

1                   Dominic Morgan - as on cross

2                   THE COURT: Is that correct?

3                   MS. FITZGERALD: I'm sorry. I --

4                   THE COURT: At the hearing before  
5                   Judge Maier?

6                   MS. FITZGERALD: July of '04.

7                   THE COURT: Was it in '04 or '05?

8                   MS. FITZGERALD: '05.

9                   THE COURT: Did Mr. Friedman  
10                  represent Mr. Morgan in that proceeding?

11                  MS. FITZGERALD: He did and perhaps  
12                  he can explain. There was a directive from  
13                  Judge Bernstein regarding his withdraw.

14                  DR. FRIEDMAN: Your Honor, at the  
15                  time after I was -- the plaintiffs had  
16                  received permission to add a defendant, not to  
17                  amend their complaint. I was added as a  
18                  defendant. I then filed a request to be  
19                  removed as counsel.

20                  There was a hearing in front of  
21                  Judge Bernstein. Mr. Morgan came also, so  
22                  did, I believe, Mr. Lapat. Judge Bernstein  
23                  listened to this and said to me, he said  
24                  "Counsel, I don't think you should be  
25                  withdrawing now. I'm going to deny your

1           Dominic Morgan - as on cross  
2           motion to withdraw, and I am going to change  
3           this. I am going to sign the order" -- which  
4           he did, giving me permission to withdraw at  
5           any time that I would in the future file a  
6           precipe based upon my feeling that I needed to  
7           withdraw.

8           He was talking about there's a big  
9           difference between getting involved with a  
10          case where you're sued and then as opposed to  
11          be -- already being involved in a case and  
12          then being sued and make that distinction.

13          I continued as counsel. There were  
14          certain meetings in chambers later with Judge  
15          Rizzo where I said -- one was a scheduled  
16          meeting. I believe it had something to do  
17          with plaintiff's again filing to have me  
18          removed as counsel.

19          We went in front of Judge Rizzo.  
20          Judge Rizzo said, "I'm very disturbed by the  
21          position the plaintiffs take in -- you as the  
22          defendant. I am equally disturbed by the  
23          position that you now have, but what I'm going  
24          to rule is that all deposition -- all these  
25          discovery requests do not have to be answered.

1                   Dominic Morgan - as on cross  
2                   None of them have to be answered. They were  
3                   all be taken by depositions duces tecum.  
4                   That's my deposition and Mr. Morgan's  
5                   deposition. All but -- duces tecum  
6                   deposition.

7                   THE COURT: You know what's  
8                   happening here? I have to calm this down.  
9                   We're getting into other areas that might be  
10                  extraneous, and I'm here to make certain  
11                  decisions. I don't want to start an infight  
12                  here about when -- between counsel here as to  
13                  what Mister -- what Dr. Friedman's status was.  
14                  We're going to get sidetracked. It's  
15                  tangential. Very well.

16                  Let's proceed.

17 BY MR. SILVERMAN:

18 Q     Mr. Morgan, do you see the request for  
19     admission?

20 A     Did you give me the book?

21 Q     It's on your desk. It's Tab 43. I opened it  
22     to that tab.

23             Did you find it?

24 A     Yes.

25                   MR. SILVERMAN: May I approach the

1                   Dominic Morgan - as on cross  
2                   witness, Your Honor?

3                   THE COURT: Yes.

4                   MS. FITZGERALD: Your Honor, may I  
5                   have a continuing objection to this line of  
6                   questioning for each admission.

7                   THE COURT: Very well.

8                   MS. FITZGERALD: Thank you.

9                   THE COURT: I understand your  
10                  position.

11                 BY MR. SILVERMAN:

12                 Q    Admission No. 8 in Plaintiff's Exhibit 433  
13                 states: "Admit that you were examined by  
14                 Dr. Labson (ph) for the purpose of seeking medical  
15                 treatment."

16                 Did I read that correctly?

17                 A    Yes.

18                 Q    "Admit that Dr. Labson -- that Dr. Labson did  
19                 not find anything improper about the Lasik  
20                 procedure performed to your eyes."

21                 Did I read that correctly?

22                 A    Yes.

23                 Q    Okay.

24                 "Admit that Dr. Labson" -- excuse me.

25                 "Admit that Dr. Labson did not state that you

1                   Dominic Morgan - as on cross

2       were not a proper candidate for Lasik surgery."

3           Do you see that?

4       A     Yes.

5       Q     "Admit that you were examined by Dr. Beer for  
6       the purpose of seeking medical treatment."

7           See that? That's No. 11: "Admit that  
8       Dr. Beer did not find anything improper about the  
9       Lasik procedure performed to your eyes."

10          Do you see that? That's No. 12.

11       No. 13: "Admit that Dr. Beer did not state  
12       that you were not a proper candidate for Lasik  
13       surgery."

14          Do you see that?

15       A     Yes.

16       Q     "Admit that you were examined by Dr. Dugan for  
17       the purpose of seeking medical treatment."

18          See that? That's No. 14.

19       A     Yes, sir.

20       Q     "Admit that Dr. Dugan did not find anything  
21       improper about the Lasik procedure performed to  
22       your eyes."

23          Do you see that?

24       A     Yes.

25       Q     "Admit that Dr. Dugan did not state that you

1                   Dominic Morgan - as on cross

2       were not a proper candidate for Lasik surgery."

3                   Do you see that?

4       A     Yes.

5       Q     No. 17: "Admit that you were examined by  
6       Dr. Harland for the purpose of seeking medical  
7       treatment."

8                   That's No. 17.

9       A     Yes.

10      Q     "Admit that Dr. Harland did not find anything  
11     improper about the Lasik procedure performed to  
12     your eyes."

13                  No. 19: "Admit that Dr. Harland did not state  
14     that you were not a proper candidate for Lasik  
15     surgery."

16                  No. 20: "Admit that you were examined by  
17     Dr. Deglin for purpose of seeking medical  
18     treatment."

19                  "Admit that Dr. Deglin did not find anything  
20     proper about the Lasik procedure performed to your  
21     eyes."

22                  Did I read that correctly?

23      A     Yes.

24      Q     "Admit that Dr. Deglin did not state that you  
25     were not a proper candidate for Lasik surgery."

1                   Dominic Morgan - as on cross

2           Did I read that correctly?

3    A    Yes.

4    Q    "Admit that you were examined by Dr. Belling  
5    (ph) for the purpose of seeking medical treatment."

6           Did I read that correctly?

7    A    Right.

8    Q    "Admit that Dr. Belling did not find anything  
9    improper about the Lasik procedure performed to  
10   your eyes."

11           Did I read that correctly?

12   A    Correct.

13   Q    "Admit that Dr. Belling did not state that you  
14   were not a proper candidate for Lasik surgery."

15           Did I read that correctly?

16   A    Right.

17   Q    No. 26: "Admit that you were examined by  
18   Dr. Tamara (ph) for the purpose of seeking medical  
19   treatment.?"

20           Did I read that correctly?

21   A    Correct.

22   Q    "Admit that Dr. Tamara did not find anything  
23   improper about the Lasik procedure performed to  
24   your eyes."

25           Did I read that correctly?

1                   Dominic Morgan - as on cross

2     A     Correct.

3     Q     No. 28: "Admit that Dr. Tamara did not state  
4     that you were not a proper candidate for Lasik  
5     surgery."

6             Did I read that correctly?

7     A     Correct.

8     Q     "Admit that you were examined by Dr. Feyol  
9     Silva (ph) for the purpose of seeking medical  
10    treatment."

11            Did I read that correctly?

12    A     Right.

13    Q     No. 30: "Admit that Dr. Feyol Silva did not  
14    find anything improper about the Lasik procedure  
15    performed to your eyes."

16            Did I read that correctly?

17    A     Right.

18    Q     "Admit that Dr. Feyol Silva did not state that  
19    you were not a proper candidate for Lasik surgery."

20            Did I read that correctly?

21    A     Right.

22    Q     "Admit that you were examined by Dr. Fisher  
23    for the purpose of seeking medical treatment."

24            Did I read that correctly?

25    A     Right.

1                   Dominic Morgan - as on cross

2       Q     No. 33: "Admit that Dr. Fisher did not find  
3       anything improper about the Lasik procedure  
4       performed to your eyes."

5                   Did I read that correctly?

6       A     Right.

7       Q     "Admit that Dr. Fisher did not state that you  
8       were not a proper candidate for Lasik surgery."

9                   Did I read that correctly?

10      A     Right.

11      Q     No. 35: "Admit that you were examined by  
12      Dr. Morior (ph) for the purpose of seeking medical  
13      treatment."

14                  Did I read that correctly?

15      A     Right.

16      Q     Admit that Dr. Morior did not find anything  
17      improper about the Lasik procedure performed to  
18      your eyes."

19                  Did I read that correctly?

20      A     Right.

21                                THE COURT: Mr. Silverman, what's  
22      the purpose of this? To show that these were  
23      requests for admissions that he never  
24      answered? Is that what you are trying to do?  
25      What you are driving at here?

1                   Dominic Morgan - as on cross

2                   MR. SILVERMAN: What I'm driving at,  
3                   Your Honor, is that he was examined by  
4                   numerous physicians at his request, none of  
5                   them, none of them found that there was  
6                   anything improper about the operation that was  
7                   performed and that he was a proper subject --

8                   THE COURT: He admitted this in  
9                   these requests for admissions?

10                  MR. SILVERMAN: Correct.

11                  MS. FITZGERALD: He didn't answer  
12                  them.

13                  THE COURT: Pardon me?

14                  MS. FITZGERALD: He did not answer.

15                  THE COURT: He didn't answer?

16                  MS. FITZGERALD: They are  
17                  unanswered.

18                  THE COURT: Very well.

19                  MR. SILVERMAN: Your Honor, if you  
20                  would prefer, I will just submit these.

21                  THE COURT: You may submit them.

22                  MR. SILVERMAN: And stop the --

23                  THE COURT: Yes. Let's move on.

24                  MR. SILVERMAN: Okay.

25                  MS. FITZGERALD: Just note my

1           Dominic Morgan - as on cross  
2           objection.

3           THE COURT: Yes. It's not  
4           admissible against your client.

5           MS. FITZGERALD: Thank you.

6           MR. SILVERMAN: I am moving for the  
7           admission in Plaintiff's Exhibit 43 of the  
8           Admissions No. 8 through 43.

9           THE COURT: Realizing the convoluted  
10          nature of this case -- and looks like almost  
11          half of Commonwealth pleas Court of  
12          Philadelphia was involved some way or another  
13          in it -- I can't attribute this to your  
14          client, Dr. Friedman, any of these -- what was  
15          not answered, what was answered.

16          I think we may be getting far afield  
17          here for the purpose of this trial. I've sat  
18          here patiently for almost a week, and I think  
19          we should start to finish up, wrap this up.

20          MR. SILVERMAN: I have one last  
21          question, and you can stay there, Mr. Morgan.

22          BY MR. SILVERMAN:

23          Q     Did you provide Brett Hansen --

24          THE COURT: I'm sorry. What was  
25          that?

1                   Dominic Morgan - as on cross

2       BY MR. SILVERMAN:

3       Q     Did you provide Mr. Hansen, who also has a  
4       website related to Lasik, with a CD of the  
5       information that you posted on your website?

6       A     I have an email -- no. Mr. Hansen downloaded  
7       my website multiple times.

8       Q     Did you ever send him a CD that contained the  
9       content of your website?

10      A     I don't remember sending him a CD.

11      Q     Have you spoken to Mr. Hansen?

12      A     When?

13      Q     At any time.

14      A     Years ago, yes.

15      Q     Not recently?

16      A     Not recently, no.

17      Q     Do you recall?

18      A     May I add, I do have an email that I  
19      requested -- I have it if you give me a few minute.

20      Q     Why don't you just describe it.

21      A     I did request Mr. Hansen remove Dr. Friedman's  
22      letters, and he refused. Actually, I can bring it  
23      up on the screen, if you'd like.

24                   THE COURT: Is that H-A-N-S-E-N?

25                   MR. SILVERMAN: Yes.

1 Dominic Morgan - as on cross

2 THE WITNESS: I have it on here, if  
3 you would like to read it.

4 BY MR. SILVERMAN:

5 Q You have requested Mr. Hansen to remove  
6 Mr. Friedman's letters?

7 A Yes.

8 Q But you didn't remove Mr. Friedman's letters  
9 from your website; did you?

10 A Yes, I most certainly did.

11 Q When did you do that?

12 A When Judge Maier ordered me to.

13 MR. SILVERMAN: No further  
14 questions.

15 THE COURT: Ms. Fitzgerald, do you  
16 have questions for Mr. Morgan?

17 MS. FITZGERALD: Just a few.

18 He can -- do you want him back up to  
19 the stand?

20 THE COURT: Whatever is easiest for  
21 both of you.

22 MS. FITZGERALD: Why don't you stay  
23 there. It's just a few.

24 BY MS. FITZGERALD:

25 Q Mr. Morgan, when Dr. Friedman sent you the

1                   Dominic Morgan - as on cross

2       December 4, 2003, letter, he was your attorney,  
3       correct?

4       A     Yes.

5       Q     And he was sending it to you as a client?

6       A     Yes.

7       Q     Okay.

8               You and you alone were responsible for the  
9       posting of that letter on your website?

10      A     As I stated many times, yes.

11      Q     Dr. Friedman did not tell you to post that  
12      letter, did not encourage you to post that letter,  
13      did not suggest you post that letter, correct?

14      A     No, he did not.

15      Q     And that would be true for the other three  
16      letters, the December 20, 2001, December 28, 2001,  
17      January 4, 2002, and the August 10, 2002 letter.

18      A     He did not give me permission to post or  
19      mention anything regarding posting them. I posted  
20      them on my own.

21                   MS. FITZGERALD: No questions, Your  
22                   Honor.

23                   THE COURT: Anything further?

24                   MR. SILVERMAN: No, Your Honor.

25                   THE COURT: Thank you, Mr. Morgan.

1 Dominic Morgan - as on cross

2 MR. SILVERMAN: Can we take a quick  
3 bathroom break?

4 THE COURT: Very well.

5 - - - - -

6 (Recess taken.)

7 - - - - -

8 MR. SILVERMAN: I move the admission  
9 of all of the documents that have been  
10 referenced. I think they have all been  
11 admitted by me, all the documents.

12 THE COURT: I believe so.

13 MR. SILVERMAN: And the Plaintiff  
14 rests.

15 THE COURT: Very good.

16 - - - - -

17 (Pause.)

18 - - - - -

19 MS. FITZGERALD: On behalf of  
20 Dr. Friedman, I make a motion for nonsuit as  
21 to the defamation count against him.

22 THE COURT: I think there's a  
23 factual issue here created concerning whether  
24 the publication -- his roll in the publication  
25 was malicious.

1                   Nevyas v. Morgan & Friedman

2                   MS. FITZGERALD: Can I --

3                   THE COURT: You just can't -- your  
4                   argument is that since he never -- he himself  
5                   never published it, Mr. Morgan did, he's  
6                   automatically absolved. I disagree. I  
7                   vigorously disagree with that because the  
8                   issue -- one of the issues in defamation is  
9                   the communication.

10                  Now, if it was not malicious by  
11                  clear and convincing evidence, then you  
12                  prevail; but it's clearly a -- I believe a  
13                  factual issue.

14                  MS. FITZGERALD: Could I just be  
15                  heard on that point, Your Honor?

16                  The case that the Plaintiffs rely on  
17                  is a case called Wills versus Hardcastle.  
18                  It's a 1902 decision --

19                  THE COURT: I am relying on  
20                  the -- I'm relying on all -- I'm not relying  
21                  on the 1902. I'm relying on all these cases  
22                  that I've -- that I cited in the -- in the  
23                  motions in limine on Monday. I'm relying on  
24                  what the law is that if you -- there's a  
25                  distinction between negligent

1                   Nevyas v. Morgan & Friedman  
2                   publication -- and publication is part of it.  
3                   Merely because the material is defamatory,  
4                   that's one step. This next step is was it  
5                   published. And in publishing it, if you're  
6                   using the negligence standard, was it  
7                   negligently published. If it's a malicious  
8                   standard, was it done maliciously.

9                   MS. FITZGERALD: Your Honor, the  
10                  cases that are out there are not cases where  
11                  an attorney communicates with a client. The  
12                  case that they rely on and cite is a case  
13                  where a defendant had a defamatory article, a  
14                  magazine article, and handed it to a magazine  
15                  editor.

16                  In that case the Court held the jury  
17                  may consider evidence that by handing that to  
18                  a publisher, a magazine publisher, the --

19                  THE COURT: Let me say this --

20                  MS. FITZGERALD: If you have an  
21                  attorney communicating with his client --

22                  THE COURT: That's a factor you can  
23                  argue and say was it malicious. After all, he  
24                  was -- Mr. Morgan wanted the -- wanted these  
25                  matters to the sent to the FDA, and as an

1                   Nevyas v. Morgan & Friedman  
2                   attorney, he gave copies to the -- to his  
3                   client. That's one argument you can make.

4                   Now, there's a counterargument here,  
5                   and I as the fact finder have to take this  
6                   into consideration.

7                   Let's strip this all bare at this  
8                   point. I have listened almost a week to all  
9                   of this testimony, but the issue I have to  
10                  decide is whether he knows he -- your client,  
11                  knows that Mr. Morgan has all these websites.  
12                  He knows that the first three letters were  
13                  published by Mr. Morgan on the website. Did  
14                  he know or have reason to know? That's the  
15                  negligence standard. But was it malicious for  
16                  him to give this letter even though he was his  
17                  client --

18                  MS. FITZGERALD: Your Honor,  
19                  respectfully, Your Honor, I think you're  
20                  analysis is a negligence analysis.

21                  THE COURT: It may be. It may be a  
22                  negligence analysis; if it's a negligence  
23                  analysis -- and here is where I think you  
24                  disagree -- you prevail.

25                  MS. FITZGERALD: I ask the Court to

1                   Nevyas v. Morgan & Friedman

2                   look at the --

3                   THE COURT: I believe there is -- if  
4                   this were a jury trial, I would have submit  
5                   the malicious aspect to the jury.

6                   MS. FITZGERALD: Okay.

7                   THE COURT: So I'm submitting it to  
8                   myself.

9                   MS. FITZGERALD: With --

10                  THE COURT: I deny your motion.

11                  And --

12                  MS. FITZGERALD: With the  
13                  understanding that the plaintiff must prove  
14                  that Dr. Friedman published these letters --

15                  THE COURT: By clear and convincing  
16                  evidence.

17                  MS. FITZGERALD: -- with actual  
18                  malice.

19                  THE COURT: The Blackwell case and  
20                  the Bartlett case.

21                  MS. FITZGERALD: Bartwell, correct.

22                  MS. LAPAT: Your Honor, if I may  
23                  just may respectfully state that I think the  
24                  Blackwell and Bartlett case talk about the  
25                  proof of actual malice must be by a clear and

1                   Nevyas v. Morgan & Friedman  
2                   convincing evidence. I don't believe that  
3                   there's anything in those cases that state  
4                   that the clear and convincing standards,  
5                   therefore, that spills over into other  
6                   aspects --

7                   THE COURT: I think it does spill  
8                   over to the publication. That's part of the  
9                   malice. Part of the malice is the  
10                  publication. You can't extricate the malice  
11                  from the publication.

12                  Something could -- something could  
13                  be defamatory and then you got it published,  
14                  and was that publication malicious in this  
15                  case? That is knowing falsehood, reckless  
16                  disregard. That's one aspect. The other is  
17                  was it malicious to give it to Morgan knowing  
18                  Morgan, Mr. Morgan, was going to publish it.

19                  All of that is in.

20                  MS. FITZGERALD: But there is  
21                  no -- Plaintiff has not put forth any evidence  
22                  that Doctor -- that anybody knew that  
23                  Dr. Friedman was -- that Mr. Morgan was  
24                  actually going to publish --

25                  THE COURT: Oh, please. Please.

1                   Nevyas v. Morgan & Friedman

2                   I've been listening to this case for a week.  
3                   Mr. Morgan's going to publish -- anything  
4                   about anything is going to be go on his  
5                   websites. The question is was there an  
6                   attorney-client relationship. The question is  
7                   did -- what Mister -- did -- what Mister  
8                   -- Dr. Friedman, was it malicious in turning  
9                   it over, and that's the issue.

10                   MS. FITZGERALD: One final point, I  
11                   asked the Court to consider the case of Wok  
12                   W-O-K, versus Teladine (ph) industries.  
13                   That's an Eastern District Case 2007, 475 --

14                   THE COURT: It's an Eastern District  
15                   case --

16                   MS. FITZGERALD: In that case, the  
17                   Court held an attorney's communication with  
18                   his client is absolutely privileged,  
19                   absolutely privileged.

20                   THE COURT: Yes, but this is an --

21                   MS. FITZGERALD: Even if the client  
22                   then goes and does --

23                   THE COURT: Turning it over -- I  
24                   agree if Mr. Friedman -- if Dr. Friedman after  
25                   he sent the letters to the FDA then turned it

1                   Nevyas v. Morgan & Friedman

2                   over to Mr. Morgan --

3                   MS. FITZGERALD: It's a complaint --

4                   THE COURT: If I want to get ahold  
5                   of those letters from Mr. Morgan -- let's say  
6                   there's no communication -- there's no  
7                   publication -- there's an attorney-client  
8                   privilege. I would agree with that. But  
9                   that's -- this went a step further. He  
10                  then -- he, Mr. Morgan, then publishing it.

11                  Now, the question is --

12                  MS. FITZGERALD: He also  
13                  published --

14                  THE COURT: -- what was  
15                  Dr. Friedman's motivation here? Was it  
16                  malicious to get back at the Nevyses because  
17                  he was being sued or --

18                  MS. FITZGERALD: No.

19                  THE COURT: -- was it he felt, look,  
20                  I represent him. He's got a right to this  
21                  letter --

22                  MS. FITZGERALD: Your Honor, he  
23                  wasn't sued.

24                  THE COURT: At the time?

25                  MS. FITZGERALD: No. Not at all.

1                   Nevyas v. Morgan & Friedman

2                   THE COURT: I said his client was  
3                   sued.

4                   MS. FITZGERALD: He filed --

5                   THE COURT: His former client.

6                   MS. FITZGERALD: He filed an answer.

7                   THE COURT: He wasn't sued at that  
8                   time?

9                   MS. FITZGERALD: No.

10                  THE COURT: Okay. That's a factual  
11                  issue you can raise.

12                  MS. FITZGERALD: I wasn't -- he  
13                  filed an answer and attached a counterclaim  
14                  and with that a number of documents, a lot of  
15                  the material he had since gotten from the FDA  
16                  and filed it and gave it to Mr. Morgan.  
17                  Mr. Morgan got a copy of the answer.

18                  THE COURT: Okay.

19                  MS. FITZGERALD: It's public record.

20                  THE COURT: That's what I'm not  
21                  clear of. You better have your client  
22                  testify.

23                  MS. FITZGERALD: Mr. Morgan  
24                  testified to it.

25                  THE COURT: We may be going outside

1                   Nevyas v. Morgan & Friedman  
2                   the record here.

3                   MS. FITZGERALD: No. No.  
4                   Mr. Morgan testified yesterday afternoon he  
5                   got the answer -- and this was what the answer  
6                   looked like. It had a ton of exhibits. That  
7                   letter was one exhibit.

8                   Simply by the fact that it's already  
9                   judicial record, it's privileged. And then  
10                  it's privileged for the additional reason that  
11                  it's an attorney-client communication.

12                  THE COURT: It's not privileged to  
13                  put it on the internet.

14                  MS. FITZGERALD: There's no evidence  
15                  that Dr. Friedman did.

16                  THE COURT: I agree.

17                  MS. FITZGERALD: Non whatsoever.

18                  THE COURT: I agree.

19                  MS. FITZGERALD: That has to be  
20                  shown by clear and convincing evidence.

21                  THE COURT: I agree, but it's a jury  
22                  question. That's what I keep saying here.

23                  You want me to direct the verdict in  
24                  favor of Dr. Friedman. Under no circumstances  
25                  would I do that. There's plenty of evidence

1                   Nevyas v. Morgan & Friedman

2                   here for a jury to consider.

3                   I'm in the saying at this point I'm  
4                   making that ruling. I'm merely saying there's  
5                   plenty of evidence in this case for a jury to  
6                   make that determination.

7                   MS. FITZGERALD: Okay.

8                   Can I have a clarification -- are  
9                   you -- have you held that the communications  
10                  to the FDA are privileged?

11                  THE COURT: You see you, want me  
12                  to --

13                  MS. FITZGERALD: All right. I --

14                  THE COURT: You want to put me in a  
15                  bind.

16                  MS. FITZGERALD: I want to  
17                  understand before I put my case on.

18                  THE COURT: That's not the end of  
19                  it. The end of it is some certain other  
20                  things happened.

21                  MS. FITZGERALD: Okay.

22                  THE COURT: If that's all that was  
23                  done, yes. But that's not what was done here,  
24                  and I'm not -- I'm not -- the one thing the  
25                  jury is not going to do is compartmentalize