

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 9:16-cv-80655-RLR

JAMES TRACY,

Plaintiff,

VS.

FLORIDA ATLANTIC UNIVERSITY,
BOARD OF TRUSTEES, a/k/a FLORIDA
ATLANTIC UNIVERSITY, et al.,

Defendants.

CORRECTED TRANSCRIPT

VOLUME II

DEPOSITION OF DIANE ALPERIN

TAKEN ON BEHALF OF THE PLAINTIFF

MAY 9, 2017
10:20 A.M. TO 7:15 P.M.

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204	<p>1 CORRECTED TRANSCRIPT</p> <p>2 VOLUME II</p> <p>3 DEPOSITION OF DIANE ALPERIN</p> <p>4 MAY 9, 2017</p> <p>5 CONTINUED DIRECT EXAMINATION</p> <p>6 BY MR. LEO:</p> <p>7 Q Have you seen this before?</p> <p>8 A I haven't seen this before.</p> <p>9 Q Do you know what this is?</p> <p>10 A It looks like it's a report of faculty who</p> <p>11 have submitted this report of outside employment or</p> <p>12 professional activity.</p> <p>13 Q And it's called "The Outside Business Report",</p> <p>14 right?</p> <p>15 A Correct.</p> <p>16 MR. CURELY: Objection to form.</p> <p>17 Q (By Mr. Leo) Would who know about this report?</p> <p>18 A I don't know where it came from. Where did</p> <p>19 you get it?</p> <p>20 Q From your counsel.</p> <p>21 A My counsel? I haven't seen it. I mean, I</p> <p>22 assume that it came from -- looking at the people on</p> <p>23 it --</p> <p>24 Q So my question was going to be --</p> <p>25 MR. CURELY: Hold on.</p>

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1 THE WITNESS: If you look -- since it includes
 2 faculty and non-faculty, it had to come from
 3 someplace outside of Academic Affairs.
 4 **Q (By Mr. Leo) This is some kind of a**
 5 **spreadsheet that is compiled by The University?**
 6 MR. CURELY: Objection to form.
 7 THE WITNESS: I don't know.
 8 **Q (By Mr. Leo) You never have access to this**
 9 **information?**
 10 A I've never seen it, correct.
 11 **Q So how do you know if someone has reported an**
 12 **activity or not?**
 13 A I don't understand your question.
 14 **Q When you're asked to determine whether someone**
 15 **has submitted their outside business forms --**
 16 A I look --
 17 **Q How would you know?**
 18 A I look in their credential file to see if we
 19 have a copy of it or I ask Human Resources if they have
 20 a copy of it.
 21 **Q Is there a master list somewhere?**
 22 A I don't know. This looks like it might be a
 23 list, but I'm not aware of it.
 24 **Q The only years that we were provided are**
 25 **these --**

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1 A 12/13.
 2 **Q Was there a discontinuation of this list or --**
 3 A I'm not aware of this list.
 4 **Q Okay. My next question is where would non-**
 5 **professional or non-business activity reported go on --**
 6 **in this or anything else like this? Is there something**
 7 **like it?**
 8 A This looks like --
 9 MR. CURELY: Objection to form.
 10 THE WITNESS: It looks like it's -- it looks
 11 like the column that's named "Outside Business"
 12 includes all sorts of activities.
 13 **Q (By Mr. Leo) Do faculty have access to this**
 14 **list, if there is one?**
 15 MR. CURELY: Objection to form.
 16 THE WITNESS: I don't know.
 17 **Q (By Mr. Leo) And who should we ask about this**
 18 **document, if you were going to point us in the direction**
 19 **of someone who would know?**
 20 A I don't know. I guess my first -- again,
 21 since this includes people and student affairs and
 22 parking and transportation -- that I would ask Human
 23 Resources please -- fiscal plans. These are all must
 24 employees that are outside of Academic Affairs.
 25 **Q Have you ever been asked to submit outside**

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1 **employment forms yourself?**
 2 A I submit outside employment forms myself.
 3 **Q For what activity?**
 4 A Now or in the past?
 5 **Q At any time.**
 6 A Any time? I would say in the past I have --
 7 when I was still part of the Department of Social Work
 8 and for a time while I was in the Provost Office I
 9 supervised -- I'm a -- I was a licensed clinical social
 10 worker, and I supervised people who needed supervision
 11 for licensure. I did that off campus for compensation
 12 and on campus uncompensated.
 13 **Q And you reported that?**
 14 A Yes.
 15 **Q On P-2?**
 16 A Yes, and then --
 17 **Q I'm sorry. PA-2.**
 18 A -- I have -- currently I have two outside
 19 employment forms approved by the Provost, form PA-5. I
 20 live in Delray Beach, and I am a member of the Delray
 21 Beach Homeless Task Force, and I am also on the Board of
 22 Directors of Family Cross of South Palm Beach County,
 23 which is an agency that seeks -- that works with
 24 homeless families and seeks to make them sustainable and
 25 independent.

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1 **Q Are these compensated activities?**
 2 A No.
 3 **Q They're uncompensated?**
 4 A Uncompensated.
 5 **Q And you report them?**
 6 A Yes.
 7 **Q Why?**
 8 A Based on the guidelines this is outside
 9 activity, and it is tied to -- it can be tied to my
 10 profession, and I feel it's important to report, and I
 11 think it says in there the guidelines to report activity
 12 on a board or on a task force.
 13 **Q When you say it's tied to your profession,**
 14 **what does that mean?**
 15 A Social work. I think working -- I think that
 16 people see me on these committees as having some
 17 knowledge of homelessness because of my background in
 18 social work.
 19 **Q But is there a connection between your, I**
 20 **guess, area of expertise or your profession and**
 21 **reportability?**
 22 A I don't understand the question.
 23 **Q You had indicated that it's part of your**
 24 **profession --**
 25 A Right.

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1 **Q -- these outside committees.**
 2 A But I'm required to report, and that's why I'm
 3 reporting.
 4 **Q You're required to report the --**
 5 A The activity.
 6 **Q -- the activity that you're undertaking --**
 7 A Correct.
 8 **Q -- or is it your interpretation that you're**
 9 **required to report it?**
 10 A I believe I'm required to report like every
 11 other employee.
 12 **Q The policy doesn't say, Diane Alperin, your**
 13 **social work --**
 14 A No, it doesn't say Diane Alperin report.
 15 **Q -- outside of The University is required.**
 16 A It says employee should report.
 17 **Q Right. So you interpreted the policy in a way**
 18 **that you believe you need to report, right?**
 19 A Correct. You have --
 20 **Q The policy doesn't say Diane Alperin has to**
 21 **report anything that's connected --**
 22 A It doesn't say --
 23 **Q -- with social work or --**
 24 THE REPORTER: Hold it.
 25 THE WITNESS: I'm sorry. It doesn't have

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1 everybody's name in the policy.
 2 MR. LEO: Right.
 3 THE WITNESS: But in the Report of Guidelines
 4 it says that you should report -- let me see. It's
 5 a time commitment. 4. "Outside activities when
 6 these are in the same field" and that is the
 7 faculty of staff member and --
 8 **Q (By Mr. Leo) You're reading from the**
 9 **guidelines?**
 10 A I'm reading from PA-6.
 11 **Q Okay.**
 12 A And then --
 13 **Q And which page is that?**
 14 A What?
 15 **Q Which page are you reading from?**
 16 A PA-6. Let me get back to that page. Page 5,
 17 number 5. "Outside Activities, particularly when these
 18 are in the same field as that of the faculty", and then
 19 there I think in another place --
 20 **Q You're referring to number 5 that says,**
 21 **"Outside activities or financial interest in an entity**
 22 **which competes with The University's core activities"?**
 23 A Which I have a special expertise, yes, and
 24 then if you go to page 8 (G) --
 25 MR. CURELY: This is Exhibit 6 she's been

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1 referring to.
 2 THE WITNESS: No. I'm sorry. (H), not (G).
 3 "A business activity, including service on the
 4 Board of Directors in the same discipline or
 5 field." So I believe that these guidelines --
 6 you'd need to report those activities.
 7 **Q (By Mr. Leo) You've interpreted them that way,**
 8 **but could it also be interpreted that you're not**
 9 **required to report --**
 10 A I don't see that.
 11 **Q -- one -- a business activity that's not a**
 12 **business activity, it's not being compensated?**
 13 A Business activities doesn't mean it has to be
 14 compensated.
 15 **Q What's business mean?**
 16 A It's an agency that's running. It's a
 17 business.
 18 **Q I thought you're helping the homeless people.**
 19 **How is it a business?**
 20 A There's an agency that's supported that has
 21 money to help the homeless people.
 22 **Q Would you agree that's not really a business?**
 23 A I believe it is a business.
 24 **Q Isn't it a business about making money?**
 25 A I think --

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1 MR. CURELY: Objection to form.
 2 THE WITNESS: -- making money to provide
 3 support or homeless families --
 4 **Q (By Mr. Leo) That sounds like -- =**
 5 A We don't exist --
 6 **Q -- public, like a benefit entity or some kind**
 7 **of a public service, not a business. A business would**
 8 **be about making money, and that's it, right?**
 9 A When we apply for grants we have to show our
 10 business profile and our funding.
 11 **Q Okay. That's because of --**
 12 A Did you want these back?
 13 **Q Is that because of donations or grants you're**
 14 **receiving?**
 15 A They would do everything, donations, grants,
 16 people want to see what -- you didn't mark that, so I
 17 didn't --
 18 **Q Yeah, we can leave it right here for now, but**
 19 **going back to the interpretation of the policy wherein**
 20 **you have reported these activities, arguably those**
 21 **activities may not be necessarily reportable.**
 22 A I believe they were necessarily reporting.
 23 **Q No, I understand what you said that you**
 24 **believe, but couldn't somebody else in similar positions**
 25 **assert an argument that given the language of the --**

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1 both Article 19 as well as The Guidelines, that an
 2 uncompensated professional activity does not necessarily
 3 have to be reported? For example, if there's no time
 4 commitment conflict in the faculty member's eyes?
 5 A One, I don't see you have an activity with no
 6 time.
 7 Q No, I'm saying conflict of time.
 8 A So I believe that the only way -- what I
 9 reported could not be reported is if it was part of my
 10 assignment.
 11 Can we have a little break?
 12 MR. CURELY: Sure, let's take 5.
 13 MR. LEO: Yeah, sure.
 14 (Thereupon, the following proceedings took place at
 15 3:45 p.m., following a short recess at 3:35 p.m.)
 16 Q (By Mr. Leo) All right. Getting back to the
 17 Report of Outside Employment, I'm going to show you --
 18 this is FAU 506. It's entitled "Reporting For Outside
 19 Employment." This is FAU 506 through 510. On the
 20 second page here, FAU 5007, it's entitled "Florida
 21 Atlantic University Report of Outside Employment or
 22 Professional Activity Form, Additional Explanation."
 23 A Would you like that back to --
 24 Q Yeah, this is going to be PA-23.
 25 (Thereupon, Plaintiff's Exhibit Number PA-23

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1 was marked for identification.)
 2 Q (By Mr. Leo) When you were referring earlier
 3 to HR and Additional Explanation, is this what you were
 4 referring to?
 5 A No. The HR document is the guidelines
 6 document.
 7 Q Oh, PA --
 8 A That was -- I was showing you. Yes, PA-6, and
 9 that's --
 10 Q PA-6.
 11 A PA-6, and this is also a document that's on
 12 the HR web site, this Additional Explanation.
 13 Q When was this "Additional Explanation"
 14 provided to faculty?
 15 MR. CURELY: Which one are we referring to?
 16 MR. LEO: PA-23.
 17 THE WITNESS: PA-23, which is the "Florida
 18 Atlantic University Report of Outside Employment or
 19 Professional Activity Form, Additional Explanation."
 20 Q (By Mr. Leo) And when was this Additional
 21 Explanation provided to faculty members?
 22 A It says June 2016 at the end of the document.
 23 I believe it was posted at the same time the new form
 24 was put up.
 25 Q So this was provided to faculty members after

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1 Professor Tracy's termination?
 2 A Yes.
 3 Q What do you make of this distinction between
 4 financial interest and significant financial interest?
 5 A This is --
 6 MR. CURELY: Objection, form.
 7 THE WITNESS: This is --
 8 Q (By Mr. Leo) Is there a difference?
 9 A This is, as I indicated, much of the impetus
 10 for the change in the form, and this explanation comes
 11 from the Division of Research, and this is part of
 12 regulations having to do with federal grants, and that's
 13 why this is added, and this is -- a good author of this
 14 article was the attorney for -- this document -- I'm
 15 sorry -- was the attorney for the Division of Research.
 16 Q Which attorney was that?
 17 A Jack Lubin.
 18 Q So, correct me if I'm wrong, faculty members
 19 don't need to report financial interest unless they
 20 exceed \$5,000?
 21 MR. CURELY: Objection to form.
 22 Q (By Mr. Leo) According to this Additional
 23 Explanation.
 24 A Yes, this has to do with sponsored research.
 25 Q I'm referring to where it says, "significant

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1 financial interest --"
 2 A Correct.
 3 Q -- in the middle of the page there, and that's
 4 page 1?
 5 A The indent under significant financial
 6 interest.
 7 Q Right. Well, my question is whether -- if
 8 it's less than \$5,000, does it need to be reported?
 9 MR. CURELY: Objection to form.
 10 THE WITNESS: For responsive research? No, I
 11 assume not. This is not my area of expertise.
 12 Q (By Mr. Leo) For any financial interest.
 13 MR. CURELY: Objection to form.
 14 THE WITNESS: Correct.
 15 Q (By Mr. Leo) So, according to this Additional
 16 Explanation, only a significant financial interest would
 17 have to be disclosed?
 18 A No.
 19 MR. CURELY: Objection to form.
 20 THE WITNESS: This has to do with an
 21 investigator, a researcher.
 22 Q (By Mr. Leo) Where are you getting that from?
 23 A "Significant financial interest is defined as
 24 a financial interest consisting of one or more of the
 25 following interests of the Investigator." Investigator

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1 with a capital "I" has to do with a researcher, and
 2 those of the investigator's spouse or children that
 3 reasonably appears to be related to the Investigator's
 4 institutional responsibilities."
 5 **Q So these who are deemed Investigators this**
 6 **applies to.**
 7 A Yes.
 8 **Q Who is an Investigator?**
 9 A Somebody who has responsive research.
 10 **Q Where is Investigator defined?**
 11 A There is other documents that have to do with
 12 significant financial interests that are part of the
 13 Division of Research.
 14 **Q Referring to the guidelines, do you see --**
 15 MR. CURELY: Can you be more specific?
 16 MR. LEO: This is PA-6.
 17 **Q (By Mr. Leo) For now when I say, "The**
 18 **Guidelines", that's what I'm referring to.**
 19 A Okay.
 20 **Q I'm referring to PA-6, the document entitled**
 21 **"Guidelines."**
 22 A Right.
 23 **Q If you can, just look at subsection capital B.**
 24 A B? Do you know what page? Oh, you're on that
 25 line.

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1 **Q Yes, it's not numbered. It's in bold,**
 2 **"Federal Reporting Requirement --"**
 3 A Okay. Yeah, I see that.
 4 **Q -- and evading the responsive project."**
 5 MR. CURELY: She's there.
 6 **Q (By Mr. Leo) If you just read that first and**
 7 **second paragraph underneath the subsection in capital**
 8 **B --**
 9 A Do you want me to read it our loud or you just
 10 want me --
 11 **Q No, you can read it to yourself.**
 12 A Okay. Okay.
 13 **Q It's quite extensive. The question I have is**
 14 **about the term "Investigator". You see in that second**
 15 **paragraph it refers to the term?**
 16 A Right.
 17 **Q Is this where you're indicating it was**
 18 **defined?**
 19 A Right.
 20 **Q "Any employee submitting a grant or contract**
 21 **proposal to the Public Health Service or The National**
 22 **Science Foundation or other government agency through**
 23 **The University or conducting a research or educational**
 24 **activities pursuant to such a federal grant or contract**
 25 **at The University as a --" quote -- "Investigator, must**

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1 **report a significant financial interest that would**
 2 **reasonably appear to be affected by the proposed or**
 3 **funded research activity", and it goes on. Is this**
 4 **where Investigator is defined?**
 5 A Uh-hm.
 6 **Q Is that what you're referring to?**
 7 A Yes, it's -- the end of the paragraph talks
 8 about "an Investigator is defined as a Principal
 9 Investigator, Pro Principal Investigator or any other
 10 employee responsible for the design, conduct or
 11 reporting of the proposed or funned research or
 12 educational activity."
 13 **Q Uh-hm. Would you agree with me that the --**
 14 **there's a \$10,000 cap in The Guidelines that you were**
 15 **just reading, if you keep going down to the third**
 16 **paragraph under Capital subsection B?**
 17 A Yes. It states, "A significant financial
 18 interest and not expected to exceed \$10,000 over the
 19 next 12 months."
 20 **Q So in the Guidelines it talked about a \$10,000**
 21 **cap, but in the Additional Explanation it's referring to**
 22 **a \$5,000 cap for Investigators. You agree with that?**
 23 A Yes.
 24 **Q The -- has this discrepancy been brought to**
 25 **your attention before?**

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1 A I don't know if it's a discrepancy. I
 2 believe --
 3 MR. CURELY: Objection to form.
 4 THE WITNESS: -- that the Additional
 5 Explanation is because of the change in the federal
 6 guidelines.
 7 **Q (By Mr. Leo) And the federal guidelines that**
 8 **are referenced in this document, the -- PA-6 --**
 9 A Right.
 10 **Q It says, "Federal regulations require The**
 11 **University manage, reduce or eliminate any actual or**
 12 **potential conflicts of interest that may be presented by**
 13 **certain compensated outside activities and other**
 14 **financial interest of persons involved in sponsored**
 15 **research projects funded by the government. Is that**
 16 **your understanding of the federal regulations?**
 17 A Uh-hm.
 18 **Q Are there any federal regulations that govern**
 19 **uncompensated activity?**
 20 A I'm only aware of -- I don't know. The only
 21 thing that this relates to is federal regulations that
 22 have to do with research.
 23 **Q And compensated activity.**
 24 A That's the question that I understand the
 25 federal government asks.

<p style="text-align: right;">221</p> <p>1 Q And, in particular, this guideline, PA-6, 2 references, quote, "certain compensated outside 3 activities." That's the language word for word. 4 A And -- 5 Q Just that first sentence under subsection 6 capital B, "Federal regulations require that The 7 University manage, reduce or eliminate any actual or 8 potential conflict of interest that may be presented by 9 certain compensated outside activities --" 10 A Correct. 11 Q "-- and other financial interests a person is 12 involved in sponsored research projects funded by the 13 government." Concerning Professor Tracy, my next 14 question is were there any actual or potential conflicts 15 of interest that were presented by any of the outside 16 activities you were aware of Professor Tracy was 17 undertaking? 18 A In relation to this? He was not submitting a 19 grant or a federal grant. This is all related to being 20 an Investigator for research. 21 Q You say this is all related to. What are you 22 referring to? 23 A This B that you referred me to -- 24 Q This is part of the -- 25 A -- federal reporting requirements relating to</p>	<p style="text-align: right;">222</p> <p>1 sponsored projects. 2 Q Okay. But you agree when it's referring to 3 federal regulations, it's speaking more broadly about -- 4 A I would not -- as far as I know, with what 5 Dr. Tracy -- Professor Tracy, Dr. Tracy has submitted, 6 he is not an Investigator on a federal grant, and this 7 section would not apply to him as far as I know. 8 Q So Professor Tracy would not be required to -- 9 A If he's not -- 10 Q -- report it. 11 A -- involved in a project like this, correct. 12 Q So Professor Tracy would not be required to 13 report anything pursuant to this section -- 14 MR. CURELY: Objection to form. 15 Q (By Mr. Leo) -- subsection B? 16 A Based on what I know, if he doesn't have a -- 17 he's not an Investigator on a grant, he would not be 18 required to report under this Section B. 19 Q All right. Going back up in this document, 20 maybe to the previous page -- 21 A Okay. 22 Q -- where it says, "The following activities -- 23 " I think it's maybe one more. 24 A Okay. 25 Q See where it says, "The following activities</p>
<p style="text-align: right;">223</p> <p>1 and financial interest -- 2 A Must be reported? 3 Q -- in all caps, must be reported and approved 4 prior to engaging in the activity? 5 A Right. 6 Q Which of these activities encompass any 7 activity that Professor Tracy was asked to report? 8 A Well, the first one, outside activities where 9 there's more incidental use of University facilities, 10 equipment and/or services", because he does fill out 11 that form when he finally fills out the form indicating 12 that he's using equipment for his -- I think it's called 13 "Truth Frequency", the podcast. 14 Q Which equipment was Professor Tracy using? 15 A It's on the forms. Do you have the forms? Do 16 I have the forms? 17 Q You have the forms now. PA-7? 18 A He's using equipment, the iMac in office and 19 that facilities record -- I think it's record/practice 20 MP3 files weekly on -- is it Garage Band and iTunes for 21 broadcast. 22 Q And which of those activities on the forms he 23 submitted would rise above incidental use? 24 A These two forms. This is more than incidental 25 use.</p>	<p style="text-align: right;">224</p> <p>1 Q Right. How so? 2 A Because it says he's using these files weekly. 3 Q Using what files? 4 A Record and produce MP3 files weekly on Garage 5 Band and iTunes for --" I can't read what the rest of it 6 says. 7 Q What's the definition of incidental use? 8 MR. CURELY: Objection to form. 9 Q (By Mr. Leo) According to FAU. 10 A I don't know that -- 11 MR. CURELY: Objection to form. 12 THE WITNESS: I don't know that FAU has a 13 definition of the incidental use. To me incidental 14 use is if you get an e-mail about something, but 15 actually coming in and recording something is not 16 incidental use. 17 Q (By Mr. Leo) When you say "coming in recording 18 something", what are you aware of that Professor Tracy 19 actually recorded? 20 A What he said on the form. That's all I'm 21 aware of. 22 Q And he said he recorded -- 23 A Because prior -- 24 Q -- MP3 files? 25 A Because prior to this he indicated he was not</p>

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1 using FAU equipment for anything.
 2 **Q When did he indicate that?**
 3 A Back in 2013 I believe.
 4 **Q Where?**
 5 A In a conversation with Dean Coltman and
 6 myself.
 7 **Q In January 2013?**
 8 A Yes.
 9 **Q And what did he say?**
 10 A I believe he said he was not using FAU
 11 equipment.
 12 **Q In response to a question?**
 13 A I don't know that we asked him a specific
 14 question.
 15 **Q So Professor --**
 16 A I don't remember. It's 2013. It's five
 17 years. I don't --
 18 **Q But you remember him saying I didn't use**
 19 **equipment.**
 20 A Yes.
 21 **Q Pretty good memory.**
 22 (Thereupon, Plaintiff's Exhibit Number PA-24
 23 was marked for identification.)
 24 **Q (By Mr. Leo) Let me show you PA-24. Do you**
 25 **recognize this document?**

226

1 A Yes, it's a form that we use.
 2 **Q What's this form for?**
 3 A This is -- if you're using University
 4 equipment.
 5 **Q So PA-24 --**
 6 A "For use with reported outside employment or
 7 professional activity form, an employee who engages
 8 outside activity cannot normally expect to use
 9 University equipment facilities and/or services. The
 10 use of these resources will be allowed only on a non-
 11 interference basis to the extent that no more than
 12 normal depreciation of equipment is experience in the
 13 use of facilities and/or services will not result in
 14 added expenses to The University."
 15 **Q All right. Is that the definition of**
 16 **incidental use?**
 17 A I think it's talking about use, what you need
 18 to record.
 19 **Q And if it falls into exceptions that you just**
 20 **read, it would not require permission to use the**
 21 **equipment, right?**
 22 A What exceptions?
 23 **Q The two you just read.**
 24 A Oh, if it didn't require a depreciation or
 25 result in expenses?

227

1 **Q No more than normal depreciation of equipment**
 2 **experienced and, 2, use of the facilities and/or**
 3 **services will not result in added expense to The**
 4 **University.**
 5 A That would be a determination that when the
 6 form was submitted and if it was evaluated and signed by
 7 the Director and then sent up the chain of command.
 8 **Q But going back to my question, are these the**
 9 **exceptions to use of equipment approval?**
 10 MR. CURELY: Objection to form.
 11 THE WITNESS: These are the exceptions that
 12 are written on this form.
 13 **Q (By Mr. Leo) And it says here, "The use of**
 14 **these resources will be allowed on a non=interference**
 15 **basis to the extent 1 and 2.**
 16 A Right.
 17 **Q So it's allowed if they're not depreciating**
 18 **the equipment and causing added expense to The**
 19 **University.**
 20 A Correct.
 21 **Q That's it. Would you agree with me that**
 22 **that's the incidental use policy at FAU?**
 23 MR. CURELY: Objection to form.
 24 THE WITNESS: That's the non-interference
 25 basis.

228

1 **Q (By Mr. Leo) And the definition of incidental**
 2 **use.**
 3 MR. CURELY: Objection to form.
 4 **Q (By Mr. Leo) Right?**
 5 A I don't see those as the same.
 6 **Q Going back to The Guidelines, A-9 --**
 7 A A --
 8 **Q Where you actually were are reading from that**
 9 **same are page, under reporting requirements, "The**
 10 **following outside activities and financial interest must**
 11 **be reported."**
 12 A Okay. 9? There's no 9. There's 8 --
 13 **Q Where it says in bold -- there it is. There**
 14 **it is.**
 15 A Oh, I see. So there was a letter sent to
 16 them.
 17 **Q Right. Look at subsection A underneath that**
 18 **bold language.**
 19 A "Outside activities in which there was more
 20 than incidental use of University facilities, equipment
 21 and/or services, these must be reported."
 22 **Q Right. This is saying that if it is more than**
 23 **incidental use --**
 24 A Correct.
 25 **Q -- it must be reported.**

229

1 A Right.
 2 Q So if it wasn't more than incidental use, it
 3 doesn't need to be reported --
 4 A Correct.
 5 Q -- would you agree?
 6 A But he reported it.
 7 Q Who?
 8 A Dr. Tracy.
 9 Q Dr. Tracy reported his use of FAU equipment --
 10 A Correct.
 11 Q -- because he was threatened if he didn't
 12 report it, right?
 13 A I don't agree that he was threatened.
 14 Q Okay. Let's talk about these threats. You
 15 don't agree that Professor Tracy was threatened?
 16 A I believe he was asked. He was asked
 17 repeatedly to submit the Outside Employment Form. I
 18 don't think he was asked specifically to fill out The
 19 University Equipment Facilities and Services Form, but I
 20 could be incorrect.
 21 Q Doesn't this all go together?
 22 A It does if you're using equipment and
 23 facilities.
 24 MR. LEO: Are we on 25, PA-25?
 25 THE WITNESS: Oh, that's the next one? Yes.

230

1 (Thereupon, Plaintiff's Exhibit Number PA-25
 2 was marked for identification.)
 3 Q (By Mr. Leo) Let me show you what's been
 4 marked as PA-25.
 5 MR. LEO: Here's another extra copy, Joe.
 6 MR. CURELY: Thank you.
 7 Q (By Mr. Leo) This is the November 10 Notice of
 8 Discipline.
 9 A Right.
 10 Q You've seen this before, right?
 11 A Yes.
 12 Q And is it your testimony that this is not a
 13 threat?
 14 A This is asking Dr. Tracy to fill out --
 15 acknowledge receipt of his annual assignment and his
 16 Outside Employment Forms for the last three years and
 17 that failure to do that will result in disciplinary
 18 action.
 19 Q Well, "It says failure to do that will result
 20 in further --"
 21 A "May result." May result."
 22 Q "May result in further disciplinary action."
 23 A Correct.
 24 Q So this is actually disciplinary action.
 25 A Yes, it's Notice of Discipline.

231

1 Q Right. So on November 10, 2015, Dean Coltman,
 2 with your -- she cc'd you, but did she get permission to
 3 send this?
 4 A I think we talked about it, but she wrote it.
 5 She sent it.
 6 Q Did you help her write it?
 7 A No.
 8 Q You didn't help her draft it?
 9 A No. She drafted it to my recollection.
 10 Q Did she send you a draft?
 11 A I don't recall.
 12 (Thereupon, Plaintiff's Exhibit Number PA-26
 13 was marked for identification.)
 14 Q (By Mr. Leo) I'm going to show you what's been
 15 marked as PA-26 for today.
 16 MR. LEO: Here's a copy for you, Joe.
 17 MR. CURELY: Thank you.
 18 MR. LEO: This is also PRR-919 and 920.
 19 Q (By Mr. Leo) Would you agree this is a draft
 20 of the November 10 Notice of Discipline that was sent to
 21 you and Lawrence Glick dated November 9th, 2015? Did
 22 this refresh your recollection?
 23 A Yes.
 24 Q This is a draft that Dean Coltman sent to you
 25 and to Lawrence Glick?

232

1 A Correct.
 2 Q Did you make note of this draft?
 3 A There are changes between the final and the
 4 draft, but I don't know who made the suggestion.
 5 Q Do you see what's been changed?
 6 A Yes.
 7 Q What was changed?
 8 A At the end, which is standard language, "This
 9 disciplinary action and the reprimand is subject to
 10 Article 20 of the BOT/UFF Collective Bargaining
 11 Agreement --
 12 THE REPORTER: Subject to the what?
 13 THE WITNESS: Okay. "Subject to BOT/UFF
 14 Collective Bargaining Agreement, and that's
 15 standard language and discipline, and then there is
 16 a different -- I'm not sure what difference means.
 17 In the final draft he is asked to acknowledge
 18 receipt of his annual assignment in FAIR and submit
 19 the Outside Employment Forms. In the draft he's
 20 asked to acknowledge the terms and conditions of
 21 his assignment, and I don't know -- at this point I
 22 don't recall what the difference was, why that was
 23 removed.
 24 Q (By Mr. Leo) Before this was sent to Professor
 25 Tracy on November 10, 2015, did you have a meeting to

233

1 discuss this discipline?
 2 A I don't recall that.
 3 Q And you agree that Professor Tracy objected to
 4 submitting the forms for his blogging and had requested
 5 clarification before this Notice of Discipline.
 6 A I do believe that he objected.
 7 Q And there was no attempt to speak with
 8 Professor Tracy before disciplining him?
 9 A I don't know. I did not speak to Professor
 10 Tracy about this.
 11 Q With all the confusion that was happening, you
 12 know, and all the complaints that were expressed in
 13 September of 2015, why was Professor Tracy treated
 14 differently?
 15 MR. CURELY: Objection to form.
 16 THE WITNESS: I don't believe he was treated
 17 differently.
 18 Q (By Mr. Leo) Well, everybody else was
 19 communicated with without discipline up until this
 20 Notice of Discipline; would you agree?
 21 A Who?
 22 Q For example, the faculty members who had
 23 expressed their confusion and concern. You were talking
 24 to them.
 25 A Yeah, but they did not -- they did not refuse

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1 to submit a form of Outside Employment Activity.
 2 Q Do you --
 3 THE REPORTER: Did not what? I'm sorry.
 4 THE WITNESS: I'm sorry. The faculty -- are
 5 you talking about the faculty that were at the
 6 Senate meeting?
 7 MR. LEO: Sure.
 8 THE WITNESS: I don't know that I had -- I did
 9 not have a discussion with them about their refusal
 10 to submit an Outside Employment/Professional
 11 Activity Form.
 12 Q (By Mr. Leo) You had a discussion with the
 13 faculty members in September of 2015 about their
 14 confusion about the policy, the forms, and was changes
 15 that were happening at the time, right?
 16 A Yes, there were changes that were happening,
 17 yes.
 18 Q So why didn't you speak to Professor Tracy and
 19 say there's changes that are happening, I know there's a
 20 lot of confusion, you know, and here's how we're using
 21 this policy and why?
 22 A That would not be what I would do.
 23 Q You wouldn't tell the faculty member that
 24 there's --
 25 A That's --

235

1 Q -- changes underway?
 2 A What does the -- the changes did not negate
 3 the obligation to file the report.
 4 Q Okay. But --
 5 A There is still a report to be filed now, and
 6 there was a report to file then, and there was a report
 7 to file when I came to work at FAU in 1980, and it
 8 probably existed before then.
 9 Q Would you agree that the faculty members'
 10 understanding of the policy is shaped by the application
 11 of the policy over the years and use of the policy?
 12 MR. CURELY: Objection to form.
 13 THE WITNESS: I would have to really think
 14 about that. I don't know.
 15 Q (By Mr. Leo) Take your time.
 16 A We always -- you know, we always ask for
 17 feedback when we change the form, when we changed -- we
 18 added the explanation. That was circulated through the
 19 Division of Research. It was circulated through the
 20 Deans, the Chairs, the faculty. It went to Faculty
 21 Senate. It went to Union. Everybody is involved with --
 22 The University believes in shared government, and
 23 everybody's input is respected.
 24 Q Was Professor Tracy's input respect in the
 25 fall of 2015?

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1 A I don't know that he sent me anything that
 2 specifically asked for input into the policy --
 3 Q Well, he objected.
 4 A -- of the form.
 5 Q He objected based on his own concerns about
 6 the use of the policy in a way that violated his rights,
 7 right?
 8 MR. CURELY: Objection to form.
 9 THE WITNESS: It didn't violate his rights by
 10 submitting the form. I don't believe that.
 11 Q (By Mr. Leo) I'm not asking what you believe.
 12 I'm asking what Professor Tracy said to his superiors,
 13 David Williams, Dean Coltman, to you, whether it was
 14 forwarded to you or directly to you. You're aware of
 15 what he was saying, right?
 16 A I'm aware of some of the e-mails. I don't
 17 remember.
 18 Q There's a few that we've already gone over if
 19 you want to take a look at them again or I can summarize
 20 them.
 21 A Yeah.
 22 Q Professor Tracy, from what I see, was
 23 expressing his concern that the policy was being used in
 24 a way that been violated his rights, his constitutional
 25 rights. He was also concerned that it was perhaps a

237	<p>1 breach of the Settlement Agreement that he had entered</p> <p>2 into with FAU and yourself in 2013; is that a fair</p> <p>3 characterization?</p> <p>4 MR. CURELY: Objection to form.</p> <p>5 THE WITNESS: I don't -- I mean, I'm not gonna</p> <p>6 characterize what he said, but his rights were not</p> <p>7 abridged. The Settlement Agreement had to do with</p> <p>8 the disclaimer. I don't think it said anything</p> <p>9 about outside employment and activity.</p> <p>10 Q (By Mr. Leo) What makes you think his rights</p> <p>11 were not abridged?</p> <p>12 A Because he didn't submit the form. If he had</p> <p>13 submitted the form and I had said, after consultation,</p> <p>14 that this is not an acceptable outside activity, then I</p> <p>15 would -- he would have to a chance to say why are you</p> <p>16 saying that. So when a faculty member submits a form --</p> <p>17 and even sometimes -- I mean, sometimes the Director</p> <p>18 talks to them, but sometimes it comes to me, and I have</p> <p>19 a concern, I call the Dean and say this person says</p> <p>20 they're gonna do 40 hours at Palm Beach State College,</p> <p>21 and I don't see how they can do 40 hours for FAU and 40</p> <p>22 hours for Palm Beach College.</p> <p>23 Q But that wasn't Professor Tracy --</p> <p>24 A That wasn't Professor Tracy, but what I'm</p> <p>25 saying is if the form had been submitted, then there</p>	239	<p>1 did after the deadline.</p> <p>2 Q Right. Would you agree that there would have</p> <p>3 never been a deadline the would have been timely after</p> <p>4 the years had passed and Professor Tracy hadn't reported</p> <p>5 those years?</p> <p>6 A I think there was a deadline given to him by</p> <p>7 the Dean, and that's --</p> <p>8 Q In 2015.</p> <p>9 A Yes.</p> <p>10 Q The first deadline wasn't in 2015 though.</p> <p>11 A It was 2013.</p> <p>12 Q Right. So there's a deadline given in 2013 by</p> <p>13 Dean Coltman to Professor Tracy in January of 2013, and</p> <p>14 he objects.</p> <p>15 A Yes.</p> <p>16 Q And he's not disciplined for that.</p> <p>17 A As far as I know.</p> <p>18 Q Would you agree that The University abandoned</p> <p>19 discipline at that point --</p> <p>20 MR. CURELY: Objection to form.</p> <p>21 Q (By Mr. Leo) -- for not submitting the form?</p> <p>22 A I don't know what decision was made at that</p> <p>23 point.</p> <p>24 Q You weren't involved in that process?</p> <p>25 A No, not back then, no.</p>
238	<p>1 wouldn't have been a discussion of the issue.</p> <p>2 Q You mean like when he submitted the form in</p> <p>3 December, and he was fired the next day?</p> <p>4 A Because he didn't submit it on time, and he</p> <p>5 didn't submit the form completed.</p> <p>6 Q When would the forms have been timely</p> <p>7 submitted for 2013?</p> <p>8 A For 13/14 they should have been submitted at</p> <p>9 the beginning of the year.</p> <p>10 Q In 2013?</p> <p>11 A Yes.</p> <p>12 Q Okay. So would you agree that they would</p> <p>13 never have been timely submitted, those forms?</p> <p>14 A No. Excuse me. The forms are -- they're</p> <p>15 required to be submitted at the beginning of the year or</p> <p>16 when an activity begins.</p> <p>17 Q Okay. And Professor Tracy was blogging since</p> <p>18 before 2012, right?</p> <p>19 A And he didn't submit the form, correct.</p> <p>20 Q Okay. So you would agree with me that he was</p> <p>21 blogging before 2012, so he had not submitted forms for</p> <p>22 2013, 2014 or 2015, and then you threatened him with</p> <p>23 discipline, and then he submits the forms for the</p> <p>24 blogging.</p> <p>25 A He was asked to submit the forms, and then he</p>	240	<p>1 Q You were involved in the grievance, right?</p> <p>2 A Well, the grievance was about the disclaimer.</p> <p>3 You mean the grievance in March.</p> <p>4 Q Right, but you were the one who was involved</p> <p>5 in that --</p> <p>6 A The Settlement Agreement.</p> <p>7 Q -- the grievance process. There was a</p> <p>8 response to the grievance that was submitted by The</p> <p>9 University, right?</p> <p>10 A For the settlement because that resulted in a</p> <p>11 Settlement Agreement. That was without the disclaimer.</p> <p>12 Q Right, but before all that, in January of 2013</p> <p>13 he says or Dean Coltman says, "Submit the form for the</p> <p>14 blog." Professor Tracy says, "No."</p> <p>15 A Right.</p> <p>16 Q And Professor Tracy is not disciplined for</p> <p>17 that --</p> <p>18 A As far as I know.</p> <p>19 Q -- in 2013.</p> <p>20 A Correct, as far as I know.</p> <p>21 Q And in 2014 Professor Tracy is not disciplined</p> <p>22 for not submitting forms for his blogs, correct?</p> <p>23 A As far as I know.</p> <p>24 Q In fact, in 2014 he hadn't submitted any</p> <p>25 Outside Activity Form or report for anything.</p>

241

1 A Okay.

2 **Q Right?**

3 A As far as I know.

4 **Q The first time he submits forms for anything**

5 **is late 2015 --**

6 A Correct.

7 **Q -- after the threat of termination; would you**

8 **agree?**

9 A He was disciplined, and he -- oh, and you're

10 saying a letter -- a Notice of Term -- in the letter

11 from Dean Coltman we talk about for the discipline.

12 **Q Right. He submits them under duress; would**

13 **you agree with that characterization?**

14 A I think he had an obligation --

15 MR. CURELY: Objection to form.

16 THE WITNESS: -- to submit.

17 **Q (By Mr. Leo) An obligation that The**

18 **University created for him.**

19 A Created for all its employees. He was not the

20 only employee who needed to submit outside employment.

21 I don't think you're -- I can't remember. Outside

22 activity --

23 **Q Wouldn't you agree that this policy is**

24 **confusing?**

25 A No.

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1 MR. CURELY: Objection to form.

2 **Q (By Mr. Leo) You're using different words to**

3 **describe it every time you talk about it.**

4 MR. CURELY: Objection to form.

5 THE WITNESS: I'm sorry I'm doing that. I'll

6 try and do better.

7 **Q (By Mr. Leo) I'm just pointing it out for the**

8 **record --**

9 A But --

10 **Q -- to ask you a question --**

11 A -- I don't think it's hurting --

12 **Q -- about it. Let me just ask you a question.**

13 **Do you not think that's confusing when every time you**

14 **describe a policy you're using a different word to talk**

15 **about it?**

16 A I'm sorry that I'm doing that. I will be

17 better.

18 MR. CURELY: Just answer the question.

19 **Q (By Mr. Leo) But my question is do you think**

20 **that that's confusing?**

21 MR. CURELY: All right. Look, guys --

22 **Q (By Mr. Leo) You don't think so? So if I**

23 **turned to him and said that's not an answer to your**

24 **question --**

25 MR. CURELY: Okay. Okay. Fine.

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1 MR. BENZION: I didn't interrupt the witness,

2 I didn't.

3 MR. LEO: All right.

4 MR. CURELY: I understand, but I need to say

5 this, okay?

6 MR. LEO: Go for it, Joe.

7 MR. CURELY: Sometimes we hear you. Sometimes

8 we don't, and I know you're not doing on purpose,

9 but just try and be conscious of it, okay, because

10 sometimes it gets a little bit long, okay?

11 MR. MEDGEBOW: It can confuse people.

12 MR. CURELY: I get confused easily on --

13 MR. LEO: You need a break? The court

14 reporter has indicated she needs a break, so let's

15 give her --

16 MR. CURELY: Okay. Let's take 5.

17 (Thereupon, the following proceedings took place at

18 4:25 p.m., following a short recess at 4:15 p.m.)

19 **Q (By Mr. Leo) All right. So we were talking**

20 **about October, November of 2015, and we were talking**

21 **about Professor Tracy's objection before we broke, and**

22 **we had briefly talked about the confusion that can arise**

23 **from calling the policy different things. You agree**

24 **with that?**

25 A We talked about that, yes, I agree.

244

1 **Q And, just so that we're clear for the record,**

2 **do you think it's confusing to use different labels to**

3 **talk about the same policy?**

4 A I don't think it's terribly confusing, no.

5 **Q You don't think the use of the labels is**

6 **confusing?**

7 A I think there's only been one form, and I

8 think that the employees are familiar with that form.

9 **Q The employees? Which employees?**

10 A Of FAU.

11 **Q What about the employees at the Senate Faculty**

12 **meeting?**

13 A I don't think they were confused about the

14 form.

15 **Q Did you ever --**

16 A They were confused about the direction that

17 they had received from the Vice President of Public

18 Affairs.

19 **Q Are you saying that there was no confusion**

20 **about the forms pertaining to the policy?**

21 A I don't recall that.

22 **Q Do you remember yourself acknowledging the**

23 **confusing policy?**

24 A I acknowledge that there was a committee that

25 was looking at the policy and the form, and we were

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1 trying to make it clearer; and, as I said before, a lot
 2 of that initiative came from research and the
 3 requirements for federal reporting.
 4 **Q Did you say anything at the Senate Faculty**
 5 **meeting about the policy?**
 6 A I don't remember if it was at that meeting. I
 7 do remember commenting at a meeting that we had a
 8 committee that was working on the documents. I don't
 9 know if it was that meeting or not.
 10 **Q There's one more minute left on this audio.**
 11 A Okay.
 12 **Q I'm going to play it, and you tell me if this**
 13 **is --**
 14 A If it's me?
 15 **Q If it's you, okay?**
 16 A We'll see.
 17 **Q Fair enough?**
 18 A I identified earlier that I'm not --
 19 MR. LEO: Let me just back this up a minute
 20 and a half.
 21 (Thereupon, the following proceedings were
 22 taken from a recording from Mr. Leo's
 23 computer.)
 24 A VOICE: I will also add that one of the
 25 things that I've done this week is to look at the

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1 form that needs to be filled out, and it's a little
 2 bit -- it's confusing about whether it applies in
 3 this hypothetical scenario that you're talking
 4 about. I understand that there's a revision to
 5 that form because of new federal laws surrounding
 6 grants and conflict of interest and so forth. So
 7 the form is currently being revised, and I hope
 8 that we'll see that -- a draft of that form soon so
 9 that it becomes clear, you know, how it would work
 10 in the -- in that scenario.
 11 MS. ALPERIN: Are you speaking about the
 12 outside employment form?
 13 A VOICE: I am.
 14 MS. ALPERIN: Yes, we are looking at that, and
 15 we're both trying to get it changed.
 16 (Thereupon, the following proceedings took
 17 place following the playing of the record from
 18 Mr. Leo's computer.)
 19 MR. LEO: Here. Let me play it back.
 20 MR. CURELY: Yeah, do it again, will you?
 21 (Thereupon, the following proceedings were
 22 taken from a recording from Mr. Leo's
 23 computer.)
 24 A VOICE: So the form is currently being
 25 revised, and I hope that we'll see that draft of

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1 that form soon so that it becomes clear, you know,
 2 how it would work in that scenario.
 3 (Thereupon, the following proceedings took
 4 place following the playing of the recording
 5 from Mr. Leo's computer.)
 6 MR. LEO: Why don't I just play it through,
 7 and then when you're done, let me know.
 8 (Thereupon, the following proceedings were
 9 taken from a recording from Mr. Leo's
 10 computer.)
 11 MS. ALPERIN: You're talking about the Outside
 12 Employment Form?
 13 A VOICE: I am.
 14 MS. ALPERIN: Yes, we are -- we'll definitely
 15 get a draft because we're both trying to get a
 16 change to that for a about a few years. We're
 17 still working on it, but I agree that there needs
 18 to be clarity as to what -- there needs to be a,
 19 specially from the Division of Research, clarity of
 20 all (inaudible) confidential. I think it's rare
 21 that we're --
 22 (Thereupon, the following proceedings took
 23 place following the recording from Mr. Leo's
 24 computer.)
 25 THE WITNESS: Okay.

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1 **Q (By Mr. Leo) I had trouble hearing what you**
 2 **said. Maybe you can tell me what you were saying.**
 3 A I think I was acknowledging the person
 4 speaking right before that, Chris Beetle. He's the
 5 President of Faculty Senate, and he was aware that we
 6 were working on a revision of the form. He was asking
 7 that the form come to the Faculty Senate for review, and
 8 I was just acknowledging that we were working on it, and
 9 we would come to Faculty Senate, and there was something
 10 I couldn't hear, but I think that was the gist of what I
 11 was saying.
 12 **Q So in September of 2014 Chris Beetle is**
 13 **expressing confusion about the policy clearly, right?**
 14 A He's asking about the form, and he's tying it
 15 to the e-mail that he had seen from Peter Hill to Kevin
 16 Wagner.
 17 **Q Right. Would you agree that Christopher**
 18 **Beetle said on more than one occasion that he was**
 19 **confused and did not understand the policy itself?**
 20 A In this meeting or --
 21 **Q In the Senate Faculty meeting we just played**
 22 **the audio for.**
 23 A And, again, he did say that, and I think he
 24 tying it to the direction that Kevin Wagner has been
 25 given by the Vice President of Research I think -- I

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1 mean, Vice President of Public Affairs. They mentioned
 2 that several times.
 3 **Q So you agree that Christopher Beetle was**
 4 **confused about the policy.**
 5 A About the policy as it related to the faculty
 6 members in particular, yes.
 7 **Q I didn't hear those words, but I heard him say**
 8 **multiple times, without caveat or specifying a**
 9 **particular case, "I'm still trying to figure out the**
 10 **policy." I mean, I believe that is the one of the**
 11 **examples he used.**
 12 A Well, I think it is part of the case because
 13 this was a faculty member who was told directly in an e-
 14 mail from a Vice President not to publish on op-ed.
 15 **Q Right. Well, this is one --**
 16 A So this --
 17 **Q -- one example of -**
 18 A Well --
 19 **Q -- a concern from one faculty member, right?**
 20 MR. CURLEY: You have to let her finish.
 21 THE WITNESS: I think that was the discussion,
 22 and that was concern --
 23 **Q (By Mr. Leo) All right.**
 24 A -- at this meeting.
 25 **Q And after the discussion that we heard -- and**

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1 **we can let what they said speak for themselves -- what**
 2 **did you do?**
 3 A I continued to work -- I mean, I continued to
 4 work on the -- with my group on a policy and the form
 5 until everybody had reviewed it as part of faculty
 6 government. As I said, it had gone through Division of
 7 Research, Academic Affairs, the Deans, the Chairs, the
 8 faculty, and it went back to Faculty Senate, and then it
 9 was finally, I believe, posted in spring of 2016.
 10 **Q After Professor Tracy is fired for not**
 11 **completing the form?**
 12 A Correct.
 13 **Q So is it far that when we're talking about**
 14 **"the form", we're referring to what -- that's PA-2, 2015**
 15 **version of the Outside Employment Form?**
 16 A I'll have to go find it. PA-2, correct.
 17 **Q So Professor Tracy was fired for not**
 18 **completing a form that was undergoing changes --**
 19 A He was --
 20 **Q -- at the time.**
 21 A He was -- part of his termination had to do
 22 with insubordination for refusing to file -- use a form
 23 that was in place at the time.
 24 **Q Going back to his actual objection, let me**
 25 **just -- confirming again, this is PA-13. You read this**

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1 **document earlier, right?**
 2 A Yes.
 3 **Q Did you read this before disciplining**
 4 **Professor Tracy in November of 2015?**
 5 A I would suspect so. I don't really recall.
 6 **Q Earlier there was -- part of this e-mail was**
 7 **objected to. Would you agree that this is the full e-**
 8 **mail between David Williams and James Tracy on October**
 9 **27th and October 28th, 2015?**
 10 A As far as -- I mean, I don't know if there was
 11 another e-mail.
 12 **Q It's not another e-mail. This is the full**
 13 **exchange between James Tracy and David Williams between**
 14 **October 28th, 2015 and October 27th concerning his**
 15 **objections to submitting the Outside Employment Form.**
 16 A This is the full e-mail that you have shown
 17 me. I don't know if there was another response from
 18 David Williams to back to James Tracy. I'm not aware of
 19 one, but I don't know if there is one.
 20 **Q All right. You see where he says to David**
 21 **Williams, Tracy says, "Given your leadership role, I'm**
 22 **frankly taken aback at the dismissiveness you exhibit**
 23 **toward my concerns, both here and elsewhere in the**
 24 **presence of other faculty. As you are well aware, since**
 25 **2013 I've been subjected to undue harassment and**

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1 **surveillance by the FAU administration and like-minded**
 2 **colleagues as a result of the above issue. I apologize**
 3 **if this is an inconvenience for you to address, and I**
 4 **cannot, in good faith, sign off on a document with such**
 5 **implications and potential repercussion." Did you read**
 6 **that in November 2015?**
 7 A I suspect I did.
 8 **Q Why did you not call Professor Tracy in to**
 9 **alleviate any concerns he had that the policy was being**
 10 **used in a way that would hurt him?**
 11 A I believe that's the responsibility of the
 12 Director and the Dean. It's not my responsibility.
 13 **Q The Director of the School --**
 14 A Right.
 15 **Q -- who can't provide accurate information**
 16 **about the policy to the faculty members?**
 17 MR. CURELY: Objection to form.
 18 **Q (By Mr. Leo) And needs to go to legal for an**
 19 **opinion, is that what you're saying?**
 20 A I'm saying that the first line is discussing
 21 it with the faculty member and the Director and the
 22 Dean.
 23 **Q All right. Would you agree that that failed,**
 24 **that the Director could not help, in this case,**
 25 **Professor Tracy in understanding and complying with the**

253

1 policy?

2 A I don't know what Dr. Tracy understood.

3 Q I'm not asking what Dr. Tracy understood. I'm

4 asking whether the Director of the School was unable to

5 help Professor Tracy or to clarify the policy in a way

6 that would be accurate.

7 A I don't know.

8 Q Looking at this today -- you have now all of

9 the e-mails, again, in front of you -- do you think that

10 David Williams accurately explained the policy to

11 Professor Tracy in October 2015?

12 A I don't know what he explained to Dr. Tracy.

13 Q Well, it's right there.

14 A I do know that we -- as we've mentioned

15 before, it's unfortunate that the termination was

16 mentioned, but it's also clear that Dr. Tracy, who was

17 President of the UFF, understood that that was not

18 correct.

19 Q What about Professor Tracy's Presidency did

20 you mean has to do with this?

21 A That he should be familiar -- he is saying

22 that he understands what outside activity is,

23 compensated or uncompensated. He --

24 Q Well, what does that have to do with UFF?

25 A Because that has to do with the Collective

254

1 Bargaining Agreement. The collective bargaining is in

2 the Collective Bargaining Agreement.

3 Q Right, but this is not --

4 A But he's familiar --

5 Q -- right from the Collective Bargaining

6 Agreement.

7 A But he's familiar with the Collective

8 Bargaining Agreement. He's familiar with what it says

9 about reporting.

10 Q Right, which is why he objected, right,

11 because his language has been changed, just like the

12 faculty members were complaining about in the Senate

13 Faculty meeting. The language had been changed from the

14 Collective Bargaining Agreement. It was now being even

15 more broader; would you agree?

16 MR. CURELY: Objection to form.

17 THE WITNESS: No.

18 Q (By Mr. Leo) You don't agree that the policy

19 was being broadened?

20 A I think the policy was becoming more specific

21 in terms of the Division of Research, what they were

22 requiring to be reported.

23 Q How would it be more specific?

24 A Because it was asking for -- it was asking for

25 -- by the financial -- significant financial interest,

255

1 which was now required by the federal government for

2 Investigators.

3 Q Which Professor Tracy wasn't.

4 A He was not.

5 Q Okay.

6 A It was also saying that had to do with family

7 members of an Investigator, and then there was the

8 recommendation that faculty not do more than 8 hours of

9 outside activity a week.

10 Q Professor Tracy's concerns were that the

11 policy was being used unlawfully. That was part of his

12 concern, right?

13 A I believe he expressed that. I don't know. I

14 don't know what that means.

15 Q He says, "In light of the above, I would be

16 much more comfortable electronically signing the annual

17 assignment with these qualifications if the

18 administration or its counsel can produce a signed

19 statement asserting its position that my personal

20 activity, media criticism, alternative journalism

21 blogging in no way constitutes legitimate

22 intellectual/creative endeavors, and thus cannot be

23 considered a conflict of interest, conflict of

24 commitment or outside activity." Would you agree that

25 he wasn't provided with that?

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1 MR. CURELY: Objection to form.

2 THE WITNESS: I cannot make that decision

3 without the information that's on the form.

4 Q (By Mr. Leo) You can't make a decision as to

5 whether he has a conflict of time commitment?

6 A Yes. He's asking us to make a decision to say

7 that we would not consider it a conflict of interest, a

8 conflict of commitment or an outside activity without

9 seeing the form.

10 Q Okay. Would you agree that the form requires

11 approval?

12 A Yes.

13 Q What makes you think that The University can

14 require approval of a personal activity like blogging?

15 A I believe that we decided that this was

16 professional activity.

17 Q Who decided that?

18 A When it would be reported we would make that

19 decision.

20 Q Okay. So you would agree that by putting it

21 on on form you're subjecting yourself to approval of

22 that activity.

23 A The activity, correct.

24 Q So it's, in essence, saying to FAU you can

25 regulate this activity or you can approve it or

257

1 disapprove it.
 2 A Correct.
 3 **Q Okay. Would you agree that that's a prior**
 4 **restraint with respect to speech?**
 5 A No, it's not.
 6 **Q If, for example, I submitted to you my blog**
 7 **for my speech on this form for approval, I'm needing to**
 8 **get permission by submitting that form, right?**
 9 MR. CURELY: Objection to form.
 10 THE WITNESS: I'm not asking you to submit
 11 your blog to me for approval. I'm asking you to
 12 tell me what your activity is and how many hours a
 13 week you spend in that activity. At no time was he
 14 asked to submit the blog.
 15 **Q (By Mr. Leo) Why would you need to ask faculty**
 16 **members how much they spend writing or blogging or doing**
 17 **anything on their own personal time?**
 18 A Because faculty are in an unusual place in
 19 that their time is very much their own. We have to show
 20 to the State that they are working 40 hours a week.
 21 This is made up of teaching, research, service and
 22 sometimes administration.
 23 This form allows us to see how much time they
 24 may be spending on an outside activity. I think in both
 25 the Collective Bargaining Agreement and all our

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1 documents we talk about that we encourage faculty to
 2 have outside activity, but we do have to be concerned
 3 that they are meeting their commitment to The University
 4 with a salary that's paid for by the taxpayer.
 5 **Q Would you agree you're lumping together a lot**
 6 **of things that really have no particularly express**
 7 **requirements in your own Collective Bargaining**
 8 **Agreement, like the time commitment thing that you just**
 9 **described, you have to evaluate a time commitment or a**
 10 **potential conflict. That's not in the Collective**
 11 **Bargaining Agreement; would you agree?**
 12 A I'd have to look at it again, but it says that
 13 an activity, which interferes with the full performance
 14 of an employee, professional or institutional
 15 responsibilities. So, yes, if somebody is working 40
 16 hours someplace else, I think that's interfering with
 17 their full performance.
 18 **Q You're not talking about Professor Tracy**
 19 **because he wasn't working anywhere else.**
 20 A Yeah, I -- no, you're asking me to explain
 21 what I said, why is say a time commitment is one of the
 22 things that we look at.
 23 **Q So even if it's not in your Collective**
 24 **Bargaining Agreement, you look at it.**
 25 A I think it says any activity which interferes.

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1 An activity would be looked at what the activity was and
 2 the amount of time it took.
 3 **Q Where does it say "any activity that**
 4 **interferes"?**
 5 A 19.2(b)2.
 6 **Q Okay. Any activity which interferes with the**
 7 **full performance.**
 8 A Full performance.
 9 **Q Okay. Are you saying that the only way to**
 10 **evaluate if something is interfering with the**
 11 **performance would be to ask a faculty member to submit a**
 12 **form about it?**
 13 A Yes.
 14 **Q So you can't evaluate a faculty member's**
 15 **performance without a form?**
 16 A I'm evaluating it in context of the outside
 17 activity.
 18 **Q Okay. Why would you do that? Why wouldn't**
 19 **you just look at their performance at school, their**
 20 **teaching and what they're doing on the job and say,**
 21 **well, you're not doing a good job in this area or that**
 22 **area? What does the outside committee have anything to**
 23 **do with the faculty member's performance unless they're**
 24 **not doing their job?**
 25 MR. CURELY: Objection to form.

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1 **Q (By Mr. Leo) Do you want me to rephrase?**
 2 A Yeah, rephrase it because I think both --
 3 **Q Why do you need to have a form about an**
 4 **outside activity to evaluate one's performance on the**
 5 **job?**
 6 A I think that if a person has no outside
 7 activity, their performance is evaluated on the job. I
 8 think that if a faculty member is submitting a form
 9 saying that they have an outside activity, I see it as
 10 the obligation of their director supervisor and the Dean
 11 to evaluate if this is going to interfere with the
 12 performance of their duties.
 13 **Q Do you know what pretext is?**
 14 A Explain it to me.
 15 **Q Making up something so you can find something**
 16 **wrong, for example.**
 17 A I don't see that's making something up.
 18 **Q I'm just -- I had asked you if you know what**
 19 **pretext was.**
 20 A Yes, but you're saying it's making something
 21 up.
 22 **Q Right.**
 23 A I'm not making something up.
 24 **Q Making faculty members submit their speech**
 25 **outside of The University, for example, so that you can**

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1 evaluate whether or not that's a conflict with their
 2 time commitment --
 3 A I'm not asking --
 4 Q -- how is there a connection?
 5 A I'm not asking someone to submit their speech.
 6 Q No. You're asking them to report how many
 7 hours they're speaking outside of The University, for
 8 example; would you agree?
 9 MR. CURELY: Objection to form.
 10 Q (By Mr. Leo) That's what you would ask them to
 11 put on the form, how many hours are you spending on your
 12 blog? Is that what you're saying?
 13 A It may be. It may be teaching somewhere else.
 14 It may be doing research --
 15 Q But we're not talking about teaching. We're
 16 talking about blogging, for example. Let's start with
 17 just blogging, okay?
 18 A Uh-hm.
 19 Q Why would a faculty member need to tell you
 20 how many hours they're blogging on their own time?
 21 MR. CURELY: Objection to form.
 22 Q (By Mr. Leo) Why?
 23 A So the Director can evaluate if that would
 24 interfere with their obligations to The University.
 25 Q You would agree that a blog posting of a

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1 the First Amendment?
 2 Q I don't know.
 3 A I don't many recall being accused of violating
 4 the First Amendment.
 5 Q All right. For the record, this is a
 6 Constitution of the United States, and we have here
 7 Amendment 1 dated 1791.
 8 A Okay.
 9 MR. LEO: Joe, do you want to take a look and
 10 make sure it's the First Amendment?
 11 MR. CURELY: Okay. Let's see here. It looks
 12 like it to me. There you go.
 13 MR. LEO: I hope so.
 14 THE WITNESS: Okay. "Congress shall make no
 15 law respecting an establishment of religion or
 16 prohibiting the free exercise thereof, or abridging
 17 the freedom of speech or of the press or the right
 18 to people peaceably to assemble and to petition the
 19 government for a redress of grievances."
 20 Q (By Mr. Leo) Does this refresh your
 21 recollection as to what the First Amendment says?
 22 A Yes.
 23 Q You've received letters concerning Professor
 24 Tracy's blogging from organizational groups that protect
 25 faculty rights, right?

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1 faculty member is protected by the First Amendment,
 2 wouldn't you?
 3 MR. CURELY: Objection to form.
 4 THE WITNESS: I believe the concept is,
 5 correct.
 6 Q (By Mr. Leo) Do you know what the First
 7 Amendment says?
 8 A No. Tell me.
 9 Q You don't know what the First Amendment is?
 10 A I know in general that it has to do with free
 11 speech. Does it have to do with other things as well?
 12 Q Are you saying you've never looked at the
 13 First Amendment before?
 14 A Yes, I have. Did I look at it today? No.
 15 Q Would you like me it show it to you?
 16 A Sure.
 17 Q All right. I was hoping to pull out my
 18 Constitution today. And, just to be clear, when is the
 19 last time you looked at the First Amendment?
 20 A I don't know. I really don't recall.
 21 Q Has anybody ever accused you of violating the
 22 First Amendment before?
 23 A No.
 24 Q Never?
 25 A Never? Why would they accuse me of violating

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1 A I believe there were University-received
 2 letters, yes.
 3 Q You were also sent these letters.
 4 A Okay.
 5 Q Yes?
 6 A I don't know. You have to show me. Show me
 7 them.
 8 Q Here. I'll show you one of them I have for
 9 you, PA-28.
 10 (Thereupon, Plaintiff's Exhibit Number PA-28
 11 was marked for identification.)
 12 MR. LEO: Here's a copy for Joe.
 13 MR. CURELY: Thank you.
 14 Q (By Mr. Leo) Do you recognize this letter?
 15 A Yes.
 16 Q On the last page there it says that you were
 17 cc'd on this letter.
 18 A Okay.
 19 Q As well as a lot of other FAU personnel; would
 20 you agree?
 21 A Okay. Yes.
 22 Q Did you read this letter when you got it?
 23 A Probably.
 24 Q Well, you see page -- well, it says 3 at the
 25 top here. It's actually the second page. Do you see

265

1 that?

2 A Uh-hm.

3 Q Do you see the second big paragraph?

4 A Uh-hm.

5 Q It says, "The First Amendment protects Tracy's

6 personal blog entries."

7 A Probably at the time --

8 Q Do you see that? When did that change?

9 A Why did it change?

10 Q No. I'm asking when did the First Amendment

11 stop protecting Professor Tracy's personal blog entries?

12 MR. CURELY: Objection to form.

13 THE WITNESS: I don't know why -- when

14 Professor Tracy's blog entries was stopped.

15 Q (By Mr. Leo) No. My question was when did the

16 First Amendment stop protecting Professor Tracy's

17 personal blog entries?

18 MR. CURELY: Objection to form.

19 THE WITNESS: I don't see that it stopped.

20 Q (By Mr. Leo) Would you agree that requiring

21 Professor Tracy to report his personal blog entries

22 would not comport with the First Amendment?

23 MR. CURELY: Objection to form.

24 THE WITNESS: He was not required to report

25 his entries. He was required to report his

266

1 activity.

2 Q (By Mr. Leo) Which was what you his blogging,

3 right?

4 MR. CURELY: Objection the form.

5 THE WITNESS: His activity.

6 Q (By Mr. Leo) At the time of this blogging in

7 2015.

8 MR. CURELY: Objection to form.

9 THE WITNESS: I didn't ask to read his blogs.

10 Q (By Mr. Leo) Why not?

11 A All we asked was to report the activity. I'm

12 not assessing the content of his blog.

13 Q But how do you know if it's reportable

14 activity?

15 A Because when he reports it it says how many

16 hours he's working, and it's an activity.

17 Q So you're saying once Professor Tracy puts his

18 blog on the outside employment form, then it's now a

19 reportable activity.

20 MR. CURELY: Objection to form.

21 Q (By Mr. Leo) Is that what you're saying?

22 A I'm saying it's a reportable activity.

23 Q At what point?

24 A When he's doing it.

25 Q The blogging?

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1 A The activity.

2 Q All right. I just want to be clear for the

3 record. When we're talking about -- the personal

4 blogging or are you talking about some other activity?

5 A Well --

6 MR. CURELY: Objection to form.

7 Q (By Mr. Leo) If you're talking about another

8 activity, tell me so I can under -- be on the same page.

9 A Well, he's reported two activities, correct.

10 Q Which ones?

11 A He reported his -- I think it's Canadian

12 research.

13 Q Are you talking about Global Research?

14 A Global research. Thank you.

15 Q Would you agree that Global Research is a

16 mirror site that mirrors blogs?

17 MR. CURELY: Objection to form.

18 THE WITNESS: I don't know what it is.

19 Q (By Mr. Leo) You don't know?

20 A No.

21 Q Did you, at any point, determine whether or

22 not Global Research was a reportable activity?

23 A He reported it on December 15th.

24 Q He reported it long before that, didn't he?

25 MR. CURELY: Objection to form.

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1 Q (By Mr. Leo) Are you suggesting that Professor

2 Tracy hid Global Research from The University?

3 A No.

4 Q You were well aware of Global Research years

5 before he submitted it on a form under the threat of

6 discipline; would you agree?

7 MR. CURELY: Objection to form.

8 THE WITNESS: I was aware of it.

9 Q (By Mr. Leo) Right. Global Research was not

10 only something that you discussed with Professor Tracy

11 and Dean Coltman in 2013, right --

12 A Uh-hm.

13 Q -- it was also used in FAU's marketing

14 materials on their web site?

15 A Oh, I don't know about that.

16 Q You don't know that The University posted

17 Global Research reference material on the web site?

18 A No, I don't know that.

19 Q Would that be an outside activity or would

20 that be an inside activity?

21 A It depends if he was doing it as part of his

22 assignment.

23 (Thereupon, Plaintiff's Exhibit Number PA-29

24 was marked for identification.)

25 Q (By Mr. Leo) Here. I'll show you PA-29, and

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1 **let's just gather this, Composite PA-29.**
 2 A Is this the web site? This is the school's
 3 web site?
 4 **Q Look at the url at the bottom. Does it look**
 5 **like --**
 6 MR. CURELY: Go ahead and read it.
 7 **Q (By Mr. Leo) For the record, this is PA-29.**
 8 **It's Fau/edu/scms/project_sensor2015.php. It says,**
 9 **"Featured story on the College of Arts and Letters**
 10 **School of Communication and Multimedia Studies." Have**
 11 **you seen this before?**
 12 A No.
 13 **Q You see what I was referring to when I said**
 14 **that Global Research was referenced in this featured**
 15 **story?**
 16 A Yes.
 17 **Q The link was to James Tracy's publication,**
 18 **Help Impact of RF Radiation, Media Blackout on Smart**
 19 **Meter Dangers, published by the Center for Research on**
 20 **Globalization in January 2014.**
 21 A Correct, and a study of the impact of
 22 everybody on their cell phone.
 23 **Q Right, that's a whole 'nother can of worms,**
 24 **but you agree that the article that's linked to**
 25 **ProjectSensor.org/endangers-smart-meters, the source to**

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1 **the article is Global Research --**
 2 A Global Research.
 3 **Q -- that ca link, and this is, I'm pretty sure,**
 4 **on the school's web site. Would this be an outside**
 5 **activity?**
 6 A No. This is work that I -- and I'll have to
 7 read it again, but this is work that he was doing with
 8 the students, and I don't know if he reported this as
 9 part of his -- this article as part of this assignment,
 10 but --
 11 **Q It's more likely this would be part of the**
 12 **annual assignment.**
 13 A Right.
 14 **Q The Global Research, in some instances, was**
 15 **made a part of Professor Tracy's annual assignment?**
 16 MR. CURELY: Objection to form.
 17 THE WITNESS: It may have been.
 18 **Q (By Mr. Leo) Based on the nature of the**
 19 **publication on that site.**
 20 A Yes.
 21 **Q In 2013 you had meetings with Dean Coltman and**
 22 **other officials at FAU about Professor Tracy before the**
 23 **first round of disciplining.**
 24 MR. CURELY: Objection to form.
 25 THE WITNESS: The first -- well, the -- was

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1 Professor Tracey at that meeting?
 2 MR. LEO: Before that.
 3 THE WITNESS: Before that?
 4 **Q (By Mr. Leo) You had several meetings; isn't**
 5 **that right?**
 6 A With Professor Tracy.
 7 **Q Not with Professor Tracy. With other FAU**
 8 **officials.**
 9 A I don't recall.
 10 MR. LEO: Let me just have this marked. We're
 11 gonna call it PA-30 for today.
 12 (Thereupon, Plaintiff's Exhibit Number PA-30
 13 was marked for identification.)
 14 **Q (By Mr. Leo) Just take a look at these notes,**
 15 **and let me know if this refreshes your recollection**
 16 **about meetings that were held in January of 2013.**
 17 MR. CURELY: Objection to form.
 18 THE WITNESS: I don't know whose notes these
 19 were. They're not my notes.
 20 **Q (By Mr. Leo) Dean Coltman testified that these**
 21 **were her notes from those meetings --**
 22 A Okay.
 23 **Q -- just last week.**
 24 MR. CURELY: I'll be right back.
 25 MR. LEO: Do you need to use the restroom?

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1 THE WITNESS: Yes.
 2 LEO: We'll go on a 5-minute break, that's
 3 fine. Any time you need to take a moment --
 4 (Thereupon, the following proceedings took place at
 5 5:14 p.m., following a short recess at 5:02 p.m.)
 6 **Q (By Mr. Leo) Before we broke you were**
 7 **reviewing the notes from Dean Coltman from January 2013.**
 8 **Does this refresh your recollection about those**
 9 **meetings?**
 10 A Somewhat. It does indicate that we had a
 11 meeting.
 12 **Q When it says, "Diane", that's referring to**
 13 **you?**
 14 A Yes.
 15 **Q And the dates at the top here, 1/18/13, 1/9,**
 16 **1/14, 1/16, these were each individual meetings that**
 17 **were held at The University or the dates of meetings?**
 18 A They're dates of meetings. I don't know if --
 19 well, I would assume the 1/8 meeting is an actual
 20 meeting. The others I'm not sure if they're meetings or
 21 they're phone calls.
 22 At one point in one of them she says, 1/16/13,
 23 Larry G. on the phone. So I don't know how many of
 24 theses were -- other than the first one it looks like it
 25 was -- it might have been a meeting. The others may be

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1 meetings or phones calls. I don't know.
 2 **Q The first note, the 1/8/13 --**
 3 A Yes.
 4 **Q -- it says at the top, "Larry Glick, Scott**
 5 **Silverstein, Jim Actins, Diane Alperin, Lisa Metcalf."**
 6 **Were those all the names of officials who were in**
 7 **attendance at the meeting?**
 8 A I would expect so.
 9 **Q Do you recall where this meeting was held?**
 10 A No.
 11 **Q Where it says, "MJ", is that referring to the**
 12 **President at the time?**
 13 A I assume so.
 14 **Q Mary Jane?**
 15 A Mary Jane Saunders.
 16 **Q And it says here, after this, "No e-mail on**
 17 **this." What does that mean to you?**
 18 A I don't know.
 19 **Q Dean Coltman indicated that it may have been a**
 20 **directive from the President not to e-mail about**
 21 **Professor Tracy's controversy at the time?**
 22 MR. CURELY: Objection to the form.
 23 **Q (By Mr. Leo) Would that be accurate?**
 24 A I don't know what she meant.
 25 **Q When it says, "Centrally handle, no comments."**

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1 **Does that ring a bell?**
 2 A This particular year there were a lot of
 3 things occurring, and there was a decision at some point
 4 -- and I don't know if it refers to it -- that all the
 5 e-mails, phone calls should be reported centrally and
 6 that there would be a central response.
 7 **Q When you say "central --"**
 8 A Centrally in the President's Office.
 9 **Q Okay. So the President's Office was handling**
 10 **comments about Professor Tracy?**
 11 MR. CURELY: Objection to form.
 12 THE WITNESS: I believe so.
 13 **Q (By Mr. Leo) And this was in early 2013.**
 14 A It says January 2013, yes.
 15 **Q Okay. Just making sure. It says here, "MJ**
 16 **did not like my e-mail." Did Dean Coltman write an e-**
 17 **mail that the President did not like?**
 18 A I don't -- that's what she says there. I
 19 don't know what that's about.
 20 **Q You don't remember an e-mail that was not**
 21 **liked?**
 22 A No.
 23 **Q Let's go to the next page here. This just has**
 24 **your name at the top, "Diane." On 1/9 did you have a**
 25 **meeting with Dean Coltman, 1/9/13?**

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1 A I don't remember a meeting, but there must
 2 have been some interaction with her if she was taking
 3 notes. Did she say it was a meeting?
 4 **Q You're talking about Dean Coltman?**
 5 A Yes, because I don't --
 6 **Q She indicated that these notes reflected**
 7 **meetings that were held.**
 8 A Okay.
 9 **Q It says here, "Had meeting with MJ." Did you**
 10 **meet with the President before this meeting?**
 11 A I don't recall.
 12 **Q Dean Coltman indicated that she hadn't met**
 13 **with the President. It must have been you.**
 14 A Okay.
 15 **Q That's why I wanted to ask you if you recall**
 16 **meeting with President Mary Jane Saunders at any point**
 17 **regarding Professor Tracy.**
 18 A At some point. I don't know when it was.
 19 **Q Do you recall what was discussed?**
 20 A I -- she was -- as I said, there were a lot of
 21 issues, a lot of incidents happening that year, and she
 22 was concerned with the public reaction.
 23 **Q Did you have a meeting about the public**
 24 **reaction of Professor Tracy's blogging?**
 25 A That may have been one of the topics.

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1 **Q What did the President of the FAU, again, say**
 2 **about Professor Tracy's blogging?**
 3 A I don't remember anything specific other than
 4 he needed to have a consistent message to the public, to
 5 both, you know, as I said -- people all over campus were
 6 getting phone calls, and they would be centrally
 7 accepted, and the secretaries, etcetera shouldn't have
 8 to listen to what was being said or respond to it.
 9 **Q Looking at these notes, does this refresh your**
 10 **recollection about any changes that were being made at**
 11 **the time?**
 12 A Well, that first comment, I don't know -- it
 13 looks like they're talking about his research
 14 assignments, his service assignment.
 15 **Q Do you see the bottom there? It looks like it**
 16 **says, "I revised FAIR after this conversation."**
 17 A It says, "DA called back to say no more
 18 changes." I don't know what that means.
 19 **Q When it says, "DA", she's referring to you?**
 20 A Yes.
 21 **Q Is that your initials?**
 22 A Yes.
 23 **Q And you don't know what changes she's**
 24 **referring to?**
 25 A No.

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1 **Q Was the FAIR system changed after this course**
 2 **or this meeting?**
 3 A I don't know.
 4 **Q You had testified that there was a change made**
 5 **in 2014 to the affirmation language.**
 6 A Correct?
 7 **Q Was that in response to Professor Tracy?**
 8 A No.
 9 **Q No?**
 10 A No.
 11 **Q Going to the next page, 1/14, Diamond and**
 12 **Larry.**
 13 A Okay.
 14 **Q Do you remember this meeting?**
 15 MR. CURELY: Objection to form.
 16 THE WITNESS: Not specifically.
 17 **Q (By Mr. Leo) Looking at these notes,**
 18 **objective. It says here, underneath where it says, "Bring**
 19 **Doug", do you see that?**
 20 A Yes.
 21 **Q "Objectives: 1. Explore potential**
 22 **misconduct." What's that referring to?**
 23 A Well, the next sentence says -- one was
 24 disclaimer put on, that there was no disclaimer that
 25 would -- could be misconduct.

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1 **Q So were you talking about exploring potential**
 2 **misconduct for Professor Tracy's blog?**
 3 A I'm not sure.
 4 **Q When it says, "Objectives", whose objectives**
 5 **were -- was Dean Coltman indicating?**
 6 A I assume they were hers.
 7 **Q She said the same thing about you?**
 8 MR. CURELY: Objection to form.
 9 **Q (By Mr. Leo) She testified she believed that**
 10 **she was just taking notes and that you and Larry Glick**
 11 **were the ones that were doing the talking.**
 12 MR. CURELY: You're mischaracterizing the
 13 testimony.
 14 MR. LEO: Well --
 15 MR. CURELY: You can only testify as to your
 16 recollection.
 17 **Q (By Mr. Leo) I'm telling you what I heard last**
 18 **week. So if that's different, you'll have an**
 19 **opportunity to review the transcript, and you can make**
 20 **that determination later. Who was exploring potential**
 21 **misconduct? Let's rephrase the question.**
 22 A It would have been Dean Coltman if she was
 23 looking at the web site if there was a disclaimer or --
 24 you know, I think this was -- this is one -- I think
 25 this is January 14th, not 1/14, correct? Do you believe

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1 this is January 14th --
 2 **Q 2013.**
 3 A 2013, okay.
 4 **Q Right. Yeah, these notes all are in the same**
 5 **month.**
 6 A So I suspect this was our discussion since it
 7 says, "Bring Doug in preparation for our January 18th
 8 meeting with Professor Tracy."
 9 **Q So you and Dean Coltman were exploring**
 10 **Professor Tracy's blog at that time?**
 11 A At that time -- I don't know what you mean by
 12 "explore".
 13 **Q Well, it says here, "Explore potential**
 14 **misconduct."**
 15 A That had to do with the disclaimer.
 16 **Q And then there's an arrow. "It's a violation**
 17 **of CBA."**
 18 A Without a disclaimer.
 19 **Q Okay. Was Dean Coltman tasked with exploring**
 20 **his conduct?**
 21 A I think she was tasked with seeing if there
 22 was a disclaimer.
 23 **Q And did she follow her objectives?**
 24 A I believe that's what we discussed on the 18th
 25 with Dr. Tracy.

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1 **Q Okay. And you see the number 3 here, "Citing**
 2 **Global Research as part of research assignment. Should**
 3 **have had disclaimer or it will be evaluated**
 4 **appropriately."**
 5 A That was -- I think there was some back and
 6 forth with the Director. I believe it was Dr. Marin as
 7 to whether the Global Research would be part of his
 8 assignment.
 9 **Q Based on what you've seen, the Global Research**
 10 **was a part of the annual assignment.**
 11 A Uh-hm.
 12 **Q In 2013 FAU was well aware of Global Research,**
 13 **right?**
 14 A It appears that way.
 15 **Q Did you ever look on Global Research to see**
 16 **what Professor Tracy had posted?**
 17 A In 2013?
 18 **Q At any time.**
 19 A Perhaps. I don't recall specifically.
 20 **Q Going down here to where it says, "impact --"**
 21 **A Yes.**
 22 **Q It says, "Hundreds of e-mails calling for**
 23 **termination --"**
 24 A Correct.
 25 **Q "-- and appalled at admin."**

<p style="text-align: right;">281</p> <p>1 A Correct.</p> <p>2 Q Is this accurate?</p> <p>3 A Yes, and this was -- what was -- you know,</p> <p>4 there was a central repository for all the materials,</p> <p>5 and this is what we us discussed with Professor Tracy on</p> <p>6 the 18th about the impact of his comments about what</p> <p>7 happened at Sandy Hook and was asking him if he was</p> <p>8 aware of it, asking him about safety concerns, not only</p> <p>9 for him, for his family, for the students.</p> <p>10 Q What were Professor Tracy's comments about</p> <p>11 Sandy Hook back then?</p> <p>12 A At that point he was saying, at my</p> <p>13 recollection, is that it was staged, it wasn't real, and</p> <p>14 it was staged -- and this is my recollection -- as part</p> <p>15 of gun control.</p> <p>16 Q Is that what Professor Tracy was saying back</p> <p>17 then or is that what the media was saying?</p> <p>18 A I believe that's what he was saying.</p> <p>19 Q Did you look at his blog to see what he was</p> <p>20 saying?</p> <p>21 A In 2013, at this point I did look at the</p> <p>22 Memoryhole blog.</p> <p>23 Q And is that what he was saying?</p> <p>24 A I would have to look at it again. I mean,</p> <p>25 that's my recollection. That's a while back.</p>	<p style="text-align: right;">283</p> <p>1 University. They were disruptive to The University</p> <p>2 because of the volume of the phone calls and the e-mails</p> <p>3 and the negative press and the negative comments.</p> <p>4 Q Was it the statements that Professor Tracy was</p> <p>5 actually making that was creating this frenzy or</p> <p>6 backlash or was it what the media was saying about what</p> <p>7 he was saying?</p> <p>8 A I mean, looking back -- I mean, this is a</p> <p>9 number of years ago -- and all the things that happened</p> <p>10 that year, I believe it was both. I think that thanks</p> <p>11 to social media this traveled all over the world, and</p> <p>12 there were many people making comments about this, and I</p> <p>13 believe that's true today with anything that happens.</p> <p>14 Q What about today?</p> <p>15 A Well, I meant with his comments, I mean, in my</p> <p>16 view, and, as I said, I'm old. If he wrote a scholarly</p> <p>17 article about this in 1980, it wouldn't have traveled</p> <p>18 around the world, in my opinion, as fast as it did. We</p> <p>19 were getting -- it was in the paper. It was in the</p> <p>20 Daily Mail in London.</p> <p>21 Q What was?</p> <p>22 A About his questioning whether this really</p> <p>23 happened.</p> <p>24 Q Would you agree the media was not publishing</p> <p>25 what Professor Tracy was saying, but they were just</p>
<p style="text-align: right;">282</p> <p>1 Q Did you ever read the, "Unanswered Questions"</p> <p>2 article that he wrote?</p> <p>3 A I don't recall that specifically.</p> <p>4 Q Did about the questions that he had about the</p> <p>5 event?</p> <p>6 A I remember that he had questions about the</p> <p>7 event.</p> <p>8 Q Professor Tracy, in the beginning, say</p> <p>9 December 2012, January 2013, he wasn't saying that it</p> <p>10 was staged for gun control. He was saying that he was</p> <p>11 questioning whether it happened the way that it was</p> <p>12 reported, right?</p> <p>13 A Again, I would have to read the article again,</p> <p>14 but I do remember he was questioning it, you're correct.</p> <p>15 Q Would you agree that that was his right --</p> <p>16 A To question it, yeah.</p> <p>17 Q -- as an American citizen to question a matter</p> <p>18 of public concern?</p> <p>19 A Yes.</p> <p>20 Q When it says here, "this impact", why were you</p> <p>21 discussing this at the time?</p> <p>22 A We were preparing to discuss with him what the</p> <p>23 impact of this statements were.</p> <p>24 Q Why?</p> <p>25 A Because they were having an impact on The</p>	<p style="text-align: right;">284</p> <p>1 demonizing him and making him out to be crazy on</p> <p>2 television and in the newspaper?</p> <p>3 MR. CURELY: Objection to form.</p> <p>4 THE WITNESS: I don't know. I mean, I think</p> <p>5 that there was all sorts of media --</p> <p>6 MR. LEO: Right.</p> <p>7 THE WITNESS: -- but I can't classify all of</p> <p>8 it as one way or the other. I mean, there was a</p> <p>9 variety of media.</p> <p>10 Q (By Mr. Leo) Would you agree that the media</p> <p>11 was attacking Professor Tracy and FAU?</p> <p>12 MR. CURELY: Objection to form.</p> <p>13 THE WITNESS: I think the -- I mean, you know,</p> <p>14 you'd have to ask Professor Tracy, but I do know I</p> <p>15 remember once seeing on the news where they -- he</p> <p>16 was going to class, and the media was there with a</p> <p>17 camera.</p> <p>18 Q (By Mr. Leo) From the CNN?</p> <p>19 A I don't remember it that was CNN. I --</p> <p>20 Q They showed up at his house.</p> <p>21 A Yes. So I would assume that if I was</p> <p>22 Professor Tracy, I would see that as hounding me in a</p> <p>23 sense.</p> <p>24 Q Right.</p> <p>25 A Yes.</p>

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1 **Q Did FAU conduct an investigation into the**
 2 **veracity of Professor Tracy's blog posts at any point?**
 3 A No.
 4 **Q Why not?**
 5 A That would not be my role to collect -- to
 6 assess what he was saying.
 7 **Q Well, for example, I'm aware that FAU issued a**
 8 **public statement.**
 9 A That was the President I believe. I don't
 10 know. I didn't issue a public statement.
 11 **Q I don't have it in the front of me, but before**
 12 **issuing a public statement on the matter was an**
 13 **investigation conducted?**
 14 A I don't know.
 15 **Q For example, if FAU wished condolences to**
 16 **those who lost their lives at Sandy Hook --**
 17 A Did we do that? I don't know.
 18 **Q You tell me.**
 19 A I don't know. I'm not aware of that.
 20 **Q But you're not aware of any investigation that**
 21 **took place concerning Sandy Hook?**
 22 A The investigation that Dr. Tracy did?
 23 **Q No. I'm asking if The University investigated**
 24 **Sandy Hook.**
 25 A Not to my knowledge.

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1 **Q The University, FAU, did some fundraising for**
 2 **the victims of Sandy Hook; is that correct?**
 3 A I'm not aware of that.
 4 **Q You're unaware of that fact? You have no**
 5 **knowledge of that?**
 6 A No.
 7 **Q Would that be something that -- who -- let me**
 8 **rephrase. Who would be involved in fundraising for The**
 9 **University?**
 10 MR. CURELY: Objection to form.
 11 THE WITNESS: There's a variety of -- I mean,
 12 it could be -- I can't imagine that -- I don't know.
 13 It's the foundation, students and individuals.
 14 I'm not aware. I don't recall if anybody was
 15 organizing that.
 16 **Q (By Mr. Leo) Do the individual colleges have**
 17 **their own abilities to fundraise?**
 18 A They fundraise. They generally fundraise for
 19 themselves.
 20 **Q Do they need permission to do that?**
 21 A Back then, yes. I think we had a central
 22 office that The University called Advancement at the
 23 time, and we tried to coordinate those events.
 24 **Q If, for example, a faculty member is alleging**
 25 **an event that's the forming the basis for fundraising**

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1 **didn't happen the way that it was reported, who would**
 2 **investigate that?**
 3 A Could you rephrase that question?
 4 **Q If a faculty member had reported or had**
 5 **written that an event which is the basis for fundraising**
 6 **at The University for any reason, who would investigate**
 7 **those allegations?**
 8 MR. CURELY: Objection to form.
 9 **Q (By Mr. Leo) Let me -- do you want me to**
 10 **rephrase it?**
 11 A Yes, because I'm not following you.
 12 **Q For example, Professor Tracy has on his blog**
 13 **in 2012 -- he's writing about unanswered questions from**
 14 **Sandy Hook, and he's questioning whether the event**
 15 **happened th way it is reported --**
 16 A Okay.
 17 **Q -- that it was reported. Who would**
 18 **investigate what Professor Tracy is writing at The**
 19 **University, if anybody?**
 20 A Nothing if --no, nobody would have to do that.
 21 **Q If, for example, in this case FAU started**
 22 **fundraising for victims of this event that's being**
 23 **questioned by a faculty member and you're aware of that,**
 24 **the questions that he has asked, right, are you saying**
 25 **there that would be no investigation before fundraising**

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1 **for these people?**
 2 A That's not my area. I don't know if The
 3 Foundation -- what they investigate before they do
 4 fundraising. Again, most of the fundraising the do is
 5 for The University.
 6 **Q Right. If it was fundraising for somebody**
 7 **outside The University, would that be an outside**
 8 **activity?**
 9 A If an individual was doing fundraising?
 10 **Q Or The University was fundraising.**
 11 MR. CURELY: Objection to the form.
 12 **Q (By Mr. Leo) For someone else outside of The**
 13 **University?**
 14 A If an individual was doing fundraising, that
 15 would be an outside activity. If the -- what I'm
 16 thinking now is we encourage contributions to the United
 17 Way. That's part of what The University does. Whether
 18 they have investigated the United Way --
 19 **Q Right.**
 20 A -- before they made that decision, I'm not
 21 aware of that.
 22 **Q Would that be an outside activity if The**
 23 **United Way was doing a fundraiser or sanctioned by the**
 24 **school, at the school?**
 25 A No, that would be part of what The University

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1 is sponsoring.

2 **Q And if it was alleged that the event that**

3 **they're fundraising for is a fraud or a hoax, for**

4 **example, would that be something that you would be**

5 **tasked with investigating or who --**

6 A I would suspect if it was a fraud it would be

7 the police, the FAU police and -- working in conjunction

8 with counsel.

9 **Q Would that be a conflict of interest inquiry**

10 **as well for a committee or anything like that?**

11 MR. CURELY: Objection to form.

12 THE WITNESS: Not to me. If you're saying

13 fraud, that would be --

14 **Q (By Mr. Leo) What is the FAU Conflict of**

15 **Interest Committee?**

16 A There is a committee through the Division of

17 Research where -- and, again, I'm not part of this. I'm

18 not the person who is appointed to that, but we do

19 allow, as we say, conflict of interest, but it has to be

20 managed.

21 **Q When you say, "The Committee", who is on The**

22 **Committee?**

23 A It's appointed by the Division of Research. I

24 don't know who's on The Committee.

25 **Q All right. Does it still exist today?**

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1 A I believe so.

2 **Q Was the Conflict of Interest Committee ever**

3 **formed to evaluate Professor Tracy's blog?**

4 A No.

5 **Q Or any of Professor Tracy's outside**

6 **activities?**

7 A Not that I know of.

8 **Q Who would the Conflict of Interest Committee**

9 **investigate, if anyone?**

10 A I'm not saying it's an investigation. What

11 I'm saying is if a faculty member -- and, again, having

12 to do with research -- is doing something that a

13 conflict needs to be managed, they work out a management

14 plan.

15 **Q I see. Who or which faculty member that**

16 **you're aware of is currently being managed or --**

17 A I'm not aware.

18 **Q -- by The Committee?**

19 A It's not a committee that I work with.

20 **Q Have you heard of a monitoring plan before?**

21 A I assume it's part of the Conflict of Interest

22 Management Plan, that there would be a monitoring plan.

23 **Q How does monitoring work?**

24 A I don't know. That's not something that I do.

25 **Q Okay. We can come back to that. Going back**

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1 **to the notes from January 14th, 2013, under impact here**

2 **it talks about a Braman e-mail --**

3 A No, I --

4 **Q -- donors, history, etcetera, show Braman e-**

5 **mail. What's that about?**

6 A I don't know. I looked at that. I don't

7 know.

8 **Q Was he a donor?**

9 A I don't know. I don't know if that's related

10 to the history donor who withdrew his donation.

11 **Q Who is that?**

12 A I don't know the name.

13 **Q The history donor?**

14 A That there was somebody who was making a

15 donation to the Department of History, and they withdrew

16 it. I believe it was in the papers.

17 **Q Is that why the Department of History wrote a**

18 **letter condemning Professor Tracy in 2013?**

19 MR. CURELY: Objection to form.

20 THE WITNESS: I believe that there was a

21 letter. I was one of the people on the letter. Do

22 you have the letter? Do you have the letter?

23 MR. LEO: No, that's why I'm asking about it.

24 THE WITNESS: Okay. It was in the Palm Beach

25 Post.

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1 **Q (By Mr. Leo) Oh, you're referring to the**

2 **History Department here?**

3 A But I think it was more than -- the people who

4 signed it were more than history faculty, but I do know

5 that the History Department was concerned that they lost

6 the donation, but I don't know who -- I don't think it

7 was only history faculty who signed the letter, but

8 without seeing the letter, I'm not sure.

9 **Q In October 2013 there was another letter**

10 **written by faculty members and administrators. Are you**

11 **familiar with that one?**

12 A No.

13 **Q It was published in the Palm Beach Post.**

14 A It wasn't the one that I was just talking

15 about was by faculty only?

16 **Q I think it's different.**

17 A Okay.

18 **Q You're referring to -- there was a letter from**

19 **the History Department, and there was a letter from, I**

20 **believe, three faculty members.**

21 A Okay. Because I'm only familiar with the one.

22 **Q Which one?**

23 A The three faculty members.

24 **Q That was the one that was telling Professor**

25 **Tracy he should resign?**

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1 A Yes, that's my recollection.

2 **Q Okay. Speaking of that letter, when was that**

3 **brought to your attention?**

4 A I believe one of the faculty who was a

5 signature on the letter either called or e-mailed me to

6 tell me that it was going to appear in the Palm Beach

7 Post.

8 (Thereupon, Plaintiff's Exhibit Number PA-31

9 was marked for identification.)

10 **Q (By Mr. Leo) I'm going to show you what's**

11 **marked as PA-31. Is that letter you're referring to?**

12 A Okay. Let me look at it.

13 **Q I think it ends at the top of page 2.**

14 A I thought this is just --

15 **Q Yeah, I think it ends at the top of page 2.**

16 **The rest of it may be commentary or part of the article**

17 **as it is today at least on line.**

18 A Yes, I'm familiar with the first letter from

19 Dr. Morton Kollander, also. I do not recall the letter

20 from Dr. Morani.

21 **Q Who brought this to your attention, this**

22 **publication?**

23 A I read the Palm Beach Post everyday.

24 **Q So you saw it in the paper when it was**

25 **published?**

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1 A Yes, and Dr. Morton had e-mailed me that it

2 was going to be published.

3 **Q Did Dr. Morton provide an Outside Activity**

4 **Report for this publication?**

5 A I don't recall.

6 **Q And was this an approved activity?**

7 A A letter to the editor?

8 **Q Yes.**

9 A I don't recall.

10 **Q Did you approve of this publication?**

11 A I didn't approve or disapprove. I just read

12 it.

13 **Q Would you agree that this letter is**

14 **defamatory?**

15 MR. CURELY: Objection to the form.

16 THE WITNESS: I believe it's their opinion.

17 Their speech.

18 **Q (By Mr. Leo) That he not an academic? That's**

19 **an opinion?**

20 A I think.

21 MR. CURELY: Objection to form.

22 **Q (By Mr. Leo) Professor Tracy is an academic,**

23 **right?**

24 MR. CURELY: Objection to form.

25 THE WITNESS: He was a faculty member at FAU.

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1 I think there were other people who expressed

2 concerns about his conclusions based on his looking

3 at photographs of what happened, and that's -- and

4 I believe that's what -- I believe -- that' a long

5 time ago -- that's what they're saying.

6 **Q (By Mr. Leo) Did Dr. Morton, Professor**

7 **Kollander, Professor Wilson, did they actually conduct**

8 **an investigation into what Professor Tracy was saying?**

9 A I don't know.

10 **Q And you said FAU didn't do an investigation**

11 **either.**

12 A Correct.

13 **Q So does FAU normally allow faculty members to**

14 **disparage other faculty members using the Palm Beach**

15 **Post as a medium?**

16 A Do we allow --

17 MR. CURELY: Objection to form.

18 MR. LEO: Right.

19 THE WITNESS: I don't have control over

20 faculty disparaging each other.

21 **Q (By Mr. Leo) That wasn't the only way that**

22 **they disparaged him, these professors, in the Palm Beach**

23 **Post, but they also put this in Professor Tracy's**

24 **mailbox; isn't that right?**

25 MR. CURELY: Objection to form.

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1 THE WITNESS: I don't know.

2 **Q (By Mr. Leo) You don't if it was put in his**

3 **mailbox?**

4 A Correct.

5 **Q This was distributed to all faculty by**

6 **somebody with access to all of the faculty's mailbox;**

7 **would you agree?**

8 MR. CURELY: Objection to form.

9 THE WITNESS: I -- what I recall was that the

10 copy of what was printed in the Post was put in the

11 mailboxes of the faculty of the School of

12 Communication. I don't know who did it.

13 **Q (By Mr. Leo) Are you saying you weren't aware**

14 **that this publication, this letter was put into**

15 **Professor Tracy's mailbox and other faculty members'**

16 **mailboxes?**

17 A I was aware --

18 MR. CURELY: Objection to form.

19 THE WITNESS: Sorry.

20 **Q (By Mr. Leo) You were aware of what?**

21 A I was aware of that a copy of the letter --

22 yeah, letter in the Palm Beach Post was put in the

23 mailboxes of the faculty of the School of Communication.

24 **Q Who has access to the mailboxes?**

25 A I don't know. I would say everybody. I don't

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1 know -- I don't recall where the mailbox is in that
 2 school. Every school is a little bit different.
 3 **Q Can any faculty member put mail in anybody's**
 4 **mailbox?**
 5 A Could be.
 6 **Q They have access to the mailbox?**
 7 A Maybe access -- I mean, it's not -- I don't
 8 know what it's like in the School of Communication, but
 9 in most departments and mine it's an mailbox. It's not
 10 locked. It's a slot, and people can come by and put
 11 things in the slot, including students or staff.
 12 **Q Did you ever, at any point, identify who**
 13 **distributed this letter in The University?**
 14 A No.
 15 **Q Do faculty members have permission to**
 16 **distribute mail to all faculty members?**
 17 A Yes.
 18 **Q They can go into the mailroom freely and**
 19 **distribute mail however they want?**
 20 A Yes, especially if this is in their
 21 department, their school.
 22 **Q Were any of these faculty member, Morton**
 23 **Kollander or Wilson, from the School of Communications?**
 24 A No, but they were in the College of Arts and
 25 Letters, but we don't know who distributed it, the

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1 letter. I don't know.
 2 **Q Can we assume it was one of these individuals?**
 3 A No.
 4 **Q Or maybe they had help from inside the**
 5 **administration?**
 6 A Inside the administration?
 7 **Q Right, but some of these faculty members were**
 8 **former administrator, right?**
 9 A Only Dr. Kollander was Chair of History.
 10 **Q Chair of history.**
 11 A Yeah, but he was -- none of these faculty
 12 members had access to the mailroom at the School of
 13 Communications. I don't know. I'd have to look at what
 14 it looked like at that time.
 15 **Q Professor Tracy brought this incident to you,**
 16 **your attention; isn't that correct?**
 17 A Correct.
 18 **Q And he wanted it to be investigated?**
 19 A Yes.
 20 **Q Would you agree that this could be considered**
 21 **harassment?**
 22 A No.
 23 **Q This isn't harassment --**
 24 A No.
 25 **Q -- to send a nasty letter to someone's mailbox**

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1 **telling them that they're not an academic, and they**
 2 **should resign?**
 3 A This is their opinion. It's free speech.
 4 **Q Okay. But can an opinion be harassment,**
 5 **especially if it's a nasty opinion that contradicts**
 6 **actual facts, for example, for example, calling somebody**
 7 **an academic or saying that they're not an academic when**
 8 **they actually are an academic.**
 9 MR. CURELY: Objection to form.
 10 THE WITNESS: So are you asking to restrict
 11 their speech?
 12 **Q (By Mr. Leo) I'm sorry. Am I asking you --**
 13 A Yes, to restrict their speech.
 14 **Q -- to restrict their speech?**
 15 A Yes.
 16 **Q Well, who said that these people can't speak?**
 17 A They didn't.
 18 **Q Was telling them that they can't distribute**
 19 **this mail, this letter to everybody's mailbox, would**
 20 **that be restricting their speech?**
 21 A They have already spoken. It was already in
 22 the paper.
 23 **Q Right, so was there a reason for them to stick**
 24 **it in everyone's mailbox at --**
 25 A I don't know who did it.

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1 **Q --The University, including Professor Tracy's?**
 2 A I don't know who did it, and I don't know what
 3 their motivation was.
 4 **Q But did you conduct an investigation to**
 5 **determine who it did?**
 6 A No.
 7 **Q Why not?**
 8 A That would not be my role. That would have
 9 been the role -- if somebody felt it needed to be
 10 investigated it would have been done at the level of the
 11 school.
 12 **Q Who investigates harassment at the school?**
 13 A If harassment is reported we have an office
 14 that is currently called "Equity Inclusion and
 15 Compliance", and they --
 16 (Thereupon, Plaintiff's Exhibit Number PA-32
 17 was marked for identification.)
 18 **Q (By Mr. Leo) Here. Take a look. This is PA-32.**
 19 **P.A. 32?**
 20 A And they investigate.
 21 MR. LEO: Here's a copy.
 22 **Q (By Mr. Leo) Does this message look familiar?**
 23 A Yes, somewhat.
 24 **Q This is bate stamped Tracy-Alperin's 1, 2 and**
 25 **3, and for today it's PA-32. It's a message dated June**

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1 **26, 2013 to Diane Alperin from Jim Tracy.**
 2 A Uh-hm.
 3 **Q You can see he's asking for your help.**
 4 A Right.
 5 **Q Right? Is it safe to say that nobody was**
 6 **disciplined?**
 7 A I'm not aware of anybody being disciplined.
 8 **Q For this publication, PA-32.**
 9 A Yes, I'm not aware of anybody being
 10 disciplined, no.
 11 **Q Would you agree that The University condoned**
 12 **this behavior?**
 13 MR. CURELY: Objection to form.
 14 THE WITNESS: No.
 15 **Q (By Mr. Leo) How did they not condone it?**
 16 MR. CURELY: Objection to form.
 17 **Q (By Mr. Leo) Do you know what the definition**
 18 **of what condone means?**
 19 A No. Tell me.
 20 **Q According to Google it means, "accept and**
 21 **allow to continue."**
 22 A It's --
 23 MR. CURELY: There's no question.
 24 THE WITNESS: This article was published in
 25 the Palm Beach Post, and it was distributed. I

302

1 don't know what investigation Dr. Marin did. I
 2 don't know is she was -- I'm not aware of who --
 3 MR. LEO: Right.
 4 THE WITNESS'S: We know who wrote the letter,
 5 but I don't know who distributed it.
 6 **Q (By Mr. Leo) You never had a meeting with**
 7 **Professor Morton --**
 8 A No.
 9 **Q -- about this letter? You never had a meeting**
 10 **with Professor Kollander?**
 11 A No.
 12 **Q Never had a meeting with Professor Tom Wilson?**
 13 A Not as far as I know.
 14 **Q How about Professor Narayan?**
 15 A No. I wasn't aware that -- I must tell you
 16 that I don't remember this. Was this published in The
 17 Post as well? I'm not aware -- I don't remember it at
 18 all.
 19 **Q In fact, he refers to Professor Tracy as some**
 20 **idiot exercising his freedom, again, he calls idiot.**
 21 **That kind of behavior is tolerated, faculty members name**
 22 **calling one another?**
 23 A Again, I wasn't of this. That's his opinion.
 24 **Q Do you think a faculty member expressing an**
 25 **opinion that another faculty member is an idiot in the**

303

1 **Palm Beach Post is acceptable behavior for an FAU**
 2 **faculty member?**
 3 MR. CURELY: Objection to form.
 4 THE WITNESS: I'm not gonna restrict free
 5 speech.
 6 **Q (By Mr. Leo) Whose?**
 7 A These professors.
 8 **Q So if faculty members at your University are**
 9 **name calling -- let's see, in this example Morton,**
 10 **Kollander and Wilson say that James Tracy spins a tall**
 11 **tale about nothing, you think that's free speech?**
 12 A I think that's their opinions, don't you?
 13 **Q Well, if they didn't investigate Sandy Hook,**
 14 **and they didn't read what Professor Tracy wrote, then I**
 15 **would argue that's defamation. That's what that looks**
 16 **like to me, but, again, I'm a lawyer, and I see things a**
 17 **little differently than other people, but going back to**
 18 **what you saw in 2013, you sawing nothing wrong with this**
 19 **letter, PA-32, when you saw this in the Palm Beach Post?**
 20 A No.
 21 **Q You see nothing wrong with faculty members**
 22 **disparaging their colleagues in publication, in print to**
 23 **everybody in South Florida. You see nothing wrong with**
 24 **that, just so we're clear for the record.**
 25 MR. CURELY: Objection to the form.

304

1 THE WITNESS: The clear answer is no.
 2 **Q (By Mr. Leo) Okay. And you think that if**
 3 **somebody from FAU publishes a statement like Professor -**
 4 **- I'm sorry -- James Tracy should not resign from FAU**
 5 **because he has upset people or brought shame to The**
 6 **University. He should resign because he is not an**
 7 **academic. Do you think that's an acceptable comment**
 8 **from FAU faculty members, former administrators to**
 9 **publish in the Palm Beach Post?**
 10 A I think that was their opinion.
 11 **Q Okay. But these are three faculty members**
 12 **that were employed at FAU when they published this**
 13 **opinion.**
 14 A Correct.
 15 **Q Okay. And you said that you don't know if**
 16 **they submitted a form and asking permission to publish**
 17 **this before they did?**
 18 A Correct.
 19 **Q Would you agree that The University acquiesced**
 20 **and accepted this publication afterwards by not**
 21 **disciplining them or doing anything for that matter?**
 22 A As far as -- I don't know what their
 23 supervisors did.
 24 **Q Do you know what workplace bullying is?**
 25 A I think I know what -- yes, I know what

305

1 bullying is.

2 **Q Would you think this is bullying?**

3 A No.

4 **Q Would you consider telling another -- a**

5 **colleague or another employee of your job that they**

6 **should resign because they're not an academic, that's**

7 **not bullying?**

8 MR. CURELY: Objection to form.

9 THE WITNESS: I think that's their opinion.

10 They're not --

11 **Q (By Mr. Leo) Can opinions be bullying --**

12 A They're not --

13 **Q -- if expressed in a way --**

14 A They're not his --

15 MR. CURELY: You need to let her talk. You

16 guys can't talk can't talk at the same time.

17 Finish your question. She'll answer it.

18 **Q (By Mr. Leo) Can an opinion be bullying?**

19 A In the abstract?

20 **Q I'm not asking about abstract. I'm asking can**

21 **an opinion be bullying?**

22 A These are not his supervisors.

23 **Q If I told my colleague you're not an academic,**

24 **you should resign, is that me expressing my opinion or**

25 **am I bullying him?**

306

1 A I think that's expressing your --

2 MR. CURELY: Objection to form.

3 THE WITNESS: That's expressing your opinion.

4 **Q (By Mr. Leo) Expressing my opinion. Now, if I**

5 **did that in a way that was threatening, would that now**

6 **bullying?**

7 MR. CURELY: Objection to form.

8 THE WITNESS: What is your relationship?

9 **Q (By Mr. Leo) Let's say I'm a co-worker, I'm in**

10 **a different division, but I decide I'm gonna take my**

11 **opinion, I'm gonna publish it in the Palm Beach Post,**

12 **and I'm gonna print out that opinion, and I'm gonna put**

13 **it in every single's mail -- every single faculty member**

14 **at The University's mailbox so everyone see my opinion,**

15 **including the person that I'm targeting, right, you're**

16 **telling me that's not workplace bullying?**

17 MR. CURELY: Objection to form.

18 THE WITNESS: I think it's their opinion.

19 **Q (By Mr. Leo) And not bullying.**

20 MR. CURELY: Objection to form.

21 THE WITNESS: I didn't see this as bullying.

22 **Q (By Mr. Leo) I'm sorry?**

23 A I didn't see this as bullying.

24 **Q Do you see it as bullying now?**

25 MR. CURELY: Objection to the form.

307

1 THE WITNESS: No.

2 **Q (By Mr. Leo) You think this is acceptable**

3 **behavior from an FAU faculty member.**

4 A I think it's their opinion.

5 **Q Okay. Their opinion that's expressed in a**

6 **format that you condone; would you agree?**

7 MR. CURELY: Objection to form. You're

8 beating this up pretty good here, counsel. How you

9 doing time-wise, guys?

10 MR. MEDGEBOW: We got a little more than an

11 hour.

12 MR. SONDERLING: Seriously?

13 MR. MEDGEBOW: Seriously.

14 MR. LEO: We're just getting wound up.

15 MR. CURELY: I want an inspector general in

16 here to monitor this thing.

17 **Q (By Mr. Leo) All right. Going back to the PA-**

18 **33, did you respond to Professor Tracy?**

19 A No. I don't recall responding to Professor

20 Tracy. Where is --

21 **Q You didn't write him back and say --**

22 A -- 33? Do I have 33?

23 **Q You should.**

24 A Oh, 32, my attempts to resolve the event?

25 **Q I'm sorry, 32, PA-32.**

308

1 A PA-32. No, I don't recall responding to

2 Professor Tracy.

3 **Q So when Professor Tracy asked if you could --**

4 **when he wrote you said, "His attempts to resolve this**

5 **event described in the attached e-mail has been**

6 **unacceptable -- I'm sorry --**

7 A Unsuccessful.

8 **Q -- unsuccessful. I'm interested in better**

9 **understanding what happens to be a campaign of personal**

10 **harassment against me on several fronts within my**

11 **college." There was no followup on that?**

12 A No.

13 **Q So --**

14 A Not that I recall.

15 **Q -- if a faculty member tells you that he's**

16 **being harassed by other faculty members, you don't**

17 **respond to him?**

18 A Not necessarily.

19 **Q Not even I don't think this is harassment,**

20 **sorry?**

21 A I don't recall responding to him.

22 **Q Would you agree that that's ignoring him?**

23 A I think there were employees at The University

24 who felt that -- taken in context of what he was doing

25 to the parents of the children who died in Sandy Hook,

309

1 that that was harassment.

2 **Q What was he doing to the parents of the**

3 **children who died in Sandy Hook?**

4 A He was saying that -- and I don't remember

5 exactly what the point, but he was saying that this

6 event didn't occur.

7 **Q When did he say that?**

8 A I don't remember exactly. I'd have to go back

9 and look.

10 **Q Do you normally take what the media says about**

11 **people as truth?**

12 A No.

13 **Q You agree that the news is not always right?**

14 A Correct.

15 **Q And that they have their own agenda, the**

16 **media.**

17 A Some media.

18 **Q Right, but they have their own agenda --**

19 A I think -- No. I think there's all sorts of

20 media out there. I didn't can't just globally that the

21 media has their own agenda.

22 **Q Would you agree that the media, as we know it**

23 **as the mainstream media, is owned by a handful of**

24 **corporations?**

25 A Oh, I don't know. That's not my area.

310

1 **Q You don't know that?**

2 A No, I don't know that.

3 **Q Let's -- so we'll move on that. So was this**

4 **the first time this PA-32 -- was this the first time**

5 **that you ignored something that Professor Tracy sent to**

6 **you?**

7 A I don't know.

8 **Q Is this standard procedure for dealing with a**

9 **faculty member that one disagrees with?**

10 A Disagrees with.

11 **Q Right.**

12 A Why would --

13 **Q Would you ignore him because you didn't like**

14 **what he was saying on his blog?**

15 A No. I ignored it because it's the

16 responsibility of the Director of the school to do the

17 investigation.

18 **Q Did you agree with Professor Morton, Kollander**

19 **and Wilson when they wrote that Professor Tracy should**

20 **resign in 2013?**

21 A No. No.

22 **Q You didn't agree with them?**

23 A No.

24 **Q What did you disagree with in their letter?**

25 MR. CURELY: Objection to form.

311

1 THE WITNESS: I agree that they say in the

2 first sentence that he's an associate professor of

3 communication. I agree that infuriated the public

4 because we were getting bad feedback, and I guess

5 at this point he had also indicated that the Boston

6 Marathon Bombing also didn't happen, that it was

7 staged, it happened, it was staged, correct?

8 **Q (By Mr. Leo) And you read this?**

9 A I read this, yes.

10 **Q Where did you read that he said that the**

11 **Boston Bombing was staged been?**

12 A I believe that I read it on the Memoryhole

13 blog --

14 THE REPORTER: Memoryhole what?

15 THE WITNESS: Memoryhole blog, B-L-O-G, but I

16 really don't have -- I did not -- I agree that --

17 well, let me see.

18 **Q (By Mr. Leo) Do you agree that James Tracy**

19 **spun tall tales out of nothing?**

20 A No. I do believe that he looked at pictures

21 and events, and he did believe that they were staged. I

22 don't believe --

23 **Q Did you talk to Professor Tracy about this?**

24 A No.

25 **Q So how do you know what he believed?**

312

1 A No, I don't talk to him about that. You asked

2 me my opinion. That's my opinion.

3 **Q Do you agree that Professor Tracy is not an**

4 **academic?**

5 A No. He was a faculty member at FAU.

6 **Q So is he an academic.**

7 A Yes.

8 **Q And at all times material to this case he was**

9 **an academic.**

10 A Yes.

11 **Q Going back to November 2015 -- I'm going to**

12 **show you what's been marked as PA-33.**

13 (Thereupon, Plaintiff's Exhibit Number PA-33

14 was marked for identification.)

15 MR. LEO: And I don't have a copy for you,

16 Joe, but I think you've seen this one.

17 MR. CURELY: Oh, yeah.

18 **Q (By Mr. Leo) This was Professor Tracy's**

19 **response to the November 10 Notice of Discipline; isn't**

20 **that right?**

21 A It looks like it.

22 MR. CURELY: You guys, I don't know which or

23 who's responsible for that agreement.

24 MR. LEO: I'm having outside commuter's words.

25 Were you doing some of that?

313

1 MR. CURELY: Well, that's what I'm here for.
 2 **Q (By Mr. Leo) You agree that's Professor**
 3 **Tracy's response to the November 10 Notice of**
 4 **Discipline?**
 5 A It appears to be.
 6 **Q And in his response, without belaboring**
 7 **everything he said in there, he expressed confusion**
 8 **about the policy still, right?**
 9 A He expressed that confusion, yes.
 10 **Q And he was upset and concerned that he wasn't**
 11 **given clarification --**
 12 A He expresses that.
 13 **Q -- by his superiors.**
 14 A Yes.
 15 **Q Did you review this response with Dean**
 16 **Coltman?**
 17 A I don't recall.
 18 **Q Dean Coltman, did she ask you for guidance in**
 19 **responding to it?**
 20 A I don't recall.
 21 (Thereupon, Plaintiff's Exhibit Number PA-34
 22 was marked for identification.)
 23 **Q (By Mr. Leo) I'm going to show you what's been**
 24 **marked as PA-34.**
 25 MR. LEO: I don't have a copy, Joe.

314

1 **Q (By Mr. Leo) Does this e-mail refresh your**
 2 **recollection as to whether Dean Coltman asked you for**
 3 **guidance with respect to the response to this PA-3?**
 4 A I see that I was sent this. I don't remember
 5 how I responded.
 6 **Q Let me show you how Dean Coltman, and here's a**
 7 **copy for Joe.**
 8 MR. CURELY: Thank you.
 9 **Q (By Mr. Leo) Was this the advice you gave to**
 10 **Dean Coltman on how to respond to Professor Tracy's**
 11 **November 22nd letter?**
 12 A I don't recall.
 13 **Q Do you believe that Dean Coltman ultimately**
 14 **ignored much of what Professor Tracy was saying and**
 15 **asking for?**
 16 A Well, she's saying --
 17 MR. CURELY: Objection to form.
 18 THE WITNESS: She says, "You claim you were
 19 confused. I have now addressed that." I'm sorry."
 20 Because you claim that you were confused and I
 21 have now addressed that, I will extend the deadline
 22 to submit these reports to me.
 23 **Q (By Mr. Leo) How did Dean Coltman address**
 24 **that?**
 25 MR. CURELY: Objection to form.

315

1 THE WITNESS: I believe in paragraph 2 she's
 2 saying, "I am writing to reiterate clearly that you
 3 must file Report of Outside Employment or
 4 Professional Activity Forms for 2013/14, 2014/15
 5 and 2015/16 as required by University policy found
 6 Article 19 of UFF FAU BOT Collective Bargaining
 7 Agreement and as directed by me in my Notice of
 8 Discipline dated November 20th, 2015. This is not
 9 optional."
 10 **Q (By Mr. Leo) This is clarification?**
 11 A I believe it's clarification.
 12 **Q This clarifies that the policy is not being**
 13 **used in a way that would violate --**
 14 A No, this would --
 15 **Q -- his Settlement Agreement, for example? I'm**
 16 **sorry. Let me just finish so she can get a break.**
 17 A Sorry.
 18 **Q You're saying that this clarifies that the**
 19 **policy is not being used in a way that violates the**
 20 **Settlement Agreement that was entered in 2013?**
 21 A The Settlement Agreement had to with
 22 disclaimers. It didn't have to do with outside activity.
 23 **Q Why didn't Dean Coltman say that?**
 24 A Why would she say that?
 25 **Q Well, he's asking you for clarification to**

316

1 **make sure that their -- this directive doesn't conflict**
 2 **with that agreement or isn't a violation of the**
 3 **agreement, right? Isn't that what he wrote in that long**
 4 **letter that you just read?**
 5 MR. CURELY: Objection to form.
 6 **Q (By Mr. Leo) No. Don't read it again. Let's**
 7 **stick to what you know. You just had a chance to read**
 8 **it. You read it for about 15 to 20 minutes --**
 9 A Okay.
 10 **Q -- okay? So based on what you just read,**
 11 **without looking at it again --**
 12 MR. CURELY: Objection to form.
 13 **Q (By Mr. Leo) -- would you agree with me that**
 14 **she did not clarify that the policy was not being used**
 15 **in a way that violated the Settlement Agreement, Dean**
 16 **Coltman, in her letter --**
 17 A I agree in her letter she doesn't --
 18 **Q -- doesn't even talk about a Settlement**
 19 **Agreement.**
 20 A Yes, I agree that she didn't talk about the
 21 Settlement Agreement.
 22 **Q Right, so she -- Dean Coltman didn't provide**
 23 **clarification on the Settlement Agreement. Did she**
 24 **respond to anything about free speech?**
 25 MR. CURELY: Objection, form.

317

1 THE WITNESS: She says that she reviewed his
 2 arguments --
 3 **Q (By Mr. Leo) But doesn't respond.**
 4 A -- relating to outside activity, research,
 5 claim of free speech and academic freedom.
 6 **Q But doesn't respond to any of those arguments.**
 7 A Not in this letter.
 8 MR. CURELY: Objection to form.
 9 **Q (By Mr. Leo) Right. Would you agree with me**
 10 **that Dean Coltman ignored Professor Tracy's argument in**
 11 **this November 22nd letter?**
 12 A No.
 13 **Q Let me ask you another question. Would Dean**
 14 **Coltman have the authority to not discipline Professor**
 15 **Tracy at this point?**
 16 A Yes.
 17 **Q Without you or anybody from the Provost, she**
 18 **could say, you know what, I'm not gonna discipline**
 19 **Professor Tracy any further.**
 20 A Correct?
 21 **Q So could have also have said I'm not going to**
 22 **require forms for the blog based on free speech**
 23 **concerns.**
 24 A No.
 25 MR. CURELY: Objection to form.

318

1 **Q (By Mr. Leo) Dean Coltman couldn't have said**
 2 **that?**
 3 A No. She could have, based on his response,
 4 decided to change the discipline to be not do the
 5 discipline, however, she --
 6 **Q She could retract the discipline?**
 7 A She could retract the discipline, yes. That's
 8 why with give faculty an opportunity to respond.
 9 **Q She could have said -- Dean Coltman could have**
 10 **said to Professor Tracy, turn the forms in, and I'll**
 11 **remove the discipline from your file, and we'll leave it**
 12 **at that, right?**
 13 A Yeah.
 14 **Q But that's not what she said.**
 15 A No.
 16 **Q She said submit the form or you'll receive**
 17 **further disciplinary action up to and including**
 18 **termination.**
 19 A Right, and he needs to complete the form.
 20 That's not --
 21 **Q Right.**
 22 A She did not have the right to say not to
 23 complete the form.
 24 **Q Would you agree with me that Dean Coltman was**
 25 **advised by your office in writing this December 11th,**

319

1 **2015 letter?**
 2 A I don't recall. I don't deny. I don't
 3 remember discussing it with her.
 4 **Q Did she draft this letter or did you or**
 5 **something else?**
 6 MR. CURELY: Objection to form.
 7 THE WITNESS: I don't know. I believe she
 8 drafted it.
 9 **Q (By Mr. Leo) Did somebody send her this**
 10 **language to use?**
 11 A I don't know.
 12 **Q Was this drafted by an attorney for FAU, for**
 13 **example?**
 14 A Maybe. I don't know.
 15 **Q Who would know the answer to that question?**
 16 A I guess Dean Coltman.
 17 **Q And if she didn't know?**
 18 A I don't know who would know.
 19 **Q Okay. Going back to the discipline in this**
 20 **instance, Professor Tracy was given a deadline of when,**
 21 **December 14th; is that what it says?**
 22 A Yes.
 23 **Q At 5:00 p.m.?**
 24 A Yes.
 25 **Q Was that a Friday?**

320

1 A I don't know. No, it says Monday in this e-
 2 mail. I don't know when it was, but in the e-mail it
 3 says Monday.
 4 **Q Okay. So she -- I'm sorry. The letter is**
 5 **dated Friday, December 11th.**
 6 A Okay.
 7 **Q Okay.**
 8 MR. CURELY: Keep going, and we'll let her --
 9 just so it's clear, it's an e-mail I believe.
 10 **Q (By Mr. Leo) This is an e-mail dated Friday,**
 11 **December 11th, 2015 at 7:09 p.m. --**
 12 A Correct.
 13 **Q -- from Dean Coltman to James Tracy, right?**
 14 A Yes.
 15 **Q You agree that it's dated Friday, December**
 16 **11th, 2015, right?**
 17 A Yes.
 18 **Q And then the deadline she gave was Monday.**
 19 A Yes.
 20 **Q The following Monday.**
 21 A Correct.
 22 **Q So she gave him the weekend and then said it**
 23 **needs to be in by Monday --**
 24 A Yes.
 25 **Q -- or you'll be disciplined up to and**

321

1 including termination.
 2 A Yes.
 3 **Q Would you agree with me that this did not**
 4 **clear up any confusion for Professor Tracy?**
 5 MR. CURELY: Objection to form.
 6 **Q (By Mr. Leo) -- this letter?**
 7 A I don't know.
 8 **Q Nonetheless, Professor Tracy did submit the**
 9 **form that he was directed, albeit it was the next day,**
 10 **December 15th.**
 11 A Correct.
 12 MR. CURELY: Object to the form.
 13 **Q (By Mr. Leo) Tuesday.**
 14 A He submitted some forms on December 15th.
 15 **Q Okay. My question now is was the decision to**
 16 **fire Professor Tracy -- was it before this letter was**
 17 **sent on Friday, December 11th, 2015? Was the decision**
 18 **made already?**
 19 MR. CURELY: Exhibit 35.
 20 (Thereupon, Plaintiff's Exhibit Number PA-35
 21 was marked for identification.)
 22 **Q (By Mr. Leo) PA-35. You still got it in front**
 23 **of you, right?**
 24 A Yeah, I'm looking at it.
 25 **Q Yeah.**

322

1 MR. CURELY: She has an e-mail, and you keep
 2 saying letter. I just don't want to be confused
 3 about it.
 4 THE WITNESS: I think that we were moving in
 5 that direction, and clearly if he had submitted the
 6 correct form, he would not have gotten a Letter of
 7 Termination post termination. On what basis --
 8 **Q (By Mr. Leo) Are you saying that he would have**
 9 **been fired had he turned them in on Monday?**
 10 A Correct. If he turned them all in even on
 11 Tuesday.
 12 **Q He turned them in on Tuesday.**
 13 A But he didn't complete the Memoryhole blog.
 14 He didn't --
 15 **Q You're saying he didn't --**
 16 A He did not include that. It was not what he
 17 submitted.
 18 **Q So he didn't include his personal blog on the**
 19 **Outside Employment Form --**
 20 A Correct.
 21 **Q -- and he was fired for that.**
 22 MR. CURELY: Objection to form.
 23 THE WITNESS: Because he had been repeatedly
 24 asked for two months to submit these forms.
 25 Insubordination. He didn't complete the form.

323

1 **Q (By Mr. Leo) When you say two months, do you**
 2 **mean three years?**
 3 A From October -- no. I'm talking about from
 4 October 20th when --
 5 **Q But wasn't he asked in January of 2013?**
 6 A Right, but he wasn't disciplined for that.
 7 **Q Right.**
 8 A Correct.
 9 **Q Doesn't that create some confusion perhaps**
 10 **from the part of Professor Tracy?**
 11 A No.
 12 MR. CURELY: Objection to form.
 13 **Q (By Mr. Leo) So you admit that he was directed**
 14 **in January of 2013 to submit the form for his blog.**
 15 A That's in a letter, yes.
 16 **Q Okay. He doesn't.**
 17 A Correct.
 18 **Q And he's not disciplined for it.**
 19 A As far as I know.
 20 **Q In 2013.**
 21 A Correct.
 22 **Q He's not asked again to submit the form**
 23 **until--**
 24 A October.
 25 **Q -- October of 2015.**

324

1 A Right.
 2 **Q Years later.**
 3 A Right.
 4 **Q Years after no discipline has been implemented**
 5 **for his refusal to submit the forms for his blog in**
 6 **2013, right?**
 7 A Correct.
 8 **Q Do you not see any problem with that?**
 9 A No.
 10 **Q You think it's okay that he wasn't disciplined**
 11 **in 2013?**
 12 A I see that he was asked in 2015 to submit the
 13 forms accepting his assignment and --
 14 **Q After The University --**
 15 MR. CURELY: You have to let her finish her
 16 answer, okay?
 17 MR. LEO: Okay. Or I can ask another
 18 question, and I'll ask --
 19 MR. CURELY: And interrupt her, sure.
 20 MR. LEO: It's my deposition. If I want to
 21 conduct it this way, then that's my prerogative.
 22 MR. CURELY: Fine. I made my objection.
 23 **Q (By Mr. Leo) Going to the years that went by**
 24 **from January 2013 to October 2015, you don't see any**
 25 **problem with the University's position with respect to**

325

1 perhaps acquiescence?
 2 A I didn't know that he didn't submit the forms.
 3 Q You didn't know that he didn't submit the
 4 forms?
 5 A It's not my role to monitor who submits the
 6 forms.
 7 Q You just said though that you knew that he
 8 didn't submit the form in 2013, right?
 9 A In 2013, but subsequent to that until 2015,
 10 when he objects, that's when this becomes an issue.
 11 Q But weren't you exploring potential misconduct
 12 in 2013?
 13 A No. We were exploring --
 14 Q That's not what Dean Coltman wrote down in her
 15 notes from your meeting in January 2013?
 16 A That's what she wrote down in her notes.
 17 Q In meetings with you.
 18 A Yes, but that's --
 19 Q And she testified that she didn't say anything
 20 about exploring misconduct, so through process of
 21 elimination, that leaves either you or FAU general
 22 counsel.
 23 MR. CURELY: I'm gonna object to counsel's
 24 statement for the record.
 25 Q (By Mr. Leo) Would you agree?

326

1 MR. CURELY: Move to strike.
 2 MR. LEO: That's something that can be
 3 determined later, and we can address those
 4 objections later.
 5 Q (By Mr. Leo) But given Defendant Coltman last
 6 week testified that she did not explore potential
 7 misconduct based on her notes that she testified to,
 8 would you agree with me that FAU or whoever was in this
 9 meeting was exploring potential misconduct in early
 10 2013?
 11 MR. CURELY: I object and move to counsel's
 12 comments, which are extraneous, just for the
 13 record.
 14 MR. LEO: You can answer the question. His
 15 objections are noted for the record.
 16 THE WITNESS: I don't remember being directed
 17 to explore misconduct.
 18 Q (By Mr. Leo) Did you direct Dean Coltman to
 19 explore misconduct?
 20 A I don't recall that.
 21 Q Is it possible you did?
 22 A I don't recall. We were really focused on the
 23 safety of the -- of Dr. Tracy, the safety of his
 24 students, the --
 25 Q When?

327

1 A In 2013.
 2 Q When was there a threat to Professor Tracy's
 3 safety?
 4 A There was many e-mails and phone calls of
 5 people who wanted him fired.
 6 Q So --
 7 A I don't know -- you know, like I said, there
 8 were many e-mail, so I'm not sure what they all said.
 9 Q Did you ever talk to anybody who made threats
 10 to Professor Tracy?
 11 A Personally, I don't recall.
 12 Q So you possibly did?
 13 A I may have.
 14 Q Did you ever speak to somebody named Posner?
 15 A No.
 16 Q Did you speak to Lenny Posner?
 17 A No.
 18 Q How about his spouse, Veronica?
 19 A No.
 20 Q Did you speak to anyone from the Soto family?
 21 A No.
 22 Q Any family from Sandy Hook?
 23 A I believe there were e-mails. I don't
 24 remember phone calls.
 25 Q You were forwarded e-mails from people who

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1 were connected with these folks.
 2 A Yes.
 3 Q Misty Fitch, does that ring a bell?
 4 A No.
 5 Q You don't remember getting an e-mail about
 6 Misty Fitch?
 7 A No, I don't remember.
 8 Q She was connecting Dean Coltman with the
 9 Posner family in 2015; does that ring a bell?
 10 A I remember somebody who contacted Dean
 11 Coltman, but I didn't have contact with them.
 12 Q Dean Coltman was having contact with these
 13 people though.
 14 A Yes.
 15 Q You're aware of that.
 16 A I believe that most of the initial calls came
 17 into the School of Communication and to Arts and Letters
 18 and then to the President and then to the Provost.
 19 Q Right, there was lots of complaints about
 20 Professor Tracy --
 21 A Right.
 22 Q -- based on a defamatory op-ed in the Sun-
 23 Sentinel that accused Professor Tracy of harassment,
 24 right?
 25 MR. CURELY: Objection to form.

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1 THE WITNESS: You're talking about 2015 now.
 2 MR. LEO: Right.
 3 THE WITNESS: Yes.
 4 **Q (By Mr. Leo) The Posners wrote an op-ed in the**
 5 **Sun-Sentinel December 10th, 2015, right?**
 6 A Correct.
 7 **Q Did that affect your judgment in this case?**
 8 A No.
 9 **Q And the decision that was made on December 16,**
 10 **2015.**
 11 A No.
 12 **Q You had said that the decision -- you were**
 13 **getting there?**
 14 A Correct.
 15 **Q What was it that you said?**
 16 A Well --
 17 **Q When exactly do you think a decision was made?**
 18 A The day that we sent the letter.
 19 **Q On the 16th.**
 20 A Yes.
 21 **Q But you said that it was in your mind before**
 22 **that that this was gonna be a termination?**
 23 A Could be.
 24 **Q Would you agree that that would be the first**
 25 **official discipline that Professor Tracy faced for not**

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1 **turning in the forms?**
 2 MR. CURELY: Objection to form.
 3 THE WITNESS: No, I thought he just -- got
 4 disciplined November 10th from Christine Coltman.
 5 **Q (By Mr. Leo) Okay. So November 10th was the**
 6 **first discipline for not turning in the forms for the**
 7 **blog.**
 8 A Yes.
 9 **Q And the next wave stemmed from the same exact**
 10 **offense.**
 11 A Yes.
 12 MR. CURELY: Objection to form.
 13 **Q (By Mr. Leo) The December discipline was**
 14 **termination.**
 15 MR. CURELY: You said defense or offense?
 16 MR. LEO: Same exact offense.
 17 MR. CURELY: Okay. Sorry.
 18 **Q (By Mr. Leo) The offense of not turning in the**
 19 **forms, that's what we're talking about, right?**
 20 A So it looks like you're saying offense, not
 21 defense.
 22 MR. CURELY: Yeah, I thought he said defense.
 23 I'm sorry.
 24 **Q (By Mr. Leo) I may have just said it fast, and**
 25 **I apologize. I'm referring to comparing the November**

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1 **discipline with the December discipline.**
 2 A Correct.
 3 **Q This was all stemming from the same offense.**
 4 A Yes.
 5 **Q So you would agree that the discipline between**
 6 **November and December stems from the same conduct.**
 7 A Correct.
 8 **Q Okay. The first discipline is just a nasty**
 9 **note or a letter, the November 10 notice or you called**
 10 **it a reprimand?**
 11 MR. CURELY: Objection to form.
 12 **Q (By Mr. Leo) Is that -- that's discipline,**
 13 **right?**
 14 A A reprimand is discipline, yes.
 15 **Q So the first discipline then would be the**
 16 **letter in the file, a reprimand.**
 17 A Yes.
 18 **Q The next discipline was that termination?**
 19 A Yes.
 20 **Q And that was after Professor Tracy turned in**
 21 **the forms albeit he was missing one for his personal**
 22 **blog.**
 23 A Correct.
 24 **Q Do you agree with that?**
 25 A Yes.

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1 **Q Were you present on November 30th at the**
 2 **meeting between FAU officials and Union officials?**
 3 MR. CURELY: Objection to form.
 4 THE WITNESS: November 30th?
 5 **Q (By Mr. Leo) November 30th, 2015 there was a**
 6 **consultation that was held. Do you remember that.**
 7 A No, I don't go to consultations. Usually it's
 8 consultations with the President and then the Provost ad
 9 legal counsel.
 10 **Q Okay.**
 11 A I don't remember that consultation.
 12 **Q Is it possible that you were there?**
 13 A No, not usually -- not at that time. There
 14 was a time many, many years ago where I was the only
 15 person in consultation, but that changed under Dr.
 16 Saunders where she wanted to do the consultations
 17 herself, and I believe Dr. Kelly has done the
 18 consultations himself.
 19 **Q So you weren't in a meeting with Defendant**
 20 **Zoeller, Moes, Kelly, Glick at any time?**
 21 MR. CURELY: Objection to form.
 22 THE WITNESS: At any time?
 23 **Q (By Mr. Leo) That you can remember.**
 24 A I remember one consultation. This was after
 25 we had posted the new Outside Activity Form --

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1 **Q And --**
 2 A -- and the new Additional Explanation, yes,
 3 and the -- when the Union does consultation they send an
 4 agenda to The President --
 5 **Q Uh-hm.**
 6 A -- and my recollection is that Bob Zoeller
 7 sent an agenda that included outside activity, and --
 8 **Q But this was after Professor Tracy was fired?**
 9 A Yes. This was --
 10 **Q How about before --**
 11 A After the new form --
 12 **Q Okay.**
 13 A -- was posted. So that's how I know because
 14 their concern was they would sign the form, meaning the
 15 Union -- and I don't recall if I was there for the whole
 16 meeting or only that meeting. They had no problem with
 17 the new form.
 18 They were concerned about the pieces that we
 19 were required to add because of research, the fact that
 20 we were recommending that faculty not do more than 8
 21 hours of outside activity, the fact that there was
 22 significant and financial interest included family.
 23 That's my recollection of their concerns that were
 24 discussed at the consultation, and I believe Mike Moes
 25 was at that meeting.

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1 **Q This was after Tracy was fired though.**
 2 A Yes.
 3 **Q Before Tracy was fired, did you have a meeting**
 4 **with Moes, Zoeller in any way?**
 5 A No.
 6 **Q Can I turn your attention to interrogatories?**
 7 **This is the first exhibit, so let's go back. Do you see**
 8 **there, not the last page where you signed, but the page**
 9 **before that --**
 10 A Okay.
 11 **Q -- second to last? And, for the record, this**
 12 **is PA-1. This is interrogatory responses.**
 13 A Okay.
 14 **Q This is the question about meetings with UFF.**
 15 A Correct.
 16 **Q And it says here on -- "On or about December**
 17 **18th, Defendant Alperin attended a Collective Bargaining**
 18 **meeting. Defendant Zoeller and Larry Glick were both**
 19 **present. During a break in the meeting Defendant**
 20 **Zoeller requested an extension of time for planning to**
 21 **respond to the Notice of Termination. Such request was**
 22 **granted.**
 23 A Okay.
 24 **Q Does this refresh your recollection as to**
 25 **whether you had a meeting with Zoeller?**

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1 A The -- the meeting was -- well, first you
 2 asked me about Zoeller, and Moes was not here.
 3 **Q Okay.**
 4 A Okay? We -- the meeting was on collective
 5 bargaining. Management was there. The Union had
 6 representatives there.
 7 **Q Where did this request for extension -- where**
 8 **did this happen?**
 9 A I'm getting to that?
 10 **Q Okay.**
 11 A Okay? So we were doing collective bargaining.
 12 We were taking a break, and my recollection is that Bob
 13 Zoeller asked to speak to Larry Glick.
 14 **Q About Tracy.**
 15 A I wasn't sure what it was about at that point.
 16 He asked to speak to Larry. They -- we meet in the
 17 Provost conference room for bargaining. They went
 18 across to the BOT room, which was empty, and I can't
 19 recall if I went over on my own or whether they called -
 20 - asked me to come in, but the discussion was that -- as
 21 you see, it was the middle of December. The Union was
 22 trying to secure an attorney for Dr. Tracy, and they
 23 were trying to secure a meeting for him with the
 24 attorney.
 25 It was a complicated time because it was the

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1 middle of December. It was holidays, and he had already
 2 received the Notice of Proposed Termination, and he had
 3 10 days to respond to that, which would have been
 4 December 26th.
 5 **Q How did you know that the Union was trying to**
 6 **secure an attorney for Tracy?**
 7 A That's what Bob Zoeller told Larry and then
 8 told me, that they were trying to do this, and could we
 9 delay sending the Letter of Termination. Part of it was
 10 because they want -- they were trying to do this, and
 11 the other part was December 26th The University would
 12 have been closed, and could we delay until The
 13 University reopened in January, and we agreed to that.
 14 **Q You had stated that this was a complicated**
 15 **time?**
 16 A They said it was complicated because it was
 17 the middle of December, it was holidays, and they were
 18 having trouble contacting attorneys and having time for
 19 Professor Tracy to meet with the attorney.
 20 **Q Professor Tracy was on parental leave for that**
 21 **semester.**
 22 A Correct.
 23 **Q His leave ended -- was it the week of the 11th**
 24 **of December, if you know?**
 25 A I don't know. He gets -- he was paid

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1 throughout the period.

2 **Q No consideration was given to Professor Tracy**

3 **for being on parental leave when these directives were**

4 **being made?**

5 MR. CURELY: Objection to form.

6 THE WITNESS: No.

7 **Q (By Mr. Leo) Do you agree that Professor Tracy**

8 **has four children?**

9 A Do I know that? Yes.

10 **Q And that he had a newborn child at the time?**

11 MR. CURELY: Objection to form.

12 THE WITNESS: I don't know how old the child

13 was, but I knew that he was on paid parental leave.

14 **Q (By Mr. Leo) Parental leave is usually after a**

15 **child is born?**

16 MR. CURELY: Objection to form.

17 THE WITNESS: Either that or just before.

18 MR. LEO: Okay.

19 THE WITNESS: Whenever.

20 **Q (By Mr. Leo) Was that why these directives**

21 **were made around that time?**

22 A No.

23 **Q Was this a design to prevent Professor Tracy**

24 **from responding in a timely fashion?**

25 A No.

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1 **Q Would you agree that it's not very fair to**

2 **Professor Tracy to be making these kinds of directives**

3 **when he's on parental leave?**

4 MR. CURELY: Objection to form.

5 THE WITNESS: No.

6 **Q (By Mr. Leo) Are you saying this wasn't a**

7 **conscious decision?**

8 A No.

9 **Q Given the complaints that were made in**

10 **December of 2015, just a month before these directives**

11 **began, do you think that Professor Tracy was treated**

12 **fairly?**

13 A Yes.

14 **Q Do you think it was fair not to provide**

15 **Professor Tracy with clarification about use of the**

16 **policy?**

17 MR. CURELY: Objection to form.

18 THE WITNESS: I think he was given

19 clarification from the Dean to complete the forms.

20 **Q (By Mr. Leo) While the Dean is sending**

21 **threatening letters to Professor Tracy, you're actually**

22 **undergoing revisions on the Outside Activity Policy at**

23 **the time; isn't that right?**

24 MR. CURELY: Objection to form.

25 THE WITNESS: Correct.

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1 **Q (By Mr. Leo) In fact, mid December you guys**

2 **were -- I'm sorry. You, you and the FAU administration**

3 **were circulating revisions to the policy; isn't that**

4 **right?**

5 A Probably.

6 **Q Probably or that's what was happening?**

7 A Well, I don't remember. I know that we were

8 revising, and we were circulating. I don't know

9 remember the exact dates.

10 MR. LEO: Are we on 26?

11 MR. CURELY: Oh, no. You're way past that.

12 MR. MEDGEBOW: 36.

13 (Thereupon, Plaintiff's Exhibit Number PA-36

14 was marked for identification.)

15 **Q (By Mr. Leo) Let me show you what's been**

16 **marked as PA-36; and, just for the record, this is also**

17 **FAU 666 through 670.**

18 A Okay.

19 **Q Does this refresh your recollection as to the**

20 **revisions that were happening at the time?**

21 MR. CURELY: Do you have a copy for me?

22 MR. LEO: I don't even have one for me, so --

23 MR. CURELY: Okay. Hang on a second because

24 that's not one I'm familiar with, so I need to look

25 at it.

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1 MR. LEO: Sure, take your --

2 MR. CURELY: But she's going to look at it.

3 What did you say, it 666 through 670?

4 MR. LEO: 670, yeah.

5 MR. CURELY: Okay.

6 **Q (By Mr. Leo) You agree that there was**

7 **revisions that were happening?**

8 MR. CURELY: Hang on one second.

9 MR. LEO: Okay.

10 MR. CURELY: Okay. All right. Go ahead.

11 Thank you.

12 **Q (By Mr. Leo) Does that refresh your**

13 **recollection as to whether there were revisions that**

14 **were happening concerning the Outside Activity Policy in**

15 **November of 2015?**

16 A Right, this is a revision, suggested revision

17 to the form.

18 **Q So you agree that there were changes that were**

19 **being made in November of 2015 to the Outside --**

20 A Correct, because he says --

21 **Q -- Activity Policy?**

22 A -- that the new form --

23 THE REPORTER: I'm sorry.

24 **Q (By Mr. Leo) Changes that were being made to**

25 **the Outside Activity Policy, end of question.**

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1 THE REPORT: Oh, that was? Okay.

2 MR. LEO: Do you want me to say it again?

3 THE REPORTER: I didn't get the rest of the

4 question. I have it down. I have it.

5 **Q (By Mr. Leo) Did you hear my question?**

6 A Yes, I agree that, as we had said, that we

7 were working on revisions. There was a group of people

8 working on it, and this is a draft of one of the

9 revisions that we were working on the form that was

10 finalized. I believe we agreed in the spring of 2016.

11 **Q There's changes being made to the form for the**

12 **policy?**

13 A Yes, the form.

14 **Q There was changes being made to the**

15 **explanations for the policy?**

16 A Correct.

17 **Q Explanations that were given to faculty**

18 **members?**

19 MR. CURELY: Let him finish his question.

20 **Q (By Mr. Leo) I just -- well, I'm going one by**

21 **one, one by one with you. So there was changes being**

22 **made --**

23 MR. CURELY: You gotta pause when you're ready

24 for her to answer, and then she'll answer.

25 **Q (By Mr. Leo) There were changes that were**

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1 **being made to the form?**

2 A Correct.

3 **Q There were changes that were being made to the**

4 **explanations?**

5 A Correct.

6 **Q There were memorandums that were being**

7 **drafted?**

8 A Possibly.

9 **Q And this was all designed to clear up any**

10 **confusion about the policy.**

11 MR. CURELY: Objection to form.

12 THE WITNESS: The primary responsibility --

13 the primary impetus for this came from the Division

14 of Research.

15 **Q (By Mr. Leo) But this was to help clarify the**

16 **policy, right?**

17 A Especially during --

18 MR. CURELY: Objection to form.

19 THE WITNESS: Yes, responsible Investigators

20 and research. That was the primary.

21 **Q (By Mr. Leo) I'm sorry?**

22 A The primary impetus came from the Division of

23 Research.

24 **Q Was it for the Division of Research or was it**

25 **for faculty members and staff?**

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1 A For all employees, but the impetus for the

2 changes came from the Division of Research.

3 **Q It didn't come from the faculty meeting when**

4 **Professor Lenz says nobody knows that this means?**

5 A We were already in the process of looking at

6 it at that point.

7 **Q Right. So in September in 2015 it was already**

8 **a problem?**

9 A It was already --

10 MR. CURELY: Objection to form.

11 THE WITNESS: -- a process that we were

12 working on.

13 **Q (By Mr. Leo) Would you agree or disagree with**

14 **Professor Lenz that nobody at FAU knew what was a**

15 **reportable outside activity?**

16 A I don't --

17 MR. CURELY: Objection to form.

18 THE WITNESS: I don't agree with Professor

19 Lenz.

20 **Q (By Mr. Leo) Okay. One of the reasons that**

21 **you terminated Professor Tracy was that he didn't**

22 **disclose a book; is that your understanding?**

23 A Is that what's in the letter?

24 **Q You mentioned it earlier. You said that he**

25 **didn't tell you about a book?**

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1 A I think I wrote a separate letter. I didn't

2 know about the book.

3 **Q Okay. What book was it that Professor Tracy**

4 **didn't disclose?**

5 A I believe it's called, "Nobody Died at Sandy

6 Hook".

7 **Q Did Professor Tracy actually write that book?**

8 A He has a chapter in the book, and he is

9 identified as a faculty member at FAU in the book.

10 **Q How do you know that?**

11 A Because I was -- somebody sent me -- told me

12 about the book.

13 **Q Who told you about the book?**

14 A It was an e-mail after the -- my recollection

15 is that it was an e-mail or a phone call after the -- I

16 believe that the Posner letter and the Sun-Sentinel

17 editorial were about the same time in December, correct?

18 You don't remember an editorial in the Sun-Sentinel or

19 you asked me about the --

20 **Q I can't tell you one way or another.**

21 A Okay. You don't have the letter, Posner's

22 letter?

23 **Q I'm just say that that's really not how this**

24 **goes. I ask the questions, and then --**

25 A Okay. But you were the one who mentioned the

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1 Posners' letter.
 2 **Q But I'm only asking about his book.**
 3 A Okay. But it was after that that --
 4 **Q After what?**
 5 A After what -- the December issue became,
 6 again, an issue with the Posners' letter in the Sun-
 7 Sentinel that people started contacting us again about
 8 Dr. Tracy and it was at that point, my recollection,
 9 that somebody told us about the book.
 10 **Q After he's gonna be fired?**
 11 A I'd have to look. I don't think so.
 12 **Q You don't know?**
 13 A No, because I think my letter to him --
 14 **Q Do you know if he wrote the book?**
 15 A He never -- he is identified as the author of
 16 a chapter in the book.
 17 **Q Okay. Does it sound about right that a**
 18 **chapter from the book may have been copied from his**
 19 **blog?**
 20 A Oh, I don't know. I didn't read the book.
 21 **Q You didn't read the book?**
 22 A No, I didn't read the book.
 23 **Q But you used it as a basis for accusing him of**
 24 **misconduct.**
 25 MR. CURELY: Objection to form.

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1 THE WITNESS: Because he didn't use the
 2 disclaimer because he identified himself as a
 3 faculty member at FAU.
 4 **Q (By Mr. Leo) In a book that he didn't write?**
 5 A I don't know that he didn't write it.
 6 **Q Have you seen this?**
 7 A Yes. I haven't seen that, no.
 8 **Q Is this the book?**
 9 A I don't know. I've seen --
 10 **Q Here it is. I'm gonna hand you the book.**
 11 A Okay.
 12 **Q Who wrote the book?**
 13 A Jim Fetzer and -- or the editor for Jim Fetzer
 14 and Mike --
 15 MR. CURELY: You're reading that --
 16 THE WITNESS: -- Talisman.
 17 MR. CURELY: --from what he just gave you,
 18 right?
 19 THE WITNESS: Yes.
 20 MR. CURELY: Okay.
 21 **Q (By Mr. Leo) Right. This it the book, "Nobody**
 22 **Died At Sandy Hook", right?**
 23 A Yes, looks like it. I never saw this book.
 24 **Q You never read it.**
 25 A I didn't read it, no.

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1 **Q So how do you know that Professor Tracy wrote**
 2 **it or contributed to it?**
 3 A I went to the beginning where he is indicated
 4 as one of the authors of one of the chapter.
 5 **Q Okay. Let's stop there. Wait. So Professor**
 6 **Tracy is indicated in this book as an author of a**
 7 **chapter.**
 8 A Correct.
 9 **Q Okay. Do you know, as you sit here today,**
 10 **whether Professor Tracy received compensation for his**
 11 **contribution to his book?**
 12 A I don't know.
 13 **Q All right. Back in January of 2015, did you**
 14 **know that?**
 15 A Yes.
 16 **Q In December of 2015 did you know whether or**
 17 **not Professor Tracy received compensation for this book?**
 18 A No.
 19 **Q And if Professor Tracy did not receive**
 20 **compensation for this book in December of 2015 -- right?**
 21 **You listening?**
 22 MR. CURELY: Objection to form.
 23 **Q (By Mr. Leo) I just want to make sure you're**
 24 **paying attention because you're looking at the book.**
 25 A Well, yes. I'm trying -- I'm sorry. I'm

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1 looking at where he's listed as a contributor and a
 2 professor at FAU.
 3 **Q Okay. So why don't you give me the book.**
 4 MR. CURELY: I'd like -- let me look at it.
 5 **Q (By Mr. Leo) He can look at the book, that's**
 6 **fine. I just want your attention for a second.**
 7 A Okay.
 8 **Q The book, in December of 2015, you didn't read**
 9 **it then.**
 10 A Correct. I just read that he was a
 11 contributor and that he had contributed a chapter.
 12 **Q Somebody accused Professor Tracy of writing**
 13 **this book though; isn't that right?**
 14 A Contributed to it.
 15 **Q Right. Do you know when this book was**
 16 **actually drafted or published?**
 17 A Uhm --
 18 MR. CURELY: Wait a minute. Hold on.
 19 **Q (By Mr. Leo) No, I'm just asking whether you**
 20 **know.**
 21 MR. CURELY: Just wait a second.
 22 **Q (By Mr. Leo) Without looking at it if -- I**
 23 **mean, do you know?**
 24 A I would have looked at it at the time. I
 25 don't know now.

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1 Q Okay. Because I'm asking -- because this is a
 2 book, and you tell me when it was drafted. I can do
 3 that.
 4 A Okay.
 5 Q I just want to know if you knew when it was
 6 you actually published.
 7 A At the time I probably did. I don't recall.
 8 Q Okay. Concerning books in general -- I'm
 9 going away from this book for a second -- a book does
 10 not necessarily have to be reported on an outside
 11 activity even if one writes it; isn't that right?
 12 A Why wouldn't it?
 13 Q We talked about this a little earlier, didn't
 14 we?
 15 A I know.
 16 Q If a faculty member -- and I'm just going to
 17 ask you to put the book down because I want to talk
 18 about books in general without any distractions.
 19 A All right. But it was --
 20 Q Because it's a great book, and you should read
 21 it --
 22 A -- published in October 2015.
 23 Q -- and we can get you a copy if you'd like it.
 24 A The second edition is May 2016.
 25 MR. CURELY: So the first time edition was --

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1 what did you say?
 2 THE WITNESS: October 2016.
 3 Q (By Mr. Leo) According to this publication
 4 that you just looked at.
 5 A Yes.
 6 Q Right, but in December 2015 you didn't know
 7 that --
 8 A I don't recall when --
 9 Q -- correct?
 10 A -- I actually became aware of the book.
 11 Q And, just so we're clear, you've never
 12 actually read the book.
 13 A I didn't read the whole book, correct.
 14 Q Or the chapter that Professor Tracy -- his
 15 blog was copied out of.
 16 MR. CURELY: Objection to the form.
 17 THE WITNESS: I don't know that. I don't know
 18 that --
 19 Q (By Mr. Leo) You don't know if the chapter was
 20 copied from his blog.
 21 A Correct, I don't know that.
 22 Q And if it was a copy from his blog that he
 23 wrote years before, right?
 24 A Right.
 25 Q Would that make it something different than

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1 Professor Tracy wrote a book and didn't tell you about
 2 it?
 3 MR. CURELY: Objection to form.
 4 THE WITNESS: No.
 5 Q (By Mr. Leo) It wouldn't be different than
 6 what you at least were told about the book?
 7 A No.
 8 Q Going back to books in general, if a faculty
 9 member writes a book, they don't necessarily have to
 10 report the book on an Outside Employment Form, right?
 11 MR. CURELY: Objection to form.
 12 How we doing time-wise?
 13 MR. LEO: I'd like her to answer the question.
 14 Q (By Mr. Leo) Do you want me to ask it another
 15 way?
 16 A I think I -- I believe if a faculty member
 17 is writing a book, that would be part of their
 18 assignment or part of an outside activity.
 19 Q So the question is should a faculty member
 20 writing a book be reported as an outside activity?
 21 A It could be.
 22 Q It could be or must it?
 23 A Again, if it's writing it as part of their
 24 assignment, then it would be an outside activity.
 25 Q All right. But, just so we're clear about the

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1 answer, you say it could be, but it's possible that it
 2 doesn't need to be, right?
 3 A Because it's possible that it's part of their
 4 assignment. If it's part of their assignment, it
 5 doesn't have to reported as an outside activity.
 6 Q Okay. And if a faculty member of a chair
 7 asked you and said does this faculty member who's
 8 writing a book need to report it, what would your answer
 9 be?
 10 MR. CURELY: Objection to form.
 11 THE WITNESS: I would say if it's part of
 12 their assignment.
 13 Q (By Mr. Leo) You wouldn't say --
 14 A If it's part of their assignment, then I
 15 wouldn't have it reported as outside activity.
 16 Q Would you ever say no, it doesn't need to be
 17 reported?
 18 MR. CURELY: Objection to form.
 19 THE WITNESS: I cannot recall why I would say
 20 that.
 21 MR. LEO: Okay. I'm just going to have this
 22 marked since this is where we're going. This is
 23 PA-37.
 24 (Thereupon, Plaintiff's Exhibit Number PA-37
 25 was marked for identification.)

<p style="text-align: right;">353</p> <p>1 MR. LEO: For the record, this is FAU bate 2 stamp 306 through 308, and here's a copy for Joe. 3 MR. CURELY: Thank you. 4 Q (By Mr. Leo) And my questions are only 5 directed for now to the first that second communication 6 on this thread. Did you get a chance to read those? 7 A I'm still reading it. 8 Q Okay. This is an e-mail from you to Mohammad-- 9 A Ilyas. 10 Q Ilyas. Who is Mohammad Ilyas? 11 A He's the Dean of the College of Engineering 12 and Computer Science. 13 Q And he's a current Dean? 14 A Yes. 15 Q This is an e-mail dated February 15, 2016. 16 You wrote, "Mohammad, thank you for following up on 17 this. See my responses below." Is the responses, the 18 all caps that -- 19 A That's my response, yes. 20 Q -- in this -- it looks like his e-mail with 21 questions. 22 A Correct. 23 Q Was this true and correct when you wrote those 24 comments to Dean Ilyas? 25 A I believe it's correct.</p>	<p style="text-align: right;">355</p> <p>1 A There was no question on the Outside 2 Employment Form about income, whether it's compensated 3 or not. 4 Q Right, but I was -- my question was that this 5 is another example of income that would be received by a 6 faculty member, but not need to be put on the Outside 7 Employment Form. 8 A Correct. 9 MR. CURELY: Objection to form. 10 Q (By Mr. Leo) I'm sorry? 11 A Correct. 12 Q Much like gambling, for example? 13 A Right. 14 Q Would not be income that would need to be 15 reported. 16 A If it's gambling income, I don't know. I 17 don't think so. 18 Q IRS thinks so. 19 A Okay. 20 Q Would you agree that that's another example? 21 A IRS -- 22 MR. CURELY: Objection to form. 23 THE WITNESS: The IRS doesn't say anything 24 about whether faculty should report if they go down 25 to -- what is it called if they go down to --</p>
<p style="text-align: right;">354</p> <p>1 Q You see bullet point number 2? 2 A Yes. 3 Q It says, "One faculty member had served on an 4 NSF panel and was paid an honorarium. This may also be 5 considered as part of a professional service, but is 6 compensated. Should this be reported as an outside 7 activity?" Was that your, all caps, comments at the 8 end? 9 A Yes. 10 Q Answered, "No. This would be professional 11 service and would not need to be reported." 12 A Correct, if it's part of the assignment. 13 Q It doesn't say it should be part of the 14 assignment, does it? 15 A Well, professional services is part of the 16 assignment. 17 Q Okay. But it says it would not need to be 18 reported. 19 A As outside activity. 20 Q This would be another example of income that's 21 received by a faculty member that doesn't need to be put 22 on the Outside Employment Form. 23 A There is no -- there is no question on the 24 Outside Employment Form. 25 Q I'm sorry?</p>	<p style="text-align: right;">356</p> <p>1 MR. LEO: That's all I can answer for you. 2 THE WITNESS: -- The Hardrock. That's the 3 name of it. 4 Q (By Mr. Leo) Going to bullet point number 3, 5 it says, "One faculty member is writing a book. Should 6 this be reported as an outside activity? No. This would 7 be a report as part of research/creative activity. 8 A Right, that's part of their assignment. 9 Q Would you agree that if this -- this is the 10 right answer? 11 A I believe it's the right answer. 12 Q That a faculty member writing a book does not 13 need to report it on an Outside Activity Form? 14 A Because it's part of their assignment. 15 Q How did you deduce that from these questions? 16 A From the initial piece I believe I first had a 17 meeting with Dean Ilyas, right, because I say -- 18 Q He doesn't name the faculty member. 19 MR. CURELY: You have to let her finish. 20 THE WITNESS: I believe that's what he meant, 21 that we had talked about this, but if a faculty 22 member is writing a book, it should be -- I said 23 this would be part of their assignment, the 24 research assignment. 25 Q (By Mr. Leo) This question didn't explain</p>

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1 which faculty member of which book or anything about it.
 2 It just says, "a faculty member is writing a book." So
 3 how can you deduce what the book was written for or that
 4 it was part of an annual assignment or anything like
 5 that?
 6 A I don't know if -- it might have been in a
 7 prior discussion.
 8 Q Are you saying that you met with this Dean --
 9 A Yes.
 10 Q -- before answering these questions?
 11 A I know I met --
 12 Q -- about this form?
 13 MR. CURELY: Let him finish his question.
 14 Q (By Mr. Leo) Did you meet with the Dean before
 15 answering these questions to ask about which faculty
 16 member wrote a book?
 17 A I don't know. I may have.
 18 Q Would you agree that this looks like general
 19 questions and general answers from you?
 20 MR. CURELY: Objection to form.
 21 THE WITNESS: Yes, they're answers from me.
 22 Q (By Mr. Leo) And this is just a month after
 23 Professor Tracy has been terminated for not reporting a
 24 book on an Outside Activity Form?
 25 A Correct.

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1 MR. CURELY: Objection to form.
 2 Q (By Mr. Leo) Do you think that Professor Tracy
 3 was treated fairly after looking at this?
 4 A Yes.
 5 Q You don't think that this conflicts with the
 6 reasoning in your termination letter?
 7 A No.
 8 Q You don't see the conflict there?
 9 A No.
 10 Q You don't think that that's inconsistent with
 11 what you told Dean Ilyas and what you told Professor
 12 Tracy is not different?
 13 A I would have to find that letter that I wrote
 14 to Professor Tracy and --
 15 Q It's part of the public record. You can
 16 review that on your time.
 17 A Have you marked it ever?
 18 MR. CURELY: No, he did not.
 19 MR. LEO: No. No. We're probably not gonna
 20 have time to get to it, so --
 21 MR. CURELY: I'll show you that letter.
 22 THE WITNESS: I thought that had to do with
 23 the disclaimer.
 24 Q (By Mr. Leo) Well, keep going. Let's look at
 25 the memorandum draft, PA-38. This is FAU --

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1 (Thereupon, Plaintiff's Exhibit Number PA-38
 2 was marked for identification.)
 3 MR. LEO: Joe, if you want to look at the bate
 4 stamp. I don't have another copy of that.
 5 THE WITNESS: That's general counsel's
 6 handwriting.
 7 Q (By Mr. Leo) That was going to be my next
 8 question. Is this your handwriting?
 9 A No. That's General Counsel, Senior General
 10 Counsel.
 11 Q It's Larry Glick's handwriting?
 12 A Yes.
 13 Q Okay.
 14 MR. CURELY: Just hang on a second.
 15 MR. LEO: I'm sorry. That's PA-38, right?
 16 MR. MEDGEBOW: Yes.
 17 Q (By Mr. Leo) This isn't your handwriting.
 18 A No.
 19 Q Okay. Let's put it aside. Aside from just
 20 the question, this draft memorandum, was it circulated
 21 to you?
 22 A I don't know.
 23 MR. LEO: And are we ready?
 24 MR. CURELY: Oh, yeah.
 25 MR. LEO: Oh, okay. I thought you guys were

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1 looking at it.
 2 MR CURELY: No.
 3 Q (By Mr. Leo) Going back to the e-mail --
 4 MR. CURELY: Which one?
 5 MR. LEO: FAU 306.
 6 Q (By Mr. Leo) This is the letter to Dean Ilyas?
 7 A Yes.
 8 MR. CURELY: That's Exhibit 37, okay.
 9 MR. LEO: Yes, 37.
 10 Q (By Mr. Leo) This was in response, FAU -- I'm
 11 sorry. PA-37 was in response to questions from faculty
 12 members in February of 2016, right?
 13 A Yes.
 14 Q Would you agree that there were still
 15 confusion at that point in February of 2016 from faculty
 16 members and even the Deans at FAU --
 17 MR. CURELY: Objection to form.
 18 Q (By Mr. Leo) -- about the policy?
 19 A I think they were asking questions, and I was
 20 trying to answer them.
 21 Q Right. So you would agree there was confusion
 22 about the policy.
 23 A I think there were questions.
 24 Q Is that why Gary Perry released a memorandum
 25 in June of 2016?

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1 A In when?
 2 **Q June of 2016. It was in response to questions**
 3 **from faculty members in February of 2016.**
 4 MR. CURELY: Objection to form. We don't have
 5 that here.
 6 THE WITNESS: I don't have that.
 7 (Thereupon, Plaintiff's Exhibit Number PA-39
 8 was marked for identification.)
 9 **Q (By Mr. Leo) I'm gonna show you -- here's a**
 10 **memorandum, FAU 568 through 571. For today it's PA-39.**
 11 **Do you recognize this memorandum?**
 12 MR. CURELY: Hang on a second. Take a look at
 13 it. Do you have a copy for me or no?
 14 MR. LEO: Sure.
 15 MR. CURELY: Thank you.
 16 MR. LEO: Here's the next one. Here's a copy
 17 for you, Joe.
 18 MR. CURELY: Okay.
 19 MR. LEO: Yeah, the next one is gonna be --
 20 MR. CURELY: PA-40?
 21 MR. LEO: PA-40.
 22 (Thereupon, Plaintiff's Exhibit Number PA-40
 23 was marked for identification.)
 24 **Q (By Mr. Leo) Have you had a chance to look at**
 25 **that?**

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1 MR. CURELY: Which one? She's looking at 39--
 2 **Q (By Mr. Leo) PA-39. I'm not gonna ask you too**
 3 **much questions about it, so you don't have to read the**
 4 **whole thing.**
 5 **The memo you just read, that was in response**
 6 **to a request for clarification from faculty members,**
 7 **right?**
 8 A And this was -- based on the date it's when
 9 the new Outside Activity Form was posted.
 10 **Q So was this when the policy was finalized, in**
 11 **June 2016?**
 12 A I believe so. I believe when we looked at
 13 that -- I don't know what number it was, but it was the
 14 Additional Explanation.
 15 **Q Right.**
 16 A I think that that said June 2016.
 17 **Q So June 2016 the Outside Activity Policy had**
 18 **been finalized.**
 19 A Yes.
 20 MR. CURELY: Objection to form.
 21 **Q (By Mr. Leo) Would you agree that Professor**
 22 **Tracy was terminated while the policy was being**
 23 **finalized?**
 24 MR. CURELY: Objection to form.
 25 THE WITNESS: There was a policy in place when

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1 he was terminated. There was a form in place when
 2 he was terminated.
 3 **Q (By Mr. Leo) And do you think that that policy**
 4 **was final when he was terminated or it was undergoing**
 5 **changes?**
 6 A It was final. That was the policy that we
 7 were following. Then we were changes, and we were -- to
 8 that policy, but that policy didn't change in that it
 9 said people no longer needed to report outside activity.
 10 **Q Who was the one who said that you needed to**
 11 **find winning metaphors to the First Amendment?**
 12 A Oh, I don't know.
 13 **Q Going back to meeting with Dean Coltman in**
 14 **2013 --**
 15 A Right.
 16 **Q -- someone brought up winning metaphors to the**
 17 **First Amendment, right?**
 18 A I don't recall that discussion.
 19 **Q Was the Outside Activity Policy the winning**
 20 **metaphor for --**
 21 A I don't know what --
 22 **Q -- getting rid of Professor Tracy?**
 23 A No.
 24 MR. CURELY: Objection to form.
 25 THE WITNESS: No. I don't know what a winning

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1 metaphor is.
 2 **Q (By Mr. Leo) I don't know either. That's why**
 3 **I'm asking.**
 4 A I don't know. Those aren't my notes.
 5 **Q Did Dean Coltman say that you needed a winning**
 6 **metaphor?**
 7 A I don't recall her saying that.
 8 **Q Was the Outside Activity Policy used to target**
 9 **Professor Tracy?**
 10 A No.
 11 **Q Would you agree that Professor Tracy was**
 12 **singled out and treated differently than the other the**
 13 **FAU faculty members with respect to the Outside Activity**
 14 **Policy?**
 15 A No.
 16 **Q You think he was treated the same as other**
 17 **faculty members?**
 18 A I think that he didn't complete the form, and
 19 he was repeatedly asked to, and that's why he was
 20 terminated.
 21 **Q All of the other faculty members at FAU, when**
 22 **they had questions about the policy, they were answered;**
 23 **isn't that right?**
 24 A I don't know if they had their questions
 25 answered, but --

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1 **Q** You just saw an e-mail where you answered
 2 several questions --
 3 A Yes, I did.
 4 **Q** -- from Dean Ilyas.
 5 A Ilyas, yes.
 6 MR. CURELY: Let him finish.
 7 **Q (By Mr. Leo) Right. Why didn't you do this**
 8 **for Professor Tracy --**
 9 MR. CURELY: Objection to form.
 10 **Q (By Mr. Leo) -- what you did for Dean Ilyas**
 11 **and the faculty members who had questions about the**
 12 **policy in February of 2015?**
 13 A I don't know.
 14 **Q You could have, right?**
 15 A I don't recall.
 16 **Q Would you agree that you didn't want to?**
 17 A No, I wouldn't agree.
 18 **Q Would you agree that you and Dean Coltman and**
 19 **FAU's administrators were tired of the controversy**
 20 **surrounding Professor Tracy's blogging at the time?**
 21 MR. CURELY: Objection to form.
 22 THE WITNESS: No.
 23 **Q (By Mr. Leo) In 2015 you didn't want to get**
 24 **rid of Professor Tracy?**
 25 A No.

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1 **Q** Would you agree that the e-mails that were
 2 exchanged between FAU administrators paint a different
 3 picture?
 4 MR. CURELY: Objection to form.
 5 THE WITNESS: No.
 6 **Q (By Mr. Leo) Have you reviewed those e-mails?**
 7 A Are these the e-mails you gave me today?
 8 **Q Some of them. Like when Dean Coltman writes**
 9 **Professor -- about Professor Tracy's request for a**
 10 **response. Professor Tracy had requested a December 1st**
 11 **response or at least a response by December 1st. Dean**
 12 **Coltman wrote to you and say, "Oh, well" about that,**
 13 **right?**
 14 A I don't know what that means.
 15 **Q She wasn't concerned about getting Professor**
 16 **Tracy a response by the deadline that he asked for,**
 17 **right?**
 18 MR. CURELY: Objection to form.
 19 THE WITNESS: I don't know.
 20 **Q (By Mr. Leo) And Dean Coltman didn't provide**
 21 **Professor Tracy with any kind of clarification on the**
 22 **questions that he had about the policy and how it was**
 23 **being used with respect to his outside activity, right?**
 24 MR. CURELY: Objection to the form, asked and
 25 answered.

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1 **Q (By Mr. Leo) You can answer.**
 2 A I don't know.
 3 **Q You don't if Dean Coltman provided**
 4 **clarification --**
 5 A I think she provided what she thought was
 6 clarification.
 7 MR. CURELY: You're out of time, but you got
 8 like five minutes, so try and --
 9 MR. SONDERLING: I got six minutes, for the
 10 record. I know that you guys have different time.
 11 MR. CURELY: Six minutes is fine, however, I'm
 12 saying if there's something you haven't asked --
 13 MR. LEO: I have a very important question.
 14 MR. CURELY: Okay.
 15 **Q (By Mr. Leo) How was Professor Tracy's**
 16 **termination progressive?**
 17 A He received a Notice of Discipline.
 18 **Q In November?**
 19 A In November, yes. That was November, and he
 20 did not respond to requests from his Director, from his
 21 Dean, from others to fill out the forms over a period
 22 starting in October 30th until December, and that's when
 23 the decision was made to terminate.
 24 **Q You say he did not respond. He did respond.**
 25 **You just looked at those responses.**

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1 A He didn't complete the form.
 2 **Q Right, but he did respond to those Directors.**
 3 A He responded to Dean Coltman.
 4 **Q Right. He said, "I'm confused about this**
 5 **policy", and I'm suspicious is what he ultimately was**
 6 **saying in these letters, right?**
 7 MR. CURELY: Objection to form.
 8 THE WITNESS: Well, I could see -- yes, I can
 9 see that.
 10 **Q (By Mr. Leo) Because he was targeted in 2013**
 11 **perhaps for his blogging.**
 12 MR. CURELY: Objection to form.
 13 THE WITNESS: Why was he targeted? By who?
 14 **Q (By Mr. Leo) By your administration.**
 15 A Current administration?
 16 **Q You remember what happened in 2013, right?**
 17 A Yes.
 18 **Q Attempted discipline, withdrew the**
 19 **discipline--**
 20 A Correct.
 21 **Q -- the Settlement Agreement --**
 22 A -- we wanted to suspend.
 23 **Q Right. Going back to the Settlement Agreement**
 24 **in 2013, who was tasked with removing the discipline in**
 25 **2013 from Professor Tracy's file?**

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1 A It would have -- it would have been in -- I
 2 don't know when it was. I would have been removed from
 3 his credential file.
 4 **Q It would have been. Was it?**
 5 A It was. Yes, it was.
 6 **Q Who removed it?**
 7 A I don't know if I removed it or my secretary
 8 removed it.
 9 **Q As you sit here today, you don't know if you**
 10 **removed it?**
 11 A I don't recall in 2013 if I physically went to
 12 his credential file and removed it or my secretary
 13 removed it.
 14 **Q Okay. Who is your secretary?**
 15 A Irma Bennett.
 16 **Q Are you saying Irma Bennett would have removed**
 17 **it if it wasn't you?**
 18 A I may have asked her to do it or I did it. I
 19 don't recall.
 20 **Q And if the 2013 attempted discipline was still**
 21 **in Professor Tracy's file when it was requested by**
 22 **Professor Tracy, would that surprise you?**
 23 A I don't believe it was in his personnel file
 24 when he requested it.
 25 **Q But how do you know?**

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1 A I believe that he e-mailed Irma Bennett and
 2 asked her for a signed copy of the Settlement Agreement.
 3 **Q Okay. But --**
 4 A She look -- I'm still answering your question.
 5 **Q Okay.**
 6 A She looked in his personnel file or what we
 7 call the credential file, which is in the Provost's
 8 office, and there was nothing there, and I believe she
 9 advised him of that.
 10 **Q What about his public personnel file?**
 11 MR. CURELY: Form.
 12 THE WITNESS: Let me finish my statement.
 13 Then she said to me that he was looking for the
 14 Settlement Agreement, and she had looked in his
 15 credential file, and it wasn't there, and I said it
 16 wouldn't be in his credential file. It would be in
 17 the grievance file. So then she went and found it,
 18 and I believe she faxed or scanned a copy and sent
 19 it to Dr. Tracy.
 20 **Q (By Mr. Leo) But the agreement was with**
 21 **respect to his personnel file, right, not a credential**
 22 **file. It was publicly available personnel file. That**
 23 **was the agreement. It was remove the discipline from**
 24 **his personnel file.**
 25 MR. CURELY: Form.

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1 **Q (By Mr. Leo) Would you agree with me that was**
 2 **the whole point of the agreement?**
 3 MR. CURELY: Objection to form. Whatever the
 4 agreement says it says.
 5 **Q (By Mr. Leo) My question was who removed it**
 6 **from the file?**
 7 A As I believe it was removed from the file. As
 8 I said, I don't recall if it was me or I asked my
 9 secretary to do it.
 10 **Q As you sit here today, do you know if it was**
 11 **ever removed?**
 12 A I believe it was.
 13 **Q Based on that what belief?**
 14 A I don't -- I believe that we abided by the
 15 agreement.
 16 **Q But if you didn't physically go and take it**
 17 **out of the personnel file, how do you know it was**
 18 **removed?**
 19 A I believe when -- that it was removed. I
 20 believe that when my secretary went to look for the
 21 Settlement Agreement and it wasn't in the file that it
 22 was in the grievance file. A grievance file is always
 23 separate from a personnel file.
 24 **Q But we're not talking about the settlement**
 25 **Agreement. We're talking about the discipline that you**

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1 **agreed, signed saying that it would be removed from his**
 2 **file. That was a contract; was it not? That was the**
 3 **agreement.**
 4 A Yes.
 5 **Q Okay. And you didn't personally remove it.**
 6 A I don't recall if I did or not.
 7 **Q As you sit here today, you have no personal**
 8 **knowledge as to whether --**
 9 A I have no memory of --
 10 **Q -- it was actually removed pursuant to your**
 11 **agreement; would you agree with me?**
 12 A I believe that it was removed.
 13 **Q To answer my question, you have no personal**
 14 **knowledge if --**
 15 A I can't recall if --
 16 **Q -- it was actually removed.**
 17 A I can't recall whether I went back to the file
 18 and removed it or not.
 19 **Q So it's possible it was never removed, right?**
 20 A I believe it was removed.
 21 **Q And if it wasn't removed, would you agree that**
 22 **FAU breached its agreement in September of 2013 by not**
 23 **removing it?**
 24 A I believe we had an agreement to remove it. I
 25 believe we removed it.

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1 **Q All right. We can end as soon as you answer**
 2 **the question.**
 3 MR. CURELY: She's answered it about five
 4 times.
 5 MR. LEO: No. No. She's giving the answer
 6 she wants to give, which is not answering the
 7 question.
 8 I believe I removed it is not saying whether
 9 or not it was removed.
 10 THE WITNESS: I'm saying that you're asking --
 11 MR. CURELY: It's okay. He's just -- counsel
 12 can beat you up. He doesn't like your answers, so
 13 he wants you to change it, and I move to strike his
 14 comments and go back and --
 15 MR. LEO: Sure. Then I will move to strike
 16 your nonresponsive answer when you say, "I believe
 17 I removed it."
 18 **Q (By Mr. Leo) I asked you if you had personal**
 19 **knowledge as to whether it was removed or not. I**
 20 **believe it was removed it not answering that question,**
 21 **and I'm sorry, it's not --**
 22 MR. CURELY: But that's your opinion.
 23 MR. LEO: -- so I'll move to strike your
 24 response.
 25 **Q (By Mr. Leo) And I'll ask you what, as you sit**

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1 MR. LEO: Should we?
 2 MR. CURELY: Yes, please.
 3 **Q (By Mr. Leo) Let me just say, final answer,**
 4 **you believe you removed it or you know or you don't**
 5 **know? Which one is it?**
 6 MR. CURELY: That's the best answer she's got.
 7 MR. LEO: No answer, that's --no, no response.
 8 You think that's a response.
 9 MR. CURELY: Yes, I do. Okay. She'll read.
 10 We're done, and I gave you --
 11 MR. LEO: Correct, and we'll certify the
 12 question. Why don't you go ahead -- we're going to
 13 order standard, and we'll take it up with the
 14 Court.
 15 THE REPORTER: Read?
 16 MR. LEO: She said she's gonna read.
 17 MR. CURELY: Read.
 18 THE REPORTER: And do you want a copy?
 19 MR. CURELY: Yes.
 20 THE REPORTER: What's your pleasure?
 21 MS. GRIFFIN: E-Tran.
 22 (Thereupon, the deposition was concluded at
 23 7:15 p.m.)
 24
 25

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1 **here today, can you point to to testify based on your**
 2 **belief that it was removed?**
 3 MR. CURELY: Okay. Tell him one more time,
 4 and then we're done.
 5 THE WITNESS: I believe it was removed. You're
 6 talking about something that was five years ago.
 7 **Q (By Mr. Leo) Do you believe that you went and**
 8 **actually physically removed it from the file?**
 9 A I don't recall if I physically removed it.
 10 **Q Okay. So you don't know. It's not you**
 11 **believe. It's you don't know, right?**
 12 A I don't recall if I physically --
 13 MR. CURELY: This is being argumentative.
 14 That's --
 15 MR. LEO: This is just evasive responses to a
 16 question, so -- I don't remember, I don't recall, I
 17 don't believe. No, trust me. We're all acquainted
 18 with evasive responses.
 19 **Q (By Mr. Leo) So when you say, "I believe I**
 20 **removed it", my question wasn't whether you believe you**
 21 **did. My question was whether you know. So it's a**
 22 **simple I don't know or I do know. I believe is not a**
 23 **response. It's not answering the question. So should we**
 24 **certify it?**
 25 MR. CURELY: Yeah, go ahead.

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1 CERTIFICATE OF REPORTER
 2 STATE OF FLORIDA
 3 COUNTY OF PALM BEACH
 4
 5 I, LORA LEE KNORR, Court Reporter and Notary
 6 Public in and for the State of Florida, do hereby
 7 certify that I was authorized to and did
 8 stenographically report the foregoing deposition of
 9 DIANE ALPERIN, and that the transcript is a true and
 10 complete record of my notes.
 11
 12 I FURTHER CERTIFY that I am not a relative,
 13 employee, attorney or counsel of any of the parties,
 14 nor am I a relative or employee of any of the parties'
 15 attorneys or counsel connected with the action, nor am
 16 I financially interested in the action.
 17 Witness my hand this 22nd day of May, 2017 at Boca
 18 Raton, Palm Beach County, Florida.
 19
 20
 21
 22
 23 _____
 24 LORA LEE KNORR, COURT REPORTER, FPR, RPR,
 25 NOTARY PUBLIC, STATE OF FLORIDA

1 CERTIFICATE OF OATH
 2 THE STATE OF FLORIDA
 3 COUNTY OF PALM
 4
 5 I, LORA LEE KNORR, the undersigned authority,
 6 certify that DIANE ALPERIN, personally appeared before
 7 me and was duly sworn on the 9th day of May, 2017.
 8
 9 Witness my hand this 21st day of May, 2017.

10
 11
 12
 13 _____
 14 LORA LEE KNORR, COURT REPORTER
 15 NOTARY PUBLIC, STATE OF FLORIDA
 16 Commission No.: FF198698
 17 Commission Expires: 4/30/2019

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1 ERRATA SHEET
 2 I wish to make the following changes, for the following
 3 reasons:
 4 PAGE NO. LINE NO.
 5 _____ CHANGE _____
 6 REASON _____
 7 _____ CHANGE _____
 8 REASON _____
 9 _____ CHANGE _____
 10 REASON _____
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 22 REASON _____
 23 _____ CHANGE _____
 24 REASON _____
 25 _____ SIGNATURE _____ DATE _____

1 May 23, 2017
 2 Diane Alperin
 3 C/O GERALD J. CURELY, ESQUIRE
 4 GUNSTER, YOAKLEY & STEWART, P.A.
 5 777 South Flagler Drive, Suite 500 East
 6 West Palm Beach, Florida 33401
 7 IN RE: JAMES TRACY V. FLORIDA ATLANTIC UNIVERSITY, ET
 8 AL.
 9 Dear Ms. Alperin:
 10
 11 Please take notice that on Monday, May 9th, 2017
 12 you gave your deposition in the above-referenced
 13 matter. At that time you did not waive your signature.
 14 It is now necessary that you sign your deposition. You
 15 may do so by contacting your own attorney or the
 16 attorney who took your deposition and make an
 17 appointment to do so at their office.
 18
 19 You may also contact our office at the below number
 20 Monday through Friday, 9:00 a.m. - 5:00 p.m. for
 21 further assistance
 22
 23 If you do not read and sign your deposition within
 24 thirty (30) days, the original, which has already been
 25 forwarded to the ordering attorney, may be filed with
 the Clerk of the Court.
 If you wish to waive your signature, sign your name in
 the blank at the bottom of this letter and promptly
 return it to us. Very truly yours, Lora Lee Knorr,
 Court Reporter Universal Court Reporting (954) 712-2600
 I do hereby waive my signature.

 DIANE ALPERIN
 cc: Via transcript: Louis Leo, IV, Esq.
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