

Dear reader,

Since Defendants Emory, Robert Gross, Daniel Barrow and Thomas Lawley have gathered some witnesses around them to defend their cases with sworn affidavits, their efforts should not be let go unnoticed. Also, since they have dared to submit their false testimonies to the court, I should dare to comment on such public information. It is up to the conscionable minds to judge whether defendants are defending with truth or insulting the American justice system.

Note: Defendants' witnesses who testified with affidavit are all interested persons, either Defendants or Defendant Emory University's employees.

Without a dispute, Defendants' witnesses who testified with affidavit in support of Defendants' Motion For Summary Judgment are all employees of Defendant Emory and all involved in the factual occurrences that gave rise to the civil actions. All but Jeanne Thigpen ("Thigpen") are employees of Defendant Emory's Medical School for years, where Thomas Lawley ("Defendant Lawley") is the Dean. Among them, Elizabeth (Lissa) Jackson ("Jackson"), Claire-Anne Gutekunst ("Gutekunst"), Enrique Torre ("Defendant Torre"), Robert Gross ("Defendant Gross"), Jae Schmidt ("Schmidt") are employees of Defendant Emory's Neurosurgery Department for years, where Defendant Daniel Barrow ("Defendant Barrow") is the Chairman. Jackson, Gutekunst and Defendant Torre work in a laboratory where Defendant Gross is the director.

Note: Testimonies of Defendants' witnesses were (self-)contradicted by proven facts and their own testimonies and the credibility of them will be challenged as to whether perjury has been committed.

Example 1. Concerning the credibility of Schmidt

The evidence shows that Schmidt alleged to individuals including the staff in Dean Office of Defendant Emory's Medical School and Human Resources Department on June 12, 2006, the day Plaintiff received the termination letter and when Schmidt knew that Plaintiff initiated an appeal of his and Barrow's decisions, "[h]e (Plaintiff) was reluctant to leave my area today to the point that I had to have the police escort him out", "[h]e may appear on WHSCAB 3rd floor once he learns where the Dean's office is located. If so, you may need to again alert the authorities if he becomes indignant", "[a]fter Dr. XXX's behavior today, and the attempted intimidation of our administrative staff, the reasoning behind the action was reaffirmed for me" (emphasis added).

However, Schmidt failed to point out the fact that Plaintiff was, first in Neurosurgery Department's common kitchen then in a public waiting room, anticipating Defendants Gross' and Barrow's secretaries to pass on both individuals' response and preparing a written request of conference to Defendant Barrow when Schmidt called Emory police. Schmidt also failed to mention that his "attempted intimidation" allegation was only referring to the fact that Plaintiff, who was forced out to the street by Schmidt and did not carry a cell-phone, used a payphone to contact Defendants Gross' and Barrow's secretaries.

In his affidavit, Schmidt testified under oath, “Dr. XXX did not leave the building in which the Department of Neurosurgery is located, as I had instructed him to do at the conclusion of the meeting on June 12, 2006. Dr. XXX refused to leave the building when I again told him that he needed to leave the building. Accordingly, it was necessary for me to call the police and have the police escort Dr. XXX out of the building” (emphasis added). Noticeably, Schmidt did not make further testimonies in this regard. No word of “behavior” or “attempted intimidation” was present in Schmidt’s affidavit.

Additionally, the e-mails of Defendant Gross’ secretary unequivocally confirmed the reasons for Plaintiff “not leaving the building” or “Schmidt’s area”. She wrote to Defendant Gross, “[h]e (Plaintiff) is here and wants to know if you are willing to speak with him?”, “Are you willing to call him? He is just going to continue trying reach you”.

One e-mail also indicated that Schmidt knew Plaintiff was not “attempting to intimidate” anyone. Defendant Gross’ secretary wrote to Schmidt, “[s]he (Defendant Barrow’s secretary) answered and said that he (Plaintiff) is still asking to speak to Barrow, and he is continuing to call me so I am sure it is for the same thing”.

To a reasonable mind and the jury, whether Schmidt had and has a serious credibility issue and whether Schmidt’s false remarks were made for specific purposes are genuine questions.

Example 2. Concerning the Credibility of Schmidt, Thigpen, Pearson, Beard and Lawley

In his affidavit, Schmidt testified under oath that he “interviewed all employees who had personal knowledge of the incident” (emphasis added).

Without a dispute, Ms. E met with Schmidt around June 5, 2006 and provided him with her knowledge regarding the May 17 incident. However, Plaintiff and Defendants certainly dispute over whether Schmidt made self-contradictory statements regarding the nature and significance of such conversation.

In his alleged “memo to file”, Schmidt labeled such conversation, actually initiated by Ms. E’s voluntary drop-by, as a “meeting” between Ms. E and him (emphasis added) and such conversation was also allegedly considered as one of Schmidt’s “interviews” by the ad hoc committee of Defendant Emory Medical School (emphasis added).

In their affidavits, the three members of the ad hoc committee also testified under oath, “I believed the evidence showed that the Department of Neurosurgery’s investigation of the altercation was reasonable, fair and consistent with Emory University policies. The information provided to the ad hoc committee demonstrated that the Department of Neurosurgery interviewed all the relevant witnesses, obtained statements and made a reasonable and good-faith attempt to ascertain what transpired on May 17, 2006” (emphasis added).

However, the court record undisputedly shows that Schmidt himself once alleged in another occasion, his “notes of conversation” with Ms. E were “typed” “on July 7, 2006 so that the

information from Ms. E would be included in the record for consideration of Dr. XXX's appeal of his termination" (emphasis added). Noticeably, on June 12, 2006, Plaintiff received Defendant Barrow's letter ending their "investigation". Consistently, Schmidt and Defendant Barrow did not wait until June 5, 2006, the day when Schmidt' alleged "interview" or "meeting" with Ms. E occurred, to make their final decisions. On May 30, 2006, Defendant Barrow already announced his decisions at his meeting with Defendant Gross that he "recommend[ed] Dr. XXX's departure from the lab" and Defendant Torre to "receive one week without pay and letter to Dean noting the incident as formal reprimand". On June 1, 2006, Schmidt wrote to others, Defendant Barrow "would like to reprimand Dr. Torre with a formal letter copied to the Dean, as well as one week without pay. He would like to offer Dr. XXX the option of resigning prior to termination".

Therefore, evidently, Schmidt's "memo to file" did not exist, in the least, until July 7, 2006 and he did not document Ms. E's information as base for Defendant Barrow's decisions as so alleged by him and the ad hoc committee. Additionally, whether Schmidt "typed" his "memo to file" based on his hand-written notes or unreliable memory and invention is another disputed material issue when Defendant Emory has failed and refused to confirm the existence of Schmidt's hand-written notes and, if existed, produce a copy to Plaintiff. In any event, the credibility of Schmidt, even with a sworn affidavit, is itself a genuine issue to be determined by the jury.

Since the ad hoc committee ignored Plaintiff's unequivocal written alert about Schmidt's fishy "memo to file" and Defendant Barrow's haste and irresponsible decisions and falsely concluded that Schmidt and Defendant Barrow had "made a reasonable and good-faith attempt to

ascertain what transpired on May 17, 2006” without evidence and verification, the credibility of the committee’s members, Thigpen, Thomas Pearson (“Pearson”) and Linda Beard (“Beard”), even with sworn affidavits, is itself a genuine issue for the jury.

In his letter to Plaintiff, Defendant Lawley asserted, “I believe that their report, which is advisory and confidential to me, indicates that they performed a thorough and comprehensive review of your termination. The committee carefully considered not only the background materials I provided with the committee’s charge, but also the written materials and oral information you provided to the committee directly” (emphasis added). Likewise, the credibility of Defendant Lawley is an issue to be determined by the jury.

Additionally, the contentions of the ad hoc committee members that “the Department of Neurosurgery interviewed all the relevant witnesses, obtained statements and made a reasonable and good-faith attempt to ascertain what transpired on May 17, 2006” and of Defendant Lawley that the ad hoc committee “performed a thorough and comprehensive review of your termination” are further negated by the evidence. **First**, evidently, the Department of Neurosurgery had already mad up its mind to terminate Plaintiff’s postdoctoral employment not only before Ms. E’s drop-by around June 5, 2006 but even before Defendant Barrow met Plaintiff for the first and only time. For instance, at 2:05 PM on May 30, 2006, Defendant Gross wrote to Schmidt, “[t]here needs to be a mechanism for continued communication with Dr. XXX with regard to writing his results up for publication”. Bearing his earlier “dismissal” affirmation (on May 23, 2006) in mind, evidently, Defendant Gross was discussing with Schmidt how to benefit from Plaintiff’s research results after Plaintiff was fired. Schmidt replied at 4:13 PM

before he attended Defendant Barrow's meeting with Plaintiff, "we can discuss this at our meeting". Without a dispute, on May 30, 2006, Defendant Barrow met with Plaintiff around 4:15 PM in his office. The record shows that Defendant Barrow announced Plaintiff's "departure" and Defendant Torre's retention at his meeting with Defendant Gross and Schmidt later that day. **Second**, according to their own words and actions, Schmidt and Defendant Barrow's "investigation" including "interviews" was mere a pretentious show serving the goal of a conspiracy against Plaintiff. For instance, on June 12, 2006 after meeting Plaintiff, Schmidt wrote to Defendant Gross, "he (Plaintiff) accused us of an unfair investigation and outcome", and "would take his appeal to 'higher levels'". In reply, Defendant Gross wrote, "Ah. . . .due process in the end will be our salvation" (supplied in its entirety). **Third**, evidently, the ad hoc committee also reached its conclusion hastily and irresponsibly without proof and verification. For instance, on the morning of July 21, 2006, just hours after the ad hoc members met with Plaintiff for the first and only time (Plaintiff's meeting with the committee ended shortly after 7 PM on July 20), Joshua Barwick, a staff member in Dean's Office of Defendant Emory's Medical School, wrote to Schmidt, "having talked with Dr. Pearson (chair of the ad hoc committee) this morning, I don't think it's necessary for you to provide anything additional. The committee was able to reach a decision based on the materials and information it reviewed yesterday".

Accordingly, the credibility of Schmidt, Thigpen, Pearson, Beard and Defendant Lawley, even with sworn affidavits, is a genuine issue to be determined by the jury.

Example 3. Concerning the credibility of Schmidt, Gutekunst, Thigpen, Pearson, Beard and Defendant Lawley

In his affidavit, Schmidt testified under oath, “[a]ttached as Exhibit B are my notes of my meeting with Dr. XXX on May 22, 2006” and “[t]hese notes accurately summarize my statements and questions to Dr. XXX and Dr XXX’s statements to me”. Claire-Anne Gutekunst (“Gutekunst”) also testified under oath, “Mr. Schmidt’s notes accurately summarize Mr. Schmidt’s statements and questions to Dr. XXX and Dr. XXX’s statements to Mr. Schmidt”.

In the above-referred memo of his meeting with Plaintiff, Schmidt noted Plaintiff’s “statements” to him, “Dr. XXX posted a sign over his dissection bench requesting that area be designated for his express use on specific days (including Wednesday mornings) and times (9am to 12pm)” and “I witnessed a sign in the laboratory that describes this request” (emphasis added).

Plaintiff faithfully informed Defendant Lawley in his appeal letter in June 2006 that Plaintiff’s reservation note actually read “[i]f you have to use this bench on any Wednesday from 9 AM through 12 PM, please let me know. Appreciate it. XX” (emphasis added).

Convincingly, Defendant Torre confirmed Plaintiff’s truthfulness in this regard. According to a memo prepared during his “investigation”, Schmidt documented, Defendant Torre “had noted a sign in the area, but misunderstood the sign to be for a specific Wednesday a couple weeks prior, and didn’t interpret the sign to mean every Wednesday, nor did he understand that Dr. XXX expected this equipment to be designated for his exclusive use on Wednesdays. Dr. Torre noted

that it wasn't until another employee clarified 'every Wednesday' that he understood the ongoing nature of the sign's request" (emphasis added).

In addition, the court record undisputedly shows that Jackson stated in another occasion, "XX has posted a sign in the clean bench requesting that he ha[s] use of the bench on Wednesday mornings, 9-12. This sign is 'open-ended' in my opinion" (emphasis added).

Evidently, Schmidt's own statements in two sworn documents self-contradicted with each other and were further contradicted by the statements of Jackson, one of Defendants' witnesses. To a reasonable mind and the jury, there's no identifiable reason for either Plaintiff or Defendant Torre or Jackson to have made untrue statements regarding Plaintiff's reservation only on "every Wednesday". Therefore, the doubt of credibility can only be cast on Schmidt. Likewise, the doubt of credibility can only be cast on Gutekunst.

The ad hoc committee of Defendant Emory' Medical School was advised by Plaintiff that Schmidt was not a truthful note-taker. The committee itself also acknowledged, "[t]he parties involved often have very different opinions as to what was communicated during the interviews to investigate these events". The committee went on to state, "[i]t would be very helpful in the future to have an uninvolved third party present during interviews, which would allow for verification of the facts verbally communicated". Yet, as Defendants admitted, without verification by themselves with Gutekunst, "a third party", the committee bluntly concluded, "[i]n our opinion the inquiry into this altercation was reasonable, fair and consistent with Emory University policy". In their affidavits, the committee members also testified under oath, "I

believed the evidence showed that the Department of Neurosurgery's investigation of the altercation was reasonable, fair and consistent with Emory University policies. The information provided to the ad hoc committee demonstrated that the Department of Neurosurgery interviewed all the relevant witnesses, obtained statements and made a reasonable and good-faith attempt to ascertain what transpired on May 17, 2006" (emphasis added). Therefore, the credibility of the committee's members, Thigpen, Pearson and Beard, even with sworn affidavits, is itself a genuine issue for the jury.

In his letter to Plaintiff, Defendant Lawley asserted, "I believe that their report, which is advisory and confidential to me, indicates that they performed a thorough and comprehensive review of your termination. The committee carefully considered not only the background materials I provided with the committee's charge, but also the written materials and oral information you provided to the committee directly" (emphasis added). Likewise, the credibility of Defendant Lawley is an issue to be determined by the jury.

Example 4. Concerning the credibility of Schmidt and Gutekunst

In his affidavit, Schmidt testified under oath, "[a]ttached as Exhibit B are my notes of my meeting with Dr. XXX on May 22, 2006" and "[t]hese notes accurately summarize my statements and questions to Dr. XXX and Dr XXX's statements to me". Gutekunst also testified under oath, "Mr. Schmidt's notes accurately summarize Mr. Schmidt's statements and questions to Dr. XXX and Dr. XXX's statements to Mr. Schmidt".

In the above-referred memo, Schmidt noted, “Dr. XXX asked Dr. Torre ‘why he needed to use the space today’” (emphasis added).

Evidently, Plaintiff only reserved and needed the dissection bench from “9am to 12pm” (emphasis added). To a reasonable mind and the jury, there’s no identifiable reason for Plaintiff to have raised a senseless question to Defendant Torre. In fact, Plaintiff rather asked Defendant Torre why he needed the bench “right away”.

Therefore, the doubt of credibility can only be cast on Schmidt. Likewise, the doubt of credibility can only be cast on Gutekunst.

Example 5. Concerning the credibility of Schmidt and Defendant Barrow

In his affidavit, Schmidt testified under oath, “[a]ttached as Exhibit F are my notes of the meeting between myself, Dr. XXX and Dr. Barrow on May 30, 2006 and the meeting between me, Dr. Torte and Dr. Barrow on May 30, 2006. These notes accurately summarize Dr. Barrow’s statements and questions to Dr. XXX, Dr. XXX’s statements to me and Dr. Barrow”. Defendant Barrow also testified under oath, “I have reviewed Mr. Schmidt’s notes of this meeting attached as Exhibit C. These notes accurately summarize my statements and questions to Dr. XXX, Dr. XXX’s statements to me and Mr. Schmidt”.

During the above-mentioned meeting, in addition to his recount of the May 17 incident, Plaintiff was only requested to provide information on “door locking” issue in absence of any reference to “events leading up to the altercation”.

Schmidt documented Plaintiff’s “recount” as, Plaintiff and Defendant Torre “had an initial disagreement about keeping the lab doors locked at night. In Brief: Dr. Torre asked Dr. XXX to lock doors if he’s last to leave; Dr. XXX agreed and did so, but Dr. Torre was then frequently locked out without his keys; Dr. Torre often called to Emory Police to regain access to the locked lab; Dr. Torre requested Dr. XXX ‘look for him’ prior to leaving and locking the doors so Dr. Torre would not be locked out; Dr. XXX asked Dr. Torre to carry his keys so this wouldn’t be necessary; Dr. Torre didn’t want to carry his keys because they are ‘bulky’”.

During Plaintiff’s appeal to Defendant Emory’s Medical School, Schmidt’s recount of Plaintiff’s statements was challenged by Plaintiff, which was itself not negated by neither Schmidt nor Defendant Barrow:

Therein, Plaintiff rebutted, “[a]s to the ‘door locking’ disagreement, Mr. Schmidt did not recount my words faithfully. He again put his words in my mouth. I never said that Enrique was locked out ‘frequently’ and Enrique had to ‘often’ call the Emory police. I don’t even know the existence of the word ‘bulky’ before I read [his] memo”. “The following is my recount of that event and its background: Before Enrique joined the lab, I used to be the last person to leave. I always locked the door. After he joined, he also left late. On one occasion, thinking he was still around, I left without locking the door.

The next morning, someone in the lab mentioned to me the door was open before the first person came. So since then, I closed the door whenever I left. Later one morning Enrique approached me and complained he was locked out the night before. I suggested him to bring his key with him. Some time after that, Enrique approached me another morning and complained he was locked out again. I suggested him again to bring his key. He replied, to the effect, why should he, and I should search everywhere for him before I locked the door. I regarded his demand as being unreasonable and inconsiderate. He started arguing with me in a mocking and teasing tone. He only stopped verbally bothering me when I left the room. He resumed mocking and teasing when I returned into the room. Even when I blocked my ears with my fingers, he didn't stop. Facing the lasting bothering from him, I shouted to him 'Shame on you' several times in an attempt to stop him. I did not use coarse language all the time. On the contrary, Enrique called me 'Bastard!' in the lab in public. After he was quiet down, he apologized and said 'There won't be any burst like this'".

Evidently, whether Schmidt fabricated Plaintiff's "statements" in his memo and Schmidt and Defendant Barrow falsely affirmed such fabrications in their affidavits is disputed. Again, the credibility of Schmidt and Defendant Barrow as witnesses, even with sworn affidavits, can only be determined by the jury.

Example 6. Concerning the credibility of Schmidt, Defendant Barrow and Jackson

In their affidavits, Schmidt and Defendant Barrow testified under oath that Schmidt's memo of the meeting between Jackson and Defendant Barrow "accurately summarize" Defendant Barrow's statements and questions to Jackson and her statements to Defendant Barrow and Schmidt during this meeting.

In Schmidt's referred memo, he documented, "Lissa noted her original disagreement with Dr. XXX where he yelled at her for questioning his scientific method. Lissa was brought to tears by this encounter", "Lissa remarked that 'Enrique gives assistance to everyone else in the lab'...Then notes two previous post-doc's who had arguments with XX—one of whom said 'XX's crazy'" (emphasis added).

However, in her own affidavit, Jackson testified under oath, "[d]uring this meeting, I also described my previous argument with Dr. XXX and told Dr. Barrow and Mr. Schmidt that two previous postdoctoral researchers also had arguments with Dr. XXX" (emphasis added). There're no words about "questioning Plaintiff's scientific method".

As rebutted by Plaintiff during his appeal to Defendant Emory's Medical School, which was itself not negated by Jackson.

"Assuming Lissa did note 'her original disagreement with Dr. XXX where he yelled at her for questioning his scientific method'. This was not true. Lissa and me was working together to analyze the viability of a cell sample for a clinical trial. We did not agree with each other's counts. Likely thinking her having more experience

counting those cells, she put down her number on the recording book. After she left the room, I looked the sample under the microscope more carefully trying to understand the difference. When she reentered the room later, seeing me sitting in front of the scope, without saying anything, she wave one of her fingers in a disrespectful manner suggesting me (without words) to stand immediately. Combined with her facial expression, she clearly expressed her impatience suggesting I was wasting time. Felt a need to stop her pattern of disrespectful behavior (I let her go free in several prior similar situation), I raised my voice and told her ‘if you do not respect me, you will not get my respect’. She left the room without [any verbal] response. Normally when she felt she was right, she would respond with harsh comments. I personally did not see her crying. When I came back to the main lab a short while later, she started a conversation with me regarding a non-urgent matter. Everyone who knows her can tell she has a very strong personality and if someone offends her with no reason, he will not get away with it easily. That she talked to me first that early was definitely an indication that she was not mistakenly warned. If necessary, please check on her personality” (emphasis added).

As regard to Plaintiff’s “arguments” with “two previous post-docs”, Plaintiff rebutted, “I wonder what she (Jackson) referred to as arguments and their nature. I wonder what circumstance resulted in the ‘crazy’ comment and what on earth it could mean. If Mr. Schmidt think[s] this means something to him, please explain to me and the committee”. Neither Schmidt nor the ad hoc committee responded in this regard.

Additionally, when Plaintiff contacted Jackson for verification, the following e-mail chain occurred on August 10, 2006 (emphasis added):

Plaintiff to Jackson:

Hi Lissa,

Please verify if you made some statements as according to Jae Schmidt or what actually you said regarding relevant issues during your meeting with Daniel Barrow on May 30, 2006.

1. Schmidt documented that you said “neither (XX and Enrique) values the others work”.
2. He also noted that you said “Enrique gives assistance to everyone else in the lab”, “XX has had interaction with previous people”, “two previous post-doc’s had arguments with XX and one said ‘XX’s crazy’”.

If Schmidt missed out some relevant comments you made, please indicate.

Thanks.

XX

Jackson to Schmidt:

Jae,

I got this email from XX. I do not think I should answer any of these questions as I do not have a transcript of our conversation. I guess I thought our discussion was not to be disclosed to XX. I do not think this discussion should be by email. From this communication, it seems there is not a firm decision.

I would appreciate any advise etc.

Thanks, Lissa

According to Jackson, at the time of e-mailing to Schmidt, she did not know that Defendant Lawley had ended his “review”. Bearing this in mind, Jackson simultaneously stated that, at the time of making her statements when meeting Defendant Barrow on May 30, 2006, she “thought” that whatever she said would not be disclosed to Plaintiff. Whether such belief was only her personal perception or an assurance from Schmidt and/or Defendant Barrow and whether such belief affected Jackson’s ability to provide truthful information are genuine material issues to be raised to and determined by the jury.

Evidently, Plaintiff faithfully cited Jackson’s own statements as documented by Schmidt and sought Jackson’s verification. That is to say, anyone who reads Schmidt’s memo will conclude that Plaintiff did not either alter or quote Jackson’s alleged remarks out of context.

Evidently, Jackson did “not think” that she “should”, or rather could in August 2006, confirm the cited statements to be hers because she did “not have a transcript of” her conversation. To a reasonable mind and the jury, it would be very hard to understand that, in January 2008 when nearly 18 months have passed by, Jackson “should” or “could” be so positive to testify that the very same transcripts were true summary of her words.

In addition, Defendant Emory has failed and refused to provide any evidence to support mere allegations of Jackson in her meeting with Defendant Barrow. Therefore, the credibility of Jackson, even with a sworn affidavit, is itself a genuine issue to be only determined by the jury.

Likewise, the credibility of Schmidt and Defendant Barrow, even with sworn affidavits, is itself a genuine issue for the jury.

Example 7. Concerning the credibility of Defendant Barrow

To justify his termination decision, Defendant Barrow (1) accused that Plaintiff used “physical force” toward Defendant Torre; (2) alleged that Plaintiff had “numerous prior personal conflicts with other members of the laboratory” and an “inability to consistently work in a collaborative and communicative manner is a hindrance to the efficiency and ultimate success of the laboratory and Department’s research enterprise”; (3) alleged that there have been “other concerns regarding your (Plaintiff’s) performance”; (4) alleged that Plaintiff had a “reluctance to accept criticism and guidance from your (Plaintiff’s) supervisors”; (5) asserted that Plaintiff could no longer work for Defendant Emory because of a “pattern of ineffective personal skills, a recent fist fight, mistreatment of animals, and concerns regarding your scientific method”; (6) stated that due to a “pattern of behavior and severity of your recent actions, you will be ineligible for future employment at Emory University”.

However, in his affidavit, Defendant Barrow testified under oath, “[e]ven assuming that Dr. XXX did not have any prior job performance problems or prior interpersonal conflicts with others in the lab, as uncovered in the investigation, I would have made the same decision to terminate Dr. XXX’s employment” (emphasis added).

Evidently, Defendants Emory and Barrow have failed and refused to provide any evidence other than mere allegations of Defendant Gross, Defendant Torre and Jackson to support Defendant Barrow's allegations in his letter terminating Plaintiff. In this regard, the ad hoc committee noted, Defendant Barrow's "termination letter to Dr. XXX notes 'numerous prior personal conflicts with other members of the laboratory before the current dispute'. We can not find documentation of this in the records that we have for review".

Bearing this in mind, Defendant Barrow's testimony of "assuming that Dr. XXX did not have any prior job performance problems or prior interpersonal conflicts with others in the lab", instead of proving otherwise, raises a genuine issue of his credibility for the jury.

In his affidavit, Defendant Barrow testified under oath, although Torre's "involvement in this altercation was inappropriate, Dr. Torre did not commit an acts of violence".

However, on May 22, 2006, Torre alleged to Schmidt that he "became physically angry" "pushing' Dr. Mei backwards with his right hand on Dr. Mei's neck and shoulder". However, according to Schmidt's notes of the conversation between him and Ms. Evans, which was sworn to accurately summarize such conversation, Ms. Evans provided her opinion that "these marks [on Plaintiff] could not have come from a 'push' as claimed by Dr. Torre". In addition, Lawley's committee noted even with crafty wording, Torre "had physical contact with Dr. Mei". Therefore, the credibility of Defendant Barrow even with a sworn affidavit is itself a serious question to be determined by the jury.

Example 8. Concerning the credibility of Defendant Gross

In his affidavit, Defendant Gross testified under oath that he prepared a “note to file” (in 2004) and e-mailed to Plaintiff in reference to his “concerns regarding Dr. XXX’s job performance as a researcher”, “serious deficiencies in his (Plaintiff’s) performance”, “difficulty understanding scientific principles and objectives and critically evaluating his work”.

Evidently, Plaintiff has asserted that he was not aware of the existence and content of Defendant Gross’ “note to file” until Plaintiff filed his appeal with Defendant Emory’s Medical School in mid-July 2006. Evidently, once Plaintiff was aware, he disputed Gross’ remarks.

Additionally, Plaintiff did not respond to Gross’ e-mail due to its absurdness and frivolity.

During his appeal, Plaintiff rebutted,

1. Please note both (Gross’ “note to file” and e-mail) were written in late 2004. At that time, my project ran into a major obstacle that expression of C3 protein (an enzyme) in viral infected cells could not be unequivocally confirmed through immunoassaying. Seeing firsthand the striking morphological changes in infected cells, I was certain about the presence of the C3 protein. However, others in the lab were not so sure due to limited exposure to my results. Both Dr. Gross and me were frustrated and sought solutions. I understood that he was harshly critical towards me due to misunderstanding and

impatience. He set a time for me to solve this. Before the deadline, I was able to undoubtedly prove that C3 was expressed through several lines of evidence including RT-PCR and improved immunoassaying (Enrique helped me with the latter). As a note, the previous problem of C3 staining was later agreed to likely arose from its cytotoxicity, thus low level in surviving cells.

2. If he (Gross) had not changed his view later on and been satisfied with my ability and performance, it would be difficult to note that he extended my employment status twice in February 2005 and February 2006 (a letter is enclosed), respectively.

3. With the data I generated, Dr. Gross applied for and was awarded grant(s) and has been actively seeking grant renewal and collaboration with other researchers.

4. I have presented my research data in national meetings. A manuscript of my work for publication was prepared in fall 2005 and has been in revision by Dr. Gross and me. Dr. Gross thought it could go out with a bit more in vivo results.

5. In February 2006, during an individual meeting with Dr. Gross, he told me one of his personal stor[ies]. He mentioned that he once received a disapproval of ability and performance from his supervisor likely when he was a resident. He proved him wrong a few month[s] later and became friends. He was glad that I did the same thing. I appreciated his openheartedness and his changed impression of me.

Without a dispute, whether Defendant Gross' remarks were sound and founded on facts is disputed. Considering his subsequent actions including his two additional renewals of Plaintiff's postdoctoral employment, the credibility of Defendant Gross in his words is certainly a genuine issue to be determined by the jury.

Example 9. Concerning the credibility of Defendant Gross, Defendant Torre and Gutekunst

In his affidavit, Defendant Gross testified, "I asked Dr. Enrique Torre and Dr. Claire-Anne Gutekunst" "to become more involved with Dr. XXX's research during 2005 and early 2006 in hopes of improving Dr. XXX's work. Dr. XXX was not receptive to their involvement with the research he performed", "his (Plaintiff's) continued reluctance to accept criticism or feedback from me, Dr. Torre or Dr. Gutekunst regarding his research" (emphasis added).

Likewise, in his affidavit, Defendant Torre testified under oath, "[a]t the request of Dr. Gross, I became more involved with Dr. XXX's work in 2005 and early 2006 and attempted to provide Dr. XXX with supervision, direction and advice concerning his research. Dr. XXX, however, was resistant to my input and advice concerning his research and appeared to perceive my feedback as criticism. It appeared to me that Dr. XXX resented my involvement with his research and preferred to work alone without my feedback or input" (¶ (emphasis added).

Likewise, in her affidavit, Gutekunst testified under oath, “[a]t the request of Dr. Robert E. Gross, an Assistant Professor in the Department of Neurosurgery, I became more involved with Dr. XXX’s work in 2005 and early 2006 and attempted to provide Dr. XXX with supervision, direction and advice concerning his research. Dr. XXX, however, was resistant to my input and advice concerning his research and appeared to perceive my feedback as criticism. It appeared to me that Dr. XXX resented my involvement with his research and preferred to work alone without my feedback or input” (emphasis added).

First, without a dispute, Plaintiff is a trained molecular biologist with a Ph.D. degree. Notwithstanding that Plaintiff will prove to the jury his scientific ability and professionalism, Defendants are challenged to dispute the fact that Plaintiff was the most experienced researcher in lentiviral gene therapy in Defendant Gross’ lab. Defendants are challenged to dispute the fact that Defendant Gross’ lab only began lentiviral gene therapy research after Plaintiff joined and single-handedly started from the scratch. Defendants are challenged to dispute the fact that Plaintiff’s scientific competence has been proven beyond doubt by his research manuscript. In this regard, Defendant Emory has failed and refused to assert contribution of any other individuals in Defendant Gross’ lab to Plaintiff’s scientific achievement exhibited in his manuscript. And yet, it is beyond comprehension and as a supreme insult to the spirit of science and the modesty of honest scientists, Defendant Torre and Gutekunst dared to claim that they were there to provide “supervision, direction and advice” concerning Plaintiff’s research even they knew little about gene therapy. To a reasonable mind and the jury, the credibility of persons with such inflated egos and disproportional arrogance, even with sworn affidavits, is certainly a genuine and serious issue.

As a noble man and honest scientist, Plaintiff appreciated the importance of scientific discussions among colleagues for mutual benefits. Accordingly, Plaintiff actually invited in lab meetings suggestions to his research and adequately acknowledged such feedback and input in his research manuscript. Defendant Gross, Defendant Torre, Gutekunst and Jackson were all named therein as co-authors. On the contrary, whether Defendant Torre and Gutekunst have decently acknowledged Plaintiff's contribution to their research since their joining in Defendant Gross' lab is disputed.

Second, the record speaks against them. Defendants has not provided any evidence other than Defendant Gross' 2004 "note to file", whose truthfulness has been negated, to substantiate mere assertions in testimonies of Gross, Defendant Torre and Gutekunst in this regard.

Third, Defendant Gross' own words contradicted the testimonies of these individuals. In his e-mail to Schmidt on May 23, 2006, Defendant Gross alleged, "I have involved him (Defendant Torre), and Dr. Claire-Anne Gutekunst, in Dr. XXX's work to improve its quality, and indeed it has" (emphasis added). Similarly, in his affidavit, Defendant Gross testified, "I decided to offer Dr. XXX employment in my lab for one final year for 2006-2007 because he did make some progress on his research (with the assistance of Dr. Torre and Dr. Gutekunst)" (emphasis added).

To a reasonable mind and the jury, it is very hard to understand, if not impossible, why Defendant Gross gave credits to Defendant Torre and Gutekunst for Plaintiff's "improved work" while he and these two individuals alleged that Plaintiff was "not receptive to" or 'resented'

Defendant Torre and Gutekunst's involvement, "resistant" to Defendant Torre's and Gutekunst's "input and advice", "preferred to work alone without [their] feedback or input".

Therefore, an issue of the credibility of Defendant Gross, Defendant Torre and Gutekunst, even with sworn affidavits, has to be raised and determined by the jury.

Example 10. Concerning the credibility of Defendant Gross

In his affidavit, Defendant Gross testified, "Dr. XXX showed some minor improvements in his research by January 2005. Although he did not substantially improve his research methods nor resolve in a meaningful way the concerns that I had, I decided to give Dr. XXX the opportunity to continue his research for another year", "[e]ven after January 2005, I had frequent discussions with Dr. XXX explaining to him the flaws in his research and his data, and the fact that these flaws would be exposed in a far harsher manner by outside peer reviewers if a paper were published without correcting these flaws", "I counseled Dr. XXX on numerous occasions regarding the need for him to work more collegially with other lab employees", "I was reluctant to offer Dr. XXX employment in my lab after his current contract expired" (on February 2006), "[n]evertheless, I decided to offer Dr. XXX employment in my lab for one final year for 2006-2007 because he did make some progress on his research", "I did not intend to offer Dr. XXX employment in my lab after this contract expired on February 26, 2007" (emphasis added).

Evidently, Defendant Gross' testimonies were self-contradictory. If he was "reluctant to offer Dr. XXX employment" before February 2006, then why did he "nevertheless" make the offer in

February 2006? If he did it because Plaintiff “did make some progress on his research”, then why did Defendant Gross allege that Plaintiff “did not substantially improve his research methods nor resolve in a meaningful way the concerns” that he had? One has to wonder whether Defendant Gross realized that his afterthoughts, albeit the intention, did nothing more than ridiculing his own sanity and judgment.

Additionally, to a reasonable mind and the jury, it is very hard to understand, if not impossible, why Defendant Gross “reluctantly” offered postdoctoral employment to Plaintiff time after time. Ironically, Defendant Gross himself provided the answer. In his e-mail to Schmidt on May 23, 2006, Defendant Gross wrote, “[s]urprisingly, he (Plaintiff) accomplished most of what I challenged him to do by 1/2005 and I extended him for another year. It seemed to me that his work had improved considerably in the ensuing year” (emphasis added).

Also in this regard, his own words speak against him repeatedly.

In February 2005, Defendant Gross wrote to Plaintiff, “[i]t is a pleasure to renew your position as a post-doctoral Research biologist in the Department of Neurosurgery at Emory University beginning March 1, 2005 through February 27, 2006. This is a one-year appointment contingent on continued satisfactory performance”, “[w]e look forward to having you on our staff and hope that you find the work environment here both stimulating and enjoyable” (emphasis added).

In February 2006, Defendant Gross wrote to Plaintiff, “[i]t is a pleasure to offer you a position as a post-doctoral Research Biologist in the Department of Neurosurgery at Emory University, beginning February 27, 2006 through February 26, 2007. This position is for one year, with the possibility of renewal for additional years upon mutual agreement (as per accompanying letter)”, “[w]e look forward to your continued productivity” (emphasis added).

As for “some minor improvements by January 2005”, Defendant Gross’ own words speak against him again. In his e-mail to Schmidt on May 23, 2006, Defendant Gross asserted, “[s]urprisingly, he (Plaintiff) accomplished most of what I challenged him to do by 1/2005 and I extended him for another year” (emphasis added).

As for “frequent discussions after January 2005” and “counseled on numerous occasions regarding the need for him to work more collegially with other lab employees”, Defendants Emory and Gross have failed and refused to provide any evidence other than Defendant Gross’ 2004 “note to file” to support such mere allegations.

Defendant Gross’ own words speak against him again. In his e-mail to Schmidt on May 23, 2006, Defendant Gross alleged, “I was aware of an altercation with Lissa Jackson, my senior tech., but I do not recall whether I discussed this with Dr. XXX” (emphasis added). By his own statements, Defendant Gross could not claim, with mere assertion after 20 months, that he “counseled” Plaintiff on “an altercation” with Jackson.

In his affidavit, Defendant Gross also testified under oath, “I also learned from Ms. Jackson that the relationship between Dr. XXX and another lab employee, Lincoln Jimenez, had deteriorated to the point where they were not on speaking terms outside of lab meetings” (emphasis added). Again, by his own words, albeit purposely crafted, Defendant Gross did not claim that he “counseled” Plaintiff on “deteriorated” relationship with Jimenez.

In his affidavit, Defendant Gross testified, “[b]ased on the information conveyed by Dr. Torre to me and Mr. Schmidt during the May 22, 2006 meeting and the information conveyed to me by Ms. Jackson, it became apparent to me that Dr. XXX’s interpersonal conflicts with other employees in the lab was significantly worse than I had realized previously” (emphasis added). Again, by his own words, Defendant Gross did not claim that he reached his conclusion after verification of the allegations made by Defendant Torre and Jackson, who had personal motives and interests to attack Plaintiff, with Plaintiff, let alone “counseled” Plaintiff in this regard. Whether it was representative of Defendant Gross’ pattern of dealing with Plaintiff during 2003-2006 or just one exception is a genuine issue to be raised to and determined by the jury.

Additionally, the following e-mails further disproves Defendant Gross’ assertions.

On July 7, 2006, Joshua Barwick, a staff in Dean’s Office of Defendant Emory’ Medical School e-mailed to Schmidt, “I’m wondering if there are any progress notes or other relevant documents regarding Dr. XXX’s performance from 2005 or early 2006? I’m guessing probably not, and that’s okay”.

In reply, Schmidt wrote, “[t]here were not additional documentation materials in my file, although Dr. Gross had spoken with Dr. XXX on a few occasions without reporting it to my office”.

Even according to Schmidt, Defendant Gross only spoke with Plaintiff “on a few occasions” but not “numerous occasions”. Importantly, Schmidt admitted that no documents other than Defendant Gross’ 2004 “note to file” existed to substantiate his mere assertions.

Therefore, the credibility of Defendant Gross, even with a sworn affidavit, is certainly a genuine and serious issue to be determined by the jury.

Example 11. Concerning the credibility of Defendant Torre

In his affidavit, Defendant Torre testified, “I have reviewed Mr. Schmidt’s notes of the May 22, 2006 meeting between me, Mr. Schmidt and Dr. Gross, attached hereto as Exhibit A. Mr. Schmidt’s notes accurately reflect Dr. Gross’ and Mr. Schmidt’s statements and questions to me, my statements to Dr. Gross and Mr. Schmidt and my demeanor during this meeting. The statements I made to Dr. Gross and Mr. Schmidt during this meeting and the sentiments I expressed to them during this meeting, as documented by Mr. Schmidt’s notes, are true and correct”.

Similarly, Defendant Torre testified under oath, “I have reviewed Mr. Schmidt’s notes of the May 30, 2006 meeting between me, Mr. Schmidt and Dr. Barrow, attached hereto as Exhibit B.

Mr. Schmidt's notes accurately summarize Dr. Barrow's statements and questions to me and my statements to Dr. Barrow and Mr. Schmidt during this meeting. The statements I made to Dr. Barrow and Mr. Schmidt during this meeting and the sentiments I expressed to them during this meeting, as documented by Mr. Schmidt's notes, are true and correct".

However, Defendant Torre's testimonies were either self-contradictory or contradicted by the record.

First, according to one of Schmidt's above-referred memos, on May 30, 2006, Defendant Torre alleged that he had "no prior knowledge" regarding Plaintiff's reservation of the bench for Wednesday mornings (emphasis added). But according to Schmidt's another above-referred memo, on May 22, 2006, Defendant Torre admitted that he "had noted a sign in the area" and "misunderstood the sign to be for a specific Wednesday a couple weeks prior" until "another employee clarified 'every Wednesday'" to him later (emphasis added).

Second, on May 30, 2006, Defendant Torre asserted that "he has avoided confrontation to the best of his ability" (emphasis added). Yet, according to the same memo, Defendant Torre also admitted that he did "not have as tight a time window [as Plaintiff]" and "he needed [the bench] 2-3 hours that day". Since Plaintiff only reserved and needed the bench "9-12" on Wednesdays mornings, Defendant Torre was admitting to Defendant Barrow about his complete lack of justification to obstruct Plaintiff's planned work and invoke but not "avoid" an unnecessary confrontation.

Third, on May 22, 2006, Defendant Torre replied to Schmidt's question "if he waved his hands in jest of Dr. XXX" with "I don't know. . . maybe. . . it's possible" (Exhibit A in Affidavit Of Enrique Torre). Yet, on May 30, 2006, when Defendant Barrow asked Defendant Torre what "he was doing immediately prior to Dr. XXX's throwing of the animal cage?", Defendant Torre replied that "he was 'yelling' and 'some taunting'".

Forth, on May 22, 2006, Defendant Torre alleged that he "became physically angry" "pushing' Dr. XXX backwards with his right hand on Dr. XXX's neck and shoulder" (Exhibit A in Affidavit Of Enrique Torre). However, according to Schmidt's notes of the conversation between him and Ms. E, which was sworn to accurately summarize such conversation, Ms. E provided her opinion that "these marks [on Plaintiff] could not have come from a 'push' as claimed by Dr. Torre".

In light of the foregoing, to a reasonable mind and the jury, a serious issue of the credibility of Defendant Torre has to be raised and determined.

Example 12. Concerning the credibility of Schmidt, Defendant Gross, Thigpen, Pearson, Beard and Defendant Lawley

In his affidavit, Schmidt testified under oath, "I did not believe that Dr. Gross' email was intended to be an invitation to 'conspire' with him to terminate Dr. XXX, and I did not construe Dr. Gross' email in that manner".

First, Schmidt's statements were mere denials. He did not provide any justifications for not verifying with Plaintiff on Gross' allegations and his bias throughout his "investigation".

Second, Defendants have failed and refused to disclose all communications among Defendant Emory's employees related to Schmidt and Defendant Barrow's "investigation" into the May 17 incident between Plaintiff and Defendant Torre.

The referred e-mail(s) between Defendant Gross and Schmidt were as follows:

Gross: "Jae, Have had a problem with personnel in the lab that has come to blows, literally (hmmm, sounds like a Van Meir situation!) I need to be in contact with HR for help in resolving it. Can you help? Bob"

Schmidt: "absolutely, who's involved? we can make intervention tomorrow. I've cc'd yvette hart in HR who is assisting with our other lab issues. Jae"

Gross: "XX XXX (post doc; history of interpersonal problems in the lab) and Enrique Torre (Asst Prof)."

Plaintiff was informed in his meeting with Schmidt on May 22, 2006, with a pre-signed letter, to be placed on Administrative Leave without pay pending an investigation of the May 17 incident. During his subsequent meeting with Schmidt on May 22, 2006, Defendant Torre was only told that "he may be placed on Administrative leave". Importantly, Defendant Emory has

failed and refused to either confirm the existence of such a letter or produce a copy to Plaintiff. According to his sworn affidavit, Defendant Torre rather received a letter from Schmidt placing him “on administrative leave without pay pending the outcome of the investigation” “[a]t some point later in the day on May 22, 2006 after my meeting with Dr. Gross and Mr. Schmidt”.

Additionally, Defendant Torre’s false allegations regarding Plaintiff’s interpersonal conflicts, made at Defendant Torre’s own will or others’ invitation, were documented by Schmidt even though Schmidt testified under oath, Defendant Barrow “instructed me to review the situation, including interviewing employees with information regarding the altercation”. More importantly, Defendant Torre’s documented false allegations were neither disclosed to nor verified with Plaintiff by Schmidt or Defendant Barrow throughout their “investigation”. Similarly, Gross’ false assertion (“XX XXX (post doc; history of interpersonal problems in the lab[])”) was neither disclosed to nor verified with Plaintiff. Defendants have also failed and refused to produce any evidence, except now with impeachable affidavits, to support mere personal allegations of Defendants Gross and Torre.

Yet, in their affidavits, the three members of the ad hoc committee also testified under oath, “I believed the evidence showed that the Department of Neurosurgery’s investigation of the altercation was reasonable, fair and consistent with Emory University policies. The information provided to the ad hoc committee demonstrated that the Department of Neurosurgery interviewed all the relevant witnesses, obtained statements and made a reasonable and good-faith attempt to ascertain what transpired on May 17, 2006” (emphasis added).

In his letter to Plaintiff, Defendant Lawley asserted, “I believe that their report, which is advisory and confidential to me, indicates that they performed a thorough and comprehensive review of your termination. The committee carefully considered not only the background materials I provided with the committee’s charge, but also the written materials and oral information you provided to the committee directly” (emphasis added).

Therefore, the credibility of Schmidt, even with a sworn affidavit, is a genuine issue to be determined by the jury. Likewise, the credibility of Thigpen, Pearson and Beard, even with sworn affidavits, is a genuine issue for the jury. Likewise, the credibility of Defendant Lawley is an issue to be determined by the jury.

Example 13. Concerning the credibility of Schmidt and Defendant Gross

In his affidavit, Schmidt testified under oath, “[o]n May 23, 2006, I received an email from Dr. Gross” and “I did not construe this email by Dr. Gross to be advocating that Dr. XXX be terminated. But rather that, if Dr. XXX were terminated, Dr. Gross would regret the negative impact such a termination would have on Dr. XXX’s career”. Likewise, in his affidavit, Defendant Gross testified under oath, “I did not suggest or recommend that Dr. XXX’s employment should be terminated, but rather I commented that, if Dr. XXX were terminated, I would regret the negative impact such a termination would have on his career”.

However, in the referred e-mail, Defendant Gross wrote, “[a]fter investigating the situation by speaking to all lab members (except Dr. XXX, who spoke with you while I was in the OR, but

whose account you told to me), and based on the history of Dr. XXX's and Dr. Torre's tenure in the lab, with long consideration I must conclude that the culpability lies to the far greater share in Dr. XXX's behavior. Although more restraint should have been exhibited by Dr. Torre, I feel he was provoked beyond reason, and this is not part of any ongoing difficulty on his part. Personally, I regret the effects that dismissal would have on Dr. XXX's career, and I have gone to great lengths to help him succeed. However, I feel that most of the current and past problems are of his own creation. In contrast, I would be personally distraught if the current altercation were to negatively impact Dr. Torres career, and feel that he should be reinstated as soon as possible, upon the conclusion of any further investigation deemed necessary by the Dean" (emphasis added).

Thus, there's no identifiable reason for a reasonable mind and the jury not to determine as a fact that, by making contrasting comparison, Defendant Gross was indeed affirming to Schmidt his justifications, albeit false, for terminating Plaintiff but pardoning Defendant Torre. His "regret" over "the effects that dismissal would have on Dr. XXX's career" was merely pretentious and instantly buried by his subsequent assertions that "I have gone to great lengths to help him succeed. However, I feel that most of the current and past problems are of his own creation". Importantly, without a dispute, Defendant Gross' forgoing statements were made on the second day of Schmidt's "investigation" and before Defendant Gross conferred with Plaintiff regarding the May 17 incident. In fact, Defendant Gross never conferred with Plaintiff during Schmidt and Defendant Barrow's "investigation" and alleged to Plaintiff his non-involvement in the "investigation" and a "friendly" stance toward Plaintiff on June 12, 2006 when reluctantly answered Plaintiff's repeated phone calls.

Therefore, the credibility of Schmidt in this regard, even with a sworn affidavit, is only to be determined by the jury. Likewise, the credibility of Defendant Gross in his statements in a sworn affidavit is only to be determined by the jury.

Example 14. Concerning the credibility of Thigpen, Pearson, Beard and Defendant Lawley

In their affidavits, the three members of the ad hoc committee testified under oath, “I believed the evidence showed that the Department of Neurosurgery’s investigation of the altercation was reasonable, fair and consistent with Emory University policies”(emphasis added).

However, in the exhibits of the same affidavits, the three individuals also acknowledged, “University policy requires that employees placed on administrative leave without pay be informed of the final decision regarding their employment within 14 calendar days. In the case of Dr. XXX, this time period was 18 days”.

Defendant Lawley also acknowledged to Plaintiff, “[i]n reviewing the inquiry process, the committee noted that University policy requires that employees placed on administrative leave without pay be informed of the final decision regarding their employment within 14 calendar days, and that you were not informed of your termination until 18 calendar days after you had been placed on administrative leave without pay”.

Although the committee and Defendant Lawley miscounted (Plaintiff was placed on the leave on May 22, 2006 and informed about the final decision on June 12, 2006. There were 22 days in this period), without a dispute, Schmidt and Defendant Barrow violated Defendant Emory's policy regarding Administrative Leave. Evidently, the committee's own statements self-contradicted with each other. Therefore, the credibility of the committee's members, Thigpen, Pearson and Beard, even with sworn affidavits, is itself a genuine issue to be determined by the jury.

In his letter to Plaintiff, Defendant Lawley asserted, "I believe that their report, which is advisory and confidential to me, indicates that they performed a thorough and comprehensive review of your termination", "the Department of Neurosurgery's inquiry into your termination was reasonable, fair and consistent with University's policies" (emphasis added). Likewise, the credibility of Defendant Lawley is an issue to be determined by the jury.

Example 15. Concerning the credibility of Thigpen, Pearson, Beard and Defendant Lawley

In exhibits of their affidavits, the committee members acknowledged, Defendant Barrow's "termination letter to Dr. XXX notes 'numerous prior personal conflicts with other members of the laboratory before the current dispute'. We can not find documentation of this in the records that we have for review" (emphasis added). Plaintiff also advised the committee that Defendant Barrow's false allegations were neither verified nor discussed with Plaintiff during the "investigation".

However, in their affidavits, the committee members testified under oath, “I believed the evidence showed that the Department of Neurosurgery’s investigation of the altercation was reasonable, fair and consistent with Emory University policies” and “[b]ecause the ad hoc committee concluded that Dr. XXX’s conduct on May 17, 2006 justified his termination, it did not reach any conclusions or make any recommendations regarding the allegations that Dr. XXX’s job performance as poor and that Dr. XXX had a history of interpersonal conflicts with others in the lab” (emphasis added). Whether the committee members actually reached a conclusion and did not state the true reasons for no verification is disputed.

Nonetheless, evidently, the testimonies of the ad hoc committee members self-contradicted with each other. Therefore, the credibility of the committee’s members, Jeanne Thigpen, Thomas Pearson and Linda Beard, even with sworn affidavits, is itself a genuine issue to be determined by the jury.

In his letter to Plaintiff, Defendant Lawley asserted, “I believe that their report, which is advisory and confidential to me, indicates that they performed a thorough and comprehensive review of your termination. The committee carefully considered not only the background materials I provided with the committee’s charge, but also the written materials and oral information you provided to the committee directly”, “the committee concluded that the Department of Neurosurgery’s inquiry into your termination was reasonable, fair and consistent with University’s policies” (emphasis added). Likewise, the credibility of Defendant Lawley is an issue to be determined by the jury.

Example 16. Concerning the credibility of Defendant Lawley

In his affidavit, Defendant Lawley testified under oath, “I did not instruct the ad hoc committee to review the personnel decision Dr. Barrow made concerning Dr. Torre. I did not receive any request to review Dr. Barrow’s personnel decision concerning Dr. Torre”.

However, during his “review”, Plaintiff unequivocally advised Defendant Lawley in writing, “[b]ased on Mr. Schmidt’s records, I have serious doubts over Enrique’s moral standard and integrity. Enrique clearly lied numerous and irresponsibly damaged the reputation of me, an Emory employee. According to Enrique’s own words, he initiated an unnecessary personal conflict and obstructed another [Emory] researcher’s work without any justifications. During the conflict, all Enrique did was verbal and physical insults and assaults towards me. Due to Enrique’s complete lack of will to discuss, I was only forced to respond to his provocations all the time. His misconducts should be disciplined by the University accordingly” (emphasis added).

Additionally, on July 12, 2006, Plaintiff e-mailed to Defendant Lawley, which was responded by Claudia Adkison on behalf of the Dean’s office, “[i]n my view, all the information gathered by the investigators, including allegations, should be presented to and addressed by both parties before they can be acted upon. I would also like this fact to be appreciated that justice delayed is justice denied. I greatly appreciate your office taking time to **review** the incident, **the departmental investigation and its decisions regarding both parties**” (emphasis added).

Evidently, Defendant Lawley made a false testimony in his sworn affidavit. Therefore, the credibility of Defendant Lawley as a witness, even with a sworn affidavit, is a genuine issue to be determined by the jury.

Example 17. Concerning the credibility of Speck, Defendants Barrow and Lawley

In his affidavit, Samuel Speck (“Speck”) testified under oath, “[t]he humane care and proper use of laboratory research animals is a very serious matter in the School of Medicine”, “I received a letter dated May 31, 2006 from Jae Schmidt, the Administrator for the Department of Neurosurgery at the Emory University School of Medicine reporting an act of violence that Dr. XXX committed towards laboratory mice”, “[t]he Institutional Animal Care and Use Committee did not complete an investigation into Dr. XX XXX’s reported mistreatment of Dr. Enrique Torre’s research animals because Dr. XXX was terminated from his employment”.

Without a dispute, the incident involving alleged mistreatment of mice occurred on May 17, 2006 and Schmidt started his “investigation” no later than May 22. According to Speck, he only received Schmidt’s letter on May 31. To a reasonable mind and the jury, it needs more than mere assertions to prove that Defendant Emory administrators were “very serious” about animal’s welfare.

Defendant Emory has failed and refused to provide any evidence that its Institutional Animal Care and Use Committee initiated an investigation into the alleged animal mistreatment. Thus, a

mere assertion of “did not complete” an investigation of “a very serious matter” only cast doubt of credibility on Speck as a witness even with a sworn affidavit, which is only to be determined by the jury.

Additionally, Plaintiff was terminated partially for alleged mistreatment of mice and such termination was upheld primarily for such alleged actions. Yet, according to Speck’s sworn testimony, “an investigation” into such actions was “not completed” because Plaintiff was already terminated for such actions.

Evidently, the testimonies of Speck, Defendants Barrow and Lawley contradicted with each other. Therefore, the credibility of them, even with sworn affidavits, is a genuine issue to be determined by the jury.