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CLIENT/MATTER NUMBER
063843-0101

September 2, 2008

VIA HAND DELIVERY

David R. Schanker, Clerk
Supreme Court of Wisconsin
110 East Main Street, Suite 215
Madison, Wisconsin 53703

Re: Petition for Review in *Richard G. McLellan, et al. v. Roger L. Charly*, Appeal No. 2007AP1120 – Disclosure of Conflict-of-Interest Considerations

Dear Mr. Schanker:

We represent defendant-appellant-cross-respondent Roger L. Charly. Because the University of Wisconsin (the "University") is not a named party in this case, we are writing as a courtesy to advise the Court for purposes of the Justices' standard conflict-of-interest/recusal analysis of the fact that the University has a direct and material interest in the outcome of this case.

As reflected in the plaintiffs' Petition for Review, this dispute centers on whether plaintiffs can compel our client, Mr. Charly, to sell them his commercial property which is located directly between the Wisconsin National Primate Research Center and the Wisconsin Harlow Center for Biological Psychology. As reflected in the attached printouts from their "home" web pages, both facilities are part of the University and administered through the University Graduate School with ties to various Departments, primarily Zoology, Genetics and Psychology. The two University primate research facilities flank each side of the commercial property at issue.

As noted by the trial court in its Findings of Fact ## 29-32, shortly after Mr. Charly advised the plaintiffs of his position that their option to purchase was void for lack of consideration, "Charly received an option to purchase the property from the UW in the amount of $1 million (Ex. 27) [which] is still in effect."[1] If the Court of Appeals decision is affirmed, the sale of the property to the University Research Park will be finalized.

If plaintiffs persuade this Court to accept review and overturn the Court of Appeals' decision so that they can compel the defendant to sell the commercial property to them instead of to the University Research Park, they have publicly proclaimed their intent to use the site as a platform

[1] As reflected in Exhibit 27, the acquisition is by "URP Development LLC," a/k/a University Research Park, an integral part of the UW-Madison Technology Transfer Team. *See* http://UniversityResearchPark.org-techtransfer. URP Development is a solely-owned subsidiary of URP, Inc., a 501(c)(3) Wisconsin corporation whose board is headed by the UW Chancellor, a UW Regent and a Wisconsin Alumni Research Foundation Board Member. *Id.*

for staging animal rights protests aimed against the University's two flanking, multi-million dollar primate research centers. If, however, the Court of Appeals' decision stands, the University's purchase of the lot by the University's Research Park will be finalized.

The University's stake in the outcome of this case is substantial. As reflected in the trial court's findings of fact, Alan Fish, Associate Vice Chancellor for the University's UW Madison campus, provided key testimony at trial (*see* Trial Court's Finding of Fact 39(a)(2)(g) in the Petitioner's Appendix at App. 037-38). He estimated that, if the plaintiffs obtain the property, the University's costs "would be $3-5 million higher." *Id.* Finding of Fact (f) at App. 038. He also estimated that there would be additional costs to the University above the $3-5 million for "additional cameras, additional security on the doors, potentially different types of windows and exterior walls, roof access, things like that." *Id.* at Finding (g). We also note that the Petitioners have argued throughout this case that, even though they did not pay the defendant-seller any money for the option, "the evidence of Charly's [the seller's] personal satisfaction at "tweaking" the University constituted separate consideration for the option." Court of Appeals Decision at ¶¶ 39-43 (Petitioners' Appendix at App. 018-19). Additionally, as reflected in the attached web pages for the Wisconsin Primate Center: "UW-Madison received $583.50 million in research funding in 2003-2004, a significant portion of which depended on animal use." Although the precise statistics are not readily publicly available for the current year, there is no known reason to believe that the magnitude or importance of that research to the University has diminished in the interim.

The trial court found as fact that one of the petitioners, Mr. Bogle, "gave the following unrebutted testimony about his actions regarding the primate research centers:

> (c) One of his goals [as an animal rights activists] is to shut down all of the primate research centers in the U.S.
>
> . . . .
>
> (g) If 1,000 people were willing to join him, he fantasizes about attacking the UW Primate Center with a sledge-hammer and having others take his place after he gets hauled away. Ex. 17."

(Finding of Fact 38, Petition App. at App. 037. *See also* extensively quoted testimony of petitioner Bogle in the Petition at pages 14-16.)

Thus, the University has a major economic and public interest stake in the outcome of this case.

We note that two members of the Court have chosen to recuse themselves in previous cases involving the interests of the University of Wisconsin, *see, e.g., Marder v. Bd. of Regents*,

2005 WI 159, 286 Wis. 2d 252, 255, 706 N.W.2d 110. While grounds for the recusals need not, and were not, detailed, we assume it likely related to their spouses' connections with the University. Mark J. Bradley is the president of the University's Board of Regents. *See, e.g.,* http://www.uwsa.edu/bor/bios. Seymour Abrahamson is a professor emeritus at the University's UW-Madison campus in the Department of Zoology (Zoology-Genetics Unit). *See, e.g.,* http://www.wisc.edu/directories-results.php?name; email at sabramha2@facstaff.wisc.edu. The University's Zoology-Genetics unit has extensive interactions with the primate centers at issue.

We are writing to make this disclosure to avoid any suggestion of waiver by our client under Wis. Stat. § 757.19(3). Neither that statute nor reported case law provides clear guidance as to appropriate means for apprising the Court or particular justices of facts relevant to considerations about recusal. We understand that the inherently subjective determination of whether a disclosure is required under § 757.19(3) is one that only the justices themselves can make. Nevertheless, parties have been encouraged to bring to a judge or justice's "attention facts that may bear on that determination." *City of Edgerton v. Gen. Cas. Co.,* 190 Wis. 2d 510, 521-22, 527 N.W.2d 305, 309 (1994). It is in that spirit that we note the facts above regarding the University's interests and connections with this case. Although the University supports our client's position, we nevertheless feel compelled as officers of the Court to make these disclosures.

Thank you for your attention to this matter.

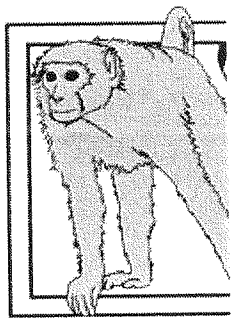
Very truly yours,

FOLEY & LARDNER LLP

Michael B. Van Sicklen

Enclosures
cc: Kendall W. Harrison (with enclosures)
John C. Dowling, Senior University of Wisconsin Legal Counsel (with enclosures)
Jon C. Manzo (with enclosures)

WISCONSIN NATIONAL PRIMATE RESEARCH CENTER
UNIVERSITY OF WISCONSIN-MADISON



The Wisconsin National Primate Research Center is one of eight federally supported (NIH-NCRR) National Primate Research Centers and the only one in the Midwest. More than 250 center scientists, through competitive grants, conduct research in primate biology with relevance to human and animal health.

The Primate Center is based in the Graduate School of the University of Wisconsin-Madison. The Center has strong research and teaching links to the UW Schools or Colleges of Medicine, Letters and Science, Agriculture and Life

PRIMATE CENTER NEWS:

August 4, 2008: New $8.9 Million Project Aims to Unlock Stem Cell Secrets

Register now for Nonhuman Primate Models for AIDS Dec. 9-12, 2008

Spring 2008: NCRR Reporter, More than Skin Deep (critical role of primate research in regenerative medicine)

April 29, 2008: Stem cell pioneer Thomson elected to National Academy of Sciences

April 17, 2008: WNPRC Scientists Colman, Friedrich win Institute for Clinical and Translational Research Pilot Awards

Feb. 27, 2008: Hamel to lead Primate Center Library

Nov. 30, 2007: Zeroing in on the workings of an anxious brain

Nov. 20, 2007: UW-Madison scientists guide human skin cells to embryonic state

Sciences, and Veterinary Medicine. The Center is AAALAC accredited and its policies adhere to the U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training.

Jacobsen conservation award

October 8, 2007: Primate study shows excess vitamin A can be stored during fetal development

April 13, 2007: Walking Toward a Cure for Parkinson's Disease

April 10, 2007: Researchers seek early detection for hard-to-diagnose disease

More news...

- Primate Center mission and objectives
- Primate Center discoveries
- How to find the Primate Center
- UW student admissions and the Primate Center

Center Director and Contact:

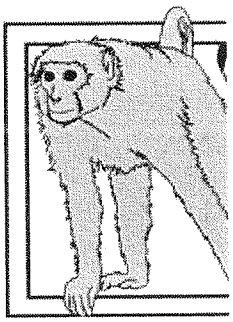
Joseph W. Kemnitz, Ph.D., Director
1220 Capitol Court
Madison, WI 53715-1299
Phone: (608) 263-3500
Fax: (608) 265-2067

Programs of the National Primate Research Center are supported in part by Grant No. RR000167 from the National Institutes of Health

File last modified:

Feedback, questions or accessibility issues: WNPRC Public Information Office

WISCONSIN NATIONAL PRIMATE RESEARCH CENTER
UNIVERSITY OF WISCONSIN-MADISON



UW GRADUATE SCHOOL

Principal Investigator:	Dean Martin Cadwallader
Associate Dean:	Bill Mellon
	Donna Paulnock
Fiscal Dean:	Jim Knickmeyer
Personnel Dean:	Julie Karpelenia

PRIMATE CENTER

Contact Information:	1220 Capitol Court Madison, Wisconsin 53715-1299 (608) 263-3500 FAX (608) 265-2067
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Operational Services:	Associate Director: James Butts Facilities Management & Shop Services: Bruce Pape Human Resources: Susan Baculik Payroll/Benefits: Stacey Alt Grants Management: Kristin Nagle Stores/Delivery: Michael DiSalvo

	Financial Management Services: Bonnie Gay Travel: Meghna Shah
Information Services:	Assistant Director: vacant Director, Lawrence Jacobsen Library: Ray Hamel Information Technology and Systems Services: Tom Lynch
Research Services:	Interim Associate Director: Dr. David O'Connor Assay Services: Dr. Toni Ziegler Centralized Protocol Implementation: Dr. Nancy Schultz-Darken Genetics: Dr. David O'Connor Immunology: Dr. Eva Rakasz Virology: Dr. Thomas Friedrich Pathology Services: Dr. Heather Simmons
Animal Services:	Associate Director: Dr. Saverio Capuano Clinical Veterinary Medicine: Dr. Michelle Harke Colony Management: Bonnie Friscino Colony Records: Nancy Spilker Surgery: Victoria Carter Compliance Coordinator/ Occupational Health & Safety Coordinator: Sandra Boehm
Other Resources:	Aging Resource: Dr. Ricki Colman Genetics Resource: Dr. David O'Connor Stem Cell Resource: Dr. James Thomson

Staff home pages

File last modified: June 04, 2008

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UNIVERSITY OF WISCONSIN-MADISON

RESEARCH ANIMAL RESOURCES CENTER

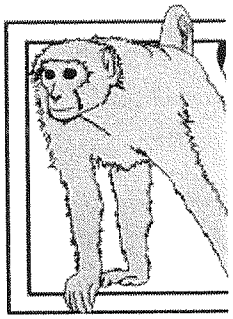
WELCOME TO THE RESEARCH ANIMAL RESOURCES CENTER

The Research Animal Resources Center (RARC) is an administrative unit of the Graduate School. RARC has four primary functions:

- provide veterinary and laboratory services in support of quality animal care.
- provide the support and training necessary to provide the highest quality care possible for the University's research animals.
- provide oversight and assistance in assuring compliance to all laws, regulations, and rules governing the care and use of laboratory animals.
- conduct direct or collaborative research and/or consultation on animal models for biomedical research.

Director: Eric Sandgren, VMD, Ph.D.; sandgren@rarc.wisc.edu, (608) 262-1238.
Associate Director: Richard R. Lane, BBA, MS; lane@rarc.wisc.edu, (608) 262-0400.
Chief Campus Veterinarian: Janet Welter, DVM, MPH, Ph.D.; welter@rarc.wisc.edu, (608) 265-2695.

After work hours research animal veterinary emergencies call 262-2122.
During work hours contact your unit's attending veterinarian or designee for care.



WISCONSIN
NATIONAL PRIMATE RESEARCH CENTER
UNIVERSITY OF WISCONSIN-MADISON

ANIMAL-BASED RESEARCH AT UW-MADISON AND WPRC

Like all major research universities, the University of Wisconsin-Madison has extensive programs of research in nearly all branches of science. In the agricultural, medical, behavioral and biological sciences, research inquiries often call for the use of animals as models because no effective alternatives exist.

Without animal research, many of the country's biggest medical breakthroughs would not have been possible. Those include a vaccine for polio, insulin treatments for diabetics, medication for high blood pressure, kidney dialysis, and chemotherapy treatments for cancer and leukemia. Animal research is required to test new medical treatments and surgical techniques for efficacy and to test new drugs for safety.

At UW-Madison, such research has led to many important discoveries: New organ preservation and transplant techniques; potential new treatments for degenerative diseases through stem cell therapies; and the development of life-prolonging blood anticoagulants. All of these important Wisconsin projects depended on the use of animals in research. Animal models for chronic and life-threatening diseases, such as cystic fibrosis, atherosclerosis, a variety of cancers and AIDS are helping scientists to devise more sensitive and accurate diagnostic tools and to develop better

treatments.

Primate Research at UW-Madison

The Wisconsin Primate Research Center, supported by the National Institutes of Health (NIH), is one of eight federally sponsored primate centers in the United States. The center is part of the UW-Madison Graduate School and has strong research and teaching links across campus, including medicine, letters and science, agriculture and veterinary medicine disciplines. The center's mission is to advance fundamental knowledge in primate biology to address major health concerns. Those include new therapies or cures for AIDS, infertility, pregnancy complications, obesity, endometriosis, polycystic ovarian syndrom, diabetes, Parkinson's, osteoporosis, glaucoma, and environmental influences on people and animals.

The nearby Harlow Center for Biological Psychology supports primate research by faculty from several departments, including psychology, psychiatry and kinesiology, who share a common interest in infant and child development. The center works to better understand the prenatal and postnatal factors that promote normal behavioral development and health. Current studies include investigations of how the pregnant female's psychobiological state affects fetal development; and the influence of rearing conditions on the development of an infant's immune system.

Scope of Research

UW-Madison received $583.50 million in total research funding in 2003-2004, a significant portion of which depended on animal use. Most research funding comes from the Department of Health and Human Services. Other funding agencies include the National Science Foundation, the USDA, the Food and Drug Administration, and a variety of industries. Research activities provide training for undergraduate and graduate students and employment for a large number of Wisconsin residents, either directly or indirectly.

Research Animal Regulation, Policy and Administration

UW-Madison is governed by and strictly adheres to stringent federal statutes and regulations regarding the care and use of laboratory animals for both teaching and research. At the federal level, both NIH (through the Public Health Service) and the USDA oversee the policies and statutes governing the care and use of laboratory animals and the university is subject to unannounced spot checks by inspectors from those agencies. The university must also submit an annual assurance statement to the U.S. Public Health Service and an annual report to USDA. The university must abide by USDA standards published in the "Federal Register" which are continually being updated, and the Public Health Service policy set forth in the NIH "Guide for the Care and Use of Laboratory Animals."

Responsibility for adherence to federal statutes and guidelines as well as university policies lies with the Research Animal Resources Center, an all-campus Animal Care Committee and the animal care and use committees established by the various schools and colleges.

Prior to any procedure involving animals, UW-Madison researchers are required to submit, in writing, a description of all research protocols for review by the animal care and use committee of the appropriate school or college. All proposed protocols must be approved before the research can take place.

Animal Care

Care of animals used in research is provided by a dedicated and well-trained staff of veterinarians and animal care technicians. Veterinarians affiliated with the Research Animal Resources Center are responsible for overseeing the responsible care and use of laboratory animals. In addition, all UW-Madison faculty and staff engaged in research employing animal models must be certified by the university through the successful completion of an exam on the responsible use and care

of animals. Full time animal caretakers are also strongly encouraged to complete a 16-week course on animal care. UW-Madison's research program is fully accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International).

File last modified: February 18, 2005

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UNIVERSITY OF WISCONSIN FOUNDATION

Wisconsin National Primate Research Center

The Wisconsin National Primate Research Center (WNPRC) is one of eight federally supported National Primate Research Centers and the only one in the Midwest. More than 250 center scientists, through competitive grants, conduct research in primate biology with relevance to human and animal health.

The Primate Center is based in the University of Wisconsin-Madison Graduate Sch Center has strong research and teaching links to the UW Schools or Colleges of M Letters and Science, Agriculture and Life Sciences, and Veterinary Medicine.

The mission of the Primate Center is to increase our understanding of basic prima and to improve human health and quality of life through research. To accomplish WNPRC:

- Helps discover treatments, preventions and cures for human disease.
- Generates new knowledge of primate biology, from the molecular and who levels to the understanding of primate ecosystems.
- Facilitates research progress by providing expertise, resources and training scientists worldwide.
- Collects primate information and disseminates to the research community public.

For More Information

- **Barbara McCarthy**
  Director of Development
  608-265-5891
- **Wisconsin National Primate Research Center Web Site**

Virgie and I feel strongly about this fellowship because graduate students

made my program.

- Stanley Peloquin ('51 MS ALS, '52 PhD L&S), who with wife Vergie created the Peloquin Graduate Training and Research Fund

Harlow Center for Biological Psychology

Department of Psychology
University of Wisconsin-Madison
22 North Charter Street

Madison, WI 53715-2613

Phone: (608) 263-3550
Fax: (608) 262-6020

Director: Dr. Christopher Coe

The Harlow Center for Biological Psychology is located on the campus of the University of Wisconsin-Madison. It is administered through the Department of Psychology and has long been home to internationally recognized research on behavioral and developmental psychology. The Harlow Center is affiliated with, but independent from, the adjacent Wisconsin Primate Research Center.

Mission Statement

To improve our understanding of infant development and the biological basis of behavior in order to promote health and psychological well being across the life span.

Specific Objectives

- To maintain a healthy and productive nonhuman primate colony in order to facilitate psychological and biomedical research at the University of Wisconsin.
- To evaluate and apply modern animal husbandry techniques to ensure the optimal care of rhesus monkeys involved in our breeding and research projects.
- To investigate the relationship between physiological processes and behavior, especially the neurobiological substrate of cognition, sensory perception, and emotions.
- To determine the influence of genetic, prenatal, and environmental factors on the maturation of immune responses in the young infant.
- To assess the effect of environmental factors and life style, such as alcohol consumption, on the development and functioning of the brain, especially with

respect to psychological and learning capabilities.
- To ascertain the influence of nutritional factors on pregnancy and infant development, especially with regard to iron deficiency anemia.

Location

The Harlow Center is located on the corner of Charter Street and Capitol Court, one block north of Regent Street. On the map of the UW-Madison campus, it is building number 97 in Area 5.

To learn more about the Harlow Center for Biological Psychology, please select one of the links below.

History
Research
Links

Please note: this site is under construction. If you have trouble accessing this page, contact the Harlow Center facility manager: mlluck@facstaff.wisc.edu

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UNIVERSITY OF WISCONSIN MADISON

Harlow Center for Biological Psychology

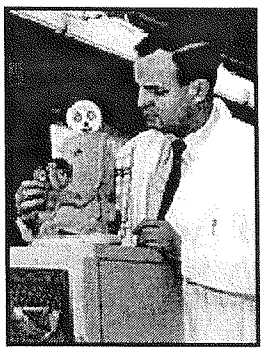
History

Facility Origins and Growth

The origins of the Harlow Center for Biological Psychology lie in the work of Dr. Harry Harlow who founded the Psychology Primate Laboratory in 1930. After years of gradual expansion, the lab relocated in 1950 to its current site. Harlow acted as director of the Primate Lab from 1932-1974. Under his stewardship, the Primate Lab developed an international reputation as a center for research on social behavior, learning, and developmental psychology.

Notable Research Completed at the Harlow Center:

Dr. Harry Harlow



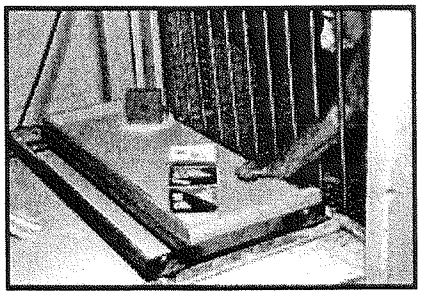
Dr. Harry Harlow is widely recognized as one of the most significant comparative psychologists of the 20th century. Most of his professional accomplishments were achieved at the laboratory that now bears his name. After completing his PhD at Stanford University, Harlow joined the psychology faculty at the UW-Madison in 1930. He initially intended to continue his experimental studies of rat learning, but the unexpected closure of the Animal Psychology Laboratory left Harlow in search of new opportunities.

Harlow quickly recognized both the complexity of the monkey mind and the similarity between development in monkeys and humans. At the same time, he became interested in exploring the origins of human learning and emotions, particularly the often scientifically taboo subject of infant attachment and social bonding.

Harlow conducted a series of landmark studies that involved separating infant rhesus monkeys from their natural mothers and raising them with surrogate wire or cloth mothers. His findings illustrated the importance of maternal and peer contact in the development of normal social relationships.

Harlow generated over 320 publications during his career. Among the honors and awards he received were the American Psychological Association Distinguished Psychologist Award (1960), the National Medal of Science (1967), the American Psychological Foundation Gold Medal (1973), and the International Award from the Kittay Scientific Foundation (1976).

WGTA



The Wisconsin General Test Apparatus (WGTA) is a piece of laboratory equipment essential to investigations of primate learning, which was developed and refined at the Harlow Center over a half century ago. The original WGTA was designed in the 1930s, largely by Drs. Paul Settlage and Walter Grether, to provide a suitable environment for safely testing the learning capabilities of monkeys. The WGTA was first described in the scientific literature in an article published by Drs. Harry Harlow and John Bromer in the *Psychological Record* in 1938. Since that time, numerous versions of the WGTA have been utilized, including recent computerized model operated by monkeys using touch screens or joysticks.

Despite the many modifications over the years, including increased automation, certain elements of the WGTA design remain standard. It is essentially a testing apparatus with: (1) a stimulus tray, (2) a food reward delivered under 1-3 objects, (3) the option to permit or deny the monkey the opportunity to observe placement of the food reward under an object, (4) an observation interval in which subjects can see but not displace objects, (5) a subsequent interval in which subjects can obtain objects and food rewards, and (6) a one-way screen for experimenter observation. This basic arrangement allows both the researcher and the monkey to manipulate objects in a safe and controlled environment.

Back to Harlow Center for Biological Psychology Home Page

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