From: David Amberg <ambergd@upstate.edu>
To: Steven Goodman
Date: 03/02/2012 5:21 PM
Subject: Fwd: Miller and Hu article

David C. Amberg
Professor
Biochemistry and Molecular Biology
Assistant Vice President of Research Integrity
SUNY Upstate Medical University
750 E. Adams St.
Syracuse, New York 13210
E-mail: ambergd@upstate.edu
Phone: 315-464-8727
FAX: 315-4648750
Website: http://www.upstate.edu/biochem/amberg/

Begin forwarded message:

> From: Steve Levison <levisosw@umdnj.edu>
> Date: July 21, 2011 4:45:15 PM EDT
> To: ambergd@upstate.edu
> Cc: Nold Thomas <T.NOLD@karger.ch>
> Subject: Miller and Hu article
>
> Dr. Amberg,
> I would like to assure you that we (the publisher of
> Developmental Neuroscience, S. Karger AG and the publisher's
> representative Thomas Nold) and I, as Editor-in-Chief) are both
> seriously and deliberately assessing the status of Miller and Hu's
> article and, as you likely are aware, still have not reached a final
> decision on whether to publish an erratum or a retraction of the
> article they published in Developmental Neuroscience in 2009.
>
> Winthrop Thurlow provided me with the letter and report that you
> had submitted on February 22 to help me better understand the
> accusations made by your committee against Drs Miller and Hu and the
> data that supported those allegations, which I had not previously

> seen. Within that letter, your committee indicated that a local
> stereology expert was brought in to re-examine the original images
> used to collect the data that were originally published, and that
> upon re-analyzing these newly collected data, that they could not
> reproduce the results of Drs. Miller and Hu.
> I am writing to request that your committee provide me with the
> new data that were collected as well as with the analyses of those
> data so that I may directly compare them to the data from Drs.
> Miller and Hu. Furthermore, please provide me with the name of this
> stereology expert and the relationship of this expert and his
> technician to Drs. Miller and Hu. In addition, please provide me
> with signed disclosure statements you obtained from the PI regarding
> any potential conflicts of interest that he might have in these
> proceedings. I will of course treat the information provided as
> strictly confidential.
>
> Upon receiving these items I will be able to more fully examine this
> case towards deciding on the most appropriate future course of action.
>
> Thank you for your assistance,
>
> Respectfully,
>
> Steven W. Levison, PhD
> Editor in Chief, Developmental Neuroscience
> Professor of Neuroscience
> Director, Laboratory for Regenerative Neurobiology
> Department of Neurology and Neuroscience
> Newark, NJ 07103
> PH (973) 972-5162
> FAX: 973 972-2668
> e: steve.levison@umdnj.edu
> w: www.karger.com/dne
>
>
>

From: David Amberg <ambergd@upstate.edu>
To: Steven Goodman
Date: 03/02/2012 5:21 PM
Subject: Fwd: Miller and Hu article

David C. Amberg
Professor
Biochemistry and Molecular Biology
Assistant Vice President of Research Integrity
SUNY Upstate Medical University
750 E. Adams St.
Syracuse, New York 13210
E-mail: ambergd@upstate.edu
Phone: 315-464-8727
FAX: 315-4648750
Website: http://www.upstate.edu/biochem/amberg/

Begin forwarded message:

> From: Steve Levison <levisosw@umdnj.edu>
> Date: July 26, 2011 1:04:39 PM EDT
> To: ambergd@upstate.edu
> Cc: Nold Thomas <T.NOLD@karger.ch>, Winthrop Thurlow <ThurlowW@upstate.edu
> >
> Subject: Fwd: Miller and Hu article
>
> Dr. Amberg,
> I received the following email below from Mr. Thurlow. His email
> did not address my request.
> Will I be receiving the information that I requested from your
> committee or is my request still under deliberation?
>
> Steve Levison, PhD
> Editor in Chief, Developmental Neuroscience
> Professor of Neuroscience
> Director, Laboratory for Regenerative Neurobiology
> Department of Neurology and Neuroscience
> Newark, NJ 07103

> PH (973) 972-5162
> FAX: 973 972-2668
> e: steve.levison@umdnj.edu
> w: www.karger.com/dne
>
>
>
> Begin forwarded message:
>
>> From: Winthrop Thurlow <ThurlowW@upstate.edu>
>> Date: July 21, 2011 6:38:28 PM EDT
>> To: Steve Levison <levisosw@umdnj.edu>
>> Subject: Miller and Hu article
>>
>> Dr. Levison:
>>
>> I understand that you have advised Dr. David Amberg of our
>> university that you have not decided whether to retract the above-
>> referenced article. As you know, Dr. Miller has asked that the
>> article be retracted. Dr. Hu has asked that the article be
>> retracted. What could possibly be left to consider?
>>
>> As you know, Dr. Miller has been found to have committed scientific
>> misconduct in the writing and publication of this article. He is
>> now the subject of an investigation by the Office of Research
>> Integrity. Upstate Medical University has endeavored to insure
>> that it has taken all necessary steps to investigate and deal with
>> this scientific misconduct. Your journal's puzzling reluctance to
>> retract the article in the face of the authors' specific requests
>> has the potential to create the impression that this institution is
>> not taking seriously its duties in this regard. Nothing could be
>> further from the truth and your inaction is both bothersome and
>> harmful to this university.
>>
>> Please act on the authors' requests immediately. Please, also,
>> advise me when the retraction will be published.
>>
>> Thank you.
>>
>>
>> Winthrop H. Thurlow, Esq.
>> Office of University Counsel

>> Madison Towers, Suite 106
>> 60 Presidential Plaza
>> Syracuse, NY 13202
>> (315) 464-4700 (telephone)
>> (315) 464-4706 (facsimile)
>> thurloww@upstate.edu
>> PRIVILEGED AND CONFIDENTIAL
>> ATTORNEY-CLIENT COMMUNICATION
>> ATTORNEY WORK PRODUCT
>

From: David Amberg <ambergd@upstate.edu>
To: Steven Goodman
Date: 03/02/2012 5:22 PM
Subject: Fwd: Miller and Hu article

David C. Amberg
Professor
Biochemistry and Molecular Biology
Assistant Vice President of Research Integrity
SUNY Upstate Medical University
750 E. Adams St.
Syracuse, New York 13210
E-mail: ambergd@upstate.edu
Phone: 315-464-8727
FAX: 315-4648750
Website: http://www.upstate.edu/biochem/amberg/

Begin forwarded message:

> From: David Amberg <rio@upstate.edu>
> Date: August 16, 2011 6:06:02 PM EDT
> To: Steve Levison <levisosw@umdnj.edu>
> Cc: Nancy Nussmeier <NussmeiN@upstate.edu>, Steven Goodman <GoodmanS@upstate.edu

> >, Winthrop Thurlow <ThurlowW@upstate.edu>
> Subject: Re: Miller and Hu article
>
> Dear Dr. Levison,
>
> Under guidance from University
> Counsel, Win Thurlow, I am responding to your request for additional
> information concerning the University's misconduct investigation of
> Dr. Michael Miller. We will not provide you with information
> concerning witnesses in the investigation as we have an obligation
> to protect those that cooperate with misconduct investigations from
> retaliation. Although your request may be innocent, it could be
> construed or lead to retaliation and could compromise cooperation
> with future misconduct investigations. We believe that clarity in

> how to handle this situation can be found from the ICMJE Uniform
> Requirements for Manuscripts Submitted to Biomedical Journals: “The
> second type of difficulty is scientific fraud. If substantial doubt
> arises about the honesty or integrity of work, either submitted or
> published, it is the editor’s responsibility to ensure that the
> question is appropriately pursued, usually by the authors’
> sponsoring institution. Ordinarily, it is not the responsibility of
> the editor to conduct a full investigation or to make a determination
> —that responsibility lies with the institution where the work was
> done or with the funding agency. The editor should be promptly
> informed of the final decision, and if a fraudulent paper has been
> published, the journal must print a retraction. If this method of
> investigation does not result in a satisfactory conclusion, the
> editor may choose to conduct his or her own investigation. As an
> alternative to retraction, the editor may choose to publish an
> expression of concern about aspects of the conduct or integrity of
> the work.” Our reading of the sentence concerning “a satisfactory
> conclusion” is that you would be justified in carrying out your own
> investigation had we failed to adequately investigate a paper you
> published and felt may be fraudulent. Let me assure you that we have
> performed due diligence in investigating this matter and are
> therefore rather baffled why you would want to repeat our efforts.
>
> However, in the spirit of cooperation and transparency, counsel has
> agreed to allow me to make available to you: 1) The Oversight
> Committee’s report relevant to the retraction of the Hu and Miller
> paper, 2) Dr. Miller’s response to that report, and 3) The Oversight
> Committee’s response to Dr. Miller’s response. In reading these
> documents, I believe you will realize that Dr. Miller cannot provide
> data that supports Figure 2 of the Hu and Miller paper. In contrast
> the primary data that has been identified as being the support for
> Figure 2 of the Hu and Miller paper shows no significant differences
> between any of the samples. In regards to this point, I refer you to
> PHS regulation 42 CFR 93 part 106b: “The destruction, absence of, or
> respondent's failure to provide research records adequately
> documenting the questioned research is evidence of research
> misconduct….”
>
> I hope that providing these materials will help expedite a
> resolution to this unfortunate matter.
>
>

>
> Sincerely,
>
> David C. Amberg
> Professor and Jacobsen Scholar
> Biochemistry and Molecular Biology
> Assistant Vice President of Research Integrity
> SUNY Upstate Medical University
> 750 E. Adams St.
> Syracuse, New York 13210
> E-mail: ambergd@upstate.edu
> Phone: 315-464-8727
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> Website: http://www.upstate.edu/biochem/amberg/
>
>
>
>
>
> David C. Amberg
> Professor
> Biochemistry and Molecular Biology
> Assistant Vice President of Research Integrity
> Research Integrity Officer
> SUNY Upstate Medical University
> 750 E. Adams St.
> Syracuse, New York 13210
> E-mail: rio@upstate.edu
>
>
>
> On Jul 21, 2011, at 4:45 PM, Steve Levison wrote:
>
>> Dr. Amberg,
>> I would like to assure you that we (the publisher of
>> Developmental Neuroscience, S. Karger AG and the publisher's
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>> Respectfully,
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>> Steven W. Levison, PhD
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>>
>>
>>
>

College of Medicine
Department of Biochemistry & Molecular Biology
4227 Weiskotten Hall
750 East Adams Street
Syracuse, N. Y. 13210
(315) 464-8727

David C. Amberg, Ph.D.
Professor and Jacobsen Scholar
Program in Biomedical Sciences
Program in Struct. Biol., Biochem. & Biophy.
ambergd@upstate.edu
http://www.upstate.edu/biochem/amberg/

State University of New York
Upstate Medical University

February 22, 2011

Dear Dr. Miller,

Attached is a copy of the Oversight Committee's report concerning your planned erratum for the Hu and Miller paper published in Developmental Neuroscience 2009. As you will see, the committee does not find your erratum to be an acceptable response to The Investigation Committee's recommendations concerning allegation #9 of their report. I have been asked to inform you that you have until the end of business on Friday February 25th 2011 to respond to this report.

Sincerely,

David C. Amberg, Ph.D.
Professor
Biochemistry and Molecular Biology

To Whom It May Concern,

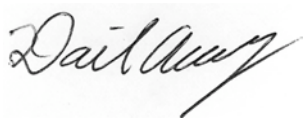
The SUNY Upstate Medical University Oversight Committee for Michael Miller has identified a serious instance of non-compliance by Dr. Miller with the directives of the Deciding Official, Dr. David Smith. In the Report of Investigation Committee for ORI case #DIO 4198 (allegation #9) it was concluded that falsification had been committed in the publication Miller HW and Hu H (2009) Lability of neuronal lineage decisions is revealed by acute exposure to ethanol. Dev. Neurosci. 31:50-57. The Investigation Committee concluded that the "fabricated data sufficiently undermine the conclusions reached in the Miller and Hu paper that it should be withdrawn." This recommendation was accepted by the Deciding Official on May 20th 2010 and yet the paper has not been retracted 9 months later. The Oversight Committee was recently made aware that instead of a retraction, the journal editor and Dr. Miller are planning an erratum. In a meeting between the Research Integrity Officer, Dr. Steve Goodman and the Chair of the Oversight Committee Dr. David Amberg on January 28th 2011, Dr. Amberg was notified that an erratum constitutes a publication and therefore falls within the responsibilities of the Oversight Committee. On that same day, Dr. Amberg requested by email to Dr. Miller that he provide to the committee all materials related to the erratum. On February 1st, Dr. Miller complied by providing three files, a Word document of the actual erratum (Attachment #1), and Excel spreadsheet with the data related to Figure 2 of the manuscript (Attachment #2) and a Sigmaplot file with the statistical analyses reported in the erratum. In a later email received on 2/14/11 he provided a revised version of Figure 2 (Attachment #3). First and foremost, the Oversight Committee reiterates that compliance with the decisions of the Deciding Official requires that the manuscript be retracted and that the publication of an erratum is wholly unacceptable. However, as a courtesy to Dr. Miller, the Oversight Committee has completely revisited allegation #9 of the Investigation Report and analyzed whether the planned erratum addresses and corrects the substantive problems identified with this manuscript and its supporting data. We have concluded that the erratum falls far short of addressing these problems and that were it published, it would perpetuate and wrongly support data falsification in a deeply flawed publication. As such, the erratum itself is an example of data falsification and would therefore form the basis for additional charges of scientific misconduct. Moreover, publication of this erratum would undermine the authority of the SUNY Upstate Research Integrity Officer and Deciding Official as well as compromise the scientific misconduct policies of the State University of New York. In addition, the complicity of the journal editor in the publication of this erratum is of great concern and should be communicated to the Office of Research Integrity. Detailed below are our reasons for finding the erratum an unacceptable response to allegation #9 of the Investigation Report.

1) The data provided in support of the erratum by Dr. Miller in Excel file "YFP layer Va.xls" are identical to that provided by Dr. Miller to the Investigation Committee with the exception that some (but not all) arithmetic errors have been corrected. These data were concluded by the Investigation Committee to be falsified based on a stereological re-analysis of the original images by a local expert. The chair of the Oversight Committee re-interviewed this local expert and learned that not only had he repeated the PI (propidium iodide) and YFP counts on the original Z-sections generated by Dr. Eric Olson for Figure 2 of the manuscript, but he did so blindly and had the same analysis repeated by his technician. The percentages of YFP-positive cells for all samples were found to be extremely close between the counts performed by the faculty member and his technician and very different from those provided by Dr. Miller. Statistical analysis of the data as quantified by the objective local expert showed no statistically significant differences for YFP-positive cells under any conditions. Therefore, the use of the original falsified cell counts to support the erratum is inappropriate and perpetuates the originally identified data falsification.
2) The Oversight Committee has learned from the co-author of the publication, Dr. Huaiyu Hu, that he does not support publication of an erratum but instead supports the recommendations of the Investigation Committee in regards to this publication. His lack of support for the erratum is not noted in the erratum, nor has he been notified that an erratum has been submitted, and therefore the erratum is in direct violation with NIH guidelines for consent of authorship.
3) In his response to the Investigation Committee Report (page 14 of the report), Dr. Miller stated: "and the data from each slide of the two slides examined for each animal were treated as separate samples improperly." In interviewing Dr. Olson, the chair of the Oversight Committee was informed that there were not Z-sections for two slides but only a single Z-series for each channel (PI and YFP) from a single slide for each sample. In the Excel file "YFP layer Va.xls" provided by Dr. Miller in support of the erratum, two sets of cell counts are shown for each animal and layer of the brain. Given that only a single slide was

made for each sample, the Oversight Committee cannot determine how two separate counts were obtained making the data extremely suspect.

4) Dr. Don Cibula, a member of the Oversight Committee and a trained statistician in The Department of Public Health and Preventative Medicine has separately repeated Dr. Miller's statistical analyses and has found many flaws in the treatment of the data and errors in the calculations. Specifically, Dr. Cibula found no statistical differences for 4 of the 6 conditions where Dr. Miller reports statistically significant differences between control and experimental animals. Furthermore, Dr. Cibula could not determine how the error bars reported in Figure 2 Revised (Attachment #3) were calculated. Dr. Cibula's complete report is included as Attachment #4.
5) In the erratum Dr. Miller states "the means included some minor arithmetic errors" and that "these errors were corrected". The Oversight Committee found 28 arithmetic errors (see Attachment #2); some minor, others not so minor such as 23.6% versus 19.7% for mouse #59 on G13 in the occipital layer (Attachment #2, page #2).
6) In interviewing the investigation witness, Dr. Eric Olson, the Oversight Committee was informed that the published manuscript contains a false statement that is critically important to the interpretation of the paper, in fact it could affect the veracity of the title of the paper. On page 5, paragraph 4 of the discussion it is written that: "In the present study, however, there is no evidence that episodic exposure to ethanol during gestation affects neuronal survival. After all, the total number of neurons in layer V is wholly unaffected by ethanol treatment on G 14, 15, or 17." According to the individual who did these experiments (Dr. Olson), the total number of neurons in layer V was not determined for any of the samples. Furthermore, Dr. Olson has testified that he notified Dr. Miller of this error prior to publication and yet this false statement remained in the published manuscript. Therefore, the purported effects of ethanol (were they statistically significant which they were not) could be attributed to cell proliferation or cell death rather than changes in cell lineage, the major purported finding of the paper.

Sincerely,



David C. Amberg, Ph.D.
Professor
Biochemistry and Molecular Biology

David R. Mitchell, Ph.D.
Professor
Cell and Developmental Biology

Don Cibula, PhD
Assistant Professor
CNYMPH Program and Center for Research and Evaluation
Department of Public Health and Preventive Medicine

Attachment #1

Please add the sentence in bold and the word replacement in bold (though they should not be in bold in the printed Erratum). Also, please include the attached graph which is the revised Figure 2. I would appreciate having the chance to review the revised Erratum before it is finalized. Thank you.

We regret that there are 2 errors regarding figure 2 in the article by Miller and Hu, entitled 'Lability of neuronal lineage decisions is revealed by acute exposures to ethanol' (Dev Neurosci 2009; 31: 50–57).

Data for the YFP labeling frequencies (*y*-axis; quotient of the number of YFP-positive and propidium iodide-positive profiles times 100%) are plotted for mice treated with ethanol on gestational day (G) 14, G 15, or G 17 (revised Fig. 2). The means were based on 3 animals per group, with the exception of the group of control mice treated with saline on G 14, which comprised 2 samples. In addition, the means included some minor arithmetic errors. Both errors were corrected and the data were analyzed using standard statistical tests. ANOVA were performed for the data describing each day of treatment. In the cases for each time of exposure, the data passed normality and equal variance tests. Two-way ANOVA showed that there were significant overall effects of treatment on G 14 ($F_{1, 14} = 8.587$; $p = 0.017$) and G 17 ($F_{1, 17} = 21.488$; $p < 0.001$). No significant difference was detected on G 15. Pair-wise multiple comparison procedures (Holm-Sidak tests) also revealed statistically significant differences caused by treatment on G 14 ($t = 2.930$, $p = 0.017$; noted by asterisks) and G 17 ($t = 4.645$, $p = 0.001$; noted by pound signs). No significant effect related to the site of the analysis was detected for G 14 or G 15, but there was a significant difference among the sites for G 17 ($F_{2, 17} = 17.434$; $p < 0.001$). No significant interaction between treatment and site was detected at any of the 3 ages tested.

Attachment #2

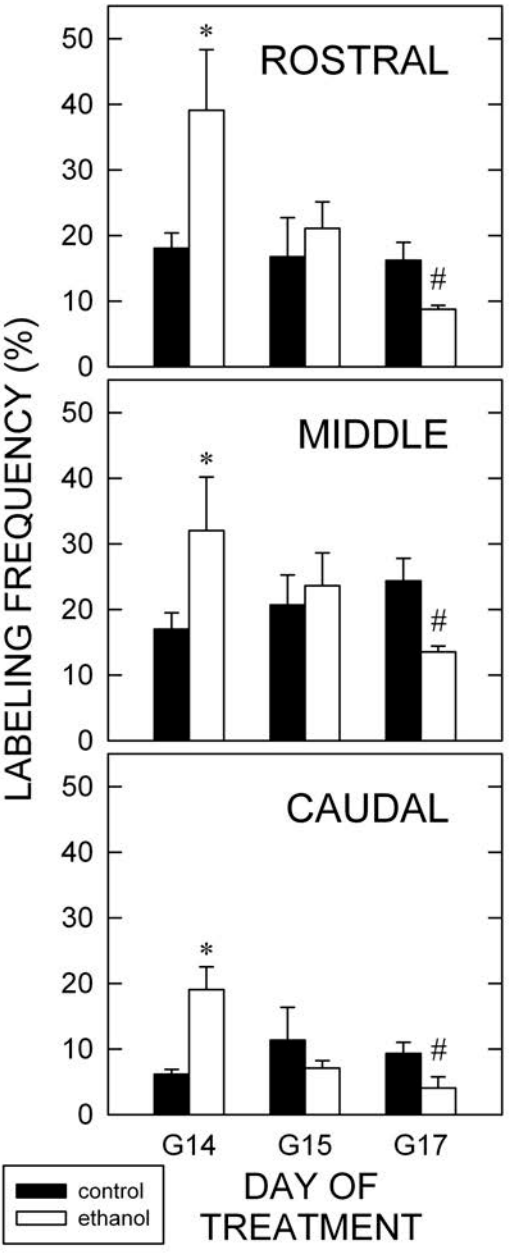
control	ANTERIOR				PARIETAL				OCCIPITAL			
	PI	GFP	PI	Corrected	PI	GFP	PI	Corrected	GFP			Corrected
G13	47	32	6	20.4		44	6	19.5	59	4	6.9	6.8
	79	32	5	15.7	15.6	43	6	14.5	49	3	5.4	
				18.1	18.0			15.8	17.0		6.1	
G14	15	39	11	28.2		53	14	26.9		63	7	11.3	11.2
	56	47	6	13.8		49	12	23.4		43	9	20	19.9
	89	38	3	8.3		47	6	11.8	11.7	55	2	2.7	
				16.8	16.7			20.7			11.3		
G16	40	36	4	11.2	11.1	37	11	31.2	31.1	39	5	12.1	
	76	33	6	17		44	9	20.9		55	5	9.6	
	94	39	8	20.5		43	9	21		65	4	6.3	6.2
				16.2				24.3			9.3		

ethanol	ANTERIOR				PARIETAL				OCCIPITAL			
	PI	GFP	PI	Corrected		GFP	PI	Corrected	GFP			
G13	45	33	14	41.1	41.2	48	10	25.8	48	6	12.8	
	46	41	9	22.2		41	20	48.2	49	12	24.7	
	59	47	25	54		54	12	22.1	56	13	19.7	23.6
				39.1				32			19	20.4
				*p=0.01				*p=0.042			*p=0.01	
G14	18	42	6	13.1	13.0	53	7	14.3		60	4	7.1	
	53	40	10	25.7	25.4	47	15	31.4	31.3	60	6	9.4	
	91	35	9	24.5	24.4	39	10	25.2		54	6	10.9	10.8
				21.1	20.9			23.5	23.6		9.1		
G16	42	48	5	9.8		46	11	11.8		55	4	6.5	
	86	39	3	7.8		45	7	14.1		52	3	4.9	
	92	35	3	8.7		44	7	14.7	14.6	63	1	0.8	
				8.8				14	13.5		4.1		
				*p=0.026				*p=0.01			*p=0.04		

control	ANTERIOR				PARIETAL				OCCIPITAL			
	PI	GFP	PI	Corrected		GFP	PI	Corrected	GFP			Corrected
G13	47	34	8	23.5		44	9	20.4	20.5	59	4	6.8
		29	5	17.2		43	8	18.6		58	4	6.9
	79	33	5	15.2		36	6	16.7		45	4	8.9
		31	5	16.1		49	6	12.2		52	1	1.9
G14	15	39	14	35.9		50	16	32		65	7	10.8
		39	8	20.5		55	12	21.8		60	7	11.7
	56	45	3	6.7		46	10	21.7		36	5	13.9
		48	10	20.8		52	13	25		50	13	26
	89	34	4	11.8		48	7	14.6		54	0	0
		42	2	4.8		45	4	8.9		56	3	5.4
G16	40	36	6	16.7		30	11	36.7		35	6	17.1
		36	2	5.6		43	11	25.6		43	3	7
	76	32	6	18.8		41	11	26.8		47	6	12.8
		33	5	15.2		47	7	14.9		63	4	6.3
	94	39	9	23.1		41	9	22		59	4	6.8
		39	7	17.9		45	9	20		70	4	5.7

ethanol	ANTERIOR				PARIETAL				OCCIPITAL			
	PI	GFP	PI	Corrected		GFP	PI	Corrected	GFP			Corrected
G13	45	31	14	45.1	45.2	41	9	22		46	8	17.4
		35	13	37.1		54	16	29.6		49	4	8.1	8.2
	46	39	8	20.5		41	19	46.3		48	9	18.8
		42	10	23.8		40	20	50		49	15	30.6
	59	44	26	59.1		60	14	23.3		53	15	20.3	28.3
		49	24	49		48	10	20.8		58	11	19
G14	18	45	7	15.6		49	10	20.4		54	6	11.1
		38	4	10.5		49	4	8.2		65	2	3.1
	53	38	10	26.3		44	15	34.1		58	9	15.5
		41	10	25	24.4	49	14	28.6		62	2	3.2
	91	33	9	27.3		36	13	36.1		62	4	6.5
		37	8	21.6		42	6	14.3		46	7	15.2
G16	42	50	2	4		42	4	9.5		51	4	7.8
		45	7	15.6		50	7	14		58	3	5.2
	86	36	3	8.3		39	5	12.8		54	2	3.7
		41	3	7.3		52	8	15.4		50	3	6
	92	35	3	8.6		46	8	17.4		63	0	0
		34	3	8.8		42	5	11.9		63	1	1.6

Attachment #3



Attachment #4

Results of Re-Analysis of Data Pertaining to Erratum, "Lability of neuronal lineage decisions is revealed by acute exposures to ethanol", Miller and Hu, Dev Neurosci 2009; 31: 50-57

Spreadsheet Data

Two measurements of percent labeling per animal were averaged to produce a single measure for each animal. It appears that Miller summed the number of labeled cells and divided by two, then summed the total number of cells and divided by two and then used these two averages to produce a mean percent labeled cells. This method is incorrect, because the two (2) counts of labeled cells that were averaged were generally based on different numbers of total cells, but this method gives equal weight to both denominators. A more representative alternative method is to pool (i.e. add) the total number of labeled cells to form a common numerator and pool the total number of cells to form a common denominator and then divide the common numerator by the common denominator, to produce a percent labeling for the combined total number of cells. I used this latter method to prepare data for the ANOVA analysis.

I also replicated Miller's method of averaging, and there were four (4) errors in calculation in the original spreadsheet (see YFP layer by Va DAC Audit.xlsx, tab DAC Recalcs, highlighted cells). The original data for the ANOVAs, together with my recalculations of the data are shown in YFP layer by Va DAC Audit.xlsx, tab ANOVA Data; cases where the recalculated values were more than 1/2 of a percentage point different are highlighted, and there were eight such cases.

Figure 2, Revised

G14

Asterisks representing statistically significant differences between G14 means for the control and ethanol groups are shown for all three panels (brain regions). There is no evidence in Miller's SigmaPlot ANOVA output (Miller ANOVA, G14.pdf) to support this claim and I found no basis for the p-values that were placed in Miller's excel spreadsheet. It appears that the researcher used the post hoc comparison for the ethanol vs. control groups (collapsed across brain regions) as the basis for the asterisks; this would correspond to the t and p-values he reports in the text of the erratum. When the three post hoc comparisons are done for ethanol vs. control within each brain region (see Cibula ANOVA, G14.pdf), *no significant differences were found between treatments and controls for any of the brain regions*. Furthermore, it is not clear what the error bars represent, but assuming they were intended to represent 1 SE of the least square means (the smallest of generally used error bars), the ones in Figure 2, Revised are smaller than the SEMs in Miller's output (see Miller ANOVA, G14.pdf). I have no original data that shows how the error bars were calculated.

G17

Like the case with G14, Miller placed pound signs on all three panels of Revised Figure 2, implying that the Holm-Sidek multiple comparison procedure found these three pairs of means to be significantly different. Again, there is no evidence in the SigmaPlot ANOVA output (see Miller ANOVA, G17.pdf) to substantiate this, and again, it is not clear where the p-values in the excel spreadsheet came from. Based on the text of the erratum, it appears that Miller used the results of the comparison of treatment and controls (collapsed across brain regions) as the basis for the pound signs. When I did the post hoc tests (see Cibula ANOVA, G17), statistically significant differences at the 5% level were found for two brain regions on G17, but not for the third. It appears that Miller did not appear to use the estimate of the standard error in least square means provided in the SigmaPlot output (2.076, Miller ANOVA, G17.pdf), because the error bars differ in length across the three brain regions for G17. It is not clear how these error bars were calculated.

ANOVA Results

ANOVA results calculated by me differed from the results in the researcher's SigmaPlot output, and the F-values reported in the Erratum are different. This is mostly due to miscalculations of mean percentages for each animal, as described above. In addition, degrees of freedom (df) reported in the Erratum are incorrect; Miller incorrectly reports df for the total mean square, but he should report df for the error mean square.

Reanalysis Using Miller's Original Data

I also re-ran the ANOVAs for G14, G15 and G17 using Miller's original data. The results confirmed what is reported in the section above, titled "Figure 2, Revised". Post hoc testing revealed no differences in means between treatment and control at each level of brain region for G14. Thus, by his own original data, there is no basis for the three asterisks in Figure 2, Revised. In addition, post hoc testing did reveal differences in means between treatment and controls at two brain regions (rostral and mid), but not for the caudal region. Thus based on Miller's original data, Figure 2, Revised should not have a pound sign for the between means comparison for G17 in the caudal panel.

Two Way Analysis of Variance Friday, February 11, 2011, 3:22:37 PM

Data source: Data 1 Audit in YFP et v site - DAC Audit

General Linear Model

Dependent Variable: DAC Data 14

Normality Test (Shapiro-Wilk) Passed (P = 0.617)

Equal Variance Test: Passed (P = 0.200)

Source of Variation	DF	SS	MS	F	P
treat 14	1	1020.277	1020.277	9.104	0.015
site 14	2	613.967	306.984	2.739	0.118
treat 14 x site 14	2	29.569	14.784	0.132	0.878
Residual	9	1008.574	112.064		
Total	14	2744.513	196.037		

The difference in the mean values among the different levels of treat 14 is greater than would be expected by chance after allowing for effects of differences in site 14. There is a statistically significant difference (P = 0.015). To isolate which group(s) differ from the others use a multiple comparison procedure.

The difference in the mean values among the different levels of site 14 is not great enough to exclude the possibility that the difference is just due to random sampling variability after allowing for the effects of differences in treat 14. There is not a statistically significant difference (P = 0.118).

The effect of different levels of treat 14 does not depend on what level of site 14 is present. There is not a statistically significant interaction between treat 14 and site 14. (P = 0.878)

Power of performed test with alpha = 0.0500: for treat 14 : 0.724
Power of performed test with alpha = 0.0500: for site 14 : 0.267
Power of performed test with alpha = 0.0500: for treat 14 x site 14 : 0.0500

Least square means for treat 14 :

Group	Mean	SEM
ct	13.652	4.322
et	30.486	3.529

Least square means for site 14 :

Group	Mean
rostral	28.547
mid	24.529
caudal	13.131

Std Err of LS Mean = 4.832

Least square means for treat 14 x site 14 :

Group	Mean	SEM
ct x rostral	18.130	7.485
ct x mid	16.829	7.485
ct x caudal	5.996	7.485
et x rostral	38.965	6.112
et x mid	32.229	6.112

et x caudal 20.266 6.112

All Pairwise Multiple Comparison Procedures (Holm-Sidak method):
Overall significance level = 0.05

Comparisons for factor: **treat 14**

Comparison	**Diff of Means**	**t**	**P**	**P<0.050**
et vs. ct	16.835	3.017	0.015	Yes

Comparisons for factor: **site 14**

Comparison	**Diff of Means**	**t**	**P**	**P<0.050**
rostral vs. caudal	15.416	2.256	0.144	No
mid vs. caudal	11.398	1.668	0.243	No
rostral vs. mid	4.019	0.588	0.571	No

Comparisons for factor: **site 14 within ct**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
rostral vs. caudal	12.134	1.146	0.629	No
mid vs. caudal	10.833	1.023	0.555	No
rostral vs. mid	1.301	0.123	0.905	No

Comparisons for factor: **site 14 within et**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
rostral vs. caudal	18.699	2.163	0.166	No
mid vs. caudal	11.963	1.384	0.360	No
rostral vs. mid	6.736	0.779	0.456	No

Comparisons for factor: **treat 14 within rostral**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
et vs. ct	20.835	2.156	0.059	No

Comparisons for factor: **treat 14 within mid**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
et vs. ct	15.400	1.594	0.145	No

Comparisons for factor: **treat 14 within caudal**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
et vs. ct	14.270	1.477	0.174	No

Two Way Analysis of Variance Friday, February 11, 2011, 4:03:11 PM

Data source: Data 1 Audit in YFP et v site - DAC Audit

Balanced Design

Dependent Variable: DAC Data 17

Normality Test (Shapiro-Wilk) Passed (P = 0.798)

Equal Variance Test: Passed (P = 0.634)

Source of Variation	DF	SS	MS	F	P
treat 17	1	256.133	256.133	21.703	<0.001
site 17	2	452.582	226.291	19.175	<0.001
treat 17 x site 17	2	20.539	10.270	0.870	0.444
Residual	12	141.619	11.802		
Total	17	870.873	51.228		

The difference in the mean values among the different levels of treat 17 is greater than would be expected by chance after allowing for effects of differences in site 17. There is a statistically significant difference (P = <0.001). To isolate which group(s) differ from the others use a multiple comparison procedure.

The difference in the mean values among the different levels of site 17 is greater than would be expected by chance after allowing for effects of differences in treat 17. There is a statistically significant difference (P = <0.001). To isolate which group(s) differ from the others use a multiple comparison procedure.

The effect of different levels of treat 17 does not depend on what level of site 17 is present. There is not a statistically significant interaction between treat 17 and site 17. (P = 0.444)

Power of performed test with alpha = 0.0500: for treat 17 : 0.991
Power of performed test with alpha = 0.0500: for site 17 : 0.999
Power of performed test with alpha = 0.0500: for treat 17 x site 17 : 0.0500

Least square means for treat 17 :

Group	Mean
ct	16.322
et	8.778

Std Err of LS Mean = 1.145

Least square means for site 17 :

Group	Mean
rostral	12.418
mid	18.756
caudal	6.476

Std Err of LS Mean = 1.402

Least square means for treat 17 x site 17 :

Group	Mean
ct x rostral	16.182
ct x mid	23.841
ct x caudal	8.944
et x rostral	8.654
et x mid	13.672

et x caudal 4.008
Std Err of LS Mean = 1.983

All Pairwise Multiple Comparison Procedures (Holm-Sidak method):
Overall significance level = 0.05

Comparisons for factor: **treat 17**

Comparison	**Diff of Means**	**t**	**P**	**P<0.050**
ct vs. et	7.544	4.659	<0.001	Yes

Comparisons for factor: **site 17**

Comparison	**Diff of Means**	**t**	**P**	**P<0.050**
mid vs. caudal	12.280	6.192	<0.001	Yes
mid vs. rostral	6.338	3.196	0.015	Yes
rostral vs. caudal	5.942	2.996	0.011	Yes

Comparisons for factor: **site 17 within ct**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
mid vs. caudal	14.897	5.311	<0.001	Yes
mid vs. rostral	7.658	2.730	0.036	Yes
rostral vs. caudal	7.239	2.581	0.024	Yes

Comparisons for factor: **site 17 within et**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
mid vs. caudal	9.664	3.445	0.014	Yes
mid vs. rostral	5.018	1.789	0.188	No
rostral vs. caudal	4.646	1.656	0.124	No

Comparisons for factor: **treat 17 within rostral**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
ct vs. et	7.528	2.684	0.020	Yes

Comparisons for factor: **treat 17 within mid**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
ct vs. et	10.169	3.625	0.003	Yes

Comparisons for factor: **treat 17 within caudal**

Comparison	**Diff of Means**	**t**	**P**	**P<0.05**
ct vs. et	4.936	1.760	0.104	No

Two Way Analysis of Variance Tuesday, July 13, 2010, 4:52:05 PM

Data source: Data 1 in Notebook 1

General Linear Model

Dependent Variable: data 14

Normality Test: Passed (P > 0.050)

Equal Variance Test: Passed (P = 0.155)

Source of Variation	DF	SS	MS	F	P
treat 14	1	960.400	960.400	8.587	0.017
site 14	2	661.141	330.570	2.956	0.103
treat 14 x site 14	2	42.733	21.366	0.191	0.829
Residual	9	1006.583	111.843		
Total	14	2760.013	197.144		

The difference in the mean values among the different levels of treat 14 is greater than would be expected by chance after allowing for effects of differences in site 14. There is a statistically significant difference (P = 0.017). To isolate which group(s) differ from the others use a multiple comparison procedure.

The difference in the mean values among the different levels of site 14 is not great enough to exclude the possibility that the difference is just due to random sampling variability after allowing for the effects of differences in treat 14. There is not a statistically significant difference (P = 0.103).

The effect of different levels of treat 14 does not depend on what level of site 14 is present. There is not a statistically significant interaction between treat 14 and site 14. (P = 0.829)

Power of performed test with alpha = 0.0500: for treat 14 : 0.694
Power of performed test with alpha = 0.0500: for site 14 : 0.296
Power of performed test with alpha = 0.0500: for treat 14 x site 14 : 0.0500

Least square means for treat 14 :

Group	Mean	SEM
ct	13.733	4.317
et	30.067	3.525

Least square means for site 14 :

Group	Mean	SEM
rostral	28.575	4.827
mid	24.517	4.827
caudal	12.608	4.827

Least square means for treat 14 x site 14 :

Group	Mean	SEM
ct x rostral	18.050	7.478
ct x mid	17.000	7.478
ct x caudal	6.150	7.478
et x rostral	39.100	6.106
et x mid	32.033	6.106

et x caudal	19.067	6.106

All Pairwise Multiple Comparison Procedures (Holm-Sidak method):
Overall significance level = 0.05

Comparisons for factor: **treat 14**

Comparison	**Diff of Means**	**t**	**Unadjusted P**	**Critical Level**	**Significant?**
et vs. ct	16.333	2.930	0.017	0.050	Yes

Two Way Analysis of Variance Tuesday, July 13, 2010, 4:52:26 PM

Data source: Data 1 in Notebook 1

Balanced Design

Dependent Variable: data 15

Normality Test: Passed (P > 0.050)

Equal Variance Test: Passed (P = 0.635)

Source of Variation	DF	SS	MS	F	P
treat 15	1	12.836	12.836	0.208	0.656
site 15	2	457.098	228.549	3.708	0.056
treat 15 x site 15	2	35.498	17.749	0.288	0.755
Residual	12	739.727	61.644		
Total	17	1245.158	73.245		

The difference in the mean values among the different levels of treat 15 is not great enough to exclude the possibility that the difference is just due to random sampling variability after allowing for the effects of differences in site 15. There is not a statistically significant difference (P = 0.656).

The difference in the mean values among the different levels of site 15 is not great enough to exclude the possibility that the difference is just due to random sampling variability after allowing for the effects of differences in treat 15. There is not a statistically significant difference (P = 0.056).

The effect of different levels of treat 15 does not depend on what level of site 15 is present. There is not a statistically significant interaction between treat 15 and site 15. (P = 0.755)

Power of performed test with alpha = 0.0500: for treat 15 : 0.0500
Power of performed test with alpha = 0.0500: for site 15 : 0.427
Power of performed test with alpha = 0.0500: for treat 15 x site 15 : 0.0500

Least square means for treat 15 :

Group	Mean
ct	16.267
et	17.956

Std Err of LS Mean = 2.617

Least square means for site 15 :

Group	Mean
rostral	18.933
mid	22.167
caudal	10.233

Std Err of LS Mean = 3.205

Least square means for treat 15 x site 15 :

Group	Mean
ct x rostral	16.767
ct x mid	20.700
ct x caudal	11.333
et x rostral	21.100
et x mid	23.633

et x caudal 9.133
Std Err of LS Mean = 4.533

Two Way Analysis of Variance Tuesday, July 13, 2010, 4:52:43 PM

Data source: Data 1 in Notebook 1

Balanced Design

Dependent Variable: data 17

Normality Test: Passed (P > 0.050)

Equal Variance Test: Passed (P = 0.726)

Source of Variation	DF	SS	MS	F	P
treat 17	1	277.694	277.694	21.488	<0.001
site 17	2	450.610	225.305	17.434	<0.001
treat 17 x site 17	2	23.581	11.791	0.912	0.428
Residual	12	155.080	12.923		
Total	17	906.965	53.351		

The difference in the mean values among the different levels of treat 17 is greater than would be expected by chance after allowing for effects of differences in site 17. There is a statistically significant difference (P = <0.001). To isolate which group(s) differ from the others use a multiple comparison procedure.

The difference in the mean values among the different levels of site 17 is greater than would be expected by chance after allowing for effects of differences in treat 17. There is a statistically significant difference (P = <0.001). To isolate which group(s) differ from the others use a multiple comparison procedure.

The effect of different levels of treat 17 does not depend on what level of site 17 is present. There is not a statistically significant interaction between treat 17 and site 17. (P = 0.428)

Power of performed test with alpha = 0.0500: for treat 17 : 0.991
Power of performed test with alpha = 0.0500: for site 17 : 0.998
Power of performed test with alpha = 0.0500: for treat 17 x site 17 : 0.0500

Least square means for treat 17 :

Group	Mean
ct	16.644
et	8.789

Std Err of LS Mean = 1.198

Least square means for site 17 :

Group	Mean
rostral	12.500
mid	18.950
caudal	6.700

Std Err of LS Mean = 1.468

Least square means for treat 17 x site 17 :

Group	Mean
ct x rostral	16.233
ct x mid	24.367
ct x caudal	9.333
et x rostral	8.767
et x mid	13.533

et x caudal 4.067
Std Err of LS Mean = 2.076

All Pairwise Multiple Comparison Procedures (Holm-Sidak method):
Overall significance level = 0.05

Comparisons for factor: **treat 17**

Comparison	**Diff of Means**	**t**	**Unadjusted P**	**Critical Level**	**Significant?**
ct vs. et	7.856	4.635	0.001	0.050	Yes

Comparisons for factor: **site 17**

Comparison	**Diff of Means**	**t**	**Unadjusted P**	**Critical Level**	**Significant?**
mid vs. caudal	12.250	5.902	0.000	0.017	Yes
mid vs. rostral	6.450	3.108	0.009	0.025	Yes
rostral vs. caudal	5.800	2.794	0.016	0.050	Yes

State University of New York
Upstate Medical University

Department of Neuroscience & Physiology

750 East Adams Street
Syracuse, New York 13210 USA

Phone (315) 464-7729
FAX (315) 464-7712

Michael W. Miller, Ph.D.
Professor
millermw@upstate.edu

March 2, 2011

David Amberg, Ph.D.
Chair, Oversight Committee
Department of Biochemistry and Molecular Biology
4227 Weiskotten Hall
750 East Adams Street
Syracuse NY 13210

Dear Drs. Amberg, Mitchell, and Cibula:

Thank you for your thorough review of the data included in Figure 2 of the paper published by Miller MW and Hu H (2009) *Developmental Neuroscience* 31:50-57. I appreciate the significance and seriousness of your letter and I would like to respond to comments raised by the Oversight Committee.

I have been fully compliant with the directives of the Deciding Official, President David Smith. I apologized to faculty members in the Department of Neuroscience and Physiology and to the chairs at Upstate Medical University, and I no longer serve as departmental chair. I have also fully abided by the recommendations of the Investigation Committee. I have provided information to the Oversight Committee, and I requested that the paper authored by Huaiyu Hu and me be retracted. I would like to describe issues related to the submission of the retraction letter and agreements related to this submission.

1. The letter of retraction was submitted on September 27, 2010 to the Editor of the journal *Developmental Neuroscience*, Steven Levison, Dr. Levison received this letter, but he did not accept this request. He asked that an erratum be submitted. In coming to this decision, there was no collusion between Dr. Levison and me. He was provided the data and the analysis of the data related to Figure 2 and Dr. Levison came to his own decision.

During the summer of 2010 while trying to determine if I was able to retract the paper unilaterally, I had conversations with my co-author, Dr. Hu. We discussed the data, the errors, and the corrected data and analyses. At no time did Dr. Hu express to me that he had any discomfort with the data, however, he told me that he had had a discussion with an official of the University who asked him not to act on the paper. In our last conversation about the paper, I presented him with two letters: one requesting that the paper be retracted and another asking for a correction. Dr. Hu was unwilling to sign either letter. I was concerned about the proper way to proceed, so I

discussed the situation with Dr. Levison to determine about my ability to take action unilaterally as the corresponding author. He pursued this question with his publisher, after which he told me that as corresponding author, I could make unilateral decisions. This was a position strongly supported by the University Counsel, Winthrop Thurlow. Therefore, I drafted a letter of retraction which was approved by the University Counsel.

I submitted the approved retraction letter. In doing so, the University Counsel stated that the University would have no further communication with the Journal, and that from the University's perspective, the case was closed. This was the substance of telephone conversations between Mr. Thurlow and my attorney James Lantier and it was followed by email communications between them. Mr. Thurlow was clear that he (as a representative of the University) was only interested in my submission of the letter and that he did not care what decision the Journal would make. In coming to this agreement, Mr. Thurlow was in full knowledge of the Journal's position that a retraction was not warranted. Please note that despite my submitting the approved letter of retraction and the agreement that the University would have no further communication with the Journal regarding the Miller Hu paper, Mr. Thurlow has continued to communicate with the Journal.

2. An erratum is outside the purview of the Oversight Committee and not addressed by the Recommendations of the Investigation Committee or the President's directives. Recommendation #4 from the Investigation Committee states that "a process should be set up for monitoring and oversight of Dr. Miller's future work for a period of at least three years. That process should include oversight and supervision of all raw data spreadsheets, statistical analyses, and generation of tables and figures for all submitted manuscripts and grant applications." Thus, the specific responsibilities of the Oversight Committee relate to manuscripts and grant applications. An erratum is neither a manuscript nor a grant application.

3. The University's position about the Miller Hu paper focused on the data in Figure 2. This position has been inconsistent and unsupported. Let me elaborate.

(1) In the process of discussing the data with the Investigation Committee, I acknowledged errors and that the paper as published should not stand. I submitted a corrected data set and a new statistical analysis to the Investigation Committee. Evidently, they did not examine this information. As stated in the Addendum to the Report of the Investigation Committee "the analysis that has been redone in [Dr. Miller's] appendix, whether correct or not, was not part of the published manuscript. Therefore, the Committee stands by its original assessment. . . even if the new analysis is statistically significant." Had the re-analysis been examined, the published record could have been addressed.

(2) In a conversation on June 18, 2010 with the Dean, Steven Scheinman, he told me that a reason for demanding the retraction was that a sample size of two was insufficient for statistical analyses. This criticism is inaccurate. I called the Helpline at Systat (the manufacturers of the software SigmaPlot and SigmaStat). Two technical support staff independently stated that a sample of two is acceptable for an analysis of variance (ANOVA). One person noted that there is the potential, however, that the data may fail a normality test. This was not the case for the dataset on YFP labeling because the data not only passed a normality test, but also an equal variance test.

(3) The University Counsel stated in an email on August 5, 2010 that the paper must be withdrawn because (a) it was based on samples of one, thus the paper inappropriately included error bars, (b) Dr. Miller "replicated the experiment for purposes of showing it to the Investigation

Committee, or . . . for the purposes of seeking relief from retraction from Dean Scheinman or the Journal, [(c) that] 'No harm, no foul' is not a defense to a claim of research misconduct," and (d) that Dr. Miller sought relief with the Journal. Each of these statements is incorrect. (1) I acknowledged that there was an error in the reporting of sample numbers. Even after correcting the error, groups had samples of three subjects with the exception that one of the six groups comprised two subjects. (2) No data were ever replicated. The same data were presented to the Investigation Committee, the Dean, the Journal Editor, and the Oversight Committee. (3) I never claimed "no harm, no foul." I acknowledged the error to the Investigation Committee and I asked the Dean that I be able to publicly identify the error and to have the published record corrected. (4) I contacted the Editor to determine the mechanism of withdrawing the paper and only discussed the reasons for the retraction when prompted by the Editor. I did not seek the Editor's opinion on the merits of a withdrawal, i.e., I did not seek relief from the Journal. I endeavored to retract the paper.

4. Regarding the analysis by the statistician DAC: Note there is a number of differences between the calculations of DAC and me. I would like to first describe the sequence used in the analysis of the data. Sections of cortex from control and ethanol-treated mice were examined. Two measures were determined: numbers of green fluorescent protein (GFP) positive cells and numbers of propidium iodide (PI) positive neurons. Data for two samples (each taken from a different slice of tissue) were obtained in each animal. The animal numbers are listed in column O on the spreadsheet YFP layer Va.xls. The data for the GFP and PI labeling are in columns Q, T, and W and in P, S, and V, respectively. The data describe samples taken at different sites along the rostral to caudal axis of the cortex (described as anterior, parietal, and occipital in the spreadsheet).

The labeling index for each sample was calculated as the number of GFP-labeled cells divided by the number of PI+ neurons times 100%. These data are in columns R, U, and X for the three sites of interest. The means of the pair of samples for each animal were calculated; they are provided in columns E, H, and K. [n.b. Please note that the numbers in columns B, C, F, G, I, and J are means of the PI and GFP labeling from the table on the right (i.e., columns N-X), but these numbers were not used. They were not used (or considered valid) because the number of PI+ cells in each sample was not the same. Therefore, the data could be biased by a count that included a particularly high or low number of PI+ neurons. The more conservative approach of treating each sample independently was applied.]

The data for each animal (in columns E, H, and K) were used in the statistical analyses. A two-way ANOVA was used. The software package was SigmaStat 3.0. The data were entered into columns 3, 6, and 9 for animals administered with ethanol or saline on gestational day (GD) 14, GD 15, or GD 17, respectively. [n.b. Please note that there may be confusion about the identification of dates during gestation. Please note that the dates of analysis vary among the documents between GD 13, GD 14, and GD 16 and GD 14, GD 15, and GD 17. These triads are identical and only reflect different conventions used by different investigators for naming dates in fetal development.] A two-way ANOVA was performed for treatment (control v ethanol) and site of analysis (rostral, middle, and caudal); each ANOVA was for a different time of treatment. Post-hoc tests were then performed to assess differences among treatments or sites of analyses. The grand means (described in rows 7, 15, 23, 32, 40, and 48 of columns E, H, and K of file YFP layer Va.xls) are the values plotted in the revised Figure 2.

As for discrepancies between DAC and me, let me address an example of the data, for the rostral (anterior) site in control mice injected on G13. We both agree on the calculated labeling indices

for the two counting sites in mouse #47 (23.5 and 17.2) and mouse #79 (15.2 and 16.1). I calculated the mean for mouse #47 as 20.35 which rounded to three significant figures is 20.4. DAC has a mean of 20.6. I calculated the mean for mouse #79 as 15.65 which rounded to 15.7. DAC has 15.6. This may be an example of an arithmetic error and rounding difference by DAC. There is another explanation for the data analysis by DAC. S/he may have concatenated the data for the two counting boxes for each animal and then determined the labeling indices. The result of such an analysis is consistent with the numbers entered in the Excel spreadsheet titled YFP Va DAC Audit. An argument can be made for either approach, i.e., neither is wrong. As noted above, I believe that my approach (to generate separate means for each counting box and then to take a grand mean for each animal) is more stringent and appropriate. This approach eliminates bias resulting from the heterogeneous clustering of neurons included within an individual box.

I performed two-way ANOVAs, whereas DAC chose a three-way ANOVA. This decision is based on the *a priori* experimental design: the study examined potential ethanol-induced changes at individual ages. It was not comparing changes over age. With a two-way ANOVAs, the results are as I described them - statistically significant ($p<0.05$) for the effects of the ethanol injection on GD 14 and GD 17. This approach was described in the paper and found appropriate and acceptable by both the reviewers and editors of the journal *Developmental Neuroscience*.

As noted above, most differences between the data used by DAC and me arose from differences in manner in which the data were calculated and in rounding decimals. Despite multiple reviews of the data, there were two unintentional arithmetic errors: the rostral (anterior) level for mouse #53 and in the caudal (occipital) level for mouse #59. The latter error was an mistake in transcribing 20.3 instead of 28.3 (which in the readout of my calculator have similar appearances). This changed the mean for this mouse to a labeling index of 23.6, not 19.7 as I had entered in the spreadsheet. I am embarrassed by these errors, but I am comforted that they at least did not change the statistical conclusions or appreciably alter Figure 2.

There is consensus among all parties that two sets of data were taken from each of two or three animals. The original analysis mistakenly treated the two data for each animal as separate entries. I acknowledged that this was an error, corrected it, and performed a new analysis. The text of neither the paper nor the erratum states that the pair of samples was taken from different slides. A comment in my Response to the Report of the Investigation Committee states that separate sections were examined. This may have been a poor choice of terms. The analysis was of a z-stack of optical slices. I did not have the samples with me (files and notebooks had been sequestered) and to the best of my recollection two counting boxes were examined. I cannot recall whether they were on separate z-stacks or separate sites on the same z-stack. Nevertheless, the values for each counting box should have independently calculated and the values for the pair of boxes examined in each animal should have been averaged as was done in my re-analysis.

5. The Report of the Oversight Committee commented on the conclusion that ethanol did not cause any cell death. This is a new issue; it was not raised in the Report of the Investigation Committee. Nevertheless, this conclusion was based on assays of total neuronal density in layer V and in a cortical column including all layers. Density is an expression of number per unit volume. The comment in the Discussion refers to the data on total values described in Figure 3. I am aware that this is not definitive evidence for neuronal death or a lack thereof which is why the conclusion in the text is equivocal. It says, "In the present study, however, there is no evidence that episodic exposure to ethanol during gestation affects neuronal survival." I do not recall having a conversation about this with Dr. Olson.

In summary, I have been fully compliant with the University's wishes. I requested that the paper be retracted and I worked within the purview of the Oversight Committee. I attempted to work with my co-author, but when he rendered himself inaccessible, I followed the guidance of the University Counsel to act unilaterally.

Please contact me if you have any questions.

Sincerely,

Michael W. Miller

State University of New York
Upstate Medical University

March 24, 2011

Dear Dr. Goodman,

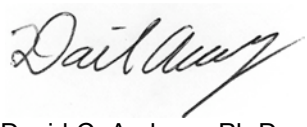
Described below are the responses of the Michael Miller Oversight Committee to Dr. Miller's response to the committee's report on the submitted erratum to the Hu and Miller paper (Dev. Neurosci. 31:50-57). The committee's responses are numbered corresponding to the points made in Dr. Miller's response that was submitted to the committee on March 2nd 2011.

1) Dr. Amberg re-interviewed Dr. Hu concerning the statements made in this section of Dr. Miller's response. Dr. Hu assured Dr. Amberg that he never told Dr. Miller "that he had had a discussion with an official of the University who asked him not to act on the paper." Furthermore, Dr. Hu stated very clearly that he was never presented by Dr. Miller with a letter "requesting that the paper be retracted" only with a letter crafted by Dr. Miller that claimed Dr. Hu's support for a correction/erratum. Dr. Hu refused to sign this letter and made it clear to Dr. Miller that he did not trust the data. Therefore, Dr. Hu did in fact express his discomfort with the data to Dr. Miller. Lastly, Dr. Hu stated that following Dr. Miller's removal as chair and address to the department on May 28th 2010, Dr. Miller came to Dr. Hu's office and stated that "all of the lawyers I have talked to have told me that I do not have to retract the paper". This statement suggests that Dr. Miller never had any intention of retracting the Hu and Miller paper. These statements were confirmed by counsel, Winthrop Thurlow, in a subsequent interview Mr. Thurlow had with Dr. Hu.
2) Kristen Grace from the Office of Research Integrity has told Dr. Goodman that she feels that it is within the purview of the Upstate Oversight Committee to review an erratum containing a revised figure from the Miller laboratory and our counsel, Winthrop Thurlow concurs with this position.
3) And 4) The committee stands behind the statistical analyses performed by Dr. Don Cibula. He is a recognized expert in the statistical analysis of biological research data and he undertook his analyses with an accurate understanding of the nature of the data and the experiments from which they are purported to have been derived. As stated in his report to the Oversight Committee, Dr. Cibula replicated Dr. Miller's two-factor independent ANOVAs for each of the three gestational age groups using Dr. Miller's original (unaltered) data, and found that four of the six comparisons Dr. Miller claims to be statistically significant in Figure 2, Revised are not significant at the criterion level of 5% (see Miller Reanalysis, G14.pdf and Miller Reanalysis, G17.pdf). Furthermore, evidence that Dr. Miller performed the appropriate Holm-Sidak post hoc comparisons to support Figure 2, Revised (i.e. comparisons of treatment vs. controls within each level of brain region) is not in the SigmaPlot file (YFP et v site.jnb) that he provided to the Oversight Committee.
5) The issue of whether total cell counts had been done on the samples used to generate Figure 2 is not a new issue. This issue was highlighted by Dr. Olson in his interview with the Investigation Committee and is in his opinion yet one more fatal flaw of the paper. The Oversight Committee reviewed the transcript from the 2/12/10 meeting of the Investigation Committee confirming that Dr. Olson had testified to the Investigation Committee as to the absence of total cell counts for the data supporting Figure 2. In revisiting the merits of the publication, the Oversight Committee concluded, in agreement with Dr. Olson, that this constitutes data fabrication and is therefore a fatal flaw and one that is not addressed by the erratum. Furthermore, Dr. Amberg re-interviewed Dr. Olson concerning Dr. Miller's statement that "I do not recall having a conversation about this with Dr. Olson." referring to whether Dr. Olson expressed his concerns about total cell counts not being done. Dr. Olson reiterated that on numerous occasions during the performance of the study he expressed to Dr. Miller the need to do total cell counts. When Dr. Olson was presented with a draft of the manuscript he expressed to Dr. Miller that the statements suggesting that these counts had been done must be removed. Two days later Dr. Olson was presented with a new draft that still included the offending statements and it was in part as a result of this that Dr. Olson

insisted at that time his name be removed from the manuscript. These statements, made to Dr. Amberg by Dr. Olson, are well supported by the original drafts of the manuscript in Dr. Olson's possession that clearly bear Dr. Olson's comments pointing out that total cell counts were never performed. Interestingly, these drafts also clearly show that Dr. Olson alerted Dr. Miller to the incorrect reporting of the n for Figure 2. Dr. Olson has provided copies of these drafts to the committee and Dr. Goodman.

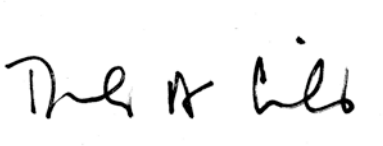
Lastly, Dr. Miller's response completely fails to address the first, and most important point of the Oversight Committee's report: that independent re-analysis of his images failed to agree with his data. Therefore, the erratum perpetuates falsified data. In conclusion, the Oversight Committee finds little to no validity in Dr. Miller's responses to our report on the erratum for Hu and Miller. In addition, we are very concerned over the complete lack of collegiality that Dr. Miller continues to show toward Drs. Hu and Olson, two individuals that have been damaged most by Dr. Miller's actions.

Sincerely,



David C. Amberg, Ph.D.
Professor
Biochemistry and Molecular Biology

David R. Mitchell, Ph.D.
Professor
Cell and Developmental Biology



Don Cibula, PhD
Assistant Professor
CNYMPH Program and Center for Research and Evaluation
Department of Public Health and Preventive Medicine

From: David Amberg <rio@upstate.edu>
To: Steven Goodman
Date: 03/02/2012 5:22 PM
Subject: Fwd: Miller and Hu article

David C. Amberg
Professor
Biochemistry and Molecular Biology
Assistant Vice President of Research Integrity
Research Integrity Officer
SUNY Upstate Medical University
750 E. Adams St.
Syracuse, New York 13210
E-mail: rio@upstate.edu

Begin forwarded message:

> From: David Amberg <rio@upstate.edu>
> Date: September 21, 2011 4:42:17 PM EDT
> To: Steve Levison <levisosw@umdnj.edu>
> Cc: Steve Levison <levisosw@umdnj.edu>, Nancy Nussmeier <NussmeiN@upstate.edu
> >, Steven Goodman <GoodmanS@upstate.edu>, Winthrop Thurlow <ThurlowW@upstate.edu
> >
> Subject: Re: Miller and Hu article
>
> Dear Dr. Levison,
> I am writing to ask if you have
> considered the additional information I provided to you on August
> 16th and whether you have come to the conclusion to retract the

> manuscript in question? I was recently made aware that your journal
> has agreed to follow the recommendations of the ICMJE making us
> hopeful for a proper resolution of this matter.
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> Professor
> Biochemistry and Molecular Biology
> Assistant Vice President of Research Integrity
> Research Integrity Officer
> SUNY Upstate Medical University
> 750 E. Adams St.
> Syracuse, New York 13210
> E-mail: rio@upstate.edu
>
>
>
> On Aug 16, 2011, at 6:06 PM, David Amberg wrote:
>
>> Dear Dr. Levison,
>>
>> Under guidance from University
>> Counsel, Win Thurlow, I am responding to your request for
>> additional information concerning the University's misconduct
>> investigation of Dr. Michael Miller. We will not provide you with
>> information concerning witnesses in the investigation as we have an
>> obligation to protect those that cooperate with misconduct
>> investigations from retaliation. Although your request may be
>> innocent, it could be construed or lead to retaliation and could
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>> of work, either submitted or published, it is the editor's
>> responsibility to ensure that the question is appropriately
>> pursued, usually by the authors' sponsoring institution.
>> Ordinarily, it is not the responsibility of the editor to conduct a
>> full investigation or to make a determination—that responsibility
>> lies with the institution where the work was done or with the
>> funding agency. The editor should be promptly informed of the final

>> decision, and if a fraudulent paper has been published, the journal
>> must print a retraction. If this method of investigation does not
>> result in a satisfactory conclusion, the editor may choose to
>> conduct his or her own investigation. As an alternative to
>> retraction, the editor may choose to publish an expression of
>> concern about aspects of the conduct or integrity of the work.” Our
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>> that you would be justified in carrying out your own investigation
>> had we failed to adequately investigate a paper you published and
>> felt may be fraudulent. Let me assure you that we have performed
>> due diligence in investigating this matter and are therefore rather
>> baffled why you would want to repeat our efforts.
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>> However, in the spirit of cooperation and transparency, counsel has
>> agreed to allow me to make available to you: 1) The Oversight
>> Committee’s report relevant to the retraction of the Hu and Miller
>> paper, 2) Dr. Miller’s response to that report, and 3) The
>> Oversight Committee’s response to Dr. Miller’s response. In reading
>> these documents, I believe you will realize that Dr. Miller cannot
>> provide data that supports Figure 2 of the Hu and Miller paper. In
>> contrast the primary data that has been identified as being the
>> support for Figure 2 of the Hu and Miller paper shows no
>> significant differences between any of the samples. In regards to
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>> resolution to this unfortunate matter.
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>> Professor and Jacobsen Scholar
>> Biochemistry and Molecular Biology
>> Assistant Vice President of Research Integrity
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>> 750 E. Adams St.
>> Syracuse, New York 13210

>> E-mail: ambergd@upstate.edu
>> Phone: 315-464-8727
>> FAX: 315-4648750
>> Website: http://www.upstate.edu/biochem/amberg/
>>
>> <Miller Oversight Final Report.pdf>
>> <Miller Response to Erratum Report.pdf>
>> <Overisight Response to MM's Response.pdf>
>>
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>>
>>
>> On Jul 21, 2011, at 4:45 PM, Steve Levison wrote:
>>
>>> Dr. Amberg,
>>> I would like to assure you that we (the publisher of
>>> Developmental Neuroscience, S. Karger AG and the publisher's
>>> representative Thomas Nold) and I, as Editor-in-Chief) are both
>>> seriously and deliberately assessing the status of Miller and Hu's
>>> article and, as you likely are aware, still have not reached a
>>> final decision on whether to publish an erratum or a retraction of
>>> the article they published in Developmental Neuroscience in 2009.
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>>> Winthrop Thurlow provided me with the letter and report that
>>> you had submitted on February 22 to help me better understand the
>>> accusations made by your committee against Drs Miller and Hu and
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>>> Upon receiving these items I will be able to more fully examine
>>> this case towards deciding on the most appropriate future course
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>>> Thank you for your assistance,
>>>
>>> Respectfully,
>>>
>>> Steven W. Levison, PhD
>>> Editor in Chief, Developmental Neuroscience
>>> Professor of Neuroscience
>>> Director, Laboratory for Regenerative Neurobiology
>>> Department of Neurology and Neuroscience
>>> Newark, NJ 07103
>>> PH (973) 972-5162
>>> FAX: 973 972-2668
>>> e: steve.levison@umdnj.edu
>>> w: www.karger.com/dne
>>>
>>>
>>>
>>
>

From: David Amberg <rio@upstate.edu>
To: Steven Goodman
Date: 03/02/2012 5:22 PM
Subject: Fwd: Miller and Hu 2009

David C. Amberg
Professor
Biochemistry and Molecular Biology
Assistant Vice President of Research Integrity
Research Integrity Officer
SUNY Upstate Medical University
750 E. Adams St.
Syracuse, New York 13210
E-mail: rio@upstate.edu

Begin forwarded message:

> From: Steve Levison <levisosw@umdnj.edu>
> Date: September 26, 2011 10:09:01 AM EDT
> To: David Amberg <rio@upstate.edu>
> Subject: Re: Miller and Hu 2009
>
> Dr. Amberg,
> The publisher and I are still reviewing this case to determine
> whether to retract the article or to publish an erratum. The senior
> manager of the Karger publishing house, Mr. Thomas Nold, who has
> been advising me on how to proceed has been traveling and doesn't
> have all of the files with him, so he can't make an informed
> decision at the present time. We hope to have a decision to you

> within the next 7-10 days.
>
> Steve Levison, PhD
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>>> <Miller Response to Erratum Report.pdf>
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>>>> Steven W. Levison, PhD

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From: David Amberg <rio@upstate.edu>
To: Steven Goodman
Date: 03/02/2012 5:22 PM
Subject: Fwd: Retraction of Hu and Miller

David C. Amberg
Professor
Biochemistry and Molecular Biology
Assistant Vice President of Research Integrity
Research Integrity Officer
SUNY Upstate Medical University
750 E. Adams St.
Syracuse, New York 13210
E-mail: rio@upstate.edu

Begin forwarded message:

> From: David Amberg <rio@upstate.edu>
> Date: October 17, 2011 5:10:26 PM EDT
> To: Steve Levison <levisosw@umdnj.edu>
> Cc: Winthrop Thurlow <ThurlowW@upstate.edu>, Nancy Nussmeier <NussmeiN@upstate.edu
> >, Steven Goodman <GoodmanS@upstate.edu>, Barbara Humphrey <HumphreB@upstate.edu

> >
> Subject: Retraction of Hu and Miller
>
> Dear Dr. Levison,
>
> On September 26th you informed me

> by e-mail that you needed 7-10 days for you and the publisher to
> make a decision concerning retraction of the Hu and Miller paper. It
> is now well past that time and your continued irresponsible
> intransigence in this matter leaves us little choice but to pursue
> other avenues to try and correct the scientific record. If you do
> not agree, as both authors have formally requested in writing, to
> retract the Hu and Miller paper, we will share your role in this
> affair, including all correspondence, with Retraction Watch
(http://retractionwatch.wordpress.com/
>). You have 48 hours to inform us of your willingness to retract the
> paper. If we do not hear from you by the end of the business day on
> October 19th 2011, these materials will be forwarded to Retraction
> Watch.
>
>
>
> Sincerely,
>
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> David C. Amberg
> Professor
> Biochemistry and Molecular Biology
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Begin forwarded message:

> From: Steve Levison <levisosw@umdnj.edu>
> Date: October 18, 2011 9:43:27 AM EDT
> To: David Amberg <rio@upstate.edu>
> Cc: Winthrop Thurlow <ThurlowW@upstate.edu>, Nancy Nussmeier <NussmeiN@upstate.edu
> >, Steven Goodman <GoodmanS@upstate.edu>, Barbara Humphrey <HumphreB@upstate.edu

> >
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> Dr. Amberg,
> Your email of 10/17 arrived just as the publisher and I had

> reached a final decision. We have completed a review of all of the
> documents that you provided to me and those provided previously by
> Winthrop Thurlow, as well as documents provided to me by Drs. Miller
> and Hu and from Dr. Miller's lawyer, Mr. Lantier.
>
> Earlier, Thomas Nold (a senior manager of the Karger Publishing
> house, the publisher of Developmental Neuroscience) and I had
> determined based on the documents provided to us last year that an
> erratum was more appropriate than a retraction of the entire Miller
> and Hu (2009) article, as a published work cannot be truly retracted
> because the paper is in circulation. At that time it was our view
> that despite the flaws in the analysis of the data, that those flaws
> could be corrected in a published erratum to produce a final product
> that would be useful to the scientific community. We expressed this
> view to Mr. Thurlow on Dec. 10th, 2010 and we requested that Dr.
> Miller provide a corrected figure with an explanation of the
> mistakes that had been previously published.
> However, since then additional information provided has
> justified a re-evaluation of that decision. In particular, two
> points raised in the letter dated March 24th, 2011 to Dr. Goodman
> from your committee convinced us that the data in the manuscript may
> be unreliable; and, therefore, a retraction of this article, rather
> than an erratum now seems appropriate. In particular, we find the
> reported testimony of Dr. Hu, the co-author of this manuscript, that
> the data are unreliable, compelling. Furthermore, although we find
> the testimony of Dr. Olsen tainted due to his dissonant relationship
> with Dr. Miller, his testimony that data may have been fabricated
> and the inability of Dr. Miller to discredit this assertion in any
> of his rebuttals, of significant concern. Finally, since our
> original decision to publish an erratum, Dr. Hu, at my request,
> provided me with a letter approving the retraction of this article.
>
> Accordingly, we will publish a retraction of this article.
> However, in light of Dr. Miller's arguments that the underlying data
> are reliable we cannot accept the retraction letter submitted
> unilaterally by Dr. Miller dated Sept 27th, 2010. Instead, we will
> insist that a new letter of retraction be provided that is co-
> authored and co-signed by both authors, Dr. Miller and Dr. Hu. I
> have sent emails to Drs. Miller and Hu with this decision and in
> that email requested that they submit a new, jointly signed letter
> of retraction by Nov. 1st, 2009; whereupon we will publish that
> letter in Developmental Neuroscience.

>
> Sincerely,
>
> Steve Levison, PhD
> Professor of Neuroscience
> Director, Laboratory for Regenerative Neurobiology
> Department of Neurology and Neurosciences
> NJMS UH Cancer Center
> Office H-1226
> 205 South Orange Ave
> Newark, NJ
> 07103
> PH (973) 972-5162
> Fax (973) 972-2668
> Email: steve.levison@umdnj.edu
> http://njmsuhcc.umdnj.edu/home/index.php/Levison-Lab.html
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>
> On Oct 17, 2011, at 5:10 PM, David Amberg wrote:
>
>> Dear Dr. Levison,
>>
>> On September 26th you informed me
>> by e-mail that you needed 7-10 days for you and the publisher to
>> make a decision concerning retraction of the Hu and Miller paper.
>> It is now well past that time and your continued irresponsible
>> intransigence in this matter leaves us little choice but to pursue

>> other avenues to try and correct the scientific record. If you do
>> not agree, as both authors have formally requested in writing, to
>> retract the Hu and Miller paper, we will share your role in this
>> affair, including all correspondence, with Retraction Watch
(http://retractionwatch.wordpress.com/
>>). You have 48 hours to inform us of your willingness to retract
>> the paper. If we do not hear from you by the end of the business
>> day on October 19th 2011, these materials will be forwarded to
>> Retraction Watch.
>>
>>
>>
>> Sincerely,
>>
>>
>> David C. Amberg
>> Professor
>> Biochemistry and Molecular Biology
>> Assistant Vice President of Research Integrity
>> Research Integrity Officer
>> SUNY Upstate Medical University
>> 750 E. Adams St.
>> Syracuse, New York 13210
>> E-mail: rio@upstate.edu
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