

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 2

In the Matter of:

Trustees of Columbia University Case No. 02-RC-225405
in the City of New York,

Employer,

and

Columbia Postdoctoral Workers
and United Automobile,
Aerospace, and Agricultural
Implementation Workers of
America (CPW-UAW),

Petitioner.

Place: New York, NY

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UNITED STATES OF AMERICA
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TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

EMPLOYER,

and

COLUMBIA POSTDOCTORAL WORKERS
AND UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL
IMPLEMENTATION WORKERS OF
AMERICA (CPW-UAW),

PETITIONER.

Case No. 02-RC-225405

The above-entitled matter came on for hearing, pursuant to notice, before **MATTHEW MURTAGH**, Hearing Officer, at the National Labor Relations Board, 26 Federal Plaza, Suite 3614, New York, NY 10278, on **Wednesday, August 22, 2018, 10:38 a.m.**



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A P P E A R A N C E S

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I N D E X

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P R O C E E D I N G S

HEARING OFFICER MURTAGH: The hearing will now be in order. This is a formal hearing in the matter of the Trustees of Columbia University case number 02-RC-225405 for the National Labor Relations Board. The hearing officer appearing for the National Labor Relations Board is Matthew Murtagh.

All parties have informed of the procedures at formal hearings before the board by service of a description of procedures in certification and decertification cases with the notice of hearing. I have additional copies of this document for distribution if any party wants more.

Will counsel at this time please state their appearances for the record? For the Petitioner?

MR. MEIKLEJOHN: For the Petitioner, Thomas Meiklejohn, Livingston, Adler, Pulda, Meiklejohn & Kelly, 557 Prospect Avenue, Hartford, Connecticut.

HEARING OFFICER MURTAGH: And for the employer?

MR. PORZIO: For the University, Steven Porzio, Proskauer Rose, 11 Times Square, New York, New York 10036.

MR. PLUM: And Bernard Plum also at Proskauer.

HEARING OFFICER MURTAGH: Are there any other appearances?

MS. CATAPANO: Patricia Catapano, associate general counsel, Columbia University.

HEARING OFFICER MURTAGH: Any other appearances? Let the record show no response.



1 Are there any other party -- persons, parties, or labor
2 organizations in the hearing room who claim an interest in this
3 proceeding. Let the record show no response.

4 I now propose to receive the formal papers. They've been
5 marked for identification as Board Exhibit 1-A through 1-I
6 inclusive, Exhibit 1-I being an index and description of the
7 entire exhibit. The exhibit has already been shown to all
8 parties. Are there any objections to the receipt of these
9 exhibits into the record?

10 MR. MEIKLEJOHN: No objection.

11 MR. PORZIO: No objection.

12 HEARING OFFICER MURTAGH: Hearing no objections, the
13 formal papers are received into the record.

14 **(Board Exhibit Number 1-A through 1-I Received into Evidence)**

15 HEARING OFFICER MURTAGH: Are there any motions to
16 intervene in these proceedings to be submitted to the hearing
17 officer for ruling by the Regional Director at this time? Are
18 the parties aware of any other employers or labor organizations
19 that have an interest in this proceeding?

20 MR. MEIKLEJOHN: No, sir.

21 HEARING OFFICER MURTAGH: And the Hearing Officer hears no
22 further response. Now, are there any pre-hearing motions made
23 by any party that need to be addressed at this time?

24 MR. MEIKLEJOHN: I don't believe so.

25 MR. PORZIO: No.

1 HEARING OFFICER MURTAGH: So let the record show no. Now,
2 the parties to this proceeding have executed a document, which
3 is marked as Board Exhibit 2. The exhibit contains a series of
4 stipulations, including, among other items, the jurisdictional
5 information for the university, petitioner's labor organization
6 status, collective bargaining history, contract bar, and
7 petitions pending in other regional offices.

8 The -- in off-the-record discussions, the counsel for the
9 university has indicated that, with regard to labor
10 organization status, they are willing stipulate to Petitioner
11 being a labor organization within the meaning of Section 2(5),
12 but with a caveat.

13 So Employer counsel, at this time, can you restate your
14 positions?

15 MR. PORZIO: Thank you. The petition for a unit, as
16 currently composed by the Petitioner, the university does not
17 contest the 2(5) status; however, should the composition of the
18 petition for a unit change, either Petitioner changes
19 voluntarily or as a result of any subsequent direction and
20 order and direction of election, the University, without
21 prejudice to its argument raised in what's been marked as Board
22 Exhibit 3, as it relates to the postdoctoral research
23 scientists, postdoctoral research scholars, and postdoctoral
24 research fellows not meeting the Board's test for 2(3) employee
25 status, without prejudice to that argument, we would stipulate

1 to the union's status as a 2(5) labor organization.

2 HEARING OFFICER MURTAGH: Okay. And Union counsel, is
3 there anything you want to add at this point?

4 MR. MEIKLEJOHN: No, sir.

5 HEARING OFFICER MURTAGH: Okay. So hearing no objection
6 to Board Exhibit 2, I hereby receive it into evidence.

7 **(Board Exhibit Number 2 Received into Evidence)**

8 HEARING OFFICER MURTAGH: Now, some reminders concerning
9 the hearing. The parties are reminded that, prior to the close
10 of the hearing, the Hearing Officer will solicit the parties'
11 positions on the type, dates, times, and locations of the
12 election and the eligibility period, including most recent
13 payroll ending date and any applicable eligibility formulas but
14 will not permit litigation of these issues.

15 The Hearing Officer will also inquire as to the need for
16 foreign language ballots and notices of election. Please have
17 the relevant information with respect to these issues available
18 at that time.

19 As we discussed during off-the-record conversations, the
20 Regional Director would like to have break downs per site with
21 specific hours, and particularly as they relate to sites that
22 have, you know, only a few employees. And also, to the extent
23 a mixed manual mail election may be necessary, he will be
24 soliciting your opinion on that as well.

25 The parties have been advised that the hearing will



1 continue from day to day as necessary until completed, unless
2 the Regional Director concludes that extraordinary
3 circumstances warrant otherwise. The parties are also advised
4 that, upon request, they shall be entitled to a reasonable
5 period at the close of hearing for oral argument. Post-hearing
6 briefs shall only be filed upon special permission of the
7 regional director.

8 In addition, a party may offer into evidence a brief memo
9 of points and authorities, case citations, and other legal
10 arguments during the course of the hearing, but before the
11 hearing closes. During off-the-record discussions, University
12 counsel indicated that he would be requesting permission from
13 the Regional Director to file post-hearing briefs. Union
14 counsel indicated he would consider whether he would join that
15 or oppose it.

16 Have there been any movements from those discussions?

17 MR. MEIKLEJOHN: Oh, yes. The Union opposes the
18 submission of post-hearing briefs.

19 HEARING OFFICER MURTAGH: What's your --

20 MR. MEIKLEJOHN: We feel that they are not contemplated by
21 the current rules, and that this case is not such a complicated
22 case as to warrant that. I understand that the Employer is
23 going to be asking for two weeks for the submission of briefs,
24 and we feel that that just reinforces our point that briefs are
25 unnecessary and result in delay that is not consistent with the

1 intent of the current -- the intent of the election polls.

2 HEARING OFFICER MURTAGH: All right. And Mr. Porzio,
3 while we're on it, I guess, at this time, if you do wish to
4 formally request briefs, you can do so now.

5 MR. PORZIO: Yes. So we'll be filing a request for
6 special permission to the Regional Director for permission to
7 submit a post-hearing brief. I disagree with my esteemed
8 colleague to my right on -- in terms of what the new R case
9 rules say in terms of being granted the opportunity to brief
10 what, I believe, are pretty novel issues in this case, given
11 that there are, from our check, no private sector postdoc
12 unions.

13 And this presents some interesting issues in terms of
14 funding, which will be further elaborated on in the hearing.
15 But we'll set out our full explanation of why post-hearing
16 briefs are necessary in this case in a letter which will be
17 transmitted to the Board either later today or tomorrow.

18 HEARING OFFICER MURTAGH: Okay. And do you envision two
19 weeks as Mr. Meiklejohn indicated?

20 MR. PORZIO: Yeah, two weeks from the close of the record.

21 HEARING OFFICER MURTAGH: Okay. So that will -- upon
22 receipt, the Regional Director will consider that.

23 So now moving to the statement of position, the Employer's
24 completed, and I have marked for identification as Board
25 Exhibit 3, statement of position in this matter. The parties

1 have been given copies.

2 Are there any objections to the receipt of this exhibit
3 into the record?

4 MR. MEIKLEJOHN: No objection.

5 MR. PORZIO: No objection.

6 HEARING OFFICER MURTAGH: So hearing no objection, Board
7 Exhibit 3 is received.

8 **(Board Exhibit Number 3 Received into Evidence)**

9 HEARING OFFICER MURTAGH: So now moving to the statement
10 of position itself, and so beginning with the University, Mr.
11 Porzio, if you could, you know, briefly summarize your position
12 on the various issues contained in the rider that you included
13 to the statement of position. And you know, I'll leave it to
14 you if you think it would be best to go point by point, or if
15 you would prefer to attempt -- you know, your part as a whole
16 and then allow Mr. Meiklejohn to respond in kind.

17 MR. PORZIO: Sure. So the statement of position asks the
18 University to identify whether the petition for a unit as
19 requested by the petitioner is even an appropriate unit for
20 collective bargaining purposes, and the University does not
21 believe it's an appropriate unit for three principal reasons,
22 and I can lay those out for you.

23 One, I've already alluded, the definition of "employee" as
24 defined by the National Labor Relations Act in Section 2(3) of
25 the Act does not contemplate, the University's opinion, the



1 individuals that are in the classifications of postdoctoral
2 research scientist, postdoctoral research fellow, and
3 postdoctoral research scholar. Those three classifications
4 make up a significant portion of the petition for a unit, and
5 the University believes that the Board should not recognize
6 those individuals as employees as defined by the act.

7 Assuming *arguendo* that the Board disagrees with the
8 initial argument I just laid out, there's two additional issues
9 with the petition for a unit that warrants further examination.

10 The first being that the classification postdoctoral
11 research fellow consists of individuals who receive funding
12 from external agencies, not Columbia University. And we
13 believe that, in addition to the principal argument that
14 they're not employees, to the extent that they are employees,
15 we don't believe that they're employees of Columbia University.

16 The third argument is a community of interest argument in
17 that the petition for a unit, in addition to including the
18 three postdoctoral classifications that I just referenced --
19 postdoctoral research scientist, postdoctoral research scholar,
20 and postdoctoral research fellow -- in addition to the those
21 three, the Union has asked for the associate research scientist
22 and associate research scholar titles. Those two titles are of
23 professional officers of research as defined in the Columbia
24 University handbook, faculty handbook, which you will see as an
25 exhibit as we start our case.

1 The terms and conditions of employment between those two
2 groups, the ARS, the associate research scientists and
3 scholars, and the postdoc classifications, there exists a
4 disparity in the terms and conditions of employment, and their
5 lax -- their requisite community of interest between those two
6 groups for appropriate collective bargaining purposes.

7 HEARING OFFICER MURTAGH: And so with regard to your first
8 argument regarding the 2(3) status of the classifications you
9 mentioned, that -- is that the same issue as the one addressed
10 by the Board in the prior Columbia University decision
11 published at 364 NLRB No. 90?

12 MR. PORZIO: So it's a similar argument. There are
13 additional cases that precede Columbia University. And at
14 Columbia University, at the case cite that you just referenced,
15 really dealt with graduate student assistance, either in a
16 teaching assistant or a research assistant capacity. There are
17 analogous cases that the Board has considered and contemplated
18 that deal with, in particular, house staff that we believe are
19 more analogous to the postdoc classifications that we've
20 identified. But the argument is certainly similar to the one
21 in the recent Columbia case from 2016.

22 HEARING OFFICER MURTAGH: And just for our clarity
23 purposes, the -- so the second argument you raised regarding
24 funding, that is not an issue that, in your view, is -- was
25 discussed by the Board or at issue in the Columbia University

1 case I just cited?

2 MR. PORZIO: So to my understanding is that the very
3 precise issue was not necessarily tackled directly by the Board
4 in Columbia in that my understanding is that most of the
5 research assistants, either in a research assistant or teaching
6 assistant capacity, received funds through the university. Our
7 position here is slightly nuanced in that there's a
8 classification of postdoc fellows that do not receive funding
9 from the university, that, in fact, they receive it through
10 directly -- either directly from an outside granting agency, or
11 as merely a pass-through by Columbia of funds received by an
12 external agency and passed directly to the postdoc trainee.

13 HEARING OFFICER MURTAGH: And now, Mr. Meiklejohn, if you
14 could respond to the Employer's contentions?

15 MR. MEIKLEJOHN: Certainly. You know, the petition in
16 this case seeks a unit of scientists and other scholars who
17 have completed the highest level of education offered in most,
18 if not all, of the United States educational system, or the
19 Western education system. They conduct the research that
20 generates knowledge to fulfill Columbia's mission of developing
21 and expanding the knowledge of the human race.

22 Obviously, the Regional Director cannot overrule Brown,
23 but even if he could, the idea that the individuals, or that
24 any of the individuals involved in this case are primarily
25 students, as the Brown University decision would hold, is

1 patently absurd.

2 When counsel refers to house staff, I assume he's
3 referring to interns and residents. The employer's position
4 statement cites St. Clare's Hospital and Healthcare Center,
5 which was overruled almost 20 years ago in Boston Medical
6 Center, and which has -- Boston Medical Center has consistently
7 been the law under the National Labor Relations Act throughout
8 that period.

9 So if that is the case law that counsel's referring to,
10 he's on even shakier ground, if that's possible, than for the
11 Employer to rely upon Brown. But even if Brown were -- I mean,
12 even if Brown were to become the law again and Columbia to be
13 overruled, it would not affect the petition that we're seeking
14 in this case.

15 The individuals that we're petitioning for are not seeking
16 -- are not there, are not at the university to obtain degrees.
17 They're conducting research to tame publication of their new
18 knowledge and to -- and as I say, to fulfill the mission of
19 Columbia.

20 The -- with respect to the fellows, the ones that we are
21 seeking to represent are ones who are on the payroll of
22 Columbia. These are individuals who receive grants from
23 funding agencies, either domestic or -- either federal
24 government or private entities or overseas grants, that the
25 grants are made to the university. From those grants, they are

1 provided with university health insurance, and they receive a
2 monthly payment from the university, which is labeled a
3 stipend.

4 This category is controlled by Columbia on page 18 of the
5 Columbia decision where there's a discussion of trainee grants.
6 These are people who work in the same laboratories as the other
7 classifications we seek, the postdoctoral research scientists
8 and the associate research scientists, with the exception of
9 the few who are not in the sciences. They are supervised by
10 the same principal investigators as the other classifications,
11 and they do the same kind of work under the same direction --
12 same kind of direction, and supervision.

13 On occasion, they won't transfer between the fellow
14 classification and the postdoctoral research scientist or
15 scholar classification, when and if, they're funding for their
16 postdoctoral or there for their fellowships run out.

17 With respect to the final issue, the creation or the
18 inclusion of postdoctoral officers of research with associate
19 research scientists and scholars, the record will show --
20 again, I don't think there will be any dispute -- they work
21 together. They perform the same kind of work. The work done
22 by associate research scientists is more advanced. There is a
23 progression, but it is a natural and normal progression. And
24 it is very common for postdoctoral research scientists or
25 scholars, or even postdoctoral research fellows, who --

1 Well, there is a limit to how many years someone can serve
2 in those classifications under the university's regulations.
3 And when that timeline runs out, if those employees wish to
4 continue their research at Columbia, they are frequently given
5 appointments as associate research scientists so that they can
6 continue their research in the same laboratory under the same
7 direction and supervision of the same principal investigator so
8 that one day they're doing the same research as a research
9 associate -- as a postdoctoral research scientist, and the next
10 day they're doing that research as an associate research
11 scientist.

12 And I believe we have -- we have at least agreed --
13 reached agreement on the introduction of a document, which --
14 and maybe we'll agree to this fact -- which shows that, out of
15 100 -- I'm sorry, of 1,017 total associate research scientists
16 and scholars identified by the Employer as being in the
17 bargaining unit, 176 or more than 17 percent of that group
18 previously worked or were classified as postdoctoral research
19 scientists or scholars or fellows.

20 So that is a substantial percentage of the people in the
21 associate research scientist category who previously worked as
22 -- in the postdoctoral categories. So we think that's a strong
23 piece of evidence that the combined bargaining unit is
24 appropriate.

25 HEARING OFFICER MURTAGH: Okay. And Mr. Meiklejohn,

1 the -- you know, at this point, I just wanted to clarify the
2 petition and confirm that you are not seeking postdoctoral
3 clinical fellows and postdoctoral residency fellows, that you
4 are only, in fact, seeking associate research scientist
5 scholars, postdoctoral research scientist scholars, and then
6 the postdoctoral research fellows; is that correct?

7 MR. MEIKLEJOHN: That is correct. The other
8 classifications that you identified, the clinical personnel,
9 generally speaking, have medical degrees, and their jobs
10 involve treating, caring for patients of various categories.
11 And we are not seeking to represent people in performing that
12 type of work.

13 MR. PORZIO: So if I may?

14 HEARING OFFICER MURTAGH: Yes.

15 MR. PORZIO: Given the petitioner's response, the
16 University would request that the unit description be modified
17 to specifically include the postdoctoral residency fellow
18 classification and postdoctoral clinical fellow classifications
19 to the excluded line in the definition just for clarity
20 purpose.

21 HEARING OFFICER MURTAGH: And would you have any
22 opposition to that, Mr. Meiklejohn?

23 MR. MEIKLEJOHN: No, no, I was prepared to do that. I --

24 HEARING OFFICER MURTAGH: Okay.

25 MR. MEIKLEJOHN: -- want to make -- I guess if I'm going

1 to move to amend it, I need to get my language right. So --

2 HEARING OFFICER MURTAGH: Okay.

3 MR. MEIKLEJOHN: Can we go off the record for just a
4 second?

5 HEARING OFFICER MURTAGH: Absolutely.

6 (Off the record at 11:02 a.m.)

7 MR. MEIKLEJOHN: Yes, the Petitioner -- at the request of
8 the Employer, the Petitioner moves to amend the petition to
9 provide that the postdoctoral clinical fellows and postdoctoral
10 residency fellows are specifically excluded from the bargaining
11 unit. So that -- well, that -- I think that's clear enough.
12 So that's my motion.

13 HEARING OFFICER MURTAGH: And Mr. Meiklejohn, in
14 off-the-record discussions, we talked about the possibility of
15 stand -- a potential standalone unit of associate research
16 scientist scholar. Is that something that the Union would
17 agree to or in any other unit -- or through an election, any
18 other unit determined to be appropriate by the Regional
19 Director?

20 MR. MEIKLEJOHN: The Union would proceed to an election in
21 any unit deemed appropriate by the Regional Director, yes.

22 HEARING OFFICER MURTAGH: And Mr. Porzio, going back to
23 the point regarding the postdoc fellows, is it the Employer's
24 position that the only difference between them and the postdoc
25 scientist scholars is the -- kind of the payment method or the

1 receipt of stipends, or is there something more there?

2 MR. PORZIO: Yes. So I think primarily, the most
3 significant difference is the source of the funding, but as
4 you'll hear from testimony of the University's witness, in
5 addition to that, there's a difference in the level of autonomy
6 that a fellow has when he or she comes to the university with
7 his or her own grant that he or she wrote with the directions
8 or instructions and research that they plan to perform, and
9 have a higher level of autonomy when they're in the lab as it
10 relates to the, you know, the direction that Mr. Meiklejohn was
11 referring to by the PI.

12 HEARING OFFICER MURTAGH: Okay.

13 MR. PORZIO: And if I may, a couple of additional points
14 on the third argument that Mr. Meiklejohn responded to. So the
15 -- and I didn't get into our entire argument when I just gave
16 you a precursor explanation, but I think it warrants discussion
17 now.

18 The associate research scientist position and the
19 associate research scholar position that Mr. Meiklejohn was
20 referring to, he's -- if I'm understanding the Petitioner's
21 argument correctly, the Petitioner is arguing that the level of
22 interchange between the postdoc research scientist scholar and
23 postdoc research fellow classifications into the associate
24 research scientist ranks is a form of interchange that would
25 tend to suggest that there is a community of interest.

1 But the -- what Mr. Meiklejohn failed to identify is that
2 that type of interchange, which the Board distinguishes and
3 calls permanent interchange, is different and distinguishable
4 from the intermittent or temporary interchange, which really
5 the crux of the analysis for our community of interest factor.
6 My understanding, and unless the Union could tell me otherwise,
7 is that any individual that transfers from the rank of
8 postdoctoral research scientist scholar fellow into the ranks
9 of associate research scientist or scholar is a one-way trip.
10 You would -- you would only go into those -- into the ARS
11 classifications from postdoc. There isn't the temporary
12 interchange where individuals float back and forth between the
13 two categories. I think that's a significant point.

14 Secondly, the classification associate research scientist
15 scholar and associate research scientist are among a different
16 class of scientists and researchers at the university in that
17 they are professional officers of research where their tenure
18 can be permanent. And as Mr. Meiklejohn correctly pointed out
19 in his response, that's not the case for postdoc individuals in
20 any of the three classifications. As he correctly pointed out,
21 that is a temporary state -- a temporary classification that
22 has a ceiling in terms of how long they can be in those
23 classifications.

24 So I think that that warranted just a further elaboration.
25 You'll hear additional detail and a much more granular level

1 explanation of that by the University's witnesses.

2 HEARING OFFICER MURTAGH: Okay. And regarding each of
3 those three groups, the -- how many -- I don't suppose you
4 know. How many employees would you -- or however you would
5 like to classify these individuals, would you estimate are in
6 each of those categories? So beginning with the associate
7 research scientist/scholars and then moving down from there.

8 MR. PORZIO: So I don't have an exact count. My
9 understanding is that associate research scientist/scholar is
10 at the 1,017 mark. I don't have an exact breakdown for the
11 other classifications. If that would be helpful to the Hearing
12 Officer, I could certainly get that.

13 HEARING OFFICER MURTAGH: Well, the statement of position
14 has the list. And so the -- you know, to the extent that that
15 is correct, I think it will be good for the rough estimate at
16 this stage.

17 Okay. And now, is there anything else we need to discuss
18 at this point prior to me going to the Regional Director with
19 the amendment to the petition?

20 MR. PORZIO: So the University has one other issue in
21 terms of the wording in the included portion of the unit
22 description. And off the record -- or actually conversations
23 that precede the opening of the record, the University
24 requested that the Union revise the included definition to
25 exclude and excise a portion that the University feels is

1 injecting, you know, uncertainty and ambiguity into what should
2 be a very clear definition so that the parties know exactly who
3 is and who is not part of the proposed unit. And that would be
4 -- I could read the language if it would be helpful. In the
5 included section of the petition, it says including
6 postdoctoral research scientist/scholars and postdoctoral
7 research fellows, associated research scientist/scholars, and
8 then here's the problematic language: or anyone with
9 substantially equivalent qualifications who conducts similar
10 work at all of the Employer's facilities.

11 Just as a factual matter, Columbia University employs a
12 number of individuals that have similar qualifications in terms
13 of having PhD degree. Some of them which are going to testify
14 today and do, I guess, what could be described as similar work
15 and would clearly have no communitive interest with the
16 petition for unit. And so I believe we've got clarity in terms
17 of who the Union's looking for in terms of specific
18 classifications. So we would ask that kind of open-ended
19 kicker clause would be removed.

20 HEARING OFFICER MURTAGH: Mr. Meiklejohn?

21 MR. MEIKLEJOHN: So you're asking for my response on that
22 point alone?

23 HEARING OFFICER MURTAGH: Yes.

24 MR. MEIKLEJOHN: I mean, our concern is that in our past
25 dealings with these complex elite universities with its -- with

1 their many layers of participation in the operations of the
2 university, that individuals are with varying degrees of
3 frequency placed in one category for payroll purposes when they
4 are, in fact, doing work that belongs in a different category.
5 It has happened a lot in the graduate assistant cases including
6 at Columbia. Although it has been common at some of its peer
7 institutions, or institutions that would consider themselves to
8 be peers of Columbia.

9 But that's what we are attempting to guard against and
10 ensure that if there are people who are misclassified, they are
11 not precluded from voting by the unit definition.

12 HEARING OFFICER MURTAGH: And so are you saying that the
13 Union is not inclined to -- not -- okay.

14 MR. MEIKLEJOHN: So we're not willing to -- yes. We are
15 not willing to amend the petition to remove that language.

16 MR. PORZIO: So Mr. Hearing Officer, if I may. So the
17 University as required by the new R case rules -- and I guess
18 not so new at this point -- has produced the list, which is now
19 part of the record as Board Exhibit 3 in its statement of
20 position where it not only listed the classifications that it
21 believes are within the petition for a unit, but it gives
22 actual names.

23 So I don't think it's -- I understand the Union's
24 contention that it's looking to guard against the University
25 engaging in funny business in terms of who's in or who's not.

1 But the Union has the actual names. So if it believes that the
2 University has either been over or under inclusive of who is in
3 the petition for a unit, then the Union could tell us, and we
4 could either amend our statement of position or add that.

5 So I think there's certainly a procedural avenue that the
6 University, the Petitioner, and the Board can avail themselves
7 of to alleviate the concern that Mr. Meiklejohn referred to.
8 And I think assuming that an election is directed and assuming
9 that bargaining commences, having a definition like this is
10 going to add a lot of uncertainty in terms of who's covered by
11 the unit or not.

12 And additionally, the Board has a mechanism to alleviate
13 the concern Mr. Meiklejohn alluded to, which is the unit could
14 file a unit clarification petition to seek clarity on whether a
15 challenged classification that had not been included by name in
16 the petition should be included into the description for
17 purposes of collective bargaining. So I think there is a
18 suitable remedy under either scenario for the Union that would
19 not require keeping such a broad and potentially ambiguous
20 clause in the description.

21 HEARING OFFICER MURTAGH: Do you have anything to add?

22 MR. MEIKLEJOHN: I'll respond to a couple of points.

23 HEARING OFFICER MURTAGH: Okay.

24 MR. MEIKLEJOHN: You know, we got a list of 2,000 names
25 less than 24 hours ago. So that hasn't afforded us an

1 opportunity as counsel suggests. Second, we're not suggesting
2 any funny business on the Employer's part. It's just sometimes
3 people seem to end up in the wrong category. So we agree,
4 there is not a lot of confusion. It's not who is and is not in
5 the bargaining unit. But I do note that in looking through the
6 list, there are a substantial number of people whose names
7 appear more than once. So the suggestion that we don't have to
8 worry about mistakes is not that reassuring. So in any event,
9 we would decline to amend the petition in that fashion.

10 HEARING OFFICER MURTAGH: Okay. So at this stage, I will
11 bring the amendment that you have agreed to concerning the
12 explicit exclusion of the clinical fellows and the residency
13 fellows. And as you stipulated to early, Mr. Meiklejohn,
14 the -- you know, if the Director finds that this unit
15 description is overbroad or, you know, is problematic for
16 whatever reason, you know, he will direct an election in the
17 unit he determines to be appropriate.

18 MR. MEIKLEJOHN: Yes. Understood.

19 MR. PORZIO: Mr. Hearing Officer, could I make one more --

20 HEARING OFFICER MURTAGH: Absolutely. Yes.

21 MR. PORZIO: -- clarification? Sorry. Just to be clear
22 if I was misinterpreted, I'm not saying that it's impossible
23 for the University to make a mistake, because that's certainly
24 not what I'm saying. What I am saying is should a mistake be
25 identified between now, the end of the hearing, the issuance of

1 a decision and direction of election, and the voter eligibility
2 list being produced, and even after the voter eligibility list
3 is produced prior to the start of the election, the Union can
4 come to the University with whatever mistake it believes the
5 University made, and we can amend either our statement of
6 position or our voter eligibility list or even prior to it
7 being issued, you know, add in this potentially disputed
8 classification into the voter eligibility list.

9 So I'm not saying we can't make mistakes. There's a
10 procedure that we have to follow. I agree that, you know, less
11 than 24 hours isn't a tremendous amount of time for the Union
12 to go line by line. But the answer -- the Union doesn't have
13 to catch any potential mistakes immediately. There is -- what
14 I am saying is, there is sufficient time between now and if,
15 and when, an election is ordered and a voter eligibility list
16 is due, there's time for the Union to have identified any
17 issues with our list and statement of position.

18 HEARING OFFICER MURTAGH: All right. So we'll go off the
19 record.

20 (Off the record at 11:19 a.m.)

21 HEARING OFFICER MURTAGH: Okay. So we're back on the
22 record. And the Regional Director has accepted Petitioner's
23 amendment to the petition to specifically exclude the
24 categories of postdoctoral clinical fellows and postdoctoral
25 residency fellows.

1 As Petitioner would not agree at this stage to remove the
2 language that, you know, the Employer, you know, pointed to as
3 potentially ambiguous, you know, that language being, "or
4 anyone with substantially equivalent qualifications who
5 conducts similar work throughout the Employer's facilities.",
6 the Director has determined that, you know, as Petitioner has
7 agreed to, we will direct an election if necessary in the unit
8 determined to be appropriate. And to the extent that this
9 description, you know, may be subject to change, you know,
10 Petitioner has agreed to that.

11 Now, moving to the issues to be litigated in the
12 proceeding. The Regional Director has decided that regarding
13 the Employer's first argument concerning the employee status
14 under Section 2(3) of the Act of the petition for unit
15 generally that he will accept an offer of proof, you know,
16 concerning that issue only. And it can be in writing or on the
17 record. Employer counsel has indicated that in off-the-record
18 discussions that they wish to present it in writing. And so
19 once it's received, the Director will consider it and will make
20 a ruling.

21 As we had discussed off the record, the record will be
22 held open until the Director makes his ruling on that offer of
23 proof, which, you know, we -- the parties have discussed
24 hopefully ending tomorrow. So hopefully we will have
25 everything together by close of business tomorrow or as late as

1 we have to go.

2 The Regional Director has directed that the following
3 issues will be litigated in this proceeding, you know, and the
4 first issue is the employee status of the research fellows as
5 distinguished from the postdoctoral research scientists. And
6 he has also directed that parties will litigate the community
7 of interest issue among, you know, the various classifications
8 in particular, the associate research scientist/scholars and
9 then the two classifications of postdoctoral officers of
10 research in the petition.

11 And with regard to the offer of proof, you know, to the
12 extent the prior Columbia University charge that I discussed
13 before or the Brown University case that has been mentioned are
14 implicated by that issue by the 2(3) status of employees
15 generally. The Employer is, of course, invited to address
16 that.

17 MR. PORZIO: Thank you.

18 MR. MEIKLEJOHN: It did occur to me -- one other thing
19 that should be put on the record.

20 HEARING OFFICER MURTAGH: Sure.

21 MR. MEIKLEJOHN: I think it may be something everybody's
22 taking for granted. But with respect to the stipulation on
23 bargaining history, we would anticipate that the Regional
24 Director would take administrative notice of the fact that
25 there was a certification issued in case number 2RC143012 with

1 respect to graduate assistants, which I think is just relevant
2 to the parties' mutual understanding that graduate assistants
3 would not be included in this bargaining unit.

4 MR. PORZIO: And Mr. Hearing Officer, we agree with what
5 Mr. Meiklejohn just relayed. But to be clear, while the
6 certification has issued, no collective bargaining has
7 commenced between the two parties in that case.

8 MR. MEIKLEJOHN: That's true.

9 HEARING OFFICER MURTAGH: Okay. Now, both parties, please
10 be aware that to respect that, you know, positions that are
11 taken during this hearing involve presumptions of the board of
12 law. The burden lies with the party seeking to rebut that
13 presumption. And you must present specific detailed evidence
14 in support of your positions. General conclusory statements by
15 witnesses will not be sufficient.

16 Okay. Now, moving to the presentation of evidence.
17 Employer, you may present your first witness.

18 MR. PLUM: Okay. We're going to call Michael Purdy.

19 HEARING OFFICER MURTAGH: Mr. Purdy, if you could please
20 raise your right hand.

21 Whereupon,

22 **GRAHAM MICHAEL PURDY**

23 having been duly sworn, was called as a witness herein and was
24 examined and testified as follows:

25 HEARING OFFICER MURTAGH: And if you can please state and



1 spell your name for the record.

2 THE WITNESS: My name is Graham Michael Purdy, P-U-R-D-Y.

3 HEARING OFFICER MURTAGH: Mr. Plum?

4 **DIRECT EXAMINATION**

5 Q BY MR. PLUM: Mr. Purdy, by whom are you employed?

6 A Columbia University.

7 Q And what's your job title?

8 A I'm executive vice president for research and a professor
9 in the department of earth and environmental sciences.

10 Q And would you tell us about your educational background?
11 Would you describe that for us, please?

12 A I have a bachelor's degree in physics from London
13 University. A master's degree in geophysics from the Royal
14 School of Mines in London. A PhD in geophysics from Cambridge.
15 And then I continued my education as a postdoc in the states.
16 Came over to the states in '74 and did one year of postdoc
17 before starting my research career.

18 Q And where did you do the postdoc?

19 A I did my postdoc at Woods Hole Oceanographic Institution
20 as part of a joint program with MIT.

21 Q And by whom were you employed before coming to work at
22 Columbia?

23 A After 20 odd years of -- in my research career up in
24 Massachusetts where I supervised ten or so PhD students and
25 four or five postdocs who now I'm proud to say are scattered

1 around the nation's academic institutions, I was recruited away
2 out of my research career by the federal government to the
3 National Science Foundation where I was director of the
4 division of ocean sciences overseeing the funding for most of
5 the basic ocean sciences and climate research information.

6 After five or six years of federal service, I left to join
7 Columbia as director of one of the biggest research
8 institutions at the University (indiscernible) that does some
9 climate science. And then in late 2010, the president asked me
10 to do this job that I'm in right now, the executive vice
11 president for research.

12 Q Now, just going back for a moment here. Twenty years in
13 Massachusetts, that was at Woods Hole?

14 A Correct.

15 Q And so when was it that you took over your current
16 position? Do you remember what year that was?

17 A My current position of EVPR? Late 2010, I think it was
18 December 2010.

19 Q And how would you describe your duties and
20 responsibilities in your current position?

21 A I'm responsible to the president for all research at the
22 university. And that responsibility falls into two primary
23 categories. The first being the nurturing and development of
24 new interdisciplinary and cross school research programs. And
25 the second being ensuring that all research at the university

1 is fully compliant with all state and federal regulations.

2 Q And you report to the president of the university?

3 A I do.

4 Q And who reports to you?

5 A I have a total staff approaching 200 people. That is
6 broken down into a number of units. I have nine unit heads
7 that report to me that cover issues like strategic planning and
8 development. I have a unit called research initiatives that
9 develops new, as I said, cross university research activities.

10 And then there are the regulatory units that are concerned
11 with the protection of human research subjects, the protection
12 of animals used in research, the responsive projects program
13 that oversees all the proposal submissions and receipts of all
14 the 800 to 900 million dollars of federal funding that we
15 receive each year.

16 And then lastly, I've got the naughty, naughty problem of
17 research misconduct and office that polices the quality of
18 research across the university and detects and acts on any
19 determinations of research misconduct.

20 Q And do you have responsibilities for the education of
21 postdoctoral trainings?

22 A One of those units that I forgot to list -- I'm sorry,
23 Ericka-- is the office of postdoctoral affairs, which is
24 charged with helping the very important community of postdocs
25 at the University develop their careers.

1 Q Now, are you familiar with the term "principal
2 investigator"?

3 A Very much so, yes.

4 Q And would you describe what a principal investigator is
5 and does?

6 A Any research project at the university has to almost by
7 definition have an identified principal investigator. And that
8 principal investigator is responsible for all aspects of that
9 research activity. That is not the full range of
10 responsibilities from ensuring the quality and effectiveness of
11 the research, ensuring that that research is adequately
12 communicated openly, and using appropriate mechanisms to the
13 general public. But also, very important to me, ensuring that
14 all federal regulations, state regulations, city regulations
15 are adhered to.

16 And last but not least, the principal investigator has
17 financial responsibility. And that is a significant
18 responsibility nowadays when many complex research projects
19 have budgets in excess of a million dollars. The principal
20 investigator is responsible for ensuring that the expenditure
21 of those funds is correct.

22 Q Are PIs employees of the university?

23 A Yes.

24 Q Now, I take it you're familiar with the phrase or the term
25 "postdoctoral training"?

1 A I am.

2 Q Could you explain for us what postdoctoral trainees are
3 and do?

4 A They're singularly one of the most important groups of
5 individuals at the University. We're blessed at Columbia in
6 having a brilliant group of roughly 1,000 postdocs across the
7 university that are one of the greatest idea generating engines
8 that we have. They're obviously by definition folks who just
9 got their PhDs, and they're engaged in research under the
10 mentorship of a more senior faculty member. They stay at the
11 University typically for one to three years. And most
12 importantly, they learn about doing a research project and
13 building a research program.

14 And that learning is quite distinct from that they gain as
15 a PhD student. As a PhD student, when they get a PhD, they are
16 establishing the fact that they are intellectually capable of
17 generating new knowledge of significance to humankind.

18 But that alone is not enough to succeed in the business of
19 academic research. You need to know how to operate in the
20 culture of academic research. You need to know about writing
21 proposals. You need to know about building collaborations.
22 You need to know about making good decision on author order --
23 authorship order when writing a paper. You need to make good
24 decisions about which journals to submit your papers to, good
25 strategy on which professional meetings to go to. All those

1 things are part of the education of a researcher that occur
2 during these postdoc years.

3 And the postdoc affairs office that I referred to a few
4 moments ago is charged with helping the supervisors of the
5 postdocs carry out this important educational process of
6 training postdocs how to apply their intellect and function in
7 the infrastructure -- the modern infrastructure -- very
8 complicated infrastructure of academic research today.

9 Q How would you describe the relationship between a
10 principal investigator and a postdoc?

11 A The single most important word would be mentor. The
12 principal investigator is responsible for helping the postdoc
13 build their career. And in fact, you know, as the culture is,
14 there is great interest in that. Faculty members want their
15 postdocs to spend two or three years in their lab and then go
16 get a prestigious faculty position somewhere to continue -- I
17 mean, faculty members see that as spreading their thinking,
18 spreading their philosophy of research around the nation's
19 universities.

20 Faculty members typically list the names of all their
21 postdocs on their CVs as a badge of honor that they have
22 successfully trained and mentored these individuals who have
23 gone on -- the proof of the quality of that mentorship is the
24 fact that they've gone on to secure prestigious faculty
25 positions at leading universities around the country. So it's

1 very much a -- it's a leadership, it's a mentorship
2 relationship training the postdoc on how to succeed in the
3 business of academic research in this country.

4 Q How would you differentiate between the roles that they
5 play? I mean, obviously mentor is in a different position than
6 a trainee. But how would you describe the differences between
7 a postdoc and a PI, a principal investigator?

8 A I mean, the PI has the overall responsibility for ensuring
9 that adequate funds are raised to run the lab, that appropriate
10 capabilities -- laboratory capabilities are available. They
11 typically supervise a group of folks that include a mix of
12 graduate students, technicians, and postdocs. And they have
13 the responsibility to make sure that as a team everybody works
14 together effectively in the lab and produces high quality
15 research.

16 The postdoc is one member of that team, which, as I say,
17 consists of several different classes of folks, who's
18 responsible absolutely for doing high quality research in the
19 PI's lab and supporting the PI's research but is also very much
20 responsible for developing their own career and taking
21 advantage of the many resources that exist around Columbia to
22 help them develop their career and help them get into a
23 position where they can compete for and win a prestigious next
24 position either as a research -- on the research scientist
25 track or the research professor track, as it's called as some

1 of the universities, or on a tenure track faculty. I mean,
2 that's the -- the goal of a postdoc is to land a really good,
3 you know, ideally tenure track faculty position somewhere.

4 HEARING OFFICER MURTAGH: And so before you go on, you had
5 used the word trainee. I just wanted to clarify for the reader
6 of the record that this testimony is concerning postdoctoral
7 offices of research generally, including the petition for
8 classifications of research scientists, scholars, and fellows.
9 And that it's not, you know, one or some sort of subset of
10 those; is that correct?

11 MR. PLUM: No. At this point, we're not -- at this point,
12 the witness is not differentiating between --

13 HEARING OFFICER MURTAGH: Okay.

14 MR. PLUM: -- research scientists, scholars, and fellows.

15 HEARING OFFICER MURTAGH: Okay.

16 THE WITNESS: Correct.

17 HEARING OFFICER MURTAGH: And that word trainee that you
18 used, that is addressing the petition for classifications?

19 MR. PLUM: Yes.

20 HEARING OFFICER MURTAGH: Yes. Okay. You can go on.

21 Q BY MR. PLUM: So if you could be a little more specific
22 about describing the type of training that the postdoc receives
23 from the PI or in the lab.

24 A As I said before, I think the -- you know, there's a very
25 broad range of activities they're learning about. I mean, it's

1 not only -- it's specifically not only the mechanics of
2 operation of whatever instrumentation is required for data
3 collection, but it's learning how they can become independent
4 researchers themselves in the future. And there are many tools
5 that they need in order to be able to do that. It's not
6 sufficient just to be able to run the machines, collect the
7 data, and write the papers. There are many other things one
8 needs to do to succeed as an academic researcher, which
9 includes as I said a moment ago, learning how to play the
10 fundraising game. You need to learn how to raise the funds.
11 Research increasingly is a very expensive business, and one
12 cannot succeed unless one is able to raise substantial funding
13 from various funding agencies. And there are a lot of tricks.
14 And there's a lot of experience that needs to be gained to
15 learn how to do that.

16 You need to learn how to collaborate. Increasingly we see
17 this very much over the past ten years, the complexity of
18 modern science is such that the majority of published papers
19 have a long list of authors associated with them. So the vast
20 majority of significant research breakthroughs now are the
21 result of big collaborations. Research collaborations are very
22 difficult things. They're sometimes monsters that get out of
23 control. And folks need to learn how to operate within the
24 complex dynamics of these mega egos that exist within big
25 research universities.

1 So it's more than just the mechanics of doing the
2 research. It's the learning how to operate in the
3 infrastructure -- the national infrastructure and the
4 university infrastructure to succeed.

5 Q So I'm going to show you a document that we've marked for
6 identification as Employer's Exhibit 1. Have you seen Exhibit
7 1 before?

8 A Yes.

9 Q Can you tell us what it is?

10 A It's the faculty handbook. I've seen it on the website.
11 (Counsel confer)

12 Q BY MR. PLUM: So I take it this is kept by Columbia in the
13 ordinary course of business?

14 A Yes.

15 MR. PLUM: I'd like to have this document admitted into
16 evidence.

17 HEARING OFFICER MURTAGH: Any objection?

18 MR. MEIKLEJOHN: I'm just comparing this with the version
19 I have and trying to figure out why it looks different. I
20 think it's just the printer. But --

21 MR. PORZIO: So we --

22 MR. MEIKLEJOHN: But I mean, it's obviously been
23 adequately identified.

24 MR. PORZIO: We would represent this was printed off the
25 website at the URL at the bottom of the page on the date --

1 MR. MEIKLEJOHN: I see that. I think that's where I
2 printed mine. They just look different. But I have no
3 objection.

4 HEARING OFFICER MURTAGH: Okay. Employer 1 is received
5 into evidence.

6 **(Employer Exhibit Number 1 Received into Evidence)**

7 Q BY MR. PLUM: Mr. Purdy, are you familiar with the job
8 title of associate research scientist and associate research
9 scholar?

10 A Yes.

11 Q Can you tell us about those positions, please?

12 A Those are titles within the professional offices of
13 research. Associate research scientist, research scientist,
14 senior research scientist are three levels within the
15 professional of research labs. They're permanent positions
16 within the university. Associate research scientist is defined
17 in the faculty handbook as being equivalent to an assistant
18 professor. A research scientist is equivalent to associate
19 professor. And senior research scientist equivalent to
20 professor. The associate research scientist position is
21 typically held for a number of years before promotion to
22 research scientist. They are professional officers of research
23 that do research with varying degrees of independence and an
24 important -- very important component of the university's
25 research activity.

1 Q And what is the difference between an associate research
2 scientist and an associate research scholar?

3 A Only the discipline. Scholars are in the humanities and
4 social sciences. Scientists are in the natural sciences,
5 biomedical sciences, and engineering.

6 Q And how do you differentiate between -- or how would you
7 describe the differences between associate research scientists
8 and scholars and postdoctoral trainees?

9 A Associate research scientist/scholar is a job. It's a
10 job. You apply for it. It's got a job description. You're
11 working for a PI. You're doing a job. Postdoc is a
12 traineeship. You're learning. As I described a few moments
13 ago, you're learning this process of --

14 MR. MEIKLEJOHN: I'm going to object at this point that
15 some of this testimony seems to go to the issue that the
16 Regional Director ruled would not be litigated.

17 MR. PLUM: I don't think that's true. The point is to
18 differentiate -- he's comparing the difference between postdocs
19 and associate research scientists and scholars. It goes
20 directly to the question of whether there's a community of
21 interest. The witness is saying that the postdocs are
22 trainees. They're learning. And the associate research
23 scientists and scholars have a job. They're not training
24 anymore. That's what he just testified to. That goes directly
25 to the question of community of interest.

1 HEARING OFFICER MURTAGH: And I will let the testimony
2 move forward to the extent that it does go to the community of
3 interest analysis. If it does seem to be bleeding into the
4 issue of 2(3) status, you know, and acknowledging that perhaps
5 some of it -- some of this bleeding into it is inevitable -- if
6 it seems that it really is going to the issue that the Regional
7 Director has included in the submission for the offer of proof,
8 I will cut it off at that point.

9 MR. PLUM: I appreciate that. I just want to make clear,
10 we have said from the beginning that assuming arguendo that the
11 postdocs are employees. They're trainees as opposed to people
12 who are fully trained and performing a job. And that's where
13 this testimony is going. Okay. I'm sorry.

14 Q BY MR. PLUM: Would it help if you heard the last thing
15 that you said before you were interrupted?

16 A It would. I'm not sure what I was going to say next.

17 MR. PLUM: Can we possibly read back the last piece of
18 testimony?

19 (Off the record at 12:10 p.m.)

20 A So I mean, you're learning this process of how to become
21 an independent PI yourself. I mean, the goal of the vast
22 majority -- I can't say all -- but I mean, the goal of the vast
23 majority of folks in the postdoc ranks is to develop to become
24 an independent principal investigator. And they need to learn
25 the skills that will allow them to do that.

1 As I said before, there are many skills that are necessary
2 that are beyond the purely intellectual capacity that's needed
3 to do the original thinking. And the goal of the postdoc
4 traineeship is to put postdocs in high functioning labs led by
5 successful PIs from whom they can, from whom they can gain the
6 experience they need to succeed on their own.

7 Q BY MR. PLUM: How does one become an associate research
8 scientist or scholar?

9 A You apply for a job. You apply to a posting that's on the
10 Columbia website or advertised in some channel.

11 Q And what are the qualifications -- how would you describe
12 the qualifications for the associate research scientist or
13 scholar?

14 A Obviously, a PhD. Typically, some years of postdoc
15 experience. A record of accomplishment in research at a
16 reasonable level as indicated by publications in the peer
17 reviewed literature. But also, recognition by one's peers. We
18 always solicit outside reference letters. So one would expect
19 there would be an established record of accomplishment at a
20 junior level, obviously at a junior level.

21 Q And when the university or when the department or the PI
22 hires the associate research scientist or scholar, are they
23 looking for candidates who have specific skills?

24 A Absolutely. I mean, PIs are looking to staff their labs.
25 I mean, the PI has perhaps committed to -- through the writing

1 of a successful award of a research proposal, they've committed
2 to be able to complete this set of experiments, for example.
3 And they've got to staff up their lab in order to be able to do
4 that. And they raise the money from an agency so they know
5 they've got the salary. So they advertise the job. And they
6 are looking for someone with the skills and the background to
7 achieve the objectives that have been laid out in the research
8 project.

9 Q And does that differ from the process of selecting a
10 postdoc?

11 A Yes. The postdoc is obviously working on research
12 projects in the PI's lab in the same way that an associate
13 research scientist is. So I mean, there's that similarity
14 which absolutely cannot be denied. But the postdoc is
15 developing their career and thinking about moving on in one or
16 two years.

17 The associate research scientist is building a career
18 within the lab and, you know, is potentially staying for five
19 to ten years, maybe even longer, getting promoted to a research
20 scientist.

21 So the -- you know, the mechanics of what they're doing,
22 perhaps, you know, running a particular machine, you could see
23 an associate research scientist or a postdoc running that same
24 machine. So mechanically, they would perhaps be doing similar
25 things. But their goals, aspirations, and, you know, the -- I

1 mean, the postdoc is much more involved with developing their
2 own career. The associate research scientist is doing a job.
3 The postdoc is developing their own career. And it's the
4 responsibility of the PI to help the postdoc develop their own
5 career by getting the senior authored papers, for example,
6 published to aid them in getting their next position because
7 always, the postdoc is a temporary thing. It's one to three
8 years. So they're always thinking about how can I position
9 myself to move into that next job.

10 Q When you post an ARS, an associate research scientist or
11 scholar position, are there other -- are there legal -- other
12 than the specific qualifications for the job, are there other
13 legal requirements that you follow?

14 A I mean, of course. There's the important affirmative
15 action equal opportunity. I mean, one of the primary reasons
16 we enforce the requirement for open competitions for these
17 permanent positions is to satisfy equal opportunity and
18 affirmative action regulations. And that's something that the
19 university is particularly strong about and very concerned
20 about, ensuring that all our recruiting is fair and open and
21 encourages the diversity of the university staff. That's one
22 of the priorities that we have.

23 Q And do those requirements apply to postdoc positions as
24 well?

25 A No. Because they're not permanent positions.



1 Q And who makes the decision as to whether to hire an
2 associate research scientist or scholar?

3 A The PI.

4 Q And is it subject to --

5 A Approval by the department chair. And then the
6 appointment itself is approved by the provost.

7 Q All right. I'm going to show you a document that's been
8 marked for identification as Employer Exhibit 2. Can you tell
9 us what Employer Exhibit 2 is?

10 A It's a template for an offer letter for an associate
11 research scientist or scholar.

12 Q And is this template one that's used as a model and kept
13 in the ordinary course of business at Columbia?

14 A Yes.

15 MR. PLUM: I'd like to have Employer 2 in evidence.

16 HEARING OFFICER MURTAGH: Petitioner?

17 MR. MEIKLEJOHN: Could I have a couple quick questions on
18 voir dire?

19 HEARING OFFICER MURTAGH: Sure.

20 **VOIR DIRE EXAMINATION**

21 Q BY MR. MEIKLEJOHN: In the third paragraph in big -- in
22 capital letters and in brackets you have the phrase
23 "description of research". Is that something that the specific
24 PI would fill out to describe --

25 A Exactly.

1 Q Wait until I finish the question. It makes it hard for
2 the court reporter even though my questions are really kind of
3 easy to follow. Is that filled out by the PI to describe the
4 work that the associate research scientist or scholar is going
5 to be doing?

6 A Exactly.

7 MR. MEIKLEJOHN: Okay. Thank you. No objection.

8 HEARING OFFICER MURTAGH: Employer 2 is received. Mr.
9 Plum, you may continue.

10 **(Employer Exhibit Number 2 Received into Evidence)**

11 Q BY MR. PLUM: How are associate research scientists and
12 scholars compensated?

13 A Salary paid by the university. And the source of that
14 salary typically is outside sponsored research grants from
15 federal government.

16 Q And those are outside research grants that are made to the
17 university?

18 A Made to the university in response to proposals submitted
19 by the principal investigator.

20 Q Now, do postdocs -- do some postdocs become associate
21 research scientists or scholars?

22 A Yes.

23 Q And how do they go about doing that?

24 A They apply for the job.

25 Q So they -- and they apply for a job by responding to a

1 posting or an ad?

2 A Right.

3 MR. PLUM: Can I just take a minute?

4 HEARING OFFICER MURTAGH: Yeah. Do you want to go off the
5 record?

6 MR. PLUM: Yeah. Let's go off the record, please.

7 (Off the record at 12:24 p.m.)

8 HEARING OFFICER MURTAGH: Back on the record.

9 Q BY MR. PLUM: Do any of the outside granting agencies,
10 government or otherwise, impose any training requirements as a
11 condition of their grants?

12 A Yes. They most recently -- or most significantly the NIH,
13 National Institutes of Health, that provides more than
14 approximately three-quarters of all the outside research
15 funding that the University receives, requires that postdocs
16 that are supported by NIH grants have annual career development
17 plans that are exactly what they sound like: A plan of
18 activities to help the postdoc develop their careers. And it's
19 -- that's an example of one of the things that the office of
20 postdoctoral affairs and my office, Ericka runs -- helps the
21 postdocs develop. It's a direct recognition of -- on the part
22 of NIH of the importance of mentorship as part of the postdoc
23 experience.

24 Q And are there similar training requirements for associate
25 research scientists or scholars?

1 A No.

2 Q I want to go back for a second to the hiring criteria or
3 selection process, how it -- the comparison between the
4 selection process for an associate research scientist and a
5 postdoc trainee. And if you could just briefly summarize the
6 difference in approach or focus when one is hiring an ARS, an
7 associate research scientist or scholar, as compared to a
8 postdoc.

9 A And the ARS is from a PI's point of view -- hiring an ARS
10 is a much longer term commitment. I mean, you are -- and that
11 is relevant because, you know, there is some activities in your
12 lab that you know will continue for 10 or 20 years because if
13 you're in a certain kind of science, you know by definition
14 you're going to be running this kind of instrument. So you're
15 always going to need somebody to run that kind of instrument.
16 And that -- okay. That would be an influenced job description
17 that you would put in an ad for an ARS because you'd want
18 somebody in the long term to do that.

19 But there are other aspects of research in the lab that
20 are temporary. You try a new project. You try a new
21 direction. And recruiting a postdoc is often one of the key
22 components of a PI moving into a new area. I want to try this
23 new method and see whether it works. Well, let me hire a
24 postdoc and they can work on that for a couple of years and if
25 it works, great. If it doesn't, okay. That's good training,

1 and we all learn from it. So it's a very different kind of
2 strategic mindset on the part of the PI thinking about the
3 elements in their lab that they are know are long term and need
4 the long term support that an ARS can provide versus, you know,
5 shorter term two to three year forays into -- into new areas.

6 MR. PLUM: Okay. I have nothing further. Thank you.

7 HEARING OFFICER MURTAGH: I have a few questions just for
8 clarification purposes. So Mr. Purdy, you testified concerning
9 the number of years that a typical postdoc scholar or scientist
10 works. And you said usually around two or three years. Upon
11 hiring, is it expected that they will be there for a number of
12 years? Or is it possible that they will only be there for one
13 year or perhaps, you know, as many as five?

14 THE WITNESS: My first response is that the university
15 places a limit of three years on postdoctoral appointments.
16 There are exceptions made in a few cases. But generally, the
17 rule is you can only have a postdoc appointment for three
18 years.

19 Second response is, when a PI decides to hire a postdoc,
20 it could be only for one year because they only have one year
21 of funding, or it could be from one to three years depending on
22 -- the thing that drives that is funding availability on the
23 part of the PI.

24 So I mean, sometimes they'll run an ad that is just for
25 one year. Other times, they will run an ad that says, you

1 know, for one year but renewable for -- you know, based on
2 performance, renewable for a second or a third. And that is
3 very much driven by resource availability for the PI.

4 HEARING OFFICER MURTAGH: And you testified regarding the
5 grants that are received in response to a PI's proposal. That
6 grant would cover both associate research scientist/scholars
7 and postdoc research scientist/scholars; is that correct?

8 THE WITNESS: Yeah. Federal funds or state funds or you
9 know, outside sponsored research funds are the primary source
10 of salary support for both postdocs and associate research
11 scientists.

12 HEARING OFFICER MURTAGH: Would it be the same grants? So
13 a PI, you know, receives a grant for X, that would cover all
14 aspects of what he's doing or any positions he's looking to
15 hire?

16 THE WITNESS: I mean, a typical successful principal
17 investigator at Columbia has between five and ten different
18 research grants at any one time. So they're typically putting
19 together, you know, 12 months of support for an individual from
20 several different research grants. Typically, that's how it
21 operates.

22 HEARING OFFICER MURTAGH: And that's --

23 THE WITNESS: Very occasionally there are mega grants.
24 But most often that's how it operates.

25 HEARING OFFICER MURTAGH: And that would go for both --

1 THE WITNESS: Postdocs and ARSs, correct.

2 HEARING OFFICER MURTAGH: I have no further questions.

3 Mr. Meiklejohn?

4 MR. MEIKLEJOHN: Could I have a short break before I
5 cross-examine?

6 HEARING OFFICER MURTAGH: Of course. Yeah.

7 MR. MEIKLEJOHN: Thank you.

8 HEARING OFFICER MURTAGH: Off the record.

9 (Off the record at 12:36 p.m.)

10 **CROSS-EXAMINATION**

11 Q BY MR. MEIKLEJOHN: Good afternoon. You understand I'm
12 the attorney representing the Columbia postdoctoral workers in
13 this matter?

14 A I do.

15 Q And you do understand -- and obviously, that was fine.
16 But you do understand the importance of answering verbally my
17 questions?

18 A I do.

19 Q Okay. You testified that you have a PhD in I think it was
20 geophysics from Cambridge?

21 A Correct.

22 Q And is a PhD in England basically the same as a PhD in the
23 States?

24 A Yes.

25 Q And a PhD is considered a terminal degree; have you heard



1 that term?

2 A I'm not terribly familiar with it. no.

3 Q What is a PhD?

4 A It's a Doctor of Philosophy. It's given in recognition of
5 original work proving that an individual is capable of
6 generating new knowledge of significance to humankind.

7 Q And --

8 A And there are higher degrees like DSCs, for example. I'm
9 not sure how common they are in North America. But in Europe,
10 DSCs are granted to folks five to ten years after PhDs.

11 Q But postdocs are not working towards a degree; is that
12 correct?

13 A Postdocs are not working towards a formal qualification to
14 a degree, correct.

15 Q And they are still continuing to -- they are seeking to
16 generate original research as part of their function, correct?

17 A Correct.

18 Q Now, you testified that postdoctoral research scientists
19 get a bimonthly salary?

20 A Correct.

21 Q Maybe you didn't. And associate research scientists also
22 get biweekly salary -- bimonthly salaries?

23 A Correct.

24 Q And are you familiar with the salary guidelines for
25 officers of research?

1 A I know of them. I could not quote any numbers from them.

2 Q No, I wouldn't ask you to do that.

3 HEARING OFFICER MURTAGH: Mr. Meiklejohn, are we marking
4 this as Petitioner 1?

5 MR. MEIKLEJOHN: I'm sorry. Petitioner Exhibit 1, yes.

6 **(Petitioner Exhibit Number 1 Marked for Identification)**

7 Q BY MR. MEIKLEJOHN: You've been shown a document marked
8 for identification as Petitioner's Exhibit 1?

9 A Yep.

10 Q Have you had an opportunity to look it over?

11 A Yes, I glanced at it.

12 Q Do you -- well, first of all, are these the salary
13 guidelines for officers of research for the upcoming year?

14 A Yes.

15 MR. MEIKLEJOHN: And I'll move the admission of
16 Petitioner's 1.

17 MR. PLUM: No objection.

18 HEARING OFFICER MURTAGH: Petitioner's 1 is received.

19 **(Petitioner Exhibit Number 1 Received into Evidence)**

20 Q BY MR. MEIKLEJOHN: Now, in each of these categories
21 there's a listing for a minimum and a review point. I guess I
22 understand what a minimum is. But perhaps -- well, I'll ask.
23 The minimum is the lowest amount that can be offered to an
24 individual in that category. So for example, the lowest amount
25 that can be offered to an associate research scientist or

1 scholar is 56,300 dollars per year?

2 A That is correct.

3 Q And those are annual salaries?

4 A That is correct.

5 Q And then after that, there's a listing for a review point
6 which is generally much higher. What is the review point?

7 A That is when in order to pay someone in that category
8 above that number would require -- I think and I cannot be
9 absolutely sure about this, but I think it requires provostial
10 approval.

11 Q It requires some high-level approval at the top levels of
12 the university?

13 A Right.

14 Q Above your level?

15 A Above my level?

16 Q I'll withdraw that part of the question. And as indicated
17 in Petitioner's Exhibit 1, the university sets a minimum level
18 for the stipends of postdoctoral research fellows based upon
19 NIH standards?

20 A Correct.

21 Q And that minimum applies regardless of whether the
22 individual's fellowship is funded by the NIH; is that correct?

23 A I do not have absolute knowledge of that. I believe so.
24 But I do not want to -- I do not want to give a definitive
25 response given that I am under oath here.

1 Q Well, if you look at the second sentence of paragraph 3,
2 it indicates that -- I'm sorry, the third -- the last sentence.
3 It's probably the fourth sentence. But if any of these fellow
4 stipends are below the NIH minimum, the PIs, the principal
5 investigators, or the department must supplement the stipend;
6 do you see that statement?

7 A Yep. So you are correct.

8 Q So these minimums apply regardless of whether the NIH is
9 funding the grant?

10 A Yep.

11 Q Okay. And do postdocs -- I'm sorry. Do associate
12 research scientists -- does the university make health
13 insurance benefits available to associate research scientists?

14 A Yes.

15 Q And are there three levels of health insurance plans
16 offered to postdoctoral -- to associate research scientists?

17 A I do apologize, but I'm not familiar with levels of health
18 insurance benefits details. I cannot respond to that.

19 Q Well, let me ask you this. Do you know whether the same
20 health insurance benefits are made available to postdoctoral
21 research scientists?

22 A Yes.

23 Q And do you know whether health insurance benefits are made
24 available to postdoctoral research fellows?

25 A It depends on the fellowship. It depends on the -- I

1 mean, some fellowships -- some externally funded fellowships
2 come with their own funding for benefits.

3 Q And if --

4 A So for fellows, it's complicated.

5 Q And so if they -- if the fellowship provides another
6 benefit, then the university --

7 A Right.

8 Q -- provides health insurance, then the university does
9 not?

10 A Correct.

11 Q But if the fellowship does not provide for health
12 insurance directly, then the university provides that to the
13 fellow, correct?

14 A We require that. As a recent change in university policy,
15 we require that all postdocs have health insurance. And we
16 provide help with that.

17 Q And they participate in the same, or at least one of the
18 health insurance benefit options made available to other
19 professional officers of research, correct?

20 A I apologize. I am not an expert on benefits. I do not
21 know that for a fact.

22 Q Do you know what the Choice Plus 80 medical plan is?

23 A I'm afraid not.

24 Q I take it you do not participate yourself in any of the
25 university's --

1 A That is correct.

2 Q Okay. For same reasons that I don't participate in my law
3 firm's insurance plan I suppose. Are you aware of any
4 differences in the benefits provided to postdoctoral research
5 scientists and associate research scientists?

6 A No.

7 (Counsel confer)

8 Q You testified about the responsibilities of the PIs. One
9 of those was ensuring that -- I believe you said that they're
10 required to ensure the quality and the effort of the work done
11 by the postdoctoral research scientists?

12 A Right.

13 Q Are they also responsible for ensuring the quality and the
14 effort of the work done by postdoctoral fellows working in
15 their labs?

16 A Yes. Yes.

17 Q And are they also responsible for ensuring the quality and
18 effort of the associate research scientists working in their
19 labs?

20 A Yes.

21 Q And are they also responsible for ensuring that all of
22 these classifications of individuals are complying with federal
23 and state regulations?

24 A Yes.

25 Q And are they responsible for ensuring that all these

1 individuals communicate appropriately about the results of
2 their work?

3 A Yes.

4 Q Now, the University has a classification for student
5 officers of research; is that correct?

6 A I have no knowledge of that.

7 Q Okay. But postdoctoral -- well, postdocs in the broader
8 classification used are not considered student officers of
9 research; is that correct?

10 A That is correct.

11 Q They are considered officers of -- professional officers?

12 A That is correct.

13 Q Let me correct this. They are considered officers of
14 research, correct?

15 A Postdoctoral research scientists are officers of research.
16 Postdoctoral fellows I do not believe are. But I'm not --

17 Q Do you still have Employer Exhibit 1 in front of you
18 somewhere there?

19 A The faculty handbook?

20 Q Yes. Well, it's excerpts from the faculty handbook,
21 correct?

22 A Right.

23 Q Right. And I guess I would draw your attention to the
24 lower part of the second page with the section captioned
25 postdoctoral officers of research?

1 A I stand corrected, sir. I stand corrected. Postdoctoral
2 research fellows are classified as postdoctoral officers of
3 research.

4 Q Now, you gave an example of somebody who was -- of a PI
5 who was interested in trying out a new -- I think you said a
6 research mechanism or a new methodology. Trying something new
7 and seeing how it works.

8 A Right.

9 Q And in that circumstance, you indicated he or she might
10 hire a postdoc with sort of an understanding that the postdoc
11 would work for a year or two and see how it works out?

12 A Precisely correct.

13 Q And if it didn't work out, the postdoc, I guess, has to
14 move on, right? Is that right?

15 A It would depend. But typically, yes.

16 Q And if it does work out, and the PI and the postdoc want
17 to continue exploring this new avenue for conducting research,
18 what would happen under those circumstances?

19 A Well, that would be very much up to the postdoc whether
20 the -- frequently under those circumstances, the postdoc at
21 that point wants to become independent and start building their
22 own career. And if they've had a successful two-year postdoc
23 in a PI's lab and they've made this discovery that something
24 will work, then a typical response to that of a postdoc would
25 be to take the success of that research and turn it into a job

1 offer from somewhere, maybe at Columbia, but it may be
2 elsewhere.

3 Q Well, if the postdoc when working --

4 A This is all highly speculative, of course.

5 Q And I suppose I (indiscernible) speculation. I think your
6 initial testimony may also have been speculative, but there are
7 also circumstances in which the postdoc wishes to continue
8 working with the PI on the technique of the process, correct?

9 A Correct.

10 Q And under those circumstances, they sometimes -- it takes
11 more than three years to develop the process?

12 A Could there possibly be circumstances where it would take
13 more than three years? Of course.

14 Q And under those circumstances, the postdocs can be
15 extended for a fourth year, correct?

16 A It's not clear that that would be sufficient to be -- for
17 an extension to be granted.

18 Q So an alternative might be for the postdoc to become an
19 associate research scientist?

20 A That is one possibility.

21 Q And that does happen at Columbia, correct?

22 A If that was to happen -- that does happen, in response to
23 your question. But if that was to happen, then that could only
24 occur by the principal investigator advertising a position for
25 an ARS, describing the nature of the work, and having that

1 postdoc apply for that position along with everybody else.

2 Q But the position would be -- could be described as someone
3 who has done the research that the PI and the postdoc have just
4 developed, correct?

5 A Correct.

6 Q So there would be a field of available applicants
7 consisting basically of one person, correct?

8 A We work hard to prevent PIs from writing job
9 advertisements that are specific to an individual. As I said
10 in my testimony earlier, affirmative action equal opportunity
11 regulations play a major role in our review of job
12 advertisements and position descriptions.

13 Q You testified that if the postdoc developed a successful
14 new technique, he or she might take that somewhere else; is
15 that correct?

16 A That's one possibility, yes.

17 Q But isn't it true that the postdoc is required to sign an
18 agreement that any intellectual property that he or she
19 develops at Columbia belongs to Columbia or that Columbia
20 retains rights in it?

21 A Intellectual property, correct.

22 Q And the -- both officers of research, including
23 postdoctoral fellows, are required to sign the university's
24 intellectual property agreement?

25 A Yes.

1 MR. PORZIO: Tom, can I just ask for a clarification. You
2 said officers of research. Which ones were you referring to?

3 Q BY MR. MEIKLEJOHN: Okay. Does that include the associate
4 research scientists and scholars?

5 A Yes.

6 Q Does that include the postdoctoral research scientists and
7 scholars?

8 A Yes.

9 Q And it also includes the postdoctoral fellows?

10 A Yes.

11 MR. MEIKLEJOHN: And I'd like this marked as Petitioner's
12 Exhibit 2.

13 **(Petitioner Exhibit Number 2 Marked for Identification)**

14 Q BY MR. MEIKLEJOHN: Have you had an opportunity to review
15 Petitioner's Exhibit 2?

16 A Yes.

17 Q And is that the intellectual property agreement that we've
18 been -- you -- that we've been talking about?

19 A Yes.

20 MR. MEIKLEJOHN: Okay. I move the admission of
21 Petitioner's 2.

22 MR. PLUM: No objection.

23 HEARING OFFICER MURTAGH: Petitioner's 2 is received.

24 **(Petitioner Exhibit Number 2 Received into Evidence)**

25 Q BY MR. MEIKLEJOHN: Now, the associate research



1 scientists, postdoctoral research scientists and postdoctoral
2 fellows are all conducting research under the direction of a
3 principal investigator, correct?

4 A Correct.

5 Q And in the typical day or week in the life of a
6 postdoctoral research scientist or scholar, what percentage of
7 their work time would they spend actually conducting that
8 research?

9 A A very large percentage. I mean, I hesitate to put a
10 number, but it would be the vast majority of their time.

11 Q And that would be true of the postdoctoral research
12 fellows as well; is that correct?

13 A Yes.

14 Q Now, is it true that grants for postdoctoral research
15 fellows are in many instances awarded to the university? That
16 is the funds go to the university; is that correct?

17 A In many cases, the funds go through the university. But
18 the award is to the individual.

19 Q Well, NIH you said is like three quarters of the grants
20 that are funding the research of these folks, correct?

21 A Correct.

22 Q The NIH grants are awarded --

23 A Through the university. Yes.

24 Q Okay. And the university -- and does the NIH provide
25 health insurance for postdoctoral fellows?

1 A I do not know the answer to that.

2 Q But then the university distributes those funds to the
3 individual on a monthly basis, correct?

4 A Correct.

5 Q And the individual whose work is funded by the grant is
6 then working in the lab alongside postdoctoral research
7 scientists and associate research scientists, correct?

8 A Correct.

9 Q And that postdoctoral research fellow is conducting
10 research to help fulfill the research mission of that
11 particular laboratory or department, correct?

12 A It depends on the terms of the fellowship. But obviously
13 the research that the fellow would be carrying out would be a
14 component of the lab's research. That's correct, yes.

15 Q And if the individual were unable to obtain a fellowship
16 or get the -- well, strike that. Fellowships are generally
17 awarded for a one-year period, correct?

18 A Correct.

19 Q So if an individual's fellowship were not to be renewed by
20 NIH for whatever reason, because of an administration that is
21 no longer interested in that work, whatever the reason, what
22 impact would that have on the PI's research? How would the PI
23 be able to continue the research that the fellow was working
24 on?

25 A It depends on whether the PI has other resources

1 available. If the PI has other resources available, the
2 research fellow can switch from a fellowship to a postdoctoral
3 research scientist position and be supported by other funds
4 from the PI. But all of that is included in the three-year
5 maximum. All that counts towards the three-year maximum.

6 Q So an individual might work as a -- might serve as a
7 postdoctoral fellow for part of the three years and as a
8 postdoctoral research scientist or scholar for --

9 A Correct. Correct.

10 Q And it's all -- all adds up?

11 A Correct.

12 Q Okay, and if the -- and I guess if -- what happens if the
13 PI doesn't have any other funds, then the research cannot
14 continue?

15 A Correct.

16 Q And he's saying laboratories may also have research
17 assistants who are doctoral students, working in the same
18 laboratory, correct?

19 A Very commonly.

20 Q And is it fair to say that there is a progression from
21 research assistant to postdoctoral research scientist or
22 scholar to associate research scientist or scholar, in terms of
23 the independence that the individual does their work with?

24 A I would not say in general that associate research
25 scientists are more independent than postdocs. I use postdoc

1 as a shorthand for both scientists and fellows because
2 associate research scientists, as I've said before are doing a
3 job under the direction of the PI. The postdoc is doing
4 independent research. As part of the -- you know, as part of
5 the overall activity in the lab. But the postdoc is primarily
6 about career building whereas the associate research scientist
7 is primarily about fulfilling their job description, and making
8 sure they do what their -- making sure they do what the PI
9 tells them to do. So I'm not -- obviously this is hugely
10 variable. But in general, I would not agree that there's an
11 increase in independence as you go through those. I mean
12 there's certainly more independence of a postdoc than there is
13 of a graduate research assistant, absolutely.

14 But from a postdoc to an ARS an increase in independence,
15 I'm not sure that would be generally -- generally true.

16 Q Okay. I mean you -- is it -- I mean is it your testimony
17 that ARSs, as a general category have given up on the idea of
18 becoming PIs themselves?

19 A No. That is not my testimony at all.

20 Q So your understanding would be that many PIs -- I mean
21 many associate research scientists or scholars are continuing
22 to try to establish themselves with the possibility of becoming
23 PIs themselves?

24 A There is a -- there is a subset of ARSs who are absolutely
25 dedicate to that. And the university is totally supportive of

1 that.

2 Q Do postdocs generally, in both categories, publish papers
3 with their PIs?

4 A Yes.

5 Q Is that one of the major objectives of their work
6 together?

7 A Yes.

8 Q Do ARSs also publish papers with their PIs?

9 A Yes.

10 Q And is that also one of the major objectives of their work
11 together?

12 A Yes.

13 Q Does the university have some policy or program to try to
14 achieve a diverse group of postdoctoral research -- of
15 postdocs?

16 A A program -- I mean we have a university-wide diversity
17 program. We have devised provost -- diversity in the provost
18 office that is focused on improving diversity across all
19 segments of the university. Do we have a program specifically
20 focused on postdocs and nobody else, I do not believe so.

21 Q Okay.

22 A But as I said, you know, we -- we are rigorous in our
23 application of affirmative action. We call it opportunity
24 regulations in the recruitment of postdocs and everybody else
25 we recruit.

1 Q And that university-wide program under the direction of
2 the provost that you referenced, that would apply to postdocs
3 and to ARSs; is that correct?

4 A Under the policies that are developed by that office.

5 Q Policies.

6 A Absolutely.

7 Q You testified that one of the things that NIH requires in
8 grants for postdocs is some career or --

9 A Career development plan.

10 Q Right. What other requirements are there to attain an
11 application for an NIH grant?

12 A In general overall, I mean --

13 Q Yeah, what are the general -- okay, I'll ask more pointed
14 questions.

15 A NIH requires that we, you know, adhere to a whole stack of
16 regulations.

17 Q That would apply to all NIH grants at any level?

18 A Right.

19 Q And that includes human and animal --

20 A Yeah.

21 Q -- treatment standards.

22 A Hundreds of pages.

23 Q Right. But that also includes establishing that the
24 research will lead -- or hopefully or is likely to lead to new
25 knowledge to be productive?

1 A Very much so. And success rates is extremely competitive.
2 Success rates of NIH grants are in some programs as low as ten
3 percent. So for you to be funded by NIH requires that you
4 cross the very, very high bar of quality, a very, very high bar
5 of likelihood of success.

6 Q And that applies to postdocs as well?

7 A Absolutely.

8 Q And they also have to demonstrate or have a plan to
9 demonstrate that the research would benefit --

10 A Humankind, yes.

11 Q Humankind, okay. That's the word I was looking for. Now,
12 you testified that -- hold on a second.

13 (Counsel confer)

14 MR. MEIKLEJOHN: We didn't go off the record, did we?

15 HEARING OFFICER MURTAGH: No.

16 MR. MEIKLEJOHN: Okay.

17 Q BY MR. MEIKLEJOHN: You testified that hiring an associate
18 research scientist or scholar involves a commitment of how many
19 years?

20 A Well, strictly one year.

21 Q Which is the same period for a postdoctoral appointment,
22 correct?

23 A That is correct.

24 MR. MEIKLEJOHN: Okay. Nothing further.

25 HEARING OFFICER MURTAGH: Mr. Purdy, I have a few

1 clarification questions. Now, a postdoc position is either in
2 the fellow category or in a scientist category, are they posted
3 somewhere or, you know, will PI approach someone directly. How
4 does that work?

5 THE WITNESS: Oh, they're openly advertised except in
6 the -- you know, in the case of outside funded fellows, you
7 know, individuals who were funded by some outside foundation on
8 a fellowship, may approach one of our faculty members and say,
9 I have this fellowship, may I bring it to your lab? And then
10 there's a discussion between the fellow and the faculty member
11 as to whether there's a good fit. But, you know, that's a
12 relatively small percentage of the overall postdoc population.
13 The vast majority of the postdoc population are selected
14 competitively.

15 HEARING OFFICER MURTAGH: And who sets the salary for the
16 various classifications outlined in the salary guidelines of
17 Petitioner's Exhibit --

18 THE WITNESS: That's the provost office, the investee.

19 HEARING OFFICER MURTAGH: But for a specific individual?

20 THE WITNESS: Oh, that's -- I'm sorry. I'm sorry, I
21 misunderstood. The PI with approval of the department chair.
22 The department chair is charged with looking at salary levels
23 across the department to ensure fairness and equity across the
24 department.

25 HEARING OFFICER MURTAGH: And that would go for postdoc

1 fellows?

2 THE WITNESS: Postdoc fellows, yes. Well, yeah. I mean
3 the fellows again, the magnitude of their salary is controlled
4 by the outside entity that provided the funding. So that's a
5 little bit different. For the postdoc research scientists
6 supported on an NSF grant for example, you know, the PI has
7 flexibility in how much -- how much the salary is.

8 HEARING OFFICER MURTAGH: So for a typical fellowship,
9 would the grant say, you know, \$60,000 will go to salary, or --

10 THE WITNESS: Yep.

11 HEARING OFFICER MURTAGH: And I'm looking at Employer 1
12 now. And in the discussion concerning compensation, there
13 aren't any page numbers, but there's a mention of postdoc
14 research fellows receiving a stipend, but if it's coming from
15 the university, they, in effect, become postdoc research
16 scientists or scholars. I can show you the page right here.

17 MR. PORZIO: Can you just tell us how many pages --

18 HEARING OFFICER MURTAGH: Yeah. This is 1, 2, 3, 4, 5, 6,
19 7, 8, 9, 10. It's page 10.

20 MR. PORZIO: Oh, compensation.

21 MR. MEIKLEJOHN: What paragraph does it start?

22 HEARING OFFICER MURTAGH: It's under compensation, and
23 then subparagraph salary, and then that second paragraph there.

24 THE WITNESS: Right.

25 HEARING OFFICER MURTAGH: And so my question is for those

1 outside grants that are redirected through the university and
2 aren't being paid out directly from the fellowship pot, those
3 individuals are the common postdoctoral research scientists or
4 scholars. Is that -- am I reading that paragraph correctly?

5 THE WITNESS: I mean that -- if a fellowship is funded
6 from university sources, and there are -- we run some
7 fellowship programs ourselves where we have endowed funds.

8 MR. PLUM: Yeah, I was just pointing out for the record
9 that that sentence, fellowship is in quotes.

10 THE WITNESS: Uh-huh.

11 MR. PLUM: I don't think that's discussing an external
12 funding source.

13 HEARING OFFICER MURTAGH: And so those funding sources
14 would be ones that the university, you know, has a standing
15 grant for, for whatever reason. An internal funding source?

16 THE WITNESS: That's what that sentence refers to, yes.

17 HEARING OFFICER MURTAGH: And then the reference to
18 fellows receiving a stipend as opposed to a salary for the
19 other classifications listed in the paragraph immediately
20 above, I believe you testified the stipend is distributed
21 monthly; is that correct?

22 THE WITNESS: I don't -- I don't think I testified to
23 that. I think the only thing I know about is bimonthly. But
24 whether the fellowship stipends are funded differently, that is
25 beyond my experience. I do not know.

1 HEARING OFFICER MURTAGH: And including -- you don't know
2 the frequency with which they're paid out?

3 THE WITNESS: I do not know whether stipends are paid out
4 at a different rate than regular salaries.

5 HEARING OFFICER MURTAGH: And then, you know, turning
6 to -- and that stipend, is that distributed directly to the
7 student's direct deposit account?

8 THE WITNESS: To the --

9 HEARING OFFICER MURTAGH: Or I'm sorry, the fellow's
10 account?

11 THE WITNESS: Yes.

12 HEARING OFFICER MURTAGH: Okay. By the university?

13 THE WITNESS: Yes.

14 MR. PORZIO: I think some of those questions will be
15 clarified in --

16 HEARING OFFICER MURTAGH: Okay, great, great. And then
17 one final question. So, you know, in the day to day life in
18 the lab, if someone needs to take a day off or just to show up
19 late, how does that work? Do they go to the PI, do they have
20 to go to the provost, or someone else?

21 THE WITNESS: No, they work with PI.

22 HEARING OFFICER MURTAGH: And that would be --

23 THE WITNESS: It's extremely informal.

24 HEARING OFFICER MURTAGH: And that would be for all of the
25 classifications at issue in this petition? The associate

1 research scientist and the--

2 THE WITNESS: Absolutely. There are no clocks.

3 HEARING OFFICER MURTAGH: Okay. Okay, you can go ahead
4 Mr. Plum.

5 **REDIRECT EXAMINATION**

6 Q BY MR. PLUM: Okay, Professor Purdy. I just want to take
7 you back, or direct your attention, to some of the testimony
8 that you gave on cross-examination concerning research
9 techniques and methods that might be developed by a postdoc
10 researcher that you described circumstances where those postdoc
11 researchers might take them elsewhere.

12 A Right.

13 Q In the examples that you were describing of those
14 techniques and methodologies, are those -- were you talking
15 about things that would be subject to an intellectual property
16 policy that's described in Union 2?

17 A No.

18 Q So what kinds of things were you talking about then?

19 A I mean a new research technique, a new way of making
20 measurements, a new way of interpreting existing measurements,
21 developing a new algorithm to improve the quality of images,
22 developing an approach to analysis of some kind of data,
23 sometimes developing an actual piece of hardware. But only
24 very, very -- only rarely is there a commercial possibility of
25 these developments. And then when there's commercial

1 possibility, of course, the IP issues come in. But the vast
2 majority of research developments do not lead to IP.

3 Q And again, directing your attention to some of the
4 testimony on cross, this time to some of the questions and
5 answers about the responsibility for grant compliance, making
6 sure that the project is run in the terms about of a grant, is
7 there a difference in terms of the level of responsibility of a
8 fellow, as opposed to a scholar scientist working -- being paid
9 under a grant?

10 A Level of responsibility for adhering to good? No.

11 Q But I'm talking about level of responsibility for adhering
12 to the terms of the grant, to make sure that the grant is
13 complied with.

14 A Is there a difference between --

15 Q The level of responsibility of a fellow who is the
16 recipient of a grant --

17 A Right.

18 Q -- as opposed to a post -- a scholar scientist who is
19 working on a grant that was going to be --

20 A Okay, sorry.

21 Q -- researched.

22 A I finally understood the question. I mean, you know, the
23 key difference there, of course, is the fact that the fellow
24 has developed their own proposal whereas the postdoc is working
25 on an ongoing project in the PI's lab. So I would say there is

1 a greater motivation on the part of the postdoc fellow to focus
2 on the specifics of the proposal that they wrote to get the
3 fellowship.

4 (Counsel confer)

5 MR. PLUM: I'm going to go off the record for one second.

6 HEARING OFFICER MURTAGH: Off the record.

7 (Off the record at 1:32 p.m.)

8 HEARING OFFICER MURTAGH: Back on the record.

9 MR. PLUM: We have nothing further.

10 HEARING OFFICER MURTAGH: Mr. Meiklejohn.

11 MR. MEIKLEJOHN: No, nothing.

12 HEARING OFFICER MURTAGH: Okay. You may be excused.

13 Thank you, very much for your testimony today. Why don't we go
14 off the record.

15 (Off the record at 1:33 p.m.)

16 HEARING OFFICER MURTAGH: Mr. Porzio, you may call your
17 next witness.

18 MR. PORZIO: The University calls Ericka Peterson.

19 Whereupon,

20 **ERICKA PETERSON**

21 having been duly sworn, was called as a witness herein and was
22 examined and testified as follows:

23 HEARING OFFICER MURTAGH: And can you please state your
24 name and spell it for the record?

25 THE WITNESS: Yes, Ericka Peterson, Ericka E-R-I-C-K-A



1 Peterson, P-E-T-E-R-S-O-N.

2 HEARING OFFICER MURTAGH: You may proceed, Mr. Pozio.

3 **DIRECT EXAMINATION**

4 Q BY MR. PORZIO: Ms. Peterson, can I call you Ms. Peterson,
5 by the way? Okay, thank you. By whom are you employed?

6 A Columbia University.

7 Q And what is your title?

8 A Director, Office of Postdoctoral Affairs.

9 Q And to whom do you report?

10 A I report to Deborah Stiles, the VP of Research Operations.

11 Q Okay, and who does Deborah report to?

12 A To Dr. Mike Purdy.

13 Q Okay. Can you tell us a little bit about your
14 educational background?

15 A Yes. I have a bachelor's degree in neuroscience. I have
16 a master's degree in interdisciplinary science. I have a PhD
17 in medicine. And I also have training as a postdoc.

18 Q That's why I asked. Would you rather I call you Dr.
19 Peterson or --

20 A That's fine.

21 Q Okay.

22 A Either way is --

23 Q Fine. Did you work for other organizations before coming
24 to Columbia?

25 A I did.



1 Q And can you tell us which ones?

2 A Yes. After I finished my postdoctoral training I moved to
3 industry. I worked within medical communications, medical
4 education, pharmaceutical marketing, and advertising. And had
5 two of the big four advertising agencies in the city and then
6 moved back to academia.

7 Q All right. And when was that that you moved back to
8 academia?

9 A I moved to Columbia in January of 2016.

10 Q Okay, and what was your title back in January 2016 at
11 Columbia?

12 A It was assistant director of the office of postdoctoral
13 affairs.

14 Q Did you hold any other title at Columbia?

15 A I did.

16 Q Before your present -- go ahead.

17 A Excuse me. After about nine months I was promoted to
18 associated director of the office. And a few months after that
19 I was promoted to director of the office. I've been the
20 director for about a year and a half.

21 Q Excellent. So let's -- let's talk about your current role
22 as director of the office of postdoctoral affairs. And is the
23 acronym for that OPA?

24 A Yes.

25 Q Is that commonly accepted -- okay. So can you describe



1 your duties and responsibilities as a director of OPA?

2 A So the purpose of the OPA and the mission of the Office of
3 Postdoctoral Affairs is to support postdoctoral trainees on all
4 levels during their time at Columbia whether that be through
5 career and professional development activities, or through the
6 postdoctoral affairs side of their time at Columbia.
7 So really you can think about the office in two different ways.
8 Career professional development, and within that we do a wide-
9 range of programming. We provide resources. We provide one on
10 one counseling.

11 A couple examples of courses would be the individual
12 development program that came up earlier as a mandate from
13 federal agencies like the NIH. We just actually launched that
14 program today. It will begin in September. And this year it
15 will consist of leadership courses, business concepts for
16 scientists courses, career panels, career talks, and then one
17 individual presentation on leadership. And throughout that
18 postdocs are encouraged to complete their individual
19 development plan, to address -- excuse me, identify certain
20 skills, traits and interests that they have, and have a career
21 discussion with their PI. That's one of the examples that we
22 do.

23 We run workshops on how to write a resume, how to write a
24 CV, how to build your LinkedIn profile, how to write and get an
25 elevator pitch. We run programs on how to communicate science



1 to the non-scientist. We run courses on -- one very popular
2 one is transitioning to research independence. And that's
3 where postdocs learn a lot of the skills that Dr. Purdy
4 referred to earlier in terms of how to negotiate, how to staff
5 a lab, how to manage people, how to have difficult
6 conversations, how to budget. So that's one example of one
7 offering that we have. And oftentimes those types of courses
8 and workshops are led by faculty at Columbia. So they're
9 really getting, you know, an insider view on what they should
10 be doing.

11 And also in terms of career and professional development,
12 I mentioned we do the one on one counseling, whether that's
13 career counseling, or reviewing their CVs, resumes and cover
14 letters. We send out weekly communications of all of the
15 events that are going on. And we also support postdocs, which
16 I'm really proud of. We know how important they are to our
17 research enterprise, but they also work very hard, and they're
18 under a lot of pressure, and since I started at Columbia, I was
19 able to initiate a mental health and wellness program. And
20 that ranges everything from yoga to meditation to imposter
21 syndrome to how to eat better, how to sleep better. So
22 supporting really the person in the postdoc. You can look at
23 my office as a support system for postdocs and their training
24 here.

25 On other side we support postdocs in terms of advocating



1 for them, in terms of benefits, policies, ways to improve their
2 training at Columbia. An example of that is the fulfillment of
3 benefits for postdoctorial fellows. They were granted benefits
4 in terms of healthcare about two -- two and a half years ago.
5 And last year -- late last year, we were also able to secure
6 life insurance for the fellows and give them access to the
7 employee assistance program. So that's an example of how we
8 advocate in terms of benefits.

9 In terms of policies, right now we're advocating for a new
10 teaching policy. While postdocs are allowed to teach at
11 Columbia, the process and the policies weren't very transparent
12 or easy to navigate, and we know that many postdocs may want to
13 teach in their career. So that's another policy that we're
14 working on. And hopefully that will be approved in the near
15 future.

16 Q Great. Thank you. So you gave a bunch of examples.
17 Thank you for that. Can I ask you one general question, and
18 I'd like to back up for a minute. I believe you said all of
19 those policies and programs, those are applicable for as --
20 since they're germane to your office, those are applicable to
21 postdocs; is that correct?

22 A Yes.

23 Q Are they also available to ARS individuals ?

24 A They are not.

25 Q Okay, and ARS, just for the record is associate research

1 scientists or scholars?

2 A Yes. But my office does not oversee that population.

3 Q So Dr. Peterson, I'm showing you a document that's been
4 marked for identification as Employer Exhibit 3. Do you
5 recognize this document?

6 A I do.

7 Q Can you tell me what it is?

8 A It's a page from the National Postdoc Association website,
9 where they define what a postdoc is. And this is a definition
10 that I would say is accepted by most institutions across the
11 country.

12 Q Okay. Do you accept this definition as your understanding
13 of what a postdoc is?

14 A I do.

15 Q Okay.

16 A And we also refer to it. I move that the exhibit that's
17 been marked for identification as Employer's Exhibit 3 be
18 received into evidence.

19 HEARING OFFICER MURTAGH: Mr. Meiklejohn?

20 MR. MEIKLEJOHN: I have a question what is the National
21 Postdoctoral Association?

22 THE WITNESS: The National Postdoc Association is made up
23 of postdocs and administrators like myself, and it's similar to
24 your membership societies. So postdocs may be a member of, you
25 know, the American Chemical Society, but they may also be a

1 member of this. It's a non-profit organization that has a
2 number of resources for postdocs and administrators, like
3 myself. There is conferences available. There's job postings
4 available. There's resources. There's workshops, webinars,
5 different things like that. And through Columbia postdocs have
6 free membership to it, that my office pays for. So postdocs
7 are free to take advantage of all of their offerings.

8 MR. MEIKLEJOHN: My only objection to this document is the
9 print is so incredibly small, I can barely read it. But I have
10 no objection to its admission.

11 HEARING OFFICER MURTAGH: Okay. Employer Exhibit 3,
12 despite its small font, is being received into the record. All
13 right, you can go ahead.

14 **(Employer Exhibit Number 3 Received into Evidence)**

15 MR. PORZIO: Thank you.

16 Q BY MR. PORZIO: So Dr. Peterson, I'm showing you what's
17 been marked for identification purposes as Employer Exhibit 4.
18 Do you recognize this document?

19 A I do.

20 Q Can you tell me what it is?

21 A This is a page from my office's website.

22 Q Okay. Is this accurate as of today, or at least this past
23 week?

24 A Yes.

25 Q Any changes to this page since the 13th, it looks like

1 when it was printed?

2 A None that I'm aware of.

3 Q Okay. The University moves the exhibit that's been marked
4 for identification purposes as Employer Exhibit 4 into
5 evidence.

6 MR. MEIKLEJOHN: No objection.

7 HEARING OFFICER MURTAGH: Employer 4 is received.

8 **(Employer Exhibit Number 4 Received into Evidence)**

9 HEARING OFFICER MURTAGH: Is this the whole page or what
10 would we call this? I assume we're going to get more pages for
11 this, right?

12 MR. PORZIO: Possibly. This, I believe, is the -- this is
13 the career development page, or pages, from the postdoctoral
14 affairs website. You can see in the top one-third where it
15 gives like arrows going across, home, Office of Postdoctoral
16 Affairs. This is a career development (indiscernible) of the
17 website.

18 Q BY MR. PORZIO: Dr. Peterson, can an individual make
19 postdoc a career?

20 A I'm sorry, can you repeat that?

21 Q Sure. Can -- can an individual who's currently a
22 postdoctoral trainee, and I guess that would encompass a
23 postdoctoral research scientist, a post-doctoral research
24 scholar, and postdoctoral research fellow, can they make a
25 career out of being postdoc?

1 A No. The purpose of a postdoc is a temporary period of
2 mentor research or scholarly training.

3 Q Okay, so let's talk about a post-doctoral research
4 scientist/scholar. I'll use the acronym PDRS to encapsulate
5 both. If there's a difference that you feel is necessary to
6 distinguish, please feel free to do so. So are you familiar
7 with the phrase postdoctoral research scientist or scholar.

8 A Yes.

9 Q Okay, and what is that? A PDRS? What is a PDRS?

10 A A postdoctoral research scientist or scholar is one of the
11 categories at the university that postdocs are classified
12 under. And they're classified under that nomenclature or that
13 position, based on their funding status.

14 Q And what's the difference between a postdoctoral research
15 scientist and postdoctoral research scholar?

16 A The only difference is the discipline in which they're
17 working in.

18 Q And what are some -- what discipline?

19 A So the scholars, for example, would be found more in the
20 social sciences and humanities, where the scientists would be
21 more in the life sciences or the hard sciences, engineering.

22 Q Okay, so how does someone go about becoming a PDRS at
23 Columbia?

24 A There's a number of ways, as Dr. Purdy alluded to earlier.
25 There are postings available, whether that's on Columbia's

1 website for open positions, whether it's on the National
2 Postdoc Association has job postings that Columbia can post to.
3 Some of your other high impact journals, such as Science and
4 Nature also have job boards. Postdocs can reach out to --
5 interested individuals, let's say, can reach out to PIs to
6 express interest, to see if there's any open positions
7 available in the lab. Those are the main ways that postdocs
8 apply.

9 Q Okay, and I think you mentioned the post things or asking,
10 is there an application process involved in becoming a PDRS at
11 Columbia?

12 A Yes.

13 Q Can you describe the application process?

14 A If they apply on line, so typically they would submit
15 their CV and letters of reference and the PI and the department
16 would review that to see if they're a good fit. They would
17 have to have departmental approval. They would have to make
18 sure that there was enough funding available and laboratory
19 space for that position, obviously. And then that would
20 require approval by the provost as well.

21 Q When you said they have to find out if there's sufficient
22 funding available, can you explain that?

23 A So postdoc research scientists and scholars are not coming
24 with their own funding secured in advance. They need to be
25 supported by grants through the university, or funding through

1 the university.

2 Q So to the extent that a larger number of individuals apply
3 for a finite amount of funding, what would happen?

4 A Can you clarify that?

5 Q Sure. So -- well, let me ask it to you this way. Is the
6 number of PDRSs who are accepted dependent on the amount of
7 funding available at the university?

8 A Yes.

9 Q Okay, and once an application has been processed by the
10 university, what happens if an application is successful and
11 the university wants to attempt to get them admitted as a PDRS?

12 A Right. So after there's been a provost approval, or
13 faculty affairs approval, depending on which campus they're
14 located, they would receive an offer letter that outlines, you
15 know, what their responsibilities are, or what they're
16 receiving from the university and what regulations they need to
17 comply with. And then after that, if that's all successful and
18 signed, and agreed upon, then they would be given an
19 appointment letter.

20 Q Okay. So Dr. Peterson, I'm showing you a document that's
21 been marked for identification as Employer Exhibit 5. Do you
22 recognize this document?

23 A I do.

24 Q And what is this?

25 A This is a template for an offer letter.

1 Q Okay, are you familiar with this document?

2 A I am to some extent. So appointments are not processed
3 through my office, although I have seen this on occasion. If a
4 postdoc has a question or concern, oftentimes they will bring
5 me their offer letter to help clarify things or for me to help
6 point them in the right direction of who they could speak to if
7 they had questions or concerns.

8 Q Okay, does this appear to be a true and accurate copy of
9 that kind of template offer letter that you're referring to?

10 A Yes.

11 Q Okay. I move for admission what's been marked as
12 Employer's Exhibit 5 into evidence.

13 MR. MEIKLEJOHN: No objection.

14 HEARING OFFICER MURTAGH: Employer Exhibit 5 is received.

15 **(Employer Exhibit Number 5 Received into Evidence)**

16 Q BY MR. PORZIO: So Dr. Peterson, once the offer letter is
17 sent to the individual -- and I notice that the second page of
18 the individual applicant has the ability to sign and accept the
19 appointment -- what happens if, and when, that appointment
20 letter gets signed by the individual applicant?

21 A Once that occurs, I believe that the postdoc would then
22 receive an appointment letter. It's a much shorter letter.

23 Q And how does -- how does a postdoctoral research scientist
24 or scholar get appointed at Columbia?

25 A By their department.

1 Q Okay. Does that require approval beyond --

2 A Yes, it requires approval normally from the chair or the
3 dean and then from the provost or from the Office of Faculty
4 Affairs.

5 Q Dr. Peterson, I'm showing you what's been marked for
6 identification purposes as Employer Exhibit 6. Do you
7 recognize this document?

8 A Yes.

9 Q Can you tell us what it is?

10 A See this is what I was referring to earlier as -- in terms
11 of the appointment letter for a postdoctoral research
12 scientist.

13 Q Okay. Employer moves what's been marked as Employer
14 Exhibit 6 into evidence.

15 MR. MEIKLEJOHN: No objection.

16 HEARING OFFICER MURTAGH: Employer 6 is received.

17 **(Employer Exhibit Number 6 Received into Evidence)**

18 Q MR. PORZIO: So Dr. Peterson, can you tell us what the
19 responsibilities of a PDRS are at Columbia University?

20 A So typically the PDRS are within -- working within the
21 confines of their PI's grant. So the work that they have to do
22 is clearly defined by the proposal and the aims and the purpose
23 of the grant that was applied for and awarded. It's very
24 specific in the type of research that they're doing. It's
25 clearly defined. It's clearly outlined, and they're working in

1 this relationship with their PI as a mentor/mentee relationship
2 and that includes, you know, writing papers, attending
3 conferences, presenting their work. It's all contained within
4 the position itself.

5 Q And are PDRS individuals compensated?

6 A Yes.

7 Q Do you know how much they are compensated?

8 A How much they are compensated?

9 Q Yes.

10 A It depends on the level, but there's minimums set by
11 Columbia, and they're paid bimonthly salary.

12 Q Okay, do you happen to know what the minimum is at
13 Columbia?

14 A As of July 1st the minimum is 50,123.

15 Q Do you know who issues the paychecks to the PDRS
16 individuals?

17 A The university.

18 Q Okay. Are withholdings taken out of those checks?

19 A Yes.

20 Q Who does that?

21 A The university.

22 Q Are PDRSs eligible for benefits?

23 A Yes.

24 Q And what benefits do they receive, if you know?

25 A They would receive an employee benefits package.

1 Q Do you have some general sense of what some of the
2 examples of the employee benefit package include?

3 A I do. For example, healthcare, dental, vision. They
4 would also, due to the withholdings and because of their
5 status, be eligible for tax dependent benefits, such as
6 flexible spending accounts, dependent care accounts, travel
7 reimbursement. Of course, they're all optional, but they are
8 entitled to those. There's a number of other benefits that
9 they're also entitled to.

10 Q Okay. Are you familiar with the term visiting
11 postdoctoral research scientist or scholar?

12 A Yes.

13 Q Can you tell us what that means?

14 A I think that they are very rare. And this is an
15 individual who is appointed at Columbia at zero salary and
16 employed at another institution full time and are paid through
17 that institution. So an example would be someone coming to
18 Columbia because there is a collaborative effort, and there
19 might be a specific microscope or tool or instrumentation that
20 they're using. So in order for them to be within the Columbia
21 system, we have to appoint them and give them a zero salary
22 appointment. Even to get a badge to get into the room they
23 would do that. So that's an example of a visiting.

24 Q So you use the term zero salary appointment. What does
25 that mean? Can you explain that?

1 A That means that they aren't receiving any funds from
2 Columbia in terms of salary.

3 Q Okay. So, but I think your testimony was they are
4 receiving salary. Who are they receiving it from?

5 A From their home institution.

6 Q Okay, and how about benefits? Do they receive benefits?

7 A From Columbia? No. But from their home institution they
8 would.

9 Q Okay. So let's now talk about postdoctoral research
10 fellows as compared to the postdoctoral research
11 scientist/scholar. Are you familiar with that term
12 postdoctoral research fellow?

13 A Yes.

14 Q And can I call them fellows? You'll know what I'm
15 speaking of? Okay. So what is a fellow?

16 A A postdoctoral research fellow is another classification
17 of fellows at Columbia. And these are individuals who have
18 obtained their own funding, and they are working at the
19 university under the direction of a PI within the department
20 similar to a postdoctoral scientist, but these are scholars who
21 have gone above and beyond -- or postdoctoral gone above and
22 beyond and secured their own funding.

23 We know that oftentimes it's a very difficult and rigorous
24 process. And ultimately all postdocs, whether they're student
25 -- or excuse me, scholars, scientists, or fellows. One of

1 their goals is to secure outside funding, just as it is to
2 publish. This is a different classification of postdocs that
3 are bringing their own funding to the university.

4 Q So can you explain for a layman like myself, why is it
5 important or why is it a primary objective, as I believe you
6 mentioned, for a postdoc to secure his or her own funding?

7 A Well, when you think about a postdoc, what we really want
8 them to do is to be on a path to independence, right. And a
9 way to be independent is to be financially secure and to obtain
10 that funding on your own. So these are individuals who have
11 gone and applied for funding on their own. As I mentioned, it
12 could be a very rigorous and competitive process. And that
13 also allows them to have more autonomy and freedom in terms of
14 their scientific interests and the type of proposals that they
15 write, the research that they want to perform, the way they'd
16 like to publish, and the type of work they like to do.

17 Q Okay.

18 A I think in general postdocs want to secure funding on
19 their own at some point in their tenure as a postdoc.

20 Q Okay. So now let me ask you if you can compare and
21 contrast what are the primary differences between a fellow and
22 a PDRS that we've already spoke of?

23 A So as we've spoken about the -- the basic difference is
24 the funding if you just look at the basic principle. If you
25 want to think about them in terms of their career and their

1 development as a scientist, you really want to think about
2 their pathway to independence. We have many bright scholars
3 and scientists, of course, and many of them do go on to get
4 funding of their own. But when you have secured your own
5 funding, you're in more control over the work that you do.
6 You've reached out to Columbia to say, you know, I've been
7 awarded this fellowship, do you have space for me in your
8 laboratory. Of course, the work that they're doing has to work
9 within the scope of what the department wants to accomplish.
10 But they really are in essence picking Columbia versus Columbia
11 choosing them.

12 Of course, you know, they have to be appointed and
13 approved to work there. But they're really further along in
14 their pathway to independence. We want all postdocs to be
15 independent. But these individuals are further along in their
16 careers. And it's not to say that postdocs who are scientists
17 and scholars can't secure their own funding. Hopefully they
18 do. But these individuals are already on that path. And it
19 also allows them for more scientific freedom in the work that
20 they do.

21 Obviously they've written their own ideas and their own
22 aims, so they have more freedom and autonomy and independence.
23 And it gives a level of prestige. And if you're applying for a
24 faculty position, oftentimes they want to see that you've been
25 able to secure funding on your own along with many other

1 credentials. But that's certainly something that's very
2 important.

3 Q Great. When a fellow, if I understand your testimony, a
4 postdoctoral research fellow comes with a grant already
5 afforded to him or her, is that individual, the postdoc fellow,
6 responsible for managing those funds? Or is that managed by
7 the university?

8 A So in terms of managing the funds to do the work?

9 Q The budget of the funds.

10 A Right. So typically when -- with any grant application
11 you set out the budget in advance. So, yes, ultimately the
12 individual who was awarded the money is responsible for how the
13 money is spent.

14 Q But is having -- I know you talked about this gives some
15 individuals a leg up. Is learning how to manage a budget or
16 write grants, is this part of that leg up that a fellow would
17 have to give them an advantage over other applicants?

18 A It does. It does. That's part of a faculty position is
19 writing grants, securing your own funding. As Dr. Purdy eluded
20 to earlier, that's part of this process is learning to manage
21 funds on your own, learning to write applications, how to
22 manage your own work, and that's certainly something that we
23 support.

24 Q Okay. So now can you tell me the process for how someone
25 would go about becoming a postdoctoral research fellow at

1 Columbia?

2 A As I mentioned earlier, it's more -- in a way it's the
3 postdoc fellow choosing Columbia versus Columbia choosing them.

4 Q Can you please tell me what that means first?

5 A So they could have gone to a number of universities,
6 right? There's -- they have an option to choose where they
7 think their work would fit in best. So typically they would
8 contact the PI and say I'm interested in doing this work. I've
9 been awarded X amount of funding. Do you have space in your
10 laboratory, and does my work compliment the work that you're
11 doing there. And there's, you know, discussions that are made.
12 And if there's space and that they feel the mission is
13 supporting the lab, then they can be appointed. But the
14 appointment process would be the same.

15 Q Okay, and I'm sorry, I interrupted you. You were
16 answering my question, which I'll re-ask for you. Can you
17 explain the process that someone uses to become a fellow at
18 Columbia?

19 A Right. So after they've contacted the PI and established
20 a relationship with them, and they have agreed that the
21 research can be conducted there, that they have the necessary
22 means whether that's instrumentation or lab space, and that the
23 funding is appropriate to support that, then they would go
24 through the appointment process. They would still have to be
25 approved by the department, by the chair, or the dean and the

1 provost, and then they would be appointed as a postdoc fellow.

2 Q Okay. Could you walk us through the process of what -- or
3 how, I guess, an aspiring postdoc research fellow would go
4 about securing these funds to fund the fellowship?

5 A Right. So there's a number -- there's a number of ways to
6 do that. Different organizations, entities, non-profits will
7 advertise for a fellowship opportunities. And then they can
8 apply through that. It's often a very competitive and rigorous
9 process. There's detailed grant applications that are
10 involved in that. And that's, you know, setting out project
11 aims, setting out goals, identifying the budget in terms of
12 what you need, and how much you need to get that done. And
13 then being awarded the grant. But there's numerous grants
14 available for postdocs to apply to. But they're very
15 competitive.

16 Q And would that happen prior to applying to Columbia for a
17 fellow spot?

18 A Yes.

19 Q So you mentioned earlier in your testimony that there were
20 limits on the number of spots for a postdoctoral research
21 scientist/scholar, and it was dependent on the amount of
22 funding available. Does the same limit apply to postdoctoral
23 research fellows?

24 A To a lesser extent. There would need to be space for the
25 postdoc. There would need to be whatever type of

1 instrumentation or tools that they need to actually complete
2 the work. They won't be coming with their own microscope for
3 example. So they need to make sure that that's available
4 freely for them to use. But they have secured their own
5 funding, so that's not the issue.

6 Q Okay. Who determines whether to provide an offer to an
7 aspiring postdoc research fellow?

8 A The PI.

9 Q Dr. Peterson, I'm showing you what's been marked for
10 identification purpose as Employer Exhibit 7. Do you recognize
11 this document?

12 A Yes.

13 Q Can you tell me what it is?

14 A This is a template offer letter for a full time
15 postdoctoral research fellow.

16 Q Does this appear to be a true and accurate copy of a
17 template offer letter for a postdoctoral research fellow?

18 A Yes.

19 Q The University moves Employer exhibit that's been marked
20 for identification as Employer Exhibit 7 into evidence.

21 MR. MEIKLEJOHN: No objection.

22 HEARING OFFICER MURTAGH: Employer Exhibit 7 is received.

23 **(Employer Exhibit Number 7 Received into Evidence)**

24 Q BY MR. PORZIO: Dr. Peterson, are fellows compensated?

25 A Yes.



1 Q And how are they compensated?

2 A They are compensated monthly either -- there's a couple
3 different ways. They could be compensated by being paid
4 directly from their funding agency. They could be paid from
5 their home institution, or a fund could be set -- an account
6 could be set up at Columbia where the funds are directly
7 deposited from the funding agency and then simply a function of
8 payroll.

9 Q Okay. So let's go through those one at a time. Let's
10 start with the last one. I believe you said where they're paid
11 by funds through Columbia. So can you tell us how that would
12 happen? How would a fellow would get paid by Columbia by funds
13 that flowed through it.

14 A Well, if you think about it, the function of the funding
15 agency is not as a payroll service. So typically to my
16 understanding, a separate account is set up where the funds
17 specific for that individual are deposited from the funding
18 agency, and then Columbia simply issues the payroll function of
19 it.

20 Q Okay. Does -- who determines what the amount of the check
21 is going to be to the postdoctoral research fellow that fits
22 into that category?

23 A In terms of the amount of check they get each month?

24 Q Correct.

25 A The funding agency.

1 Q Okay. Are there withholdings taken out of that check?

2 A No.

3 Q Are they -- is that check given on a -- pursuant to a 1099
4 or a W2?

5 A A 1099.

6 Q So let's move them to the second category which I believe
7 you said they're paid by their home institution.

8 A Uh-huh.

9 Q So can you tell us how that would happen.

10 A So for example, I think it's quite rare, but there are
11 some institutions abroad that will pay their postdocs directly.

12 Q Okay, and when you say directly, so the funding agency is
13 giving checks directly to the postdoctoral research fellow?

14 A Yes.

15 Q Okay, and I know you said that that was foreign agencies.
16 Are there domestic agencies in the U.S. that do this as well?

17 A Yes.

18 Q Okay. Can you give us an example?

19 A I can't think of an example off the top of my head, but
20 I -- of the specific funding agency, but I know that it happens
21 where postdocs -- I can think of the individual, but I can't
22 recall which funding agency he has, where he has issued the
23 check himself, his home address and is then responsible for how
24 to manage the funds.

25 Q Okay. So what role, if any, does Columbia have in the

1 compensation portion for that postdoctoral research fellow?

2 A The only role they would have is to ensure that his salary
3 meets the minimum requirement.

4 Q Okay. Are withholdings taken out by Columbia from those
5 checks?

6 A No.

7 Q Okay, and then the final and third category I think you
8 mentioned the home university, are you referring to the
9 visiting postdoc fellows that you mentioned earlier?

10 A Yes.

11 Q So can you tell me how those folks would be compensated?

12 A Those individuals are compensated from their home
13 institution.

14 Q Okay, and so does Columbia have any hands on the paychecks
15 for those individuals?

16 A No.

17 Q Do they take withholdings out of those?

18 A No.

19 Q Okay. Do those folks receive benefits from Columbia?

20 A The visiting?

21 Q Yes.

22 A No.

23 Q Okay. All right. So aside from the visiting postdoc
24 fellows, do the other two types of fellows that you're
25 referring to, those that get paid directly by the funding

1 agency and those who get paid by the agency but through
2 Columbia, do they receive benefits?

3 A Yes.

4 Q Okay. How do those benefits compare to the benefits
5 received by postdoc research scientists?

6 A They don't receive as many. And they --

7 Q Who doesn't receive as many?

8 A The fellow.

9 Q Okay.

10 A So they're entitled to healthcare. But in terms of any
11 benefits that are related to tax, obviously they're not
12 included in that. They're not part of the fringe pool and
13 they're not having withholding, so they're not entitled to
14 benefits such as flexible spending accounts, dependent care,
15 travel reimbursement.

16 Q So you mentioned the fringe pool. Can you tell me what
17 that is?

18 A So for the postdoc research scientists and scholars, each
19 department is responsible for paying a certain portion to allow
20 benefits to be extended to them, just as any other employee.

21 Q And --

22 A And for fellows, they are not part of the fringe pool. So
23 a faculty member is not paying to have them at Columbia.

24 Q Okay. So Dr. Peterson, I'm showing you what's been marked
25 for identification as Employer Exhibit 8. Do you recognize

1 this document?

2 A Yes.

3 Q Can you tell us what it is?

4 A This is a notice of appointment letter for a postdoctoral
5 research fellow.

6 Q Are you familiar with this document?

7 A Yes.

8 Q Okay.

9 MR. PORZIO: The Employer moves what's been marked for
10 identification purposes Employer Exhibit 8 into evidence.

11 MR. MEIKLEJOHN: No objection.

12 HEARING OFFICER MURTAGH: Employer Exhibit 8 is received.

13 **(Employer Exhibit Number 8 Received into Evidence)**

14 Q BY MR. PORZIO: Dr. Peterson, are you familiar with the
15 term "associate research scientist" or "associate research
16 scholar"?

17 A Yes.

18 Q ARS? Okay. Can you tell us what is the role of an ARS?

19 A I just want to clarify that my office does not oversee
20 that group. But as Mr. Purdy alluded to earlier, they're also
21 conducting research and are involved in scholarly mentor
22 training.

23 I do know that the appointment process and other items are
24 different compared to postdocs.

25 Q Okay.

1 MR. PORZIO: No further questions.

2 HEARING OFFICER MURTAGH: Mr. Meiklejohn?

3 MR. MEIKLEJOHN: I just have a few questions.

4 HEARING OFFICER MURTAGH: Okay.

5 **CROSS-EXAMINATION**

6 Q BY MR. MEIKLEJOHN: Dr. Peterson, you say you have a PhD?

7 A I do.

8 Q Are you familiar with the term "terminal degree"?

9 A Yes.

10 Q And what does terminal degree mean?

11 A My definition of terminal degree would be a degree that
12 you take as your last steps in education, that you wouldn't
13 expect to go beyond that. And in most cases, there isn't much
14 beyond that.

15 Q And a PhD is considered a terminal degree?

16 A In my thinking, yes.

17 Q It's sort of the classic terminal degree.

18 A Yes.

19 Q The term is used when -- in other fields where they're
20 trying to claim some other degree as a terminal degree; is that
21 where it usually comes up?

22 A I'm sorry. Can you clarify that?

23 Q Well, the PhD is sort of the gold standard of the terminal
24 degree.

25 A Yes.

1 Q Okay. You say that your --

2 (Counsel confer)

3 Q You say that your office offers -- well, you offer classes
4 for -- that benefit postdocs and fellows?

5 A I think I would call them workshops.

6 Q Okay. Are any of these required of postdocs or fellows?

7 A None are required. I would say that the soft mandates
8 from the some of the federal funding agencies like the NIH, in
9 terms of mentorship plan, is something that's more or less
10 required. So that would be the individual development program
11 that I described earlier.

12 Q Does Columbia do anything to require people to take these
13 classes?

14 A No. But it's strongly encouraged.

15 Q Okay. And how are the postdocs informed of the existence
16 of these classes?

17 A That's a great question. On Tuesdays, we send a mass
18 communication to all postdocs, and that details information
19 regarding upcoming workshops, events, speakers, programs that
20 are through my office.

21 On Thursdays, we send out a communication that's based on
22 opportunities, resources, workshops, conferences, information,
23 fellowship information from outside of Columbia.

24 And on Fridays, we have a series called the "Did you
25 know". And these are just short tidbits of information that we

1 started a few months ago, because we felt that most postdocs
2 probably weren't reading the postdoctoral handbook. So we
3 started to take small pieces of information to send to them in
4 the hopes that they would read a short piece of information.
5 And that could be things like did you know that there's yoga
6 classes now? Did you know that there is an American language
7 program? Simple bits of information like that.

8 So all information -- all events or programming that my
9 office does are communicated weekly to postdocs. And we have a
10 website where all the events are listed.

11 And oftentimes, postdocs come to me with ideas, and we
12 work together to put workshops together. We just did one last
13 summer on science policy that wasn't done before.

14 Q And are the yoga classes limited to postdocs?

15 A It's part of the mental health and wellness initiative,
16 weekly yoga classes for free. All of this is free for them.

17 Q Are you taking any steps -- if an associate research
18 scientist wanted to take one of these yoga classes, would you
19 stop -- do you have any mechanisms to stop them?

20 A Let's say that I don't ID them at the door. But I don't
21 know if that resource is available to them elsewhere.

22 Q So the -- you say that the postdoctoral research
23 scientists are offered employee benefits.

24 A Yes.

25 Q That's essentially the same benefits that are offered to

1 most other employees of Columbia, including associate research
2 scientists?

3 A Yes.

4 Q Okay. And the postdoctoral research -- I'm sorry. The
5 postdoctoral fellows are offered health insurance?

6 A Yes. And a number --

7 Q And there -- is it true that they are offered
8 only -- well, let's strike that.

9 For the other categories of employees, are there three
10 health insurance options available?

11 A Yes.

12 Q And for the fellows, the fellows are offered one of those
13 three options; is that correct?

14 A Yes.

15 Q And what other benefits are the fellows offered?

16 A The -- I'll start by saying that benefits are not done
17 through my office. There is a complete list on the website.
18 But I do know that they are entitled to the healthcare
19 benefits. They're entitled to a life insurance. They're
20 entitled to the Employee Assistance Program. And they're not
21 entitled to benefits that relate to tax.

22 Q Right. So I mean -- and but the life insurance and the
23 EAP plan are the same plans that are offered to other
24 categories of employees; is that correct?

25 A Yes.

1 Q Okay. If you take a look at Employer Exhibit 4, I think.

2 A 4.

3 Q No, 4 is the departmental description. 5.

4 In the third paragraph, there is a space marked
5 "Description of Research Project Enrollment". Can you explain
6 what goes in that portion of the offer letter?

7 A This would be something that the PI inserts.

8 Q And he would -- that would be describing the work that
9 the -- in this case, the research scientist or scholars
10 expected to do during the term of the appointment?

11 A Yes.

12 Q And in Exhibit 7, there is similarly -- it's in a
13 different place, but there's -- and you use different
14 words -- but it states "discuss specifics of research here".
15 Do you see that above about 90 percent of the way down the page
16 after "Duties"?

17 A Uh-huh.

18 Q I'm sorry. You have do yeses and noes.

19 A Yes. I'm sorry. I see that.

20 Q All right. And does similar information go into that
21 space on this letter?

22 A Yes.

23 Q You said something along the lines that the fellows,
24 because they have their own funding, can seek out PIs or
25 laboratories that fit in and can provide support for the

1 research that they have a grant to conduct?

2 A Yes.

3 Q Do the -- to your knowledge -- do postdoctoral research
4 scientists also seek out PIs in laboratories that conduct
5 research that is of interest to them?

6 A Yes.

7 MR. MEIKLEJOHN: Is there a copy of Board Exhibit -- I
8 believe it's 3, the Employer statement position, available?

9 Q BY MR. MEIKLEJOHN: I ask you to take a look at Board
10 Exhibit 3. And if you --

11 MR. MEIKLEJOHN: Of course, I'm using a different -- I
12 better use the same version.

13 (Counsel confer)

14 HEARING OFFICER MURTAGH: You want to go off the record
15 for a second?

16 MR. MEIKLEJOHN: Off the record?

17 HEARING OFFICER MURTAGH: Off the record.

18 (Off the record at 3:05 p.m.)

19 HEARING OFFICER MURTAGH: Back on the record.

20 Q BY MR. MEIKLEJOHN: If you look -- well, there's a list of
21 names that starts on the fourth page of the exhibit. And
22 there -- I mean I'll represent that there are approximately 43
23 people on here whose names appear twice.

24 But I'm just going to -- you see this is an alphabetical
25 list, right?

1 A Yes.

2 Q And so if you look through there until you find "Singer",
3 a page that's labeled with -- yeah, a lot of these are no good,
4 but -- can you find -- there's actually two copies of the list,
5 but he should be in both places.

6 Okay. Have you found the "S" page?

7 A Yes.

8 Q Or the -- can you find Zakary S. Singer?

9 A Yes.

10 Q And you see that his name is -- or there is -- that Zakary
11 S. Singer is listed twice?

12 A Yes.

13 Q And both listings indicate that he is in the Department of
14 Biomedical Engineering?

15 A Yes.

16 Q Do you see that?

17 A Yes.

18 Q And one of -- and then the next column was "job
19 classification". And in one place he's listed as a Postdoc
20 Research Scientist, and the next place he's listed as a
21 postdoctoral research fellow. Can you explain why he would be
22 listed as having both classifications?

23 A No.

24 Q Well, it's true, is it not, that the -- if somebody's
25 grant falls below the NIH minimums, that the university will

1 supplement that grant with its own funds?

2 A Yes.

3 Q I mean I think somebody may have testified that the PI has
4 to pay for it, but it's funding that the PI has is used to make
5 up the difference by the university, correct?

6 MR. PORZIO: So can I just -- you asked a -- I'm sorry,
7 Tom, to interrupt -- but you just ask the question again? I
8 wasn't clear when you said "somebody", who you were referring
9 to?

10 MR. MEIKLEJOHN: Well, it was either you or the previous
11 witness. I can't remember. I think you used the term -- well,
12 strike that.

13 I'll just rephrase the question, because that part not's
14 important.

15 Q BY MR. MEIKLEJOHN: If the funding is -- the grant is
16 insufficient to cover the funding -- to cover the NIH levels,
17 the fellow's grant is insufficient, then university funds are
18 used to make up the difference, correct?

19 A Yes.

20 Q And do you know if the university classified those people
21 as post postdoctoral fellows?

22 A I don't know. I'm sorry. Can you repeat that?

23 Q Does the university classify those individuals as
24 postdoctoral research scientists or scholars for the portion of
25 their payroll that makes up the difference?

1 A Can I ask a clarification?

2 Q Yeah. That would seem fair.

3 A Are you asking --

4 Q Because I'm really struggling with the question.

5 A Are you asking if they're dually appointed?

6 Q Yes. Is that how the university deals with that?

7 A I don't know.

8 Q Okay.

9 MR. MEIKLEJOHN: I will just represent for the record that
10 Board Exhibit 3, the Employer's listing, contains -- we
11 believe, if we counted them right, that there are 43 people who
12 have both of those two appointments.

13 Q BY MR. MEIKLEJOHN: Now, I believe you testified that
14 Columbia performs the payroll function for the monthly payments
15 to the fellows?

16 A Yes. In some cases.

17 Q For the funds that are processed through the University,
18 correct?

19 A Yes.

20 Q Do you -- what do you mean be performing the payroll
21 functions?

22 A I think it's as simple as the check is created and
23 distributed through the Columbia payroll system. And funds are
24 directly from the funding agency, that an account is created
25 for that individual.

1 Q So the money comes into the University. It goes to the
2 payroll department, and then the payroll department
3 disseminates it to the fellows?

4 A Yes.

5 Q Okay.

6 MR. MEIKLEJOHN: Can we go off the record for a minute?

7 HEARING OFFICER MURTAGH: Sure. Off the record.

8 (Off the record at 3:10 p.m.)

9 HEARING OFFICER MURTAGH: Okay. Now, we'll go back on the
10 record.

11 Q BY MR. MEIKLEJOHN: So it's come out more than once
12 that -- and it's in Petitioner's Exhibit 1, I think, or
13 2 -- Petitioner's Exhibit 2 -- that Columbia requires that
14 postdoctoral fellows be paid at least the NIH minimum, even if
15 the grant comes from somewhere else, correct?

16 A Correct.

17 Q And that is not something required by the NIH. The NIH
18 only imposes requirements on recipients of its grants, correct?

19 A Correct.

20 Q So this is something that -- this is a policy that
21 Columbia has decided to implement?

22 A Yes.

23 Q Do postdoctoral research scientists sometime obtain
24 fellowship funding?

25 A Of course.

1 Q And does the University try to help them get that money?

2 A Yes.

3 Q And I -- that's partly to benefit the development of
4 postdocs, correct?

5 A Yes.

6 Q Are there also benefits to the university of helping them
7 get their own funding and becoming fellows?

8 A Yes.

9 Q What are the benefits to the university?

10 A The benefits to the university would be to -- it shows
11 support of them. It shows support of the PI, that they have
12 trained them to write this type of application and to be
13 competitive in the application process and later on in the job
14 market.

15 Q Does it also provide additional -- make additional funding
16 available to Columbia to conduct its research mission?

17 A It makes the funding available to the postdoc, but it
18 would further the mission of the University in terms of
19 research.

20 Q Okay. And if a -- in your experience -- you have had
21 experience with postdoctoral research scientists or scholars
22 obtaining their own -- obtaining fellowship funding, correct?

23 A Yes.

24 Q Is it typically the case that when they do that, they are
25 obtaining funding to continue the research that they were

1 doing, or expand on the research that they were doing as
2 postdoctoral research scientists?

3 A Yes.

4 Q Okay.

5 MR. MEIKLEJOHN: Nothing further.

6 HEARING OFFICER MURTAGH: So I do have a few clarifying
7 questions.

8 Earlier you testified that the fellows have more
9 scientific freedom, given that they're being funded on their
10 own, that they have applied for the grant and received it on
11 their own. I was hoping for the reader of the record that you
12 can just paint a picture of kind of what a day in the lab would
13 look like. So what is the fellow doing? How does it relate
14 to, you know, the person's own grant or the overall mission of
15 the -- whether the overall research of the PI, just kind of
16 what's happening in each of these roles?

17 THE WITNESS: I think that would be very
18 discipline-specific.

19 HEARING OFFICER MURTAGH: Okay.

20 THE WITNESS: There's many disciplines at Columbia and
21 different types of research that would be dependent on the type
22 of work that they're actually doing.

23 I would say, for an example, in a laboratory, they might
24 be conducting some work at the bench, analyzing data, writing
25 up that data, discussing it with colleagues, discussing it with

1 their PI.

2 If they were in the social sciences in humanities, they
3 might be drafting a book. They might be interviewing.

4 They -- if they were in the Mailman's group public health, they
5 might be conducting surveys. It would -- it varies greatly
6 across disciplines.

7 HEARING OFFICER MURTAGH: And the interaction between the
8 work of the PI and the work of the fellow, you know, would you
9 be able to provide just a very simple example? So would -- you
10 know, are they generally in the same area, or is it much or
11 specific? You know, they're both doing in the sciences, you
12 know, the same disease or something or that sort?

13 THE WITNESS: They could be. But within that, there could
14 be very specific components of their research that, you know,
15 one individual may be doing versus another individual, working
16 on different cell lines, working on different staining
17 techniques.

18 But I think you are correct in the sense that a department
19 probably has a specific aim in terms of identifying a disease
20 type or a trait, that there is a central mission in a way.
21 Otherwise, they wouldn't function as a group.

22 HEARING OFFICER MURTAGH: Okay. And to what extent does
23 the PI kind of tell or dictate what the fellow has to do in a
24 given day or over a course of time?

25 THE WITNESS: I think the PI is very limited in what they

1 can tell a fellow to do. The fellow has been awarded their
2 funding based on their proposal and the aims that they have
3 developed within that proposal, and there's very little room to
4 change that. And if they wanted to change anything within the
5 scope of their award, they would have to contact the funding
6 agency.

7 HEARING OFFICER MURTAGH: And what about with regard to
8 the research -- I'm sorry -- the scientist scholars?

9 THE WITNESS: Again, that's set out in terms of what the
10 PI would like them to do. It's a more clear define. There is
11 probably greater oversight in terms of what they do because
12 in -- ultimately, the PI is responsible for what goes on in the
13 grants that he/she has been awarded.

14 HEARING OFFICER MURTAGH: Okay. And Mr. Porzio?

15 MR. PORZIO: No questions. No further questions.

16 HEARING OFFICER MURTAGH: Okay.

17 MR. MEIKLEJOHN: I mean it's just follow up -- always
18 follow up to the Hearing Officer's questions, but --

19 **REXCROSS-EXAMINATION**

20 Q BY MR. MEIKLEJOHN: Is the PI responsible, among other
21 things, for ensuring that the fellow conducts research that is
22 consistent with the grant given to the fellow?

23 A Ultimately, that responsibility rests with the fellow.
24 He's the -- he or she is the one who has been awarded the
25 funding, but there is certainly oversight from the PI.

1 Q Does the --

2 (Counsel confer)

3 MR. MEIKLEJOHN: Nothing further.

4 HEARING OFFICER MURTAGH: Okay. And no further questions?

5 I have no further questions.

6 MR. PORZIO: No further questions.

7 HEARING OFFICER MURTAGH: Okay. You may step down. Thank
8 you.

9 Why don't we go off the record for a minute?

10 (Off the record at 3:23 p.m.)

11 HEARING OFFICER MURTAGH: Now, do you -- so is that it for
12 today? Any further witnesses?

13 MR. PORZIO: Yes.

14 MR. MEIKLEJOHN: We got documents.

15 HEARING OFFICER MURTAGH: So the -- as reflected in the
16 our off the record discussions, the parties will not be
17 presenting additional witnesses today.

18 Mr. Porzio and Mr. Plum, if you do plan on submitting an
19 offer of proof on the 2(3) status of the Petition for
20 Employees, you know, please do so as soon as possible.

21 And the Regional Director would prefer it in written form.
22 And once he receives it, he will make his decisions in that
23 regard.

24 The -- I did want to make sure the record was clear
25 regarding discussions we had prior to the opening of the



1 hearing this morning that the classification of associate
2 research scientist and scholars are, you know, indisputably
3 employees of the University; is that correct?

4 MR. PORZIO: That is correct, as defined by section 2(3)
5 of the National Labor Relations Act, yes.

6 HEARING OFFICER MURTAGH: All right. And Tom?

7 MR. MEIKLEJOHN: That's obviously our position, yes.

8 HEARING OFFICER MURTAGH: Okay. The -- and with that, we
9 will open tomorrow with the Petitioner's witnesses, 9:30. And
10 if there are any preliminary matters, we can discuss it prior
11 to the opening. Okay?

12 MR. MEIKLEJOHN: Okay. As I said off the record, we would
13 like to avoid keeping these scientists waiting to the extent
14 possible, because they are very dedicated to their work.

15 HEARING OFFICER MURTAGH: Okay. All right. With that, we
16 will go off the record.

17 **(Whereupon, the hearing in the above-entitled matter was**
18 **recessed at 3:39 p.m. until Thursday, August 23, 2018 at 9:30**
19 **a.m.)**

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C E R T I F I C A T I O N

1
2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 2, Case Number
4 02-RC-225405, Trustees of Columbia University in the City of
5 New York and Columbia Postdoctoral Workers and United
6 Automobile, Aerospace, and Agricultural Implementation Workers
7 of America (CPW-UAW), at the National Labor Relations Board, 26
8 Federal Plaza, Suite 3614, New York, NY 10278, on August 22,
9 2018, at 10:37 was held according to the record, and that this
10 is the original, complete, and true and accurate transcript
11 that has been compared to the reporting or recording,
12 accomplished at the hearing, that the exhibit files have been
13 checked for completeness and no exhibits received in evidence
14 or in the rejected exhibit files are missing.

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ADRIAN MORRIS

19 Official Reporter
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