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1 BY MR. FLOWERS:

2 Q What do you recall?

3 THE COURT REPORTER: I didn't hear an  
4 answer.

5 BY THE WITNESS:

6 A My answer is vaguely that he was of  
7 the same opinion as I was.

8 BY MR. FLOWERS:

9 Q And what was that opinion?

10 MR. MCFARLANE: Objection; calls for  
11 hearsay.

12 BY THE WITNESS:

13 A That the study was inconclusive.

14 BY MR. FLOWERS:

15 Q Did you ever discuss the results of  
16 the study with Dr. Baron?

17 A Not the results of the study, but I  
18 think as he was injecting one patient and  
19 another and all that, as we were meeting in our  
20 common conference room, he was kind of giving me  
21 a report that he has done a patient and he has  
22 lined up another patient and the patients were  
23 lined up by Dr. Emmanouel who was I think it was  
24 chief of biology at the time.

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1 Q So do you recall ever discussing the  
2 results of the experiment with Dr. Baron?

3 A No. You don't need to discuss -- I  
4 recall the general disappointment. Let's put it  
5 this way. We didn't sit down and analyze it  
6 because it's quite obvious he told me one  
7 hemoglob -- we measured I think hematocrit --  
8 sorry -- reticulocytes and one went up half a  
9 percent or something like that and one didn't  
10 change and one went down half a percent. That's  
11 what I recall.

12 MR. McFARLANE: Move to strike for  
13 speculation, lack of firsthand knowledge.

14 BY MR. FLOWERS:

15 Q Do you recall actually seeing the  
16 data from the three-subject experiment?

17 A No.

18 Q Just to back up, did you play any  
19 role at all in designing the experiment?

20 A No, very little, and if you press me  
21 to tell you what was that little, I don't know.

22 I think all was provided the urine  
23 and the expertise regarding the amount that he  
24 has and I think he did the iodination. No, I'm

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1     sorry. That wasn't with iodination. In  
2     patients you cannot use radioactive, and  
3     Dr. Emmanouel scheduled the nitty-gritty part of  
4     asking the patients to volunteer and to give  
5     them the material.

6           Q       Did you have an opportunity to  
7     provide input into the design of the experiment  
8     before it was conducted?

9           A       No, I don't think -- I didn't think  
10    it was necessary.

11          Q       Why?

12          A       I thought that with Goldwasser such  
13    an authority and Dimitri Emmanouel very expert  
14    in both nephrology and dialysis, dealing with  
15    dialysis patients and knowing who among the  
16    dialysis patients -- in those days the units  
17    were very small, we had 20 or 30 patients all  
18    together -- would volunteer and his skills with  
19    injecting stuff, he was very skilled manually,  
20    that my input was not necessary.

21          Q       Before the three-subject urinary EPO  
22    experiment was conducted, did you have any hopes  
23    about the outcome?

24          A       Well, you know, a scientist doesn't

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1 BY THE WITNESS:

2 A I don't think so. I think they  
3 received the EPO, and I'm not quite sure how you  
4 can blind that so somebody else will receive  
5 saline. I mean, we didn't need that kind of  
6 control to know that blood picture doesn't  
7 improve by itself. These three patients could  
8 have been their own controls before or after the  
9 experiment.

10 BY MR. FLOWERS:

11 Q How would that have been done?

12 A Just --

13 MR. McFARLANE: Sorry. Objection;  
14 calls for expert testimony.

15 BY THE WITNESS:

16 A Just looking at their previous curves  
17 of hemoglobin, reticulocytes, hematocrit in the  
18 period closest to the experiment or in the  
19 period some weeks after the experiment.

20 BY MR. FLOWERS:

21 Q Do you know whether that was done in  
22 regard to this experiment?

23 MR. McFARLANE: Objection; lacks  
24 firsthand knowledge.

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1 BY THE WITNESS:

2 A I have no idea.

3 BY MR. FLOWERS:

4 Q Let me ask, do you know where  
5 Dimitrios Emmanouel is today?

6 A Yes.

7 Q Where is he?

8 A Under the soil of Greece.

9 Q So he passed away?

10 A Yes.

11 Q How long ago did he pass away?

12 A He passed away in 2002 or '3.

13 Q Do you know how the patients who --  
14 the three subjects that were administered the  
15 urinary EPO in this study, do you know how they  
16 came to be a part of the study?

17 MR. McFARLANE: Objection; it lacks  
18 foundation.

19 BY THE WITNESS:

20 A No. I think they were amenable to be  
21 recruited because patients in general, you tell  
22 them we would like to do something new that  
23 nobody has done, they say, Well, count me out.  
24 So I suppose they were people that had --

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1 Dr. Emmanouel had more of a relationship with  
2 and pressured them to participate, but that's  
3 the case.

4 BY MR. FLOWERS:

5 Q You don't know one way or the other?

6 A No.

7 Q Do you know whether any of the  
8 patients that were under your care, whether any  
9 of those three subjects were under your care at  
10 that time?

11 MR. McFARLANE: Objection; lacks  
12 firsthand knowledge.

13 BY THE WITNESS:

14 A I don't recall.

15 BY MR. FLOWERS:

16 Q Okay. You don't remember.

17 MR. FLOWERS: If I can mark as the  
18 next exhibit -- I'll ask the reporter to mark as  
19 the next exhibit a document bearing production  
20 numbers AM-ITC 00949333 through 335.

21 (Katz Exhibit No. 3 was  
22 marked for ID.)

23 BY MR. FLOWERS:

24 Q My first question, Doctor, is just

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1 BY THE WITNESS:

2 A I don't.

3 BY MR. FLOWERS:

4 Q Going back to the three-subject  
5 urinary EPO experiment, did you make any  
6 personal observations as to whether the overall  
7 condition of any of those subjects improved as a  
8 result of receiving the urinary EPO?

9 MR. McFARLANE: Objection; calls for  
10 expert testimony, firsthand knowledge.

11 BY THE WITNESS:

12 A No.

13 BY MR. FLOWERS:

14 Q Did you make any personal  
15 observations as to whether or not the anemia of  
16 any of those three subjects was corrected as a  
17 result of receiving the urinary EPO?

18 MR. McFARLANE: Objection; expert  
19 testimony and firsthand knowledge.

20 BY THE WITNESS:

21 A No.

22 BY MR. FLOWERS:

23 Q As his chief would you have been --  
24 as his chief were you aware of Dr. Emmanouel's

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1 which data generated in the three-subject human  
2 urinary EPO experiment were recorded?

3 MR. McFARLANE: Objection; lacks  
4 firsthand knowledge.

5 BY THE WITNESS:

6 A I believe vaguely that they showed me  
7 these results that I mentioned to you once in  
8 which one went up and one went down and one  
9 stayed the same. That's based on me seeing I  
10 believe the reticulocyte count.

11 BY MR. FLOWERS:

12 Q And do you recall when you saw that  
13 data?

14 MR. McFARLANE: Objection; no  
15 firsthand knowledge, calls for speculation.

16 BY THE WITNESS:

17 A No. Actually I -- those dates are so  
18 remote that even my own article I didn't realize  
19 was published in '80, something '80. I thought  
20 it was in '77. So if you ask me when was this  
21 study done, I have no idea what year, what date.

22 BY MR. FLOWERS:

23 Q Do you remember the format in which  
24 you were presented with the data from this



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1 study?

2 MR. McFARLANE: Objection; calls for  
3 speculation, no firsthand knowledge, and also  
4 hearsay and mischaracterizes his testimony.

5 BY THE WITNESS:

6 A No.

7 MR. FLOWERS: I'd like to mark as --  
8 ask the court reporter to mark as Katz Exhibit 4  
9 a document bearing the production number Baron  
10 00651A.

11 (Katz Exhibit No. 4 was  
12 marked for ID.)

13 BY THE WITNESS:

14 A This is -- I'm sorry. You didn't ask  
15 me any question.

16 BY MR. FLOWERS:

17 Q Well, my first question is do you  
18 recognize this document?

19 A Not the document itself, but I  
20 recognize it -- his handwriting, that it's  
21 written by him, by Dimitrios Emmanouel.

22 Q So in 1979 and 1980 were you familiar  
23 with Dr. Emmanouel's handwriting?

24 MR. McFARLANE: Objection. Move to

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1 strike. It calls for expert testimony.

2 BY THE WITNESS:

3 A Yes, very.

4 BY MR. FLOWERS:

5 Q How? How did you come to be familiar  
6 with his handwriting?

7 MR. McFARLANE: Objection.

8 BY THE WITNESS:

9 A Because he was always taking the  
10 notes from our experiments with animals and we  
11 would go over them periodically or regularly,  
12 every week.

13 BY MR. FLOWERS:

14 Q In that time period 1979 and 1980,  
15 did you personally observe Dr. Emmanouel writing  
16 notes?

17 A Yes.

18 Q Is that how you became familiar with  
19 his handwriting?

20 A I knew -- he would report to me. He  
21 would give me his handwritten stuff, even drafts  
22 of articles to publish in longhand. We didn't  
23 have computers. We had an IBM ball and even  
24 that didn't work.

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1 Q So do you recognize the handwriting  
2 on Katz Exhibit 4 as Dr. Emmanouel's?

3 A Yes.

4 MR. McFARLANE: Objection; calls for  
5 expert testimony and speculation.

6 BY THE WITNESS:

7 A Yes, I do.

8 BY MR. FLOWERS:

9 Q Beyond that do you recognize this  
10 document?

11 MR. McFARLANE: Objection; asked and  
12 answered.

13 BY THE WITNESS:

14 A No.

15 MR. FLOWERS: Okay. I'd like to ask  
16 the court reporter to mark as the next exhibit a  
17 document bearing the production No. Baron  
18 00906A.

19 (Katz Exhibit No. was 5  
20 marked for ID.)

21 BY MR. FLOWERS:

22 Q And the same question, Doctor. Do  
23 you recognize this document?

24 A Same answer. Not the document but

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1 the handwriting.

2 Q You recognize the handwriting on this  
3 document?

4 A Yes.

5 MR. McFARLANE: Objection; calls for  
6 speculation.

7 BY THE WITNESS:

8 A Yes, I do.

9 BY MR. FLOWERS:

10 Q And whose handwriting do you believe  
11 this to be?

12 MR. McFARLANE: Objection; calls for  
13 expert testimony and speculation.

14 BY THE WITNESS:

15 A Dr. Dimitrios Emmanouel.

16 BY MR. FLOWERS:

17 Q Is there any aspect of the writing on  
18 this -- any particular aspect of the handwriting  
19 on this document that leads you to believe it's  
20 Dr. Emmanouel's?

21 MR. McFARLANE: Objection.

22 BY THE WITNESS:

23 A I know his handwriting like mine.

24 Also the length of these pages was some

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1 particularity of his that many people copied  
2 because it was useful to put the whole package  
3 of data that otherwise -- when you didn't have  
4 computers I mean. This is I think double width.

5 I don't know what the original is,  
6 but double width of line and then he made it for  
7 four times so you can look horizontally and see  
8 from Noah's flood until today.

9 THE COURT REPORTER: I'm sorry. You  
10 can see it from?

11 MR. FLOWERS: From Noah's flood until  
12 today.

13 MR. McFARLANE: And move to strike.

14 MR. FLOWERS: Just the Noah's flood  
15 part?

16 MS. BEN-AMI: I think your tape is  
17 running out.

18 MR. FLOWERS: Why don't we just go  
19 ahead and switch the tape?

20 THE VIDEOGRAPHER: This marks the end  
21 of Tape 1 Volume 1 in the deposition of  
22 Dr. Adrian I. Katz. Going off the record. The  
23 time is now 4:21 p.m.

24 (Recess had.)

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1 BY MR. FLOWERS:

2 Q Doctor, the court reporter has marked  
3 this document as Katz Exhibit 7. I have the  
4 same question for you, whether you recognize the  
5 document.

6 A The same answer. I recognize the  
7 handwriting -- the author of the handwriting.

8 Q And who is that?

9 A Dr. Dimitrios Emmanouel.

10 Q Other than recognizing the  
11 handwriting, do you recognize the document?

12 A I mean, I recognize the data written.  
13 I don't recall seeing this document before.

14 Q You said you recognize the data  
15 that's written. What did you mean?

16 A There are a number of dates and there  
17 are a number of measurements on each date. I  
18 don't know what -- in what order they are and  
19 what exactly they mean. That's not your  
20 question anyway.

21 Q That's correct. Do you recognize  
22 this data on Katz Exhibit 7 as data from the  
23 three-subject urinary EPO experiment?

24 MR. MCFARLANE: Objection; calls for

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1 speculation, leading, and lack of firsthand  
2 knowledge.

3 BY THE WITNESS:

4 A So far I have trouble. I see here a  
5 **Redacted**. I assume this is one patient. I have  
6 trouble seeing three patients here, but I  
7 suppose I have a bunch of dates and their  
8 sequential, and I don't know. To me they seem  
9 like one patient unless they are averages. I'm  
10 sorry. This continues. It's the same thing.  
11 It seems to me to be from one patient.

12 BY MR. FLOWERS:

13 Q Were you aware of the names of the  
14 three patients or the three subjects who  
15 participated in this study in 1979?

16 A No.

17 MR. MCFARLANE: Objection; lacks  
18 foundation, lack of firsthand knowledge.

19 BY THE WITNESS:

20 A No. Now I saw some names, but  
21 different --

22 BY MR. FLOWERS:

23 Q Okay. I'll put that to the side.

24 MR. FLOWERS: I'd like the court

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1 production number Baron 00018A.

2 (Katz Exhibit No. 9 was  
3 marked for ID.)

4 BY MR. FLOWERS:

5 Q Doctor, the court reporter has marked  
6 this document as Katz Exhibit 9. I have the  
7 same question for you. Do you recognize this  
8 document?

9 A Same answer. I don't recognize the  
10 document, but I recognize Dr. Dimitrios  
11 Emmanouel as its author or its writer.

12 Q Do you recognize the handwriting on  
13 the document?

14 MR. McFARLANE: Objection; expert  
15 testimony.

16 BY THE WITNESS:

17 A Yes.

18 BY MR. FLOWERS:

19 Q And whose handwriting do you  
20 recognize it as being?

21 MR. McFARLANE: Same objection.

22 BY THE WITNESS:

23 A Dr. Dimitrios Emmanouel.

24



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1 BY MR. FLOWERS:

2 Q Okay. You can put that to the side.

3 MR. FLOWERS: I'll ask the court

4 reporter to mark as the next exhibit Katz

5 Exhibit 10 a document bearing the Bates No.

6 Baron 00889A.

7 (Katz Exhibit No. 10

8 was marked for ID.)

9 BY MR. FLOWERS:

10 Q Dr. Katz, the court reporter has

11 handed you a document which has been marked as

12 Katz Exhibit 10 and I have the same question, do

13 you recognize this document?

14 A No.

15 Q Do you recall ever seeing this

16 document before?

17 A No.

18 Q Do you recognize the handwriting on

19 the document?

20 A Yes.

21 Q And whose handwriting do you

22 recognize it as being?

23 A Dr. Dimitrios Emmanouel.

24 Q You can put that to the side as well.

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1 Dr. Katz, do you recall ever drawing  
2 any conclusions from the results of the  
3 three-subject human urinary EPO experiment as to  
4 whether those results were statistically  
5 significant in any way?

6 MR. McFARLANE: Objection; asked and  
7 answered, expert testimony, calls for  
8 speculation.

9 BY THE WITNESS:

10 A No. No statistics were done or  
11 possible.

12 BY MR. FLOWERS:

13 Q Why?

14 A Because --

15 Q First of all, why weren't any  
16 statistics done?

17 A I don't know.

18 MR. McFARLANE: Objection; lack of  
19 foundation.

20 BY MR. FLOWERS:

21 Q And why weren't statistics possible  
22 on those results?

23 MR. McFARLANE: Objection; calls for  
24 expert testimony.

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1 BY THE WITNESS:

2 A Because with an N number of N equal  
3 3, it's very difficult, if not impossible, to do  
4 any decent statistics.

5 MR. McFARLANE: Move to strike for  
6 expert testimony.

7 BY MR. FLOWERS:

8 Q Earlier you had mentioned today  
9 reticulocytes. I wanted to ask you what are  
10 reticulocytes?

11 MR. McFARLANE: Objection; calls for  
12 expert testimony.

13 BY THE WITNESS:

14 A Reticulocytes are the precursors of  
15 the mature red cells that we have in the  
16 circulating blood.

17 BY MR. FLOWERS:

18 Q How are reticulocytes made in a human  
19 being?

20 MR. McFARLANE: Objection; calls for  
21 expert testimony.

22 BY THE WITNESS:

23 A They are made from precursors of  
24 their own which are populating the bone marrow.

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1 BY MR. FLOWERS:

2 Q And when reticulocytes are introduced  
3 into the human bloodstream, what happens to  
4 them?

5 MR. McFARLANE: Objection; calls for  
6 expert testimony.

7 BY THE WITNESS:

8 A Some of them live for awhile and then  
9 they die, and I don't remember what's the half  
10 life, and some of them turn into red cells.

11 BY MR. FLOWERS:

12 Q By 1979 had you made any observations  
13 either in your clinical practice or in your  
14 research as to whether or not the level of  
15 reticulocytes in the bloodstream of any of your  
16 own patients varied over time in any way?

17 MR. McFARLANE: Objection; it's  
18 compound, calls for expert testimony, calls for  
19 speculation.

20 BY THE WITNESS:

21 A They do vary over time, but within a  
22 miserable range. They're low but they're not  
23 every day the same thing and that may be  
24 laboratory variation, maybe.

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1 BY MR. FLOWERS:

2 Q In 1979 were you familiar with the  
3 range of variation that was inherent in  
4 measurements of reticulocytes in a clinical  
5 laboratory?

6 MR. McFARLANE: Objection; calls for  
7 expert testimony, calls for speculation.

8 BY THE WITNESS:

9 A Sometime about that time they came  
10 out with automated machines that were measuring,  
11 and I don't recall if my experience is from  
12 before that when they were counted by hand or  
13 after there was this what's called a Coulter  
14 counter, C-o-u-l-t-e-r with a capital C, Coulter  
15 counter, but the variation is generally less  
16 than one half of one percent.

17 BY MR. FLOWERS:

18 Q Going back to the variation in the  
19 level of reticulocytes in the human bloodstream,  
20 why does the level of reticulocytes in the human  
21 bloodstream vary over time?

22 MR. McFARLANE: Objection; calls for  
23 expert testimony, speculation, lack of firsthand  
24 knowledge.

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1 BY THE WITNESS:

2 A Well, one I mentioned is the  
3 laboratory error. The second is that their  
4 release from the bone marrow is not steady.  
5 It's periodic. Sometimes the bone marrow puts  
6 out more and sometimes they put out less.  
7 Thirdly -- I take that back because -- I take  
8 that back. That was in error. It's also the  
9 rate that they are consumed. They can be  
10 consumed faster or slower, mostly in the  
11 generation of the mature red cells. That's what  
12 comes to mind.

13 MR. McFARLANE: Move to strike as  
14 nonresponsive.

15 BY MR. FLOWERS:

16 Q Prior to the introduction of the  
17 Coulter counter, do you recall what the level of  
18 experimental error was in hand counting  
19 reticulocytes in human blood samples?

20 MR. McFARLANE: Objection; calls for  
21 expert testimony, calls for speculation, no  
22 firsthand knowledge, lack of foundation.

23 BY THE WITNESS:

24 A I don't. I don't even know if the

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1 number I gave you is after the Coulter or not,  
2 but if we're talking about day-to-day  
3 variations, 0.5 percent is very common I think  
4 today when we have the Coulter for decades.

5 Before it probably since -- with  
6 humans it probably was bigger. I cannot give  
7 you exact number. They look very specific under  
8 the microscope. It's hard to confuse them with  
9 something else, but there aren't many, so you  
10 have to look through a lot of fields to find one  
11 or two. So that's the source of the error when  
12 it is done by hand.

13 BY MR. FLOWERS:

14 Q Do you recall whether reticulocyte  
15 counts were done in the three-subject human  
16 urinary EPO experiment in 1979, 1980?

17 MR. McFARLANE: Objection; lacks  
18 personal knowledge.

19 BY THE WITNESS:

20 A I do.

21 BY MR. FLOWERS:

22 Q How do you know that?

23 A Because I think this is what we  
24 looked at when I concluded that it was

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1 inconclusive.

2 MR. McFARLANE: Move to strike. The  
3 witness has already testified that he did not  
4 conclude anything from the data.

5 BY MR. FLOWERS:

6 Q Do you recall how the reticulocyte  
7 counts were determined in the three-subject  
8 human urinary EPO experiment?

9 MR. McFARLANE: Objection; lacks  
10 foundation, lacks personal knowledge.

11 BY THE WITNESS:

12 A No. They were performed by a central  
13 laboratory, but the method by which they did it  
14 I don't remember. I don't know. I never knew.

15 BY MR. FLOWERS:

16 Q In your clinical practice as of 1979  
17 did you ascribe any significance to the level of  
18 normal variation in the number of reticulocytes  
19 in the human bloodstream?

20 MR. McFARLANE: Objection; calls for  
21 expert testimony, calls for speculation, no  
22 firsthand knowledge.

23 BY THE WITNESS:

24 A I didn't have occasion to do serial



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1 measurements or need for, so I cannot answer  
2 that.

3 MR. FLOWERS: Let me mark as the next  
4 exhibit what I believe is the subpoena served by  
5 the Roche defendants on Dr. Katz in this action.

6 (Katz Exhibit No. 11  
7 was marked for ID.)

8 BY MR. FLOWERS:

9 Q So let me just ask you, Dr. Katz.  
10 The court reporter has marked this document as  
11 Katz Exhibit 11 and on the last two pages -- let  
12 me start at the right place.

13 First of all, do you recognize this  
14 document?

15 A Yes.

16 Q And what is it?

17 A It's a subpoena.

18 Q And was this document served on you?

19 A Yes.

20 Q And the last two pages of the  
21 document at the top of the next to last page it  
22 says Schedule B Document Requests and it has a  
23 series of paragraphs there, No. 1 through 8, and  
24 I wanted to ask you did you look at this

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1 Schedule B when the subpoena was served upon  
2 you?

3 A I think I may have, but at that point  
4 I was so confused as to why am I served with  
5 this that -- anyway, I didn't have the data so I  
6 didn't think any action is called on my part.

7 Q I won't go through each of these  
8 separate eight paragraphs in the document  
9 request, but did you look for any documents  
10 relating to the three-subject human urinary EPO  
11 experiment after you were served with this  
12 subpoena?

13 A No. I have an extraordinary memory.  
14 I know what I have and I know what I don't, and  
15 I don't have data that somebody else has  
16 reported 30 years ago that led to no  
17 publication. So to be frank, I didn't  
18 understand this whole business why I am  
19 subpoenaed and so forth, but that's another  
20 matter.

21 Q So is it your belief that you don't  
22 have any documents that relate to --

23 A It's not my belief. It's my  
24 certainty.

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1 MS. BEN-AMI: So would you mind if I  
2 take your seat?

3 MR. FLOWERS: Sure.

4 MS. BEN-AMI: Just because otherwise  
5 I'm far away.

6 (Brief interruption.)

7 (Discussion had off the  
8 record.)

9 EXAMINATION

10 BY MS. BEN-AMI:

11 Q Good afternoon, Doctor. My name is  
12 Leora Ben-Ami and I represent the other side,  
13 Roche, and I really have very few questions for  
14 you, but I do need to ask you a few things.

15 You said that you -- you don't need  
16 to look at it. This is your subpoena and it's  
17 dated in early February of this year.

18 Do you remember that?

19 A Yes. I remember.

20 Q Okay. And you said before that when  
21 you received it you didn't remember the  
22 three-patient clinical study at all, right?

23 A I didn't remember anything of what I  
24 said today.

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1 Q And then you spoke to Dr. Goldwasser,  
2 right?

3 A Yes.

4 Q And after that somehow you met  
5 Mr. Flowers, right?

6 A Yes.

7 Q How did you meet him?

8 A I don't know.

9 Q Well, how did you -- did you call him  
10 as a lawyer or did he call you?

11 A No. He called me and explained that  
12 his firm works with the university counsel and  
13 can he ask me a few questions. I believe that  
14 was the sequence.

15 Q He said that his firm works with the  
16 university?

17 A On this particular case.

18 Q Okay.

19 A But when he called, I also expressed  
20 my puzzlement about why do I get this. I mean,  
21 I don't remember anything, and if Goldwasser  
22 wouldn't have told me, to this today I wouldn't  
23 have remembered.

24 Q Okay. Good. So Mr. Flowers told you

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1 that his firm was working with the university,  
2 is that --

3 A I believe that.

4 Q Okay. And so you used to work for  
5 the university, right?

6 A Yes.

7 Q And so you naturally spoke to  
8 Mr. Flowers?

9 A Right.

10 Q Okay. And did you actually meet with  
11 him at some point?

12 A Yes.

13 Q Prior to today?

14 A Yes.

15 Q How many times did you meet with him?

16 A Once.

17 Q And where was it?

18 A In my home.

19 Q And how long did the meeting take?

20 A Well, if we don't count the time that  
21 we're waiting for the taxi, about an hour and a  
22 half.

23 Q Okay. And during that time he showed  
24 you these documents that you saw today?

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1 A No. No, he didn't.

2 Q Didn't you during a break say, Isn't  
3 there a third one of these, to Mr. Flowers?

4 A Pardon me?

5 Q During the break when I was sitting  
6 here didn't you say, Isn't there a third one of  
7 these, to Mr. Flowers?

8 A A third one?

9 Q Yeah. You had seen two of these  
10 documents and you said --

11 A Well, the third came, he had it in  
12 his bag. We were talking about three patients.  
13 That's why I asked.

14 Q Okay. So you had a conversation with  
15 Mr. Flowers about the clinical studies, right?

16 A I was mostly asking him how did I get  
17 into this and he gave me the background that  
18 there is a lawsuit going on between the two  
19 companies and that my deposition is important.  
20 I said, But my deposition, I can finish in ten  
21 minutes. I have no recollection of anything.

22 And he said, Yeah, that's nice, but I  
23 don't think it's going to be enough.

24 Q And you know that after Roche found

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1 out that you really didn't know anything about  
2 this Roche said, Well, let's not have the  
3 deposition? Did Mr. Flowers tell you that?

4 A No.

5 Q So you understand that he subpoenaed  
6 you?

7 A He did.

8 Q He forced you to come here?

9 A He sent the subpoena.

10 Q Right.

11 A Or his firm.

12 Q So Roche understood from Dr. Baron  
13 that you probably wouldn't have any information  
14 and, therefore, Roche said, Let's not do the  
15 deposition and then Mr. Flowers and his  
16 colleagues said, No, we want to do the  
17 deposition anyway. Was that your understanding?

18 A No. I didn't think he said, We want  
19 a deposition, but my understanding was that he  
20 thought or said that it's inevitable, that even  
21 if I don't have a good recollection, a  
22 deposition is important.

23 Q So even if you don't remember, you  
24 still have to give testimony?

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1 A Yes.

2 Q So --

3 A I must say by then he asked me what  
4 do you remember or don't, and I said I just  
5 remember what I've asked Dr. Goldwasser and he  
6 told me about these three patients.

7 Q Dr. Goldwasser told you about the  
8 three patients?

9 A Just that there were three because I  
10 asked him, I said, Eugene, I didn't do clinical  
11 research in my life, and that was a phone call  
12 way at night I think after I received the  
13 subpoena from them.

14 Q So is Mr. Flowers being paid by you  
15 to be your attorney?

16 A No.

17 Q And are you being paid by anyone?

18 A No.

19 Q No?

20 A That's something else I need to talk  
21 to you about. No.

22 Q What do you want to talk about?

23 A No, no. I'm kidding. I'm not paid  
24 except the checks for the sandwiches, whatever



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1 Q And you respect that he understood  
2 what the results were, correct?

3 A These are two different issues. I  
4 respect him as a scientist. I don't know what  
5 he -- about what you're speaking, what the --

6 Q I'm sorry? I'm speaking what?

7 A Never mind. -- what made him write  
8 these statements, and for all I know they may be  
9 correct. And if they're not correct, I might  
10 tell you -- what's the term in law, under the  
11 table, sub rosa --

12 Q You can't be sub rosa when there is a  
13 video camera on you.

14 A -- sub rosa that people embellish a  
15 bit their grants. Everybody does, and even  
16 respectable people, but that has nothing to do  
17 with that. I'm willing -- if I had this data,  
18 I'm willing to look at them again. He doesn't  
19 say he published them anywhere.

20 Q No. He just says under pain and  
21 penalty of perjury that he says this is accurate  
22 on the first page.

23 A Well, what we have here are all these  
24 big tables. Somebody should be able to decide.