

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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

Plaintiff,

Case No. 03-4837 (DMC)

-vs-

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

Defendants.

Examination of MAREK LENARCZYK, Ph.D.,
taken at the instance of the Defendants, under and
pursuant to the Federal Rules of Civil Procedure, before
LINDA J. SAARI, a Registered Merit Reporter and Notary
Public in and for the State of Wisconsin, at
Intercontinental Hotel, 139 East Kilbourn Avenue,
Milwaukee, Wisconsin, on October 28, 2008, commencing at
10:01 a.m. and concluding at 6:05 p.m.

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

2 BUCCERI AND PINCUS, by
3 MR. SHELDON H. PINCUS,
4 1200 Route 46,
5 Clifton, New Jersey 07013-2440,
6 973-773-5665,
7 appeared on behalf of the Plaintiff.

8 McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP, by
9 MR. JOHN P. LEONARD,
10 MR. SCOTT S. FLYNN
11 1300 Mount Kemble Avenue
12 P.O. Box 2075,
13 Morristown, New Jersey 07962-2075,
14 973-993-8100 // jleonard@mdmc-law.com,
15 appeared on behalf of the Defendants.

16 A L S O P R E S E N T

17 Dr. Helene Hill

18 * * * * *

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* * * * *

1 TRANSCRIPT OF PROCEEDINGS

2 MAREK LENARCZYK, Ph.D., called as a
3 witness herein, having been first duly sworn on
4 oath, was examined and testified as follows:

5 EXAMINATION

6 BY MR. LEONARD:

7 Q Dr. Lenarczyk, my name is John Leonard. I'm a
8 member of the law firm of McElroy, Deutsch,
9 Mulvaney & Carpenter. Together with my colleague,
10 Scott Flynn, we represent the University of
11 Medicine & Dentistry of New Jersey, Dr. Roger
12 Howell and Dr. Anupam Bishayee in an action filed
13 by Dr. Hill currently pending in the United States
14 District Court of New Jersey. Okay?

15 A Mm-Mm.

16 Q Have you ever given testimony before today?

17 A Never.

18 Q Okay. Have you ever made a statement under oath
19 prior to today?

20 A This is my first time I'm involved in that kind of
21 case.

22 Q Okay. Let me explain what's going to happen then.
23 It will help you to know what's coming.

24 The court reporter sitting to my right,
25 your left, is taking down everything we're saying

1 verbatim. So, it's important that we do a couple
2 of things. The first is that you answer vocally.
3 Okay? Because, obviously, if you nod your head
4 "yes," I know what you mean, she can't record it.

5 The other thing is, please, allow me to
6 finish a question before you begin your answer,
7 and I will do the same. I will let you complete
8 your answer before I start a new question.

9 If there should be any objections or
10 dialogue between myself and Mr. Pincus, just
11 suspend your answer while we discuss that.

12 You are not represented by counsel here
13 today?

14 A No, I couldn't.

15 Q Okay.

16 MR. PINCUS: May I ask just one favor
17 just by way of instruction.

18 Dr. Lenarczyk, would you do me the favor
19 of trying to keep your voice up so that we can all
20 hear you.

21 THE WITNESS: I will try. Okay.

22 MR. PINCUS: If we should remind you
23 don't take offense. Okay.

24 THE WITNESS: Sure.

25 BY MR. LEONARD:

1 Q Dr. Lenarczyk, it's important for you to
2 understand that you're under oath today. The oath
3 that was just administered is the same oath as if
4 you were testifying in a court of law. Do you
5 understand that?

6 A Yes, I understand.

7 Q Do you understand a false statement you could be
8 held liable for perjury. Do you understand that?

9 A Yes, I understand.

10 Q I'm going to ask you a series of questions. I'll
11 try to keep it as painless as possible, and move
12 it along as quickly as possible. If I ask you a
13 question that you do not understand, it's
14 important that you let me know that and I will
15 rephrase the question.

16 A Okay. I will.

17 Q If you answer a question, I'm going to assume that
18 you understood it. Fair enough?

19 A Okay. Yes.

20 Q Okay. No problem at all if I ask you a question,
21 if you don't know what I mean say, "John, I'm not
22 sure what you mean," I'll rephrase the question.

23 A Okay.

24 Q Okay? As I say, I don't anticipate objections
25 insofar as you're not represented by counsel, but

1 to the extent Mr. Pincus and I have something to
2 discuss, just suspend your answer while we figure
3 out whatever it is the issue is between us. Okay?

4 A Okay.

5 Q All right. Breaks. This is not a marathon. I'm
6 not trying to wear you down. So, if you've got to
7 go to the bathroom, you want to stretch your legs,
8 you want to get some coffee, just say so and, of
9 course, you can do that.

10 A Okay.

11 Q All right. Are you on any medications today?

12 A No.

13 Q Okay. In preparation for today's deposition tell
14 me what you did.

15 A What do you mean what I did?

16 Q Sure. Did you look at any documents?

17 A I don't have any documents now, because I moved a
18 couple of times after I left the lab in
19 New Jersey. So, I only was asked couple of years
20 ago to send my lab notebook, I think, when the
21 case was under investigation at UMDNJ in
22 New Jersey, which at that time I believe I was in
23 Colorado. So, I send that. And after that I just
24 moved a couple of times from Colorado to
25 different, including this one. So, I really don't

1 have very much documents, because I moved out from
2 place-to-place. So, I'm not keeping hard copies
3 or whatever I collected back at that time.

4 Q We'll stop back to that point, because we'll go
5 through the subpoena that you were served with.

6 Did you talk to Dr. Hill in preparation
7 for today's deposition?

8 A Not really about that. I mean, she mentioned to
9 me one day that she would like to go for the civil
10 case, but we didn't talk about exactly what will
11 happen today.

12 Q When did that conversation take place?

13 A Oh, gosh! Maybe a half year ago. When I was here
14 in Wisconsin.

15 Q So, is that the last time you spoke to Dr. Hill?

16 A Yes.

17 Q How about Mr. Pincus, have you even spoken to him?

18 A No.

19 Q What did Dr. Hill say to you when she contacted
20 you six months ago?

21 A I think that she -- I mean, I contacted her,
22 because we have a scientific issue. I asked her
23 about some tests she was running in the lab. And
24 then she told me that -- She would send me some
25 materials about the test, but she also told me

1 that she would like to go for the civil case, and
2 she would like probably to take me as a witness of
3 the civil case or something like that.

4 Q And what did you say?

5 A I said nothing, because she didn't ask me if I
6 want to or if I don't like to, she just informed
7 me that she would like to go for that.

8 Q Okay. And you understand, as an individual that
9 lives outside the State of New Jersey, that you
10 cannot be compelled to appear at a hearing in
11 New Jersey, correct?

12 A I don't understand that. What?

13 Q If you reside in any state other than New Jersey,
14 Dr. Hill, myself, nobody can compel your
15 attendance to the lawsuit in New Jersey. Nobody
16 can make you go to in New Jersey.

17 A I didn't know about that, but now I know.

18 Q Now you know. Okay. Did you ever tell Dr. Hill
19 that you would travel to New Jersey to allow your
20 deposition to be taken, what we're doing here?

21 A Did I tell?

22 Q Yes.

23 A No.

24 Q Did you ever tell Dr. Hill that you would travel
25 to New Jersey in order to testify at the trial?

1 A I don't think so. I mean, we were not talking
2 about traveling. She mentioned to me that she
3 would like to go for the civil case, and perhaps
4 she will ask me to fly to New Jersey, but that was
5 only what she mentioned to me at that time.

6 Q Well, do you have any intention of flying to
7 New Jersey to testify at a trial?

8 A No, I didn't.

9 Q As we sit here today do you have any intention of
10 flying to New Jersey to testify at a trial?

11 A No.

12 Q With respect to preparation for your deposition,
13 for today's deposition, did you look at any
14 e-mails?

15 A I printed out only one e-mail, which I still have
16 in my computer, which was exactly the e-mail about
17 the scientific issue which we had with Dr. Hill at
18 that time talking about some experiments, but that
19 was nothing connected probably to the civil case.

20 Q Okay.

21 A I have that e-mail, so I can give you that e-mail
22 if you want.

23 Q Okay. I just want to mark the subpoena that you
24 were served with.

25 A The subpoena I have also.

1 Q No, that's all right, I got it. It's part of what
2 we do here.

3 MR. LEONARD: Could you mark this as
4 Plaintiff's Exhibit 1, please. Just a matter of
5 the way this has to proceed in terms of --

6 MR. PINCUS: What are you calling this?
7 P1?

8 MR. LEONARD: No, D1. I'm sorry.

9 (Exhibit Number 1 was marked.)

10 BY MR. LEONARD:

11 Q Dr. Lenarczyk, I'm going to hand you a document
12 that's been marked Lenarczyk 1. I will represent
13 to you that it is a subpoena, and ask you to
14 confirm that that is what you were served with by
15 my office.

16 A So, what I have to do with that? I read that
17 before, because --

18 Q Just tell me if you recognize it.

19 A Yes, I recognize this.

20 Q Okay. And I'll ask you to turn to the last page.

21 A But I have a little bit different one, because I
22 didn't have that middle page.

23 Q The middle page? Okay.

24 A I had only the first one and the last one which
25 they send me by e-mail.

1 MR. FLYNN: That was the Proof Of
2 Service.

3 MR. LEONARD: Oh, Proof Of Service.
4 Okay.

5 BY MR. LEONARD:

6 Q On the last page it says "You Are Commanded," if
7 you have them, to bring certain documents. Did
8 you look to see whether you have any of these
9 documents in your possession?

10 A I can show you what I have, which I found. Okay?

11 Q Okay.

12 A And then you can tell me. And this is really what
13 I have now.

14 Q Okay.

15 A This is the e-mail which I printed off. Sorry
16 about this.

17 Q That's all right.

18 A That was about this scientific issue which we had
19 with Dr. Hill. This is the subpoena which I got
20 from my college by the business e-mail which has
21 no middle page.

22 Q The middle page is a Proof Of Service. They
23 wouldn't leave that with you.

24 A This is some letter which Dr. Hill sent me some
25 time ago. I don't know what is the date of this

1 letter, but she sent me something. I think that
2 this is something she would like to try to prefer
3 to go for the civil case. She tried to
4 investigate by herself something.

5 MR. LEONARD: Just for the record, I'm
6 looking at several documents that Dr. Lenarczyk
7 just handed me that apparently --

8 THE WITNESS: I don't know what is the
9 date of that.

10 MR. LEONARD: -- Dr. Hill sent him.

11 BY MR. LEONARD:

12 Q How long ago?

13 A It was here in Wisconsin, when I'm here from 2005,
14 so it might be 2006. I don't remember that.

15 Q Okay. The first document purports to be an
16 "Analysis of Coulter Counter Counts by B and
17 Hill," with a handwritten notation, "This is a way
18 to determine if data are made up. The last digits
19 in each Coulter Count should be randomly
20 distributed. This shows that Bishayee's were not.
21 Yours (next page) are all okay." Do you have any
22 idea what this means?

23 A I don't know. I mean, this is her -- I mean, this
24 is something which she would like to try to
25 investigate.

1 Q But you don't know what this means?

2 A I didn't pay any attention of that. I mean,

3 that's not my case.

4 Q Was this handed to you?

5 A That came to my mailbox.

6 Q It came through the mail?

7 A Right.

8 Q Okay. The next document is entitled "Summary of

9 Qui Tam Case Against The UMDNJ Proposed By

10 Dr. Hill." And it says, "Prepared for meeting

11 with Sheldon Pincus on April 10, 2003."

12 The next document are several pages,

13 nine pages in total, front and back copied,

14 entitled "An Analysis of the Findings in Box #6,"

15 with handwriting up at the top that I assume is

16 Dr. Hill's that says, "For Presentation for U.S.

17 Attorney." Do you understand what this is?

18 A I don't know. I mean, I think that this is kind

19 of PowerPoint slide presentation which she did

20 probably somewhere sometime. I don't know what

21 that is.

22 Q Okay. But you have no firsthand knowledge. And

23 this is an important point as we go through your

24 questioning today. There's been a lot of

25 conjecture, and what I want to know is your

1 firsthand knowledge, things that you actually
2 know, you observed, you witnessed.

3 A This is not the material which I prepared by
4 myself, I just got this material.

5 Q Okay. So you don't know anything about the raw
6 data that went into creating this?

7 A It was not very -- I didn't like to even read
8 this. I mean, nothing was exactly about the case
9 which I was involved in at that time.

10 Q Okay.

11 A So, I think that this is her preparation for
12 something she would like to go with.

13 Q Understood. The next document is several pages
14 long, eight, front and back, entitled "Whistle
15 Blower Statement," again, by Dr. Hill. On the top
16 is writing that I presume to be Dr. Hill's, it
17 says, "I am a whistleblower - draft changes
18 accepted.doc." Did you read this document?

19 A I don't remember. Maybe I read. But if you would
20 ask me what is that I would say I don't know,
21 because that was so as long as ago.

22 Q Okay. The next document is three pages, front and
23 back, again, with Dr. Hill's name on the front
24 and, again, up in the right-hand corner,
25 handwriting that I presume is that of Dr. Hill's.

1 And it says, "The Effect of Tritiated Thymidine ON
2 THE Cell Cycle of Chinese Hamster V79 and Its
3 Implications in Experiments Done in the Laboratory
4 of Roger Howell in 1998 to 2001." Have you seen
5 this document before?

6 A I seen that document, because I gave you this
7 letter before. But if you can ask me what is
8 inside, I don't know.

9 Q Do you have any firsthand knowledge of any of the
10 data that was used to comprise this letter?

11 A Say again?

12 Q Do you have any firsthand knowledge? Do you
13 personally know what Dr. Hill used or looked at in
14 order to compose this?

15 A What she looked for?

16 Q Yes.

17 A I don't know.

18 Q Okay. You weren't consulted about any of these
19 documents? You didn't review drafts?

20 A No.

21 Q Okay. The next document is a copy of a letter
22 from Dr. Hill to Susan Steele, United States
23 Attorney's Office, District of New Jersey. Did
24 you read it?

25 A Probably, yes, but I don't know what this is. I

1 mean, I didn't remember this letter.

2 Q So, you don't really have any recollection of
3 anything that's in this letter?

4 A No.

5 Q Okay. This letter talks about Dr. Bishayee. Do
6 you have any recollection of issues involving him
7 at this point?

8 A I remember Dr. Bishayee, but I don't know what
9 this is about, him in this letter.

10 Q Okay. Fair enough. You'd be a busy reader. The
11 next document is three pages, front and back
12 again, Dr. Hill's name up in the left-hand corner
13 again, handwriting that appears to be hers on the
14 upper right. "The Impossibility of an Exponential
15 Decline in Survival of Chinese Hamster Cells in
16 the Presence of" -- and I'm probably murdering
17 this word -- Tri --

18 MR. PINCUS: Tritiated.

19 BY MR. LEONARD:

20 Q Tritiated. Okay. Have you seen this?

21 A Yes, I've seen that.

22 Q Do you know -- Did you read it?

23 A I probably read all of these documents before, but
24 I don't pay any attention what is that, so I don't
25 remember what is in that letter now if you would

1 ask me about it.

2 Q You don't know what, if any, relevance this is?

3 A I think that this is relevant to that situation

4 which was happening many, many years ago in the

5 lab, but I really don't know. I don't remember

6 exactly what is in each of the documents now.

7 Q That's fair. Other than the phone call about six

8 months ago -- And then when did you say you

9 received this package, approximately?

10 A It was happening when I was in New Jersey. I came

11 here in 2005. I believe it was maybe in 2006.

12 Q Okay.

13 A I really don't remember exactly. Not by this year

14 definitely.

15 Q Okay. Aside from that e-mail and that package,

16 have there been any communications between you and

17 Dr. Hill since you left UMDNJ?

18 A I think we spoke maybe two, three times by

19 telephone conversation just like

20 colleague-to-colleague, but nothing spectacular.

21 Q Any dialogue -- Sorry.

22 A I met Dr. Hill, for example, in one of our recent

23 research meetings which was in Philadelphia -- no,

24 in San Francisco I could have met. I saw her in

25 one meeting after that, but that was it.

1 Q Okay. And how long ago was that would you say?

2 A The last one was in Boston. Before was
3 San Francisco, which she was not -- It might be
4 either Philadelphia or Reno. I don't remember
5 when we met at that time.

6 Q I'm sorry, Dr. Lenarczyk, you have to look at me,
7 you can't --

8 A No, no, that's okay. I think that we met last
9 time in Reno on the meeting.

10 Q And when was that?

11 A I don't remember.

12 Q Within the past year?

13 A No, last year -- This year was in Boston. Last
14 year was in San Francisco. Before was in
15 Philadelphia. So, it might be like four years
16 ago.

17 Q Okay.

18 A I believe that that was before Philadelphia.

19 Q Let me go back and touch upon -- We got
20 side-tracked with the documents -- let me go back
21 and touch upon some background information about
22 you. I just want to confirm your date of birth is
23 March 30, 1956?

24 A Yes, it is.

25 Q Your Social Security is 141-98-1334?

1 A Yes.

2 Q How long have you lived at your present address?

3 A I came here in May, 2005.

4 Q What is your current address?

5 A My current address is 2014 South 102nd Street,

6 West Allis, 53227, Wisconsin.

7 Q Are you a U.S. citizen?

8 A No, I'm not.

9 Q What's your immigration status now?

10 A I have a visa, a working visa, H1-B, I think it's

11 called. "B" like in boy.

12 Q I have to ask you. Have you ever been convicted

13 of a crime?

14 A No, I never.

15 Q Are you married?

16 A Yes, I am.

17 Q Children?

18 A I have three kids, three boys.

19 Q What are their ages?

20 A Oh, the oldest one --

21 Q I could have asked you the date you got married.

22 I thought I would let you off easy.

23 A That's easy, because everything is on my wedding

24 ring. The first one was born in 1980, which means

25 that he's now 28 years old. Another one was born

1 in '87. And the last one was born in '88.

2 Q Okay.

3 A So now we count how much is that. The youngest

4 one is 20. The oldest -- the middle one is 21, I

5 believe.

6 Q Okay. Have you or your wife ever been involved in

7 a lawsuit before?

8 A No.

9 Q Neither been sued, nor have you sued anybody?

10 A No.

11 Q Could you just tell me briefly the colleges and

12 universities you've attended?

13 A Wow!

14 Q Not for work.

15 A After work?

16 Q No, not to work for them, but to get your degrees.

17 A Oh, to get my degree. All of my degrees I got

18 from Poland when I was in Warsaw. I have a degree

19 from University of Warsaw, which is Master Of

20 Science. And then I used to work for, almost like

21 23 years, in a research institute in Warsaw, which

22 was National Institute of Hygiene. And then I got

23 Ph.D. from that institute, and that was in '88.

24 Q Okay. Any other training that you've been

25 involved in?

1 A For degree or --

2 Q Yeah.

3 A No.

4 Q Okay. Let's go through your work history. But
5 why don't we start with your departure from UMDNJ
6 in the 2001/2002 period. Okay. Start there and
7 go forward. Okay. Can you tell me your
8 employers?

9 A In 2002 I came for the second time to work with
10 Dr. Howell, and I spent roughly one year after
11 2001.

12 Q What was your title?

13 A My title was post-doctoral fellow, I think.

14 Q And what were your duties --

15 A Post-doctoral fellow.

16 Q And what were your duties as a post-doctoral
17 fellow?

18 A I was usually involved in benchtop research at
19 that lab, which is like when you are working in
20 the lab. Okay? I was involved in lab work.

21 Q Okay.

22 A Basically running experiments on daily matter.

23 MR. PINCUS: "Matter," was that your
24 word?

25 THE WITNESS: Okay. I was running

1 experiments at each day. Is that clear?

2 MR. PINCUS: Okay. I just wanted to
3 make sure that the record is clear. Please don't
4 take offense.

5 THE WITNESS: No, no, that's okay.

6 BY MR. LEONARD:

7 Q Who did you report to?

8 A Formally I reported to my boss, who was at the
9 time Dr. Howell.

10 Q Let's go to your next employer after UMDNJ.

11 A When I left from Dr. Howell's lab I went back to
12 Poland for, I think, half a year. And then in
13 2002 I came to work in Colorado State University.
14 And that was, I believe, something around April
15 of 2004.

16 Q And what title did you have at Colorado
17 University?

18 A I had Research Associate 4, whatever that means.

19 Q What were your duties?

20 A Basically the same as before. I mean, I was
21 working all the time in the research lab
22 conducting experiments each day. I have a little
23 managerial responsibility, because we were working
24 with students, so I had to supervise them, what
25 they were doing for that project, which I was

1 involved at that time. And I spent over there
2 three years, up to 2005. And when the support was
3 exhausted -- I mean, when my boss was running out
4 of the money I had to find another job, which I
5 moved in 2005, almost at New Year, I think was 1st
6 or 2nd January of 2006 -- no -- '05 I moved from
7 Colorado to Arkansas, and I spent over at the
8 University of -- that was University of Medical
9 School, I believe, in Little Rock. I worked over
10 there for four months.

11 Q Let's back up just a little bit and go back to
12 Colorado. What was your position when you left?

13 A From Colorado?

14 Q Mm-Mm.

15 A Same, research associate.

16 Q And what was your salary at the time you left?

17 A Probably something around 46, 47.

18 Q Okay. And who did you report to at Colorado?

19 A My boss was Dr. Lieber. Howard.

20 Q Could you spell that, please.

21 A L-I-E-B-E-R.

22 Q Howard?

23 A Howard.

24 Q And forgive me for asking, but what were the
25 reasons for your leaving? Did you leave or were

1 you let go?

2 A Leave from Colorado to Arkansas?

3 Q Yes.

4 A Only one reason was that he cannot support me

5 anymore, because he has a grant from NIH, and I

6 was under soft money. So, when the grant -- I was

7 under soft money which was totally supported by

8 the grant. I was totally supported based on my

9 boss man. So, my salary, we called it soft money,

10 because that was not my money, that was his money,

11 but he hired me to work with him. So, when he --

12 Maybe is this kind of germane, but I

13 don't know, but like we call it her money if you

14 have support on your own --

15 Q Yes.

16 A -- and soft money if you are working for somebody

17 who has that kind of support, in the lab at least.

18 I don't know what the situation is in different

19 professions.

20 So, when I was informed that there is no

21 more support to keep me at that position I tried

22 to find another job. And then I found another job

23 in Arkansas in the medical school in Little Rock.

24 So, I moved there. And I used to work only for

25 four months, from January up to March. And then I

1 moved here -- No, January to April, I believe.

2 Then I moved here in May, 2005.

3 Q Okay. Let's go back to Little Rock for a moment.

4 What was your position that you were hired into?

5 A I was hired for a research assistant professor at

6 that time.

7 Q What was your salary?

8 A Much, much lower. 38. They told me that this is

9 a very cheap state to live, that's why they are

10 offering me that kind of money. Which one of the

11 reasons why I moved from there was because of

12 that, because we were still living, my family in

13 the States, they were in Colorado, because at that

14 time my kids were almost graduated from the high

15 school, which I tried to keep them as long as

16 necessary. So, they stayed in Colorado. I moved

17 to Little Rock just to get any kind of support.

18 And at the same time I found another position here

19 in Wisconsin. And then I decided to move from

20 Little Rock to Wisconsin.

21 Q To whom did you report in Little Rock?

22 A My boss' name was Elbein. E-L-B-E-I-N, I believe.

23 Steve Elbein. There are two Elbeins in that

24 university. One is dead. One is son. And I was

25 working with son.

1 Q And what was your reason for leaving Little Rock?

2 A Basically the support. I have not enough money.

3 Q Besides it being Little Rock.

4 A I didn't realize how hard it is to keep your

5 family in States. And we had only one income,

6 which was my income, so I couldn't stay over

7 there. I tried to stay in science, but not

8 necessarily for that kind of money which they

9 offered me. So, it was absolutely impossible to

10 stay and keep my family. So, I decided to move

11 out.

12 Q And when did you come to Wisconsin?

13 A That was May, 2005.

14 Q And you came here directly from Little Rock?

15 A Yes.

16 Q And what position do you have here?

17 A I have a post-doctoral position, because that was

18 the only one position they can offer me at the

19 time based on the money which they have from, I

20 believe from NIH too.

21 Q And what are your duties currently?

22 A Very similar like everywhere else. I mean, I work

23 in the lab as a scientist, as a researcher, so I'm

24 doing my experiments day-by-day and reporting the

25 data to my boss.

1 Q And to whom do you report now?

2 A My boss now is John Moulder.

3 Q Could you spell that, please.

4 A John, it's easy.

5 Q John I got. That's my name. It's the last name.

6 A M-O-U-L-D-E-R.

7 Q What is your current salary?

8 A 53, I believe. Close to 53.

9 Q And you've been -- when I say here, what is the
10 name of the university here?

11 A Here?

12 Q Yes.

13 A This is the College Of Medicine in Wisconsin.

14 Q And you've been at the College Of Medicine in
15 Wisconsin continuously from when you left Little
16 Rock until today?

17 A Yes, exactly.

18 Q Okay. Got you. Are you aware that Dr. Hill has
19 filed what is commonly referred to as a qui tam
20 action against UMDNJ?

21 A What is qui --

22 Q Let me back up a little bit. Are you aware that
23 Dr. Hill filed a lawsuit against UMDNJ, Dr. Howell
24 personally, and Dr. Bishayee personally?

25 A If I aware about that?

1 Q Yes. Do you know if she did that?

2 A I know that she, because she informed me, because
3 at the beginning the case was just clearly at
4 UMDNJ, and then she went somewhere out of the
5 University of Medicine & Dentistry to continue
6 that case.

7 Q Okay.

8 A But I was not involved in that part. I mean, I
9 was involved only partially probably, because some
10 day somebody called me from, I believe from FBI,
11 which I was really surprised was calling at that
12 time. And that person asked me about some
13 situation which was happened during the time when
14 I was working with Dr. Howell in the lab, and was
15 clearly connected to that case.

16 Q Let me explain to you what a Qui Tam action is.
17 An individual, in this case Dr. Hill, can file a
18 lawsuit in Federal court on behalf of the United
19 States. In this case it's under the False Claim
20 Act. Okay?

21 So, basically what she's saying is that
22 you have to -- There's three scenarios. A person
23 knowingly submits, or causes to be submitted, a
24 false or fraudulent claim to the Federal
25 government; a person makes, uses or causes to be

1 made or used a false record or statement to get a
2 false or fraudulent claim paid or approved by the
3 Federal government; or a person conspires to
4 defraud the Federal government by getting a false
5 or fraudulent claim paid.

6 So, Dr. Hill filed this action against
7 UMDNJ, Dr. Howell individually, and Dr. Bishayee
8 individually. Okay?

9 A Okay.

10 Q There's a period of time when the U.S. Attorney
11 decides whether it wants to be involved. During
12 that time they interview people like yourself.
13 Okay? They look at all the facts. They've come
14 back and said, "We decline to be involved."

15 A Which may be that was --

16 MR. PINCUS: Objection. Just a second.
17 Objection to the form of the question. But you
18 may answer.

19 BY MR. LEONARD:

20 Q You can answer. Do you understand that?

21 A I don't know everything about this language,
22 because this is not my vocabulary.

23 Q Okay.

24 A But what I know is that Dr. Hill probably tried to
25 go farther after the case was closed at UMDNJ and

1 then she went somewhere else.

2 Q Right. Well, you know Federal courts.

3 A I know what is Federal court, but I was not

4 involved in that case, except of that one

5 situation where somebody called me from the FBI

6 and asked me if I would be able to talk to that

7 person to confirm what happened during that time

8 when I was working with Dr. Howell.

9 Q Right.

10 A But that was the person who was calling me, and we

11 had a telephone conversation about that.

12 Q And we'll talk about that. I have the transcript

13 of that conversation, and we'll talk about that.

14 MR. LEONARD: Could you have this marked

15 as Lenarczyk 2, please.

16 (Exhibit Number 2 was marked.)

17 BY MR. LEONARD:

18 Q Dr. Lenarczyk, I'm going to hand you a document

19 that's been marked as Lenarczyk 2. I will

20 represent to you that this is the complaint filed

21 by Dr. Hill in Federal court initiating a lawsuit

22 against UMDNJ, Dr. Howell individually, and

23 Dr. Bishayee individually. Could you take a look

24 at that, please.

25 A Do I need to read this one or just --

1 Q Well, have you ever seen it before?

2 A No.

3 Q Did Dr. Hill ever ask you to take a look at this?

4 A No, I don't think so. I don't remember. But I
5 didn't recollect that I saw this document ever.

6 Q Do you understand that the claims that Dr. Hill
7 has alleged in her complaint is essentially that
8 individuals at UMDNJ, including Dr. Roger Howell
9 and Dr. Bishayee, defrauded the United States
10 Government?

11 MR. PINCUS: Objection to the form of
12 the question. No foundation.

13 BY MR. LEONARD:

14 Q You can answer.

15 MR. PINCUS: You may answer.

16 THE WITNESS: Can you ask me again?

17 BY MR. LEONARD:

18 Q Sure. You are you aware that Dr. Hill is alleging
19 that Dr. Howell and Dr. Bishayee defrauded the
20 United States Government?

21 A What do you mean I aware? I aware of these people
22 who are involved in that?

23 Q Are you aware of those claims?

24 MR. PINCUS: Same objection. You may
25 answer.

1 THE WITNESS: I don't completely
2 understand what you mean by "aware," which means
3 that --

4 BY MR. LEONARD:

5 Q I'm sorry, you don't understand my question?

6 A What do you mean did I, or do I aware about these
7 people? Do I need to --

8 Q Why don't we do it this way. Let's turn to
9 Paragraph 22.

10 A Paragraph 22.

11 Q Okay. It says, "Subsequent to the approval and
12 funding of Howell's grant in July, 2000, an
13 additional post-doctoral fellow, Dr. Marek
14 Lenarczyk, was hired by Howell to conduct other
15 research relating to the grant." Do you see that?

16 A Yes, I see that.

17 Q Do you see the next paragraph?

18 A 23?

19 Q Do you agree with Paragraph 22, you were hired?

20 A Yes, I was hired. Right, I agree with that.

21 Q In Paragraph 23 it says, "In or about March, 2001,
22 Lenarczyk observed and reported to Hill that he
23 also suspected Bishayee of fabricating data when
24 Lenarczyk observed Bishayee setting up an
25 experiment with contaminated cultures."

1 You told Dr. Hill that you believed

2 Bishayee was fabricating data.

3 A I don't remember exactly what I told her at that
4 time. But we were working on some experiments
5 which we were running together, or parallely with
6 Dr. Bishayee, and we were thinking that something
7 is not -- We have no good explanation for
8 everything what was happening at that time in the
9 lab, because some of my experiments were not
10 confirming exactly what was done before by
11 Dr. Bishayee. So, he was running at the same time
12 experiments as I ran, because we were working at
13 the same time with the same person, which was
14 Dr. Howell.

15 Q Right. But in March of 2001 do you know, do you
16 have personal knowledge of the fact that that's
17 because he fabricated data?

18 A I wouldn't say that he fabricated, because I
19 didn't talk about this one to him. That was our
20 assumption that something is maybe fabricated,
21 because it's not exactly what we tried to do by
22 our ourselves, I mean, what I was doing.

23 Q So as you sit here today, do you have personal
24 knowledge --

25 A Of?

1 Q -- of Bishayee fabricating data?

2 A No, I don't have that knowledge.

3 Q The next sentence says, "In light of this fact,
4 Hill and Lenarczyk documented the management of
5 the experiment by Bishayee." Do you see that?

6 A Which one is that?

7 Q The second sentence in 23.

8 A "In light of this fact" -- Yes, I see that
9 sentence.

10 Q Is that true?

11 A "In light of this fact, Hill and Lenarczyk
12 documented the management of the experiment by" --
13 What you mean by management -- "documented the
14 management of the experiment"?

15 Q This is what Dr. Hill wrote and filed in the
16 court. This is what she is saying you did. I'm
17 asking you if it's true.

18 A We did some picture of some tubes or part of an
19 experiment which we were suspicious that something
20 is not right.

21 Q Who authorized you to do that?

22 A Sorry?

23 Q Who authorized you to do that?

24 A Nobody.

25 MR. PINCUS: Objection to the form of

1 the question. It assumes that it required someone

2 to do so. Lack of foundation. You may answer.

3 BY MR. LEONARD:

4 Q To whom did you report in that lab?

5 A That was not a formal report, that was like,

6 because we were working at that time together with

7 Dr. Hill, we were talking about that, what was

8 going on, because this is like a normal situation

9 in every other lab. When the people are working

10 they are supposed to share the data when they're

11 working on the benchtop. So, when we have results

12 we were just talking to each other, because this

13 is how part of our job. And then at that time I

14 talked to Dr. Hill about that also, because we

15 were working together.

16 Q And let's be very, very clear. Did you tell

17 Dr. Hill that Bishayee was fabricating data?

18 A I don't remember, no. That was too -- I mean, I

19 couldn't remember everything correctly, okay,

20 because that was like seven years ago.

21 Q Okay. Fair enough. Is it fair to say that

22 everybody in that lab reported to Dr. Howell at

23 that time?

24 A I don't know. I mean, I cannot assume that,

25 because Dr. Howell was our boss at that time.

1 Q Right.

2 A But I don't know what does it mean the word
3 "reporting," because "reporting" seems to me like
4 a very obvious word that you have to report to
5 somebody.

6 Usually in the lab we have kind of lab
7 meetings when we are sharing our data to discuss
8 this data during the process when we are working
9 on particular projects. So, it's not like I
10 cannot talk to anybody else what I was doing in
11 the lab, because otherwise we cannot make any
12 progress. I mean, we were working together as a
13 group. So, when we were doing -- when somebody is
14 doing his own small project and he or she is
15 getting the data, usually the people are sharing
16 each other what they are getting out of this
17 experiment, because it might help another person
18 to do something better or to avoid to make some
19 unnecessary experiment, because it's already done
20 or confirmed.

21 So, based on the that I would say
22 reporting -- It was not a formal reporting, I had
23 to report. I mean, we were talking about our
24 experiments. Obviously the most important person
25 at that time in the lab was my boss, because he

1 was hiring me. So, whatever we were doing. If
2 you would like to, let's say, collect the data and
3 put it in the paper to publish the data, then
4 definitely we were working together. But by the
5 time when I'm getting some data from experiments
6 we were talking to each other, like, for example,
7 now. That was not prohibited.

8 Q No. And I'm not suggesting it was.

9 A So, I didn't -- I say I didn't report -- I don't
10 like to use this word "report," because I think
11 that "report" is like some heavy word to me that
12 is something formal.

13 Q Okay.

14 A I'd rather use the words we were talking about
15 what we were doing in that lab.

16 Q Okay. But you were all working on Dr. Howell's
17 grant?

18 A Right.

19 Q Okay.

20 A At least I was working at that time on
21 Dr. Howell's grant. I believe that everybody else
22 too, but --

23 Q Can I direct your attention to Paragraph 24.

24 Again, this is Dr. Hill's statement that she has
25 filed with the court. "As a result of their

1 actions, Hill and Lenarczyk concluded that
2 Bishayee had, in fact, fabricated the experiment's
3 data and engaged in scientific fraud."

4 Is that what you concluded, that he
5 engaged in scientific fraud?

6 A I don't think so. I don't recall those words,
7 "engaged in scientific fraud."

8 Q Okay.

9 A *What I found I just told you. We found that*
10 *experiment, which was conducted by Dr. Bishayee,*
11 *was a little bit suspicious to us what he found*
12 *out. It was not clearly connected to the data*
13 *which he showed us.*

14 Q Understood.

15 A But I never said "scientific fraud." I mean --

16 Q Okay. So as it relates to you, that first
17 sentence in Paragraph 24 is not true?

18 A To whom I supposed to conclude that, that
19 Dr. Bishayee was --

20 Q Apparently Dr. Hill put it in there, that the two
21 of you -- I mean, these are her words -- that you
22 concluded --

23 A Yeah, but this is not my report, so I didn't --

24 Q I understand.

25 A I never saw this report. So, you are asking me

1 now about something that was not prepared by
2 myself in that report.

3 Q That's true.

4 A So, that's why this is hard to me, because
5 something is related to me because my name is
6 here, but --

7 Q I understand.

8 A -- but none of this paragraph, none of even one
9 word I prepared in that report.

10 Q Please, you have to understand, I didn't put your
11 name there.

12 A So, I'm a little bit afraid what I'm saying,
13 because maybe you are thinking that I'm trying to
14 cover or something. No, I'm not, because I'm
15 trying to figure out what this was and trying to
16 do my best to explain what I can understand after
17 this, because is the first time when I can that
18 document.

19 Q I see.

20 MR. PINCUS: You're welcome to read the
21 whole thing, by the way. You don't have just read
22 the paragraph that you're directed to.

23 BY MR. LEONARD:

24 Q In fairness to you, there are certain statements
25 that are made in here by Dr. Hill about what you

1 concluded, about what you think. And what I'm
2 saying to you is, do you agree with the statement
3 she's making about what you concluded or not?

4 I mean, I didn't write this either,
5 Dr. Hill did. So, when Dr. Hill says, "As a
6 result of their actions, Hill and Lenarczyk
7 concluded that Bishayee had, in fact, fabricated
8 the experiment's data and engaged in scientific
9 fraud," is that true or not true as it relates to
10 you?

11 A No, I didn't conclude that.

12 Q Did you conclude he fabricated data?

13 A I don't remember that. I mean, what I said, *I*
14 *told you I found what was did by Dr. Bishayee at*
15 *that time was not clearly understood by me,*
16 *because his observation was not related work for*
17 *his data, what he was showing.*

18 Q Okay.

19 A *That's why we have this suspicion about that.*
20 *Plus at the same time I was running an experiment*
21 *very similar to his experiment.*

22 Q Understood.

23 A *And then my data from my experiment were not*
24 *clearly confirming the data which was made by them*
25 *even before I came to the lab.*

1 Q Understood.

2 A Okay.

3 Q So you understand, I'm not trying to hold you
4 responsible for what's in this document. I know
5 that you didn't draft this.

6 A I would like to be clear that I'm not feeling
7 responsible at all for this document. Okay?

8 Q You're not. Okay. But the reality is Dr. Hill
9 puts in a number of statements in this, and a
10 whole bunch of other documents we're going to look
11 at saying -- yeah, saying that you've concluded
12 that there's been scientific misconduct and
13 fraudulent data. Okay? And there are documents
14 that are not just here, they've been provided to
15 other people in the industry, and your name is on
16 them, so I have to ask you if you agree or
17 disagree.

18 A I can say like that I never prepared any kind of
19 document about that, except of the one fact which
20 was happened at that time when I used to work with
21 Dr. Howell --

22 Q Understood.

23 A -- when that case was investigated inside of the
24 University. We were having a couple of meetings
25 with the committee which was trying to figure out

1 what was happening at that time. And I was asked
2 by this committee -- I don't remember now the name
3 of these people -- but there was like a committee
4 inside of the university.

5 Q We'll get to that.

6 A When they asked me to come over and just to tell
7 them what essentially I'm telling you now today,
8 what happened in the lab, what I found, what I
9 did, what I saw, and that's it. So, that was my
10 verbal conversation with those people at that
11 time, because Dr. Hill, I think, tried to make
12 this case at that time at the university. So, I
13 cannot avoid to go there --

14 Q I understand.

15 A -- because I was trying to cooperate with those
16 people at that time, and that was only the one
17 time which I was formally involved in this case.
18 Plus, that one telephone, which somebody called me
19 from FBI to ask me about essentially the same time
20 when I used to work with Dr. Howell.

21 Q I understand.

22 A But now you are a showing me a lot of -- I mean, a
23 lot -- the first document which I never prepared.

24 Q This is the document they were calling you about.
25 And the FBI called you is because they were

1 investigating these claims.

2 A I understand that. But I never prepared this
3 document, and I was never informed that the
4 document was prepared.

5 Q Okay.

6 A I was only involved in that situation, because
7 Dr. Hill, I think, tried to do something more when
8 that case was closed at the University of
9 Medicine. So, that's why I was involved in the
10 process.

11 Q Dr. Lenarczyk, I completely understand. But you
12 have to understand our position. I understand
13 exactly what you're saying, but Dr. Hill has gone
14 on and created a lot of documents, and your name
15 is all over them as somebody who supports her in
16 these allegations. Okay?

17 She's prepared documents and given them
18 to staff at Columbia University -- and we'll go
19 through all of them -- and your name is all over
20 them, because what she is saying you agree with
21 her there's been scientific misconduct, there's
22 been fabrication of data.

23 We know you didn't write the documents.
24 I'm here to just say is that your opinion or not.
25 And I think what I'm hearing -- and tell me if I'm

1 wrong -- is, no, that's not your opinion.

2 MR. PINCUS: Again, objection to the
3 form of the question. You may answer.

4 BY MR. LEONARD:

5 Q You can answer.

6 A That's everything what I want to say. I never
7 prepared any kind of documents. I was sharing my
8 observation with Dr. Hill at that time what was
9 happening in the lab, because, you know, that was
10 like a normal situation. Every time in every lab
11 when the people are doing something they are
12 observing, they are sharing their own ideas what
13 is going on. *Particular to me was something*
14 *difficult to understand, because I was running*
15 *essentially the same kind of experiment as they*
16 *did before and I couldn't confirm that data. So,*
17 I was asking myself maybe I'm doing something
18 wrong, or I was suspicious for myself, because I
19 would like to do the best job at that time.

20 So, when I was trying to share my
21 observation with Dr. Hill then everything was --
22 everything went so quickly. I mean, she took
23 everything and she tried to make that case. And
24 she went somewhere to University to report the
25 case, and that's why everything was happening at

1 that time.

2 Q I understand. We'll work our way through it.

3 Paragraph 26 says, "After the Committee's

4 report" -- By the way, the initial committee

5 report came back and *said no evidence of*

6 *scientific misconduct.*

7 A Yes, I know that, because I have a letter from

8 them at that time.

9 Q So then Paragraph 26 says, "After the Committee's

10 report, Howell proceeded to terminate the

11 employment of Bishayee and Lenarczyk." Were you

12 terminated by Dr. Howell?

13 A No, I didn't.

14 Q Okay.

15 A I talked to Dr. Howell that I would like to -- I

16 would like to terminate my employment.

17 Q Okay.

18 A He didn't fire me. Okay?

19 Q Okay.

20 A I was hired for one year, and I was terminated

21 even probably a month before formal term of my

22 first year working with him.

23 Q Okay.

24 A I just explained to him that I'm not feeling

25 comfortable to working in that kind of situation

1 when something is not going, maybe not right, but
2 very difficult to explain. *So, I said I don't*
3 *like to be involved in that kind of situation to*
4 *work in the lab when we don't know what we are*
5 *doing essentially.*

6 Q I understand. And you have to understand this is
7 one of the things we're going --

8 A I was not terminated by him.

9 Q You were not terminated by him?

10 A No. No. I asked him to agree that I would like
11 to leave that position on that particular time
12 when I left.

13 Q So that sentence in Paragraph 26 is not true?

14 A In terms that I was terminated, probably, yes,
15 not.

16 Q Okay.

17 A I don't know about Dr. Bishayee, because when I
18 left he was still in the lab, I believe, at that
19 time.

20 Q Okay.

21 A Now, I have one question a little bit out of that.
22 I don't have a car, and I'm commuting with my son.
23 He is going to pick me up. I didn't know how
24 long.

25 MR. FLYNN: Go off the record.

1 MR. LEONARD: Let's go off the record.

2 (Discussion off the record.)

3 (Recess taken.)

4 BY MR. LEONARD:

5 Q Dr. Lenarczyk, we're back on the record. And I
6 remind you that you remain under the oath that you
7 were previously administered earlier today. Do
8 you understand that?

9 A Mm-Mm.

10 Q Okay. We have been looking at the complaint
11 drafted by Dr. Hill and filed in the District of
12 New Jersey. And I think we touched upon this, but
13 I just want to be sure. Did you assist in
14 drafting or provide any input into the creation of
15 this document?

16 A No.

17 Q Okay. Did Dr. Hill reach out to you in or about
18 October, 2003 when the complaint was filed to ask
19 you for your assistance in drafting the complaint?

20 A No.

21 Q Did her attorney reach out to you to confirm your
22 firsthand knowledge of the facts in the complaint?

23 A No.

24 Q Okay. Do you have any firsthand knowledge of
25 fraud committed by Dr. Howell?

1 A What do you mean "first"?

2 Q In other words, firsthand knowledge is not what
3 somebody's told you, what you think what you've
4 observed, you personally.

5 MR. PINCUS: Objection to the form of
6 the question in that it calls for a legal
7 conclusion.

8 MR. LEONARD: All right.

9 MR. PINCUS: You may answer.

10 MR. LEONARD: All right. Let me give it
11 to you this way.

12 BY MR. LEONARD:

13 Q If you walked outside and you saw a car accident,
14 you would have firsthand knowledge that there was
15 a car accident.

16 A Okay.

17 Q If I told you I just came up from the lobby and I
18 saw a car accident, you would have heard about it
19 from me, but you personally wouldn't have any
20 firsthand knowledge of it.

21 A Okay. I see.

22 Q Do you understand what I'm saying?

23 A Yes, I know.

24 Q Okay.

25 A Which means I have to be witness of something

1 which I --

2 Q Know something yourself, observe it, experience

3 it, yes. Do you have any firsthand knowledge of

4 fraud committed by Dr. Howell?

5 A By Dr. --

6 Q Howell.

7 A Fraud?

8 Q Yes.

9 A No.

10 Q Okay. Do you have any firsthand knowledge of

11 fraud committed by Dr. Bishayee?

12 A No.

13 Q Do you understand that Dr. Hill, through her

14 complaint, is seeking to impose penalties and

15 fines in excess of \$4 million against the

16 University and Dr. Howell and Dr. Bishayee

17 individually?

18 A Do I know about that?

19 Q Yes.

20 A No.

21 Q Okay. Do you understand, do you have any

22 understanding that Dr. Hill would be entitled to a

23 fee of \$1,000,000 if she is successful in this

24 lawsuit?

25 A No.

1 Q So, I take it Dr. Hill hasn't offered you a
2 portion of the \$1,000,000 fee?

3 A No.

4 MR. PINCUS: Objection to the form of
5 the question. We'll call that a rhetorical
6 question with a rhetorical objection.

7 THE WITNESS: Can I get a little coffee?

8 MR. LEONARD: Yeah, absolutely.

9 BY MR. LEONARD:

10 Q Dr. Bishayee, along the lines of what we were
11 talking about earlier --

12 MR. PINCUS: This is not Dr. Bishayee.

13 MR. LEONARD: I'm sorry, Dr. Lenarczyk.

14 THE WITNESS: That's okay.

15 MR. LEONARD: I apologize.

16 BY MR. LEONARD:

17 Q Do you have any firsthand knowledge of any
18 misconduct committed by Dr. Howell?

19 A No.

20 Q Do you have any firsthand knowledge of any
21 misconduct committed by Dr. Bishayee?

22 MR. PINCUS: Again, same objection in
23 that it calls for a legal conclusion. You may
24 answer.

25 THE WITNESS: No.

1 BY MR. LEONARD:

2 Q Okay. Let's go back to your return to UMDNJ. At

3 some point you returned to UMDNJ in or about 2000?

4 A In some point I returned?

5 Q Yes. You went back to work for UMDNJ.

6 A Yes, because I was working with Dr. Howell in

7 '95/'96, I think, first time.

8 Q Right. For a six-month period?

9 A Right. Yeah, that was half a year, right.

10 Q Okay.

11 A And that was based on my money which I got as a

12 fellowship when I came here to work with him.

13 Q And then after that -- I'm sorry.

14 A And after that I got a position in Colorado, which

15 I moved over there. And I used to work in

16 Colorado up to '98. And then I was back Poland

17 for two years. And then in 2002, as soon as

18 Dr. Howell got a grant, he was looking for people

19 to work on the grant, I had been -- Dr. Howell --

20 Q I don't mean to correct you, but you just said

21 2002. I think you meant 2000.

22 A Right, because I came to work with him in 2000,

23 with Dr. Howell, second time.

24 Q Right. Okay. We're saying the same thing.

25 A We're saying the same thing. I'm trying to go

1 through all the time when I was working here in
2 different labs.

3 Q Wait a minute. The only thing I want to focus on
4 right now is your second time spent at UMDNJ.

5 A That is correct.

6 Q That was in 2000.

7 A That was in 2000. The first one was '95/'96, and
8 the second one was 2000/2001.

9 Q Okay. What were the circumstances of your return?

10 How was it that you came back to UMDNJ?

11 A Sorry.

12 Q Sure. Why did you come back to UMDNJ in 2000?

13 A Because I was offered the position to work there,

14 I mean --

15 Q Okay.

16 A -- by Dr. Howell. He was looking for people who
17 would conduct experiments. I had enough expertise
18 to do that.

19 Q How did you find out about the position?

20 A I think just by communication with Dr. Howell at
21 the time, because that is when we had the e-mail
22 at the time.

23 Q Okay.

24 A I mean, I was just like friends. I mean, we were
25 talking from time-to-time with e-mails. And one

1 day he told me that he got a grant, if I want to
2 come over he can offer me the position, which I
3 agreed to get this position. That's why I came.

4 Q Okay. And he actually helped you with immigration
5 issues, did he not?

6 A I think that that was quite stressful at the time,
7 because I was already before in the same place, so
8 at least they had my file probably from '95/'96,
9 and he helped me to get J-1 visa at the time. Or
10 University, because that was overseen by the
11 university.

12 Q Okay. Got you. When you came back in 2000 who
13 were you working with in the lab?

14 A You mean who was in that lab, in the lab all the
15 people who were working or --

16 Q The project that you were on, who did you work on
17 that project with?

18 A I think that with Dr. Hill we were working closely
19 on that project.

20 Q And I'm very cautious to use this word --

21 A But also I was to work with -- I was supposed to
22 work with Dr. Bishayee at the time, because he was
23 running very similar experiment as I did. So, we
24 were essentially doing experiments using the same
25 biological model, which was that magic cells which

1 you mentioned before, and he was running some
2 experiments using different end points as I used.
3 "End points" means different -- For different
4 reason he run the same experiment. He was trying
5 to find out the data or the results of that
6 experiment using different we call end points. In
7 his case --

8 Q So, you're using the same protocol, but you're
9 looking for different things?

10 A Right. And, *I mean, for some extent we were using*
11 *the same protocol, because we were supposed to*
12 *treat the cells exactly in the same way, and then*
13 *proceed then to get some data out of that*
14 *experiment. So, I was working on, essentially on*
15 *something which you may call mutagenicity theory.*
16 Like looking for the mutagenic effect of something
17 which was treated by something. In that case
18 cells were treated by radionuclide.

19 MR. PINCUS: Radionuclide. Right?

20 DR. HELENE Z. HILL: Radionuclide.

21 THE WITNESS: Right. I'm sorry about
22 the pronunciation.

23 So, essentially we were working on the
24 same cells. We had the same kind of cells, and he
25 was proceeding his experiment, I conducted my

1 experiment.

2 BY MR. LEONARD:

3 Q Okay.

4 A But we were supposed to do the same treatment for
5 the cells.

6 Q Right.

7 A And looking for something which we'll verify the
8 same hypothesis, which we had a common hypothesis
9 for that experiment.

10 Q Right.

11 A After treatment we can expect that something will
12 be showing up by the cells, that's the mutagenic
13 response, or another response he was measuring at
14 that time.

15 Q And at that time you were working with
16 Dr. Bishayee and Dr. Hill with Dr. Howell on an
17 NIH grant?

18 A I think that that was an NIH grant.

19 Q And beginning in 2001 is it fair to say that you
20 were primarily working on experiments with
21 Dr. Hill?

22 A What do you mean -- I mean, we were working in the
23 same lab. Okay? We were sharing the same lab.
24 So, what we were doing, we were working -- Yes, we
25 may say like that. I mean, I was running

1 experiment in the small lab, which I think that
2 that was given to Dr. Hill at that time. So, she
3 had at that time small room with that lab, and I
4 was working in that room. Because that was only
5 the one place when I had an opportunity to do that
6 experiment, because of the technical reason.

7 Q Okay. Did there come a point in time where
8 Dr. Hill terminated the project -- excuse me --
9 Dr. Howell terminated the project that you and
10 Dr. Hill were working on?

11 A If I what? Sorry.

12 Q Did there come a point in time when Dr. Howell
13 terminated an experiment that you and Dr. Hill
14 were working on?

15 A No. I left from Dr. Howell's lab when the grant
16 was still running, I believe. So, if you asking
17 me about experiment, I'm thinking about whole
18 grant which was dedicated to run experiments.

19 Q Not the whole grant. I mean, there were different
20 experiments that were going on within the grant,
21 correct?

22 A Yes, because we were working -- It's not like one
23 experiment is for one grant.

24 Q No, I understand.

25 A You can run experiment, even a couple of them at

1 the same time if you can handle that, but you have
2 to start the experiment and you can finish the
3 experiment.

4 Q Right. But wasn't there one experiment that you
5 and Dr. Hill were working on, and at some point
6 Dr. Howell said he wasn't seeing results and
7 wanted to terminate that experiment?

8 A I don't remember that. I'm sorry.

9 Q That's okay. If you don't remember, you don't
10 remember.

11 A Sometimes you are trying to be very precise, but I
12 don't recollect everything that happened seven
13 years ago. So, if I can say I don't remember,
14 this is my best knowledge at this point, which is
15 2008.

16 Q If you have a specific recollection we're entitled
17 to know. If you don't know, don't guess.

18 A Okay.

19 Q Okay. It's fair enough to say that you don't
20 recall. All right.

21 *So, you're in the lab. And at some*
22 *point you observed something in the lab with*
23 *regard to Dr. Bishayee that you find troubling?*

24 A *Right.*

25 Q Okay. And we're talking, I guess, March 26th

1 through March 30, 2001. Okay?

2 A Okay.

3 Q What did you observe that you found troubling?

4 A *We observed nonconsistency between the data which*
5 *was coming out of the experiment which was running*
6 *by Dr. Bishayee at that time.*

7 Q Okay.

8 A And that was very related to what I used to work
9 on at that time.

10 Q Okay.

11 A Because part of my experiment was to confirm some
12 data which they were found before, I believe, by
13 Dr. Bishayee who was working earlier at the same
14 lab before I came.

15 *So, the scientific design of my*
16 *experiment, which I was asked to do, was that I*
17 *had to go through the same kind of experiment*
18 *which was done before by Dr. Bishayee, because*
19 *that was just a normal situation in that kind of*
20 *assay which we were using.*

21 MR. PINCUS: If I may --

22 THE WITNESS: What I was doing, I was
23 working on the experiment, which technically part
24 of my experiment was to confirm, or to at least
25 verify the data which was prepared before by

1 Dr. Bishayee.

2 *It's like, okay, in simple words okay,*
3 *experiment consists of two parts, A and B. I was*
4 *carrying Part A and B, Dr. Bishayee was carrying*
5 *Part A. So, when I was doing my experiment, which*
6 *is A and B, I had to go through A. So,*
7 *practically I had to confirm something which was*
8 *discovered or which was reported before I came by*
9 *him. And that was difficult to me, because I was*
10 *working for a couple of months in that lab and I*
11 *didn't make any similar data which was found*
12 *before by Dr. Bishayee -- probably Dr. Bishayee,*
13 *because nobody worked on this project except for*
14 *him, I think. So, I had a hard time, because I*
15 *was doing my experiment and I couldn't get the*
16 *same data. And then --*

17 BY MR. LEONARD:

18 Q Did you ask Dr. Bishayee why that was?

19 A I asked him couple of times to help me with
20 something, because part of the experiment was to
21 treat the cells with radionuclide. And that was a
22 very precise treatment, because we had the record
23 for that. But the treatment by itself is very
24 influential by the hand who is doing that
25 treatment.

1 So, I was afraid that maybe my data are
2 coming because I did something differently than he
3 did before. So, when I asked him to show me,
4 technically *he didn't show me*. I mean, he
5 couldn't try to be helpful at that time.

6 *So, then I was running the experiment by*
7 *myself, and we had the lab notebook of everything*
8 *what I did. And later on when I had the*
9 *difficulty on confirm the data and nobody -- I*
10 *mean nobody -- he couldn't help me to try to find*
11 *out if I'm doing something wrong maybe, that's why*
12 *I had different data.*

13 *But what happened is that we were*
14 *talking, of course, with Dr. Hill, we talked about*
15 *this. And then one day when I found that*
16 *something is very difficult to explain I was*
17 *trying -- I started to be a little bit suspicious*
18 *what's going on, because if you are showing on the*
19 *paper the data, that data is supposed to come from*
20 *real experiment which you are carrying on, and*
21 *there was no consistency between this. And then*
22 *we were talking about that with Dr. Hill*
23 *basically. And then from that point everything*
24 *was happened. I mean, Dr. Howell was later on*
25 *tried to be very suspicious what's going on. So,*

1 he asked couple of people --

2 Q Could we back up before we get too far down the
3 road. You said you talked to people. Did you
4 ever go to Dr. Howell and talk to him about the
5 situation?

6 A I don't remember.

7 Q It was his grant, correct?

8 A Yes, this was his grant.

9 Q And you have no recollection of ever bringing this
10 issue to his attention, you personally?

11 A I don't have a recollection of that.

12 Q Okay. So, you see discrepancies between your
13 results and Dr. Bishayee's?

14 A Right.

15 Q So, you see some differences in your results and
16 the results Dr. Bishayee did using a similar
17 protocol?

18 A Right.

19 Q And there's a concern by you that maybe you're
20 doing something wrong initially?

21 A Right, because, you know, this is like the first
22 thing which you can concern. Okay? Because if
23 you are doing something you can say, "I cannot do
24 the same as somebody did before, why is that?"

25 So, I asked myself maybe I'm doing something wrong

1 with my hands, using my hands. So, then I tried
2 to ask Dr. Bishayee to help me, or at least to
3 observe what I was doing.

4 Q And he was of no help?

5 A No.

6 Q Okay. And you have no recollection of speaking to
7 Dr. Howell about it?

8 A About not giving me any help?

9 Q Not giving you any help, or the fact that your
10 data wasn't in line with Dr. Bishayee's data.

11 A No, I don't have that recollection.

12 Q Okay. You did speak to Dr. Hill?

13 A Yes, because, see, we were working at the same
14 time on the same project. So, it was like an
15 automatic situation that when she got something
16 out of his experiment, her experiment, and when I
17 got something out of my experiment, the first
18 communication was between us, because we were
19 working in the same lab area. And we were, in
20 fact, involved in the same kind of experiments.
21 Okay? So, we were talking, like sharing our data,
22 what we did. Okay?

23 Q I'm sorry. And what did she say when you brought
24 this to her attention?

25 A She was -- I don't remember, but -- I think that

1 she found that something is very suspicious about
2 that, because we found something which was not
3 really clear to us. And then she started to think
4 that something is making up, I mean, you know,
5 like you can make data not exactly out of the
6 experiment you run or --

7 Q She did this or you did this? Who made these sort
8 of conclusions?

9 A I don't know if that was a conclusion at all.
10 But, you know, it's like when you observed what
11 was happening at that lab in particular with that
12 experiment which Dr. Bishayee was running at that
13 time, we started to be suspicious that something
14 is not right, because --

15 Q I'm sorry, you keep going.

16 A *Because he was showing -- I think that he was*
17 *showing the data which we found out that that data*
18 *cannot come through that experiment he was running*
19 *at the same time.*

20 Q How do you know that? How do you have personal
21 knowledge of that fact?

22 A First of all, some of the tubes which he --
23 "tubes" means plastic tubes -- he supposed to use
24 them to run the experiment, to finish the
25 experiment, to collect the data -- they were still

1 in the fridge at that time, because which was the
2 environment where we kept the small samples.

3 Q Did you ask anybody if they were the same tubes or
4 if there was an explanation for that?

5 A I don't remember that happening, if I asked
6 somebody.

7 Q Well, don't you think that would be an important
8 piece of information to know?

9 A That would be an important piece of information,
10 but -- I don't remember. I mean -- I'm sorry, I
11 don't remember if I asked anybody.

12 Q When you spoke to Dr. Hill about the situation,
13 did she tell you that she had problems with
14 Bishayee before?

15 A I don't remember. I don't remember that.

16 Q Whose idea was it to engage in this covert
17 operation to watch Dr. Bishayee and take pictures
18 of his work and document what he was doing?

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

21 THE WITNESS: Whose idea to do that? I
22 mean --

23 BY MR. LEONARD:

24 Q Yes.

25 A Technically we did that together. Okay?

1 Q Why?

2 A I don't know why was it, what might be the
3 explanation of that. We just want to collect the
4 data based on which we may be able to explain the
5 non-consistency between the experiments and the
6 data.

7 Q Well, you took about 17 photographs, correct?

8 A I took a photograph. What number, I don't
9 recollect.

10 Q So, you're familiar with the photographs with your
11 hands. You copied pages out of notebooks,
12 correct?

13 A My notebook? I have my notebook from --

14 Q From Bishayee's notebook, copied relevant pages of
15 the notebook.

16 MR. PINCUS: Well, objection to the form
17 of the question. No foundation. You may answer.

18 THE WITNESS: I don't recollect that.

19 BY MR. LEONARD:

20 Q Searched through trash cans?

21 A I don't remember that.

22 Q Okay. Tested tubes for radioactivity?

23 A I don't think so. I don't remember that.

24 Q Okay.

25 A I don't think so that I tested the tube for

1 radioactivity.

2 Q In one of her papers Dr. Hill refers to it as
3 shadowing Dr. Bishayee. Do you know what she
4 meant by that?

5 A No.

6 Q Did either of you speak to Dr. Bishayee about your
7 concerns or what you were doing?

8 A No, I don't think so.

9 Q Okay. What was to be gained from engaging in
10 these activities without disclosing what you were
11 doing to Dr. Bishayee?

12 A What was the reason for that?

13 Q Mm-Mm.

14 A I don't know. I mean, we just did that. I mean,
15 no reason.

16 Q I'm just trying to understand.

17 A *I tried to collect this data, because, first of*
18 *all, I couldn't get any help out of him to explain*
19 *something. I was working on the experiment, which*
20 *was even published before, which I couldn't*
21 *confirm. And when we tried to discuss this one it*
22 *was almost like no discussion about the data.*

23 *So, when I was facing the trouble with*
24 *my experiments, and I couldn't confirm anything*
25 *what was happening, then I tried, started to be*

1 *suspicious that something is not right, maybe the*
2 *experiment which was done by him was not correct,*
3 *or maybe something -- I have no good explanation*
4 *why I couldn't confirm something out of my*
5 *experiment with that experiment which was done*
6 *before.*

7 Q Yeah, I understand that completely. The problem
8 I'm having is understanding why, as a person of
9 science, you wouldn't take the two sets of data
10 and sit down with Dr. Howell and Dr. Bishayee and
11 Dr. Hill, or whoever else was in the lab, saying,
12 "This is what I'm finding." To me a person of
13 science not, electing not to do that, and digging
14 through trash cans, and taking photographs, it
15 just -- I don't know -- I find it hard to
16 understand why somebody would engage in that
17 behavior.

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

20 BY MR. LEONARD:

21 Q You can answer.

22 A I don't have an explanation for that.

23 Q Okay. Was the goal to get Dr. Bishayee -- Was
24 your goal to get Dr. Bishayee fired?

25 A No.

1 Q Okay. So, what conclusion did all this bring you
2 to, you personally?

3 A All of this what was happening at that time?

4 Q Yeah, your investigation.

5 A See, the very important part which was happened we
6 never discussed yet. Okay? Which maybe that
7 would be the conclusion, not necessarily what I
8 saw.

9 But when we found that my data are not
10 confirming his data, I mean Dr. Bishayee, and when
11 everything was starting, I mean, that whole
12 process about when Dr. Hill went to University
13 authorities to report everything, then I think
14 that we were obligated to not talk to each other,
15 because that was like we were investigating. And
16 up to that point when we were asked to go there we
17 were supposed to not talk to each other about
18 that.

19 *So, anyway, by the time when Dr. Howell*
20 *figured out that something is not right he asked a*
21 *couple of people in that lab, including himself,*
22 *me, Dr. Bishayee, and another person who was*
23 *working for Dr. Azzam at that time, tried to do*
24 *the same experiment by three of us, because that*
25 *was like finding the proof of confirm that*

1 *something is really either my fault, or maybe*
2 *something magic is going on which we cannot*
3 *confirm the previous data.*

4 *So, one day Dr. Howell locked the lab*
5 *when we were working that radionuclide stuff, and*
6 *then we were asked to come over, three of us at*
7 *the same time, because Dr. Howell, as the boss, he*
8 *was able to run the experiment. So, we are*
9 *running parallelly at the same time, three of us,*
10 *the same experiment from the same cells, just to*
11 *avoid any influence that somebody is preparing by*
12 *himself, somebody is preparing by --*

13 Q *When you say "the same cells," you mean each of*
14 *the three of you had the same cells, not*
15 *necessarily the same cells that were used in the*
16 *prior experiment?*

17 A *Right. Right. Because the prior experiment was*
18 *probably done a year before.*

19 Q *Exactly. I'm sorry. Go ahead.*

20 A *This was not exactly the same cells in terms of*
21 *the piece of the cell.*

22 Q *Right.*

23 A *That was the same strain of cells. Okay. We were*
24 *working on that. So, we prepared the cells.*

25 *Dr. Howell asked us to run the experiment, three*

1 of us, just to find out what's going on. Because
2 I think that he started to be suspicious too at
3 that time. That's my guess. Maybe I'm wrong.

4 Q He never said that to you?

5 A No, he never said to me.

6 Q Okay.

7 A But based on his reaction, which was happened, I
8 was really scared about that, because he really,
9 really have to do something, which has never
10 happened to me before.

11 So, he asked us to do that experiment.

12 So, we run experiment, three of us, Dr. Bishayee,
13 Dr. Howell, and me at the same time. We processed
14 the cells. And the experiment took like one week
15 from the time when you are processing to see the
16 data, to see the results. So, by that time the
17 cells were in incubator, which is lab equipment.
18 And that incubator was in that piece of lab. When
19 we were done with the first part of the
20 experiment, Dr. Howell locked that lab, nobody can
21 get in just to not interfere with something. And
22 then after one week when we supposed to see the
23 results of the treatment we went to that lab,
24 three of us, and we checked that piece of work
25 done by each of us, and everything was done like I

1 *did. So, they didn't confirm either, Dr. Bishayee*

2 *or Dr. Howell, anything what was before --*

3 Q Right.

4 A -- discovered by them before I came.

5 Q Right.

6 A *So, that was like confirmation that what I did*

7 *was, what I got from this experiment was right.*

8 *Because they worked on that experiment before,*

9 *even before I came to work with them.*

10 Q Right.

11 A But when I came and found out that I couldn't find

12 the same data out of my experiments as they did

13 before, after this experiment which was conducted

14 by three of us, everything was, looked like I did.

15 Q Right.

16 A *Which means that they couldn't confirm anything*

17 *what they found before. So, and that was not a*

18 *very pleasant situation, because I was feeling*

19 *that something is not right. I couldn't -- We*

20 *couldn't find a good explanation for that. They*

21 *couldn't provide a good explanation why this is*

22 *going like that.*

23 Q Who is "they"?

24 A Dr. Howell and Dr. Bishayee. Nobody working in

25 that lab. Because, obviously, everybody knows

1 what's going on, because we were working in that
2 lab.

3 So, I was just running the experiment
4 what they asked me to do to verify kind of
5 hypothesis, *but my data was completely different*
6 *from their data -- not completely -- yeah,*
7 *completely different what they found before.*

8 Q Right.

9 A So, later on --

10 Q And just so we're clear, you're not suggesting
11 that just because your data is different that that
12 means the other data was falsified or fraudulent?

13 A No, no, it's not like that, because different
14 means like -- Okay. You can mix two colors, and
15 then one person has a different color, and another
16 person has a different color.

17 Q Right.

18 A Why this is happening, it's supposed to not,
19 because you are using the same product of the
20 bigger one, okay, and you are getting different
21 results, which that is something which supposed to
22 not be seen, because otherwise means that
23 something is not comparable.

24 Q Right. Okay. Can you explain to me what you
25 believe to be the goal of Dr. Bishayee's

1 experiment?

2 A What was the goal?

3 Q Mm-Mm. What was the focus of his experiment?

4 A I think that his goal was to find out what is the

5 response of the cells after treatment with

6 radionuclide at that time was, I think, three

7 years in the lab, using the end point which we are

8 calling survival of the cells.

9 Q So the focus of his experiment, would it be fair

10 to say, was on the radioactive cells?

11 A Right. I mean, that was like a little bit

12 complicated experiment, because I think that that

13 was like that. You have cells which they were

14 irradiated with radionuclide, irradiated or

15 treated with radionuclide. And these cells after

16 treatment are supposed to die, because was killing

17 them, that treatment. But they were not dying

18 immediately like that. Okay?

19 When you have a parallel, the population

20 of the cells, which they are not treated, they

21 will repopulate, and you can control that

22 repopulation by different kind of end points; like

23 survival, for example.

24 Now, if you would mix the cells in known

25 parts, each one, treated versus untreated, then

1 you will predict what will be the survival if you
2 will mix cells which they were treated with the
3 cells which they were not treated. Because you
4 will assume that all of the cells which they were
5 treated will die. All of the cells which were not
6 treated will survive. However, the hypothesis was
7 that by the treatment of these cells with
8 radionuclide, when you would mix them with the
9 population of untreated cells, then by the time
10 when the treated cells are dying they will
11 influence the survival of the cells which were not
12 treated --

13 Q The bystander effect.

14 A -- which we call bystander effect.

15 Q Understood.

16 A And that was measured by him and by me at the same
17 time.

18 Q Understood.

19 A Now, he was using survival. I was using survival
20 plus mutagenicity, because that was the part of my
21 experiment.

22 Q Understood.

23 A *So, I couldn't find any evidence that the survival*
24 *is showing the bystander effect, which means that*
25 *untreated cells, when they were mixed with treated*

1 cells, they're supposed to show different survival

2 based upon --

3 Q Because they've been influenced?

4 A They supposed to show lower survival, because the

5 treated cells will release some, that factor,

6 okay, to influence that survival.

7 Q Okay.

8 A I couldn't find that working for a couple of

9 months.

10 Q Okay.

11 A They found that before.

12 Q Right.

13 A Even before I came.

14 Q Understood.

15 A And that was essentially everything what was

16 different. Okay?

17 Q Okay.

18 A And then when we were running, after three or

19 maybe four months, I don't remember now how long I

20 was working on my experiments, to find out that I

21 couldn't confirm the data. But when Dr. Howell,

22 they asked us, okay, that's it, we have to run

23 experiments, the three of us, because something is

24 wrong. Either Marek is wrong, or something is

25 wrong with the cells, or maybe -- we don't know

1 what is wrong.

2 Q Okay.

3 A When we run this experiment, three of us, and then

4 it was evident that everything is like I did.

5 Q Right.

6 A *So, there was not that kind of bystander effect*

7 *they reported before.*

8 Q Right.

9 A Then I found that this is not a good situation.

10 Okay? I didn't like to be involved in that kind

11 of experiment when the people they have no idea

12 what is going on. And there was no reason to work

13 on that, because I couldn't find -- I mean, even

14 if I would go farther to run experiments later on,

15 if I would find some evidence with mutagenicity,

16 which is the part of that --

17 Q You did see bystander in that population?

18 A I don't remember, but you can check the notebook.

19 Okay? There is probably tons of data which I

20 couldn't tell you what is exactly. But you can

21 track that data.

22 By hypothetically if you would find out

23 some effects of the mutagenicity, when part of

24 this experiment is showing survival, which they

25 published before, only that part, then if I want

1 to discuss the results, I have to discuss the
2 results referring to the results which they found
3 before, which was contradictory, because we have a
4 different result. And for many, many weeks I was
5 afraid that something is wrong with my subject,
6 because maybe I'm doing something wrong. *But when*
7 *we did that experiment, the three of us, I was*
8 *rather convinced that what I was doing was right.*

9 Q Okay.

10 A Because we cannot confirm any data which they
11 published or they showed before.

12 Q Okay. Contradictory results, but you have no
13 personal knowledge of any fraud or fabrication of
14 that?

15 A No, I didn't know about that, because most of this
16 data done before I came, I believe.

17 Q Understood. So, you have no personal knowledge
18 of --

19 A No.

20 Q -- the protocol, how it was done, or what was in
21 the lab at that time?

22 A No.

23 Q Okay.

24 A And I was having a very nice time working with
25 Dr. Howell before, so why I have to think about

1 that even.

2 Q Did Dr. Hill ever tell you that she wanted to have
3 Bishayee fired?

4 A She wanted to fire Bishayee?

5 Q She wanted to convince Howell to fire Bishayee.

6 A I don't remember that. Okay? And this is what
7 I'm saying now. When I'm saying I don't remember
8 that, it's really I don't remember that. Okay?
9 Some questions are related to, which I mentioned
10 before, seven years before.

11 Q I understand.

12 A So, when you can show me some kind of paper then I
13 can at least read this and I can say, okay, this
14 is right, this is wrong, but something is --

15 Q You'll agree with me, won't you, that what you and
16 Dr. Hill did with Bishayee's experiment
17 contaminated that experiment?

18 A Mm-Mm.

19 MR. PINCUS: Object to the form of the
20 question. You may answer.

21 MR. LEONARD: I think he already did.

22 THE WITNESS: Can you ask again? That
23 Dr. Bishayee did experiment with contaminated
24 cells?

25 BY MR. LEONARD:

1 Q No. That what that you and Dr. Hill did in
2 removing tubes and taking pictures, that in and of
3 itself contaminated his experiment.

4 A By doing that you may contaminate his experiment?

5 Q Yes, by removing tubes, by taking photographs,
6 by --

7 A No, we cannot contaminate the cells by taking
8 them. I mean -- No, you cannot do that. I mean,
9 you have to contaminate the cells usually before
10 you can put in the tube. Because when they are in
11 the tube they are locked, so we'll have no
12 physical possibility to touch the cells. By
13 taking the tube, by keeping the tube, because tube
14 is just a tube with a cap, and the tube are locked
15 by the cap. So when you are taking the tube in
16 your finger you are not touching the cells, which
17 are inside.

18 Q How about when you're testing it for
19 radioactivity?

20 A Technically you may contaminate, because you have
21 to take them out. But I think that usually -- I
22 don't remember exactly now this protocol, but -- I
23 don't remember how the protocol was at that time.
24 But I believe that you can take the cells to
25 measure their radioactivity in the incubator when

1 the environment is aseptic.

2 Q Is that what you did with Dr. Bishayee?

3 A I didn't do that. I mean, I don't recollect that

4 I did that. I mean, if you can show me the

5 protocol I may be a little bit more precise,

6 because I don't remember now the protocol, how

7 they measured the radioactivity.

8 Q I don't think there was any protocol for what

9 transpired with Dr. Bishayee's experiments between

10 the photographs and the testing.

11 A Oh, no, this one. No, but you're asking me

12 generally can you contaminate the cells if you can

13 measure the radioactivity.

14 Q No, I'm asking you if you'll agree with me that

15 experiment was contaminated by checking for

16 radioactivity.

17 A I didn't recollect I checked the radioactivity at

18 this experiment. So, you are asking me about

19 something which I cannot remember.

20 Q Okay. Fair enough. If you had checked for

21 radioactivity could that have contaminated the

22 experiment?

23 MR. PINCUS: Objection to the form of

24 the question. Calls for speculation.

25 BY MR. LEONARD:

1 Q You can answer.

2 MR. PINCUS: You may answer.

3 THE WITNESS: Yes, you can, because if
4 you can touch the cells, if you can take them out
5 of the tube and keep them in an environment which
6 is not clear then you can contaminate that cell.

7 BY MR. LEONARD:

8 Q Okay. Do you know how the experiment -- and this
9 is the March 26 to March 30, '01 experiment -- how
10 that related to Dr. Howell's research grant goals?

11 A Did I know?

12 Q Yeah, do you know how it relates to his obtaining
13 the grant?

14 A I don't remember that. I mean, I know that his
15 grant was for looking for bystander effect too. I
16 don't know -- I didn't read the grant. Okay? So,
17 I really don't know what he put in that grant.

18 Q Okay.

19 A Because he hired me, and I was running the
20 experiment, but I didn't have the grant as a
21 project.

22 Q Okay.

23 A So, I believe that maybe something was related,
24 because, you know, that was not very far away on
25 that project from what we were working on at that

1 time.

2 You are asking me about something what
3 they found related to the project which was funded
4 by them, right?

5 Q No, I'm asking you if you have any understanding
6 of the role that particular experiment played in
7 Dr. Howell's grant application.

8 A No, I don't have any.

9 Q Okay. Did there come a point in time when you and
10 Dr. Hill filed an allegation of misconduct in
11 science against Dr. Bishayee?

12 A That was at that time we were working at the
13 university, right?

14 Q Right.

15 A Did I have understanding about that?

16 Q Yes.

17 A Yes, because she told me that she would go for
18 that.

19 Q Did you assist her in filing the complaint with
20 the committee?

21 A I don't remember.

22 Q Did you agree with her making such a complaint at
23 that juncture?

24 A I don't remember.

25 Q Do you know you're down as a co-complainant on

1 that complaint?

2 A If I was, that I was.

3 Q Well, do you have a recollection of that?

4 A No, I don't have recollection.

5 Q Did Dr. Hill ask you if it was okay to include you

6 as a co-complainant?

7 A I don't remember that.

8 Q Okay. Prior to her filing the complaint with the

9 committee, are you aware of any efforts either you

10 or Dr. Hill made to raise issues internally within

11 your department?

12 A Say again?

13 Q Sure. Prior to filing that complaint that you're

14 listed as a co-complainant, did you try to resolve

15 the issues within your department; that is to say,

16 did you go to Dr. Howell?

17 A I don't remember.

18 Q Do you agree that it would be an unusual step to

19 bypass going to the person whose grant you're

20 working on to file a complaint directly with the

21 committee?

22 MR. PINCUS: Objection to the form. You

23 may answer.

24 THE WITNESS: I don't have response for

25 that.

1 BY MR. LEONARD:

2 Q I'm sorry, what was your answer?

3 A I don't have response for that. I don't know.

4 Because you asked me if that would be the normal
5 way to?

6 Q Well, let me rephrase. Why didn't you do it that
7 way?

8 A Which way?

9 Q To try to resolve it within the department. Why
10 wouldn't you go to Dr. Howell before taking it to
11 a committee?

12 MR. PINCUS: Objection to the form. No
13 foundation. You may answer.

14 THE WITNESS: I don't know. I don't
15 have an answer for that.

16 BY MR. LEONARD:

17 Q In retrospect do you regret not taking it to
18 Dr. Howell first?

19 A Probably, yes.

20 Q Okay. You were interviewed by the committee?

21 A At UMDNJ?

22 Q Yes.

23 A Yes, I was.

24 Q Did Dr. Hill ever tell you not to discuss this
25 situation with Dr. Howell?

1 A I don't remember that.

2 Q You don't remember her telling you that it would
3 be better for her to tell him rather than you?

4 A For not telling him?

5 Q No. Do you recall her telling you that she should
6 tell Dr. Howell, not you, about what's going on?

7 A I don't remember that.

8 Q Okay. You were interviewed by the committee?

9 A Yes.

10 Q You testified honestly?

11 A I think so.

12 Q Any reason to recant or change your testimony?

13 A The reason to change at that time?

14 Q Now, as you sit here today, do you have any reason
15 to change -- Is there anything that you know now
16 that would cause you to change your testimony
17 which you previously gave?

18 A No, I don't think so.

19 Q Okay.

20 A So, essentially what I'm saying now is exactly
21 what I said before, except for that which I don't
22 remember. Is that right? I mean --

23 Q I don't know if it's exactly the same except for
24 you don't remember, but --

25 A If I don't remember something I said I don't

1 remember.

2 Q Okay.

3 A If I remember something, I believe I said the same

4 at the time when I was investigated by the

5 committee.

6 Q Okay. Are there any feelings of guilt that

7 Dr. Bishayee's reputation at the university was

8 being called into question before the committee?

9 A Any recollection that Dr. Bishayee was --

10 Q No. Did you ever feel any feelings of guilt that

11 his character was being called into question by

12 the committee?

13 A No, I don't remember.

14 Q You don't remember or you didn't feel guilty?

15 A If I'm feeling guilty that -- I couldn't

16 understand your question. Can you --

17 Q Okay. Yeah. Did you ever feel guilty that

18 Bishayee's reputation, okay, was being called into

19 question by the committee based on what you and

20 Dr. Hill --

21 A Before or --

22 Q -- after you and Dr. Hill went to the committee?

23 A I don't know that.

24 Q You don't know if you felt guilty about it

25 afterwards?

1 A If I feel guilty about him or if he was guilty?

2 Q No. Do you feel guilty about having reported him,
3 because of his reputation and people were looking
4 at him?

5 A I don't think so. I mean, why are you supposed to
6 be guilty?

7 Q No.

8 A Am I supposed to feel -- I mean --

9 Q Do you and Bishayee have a good working
10 relationship?

11 A Up to the point when I asked him and have no
12 question, I mean, yes, we were kind of friends,
13 normal, like the normal lab environment, but he
14 was not very helpful every time when I asked him
15 something.

16 Q Did you ever have any arguments?

17 A No.

18 Q Okay. Eventually you learned that the committee
19 concluded that there was insufficient credible
20 evidence of misconduct in science to warrant any
21 further investigation?

22 A I think that I got similar letter like that kind
23 of statement.

24 Q Okay. Did you agree or disagree with that
25 finding?

1 A Nobody asked me about that.

2 Q I'm asking you. I should say do you support a
3 finding that Dr. Bishayee committed scientific
4 misconduct? I think that was the actual finding.

5 A I don't like to discuss this comment. I don't
6 know. This is the comment by the committee, not
7 by myself. So, you are asking me to judge the
8 committee, what the committee -- that's not my --
9 I think that's not my responsibility.

10 Q Were you upset with the committees's finding?

11 A No, I'm not. I mean, what committee found, that
12 was found.

13 Q What was your relationship with Bishayee after
14 that investigation?

15 A My relationship with --

16 Q Bishayee after the investigation.

17 A What was my relationship with him?

18 Q Mm-Mm.

19 A Like before. I mean, normal. We were working in
20 the same lab.

21 Q Were things tense between you?

22 A No. We even go for the conference. We shared the
23 same room at that time, so it was no problem. I
24 mean, we were not fighting each other, we were
25 trying to work in the same lab. Okay?

1 Q Okay. When was that conference?

2 A It was in Puerto Rico.

3 Q Do you remember the year, by any chance?

4 A I think it was supposed to be 2001, I believe.

5 The conference was in March, I think, the

6 beginning of the springtime. So, it must be 2001,

7 because when I came it was 2000 and that was May.

8 So, I think it was 2001.

9 Q Okay. Did Bishayee, while you were sharing a

10 room, ever say to you, "Marek, good work. What

11 are you doing," or "What are you trying to do to

12 me? Why did you do this?"

13 A No, we were not talking about this. We were

14 trying to not talk about that. I think it was not

15 very good subject to talk about that between us.

16 I mean, he -- No, he didn't ask me. We were

17 trying to keep a normal relationship when we were

18 working together.

19 Q Do you like Bishayee?

20 A Like everybody else, I like people, so why I don't

21 like him. I mean --

22 Q But you don't dislike him, let's put it that way.

23 A No, I don't dislike him.

24 Q How was your relationship was Dr. Howell after the

25 investigation?

1 A I couldn't see very much difference from my side.

2 Okay? I mean, I was still working in the lab

3 doing the research. Maybe he was a little bit

4 upset what was happening. I don't know. You

5 would have to ask him about that.

6 Q Well, did he ever tell you he was upset?

7 A I don't remember.

8 Q What was the atmosphere like in the lab after the

9 investigation?

10 A I think that not like before.

11 Q How do you mean?

12 A Everybody knows that something is going around,

13 which is not probably nice, because we are trying

14 to do something which is not nice to see.

15 Q Okay. After the investigation was Dr. Howell ever

16 hostile towards you?

17 A What do you mean?

18 Q Aggressive. Angry.

19 A No.

20 Q Okay. Did you ever witness him acting that way

21 towards Dr. Hill?

22 A No.

23 Q Did you ever witness Dr. Howell taking any

24 retaliatory acts against Dr. Hill?

25 A What is "retaliatory"?

1 Q Treat her poorly. Did you ever see them treat her
2 differently or poorly after the investigation?

3 A I would say no.

4 Q Okay. How about Dr. Baker or Dr. Azzam? Did they
5 ever treat her differently or poorly after the
6 investigation?

7 A Me?

8 Q No.

9 A Her?

10 Q Her.

11 A I barely see Dr. Baker. I mean, I have no contact
12 with Dr. Baker, because I think that he was the
13 chairman at that time of the department, and he
14 was not working with us.

15 Q Okay.

16 A So, I really don't know him. Dr. Azzam? No, it
17 was like before.

18 Q Okay. How was your relationship with Dr. Hill
19 after the investigation?

20 A I think that we had a good relationship, I mean,
21 like before. There was nothing different.

22 Q Did Dr. Hill ever express any dissatisfaction with
23 the committee's findings to you?

24 A Dr. Hill express -- Yes, she expressed that,
25 because I think that that's the real reason why

1 she went later on for the next step.

2 Q What did she say?

3 A I don't remember exactly, but definitely she was

4 not convinced or happy what was found.

5 Q And you're aware that Dr. Hill subsequently

6 pursued claims with the Office Of Research

7 Integrity?

8 A If I'm aware about that?

9 Q Yes.

10 A I didn't know what that means, in fact, that kind

11 of situation.

12 Q What do you mean?

13 A I didn't know what would be the result of that

14 next step. I mean, I don't know.

15 Q The ORI investigation?

16 A I know that she went for that.

17 Q Okay.

18 A That's everything what I know.

19 Q So, you didn't assist her in pursuing the matter

20 with ORI?

21 A No, because I think that that was done when I was

22 out of this lab, I believe.

23 Q Do you agree with her decision to pursue this

24 matter with ORI?

25 MR. PINCUS: Objection. No foundation.

1 You may answer.

2 THE WITNESS: I don't have comment on
3 that.

4 BY MR. LEONARD:

5 Q Well, would you have pursued it with ORI?

6 A If I will?

7 Q You decided not to pursue it, correct?

8 A No, because I was not asked to do that. That step
9 was done by her, not by me.

10 Q Right.

11 A I have no reason to be involved in the formal
12 steps.

13 Q Do you agree with her decision to go to ORI?

14 A That was her decision. You're asking me if I
15 agree with her decision what she did, is that the
16 question?

17 Q Yes.

18 A May I have no comment of that?

19 Q No, you have to tell me your thought on that.

20 A I don't know. I mean, I don't know really how to
21 answer that.

22 MR. LEONARD: Could I get this marked as
23 Lenarczyk 3, please.

24 MR. PINCUS: You're doing Lenarczyk 3
25 now or D3?

1 MR. LEONARD: She's been marking them
2 Lenarczyk 3. My idea is D, but she convinced me.

3 (Exhibit Number 3 was marked.)

4 BY MR. LEONARD:

5 Q Dr. Lenarczyk, I'm going to hand you a document
6 that's been marked Lenarczyk Exhibit 3, and it's a
7 "Freedom of Information Act - Case Information For
8 Possible Disclosure." Okay? And I want you to
9 take a look at this and tell me if you've ever
10 seen this before.

11 A I don't recollect.

12 Q You don't recollect seeing this?

13 A Right, I don't remember the document.

14 Q I want to direct your attention to from the top
15 "Inquiries and Investigations" -- 1, 2, 3, 4, 5 --
16 where it says "Complainant(s)."

17 A Okay.

18 Q You're listed as a complainant.

19 A Right.

20 Q Did you know at the time that you were listed as a
21 complainant?

22 A That is document which was prepared for that
23 investigation which was done by the university or
24 later on?

25 Q Later.

1 A No, I don't think so that I saw that document.

2 Q This was dated August 27, 2002. Did Dr. Hill ask
3 you if it was okay to list you as a complainant?

4 A I don't remember that. But definitely I didn't
5 prepare this document.

6 Q Did you see it before it was filed?

7 A I don't think so.

8 MR. LEONARD: Off the record.

9 (Discussion off the record.)

10 (Last two questions and answers read
11 back.)

12 BY MR. LEONARD:

13 Q We covered previously that you were, in fact, not
14 fired by Dr. Howell; is that correct?

15 A Yes.

16 Q Do you have any animosity toward Dr. Howell?

17 A Animosity?

18 Q Any bad feelings or anger?

19 A To Dr. Howell?

20 Q Yeah.

21 A No. I spoke to him a few months ago at the
22 conference.

23 Q Did you ever tell Dr. Howell that you weren't
24 happy with Dr. Hill's actions with regard to
25 complaints?

1 A I don't remember.

2 Q Do you remember sending him an e-mail to that
3 effect?

4 A No, I don't remember, sorry. I don't know.

5 Q We can come back to that. We'll go back to that
6 when he comes back.

7 A Which doesn't mean that I sent it, it's simply I
8 don't remember.

9 Q No. And we have an e-mail we'll show you. I
10 understand.

11 A If you have an e-mail, that's probably what I did.

12 Q Dr. Lenarczyk, please understand nobody is
13 questioning --

14 A Not only for today. I really don't remember
15 everything which has happened seven or six years
16 ago.

17 Q Nobody is questioning your honesty. Okay? We
18 understand. We've been doing this a long time.
19 Typically depositions happen a long time after the
20 fact. We understand.

21 Did there come a point in time that you
22 learned that ORI concurred with UMDNJ that there
23 was insufficient evidence to warrant further
24 investigation of the complaints of scientific
25 misconduct against Dr. Bishayee?

1 A If I know about that?

2 Q Yes. Did you know that they came out after
3 reviewing it and said that there was insufficient
4 evidence, ORI?

5 A Yes, because I have a letter.

6 Q Okay.

7 A Which one is that? This piece of paper I can
8 handle, but not like in a lab book. I think that
9 one of these letters about that. I think that
10 this is the letter you are asking me about; is
11 that right?

12 MR. PINCUS: If you're going to ask him
13 about it, please mark it.

14 MR. LEONARD: Let's mark this.

15 BY MR. LEONARD:

16 Q Here's a logistical issue. If we mark this, then
17 that's going to be become part of what we're doing
18 here. Do you want the original back?

19 A That you have that letter, because this is letter
20 which was sent to me by the committee, right?
21 It's supposed to be in the document.

22 Q Yeah.

23 MR. PINCUS: We don't have this?

24 MR. LEONARD: What?

25 MR. PINCUS: Are you sure we don't have

1 this?

2 MR. LEONARD: I'll let you know when the

3 Boy Wonder comes.

4 MR. PINCUS: I'll be able to tell you.

5 THE WITNESS: Is that the letter saying

6 that there was no finding?

7 BY MR. LEONARD:

8 Q Yes, that's the letter.

9 A This is letter showing that the case is closed,

10 right?

11 MR. LEONARD: Do we have that?

12 MR. FLYNN: I think we have. Yes,

13 absolutely.

14 MR. LEONARD: Okay. You can keep that.

15 Thank you.

16 MR. PINCUS: Do you want to like just

17 note for the record what we were looking at?

18 MR. LEONARD: Sure.

19 MR. PINCUS: I think that way we can

20 then, to the extent we want to find a particular

21 Bates stamp number.

22 MR. LEONARD: The document we have been

23 discussing on the record is a document from the

24 Chair of the Newark Campus Committee On Research

25 Integrity dated July 5, 2001 to Marek Lenarczyk

1 stamped "Confidential - New Jersey Medical School"
2 letting Dr. Lenarczyk know that the committee
3 unanimously concluded that there is no cause to
4 warrant further misconduct in science proceedings
5 with regard to the allegations.

6 Just so we're all clear, that document,
7 a copy of that document is in the documents
8 produced to date, Bates stamped "UMDNJ-Hill
9 Confidential 002421." I'm returning the original
10 to Dr. Lenarczyk.

11 (Discussion off the record.)

12 BY MR. LEONARD:

13 Q Dr. Lenarczyk, did Dr. Hill ever speak to you
14 about ORI's findings?

15 A Is that the next step for this one which I showed
16 you the letter about that or --

17 Q No, that's that one that just concluded.

18 MR. FLYNN: That was the first one.

19 BY MR. LEONARD:

20 Q That was the first one. The second one, ORI, the
21 outside agency that looked at the matter.

22 A I think that she informed me about that some time,
23 but --

24 Q Did she telephone you? Did she --

25 A Maybe that was telephone. Maybe that was -- I

1 don't remember now exactly.

2 Q But she contacted you when she got the findings?

3 A I don't remember if she informed me about the

4 results about that, but definitely she informed me

5 that she would go for that. And I asked about --

6 At this point I was probably asked by the FBI

7 agent to cooperate for this case. So, definitely

8 I was present by having the telephone conversation

9 with the agent. But I don't remember if we were

10 talking about the results of that. I don't

11 remember.

12 Q Okay. Fair enough. Do you have any feelings

13 about the fact that ORI decided there was not

14 enough evidence to warrant further investigation?

15 A No. What they found, they found.

16 Q Dr. Lenarczyk, I'm going to point you to Exhibit

17 Number 3 that we looked at previously.

18 A This one?

19 Q No.

20 A That one?

21 Q That, yeah. We talked about this previously where

22 it says you're a co-complainant. Do you see that

23 up on top?

24 A Yes, I see that.

25 Q You understand this is for ORI now, this is not

1 for the committee at UMDNJ.

2 A Okay. I understand that.

3 Q Okay. So, I just want to make sure you're clear
4 on that.

5 A Yes, I'm clear about that.

6 Q Okay. So, did you assist with the filing of the
7 complaint with ORI?

8 A "Filing" means preparing the paper to send it to
9 somewhere?

10 Q Yes.

11 A I don't think so.

12 Q Okay. Did you assist Dr. Hill in pursuing the
13 matter with ORI?

14 A Means to encourage her to do that?

15 Q No, to help her.

16 A I don't remember.

17 Q Do you remember anything about the ORI
18 investigation?

19 A Definitely the call from the FBI agent.

20 Q That got your attention?

21 A Of course. I mean, you know, if somebody is
22 calling you from the FBI --

23 Q Just so you understand, that has nothing to do
24 with the ORI investigation. You got a call from
25 the FBI, because this complaint was filed in

1 Federal court.

2 A Oh, okay.

3 Q And the U.S. Attorney was trying to decide whether
4 or not they were going to prosecute the case.

5 A Oh, I see.

6 Q After investigating they said, no, they weren't
7 going to prosecute it. So, Dr. Hill then has to
8 prosecute the case.

9 A And that was the one, next one or before this one?

10 Q Well, that was after. After ORI there's a whole
11 other complaint to the committee. And then after
12 that comes back then finally there's the filing of
13 the complaint.

14 A Oh, I see what you mean.

15 Q Okay. I just want to make sure you got them all
16 straight. So, there's two internal committees --

17 A The first one is investigation at UMDNJ.

18 Q Committee.

19 A Then was that one --

20 Q ORI.

21 A ORI. And then --

22 Q UMDNJ.

23 A UMDNJ.

24 Q And then the filing of the lawsuit in Federal
25 court.

1 A Okay.

2 Q Okay. Just timingwise.

3 MR. LEONARD: Would you, please, mark
4 this.

5 (Exhibit Number 4 was marked.)

6 BY MR. LEONARD:

7 Q Dr. Lenarczyk, I'm going to hand you what has been
8 marked Lenarczyk Exhibit 4. It's an e-mail from
9 you to Dr. Howell dated October 10, 2001. Would
10 you take a look at that, please.

11 (Discussion off the record.)

12 MR. LEONARD: Okay. Back on the record.

13 BY MR. LEONARD:

14 Q Do you recognize this e-mail?

15 A Sure.

16 Q Okay. Can you tell me the paragraph that starts
17 with "Lanie Story. Lanie story is really not very
18 easy to understand." What do you mean by that?

19 A I think this is referring to any additional steps
20 which was done after that case was investigated at
21 UMDNJ, I think.

22 Q So by this sentence you're referring to the ORI
23 and the additional complaints that were filed?

24 MR. PINCUS: Objection to the form of
25 the question. I mean, just the timing of his

1 e-mail just makes it an improper question. You
2 may answer.

3 BY MR. LEONARD:

4 Q This is one you wrote, so you have to tell us what
5 you meant.

6 A Yeah, but, you know, once again, few years ago. I
7 don't remember now, really.

8 Q So, you don't know what you meant when you wrote
9 "Lanie story is really not very easy to
10 understand"?

11 A No, I don't understand -- I don't remember now
12 what I was meaning by that.

13 Q How about the next sentence, "I am not happy
14 because all work has happened, too"?

15 A That was because of that whole investigation,
16 because -- I was thinking that everything will be
17 discussed first in the lab and then try to find
18 out the solution for that and not to go --
19 solution for that in the lab -- I mean, inside,
20 like you said, in the department or --

21 Q And not to what? I'm sorry.

22 A And not to go so far with that kind of
23 investigation.

24 Q Okay.

25 A Because I didn't feel that this is necessary to

1 do. I mean, I think that if you have that kind of
2 situation usually you're supposed to deal in the
3 lab first. That was my -- Probably this is
4 referring to that.

5 Q Okay.

6 A But this is what I can make comments of now.

7 Okay?

8 Q Okay. How about that last sentence? "I know that

9 I am not an angel too, but perhaps we should shake
10 our hands and try to build the peace at least."

11 Peace between whom?

12 A Just, you know, form of word, but it's not like --

13 I was feeling that something is not right between

14 us when I left when everything was found at that

15 time. Definitely probably Roger was not very

16 happy about that. Because who would be happy? I

17 mean, it's not a nice situation for him. So, it's

18 maybe kind of apology or something like that, you

19 know. What has happened has happened, and I think

20 that now we have to move on, and that's it. I

21 mean, that's what my intention, I mean, to keep

22 our relationship on a good, in a good way. I

23 mean, not fight, not to -- There is no reason why

24 we have to. I mean, he might have that kind of

25 feeling, but I don't know.

1 Q Now, in discussing the last two sentences does
2 that refresh your recollection about the first
3 sentence when you said, "Lanie story is really not
4 very easy to understand"? Do you now have a
5 better idea of what you meant by that sentence?

6 A I think that it might be like -- I mean, maybe I'm
7 off of the time frame, because, you know, this is
8 so far. But for somehow I probably felt that what
9 was found at the committee by university supposed
10 to be end of that story. That's probably
11 referring to that. I'm not sure. Okay? I was
12 rather surprised that everything is going so far
13 again, and again, and again, because I was not
14 having that kind of situation before, and I was
15 not feeling that -- Okay, if you complain
16 something, the committee can say, okay, there is
17 no reason to find something which you complain
18 about that, that's it. I mean, that's --

19 For me it was not a very big problem.
20 Okay? I mean, working in science you can get
21 sometimes different data. Okay? This is the
22 science. That's why we call it research,
23 research, research. So, we are facing all the
24 time we troubleshoot. Okay? Which means that we
25 have to try to confirm something, try to disprove

1 something, because this is just science. So, when
2 something has happened like that -- It's difficult
3 to explain at the moment when you can see that,
4 but if you have no reasonable -- a reason how to
5 explain that, which at least I had that situation
6 before, because I tried to do my best. I mean, I
7 tried to -- Then I decided, okay, it happened.
8 Okay? I don't know what happened before I came to
9 that lab. I know what is happening now when I'm
10 working, and I have difficulties to confirm
11 something which was published before, which we
12 couldn't. Because that was not only my finding,
13 that was also the finding all of us at the time.
14 So, I said, "Okay, fine." That's not my project,
15 in fact. I mean, I'm not really responsible for
16 all of the hypotheses which are in that project.
17 I'm just a person who is trying to verify the
18 hypothesis which was prepared by, at that time,
19 Roger Howell.

20 So, when I went back to call on them I
21 tried to -- I couldn't forget about everything, of
22 course, because that was kind of a very, very rare
23 situation which happened in the lab. So, maybe I
24 was feeling that Roger is not so happy about that,
25 which probably he was not so happy about that.

1 As we discussed before, I was not fired
2 by him. He didn't throw me away because of that
3 investigation. I mean, I'd rather try not to work
4 on that anymore, because it was very difficult to
5 me. I mean, I don't like to argue with something
6 which cannot become verified in a logic way, okay,
7 at least for me. So, I quit that job, I went
8 back, and then we were having that kind of
9 conversation.

10 Q Okay. Are you aware that after ORI determined
11 that no further investigation should be conducted
12 that Dr. Hill filed yet another complaint with the
13 UMDNJ committee?

14 A Am I aware of -- So, that means that do I think
15 that she supposed to do something more?

16 Q No. Just did you know about it at the time that
17 she filed the second complaint with UMDNJ. So,
18 it's actually the third complaint, second with
19 UMDNJ.

20 A I don't remember exactly. That time probably I
21 was in Poland, I see by this letter, but -- I
22 believe that we not talking at that time, because
23 of the obvious reason, because of the distance.
24 Maybe we shared some e-mails. I don't know. It's
25 really too difficult to recollect everything for

1 me now.

2 Q So you don't recall any conversations with her at
3 or about the time that she filed the second
4 committee complaint?

5 A Conversation, probably not.

6 Q Okay. By "conversation" I mean communication,
7 e-mails. Is she updating you that "Now I'm going
8 to file" --

9 A Maybe she did. I mean, I don't remember. Okay?

10 If you would show me the e-mail that's the
11 evidence, but I don't remember now, really.

12 Q Might have been around the time you received this.
13 Was there a letter that came --

14 MR. PINCUS: Just indicate that the
15 witness shook his head from side-to-side. Sorry,
16 John.

17 MR. LEONARD: That's okay.

18 THE WITNESS: This is e-mail, right?

19 BY MR. LEONARD:

20 Q The documents that you showed us from here, was
21 there a cover letter that came with them?

22 A I don't know. No, I think that everything that
23 was inside was inside.

24 Q So, there was just like you opened it up and there
25 were just random documents in there?

1 A Right. I mean, everything which I got this in
2 there, I believe -- I mean, I didn't throw it
3 away, I hope.

4 Q Did she send you an e-mail maybe to say you can
5 expect documents and here is what they --

6 A I think that she told me that. I mean, maybe she
7 sent me the e-mail about that, that she is sending
8 me something, showing something.

9 Q Showing what, Dr. Lenarczyk?

10 A Showing what she sent me in that letter.

11 Q In those various documents?

12 A Right.

13 Q Okay.

14 A That's what I can remember.

15 Q Okay. So, you didn't assist her in filing the
16 second UMDNJ complaint, true?

17 A Assist by writing down something?

18 Q Anything. Talk to her about it. Any
19 communications at all about it prior to her filing
20 it.

21 A I don't remember, really. I don't remember.
22 Maybe we were sharing some e-mails. I don't
23 remember now.

24 Q So, you may have assisted her in the second
25 committee complaint?

1 A I don't remember.

2 Q Okay.

3 A Sorry.

4 Q Did you try to discourage her from filing the
5 third complaint, the second with UMDNJ?

6 A Again, I don't remember that.

7 Q Do you remember any conversations or any
8 communications between the two of you regarding
9 her filing the second complaint with the UMDNJ
10 committee?

11 A I don't remember now.

12 Q How did you come to learn that she did, in fact,
13 file a second complaint with the committee?

14 A Maybe we had that kind of e-mail conversation. I
15 don't remember now. I mean, I --

16 Q But you remember knowing at or about the time?

17 A No, I don't remember. I mean --

18 Q Do you have any understanding of the basis for the
19 new complaint?

20 A If I don't remember -- No, I don't remember that.
21 I mean --

22 Q Would it refresh your recollection if I tell you
23 that the second complaint is based on allegations
24 that a statistical review of Dr. Bishayee's data
25 suggest a lack of uniformity or randomness? Does

1 that mean anything to you?

2 A Sounds like kind of statistical evaluation of some
3 data.

4 Q Right.

5 A But I don't recollect that I did that statistical
6 evaluation.

7 Q Are you a statistician?

8 A No, I'm not.

9 Q Do you have any statistic training?

10 A Formally, no, but I use statistics for evaluating
11 the data.

12 Q And you've never looked or attempted to do any
13 statistical analysis of any data relating to this
14 case?

15 A To which case? To --

16 Q To the case that -- to the complaint of Dr. Hill
17 to Dr. Bishayee's work.

18 MR. PINCUS: Objection to the form. Are
19 you referring to the Federal complaint? In other
20 words, are you referring to --

21 MR. LEONARD: Dr. Bishayee's data.

22 MR. PINCUS: Yeah, but you used the
23 words "the complaint." That's where we're asking
24 for clarification.

25 BY MR. LEONARD:

1 Q Have you ever employed any statistical analysis
2 for use on Dr. Bishayee's data?

3 A Did I do a statistical analysis by myself of his
4 data?

5 Q Yes.

6 A I don't think so.

7 Q Okay. Did Dr. Hill ever discuss any statistical
8 findings that she performed with you?

9 A It might be in those documents which I gave you.
10 I don't remember exactly, but there might be
11 something in that letter which I gave you, because
12 I believe that there is something about the
13 evaluation of the data.

14 Q Which you didn't read that?

15 A I mean, I read that, but if you will ask me what
16 is precisely in particular document, I don't
17 remember now, because I just read like, you know --

18 Q Well, if I show you that document now would you
19 understand what that document purports to show?

20 A Not necessarily everything. I mean, if there is
21 some, let's say, statistical analysis then I'm not
22 responsible for judging this one, because I have
23 not that kind of knowledge of statistics. Okay?

24 Q Good enough. Did there come a point in time where
25 you learned that UMDNJ, once again, found

1 inconsistent credible evidence of misconduct in
2 science to warrant further investigation of
3 Dr. Hill's claims against Dr. Bishayee?

4 A I don't remember that.

5 Q Do you remember speaking to Dr. Hill about the
6 fact that, once again, the committee found no
7 reason to go forward with the investigation?

8 A It may have happened that she informed me about
9 that, but, you know, I really don't remember that.

10 Q You have no specific recollection of her telling
11 you that?

12 A I don't have very specific -- I mean, we were not
13 talking like, you know, each day or each week.
14 So, when we were sharing couple e-mails, or
15 sometimes where we talk to each other, that was
16 very, very rare. So, I really don't remember
17 everything, you know.

18 Q Do you recall her expressing any anger or being
19 upset about the fact that now three different
20 bodies have come back and found insufficient
21 evidence to proceed?

22 A I don't remember.

23 Q Do you remember that complaint that I showed you
24 earlier today?

25 A Which one? This one?

1 Q No, the big one underneath it.

2 A Yes, I remember.

3 Q Did you know at or about the time that Dr. Hill
4 filed that in October of 2003?

5 A Did I know about that?

6 Q Mm-Mm.

7 A I don't remember. But it might be possible that
8 she informed me about that just to say that she's
9 going for something. I don't remember.

10 Q You know, I don't want to be flip with you, but I
11 just want to be sure. You don't remember or
12 you're not sure that she told you about the second
13 ORI filing --

14 A I don't remember. Okay? It would be --

15 Q Just let me finish the question. The second ORI
16 filing, the third committee filing, and now the
17 complaint filing. You have some understanding
18 that all these things took place, but you don't
19 have any specific recollection of her telling you
20 about them?

21 A I don't remember exactly what was happened, but I
22 think I know what she was doing.

23 Q How?

24 A Maybe she send me some e-mails.

25 Q Did you ever speak by phone?

1 A I don't remember. Sorry.

2 Q You don't remember how you talked to her?

3 A No, I don't remember.

4 Q Did you ever call her or she call you while you
5 were in Poland?

6 A In Poland?

7 Q Mm-Mm.

8 A No, I don't remember. I mean, I would be
9 surprised if I would call her, because of the
10 distance.

11 Q Because of what? I'm sorry.

12 A Because of the distance and time and everything.

13 Q You spoke earlier about speaking to the FBI; is
14 that correct?

15 A Yes.

16 Q Do you remember telling the person who interviewed
17 you on April 21, 2004 --

18 A I don't remember the name. That was she, I think.

19 Q Yeah, Susan Schlow.

20 A I don't remember the name, but definitely that was
21 she.

22 Q I will represent to you that that's who it was.

23 Okay?

24 A Okay.

25 Q Do you remember telling that special agent that

1 you thought Dr. Hill may have acted too quickly?

2 A That Dr. Hill what?

3 Q Acted too quickly. Do you remember saying you
4 were not sure why Dr. Hill reported Dr. Bishayee
5 to the university so quickly?

6 A I don't remember that, but maybe I said that. I
7 mean --

8 Q Okay. I'm going to show you some documents.

9 MR. LEONARD: Would you, please, mark
10 this Lenarczyk Exhibit 5.

11 (Exhibit Number 5 was marked.)

12 MR. LEONARD: Thank you.

13 BY MR. LEONARD:

14 Q Dr. Lenarczyk, I'm going to hand you a document
15 that's entitled Lenarczyk, that's been marked
16 Lenarczyk Exhibit 5. The document is entitled "I
17 Am A Whistle Blower" by Dr. Hill. The documents
18 are Bates numbered beginning 000730 through 734
19 consecutively. I say that because it's not
20 stapled together. Would you take a look at that
21 document, please. Just take a minute and read
22 that opening paragraph. Or actually read the
23 whole thing if you'd like. Take a few minutes.
24 It's not that long.

25 A Okay.

1 Q Have you ever seen this document before?

2 A I don't know if something is about the whistle
3 blower in that letter.

4 Q I'm sorry, you have to keep your voice up.

5 A Something might be -- Because I really don't know
6 what does it mean whistle blower, but I think that
7 something like that was in this letter. You may
8 check those documents which I gave you.

9 MR. PINCUS: We ought to mark those up
10 at some point.

11 MR. LEONARD: Yeah, we will.

12 THE WITNESS: It might be here. Yeah,
13 this is probably the same letter here. It looks
14 like. I mean --

15 BY MR. LEONARD:

16 Q They're actually entitled the same thing, but
17 they're different.

18 MR. PINCUS: Let the record reflect that
19 the witness identified a document entitled
20 "Whistle blower Statement" - Dr. Hill, eight-page
21 statement that he identified as part of a packet
22 of material that he brought in response to your
23 subpoena duces tecum.

24 MR. LEONARD: You know what, let me see
25 all of them. Let's just get them on the record.

1 MR. FLYNN: Perfect timing. I was going
2 to say let's break for lunch. I'll go make
3 copies.

4 (Lunch recess, 1:09 p.m. to 1:43 p.m.)

5 MR. LEONARD: Let's go back on the
6 record.

7 What we're going to do now is mark a
8 number of documents that Dr. Lenarczyk brought
9 with him to today's deposition. These are
10 documents that were mailed to him at his address,
11 2014 South 102th Street, Apartment 120, West
12 Allis, A-L-L-I-S, Wisconsin 53227.

13 These are documents that he received
14 from Dr. Hill. There does not appear to be a
15 cover sheet. And I guess we're not sure whether
16 one exists. But we're going to mark these exhibit
17 documents as Lenarczyk 6, and then we'll go A, B,
18 C and D through.

19 So, the first document is actually a
20 photocopy of the envelope. That would be A.

21 6-B would be an e-mail exchange between
22 Dr. Hill and Dr. Lenarczyk.

23 C would be a document entitled "Summary
24 of Qui Tam Case Against the UMDNJ Proposed by
25 Helene Z. Hill, Ph.D." There are nine pages of

1 exhibits, front and back, with that exhibit.

2 MR. FLYNN: That's a separate thing.

3 MR. LEONARD: This is separate?

4 MR. FLYNN: Yes.

5 MR. LEONARD: Okay. Where were we on

6 this one?

7 MR. FLYNN: This is D.

8 MR. LEONARD: D. 6-D is going to be a
9 document that is eight, nine pages long, front and
10 back, entitled "An Analysis of the Findings IN Box
11 Number 6," slide show presentation.

12 The next exhibit is two pages, it's a
13 document front and back, a document entitled, "The
14 Effect of" -- what is that word I can never say --
15 Tritiated Thymidine on the Cell Cycle of Chinese
16 Hamster V79 Cells and its Implications in
17 Experiments Done in the Laboratory of Roger
18 Howell, Ph.D., 1998 - 2001."

19 The next exhibit is a letter from
20 Dr. Hill to Susan Steele of the U.S. Attorney's
21 Office dated November 16, 2006.

22 The next document a two-page document,
23 front and back, entitled, "The Impossibility of an
24 Exponential Decline in Survival Of Chinese Hamster
25 Cells in the presence of Tri" -- whatever.

1 DR. HELENE Z. HILL: Tritiated
2 thymidine.

3 MR. LEONARD: I don't know why I'm
4 having a real mental block with that one.

5 The next document is eight pages, front
6 and back, "Whistle Blower Statement."

7 And the next document is "Analysis of
8 Coulter Counter Counts by B and Hill." And that's
9 it.

10 (Exhibit Numbers 6-A through 6-I were
11 marked.)

12 MR. LEONARD: We just want the record to
13 reflect that we have now marked all the documents
14 that Dr. Lenarczyk brought with him in compliance
15 with the subpoena, and I've returned to him the
16 originals of those documents.

17 BY MR. LEONARD:

18 Q Dr. Lenarczyk, previously I gave you a document
19 entitled "I Am A Whistle Blower." Have you had a
20 chance to look through that document?

21 A I have not read that document. Do you like me to
22 read this document now? That's essentially
23 probably the same document which is --

24 Q It's not.

25 A It's not?

1 Q Why don't you just glance through this one.

2 A Okay.

3 Q Now, if you would turn over to the second page
4 where it says "Fabrication Of Results In 2001."

5 A Right.

6 Q Okay. It says, "In the fall of 2000, Howell hired
7 Dr. Marek Lenarczyk, a post-doctoral fellow, to
8 work on his research that was supported by an NIH
9 grant. Howell told Lenarczyk to work with
10 Bishayee, Bishayee was very elusive and Lenarczyk
11 had great difficulty pinning him down. Lenarczyk
12 became suspicious of Bishayee and frequently
13 voiced his concerns to me." To Dr. Hill. She's
14 the author of this.

15 Is that true, you frequently voiced
16 concerns to Dr. Hill?

17 A I mean, we were talking about this one, because I
18 was feeling that something is not right, because I
19 was finding completely different results from the
20 one that was published by Dr. Bishayee before I
21 came. So, obviously, I would like to share
22 something and try to find out what is the reason
23 why now I'm having different results, when before
24 was made by another person having the same
25 biological model that I was using. It was just a

1 clearly scientific discussion about the results.

2 Q The next sentence says, "When he" -- meaning
3 you -- "complained to Dr. Howell, Howell brushed
4 him off." Is that true?

5 A I don't remember that. Okay?

6 Q I thought your testimony previously was you didn't
7 have any discussion with Dr. Howell.

8 A And I believe that this is rather true, because if
9 I would have that discussion with Dr. Howell I
10 probably would not go for any other further steps.
11 So, I believe everything would be decided in the
12 lab.

13 Q Okay.

14 A I mean, that's my assumption, but I'm not sure
15 about that.

16 Q Do you have any recollection of Dr. Howell ever
17 brushing you off?

18 A No, he didn't brush me off.

19 Q Do you have any recollection of ever bringing any
20 complaints to Dr. Howell?

21 A Complaints about the results which we are having
22 or --

23 Q About Bishayee. It says, "When he complained to
24 Howell, Howell brushed him off."

25 A I don't remember that. I mean, I definitely

1 didn't feel that I was brushed off by him. Okay?

2 We were fully talking to each other. I mean, it

3 was not a problem to talk to Roger about anything

4 that was related to the science or the results. I

5 don't remember that he brushed me off.

6 Q So, this statement is not an accurate statement?

7 MR. PINCUS: Objection to the form of

8 the question. You may answer.

9 THE WITNESS: This is not my statement.

10 Okay?

11 BY MR. LEONARD:

12 Q No. No.

13 A I don't feel particularly that I was brushed off.

14 Q Okay. You have to understand I know you feel like

15 sometimes I'm -- Nobody is accusing you of

16 anything. We know you didn't write this, but I've

17 got to know. This is what somebody else is

18 writing about something that you supposedly told

19 them. If that's not the case, then we need to

20 know that.

21 A I don't remember that I was brushed off.

22 Q Do you remember ever complaining to Dr. Howell?

23 A No, I don't remember that.

24 Q Okay.

25 A I'm sorry.

1 Q That's okay. Later down in that paragraph it
2 says, "We agreed not to inform Howell" -- "we"
3 being you and Dr. Hill -- "to inform Howell,
4 because we both were concerned that Howell would
5 protect Bishayee and terminate the experiment,
6 thus destroying any evidence of malfeasance." Do
7 you believe that to be true?

8 A That they will destroy the experiment to --

9 Q That Dr. Howell would destroy any evidence. If
10 you went to Dr. Howell, that he would destroy the
11 evidence of wrongdoing, of any wrongdoing.

12 A I have no reason to believe that. Okay? Because
13 I never had that situation with Roger Howell
14 before. So, I don't know if he would do that. I
15 mean, I don't -- I don't feel particularly that he
16 would terminate the experiment.

17 Q Okay.

18 A Especially as everybody knows at the time that
19 something is going on. I mean --

20 Q This is somebody writing something that they say
21 you felt or you told them, and I just want to be
22 sure, because that's a very -- that's a very
23 strong statement to say somebody would destroy
24 evidence. And if you believe that, fine, say
25 that, but if that's not what you believed you need

1 to say that as well.

2 A I have no reason to believe that. I mean -- But
3 this is statement which I can make now. Okay? I
4 mean, I don't believe that Roger will -- If I will
5 work with him, okay, I don't think so that he will
6 ask me to discontinue the experiment if something
7 is not really right. And I wouldn't like to do
8 that anyway, because experiment is just
9 experiment. If you can get the data, you have
10 data. You have to try to analyze the data, even
11 if the data are not as you expect. Okay?

12 Q Okay. Understood. The last sentence says,
13 "Lenarczyk's and my observations support, strongly
14 support our belief that Bishayee fabricated the
15 results here of a second experiment."

16 And I think we spoke earlier, about you
17 have no -- Do you believe he fabricated the
18 results? Do you have any personal knowledge?

19 A He fabricated?

20 Q Yes. Do you have any personal knowledge that he
21 did that?

22 A I mean, I couldn't caught him. I mean, I didn't
23 see that he fabricated. I mean, I just had
24 difficulty to find out a logical explanation why
25 we cannot -- why I'm doing the same and I cannot

1 confirm something which is already done.

2 Q Okay. Could you turn to the last page where it

3 says, "On April 6."

4 A Which is 73 what.

5 Q 734. I'm sorry?

6 A Okay. Which part? Sorry.

7 Q The second paragraph from the bottom it says, "In

8 this Qui Tam case, the stakes are very high. If

9 the defendants are found guilty" -- that being

10 Roger Howell, Dr. Bishayee and the University --

11 "the penalty is 3 times the amount of the fraud,

12 in this case, \$4.2 million. The whistle blower --

13 that would be Dr. Hill -- "generally receives

14 30 percent of that, in this case more than \$1

15 million."

16 Do you understand that in this

17 litigation she's seeking to get a judgment against

18 Dr. Howell, Dr. Bishayee and the university for

19 over \$4 million?

20 A Did I understand?

21 Q Do you understand that?

22 A Now?

23 Q Yes.

24 A I understand, because it says that here. So, it's

25 clear to me now.

1 Q Do you agree with her position that they should be
2 held liable for in excess of \$4 million?

3 MR. PINCUS: Objection. Calls for a
4 legal conclusion. You can answer.

5 BY MR. LEONARD:

6 Q You can answer.

7 A I don't know why university supposed to be losing
8 that \$4.2 million by this case.

9 Q How about Dr. Howell? Do you think he should have
10 to pay \$4.2 million?

11 MR. PINCUS: Same objection.

12 THE WITNESS: I don't understand that
13 law. But, you know, I don't feel that this is
14 what will happen. I mean, I don't know. Really,
15 I don't know. I don't like to make a comment of
16 that, because this is something which is coming
17 out of that as a consequence of the law. Okay?
18 So, I don't know. I definitely didn't know at the
19 time that that might be the consequence. Okay?

20 BY MR. LEONARD:

21 Q The paragraph above says, "In order to present the
22 strongest possible case, I will need expert
23 witnesses in the following areas: Statistics, cell
24 cycle, hypoxic effects and radiation studies."
25 Are you an expert in any of those areas?

1 A Which one is the paragraph? Sorry.

2 Q It's "On April 6," that last sentence.

3 A Okay. Not really. I'm definitely not an expert
4 in statistics.

5 Q Cell cycle?

6 A I didn't work with hypoxic effects.

7 Q Okay.

8 A Cell cycle for some extent, yes, but not forever.

9 I mean, this is broader meaning of the science.

10 Okay. I don't know what that means, cell cycle.

11 I mean, I understand the cell cycle, but --

12 Q What area in cell cycle do you feel that you have
13 an expertise?

14 A I would say I'm not expert in cell cycle. Okay?

15 That's a better conclusion.

16 Q Okay. And you've never served as an expert in any
17 case or legal proceeding?

18 A No, I never.

19 MR. LEONARD: Okay. All right. I would
20 like to get this marked as Lenarczyk 7.

21 (Exhibit Number 7 was marked.)

22 BY MR. LEONARD:

23 Q Before we get to this, going back to the document

24 "I Am A Whistle Blower," and the fact that your

25 name appears throughout this document, would it

1 surprise you to know that this document was given
2 to Dr. Hall in the Radiology Department at
3 Columbia University?

4 A Would that surprise me that was given to
5 Dr. Howell?

6 Q Yeah -- No, not Howell, Hall and the folks at
7 Columbia University.

8 A I didn't know that. I mean, how can I know that?

9 Q No, I'm saying it was. I'm representing to you
10 that it was. Did you know that she intended,
11 Dr. Hill intended to give this out to other
12 experts in the field at other universities?

13 A Maybe that was the logical way, because maybe she
14 was looking for some expertise there. Columbia is
15 not a bad place to look for that kind of
16 expertise. There are people working in
17 radiobiology.

18 Q Do you have any feelings about the fact that all
19 this information about you is in there?

20 A I don't like my name anywhere in this document.

21 Q That's what I'm asking you.

22 A But, you know --

23 Q I mean, there's some pretty strong accusations in
24 there.

25 A I mean, it's written by Dr. Hill. So, what can I

1 say?

2 Q Do you think she should have verified this
3 information with you before she circulated this
4 document?

5 A At least I would do something like that. I
6 mean --

7 Q Okay.

8 A I will not write down on behalf of somebody not
9 showing him what I'm writing down, because it's
10 like -- The consequence of this document is that
11 this is the document. Okay? This, I would say,
12 made by blah, blah, blah, or something like that.

13 I would expect that some people who are
14 in the document will know at least at the time the
15 document is prepared and what is the intention.

16 Q I'm going the to show you, Dr. Lenarczyk,
17 Exhibit 7. It's a document entitled
18 "Attachment 1b." It's been marked Lenarczyk 7.
19 Would you take a look at that. Oh, I'm sorry.
20 The Bates range -- No, no, I apologize -- are
21 000065 through 66. Have you ever seen this
22 document?

23 A I don't remember now.

24 Q Can you turn to the second page.

25 A Yes.

1 Q And about four sentences down where it says, "It
2 is my hope." Do you see that?

3 A Down from the top or --

4 Q No, I apologize, in the third paragraph it starts,
5 "On Monday."

6 A Oh, third. One, two, three, four down.

7 Q To the right it says, "It was my hope."

8 A Okay. Yeah, I see that.

9 Q It says, "It was my hope that by careful
10 documentation I would be able to present a
11 convincing case to Dr. Howell regarding
12 Dr. Bishayee's incompetence and I could then
13 persuade Dr. Howell to terminate his appointment."
14 Do you see that?

15 A Yes, I see that.

16 Q Did you know at the time that that was Dr. Hill's
17 intention to get Dr. Bishayee fired?

18 A I don't remember that. That's a very strong
19 argument. I don't remember that.

20 Q She wrote this. This is her statement. This is
21 her position. The only question is, did she share
22 her feeling on this with you?

23 A I don't remember that. Okay?

24 Q Okay.

25 MR. LEONARD: Could I get this document

1 marked as Lenarczyk 8. It's entitled "Scientific
2 Misconduct At The New Jersey Medical School."

3 (Exhibit Number 8 was marked.)

4 BY MR. LEONARD:

5 Q Dr. Lenarczyk, I'm going to show you what's been
6 marked Lenarczyk Exhibit 8. Again, it's a
7 document entitled "Scientific Misconduct at the
8 New Jersey Medical School" and ask you to take a
9 look at that.

10 A Okay.

11 Q Again, a document with your name all over it
12 that's been circulated. Let's go to Page -- 1, 2,
13 3 -- 4 where it says, "The committee's report and
14 its aftermath." Do you see that?

15 A Yes.

16 Q The second paragraph it talks about how Dr. Howell
17 told Dr. Hill that both Dr. Bishayee and yourself
18 "would be leaving at the end of the month."
19 Dr. Hill states she knew that you wanted very much
20 to stay, and that Dr. Howell didn't permit that.

21 A I never asked him to stay. I asked him to agree
22 to leave, terminate my position. I don't remember
23 that he asked me to leave.

24 Q Okay. So, at the end of that paragraph, the
25 sentence that says, "However, Dr. Howell dug in

1 his heels and Dr. Lenarczyk returned to Poland on
2 July 26." That's not your recollection of how
3 your departure transpired?

4 A I don't think so, because I wrote the letter to
5 Dr. Howell to ask him to agree to terminate my
6 position.

7 Q Okay.

8 A Even one month before I have that contract at the
9 time. And I explained to him why. One of the
10 reasons was because I had a ticket already, a
11 return ticket.

12 I never heard from him, as I recollect
13 now, that he would like to fire me. I mean, he
14 didn't tell me that.

15 Q The last paragraph on that page, the
16 next-to-the-last-sentence says, "Dr. Howell likes
17 to play around with fitting data into mathematical
18 models."

19 A Which is that? Last paragraph on the same page?

20 Q Yes. Next-to-the-last-sentence on the page.

21 A Okay.

22 Q Do you have any understanding what Dr. Hill means
23 by that?

24 A Sorry, what was the question?

25 Q Do you have any idea what she means by that,

1 "Dr. Howell likes to play around with fitting data
2 into mathematical models"?

3 A I know what was the mathematical model at the
4 time, probably describing that reason, that
5 experiment, but I don't know if Roger likes to
6 play around. I don't know.

7 Q Fair enough.

8 A You're asking me about something what somebody
9 else would like to do. I don't know.

10 Q It's just a statement. I didn't know if she ever
11 confided in you what she meant by that.

12 MR. LEONARD: I think we're going to
13 have you done pretty soon, Dr. Lenarczyk.

14 THE WITNESS: While you're looking, I
15 will be back. Okay?

16 MR. LEONARD: Okay.

17 (Recess taken.)

18 MR. LEONARD: Could you mark that
19 Lenarczyk 9.

20 (Exhibit Number 9 was marked.)

21 BY MR. LEONARD:

22 Q Dr. Lenarczyk, I'm handing you what has been
23 marked Lenarczyk Exhibit Number 9. It is
24 Dr. Hill's "Answers to Defendants' Initial
25 Interrogatories."

1 I will represent to you that
2 interrogatories are written questions that the
3 parties serve on one another, and that the other
4 side must answer to the best of their ability.

5 Now, Interrogatory Number 2 says,
6 "Identify any and all persons who have knowledge
7 of any facts that are relevant to this matter."

8 A 9-2?

9 Q Interrogatory -- Page 3.

10 A Page 3. Okay.

11 Q "Identify any and all persons who have knowledge
12 of any facts that are relevant to this matter, and
13 summarize the facts of which each such person has
14 knowledge." Okay?

15 Now, if you go to Page 5 you'll see your
16 name listed there.

17 A Starting by the part Letter D, right?

18 Q That's right. Let's go down to the last two
19 sentences on Page 5.

20 A Okay. Starting with my name?

21 Q Yes. "Dr. Lenarczyk observed Defendant Bishayee
22 in March of 2001 when cultures were found to be
23 contaminated; and complied with Bishayee's request
24 to provide clean cultures." Okay?

25 "Dr. Lenarczyk observed that

1 Dr. Bishayee left the original samples in the
2 incubator, and thus must have substituted other
3 cells for the contaminated ones."

4 Do you have any personal knowledge that
5 Dr. Bishayee substituted other cells for
6 contaminated cells?

7 A No, I don't have that knowledge.

8 Q Okay. With respect to that response, did either
9 Dr. Hill or her attorney call you to confirm your
10 knowledge before sending that out, do you know?

11 A This document?

12 Q Mm-Mm.

13 A No, I don't think so.

14 MR. LEONARD: Okay. Could you mark this
15 Lenarczyk 10.

16 (Exhibit Number 10 was marked.)

17 BY MR. LEONARD:

18 Q Dr. Lenarczyk, I'm going to hand you document, I
19 think it's the actually a PowerPoint presentation,
20 but it's entitled "Evidence Supporting Allegations
21 of Fraud at the New Jersey Medical School" by
22 Dr. Hill." I'm going to direct your attention to
23 Bates number 753, Page 19.

24 A "The Second Suspicious"?

25 Q Yes. The last dotted line there says, "Hill and

1 Lenarczyk shadow Bishayee until the experiment is
2 completed." Can you tell me your understanding of
3 what that means?

4 A I don't know what does it mean. Maybe that means
5 that we were waiting for the time when the
6 experiment is finished. Is that the meaning of
7 "shadow"? I remember what "shadow" means when my
8 kids were shadowing somebody, as to follow
9 somebody, to observe what these people are doing,
10 but that was part of the educational process of
11 some class. But I don't know what "shadow" -- I
12 mean, "shadow," I know what is shadow by the
13 meaning of "shadow."

14 Q Well, is it possible she meant that the two of you
15 were following and observing Dr. Bishayee?

16 A Not like that. I mean, I was not following him.

17 Q Okay. Just, again, Dr. Hill wrote this. I'm just
18 asking.

19 A The meaning of the "shadow" here it might be
20 related to waiting for last step of the
21 experiment.

22 Q I don't know. Let's turn to the next page.

23 A Okay.

24 Q "Hill and Lenarczyk's Observations." Can you read
25 those and tell me which of these you personally

1 observed?

2 A I don't remember that. I mean, that was too long
3 a time ago.

4 Q Do you remember doing any of these things?

5 A I believe that if Dr. Bishayee asked me to give
6 him the fresh cells I would do that. Okay?

7 Q Okay.

8 A So, maybe some part of this third statement is
9 true, that if "Dr. Bishayee requests and obtains a
10 fresh" -- Maybe that is true. I mean, because if
11 somebody will ask me in the lab to provide him the
12 cells, I will do that.

13 Q Okay.

14 A Some of these sentences are directly to the time
15 when we saw that, which was March, 2001, I
16 believe, right? So, I don't remember all this.

17 Q So, other than giving him the cells --

18 A I mean, I believe what I will do, even now if
19 somebody would ask me, "Okay, give me the cells,
20 because I have a bad line, because my cells are
21 contaminated," if I would have the same cells to
22 continue his or her research I will do that. I
23 mean, this is nothing wrong.

24 Q No, I don't think so either.

25 A But many of the statements are related to very

1 particular procedures. Okay. So, which I don't
2 remember.

3 Q Let's move down a little bit.

4 A Okay.

5 Q The third from the bottom it says, "Hill and
6 Lenarczyk conclude that Bishayee mocked up the
7 FACS separation using new cells he received from
8 Lenarczyk."

9 I think we talked about that earlier.

10 Do you have any firsthand knowledge that he used
11 those cells you gave him to do that?

12 A I don't know what he did with the cells, even if I
13 gave him that cell, because we were not talking
14 about that.

15 Q Let's turn to the next page, "The Second
16 Suspicious Experiment: Spring, 2001 Continued."
17 Okay?

18 A Okay.

19 Q "Hill and Lenarczyk conclude." I mean, I want you
20 to tell me which, if any, of these conclusions did
21 you personally draw?

22 A I don't think so that I draw any of this part of
23 the document, because that's not my document.

24 Q Do these represent your conclusions about
25 Bishayee's experiment, if any? I mean --

1 A I don't remember. I mean, if -- No, I don't
2 remember that.

3 Q Okay.

4 A I don't know what he did, what he was doing after
5 that when I gave him the cells.

6 Q Okay. Are you finished?

7 A Yes.

8 MR. LEONARD: So am I. Thank you very
9 much for your time.

10 THE WITNESS: Oh, no problem.

11 (Recess taken.)

12 EXAMINATION

13 BY MR. PINCUS:

14 Q Good afternoon, Dr. Lenarczyk.

15 A Good afternoon.

16 Q I appreciate your patience. As you know, I
17 represent Dr. Hill in this matter, and I have a
18 number of questions, as well a significant number
19 of documents that I'm going to have to mark and
20 question you about too.

21 And my ground rules to you are similar
22 to those which Mr. Leonard gave you. I'm not here
23 to trick you. I want you to answer the questions
24 to the best of your ability. Tell me what you
25 know and what you don't know.

1 If you don't understand my question,
2 please don't hesitate to ask me for some kind of
3 clarification or repetition, because if you do
4 respond I'm going to assume that understood my
5 question and you can answer it thoroughly and
6 accurately.

7 And my other reminder, again, is I would
8 appreciate if you would give a verbal response as
9 opposed to a nod or gesture. If I remind you,
10 don't take offense, it's very commonplace. But
11 I'm going to try to get you through this as
12 quickly as I can.

13 Now, if I understood, just briefly, just
14 by way of some background, you indicated you had
15 first worked for Dr. Howell in his lab for some
16 time back in 1995; is that correct?

17 A Yes.

18 Q And what type of work were you doing for him then?

19 A I was working with him in '95/'96 as a visiting
20 scientist based on the fellowship which I carry on
21 with me from Europe. And we were working on a
22 different model, because that was animal model.
23 We were working on mice.

24 MR. PINCUS: Hold on one second, please.
25 So the reporter can see you, I'm going to switch.

1 Just read me back where he was.

2 (Last answer read.)

3 BY MR. PINCUS:

4 Q And so then there came a point in time where you
5 left the lab, correct? You left the university.

6 A Yes, I left that one, because that was -- Actually
7 I finished my fellowship with him at the time, and
8 I found at the same time another position in
9 Colorado. So, I moved from New Jersey to
10 Colorado.

11 Q Okay. And then from Colorado?

12 A Then I stayed up until '98 in Colorado. And then
13 when that project was finished in Colorado I moved
14 back to my country, to Poland, for two years. And
15 then after two years I was revisiting Dr. Howell
16 in 2000.

17 Q Okay.

18 A And I spent at that time one year with him.

19 Q Do you ever recall referring to Dr. Bishayee as
20 Mr. Maharaja?

21 A I referred him to as a maharaja? I don't know.
22 Maybe I did something like that. I mean, I don't
23 remember. I mean --

24 Q Can you recall ever making such a statement or a
25 reference to Dr. Bishayee to Dr. Hill?

1 A It might be possible. I don't know. It's like
2 that was my recollection, because --

3 Q What was the basis for your referring to him as
4 Mr. Maharaja?

5 A I think that Maharaja is something very related to
6 Indian people, like the history of.

7 Q To the extent that you utilized the phrase
8 Mr. Maharaja in reference to Dr. Bishayee, what is
9 your recollection in terms of what you were
10 referring to Dr. Bishayee about?

11 A Nothing spectacular. I mean, just, you know,
12 different name. People they have kind of nickname
13 or something like -- It's like that. I mean,
14 somebody can call me gray-haired guy or something
15 like that. I don't remember that there was any
16 particular meaning of that.

17 Q If Dr. Hill were to testify that you had made such
18 a statement to her on occasion, or more than one
19 occasion, do you have any reason to doubt the fact
20 that you had done so?

21 A Statement about what?

22 Q Referring to Dr. Bishayee as Mr. Maharaja.

23 A If I have any reason to do that?

24 Q Would you have any reason to doubt the accuracy of
25 Dr. Hill's recollection that you had referred to

1 Dr. Bishayee as Mr. Maharaja?

2 A I don't understand that.

3 Q You're doing exactly what I wanted you to do. If

4 Dr. Hill were to testify under oath that, in fact,

5 you had on an occasion or more than one occasion

6 referred to Dr. Bishayee as, quote,

7 "Mr. Maharaja," unquote, would you have any basis

8 to dispute that?

9 A No, I don't think so.

10 Q Can you recall of any particular occasion or

11 occasions when, in fact, you referred to

12 Dr. Bishayee as Mr. Maharaja?

13 A Did I have any recall to refer him as --

14 Q Do you have a specific recollection of any

15 particular occasion of referring to him that way?

16 A No, I don't remember a specific recollection about

17 that.

18 Q Now, you indicated that when you came back in, I

19 believe, 2000 to work in Dr. Howell's lab, you

20 know, at that point you were aware of certain

21 research that had already gone on in Dr. Howell's

22 lab, along with Dr. Bishayee, relating to the

23 bystander effect, as you recall, correct?

24 A Yes, because I was involved in that kind of

25 research too.

1 MR. PINCUS: Okay. Can I have this
2 marked, please. We'll just continue in series.
3 Lenarczyk 11, please.

4 (Exhibit Number 11 was marked.)

5 BY MR. PINCUS:

6 Q Now, before you look at that, please, you said
7 that at this time you were also involved in
8 research associated with the bystander effect at
9 the time you commenced working in Dr. Howell's lab
10 in 2000?

11 A Right.

12 Q Can you explain to me what you had done? What was
13 the nature of your work?

14 A That was essentially the same what I explained
15 before to John, about how you can find out what
16 does it mean "bystander effect."

17 By the meaning of bystander effect, the
18 experiment was designed in that way that you have
19 two populations of the cells separated. And that
20 cells, one population of the cells were
21 irradiated, or treated by this radionuclide, and
22 then another one was not treated.

23 So, to find out the bystander effect you
24 have to mix them together, which we did that in
25 kind of 3-dimensional model in that small tube,

1 which is probably in that paper. So, when you can
2 mix population of the irradiated cells with
3 non-irradiated cells you would expect that
4 irradiated cells will die because of the
5 radiation. And then by knowing what is the
6 quantity, or what is the amount of dead cells,
7 versus that ones which are not irradiated, in that
8 mixed population you can count how many of these
9 non-treated cells will survive.

10 Let's see. If you will assume that you
11 are mixing 50 percent of that, and 50 percent of
12 non-treated cells, then the survival of the mixed
13 population cannot be higher than 50 percent if
14 nothing will happen, because that 50 percent of
15 irradiated cells will die.

16 And then when you can keep the cells
17 together, the bystander effect is, what I mean by
18 "bystander effect," is referring that for somehow
19 these irradiated cells by the process of dying,
20 when they are mixing with other cells, which means
21 that they are very, in very close proximity each
22 other, they will transfer some kind of signal by
23 the process of dying to the non-treated cells.

24 So, in that particular situation, the
25 50/50 percent, the survival would be down to

1 50 percent, because you will expect that that
2 signal which is coming from dying cells, which you
3 cannot see them anyway because they will die, will
4 harm the non-treated cells. Therefore, the
5 non-treated cells will give you less survival than
6 you would expect if they would be not harmed.

7 Q Okay. Now, I show you what we've marked as
8 Exhibit Lenarczyk 11.

9 A Okay.

10 Q Are you familiar with this document?

11 A I think this is the paper where they published
12 this one before I came to the lab.

13 Q This is a paper that was published in a periodical
14 called "Radiation Research," Volume 152, Pages 88
15 to 97 in 1999, and it's by Dr. Bishayee, a
16 Dr. Rao, and Dr. Howard. And you were familiar
17 with the contents of this paper at the time you
18 commenced --

19 MR. LEONARD: Objection. Form.

20 MR. PINCUS: Let me finish the question,
21 please.

22 THE WITNESS: With the contents of that
23 when I came to the university?

24 BY MR. PINCUS:

25 Q Yes.

1 A I was not familiar with that paper at that time.

2 Q Did you have occasion to review the paper when you
3 did come to the university?

4 A I read that paper.

5 Q You did read it?

6 A Yes. I mean, that was part of my job to find out
7 what this was.

8 Q So you were familiar with the contents and the
9 results which Dr. Bishayee had reported; is that
10 correct?

11 A Yes.

12 Q Okay. Thank you. I'll take that. You can just
13 lay it on the side for the moment in case we have
14 to go back to it.

15 MR. PINCUS: If you can mark that as 12,
16 please.

17 (Exhibit Number 12 was marked.)

18 BY MR. PINCUS:

19 Q Dr. Lenarczyk, I show you what I've marked as
20 Lenarczyk 12. This is another article that was
21 published in the periodical "Radiation Research,"
22 Volume 155 in 2001, I believe. Are you familiar
23 with this document?

24 A I was familiar more at the time when I was there
25 probably, because I read it.

1 Q Do you recognize it?

2 A Yes. Yes.

3 Q And, to your knowledge, and to your recollection,
4 had this document been accepted for publishing at
5 the time you arrived back in Dr. Howell's lab in
6 2000, or was it subsequent, do you know?

7 A I don't remember that.

8 Q Fair enough.

9 A This is not my paper, so I didn't know about it.

10 I don't remember that.

11 Q But you do recall reviewing it as part of your
12 job?

13 A Yeah, because as part of my job I'm supposed to
14 read some papers, especially this one which came
15 from the lab when I was working, and they are
16 related for whatever I was doing at the time.

17 Q So, is it fair for me to say that you were that
18 you were familiar with its contents and the
19 results which the authors, including Dr. Bishayee,
20 had reported?

21 A Yes, I will say that I was familiar.

22 Q Okay. You can lay that one on the side for a
23 moment.

24 MR. PINCUS: If you can mark this is
25 Exhibit 13, please.

1 (Exhibit Number 13 was marked.)

2 BY MR. PINCUS:

3 Q I show you Lenarczyk 13. Are you familiar with
4 this document?

5 A I don't remember, but probably not, because this
6 looks like this was --

7 Q Was it your understanding that it was this grant
8 that served to pay for your fellowship commencing
9 in about 2000?

10 A I understand that my salary was paid out of this
11 grant.

12 MR. LEONARD: Objection to form. You
13 can answer.

14 BY MR. PINCUS:

15 Q So your understanding is that your salary was paid
16 out of this grant?

17 A I understand that Dr. Howell has to find the money
18 to pay my salary anyway, and I believe that that
19 was out of this grant, because this is the grant
20 which is referring to.

21 Q Were you familiar with the, or did Dr. Howell
22 describe to you the preliminary results that had
23 been presented in support of this grant at the
24 time you started reworking in his lab?

25 A I don't remember that.

1 Q So, sitting here today do you have any
2 recollection of reviewing this grant, or any of
3 the specific aims that would guide your research
4 while working in Dr. Howell's lab?

5 A I don't remember that. I mean --

6 Q Did you have any oral discussions with Dr. Howell
7 in regards to the specific aims that would guide
8 your research?

9 MR. LEONARD: Objection to form.

10 THE WITNESS: I believe that we were
11 talking about what I supposed to do, okay, because
12 that was part of our job. I mean, I couldn't
13 believe that I was asked to do something without
14 discussing with Dr. Howell. But I don't remember
15 now exactly if that was happened, and if so, when.
16 Okay?

17 BY MR. PINCUS:

18 Q In general, however --

19 A In general usually the boss when you are hired is
20 showing you or explaining to you what you will be
21 involved in working on the project. So, I believe
22 that we were talking about that. I mean --

23 Q Based on the custom and practice that existed
24 in -- Let me ask the whole question. Based on the
25 custom and practice that existed in the laboratory

1 at that time --

2 MR. LEONARD: Objection to form.

3 BY MR. PINCUS:

4 Q -- is it fair to say that Dr. Howell explained to
5 you what the nature of your research was about?

6 MR. LEONARD: Objection. Form.

7 BY MR. PINCUS:

8 Q You may answer.

9 A I will assume that.

10 Q Okay.

11 A If I will be in the same position as Roger Howell,
12 if I would be the boss, and I would hire somebody
13 to work on my grant, definitely I would do that.
14 Because otherwise how is the person who is hired
15 going to be know what's supposed to be done.

16 MR. PINCUS: Mark this as 14, please.

17 (Exhibit Number 14 was marked.)

18 BY MR. PINCUS:

19 Q Going to show you what's been marked as Lenarczyk
20 14. This appears to be an experiment that was
21 performed --

22 A By me.

23 Q -- on October 2, 2000. Are you telling me that
24 this was an experiment performed by you?

25 A I believe, because it's like my hand notes on the

1 side of this document, I think. I mean --

2 Q Let's just look at the documents themselves.

3 A Probably nobody will mark 13:40 as a time here,
4 except somebody who is coming from Europe.

5 Q All right. But if you would look at the documents
6 which comprise this packet that has been marked as
7 Lenarczyk 14, to your knowledge, does this
8 represent the documents representing the protocol
9 for the experiment and the results that you
10 obtained as a result of performing the experiment?

11 A Yes.

12 Q Would you be kind enough just to --

13 MR. LEONARD: Objection. Form. Sorry.

14 BY MR. PINCUS:

15 Q Would you be kind enough just to walk me through
16 the various sections. So, for instance, if we
17 look at the pages, the first page that you have
18 before you that have the Bates stamps of B019439
19 and B019440, can you identify what --

20 A What is what?

21 Q -- that is, please. Specifically is that what we
22 refer to as the protocol?

23 A Yes, I think that this is on the first page on
24 this, whatever 19439, is exactly the protocol you
25 have to follow to do that experiment.

1 Q Okay.

2 A This is the table showing here what is the
3 radioactivity you can prepare.

4 Q Let's continue on. Bear with me, please. The
5 second page of this exhibit, which has Bates
6 stamps B019441 and B019442, what is this second
7 page? Is this also the protocol?

8 A Yes, I think that the first part is protocol up to
9 the .42, and then there is my additional
10 handwritten notes about what I did for
11 mutagenicity to follow all this protocol.

12 Q The part that's B019442, what is that?

13 A This one? I think that this comes from Coulter
14 Counter, I believe. It's an instrument which is
15 counting the radioactivity. That's my guess.

16 Okay?

17 Q Okay. But, to your knowledge, is this part of the
18 experiment that you commenced on the 2nd of
19 October?

20 A I believe so.

21 Q Continue on to the third page of this exhibit, the
22 pages that are marked B019443 and B019444. Do you
23 see where I'm referring to at the bottom of the
24 page? No, no, no.

25 A Okay.

1 Q I'm giving you a Bates stamp reference. So, if I
2 say third page, but I'm just calling your
3 attention --

4 A This is like two pages in one?

5 Q That's correct. So what are these two pages, if
6 you would?

7 A This page is showing here the result you can
8 expect from probably experiment with mutagenicity
9 for HPRT gene, which is showing here probably the
10 number of colony -- No, first one is -- First one
11 is showing you what is the activity of medium you
12 are measuring in the small tubes. And the second
13 page, which is Table 3, this is also about the
14 radioactivity.

15 Q The coulter counts?

16 A Right.

17 Q Now, if you go to the fourth page. And, again,
18 I'm referring refer you to Bates stamps B019445
19 and B019446. What does the right-hand portion of
20 this page represent, please?

21 A Right page?

22 Q No. I'm sorry, the left.

23 A The left one?

24 Q The left one.

25 A The left one is a readout from Coulter Counter,

1 which is the instrument to measure the
2 radioactivity, I believe.

3 Q Am I correct that you spell that C-O-U-L-T-E-R,
4 coulter?

5 A Yes.

6 Q And the right-hand, Table 2, what is that, please?

7 A This, again, something which is referring to the
8 radioactivity of probably cell suspension, because
9 is this marked on the table, which is essentially
10 measuring the radioactivity. It says
11 "Suspension," I think.

12 Q Are you familiar with what a scintillation counter
13 was?

14 A Yes, we were using this one for measuring the
15 radioactivity.

16 Q If you would go to the next page, the Table 4 --

17 A Okay.

18 Q -- on B019447. What was that, please?

19 A It's probably data coming out of survival
20 experiment, which is the number of colonies these
21 particular cells, we were using to flag them to
22 check what are the survival of the cells.

23 Q And the page to the right, B019448?

24 A I think that this is page of my notebook exactly
25 the same which is on the left.

1 Q Okay.

2 A That's my guess. Yes, that's probably like that.

3 Q I want you to turn the page, please, and you'll

4 see that it has a different Bates stamp, 00934.

5 Are you familiar with -- This indicates that, or

6 appears to relate to the experiment that we're

7 talking about, October, 2, 2000. It indicates

8 that you're the investigator. Can you identify

9 what this is?

10 A That was the program which we designed, I think,

11 under Excel to -- I don't remember what was done.

12 This is the record of something which is related

13 to the radionuclide measurement, or the activity

14 measurement, I think.

15 Q And the following pages, is that all part of the

16 same program that you were just referring to?

17 A I believe so. I mean, I think that this is

18 something which is showing some radioactivity

19 measured by the Coulter Counter for this

20 particular experiment.

21 Q And if you would go to the Pages 938, 939, and

22 these charts. What is that, if you would, please.

23 A This is a graphical explanation of the results

24 which you can get from this experiment in terms

25 what is your survival of the cells versus

1 radioactivity you measure for these particular
2 cells.

3 Q Is it your recollection that this was the first
4 experiment that you did for Dr. Howell that
5 involved these V79 cells 100 percent labeled with
6 tritiated thymidine?

7 MR. LEONARD: Objection. Form.

8 THE WITNESS: I don't remember if that
9 was my first experiment or the next one.

10 BY MR. PINCUS:

11 Q Or the next one, is that what you said?

12 A Or the next one. I don't know.

13 Q But you do recall --

14 A It's definitely my experiment.

15 Q And the documents that I've shared and reviewed
16 with you, to your knowledge, all comprise the
17 documentation that was associated with this
18 experiment; is that correct?

19 A By "this," which are you referring? To that
20 paper?

21 Q No, what we're just looking through now, which
22 would be Lenarczyk 14.

23 A Yeah, that's --

24 Q That's the documentation --

25 A This is kind of standard documentation for the

1 experiment which we were doing at that time in the
2 lab. So, it was probably full sets from the very
3 beginning how to go for the experiment, what you
4 have to do, how to measure, and then how to
5 express your data on the graphical -- or on the
6 pictures.

7 Q If you go to the first page where it says
8 "Experiment Name."

9 A Yes.

10 Q Where it's the "3HTdR toxicity (cluster 100%
11 labeling)." What does that mean?

12 A I think that this is, I believe, if I'm correct
13 now, that this is referring to the situation when
14 you will assay all of cells which they were
15 irradiated.

16 Q That's what the 100 percent reference --

17 A That's 100 percent labeling. That means that what
18 you did with this experiment, you labeled all of
19 them and then you tried to find out what is there,
20 the result of that.

21 Q When you look at this experiment and the results,
22 what conclusion or results did you determine here
23 by performing this experiment?

24 A Let me check.

25 Q Okay. I understand.

- 1 A You're asking me about something --
- 2 Q I appreciate that. So, you check. Or let me
- 3 rephrase.
- 4 A If you will look at the Page 98, which is survival
- 5 versus uptake.
- 6 Q That would be this chart here?
- 7 A Right.
- 8 Q Okay.
- 9 A I don't remember what was corrected versus
- 10 uncorrected now. But the points which are above
- 11 the line, which is 1, it's showing you essentially
- 12 that you have no effect. Because the survival
- 13 is 1, which means that nothing has happened.
- 14 Q When you say "no effect," you mean no bystander
- 15 effect?
- 16 A That was not even the bystander effect, because
- 17 that situation was referring to non-bystander
- 18 situation. That situation was referring to
- 19 something which is everything labeled. So, we are
- 20 not looking for bystander, we are looking for --
- 21 Q So, what are looking for here?
- 22 A You looking for survival, what the treatment can
- 23 do for the cells in terms of survival. So, if you
- 24 would have a situation like here when all of the
- 25 points are above the line, that means that you

1 have no effect.

2 Now, if some points are below, that
3 means that this is the effect, which means that
4 these cells for some extent they were killed by
5 the treatment, because the survival is lower than
6 1. Because 1 is assuming that this is the
7 controlled survival, and you can normalize
8 everything for the cells which they were not
9 treated.

10 Q How would you compare your results to the results
11 that Dr. Bishayee represented in the two earlier
12 papers from "Radiation Research" that I showed
13 you?

14 MR. LEONARD: Objection. Form.

15 BY MR. PINCUS:

16 Q You may answer.

17 A This is not easy now. I cannot make any comment,
18 because I have to read this paper again, okay,
19 because I don't remember exactly what was in the
20 paper.

21 Q Can you take a moment to see if you can do that.

22 MR. LEONARD: Without any backup data
23 you're asking him to compare research experiments?

24 MR. PINCUS: We're going to go through
25 it.

1 MR. LEONARD: I just want to be very
2 clear, Shelly, that if what we're going to do this
3 afternoon is sit and try and have Dr. Lenarczyk to
4 act as an expert by comparing and making
5 comparisons to Bishayee's work and what that
6 means, that's against court rules. We've been
7 doing this road with the Columbia people. This
8 man is not given any real data. He's sitting here
9 with photocopies, and you're asking him to make
10 determinations or give an expert opinion, when he
11 isn't even qualified, under his own testimony, to
12 be an expert about that.

13 MR. PINCUS: John, with all due respect,
14 you walked him down this path. You asked him
15 questions about what experiments he performed. He
16 identified the fact that his results differed
17 markedly from that which Dr. Bishayee had been
18 doing, the same kinds of experiments, and which
19 they had done in the lab preceding his arrival.
20 I'm going -- I'm pursuing that somewhat, and I
21 want to ask him questions about that. So, it's
22 not a question --

23 MR. LEONARD: Which it appears you
24 elicited expert testimony in this latest desperate
25 attempt --

1 MR. PINCUS: Don't go there, because you
2 have no basis, you know, for making that
3 assertion. This gentleman worked in the lab, as
4 did Dr. Bishayee and Dr. Howell. He performed
5 experiments. I'm asking him questions about his
6 protocols, and asking him in terms of when he
7 identifies the fact that his results were
8 different from those which Dr. Bishayee performed,
9 I'm asking if, in fact, this was one of those
10 experiments. So, let me pursue that, please.

11 MR. LEONARD: As long as you don't ask
12 him to start opining on experiments done by other
13 people before he even arrived at the lab. He
14 already said he's not an expert in cell cycle. I
15 don't know where this is going at the end of the
16 day.

17 MR. PINCUS: Okay.

18 MR. LEONARD: I mean, I know you're
19 dying to ask these question, but you have to go
20 retain an expert. Go ahead.

21 BY MR. PINCUS:

22 Q Can you answer the question?

23 A I believe that the paper, which is marked by
24 "Rapid Communication" is not related very much,
25 because in that paper -- I believe that the paper

1 which is marked by "Rapid Communication" --

2 Q That would be Lenarczyk 11.

3 A -- is not very related, because as I see by the
4 Figure 1, that was a mixed situation where you can
5 fix labeled with unlabeled cells, which you are
6 looking essentially for bystander effect.

7 Q What about the others?

8 A That was a short answer for that, because I have
9 no time to read all of this paper now.

10 Q Okay.

11 A The second paper --

12 Q Which would with be Lenarczyk 12.

13 A Which is here. There is something probably you
14 can compare, because they are referring to 100
15 percent labeling, which, I believe, is similar for
16 that 100 percent labeling idea which I did. But
17 there is no easy comparison, because there is
18 no --

19 Q If you would look at Page 337, Figure 1.

20 A Yes. That's what I'm looking for.

21 Q Okay. These cells, does this indicate that these
22 cells were 100 percent labeled?

23 A It looks like, because it says that there was 100
24 percent labeling.

25 Q What does this tell you insofar as the survival

1 element that you were referring to in your
2 experiment?

3 MR. LEONARD: Objection to form.

4 BY MR. PINCUS:

5 Q Are these results the same or are they different?

6 MR. LEONARD: Objection to form.

7 THE WITNESS: I think they are
8 different, but that's my -- I don't like to make
9 like hot comments, because, you know, you have to
10 read this paper first and then try to figure out
11 what is what. This is a little bit different
12 explanation how you can relate the experiments
13 which I did for what was done before.

14 If you would make any kind of
15 comparison, just you asked me for that, there's
16 clearly no comparable data, because one is showing
17 that there is a stiff decline in survival --

18 BY MR. PINCUS:

19 Q That's Dr. Bishayee's --

20 A Yes.

21 Q -- report?

22 A -- what is here, which is showing you essentially
23 opposite situation. There is no --

24 Q The latter being yours?

25 A Right.

1 Q Did you report, to your recollection, to

2 Dr. Howell your results?

3 A I don't remember that. I can assume that, yes,

4 but, you know, I'm not sure about that. Okay?

5 Q Okay.

6 A Because it seems this is my protocol, so I believe

7 that we were talking about this one, because this

8 is the part of experiment which we go through.

9 Q Do you have any recollection of any response that

10 Dr. Howell gave to you regarding this particular

11 experiment?

12 A I cannot -- I don't understand -- No, I don't

13 remember. Okay? That's my answer.

14 Q That's fine.

15 MR. PINCUS: Mark this as 15, please.

16 (Exhibit Number 15 was marked.)

17 BY MR. PINCUS:

18 Q I'm going to show you what I've marked as

19 Lenarczyk 15, please. Take a moment to review

20 this. Let me know when you're ready, please.

21 A Okay.

22 Q Would I be correct that this is another experiment

23 that you performed on or about December 14, 2000?

24 A It looks like, yes.

25 Q Now, it says "Investigator" -- If you look at the

1 first page it says, "Investigator: R. Howell

2 @ Marek Lenarczyk."

3 A Right.

4 Q What is the significance of that notation?

5 A Definitely this is saying that I was doing

6 something. And I don't remember why those -- I

7 don't remember why there is Dr. Howell's name on

8 that.

9 Q Now, if you would review the paperwork associated

10 with this document, again, B019476 through 19586,

11 and the other documents Bates stamped 000940 to

12 946, to your recollection, would these documents

13 represent the documentation that were associated

14 with this particular experiment?

15 A I believe so. I mean, it looks like this is

16 starting from the process that you have to do, and

17 then some data from radioactivity measurement, and

18 then data from survival of dead cells, and then

19 something which is showing for the survival on the

20 picture.

21 Q The survival picture that you were just referring

22 to, is that Page 941?

23 A 49?

24 Q Tell me the Bates stamp reference.

25 A I have the last page as 946.

1 Q Okay. So, when you were talking about survival,
2 which Bates stamp number were you referring to?

3 A We can refer to the same, but -- Okay. This is
4 the one which is here on Page 943, and now there's
5 a picture showing the survival.

6 Q So, you're looking at the upper -- So, I'm clear,
7 you're looking at the chart in the upper --

8 A That's exactly the same chart.

9 Q Okay. I want to make sure we're talking about the
10 same page. You're on 943?

11 A Right.

12 Q And what does that tell you about survival in this
13 experiment?

14 A It's showing you some effect. Okay? Because the
15 points which are marked on this graph is
16 declining, versus the activity of radionuclide to
17 be used at the time.

18 Q Did you find that your results regarding survival
19 that you had obtained doing this experiment
20 resembled the results that had been obtained
21 and/or reported by Dr. Bishayee, or are they
22 different in any significant respect?

23 MR. LEONARD: Object to form.

24 THE WITNESS: What do you mean, they are
25 different from the results or they are not

1 different?

2 BY MR. PINCUS:

3 Q Whether they were or weren't different, were you
4 able to determine that?

5 A You might tell by magnitude of the survival if you
6 would look at that paper, for example. Yes, we
7 can -- I mean, if you would compare this picture
8 from the file, which is describing my experiment,
9 with the paper which is --

10 Q That would be Exhibit Lenarczyk 12?

11 A Right.

12 Q And again, you're going on that Table 1.

13 A If you would compare this box "Survival,"
14 definitely you will see that the magnitude of the
15 response is completely different, because you are
16 now for survival -- let's see -- one, two -- Yes,
17 because, I mean, if you going to refer to the XY,
18 which is showing you survival versus activity,
19 then my experiment is showing much less effect --

20 Q Okay.

21 A -- than this one which is in the paper.

22 Q Is it fair to say that there was a discrepancy in
23 terms of magnitude?

24 MR. LEONARD: Objection to form.

25 THE WITNESS: It looks like, okay, but

1 it's not -- Yeah, it's like one log.

2 BY MR. PINCUS:

3 Q One log?

4 A One log down, probably here, because if you can

5 see -- Assuming that the labeling is showing you

6 the same in both pictures, then if you -- Let's

7 see what is going on at labeling, which is

8 referring to 2.5. And then if you will see the

9 same on the paper, which was published, then for

10 that it's down to 2.1 percent. Mine is a little

11 bit higher.

12 Q When you used the phrase "a log" a moment ago,

13 explain to me what that is.

14 A A log is the log scale by which you can explain

15 the survival curve. It's just an expression of

16 some data using, not linear scale, but log scale,

17 logarithmic scale. L-O-G scale.

18 Q If you go back to, if you would, please, Exhibit

19 Lenarczyk 11. I show you Page 91. Here it is.

20 Call your attention to Figure 3 there. Is that

21 the same chart that we were referring to a moment

22 ago in the other report? Does that assist you in

23 any way?

24 A Looks like part of this one is like probably this

25 first one, because here there's a mixed situation

1 when you have a 50/50 percent or 100 percent
2 labeling. Here is only 100 percent labeling, I
3 believe.

4 Q Did you discuss these differences with
5 Dr. Bishayee at all, or attempt to do so?

6 A I don't remember that.

7 Q Okay.

8 A I may, but I don't remember that.

9 Q Did you discuss them with Dr. Howell, to your
10 recollection?

11 A Again, I don't remember.

12 Q Do you have any recollection of any explanation
13 for these differences being provided to you by
14 either Dr. Bishayee or Dr. Howell?

15 MR. LEONARD: Objection. Asked and
16 answered.

17 THE WITNESS: Do I have any explanation
18 for this?

19 BY MR. PINCUS:

20 Q No. Do you have any recollection of receiving an
21 explanation from either of those gentlemen?

22 A I don't remember that.

23 Q Okay. You can put that one away. Keep these on
24 the side, if you would, please.

25 MR. PINCUS: Mark this, please, as

1 Exhibit 16.

2 (Exhibit Number 16 was marked.)

3 BY MR. PINCUS:

4 Q All right. We've marked as Lenarczyk 16 what
5 appears to be another 100 percent experiment
6 regarding tritiated thymidine which you performed
7 on May 3, 2001; is that correct?

8 A Looks like.

9 MR. LEONARD: Object. Have you marked
10 it or --

11 THE WITNESS: No, no, it's marked
12 May 3rd.

13 BY MR. PINCUS:

14 Q That you performed on May 3rd. That's the date
15 reference on there.

16 A Right.

17 Q Okay. And having had the opportunity to look at
18 these documents, am I correct that these represent
19 the documentation associated with the experiment
20 that you performed on that date?

21 A Sure.

22 Q Okay. Again, if you would look at Page 931 in
23 regards to the issue of survival, how did your
24 results in regards to survival compare with
25 reports shown by Dr. Bishayee?

1 MR. LEONARD: Objection. Form.

2 BY MR. PINCUS:

3 Q And you're looking now at Exhibit --

4 A You can only compare something which is on the
5 Figure 1 on the paper, Page 337.

6 Q Okay.

7 A So, this is for 100 percent, and this is 100
8 percent.

9 Q You show much more survival than he does; is that
10 correct?

11 A Yes. It's higher survival in my experiment than
12 his experiment, right? I believe that my survival
13 is little higher than his survival.

14 Q When you say your survival is higher than his
15 survival, by what magnitude?

16 A His survival is, let's say, for 1 millibecquerel
17 is around, or whatever, for 1 unit of
18 radioactivity that would be around -- is that -- I
19 don't remember if we used a DMS saw with my
20 experiment.

21 See, I didn't go for that high activity
22 as they have, because my activity is up to -- and
23 this particular experiment is up to 1.5. So, that
24 activity is showing here very similar survival, I
25 would say, because it's somewhere here. This is

1 the 1. This is 2. So, 2 is here. 1 is somewhere

2 here. So --

3 Q If you would use the other exhibit that I called

4 to your attention, does that assist you in any

5 fashion, Lenarczyk 11, the Figure 3 to answer my

6 question?

7 A It looks like it's not very much different.

8 Q Okay. Fair enough.

9 A That's my -- I mean, but this is very, very --

10 Q So, in this experiment you found that they were

11 not that much different; is that correct? Is that

12 what you're saying to me?

13 A You might say like that, because that label of

14 radioactivity which I have here, which is close to

15 1.5. The survival is almost like 9.

16 Q Okay. That's what I wanted to know.

17 A Very similar label, because you have close to 1.

18 Q Do you have any recollection of discussing these

19 results with Dr. Bishayee?

20 A I don't remember that.

21 Q Do you have any recollection of discussing these

22 results with Dr. Howell?

23 A Don't remember.

24 Q You can flip that one for a moment, please.

25 MR. PINCUS: Mark this as 17, please.

1 (Exhibit Number 17 was marked.)

2 MR. PINCUS: Thank you.

3 BY MR. PINCUS:

4 Q Going to show you Number 17. This appears to be
5 another 100 percent experiment, using that word
6 generically in the sense that we've used it, that
7 apparently you performed on May 21, 2001; is that
8 correct?

9 A Yes.

10 Q And before I ask a question, is it fair to say
11 looking at the documentation that you have before
12 you in this exhibit, that these documents
13 represent the documentation associated with the
14 experiment that you performed on that date?

15 A Looks like this is.

16 Q Okay. And as we have, if I call your attention to
17 the Bates stamp, I believe it's on --

18 A 922.

19 Q -- 922. What did this tell you insofar as
20 survival?

21 A In my experiment looks like there was not very
22 much difference between survival of irradiated
23 versus non-irradiated, because there's very small
24 difference, like maybe 20 percent down, 30 percent
25 down, and the cells were treated with something

1 which is related to 1.5 units of the box.

2 Q And how did your results compare with those which
3 were reported by Dr. Bishayee as we've been, you
4 know, referring to in these papers?

5 MR. LEONARD: Objection. Form.

6 THE WITNESS: See, I don't know if you
7 can compare that, because here -- I don't know if
8 you can compare that directly, because this is
9 cellular uptake versus cluster activity.

10 BY MR. PINCUS:

11 Q What's the difference that you're referring to?

12 A One is showing you activity per cell, one is
13 showing you activity per whole cells which are in
14 the clusters. Is that right? This is
15 kilobecquerel.

16 Q If you go back to the smaller chart --

17 A Right here?

18 Q Over here. Answer my question looking at that
19 chart, please.

20 A Okay.

21 MR. LEONARD: Could you repeat the
22 question?

23 MR. PINCUS: It was answer my question.

24 MR. LEONARD: Oh.

25 MR. PINCUS: The other question. I'm

1 sorry. How his results compared to
2 Dr. Bishayee's.

3 MR. LEONARD: Okay.

4 THE WITNESS: Okay. I think it's not
5 very different. Okay? Because here in the paper,
6 published paper for the activity which is by
7 almost same unit, the survival looks like close to
8 maybe 80 percent for 1. Is that right? Maybe --

9 It might be that my survival is a little
10 bit higher than his survival, but not very much
11 different, I think, because we are looking for
12 this Figure 1 for the plot which is by the empty
13 circle, right?

14 BY MR. PINCUS:

15 Q You're saying that your survival is over 1, right?

16 A No, my survival in terms of dose response is
17 little bit down, but not very much.

18 Q But below 1?

19 A Below 1, right. But they are using a little bit
20 higher activity for this experiment than I used.

21 So, my results do not compare with whole plot,
22 which they have on this plot, because my plot is
23 only up to here. This is something which is
24 related to 1.

25 Q When you say "here" you're talking about the axis

1 that is denoted "Activity For Labeled Cell"?

2 A Right. I mean, you can look at something which is

3 between 1 and 2, and then you will see that the

4 survival for these cells which are in the cluster

5 are around probably 20 percent. Maybe 20 percent

6 yes.

7 Q So, if I understood you --

8 A No, 50. Mine is a little bit higher.

9 Q You said 80 compared to 50, if I understood you

10 correctly?

11 A Yeah, but this is not very much different. This

12 is still on the same log phase.

13 Q Did you have -- I didn't mean to interrupt you.

14 You continue.

15 A You cannot make a final conclusion out of this

16 what is much bigger or much lower. It's similar

17 magnitude of the survival, the log.

18 Q Did you have any discussions with Dr. Bishayee

19 about your experiment, that you can recall?

20 A I don't remember.

21 Q What about Dr. Howell?

22 A The same. I don't remember.

23 MR. PINCUS: Mark this as 18, please.

24 (Exhibit Number 18 was marked.)

25 BY MR. PINCUS:

1 Q I'm going to show you what we've marked as Exhibit
2 Lenarczyk 18. This appears to be an experiment
3 that you performed, 100 percent experiment on
4 June 21, 2001, correct?

5 A Yes.

6 Q And have you taken the opportunity -- Please take
7 the opportunity to review the documentation
8 packet. And am I correct that the documents
9 comprising this exhibit represent the
10 documentation associated with this experiment?

11 A Yes.

12 Q If you would, turn to, I believe it's Page --

13 A 912.

14 Q -- 912. And, again, would I be correct that your
15 survival rate shows flattening out again or
16 plateauing?

17 A Yes.

18 Q Is that a fair characterization?

19 A Yes. It's a little bit down and there's no effect
20 by the dose, which is you can go a little bit
21 down, but from later on this is like a flat
22 response, which means that this is essentially no
23 response versus a dose you can apply to irradiated
24 cells.

25 Q So, notwithstanding the fact that you're

1 increasing the dose.

2 A If you will say, okay, yeah, because that's
3 essentially what this is showing. I mean,
4 theoretically if you would expect that fact, then
5 the points will be like this, or maybe like that,
6 depends how --

7 Q So, let the record reflect that --

8 A Because you are --

9 Q Hold on a second. You were indicating with your
10 pen the direction down and to the right on the
11 chart, correct?

12 A Correct.

13 Q So, that would mean that, if I understood you
14 correctly, that, you know, if the increased doses
15 were having the effect on survival that one might
16 expect, the increased dose would cause less
17 survival?

18 MR. LEONARD: Objection to form.

19 BY MR. PINCUS:

20 Q Is that fair?

21 A I can explain this one.

22 Q Why don't you explain it in your words?

23 A Now, if you will see on these points, which they
24 are reflecting the survival of the cells we were
25 using versus the dose, which each point is

1 reflecting the dose. If that will be the effect
2 as a function of dose, then it wouldn't be flat,
3 it would be like this, or this, or this.

4 Q Again, your pen pointing down and to the right?

5 A Right. Because then, let's say, if over here -- I
6 mean, I'm not sure if that is exactly the same
7 point, because some of them are marked like
8 uncorrected site, some of them corrected. But
9 assuming that they are very similar, because they
10 are similar, and they are almost in the flat
11 range. If you will check this point, which is
12 close to .5, with the point which is close to 1.5,
13 essentially the survival is almost the same, which
14 is probably like, I would say, 80 percent or maybe
15 more here.

16 Now, if the survival would be changed,
17 because of the irradiation, then for this point,
18 which is by 1.5, wouldn't be here, but somewhere
19 down.

20 Q "Down" meaning that less survived?

21 A Right. Because, I mean, how down depends on many,
22 many different factors. But then you would say,
23 okay, I have an effect.

24 Now, here you might say, okay, I have an
25 effect down to 20 percent, but that's not related

1 to dose effect. I mean, I can see something which
2 is not clearly 1 here, but there's no relation
3 between this survival versus the irradiation. In
4 other words, irradiation is not going to change
5 the survival, unless the survival will be down to
6 80 percent.

7 Q The results that you found, would you do the
8 comparison in terms of the ones reported by
9 Dr. Bishayee in his paper --

10 MR. LEONARD: Objection to form.

11 BY MR. PINCUS:

12 Q -- as you have in the past?

13 A See, I don't like the comparison, because, first
14 of all, I'm not sure what is the scale here.

15 Okay? It's probably -- But this is my guess.

16 Okay? Probably his survival is little bit lower
17 than mine. And, more importantly, his survival is
18 declining.

19 Q As compared to yours plateauing?

20 A Because if you can see on the graph, Figure 1,
21 it's 1 and 2. Now, we are not -- Now, we have not
22 that much response like he has down with survival.

23 Q He's showing a much greater --

24 A He's showing survival going down.

25 Q Down much more dramatically than you?

1 MR. LEONARD: Objection to form.

2 BY MR. PINCUS:

3 Q Let me ask the question again. Compare the
4 results in regards to survival that he showed as
5 compared to the ones that you found in this
6 experiment, please.

7 A If you would compare directly the units, which are
8 referring to my experiment, with whatever the
9 units are in the paper, then here the survival in
10 his paper is much more suffering by the
11 irradiation, which means much more -- less cells
12 can survive.

13 Q Okay.

14 A Okay.

15 Q Do you have a recollection of discussing your
16 June 21 experiment with Dr. Bishayee?

17 A I don't remember that. Sorry.

18 Q Any recollections of discussion with Dr. Howell?

19 A Again, I don't remember.

20 Q Okay. So, correct me if I'm wrong -- Hold on a
21 second, please.

22 MR. PINCUS: Mark this as Exhibit 19,
23 please.

24 (Exhibit Number 19 was marked.)

25 BY MR. PINCUS:

1 Q Going to show you Exhibit 19. This is an
2 experiment that you performed on or about
3 November 10 or 11, 2000; is that correct?
4 November 10th.

5 A Yes.

6 Q This was a 100 percent experiment also?

7 A Yes, looks like it.

8 Q What exactly is A, what I believe referred to as
9 AI?

10 A AI? They are specific strain of cells we were
11 using to make this assay. They are a Chinese
12 hamster ovary cell line.

13 Q What's the difference, if any, between AI cells
14 and V79 cells?

15 A They're a different cell line.

16 Q Are they closely related?

17 MR. LEONARD: Objection. Form.

18 THE WITNESS: I don't remember if V79

19 are from hamsters or from -- There is one

20 difference between them, because AI cells, they

21 are very specific kind of cell line which was

22 designed by other people to measure some effects

23 which might be related to human beings, because

24 they have one human chromosome, although they are

25 from Chinese hamster ovary. The other one are not

1 the human cell line at all.

2 BY MR. PINCUS:

3 Q When you used these cells, was it your expectation
4 that they would have radiobiological properties
5 similar to the V79 cells?

6 A I don't know, because I never used those cells
7 before for that particular kind of experiment.

8 So, why we picked up those cells was because of
9 the feature of the cells. You might be able to
10 use them to assay something relating to
11 mutagenicity. Because I was familiar with the
12 system, because I used to work with that system
13 before.

14 Q Okay.

15 A That was just -- And also there was another reason
16 why we picked up that cell, because those cells,
17 they have characteristic that you may have some
18 subline which are resistant for different
19 antibiotics. So, it's just an advantage of the
20 cells if you want to use them to assay
21 mutagenicity to using that bystander effect.

22 Q But these were still bystander-related
23 experiments, correct?

24 A It was related. I mean, that was not clearly
25 bystander effect, because of 100 percent labeling,

1 but we have to find out first what is the response
2 after 100 percent labeling, and then go farther to
3 the next step.

4 Q Let's look at these, if we could, please. First
5 of all, would you confirm for me that the
6 paperwork that comprises this exhibit represents
7 the documentation, entire documentation associated
8 with the performing of this experiment on
9 November 10, 2000?

10 A Yes, I believe that this is it.

11 Q If we go to, I believe, Page 877. Tell me --

12 A Wait, wait, wait.

13 Q Am I on the right page?

14 A For that survival? '981.

15 Q Oh, I'm sorry, 19981.

16 A Okay.

17 Q Okay. What does this tell you insofar as -- So,
18 the B019981, correct?

19 A Are you referring to -- Yes.

20 Q Okay. What does this tell you, this experiment
21 tell you in terms of survival? In other words,
22 was there a biphasic result or was it a decline of
23 an exponential nature?

24 A This is not clear. This is not clear experiment.
25 If everything is related to that which is named by

1 "Corrected" that means that you some scatter of
2 the data, because there is no consistency between
3 the irradiation and survival, because some points
4 are over 1, which means that it's something you
5 cannot expect if you will irradiate those cells.
6 So, I will not pay very much attention for this
7 data.

8 But technically over the dose you have
9 no real evidence of dose effect. Because between
10 the doses which are down to 1, again, those are
11 flat, which means that -- The simple explanation
12 of all of this experiment would be that if you
13 have any kind of dose effect then the points
14 versus unit of radiation will be down.

15 Now, most of the time they are not very
16 down, they are rather on the flat, which means
17 that, again -- If you can keep this one, this
18 part, which you cannot, because this is the
19 results. So, but, again --

20 Q You're pointing to the square that's --

21 A Which are above 1.

22 Q Above 1. Okay.

23 A But even if you can consider what you have here it
24 looks like --

25 Q It's below the line 1?

1 A -- between the dose, which is starting from
2 somewhere probably like .25 up to a little bit
3 more than .5, there is not very much difference
4 between the survival, for the survival of this.

5 Q Okay I'll take that back. Put that in your file,
6 please.

7 (Exhibit Number 20 was marked.)

8 BY MR. PINCUS:

9 Q I'm going to show you what I've marked as
10 Lenarczyk 20, please. Would I be correct that
11 this is related to an experiment that you
12 performed on November 28, 2000?

13 A Yes.

14 Q And this was another AI 100 percent experiment,
15 correct?

16 A Yes.

17 Q Okay. And insofar as the survival, what did your
18 experiment show?

19 A I think we are referring to the first page, which
20 is '980.

21 Q I believe so. You tell me if we're referring to
22 something else though.

23 A Yes. It looks like you can get some effect of
24 survival for up to something close to 1 unit, and
25 then later on the effect is flat. So, there's not

1 very much difference of survival. So, if you
2 would expect any kind of difference, the
3 difference is -- So, it means that the cells are
4 killing by irradiation up to whatever is close to
5 1, and then later on there is not this effect.

6 MR. PINCUS: I'm sorry, could you repeat
7 back what he just said?

8 (Last answer read.)

9 BY MR. PINCUS:

10 Q How does this chart, if you would, compare to the
11 one that is on the Page 71, if you would, please.

12 MR. LEONARD: Objection. Form.

13 BY MR. PINCUS:

14 Q No, no, no. What is the difference of --

15 A This one that you gave me?

16 Q Yes. On '871. Are you with me?

17 A Yes.

18 Q You're on '872, I believe.

19 A Sorry.

20 Q What is this chart on the upper right-hand
21 portion?

22 A It looks like this is kind of survival for cells.

23 Q What's the difference between the data that's
24 represented there as compared to the page that we
25 looked at, the 19980 one?

1 A I don't know.

2 Q Did somebody draw in, to your knowledge, anything
3 on this separate and apart from what was
4 represented?

5 A It looks like there's some draw made on this one.

6 Q "This one" being the B019980?

7 A Here there is no -- the quality is like -- I mean,
8 I don't --

9 Q In the terms of your explanation of survival, if
10 you use this chart on the '871 page, what does
11 that tell us?

12 A I think it's very similar, because you have a
13 little bit down and then there's no effect. This
14 is like here and no effect.

15 Q So, there is a little bit, and then it goes with
16 what? I didn't understand what you said.

17 A You have a little bit effect of survival up to 1,
18 and then, again, after higher dose you might
19 expect something down again, but this is not going
20 down.

21 Q It's not happening?

22 A It's not happening.

23 Q Okay. Thank you.

24 MR. PINCUS: This will be 21, please.

25 (Exhibit Number 21 was marked.)

1 BY MR. PINCUS:

2 Q I'm going to show you what we've marked as
3 Lenarczyk Exhibit 21, please. This appears to be
4 the documentation associated with an experiment
5 that you performed on February 19, 2001, correct?

6 A Yes.

7 Q This is, again, an AI 100 percent experiment?

8 A This is AI. I think that this is 100 percent,
9 right?

10 Q Is that correct?

11 A Yes.

12 Q Okay. And insofar as survival, what did your
13 experiment show?

14 A It's very similar like before.

15 Q Describe it, please.

16 A Which means that you can get some effect of
17 survival up to something close to 1.25, and then
18 when you can expect something going down versus
19 the dose there's no effect.

20 Q So, your expectation and what the results were two
21 different things, correct?

22 MR. LEONARD: Objection to form.

23 THE WITNESS: No, my expectation was not
24 like that. My expectation -- What I'm trying to
25 explain to you is that if you would expect that

1 this is the linear response as a function of dose
2 of irradiation, then going up with the dose the
3 points which are reflecting your survival will be
4 down, not flat.

5 BY MR. PINCUS:

6 Q Okay. And yours were coming out flat?

7 A Right. I mean, from this picture you can say like
8 that, because all of the points, which are
9 representing the cells, which they were irradiated
10 with higher dose, is not necessarily showing you
11 any kind of effect of survival, because the
12 survival is still at the same level.

13 Q Is another way of referring to that called
14 biphasic?

15 A You may say like that, because this is like one
16 phase here when you can expect something up to a
17 certain level of irradiation, and then when you
18 can reach that point later on, doesn't matter what
19 is the irradiation, at least for this scale, which
20 we have here, there is no effect. So, you have
21 like biphasic.

22 Q And so we're clear, when you were just describing
23 this you were referring to the document that is
24 Bates stamped '864, correct, in the upper
25 right-hand chart?

1 A Oh, I'm sorry. Yes, '864. This is the page of
2 '864 for document which is 21.

3 Q So, it would appear that insofar as these AI
4 experiments that you performed -- and I think we
5 looked at three of them --

6 A Right.

7 Q -- and your results were, to use your words,
8 biphasic.

9 A Yes.

10 Q Okay. And then we looked at some 100 percent
11 experiments that you had performed using the V79
12 cell line, and your results insofar as survival --

13 A It's not very much different.

14 Q In the sense that they are showing the same type
15 of biphasic result, correct?

16 A Yes.

17 Q And then as compared to the results that
18 Dr. Bishayee had reported in that paper, he was
19 showing the decline that you had described in
20 terms of comparatives, that with the increased
21 dosage one would expect to see the more
22 significant decline in survival --

23 MR. LEONARD: Objection. Form.

24 BY MR. PINCUS:

25 Q -- if I understand you correctly, correct?

1 A Yes, but you have to be careful, because they were
2 using much higher doses than I used. Okay? And
3 because of the scale of this picture you really
4 don't know what what's going on in this range of
5 doses which are between zero up to 2.

6 Q When you said earlier in your testimony today that
7 when you were doing these kinds of experiments you
8 found that your results were very much different
9 than the ones that Dr. Bishayee was performing,
10 and/or which had been done in the lab prior to
11 your arrival, you were referring to these
12 experiments, were you not?

13 MR. LEONARD: Objection to form.

14 BY MR. PINCUS:

15 Q Answer the question, please.

16 A I had to refer for this experiment, because, as I
17 explained before when John asked me, when I came
18 to this lab to do experiments, my experiments,
19 when I was doing my experiments I had to go
20 through the same phase of experiment which was
21 done before.

22 Q And that's what you were doing here, correct?

23 A Right. Because before they were concentrated,
24 which is referring to that paper here, that
25 "Radiation Research, Rapid Communication." They

1 were referring to only survival as an end point.
2 So, they were measuring how much you can kill the
3 cells if you would treat them in that particular
4 environment. When I came they asked me to go a
5 little bit farther with end point to measure the
6 mutagenicity.

7 Q But I'm focusing you solely on the survival aspect
8 of it. And in that sense, if I understood what
9 you've been telling me, insofar as the experiments
10 that we've reviewed, and which you performed, you
11 were showing survival along the biphasic lines
12 that you've described as compared to an
13 exponential decline in survival which Dr. Bishayee
14 had reported, correct?

15 A Yes. Yes. Generally, yes, because I don't have
16 that kind of decline of survival at this range of
17 doses which I apply in my experiment.

18 Q Okay.

19 A His range of doses is much wider.

20 Q Much wider. Okay. And these were the experiments
21 that when Mr. Leonard was questioning you on
22 earlier this morning that you were referring to,
23 correct?

24 MR. LEONARD: Objection to form.

25 BY MR. PINCUS:

1 Q Answer the question, please.

2 A What do you mean?

3 Q When you were being questioned about this area by

4 Mr. Leonard earlier today, these were the

5 experiments that you were making reference to for

6 purposes of responding to his questions; is that

7 correct?

8 MR. LEONARD: Objection to form.

9 THE WITNESS: I think so, because that

10 was the experiment which I did. It's something

11 coming out of my notebook, so --

12 BY MR. PINCUS:

13 Q Now, again, I want to be clear having reviewed

14 these groups of, these various experiments here.

15 Does it refresh your recollection in any fashion

16 as to whether, given the differences in your

17 results as compared to the results that were

18 reported, you know, by Dr. Bishayee, do you have

19 any recollection of discussing those differences

20 with him?

21 MR. LEONARD: Objection. Asked and

22 answered twelve times.

23 THE WITNESS: I don't remember that.

24 BY MR. PINCUS:

25 Q Or Dr. Howell?

1 A I don't remember that.

2 MR. LEONARD: Same objection.

3 MR. PINCUS: Okay. Mark this as 22.

4 (Exhibit Number 22 was marked.)

5 BY MR. PINCUS:

6 Q I'm going to show you what we've marked as Exhibit

7 Lenarczyk 22. And this appears to be a 100

8 percent experiment that looks like Dr. Howell

9 performed on July 16, 2001?

10 A Yes.

11 Q Do you see where I'm referring to?

12 A Yes.

13 Q To your knowledge, were you gone from the lab by

14 that point in time?

15 A I was -- I think that I left in June earlier than

16 that experiment was done.

17 Q I would like you to just take a moment -- Go

18 ahead. I don't mean to interrupt you, sir.

19 A No, no, no, wait a minute. There is something in

20 the paper, in the materials which seems to me

21 that --

22 Q Were you still there?

23 A I think that I left one month before that.

24 Q In June you think you left or was it July of 2001?

25 A I don't remember, but looks like -- I can check

1 this one. I don't remember now.

2 Q It's not that critical. I'm just, you know,
3 curious as to your recollection. But, in any
4 event, this appears to be an experiment that
5 Dr. Howell performed. Do you recognize his
6 writing?

7 A But it looks like there is -- It's probably also
8 my writing.

9 Q Really! What are you looking -- What page are you
10 looking at, if you'll give me a Bates stamp
11 reference in the lower right-hand portion of the
12 document, leading you to believe that you
13 participated in this experiment?

14 A See, like in Page 7438.

15 Q 7438.

16 A Dr. Howell is using number 7 without crossing. If
17 you can see on the title of this.

18 Q Yes, I see. He's not using what I call the
19 European 7, right?

20 A Right. And this is definitely his writing, his
21 handwriting. But in the table the numbers --

22 Q I see.

23 A -- I think that this is my handwriting.

24 Q So, you may have worked on this experiment?

25 A I may have worked on this experiment.

1 Q Okay. Now, do you recall insofar as this
2 experiment is concerned, what does this one tell
3 you in terms of for survival? What page are you
4 looking at?

5 A It reminds me that I started the experiment when I
6 was in the lab, and it was finished when I left
7 the lab.

8 Q Okay.

9 A Is that possible?

10 Q I don't know. I wasn't there.

11 A That's what I'm --

12 Q Do you recall, just for purposes of refreshing
13 your recollection, do you recall ever having, or
14 Dr. Howell ever sending any experiments to you in
15 Poland?

16 A I don't remember that.

17 Q Okay. All right. Now insofar as this, this is a
18 100 percent experiment, correct?

19 A Mm-Mm.

20 Q And let's talk about survival again.

21 A Okay.

22 Q Which page do we look to for purposes of seeing
23 whether there is the biphasic results or the
24 exponential decline or some other result?

25 A Okay. Which is on Page 7456.

1 Q 7456?

2 A Mm-Mm.

3 Q Okay. And you're looking at the upper right-hand
4 chart again?

5 A Right.

6 Q What does this tell you in terms of survival?

7 A It's very similar to that one which you had from
8 the AI cells.

9 Q The ones that you performed?

10 A Right. I mean, it's like if you would consider
11 that there would be a very big difference in terms
12 of as a function of irradiation, then from that
13 point which are referring to the dose close to 1.5
14 up to 4 the response is supposed to be much more
15 steeper down.

16 Q Steeper down, but this appears --

17 A It's not very flat, but it's close to flat,
18 because when you can refer -- Remember, on the
19 left side you have a logarithmic scale. So, it's
20 not like 10, 20 -- this is -- here is like -- What
21 I'm saying these points which are between 1.5 up
22 to 4.

23 Q 4.

24 A 4, almost 4, it's showing you not very much
25 difference in terms of response as a dose.

1 However, you can see some response at the
2 beginning when the cells are irradiated up to,
3 let's say, 1, maybe little bit more. So this,
4 again, looks similar to this biphasic response,
5 that you have a little bit down at the beginning
6 and then the cells are not very much responding.

7 Q So, this appeared to be consistent with the prior
8 experiments which you had performed?

9 A It might be consistent for this AI experiment.

10 Q Okay.

11 A It might be what I said, that maybe I started the
12 experiment, because definitely some papers here,
13 like this one, is definitely my handwriting.

14 Q Which when you're saying "this paper" --

15 A 445.

16 Q 44 --

17 A '5.

18 Q Hold on one second, please. So, 445 is your
19 handwriting?

20 A Right. Then down is writing by Roger.

21 Q All the way at the bottom?

22 A Right.

23 Q Where it says "Need 250 milliliters"?

24 A So, it might be that we started the experiment
25 together or -- I don't know, because it looks like

1 later on -- Because the experiment was started on

2 16th as it's marked on the first page on 434.

3 Q Got you.

4 A And then when you will go down then you will see

5 that, for example, in the table, which is on 437

6 is July 20, which is three days or four days

7 after, and this is probably my handwriting. And

8 then next one is --

9 Q You're judging that on the European 7s again,

10 correct?

11 A Even not like that. See, when you would go to

12 Page 438 there is some text, which is on the top,

13 which is just a title of that one. And if you can

14 compare that lettering with that one which is down

15 are completely different. This is probably done

16 in my writing, and this is Roger Howell's writing.

17 Q Fair enough.

18 A That's another one. Now, the results here --

19 Q The results when you say "here," what are you

20 referring to?

21 A The results, which they are in Table 3 on Page 440

22 looks like they were put in the table by Roger.

23 This is definitely Roger's hand. That's my guess.

24 Okay? I will make a 7 with a cross. And also

25 that text is very similar in terms of characters

1 that he was using in the previous page.

2 Q You recognize that as his handwriting?

3 A Correct. I mean -- Now, another one is also his
4 writing, I believe.

5 Q Okay. But I understand. And I appreciate that.

6 I was curious in terms of the survival as I've
7 been asking you about these experiments. Let's
8 move on.

9 A Definitely both of us were working on the same,
10 okay, for whatever reason was happening, because
11 there are two different handwritings.

12 BY MR. PINCUS:

13 Q Well, if you were working on that experiment
14 together, and you saw this biphasic, you know,
15 result, did he mention to you that this appeared
16 in any way, shape or form to be different than the
17 results that Dr. Bishayee had reported?

18 MR. LEONARD: Objection. Form.

19 THE WITNESS: I don't remember that.

20 Sorry.

21 MR. PINCUS: Okay. If you would be so
22 kind, would you, please, mark this as 23.

23 (Exhibit Number 23 was marked.)

24 MR. PINCUS: Thank you.

25 BY MR. PINCUS:

1 Q I'm going to show you what we've marked as Exhibit
2 Lenarczyk 23, please. This appears to be a 100
3 percent experiment that was performed by
4 Dr. Howell on or about September 27, 2001. Now,
5 at this point in time --

6 A I was in Poland.

7 Q You were in Poland. You're certain of that?

8 A Right, I'm certain about that.

9 Q Do you have a recollection of Dr. Howell sending
10 you a copy of this experiment or in any manner
11 communicating to you the results of this
12 experiment?

13 A I don't remember.

14 Q Okay. In any event, let's talk about the survival
15 element. And where are you looking to respond to
16 my question? Can you identify the page number,
17 please, please.

18 MR. LEONARD: Objection to form. What's
19 the question?

20 MR. PINCUS: Never mind.

21 BY MR. PINCUS:

22 Q Look at 7485, the next-to-last page. What were
23 the results of the survival in this experiment?

24 MR. LEONARD: Again, I just want to put
25 an objection on the record that at this point

1 you're having him look at Howell's experiments,
2 which he has no firsthand knowledge at all, and
3 asking him to interpret results of, you know,
4 experiments that he didn't participate in, nor
5 apparently had any knowledge of, and so being
6 handed 20-some pages of documents.

7 MR. PINCUS: I understand your
8 objection.

9 BY MR. PINCUS:

10 Q I'm calling your attention to the Page B007485
11 there is a chart regarding survival, is there not,
12 Dr. Lenarczyk?

13 A Yes, there is a chart of survival.

14 Q Okay. And based on your understanding of these
15 types of experiments, as you've described during
16 the course of your testimony, what were the
17 results of the survivals that Dr. Howell
18 represents in this chart associated with the
19 September 27, 2001, experiment?

20 MR. LEONARD: Objection to form.

21 THE WITNESS: If you will compare this
22 chart with the picture which is in the published
23 paper there is not very much consistency between
24 the data.

25 BY MR. PINCUS:

1 Q In what way is there a lack of consistency?

2 A Because you have a dose from 5 to 20, and then you
3 have here the dose from zero to 10. Now, here you
4 have a survival going down by 3 log phase.

5 Q You're referring to the Bishayee paper?

6 A Right. Here is still in the same log phase --

7 Q You're referring now to --

8 A -- which means --

9 Q Hold on one second. Now you're referring to
10 Dr. Howell's experiment?

11 A Because if you will just transfer this data and
12 try to make one picture that data here will be
13 like this.

14 Q Again --

15 A Because this what you got.

16 Q Okay. Hold on a second. I have to describe what
17 you said. And you correct me if I'm wrong.

18 A Okay.

19 Q The data that is represented in the chart in
20 Dr. Howell's September 27, 2001 experiment you
21 identified as being representative of one log
22 phase, correct?

23 A Yes.

24 Q As compared to the chart in Figure 1 of Lenarczyk
25 12, the Lenarczyk paper, you indicated that chart

1 represents 3 log phases, correct?

2 A Yes, it looks like.

3 Q And then, as you said, if you transferred the
4 results from Dr. Howell's paper into the chart in
5 the Bishayee paper one would see a much steeper
6 decline, at least you used your pen to describe
7 that, isn't that so?

8 A Yes, I would expect that, because, see, he applied
9 the doses like 10, whatever units is here, and he
10 still has survival in one log phase. Once in the
11 paper for 10 he's down to third log phase, which
12 is a big, big difference in the magnitude, because
13 this is the log phase.

14 Q Okay.

15 A A log scale. Sorry.

16 Q So, the Howell experiment -- again, using the
17 nomenclature that we've been utilizing here during
18 the course of your testimony -- shows a biphasic
19 survival, right? Is that so, or no? Or
20 plateauing?

21 MR. LEONARD: Objection to form.

22 BY MR. PINCUS:

23 Q Describe it for me, please, by way of shape.

24 A You may say like that, because --

25 Q Like what?

1 A Like biphasic response.

2 Q Okay. As compared to the Bishayee paper?

3 A Which is clearly not biphasic, which is like a
4 normal linear regression decline.

5 Q Is it fair for me if I use the phrase an
6 exponential decline? Is that an accurate
7 representation?

8 A Yes.

9 Q Thank you. So, if I do the math correctly, it
10 seems that we've reviewed some nine 100 percent
11 experiments using Chinese hamster cells that were
12 performed by either yourself or Dr. Howell between
13 October, 2000 and July of 2001, as well as this
14 most recent, or tenth experiment that was
15 performed by Dr. Howell alone in which the
16 survival is biphasic, or tending to flatten out in
17 the first decade, correct?

18 MR. LEONARD: Objection. Are you
19 testifying, Shelly, or are you asking questions?

20 MR. PINCUS: I'm asking him whether he
21 agrees or disagrees with me.

22 BY MR. PINCUS:

23 Q Is what I've described to you consistent with what
24 you've testified to here?

25 MR. LEONARD: As to all --

1 MR. PINCUS: Yeah, as to the experiments

2 that we reviewed.

3 THE WITNESS: I think that you are

4 correct.

5 MR. PINCUS: Thank you.

6 BY MR. PINCUS:

7 Q And, as compared to the results of Dr. Bishayee in

8 the two papers where you described it as an

9 exponential decline, correct?

10 A Yes.

11 Q Based on your involvement in these experiments,

12 how do you explain the discrepancy?

13 MR. LEONARD: Objection. Form.

14 BY MR. PINCUS:

15 Q If you can.

16 A I have no any idea why.

17 Q How did Dr. Howell explain these discrepancies to

18 you, if at all?

19 MR. LEONARD: Objection. Asked and

20 answered about 47 times at this point.

21 THE WITNESS: I don't remember if we

22 were talking about this data with Dr. Howell.

23 BY MR. PINCUS:

24 Q By the time you were interviewed by the Campus

25 Committee On Scientific Misconduct -- I'm sorry --

1 the Campus Committee On Scientific Integrity in or
2 about April of 2001, you knew of these
3 experiments, correct?

4 A Except of this. That was --

5 Q Except this last one.

6 A -- when I left.

7 Q And you knew that his results could not be
8 replicated, correct?

9 MR. LEONARD: Objection to form.

10 THE WITNESS: Yes, because we cannot
11 replicate these results.

12 BY MR. PINCUS:

13 Q Did you report these -- Did you report these
14 discrepancies or results to the committee?

15 A I believe that I did.

16 Q What do you recall telling them in that respect?

17 A I said I believe I did, because they asked me
18 exactly very similar -- I mean, they asked me very
19 similar question as both of you asking me now.
20 They just asked me describe the nature of this
21 experiment, what you get out of your experiment,
22 what is the difference. So, I went through,
23 probably through the whole same protocol, except
24 for this experiment, because that was not done at
25 that time.

1 Q Is it your recollection that the committee
2 reviewed with you each of the experiments that you
3 and I have discussed here today, but for the last
4 exhibit that we just looked at, which was
5 Lenarczyk 23?

6 A I don't remember that. Okay? What I can say to
7 you, one time after that they asked me to send
8 them the notebook, because of next investigation
9 at UMDNJ, which at that time when I was in
10 Colorado I think that I sent them that notebook,
11 which they make a copy of that. And then -- But
12 that was after the investigation. So, I don't
13 recollect, and I don't remember if they showed me
14 all of this data as you showed me now at that time
15 when I was investigating, or we were investigating
16 it in UMDNJ. I don't remember.

17 Q So we're clear, are you telling me, if I
18 understand you correctly, you're saying that you
19 don't recall whether during the course of the
20 first committee's investigation that they reviewed
21 with you each of the various experiments that I
22 have reviewed with you here today?

23 A I don't remember that.

24 Q But you also --

25 A But I also indicated that some of the people that

1 were in the committee maybe weren't the same
2 people the first time as the second time. They
3 are supposed to know about this experiment.
4 Because at least for the second time when I send
5 them the notebook, my notebook, they made a copy
6 of that. So, they are supposed to have all of
7 this data, which you are referring now, except of
8 this data which are coming from experiment which
9 were done by Roger Howell when I left from UMDNJ.

10 Q So you recall that there came a point in time when
11 the second committee was constituted, that a
12 request was made of you to supply your lab
13 notebook?

14 A Yes, which I did that, and which is in one of the
15 letters which I showed you.

16 Q Okay. But notwithstanding the fact that you
17 provided the second committee your lab notebook,
18 am I correct that you were not interviewed a
19 second time by the committee?

20 A No, because I was out of the university at that
21 time.

22 Q So, during the course of the second committee
23 investigation, at which point in time you had
24 provided your lab notebook to them containing
25 these experiments that we've reviewed here, you

1 were not contacted for purposes of reviewing each
2 and every one of the experiments?

3 A No. I got a letter from somebody from UMDNJ that
4 they would like me to cooperate and to provide
5 them all of the original notebook. Because when I
6 left I made a copy of the notebook. So, I think
7 that Roger Howell already had that copy, and he
8 has that copy even it now. The committee asked me
9 to send them the original copy, which I did at
10 that time when I was in Colorado. But I never
11 went from Colorado to visit somebody in New Jersey
12 at that time.

13 Q And you don't have a firm recollection sitting
14 here today during the course of the first
15 committee when you were interviewed by them of
16 reviewing each and every one of these experiments?

17 A I don't remember that. I'm sorry.

18 Q That's okay.

19 A I'm so far from here.

20 Q I appreciate you going through that sequence
21 again, and I just wanted to be certain.

22 (Exhibit Number 24 was marked.)

23 BY MR. PINCUS:

24 Q Now, going to show you what we've marked as
25 Lenarczyk 24. Have you ever seen this document

1 before?

2 A Again, I don't remember. It might be in that

3 letter --

4 Q Okay.

5 A -- that you send me. I don't remember.

6 Q Take a quick look. Doesn't appear to be. My

7 question to you is, do you recall whether the

8 first committee ever gave you the opportunity to

9 look over this document?

10 MR. LEONARD: Objection. Foundation.

11 Did they have this document?

12 MR. PINCUS: I believe you'll find that

13 it is part of the documentation comprising the

14 first committee, John.

15 MR. LEONARD: Is this another missive

16 created by your client?

17 MR. PINCUS: It's a document that isn't

18 a missive, but a log of activities that she has

19 personal knowledge of.

20 BY MR. PINCUS:

21 Q So, my question to you is, do you recall whether

22 the committee shared this document with you or

23 gave you the opportunity to review it?

24 A I don't remember. There's a lot I don't remember,

25 because it was so, so far away from today.

1 Q Do you have any recollection of Dr. Hill providing
2 you this document?

3 A I don't remember that.

4 Q Okay.

5 A Maybe yes, maybe no. I don't remember.

6 Q All right. Put that on the pile.

7 MR. PINCUS: Let's take a five-minute
8 break, if we could.

9 (Recess taken.)

10 MR. PINCUS: Would you mark that as
11 Exhibit Number 25, please.

12 (Exhibit Number 25 was marked.)

13 BY MR. PINCUS:

14 Q Dr. Lenarczyk, I'm going to show you what I've
15 marked as Exhibit Number Lenarczyk 25. Now,
16 correct me if I'm wrong, but this appears to be an
17 experiment which you performed on December 26th of
18 2000, and this is using V79 cells, correct?

19 A Yes.

20 Q And this is what we've made reference to during
21 the course of your examination as a 50 percent
22 experiment, correct?

23 A Yes, it's showing here by "Fraction Of Cells
24 Labeled" .5 on the first page.

25 Q Where are you referring to?

1 A Over here.

2 Q Got you. "Fraction Of Cells." So, that's
3 50 percent. Now, just so we're clear again,
4 describe for me the difference between a
5 50 percent experiment and a 100 percent
6 experiment.

7 A If I'm correct, 100 percent experiment means that
8 all of the cells were irradiated or labeled with
9 radionuclide. 50 percent experiment means that
10 only half of the cells were irradiated, and mixed
11 with similar half of cells which they were not
12 irradiated, to put them together to get 100
13 percent.

14 Q Okay.

15 A So, if you can compare 100 with 50 percent, in 100
16 each single cell was irradiated, and 50 percent
17 only -- 50 percent of the cells were irradiated.

18 Q Okay. Now, to your knowledge, are the documents
19 that are marked as part of this exhibit, represent
20 the documentation associated with your experiment
21 on December 26, 2000?

22 A It looks like, yes.

23 Q Let us, if you will, again, deal with the issue of
24 survival.

25 A Page 900.

1 Q Okay.

2 A All right. Which one do you want me to check?

3 There are two of them. One is 901, one is 900.

4 Q Well, what's the difference between the one on 900
5 and the one on 901? Can you explain that to me?

6 A I don't know. Oh, okay. I think that the
7 difference is that in the 901, everything, all of
8 this results are compact, because the scale for
9 uptake is up to 40.

10 Q I see.

11 A The ones in 901, it's like the scale is only for
12 10, which means that you have a better picture of
13 something over the dose. They're essentially the
14 same results.

15 Q And insofar as survival what did this signify to
16 you?

17 MR. LEONARD: Objection to form.

18 THE WITNESS: It looks like there's not
19 very much based on bystander effect. There's not
20 very much bystander effect, I think.

21 BY MR. PINCUS:

22 Q So, now with these 50 percent experiments now, are
23 you telling me that we're measuring the bystander
24 effect?

25 A Yes.

1 Q Okay. And if I understood you correctly, that
2 insofar as this experiment the results that you
3 obtained did not show much of a bystander effect;
4 is that correct?

5 MR. LEONARD: Objection. Form.

6 MR. PINCUS: Got you.

7 THE WITNESS: Let's see.

8 BY MR. PINCUS:

9 Q Let me ask -- I'm sorry, go ahead and answer the
10 question.

11 A It looks likes there's no bystander effect, I
12 think.

13 Q So, is it fair to say that based on this
14 experiment you were unable to confirm
15 Dr. Bishayee's results about a bystander effect as
16 he had reported in the "Radiation Research" paper?

17 MR. LEONARD: Objection to form.

18 THE WITNESS: You might say like that.

19 BY MR. PINCUS:

20 Q Do you say like that?

21 A Yes.

22 Q When you performed this experiment, did you
23 discuss the result with Dr. Howell?

24 MR. LEONARD: Objection. Asked and
25 answered.

1 THE WITNESS: I don't see how I asked
2 the question before. It was a completely
3 different line of experiments.

4 MR. LEONARD: He said he's never, during
5 my examination, he said he never talked to Howell
6 about any of this.

7 THE WITNESS: I don't remember that.

8 MR. PINCUS: Okay.

9 BY MR. PINCUS:

10 Q Did you discuss the results of this experiment
11 with Dr. Bishayee?

12 A Again, I don't remember that.

13 Q Do you recall at any time being presented with any
14 kind of plan for checking what appeared to be
15 discrepant results that you obtained as compared
16 to Dr. Bishayee's?

17 MR. LEONARD: Objection to form.

18 THE WITNESS: I don't understand exactly
19 what you're asking me.

20 BY MR. PINCUS:

21 Q Do you recall at any time anyone providing you a
22 plan for double-checking or rechecking the
23 discrepancies between your results and those which
24 had been reported by Dr. Bishayee?

25 MR. LEONARD: Objection to form. He

1 said it the same exact way.

2 THE WITNESS: I don't remember that.

3 MR. PINCUS: Okay. This will be 26,
4 please.

5 (Exhibit Number 26 was marked.)

6 BY MR. PINCUS:

7 Q All right, Dr. Bishayee, I show you -- I'm sorry,
8 Dr. Lenarczyk. I apologize. I show you what I've
9 marked as Exhibit Lenarczyk 26. And this appears
10 to be the documentation associated with another
11 50 percent experiment that you performed on
12 January 15, 2001; is that correct?

13 A Yes.

14 Q This documentation appears to be associated with
15 that experiment?

16 A Yes.

17 Q Okay. And insofar as bystander effect, what did
18 your experiment show?

19 A Maybe we can make one comparison for all of this,
20 because this is like very similar. If you can
21 take this paper which was -- This is Document 11.
22 Okay?

23 Q Hold on one second. You're on Page 91?

24 A Right. And there is picture showing --

25 Q You're looking at Figure 3?

- 1 A Figure 3 on the right side. No, this is Figure 2.
- 2 Q Figure 3.
- 3 A If you will see what's going on on that figure
4 with the cells.
- 5 Q You're looking at which of the lines?
- 6 A These are cells which they supposed to be marked
7 as 50 percent, which by the legend is referring to
8 some circle --
- 9 Q The dark circle, or an open circle, or clear
10 circle, correct?
- 11 A Correct. Okay. Now, that means that we are
12 looking for that exponential decline above of
13 something which is, from that dose, which is
14 probably close to, I would say, maybe 2, maybe 3,
15 maybe 1. It's probably close to -- 2, 4, 5 --
16 it's probably -- But the point is that they are
17 using the activity which is up to 60 units. Here
18 I put everything in the same --
- 19 Q Okay.
- 20 A -- up to 60 units.
- 21 Q So, your representation of the becquerels on the
22 lower, on the horizontal axis, is the same as
23 depicted in Figure 3 of the Bishayee article,
24 correct?
- 25 A Just for convenience. Okay?

1 Q I'm with you.

2 A Because you have the same scale, the same size of
3 the scale. Now, if you would look at whatever the
4 points are representing, the points are not going
5 below of 1 log scale.

6 Q You're referring, however, to your experiment?

7 A To my experiment. In my experiment you can see
8 something which -- Okay. You may discuss if that
9 is big difference versus dose. It would be big if
10 you would have like this.

11 Q "This" meaning, again, your signifying using your
12 pen --

13 A Right.

14 Q -- a line that would be going from the left, the
15 vertical axis all the way down to the lower
16 right-hand corner of the page?

17 A For the 30 units of that irradiation in the paper
18 they are going down to something which is on the
19 second log phase.

20 At the 30 I'm barely seeing any effects,
21 because that effect is somewhere between probably
22 80, 90 percent for the same dose. Plus the
23 pattern of that effect is flat. Which means I
24 have not very much difference between the effect
25 versus the dose once they have this one in that

1 paper.

2 Q So --

3 A And this paper is referring probably to experiment
4 which was done similarly, because they use also
5 50.

6 Now, I don't know exactly what they did,
7 because this paper was done not by me, but I think
8 Doctor -- No, even -- So, but assuming that
9 50 percent experiment is showing the whole idea
10 what 50 percent means, then you would expect that
11 if you have a bystander effect, that all of the
12 these 50 percent cells that were not irradiated in
13 this population, which was mixed with 50 percent
14 irradiated cells, if they would be harmed by
15 whatever magic signal coming out of the dying
16 cells, then the survival will reflect that. Means
17 that by the dose, as a function of dose, the
18 survival will decline. If they will decline
19 steeper or less steep, that's the question. But
20 in my experiment there is almost like no end
21 indication that you have a difference between
22 survival up to 30. In their experiment 30 is
23 giving you by the regression line something which
24 is in the second log phase --

25 Q Okay.

1 A -- which is very big difference.

2 Q Okay. Thank you.

3 MR. PINCUS: This will be 27, please.

4 (Exhibit Number 27 was marked.)

5 BY MR. PINCUS:

6 Q All right, Dr. Lenarczyk, do you have before you

7 now as Exhibit Lenarczyk 27 is another 50 percent

8 experiment apparently you performed on February 5,

9 2001; is that correct?

10 A Yes.

11 Q These are the documents associated with those

12 experiments -- that experiment?

13 A Yes.

14 Q Now, if you would, walk us through as you did with

15 the prior exhibit insofar as what you showed or

16 what you determined in terms of the presence or

17 lack of the presence of the bystander effect.

18 MR. LEONARD: Objection. Lacks

19 foundation.

20 THE WITNESS: By definition, the

21 bystander effect is the situation when if you

22 would measure the fraction of survival of dead

23 cells, which they were not irradiated, they're

24 supposed to be related for the amount of the

25 cells. Which means that if you have 50 percent of

1 cells, which they were not irradiated, then your
2 survival will be 50 percent, because only dead
3 cells are going to give you that cells which can
4 form colonies which you can count on as the
5 survivors.

6 If you would have bystander effect, when
7 the situation is like what you are mixing, the
8 amount of irradiated cells with irradiated cells,
9 you would expect that the irradiated cells because
10 of the dose at, a certain level, they will be
11 killed, all of them, because of the irradiation.

12 By the process of killing you will expect that
13 these cells, which they were not irradiated, but
14 they were mixed with dead irradiation cells, will
15 feel the effect of dying of dead cells and showing
16 you lower survival than you will count if that
17 will not happen. So, that's why in that paper --

18 BY MR. PINCUS:

19 Q "That paper" referring to the "Radiation Research"
20 paper?

21 A This is clearly shown because this is what you
22 will expect. Okay? Because if you will mix
23 50 percent of the cells with another 50 percent
24 which they were irradiated, then you will never go
25 for the survival below 50 percent if something has

1 not happened. If something is happening then that
2 means that these cells, which they were not
3 irradiated, they got some message which was
4 transferred from the dying cells, and as a result
5 of that they will die also, so their population
6 will be lower. That's why your survival will show
7 that, because that survival will be not
8 50 percent, but, for example, like in the paper,
9 depends on the dose.

10 Q Okay. So, compared to the paper what did your
11 experiment show?

12 A This is exactly the same comparison as we, the
13 same way before. It's exactly the same. I cannot
14 see based bystander effect in my results.

15 MR. PINCUS: Thank you. This will be
16 28, please.

17 (Exhibit Number 28 was marked.)

18 BY MR. PINCUS:

19 Q Dr. Lenarczyk, I'm showing you Exhibit Lenarczyk
20 28. This appears to be another 50 percent
21 experiment which you performed on June 14, 2001;
22 is that correct?

23 A Yes.

24 Q And does the documents which comprise this exhibit
25 appear to be the documentation associated with

1 this experiment?

2 A Yes.

3 MR. LEONARD: Shelly, does it move it
4 along at all -- I mean, I think we all agree that
5 it hasn't been replicated in that lab. I don't
6 know if we need to sit and go through every
7 single --

8 MR. PINCUS: I'm almost -- I'm going to
9 go through these. I'm sorry. It's very boring to
10 us. Okay.

11 MR. LEONARD: You're coming to the same
12 conclusion, it's not replicated. I mean, we're
13 willing to stip to that.

14 MR. PINCUS: Well, let me then at least
15 have him identify the exhibits and just confirm
16 with him whether or not he did not show a
17 bystander effect. Okay? I just want to
18 authenticate them.

19 MR. LEONARD: Yes.

20 MR. PINCUS: That's fair. If you're
21 stipulating, if you're prepared to stipulate that
22 he did not show the bystander effect, that's
23 satisfactory to me. He said that this morning.

24 MR. LEONARD: He said that this morning.

25 MR. PINCUS: Okay. Then let's go

1 through it this way. I'll see if we can

2 short-circuit it.

3 THE WITNESS: I mean, so far all of the
4 results having this 50 percent experiment are very
5 similar, at least what I did, and that I will
6 compare what I did with the results which were
7 published.

8 BY MR. PINCUS:

9 Q I'll short-circuit it. This is an experiment that
10 you performed on June 14, 2001, correct?

11 A Yes.

12 Q Okay. And you did not find the bystander effect?

13 A No, I didn't.

14 MR. PINCUS: This will be 29, please.

15 (Exhibit Number 29 was marked.)

16 BY MR. PINCUS:

17 Q All right, Dr. Lenarczyk, I show you what I've
18 marked as Lenarczyk 29. Am I correct that this is
19 the documentation associated with the 50 percent
20 experiment that you performed on July 5, 2001?

21 A Yes.

22 Q Am I correct that in performing this experiment
23 you found no bystander effect?

24 A Exactly correct.

25 Q By the way, this appears to indicate that -- Oh,

1 I'm sorry. I want to go back here for a second.

2 Was this an experiment actually that you performed

3 or did you work with anyone else? This seems to

4 indicate that you and Dr. Bishayee worked on this.

5 A Yes, it might be possible that we were working for

6 some part of experiment together.

7 Q At least this would indicate that he had some

8 involvement?

9 A It might be like that, right.

10 Q Okay. But there was no bystander effect?

11 A No, the results are showing no bystander effect.

12 Q And just so we're clear, the results are shown on

13 what is Page --

14 A '822.

15 Q -- '882. Thank you.

16 MR. PINCUS: This will be 30, please.

17 (Exhibit Number 30 was marked.)

18 BY MR. PINCUS:

19 Q Dr. Lenarczyk, showing you what we've marked as

20 Lenarczyk Exhibit 30. This appears to be a

21 50 percent experiment that you performed on

22 November 20, 2000 using AI again, correct?

23 A Yes.

24 Q And these documents represent the documents

25 associated with this experiment?

1 A Yes.

2 Q Am I correct you showed no bystander effect?

3 A Exactly correct.

4 Q And that is represented by the chart on which
5 page?

6 A Page '978, picture upper right, "Survival Versus
7 Cell Uptake."

8 Q Give me that number again?

9 A '978, last three digits. 978.

10 Q Oh, I see, B019978.

11 A Right.

12 Q Got you.

13 A I was referring to the last three digits.

14 Q Okay. No problem.

15 MR. PINCUS: Thank you. This will be

16 31, please.

17 (Exhibit Number 31 was marked.)

18 BY MR. PINCUS:

19 Q All right, Dr. Lenarczyk, I'm showing you what
20 we've marked as Lenarczyk 31. This appears to be
21 another AI 50 percent experiment that you
22 performed on November 28, 2000, correct?

23 A Yes.

24 Q These are the documents associated with that
25 experiment?

1 A Yes.

2 Q Okay. And am I correct that the results of this
3 experiment failed to show any bystander effect?

4 A Yes.

5 Q And that's represented by which page number, Bates
6 stamp number?

7 A Page '852.

8 Q Thank you.

9 MR. LEONARD: Do you want to just
10 stipulate that he's never been able to achieve the
11 bystander effect?

12 MR. PINCUS: I still want him to
13 authenticate these experiments. So, we're getting
14 through them.

15 This will be 32, please.

16 (Exhibit Number 32 was marked.)

17 BY MR. PINCUS:

18 Q Dr. Lenarczyk, I show you what we've marked as
19 Exhibit Number Lenarczyk 32. This is an AI
20 experiment, 50 percent, that you performed on
21 February 15, 2001, correct?

22 A Yes.

23 Q These are the documents associated with that
24 experiment?

25 A Yes.

1 Q And this does not show the bystander effect,

2 correct?

3 A I believe that I can find it, only the picture.

4 Q Okay.

5 A Just to make sure. Yes, this is on Page '692.

6 Q B019692, correct?

7 A Yes.

8 Q Thank you.

9 A Now I will have my notebook.

10 Q There you go.

11 MR. LEONARD: You thought nothing good

12 would come of this to you.

13 THE WITNESS: The best part is I have no

14 paper out of this.

15 MR. PINCUS: This will be 33, please.

16 (Exhibit Number 33 was marked.)

17 BY MR. PINCUS:

18 Q Now, Dr. Lenarczyk, I'm showing you what's been

19 marked as Lenarczyk 33. This is an experiment

20 that was, a 50 percent experiment that appears to

21 have been performed by Dr. Howell on April 12,

22 2001; is that correct?

23 A Yes.

24 Q Did you have any -- Did you do any -- Strike that.

25 Did you participate in any way in this Exhibit --

1 in this experiment? I apologize.

2 A I don't remember that.

3 Q If you would, if you would look at the various
4 pages.

5 MR. LEONARD: I'm going to, just for the
6 record, Shelly, object, again, to asking him to
7 look at documents that he has none of the raw data
8 for --

9 MR. PINCUS: I understand.

10 MR. LEONARD: -- to the extent that
11 you're looking for some sort of expert testimony
12 from him on an experiment he didn't participate in
13 at all.

14 MR. PINCUS: I understand.

15 THE WITNESS: This is exactly -- I mean,
16 I don't remember that. Okay?

17 BY MR. PINCUS:

18 Q This one you don't remember?

19 A I don't know. I don't remember.

20 Q Okay. Do you recall providing a copy of this
21 experiment to Dr. Hill at any time?

22 A I provided her?

23 Q Do you have any recollection of doing so?

24 A I don't remember.

25 Q Okay. Are you able to determine from looking at

1 this whether this experiment showed any kind of
2 bystander effect?

3 A No.

4 MR. LEONARD: Objection. Form.

5 MR. PINCUS: Thank you.

6 BY MR. PINCUS:

7 Q Earlier this morning, based on Mr. Leonard's
8 question, he related to an experiment that you,
9 Dr. Howell and Dr. Azzam performed together. Do
10 you recall your testimony?

11 A Not Dr. Azzam. Dr. Bishayee.

12 Q I recall you indicating that there was a point in
13 time where you were, so-called to use your words,
14 locked.

15 A Right. That was Dr. Howell, Dr. Bishayee and me.
16 Dr. Azzam was just observer of the experiment.

17 Q Okay. Do you recall whether this was the
18 experiment?

19 A This one?

20 MR. LEONARD: Objection.

21 THE WITNESS: I don't remember.

22 BY MR. PINCUS:

23 Q Is there any way, looking at this document, that
24 you could make a determination as to whether that
25 was the experiment you were referring to earlier

1 in your testimony this morning?

2 MR. LEONARD: Objection to form.

3 THE WITNESS: I don't remember that. I

4 cannot make any statement on this.

5 BY MR. PINCUS:

6 Q But I seem to recall it was your testimony that

7 during the course of that experiment that you,

8 Dr. Howell and Dr. Bishayee performed, in the

9 presence of Dr. Azzam, it was a 50 percent

10 experiment, correct?

11 A I believe that.

12 Q And the results of that experiment failed to

13 replicate a bystander effect, correct?

14 MR. LEONARD: Objection to form.

15 BY MR. PINCUS:

16 Q Correct?

17 A Yes.

18 MR. PINCUS: Thank you. This will be

19 34, please.

20 (Exhibit Number 34 was marked.)

21 BY MR. PINCUS:

22 Q Dr. Lenarczyk, I show you what I've marked as

23 Lenarczyk Exhibit Number 34. This appears to be a

24 50 percent experiment performed on April 19, 2001

25 by Dr. Howell; is that correct?

1 A Yes.

2 MR. LEONARD: Objection. Again, he had
3 no firsthand knowledge.

4 MR. PINCUS: Let me ask the question.

5 MR. LEONARD: Well, he has no firsthand
6 knowledge about that question. He doesn't know
7 whether Dr. Howell did this or not. He's just
8 reading a line on a document.

9 BY MR. PINCUS:

10 Q Based on your review of the document, am I correct
11 this appears to be an experiment that was
12 performed by Dr. Howell?

13 MR. LEONARD: Objection. Form.

14 BY MR. PINCUS:

15 Q Is that correct? He's identified as the
16 investigator?

17 A He's not identified here as the investigator by
18 the name of Howell.

19 Q Look at 7390 about five sheets in.

20 A Okay. It looks like this is his hand. Okay?

21 Q Okay. See where I'm referring to?

22 A Yes.

23 Q He's identified as the investigator --

24 A Oh, I see.

25 Q -- on B007390; is that correct?

1 A Mm-Mm.

2 Q Did you have any involvement in this experiment?

3 A I don't remember.

4 Q Looking at this document, if you look at B007395,

5 does that appear to be the chart representing

6 whether a bystander effect was shown or not?

7 MR. LEONARD: I'm going to object. I

8 don't think he's qualified to testify about

9 somebody else's experiments.

10 BY MR. PINCUS:

11 Q You may answer.

12 A Looks like there was no bystander effect.

13 MR. PINCUS: Thank you. This will be

14 35, please.

15 (Exhibit Number 35 was marked.)

16 BY MR. PINCUS:

17 Q Dr. Lenarczyk, I show you what I've marked as

18 Lenarczyk Exhibit 35. Again, this appears to be a

19 50 percent experiment in which Dr. Howell is

20 identified as the investigator that was performed

21 on May 3, 2001, correct?

22 MR. LEONARD: Object. Shelly, he has no

23 firsthand knowledge in the world whether that's

24 correct. He's reading the same thing you're

25 reading. The fact that somebody types it into a

1 document doesn't mean anything.

2 MR. PINCUS: Okay.

3 MR. LEONARD: You should ask --

4 MR. PINCUS: I simply asked --

5 MR. LEONARD: -- Dr. Howell about this.

6 MR. PINCUS: -- is Dr. Howell identified
7 as the investigator on this.

8 THE WITNESS: Yes, he is.

9 BY MR. PINCUS:

10 Q Did you have any involvement in this experiment?

11 A I don't remember.

12 Q Okay. Do you recall sending in the results of
13 this experiment to Dr. Hill?

14 A I don't remember that.

15 Q If you'll look at B007407, based on your
16 experience in these types of experiments, does
17 this show the presence of any bystander effect?

18 MR. LEONARD: Objection. He's not
19 qualified to give an opinion as to somebody else's
20 experiment.

21 MR. PINCUS: Your objection is noted.

22 BY MR. PINCUS:

23 Q Would you answer the question?

24 A By comparison with everything that we showed
25 before there is no bystander effect.

1 Q Thank you.

2 MR. LEONARD: Are the rest of these all
3 Howell's experiments?

4 MR. PINCUS: I think I have one more
5 here. This will be 36, please.

6 (Exhibit Number 36 was marked.)

7 MR. LEONARD: Before you start, I'll get
8 this out. He has no firsthand knowledge of any of
9 these experiments conducted by Roger Howell. He
10 is not qualified as an expert to render an opinion
11 as to what they say, nor does he have any specific
12 knowledge of any of the data that went into these.

13 MR. PINCUS: I understand.

14 MR. LEONARD: I mean, we can go through
15 this exercise of handing him 20 pages at a clip
16 and having him say yes, yes, yes, yes, but it's of
17 no evidentiary value. I don't know why we're
18 wasting our time.

19 MR. PINCUS: I appreciate your
20 objection. It's noted.

21 BY MR. PINCUS:

22 Q I show you, Dr. Lenarczyk, what's been marked as
23 Lenarczyk Exhibit 36. This a document that
24 identifies Dr. Howell as an investigator for an
25 experiment on June 28, 2001. To your knowledge,

1 did you have any involvement in this experiment?

2 A I don't remember.

3 Q Do you recall whether you sent the results of this

4 experiment to Dr. Hill?

5 A I don't remember.

6 Q Based on your experience in performing these types

7 of experiments, did this show the presence of the

8 bystander effect?

9 MR. LEONARD: Objection. He's not

10 qualified to render an opinion, nor does he have

11 any firsthand knowledge of this information.

12 BY MR. PINCUS:

13 Q You may answer.

14 A Like before, it looks like there's no evidence of

15 bystander effect.

16 MR. PINCUS: Will you, please, mark this

17 as 37.

18 (Exhibit Number 37 was marked.)

19 BY MR. PINCUS:

20 Q Dr. Lenarczyk, I'm showing you what I've marked as

21 Lenarczyk Exhibit 37. Am I correct that these are

22 documents associated with an experiment that you

23 performed on April 2, 2001?

24 A Yes.

25 Q Okay. I think earlier in the day at some point in

1 time you referred, you utilized the term

2 "hypoxic." Do you recall?

3 A Yes, we used that term.

4 Q What exactly is that again?

5 A I didn't use the term.

6 Q Oh, you didn't?

7 A John asked me if I'm feeling that I'm expert for

8 hypoxic, and I said, no, I'm not.

9 Q If you look on Page 953?

10 A 953.

11 Q The next-to-last page of the exhibit --

12 A Okay.

13 Q -- the upper chart.

14 A Yes.

15 Q Notwithstanding you don't consider yourself an

16 expert on hypoxia, does this chart represent

17 anything related to hypoxia?

18 A I said I'm not feeling expert of hypoxia, so I

19 don't like to make any comments of that.

20 Q This is your experiment, that's why I'm asking

21 you.

22 A I can tell you what I can see out of this

23 experiment, but not necessarily related to

24 hypoxia.

25 Q Fair enough.

1 MR. PINCUS: Mark that as 38.

2 (Exhibit Number 38 was marked.)

3 BY MR. PINCUS:

4 Q Dr. Lenarczyk, I show you a memorandum dated
5 April 6, 2001 to Dr. Steven Baker from Dr. Howell
6 regarding "Integrity Of Data." Have you ever seen
7 this document before?

8 A I don't remember that.

9 Q Okay. Whether you did or didn't, I'd like to call
10 your attention to certain statements that
11 Dr. Howell makes in the body of this.

12 If you'll look in the first paragraph,
13 approximately a little more than halfway down --

14 A Yes.

15 Q -- there's a statement by Dr. Howell to Dr. Baker.
16 "As I told you this morning, I have requested my
17 post-doctoral fellow, Marek Lenarczyk, repeat some
18 of Dr. Bishayee's experiments as a check of the
19 validity of the data."

20 A I see that.

21 Q Do you recall him making such a request to you?

22 A I don't remember, but it might be possible that he
23 asked me to do something.

24 Q Sitting here today, do you have a recollection of
25 Dr. Howell requesting you to repeat some of

1 Dr. Bishayee's experiments as a check of the
2 validity of Dr. Bishayee's data?

3 MR. LEONARD: Objection.

4 THE WITNESS: I don't remember.

5 BY MR. PINCUS:

6 Q Would I be correct that based on the experiments
7 that we've reviewed here today, that up to that
8 time you'd not been able to replicate
9 Dr. Bishayee's results in the 100 percent
10 experiments using V79 cells?

11 MR. LEONARD: Objection. Lacks
12 foundation.

13 BY MR. PINCUS:

14 Q You may answer.

15 A It looks like I didn't.

16 Q You didn't? Did not?

17 A I did not.

18 Q Okay. And you hadn't been able to replicate
19 Dr. Bishayee's results in any of the 100 percent
20 experiments in which you used the A1 cells,
21 correct?

22 A Yes.

23 MR. LEONARD: Objection.

24 BY MR. PINCUS:

25 Q You had not been able to replicate any of

1 Dr. Bishayee's results in the 50 percent
2 experiments which we reviewed in which you used
3 AI cells, correct?

4 MR. LEONARD: Object to form.

5 BY MR. PINCUS:

6 Q You may answer.

7 A I said that before when we were discussing that.

8 Yes, I didn't.

9 Q To your recollection, aside from Dr. Howell or
10 Dr. Bishayee, did you report your results to
11 Dr. Azzam?

12 MR. LEONARD: Objection. Form.

13 BY MR. PINCUS:

14 Q You may answer.

15 A I don't remember that.

16 Q What about Dr. Toledo, Dr. Azzam's spouse?

17 MR. LEONARD: Objection to form.

18 THE WITNESS: Again, I don't remember
19 that.

20 BY MR. PINCUS:

21 Q To Dr. Baker?

22 MR. LEONARD: Objection to form.

23 THE WITNESS: This one probably not,
24 because I barely met Dr. Baker.

25 BY MR. PINCUS:

1 Q To anyone else inside or outside the lab?

2 MR. LEONARD: Objection. Form.

3 THE WITNESS: We were talking with Lanie
4 about results.

5 BY MR. PINCUS:

6 Q So, you let Dr. Hill know?

7 A The results. So, definitely she knows.

8 MR. PINCUS: 39, please.

9 (Exhibit Number 39 was marked.)

10 BY MR. PINCUS:

11 Q Dr. Lenarczyk, I show you what I've marked as
12 Exhibit Number Lenarczyk 39, which are the minutes
13 of the first committee for its meeting of
14 April 27, 2001. And I would like to call your
15 attention to Page 13, if you would, please. Look
16 at the third paragraph from the bottom.

17 A Yes.

18 Q Have you ever seen these minutes?

19 A Probably not. I don't remember.

20 Q Notwithstanding, did Dr. Howell --

21 A This is the third paragraph from the bottom?

22 Q The third paragraph from the bottom. Did
23 Dr. Howell ever indicate to you that he felt that
24 you had been non-productive in your nine months as
25 a post-doc in his lab?

1 A No.

2 Q Did he indicate to you -- if you look at the
3 paragraph down below, the very next paragraph,
4 that he felt that you had produced no reasonable
5 data and that your position was only guaranteed
6 for one year?

7 A No, I never heard that from him.

8 Q Was it your understanding that Dr. Howell was
9 satisfied with your performance as a post-doc in
10 his laboratory during this time period that we've
11 been reviewing?

12 A He never mentioned this too. I just was working,
13 and that's it.

14 Q Did he express to you in any form, orally or in
15 writing, dissatisfaction with your performance?

16 A I don't remember that.

17 Q Did he at any time, that is Dr. Howell, express
18 displeasure with you because you had been unable
19 to replicate the results that Dr. Bishayee had
20 produced in regards to the bystander effect?

21 MR. LEONARD: Objection. Asked and
22 answered. Go ahead.

23 THE WITNESS: No.

24 MR. PINCUS: This will be 40.

25 (Exhibit Number 40 was marked.)

1 MR. PINCUS: Thank you.

2 BY MR. PINCUS:

3 Q Dr. Lenarczyk, I'm going to show you what's been
4 marked as Lenarczyk Exhibit Number 40. Have you
5 ever seen this document before?

6 A I don't think so.

7 Q Okay. I want to call your attention to certain
8 statements that were made by Dr. Howell and see if
9 you have any knowledge concerning them, please.

10 MR. LEONARD: Before we do that, Shelly,
11 you know, and this is the same thing with this
12 other document. These aren't statements made by
13 Howell, these are notes taken of a conversation.

14 MR. PINCUS: Okay.

15 MR. LEONARD: Even in this, these aren't
16 statements made by Howell, it's somebody writing
17 down after the fact what they perceived to be a
18 conversation. Same with this. In this case it
19 was --

20 MR. PINCUS: You don't believe there's
21 any basis to rely on the accuracy of the
22 committee's minutes in any way, shape or form,
23 John, is that what you're telling me?

24 MR. FLYNN: We've had to represent that
25 on the record in questioning him.

1 MR. LEONARD: The point we're making is
2 that these are minutes, in this case by an unknown
3 individual. I have no idea what the minutes are.

4 And it's not whatsoever, Shelly, it's --
5 you know, these are not quotes. This is not a
6 statement signed by Howell where he says, "I see
7 what you say and I agree with that. I sign it."

8 MR. PINCUS: I'll rephrase the question.
9 I understand the substance of your objection.

10 MR. LEONARD: And the same is true with
11 this document.

12 MR. PINCUS: Okay.

13 BY MR. PINCUS:

14 Q If we go back to the minutes a few minutes ago, I
15 was reading you certain statements that are
16 attributed to Dr. Howell by the author of that
17 document. And notwithstanding that, did you have
18 any knowledge, you know, of him making such
19 statements to you about the quality or lack of
20 quality of your work?

21 A No.

22 Q Okay. Now, insofar as Lenarczyk Exhibit 40, which
23 you have before you, this is a document which I'll
24 represent to you are notes apparently
25 Dr. Putterman may have taken on April 16, 2002,

1 based upon response -- no, questions that she put
2 to Dr. Howell. Okay?

3 A Mm-Mm.

4 Q And I want to ask you some questions about that,
5 please. If you'll look at the second bulleted
6 point --

7 A Okay.

8 Q -- Dr. Putterman reports that Dr. Howell had had
9 discussions with Dr. Bishayee "concerning ill will
10 in the lab and 'uncomfortable working conditions'
11 due to a dispute between Dr. Hill and
12 Dr. Bishayee."

13 Did Dr. Howell ever have any discussions
14 regarding "uncomfortable working conditions" in
15 the laboratory with you?

16 A No.

17 Q Did he have any discussions with you regarding the
18 subject matter of ill will in the lab?

19 A What do you mean "ill will"?

20 Q Well, it says "ill will." Any disagreements. Did
21 he have any discussions with you regarding
22 disagreements that may have existed between
23 Dr. Hill and Dr. Bishayee?

24 A I don't remember.

25 Q Did he ever indicate to you that -- Dr. Howell,

1 that is -- that he had observed any aggressive
2 behavior of Dr. Hill to Dr. Bishayee?

3 A I don't remember that.

4 Q Did you ever personally observe, Dr. Hill, observe
5 an aggressive manner towards Dr. Bishayee?

6 MR. LEONARD: Objection. Form.

7 Can you read that back to me?

8 MR. PINCUS: I'll rephrase the question.

9 BY MR. PINCUS:

10 Q Did you ever observe Dr. Hill behave aggressively
11 towards Dr. Bishayee?

12 A No.

13 Q In the fifth bulleted item there is a reference
14 that says, "No one else in Dr. Howell's lab has
15 repeated these experiments," referring to the
16 bystander effect.

17 A This is fifth?

18 Q I believe -- one, two, three -- Fifth, yes.

19 A Okay.

20 Q The second sentence. Do you see where I'm
21 referring to?

22 A Okay. "No one else." Okay, I see that.

23 Q In fact, based on what we reviewed here today,
24 prior to April 16, 2002 you had attempted to, and
25 had, in fact, repeated the bystander experiments,

1 had you not?

2 MR. LEONARD: Objection to form.

3 MR. PINCUS: I'll rephrase.

4 BY MR. PINCUS:

5 Q Prior to April, 2002 you had repeated the

6 bystander experiments, correct?

7 A *I repeated something which we can call bystander*

8 *effect experiment, but my finding was that I*

9 *couldn't find bystander effect.*

10 Q *In other words, you repeated the experiments, you*

11 *could not replicate the results?*

12 A *Right.*

13 Q Is that fair?

14 A This is fair.

15 Q Thank you. Look all the way down at the bottom of

16 the first page with regards to this issue of

17 repeating the experiments. It indicate -- A

18 comment is attributed to Dr. Howell that says, "He

19 also doubts that Dr. Lenarczyk has the technical

20 expertise to repeat the experiments."

21 Do you believe you had the technical

22 expertise to repeat the bystander experiments?

23 A If I wouldn't, I wouldn't be hired.

24 Q So, you do believe you had the technical

25 expertise?

1 A Yes, I believe I have.

2 MR. PINCUS: 41.

3 (Exhibit Number 41 was marked.)

4 BY MR. PINCUS:

5 Q I'm going to show you what I've marked as

6 Lenarczyk Exhibit 41. Do you recognize this

7 document?

8 A Yes.

9 Q Can you identify what it is, please.

10 A This is the poster of my work which is showing me

11 that I did something. Okay? I was able to do

12 something.

13 MR. LEONARD: Your name appears first.

14 THE WITNESS: Which was accepted by

15 Radiation Research Society at the meeting which, I

16 believe, was happened in Reno, Nevada.

17 BY MR. PINCUS:

18 Q Okay.

19 A And that was probably 2002.

20 Q Now, would I be correct that -- these PowerPoint

21 slides are somewhat small -- but do you recall

22 whether in this presentation you present

23 mutagenesis data from both yours and Dr. Howell's

24 bystander experiments?

25 A I don't remember that. It's not clear on that.

1 Q If you look over to the right-hand column, I
2 believe the middle one; is that correct? If I can
3 help you out to move it along.

4 A Yes, this is the mutagenesis data, right.

5 Q Is there a reason, or is it unusual to present
6 mutations without showing the concomitant survival
7 date?

8 MR. LEONARD: Objection. Form.

9 THE WITNESS: Say that again.

10 BY MR. PINCUS:

11 Q Is it unusual to present mutation data without
12 showing the concomitant survival data?

13 A I wouldn't present that. Okay. I mean, it's
14 supposed -- If you would publish the data for
15 mutagenicity, you have to show survival, because
16 everything is related to the fraction of survived
17 cells. So, without having knowledge what is the
18 survival of the population out of which you are
19 going to measure mutations, then you have no
20 denominator by which you can explain the ratio or
21 whatever number of the mutation.

22 Q Did you show survival data here?

23 MR. LEONARD: When you say "he" you mean
24 he, Dr. Hill and Dr. Howell?

25 MR. PINCUS: No, I believe I meant --

1 MR. LEONARD: Well, this is their
2 presentation. So, there's no foundation that he
3 would get that they had any objection or --

4 MR. PINCUS: I'm getting to that. So,
5 just bear with me a moment. Okay?

6 BY MR. PINCUS:

7 Q Does this show survival data?

8 A What is here? I couldn't see that.

9 Q Looks like kinetics of radioactivity.

10 A Which is not survival.

11 MR. LEONARD: Do you have a color
12 printout there?

13 MR. PINCUS: I have a color --

14 BY MR. PINCUS:

15 Q See if that helps you.

16 A Yes. There is no survival data on that
17 presentation.

18 Q Did Dr. Howell discuss this point with you?

19 A I don't remember that.

20 Q Do you have any recollection as to whether it was
21 his decision not to show survival results from
22 these experiments?

23 MR. LEONARD: Objection. Form.

24 THE WITNESS: I don't know that.

25 MR. PINCUS: Okay. You are done, at

1 least from me.

2 I don't know whether you have any more.

3 MR. LEONARD: I have nothing else.

4 You're done.

5 MR. PINCUS: Dr. Lenarczyk, I'll take

6 all of those. Thank you very much --

7 THE WITNESS: Thank you very much.

8 MR. PINCUS: -- for your patience and

9 your perseverance. And I'm glad that we could

10 accommodate you. And I'm even more glad that we

11 can go home. These are the --

12 MR. FLYNN: Original. That's part of

13 that.

14 MR. PINCUS: Is she taking all of these?

15 MR. FLYNN: Yeah, and we'll get copies

16 back of everything.

17 MR. PINCUS: Let's make sure we have

18 everything for her, okay, before we leave here

19 tonight.

20 (Proceedings concluded at 6:05 p.m.)

21 * * * * *

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25

1 STATE OF WISCONSIN)
) SS:
2 COUNTY OF MILWAUKEE)

3
4
5

6 I, LINDA J. SAARI, a Registered Merit
7 Reporter and Notary Public in and for the State of
8 Wisconsin, do hereby certify that the above deposition
9 of MAREK LENARCZYK, Ph.D. was recorded by me on October
10 28, 2008, and reduced to writing under my personal
11 direction.

12 I further certify that I am not a
13 relative or employee or attorney or counsel of any of
14 the parties, or a relative or employee of such attorney
15 or counsel, or financially interested directly or
16 indirectly in this action.

17 In witness whereof I have hereunder set
18 my hand and affixed my seal of office at Milwaukee,
19 Wisconsin, this 7th day of November, 2008.

20
21

22 _____
Notary Public

23 In and for the State of Wisconsin

24

25 My Commission Expires: November 6, 2011.