

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HAITIAN CENTER, CV-92-1258
Plaintiff,
-against- :
United States Courthouse
Brooklyn, New York
McNARY,
Defendant. :
March 25, 1993
----- X 10:00 o'clock a.m.

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE STERLING JOHNSON, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: SIMPSON, THACHER & BARTLETT
BY: JOSEPH F. TRINGALI, ESQ.
SUSAN SAWYER, ESQ.

AMERICAN CIVIL LIBERTIES UNION
BY: LUCAS GUTTENTAG, ESQ.
JUDY RABINOVITZ, ESQ.

CENTER FOR CONSTITUTIONAL RIGHTS
BY: MICHAEL RATNER, ESQ.

YALE LAW SCHOOL
BY: HAROLD HONGJU KOH, ESQ.
Professor of Law

For the Defendant: MARY JO WHITE
United States Attorney
BY: BOB BEGLEITER, ESQ.
SCOTT DUNN, ESQ.
Assistant United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE
Office of Immigration Litigation
BY: LAURI STEVEN FILPPU, ESQ.
Deputy Director
DAVID J. KLINE, ESQ.
Assistant Director
and
CHARLES E. PAZAR, ESQ.
and
ELLEN SUE SHAPIRO, ESQ.

Court Reporter: ANTHONY M. MANCUSO
225 Cadman Plaza East
Brooklyn, New York
718-330-7687

Proceedings recorded by mechanical stenography, transcript produced by computer.

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1 (Case called.)

2 (Trial resumed.)

3 THE COURT: Mr. Filppu.

4 MR. FILPPU: Your Honor, we have one more witness
5 this afternoon, in accordance with the court's indication that
6 we could have a continuance for that.

7 THE COURT: And then you will rest?

8 MR. FILPPU: We have a doctor and Mr. Pazar will be
9 examining the witness.

10 THE COURT: Okay.

11 After this you're going to rest?

12 MR. FILPPU: Well, I think we just have a few minor
13 disputes over deposition transcripts, things of that sort,
14 that we may want the court to address and we do have one
15 exhibit that the government wishes to offer that I understand
16 plaintiffs continue to object to.

17 THE COURT: What is that?

18 MR. FILPPU: I believe that is all that probably
19 remains. I'm trying to think now.

20 THE COURT: What is that, Mr. Tringali?

21 MR. TRINGALI: It's an exhibit, your Honor, that
22 they refused to provide us. What it is is when the Haitians
23 had second interviews on Guantanamo the INS asylum officer
24 would write down notes of their interviews. They would not
25 provide them to us. Now, they want to introduce one of them

1 into evidence. I think it's clear they should not be
2 allowed.

3 MR. FILPPU: Your Honor, the government did browse
4 these documents. We did it in a fashion that made it
5 practically hard for the plaintiffs to link them up.

6 We produced the documents he's talking about, but at
7 one time we redacted the names on confidentiality grounds for
8 the persecution claim. We didn't know what claimants on
9 Guantanamo wanted to divulge their names. We subsequently
10 produced the document with the names on it with the body of
11 the claim deleted and only the decision outstanding.

12 We have not sought to offer any other applications or
13 persecution claims or interview reports, if you will, in this
14 case.

15 However, plaintiffs in this instance have introduced
16 by way of deposition testimony this individual's persecution
17 claim. They have made it an issue in the case, part of the
18 record.

19 THE COURT: If you have not turned it over, how come
20 you want to introduce it in evidence?

21 MR. FILPPU: In fact, the document that we seek to
22 introduce was turned over when we turned over the bulk of our
23 documents sometime --

24 MR. TRINGALI: Are you sure about that? The
25 interview notes that you are talking about were done in June.

1 This is not someone who was in Guantanamo in March.

2 MR. FILPPU: I'm saying the exhibit, the identified
3 exhibit, would have been turned over to you last week or the
4 week before.

5 MR. TRINGALI: In the last week, fine.

6 MR. FILPPU: They would have had the document now --
7 I don't know -- for ten days. I think we turned it over
8 sometime in the first week of trial just before we were
9 starting our case, if I recall correctly. So they would have
10 had the entire documents during that period of time and it's
11 in response to evidence they have put in of record. They did
12 have the information not in a form that they necessarily could
13 have linked the name of the alien and the information we've
14 provided --

15 MR. TRINGALI: First of all --

16 THE COURT: Let's take the testimony and then we'll
17 argue that.

18 MR. TRINGALI: First of all, we did not even have
19 this in the form with the name blocked off. The ones we had,
20 the earlier ones they gave us back in April, we didn't even
21 have this one. Secondly, we would have had it without the
22 name.

23 Also, I have a letter dated October 23 from
24 Mr. Filppu telling me we can't have them because the INS
25 treats the interview notes as confidential from a variety of

Wolf/direct/Pazar

1 perspectives and employs them in making credibility
2 assessments.

3 THE COURT: Can we have the witness?

4 MR. PAZAR: Yes, your Honor.

5 BARBARA C. WOLF,

6 having been duly sworn was examined and
7 testified as follows:

8 THE CLERK: State your name for the record.

9 THE WITNESS: Barbara C. Wolf, W O L F

10 DIRECT EXAMINATION

11 BY MR. PAZAR:

12 Q. Are you a physician?

13 A. Yes, I am.

14 Q. In what states are you licensed please?

15 A. I'm licensed in New York and in Massachusetts.

16 Q. What is your educational background?

17 A. I obtained a Bachelors degree from Boston University and
18 subsequently a M.D. Degree from Boston University in Boston.

19 I then pursued a residency in pathology at Boston
20 University and at Harvard and then a fellowship in
21 hematopathology at Boston University.

22 Q. Your education at Boston University, was that through the
23 six-year program?

24 A. Yes, it was.

25 Q. What does that mean?

Wolf/direct/Pazar

1 A. The six-year program is a program where one is accepted
2 both to college and to medical school at the end of high
3 school as one is applying to college.

4 Instead of taking a standard four years of
5 undergraduate work and four years of medical school, you do a
6 combined program with a lot of summer work. So the entire
7 process is a six-year process rather than an eight-year
8 process.

9 Q. While you were at Boston University did you win any
10 awards?

11 A. As part of the six-year program, I received an award for
12 outstanding achievement in that program. I received an award
13 for my performance in anatomy and an award from the American
14 Medical Women's Association. I graduated from college summa
15 cum laude and from medical school magna cum laude.

16 Q. Did you have a fellowship?

17 A. Yes, I did.

18 Q. Where was that?

19 A. At Boston University in hematopatholgy.

20 Q. What was the speciality?

21 MR. TRINGALI: Your Honor, I believe they are going
22 to introduce this witness' CV which has all this information
23 on it. It will be quicker.

24 THE COURT: Can we have save time?

25 MR. PAZAR: I think your Honor would benefit from

Wolf/direct/Pazar

1 some background to know about Dr. Wolf's experience.

2 THE COURT: Is the background in the CV?

3 MR. PAZAR: Yes, it is, sir.

4 THE COURT: Introduce that.

5 MR. PAZAR: Okay this has been marked, your Honor,
6 as M 11.

7 THE COURT: Any objection?

8 MR. TRINGALI: No, your Honor.

9 THE COURT: Now, are you and the government -- have
10 you agreed on the exhibits that have been introduced with the
11 exception of a few that have to be resolved?

12 MR. TRINGALI: Yes, your Honor.

13 THE COURT: Okay.

14 (Defendant's Exhibit M 11 for identification was
15 received in evidence.)

16 Q. Dr. Wolf, what is pathology?

17 A. In the broad sense of the term, pathology refers to the
18 study of disease in a practical sense. Pathology is the
19 aspect of medicine that is involved largely with the diagnosis
20 of disease through examination of tissues, through autopsies,
21 through laboratory tests.

22 Q. Are you board certified in any specialties?

23 A. Yes, I am.

24 Q. What are they?

25 A. I'm board certified in anatomic pathology and in

Wolf/direct/Pazar

1 hematology.

2 Q. What is hematology?

3 A. Hematology or hematopathology is the study of diseases of
4 the blood and blood-forming organs and lymphoid tissues.

5 Q. Dr. Wolf, have you had any academic appointments?

6 A. Yes.

7 MR. TRINGALI: Your Honor, this is all on the
8 resume.

9 THE COURT: I thought you were going to --

10 MR. PAZAR: I'll move on.

11 Q. What is your current position?

12 A. I'm the director of anatomic hematology at Albany Medical
13 in Albany. I'm an Albany County Coroner's pathologist and an
14 associate professor of pathology at Albany Medical Center.

15 Q. Are you a consultant to any agencies?

16 A. Yes, I am.

17 Q. What agencies?

18 A. I am the pathology chairman for the Eastern Cooperative
19 Oncology Group, or ECOG, which is a group of -- it's a
20 national and international consortium of institutions and
21 researchers involving cancer clinical trials.

22 I am a consultant to the forensic science unit of the
23 New York State Police and to the New York State correction
24 commission, medical review board.

25 Q. What would you be called upon to do in your role as a

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1 consultant for the state commission of corrections?

2 A. In that capacity I might be asked to review records
3 pertaining to medical questions about -- involving prisoners,
4 anyone in New York State facilities.

5 I might be asked to perform or to review autopsies
6 performed on people in those facilities.

7 Q. Have you been called upon or have you been called upon to
8 do anything pertaining to a prisoner who has had AIDS?

9 A. Yes, I have.

10 Q. What was that?

11 A. I have performed autopsies on prisoners with AIDS. I
12 have been a consultant in making diagnoses on various tissues
13 of patients with AIDS and consulting with treating physicians
14 on the treatment of these patients.

15 Q. Doctor, in your work as director of anatomical pathology
16 in Albany, do you work with physicians who treat HIV positive
17 or AIDS patients?

18 A. Yes, I do.

19 Q. Could you describe what your work involves in
20 collaboration with those physicians?

21 A. Albany Medical Center has an AIDS treatment center that
22 treats and follows both HIV zero positive people as well as
23 patients with AIDS on both an inpatient and outpatient basis.

24 I work with the treating physicians of the AIDS
25 treatment center as their pathologist. I am responsible for

Wolf/direct/Pazar

1 making diagnoses of infectious processes of malignancies that
2 arise in these patients.

3 I also direct the laboratory that does the T-cell
4 subset testing. I also perform autopsies on adults and
5 pediatric cases of AIDS.

6 Q. Doctor, in your career, how many HIV positive or AIDS
7 consultations have you made?

8 A. Since 1980, as a very rough estimate, one or two a day.
9 So thousands.

10 Q. So your job then is to assist the clinicians at Albany?

11 A. Exactly.

12 Q. And, in assisting the clinicians, is it important for you
13 to be knowledgeable about the transmission of HIV and means of
14 preventing its spread so as to assist your colleagues?

15 A. Yes, it is.

16 Q. Why is that, please?

17 A. Because pathology is the study of the disease processes.
18 A knowledge of the transmission of these diseases is very
19 important in enabling me to make a diagnosis on a given
20 specimen that I might receive and then to communicate this
21 information to the physicians to assist them in planning their
22 treatment.

23 Q. Do your colleagues, the treating physicians, expect you
24 to be knowledgeable about the means of the spread of AIDS?

25 THE COURT: Sustained.

Wolf/direct/Pazar

1 Q. As the pathology chair of the Eastern Cooperative
2 Oncology Group, have you had occasion to work with physicians
3 who treat HIV positive or AIDS patients?

4 A. Yes, I have.

5 Q. Could you tell the court what that work vials?

6 A. The Eastern Cooperative Oncology Group has a committee on
7 AIDS that is involved in clinical trials and research
8 protocols on the subject of AIDS. I am the pathologist for
9 that committee.

10 Q. Could you tell the court where consultants or rather
11 where -- let me back up.

12 Could you tell the court, please, who you consult
13 with in that group?

14 A. ECOG is a consortium of institutions and individuals
15 throughout this country and throughout the world. So I work
16 with physicians internationally.

17 Q. Would those physicians be involved in the treatment of
18 AIDS?

19 A. Yes, they would.

20 Q. Doctor, have you conducted any research on HIV and its
21 transmission?

22 A. Yes, I have.

23 Q. And could you tell the court, please, of some recent
24 research you've done involving HIV in Albany?

25 A. I have been and am currently involved in a number of

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1 research protocols dealing with an a variety of aspects of HIV
2 disease. Among the currently active studies I am involved
3 with is a study of the transmission of AIDS through the semen
4 of infected men.

5 I am involved in another study of the transmission of
6 AIDS from infected mothers through the placenta to their
7 infants.

8 I am involved in a study of the pathology of the
9 cervix in women with AIDS. I have done a number of studies
10 concerning lymphomas arising in AIDS patients, other tumors.

11 Q. Doctor, do you review papers written on AIDS?

12 A. Yes, I do. I am on the editorial review board for a
13 number of medical journals and in that capacity a paper that
14 is submitted to a journal for potential publication could then
15 be sent to me to review and that has included a number of
16 papers on AIDS.

17 Q. And do you review grants for people who are studying
18 AIDS?

19 A. I have been on panels that have reviewed AIDS-related
20 research, yes.

21 Q. Dr. Wolf, how is the HIV virus transmitted?

22 A. There are, as we understand it now, several routes of
23 transmission involving almost exclusively body fluids. A
24 transmission may be sexual. It may be through needles or
25 other intravenous exposure. It may be also from an infected

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1 mother to the fetus that she's carrying through the placenta.

2 Q. Doctor, in your experience, do people who know that they
3 are HIV positive occasionally engage in activities that put
4 other people at risk of getting HIV?

5 A. Some of them do, yes.

6 Q. And on what do you base that conclusion?

7 A. At the AIDS treatment center at Albany Medical Center, we
8 are following currently between 900 and a thousand patients
9 with HIV disease. This includes asymptomatic HIV positive
10 people as well as people with the full-blown manifestations of
11 AIDS. These people are followed by physicians as well as
12 counseled extensively both by physicians and by behaviorists.

13 We have developed exhaustive questionnaires
14 questioning patients seen at the AIDS treatment center about
15 various aspects of their risk factors, their behaviors.

16 The data that that analysis and my interaction with
17 the AIDS treatment center has yielded indicates that there are
18 people who, in spite of the knowledge of their HIV positivity,
19 may still engage in behaviors that could transmit the disease
20 or, in looser terms, may still practice unsafe sex.

21 Q. Doctor, assume for purposes of this question that are 215
22 persons at Guantanamo who are HIV positive and who have so
23 been informed.

24 Assume for the purposes of the question that they
25 come to the United States. Assume that after they arrive in

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1 the United States they live in a noncoercive environment and
2 that all medically appropriate steps have been taken to inform
3 them of their condition and appropriate behavior.

4 Would you expect that there would be some incidents
5 of noncompliance in this population as I have described it?

6 A. Yes, I would.

7 Q. And why is that?

8 A. Because we have seen a number of people who have
9 exhibited noncompliant behavior at our AIDS treatment center
10 in spite of the fact that they are in a noncoercive
11 environment and have had appropriate medical and behavioral
12 counseling.

13 Q. Doctor, assume for purposes of this question that at
14 least one person of those 215 on Guantanamo has been told that
15 he is HIV positive, has stated that he does not believe it and
16 continues to practice unprotected sex.

17 Does that support the conclusion that you have just
18 stated?

19 A. Yes, it does.

20 Q. Why, please?

21 A. That is entirely consistent with our observations through
22 Albany and through ECOG concerning noncompliance in some
23 infected patients.

24 Q. Doctor, do you recognize the journal the Annals of
25 Internal Medicine as authoritative in medicine concerning AIDS

Wolf/direct/Pazar

1 and HIV?

2 A. Yes, I do.

3 Q. And do you recognize Dr. Neil S. Wenger as an authority
4 on issues relating to AIDS and HIV?

5 A. Yes, I do.

6 Q. Doctor, I would like to read to you a sentence from
7 volume 117, 1992, entitled Effective HIV Antibody Testing in
8 AIDS Education On Communication About HIV Risk In Sexual
9 Behavior-A Randomized Controlled Trial In College Students.

10 Despite improved communication about HIV risk among
11 those receiving both the educational intervention and HIV
12 antibody testing, sexual behavior did not change. Indeed, the
13 rate of the condom use among students in our trial was similar
14 to that found among patients at a San Francisco STD clinic in
15 this case.

16 What does STD mean in that context?

17 A. STD refers to sexually transmitted diseases.

18 Q. Have you read this article, doctor?

19 A. Yes, I have.

20 Q. Are you familiar with the findings that those physicians
21 reached?

22 A. Yes, I am.

23 Q. Do you agree with those findings?

24 A. Yes, I do.

25 Q. Do they support your position stated earlier?

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1 A. Yes, they do.

2 Q. Why is that?

3 A. They are describing a college population of obviously
4 educated individuals who are exhibiting some degree of
5 noncompliance, similar to what we have observed in our own
6 treating population.

7 Q. Would you expect, doctor, that college students would be
8 more compliant than persons who are not as well educated?

9 A. That would be my expectation.

10 Q. Doctor, do you recognize the New England Journal of
11 Medicine as an authoritative journal in medicine?

12 A. I certainly do.

13 Q. And do you recognize University of North Carolina as a
14 respected medical institution?

15 A. It certainly is.

16 Q. Again, I would like to read to you from an article that
17 appeared at volume 326 at page 101 on January 9, 1992 from an
18 article entitled Results Of A Randomized Trial Of Partner
19 Notification In Cases Of HIV Infection In North Carolina.

20 In this trial leaving the notification of partners up
21 to the subjects (patients' referral) was quite ineffective
22 despite the North Carolina law requiring that partners be
23 notified.

24 Have you read that article, doctor?

25 A. Yes, I have.

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1 Q. And does the sentence that I read to you a moment ago
2 support your conclusion?

3 A. Yes, it does.

4 Q. And, again, I would like to ask you why.

5 A. The results of that study suggest or confirm the fact
6 that knowledge of HIV positivity does not necessarily mean
7 that one will inform a partner or potential partner of that
8 fact and that is, again, entirely consistent with behavior
9 we've seen among some people in our AIDS treatment center.

10 Q. Dr. Wolf, Dr. Mann, Dr. Jonathan Mann, has testified in
11 these proceedings that entry of the HIV positive persons
12 currently on Guantanamo would not add a significant burden or
13 rather would not add significantly to the existing burden of
14 HIV positive persons in this country.

15 Do you agree with that statement?

16 A. No, I don't.

17 Q. Why not?

18 A. Although 215 additional HIV positive patients in this
19 country may seem like a very small number in comparison with
20 the estimates of the people here already infected, in far more
21 practical terms that small number could have an enormous
22 impact on a single individual who might be infected by contact
23 with one of those persons or in a community where these people
24 might settle and potentially have contact with people there.

25 Although the numbers may be small, both in terms of

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1 numbers of individuals and in financial terms, the potential
2 impact could be exponential from even one person spreading the
3 virus to an unknown number of additional people and then that
4 then being propagated. So, I do not agree with that
5 statement.

6 Q. Dr. Wolf, are you familiar with any studies concerning
7 the cost of caring for HIV positive persons?

8 A. Yes, I am.

9 Q. What do they show, please?

10 A. There are published figures in the literature concerning
11 the financial impact of AIDS. We have also done some analyses
12 both at Albany Medical Center and with the New York State
13 Corrections Commission concerning the financial impact of HIV.

14 The data from the corrections commission -- the
15 analysis that I have seen took an index year that I believe
16 was 1991, indicated that there were 4,000 symptomatic HIV
17 prisoners in New York State, not including patients who were
18 positive but did not have symptoms. The cost in that year --

19 THE COURT: You say 4,000 prisoners?

20 THE WITNESS: Yes.

21 THE COURT: How many prisoners totally?

22 THE WITNESS: I do not know.

23 THE COURT: Okay.

24 Q. Please, continue.

25 There are 4,000 prisoners?

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1 A. 4,000 symptomatic prisoners. The cost of caring for
2 those patients, strictly in terms of their medical care
3 pertaining to their HIV positivity, in that one year was
4 approximately \$13,500,000.

5 Q. Would that care have been provided in hospitals?

6 A. If --

7 MR. TRINGALI: Objection, your Honor.

8 THE COURT: Sustained. Speculation.

9 Q. Referring to the statistics, please tell the court what
10 the statistics are for the Albany Medical Center where you are
11 employed?

12 A. Again, using 1991, which I believe was the latest year
13 that we have analyzed, in that year there were nine hundred to
14 a thousand patients followed at the AIDS treatment center.
15 379 were admitted to Albany Medical Center. The cost of those
16 admissions to Albany Medical Center and then to obviously
17 third-party payers and the public was \$3,200,000
18 approximately.

19 There were over 3,000 outpatient visits to the AIDS
20 treatment center at a cost of approximately 162 dollars per
21 visit.

22 Q. Does the figure of -- I'm sorry. You have already
23 answered that question?

24 MR. PAZAR: May I consult with Mr. Begleiter for a
25 moment, your Honor?

Wolf/cross/Tringali

1 THE COURT: You may.

2 (Pause.)

3 MR. PAZAR: No further questions, your Honor.

4 THE COURT: Cross-examination.

5 MR. TRINGALI: I know the government has complained
6 about notice a lot in this trial. I'm not sure whether they
7 are asking your Honor, as part of the relief, that you send
8 American college students out of the country. That seemed to
9 be at least part of the gist of their questioning.

10 MR. BEGLEITER: Strike that, your Honor.

11 THE COURT: We'll strike it

12 CROSS-EXAMINATION

13 BY MR. TRINGALI:

14 Q. Dr. Wolf, are there any other diseases that cost as much
15 as AIDS over a lifetime?

16 A. There are diseases that, in a given individual, can
17 result in equivalent costs, yes.

18 Q. Dr. Wolf, you have no background in public health, is
19 that correct?

20 A. That's correct.

21 Q. And you have no background in epidemiology?

22 A. That's correct.

23 Q. And you have not provided HIV counseling to any patients?

24 A. I have not counseled patients directly, that's correct.

25 Q. And you know of Dr. Mann, is that correct?

Wolf/cross/Tringali

1 A. Yes, I do.

2 Q. And you know that he is well-known and well-respected in
3 the field of public health and AIDS?

4 A. Yes, he is.

5 Q. And that is a field in which you have no expertise?

6 A. That's true.

7 MR. PAZAR: Your Honor -- all right.

8 THE COURT: You just wanted to stand up?

9 MR. PAZAR: The witness was a little bit faster than
10 I was, your Honor.

11 Q. Doctor, there are approximately 1.5 million Americans in
12 the United States who are HIV positive?

13 A. That is approximately the current estimate, yes.

14 Q. And the risk posed by the entry of each of the 215
15 Haitians on Guantanamo into this country is the exact same
16 risk already posed by each of the approximately 1.5 million
17 Americans already here?

18 A. I'm sorry. Could you repeat that?

19 Q. Sure. The risk posed by the entry of 215 Haitians from
20 Guantanamo who are HIV positive is the same risk already posed
21 in this country by the 1.5 million Americans who are HIV
22 positive?

23 A. In my opinion, that's an accurate assumption.

24 Q. And it's also the same risk that's posed by those among
25 the 20 million tourists who enter our country each year who

Wolf/cross/Tringali

1 are HIV positive, is that correct?

2 MR. PAZAR: Your Honor, there's no foundation. I
3 object.

4 THE COURT: I'll sustain the form of the question.

5 Q. Do you know that tourists come into this country each
6 year without being HIV tested?

7 A. Yes, I do know that.

8 Q. Do you know that there are approximately 20 million
9 tourists who come into this country each year? That's the
10 estimate.

11 A. I was not aware of that figure.

12 Q. Whatever the number is, am I correct that the risk posed
13 by those individuals who are HIV positive, tourists who come
14 into this country, is also the same risk that is posed by
15 these 215 Haitians on Guantanamo?

16 A. I think that's a reasonable assumption.

17 Q. Now, HIV can be spread today in the United States by any
18 of 1.5 million people who are here and already infected?

19 A. Yes, although I would say with the exception of those who
20 are in terminally ill stages of disease, yes.

21 Q. Many of those 1.5 million people have never been tested
22 and don't know they are HIV positive?

23 A. That's correct.

24 Q. And the only way to eliminate the risk in the United
25 States of an additional HIV infection, doctor, would be to

Wolf/cross/Tringali

1 require mandatory testing and quarantine of all those who test
2 HIV positive, is that correct?

3 MR. PAZAR: Your Honor, again, I object. First,
4 there's no foundation laid; second, it's beyond the scope.

5 THE COURT: I'm going to allow it.

6 A. I'm sorry. I don't think I understand it. Can you
7 repeat it.

8 Q. To eliminate the risk through sexual transmission, the
9 only way you could do that is to test every person living in
10 the United States and then as to those who are HIV positive to
11 quarantine them so that you can be certain that they will not
12 pass the virus on to anyone else, if you want to eliminate the
13 risk?

14 THE COURT: Risk through sexual intercourse?

15 MR. TRINGALI: That's correct.

16 A. To completely eliminate the risk, I guess in absolute
17 terms that could be considered correct. What we are trying to
18 do is to minimize the risk through education and behavioral
19 modification.

20 Q. And as a doctor you are opposed to both mandatory testing
21 and quarantine, is that correct?

22 A. Mandatory testing of the general population?

23 Q. Correct.

24 A. Yes, I am opposed the to that.

25 Q. And quarantine?

Wolf/cross/Tringali

1 A. Yes.

2 Q. And you are also opposed to holding someone in prison for
3 no reason other than that they are HIV positive, is that
4 correct?

5 MR. PAZAR: Your Honor, again --

6 THE COURT: I'm going to allow it.

7 A. Am I opposed to imprisoning someone on the basis solely
8 of HIV status?

9 Q. Yes.

10 A. Yes. I would be opposed to that.

11 Q. Doctor, if you increase the number of HIV positive people
12 in the United States from 1.5 million to 1,500,215, isn't it
13 correct that the increase in the U.S. HIV population I guess
14 approximately 1/100 of one percent?

15 A. I will have to accept your calculations.

16 Q. I have a calculator for you, if you would like.

17 THE COURT: She's a doctor, not a mathematician.
18 She accepts it.

19 MR. TRINGALI: Okay. I have nothing further. Thank
20 you are, doctor.

21 THE COURT: Any redirect?

22 MR. PAZAR: Yes, your Honor, if I may.

23 REDIRECT EXAMINATION

24 BY MR. PAZAR:

25 Q. Dr. Wolf, Mr. Tringali asked you about cost of diseases,

Wolf/redirect/Pazar

1 care of diseases that might be as much as HIV.

2 To your knowledge, are any of those other diseases
3 infectious?

4 A. No, they are not.

5 Q. Mr. Tringali also asked you a question concerning the
6 supposed rate of increase for HIV if these 215 people were to
7 come into the United States.

8 As to the one person who might become infected as a
9 result of one of those 215 having unprotected sex, what is the
10 increase in HIV as to that one person?

11 A. Obviously, if a given individual becomes infected, the
12 risk is, therefore, 100 percent. If a community becomes
13 infected or if the virus is widely transmitted in a community,
14 the risk is much higher than comparing an absolute number
15 across the country.

16 MR. PAZAR: No further questions, your Honor.

17 MR. TRINGALI: I have nothing, your Honor.

18 THE COURT: Thank you very much, Dr. Wolf.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 THE COURT: We have some housekeeping chores?

22 MR. KLINE: Yes, we have some housekeeping chores,
23 your Honor, deposition designations.

24 MR. TRINGALI: Why don't we do the exhibit first
25 that we started arguing about?

1 MR. KLINE: Exhibit H 1, your Honor, there was some
2 prefatory argument about Exhibit H 1. If I could, I would
3 like to ask my cocounsel, Mr. Filppu, to handle it.

4 THE COURT: What is H 1?

5 MR. FILPPU: H 1, your Honor, again, is the record
6 of the Well-Founded Fear Interview I believe of a particular
7 migrant whose deposition was taken on Guantanamo.

8 Portions of that deposition have been offered by the
9 plaintiffs with regard to that individual's persecution claim
10 and we simply want to offer Exhibit H 1 in order to show one
11 particular aspect of his claim which he testified -- which he
12 told the Immigration Service about which he did not testify --

13 THE COURT: H 1 is his deposition you are saying?

14 MR. FILPPU: Exhibit H 1 is the government's
15 proposed exhibit which is a certified authentic copy of a
16 Well-Founded Fear Interview of a Mr. Cog Jeanty and it simply
17 recounts -- it's the handwritten summary, the notes taken by
18 the asylum officer at the time he did the Well-Founded Fear
19 Interview and related papers. It's a fairly short exhibit.
20 It's eight pages in length.

21 THE COURT: Why are you offering that?

22 MR. FILPPU: Particularly, your Honor, the
23 individual was a soldier I believe in the Haitian army and he
24 left Haiti he testifies in part because of some orders he was
25 given that he didn't carry out.

1 And the exhibit will show that when he was
2 interviewed by the Immigration Service he testified to the
3 fact that he also killed some other people in Haiti and that
4 that is why he was found not qualified and that he was a
5 persecutor himself. That's simply the purpose of it.

6 THE COURT: You can't offer that, because that would
7 be rank hearsay.

8 MR. FILPPU: It shows the admissions made by the
9 individual to the Immigration Service contemporaneously
10 recorded by the officers at the time of the interview.

11 THE COURT: It shows that someone wrote something
12 down.

13 MR. FILPPU: It's an official record, your Honor,
14 maintained by the Immigration Service at the time. This is
15 what forms the basis for the decision with regard to the
16 individual.

17 MR. TRINGALI: Your Honor, the bottom line is that we
18 asked for these documents and Mr. Filppu has not said and
19 cannot say anything other than the fact that he refused to
20 produce them to us, saying, as I told you already, that they
21 were confidential and we couldn't have them. He cannot now
22 selectively introduce one of those.

23 THE COURT: Is that correct?

24 MR. FILPPU: Your Honor, we didn't turn over the
25 entire documents to the plaintiff, in part, because we didn't

1 know which migrants at Guantanamo would consent to the use of
2 their persecution stories as part of this litigation and
3 consent to the plaintiffs having it.

4 THE COURT: Is this one of the documents you
5 withheld?

6 MR. FILPPU: This particular individual did testify
7 in deposition and he was willing to explain in that context
8 his asylum story and plaintiffs have designated that as part
9 of their proof in this case. We simply want to be able to
10 complete the story.

11 MR. TRINGALI: Maybe he can now answer your
12 question, your Honor.

13 THE COURT: Is this one of the documents you refused
14 to give to the plaintiffs?

15 MR. FILPPU: It's my understanding -- now, I don't
16 know. Mr. Tringali is making a statement about whether he got
17 this or not.

18 We turned over documents --

19 THE COURT: Just a second. Let me ask you one
20 thing: When was this or documents such as this requested,
21 Mr. Tringali?

22 MR. TRINGALI: It was requested, your Honor, as
23 early as October 23, because that's when Mr. Filppu wrote me
24 that I can't have it.

25 THE COURT: This is 1993?

1 MR. TRINGALI: 1992.

2 MR. FILPPU: What he couldn't have, your Honor, was
3 the document with the name attached,. What the government did
4 was turn over documents of this character, but we deleted
5 identifying names.

6 THE COURT: My question is: Was this document one
7 of the documents that was not turned over to the plaintiffs?

8 MR. FILPPU: Well, it would have been turned over to
9 the plaintiffs in its complete form about ten days ago.

10 THE COURT: In other words, it was not turned over
11 to them?

12 MR. FILPPU: Not in the complete form. I don't know
13 whether this document was turned over previously with the name
14 redacted. It would have been our policy to release it if it
15 was in the material that we had at the time.

16 THE COURT: Your answer is you don't know?

17 MR. FILPPU: That's correct. The answer is I do not
18 know. But clearly we would have been willing to turn this
19 over with the name redacted.

20 THE COURT: My question is specific: Did you or
21 didn't you? Your answer is you don't know?

22 MR. FILPPU: That I don't know.

23 MR. TRINGALI: I think his answer is more specific
24 that he will say he knows he did not give it to me with the
25 person's name on it. That much he'll tell you.

1 MR. FILPPU: That is correct. Up until about ten
2 days ago we would not have turned this over with the
3 individual's name attached to it. We did not know that the
4 particular individual at the time was willing to have his
5 asylum or persecution claim made public. Now we know this
6 individual is. Consequently, we feel it is fair to the
7 government to complete the picture.

8 THE COURT: Mr. Tringali, do you know for a fact
9 whether this was turn over to you?

10 MR. TRINGALI: It was not turned over to us in
11 redacted form or nonredacted form. They did produce to us
12 some INS files.

13 THE COURT: I'm talking about this particular
14 document.

15 MR. TRINGALI: Not until we were on trial.

16 THE COURT: I'm not going to allow it, Mr. Filppu.

17 MR. FILPPU: Okay. Well, we understand the court's
18 ruling. We take objection.

19 THE COURT: Next.

20 MR. KLINE: Your Honor, we have the matter of
21 deposition designations.

22 As I understand from Mr. Guttentag, the parties can
23 agree now on all but two of the designations. I think we need
24 into record -- three? We will get to that, your Honor.

25 I can represent to you we agreed on everything but

1 two of the designations. The reason why counsel is raising
2 yet another one is these are ones that we will withdraw our
3 objections to their designating.

4 If we could, could we read into the record that, and
5 ask Mr. Guttentag to check me on this. The agreement with the
6 party -- by the parties about what has -- what designations
7 are being withdrawn and which objections are being withdrawn.

8 THE COURT: Okay.

9 MR. KLINE: The deposition of Scott Busby, page 149
10 line 12 to page 149 line 14. Plaintiffs withdraw the
11 designation of deposition.

12 MR. GUTTENTAG: For the record, that's Plaintiff's
13 Exhibit 75.

14 THE COURT: Okay.

15 MR. KLINE: Okay. Page 153 line 12 to page 155 line
16 1. Plaintiffs withdraw the designation of deposition.

17 Page 168 line 7 to page 168 line 9. Plaintiffs
18 withdraw the designation of deposition.

19 Doctor Ebbeling, that's Plaintiff's Exhibit 103, your
20 Honor. Page 10 line 2 to page 10 line 6. Defendants withdraw
21 their objection.

22 Page 10 line 8 to page 10 line 17, defendants
23 withdraw their objection.

24 Page 10 at line 20 to page 12 line 6, defendants
25 withdraw their objection.

1 Page 69 line 12 to page 69 line 19, defendants
2 withdraw their objection.

3 The deposition of John Cummings, Plaintiff's Exhibit
4 76, page 42 line 5 to page 42 line 19, plaintiffs withdraw the
5 designation of deposition.

6 Page 43 line 9 to page 43 line 17, plaintiffs
7 withdraw the designation of deposition.

8 Page 82 line 6 to page 82 line 8, plaintiffs withdraw
9 the designation of deposition.

10 The deposition of Joseph Reese, Plaintiff's Exhibit
11 83.

12 MR. GUTTENTAG: January 7, 1993, your Honor.

13 MR. KLINE: Page 12 line 2, defendants withdraw
14 their objection.

15 Page 14 line 5 to page 14 line 17, defendants
16 withdraw their objection.

17 MR. GUTTENTAG: I believe that's line 4 through 17.

18 MR. KLINE: There is a mistake in our objection. It
19 does say line 4. We do withdraw that objection.

20 MR. GUTTENTAG: Okay.

21 THE COURT: Okay.

22 MR. KLINE: That leaves the two items that the
23 parties cannot agree on, your Honor. One is from the
24 deposition of Scott Busby, that's Plaintiff's Exhibit 75. The
25 disputed page and line cites are page 145 line 8 to page 145

1 line 10.

2 Your Honor, I will hand that up to you and if you
3 would like or I can read it to you, whichever you refer.

4 THE COURT: You have an extra copy?

5 MR. KLINE: I do not now. This is from the
6 original, your Honor.

7 THE COURT: Okay.

8 MR. KLINE: Defendants' objection to the sentence
9 beginning on line 8 is that it is speculative.

10 THE COURT: Line 8 or 7?

11 MR. KLINE: It's 145 line 8, your Honor to page 145
12 line 10. There are three lines. The sentence we object to
13 begins on line 8. Defendants submit that it is nothing but
14 pure speculation. It should not be admitted.

15 THE COURT: 8 to line what?

16 MR. KLINE: 10, your Honor.

17 THE COURT: Okay. Who is this, Scott Busby?

18 MR. KLINE: He's a asylum officer.

19 MR. GUTTENTAG: Who spent some time at Guantanamo,
20 who interviewed numerous patients and who was in a supervisory
21 capacity there as a quality control officer and it's his
22 opinion, based on his experience.

23 MR. KLINE: I object to that, your Honor. It's not
24 his opinion based on his experience. If you read the context,
25 it's quite plain that he's trying to interpolate from general

1 information he might have, he might know about Haiti itself,
2 not from his own experiences.

3 MR. GUTTENTAG: Your Honor, I think the court can
4 give whatever weight it thinks is appropriate to what
5 Mr. Busby clearly states is the case.

6 If the court decides to give it no weight, it can do
7 so. If it gives it weight, it can do that.

8 He indicates he knows what the illiteracy is as a
9 whole.

10 THE COURT: I won't allow this. This is an
11 assumption.

12 MR. GUTTENTAG: Just the last sentence of the
13 answer?

14 THE COURT: Yes.

15 MR. GUTTENTAG: The assumption part?

16 THE COURT: Yes.

17 MR. KLINE: Your Honor, that brings us to the last
18 item of dispute. It is in the deposition of John Cummings,
19 Plaintiff's Exhibit number 76. The dispute centers on page
20 145 -- strike that ---the dispute centers on page 22 line 19
21 to page 23 line 11.

22 Your Honor, once again, this is nothing but pure
23 unadulterated speculation. It's obvious that Mr. Cummings is
24 testifying about something he doesn't know. He says several
25 times I don't know and only at prodding of opposing counsel

1 does he end up speculating.

2 With your Honor's permission, I shall hand this up.

3 MR. GUTTENTAG: Your Honor, Mr. Cummings, just to be
4 clear here, was supervising Mr. Reese who wrote the
5 memorandum, Plaintiff's Exhibit 22. That sets forth the
6 process at Guantanamo and the question goes on to ask what the
7 process will be to which screened in HIV positive Haitians who
8 satisfy the well-founded fear standard, what will happen to
9 them next and what plans, if any, the Immigration Service has
10 made in that regard.

11 And the question went to that, whether the INS had
12 made a determination at that time as to what would happen
13 next. As Mr. Kline correctly points out, Mr. Cummings, who is
14 a senior official at the INS, repeatedly answers that he
15 doesn't know or that plans have not yet been made.

16 That's what we're offering it for, at that time
17 Mr. Cummings did not have a plan or did not know of any plan
18 at the INS in regard to what would happen to Haitians who
19 satisfy the well-founded fear standard at Guantanamo.

20 THE COURT: From page 22 line what?

21 MR. KLINE: Page 22 line 19, your Honor, to page 23
22 line 11.

23 Of course, I degree with opposing counsel's
24 characterization of the testimony.

25 THE COURT: His answer here was less than a year.

1 MR. KLINE: Your Honor, please, if I may interrupt.
2 I think if you read the next question and the next
3 response --

4 THE COURT: You mean 12? I've read up until line
5 9. He is specific. Would less than a year be? Of course.

6 MR. KLINE: The next is, if I recollect --

7 THE COURT: Okay.

8 MR. KLINE: Line 11 of course is: I hope. I don't
9 know.

10 MR. GUTTENTAG: That's the point, your Honor, that
11 he didn't know.

12 THE COURT: It's difficult making a determination
13 without seeing the whole context.

14 How long is his testimony?

15 MR. KLINE: His testimony, your Honor, is
16 altogether.

17 THE COURT: This is a bench trial and you are not
18 dealing with a jury and I can determine what is admissible and
19 what is not admissible and what weight to give the testimony,
20 if any.

21 So, I think you're going to have to trust me with
22 that.

23 It's difficult for me to make a determination whether
24 it should be excluded or not because I'm taking it out of
25 context.

1 MR. KLINE: I truly can understand that, your
2 Honor. It is very clear in this particular instance that he
3 is doing nothing but purely and obviously speculating about
4 what might be the case. I hope and I don't know he says.

5 MR. GUTTENTAG: The point is that's what we were
6 inquiring into, whether the Immigration Service had a plan at
7 that time. Mr. Cummings was a senior person within the INS
8 and the question is did he know and the answer is they don't
9 know at that time, for what it's worth.

10 THE COURT: Is the rest of his testimony going to be
11 admitted?

12 MR. GUTTENTAG: There's no objection to any other
13 portion of the testimony from this deposition that we're
14 offering, your Honor.

15 THE COURT: Okay. I will exclude it and I'll read
16 all of his testimony and I'll make a determination. I'm going
17 to exclude it.

18 MR. GUTTENTAG: You're excluding the testimony?

19 THE COURT: No, not the testimony.

20 MR. GUTTENTAG: Denying the defendants' objection?

21 THE COURT: No. Granting the defendants' objection
22 from line 19 page 20 to line 11 on 23.

23 MR. KLINE: Thank you, your Honor.

24 THE COURT: Anything else?

25 MR. KLINE: That is it.

1 I believe there's a stipulation concerning exhibits,
2 your Honor. I do not know whether it has been handed in yet.

3 With the court's permission, this is the stipulation
4 you asked for concerning the exhibits between the parties.

5 If you notice the last item pertains to Defendant's
6 Exhibit H 1, which you ruled on earlier in this proceeding.

7 THE COURT: Okay. Everybody has a copy.

8 MR. TRINGALI: Actually, no.

9 MR. KLINE: We do not have a fully signed copy, your
10 Honor. We passed on our copy to plaintiffs and this is the
11 first we've seen it since we've given it to them.

12 THE COURT: You want to look it over, all parties
13 look it over.

14 MR. TRINGALI: We don't need to look it over. All
15 we need is a copy at some point.

16 THE COURT: Look it over. You can use the xerox
17 machine in chambers, if you want to, to run it offer.

18 Anything else?

19 MR. KLINE: No, your Honor.

20 THE COURT: Has the government rested?

21 MR. FILPPU: I don't believe the plaintiffs have
22 rested yet, your Honor.

23 MR. TRINGALI: I think we have tried to rest several
24 times. We've rested.

25 MR. FILPPU: Okay. We rest, too, your Honor.

1 THE COURT: Now, tomorrow both sides will have their
2 proposed findings of facts and proposed conclusions of law?

3 MR. FILPPU: Yes, your Honor. We'll have them in to
4 you by 5:00 p.m. And we hope earlier.

5 MR. TRINGALI: We have ours available for your Honor
6 now and we will provide them to the defendants when the
7 defendants provide us theirs.

8 THE COURT: Thank you very much.
9 Anything else?

10 MR. TRINGALI: Your Honor, we sent over to chambers
11 a courtesy copy of exhibits. We didn't include the videotape,
12 which is Plaintiff's Exhibit 105. We'll give it to you.

13 THE COURT: Is that it?

14 MR. TRINGALI: For us it is.

15 MR. FILPPU: I think that's it, your Honor. We'll
16 make a copy of the stipulation.

17 THE COURT: Okay. You can use the xerox machine in
18 chambers.

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-d</u>	<u>Re-X</u>	<u>Voir Dire</u>
BARBARA C. WOLF	1624	1639	1642		

E X H I B I T S

<u>Plaintiff/Govt</u>	<u>For Identification</u>	<u>In Evidence</u>
<u>Defendant</u>	<u>For Identification</u>	<u>In Evidence</u>
M 11		1626