

UNIVERSITY OF WISCONSIN-MADISON  
ACADEMIC STAFF APPEALS COMMITTEE

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**In re:**

**APPEAL OF DR. KIM BAUERS  
OF DECISION OF NONRENEWAL AND GRIEVANCE**

---

**Respectfully submitted,**

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**October 17, 1997**

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## I. INTRODUCTION

Dr. Kim Bauers respectfully appeals the non-renewal of her appointment as an Assistant Scientist at the Wisconsin Regional Primate Research Center. Dr. Bauers was notified on May 9, 1997, by Dean Virginia Hinshaw, that her appointment to the Primate Center would not be renewed, purportedly because of lack of funding and change in program direction. (Ex. 21.)<sup>1</sup>

Dr. Bauers' nonrenewal followed a decision by Assistant Vice-Chancellor Betsy Draine on March 19, 1997, reinstating Dr. Bauers to her employment. (Ex. 20.) Dean Hinshaw previously terminated Dr. Bauers' employment on July 19, 1996. (Ex. 19.) Assistant Vice-Chancellor Draine concluded that Dr. Bauers should not have been terminated for cause.

On April 11, 1997, University legal counsel John Dowling wrote to Dr. Bauers' counsel that although Dr. Bauers had been reappointed to the position of Assistant Scientist, as ordered, she would not be permitted to resume any meaningful role at the Primate Center:

Dr. Bauers has been reappointed to the position of Assistant Scientist as required. However, she should not report to work and she should not have any contact with other employees at the Wisconsin Regional Primate Center or the Vilas Zoo facility. Furthermore, as we have discussed, she should not hold herself out as a representative or a current, active employee of UW-Madison or the Primate Center. I should emphasize that these requirements are extremely important to us and will be an indication to us of your

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<sup>1</sup>Exhibit references are to tabbed document files submitted herewith.

client's good faith in proceeding to resolve this matter.  
(Ex. 23.)

On April 18, 1997, Attorney Dowling further wrote to Dr. Bauers' counsel that "Dr. Bauers will not under any circumstances be allowed any affiliation, position or office at the Wisconsin Regional Primate Center or the Vilas Zoo facility." Attorney Dowling also stated that "it is our intent at this time to pursue psychological assessment of Dr. Bauers to determine whether she is able to return to any position of employment." (Ex. 24.) Dr. Bauers had provided evidence of her psychological fitness to return to work.

Dean Hinshaw then terminated Dr. Bauers on grounds of nonrenewal. The effective date of termination is February 28, 1998, *i.e.*, 9 months from date of notice. In the meantime, Dean Hinshaw directed that Dr. Bauers have no contact with any employees of the Primate Center; that Dr. Bauers have no office; that Dr. Bauers not use the Primate Center library; that Dr. Bauers' computer accounts at the Primate Center colony database remain locked and unavailable to Dr. Bauers; and that Dr. Bauers not be permitted to complete data collection for research projects involving the stump-tailed or rhesus macaque colonies at the Vilas Zoo facility.

Dr. Bauers contends that her nonrenewal is arbitrary, capricious and contrary to law. The stated reason for nonrenewal is a pretext to prevent Dr. Bauers from being reinstated and to prevent Dr. Bauers a meaningful opportunity to confront and challenge now unstated reasons for termination. The unstated reasons, moreover, implicate illegal motivations, including perceived disability discrimination, retaliation

for complaining about sexual discrimination, and retaliation for exercising due process and First Amendment rights. Dr. Bauers' due process rights are denied by the non-renewal precisely because the real motivating reasons are deliberately unstated now so that Dr. Bauers cannot challenge them, as she successfully challenged her initial termination. Dean Hinshaw is trying to do via the back door what she could not do by the front door.

Finally, Dr. Bauers grieves the unreasonable conditions and restrictions that have been placed on her pending employment. Even when University employees of Dr. Bauers' longevity are properly nonrenewed, they are entitled to 9 months of meaningful employment in order to facilitate a transition from University employment. Here, the University has consigned Dr. Bauers to a hidden, humiliating and anonymous existence that prevents any meaningful research and orderly winding up of projects.

Admittedly, all employers, including the University, dislike having employees reinstated. The employer views reinstatement as a rebuke to the employer's authority. This reasoning is ultimately faulty, however, because the employer undermines itself by disregarding the agreed-upon rules of the workplace. Here, Dr. Bauers was entitled to meaningful reinstatement, rather than mean-spirited retribution.

Dean Hinshaw has consistently prejudged Dr. Bauers and uncritically concluded that Dr. Bauers is an unsuitable and unstable University employee. Dean Hinshaw, however, has never investigated, or even acknowledged Dr. Bauers' claims that she has been harassed, abused, obstructed, impeded and lied to in the course of

her employment. On the other hand, Dean Hinshaw has admitted that Dr. John Hearn, Director of the Primate Center, falsely denied any relationship with Dr. Bauers, but no one from the University has even deigned to discuss this issue with Dr. Bauers. (Background regarding this issue is provided at Ex. 59.)

By contrast, Dean Hinshaw's decision to not fund Dr. Bauers' research has serious implications, and, not just for Dr. Bauers. The Primate Center committed to Dr. Bauers, and, to the government of Thailand, that it would financially support Dr. Bauers' field research studying stump-tailed macaques. (Ex. 9.) In exchange, the Thai themselves have made a substantial commitment to preserve and protect threatened macaque habitat, and, to otherwise assist Dr. Bauers' research. (Ex. 10.) Her nonreturn to Thailand is an embarrassment to Dr. Bauers and to the University. Significantly, however, Dr. Bauers continues to personally send substantial sums each month to Thailand to protect and secure her field research sites and property. The University, for its part, has not accepted its responsibilities, including to Dr. Bauers.

## **II. DR. BAUERS COMMENDABLY PERFORMED HER DUTIES AS AN ASSISTANT SCIENTIST FOR THE PRIMATE CENTER.**

### **A. Dr. Bauers' Nonrenewal was Intended to Implement Dean Hinshaw's Earlier Termination Attempt.**

Dean Hinshaw clearly intended nonrenewal of Dr. Bauers, after reinstatement, as a means to implement the Dean's earlier failed attempt to terminate Dr. Bauers for cause. The nonrenewal decision cannot credibly be differentiated from Dean Hinshaw's earlier rush to judgment that Dr. Bauers failed to adequately perform her

duties as an Assistant Scientist. This conclusion is reinforced by the Dean's insistence that Dr. Bauers have no identity or contact with the Primate Center after reinstatement. The Dean clearly believes that Dr. Bauers warrants terminal discipline, and, she rather defiantly has refused to implement meaningful reinstatement -- or even countenance the possibility of reinstatement. The Dean's stated rationale for nonrenewal is not her real motivation, which Dr. Bauers is, therefore, effectively prevented from challenging.

Pretextually terminating Dr. Bauers for lack of funding has a pernicious effect on Dr. Bauers' basic due process rights. Dr. Bauers is entitled to contest a termination for cause, based upon a forthright statement of the reasons and evidence underlying the decision. In fact, Dr. Bauers successfully exercised just this right when the Dean attempted to terminate Dr. Bauers in July of 1996. The Dean's subsequent nonrenewal, implicitly for the same failed reasons, is clearly arbitrary and capricious. It defeats the procedural right of Dr. Bauers to contest termination for cause. It undermines Assistant Vice-Chancellor Draine's authority to independently review Dr. Bauers' termination and to order reinstatement based upon her judgment. Finally, it retaliates against and punishes Dr. Bauers for successfully exercising her due process rights. The nonrenewal, therefore, is both arbitrary and contrary to law.

Grounds to again terminate Dr. Bauers simply do not exist. Dr. Bauers has worked doggedly, faithfully and extremely successfully at the Primate Center since 1989. Dr. John Hearn himself has consistently acknowledged Dr. Bauers' yeoman and successful efforts, including the fact that she essentially performed the duties of



three full-time employees. (Ex. 14.) Dr. Bauers accomplished these efforts at great personal sacrifice to her personal life and health and by assuming professional risk on behalf of the Primate Center. Dr. Bauers is fully willing to stand upon her record at the Primate Center. Her record did not and does not warrant termination. (Background to Dr. Bauers' research projects can be learned from reviewing major grant proposals at Exs. 1-4.)

**B. Dr. Bauers has Made Unprecedented and Uniquely Valuable Contributions to the Primate Center.**

From December 1, 1989 through August 1, 1996, Dr. Bauers was an excellent University employee and a very conscientious and able scientist. She was regularly cited for her success in her research and other projects. She routinely received promotions and pay raises from the University until her termination. Dr. Bauers' projects, moreover, were complex and the required tasks voluminous, yet she dutifully carried them out under extremely difficult conditions.

On November 1, 1989, Dr. Hearn offered Dr. Bauers a position as a research associate. Dr. Bauers accepted Dr. Hearn's offer of employment at the primate center on November 2, 1989.

Dr. Bauers' doctoral research had been based on vocal communication in stump-tailed macaques. Even though Dr. Bauers' expertise was in communication, however, Dr. Hearn required her to switch her specialty to his area of expertise, *i.e.*, reproduction and genetics. This required Dr. Bauers to learn an entirely new area, which she did quickly and effectively.

Dr. Bauers, along with Dr. Hearn, developed a research project whereby Dr. Bauers would study the stump-tailed macaque, an endangered species, in its natural habitat in Thailand and also study populations maintained at the Vilas Zoo facility. The parallel aspects of the project, using both captive and wild populations, was considered an essential and important part of the project. Significantly, however, stump-tailed macaque populations had never previously been studied in their wild and native habitat. The parallel study of captive macaques further was deemed critical by Professor Hearn so as to include a biomedical, biological or genetic research component.

Dr. Bauers' research project initially focused on the following matters:

1. Reproductive biology and behavior in social groups of stump-tailed macaques.
  - a. Basic research in reproductive biology and socio-sexual behavior;
  - b. Physiological indices of reproductive status;
  - c. Physiological indices of relative social status.
2. The relationship between male social dominance and reproductive success in social groups of stump-tailed macaques.
3. Validation and application of genetic probes for paternity analysis in the stump-tailed macaque.

4. The influence of kinship, including genetic relatedness, sexual interests, and behavioral inhibition of mating by subordinate individuals, on group integrity.
5. Parallel research in captivity and in the wild on social organization and gene flow in populations of stump-tailed macaques.

A few weeks after beginning her employment at the primate center, Dr. Hearn sent Dr. Bauers to Thailand to determine whether any stump-tailed macaque populations still existed in Thailand; to conduct a feasibility study; and to explore collaborations with universities in Thailand. Dr. Hearn sent Dr. Bauers alone to Thailand knowing that she had no contacts in Thailand, and knowing that no one knew where stump-tailed macaques were located, and knowing that she did not speak any Thai language.

Dr. Bauers' first trip lasted three months. The majority of her time was spent traveling from the northwestern part of Thailand to the southern reaches of Thailand attempting to complete an initial feasibility study of potential research populations. Dr. Bauers carried out her work by hiring guides and interpreters to accompany her through the countryside of Thailand. She interviewed people and walked through the jungle with the guides attempting to find stump-tailed macaques. During that first three months, she identified three separate populations that were suitable for study, two of which were previously unknown. Dr. Bauers is the first scientist in history to conduct detailed studies of stump-tailed macaques in the wild.

Dr. Bauers made three other research trips to Thailand in 1991, 1992, and 1994. She was able to habituate the animals for close range observation in two populations. She learned to identify, and, to even obtain close range portrait-type photographs of every individual monkey in the groups. (Photographic examples are submitted herewith.) This had never before been accomplished for this species in the wild. In 1994, Dr. Bauers discovered and documented five additional wild populations previously unknown to scientists or conservationists. By this time, she had made substantial achievement on all aspects of the original project.

Dr. Bauers also spent considerable time in Thailand meeting with government and university officials in order to form research collaborations with the Thai government, obtain assistance protecting the research sites, and to obtain a research permit from the Thai government. These were very difficult and important goals, in which Dr. Bauers succeeded. She was successful in obtaining a five year permit from the Thai government (National Research Council). (Ex. 11.) She secured Thai commitment for formal protection of two key study sites, in collaboration with the Royal Forest Department. (Ex. 10.) She formed successful liaisons with Thai universities. Significantly, University of Wisconsin Alumni also were contacted and helpful in achieving Thai assistance and cooperation.

Dr. Bauers also was responsible for setting up the research sites in Thailand, which entailed building water and storage facilities. She was responsible for coordinating the construction of a storage room, water and sanitary facilities in a remote area. She hired local labor to construct these facilities and she oversaw their

work. The construction of these facilities was in progress when Dr. Bauers was terminated by the University in July of 1996. Since Dr. Bauer's return to the United States in August of 1996, she has not been back to Thailand, but she has remained in close contact with Thai individuals, including persons assisting Dr. Bauers to monitor the safety of her research sites. Dr. Bauers has regularly paid to local Thai individuals nearly \$800 per month, since her return to the United States, in an effort to protect the safety of the research site and research equipment, despite vigorous obstruction from Dean Hinshaw.

Dr. Bauers further had research responsibilities for the stump-tailed macaque and rhesus macaque groups at the Vilas Zoo facility. In addition to the research responsibilities in Thailand and at the Vilas Zoo, however, Dr. Hearn assigned Dr. Bauers responsibility for overseeing a major renovation of the Vilas Zoo facility. The facilities were not adequate for the monkey populations. Dr. Bauers helped Dr. Hearn raise \$100,000 for these renovations. This work ultimately was a great success, as noted by Charles Read, Interim Dean of the Graduate School. Dean Read thanked Dr. Bauers in October of 1994 for her efforts on behalf of the University, and commended Dr. Bauers on her research project in Thailand, and commended her work which improved conditions at the Vilas Zoo. (Ex. 8.) As a result of the renovations and innovations made by Dr. Bauers at the Vilas Zoo, the physical condition of the macaque colonies improved dramatically, and, infant mortality dropped substantially.

Dr. Bauers has applied great resourcefulness, dedication and ingenuity to the tasks she has carried out for the primate center. Dr. Bauers worked closely, for example, with the University Department of Engineering Technical Services to develop a specialized primate trapping system to be used in Thailand. The purpose of this system was to trap stump-tailed macaques and retrieve samples, without harming the animal. Dr. Bauers worked with Burke O'Neil, the Director of Engineering Technical Services to design the system. The trapping system was designed to allow Dr. Bauers to take it up a mountain and to assemble it without any tools. Dr. Bauers and Dr. Hearn each made two separate trips back and forth to Thailand in order to transport the ultimate system to site location.

Dr. Bauers has had to overcome tremendous difficulties over the past seven years, particularly in the field in Thailand. She has had to deal with major forest fires at both of the research sites. During 1995, monsoons and record flooding made field research almost impossible to carry out.

Dr. Hearn also eventually assigned three additional research projects to Dr. Bauers, despite her already heavy load of responsibilities. She was directed to study the reproductive biology of Rhesus and stump-tailed macaques, a comparative study of patterns of reproductive senescence (how females inter-birth intervals change and how they stop producing babies). Dr. Bauers also began to study reproductive success in relation to social dominance in both male and female stump-tailed macaques and Rhesus monkeys. Finally, Dr. Bauers began a study of sleeping

patterns of macaques as a rapid index with low variability for mapping social relationships.

The amount of work assigned to Dr. Bauers by Dr. Hearn was unprecedented at the primate center. The record demonstrates, however, that throughout her employment, Dr. Bauers' work was quite successful and resulted in several promotions. On October 4, 1991, Dr. Bauers was promoted from research associate to assistant researcher. In both his October 4, 1991 letter and the Request for Rate and/or Title Change, Dr. Hearn praised Dr. Bauers' work. In the request for rate and/or title change, Dr. Hearn specifically stated:

The original appointment was as a postdoctoral research assistant on one project. This is being executed well and has provided novel data. Now, in addition, Dr. Bauers has taken the initiative to develop and implement, with support from our workshop and animal care staff, a range of managerial and environmental enrichments procedures that have greatly improved our animal health at Vilas Park, reducing criticisms from the public and neutralizing criticisms made in NIH reviews of this facility over many years. A new and original project in Thailand has also been established due to Dr. Bauers' innovative approach and successful liaison with university and governmental officials. She has also learned to speak Thai.

In Dr. Hearn's October 4, 1991 letter to Dr. Bauers, he stated as follows:

Congratulations on this appointment, which recognizes your success in initiating the laboratory and field research projects on the stump-tailed macaques; and the testing of molecular genetics for paternity confirmation in group-living monkeys.

In addition, your voluntary and successful efforts to initiate the upgrading of environmental enrichment,

handling, diet, heating, and lighting conditions for the Vilas laboratory are important. They overcome previous criticisms of this facility, help our relations with the public, and greatly improve animal well-being.

Dr. Hearn subsequently wrote to Dr. Bauers on June 23, 1992, to notify her of the renewal of her fixed term appointment, a two-year "Multiple Year" appointment, in recognition of her service to the Primate Center. The Research Development Committee of the Primate Center staff then voted unanimously on December 22, 1992, to appoint Dr. Bauers to the position of assistant scientist. The minutes of that meeting reflect Dr. Bauers' outstanding work at the Primate Center:

Dr. Hearn noted that Dr. Bauers had been a member of staff since December, 1989. She had established two related projects on the stump-tailed macaque, being studied at the Vilas facility and in Thailand. Research focused on the effects of male dominance on reproductive success and gene flow in primate social groups. In addition, studies covered the factors of peripheralization, group fission and female choice. Dr. Bauers had seven papers, three of these in press and five of these as first author. She had written three grants in the past 18 months, obtaining some graduate school support. She has now prepared a major grant for submission to NSF and assistant scientist status would help her competitiveness. She will need to give more attention to organization, but is making progress. The projects are complex and difficult and she had been successful in their establishment.

Dr. Hearn also noted that Dr. Bauers had successfully established two field sites in Thailand and had developed excellent relations with local universities and government in Thailand. As a result of her efforts, Dr. Bauers was promoted to



assistant scientist on February 1, 1993. In a February 26, 1993 letter to Dr. Bauers, Dr. Hearn stated that in making the appointment to assistant scientist, he recognized the difficulties and complexities that Dr. Bauers had overcome in establishing her two related projects at the Vilas Zoo and in Thailand. Dr. Hearn also recognized that Dr. Bauers had made excellent progress in her successful Graduate School grant, in submitting a substantial grant to NSF, and with papers then in preparation.

Dr. Hearn recommended a salary increase for Dr. Bauers in May of 1993, based on her compelling work performance and because he felt she was being significantly underpaid in comparison to her male peers, who were carrying out less demanding projects. Dr. Hearn wrote, in part, in support of Dr. Bauers:

Dr. Bauers is an assistant scientist at the Primate Research Center, having been promoted from assistant researcher on February 1, 1993. She is responsible for two major projects at the Center, one at our Vilas laboratory and one in Thailand, where she spends up to 4-5 months each year. Apart from their scientific merit (see below), these projects are in the public eye and are of great value in explaining the Center's mission in biomedical, behavioral and conservation sciences to the press and public. They are the principal reason why we receive so little adverse comment and criticism of our research from the "animal rights" groups.

Our external Scientific Advisory Board, meeting on May 6-7, 1993, highlighted the importance of Dr. Bauers' projects, term them to be a very high priority in the Center's program, and classified their scientific progress and potential as outstanding (see attached). These are not easy projects and their successful execution requires unusual scientific skill, practical skills, dealing with numerous agencies and individuals here and in Thailand; and ability to speak basic Thai.

Dr. Hearn attached two letters and a review of an NSF proposal submitted by Dr. Bauers to his May 18, 1993 memo. The first letter from Peter Marler cites Dr. Bauers' work, as to which he expressed that he was especially impressed with her progress. (Ex. 17.) A second letter from Charles Southwick regarding Dr. Bauers' NSF proposal, and his review of that proposal, was also significantly impressive. Dr. Southwick stated in his review:

This is an outstanding proposal, and I am enthusiastically recommend support. The Principal Investigator, Dr. Bauers, is a young scientist with only a few publications, but she has done an admirable amount of careful preparation for this research and has assembled an excellent team of researchers.

...

In summary, I consider this one of the best proposals in primate behavior I have seen in many years. It has the right combination of addressing fundamental scientific issues, integrating first rate field and laboratory work, and drawing together an outstanding team of investigators. I recommend the highest priority for this work. (Ex. 5.)

Dr. Hearn wrote to Dr. Bauers on June 3, 1993, to inform her of a salary increase. Dr. Hearn stated in his letter:

This review recognizes the level of responsibility that you carry in your projects in Thailand and at Vilas; the importance of your projects to the Center in providing a balance between our biomedicine, behavioral and conservation program; and the additional costs that you bear through your spending a significant part of each year in the field in Thailand.

Dr. Hearn requested that Dr. Bauers' salary be increased from \$40,838 to \$53,000 in November of 1994, which Dr. Hearn justified by the large amount of responsibility assigned to Dr. Bauers, her successful work on the research projects at the Vilas laboratory and in Thailand and on her successful renovation of the Vilas laboratory. On February 9, 1995, Dr. Hearn wrote to Dr. Bauers to inform her that she had been awarded a base adjustment to salary of \$46,094. Dr. Bauers' fixed term appointment also was renewed once again in August of 1995.

Dr. Hearn's review in November 1994 of Dr. Bauers' previous four years of work, sacrifice and achievement is eye-opening and instructive. In a memorandum dated November 12, 1994, Dr. Hearn specifically noted that Dr. Bauers "has been doing three full-time jobs over a four year period, with the Southeast Asian project, in particular, involving enormous effort, personal sacrifice and high risk." (Ex. 14.) Accordingly, Dr. Hearn concluded that "Dr. Bauers' commitment, level of effort, time, contributions, and achievements merit a salary review." Dr. Hearn then specifically evaluated the three primary areas of Dr. Bauers' responsibilities, including her research program focusing on the reproductive and behavioral biology of the stump-tailed macaque colony at the Vilas Zoo facility, and the influence of these factors on social and population dynamics. In addition, Dr. Hearn described Dr. Bauers' responsibilities at the Vilas Zoo facility in the following terms:

In addition to her research, Dr. Bauers has shown the strongest possible commitment to initiating and assuming the responsibility for fundamental improvement of our Vilas Laboratory over the last three years. She has helped me to raise \$100,000 for improvements in

structure and in animal care. As a result of the major renovations she planned and supervised, this facility is now an asset to be proud of rather than a public relations liability. For the first time at Vilas, the provision of year round heating and lighting, dietary improvement and environmental enrichment, as well as the capacity for psysiological sampling, have transformed the facility to a modern behavioral research and physiology laboratory in contrast to a substandard facility which caused severe criticism from NIH reviewers and from the public. Consequently, this year Dr. Bauers is functioning formally as co-manager of the Vilas facility.

When I first visited the campus in 1989, Dr. Bauers suggested that inadequate heating and sunlight were the factors responsible for the drastic hair loss of the animals at Vilas, a source of chronic public friction and complaint. Despite substantial opposition to these ideas, she helped to raise \$100,000 to bring about the necessary renovation to the facility and has now solved the twenty year old problem of inadequate coat conditions and related health disorders in these animals. Her persistence and commitment, which caused difficulties for her with those who promoted the status quo, have resulted in major advances for the Center at some cost to herself. Her initiatives in installing humane animal handling practices and improved training and staff procedures have greatly reduced stress and injury to both animals and to animal technicians at Vilas. The numerous improvements have enabled several new avenues of research which were not previously possible and have greatly increased the validity, generalizability and standards of research that can be conducted at Vilas. As an example of integration of research and management objectives, she has researched and implemented an animal identification system, using microchips instead of tattoos, which will not only make identification more efficient, but is also the basis for current research on the potential for passive genetic management systems. The time and effort involved in bringing about fundamental changes at Vilas have cost Dr. Bauers in research productivity, but the commitment required to establish a new standard has made us more competitive for future

funding. The Vilas facility is now also an important part of our outreach and education programs, explaining our balanced research program in biomedicine and conservation biology to the public. Over 750,000 people a year visit Vilas, and there has been a striking transition from public criticism to positive interest and endorsement. (Ex. 14.)

Dr. Hearn's critique of Dr. Bauers' field work in Thailand provides absorbing and compelling evidence of her competence and commitment:

The initial project for which Dr. Bauers was contracted, when I began as Director in January 1990, was to develop a program in conservation biology for the stump-tailed macaque. She has now developed the first detailed field study of this species ever conducted in the wild. Based on extensive survey efforts, working in remote locations in Southeast Asia, with limited language ability, she managed to identify and develop three separate research sites. Two of these sites include populations in remnant forest tracts where close range, detailed observation is possible. The research is being extended to additional groups in a large National Park nearby. She has already achieved detailed description, individual identification and habituation of the first two groups and is now prepared to collect hair samples for genetic analysis. These samples will be used to evaluate patterns of genetic transmission and reproductive success as a function of behavioral organization into wild populations. The results may also provide the first database for the assessment of relative inbreeding of isolated populations in the wild. Based on their previous collaboration with her, the UW Engineering Department has agreed to underwrite the development costs of a unique field trapping and sampling device designed by Dr. Bauers in collaboration with Burke O'Neil and Richard Pape. This device may have wide application in future field studies of primates and other animals, allowing safe, noninvasive sampling without disturbing the social behavior of wild groups, ~~where~~<sup>or</sup> negatively influencing their habituated status.

Dr. Bauers has also initiated the first scientific research program conducted in the largest national park in Thailand, and established a network of committed field assistants from among Park staff allowing the monitoring of a wide area of the Park. She has built strong local support and generated interest and cooperation at all levels of the Royal Thai Forestry Department (Director General, Directors of Research, Conservation and Management). She has worked intensively to negotiate protection of the two study sites outside the national park which are the only two places in the world where it is now possible to study this species at close range. In bringing to the attention of the Thai government the international scientific value of these sites, the Wisconsin Primate Center has created pride on the part of the Thai government in their own wildlife heritage. The project has great potential to catalyze other research projects with conservation application in Thailand and in other areas of Southeast Asia under threat from human population expansion. Dr. Bauers has also established research and training links for Thai students and staff at Kasetsart University (Thailand's foremost forestry and ecology university), and at the Royal Thai Forest Department. Dr. Bauers' efforts in Thailand have already brought the Center substantial national and international attention.

The achievements in Thailand have been brought about in an environment of extreme difficulty and discomfort. Dr. Bauers has been working in isolated, sometimes dangerous areas where no one speaks English and where communication difficulties are severe. For four years she has lived in an extremely small hut (six feet square) with an interior temperature averaging 120° Fahrenheit and without convenient sanitation facilities. The hut has no protection from insects and rats in an area with a high incidence of malaria and a tin roof that leaks during rain. Her work this year had to be conducted in the monsoon season, creating formidable difficulties in day to day life. At a personal level, she has borne very substantial financial costs in living between two countries, with expensive arrangements for house-sitting and other matters here when she is away; and numerous non-

research expenses for living months at a time in Thailand, with substantially increased health insurance. She must absorb the high costs (from Thailand) of any communication with friends or family in the U.S. She is socially isolated for 3-5 months at a time, while also removed from access to modern scientific and computing facilities, libraries, office facilities or the opportunity to speak the English language to anyone. Despite all this, she is subject to the same expectations for the production of papers and grant proposals as other staff, without the necessary resources while outside the U.S. The program in Thailand has required her to absorb enormous personal and professional costs.

Dr. Hearn, in his November 22, 1994 memorandum, further noted that Dr. Bauers merited a pay increase based upon the scientific progress and potential of her parallel captive and field research programs, but also noted that Dr. Bauers, as a woman, merited consideration for representation in the Primate Center's scientific administration at higher levels:

The case for this review is based on the scientific progress and potential of two research programs (captive and field). The case also recognizes the additional administrative responsibilities involved and the exceptional difficulties of the program. The case is not based on gender issues, although this is a factor. NIH-NCRR counsel, meeting in July 1994 in Washington, reaffirmed gender balance and career progress as important criteria in its assessment of future base grant renewal funding to Centers. The Graduate School has also focused directors' attention on this matter for the University of Wisconsin. The Primate Research Center, while having a number of women scientists on its staff, does not currently have sufficient representation of women in its scientific administration at higher levels. Dr. Bauers' proven commitment and ability to deliver makes her a clear case for progression in redressing, at least in part, the current lack of balance. I ask that these matters be considered carefully and the case for Dr.

Bauers' redefinition of position and salary be approved on her merits and as a part of the actions that we are taking to prepare for our next NIH-NCRR Center reviews in 1995 and 1996. (Ex. 15.)

Finally, in January of 1995, Dr. Hearn again described the substantial significance and contribution of Dr. Bauers' research program:

The program that you have developed is of great value scientifically and also important for the balanced research program of the Primate Center. It is achieving recognition on campus, and internationally. The first major paper has recently been published and I know that you have several papers in preparation that should be accepted before the papers for the 1996 base grant review go in.

In Thailand, your heroic efforts to establish the only field sites where the stump-tailed macaque can be studied now puts you in a unique position for potential, novel research. The complexities that you have faced and overcome, through negotiations at all level of government, show great persistence and skill when working in a foreign culture with limited (though improving) language ability. The collaborations that you are establishing with the Forestry Department and with the Universities are also impressive and should ensure the longevity of the program. (Ex. 16.)

Dr. Bauers clearly has not been merely an ordinary or average Assistant Scientist at the Primate Center. At least until the middle of 1995, she was widely viewed as an outstanding and valuable member of the Primate Center staff. We must now consider then why Dr. Bauers has come to be treated with social stigma and as a pariah by the University to which she has made such sacrifice and such contributions.



### **III. DR. BAUERS IS PERCEIVED AS A PERSON WITH A DISABILITY AND SHE HAS BEEN DISCRIMINATED AGAINST ON THAT BASIS.**

University records indicate that at least beginning in November of 1995, Dr. Bauers was portrayed and perceived as a person with an emotional disability. In fact, Dr. Bauers admits that she began to suffer from clinical depression and anxiety in 1995 after her continued position at the University began to be threatened by Dr. Hearn. She also suffered severe physical illness in Thailand in 1995 and 1996. (Exs. 50-56.)

Threats to Dr. Bauers' continued relationship with the Primate Center began to occur after Dr. Bauers complained to the University Office of Affirmative Affairs (OAA) on April 28, 1995. (Ex. 36.) Dr. Bauers complained about Primate Center staff, including Robert Watson, for undermining and interfering with her responsibilities at the Primate Center. A particularly pernicious event occurred in April of 1995, after Dr. Bauers returned to the United States upon the unexpected death of her father, and while in a state of deep grief and exhaustion. While she was in Madison on that return trip from Thailand, an offensive note was posted publicly on her office door. Dr. Bauers' complaint to OAA became known to Dr. Hearn, who reacted with extreme hostility to Dr. Bauers in personal exchanges, but implicitly acknowledged the validity of her complaint publicly. (Exs. 36-37.)

Significantly, Dr. Hearn himself had insisted upon a sexual relationship with Dr. Bauers, about which Dr. Hearn was extremely concerned and frightened that Dr. Bauers also would report to OAA. Although Dr. Bauers had not at that time

complained of Dr. Hearn to OAA, Dr. Hearn's attitude and treatment of Dr. Bauers changed markedly after he learned of her contact with OAA in early May of 1995. Dr. Hearn began to express privately to Dr. Bauers that she had no future at the Primate Center; that her projects were over; that she "had ruined everything;" and Dr. Hearn generally refused to further collaborate, support and assist Dr. Bauers in her projects, including in her Thai field study. By January of 1996, Dr. Hearn began telling Dr. Bauers that he did not intend to Dr. Bauers to be included in the Primate Center's 1996 base grant proposal to NIH.

Dr. Hearn, significantly, also then began to portray Dr. Bauers as mentally unstable and deranged to University officials -- while Dr. Bauers was in Thailand. For example, in a "Note for the Record" dated November 22, 1995, which was only disclosed to Dr. Bauers in February of this year, Dr. Hearn voiced purported concerns about Dr. Bauers' mental status with Employee Assistance, Provost Wiley, Casey Nagy, Mike Rothstein (academic personnel) and Dean Marsha Douglas. (Ex. 28.) In his "Note," Dr. Hearn concluded that "my own opinion (I am not a psychiatrist) is that formal disciplinary action should not be taken over this matter as Dr. Bauers may need medical help." Based on these stated concerns, the University then began to plan in late November of 1995 to force Dr. Bauers to return from her field sites in Thailand, apparently to address psychological issues. (Ex. 29.) In order to put pressure on Dr. Bauers to abandon her field work at that time, the University coupled the order to return with the threat of termination for insubordination. (Ex. 29.)

In another previously unknown "Note for the Record," dated February 9, 1996, Dr. Hearn described a meeting at the office of Casey Nagy, and attended by Marsha Douglas, Steve Lund, and Brian Bridges of University Police and Security. (Ex. 30.) The fact of this meeting also was only recently discovered. The stated purpose of the meeting was to discuss alleged threats made by Dr. Bauers against others at the Primate Center and herself. The note clearly reflects at least a stated perception of Dr. Bauers as being unstable while in Thailand.

In another memo dated February 27, 1996, by Dr. Joe Kemnitz to John Hearn, Dr. Kemnitz accuses Dr. Bauers of demanding a member of the animal care staff at the Vilas Zoo facility to collect blood samples -- under the threat of suicide by Dr. Bauers. (Ex. 32.) (Dave Wade, the animal caretaker who allegedly reported this incident, has stated that the memo dated February 27, 1996 is false and that he informed Dr. Kemnitz of this fact on the same date of the memo. (Ex. 35.)) Again, however, this documentation from February of 1996 reflects the University's purported perception that Dr. Bauers was suffering emotional and psychological disability.

In another memo dated May 29, 1996, from Cynthia Williams to Mareda Weiss, discussion is had of enlisting the U.S. Embassy in Thailand to bring Dr. Bauers out of Thailand. Ms. Williams states that "I spoke with Bob Bickner, a Thai expert who has spent considerable time in Thailand. He indicated that it is not unusual for Americans living in Thailand to develop serious problems or become unstable." (Ex. 34.) Significantly, Dr. Bauers had no knowledge of these

perceptions, but merely that she was being barraged with threats of imminent firing. (Exs. 48 and 57.) For her part, Dr. Bauers was dealing with severe physical illness, exhaustion, numerous field site tasks, efforts to complete grant proposals, and lack of funds to even pay bills in Thailand.

Significantly, the University's threats to fire Dr. Bauers purportedly were intended to pressure her return from Thailand because of health concerns and for assessment. Dean Hinshaw, however, subsequently has demonstrated only a commitment to finally get rid of Dr. Bauers since her return.

The perception of Dr. Bauers as being psychologically deranged and unstable has persisted throughout her long and tortuous effort to obtain meaningful reinstatement to the Primate Center. Assistant Vice-Chancellor Draine, for example, suggested that a psychological fitness for duty evaluation may be appropriate before returning to job duties. Dean Hinshaw then initially requested such an evaluation (Ex. 20.), although Dr. Bauers had already obtained a statement from health care providers establishing her fitness for duty, which she provided to Dean Hinshaw. (Ex. 22.) Dean Hinshaw then dropped the request, and, instead notified Dr. Bauers that she was being terminated on the grounds of nonrenewal. Further, she had already advised Dr. Bauers that she would not be permitted to return to the Primate Center in any capacity, and, that Dr. Bauers was not to have any contact with Primate Center employees.

Accepting the University's stated perception in late 1995 and in 1996 that Dr. Bauers had become unstable while in Thailand, Dean Hinshaw's resulting termination

and refusal to meaningfully reinstate Dr. Bauers, as directed by Vice Chancellor Draine, clearly constitutes discrimination on the basis of disability or perceived disability. Recognizing that Dr. Bauers has experienced psychological and physical distress, and the University's perception that she is disabled, Dean Hinshaw's stubborn refusal to make any effort to accommodate Dr. Bauers is not just callous, but contrary to law. The University has internal prohibitions against discrimination on the basis of disability, which parallel federal and state legal prohibitions. Dr. Bauers is clearly a qualified Assistant Scientist at the University, who does suffer from some partial disability, and, more importantly, from the perception of being disabled.

In these circumstances, the University is legally required to try to accommodate Dr. Bauers, rather than to punish her. As described above, moreover, Dr. Bauers is highly deserving of this legal requirement. This is the law, but it also has a salutary purpose for employers, as well as employees. Employees like Dr. Bauers are not liabilities; they can be among an institution's greatest assets, if permitted. If the University remains concerned about Dr. Bauers' psychological stability, however, then Dean Hinshaw should state that as the basis for her decision to fire Dr. Bauers, rather than pretextual reasons. Dean Hinshaw should state what is really on her mind, so that Dr. Bauers has a fair chance to respond.

#### IV. THE UNIVERSITY HAS RETALIATED AGAINST DR. BAUERS FOR COMPLAINING OF SEXUAL HARASSMENT.

Dr. Bauers' status and treatment at the Primate Center changed dramatically after she reported harassment to OAA in May of 1995. Although the complaint made by Dr. Bauers did not relate specifically to Dr. Hearn, his treatment and conduct vis-a-vis Dr. Bauers then became critical, hostile, uncooperative and threatening. In addition, as noted above, Dr. Hearn began to portray Dr. Bauers as psychologically unstable, which set in motion at the Primate Center an official plan of action completely unknown to Dr. Bauers. In private telephone calls to Dr. Bauers and in person, however, Dr. Hearn expressed furor about Dr. Bauers' complaint to OAA and articulated threats that Dr. Bauers now had no future at the Primate Center. It is also significant that only after Dr. Bauers' complaint did issues first arise regarding continued support for Dr. Bauers' research projects, which had previously been consistently supported and lauded.

Dr. Hearn's reaction to Dr. Bauers' complaint to OAA was intensified by his concern and fear that Dr. Bauers would disclose his own sexual harassment and abuse of Dr. Bauers. Contrary to Dr. Bauers' express intentions, Dr. Hearn had insisted on a sexual relationship with Dr. Bauers within a few months after she began working under his direction at the Primate Center. This sexual relationship was unwelcome and forcible, but Dr. Bauers was extremely dependent upon Dr. Hearn at the Primate Center.

Dr. Hearn was extremely concerned that his relationship not become known, and, he went out of his way to show absolutely no favoritism to Dr. Bauers in her employment. On the contrary, Dr. Bauers was assigned unprecedented and burdensome responsibilities in her position. Dr. Hearn also emphatically instructed Dr. Bauers in March of 1996 that she should absolutely deny any sexual relationship if inquiries were made from the University, and, that she could face criminal prosecution. For his own part, at least until April 1, 1996, Dr. Hearn continually denied and lied about any relationship with Dr. Bauers, while all the while raising questions about her psychological stability and suitability for continued employment.

According to Dean Hinshaw, Dr. Hearn finally admitted to a purely consensual relationship with Dr. Bauers on April 1, 1996. (Ex. 59.) Dean Hinshaw, for her part, nonetheless continued to rely upon and collaborate with Dr. Hearn regarding Dr. Bauers' employment situation. Dr. Bauers, however, was unaware of Dr. Hearn's limited confession, and, she knew only that she kept receiving a barrage of letters threatening her immediate termination from the Primate Center. Finally, on about April 18, 1996, Dr. Bauers informed Dean Hinshaw about the unwanted and abusive relationship with Dr. Hearn, which she suspected he was trying to conceal by discrediting her to the Dean. (Exs. 49 and 58.) By the end of April, therefore, Dean Hinshaw had conflicting information that Dr. Hearn had either a consensual or an unwanted sexual relationship with his subordinate, Dr. Bauers. Either version of the relationship, however, constituted improper conduct by Dr. Hearn. Dr. Bauers,

moreover, also brought this situation to the attention of Chancellor Ward in May of 1996, prompting objection by Dean Hinshaw.

No investigation or discipline resulted from these disclosures. Dean Hinshaw continued to rely on Dr. Hearn in making decisions about Dr. Bauers, but she did not make any inquiry about Dr. Bauers' concerns. Instead, she steadfastly and resolutely insisted on terminating Dr. Bauers, although the original threat to terminate Dr. Bauers if she did not immediately return from Thailand was purportedly intended to address her reported psychological instability by Dr. Hearn. She refused a requested telephone conference by Dr. Bauers with her legal counsel on May 20, 1996, and only personally communicated with a very ill Dr. Bauers in Thailand at 5:00 a.m. to summarily convey the directives of her May 20 memo. (Ex. 70.) In the meantime, Dean Hinshaw took no disciplinary steps against Dr. Hearn during April, May, June or July of 1996. Only on August 27, 1996, after allegedly receiving an audit inquiry from NIH regarding Dr. Hearn, did Dean Hinshaw initiate any disciplinary action against Dr. Hearn. (Ex. 59.) In the absence of the NIH inquiry, however, Dean Hinshaw apparently had resolved to take no action against Dr. Hearn based on his relationship with Dr. Bauers, as to which Dean Hinshaw had not investigated. Although Dean Hinshaw then admits that Dr. Hearn had lied and tried to conceal any relationship with Dr. Bauers, she nonetheless accepted his version of the relationship as being completely consensual in her letter to Chancellor Ward in August of 1996 -- contrary to the contention of Dr. Bauers. As the messenger, however, Dr. Bauers was fired by Dean Hinshaw in July of 1996.



Both Dr. Hearn and Dean Hinshaw had strong motivations to get rid of Dr. Bauers based upon her complaints. Dr. Bauers represented a serious potential threat to Dr. Hearn, based upon her prior complaints to OAA, and, the threat of direct complaint about Dr. Hearn. Dean Hinshaw had strong motivation to get rid of Dr. Bauers, and, to keep a lid on her complaints, at least until Dr. Hearn completed oversight of a major base grant proposal to NIH for the Primate Center, which was filed on June 1, 1996. In addition, Dr. Hearn was hosting the meeting of the International Primate Society in Madison during August of 1996. Whereas Dr. Bauers was a source of potential embarrassment for the University, Dr. Hearn was valuable to the University.

Dr. Hearn's duplicity in denying any relationship with Dr. Bauers also characterized his conduct and treatment of Dr. Bauers. As noted above, after learning of Dr. Bauers' complaint to OAA, he began to actively portray Dr. Bauers as psychologically unstable. For the previous five years, however, Dr. Bauers by all accounts was an extremely productive and successful Assistant Scientist for the Primate Center. Within a year, however, a remarkable transformation suddenly occurred in which both Dr. Bauers and her research projects supposedly became second-rate. In personal conversations with Dr. Bauers, moreover, Dr. Hearn expressed disgust and anger about Dr. Bauers' complaints to OAA. He nonetheless expressly demanded in March of 1996 that Dr. Bauers deny any relationship with him.

In addition to portraying Dr. Bauers as unstable, Dr. Hearn also actively interfered and obstructed Dr. Bauers' efforts to complete and submit her portion of the 1996 NIH base grant proposal. He initially sent Dr. Bauers the necessary grant materials two months later than other participants in the base grant proposal. He then positively refused to work with Dr. Bauers in providing necessary input to her part of the base grant proposal, and, in other respects, provided false information. Dr. Hearn had agreed to meet with Dr. Bauers in January of 1996, to provide necessary input for their collaborative projects. At the last minute, Dr. Hearn changed his plans and did not meet with Dr. Bauers. He also canceled a planned meeting on February 29, 1996. Dr. Hearn also provided Dr. Bauers with an incorrect budget form, and, he then later criticized Dr. Bauers for using an incorrect format. Dr. Hearn also refused to communicate with Dr. Bauers regarding necessary budget and budget justification information. He also advised Dr. Bauers that she could not include her salary in the base grant proposal ostensibly because NIH would not fund such salaries. Dr. Bauers, however, has subsequently learned that other base grant participants were allowed to include their salaries in the budget justification. Finally, neither Dr. Hearn, nor anyone else from the Primate Center, ever advised Dr. Bauers that the absolute deadline for her submission was April 29, 1996, so that when she submitted her final materials in May of 1996, she was summarily advised that they were too late. (Exs. 42, 45 and 70.)

The only action taken by Dean Hinshaw in response to Dr. Bauers' disclosure of Dr. Hearn's relationship was also very significant in frustrating Dr. Bauers' base

grant proposal. In April of 1996, she removed Dr. Hearn as supervisor and ordered Dr. Bauers to have no communication with Dr. Hearn. Dr. Bauers literally begged and pleaded with Dean Hinshaw to at least permit her to communicate with Dr. Hearn regarding critical information she needed to complete the base grant proposal. (Exs. 43, 44, 50-52.) Dean Hinshaw refused to permit such communication, and, Dr. Hearn peevishly reported to Dean Hinshaw Dr. Bauers' frantic efforts to communicate with him regarding the base grant proposal. (Ex. 40.) Interestingly, however, while Dr. Hearn seemingly complained of such efforts at communication by Dr. Bauers, he himself sent personal faxes to Dr. Bauers in May of 1996, reporting the gravely ill condition of his mother. (Ex. 41.) He would not respond to Dr. Bauers, however, regarding her need for information necessary to complete the base grant proposal.

At the same time that Dr. Hearn refused to communicate with Dr. Bauers regarding the base grant proposal, while providing positively misleading information and not reporting deadlines to her, Dr. Bauers was deluged with continuing threats of termination and directives that precluded her from working on the base grant proposal. From Dr. Bauers' perspective, in a foreign country, where she was very ill, dealing with unprecedented field conditions and obstacles, this created a constant crisis environment. Dean Hinshaw now complains that Dr. Bauers was insubordinate and not communicative from Thailand. On the contrary, however, Dr. Bauers went to lengths in explaining circumstances beyond her control that made return dates impossible to meet. (Ex. 50-56.) She reported to Dean Hinshaw regularly and extensively on her circumstances -- and she practically begged for her help. All that

Dr. Bauers received in return, however, were continued deadlines and ultimatums of termination. In fact, in April of 1996, Dean Hinshaw and Dr. Hearn demanded that Dr. Bauers sign a written statement that she would undertake only certain remaining activities, which did not include work on the base grant proposal; if Dr. Bauers refused to sign the document, she was declared to be terminated. (Ex. 47.)

The crisis situation created by Dr. Hearn and Dean Hinshaw, and the total refusal and obstruction to her efforts to complete her portion of the base grant proposal, ultimately caused Dr. Bauers to experience a breakdown in May of 1996, for which she was hospitalized. (Exs. 50-56.) She incredibly, however, completed the base grant materials and had everything in the Primate Center's hands by May 20, 1996. (Exs. 2, 43-44.) The Committee is invited to carefully examine Dr. Bauers' material, which was prepared under extraordinarily adverse conditions, including without notification that the deadline for her material had been set at April 29, 1996. (Ex. 2.) The only part of the proposal not finally completed by Dr. Bauers was the budget justification, for which she absolutely needed to communicate with Dr. Hearn. (Ex. 43, 44, 50-51.) In any event, moreover, Dr. Bauers' proposed budget was exceedingly modest in comparison to this multi-million dollar grant proposal, including because Dr. Hearn had apparently falsely advised Dr. Bauers not to include her salary, and, because many costs associated with the Thailand field study, such as infrastructure and building, were not appropriate for inclusion in the base grant. By contrast, funding for the Vilas Zoo facility, where Dr. Bauers' captive research project with stump-tailed and rhesus macaques was ongoing, was and is included in

the new base grant proposal. Even at this time, the Vilas Zoo research facility, to our understanding, is being funded by the Primate Center's NIH base grant. Despite Dr. Bauers' efforts to complete her part of the base grant proposal, therefore, she received absolutely no cooperation or accommodation, despite being in obvious distress in Thailand in the face of undisguised threats of termination. Instead of assistance, Dr. Bauers effectively encountered active resistance.

Dr. Hearn's dramatic change in his effective support and assistant of Dr. Bauers' research projects after June of 1995 is only understandable in the context of his concern to punish Dr. Bauers for reporting to OAA and his extreme desire that his own relationship with Dr. Bauers not be revealed. This constitutes direct and prohibited discrimination and retaliation on the basis of sex that is prohibited by University policy, and, by state and federal law. A comparison of Dr. Bauers' situation in November of 1994 is instructive. At that time, Dr. Hearn genuinely recognized Dr. Bauers' unprecedented and uniquely valuable efforts on behalf of the Primate Center over the previous four years. By all accounts, Dr. Bauers was a competent, resourceful, resilient and outstanding Assistant Scientist at the end of 1994. By no account was she anything approaching a "basket case." By the next year, after complaints to OAA, Dr. Bauers is reported to be psychologically unstable and deranged, albeit these reports are made while she is in Thailand and unbeknownst to her. In fact, Dr. Hearn's efforts to portray Dr. Bauers as psychologically unstable, including meetings with University police, while Dr. Bauers was in Thailand, were

never made known to Dr. Bauers until February of 1997, seven months after she was fired.

Even accepting at face value the claimed perception that Dr. Bauers was unstable and ill, which she was by June of 1996, Dean Hinshaw's response to this whole situation is also only explainable based upon her desire to quickly and decisively eliminate the potential disclosure of embarrassing matters for the University. The original directive for Dr. Bauers to return from Thailand to the United States was ostensibly not disciplinary or punitive. The stated purpose had been to bring a distraught and distressed researcher safely home to the United States, where a full evaluation of her responsibilities and psychological condition could be made. Dean Hinshaw, however, has never engaged in that process; has never acknowledged any sensitivity to Dr. Bauers' extraordinary distress and panic at threats of immediate termination; and has never investigated Dr. Bauer's claims of abuse and interference by Dr. Hearn.

Instead, Dean Hinshaw has stuck to the path of termination and punishment. She never even acknowledged Dr. Hearn's ultimate admission that he had had at least some relationship with Dr. Bauers, and, to this day this University has minimized Dr. Hearn's departure. Only in late August of 1996, after the base grant proposal was in, and after the site visit by NIH was completed, and after the International Primate Society meeting had been hosted, and after NIH auditors had apparently questioned expenditures, did Dean Hinshaw initiate any action against Dr. Hearn. (Ex. 59.) Dr. Hearn then quickly agreed to resign from the University, in exchange for which the

University agreed to conduct no investigation. (Ex. 61.) But Dr. Bauers remained terminated, and was treated without compassion or any attempt at understanding by Dean Hinshaw. Instead, even after ordered reinstatement by Assistant Vice-Chancellor Draine, Dean Hinshaw steadfastly has refused to dignify Dr. Bauers as an employee of the University. Her motivation, then and now, remains the same: to discredit and disgrace Dr. Bauers as a result of her complaints of abuse and discrimination. Dr. Bauers is a far less credible threat to be taken seriously if she is disgraced and discarded summarily. Dr. Bauers, however, should be taken seriously, not as a threat to the University, but as a valuable researcher. During the review of Dr. Bauers' prior termination by Assistant Vice-Chancellor Draine, Dean Hinshaw admitted that she had never even read the base grant proposal prepared by Dr. Bauers. The indisputable fact is that Dr. Bauers is a serious, credible and competent researcher. Dean Hinshaw's summary dismissal of Dr. Bauers in order to discredit her claims of discrimination is itself retaliatory and prohibited by law. Such motivations have influenced Dean Hinshaw, and, they render her decision to nonrenew both arbitrary and illegal.

**V. DEAN HINSHAW'S NONRENEWAL DECISION IS ARBITRARY AND CONTRARY TO PRIMATE CENTER COMMITMENTS.**

Dean Hinshaw's decision on May 9, 1997, after Dr. Bauers was ordered reinstated, to nonrenew Dr. Bauers' appointment for lack of funding, is arbitrary and capricious on its merits. Dean Hinshaw seemingly portrays the decision as dictated exclusively by external sources, and, she presents the decision as essentially non-

volitional. In fact, the nonrenewal decision cannot be differentiated from the decision to implement the failed termination attempt. It cannot be disguised as anything but retaliation for having successfully challenged her earlier termination. The stated rationale is not the real motivating reason for Dr. Bauers' termination. The decision is arbitrary precisely because it does not constitute the real reason actuating the Dean's decision.

The decision itself is volitional because support for at least Dr. Bauers' salary, computing and library needs can be continued by the Primate Center and by the Graduate School. In fact, Dr. Hearn had advised Dr. Bauers that salary funding could not come from the base grant, in any event. In addition, a substantial part of Dr. Bauers' research project, *i.e.*, the captive study at the Vilas Zoo facility, is still being funded by the Primate Center under its NIH base grant.

More importantly, the Primate Center and the University made commitments to Dr. Bauers and to the government of Thailand to support Dr. Bauers' unique and important field research on an endangered primate species. On September 6, 1995, in support of Dr. Bauers' application for a Thai research permit, Dr. Hearn made the following commitment of financial support to both Dr. Bauers and the Thai government:

The cost of Dr. Bauers' project will be supported by the Wisconsin Regional Primate Research Center of the University of Wisconsin. Dr. Bauers is a scientist on the staff of the Center, where she has worked for over 8 years. The Center is funded by the National Institutes of Health for research in primate biology, behavior, reproduction and genetics. The Center will pay the costs



of salary and field expenses in Thailand, including equipment, travel, local travel, maintenance and subsistence as well as equipment insurance costs. We are committed to supporting the project for the next 3 to 5 years subject to the renewal of grants beyond 3 years. We are actively exploring support beyond 3 years from a number of Federal and other sources. The research results and data obtained from the last 2 years of the study will help us to seek and obtain supplemental funds for further years.

We are currently seeking additional funds to support field assistants, students, and the involvement of the Forest Department staff in our project. (Exs. 1 and 9.)

Based upon these commitments and assurances, the National Research Council of Thailand granted Dr. Bauers' research permit. (Ex. 11.) In fact, the Thai government has taken additional steps to preserve and protect threatened habitat areas of the threatened stump-tailed macaque species. On June 17, 1996, the Wildlife Conservation Division of the Royal Forest Department of Thailand wrote to Dr. Bauers as follows:

I am aware of the history of your project, and the issues which you raised. I am pleased to tell you that the Wildlife Conservation Division of the Royal Forest Department is in the process of formally declaring the areas in which you study Ling Saen [stump-tailed macaque] to be non-hunting areas. We have already assigned staff of the Royal Forest Department to be the chief of this area, and to monitor activities.

We are committed to protection of this rare Thai primate species. The Royal Forest Department is pleased to cooperate with your university and these scientific and conservation efforts, and appreciates your commitment to join this effort. Look forward to our continuing collaboration. (Ex. 10.)

The decision to nonrenew Dr. Bauers, and to discontinue the research projects she has undertaken in Thailand, is not just a failure to honor obligations to an employee; it is a failure of the University to honor its obligations and commitments throughout the world. The University works exceedingly hard to develop just such cooperative relationships. The failure to honor such commitments is embarrassing to the University. Concrete decisions and actions are being taken by the government of Thailand, while the University has never even dignified this effort with an explanation of the University's abandonment of its own commitments. While Dean Hinshaw now pronounces a change in program direction, this decision has never even been discussed with the primary researcher involved. In November of 1994, moreover, Dr. Bauers' projects were deemed to be uniquely valuable, and, necessary to lend balance to the Primate Center's research programs. The merits of these research projects did not suddenly change overnight and the decision to suddenly abandon them "for lack of funding and change of program direction," without deliberative involvement by the primary researcher, is itself an arbitrary decision. It is the antithesis of a reasoned and responsible decision.

As described above, the merits of Dr. Bauers' research projects cannot credibly be questioned. Even Dr. Bauers' ability to effectively and cooperatively work with collaborative nations, organizations and researchers, is unquestioned, except by the University of Wisconsin. Dr. Bauers' alleged psychological deficits are certainly not acknowledged by those persons and entities that Dr. Bauers has worked with in Thailand (Exs. 10-12); in Japan (Ex. 63); and in the genetic commercial

industry (Ex. 64.) The University's summary abandonment of Dr. Bauers' research projects is spiteful, petulant and arbitrary.

The University, however, has gone to great lengths to eliminate any *raison d'etre* for Dr. Bauers' meaningful return to the University. The Primate Center, for example, initiated discussions with Procter & Gamble earlier this year, after Dr. Bauers' reinstatement, to sell the Vilas Zoo stump-tailed macaque colony. According to Procter & Gamble, these discussions were initiated by the Director of the Primate Center. (Ex. 65.) The intent of this overture is self evident. This decision again, however, is inconsistent with the recognized value of Dr. Bauers' research project at the Vilas Zoo facility. It is also an absolute abandonment of the substantial investment of time and money by the Primate Center in renovating the Vilas Zoo facility. Decisions regarding Dr. Bauers' research projects are now being made, without her involvement, that have the effect abnegating the substantial commitment of resources already made to these projects. Institutional decisions are being made based only upon a desire to prevent Dr. Bauers' return to the University.

The University is so intent on denying Dr. Bauers the consideration for and the fruits of her sacrifices that she has been denied the right to continue working with the Vilas Zoo stump-tailed macaques, even since her reinstatement. The Vilas Zoo stump-tailed macaque colony is the oldest and largest stable breeding colony of this species, in captivity, anywhere in the world. While the University contemplates selling this colony of macaques, however, Dr. Bauers is denied any access to the

Vilas Zoo facility in order to complete at least some of her research. These are not decisions that are reasoned.

Dean Hinshaw's reliance on Dr. Bauers' non-inclusion in the NIH base grant proposal to justify her decision similarly cannot support a rational nonrenewal decision based upon the circumstances in which Dr. Bauers was obstructed and interfered with in her ability to complete her portion of the base grant proposal. As described above, Dr. Bauers received written materials months after other participants in the base grant proposal and necessary disks even later; Dr. Hearn would not communicate or provide essential information to Dr. Bauers; Dr. Hearn provided inaccurate information about costs, including that salaries could not be included in the base grant proposal; she was provided incorrect budget formatting; and she operated in a crisis environment of threatened termination, amid directives that precluded her from working on the base grant. In spite of these circumstances, Dr. Bauers completed her portion of the base grant proposal, within days of an unknown deadline. Moreover, a supplemental application for funding by NIH could have been, and presumably still can be, submitted with University support for Dr. Bauers. The fact is that conscious decisions are being made to not permit funding for Dr. Bauers' research projects, which decisions are volitional, and, which would not be made if the researcher was not Dr. Bauers.

Conscious decisions are being made to deny any support to Dr. Bauers based upon improper extraneous reasons. As described above, the nonrenewal decision is based upon the same reasoning that underlaid Dean Hinshaw's attempted termination

of Dr. Bauers in July of 1996. Those decisions include the perception that Dr. Bauers is disabled; retaliation for complaining about harassment and discrimination; and an attempt to discredit Dr. Bauers to avoid possible disclosure of embarrassing circumstances for the University, including that the Vilas Zoo animals were improperly being used for invasive research, which Dr. Bauers disclosed to both Dean Hinshaw and Chancellor Ward in May of 1996. (Ex. 51.) These are improper reasons for termination, and, the currently stated reason for termination is pretextual. These circumstances, the merit of Dr. Bauers' research projects, the current availability of funding for at least some of Dr. Bauers' research subjects, and the commitments made by the University to Dr. Bauers and third-party governments, clearly reveal this decision to be arbitrary and capricious and contrary to law.

**VI. THE RESTRICTIONS AND LIMITATIONS PLACED ON DR. BAUERS' CURRENT EMPLOYMENT ARE DISCRIMINATORY, ARBITRARY AND CAPRICIOUS, AND PRECLUDE EFFECTIVE RESEARCH.**

Dean Hinshaw has adhered to her opening shot that Dr. Bauers would not be permitted to return to the Primate Center in any visible or effective capacity. Dean Hinshaw said that this would be the case as soon as Assistant Vice-Chancellor Draine ordered reinstatement. (Exs. 23-34.) She has stuck to her guns.

Dean Hinshaw initially advised Dr. Bauers that she could have no office, and still insists that Dr. Bauers cannot return to her office at the Vilas Zoo facility where all her personal and professional belongings have remained since Dr. Bauers last saw them in May of 1995. Dr. Bauers' office at the Primate Center, moreover, was

preemptorily taken from her just three days prior to the hearing before Betsy Draine. Dean Hinshaw also has refused to permit Dr. Bauers to publicly use the Primate Center library for her research. Dean Hinshaw also has refused to permit Dr. Bauers to do any further research involving the stump-tailed macaque colony at the Vilas Zoo facility, even to obtain limited additional data from this unique colony of monkeys before it may be sold for commercial research. She has continued to block Dr. Bauers' accounts on the Primate Center colony database, which computer has essential data and programs necessary for Dr. Bauers to effectively analyze and write up any of her research. Dean Hinshaw further has refused to permit Dr. Bauers to obtain limited additional blood samples from Primate Center rhesus macaques necessary to complete a genetics DNA fingerprinting project that Therion Corporation had agreed to do in collaboration with Dr. Bauers at no expense. Dean Hinshaw also has refused to permit Dr. Bauers the opportunity to obtain limited additional sleep data from the stump-tailed macaque colony, which observational data is necessary to have statistically sufficient data to complete a very important project undertaken by Dr. Bauers. Dean Hinshaw has even refused to permit Dr. Bauers to obtain hair samples from the stump-tailed macaque colony for another research project that began in conception more than four years ago. The hair samples from the colony, moreover, would be from the oldest and largest stable breeding macaque colony in the world, which includes a 36 year old female monkey that was brought to the Vilas Zoo facility from the wild. Dean Hinshaw objects to further scientific research,

including preserving data from this unique colony, despite virtually no additional cost to the Primate Center, which currently funds the Vilas Zoo facility.

Dean Hinshaw's refusal to permit any acknowledgment of or visibility for Dr. Bauers as a University employee is punitive and retaliatory. The very physical presence of Dr. Bauers is apparently perceived by Dean Hinshaw as a rebuke to her authority to terminate employees. Dean Hinshaw absolutely cannot countenance that Dr. Bauers should be permitted to walk among her colleagues with any semblance of dignity and respect. The fact of the matter, however, is that Dr. Bauers is an Assistant Scientist that has earned the right to respect by her previous accomplishments. Dr. Bauers admittedly has been worn down and made ill in her efforts on behalf of the Primate Center and in her effort to protect her professional investment and career in this very specialized area of research. For this effort, Dean Hinshaw announces on behalf of the University that "we do not welcome you back -- and we deny that you exist."

Dr. Bauers does exist. She is well. She wants to work. She is entitled, moreover, to at least the nine months from notice of nonrenewal in order to salvage as much of her career as she possibly can. Dean Hinshaw, however, won't permit that. She will not dignify Dr. Bauers as a professional.

There is no basis for the draconian restrictions and limitations on Dr. Bauers. The only justification that Dean Hinshaw has ever offered for her actions is that Dr. Bauers would be too "disruptive" an influence to return to a visible position at the Primate Center. It may be that her reinstatement by Assistant Vice-Chancellor Draine

is unsettling to some, but the test of whether she should be permitted to work is not the popular vote of those who tried to fire her. Under that test, any reinstated employee could be denied effective reinstatement simply by the refusal to work with the reinstated employee.

Dr. Bauers wishes merely to return to her office at the Vilas Zoo facility, where she worked with the stump-tailed macaques for many years, and, where her professional and personal belongings remain. There are no other Primate Center employees at the Vilas Zoo facility. It is the most logical, convenient, yet out-of-the-way office imaginable for Dr. Bauers. Disruptive? To whom? Dr. Bauers, it should be recalled, was responsible for the renovation of that facility and the respect that it has achieved professionally and in the public domain. It is not an exaggeration to say that those monkeys have been an integral part of Dr. Bauers' professional life.

Here, the pettiness practically knows no bounds. Dr. Bauers, for example, is prohibited from using the Primate Center library. She has been directed to provide a list of articles that she may need, which will then be copied for her. (Ex. 27.) This is not an effective, practical or efficient means of using a professional library, which is critically essential for a person who has been excluded for nearly two years from professional developments in her field. Disruption in the library?

Dean Hinshaw also refuses to unlock Dr. Bauers' computer accounts at the Primate Center colony database. She has unilaterally decided that Dr. Bauers does not need access to colony data and programs. In fact, however, huge amounts of accumulated data need to be manipulated and worked with as an integral part of Dr.



Bauers' research. The need to extensively work with this data was recognized even by Dr. Hearn, who noted the need for a research assistant. (Ex. 66.)

Only in response to our filing of this grievance, Dean Hinshaw purported to make computing capability available to Dr. Bauers, remotely, through the University Computing Laboratory. Dean Hinshaw went to the trouble to have an account at the Computing Lab set up for Dr. Bauers, in lieu of simply unlocking Dr. Bauers' existing accounts on the colony database. As matters have developed, however, Dr. Bauers has spent tens of hours trying to access and manipulate her data from this remote account, but with extremely limited and mostly unsuccessful dead ends. Many programs used to routinely manipulate colony data are not available through the Computing Lab means. Dr. Bauers, moreover, is proficient with the programs and commands of the colony database programs with which she has worked over the years, not the system now imposed on her. With such a limited term as Dean Hinshaw is willing to give Dr. Bauers, it is indefensible and arbitrary to continue to lock Dr. Bauers out of her own accounts on the colony database and to deny access to necessary and familiar programs. Disruptive?

If Dean Hinshaw would simply permit Dr. Bauers to log in to her account on the colony database, she could utilize that critically necessary resource both from her home and from her computer at the Vilas Zoo facility. As Dean Hinshaw knows, moreover, Dr. Bauers would not be able to access other researchers' accounts on the colony database. She would only be able to access her own accounts and the integrity of all of the data on the colony database would be secure. The inconvenience to the

Primate Center to permit Dr. Bauers to log in to her own accounts is virtually nil. The cost, inconvenience and disruption to Dr. Bauers' research without such access is incalculable.

Completing data acquisition for as much of Dr. Bauers' research as can be salvaged is an absolute priority. In this respect, completing the blood samples from a limited number of Primate Center animals for evaluation by Therion Corporation for Dr. Bauers' genetics project is of highest priority. This data was supposed to have been collected in May of 1996. It did not get properly completed at that time and Dr. Bauers has been fighting vainly ever since to finish the blood sampling. This is an important and valuable study from which a good paper can be obtained.

Dean Hinshaw initially flat-out refused to permit the remainder of the sampling. (Ex. 25.) In a memo to Dr. Bauers dated July 24, 1997, she advised that Therion Corporation had all of the blood samples that it needed, and that it lacked only Dr. Bauers' code. One day later, however, Dean Hinshaw received a letter from Therion Corporation on July 25, 1997, advising that it did need some additional blood samples, and that it did not need Dr. Bauers' code. (Ex. 64.) Therion further indicated that it needed the remaining blood samples for evaluation by August 25, 1997. (Ex. 64). Dean Hinshaw did not advise Dr. Bauers of this letter. She continued to argue against the need for these blood samples, until finally, Dean Hinshaw admitted that she now intended to permit the blood samples, but that the sampling could not be done with Dr. Bauers' involvement or oversight. Dean Hinshaw cavalierly announced that she will have the blood samples obtained, but that

she needs to know from Dr. Bauers what animals still need to be sampled and she needs for Dr. Bauers to reveal her coding system. For her part, Dr. Bauers has requested that she be permitted to directly oversee the blood sampling, or at least that her primary assistant, Suzann Moertl, or Nichelle Cobb of the Primate Center, be permitted to supervise the sampling. Dean Hinshaw refuses to permit Dr. Bauers to have any direct involvement in the sampling and she insists upon receiving Dr. Bauers' code. Disruptive? In what way? Why not permit Ms. Moertl or Ms. Cobb to oversee the sampling? As for providing Dr. Bauers' coding system to Dean Hinshaw, it is not unusual for researchers to be reluctant to provide valuable coding systems to other researchers who may preempt data and results. There is admittedly a lack of trust by Dr. Bauers, which in the circumstances, seems well justified. Everybody now agrees, however, that the remaining blood samples should be taken as quickly as possible. Dean Hinshaw's insistence that Dr. Bauers have no involvement in this sampling, necessary for her own research, is again arbitrary, petty and obstructionist.

Dean Hinshaw also flat-out refuses to permit a simple process of obtaining hair samples from the stump-tailed macaque colony. Dean Hinshaw reasons that Dr. Bauers is unlikely to be able to immediately utilize the hair samples for evaluation, given the shortness of her remaining time with the Primate Center. The value of the preserved hair samples, however, for evaluation even at some future date, cannot be underestimated. As noted, there is an aged 36 year old female stump-tailed macaque in this colony that originates from the wild. The genetic information from this animal

and from the entire colony of a stable long-time breeding group of macaques is important and likely to be only fleetingly available. The scientific potential from these hair samples will have a long shelf life, and, even if Dr. Bauers cannot immediately have the hair samples evaluated, collection of the data is important at this time. It is positively unscientific and irresponsible to not avail this opportunity on the ostensible basis that Dr. Bauers has only a short expected life span with the Primate Center. The cost and inconvenience and degree of difficulty to the University to obtain these hair samples, moreover, is again virtually nothing. Disruptive? To whom? The hair samples can be obtained under Dr. Bauers' supervision by the animal caretaker staff at the Vilas Zoo facility. As Suzann Moertl states in her statement, Dr. Bauers has been the antithesis of disruptive in her years of service to the Primate Center. (Ex. 69.)

Dean Hinshaw also has categorically refused to permit Dr. Bauers to make limited additional observations of the Vilas Zoo stump-tailed macaques to complete the data for a very important sleep study. This research project too can lead to a good publication, but limited additional data is necessary for statistical validity. Dean Hinshaw has refused to permit this additional data collection ostensibly on the grounds that all necessary data had essentially been collected. Dr. Bauers, who is most familiar with the project, and knows it intimately, is the expert on this project, and, she states that only approximately 3 months of additional data must still be obtained. According to Dean Hinshaw, however, Suzann Moertl allegedly told Dr. Kemnitz that additional data was unnecessary. Attorney Bolton immediately contacted Ms. Moertl

to verify her claimed report to Dr. Kemnitz. She has denied the statements attributed to her by Dean Hinshaw and she immediately provided a written note to this effect to Dr. Kemnitz. Still, Dean Hinshaw has refused to permit the additional data collection and all the time and effort that has already gone into this project stands on the brink of being forfeited.

The cost and inconvenience to the Primate Center and to the University to permit the additional data collection would be practically nothing. The data collection merely involves observing and recording data involving the stump-tailed macaque colony in their nighttime resting configurations. It is not invasive. It merely involves observation. Dr. Bauers is prepared to personally make the observations. She is also prepared to personally pay, if necessary, Suzann Moertl, her assistant, to assist in the data collection. (Ms. Moertl's position too has been recently nonrenewed for lack of funding.) The data collection merely requires access by Dr. Bauers to the Vilas Zoo facility, where she has maintained an office for many years. The refusal to permit completion of data acquisition for this study, again, is arbitrary and vindictive -- and apparently an act of hubris. Dean Hinshaw operates on the premise that Dr. Bauers does not know her own research projects and that she is not a competent scientist. No other Research Scientist is known to operate under such intellectual constraints and limitations. Dr. Bauers' record of accomplishment belies this treatment and we direct attention to her submissions for the 1996 base grant proposal and her NSF grant proposal as evidence of her scientific legitimacy. (Exs. 2-4.)

Finally, Dr. Bauers objected to the rigorous supervisory role that Dean Hinshaw has assumed. We doubt that Dean Hinshaw supervises any research scientist in this manner, and, we have questioned her objectivity. (Ex. 26.) Dean Hinshaw has demonstrated for the last 18 months a commitment to force Dr. Bauers to leave the University. She fired Dr. Bauers. She nonrenewed Dr. Bauers after reinstatement. She has directed Dr. Bauers to have no public visibility as a University employee. Her presumption to then directly supervise Dr. Bauers is highly irregular.

Dean Hinshaw responded to the grievance of her supervisory role by purporting to appoint Dr. Chris Coe as Dr. Bauers' direct supervisor. Dr. Bauers has met with and talked at length with Dr. Coe, who has expressly stated to Dr. Bauers that he has no decision-making authority vis-a-vis Dr. Bauers, even as to issues relating to her research needs and access to data. While Dr. Coe is willing to confer with Dr. Bauers, he disclaims any authority to make any decisions, which he says must be made by Dean Hinshaw. For example, Dr. Coe initially agreed with Dr. Bauers that obtaining the additional blood samples was necessary, appropriate and a high priority. He also seemed to concur that Dr. Bauers should be directly involved in the blood sampling. Subsequently, however, Dr. Coe has said that arrangements regarding the blood sampling must be made by Dr. Bauers after meeting with Dean Hinshaw. The circle closes. The effective supervisor is still Dean Hinshaw. This is not a desirable or productive situation. It is disrespectful even of Dr. Coe's

judgment. It is a poor use of the Dean's time in micro-managing Dr. Bauers' research. It precludes Dr. Bauers from meaningful activity.

Dean Hinshaw's insistence that Dr. Bauers have no visible identity with the University, even pending the date of her nonrenewal, is ultimately petty and unsupported by any legitimate justification. The only response to these restrictions and limitations by Dean Hinshaw has been to claim that Dr. Bauers is a disruptive influence at the Primate Center. This explanation does not even have any validity insofar as Dr. Bauers merely requests office space and access to the Vilas Zoo facility. It also has no basis in objective fact. As of the beginning of 1995, Dr. Bauers' contributions to the Primate Center and the Vilas Zoo facility were recognized as invaluable. No complaint was made that Dr. Bauers was disruptive and should be closeted. In fact, Dr. Bauers has spent no time at the Primate Center since June of 1995. She left for Thailand in March of that year; returned shortly thereafter when her father died; and, returned to Thailand in about May of 1995 and did not return until August of 1996. Since then, she has been first terminated, and, then constructively and literally denied any access to the Primate Center. There is not a history or basis in fact for claiming that Dr. Bauers is disruptive, or that she brings the operations of the Primate Center to a screeching halt by her presence. Professional colleagues should not object merely to her presence, even with different agendas.

The constraints and limitations imposed on Dr. Bauers, even pending nonrenewal, do not permit a meaningful opportunity for Dr. Bauers to accomplish

anything. She is denied the intellectual control of her own research projects. She is denied meaningful access to her own data and the necessary computing means and programs to manipulate and evaluate her data. She is denied any access to professional colleagues. She is required to engage in self-abnegation. Even for a research scientist who is being nonrenewed for lack of funding, these restrictions are arbitrary and capricious and contrary to the underlying reason for giving such employees 9 months to salvage as much of their work and career as possible.

## **VII. CONCLUSION.**

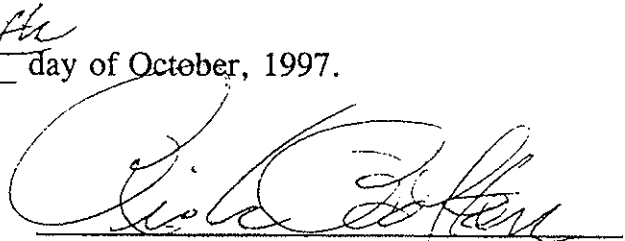
Dr. Bauers again respectfully requests the Committee to carefully consider the facts and the motivations for both her nonrenewal and the work restrictions imposed upon her. Nonrenewal, purportedly for lack of funding, is a volitional decision based upon the fundamental principle that Dr. Bauers personally is not wanted at the Primate Center. She can be fired for cause, but that attempt has already failed. Dean Hinshaw's subsequent efforts to implement termination for the same reasons previously rejected by Assistant Vice-Chancellor Draine, is arbitrary and contrary to law. The merit of Dr. Bauers' research projects is well-recognized, and, commitments by the Primate Center to support those projects have been made both to Dr. Bauers and to the nation of Thailand. The actuating reason for nonrenewal, therefore, is implicitly the same failed reasons underlying Dr. Bauers' prior attempted termination. The stated reason of nonfunding is a pretext. Cause to terminate Dr. Bauers does not exist. The only reason Dr. Bauers is being terminated is based upon



arbitrary and illegal considerations, including discrimination on the basis of disability and retaliation for complaints of sexual harassment. The same holds true for the draconian limitations placed upon Dr. Bauers' employment pending her termination.

Dr. Bauers' investment in her career at the Primate Center is very specialized. It is not fungible. The University threatens to take away everything for which Dr. Bauers has worked. She does not have tenure at the University, which we acknowledge. She does have rights, however, and they should not be casually denied, including for unstated reasons as to which Dr. Bauers is denied an opportunity to respond or defend. She may be a messenger of things that the University would like to leave alone, but the messenger still has rights. First, and foremost, however, Dr. Bauers has been and is a truly dedicated scientist who requests only a fair opportunity to pursue the mission of this institution of higher education.

Respectfully submitted this 17<sup>th</sup> day of October, 1997.



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