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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CASE NO. 03-4837

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UNITED STATES OF AMERICA
EX REL. DR. HELENE Z. HILL,

Plaintiffs,

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-v-

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UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY,
DR. ROGER W. HOWELL and
DR. ANUPAM BISHAYEE,

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Defendants.

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DEPOSITION UPON
ORAL EXAMINATION OF:
DR. STEPHEN R. BAKER

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TAYLOR & FRIEDBERG
Certified Shorthand Reporters
120 Washington Street
Morristown, New Jersey 07960

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TRANSCRIPT of the deposition of DR.
STEPHEN BAKER, called for Oral Examination in the
above-entitled matter, said deposition being
taken by and before TONI A. HENRIQUEZ-GIL, a
Certified Shorthand Reporter and Notary Public of
the State of New Jersey, License No. XI 00743, at
the Law Offices of McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP, Gateway 3, Newark, New Jersey
07102, on Monday, December 29, 2008, commencing
at 10:05 in the forenoon.

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A P P E A R A N C E S:

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ALSO PRESENT:

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Dr. Helene Z. Hill

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WITNESS DIRECT CROSS REDIRECT RECROSS

DR. BAKER

By: MR. PINCUS 5

E X H I B I T S

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1 S T E P H E N B A K E R,
2 Department of Radiology
3 Room C3-20, University Hospital
4 150 Bergen Street
5 Newark, NJ 07103-2406

6 Having been duly sworn by the Notary testified
7 under oath as follows:

8

9 DIRECT EXAMINATION BY MR. PINCUS:

10 Q Good morning, Dr. Baker, I know
11 I introduced myself earlier. I'm Sheldon Pincus
12 and I'm representing Dr. Hill in this matter
13 that's been brought against the university, Dr.
14 Howell and Dr. Bishayee. I'm here to take your
15 deposition today. Have you ever had your
16 deposition taken before?

17 A Yes, I have.

18 Q Let me just give you my ground
19 rules then. I simply want you to answer my
20 questions to the best of your ability. If you
21 don't know the answer to a question, that's all
22 you need tell me. Similarly, if you don't
23 remember the answer to a question, I'd ask you to
24 keep in mind the distinction between not knowing
25 and not remembering. Not knowing means we can

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1 sit here all day and you're not going to know the
2 answer. Not remembering I may be able to jog or
3 refresh your memory by orienting you to an event
4 or to a document. If you need me to repeat or if
5 you don't understand my question, please don't
6 hesitate to tell me. I'm not here to trick you,
7 I simply want to get answers to the questions as
8 best you can, and, you know, and I will be happy
9 to repeat it. Do you understand that?

10 A Yes.

11 Q During the course of this
12 deposition, Mr. Leonard, your counsel, may have
13 an objection to a question or questions that I
14 may ask. If that happens, kindly hold your
15 response providing him the opportunity to set
16 forth his objection on the record. He will then
17 direct you whether to answer the question or not.
18 It's also important, in as much as everything
19 that you say and I say is being taken down by our
20 stenographer, that you afford me the courtesy of
21 allowing me to completely ask my question. I can

22 assure you that if you do that, I will similarly
23 afford you the courtesy of giving you the
24 opportunity to respond fully to my question. Do
25 you understand that?

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1 A Yes.

2 Q You also need to give me a
3 verbal response because nods or gestures are
4 difficult for us to transcribe. If, it's very
5 natural, if I characterize or describe a nod or
6 gesture or remind you to give a verbal response,
7 please don't take offense, it's just that we want
8 to have an accurate record of my questions and
9 your responses. Everything, as I said,
10 everything that is said here today, unless we go
11 off the record, is going to be transcribed. And
12 this proceeding, while somewhat informal here in
13 a conference room, has the solemnity as if we
14 were in a court of law. You're under oath, it's
15 important that you tell the truth. Do you
16 understand that?

17 A Yes.

18 Q Do you have any questions of me
19 insofar as how the deposition will proceed or any
20 of my instructions?

21 A I do not.

22 Q You'll be able to abide by
23 those?

24 A Yes.

25 Q Are you on any medications today

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1 that would affect your ability to answer my
2 questions fully and truthfully?

3 A No.

4 Q Have you reviewed anything in
5 advance of appearing at this deposition?

6 A No.

7 Q What is your present title, sir?

8 A I'm the Chairman of Radiology
9 and Associate Dean for Graduate Medical Education
10 and Professor of Radiology at New Jersey Medical
11 School.

12 Q How long have you been chair of
13 the radiology department?

14 A Eighteen years.

15 Q And the Associate Dean of the
16 graduate education program, did you say?

17 A Of Graduate Medical Education.

18 Q Medical Education?

19 A Six years.

20 Q And as a professor?

21 A Eighteen years.

22 Q Is that eighteen years in the
23 rank of full professor?

24 A Well, it's 22 of, my previous
25 position was at Einstein where I was professor

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1 there for four years.

2 Q And in your capacity as a
3 Chairman of the Radiology Department, did you
4 have any responsibility or supervisory
5 responsibility over Dr. Howell?

6 A Yes.

7 Q Can you describe for me your
8 responsibilities in regards to supervision of Dr.
9 Howell?

10 A Well, like any other physician
11 in my department, *I'm responsible for them to*
12 *maintain their position in an ethical manner.*
13 I'm responsible for evaluating them at least
14 annually. And I'm responsible for making sure
15 that they *obey the rules and regulations of the*
16 *institution.* I'm also in charge of deciding
17 whether they would be promoted or punished.

18 Q Am I correct that Dr. Howell's
19 present title is, give me a second, please, he's
20 the chief of the Division of Radiation Research,
21 is that correct?

22 A That's correct.

23 Q If you are the chairman of the
24 Radiology Department and he's chief of the
25 Division of Radiation Research, can you briefly

0010 describe for me the hierarchy of things in terms
1 of how he fits below you?

2 A Yes, *he's responsible for all*
3 *matters relating to radiation research, which is*
4 *one of the components of the department. And,*
5 *therefore, reports to me both in his capacity as*
6 *a researcher and his capacity as chief of that*
7 *particular division of our department.*

8 Q How many other chiefs are there
9 within your department, if you know?

10 A There's vice chairs, I have
11 three vice chairs.

12 Q What is the relationship between
13 someone who is designated to serve in the
14 position of vice chair verses chief?

15 A There's no strict relationship
16 there. It's, the three vice chairs all have
17 responsibilities separate and distinct in terms
18 of the disciplines they supervise than does Dr.
19 Howell.

20 Q So, the terms are not
21 synonymous, first of all, is that correct?

22 A They're not synonymous, but they
23 really don't differ substantively regards to what
24 his responsibility is verses someone who's

0011 responsible for the clinical work.

1 Q Can you just briefly identify
2 for me by way of title what the other vice chairs
3 are by way of the section responsibilities?

4 A Sure, Dr. Malgin(ph) is a vice

6 chair for the clinical operation.
7 Q Okay.
8 A And Dr. Zuckier is vice chair of
9 nuclear medicine.
10 Q And the third?
11 A And the third will be Dr.
12 Plaxin(ph), who will become vice chair, it's in
13 the process, for administrative matters.
14 Q Now, within the Division of
15 Radiation Research, are there different sections
16 to your knowledge?
17 A It's not divided into sections.
18 Well, yes, we do have people -- let me try to
19 answer that question the way I perceive it. They
20 have different research interests, so that there
21 would be an individual who would be involved in
22 radiation research in terms of physics and others
23 in terms of biology and others in terms of
24 functional imaging, and another one in terms of
25 issues related to the juncture of psychiatry and

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1 radiology. So, they don't have specific titles,
2 administrative titles, they have specific
3 interests to, and they are now in that section.
4 Q Are you aware of the fact that
5 at one point in time Dr. Hill served as head of
6 the section of Cancer Biology?
7 A Yes.
8 Q And was that prior to the time
9 that Dr. Howell became chief of the Division of
10 Radiation Research to your knowledge?
11 A To my knowledge, that is
12 probably the case, I don't recall.
13 Q So, when she was head of the
14 section of Cancer Biology, were the sections
15 synonymous in what you are describing now in
16 terms of these interests? How is the hierarchy
17 set up at that time if you could tell me?
18 A It would be synonymous in terms
19 of interest not in terms of strict stratified
20 administrative responsibilities.
21 Q Now, are you familiar with the
22 term principal investigator insofar as grants?
23 A Yes.
24 Q Insofar as an individual
25 designated as a principal investigator at UMDNJ,

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1 what is your understanding in terms of the
2 responsibilities of that individual?
3 A The responsibilities
4 functionally be in terms of managing the grant.
5 In terms of the reward system, which is an
6 important point of that, they would be the
7 grantee of that award, and that would devolve
8 upon their responsibilities, of course, but on
9 the recognition of those responsibilities by

10 everyone else who evaluates the performance of
11 that individual as a researcher.

12 Q And to your knowledge within
13 your department, other than Dr. Howell, have
14 there been other individuals who have received
15 grants from the National Institute of Health for
16 research purposes?

17 A Yes.

18 Q And insofar as grants that are
19 provided from the National Institute of Health,
20 do you have any responsibility insofar as the
21 application process for that grant?

22 A I sign off on those grants.

23 Q That's what I wanted to know.

24 A Yes, I have to sign off because
25 a chair must sign off on each grant.

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1 Q Do you know what the purpose of
2 that is?

3 A Well, I think for accounting
4 purposes and oversight in case there are issues
5 related to those grants, then there has been,
6 it's been looked at by a, someone who is not the
7 author of the grant before it's submitted. And
8 it makes good sense administratively.

9 Q Insofar as your responsibilities
10 in terms of signing off, is that known as an
11 assurance to your knowledge?

12 A I'm not familiar with the term.

13 Q Have you in your capacity as the
14 head of the radiology department familiarized
15 yourself with the rules and regulations that the
16 National Institute of Health has promulgated
17 insofar as the grant process?

18 A I'm not intimately familiar with
19 it. All my grant proposals are looked at by
20 administrator in my department who has a long
21 experience, and then they're looked at by a grant
22 department of the medical school.

23 Q The grant administrator you
24 said, who is that?

25 A I have an administrator of my

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1 department who has a long history of becoming
2 familiar with some of the mechanical issues
3 related to grants and their appropriate filling
4 out of the forms, that's Ms. Karel Campbell,
5 K-A-R-E-L, C-A-M-P-B-E-L-L, who is my
6 administrator.

7 Q And then you said there is a
8 grant committee, was it?

9 A There is an actual Associate
10 Dean for research who will look at each of these
11 grants as well.

12 Q But ultimately if a professor or
13 someone else of rank within your department
14 obtained such a grant, you actually have to sign

15 off on it?

16 A I do.

17 Q Is it your understanding that
18 insofar as the submission of the grant, the
19 individual who's looking to serve as the
20 principal investigator has to certify that the
21 application is true and complete and accurate to
22 the best of his or her knowledge?

23 A I believe that's correct.

24 Q Was it your understanding that
25 they are made aware of the fact that any false,

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1 fictitious or fraudulent statements or claims may
2 subject the principal investigator to criminal,
3 civil or administrative penalties?

4 MR. LEONARD: Object to form,
5 you can answer if you can.

6 A Could you repeat the question?

7 Q Sure, is it your understanding
8 that in submitting such a grant, the individual
9 who's seeking to serve as a principal
10 investigator does so with knowledge that any
11 false, fictitious or fraudulent statements or
12 claims may subject he or she to either criminal,
13 civil or administrative penalties?

14 A I'd agree with that.

15 Q Is it your understanding that
16 the principal investigator in submitting the
17 grant agrees to accept responsibility for the
18 scientific conduct of the project?

19 MR. LEONARD: Objection to form,
20 you can answer it if you can.

21 A Yes.

22 Q Is it your understanding that
23 the principal investigator insofar as submitting
24 a grant agrees to provide progress reports if the
25 grant is awarded as a result of the application?

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1 A Yes.

2 Q Now, within your department, you
3 said that there are other individuals who have
4 received grants from NIH, correct?

5 A Yes.

6 Q And I take it there are
7 individuals who have received research grants
8 from other institutions or entities?

9 A Yes.

10 Q During the time that this matter
11 was, has been going on and time for which it
12 relates, Dr. Howell, for all intense and
13 purposes, had his lab with either one or at most
14 two post doctorate employees, you know, working
15 with him on the grant, is that your
16 understanding?

17 MR. LEONARD: Objection to form,
18 you can answer it.

19 A I don't know what you mean by

20 all intense and purposes.
21 Q Fair enough, I'll rephrase the
22 question. During the time that the subject
23 matter of this suit was transpiring, do you know
24 how many post docs Dr. Howell had working with
25 him on this grant?

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1 A No.
2 Q Have you ever met Dr. Marck
3 Lenarczyk?
4 A I'm sure I have. I met all of
5 his post docs.
6 Q So, you met Dr. Lenarczyk?
7 A If that was one of them, I don't
8 recall all the names. Unless I have something
9 else to jog my memory, but if it was a post doc,
10 I would have met them.
11 Q Same question, do you recall
12 meeting Dr. Anupam Bishayee?
13 A Yes.
14 Q And I believe you knew Dr. Hill
15 working in his lab?
16 A Yes, I knew Dr. Hill.
17 Q What was your understanding
18 insofar as what Dr. Hill was doing insofar as the
19 grant that is the subject matter of this suit?
20 A I am not sure.

21 MR. PINCUS: Can we mark this as
22 Baker-1?
23 (Whereupon, Exhibit Baker-1,
24 Research Associate Job Description, is received
25 and marked for identification by the reporter.)

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1 Q Dr. Baker, I'm going to show you
2 what we've marked for identification as Baker
3 Exhibit 1, that's that yellow sticker that's on
4 the lower right hand corner of the document that

5 I placed before you. Am I correct that post doc
6 working for a grant is known as a research
7 associate at the UMDNJ?

8 A I can't answer that question
9 precisely. Seems the two terms would go
10 together. There could be some overlap, and if
11 you will, some areas where they don't coincide.
12 So, the term seems to be correct, but I can't
13 give you an authoritative answer as to whether
14 that means that every post doc is a research
15 associate or every associate research is a post
16 doc. So, I really can't answer that question.

17 Q Fair enough, do you recognize
18 this document as the job description for a
19 research associate at University Medicine and
20 Dentistry of New Jersey?

21 A Would you allow me to read it?

22 Q Oh, of course.

23 A Okay.

24 Q Do you recognize the document?
25 A I don't recognize the document,
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1 per se, if that's your question.

2 Q That was my question. So, you
3 don't know whether this is, am I correct, that
4 you can't tell me whether this was the job
5 description that was applicable to the post
6 doctoral fellows employed in Dr. Howell's
7 laboratory?

8 A The document speaks to the
9 process, I don't know if this is the document.

10 Q Fair enough, I'll take that
11 back.

12 MR. PINCUS: Mark these as
13 Baker-2 and then 3.

14 (Whereupon, Exhibit Baker-2,
15 Policy, is received and marked for identification
16 by the reporter.)

17 (Whereupon, Exhibit Baker-3,
18 Policy, is received and marked for identification
19 by the reporter.)

20 Q Dr. Baker, I'm going to show you
21 copies of two policies, Baker-2 and Baker-3,
22 that's 2 and that's 3.

23 MR. LEONARD: Before you begin
24 questioning, I note that there's no bates
25 numbers.

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1 MR. PINCUS: I just wanted to, I
2 was about to tell you that I pulled these off of
3 the university's website the other day and did
4 not have the opportunity to bates stamp them, but
5 I will follow it up, okay?

6 MR. LEONARD: Okay.

7 Q You let me know when you're
8 done, Dr. Baker.

9 A Okay.

10 Q Okay, fine, let's first take
11 Baker-2. This policy deals with establishing
12 internal control procedures to assure appropriate
13 review and approval of grant and contract
14 proposals. Do you recognize this document?

15 A It seems to be university
16 policy. Do I recognize it as having this one
17 look like a report or a policy I've seen before,
18 I don't recall seeing it before in this fashion,
19 but it seems a university policy.

20 Q Okay. And I note that, and then
21 if you go to Baker-3, this policy is related to
22 establish respective responsibilities of the
23 grants and contracts department and the principal
24 investigator in the administration of grants and
25 contracts. Have you seen this document before?

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1 A As in the other document, I

2 might have seen this before, I don't recall
3 seeing it, but I have no reason to doubt its
4 applicability and legitimacy.

5 Q Is it available to individuals
6 on the university's website, is that to your
7 understanding reflective of it being a current
8 policy and procedure, if you know?

9 A If it's on the website, it
10 probably is a current policy. If it's on the
11 website, it is a policy unless it's been
12 superseded.

13 Q These two documents, Baker-2 and
14 Baker-3, both on the bottom of the first page and
15 continuing on to the tops of the second page,
16 identify and describe what a principal
17 investigator is responsible for. Do you see
18 where I'm referring to?

19 A Yes, I do.

20 Q Okay, my question is, to your
21 knowledge, are there any other documents
22 applicable to individuals employed within your
23 department or the university in general that
24 describes the role and responsibilities of the
25 principal investigator?

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1 A Well, this is a generic
2 statement. I know that there's one other thing
3 that's not included in here if we're dealing with
4 human subjects. I don't see the institutional
5 review board. There should probably be an
6 approval from the institutional review board. I
7 don't see that. And if it involved animals,
8 there would probably have to be a signoff and the
9 responsibility of the principal investigator for
10 that function.

11 Q Is there another document that
12 you were referring to by way of responding to my
13 question?

14 A I'm quite sure there would be,
15 there would have to be policies and procedures
16 related to it.

17 Q So, you're saying that to your
18 knowledge there is another university policy
19 dealing with grants related to involvement of
20 human subjects, was that your statement?

21 A And there would be one and there
22 would be one relating to animals as well. And
23 there may be others, but those are the one's that
24 come to mind because that is a subject for the
25 research that I oversee.

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1 Q Are there any other documents
2 that you're aware of, whether it be policies,
3 procedures, guidelines or other documents that
4 describe the roles and responsibilities of
5 principal investigators?

6 A There may be, but I don't recall

7 which ones there are if there are others.
8 Q I'll take those, please. Thank
9 you very much. So, you indicated to me in some
10 of my earlier questions that there are other
11 individuals who have research grants within your
12 department. Insofar as laboratory research, can
13 you give me the range or the number of post docs
14 that individuals doing research grants within
15 your department have under them? I mean is it
16 one, ten, you know --

17 MR. LEONARD: Objection.
18 Q What's the smallest amount of
19 post docs --
20 MR. LEONARD: Objection to form.
21 MR. PINCUS: I'll rephrase the
22 question.

23 Q What's the range of post docs?
24 A I'd hazard a guess it would be
25 zero to three.

0025

1 Q Zero to three?
2 A For each of the investigators,
3 but that varies from year to year or within a
4 year. So, that's my best guess.
5 Q Has there ever been an occasion
6 where there have been more than three that you
7 can recall?
8 A I can't recall that specifically
9 or not recall that specifically.

10 MR. PINCUS: Baker-4, please.
11 (Whereupon, Exhibit Baker-4,
12 Conduct of Research Guidelines, is received and
13 marked for identification by the reporter.)
14 Q Dr. Baker, I'm going to show you
15 what I've marked for identification as Baker-4.
16 Again, after you've had a moment, can you
17 identify what this document is? Are you ready,
18 sir?

19 A Yes.
20 Q Can you identify this document?
21 A Yes, it's the guidelines for the
22 conduct of research.

23 Q And a couple of moments ago when
24 I showed you Baker-2 and Baker-3, which were two
25 university policies, you mentioned things about

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1 human subjects research and animals research, and
2 I note that in the table of contents there are
3 two subject headings relating to that. Can you
4 tell me, please, what's the difference between
5 policy and guidelines?

6 A No, this word says guidelines,
7 but this is in essence rules of engagement.

8 Q Meaning?

9 A That it sets out in this
10 document how the researchers should proceed in
11 each of these areas. There may be some

12 variations with it, but the researchers should
13 know that what's specified in here is the
14 procedures he or she should undertake for each of
15 these matters, consonant with policy of UMDNJ.

16 Q When you say the policy of
17 UMDNJ, are those Baker-2 and Baker-3 that we were
18 looking at or are you referring to other
19 policies?

20 A I would say the broad concept of
21 acting ethically and within the appropriate rules
22 as specified both internally and required of
23 individuals seeking grant funding from other
24 sources. So, it would seem to me that they are
25 related.

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1 Q And do you recognize this as the
2 current version of the guidelines?

3 A This seems to be the most
4 current version of the guidelines. I don't know
5 if there is one that's more current, this is from
6 July of 2006. There may be additional one's.
7 This is the one that's from July, 2006, that's
8 all I can say.

9 Q I understand that. And do you
10 know when this was revised in July, 2006, what
11 guidelines they served to revise, by way of date?

12 A I don't know for what it was
13 revised from.

14 Q To your knowledge, do the
15 unrevised version of the guidelines still exist
16 or do you have a copy of those in your possession
17 or your offices?

18 A No, I do not know. I would
19 doubt if there was a previous version they would
20 still apply given this revision. I don't know
21 what it was revised from. I probably do not have
22 a copy of the previous one's that I have access
23 to.

24 Q Who would have a copy of that,
25 if you know?

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1 A Well, my administrator would
2 have it.

3 Q That was Ms. Campbell?

4 A Yes.

5 MR. PINCUS: I don't know, I'll
6 follow it up, but I'm going to ask to have a
7 copy, to the extent that they exist, to the
8 guidelines for the conduct of research that was
9 applicable from 1999 up through 2006, okay?

10 MR. LEONARD: Okay.

11 Q I'll take that back, Dr. Baker.
12 Thank you. By the way, Dr. Baker, one
13 instruction I failed to tell you. This isn't a
14 marathon session, if you need a break, don't
15 hesitate to ask.

16 A Sure.

17 MR. PINCUS: Baker-5.
18 (Whereupon, Exhibit Baker-5,
19 Grant Application involving lawsuit, is received
20 and marked for identification by the reporter.)
21 Q Dr. Baker, I'm going to show you
22 what we've marked for identification as Baker
23 Exhibit 5. And I represent to you that this is a
24 copy of the grant application that forms the
25 subject matter of this lawsuit involving Dr.

0029

1 Howell and Dr. Bishayee at school. Have you ever
2 seen this document before?

3 A I can't say that I have, it's a
4 long time ago.

5 Q I understand. In the bottom
6 right hand corner of the first page of that
7 document that's bates stamped 000094, do you see
8 where I'm referring to, sir?

9 A Yes.

10 Q Below what appears to be Dr.
11 Howell's signature is someone else's signature,
12 is that your signature?

13 A Doesn't look like my signature.

14 Q You identified earlier that you
15 have as part of your duties and responsibilities,
16 you sign your approval on an application for a
17 grant before such time in this case as this would
18 have been submitted to the National Institute of
19 Health, do you recall testifying to that affect?

20 A Yes.

21 Q When you sign off your approval,
22 is it on the grant itself or is that a separate
23 document?

24 A Separate document that doesn't
25 look like this.

0030

1 Q Is it, does the document have a
2 particular name or title or form that you use?

3 A I recognize it when I see it, I
4 don't remember the title of it. I look to where
5 I'm supposed to sign, I don't look at the top.

6 Q I understand that. And when you
7 sign your approval, is it your understanding that
8 that is a document which must be maintained by
9 either your office or the university as a record
10 relating to the grant?

11 A Absolutely.

12 Q So, that approval that you
13 signed off on this grant would still exist?

14 A Yes.

15 Q And Ms. Campbell would have that
16 in her possession?

17 A Yes.

18 MR. PINCUS: I'll ask for a copy
19 of that, John.

20 Q Now, while we're here, I'd like
21 you to turn to Page 29 of the grant, and in

22 particular what is denoted as figure seven, and
23 that would be the document bates stamped 000122?

24 A 122?

25 Q 122.

0031

1 A How do we know it's 29?

2 Q Because on the bottom of the

3 grant itself on each page --

4 A Oh, I see it now.

5 Q Just giving you two references.

6 A Okay.

7 Q See where I'm referring to

8 figure seven?

9 A Yes, now I do.

10 Q To your recollection, *did Dr.*
11 *Howell ever inform you that the results depicted*
12 *in this figure, and in particular in the B graft*
13 *of this figure, conflicted with results from a*
14 *similar experiment that had been performed*
15 *earlier by Dr. Hill?*

16 A No.

17 MR. LEONARD: Objection to form,
18 you can answer.

19 A No, I don't recall he ever
20 informed me about that.

21 Q And would your response be the
22 same whether I asked the question whether he
23 informed you before the submission of this grant
24 or after, after the submission?

25 A It was a very specific issue

0032

1 related to the science of this case. I don't
2 think I was informed about it one way or the
3 other that I can recall.

4 Q Fair enough.

5 A I meant to say grant not case.

6 Q Grant, okay, by all means. *Did*
7 *he ever tell you at or about the time this grant*
8 *was being submitted that Dr. Hill had had*
9 *observed certain dishes and that she had*
10 *suspected, dishes used during experimentation,*
11 *and that she had concerns that the post doc, Dr.*
12 *Bishayee, had fabricated the results that were*
13 *ultimately presented in figure seven?*

14 MR. LEONARD: Objection to form,
15 you can answer.

16 A No, I don't recall that.

17 Q Do you recall having any
18 conversations with Dr. Howell in which he
19 conveyed to you suspicions about fabrication data
20 that had been related to him by Dr. Hill?

21 A No.

22 MR. PINCUS: Baker-6.

23 (Whereupon, Exhibit Baker-6,
24 Experiment document, is received and marked for
25 identification by the reporter.)

0033

1 (Whereupon, Exhibit Baker-7, Dr.
2 Hill's memo, is received and marked for
3 identification by the reporter.)

4 Q Dr. Baker, I'm going to show you
5 what I've just marked for identification as
6 Baker-6. Have you ever seen this document
7 before, did you have an opportunity to look at
8 it?

9 MR. LEONARD: The question is do
10 you remember seeing this document?

11 Q Do you remember seeing this
12 document?

13 A I don't remember seeing this.

14 Q I just want to orient you by way
15 of time. This is an experiment, so you know,
16 what has been described to us as one that was
17 performed by the post doc, Dr. Bishayee,
18 commencing on or about September 20, 1999. It's
19 evident from looking at the protocol for the
20 experiment that is on the document that is bates
21 stamped 13911 in the upper right hand corner. Do
22 you see where I'm referring to?

23 A Yeah, I see that, but where's
24 13911?

25 Q All the way down on the bottom.

0034

1 A Okay.

2 Q Now, if you then jump ahead to
3 two pages to 913, B013913, all the way down at
4 the bottom.

5 A Yes.

6 Q There's a reference to colony
7 counting on October 11, 1999, do you see where
8 I'm referring?

9 A Yes, I do.

10 Q I'm going to show you what's
11 been marked as Baker-7, it's a memo that Dr. Hill
12 wrote to herself in October of 1999. Have you
13 ever seen this document?

14 A I don't recall seeing this
15 document.

16 Q I'll represent to you that this
17 sets forth her observation with regard to the
18 experiment that I placed before you involving Dr.
19 Bishayee and which has been identified as Exhibit
20 Baker-6. Does this refresh your recollection in
21 any fashion insofar as any discussions that you
22 may have had with Dr. Howell regarding suspicions
23 that were related to him by Dr. Hill?

24 A This does not refresh my memory.

25 Q This document sets forth Dr.

0035

1 Hill's belief and position that her having worked
2 on a similar experiment in which she obtained
3 conflicting data or data that conflicted that
4 which Dr. Bishayee got from this experiment took
5 place. What's your understanding insofar as the

6 process that Dr. Howell should have followed or
7 employed where there are conflicts involving the
8 same experiment conducted by two individuals
9 within the same laboratory?

10 MR. LEONARD: I'm going to
11 object to form. I don't even understand that
12 question.

13 Q Do you understand the question?

14 A Not really.

15 Q I'll rephrase it. I want you to
16 assume that Dr. Hill and Dr. Bishayee performed
17 two experiments, each of them using the same
18 protocols, you with me so far?

19 A So far.

20 Q And having performed those two
21 separate experiments they came up with data that
22 conflicted with one another. What was your
23 understanding of Dr. Howell's responsibilities in
24 terms of resolving the conflict between the data
25 of those two experiments?

0036

1 A You're asking two different
2 questions in the question. The question you
3 asked, what we do in terms of the conflict. The
4 conflict to me indicates that there is going to
5 be some contest. What you have is two different
6 results. So, I really don't know how to perceive
7 from your question when you get two different
8 results, because the possibilities, each of which
9 may initiate a different action, depends upon a
10 lot of other factors besides what's included in
11 the generality of your question.

12 Q What if the data in one of the
13 experiments was used to support that figure seven
14 in the grant application that I placed before
15 you, which was Baker-5, and the other data which
16 was at variance with that as apposed to
17 conflicting with it? Under those circumstances
18 what was your understanding of Dr. Howell's
19 responsibilities in resolving that?

20 MR. LEONARD: I'm going to
21 object to this line of questioning. You're
22 asking Dr. Baker to assume two identical
23 experiments and all variables were exactly the
24 same?

25 MR. PINCUS: Yes, I am.

0037

1 MR. LEONARD: I think that's a
2 scientific impossibility.

3 MR. PINCUS: Your objection is
4 noted.

5 Q Can you answer?

6 A My answer would be as specified,
7 I don't know if these are identical experiments,

8 under identical conditions with identical
9 precursors. There's not enough information to

10 assume that two experiments done at different
11 times realizing different results were in effect
12 in conflict, which was in your question. So, I
13 don't know how to answer that question.

14 Q I understand your response. *But*
15 *do you not recall Dr. Howell relating such*
16 *circumstances that existed regarding two*
17 *experiments, one of which had been performed by*
18 *Dr. Hill in or about October, 1999, the other*
19 *which had been performed by Dr. Bishayee in or*
20 *about October, 1999?*

21 A No, I don't recall that.

22 Q I'll take all of these back.

23 MR. PINCUS: Baker-8.

24 (Whereupon, Exhibit Baker-8,
25 April 6, '01, Memo, is received and marked for

0038

1 identification by the reporter.)

2 Q I'm going to show you what's
3 been marked for identification as Baker Exhibit
4 8. Would you take a moment to review that? You
5 let me know when you're done, sir.

6 A Okay.

7 Q Do you recognize this document?

8 A I'm not sure I understand the

9 question as do I recognize the document.

10 Q Do you recall receiving this
11 document from Dr. Howell on or about April 6,
12 2001?

13 A I don't recall receiving it. It
14 doesn't mean that I didn't receive it. I just
15 don't recall that.

16 Q In the second sentence, I
17 believe, of Dr. Howell's memo to you, there's a
18 statement that, as I mentioned to you I first
19 became aware of Dr. Hill's concerns about six to
20 nine months ago when she brought this to my
21 attention. Do you see where I'm referring to?

22 A Yes, I do.

23 Q Do you recall him discussing
24 with you the concerns that Dr. Hill had raised
25 with him?

0039

1 A All I recall was that there were
2 concerns that were raised by Dr. Hill, I didn't
3 know the specifics.

4 Q At the time that Dr. Howell
5 spoke with you, did he provide to you any
6 documentation relating to the concerns of Dr.
7 Hill that are referred to?

8 A Not that I recall.

9 Q Did you require or request of
10 him any additional follow-up insofar as setting
11 forth or articulating of the concerns of Dr. Hill
12 of which he notes?

13 A No, I didn't, because my

14 knowledge, if I can recall, was that there was a
15 dispute, I didn't know the specifics of that
16 dispute.

17 Q And your knowledge was that
18 there was a dispute, what was the dispute that
19 you knew of at that time?

20 A As I said, that I was aware
21 there was a dispute between the two, that's all
22 that I knew.

23 Q So, you didn't know what the
24 substantive aspects of the dispute was?

25 A I didn't know the substantive

0040

1 aspects of the dispute.

2 Q When had you first learned of
3 the so-called dispute?

4 A My recollection it's about 2000,
5 the year 2000.

6 Q And how did you learn about it?

7 A I think Dr. Howell told me that
8 there was a dispute.

9 Q Do you recall anything else that
10 he told you back in 2000?

11 A That's all that I recall.

12 Q Do you recall whether in 2000 he
13 shared with you any documentation relating to the
14 dispute?

15 A I don't recall that.

16 Q When he told you that there was
17 a dispute in the year 2000, what, if anything,
18 did you do?

19 A Well, Dr. Howell was the
20 director of that section. And if I recall, the
21 dispute was to me, as I remember it, more over
22 lab space and two people working together. I
23 didn't recall that there was a specific issue
24 about science. I told him he should resolve the
25 differences not knowing that it was one

0041

1 specifically related to an issue of integrity in
2 science.

3 Q Okay, so your recollection is it
4 related to lab space, Number 1, correct?

5 A Vaguely remember that.

6 Q And that the timeframe that you
7 seem to recall was preceding the date on which
8 you received this memorandum in or about the year
9 2000?

10 A Yeah, but my memory isn't sharp
11 on this because that's a long time ago.

12 Q So, you're not certain of the
13 date, is that what you're telling me?

14 A I'm not certain of the date.

15 Q Are you telling me that it could
16 have occurred after this discussion or is it your
17 recollection that you're certain that the --

18 A I'm not certain of anything.

19 The specifics are that it seemed to be about that
20 time.

21 Q About that time?

22 A About 2000, somewhere in that
23 regards, a long time ago now.

24 Q I understand.

25 A And I have a lot of people

0042

1 dispute with a lot of people in my department,
2 that's the nature of things.

3 Q If I were to represent to you
4 that Dr. Hill did not make a formal complaint
5 about Dr. Bishayee and Dr. Howell until April 10,
6 2001, does that in any manner refresh your
7 recollection insofar as when it was that Dr.
8 Howell first related to you that there was a
9 dispute or describe the substance of that
10 dispute?

11 A No, sir.

12 Q If you go down approximately
13 two-thirds of the way in the first paragraph,
14 there is a statement, as I told you this morning
15 I have requested that my post doctoral fellow,
16 Marck Lenarczyk, Ph.D. repeat some of Dr.
17 Bishayee's experiments as a check of the validity
18 of the data. Do you see where I'm referring to?

19 A I do.

20 Q *Did he inform you in this*
21 *meeting or any prior meeting that Dr. Lenarczyk*
22 *had attempted to replicate Dr. Bishayee's results*
23 *in eleven experiments without success?*

24 A I don't recall that.

25 Q There's also a statement about

0043

1 two sentences following that, I will also
2 personally sign all of Dr. Bishayee's data sheets
3 and culture dishes to insure they are not
4 tampered with. Do you see where I'm referring
5 to?

6 A I do.

7 Q Do you recall the discussion
8 regarding his signing the data sheets and culture
9 dishes came about?

10 A No, I just remember that there
11 was some issue with Dr. Bishayee, but I don't
12 remember the specifics.

13 Q I'm going to show you, Dr.
14 Baker, a series of documents from a prior
15 deposition that was taken of Dr. Marck Lenarczyk
16 on or about, I believe it was October 28, 2008,
17 and we've marked those separately, so rather than
18 take the time to remark them as separate exhibits
19 for your review. These exhibits span a period of
20 the year 2000 into 2001, all of which precede the
21 date of the memo you have before you dated April
22 6th, 2001, which was marked as Baker Exhibit 8, I
23 believe.

24 A Yes.
25 Q And I had asked you a moment
0044
1 ago, and you said you don't recall Dr. Howell
2 informing you in your meeting, this meeting or
3 any prior meeting, that Dr. Lenarczyk had been
4 unable to replicate Dr. Bishayee's results in
5 eleven experiments without success. Did he ever
6 show you, I'm going to identify the exhibits for
7 the record, Lenarczyk-14, 15, 19, 20, 21, 25, 26,
8 27, 30, 31 or 32.
9 A What are those numbers again,
10 please?
11 Q Lenarczyk-14, let's take them
12 one at a time. Did he ever show you this or
13 share with you this exhibit?
14 A No, I wouldn't have seen this.
15 Q Okay, you can just flip them
16 over and I'll put them back. What about
17 Lenarczyk-15?
18 A Similarly, no.
19 Q Never saw that, never provided
20 to you by Dr. Howell?
21 A No.
22 Q Lenarczyk-19, did you ever see
23 that or was it ever provided to you by Dr.
24 Howell?
25 A No, I would have never seen
0045
1 this.
2 Q Same question regarding
3 Lenarczyk-20?
4 A I don't recall seeing this.
5 Q Same question regarding
6 Lenarczyk-21, please?
7 A I don't recall seeing this one.
8 Q Same question regarding
9 Lenarczyk-25?
10 A I don't recall seeing this.
11 Q Same question, Lenarczyk-26?
12 A I don't recall seeing this form.
13 Q Lenarczyk-27?
14 A I don't recall seeing this.
15 Q Lenarczyk-30?
16 A I don't recall seeing this.
17 Q Lenarczyk-31?
18 A I don't recall seeing this.
19 Q Lenarczyk-32?
20 A I don't recall seeing this.
21 Q Similarly, I'm going to show you
22 two papers that are marked for identification
23 during the course of Dr. Lenarczyk's deposition,
24 that were authored in part by Dr. Bishayee and
25 Dr. Howell. I show you Lenarczyk Exhibit 11 and
0046
1 Lenarczyk Exhibit 12, have you ever seen those
2 documents?

3 A I'm aware of the bystander
4 effect, I'm aware that people in my department
5 publish articles. I'm not, I do not look at
6 these articles. So, I'm not aware of them
7 specifically.

8 Q I understand that. *Did Dr.*
9 *Howell ever relate to you or discuss in any way*
10 *that the results set forth in either of the two*
11 *papers, Lenarczyk-11 or 12, are at variance with*
12 *any of the eleven experiments that I just shared*
13 *with you?*

14 A I don't recall that at all.

15 Q So we're clear, when you say you
16 don't recall, I just want to be certain that
17 beyond any oral discussion, you were provided no
18 document that related that the results were at
19 variance?

20 A I don't recall a discussion or
21 the presentation of documents related to that. I
22 don't recall any of those things.

23 Q Okay, I'll take those back.

24 Again, I want to first orient you to what we
25 marked as Exhibit Baker-8 and the date of it

0047

1 being April 6th, 2001. I'm going to show you an
2 additional five experiments, and I'm going to
3 represent to you that the dates of these
4 experiments took place subsequent to the date of
5 the memo, Baker-8, okay? And I want to go
6 through each one and just, the question to you is

7 did Dr. Howell at any time share with you a copy
8 or the results of the experiment -- I'm sorry,
9 there's got to be a fourth. I missed one, let me
10 go back. This is on top. I'm going to share
11 with you six experiments, not five, that were
12 performed subsequent to the date of the memo,
13 Baker-8. Did Dr. Howell at any time share with
14 you a copy of what has been marked as
15 Lenarczyk-33?

16 A This is Lenarczyk-18.

17 Q So you need 33. Thank you for
18 correcting it, I'll take that one back.

19 A Maybe it's in here, I don't
20 know.

21 Q No, no, thank you for correcting
22 me. There's 33, so I'm showing you Lenarczyk-33.

23 A I never saw this that I can
24 recall.

25 Q Were you aware of any actions

0048

1 that he took insofar as a Dr. Azzam, do you know
2 Dr. Azzam?

3 A Yes.

4 Q Were you aware of any actions of
5 Dr. Azzam undertook insofar as observing the
6 conduct of this experiment?

7 MR. LEONARD: Objection to form,
8 you can answer.

9 A The question you asked me, was I
10 aware of he, and then you said Dr. Azzam, does
11 the he refer to Dr. Howell or Dr. Azzam?

12 Q He refers to Dr. Howell.

13 A Can you repeat the question?

14 Q Sure, first, you said are you
15 familiar, you've not seen this document?

16 A I have not seen this document
17 that I can recall.

18 Q Were you aware of any requests
19 that Dr. Howell made of Dr. Azzam to observe the
20 conduct of this experiment?

21 A I'm not aware of that.

22 Q Have you had any conversation or
23 discussion with Dr. Azzam regarding this
24 experiment?

25 A No.

0049

1 Q Or any experiments that were
2 undertaken in Dr. Howell's lab regarding the
3 bystander effect?

4 A Dr. Azzam's main area of
5 interest is the bystander effect. So, I'm sure
6 that there had been conversations between Dr.
7 Howell and Dr. Azzam about the bystander effect.

8 Q My question was did you have any
9 conversation with Dr. Azzam, not Dr. Howell?

10 A About the bystander effect?

11 Q The experimentation.

12 A These experiments?

13 Q Yes.

14 A No.

15 Q Now, let's go to Lenarczyk-34
16 next. Is that the right document, just want to
17 be sure?

18 A Yes.

19 Q Have you ever seen that one?

20 A No.

21 Q Do you recall any discussions
22 with Dr. Howell regarding the results of this
23 experiment that was undertaken by Dr. Lenarczyk
24 or himself?

25 A I don't have any recollection of

0050

1 any specific experiments relating to the
2 bystander effect or this component of it.

3 Q I want to go back. This was an
4 experiment as well as the preceding one, which
5 was conducted by Dr. Howell, not Dr. Lenarczyk.
6 Did he discuss with you the fact that he
7 undertook these series of six experiments
8 subsequent to his providing you the memo of April
9 6?

10 A No, I'm not aware of that.

11 Q Okay, so let's just be sure, you

12 don't recall seeing Lenarczyk-34, which was the
13 second document that you just flipped over. What
14 about 35, will you answer, please?

15 A I'm not aware of that.

16 Q Lenarczyk-36?

17 A I'm not aware of that one.

18 Q Lenarczyk-22, I believe?

19 A I'm not aware of that one.

20 Q And last, Lenarczyk-23?

21 A I'm not aware of this one.

22 Q So, if I understand you

23 correctly, at no time did Dr. Howell relate to

24 you that in any of the, that any of the

25 experiments that Dr. Lenarczyk had performed were

0051

1 unsuccessful in replicating the results that Dr.

2 Bishayee and Dr. Howell had reported in the two

3 papers that I showed you, you have no

4 recollection of such a discussion?

5 A No recollection of such a

6 discussion.

7 Q Do you have any recollection of

8 him discussing with you the series of six

9 experiments that I just shared with you and the

10 fact that in undertaking them they were unable to

11 replicate the results of Dr. Bishayee as reported

12 in those two papers?

13 MR. LEONARD: Objection to form,

14 you can answer.

15 A I'm not aware of that.

16 Q Did they indicate to you that

17 they were unable to replicate the results in the

18 experiment as reported in the grant application?

19 MR. LEONARD: Objection to form,

20 you can answer.

21 A I'm not aware of that.

22 Q You were aware that there came,

23 were you aware that there came a point in time

24 where Dr. Lenarczyk left Dr. Howell's lab and

25 returned to Poland?

0052

1 A Now that you refresh my memory,

2 he no longer works there. I didn't know where he

3 would return to. I know that he was there and

4 then I knew he wasn't there, that's all I know.

5 Q So, you knew that he left?

6 A Yes.

7 Q Fair enough.

8 A I don't keep tabs on where they

9 go unless I happen to know them personally.

10 Q I understand. Did Dr. Howell

11 indicate to you that before he left the lab, that

12 being Dr. Lenarczyk, he had performed five yet

13 additional experiments, none of which were able

14 to replicate the results that had been reported

15 in the two papers or the grant application?

16 MR. LEONARD: *Objection to form,*
17 *you can answer that.*
18 A *I'm not aware of that.*
19 Q *I'm going to show you, let me*
20 *just state the numbers, Lenarczyk-16, 17, 18, 28*
21 *and 29. And just as we have, let's take them one*
22 *at a time, please.*
23 A *Sure.*
24 Q *Lenarczyk-16, did Dr. Howell at*
25 *any time provide you a copy of this exhibit or*
0053
1 *discuss it?*
2 A *No, sir, not that I can recall.*
3 Q *Same questions in regard to the*
4 *next, Lenarczyk-17?*
5 A *Same response.*
6 Q *18?*
7 A *Is that okay?*
8 Q *Yeah, that's fine.*
9 A *Same response.*
10 Q *28?*
11 A *Same response.*
12 Q *And last, Lenarczyk-29?*
13 A *Same response.*
14 Q *So, looking back at your memo or*
15 *the memo that you received from Dr. Howell on*
16 *about April 6, 2001, do you recall any additional*
17 *follow-up being provided to you by Dr. Baker?*
18 A *I am Dr. Baker.*
19 Q *I'm sorry, you are, do you*
20 *recall any additional follow-up being provided to*
21 *you by Dr. Howell?*
22 A *No, I do not.*
23 Q *Did you ever ask him to provide*
24 *you any follow-up?*
25 A *No, I did not.*
0054
1 Q *I'll take this back.*
2 A *Okay.*
3 MR. PINCUS: *Baker-9.*
4 *(Whereupon, Exhibit Baker-9, Dr.*
5 *Baker Letter, is received and marked for*
6 *identification by the reporter.)*
7 Q *Dr. Baker, I'm going to show you*
8 *what was marked as Exhibit Baker-9. Could you*
9 *take a moment to look at that, please?*
10 A *Yes.*
11 Q *Do you recall authoring this?*
12 A *Yes.*
13 Q *Do you recall whether this was*
14 *authored shortly after the decision had come down*
15 *from the committee on scientific integrity that*
16 *there was insufficient evidence of scientific*
17 *misconduct as alleged by Dr. Hill?*
18 A *I don't recall the chronology.*
19 Q *Okay, in this letter you appoint*
20 *Dr. Howell the chief of the Division of Radiation*

21 Research, am I correct?

22 A Right.

23 Q Am I further correct that in
24 doing so you abolish the section of Cancer
25 Biology?

0055

1 A Yes.

2 Q And *this effectively made Dr.*

3 *Howell Dr. Hill's supervisor, is that correct?*

4 MR. LEONARD: *Objection to form,*
5 *you can answer.*

6 A Yes, *that's correct.*

7 Q Did Dr. Hill ever relate to you
8 the fact that Dr. Howell called her into his
9 office in or about July, early July of 2001, and
10 told her he wanted nothing to do with her?

11 A Again, I know that there was a
12 dispute between the two of them. That dispute
13 had been simmering, and I don't know what the
14 specifics of that dispute were except that my
15 perception of it was there was disagreements.
16 So, I don't recall that specifically, and I would
17 not react to a statement when someone doesn't
18 want something to do with someone. That's not a
19 very productive statement to be made to me.

20 Q *Is it a statement that you would*
21 *expect from, of an individual who you had*
22 *appointed in a supervisory capacity within your*
23 *department?*

24 MR. LEONARD: *Objection to form.*

25 A *It's a statement I would not*

0056

1 *expect from anybody who works for me or who is a*
2 *colleague of mine. So, it's not just a statement*
3 *made by someone who's taking on a supervisory*
4 *capacity, it's a hostile, nonproductive*
5 *statement.*

6 Q Did you come to have knowledge
7 of the fact that Dr. Hill was then locked out of
8 access to shared laboratory space within the
9 division sometime later that month?

10 MR. LEONARD: *Objection to form.*

11 Q July, 2001?

12 MR. LEONARD: *Objection to form,*
13 *you can answer it if you can.*

14 A I don't recall, I just recall
15 that there was bad blood.

16 Q And by bad blood what are you
17 referring to?

18 A There was a lot of disputes, and
19 I'm not referring to anything specifically.

20 Q And when you learned that there
21 was this bad blood and/or these disputes, what,
22 if any, actions did you undertake to seek to
23 resolve them?

24 A I told Dr. Howell that there
25 needs to be a modus vivendi among the two of you.

0057

1 Q And how did you --

2 A Between the two of them.

3 Q And how did you monitor whether,
4 in fact, that occurred?

5 A I didn't monitor that, I didn't
6 hear either of the individuals speak to me
7 further about it.

8 Q So, on the basis of silence did
9 you presume that there was no longer a problem?

10 A Well, I presumed that there was
11 no longer an acute issue, I'm sure that there was
12 a problem.

13 Q So, if you were sure that there
14 was still a problem, did that cause any concern
15 to you?

16 A Of course it causes concern, but
17 I have a lot of people who may not get along with
18 a lot of other people.

19 Q What was your concern that you
20 had at that point in time as regards Dr. Hill and
21 Dr. Howell?

22 A That question's kind of vague,
23 what is my concern?

24 Q Well, you said it caused you a
25 concern, I'm asking you what was the nature of

0058

1 your concern?

2 A I regretted that two people
3 couldn't work together. I know they had
4 different research focus, and I would hope they
5 would pursue them.

6 Q So, did you take any other steps
7 insofar as seeking a resolution of those
8 concerns?

9 A No, I took no other steps.

10 MR. PINCUS: Baker-10.

11 (Whereupon, Exhibit Baker-10,
12 Lab Assignment, is received and marked for
13 identification by the reporter.)

14 Q Dr. Baker, I'm going to show you
15 what we marked as Exhibit Baker-10. Take a
16 moment to review that and let me know when you're
17 done, please.

18 A I'm done.

19 Q Okay, do you recognize this
20 document?

21 A No.

22 Q Did you have any discussions
23 with either Dr. Howell or any of the other
24 individuals listed on this document with regards
25 to the assignments of laboratory space?

0059

1 A No.

2 Q If you look at the reassignments
3 that are set forth in regards to offices of
4 laboratory, would you agree that this announced

5 that Dr. Hill was going to be locked out of the
6 division shared spaces in MSBF451, F451A and B?

7 MR. LEONARD: Objection to form,
8 you can answer.

9 A Nothing here that says she'd be
10 locked out of anyplace. It says there's a room
11 assigned to her, both in the office and in the
12 laboratory.

13 Q Did you ever come to learn that,
14 in fact, she had been locked out?

15 MR. LEONARD: Objection to form,
16 you can answer if you can.

17 A No, I was not informed by either
18 Howell or by Hill about this matter.

19 Q Were you ever made aware of any
20 grievances that Dr. Hill filed in regards to this
21 assignment of laboratory space?

22 A No, nor did I ever hear from Dr.
23 Hill that she was aggrieved.

24 Q So, you've not seen any
25 documents associated with any grievances, any

0060

1 grievances associated with this?

2 A She never came to me and talked
3 to me that there was issue, which I would have
4 expected what she would do if there was an issue
5 to which she was aggrieved.

6 MR. PINCUS: Baker-11.

7 (Whereupon, Exhibit Baker-11,
8 Dr. Howell Letter, is received and marked for
9 identification by the reporter.)

10 Q I show you what's been marked as
11 Exhibit Baker-11, take a moment to review that,
12 please. Let me know when you're done, sir.

13 A I'm done.

14 Q Okay, do you recall receiving a
15 copy of this?

16 A I don't recall, but I was cc'd,
17 so I probably received it.

18 Q Am I correct that at the time
19 Dr. Howell authored this, he had been appointed
20 chief of Radiation Research by you, correct?

21 A Correct.

22 Q So, does this refresh your
23 recollection at all insofar as Dr. Howell denying
24 or restricting access to certain laboratories to
25 Dr. Hill?

0061

1 A It states that he restricted her
2 access.

3 Q I see you reading that, but does
4 that refresh your recollection insofar as any
5 further involvement or discussions that you had
6 regarding this subject matter?

7 A No.

8 Q Can you think of any reason or
9 reasons why Dr. Howell at the time would have

10 restricted access to the laboratory spaces that
11 are denoted to Dr. Hill?

12 A You're asking me to speculate?

13 Q I'm asking do you know of any
14 reasons why he did that?

15 A Could you rephrase your question
16 then?

17 Q Sure, do you know of any reasons
18 why Dr. Howell denied access to Dr. Hill as set
19 fourth in this memorandum?

20 A I don't know any reasons.

21 MR. PINCUS: Baker-12, please.

22 (Whereupon, Exhibit Baker-12,

23 Dr. Saporito Correspondence, is received and

24 marked for identification by the reporter.)

25 Q I'm going to show you what I've

0062

1 marked for exhibit, Baker-12, can you take a
2 moment to review that and let me know when you
3 are done, sir? Are you through?

4 A Yes.

5 Q Have you ever seen this
6 document?

7 A No, I don't think I was cc'd on
8 it. I've never seen this document.

9 Q Do you recall having any
10 discussions with Dr. Howell regarding the
11 correspondence that he had with Dr. Saporito?

12 A No, I don't recall that.

13 Q You recall having any
14 conversations with Dr. Saporito regarding this
15 correspondence?

16 A I did not have any conversations
17 with Dr. Saporito, involvement in this issue.

18 Q Do you have any knowledge why
19 this issue regarding lab space would have gone to
20 Dr. Saporito as apposed to you for resolution?

21 A I don't know why that happened.

22 Q Do you have any other knowledge
23 regarding the issue of lab space that you haven't
24 already identified?

25 A Yes, one clarification, Dr.

0063

1 *Howell was seriously ill about this time.*

2 Q Okay.

3 A I'm not sure what year it was,
4 but it seems about this time.

5 Q So, if he was ill --

6 A There was several weeks when he
7 wasn't physically present.

8 Q And how does that relate to the
9 circumstances?

10 A I don't know where these,
11 whether these letters were penned by him as he
12 was recuperating or he was physically present, I
13 don't know. But it seems to me that in my mind

14 there was at least two events were happening
15 close to each other, but I'm not sure.

16 Q What would his illness have to
17 do with his authorship of these documents?

18 A Good question, they probably
19 have little to do with it, but he may not have
20 been physically present at that time. I don't
21 know, you can find out from him exactly. Just to
22 tell you I don't know whether he was there or he
23 was not there, seems to be about the same time.

24 Q Okay, I'll take these back. Do
25 you need a break or anything?

0064

1 A No.

2 Q How, if at all, were you
3 informed of Dr. Bishayee leaving the laboratory
4 in or about the end of July or early August,
5 2001?

6 MR. LEONARD: Objection to form,
7 you can answer if you can.

8 A How was I informed?

9 Q How did you learn that Dr.
10 Bishayee left Dr. Howell's laboratory at the end
11 of July, beginning of August, 2001?

12 A I believe he told me.

13 Q He told you?

14 A Yes.

15 Q Where did that take place, if
16 you recall?

17 A Someplace in the confines of the
18 Newark campus. It could have been in my office,
19 it could have been in the hall, it could have
20 been in the cafeteria, I don't know.

21 Q Was it just the two of you or do
22 you recall anyone else being present?

23 A It was a conversation only the
24 two of us would have heard, wherever it took
25 place.

0065

1 Q What did he tell you?

2 A I don't recall, that he was
3 leaving.

4 Q Did he tell you that Dr. Howell
5 had prepared the letter of resignation for him to
6 sign?

7 A Did who tell me?

8 Q Dr. Bishayee.

9 A You're asking, did I have a
10 conversation with Dr. Bishayee?

11 Q Yes.

12 A Oh, I thought you asked me if I
13 had a conversation with Dr. Howell about Dr.
14 Bishayee.

15 Q All right, then, so your answers
16 to the preceding few questions about a
17 conversation about Dr. Bishayee leaving the
18 laboratory, you were referring to a conversation

19 that you had with Dr. Howell, not Dr. Bishayee,
20 is that correct?

21 A Yes, in all respect I thought
22 that's the way you asked me the question.

23 Q I'm glad you asked for
24 clarification, so we have an accurate record
25 then. The conversations to which you were

0066

1 referring related to a conversation that you had
2 with Dr. Howell and not with Dr. Bishayee, is
3 that correct?

4 A That's correct.

5 Q Did he tell you that, Dr. Howell
6 that is, that he had prepared the letter of
7 resignation for Dr. Bishayee to sign?

8 A I don't recall that.

9 Q Did he describe anything else by
10 way of the basis or circumstances surrounding Dr.
11 Bishayee leaving the laboratory?

12 A I know there was another issue
13 with Dr. Bishayee.

14 Q That issue was what?

15 A *A question in whether it was*
16 *appropriate looking at images in his computer.*

17 Q And do you know when in
18 reference to his resignation the issue relating
19 to, looking at things on his computer had
20 occurred?

21 A I don't know, it's probably
22 approximate, but I don't know.

23 Q So, was it your understanding
24 that that served as a basis for his leaving the
25 lab?

0067

1 A I don't know the answer to that
2 question.

3 MR. PINCUS: Okay, Baker-13.
4 (Whereupon, Exhibit Baker-13,
5 Staff Information Adjustment Form, is received
6 and marked for identification by the reporter.)

7 Q I'm going to show you what I've
8 marked for identification as Baker-13. Can you
9 tell me, please, what a staff information
10 adjustment form is to your knowledge?

11 A Yes, I can.

12 Q Would you, please?

13 A That's any time someone comes on
14 or leaves or goes on leave, there needs to be a
15 form commemorating that change in status. That's
16 available as a full time record, as a record, for
17 resolution of that issue in terms of salary,
18 benefits and just a historical record of
19 employment or any change thereof.

20 Q Is that your signature or
21 authorized signature at the bottom?

22 A It's authorized signature.

23 Q That's Ms. Campbell?

24 A That's the KC, yes.
25 Q So, other than the conversation

0068

1 that you identified with Dr. Howell a few moments
2 ago, do you recall any other discussions that you
3 may have had with him regarding Dr. Bishayee's
4 termination?

5 A I don't recall any other.
6 MR. LEONARD: Objection to form,
7 Shelly. Just, you're saying termination, this
8 just designates termination as leaving, but it
9 says resignation on the document.

10 MR. PINCUS: Termination and/or
11 resignation, okay?

12 MR. LEONARD: Well, it's not
13 and/or, it says type.

14 A No, the type of termination of
15 his employment is resignation, not a termination.

16 Q Your understanding was he
17 resigned?

18 A Yes.

19 Q Were you aware that after Dr.
20 Bishayee resigned, he collected unemployment
21 compensation from the New Jersey Department of
22 Labor?

23 A I would not be aware of that at
24 all.

25 Q Is it your understanding that an

0069

1 individual employed within your department who
2 voluntarily resigns from their position of
3 employment is entitled to receive unemployment
4 compensation?

5 MR. LEONARD: Objection to form,
6 you can answer it.

7 A That's an HR issue, I'm not
8 aware of the specifics of Human Resources policy.

9 Q So, that being said, do you have
10 any knowledge of the fact that Dr. Bishayee on
11 resigning from UMDNJ, and specifically Dr.
12 Howell's laboratory, collected unemployment
13 compensation for a period of time thereafter?

14 MR. LEONARD: Objection, asked
15 and answered.

16 A I would have no way of knowing.

17 Q To your knowledge, would you
18 have had to sign any documentation relating to
19 Dr. Bishayee's ability or inability to collect
20 unemployment compensation?

21 A I would never have had that
22 opportunity as far as I can recollect for people
23 who have resigned voluntarily or been asked to
24 resign. So, I have no knowledge of that.

25 Q What about any of your

0070

1 employees, and Ms. Campbell for one, would she to
2 your knowledge have any responsibilities in

3 regards to any documentation?
4 A That's an HR responsibility.
5 That's a university HR department would have that
6 responsibility, not the individual department.

7 MR. PINCUS: Baker-14.
8 (Whereupon, Exhibit Baker-14,
9 Dr. Putterman Correspondence, is received and
10 marked for identification by the reporter.)

11 Q I'm going to show you a document
12 I've marked as Exhibit Baker-14. Take a moment
13 to review that, please, let me know when you're
14 done.

15 MR. LEONARD: You're asking him
16 if he's ever seen this before, Shelly?

17 MR. PINCUS: That was going to
18 be my question. I didn't ask the question yet.

19 A Okay.

20 Q Have you ever seen this?

21 A No.

22 Q Do you know who Dr. Putterman
23 is?

24 A Yes, I certainly do.

25 Q What position did she hold at

0071

1 the university in or about April of 2002, if you
2 know?

3 A She was, I'm reading the wrong
4 title, but I'll give you the right effect. She
5 was the deputy to the vice president for Academic
6 Affairs. So, she was the second command in that
7 university function.

8 Q So, did she have any discussions
9 with you regarding any of the items that are
10 identified within this document?

11 A She had one discussion with me
12 about the issue that this would be an
13 investigation into Dr. Bishayee sometime in 2001
14 in the first half of the year.

15 Q What do you mean this would be
16 an investigation?

17 A There would be an investigation
18 because Dr. Hill had raised issues.

19 Q And beyond that?

20 A Beyond that there were no
21 discussions.

22 Q Was there an exchange of any
23 documents between you?

24 A *There was no exchange of any*
25 *documents.*

0072

1 Q That would include e-mails,
2 things of that nature?

3 A There were no e-mails. She
4 called me, I called her. I think I got a cell
5 phone call, I was at Union Station and I had a
6 discussion with her on the phone. That was the
7 only discussion or only exchange we had.

8 Q Did you have any involvement
9 insofar as the investigation?
10 A I had none.
11 Q I'll take that back.
12 MR. PINCUS: Baker-15.
13 (Whereupon, Exhibit Baker-15,
14 Memo, is received and marked for identification
15 by the reporter.)
16 Q I show you what we've marked as
17 Baker-15, sorry for the challenge of reading that
18 small print, but would you take a moment to look
19 at it?
20 A It's not authored, can you tell
21 me who wrote this?
22 Q I believe this was authored by
23 Dr. Howell. So, when you're done, my question
24 will be have you ever seen this document before?
25 A I have not.
0073
1 Q And I didn't mean to interrupt
2 your review of it, but the other question is if
3 you have not seen the document, did you have any
4 discussions with Dr. Howell regarding the
5 substantive aspects of this memo?
6 A I did not.
7 MR. PINCUS: I think we're done,
8 but if you'll just give me two minutes to meet
9 with Dr. Hill, I'll come right back in.
10 THE WITNESS: Then I can take a
11 break?
12 MR. PINCUS: Absolutely, you
13 could have taken a break any time you wanted to,
14 I told you that.
15 (Whereupon, there is a short
16 break.)
17 MR. PINCUS: I'm done, so unless
18 Mr. Leonard has some questions, you're done.
19 MR. LEONARD: No.
20 MR. PINCUS: I thank you for
21 your time.
22 THE WITNESS: Sure.
23 MR. PINCUS: Nice to meet you.
24 (Deposition adjourned)
25

0074

1 C E R T I F I C A T E
2
3 I, TONI ANN HENRIQUEZ-GIL, a Notary Public
4 and Certified Shorthand Reporter of the State of
5 New Jersey, LICENSE NO. XI000743, do hereby
6 certify that prior to the commencement of the
7 examination, STEPHEN BAKER, was duly sworn by me
8 to testify the truth, the whole truth and nothing
9 but the truth.
10 I DO FURTHER CERTIFY that the foregoing is a
11 true and accurate transcript of the testimony as
12 taken stenographically by and before me at the

13 time, place and on the date hereinbefore set
14 forth, to the best of my ability.

15 I DO FURTHER CERTIFY that I am neither a
16 relative nor employee nor attorney nor counsel of
17 any of the parties to this action, and that I am
18 neither a relative nor employee of such attorney
19 or counsel, and that I am not financially
20 interested in the action.

21
22
23

TONI ANN HENRIQUEZ-GIL
Notary Public of the
State of New Jersey
License No. XI 00743

24
25