



**Then and now.** Judy Mikovits (*left*) for 2 years faced skepticism about her CFS research, but recently, when police took this mug shot (*right*), she faced criminal charges.

## INTELLECTUAL PROPERTY

## Dispute Over Lab Notebooks Lands Researcher in Jail

Judy Mikovits, a biochemist who became world famous for her studies with chronic fatigue syndrome (CFS), was arrested and jailed on 18 November in Ventura, California, on a felony charge of possessing stolen property from a research institute that fired her in September. The property at issue consisted of her laboratory notebooks and related data.

Court documents filed by police in a criminal case and by her former employer—the Whittemore Peterson Institute for Neuro-Immune Disease (WPI) in Reno, Nevada—in a related but separate civil case allege that Mikovits instructed a lab assistant to steal the notebooks and other material. The documents charge that she then made a clandestine trip from her residence in Ventura back to Reno to retrieve the “stolen items” and then hid on a boat near her California home to dodge a possible summons. Mikovits, through an attorney, at first strongly denied that she possessed the notebooks; Mikovits and her attorneys have not commented since the arrest and the filing of affidavits detailing the alleged wrongdoing.

These astonishing—if not downright bizarre—events cap a 2-year period in which Mikovits has been mired in a topsy-turvy research debate that saw her work praised and then derided by prominent colleagues. She first made headlines in October 2009

when her group at the largely unknown WPI teamed up with well-known researchers at the U.S. National Cancer Institute (NCI) and the Cleveland Clinic in Ohio and published a report in *Science* that tied an obscure mouse retrovirus to CFS. Other labs soon began reporting that they could not confirm the finding, which outraged many CFS patients who distrusted the scientific community and held great hope that the virus, dubbed XMRV, could lead to a long-sought explanation for their baffling disease and potential treatments and even cures.

But as more negative data piled up, as well as evidence that some positive results were due to contamination, the XMRV theory began to crumble (*Science*, 23 September, p. 1694). A multilab study led by a working group that the U.S. Department of Health and Human Services established—and in which Mikovits participated—reported online in *Science* on 22 September that none could reliably find XMRV in 15 blinded samples from people who earlier had tested positive for the virus at WPI and elsewhere.

One week later, on 29 September, WPI President Annette Whittemore, in what she said was an incident unrelated to XMRV’s woes, fired Mikovits for insubordination and insolence. Whittemore and her husband, Harvey, a well-known real estate developer and attorney, started WPI in 2007 with their

own money and grants from the state and federal government. They are alumni of and major donors to the University of Nevada, Reno, where WPI is located.

Mikovits’s legal troubles began on 4 November when WPI filed a civil suit against her alleging breach of contract, misappropriating trade secrets, and related claims. WPI asserted that after it fired Mikovits, she took her notebooks, a laptop, and flash drives with data that did not belong to her. Mikovits, WPI stressed, had signed a “proprietary information and invention agreement” when her employment began in 2007 that stipulated she would return all work materials upon termination. WPI sought a preliminary injunction that would force her to return, undamaged, the “misappropriated property.”

On 4 November, Lois Hart, an attorney representing Mikovits at the time, wrote a letter to WPI’s counsel at the firm SNR Denton denying all charges. “Dr. Mikovits was not and is not in possession of the lab notebooks or any WPI intellectual property,” Hart wrote. “A number of individuals have keys to the office and lab, including the administrative staff, lab staff and custodial. Your client’s concern as to the location of those notebooks, and intellectual property, should be directed elsewhere.” Many CFS patients and their families who viewed Mikovits as a hero decried her legal fate in the blogosphere.

The civil suit became entangled with a criminal case when WPI reported a break-in and theft. Adam Garcia, chief of police at the University of Nevada, Reno, told *Science* that his office received the report from WPI “staff” on 9 November but that the alleged crime could have happened earlier. Garcia’s office launched an investigation, which led one of his officers to file affidavits with the Reno Justice Court in support of an arrest warrant. According to the affidavits filed on 16 and 17 November, Mikovits instructed a research assistant of hers at WPI, Max Pfof,

to “illegally enter her former office” and retrieve research notebooks, a laptop, flash drives, and correspondence that belonged to the institute. “The missing property includes trade secrets and inventions that are patented, or for which a patent application is pending,” the officer stated, estimating that “the value of the property stolen is likely to be in the hundreds of thousands of dollars, or more.” The Reno Justice Court issued the arrest warrant.

After Ventura County police arrested Mikovits on 18 November, they locked her up at the Todd Road Jail. She was held on a felony charge of being a fugitive from justice, pending her extradition to Washoe County, Nevada, to face the criminal charges.

On 22 November, Mikovits appeared in Ventura County Superior Court for the extradition hearing. Outfitted in a blue jail-issued jump suit with an orange T-shirt underneath, Mikovits sat in a barred room-within-the-room that had a few dozen similarly dressed inmates. When her case came up, she spoke to Paul Tyler, the attorney handling her criminal defense, through the cagelike bars. Tyler requested that her extradition be delayed, and the judge agreed that she could return to his court on 19 December to decide the issue. Tyler asked the judge to reduce her \$100,000 bail but was denied. Tyler did not discuss her guilt or innocence with the judge and declined to comment to *Science*.

John Coffin, a retrovirologist at Tufts University School of Medicine in Boston who switched from being an early scientific supporter of Mikovits to a vocal critic, says regardless of the property dispute, it “goes way too far” to jail her. “She doesn’t deserve this,” Coffin says. “It really comes down to personalities. It’s almost like a domestic dispute from love to throwing frying pans in no time. It just looks like an escalating situation that got out of control.”

Robert Charrow, an attorney with Greenberg Traurig in Washington, D.C., who specializes in scientific research disputes and represents universities, says academic institutions typically allow researchers to take a copy of their data, whereas industry forbids it. With WPI, a nonprofit organization, “it’s a gray area,” Charrow says.

It’s unclear whether Mikovits ever requested copies of her notebooks and other data from WPI. But her attorney’s 4 November letter to WPI’s counsel contended that the notebooks contained “important non-proprietary information” that could “advance the field of neuroimmune disease,” and Mikovits needed them to complete work on several grants she had been

awarded. Since 2009, Mikovits has received more than \$300,000 a year in grants from the U.S. National Institute of Allergy and Infectious Diseases (NIAID) to develop new strategies to decipher the pathophysiology of CFS. Hugh Auchincloss, NIAID’s deputy director, says the institute awards grants to institutions, not individuals, but if the institute cannot find a suitable replacement for Mikovits, WPI will have to forfeit the money. The Department of Defense (DOD) had also awarded her a grant for research into prostate cancer, which has XMRV links, too.

On the same day that Mikovits went to court for her extradition hearing, the Second Judicial District Court in Washoe County held a hearing on WPI’s request for a prelim-



**Exhibit A.** Max Pfof in June with a lab notebook at the center of the case against Mikovits.

inary injunction that would require Mikovits to return the material undamaged. In support of that civil case, WPI’s attorneys filed affidavits with the court—made public that morning—that included more details about the theft it said Mikovits “masterminded.”

In two affidavits, Pfof describes his role, which began with a phone call from Mikovits shortly after her firing. “She stated that WPI would go down, and that I should get out, too,” Pfof claimed in a notarized affidavit. Pfof said Mikovits told him she hoped to move the NIAID and DOD grants to wherever she ended up working.

Pfof states in an affidavit that Mikovits gave him the keys to her office and desk and asked him to remove notebooks and “samples” from the lab. (Another affidavit from a different research assistant says Mikovits

asked her to remove “cell lines and plasma” samples and send them to collaborators at NCI, but she states that she didn’t do it.) Pfof wrote in his affidavit that he went to WPI a few hours before sunrise, but his security key card didn’t give him access. Pfof said he returned around 8 a.m. and entered the building, but the lab was “on lock down” and he could not obtain the samples. He was able to enter Mikovits’s office, he said in an affidavit, and removed 12 to 20 notebooks. Pfof hid them in a multicolored “Happy Birthday” bag he had at his condo. Worried about WPI’s interest in the missing notebooks, and at the behest of Mikovits, Pfof said that 4 days later, he moved the bag to his mother’s garage in Sparks, Nevada.

Pfof’s affidavit says Mikovits asked him to ship the notebooks to “a safe location in California or Virginia,” but he couldn’t afford the cost and asked her to retrieve them in Reno. Pfof went on to explain that shortly after midnight on 17 October, he picked up Mikovits at the Reno airport, drove her to his condo, and gave her the Happy Birthday bag with the notebooks.

Police Chief Garcia told *Science* on 22 November that the felony investigation was ongoing. “Whether or not others will be arrested is yet to be determined,” Garcia said. He would not answer questions about whether Pfof was offered immunity from prosecution in return for his affidavits. According to a WPI spokesperson who works at SNR Denton, the law firm representing the institute, Pfof remains employed there.

Mikovits posted bail soon after her extradition hearing and was released that evening. That same day, the civil court in Reno granted WPI the preliminary injunction it sought, which orders her to return the “misappropriated property” or be held in contempt of court. On 23 November, the day before Thanksgiving, WPI posted a cryptic note on its Facebook page suggesting that the case against Mikovits may soon have closure. “We are thankful that most of our property has been returned,” the note states. WPI’s spokesperson told *Science* that Mikovits’s husband “returned some material to police in Ventura” but that it had not all been accounted for as of 28 November.

Coffin of Tufts says he expects the saga to continue. “The science is gone now, and it’s all about lawyers—and there probably is an awful lot of legal stuff under the surface,” Coffin says. “We’re certainly not at the end of this.”

—JON COHEN

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Jon Cohen (December 1, 2011)

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Editor's Summary

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