

Exhibit 5

1 MR. JOHNSON: I HAVE NO FURTHER QUESTIONS.

2 THE COURT: THANK YOU VERY MUCH. YOU MAY
3 STEP DOWN. THANK YOU FOR COMING.

4 (WITNESS EXCUSED.)

5 THE COURT: NEXT WITNESS, MR. HARPER.

6 MR. HARPER: IF I MAY, YOUR HONOR. WE WILL
7 CALL DR. RICHARD MUELLER.

8 THE CLERK: STATE AND SPELL YOUR FULL NAME
9 FOR THE RECORD, PLEASE.

10 THE WITNESS: RICHARD MUELLER,
11 M-U-E-L-L-E-R.

12 RICHARD MUELLER, WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. HARPER:

15 Q. GOOD AFTERNOON, DR. MUELLER.

16 A. GOOD AFTERNOON.

17 Q. ARE YOU CURRENTLY EMPLOYED?

18 A. YES, I AM.

19 Q. WHAT IS YOUR OCCUPATION?

20 A. I'M A NON-INVASIVE CARDIOLOGIST.

21 Q. WHERE DO YOU PRACTICE?

22 A. IN MANHATTAN.

23 Q. HAVE YOU ANY SPECIALTIES OR CONCENTRATIONS?

24 A. I PRACTICE THE FULL SCOPE OF CLINICAL AND
25 CONSULTATIVE CARDIOLOGY WITH SPECIAL INTERESTS IN

1 ECHOCARDIOGRAPHY.

2 Q. OKAY.

3 COULD YOU TELL US A LITTLE, DR. MUELLER,
4 ABOUT YOUR EDUCATION AFTER SECONDARY SCHOOL?

5 A. MY UNDERGRADUATE EDUCATION WAS AT BROWN
6 UNIVERSITY. MEDICAL SCHOOL WAS AT THE UNIVERSITY OF
7 CALIFORNIA, SAN FRANCISCO. I FINISHED THERE IN 1987.
8 I DID MY INTERNSHIP AT NORTH SHORE UNIVERSITY HOSPITAL,
9 AS WELL AS MEMORIAL SLOAN-KETTERING CANCER CENTER IN
10 NEW YORK, A COMBINED PROGRAM FROM 1987 TO 1988. I THEN
11 DID RESIDENCY IN INTERNAL MEDICINE AT THOSE SAME TWO
12 PROGRAMS FROM 1988 TO 1990. I WAS THEN CHIEF RESIDENT
13 IN INTERNAL MEDICINE AT NORTH SHORE UNIVERSITY HOSPITAL
14 FROM 1990 TO 1991.

15 Q. LET ME STOP YOU THERE FOR JUST A SECOND.

16 DOES ANYBODY GET TO BE A CHIEF RESIDENT?

17 A. NO. JUST ONE OR TWO PEOPLE FOR EACH YEAR OF
18 RESIDENCY.

19 Q. HOW ARE THEY SELECTED?

20 A. BY THE CHAIRMAN OF THE DEPARTMENT OF MEDICINE.

21 Q. AND IT'S NOT JUST BECAUSE YOU WANT TO STAY AN
22 EXTRA YEAR. IS THERE SOME KIND OF MERIT SELECTION
23 INVOLVED?

24 A. OH, YES, DEFINITELY. IT'S -- BASICALLY ONE IS
25 FOREGOING GOING TO THE NEXT STEP AND STAYING ON. IT'S

1 CONSIDERED AN ACADEMIC POSITION.

2 Q. AFTER YOU COMPLETED YOUR CHIEF RESIDENCY AT NORTH
3 SHORE UNIVERSITY, WHAT DID YOU DO?

4 A. I THEN DID MY CARDIOLOGY FELLOWSHIP AT THE NEW
5 YORK HOSPITAL, CORNELL MEDICAL CENTER IN NEW YORK FROM
6 1991 TO 1994.

7 Q. LET ME ASK YOU A QUESTION. WHAT IS THE DIFFERENCE
8 BETWEEN A RESIDENCY AND A FELLOWSHIP?

9 A. JUST THE PATHWAYS ARE DIFFERENT FOR DIFFERENT
10 SPECIALTIES, MEDICAL VERSUS SURGICAL, THEN
11 SUBSPECIALTIES. FIRST, ONE MAKES THE DECISION TO DO A
12 MEDICAL -- TO PURSUE A MEDICAL TRACK WHICH IS INTERNAL
13 MEDICINE, WHICH IS NOW CURRENTLY A THREE YEAR
14 RESIDENCY. AND THEN IF ONE WANTS TO SUBSPECIALIZE
15 WITHIN INTERNAL MEDICINE, SAY, IN CARDIOLOGY, ONE DOES
16 WHAT IS NOW A THREE-YEAR CARDIOLOGY FELLOWSHIP.

17 Q. WHERE DID DO YOU THAT FELLOWSHIP?

18 A. NEW YORK HOSPITAL, CORNELL MEDICAL CENTER.

19 Q. ARE YOU CERTIFIED BY ANY PROFESSIONAL BODIES?

20 A. YES. SEVERAL.

21 Q. CAN YOU NAME SOME OF THEM?

22 A. SOME OF THEM ARE MEMBERSHIPS, SOME OF THEM ARE
23 ELECTED FELLOWSHIPS. THE ELECTED FELLOWSHIPS ARE,
24 FELLOW OF THE AMERICAN COLLEGE OF CARDIOLOGY.

25 Q. I'M SORRY, DOCTOR. I DON'T MEAN TO INTERRUPT YOU.

1 I'M REALLY TALKING ABOUT CERTIFICATIONS AT THE MOMENT
2 AND NOT MEMBERSHIPS AND PROFESSIONAL SOCIETIES.

3 A. SORRY. THE AMERICAN BOARD OF INTERNAL MEDICINE,
4 1990, ORIGINAL CERTIFICATION AND THEN RECERTIFIED IN
5 2000. AND THEN THE AMERICAN BOARD OF INTERNAL MEDICINE
6 FOR CARDIOVASCULAR DISEASES, AS A SUBSPECIALTY,
7 ORIGINALLY 1995, AND RECERTIFIED IN 2000.

8 Q. NOW, HAVE YOU ACHIEVED A CERTAIN LEVEL OF TRAINING
9 IN ECHOCARDIOLOGY ACCORDING TO THE AMERICAN SOCIETY OF
10 ECHOCARDIOLOGISTS?

11 A. YES.

12 Q. WHAT IS THAT LEVEL?

13 A. 2.

14 Q. WHAT DID YOU DO AFTER YOU COMPLETED YOUR
15 FELLOWSHIP?

16 A. I STARTED MY OWN PRIVATE PRACTICE IN 1994 AS A
17 SOLO PRACTITIONER IN CARDIOLOGY, AS WELL AS IN INTERNAL
18 MEDICINE.

19 Q. IS THAT WHAT YOU HAVE BEEN DOING CONTINUOUSLY
20 SINCE 1994?

21 A. CORRECT.

22 Q. ARE YOU AFFILIATED WITH ANY HOSPITALS?

23 A. YES, I AM.

24 Q. WHICH ONES?

25 A. I HAVE A CLINICAL APPOINTMENT AT WHAT IS NOW

1 CALLED NEW YORK PRESBYTERIAN HOSPITAL IN NEW YORK,
2 WHICH WAS THE SAME -- FORMALLY NEW YORK HOSPITAL WHERE
3 I DID FELLOWSHIP TRAINING.

4 I ALSO HAVE A FACULTY APPOINTMENT AT ST.
5 LUKE'S ROOSEVELT HOSPITAL, ALSO IN NEW YORK, AS WELL AS
6 HOSPITAL FOR SPECIAL SURGERY, ALSO IN NEW YORK.

7 Q. HAVE YOU EVER QUALIFIED AS AN EXPERT WITNESS IN
8 ANY LITIGATION?

9 A. YES.

10 Q. APPROXIMATELY HOW MANY TIMES?

11 A. FOR COURT TESTIMONY, I BELIEVE, JUST TWICE.
12 DEPOSITIONS, THREE OR FOUR, AND REVIEWING RECORDS, MORE
13 THAN THAT.

14 Q. ON BEHALF OF DOCTORS ONLY?

15 A. NO, BOTH.

16 Q. BOTH DOCTORS AND PATIENTS?

17 A. YES, PLAINTIFFS AND DEFENSE.

18 Q. NOW, LET ME SHOW YOU A DOCUMENT THAT HAS BEEN
19 MARKED HN 103, AND ASK YOU IF YOU CAN IDENTIFY IT.

20 MR. HARPER: MAY I APPROACH?

21 THE COURT: YOU MAY.

22 BY MR. HARPER:

23 Q. PUT UP PAGE 2.

24 FIRST OF ALL, DOCTOR, WOULD YOU IDENTIFY HN
25 103 FOR US?

1 A. THIS IS MY CV.

2 Q. LET ME DIRECT YOUR ATTENTION TO PAGE 2 OF THE CV.
3 IT'S DEPICTED ON THE SCREEN, AS WELL.

4 YOU WERE ABOUT TO TELL US YOUR MEMBERSHIPS
5 IN PROFESSIONAL SOCIETIES EARLIER, AND I CUT YOU OFF.
6 DOES PAGE 2 ACCURATELY DEPICT YOUR MEMBERSHIPS IN
7 VARIOUS PROFESSIONAL SOCIETIES?

8 A. IT DOES.

9 Q. CAN YOU TELL US THE DIFFERENCE BETWEEN A FELLOW
10 AND A MEMBER.

11 A. MEMBERSHIP IS THE EASIER LEVEL OF ENTRY. USUALLY,
12 THERE ARE SOME QUALIFICATIONS THAT WOULD MAKE IT
13 APPROPRIATE, BUT USUALLY ONCE ONE HAS THE BASIC
14 QUALIFICATIONS OR BACKGROUND OR TRAINING, IT'S AN ISSUE
15 OF JUST SIGNING UP AND PAYING A MEMBERSHIP FEE. A
16 FELLOWSHIP IS AN ELECTED, EITHER SOMETIMES NOMINATED
17 AND ELECTED, ALWAYS AN ELECTED POSITION, AND WITH MUCH
18 MORE RIGOROUS CRITERIA.

19 Q. COULD YOU TURN TO PAGE 3 OF YOUR CV WHERE IT SAYS,
20 CERTIFICATIONS. LET ME ASK YOU THIS. HAVE YOU EVER
21 HEARD THE PHRASE "EXAMINATION OF SPECIAL COMPETENCY"?

22 A. YES.

23 Q. WHAT IS IT?

24 A. I THINK IT'S ONE OF THE DIFFERENT VARIATIONS OF
25 THE WAY THAT DIFFERENT EXAMINING BODIES LIKE TO CALL

1 THEIR EXAMINATION, AND THAT IS SOMETHING THAT THE
2 AMERICAN SOCIETY OF ECHOCARDIOGRAPHY HAS USED. I THINK
3 SOMETHING VERY SIMILAR FOR THE ECG PROFICIENCY EXAM
4 FROM THE ACC HAS SOME SIMILAR TYPE OF THING.

5 Q. LET ME DIRECT YOU TO WHERE IT SAYS, ASC, AMERICA
6 SOCIETY OF ECHOCARDIOLOGY CERTIFYING EXAMINATION, LINE
7 99, DO YOU SEE THAT?

8 A. YES.

9 Q. IS THAT SOMETIMES REFERRED TO AS THE EXAMINATION
10 OF SPECIAL COMPETENCE?

11 A. YES.

12 Q. DOES EVERY ECHOCARDIOLOGIST TAKE THAT EXAMINATION?

13 A. NO. JUST A SMALL MINORITY, FROM MY EXPERIENCE.

14 Q. YOU TOOK IT AND YOU PASSED IT?

15 A. YES.

16 Q. FIRST TIME?

17 A. YES.

18 Q. DO YOU KNOW WHO CONDUCTS IT?

19 A. THE AMERICAN SOCIETY OF ECHOCARDIOGRAPHY.

20 Q. DO YOU HAPPEN TO KNOW WHO WROTE THE EXAMINATION?

21 A. I IMAGINE IT'S PROBABLY --

22 THE COURT: DON'T GUESS.

23 BY MR. HARPER:

24 Q. I'M JUST ASKING YOU WHETHER YOU KNOW.

25 A. SPECIFICALLY, NO.

1 Q. NOW, IN YOUR PRIVATE PRACTICE, YOU HAVE HAD
2 OCCASION TO CONDUCT AND INTERPRET ECHOCARDIOGRAMS,
3 CORRECT, DOCTOR?

4 A. YES, MANY TIMES.

5 Q. APPROXIMATELY HOW MANY ECHOCARDIOGRAMS HAVE YOU
6 INTERPRETED?

7 A. I WOULD SAY ABOUT 8 OR 900 A YEAR TIMES EIGHT
8 YEARS OF PRACTICE, SO THAT DOES NOT INCLUDE TRAINING,
9 SOMETHING IN THAT RANGE, 6,000, 7,000.

10 Q. NOW, OF THE ECHOCARDIOGRAMS THAT YOU HAVE
11 INTERPRETED, APPROXIMATELY HOW MANY HAVE YOU PERSONALLY
12 PERFORMED?

13 A. 99 PERCENT.

14 Q. AND SO OF THE 30 PLUS ECHOCARDIOGRAMS THAT HAVE
15 BEEN SELECTED FOR SCRUTINY IN THIS PROCEEDING,
16 APPROXIMATELY HOW MANY DID YOU PERSONALLY CONDUCT?

17 A. I BELIEVE IT'S ALL BUT TWO.

18 Q. LET ME SHOW YOU A DOCUMENT THAT IS REALLY A
19 COLLECTION OF EXHIBITS. WE ARE INDEPENDENTLY MARKING
20 IT AS HN 208, BUT IT IS COMPRISED OF EXHIBITS 1, 3, 5,
21 6, 8, 12, 14, 17, 18, 20, 24, 25, 30, 32, 33, 35, 37,
22 38, 43, 45, 46, 47, 48, 50, 53, 54, 56, 57, 60, 64, 80
23 AND 85.

24 MR. HARPER: MAY I APPROACH, YOUR HONOR?

25 THE COURT: YOU MAY.

1 BY MR. HARPER:

2 Q. DOCTOR, COULD YOU IDENTIFY THE DOCUMENTS THAT WE
3 HAVE GATHERED TOGETHER AS HN 208 FOR THE COURT?

4 A. THESE ARE MY REPORTS FOR ECHOCARDIOGRAMS THAT I
5 HAVE PERFORMED.

6 Q. WOULD YOU PUT UP NUMBER 1, MOVANTS' ONE, WHICH IS
7 THE FIRST PAGE OF HN 208.

8 MR. GROSSI: I'M NOT FOLLOWING EXACTLY. IS
9 THIS A SET THAT WE PREVIOUSLY HAD?

10 MR. HARPER: THIS IS NOTHING BUT JUST FOR
11 EASE MY EXAMINATION AND I HOPE THE CONVENIENCE OF THE
12 COURT. I HAVE SIMPLY TAKEN ALL OF THE ECHOCARDIOGRAM
13 REPORTS THAT THE MOVANTS HAVE MARKED, WHICH ARE DR.
14 MUELLER'S REPORTS, AND COMBINED THEM TOGETHER IN ONE
15 EXHIBIT CALLED HN 208.

16 MR. GROSSI: WOULD IT BE POSSIBLE TO GET A
17 COPY OF THAT AS SUCH?

18 MR. HARPER: ABSOLUTELY.

19 MS. FLETMAN: WHEN YOU READ THOSE EXHIBIT
20 NUMBERS BEFORE, THOSE WERE MOVANT EXHIBIT NUMBERS?

21 MR. HARPER: YES, THEY WERE ALL MOVANT
22 EXHIBITS.

23 MR. GROSSI: THANK YOU.

24 MR. HARPER: YOU ARE WELCOME.

25 BY MR. HARPER:

1 Q. DR. MUELLER, WHO PREPARED THIS?

2 A. I DID.

3 Q. WHY? FOR WHAT PURPOSE?

4 A. THIS IS THE TEMPLATE THAT I USE FOR THE THOUSANDS
5 OF ECHOCARDIOGRAMS THAT I'VE DONE. IT'S THE SAME
6 TEMPLATE THAT I USE FOR MY OWN PATIENTS AND CLINICAL
7 EXAMINATIONS.

8 Q. SO WHEN DID YOU PREPARE THIS?

9 A. THERE HAVE BEEN SOME SLIGHT MODIFICATIONS, BUT
10 SINCE THE EARLY -- SINCE THE MID-1990'S WHEN I WENT
11 INTO PRACTICE.

12 Q. THE PREPARATION OF THIS FORM HAD NOTHING TO DO
13 WITH THE CONDUCT OR INTERPRETATION OF ECHOCARDIOGRAMS
14 IN CONNECTION WITH THE SETTLEMENT?

15 A. OH, NOT AT ALL. IT'S THE SAME EXACT TEMPLATE.

16 Q. YOU SAY YOU USE THIS REPORT FOR YOUR PATIENTS?

17 A. EVERY DAY.

18 Q. DID YOU USE THIS SAME FORM FOR THE CLIENTS OF
19 HARITON & D'ANGELO WHOSE ECHOCARDIOGRAMS YOU PERFORMED
20 AND/OR INTERPRETED?

21 A. YES, IN EVERY CASE.

22 Q. NOW, THERE CAME A TIME THAT YOU BEGAN TO PERFORM
23 ECHOCARDIOGRAMS FOR CLIENTS OF THE LAW FIRM OF HARITON
24 & D'ANGELO?

25 A. YES.

1 Q. WHEN APPROXIMATELY?

2 A. AUGUST OR -- I BELIEVE IT WAS AUGUST OF 2000.

3 Q. AND HOW DID THAT COME ABOUT?

4 A. I HAD FIRST BEEN CONTACTED BY MR. D'ANGELO, I
5 THINK, A YEAR PREVIOUSLY, ABOUT DOING EXPERT WITNESS
6 WORK IN A MUCH MORE STRAIGHTFORWARD MEDICAL MALPRACTICE
7 SETTING, REVIEWING CHARTS AND SO FORTH. SO, I KNEW HIM
8 FROM SOMETIME, I BELIEVE, IN 1999: AND THEN I WAS
9 ASKED TO REVIEW TWO CASES IN AUGUST OF 2000 WHICH WERE
10 SORT OF A MIXTURE OF A STRAIGHTFORWARD MEDICAL
11 MALPRACTICE EXPERT WITNESS REVIEW IN THE TRADITIONAL
12 SENSE WITH OUTSIDE REPORTS. AND IN REVIEWING OUTSIDE
13 REPORTS, AS WELL AS IN ONE OF THE TWO CASES, I BELIEVE,
14 I WAS REVIEWING OUTSIDE ECHOCARDIOGRAMS, AND IN ONE OF
15 THE TWO CASES, HE REQUESTED THAT I REPEAT MY OWN
16 ECHOCARDIOGRAM ON ONE OF THESE CLIENTS.

17 Q. ACTUALLY, IF WE LOOK AT MOVANTS' 1, IT'S ON THE
18 SCREEN, THE FIRST PAGE OF HN 208, THAT INDICATES A DATE
19 OF 8/24/00. DO YOU SEE THAT?

20 A. YES.

21 Q. SO IS THIS APPROXIMATELY AROUND THE TIME THAT MR.
22 D'ANGELO FIRST APPROACHED YOU IN CONNECTION WITH THE
23 SETTLEMENT AGREEMENT?

24 A. YES, THIS WAS ONE OF THE TWO.

25 Q. SO, THE CONSULTATION EARLIER IN 1999 HAD NOTHING

1 TO DO WITH THE SETTLEMENT AGREEMENT OR WHAT BRINGS US
2 TOGETHER TODAY?

3 A. CORRECT.

4 Q. DO YOU KNOW HOW MR. D'ANGELO GOT YOUR NAME IN THE
5 FIRST INSTANCE?

6 A. I DON'T RECALL.

7 Q. OTHER THAN ON BEHALF OF THE HARITON & D'ANGELO
8 FIRM, HAVE YOU PERFORMED ECHOCARDIOGRAMS FOR ANYONE
9 ELSE IN CONNECTION WITH THE FEN-PHEN SETTLEMENT?

10 A. YES, I HAVE.

11 Q. WHO?

12 A. FIRST OF ALL, THE AHP TRUST THEMSELVES, AS WELL AS
13 ONE -- I PERFORMED ECHOCARDIOGRAMS FOR ONE OTHER LAW
14 FIRM THAT I CAN THINK OF. AND I HAVE REVIEWED EITHER
15 ECHO TAPES OR MOSTLY JUST MEDICAL RECORDS AND REPORTS
16 OF OTHER STUDIES FOR A SMALL HANDFUL OF OTHER FIRMS.

17 Q. OTHER THAN THE HARITON AND D'ANGELO FIRM AND THE
18 TRUST, APPROXIMATELY HOW MANY ECHOCARDIOGRAMS HAVE YOU
19 CONDUCTED OR INTERPRETED FOR OTHER LAW FIRMS IN
20 CONNECTION WITH THE SETTLEMENT?

21 A. JUST TWO.

22 Q. AND NOW, LET'S GO BACK TO THE TRUST. WHO
23 CONTACTED WHOM IN CONNECTION WITH YOUR DOING
24 ECHOCARDIOGRAMS ON BEHALF OF THE TRUST?

25 A. I WAS CONTACTED BY THE TRUST, I BELIEVE, VIA THEIR

1 CONTRACTORS OR THIRD PARTIES THAT THEY WORK WITH,
2 CRAWFORD, AND/OR CCN, AND WAS INITIALLY CONTACTED AND
3 TOLD THAT I WAS INVITED TO BE IN A POOL OF DOCTORS WHO
4 WOULD PERFORM THESE EXAMINATIONS AND WOULD I AGREE AND,
5 IF SO, WHAT WERE MY FEES, WOULD I AGREE TO THEIR FEES
6 AND SO FORTH.

7 Q. APPROXIMATELY HOW MANY ECHOCARDIOGRAMS DID YOU
8 PERFORM ON BEHALF OF THE TRUST OR SUBJECTS SENT TO YOU
9 BY THE TRUST?

10 A. I WOULD ESTIMATE 20 OR SO.

11 Q. AND DO YOU RECALL HOW MUCH YOU WERE PAID FOR THE
12 ECHOCARDIOGRAMS THAT YOU PERFORMED ON BEHALF OF OR FOR
13 SUBJECTS SENT TO YOU ON BEHALF OF THE TRUST?

14 A. I DON'T RECALL PRECISELY, BUT THE APPROXIMATE
15 NUMBER WOULD BE ABOUT \$900 FOR THE ECHO, GIVE OR TAKE
16 \$100 -- PLUS OR MINUS \$100. I BELIEVE IT WAS AROUND
17 \$900, IN THAT RANGE. AND THEN THEY ALSO RECOMMEND THAT
18 WE BILL FOR A CLINICAL -- I SHOULD NOT SAY CLINICAL.
19 THEY ALSO RECOMMEND THAT THEY BILL -- WE BILL A
20 SEPARATE CODE WHICH IS OFTEN USED IN THE CLINICAL
21 SETTING THAT WAS FOR A CONSULTATION TO EXPLAIN THE
22 RESULTS TO THE CLIENT. SO THAT IS A SEPARATE BILLING.
23 THEY GIVE US A WIDE RANGE OF WHICH CODES TO USE, AND
24 THAT CODE WOULD PROBABLY BE AROUND \$200 FOR THAT, SO
25 THE TOTAL WOULD BE AROUND \$1,100 PLUS/MINUS \$100.

1 Q. NOW, WHAT FORM DID YOU USE WHEN YOU CONDUCTED OR
2 INTERPRETED ECHOCARDIOGRAMS FOR THE TRUST?

3 A. IN TERMS OF THE REPORT?

4 Q. YES.

5 A. THE SAME EXACT REPORT AS WE SEE NOW.

6 Q. ALL RIGHT. DID YOU FOLLOW ANY DIFFERENT PROTOCOL
7 IN PERFORMING ECHOCARDIOGRAMS ON BEHALF OF THE TRUST
8 THAN FOR THE CLIENTS OF THE HARITON & D'ANGELO FIRM?

9 A. NO. IT WAS EXACTLY THE SAME.

10 Q. OKAY. DID THE TRUST EVER COMPLAIN TO YOU ABOUT --
11 AT ANY TIME, ABOUT THE ECHOCARDIOGRAMS THAT YOU HAD
12 CONDUCTED ON BEHALF OF SUBJECTS SENT TO YOU BY THE
13 TRUST?

14 A. NEVER.

15 Q. WHEN WAS THE LAST TIME YOU WERE APPROACHED BY THE
16 TRUST?

17 A. I PERFORMED A TRUST ECHOCARDIOGRAM -- I PERFORMED
18 AN ECHOCARDIOGRAM ON ONE OF THE TRUST CLIENTS
19 APPROXIMATELY TWO WEEKS, 10 DAYS TO 14 DAYS BEFORE I
20 WAS MADE AWARE OF THIS ACTION. AND I BELIEVE I WAS
21 CONTACTED TO SCHEDULE MORE WITHIN THE WEEK BEFORE I WAS
22 INFORMED OF THIS ACTION.

23 Q. NOW, ARE YOU FAMILIAR WITH A COMPANY CALLED WYETH?

24 A. OF COURSE.

25 Q. WHAT RELATIONSHIP, IF ANY, DO YOU HAVE WITH WYETH?

1 A. I'M REGISTERED ON THEIR SPEAKERS' BUREAU.

2 Q. WHAT DOES THAT MEAN?

3 A. ALL THE PHARMACEUTICAL FIRMS HAVE A POOL OF
4 PHYSICIANS OR OTHER EXPERTS WHO THEY HAVE A CONSULTING
5 AGREEMENT WITH TO FUNCTION AS AN EXPERT IN THE FORM OF
6 PERFORMING SPEAKING ENGAGEMENTS, EDUCATION OF OTHER
7 DOCTORS ON THEIR BEHALF.

8 Q. WHO IS THE AUDIENCE FOR THESE SPEAKING OCCASIONS?

9 A. PHYSICIANS.

10 Q. PHYSICIANS?

11 A. YES.

12 Q. APPROXIMATELY HOW MANY OF THESE SPEAKING
13 ENGAGEMENTS HAVE YOU DONE FOR WYETH?

14 A. SEVERAL DOZEN.

15 Q. HOW RECENTLY WERE YOU ASKED BY WYETH TO CONDUCT
16 ONE OF THESE EDUCATIONAL PROGRAMS FOR PHYSICIANS?

17 A. LITERALLY ON THE DAY THAT I WAS INFORMED OF THIS
18 PROCEEDING.

19 Q. NOW, DR. MUELLER, BEFORE LAST WEEK IN
20 PHILADELPHIA, HAD YOU EVER MET MARK BERN?

21 A. NEVER.

22 Q. HAD YOU EVER COMMUNICATED WITH MARK BERN OF THE
23 NAPOLI KAISER BERN ASSOCIATES ON THE SUBJECT OF
24 ECHOCARDIOGRAMS AT ANY TIME?

25 A. I'M STILL NOT SURE EXACTLY WHO HE IS. I KNOW HE

1 IS IN THIS ROOM.

2 Q. BEFORE LAST WEEK WHEN WE ALL GATHERED IN
3 PHILADELPHIA, DID YOU KNOW PAUL NAPOLI?

4 A. NO. NO.

5 Q. TO YOUR KNOWLEDGE, HAVE YOU EVER COMMUNICATED WITH
6 MR. NAPOLI ON THE SUBJECT OF ECHOCARDIOGRAMS?

7 A. I HAVE NOT.

8 Q. NOW, YOU DO KNOW MARIO D'ANGELO, CORRECT?

9 A. I DO.

10 Q. HAVE YOU EVER SOCIALIZED WITH MARIO D'ANGELO?

11 A. NEVER.

12 Q. AND EXCEPT FOR THE ONE TIME THAT HE CONSULTED WITH
13 YOU IN 1999, AND THEN WHEN HE CAME BACK TO YOU WITH
14 RESPECT TO ECHOCARDIOGRAMS IN THE YEAR 2000, WHAT
15 RELATIONSHIP, IF ANY, DO YOU HAVE WITH ANYBODY AT THE
16 HARRITON D'ANGELO FIRM?

17 A. NONE.

18 Q. WHAT, IF ANY, INFLUENCE DID THE HARITON AND
19 D'ANGELO FIRM HAVE ON YOUR INTERPRETATIONS OF
20 ECHOCARDIOGRAMS?

21 A. INTERPRETATIONS, NONE.

22 Q. DID ANYONE FROM HARITON AND D'ANGELO EVER TRY TO
23 PERSUADE YOU TO CHANGE AN ECHOCARDIOGRAM REPORT?

24 A. NO.

25 Q. DID ANYONE FROM THE HARITON D'ANGELO FIRM EVER

1 DICTATE WHAT PROCEDURES YOU SHOULD FOLLOW IN CONDUCTING
2 THE ECHOCARDIOGRAM?

3 A. NEVER.

4 Q. DID ANYONE FROM THE HARITON D'ANGELO FIRM EVER TRY
5 TO DICTATE WHAT PROCEDURES YOU SHOULD FOLLOW IN
6 INTERPRETING THE ECHOCARDIOGRAM?

7 A. NEVER.

8 Q. THEY GAVE YOU A COPY OF THE GREEN FORM, CORRECT?

9 A. YES.

10 Q. AND DID ANYONE FROM THE HARITON D'ANGELO FIRM EVER
11 TRY TO SAY TO YOU, IN WORDS OR SUBSTANCE, JUST FIND ME
12 A JET OVER 20 PERCENT?

13 A. ABSOLUTELY NOT.

14 Q. NOW, YOU MENTIONED THAT INITIALLY MR. D'ANGELO
15 APPROACHED YOU ON THE SUBJECT OF TWO PARTICULAR
16 ECHOCARDIOGRAMS, ONE THAT HE WANTED YOU TO REVIEW, AND
17 ONE THAT HE WANTED YOU TO CONDUCT. DID THERE COME A
18 TIME WHEN HE APPROACHED YOU AGAIN TO INCREASE THE
19 NUMBER OF ECHOCARDIOGRAMS THAT HE WANTED YOU TO DO?

20 A. YES. HE CONTACTED ME AFTER THESE TWO INITIAL
21 CASES, IN LATE SUMMER OF 2000. I DON'T REMEMBER
22 EXACTLY WHEN, SEVERAL MONTHS LATER, THERE WAS A HIATUS
23 OF SEVERAL MONTHS, AND HE CONTACTED ME AND TOLD ME THAT
24 BECAUSE OF THE SETTLEMENT, WHICH I HAD READ ABOUT IN
25 THE NEWSPAPER, AND HAD SOME GLANCING EXPERIENCE WITH

1 SOME MY OWN PATIENTS WHO HAD TAKEN THE DRUGS, AND WERE
2 COMING AT ME WITH VARIOUS TYPES OF FORMS, HE SAID THAT,
3 WELL, NOW I HAVE A NUMBER OF CLIENTS WHO NEED TO HAVE
4 ECHOCARDIOGRAMS PERFORMED. I WON'T NEED YOU TO DO THE
5 COMPLETE MED-MAL EVALUATION. I JUST NEED YOU TO
6 PERFORM ECHOCARDIOGRAMS. THAT WAS SEVERAL MONTHS
7 LATER, IN PROBABLY EARLY 2001, I WOULD THINK.

8 Q. WHAT WAS YOUR RESPONSE?

9 A. I SAID, OKAY, WELL, THAT'S DIFFERENT. EXPLAIN TO
10 ME WHAT EXACTLY YOU WANT DONE AND WHAT TYPE OF TIME
11 COMMITMENT AND I WILL TRY TO MAKE MYSELF AVAILABLE
12 AND --

13 Q. WHAT DID HE TELL YOU HE WANTED TO HAVE DONE?

14 A. HE WANTED TO JUST SIMPLY SCHEDULE HIS CLIENTS TO
15 HAVE ECHOCARDIOGRAMS WITH ME, HAVE ME PERFORM THE
16 STUDY, INTERPRET THE STUDY AND ISSUE THE REPORT.

17 Q. NOW, WERE YOU COMPENSATED FOR THE ECHOCARDIOGRAMS
18 YOU PERFORMED FOR CLIENTS OF HARITON & D'ANGELO?

19 A. YES.

20 Q. WHAT WAS THE COMPENSATION ARRANGEMENT BETWEEN
21 YOURSELF AND THE HARITON & D'ANGELO FIRM?

22 A. IT VARIED OVER TIME. I JUST HAVE THE ROUGH
23 CHRONOLOGY IN MY HEAD BECAUSE I DIDN'T HAVE ANY -- I
24 DIDN'T KEEP ANY WRITTEN RECORDS. I BELIEVE INITIALLY
25 IT WAS EITHER \$1,000 OR \$1,200. OUR USUAL FEE FOR

1 SOMEONE WHO WAS GETTING AN ECHO OUTSIDE OF INSURANCE
2 OFF THE STREET, AS IT WAS PUT, IN OUR OFFICE IS \$1,200.

3 SO, ORIGINALLY IT WAS IN THE 1,000 TO \$1,200
4 RANGE. AFTER THAT, IT BECAME \$900 OVER TIME.

5 Q. WELL, NOW, WERE YOU ALSO SEPARATELY COMPENSATED
6 FOR COMPLETING A GREEN FORM?

7 A. INITIALLY, THERE WAS NO -- MY RECOLLECTION IS THAT
8 I WAS NOT GIVEN OR SHOWN OR ASKED TO FILL OUT A GREEN
9 FORM FOR SEVERAL MONTHS.

10 THINGS HAPPENED IN STAGES. SEVERAL MONTHS
11 LATER, OR WEEKS TO MONTHS LATER, SOMETIME IN THAT TIME
12 RANGE, I WAS ASKED TO THEN COMPLETE INITIALLY ONE GREEN
13 FORM. I BELIEVE THIS MAY HAVE BEEN THE FIRST ONE. AND
14 THEN I SAID, OKAY, WELL, THIS IS DIFFERENT, WHAT DOES
15 THIS ENTAIL, LET ME LOOK AT ALL OF THIS. IT WAS A 14
16 PAGE-FORM AND SO FORTH. YES, AT THAT POINT SEEING THAT
17 THERE WAS EXTRA WORK INVOLVED I ASKED TO BE COMPENSATED
18 SEPARATELY FOR THAT.

19 Q. WHOSE IDEA WAS IT FOR YOU TO BE SEPARATELY
20 COMPENSATED FOR THE GREEN FORM IN THE FIRST INSTANCE?

21 A. INITIALLY, I REQUESTED IT SINCE I WAS NOW BEING
22 ASKED TO DO WORK THAT WAS WEEKS TO MONTHS LATER.

23 Q. AND THEN SUBSEQUENTLY, YOU TELL ME THAT THE --
24 THAT MR. D'ANGELO AND YOU NEGOTIATED A \$900 PER
25 ECHOCARDIOGRAM FEE?

1 A. YES.

2 Q. AND THEN WERE YOU SEPARATELY COMPENSATED FOR THE
3 GREEN FORM, FOR COMPLETING THE GREEN FORM IN THE LATER
4 STAGES OF THE RELATIONSHIP?

5 A. YES.

6 Q. AND DO YOU KNOW HOW MUCH YOU WERE PAID SEPARATELY?
7 DO YOU RECALL HOW MUCH YOU WERE PAID SEPARATELY FOR
8 PREPARING A GREEN FORM?

9 A. AT WHAT POINT?

10 Q. IN THE LATER STAGE. WELL, IN THE EARLY -- LET'S
11 START IN THE EARLY STAGES. I THINK YOU TOLD US --

12 A. THAT, TOO, THERE WAS A CHRONOLOGY. AND I DON'T
13 REMEMBER EXACTLY HOW THE TWO INTERSECTED. BUT
14 INITIALLY IT WAS \$1,000 PER GREEN FORM, AND LATER IT
15 WAS \$2,000 PER GREEN FORM.

16 Q. LET ME SHOW YOU A DOCUMENT THAT HAS BEEN MARKED
17 WYETH EXHIBIT 103.

18 THE COURT: YOU SAY 2,000 PER GREEN FORM.
19 YOU MEAN THE PERFORMING OF THE ECHO, THE READING OF IT
20 AND THE COMPLETION OF THE GREEN FORM WAS 2,000?

21 THE WITNESS: NO. THEY WERE SEPARATE.

22 THE COURT: SO YOU WOULD GET 2,000 TO FILL
23 OUT THE GREEN FORM PLUS 900 TO DO THE ECHO AND READ THE
24 ECHO?

25 THE WITNESS: CORRECT.

1 MR. HARPER: MAY I APPROACH, YOUR HONOR?

2 THE COURT: YES.

3 BY MR. HARPER:

4 Q. DR. MUELLER, CAN YOU IDENTIFY WYETH EXHIBIT 103
5 FOR US?

6 A. YES. THIS IS A LETTER FROM MR. D'ANGELO TO ME
7 DATED APRIL 17TH, 2002, WHICH JUST PUT IN WRITING OUR
8 VERBAL AGREEMENT. I THINK, AT THE TIME -- EITHER AT
9 THE TIME OR SOON AFTER THE \$2,000 PER GREEN FORM FEE
10 WAS SETTLED UPON, MR. D'ANGELO APPROACHED ME AND TOLD
11 ME THAT HE HAD CONCERNS OVER HIS CASH FLOW AND THAT HE
12 ASKED ME IF I WOULD ACCEPT \$500 AT THE TIME THAT THE
13 GREEN FORM WAS COMPLETED WITH THE REST TO BE DEFERRED
14 SIX MONTHS LATER.

15 Q. DOCTOR, APPROXIMATELY HOW MANY ECHOCARDIOGRAMS DID
16 YOU PERFORM OR INTERPRET FOR CLIENTS OF THE HARITON
17 D'ANGELO FIRM?

18 A. I DON'T HAVE AN ACCURATE COUNT BECAUSE WE DID NOT
19 SEGREGATE IT.

20 Q. WHAT IS YOUR BEST ESTIMATE?

21 A. I THINK PROBABLY AROUND 300, 250 TO 300.

22 Q. 250 TO 300.

23 OF THOSE ECHOCARDIOGRAMS, HOW MANY TIMES
24 WERE YOU ASKED TO COMPLETE A GREEN FORM?

25 A. I'M NOT SURE.

1 Q. CAN YOU GIVE ME A REASONABLE ESTIMATE?

2 A. I WOULD ESTIMATE -- IT'S A BROAD ESTIMATE, BUT I'M
3 NOT REALLY SURE. IT'S GOING TO BE SOMEWHERE BETWEEN 50
4 AND 100.

5 Q. SO, IT'S YOUR BEST ESTIMATE THAT OF THE TOTAL
6 ECHOCARDIOGRAMS THAT YOU CONDUCTED AND/OR INTERPRETED
7 FOR CLIENTS OF THE HARITON & D'ANGELO FIRM, THE NUMBER
8 OF GREEN FORMS THAT YOU COMPLETED COMPRISED
9 APPROXIMATELY 30 PERCENT?

10 A. WITH THOSE NUMBERS, YES, OR MAYBE SLIGHTLY LESS,
11 25 TO 30 PERCENT.

12 Q. 25 TO 30 PERCENT.

13 LET ME SHOW YOU DOCUMENTS THAT HAVE BEEN
14 MARKED AS WYETH EXHIBITS 106, 122 AND 123.

15 MR. HARPER: MAY I APPROACH?

16 THE COURT: YOU MAY.

17 BY MR. HARPER:

18 Q. VERY BRIEFLY, DOCTOR, TAKE A QUICK LOOK THROUGH
19 WYETH 106, 122, AND 1 -- FIRST, 106 AND 122. JUST
20 TELL US WHAT THE CIRCUMSTANCE OF THIS E-MAIL TRAFFIC
21 WAS?

22 A. THE FIRST TWO ARE E-MAILS FROM MYSELF TO MR.
23 D'ANGELO AND THEY BOTH ADDRESS MY GROWING FRUSTRATION
24 WITH THE RISING TIDE OF NO SHOWS OF HIS CLIENTS.

25 Q. AND DID YOU AND MR. D'ANGELO ULTIMATELY WORK OUT

1 SOME SOLUTION TO THAT ISSUE?

2 A. YES. I THINK THAT IS WHAT THE THIRD E-MAIL REFERS
3 TO.

4 Q. COULD YOU READ THE THIRD E-MAIL? IT'S JUST ONE
5 LINE.

6 A. IT'S FROM MR. D'ANGELO TO ME. HE SAYS: I PROPOSE
7 THAT WE PREPAY FOR FIVE HOURS OF TIME IN ADVANCE WHERE
8 WE SHOULD SCHEDULE A MAXIMUM OF SEVEN CLIENTS. THIS
9 WOULD ELIMINATE THE NEED FOR ROSTER BILLING AND WOULD
10 MITIGATE THE NO-SHOW PROBLEM.

11 Q. IS THAT THE AGREEMENT THAT YOU REACHED WITH MR.
12 D'ANGELO?

13 A. NO, NOT EXACTLY. I WAS CONCERNED -- I HAD BEEN
14 USED TO ALLOCATING ONE HOUR FOR EACH ECHO THAT I
15 PERFORMED. I WAS CONCERNED THAT I DIDN'T FEEL
16 COMFORTABLE WITH TRYING TO GET SEVEN CLIENTS INTO FIVE
17 HOURS, WHERE I THOUGHT IT MIGHT BE POSSIBLE BUT I
18 DIDN'T WANT TO BE BOXED INTO THAT. SO OUR ULTIMATE
19 COMPROMISE WAS THAT WE WOULD TRY SIX AND FIVE, FIVE
20 BECAUSE I FIGURED THERE WAS GOING TO BE AT LEAST ONE
21 NO-SHOW ANYWAY, BUT I TOLD MR. D'ANGELO THAT IF, ALL OF
22 A SUDDEN, SIX STARTED SHOWING UP EACH TIME, THAT I FELT
23 PRESSED FOR TIME, THAT WE WOULD GO BACK TO THE OLD
24 SYSTEM. HE AGREED.

25 Q. LET ME CHANGE SUBJECTS BRIEFLY. FROM YOUR -- CAN

1 YOU PUT UP THE SECOND DOCUMENT IN 208 -- MOVANTS' 2.

2 NOW, IS THERE A WAY ON THIS FORM, DOCTOR,
3 FOR YOU TO TELL US WHO ACTUALLY PERFORMED THE
4 ECHOCARDIOGRAM?

5 A. YES.

6 UNDER TECHNOLOGIST IN THE FIRST -- NOT THE
7 FIRST BOX, BUT THE BOX THAT CONTAINS THE NAME, IS A
8 DEMOGRAPHICS BOX UNDER TECHNOLOGIST.

9 MS. FLETMAN: YOUR HONOR, I DON'T MEAN TO
10 INTERRUPT. THAT IS MOVANT EXHIBIT 3.

11 MR. HARPER: THANK YOU VERY MUCH. I THANK
12 YOU VERY MUCH.

13 BY MR. HARPER:

14 Q. SO AFTER THE -- AFTER THE WORD TECHNOLOGIST, THERE
15 ARE INITIALS?

16 A. YES.

17 Q. THEY SAY VM?

18 A. YES.

19 Q. WHO IS VM?

20 A. THIS WOULD BE ONE OF THE TWO OUT OF 33. THAT
21 WOULD BE A TECHNOLOGIST WHOSE NAME IS VICKY MILLIAN.

22 Q. HOW DID YOU COME TO HIRE VICKY MILLIAN TO
23 PERFORM -- STRIKE THAT.

24 IS VICKY MILLIAN AN EMPLOYEE OF YOURS?

25 A. CURRENTLY, NO.

1 Q. DID SHE PERFORM ECHOCARDIOGRAMS IN YOUR OFFICE?

2 A. SHE PERFORMED ABOUT 10. SHE PERFORMED ABOUT TEN
3 OF THE STUDIES FOR THE D'ANGELO FIRM, AND SHE ALSO
4 PERFORMED REGULAR CLINICAL STUDIES FOR MY PATIENTS.

5 THE COURT: IN YOUR OFFICE?

6 THE WITNESS: YES.

7 BY MR. HARPER:

8 Q. HAD YOU WORKED WITH MISS MILLIAN BEFORE YOU BEGAN
9 DOING ECHOES FOR THE CLIENTS OF THE HARITON & D'ANGELO
10 FIRM?

11 A. YES.

12 Q. ARE YOU AWARE, AS YOU SIT HERE UNDER OATH, OF ANY
13 RELATIONSHIP BETWEEN MISS MILLIAN AND THE HARITON AND
14 D'ANGELO FIRM?

15 A. OTHER THAN ME INTRODUCING HER TO THEM AFTER I
16 HIRED HER?

17 Q. RIGHT. ARE YOU AWARE OF ANY OTHER RELATIONSHIP
18 BETWEEN VICKY MILLIAN AND THE HARITON & D'ANGELO FIRM?

19 A. NOT BEYOND THAT, NO.

20 Q. ARE YOU AWARE OF ANY COMMUNICATIONS BETWEEN THE
21 HARITON AND D'ANGELO FIRM AND VICKY MILLIAN ON THE
22 SUBJECT OF ECHOCARDIOGRAMS?

23 A. DIRECTLY?

24 Q. YES.

25 A. NO.

1 Q. OR INDIRECTLY?

2 A. NO.

3 Q. THE JUDGE LEAPT ON A PREPOSITIONAL PHRASE THAT I
4 USED WHICH WAS "IN YOUR OFFICE." I WAS GOING TO ASK
5 YOU WHERE SHE PERFORMED THE ECHOES. DID MISS MILLIAN
6 PERFORM EACH OF THE ECHOCARDIOGRAMS THAT SHE PERFORMED
7 FOR CLIENTS OF THE HARITON AND D'ANGELO FIRM IN YOUR
8 OFFICES?

9 A. YES, ALL 10 WERE DONE IN THE OFFICE, IN MY OFFICE.

10 Q. AND DID YOU HAVE COMMUNICATIONS WITH HER
11 CONCERNING THE WAY YOU WANTED THE ECHOCARDIOGRAM TO BE
12 CONDUCTED?

13 A. YES.

14 Q. WHAT DID YOU TELL HER?

15 A. SINCE THIS PROTOCOL REQUIRES, AS DR. CROUSE PUT
16 IT, A CERTAIN EXACTITUDE, AND A HIGH DEGREE OF
17 DILIGENCE, IN ACQUIRING TECHNICALLY DIFFICULT IMAGES ON
18 VERY CHALLENGING, FREQUENTLY MASSIVE, OBESE PATIENTS,
19 AS WELL AS THE RIGOROUS NATURE AND QUANTITATIVE NATURE
20 OF THE PROTOCOL, ANYBODY, ANY TECHNICIAN GOING INTO
21 THIS CLEARLY WOULD NEED A BRIEFING SESSION BEFOREHAND,
22 IN TERMS OF THE MEASUREMENTS THAT ARE REQUIRED, AND HOW
23 TO DO THEM, AND HOW TO BE SURE THEY ARE DONE PROPERLY.

24 Q. DID YOU GIVE THOSE INSTRUCTIONS TO MISS MILLIAN?

25 A. YES, I DID.

1 Q. WHERE WERE YOU WHEN MISS MILLIAN WAS CONDUCTING
2 THESE ECHOCARDIOGRAMS?

3 A. IN THE OFFICE. I BELIEVE THERE WAS ONE SATURDAY
4 SESSION WHERE I WAS NOT IN THE OFFICE WHERE OUT OF THE
5 10 THAT SHE DID, MAYBE THREE OF THOSE WERE ON A
6 SATURDAY. THE REMAINDER WERE ALL DONE DURING WEEKDAYS,
7 AND I WAS IN THE OFFICE.

8 Q. NOW, DOCTOR, YOU TOLD US THAT IT WAS YOUR BELIEF
9 THAT TWO OF THE ECHOCARDIOGRAMS THAT YOU INTERPRETED AT
10 ISSUE IN THIS PROCEEDING WERE PERFORMED BY MISS
11 MILLIAN, RATHER THAN BY YOU PERSONALLY.

12 COULD YOU PUT UP MOVANTS' EXHIBIT 33, WHICH
13 IS WITHIN HN 208.

14 DOCTOR, YOU SEE THERE NEXT TO TECHNOLOGIST,
15 IT SAYS, RM. DID YOU CONDUCT THIS ECHOCARDIOGRAM?

16 A. I DON'T BELIEVE I DID. I THINK THIS WAS A
17 MISTAKE. THIS WAS THE OTHER STUDY. WE SAW THE FIRST
18 ONE. THIS WAS THE SECOND STUDY. SHE PERFORMED THIS
19 ONE. THAT'S MY MISTAKE.

20 Q. OKAY.

21 SO, IT WAS YOUR MISTAKE, IN PUTTING YOUR
22 INITIALS IN AS THE TECHNOLOGIST ON THIS OCCASION.

23 A. IT WAS A TYPOGRAPHICAL ERROR ON MY PART.

24 Q. DID YOU EVER MEET WITH DR. ROTH WHO TESTIFIED AS
25 AN EXPERT IN THIS MATTER?

1 A. NO?

2 Q. DID YOU EVER TELL HIM THAT MISS MILLIAN HAD
3 CONDUCTED THE ECHOCARDIOGRAM FOR MISS GUTHRIE?

4 A. NO, NEVER.

5 Q. WHO IS DR. GEORGIO?

6 A. DR. GEORGIO IS A CARDIOLOGIST WHO I HAD HIRED TO
7 HELP ME WITH THE WORKLOAD OF READING MY CLINICAL ECHOES
8 AND I ALSO ASKED HIM AT THE TIME I ASKED MISS MILLIAN,
9 I ASKED BOTH OF THEM TO WORK WITH ME WITH SOME OF THE
10 D'ANGELO CLIENTS.

11 Q. NOW, HAVE YOU USED HIM, DR. GEORGIO, TO INTERPRET
12 ECHOCARDIOGRAMS FOR PATIENTS OR SUBJECTS OTHER THAN
13 CLIENTS OF THE HARITON & D'ANGELO FIRM?

14 A. YES. MY OWN PATIENTS BEFORE AND AFTER.

15 Q. AND ARE YOU AWARE OF ANY RELATIONSHIP BETWEEN DR.
16 GEORGIO AND THE HARITON AND D'ANGELO FIRM?

17 A. NOT TO MY KNOWLEDGE.

18 Q. DO YOU KNOW OF ANY COMMUNICATIONS BETWEEN DR.
19 GEORGIO AND THE HARITON AND D'ANGELO FIRM?

20 A. NOT TO MY KNOWLEDGE.

21 Q. IS DR. GEORGIO A LEVEL II BOARD CERTIFIED
22 CARDIOLOGIST?

23 A. YES.

24 Q. NOW, DR. MUELLER, DID YOU EVER SIGN A GREEN FORM
25 AS TO WHICH YOU DID NOT PERSONALLY CONDUCT AND/OR

1 INTERPRET THE ECHOCARDIOGRAM?

2 A. NOT TO MY KNOWLEDGE.

3 Q. SO NONE OF THE GREEN FORMS THAT YOU SIGNED AT
4 ISSUE HERE ARE BASED ON READINGS THAT WERE PERFORMED OR
5 REVIEWS CONDUCTED BY DR. GEORGIO?

6 A. NO.

7 Q. NOW, WITH RESPECT TO THE GREEN SHEETS YOU SIGNED,
8 IN EACH INSTANCE WHEN YOU DETERMINED THAT A SUBJECT HAD
9 AT LEAST MODERATE MITRAL REGURGITATION, DID YOU DO SO
10 WITHIN A REASONABLE DEGREE OF MEDICAL CERTAINTY THAT
11 THE ECHOCARDIOGRAM SHOWED MODERATE OR GREATER MR?

12 A. CERTAINLY. YES.

13 Q. NOW, YOU HAVE HAD OCCASION TO REVIEW AND LISTEN TO
14 THE REPORTS AND TESTIMONIES OF DR. HELMCKE AND DENT
15 CRITICIZING YOUR WORK?

16 A. YES.

17 Q. AND YOU RECALL REFERENCES TO NYQUIST LIMITS?

18 A. YES.

19 Q. WHAT DO YOU RECALL ABOUT THEIR CRITICISMS?

20 A. I THINK IT WAS A BROAD BASED CRITIQUE THAT THE
21 NYQUIST LIMITS WERE SET, QUOTE, UNQUOTE, TOO LOW. THAT
22 WAS IT.

23 Q. HOW ARE THE NYQUIST LIMITS SET ON YOUR MACHINE?

24 A. IT'S ALL MACHINES. THE NYQUIST, WHEN YOU TURN ON
25 THE MACHINE, AND YOU TURN ON THE COLOR MODE, THE COLOR

1 PROCESSOR WITHIN THE MACHINE WHICH VARIES NOT ONLY
2 BETWEEN EACH MANUFACTURER BUT VARIES WITHIN EACH MODEL,
3 EACH SOFTWARE REVISION IN SOME CASES, THE COLOR
4 PROCESSOR AUTOMATICALLY, BASED ON CERTAIN PARAMETERS,
5 THAT IT INPUTS, WILL AUTOMATICALLY DISPLAY NYQUIST
6 LIMIT.

7 Q. NOW, CAN YOU MANUALLY DECREASE THE NYQUIST LIMIT?

8 A. YOU COULD.

9 Q. DO MACHINES CHANGE THE NYQUIST LIMITS ON ITS OWN?

10 A. WELL, YOU HAVE TO DEFINE WHAT YOU MEAN. IN MANY
11 CASES, YES. THERE ARE MANY DETERMINANTS OF THE NYQUIST
12 LIMITS. THE PRIMARY CLINICAL DETERMINANT THAT IS MOST
13 IMPORTANT BOTH, IN TERMS OF CLINICAL APPLICATION, AS
14 WELL AS THE MAGNITUDE OF THE CHANGE, IS THE DEPTH. ONE
15 THING THAT IS VERY IMPORTANT TO REMEMBER, IS THAT THE
16 MITRAL VALVE IN THESE -- IN THIS PROTOCOL, ONE IS ASKED
17 TO MEASURE IT IN ANY OF THE APICAL VIEWS, THE MITRAL
18 VALVE AND RECEIVING CHAMBERS, LEFT ATRIUM AND THE
19 APICAL VIEWS, WHICHEVER ONE IS THE DEEPEST POSSIBLE
20 STRUCTURE IN THE HEART JUST SO HAPPENS, AND IN THESE
21 FREQUENTLY VERY MORBIDLY OBESE PATIENTS, YOU ARE
22 TALKING ABOUT, IT HAS BEEN MENTIONED BEFORE, SOMETIMES
23 EXTREME DEPTH. THERE IS A VERY STEEP RELATIONSHIP
24 BETWEEN NYQUIST LIMITS AND DEPTH ALL OTHER THINGS BEING
25 EQUAL.

1 AND SO ONE WILL NOT -- ONE WILL OFTEN GET A
2 LOW NYQUIST LIMIT WHEN ONE IS LOOKING AT MITRAL
3 REGURGITATION WITH EXTREME DEPTH.

4 THERE IS ALSO A VERY LARGE VARIATION BETWEEN
5 MACHINES, AND BETWEEN TYPE OF MACHINES. FOR INSTANCE,
6 SOME MACHINES, LIKE THE ATL 5000 I BELIEVE, ARE DIGITAL
7 MACHINES WITH HARMONIC CAPABILITIES, WHEREAS THE
8 MACHINE I USE, IS NOT DIGITAL AND IS NOT HARMONIC,
9 SO-CALLED FUNDAMENTAL.

10 Q. WHAT'S THE MACHINE YOU ARE CURRENTLY USING?

11 A. I USE TWO MACHINES FOR THE D'ANGELO CLIENTS
12 INITIALLY, A HEWLETT PACKARD SONOS 100 AND THEN,
13 STARTING IN APRIL OF 2001, 99 PERCENT OF THEM WERE
14 USING THE HEWLETT-PACKARD SONOS 2000.

15 Q. NOW, HAVE YOU EVER INTENTIONALLY TRIED TO DECREASE
16 THE NYQUIST LIMITS IN ORDER TO ENHANCE THE SIZE OF THE
17 JET?

18 A. SEVERAL PARTS TO THAT ANSWER.

19 THE FIRST ONE IS SIMPLY NO.

20 SECOND OF ALL, DECREASING NYQUIST LIMIT,
21 WHETHER IT'S DONE BY THE OPERATOR OR BY MACHINE OR
22 PATIENT FACTORS DOES NOT ALWAYS INCREASE THE SIZE OF
23 THE JET. IT CAN. THERE ARE EXAMPLES IN BOTH
24 DIRECTIONS.

25 AND THIRD OF ALL, SOME TIMES, ONE WOULD WANT

1 TO ACTUALLY DECREASE THE NYQUIST LIMITS. SINCE THESE
2 WERE DONE AT TYPICALLY VERY HIGH DEPTHS, SINCE THE
3 NYQUIST LIMITS WERE ALREADY KIND OF MARGINAL BECAUSE OF
4 MACHINERY THAT I HAVE, SPECIFIC ALGORITHM, THE DEPTHS
5 WE WERE TALKING ABOUT, ESPECIALLY FOR MITRAL
6 REGURGITATION JETS, I NEVER ONCE, TO MY RECOLLECTION,
7 INTENTIONALLY TURNED IT DOWN BECAUSE I WAS ALREADY IN
8 THAT DIRECTION. HOWEVER, IT WOULD BE WRONG TO SAY THAT
9 IF ANYONE ELSE EVER TURNED DOWN A NYQUIST LIMIT, THAT
10 THAT WOULD BE SOMEHOW IMPROPER.

11 FIRST OF ALL, A KNOB IS THERE FOR A REASON.
12 IF SOMETHING IS NOT TO BE CHANGED OR ONLY TO BE CHANGED
13 IN ONE DIRECTION, ONE WOULDN'T HAVE THAT CONTROL.

14 SECOND OF ALL, THE -- IF YOU CALL UP THE
15 CLINICAL SPECIALIST AT HEWLETT PACKARD, AS I HAVE, THEY
16 WILL TELL YOU THAT SOMETIMES YOU TURN IT UP, SOMETIMES
17 YOU TURN IT DOWN, THAT ONE CANNOT PLACE UNDUE EMPHASIS
18 ON THE NYQUIST LIMIT AS THE PARAMOUNT DETERMINANT OF
19 COLOR FLOW QUALITY.

20 BUT THAT, INDEED, THE OPPOSITE IS THE CASE.
21 CLINICAL SPECIALISTS WILL TELL YOU THAT ONE OPTIMIZES
22 THE COLOR FLOW PICTURE USING ALL OF THE PARAMETERS
23 AVAILABLE, AND THEN ONE MAY OR MAY NOT WANT TO CHANGE
24 THE NYQUIST LIMIT.

25 BUT TO ANSWER YOUR QUESTION, I NEVER TURNED

1 IT DOWN BECAUSE IT WAS ALREADY IN THAT RANGE WHERE I
2 WOULDN'T WANT TO TURN IT DOWN.

3 Q. AND THAT HAS TO DO WITH THE DEPTH OF THE SOUND
4 WAVES HAD TO GO IN ORDER TO GET YOU THE IMAGE THAT YOU
5 WANTED TO SEE?

6 A. THAT IS THE PRIME DETERMINANT. THERE ARE HALF
7 DOZEN OTHERS. THE SECOND MOST IMPORTANT IS SIMPLY THE
8 MACHINE THAT YOU ARE USING, HUGE VARIABILITY.

9 Q. DO YOU KNOW OF ANYTHING -- YOU MENTIONED BEFORE
10 THAT YOU WERE GIVEN THE GREEN FORM BY THE HARITON AND
11 D'ANGELO FIRM, CORRECT?

12 A. YES.

13 Q. DID YOU READ IT?

14 A. YES.

15 Q. DO YOU RECALL ANYTHING IN THE GREEN FORM THAT
16 DICTATES A PARTICULAR NYQUIST LIMIT?

17 A. NO, THERE IS NOTHING IN IT ABOUT IT.

18 Q. ANYONE FROM THE HARITON AND D'ANGELO FIRM EVER
19 TELL YOU TO LOWER THE NYQUIST LIMITS ON YOUR
20 ECHOCARDIOGRAMS?

21 A. NEVER.

22 Q. NOW, DID THERE COME A TIME WHEN YOU HEARD THAT
23 SOMEONE WAS RAISING AN ISSUE ABOUT THE NYQUIST LIMITS
24 ON YOUR ECHOCARDIOGRAMS?

25 A. YES.

1 Q. LET ME SHOW YOU A DOCUMENT THAT HAS BEEN MARKED AS
2 WYETH 108 THROUGH 116.

3 I AM JUST GOING TO BRIEFLY WALK YOU THROUGH
4 THESE?

5 MR. HARPER: MAY I?

6 THE COURT: YOU MAY.

7 BY MR. HARPER:

8 Q. NOW, DOCTOR, LET'S JUST START WITH WYETH 108.

9 COULD YOU IDENTIFY THIS FOR ME?

10 A. E-MAIL FROM MYSELF TO MR. D'ANGELO.

11 Q. WHAT WERE THE CIRCUMSTANCES OF THE E-MAIL OF YOUR

12 WRITING TO MR. -- WHAT PROMPTED YOU TO WRITE TO MR.

13 D'ANGELO?

14 A. THIS WAS PROMPTED BY A CALL OR SERIES OF CALLS IN
15 MARCH OF 2002 FROM HIM THAT, TO THE EFFECT THAT TWO --
16 I WAS AWARE THAT THERE WAS REVIEW AND AUDIT PROCESS AND
17 HE TOLD ME THAT TWO OF MY TAPES, TWO OF MY STUDIES,
18 WERE BEING QUESTIONED BY THE TRUST BECAUSE OF CONCERNS
19 OVER THE NYQUIST LIMIT BEING TOO LOW.

20 HE ASKED ME TO PREPARE A RESPONSE.

21 Q. LET ME DIRECT YOUR ATTENTION TO THE FIRST -- THE
22 SECOND PART OF THE FIRST SENTENCE AFTER THE SEMICOLON.
23 THE MACHINE AUTOMATICALLY SETS THE COLOR NUMBER CHANGE
24 WHEN ONE INPUTS THE PREFERENCE OF COLOR MODE AND THEN
25 THERE ARE SOME LETTERS AND NUMBERS ON THE CONTROL

1 PANEL.

2 NOW, CAN YOU EXPLAIN TO THE JUDGE IN LAY
3 PERSON'S TERMS WHAT THAT MEANS?

4 A. WELL, I'M NOT SURE IT'S TRUE. I WAS -- I DON'T
5 THINK I WAS IN FRONT OF A MACHINE AT THE TIME AND I WAS
6 JUST COMPOSING THIS E-MAIL. THAT ACTUALLY IS ONE OF
7 THE THINGS THAT DOES NOT DETERMINE THE NYQUIST LIMIT
8 BUT I WAS TRYING TO RESPOND IN SOME SORT OF INTELLIGENT
9 FASHION ABOUT THIS.

10 AGAIN, ONE NEVER HAS TO INPUT NYQUIST LIMIT
11 WHEN ONE STARTS AN ECHO. YOU TURN THE MACHINE ON.
12 EVEN BEFORE YOU TOUCH THE TRANSDUCER TO THE PATIENT'S
13 CHEST, ONCE YOU PRESS THE COLOR MODE, A SCALE, AS WE
14 HAVE SEEN SEVERAL TIMES IN THE UPPER RIGHT-HAND CORNER,
15 APPEARS, NYQUIST LIMIT APPEARS. THE PRIMARY
16 DETERMINANT IS DEPTH. THE SECOND MOST IMPORTANT
17 DETERMINANT IS THE MACHINE. OTHER THINGS ALSO ARE
18 DETERMINANT. FREQUENCY OF THE TRANSDUCER, CARRIER
19 FREQUENCY, THE ATTENUATION THROUGH THE CHEST WALL, ET
20 CETERA.

21 Q. LET ME ASK YOU, YOU SAY BECAUSE YOU SAY NYQUIST
22 LIMIT IS SET AS SOON AS YOU PUSH THE COLOR MODE?

23 A. RIGHT.

24 Q. DO YOU HAVE A CHOICE OF COLOR MODES ON THE
25 MACHINE?

1 A. NOT REALLY. I THINK IN RETROSPECT, THAT SPECIFIC
2 EXAMPLE IN THE PARENTHESIS WAS NOT THE BEST EXAMPLE TO
3 USE. AS SOON AS ONE TURNS ON COLOR MODE, REGARDLESS OF
4 WHATEVER PREFERENCE ONE HAS, THE NYQUIST LIMIT IS SET
5 BY THE COLOR PROCESSOR.

6 Q. ARE YOU AWARE OF ANYTHING IN THE GREEN FORM THAT
7 DICTATES A COLOR MODE THAT AN ECHOCARDIOGRAPHER MUST
8 USE?

9 A. NOT AT ALL.

10 Q. NOW, LET ME DIRECT YOUR ATTENTION TO THE SECOND
11 PARAGRAPH. IT SAYS: HOWEVER, IF THEY WANT 50 TO 60.
12 DO YOU SEE THAT?

13 A. YES.

14 Q. WHO DID YOU UNDERSTAND WANTED 50 TO 60?

15 A. THE TRUST.

16 Q. WHO TOLD YOU THAT?

17 A. MR. D'ANGELO.

18 Q. THEN AT THE SECOND PART OF THAT SENTENCE: I MAY
19 HAVE TO CHANGE THE COLOR NUMBER CODE, WHICH MAY MEAN
20 DIFFERENT CODES ON DIFFERENT PATIENTS DUE TO DIFFERENT
21 PT SIZES, ET CETERA.

22 WHAT DOES THAT MEAN?

23 A. I WAS JUST TRYING TO MAKE HIM AWARE OF THE
24 COMPLEXITY. THERE ARE SIX OR 10 DIFFERENT INTERRELATED
25 FACTORS THAT DETERMINE THE NYQUIST LIMIT. I WAS TRYING

1 TO MAKE HIM AWARE THAT IF I AM BEING PUSHED IN THE
2 DIRECTION OF HAVING TO NOW OBEY A THRESHOLD THAT NEVER
3 EXISTED BEFORE, OR IN THE GREEN FORM, THAT OTHER THINGS
4 MAY THEN HAVE TO CHANGE NECESSARILY, AND THAT IT MAY
5 NOT EVEN BE POSSIBLE IN ALL CASES.

6 Q. LET'S TURN TO WYETH 109.

7 CAN YOU IDENTIFY THAT E-MAIL?

8 A. YES. THAT IS FROM MR. D'ANGELO TO ME DISCUSSING
9 WHICH TWO CASES PROMPTED THE CONCERN.

10 Q. DOCTOR, I'M JUST GOING TO MAKE IT CLEAR, YOU HAVE
11 THE DOMAIN NAME, NEWYORKCITYDOC@AOL.COM?

12 A. YES.

13 Q. TO YOUR KNOWLEDGE MR. D'ANGELO IS
14 MDESQ@WORLDNET.ATT.NET?

15 A. YES.

16 Q. IN THIS E-MAIL, MR. D'ANGELO IS TELLING YOU THAT
17 HE IS CONCERNED ABOUT TWO OF HIS CLIENTS AND THE
18 NYQUIST READINGS ON THEIR ECHOCARDIOGRAMS, CORRECT?

19 A. YES.

20 Q. WHEN HE SAYS, THEY STATE THE COLOR SCALE IS SET
21 TOO LOW AND THEREFORE REGURGITATION LEVELS CANNOT BE
22 EVALUATED, WHO DID YOU UNDERSTAND THE "THEY" TO REFER
23 TO?

24 A. THE TRUST.

25 Q. DID MR. D'ANGELO TELL YOU THAT?

1 A. THAT IT WAS COMING FROM THE TRUST?

2 Q. YES.

3 A. YES, HE DID.

4 Q. LET'S TURN TO 110.

5 CAN YOU IDENTIFY THAT E-MAIL?

6 A. THIS IS, I GUESS, THE RETURN RESPONSE FROM ME TO
7 HIM.

8 Q. READ THE SECOND AND THIRD PARAGRAPHS TO YOURSELF.

9 HAVE YOU FINISHED?

10 A. YES.

11 Q. WAS IT TRUE AT THE TIME THAT YOU WERE UNAWARE OF
12 ANY STANDARD SPECIFYING NYQUIST LIMIT MUST BE 50 AND 60
13 IN ALL CASES?

14 A. I WAS.

15 Q. WAS IT TRUE AT THE TIME THAT THEY WERE NOT AWARE
16 OF ANY STANDARD NUMBERS THAT YOU HAD TO ADHERE TO WITH
17 RESPECT TO GAIN SETTINGS?

18 A. THERE WAS NO STANDARD.

19 Q. ARE YOU AWARE, HAVING SAT THROUGH, WHAT I BELIEVE
20 IS THE MOST COMPREHENSIVE TRIAL ON ECHOCARDIOGRAMS IN
21 AMERICAN HISTORY, HAVE YOU HEARD ANY TESTIMONY AS YOU
22 SAT HERE OF ANY LIMITS ANYWHERE OR ANY REQUIREMENTS
23 ANYWHERE ON WHAT A NYQUIST LIMIT MUST BE?

24 MR. GROSSI: I OBJECT TO THE FORM OF THE
25 QUESTION. I THINK HE MISSTATED --

1 MR. HARPER: I'LL WITHDRAW THE PREAMBLE.

2 MR. GROSSI: THERE WAS TESTIMONY ON THAT
3 ISSUE.

4 MR. HARPER: WITHDRAW THE PREAMBLE.

5 BY MR. HARPER:

6 Q. DO YOU RECALL ANY TESTIMONY ON WHETHER THERE WERE
7 ANY -- WHETHER THERE IS ANY STANDARD IN THE GREEN FORM
8 REGARDING NYQUIST LIMITS?

9 A. THERE IS NOT.

10 Q. AND DO YOU -- DID YOU HEAR ANY TESTIMONY OUT OF
11 ANY EXPERTS' MOUTH THAT THERE IS A STANDARD THAT MUST
12 BE FOLLOWED IN ECHOCARDIOLOGY FOR THE NYQUIST LIMITS.

13 MR. GROSSI: I OBJECT TO THE FORM OF THE
14 QUESTION. HE IS MISSTATING IT WHEN HE ASKS ABOUT
15 TESTIMONY ABOUT STANDARDS TO BE FOLLOWED. THERE WAS
16 TESTIMONY FROM DR. HELMCKE.

17 MR. HARPER: WELL, YOUR HONOR, I
18 RESPECTFULLY SUBMIT THAT THERE WAS NO SUCH TESTIMONY,
19 AND ON CROSS EXAMINATION HE WAS ASKED TO IDENTIFY A
20 SINGLE BOOK INDICATING DR. HELMCKE'S THEORY OF THE
21 WORLD. HE COULDN'T.

22 THE COURT: WHY DON'T YOU PROVIDE YOUR
23 QUESTION. MOVE ALONG.

24 BY MR. HARPER:

25 Q. YOU ARE NOT AWARE OF ANY STANDARD ON GAIN

1 SETTINGS; CORRECT?

2 A. NO, ABSOLUTELY.

3 Q. YOU ARE NOT AWARE OF ANY STANDARDS ON NYQUIST
4 LIMIT; CORRECT?

5 A. ABSOLUTELY NOT.

6 Q. AS AN ECHOCARDIOLOGIST WHO HAS BEEN A CHIEF
7 RESIDENT, TAKEN THE EXAM ON SPECIAL COMPETENCY OF THE
8 AMERICAN SOCIETY OF ECHOCARDIOLOGY, HAVE YOU EVER SEEN
9 ANY DATA OR LITERATURE INDICATING THE NYQUIST LIMIT
10 MUST BE SET AT A CERTAIN LEVEL?

11 A. NO, NOR DO THE TEXTBOOKS GIVE SUCH A LEVEL. NOW,
12 IN FACT, THEY GIVE SEVERAL COLOR PLATE EXAMPLES OF
13 NYQUIST LIMITS IN THE LEVEL, IN THE RANGES THAT I --

14 Q. WE WILL GET TO THAT, DOCTOR.

15 AND JUST QUICKLY TURN TO THE NEXT ONE, WHICH
16 IS WYETH 111. AND AGAIN, WHEN I'M JUST GOING TO
17 BRIEFLY TOUCH ON ONE OR TWO LINES IN HERE. WHEN YOU
18 SAY THAT YOU ALWAYS TRY TO DO THE BEST JOB I CAN
19 ESPECIALLY WITH DIFFICULT TO IMAGE PATIENTS, WHEN YOU
20 REFER TO DIFFICULT TO IMAGE PATIENTS, WERE YOU
21 REFERRING TO THOSE WHO IT'S TOUGH TO GET AN APICAL
22 VIEW?

23 A. THERE ARE MANY DIFFERENT TYPES. OBESITY IS ONE
24 CAUSE. THERE CAN BE MANY. SOMETIMES THIN PATIENTS ARE
25 THE MOST DIFFICULT. THERE ARE WOMEN WITH BREAST

1 IMPLANTS. ALL KINDS OF SCENARIOS.

2 Q. WAS IT TRUE AT THE TIME WHEN YOU SAID THAT YOU HAD
3 NEVER -- OR THAT YOU COULD NEVER RECALL EVER HAVING AN
4 ECHOCARDIOGRAM OF THE THOUSANDS YOU HAD PERFORMED OVER
5 YOUR CAREER QUESTIONED ON THIS BASIS?

6 A. YES, I RECALL.

7 Q. WAS IT TRUE AT THE TIME THAT YOU COULD NOT RECALL
8 EVER HAVING BEEN QUESTIONED OR HAVING AN ECHOCARDIOGRAM
9 QUESTIONED OF THE THOUSANDS THAT YOU HAD CONDUCTED OVER
10 THE COURSE OF YOUR CAREER BASED UPON NYQUIST SETTINGS
11 OR GAIN SETTINGS?

12 A. THAT IS CORRECT.

13 Q. LET'S TURN TO WYETH 112.

14 JUST BRIEFLY IDENTIFY THIS E-MAIL FOR US.

15 A. IT IS FROM ME TO MR. D'ANGELO.

16 Q. IT SAYS: PLEASE LET ME KNOW EXACTLY WHAT COLOR
17 PARAMETER TO SET AT 50-60 BEFORE I SCAN MORE CLIENTS.
18 DO YOU SEE THAT?

19 A. YES.

20 Q. WHAT WERE THE OPTIONS BESIDE NYQUIST LIMITS?

21 A. THESE -- A LOT OF THESE TERMS ARE USED IN A LOOSE
22 OVERLAPPING FASHION AND OBVIOUSLY, I WANTED TO BE SURE
23 AS TO WHAT WAS BEING QUESTIONED AND TO FORMULATE A
24 RESPONSE AND A PLAN.

25 Q. LET'S TURN TO THE NEXT, WYETH 113.

1 BY THE WAY, DOCTOR, THIS IS SIXTH THE E-MAIL
2 ON THIS SUBJECT THAT WE HAVE GONE THROUGH BRIEFLY. CAN
3 YOU TURN TO WYETH 108 AND AGREE WITH ME THAT THE FIRST
4 ONE WAS MARCH 27TH, AT EIGHT O'CLOCK, 8:17 IN THE
5 MORNING?

6 A. YES.

7 Q. NOW, WE ARE TWO DAYS LATER, MARCH 29 AT 11 IN THE
8 MORNING?

9 A. CORRECT.

10 Q. NOW, I DIRECT YOUR ATTENTION TO THE SECOND
11 SENTENCE WHERE IT SAYS: FROM WHAT I HAVE BEEN TOLD.
12 THIS IS MR. D'ANGELO TO YOU, CORRECT?

13 A. YES.

14 Q. THEY, AHP, CLAIM THAT BY SETTING THE COLOR SETTING
15 LOW, WE ARE ACTUALLY MEASURING TURBULENCE AND NOT AN
16 ACTUAL JET.

17 WHAT DO YOU UNDERSTAND BY THAT PHRASE,
18 MEASURING TURBULENCE AND NOT AN ACTUAL JET?

19 A. TURBULENCE IS ONE OF THE HALLMARKS OF A
20 REGURGITANT JET. SO IN AND OF ITSELF, THAT TO ME IS
21 NONSENSICAL, BECAUSE TURBULENCE IS ONE OF THE HALLMARKS
22 OF A PATHOLOGICAL JET.

23 Q. PATHOLOGICAL JET MEANS A MODERATE OR GREATER
24 MITRAL REGURGITATION?

25 A. NO. IT DOES NOT QUANTIFY DEGREE. IT IS AN

1 IDENTIFYING FEATURE OF ANY REGURGITATION.

2 Q. YOU SEE THE NAME DR. CROUSE IN THE PENULTIMATE
3 SENTENCE OF THE E-MAIL?

4 A. YES.

5 Q. DID YOU KNOW DR. CROUSE AT THE TIME?

6 A. NO.

7 Q. HAD YOU HEARD OF HER?

8 A. YES.

9 Q. DID YOU HAVE ANY REACTION TO SEEING HER NAME IN
10 THIS E-MAIL?

11 A. I WAS IMPRESSED THAT HE WAS DEALING WITH RENOWNED
12 ECHOCARDIOGRAPHERS.

13 Q. LET'S TURN TO WYETH 114. TELL US WHAT THIS E-MAIL
14 IS.

15 A. THIS IS FROM ME TO MR. D'ANGELO. I THINK WE ARE
16 TRYING TO SORT OF CLOSE THIS ISSUE AND GO ON. THIS WAS
17 IN RESPONSE TO GETTING MORE SPECIFICS ABOUT WHAT THE
18 TRUST CONSIDERED A TARGET OR CUTOFF, IF YOU WILL, FOR
19 THE NYQUIST AS WELL AS FROM ANOTHER ECHOCARDIOGRAPHER.
20 SO I WAS THANKING HIM FOR THE SPECIFICS REGARDING WHAT
21 WE WERE TALKING ABOUT AND WHAT RANGE WAS BEING
22 REQUESTED AND THAT I WOULD TRY TO OBLIGE.

23 Q. AND THAT -- THAT IS DATED MARCH 30TH?

24 A. CORRECT.

25 Q. YOU SENT ANOTHER ONE LATER THAT DAY OR?

1 A. LATER THAT MORNING, YES.

2 Q. AND THAT IS WYETH 115?

3 A. YES.

4 Q. OKAY.

5 NOW, TURN TO WYETH 116.

6 A. YES.

7 Q. CAN YOU IDENTIFY WYETH 116 FOR US, PLEASE?

8 A. IT'S AN E-MAIL FROM MYSELF TO MR. D'ANGELO. IT'S
9 THE COVER LETTER FOR THE LETTERS THAT HE REQUESTED THAT
10 I PREPARE.

11 Q. I WOULD LIKE TO NOW SHOW YOU, DOCTOR, DOCUMENTS
12 THAT HAVE BEEN MARKED EXHIBITS HN 105 AND 106.

13 MR. HARPER: MAY I?

14 THE COURT: YOU MAY.

15 BY MR. HARPER:

16 Q. CAN YOU IDENTIFY HN 105 AND 106?

17 A. LETTERS THAT I PREPARED.

18 Q. IS IT FAIR TO SAY THAT THE TEXT OF THE 105 AND 106
19 ARE IDENTICAL EXCEPT THAT THE NAME OF THE SUBJECT HAS
20 BEEN CHANGED?

21 A. CORRECT.

22 Q. DID YOU WRITE THE TEXT OF HN 105 AND 106?

23 A. I DID.

24 Q. AND THOSE ARE THE TWO NAMES THAT MR. D'ANGELO HAD
25 MENTIONED TO YOU IN AN E-MAIL ON MARCH 27TH, CORRECT?

1 A. YES.

2 Q. NOW, DID ANYONE FROM HARITON & D'ANGELO SUGGEST
3 THAT YOU MAKE ANY CHANGES IN HN 105, 106?

4 A. THEY DID NOT.

5 Q. CAN YOU JUST DIRECT YOUR ATTENTION TO THE THIRD
6 PARAGRAPH IN HN 105. AND JUST VERY BRIEFLY EXPLAIN TO
7 THE JUDGE WHAT YOU MEAN BY THE POINT YOU ARE MAKING
8 THERE.

9 A. WELL, I THINK I WAS TRYING TO PUT INTO CONTEXT
10 WHAT I MENTIONED BEFORE, WHICH IS WHAT HEWLETT PACKARD
11 TOLD ME AND FROM MY TRAINING, KNOWLEDGE AND EXPERIENCE
12 IS THAT UNDUE ATTENTION TO ONE OF THE MANY, MANY
13 PARAMETERS IN COLOR FLOW IMAGING IS INAPPROPRIATE. THE
14 OVERALL IMAGE QUALITY IS DEPENDENT ON A LOT OF
15 INTERRELATED FACTORS. UNDUE EMPHASIS ON ONE SINGLE
16 FACTOR MAY NOT BE POSSIBLE WITH THE EQUIPMENT, WITH THE
17 PATIENTS YOU ARE WORKING WITH AND MAY, IN FACT, DISTORT
18 THE FINDINGS. TOO HIGH OF A NYQUIST LIMIT CAN BE VERY
19 DISTORTING, AS WELL.

20 Q. NOW, DOCTOR, IN THE LAST SENTENCE, YOU OFFER TO
21 REPEAT THE STUDY, IF DESIRED BY THE TRUST, CLIENT OR
22 THE ATTORNEY. DO YOU SEE THAT?

23 A. YES.

24 Q. ANYBODY EVER ASK YOU TO REPEAT THE STUDY?

25 A. NO.

1 Q. ARE YOU AWARE OF ANY COMPLAINTS CONCERNING THE
2 NYQUIST LIMITS ON ECHOCARDIOGRAMS THAT YOU CONDUCTED
3 AND INTERPRETED OTHER THAN ON THE ONES CONDUCTED ON
4 MR. SCHULMAN AND MISS KOCH?

5 A. NO.

6 Q. LET ME SHOW YOU A DOCUMENT THAT HAS BEEN MARKED HN
7 107.

8 MR. HARPER: YOUR HONOR, MAY I?

9 THE COURT: YOU MAY.

10 BY MR. HARPER:

11 Q. CAN YOU IDENTIFY HN 107 FOR THE COURT?

12 A. IT IS ANOTHER -- IT IS THE THIRD AND FINAL LETTER
13 ON THIS, THIS ISSUE THAT I WAS ASKED TO PREPARE.

14 Q. NOW, YOU SEE IN THE SECOND PARAGRAPH IT SAYS:
15 ACCORDINGLY, VERY OBESE PATIENTS WILL CONSISTENTLY HAVE
16 LOWER MAXIMAL COLOR DOPPLER SCALES THAN THINNER
17 PATIENTS, AND A REGION OF INTEREST IN THE LEFT ATRIUM.
18 WHAT DO YOU MEAN BY "REGION OF INTEREST?"

19 A. WHERE THE COLOR ZOOM BOX IS, WHERE ALL THE ACTION
20 IS.

21 Q. WILL CONSISTENTLY HAVE LOWER MAXIMAL COLOR DOPPLER
22 SCALES THAN MORE SUPERFICIAL REGIONS OF INTEREST, WHAT
23 DO YOU MEAN BY THAT?

24 A. THIS IS, THIS IS JUST ANOTHER WAY OF SAYING, DEPTH
25 IS PARAMOUNT. THE DEEPER -- YOU CANNOT VIOLATE THE

1 LAWS OF PHYSICS. THE DEEPER YOU GO WITH YOUR IMAGING
2 AREA OF INTEREST, THE LOWER THE -- THERE IS A STEEP
3 DROPOFF IN NYQUIST LIMIT.

4 Q. AND WHEN YOU SAY, IN THE FINAL SENTENCE, DESPITE
5 ALL EFFORTS AT MAXIMIZING THIS VARIABLE, IN SOME CASES
6 ONLY A RELATIVELY LOW MAXIMAL SCALE LEVEL CAN BE
7 REALISTICALLY ACHIEVED. I'M GOING TO EDIT A LITTLE
8 GRAMMAR THERE.

9 DO YOU SEE THAT, DOCTOR?

10 A. I SHOULD HAVE PROOFED IT. YES.

11 Q. AM I TO UNDERSTAND THAT ON SOME MACHINES, WITH
12 SOME PATIENTS, YOU JUST CAN'T GET A NYQUIST LEVEL ABOVE
13 A CERTAIN NUMBER?

14 A. ABSOLUTELY.

15 Q. NOW, IN THE NEXT PARAGRAPH, YOU REFER TO THE FACT
16 THAT YOU CONSULT, YOU SAY THAT YOU WERE CONSULTING
17 SEVERAL TEXTBOOKS AND OTHER KNOWLEDGEABLE COLLEAGUES,
18 DO YOU SEE THAT?

19 A. YES.

20 Q. DID YOU DO THAT?

21 A. OF COURSE.

22 Q. LET ME SHOW YOU A BOOK THAT --

23 MS. FLETMAN: YOUR HONOR, JUST BEFORE WE
24 LEAVE THAT, I JUST WANT TO POINT OUT FOR THE COURT.
25 WHAT IS UP ON THE SCREEN IS DIFFERENT FROM WHAT WE WERE

1 Q. LET'S THEN GO TO THE SECOND FULL PARAGRAPH ON THE
2 RIGHT HAND COLUMN OF PAGE 4 OF THE BOOK THAT YOU
3 CONSULTED.

4 WHERE IT SAYS COLOR FLOW IMAGING ALSO
5 DEPENDS ON THE GAIN AND FILTER SETTING. CAN YOU READ
6 THAT FOR THE JUDGE?

7 A. COLOR FLOW IMAGING ALSO DEPENDS ON THE GAIN AND
8 FILTERS SETTING. IT IS IMPORTANT TO MAKE CERTAIN THAT
9 THE AREA OF ABNORMAL BLOOD FLOW IS NOT UNDERESTIMATED
10 BY A LOW GAIN SETTING OR OVERESTIMATED BY A LOW FILTER
11 SETTING BECAUSE THE SEVERITY OF VALVULAR REGURGITATION
12 OR SHUNT FLOW DEPENDS ON THE AREA OF ABNORMAL BLOOD
13 FLOW DETECTED WITH THE COLOR FLOW IMAGING. THE OPTIMAL
14 SETTING SHOULD BE WHERE THE ENTIRE FLOW JET IS
15 DISPLAYED WITH MINIMAL BACKGROUND NOISE. USUALLY IT IS
16 BEST TO START WITH MAXIMAL COLOR GAIN TO IDENTIFY THE
17 LARGEST AREA OF ABNORMAL BLOOD FLOW AND THEN TO
18 DECREASE THE GAIN GRADUALLY TO MINIMIZE THE BACKGROUND
19 NOISE WITHOUT COMPROMISING THE VISUALIZATION OF
20 ABNORMAL FLOW.

21 Q. NOW, DOCTOR, WERE YOU IN THE COURTROOM WHEN I USED
22 THE ANALOGY OF STEREO SPEAKERS AND EARPHONES?

23 A. I WAS.

24 Q. CAN YOU TRANSLATE THIS TEXTBOOK FOR THE COURT IN
25 TERMS OF HOW YOU SET THE GAIN SETTINGS ON YOUR MACHINE?

1 A. LONG BEFORE I EVER SAW THIS BOOK, I WAS TRAINED IN
2 THE -- IN AN INTERNATIONALLY RENOWNED ECHO LAB AT
3 CORNELL TO TURN THE COLOR GAIN ALL OF THE WAY UP UNTIL
4 ONE STARTS TO SEE SPECKLING AND NOISE, OBVIOUS RED AND
5 BLUE SPECKLED DOTS THAT HAVE NO ANATOMIC RELATIONSHIP
6 THAT ARE DANCING ON THE SCREEN. AT THAT POINT -- IT'S
7 CLEARLY YOU HAVE INAPPROPRIATE NOISE. AT THAT POINT,
8 ONE, I WAS TAUGHT TO THEN TURN IT DOWN SLIGHTLY TO THE
9 POINT JUST BELOW WHERE THAT SPECKLING APPEARS. THAT IS
10 OPTIMAL COLOR GAIN.

11 Q. LET ME ASK YOU TO TURN TO PAGE 21 OF THE BOOK,
12 WHICH IS HN 216.

13 A. YES.

14 Q. AND, IN PARTICULAR, FIGURE 216?

15 A. YES.

16 Q. CAN YOU SEE THE NYQUIST LIMIT ON THE EXAMPLE USED
17 IN THIS TEXTBOOK TO SHOW MITRAL REGURGITATION?

18 A. YES, IT'S A LITTLE HARD TO SEE BUT THEY DO
19 ACTUALLY FOOTNOTE IT IN THE FIGURE. IT'S 48.

20 Q. COULD YOU, DOCTOR, TURN TO PAGE 127, WHICH
21 CORRESPONDS TO HN 217.

22 A. I BELIEVE THERE IS ANOTHER VALUABLE POINT ON THIS.

23 Q. I'M SORRY. GO AHEAD.

24 A. BEFORE I TURN -- I THINK IT HAS BEEN SAID THAT A
25 NYQUIST LIMIT THAT IS TOO LOW WILL ALWAYS OVERENHANCE A

1 JET. I THINK THIS IS A PERFECT EXAMPLE WHERE THE
2 OPPOSITE CAN BE THE CASE.

3 ON THE LEFT, THE NYQUIST LIMIT IS 48 WITH
4 THE BASELINE IN THE CENTER OF THE COLOR BAR. WE SEE
5 THE MITRAL REGURGITANT MOSAIC. THEY USED TURBULENCE OR
6 VARIANCE MAP, AS IS MY PREFERENCE, WHERE TURBULENCE IS
7 INDICATED BY SHADES OF GREEN AND YELLOW.

8 THEY SHOW ON THE RIGHT-HAND PANEL, WHAT
9 HAPPENS WHEN ONE TURNS DOWN THE NYQUIST LIMIT. IF ONE
10 BRINGS THE BASELINE DOWN, THE BASELINE, BELOW THE
11 BASELINE THE NYQUIST LIMIT NOW IS, I BELIEVE, 28. THAT
12 IS WHAT IS RELEVANT FOR MITRAL REGURGITANT FLOW,
13 BECAUSE MITRAL REGURGITANT IS, OF COURSE, BLUE FLOW
14 AWAY FROM THE TRANSDUCER INTO THE LEFT ATRIUM.

15 IN THIS CASE, ALL OF US WOULD AGREE THAT
16 THAT IS A FAIRLY LOW NYQUIST LIMIT, 28, BELOW ANYTHING
17 WE HAVE DISCUSSED SO FAR.

18 LOOK AT WHAT HAPPENS TO THE JET. THE JET
19 TURNS RED, WHICH NO ONE WOULD MISTAKE FOR MITRAL
20 REGURGITATION. IN THIS CASE, IT MAKES THE
21 REGURGITATION GO AWAY. SO IT'S A COMPLEX
22 INTERRELATIONSHIP. AND JUST LIKE THERE ARE EXCEPTIONS
23 TO EVERYTHING IN ECHOCARDIOGRAPHY, ONE CAN'T PAINT A
24 WIDE BRUSH AND SAY, HIGH NYQUIST GOOD, LOW NYQUIST BAD
25 IN EACH AND EVERY CASE. I THINK THIS VIVIDLY

1 DEMONSTRATES THAT.

2 Q. I NOTICE, DOCTOR, ON THE LEFT SIDE OF HN 216, PAGE
3 21 OF THE TEXT, IT HAS A DEFINITION OF TURBULENCE. DO
4 YOU SEE THAT, ITALICIZED?

5 A. YES.

6 Q. IT SAYS: BLOOD MOVING IN MULTIPLE DIRECTIONS WITH
7 MULTIPLE VELOCITIES?

8 A. CORRECT.

9 Q. IS THAT INDICATIVE OF REGURGITATION?

10 A. IT'S ONE OF THE HALLMARK FEATURES.

11 Q. SO WHEN THE -- WHEN THE TRUST WAS CONVEYING TO YOU
12 THAT THE NYQUIST LIMITS WERE SHOWING TURBULENCE,
13 WHAT --

14 MS. FLETMAN: OBJECTION, YOUR HONOR. IT
15 NEVER WAS THAT THE TRUST, THERE WAS THIS WHOLE CHAIN OF
16 KROHMER TALKS TO D'ANGELO, WHO TALKS TO HIM, WHO EVEN
17 KNOWS WHO KROHMER TALKED TO.

18 THE COURT: OKAY.

19 MR. HARPER: I WILL REPHRASE, YOUR HONOR.
20 FAIR OBJECTION.

21 BY MR. HARPER:

22 Q. WHEN YOU WERE TOLD BY MR. D'ANGELO THAT THE TRUST
23 WAS SAYING THAT YOUR NYQUIST LIMITS WERE DEPICTING
24 TURBULENCE RATHER THAN REGURGITATION, WHAT DID THAT
25 MEAN TO YOU?

1 A. AGAIN, IT WAS NONSENSICAL. IT WAS A NON SEQUITUR,
2 IN THAT PHRASE, TURBULENCE. IT WAS IRONIC BECAUSE
3 TURBULENCE IS, AFTER ALL, WHAT WE ARE LOOKING FOR.

4 Q. AND FINALLY, LET ME DIRECT YOUR ATTENTION TO PAGE
5 127 OF THE BOOK. HN 217.

6 A. YES.

7 Q. YOU WILL AGREE WITH ME THAT FIGURE 936 DEPICTS A
8 TEXTBOOK EXAMPLE OF COLOR FLOW IMAGING AND MITRAL
9 REGURGITATION?

10 A. IT DOES.

11 Q. AND CAN YOU SEE THE NYQUIST LIMITS SHOWN ON THESE
12 TEXTBOOK EXAMPLES OF MITRAL REGURGITATION?

13 A. PANEL B IS THE MOST APPROPRIATE BECAUSE THAT SHOWS
14 THE PARENT IMAGE BEFORE THIS MANIPULATION OF THE
15 BASELINE. THE LEFT SIDE OF THE PANEL B SHOWS NYQUIST
16 LIMIT OF 46. AND THEN THEY GO THROUGH THE SAME
17 EXERCISE OF BASELINE SHIFT AND SHOWING HOW THE GREEN
18 AND YELLOW OF THE MITRAL REGURGITATION ACTUALLY GOES
19 AWAY WHEN YOU MAKE THE NYQUIST IN THE DOWNWARD
20 DIRECTION LOW.

21 MR. HARPER: YOUR HONOR, MY NEXT QUESTION
22 WAS GOING TO RELATE TO ANOTHER BOOK THAT DR. MUELLER
23 GAVE ME THIS MORNING. IT'S THE HANDBOOK FOR HIS
24 MACHINE, BUT I WILL SKIP OVER THAT QUESTION, GIVE
25 COPIES TO MY ADVERSARY OVERNIGHT. WE WILL PICK UP WITH

1 THOSE QUESTIONS IN THE MORNING. I WILL MOVE TO ANOTHER
2 PART.

3 THE COURT: TELL US WHAT SUBJECT YOU ARE
4 GOING TO INTERROGATE HIM ABOUT WITH THAT BOOK. IT'S
5 PROBABLY ONE OF THOSE MASSIVE TOMES.

6 MR. HARPER: THIS IS ONE OF THE THINGS YOU
7 GET WITH A STEREO SYSTEM.

8 THE COURT: THEY ARE EVEN MORE
9 INCOMPREHENSIBLE.

10 MR. HARPER: THIS ONE IS A SKINNY ONE. I
11 HAVE HAD COPIES. AGAIN, DOCTOR --

12 THE COURT: WHAT IS IT THAT YOU ARE GOING TO
13 FOCUS ON IN THAT BOOK?

14 MR. HARPER: JUST THE FACT THAT THE BOOK,
15 WHICH IS THE INSTRUCTION MANUAL IN EFFECT FOR THE
16 MACHINE THAT HE USED, HAS ANYTHING ABOUT USING NYQUIST
17 LIMITS BETWEEN 50 AND 60 OR 60 AND 70 OR ANYTHING ELSE
18 LIKE THIS SO --

19 THE COURT: THAT'S FINE.

20 MR. HARPER: I WILL SAVE IT OR USE IT. I
21 HAVE COPIES NOW.

22 THE COURT: WELL, WE WILL MOVE ON TO THE
23 NEXT SUBJECT FOR FIVE MINUTES OR SO. GIVE THAT TO
24 THEM. THEY CAN LOOK AT IT OVERNIGHT.

25 MR. HARPER: WE ARE GOING TO SAVE THIS FOR

1 THE MORNING.

2 BY MR. HARPER:

3 Q. NOW, DOCTOR, AS THE ONLY WITNESS THIS COURT HAS SO
4 FAR SEEN WHO ACTUALLY CONDUCTED AND INTERPRETED AN
5 ECHOCARDIOGRAM THAT IS AT ISSUE, I WOULD LIKE YOU TO
6 WALK THROUGH A SESSION WITH HARITON & D'ANGELO'S
7 CLIENTS FOR THE COURT. BUT BEFORE YOU PUT IN ANY
8 TAPES, JUST WALK ME THROUGH THE STEPS. HOW IS THE
9 APPOINTMENT ARRANGED?

10 A. BETWEEN MR. D'ANGELO'S OFFICE AND MY OFFICE, THAT
11 IS A CLERICAL LEVEL CONTACT WHERE THEY WOULD BOOK A
12 SLICE OF MY TIME, SEVERAL HOURS' WORTH, GENERALLY ONE
13 HOUR PER CLIENT WITH THOSE RECENT MODIFICATIONS, SIX
14 AND FIVE, ACCOUNTING FOR NO-SHOWS, AND THAT WOULD BE
15 SET BEFORE I EVER GOT INVOLVED.

16 Q. FROM BEGINNING TO END, APPROXIMATELY HOW LONG
17 WOULD EACH SESSION, WITH EACH CLIENT OF HARITON &
18 D'ANGELO, LAST?

19 A. VARY FROM THREE TO FIVE HOURS.

20 Q. DO YOU HAVE A PRACTICE WITH RESPECT TO VIDEOTAPING
21 YOUR ECHOCARDIOGRAMS?

22 A. YES.

23 Q. HOW MUCH OF IT DO YOU TAPE?

24 A. I LIKE TO TAPE A LOT. WITH THAT COMES THE PRICE
25 OF RECORDING A LOT OF EXTRANEIOUS INFORMATION AND

1 RECORDING SOME OF THE STRUGGLES THAT I THINK WE'LL SEE
2 VIVIDLY THAT GOES ON WITH THESE STUDIES. THE ADVANTAGE
3 IS THAT ONE DOES NOT OFTEN FORGET WHEN THE TAPE BUTTON
4 IS ON AND OFF. YOU ARE LESS PRONE TO THINKING YOU ARE
5 RECORDING THINGS WHEN YOU ARE NOT.

6 Q. WHO WOULD BE PRESENT DURING YOUR CONDUCT OF THE
7 ECHOCARDIOGRAM?

8 A. EXCEPT FOR TIMES WHEN THERE WAS ILLNESS OR SOME
9 WEATHER, INCLEMENT WEATHER INVOLVED, THERE WAS A NURSE,
10 RARELY A SONOGRAPHER, CHIEFLY A NURSE, WHO HAD SOME
11 EXPOSURE TO ECHOCARDIOGRAMS THAT WAS SENT BY THE
12 D'ANGELO FIRM.

13 Q. LET ME SHOW YOU, IF I MAY, A DOCUMENT THAT HAS
14 BEEN MARKED AS MOVANT EXHIBIT 99.

15 MR. HARPER: MAY I?

16 THE COURT: YOU MAY.

17 BY MR. HARPER:

18 Q. DOCTOR, BEFORE YOU HEARD ABOUT THIS HEARING, HAD
19 YOU EVER SEEN THE DOCUMENT CALLED -- IDENTIFIED AS
20 MOVANT EXHIBIT 99?

21 A. I HAVE NEVER SEEN IT.

22 Q. DO YOU KNOW WHO PREPARED IT?

23 A. NO.

24 Q. NOW, THE HARITON AND D'ANGELO NURSE OR
25 SONOGRAPHER, WOULD THERE EVER BE MORE THAN ONE

1 REPRESENTATIVE OF THE HARITON & D'ANGELO FIRM THERE?

2 A. OCCASIONALLY, THERE WOULD BE TWO.

3 Q. DID THEY EVER TELL YOU WHAT TO DO?

4 A. IN TERMS OF CONDUCTING THE EXAM?

5 Q. YES.

6 A. CERTAINLY NOT.

7 Q. WHAT, IF ANYTHING, WOULD THE REPRESENTATIVE OF
8 HARITON & D'ANGELO BE DOING?

9 A. I WAS NOT ALWAYS ENTIRELY SURE. I FIGURED IF THEY
10 WANTED TO SEND SOMEONE, THEY COULD, AS LONG AS THE
11 CLIENT CERTAINLY NEVER RAISED ANY OBJECTION.

12 MY IMPRESSION WAS THAT THEY WERE THERE TO
13 MEET AND GREET THEIR CLIENTS. SOMETIMES THERE WAS SOME
14 EXCHANGE OF PAPERWORK AND CLERICAL ISSUES GOING ON. I
15 THINK THEY WERE THERE TO EXPLAIN WHAT WAS GOING TO
16 HAPPEN SINCE ALL OF THEM WERE VERY NERVOUS. AND THEN
17 USUALLY THE CLIENTS WOULD HAVE QUESTIONS ABOUT WHERE
18 THE PROCESS WAS GOING AND THAT, AT THAT POINT, THAT WAS
19 MY TIME TO EXIT AND SAY GOOD-BYE AND THEN I WOULD LEAVE
20 THEM TOGETHER TO TALK.

21 Q. WELL, DOCTOR, WHEN YOU FINISHED -- AFTER YOU
22 FINISHED THE ECHOCARDIOGRAM, WOULD YOU EVER DISCUSS IT
23 WITH THE CLIENT OF THE HARITON & D'ANGELO FIRM?

24 A. YES. IN EACH AND EVERY CASE, I GAVE THEM A
25 SUMMARY OF THE FINDINGS AND I REPEATEDLY AND STRONGLY

1 RECOMMENDED THAT THEY OBTAIN A COPY OF THE REPORT, AND
2 DISCUSSED THE REPORT WITH THEIR DOCTORS.

3 Q. ARE ANY OF THE -- DO YOU HAVE TODAY AN EXISTING
4 DOCTOR/PATIENT RELATIONSHIP WITH ANY OF THE PERSONS YOU
5 FIRST MET AS CLIENTS OF THE HARITON & D'ANGELO FIRM?

6 A. YES, SEVERAL.

7 Q. HOW WOULD YOU FILL OUT -- LET'S PUT UP MOVANTS' 1.
8 ACTUALLY, USE MOVANTS 2 BECAUSE IT'S MORE
9 CHARACTERISTIC, I THINK. 3. 3.

10 HOW WOULD YOU GO ABOUT -- OH, LET ME START
11 FIRST WITH, WHEN WOULD YOU COMPLETE THIS ECHOCARDIOGRAM
12 REPORT?

13 A. IN ALMOST ALL CASES, WHEN I WENT HOME FOR THE
14 EVENING.

15 Q. AND ON THE BASIS OF WHAT INFORMATION? WHAT
16 INFORMATION WOULD YOU HAVE BEFORE YOU WHEN YOU PREPARED
17 THIS REPORT?

18 A. OUR MACHINE, LIKE MOST, HAS A SONY PRINTER THAT
19 WILL PRINT POLAROID STYLE INSTANT PICTURES OF WHATEVER
20 IS ON THE SCREEN. IT'S MY PRACTICE FOR ALL MY STUDIES,
21 AND NO DIFFERENT FOR THESE VERSUS MY CLINICAL STUDIES,
22 TO HIT THE PRINT BUTTON ON ANY PICTURE OF INTEREST.

23 MR. GROSSI: IF I MAY OBJECT AT THIS POINT.
24 THIS IS A PROBLEM WE HAVE. WE HAVE NEVER BEEN PROVIDED
25 -- I DON'T THINK THE TRUST HAS EVER BEEN PROVIDED WITH

1 THE ORIGINAL TAPES OF DR. MUELLER. IT'S OUR
2 UNDERSTANDING THAT DR. MUELLER HAS DECLINED TO PROVIDE
3 THEM EVEN TO COUNSEL. WE HAD AN AGREEMENT WITH COUNSEL
4 THAT THEY WOULD NOT ELICIT ANY TESTIMONY BASED ON THE
5 ORIGINALS OF THOSE TAPES. NOW IT APPEARS THAT HE IS
6 ABOUT TO ELICIT SOME TESTIMONY BASED ON POLAROID'S FROM
7 THOSE TAPES. WE HAVE NEVER SEEN THOSE EITHER. WE
8 OBJECT MOST STRENUOUSLY TO ANY ATTEMPT TO BUTTRESS THE
9 CASE BASED ON MATERIALS THAT HAVE NOT BEEN PROVIDED.

10 MR. HARPER: THAT IS A MOST UNFAIR
11 CHARACTERIZATION OF THE DISCUSSION. I'M SURPRISED. I
12 CAN ONLY ATTEST TO THE FACT THAT MR. GROSSI WAS NOT A
13 PARTY TO THE CONVERSATIONS.

14 YOUR HONOR, DR. MUELLER INSISTS UPON
15 RETAINING POSSESSION, CUSTODY AND CONTROL OF HIS OWN
16 FILES. AS A RESULT, WE WERE UNABLE TO MAKE THEM
17 AVAILABLE EITHER TO THE EXPERTS FOR THE TRUST AND WYETH
18 OR, TO OUR OWN EXPERT, DR. ROTH. SO WHAT I COMMITTED
19 TO WYETH, TO ARNOLD AND PORTER WAS, THAT I WILL NOT
20 MAKE THE ARGUMENT THAT THE INTERPRETATION BY THE
21 EXPERTS OF THE RESULTS OF THE ECHOCARDIOGRAM WAS IN ANY
22 WAY AFFECTED OR INFLUENCED OR NO GOOD BECAUSE THEY HAD
23 SEEN SIMPLY A COPY OF DR. MUELLER'S TAPES, JUST AS MY
24 EXPERTS HAD.

25 IF YOU REMEMBER, YOUR HONOR, IN OUR ORIGINAL