

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.

VOLUME I

VIDEOTAPED DEPOSITION OF DOUG MCGETCHIN

APRIL 4, 2017

10:58 A.M. TO 5:07 P.M.

301 YAMATO ROAD

SUITE 1240

BOCA RATON, FLORIDA 33431

REPORTED BY:

JESSICA COOPER, FPR, COURT REPORTER

NOTARY PUBLIC, STATE OF FLORIDA



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<p>2</p> <p>1 APPEARANCES OF COUNSEL 2 ON BEHALF OF THE PLAINTIFF: 3 LOUIS LEO, ESQUIRE and 4 JOEL MEDGEBLOW, ESQUIRE 5 MEDGEBOW LAW, P.A. 6 4171 W HILLSBORO BLVD STE 9 7 COCONUT CREEK, FL 33073 8 954-478-4223 9 JOEL@MEDGEBOWLAW.COM 10 LOUIS@MEDGEBOWLAW.COM 11 12 MATT BENZION, ESQUIRE 13 MATT BENZION, P.A. 14 4171 W HILLSBORO BLVD STE 9 15 COCONUT CREEK, FL 33073 16 561-306-5949 17 MAB@BENZIONLAW.COM 18 ON BEHALF OF THE DEFENDANTS: 19 KATHERINE HEFFNER, ESQUIRE 20 CAIR FLORIDA 21 8076 N 56TH ST 22 TAMPA, FL 33617 23 813-514-1414 24 KHEFFNER@CAIR.COM 25 16 HOLLY GRIFFIN, ESQUIRE 17 GUNSTER 200 S ORANGE AVE STE 1400 18 ORLANDO, FL 32801 19 407-406-5246 20 SHUFF@GUNSTER.COM 21 22 ALSO PRESENT: 23 ANTHONY MAROUN, INTERN 24 25 JAMES TRACY, PLAINTIFF</p>	<p>4</p> <p>1 INDEX OF EXHIBITS 2 EXHIBIT DESCRIPTION PAGE 3 PM-1 ARTICLE 19 13 4 PM-2 COLLECTIVE BARGAINING AGREEMENT 14 5 PM-3 EMAIL 29 6 PM-4 EMAIL 29 7 PM-5 OUTSIDE ACTIVITY FORM 30 8 PM-6 NOTICE OF DISCIPLINE 33 9 PM-7 GRIEVANCE 66 10 PM-8 5.2(D). POLICY 75 11 PM-9 EMAIL MESSAGE 125 12 PM-10 EMAIL 126 13 PM-11 EMAIL 136 14 PM-12 EMAIL 165 15 PM-13 EMAIL 168 16 PM-14 NOTICE OF TERMINATION 169 17 PM-15 E-MAIL 181 18 PM-16 E-MAIL 214 19 PM-17 E-MAIL 216 20 21 22 23 24 25</p>
<p>3</p> <p>1 INDEX OF EXAMINATION 2 WITNESS: DOUG MCGETCHIN 3 4 DIRECT EXAMINATION 5 BY: MR. LEO 6 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>5</p> <p>1 VIDEOTAPED DEPOSITION OF DOUG MCGETCHIN 2 APRIL 4, 2017 3 VOLUME I 4 THEREUPON, 5 THE COURT REPORTER: Okay. We're now on the 6 video record. Today's date is April 4th, 2017; the 7 time is 10:58 a.m. This is the video deposition of 8 Doug McGetchin taken in the matter of James Tracy 9 versus Florida Atlantic University Board of 10 Trustees, a/k/a Florida Atlantic University, et al; 11 case number 9:16-cv-80655-RLR. The court reporter 12 is Jessica Cooper with the company Universal Court 13 Reporting. Would counsel please introduce 14 themselves for the record? 15 MR. LEO: I am Louis Leo IV along with co- 16 counsels Joel Medgebrow, Matthew Benzion and intern 17 Anthony Maroun is present. We represent Professor 18 James Tracy. 19 MS. HEFFNER: My name is Katherine Heffner. I 20 represent the UFF-FEA, Defendants. 21 MS. HEFFNER: My name is Holly Griffin and I 22 represent the FAU, Defendants. 23 DOUG MCGETCHIN, 24 was called as a witness, and after having been first 25 duly sworn, testified as follows:</p>

6

1 DIRECT EXAMINATION

2 BY MR. LEO:

3 Q Good morning.

4 A Morning.

5 Q How you're doing today?

6 A Good.

7 Q Can you please tell us where you're currently

8 employed?

9 A Florida Atlantic University.

10 Q And how long have you worked there?

11 A Since 2005, August.

12 Q And what's your title or?

13 A Associate professor.

14 Q And are you a tenured faculty?

15 A Yes.

16 Q And do you also work for United Faculty of

17 Florida?

18 A Yes.

19 Q In what capacity?

20 A Grievance chair.

21 Q Grievance chair. All right. And would you

22 like me to call you Professor, Doctor?

23 A Doug it's fine.

24 Q Doug, okay. That's fine.

25 A I don't know how formal this is supposed to

7

1 be.

2 Q However is comfortable for you.

3 A Okay.

4 Q Have you ever given a deposition before?

5 A No.

6 Q Okay. So, let's go do some ground rules. I'm

7 going to ask you a series of questions. There is no

8 right or wrong answers, only truthful answers. If you

9 don't understand the question I've asked please let me

10 know. Is that fair?

11 A Um-hum.

12 Q Is there any reason why you wouldn't be able

13 to testify truthfully today?

14 A No.

15 Q Are you under the influence of any drugs or

16 alcohol or any controlled substance?

17 A No.

18 Q Anything that would affect your ability to

19 remember or testify?

20 A No.

21 Q Has anybody made any threats to you concerning

22 your testimony today?

23 A No.

24 Q Has anybody made you promises?

25 A No.

8

1 Q Did you review any documents in preparation

2 for your testimony today?

3 A I looked at the e-mail, I think the 17th.

4 Q You looked at e-mails?

5 A At an e-mail but I didn't really review that

6 much. I didn't -- I thought this was like my memory so

7 I didn't really -- I figured people had records.

8 Q Sure. What e-mail did you look at?

9 A There was an e-mail from December I think it

10 was that I had sent to Bob Zoeller.

11 Q Okay. You just looked at one e-mail though?

12 A Yeah.

13 Q Okay. And we'll come back to that. Just

14 another ground rule, the court reporter has to record

15 everything we're saying so if you can wait till I finish

16 a question before responding. And also if you could

17 respond verbally, head nods, uh-huhs don't go on the

18 record, so yes, no, maybe, verbal response is what we're

19 looking for so, is that okay?

20 A Yes.

21 Q Okay. Going back to preparation for today,

22 did you speak to anybody about your testimony before

23 today?

24 A Bob Zoeller we talked about ongoing Union

25 business so.

9

1 Q Did you talk to Zoeller about your testimony

2 today?

3 A I guess he's talked to me about the case.

4 Q Okay. What did you discuss about the case?

5 A That I think it's about the conspiracy

6 allegation that the Union and FAU had conspired.

7 Q Okay. Did Zoeller tell you anything in

8 particular about your testimony?

9 A He didn't like --

10 Q For example did --

11 A -- tell me to say something. I don't know. I

12 don't know.

13 Q For example, did he tell you to say something

14 or did he tell you not to say something?

15 A He said tell the truth.

16 Q Okay. And we'll come back to Zoeller, but did

17 you speak to anybody else about your testimony, any

18 attorneys or representatives of any of the parties

19 perhaps in this room?

20 A McKee representative I talked to him, yeah.

21 Q The record you're referring to --

22 A Jessica --

23 MS. HEFFNER: Katherine.

24 A Katherine.

25 Q (By Mr. Leo) Katherine. And when did you talk

<p style="text-align: right;">10</p> <p>1 to Katherine?</p> <p>2 A I'd say I think it was last week. I'm not</p> <p>3 sure what day.</p> <p>4 Q Just one time?</p> <p>5 A Middle of the week, I think, yes. Well, she</p> <p>6 had called me and left a message and then we called back</p> <p>7 and then she -- then we talked.</p> <p>8 Q And what did you discuss?</p> <p>9 A The deposition, went over the --</p> <p>10 Q And if you would just give me some details</p> <p>11 about your conversation.</p> <p>12 A We talked about that e-mail, we talked about</p> <p>13 what kind of questions, I guess might come up and --</p> <p>14 Q And what kind of questions did you talk about?</p> <p>15 A I think the firing was one issue and then is</p> <p>16 there -- was it -- the signing of the document I think.</p> <p>17 So, I think there was the meeting -- there was a meeting</p> <p>18 with Tim Lenz, Michael Moats, Bob Zoeller and me at the</p> <p>19 end of November and we discussed James Tracy's -- was it</p> <p>20 a letter or it was a -- he's supposed to sign a document</p> <p>21 and then the possibility of a grievance. So, there was</p> <p>22 that meeting. And then -- so that the issue of whether</p> <p>23 there would be a grievance or not or the possibility of</p> <p>24 a grievance being filed.</p> <p>25 Q Okay. And what did you tell Katherine?</p>	<p style="text-align: right;">12</p> <p>1 the counsel sitting next to you, did you speak to any</p> <p>2 other attorneys?</p> <p>3 A No.</p> <p>4 Q Okay. Did you speak to anybody else about</p> <p>5 this case in any way before today?</p> <p>6 A No.</p> <p>7 Q Did you talk to anybody from Florida Atlantic</p> <p>8 University?</p> <p>9 A No.</p> <p>10 Q Other than Bob Zoeller?</p> <p>11 A Bob Zoeller and the McKee office.</p> <p>12 Q Okay. Did you speak to anybody in the</p> <p>13 administration?</p> <p>14 A No.</p> <p>15 Q For example, President Kelly?</p> <p>16 A No.</p> <p>17 Q How about Diane Alperin?</p> <p>18 A No.</p> <p>19 Q Heather Coltman? Okay.</p> <p>20 THE COURT REPORTER: Is that a no?</p> <p>21 A No, nobody. No one -- no one in the</p> <p>22 administration.</p> <p>23 Q (By Mr. Leo) Let's talk a little bit about the</p> <p>24 -- well, your experience particularly with the outside</p> <p>25 activities policy, are you familiar with the outside</p>
<p style="text-align: right;">11</p> <p>1 MS. HEFFNER: Objection as to form and</p> <p>2 attorney-client privilege.</p> <p>3 Q (By Mr. Leo) Are you represented by the</p> <p>4 attorney sitting next to you?</p> <p>5 A I don't know, am I?</p> <p>6 MS. HEFFNER: You represent the Union so those</p> <p>7 -- whatever you told him, whatever he told me would</p> <p>8 be technically protected under Union but you can</p> <p>9 talk about what we talked about. So, go ahead and</p> <p>10 -- you can answer that question.</p> <p>11 A So, we talked about what the -- the -- that</p> <p>12 meeting, the November meeting, the e-mail and I think</p> <p>13 she just wanted to know what we would be talking about,</p> <p>14 I guess.</p> <p>15 Q (By Mr. Leo) Just to be clear for the record,</p> <p>16 does counsel for the Union also represent you</p> <p>17 individually?</p> <p>18 A I guess not.</p> <p>19 Q Did you sign a retainer agreement with the</p> <p>20 attorney sitting next to you?</p> <p>21 A No.</p> <p>22 Q Did you sign a retainer agreement with Mr.</p> <p>23 McKee?</p> <p>24 A No.</p> <p>25 Q Okay. We'll come back to this. Other than</p>	<p style="text-align: right;">13</p> <p>1 activities policy?</p> <p>2 A Not very familiar but is it --</p> <p>3 Q I'm referring to Article 19 of the Collective</p> <p>4 Bargaining Agreement. Are you committed with the</p> <p>5 policy?</p> <p>6 A There is a -- there is a Collective Bargaining</p> <p>7 Agreement that I would had to look it up, off the top of</p> <p>8 my head I would need to look at it to know the details.</p> <p>9 Q Let me -- I'm going to mark this as PM for</p> <p>10 today. This is going to be PM-1 the Article 19.</p> <p>11 (Thereupon, Plaintiff's Exhibit PM-1 was</p> <p>12 entered into the record.)</p> <p>13 Q (By Mr. Leo) I'm showing you what's been</p> <p>14 marked as PM-1 for today. Do you recognize this</p> <p>15 document or this policy?</p> <p>16 A So, this is from the Collective Bargaining</p> <p>17 Agreement?</p> <p>18 Q You tell me. You can -- you can read through</p> <p>19 it and when you get a chance to review it let me know.</p> <p>20 A I guess to be totally sure I would want to</p> <p>21 look at the Collective Bargaining Agreement and make</p> <p>22 sure that it was --</p> <p>23 Q Sure.</p> <p>24 A -- there but I would take your word for it if</p> <p>25 it's -- it's what it is.</p>

14

1 **Q Is this the Collective Bargaining Agreement**
 2 **that you're referring to?**
 3 A It looks like it.
 4 MR. LEO: And why don't we -- let's just mark
 5 it. So we can talk about it. We'll call this PM-2
 6 for today.
 7 (Thereupon, Plaintiff's Exhibit PM-2 was
 8 entered into the record.)
 9 **Q (By Mr. Leo) If you need to look through it go**
 10 **for it and then once you've had a chance to refresh your**
 11 **recollection about the outside activities policy please**
 12 **let me know so we can ask about it.**
 13 A All right.
 14 **Q Does this refresh your recollection as to the**
 15 **Collective Bargaining Agreement and the outside**
 16 **activities policy?**
 17 A So, it's part of the agreement.
 18 **Q I'm sorry?**
 19 A So, it's part of the agreement.
 20 **Q Is it?**
 21 A Yeah, it looks like it. Then it looks -- if
 22 this is the agreement then it looks like it's part of it
 23 so.
 24 **Q Have you reviewed this Collective Bargaining**
 25 **Agreement before today?**

15

1 A I have, yes.
 2 **Q When was the last time you looked at this**
 3 **agreement?**
 4 A Probably last week.
 5 **Q Last week. Is this the agreement you looked**
 6 **at last week or was it a different version of this**
 7 **agreement?**
 8 A There is a little booklet.
 9 **Q You have a little booklet?**
 10 A Um-hum. And there's an e-version of it, too.
 11 **Q Just hold on one second. I don't know what's**
 12 **going on over there.**
 13 (Thereupon, a short discussion was held off
 14 record.)
 15 (Deposition resumed.)
 16 **Q (By Mr. Leo) Okay. So, with respect to the**
 17 **outside activities policy are you familiar with the**
 18 **outside activities policy?**
 19 A Not really. And then I looked -- I looked up
 20 things in here so.
 21 **Q Why would you look things up?**
 22 A Because it's thick and there's a lot in there.
 23 **Q Let's talk about your duties at UFF-FAU. You**
 24 **said that you're a grievance chair?**
 25 A Right.

16

1 **Q What exactly is a grievance chair?**
 2 A Files grievances on behalf of faculty.
 3 **Q Is that all that you -- that you do at UFF-**
 4 **FAU?**
 5 A I am up in the Jupiter Campus so I do Stuart
 6 activities I guess, like we have a -- put on a happy
 7 hour.
 8 **Q Do you have any other title or description at**
 9 **UFF-FAU?**
 10 A No, I don't think so.
 11 **Q How about contract enforcement?**
 12 A Yeah, I guess that's the official.
 13 **Q Okay. So, you --**
 14 A That's -- that's grievance.
 15 **Q So, you file grievances and you enforced the**
 16 **contract?**
 17 A Right.
 18 **Q That's -- that's your job?**
 19 THE COURT REPORTER: Yes?
 20 A Yes.
 21 **Q (By Mr. Leo) She can't record head nod.**
 22 A Yes.
 23 **Q Yes? How long have you been a grievance filer**
 24 **or contract enforcer?**
 25 A Let's see. There is the summer -- I think it

17

1 was -- this is 2007 so I believe summer of 2015. Tim
 2 Lenz was doing it and then I talked to Mike Budd and
 3 agreed to work with Tim Lenz and then eventually with
 4 the idea that I would be the main person to do the
 5 grievances.
 6 **Q And what kind of training did you undergo to**
 7 **become the grievance filer/contract enforcer?**
 8 A I went to a senate meeting. There is a yearly
 9 meeting and there was a workshop there.
 10 **Q When was -- when was that meeting?**
 11 A I'm not sure.
 12 **Q Was it 2015?**
 13 A I think so. Let's see, the senate meeting is
 14 in -- we just went to one in Orlando so that I know is
 15 2017 and this is February, right? All right, no, this
 16 is April. April -- so, March. I don't know. I'd have
 17 to look at the date but it's -- it's like -- it was
 18 early on, it was like 2015.
 19 **Q Would it be -- would it be after the summer of**
 20 **2015 when you took over this position?**
 21 A I think so.
 22 **Q Was it before or after?**
 23 A Sure.
 24 **Q I'm sorry?**
 25 A It might have been in May, I'm not sure. But

18

1 it was -- it was close when I was showing up.
 2 **Q Was it -- was this meeting or workshop, was it**
 3 **before or after Professor Tracy was disciplined in**
 4 **2015?**
 5 A It was before.
 6 **Q It was before? Who was at the senate meeting**
 7 **or the workshop that you attended?**
 8 A Bob Zoeller was there, I think. The senate
 9 meeting, there are a bunch of senators who came there.
 10 **Q Are we talking about FAU senators or --**
 11 A No, no, no.
 12 **Q Or UFF senators?**
 13 A The UFF senators. It was in Tampa, I believe.
 14 **Q Okay.**
 15 A And then it was kind of a breakout session,
 16 there were other things going on so I'm not sure exactly
 17 who was in. I think maybe one other person but Bob
 18 Zoeller was in there and it was representatives from all
 19 over the state and then they were talking about cases
 20 and filing grievances and --
 21 **Q Were they talking about particular grievances**
 22 **or were they using examples anonymously?**
 23 A They didn't mention specific names or anything
 24 like that but yeah they talked about -- well, people
 25 would -- would give examples and I don't think they

19

1 talked about particular, they didn't identify anybody
 2 but they said there is this case and then -- and then
 3 the presenters would talk about particular cases as
 4 well.
 5 **Q Did they show you --**
 6 A But not --
 7 **Q Did they show you examples of grievance**
 8 **filings?**
 9 A They talked about -- gosh, I'm pretty sure
 10 they talked about examples of grievances. They didn't -
 11 - I don't think there was a present -- like a slide
 12 thing so I don't think they used the forms and I believe
 13 those forms vary from institution to institution. So,
 14 they were talking more generally about the grievance
 15 process.
 16 **Q So, this was a training from the United**
 17 **Faculty of Florida and Florida Education Association up**
 18 **in Tampa? You would say that it was --**
 19 A Right.
 20 **Q -- around summer of 2015? Would you say it**
 21 **was before or after you assumed the role of grievance**
 22 **chair?**
 23 A About that time and there was a bit of a
 24 overlap with Tim Lenz so I accompanied him for a number
 25 of grievances and worked with him so there was kind of

20

1 an overlap.
 2 **Q So, Lenz, was at the Tampa workshop and**
 3 **meeting also?**
 4 A I don't think -- I don't think he went.
 5 **Q Okay. Did you train with Tim Lenz after that?**
 6 A Well, I would work with him. I would consult
 7 with him and then eventually he kind of dropped out.
 8 **Q When you say you worked with him describe the**
 9 **work you do with him?**
 10 A I talk to him about particular cases that came
 11 up and then if we had a grievance for him I can talk to
 12 him about that.
 13 **Q Who showed you the grievance form and how to**
 14 **use the form?**
 15 A He showed me that.
 16 **Q Lenz?**
 17 A Right.
 18 **Q How many grievances have you filed since**
 19 **becoming grievance chair?**
 20 A Probably around a half dozen, something like
 21 that.
 22 **Q And who have you filed grievances for?**
 23 A For faculty.
 24 **Q Which faculty?**
 25 A Is that okay to say that? Okay, let's see.

21

1 Claire, I forget the last name. Claire.
 2 **Q You said Claire?**
 3 A Claire was one, she is in the business school.
 4 **Q Is it a first name or a last name?**
 5 A That's her first name, Nash I think.
 6 **Q Nash. You said that's business school?**
 7 A Right, accounting.
 8 **Q And let's talk about that one. When was that**
 9 **grievance filed?**
 10 A I don't have dates, sir.
 11 **Q Is it recently or?**
 12 A No. Well, I think it was -- that was probably
 13 in the winter.
 14 **Q Of?**
 15 A Of -- either fall or winter 2015, I believe.
 16 **Q Was it before or after Professor Tracy's**
 17 **discipline?**
 18 A That's a good question. I'm thinking before.
 19 I might be wrong.
 20 **Q What other grievances have you filed?**
 21 A Sunil Babbar, also in business.
 22 THE COURT REPORTER: Can you spell the first
 23 name?
 24 THE WITNESS: B-A -- S-U-N-I-L, Babbar.
 25 **Q (By Mr. Leo) And going back to actually**

22

1 **Professor Nash's grievance. What was that a grievance**
 2 **for?**
 3 A For an evaluation so it was a low evaluation
 4 mark. She was disputing that.
 5 **Q Okay. And how about for Professor Babbar?**
 6 A There was an evaluation file and I think that
 7 was -- I believe that was in the spring?
 8 **Q Similar dispute over evaluations?**
 9 A 2016. That one is a little different because
 10 that was -- there was a dispute over a student. A
 11 student had complained and then he wanted her complaint
 12 out of his evaluation file because the equal opportunity
 13 had investigated the complaint and founded it did not
 14 have a basis but the chair still kept the complaint in
 15 the file so he wanted it out of the file.
 16 **Q What were the results of these two that we**
 17 **just discussed?**
 18 A So, the -- the Nash one it went through the
 19 -- there is the step 1 and then there is step 2 ad then
 20 it -- there is the question of should it go a
 21 arbitration level for Nash and the state, we forwarded
 22 it to the state, the CEC, the UFF Statewide Board to
 23 determine whether they would pursue arbitration with
 24 that and they decided not to pursue it I think because
 25 it was a evaluation case and those are hard to win with

23

1 arbitrators so. So they said we're not going to pursue
 2 it and that -- so that ended it.
 3 **Q Does the UFF Statewide Board have overall say**
 4 **in the pursuit of grievances?**
 5 A They -- I know they answer the question of
 6 once it reaches the arbitration level. Now, you're
 7 asking if it has overall say.
 8 **Q Sure. Do they have any say in filing of a**
 9 **grievance --**
 10 A The initial grievance?
 11 **Q -- at the initial phase?**
 12 A Yeah, they wouldn't -- we wouldn't consult
 13 with them really. I mean that's kind of mid -- that's
 14 the chapter level.
 15 **Q So, when you say we you're referring to the**
 16 **chapter?**
 17 A Right.
 18 **Q So, the chapter wouldn't consult with UFF or**
 19 **FEA in determining whether to file a grievance at the**
 20 **initial phase?**
 21 A No, actually they would so.
 22 **Q They would what?**
 23 A Well, the -- usually what happens is the
 24 faculty member would get a potential grievance, usually
 25 someone will contact the president Bob and then he --

24

1 he'll contact me and then he is in constant usually
 2 contact with Michael Moats so. But Michael Moats is not
 3 the CEC. I mean he is the rep, the state level rep for
 4 the chapter so.
 5 **Q What's -- what's Moats' official title, if you**
 6 **know?**
 7 A I'm not sure what his official title is.
 8 **Q Does service unit director sound about right?**
 9 A That might -- that might be right. I don't
 10 know what it is but.
 11 **Q How much -- how much contact do you have with**
 12 **Michael Moats in the course of your duties?**
 13 A Occasionally we'll have meetings with a
 14 grievant, the president, Bob Zoeller and then Michael,
 15 so that meeting on -- at the end of November, that one
 16 was -- that was pretty rare though to have us all and
 17 we're all face to face.
 18 **Q So, you had --**
 19 A But usually --
 20 **Q You had an in-person meeting in November 2015**
 21 **about Professor Tracy, is that what you're referring to?**
 22 A Dr. Tracy came up for a very brief time during
 23 that meeting. There were --
 24 **Q There was other issues --**
 25 A Yeah.

25

1 **Q -- that you were discussing?**
 2 A There was -- there were plenty of other --
 3 other issues we're discussing.
 4 **Q Was this like a grievance meeting?**
 5 A Yeah.
 6 **Q So, you were discussing other grievances that**
 7 **were going on?**
 8 A Right.
 9 **Q Going back to Professor Tracy's dispute, the**
 10 **University and his request for a grievance. At that**
 11 **time in November 2015 how many other grievances were**
 12 **ongoing or being discussed by your chapter?**
 13 A I'm not sure off the top of my head. We have
 14 the filings of the grievances. It's a good question.
 15 **Q Was Babbar and Nash, were those grievances**
 16 **that were being discussed at that time or if you can**
 17 **remember?**
 18 A I'm not sure. If you have records of -- I
 19 don't remember off the top of my head.
 20 **Q Okay. We'll come back to it, maybe you'll**
 21 **remember. The other four, you said there was about six**
 22 **that you filed?**
 23 A Over the course.
 24 **Q Since you've been grievance chair you said**
 25 **Nash, Babbar, who else can you remember?**

26

1 A Steve Kajura was another one. Although he
 2 had his own private, he was not a Union member and so
 3 some of these he represented himself. I think there
 4 were two that he filed on his own and then there -- then
 5 he joined and then there was another issue and so we
 6 filed on behalf of him and he is in biology.
 7 **Q When was Kajura's grievance?**
 8 A That was much more recent. That was I think
 9 fall of 2016.
 10 **Q And what was the outcome of that grievance?**
 11 A That one I would say, so he had his own
 12 private grievances pursuing -- I think one is in
 13 arbitration right now but the one with the Union for
 14 Kajura, that one didn't -- I think it -- it went
 15 through step 1 and then it got to step 2 and I believe
 16 we didn't meet. It ended, it didn't get -- well,
 17 actually we did meet at step 2 and then it went up then
 18 I think we -- it stopped before it went to the
 19 arbitration level.
 20 **Q When you said that he had -- you had multiple**
 21 **grievances at the same time so he had his own his own**
 22 **grievance and then the chapter filed a grievance also?**
 23 A Right.
 24 **Q How does that work?**
 25 A Well, the grievances -- I think there was a

27

1 -- actually, no. I think we had two grievances for him.
 2 Because there was an issue over his grant and then I
 3 think it was -- his assignment was the other part of
 4 that.
 5 **Q So, there were two different grievances -- he**
 6 **was grieving two different issues?**
 7 A Yeah, two different issues and then he had a
 8 separate issue that I think was before and I'm not
 9 totally sure what that was about.
 10 **Q So, would you say that you can file multiple**
 11 **grievances on multiple issues for a faculty member?**
 12 A Yeah, if -- if something comes up and it's a
 13 violation of the Collective Bargaining Agreement then we
 14 can file if there is multiple things --
 15 **Q Okay.**
 16 A -- things that occur.
 17 **Q Okay. Who makes the determination as to**
 18 **whether there has been a violation of the Collective**
 19 **Bargaining Agreement?**
 20 A I do and then Bob Zoeller does or the
 21 president and then he usually consults with Michael.
 22 **Q Who made the determination that Professor**
 23 **Tracy's discipline in November of 2015 was not**
 24 **grievable?**
 25 A We discussed that briefly at that November

28

1 meeting and the issue of should he sign the -- the
 2 document, an outside activity document I think, so that
 3 -- that came up and then the advice was to sign the
 4 document under protest, I believe.
 5 **Q But to answer my question -- who made the**
 6 **determination at UFF-FAU or at UFF-FEA if you know that**
 7 **the November 2015 Notice to Discipline was not**
 8 **grievable?**
 9 A I don't know that there was that
 10 determination.
 11 **Q You don't know if there was a determination**
 12 **that it was not grievable?**
 13 A I don't know that there was a determination
 14 that it was not grievable.
 15 **Q Let me just -- just give me one second. Back**
 16 **in November you said you met with you said Zoeller and**
 17 **Moats about grievances that were going on including**
 18 **Professor Tracy's?**
 19 A Right.
 20 **Q Was there anybody else that was involved in**
 21 **those discussions other than Zoeller and Moats?**
 22 A Tim Lenz was involved.
 23 **Q Tim Lenz? How about Mike Budd?**
 24 A He wasn't at that meeting. I'm sure there
 25 were e-mails. I don't remember him specifically but

29

1 probably I think because James Tracy was president
 2 before.
 3 **Q Were you included on all of the communications**
 4 **at the time, UFF-FAU communications concerning Professor**
 5 **Tracy's Notice of Discipline in November 2015?**
 6 A I don't have a way of knowing that, probably
 7 not. I did get some.
 8 **Q I'm going to show you what's been marked as**
 9 **PM-3 for today.**
 10 (Thereupon, Plaintiff's Exhibit PM-3 was
 11 entered into the record.)
 12 **Q (By Mr. Leo) Just take a look at this exchange**
 13 **and let me know when you've had a chance to review it.**
 14 A Okay. So --
 15 **Q Does this refresh your recollection as to**
 16 **whether there was a decision made in November or**
 17 **December --**
 18 A Yeah, so it's look like --
 19 **Q -- 2015 as to whether Professor Tracy's**
 20 **November Notice of Discipline was not grievable?**
 21 A Yeah, it looks like there was a decision that
 22 it's not grievable here.
 23 **Q I'm going to show you also -- this is for**
 24 **today PM-4, it's a continuation of this exchange.**
 25 (Thereupon, Plaintiff's Exhibit PM-4 was

30

1 entered into the record.)

2 A So, is this -- this is the top.

3 **Q (By Mr. Leo) It looks like it goes bottom up.**

4 **You see there is timestamps so you can see the**

5 **chronology.**

6 A So, the conflict of interest that's the key

7 part of it, right?

8 **Q I'm sorry?**

9 A The conflict of interest statement signing it,

10 that's the key to the --

11 **Q What's the conflict of interest statement?**

12 A The administration asked Dr. Tracy to sign a

13 con --

14 **Q Are you referring to outside activities form?**

15 A Yeah, maybe that outside activities.

16 **Q Let me -- let me see if this is the one you're**

17 **talking about. I'm going to show you what's been marked**

18 **as PM-5 for today.**

19 (Thereupon, Plaintiff's Exhibit PM-5 was

20 entered into the record.)

21 **Q (By Mr. Leo) Is that the form that you're**

22 **referring to?**

23 A That looks like an outside activity form, yes.

24 **Q You called it -- you called it a conflict of**

25 **interest statement?**

31

1 A That's what this e-mail says.

2 **Q Just so we're clear for the record. These**

3 **communications that you're looking at --**

4 A Right.

5 **Q -- PM-4 and PM-5 for today, were you included**

6 **on these communications?**

7 A It looks like PM-3. I don't know about PM-4

8 but yeah, it looks like --

9 **Q I notice your name is on them. Was the**

10 **meeting that was held was that November 30th, 2015?**

11 A That's the Michael Moats, me, Zoeller, Lenz,

12 yes.

13 **Q And where was that meeting held?**

14 A That was in right across from Tim Lenz's

15 office.

16 **Q On campus?**

17 A On campus in the political science building.

18 **Q And was anybody else present at the meeting**

19 **other than the individuals you just named?**

20 A No.

21 **Q Did anybody participate in the meeting**

22 **telephonically for example?**

23 A No.

24 **Q Why don't you tell us about your discussion**

25 **about Professor Tracy at this meeting.**

32

1 A So, I believe Bob brought up the issue of the

2 signing of the outside employment form and then --

3 **Q What did he say?**

4 A That there was an issue or you know, I don't

5 know the exact words but my memory is he brought out

6 this -- an issue or problem with James Tracy signing the

7 document signing this -- this form and then -- so we

8 discussed and I guess he didn't want to sign the form

9 and then he said that he should sign it but then the --

10 sign it under duress or --

11 **Q Did the conversation begin with discussion of**

12 **not signing the forms or was there any other issue that**

13 **Professor Tracy was facing other than he hadn't turned**

14 **in his form?**

15 A I don't remember any other issue.

16 **Q Was there a Notice of Discipline that was**

17 **discussed at this meeting?**

18 A Possibly.

19 **Q Are you familiar with the November Notice of**

20 **Discipline that Professor Tracy received?**

21 A Because that -- that was the discipline for

22 not signing the form. Is that the --

23 **Q Are you asking me?**

24 A Yes.

25 **Q Here let's just do this.**

33

1 A It would make sense if there was --

2 **Q Have you ever seen a Notice of Discipline that**

3 **was issued by Florida Atlantic University in November of**

4 **2015 for Professor Tracy?**

5 A I did not see that.

6 **Q I'm just going to -- this is going to be PM-6**

7 **for today. Do you have this?**

8 (Thereupon, Plaintiff's Exhibit PM-6 was

9 entered into the record.)

10 **Q (By Mr. Leo) Just go ahead and take a look at**

11 **that and tell me if this refreshes your recollection as**

12 **to whether you have seen this document.**

13 A I might have seen it if it was forwarded. I

14 probably should have seen it if I didn't -- I don't

15 remember seeing it but let's see.

16 **Q Professor Tracy sent this to you, didn't he?**

17 A He may have or there is -- there is

18 attachments to e-mails so.

19 **Q Before today have you reviewed e-mails?**

20 A I have not looked --

21 **Q Do you recall giving Professor Tracy advice**

22 **concerning the Notice of Discipline?**

23 A I don't remember having any contact directly.

24 **Q With who?**

25 A With Tracy.

34

1 **Q You -- you didn't e-mail him?**
 2 A I don't remember e-mailing him directly.
 3 **Q Did you ever speak to Professor Tracy?**
 4 A I don't remember doing that. He came to visit
 5 my department but that was years ago.
 6 **Q When he e-mailed you, you would have looked at**
 7 **his e-mails?**
 8 A I don't remember looking at it but if I make
 9 an effort to check e-mails I would --
 10 **Q Would you --**
 11 A -- I might have missed it.
 12 **Q Would you have ignored his e-mails?**
 13 A No, I think so.
 14 **Q All right. Concerning this November 10 Notice**
 15 **of Discipline was there any discussion at your meeting**
 16 **on November 30th with Zoeller, Moats and Lenz? Was there**
 17 **any discussion about this Notice of Discipline? That's**
 18 **PM-6 for today.**
 19 A This must be what was behind the issue of
 20 signing. I just remembered the needing to sign the
 21 outside. So -- so, this must be the letter of
 22 discipline that made signing this important.
 23 **Q Do you typically talk to grievance about the**
 24 **grievances before you file them?**
 25 A Yes.

35

1 **Q Do you -- tell me what your standard operating**
 2 **procedure is and how you approach these discussions with**
 3 **the grievance?**
 4 A So, usually there will be some issues,
 5 grievant, potential grievant will contact Bob, usually
 6 it's him who they contact because he is a president. So,
 7 I'll get a message from him usually or possibly from the
 8 grievant and then we'll figure out what the issue is,
 9 talk to the grievant or send an e-mail and usually he is
 10 the one who talks to the person and then figures out
 11 what the issue is then --
 12 **Q Zoeller talks to the grievant? Or do you --**
 13 **do you --**
 14 A Or I can.
 15 **Q Do you talk to the grievant?**
 16 A Yeah, and sometimes like we'll send e-mails
 17 back and forth and then once we figure out what the
 18 issue is, look at the contract and then see if there is
 19 a potential violation, figure out with articles and then
 20 I have been drafting the -- the grievance forms and then
 21 put the article in there and then that's a draft so I
 22 will send that to the grievant and --
 23 **Q Going to the -- for example, this Notice of**
 24 **Discipline again, looking at this now, let's just talk**
 25 **about this document. Is -- is this grievable, this**

36

1 **document? This Notice of Discipline, in your opinion.**
 2 A Let's see so --
 3 **Q Let's just -- let's backup for a second. We'll**
 4 **come back to this question. What is grievable at the**
 5 **University?**
 6 A If it's a violation of the contract.
 7 **Q If what is?**
 8 A The -- whatever happens, whatever the -- the -
 9 - the -- usually the administration there is some sort
 10 of action against a faculty member then there is the
 11 contract, if it oversteps the agreement in the
 12 Collective Bargaining Agreement.
 13 **Q Does it need to be an actual violation of the**
 14 **contract to be grievable or would simply a Notice of**
 15 **Discipline be grievable?**
 16 A A Notice of Discipline if -- if it's in
 17 accordance with the contract then it will be grievable.
 18 **Q So, you're saying that a Notice of Discipline**
 19 **where there is no violation of the contract in the**
 20 **notice it wouldn't be grievable?**
 21 A So, if say the faulty member is mad about the
 22 notice but then it doesn't look like the notice, breaks
 23 the agreement then it would not be grievable.
 24 **Q And I know we're talking abstractly here.**
 25 **Let's talk about now this notice.**

37

1 A Um-hum.
 2 **Q Is this notice that Professor Tracy was issued**
 3 **on November 10th, 2015 is this grievable?**
 4 MS. HEFFNER: Objection as to form but you can
 5 answer.
 6 A So, I'd need to look at it this and then look
 7 at the --
 8 **Q (By Mr. Leo) Sure.**
 9 A -- the contractor and see if it's grievable.
 10 **Q Let me ask you, have you ever done that before**
 11 **today?**
 12 A I don't remember doing that.
 13 **Q You don't remember looking at the Notice of**
 14 **Discipline, looking at the contract and making a**
 15 **determination as to whether this Notice of Discipline**
 16 **was grievable?**
 17 A I don't remember.
 18 **Q Is it possible you didn't?**
 19 A I guess it's possible.
 20 **Q Going back to the meeting that you had**
 21 **November 30th, 2015 was there any discussion about**
 22 **whether the November 10th Notice of Discipline was**
 23 **grievable from Zoeller, Moats, Lenz, did anybody talk**
 24 **about that?**
 25 A Yes, they did talk about that at the meeting.

38

1 **Q Who talked about the November 10 notice?**
 2 A Zoeller and Moats talked about that.
 3 **Q How about Lenz?**
 4 A I don't remember him talking about it.
 5 **Q Did any of those individuals say this November**
 6 **10 Notice of Discipline is not grievable at that**
 7 **meeting?**
 8 A I don't remember specifically mentioning this.
 9 **Q Did anybody say that this November 10 Notice**
 10 **of Discipline is grievable?**
 11 A I don't remember that, saying that either.
 12 The --
 13 **Q And just to be clear, you said you don't**
 14 **remember looking at the Notice of Discipline, the**
 15 **Article 19 outside activities policy or the Collective**
 16 **Bargaining Agreement before today?**
 17 A I don't remember doing that specifically.
 18 **Q Did you personally make a determination or a**
 19 **decision concerning the grievability of this Notice of**
 20 **Discipline before today?**
 21 A I don't remember doing that.
 22 **Q There is a very small window to grieve, right?**
 23 A Thirty days.
 24 **Q Can you explain the difference between step 1**
 25 **and step 2?**

39

1 A So, step 1 is with the unit head which can be
 2 the department chair, might be the dean and the --
 3 **Q Explain, what's the unit head?**
 4 A It's the -- the closet person -- supervisor of
 5 the grievant and then step 2 is with the provost so
 6 that's a higher level.
 7 **Q When you say it's with them do you mean you**
 8 **grieve to that person?**
 9 A Right.
 10 **Q So, step 1 you grieve to the supervisor, step**
 11 **2 you go above the supervisor to the provost or the vice**
 12 **provosts?**
 13 A Right, so it's like an appeal.
 14 **Q Would you agree that you're appealing to the**
 15 **people who are trying to discipline you?**
 16 A I mean they are on the administration but it's
 17 another person. So, theoretically it's another person
 18 to check it.
 19 **Q Is that process arbitrary? The appeal**
 20 **process, the grievance process, is that an arbitrary**
 21 **process in your opinion?**
 22 A What do you -- what's an arbitrary process?
 23 What do you mean?
 24 **Q Meaning it's not fair. One sided, for**
 25 **example.**

40

1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A I would say it's arbitrary in the sense that
 4 the unit head and then the provost level is -- are
 5 connected or so I guess, there is an unfair portion of
 6 it but --
 7 **Q (By Mr. Leo) Do you get an independent or an**
 8 **objective third party in this process?**
 9 A At the arbitration level above it but I mean
 10 they don't always go to back each other up or I mean
 11 sometimes a provost level does. Usually it's -- I would
 12 say it's more arbitrary at the lower level and then
 13 there is more, I mean, independence at the higher level.
 14 **Q At the highest level, the arbitration level,**
 15 **the arbitrator can't or arbitrator can't change the**
 16 **terms of your contract can they?**
 17 A No.
 18 **Q So, you're stuck with what's in your**
 19 **Collective Bargaining Agreement the wording of that**
 20 **agreement? Would you agree with --**
 21 THE COURT REPORTER: Is that a yes?
 22 A Yes, yes, yes, sir.
 23 **Q (By Mr. Leo) Would you agree that that's**
 24 **arbitrary and unfair in the sense if there is a dispute**
 25 **as to the meaning of language in the Collective**

41

1 **Bargaining Agreement that's at issue?**
 2 MS. HEFFNER: Objection as to form but you can
 3 answer.
 4 A So, you're asking me if the arbiter is
 5 arbitrary?
 6 **Q (By Mr. Leo) If the process. For example, if**
 7 **there is a dispute as to the definition or the meaning**
 8 **of terms that are at issue in the contract that's being**
 9 **disputed.**
 10 A I guess that's the arbiter's job, isn't it to
 11 interpret things or? I don't quite know how it all
 12 works. I guess they would look at the agreement and
 13 then see if it says it or not.
 14 **Q Going back to the meeting you've had November**
 15 **30th, if there was no discussion about the Notice of**
 16 **Discipline what did you guys discuss about Professor**
 17 **Tracy?**
 18 A It must be what that this -- the form to sign
 19 which I guess relates to the discipline.
 20 **Q Well, the Notice of Discipline is instructing**
 21 **Professor Tracy to submit those forms for his blog,**
 22 **right?**
 23 THE COURT REPORTER: Is that a yes?
 24 A Yes.
 25 **Q (By Mr. Leo) Who made the determination at**

42

1 this meeting that Professor Tracy should be advised to
 2 submit the outside activities form for his blog?
 3 A So, Bob and Michael discussed it and Tim may
 4 have been part of that discussion.
 5 Q Was Professor Tracy required to submit
 6 anything before filing a grievance, if you know?
 7 A I don't -- I don't know.
 8 Q So, Zoeller, Moats tell you in their opinion
 9 Professor Tracy should just submit the forms but he
 10 can't file a grievance, is that what your testimony is?
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A So, my understanding was he should sign the
 14 form that was the --
 15 Q (By Mr. Leo) Right.
 16 A -- advice out of the meeting.
 17 Q And that -- and -- but he can't grieve is --
 18 that was what came out of that collective meeting and
 19 decision?
 20 MS. HEFFNER: Objection as to form, you can
 21 answer.
 22 A This December 1st e-mail says it's not
 23 grievable so, yes.
 24 Q (By Mr. Leo) And when he says it's not
 25 grievable Zoeller is referring to the November 10 Notice

43

1 of Discipline?
 2 A Well, this is the basis for signing the form -
 3 - signing the outside employment form so.
 4 Q Just to -- just to be clear, when Zoeller in
 5 his email says, "The situation is not grievable." Right?
 6 He is referring to the November 10 Notice of Discipline?
 7 MS. HEFFNER: Objection as to form but you can
 8 answer.
 9 A I believe so.
 10 Q (By Mr. Leo) Would it surprise you if I told
 11 you that everybody we've asked from UFF-FAU about
 12 whether the Notice of Discipline from November 10th
 13 including Lenz, would it surprise you if they all said
 14 that it was absolutely grievable?
 15 MS. HEFFNER: Objection as to form but you can
 16 answer.
 17 Q (By Mr. Leo) Would that surprise you?
 18 A I think so because --
 19 Q You would be surprised by that?
 20 A The -- well, the advice was not that it wasn't
 21 grievable.
 22 Q That was the advice from Moats and Zoeller?
 23 Were you aware of --
 24 THE COURT REPORTER: Is that a yes? Sorry.
 25 THE WITNESS: Yes.

44

1 Q (By Mr. Leo) Were you aware of the 2013
 2 attempt by Florida Atlantic University to discipline
 3 Professor Tracy for the same exact basis that was issued
 4 in November -- in their Notice of Discipline?
 5 MS. HEFFNER: Objection as to form, you can
 6 answer.
 7 A So, there was -- I am aware that there was a
 8 standing agreement that as long as he signs this form
 9 then that's okay.
 10 Q (By Mr. Leo) I'm sorry. What -- what did you
 11 say?
 12 A So, I guess -- so, I guess, yes. So, as long
 13 as he signs the form then it's okay.
 14 Q I'm not sure what you're saying.
 15 A So, I think yes. I don't know the specifics
 16 of the agreement.
 17 Q Did you know that Professor Tracy grieved in
 18 2013 in that UFF-FAU represented Professor Tracy and
 19 filed a grievance on his behalf in 2013?
 20 MS. HEFFNER: Objection as to form but you can
 21 answer.
 22 A That must be Broadfield -- Doug Broadfield was
 23 the grievance representative.
 24 Q (By Mr. Leo) So, you are aware of the 2013
 25 grievance?

45

1 A So -- I -- Tim Lenz did not have any files so
 2 I have no records of anything before I took over. I
 3 have no records so.
 4 Q Did anybody tell you at UFF-FAU -- did anybody
 5 tell you from your chapter about the 2013 grievance?
 6 A That sounds right, someone must have told me
 7 at some point, yeah.
 8 Q Did Professor Tracy tell you?
 9 A No, I didn't talk to him. I haven't talked to
 10 him.
 11 Q What's your understanding of the 2013
 12 grievance and settlement?
 13 A So there was the Sandy Hook massacre and then
 14 there was a furor in the papers and I remember my
 15 department signed condemnation, I guess, of it.
 16 THE COURT REPORTER: A what, sorry?
 17 THE WITNESS: Condemnation.
 18 A I don't know the details of the 2013 grievance
 19 so.
 20 Q (By Mr. Leo) Would you agree that the 2013
 21 grievance would be pertinent to a 2015 disciplinary
 22 action against Professor Tracy?
 23 MS. HEFFNER: Objection as to form, you can
 24 answer.
 25 A If it has to do with the same thing then,

46

1 yeah.

2 **Q (By Mr. Leo) Would you agree that that's**

3 **something that should have been taken into consideration**

4 **in any collective decision regarding a response by the**

5 **chapter at UFF-FAU to the November 2015 Notice of**

6 **Discipline?**

7 MS. HEFFNER: Objection as to form, you can

8 answer.

9 A If there was a Precedent before.

10 **Q (By Mr. Leo) Were you aware -- were you aware**

11 **that Michael Moats advised Professor Tracy not to submit**

12 **outside activity forms for his personal blogging?**

13 MS. HEFFNER: Objection as to form, you can

14 answer.

15 A I didn't know that.

16 **Q (By Mr. Leo) Nobody brought that up at the**

17 **November 30th meeting?**

18 A The big takeaway that I got from that meeting

19 regarding that issue is you always sign, you always

20 agree, do what they're asking, so don't be insubordinate

21 but then object to it later so.

22 **Q Now, this advice seems to contradict the**

23 **advice that was given to Professor Tracy in 2013. So my**

24 **question is -- is when did the change in that policy**

25 **happen at UFF-FAU?**

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1 MS. HEFFNER: Objection as to form, you can

2 answer.

3 **Q (By Mr. Leo) If you know.**

4 A Not -- not during my time as grievance -- with

5 the grievances.

6 **Q You see my concern and our issue here, you**

7 **have 2013, you have the UFF-FAU, Michael Moats telling**

8 **Professor Tracy not to fill out the forms and they filed**

9 **a grievance in response to a Notice of Discipline that**

10 **was issued in 2013 right away, successfully and you fast**

11 **forward to 2015 and UFF-FAU through Michael Moats again**

12 **and now Zoeller are telling Professor Tracy to submit**

13 **the forms that they instructed him not to submit just a**

14 **few years earlier. Do you see a problem with that?**

15 MS. HEFFNER: Objection as to form, you can

16 answer.

17 A That seems to be two different, saying two

18 different things. Maybe did the law change in between

19 or is there some -- maybe there was some result from the

20 2013. It was one of the -- it was the stipulation of

21 that grievance that he had to file forms since then.

22 Maybe you know --

23 **Q (By Mr. Leo) Have you seen the agreement?**

24 A Maybe the conditions, I haven't seen it but

25 maybe the conditions are different.

48

1 **Q Did you take a look at Professor Tracy's**

2 **settlement agreement from 2013 at any time?**

3 A No, I don't know what's in there.

4 **Q Did Zoeller, Moats or anybody from UFF-FAU**

5 **mention the settlement agreement during your November**

6 **discussions whether it was in-person or in e-mail?**

7 A Not that I remember.

8 **Q Did anybody --**

9 A Although --

10 **Q Go ahead.**

11 A They didn't talk, I mean, I knew that there

12 was -- I knew there was the issue had occurred in the

13 past but I don't remember specifically mentioning, maybe

14 they did mention in the agreement, I don't know. I don't

15 remember it specifically coming up.

16 **Q Do you keep files at UFF-FAU on your**

17 **grievance?**

18 A Yes.

19 **Q Is there a file for Professor Tracy's**

20 **grievance from 2013?**

21 A No, not that I know of. I asked him for --

22 for files. I think --

23 **Q You asked who?**

24 A Doug -- Tim -- Tim Lenz and Doug Broadfield.

25 He left FAU and he took all the files, there were no

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1 files.

2 **Q Broadfield took the files from the grievances**

3 **he filed?**

4 A Yes.

5 **Q Did you ever ask Broadfield for the files?**

6 A I asked -- I asked Tim Lenz and I never ask

7 Dough Broadfield but I did ask Tim so.

8 **Q Do you know if anybody consulted with or**

9 **contacted Doug Broadfield in 2015 particularly in**

10 **November or December with respect to Professor Tracy's**

11 **grievance?**

12 A Not that I know of.

13 **Q Did anybody say anything about Broadfield at**

14 **all with respect to Professor Tracy's 2015 issues?**

15 A I don't -- I don't think so.

16 **Q Did anybody suggest contacting him since he**

17 **was the one who filed the grievance in 2013 to get his**

18 **input?**

19 MS. HEFFNER: Objection as to form but you can

20 answer.

21 A That didn't come up.

22 **Q (By Mr. Leo) Did Broadfield ever contact you**

23 **about Professor Tracy?**

24 A I've never talked to Broadfield after taking

25 over his grievance chair.

50

1 **Q Did he ever e-mail you concerning Professor**
 2 **Tracy?**
 3 A No, I would have liked to talk to him to get
 4 some of these files because I was pretty blind going
 5 into it, not having any records of anything.
 6 **Q Looking back at the Notice of Discipline**
 7 **November 10th, I don't think you answered the question**
 8 **as to whether this is grievable. Can you -- can you**
 9 **take a look at that and take a look at whatever else you**
 10 **need to in the Collective Bargaining Agreement. And if**
 11 **you'd like we can take a break so you can read through**
 12 **it.**
 13 MS. HEFFNER: Objection as to form on the
 14 record before we go off.
 15 (Thereupon, a short discussion was held off
 16 record.)
 17 (Deposition resumed.)
 18 **Q (By Mr. Leo) All right. Have you had a chance**
 19 **to review those documents?**
 20 A Yes.
 21 **Q Do you have an opinion as to whether the**
 22 **November 10, 2015 Notice of Discipline was grievable?**
 23 A Well, it looks like this Article 19 is about
 24 reporting outside activity and if there is a conflict of
 25 interest then the person can grieve it.

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1 **Q I'm sorry?**
 2 A So, it looks like if there is a disagreement
 3 about -- if there is a conflict of interest or not
 4 that's when a grievant files a grievance. But -- so,
 5 reportable outside activity is professional practice,
 6 consulting, teaching and research which is not part of
 7 the assigned duties. So, that -- so, it looks like
 8 there is outside -- if it's related to what they do and
 9 they're doing it outside of FAU they should file the
 10 form. So, that's part of the agreement or part of the
 11 contract. And this is the -- the dean is asking him to
 12 submit the annual assignment which already did and then
 13 -- but then it looks like past years of outside
 14 employment forms.
 15 **Q All right. They are asking Professor Tracy to**
 16 **submit forms, the outside activity forms for his**
 17 **personal blogging, right?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 A I don't -- it doesn't say what they are for
 21 specifically outside activity. So, blog -- it doesn't
 22 say blog but -- yeah, I would think a blog if a -- if
 23 you're addressing a topic based on your expertise then
 24 that would relate to your profession, right?
 25 **Q (By Mr. Leo) So, you're -- are you saying that**

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1 **that faculty members at FAU are required to report**
 2 **personal blogs to the University pursuant to Article**
 3 **19?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 A I don't know. I mean, I guess if it's related
 7 to one's profession.
 8 **Q (By Mr. Leo) Let's talk about the outside**
 9 **activity form just for a second. Have you ever**
 10 **submitted an outside activity form?**
 11 A I have, yes.
 12 **Q For what?**
 13 A Usually if I'm giving a lecture in the
 14 community or doing some sort of course or presentation
 15 or going to a conference. So, those relate to the
 16 expertise.
 17 **Q Do you submit these forms for your online**
 18 **activities?**
 19 A Like social media and things like?
 20 **Q Right.**
 21 A No.
 22 **Q No. Do you have social media?**
 23 A Yes.
 24 **Q What kind of social media do you have?**
 25 A I have a Facebook and Twitter account.

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1 **Q Do you submit the outside activity form for**
 2 **your Facebook page?**
 3 A No.
 4 **Q Do you submit the outside activity form for**
 5 **your Twitter?**
 6 A No.
 7 **Q Are you concerned that you have failed to**
 8 **comply with Article 19 because you haven't reported**
 9 **those activities to the University?**
 10 MS. HEFFNER: Objection as to form, you can
 11 answer.
 12 A There is not a lot of professional activity
 13 going on there so --
 14 **Q (By Mr. Leo) Let's -- let's ask about --**
 15 **A I haven't -- I haven't heard of any**
 16 **requirement to do that.**
 17 **Q You were never instructed to submit forms for**
 18 **your Facebook page?**
 19 A Right.
 20 **Q You were never instructed to submit forms for**
 21 **your Twitter?**
 22 A No.
 23 **Q How about any online activity whatsoever?**
 24 A Well, publications, I'm thinking if there is
 25 like a e-publication but I don't know if that counts as

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1 online.

2 **Q Do you submit outside activity forms for e-**

3 **publications?**

4 A That would not -- that would not be for the

5 form. It would be -- it's part of that annual

6 evaluation.

7 THE COURT REPORTER: Can you speak --

8 **Q (By Mr. Leo) I'm sorry, I didn't hear that.**

9 A Sure. It would be for an annual evaluation so

10 like a --

11 **Q What would differ?**

12 A Like a -- if there was some sort of

13 publication then I would --

14 **Q Let's just use an example, if you published an**

15 **article online for no compensation, would you report**

16 **that on your outside activity form?**

17 A I think if it was compensated then I would.

18 **Q And if it was not compensated --**

19 A Usually they are -- usually they are not so

20 like a book review or something like that then.

21 **Q Right. You wouldn't report that?**

22 A Well, not with this form but it would go into

23 my annual evaluation. I would put the printout and then

24 it would be on the CV.

25 **Q When was the last time you submitted something**

55

1 **that you published online to the University?**

2 A Let's see.

3 **Q With or without compensation, just in general**

4 **anything you published online.**

5 A I think there is a book review couple years

6 ago so for that --

7 **Q You submitted what to the University for that?**

8 A The printout of the review but I didn't do

9 something like this.

10 **Q Who did you -- who did you give it to?**

11 A My chair.

12 **Q And you gave it to her with -- with what?**

13 A With an the evaluation form. There is a -- I

14 -- form that you fill out for all the areas of teaching,

15 research.

16 **Q And are you -- were you submitting that**

17 **because it was part of your job duty or your assignment**

18 **for your class?**

19 A It's part of the research assignment so, yeah.

20 **Q So, it -- that's dealing with what you're**

21 **supposed to be teaching at the University?**

22 A Doing research, yes.

23 **Q If it wasn't for your class or for your**

24 **research for the school, would you have submitted it to**

25 **the University in that way?**

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1 MS. HEFFNER: Objection as to form, you can

2 answer.

3 A I guess it depends, if it connects to my

4 specialty or not.

5 **Q (By Mr. Leo) What's your specialty?**

6 A History.

7 **Q And who is your chair?**

8 A Ben Lowe.

9 THE COURT REPORTER: Who? Sorry.

10 THE WITNESS: Ben L-O-W-E.

11 THE COURT REPROTER: Thank you.

12 **Q (By Mr. Leo) For example, on January 7th you**

13 **tweeted new book Gendered Encounters between Germany**

14 **and**

15 **Asia. You're familiar with that?**

16 A Yeah.

17 **Q Did you submit that to your chair?**

18 A With the form?

19 **Q In any way.**

20 A No, I didn't submit that. Although -- well,

21 the book itself was part of the evaluation, the annual

22 evaluation so I gave him a copy of the book and then I

23 listed it on the annual evaluation form.

24 **Q With respect to the outside activity form**

25 **when's the last time you submitted one of these forms?**

26 A I would say last month or two.

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1 **Q The last month?**

2 A Yeah, there is a exhibit -- exhibition in --

3 for a Swiss Museum and they wanted me to write little

4 ten paged write up on a topic and --

5 **Q Was this compensated activity?**

6 A And they did agree to compensate so I think

7 because of the compensation.

8 **Q That would fall within the scope of the**

9 **outside employment report?**

10 A Right, because it's employment.

11 **Q Now, with respect to your online activities**

12 **that are not compensated, have you ever filled out**

13 **outside activity form for those activities?**

14 A Like the book review I'm thinking which was

15 not compensated. I didn't fill one of these out. I --

16 my understanding and maybe I'm wrong if it's -- if

17 you're compensated then you need to do this or if there

18 is some sort of conflict with the class or you know time

19 wise like scheduling.

20 **Q When did you first submit an outside activity**

21 **form, do you remember?**

22 A I don't remember but I'm guessing it would be

23 for some sort of -- I've done some lifelong learning

24 classes but I don't -- I don't know if this counts for

25 that, it might. So, that's not part of the official job

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1 description but it's --

2 **Q Have you ever submitted any constitutionally**

3 **protected activity or speech on these forms?**

4 A Is constitutionally protected, isn't -- isn't

5 most activity constitutionally protected or?

6 **Q If you know. I'll use an example, your**

7 **political activities without getting into them, do you**

8 **submit your political activities to the University for**

9 **approval on the outside activity form?**

10 A No.

11 **Q How about your opinion on matters of public**

12 **concern? Do you submit your opinions on matters of**

13 **public concern to the Florida Atlantic University for**

14 **approval or for evaluation or for any reason that you**

15 **know of?**

16 A No.

17 **Q Would you agree that the form that's for today**

18 **PM-5, that this form is used by the University in**

19 **connection with commercial or compensated activity?**

20 MS. HEFFNER: Objection as to form, you can

21 answer.

22 A I think that's the primary purpose of it.

23 **Q (By Mr. Leo) In connection with your -- your**

24 **job at the University, has the University ever provided**

25 **you with guidelines concerning this policy specifically**

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1 **Article 19 and the report of outside activity?**

2 A There is probably instructions that go with

3 it.

4 **Q Have you actually been provided with any**

5 **instructions?**

6 A Probably, I don't remember specifically but.

7 **Q What kind of instructions were you given?**

8 A It is probably a form or this is probably on a

9 website then it's probably instructions with it.

10 **Q Have you ever read any of the instructions**

11 **pertaining to this policy?**

12 A I believe the chair also has e-mailed this to

13 -- to people with instructions about how to fill it out,

14 not super detail but.

15 **Q Answer my question, have you actually read the**

16 **instructions that were given to you if any were given to**

17 **you?**

18 A Yeah.

19 **Q You did, okay. So, what kind of instructions**

20 **were you given from the University with respect to**

21 **complying with the policy?**

22 A I'm fuzzy on the exact details of what those

23 instructions were. I believe the chair may have talked

24 about it at a chair -- at a department meeting and

25 probably he e-mailed this form with some instructions

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1 about it.

2 **Q Would you advise anybody at UFF-FAU to fill**

3 **out this form for their personal online activity?**

4 MS. HEFFNER: Objection as to form, you can

5 answer.

6 A I guess I'd have to look at the contract and

7 see if -- if it matches.

8 **Q (By Mr. Leo) See if what matches?**

9 A If -- if there is a violation of the contract

10 so.

11 **Q I'm sorry. Why would you be concerned with**

12 **the violation of the contract if the question is whether**

13 **they should submit this form for personal blogging or**

14 **online activity? Are you saying that you are concerned**

15 **or that you're -- the basis for your advice would be**

16 **from the contract?**

17 A The contract and then I guess instructions

18 from chairs and then University policy would be the --

19 **Q So, why don't you go ahead and take a look at**

20 **Article 19 and tell me where in Article 19 it says that**

21 **employees are required to submit their personal online**

22 **activity.**

23 A So, it's professional -- professional

24 practice. So, personal -- so, if there is a difference

25 between personal and professional then --

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1 **Q Is there?**

2 A -- then personal wouldn't be covered.

3 **Q Is there a difference between personal and**

4 **professional?**

5 MS. HEFFNER: Objection as to form, you can

6 answer.

7 **Q (By Mr. Leo) In your opinion.**

8 A I guess personal would be ones, family ones,

9 own thoughts rather than expertise based profession or

10 opinion out there for the public so I guess public

11 versus private that --

12 **Q Would you --**

13 A -- I would say that is the difference.

14 **Q What would you consider your Twitter account,**

15 **for example? Is that professional activity or is that**

16 **personal activity?**

17 A I see both of those as kind of blurred because

18 there is both on there, right? So, I mean --

19 **Q And when you say there is both you're saying**

20 **there is both professional and personal activity?**

21 A Yes.

22 **Q Do you make a distinction between personal and**

23 **private? Or would you consider those the same?**

24 A One could make a distinction there, I think.

25 **Q Have you ever addressed these issues or**

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1 questions that I'm asking you now before today with
 2 respect to the policy and the distinction between
 3 personal and professional activity?
 4 A I don't -- I don't think so. I don't know.
 5 Q Going back to Professor Tracy's discipline in
 6 November 2015, did you instruct Professor Tracy to
 7 submit the outside activity form for his blog or was
 8 that just Zoeller and Moats?
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A I did not have personal contact.
 12 Q (By Mr. Leo) So, you never told Professor
 13 Tracy to submit the form for his blog?
 14 A No.
 15 Q And to your knowledge that was Zoeller and
 16 Moats who advised counsel have instructed Professor
 17 Tracy to submit this form for his blog?
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 A Yes, it -- that sounded reasonable though.
 21 Q (By Mr. Leo) Based on the advice that you were
 22 given that it was appropriate to submit the forms as
 23 requested but then grieve?
 24 A Right.
 25 Q If you were instructed by your supervisors at

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1 the University to do something unlawful would you do it
 2 and then grieve?
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 A If it's clearly unlawful then one should not
 6 do that.
 7 Q (By Mr. Leo) Okay. So, would you agree that
 8 if you were given a directive to submit for example,
 9 constitutionally protected speech to the University for
 10 approval that that would be an unlawful directive?
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A There was a similar issue, Kevin Wagner in the
 14 political science department and I think this was after
 15 this issue. I think it was in the spring of 2016, he
 16 had published articles in the newspaper and then -- so,
 17 this issue came up of to what degree should even muzzled
 18 basically or. So, and FAU Senate that was something
 19 that was debated so.
 20 Q (By Mr. Leo) This was before Professor Tracy's
 21 discipline in 2015, is that right?
 22 A I'm not sure of the timing. It might have
 23 been -- I thought it was in the spring of 2016. Maybe
 24 it was in the fall of 2015. I think it was about that
 25 time.

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1 Q You were at the senate faculty meeting in
 2 September of 2015, right?
 3 A When they were discussing that issue?
 4 Q Right.
 5 A I was in Jupiter but yeah I was remotely
 6 connected.
 7 Q You were video watching or --
 8 A Right.
 9 Q Were you able to participate in the meeting as
 10 well?
 11 A Yeah, they had a little you know microphone.
 12 Q Where you can -- where you can speak? Do you
 13 recall any complaints during that meeting about the
 14 outside activity form or the policy?
 15 A The concern was that issue of do you have to
 16 check beforehand and then I believe the resolution was
 17 you don't have to check beforehand that the -- it's
 18 assumed that you're not speaking on behalf of the whole
 19 University.
 20 Q When you said there was a resolution, when was
 21 that resolved?
 22 A I think within a month or so of that senate
 23 meeting.
 24 Q During that senate faculty meeting, were you
 25 at that time grievance chair or contract enforcement?

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1 A That was I believe in that transition period
 2 with Tim Lenz so I think officially, I'm not sure
 3 officially if I was or not but I was working on this
 4 issue. So, yes, I was part of that --
 5 Q Was there any discussion -- was there any
 6 discussion amongst UFF-FAU members or you know non-
 7 members including faculty members, regarding a grievance
 8 against the outside activity's policy at that time in
 9 September of 2015?
 10 A There were some chapter grievances. There
 11 have been chapter grievances filed. I don't remember
 12 specifically if there was outside -- yeah, there was a
 13 chapter. I think there was a chapter grievance about
 14 outside activities.
 15 Q When was the chapter grievance about outside
 16 activities?
 17 A There was -- there was a couple chapter
 18 grievances, I believe that was one of them but I think -
 19 - I think that was the one because there was one that
 20 was pulled because I believe that was the one because
 21 the administration agreed to not muzzle the opportunity.
 22 Q When was that pulled?
 23 A I'm thinking spring 2016.
 24 Q And when was the grievance filed on that one?
 25 A I'm not sure. Probably early 2016, I'd have

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1 to look at the file and see when.
 2 **Q Did you file a grievance?**
 3 A Chapter grievances are filed at the provost
 4 office and I have filed some up there, I may have.
 5 **Q When did the University agreed to not muzzle**
 6 **the professors?**
 7 A I'm not sure of the date.
 8 **Q Was this a written agreement?**
 9 A I don't know. I don't know the details of
 10 that. I think --
 11 **Q Did it go to step --**
 12 A I don't think it was -- I think it was one of
 13 those cases where it was kind of resolved informally
 14 without going through all the steps of the grievance
 15 pursuant to --
 16 **Q Were you involved in the resolution process?**
 17 A No, I believe that was maybe the senate worked
 18 on that. I think -- I think that really -- I'm not
 19 totally sure how much the Union was involved in that. I
 20 thought that was more a senate resolution.
 21 **Q I'm going to show you what's been marked as**
 22 **PM-7 for today.**
 23 (Thereupon, Plaintiff's Exhibit PM-7 was
 24 entered into the record.)
 25 **Q (By Mr. Leo) Do you recognize this?**

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1 A Okay, yeah. So, it was -- yeah, I do. So --
 2 **Q Is the grievance you're talking about -- about**
 3 **being resolved informally?**
 4 A Right. Right. And there was another one
 5 going on at the same time, there were two of these
 6 chapter level. And I think -- so this was the one. I
 7 forget what the second one was.
 8 **Q Was the second one that you're referring to**
 9 **did it have anything to do with outside activity or was**
 10 **it a separate issue?**
 11 A I think it was a different issue.
 12 **Q What issue do you recall that being?**
 13 A Performance maybe. Maybe it was a performance
 14 evaluation, I'm guessing, something like that.
 15 **Q Looking at this PM-7 at the bottom there is a**
 16 **stamp on the first page, what does the stamp indicate?**
 17 A So, that's the receipt by the provost's
 18 office. So, that's the filing. That means I walked in
 19 there and they received it and stamped it. So, they --
 20 that's the filing date.
 21 **Q What's the -- is this initials underneath the**
 22 **date?**
 23 A That's the secretary at the provost office.
 24 **Q Is that KL?**
 25 A Looks like it.

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1 **Q What's the secretary's name?**
 2 A I'm not sure.
 3 **Q So, this indicates that this grievance, this**
 4 **is a chapter grievance, right?**
 5 A Right.
 6 **Q This is filed on April 19th, 2016?**
 7 A Yes.
 8 **Q Does this refresh your recollection as to when**
 9 **this was filed?**
 10 A Yes. April 19th, it looks like.
 11 **Q And how long after this was filed was this**
 12 **resolved?**
 13 A No, I believe if I'm -- I'm right, we did have
 14 some step 2 meeting, we had a step 2 meeting about this
 15 time and we talked to the -- I think it was Michelle and
 16 Diane Alperin about these. So, we had the step 2 on a
 17 different grievance and then we talked about these step
 18 2 or these chapter grievances, so there were three
 19 different issues. There was the grievance and then
 20 there were the chapter grievance, there were two chapter
 21 grievances and then one where there was a -- I think it
 22 was for the evaluation. Yeah, I think the issue with the
 23 evaluations was the policy was not yet in place and so a
 24 grievance was not appropriate and so it pulled it.
 25 **Q This grievance --**

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1 A So, I think that --
 2 **Q Was this grievance pulled?**
 3 A So, that must mean that this was the other
 4 one. So -- so that would mean that this one was not
 5 pulled but this didn't get to arbitration so that must
 6 mean that this one was resolved, they must have decided
 7 not to put, take it to arbitration.
 8 **Q What's your understanding of the resolution of**
 9 **this grievance that was filed on April 19th, 2016?**
 10 MS. HEFFNER: Objection as to form, you can
 11 answer.
 12 A I don't have much of a recollection of it, I'm
 13 not sure.
 14 **Q (By Mr. Leo) You said it wasn't in writing the**
 15 **resolution?**
 16 A I'm thinking maybe there was a official
 17 University policy or maybe a provost's statement about
 18 this.
 19 **Q A written statement?**
 20 A Or regarding, not the grievance but regarding
 21 that policy of outside activity. I believe and I think
 22 the senate was working on that too so there was a policy
 23 about outside activity so I think, I'm guessing the
 24 objection regarding this -- that this grievance was
 25 designed to address was being handled by the -- the

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1 reworking the policy I guess by the provost.
 2 **Q This grievances narrow the focus on a specific**
 3 **provision, right?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 A Yes, so there were new requirements I think
 7 because of the Kevin Wagner's letter that the issue over
 8 that, there were more narrow guidelines of how faculty
 9 are supposed to interact with the public so. And then
 10 this was an objection over those restrictions. So, yes.
 11 **Q (By Mr. Leo) If I can just direct your**
 12 **attention to where it says, "Changes to reporting**
 13 **requirements on outside activity are not in accordance**
 14 **with the current CBA." What's your understanding of the**
 15 **changes to the reporting requirements that were at issue**
 16 **in this grievance?**
 17 A So, I believe those were -- those are more
 18 specific tighter requirements for reporting.
 19 **Q With respect to this grievance and the focus**
 20 **of this grievance, would you agree that this is a little**
 21 **vague?**
 22 MS. HEFFNER: Objection as to form, you can
 23 answer.
 24 A Grievances tend not to go into a lot of detail
 25 so they're very -- or very --

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1 **Q (By Mr. Leo) Broad?**
 2 A Yeah, they are as simple as possible or as
 3 brief as possible so there is no --
 4 **Q So, changes to reporting requirements and**
 5 **outside activity not in accordance with current CBA,**
 6 **that would be sufficient to challenge any change to the**
 7 **policy?**
 8 A So, you're saying if it was just that first
 9 sentence?
 10 **Q What I'm saying is, what is included in this**
 11 **grievance? Ultimately my question is, what changes to**
 12 **the reporting requirements on outside activity were not**
 13 **in accordance with the current CBA when this was filed?**
 14 A I don't know what the full list but the
 15 objections were to those additional changes and this
 16 just has that example there. So, there must have been
 17 more problems with those, the new requirements.
 18 **Q Is there a reason why those other issues or**
 19 **changes are not listed in this grievance?**
 20 A It's probably because these grievances are not
 21 meant to be exhaustive. Those -- the article, you know
 22 the little blurb there for saying what was violated that
 23 should be as brief as possible, I know that's a
 24 consistent thing they're supposed to be.
 25 **Q Is there a list of changes somewhere that you**

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1 **keep or anybody at UFF-FAU or UFF or FEA, is there any**
 2 **list that --**
 3 A I don't remember seeing any list like that.
 4 So, I don't -- I don't know that there is a list.
 5 **Q When this grievance was prepared, when was**
 6 **that?**
 7 A If it was filed April 19th then within a
 8 couple of weeks before probably two weeks, I would say
 9 something like that.
 10 **Q Is this grievance, the April 19th grievance,**
 11 **was this intended by UFF-FAU to address the concerns**
 12 **that were raised in September 2015?**
 13 A The concerns are those, the --
 14 **Q The concerns that were raised by faculty**
 15 **members like Tim Lenz for example, at the senate faculty**
 16 **meeting, is that what this grievance this April 19th,**
 17 **2016 grievance was filed to address?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 A Um-hum. So, and that has to do with -- with
 21 the speaking in public, being able to speak to the
 22 public outside of one's capacity, one's official
 23 capacity, I guess. So, I would think so, yeah. I would
 24 think that connects to it.
 25 **Q (By Mr. Leo) Is this a little late? You said**

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1 **there is a very small window, right? Thirty days.**
 2 A Well, that depends on when the specific
 3 grievable event happen. So, if there is a new policy
 4 you could grieve the date that the new policy came out.
 5 Usually though if someone does something, so like Wagner
 6 writes an article or publishes a column and then there
 7 is some action against him then that would be the
 8 grievable date. So -- so if these new regulations came
 9 up say over the summer and that was the -- at the senate
 10 meeting, talked about it in September then it would make
 11 sense if there was a -- there was a gap.
 12 **Q This grievance, this April 19th grievance is**
 13 **not really clear as to when any changes were made to the**
 14 **policy?**
 15 A It just says changes, yeah.
 16 **Q Is that problematic?**
 17 MS. HEFFNER: Objection.
 18 **Q (By Mr. Leo) And does it identify an operative**
 19 **grievable event?**
 20 MS. HEFFNER: Objection as to form, you can
 21 answer.
 22 **Q (By Mr. Leo) With specificity as to that?**
 23 MS. HEFFNER: Objection as to form, you can
 24 answer.
 25 A Let's see. Usually there is a statement when

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1 the event happened but I think that might be for the
 2 -- for the -- for the arbitration level where there is a
 3 list of dates and when things happened and when the
 4 grievable event happened. So, I don't see and -- see
 5 these is all different too because it is step 2 so there
 6 is no step 1. On the step 1 form I think might say when
 7 the -- there might be a date for that so -- so that
 8 might be why.
 9 **Q (By Mr. Leo) Is this April 19th, 2016**
 10 **grievance, is this or was this intended to address**
 11 **violations of faculty member's constitutional rights?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A I don't know, I guess that's part of
 15 constitutional --
 16 **Q (By Mr. Leo) You filed it, right?**
 17 A Isn't constitutional rights part of outside
 18 activities? I guess.
 19 **Q Are you asking me?**
 20 A Yeah. I don't know.
 21 **Q Sir, I can't answer your question but I can**
 22 **tell you based on what I am looking at, I don't see**
 23 **anything in here about constitutional rights, would you**
 24 **agree?**
 25 MS. HEFFNER: Objection as to form, you can

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1 answer.
 2 A It doesn't mention that specifically, no.
 3 **Q (By Mr. Leo) Are you familiar with Article 5**
 4 **of your Collective Bargaining Agreement?**
 5 A I could have a freedom.
 6 **Q And I have it for you if you want to -- you**
 7 **guys have that? I'll just do the -- this is what's been**
 8 **marked as PM-8 for today.**
 9 (Thereupon, Plaintiff's Exhibit PM-8 was
 10 entered into the record.)
 11 **Q (By Mr. Leo) Are you familiar with this**
 12 **policy?**
 13 A Yes.
 14 **Q If I can your direct your attention to the**
 15 **5.2(d). Are you familiar with that subsection?**
 16 A Constitutional rights.
 17 **Q And what does it say?**
 18 A I can -- it includes a freedom to exercise
 19 constitutional rights without institutional censorship
 20 or discipline.
 21 **Q So, if the University was doing anything that**
 22 **censored faculty members that would be a violation of**
 23 **this policy, right?**
 24 MS. HEFFNER: Objection as to form.
 25 A If it violates constitutional rights?

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1 **Q (By Mr. Leo) So, for example --**
 2 MS. HEFFNER: I'm sorry, there is two pages to
 3 this exhibit?
 4 MR. LEO: Oh, I'm sorry it's shouldn't be --
 5 MS. HEFFNER: Okay. Sorry, just want to make
 6 sure I didn't miss anything.
 7 (Thereupon, a short discussion was held off
 8 record.)
 9 (Deposition resumed.)
 10 **Q (By Mr. Leo) Going back to the 5.2(d) my**
 11 **question was, if the University was acting in a way that**
 12 **censored a faculty member would that be a violation of**
 13 **Article 5?**
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 A There needs to be -- yes, so there needs to be
 17 freedom and constitutional rights. So, if the
 18 University is violating that then yes that's --that's a
 19 problem.
 20 **Q (By Mr. Leo) It'd be a violation?**
 21 A Yeah.
 22 **Q And it would be grievable if somebody was**
 23 **being -- somebody at the University or faculty member**
 24 **was being censored or disciplined because of the**
 25 **exercise of their constitutional rights, right?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A I think so, yes.
 4 **Q (By Mr. Leo) Has anybody before today brought**
 5 **Article 5 to your attention with to respect any**
 6 **allegations of violations of Article 5?**
 7 A I believe there've been -- I think there has
 8 been a grievance.
 9 **Q There's been a grievance for Article 5?**
 10 A Yeah, I'm thinking. I'm pretty there has been
 11 an Article 5 where that's been one of the articles.
 12 **Q Is this the grievance that you filed or you're**
 13 **just talking about a grievance that had been filed**
 14 **previously?**
 15 A I think, I don't remember which one it was.
 16 **Q Was it Professor Tracy's 2013 grievance that**
 17 **you're referring to?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 A I've never seen that one. But I -- I think
 21 this was -- I don't know it was Kajjura. I think there
 22 was another -- one more grievance during the time that
 23 I've been doing grievances that used that.
 24 **Q (By Mr. Leo) At any time did you make a**
 25 **determination as to whether Professor Tracy's**

<p style="text-align: right;">78</p> <p>1 constitutional rights have been violated by the 2 University? 3 MS. HEFFNER: Objection as to form, you can 4 answer. 5 A I didn't. 6 Q (By Mr. Leo) At any time were you asked to 7 make a determination as to whether Professor Tracy's 8 constitutional rights had been violated by the 9 University? 10 A For all the grievances I'm asked to look at 11 -- look through the Collective Bargaining Agreement and 12 see if there is a violation. Usually -- well, Bob 13 Zoeller and Michael Moats will be part of that and the 14 grievant. 15 Q Was -- was there an actual meeting about the 16 constitutional rights of Professor Tracy that you can 17 recall? 18 MS. HEFFNER: Objection as to form, you can 19 answer. 20 A I don't remember specifically talking about 21 constitutional rights. 22 Q (By Mr. Leo) So, November 30th, 2015 when 23 you're meeting to discuss the grievability of the 24 November 2015 Notice of Discipline, constitutional 25 rights didn't come up in that discussion at all?</p>	<p style="text-align: right;">80</p> <p>1 answer. 2 A I don't remember that. 3 Q (By Mr. Leo) Did anybody ask you to file a 4 grievance against the outside activities policy for 5 violations of Article 5? 6 MS. HEFFNER: Objection as to form, you can 7 answer. 8 A So, you're asking me if anyone -- 9 Q (By Mr. Leo) Asked you -- 10 A -- asked me to file a grievance per -- 11 Q To file a grievance against Article 19 for 12 violating Article 5 or against the University's use of 13 Article 19 -- 14 MS. HEFFNER: Objection as to form, you can 15 answer. 16 Q (By Mr. Leo) -- for violations of Article 5, 17 particularly 5.2(d)? 18 MS. HEFFNER: Objection as to form, you can 19 answer. 20 A I don't -- I'd have to look at all that 21 grievances. I guess, I don't remember. 22 Q (By Mr. Leo) At any time did you make a 23 determination whether the Notice of Discipline issued by 24 the University in November 2015 violated Article 5? 25 A So this letter?</p>
<p style="text-align: right;">79</p> <p>1 MS. HEFFNER: Objection as to form, you can 2 answer. 3 A I'm not sure. 4 Q (By Mr. Leo) Did Article 5 come up in that 5 conversation or discussion? 6 A I remember the form coming up, should he sign 7 it or not. I don't remember if the constitutionality 8 issue came up. I don't remember. 9 Q Did anybody tell you that requiring Professor 10 Tracy to submit that form for his personal blogging 11 would be unconstitutional? 12 MS. HEFFNER: Objection as to form, you can 13 answer. 14 A I don't remember that. 15 Q (By Mr. Leo) Do you know what a prior 16 restraint is? Are you familiar with the term? 17 A No. 18 Q Are you -- do you remember the senate faculty 19 meeting? Do you remember a constitutional law professor 20 speaking at that meeting about prior restraints? 21 A No. 22 Q Particularly with respect to the use of the 23 outside activities policy, do you recall the allegation 24 that the policy was being used as a prior restraint? 25 MS. HEFFNER: Objection as to form, you can</p>	<p style="text-align: right;">81</p> <p>1 Q Right. Do you want me to repeat the question? 2 A Did -- did I -- did I make a determination? 3 What is this? 4 Q At any time did you ever make a determination 5 as to whether the Notice of Discipline issued in 6 November 2015 was violative of Article 5 of the 7 Collective Bargaining Agreement? 8 A I don't know. I guess not. 9 Q Okay. Did you ever make a determination as to 10 whether the Notice of Discipline issued in November 2015 11 violated Professor Tracy's constitutional rights? 12 MS. HEFFNER: Objection as to form, you can 13 answer. 14 A Can you say that again? 15 Q (By Mr. Leo) Did you ever make a determination 16 regarding the November 2015 Notice of Discipline as to 17 whether it violated Professor Tracy's constitutional 18 rights? 19 MS. HEFFNER: Objection as to form, you can 20 answer. 21 A Constitutional rights. 22 Q (By Mr. Leo) Would you like me to ask in 23 another way? 24 A I don't -- did I determine whether the -- it 25 violated the constitutional rights? I guess I didn't do</p>

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1 that. I guess I didn't make a determination.
 2 **Q Okay. Did Zoeller or Moats or anybody at**
 3 **United Faculty of Florida or Florida Education**
 4 **Association ask you to make that determination?**
 5 A I don't remember that unless that was part of
 6 the meeting or maybe there is an e-mail.
 7 **Q A moment ago you testified that there was no**
 8 **discussion of constitutional rights at the meeting you**
 9 **had about Professor Tracy, right?**
 10 A I don't remember specifically talking about
 11 that.
 12 **Q As part of your duties as grievance chair is -**
 13 **- would that be a determination that you are supposed to**
 14 **make?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A I'm supposed to see if there is any violation
 18 from the contract. See if there is a violation of
 19 contract so that is part of the contract, right? So, I
 20 should determine if there is a violation. So, so I
 21 guess I -- yeah, I should know whether or not or I
 22 should figure out if there is a violation in the
 23 contract or not. So, that's part of the job, yes.
 24 **Q (By Mr. Leo) And you didn't do that in this**
 25 **case?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A So, I guess I don't -- yeah, I don't have the
 4 recollection of having done that.
 5 **Q (By Mr. Leo) Do you know if any other United**
 6 **Faculty of Florida or Florida Education Association**
 7 **officer, advisor, supervisor, employee ever made that**
 8 **determination as to whether or not University was**
 9 **violating Professor Tracy's constitutional rights in**
 10 **November of 2015?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A I guess, I would think they would know the
 14 contract and then see if there was a violation so.
 15 **Q (By Mr. Leo) But did anybody actually do that?**
 16 A I don't know. I would guess, yes.
 17 **Q If there was -- if there had been a**
 18 **determination by United Faculty of Florida that**
 19 **Professor Tracy's constitutional rights were being**
 20 **violated in November of 2015 they would have filed a**
 21 **grievance, right?**
 22 MS. HEFFNER: Objection as to form, you can
 23 answer.
 24 A The grievance depends on the grievant and then
 25 looking at the contract and then figuring out if the

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1 grievance if it's grievable or not. So, usually there
 2 is a sort of draft -- series of drafts that go back and
 3 forth and communications.
 4 **Q (By Mr. Leo) And regarding Professor Tracy's**
 5 **November Notice of Discipline that was never done,**
 6 **right?**
 7 A The -- there was I think an initial e-mail, so
 8 there are e-mails and I think the discussion was the
 9 determination. I didn't look at the -- look at it
 10 specifically.
 11 **Q You didn't look at what?**
 12 A The -- before that meeting I don't think I
 13 looked at this --
 14 **Q The Notice of Discipline?**
 15 A And then -- and then Article 5.
 16 **Q So, you're saying before the meeting you had**
 17 **with Zoeller and Moats and Lenz you didn't look at the**
 18 **Notice of Discipline that had been issued to Professor**
 19 **Tracy? And you didn't look at Article 5 of the**
 20 **Collective Bargaining Agreement, is that what you're**
 21 **saying?**
 22 A I think so.
 23 **Q Did you look at Article 19 the outside**
 24 **activities policy before your meeting with Zoeller and**
 25 **Moats?**

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1 A We had the agreement in the meeting.
 2 **Q You have what agreement?**
 3 A The -- I mean the Collective Bargaining
 4 Agreement.
 5 **Q Did you actually talk about Article 19 in that**
 6 **meeting?**
 7 A I guess so, I think.
 8 **Q And what did you discuss about the policy,**
 9 **Article 19?**
 10 A That there is a form to -- to sign.
 11 **Q So, you just talked about the form?**
 12 A That's what I remember signing the form.
 13 **Q And Moats and Zoeller it was their opinion**
 14 **that Professor Tracy's Notice of Discipline was not**
 15 **grievable?**
 16 MS. HEFFNER: Objection as to form, you can
 17 answer.
 18 A Right.
 19 **Q (By Mr. Leo) You're not --**
 20 **A Yes, yes.**
 21 **Q Was that your opinion at the time? Or did you**
 22 **just go along with what they were saying?**
 23 MS. HEFFNER: Objection as to form, you can
 24 answer.
 25 A There wasn't a lot of time to go over to look

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1 through and compare things and look up details so.
 2 **Q (By Mr. Leo) But to answer my question, did**
 3 **you actually form an opinion as to whether or not there**
 4 **was a violation of Professor Tracy's constitutional**
 5 **rights? Or did you just go along with what Zoeller and**
 6 **Moats in their opinion was?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A I went along.
 10 **Q (By Mr. Leo) You went along with Zoeller and**
 11 **Moats?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A I didn't.
 15 **Q (By Mr. Leo) You said there wasn't a lot of**
 16 **time. How much time did you have to review these**
 17 **documents if any?**
 18 A I don't remember getting any documents before
 19 that meeting so.
 20 **Q You didn't receive any of the relevant**
 21 **documents pertaining to Professor Tracy's discipline in**
 22 **November of 2015?**
 23 MS. HEFFNER: Objection as to form.
 24 A I don't -- I don't remember reviewing those. I
 25 think there were some other activities we were working

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1 on and that -- that meeting they brought up the issue
 2 with Dr. Tracy and then -- so, there was maybe like a
 3 minute, couple of minutes conversation about it.
 4 **Q (By Mr. Leo) Were you in the transitional**
 5 **phase in November of 2015 still?**
 6 A I believe I was starting to do my own
 7 grievances so I think Claire was the first one so
 8 whatever the date is she is the first one I really
 9 worked on on my own. So, I am thinking that was the
 10 fall of 2015.
 11 **Q With respect to Professor Tracy's Notice of**
 12 **Discipline in 2015 did Zoeller and Moats tell you that**
 13 **they were going to take care of Professor Tracy's**
 14 **issues?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A Usually what happens Bob handles a lot of them
 18 or filed it -- putting the form together and then
 19 frequently the people will be in direct contact,
 20 sometimes he will pass them up to me to work with and
 21 then I worked with in more detail so Claire Senial and
 22 Kajjura I worked with them extensively. There is quite
 23 a few cases that Bob will handle directly.
 24 **Q (By Mr. Leo) Was that -- was Tracy one of**
 25 **those cases?**

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1 A And -- so I never really interacted with
 2 Tracy.
 3 **Q Right. I know you said that but my question**
 4 **is whether Zoeller and/or Moats told you, "We'll take**
 5 **care of Tracy, you don't have to worry about it." Or**
 6 **some thing along those lines.**
 7 A I didn't hear that phrase or that thought. I
 8 think it was more --
 9 **Q How about directive?**
 10 A -- this -- this e-mail does sounds right.
 11 Yeah, well, I didn't -- I knew I wasn't immediately
 12 going to be doing a grievance form so I was working on
 13 other things but if -- if it would have turned into a
 14 grievance then I would have done a grievance form
 15 and --
 16 **Q Were you instructed not to file a grievance**
 17 **for Professor Tracy?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 A I didn't get instructions to do that. Usually
 21 -- usually there is -- there's a number of steps leading
 22 up to filing of the grievance so.
 23 **Q (By Mr. Leo) Right.**
 24 A So, it's not like --
 25 **Q And what steps were -- what steps were**

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1 **followed with respect to Professor Tracy leading up to**
 2 **filing a grievance?**
 3 A Communication with the potential grievant,
 4 figuring out what the articles would be if it's
 5 grievable. So, that decision making of whether things
 6 are grievable or not usually that's -- that's Bob and
 7 Michael. Michael kind of has the ultimate say because
 8 he is --
 9 **Q Right.**
 10 A -- he knows -- he's got much more experience
 11 and he knows about whether it would be worthy of pursuit
 12 at the arbitration level so.
 13 **Q Right. Well, I want to talk specifically**
 14 **about Professor Tracy and you know you've testified**
 15 **about your meeting and what was done and what wasn't**
 16 **done. Were any of the steps that you just mentioned,**
 17 **were they actually followed with respect to Professor**
 18 **Tracy's grievance?**
 19 A I did not contact him but Bob was in contact
 20 with him.
 21 **Q Right.**
 22 A So -- and so they were --
 23 **Q So, that's my question. The steps that are**
 24 **usually followed with respect to grievance were not**
 25 **followed with respect to Professor Tracy's grievance?**

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1 MS. HEFFNER: Objection as to form.
 2 A I think they were, I mean.
 3 **Q (By Mr. Leo) Okay. Start with -- start with**
 4 **the first step. What was the first step that you said?**
 5 **Speaking to the grievant?**
 6 A The grievant usually contacts the -- someone
 7 at the Union so usually Bob, usually the president.
 8 **Q Okay. So, was that done?**
 9 A So, that -- so, that happened.
 10 **Q When did that happened?**
 11 A I'm not sure when.
 12 **Q So, how do you know that it happened?**
 13 MS. HEFFNER: Objection as to form.
 14 A He brought up at the meeting that there was
 15 this issue with the form signing so.
 16 **Q (By Mr. Leo) Did he say I spoke with Professor**
 17 **Tracy?**
 18 A I think he said there was a meeting or he had
 19 either spoke with them or he had had some meeting, he
 20 had some contact I don't know with the -- if it was an
 21 e-mail or a meeting.
 22 **Q Do you know if he actually spoke to Professor**
 23 **Tracy or did he just indicate perhaps he had and you're**
 24 **just assuming that he did speak with him?**
 25 MS. HEFFNER: Objection as to form, you can

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1 answer.
 2 A I don't know. I don't know specifically
 3 if --
 4 **Q (By Mr. Leo) You don't know if you spoke to**
 5 **him?**
 6 A If he -- if he spoke to him. He -- I am
 7 assuming that he found out about this issues in some way
 8 so.
 9 **Q Right. But you don't know if anybody from**
 10 **UFF-FAU actually spoke to Professor Tracy about his**
 11 **grievance at any time?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A I believe because he was --
 15 **Q (By Mr. Leo) Let me ask it another way.**
 16 A Okay.
 17 **Q Give me one example of somebody from UFF-FAU**
 18 **speaking to Professor Tracy that you know of.**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 **Q (By Mr. Leo) Can you name one?**
 22 A I don't -- I don't know. I don't have direct
 23 knowledge of -- of that.
 24 **Q So, you don't know if the first step has been**
 25 **followed?**

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1 MS. HEFFNER: Objection as to form.
 2 A Well, other than -- I believe there is an e-
 3 mail. I think he forwarded an e-mail. I believe he
 4 forwarded an e-mail from Tracy.
 5 **Q (By Mr. Leo) But we're talking about speaking.**
 6 A But speaking that I --
 7 **Q Telephone, in-person.**
 8 A -- that I don't know. I don't know for sure.
 9 **Q So, you don't know if the first step had**
 10 **actually been followed by anybody at UFF-FAU?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 **Q (By Mr. Leo) Other than what you were told by**
 14 **Zoeller?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A I thought he was in -- definitely in contact
 18 and probably phone contact and I'm not totally sure what
 19 the contact was but --
 20 **Q (By Mr. Leo) Did you know if Professor Tracy**
 21 **was at the University at that time?**
 22 A Let' see. So you're -- now, so there was this
 23 letter and then there was a termination letter later in
 24 December, right? So, what time are you talking about,
 25 at the meeting?

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1 **Q In general. In November -- well, let's focus**
 2 **on November 2015. Was Professor Tracy actually at the**
 3 **University in November of 2015 if you know?**
 4 A I believe so because this was the warning to
 5 turn in the --
 6 **Q So, you didn't know if - you didn't know**
 7 **Professor Tracy was on paternity leave that entire**
 8 **semester?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A No.
 12 **Q (By Mr. Leo) And if I told you that you would**
 13 **agree that he wasn't at the University when he was**
 14 **issued this Notice of Discipline?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A Paternity leave so he -- he was not teaching
 18 or not, okay. I didn't know that.
 19 **Q (By Mr. Leo) He was not on campus?**
 20 MS. HEFFNER: Objection.
 21 **Q (By Mr. Leo) Do you know if anybody at UFF-**
 22 **FAU offered Professor Tracy the opportunity to come to**
 23 **the campus and participate in any discussion pertaining**
 24 **to his grievance or the Notice of Discipline in November**
 25 **of 2015?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A I have not heard of an offer to do that.
 4 **Q (By Mr. Leo) Did you offer Professor Tracy the**
 5 **opportunity to speak about his own Notice of Discipline**
 6 **or his wish to file a grievance?**
 7 A I did not contact him.
 8 **Q Did you contact Doug Broadfield at any time?**
 9 A No.
 10 **Q Did you -- did you -- I'm sorry.**
 11 A I tried to look him up or I had asked - mostly
 12 I proceeded through Tim to try to figure out where he
 13 was. I looked him up one time to try to figure out what
 14 university, where he was. I couldn't track him down.
 15 **Q Did you try to contact Doug Broadfield with**
 16 **-- in connection with Professor Tracy's issues or just**
 17 **in general?**
 18 A No, I was -- I was more concerned with getting
 19 the files for the past cases mostly because I wanted to
 20 see what had been done in the past to -- as their
 21 president and --
 22 **Q Make sense.**
 23 A -- so I'd have models of how to file
 24 grievances.
 25 **Q Did you try to find his phone number, speak to**

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1 **any of his colleagues to get his number?**
 2 A I think I looked him up online but I didn't
 3 talk to any colleagues other than Tim.
 4 **Q When you learned about the November 2015**
 5 **Notice of Discipline what did you do to get acclimated**
 6 **with Professor Tracy's issues, if anything?**
 7 A I think I looked at his blog but I didn't -- I
 8 didn't have the files for the previous thing.
 9 **Q Did you look at his file at the University?**
 10 A I don't have access to that. I don't know.
 11 **Q Did you ask Professor Tracy for his file?**
 12 A No.
 13 **Q Did you contact anybody at UFF-FAU to request**
 14 **the file or to request his history at UFF-FAU?**
 15 A No.
 16 **Q Would you agree that the 2013 issues that**
 17 **Professor Tracy had at the University UFF's defense of**
 18 **Professor Tracy in 2013 would all be relevant to an**
 19 **inquiry pertaining to a 2015 Notice of Discipline?**
 20 MS. HEFFNER: Objection as to form, you can
 21 answer.
 22 A Yes, that should be -- and I guess the
 23 administration would have those files so we can ask them
 24 for the files.
 25 **Q (By Mr. Leo) Did anybody at UFF-FAU including**

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1 **yourself ask the administration for any of the files**
 2 **from 2013?**
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 A No, not that -- not that I know of, I didn't
 6 ask them.
 7 **Q (By Mr. Leo) Do you think that that would all**
 8 **be relevant information that would be necessary to make**
 9 **a determination as to whether the November 2015 Notice**
 10 **of Discipline was grievable?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A Potentially, I'm not sure specifically.
 14 **Q (By Mr. Leo) Did anybody at UFF-FAU mention**
 15 **the 2013 discipline in any discussions or meetings that**
 16 **were held concerning Professor Tracy in 2015?**
 17 MS. HEFFNER: Objection as to form, you can
 18 answer.
 19 A Tim may have mentioned that.
 20 **Q (By Mr. Leo) What did he say?**
 21 A I don't -- I know there was the discipline
 22 going on but I don't know specifically what -- what the
 23 answers were or what the --
 24 **Q Would you say that United Faculty of Florida**
 25 **set you up to fail with respect to Professor Tracy's**

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1 **Notice of Discipline in November?**
 2 MS. HEFFNER: Objection as to form, you can
 3 answer.
 4 A I don't understand.
 5 **Q (By Mr. Leo) That they didn't prepare you to**
 6 **handle Professor Tracy's discipline in 2015?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A I don't know how to answer that.
 10 **Q (By Mr. Leo) There is only one way to answer**
 11 **it. It would be the truthful answer. Let's just --**
 12 **well, let me backup.**
 13 A Why is it -- why is it --
 14 **Q Were you provided all the information that you**
 15 **needed to make a determination as to whether or not**
 16 **Professor Tracy's November 2015 Notice of Discipline was**
 17 **grievable?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 **Q (By Mr. Leo) I'm referring to at that time.**
 21 **Were you provided with that information in November of**
 22 **2015 when the clock is running? In your opinion, I'm**
 23 **asking for your opinion. I'm not asking for anything**
 24 **else.**
 25 A I don't know how to -- how to answer that.

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1 **Q** Given what you know now after sitting here and
 2 reviewing the documents that you've already reviewed,
 3 sitting here today do you feel like you were given all
 4 of the information that you needed at the time to make a
 5 determination whether or not Professor Tracy's Notice of
 6 Discipline in November of 2015 was grievable?
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A Okay. So, for me, you're talking me
 10 personally to review all these and to determine whether
 11 it's grievable or not?
 12 **Q (By Mr. Leo)** I'm asking whether or not you
 13 were provided with the information that you needed in
 14 November of 2015 to make a determination as to whether
 15 or not the November 2015 Notice of Discipline was
 16 grievable?
 17 MS. HEFFNER: Objection as to form, you can
 18 answer.
 19 **Q (By Mr. Leo)** I'm only asking about that time.
 20 A I didn't have all the information at that
 21 meeting.
 22 **Q Right. You were not provided that**
 23 **information, would you agree?**
 24 A I had --
 25 MS. HEFFNER: Objection as to form, you can

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1 answer.
 2 A I had the -- a copy of the Collective
 3 Bargaining Agreement. I don't remember seeing this
 4 letter so.
 5 **Q (By Mr. Leo)** The Notice of Discipline.
 6 A The Notice of Discipline.
 7 **Q So, you didn't even have the Notice of**
 8 **Discipline at that time in November of 2015?**
 9 A It may have been in an e-mail, I don't know. I
 10 don't remember looking at it. I remember the meeting
 11 bringing up the issue or the issue was at the meeting, I
 12 don't remember it before that.
 13 **Q So, when you were sitting in that meeting in -**
 14 **- on November 30th, 2015, is that the date, November**
 15 **30th?**
 16 A I think so.
 17 **Q You're sitting in that meeting, you -- you**
 18 **don't have the Notice of Discipline?**
 19 A Yeah, we were discussing it verbally --
 20 **Q Right.**
 21 A -- rather than looking at all the documents.
 22 **Q And you were just basically agreeing or**
 23 **differing to Zoeller and Moats on the issue?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A Yes.
 2 **Q (By Mr. Leo)** All right. So, you would agree
 3 with me that Zoeller and Moats and even Lenz did not
 4 provide you with the information, the complete picture
 5 of what had happened to Professor Tracy with respect to
 6 this outside activities issue at that time?
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A I didn't have all the information but the --
 10 that's true.
 11 **Q (By Mr. Leo)** Do you think that Professor Tracy
 12 was treated fairly by United Faculty of Florida in
 13 November of 2015?
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 A Well, I think the opportunity -- so, yes,
 17 I --
 18 **Q (By Mr. Leo)** You think he was treated fairly?
 19 A I mean the -- I don't see a huge
 20 difference --
 21 **Q You don't see --**
 22 A -- between this and the process of the other
 23 grievances or grievance coming to the Union and then the
 24 Union working with the grievant.
 25 **Q Well, just going back to the -- what we**

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1 discussed a moment ago, you never actually spoke with
 2 Professor Tracy?
 3 A Right.
 4 **Q That would be very different than the other**
 5 **grievance that you described also as engaging with,**
 6 **right?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A Yeah, usually I'll work with the grievance.
 10 **Q (By Mr. Leo)** Is there a reason why you didn't
 11 work with Professor Tracy on his discipline notice in
 12 November 2015?
 13 A So, the -- there was the initial raising of
 14 the potential for grievance then it's usually contact
 15 back and forth between them. So, I didn't contact him.
 16 **Q Right. But my question is, is there a reason**
 17 **why you didn't?**
 18 A I don't know that there was a basis for a
 19 grievance. Usually --
 20 **Q Aside from that?**
 21 A Usually the -- I'll get instructions from Bob
 22 or contact from the grievant.
 23 **Q Right. But we know you didn't try to contact**
 24 **Professor Tracy?**
 25 A So, continue to pursue that.

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1 **Q Right? And you just went along with what**
 2 **Zoeller and Moats were telling you in November 2015,**
 3 **right?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 A Yes.
 7 **Q (By Mr. Leo) But my question really is here**
 8 **towards, why -- why you didn't make contact with**
 9 **Professor Tracy and engage with him to learn about his**
 10 **issues? Is there a reason for that?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 **Q (By Mr. Leo) I'll remind you, you're under**
 14 **oath.**
 15 A I guess I was scared of him is part of it.
 16 **Q You were scared of him in what way?**
 17 A Or I was scared of the issue.
 18 **Q What issue?**
 19 A And of the -- the public furor.
 20 **Q You were afraid of the media?**
 21 A Right.
 22 **Q Were you afraid of the public backlash for**
 23 **representing him?**
 24 MS. HEFFNER: Objection as to form.
 25 A Yes.

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1 **Q (By Mr. Leo) Were you the only one who is**
 2 **afraid of the media or the public backlash for**
 3 **representing Professor Tracy?**
 4 MS. HEFFNER: Objection as to form.
 5 A I don't know. I would imagine because it was
 6 such a big thing.
 7 **Q (By Mr. Leo) Is it because -- were your --**
 8 **were your fears of representing Professor Tracy were --**
 9 **were they because of the negative publicity or was it**
 10 **because of something you read on his blog?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A Negative publicity is one part of it and I
 14 mean I disagree with the blog.
 15 **Q (By Mr. Leo) You disagree with what?**
 16 A Characterizing the massacre is not happening.
 17 **Q So, you -- you disagree with the opinions that**
 18 **Professor Tracy shared on his personal blog, is that an**
 19 **accurate statement?**
 20 A Yeah.
 21 **Q Which statements particularly did you disagree**
 22 **with?**
 23 A The -- that the massacre did not happen.
 24 **Q The Sandy Hook massacre? When you read**
 25 **Professor Tracy's opinion when was that?**

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1 A I think it's early December.
 2 **Q Early December? You hadn't read Professor**
 3 **Tracy's blog before December?**
 4 A Yeah, I know -- I don't think so because I
 5 know back -- was it 2013 - 2012 when there was the
 6 initial public furor over that.
 7 **Q So, you would -- did you read Professor**
 8 **Tracy's blog in 2013?**
 9 A I don't think I did. I might have glanced at
 10 it, I don't remember. I don't think I did though but I
 11 do remember I looked at it.
 12 **Q Did you ever disagree publicly with Professor**
 13 **Tracy or his opinions back in 2013?**
 14 A I don't think I published anything or --
 15 **Q Did you --**
 16 A -- if that's what you mean.
 17 **Q Did anybody on your behalf perhaps?**
 18 A No, there was the, I think the history
 19 department.
 20 **Q That's your department?**
 21 A Yeah, did a statement of some kind.
 22 **Q And what was that?**
 23 A Against the -- the -- statement against the
 24 position that he took.
 25 **Q And what was the position that Professor Tracy**

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1 **took in 2013 that the history department opposed?**
 2 A That it was a conspiracy that the -- that the
 3 Sandy Hook massacre did not occur. That it was a staged
 4 event, I guess.
 5 **Q Is that what Professor Tracy was saying back**
 6 **in 2014 or is that what the media was saying, if you**
 7 **know?**
 8 MS. HEFFNER: Objection as to form, you can
 9 answer.
 10 A I don't know the details perhaps.
 11 **Q (By Mr. Leo) Let's talk a little bit about**
 12 **your background history. When did you become a history**
 13 **teacher?**
 14 A In -- I went to grad school in 1995 and then
 15 1996 I started as a teaching assistant so as a teaching
 16 assist I guess you can say that's the start, I graduated
 17 in 2002 but I taught a class a little before then so
 18 around 2001 I would say.
 19 **Q So, about a few decades you've been treating**
 20 **history?**
 21 THE COURT REPORTER: Is that a yes?
 22 THE WITNESS: Yes.
 23 THE COURT REPORTER: Okay.
 24 **Q (By Mr. Leo) And before history what was your**
 25 **training and education in history, if any?**

106	<p>1 A Undergraduate political science and history</p> <p>2 major, undergraduate.</p> <p>3 Q And how do you learn history?</p> <p>4 A Read books.</p> <p>5 Q Okay.</p> <p>6 A And do archival research.</p> <p>7 THE COURT REPORTER: Do, sorry?</p> <p>8 THE WITNESS: Archival research.</p> <p>9 A Look at documents from the past.</p> <p>10 Q (By Mr. Leo) Is history interpretable?</p> <p>11 MS. HEFFNER: Objection.</p> <p>12 Q (By Mr. Leo) Or is there one version of</p> <p>13 history that you know universal truth so to speak of</p> <p>14 history, if that make sense?</p> <p>15 MS. HEFFNER: Objection as to form, you can</p> <p>16 answer.</p> <p>17 Q (By Mr. Leo) You understand my question</p> <p>18 you --</p> <p>19 A Yeah, I mean there's lots of different</p> <p>20 versions or yeah, everyone -- different historians</p> <p>21 interpret events through their lens.</p> <p>22 Q In your history lessons before becoming</p> <p>23 teacher did you learn of any false flag operations or</p> <p>24 events that were misreported historically in the past?</p> <p>25 MS. HEFFNER: Objection as to form, you can</p>	108
107	<p>1 answer.</p> <p>2 A Have I learned about those? Yeah.</p> <p>3 Q (By Mr. Leo) Right. Are there any examples</p> <p>4 that you can give me today of events staged or fake so</p> <p>5 to speak to achieve something?</p> <p>6 MS. HEFFNER: Objection as to form, you can</p> <p>7 answer.</p> <p>8 A Yes.</p> <p>9 Q (By Mr. Leo) What kind of examples could you</p> <p>10 give?</p> <p>11 A I'm thinking of 1939 Poland, the attack at</p> <p>12 Gleiwitz which was a radio station on the border of</p> <p>13 Germany and Poland and that was staged to look like the</p> <p>14 Poles attacked Germany so that was used as a pretext to</p> <p>15 invade Poland.</p> <p>16 Q Is there other examples around that time, too?</p> <p>17 A So, you're talking about fake, fake --</p> <p>18 Q Events that are staged --</p> <p>19 A -- events. Fake events.</p> <p>20 Q -- whether it's -- whether it's didn't</p> <p>21 happened and they said it happened or done to look like</p> <p>22 somebody else did it?</p> <p>23 MS. HEFFNER: Objection as to form, you can</p> <p>24 answer.</p> <p>25 Q (By Mr. Leo) Isn't that burning of a building</p>	109

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1 answer.

2 A The US was neutral so this was a way for

3 Roosevelt to get US involved in the war if he knew that

4 the Japanese were attacking and did not set up, did not

5 warn the navy.

6 **Q (By Mr. Leo) Right. Is there an example of**

7 **similar Pearl Harbor type of conspiracy in more modern**

8 **day?**

9 MS. HEFFNER: Objection as to form.

10 **Q (By Mr. Leo) Perhaps our life time?**

11 MS. HEFFNER: Objection as to form, you can

12 answer.

13 A The 9/11 is one.

14 **Q (By Mr. Leo) Right. Have you investigated the**

15 **9/11 Truth Movement?**

16 MS. HEFFNER: Objection as to form.

17 A I read the what was it, the New Pearl Harbor I

18 think, it's a book.

19 **Q (By Mr. Leo) You're referring to the project**

20 **for American Century something like that?**

21 A There is -- there is not -- I'm talking about

22 there is a book -- I think it's called -- yes, Griffin.

23 Yeah, the new Pearl Harbor book. That book was

24 interesting, I thought.

25 **Q (By Mr. Leo) Just to make a long story short,**

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1 **what's the theory?**

2 A So --

3 MS. HEFFNER: Objection as to form, you can

4 answer.

5 A Well, he's -- he's got a range of different

6 possibilities from you know complete government

7 knowledge of this to like Cheney knew that it was going

8 to happen and didn't either actively or did

9 countermeasures or did not you know let it go through.

10 And then they used it like the Reichstag Fire to clamp

11 down on domestic dissent.

12 **Q (By Mr. Leo) Patriot acts?**

13 A Right.

14 **Q All that. Pretext for war, would that be one**

15 **of the reasons for it?**

16 A Sure.

17 **Q How about Building 7, are you familiar with**

18 **Building 7?**

19 A Yes.

20 **Q Do you agree with the theories or disagree?**

21 MS. HEFFNER: Objection as to form, you can

22 answer.

23 A It's very troubling I think the 9/11.

24 Depending on -- I wonder about that too in Building 7

25 sure I -- yeah, I wonder.

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1 **Q (By Mr. Leo) Where was the plane?**

2 A Yeah, through the Pentagon, yeah.

3 **Q And then fast forward to 2012 December what**

4 **happened in New Town of Connecticut?**

5 MS. HEFFNER: Objection as to form, you can

6 answer.

7 A Shooter shot up the town or the school.

8 **Q (By Mr. Leo) What's your understanding of the**

9 **-- the theories about Sandy Hook?**

10 MS. HEFFNER: Objection as to form, you can

11 answer.

12 A So, I understand the theory is that there

13 wasn't a shooter that it was -- they are all staged

14 actors or it was a faked massacre which I don't

15 understand because massacres happen all the time in the

16 US.

17 **Q (By Mr. Leo) Did you investigate that theory?**

18 MS. HEFFNER: Objection as to form, you can

19 answer.

20 A I did not look into it. I didn't make it a

21 research project so, no.

22 **Q (By Mr. Leo) Did anybody at Florida Atlantic**

23 **University or in your department for example,**

24 **investigate the allegations that had been made about**

25 **Sandy Hook being a staged event?**

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1 MS. HEFFNER: Objection as to form, you can

2 answer.

3 A I did not hear of any specific research

4 projects into that so, no.

5 **Q (By Mr. Leo) Did you back in 2000 -- early**

6 **2013 when you first learned of the controversy**

7 **concerning Professor Tracy's blogging, did you**

8 **investigate Professor Tracy's blog?**

9 MS. HEFFNER: Objection as to form, you can

10 answer.

11 A I don't think I looked at it. Back in 2013 I

12 don't -- I don't believe. I don't believe I looked at

13 it then.

14 **Q (By Mr. Leo) But you participated in a letter**

15 **to Professor Tracy condemning him for his opinions?**

16 MS. HEFFNER: Objection as to form, you can

17 answer.

18 A With the department, yeah.

19 **Q (By Mr. Leo) Is it common for -- for you to**

20 **join the band wagon so to speak without actually**

21 **investigating the truth of a matter?**

22 MS. HEFFNER: Objection as to form.

23 **Q (By Mr. Leo) Such as Professor Tracy's opinion**

24 **that Sandy Hook was staged for example?**

25 MS. HEFFNER: Objection as to form, you can

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1 answer.

2 A I joined some band wagons I suppose if you

3 want to put it that way.

4 **Q (By Mr. Leo) Would you say you believe in free**

5 **speech?**

6 MS. HEFFNER: Objection as to form, you can

7 answer.

8 A Yes.

9 **Q (By Mr. Leo) You do. Do you believe that**

10 **Professor Tracy had the right to say what he said on**

11 **this personal blog?**

12 MS. HEFFNER: Objection as to form, you can

13 answer.

14 A Sure.

15 **Q (By Mr. Leo) Do you believe that Professor**

16 **Tracy should have been disciplined by the University for**

17 **his personal blogging?**

18 MS. HEFFNER: Objection as to form, you can

19 answer.

20 A If it's a personal -- my understanding if it's

21 personal then no because then it's separate. Because I

22 know he taught a class on the Holocaust as well and I

23 know there is examples of Butts(Phonetic), I believe his

24 name, he is engineering professor who also did Holocaust

25 denial and he did not -- he did not get disciplined

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1 because he did engineering and then he did the Holocaust

2 denial but he didn't talk about the Holocaust denial.

3 **Q (By Mr. Leo) In his job?**

4 A In his -- in his job, right. So, the kind of

5 professional personal didn't crossover.

6 **Q Right. Do you have any knowledge that**

7 **Professor Tracy's blog being spilled over into his own**

8 **academic or research assignments at the University?**

9 MS. HEFFNER: Objection as to form, you can

10 answer.

11 A I had heard that he had taught a class in

12 conspiracy and media is the topic area so from what I

13 understood there was crossover between the two.

14 **Q (By Mr. Leo) Based on what you were told by**

15 **who?**

16 A I think at the department meeting I would

17 image.

18 **Q Your history department?**

19 A Right. Or -- or -- I don't know if it was in

20 -- it might have been in the newspaper too or the

21 reports at the time about the you know, in the Palm

22 Beach Post or whatever.

23 **Q Did anybody in your department conducted**

24 **investigation into the varsity or truthfulness of**

25 **Professor Tracy's blogging?**

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1 MS. HEFFNER: Objection as to form, you can

2 answer.

3 **Q (By Mr. Leo) If you know.**

4 A I don't know specifically and I don't know if

5 there may have been people within the department who

6 looked more in depth at it.

7 **Q Did anybody investigate Sandy Hook?**

8 MS. HEFFNER: Objection as to form, you can

9 answer.

10 A I don't believe so.

11 **Q (By Mr. Leo) Nobody pulled the police report**

12 **from Sandy Hook that you know of?**

13 MS. HEFFNER: Objection as to form.

14 A Not that I know of.

15 **Q (By Mr. Leo) Did any of the documentaries that**

16 **have been made by hundreds and thousands of concerned**

17 **American citizens about the events in Sandy Hook, were**

18 **any of those discussed by your department or by anybody**

19 **at the University that you know of?**

20 MS. HEFFNER: Objection as to form, you can

21 answer.

22 A The documentaries about them saying that it

23 was not an actual event or an actual --

24 **Q (By Mr. Leo) Or in any way, you know there has**

25 **been a lot of documentaries that have been published,**

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1 **they are online available on YouTube took for free**

2 **viewing, do you know if any of the -- your -- your**

3 **department, the history department which seems like --**

4 **history would be right up their alley, did they actually**

5 **talk about these documentaries? Have they viewed them?**

6 **Do you know of any --**

7 A I don't believe so.

8 MS. HEFFNER: Objection as to form.

9 **Q (By Mr. Leo) Anything like that.**

10 A I don't think so.

11 **Q Has anybody indicated that in your department**

12 **that they agree with Professor Tracy's opinions or views**

13 **on Sandy Hook?**

14 MS. HEFFNER: Objection as to form, you can

15 answer.

16 A I haven't heard agreement.

17 **Q (By Mr. Leo) From anybody in your department?**

18 A Yeah.

19 **Q Anybody at the University whether it's faculty**

20 **or students, have you heard anybody say I agree with**

21 **Professor Tracy and what he has been blogging about?**

22 MS. HEFFNER: Objection as to form, you can

23 answer.

24 A I haven't -- I haven't heard any. I image

25 some that, not that I'm aware of.

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1 **Q (By Mr. Leo) If Sandy Hook was proven to be**
 2 **false, would that change your opinion about Professor**
 3 **Tracy's blogging?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 A If it was false, yeah, sure.
 7 **Q (By Mr. Leo) Would you retract your 2013**
 8 **history department condemnation?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A It's -- it's -- well, yeah, if it was false.
 12 That was a group -- that was a group action so I don't
 13 know. I wouldn't even think about doing that but I
 14 suppose --
 15 **Q (By Mr. Leo) Is there any courses --**
 16 A -- that was in the past.
 17 **Q Is there any courses at FAU or proposed**
 18 **courses concerning false flags or staged events in**
 19 **history?**
 20 MS. HEFFNER: Objection as to form, you can
 21 answer.
 22 A Not specifically about that I don't think.
 23 Although I think in -- there is a conspiracy class I
 24 believe in the honor's college, I think Dr. Strain is
 25 teaching a class on conspiracies.

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1 MS. HEFFNER: Objection.
 2 A They shouldn't.
 3 **Q (By Mr. Leo) Why is that?**
 4 A Freedom of -- academic freedom.
 5 **Q Did you ever convey your personal opinion as**
 6 **to Professor Tracy's blogging to anybody at United**
 7 **Faculty of Florida?**
 8 A Well, my personal feelings, yeah, I wrote that
 9 e-mail in December to Bob Zoeller.
 10 **Q What did you tell him?**
 11 A That I thought it was horrible that we
 12 shouldn't work with them or that I didn't want to work
 13 with them.
 14 **Q You told Zoeller "we" shouldn't meaning the**
 15 **chapter or UFF-FAU?**
 16 A I'm not sure exactly what I said. I know I
 17 didn't want to.
 18 **Q Was -- your e-mail in December was that the**
 19 **first time you conveyed those feelings to Zoeller?**
 20 A I'm not sure. That those were the most --
 21 that e-mail was the most condensed form I guess or
 22 explicit form.
 23 **Q Who is Meredith Mountford?**
 24 A She is the current president of the Union.
 25 **Q Did you speak to her about Professor Tracy's**

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1 **Q (By Mr. Leo) And do you know whether they**
 2 **teach Sandy Hook in that class?**
 3 MS. HEFFNER: Objection as to form.
 4 A I'm not sure if that's going to be part of it
 5 or not.
 6 **Q (By Mr. Leo) Do you know anything about the**
 7 **conspiracy class?**
 8 MS. HEFFNER: Objection as to form.
 9 A I talked to Dr. Strain about whether he was
 10 going to be teaching one and then -- but that was a
 11 little maybe like a year ago and then I believe it's on
 12 the books. I think in the fall I believe he was
 13 teaching it. So, we didn't really go into detail of
 14 which particular ones, which cases he is going to be
 15 looking at in the class so.
 16 **Q (By Mr. Leo) Who would make that determination**
 17 **as to what conspiracies are going to be taught in that**
 18 **class, for example?**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 A He would do that I would expect.
 22 **Q (By Mr. Leo) The professor?**
 23 A Yeah.
 24 **Q Does the administration have any say as to**
 25 **what will be taught in that class?**

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1 **discipline at any time?**
 2 A No.
 3 **Q Were you aware that Professor Zoeller was**
 4 **excluding Meredith Mountford from the grievance**
 5 **discussion concerning Professor Tracy?**
 6 A At that time I don't think she wasn't really
 7 in the grievance unit or I mean Bob, me, Michael and Tim
 8 Lenz at that time. Was she a vice president back then -
 9 - but I don't think she was -- she was not really
 10 involved in any of the grievances.
 11 **Q And you mentioned Tim Lenz but at that time in**
 12 **November 2015 he was serving only in an advisory**
 13 **capacity, isn't that right?**
 14 A Pretty much yeah.
 15 **Q So, the grievance team so to speak for you**
 16 **UFF-FAU would be Zoeller, you and Moats?**
 17 MS. HEFFNER: Objection as to form, you can
 18 answer.
 19 A Well, for FAU Zoeller and me and then Moats is
 20 advisory above --
 21 **Q (By Mr. Leo) He is with the --**
 22 A Statewide.
 23 **Q -- he is up the ladder with UFF?**
 24 A Right.
 25 **Q Does Moats work for UFF and FEA or does he**

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1 **just work for UFF, if you know?**
 2 A He might work for both I'm not entirely sure.
 3 **Q What's his title, Moats?**
 4 A I'm not sure.
 5 **Q Does service unit director sound right?**
 6 A That sounds right. I'm not totally sure but.
 7 **Q Does the Chapter UFF-FAU consider Moats to be**
 8 **a director of any kind of operation or activity within**
 9 **the chapter?**
 10 MS. HEFFNER: Objection as to form, you can
 11 answer.
 12 A My understanding it's more advisory, I don't
 13 know the -- if you're asking is he like a boss.
 14 **Q (By Mr. Leo) I'm just asking if he -- if he**
 15 **directs any activity at UFF-FAU that you know of?**
 16 MS. HEFFNER: Objection as to form, you can
 17 answer.
 18 A If he directs --
 19 **Q (By Leo) For example, grievance.**
 20 A Well, the grievance. Yeah, I mean he
 21 definitely has a big impact on what happens with the
 22 grievances because we rely on his expertise --
 23 **Q Right.**
 24 A -- whether to push the grievance up the chain.
 25 Whether it's going to be worthwhile to get to the -- the

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1 arbitration level, okay.
 2 **Q So, when Moats says to you Professor Tracy's**
 3 **situation is not grievable, you rely upon on that**
 4 **representation and his expertise --**
 5 A Yes.
 6 **Q -- on that issue?**
 7 MS. HEFFNER: Objection as to form.
 8 A Yes.
 9 **Q (By Mr. Leo) And as you testified earlier you**
 10 **relied upon Michael Moats' representations to you that**
 11 **in his opinion Professor Tracy's November 2015 Notice of**
 12 **Discipline was not grievable?**
 13 MS. HEFFNER: Objection as to form, you can
 14 answer.
 15 A Yes.
 16 **Q (By Mr. Leo) Did you ever convey your feelings**
 17 **about Professor Tracy's blogging to Michael Moats?**
 18 A I don't believe so.
 19 **Q So, you just conveyed them to Zoeller?**
 20 A I believe so, yes.
 21 (Thereupon, a short discussion was held off
 22 record.)
 23 (Deposition resumed.)
 24 **Q (By Mr. Leo) All right. Earlier we talked**
 25 **about a meeting --**

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1 MR. MEDGEBLOW: Doug said he wanted to add
 2 something?
 3 MR. LEO: Oh, okay before I ask.
 4 A I just wanted to add because you -- you had
 5 asked earlier if I had investigated any of this and it's
 6 just -- it got me thinking about I teach a Holocaust
 7 class and then so we bring up the Holocaust denial issue
 8 and the -- in '88 there was a guy who went to Auschwitz
 9 and investigated it and then submitted this report and
 10 then Holocaust deniers used it and I had a student asked
 11 me if I had read this report and it just reminded me of
 12 that. It's hard to investigate everything and then --
 13 but I agree you should --
 14 **Q (By Mr. Leo) Right.**
 15 A -- you should investigate before you judge --
 16 judge something. So, I guess I rely on other experts.
 17 **Q Okay.**
 18 A But yeah, one should look into a matter before
 19 judging it.
 20 **Q Just before I forget, we're using this**
 21 **November 30th day as the date that you met with Zoeller**
 22 **and Moats and that date comes from the e-mails, is that**
 23 **-- is that where the date come from?**
 24 A The --
 25 **Q The November 30th date?**

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1 A I believe so.
 2 **Q There's an e-mail Zoeller refers to a meeting**
 3 **yesterday and it's dated December 1st, right? Is that -**
 4 **- is that why we said November 30th or?**
 5 A So -- yes so on Monday. Monday was that that
 6 meeting.
 7 **Q Let me show you -- let me mark this as --**
 8 (Thereupon, a short discussion was held off
 9 record.)
 10 (Deposition resumed.)
 11 **Q (By Mr. Leo) For today I'm showing you what's**
 12 **been marked as PM-9. This is a message dated November**
 13 **23rd.**
 14 (Thereupon, Plaintiff's Exhibit PM-9 was
 15 entered into the record.)
 16 **Q (By Mr. Leo) And your e-mail is**
 17 **dmcgetchin@gmail, right?**
 18 A It's a Yahoo.
 19 **Q I'm sorry.**
 20 A It's a Yahoo. So that's wrong.
 21 **Q So, this e-mail didn't get to you, it's the**
 22 **November 23rd e-mail in this exhibit, you never received**
 23 **this you're saying?**
 24 A Not at that e-mail address.
 25 **Q If you'd noticed that he's -- Zoeller is the**

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1 sender of this e-mail, right?

2 A Right.

3 Q He's proposing some days to meet -- do you

4 recall meeting with Zoeller on any of these days before

5 the 30th?

6 A I don't remember doing so.

7 Q Is the November 30th meeting the only actual

8 meeting you can recall having with Zoeller and Moats

9 about Dr. Tracy?

10 A That meeting was unusual because Moats was

11 actually there and I believe Tim and I had met a few

12 times, a couple -- you know during the preceding months,

13 but that time Moats was going to be there in person.

14 But I don't remember, I don't remember -- I don't

15 remember other meetings.

16 Q Let me mark this as PM-10.

17 (Thereupon, Plaintiff's Exhibit PM-10 was

18 entered into the record.)

19 Q (By Mr. Leo) You can just take a look at that

20 communication.

21 A Yeah, this one has got the right e-mail

22 address.

23 Q I see that. So, you sent the first e-mail at

24 the top here?

25 A Looks like it, yes.

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1 Q And then at the bottom here, this is Zoeller's

2 e-mail before yours which mean you're responding to him?

3 A Yes.

4 Q Okay. So, you -- in this PM-10 you're

5 responding to Zoeller's November 24th e-mail regarding

6 availability for meeting. In this exchange here are you

7 talking about meeting to discuss Professor Tracy's

8 grievance?

9 A It doesn't look like it.

10 Q If I can direct your attention to the top

11 subject line of your original message. Do you see what

12 it says?

13 A Oh yeah, Response to Notice of Discipline.

14 Q Response to 11/10/15 Notice of Discipline.

15 A Right.

16 Q So, would you agree with me that this

17 communication is concerning Professor Tracy's Notice of

18 Discipline in November of 2015?

19 A That seems to refer to it. I don't know if

20 you have the rest of the e-mail if it refers to it.

21 Q Would you agree that the subject of this

22 exchange is concerning Professor Tracy's November Notice

23 of Discipline?

24 MS. HEFFNER: Objection as to form, you can

25 answer.

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1 A There are e-mails, we'll discuss different

2 cases in the same e-mail so -- I may not have been aware

3 if that specifically refers to it.

4 Q (By Mr. Leo) Are you aware of any other Notice

5 of Discipline issued by FAU on November 10th,

6 2015?

7 A I don't know, no. I don't know that I was

8 aware of that at the time, but yeah it looks like the

9 date matches so that's logical that it would be having

10 to do with Dr. Tracy.

11 Q Going to Zoeller's e-mail at the bottom here

12 when he says, "I'll be on campus Monday the 30th for

13 consultation," what's that mean to you?

14 A Is that referring -- that's probably the

15 consultation, there is a presidential consultation with

16 the provost.

17 Q Right.

18 A So -- and now it's I think once a semester I

19 believe is the norm so he meets with provost's

20 representative or president's representative or the

21 president.

22 Q So, on November 30th Zoeller was meeting with

23 the president of the University and the provost and

24 other representatives from the administration, is that

25 what this means?

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1 A Possibly. I'm not sure what the schedule is

2 exactly, but if that's what that consultation is, I

3 don't know if it means like a different consultation

4 with somebody else.

5 Q Do you know whether or not Zoeller met with

6 the president or the provost on the 30th?

7 A Let's see. I don't know if they did and I'm

8 thinking, I believe that meeting -- I'm not sure when

9 -- I think it was in the afternoon when I met -- so I

10 don't know if he met after, before or if he met, I don't

11 -- I don't remember.

12 Q Did he talk to you about the meeting?

13 A I don't remember him talking about it.

14 Q Is it typical for the president of UFF-FAU to

15 meet with the president of the University or the provost

16 without talking to you about the meeting?

17 A Yeah, they -- they have consultations. I know

18 it's irregularly scheduled and that -- so it's kind of

19 separate, I mean sometimes he will bring up issues and

20 grievances like that, the chapter grievance we looked at

21 earlier that type of like big issues. He could bring up

22 things like that at a consultation.

23 Q So, at a consultation the president of the

24 University will discuss grievances, is that what you're

25 saying?

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1 A I think issues, I don't know -- it seems like
 2 that's -- I mean, there's the grievance process so the
 3 chair's and provost's representative handles that
 4 grievance process but -- but I think if there is an
 5 issue that's affecting the faculty that might eventually
 6 become part of the Bargaining Agreement. Although, I
 7 don't know if -- bargaining there might -- maybe they
 8 are not supposed to talk about bargaining issues at the
 9 consultation. I'm not totally clear on that, what is or
 10 not part of the consultation, but it's basically a
 11 check-in with the administration.

12 **Q Are you familiar with Article 2 of the**
 13 **Collective Bargaining Agreement?**

14 A Does that talk about consultation? Yes. Okay,
 15 good, so there is a whole article about that.

16 **Q Why don't you to take a look and let me know**
 17 **if that refreshes your recollection as to what would**
 18 **happen at the consultation?**

19 A Okay. Once a semester, agenda items, resolve
 20 problems, but not Collective Bargaining, okay, yeah.

21 **Q Can they talk about Collective Bargaining?**

22 A They can talk about -- it looks like it's not
 23 -- you're not supposed to do bargaining during that
 24 meeting it looks like.

25 **Q But you can talk about it, you just can't**

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1 **actually bargain?**

2 A So, I think bringing up issues that might be
 3 addressed later.

4 **Q Do you know if during the November 30th**
 5 **consultation Zoeller spoke to the president about**
 6 **Professor Tracy?**

7 MS. HEFFNER: Objection as to form, you can
 8 answer.

9 A I don't know whether he did or not. I don't
 10 know.

11 **Q (By Mr. Leo) Who does the president of the**
 12 **chapter normally bring to a consultation?**

13 A I'm trying to think if I have ever been there.
 14 I don't -- I think I went to one maybe.

15 **Q With Zoeller?**

16 A I don't think I went with him. I can't
 17 remember. I don't remember. So, president -- vice
 18 president, I'm not sure who he brings. I'd imagine he
 19 bring a few people with him. But usually I don't go to
 20 those.

21 **Q Who was with Zoeller on the 30th if you know**
 22 **before your meeting?**

23 A I don't know. I would expect vice presidents.
 24 I think he would bring some people with him. I wasn't
 25 there.

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1 **Q Do you have like an office for UFF-FAU?**

2 A No, not that I know of. I think officially
 3 there is supposed to be an office, but we don't really
 4 use one.

5 **Q So, where do you guys hold meetings for the**
 6 **executive committee?**

7 A We'll meet at various classrooms, they reserve
 8 it in advance and then we'll meet in a classroom.

9 **Q Where are records for the chapter kept?**

10 A With the officers I think. The individual
 11 officers have them.

12 **Q In their offices at the University or at home?**

13 A Yeah, wherever they do their work I think.

14 **Q So, there is no central records for the**
 15 **chapter?**

16 A Not that I know of.

17 **Q And there is no central recordkeeping for the**
 18 **chapter?**

19 A That's a problem.

20 **Q That might explain how Broadfield could leave**
 21 **and take all of the grievance files for the chapter?**

22 MS. HEFFNER: Objection as to the form.

23 A Yes.

24 **Q (By Mr. Leo) Is that a problem?**

25 MS. HEFFNER: Objection as well.

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1 A I think so. I mean we should have maintained
 2 file because the administration has all those files, and
 3 I thought at one point whether we should request those
 4 from the administration like all the files but I think I
 5 brought that up to Tim and Bob at one point but I'm just
 6 keeping records going forward and then I'll them over to
 7 whoever. So, I've got electronic files and then paper
 8 files on some of the -- some of the things.

9 **Q During your meeting with Zoeller and Moats on**
 10 **the 30th was there ever a directive or did Zoeller and**
 11 **Moats ever tell you not to let Professor Tracy grieve on**
 12 **his own?**

13 A No.

14 **Q No?**

15 A And I was expecting -- usually the grievant
 16 would contact me or there would be some connection if
 17 they wanted to pursue a grievant so I would expect that
 18 that that would be sort of the next step.

19 **Q Were you aware of any attempts by Professor**
 20 **Tracy to leave UFF-FAU in late November, early December**
 21 **2015?**

22 A There was the -- I think there was an e-mail
 23 about I'm withdrawing membership so --

24 **Q So, there was an attempt?**

25 A I believe so, yes.

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1 **Q Are you aware of any efforts to stop Professor**
 2 **Tracy from leaving UFF-FAU?**
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 A I know there were other friends of Jim Tracy
 6 who have been in the Union before so I know or I believe
 7 there was outreach through that to keep him in.
 8 **Q (By Mr. Leo) Did Zoeller or Moats ever -- that**
 9 **you know of, did they ever attempt to keep Professor**
 10 **Tracy in the Union?**
 11 A I'm not sure about that.
 12 **Q Did this topic come up during your meeting in**
 13 **November 30th?**
 14 A I don't remember that. I don't - I don't
 15 think. I don't think that came up in the meeting, the
 16 issue -- I don't know when exactly the withdrawal or the
 17 quitting took place.
 18 **Q According to the e-mails he had expressed this**
 19 **interest, I'm referring to Professor Tracy, after he was**
 20 **told by Zoeller that his November Notice of Discipline**
 21 **was not grievable?**
 22 A Um-hum.
 23 MS. HEFFNER: Objection as to form, you can
 24 answer.
 25 **Q (By Mr. Leo) After that e-mail are you aware**

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1 **of anybody in particular who reached -- actually reached**
 2 **out to Professor Tracy and told him not to leave?**
 3 A Um-hum.
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 A I don't know of anyone in particular. I would
 7 expect maybe some of the Union members maybe like Chris
 8 Robe or Shane you know some of the -- maybe the people
 9 with whom he had served would reach out to him. I don't
 10 know if that happened but I would expect maybe the
 11 people who are officers when he was president would do
 12 that but I don't --
 13 **Q (By Mr. Leo) But you have any personal**
 14 **knowledge of --**
 15 A I don't know --
 16 **Q Okay.**
 17 A -- of any of the details of that.
 18 **Q Are you aware of any advice or directive from**
 19 **Michael Moats to not let Professional Tracy respond to**
 20 **any Notice of Discipline that he has been given from the**
 21 **University?**
 22 MS. HEFFNER: Objection as to form, you can
 23 answer.
 24 A So, you're saying, "Did Michael Moats tell him
 25 not to respond?"

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1 **Q (By Mr. Leo) Did Michael Moats tell anybody at**
 2 **UFF-FAU including yourself not to let Professor Tracy**
 3 **respond to a Notice of Discipline?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 A No, I would think the opposite that one should
 7 -- one should respond, one should definitely take steps
 8 to address it. So, yeah, I never heard that to
 9 completely ignore the letter.
 10 **Q (By Mr. Leo) I'm going to show you what's been**
 11 **marked as PM-11.**
 12 (Thereupon, Plaintiff's Exhibit PM 11 was
 13 entered into the record.)
 14 **Q (By Mr. Leo) This is -- for today it's PM-11,**
 15 **are you familiar with this communication?**
 16 A This doesn't look familiar, but -- but I can
 17 see it says, "Don't let Jim respond" at the bottom
 18 there.
 19 **Q And you were included on this communication**
 20 **and that's your e-mail, right, dmcgetchin?**
 21 A Yeah.
 22 **Q And this is a message from Michael Moats?**
 23 A Right. I believe, I'm expecting that means
 24 don't respond, I don't know that he is referring to the
 25 letter. Don't respond to the letter.

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1 **Q Does this refresh your recollection as to**
 2 **whether Michael Moats ever issued a directive to United**
 3 **Faculty of Florida-FAU not to respond to FAU's**
 4 **disciplinary action?**
 5 MS. HEFFNER: Objection as to form, you can
 6 answer.
 7 A This is kind of new to me. I don't -- I don't
 8 remember this.
 9 **Q (By Mr. Leo) You don't remember seeing this?**
 10 A Yeah.
 11 **Q But you would agree that that appears to be**
 12 **what Michael Moats is saying in his e-mail in this**
 13 **exhibit?**
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 A I don't know where the response, because I'm
 17 thinking maybe it means responding publicly or --
 18 **Q (By Mr. Leo) Well, what's he saying before**
 19 **that that line?**
 20 A In regards to his last work day which is six
 21 to ten day window.
 22 **Q Regarding the ten day window what does that**
 23 **sound like to you?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A Is it refer -- I guess, I would want to look
 2 at this so there is a dead -- maybe there's a deadline
 3 for this.
 4 **Q (By Mr. Leo) Are -- you're referring to the**
 5 **November notice?**
 6 A Yeah, the November. So, I don't know what
 7 this is referring to. Maybe --
 8 **Q You see the date on this e-mail?**
 9 A So, that's the 16th. So maybe there is
 10 another. This must be the termination, okay, and that
 11 was -- so, maybe that was a month after this so this
 12 would be -- so, if that was the 10th day or 11th then
 13 this was a couple -- and there was probably a 10-day
 14 window on that termination letter.
 15 **Q Are you troubled by a directive from Michael**
 16 **Moats to the president of UFF-FAU that Professor Tracy**
 17 **should not be allowed to respond to FAU's disciplinary**
 18 **action?**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 A I would expect that Jim Tracy, the grievant
 22 and Michael Moats and then Bob and then me eventually
 23 would be involved in a potential grievance if there was
 24 a grievance there. So, that -- this line doesn't
 25 trouble me. I would think he would want to have make

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1 sure everyone coordinates what the response is going to
 2 be, right?
 3 **Q (By Mr. Leo) Let's talk about at this time.**
 4 **This is after Professor Tracy receives the Notice of**
 5 **Termination, right? That's after the window closed on**
 6 **grieving the November Notice of Discipline, right?**
 7 MS. HEFFNER: Objection as to form of the
 8 question.
 9 A For 30 days, right.
 10 **Q (By Mr. Leo) Right. What was the effect of**
 11 **UFF-FAU failing to file a grievance on behalf of**
 12 **Professor Tracy by December 10th, 2015, that 30 days, if**
 13 **you know?**
 14 A So, there was no grievance filed for the
 15 November 10th.
 16 **Q Are you asking or?**
 17 A Well -- so, there is -- with no grievance
 18 being filed and no response to this. So, the
 19 administration then wrote the second letter terminating,
 20 right? So the effect is termination then.
 21 **Q Well, my question is specifically geared**
 22 **towards the Notice of Discipline and the failure to**
 23 **grieve that Notice of Discipline in November, through**
 24 **December 10th. So, after December 10th what's the**
 25 **effect of not responding or grieving the November 10th**

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1 **Notice of Discipline?**
 2 A It looks like termination is the effect --
 3 **Q And --**
 4 A -- of not dealing with this.
 5 **Q It resulted in a Notice of Termination, is**
 6 **that what you're saying?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A That's what it looks like, I mean --
 10 **Q (By Mr. Leo) After December 10th, 2015**
 11 **Professor Tracy's window to grieve the Notice of**
 12 **Discipline issued on November 10th was closed, would you**
 13 **agree with that?**
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 A Yeah, November 10th was the action so 30 days
 17 it would be December 10th.
 18 **Q (By Mr. Leo) Right. Did that failure to**
 19 **grieve result in Professor Tracy's inability to contests**
 20 **the directive that was issued on November 10th, 2015?**
 21 A Thirty -- yeah, 30 days means you can grieve
 22 the action, so yes.
 23 **Q It'd be like a default?**
 24 MS. HEFFNER: Objection.
 25 A Right, because if -- because there is -- you

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1 don't -- if you don't grieve it then it --
 2 **Q (By Mr. Leo) If you don't use it you lose it,**
 3 **right?**
 4 A Exactly.
 5 **Q Let's focus now on December now. December**
 6 **16th Michael Moats sends this message saying, "Don't let**
 7 **Jim respond." And -- I just want to be clear, to you**
 8 **that's not troubling?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A I would hope -- no, because they would all be
 12 coordinating with each other that was my understanding,
 13 they would be talking and trying to figure out what the
 14 response is rather than have one having the grievant
 15 respond you want to have a coordinated action.
 16 **Q (By Mr. Leo) Is that what actually happened**
 17 **though?**
 18 MS. HEFFNER: Objection as to the form.
 19 A My understanding, there was a UFF lawyer
 20 involved in this and then --
 21 **Q (By Mr. Leo) Is it common for UFF to assign a**
 22 **lawyer or to appoint a lawyer to represent a grievant at**
 23 **the University in the initial phase?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A The grievant can choose whether they're going
 2 to grieve it, like UFF representation they can choose
 3 their own lawyer or they can represent themselves in a
 4 grievance so.
 5 **Q (By Mr. Leo) Do you know if Professor Tracy**
 6 **was given the opportunity to choose a lawyer?**
 7 MS. HEFFNER: Objection as to the form.
 8 A That I don't know.
 9 **Q (By Mr. Leo) Who is the first person to tell**
 10 **you that a lawyer had been assigned or appointed to**
 11 **Professor Tracy?**
 12 A Bob.
 13 **Q And when did he tell you that?**
 14 A I think a little bit after this because I
 15 wrote that e-mail to him. He called me back saying we
 16 need to represent him and then I think the next step
 17 would have been to contact Dr. Tracy to coordinate a
 18 grievance but then he said that he had a lawyer now so.
 19 **Q You said -- you're saying "he" meaning**
 20 **Zoeller?**
 21 A Right.
 22 **Q Did Zoeller give you the impression that a**
 23 **grievance was going to be filed on Professor Tracy's**
 24 **behalf by anybody, whether it's the chapter or his Union**
 25 **employment lawyer?**

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1 A I thought so that there would be, for
 2 termination obviously is very serious so that there
 3 would be some action and that there was a -- the lawyers
 4 were on it or were part of, it's kind of above a
 5 grievance.
 6 **Q Does it concern you that no grievance was ever**
 7 **filed on Professor Tracy's behalf by either the chapter,**
 8 **Zoeller or the Union appointed attorney?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A For the -- for the termination?
 12 **Q (By Mr. Leo) Right. Does that -- does that**
 13 **concern you?**
 14 A There -- if there was -- yeah, no, no, push
 15 back of about the termination, I guess it would depend
 16 on what the lawyers determined if there was a standing
 17 or a reason to object it -- object to it and I would --
 18 I mean I don't know the law for those details but.
 19 **Q Regarding your duties and responsibilities as**
 20 **grievance chair do you have any say or input in or as to**
 21 **whether a grievance is filed by the chapter?**
 22 A I can recommend whether one is or not. Usually
 23 it goes like I'll -- I will look over the grievance and
 24 look at the contract and then usually it's between four
 25 people really, the grievant, me, Bob and Michael.

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1 **Q Moats?**
 2 A Moats, right.
 3 **Q Okay.**
 4 A Over if a grievant -- if a grievance is going
 5 to go forward. And I mean there is also a degree
 6 instead of how much any of those people are pushing for
 7 except the grievant is really adamant and say Michael
 8 doesn't think it'll fly in arbitration then that could -
 9 - we might file it anyway or vice versa, yeah.
 10 **Q Did anybody ever say that Professor Tracy was**
 11 **a liability to the Union?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 **Q (By Mr. Leo) Or to UFF-FAU?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A Did anyone say that to me? Umm--
 18 **Q (By Mr. Leo) If you know.**
 19 A I don't think so, I mean --
 20 **Q Did anybody ever say that Professor Tracy**
 21 **should be gone?**
 22 MS. HEFFNER: Objection as to form, you can
 23 answer.
 24 **Q (By Mr. Leo) Anybody from United Faculty of**
 25 **Florida particularly, did anybody tell you that they**

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1 **thought that Professor Tracy should have his employment**
 2 **terminated?**
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 A I don't think so.
 6 **Q (By Mr. Leo) Nobody said that to you? Did you**
 7 **ever say that to anybody?**
 8 A I said that I did not want to represent him
 9 but I don't believe I said he should be gone --
 10 **Q Did you ever say that --**
 11 A -- because --
 12 **Q -- he was a liability?**
 13 A Probably.
 14 **Q And why would you say that?**
 15 A Because of the controversy of the Sandy Hook
 16 issue.
 17 **Q And how would that be a liability?**
 18 A Because it's -- because it's a sensitive topic
 19 for victims.
 20 **Q Going back to the free speech issue. How does**
 21 **-- how does your feeling about -- about that? About what**
 22 **he said? How does that work with your views on free**
 23 **speech?**
 24 A Yeah, I know it's all Voltaire idea of you
 25 know defending someone who you disagree, you disagree

<p style="text-align: right;">146</p> <p>1 with them, but then you fight for their right to say it.</p> <p>2 Q And there is more at stake here, isn't there?</p> <p>3 MS. HEFFNER: Objection as to form, you can</p> <p>4 answer.</p> <p>5 A In this particular case you're talking about?</p> <p>6 Q (By Mr. Leo) Yeah.</p> <p>7 A If -- if he is fired because of the free</p> <p>8 speech issue?</p> <p>9 Q Right.</p> <p>10 A If -- if there is a free speech issue at</p> <p>11 stake, if that's the reason for the firing, I can see</p> <p>12 that.</p> <p>13 Q Would you agree that as a tenured faculty</p> <p>14 member there is also a lot more at stake in that realm?</p> <p>15 MS. HEFFNER: Objection as to form, you can</p> <p>16 answer.</p> <p>17 A So, with the idea of if someone is terminated</p> <p>18 for speaking out in a certain way, if their</p> <p>19 constitutional rights are not -- are not honored then</p> <p>20 you can continue to fire people until you get a small</p> <p>21 group of ideologically.</p> <p>22 THE COURT REPORTER: Can you please speak up?</p> <p>23 Q (By Mr. Leo) I'm really -- I'm mean I'm trying</p> <p>24 to separate the two. Free speech from tenure, if</p> <p>25 possible. The issue with tenure, aren't tenured faculty</p>	<p style="text-align: right;">148</p> <p>1 on tenure at FAU?</p> <p>2 MS. HEFFNER: Objection as to form, you can</p> <p>3 answer.</p> <p>4 A If it was a first amendment issue then I would</p> <p>5 be concerned.</p> <p>6 Q (By Mr. Leo) What can a tenured faculty member</p> <p>7 be terminated for at FAU?</p> <p>8 MS. HEFFNER: Objection as to form, you can</p> <p>9 answer.</p> <p>10 A Misconduct I think. So, breaking -- breaking</p> <p>11 the law, you know doing umm--</p> <p>12 Q (By Mr. Leo) Is there anything else?</p> <p>13 A I'm sure there is a list of things not to do.</p> <p>14 Q Where would that be?</p> <p>15 A Probably faculty handbook, university policy.</p> <p>16 Q Are you aware of any law that Professor Tracy</p> <p>17 broke at any time?</p> <p>18 MS. HEFFNER: Objection as to form, you can</p> <p>19 answer.</p> <p>20 A The -- filing the form I believe. Well,</p> <p>21 that's not a law outside the university.</p> <p>22 Q (By Mr. Leo) So, are you saying that Professor</p> <p>23 Tracy violated Article 19 the outside activities policy?</p> <p>24 MS. HEFFNER: Objection as to form, you can</p> <p>25 answer.</p>
<p style="text-align: right;">147</p> <p>1 protected more so than a non-tenured faculty member?</p> <p>2 MS. HEFFNER: Objection as to form, you can</p> <p>3 answer.</p> <p>4 A Yes.</p> <p>5 Q (By Mr. Leo) If you know.</p> <p>6 A Yes. Well, are you talking about what they</p> <p>7 can say? I mean.</p> <p>8 Q (By Mr. Leo) No, with respect to their job</p> <p>9 and --</p> <p>10 A Sure, I mean --</p> <p>11 Q -- and what could be grounds from termination</p> <p>12 or discipline of a tenured faculty member?</p> <p>13 MS. HEFFNER: Objection as to form, you can</p> <p>14 answer.</p> <p>15 A Non-tenured faculty don't have a guaranty of</p> <p>16 continuing courses and employment so.</p> <p>17 Q (By Mr. Leo) Like an at will -- at will</p> <p>18 employee basically?</p> <p>19 A Right.</p> <p>20 Q They can just be done away with a lot easier</p> <p>21 than a tenured faculty member, right?</p> <p>22 A Yes.</p> <p>23 MS. HEFFNER: Objection as to form.</p> <p>24 Q (By Mr. Leo) Do you have any concerns about</p> <p>25 the effect of Professor Tracy's termination in this case</p>	<p style="text-align: right;">149</p> <p>1 A That's what the administration is saying,</p> <p>2 right, that's the charge I believe.</p> <p>3 Q (By Mr. Leo) That's what the FAU</p> <p>4 administration accused Professor Tracy of doing,</p> <p>5 correct?</p> <p>6 MS. HEFFNER: Objection as to form.</p> <p>7 A That's -- that's my understanding of it.</p> <p>8 Q (By Mr. Leo) Failing to follow the outside</p> <p>9 activities policy?</p> <p>10 MS. HEFFNER: Objection as to form, you can</p> <p>11 answer.</p> <p>12 A Correct.</p> <p>13 Q (By Mr. Leo) That's your understanding based</p> <p>14 on what you've read?</p> <p>15 MS. HEFFNER: Objection as to form.</p> <p>16 A Correct. Yes.</p> <p>17 Q (By Mr. Leo) And if the outside activity</p> <p>18 policy was being used in a way that it cannot be used by</p> <p>19 the University would you agree that the firing was</p> <p>20 unjustified?</p> <p>21 MS. HEFFNER: Objection as to form, you can</p> <p>22 answer.</p> <p>23 A If it was not used, umm-- yes, so if any of</p> <p>24 these articles are not used according to what how --</p> <p>25 Q (By Mr. Leo) Let me -- I can rephrase. If</p>

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1 **Article 19 was being used by Florida Atlantic University**
 2 **to target Professor Tracy's constitutionally protected**
 3 **speech to require Professor Tracy to report his opinions**
 4 **and his viewpoints is expressed online on his own time,**
 5 **on his personal blog. If that's how the policy was**
 6 **being used would you agree that the firing in discipline**
 7 **on those grounds would be unjustified?**
 8 MS. HEFFNER: Objection as to form, you can
 9 answer.
 10 A If that was the case, I don't know if that's
 11 the case but sure
 12 **Q (By Mr. Leo) Have you conducted an**
 13 **investigation into whether or not that was the case --**
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 **Q (By Mr. Leo) -- in this case?**
 17 MS. HEFFNER: Objection as to form, you can
 18 answer.
 19 A No.
 20 **Q (By Mr. Leo) Do you know if anybody at FAU has**
 21 **conducted an investigation as to whether or not the**
 22 **outside activities policies is being used to target**
 23 **constitutionally protected speech?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A I would expect faculty who are subjected to
 2 that or faculty would it up if there was a problem.
 3 **Q (By Mr. Leo) Right. But my question is --**
 4 **have -- are you aware of anybody at FAU who has actually**
 5 **investigated that allegation that I just made?**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A No, or -- yeah, well --
 9 **Q (By Mr. Leo) No or no, but you're not aware of**
 10 **anything?**
 11 A You're talking about did Bob and Michael
 12 investigate it?
 13 **Q Anybody. I'm asking about anybody in general.**
 14 **Do you know if anybody who's investigated whether or not**
 15 **Article 19 the outside activities conflict of interest**
 16 **policy of FAU is being used unlawfully?**
 17 MS. HEFFNER: Objection as to form, you can
 18 answer.
 19 A So, did anyone investigate? Is it -- I'm
 20 confused -- so the investigation -- so there is no
 21 investigation --
 22 **Q (By Mr. Leo) I'm asking you if you are aware**
 23 **of anybody who's investigated whether or not Article 19**
 24 **conflict of interest/outside activities policy is or was**
 25 **being used unlawfully?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A There was that chapter grievance so --
 4 **Q (By Mr. Leo) You're talking about the April**
 5 **2016 grievance?**
 6 A Right. Right. So --
 7 **Q But was that -- was that part of an**
 8 **investigation?**
 9 A What do you mean by -- there are faculty
 10 concern with it then --
 11 **Q Do you know what an investigation is?**
 12 A Not -- no, are you using -- do you mean like
 13 a --
 14 **Q What does investigation mean to you?**
 15 A I guess it means there is people looking into
 16 it. I don't know if there is a -- like official agency
 17 doing it or one person -- I don't know if that counts as
 18 an investigation. So, I guess I think with that
 19 grievance Bob was looking into it the senate -- there
 20 were some people looking into this whole issue. People
 21 in the political science, so, I guess then I think about
 22 it those people would be investigating it. I don't know
 23 if there is a group investigating it. Maybe there is a
 24 committee in the senate. They might have been looking
 25 into that issue of --

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1 **Q Sounds like you're doing -- speculating.**
 2 A I am.
 3 **Q Do you know, your personal knowledge of any**
 4 **-- anybody looking into whether Article 19 conflict of**
 5 **interest/outside activities policy is being or was being**
 6 **used unlawfully?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A Was being -- investigation. I don't quite
 10 understand, but --
 11 **Q (By Mr. Leo) What don't you understand?**
 12 A So, you're asking if someone was investigating
 13 whether --
 14 **Q I'm asking whether or not you know of anybody**
 15 **who was looking into -- I'm using your words to describe**
 16 **what investigation means to you, was looking into**
 17 **whether or not Article 19 conflict of interest/outside**
 18 **activities policy was being used unlawfully by FAU?**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 A I don't -- I don't know of a investigation I
 22 guess.
 23 **Q (By Mr. Leo) So, the answer would be no,**
 24 **right?**
 25 A I think so.

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1 **Q You're not aware of anybody who said to you,**
 2 **"Doug, I'm going to go and take a look at the history of**
 3 **the use of this policy," --**
 4 MS. HEFFNER: Objection as to form.
 5 **Q (By Mr. Leo) -- for example.**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A Well, the fact that there is that chapter
 9 grievance shows that people were looking into it.
 10 So --
 11 **Q (By Mr. Leo) In April of 2016 chapter**
 12 **grievance shows that who was looking into the policy?**
 13 A The senate. You're asking about the Union or
 14 the -- is it senate?
 15 **Q I'm asking about anybody at FAU?**
 16 A So, Senate.
 17 **Q Are you talking --**
 18 A Kevin Wagner.
 19 **Q Are you -- are you talking about personal**
 20 **knowledge or you're speculating?**
 21 A Well, I remember at that -- the meeting Kevin
 22 Wagner was concerned with that issue and so --
 23 **Q Which meeting?**
 24 A The senate meeting.
 25 **Q In 2015? September?**

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1 A I don't know if that's the one but there is a
 2 senate meeting when that was addressed.
 3 **Q Do you remember what Christopher Beetle did at**
 4 **that meeting concerning the Article 19 outside**
 5 **activities policy?**
 6 A I think he said they're going to re-look at it
 7 or revise, I think there was something about that.
 8 **Q They tabled the issue, right?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A That sounds right. So, in other words they're
 12 pulling back, they are not pushing the same list of
 13 requirements. That they're going to look at it.
 14 They're going to revisit the whole issue.
 15 **Q (By Mr. Leo) Do you remember Christopher**
 16 **Beetle -- do you remember an academic freedom in due**
 17 **process committee request regarding the Article 19**
 18 **conflict of interest/outside activities policy at that**
 19 **senate faculty meeting?**
 20 A It could be.
 21 **Q Do you remember multiple faculty members**
 22 **asking for a committee to be formed to investigate the**
 23 **Article 19 outside activities policy?**
 24 MS. HEFFNER: Objection as to form.
 25 A There was Derosa I think. There was Kevin

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1 Wagner, Kevin Lanning I think maybe spoke.
 2 THE COURT REPORTER: Kevin who?
 3 A Lanning. Lanning. I don't specifically
 4 remember committee but that would sound right.
 5 **Q (By Mr. Leo) These were professors at the**
 6 **University you named?**
 7 A Yes.
 8 **Q Okay. Also, tenured faculty members?**
 9 A Yes.
 10 **Q Derosa was the first one you mentioned.**
 11 A Right.
 12 **Q Is there a constitutional law professor?**
 13 A He is a political science professor and I
 14 believe he was senate. He had positions in faculty
 15 governance so he probably -- that sounds right. I don't
 16 know for sure.
 17 **Q He was the one who called Article 19 a prior**
 18 **restraint at that meeting, right?**
 19 MS. HEFFNER: Objection as to form.
 20 A Okay.
 21 **Q (By Mr. Leo) Does that --**
 22 A I don't remember that.
 23 **Q -- that sound right?**
 24 A I don't remember that form -- that term but
 25 that sounds plausible.

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1 **Q Did anybody after that meeting at United**
 2 **Faculty of Florida investigate whether Article 19 was**
 3 **being used as a prior restraint by the University?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 **Q (By Mr. Leo) If you know.**
 7 A Not that I know of.
 8 **Q Did anybody investigate at United Faculty of**
 9 **Florida whether the conflict of interest policy and out**
 10 **activities policy was being used unlawfully in anyway?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A Not that I know of.
 14 **Q (By Mr. Leo) If the University asked you to**
 15 **submit one of these outside activities forms for your**
 16 **opinion expressed on your own personal Twitter, would**
 17 **you agree that that would be outside the scope of**
 18 **Article 19 outside activities policy?**
 19 MS. HEFFNER: Objection as to form, you can
 20 answer.
 21 A Let's see. So, I'm not getting compensated
 22 for it and if it's -- if it's not related to my
 23 discipline then I wouldn't see how it would be relevant.
 24 But you're saying if my chair specifically asked me to
 25 do that?

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1 **Q (By Mr. Leo) Right.**
 2 A Then I would question that and I would look
 3 up.
 4 **Q Would you object?**
 5 A Well, I'd look at the rules in more detail and
 6 see if they object it or if they cross that or not
 7 but --
 8 **Q Let me give you an example. Let's say you**
 9 **Tweeted about gun control. You think that all American**
 10 **should be subjected to more restrictions on the right to**
 11 **bear arms. Was that something I assume that you might**
 12 **say on Twitter?**
 13 MS. HEFFNER: Objection as to form.
 14 A Sure.
 15 **Q (By Mr. Leo) Okay. Let's say that there was**
 16 **one tweet in particular about gun control that your**
 17 **supervisor at FAU saw and said and then they approached**
 18 **you and you said, "Doug, have you submitted your outside**
 19 **activities form for your Twitter so we can approve your**
 20 **opinion on gun control"?**
 21 A Um-hum.
 22 MS. HEFFNER: Objection as to form.
 23 **Q (By Mr. Leo) Would you think that that**
 24 **directive would be unlawful?**
 25 MS. HEFFNER: Objection as to form, you can

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1 answer.
 2 A That sounds like it. Sounds like it would be.
 3 **Q (By Mr. Leo) It would be unlawful?**
 4 A Because I would want to look at the rules more
 5 specifically but I'm not getting compensated for that.
 6 **Q So, you shouldn't have to report it, right?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A Correct. But I don't know that that's a
 10 conflict of interest.
 11 **Q (By Mr. Leo) That's a good question is it a**
 12 **conflict of interests with the University your personal**
 13 **opinion on a matter of public concern?**
 14 MS. HEFFNER: Objection as to form, you can
 15 answer.
 16 A Probably not, yeah, because all of those
 17 things would be protected.
 18 **Q (By Mr. Leo) Protected by what?**
 19 A Constitution.
 20 **Q And if the University asked you to submit your**
 21 **constitutionally protected personal opinions to your**
 22 **administration for approval, would you agree that that**
 23 **would be a violation of Article 5.2(d)?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A Well, that's constitutional. So, that would
 2 be a violation. I don't know how you would target a
 3 particular opinion in this though.
 4 **Q (By Mr. Leo) You're referring to the form?**
 5 A Right.
 6 **Q You're saying you don't know how you would**
 7 **report your opinion?**
 8 A Yes. Description -- description of employment
 9 activity so like a conference or I guess what Twitter
 10 account that's the --
 11 **Q Are you trying to figure out how to -- how you**
 12 **would disclose --**
 13 A Yeah.
 14 **Q -- your personal opinions on Twitter on a**
 15 **report of outside employment activity form?**
 16 MS. HEFFNER: Objection as to form.
 17 A Because I don't think -- and I can see, I
 18 think I see what you're saying.
 19 **Q (By Mr. Leo) What am I saying?**
 20 A That if it's constitutionally protected it
 21 shouldn't be reportable on here.
 22 **Q What's the purpose to this form?**
 23 A I think it's to keep people focused on their
 24 work to keep -- to limit the outside activity so FAU is
 25 not supporting people going on their own private lecture

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1 circuit or --
 2 **Q What are you basing these thoughts on?**
 3 A I guess I should look up to see what the
 4 policy is. You know, I've submitted in the past so --
 5 and I've never -- I guess personal experience, right
 6 that I have not had to submit one of these for personal
 7 statements. But I have -- I did submit them for
 8 lectures, conferences, those kinds of things.
 9 **Q When you're on your Twitter and your Facebook**
 10 **where do you typically post online from?**
 11 MS. HEFFNER: Objection as to form, you can
 12 answer.
 13 A Home usually.
 14 **Q (By Mr. Leo) Do you ever post on Facebook or**
 15 **Twitter using school equipment?**
 16 MS. HEFFNER: Objection as to form, you can
 17 answer.
 18 A Not usually. But I probably have one -- once
 19 or twice although probably not because usually when I'm
 20 in the office I have office hours, ready -- getting
 21 ready for class and usually I try to stay away from any
 22 of that stuff so I probably, I mean it's possible.
 23 Actually you know my Facebook, I don't think I have the
 24 code for it in my computer at work. But I do lots of
 25 work at home. So, I guess you could say that's my

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1 office. I think so.
 2 **Q (By Mr. Leo) Do you have a school computer?**
 3 A I do.
 4 **Q Is it a laptop or a PC?**
 5 A It's a PC desk.
 6 **Q Do you have a laptop as well?**
 7 A I do. It's a --
 8 **Q Was that -- is it school equipment?**
 9 A No, it's mine.
 10 **Q It's your own. Have you been issued a laptop?**
 11 A No.
 12 **Q Do you use the University's WiFi when you're**
 13 **at the University?**
 14 A Yes.
 15 **Q Do you have WiFi on your phone when you're at**
 16 **the University?**
 17 A Yes.
 18 **Q That's connected to the school WiFi?**
 19 A Yes.
 20 **Q And do you ever send a Facebook post or a**
 21 **tweet from the University WiFi?**
 22 MS. HEFFNER: Objection as to form.
 23 A Probably not. It's possible but usually when
 24 I'm at the university I'm too busy.
 25 **Q (By Mr. Leo) And if you were going to use the**

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1 **public concern with your supervisor for approval, right?**
 2 MS. HEFFNER: Objection as to form.
 3 A Right and that was the issue at the senate
 4 meeting that there would need to be prior --
 5 **Q (By Mr. Leo) That would be a prior restraint,**
 6 **is that what you're trying to say?**
 7 MS. HEFFNER: Objection as to form, you can
 8 answer.
 9 A Yes.
 10 **Q (By Mr. Leo) Going back to the first**
 11 **amendment. Are you familiar with the first amendment?**
 12 A Free speech, press, religion, isn't that in
 13 there, too?
 14 **Q And freedom of speech is that something that**
 15 **you believe in?**
 16 MS. HEFFNER: Objection as to form.
 17 A Sure. Yes.
 18 **Q (By Mr. Leo) Do you believe that your UFF-FAU**
 19 **members have the right to freedom of speech?**
 20 MS. HEFFNER: Objection as to form.
 21 A Constitution says yes, yes.
 22 **Q (By Mr. Leo) And would you defend them**
 23 **regardless of your view points or disagreement with**
 24 **their viewpoints pursuant to your duty as a grievance**
 25 **chair?**

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1 **University WiFi or hotspot to share your opinion on a**
 2 **matter of public concern for example, would you first**
 3 **fill out the outside activity form to get permission**
 4 **from your supervisor before doing that?**
 5 MS. HEFFNER: Objection as to form, you can
 6 answer.
 7 A I guess the key -- I wouldn't. And the key
 8 part is the employee -- no one is paying me to give
 9 those opinions, so I don't see that as an employment
 10 that's a outside -- that's a personal activity, that's
 11 not a professional activity.
 12 **Q (By Mr. Leo) Right. And if you were out at**
 13 **your place of work, you're at FAU on your work computer,**
 14 **but you were not on the clock, you're done with your**
 15 **duties for the day and you decided you wanted to go on**
 16 **to Palm Beach Post or a local newspaper to share your**
 17 **thoughts or your opinions about a matter of public**
 18 **concern, for example, would you first submit to your**
 19 **supervisor an outside activity form for what you're**
 20 **about to do on online?**
 21 MS. HEFFNER: Objection as to form, you can
 22 answer.
 23 A This wouldn't be appropriate, I don't think.
 24 **Q (By Mr. Leo) It wouldn't be appropriate to**
 25 **share your opinion or your thoughts on a matter of**

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1 A Yes.
 2 MS. HEFFNER: Objection as to form.
 3 A Although I have to say that the e-mail would
 4 say no to that.
 5 **Q (By Mr. Leo) What e-mail?**
 6 A The -- I sent an e-mail in December saying I
 7 don't want to defend Tracy.
 8 **Q Let me see if I have that one.**
 9 A But I agree that --
 10 **Q You agree with what?**
 11 A -- I should defend regardless of the --
 12 regardless of the position, you know the -- it doesn't
 13 matter what the position is. Although, I don't know I
 14 guess there would be some like the fire in a crowded
 15 room.
 16 **Q But that wouldn't be protected speech, would**
 17 **it?**
 18 A If it's going to lead to destruction it
 19 would --
 20 **Q Harm to others?**
 21 A Yeah.
 22 **Q Going back to your e-mail, I'm going to show**
 23 **you what's been marked as PM-12.**
 24 (Thereupon, Plaintiff's Exhibit PM-12 was
 25 entered into the record.)

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1 **Q (By Mr. Leo) Is this the e-mail that you were**
 2 **referring to?**
 3 A Right. So, I don't want to represent him it
 4 says. So, when I wrote this that was a wrong position
 5 to take.
 6 **Q I'm sorry, say what?**
 7 A That was wrong of me to say that, that I would
 8 not.
 9 **Q So, you're -- and you're referring to PM-12**
 10 **just for the record, this is an e-mail that was sent by**
 11 **you?**
 12 A Yes.
 13 **Q And who did you send it to?**
 14 A To president Bob Zoeller.
 15 **Q Did Zoeller respond to this e-mail?**
 16 A He did. He called me -- I think the next day
 17 or, when was this, 17th? He called me within a day or
 18 two.
 19 **Q And what did he say?**
 20 A And his -- he said that even though I don't
 21 -- even though, you know, it doesn't matter if I don't
 22 want to represent him the Union needs to represent him
 23 so -- and that point about disagreement or not agreeing
 24 -- even if you don't agree you still have to represent
 25 so --

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1 think I had not talked to him yet.
 2 **Q Can I -- I just want to ask you looking at**
 3 **both of these e-mails which came first PM-12 or PM-13?**
 4 (Thereupon, Plaintiff's Exhibit PM-13 was
 5 entered into the record.)
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A Looks like PM-12.
 9 **Q (By Mr. Leo) You sent PM-12 first?**
 10 A 7:00 and then the other one is 10:00, 7
 11 o'clock, 10 o'clock.
 12 **Q This was sent in the morning?**
 13 A Yeah, apparently.
 14 **Q Okay. Just -- and for the record these**
 15 **communications were dated December 17th, 2015, would you**
 16 **agree that this is after the window had closed to grief**
 17 **the November 10th, 2015 notice of discipline?**
 18 MS. HEFFNER: Objection as to form, you can
 19 answer.
 20 A Because November 10th so that would be
 21 December 10th so this is after.
 22 **Q (By Mr. Leo) So, you agree with me that the**
 23 **window was already closed in grieving the November**
 24 **discipline?**
 25 MS. HEFFNER: Objection as to form, you can

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1 **Q So, Zoeller told you that it was wrong to not**
 2 **defend Professor Tracy, is that what you're saying?**
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 A Yes.
 6 **Q (By Mr. Leo) Did Zoeller tell you what the**
 7 **chapter was doing for Professor Tracy at this time?**
 8 MS. HEFFNER: Objection as to form.
 9 A I'm not sure exactly. I think the lawyers
 10 were involved, the Union lawyers were involved at this
 11 point.
 12 **Q (By Mr. Leo) Are you saying that that they had**
 13 **found him a lawyer on December 17th already?**
 14 MS. HEFFNER: Objection as to form.
 15 A I'm not sure of the timing of it. It might
 16 have been that we need to move forward so let's work on
 17 the grievance. My memory of the conversation with him
 18 was we need to work on it. We need to work on it and
 19 that this position was not what I should -- this is not
 20 the position I should be having, like I should
 21 represent --
 22 **Q Let me just show you one more, one more**
 23 **message from the -- it looks like the same day. Is that**
 24 **some of the e-mail you sent?**
 25 A It looks like it. This is -- okay, yes, I

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1 answer.
 2 A Although -- I don't know if this is -- is this
 3 for the termination? Because if this is for the
 4 termination then this would be about a week after the
 5 termination so that would be another 30 days. So, the
 6 January 30th or January 10th.
 7 **Q (By Mr. Leo) So, you're referring to the**
 8 **notice of termination in December?**
 9 A Right, whenever that was --.
 10 **Q Do you remember what date that was?**
 11 A Is it -- I'm guessing it's what 14th, 16th,
 12 10th, 11th.
 13 **Q Does December 16 sound about right?**
 14 A That sounds -- that sound right because that
 15 would be past the 30 days.
 16 (Thereupon, Plaintiff's Exhibit PM-14 was
 17 entered into the record.)
 18 **Q (By Mr. Leo) I'm going to show you what's been**
 19 **marked as PM-14. Does that refresh your recollection as**
 20 **to when the notice of proposed discipline termination**
 21 **was issued by FAU for Professor Tracy?**
 22 A Looks like the 16th and then so the 17th is
 23 the other, yeah, so it's right after.
 24 **Q In FAU's notice of termination dated December**
 25 **16th, the basis for termination was failure to comply**

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1 with directives that were issued on November 10th, 2015,
 2 right?
 3 A Right.
 4 **Q So, how could Professor Tracy or UFF-FAU**
 5 **grieve this notice of termination after they missed the**
 6 **window to grieve the directive that was issued on**
 7 **November 10th, 2015?**
 8 MS. HEFFNER: Objection as to form, you can
 9 answer.
 10 A I think -- well, this was a new event so this
 11 would start a new clock.
 12 **Q (By Mr. Leo) A clock with respect to this**
 13 **notice?**
 14 A Right.
 15 **Q But as you testified earlier the November**
 16 **10th, 2015 notice the clock was missed, right?**
 17 MS. HEFFNER: Objection as to form.
 18 A There was no grievance filed --
 19 **Q (By Mr. Leo) There was no grievance filed?**
 20 A -- before in that 30-day.
 21 **Q So, how could a grievance be filed with**
 22 **respect to this notice of termination --**
 23 A Also --
 24 **Q -- that stems from in November of 2015 that**
 25 **was never objected to or grieved?**

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1 MS. HEFFNER: Objection as to form, you can
 2 answer.
 3 A Well, this is a new event. It's --
 4 **Q (By Mr. Leo) How is it new?**
 5 A Because it's a letter, a new letter and it's a
 6 new -- it's asking for new or it's initiating new
 7 termination. So, that's a --
 8 **Q If the December 16th proposed discipline is**
 9 **termination and it's based on the November 2015**
 10 **directive which was never grieved, how could you then**
 11 **grieve again if you've missed your window?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A One thing that comes to mind is, is it
 15 proportional so that the discipline needs to be
 16 progressive so is it -- has there been progressive
 17 discipline? So that might be one reason.
 18 **Q (By Mr. Leo) So, you can only grieve at this**
 19 **point the nature of the discipline?**
 20 A I don't know about that, if that's the only
 21 thing.
 22 **Q Could you grieve the directive from November**
 23 **of 2015?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 **Q (By Mr. Leo) Having missed that window**
 2 **obviously, that's my question.**
 3 MS. HEFFNER: Objection as to form, you can
 4 answer.
 5 A Well, this says Article 16, so let's see what
 6 Article 16 -- a disciplinary action, so I guess I would
 7 want to look at disciplinary action and then see if
 8 there is something in there that if that letter
 9 violates. So just cause Incompetence or Misconduct 16.1
 10 and then at 16.2 Progressive Discipline. So, I think
 11 you can question this based on the grievant.
 12 **Q (By Mr. Leo) Looking at this today, given**
 13 **everything you're looking at in front of you, right,**
 14 **does it look like the University had just cause to**
 15 **terminate Professor Tracy?**
 16 MS. HEFFNER: Objection as to form, you can
 17 answer.
 18 A So with Progressive Discipline it is usually
 19 there is a letter then there is usually suspension and
 20 then I think it's three, usually three, and then
 21 termination -- so termination should not be the first
 22 thing so this was the first thing, this is where the
 23 past track record would play in. So, if there is a past
 24 progressive -- so, is it progressive?
 25 **Q (By Mr. Leo) I'm asking you.**

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1 A That's what I would want to and see I don't
 2 have, I don't know what the past, I don't have a record
 3 of the past --
 4 **Q So, you're saying you can't make that**
 5 **determination?**
 6 A I guess I would -- I would want to know from
 7 the grievant what are past, I would -- the grievant must
 8 have this information.
 9 **Q To go back to my question, looking at what**
 10 **you're seeing today though, does it look like FAU had**
 11 **just caused to terminate Professor Tracy?**
 12 MS. HEFFNER: Objection as to form, you can
 13 answer.
 14 A If this was -- if the November 10th letter
 15 what was all there was, so not filling in outside
 16 employment forms that does not seem just as a reason for
 17 termination. But --
 18 **Q (By Mr. Leo) So, are you saying that it's not**
 19 **just cause?**
 20 MS. HEFFNER: Objection as to form.
 21 A If this is it but then there is -- there are
 22 prior letters I guess I would want to know what the
 23 prior letters are and may be this termination letter
 24 talks about it. I don't know if it says there are prior
 25 letters in here.

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1 **Q (By Mr. Leo) Take a look.**
 2 A So, it's just mentioning 2015. So, it -- I
 3 don't see any reference to progressive to like earlier
 4 so it looks like it's just referring to this one.
 5 Although, but then it says the activity forms and Dean
 6 Coltman required you to submit, that's the letter. All
 7 right.
 8 **Q (By Mr. Leo) So, was there or was there not**
 9 **just cause?**
 10 MS. HEFFNER: Objection as to form, you can
 11 answer.
 12 A So, I'm not seeing -- I don't see a reference
 13 in here to a prior thing maybe I missed it. So, it
 14 seems to be just referring to this. So, umm--
 15 **Q (By Mr. Leo) Yes, no?**
 16 A So, you're asking, is this justified based on
 17 this?
 18 **Q Right. My question is did the University have**
 19 **just cause to terminate Professor Tracy?**
 20 MS. HEFFNER: Objection as to form, you can
 21 answer.
 22 A So, it says incompetence or misconduct. I
 23 don't know. I guess grieve it.
 24 **Q (By Mr. Leo) I'm sorry?**
 25 A Grieve it. I don't know, I want to get better

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1 opinion.
 2 **Q Are you saying you don't know whether there**
 3 **was just cause?**
 4 A I don't know.
 5 **Q Is this the first time that that you've had to**
 6 **make a determination as to whether there was just cause**
 7 **to terminate Professor Tracy?**
 8 MS. HEFFNER: Objection as to form, you can
 9 answer.
 10 **Q (By Mr. Leo) You want me to rephrase?**
 11 A So, I don't know --
 12 **Q You don't know if this was the -- today is the**
 13 **first time you've been asked to make a determination as**
 14 **to whether there was just cause?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A So, we discussed it at the meeting.
 18 **Q (By Mr. Leo) The November 30th meeting?**
 19 A And then --
 20 **Q I'm sorry. Let me just stop you for a second.**
 21 **You discussed whether there was just cause to**
 22 **terminate --**
 23 A No, that was --
 24 **Q -- before he was terminated?**
 25 A -- before this so I guess I did not look at

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1 this termination so I don't think I looked at this I
 2 don't think --
 3 **Q Have you --**
 4 A -- I don't think I've made that determination
 5 whether it was objectable or.
 6 **Q So, you never made a determination as to**
 7 **whether FAU had just cause to terminate Professor Tracy,**
 8 **is that what you're saying?**
 9 MS. HEFFNER: Objection as to form.
 10 A I don't think so.
 11 **Q (By Mr. Leo) Okay. In your opinion after**
 12 **looking at everything that's in front of you and which**
 13 **you have available to you now, can you give an opinion**
 14 **as to whether there were just cause?**
 15 MS. HEFFNER: Objection as to form, you can
 16 answer.
 17 A So, for not filing the forms. I don't know if
 18 there is just cause or not.
 19 **Q (By Mr. Leo) Okay, let me ask you this because**
 20 **you mentioned grieve it when you were I think thinking**
 21 **out loud. Is this grievable, this November -- I'm**
 22 **sorry, December 16th, 2016 notice of proposed**
 23 **discipline, is that grievable?**
 24 MS. HEFFNER: Objection as to form, you can
 25 answer.

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1 A I guess it is.
 2 **Q (By Mr. Leo) Are you not sure?**
 3 A I am not sure I guess. See, it depends on
 4 what the grievant wants to do and then looking at the
 5 Collective Bargaining Agreement.
 6 **Q Is grievability based on what a grievant wants**
 7 **necessarily?**
 8 MS. HEFFNER: Objection as to form, you can
 9 answer.
 10 A That informs how much --
 11 **Q (By Mr. Leo) Sorry?**
 12 A That informs putting the whole grievance
 13 together, putting the grievance --
 14 **Q (By Mr. Leo) Let's talk about grievability.**
 15 **When I'm saying grievability I mean whether or not a**
 16 **grievance can actually be filed regardless of intent of**
 17 **anybody?**
 18 A Yeah.
 19 **Q Can a grievance be filed or can it be -- can't**
 20 **it be filed, right? So, is this notice, this December**
 21 **notice of termination, is this grievable? Can a**
 22 **grievance be filled in response to this notice?**
 23 MS. HEFFNER: Objection as to form, you can
 24 continue.
 25 A I guess -- so I guess -- so would it be just

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1 cause, incompetence -- the question I guess is do not
 2 filing these form does that reach the level of
 3 misconduct or incompetence?
 4 **Q (By Mr. Leo) The question is whether it's**
 5 **grievable at all?**
 6 A It's hard for me to say I mean grievance --
 7 **Q I mean earlier you said that you can grieve**
 8 **any action, disciplinary action, right?**
 9 MS. HEFFNER: Objection as to form, you can
 10 answer.
 11 A If grievance is a -- yeah, so try to grieve
 12 it.
 13 **Q (By Mr. Leo) Regardless of the merits of a**
 14 **grievance, win or lose, right? I mean that's what I'm**
 15 **asking you, grievability is whether it can be filed or**
 16 **it can't be filed?**
 17 A I think you can --
 18 MS. HEFFNER: Objection as to form.
 19 A I think you can always file something and
 20 whether or not it will result in a favorable outcome is
 21 separate. But yeah, I would say -- no, I don't know, I
 22 don't know what experts would say about the
 23 grievability.
 24 **Q (By Mr. Leo) How would you describe -- how**
 25 **would you describe your comfort level as grievance**

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1 chair?
 2 MS. HEFFNER: Objection as to form, you can
 3 answer.
 4 **Q (By Mr. Leo) Are you comfortable being a**
 5 **grievance chair?**
 6 MS. HEFFNER: Objection as to form, you can
 7 answer.
 8 A Not very -- well, a little bit I guess.
 9 It's --
 10 **Q (By Mr. Leo) You don't sound very comfortable.**
 11 MS. HEFFNER: Objection as to form.
 12 A I don't -- I guess not comfortable.
 13 **Q (By Mr. Leo) Do you feel like you're qualified**
 14 **to be a grievance chair?**
 15 MS. HEFFNER: Objection as to form.
 16 A I can put together the grievances in the file.
 17 I need some help to do it so I'm in the position. I
 18 don't know --
 19 **Q (By Mr. Leo) So, when you say -- you need help**
 20 **to file grievances?**
 21 A -- what the qualification. I don't know what
 22 the qualifications, I -- I supposed yes.
 23 **Q Yes what?**
 24 A I'm qualified.
 25 **Q You're qualified?**

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1 A I don't appear to be at the moment.
 2 **Q Is there a test that you have to take to**
 3 **become a grievance chair?**
 4 MS. HEFFNER: Objection as to form, you can
 5 answer.
 6 A There is a training, but there is no tests.
 7 There is no --
 8 **Q (By Mr. Leo) And it's not just grievance**
 9 **chair, right? It's contract enforcement, is there**
 10 **anybody else that serves in this capacity at UFF-FAU?**
 11 A There is no -- well, I work with Bob and I've
 12 work with Tim as well.
 13 **Q But does anybody actually serve as grievance**
 14 **chair or contract enforcement chair at UFF-FAU**
 15 **currently?**
 16 A No.
 17 **Q And back in 2015 November and December and**
 18 **even in January 2016 were you the only official**
 19 **grievance chair or contract enforcement chair at that**
 20 **time?**
 21 A I'm not sure exactly when that transition -- I
 22 mean I was -- I think I was the person because Tim I
 23 think by then had stepped back so probably I was the
 24 person.
 25 **Q Nobody else?**

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1 A It was me and Bob --
 2 **Q I'm going to show you --**
 3 A -- yeah, and Tim. I don't think anyone else.
 4 MR. LEO: Are we on 15?
 5 THE COURT REPORTER: Yeah, 15.
 6 **Q (By Mr. Leo) I'm going to show you what's been**
 7 **marked as PM-15.**
 8 (Thereupon, Plaintiff's Exhibit PM-15 was
 9 entered into the record.)
 10 (End of Volume I)
 11
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1 DATE: APRIL 17, 2017
 TO: Doug McGetchin
 2 561-222-4861
 3 IN RE: James Tracy v. Florida Atlantic University
 4 CASE NO: 9:16-cv-80655-RLR
 5 Dear DOUG MCGETCHIN,
 6 Please take notice that on APRIL 4TH, 2017 you gave
 your deposition in the above-referenced matter. At that
 7 time, you did not waive signature. It is now necessary
 that you sign your deposition. You may do so by
 8 contacting your own attorney or the attorney who took
 your deposition and make an appointment to do so at
 9 their office. You may also contact our office at the
 below number, Monday - Friday, 9:00 AM - 5:00 PM, for
 10 further information and assistance.
 11 If you do not read and sign your deposition within
 thirty (30) days, the original, which has already been
 12 forwarded to the ordering attorney, may be filed with
 the Clerk of the Court.
 13
 14 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.
 15
 16 Very truly yours,
 17
 18 _____
 Jessica Cooper
 18 Universal Court Reporting
 (954)712-2600
 19
 I do hereby waive my signature.
 20
 21 _____
 DOUG MCGETCHIN
 22 Cc: via transcript: LOUIS LEO, ESQUIRE
 KATHERINE HEFFNER, ESQUIRE
 HOLLY GRIFFIN, ESQUIRE
 23
 24
 25

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1 CERTIFICATE OF OATH
 2 STATE OF FLORIDA
 3 COUNTY OF PALM BEACH
 4
 5 I, JESSICA COOPER, the undersigned authority,
 6 certify that DOUG MCGETCHIN personally appeared before
 7 me and was duly sworn.
 8 Witness my hand and official seal this 4TH day of
 9 APRIL, 2017.
 10
 11
 12
 13 _____
 JESSICA COOPER, FPR, COURT REPORTER
 14 NOTARY PUBLIC, STATE OF FLORIDA
 Commission No.: FF 943563
 15 Commission Exp: 12/15/19
 16
 17
 18
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 21
 22
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1 CERTIFICATE OF REPORTER
 2 STATE OF FLORIDA
 3 COUNTY OF PALM BEACH
 4
 5 I, JESSICA COOPER, Court Reporter and Notary Public
 6 for the State of Florida, do hereby certify that I was
 7 authorized to and did digitally report and transcribe
 8 the foregoing proceedings, and that the transcript is a
 9 true and complete record of my digital notes.
 10 I further certify that I am not a relative,
 11 employee, attorney or counsel of any of the parties, nor
 12 am I a relative or employee any of the parties' attorney
 13 or counsel connected with the action, nor am I
 14 financially interested in the action.
 15 Witness my hand and official seal this 17TH day of
 16 APRIL, 2017.
 17
 18
 19
 20 _____
 JESSICA COOPER, FPR, COURT REPORTER
 NOTARY PUBLIC, STATE OF FLORIDA
 21 Commission No.: FF 943563
 Commission Exp: 12/15/19
 22
 23
 24
 25

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

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