Innocently Tarnished by Misconduct

Dear Labby,

I am a finishing graduate student and my world has collapsed due to acts of research misconduct by a technician in our lab whose materials now turn out to have been deliberately falsified. Specifically, certain plasmids and cell lines were claimed by him to have been constructed properly but later discovered not to be right. He has subsequently confessed to deliberately falsifying the description of these materials to me and other lab members. The data obtained from their use in my thesis research and the conclusions I reached are now completely suspect. My adviser has of course notified the journal in which we published this work (the research assistant was also an author, by the way). It is more than likely that the paper will need to be retracted, since it is going to take many months, perhaps a year, to reconstruct new materials properly and repeat all the work, and who knows whether the initial results and conclusions will stand (I suspect they will not).

Meanwhile, I have enough other research and publications to finish my PhD and graduate next spring as scheduled but have lost a key publication and will always have a retraction footnote in PubMed. The research assistant left our lab before this all was discovered, and I am told by institutional officials that we can’t go after him. Labby, that can’t be right. I have been severely damaged emotionally and scientifically. What can you suggest?

—Distraught

Dear Distraught,

This is as horrible a situation as any student could face, and you have Labby’s deep empathy. Let’s look at the two main points, your understandable angst about the probable retraction and the issue of damage.

Assuming the paper will be retracted, the notice can take one of two forms. In one, it would be signed by all of the authors except the former research assistant. This is usually conveyed by a statement like “Author J.S. (assuming he is ‘John Smith’) has not agreed to sign this retraction.” In a second format, the culpability of the research assistant is stated explicitly, for example as “Co-author J.S. has acknowledged fabricating key materials used in this study.” This latter format would seem preferable in this case, presuming the “confession” you mention was made in writing. In either case, the retraction footnote in PubMed takes one directly to the published notice, and any reasonable observer would immediately deduce, correctly, that the authors (other than the research assistant) had been sandbagged. Of course, while the retraction is not as stigmatizing as you may have thought, the loss of all the time and effort you and your other (honest) co-authors put into the study does remain as a deep wound.

As to legal remedies, the situation is not good. First, even if the research assistant were still in your lab (or employed elsewhere within your institution), many institutional research misconduct policies do not apply to research assistants (but do apply to students, as well as faculty). Thus, any contemplated resolution would likely not be governed by your institution’s misconduct policy but by relevant law. There the issue would be the extent and demonstrability of damage, and the plaintiffs would face a high bar. Monetary damage (costs of personnel and materials in the suspect work plus those incurred in reconstructing the materials and repeating the work) could be in the hundreds of thousands of dollars and this could be a claim of some merit (notwithstanding the question of actually recovering those costs were the judgment to go against the defendant). A claim of reputational damage would be very difficult to argue in a case such as this, in part for the very reason that your peers will be supportive (as discussed above). A claim of emotional duress could be made, but to prevail one would typically need a formal medical opinion (which hopefully is not your situation, as distressing as this is).

Despite this somber picture, there are some positives. First, let us be thankful you have other research and publications that will allow you to finish your PhD on the initially planned timetable. Second, although it may take longer to repeat the suspect project than your stay in the lab, it may turn out that the initial conclusions are supported, or that revised conclusions make use of some of your work that did not use the materials in question. In such a case you might be granted co-authorship on such a publication. Finally, your institution will be within its rights to notify this individual’s present employer (if known), and indeed this is an ethical obligation. While the form of such notice must be reviewed and approved by your institution’s legal department, one hopes it will minimize a recurrence in a subsequent lab.

Labby applauds your courage in this ordeal.

—Labby