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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Civil Action No. 03-4837(DMC)

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

-vs-

DEPOSITION OF:
DR. HELENE Z. HILL

UNIVERSITY OF MEDICINE & :
DENTISTRY OF NEW JERSEY, :
DR. ROGER W. HOWELL and DR. :
ANUPAM BISHAYEE, :
Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of BUCCERI & PINCUS, ESQS.,
1200 Route 46, Clifton, New Jersey, on Friday,
January 23, 2009, commencing at 10:05 a.m., pursuant
to Notice.

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

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BY: JOHN P. LEONARD, ESQ.
 -and-

9

SCOTT S. FLYNN, ESQ.
Counsel for the Defendants

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1 I N D E X

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 DR. HELENE Z. HILL

4 BY MR. LEONARD 4

5

6

7 E X H I B I T S

8 NO. DESCRIPTION I.D.

9 Hill-1 Graph drawn by Dr. Hill of 100%
10 Experiment 6211 Hill-2 Document entitled "Scientific
12 Misconduct" written by Dr. Hill,
13 Bates stamped 000345-350 8714 Hill-3 Paper written by Dr. Hill entitled
15 "The impossibility of an exponential
16 decline in survival of Chinese hamster
17 cells in the presence of tritiated
18 thymidine," Bates stamped 000362-382 10419 Hill-4 Written Disclosure of Dr. Hill dated
20 10/10/03, Bates stamped 000001-67 12921 Hill-5 Supplement to Written Disclosure of
22 Dr. Hill dated 4/6/04, Bates stamped
23 000335-361 129

24

25

26 REQUESTED INFORMATION:

27 None

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1 H E L E N E Z. H I L L, 3 Silver Spring Road,
2 West Orange, New Jersey 07052, is sworn.

3 DIRECT EXAMINATION BY MR. LEONARD:

4 Q Good morning, Dr. Hill. My name is
5 John Leonard. I'm a member of the law firm of
6 McElroy, Deutsch, Mulvaney & Carpenter. I represent
7 certain individuals and entities, specifically
8 University of Medicine & Dentistry of New Jersey,
9 Dr. Roger Howell and Dr. Anupam Bishayee in an
10 action filed by you pending in the United States
11 District Court. It's a qui tam action.

12 We're here today to take your deposition. I
13 know that you've had your deposition taken before,
14 But let me give you some rules as to how we're going
15 to proceed, so that this process can be as effective
16 and efficient for both of us as possible.

17 I will be asking you a series of questions.
18 The court reporter sitting to my right will be
19 taking down, as she is now, everything that we say
20 verbatim. Consequently, I ask that when you respond
21 to my question, you do so verbally. You may well
22 nod your head and I'll know exactly what you mean,
23 but she just won't be able to record it.

24 If you are confused by any of my questions
25 or you don't understand any of my questions, please

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1 stop and let me know that. I will rephrase the
2 question and hopefully do it in a way that you do
3 understand it. If you do understand a question,
4 I'll assume that you have understood the question.
5 Fair enough?

6 A Yes.

7 Q You were just placed under oath.
8 That oath is the same as if you were testifying at
9 trial or in a court of law. Do you understand that?

10 A Yes, I do.

11 Q The court reporter can only record
12 one of us at a time. Therefore, I ask that you
13 allow me to finish my question before you give your
14 response, and I will let you finish your response
15 before I start another question. Okay?

16 A Okay.

17 Q Your counsel sitting to your right,
18 Mr. Pincus, may make an objection in response to one
19 of my questions. If he does, I ask that you please
20 suspend your answer, let he and I discuss the
21 objection, and do not answer unless or until he
22 instructs you to.

23 A Okay.

24 Q If you need a break at any time, just
25 say so. We're not in a marathon. Anytime you want

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1 to stop, just let me know and we can stop.

2 A Okay.

3 Q Are you on any medications today?

4 A No.

5 Q Now, you've given a deposition
6 before; isn't that true?

7 A That's true.

8 Q How many times?

9 A Once.

10 Q And when was that?

11 A About four or five months ago.

12 Q And what was that deposition in
13 connection with?

14 A The women at the New Jersey Medical School
15 are suing for equalization of salary. I believe
16 it's a class action case, but I'm not sure, and I
17 would be a named member of the class.

18 Q So you're an actual named member?

19 A Yes.

20 Q Except for that deposition, have you
21 ever given a statement under oath before?

22 A No, I don't think so.

23 Q Have you ever testified at any
24 proceeding of any type, legal proceeding?

25 A No.

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1 Q In preparation for today's
2 deposition, what did you do?

3 A Nothing, really.

4 Q Did you review any documents?

5 A Not specifically for this deposition.

6 Q When you say "not specifically," what
7 do you mean?

8 A I didn't sit down and open up a book and
9 review any documents specifically for this
10 deposition.

11 Q So none of the documents produced by
12 either side, you didn't look at those?

13 A Many of them are known to me, but I didn't
14 specifically look at them for this deposition.

15 Q The complaints?

16 A Are known to me.

17 Q But, again, you didn't look at it in
18 preparation for your testimony here today?

19 A No.

20 Q Any of the transcripts from any prior
21 depositions taken in the case?

22 A Not specifically today, for today.

23 Q But have you read them?

24 A Yes, I have.

25 Q And when did you read them?

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1 A They were sent to me by e-mail and I read
2 them. I read the e-mails when they arrived.

3 Q Do you know when it is they arrived?

4 A I think mostly about two weeks after the
5 depositions had occurred.

6 Q Did you speak to anyone besides Mr.
7 Pincus in preparation for today's deposition?

8 A No.

9 MR. LEONARD: Shelly, I'm going to
10 use the previous stickers from previous depositions
11 so we don't have multiple copies of the same
12 documents. Does that make sense?

13 MR. PINCUS: Whatever is your
14 pleasure works for me. Do you have extra copies for
15 me?

16 MR. LEONARD: Yes.

17 MR. PINCUS: Thanks.

18 MR. LEONARD: I just figured this
19 way, when we're stipulating documents for trial, we
20 don't have four different copies of things with
21 different numbers on them.

22 MR. PINCUS: No problem.

23 Q Dr. Hill, I'm going to provide you
24 with a document that was previously marked as
25 Exhibit 9 during the deposition of Dr. Lenarczyk,

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1 which took place in Milwaukee. In fact, you were
2 present for that deposition; isn't that true?

3 A Yes, I was.

4 Q Can you take a minute, please, and
5 just look at that document?

6 A I see what it is. I can't digest it.

7 Q That's okay. Do you recognize it?

8 A Yes, I do.

9 Q And, in fact, is that your signature
10 on the last page?

11 A Yes, it is.

12 Q And I'll represent to you that that
13 is your answers to defendant's interrogatories. Do
14 you recognize that as that document?

15 A Yes.

16 Q Do you have any reason to believe as
17 you sit here today that the information in that
18 document has changed or is otherwise inaccurate?

19 A No.

20 Q Do you have any information that you
21 believe would need to supplement your responses to
22 that document?

23 A No.

24 Q Thank you.

25 MR. PINCUS: Just objection to the

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1 form of the question. Other than to the extent
2 we've already supplemented it through providing you
3 other documents or something that would potentially
4 refer to within that, her answer would stand.

5 Q But this is interrogatories. I know
6 that there's been documents. My question really is,
7 as you sit here today, is there any information that
8 you're aware that would need to be provided to
9 supplement the responses to our interrogatories?

10 A No.

11 Q Thank you.

12 Dr. Hill, what is your date of birth?

13 A April 10th, 1929.

14 Q And your Social Security number?

15 A 011-28-8632.

16 Q And I'm sorry, what was your current
17 address? I know you gave it at the outset.

18 A 3 Silver Spring Road, West Orange, New
19 Jersey.

20 Q Have you ever been charged with a
21 crime?

22 A No.

23 Q I'm sorry I have to ask that. It's
24 embarrassing, but it's something that we have to
25 ask.

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1 A It's okay.

2 Q Are you currently married?

3 A I am.

4 Q What is your husband's name?

5 A Dr. George J. Hill.

6 Q And your husband, Dr. Hill, is
7 retired; is that correct?

8 A Yes, he is.

9 Q Were you married previously?

10 A Yes, I was.

11 Q What is your former husband's name?

12 A James Hedgcock Grover, H-e-d-g-c-o-c-k.

13 Q Do you know what year you were
14 divorced?

15 A 1960.

16 Q And you have children?

17 A Yes.

18 Q Could I have their names and ages,
19 please?

20 A James Warren Hill, he is 55 today.

21 Q Today is his birthday?

22 A Today is his birthday. I have a son who is
23 deceased. Do you need information about that?

24 Q Just his name would be fine, ma'am?

25 A David Hedgcock Hill. I have two daughters,

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1 Sara Hill and Helena Rundall Hill, R-u-n-d-a-l-l,
2 and Helena is H-e-l-e-n-a. I am H-e-l-e-n-e.

3 Q Have you or your husband ever been
4 named as a defendant in any court proceeding?

5 A No.

6 Q Have you or your husband ever sued
7 anyone else?

8 A No.

9 Q A moment ago when we talked about
10 depositions, you talked about being a named
11 plaintiff in a class action suit.

12 A I'm not sure whether it's a class action or
13 not.

14 Q Okay. Let me see if I characterize
15 this correctly. It's a suit brought by certain
16 faculty members of the university, woman faculty
17 members bringing a suit based on gender bias?

18 A Yes.

19 Q Where is that suit pending?

20 A In the New Jersey Civil Courts.

21 Q Do you know if it's Federal or State?

22 A It's State.

23 Q And that's currently pending?

24 A Yes.

25 Q And have you alleged to have suffered

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1 damages in connection with the allegations in that
2 complaint?

3 A I guess so.

4 Q What damages do you allege you
5 suffered as a result of the allegations that are in
6 that complaint?

7 A That my salary is less than it should have
8 been if I had been hired at a fair salary.

9 Q So you're saying that there was a
10 difference in the beginning hiring amounts for men
11 and women, essentially?

12 A Yes.

13 Q And as we sit here today, is it your
14 claim that that difference continues throughout your
15 career at UMDNJ?

16 A Yes.

17 Q Are you seeking the services of any
18 healthcare provider in connection with the claims
19 you are making in that case?

20 A I don't understand your question.

21 Q Are you alleging emotional distress,
22 are you --

23 A Oh, no.

24 Q So you're not taking any medication
25 as a result of the allegations?

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1 A No.

2 Q Or what is happening in that case?

3 A No.

4 Q Do you know the approximate amount of
5 damages that you personally have suffered in that
6 case, in connection with the allegations in that
7 case?

8 A We had a statistician who calculated the
9 salaries of the men compared to the salaries of the
10 women, and the women salaries were about \$8,000 a
11 year less than the men's salaries.

12 Q Can I ask the name of that
13 statistician?

14 A I'm having a senior moment and I don't
15 remember right now.

16 Q If you do recall, maybe you could
17 just let me know.

18 A Yes.

19 Q The \$8,000 a year less, would that be
20 for every year that you were there?

21 A Yes. He made a curve, and the women's
22 salaries were parallel to the men's and the women's
23 salaries were just an increment of \$8,000 less than
24 the men.

25 Q I'd like to go to your educational

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1 training.

2 A Bart Holland, B-a-r-t H-o-l-l-a-n-d. It
3 takes a while for it to work its way up.

4 Q It takes a while for it to work its
5 way up with me, as well.

6 What college did you attend, Dr. Hill?

7 A Smith College.

8 Q And your major field of study?

9 A Premedical sciences and French.

10 Q What dates did you attend Smith
11 College?

12 A 1946 to 1950.

13 Q And you received your Bachelor's
14 degree here, I assume?

15 A That's correct.

16 Q Did you get a Master's degree or did
17 you just go into a Ph.D. program?

18 A I went directly to a Ph.D.

19 Q Where did you obtain your Ph.D.?

20 A At Brandeis University, B-r-a-n-d-e-i-s.

21 Q When did you start your Ph.D.
22 program?

23 A In 1956.

24 Q And what was your Ph.D. actually in?

25 A In biology.

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1 Q You wrote a thesis, I assume?

2 A I did, yes.

3 Q What was the topic of your thesis.

4 Don't say Bart Holland.

5 A It was a very long title. It had to do with
6 the ultraviolet -- oh, man, what was it? The effect
7 of ultraviolet light on chloroplasts of euglena,
8 e-u-g-l-e-n-a, gracilis, g-r-a-c-i-l-i-s. Is that
9 enough? You don't need to know the whole thing.

10 Q No, that's enough.

11 MR. PINCUS: Enjoy your reading,
12 John.

13 Q Was that paper actually published?

14 A I got three publications from my thesis.

15 Q Do you know what journals?

16 A The Biophysical Journal.

17 Q Okay.

18 A I mean they were all three in the
19 Biophysical Journal.

20 Q Okay. Outside of your formal
21 education and your Bachelor and Ph.D. program, do
22 you have any other training?

23 A I did postdoctoral fellowships.

24 Q Where were they?

25 A The first one was at Harvard Medical School.

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1 Q I've heard of that. What did you do
2 at Harvard Medical School?

3 A I was in what used to be called the
4 bacteriology department, and I studied protein
5 synthesis in rat liver.

6 Q How long did you do that?

7 A Two years.

8 Q Was that a paid position?

9 A Well, it was a fellowship, a postdoctoral
10 fellowship.

11 Q And what did you do upon completion
12 of that fellowship?

13 A We moved to Colorado and I was a
14 postdoctoral fellow at the University of Colorado
15 Medical Center in Denver.

16 Q What was your husband, Dr. Hill,
17 doing at this time?

18 A When we met he was a resident at the Peter
19 Bent Brinham Hospital in Boston in surgery. We
20 were married in 1960, and in 1961 we moved to
21 Bethesda for two years, and he was at the NIH and I
22 was working on my thesis at the NIH. And then we
23 returned to Boston and I finished my thesis.

24 I worked as an instructor at Brandeis for a
25 year, and then went to the Harvard Medical School as

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1 a postdoctoral fellow. Meanwhile, my husband
2 finished his residency at the Peter Bent Bringham
3 Hospital, and we moved to Colorado.

4 He took a chief residency in surgery at the
5 University of Colorado Medical Center, and I was a
6 postdoctoral fellow there for a year. And then I
7 was promoted to assistant professor in the
8 biophysics department.

9 Q What did you do your postdoctoral
10 fellowship in in Colorado?

11 A That was in medical genetics.

12 Q And then you say you were a professor
13 there, as well?

14 A I was promoted to assistant professor.

15 Q And did you teach classes there?

16 A I don't recall doing much teaching. Mostly
17 research.

18 Q So as an assistant professor, you
19 would do mostly research, no classroom?

20 A That's correct.

21 Q What type of research were you doing
22 at that time?

23 A Medical genetics.

24 Q You mentioned a moment ago that your
25 husband worked for NIH?

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1 A Yes.

2 Q What did he do for NIH?

3 A He was in the public health service, and he
4 was a clinical fellow was his title, I believe.

5 Q And how long was he there?

6 A I should have reviewed these documents.

7 Q It always seems that way.

8 A You're reaching back pretty far into the
9 past.

10 Q I understand and I apologize.

11 How long was he with NIH?

12 A Two years.

13 Q Do you know what his duties were at
14 NIH?

15 A He wasn't doing surgery there. He was doing
16 infectious disease, and he did research in
17 infectious disease and he also saw patients,
18 patients that were used for studies, basically.
19 Prisoners they used then.

20 Q Really?

21 A Yes, right. And they were interested in
22 leprosy. He went down to Mexico and brought three
23 young men up to the United States to study for
24 leprosy, and he wrote a book about it, actually.

25 Q Now, your assistant professorship, is

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1 that the first paid employment that you had?

2 A Well, when you're a postdoctoral fellow you
3 get paid.

4 Q You get a stipend?

5 A You get a stipend, yes, right. So yes,
6 basically it was.

7 Q Why don't we go forward from there
8 until the time that you joined UMDNJ.

9 A Okay. So I was an assistant professor from
10 1967 to 1972 in Denver in the biophysics department.
11 And then we moved to St. Louis, and I was promoted
12 to associate professor in the department of
13 radiology in the section of cancer biology at
14 Washington University in St. Louis. And then in
15 1972 --

16 Q I'm sorry, when did you --

17 A 1976.

18 Q So from 1972 to '76 you were at
19 Washington University?

20 A Yes, at the medical center.

21 Q And what did you do at Washington
22 University?

23 A I was in the section of cancer biology and I
24 did cancer research.

25 Q Did you have a particular area of

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1 expertise?

2 A Radiation and chemotherapy.

3 Q In the four years you were at
4 Washington University, do you feel you were
5 discriminated against in terms of salary?

6 A I really don't know.

7 Q Did you ever file any complaint while
8 there against the university?

9 A No.

10 Q Do you feel that there was any
11 promotion withheld from you while you were there?

12 A No.

13 Q And you left in 1976; is that true?

14 A Yes.

15 Q What was your reason for leaving?

16 A My husband was asked to be the department
17 chairman of the department of surgery at Marshall
18 University Medical School in Huntington, West
19 Virginia, and I was appointed associate professor in
20 biochemistry at Marshall.

21 Q Again, you were associate professor,
22 but you weren't teaching classes?

23 A I was teaching there. I was teaching and
24 doing research.

25 Q Okay. About how much of your time

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1 was dedicated to teaching versus research at that
2 point?

3 A Maybe 25 percent teaching and 75 percent
4 research.

5 Q What were you researching?

6 A Cancer, biology, chemotherapy and radiation
7 therapy.

8 Q And what were you teaching?

9 A I taught medical biochemistry and medical
10 genetics. I was the course master for the medical
11 genetics course.

12 Q How long were there?

13 A Five years.

14 Q That would have been from '76 to '81?

15 A That's correct.

16 Q During your time there did you file
17 any complaints against the university or any
18 co-workers?

19 A No.

20 Q Do you feel you were discriminated
21 against in any way during your tenure there?

22 A Yes.

23 Q How?

24 A You said during my time there did I file
25 complaints. When I came to New Jersey, I went to

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1 the EEOC and filed a complaint against Marshall for
2 salary discrimination.

3 Q And can I ask what the basis of your
4 complaint was?

5 A I believe that my credentials were as good
6 or better, actually better than the two other
7 members in my department, who had been hired at
8 salaries that were substantially higher than mine.
9 So I filed a salary discrimination. And I actually
10 won a judgment that, indeed, I had been
11 discriminated against. But Clarence Thomas was the
12 head of the EEOC at the time, and the ruling was
13 that if I wanted to pursue it, I would have to get
14 my own lawyer. And I didn't want to spend any time
15 on that, that was enough. I made them feel
16 uncomfortable, I hope.

17 Q Who were the other two members that
18 you referenced, were they men?

19 A They were men.

20 Q So was it a gender-based allegation?

21 A I don't think so. I mean, not specifically.

22 Q While you were there, did you ever
23 raise this issue with anybody at the university?

24 A No.

25 Q You never went to anybody and said, I

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1 don't think I'm being compensated fairly?

2 A No, I never complained.

3 Q You say you won a judgment from the
4 EEOC?

5 A Yes.

6 Q What did you get, a right to sue
7 letter?

8 A Yes, I guess so.

9 Q So there was no dollar amount or any
10 liability assessed?

11 A Yes, they said \$15,000.

12 Q And that you would then have to go
13 get an attorney and pursue that?

14 A Yes, right.

15 As a matter of fact, now that I remember, at
16 the University of Colorado I was a member of a class
17 action suit brought by the women. I had no active
18 role in that. But I did get a judgment, and the
19 ruling was that my salary had been \$25,000 less than
20 it should have been. And I was told that I could
21 settle for \$2,000 or I could get my own lawyer. So
22 I took the 2,000, that was it.

23 Q In Colorado, this is a class action
24 brought by women faculty members?

25 A Yes.

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1 Q You know that was certified as a
2 class action?

3 A I'm sure it was certified as a class action,
4 because I had no role in it at all. I just got a
5 letter that my salary had been deemed less than it
6 should have been.

7 Q Who sent you a letter saying that you
8 could either continue to sue or accept \$2,000, do
9 you know?

10 A That was at Marshall you mean?

11 Q No, in connection with the Colorado
12 suit.

13 A Oh, man, I don't remember.

14 Q But you accepted the settlement of
15 \$2,000?

16 A Right.

17 Q Do you feel that you were
18 discriminated against when you were at Colorado?

19 A They said I was.

20 Q But do you feel you were?

21 A Do I feel I was?

22 Q I thought a moment ago when we talked
23 about Colorado you said you didn't feel that you
24 were discriminated against.

25 A That's a hard question to answer. I think I

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1 probably was, but I accepted that. I liked my job,
2 I liked what I was doing.

3 Q "Accepted" sort of infers that you
4 knew and you agreed to it. Did you know or feel
5 that you were being discriminated against?

6 A I felt that the women at the medical school,
7 the women at the university were discriminated
8 against.

9 I was asked to investigate the women's
10 problems, and another assistant professor and I were
11 given access to the personnel action forms at the
12 medical school and we were allowed to go through
13 them. And we tabulated the salaries that the women
14 were getting and the men, And the promotions that
15 the women were getting and the men, and then we put
16 this into a document. And at the medical school it
17 was a faculty of 500, and I forget how many of the
18 men were on tenure track, but most of them were.
19 And of the women, there were 23 women on tenure
20 track and only 6 of them who had tenure. And we
21 reported that to the dean. And I think that after I
22 left, that that may have been what brought the women
23 to continue and to instigate the class action suit.

24 Q First of all, you said "we." Who are
25 you referring to besides yourself when you say "we"?

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1 A This other professor. She was in the
2 clinical arena and I was in the basic science arena.

3 Q What is her name?

4 A Jean Priest.

5 Q Do you know if she's still at
6 Colorado?

7 A No, she moved. Where did she go? She moved
8 to the South somewhere. Atlanta, it's a medical
9 school in Atlanta.

10 Q And she teaches there you believe?

11 A No, I think she's retired now.

12 Q And what prompted you and this
13 individual to start this investigation?

14 A The Denver Post wanted to interview -- it
15 was just the beginning of the women's movement, and
16 the Denver Post wanted to interview a woman. And
17 somehow or another they interviewed me. And I had
18 never really thought about being discriminated
19 against. But when they interviewed me, I realized
20 yeah, I probably had been. And so then there was an
21 article in the newspaper about me.

22 And then I was contacted by a women's
23 committee that was on the entire university. The
24 university is in Bolder, the medical school is in
25 Denver. And I was asked to look into women's

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1 affairs in the Denver campus.

2 Q Do you remember the name of the
3 individual who asked you to look into those affairs?

4 A No. No.

5 Q Do you recall what you did in order
6 to look into those affairs?

7 A Well, we went to the dean, I went with Jean
8 Priest, and we told the dean what was going on, and
9 we asked the dean if we could look at the personnel
10 action forms. And we got permission. That would
11 never happen today, they would never let you in, but
12 they did then.

13 Q Just so I have some sense of the
14 enormity of the undertaking, how many forms were you
15 looking at?

16 A Well, as I said, it was a faculty of about
17 500.

18 Q And each form was more than a page?

19 A Not a whole lot more. I mean, we were able
20 to see when they graduated from medical school or
21 got their Ph.D., we got that information, and what
22 their rate of promotion was and what their salaries
23 were. That was the sort of information that we were
24 looking for. I don't recall that it took a whole
25 lot of time.

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1 Q More than a day?

2 A Oh, probably more than a day.

3 Q More than a week?

4 A You know, we would just go down there every
5 so often and look at some more files.

6 Q Without trying to figure out how much
7 time per day you dedicated to this effort, from the
8 time you started it until the time you completed
9 this report, how much time would you estimate had
10 passed?

11 A You mean from, like, we started it on, say,
12 March 1 and we finished it on August 1, something
13 like that, or the number of hours?

14 Q No. The former.

15 A I would say maybe three months.

16 Q Three months?

17 A Yes.

18 Q And the document that you prepared,
19 how many pages was that?

20 A It was just a memo.

21 Q It was a memo?

22 A Yes.

23 Q A single-page memo?

24 A Yes.

25 Q And what information did it contain?

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1 A I went department by department, and I said
2 there are so many men on the tenure track that have
3 tenure, their salaries are whatever, and so many
4 women. The women were pretty small, so that was a
5 pretty easy number to get out. So department by
6 department.

7 Q I realize the dean said this was
8 okay, but did anybody have any idea, any faculty
9 members, that people were looking at their salaries
10 and so forth?

11 A I don't think so.

12 Q Who authored the memo? Was it you
13 and this other individual?

14 A I don't remember. Certainly I authored it.
15 I don't remember if her name was on it or not.

16 Q Were there any documents or exhibits,
17 attachments to it?

18 A No.

19 Q So it was just a general we've looked
20 at a number of files and this is the breakdown sort
21 of?

22 A Right.

23 Q How long after you finished authoring
24 that document did you leave Colorado?

25 A About a year and a half.

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1 Q Any interaction with the
2 administration regarding that memo?

3 A They weren't very happy about it.

4 Q How do you know that?

5 A They expressed their displeasure.

6 Q When is the first time they expressed
7 their displeasure?

8 A My chairman was very displeased.

9 Q Did he or she come to you, or how did
10 you come to know that the chairman of your
11 department was displeased?

12 A He called me in, I believe.

13 Q Do you recall what he said to you?

14 A He said I shouldn't expect to get tenure at
15 the University of Colorado Medical Center.

16 Q Do you recall this person's name?

17 A Arthur Robinson.

18 Q Do you recall how you responded to
19 that?

20 A I cried. Women always cry.

21 Q Is that the only conversation you had
22 with Mr. Robinson about this issue?

23 A Doctor.

24 Q With Dr. Robinson about this issue?

25 A I don't recall.

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1 Q Were there other members of the
2 administration that expressed their displeasure with
3 what you had done?

4 A The University of Colorado Medical Center
5 went through a series of deans at that time. One
6 would get fired and another one would come in. So I
7 interacted with several deans. And they were kind
8 to me. What more can I say? I mean, they were
9 kind. Besides we were leaving anyway, so it wasn't
10 a problem.

11 Q When you say "kind," did they express
12 their unhappiness with what you had done?

13 A I think they were more diplomatic than that,
14 kept it to themselves.

15 Q But did you believe that they were
16 unhappy with what you did?

17 A I really didn't. I'm kind of a sucker. I
18 believe that everybody has nice thoughts.

19 Q So other than Dr. Robinson, that
20 conversation you just described, you had no
21 indication that the administration was unhappy with
22 what you had done?

23 A No.

24 Q Did anybody react to the newspaper
25 article that came out?

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1 A The newspaper article was very favorable.
2 It was just a profile of me, a woman, on the faculty
3 at the medical center. It just started things going
4 in my mind. And also publicized my name so that the
5 women on the main campus contacted me and asked me
6 to be on their committee.

7 Q But the article didn't address
8 disparagy and salaries?

9 A I don't think so. I haven't read it for
10 quite a few years. I have it in my file. It's a
11 nice picture.

12 Q So you left Colorado, and at some
13 point you knew a class action was filed. Did
14 somebody contact you about being a member of the
15 class?

16 A They must have.

17 Q Do you have a recollection of that?

18 A I don't ever remember talking to anybody.
19 All I remember is that I got this piece of paper
20 that I could get \$2,000 or sue on my own. I took
21 the money and ran.

22 Q And now going forward, from '76 to
23 '81 you're at Marshall?

24 A Yes.

25 Q And did anything we just discussed

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1 refresh your recollection about any suits or
2 complaints at Marshall while you were there?

3 A I didn't bring any suits, other than when I
4 got to New Jersey I went to the EEOC.

5 Q And while you were at Marshall you
6 said you didn't complain, but did you have any
7 interaction with administration over any issues you
8 felt were wrong or improper there?

9 A Not really.

10 Q So nothing about salary?

11 A No.

12 Q Working conditions?

13 A No.

14 Q Problems with co-workers?

15 A No.

16 Q So in '81 you come to New Jersey?

17 A Yes.

18 Q And you accept a position at UMDNJ?

19 A Yes.

20 Q As does your husband?

21 A Yes.

22 Q What position did you accept at
23 UMDNJ?

24 A Professor of radiology in the department of
25 radiology.

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1 Q What was your start date, if you
2 recall?

3 A It was, like, September 1st of 1981.

4 Q And what were your duties in that
5 initial position?

6 A Basically to do research.

7 Q Did you work on your own projects or
8 did you assist other people at that point?

9 A I worked on my own project.

10 Q And what project was that?

11 A I had a grant from the American Cancer
12 Society to study chemotherapy, cancer chemotherapy.

13 Q When did you obtain that grant?

14 A Before I left Marshall. So I probably
15 started in '81.

16 Q Was that the first grant that you
17 obtained?

18 A No. Marshall was a V.A. medical school, and
19 I had, or maybe I had it with my husband, I don't
20 really recall. We had grant money to do research.
21 I would certainly have been the principal writer of
22 the grant, even though it may not have been in my
23 name. I just don't remember.

24 Q Were you the principal investigator
25 of that prior grant?

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1 A At Marshall, as I say, I'm not really sure,
2 because I did not myself have a V.A. appointment.
3 So I don't remember. The most important thing is to
4 have the money to do the research and we had it.

5 Q How much money?

6 A Oh, man, I don't remember. Always not
7 enough. I had a technician and we had a lot of
8 mice.

9 Q So you came to UMDNJ, you had the
10 grant from the American Cancer Society?

11 A Uh-huh.

12 Q I guess is just being funded around
13 the time that you arrive?

14 A Yes.

15 Q And you're working. Is that the only
16 thing you're working on is experiments and research
17 in connection with that grant?

18 A Yes.

19 Q How long did that continue?

20 A Two years.

21 Q And what did you work on after that?

22 A I had grants from the New Jersey Cancer
23 Research Commission. I was interested in the effect
24 of pigment, skin pigment on DNA damage.

25 Q When did you obtain that grant?

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1 A I had several grants. You have my C.V., you
2 can look it up.

3 Q It's important that we go through it,
4 though.

5 A Well, I don't remember. I had maybe three
6 grants from the New Jersey Cancer Research
7 Commission.

8 Q All around 1983?

9 A No. You know, I was funded from the time we
10 were at Marshall -- actually, Colorado I had what we
11 call an RO1 grant. That's the be all and end all of
12 grants, the RO1. I had an RO1 grant in Colorado,
13 which I took with me to St. Louis. And then when
14 that expired, I was working on the Center grant that
15 our section had. And then when we moved to
16 Marshall, we were working on the V.A. grants. And
17 then when we moved to New Jersey, I had the American
18 Cancer Society grant. And in New Jersey, then, I
19 got several New Jersey Cancer Research Commission
20 grants. And then I got an RO1 grant here.

21 Q When did you obtain your last grant?

22 A I think everything kind of expired in about
23 2000.

24 Q And since 2000 have you obtained any
25 other grants?

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1 A No. In 1999 I was 70, and I decided that I
2 didn't want to apply for grants anymore. I had had
3 it. You write about ten grants for every one that
4 you get.

5 Q You're tenured at UMDNJ?

6 A Yes, I am.

7 Q When did you become tenured?

8 A The way the rules went when my husband and I
9 came here, you had two and a half years to get
10 tenure. And so we came in 1981, and I got tenure I
11 think in 1983. You probably have all those letters,
12 as well.

13 Q Were you given tenure the first time
14 you were up for it?

15 A Yes.

16 Q You don't ever recall not being
17 provided tenure?

18 A You have the letters, so you know that there
19 was a little bit of an argument there, but things
20 went through the first time.

21 Q When you say there was an argument,
22 what do you mean?

23 A The members of the department were supposed
24 to vote, the tenured members, and there were only
25 three of them. And one of them abstained and two

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1 voted against me. So the current chairman was not
2 going to support me, but then he decided that he
3 would.

4 He supported me, and I went to the committee
5 known as FCAP. I'm a member of FCAP actually right
6 now. It's the Faculty Committee on Appointments and
7 Promotions. And I went through, actually, I'm told
8 with flying colors. I have very good credentials.

9 Q Do you know why your two colleagues
10 did not support you?

11 A This is a little bit of infighting. My
12 husband was the chief of surgical oncology. And one
13 of those members was the former chairman of the
14 department of radiology. And he believed that my
15 husband had been responsible for him no longer being
16 the chair.

17 Q Which person was that?

18 A Dr. Mallams.

19 Q And who is the other person who
20 didn't support you?

21 A The other one was Dr. Rao. When I came to
22 the New Jersey Medical School, Dr. Mallams told me
23 that I was to be in charge of the research. And Dr.
24 Rao had, unbeknownst to me, had just gotten an NIH
25 grant and RO1 grant. So Mallams put me in charge of

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1 Rao and Rao didn't like that. So I think that he
2 would have preferred that I not get tenure.

3 Q And you said the chairman was not
4 going to support you?

5 A Right. But then some people talked to him
6 and he decided to support me.

7 Q What people talked to him?

8 A One of the deans talked to him.

9 Q How did it come about that the dean
10 talked to the chairman?

11 A You'll have to ask him. I have no idea.
12 They just decided they wanted to keep me. And so
13 one of the deans, Dr. Larry Feldman, went to bat for
14 me and the chairman changed his mind.

15 Q Did you reach out to Dr. Feldman or
16 anybody else to support you with respect to the
17 chairman's position?

18 A I don't remember.

19 Q What did you do when you first found
20 out that two of the three members had voted against
21 you and the third abstained?

22 A I was pretty annoyed.

23 Q What did you do about it?

24 A Nothing.

25 Q Did you talk to anybody?

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1 A Oh, I'm sure I did.

2 Q Anybody in administration?

3 A I don't remember. I think I probably went
4 and talked to the dean. Yeah, I think I did.

5 Q Do you remember who was the dean at
6 that time?

7 A He's dead now. Lanzoni, Vincent Lanzoni.

8 Q How much time went by from the time
9 that you were told that you did not make it until
10 the chairman changed his mind?

11 A About two days.

12 Q How was the working relationship with
13 these other members? Did you interface with them
14 after that?

15 A Well, they had their project. Well, Mallams
16 was a clinician, and he was mad at everybody and
17 left very shortly after that. And Rao had his own
18 grant and he was working on that. And his interest
19 was in nuclear medicine and my interest was in
20 cancer biology. So our interests didn't intersect.

21 Q And up until the time you got tenure,
22 did you feel you were being discriminated against by
23 the university in any manner?

24 A No.

25 Q In hindsight do you now?

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1 A No, other than, you know, the salary
2 business. I recognize looking back at the records
3 and so forth that I probably was not being offered a
4 competing salary. The theory is, and I'm sure you
5 know it, is that women don't argue, they don't
6 bargain.

7 Q That doesn't happen in my house.

8 A It doesn't happen in your house? Well,
9 actually, it doesn't happen in mine, either.

10 (A discussion is held off the record.)

11 Q So from 1981 until you made tenure in
12 '83, you never voiced any concerns about the amount
13 of your salary?

14 A No.

15 Q You never felt that you were being
16 paid less than your male counterparts?

17 A I didn't know.

18 Q Even given your experience at
19 Colorado and Marshall and the work you did there to
20 do comparative studies, did you not have inquiries
21 as to UMDNJ?

22 A At the time that I came to UMDNJ, I just
23 wanted to do good work and I had enough of this
24 political stuff. Put my nose to the grindstone and
25 do some good science.

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1 Q So it wasn't that you weren't aware
2 of it, you just --

3 A I wasn't aware of it, but I didn't want to
4 get into it, either.

5 Q But certainly you came to UMDNJ with
6 an understanding that from your experience, women in
7 your field were being discriminated against in terms
8 of salary with respect to their male counterparts?

9 A That's correct.

10 MR. PINCUS: Objection, asked and
11 answered. You may answer.

12 A That's correct. In the global sense we're
13 talking about.

14 Q In your personal experience.

15 A Oh, okay.

16 Q At two universities prior to UMDNJ,
17 you not only were aware of it, but helped
18 investigate it.

19 A Yeah, right.

20 Q So in 2000 is the last time you
21 applied for a grant?

22 A Yes. Maybe not even that. I'm not sure
23 when I hung up my grant writing pen.

24 Q Dr. Hill, I'm going to give you a
25 copy of the complaint in this matter. It has

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1 previously been marked Exhibit 2 at the deposition
2 of Dr. Lenarczyk. Would you take a look at this,
3 please?

4 (At this point in the proceedings,
5 a brief recess is taken.)

6 Q Dr. Hill, have you had an opportunity
7 to look at the document that I gave you which has
8 been previously marked Lenarczyk Exhibit 2?

9 A I have.

10 Q Do you recognize this document?

11 A I do.

12 Q What is this document?

13 A This is the complaint, my complaint.

14 Q This is a qui tam complaint filed by
15 you; is that correct?

16 A I believe so. What does it mean "Impounded"
17 (indicating).

18 Q It just means when they take it in.

19 MR. PINCUS: It's filed under seal.

20 A Because the document that I have doesn't
21 have "Impounded" on it.

22 Q Do you understand when you filed this
23 it was filed under seal?

24 A Okay.

25 Q We'll back up. I'll explain the

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1 different marks on it to you. But this complaint
2 you filed against the university and against Dr.
3 Howell and Dr. Bishayee individually?

4 A That's correct.

5 Q And it's your contention that Dr.
6 Howell and Dr. Bishayee purposely defrauded the
7 Federal Government?

8 MR. PINCUS: Objection to the form of
9 the question. The complaint speaks for itself, but
10 you may answer.

11 A Yes.

12 Q And that they perpetrated a fraud or
13 engaged in conduct tantamount to scientific
14 misconduct?

15 A That's correct.

16 Q And when you drafted this complaint,
17 did you know at the time it was going to be filed
18 under seal?

19 A I did.

20 MR. PINCUS: Objection to the form of
21 the question. It presumes she drafted the
22 complaint.

23 Q When I say "you," I mean you or
24 somebody that you paid to do it.

25 A Yes.

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1 Q And what was your understanding of
2 the significance that it be filed under seal?

3 A That I wouldn't be allowed to talk about it.

4 Q Did you also understand that the
5 individuals that you named wouldn't know about it,
6 either?

7 A I believe that they were told something
8 about it, but not the details.

9 Q Do you believe they were told you
10 filed a complaint?

11 A I think so, yes.

12 Q Did you know that any information
13 contained in this complaint would not be made
14 available to the public?

15 A I don't understand your question.

16 Q Sure. When you filed this under
17 seal, you had an understanding that nobody was going
18 to be able to read the contents of this complaint?

19 A Right.

20 Q Until when? What were you waiting
21 for, do you know?

22 A The Attorney General had to release the
23 seal.

24 Q In fact, the Attorney General had to
25 conduct --

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1 A The U.S. Attorney, not the Attorney General.

2 Q The U.S. Attorney had to conduct an
3 investigation and make a determination whether it
4 was going to participate in this suit or not?

5 A Yes.

6 Q And you're aware they spent years
7 conducting that investigation?

8 A I really am.

9 Q And you know that they had FBI agents
10 interview people?

11 A I do.

12 Q And that they have requested and
13 reviewed voluminous amounts of information?

14 A I don't know the extent of what they've
15 reviewed, but I understand that they have reviewed a
16 fair amount of information.

17 Q And you're also aware that at the
18 conclusion of all those efforts, they have elected
19 not to participate in this suit?

20 A I understand that there are three ways that
21 things can go. One is that the U.S. Attorney can
22 take the case; one is the U.S. Attorney can allow
23 the Relator to take the case, and the other is that
24 the U.S. Attorney can say that the case has no
25 merit. The U.S. Attorney decided to let me, the

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1 Relator, to continue with the case.

2 Q But they're not interested in
3 pursuing the case, you understand that to be the
4 case?

5 MR. PINCUS: Objection to the form of
6 the question. It calls for speculation. You may
7 answer.

8 A The letter that we received from the U.S.
9 Attorney when they decided not to take the case
10 stated that they could come back into the case any
11 time they wanted to.

12 Q But they're not prosecuting the case?

13 A Not at this time.

14 Q In fact, in order to prosecute the
15 case, that burden, both financially, time and energy
16 is on you?

17 A That's correct.

18 Q And you understand that they had the
19 election to come in and prosecute the case
20 themselves?

21 A That's correct.

22 Q And they elected not to do that?

23 A That's correct.

24 Q What conclusions, if any, do you draw
25 from the fact that the U.S. Attorney decided not to

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1 prosecute the case?

2 A At just about the time that this case was
3 getting their interest and they finally got the
4 documents that had been subpoenaed and so forth, the
5 \$80,000,000 cardiology case came in from UMDNJ. And
6 I believe that they felt that that was more bucks
7 and that they needed to devote their energies and
8 their personnel to that case, rather than to my
9 case. I think my case was triaged.

10 Q What do you mean by "triated"?

11 A That the U.S. Attorney's office decided that
12 the other case was more important. And so my case
13 had enough merit for me to pursue it and that they
14 would let me do that.

15 Q You're not suggesting that you
16 believe that the U.S. Attorney only handles one case
17 at a time, are you?

18 A Oh, no, no. But they have to decide what
19 they're going to do, and they have emphasis on
20 different things and so forth. They have to find
21 terrorists and so on. So there's only a certain
22 amount of things that they can cover.

23 Q So you interpret their lack of
24 participation not a reflection of what they believe
25 to be the merits or lack thereof of the case, but

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1 just they had other cases they were more interested
2 in?

3 A Yes.

4 Q And your basis for that is?

5 A What I said, that there were other, more
6 important cases that involved a whole lot more
7 money, like \$80,000,000, the cardiology case.

8 Q What is the status of that case?

9 A I have no idea.

10 Q How do you know that that case was
11 more important to them than this case?

12 A Because \$800,000,00 is a whole lot more than
13 \$1,400,000, and many people involved.

14 Q Isn't it true that you're
15 speculating? You don't, in fact, know that that
16 case was more important to them than this case?

17 A That's true.

18 Q And isn't it also true that as far as
19 you know, that case could well have been concluded
20 years ago?

21 A I do not believe that case has been
22 concluded. The chairman of medicine, as far as I
23 know, is still not back at the medical school, and I
24 believe that case is still pending. I think that we
25 would have been told, as members of the medical

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1 school faculty, if the case had been concluded.

2 Q And you have from time to time
3 supplied additional documentation to the U.S.
4 Attorney, have you not?

5 THE WITNESS: Have I supplied
6 additional documentation to the U.S. Attorney?

7 MR. PINCUS: Do you want me to answer
8 this question? She's making an inquiry of me. I
9 can't really answer your question. If you know, you
10 can answer the question. If you don't know, that's
11 the response that you should give.

12 A I'm not really sure.

13 Q Do you have any recollection of
14 putting packets of materials together and mailing it
15 to anybody at the U.S. Attorney's office subsequent
16 to the filing of the complaint?

17 A I'm sure that we did.

18 Q Do you have a recollection as to how
19 many times you did?

20 A No.

21 Q Do you have a recollection whether it
22 was more or less than six times?

23 A No.

24 Q Do you have a recollection of what it
25 was that you sent them?

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1 A No.

2 Q You have no idea what you sent them?

3 A No, I really don't remember.

4 Q Do you remember the last time you
5 sent them something?

6 A No.

7 Q Do you remember the first time you
8 sent them something?

9 A Well, I do remember that I sent memos, and I
10 sent a memo and a letter to the U.S. Attorney, that
11 I made a presentation to them, and that I followed
12 that up with a memo and a letter clarifying and
13 adding points to what I had said. And that would
14 have been, let's see, I think in 2006, when they
15 decided not to take the case.

16 Q So is it fair to say that once you
17 found out they decided not to take the case, you
18 undertook efforts to convince them to participate in
19 the case?

20 A Yes.

21 Q And the presentation you just
22 mentioned, can you tell me what that consists of?

23 A It was a PowerPoint presentation in which I
24 presented what at that time was the evidence that I
25 had that I believed that there had been a fraud.

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1 Q Where did you put on this PowerPoint
2 presentation?

3 A Actually, unbelievably, the U.S. Attorney's
4 office didn't have Microsoft Office so that I could
5 make a PowerPoint presentation. But I had printed
6 it out and I had printed copies for the U.S.
7 Attorney, herself, and for the FBI agent who was
8 also printed, and for Mr. Pincus and myself. And I
9 went through it as though I was presenting it as a
10 PowerPoint on the screen.

11 Q To whom did you make this
12 presentation?

13 A To the U.S. Attorney and the FBI agent and
14 Mr. Pincus was there and I was there.

15 Q And do you recall the U.S. Attorney's
16 name?

17 A Another senior moment. Susan, her first
18 name is Susan.

19 Q Steel?

20 A Steel, thank you.

21 Q And how about the FBI agent?

22 A That was Mary Beth, Mary Beth Gardocki.

23 Q How long did this presentation last?

24 A Oh, a couple of hours.

25 Q And the entire time the only people

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1 in the room besides yourself were Susan Steel, Mary
2 Beth Gardocki and Mr. Pincus?

3 A That's right.

4 Q And you basically had printed a hard
5 copy of your PowerPoint presentation?

6 A Right.

7 Q Provided each person a copy?

8 A Right.

9 Q And walked them through it?

10 A Right.

11 Q Explaining, I assume, each page and
12 each item in detail.

13 A Right.

14 Q Did anybody ask questions during the
15 presentation?

16 A I don't recall.

17 Q Do you recall when the presentation
18 occurred?

19 A I have the date in my notes, but I don't
20 have it in my head.

21 MR. LEONARD: Shelly, to the extent
22 that you have that date, could you just provide it
23 to me?

24 MR. PINCUS: After we get done doing
25 follow-up requests in a letter, I'll look back in my

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1 records, and I'm fairly certain I can provide you
2 the date that occurred.

3 MR. LEONARD: Okay.

4 Q What do you recall Susan Steel saying
5 upon the conclusion of the presentation?

6 A I don't recall.

7 Q Did the presentation include
8 information that you believe the U.S. Attorney did
9 not have previously?

10 A Yes.

11 Q What new information do you believe
12 you were bringing to present them?

13 A That summer I spent a great deal of time in
14 the FBI offices and the Office of the U.S. Attorney
15 going through the documents that had been
16 subpoenaed. And I discovered at that time that the
17 results of experiments that had been done, the
18 repeat experiments that had been done by Dr. Howell,
19 which were entirely at odds with reports that had
20 been made, experiments that had been done by Dr.
21 Bishayee; that Bishayee's results were
22 scientifically impossible, and that there was a very
23 good scientific explanation for the results that Dr.
24 Howell and Dr. Lenarczyk had gotten.

25 Q How much time did you spend reviewing

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1 these documents?

2 A A lot of time. I went down probably -- I
3 could keep a record. I don't know whether I kept a
4 written record of the number of times I went to the
5 FBI office. Probably five sessions in the FBI
6 office. But then more like 10 or 12 sessions in the
7 U.S. Attorney's Office, and I would spend maybe two
8 or three hours each time.

9 Q So collectively, 17 sessions each of
10 two or three hours duration?

11 A Yes, right, 30 or 40 hours probably.

12 Q Were you provided a desk or access to
13 documents? What would you do during these session?

14 A Well, with the FBI, Mary Beth Gardocki had
15 to watch me very carefully. So she was always with
16 me. I couldn't even go to the ladies' room by
17 myself. When I was in the U.S. Attorneys Office
18 they gave me a conference room, and I was able to go
19 to the ladies' room by myself.

20 Q What exactly were you looking for?
21 Did you know what you were looking for when you went
22 there?

23 A I knew that Howell had not been able to
24 repeat the experiments. I also had a zip drive from
25 Lenarczyk, and I knew I had seen his experiments.

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1 There are two types of an experiment,
2 there's the 50 percent experiment and there's the
3 100 percent experiment. I had only focused on the
4 50 percent experiment because that involved this
5 so-called "bystander effect."

6 Well, why was I doing it? They asked me to
7 do it, that's why I was doing it.

8 Q Who asked you to do it?

9 A The U.S. Attorney and the FBI, they asked me
10 to go through the documents. There were 11 books
11 that they had subpoenaed. The first time they
12 called me in they asked me just to prioritize the
13 documents. They hardly told me what was in any of
14 them, but I prioritized them as best I could. And
15 then there was one box, Box 6, which really seemed
16 to contain the copies of most of the notebooks that
17 would have been important. And they asked me to go
18 through them.

19 Q Okay.

20 A And so I did.

21 Q I think my question, though, was what
22 you were looking for when you went there?

23 A Well, that's what I'm saying, is that I
24 didn't really know what I was looking for. They
25 asked me to go through the documents, and at their

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1 request, I was going through the documents. And
2 basically what I thought that I was looking for was
3 the actual data that had been generated by Bishayee.

4 I already knew from the ORI that the Coulter
5 counter, this particle counter that was used to
6 count the cells, were -- how shall I say -- out of
7 whack. Bishayee Coulter counts were not consistent
8 with random distribution, which they should have
9 been. So I thought I was looking for more evidence
10 of Coulter counts being not consistent with random.
11 So I was focusing on the Coulters, but I also looked
12 at the data, as well.

13 And actually, I was coming to the end of
14 looking through this Box Number 6, and I came upon
15 the repeat experiments that had been done by Howell.
16 And I had not looked at the 100 percent experiments
17 that Lenarczyk had sent me, because I had not
18 suspected that there was anything wrong with
19 Bishayee's 100 percent experiments.

20 But what I saw, I came upon the stuff from
21 Howell's notebook, and there were two experiments
22 there that were 100 percent experiments. And I went
23 through the first one and I saw that the data went
24 down like that and then plateaued. I know you can't
25 draw that on your transcript.

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1 MR. LEONARD: Why don't you provide
2 Dr. Hill a piece of paper and she can draw it and
3 we'll mark it as an exhibit.

4 A All right. So in the papers and in the
5 grant application and so forth, this would be
6 $3HdThd$, which is an abbreviation for tritiated
7 thymidine. So this is your "X" axis, this is
8 tritiated thymidine, it's a dose. This is the
9 survival. We call it is S divided by S_0
10 (indicating).

11 Bishayee's results were an exponential
12 decline like that. This is 100 percent experiment
13 (indicating).

14 Q Do you want to use two different
15 colors? That will help you out.

16 MR. PINCUS: Why don't you leave
17 Bishayee's in red, like you did, and now continue in
18 black.

19 THE WITNESS: I'm going to do Howell
20 in black.

21 MR. PINCUS: Let the record reflect
22 that Bishayee's results were drawn in red.

23 A Howell's results went like that. The number
24 here is 1.0, this is .5, let's say, this is .1, this
25 is .01. Actually, his results go down to .001

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1 (indicating). So there was a many-fold difference
2 in survival between Bishayee's results and Howell's
3 results in this 100 percent experiment.

4 Q In these documents that you were
5 looking at?

6 A In these documents that I was looking at.

7 Q Just so we're clear, you had no
8 firsthand knowledge of these experiments?

9 A No.

10 Q You're just looking at copied pages
11 contained in a box?

12 A Right.

13 Q Dr. Hill, can I have that piece of
14 paper? We're just going to have it marked as an
15 exhibit.

16 MR. LEONARD: Would you mark this as
17 Hill-1, please?

18 THE WITNESS: Well, why don't I
19 identify them.

20 MR. LEONARD: Sure.

21 THE WITNESS: We'll do this
22 scientifically correctly. This is Howell and this
23 is Bishayee (indicating).

24 Q And this is for 100 percent
25 experiments?

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1 A 100 percent experiments. I was stunned.

2 Q You were stunned when you saw that?

3 A I was stunned. And I lay awake at night.
4 Because I thought this was a 50 percent experiment.
5 And I had go back through and I had to look at the
6 beginning, and it wasn't a 50 percent experiment, it
7 was a 100 percent experiment. And I had believed
8 Bishayee's 100 percent survival, the exponential
9 decline. And now I'm looking at Howell's 100
10 percent results and it's plateauing at 50 percent
11 and I couldn't believe it. And I lay awake at night
12 thinking what's going on, what's going on.

13 And then I'm a biochemist, I'm a radiation
14 biologist, and I know that thymidine blocks the cell
15 cycle. And the explanation for Howell's results is
16 that the tritiated thymidine was blocking the cell
17 cycle. Cells are only going to be killed if they go
18 into the phase of DNA synthesis.

19 And I realized that the explanation for
20 Howell's results were that half the cells in the
21 population were not going into DNA synthesis, they
22 were being blocked. And they had to have been
23 blocked by the tritiated thymidine. So I knew then
24 that that was what the explanation was, and that
25 Bishayee's results were impossible. And that's what

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1 I told the U.S. Attorney.

2 (Graph drawn by Dr. Hill is received
3 and marked Hill-1 for identification by the
4 Reporter.)

5 Q Just so we're clear, you didn't do
6 any experiments yourself or speak to anybody who
7 conducted these experiments?

8 A No.

9 Q So the conclusions you just stated is
10 what you speculate based on the documents you
11 reviewed.

12 MR. PINCUS: Objection to the form of
13 the question. You may answer.

14 A That's correct.

15 Q You can't sit here under oath and
16 testify that that's absolutely what occurred.

17 MR. PINCUS: Objection to the form of
18 the question. You may answer.

19 A You know, I'm a scientist. And one of the
20 things that we have to do is interpret data. And
21 nothing in biochemistry or radiation biology is 100
22 percent, but it can be very close to 100 percent.
23 And I can tell you as we're sitting here that this
24 is very, very close to 100 percent that that is what
25 is going on; that the thymidine, the tritiated

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1 thymidine was blocking the cell cycle, cells are not
2 entering "S" phase, they're not being killed, and
3 that explains Howell's results.

4 And if Bishayee is doing his experiments in
5 exactly the same way that Howell is, which he is,
6 because the protocols are exactly the same, that
7 Bishayee could not be getting the results that he
8 was getting.

9 Q Again, that's your speculation.

10 A That is speculation, that is correct.

11 Q And you can't sit here today and
12 testify that that is, in fact, what occurred.

13 A No, I can't.

14 Q You said that you were very concerned
15 when you came across these documents; is that
16 correct? I'm sorry, you're nodding your head. She
17 can't record that.

18 A Well, I haven't answered your question yet.

19 Q You were very concerned when you came
20 across these notebooks?

21 A Yes.

22 Q And that concern was borne out of
23 something you weren't even looking for?

24 A Yes.

25 Q And that concern arose while you were

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1 looking at documents at either the FBI's office or
2 the U.S. Attorney's office.

3 A Yes.

4 Q And that, obviously, was subsequent
5 to the filing of the complaint.

6 A That's correct.

7 Q So I guess, just so I understand, if
8 this is all your concern, what prompted everything
9 up to the point of your discovering this?

10 A Everything began in 2000 -- well, it really
11 began in 1999, but it kind of really began in 2001,
12 when Dr. Lenarczyk came to my office and tried to
13 get me to go into the lab to see what Dr. Bishayee
14 had been doing in the course of the experiment that
15 he was doing.

16 And we shadowed him. We've gone through
17 this in other depositions. And we believed that he
18 was fabricating the results of his experiment.

19 And then in 1999, which was two years before
20 this, looking back -- well, the 2001 experiment
21 brought me to tell Dr. Howell about that, and you
22 have the documents that were involved in that, and
23 to go to the Campus Committee on Research Integrity
24 to report those results. The 1999 experiment was
25 another experiment in which I had observed that

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1 Bishayee was making up results in another
2 experiment.

3 So two observations in which Bishayee was
4 coming up with results that were incompatible with
5 my observations.

6 So the Campus Committee on Research
7 Integrity looked into mostly the second experiment.
8 But then I told them about the first experiment, and
9 they looked into that somewhat, as well. And they
10 came up with the conclusion that there was not
11 enough data there to rule on research misconduct.

12 Well, at the time that this all occurred,
13 the university policy said that the Committee on
14 Research Integrity was supposed to determine whether
15 there was some indication of research misconduct.
16 And then a new committee should have been formed
17 which would have included outside members and
18 experts in the field.

19 The Committee on Research Integrity had no
20 experts in the field, and actually was consisted of
21 deans and people whose job it was to protect the
22 university. So to my mind, the committee was not
23 properly constituted. And then rather than
24 referring the case to a second committee, which
25 would have had some experts, they decided that there

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1 wasn't enough evidence for research misconduct. So
2 they kicked it out, basically.

3 And so I went to the Office of Research
4 Integrity at the U.S. Public Health Service, and I
5 sent everything that I had given the Research
6 Integrity Committee at the university, I sent them
7 everything. And then they took another year to go
8 through all of that.

9 But in the meanwhile I talked with Dr.
10 Field, who was in charge of the case, and she told
11 me about the Coulter counts. Actually, she kind of
12 told me at the very last minute before her committee
13 was going to meet. And then I went and got some
14 more Coulter counts and sent them to her. These are
15 all in the disclosure or in the documents that
16 accompanied the disclosure. And found that there
17 was even more evidence of nonrandomness of
18 Bishayee's numbers.

19 So I thought when I was in the U.S.
20 Attorney's Office that what I was looking for was
21 more evidence of Coulter counts that were amiss, and
22 I found this other thing. But I also found, because
23 what I was looking for, and already had the results
24 of Lenarczyk's 50 percent experiments, that the
25 50 percent experiments look almost like that

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1 (indicating). Again, Bishayee has got this
2 exponential decline in survival, and Howell and
3 Lenarczyk - you could put Lenarczyk here as well -
4 Howell and Lenarczyk, they're results plateau.
5 Actually, in the 50 percent experiments, they
6 plateau at about .7, or 70 percent.

7 Q So getting back to our original train
8 of thought, nothing regarding what you found in
9 Box 6 forms the basis of anything that was in this
10 complaint.

11 A That's correct. I didn't see Box 6 until
12 after the complaint.

13 Q And we'll go through each of these
14 committee reviews and ORI and so forth and talk
15 about it in a little more detail, but I just want to
16 be very clear about something. You said Bishayee
17 fabricated data. As you sit here today under oath,
18 you can't state that you know for certain that
19 Bishayee fabricated data, can you?

20 A No, I can't. We're at the 99 percent level
21 here.

22 Q I'm sorry?

23 A We're at the 99 percent level here.

24 Q We're at the 99 percent level?

25 A That I can't say for sure, but I am very

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1 convinced that he did.

2 Q But you can't testify under oath that
3 he did?

4 A No.

5 Q And you have no firsthand knowledge
6 that he did?

7 A I have the firsthand knowledge of that first
8 experiment in 1999 that I observed with a set of
9 dishes that had no colonies on them, I have that in
10 my head. I know that those dishes were empty. And
11 I have the observations that Lenarczyk and I made of
12 the experiment in 2001 where tubes were left in the
13 cold incubator that should have been processed and
14 were not.

15 Q But my point is, firsthand knowledge
16 being you've never seen him fabricate data.

17 A I never actually saw him take the pipettes
18 and take the cells and take the tubes, no. I just
19 followed his trail.

20 Q Dr. Hill, I'd like to direct your
21 attention to the complaint and Page 6. Now, this
22 complaint was filed in 2003; is that correct?

23 A I think so, yes. I can't read the date, but
24 I would say yes.

25 Q The last sentence on Page 6.

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1 A Okay.

2 Q It reads, "It is, therefore, critical
3 that patients not be misled about the results of the
4 research." Now we're six years beyond the date that
5 this was filed. Can you identify any patients that
6 have been misled?

7 A Dr. Howell's experiments and research
8 involves setting standards for nuclear medicine.
9 Nuclear medicine uses radioactive tracers to both
10 treat cancer and to detect cancer. And Dr. Howell's
11 premise is that there's a non-random distribution of
12 radiation. So that the isotopes go to different
13 parts of the body, and some parts are irradiated
14 heavy and some parts of the body are not irradiated
15 heavily. This is very important research, and it's
16 very important to understand the kinds of doses
17 patients are receiving.

18 In radiology we deal with very large
19 numbers. Like, for example, a chest x-ray. Does a
20 chest x-ray cause cancer? Yes. But if you went for
21 a chest x-ray today, would that cause cancer? I
22 couldn't say that it caused cancer. And even if you
23 got lung cancer, I couldn't say that it caused your
24 lung cancer. But I can say that I can make a
25 calculation over the population, say 200,000,000

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1 people in the United States, and maybe how many of
2 them are getting chest x-rays every year, maybe a
3 million, I can tell you, and I've done this
4 calculation, I'm telling this off the top of my
5 head, so I don't know whether this is actually true
6 or not, but I could tell you that of all those chest
7 x-rays, those million chest x-rays, let's say, that
8 are being given in the United States in 2008, that
9 perhaps one or two people will get lung cancer
10 resulting from the radiation exposure that they have
11 gotten from those chest x-rays. Now, I can't tell
12 you who, but I can tell you that statistically a
13 chest x-ray, if you integrate over a large
14 population of people, will cause cancer.

15 Q Okay. And I don't mean to be flip.
16 So your answer is you don't know any patients that
17 have been misled?

18 A No. But it's very important for people who
19 are working in nuclear medicine to understand the
20 mechanism of the isotopes that they're using, and
21 also to understand what safe doses are. And Howell
22 is also involved in determining what the safe doses
23 are.

24 Q You're not suggesting that the dose
25 that patients are actually receiving are predicated

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1 on the paper that you and Dr. Howell co-authored?

2 A No.

3 Q So that paper is not being used or
4 relied on or in any manner have any effect, and,
5 again, the paper that you and Dr. Howell
6 co-authored, on the actual treatment of patients,
7 you're not suggesting that it is?

8 A No.

9 Q I'd like to direct your attention to
10 Paragraph 19.

11 A But let me say this, that the NIH --

12 MR. LEONARD: There's no question
13 pending, Dr. Hill.

14 MR. PINCUS: Hold on.

15 MR. LEONARD: Shelly, please.

16 MR. PINCUS: No, no, no, no, hold on
17 a second. She paused and wanted to finish her
18 answer, and I ask that you permit her to do so.

19 MR. LEONARD: Okay. I will say this,
20 though. Dr. Hill, you seem like a very nice person,
21 and I'm indulging your responses, sometimes for five
22 or ten minutes. Typically I would ask a question
23 and you would answer it and not go on a diatribe.
24 So I'm trying to sort of reign that in a little bit.
25 Had you finished your answer?

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1 THE WITNESS: No, I hadn't.

2 Q What else would you like to say?

3 A That the NIH gave Dr. Howell his grant, they
4 renewed his grant because they considered that the
5 research that he was doing was critically important.
6 The NIH doesn't give grants to just anybody. The
7 competition is very stiff, and there has to be a
8 good reason. And this grant is coming from the
9 National Cancer Institute, so the National Cancer
10 institute feels that this research is important
11 enough to support it.

12 Q Just by way of illustration, if I
13 asked you a question about whether or not it's
14 important research, that would be a very responsive
15 research. But when I say to you is the paper that
16 you and Dr. Howell co-authored being relied on to
17 set doses for patient care, the answer to that is
18 no. And frankly, what you just said isn't
19 responsive or doesn't relate to that at all. I
20 guess that's the kind of point I'm trying to make
21 here.

22 A Okay.

23 Q In Paragraph 19 of the complaint on
24 Page 7 -- I'm sorry, in Paragraph 20 it talks about
25 you having a conversation with Dr. Howell.

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1 A Okay.

2 Q Do you remember exactly what you said
3 to Dr. Howell about Dr. Bishayee? I didn't know if
4 you recalled the specific conversation is all.

5 A Well, the first experiment, in the 1999
6 experiment, I informed Howell about it, and he
7 brushed it off. And he used the results of the
8 Bishayee experiment that I believed had been
9 fabricated in his grant application.

10 Q Paragraph 24 says, "As a result of
11 their actions, Hill and Lenarczyk concluded that
12 Bishayee had, in fact, fabricated the experiment's
13 data and engaged in scientific fraud." Now, you
14 were in attendance at Dr. Lenarczyk's deposition,
15 were you not?

16 A Yes.

17 Q And you heard him testify under oath
18 that, in fact, he did not conclude those things?

19 A I did hear that.

20 Q And did you also hear him say that
21 prior to filing this complaint, you never provided
22 him a draft?

23 A That's correct.

24 Q Can I ask why, if you were going to
25 make representations regarding what a colleague

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1 thought, you wouldn't provide that colleague with a
2 draft to comment upon it?

3 MR. PINCUS: Objection to the extent
4 that that calls for disclosures of attorney work
5 product or strategy. But to the extent that you can
6 answer, you can answer.

7 A I can't answer that question.

8 Q You don't know why you wouldn't show
9 it to Dr. Lenarczyk?

10 A It didn't occur to me to show it to him. I
11 did talk with him on the telephone, I believe. But
12 it didn't occur to me to do that.

13 Q Even though you were going to file a
14 complaint in Federal Court against a major
15 university and make representations as to what he
16 concluded about colleagues in his field, you didn't
17 think that you should show him the document to see
18 if he would agree to the statements you were
19 attributing to him?

20 A Now that you say that, I think I probably
21 should have, but I didn't.

22 Q Paragraph 26 says, "After the
23 Committee's report, Howell proceeded to terminate
24 the employment of both Bishayee and Lenarczyk."
25 What is the basis for that statement?

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1 A I was told by Bishayee that Howell had
2 written a memo, which he told Bishayee to sign, in
3 which was written, "I resign my position as,"
4 whatever his position was, and he signed it.

5 Q You were at the deposition of Dr.
6 Bishayee, correct?

7 A Uh-huh.

8 Q And you heard him testify that, in
9 fact, Dr. Howell did not terminate him; is that
10 correct?

11 A He testified that Dr. Howell wrote that
12 memo.

13 Q But he testified that Dr. Howell did
14 not terminate him; isn't that correct?

15 MR. PINCUS: Objection to the form of
16 the question. His deposition speaks for itself.
17 You may answer.

18 A If that's what the deposition said, I guess
19 so.

20 Q Well, you were there. Did Dr.
21 Bishayee say that he was fired?

22 A He wasn't fired and I never said he was
23 fired.

24 Q You said he was terminated?

25 A Terminated.

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1 Q How do you define "terminated"?

2 A He was terminated. You can look at the
3 personnel action form. He was terminated, because
4 according to the personnel action form he resigned.
5 That's a termination. The form is called a
6 termination.

7 Q And that's the impression you're
8 trying to give in this document when you say, "After
9 the Committee's report, Howell proceeded to
10 terminate the employment of both Bishayee and
11 Lenarczyk"? What you're trying to convey there is
12 that he resigned?

13 MR. PINCUS: Objection to the form of
14 the question. You may answer.

15 Q What impression are you trying to
16 give by the first sentence of Paragraph 26?

17 A That Howell encouraged the termination of
18 both of these people.

19 Q That's not what that says.

20 MR. PINCUS: Objection to the form of
21 the question. You may answer.

22 Q Is it?

23 A I don't know how to answer these questions.

24 Q Well, you just said Bishayee
25 resigned, correct?

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1 A He resigned.

2 Q Dr. Howell can't resign for him,
3 correct?

4 A Dr. Howell wrote the memo.

5 Q It doesn't matter. He can't resign
6 for him; isn't that correct?

7 A I guess not.

8 Q And if Dr. Bishayee resigned, then
9 Dr. Howell couldn't have terminated him; isn't that
10 also correct?

11 A Okay, I guess that's correct.

12 Q And Dr. Lenarczyk, you read his
13 deposition?

14 A Yes.

15 Q And Dr. Lenarczyk testified under
16 oath that Dr. Howell didn't terminate him, either;
17 is that correct?

18 A That's correct.

19 Q So that statement in your complaint
20 is false.

21 MR. PINCUS: Objection, calls for a
22 legal conclusion. You may answer.

23 Q Isn't that correct?

24 A I guess you'd have to say that.

25 Q It says, Dr. Howell, the next

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1 sentence, engaged in retaliatory acts against you.
2 Can you tell me, and this time please do elaborate,
3 every retaliatory act that Dr. Howell committed
4 against you?

5 A We had a laboratory that we all shared.
6 After the committee had finished its work, my
7 chairman chose to make Howell the chief of the
8 division. And Howell, in his wisdom, decided to
9 change the locks, so that I was no longer able to
10 get into the shared laboratory.

11 Q Okay.

12 A Howell told me to my face, even though he
13 had just been appointed the division chief, that he
14 wanted to have nothing more to do with me. And
15 Howell has not spoken to me, except in public, since
16 that time. He's my division chief. He has not
17 spoken to me, except in public, since that time. He
18 has shunned me for how many years? 2001 to 2009,
19 going on eight years.

20 Q By "shunned," you mean he's withheld
21 his friendship, he has nothing to do with you?

22 A Divisions are supposed to have meetings. I
23 have never been invited to a division meeting in the
24 eight years since this happened. This is supposed
25 to be a collegial organization. There is absolutely

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1 nothing collegial about the way I have been treated
2 since then.

3 Q When you say "since then," since
4 when?

5 A Since 2001, when he called me into his
6 office and told me that he wanted to have nothing
7 further to do with me.

8 Q Anything else?

9 A He reassigned the laboratory space so that a
10 laboratory that had been mine resulted in being
11 shared with Dr. Azzam. And then Dr. Azzam, in his
12 wisdom, started moving my stuff out and putting it
13 elsewhere and not telling me where it was.

14 Q Anything else?

15 A Well, Dr. Azzam has not over the years
16 treated me with -- after Howell said he wanted
17 nothing more to do with me, I told Azzam that if he
18 wanted me to, I would do experiments for him, and I
19 did. Then in April of 2002 he came into my office
20 and he insulted me and he told me that I was a bad
21 person, because if Dr. Howell's postdocs found out
22 that Dr. Howell had done a bad thing, or if Dr.
23 Howell were to lose his grant - they were afraid
24 that Dr. Howell would lose his grant because of the
25 misconduct - that if Dr. Howell lost his grant, that

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1 the postdocs would lose their jobs, and that would
2 be my responsibility, because I would have forced
3 the postdocs to lose their jobs. If Dr. Howell's
4 children found that Dr. Howell had done a bad thing,
5 that would be a terrible thing for his children.
6 And so I was a bad person. And after that, then I
7 couldn't work with Dr. Azzam anymore.

8 Q When was that?

9 A That was in April of 2002.

10 Q You understand there's a difference
11 between two people having a conflict and somebody
12 being retaliated against, do you not?

13 MR. PINCUS: Objection to the form of
14 the question. You may answer.

15 A Retaliation is something that makes a person
16 feel very uncomfortable, and I feel very
17 uncomfortable with those two guys.

18 Q Well, it's more than that.
19 Retaliation is action taken in response to
20 something.

21 MR. PINCUS: Objection to the form of
22 the question, again, but you may answer.

23 A The action taken in response to me was taken
24 by Howell by locking me out of the lab.

25 Q By Azzam?

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1 A By Azzam, by blowing up at me and calling me
2 names.

3 Q Why didn't you name Dr. Azzam in your
4 complaint?

5 A We had considered it, but his involvement
6 was not -- he was not aware and didn't use the
7 results of Bishayee. He was not Bishayee's boss or
8 anything like that. His role was peripheral.

9 Q When you say "his role," you
10 understand that your complaint has multiple
11 complaints in it. And one of the counts you have it
12 is for retaliation, which is separate and apart from
13 any scientific misconduct. And what you seem to be
14 telling me is that Dr. Azzam threatened you and did
15 all kinds of things to you.

16 A Well, he called me names and made me feel
17 very uncomfortable, such that I no longer worked
18 with him.

19 Q Did Dr. Howell ever call you names?

20 A He's told me that he didn't want anything
21 more to do with me.

22 Q But did he call you any names?

23 A Not to my knowledge.

24 Q Did he threaten you?

25 A I think when your division chief tells you

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1 that he doesn't want anything more to do with you,
2 that puts you in a rather uncomfortable position.

3 Q But do you consider that to be a
4 threat?

5 A No.

6 Q How long were you locked out of the
7 lab?

8 A Several days. Maybe a couple of weeks. But
9 then I went to the chairman.

10 Q Who's the chairman?

11 A Stephen Baker.

12 Q And your attorney deposed Dr. Baker;
13 isn't that true?

14 A Yes.

15 Q And you attended that deposition?

16 A Yes, right.

17 Q Isn't it also true that in some of
18 the documents you created that you allege that Dr.
19 Baker, as well, has retaliated against you?

20 A Yes, he did.

21 Q How did Dr. Baker retaliate against
22 you?

23 A As soon as the committee had finished their
24 deliberations and sent out the memo that there
25 wasn't enough evidence for scientific misconduct, I

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1 was chief of the section of cancer biology, and
2 Baker abolished the section and made Howell my
3 division chief, and sent a memo to the whole
4 department inviting Howell to be the division chief.
5 And I believe that that was a slap in the face for
6 me, because he had never sent a memo about
7 appointing any other division chief. And division
8 chiefs come and go, and never had there been a
9 blanket memo like that about appointing someone as a
10 division chief. I think he did that to humiliate
11 me.

12 Q Why? Why would Dr. Baker want to
13 humiliate you?

14 A Why would he want to humiliate me? Because
15 I made the department look bad. He even said that.
16 When I went down to report to him about the results
17 of our observations in March of 2001, I took the
18 documents that I had assembled to Dr. Baker, and Dr.
19 Baker scolded me for making the department look bad.

20 Q Do you recall what he said to you
21 specifically?

22 A He said, "You made the department look bad.
23 It's all over the medical school," he said.

24 Q How many people were in the cancer
25 biology section that you just referred to?

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1 A At that time there was just me.

2 Q So when you say you were the head of
3 the section --

4 A I was it.

5 Q -- you were it?

6 A Yes.

7 Q Any reason Dr. Baker is not named the
8 retaliation count of your complaint?

9 MR. PINCUS: Again, it calls for
10 disclosure of strategy. You may answer.

11 A I don't think that his involvement was that
12 great.

13 Q Didn't you just say he humiliated
14 you?

15 A He did humiliate me, yes.

16 Q Did Dr. Howell ever humiliate you?

17 A Yes.

18 Q How?

19 A By telling me that he didn't want to have
20 anything more to do with me.

21 Q You felt humiliated by that?

22 A Yes. My office was moved about two years
23 after that, and I'm in a different hallway, in the
24 "F" level. But I have to get my mail from the
25 laboratory that Dr. Azzam and I are supposedly

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1 sharing. I find it's very humiliating to have to go
2 over there and get my mail. I find I feel very
3 humiliated when I am confronted with those people,
4 that they have treated me the way they have treated
5 me; that they have shunned me for all these years.
6 I feel very uncomfortable in that whole environment.

7 Q Do you feel any responsibility for
8 that environment?

9 A When I blew the whistle, I was following the
10 instructions of the university. We have received
11 memos telling us if we observed --

12 Q That's not my question, Dr. Hill.

13 MR. PINCUS: She's answering your
14 question. Let her response. And if you have a
15 follow up, do so.

16 Q Okay.

17 A I was following the guidelines of the
18 university. We were told if we observed misconduct
19 we were supposed to report it. I did report it.
20 And we actually had a card that we were supposed to
21 wear along with our I.D. that basically told us that
22 we had to report these things to our supervisor. If
23 we observed misconduct, we were supposed to report
24 it to our supervisor. I was following the rules of
25 the university when I did what I did.

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1 Q I'm talking now about what you refer
2 to as shunning. Do you feel any responsibility in
3 that regard?

4 A Do I feel any responsibility for my being
5 shunned? I don't think that a person should be
6 shunned because they were doing what the university
7 instructed them to do, because they were doing what
8 was right, and that was to report that misconduct
9 had occurred.

10 Q This conversation with Dr. Howell,
11 when he said he wanted nothing more to do with you,
12 is that what he said?

13 A That's what he said.

14 Q Are those his exact words?

15 A Those are his exact words.

16 Q Was there anyone else there when he
17 said that?

18 A No.

19 Q Where did that conversation take
20 place?

21 A In his office.

22 Q Why were you in his office?

23 A Because he called me in.

24 Q What else did he say to you?

25 A That was about it. Oh, he told me that

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1 Bishayee was leaving at the end of the month and
2 that Lenarczyk was leaving at the end of the month.

3 Q Is there anybody else that retaliated
4 against you?

5 A No.

6 Q There any other instances of
7 retaliation that you can recall that you haven't
8 testified to already?

9 A No.

10 Q So we have covered everything in
11 terms of the conduct that you allege constitutes
12 retaliation?

13 A I believe so, but I may think of things
14 later, but I believe that we have covered them.

15 MR. LEONARD: Why don't we mark this
16 Hill-2. Shelly, there's an exhibit number that's on
17 there. Frankly, I don't know what it's from.

18 (Document entitled "Scientific
19 Misconduct" written by Dr. Hill is received
20 and marked Hill-2 for identification by the
21 Reporter.)

22 Q Dr. Hill, I'm going to hand you a
23 document that we have marked Hill-2. It's Bates
24 numbered 000345, and ask you to take a look at that.

25 MR. PINCUS: It's really 345 through

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1 350. But we're looking at 345 now; is that correct,
2 John?

3 MR. LEONARD: That is.

4 A Okay.

5 Q Do you recognize that document?

6 A Yes, I do.

7 Q Did you author that document?

8 A Yes, I did.

9 Q When did you author this document?

10 A I met with Dr. Putterman on October 24th,
11 2002, and I prepared this document for Dr.
12 Putterman.

13 Q Let's look at the first full
14 paragraph.

15 A Okay.

16 Q Just give me one second, I apologize.

17 A I see I spelled Field's name wrong, she
18 doesn't have a "s."

19 Q I won't tell her if you don't.

20 A Okay.

21 Q I'm looking at Page 5, Bates number
22 349 down in the corner.

23 A Okay.

24 Q The first full paragraph, the third
25 sentence, where it says, "Since my return from the

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1 meeting at the end of April, Dr. de Toledo has
2 hardly spoken to me. Isolation is greater than
3 ever. I realize that this is partly my fault. I
4 cannot bring myself to have anything to do with
5 people who knowingly cover up misconduct." Does
6 that refresh your recollection of whether you have
7 some responsibility in what you refer to as this
8 shunning?

9 A I guess it does.

10 Q Okay, thank you.

11 In that same document, Dr. Hill, I'd like to
12 refer you to Page 2, Bates number 346, and the third
13 full paragraph from the top that starts with, "I
14 understand that Dr. Howell has said..." Do you see
15 that paragraph?

16 A Yes.

17 Q "I understand that Dr. Howell has
18 said that he believes that the cells changed over
19 the time since the original experiments were done,
20 or that the bystander effect that he purported to
21 have observed was dependent on serum which is a
22 component of the growth medium. These are possible
23 but unlikely explanations for the
24 non-reproducibility of the data." Do you recall
25 writing that?

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1 A I guess I do.

2 Q So as you sit here today and under
3 oath, you can't say that Dr. Howell is wrong about
4 his explanations, can you?

5 A I have further information as a result of
6 documents that we have received. And Dr. Howell
7 states that he got the serum that Bishayee had used
8 in his experiments, and that he used that same serum
9 and he was still unable to replicate Bishayee's
10 results. So the serum is not an answer to his
11 non-reproducibility.

12 Q With all of this extra material that
13 you've looked at, can you say under oath today that
14 you can as a matter of fact rule out serum?

15 A You're asking me a question that as a
16 scientist, I have to answer that I cannot absolutely
17 rule out serum. But as a scientist, I can tell you
18 that it is highly, highly, highly unlikely that
19 serum would have any effect on these results.

20 Q But you can't rule it out; is that
21 correct?

22 A I can't rule it out.

23 Q Thank you.

24 In that same paragraph it says that Dr.
25 Howell believes the cells changed over time. Can

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1 you rule that out?

2 A I can come very close to ruling that out,
3 because Dr. Howell said that they lost their liquid
4 nitrogen freezer, so they had to go back to
5 freeze-downs from 2,000. And that means that they
6 were actually going back to using cells that were
7 closely related to the cells that Bishayee had used.

8 Q Dr. Hill, my question is: As you sit
9 here today under oath, can you say definitively that
10 Dr. Howell was wrong that the cells changed over
11 time and that may have had an effect?

12 A As a scientist, I have to say that I can't
13 say definitively. But I can say to you as we sit
14 here today that it is highly, highly, highly
15 unlikely that the inability of Howell to replicate
16 these results is due to the cells having changed.

17 And furthermore, I can tell you, that the
18 biochemistry, the biochemical explanation for the
19 shape of Howell's curve is a universal effect; that
20 the thymidine is blocking the cell cycle because
21 it's blocking certain enzymes, and those enzymes are
22 present in organisms from bacteria to elephants.
23 Biochemistry has a unity. When you're breathing,
24 your oxygen is going through something called the
25 Krebs cycle. The Krebs cycle is present in organisms,

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1 from the very earliest organisms to elephants.

2 Q Thank you, Dr. Hill. But the fact
3 remains that you can't say that cell changes were
4 not a factor; isn't that true?

5 A It's the same sort of thing. I can tell you
6 that it's highly, highly, highly unlikely that the
7 cells have changed.

8 Q But you can't say that it was not a
9 factor?

10 MR. PINCUS: Objection, asked and
11 answered. You may answer.

12 MR. LEONARD: No, it hasn't been.

13 A I can't say, but --

14 Q So the answer is no, you can't say?

15 MR. PINCUS: You can finish your
16 answer.

17 A Your legal way of saying things is so
18 unscientific.

19 Q I just want a yes or no. As you sit
20 here today under oath, can you say as a matter of
21 fact that the cell changes were not a factor?

22 A I cannot say that.

23 Q Okay, thank you.

24 MR. LEONARD: Do you want to break
25 for lunch? Let's do it. Let's break for

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1 thirty minutes.

2 (A lunch recess is taken.)

3 Q Dr. Hill, we're back on the record,
4 and you remain under oath, and all the instructions
5 that I previously provided and we discussed still
6 remain in effect.

7 Prior to the break we talked about
8 retaliation and what you contend were retaliatory
9 acts against you. And I think you said at that time
10 that that's all that you could recall. Are there
11 any other retaliatory acts?

12 A I would say not, but I'm not sure. I might
13 think of something later.

14 Q With respect to these retaliatory
15 acts, have you had to seek treatment from a
16 healthcare professional?

17 A No.

18 Q So you're not taking any
19 medication --

20 A No.

21 Q -- for anxiety or anything of that
22 sort?

23 A No, no.

24 MR. PINCUS: Let him ask the full
25 question and then you answer.

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1 Q So you're not taking any medication
2 related to anxiety or depression or anything like
3 that as a result of those acts?

4 A No.

5 Q Have you suffered any monetary
6 damages as a result of those acts?

7 A You know, that's something that you can't
8 put a dollar sign on. I have not been as productive
9 as I would have been if I had stayed working with
10 the division. I've gone off on my own. I've found
11 a new field and I've done okay. But, you know, I
12 might have done better, but who knows. So I can't
13 really say that I have, but I can't really say that
14 I haven't.

15 Q Well, there's been no reduction of
16 salary?

17 A No.

18 Q And no reduction of benefits?

19 A No.

20 Q And going into this new field
21 wouldn't have changed your rate of pay or benefits?

22 A Probably not.

23 Q What is this new field?

24 A I study DNA damage in mitochondria,
25 m-i-t-o-c-h-o-n-d-r-i-a.

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1 Q And whose grant are you working
2 under?

3 A I went to CCNY and I worked with a colleague
4 there for several years. And now I support myself
5 to some extent. I also do collaborate
6 scientifically with Dr. Azzam. And I was a
7 co-investigator on a grant to the Department of
8 Energy. The principal investigator of the grant is
9 at the University of Iowa, and Dr. Azzam was the
10 principal investigator for the Newark part of that
11 grant, and I'm listed as a co-investigator on that
12 grant. The grant has expired, I believe. And I do
13 some studies that probably are supported by Dr.
14 Azzam's grant. He had several grants, actually.

15 Q Then maybe I misunderstood. I
16 thought you stopped working with Dr. Azzam in '02.

17 A I did, until probably 2006, maybe 2007.
18 2007, I guess. Well, I'm trying to remember. It
19 started with the grant from Iowa, because Azzam was
20 in charge of the Newark part of that. It probably
21 just ended 2008. So probably 2006.

22 Q So when you say Azzam was in charge
23 of, could he have not allowed you to participate in
24 working on that grant?

25 A I suppose he could have.

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1 Q But he did not do that; is that
2 correct?

3 A No, no.

4 Q Did you have any problems working
5 with Dr. Azzam again?

6 A No.

7 Q Why is that?

8 A Why I don't have problems?

9 Q Yes.

10 A How should I know why I don't have problems.
11 I mean, this is science. We're both scientists. We
12 are interested in the problem that we're looking at.
13 I have a technique that is useful to him and he
14 doesn't do it and I provide useful information.

15 Q First of all, I thought you said
16 previously he threatened you?

17 A He did, but that was in 2002.

18 Q And you were scared at the time?

19 A Upset, a little scared. Disappointed.
20 Disappointed.

21 Q Disappointed or scared?

22 A Both, a little scared, very, very
23 disappointed.

24 Q And I was under the impression after
25 2002 that the climate with the group of

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1 professionals you worked with was such that you
2 didn't want any interaction with them and they were
3 shunning you?

4 A If they had apologized to me, I would have
5 been happy and would have probably started working
6 with them again. But no one has ever reached out to
7 me and tried to bring me back into the group.

8 Q Why, then, are you working with Dr.
9 Azzam?

10 A It's a matter of science. He's studying
11 mitochondria, as I am, and he's studying different
12 aspects of the mitochondria. He has the cell lines,
13 he cultures the cells. I don't culture cells
14 anymore, he cultures the cells and provides them to
15 me, and then I study what I study in the
16 mitochondria and he studies what he studies in the
17 mitochondria. We don't have much of an interaction,
18 but it is a collaboration.

19 Q Are you working with anyone besides
20 Dr. Azzam today?

21 A I do what I do in the medical genetics
22 laboratory. And I did put together a proposal for
23 the Institutional Review Board to do human studies
24 to look at the things that I look at in mitochondria
25 in DNA from children that have cystic fibrosis, but

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1 we've only done a little bit. We haven't done very
2 much with that.

3 Q You attended Dr. Azzam's deposition,
4 did you not?

5 A I did, yes.

6 Q And I'm sure you knew that he was
7 upset during his deposition?

8 A Yes, I think he was, yes.

9 Q Particularly he was upset when he
10 discovered that you had disseminated documents with
11 accusations regarding him to third parties?

12 A I guess so, yes.

13 Q Has he retaliated against you in any
14 way.

15 A No, we continue. In fact, I have an e-mail
16 from him waiting in my mailbox right now that he's
17 moving his lab, that lab that we shared, and asked
18 me what I wanted to do with it, did I want to take
19 it back over. And I don't, I don't want to have my
20 own lab anymore. And he's going to bring me some
21 more DNA samples.

22 Q Do you regret publishing his name to
23 third parties?

24 A I don't remember what I said to third
25 parties.

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1 Q You don't remember saying that he was
2 part of the coverup or that he retaliated against
3 you?

4 A He certainly retaliated against me on the
5 day that he called me all those names.

6 Q What did he call you?

7 A He told me that I was a bad person, that I
8 would ruin the lives of Dr. Howell's postdoctoral
9 fellows, that I would ruin the lives of Dr. Howell's
10 children.

11 Q Well, that's not calling you a name,
12 is it?

13 A Well, it's inferring I'm a bad person is a
14 name.

15 Q If you weren't going to file
16 allegations against him, what was the point in
17 including his name in documents and making
18 accusations and then distributing that to third
19 parties?

20 A I was telling my story.

21 Q To whom?

22 A To whoever would read those documents.

23 Q Without any concern for the people
24 that you were talking about in them?

25 A No one has shown any concern for me.

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1 Q So is that no?

2 A I didn't think about it.

3 Q You didn't think about making
4 accusations in written documents against your
5 colleagues and distributing those to third parties?

6 A You would have to show me those accusations.
7 I don't remember what they were.

8 Q Okay. There's a pile probably four
9 inches thick of documents.

10 A Okay, show them to me.

11 Q Well, certainly your slide show, the
12 PowerPoint presentation.

13 A What did I say about Azzam in the slide
14 show?

15 MR. PINCUS: Why don't you wait to
16 let him show you the documents and then he'll ask
17 you the questions.

18 Q That same document we previously
19 marked, we can start with that. The one that was
20 marked Hill-2, why don't you take a look at that,
21 the Bates numbers 000345. The bottom of the first
22 paragraph it says, "It is my intention during this
23 meeting to show you this analysis and to relate to
24 you events that have occurred since your final
25 decision in this case that strongly indicate there

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1 has been cover-up by Dr. Howell of the misconduct
2 and that this cover-up is supported by Dr. Azzam."

3 Do you see that?

4 A This was a confidential document.

5 Q Do you see that?

6 A I don't see it. Where is it? What
7 paragraph is that? Oh, up there. Okay, right.

8 Q Do you believe Dr. Azzam participated
9 in a coverup?

10 A I would have to say looking back -- well,
11 Dr. Azzam has knowledge of Dr. Bishayee's cheating,
12 and he had an obligation to the university. He had
13 the same card that I had, he received the same memos
14 that I did; that if you suspect misconduct, you're
15 supposed to report it to your supervisor. He had
16 that same obligation that I did.

17 Q My question really just requires a
18 yes or no. Are you saying that Dr. Azzam
19 participated in a coverup?

20 A I guess I am saying that. I said that at
21 that time.

22 Q Do you believe it as you sit here
23 today?

24 A I believe that he could come forward and
25 agree. But I think that having listened to his

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1 deposition, I'm not sure what absolute knowledge he
2 had. Whether he actually saw the results of the
3 experiments.

4 Q With all due respect, Dr. Hill, don't
5 you think you should have checked that before you
6 make an accusation like this about somebody?

7 A This is a confidential document.

8 Q It's not very confidential.

9 A Not anymore. But Dr. Putterman could have
10 called in Dr. Azzam and she could have questioned
11 him.

12 Q Why would you accuse him without
13 knowing that your accusation is, in fact, true?

14 A I don't think that saying that it was
15 supported by Azzam is an accusation.

16 Q My God, what do you think it is?
17 You're saying a coverup is supported by Dr. Azzam.

18 A Well, if Dr. Azzam had knowledge of the fact
19 that Bishayee had made up data, he should have
20 reported it. He should have reported it to Dr.
21 Baker, he should have reported it to Dr. Putterman.

22 Q But that's not what you're saying
23 here. What you're saying is --

24 A It's what I'm implying.

25 Q You're saying that Dr. Azzam

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1 supported a coverup.

2 A Okay.

3 Q But you don't know that to be true
4 then or now.

5 A Okay.

6 Q Is that correct?

7 A Okay.

8 Q No, is that correct?

9 A I guess I would have to say yes.

10 Q When you first called ORI, did you
11 ask to go by the name of Hanna Heather?

12 A Hanna Hester.

13 Q Hester?

14 A Yes.

15 Q They misspelled it on the thing.
16 Why?

17 A Because they told me that I could be
18 anonymous and I could make up a name. And so I did
19 for a little while.

20 Q Why would you make up a name?

21 A Because they told me I could.

22 Q Well, if they told you you could run
23 down the street naked, would you do that?

24 A Probably not.

25 Q Why wouldn't you use your own name?

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1 A Well, I didn't call myself Hanna Hester for
2 more than about a day.

3 Q It's an interesting name. Where did
4 it come from?

5 A My grandmother. My great grandmother,
6 actually. And my parents were going to name me
7 Hanna Hester when I was born, but they decided on
8 Helena, thank goodness.

9 Q It's a very nice name.

10 (A discussion is held off the record,
11 whereupon a paper written by Dr. Hill is
12 received and marked Hill-3 for
13 identification by the Reporter.)

14 Q Dr. Hill, I'm handing you a document
15 that's just been marked Hill-3. Would you take a
16 look at this, please?

17 A Okay.

18 Q Do you recognize this document?

19 A I do.

20 Q Did you author it?

21 A I did.

22 Q When did you author it?

23 A Oh, man, when did I author it? I should
24 have dated it.

25 Q Would it help if I drew your

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1 attention to the first paragraph where a date is
2 referenced September 13th, 2006, and suggest it
3 might have probably been subsequent to that?

4 MR. PINCUS: Where are you, please?

5 MR. LEONARD: First page, first
6 paragraph, Page 362.

7 MR. PINCUS: Gotcha.

8 Q Does that refresh your recollection
9 as to a date?

10 A To whom was this document addressed?

11 MR. PINCUS: Well, if you don't know,
12 then that's all you need to say. He's asking you.
13 Okay?

14 THE WITNESS: Okay.

15 Q You prepared this document?

16 A I did.

17 Q Is this part of your slide show, your
18 PowerPoint presentation?

19 A It's not part of a slide show.

20 Q Your PowerPoint?

21 A It's not part of a PowerPoint.

22 Q For what purpose did you create this
23 document?

24 A I don't remember.

25 Q You don't remember why you created

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1 it?

2 A I don't remember. I think --

3 MR. PINCUS: I think, by the way,
4 hold on a second.

5 THE WITNESS: Okay.

6 MR. PINCUS: While you have these
7 stapled together, John, I don't think these are all
8 one and the same document. So I don't want you to
9 assume for purposes of your questioning that these
10 are all one and the same document. I'll leave it
11 there. Okay?

12 MR. LEONARD: Okay.

13 Q Dr. Hill, is it possible that these
14 first three pages were written after what appears on
15 Page 366 and beyond was rejected by Susan Steel?

16 MR. PINCUS: Objection to the form of
17 the question. There's no foundation that anything
18 was rejected by Susan Steel. You may answer.

19 A Would you ask the question again, please?

20 Q Sure. Once you found out that the
21 U.S. Attorney was not going to participate in the
22 lawsuit, you put on a presentation we discussed
23 previously.

24 MR. PINCUS: Objection, no
25 foundation. You may answer.

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1 A I presented the PowerPoint, and then the
2 U.S. Attorney decided not to pursue the case.

3 Q Okay. And after you heard that they
4 were not going to pursue the case, is it possible
5 that this document was sent to them, these first
6 three pages?

7 A Yes.

8 Q What is the purpose of the "Executive
9 Summary" page?

10 A My husband thought that I ought to put in an
11 Executive Summary before I made the presentation to
12 the U.S. Attorney.

13 Q So do these three pages enclose the
14 rest of this, these grafts and charts and so forth?

15 MR. PINCUS: What are you referring
16 to in terms of "these three pages"?

17 Q Does the Executive Summary go with
18 what follows?

19 A I handed out the Executive Summary before I
20 made the presentation.

21 Q I want to direct your attention to
22 the last paragraph in the Executive Summary.

23 A Okay.

24 Q It says, "Others who are aware of the
25 challenge to and non-producibility of Bishayee's

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1 results, and who have either remained silent or have
2 actively participated in suppression of
3 investigation of his misconduct, include: Dr.
4 Azzam, Dr. Baker, and several present and former
5 administrators of the University." Do you see that?

6 A Uh-huh.

7 Q Again, this is you saying that Dr.
8 Azzam participated in suppression of the
9 investigation. And you also believe Dr. Baker
10 participated in that, as well?

11 A Yes.

12 Q You do?

13 A Yes. Well, Dr. Baker knew that something
14 was going on, and he was my chairman.

15 Q How does that equate to suppressing
16 misconduct?

17 A This all happened so long ago, you know, I
18 can't really tell you what my reasoning was at that
19 time.

20 Q Again, we're accusing somebody of
21 doing something wrong and we're not sure of the
22 basis for the accusation. What did Dr. Baker do?

23 A Dr. Baker, when I went to him to report the
24 misconduct in 2001, he rejected me, he told me I was
25 making the department look bad. He never looked at

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1 the documents that I gave him. He never did what a
2 chairman should do. And then after that he sent the
3 memo to the department to make me look bad. Dr.
4 Baker behaved very badly at that time.

5 Q Well, it was the Committee of
6 Integrity who reviews these types of things, right?

7 A That's right.

8 Q And you availed yourself of that,
9 right?

10 A Yes -- no, Dr. Baker sent me to that
11 committee.

12 Q Okay. So if he's sending you to a
13 committee where you can raise and pursue your
14 grievance, how is he simultaneously participating in
15 a suppression of misconduct?

16 A He never listened to my story. He assumed
17 that I was wrong. He never listen to me.

18 Q So this allegation is based on the
19 fact that he didn't listen to you?

20 A I can't really answer that. You know,
21 that's a complicated question and I can't really
22 answer that.

23 Q Who else could? You're the one who
24 made the accusation. If not that reason, then why?

25 A At the time that I wrote this document, I

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1 believed that Baker would have something to reveal.
2 Really, I can't answer. You ask questions that are
3 not answerable.

4 Q I'm asking you why you wrote this?

5 A Why did I write that? I don't remember why
6 I wrote that. Why I wrote that? What I remember
7 was that I was very disappointed in Baker. He had
8 not listened to my side, he had only listened to
9 Howell, and he had punished me. And that Azzam also
10 knew what was going on, and he had not said anything
11 to Dr. Baker or anyone else. And that people were
12 not disclosing information that they had.

13 Q But Dr. Baker did send you to the
14 committee and told you that the proper place to
15 raise these issues is with the committee.

16 A He didn't tell me that the proper place to
17 raise these issues was at the committee, he didn't
18 tell me that.

19 Q Well, what did he tell you?

20 A You're putting words into his mouth.

21 Q Well, what did he tell you?

22 A He told me that this had to go to the
23 Committee on Scientific Integrity. But that's not
24 to say that he shouldn't have listened to me first.
25 Because my responsibility was to report to him. The

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1 white card said that, that I was to report to my
2 supervisor. And I went to my supervisor, and he
3 brushed me off and he said take it to the committee.
4 He never listened.

5 He listen to Howell. We know he listened to
6 Howell because we have a memo that Howell wrote on
7 April 6th, but he never heard my story.

8 Q Dr. Hill, I don't mean any disrespect
9 by this, but him not listening to your story is not
10 actually doing anything to you. You must understand
11 the difference.

12 MR. PINCUS: Objection to the form of
13 the question. You may answer.

14 A There's nothing here about retaliation.
15 "Others who are aware of the challenge to and
16 non-reproducibility..." There's nothing said about
17 retaliation in there.

18 Q Is it your understanding that Dr.
19 Baker could come out with a finding on whether there
20 was scientific misconduct?

21 A It was Dr. Baker's responsibility as my
22 supervisor to hear me out, to hear my report, to
23 receive my report.

24 Q And could he make a finding on that
25 report?

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1 A I don't know whether he could make a finding
2 or not, that would be up to him.

3 Q You must know the procedure. Who
4 better than you knows the procedure of UMDNJ for
5 airing grievances? Are you sitting here telling me
6 under oath that Dr. Baker has the ability to make a
7 determination as to whether there has been
8 scientific misconduct committed at the university?

9 A I am not saying that.

10 Q Are you saying you know that not to
11 be the case?

12 A I'm not saying that. I'm saying that Dr.
13 Baker, when I went to him, brushed me off and passed
14 me on to the committee. That Dr. Baker was aware
15 that there was a challenge. That's what it says
16 here, "Others who are aware of the challenge..."

17 Q It says more than that, right, Dr.
18 Hill?

19 A It does, yeah.

20 Q It says, "...who have either remained
21 silent or have actively participated in suppression
22 of the investigation of this misconduct."

23 A Okay.

24 Q You're a scientist. Science, I
25 assume, is a precise field.

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1 A That's correct.

2 Q So you understand that what you're
3 saying there is that Azzam, Baker and several other
4 unidentified individuals, some of them you're saying
5 actively participated in the suppression of the
6 investigation.

7 A Remained silent or actively participated.
8 Azzam remained silent. Baker remained silent.

9 Q Who actively participated?

10 A As we're sitting here today, I don't
11 remember.

12 Q But you're sure that Azzam and Baker
13 did not actively participate?

14 A I believe now that Azzam did not actively
15 participate.

16 Q What did you believe when you wrote
17 this?

18 A That he knew a lot more than he acknowledged
19 in his deposition; that he knew the nature of the --
20 well, he should have. He initialed that first
21 experiment, that first repeat experiment that was
22 started April 12th or April 13th. He initialed most
23 of the pages in that document. I believed that he
24 knew what the results of the repeat experiments
25 were. And now I'm not sure whether he knew or not.

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1 Q So basically what you're saying is
2 because somebody wouldn't repeat an experiment, that
3 would be a coverup?

4 A I didn't say that.

5 MR. LEONARD: Could you read back her
6 response, please?

7 (The answer on Page 113, Lines 18-25
8 is read by the Reporter.)

9 A I didn't know that he had signed, that he
10 had initialed that document until I saw that
11 document in the VPF files that were sent from the
12 university or from the U.S. Attorney's office. So I
13 was unaware of his participation in that experiment.
14 That's the only experiment, apparently, that he
15 participated in. And I don't know whether Dr.
16 Howell ever showed him the results of the other
17 repeat experiments. Because he's a specialist in
18 the cell cycle, he certainly would have understood
19 what was going on in Dr. Howell's repeat experiments
20 with the plateau, with that survival (indicating).
21 He would have known. He should have known, anyway.
22 If he didn't know then he's not as good a cell
23 biologist as I think he is.

24 Q Is inability to reproduce an
25 experiment in your mind absolute proof of scientific

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1 misconduct?

2 A No.

3 Q There was a lot of back and forth
4 there. So as we sit here today, do you believe Dr.
5 Azzam participated in a coverup or not?

6 A You paint things in black and white. I
7 don't paint things in black and white. I think that
8 Azzam knew that something was going on and he didn't
9 say anything about it. He told me he knew something
10 was going on, because he said to me, If Dr. Howell's
11 children find out that Dr. Howell has done something
12 bad, that will a terrible thing for Dr. Howell. If
13 Dr. Howell's postdoc lose their jobs because Dr.
14 Howell has done something bad, that will be
15 terrible. So he knew that something was going on.
16 He may not have known exactly what was going on, but
17 he knew that something was going on.

18 Q So back to my question. As you sit
19 here today, do you believe, yes or no, that Dr.
20 Azzam participated in a coverup?

21 MR. PINCUS: Objection, asked and
22 answered. She answered your question, John.

23 MR. LEONARD: I want a yes or no.

24 MR. PINCUS: I think she's saying she
25 can't answer it yes or no. She explained the facts

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1 on which she relied. You're asking the same
2 question over and over and over again. She's
3 answered it three times the same way. I don't think
4 it's going to change.

5 Q Yes or no?

6 A Do I go to jail if you don't answer your
7 question.

8 Q You don't go to jail, but you lose
9 credibility, insofar as you're writing documents to
10 people making that accusation, but now you won't say
11 it under oath.

12 MR. PINCUS: Objection to the form.

13 Q That's the problem.

14 MR. PINCUS: My objection is noted.

15 MR. LEONARD: Your objection stands,
16 I get it.

17 Q With respect to the document you
18 wrote to Dr. Putterman, isn't it true that you
19 accused Dr. Azzam of doing that?

20 A I did accuse Dr. Azzam of doing that.

21 Q But as you sit here today, you can't
22 say yes or no whether you believe that to be true?

23 A I will say I believe it to be true.

24 Q See how easy that can be?

25 A No, it wasn't easy.

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1 MR. PINCUS: And by the way, before
2 we get off of this, do you want to break up the
3 Hill-3 exhibit or do you want to leave it as one?

4 MR. LEONARD: We can leave it as one.

5 MR. PINCUS: Okay.

6 Q Dr. Hill, you had problems with Dr.
7 Bishayee prior to anything involving experiments;
8 isn't that true?

9 A Like what?

10 Q Like did you have a conflict with him
11 because you thought he was looking at pornographic
12 material on your computer?

13 A I gave him permission to use my computer.
14 And I came in the next morning, after he had used my
15 computer, and I found this e-mail. I didn't know
16 this at the time, but when e-mail went out from my
17 computer, it went out under my name. He didn't know
18 it, either. So I don't know where he got these
19 names, but, anyway, he was sending e-mail out to
20 Cutie, Baby and Honey Doll, and goodness knows who
21 all, and I was pretty shocked.

22 And then Dr. Howell came in, and I didn't
23 even know that you can see what people have been
24 doing on the internet, and Dr. Howell had found that
25 he had gone to some pretty salacious internet sites,

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1 and he was totally outraged. And I was outraged for
2 maybe a day or so, and then I thought about it. I
3 though well, here's this guy, he's far from home,
4 and he's a man and he's looking for some fun or
5 girls or something like that.

6 So Howell wrote the memo that went into his
7 personnel file. And I wasn't, you know, I wasn't
8 upset about it for very long. I thought he's a
9 lonely guy. And I would hope my son wouldn't behave
10 like that, but that's the way it was.

11 Q The first complaint you had with Dr.
12 Bishayee regarding his work was a couple of weeks
13 after that incident, wasn't it?

14 A It was a lot more than a couple of weeks.
15 It was about two and a half months.

16 Q Two and a half months?

17 A Right. Dr. Howell said it was a couple of
18 weeks, but it was a lot longer than that. And I had
19 totally forgotten about it by then.

20 Q So at that time you still were not
21 upset with him for having used your computer to
22 visit those sites?

23 A No. And he didn't get to use my computer
24 anymore. He did it in the lab.

25 MR. FLYNN: Too much information.

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1 THE WITNESS: May I say something off
2 the record?

3 MR. PINCUS: No.

4 Q When you first started going to Dr.
5 Howell with what you believed to be problems with
6 Dr. Bishayee, was it your intent to get Dr. Bishayee
7 terminated or fired?

8 A No. You don't fire a postdoc. I'm sure I
9 never used the word "fire." What you do is you help
10 them find the next job. You show them the door.

11 Q Dr. Hill, I want to show you a
12 document that's been marked previously at the
13 deposition of Dr. Lenarczyk as Exhibit 7. Would you
14 take a look at that, please?

15 A Okay.

16 Q Do you recognize that document?

17 A Yes, I do.

18 Q Did you author this document?

19 A I did.

20 Q When did you author this document?

21 A I authored this before I went to the
22 Committee on Scientific Integrity.

23 Q I want to direct your attention to
24 the second page.

25 A Okay.

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1 Q The second to the last paragraph, it
2 starts, "On Monday, March 26th."

3 A Yes.

4 Q About four sentences down it says,
5 "It was my hope that by careful documentation I
6 would be able to present a convincing case to Dr.
7 Howell regarding Dr. Bishayee's incompetence and
8 that I could then persuade Dr. Howell to terminate
9 his appointment." Do you see that?

10 A Yes.

11 Q Does that refresh your recollection
12 as to whether you wanted Dr. Bishayee fired?

13 A I told you I don't use the word "fire."
14 Terminate his appointment would mean that, you know,
15 it was time for Anupam to move on. He had been
16 there for three years, or something like that. And
17 if I could make Howell realize that Anupam was going
18 doing things that were not scientifically correct,
19 that Howell would you say, Well, Anupam, you've been
20 here for three years. Now it's time for you to get
21 another job.

22 I don't use the word "fire" for a postdoc.
23 What you do is you say, you know, it's time to find
24 another job. And what I was hoping was that Howell
25 would do that.

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1 Q Now, ethically how do you reconcile
2 that with all your prior testimony? Let me explain.
3 If you believe that Dr. Bishayee was falsifying
4 information and engaging in scientific misconduct,
5 your hope was that Dr. Howell would help him find
6 another position without disclosing it, help him
7 find another position with another employer?

8 MR. PINCUS: Objection to the form of
9 the question. You may answer.

10 A These things were just things are
11 suspicious. 1999 Bishayee did something that was
12 highly suspicious. 2001 he's doing something again
13 that is highly suspicious. And so if I were wearing
14 Howell's shoes, I would say to Bishayee, It's time
15 for you to move on. And if anyone asked me for a
16 recommendation, and I've been asked for many
17 recommendations, and I've had some pretty poor
18 performers, also, I always try to say about them
19 that what I say about them is true. I don't like to
20 say something bad about someone in a letter of
21 recommendation. Now what Howell would do, I don't
22 know. But my hope was that Howell would persuade
23 Bishayee to move on.

24 Q If you and he are aware of what you
25 refer to as "highly suspicious" activities, and you

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1 persuade him to move on, isn't that remaining
2 silent?

3 A I suppose it would be, yes, right.

4 Q Isn't that exactly what you're
5 accusing Dr. Azzam and Dr. Baker of?

6 A You're turning my words against me. Baker
7 is a supervisor and it's his job to -- it's his
8 responsibility to know what's going on in his
9 department and to act appropriately. So Baker, I'm
10 disappointed in Baker's behavior. I think that he
11 should have taken a more active role in finding out
12 what was going on.

13 Azzam, Azzam was a junior person, he was an
14 assistant professor. This was his first
15 professorial job. I at the time believed he had
16 more information than I now believe, if I believe
17 his deposition. So I can't tell you as we're
18 sitting here today that what you're saying that I'm
19 saying about them is correct.

20 Q I'm not asking you to. That's not
21 responsive to my question. My question was: If you
22 knew someone that you're a senior over, you knew
23 they engaged in highly suspicious activity over the
24 course of a couple of years, and you were trying to
25 get Howell to get them to go somewhere else, you

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1 agreed with me that that would be remaining silent,
2 correct?

3 A You're asking a hypothetical question,
4 because we don't know if -- if you have a person who
5 has done some suspicious things, you have no
6 absolute proof that that person has done suspicious
7 things, but you're suspicious of them and you want
8 to have them move on, you say it's time for me to
9 terminate your position, and that person moves on.
10 You don't help them get another job. When you're
11 asked for a recommendation, you tell them the truth,
12 he's a very hard worker and so forth, but you
13 wouldn't tell them your suspicions unless you really
14 knew for sure that they had done something bad.

15 Q What about that white card you were
16 telling me about? What about your obligations if
17 you think somebody is doing something suspicious
18 with research, wouldn't you try to figure out what
19 it is they're doing? I mean, wouldn't you try to
20 get to the bottom of what you felt was highly
21 suspicious? Wouldn't you feel an obligation to do
22 that?

23 MR. PINCUS: Hold on. Objection to
24 the form of the question. You may answer.

25 A Are you talking about Dr. Howell?

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1 Q I'm talking about you. I'm talking
2 about you saying in this document that you found all
3 this information, and what you were trying to do
4 with it was to get Dr. Howell to get him to go
5 someplace else.

6 A That's right.

7 Q Where is your obligation to go look
8 into what you believe to be highly suspicious
9 activity?

10 A I think I fulfilled my obligation. I went
11 to the Committee on Scientific Integrity and I told
12 them that I believed that there has been scientific
13 misconduct. That was my obligation.

14 Q Because Howell didn't do what you
15 asked him to do. Had Howell complied with your
16 request as you state here, Bishayee would be off at
17 some other facility and none of this would have
18 occurred; isn't that true?

19 A What happened happened. And we went to the
20 Committee on Scientific Misconduct, that happened.
21 Are you saying that I'm saying that Howell should
22 have terminated -- let's start over again.

23 Lenarczyk and I thought that Bishayee was
24 doing something wrong in his experiments. Our goal
25 in shadowing him was to be able to show Howell that,

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1 indeed, Bishayee was not carrying out the
2 experiments according to the protocol; that he was
3 carrying out an experiment with contaminated
4 cultures. That was all we were after when this
5 whole thing started. And we had hoped that when the
6 experiment was all over, that we could then go to
7 Howell and say, Look, this is what we found.

8 But then it got to be much more serious than
9 that, because Bishayee went to Lenarczyk and asked
10 for fresh cultures. We knew that his cultures
11 already were contaminated because we had tested
12 them. So Bishayee asks Lenarczyk for fresh
13 cultures. Lenarczyk gives him a flask of fresh
14 cells.

15 And lo and behold, he processes them, he
16 takes them to the fax machine, leaving the tubes
17 that he had set up earlier in the week that he
18 should have processed for that experiment, leaving
19 them in the cold incubator. So it was obvious that
20 he had switched contaminated cells and used
21 uncontaminated cells that he had gotten from
22 Lenarczyk.

23 So to start with, all we wanted to do was
24 show how he had carried out an experiment with
25 contaminated cultures and hadn't let on about it.

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1 And in the end it turned out that he did that
2 switch, and then it looked like it was a whole lot
3 more serious, that he was actually fabricating data.

4 Q Let's back up. As we sit here today,
5 the truth is you never saw him switch tubes; isn't
6 that correct?

7 A I did not see him switch tubes.

8 Q And you can't state definitively
9 under oath that he fabricated data; isn't that also
10 true?

11 MR. PINCUS: Objection, that calls
12 for a legal conclusion. You may answer.

13 A Say it again.

14 Q As you sit here today under oath, you
15 can't testify definitively that Dr. Bishayee
16 fabricated data.

17 A I have a vast knowledge and I say he
18 fabricated data.

19 Q So now you're saying that he did?

20 A I'm saying that he did.

21 Q As opposed to your prior testimony
22 where you say you can never be 100 percent sure?

23 A At that time I could not have been 100
24 percent sure.

25 Q Earlier today?

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1 A Now I believe that he fabricated data.

2 Q What changed between now and earlier
3 today?

4 A As I look back on it, I believe that he
5 fabricated data.

6 Q When you say you look back on it --

7 A In that particular experiment he had to have
8 fabricated data, or he had to have switched the
9 cells. Because the cells that we had observed in
10 that incubator during the course of the week,
11 remained there, did not get processed, something got
12 processed, and he had asked Lenarczyk to give him
13 fresh cells.

14 Q Dr. Hill, this is very important.
15 You've already testified that you couldn't, but
16 we'll go through it one more time. As you sit here
17 today under oath, it's your testimony that you can
18 say absolutely that you know Dr. Bishayee fabricated
19 data?

20 MR. PINCUS: Objection to the form of
21 the question. You may answer.

22 Q Yes or no.

23 A If I say yes, then you'll figure out some
24 way where I have said no. If I say no, you'll
25 figure out some way that I have said yes. I feel

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1 like my words are being thrown at me and used
2 against me.

3 MR. LEONARD: Read the question back,
4 please. It's a very specific question. It just
5 requires a yes or no answer.

6 MR. PINCUS: Unless she has to
7 explain herself, in which case she may.

8 MR. LEONARD: She can do so after she
9 answers the question.

10 MR. PINCUS: Well, if she can't
11 answer it yes or no and needs to explain, that's a
12 way to answer the question. But go ahead. You're
13 making it either/or, but you know it's not
14 necessarily so.

15 MR. LEONARD: It absolutely is. It
16 can't be anything else. Read back the question,
17 please.

18 (The last two questions are read by
19 the Reporter.)

20 A If you're asking me if in my heart of
21 hearts --

22 Q That's not what I'm asking you. I'm
23 not asking you in your heart of hearts, your
24 intuition, what you guess. I'm asking you as you
25 sit here today under oath, can you state that you

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1 absolutely know that Dr. Bishayee fabricated data?

2 MR. PINCUS: Same objection.

3 THE WITNESS: Can I refuse to answer?

4 MR. PINCUS: No.

5 A Then I will say yes.

6 MR. LEONARD: Okay.

7 (Written Disclosure of Dr. Hill dated
8 10/10/03 is received and marked Hill-4 for
9 identification by the Reporter.)

10 Q Dr. Hill, I'm handing you a document
11 that's been marked Hill-4. I will represent to you
12 that it's your written disclosures in this matter.

13 MR. LEONARD: Can we get this marked,
14 as well?

15 MR. PINCUS: The supplement is going
16 to be 5?

17 MR. LEONARD: Yes.

18 (Supplement to Written Disclosure of
19 Dr. Hill dated 4/6/04 is received and marked
20 Hill-5 for identification by the Reporter.)

21 Q Dr. Hill, I'm handing you a document
22 which has just been marked Hill-5. This is the
23 supplement to your Written Disclosure. I'd ask that
24 you look at those and just make sure that you can
25 identify them.

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1 A Okay.

2 Q Would you look at the last page and
3 see if that's your signature there?

4 A Which document are you looking at? I have
5 Hill-4 and Hill-5.

6 Q Both, please. One is a supplement of
7 the other.

8 A 00064, that's my signature. On 000340
9 that's my signature.

10 Q And you prepared or had those
11 documents prepared by your attorney?

12 A That's correct.

13 Q And I want you to take time if you
14 need to look through it, but I want to know if these
15 documents collectively reflect everything you
16 believe that Dr. Bishayee did wrong?

17 A No.

18 Q How do you know that?

19 A Because I had an opportunity to spend that
20 time in the U.S. Attorney's office and to look
21 through the notebooks and to become aware of the
22 experiments, like those that we were just talking
23 about (indicating).

24 Q So these do not accurately reflect
25 what you believe Dr. Bishayee did?

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1 MR. PINCUS: Objection to the form of
2 the question. That's not the question you asked.

3 MR. LEONARD: Well, she answered that
4 one. She said no.

5 MR. PINCUS: Your question was do
6 these contain everything on which you relied, as
7 opposed to now you're asking does this accurately
8 set forth. You asked two different questions and
9 there's some significance. I just want you to
10 understand the basis of my objection, John.

11 A So would you tell me what the question is,
12 please?

13 Q Sure?

14 MR. LEONARD: Could you read it back?

15 (The pending question is read by the
16 Reporter.)

17 A At the time that these documents were
18 written -- where is the date? April 6th, 2004. If
19 you're talking about everything that he did from
20 1999 through today, I would have to answer no.

21 Q Have you ever supplemented these
22 documents to include whatever information you think
23 is lacking from them?

24 A The additional information came in what I
25 believe you call discovery.

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1 Q Just so we're clear, in your words,
2 what is missing from these documents in terms of
3 what you think Dr. Bishayee did?

4 A These additional experiments, these
5 experiments, I believe that he fabricated the
6 survivals. I believe in this document, I believe
7 that he had fabricated -- this shows that he must
8 have been fabricating the bystander, the 50/50
9 experiment, the 50 percent experiment. But at this
10 time I was unaware of the 100 percent experiment.

11 Q So is it fair to say that together
12 Exhibits 4 and 5 contain everything you believe Dr.
13 Bishayee did, with the exception of possible
14 wrongdoing in connection with 100 percent
15 experiments?

16 A Yes, I think so.

17 Q And you understand that those were
18 served on the government, not us, right?

19 A Yeah. Well, yeah, yeah.

20 Q Let's go to the first one, the
21 Written Disclosure. Paragraph 5, it references your
22 line of expertise. Do you see that?

23 A Okay, yes.

24 Q What exactly is your area of
25 expertise?

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1 A I'm a radiation biologist. My expertise is
2 the effect of radiation on biological material,
3 living cells. Do you want more?

4 Q If there is more.

5 A I specialize in DNA damage and repair. And
6 up to the time that I started working with Howell, I
7 was an expert in pigmented cells and the effect of
8 radiation damage on pigmented cells. Do you want
9 more? I can keep on going for a little while.

10 Q Yes, please. I just want to know
11 your areas of expertise. It's not a trick question.
12 Just yes, whatever your areas are.

13 A At that time I guess I wasn't -- let me see,
14 what's the date? I guess it was pretty early on. I
15 hadn't start working with mitochondria yet.
16 Ultraviolet, I have done a lot of work with
17 ultraviolet light, as well as ionizing radiation.
18 2003? Yes, DNA damage and mitochondria.

19 Q And it's not limited to this date. I
20 was just asking you up to today what your areas
21 were.

22 A Okay.

23 Q Have we covered them?

24 A Yeah, I think this is good enough. You
25 don't need to know everything.

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1 Q Are there more?

2 A No, that's enough.

3 MR. PINCUS: Why do you think they
4 have CVs that are 82 pages long?

5 THE WITNESS: That's right, why don't
6 you look at my CV and you'll know what my expertise
7 is.

8 MR. LEONARD: I'd rather hear it from
9 you. Why settle for a document when I have the real
10 thing.

11 Q Paragraph 17, you say here that
12 Howell fired Bishayee, and we covered that. But you
13 also say, "...and made it impossible for Lenarczyk
14 to extend his visa."

15 A Well, Lenarczyk told me, he didn't say it in
16 his deposition, but he told me that he couldn't stay
17 because he wasn't getting enough money, and he
18 wanted to bring his wife over. So that's basically
19 the background for that statement.

20 Q You were interviewed by the Committee
21 on Research Integrity?

22 A Yes.

23 Q You gave a statement to them?

24 A Yes, I did.

25 Q As you think about that, as you

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1 reflect on that, did you testify honestly? You
2 provided a statement to them?

3 A Yes.

4 Q Was that statement truthful and
5 accurate?

6 A Yes.

7 Q You also provided testimony?

8 A Yes.

9 Q Did you testify truthfully?

10 A Yes.

11 Q As you sit here today, is there
12 anything that you wish you could change or
13 supplement to that?

14 A Wish I could change? I wish I had never
15 gotten messed up in this, but other than that...

16 Q Okay, fair enough.

17 With respect to Dr. Howell's grant, the one
18 that's in question in the renewal, is it your belief
19 that nothing good came of the efforts that were
20 undertaken with respect to that grant?

21 A No. I believe that the bystander stuff is
22 not good, because I believe that that was
23 fabricated. However, I believe that the overall
24 project itself was a worthy project, and that Howell
25 has done some very good work in other areas.

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1 Q How about with respect to that grant,
2 is there anything good that has come out of those
3 efforts?

4 A You know, I don't know. I'm not in nuclear
5 medicine myself, so I really don't know.

6 Q Have you ever had any conversations
7 with John Grandier, a statistician?

8 A John Grandier?

9 Q Yes.

10 A You know, the name is ringing a bell,
11 because Field told me about it, but that's not his
12 name.

13 Q Am I mispronouncing it?

14 A I don't think you've got the name right.
15 It's Gardinier.

16 Q I'll take that. Have you ever talked
17 to that guy?

18 A I tried to. No, I haven't. I don't think I
19 have. I tried to find him and I think I was unable
20 to find him.

21 Q Have you spoken to any statistician
22 regarding this case?

23 A Yes.

24 Q Who might that be?

25 MR. PINCUS: Objection. You're

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1 asking at this point for the disclosure of
2 individuals who we have consulted with, and at this
3 point it's not necessary, nor do we have to disclose
4 who may actually be our expert or experts in this
5 case. So to the extent you're asking us who we may
6 have consulted with during --

7 MR. LEONARD: Not retained, I'm not
8 asking you who you retained. I'm just asking who
9 she has spoken to. If there's somebody you've
10 retained and you don't want to disclose it yet,
11 that's fine. I'm just asking who she's spoken to.

12 MR. PINCUS: He's saying other than
13 anyone who we may be working with or retained, you
14 should confine yourself to that.

15 A Okay. I spoke with Dr. Mosimann.

16 Q When did you speak to him?

17 A In the offices of the ORI. So that started
18 in 2002. So it would have been sometime in 2003
19 probably.

20 Q Have you talked to him more than
21 once?

22 A I don't think so.

23 Q Have you provided him with any
24 materials?

25 A I asked him some questions, but I don't

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1 remember if I provided him with materials or not.

2 Q Any other statistician that you've
3 consulted with? And I'm not talking about actually
4 retained for the purposes of the case.

5 A No. By "consult" you mean received
6 opinions?

7 Q No, no, no, just -- well, yes, talked
8 to about the case, not necessarily retained.

9 A Well, you know, I had to look for expert
10 witnesses and I had to talk to them a little bit
11 about statistics, and I don't remember who they
12 were.

13 Q Do you know how many people you've
14 talked to?

15 A Maybe three or four.

16 Q Are they statisticians?

17 A Yes.

18 Q Without disclosing the identity, have
19 you retained a statistician?

20 MR. PINCUS: Again, you're getting
21 into an area in terms of individuals who may be
22 considered to be consulting experts, as opposed to
23 testimonial experts. At this point we're not
24 required to disclose that. Obviously, we know we
25 have a deadline and we will act accordingly. So

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1 that's the purpose of me saying what I said.

2 MR. LEONARD: That's fine.

3 Q Have you consulted, not retained,
4 have you consulted with any experts with respect to
5 cell cycles?

6 A I had to send you the names of people that I
7 had sent e-mails to. You have that list, and I
8 don't remember who they are.

9 Q How about have you consulted with
10 anybody, again, not retained, on the hypoxic effects
11 of radiation?

12 A I think that would be in the list, also.

13 Q You provided a separate document or
14 in response to answers to interrogatories?

15 A In response to interrogatories and the
16 document list.

17 MR. PINCUS: I think what she's
18 referring to is e-mails and things. I can't put my
19 finger on it at this moment, but I think that that's
20 what she's referring to.

21 A I think it was people, you know, in the
22 interrogatories, I had to say who I contacted.

23 MR. PINCUS: I may be wrong based on
24 what she's saying, but I think that's what she's
25 referring to.

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1 A Yeah, yeah, e-mails.

2 Q Are we talking about anybody other
3 than Eric Hall, Thomas Hei, and God knows I'm going
4 to butcher this name, but Hongning Zhou?

5 A Yes.

6 Q Are those the individuals to whom you
7 just referred?

8 A They're not statisticians.

9 MR. PINCUS: No, his question right
10 now had to do with hypoxia.

11 A Oh, hypoxia. Yeah, yeah.

12 Q Those are the people?

13 A I contacted them, yeah. They're the people
14 from Columbia.

15 Q Right. Anybody beyond them?

16 A Are there other names in that document?

17 Q No, not that I see, that's why I'm
18 asking.

19 A I thought I provided a list.

20 Q Hang on a minute.

21 MR. PINCUS: Do you want to take a
22 couple of minutes?

23 MR. LEONARD: No.

24 Q I've previously been giving you
25 what's been marked Lenarczyk Exhibit 9. It's your

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1 answers to interrogatories. It should be there in
2 front of you.

3 MR. PINCUS: Are you talking about
4 Page 17?

5 MR. LEONARD: Actually, I was going
6 to have her go through Number 2, starting probably
7 on Page 11.

8 MR. PINCUS: I thought you were on
9 17.

10 MR. LEONARD: I was, and she said
11 that she did. But I'd like her to go through Number
12 2, and tell me if the people listed here comprise
13 everybody who she has consulted with. If this is
14 the list she was referring to.

15 MR. PINCUS: Page 2 or Page 3?

16 MR. LEONARD: Number 2.

17 MR. PINCUS: Do you understand the
18 question?

19 THE WITNESS: I think I do, yes.

20 MR. PINCUS: He wants to now go back
21 and know whether these were individuals that you
22 consulted with or not. Is that what you were
23 asking?

24 MR. LEONARD: Yes.

25 A I wasn't really consulting. I was looking

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1 for expert witnesses. So I contacted a few people
2 to see if they would be willing to be expert
3 witnesses.

4 Q Are those people identified here?

5 MR. PINCUS: That runs through I
6 think Page 13.

7 Q You obviously don't have to read
8 everything about it. Just look at the names and
9 tell me. However it works best for you.

10 A I see what you're looking for. These are
11 all the people that were around there. Kay L.
12 Fields, I can't get rid of that "s."

13 (A discussion is held off the record.)

14 A Well, what I thought you were looking for
15 was who are the people that I contacted when I was
16 looking for expert witnesses.

17 Q That is.

18 A They're not on that list.

19 Q They're not on that list?

20 A Right.

21 Q Okay.

22 Did you communicate with all those
23 individuals through e-mail?

24 A These individuals?

25 Q No, the people that you were just

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1 referring to that you consulted with when you were
2 looking for experts.

3 A Yes.

4 Q Did you have any in-person meetings
5 with any of these people?

6 A No.

7 Q To the best of your knowledge, you
8 have produced the e-mails between you and these
9 individuals?

10 A I think I did, yes.

11 MR. LEONARD: Why don't we take ten
12 minutes. Okay?

13 (At this point in the proceedings,
14 a brief recess is taken.)

15 Q Dr. Hill, we're back on the record.
16 All the instructions given to you previously remain
17 in place. You remain under oath.

18 Previously we talked about individuals who
19 leave the university that you would not give
20 recommendations to.

21 A Not say anything bad about it is kind of
22 what I said. I will tell the truth. You know,
23 that's very important to me is the truth. So I'll
24 say what's true. You know, Bishayee never worked
25 for me. I never would have to give a recommendation

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1 for him. I think I wouldn't if I had to. But other
2 people that I've had that weren't very good, I said
3 what they did, I said that they were nice, I said
4 things like that. But I wouldn't say that I think
5 this was a terrible worker, because I really don't
6 like to destroy people. I hope that they will be
7 able to get along and get a boss that isn't as
8 easygoing as I am, who will really put the screws on
9 them and make them work right.

10 Q And not looking in this case, has
11 anybody ever worked for that engaged in what you
12 thought was suspicious activity that left and then
13 asked you to give a recommendation?

14 A Yes. I had, I guess she was a postdoc, and
15 she was doing a procedure. We were measuring DNA
16 strand breaks in gels. We scientists do an awful
17 lot of stuff in electrophoresis and gels and so
18 forth. And her results were not coming out right
19 and I knew something was wrong. I said, Let me run
20 the experiment and I'll see if I can figure out
21 where it is that something isn't working. It was a
22 pretty complicated experiment, and you had to cut
23 out the gels into little pieces and then you had to
24 digest them with acid.

25 So I went through the experiment. And when

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1 I was finished, then you have to count the
2 radioactivity that's coming from these gels. And I
3 counted my radioactivity and it was gone, and I had
4 put in lots. You can see from Howell's experiments,
5 there's lots of counts. And this was astounding.
6 And I did it again and the same thing happened. And
7 I thought this is really weird.

8 Then I realized when you digest the gel with
9 the acid, you keep a bottle of concentrated
10 hydrochloric acid on the bench and you just take a
11 pipette and you take that and you put it into each
12 one of the vials to digest the gels. I think
13 actually what she was doing was not getting them
14 thoroughly digested.

15 But I think what she did then to sabotage my
16 experiment was that she took the hydrochloric acid
17 and she put it into every single one of the tubes
18 and it just destroyed everything. I have no proof.
19 But anyway, that's what I figured, that she was
20 sabotaging my experiment. Because she didn't want
21 it to work for me if it couldn't work for her.

22 So I went to the university lawyer and I
23 said, Look, I think this woman has been sabotaging
24 my experiment, or sabotaged my experiment when I
25 tried to it, and what do I do? Things were a lot

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1 looser in those days, and the lawyer said, Go back
2 to the lab and tell her to pack up her things and to
3 leave, and give her 15 minutes. And I did that.
4 And she was supposed to be taking her off the
5 payroll. They didn't actually take her off the
6 payroll for another two or three months or something
7 like that.

8 And then they called me and they said she's
9 getting another job in Connecticut and they need a
10 letter of recommendation. And I said I really don't
11 want to write a letter of recommendation. And they
12 said you have to. So I wrote her a letter of
13 recommendation, and I did just what I said I would
14 do, I said that she's --

15 Q She drinks good coffee.

16 A Yeah, right. She's an attractive person and
17 she worked. I tried to say what was true and
18 nothing more. And so that's the way that was
19 handled.

20 Q Do you remember who you spoke to at
21 UMDNJ about this person?

22 A It was a woman in the legal department and I
23 don't remember who it was.

24 Q Do you remember when this was?

25 A It was ages ago.

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1 Q Is that the only incident?

2 A Yes.

3 Q With respect to the PowerPoint
4 presentation and some of the documents that we've
5 seen, for example, one entitled "I Am a
6 Whistleblower," and some of these other documents,
7 where were they created?

8 A On my computer.

9 Q At home?

10 A Yes, probably.

11 Q Do you know if they were on UMDNJ's
12 computers?

13 A I've been pretty careful not to do anything
14 on UMDNJ's computes. The computer I have in my
15 office I paid for out of my own money, which is
16 money that I gave to the university to support my
17 research, and it's linked to the university system.
18 And the university doesn't want you to do your
19 internet shopping on university computers. I don't
20 do that. I have e-mail at work and I have e-mail at
21 home. I take very seriously that you shouldn't use
22 the university. I don't use their copy machines to
23 do personal stuff.

24 Q So none of these documents were
25 created on your office computer?

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1 A No. I think they can reach in. I have a
2 feeling they're reaching in and looking at what's in
3 my computer.

4 Q I'm not a tech person, but I suspect
5 you're right.

6 These visits that you made to the U.S.
7 Attorney and the FBI, I think we said there were
8 like 17 visits?

9 A Something like that, yes.

10 Q Were they during weekdays?

11 A Yes.

12 Q What is your schedule now? Do you go
13 to the university every day?

14 A Not every day, but most days.

15 Q Most days?

16 A Yes.

17 Q This past week what are you working
18 on?

19 A Monday was a holiday. Tuesday I teach in
20 what they call the Core Curriculum, it's the medical
21 school. It's a new philosophy that medical schools
22 have that we need to teach doctors ethics and how to
23 interact with patients. You know, to not walk in
24 and say, "You have cancer and you're going to die,"
25 that sort of thing, sensitivity.

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1 And I'm a facilitator in the Core
2 Curriculum. I meet with my group once a week either
3 for two or three hours. We did it in the fall, we
4 did about six or eight weeks in the fall, and now
5 we're doing 13 weeks in the beginning of this year.

6 It takes a lot of time. Because I have to
7 read the documents that they have to read and so
8 forth.

9 I interview applicants for the medical
10 school, and that takes a lot of time, also, because
11 I have to go over their application and read all the
12 things that they've done to get them into medical
13 school, and read their essays and so forth.

14 And then I do what research I can, working
15 in the medical genetics and doing this preliminary
16 chain reaction that I do to analyze mitochondria
17 DNA.

18 Q With respect to interviewing the
19 medical students, is that something you do with Dr.
20 Baker?

21 A No.

22 Q Is he the head of that program?

23 A No, he's the dean for -- what do they call
24 it -- continuing education. Doctors have to do a
25 certain number of hours every year of continuing

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1 education, like 50 hours or something like that. So
2 they go to a conference and they get credit for it.
3 And the medical school will present courses that
4 doctors can attend to get their continuing education
5 credits, and that would be his job. I believe
6 that's his job, I'm not really sure.

7 Q He's not involved in interviewing at
8 all?

9 A I don't think so. I've never seen him on
10 the interview list, but I don't really see that. We
11 meet once a year and we kind of get a pep talk, and
12 I've never seen him there.

13 Q The documents that you've created in
14 connection with this case, I'm talking about the
15 PowerPoint, I Am a Whistleblower, and the other
16 documents, some of which we've looked at here today,
17 can you tell me to whom you've sent copies of those
18 documents?

19 A I sent them to the people on that list, I
20 sent one to Hei, to Hei and Hall. I sent them to
21 Richard Setlow, who is a fellow at Brookhaven
22 National Lab, I call him my scientific stepfather,
23 to have him help me find expert witnesses. Who else
24 did I send to? I thought I had given a list of
25 those people in the interrogatories, but maybe I

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1 didn't.

2 MR. FLYNN: We don't have that.

3 A Marianne Passanante has seen them. She's a
4 statistician. She's not, she's not, she's in
5 preventative medicine. I thought she was a
6 statistician. Bart Holland.

7 Q Where is she --

8 A They're at the medical school. There are
9 some other people that Setlow recommended that I
10 sent them to, but nothing ever happened there. Who
11 else?

12 Q Do you remember who Setlow
13 recommended you send them to?

14 A I don't remember the names. I probably
15 didn't send them the documents. I just sent a
16 letter and asked them if they would be willing to be
17 expert witnesses. Offhand, I don't remember anyone
18 else. I don't like to talk about this.

19 Q I know we've covered a lot of ground
20 today. Is there anything else that you wish to say
21 in support of any of your claims?

22 A Anything else that I wish to say? I suppose
23 what I want to say is that I don't take this
24 lightly. Obviously, I have expended a great deal of
25 my time, a great deal of my family's finances, that

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1 I'm sad and disappointed in the university and Dr.
2 Howell. Bishayee, I don't really blame him, because
3 I think he grew up in a place where in order to get
4 ahead you had to make up things. So he's kind of --
5 he's really the cause of it all, but I think if he
6 had been properly educated when he came to the
7 United States and it was explained to him that we
8 don't do things this way, maybe he wouldn't have
9 done what he did.

10 I know that people are being hurt and I'm
11 very sad about that, very sad. So why do I do it?
12 I think it is an obligation and a duty. I think
13 that science has to be as true as we can possibly
14 make it. And when we find out we've made mistakes,
15 I think we have to be willing to stand up and to say
16 I made a mistake and I have to retract.

17 I would give anything to have not had this
18 happened. When Marek called me in to see what
19 Anupam had done that fateful night, March 26th, I
20 believe it was, of 2001, I kept saying, "No, go
21 away, I don't want to hear you. I don't want to see
22 it." And finally he persuaded me, and that was a
23 terrible moment.

24 So I guess that's really all that I can say,
25 I'm sorry. But once I started down this slippery

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1 slope, I felt that I had an obligation to continue.
2 So I guess that's it.

3 Q The only thing I would ask is did you
4 ever confront Dr. Bishayee with any of this at the
5 time?

6 A You know, I never did. I thought that was
7 Howell's job.

8 Q And when you and Dr. Lenarczyk
9 observed or shadowed Dr. Bishayee, you didn't go
10 back to Dr. Howell, though, did you?

11 A Well, Marek and I shadowed. And when the
12 experiment was completed, then I put everything
13 together in three notebooks. And I didn't think
14 that Marek should have any further role, because I'm
15 the senior person and I had to take responsibility
16 for it. So I took the three notebooks, and my
17 obligation really was to report to Baker, but I
18 thought out of courtesy I had to report to Howell,
19 and so I did. And then he and I went together to
20 Baker. So I don't know, does that answer your
21 question?

22 Q Yes. You told Dr. Howell of
23 everything you did prior to telling Dr. Baker?

24 A I gave him the notebook. I don't know
25 whether he looked at it or not. But what happened

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1 was, I was worried because I knew at Anupam was
2 going to take contaminated cultures into the FACS
3 lab, the fluorescent activated cell sorter. That's
4 a delicate instrument, and I didn't know whether
5 putting bacterial contamination or yeast or whatever
6 it would be into that, whether that would mess it
7 up, make a real mess of that instrument or not. I
8 was worried about that.

9 So I told the boss of the lab that I was
10 worried that these contaminated cultures might be
11 coming in on Friday. And I asked him, I told him I
12 was telling him in confidence, but then he broke my
13 confidence and he told Howell. And then actually I
14 think Howell told Bishayee to clean up your act.
15 And then Bishayee got the little tubes out of the
16 freezer and threw them away. And where he threw
17 them we don't know, because remember we couldn't
18 find them.

19 But in any case, because Denny, the head of
20 that lab, spread the word, I guess then Howell went
21 and told Baker what had been going on, that I had
22 been making these observations. And then Baker,
23 when we went to Baker, Baker said, "It's all over
24 the medical school. The dean knows about it. And
25 why are you making the department look bad," and so

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1 on and so forth. So that's kind of the way it all
2 began. And I can't remember what your question was
3 that I was replying to.

4 Q That's okay. When Dr. Lenarczyk
5 first approached you on that fateful day in March,
6 why didn't you involve Dr. Howell then?

7 A Because we both knew that Howell thought
8 Bishayee was wonderful and really believed in him.
9 And we thought if we told Howell then that Howell
10 would tell Bishayee to stop the experiment, and we
11 would never have the proof that we would need to
12 show that Bishayee had been carrying out an
13 experiment with contaminated cultures. So we
14 decided to carry the experiment on through the very
15 end.

16 Q But wouldn't the desired result have
17 been achieved if you approached Howell and he did
18 exactly what you said and stopped the experiment,
19 isn't that ultimately the desired result?

20 A We wanted to convince him that Bishayee was
21 carrying an experiment through that he knew was
22 contaminated. You know, it didn't occur to me at
23 that time that he would actually make up the numbers
24 for the results. But that was our reasoning, that
25 we should carry it through to the end, and then we'd

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1 show how the flask that contained, he called it the
2 garden, because it had so much contamination in it.
3 We thought we'd have more of an impact if we did it
4 that way.

5 Q It was Howell's grant, correct?

6 A Yes.

7 Q And wouldn't it have been proper
8 protocol to go to him, rather than carry on all
9 these covert actions, allowing an experiment that
10 you had thought had gone awry to continue, wasting
11 resources and everything else that was going on?

12 A It was just wasting incubation time, not a
13 big deal. It wasn't big money at that point. The
14 experiment, by the time I started in on it, by the
15 time Lenarczyk called me, which was like Wednesday,
16 the experiment had started on Monday, and everything
17 was said set up. It was not a big deal from that
18 point on.

19 Q I guess I just can't understand when
20 Lenarczyk came to you why, if it was Howell's grant,
21 he wasn't brought in on what was happening
22 immediately, so that he would have an opportunity to
23 participate in righting the wrong.

24 A Because we didn't think that he would. We
25 thought we really had to knock it home to him. We

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1 had to go through to the very end, and then show him
2 at the end of the experiment. And then what
3 absolutely shocked us was the realization that
4 Anupam had taken the clean cells that he had gotten
5 from Marek and substituted them.

6 Q You already testified you didn't see
7 that happen. You don't know that to be the case.

8 A I don't know that.

9 Q If you had brought Howell to see what
10 you referred to as "the garden," wouldn't that have
11 terminated everything right then?

12 A I don't know.

13 Q Wouldn't that be irrefutable evidence
14 that you presented to him just by showing him those
15 tubes and that they were contaminated?

16 A He would have said you're showing me this
17 garden, but how do I know that he used this to make
18 the experiment.

19 Q You're saying that but you're
20 speculating, because you never gave him the
21 opportunity; isn't that true.

22 A That's true.

23 MR. LEONARD: I have no further
24 questions.

25 MR. PINCUS: I have questions.

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1 MR. LEONARD: Thank you for your
2 time, Dr. Hill.

3 THE WITNESS: Okay.

4 (Whereupon the deposition is
5 adjourned at 2:45 p.m.)

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C E R T I F I C A T I O N

I, SHARON B. STOPPIELLO, License
Number XIO1163, a Certified Court Reporter
and Notary Public of the State of New
Jersey, certify that the foregoing is a
true and accurate transcript of the
deposition of DR. HELENE Z. HILL, who was
first duly sworn by me at the place and on
the date hereinbefore set forth.

I further certify that I am neither
attorney nor counsel for, nor related to or
employed by, any of the parties to the
action in which this deposition was taken,
and further that I am not a relative or
employee of any attorney or counsel employed
in this case, nor am I financially
interested in the action.

A Notary Public of the State of New Jersey
My commission expires June 28, 2013
I.D. No. 2045915

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