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1 Mr. Tygart referred to it as a butter knife. It
 2 would be less accurate, is that the --
 3 A. It would be inherently less accurate
 4 A compromise is made in the screening technique,
 5 because the screening procedure is intended to
 6 be comprehensive. You're looking for many
 7 different compounds and products. The ions --
 8 well, I don't want to get too technical.
 9 But the way in which the machine is
 10 calibrated, the way in which the sorts of
 11 molecular fragments are examined is quite
 12 different than in the confirmatory test, where
 13 everything tends to be optimized for maybe a
 14 single compound or a couple. And there are
 15 calibrations or controls run to better identify
 16 and quantify what is present.
 17 Q. Okay. So that's like earlier, you
 18 testified that the screen says 10 parts per
 19 million. But when you do the confirming, it's
 20 less than 10 parts per million.
 21 A. It's a notion that typically --
 22 you've compromised your screening -- analysis on
 23 the screening assay when you do the screening.
 24 When you did go to the confirmation test, you
 25 gain and quantify more precisely and identify

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1 of forensic processing has reached a point where
 2 you can interpret the data in the way in which
 3 it was interpreted and presented.
 4 There are wheels within wheels of
 5 how to look at the data. And I just disagreed
 6 with the way in which that data was interpreted.
 7 It doesn't follow the science I'm familiar with.
 8 And I do not think it would be accepted in a
 9 court of law.
 10 MR. COLLINS: Was it your
 11 understanding that USADA had presented the
 12 evidence to show the use of --
 13 MR. TYGART: Can I interject
 14 something here? I think this line of
 15 questioning about another case really puts USADA
 16 at a severe disadvantage. Obviously we had an
 17 expert witness in that case. Dr. Black was an
 18 expert witness on the other side in that case.
 19 But we don't have the opportunity to
 20 call those witnesses now. And we're hearing a
 21 one-sided view of the evidence from a paid
 22 expert for the athlete that was unsuccessful in
 23 that case. And that collateral attack about
 24 what happened in another case is irrelevant.
 25 MR. COLBERT: Mr. Tygart, this is

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1 more precisely what you're looking for.
 2 MR. COLLINS: Okay. I have nothing
 3 further, then.
 4 MR. COLBERT: Mr. Campbell or
 5 Mr. Cheris?
 6 MR. CAMPBELL: Yeah, I have a couple
 7 more questions.
 8 Dr. Black, the Tim Montgomery case
 9 was referenced. Were you testifying that the
 10 steroid profile wasn't reliable to show the use
 11 of steroids?
 12 THE WITNESS: That's correct. The
 13 data compiled came from many laboratories. Some
 14 of which were non-WADA laboratories, or a
 15 non-WADA laboratory, I should say. And there
 16 was no information available about whether these
 17 were even Tim Montgomery's samples, what the
 18 quality control was, what the calibrator was.
 19 It was information compiled without
 20 any of the supporting information. And all of
 21 these results have been defined as negatives.
 22 And I'm unfamiliar with any application of my
 23 science and forensics, where 20 negative answers
 24 become a positive answer.
 25 I don't know that clinical studies

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1 Edward Colbert. I understand your objection,
 2 but I don't know that it would constitute a
 3 collateral attack. I believe it was you,
 4 Mr. Tygart, that raised the issue of the
 5 Montgomery case, and I believe Mr. Campbell is
 6 seeking some clarity about what occurred in that
 7 case.
 8 MR. TYGART: My questions related
 9 only to his experience in reviewing historical
 10 longitudinal studies. Not any of the specifics
 11 of the Tim Montgomery case.
 12 And, look, where we started with
 13 this is the parties agreed this wasn't relevant
 14 information, and the panel requested it. We
 15 scrambled around to provide it for you. And now
 16 as we're trying to close this hearing, we're
 17 getting a lot of questions about something the
 18 parties thought was not relevant, and it's not
 19 relevant.
 20 And if you're going to rely on some
 21 of the answers from Dr. Black, you're going to
 22 be relying on information that he doesn't know
 23 about. He admitted he doesn't know anything
 24 about the low-mode process, which is what the
 25 parties stipulated about. It's a dangerous --

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<p>1 MR. COLBERT: Mr. Tygart, I 2 understand that. But you're also the one that 3 raised the issue of low mode by questioning 4 Dr. Black about it. I think Mr. Campbell only 5 wanted to clarify a few things. 6 To the extent it's not relevant, 7 it's not relevant. But I quite frankly don't 8 mind hearing a little explanation of a few 9 things that were raised by USADA in questioning 10 Dr. Black. 11 MR. TYGART: I absolutely disagree. 12 There was no question by USADA on anything 13 dealing with the low mode prior to the panel 14 asking him questions on the longitudinal study. 15 The panel is gathering evidence for 16 itself on half of a picture. And a picture that 17 the parties agreed prior to the hearing was not 18 relevant. 19 And so if it's now going to be 20 relevant in the panel's mind, we're going to 21 need to take time to educate the panel or make 22 sure they don't make a decision based on one 23 side's presentation of it, and a side that 24 doesn't know half of the science that's out 25 there. This is not a fair process.</p>	<p>1 panel is going to consider this evidence as 2 relevant. Because we obviously aren't prepared 3 to address this issue in detail, because it 4 wasn't something that was something of relevance 5 to the parties prior to the hearing. 6 If the panel gives us notice, then, 7 you know, we can address it. But I think you've 8 heard us. We don't think -- 9 MR. COLBERT: Mr. Bock, I think 10 that's an eminently fair request. And we're 11 certainly -- if the issue comes up and we think 12 it's something relevant, we'll certainly give 13 the parties notice. But it may be an issue that 14 never simply comes to pass. 15 MR. COLLINS: This is John Collins. 16 Can I clarify one thing on the record? Travis 17 said we agreed it was irrelevant. I don't think 18 there was ever an affirmative disagreement that 19 it was irrelevant. 20 MR. COLBERT: For all purposes, 21 Mr. Collins, when you stipulate to a fact, I 22 think the purpose of relevance disappears just 23 by stipulating to a fact. 24 So, again, I'm not saying this is 25 going to be a basis of decision or any finding</p>
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<p>1 MR. COLBERT: I hear you, 2 Mr. Tygart, but I'm not going to tell 3 Mr. Campbell that he can't ask these questions. 4 And quite frankly, I thought the original 5 questions about the longitudinal study were very 6 limited and were over quickly. And this whole 7 area of expansion arose out of your 8 reexamination of Dr. Black. 9 MR. TYGART: The record speaks for 10 itself. 11 MR. COLBERT: It does. And I hear 12 your objection, which will speak for itself. 13 And it's on the record, as well. If Mr. 14 Campbell wants an answer to his question, I 15 don't see why he can't have it. 16 MR. TYGART: We're going to request 17 a postponement. And we're going to request the 18 opportunity to bring live witnesses that 19 understand and can go through a longitudinal 20 study. I think that's the only thing that's 21 fair, given the limited evidence on this issue 22 that the panel discovered for itself. 23 MR. BOCK: If I could just interject 24 something. And that would be -- I mean, I think 25 what we're asking for is some notice if the</p>	<p>1 of fact or any conclusion reached by the panel. 2 It's an issue we have questions about. More 3 questions were raised during the examination. 4 I think Mr. Bock is correct. I 5 think USADA would be entitled to notice if it 6 was determined by the panel that we should 7 consider any of this. 8 I'm not saying that it will be or is 9 being considered. And I hear your objection to 10 it. But, you know, I hope you're not now hoping 11 to back out of your stipulation. 12 MR. COLLINS: No, I'm not trying to 13 back out of the stipulation. We never agreed it 14 was irrelevant. And if there was notice that it 15 was going to be used for or against -- 16 MR. COLBERT: Like I said, both 17 parties will get notice. 18 MR. COLLINS: That's fine. I was 19 just doing it to clarify the record. 20 MR. COLBERT: That's fine. Both 21 parties will get notice. Mr. Campbell? 22 MR. CAMPBELL: I don't know if the 23 court reporter -- did I get my question out? 24 (The last question was read back.) 25 MR. CAMPBELL: Let me see if I can</p>

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1 rephrase it intelligently.
 2 Was it your understanding that USADA
 3 had presented the longitudinal steroid profile
 4 in the Thompson case for the purpose of showing
 5 the suppression in a natural profile to prove
 6 use of steroids when there were otherwise no
 7 positive tests?
 8 THE WITNESS: It was my
 9 understanding that the longitudinal profile was
 10 to show the variants of the T/E ratios as being
 11 indicative of use. And in association with
 12 that, there was blood work that was also used
 13 showing some results from blood analysis that
 14 was used in concert with the urine result.
 15 But I do not recall that it was a
 16 suppression issue, as much as the variability of
 17 the testosterone or the T/E ratio.
 18 MR. COLLINS: Now, you said that --
 19 you testified that this kind of profile couldn't
 20 be used reasonably to prosecute an athlete for
 21 drug use. What about conversely? Could it be
 22 used -- could it be reasonably used as evidence
 23 to show that that athlete probably was not
 24 engaging in a consistent pattern of doping?
 25 THE WITNESS: Oh, gosh. That's an

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1 consistency, be one that would be less likely to
 2 be one that you wanted to use?
 3 THE WITNESS: We didn't do an
 4 analysis to show the viscosity or the oil base
 5 on this product. I'm not sure that I could
 6 answer that question. By its definition here,
 7 it would seem unlikely.
 8 If it's sticky and viscous, it might
 9 be less likely to release drug through the skin.
 10 But really we didn't do any analysis to try to
 11 chemically define such a product to say this
 12 would be a good vehicle by which a drug could be
 13 administered.
 14 MR. CHERIS: In general, though, the
 15 lighter-based creams would be easier to get a
 16 drug into the body than a sticky, heavier
 17 substance?
 18 THE WITNESS: Yes.
 19 MR. CHERIS: Thank you.
 20 MR. COLBERT: Dr. Black, we've spent
 21 so much time on the steroid profile, I'd just
 22 like for you to describe -- are you looking at
 23 the steroid profile in front of you now that you
 24 testified about?
 25 THE WITNESS: Yes.

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1 excellent question. And I guess I always think
 2 from the other side. I don't think -- if it's
 3 not reliable in one way, I don't think I would
 4 accept it as reliable in the other.
 5 It certainly might be suggestive,
 6 but I don't think it's definitive. And I think
 7 the weight is greater on the accusation side. I
 8 don't think it would be reliable enough to work
 9 either way.
 10 MR. CAMPBELL: That's all the
 11 questions I have.
 12 MR. COLBERT: Mr. Chervis?
 13 MR. CHERIS: Let me go into one.
 14 On the lipigel product, there has
 15 been a question raised as to it being a new
 16 change in procedure. And we see in here that
 17 the lipigel does not contain anything of
 18 steroids and precursors.
 19 If one was going to spike a cream --
 20 I know you talked about it being less likely on
 21 a cream applied within an hour. Is the lipigel
 22 one which would be the base of a cream that
 23 would be better to use if you were going to
 24 spike a product, to get it into the system
 25 faster, or would the lipigel, because of its

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1 MR. COLBERT: I'd like to go down --
 2 there's a series at the top of titles. And
 3 across the -- across the top of the horizontal
 4 chart.
 5 THE WITNESS: Yes.
 6 MR. COLBERT: Can you just, for the
 7 record, describe what those abbreviations mean
 8 at the top of each page. You can start with
 9 ESG. I think we all know what the bottle and
 10 the collection is.
 11 THE WITNESS: The ESG is the
 12 specific gravity of the sample, or the density.
 13 The pH is a measure of acidity of the urine.
 14 And these all appear to be normal pHs for the
 15 urines.
 16 The T/E would be the testosterone,
 17 epitestosterone ratio. The bracket around
 18 testosterone indicates concentration. And the
 19 t-e-s-t would be the test -- the nanograms per
 20 milliliter.
 21 The same for the T/E. The brackets
 22 all across would indicate concentration of the
 23 epitestosterone and testosterone,
 24 etiocholanolone, and the
 25 testosterone-to-androstenone ratio and the

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<p>1 testosterone-to-etiocolanolone ratio. 2 MR. COLBERT: As I understand it, 3 for the testosterone concentration, I guess the 4 density is the concentration of testosterone? 5 THE WITNESS: Yes. 6 MR. COLBERT: The tests were 7 optimized for testing that. Not any of the 8 other substances -- 9 THE WITNESS: Yes. 10 MR. COLBERT: -- is that your 11 understanding? 12 THE WITNESS: Correct. From UCLA's 13 laboratory. And I would say that's probably 14 consistent for all the levels. 15 MR. COLBERT: So the T/E is a 16 testosterone/epitestosterone level? 17 THE WITNESS: Yes. 18 MR. COLBERT: I'm going to pick one. 19 Go down to April 22, 2006. It's got a 0.19 20 under the T/E column. 21 THE WITNESS: Yes. 22 MR. COLBERT: What does that tell 23 you? 24 THE WITNESS: That tells me that the 25 mass concentration relationship of the</p>	<p>1 versus the confirmation, is there -- the CIR is 2 always a very accurate test. Is that your 3 understanding? It's not like there's a low 4 threshold and then they do it again. 5 MR. COLBERT: That's your question 6 for Dr. Black? 7 MR. COLLINS: Yes. 8 THE WITNESS: Yes. Actually, 9 typically, the carbon isotope abrasion test 10 would be prompted by something in the screening 11 test, either the T/E ratio or the concentration 12 of the testosterone or the epitestosterone, or 13 perhaps the concentration of the DHEA itself. 14 So the carbon isotope abrasion test 15 is usually a follow-up test performed based upon 16 other indicators that the sample may be 17 positive. 18 MR. COLLINS: Thank you. 19 MR. COLBERT: Nobody has any other 20 questions? 21 Then, Dr. Black, thank you very 22 much. You're excused from testifying. But we 23 would ask that you provide to the parties and to 24 the panel -- and you could do so through 25 Mr. Collins -- copies of the photographs.</p>
<p>Page 818</p> <p>1 testosterone is in much lower concentration than 2 the epitestosterone, since epitestosterone is 3 the denominator. 4 So there's only about .2, or 5 20 percent testosterone relative to 6 epitestosterone. 7 MR. COLBERT: But this chart would 8 not tell you one way or the other whether any of 9 these tests are positive for testosterone? 10 THE WITNESS: Well, you happened to 11 pick the sample that was the carbon isotope 12 abrasion test. This chart doesn't tell us 13 there's epitestosterone present within the 14 sample. But on its own, it wouldn't tell us the 15 testosterone or any precursor that was used. 16 MR. COLLINS: Mr. Colbert, in light 17 of the last question, I have a question for 18 Mr. Black. I believe he has the chart that was 19 given out last week. I don't believe he has the 20 one that we have, which has the CIRs -- which 21 tests CIRs that we got yesterday. 22 MR. COLBERT: Okay. What's your 23 question? 24 MR. COLLINS: The question is, When 25 we talked about the accuracy or the screening</p>	<p>Page 820</p> <p>1 Color, if it's possible, of the photographs of 2 the products on which you reported. 3 THE WITNESS: We will do that. And 4 I will also verify whether or not the products 5 themselves still exist. 6 MR. COLBERT: Thank you. 7 THE WITNESS: Thank you. Goodbye. 8 MR. COLBERT: Thank you, Dr. Black. 9 Okay. Mr. Collins, that concludes 10 your case? 11 MR. COLLINS: It does. 12 MR. COLBERT: Mr. Tygart? 13 MR. TYGART: We'll be calling 14 Dr. Richard Hilderbrand. 15 MR. COLLINS: We've been going for 16 about two and a half hours. Would it be 17 possible to take a five-minute bathroom break? 18 MR. COLBERT: Yes. Surely. We will 19 probably take a few minutes to get Dr. 20 Hilderbrand. I've got about -- I've got like, 21 22, minutes after. Is 5:30 -- eight minutes -- 22 enough for everybody? 23 MR. COLLINS: That would be 4:30, 24 Central; 3:30, Mountain time. Okay. Thanks. 25 Back in eight minutes.</p>

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<p>1 (A break was taken.) 2 WHEREUPON, 3 RICHARD L. HILDERBRAND, 4 being first duly sworn in the above cause, was 5 examined and testified as follows: 6 EXAMINATION 7 BY MR. TYGART: 8 Q. Hi, Doctor. It's Travis Tygart. 9 Can you hear me okay? 10 A. I can. 11 Q. I just have a few questions for you. 12 And thanks for joining us here in a very late 13 request. 14 What is your job at USADA? 15 A. I'm science director. And part of 16 that includes managing our drug reference 17 on-line, which is our web-based information 18 service and drug reference line, which is the 19 live service from 8:00 to 4:00 on business days. 20 Q. And is one of your responsibilities 21 in your role at USADA to oversee the drug 22 reference line? 23 A. Yes. 24 Q. Describe the drug reference line. 25 A. First, may I ask, can everyone hear</p>	<p>1 Q. And does USADA advertise that number 2 to athletes? 3 A. Yes. And that's published in our 4 literature. 5 Q. And is it on the USADA website? 6 A. Yes. 7 Q. And what is the drug -- you 8 mentioned the DRO, the drug reference on-line. 9 What is that exactly? 10 A. The drug reference on-line is a web- 11 based information service that includes 12 pharmaceuticals that are available in the U.S. 13 And they can be searched by brand name. And 14 it's accessible 24 hours a day for anyone that 15 has access to the Internet. There's no 16 restrictions on it, in other words. 17 Q. Okay. Is it USADA's standard 18 practice to report calls that come into the drug 19 reference line? 20 A. Yes. The standard practice is we 21 have a call log that is separate from the DRO 22 database that I mentioned. We have a call log 23 that logs in the information from each one of 24 the calls that we receive. 25 Now, the line is intended to be</p>
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<p>1 me okay? 2 MR. CAMPBELL: I can. 3 MR. COLBERT: I can. This is Edward 4 Colbert, Doctor. 5 MR. CHERIS: Sam Cheris. I can 6 hear. 7 A. The drug reference line is a service 8 provided to support athletes when information is 9 needed on the status of medication. The drug 10 reference line has a live coverage, as I said, 11 from 8:00 to 4:00 on business days. 12 After hours, there is either a pager 13 number or a cell phone number that can be used 14 for emergency calls. So there is, in essence, 15 24-hour coverage of the drug reference line. 16 And the actual function is to provide 17 information on the status of medications that 18 athletes may need for treating accidents, 19 illness, injury, et cetera. 20 Q. And is that a toll-free number? 21 A. Yes, it is. 22 Q. And what if you're outside of the 23 United States, Is there a number you can call, 24 as well? 25 A. Yes, there's a 719 number.</p>	<p>1 anonymous. In other words, we do not want to 2 put an athlete in a position of identifying 3 themselves if they're asking about prohibited 4 medication, and perhaps the use of that 5 medication. 6 So at times we receive names and 7 telephone numbers, and we record those. At 8 other times, the caller prefers to remain 9 anonymous. 10 Q. So is it the standard practice that 11 someone gives their name, whether it's an 12 athlete or an agent or a parent, for that to be 13 recorded in the database that you just 14 mentioned? 15 A. Yes. That, in the normal course of 16 business, would be recorded, along with phone 17 numbers. 18 Q. And would you also list the 19 substance that they inquired about? 20 A. Yes. They are generally brief notes 21 about the situation, the conditions that are 22 being called about. The substances and the 23 response that is provided. 24 Q. Okay. And do you have the 25 capability to search that database?</p>

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<p>1 A. We can search it by certain 2 characteristics: telephone numbers, names, 3 dates and -- let's see. Yes. So we can search 4 for limited information. 5 Q. And in the last couple of days, have 6 you had the opportunity to review the database 7 for a call related to this case, the Justin 8 Gatlin case? 9 A. Yes, I have. 10 Q. And did you find any record of a 11 call from Renaldo Nehemiah in March of 2006? 12 A. No, I did not. 13 Q. Did you try alternative spellings -- 14 A. Yes. 15 Q. -- for the name Renaldo Nehemiah? 16 A. Yes, I did. 17 Q. Did you see any calls from a Renaldo 18 Nehemiah in February of '06? 19 A. No. 20 Q. How about January of '06? 21 A. No. 22 Q. How about April of '06? 23 A. No. 24 Q. Any time in '06 did you get a call 25 from Renaldo Nehemiah?</p>	<p>1 used for inflammation. It's used for actually a 2 variety of things. 3 Q. It's a prohibited substance? 4 A. Depends on the mode of 5 administration. For certain things, it is 6 prohibited. And for some administrations, it 7 needs a prescriptive form. And for other 8 administrations, it is allowed. 9 Q. If someone received an injection in 10 the knee for triamcinolone, what would you need 11 to have that accomplished without violating the 12 anti-doping rules? 13 A. That would require an abbreviated 14 therapeutic-use exemption form, which is a 15 notification. It does not require preapproval. 16 It requires information on the athlete, doctor's 17 signature, and then the description of the 18 medical condition and the treatment. 19 Q. Okay. There's been testimony in 20 this case, Dr. Hilderbrand, that a male doctor 21 from the drug reference line told Renaldo 22 Nehemiah that as long as you are not competing 23 within ten days of receiving a triamcinolone 24 injection, that you would be okay. Is that some 25 advice that would have been given out from the</p>
<p>1 A. No. Not where the name was 2 identified. 3 Q. How about did you check the name 4 "Justin Gatlin" during this time period. 5 A. Yes, I did. And I found no entries. 6 Q. So no entries in March of '06 or 7 February of '06? 8 A. Correct. 9 Q. And did you also check the name 10 Britton Stackhouse? 11 A. Yes, I did. 12 Q. And did you also check the name 13 Britton Stackhouse? 14 A. Yes, I did. 15 Q. And were there any records of a call 16 from a Brittany or a Britton Stackhouse in 17 February or March of '06? 18 A. Not in any of the spellings that I 19 tried. 20 Q. And any calls from a Brittany or a 21 Brit Stackhouse in '06 at all? 22 A. No. 23 Q. What is tripherylene? 24 A. That's a corticosteroid that is used 25 for a number of medical conditions. It can be</p>	<p>1 drug reference line? 2 MR. COLLINS: Objection on 3 foundation. It isn't indicated that he did it. 4 MR. TYGART: Well, he oversees the 5 drug reference line. And I didn't ask him if he 6 did it. I asked him if that would be the type 7 of advice that would be given out on the drug 8 reference line. 9 MR. COLBERT: I think it's a fair 10 question. 11 THE WITNESS: May I answer? 12 MR. COLBERT: Yes, please. 13 A. The drug reference line would not, 14 in my opinion, ever provide that advice. The -- 15 there are two types of injections that could be 16 given around the knee. One would be a local. 17 One would be intraarticular. And we have 18 evidence that the intraarticular injection, 19 which is actually an injection into the joint, 20 may give a positive result for several weeks. 21 Now, local injections, it would 22 depend on the site and the amount and things 23 like that. But I just don't believe that that 24 would be the advice given by anyone answering 25 the line.</p>

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<p>1 Q. (By Mr. Tygart) And the reason 2 that's not the advice is because there's no way 3 to know for sure how long a drug will stay in 4 someone's body; is that right?</p> <p>5 A. That is correct. Each person's 6 metabolism is a bit different, and they handle 7 the drugs differently. Our normal business 8 practice is to -- in a case where there's any 9 question, to advise the athlete to be 10 conservative. And that is to file the 11 abbreviated form or the therapeutic-use 12 exemption form as appropriate.</p> <p>13 Q. And an injection in the knee, just 14 so I'm clear, that would -- of triamcinolone, 15 that would only provide a TUE; is that right?</p> <p>16 A. Yes. It would be up to the 17 physician to decide whether he describes it as a 18 local or an intraarticular. But the knee, in my 19 experience here, would normally be considered a 20 local injection or intraarticular, and would 21 require the abbreviated form, not the standard 22 form which requires preapproval.</p> <p>23 Q. Okay. And the AHU,^ just so 24 everybody's clear, that's just as simple as 25 having your doctor sign a form and sending it</p>	<p>1 would be to give the same answer. And that is, 2 if a competition is coming up, that the 3 conservative thing is to file the abbreviated 4 form.</p> <p>5 Q. Would you ever tell someone that, As 6 long as you don't compete within ten days of 7 using either triamcinolone or Celestone, you'll 8 be okay?</p> <p>9 A. I certainly would not, and I don't 10 believe Dr. Pedraza would provide that 11 information either.</p> <p>12 Q. And, Dr. Hilderbrand, you know what? 13 That's actually all -- well, I'll ask it.</p> <p>14 Dr. Hilderbrand, you don't have any 15 evidence that would suggest that Celestone or -- 16 an injection of Celestone or an injection of 17 triamcinolone would cause a positive CIR test, 18 do I?</p> <p>19 A. I have no evidence. In my opinion, 20 based on my knowledge of the metabolism of the 21 corticosteroids and of the anabolic steroids, I 22 would see no possibility that the 23 corticosteroids would contribute to a positive 24 CIR.</p> <p>25 MR. TYGART: Okay. I have no</p>
<p>Page 830</p> <p>1 in. You don't have to wait for a response; is 2 that correct?</p> <p>3 A. That is correct. And no medical 4 documentation is required, other than the 5 doctor's information on his medical specialty, 6 the diagnosis, the treatment, and what I call 7 the course of treatment. That would be the 8 number of injections and the amounts given and 9 the location.</p> <p>10 Q. Are you familiar with the drug 11 Celestone?</p> <p>12 A. Celestone is another corticosteroid.</p> <p>13 Q. And is Celestone a drug that's 14 permitted to be used?</p> <p>15 A. Celestone would fall under the same 16 category that the triamcinolone would. And 17 that's a corticosteroid. So the prohibition, of 18 course, is only in competition. And it depends 19 on how it's administered.</p> <p>20 Q. And similarly, if someone inquired 21 about the drug Celestone, what would have been 22 USADA's drug reference line's advice if an 23 athlete needed to have an injection of 24 Celestone?</p> <p>25 A. The standard practice, of course,</p>	<p>Page 832</p> <p>1 further questions.</p> <p>2 MR. COLBERT: Mr. Collins?</p> <p>3 MR. COLLINS: I just have a couple. 4 Travis answered one of them there.</p> <p>5 EXAMINATION</p> <p>6 BY MR. COLLINS:</p> <p>7 Q. You indicated if you took it -- I 8 think you were talking about the tri -- you can 9 say the word better than I can.</p> <p>10 A. The triamcinolone.</p> <p>11 Q. You talked about it leading to a 12 positive test. I think it was intraarticular. 13 That positive test you referred to was for that 14 substance, not for testosterone or precursors?</p> <p>15 A. Yes. I'm sorry. I do need to 16 clarify that. It would be an adverse analytical 17 result for the corticosteroid.</p> <p>18 Q. Which is in competition only?</p> <p>19 A. That is correct.</p> <p>20 Q. Now, if someone were to call the 21 drug hotline -- I don't know the technical name 22 for it.</p> <p>23 A. Drug reference line. Sorry.</p> <p>24 Q. -- and ask if a corticosteroid were 25 prohibited in competition or out of competition,</p>

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1 what would that answer be?

2 A. The answer would be it would be

3 prohibited only in competition. And then we

4 would inquire about the mode of administration

5 to determine if the therapeutic -- if the

6 standard form was required, if the abbreviated

7 form was required, or if the administration was

8 actually permitted.

9 Q. And the abbreviated TUEs, you said

10 those are for notice purposes only?

11 A. That is correct. They do not

12 require preapproval, and do not require the

13 submission of medical records. They go on the

14 doctor's signature alone.

15 Q. Okay. And when discussing if it's

16 out of competition, would someone from your

17 hotline give the advice you need to take it

18 sufficiently in advance for it to be out of your

19 system?

20 A. Yes. That is an inherent part of

21 our discussion, to ensure that the person

22 realizes that they need to have it not only out

23 of their blood, which is a common medical and

24 pharmacy description. If it goes below a

25 certain amount in their blood, that's okay for

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1 them. But we do explain to the person calling

2 that it has to be out of the blood and out of

3 the urine entirely by the time of competition.

4 Q. And would you also tell them, then,

5 if you're going to ask -- if someone asked how

6 long it stayed in, would you refer them to their

7 doctor?

8 A. Yes. We do refer them to the doctor

9 or the pharmacist that filled the prescription.

10 Q. All right. And you would say to ask

11 them for how long they think it would be in,

12 because USADA can't give that answer definitely?

13 A. Yes.

14 Q. And these abbreviated TUEs, they are

15 not sent to USADA, are they?

16 A. We do, in certain cases, act as a

17 mailbox. We do act as assistance for the

18 athletes in handling them, since many of the

19 athletes are overseas. They're actually spread

20 around the world, so we act as a mailbox. Any

21 athlete can send their form to us. Either the

22 abbreviated form or the standard form.

23 If it's within our authority to

24 process, then we make the decision here and

25 we'll convene a therapeutic use committee, as

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1 needed. If it is not within our authority, then

2 we will forward it on to the International

3 Federation. And this is really to provide

4 assistance to the athlete.

5 Q. Okay. That's when you're going to

6 make the decision that it's for a full TUE, not

7 an abbreviated TUE?

8 A. That's right.

9 Q. You said you act as a mailbox. But

10 you can send it directly to the WADA?

11 A. An athlete has the choice to send it

12 to us or to the International Federation.

13 Q. So if a doctor prepared one, he

14 could send it directly to the IAAF? You're

15 saying just --

16 A. That's correct.

17 Q. You're saying just to be safe, if it

18 showed up in a positive test, you'd want it to

19 be on file that that actually happened?

20 A. Would you repeat the question? I'm

21 not sure I understand you.

22 Q. You said several times if someone

23 was going to take a drug before competition,

24 they should file a TUE, correct?

25 A. That's correct. If we were

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1 concerned about the time between dosing and the

2 potential in competition testing.

3 MR. COLLINS: I don't have anything

4 further.

5 MR. COLBERT: Mr. Tygart?

6 MR. TYGART: Nothing further from

7 USADA.

8 MR. COLBERT: Mr. Campbell?

9 MR. CAMPBELL: No.

10 MR. COLBERT: Mr. Chervis?

11 MR. CHERIS: I'd like to just clear

12 up the one thing.

13 If you don't do an abbreviated TUE,

14 you haven't violated any rule. And if your

15 doctor has said that it will be out of your

16 system in ten days, and it truly is, and doesn't

17 show up on a test, you haven't violated

18 anything; is that correct?

19 THE WITNESS: Yes, that is correct.

20 If they do not test positive or do not provide

21 an adverse analytical finding at the

22 competition, that would not be a violation.

23 MR. CHERIS: Thank you.

24 MR. COLBERT: Thank you,

25 Dr. Hilderbrand. I believe you're excused now.

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<p>1 MR. TYGART: Thanks so much. 2 THE WITNESS: Thank you. 3 MR. COLBERT: Mr. Tygart, Mr. Bock, 4 do you have another witness to call? 5 MR. BOCK: I guess if we were in the 6 same room, we'd have a quicker answer. 7 MR. COLBERT: Do you guys want to go 8 on line and chat? 9 MR. BOCK: Give us about three 10 minutes. Thanks. 11 MR. COLBERT: The rest of us will 12 stay on line. Thanks. 13 (A break was taken.) 14 MR. TYGART: This is Travis. Bill 15 will be back in one second. 16 MR. BOCK: I'm here. 17 MR. TYGART: We are going to rest 18 our case. 19 MR. COLBERT: All right. I assume, 20 then, that, Mr. Collins, assuming they only had 21 Dr. Hilderbrand to testify, and no rebuttal to 22 one of your witnesses, that you have no further 23 surrebuttal? 24 MR. COLLINS: I don't have any. The 25 one issue that kind of came up in cross is the</p>	<p>1 MR. COLLINS: 17 is the supplements, 2 and 18 is the supplements and cream. 3 MR. TYGART: I don't know if we 4 marked it as 18. 5 MR. COLLINS: I put it down as 18. 6 MR. COLBERT: Okay. With that 7 clarification, that will be 17 and 18. 8 MR. TYGART: And, Johnnie, if you're 9 on the phone, would you mind pdfing to everyone 10 the indictment in the Trevor Graham case. 11 MS. WINGUARD: Okay. 12 MR. TYGART: Thanks. 13 MR. COLBERT: And, Mr. Collins, if 14 you would forward copies to Mr. Tygart and to 15 the three panel members as soon as you get them 16 in color, then that would constitute closing the 17 record. 18 MR. COLLINS: Will do. 19 MR. COLBERT: Do you know whether 20 you'll be able to get Dr. Black's records? He's 21 on the East Coast, but he's probably headed 22 home. But we would like to have them by Friday, 23 if we could. 24 MR. COLLINS: I will make that 25 request. I'll write a note to myself right now.</p>
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<p>1 DHEA being sent in by Cameron Myler. If that's 2 sufficiently resolved by the panel, then I would 3 not have to call another witness. 4 MR. COLBERT: I think that's pretty 5 clear. 6 MR. COLLINS: Then I don't have any 7 other witnesses. 8 MR. COLBERT: All right. So that 9 leaves, as I understand it, we are going to 10 leave the record open only insofar as we are 11 waiting for a copy of the indictment, which was 12 going to be produced, but apparently didn't 13 arrive until yesterday. And to receive the 14 information from Dr. Black that was requested 15 during his cross. 16 Other than that, the record is 17 closed unless a party has some other point they 18 wish to make. 19 MR. COLLINS: I have one 20 housekeeping matter, just to make sure. Gatlin 21 17 is all 17 or 18 pages. It wasn't two 22 separate ones. Because I sent them as two 23 documents, but I assume they got merged. 24 MR. TYGART: 17 and 18 are two 25 documents.</p>	<p>1 MR. COLBERT: Barring any unforeseen 2 information, we expect to close the record on 3 Friday and will proceed accordingly. Does 4 anybody else have anything they want to add? 5 MR. TYGART: In terms of the record, 6 we're prepared to do closing arguments. 7 MR. COLBERT: Do you need a short 8 period of time to prepare for that, or do you 9 want to proceed right away? 10 MR. TYGART: I'm fine proceeding 11 right away. 12 MR. COLBERT: Now, we had a little 13 unusual circumstance in that you went second 14 because of the stipulations. But normally you 15 would start your closing first. Do you wish to 16 proceed that way, or have you spoken about this 17 with Mr. Collins? 18 MR. TYGART: We have not spoken. 19 But because of the stipulation, USADA didn't 20 have a burden to carry. And I think typically 21 the party with the burden to carry has the 22 opportunity to go first. So we would afford 23 that opportunity to Mr. Collins. 24 MR. COLBERT: Okay. Mr. Collins, 25 they've passed the burden to you. So you will</p>

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1 be able to open, and you will have a short
 2 rebuttal to USADA, if necessary. Are you
 3 prepared to proceed now with close?
 4 MR. COLLINS: I haven't had -- I
 5 have a document prepared and I can go. I can't
 6 say I've practiced it 20 times.
 7 MR. COLBERT: But do you need five
 8 minutes?
 9 MR. COLLINS: No, I will go through
 10 it, understanding that it's coming rather
 11 quickly.
 12 MR. COLBERT: When you say you
 13 prepared a document, do you have any -- I guess
 14 the question to you, Mr. Bock, is do you have a
 15 demonstrative that you wanted to fax to the
 16 panel or e-mail to the panel before you made
 17 your closing?
 18 MR. BOCK: I do not.
 19 MR. COLLINS: I do not either. My
 20 handwriting is illegible. It's a document I
 21 prepared to read. My bullet-point outline to
 22 myself. But not one I planned to publish by any
 23 stretch.
 24 (Discussion off the record.)
 25

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1 CLOSING ARGUMENTS.
 2
 3 MR. COLLINS: I'd like to start by
 4 thanking the panel for its time and attention.
 5 They have obviously -- you've obviously been
 6 very dedicated and listened attentively. You've
 7 asked a number of questions, and we thank you
 8 for that. And we also want to acknowledge the
 9 task in front of you to understand the facts and
 10 circumstances, then determine the just
 11 proportionate result in light of those facts and
 12 circumstances and in light of the WADA code.
 13 We also note that the issue before
 14 you has to do with the positive test result for
 15 testosterone and its precursors from the April
 16 22, 2006, urine test.
 17 Before getting into the specifics of
 18 the argument, we'd like to also note, as I did
 19 in my opening, and as we just discussed with
 20 Mr. Bock, that my client has the burden of proof
 21 here in that there's been a stipulation that an
 22 adverse analytical result has occurred.
 23 What that means is my client,
 24 Mr. Gatlin, had the burden of proof that he must
 25 demonstrate by the probability of certain things

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1 under the WADA code.
 2 The balance of probabilities, as the
 3 panel is aware, is the mere preponderance. It's
 4 not beyond a reasonable doubt. It's not clear
 5 and convincing. It's not comfortable
 6 satisfaction. It's just a mere preponderance.
 7 Just weighing one side against the other.
 8 It's also important to note there's
 9 no presumption of guilt here. The only
 10 presumption of the code has to do with the lab
 11 results and how they're done. There's also no
 12 presumption of use. The specific facts and
 13 circumstances that Mr. Gatlin must demonstrate
 14 by the balance of probabilities do not include
 15 anything -- they're restricted to those parts
 16 that come up in the exceptional circumstances,
 17 which we'll get to in a few minutes.
 18 Before that, I would like to also
 19 address and note that while I put together a
 20 closing argument here, I would like to reiterate
 21 and reemphasize the briefs that we filed in this
 22 case, because there are a number of things
 23 raised in those. And I want to be clear that
 24 we're not in any way waiving those arguments.
 25 And to the extent there are actions

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1 requested there, that the panel consider those.
 2 What we've done the last three days is the
 3 evidentiary part of the hearing. But there were
 4 a number of legal arguments and other items in
 5 those briefs that we reiterate, and, again,
 6 would ask to be considered.
 7 Briefly, we'd like to discuss the
 8 2001 positive test, which was also brought up on
 9 the first day. As indicated in our briefs and
 10 documents, the prior test involved Mr. Gatlin
 11 taking prescription medicine for his disability
 12 prior to his event.
 13 The USADA did find that Mr. Gatlin
 14 did not cheat. He did not intend to cheat and
 15 did not enhance his performance. I'd also like
 16 to note that there was no express finding of
 17 fault in that matter.
 18 It's Mr. Gatlin's position, as we
 19 stated in our briefs, that that positive test
 20 was too old and should not be counted. The WADA
 21 code failed to address the age of offense in the
 22 reach-back period. And the recent Thifa WADA
 23 case decision said that was a violation of Swiss
 24 law.
 25 Mr. Gatlin has not waived or

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<p>1 forfeited. I understand USADA believes he has 2 in entering into the first stipulation. As 3 indicated in our reply brief, we would seek that 4 that reply speak for itself on its face, and ask 5 that those items be considered.</p> <p>6 Also, shortly after openings, before 7 we started getting into evidence, there was a 8 question as to whether the WADA Code 2.0 9 applies. And Mr. Tygart indicated USADA's 10 position that it does not apply.</p> <p>11 As we've indicated in our briefs, if 12 you look at it, there's a lex mitior argument 13 that could be made. But more importantly, we 14 believe that looking at the WADA code -- WADA 15 Code 2.0 is attempting to address, particularly 16 with respect to the items that are at issue in 17 this case, the multiple -- the issue of multiple 18 positive tests.</p> <p>19 And those factors are placed where 20 there have been CAS panels that found a lacuna 21 in the code. And we believe those apply in this 22 case. The CAS panel's recognition of those 23 before has indicated their ability to promote 24 natural justice, and proportionality allowed 25 them to fix an answer.</p>	<p>1 under the WADA code are a method by which an 2 athlete who has had an adverse finding may 3 reduce or eliminate any penalty or sanction.</p> <p>4 First, I will address Mr. Gatlin's 5 cooperation. I think this is incredibly 6 significant here. You've had the opportunity to 7 listen to Justin himself testify on this point, 8 and you also had the opportunity to listen to a 9 special agent for the IRS, Jeff Novitzky, 10 testify about Justin's cooperation with the 11 ongoing BALCO investigation, and what led to the 12 ultimate indictment of Justin's track coach, 13 Trevor Graham.</p> <p>14 I would also like to note, if you 15 would look at Paragraph 13 of the first 16 stipulation, Paragraph 1, that document 17 recognizes that Mr. Gatlin's assistance with the 18 United States government and Special Agent 19 Novitzky may be considered as extraordinary 20 circumstances or special circumstances.</p> <p>21 "Extraordinary" keeps popping into 22 my head, because Justin's efforts here were so 23 extraordinary. You heard Mr. Novitzky testify 24 about how when he requested to speak with Justin 25 Gatlin, Justin agreed to do so promptly. And</p>
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<p>1 The WADA Code 2.0, in our reading of 2 it, appears to be an audit of those CAS 3 decisions. In other words, it provides probably 4 the best possible road map of what the WADA 5 drafters were thinking as a way to draft a 6 position to those lacunas that are raised.</p> <p>7 So it appears that since it's within 8 the apparent powers of this panel to be able to 9 do so if it wanted, to have some confidence in 10 how the WADA code would do that, it's our 11 opinion that looking at WADA 2.0 would be an 12 effective way to gauge the current temperature 13 there. Recognizing that that code has not been 14 fully adopted at this point.</p> <p>15 So it could be a reference document 16 to use. Whether it's been adopted or not, it 17 certainly has weight and merit and could be 18 considered by the panel.</p> <p>19 That brings me to the point of 20 exceptional circumstances. If the panel is to 21 determine that Justin Gatlin is at fault here -- 22 and for Justin Gatlin to overcome the adverse 23 analytical finding, he must demonstrate 24 exceptional circumstances.</p> <p>25 And the exceptional circumstances</p>	<p>1 that he and his family -- he and his mother went 2 all the way to New York, and they met for over 3 five and a half hours with Special Agent 4 Novitzky, and there was no restriction.</p> <p>5 Mr. Novitzky was allowed to ask 6 about any topic he wanted, and Justin would 7 answer him truthfully. You also heard how 8 Justin was required to answer him truthfully, or 9 he would risk penalty of perjury. You also 10 heard that Mr. Novitzky testified that he 11 believed Justin testified truthfully, and all of 12 it was corroborated by the undercover calls.</p> <p>13 Which brings me to the next point, 14 which shows the extraordinary nature of the 15 cooperation by Justin Gatlin. Toward the end of 16 that five-and-a-half hour interview, Special 17 Agent Novitzky asked Justin to make an 18 undercover call to his coach, Trevor Graham. 19 And Justin did so on the spot. There was no 20 hesitation.</p> <p>21 He agreed to do it immediately. 22 Justin clearly had nothing to hide, and wanted 23 to do everything to clear himself. Justin knew 24 he had not taken any banned substance. He had 25 exercised the utmost care not to take any. So</p>

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1 when he was asked by the government to make a
 2 call, he said yes right there.
 3 Which also dovetails with Justin's
 4 experience of being a spokesperson and trying to
 5 live, to the best of his ability, a drug-free
 6 life. Being drug-free adamantly, and spreading
 7 the message elsewhere.
 8 And in noting the extraordinary
 9 nature of his cooperation, you will remember
 10 Mr. Novitzky testified -- and you'll also recall
 11 that his testimony was extremely limited in
 12 spots about what he could say, because of
 13 USADA's representatives that were on the phone.
 14 But with respect to the BALCO
 15 prosecutions, he noted that the BALCO
 16 prosecutions have been completed to date. There
 17 was not a single undercover call by Adalie,
 18 which truly shows the nature that Justin was
 19 willing to cooperate.
 20 In the anti-doping movement, he was
 21 willing to put himself at risk by making the
 22 calls. And it also shows he had nothing to
 23 hide.
 24 I'd also call your attention to
 25 Mr. Novitzky's testimony as to why he asked

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1 Justin to make a call right then and there.
 2 Because that's very significant. He did that to
 3 help corroborate what Justin had just said. He
 4 then scripted the call to bring up -- and the
 5 second reason he did it was to develop evidence
 6 on targets.
 7 The target of that call was Trevor
 8 Graham, but there was also a request by
 9 Mr. Novitzky for the later calls to Randall
 10 Evans. You recall the discussions with
 11 Mr. Evans. The U.S. DA did not let him go much
 12 into that area, but he scripted a call to see if
 13 a call to Trevor Graham would prove any holes or
 14 give an indication that Justin had been
 15 untruthful.
 16 And Agent Novitzky testified that
 17 that prong had been satisfied. And in doing so,
 18 he had reviewed not just the transcript of that
 19 one call, but the additional ten or so calls
 20 that Mr. Gatlin made, which brings up another
 21 point of extraordinary cooperation. That he
 22 didn't make one call. He made ten over a long
 23 period of time. Every time he was asked, he
 24 would call.
 25 Special Agent Novitzky further

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1 testified that Justin had satisfied the level of
 2 cooperation for the government. He had done
 3 everything the government had asked. He put in
 4 an effort. He did note that there were a few
 5 hiccups along the way, but then those hiccups
 6 were promptly corrected.
 7 I also should bring out in this
 8 point that through the course of this hearing,
 9 it's come to our attention that the government
 10 and USADA, while we understand they were in
 11 regular communication, it was not always a
 12 complete two-way road. And in particular, I'm
 13 referring to the information about Memo, or
 14 Angel Heredia.
 15 And having learned that not
 16 necessarily all of the information that we
 17 provided to the U.S. government, to the IRS, has
 18 -- was not necessarily shared with USADA, we are
 19 now in the process of getting all of that "Memo"
 20 information to USADA so we can do something.
 21 Now, Justin's cooperation, in
 22 addition to being extraordinary, has also been
 23 significant in establishing violations. Special
 24 Agent Novitzky testified that Justin's
 25 cooperation to date has led to the indictment of

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1 Trevor Graham.
 2 As you can tell by USADA's response
 3 when we had the incident where Mr. Gatlin had
 4 seen it as an April Fool's joke, clearly Trevor
 5 Graham is a person of interest to USADA. And
 6 Mr. Gatlin, in doing anything to help in that
 7 prosecution, is significant to USADA.
 8 It also should be noted, while I
 9 don't believe USADA commented about it, but it's
 10 my understanding that USADA has a pending
 11 investigation against Trevor Graham, and
 12 Mr. Gatlin will be willing to cooperate in any
 13 way he's asked.
 14 You will recall I think I've already
 15 mentioned that Special Agent Novitzky testified
 16 that Mr. Gatlin provided evidence and recorded
 17 calls to Mr. Evans, but Mr. Novitzky was not
 18 allowed to talk at all about Mr. Evans.
 19 I think the clear presumption from
 20 the panel is that he is a person of interest in
 21 that investigation -- the ongoing investigation,
 22 and Justin's calls may very well lead to future
 23 indictments. Obviously I can't say that with
 24 any certainty, because I don't know what's
 25 happening with the grand jury investigations.

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<p>1 But you also know that the 2 undercover operatives do not control the success 3 of the venture. And it would be inappropriate 4 to only reward undercover operatives on the 5 success of the issue. That would cause one to 6 potentially fabricate evidence. So the federal 7 government of the United States has set up a 8 system whereby they're awarded on their effort 9 of what they have done.</p> <p>10 In sum, Justin Gatlin has gone above 11 and beyond standard cooperation. Typically when 12 cooperation happens in an anti-doping matter, 13 it's an athlete telling them about what they had 14 done, because those athletes had committed 15 knowing violations. And they would also tell 16 who else participated in those knowing 17 violations, so they could turn over their source 18 or co-conspirators.</p> <p>19 As you've seen here by the 20 evidence -- which has been confirmed by 21 Mr. Novitzky, who indicated that there was no 22 evidence that Mr. Gatlin ever knowingly used a 23 banned or prohibited substance -- Mr. Gatlin has 24 had no such opportunity. He has no 25 co-conspirators. He had no one to turn in. But</p>	<p>1 cooperation for anti-doping should be counted. 2 And second is limiting it by 50 percent is not 3 enough of an incentive, in that the first draft 4 reduced it by 75 percent, while the latest code 5 currently has 50 percent.</p> <p>6 I'd like to now turn our attention 7 to the no fault, or no fault or negligence. 8 Under this provision of the code, Justin is 9 expected to testify how the substance entered 10 his body.</p> <p>11 I should note that under the 12 previous code, it would have to show by balance 13 of the probabilities that he's cooperated.</p> <p>14 Here to establish no fault or 15 negligence, or no significant fault or 16 negligence, Justin is required to establish how 17 the prohibited substance entered his system. 18 And he is required to do this, again, by the 19 balance of probabilities.</p> <p>20 Justin is not required to prove what 21 substance entered his body. He's not required 22 to prove its concentrations or anything else. 23 All he has to show is how it entered his body. 24 So as a balance of probabilities, we must look 25 at what is the evidence in this case.</p>
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<p>1 he has done everything he can.</p> <p>2 And to have a system where only the 3 guilty are available for any benefit of 4 cooperation would neither be just nor 5 proportionate. There should be a method whereby 6 individuals who go above and beyond and take the 7 risk of covert operations are rewarded for 8 taking those risks and fully cooperating.</p> <p>9 And I submit what Justin Gatlin 10 deserves -- to the extent he receives any 11 penalty in this case, his actions and 12 cooperation with the United States government 13 and his cooperation with USADA should entitle 14 him to the maximum amount of reduction in 15 penalty allowed under the code.</p> <p>16 At this point, I'd also like to call 17 attention to lacuna in the current code. I'll 18 call it lacuna, but with respect to the 19 undercover action, cooperation with government 20 enforcement. And the current amount that the 21 code is willing to give reduction.</p> <p>22 And I'd note that the new code, at 23 least one of them from the WADA code -- the 24 first version of the WADA code indicated that 25 cooperation -- first it indicated that</p>	<p>1 In this case, Justin has testified 2 that he did not knowingly take any banned 3 substance. While athlete denials may be more of 4 an expectation, here you have Special Agent 5 Novitzky's testimony that he stated Justin was 6 truthful in his interview where he testified 7 that he did not knowingly ingest banned 8 substances.</p> <p>9 There is other evidence 10 corroborating that Justin did not knowingly take 11 them. You also have Justin's testimony that he 12 did not ingest any banned substance orally or 13 through an injection. And as you've heard the 14 experts testify, there's really just three ways 15 the substance can enter one's system.</p> <p>16 It can enter orally. It can enter 17 through an injection, or it can enter 18 transdermally. Justin's testimony here about 19 not ingesting any banned substance orally or 20 through an injection is credible, and has been 21 corroborated.</p> <p>22 You also have the corroborating 23 testimony of Terri Blankenship, who confirmed 24 that she did not see any injection marks or 25 evidence of injection s when she gave Justin</p>

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<p>1 Gatlin a massage just four days later. 2 As a result, the evidence here has 3 ruled out all methods other than transdermal. 4 So by balance of the probabilities, the only 5 method it could be applied was transdermally. 6 So it entered his body through the skin. 7 In corroboration of this, you also 8 heard Dr. Black testify that his test results 9 are consistent with transdermal application. 10 You also know that Justin's supplements tested 11 negative. And as Travis in his questioning 12 indicated, even a contaminated substance would 13 not be there -- would not be a basis for it. 14 You also have Justin Gatlin's 15 testimony that there were no changes in his 16 routine or his supplements between 4-22 and 17 4-29. And I draw your attention to those dates, 18 because on April 22 was a positive test, and on 19 April 29 there was a negative test. And both of 20 those test-CIRs. So you have the question about 21 how it entered his system. 22 And this is where, as you know, 23 we've entered a second stipulation. That 24 stipulation talks about there are individuals 25 who have low testosterone in their urine, and</p>	<p>1 more than 24 hours beforehand, would not result 2 in a high T/E ratio, but would result in a 3 positive test or a CIR. 4 And so we believe the balance of the 5 probabilities indicates there was something 6 applied to him transdermally prior -- within the 7 24 hours or so prior to the race. And that is 8 how the substance -- the banned substance, the 9 prohibited substance entered his system. 10 Now, as I said a number of times, 11 the burden is to balance the probabilities. To 12 balance the probabilities, you must weigh 13 evidence on one side with evidence on the other 14 side. 15 Here there has been zero evidence 16 presented by USADA that the substance entered 17 his system any way other than through his skin. 18 There has been innuendo and indication that he's 19 done something else, but there's been no 20 evidence and no testimony to present anything 21 contrary than through the skin. 22 They have attempted to impeach the 23 credibility of Mr. Gatlin. But, again, 24 Mr. Gatlin's testimony was corroborated by the 25 undercover investigation of Mr. Novitzky.</p>
<p>Page 858</p> <p>1 that adding or applying a substance to them 2 would not cause their T/E ratio to spike. 3 There's been testimony -- there's 4 certainly been indication here that somehow 5 something was administered to Justin without his 6 knowledge. I know when I first was involved in 7 that case, I was puzzled how you could have a 8 low T/E ratio and a positive CIR test. 9 It wasn't until I learned the 10 information contained in the second stipulation, 11 that something could have been administered to 12 Justin, which we believe we've established by a 13 balance of the probability was through his skin, 14 that would not lead him to suddenly have a 15 spike. 16 One would think if he had just had 17 something applied the day before, that his T/E 18 ratio would go through the roof. There's been 19 other cases where it's been reported that if 20 someone had something applied to them the day 21 before this test, they would have an 22 off-the-chart high testosterone or T/E ratio. 23 But you have learned in an 24 individual like Justin, who has naturally low 25 testosterone, that if administered, even if it's</p>	<p>Page 860</p> <p>1 So, thus, under a balance of the 2 probabilities, Justin Gatlin has established how 3 the substance entered his system, which was 4 through his skin. 5 Now, having met the burden of how it 6 entered his system, it becomes important to 7 evaluate the relevant fault. Because once you 8 get by the first threshold, you look at is there 9 no fault or negligence or is there no 10 significant fault or negligence. 11 Here, in viewing it, if you get to 12 the no significant fault or negligence, you must 13 look at Justin's negligence relative to everyone 14 else, and what it was in the totality of the 15 circumstances. 16 You've heard significant evidence in 17 this case about possible sabotage. You'll also 18 note in our briefs that no one here has 19 claimed -- sorry. 20 Before getting to that, with respect 21 to the skin, you've also heard that the only 22 person who had access to his skin was Chris 23 Whetstine. And there's no evidence that there's 24 been any other access to Justin's skin or that 25 anything was rubbed on him.</p>

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1 As indicated in our briefs and
 2 through the investigation, Justin Gatlin has not
 3 been able to confirm whether Mr. Whetstine
 4 knowingly or unknowingly rubbed this on his
 5 skin. With respect to unknowingly, there was
 6 evidence that there's significant concern in
 7 track and field. That it's a very competitive
 8 industry, and unfortunately, not the most polite
 9 industry out there, for lack of a better way to
 10 describe it.
 11 And there's concern that others --
 12 there's a lot of money involved, prestige and
 13 careers. And there's certainly significant
 14 concern amongst everybody about the possibility
 15 of sabotage. So it is impossible for us to
 16 determine whether or not Mr. Whetstine --
 17 whether somebody may have, quote, spiked his
 18 materials, his creams or what have you that was
 19 rubbed on him, or if he intentionally used them.
 20 There was testimony by Dr. Black
 21 that he tested the materials that were given to
 22 him by Mr. Whetstine. But we have no -- those
 23 are the materials that Mr. Whetstine voluntarily
 24 gave to the investigators. There is no
 25 information, though, that those are the actual

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1 tubes or substances that were applied to
 2 Mr. Gatlin on April 22.
 3 We would note that during his
 4 testimony, Mr. Whetstine indicated that he often
 5 ran out of -- at least with respect to the
 6 Lipogel or the Voltaren substance that he wrote
 7 down, that he frequently ran out. And that a
 8 tube could run out in an application of three
 9 athletes.
 10 So by a balance of probabilities, we
 11 did not have the actual substances tested. So
 12 it's entirely possible that the substance rubbed
 13 on him that day was, in fact, spiked, or could
 14 have been substituted, or somebody could have
 15 put something else in it.
 16 Mr. Whetstine did testify that he
 17 attempted to keep his stuff clean, but he did
 18 also acknowledge that someone could have grabbed
 19 his bag or could have done something.
 20 That brings us to the knowing
 21 violation, or the possibility that Mr. Whetstine
 22 may have knowingly sabotaged Justin Gatlin.
 23 Back in my days as a prosecutor, what that case
 24 would best be known as is a circumstantial case.
 25 And as I said in my brief, we've been unable to

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1 eliminate that Mr. Whetstine may have acted
 2 knowingly.
 3 In assessing a circumstantial case,
 4 you need motive and opportunity. Opportunity is
 5 not a question here. Clearly he had access to
 6 Justin's skin here, and could rub something on
 7 him. The testimony in this hearing was he gave
 8 Justin three treatments in approximately 36
 9 hours. He did one Thursday night or Friday
 10 night after midnight. There was one Friday
 11 evening, and there was the rubbing of stuff
 12 immediately beforehand.
 13 As you've heard from Dr. Black,
 14 those substances all could have been what was
 15 excreted in the urine.
 16 With respect to motive, we learned
 17 that Mr. Whetstine had demanded a bonus that he
 18 was not paid. He was clearly upset about that.
 19 He learned that he was terminated, and that he
 20 was not going to be rehired. But only when they
 21 couldn't find somebody to replace him, they
 22 brought him back on.
 23 But we also heard Mr. Whetstine had
 24 had a run-in with Trevor Graham the week before
 25 April 22, and it appeared that his termination

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1 would again be imminent. And it was clear that
 2 they were going to continue to look for someone
 3 else. And that at one point, there was
 4 questions about why would he give up the best
 5 job that he ever had. But there was also clear
 6 indication that he may not have that job very
 7 long. In fact, it may already have been done.
 8 You heard Mr. Novitzky testify that
 9 he had interviewed Mr. Whetstine, and he could
 10 not give the same opinion as to his testimony as
 11 he could about Justin, because he was unable to
 12 corroborate, as he had with Justin, through
 13 undercover calls.
 14 But you also know from the testimony
 15 that Mr. Whetstine has submitted false
 16 statements under oath before. You heard how he
 17 submitted false affidavits. He submitted false
 18 bankruptcy files. You listened to him change
 19 his testimony from beginning to end as to what
 20 his possible income was. And you also heard Mr.
 21 Whetstine indicate the racist comments he made.
 22 And the reason that's significant is
 23 how it indicates the motive. How he may be
 24 losing his job, and was being fired by people
 25 that he held those opinions about.

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<p>1 You also heard significant testimony 2 about how Justin exercised utmost care. You 3 heard how when he was on the road, he wouldn't 4 leave the room. You heard how he would check 5 into hotels under false names. He would not 6 drink out of a water bottle unless he opened it 7 himself. If he put it down or lost sight of it, 8 he wouldn't drink it again.</p> <p>9 And that clearly was showing he was 10 using his utmost care. The testimony also shows 11 the sort of environment in which track athletes 12 have to adhere, and the risk of sabotage that is 13 always present.</p> <p>14 Now, in evaluating Justin's fault or 15 negligence here, I would like to note the 16 uncontroverted evidence, the clear evidence that 17 Justin Gatlin suffers from ADD. And also note 18 for the record that USADA receives a 19 significant -- as a matter of public knowledge, 20 receives public funding.</p> <p>21 As a result of the Rehabilitation 22 Act of the United States, which is essentially 23 the same as the Americans with Disabilities Act, 24 but applies to those who receive those funds, 25 that applies here. I'd also like to note the</p>	<p>1 standard for someone in Justin's position or 2 with his disability to meet. They want to hold 3 Justin accountable. That's one of the main 4 things that they said they often questioned the 5 kid on during the evidentiary hearing.</p> <p>6 I felt as though I was sitting 7 through depositions for a Trevor Graham trial, 8 not a Justin Gatlin trial. USADA has indicated 9 that Justin's negligence, or at least the 10 questions lead me to believe that his negligence 11 was associated with Trevor Graham. And they 12 want to hold Justin Gatlin accountable because 13 he trained with Trevor Graham. Clearly USADA 14 had information about Trevor Graham that Justin 15 Gatlin did not.</p> <p>16 They also want to hold Justin Gatlin 17 accountable, because there was a question about 18 receiving Voltaren, which is an over-the-counter 19 substance in Europe, but not here. But in no 20 circumstances is it a banned substance in any 21 way.</p> <p>22 So if it's unfair to hold Justin to 23 an unreasonable standard here, and to hold him 24 to a standard that's so high that it could not 25 be met. That to not take into account his</p>
<p>Page 866</p> <p>1 guidance from the Puerta panel which states the 2 definition of no significant fault or negligence 3 requires the panel to look at the totality of 4 the circumstances.</p> <p>5 I'd also draw the attention to the 6 WADA directive that a sanctioned body cannot 7 create unrealistic and impractical expectations 8 that the athletes have to come up with. So 9 those limit what is utmost care.</p> <p>10 In addition, however, Justin's case 11 is special. Justin suffers from ADD, so when 12 evaluating utmost care for an individual who 13 suffers from ADD, that disability must be taken 14 into consideration to determine if he was 15 negligent or, if he was negligent, the 16 significance of his negligence under the 17 circumstances with respect to others.</p> <p>18 Also, there is a requirement for 19 agencies -- for parties like USADA who receive 20 federal money, to make reasonable accommodations 21 in light of that disability. Here USADA has 22 made no accommodation for Justin Gatlin's 23 disability.</p> <p>24 It wants to hold him to the highest 25 possible standard, which is an impossible</p>	<p>Page 868</p> <p>1 disability is a violation of U.S. law.</p> <p>2 Justin Gatlin's actions must be 3 viewed in light of the Rehabilitation Act and 4 the Americans with Disability Act, and in 5 evaluating his fault or his significant fault or 6 negligence, it should be clear to the IAAF that 7 this matter is an exceptional circumstance. 8 That Justin Gatlin deserves the greatest 9 reduction possible. And it should also be clear 10 to the IAAF that the U.S. law applies.</p> <p>11 I would now like to also discuss 12 proportionality. It is clear from the CAS 13 decisions that any penalty given to Mr. Gatlin 14 must be just and proportionate. And to be just 15 and proportionate, it must be what other 16 athletes have received. Here USADA is seeking 17 eight years.</p> <p>18 Eight years for Justin Gatlin, an 19 athlete for his age and his sport, that's a life 20 penalty. So before instituting such a drastic 21 penalty, which as Arbitrator Nicolai pointed out 22 in the Howell case I cited in my brief, the 23 scrutiny that must be given before doing it 24 would be to look at how other athletes have 25 done.</p>

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<p>1 In doing so, in determining what is 2 just and proportionate here, we must remember 3 that Justin did not knowingly ingest a 4 prohibited substance. As he said, he had a 5 prior positive test. And that was for taking 6 his prescription medicine. 7 Now, in determining penalty, I would 8 like to point out one I think is particularly 9 relevant, which is what happened in the Michelle 10 Collins case. 11 Michelle Collins, as the panel 12 knows, is an athlete that was part of the BALCO 13 case. And the AAA decision is available on the 14 website for USADA, and is part of the public 15 record. 16 In that case, the AAA found out that 17 Ms. Collins -- again, I should point out, no 18 relation -- engaged in a balance of behavior 19 including EPO, PHD. She actively conspired with 20 Victor BALCO and others to hide doping, and did 21 so systematically. 22 Her hearing came to the AAA panel in 23 the United States. She did not cooperate with 24 USADA, and she asserted her Fifth Amendment 25 privilege.</p>	<p>1 MR. TYGART: I don't think I've ever 2 objected on close, but I'll just object to the 3 characterization that USADA resolved that to 4 avoid the expense of going forward. There's 5 actually no evidence to that, and it's a 6 bold-faced lie. So I just have to put an 7 objection in there. 8 MR. COLBERT: All right. Noted. 9 Could you continue, Mr. Collins. 10 MR. COLLINS: And her reduction -- 11 prior to having the CAS appeal, her reduction 12 was agreed by USADA to reduce it to 50 percent. 13 And the story doesn't stop there. 14 As I've seen in recent articles, 15 Ms. Collins has now begun to provide some 16 cooperation with USADA. I'm not sure who she is 17 testifying with. I assume it's Trevor Graham, 18 based on the stipulation in this case. But 19 based on that, USADA is now prepared to reduce 20 her sentence by another 25 percent to three 21 years, so she may be eligible to compete. 22 Here USADA has offered Justin 23 nothing for his cooperation in making undercover 24 calls. They are still suggesting that he 25 receive the full eight years. That is neither</p>
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<p>1 As a result of the findings in that 2 case and the severity of her offenses, the AAA 3 panel issued an eight-year ban. The same ban 4 the USADA is seeking in this case. 5 Just looking at what she had done 6 compared to what Justin Gatlin has done, the 7 proportionality should tell you that Justin 8 Gatlin should receive less than that penalty. 9 But Ms. Collins' story does not end 10 there. After receiving the eight-year ban, 11 Ms. Collins indicated she was going to appeal 12 her case to CAS. 13 MR. CAMPBELL: Mr. Collins -- sorry. 14 This is Chris Campbell. Wasn't it Ms. Collins' 15 first offense? 16 MR. COLLINS: It was her first 17 offense, but it's also relevant in the extent of 18 that offense, and that she got an eight-year 19 period. But I wanted -- the point I was going 20 to make here is when she threatened to appeal, 21 CAS agreed to lower her penalty from eight years 22 to four. 23 So she got a 50 percent reduction 24 after a panel had already found her guilty, just 25 to avoid the expense of the CAS appeal.</p>	<p>1 just nor proportionate. 2 If you were going to be calculating 3 the penalty under the new WADA code, which 4 addresses the lacunas, and the current code in 5 this case -- in my pre-hearing brief, that's 6 addressed specifically on Pages 21 and 22 -- 7 under those provisions, it's clear that the 8 penalty here under Justin's prior offense and 9 what this offense is, is that he should receive 10 a penalty of six to eight years. 11 And given that Justin is innocent 12 and had unknowing use here, at most, it is clear 13 the worst possible scenario would be that he be 14 subject to six years. 15 From that, you would deduct his 16 exceptional circumstances, as indicated in the 17 brief. That reduction for his cooperation would 18 result in a sentence anywhere from six months to 19 18 months. 20 Lastly, there was a significant 21 amount of discussion and there's evidence in the 22 record about all of the numerous CIR tests on 23 Justin Gatlin. These tests results are 24 specifically important, and when they occurred 25 for the start date of any penalty here.</p>

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<p>1 I'd like to refer you to the brief, 2 with respect to the possible start date. 3 There's been no justification of why it took so 4 long for the results to be reported to Mr. 5 Gatlin. And in light of the Puerta case, it was 6 a different scenario, even after a positive B. 7 But in light of the lacuna and what they were 8 doing, that went back to the date of the test. 9 It's our belief that in the balance 10 of proportionality, that Justin Gatlin, if he 11 were to receive any penalty, that it too should 12 go back to April 22, 2006. 13 With respect to the other CIR tests, 14 they are important. IAAF Rule 39.4 indicated 15 that fairness requires that Justin Gatlin not be 16 required to forfeit or be disqualified for 17 events. And here we believe in light of all 18 these other CIRs, it was clear that this one 19 test on April 22, 2006, is an aberration. 20 That he was running clean. I don't 21 know -- my understanding from the testimony is 22 that CIRs are pretty rare. Or not from the 23 testimony, but from Mr. Tygart's statements at 24 the beginning of this hearing on Monday, that 25 CIRs are very rare. And I'm not aware of</p>	<p>1 victims in the war against doping. 2 "It is a hard war, and it requires 3 eternal vigilance. No matter how hard the war, 4 it is incumbent on those who wage it to avoid 5 unjust and disproportionate retribution." 6 In closing, I simply ask you to use 7 the authority you have under the WADA code and 8 CAS precedent to avoid Justin Gatlin from 9 becoming a innocent victim of the war on drugs 10 in the sport. I ask that you take into 11 consideration all of the facts and circumstances 12 in this matter, and do what is just and 13 proportionate. Thank you. 14 MR. CAMPBELL: Mr. Collins, this is 15 Chris Campbell. I have a few questions for you, 16 if that's all right, Mr. Chair? 17 MR. COLBERT: Yes, please. 18 MR. CAMPBELL: You said that Terri 19 didn't notice any injection marks in Mr. Gatlin? 20 MR. COLLINS: Correct. 21 MR. CAMPBELL: It's my understanding 22 that Mr. Gatlin took injections March 1, March 23 13, and then a B12 injection. 24 MR. COLLINS: I asked her if she 25 noticed any marks on April 26, and she indicated</p>
<p>1 anybody receiving this many CIRs in this period 2 of time. And they were all fair, except for the 3 aberration. 4 In light of that, fairness would 5 dictate that he not be disqualified or prevented 6 from anything other than the Kansas opening. 7 In the opening of this statement, I 8 talked about the war on drugs. The war on drugs 9 is significant and understandable. But over the 10 course of this hearing, you've learned that 11 Justin Gatlin is an innocent victim of that war 12 on drugs. 13 He unknowingly took a prohibited 14 substance, as Mr. Novitzky's testimony 15 corroborated. I think possibly the best way to 16 address the issue of the war on drugs -- doping 17 was stated by the Puerta panel when it stated -- 18 which is a CAS panel, which stated "it was 19 argued by some that it is an inevitable result 20 of a remorseless war on doping in sports. In 21 any war, there may be occasional innocent 22 victims. There may be an innocent victim in 23 wars when bullets fly. But the panel is not 24 persuaded that the analogy is appropriate nor 25 that it is necessary for there to be undeserving</p>	<p>1 she did not. 2 MR. CAMPBELL: Your question was 3 limited to April 26? 4 MR. COLLINS: Yes. 5 MR. CAMPBELL: Now, also, you talked 6 about USADA not presenting any evidence of a 7 Voltaren application, or ingestion of steroids 8 by any other source. 9 MR. COLLINS: Correct. 10 MR. CAMPBELL: What about the 11 evidence, if you could explain it to me, about 12 the Voltaren pill that was taken by Mr. Gatlin? 13 And I believe that was in the presence of his 14 coaches. I'm not sure. 15 Then also, there was testimony by 16 Agent Novitzky talking about a brown and a green 17 pill. 18 MR. COLLINS: Yes. Justin, when he 19 was asked by Agent Novitzky about what he had 20 taken, told him everything that he had taken. 21 And he indicated there was that time he received 22 a B12 shot. And that the next day, he received 23 a pill that was a Voltaren pill. 24 At the time of the interview, Justin 25 Gatlin indicated he believed it was a green</p>

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1 pill. And then later, he -- in the
 2 conversation -- indicated it was a brown pill.
 3 And that was something that caused concern with
 4 Agent Novitzky as to how that could have
 5 happened, because one time he called it brown
 6 and one time he called it green.
 7 Agent Novitzky asked him about that.
 8 He said, "Oh, I thought it was" -- he couldn't
 9 remember what it was. And you heard the
 10 testimony by Justin that was just about two
 11 weeks when he came back from trying out with the
 12 Tennessee Titans, he thought it was. That he
 13 was sore, and he bought some Excedrin Back and
 14 Body Pain. And he opened it up.
 15 It was in a package. It was a green
 16 pill, and he started jumping up and down in the
 17 airport, because he finally figured out why he
 18 said it was a green pill. Because at the time
 19 he had that B12 shot, he was also taking
 20 Excedrin Back and Body to try to relieve the
 21 stiffness and get it out.
 22 And once he did that, we promptly
 23 called Mr. Novitzky -- Agent Novitzky about
 24 that, and Agent Novitzky, as you know, in the
 25 end, indicated that the calls all corroborated

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1 what Justin had said. And Justin said he
 2 received a B12 shot.
 3 So the calls corroborated that he
 4 received a B12 shot. And he also indicated that
 5 he received Voltaren. And the calls
 6 corroborated that he received Voltaren. So
 7 while there may have been confusion over what
 8 shape or color the pill was, there was never any
 9 evidence that indicated it was anything but
 10 Voltaren. And there was no evidence that he
 11 ever received anything other than a B12 shot.
 12 MR. CAMPBELL: Okay. I don't have
 13 any more questions, Mr. Chair.
 14 MR. COLBERT: All right.
 15 Mr. Cheris?
 16 MR. CHERIS: On the first offense,
 17 your desire is that this not be counted because
 18 it is old? Because -- what other rationale did
 19 you have?
 20 MR. COLLINS: The first and foremost
 21 is because it is old. I know everybody
 22 appreciated me doing an analysis of the
 23 sentencing guidelines. I know Mr. Bock
 24 certainly was.
 25 But it's our position that first,

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1 you have the Thifa WADA case that says that the
 2 WADA code, to a comply with Swiss law, would
 3 have to provide some limitation on how far back
 4 you can apply a prior offense.
 5 And it's our position if you look at
 6 the sentencing guidelines, just like it's not
 7 fair to give a one-size-fits-all penalty to
 8 every offense, it's not fair to give a
 9 one-size-fits-all reach-back for every
 10 circumstance. It's not appropriate to reach
 11 back forever.
 12 It also should be noted in the Thifa
 13 case that Thifa's reach-back is only two years.
 14 WADA has addressed that by saying in the new
 15 WADA code, there should be an eight-year period.
 16 But, again, it's not differentiated by the type
 17 of offense.
 18 As you recall, the offense we
 19 indicated that Justin tested positive before was
 20 ADD medication. No intent to cheat. No
 21 violation. And it was basically a paperwork
 22 violation that happened in his first USA track
 23 and field event ever, which was a junior
 24 national event.
 25 With respect to the sentencing

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1 guidelines, the shortest penalty possible is
 2 with respect to juvenile crimes.
 3 MR. CHERIS: Juvenile crimes are for
 4 people under the age of 18. It's not for junior
 5 national championships. It's juniors who have
 6 not yet reached 18. He was 19.
 7 MR. COLLINS: I know the age of
 8 majority varies around the world.
 9 MR. CHERIS: I understand. But
 10 there's nothing in the world that says because
 11 it's a juvenile standard championship, juvenile
 12 codes around the country are 18. And in many
 13 cases, we try people as young as 16 as adults.
 14 MR. COLLINS: There's certainly
 15 other ways you can do it. But also I know
 16 people can't drink until they're 21.
 17 MR. CHERIS: I understand that. But
 18 if you have something specific you want to give
 19 me, go ahead. Otherwise, that's a red herring.
 20 Let's move on.
 21 MR. COLLINS: But the severity of
 22 it, and also how far you can count back on
 23 something, and the way it was treated by the
 24 IAAF, it was akin to one that would be reversed
 25 or overturned. That would never count.

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<p>1 So those are the arguments with 2 respect to how it would count. And there was 3 also still the fact that there was no fault -- 4 no specific finding of fault in that case. 5 MR. CHERIS: You've claimed that it 6 was proven that the product entered the system 7 by the process-of-elimination method. That 8 requires that you believe the person who's 9 giving the testimony saying, "I didn't take the 10 pill and I didn't take a shot. Therefore, it 11 must be this." 12 You have to believe the person to 13 begin with. Otherwise, you wouldn't get to the 14 idea that we discovered how it got into the 15 system. 16 MR. COLLINS: That's true if the 17 only person making such a statement was the 18 person making it. You also have here, though, 19 that those statements were made to Special Agent 20 Novitzky, who's done investigations and did 21 recorded calls, which the calls specifically 22 talked about what he was given and when he was 23 given it. 24 And those calls specifically 25 corroborated that he did not take a shot or take</p>	<p>1 reserved the right to claim it with respect to 2 the first one, to the extent it's used to 3 enhance this one. 4 MR. CAMPBELL: So is that your 5 position? 6 MR. COLLINS: I have not 7 exhaustively looked at it and talked with my 8 client about whether or not to bring that claim. 9 MR. CAMPBELL: Are you saying you're 10 not bringing that claim? 11 MR. COLLINS: I'm not relitigating 12 or trying to reopen the one from 2001 at this 13 time. If it's used and if it happens to violate 14 it, we're reserving the right to bring such a 15 case. But it's our position that it shouldn't 16 be counted. 17 MR. CAMPBELL: Why shouldn't it be 18 counted? What's the basis for your argument 19 that it shouldn't be counted? 20 MR. COLLINS: The original one? 21 MR. CAMPBELL: Yeah. 22 MR. COLLINS: Well, I just went 23 through it. That it's too old, and we don't 24 believe it should be counted. 25 MR. CAMPBELL: Too old? That's it?</p>
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<p>1 a pill. That the only thing was through the 2 skin. So it's not simply the athlete that you 3 must rely on. 4 MR. CHERIS: We have to look at 5 Novitzky's testimony and see whether it rises to 6 the level you've given it. 7 MR. COLLINS: Okay. He said that 8 the telephone calls corroborated Justin's 9 statements. 10 MR. CHERIS: Of not knowingly 11 taking -- 12 MR. COLLINS: Yes. 13 MR. CHERIS: I think I have what I 14 need. 15 MR. COLBERT: All right. 16 MR. CAMPBELL: I've got another 17 follow-up. 18 MR. COLBERT: Go ahead, 19 Mr. Campbell. 20 MR. CAMPBELL: You made a reference 21 to the Americans with Disabilities Act, and I 22 just want to ask you: Are you claiming that 23 with respect to the first positive one or the 24 second positive one? 25 MR. COLLINS: In our brief, we</p>	<p>1 MRS. GATLIN: This is Mrs. Gatlin. 2 Can I say something with reference to this 3 question? 4 MR. CAMPBELL: Mrs. Gatlin, if you 5 could let me finish. I think you've heard that 6 that's not -- okay. Never mind. 7 MR. COLLINS: We also looked at 8 there was no finding of fault. And when you go 9 to evaluate him as to how it would work and how 10 would you adjust it, that's also been raised. 11 MR. COLBERT: All right. Thank you, 12 Mr. Collins. 13 Mr. Tygart? 14 MR. BOCK: This is Bill Bock. I'm 15 going to do the close. 16 MR. COLBERT: Thank you, Mr. Bock. 17 MR. BOCK: Sure. First of all, I, 18 like Mr. Collins, want to extend thanks to the 19 United States Anti-Doping Agency Panel and to 20 all of the assistants in the process. There are 21 difficult circumstances in this case. It wasn't 22 enjoyable to be in the room with everybody 23 dealing with these circumstances, but that was 24 because of the nature of the circumstances, not 25 because of the manner in which anybody conducted</p>

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<p>1 themselves. And we do appreciate the dignity of 2 every proceeding and everybody involved in the 3 proceedings, including very specifically the 4 Gatlins and Justin, his mother and father. 5 USADA's interest in these 6 proceedings is the fair and just application of 7 the anti-doping rules. Mr. Collins has talked 8 about a war on drugs. I don't like war 9 analogies, but there's no question that doping 10 in sports threatens to destroy the value of 11 sports. And the use of sports is an example or 12 tool to clarify values and to inspire. 13 And so on many levels, it's 14 important to athletes and it's important to the 15 public at large that that sport be clean. And 16 that is USADA's interest. 17 I also, as a preliminary comment, 18 would like to make clear that it is USADA's view 19 and the personal views of those involved from 20 USADA that Justin Gatlin is entitled to respect 21 for his past accomplishments. And he is also 22 entitled to respect for the dignified manner 23 that he, and as I've said already, the members 24 of his family conducted themselves during the 25 hearing.</p>	<p>1 apply the rules of the arbitration in a very 2 specific fashion. 3 So therefore, those noble acts of 4 Mr. Gatlin that I just testified about cannot 5 influence the decision the panel is called to 6 make, insofar as they may have an impact on the 7 panel's view of his credibility. 8 In a few minutes, we'll talk about 9 the credibility of his testimony. And I'm sorry 10 to say that our view of the credibility of his 11 testimony on the specific facts of this case is 12 relatively low. We believe he made a number of 13 inconsistent statements that would undermine his 14 credibility for the purposes of the positive 15 test result that was entered in his case. 16 In the Knox case, the panel made a 17 very specific and, I think, pertinent point. 18 And it said in Paragraph 7.5.2 of that case 19 that, "the world anti-doping code does not 20 provide that the athlete's personal history also 21 be taken into account when fixing the penalty." 22 It goes on to say that, "the same 23 applies to the question of how severely the 24 penalty impacts upon the athlete or his personal 25 life." And it says in that same paragraph, "the</p>
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<p>1 And I think he's also entitled to a 2 measure of sympathy for some difficult 3 circumstances that he has encountered in his 4 career. And I also, at the risk of kind of 5 belaboring this point, do want to note that the 6 fact that he has risen above the present 7 circumstances of his doping offense and has 8 recently apparently spoken in churches and youth 9 meetings of the dangers of drugs and having 10 goals and acting with integrity, that is 11 evidence of noble acts. 12 And we're heartened that whatever 13 the decision of the panel will be in this 14 case -- and I add that USADA believes that it 15 should be a lengthy suspension for Mr. Gatlin -- 16 I think these acts demonstrate that he can and 17 will persevere, and hopefully will continue to 18 apply himself to important and noble tasks. And 19 regardless of the circumstances of this case, 20 leave a legacy that is inspiring. 21 This proceeding is only fair if set 22 rules are applied. And those rules bind this 23 panel as it would any court or adjudicated body, 24 perhaps more so, because this is arbitration. 25 And it's the responsibility of the panel to</p>	<p>1 athlete's age, the question of whether taking a 2 prohibited substance had a performance-enhancing 3 effect on the peculiarities of a particular type 4 of sport, according to the anti-doping code, are 5 matters to be weighed during the period of 6 ineligibility." 7 So there was testimony about how 8 this situation impacted Mr. Gatlin and how much 9 money he lost, and whether he's been penalized 10 enough, I think was the suggestion of some of 11 that testimony. 12 And very simply, those are not 13 relevant considerations for this panel. And if 14 they were, then Mr. Gatlin would be treated 15 differently than other athletes, simply because 16 of the athletic success that he's enjoyed in the 17 past, and the amount of money that he could 18 potentially earn as a result of that success. 19 And that would not be just. 20 The burden, as Mr. Collins pointed 21 out, is Mr. Gatlin's to carry. And if Mr. 22 Gatlin is required to carry that burden, there's 23 but one conclusion that this panel can reach, 24 and that is that a very lengthy period of 25 suspension is appropriate.</p>

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1 As I think some of the last
 2 questions to Mr. Collins indicated that much of
 3 the evidence in this case that the defense has
 4 relied on almost exclusively is Mr. Gatlin's own
 5 testimony.
 6 There's a claim that his testimony
 7 is corroborated in some particulars. I want to
 8 address some of those points in a minute. In
 9 particular, I'll go ahead and address the claim
 10 of corroboration of his testimony by Agent
 11 Novitzky.
 12 Number one, I don't believe he
 13 corroborated his testimony. He did not provide
 14 evidence that what Mr. Gatlin said was truthful.
 15 He did not. He did not provide evidence of a
 16 witness saying, "Yes, I was there. I saw that
 17 too."
 18 Rather what he said was he had not
 19 been able to find evidence to disprove what
 20 Mr. Gatlin said. And that's far short of
 21 corroboration.
 22 At the end of the testimony,
 23 everyone in the room wanted Agent Novitzky to
 24 answer a specific question about what he could
 25 draw from the evidence. And he was unable to

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1 conclude whether Justin Gatlin had used
 2 testosterone knowingly or unknowingly.
 3 There are some very specific rules
 4 that apply regarding the weight to be given an
 5 athlete's testimony in these sort of
 6 proceedings. It's been often recited in CAS
 7 cases that the presence of a denial is devalued
 8 by the fact that it has become a point for the
 9 guilty, as well as the innocent.
 10 Every case -- doping case that
 11 proceeds to hearing involves a claim by the
 12 athlete that they're -- that they didn't use a
 13 prohibited substance. And those sorts of
 14 statements are not entitled to much weight. And
 15 we've cited a number of cases to that effect.
 16 One is the -- I hope I'm pronouncing
 17 it correctly -- the Chowke case, where the panel
 18 said, quote, The panel, based on objective
 19 criteria, must be convinced of the occurrence of
 20 such alleged fact."
 21 And that was in addressing the fact
 22 that the athlete was a victim of conspiracy.
 23 And the Teeter case, also provided in Paragraph
 24 6.11, there was a discussion that indicated that
 25 an athlete's good character evidence and own

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1 testimony that he thought his drink was spiked
 2 was insufficient evidence that, in fact, the
 3 drink was spiked.
 4 And the panel said, "Respondent's
 5 explanation was lacking in corroborating
 6 evidence and unsatisfactory, thereby failing the
 7 balance of probability test."
 8 In the Wegh case, the panel found
 9 that Mr. Wegh was a sympathetic witness. And
 10 said, "while we found Mr. Wegh to be a
 11 sympathetic witness who may have taken
 12 contaminated food substance, the mere conjecture
 13 that it was contaminated does not meet his
 14 burden."
 15 That lack of a willingness in
 16 sport-doping arbitrations to rely upon the
 17 testimony -- uncorroborated testimony of an
 18 athlete is also reflected in the IAAF rules,
 19 38.12 (iii). I'll go ahead and refer to it.
 20 It provides that, first of all,
 21 exceptional circumstances exist only in
 22 circumstances where the case is truly
 23 exceptional. And it prevents an allegation that
 24 the prohibited substance or prohibited substance
 25 was given to the athlete without his knowledge

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1 as something that is not to be taken into
 2 consideration as a circumstance which is truly
 3 exceptional.
 4 And by stating that it's an
 5 allegation, I think the intent of the goal is to
 6 convey that someone can't simply come into a
 7 proceeding and say, "I have an explanation for
 8 what happened to me. I've excluded all
 9 possibilities, therefore, it must be X."
 10 If it did, it would open the door to
 11 any athlete making such a claim, and it would be
 12 track and field's equivalent of, quote, the
 13 butler did it, end quote. It would simply be a
 14 convenient scapegoat that would be used by
 15 athletes in every anti-doping case.
 16 Mr. Collins indicated at the
 17 beginning of the hearing that Trevor Graham not
 18 be the elephant in the room. And I think that
 19 was an interesting point to make, because from
 20 beginning to end in this case, the effort of the
 21 defense was to prop up a story about what
 22 allegedly caused the positive test result that
 23 was created by Trevor Graham.
 24 And in order to buy Justin Gatlin's
 25 explanation of the events in this case, one must

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<p>1 place confidence on the explanation provided by 2 Trevor Graham on June 17, 2006, three days after 3 learning of the positive test result, when 4 Trevor Graham came up with this explanation that 5 was attempted to be presented by Mr. Graham in 6 the hearing. 7 There's been no additional evidence 8 since that time. And I think the evidence in 9 the case is that those closest to Mr. Gatlin, 10 including Mr. Gatlin himself, including Renaldo 11 Nehemiah, don't really know what happened. 12 The key issue in this case, the 13 threshold issue that without which there cannot 14 even begin to be a case, is whether Justin 15 Gatlin can establish how the prohibited 16 substance entered his system. That is 17 analytical point No. 1 in our opinion for this 18 panel. And it's embodied in IAAF Rule 40.2, 19 which relates to the no-fault or negligence 20 standard, and in IAAF Rule 40.3, which relates 21 to the no significant fault or negligence 22 standard. 23 Under both circumstances, the 24 language is identical. The athlete must 25 establish how the prohibited substance entered</p>	<p>1 information that was presented to the panel. 2 First of all, Trevor Graham was not before the 3 panel. No effort apparently was made to bring 4 him before the panel. Whether he would have 5 testified, it's not possible to say. Perhaps 6 it's unlikely, given that he's under indictment. 7 But I think in relation to Trevor 8 Graham, it's significant to note that, number 9 one, the theory of this case is his theory. 10 Number two, he is under indictment. And, number 11 three, the principal players in this case all do 12 not believe in the integrity of Mr. Graham and 13 whether any trust can be placed in his claims. 14 How do we know that? Because the 15 quarterback for the Gatlin team, Mr. Nehemiah, 16 engaged with Mr. Gatlin in an effort to search 17 out Memo. Because he knew how Trevor, not Chris 18 Whetstine, but Trevor was allegedly making 19 creams containing prohibited substances in them. 20 That was late in 2006, well after this positive 21 test result was announced. 22 That the focus wasn't exclusively on 23 Chris Whetstine, as it was at the hearing and 24 where Trevor Graham attempted to place it at the 25 beginning. Rather the principal players in this</p>
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<p>1 his system in order to have his period of 2 eligibility eliminated under Rule 3.2, or 3 reduced under 40.3. 4 That is the key initial legal issue. 5 And after that, then there are secondary 6 inquiries that the panel must make. There are 7 certain things that, like I said, you can't base 8 a claim of innocence or a claim of exceptional 9 circumstances merely upon a claim of innocence. 10 And, thirdly, an athlete also must 11 demonstrate utmost caution in order to have a 12 penalty completely reduced. But I'm going to 13 spend most of the time on this question of what 14 we see as the key threshold issue, which is 15 whether the source of the positive test result 16 can be explained. 17 Again, the burden was on Mr. Gatlin 18 to prove the source of his positive test result. 19 And his counsel, as I discussed with Mr. Gatlin 20 in his examination, has made public statements 21 to the media claiming that, "We'll explain the 22 full stack of circumstances and everything 23 around it to the arbitration panel." 24 Respectfully, I would have to submit 25 that there were significant gaps in the</p>	<p>1 hearing all believe that the explanation of this 2 result had to do with Trevor Graham in some way. 3 And when I asked Mr. Nehemiah and 4 Mr. Gatlin whether there was any new information 5 that they had come up with about Chris Whetstine 6 after that point in time, I think you heard them 7 both say that there was new evidence. 8 Rather what happened is they have 9 simply brought this panel the best story they 10 could find. And, unfortunately, that story is 11 one that was created by Trevor Graham. 12 But in addition to Mr. Graham, you 13 were told by Randall Evans that he had relevant 14 evidence that this panel should hear. In 15 Mr. Gatlin's proposed witness list, it was said 16 that, "It is anticipated that Randall Evans will 17 testify regarding the events around the April 18 22, 2006, Kansas relays and other relevant 19 information." 20 We did not hear from Trevor Graham's 21 assistant and Justin Gatlin's other coach, 22 Randall Evans. And there is no doubt that he 23 had evidence that is relevant to the claims that 24 were made in this case. 25 MR. COLLINS: I'm going to object at</p>

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<p>1 this point about testimony of somebody that 2 didn't testify. A draft witness. I think 3 that's inappropriate. 4 MR. CAMPBELL: Bill, this is Chris. 5 I think you should go on, if you want. But just 6 in my mind, it's obvious that those guys weren't 7 going to testify. So I just don't know what 8 weight -- I wouldn't give it any weight. But 9 that's just my personal opinion. 10 MR. BOCK: Okay. He was on his 11 witness list and it was represented to the panel 12 and to us as of Thursday of last week that he 13 was going to testify. So I think that he was 14 apparently willing to testify and prepared to 15 testify. And I have not heard that Randall 16 Evans was under indictment. I don't know 17 whether he is or not. But I have not heard 18 that. And there certainly was no evidence in 19 the hearing that he was under indictment. 20 MR. COLBERT: This is Edward 21 Colbert. I understand the argument you're 22 trying to make. 23 MR. BOCK: Okay. 24 MR. COLBERT: But I agree with 25 Chris. If you want to talk about it -- but I</p>	<p>1 I'm sorry, in April. And the testimony varied 2 from Mr. Gatlin whether it was April 6 or 7. 3 I think if you listened to 4 Mr. Novitzky's testimony, it was April 8. So 5 sometime in that three-day period in 2006, this 6 individual without any qualifications -- 7 according to Mr. Gatlin, this individual was 8 authorized by a physician to give him an 9 injection. 10 I would submit that that really 11 makes no sense. And we know -- and creates a 12 very suspicious set of circumstances. In 13 addition, other items of evidence that I think 14 we're missing would have been the investigative 15 report that the investigators undertook. 16 Justin's medical records, and his prescription 17 history, which Dr. Black was talking about 18 today, which was not provided. 19 Let me get to some of the 20 inconsistencies that we noted in Mr. Gatlin's 21 testimony and in the presentation of the 22 evidence to the panel. Number one is what I 23 would call the injection falsification. And 24 when I use the term "falsification," I'm not 25 saying that necessarily the testimony was</p>
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<p>1 don't see where it -- I'd rather have you 2 explain to me why it's relevant. But the fact 3 that someone did not testify -- was on a list 4 and did not testify should not constitute an 5 inference of any sort against the party. It 6 goes on in trials every day. 7 MR. BOCK: I think that when -- 8 okay. In response to that, my explanation of 9 why -- I don't know that we're asking anybody to 10 draw a clear inference of guilt. We're simply 11 pointing out that the party with the burden did 12 not produce witnesses that could have explained 13 some inconsistencies in the testimony, which 14 I'll get to in a minute. 15 MR. COLBERT: Okay. That's fine. 16 MR. BOCK: Let's move on to someone 17 else that we didn't hear from. And that was 18 Dr. Martini. 19 With respect what happened with the 20 injection that was received by Mr. Gatlin in 21 April of 2006, only two weeks before the 22 positive test results, we heard that Dr. Martini 23 told Mr. Gatlin that Randall Evans was becoming 24 medically inclined, and would give Justin Gatlin 25 an injection in his hamstring on August -- or,</p>	<p>1 intentionally false, but the evidence is that 2 Mr. Gatlin's testimony regarding the injections 3 that he received was false. 4 If you take a look at Gatlin 5 Exhibit 16, which is the payment history from 6 injections that were given by Dr. Martini, that 7 document reflects two injections given in March 8 of 2006. One for triamcinolone and the other 9 for Celestone. 10 The testimony from Mr. Gatlin's 11 mouth could not have been clearer that there was 12 one injection by Dr. Martini that took place on 13 March 1. What this document that was given to 14 us when I requested it at the beginning of 15 Mr. Nehemiah's testimony reflects is that Justin 16 Gatlin's testimony regarding the occurrence of 17 injections is not entitled to credence. 18 And it demonstrates that between 19 March 1 and the positive test result on April 20 the 22nd, there were -- that we can verify at 21 this point in time -- at least three injections 22 received by Mr. Gatlin. 23 Now, I'm not sure what that says 24 about Ms. Blankenship's observative capacity or 25 ability to observe whether injections occurred.</p>

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<p>1 Mr. Collins' reliance upon the fact that she 2 allegedly didn't see any injection marks is 3 somehow an indication that he had not received 4 an injection in the time preceding the April 22 5 urine test. But, in fact, we know that he had 6 received three injections, and she didn't 7 apparently pick that up. 8 The second inconsistency in 9 Mr. Gatlin's testimony that I want to bring to 10 your attention is what I'll call the "bean 11 denial." You heard me ask Mr. Gatlin very 12 clearly use the term "beans." And he was very 13 clear before the panel he had never used that 14 term. Perhaps Memo brought it up in a 15 conversation. Perhaps somebody brought it up in 16 the conversation with him. But he had never 17 used that term. 18 And that testimony was undercut by 19 Agent Novitzky who said that term jumped out at 20 him when Justin mentioned it, because that told 21 him that he had taken a Voltaren bean. And the 22 reason it jumped out to him is because the term 23 "bean" is a street term for a testosterone pill. 24 Again, the fact that Justin now 25 claims that he didn't ever use the term "bean"</p>	<p>1 he was experiencing in his knee? That he talked 2 about the pain from what he described as a 3 damaged hamstring and his knee, to use Excedrin 4 Back and Body Pain. 5 But this is an explanation that is 6 completely uncorroborated. In fact, if you will 7 look at the doping control official records, or 8 if you'll look at the demonstrative exhibit that 9 USADA provided, or I provided to the panel and 10 parties, you will see that when Justin Gatlin 11 listed an analgesic or aspirin-like product on 12 his doping control records, in every instance, 13 it was Tylenol. And you will see that there is 14 no reference to Excedrin Back and Body Pain in 15 his doping control official records. 16 So I suppose what he is asking you 17 to believe is that while every time it was 18 picked up on a doping control record that he was 19 using an analgesic, it was Tylenol. But somehow 20 he switched his pain relief of choice to 21 Excedrin Back and Body Pain, the green pill, 22 just during this particular period of time that 23 it was most helpful to make his testimony 24 consistent. 25 MR. COLBERT: Mr. Bock, I don't mean</p>
<p>Page 902</p> <p>1 is another reason to discount his testimony. 2 A third inconsistency in his 3 testimony is what I'll call a color confusion. 4 You will recall that Agent Novitzky testified 5 that Justin Gatlin told him that he was given a 6 green bean by Randall Evans. Yet talking 7 several months later with Memo, he told Memo it 8 was a brown bean. And Agent Novitzky was very 9 upset about that inconsistency in the testimony. 10 And it's significant, again, because a brown 11 bean is the color of testosterone pills. 12 Now, the next discrepancy is what 13 I'll call the Excedrin testimony. That is the 14 claim that Mr. Gatlin is asking you to believe 15 that he had a eureka moment in the airport 16 within the last week or two before this hearing, 17 and he suddenly came up with the explanation 18 that would explain his color confusion. And 19 that explanation was Excedrin Back and Body 20 Pain. 21 And Excedrin Back and Body Pain came 22 up a great deal during his testimony. He was 23 using it, according to him, frequently in 2006 24 to deal with the pain of his various ailments. 25 Do you recall that he talked about the pain that</p>	<p>Page 904</p> <p>1 to interrupt you. But if you could give me a 2 three-minute break to continue. We've been 3 going for quite some time. Three to five 4 minutes; is that all right with everybody? 5 MR. BOCK: Sure. 6 MR. COLBERT: All right. We'll wait 7 on the line. Thank you. 8 (Brief recess was taken.) 9 MR. BOCK: What we have when we 10 combine color confusion with the Excedrin 11 explanation, if you remove those, what we think 12 are relatively improbable accounts of the facts, 13 what Justin Gatlin has admitted is that he took 14 a brown pill that was given to him by Randall 15 Evans the day after an injection in early April 16 2006. 17 That date would have been, according 18 to the testimony in the case, between April 7 19 and April 9. He took a brown pill that he 20 described to Investigator Novitzky as a bean. 21 It was given to him by Randall Evans, his coach, 22 assistant coach, who the testimony is had 23 purchased testosterone previously in Mexico. To 24 what use he put that testosterone, we do not 25 know. We do know that he was charged with an</p>

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<p>1 offense involving the possession of steroids. 2 MR. COLLINS: I'm going to object. 3 I don't know that that's on the record. 4 MR. BOCK: Well, Justin admitted 5 that he found that out later during his direct 6 examination. So what we know is that Justin 7 Gatlin, if you accept his explanations of what 8 happened, took a brown pill. And there was no 9 evidence that Voltaren comes in a brown pill 10 form. 11 The next inconsistency that I'd like 12 to point out is what I'll call the hamstring 13 harpoon. Justin Gatlin's testimony was that in 14 April of 2006, his hamstring was, according to 15 him, damaged. And that it was so damaged that 16 he required an injection. 17 Nonetheless, his testimony to the 18 panel was that it became better a few days after 19 the Kansas meet. Or, I'm sorry. A few days in 20 advance of the Kansas meet. But that testimony 21 was undercut first by Terri Blankenship, who 22 said that he was still suffering from a 23 hamstring injury on April 26, 2006, when she 24 massaged him. 25 And I'll get back -- when I talk</p>	<p>1 April 22, right after he competed, then he has a 2 problem. Because Dr. Black, you heard, 3 testified that it was improbable -- therefore, 4 by definition, not carrying a burden of balance 5 of the probabilities. Improbable that anything 6 applied to him just an hour before the test 7 could have created this positive test result. 8 So, scientifically, the evidence is 9 improbable that that tingling explanation has 10 any merit. Then finally we have an 11 inconsistency which I'll call the too-perfect 12 explanation. And that is the ability of the 13 events to change from being consistent and a 14 consistent practice, except when it's necessary 15 to avoid consistency in the evidence. 16 An example: The Penn relays. It 17 was CIR tested. It was not a positive CIR test. 18 The explanation? Well, "Mr. Whetstine didn't 19 put the cream on me before that test." That was 20 the explanation. 21 Now, Mr. Whetstine testified 22 inconsistently. He said, "I've adopted the same 23 approach for every competition." And why 24 wouldn't he? If he was truly out to get Justin, 25 why would he have avoided the opportunity to do</p>
<p>1 about Mr. Collins' motive and opportunity, we'll 2 get back to the hamstringing situation. 3 The fifth area of what I would 4 consider inconsistency in the testimony is the 5 convenient tingle. You will recall that 6 Mr. Gatlin testified that on one occasion, he 7 felt a tingling feeling. And that happened to 8 be that one occasion of the application of cream 9 provided to him by Mr. Whetstine immediately 10 prior to his drug test. 11 That's kind of curious. It, I 12 suppose, was thrown out there as an explanation 13 for the positive drug test, because it was the 14 only time that he said he ever had this tingling 15 feeling. 16 What's interesting about that, in 17 part, is the specificity of his recollection. 18 Because Mr. Gatlin could not recall specifics 19 regarding the drug testing process for 4-29-06 20 or 5-28-06 when I asked him. But yet he was 21 very specific in his recall regarding all 22 aspects of the events on the 22nd of April. And 23 he recalled this tingling feeling. 24 If we're to believe Mr. Gatlin that 25 somehow a different substance was put on him on</p>	<p>1 so at the Penn relays? It's just too perfect. 2 It's completely inconsistent. It 3 fits the CIR test explanation if -- or it 4 appears to be an effort to fit the CIR test 5 explanation to the facts which would otherwise 6 be inconsistent. 7 Okay. I'd like to move on to the 8 effort to impeach Mr. Whetstine. First of all, 9 it's not necessary, really, for USADA to 10 establish anything about Mr. Whetstine's 11 testimony. I think the doubt that we have to 12 place on Mr. Gatlin's testimony is sufficient. 13 Nonetheless, there is a great deal 14 of evidence in the record that corroborates 15 Chris Whetstine's testimony. Not the least of 16 which is the evidence that was presented today 17 regarding testing of the creams. There's no 18 evidence that he possessed any cream containing 19 a prohibited substance. And, in fact, he 20 voluntarily spoke -- the testimony was he 21 voluntarily spoke with investigators five to six 22 hours. 23 That is not what one would expect 24 from an individual that had participated in an 25 effort to hurt Mr. Gatlin. Why would he have</p>
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1 ever allowed himself to be questioned for five
 2 or six hours if he truly had something to hide?
 3 Why also would he have given the creams to the
 4 investigators? He was under no obligation to do
 5 that.
 6 In addition, Jeff Novitzky, the very
 7 person which Mr. Collins would like you to
 8 believe corroborates Mr. Gatlin's testimony,
 9 also corroborates -- if that were the case --
 10 Chris Whetstine's testimony, because he didn't
 11 find any evidence that Mr. Whetstine had been
 12 untruthful.
 13 Mr. Whetstine volunteered to take a
 14 lie detector test. And he completely, on every
 15 significant point, rebutted the testimony that
 16 he was the source of this positive test result,
 17 which is the explanation that is attempting to
 18 be made here.
 19 Mr. Collins said when one looks at a
 20 situation like this, we should look at two
 21 things: motive and opportunity. And he said
 22 that Mr. Whetstine had both. Certainly Justin
 23 Gatlin, Trevor Graham and Randall Evans had both
 24 motive and opportunity.
 25 The explanation that you're being

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1 asked to believe is that for \$5,000,
 2 Mr. Whetstine would risk his job and the primary
 3 source of his income by undermining Mr. Gatlin.
 4 The motive for Mr. Gatlin and Trevor Graham is
 5 much clearer. And that is the substantial
 6 amount of money that would come through doping.
 7 Secondly, we have strong evidence in
 8 the record that there was -- that Mr. Gatlin was
 9 dealing with an injury. That testosterone is
 10 frequently used to help athletes recover more
 11 quickly from injuries.
 12 (An interruption occurred in the
 13 proceedings.)
 14 MR. BOCK: The hamstring injury for
 15 Mr. Gatlin, as Terri Blankenship testified, was
 16 lingering late into April in 2006. Again,
 17 providing motive to use a substance that would
 18 allow recovery from that injury.
 19 In terms of any weight to be placed
 20 on the testimony of Mr. Nehemiah, he had a
 21 similar motive. And he testified that he was
 22 desperate to find a way to help his client.
 23 So in some terms of art -- and I
 24 apologize. It was probably too long. I think
 25 there were many inconsistencies that were

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1 insufficiently explained, and there certainly
 2 hasn't been. --
 3 (An interruption occurred in the
 4 proceedings.)
 5 MR. BOCK: I just want to conclude
 6 by getting to a couple of the legal issues.
 7 First is the treatment of the first offense.
 8 And I think the basic point there is that it's
 9 inappropriate to attempt to collaterally -- it
 10 would be inappropriate to attempt to
 11 collaterally attack the first decision.
 12 It's clear from the IAAF rules that
 13 the primary purpose of requiring a first
 14 offense, and then on the second offense
 15 increasing the penalty is notice to the athlete.
 16 There's no question that Mr. Gatlin had notice
 17 that his second offense could result in a
 18 lifetime suspension.
 19 MR. CHERIS: Mr. Bock, answer me a
 20 couple of questions on that. If current code
 21 were in existence in 2001, would Mr. Gatlin have
 22 been eligible for a TUE?
 23 MR. BOCK: No. Because an
 24 amphetamine is not a specified substance. Well,
 25 he could potentially -- in fact, back up.

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1 He could have gotten potentially a
 2 medical exemption in 2001, which would have been
 3 akin to a TUE. So, yes. In 2001, he could have
 4 applied for a medical exemption. In 2006, he
 5 could have gotten a TUE.
 6 MR. CHERIS: He could have gotten a
 7 TUE for the substance -- back in 2001, we're
 8 getting, "Stop taking it X days before
 9 competition," and the decision that was rendered
 10 said, basically, he followed the advice that was
 11 given at that point in time.
 12 Today, no one would give him that
 13 advice. Dr. Hilderbrand was pretty clear in the
 14 idea that you go for professional or temporary
 15 TUEs or full TUEs if you're taking something
 16 obviously regularly. And he said had today's
 17 rules and today's athletes been in existence in
 18 2001, he would have applied for and received the
 19 TUE, taken the substance, stopped taking it when
 20 he was supposed to, and he would have had no
 21 offense. So why can't we treat it that way?
 22 MR. BOCK: I disagree with that
 23 conclusion. And it's inconsistent with the
 24 Puerta panel. I don't see any conclusion in the
 25 panel that he was simply advised to discontinue

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1 the substance and get off it. That was what he
 2 chose to do. But there was a process that he
 3 could have pursued.
 4 And the panel's opinion recites that
 5 Mr. Gatlin never sought any medical exemption
 6 from the IAAF. That's a specific finding of the
 7 panel. And the decision in Paragraph 2 says
 8 that while Mr. Gatlin may have violated the IAAF
 9 and the anti-doping rules because he did not
 10 first seek an exemption from the IAAF for his
 11 medication before he competed, he is certainly
 12 not a doper.
 13 Sure, there was a recognition by the
 14 first panel that if he had applied for an
 15 exemption, he might have gotten it and there
 16 wouldn't have been an offense. But he didn't do
 17 that. He violated the rules. And just like any
 18 other athlete -- we've provided you a long list
 19 of other athletes who have been in similar
 20 circumstances. He did not follow the rules in
 21 applying for an exemption back then.
 22 And if he didn't follow the rules by
 23 not applying -- if he did not apply for a TUE,
 24 he would be suspended.
 25 MR. CHERIS: If he didn't apply for

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1 a TUE. But the education system that is in
 2 place now is much better, and you have a lot
 3 more athletes understanding what they need to do
 4 than you had in 2001. The educational process
 5 was not the same.
 6 MR. BOCK: Well, you know, there
 7 wasn't evidence of what the educational process
 8 is. I suppose that that is very possible. But
 9 there's no evidence. But what I would say is
 10 that that first offense provided Mr. Gatlin
 11 notice that a second offense would result in a
 12 lifetime ban. And that was -- he accepted that.
 13 And he made statements to the media about, "I
 14 understand. The next offense is a lifetime
 15 ban."
 16 The testimony in the hearing was he
 17 understood the next offense would be a lifetime
 18 ban. And the primary purpose of imposing a
 19 lifetime ban after a second offense is so that
 20 the athlete will have notice of how serious it
 21 is, and they will conform their behavior to the
 22 rules. And so he had that notice, regardless of
 23 the circumstances of his first offense.
 24 MR. CHERIS: And how long do you
 25 think -- so the first offense is notice. It's

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1 not something that -- you're saying that this
 2 is -- you get one that's easier. Then you get a
 3 second, it's harder, because you're a repeat
 4 offender?
 5 MR. BOCK: Right. Right. I think
 6 that the IAAF rules suggest that the primary
 7 motive of separating the offenses is notice.
 8 And if you look at the rules -- I'll find it for
 9 you -- they indicate that if you have two doping
 10 offenses that are in close proximity to each
 11 other, that they're only considered to be
 12 separate offenses if the athlete has notice of
 13 the first offense before the second.
 14 And I think that that rule is a
 15 clear indication that the primary value that is
 16 attempting to be vindicated by the two-offense
 17 requirement before a lifetime ban is notice to
 18 the athlete, as opposed to deterring recidivism.
 19 MR. CHERIS: Even though we have all
 20 the educational programs, no one gets notice
 21 really until they get caught the first time?
 22 MR. BOCK: Well, in every case, the
 23 claim of the athlete is, "I didn't know." And
 24 in every case, they didn't know the rules. They
 25 weren't sure what was on the list. They didn't

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1 know where to go to look for the list.
 2 If it wasn't specifically listed,
 3 but it's pharmacologically related, how would
 4 they know? Going through a hearing process
 5 provides an athlete with an understanding of how
 6 serious a doping violation is. And, therefore,
 7 I think makes it fair on the second offense to
 8 impose a lifetime ban.
 9 The rule for multiple violations is
 10 Rule 40.6. And the indication is that you can't
 11 have a second offense unless the athlete has
 12 received notice of the first offense. And
 13 that's in 40.6.
 14 MR. CAMPBELL: This is Chris
 15 Campbell. I just wanted to follow up, Sam,
 16 unless you're not finished.
 17 MR. CHERIS: Go ahead. I'll come
 18 back in, if I need to.
 19 MR. CAMPBELL: I can understand your
 20 arguments with respect to this offense. I am
 21 having problems with your argument with respect
 22 to the first offense, because it seems to me we
 23 have an obligation to weigh all the issues of
 24 the first offense in interpreting the penalty
 25 that we would give an athlete.

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1 And also, in my mind, a disability
 2 is a substantial issue in the first offense.
 3 And nobody has talked about it. So give me your
 4 comment on that.
 5 MR. BOCK: Okay. Number one, I
 6 think it's pretty clear that Mr. Collins is not
 7 raising that issue in attempting to collaterally
 8 attack the first offense in that manner.
 9 MR. CAMPBELL: Hey, Bill, before you
 10 go there -- and I don't mean to cut you off.
 11 But does that prevent me and the arbitrators
 12 from considering that relevant information?
 13 MR. BOCK: Well, yeah. I think
 14 there's a reason that he's not going there, and
 15 that is this: He didn't present any evidence
 16 that would relate to any sort of disability in
 17 this hearing.
 18 MR. CAMPBELL: This is all the
 19 evidence he needs for a decision. The
 20 statements made in the first decision.
 21 MR. BOCK: No, there's nothing in
 22 that first decision that indicates that
 23 Mr. Gatlin was so disabled that he was unable to
 24 apply for an exemption for the use of an
 25 amphetamine. I mean, that's the issue. Was he

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1 so disabled that he was incapable of seeking an
 2 exemption? And that's the only way that the
 3 disability would provide him any excuse.
 4 And I think there's absolutely -- I
 5 mean, you saw Mr. Gatlin. He's an intelligent
 6 young man. He presents himself very well. He's
 7 articulate. He is able to -- and he was clearly
 8 able to follow the rules back in 2001. And his
 9 disability had absolutely nothing to do with him
 10 not following the rules. It's not an issue.
 11 MR. CAMPBELL: And that's your
 12 argument? Are there any other bases that you
 13 have on your argument?
 14 MR. BOCK: I guess you say it's my
 15 argument. I haven't heard an argument to the
 16 contrary that I can respond to, either from
 17 Mr. Collins or from the panel. So, you know, I
 18 don't know -- I don't understand why I'm being
 19 asked for an explanation of, "Is there any other
 20 basis," because no one has articulated a reason
 21 that the first offense doesn't apply --
 22 MR. CAMPBELL: Let me give you an
 23 argument --
 24 MR. BOCK: -- in terms of a
 25 disability argument.

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1 MR. CAMPBELL: Let me give you an
 2 argument that I thought I heard in Mr. Collins'
 3 closing. I think he said something to the
 4 effect that the kid had ADD, right?
 5 So is that disability, I guess -- is
 6 it difficult to comprehend that the rules --
 7 what rules were required to comply with for
 8 having -- I'm murdering it.
 9 It seems to me the first offense
 10 said the predominant method for people who had
 11 ADD was to stop taking it before the meet. That
 12 was what most people did. Then there was a
 13 document that was submitted by Mr. Collins that
 14 said, in fact, he saw it in the instructions to
 15 people with ADD to stop taking the medication
 16 before the meet.
 17 MR. BOCK: Can you show me that in
 18 the first defense?
 19 MR. CAMPBELL: Which one do you want
 20 me to show you?
 21 MR. BOCK: The concept that somehow
 22 Mr. Gatlin was advised that he was to stop
 23 taking his medication shortly before -- or some
 24 period of time before the event.
 25 MR. CAMPBELL: I said I think that

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1 was in one of the documents that Mr. Collins
 2 produced as part of this hearing. Maybe I'm
 3 wrong. I thought I read it.
 4 MR. COLBERT: I think it's at
 5 Gatlin 2. Or, no, wait. Maybe it's Gatlin 3.
 6 Gatlin 3.
 7 MR. BOCK: Gatlin 3? I'm reading
 8 through here. I'm not saying it's not in here,
 9 but I don't see it.
 10 MR. COLLINS: It's on Page 2.
 11 MR. BOCK: Where are you, John?
 12 MR. COLLINS: The third section on
 13 Page 2, "Competitive Advantage. Not taking it
 14 for approximately three days. He's unaware that
 15 despite the fact that he did not take his
 16 medication" --
 17 MR. BOCK: All right. So I don't
 18 see an indication that he was advised by anybody
 19 that he could just stop taking his medication.
 20 MR. CAMPBELL: I thought I read
 21 somewhere, and maybe I didn't --
 22 MR. COLLINS: I think it was always
 23 in my pre-hearing brief.
 24 MR. CHERIS: Page 9, Paragraph 6.
 25 This is the finding of the panel. I'm just

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<p>1 taking it as being true. "USADA advises 2 athletes, after consultation with their 3 physicians, to discontinue using the ADD 4 medication prior to competition in order for the 5 medication to clear their system." 6 How far in advance was he to stop 7 taking his medication? 8 MR. TYGART: This is Mr. Tygart. 9 Can you refer me to that paragraph one more 10 time? 11 MR. COLBERT: Actually, you get to 12 go back to Tab No. 2, Page 3 -- Tab 2, Page 6, 13 Paragraph 9. 14 MR. TYGART: And I think if you look 15 at Page 5, Paragraph 3, he didn't receive any 16 advice from USADA, because he never sought it. 17 But he, on his own, didn't want it in his 18 system, because it made him feel sluggish and he 19 was unable to run. 20 MR. CHERIS: I know Mr. Tygart's 21 question. This is the way it goes with respect 22 to the issue. Before USADA or IAAF reached a 23 ruling, WADA actually issued a ruling about 24 that supplement, and athletes in some cases, 25 where they had fully looked at all the</p>	<p>1 disability is that you have asthma, you don't 2 get to not apply for a TUE because of that. 3 It's just not an explanation that, "Well, I'm 4 disabled, so I can do whatever I want." You 5 still have to comply with the sport rules, which 6 are to seek an exemption, or I suppose you can 7 go a more dangerous route and rely on the advice 8 of your doctor, if you choose. 9 MR. CAMPBELL: Well, what would be 10 the method that Mr. Gatlin would have learned 11 about this rule requiring him to apply for an 12 exemption? 13 MR. BOCK: The methods that 14 Mr. Gatlin learned from his first doping 15 offense? 16 MR. CAMPBELL: No, what would have 17 been the method that Mr. Gatlin would have 18 learned to apply for an exemption before his 19 first doping incident in order to avoid that 20 first doping incident? 21 MR. BOCK: Chris, what you're 22 attempting to do is to go behind the first 23 offense and collaterally attack it and look at 24 the evidence in that first hearing and apply 25 another standard to it. And there was a</p>
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<p>1 medicines, were determined to be not at fault. 2 Now, in this respect, if you look at 3 this, say you're in an environment now where we 4 have an athlete with a known disability. 5 Because it was not just -- it was not just 6 Mr. Gatlin that found he had a disability. It 7 was an independent international panel. 8 And if there is a document out there 9 saying that, "Oh, yeah, you just need to stop 10 taking it," that -- that could go to the issue 11 of fault. That's even before we get to the 12 issue of, Does this kid have a disability? And 13 with a disability, does he get reasonable 14 accommodation? And do we have -- USADA, the 15 IAAF, this panel -- have an affirmative duty to 16 accommodate that disability? 17 MR. BOCK: And, again, my response 18 would have to be the same. There was an 19 accommodation. It was to allow him to apply for 20 an exemption. His disability had nothing 21 whatsoever to do with that, his failure to 22 apply. You don't get -- I mean, if you have -- 23 your disability -- 24 MR. CAMPBELL: If you have -- 25 MR. BOCK: Let me say this: If your</p>	<p>1 procedure to do that in the hearing that we had. 2 And you're asking me to talk to you about 3 evidence that was in the hearing. 4 MR. CAMPBELL: This is what I'm 5 telling you, Bill. I've got an obligation to 6 seek justice. And in my mind, justice deals 7 with, in this case, this individual that had a 8 disability. And I can't ignore that in my 9 proportionality analysis. 10 MR. BOCK: Well, I guess I need to 11 understand how a proportionality analysis comes 12 into play when there's not a demonstration of 13 exceptional circumstances. 14 MR. CAMPBELL: You don't think 15 disability is an exceptional circumstance? 16 MR. BOCK: I don't think that 17 Mr. Gatlin's disability had anything -- has 18 anything to do with this case. It doesn't have 19 anything to do with -- It's not any sort of 20 explanation for his second doping offense. 21 MR. CAMPBELL: I agree with you on 22 that. 23 MR. BOCK: And as to the first 24 offense, it was an offense not as to his 25 disability, but because he did not comply with</p>

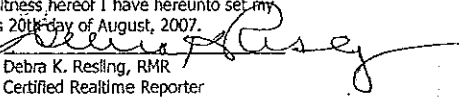
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<p>1 the rules and compete without amphetamines in 2 his system, or obtain an exemption to do so. 3 MR. CAMPBELL: And that point, I'm 4 having a problem with. I can agree with the 5 first point. The second offense had nothing to 6 do with the first offense. But the first 7 offense, in my mind, had everything to do with 8 the length of the censure that you're 9 recommending. 10 MR. BOCK: If that were the case, if 11 that were a theory that should have been present 12 in this case, then it should have been presented 13 and we should have had an opportunity to address 14 it, I suppose, in evidence of 2001. 15 MR. CAMPBELL: Let me say this: 16 this is an issue to me. And if both parties are 17 going to address it, I would love to hear it. 18 Because in my mind, this is the central issue. 19 This is the issue in the case. 20 MR. BOCK: Well, what I'm trying to 21 say is our position is any evidence of a 22 disability would be completely irrelevant to the 23 question of why didn't Mr. Gatlin comply with 24 the rules back in 2001. 25 MR. CAMPBELL: Yeah, I don't agree</p>	<p>1 it. You should. I want to put you on fair 2 notice. This is the issue for me. 3 MR. BOCK: And my response is, with 4 all respect -- and certainly I understand your 5 desire to want to do justice. And certainly 6 that's where you need to be, in terms of your 7 desire. But in terms of analyzing the issue, I 8 have to disagree that you can even analyze it. 9 Because there isn't -- it makes no sense to go 10 back and try and collaterally attack this prior 11 doping offense and say it wasn't an offense. 12 And to try to talk about facts related to the 13 2001 offense when, number one, it wasn't raised 14 in this hearing. And, number two, we know that 15 his disability did not prevent Mr. Gatlin from 16 seeking an exemption. And that was the offense. 17 The offense was his negligent 18 failure to seek an exemption for his condition, 19 and apply to use amphetamines. That was his 20 doping offense. I mean, it's not -- I agree 21 with you it's not as -- as a matter of moral 22 culpability, it's not as significant as using a 23 steroid. I agree with that. But the rules 24 don't allow you to completely discount it simply 25 because you think it's a more trivial offense.</p>
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<p>1 with that. 2 MR. BOCK: You're saying that 3 because he was ADD, he was incapable of seeking 4 an exemption? We have athletes every year that 5 are ADD and that apply for TUEs and they're able 6 to comply with that process. He could have done 7 it in 2001. He didn't. 8 As a result, you can't be consistent 9 with the many decisions that have sanctioned an 10 athlete for failing to follow the TUE process 11 and say that, "Well, because Mr. Gatlin has a 12 disability, we're not going to consider him at 13 fault," when there was a specific process in 14 place where he could have sought it. And his 15 failure to seek it had nothing to do with his 16 disability. 17 MR. CAMPBELL: Well, that's making a 18 number of assumptions that I'm not prepared to 19 make. 20 MR. BOCK: Okay. I'm not sure -- 21 MR. CAMPBELL: I would welcome -- 22 because, to me -- and I'm saying this just as 23 one member of the panel. Not the whole panel. 24 For me, while the other issues seem to be quite 25 clear, this issue is not. You ought to address</p>	<p>1 I mean, he received the benefit of 2 the IAAF's consideration that it was less 3 significant than a steroid because they 4 reinstated him. That issue has been resolved. 5 The proportionality of relating to that first 6 offense has already been addressed, and he was 7 not -- and he never has argued that the penalty 8 he received for his first offense was 9 disproportionate. 10 And I think if you look at that 11 first offense and the opinion, it's clear that 12 the panel said, "Yes, you committed a violation, 13 because you didn't follow the rules." 14 And in every case where that occurs, 15 under either the prior system where it was 16 called an exemption and the current system where 17 it's called an exemption -- a therapeutic use 18 exemption, under both systems, it is an 19 offense-involving negligence. That's just what 20 every case that has considered this sort of 21 issue has characterized a failure to follow the 22 rules by seeking an exemption. 23 MR. CAMPBELL: We agree it was 24 negligence. That was the issue at that point, 25 and not the full extent that we have under the</p>

<p style="text-align: right;">Page 929</p> <p>1 WADA code today. 2 MR. BOCK: The current standard 3 today is no significant fault or negligence. 4 And there's no difference. 5 MR. CAMPBELL: You think there's no 6 difference between how you define fault back 7 when he tested positive in 2001 and how you 8 define fault under the WADA code today? 9 MR. BOCK: Analytically, I can't 10 come up with a difference. And I would 11 certainly respond to any sort of analytical 12 difference that could be described. 13 What's the difference between -- 14 okay. What's the difference? 15 MR. CAMPBELL: Negligence is the 16 ordinary man's standard. 17 MR. BOCK: Okay. 18 MR. CAMPBELL: The standard we have 19 today in the WADA code is you've got to take the 20 utmost care. It's almost impossible to meet. 21 MR. BOCK: The utmost care only 22 applies to no fault or no negligence. Utmost 23 care applies to no fault or negligence. 24 MR. CAMPBELL: If there's no fault, 25 then negligence refers back to the no fault,</p>	<p style="text-align: right;">Page 931</p> <p>1 probably address briefly are substantial 2 assistance. If this panel were to find that 3 there may be substantial assistance -- or a 4 panel were to find there may be any sort of 5 exceptional circumstance, the obligation of the 6 panel is then to refer the matter to the IAAF 7 for a final determination on that issue, after 8 which the IAAF would remand it to the panel for 9 further action consistent with their decision on 10 that issue. 11 In terms of whether there may be -- 12 whether there may be exceptional circumstances 13 in relation to substantial assistance, we would 14 note that USADA views this case as fairly close 15 to the line. 16 The evidence of discovering -- the 17 athlete has to establish that the assistance has 18 been provided to the IAAF or USADA or other 19 relevant body. That description is provided. 20 And we would agree that "other governing body" 21 could be a government prosecutor. So we don't 22 dispute that assistance to a prosecutor can be 23 substantial assistance. 24 The next part of the standard is 25 whether it was assistance in discovering or</p>
<p style="text-align: right;">Page 930</p> <p>1 doesn't it? Doesn't it say in viewing no 2 significant fault or negligence, you have to go 3 look at that he had taken utmost care? I think 4 the issue was negligence back in 2001. Today 5 it's some other definition. 6 MR. BOCK: The indistinguishable 7 facts in today's cases are treated the exact 8 same way they were in this case, which is to say 9 it was a doping offense. And today if an 10 athlete failed to file a TUE, it would be a 11 doping offense, and they could have their 12 sanction reduced by half under the no 13 significant fault standard, potentially. But 14 not always. 15 But potentially they could get it 16 reduced by half. That's as far as any case has 17 ever gone. And that's why USADA characterized 18 it that way in the stipulation. And I don't 19 think that it makes sense to characterize it in 20 any other fashion. 21 And, again, as I said, the purpose 22 of the rules is to provide the athlete notice. 23 And Mr. Gatlin did have notice that his next 24 offense would be a lifetime ban. 25 The other legal issues that I should</p>	<p style="text-align: right;">Page 932</p> <p>1 establishing an anti-doping rule violation. 2 Certainly it does not appear that Mr. Gatlin 3 provided any assistance in discovering an 4 anti-doping rule violation. Whether he provided 5 assistance in establishing an anti-doping rule 6 violation is maybe a closer call. We think 7 perhaps that circumstance occurred here. But 8 it's difficult to say. 9 From Mr. Novitzky's testimony, at 10 best, Mr. Gatlin provided some testimony that 11 perhaps corroborated some basic facts that 12 they -- that were helpful to their prosecution 13 of perhaps Mr. Graham. And if that's the case 14 and there are helpful facts, then he may, at a 15 minimal level, meet the substantial assistance 16 factor. 17 I think a couple other things that 18 need to be taken into consideration is whether 19 his information that was provided was complete 20 and accurate. Whether the statements were 21 truthful. 22 Again, there's some evidence that 23 goes both ways on those factors. But in any 24 case, we don't believe that if there were any 25 reduction under this factor, that it would</p>

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<p>1 likely or should be a significant reduction. 2 Simply because while we think recording 3 conversations is certainly a commendable act, 4 it's unclear to us that that effort really 5 resulted in material help to the investigation. 6 And we would not like to see athletes able to 7 reduce their penalty simply by agreeing to make 8 some phone calls, if those phone calls don't 9 result in any assistance to anybody. 10 The final issue is the start date. 11 And IAAF Rule 40.9 is applicable, and it's 12 clear. And it says that the start date must be 13 the date of the hearing. There's not an 14 exemption in the IAAF of starting from the date 15 of the sample collection. 16 We've been on the phone for a long 17 time. And I apologize for the length of the 18 close, but unless there's any other questions, 19 that's USADA's submission to the panel. 20 MR. COLBERT: Mr. Bock, this is 21 Edward Colbert. Are you suggesting that if 22 there is an award from the panel, it begins on 23 July 31 or July 30 of 2007, and not on the date 24 of a voluntary withdrawal from competition in 25 2006, whether it's the date of collection or</p>	<p>1 decision, not the actual hearing date. So I 2 guess that puts a little pressure on the panel. 3 MR. COLBERT: But as a practical 4 matter, it won't make a lot of difference. If 5 the decision is 30 days from now, and there is 6 an award, then he gets credit for 30 days. If 7 it's tomorrow, he gets credit for tomorrow. So 8 however it is, he gets a credit. 9 Mr. Campbell? 10 MR. TYGART: This is Travis. If you 11 look at Paragraph 9 of the stipulation, it says 12 the credit shall begin on July 25, the day that 13 he began serving a professional suspension. 14 MR. CAMPBELL: That's also what the 15 rule says. 16 MR. TYGART: Also in that same 17 paragraph, it reserves the right to preserve the 18 WADA code in addition to the IAAF code. There's 19 a section indicating you can get that additional 20 time. 21 MR. BOCK: Yeah, certainly 22 Mr. Gatlin has a right to make that argument. 23 But that argument is not available under the 24 IAAF rule. 25 MR. CAMPBELL: Did you guys agree.</p>
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<p>1 not? 2 MR. BOCK: Well, yeah. I think it's 3 perhaps inartful the way the rules are written, 4 but the panel would start the suspension from 5 the date of the hearing, and give credit for the 6 period of professional suspension. 7 So the stipulation contains the date 8 of the professional suspension, which I think is 9 July 25. 10 MR. COLBERT: I understand your 11 position. I just want to make sure we're clear 12 about that. 13 MR. CHERIS: It starts at the date 14 of the award, and then you give credit for time 15 served? 16 MR. BOCK: Actually, it starts the 17 date of the hearing. 18 MR. COLBERT: But then you get 19 credit for time served, starting from the date 20 of fighting for ineligibility. And then when an 21 athlete has served the period of professional 22 suspension, that's the total period to be 23 served? 24 MR. BOCK: You're right, Mr. Chervis, 25 and I was wrong. The rule reads the hearing</p>	<p>1 what code applies? One or the other? 2 MR. BOCK: The stipulation states 3 that the IAAF anti-doping rules are applicable 4 to the hearing. It's in Paragraph 2. It says, 5 "USADA protocol and NSA and the International 6 Athletic Association (IAAF) rules are applicable 7 to this hearing for doping offense in USADA 8 096040." 9 MR. CAMPBELL: But it also said the 10 WADA code. 11 MR. BOCK: The mandatory provisions. 12 You're right. That's right. 13 MR. TYGART: This is Travis. Just 14 real quick on this point. What we've agreed to 15 is accurately reflected in that paragraph that 16 you went through. We included the Eddie 17 Hellphat case, because the IAAF rule is 18 different than the WADA case on that point. 19 All we ask is you articulate -- on 20 whatever basis you decide you articulate the 21 exact basis, so it gives comfort to anyone who 22 may be reviewing this decision. 23 MR. COLBERT: Mr. Collins, if you 24 want five minutes, if you have any reply or 25 response, I'll let you close, if you want,</p>

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<p>1 first. But I'd ask you to keep it short, if you 2 do.</p> <p>3 MR. COLLINS: Could I ask a favor? 4 That I'm allowed to talk to my client first 5 before using that five minutes? 6 MR. COLBERT: If you do it in one 7 minute. 8 MR. CHERIS: Take two minutes, 9 Mr. Collins. 10 (A brief recess was taken.) 11 MR. COLLINS: I would -- just sort 12 of going through my notes, Mr. Bock went at 13 length saying age should not be a consideration 14 in -- the age of a career when considering the 15 sanction of proportionality. Clearly that's not 16 the case. Since it would effectively end his 17 career, it can be considered. 18 Also, with respect to providing no 19 evidence -- or no evidence to disprove something 20 else, I would note for the panel, which I'm sure 21 is already evident to them, that the burden of 22 Mr. Gatlin having to prove a negative is 23 extraordinarily difficult. 24 There was a number of comments about 25 Mr. Novitzky's testimony. There was a couple of</p>	<p>1 But, again, listen. I assume you'll 2 have an opportunity to review the record. There 3 was a lot of talk about Trevor Graham. Whether 4 it was Trevor Graham's story or not. The record 5 was abundantly clear that Justin Gatlin never 6 ruled out the possibility that Trevor Graham was 7 involved in this. 8 In fact, the greatest evidence of 9 that was they, in fact, recorded calls, 10 undercover calls with Trevor Graham. Those 11 calls didn't produce any evidence with respect 12 to the B12 shot being anything other than B12. 13 And there was nothing about the Voltaren pill 14 being anything other than Voltaren. 15 As the Voltaren pill, in fact, there 16 was evidence in the record of it being a pill. 17 It's a brown pill. It's in a blister pack. He 18 gets it from Europe. By just looking it up on 19 the web, you can see it is a brown pill, and 20 they come in 50 milligrams or 75 milligrams, and 21 you can see it. 22 With respect to Dr. Martini and the 23 number of injections, where they used it to try 24 to impeach Justin, it was at the same time he 25 was having his knee drained. Whether he</p>
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<p>1 times where they said he didn't find anything 2 corroborating. And I'd encourage the panel to 3 go back and look at his testimony. At the end 4 of his direct testimony, looking at my notes, he 5 had not received and obtained evidence from 6 anyone regarding knowing use. 7 Part of that would include the B12 8 shots and the Voltaren pill, whether it's green 9 or brown. Whether it's a bean or pill. 10 Voltaren by any other name is still Voltaren, 11 and there's been nothing to indicate it was 12 anything but Voltaren. 13 I'd also note at the end of cross- 14 examination, there was no use of a banned 15 substance. And Mr. Novitzky, as I had said, 16 said there was the possibility of an unknowing 17 use, because there was no indication of a 18 knowing use. 19 And then lastly, when they came back 20 on the phone, when he said there was no 21 conclusions they can draw, that's not what I had 22 in my notes as to what it was. But it was that 23 they obtained no conclusive evidence that 24 Mr. Gatlin took, used or was administered 25 knowingly or unknowingly a banned substance.</p>	<p>1 remembered whether he was having an injection or 2 getting his knee drained are different matters. 3 You can see the confusion. 4 MR. CHERIS: I must say, 5 Mr. Collins, it would be helpful to have 6 Dr. Martini testify. 7 MR. COLLINS: I apologize for not 8 having called him prior to the hearing. Since 9 the testimony was there was no indication that 10 what he received in those injections would 11 render a positive test, it wasn't considered to 12 be relevant until cross-examination when they 13 started asking significant questions about it. 14 The only convenient part of the Penn 15 relays you failed to note is that you do not get 16 rubdowns between races, and Justin had not 17 finished running that day. 18 And the testimony about Chris 19 Whetstine didn't knowingly give banned 20 substances, this is not the power -- this is one 21 of the things that WADA -- they don't have the 22 ability of search and seizure, to go in and take 23 things. 24 So you couldn't get everything 25 there. And the point that he turned his</p>

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<p>1 products over voluntarily, it was three months 2 later, and most likely it was long gone. And at 3 that point, he could give them anything. He 4 knew that whatever it was was long gone. 5 So there's nothing to be read into 6 the fact that he willingly gave stuff. In fact, 7 I would be shocked that what he gave was 8 anything but proved negative. 9 That Renaldo Nehemiah was desperate 10 for his client, I respectfully disagree. He 11 asked for the truth, whether it helped Justin 12 Gatlin or hurt Justin Gatlin. He was simply 13 looking for the truth. 14 There was also talk about 15 proportionality. There were a lot of issues. 16 Mr. Bock said that proportionality only comes 17 into play if there were exceptional 18 circumstances. I disagree with that 19 interpretation. And I am not alone. 20 If you look at the CAS opinion, it 21 points to Law Review, Swiss law, and other 22 things that there are still regulations which 23 cannot directly or indirectly replace the 24 fundamental doctrine of proportionality with a 25 priority for every thinkable case. It continues</p>	<p>1 is going to make millions of dollars at the 2 Kansas relays. It's a relatively insignificant 3 event on the track calendar. 4 If he was so hurt that he couldn't 5 return, they would have simply missed the meet. 6 There's no indication that Justin Gatlin would 7 have knowingly participated in any known scheme 8 to compete at the Kansas relays. And to 9 underscore that is all the negative CIRs. 10 If he was out there knowingly 11 cheating and getting away with it, the other 12 CIRs would have turned up positive. He had no 13 idea they were going to do CIRs, and they all 14 came back clean. It indicates no knowing 15 attempt to cheat on behalf of Mr. Gatlin. 16 With that, I want to again thank the 17 panel. Obviously you're thinking long and hard 18 about this case. I really appreciate it. And 19 on behalf of the Gatlins, I want to thank you. 20 We would ask as you deliberate -- 21 we're not asking you to do anything out of the 22 code, or out of what's there or different than 23 what any other CAS panel has. But to use your 24 powers to create a just and proportionate 25 sanction in this matter.</p>
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<p>1 on and talks about substantial assistance, but 2 nevertheless, the possibility of having future 3 cases proved by Article 10.5 of the WADA code 4 must be seriously envisioned. 5 And we should note that other cases 6 also indicate that when evaluating the penalty, 7 you must take into account all the facts and 8 circumstances. 9 In light of that, we have, 10 throughout this process, maintained that the 11 panel has the right to look at the first 12 opinion, the substance of the first case, to 13 find out whether whatever penalty he receives 14 here, if he is to receive a penalty, that he 15 receive a light penalty. Eight years would end 16 his career. 17 That penalty, by definition, would 18 include some level of punishment for what 19 happened in that first offense. And they must 20 certainly consider that. 21 Lastly, I want to talk about -- 22 there were issues of motivation, and people had 23 issues -- or that Trevor Graham and Justin 24 Gatlin had motivations to take prohibited 25 substances to make millions of dollars. Nobody</p>	<p>1 MR. COLBERT: Thank you. 2 Mr. Collins, can I ask you, you read from the 3 Scizado case. Did you provide that to the 4 panel? 5 MR. COLLINS: I did not. It was 6 quoted in the Puerta case. If I was doing 7 proper legal citation, I would have said Puerta. 8 MR. COLBERT: All right. I didn't 9 remember that being provided to the panel. 10 All right. Mr. Campbell? 11 Mr. Cheris? Any questions? 12 MR. CAMPBELL: I do not. 13 MR. COLBERT: All right. We're 14 waiting for the documents. I believe we may 15 have already received the indictment from 16 Ms. Wingard. So we're waiting for the documents 17 from Dr. Black for purposes of putting documents 18 in the record. 19 The panel will hold the hearing open 20 until the transcript is available. We don't 21 know exactly when it's going to be available. I 22 was told, I believe, it's on standard 23 turnaround. So when the panel receives the 24 transcript, that will constitute closing of the 25 hearing. Do you have any questions?</p>

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<p>1 MR. COLLINS: I was just going to 2 note I would call Dr. Black promptly. 3 MR. COLBERT: All right. We'll wait 4 to hear from you. But if Dr. Black doesn't get 5 around to providing us the photos and the 6 information, and the transcript comes in in the 7 next couple of days, then all we can do is wait. 8 It's either the transcript or 9 Dr. Black's photos. But I don't expect Dr. 10 Black's photos to take more than a couple of 11 days. 12 MR. COLLINS: I don't either. 13 MR. COLBERT: Anything else, 14 gentlemen? 15 MR. COLLINS: Thank you very much 16 for your time. 17 MR. GATLIN: Thank you very much for 18 your attention. 19 MR. COLBERT: It's been a very 20 difficult case. I think the parties have done 21 an admirable job in stating their positions, and 22 we look forward to getting the last of the 23 information and the transcript, and the panel 24 will then enter its deliberation phase. Thank 25 you very much, gentlemen and ladies. And we'll</p>	<p>1 REPORTER'S CERTIFICATE. 2 3 I, DEBRA K. RESLING, RMR, and Certified 4 Realtime Reporter, appointed to take the within 5 arbitration, do certify that before the hearing 6 the witnesses were duly sworn by me to testify 7 to the truth; that the hearing was taken by me 8 at the American Arbitration Association 9 Arbitration Association, 2200 Century Parkway, 10 Suite 300, Atlanta, Georgia on July 30 and 31, 11 2007, then reduced to typewritten form 12 consisting of 723 pages herein; the telephonic 13 hearing was taken on August 1, 2007, by 14 Stephanie Ost Dahl, RPR, the foregoing is a true 15 transcript of the questions asked, testimony 16 given and proceedings had. 17 18 I further certify that I am not related to 19 any party herein or their Counsel, and have no 20 interest in the result of this litigation. 21 22 In witness hereof I have hereunto set my 23 hand this 20th day of August, 2007. 24  25 Debra K. Resling, RMR Certified Realtime Reporter and Notary Public. 4 Cheyenne Boulevard Colorado Springs, CO 80906 My commission expires February 28, 2009</p>
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<p>1 speak to you at some later time perhaps. 2 (The above proceedings were 3 concluded at 6:45 p.m., on August 1, 2007.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

BEFORE THE AMERICAN ARBITRATION
ASSOCIATION

North American Court of Arbitration for Sport Panel
USADA vs. Justin Gatlin
AAA No. 30 190 00170 07

TRANSCRIPT OF PROCEEDINGS
Word Index

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July 30 – August 1, 2007

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