

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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IN RE:
3 ZYPREXA LITIGATION,

4 MDL 04 1596
5 United States Courthouse
6 Brooklyn, New York

7 -----x
8 January 17, 2007
11:00 a.m.

TRANSCRIPT OF HEARING

9 Before: HON. JACK B. WEINSTEIN, District Judge

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11 Proceedings recorded by mechanical stenography, transcript
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1 MR. HAYES: Right.

2 THE COURT: I think it's reasonable to read the
3 letter plus the attachment as indicating December 20th as the
4 date for supplying the exhibits.

5 MR. McKAY: Your Honor --

6 THE COURT: Do you want to ask anything?

7 MR. McKAY: No, your Honor. I think that it's
8 really argumentative. It's the date of the deposition and we
9 agree with that.

10 THE COURT: Then I'm prepared to release the
11 witness.

12 MR. HAYES: Yes.

13 THE COURT: Have a good trip back to Alaska, sir?

14 THE WITNESS: Thank you, your Honor.

15 (Witness excused.)

16 THE COURT: Next witness.

17 MR. LEHNER: At this time we would call Vera Sharav
18 who is still in the courtroom, I believe.

19 VERA SHARAV, having been called as a
20 witness, first being duly sworn, was examined and
21 testified as follows:

22 THE CLERK: Could you please spell your name for the
23 court reporter.

24 THE WITNESS: Vera Sharav, V-E-R-A S-H-A-R-A-V.

25 DIRECT EXAMINATION

1 BY MR. LEHNER:

2 Q Good afternoon, Mr. Sharav.

3 My name is George Lehner and I represent Lilly in
4 this proceeding.

5 Can you tell us when you first met Mr. Gottstein,
6 under what circumstances?

7 A That's hard to tell because I don't really remember.
8 Face-to-face when did I meet him?

9 Q When did you first become acquainted with him?

10 A I became acquainted with his work with Psych Rights Law
11 Project.

12 Q When was that?

13 A That might have been two years ago. I don't have an
14 exact.

15 Q 20?

16 A 2 years ago perhaps.

17 Q And over the last two years, what kind of contact have
18 you had with Mr. Gottstein?

19 A All kinds of contact. We have similar goals in certain
20 ways and we sometimes collaborate and I spoke, gave a
21 presentation at a conference that he held on November 17th for
22 the National Association For Rights Advocacy. I forgot the
23 last name but it's NAPA. It's an organization for psychiatric
24 patients' rights.

25 Q So it's fair to say over the last two years you've had

1 regular contact with Mr. Gottstein, is that correct?

2 A As I do with very many advocates.

3 Q And the conference that you mentioned on November 17,
4 that was, you were with Mr. Gottstein at that particular
5 conference?

6 A He organized it. I was invited as a speaker and went to
7 Baltimore and presented to them, yes.

8 Q At that conference did you and Mr. Gottstein have an
9 occasion to talk about Zyprexa and the litigation that was
10 ongoing at the time?

11 A No.

12 Q And if you let me finish my question, it will make it a
13 lot easier for the court reporter and I'll try not to
14 interrupt your answer as well.

15 My question was, and I think if I understood, your
16 answer was that you did not have any occasion to discuss
17 Zyprexa with Mr. Gottstein when you were with him on
18 November 17?

19 A I was actually together with my husband so I didn't have
20 these private conversations. It was a conference as I said.

21 Q Let me ask you, and you've been in the courtroom and
22 you've heard testimony about the documents that Mr. Gottstein
23 received from Dr. Egilman.

24 When did you first receive a copy of the documents
25 that we've been talking about here today, those documents that

1 Dr. Egilman produced to Mr. Gottstein?

2 A I believe it was on the 18th. I have the document with
3 me. The stamp was the 14th. In other words, it left Alaska
4 on the 14th. I didn't get it before the 18th. It was a
5 weekend.

6 Q They were mailed to you?

7 A Yes.

8 Q You said you had the documents with you?

9 A Yes.

10 Q Is that a DVD version?

11 A Yes.

12 Q It's the only copy you were provided?

13 A What I have is what I was provided.

14 Q Had you been alerted that these documents were going to
15 be sent to you before the time they actually arrived when they
16 arrived at your home?

17 A I had received word that the documents had been posted
18 and I was given the website and I tried to open it and I
19 couldn't. So I sent Jim an E-mail and said I can't open it.

20 Q Let take that apart a little bit.

21 You had received word. Who had you received word
22 from?

23 A I believe it was -- I think it was Bob Whitiker. I'm not
24 sure but this was -- you have to understand that when those
25 documents evidently went up, I was in Washington at an FDA

1 hearing where I had to conduct a press briefing about
2 antidepressants and suicidality so I was quite out of it and
3 came back on 14th at which time I had a barrage of E-mails
4 from different people about the Zyprexa documents being up on
5 the web.

6 Q So you came back from a conference in Washington or a
7 meeting in Washington?

8 A A hearing, an FDA advisory hearing.

9 Q On the 14th?

10 A Yes. I was there the 12th and 13th.

11 Q Which was a Thursday?

12 A I guess.

13 Q At that point you had a barrage of E-mails alerting you
14 that the documents that had been provided by Dr. Egilman to
15 Mr. Gottstein were on a website?

16 A That's not exactly how it was put, but what was said was
17 that the Zyprexa documents were up on the website, yes.

18 Q And do you recall from whom you received --

19 A As I said, there were many. There is a network, people,
20 and you get actually lots of duplicates.

21 Q I'm going to ask you again, please don't interrupt me and
22 I won't interrupt you.

23 My question was: Do you recall some of the people
24 who sent you that E-mail? I understand it was a barrage but
25 from whom did you receive the E-mail?

1 A Actually from far and wide. There are advocate in the
2 U.K., Australia, Canada. Word travels on the internet and
3 that is in fact the big connecting factor for people who don't
4 have great many resources and who don't have many lawyers.
5 The internet is the way that there is a constant interchange
6 and that is how it happens.

7 Q Do you still have your computer on which you received the
8 barrage of E-mails?

9 A Probably some have probably been deleted but some I still
10 have.

11 Q Do you still maintain the same computer on which they
12 were received?

13 A Yes.

14 Q Did you have any conversations with anybody after you
15 received these E-mails and before you actually received the
16 physical package containing the disc containing the documents?

17 A No, I just --

18 Q Did you have any conversation with anybody about what
19 these documents may be that were in the mail on their way to
20 you between the 14th and the time they arrived at your home?

21 A I think you have to understand that many of us were quite
22 aware that the documents had first been obtained in what is
23 now referred to as the Zyprexa 1 trial, the one in which there
24 were 8,000 plaintiffs and Lilly paid some \$690 million which
25 we regard as money to keep the documents out of the public

1 domain.

2 And so there was guessing as to what was in them.

3 We also know from documents from the FDA and from pre-clinical

4 -- before the drug was approved as to some of the problems and

5 the fact that diabetes is now an epidemic --

6 Q What I want to really focus on are the conversations that

7 you had about how you learned what was in these documents.

8 You said you became aware even before the time the documents

9 were on their way to you what was in those documents.

10 How did you become aware of that?

11 A As I just explained, the adverse events that have been

12 observed in clinical practice --

13 Q So --

14 A I would also like not to be interrupted.

15 Q The first time I did it and I apologize.

16 A The fact that patients are getting diabetes,

17 cardiovascular dysfunction, hyperglycemia, that people are

18 dying, this is what is really the issue here. People are

19 dying from this drug. So getting documents that validate the

20 clinical evidence is very important to us.

21 Q Let me focus a little bit more on what you did when you

22 actually received the documents than on the weekend after you

23 got back.

24 The 18th was on a Monday?

25 A It could not have been before Monday and I get mail in

1 the afternoon.

2 Q The documents arrived in the mail, what did you do at
3 that point with this disc? It's a computer disc?

4 A I had it. I didn't do anything with it but I got some
5 calls.

6 Q Did you load it up on your own computer?

7 A Yes.

8 Q And you tried to open it?

9 A Yes.

10 Q And were you able to open it?

11 A Yes, I was.

12 Q Did you print up any of those documents?

13 A Yes.

14 Q And did you then distribute the documents that you
15 printed to anybody or give them to anybody?

16 A I read the documents or some of them.

17 Q Did you give them to anybody else?

18 A I had calls from a couple of press people and two came,
19 borrowed the disks, made copies and returned them. I didn't
20 do it.

21 Q Who were these people?

22 A Wall Street Journal, Bloomberg News.

23 Q That was done on the afternoon of the 19th or the 18th?

24 A The 18th I think -- 18th and 19th, morning.

25 Q Were you aware when you received these documents that

1 they had been the subject of what has been described here and
2 you've heard the testimony of a protective order that had been
3 entered into this case?

4 A I don't know about a protective order about the case.
5 What I was given to understand is that the documents were
6 obtained legally, that certain legal procedures were
7 undertaken and that's it and I accepted that. And of course
8 by the time I got them, they had been in the New York Times so
9 I figured that is the public domain.

10 Q Who had given you the understanding that they had been
11 obtained legally? Who told you that they had been obtained
12 legally? You said you had been given an understanding?

13 A That would be Jim Gottstein.

14 Q So you spoke to Jim Gottstein over the weekend?

15 A I spoke to him when I couldn't open the link. Remember.
16 I couldn't, in other words, download it myself so I said can
17 you send me it.

18 Q So you called Mr. Gottstein, said I'm trying to download
19 these documents from a link I have, I'm not able for open them
20 and you had a conversation with Mr. Gottstein at that time?

21 A Yes.

22 Q During that conversation you were led to believe that
23 these documents had been obtained legally?

24 A Yes.

25 Q And that understanding was provided to you by Mr.

1 Gottstein, is that correct?

2 A It was validated in my mind when they appeared on Sunday
3 in the New York Times front page, then again on Monday on the
4 front page. Then of course the editorial calling for
5 congressional hearings about the content of the documents and
6 that is really my interest. My interest is the content
7 because the documents document the fact that Eli Lilly knew
8 that the -- that Zyprexa causes diabetes. They knew it from a
9 group of doctors that they hired who told them you have to
10 come clean. That was in 2000. And instead of warning doctors
11 who are widely prescribing the drug, Eli Lilly set about in an
12 aggressive marketing campaign to primary doctors. Little
13 children are being given this drug. Little children are being
14 exposed to horrific diseases that end their lives shorter.

15 Now, I consider that a major crime and to continue
16 to conceal these facts from the public is I think really not
17 in the public interest. This is a safety issue.

18 MR. LEHNER: I move to strike as being nonresponsive
19 to my last question and I would like to ask the court reporter
20 if he is able to -- I think I remember my last question. I'll
21 repeat my last question. Nonetheless, I'll make a motion to
22 strike the last answer.

23 THE COURT: Denied.

24 Q My question was was it Mr. Gottstein who conveyed to you
25 the impression that you formed in your mind that these

1 documents had been obtained legally?

2 A Yes.

3 Q So the answer to that is yes?

4 A Yes.

5 Q Thank you very much.

6 Now, when he conveyed to you that the documents had
7 been obtained legally, did he tell you that they had been in
8 his view subject to a protective order at one point in time?

9 A By this time I don't know any more about protective. The
10 next thing that came were an E-mail like I think from one of
11 your lawyers.

12 Q So at some point you learned that these documents were
13 subject to a protective order and were in fact considered by
14 Eli Lilly to be confidential documents, is that correct?

15 A I realized that there was contention around it. I did
16 not accept necessarily what Eli Lilly's interpretation is.

17 Q I'm not asking you that.

18 You understood that there was at least a belief by
19 Eli Lilly and perhaps others that these documents were still
20 subject to the protection of the Court under the protective
21 order?

22 A No, I don't really -- I have to admit, protective order
23 pro se does not mean the same thing to me as it does to you.

24 Q You understand that they were designed to be kept
25 confidential?

1 A Except that they were open in the New York Times. That
2 signalled that they were open to the public.

3 Q Were there any documents that were actually reprinted in
4 the New York Times or was it actually a story?

5 A There were quotes from documents.

6 Q No whole pages or whole documents in the New York Times?

7 A No, but there were quotes from extensive documents.

8 Q Did you ever consult or consider consulting a lawyer to
9 determine the fact of whether you received this does put you
10 in any type of legal jeopardy?

11 MR. MILSTEIN: That would be attorney/client
12 privilege.

13 MR. LEHNER: I'm not asking whether she consulted a
14 lawyer.

15 THE COURT: Address your remarks to me. She is just
16 being asked about whether she consulted. That is not
17 privilege.

18 A I did not think I had any reason to.

19 Q Did you ever consider whether or not there was any
20 opportunity to contact Eli Lilly or to contact Mr. Gottstein
21 or any of the attorneys that you had become aware were
22 involved in this controversy and determine whether or not
23 there was a procedure that had been set up to determine
24 whether or not these documents should be kept confidential?

25 A I'm afraid that after they appeared in the New York

1 Times, I did not think that it was my obligation to go hunting
2 for what Eli Lilly considered or didn't consider. That really
3 is not my purview.

4 Q Now, I'll ask that this be marked as Petitioner's
5 number 7, please -- 8.

6 THE COURT: You are offering it in evidence?

7 MR. LEHNER: I am, your Honor.

8 THE COURT: Admitted.

9 (So marked in evidence Petitioner's Exhibit 8.)

10 Q Have you had an opportunity to review what has been
11 marked as Petitioner's 8?

12 A Yes.

13 Q And if I'm correct, this is an E-mail that was sent from
14 Mr. Jim Gottstein to Veracare. Is that your E-mail address?

15 A Yes.

16 Q And it was sent on Tuesday December 19th?

17 A Yes.

18 Q And it's copied to Mr. Gottstein and Mr. McKay and Mr.
19 Woodin, somebody at the Lanier law firm, an address
20 emj@lanierlawfirm, an address rdm at the Lanier law firm,
21 gentleman at the law firm of Elaine Powell?

22 A These weren't familiar to me, of course.

23 Q The only name that is familiar on there I take it is Mr.
24 Gottstein?

25 A Yes.

1 Q He sent you this E-mail on December 19 and if you would
2 read the first two lines of the E-mail.

3 A "I mailed you two DVDs with some documents on them
4 pertaining to Zyprexa and have been orally ordered to have
5 them returned too."

6 Q Now you indicated earlier on that you received one DVD.
7 Did you receive one or in fact receive two?

8 A 2.

9 Q So you received two DVDs?

10 A Yes.

11 Q Have you brought both of these DVDs with you here today?

12 A Yes.

13 Q You brought both of them here with you today?

14 A Yes.

15 Q My questions earlier on about opening the documents
16 loading them on your computer, my understanding was we were
17 talking about one DVD but did you in fact open up both DVDs
18 and copy both DVDs onto your computer?

19 A I did one. I assumed they were duplicates.

20 Q Did you look at the second DVD to determine if it was a
21 duplicate?

22 A No, I didn't have time. This is very laborious.

23 Q Was there something in the package to indicate to you
24 that these were duplicates of one DVD?

25 Was there anything in the packet itself that

1 suggested that these were duplicates of the same DVD?

2 A No, I had asked for two copies.

3 Q Who did you ask for two copies?

4 A From Jim.

5 Q So you had a communication with Jim?

6 A That was the same communication that I referred to
7 earlier. When I couldn't open it and download it myself, I
8 indicated that to him.

9 Q And what was your interest in having two copies?

10 A I wanted to take one to the New York State Attorney
11 General.

12 Q Now, this E-mail goes on and gives the address to whom
13 Mr. Gottstein has been asked to send these DVDs back. And it
14 gives a link to the proposed order in the case.

15 Did you open up that link and read the order?

16 A No, I didn't, actually because I noticed that he said he
17 was orally ordered and I didn't think that orally ordered was
18 a Court order and I wanted to hear that there would be a
19 hearing or some sort of thing in court and then I would of
20 course follow that. But when it says I've been orally
21 ordered, that sounded peculiar to me. It didn't sound like an
22 order from the Court.

23 MR. CHABASINSKI: Your Honor, I cannot hear the
24 witness at all.

25 THE WITNESS: Can you hear now?

1 MR. CHABASINSKI: Yes, thank you.

2 Q Would you go on and read the rest of the E-mail after the
3 address. The address -- we'll stipulate the document says to
4 Mr. Peter Woodin. Then it gives a website, but if you would
5 read that paragraph that begins starting with a copy.

6 A "A copy of the proposed written order is posted at Psych
7 Rights -- that is the organization and so forth -- with a
8 comment about certain language which I strenuously disagree
9 with and we are trying to get eliminated from the signed
10 order.

11 Q Would you read the next paragraph?

12 A "Regardless, please return the DVD, hard copies and other
13 copies to Special Master Woodin immediately. If you have not
14 yet received it, please return it to Special Master Woodin
15 when you do receive it. In addition, please insure that no
16 copies exist on your computer or any other computer equipment
17 or in any other format, websites or FTP sites or otherwise on
18 the internet. There is a question in my mind that the Court
19 actually has jurisdiction over me to issue the order. I
20 believe I came into the documents completely legally but the
21 consequences to me if I am wrong about the jurisdiction issue
22 are severe so I would very much appreciate your compliance
23 with this request."

24 Q I take it that you did not return the DVD to Mr.
25 Gottstein or to Special Master Woodin, is that correct?

1 A That's correct.

2 Q And you did not return the hard copies or any copies of
3 the hard copies that you made to Special Master Woodin, is
4 that correct?

5 A That's correct.

6 Q And I take it that you did not check your computer to
7 make sure that no copies of the documents once you had opened
8 them on your computer existed, is that correct?

9 A That's correct.

10 Q Why not?

11 A In the meantime, I also had word that there would be a
12 hearing.

13 Q When did you first get word that there would be a
14 hearing?

15 A I don't know the exact date but this was very much in
16 tandem because the first thing I heard, I think the first
17 communication was from your cocounsel --

18 What's his name?

19 It's not listed here. Fahey.

20 So that there were cross-signals going on and I did
21 see that there would be a Court hearing and I decided to wait
22 for that.

23 Q Was there anything in the notice that you received about
24 the court hearing that suggested that the order that had been
25 given here to return these documents was somehow being

1 withdrawn?

2 A As I say, this is coming to me not from the Court, it's
3 coming from James saying that he was ordered orally and
4 telling it to me. That is not direct instruction from the
5 Court.

6 Q But the same time as you testified, you didn't feel it
7 was necessary to even push on the link here where you could
8 read the order yourself, that was your testimony?

9 A It's --

10 Q That was your testimony, isn't that correct?

11 A Jim posted many documents during this time. I did not go
12 to each one because I was busy also with other things. The
13 Zyprexa thing, as important as it is, was not the only thing
14 that I had to deal with during this period.

15 So no, I did not go and download each of the
16 documents. They were coming fast and furious.

17 Q Let's go back and look at the website address to see
18 whether that might have heightened your concern about what
19 this particular document was.

20 That website address reads
21 [http://PsychRights.org/states/Alaska/caseXX/Eli Lilly/proposed](http://PsychRights.org/states/Alaska/caseXX/Eli_Lilly/proposed)
22 order.

23 Is that correct?

24 A Proposed order.

25 Q And you read that?

1 A Proposed order. It's not a definite thing. I did not
2 take that as a definite. It says proposed order.

3 Q So you reread that in this E-mail and decided I don't
4 need to open this?

5 A That's right.

6 Q Do you recall receiving the order dated December 29 from
7 this Court which was I think transmitted to you by Mr. Fahey
8 among others?

9 A I do and I took that one seriously.

10 Q Did you return the documents as a result of receiving
11 that particular order?

12 A We weren't told to return them, the Court did not order
13 us to return them.

14 Q But did the Court order you to do that at that time, do
15 you recall?

16 A I don't know.

17 Q You took that order seriously enough so that you posted
18 it on your website, is that correct?

19 A Yes.

20 MR. MILSTEIN: Can you show the witness the order.

21 MR. LEHNER: Just so it's in the record, I would
22 like to mark it.

23 THE COURT: Petitioner's 9, order of Judge Cogan
24 filed December 29th.

25 Do you have a copy, ma'am?

1 THE WITNESS: Not yet.

2 MR. LEHNER: Just for housekeeping, I think we did
3 move the admission of Petitioner's 8.

4 MR. MILSTEIN: I have no objection to the admission
5 of the order. I object to his characterization. He
6 characterized the order as saying it required the return of
7 the documents. The order requires no such thing.

8 THE COURT: That is true but for the sake of the
9 clarity of the record, I'll introduce it as Petitioner's 9
10 even though obviously it's a part of the record.

11 (So marked in evidence Petitioner's Exhibit 9.)

12 Q You have that order in front of you?

13 A Yes, I do.

14 Q Is that the order that you posted on your website?

15 A That may be. I have a blogger.

16 MR. LEHNER: Can we mark as the next exhibit
17 Petitioner's 10.

18 THE COURT: Mark it in evidence Petitioner's 10.

19 (So marked in evidence Petitioner's Exhibit 10.)

20 THE COURT: Should you want a recess at any time,
21 just ask for it.

22 THE WITNESS: Thank you.

23 MR. LEHNER: May I approach the witness for a
24 minute?

25 THE COURT: Yes.

1 MR. LEHNER: Can I make sure they are in the right
2 order. They might have gotten -- yes, that is fine.

3 (Pause.)

4 MR. MILSTEIN: Do you have a question?

5 Q Yes.

6 Have you had a chance to read that?

7 A I'm familiar with this, this is on our blogger.

8 MR. MILSTEIN: Just wait for the question.

9 MR. LEHNER: Your Honor, if I can hand her
10 Exhibit 8.

11 Q You said this is a blog that you maintained?

12 A Actually, it's maintained by a scientist in the U.K.

13 Q This is a blog to which you post information, is that
14 correct?

15 A Yes.

16 Q And the particular information that is included on this
17 particular document that appeared on the website was posted by
18 you, is that correct?

19 A Not physically. It's posted by the scientist.

20 Q It's your content that you provided to somebody who
21 puts --

22 A Except for the first line, your esteemed author. I don't
23 do that.

24 Q Other than that, these are your words that you wrote?

25 A Yes.

1 Q And had somebody put on the website, is that correct?

2 A Yes.

3 Q And the -- I'll turn your attention to the paragraph that
4 begins: "See the court injunction several of us received
5 below."

6 Do you see that particular paragraph?

7 A Yes.

8 Q The -- why don't you just read that paragraph through to
9 the end, please.

10 A "See the court injunction several of us received below
11 but the internet is an uncontrolled information highway. You
12 never know where and when the court's suppressed documents
13 might surface. The documents appear to be downloadable at --
14 and it provides two websites that I'm unfamiliar with. Do you
15 want me to read them?

16 Q No, that is all right. We'll note there are two websites
17 here in the documents but these are website addresses that you
18 wrote put in this document that directs people to go to the
19 documents, is that correct?

20 A If they chose, yes.

21 Q And you were aware, however, that the order that you put
22 on the -- and posted in this blog and had copied in there
23 suggested that those -- suggested or not or ordered that the
24 temporary mandatory injunction requires the removal of any
25 such documents posted at the website?

1 A We did not have them at our website.

2 Q You read the order, is that correct?

3 A Yes.

4 Q And you understood that the order itself required that
5 the mandatory injunction required the removal of any such
6 documents posted at any website?

7 A Yes, but I have no control over what people put on their
8 websites.

9 Q But you did feel that you had not only the opportunity
10 but I guess you felt you had the obligation to direct people
11 the toward websites where you believed at least they could
12 find these documents which the Court had ordered to be removed
13 pursuant to the order of December 29th, is that correct?

14 A That's correct.

15 Q Let me just ask one final question.

16 You mentioned that the group that you are associated
17 with the Alliance For Human Resource?

18 A Protection.

19 MR. MILSTEIN: Research.

20 A Research, Alliance For Human Research Protection.

21 Q That is a group?

22 A I am the president and founder.

23 Q Is that group affiliated with MindFreedom in any way?

24 A No.

25 Q Is it affiliated with NAPA in any way?

1 A No, we are strictly independent in every way, no funding
2 from industry.

3 MR. LEHNER: One more document to make sure that the
4 record is complete here.

5 THE COURT: Petitioner's 11.

6 (Pause.)

7 Q Have you had an opportunity to review what has been
8 marked as Petitioner's 11?

9 A Yes, I have.

10 MR. LEHNER: We move that into evidence, your Honor.

11 THE COURT: Yes.

12 (So marked in evidence Petitioner's Exhibit 11.)

13 Q Why don't you just tell us the dates on which this E-mail
14 was sent and received?

15 A It was sent on Sunday December 17th, the day that the
16 first article on the front page of the New York Times appeared
17 and I wrote a note to Jim: "Hope I get the copies." I still
18 hadn't had the copies. "I intend to call New York State

19 Attorney General Andrew Cuomo tomorrow to deliver, then will

20 send to other attorneys general." I think that is

21 ground-breaking. Lilly is finally haven't a PT disaster. I'd
22 like to coordinate with you when you write up the summary of
23 threats, et cetera. Forward so that I can incorporate into
24 infomail and then P.S. your portrait is a third of the page."

25 Q After you talked to Mr. Gottstein, you had asked him to

1 send you the DVDs because you had not been able to download
2 them from the link, is that correct?

3 A Yes.

4 Q And you signalled to him your intention then that it was
5 your desire to disseminate and spread this information as
6 broadly as you could at this point?

7 A In particular to the New York State Attorney General
8 after I read in the Times what was in the content of the
9 documents.

10 Q Before you read The Times, other than what you testified
11 to earlier about your suppositions of what might be in these
12 documents, did you have any other information that led you
13 specifically to believe -- that led you to a specific belief
14 about what was in those documents?

15 A As I explained, there have been --

16 Q Let me strike that question and ask more particularly.

17 Did you and Mr. Gottstein when you talked to him
18 that day discuss the content of the documents?

19 A No.

20 MR. LEHNER: I have no further questions at this
21 time.

22 MR. HAYES: Nothing, judge.

23 MR. McKAY: Nothing.

24 CROSS-EXAMINATION

25 BY MR. MILSTEIN:

1 Q Ms. Sharav, can you tell the Court what the Alliance For
2 Human Research Protection is?

3 A We're a group of professionals and lay people and our
4 mission is to protect the rights of human subjects in medical
5 research and to inform about concealed adverse drug events.

6 Q And if you can tell the Court something about your
7 background. Have you been asked the to testify or serve on
8 various government committees?

9 A Yes, I have. I've served, I have testified at various
10 government agencies including the FDA, the Institute of
11 Medicine, I presented at the National Academy of Science. I
12 was on the Children's Committee of the -- what was it called
13 then? The National Bioethics Advisory Committee and I've
14 presented before various bodies before the military, Columbia
15 University, Cornell University of Texas, primarily about both
16 unethical experiments and about the epidemic adverse effects
17 of drugs, particularly the psychotropic drugs but not
18 exclusively. Our organization focuses more generally but
19 there is a great deal in this area because vulnerable people
20 such as children and the elderly and disabled people are being
21 targeted to take drugs that are doing them more harm than
22 there is any evidence of benefit.

23 So that is why there is such a focus on this.

24 Q And in that experience that you've had, I take it you've
25 done a lot of research into the way drug companies market

1 their drugs?

2 A Yes, I have.

3 Q And the way they conduct research on their drugs?

4 A Yes, I have.

5 Q And I take it you consider it your life's calling to

6 inform the public about unethical practices of pharmaceutical

7 companies like Eli Lilly?

8 A Absolutely.

9 Q Now, with respect to the conversations you had with Mr.
10 Gottstein, you did not receive the documents before the New
11 York Times published it's front page article, is that right?

12 A That's correct.

13 Q Mr. Gottstein didn't tell you what the documents
14 contained?

15 A No, he did not.

16 Q Then you read the New York Times article?

17 A Yes, I did.

18 Q And after that, you received the documents by DVD from
19 Mr. Gottstein?

20 A Yes.

21 Q And did you have occasion to look at and read the
22 document?

23 A Yes, I have.

24 Q And what did the documents show with respect to the
25 practices of Eli Lilly?

1 MR. LEHNER: Objection, your Honor.

2 THE COURT: I'll allow it.

3 A In my opinion, this is about the worst that I have seen.
4 It borders on indifference to human life. Eli Lilly knew that
5 Zyprexa causes hypoglycemia, diabetes, cardiovascular damage
6 and they set about both to market it unlawfully for off label
7 uses to primary care physicians and they even set about to
8 teach these physicians who were not used to prescribing these
9 kind of drugs to, they taught them to interpret adverse
10 effects from their drug Prozac and the other antidepressants
11 which induce mania and that is on the drug's labels. They
12 taught them that if a patient presented with mania after
13 having been on antidepressants, that that was an indication
14 for prescribing Zyprexa for bipolar which is manic depression.
15 That is absolutely outrageous and that is one of the reasons
16 that I felt that this should involve the Attorney General.

17 Q What else did the documents say about the way Lilly
18 marketed its products?

19 A They marketed it, as I said, for off label uses which is
20 against the law. They told doctors -- they essentially
21 concealed the vital information that they knew from the
22 prescribing doctors and covered it over, sugar coated it which
23 you can see the sales. The sales of a drug that was approved
24 for very limited indications, for schizophrenia and for
25 bipolar. Each one of these is about one to 2 percent of the

1 population. But the reason the drug became a four and a half
2 billion dollar seller in the United States is because they
3 encouraged the prescription for children, for the elderly, for
4 all sorts of reasons. The drug is being prescribed
5 irresponsibly because doctors have not been told the truth and
6 major study by the National Institute of Mental Health
7 validates this. It's called the Catie study. It has been
8 published and they corroborate to such a degree the harm that
9 this drug is doing and the other so-called atypical
10 antipsychotics that leading psychiatrists who had been fans of
11 these drugs are now saying we were fooled, we didn't realize.
12 It isn't just weight gain. They are blowing up and it is
13 calling what is called metabolic syndrome, which is a cluster
14 of life-threatening conditions this drug is lethal and many
15 doctors now say it should be banned.

16 MR. LEHNER: Let me move to strike the testimony
17 again as being nonresponsive to the question that was being
18 asked.

19 THE COURT: It shows her state of mind.

20 Q In addition, are you familiar with a video recently
21 posted of a Lilly salesperson who talked about the way Lilly
22 markets the drugs?

23 A Yes.

24 Q Did that also mirror what these documents show?

25 A Absolutely. It appeared on U-Tube and we disseminated

1 that and in there the former Zyprexa salesman tells exactly
2 what they were taught and how they were taught to defuse
3 doctors's concerns who saw their patients as he put it blow
4 up.

5 Q When you reviewed the documents, was there anything in
6 those documents that you viewed as trade secrets or
7 confidential information the way that phrase is usually
8 construed?

9 A Absolutely not.

10 MR. FAHEY: Objection.

11 A What it showed me was why they were willing to pay so
12 much money to keep them concealed.

13 MR. LEHNER: Same objection, no foundation for which
14 she could answer that question.

15 THE COURT: I'll allow it. It shows state of mind.

16 Q After you received the notice from Mr. Gottstein, did you
17 disseminate the documents?

18 A No.

19 MR. MILSTEIN: That's all I have, your Honor.

20 THE COURT: Anybody on the phone wish to examine?

21 MR. CHABASINSKI: No, your Honor.

22 THE COURT: Any redirect?

23 MR. LEHNER: No, your Honor, not at this time. The
24 only thing I ask is that the documents she brought with her be
25 returned to Mr. Woodin as they have been by the others in the

1 court.

2 THE COURT: Any objection?

3 MR. HAYES: No.

4 MR. MILSTEIN: We have an objection. That is what
5 this hearing is about, whether or not this Court will issue a
6 preliminary injunction ordering a person who did not act in
7 concert with nor did she aid or abet the distribution of these
8 documents by Dr. Egilman, whether this Court can order this
9 witness to return these documents.

10 MR. VON LOHMANN: Let me also just note for the
11 record, your Honor, none of the non-parties have been ordered
12 by this Court or any other Court to return these documents.

13 The January 4th order that your Honor signed also
14 asks simply that they not further disseminate the documents.
15 There is nothing in the January 4th order just as there was
16 nothing in the December 29 order suggesting that the Court is
17 ordering the return of those documents.

18 So what counsel here is asking for is not the
19 enforcement of a prior ruling, what counsel is asking here is
20 something entirely new.

21 MR. LEHNER: This Court asked Mr. Gottstein to
22 retrieve the documents and return them to Mr. Woodin, have
23 people return them directly to Mr. Woodin. That request was
24 based particularly with respect to the first order. She says
25 she has them. Other people felt compelled to comply with that

1 request.

2 MR. MILSTEIN: It's a temporary restraining order
3 that was issued. If the court issues a preliminary injunction
4 order then Ms. Sharav is prepared to give the documents or the
5 DVDs to the special master.

6 If the Court dissolves the confidentiality order
7 with respect to the documents, as we have requested, or
8 decides not to issue a preliminary injunction, then she can
9 continue to hold on to these document and she can post them on
10 her website and distribute them to the public which needs to
11 see them to prevent further harm.

12 THE COURT: The order of December 18 from Judge
13 Cogan orders them returned, I believe.

14 MR. VON LOHMANN: I believe that order orders Mr.
15 Gottstein to request their return but especially considering
16 none of the parties are named in the order, I think it's
17 certainly -- I can't speak for -- none of these non-parties
18 even had seen this particular order at the time.

19 MR. MILSTEIN: And they did not request the New York
20 Times return the documents.

21 THE COURT: We don't have the New York Times here.
22 We have your client.

23 MR. MILSTEIN: I understand that.

24 THE COURT: Unless you want to represent the New
25 York Times --

1 MR. MILSTEIN: The New York Times.

2 THE COURT: -- and expand the orders to include it.
3 We can talk about the witness before us.

4 MR. MILSTEIN: The New York Times is noticeably
5 absent from the request of Eli Lilly to be ordered to return
6 these documents.

7 THE COURT: I understand.

8 Well, the order of December 18th requires Mr.
9 Gottstein to attempt to recover the documents.

10 MR. MILSTEIN: To request and she has refused Mr.
11 Gottstein. It doesn't order her. It orders Mr. Gottstein to
12 ask her and she says no, I'm going to wait until the Court
13 orders me if the court can order me.

14 MR. McKAY: And Mr. Gottstein complied with respect
15 to that order.

16 THE COURT: He is here in court.

17 Paragraph 4 says: "Mr. Gottstein shall immediately
18 take steps to retrieve any documents subject to this order
19 regardless of their current location and return all such
20 documents to Special Master Woodin. "

21 Come forward, sir.

22 Did you ask the witness to return the documents?

23 MR. GOTTSTEIN: Are you asking me if I did?

24 THE COURT: Yes.

25 MR. GOTTSTEIN: Would you return the documents?

1 THE WITNESS: I will return them if the Court orders
2 it.

3 THE COURT: You refuse to turn them over at his
4 request?

5 THE WITNESS: Yes.

6 THE COURT: I'm ordering you to turn them over to
7 your attorney to hold them in escrow.

8 MR. MILSTEIN: I'll do that, your Honor.

9 THE COURT: Give the envelope to the attorney.
10 Are those all of the documents you have?

11 THE WITNESS: Yes.

12 THE COURT: You can seal it. Sign it. We'll hold
13 them in escrow subject to -- you'll hold them in escrow
14 subject to the order of the Court.

15 MR. MILSTEIN: I'll do that, your Honor.

16 THE COURT: Any reason why the witness should not
17 now be excused?

18 MR. HAYES: No, your Honor.

19 THE COURT: You are excused?

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 MR. FAHEY: Your Honor, if we take a short break, we
23 can -- if we can take a short break, we can have Mr. Meadow on
24 the phone who we believe will be a short witness.

25 THE COURT: It's 10 to 4:00 we'll break until 4:00.