

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.

VIDEOTAPED DEPOSITION OF CHRIS ROBE

APRIL 3, 2017
2:08 P.M. TO 4:03 P.M.

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BOCA RATON, FLORIDA 33431

REPORTED BY:
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NOTARY PUBLIC, STATE OF FLORIDA



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5	<p>1 VIDEOTAPED DEPOSITION OF CHRIS ROBE</p> <p>2 APRIL 3, 2017</p> <p>3 THE COURT REPORTER: Okay. We're now on the</p> <p>4 video record. Today's date is April 3rd, 2017 and</p> <p>5 the time is 2:08 p.m. This is a video deposition</p> <p>6 of Chris Robe taken in the matter of James Tracy</p> <p>7 vs. Florida Atlantic University Board of Trustees,</p> <p>8 a/k/a Florida Atlantic University, et al. Case</p> <p>9 Number 9:16-cv-80655-RLR. We are located at 301</p> <p>10 Yamato Road Suite 1240, Boca Raton, Florida 33431.</p> <p>11 The Court Reporter is Jessica Cooper with the firm</p> <p>12 Universal Court Reporting. Would counsel please</p> <p>13 introduce themselves for the record?</p> <p>14 MR. LEO: I am Louis Leo IV. My co-counsel</p> <p>15 Joel Medgebrow is here, and we represent Professor</p> <p>16 James Tracy.</p> <p>17 MS. HEFFNER: My name is Katherine Heffner. I</p> <p>18 represent UFF-FAU and its affiliates.</p> <p>19 MS. HUFF: My name is Sara Huff and I</p> <p>20 represent FAU, Defendants.</p> <p>21 Thereupon:</p> <p>22 CHRIS ROBE,</p> <p>23 was called as a witness, and after having been first</p> <p>24 duly sworn, testified as follows:</p> <p>25 DIRECT EXAMINATION</p>

6

1 BY MR. LEO:
 2 **Q How are you doing today?**
 3 A All right.
 4 **Q All right. Let's just start with introduction**
 5 **and some ground rules.**
 6 A Um-hum.
 7 **Q Have you given a deposition before?**
 8 A No, never, sir.
 9 **Q Okay. It's very simple. The Court Reporter**
 10 **is trying to get everything that we say and record it.**
 11 **So head nods, hand gestures, things like that aren't**
 12 **going to be okay. So, --**
 13 A Okay.
 14 **Q -- if you can respond verbally, "yes", "no",**
 15 **"maybe", "I don't know", "I don't recall" as those are**
 16 **appropriate responses. If there is any questions I ask**
 17 **you you're not sure about or unclear --**
 18 A Um-hum.
 19 **Q -- just let me know and I can rephrase.**
 20 A Okay.
 21 **Q Is there any drugs or alcohol or anything that**
 22 **you're under the influence of right now?**
 23 A No.
 24 **Q Do you take any medications?**
 25 A No.

7

1 **Q Is there any reason why you won't be able to**
 2 **testify truthfully?**
 3 A No.
 4 **Q And I always say this, there's no right or**
 5 **wrong answers, there's only truthful answers.**
 6 A Right.
 7 **Q You're okay with that?**
 8 A Yes.
 9 **Q Has anybody made any threats to you in**
 10 **connection with your testimony today?**
 11 A No.
 12 **Q Has anybody given you promises?**
 13 A No.
 14 **Q Have you spoken to anybody from any party, any**
 15 **attorney's, under the table or outside of this room in**
 16 **connection with your testimony?**
 17 A I called our UFF attorney just to get a sense
 18 of what the deposition would be about because I've never
 19 done one before.
 20 **Q Who did you speak to?**
 21 THE WITNESS: Kathleen, you say?
 22 MS. HEFFNER: Katherine.
 23 A Katherine, sorry. Katherine.
 24 **Q (By Mr. Leo) Katherine, okay.**
 25 A Yeah.

8

1 **Q Okay. And what did you guys talk about?**
 2 A You know what a deposition is; I didn't do one
 3 before. So, she told me just tell the truth and --
 4 **Q Okay.**
 5 A Yeah, it's very brief, I've been travelling a
 6 lot.
 7 **Q Okay. Did you speak to anybody else at the**
 8 **University or United Faculty of Florida regarding your**
 9 **testimony?**
 10 A No.
 11 **Q Did you talk to Bob Zoeller?**
 12 A No, not really.
 13 **Q Okay. So, let's talk about your employment.**
 14 **How long have you worked at FAU?**
 15 A Thirteen years.
 16 **Q Thirteen years?**
 17 A Um-hum.
 18 **Q And what's your title or --**
 19 A Associate Professor .
 20 **Q Associate Professor . Are you tenured?**
 21 A Yes.
 22 **Q And how long have you been tenured?**
 23 A Sine 2011. So, however, six years I guess.
 24 **Q Okay. And how long have you been with United**
 25 **Faculty of Florida, FAU?**

9

1 A You mean as a member or --
 2 **Q Both.**
 3 A As a member, since 2005. I became a faculty
 4 member in 2004 but it's contingent. So, I didn't strike
 5 that.
 6 **Q Okay.**
 7 A You know, getting involved, it's not entirely
 8 clear but about three years in, about 2006, that'll be I
 9 guess 2006-2007.
 10 **Q Is when you became an officer?**
 11 A Well, I was an officer as a recruiter.
 12 **Q Recruiter.**
 13 A So, go around and talking to people, it's been
 14 a while that you joined for any -- recruit members,
 15 stuffs like that.
 16 **Q Okay. What other titles or positions have you**
 17 **held at UFF-FAU ?**
 18 A So, it's union president from 2011 to 2014 and
 19 then I was on sabbatical for the year after. So, I
 20 wasn't doing anything. And then when I came back as
 21 membership chair which is in-charge of recruiting.
 22 **Q Yeah, that's what I was asking you, whoever**
 23 **the membership chair is.**
 24 A Yeah, largely that kind of strategizing --
 25 **Q When you say recruiting, are you talking about**

<p style="text-align: right;">10</p> <p>1 recruiting faculty members from FAU? 2 A Yes. 3 Q So, how many faculty members at FAU are UFF 4 members? 5 A It fluctuates as you could imagine. Roughly 6 now it's about -- I can give you a percentage, it's 7 around 43%. It breaks down like 300 -- I don't know. 8 330, something around there, low 300s. 9 Q Over 300 members? 10 A Yeah, because the -- it changes because the 11 Bargaining unit, the amount of faculty at the University 12 changes per year. Some people are more hired, some 13 people let go. It fluctuates over the summer as people 14 retire and what not. So, it's always, you know, a kind 15 of a malleable number in terms of how many people belong 16 throughout the year. 17 Q Okay. And so, you were present in you said, 18 2011-2014 -- 19 A Right. 20 Q -- tell me about your duties and 21 responsibilities as president. 22 A Oh gosh, they're multifaceted, right. I mean, 23 they run the gambit of, you know, everywhere from 24 bargaining the contract to having consultations with the 25 president and the provost which we have assigned every</p>	<p style="text-align: right;">12</p> <p>1 the contract itself to, you know, so we can at least 2 have some kind of dialog, you know, what they're 3 thinking and vice versa. I don't know, I mean, that 4 seems to be -- there's other things but it seem that's 5 like the big -- 6 Q How about dealing with the umbrella, the UFF, 7 the FEA entities? 8 A Right. 9 Q Is that part of your duties as a president? 10 A Yeah, I guess. We have a -- I mean, that 11 really falls under the state president, to be honest, 12 whoever was doing that at the time. Because -- 13 Q You mean president of the UFF -- 14 A Statewide. 15 Q Just UFF? 16 A Yeah. So, you know, we're in-charge of the 17 chapters and there's "X" number of chapters depending on 18 the state University system. And there is one person 19 who is in-charge of the presidency at the time. When I 20 was chapter president, it was Tom Oxter who was the 21 president of Tallahassee, now it's Jennifer Profit or 22 was. Actually, there was just recently election, so 23 she's not any more. So, they really coordinate those 24 things, they are the intermediary between. But anyway, 25 we do have a state senate every semester, right, that we</p>
<p style="text-align: right;">11</p> <p>1 semester, you know, sort of just identifying the main 2 issues a faculty have and how to advance them. So, when 3 I was president for example, you know, instructors were 4 not fulltime faculty had a pretty bad deal, they were 5 getting paid low and were not recognized. So, one of my 6 jobs was to create a promotional structure for them, 7 right. To give them more equity and raises with that. 8 As well as like paid apparently leave, that was another 9 thing when I was UFF president but we didn't have that 10 at the time. I mean, there is a lot, you know what I 11 mean? 12 Q Yeah. 13 A I can't really go over all the things the 14 president does because it's like real lot of minutia. 15 Q Sure. 16 A -- there but like you know, bargaining the 17 contract or at least overseeing that -- somewhat 18 overseeing grievances but not necessarily, you know, on 19 the fine details of that because you're delegating, 20 right. You have a lot of people around you. 21 Q Right. 22 A You know, trying to organize and get people to 23 join, you know, on top of that, addressing the major 24 issues that faculty have. Having conversations with the 25 admin, you know, during our forms that we have within</p>	<p style="text-align: right;">13</p> <p>1 -- all the chapters kind of convene and whomever usually 2 people who've been elected senators, which is another 3 kind of station we have at UFF have attend. Not all of 4 them, by any means, but some of them. You know, the 5 point is to exchange change information between chapters 6 and what's going on. So, for example when we came up 7 with the idea of a promotional structure for instructors 8 -- we have originally learned FIU doing that first, 9 right. They gave us the idea. They went through it 10 first. They gave us a sense of tips like what work, 11 what did not work, so on and so forth. And same we have 12 breakout meetings of bargaining, to hear what like the 13 other chapters are bargaining at the other campuses to 14 compare, you know, and get a sense of what various 15 administrations are doing. But I would, you know, the 16 chapter president is not in charge of that, right. We 17 just go -- we're in- charge of bringing people, right, 18 trying to rally people up at our campus. 19 Q With respect to the bargaining and the -- so, 20 there's a bargaining agreement? 21 A Yes. 22 Q Right. I'm holding what I think is your 23 bargaining agreement, right? 24 A Yes. 25 Q A 108-page document.</p>

14

1 A Right.

2 **Q These agreements, did you participate in the**

3 **bargaining for this one?**

4 A No, I wasn't.

5 **Q No?**

6 A Yeah, that was --

7 **Q It says 2012, 2015.**

8 A Yeah, but it gets behind. That's the thing.

9 Or was is that one? Well, I'm trying to think. Is that

10 the most recent -- that's not the most --

11 **Q This is the one that I found on the website,**

12 **and it's says on here actually, "Ratified, June 27th."**

13 A Well, can I have a look at that?

14 **Q Yeah, sure.**

15 A Do you mind? Because my name will be on here

16 if I -- just to be very honest. I might have. I

17 honestly, I don't know which contract I did. So, I

18 don't want to say.

19 **Q It's not marked but this is Exhibit, I think**

20 **C?**

21 A I believe at the end they have the signatures.

22 I apologize. It's a while, you know, I kind of blocked

23 this stuff.

24 **Q Trying to save paper, that's why we didn't**

25 **print them out, you know.**

15

1 A Yeah. I'm sorry. I'm just trying to find. I

2 know there is a part where there is a signature on here.

3 Is it -- do you all know? Yeah, if you know you can

4 help me out.

5 **Q You tell me, you probably know better than me.**

6 A It's somewhere around here and usually the

7 chapter president does it. I should say, even if it was

8 the one I was -- oh, here we go. Let's see. I think I

9 got it. Yeah, so, I did it. Okay. I was on that.

10 **Q That --**

11 A Yes, I was the president.

12 **Q Okay.**

13 A I wasn't -- I should say, I wasn't directly on

14 the Bargaining team there because we had a really strong

15 one. So, I delegated a lot. My main intervention was I

16 would go to Pre-bargaining, meaning when our bargainers

17 would meet among ourselves, I would be there and kind of

18 just get a sense of hierarchy, like what do we want to

19 press for, what do we not want to press for.

20 **Q Right.**

21 A But I didn't really go to the bargainings

22 themselves because I have things to do.

23 **Q Who drafted this agreement?**

24 A What do you mean?

25 **Q The 2012-2015 CBA, was this -- this was**

16

1 **prepared by somebody, right?**

2 A Yeah I mean, it's based off the older

3 contracts. So, revisions and amendments happen through

4 that.

5 **Q So, there's a previous contract that's been**

6 **amended into this one?**

7 A Correct. And it's largely similar I mean,

8 with a couple of major except -- changes with it.

9 **Q Okay. And with respect to your time as**

10 **president, you had said that it was Tom Oxter who was**

11 **the UFF president at the time?**

12 A Correct, yeah.

13 **Q How much dealings did you have with**

14 **Mr. Oxter --**

15 A None.

16 **Q None at all?**

17 A Yeah, none really. I mean, yes, I'd see him

18 at the UFF senate and say hi. But it really -- yeah,

19 it's funny. I, you know, there's certain chapters that

20 get along with other ones, right, and we always connects

21 ourselves as more of the activist chapters, I would talk

22 to people who are more kind of like engage with trying

23 to build up faculty and what not.

24 **Q You say activist, you go against the grain?**

25 A No, not that. A sense of like this is owned

17

1 by faculty, we're not here just to represent you but we

2 want to create a faculty culture, right. You know, just

3 kind of like to put it in more neutral terms, a kind of

4 community organizing kind of thing. Like in other

5 words, going -- like for example, like just going out

6 door to door talking to faculty, not all chapters do

7 that. So, in other words, that's really important to

8 find out their concerns, to find out their interest and

9 their issues.

10 **Q Did you talk to nonmembers do you mean?**

11 A Yeah, as well as members. It depends on what

12 our thing was. So, anyway like really on the ground

13 kind of organizing -- grassroots organizing, I'll put it

14 in activist terms --

15 **Q How is a membership changed over the years,**

16 **you said it was 43% roughly now?**

17 A Um-hum.

18 **Q How is that differed over the past, you know,**

19 **five years ago?**

20 A Well, when I started, it was low. I mean Jim

21 remembers this to it was like 21%, 22% and I can say

22 precisely because we weren't doing the things we are

23 doing now, right, like on the ground organizing and what

24 not, we kind of atrophied.

25 **Q So, 2011 it was as low as --**

18

1 A No, this is -- I'm talking -- this was like
 2 2004. So, '11 we were pretty, we were pretty much
 3 stabilized like high 30s or mid 40s quite honestly.
 4 **Q When you were president, what was the**
 5 **percentage?**
 6 A About that, 39, 42, something like that.
 7 **Q 39%. So, not too much --**
 8 A Different.
 9 **Q -- different than what it is now.**
 10 A Um-hum.
 11 **Q Going back to your time as president, do you**
 12 **remember in 2013 when Professor Tracy was first dealing**
 13 **with the University's disciplinary actions?**
 14 A Right. Yes.
 15 **Q What was your role in 2013 with respect to**
 16 **that whole process the grievance and all that?**
 17 A Yeah, I should say 2013 was a crazy year. We
 18 had a lot of things going wrong at the University at
 19 that time. Our president at the time was trying to name
 20 the stadium after a prison which got a lot of flak for
 21 it. She hit a student with a car. I am just - let me
 22 like put this all in context sort of like the disaster
 23 that I was sort of dealing with at the time.
 24 **Q Wow.**
 25 A Deandre Poole had the Stomp on Jesus thing

19

1 going on at that time and then Jim's thing happened. It
 2 was like the perfect tsunami of a mess as a union
 3 president you could want. But, you know, honestly it's
 4 funny thinking about it. Jim's was -- it seems the most
 5 easily handable. This thing came up with him, you know,
 6 the outside employment and, I don't know, it seemed like
 7 -- it seemed just egregious, right, what the
 8 administration was saying at the time that he couldn't
 9 be doing the stuff on his website. So, I really
 10 delegated a lot of that to our main grievance person
 11 Doug Broadfield at the time. He's no longer here but I
 12 think he's at UM, University of Miami.
 13 **Q Right.**
 14 A And Michael Moats I think handled that too.
 15 So, I didn't -- honestly other than like telling them
 16 about it and, you know, occasionally getting updates
 17 from my grievance guy, Doug, you know it seemed under
 18 wraps. There was much more problematic stuff going on.
 19 The Deandre Poole thing I was really much more involved
 20 in because he was an instructor, because it dealt with
 21 freedom is -- academic freedom and what not and we're
 22 really waging a public campaign -- publicity campaign on
 23 that.
 24 **Q Um-hum.**
 25 A So, a lot of my energy was going there, I

20

1 mean, being a union president too, you know, you have to
 2 delegate and sort of hire guys where you need to
 3 intervene more directly. In Jim's case, you know, for
 4 when I talked to Doug at the time I think Michael, I
 5 mean it's a while. So, I don't want to -- it seemed
 6 handable. It seemed easily --
 7 **Q He seemed like he was in good hands in 2013**
 8 **from a union perspective.**
 9 A Yeah, I wasn't worried.
 10 **Q He was represented by Broadfield in a**
 11 **grievance?**
 12 A Right.
 13 **Q And that was filed -- that was based on advise**
 14 **that came from UFF?**
 15 A Yeah, I mean I assumed -- and once you get - -
 16 you get into the weeds a little that I'm not totally
 17 aware. But I know Doug was talking with Michael Moats,
 18 right. And Michael Moats was sort of our point person
 19 between the State and ourselves.
 20 **Q What is Moats' official title?**
 21 A I don't know. You know, to be honest, I'm so
 22 sorry. I don't remember what it is. I don't recall off
 23 hand what Michael's --
 24 **Q Does Service Unit Director sounds --**
 25 A That's sounds about right, yeah. I don't want

21

1 to just claim something that I don't remember. But
 2 Michael was always kind of a point person.
 3 **Q Would you say that he acts in a supervisory**
 4 **capacity or is he also directing and, you know, telling**
 5 **the Chapter what to do?**
 6 A Yeah, he's supervisory. We don't have to
 7 listen to his advice if we choose not to and that's been
 8 the way where it has been. We always had service unit
 9 directors, before him we had another guy name Bruce,
 10 it'll come to me. But there was another person before
 11 him. But UFF kind of prides itself on the autonomy of
 12 the Chapter. So, I mean of course you always get in
 13 disagreements sometimes, right, with the state level and
 14 what you're doing at the Chapter level but usually it's
 15 advisory in terms of -- as a matter of fact it's always
 16 been advisory. I never had anybody tell me to do
 17 anything when I was union president. I also didn't have
 18 much interaction with the state level. I often delegated
 19 to other people and often we had our things under
 20 control so to say as a corollary, but when we're dealing
 21 with Deandre Poole -- Interesting enough I dealing with
 22 that mostly myself. I wasn't really even asking too --
 23 I'm sure I called Michael some, you know, just to like
 24 run by ideas. Of saying, "Okay. This is what I'm
 25 thinking." But he's like, "Good." Right, I mean I seemed

22

1 to be on top of it, so.

2 **Q When Moats would advise to do something, did**

3 **you ever say, no?**

4 A I'm sure. I mean, I can't remember what, you

5 know what I mean? But I know I've re-delegated him

6 before --

7 **Q Just give me an example of something that**

8 **Moats would advise you to do and you wouldn't do it.**

9 A Well, he wanted to come down once, and I feel

10 bad because Michael is a good guy, but he wanted to come

11 down -- but we all have our limits in our talents. So,

12 he wanted to come to our chapter and help recruit with

13 me. And, you know, went out recruiting with him, and

14 quite honestly, he's not a great recruiter. So, you

15 know, I sort of didn't say that to him but I said, you

16 know, you'd be more useful in bargaining helping us out

17 that way. I talked to my other main recruiter too, he

18 kind of agreed. So, that's one way where, you know, we

19 kind of like, he thought he was going to be intervening

20 in this part but we're like, you know, -- another thing

21 I can just say this wasn't so much Michael but this was

22 Tom Oxter, so I say when we meet once a semester for all

23 the UFF states senate, all the presidents meet together

24 with the -- so, all the chapter presidents meet together

25 with the state president. I forgot how long, two hours

23

1 or something like that. I think it's called the council

2 of presidents and, you know, we discuss things, major

3 issues. So, I remember one they were asking the

4 chapters for about five grand. I don't know what year,

5 quite honestly, some time when I was the president

6 obviously but I don't remember when. But they were

7 asking for the state chapters for \$5000 for some

8 communication campaign. And I mean, I'm a communication

9 Professor, right. So, it was very vague like what this

10 money was going to go to and how it was going to use, I

11 said like, no. Right, we're not going to give you that

12 money because it just seems like throwing good money

13 after bad, right, they didn't have a god organization.

14 So, like things like that, you know.

15 **Q Yeah.**

16 A And whatever, they were all right with it. You

17 know what I mean, I was one of the few I think that

18 objected about it but some others did too.

19 **Q With respect to grievance filings, you said**

20 **that you delegate.**

21 A Um-hum.

22 **Q And when you were president, you delegated to**

23 **Broadfield.**

24 A Right.

25 **Q Moats acted in an advisory capacity for your**

24

1 **time when you were the president.**

2 A Um-hum.

3 **Q And to this day, he still is the advisory for**

4 **the chapter?**

5 A I believe so, yeah. I believe so.

6 **Q Right.**

7 A He got sick for a bit. So, he might not have

8 been for a little bit but --

9 **Q With respect to grievances, was there ever a**

10 **grievance advice that you disagreed with from Moats?**

11 A Yeah, I wasn't -- I don't know if it was

12 Moats. We've had -- so, just to give you a sense of the

13 structure. You know, first of all the UFF makes the

14 decision at the chapter level they're going to take up a

15 grievance or not, right. More often than not they do,

16 right, just to be safe. And it goes through a series of

17 steps, right. So, you try to sometimes people try to

18 resolve it informally, you know, before it starts moving

19 along. And quite honestly, you have to talk to the

20 grievance people about this. So, I don't want to speak

21 outline but there is a step two -- Step 1 and then Step

22 2 --

23 **Q Um-hum.**

24 A -- that you go through it. And then all

25 grievances are vetted through the state organization,

25

1 right.

2 **Q So, you submit the grievance to the state**

3 **organization for approval?**

4 A Yeah, ultimately if we're not getting it

5 resolved at the local level in the earlier stages --

6 **Q Informally.**

7 A -- informally or even in the earlier stages I

8 believe, right, because now we're talking about if it

9 moves up, we're going to have to have an attorney or

10 something were are talking about more cost. So, there

11 is a state board which I can't remember exactly, I feel

12 like it's CBC or something is the acronym but you can

13 look it up yourself, something like that. I can't

14 recall, and they get vetted through that in terms of

15 feasibility, in terms of being a, you know, do we think

16 they're going to win this grievance, do we think they're

17 not going to win this grievance so on and so forth.

18 **Q Is there a cost associated with grievances?**

19 A It depends where it goes, you know, I mean,

20 how it's -- there could be, right. But it depends, you

21 know, what attorneys are involved and what not.

22 **Q When would an attorney get involved from the**

23 **union side?**

24 A Later in the process.

25 **Q Like how later?**

26

1 A I mean, well, once again, I don't have to - to
 2 be honest when I was the president I don't think we ever
 3 had an attorney involved. So, you know what I mean? I
 4 can only kind of --
 5 **Q You don't need an attorney, do you, to file a**
 6 **grievance?**
 7 A No, not at all. So, I don't think we ever
 8 needed one quite honestly when I was president, never
 9 got to that level. So, I don't want to say exactly
 10 when.
 11 **Q Okay.**
 12 A But it's definitely later in the process.
 13 **Q Before Professor Tracy's 2015 dispute and**
 14 **termination, had you ever heard of an attorney being**
 15 **appointed by the union to represent a grievant or**
 16 **somebody who was facing discipline?**
 17 A Yeah, I've heard of it before.
 18 **Q Okay.**
 19 A Can I just say one thought that I had in terms
 20 of -- just going back to that thing?
 21 **Q Yeah.**
 22 A When we bring the grievances to the state
 23 board, you know, they make a decision if it's feasible
 24 or not, and there was one where they didn't think it was
 25 feasible and they thought we were not going to win. It

27

1 was through colleague who is now deceased, Lester Embry,
 2 who has had a bunch of stuff with the administration.
 3 So, you have a right to appeal that decision and we did
 4 do that then, you know, --
 5 **Q Decision from the state?**
 6 A Yeah, so, there is an appeal process, but I
 7 think we quite honestly lost it just like, you know,
 8 after we appealed it but nonetheless, we did do that.
 9 **Q But there's not a lot of time under the rules**
 10 **of your agreement, right?**
 11 A It depends though because there's often memos
 12 of understanding that will go on, you know, between the
 13 attorney and UFF of delaying time, right.
 14 **Q Like an agreement to extend the time?**
 15 A Yeah, usually it'll be a memo of understanding
 16 that you'd have something there. So, yes, you're right
 17 according to the contract but the times will be
 18 extended, depending on whatever circumstances are
 19 arising itself. I think I mean, once again, I can't
 20 remember that in terms of how long it took to move up
 21 the process there but I'm sure there were bunch of
 22 extensions put in place. Because the University
 23 attorneys at the time, you know, were overextended
 24 themselves, right? They had their own dealings and --
 25 **Q Um-hum.**

28

1 A -- and I'll say particularly even in something
 2 like 2013 where they had, you know all these other
 3 groups kind of getting involved, the ACLU and what not
 4 with the name of the stadium that was like -- I know
 5 they were really -- it depends on the time, right?
 6 **Q Right.**
 7 A So, they might very possibly want a longer
 8 time period themselves on their own end.
 9 **Q Would there be a need from the -- or for the**
 10 **UFF-FAU chapter to bring an attorney in to file the**
 11 **initial grievance for a member?**
 12 A Meaning if a member --
 13 **Q A Step 1 or a Step 2?**
 14 A Not that I know of but once again, I'm just
 15 basing this off my three years as being the president.
 16 So, I don't want to like act like I know the
 17 institutional history or has been, but not to my
 18 knowledge.
 19 **Q The reason I'm asking for example, Professor**
 20 **Tracy -- Broadfield filed a grievance on behalf of the**
 21 **Chapter for Professor Tracy in 2013 --**
 22 A Correct.
 23 **Q -- that was settled, and then in 2015 when**
 24 **University attempts to discipline Professor Tracy again**
 25 **in the same way --**

29

1 A Right.
 2 **Q -- they bring in a lawyer.**
 3 A Okay.
 4 **Q Is that unusual to you?**
 5 A I mean I don't -- when did they brought the
 6 lawyer, early or -- I don't know the details quite
 7 honestly.
 8 **Q That's what I was trying to ask.**
 9 A Yeah, I don't know the details of that. Like
 10 I said, I don't know -- I don't feel like ours -- when
 11 it was 2013 -- it didn't advance that far. I feel like
 12 we stopped it relatively early although I can't quote it
 13 if it's Step 1 or Step 2 but it finally got, you know,--
 14 **Q What's the difference between Step 1 and Step**
 15 **??**
 16 A I don't know, I think -- once again, I rather
 17 -- I don't know, right. Quite honestly.
 18 **Q Okay. If you don't know, it's fine.**
 19 A Yeah, I don't really know.
 20 **Q I don't want you to guess.**
 21 A Yeah, then I will not.
 22 **Q Going back to consultations, you said that you**
 23 **participate in consultations?**
 24 A Right.
 25 **Q What is a consultation?**

<p style="text-align: right;">30</p> <p>1 A What is?</p> <p>2 Q Yeah, how does it work?</p> <p>3 A Okay. So, you -- you know, the union and the</p> <p>4 administration set up a time, you know, to meet once a</p> <p>5 semester to discuss whatever issues they have. So, what</p> <p>6 I would typically do when I was union president was talk</p> <p>7 to our faculty, you know, see what major issues that</p> <p>8 they had and invite people to the consultation who could</p> <p>9 represent themselves. I delegated a lot, that way, I do</p> <p>10 not get along quite honestly with our old University</p> <p>11 president. I once tried to like deal with her and she--</p> <p>12 Q Saunders?</p> <p>13 A Yeah. So, I could see really quickly this was</p> <p>14 going to go nowhere if I was the main person interacting</p> <p>15 because I just kind of set her back. So, I learned</p> <p>16 really quickly to delegate to other people, and which I</p> <p>17 think is even more sound, right. In other words have</p> <p>18 the people in the room who represent their own issues,</p> <p>19 speak for themselves. That's what the union is about,</p> <p>20 it's about creating a space for those people to speak</p> <p>21 up. So, you know, it varied. When I first started</p> <p>22 doing, I didn't know what I was doing. So, I had like 11</p> <p>23 people come in, I was like which is way too much, you</p> <p>24 know, I kind of tamed it down.</p> <p>25 Q So, a lot of people came from the union?</p>	<p style="text-align: right;">32</p> <p>1 - one of the University counsels and then it would</p> <p>2 usually be -- and it varied. It'd be me and depending</p> <p>3 on what the issues were with other people -- and I</p> <p>4 usually report on that every semester, when we did a</p> <p>5 consultation, I would do a report to the faculty of like</p> <p>6 what was discussed.</p> <p>7 Q How would you report it?</p> <p>8 A Through e-mail, you know, I would send a mass</p> <p>9 e-mail to all bargaining unit members and I would also -</p> <p>10 - I think I would post it on our website also, if I</p> <p>11 recall.</p> <p>12 Q On the UFF-FAU website?</p> <p>13 A Yes.</p> <p>14 Q And do you recall ever having a consultation</p> <p>15 with the then president of FAU and the administration at</p> <p>16 that time about the Outside Activity policy?</p> <p>17 A No, we never brought -- we never did discuss</p> <p>18 that.</p> <p>19 Q What's your understanding of that Outside</p> <p>20 Activity policy</p> <p>21 A I have no idea, right. That's a really big</p> <p>22 policy.</p> <p>23 Q How so?</p> <p>24 A I mean, because it depends what they are</p> <p>25 defining as outside activity since we never really</p>
<p style="text-align: right;">31</p> <p>1 A Yeah, union members or -- you don't have to be</p> <p>2 executive committee to do that.</p> <p>3 Q Okay.</p> <p>4 A I would invite anybody who had a -- because we</p> <p>5 would create task force on certain issues. Say for</p> <p>6 example, the instructor issue we had task force meaning</p> <p>7 like studying the issue across the state. Do other</p> <p>8 universities do this type of promotional system, what</p> <p>9 did they do? They would do research on it and they will</p> <p>10 talk back to the union. And then I would have one of</p> <p>11 those members on the task force go to a consultation,</p> <p>12 right. And in many ways what we -- people used the</p> <p>13 consultation differently I should say, using presidents,</p> <p>14 but the way I saw it was sort of anticipatory to</p> <p>15 bargaining which would happen the next semester often.</p> <p>16 So, they put on their radar. Like some issues we want</p> <p>17 to deal bargaining so not getting blindsided when we</p> <p>18 bargain, right.</p> <p>19 Q Right.</p> <p>20 A In other words, we care about instructor's</p> <p>21 promotions, we're going to be coming to you like about</p> <p>22 this. So, maybe we should do a research before we go</p> <p>23 there itself. So, it's you know, usually on their side</p> <p>24 and it does change to -- when we were doing it was the</p> <p>25 president, the provost and one of the counsels, right -</p>	<p style="text-align: right;">33</p> <p>1 figured it out, right, in terms of -- you know, you hear</p> <p>2 various things -- is it a paid outside activity? It is</p> <p>3 like --</p> <p>4 Q And for the record, we're talking about</p> <p>5 Article 19, Conflict of Interest, Outside activity.</p> <p>6 A No, it's a very vague thing and I wasn't</p> <p>7 president when it really came to the forefront because I</p> <p>8 think at the time when I was the president, really Jim's</p> <p>9 case was the first time it came up in my presidency.</p> <p>10 You know what I mean? Like it was an issue I guess</p> <p>11 before but I never heard about anything during my years</p> <p>12 as a president of anyone being like -- well, actually</p> <p>13 let me say one correction to that. Before Jim, actually</p> <p>14 instructors were having issues. So, instructors are paid</p> <p>15 very low at FAU, right, particularly in the humanities.</p> <p>16 And a lot of them would supplement their incomes by</p> <p>17 doing classes outside of the University. So, right, to</p> <p>18 sort of cutback on that, they were being held</p> <p>19 accountable to the outside. It's coming back to me, they</p> <p>20 were held accountable outside activity things. This may</p> <p>21 have been a year before Jim or maybe a semester before,</p> <p>22 I can't remember.</p> <p>23 Q You said a year before, you mean before --</p> <p>24 A An academic year before Jim's case happened or</p> <p>25 a semester before.</p>

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1 **Q Before 2013?**
 2 A '13, yeah.
 3 **Q Okay.**
 4 A Sorry, before 2013. So, anyway, I remember as
 5 union president talking to, I believe the Dean at the
 6 time, Heather Coltman and saying something like, you
 7 know, either pay these people a living wage, right, and
 8 they won't do outside work or let them do outside work.
 9 This is like unjust, right, in terms of what you're
 10 doing. So, and we lost that. They kept holding
 11 instructor's feet to the fire of signing out these
 12 things and not giving them permission to teach
 13 elsewhere. So, that did come before but it was kind of
 14 a different case than Jim's in terms of how they were
 15 utilizing it.
 16 **Q Let me just -- I'm just showing you what's**
 17 **been marked as PR1, Article 19.**
 18 (Thereupon, Plaintiff's Exhibit PR1 was
 19 entered into the record.)
 20 **Q (By Mr. Leo) Just for the record, is this the**
 21 **policy you were talking about when you were referring to**
 22 **the outside activities policy?**
 23 A Yeah, yes.
 24 **Q And does this refresh your recollection as to**
 25 **what the policy says?**

35

1 A I believe so. I think they've -- since --
 2 they've since revised this with the new contract that we
 3 have, I think so, I believe it's --
 4 **Q You are saying a different contract than this**
 5 **one?**
 6 A Yeah, I think there is a new one, isn't there?
 7 I believe there is -- yeah.
 8 **Q You tell me.**
 9 A Yeah, there is. I'm pretty sure. Yeah, there
 10 is new three-year contract out there. So, --
 11 **Q And how is this policy changed?**
 12 A I don't remember. That -- but I just vaguely
 13 recall that there might've been -- then it was becoming
 14 very central, right, in terms of the University we had a
 15 senate which I know Jim had a copy of, and we listened
 16 to or this came up a bunch of faculty were questioning
 17 this outside activities.
 18 **Q September, 2015 senate faculty meeting?**
 19 A Yeah, I believe so because I was there at that
 20 -- so, it was coming up. So, I believe they were
 21 negotiating the contract or something to get language in
 22 there that would moderate it. I could be wrong. It
 23 might -- anyway, you could look at -- it should be
 24 online actually under our website.
 25 **Q With respect to the policy, you said it was**

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1 **vague?**
 2 A Yes.
 3 **Q In what way?**
 4 A Well, what constitutes outside activity,
 5 right? That's sort of the vagaries. We never got
 6 anything -- and that's sort of what upset faculty, you
 7 know, that senate meeting that you're talking about,
 8 right, because it could be -- I mean there's some
 9 legitimate thing. I don't want to act like, you know,
 10 it shouldn't necessarily exist, right, outside activity,
 11 because you don't want somebody working a second job,
 12 right, in addition to, you know, working at the
 13 University. Of course, that's usually never the case,
 14 right, that somebody is doing that, but then it could be
 15 these micro activities, we were like, you know, like
 16 doing Twitter, you know, like doing Facebook; that seems
 17 ridiculous and egregious to call that outside activity.
 18 **Q And you said it because the policy is not**
 19 **geared towards uncompensated activity or isn't --**
 20 A I don't know, that's another kind of thing I'm
 21 unclear about. At first I thought it was about
 22 compensated activity outside. But then it seems more
 23 about it could extend beyond that, you know, itself. And
 24 I remember just in 2013 with Jim's, blog seemed to be,
 25 you know, personally as the president of the union, a

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1 ridiculous thing to call -- like so many people have
 2 blogs, right, quite honestly outside of employment. As
 3 far as I know, Jim wasn't being paid for it or anything
 4 like that. So, you could hold many faculty accountable
 5 if they have a blog and calling it outside activity.
 6 **Q Has the University ever sent any directives or**
 7 **anything concerning the outside activity policy that**
 8 **would tell faculty members, even administrators, that**
 9 **their social media accounts or their blogs, their**
 10 **personal online activities fall within the scope of the**
 11 **outside activities policy, Article 19?**
 12 A Yeah, not to my knowledge. There's never been
 13 anything about that. The only explicit moment I recall
 14 particularly under my presidency was I believe the dean
 15 did send out e-mail to the instructors, who had outside
 16 jobs that this wouldn't be approved or something like
 17 that.
 18 **Q Right. But the policy, as you appear to**
 19 **understand it, has always been geared towards commercial**
 20 **activity?**
 21 A Well, like I said, I don't know exactly all
 22 the time -- it was unevenly applied, that's all I know.
 23 In other words, it sometimes seems it can be commercial
 24 activity, it sometimes seems it could not be. You know,
 25 once again, I might not have been aware of all the ways

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1 in which it has been applied, but it's never been
 2 consistently applied, it's never been clearly made what
 3 constitutes that activity, if you know what I mean,
 4 right?
 5 **Q Right. Yeah, did you ever receive guidelines**
 6 **on how to follow the policy?**
 7 A No.
 8 **Q Let me just give you -- it's another document.**
 9 **It's called PR 2.**
 10 A Okay.
 11 **Q And for the record, I'm showing what's been**
 12 **marked as PR2 for today.**
 13 (Thereupon, Plaintiff's Exhibit PR2 was
 14 entered into the record.)
 15 **Q (By Mr. Leo) Do you recognize this document?**
 16 A You know what, I'll be honest, I've never seen
 17 this document itself, the outside activity document.
 18 **Q You've never seen this document before --**
 19 A Yeah, honestly.
 20 **Q -- today?**
 21 A Yeah, until today, yeah.
 22 **Q So, you've never filled this form out?**
 23 A No.
 24 **Q Let me just ask you. Have you ever blogged?**
 25 A I don't blog, but, you know, --

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1 **Q How about do you have like a facebook page?**
 2 A I do have a facebook page.
 3 **Q Twitter?**
 4 A Yes.
 5 **Q MySpace?**
 6 A Not anymore.
 7 **Q Did you ever report any of those activities?**
 8 A No.
 9 **Q Did you ever fill out any paperwork?**
 10 A No, I never, it's -- I never --
 11 **Q Or anything other than this form, any kind of**
 12 **paperwork or disclosure to the University to -- any**
 13 **officials of the University?**
 14 A No.
 15 **Q Did you ever tell the University that you're**
 16 **participating in online activities?**
 17 A No.
 18 **Q Are you concerned about the use of this policy**
 19 **to target your online activity?**
 20 A Yes. I mean I was like - to the faculty that
 21 September what, 2015 meeting you mentioned, the senate
 22 meeting, just the vagueness of the policy and the way it
 23 could be used discriminatory on faculty. I think many
 24 of us were, right, if you listen to the transcript of
 25 it.

40

1 **Q And in 2013, the University attempted to use**
 2 **this policy to discipline Professor Tracy?**
 3 A Right.
 4 **Q And the union defended him?**
 5 A Yeah.
 6 **Q And prevailed?**
 7 A Um-hum.
 8 **Q There was a settlement agreement that was**
 9 **entered June 13th?**
 10 A That was Doug and Michael who came up with
 11 that, I don't remember exactly the details but --
 12 **Q Yeah. I just wanted to touch on it because I**
 13 **have a question about --**
 14 A Okay.
 15 **Q -- the effect of the agreement --**
 16 A Okay.
 17 **Q -- to your knowledge, did the University**
 18 **continue after 2013 and 2014 to try to use this policy**
 19 **to require anybody, not just Professor Tracy but**
 20 **anybody at the University report their blogging or**
 21 **social media activity?**
 22 A Not to my knowledge, but who knows, right,
 23 there's things always go on that you're unaware of.
 24 **Q But if they had, wouldn't it something that**
 25 **would have been brought to your attention since you guys**

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1 **were the grievance department for the University?**
 2 MS. HEFFNER: Objection. You can answer.
 3 A Okay. Not necessarily. You'll be surprised,
 4 some people do not report to us when they should, you
 5 know.
 6 **Q (By Mr. Leo) You're talking about your own**
 7 **members?**
 8 A Just in general. The faculty members or non-
 9 members. Like some people, I mean I often will speak to
 10 faculty like you should've reported this to me back
 11 whenever it happens. So, I'm hesitant, right, because I
 12 wish. What you're saying I wish happened because that
 13 would make us much more cognizant of what's going on at
 14 the University and we want to be aware of that. But
 15 sometimes -- for multiple reasons of why they went to
 16 report.
 17 **Q So, your understanding of the 2013 grievance**
 18 **filed by UFF-FAU for Professor Tracy and the settlement**
 19 **was that the issue is resolved with respect to the**
 20 **complaints about Professor Tracy's blogging?**
 21 A Correct.
 22 **Q There would be no indication -- was there**
 23 **indication after 2013-2014, for example, that they were**
 24 **going to continue -- when I say "they", I'm referring to**
 25 **FAU, --**

42	<p>1 A No.</p> <p>2 Q -- continue to require Professor Tracy to</p> <p>3 submit these forms --</p> <p>4 A No, not at the time.</p> <p>5 Q And in 2013 FAU was giving Professor Tracy a</p> <p>6 hard time seeking discipline because he hadn't submitted</p> <p>7 these forms for his blog, right?</p> <p>8 MS. HEFFNER: Objection as to form. You can</p> <p>9 answer.</p> <p>10 A Okay. Can you ask that again?</p> <p>11 Q (By Mr. Leo) Yes. FAU was giving Professor</p> <p>12 Tracy a hard time, they were requiring him to submit his</p> <p>13 blog to the University on these forms in 2013 --</p> <p>14 A Right.</p> <p>15 Q -- which was essential issue in this dispute,</p> <p>16 that you recall?</p> <p>17 A Correct, right.</p> <p>18 Q In 2013, the settlement happens, 2014 you</p> <p>19 never heard of any complaints about Professor Tracy's</p> <p>20 blogging?</p> <p>21 A Correct?</p> <p>22 Q Did you ever hear of FAU requiring or</p> <p>23 directing anybody to submit outside-activity forms at</p> <p>24 all?</p> <p>25 A Yes, because like I said, the instructors had</p>	44	<p>1 for their online activity?</p> <p>2 A No.</p> <p>3 Q And other than Professor Tracy, do you know</p> <p>4 of any other faculty members who have been targeted for</p> <p>5 their online speech or activity?</p> <p>6 A Yeah, not to my knowledge.</p> <p>7 Q Would you agree that Professor Tracy was</p> <p>8 singled out by the University in this case?</p> <p>9 A Yeah.</p> <p>10 Q Going to fast forward to 2015, so September</p> <p>11 there's this senate faculty meeting, you said you were</p> <p>12 there?</p> <p>13 A I was there at that one, yeah.</p> <p>14 Q Professor Lenz gave a speech about the</p> <p>15 policy.</p> <p>16 A Correct.</p> <p>17 Q It's Article 19. There were other faculty</p> <p>18 members who also complained; would you agree that that</p> <p>19 was well-received complaints?</p> <p>20 A Yeah, I would.</p> <p>21 Q By the faculty.</p> <p>22 A By the faculty at the senate for sure, yeah.</p> <p>23 Q Did any administrators during that meeting or</p> <p>24 after that meeting agree with the faculty that the</p> <p>25 policy was confusing, vague, it needed to be clarified?</p>
43	<p>1 to do it, that's why I was aware of that.</p> <p>2 Q So, how about for online activity or speech?</p> <p>3 A I'm trying to think. Not that I know of, but</p> <p>4 I did -- well, this was later though. So, it --</p> <p>5 according to the years that you're doing, no, but I'll</p> <p>6 just say later I did hear about, you know, somebody</p> <p>7 doing an op-ed piece, an opinion-ed piece getting flak</p> <p>8 for that as if this was an outside activity, which was</p> <p>9 ridiculous.</p> <p>10 Q My understanding is that things changed when</p> <p>11 President Kelly came into the mix.</p> <p>12 A Yes.</p> <p>13 Q Is -- would you agree with that sentiment?</p> <p>14 A Yes, with -- certainly. I was on sabbatical</p> <p>15 the year he actually came in fall for --</p> <p>16 Q When was that?</p> <p>17 A That was -- so, that was -- let me just, to be</p> <p>18 honest to you, '14-'15 year I was on sabbatical. And</p> <p>19 that's when Kelly came really onboard with FAU. So, I</p> <p>20 was at a distance, you know, I never really -- I never</p> <p>21 dealt with President Kelly like firsthand. I dealt with</p> <p>22 Kerry Perry when he was in interim provost.</p> <p>23 Q Before Kelly's emergence at the University,</p> <p>24 had you ever heard of Perry or any other FAU</p> <p>25 administrators sending threatening letters to faculty</p>	45	<p>1 A Not to my knowledge, you know, but they might</p> <p>2 have, but I wasn't privy.</p> <p>3 Q There was changes that were to the policy.</p> <p>4 A Yeah.</p> <p>5 Q At some point you said?</p> <p>6 A I think there might have been, right, in terms</p> <p>7 of --</p> <p>8 Q Was that after the senate faculty meeting?</p> <p>9 A I don't recall, yeah.</p> <p>10 Q Did you ever get a memorandum from Perry or</p> <p>11 any other FAU administrator about the policy after that</p> <p>12 meeting?</p> <p>13 A You mean this is a faculty member or --</p> <p>14 Q Right. Was anything distributed?</p> <p>15 A I don't know. Honestly, I mean -- there were</p> <p>16 a couple of issues going on there. There was one about</p> <p>17 the outside activity form, there was one about the</p> <p>18 freedom of speech, right, also? So, I can't recall if</p> <p>19 we -- I feel like we did get some -- it might have been</p> <p>20 about that. It might have been a freedom of speech</p> <p>21 thing. So, I don't recall --</p> <p>22 Q What do you recall about freedom of speech?</p> <p>23 A Well, it was -- going off that example where</p> <p>24 it really made a lot of faculty irate during that senate</p> <p>25 was this notion to gain prior permission to doing</p>

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1 interviews with like the press or something, right,
 2 which seemed outlandish and made us look unprofessional
 3 and the University ridiculous, right? In other words, if
 4 a reporter comes to you and you go, "Wait, I can't
 5 answer that question, I need to ask permission from the
 6 University itself," or the very fact you did an op-ed,
 7 you need to somehow put in the op-ed that this does not
 8 represent the University even though it's assumed and
 9 the reporters -- the paper can always edit out that
 10 stuff. So, we had a couple of faculty who're getting
 11 issues with that. So, that was the main point of
 12 contention then, right, that we were like this -- so, I
 13 know we definitely got language put in the contract
 14 later that said if a faculty member is not distinctly
 15 saying that he or she is representing the University,
 16 they are not. So, in other words, we didn't have to
 17 defend, say, we are not representing it, had to be -- we
 18 didn't explicitly state that we were representing the
 19 University, which struck me as --
 20 **Q The faculty doesn't have an affirmative duty**
 21 **to tell whoever they're speaking to that oh, by the way,**
 22 **I'm not speaking on behalf of the University when I'm**
 23 **speaking?**
 24 A Correct. Where it was assumed prior to that,
 25 right, that memo or whatever --

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1 **Q But it was in dispute in some instances as to**
 2 **whether the disclosure was required?**
 3 A Right. Or even it could be possible, right.
 4 In other words, when you an op-ed piece, the editors of
 5 the paper are not obligated to keep all your words in
 6 there. So, even if you've written down that it could be
 7 pulled out.
 8 **Q Right.**
 9 A And you should not be held accountable as a
 10 faculty member for that.
 11 **Q If you were given a directive by your**
 12 **administration, Colman, whoever, and they said**
 13 **"Professor, I want you to submit this outside activity**
 14 **form for your Twitter account", what would you do?**
 15 A Well, I'll just say the thing that we've been
 16 told by the union often, like I would do it and then
 17 grieve it. So, I would sign it and then I would grieve
 18 the thing.
 19 **Q Is this a directive from the union that came**
 20 **from Zoeller?**
 21 A No, no, this is way prior to that. I mean
 22 this is when I just began part of the union, so none of
 23 us had been really -- I don't know where it came from,
 24 to be honest. It was perhaps the state level, but I
 25 want to say it's Mike -- I don't know exactly but it was

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1 definitely higher up, but the notion was this; you know,
 2 you have to do basically what the administrators ask you
 3 unless it's threatening to your life or anybody else's.
 4 You do it, right, even if you totally disagree with it
 5 and then you file a grievance. And the reason why we
 6 were told that is if you do not, then you could be in
 7 subordination for not doing it, right?
 8 **Q Right.**
 9 A So, it's like very much drummed into us to,
 10 you know, --
 11 **Q Would you be -- would it be insubordinate to**
 12 **refuse to comply with an unlawful directive?**
 13 A I -- sorry. Say that again.
 14 **Q I'll say that again. Would it be considered**
 15 **insubordination technically speaking --**
 16 A Yeah --
 17 **Q -- from the -- from either perspective, right?**
 18 **Would it be insubordination to refuse to comply with an**
 19 **unlawful directive?**
 20 A I don't know. I mean I'm not a lawyer.
 21 **Q Obviously, the example, let's say one of the**
 22 **administrators told you to do something illegal, would**
 23 **you comply with the illegal directive and then grieve it**
 24 **or would you refuse the directive?**
 25 A I'd refuse the directive.

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1 **Q Okay. And you see where I'm going with this?**
 2 A Um-hum.
 3 **Q If for example the FAU administration told you**
 4 **I want your Twitter on here for approval, would you**
 5 **protest that, would you object to it?**
 6 A I would still sign it but I would say
 7 something when I did it, and I would tell them I'm
 8 grieving it, you know.
 9 **Q And what if they told you you couldn't do what**
 10 **you were doing on Twitter or any other social media?**
 11 A I don't know. To be honest, I would talk to
 12 the union and figure out what to do. I wouldn't make
 13 that decision myself. You know what I mean? Like --
 14 **Q You'd rely upon the union --**
 15 A Yeah, they know --
 16 **Q -- for advice?**
 17 A Right, exactly. Yeah.
 18 **Q If, for example, the University indicated that**
 19 **you failed to report your Twitter account for however**
 20 **many years you had that and that that was disciplinary**
 21 **or could be disciplined and they were going to**
 22 **discipline you, do you need to wait to file a grievance**
 23 **or could you grieve right away?**
 24 A Could you do that one more time --
 25 **Q If your University said Professor Robe, you**

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1 **didn't turn in your Twitter form -- outside activity**
 2 **form disclosing your Twitter for however many years and**
 3 **now you're going to be disciplined for that, would that**
 4 **be grievable?**
 5 A I think it's only grievable once they actually
 6 send you the disciplinary letter, right?
 7 **Q Notice of discipline?**
 8 A I believe so, right? I don't think a verbal -
 9 - that's always tricky about grievances, there actually
 10 has to be something done before you can grieve it, even
 11 though you're anticipatory of it.
 12 **Q Right.**
 13 A So, we have that with people like going up for
 14 promotion and tenure, it's pretty clear that their case
 15 is not going to win, right. We've heard through the
 16 committee but you really have to wait till the provost
 17 finally signs that last letter saying it's not -- then
 18 we would file the grievance. So, similar with that I
 19 would think we would need actual -- a letter or
 20 something that we could pinpoint a date, because that's
 21 when the grievance process could start, I mean I think
 22 it was 30 days you have after it. And that's to the
 23 best of my knowledge, once again I'm not a, you know, -
 24 - not like you guys, attorneys, so, --
 25 **Q I have the example I want to use. All right,**

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1 **I'm going to show you what's been -- I'm going to show**
 2 **you what's been marked as PR 3 for today.**
 3 (Thereupon, Plaintiff's Exhibit PR3 was
 4 entered into the record.)
 5 A Okay.
 6 **Q (By Mr. Leo) Do you recognize this document?**
 7 A Well, I haven't seen this document. So, --
 8 **Q Before today --**
 9 A I -- Jim -- well, I might have seen it. I
 10 forgot Jim sent it to me or not. I can't recall, but he
 11 might have.
 12 **Q All right. Would this be grievable?**
 13 A I don't --
 14 **Q Okay. Take a look and then --**
 15 A Yeah.
 16 **Q And then I'll ask.**
 17 A Yeah -- no. So, the key words here, this
 18 "letter of reprimand", right? This is a letter of
 19 reprimand, so yes, you can grieve that.
 20 **Q The minute that goes in the file?**
 21 A Yeah.
 22 **Q The file here.**
 23 A Yeah, and it explicitly states a letter of --
 24 I mean not necessarily immediately you have to confer
 25 with the person -- I mean there's some delay perhaps

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1 when a person gets it --
 2 **Q That's my next question. My next question is**
 3 **how would a member of UFF-FAU file a grievance when**
 4 **they get a letter like this?**
 5 A So, usually they contact the grievance person,
 6 but like I said, we have numerous instances where people
 7 wait too long, they don't realize there's a time period
 8 on grievances and what not. So, --
 9 **Q What's the time period?**
 10 A I believe 30 days.
 11 **Q So, using PR3 as an example, this is November**
 12 **10, 2015 notice of discipline. When would the operative**
 13 **date be or deadline to file the grievance?**
 14 A To be honest, I don't remember whether it's
 15 working days or not, so, I would need to look in the
 16 contract there. I don't want to give a date because I
 17 don't remember --
 18 **Q Well, --**
 19 A You know what I mean --
 20 **Q Without giving the exact date, is it 30 days**
 21 **from the date of the --**
 22 A Right, roughly. It might be more somewhat but
 23 don't remember if it's 20 days or not.
 24 **Q Depending on when it's received --**
 25 A Yeah, exactly.

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1 **Q -- versus --**
 2 A Well, depending on when it's received and what
 3 days are counted. I don't remember weekends are counted
 4 or not, I can't recall, because like I said, I was never
 5 a grievance person I should say, I never worked in
 6 grievance. So, I am the most murky about that other
 7 than reading what's in the contract and my relationships
 8 with Doug Broadfield at the time.
 9 **Q Doug Broadfield was gone in 2015?**
 10 A Yeah.
 11 **Q Who replaced Doug Broadfield?**
 12 A You'd have to ask Bob Zoeller. You know, I
 13 wasn't -- I mean I don't know the specificities of that,
 14 because mind you, I was on sabbatical, right, here
 15 after. So, --
 16 **Q Let me mark this PR4.**
 17 A Like I said, I kind of -- you know, I had a
 18 really busy three years.
 19 **Q Exactly. Let me show you what's marked as PR4.**
 20 (Thereupon, Plaintiff's Exhibit PR4 was
 21 entered into the record.)
 22 A Sure.
 23 **Q It's from the UFF-FAU 's website.**
 24 A Okay.
 25 **Q Does this refresh your recollection perhaps as**

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1 **to who replaced Doug Broadfield?**
 2 A Yeah, but I'll say I don't remember who of
 3 these two, the progression of how it went, right? Doug
 4 sort of left suddenly. We didn't get much advance
 5 notice. So, we were -- well, Bob was President by then
 6 I should say. So, I wasn't necessarily involved. So, I
 7 don't remember who immediately got in there, right? I
 8 don't think it was both of them at the same time. So,
 9 you know what I mean, I don't want to say --
 10 **Q Would it be McGetchin?**
 11 A I don't know, yeah.
 12 **Q Okay. Regarding the November 2015 notice of**
 13 **discipline, Professor Tracy's second round of**
 14 **disciplinary action brought by FAU, what do you remember**
 15 **about the -- after this notice was issued? What do you**
 16 **remember happening within your chapter?**
 17 A Well, I mean like I said, I wasn't involved
 18 with it directly. I just remember it accelerating
 19 really quickly, you know.
 20 **Q Were you -- did they communicate -- did any of**
 21 **the grievance officers communicate with you about the**
 22 **issue?**
 23 A No, we are just kind of broadly aware of it,
 24 you know, some of the executive committee members talked
 25 in general level like what's going on but never any kind

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1 of specificity.
 2 **Q Did they ever e-mail you about what you**
 3 **thought about the issues?**
 4 A They might have because I was old chapter
 5 president. So, -- but it's -- at a very distance,
 6 right, I always -- I think I caveated every time that I
 7 was like -- it's a different thing being involved there,
 8 being the chapter president, being the grievance person,
 9 as I know from doing it myself as opposed to being from
 10 the outside, the specificity of the details, right? So,
 11 at best I could only offer vague, you know what I mean,
 12 like conceptions?
 13 **Q So, you were operating in November 2015 more**
 14 **in an advisory capacity?**
 15 A Yeah, and I was a membership chair by then,
 16 right? So, that was my main thing I was looking at.
 17 **Q Your concern was with membership and the**
 18 **union?**
 19 A Yeah, just getting more people to join and --
 20 **Q Was the chapter or were you concerned that**
 21 **Professor Tracy's issues were going to affect**
 22 **membership?**
 23 A Well, not really. I dealt with that in 2013
 24 where it did, right? So, I sort of saw the fall out of
 25 that where we have --

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1 **Q Let's talk about that. What was the fallout**
 2 **with respect to the membership?**
 3 A Well, we had a couple of people resign, but we
 4 talked to them why we were defending the case, right?
 5 You know, it's a tricky issue because we wanted to
 6 defend the right to do what he was doing outside
 7 activity but we didn't necessarily want to defend what
 8 he was saying, right? So, there's this fine line, and
 9 whatever. So, members, you know, reacted negatively to
 10 that, but our position was like you have to defend, this
 11 can happen to any of us with it. So, we really dealt
 12 with -- it was quite honestly was much more a flashpoint
 13 it seems, at least from a distance, right? Like when I
 14 was President in 2013, it wasn't a lot quite honestly,
 15 it wasn't a lot of faculty we're talking about here but
 16 a few vocal minority. 2015 I didn't hear too much,
 17 right, quite honestly as a membership guy.
 18 **Q So, in 2015, did anybody leave the union?**
 19 A Not to my -- well, I mean maybe but not to my
 20 knowledge. I didn't know anything.
 21 **Q Do you know of any member of UFF-FAU who left**
 22 **because of Professor Tracy?**
 23 A Only in 2013.
 24 **Q But not in 2015?**
 25 A No, I'm not aware of that.

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1 **Q Were there any threats that they would leave**
 2 **or did anybody communicating had threat that they were**
 3 **going to do something because they disagreed with the**
 4 **union defending Professor Tracy?**
 5 A Not to my knowledge. Once again, I don't
 6 think that would come to me either, right? I mean I'm
 7 not - it is usually the chapter president, right? I
 8 mean he or she is the entry point, right? I'm sort of a
 9 --
 10 **Q Would the President, in this instance**
 11 **President Zoeller, would he have a duty to represent and**
 12 **defend Professor Tracy in 2015?**
 13 A Yeah, I mean I put it this way. And this is
 14 the way it's often kind of, you know, drummed into us in
 15 that -- we had to defend the contract, right, whoever
 16 the faculty member is, like we're not -- I don't want to
 17 sound too impersonal but we're not really defending the
 18 faculty member, right, we're defending the right of
 19 whatever that case comes up. So, with Deandre Poole, it
 20 was the right to academic freedom, right, it wasn't
 21 about Deandre. With Jim in 2013, it was about the right
 22 to do outside activity and, yeah, freedom of speech
 23 outside the University even though -- obviously and
 24 because going through a grievance personalizes it.
 25 **Q Right.**

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1 A But the way we try to have most clearly
 2 evaluate anything it's like well, has the contract been
 3 broken, does this jeopardize all faculty and that's --
 4 **Q There's more at stake.**
 5 A Yeah, right exactly.
 6 **Q And if you abandon one Professor because you
 7 disagree with what he says --**
 8 A Yeah.
 9 **Q You could be waiving everything --**
 10 A You can't personalize it, right.
 11 **Q Could you be waiving everybody's rights?**
 12 A Say it again.
 13 **Q I was saying if you don't defend one Professor
 14 who's targeted for his speech, could you be waiving
 15 everybody's rights?**
 16 A Right. Even -- I put it in a different way,
 17 you're jeopardizing the contract, right, itself, by
 18 making it vulnerable. But it's essentially it's the
 19 same thing you were suggesting.
 20 **Q Can the contract be selectively enforced?**
 21 A Oh, of course.
 22 **Q By the union?**
 23 A Well, I mean -- well, no, no, the contract
 24 needs to be enforced, you know, thoroughly, yes, of
 25 course. I'm just going to say on the other side it's

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1 sort of select- --
 2 **Q Right. That's what I wanted to clarify that
 3 the question --**
 4 A Yeah, okay, from the union, yeah --
 5 **Q I mean that's what the union is there for --**
 6 A Right.
 7 **Q -- to enforce the contract.**
 8 A As best we can, though, I'll say. You know,
 9 to be honest, going back to the thing, like many times
 10 people have violations on their rights that they don't
 11 draw the attention of the union and we're unaware of
 12 that. So, that does jeopardizes and we -- if it passes
 13 that 30-day period and or not, there's not much that we
 14 can do. So, I'm not acting like -- you know what I
 15 mean?
 16 **Q Right.**
 17 A We're not cognizant of all the problems that
 18 might be going on.
 19 **Q I just want to ask, in November 2015, were you
 20 involved in any discussions whether they were in person
 21 or on the telephone or an e-mail with President Zoeller
 22 and the grievance enforcement folks regarding the
 23 grievability of this notice, referring to PR 3?**
 24 A You mean asking if it was grievable?
 25 **Q Yes.**

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1 A No, I don't think we had the discussion about
 2 that.
 3 **Q Nobody asked you as former President, you
 4 know, "Is this notice grievable?"**
 5 A No, because it's clearly grievable. You know,
 6 to me I don't -- yeah, so, nobody had to ask for that.
 7 **Q Right. So, there's no excuse to not file a
 8 grievance in response to this notice of discipline
 9 within 30 days? We're talking about the union's duties
 10 and responsibilities.**
 11 A Yeah, as long as the grievance wants to do
 12 that -- I mean there's all these caveats of why you
 13 might or might not file a grievance. But if the
 14 grievant wants you to file a grievance and -- yeah, I
 15 don't --
 16 **Q Do you remember if Professor Tracy wanted the
 17 union to file a grievance?**
 18 A I would assume -- no, I don't recall. I would
 19 assume, but I don't know.
 20 **Q Do you recall there being a collective
 21 decision not to grieve?**
 22 A No.
 23 **Q Did President Zoeller, Michael Moats, Doug
 24 McGetchin, did any of these individuals talk to you
 25 about a collective decision they made not to grieve for**

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1 **Professor Tracy?**
 2 A No.
 3 **Q And would you agree with me that assuming it's
 4 30 days from November 10th that the grievance had to be
 5 filed by December 10th, 2015 if -- assuming that the
 6 deadline is in the operative date -- November 10th as a
 7 start?**
 8 A Yeah. If it's 30 days straight, like I said,
 9 I was unclear before if it's 30 working days or not, but
 10 yes, roughly around that.
 11 **Q So, if and when United Faculty of Florida FAU
 12 did not file a grievance for Professor by December
 13 10th, they in a sense waived his right to file a
 14 grievance with respect to this November 10th notice of
 15 discipline?**
 16 A Well, let me say, though, I don't know if
 17 there's any memo of understanding going on between them
 18 in terms of -- you know what I mean --
 19 **Q Right.**
 20 A There might be caveats where it was extended
 21 the date, so -- and I was not privy to any of that
 22 conversation. Like I said, I wasn't directly involved
 23 with Professor Tracy's grievance or what not. So,
 24 there might -- there are all these mitigating things
 25 that can happen where -- because it does happen quite

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1 often where the dates extended because of the memo of
 2 understanding, you know, what not.
 3 **Q Right. But you're not aware of any memo of**
 4 **understanding or --**
 5 A Right.
 6 **Q -- extension of time from the November 10**
 7 **notice of discipline?**
 8 A Right.
 9 **Q But you said you're also not aware of a**
 10 **decision not to grieve?**
 11 A Right, exactly.
 12 **Q If I -- and if you were made aware of a**
 13 **decision that was made without Professor Tracy's**
 14 **knowledge not to file a grievance on his behalf, --**
 15 A Right.
 16 **Q -- what would your response be to that**
 17 **decision?**
 18 A Yeah, at least -- well, I would -- if I got
 19 aware of it, I would like immediately oppose that.
 20 **Q Would there be any recourse for Professor**
 21 **Tracy or any grievant after the chapter failed to grieve**
 22 **in the timely fashion?**
 23 A I don't -- recourse, how, I don't --
 24 **Q I'm asking if you know.**
 25 A I don't know.

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1 **Q Have you ever heard of any kind of recourse**
 2 **once the grievance window has been missed?**
 3 A No, I mean -- once again, when I was
 4 President, you know, people threatened lawyers outside
 5 when a date had been missed or -- I mean I'll say there
 6 was a case where UFF-FAU was representing a person who
 7 didn't get tenure, right, and the portfolio clearly,
 8 although we initially took up the grievance, right,
 9 which we normally do when somebody doesn't get tenure,
 10 when we look after the evidence the person doesn't
 11 deserve tenure, so I remember having that -- and it got
 12 denied I believe when we brought it up to the state
 13 level thing and had a conversation with that person. And
 14 that person did threaten, you know, getting a lawyer and
 15 I said do what you have to do, I mean let's -- right,
 16 it's your -- but objectively speaking, right, we cannot
 17 win this thing, you're meeting the criteria that is --
 18 for promotion and tenure, right? It's nothing personal
 19 but there had been no violation of the contract,
 20 although I get it you're losing your job over this.
 21 That's why I don't try to depersonalize it, right? So,
 22 that's a good example of where the person, you know,
 23 wants you to grieve them but really there had been no
 24 violation of the contract.
 25 **Q Are you aware of any decision at the state**

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1 **level at UFF or FEA not to grieve Professor Tracy's**
 2 **discipline?**
 3 A I'm not aware of that.
 4 **Q Do you know if anybody at United Faculty of**
 5 **Florida, Zoeller, McGetchin held any meetings regarding**
 6 **Professor Tracy's discipline?**
 7 A Not to my knowledge.
 8 **Q Just going back to the outside activities**
 9 **policy, I want to show you one more document.**
 10 A Okay.
 11 **Q Sorry to jump around here. This is going to**
 12 **be PR 5.**
 13 A Oh -- that's for you, right.
 14 **Q You want 5?**
 15 A No, you're right, 5, okay.
 16 **Q I'm going to show you what's marked as PR 5.**
 17 (Thereupon, Plaintiff's Exhibit PR5 was
 18 entered into the record.)
 19 A Okay.
 20 **Q Do you recognize this document?**
 21 A Let's see. I definitely do not.
 22 **Q Okay. That is the question.**
 23 A I don't recognize it.
 24 **Q So, you don't recognize that document?**
 25 A No.

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1 **Q Have you ever heard of a monitoring plan?**
 2 A Not to my knowledge.
 3 **Q By FAU or anybody?**
 4 A No.
 5 **Q So, you don't know what this document was used**
 6 **for?**
 7 A -- that document is, yeah.
 8 **Q Has anybody ever told you about being**
 9 **monitored or any --**
 10 A For outside activity or conflict of interest?
 11 **Q For anything; has any faculty member ever**
 12 **complained, you know, "Chris, you're monitoring me"?**
 13 A I have, I have actually but -- you know,
 14 somebody claimed they were bugging his office years ago.
 15 **Q Who was bugging --**
 16 A The administration they claim. This is up
 17 Jupiter -- I'd rather not say the person's name I feel,
 18 you know, he's a good person, just kind of went off the
 19 rails.
 20 **Q Was this recently?**
 21 A No, this is a while ago but just really got
 22 paranoid and -- so, they were not bugging his office,
 23 right, I should just be very clear.
 24 **Q Did you guys do a sweep?**
 25 A Yeah.

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1 **Q Found out?**
 2 A Yeah -- no, we didn't do a sweep but it's like
 3 we're talking about FAU and they do not have the money
 4 to monitor and bug people's offices, right, and
 5 particularly this guy at the time. So, --
 6 **Q I'm going to show you one more document. This**
 7 **is going to be for the record PR 6.**
 8 (Thereupon, Plaintiff's Exhibit PR6 was
 9 entered into the record.)
 10 A Yeah.
 11 **Q (By Mr. Leo) Do you recognize this policy?**
 12 A I do.
 13 **Q And what policy is this?**
 14 A As it says here, Academic Freedom and
 15 Responsibility.
 16 **Q And if University policy was being used in a**
 17 **way that violated Article 5, would that be grievable?**
 18 A Yeah.
 19 **Q For example, 5.2(d), what does that say?**
 20 A Exercise constitutional rights without
 21 institutional censorship or discipline.
 22 **Q So, for example, with Professor Tracy's**
 23 **situation, would you agree that he was being censored by**
 24 **the University?**
 25 A Yeah, though I will say that with academic

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1 freedom here it's usually referring with on the campus,
 2 right? There is also -- I don't know if this applies to
 3 freedom of speech outside the campus, right, which I
 4 think something somebody should have, right, it's a
 5 constitutional right. But I think this is more in
 6 reference to anything on the campus itself.
 7 **Q Let's say that Professor Tracy or any faculty**
 8 **member was blogging from school. So, he was on his**
 9 **school computer and he's blogging on his own personal**
 10 **blog, he's off the clock, so to speak, but he's still on**
 11 **campus, would that fall within this protection 5.2d?**
 12 A That's tricky, that's tricky because
 13 theoretically you're using University equipment which is
 14 the office itself even if you're off -- yeah, I don't
 15 know, to be honest, that's a hazy -- that's really where
 16 the lawyer -- where I would differ to --
 17 **Q Would that be considered incidental use of the**
 18 **equipment, though?**
 19 A I have no idea, I don't know.
 20 **Q I mean he's not destroying anything or --**
 21 **assuming we're talking about using your computer to**
 22 **transmit a message, right, would you see that as an**
 23 **incidental use of the equipment?**
 24 A Like I said, I don't know that language, but
 25 I'm just saying, as a union person, we're often told not

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1 to do union business inside the University even when
 2 we're off, you know, in terms of --
 3 **Q Well, let's say you're using your computer to**
 4 **tweet, your school computer.**
 5 A Right.
 6 **Q Would that be a use of the equipment that**
 7 **would require recording of the speech?**
 8 A I don't know about that but we're not supposed
 9 to do that theoretically, right? It's supposed to be
 10 used for work, the equipment.
 11 **Q Right, right. Has anybody ever brought**
 12 **Article 5.2d to your attention and said I want to file a**
 13 **grievance because my rights had been violated?**
 14 A You mean when I was President?
 15 **Q At any time?**
 16 A I mean I would say the Deandre Poole, I don't
 17 want to say it's necessarily 5.2(d) but right, there was
 18 clearly a violation of the academic freedom and
 19 responsibility. I don't remember exactly what we were
 20 pinpointing at that time but definitely with his, you
 21 know, use of an exercise on campus, the textbook
 22 exercise, the University wanted to reprimand him for
 23 doing that. So, I'm sure on some level, right, we were
 24 grieving that academic freedom and responsibility.
 25 **Q Are you familiar with Mike Bud?**

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1 A Yes.
 2 **Q Who's Mike Bud?**
 3 A He also does membership recruiting.
 4 **Q So, he's another faculty member in FAU?**
 5 A Well, he's an emeritus now. So, he's retired,
 6 he does like one class this semester but he still works
 7 for the union.
 8 **Q I see. And he -- so, he serves in the**
 9 **advisory capacity like you do?**
 10 A Yeah, yeah, both are -- sort of our
 11 responsibility, we tag teams, sort of recruiting and
 12 membership stuff.
 13 **Q And who's Meredith Mountford?**
 14 A Well, she's just been elected UFF president,
 15 she was I believe Vice President --
 16 **Q She's now President?**
 17 A Yes.
 18 **Q This happened recently?**
 19 A Yeah, there's an election.
 20 **Q When did that happen?**
 21 A End of March, I don't remember the exact date,
 22 but it goes into effect -- well, there's a transition
 23 but it goes into effect April 1st.
 24 **Q And that's not a joke?**
 25 A No, it's not a joke, right, exactly.

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1 **Q Okay. With respect to Professor Mountford --**
 2 **am I saying that right -- Mountford?**
 3 A Yeah.
 4 **Q Do you recall her involvement in discussions**
 5 **particular via e-mail concerning Professor Tracy's**
 6 **dispute with the University in 2015?**
 7 A Do I recall -- say it again.
 8 **Q Do you recall her participation in e-mail**
 9 **discussions amongst UFF-FAU --**
 10 A I think so, she would probably be part of that
 11 because she was part of that because she was part of the
 12 executive committee.
 13 **Q Did you ever talk to her about her concerns?**
 14 A No. Yeah, she wasn't very present often,
 15 she's was in education --
 16 **Q Did she ever convey to you that you can recall**
 17 **that she was being excluded from the discussions that**
 18 **Zoeller and McGetchin and others were having?**
 19 A I have no idea. I have never -- yeah, I never
 20 recall her saying that.
 21 **Q Let me show you what's been marked as PR7 --**
 22 (Thereupon, Plaintiff's Exhibit PR7 was
 23 entered into the record.)
 24 A Okay.
 25 **Q (By Mr. Leo) -- for today. Why don't you just**

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1 **read through it and --**
 2 A The whole thing?
 3 **Q Yeah, just read through it and let me know**
 4 **when you have a chance to read the whole exchange.**
 5 A Okay. Okay, yeah.
 6 **Q Does this refresh your recollection?**
 7 A Sure, yeah.
 8 **Q So, you were included on this exchange?**
 9 A Yeah, I don't recall, though, exactly what,
 10 you know, she was being left out of -- or not.
 11 **Q When she says Chris, she's referring to you?**
 12 A Um-hum.
 13 **Q Okay.**
 14 A Because I must -- I did -- you know, I think I
 15 said something like this definition of outside activity
 16 is very broad. You know what I mean?
 17 **Q I think I have your message.**
 18 A Yeah. Because I think I gave a series of --
 19 once again, this was just sort of general --
 20 **Q Let me --**
 21 A -- comments I made.
 22 **Q I'm going to also mark this one -- sorry, we**
 23 **have a lot of e-mails here.**
 24 A Yeah, it's all right.
 25 **Q I think it's a little difficult to find the**

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1 **right one. PR --**
 2 A It's hard to recollect somewhat because it's -
 3 - there were so much going on at this time too.
 4 **Q Let me show you what's been marked as PR 8.**
 5 (Thereupon, Plaintiff's Exhibit PR8 was
 6 entered into the record.)
 7 A Okay.
 8 **Q (By Mr. Leo) Let me know if that's the message**
 9 **you were referring to. And then while you're doing**
 10 **that, I'm also going to mark the record, I'm going to**
 11 **mark another message, PR 9.**
 12 (Thereupon, Plaintiff's Exhibit PR9 was
 13 entered into the record.)
 14 A Right.
 15 **Q (By Mr. Leo) I'm going to show you what's also**
 16 **been marked here as PR 9.**
 17 A Okay.
 18 **Q And just for the record, PR 8, that's your**
 19 **message?**
 20 A Right.
 21 **Q Your e-mail was robe --**
 22 A robe, yeah, robe.
 23 **Q All right.**
 24 A Right. Okay, yeah.
 25 **Q Just I just wanted to ask you if these**

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1 **communications were the first communications that you**
 2 **were included on with respect to Professor Tracy's**
 3 **issues.**
 4 A As far as I can recall, you know.
 5 **Q Okay. And you notice that date on one e-mail**
 6 **is December 13th after the window to file a grievance.**
 7 A Okay.
 8 **Q Another one, PR 9, that's dated December 17th.**
 9 A Okay.
 10 **Q That's actually after the notice of**
 11 **termination has been issued by the FAU. So, is it safe**
 12 **to say that the first time Zoeller and the grievance**
 13 **chairs and those who are involved in the grievance**
 14 **decision-making process were actually talking about or**
 15 **communicating with you and other UFF members about**
 16 **filing a grievance?**
 17 A I don't know to be honest, I can't recall. I
 18 mean obviously these are the times when I was responding
 19 back because I -- you know, in some ways I don't -- I do
 20 membership stuff, so I don't want to get too involved
 21 with -- in confusing the issue. So, I might have been
 22 copied on other things quite honestly before but I don't
 23 recall responding --
 24 **Q Was Professor Tracy included on any of these**
 25 **communications to your knowledge?**

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1 A I don't recall that either.
 2 **Q Was there ever a directive by President**
 3 **Zoeller not to talk to Professor Tracy?**
 4 A No.
 5 **Q -- about his grievance or about his issues?**
 6 A No. Not to me, not to me.
 7 **Q Let me show you what's been marked -- we're on**
 8 **10?**
 9 (Thereupon, Plaintiff's Exhibit PR10 was
 10 entered into the record.)
 11 A Um-hum. Okay.
 12 **Q (By Mr. Leo) Just better read that one too.**
 13 A The top or the whole thing?
 14 **Q The whole thing. Let me know when you're**
 15 **done, because I have a question about this e-mail.**
 16 A Okay.
 17 **Q The e-mail in the bottom, this is from Mike**
 18 **Bud?**
 19 A Right.
 20 **Q That's his e-mail, mbud44@gmail?**
 21 A Yes.
 22 **Q He write, "Hi, Bob, Doug and Chris, -- so, he**
 23 **wrote you on this exchange?**
 24 A Yeah.
 25 **Q The first e-mail at the top there, at least**

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1 **first with respect to the order on this page.**
 2 A Right.
 3 **Q Or the timestamp you can see is the bottom e-**
 4 **mail came first, 132 a.m.**
 5 A Yes.
 6 **Q Were you included on both of these e-mails or**
 7 **were you only included on Mike Bud's e-mails?**
 8 A I don't recall, to be honest. I don't know, I
 9 don't remember, yeah.
 10 **Q You know I ask because in the 5:00 a.m.**
 11 **response from Zoeller, right, zdoug2014?**
 12 A Um-hum.
 13 **Q He wrote Mike and he didn't include --**
 14 A Right, I know.
 15 **Q -- you in his addressing --**
 16 A Yeah, that's why I'm not clear if I was
 17 included in that or not.
 18 **Q Does this refresh your recollection as to**
 19 **whether a collective decision was made regarding**
 20 **Professor Tracy's grievability?**
 21 A Yeah -- no, like I said, I wasn't privy to
 22 that in terms of --
 23 **Q Well, on December 2nd, Mike Bud writes to you**
 24 **and he says, "Bob, when you say the situation is not**
 25 **grievable, are you saying that Doug and Michael Moats do**

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1 **not think that you can make a case the CBA has been**
 2 **violated here?**
 3 A Right.
 4 **Q After you got this message, do you recall**
 5 **having discussions with any of these individuals?**
 6 A No, no, not immediately, afterwards. But I
 7 think that question -- yeah, at leaves it open, I don't
 8 know if there was or not, right?
 9 **Q What's SPE?**
 10 A It's post-tenure review but it goes by
 11 Sustained Performance Evaluation.
 12 **Q When he says, "I bring this up because the**
 13 **dean and the admin may go after him further and try to**
 14 **fire a tenured faculty member regardless of what happens**
 15 **with the SPE, are we okay with that?", were you okay**
 16 **with that?**
 17 A I bring this up -- no, no, obviously. I just
 18 -- SPE was being created to try to like get rid of
 19 tenured people -- well, I shouldn't -- the way it was
 20 written was problematic originally in terms of it could
 21 jeopardize someone who had tenure --
 22 **Q So, these e-mails are authentic?**
 23 A Yeah, this one I definitely know. I'm not
 24 entirely certain I read that one above. It could have
 25 been on there but I don't recall. As you know, people

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1 with e-mails, it's sporadic, they copy everybody or if
 2 they don't, so I don't want to act like I was
 3 necessarily on --
 4 **Q Oh, I know very well --**
 5 A Yeah.
 6 **Q I just want to ask if you recall actually**
 7 **reading these e-mails --**
 8 A I recall this one. Obviously I recall the
 9 ones I wrote, right.
 10 **Q So, all the ones you have so far, you recall**
 11 **actually being --**
 12 A These I do. PR 7, I don't know exactly, you
 13 know, how much -- obviously the last one I must have
 14 been on because there's -- saying she's responding me
 15 Chris. But the first two on that PR 7 I'm not entirely
 16 certain if I was included on those or not.
 17 **Q Does the exchange that includes Professor ,**
 18 **I'm not sure how to say it again, Mountford, does that**
 19 **refresh your recollection as to whether she was**
 20 **complaining at the time about being excluded?**
 21 A Yeah, but I don't know excluded from what. In
 22 other words, if it was like the e-mail exchange or if
 23 they -- well, I don't want to assume but I don't know
 24 from what, yeah.
 25 **Q Well, my next question really is with respect**

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1 to the grievance process, you talked earlier about
 2 delegating and how certain people are involved in
 3 grievances, others aren't, --
 4 A Yeah.
 5 **Q Would Professor Mountford, would she be one**
 6 **of the people that should be included or involved in the**
 7 **grievance process?**
 8 A Often not, yeah, it's often just the President
 9 of the chapter, the grievance people, right, whoever
 10 represent the grievance people and often a
 11 representative from the state that would help mediate
 12 it. We have monthly executive committees were we're
 13 updated with grievances. We don't necessarily use
 14 people's names but we'll keep people informed what's
 15 going on. But I don't -- when I was President, I don't
 16 -- and to be honest, I don't remember who the Vice
 17 President was, which should say something, was not privy
 18 to grievance stuff.
 19 **Q Okay.**
 20 A Yeah, I was mainly --
 21 **Q I mean when she -- when Professor Mountford**
 22 **responds and says, "I want to be included in this", do**
 23 **you think she had a right to be?**
 24 A It depends. Like -- I mean you have all these
 25 factors going on. Like one, if it's a matter of trying

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1 to address something timely, right -- sometimes things
 2 move too quickly forward to update everybody in a timely
 3 fashion itself. So, you don't want to jeopardize a
 4 person you're representing, you know, in the grievance
 5 to just inform other people, right? At the same time,
 6 of course, you want to keep, you know, your other
 7 officers as informed as you can if need be, right?
 8 **Q Did anybody ever tell you that you were not**
 9 **helping Professor Tracy or were a problem in anyway?**
 10 A That I was?
 11 **Q Yeah.**
 12 A No.
 13 **Q We'll come back to that, this one. I will**
 14 **have you mark this other one I want to ask you about.**
 15 **I'm going to show you what's been marked as PR 11.**
 16 (Thereupon, Plaintiff's Exhibit PR11 was
 17 entered into the record.)
 18 A Okay.
 19 **Q You can again -- and let me know once you got**
 20 **a chance to --**
 21 A Okay. Yeah. And the dates -- Okay.
 22 **Q So, it looks to me like you had a problem with**
 23 **the he was terminated, Professor Tracy?**
 24 A Right, yeah.
 25 **Q And the University's either contradicting or**

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1 inconsistent notices?
 2 A Right, it was unclear.
 3 **Q Is this the first time you expressed those**
 4 **concerns in this e-mail?**
 5 A Well, I don't know. I might have verbally
 6 said something before but I don't recall.
 7 **Q This is dated January 5th, 2016, shortly**
 8 **before his termination came to effect. Did anybody**
 9 **respond to you regarding your concerns on this e-mail?**
 10 A I don't know. Once again, I don't recall. I
 11 would think so, right, I would think so but I don't --
 12 **Q Do you remember, for example, President**
 13 **Zoeller saying "thank you, we're on it"?**
 14 A Oh, I don't know -- yeah, I don't remember, I
 15 don't recall.
 16 **Q I know there's also Marshall Ogletree is**
 17 **included on this e-mail as well as Michael Moats.**
 18 A Okay.
 19 **Q Did either of those individuals from UFF and**
 20 **FEA, did they contact you or respond to this message?**
 21 A No. I mean like they didn't contact me. Once
 22 again, I don't recall if anybody responded to this
 23 message or not, if they copied on it. Yeah, someone --
 24 I hope they would have if I wrote something like this
 25 but --

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1 **Q And correct me if I'm wrong, it looks to me**
 2 **like you were trying to help Professor Tracy --**
 3 A Right, yeah.
 4 **Q -- especially with these communications, given**
 5 **your insight and experience.**
 6 A I'll just say it was difficult because it was
 7 sort of different than 2013 than this time, but, you
 8 know, just sort of at a distance, you know, what I was
 9 seeing sort of the avenues they might have wanted to
 10 consider.
 11 **Q Would you say that Mike Bud was also trying to**
 12 **help Professor Tracy at this time?**
 13 A Definitely.
 14 **Q I am going to show you another e-mail. We're**
 15 **12 --**
 16 A I mean I should say two just like these -- I
 17 think we're all trying to like -- you know, whenever
 18 these e-mails are exchanged, like trying to collectively
 19 speak to one another about like what's the best avenue.
 20 I don't --
 21 **Q Right.**
 22 A So, I don't feel --
 23 **Q And I'm showing you, this is an e-mail dated**
 24 **December 17th 2015 from Mike Bud, looks like he's**
 25 **responding to you.**

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1 A Sure.

2 **Q Go ahead and just read that and let me know**

3 **if --**

4 A I mean him and I are very like-minded, quite

5 honestly, if you can tell from these e-mails and stuff

6 in terms of our -- not identical, but I yeah think --

7 yeah, okay.

8 **Q Was that e-mail sent to you?**

9 A I believe so, I believe so.

10 **Q Okay. And do you know if any of Mike Bud's**

11 **concerns or input was acknowledged or received by**

12 **President Zoeller or any other grievance enforcement --**

13 A Once again, I don't know about e-mail, but --

14 so one, Mike and I share the same -- we're part of the

15 same school. So, we talk often. So, I'm sure we talked

16 about this too. But, you know, I would think, because

17 we have happy hours, whenever they were, that this

18 probably would have come up some time or other. You

19 know, just --

20 **Q Okay. This is an e-mail dated the 17th after**

21 **the notice of termination, but let me show you another**

22 **one; this is PR 13.**

23 A Jeez!

24 **Q Yeah, it's a lot of e-mails.**

25 A Okay.

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1 **Q Were you copied on both of these e-mails?**

2 A I think so; they sound familiar.

3 **Q Okay.**

4 A Yeah.

5 **Q Does this refresh your recollection as to**

6 **whether President Zoeller issued a directive not to**

7 **communicate with Professor Tracy regarding these**

8 **discussions?**

9 A With -- these discussion on here you mean?

10 **Q We'll just refer -- I'm just referring to this**

11 **first message -- well, it's first from the top.**

12 A Oh, I see. Actually I didn't see that.

13 Everyone --

14 **Q It appears to be a response to the December**

15 **2nd message, the way the thread was produced at least to**

16 **us.**

17 A Right.

18 **Q It says here, "Thanks, Mike. Everyone please**

19 **understand that these e-mail communications are**

20 **sensitive --**

21 A Oh, yeah.

22 **Q -- and for this group only. They should not**

23 **be discussed with anyone and that includes Jim."**

24 A Right.

25 **Q Does this refresh your recollection as to**

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1 **whether President Zoeller had issued a directive not to**

2 **communicate with Professor Tracy on this matter?**

3 A Yeah, well, I think it's referring to the e-

4 mails itself because I did talk to Jim, you know, about

5 this stuff, regardless.

6 **Q Even though President Zoeller told you not to**

7 **discuss it with him?**

8 A Yeah. Listen, Jim's my friend, right? So,

9 you know, -- let's see, I wasn't going to the details of

10 these particular messages but more generally like what

11 his case was. So, I -- listen, I interpreted that as

12 'these e-mails we shouldn't be forwarding or what not,

13 or discussing it explicitly with Jim'. I didn't get the

14 sense that, you know, we shouldn't talk to Jim at all or

15 -- I mean -- Bob Zoeller knew like myself Shane Eason,

16 Mike Bud are friends with Jim. So, you know, inevitably

17 when we see him, it'll be really awkward not to talk

18 about what's going on.

19 **Q Right. Do you think it was odd for President**

20 **Zoeller to be directing grievance folks or those who are**

21 **acting in advisor capacity not to speak to a grievant**

22 **about his own grievance or his issues?**

23 A Yeah, I mean the thing is with this, I don't

24 know he mean -- like I said, I'm assuming it's a chain -

25 - this internal chain, right, in terms of going on. I

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1 would always assume Bob and Mike and whoever else was

2 grieving at the time would be the main foray in terms of

3 discussing it. In other words, you don't want too many

4 people giving conflicting ideas of what's going on. So,

5 I would always respect them being at the forefront of

6 representing it. Similarly when I was a President of

7 the UFF, I would want my grievance chair to be the first

8 person to talk to the grievant and myself and I would

9 not want a bunch of other people kind of chiming in.

10 You know what I mean, that conflicting information?

11 That's just going to make it more difficult to actually

12 organize the case itself.

13 **Q But shouldn't the grievant, or Professor Tracy**

14 **in this example, shouldn't he be participating in his**

15 **defense?**

16 A Well, he is though in other ways, right? I

17 assume this was just information or questioning among

18 the people on the EC and other people that had been

19 involved like myself, Bob, myself who'd been President

20 in the past. So, I don't think it excludes that, right?

21 In other words, there is --

22 **Q Yeah, well, my next question was. as**

23 **President, when you were President of UFF-FAU, did you**

24 **ever give a directive to any of the other members not to**

25 **communicate with one another particularly with respect**

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1 to a grievance?

2 A Well, I mean did give -- certainly grievances

3 are, you know, -- I mean I gave directives of like we

4 can't give grievants' names if they're not involved. I

5 mean there has to be a certain amount of privacy, right?

6 **Q Right. You're talking other people?**

7 A Yeah, other people -- and I'll say we -- I

8 didn't operate as much as e-mail, I more met up with my

9 -- because I was on campus more, you know, talking more

10 directly with the grievance people and what not, but

11 it's -- I don't think I never had to because -- like

12 there wasn't that much -- no, I don't remember saying

13 that, right? But in some ways, I didn't have to, it

14 didn't seem like -- it was mostly a more contained group

15 I think that I dealt with then -- than Bob wanted more,

16 you know, people just shooting ideas out.

17 **Q Do you think that Zoeller was trying to keep**

18 **certain information from Professor Tracy?**

19 A I can't make that judgment. I don't know what

20 his motives are in terms of -- you know --

21 **Q Do you know if Zoeller had a problem with**

22 **Professor Tracy?**

23 A What do you mean a problem?

24 **Q A problem with something Professor Tracy had**

25 **done, like for example, his blog.**

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1 A Well, I don't -- I mean, he might have -- like

2 I said, I always divest the person from -- I mean you

3 don't have to like the people you're grieving, right?

4 You don't have to like people you're representing.

5 **Q Right.**

6 A So, --

7 **Q But did Zoeller feel the same way as you do?**

8 A I think so, yeah. I mean I think he's tried

9 to divest himself from the thing that he's representing.

10 I remember him, you know, wanting the lawyer whoever it

11 was at that time to take over, have autonomy.

12 **Q At what point did you learn that Zoeller or**

13 **UFF had brought in outside counsel?**

14 A Oh, I don't remember. You know, I mean I

15 wasn't that inside with it to know when they actually

16 brought an outside counsel and stuff. I can't even

17 recall exactly who it was, but I heard it was a good

18 attorney.

19 **Q Did Zoeller or Moats or anybody at UFF ever**

20 **tell you to back off --**

21 A No.

22 **Q -- in your input?**

23 A No.

24 **Q All right. Let me show you PR 14.**

25 (Thereupon, Plaintiff's Exhibit 14 was entered

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1 into the record.)

2 A I am a pretty forward person.

3 **Q (By Mr. Leo) Are you laughing at what you**

4 **read?**

5 A Yeah, I mean -- I don't know -- okay. So,

6 yeah -- I mean obviously he kept that secret with Bob.

7 **Q Right. You're not included in this --**

8 A No, clearly not.

9 **Q But does this refresh your recollection as to**

10 **whether Moats had a problem with something you had said?**

11 A I don't know, yeah, I don't know what exactly

12 what he's referring to, to be honest, but --

13 **Q Yeah, and what could he mean by, 'you're not**

14 **helping' --**

15 A I don't know. Yeah. I don't know.

16 **Q Or hurting the case.**

17 A Yeah, I don't know that either.

18 **Q What is -- what could that mean for --**

19 A I have no idea.

20 **Q I'm just --**

21 A He's obviously never vocalizes with me.

22 **Q Right. Well, I'm just asking you based on**

23 **your experience, in your opinion, how could you giving**

24 **input to Michael Moats or Bob Zoeller or anybody at UFF,**

25 **how could that hurt Professor Tracy or his case?**

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1 A Like I said, I don't know and it's funny. I

2 mean, I'll say this was never -- in some ways it has

3 never made privy to me. So, I never -- Michael, you

4 know, never told me this himself nor Bob never related

5 it. So, since it was never articulated, I have no idea.

6 **Q My understanding, I've looked at this link --**

7 A Um-hum.

8 **Q -- in my understanding after reading some of**

9 **the other e-mails and without getting into nitty gritty**

10 **my understanding is that there was misreporting in**

11 **December of 2015 regarding a comment you had made in**

12 **2013.**

13 A Yeah, that's true.

14 **Q Does that refresh your recollection as to --**

15 A I don't know what comment I made, I don't

16 recall that.

17 **Q But you remember anybody at UFF telling you**

18 **not to talk to the media?**

19 A No.

20 **Q Or not to give a statement?**

21 A No, but I wouldn't have done it to be honest.

22 I think it's really important that the president of the

23 chapter, whoever that is be the main person of contact.

24 So, --

25 **Q How about press contacting -- general press or**

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1 **giving information from the UFF-FAU , is Zoeller that**
 2 **guy, is he the point man?**
 3 A He should be, yeah. I mean I'll say Mike Bud
 4 and myself are also communication people, so we try to
 5 vet, you know, or help out Bob in terms of what he's you
 6 know, just for -- finesse it for the press, present it
 7 well because we have more experience doing that.
 8 **Q Were you ever included in any PR discussion or**
 9 **press release traps or anything like that?**
 10 A I don't believe he did any, right. I don't
 11 think -- it was a tricky case. I'll be honest. Going
 12 back to 2013 when I was president, you know, it was a
 13 mixed bag if we wanted to go to the press or not because
 14 on one level it was a deeply unpopular case, right, with
 15 what Jim was saying. So, I didn't think we were going
 16 to win much popular support that way. At the same time
 17 we were like, you know, this is -- that time was a First
 18 Amendment issue. But I felt like the negative publicity
 19 would outweigh that. So, we didn't really go to public.
 20 We try to work through the grievance process. And I
 21 assume -- I don't think Bob mentioned anything or myself
 22 what about like doing any kind of PR campaign because we
 23 thought it'd be better not making it, you know, it's
 24 just not a popular --
 25 **Q Just to comment on a question about something**

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1 **you just said, when you're speaking of the 2013 issue**
 2 **with Professor Tracy and his blog -- you characterize**
 3 **it as a First Amendment issue, would you characterize**
 4 **the 2015 issue differently?**
 5 A Yeah, it's a -- the way in which the
 6 University is going at it, you know, it just seems more
 7 complicated, right? The 2013 was really easy in terms
 8 of it's clearly outside activity, clearly, we weren't
 9 addressing with things on campus and that the 2015 was
 10 more murky, right? And that there is a blog going on
 11 but there was equipment being used in the University,
 12 you know what I mean. Like so, I wasn't clear and I
 13 think I said this sort of one of my e-mails of like, is
 14 the first amendment or it's academic freedom, it's both,
 15 we really need to kind of clarify that because there is
 16 different types of arguments we need to make for that.
 17 As well as they're trying this technicality right on top
 18 of it of insubordination which always struck me as sort
 19 as the Achilles heel of the case and that's -- because
 20 like I said it was drummed into me before, you know if
 21 you don't sign this they can get you for
 22 insubordinations. So, I felt like we were letting, you
 23 know, something in there with not doing it. I would've
 24 sign the paperwork, sort of then file the grievance then
 25 you could've dealt with all these other issues.

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1 **Q When you said it was murky, who was murking**
 2 **the water here, if we're going to use that --**
 3 A Well, I mean I think it's just general. I
 4 didn't talk to Jim as much obviously because I wasn't
 5 union president. So, I didn't sort out those issues.
 6 But was entirely clear in terms of the defense like I
 7 said, I remember once seeing Jim, you know, on campus
 8 prior to everything happening like in the fall and
 9 seeing him having equipment in his office and saying
 10 something I don't know if it was a great idea. Because
 11 like I said, I thought to be much safer if you just kept
 12 everything --
 13 **Q What equipment did he --**
 14 A Well, it was like recording equipment and, you
 15 know, he's doing interviews in his office and it was
 16 like, I thought it's be better just to do it outside the
 17 University rather than -- because we didn't deal with
 18 that part of it, right? We didn't deal with the
 19 academic freedom side.
 20 **Q He -- Professor Tracy had brought his own**
 21 **equipment to the recording?**
 22 A Yeah, I believe so.
 23 **Q Okay.**
 24 A Yeah. So, like I said this was an added thing
 25 that I had to deal with the first time -- and like I

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1 said, they -- the University was being smarter about it,
 2 you know, in their own. In other words, if they weren't
 3 going directly at the freedom of speech but they were
 4 trying to use this technicality.
 5 **Q Right, could you agree that they were trying**
 6 **to find ways around the first amendment?**
 7 A Yeah, I mean it seems that way, right. It
 8 appears that -- once again, I can't guess what they were
 9 doing but it does seem they were trying to use the
 10 technicality there. So, there were whole hosted things
 11 that made it sort of different then when we -- we had a
 12 much more easier case when I first had to deal with --
 13 **Q But that -- nonetheless Professor Tracy, UFF-**
 14 **FAU could've filed a grievance alleging that 5.2(d) had**
 15 **been violated with respect to the discipline November of**
 16 **2015.**
 17 A Right.
 18 **Q And after he was -- notice of termination on**
 19 **the same grounds that it can't be misconduct because --**
 20 **or insubordination because you're violating 5.2(d) by**
 21 **targeting my speech.**
 22 A Say that again?
 23 **Q Sorry. I was saying -- I'll try to simplify.**
 24 A Yeah.
 25 **Q Professor Tracy and UFF-FAU could've grieved**

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1 the Notice of Discipline in November under 5.2(d) of the
 2 Collective Bargaining Agreement saying, "FAU, this
 3 discipline is censorship this is targeting my
 4 constitution and protected activity, everything that
 5 comes from this falls within a violation of 5.2(d) and
 6 they're just using Article 19 to, you know, find the in
 7 around, you know, to avoid the first amendment issues".
 8 A This is where it get's tricky, right? Because
 9 in some ways, you know, I would agree it's implicit
 10 there. But the question whether it's explicitly being
 11 violated. In this way, I would differ to Bob and
 12 whoever was grieving, right. This is where I'm saying
 13 it's kind of getting murky because, you know, if you
 14 don't fill out that paperwork and they are trying to get
 15 you on insubordination, is that trump the argument
 16 you're trying to make on the academic freedom of speech
 17 itself, right? That I don't know. That was the thing
 18 because they're directly addressing what you're
 19 saying --
 20 **Q Right, or there was no grievance filed with**
 21 **respect to the November 2015 notice. So, now,**
 22 **insubordinations in play because you never agree the**
 23 **directive, right?**
 24 A Right.
 25 **Q So, it was like a trap.**

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1 A Right. Once again, I don't know all the
 2 technicalities of that but it's like -- that's -- I
 3 don't know, and that's why I sort of have a distance of
 4 what exactly the grievance should constitute. Should it
 5 be the, you know, I don't know if Jim made himself
 6 vulnerable by not filling out the paperwork and also
 7 this allowed insubordination to take root.
 8 **Q Well, he filled out the paperwork though,**
 9 **didn't he?**
 10 A I think so, I believe so eventually. And --
 11 **Q He was fired shortly thereafter.**
 12 A Right. Yeah, and I know it was definitely
 13 accelerated after because we met once before he was
 14 fired I believe.
 15 **Q You met with Professor Tracy?**
 16 A Jim -- James Tracy, yeah. And then -- because
 17 I remember being concerned which -- about it.
 18 **Q Are you still concern?**
 19 A Yeah, of course. I mean, like I said, other
 20 than being a friend, I mean, I don't like faculty
 21 getting fired for not filling out paperwork, right?
 22 That's not a good precedent.
 23 **Q And what about tenure?**
 24 A Right, exactly. Yeah, but I would say any
 25 faculty in addition to tenure, no faculty member should

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1 be fire for not filling out a piece of paperwork.
 2 **Q Did anybody convey to you that Professor Tracy**
 3 **was in argument against tenure?**
 4 A I'm sure, I'm sure somebody brought that up.
 5 **Q Who said that to you?**
 6 A Once again, I don't -- you know, who know. I
 7 mean, it could've been multiple people who --
 8 **Q Okay. Let me narrow the question then.**
 9 A Yeah.
 10 **Q Did anybody in the administration tell you**
 11 **that Professor Tracy was the -- example, the one man**
 12 **argument against tenure?**
 13 A In the administration?
 14 **Q Right.**
 15 A Not that I know of, yeah.
 16 **Q Any representative of the University?**
 17 A I wouldn't been privy to that, I mean, I could
 18 think of faculty saying that. I don't -- not
 19 specifically but I'm sure I've heard it before but I
 20 don't know administrator I think would.
 21 **Q Did Zoeller ever say that?**
 22 A I don't know, I can't recall but he might've.
 23 **Q Possible?**
 24 A Yeah.
 25 **Q Did Michael Moats ever say anything about**

97

1 **that?**
 2 A Once again, I can't -- I can't -- I don't
 3 remember exactly. I do recall hearing that but I don't
 4 want to say.
 5 **Q Did you ever -- did you have any communication**
 6 **with FAU counsel, Larry Glick?**
 7 A No.
 8 **Q Never?**
 9 A Never, no.
 10 **Q What about before this ordeal, the 2015**
 11 **dispute -- in 2013 when you were president, did you have**
 12 **any dealings with Larry Glick?**
 13 A No, I believe Michael Moats did at the time
 14 but --
 15 **Q In what way?**
 16 A I don't know, in terms of you meet with the
 17 other counsel on the other side, discussed what's going
 18 on and, you know, figure out where you're each at. I
 19 mean you have to constantly have some kind of
 20 interaction.
 21 **Q So, Moats served in representative capacity on**
 22 **top of his advisory capacity?**
 23 A Yeah, it might've been him and Doug Broadfield
 24 together who might-- once again, I can't recall that
 25 because once again I delegated that stuff to those guys

<p style="text-align: right;">98</p> <p>1 and they were pretty competent.</p> <p>2 Q Okay. Does Moats or whoever is serving in</p> <p>3 this mediary capacity or intermediary capacity, do they</p> <p>4 regularly have communications with FAU's counsel?</p> <p>5 A Well, it's only of an issue we're bringing up</p> <p>6 and we, you know, and we want him to be one of our</p> <p>7 people there. He has more experience, right? In many</p> <p>8 ways why we would have Michael in that place because</p> <p>9 he's work on conference a lot longer, he's done</p> <p>10 grievances a lot longer than us. So, he had a certain</p> <p>11 expertise that we would have there and either, we have</p> <p>12 our own people there with him or he would report</p> <p>13 directly back to us to what was going on.</p> <p>14 Q And Michael Moats, he directed Professor Tracy</p> <p>15 or advised Professor Tracy ion 2013 not to submit his</p> <p>16 blog on the outside activities form?</p> <p>17 A Right.</p> <p>18 Q You're aware of that?</p> <p>19 A I am. I remember that, yeah.</p> <p>20 Q Did he give you any reasoning for that?</p> <p>21 A You know, and once again like I said there's a</p> <p>22 lot of other things going on. So, as far as I'm</p> <p>23 concerned if you can get the thing resolved. I don't</p> <p>24 really care the reasoning behind it.</p> <p>25 Q Right.</p>	<p style="text-align: right;">100</p> <p>1 filling it out, the only thing is you make yourself</p> <p>2 vulnerable not filling out the form, right? Somehow,</p> <p>3 Michael Moats at that time got around that but the</p> <p>4 difficulty is with every new administration, they create</p> <p>5 their own new policies, right?</p> <p>6 Q Right.</p> <p>7 A So, they're not under any obligation to follow</p> <p>8 the older policy itself. We've all been victims of this</p> <p>9 in terms of faculty like an older policy that used to</p> <p>10 stand and then when an administration takes over its</p> <p>11 somehow not followed.</p> <p>12 Q In 2015 in September, Professor Lenz gave a</p> <p>13 pretty passionate speech of the fear and uncertainty</p> <p>14 that was felt by faculty members of the University.</p> <p>15 A Um-hum.</p> <p>16 Q Did you feel that same fear and uncertainty?</p> <p>17 A I mean, no, quite honestly. But, yes, if</p> <p>18 you're vulnerable, you know, for sure. I mean, were</p> <p>19 tenure people and we're pretty articulate and to be</p> <p>20 quite honest, if you're union member out front there's</p> <p>21 not really too much to worry about. But definitely, you</p> <p>22 know, instructors and assistant professors.</p> <p>23 Q And earlier you testified that the outside</p> <p>24 activities forms, you've never submitted one.</p> <p>25 A No.</p>
<p style="text-align: right;">99</p> <p>1 A It was a win on my side. So, like I said, I</p> <p>2 don't think he needed to give me anything.</p> <p>3 Q Did the advisement of Michael Moats in 2013 --</p> <p>4 particularly the advisement not to fill out the form for</p> <p>5 the blog, did that come up again in 2015 if you</p> <p>6 remember?</p> <p>7 A I don't remember. I would think it had to but</p> <p>8 maybe Jim -- yeah, I don't know. I mean, I think it</p> <p>9 did. But once again, I'm not entirely certain who</p> <p>10 brought it up.</p> <p>11 Q And just to be clear, your testimony was that</p> <p>12 if it was you or you testified that you would fill out</p> <p>13 the form --</p> <p>14 A Right.</p> <p>15 Q -- and then grieve it.</p> <p>16 A Um-hum.</p> <p>17 Q But that's not the only way that you can</p> <p>18 grieve, right?</p> <p>19 A What do you mean?</p> <p>20 Q For example, in 2013 Professor Tracy didn't</p> <p>21 fill out the forms and grieve.</p> <p>22 A Yeah, because the grievance is dependent upon</p> <p>23 the letter of reprimand.</p> <p>24 Q Right.</p> <p>25 A It's not dependent upon you necessarily</p>	<p style="text-align: right;">101</p> <p>1 Q Do you have any fear or uncertainty that this</p> <p>2 form not being submitted for any of your outside</p> <p>3 activities could be the basis for discipline</p> <p>4 termination?</p> <p>5 A Yeah, of course I would -- yeah, I'd be</p> <p>6 concern for it but like said, I believe we could fight</p> <p>7 it.</p> <p>8 Q After today, are you going to fill out these</p> <p>9 forms for your online activities?</p> <p>10 A No.</p> <p>11 Q And you're not worried that FAU could send you</p> <p>12 a threatening letter or notice?</p> <p>13 A They could, yeah. I don't know, I'm just not</p> <p>14 that kind of a person. Other people have, right? Other</p> <p>15 people have been overprotective of like just filling out</p> <p>16 anything that they could sign it for. But --</p> <p>17 Q Did Professor Tracy's termination set</p> <p>18 precedent for the University's use of this policy?</p> <p>19 A Yeah, definitely. I think so. That's</p> <p>20 disturbing.</p> <p>21 Q And could the University go through all of the</p> <p>22 outside activities of their faculty members, look for</p> <p>23 social media, Twitter, Facebook and what not and then</p> <p>24 just start firing tenured faculty members for never</p> <p>25 reporting it?</p>

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1 A Yeah, at least tempting to, right? I mean I
 2 would say that's the difference of having a union or
 3 not, right. In other words, but they could set on on
 4 that route for sure and it's about precedent, that's --
 5 **Q Is the failure of United Faculty of Florida to**
 6 **grieve for Professor Tracy is that precedent setting?**
 7 **And for example, now, if you were targeted or any other**
 8 **faculty member was targeted, could you be disciplined**
 9 **and terminated without any recourse since Professor**
 10 **Tracy didn't grieve and there was no chapter grievance**
 11 **filed --**
 12 A But --
 13 MS. HEFFNER: Objection as to form.
 14 **Q (By Mr. Leo) -- with respect to this issue.**
 15 MS. HEFFNER: you can answer.
 16 A I mean, I wasn't -- I thought they were
 17 originally grieving, right. I thought they originally
 18 were -- did start grieving, in Tracy's case.
 19 **Q (By Mr. Leo) Is that what you were told?**
 20 A I just assumed it quite honestly because I
 21 thought that grievance people were on it. So, I wasn't
 22 aware if they weren't -- I mean, we did get -- I don't -
 23 - I guess I don't know how you're interpreting them not
 24 grieving it. They got counsel, they had a lawyer -
 25 -

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1 **Q Right. But no grievance was ever filed on**
 2 **behalf of Professor Tracy --**
 3 A All right, well, I don't know about that,
 4 right.
 5 **Q Let me just -- I'm going to show you one more.**
 6 **I think we can take a quick break and I think we can be**
 7 **done.**
 8 A Yeah, because like I said, I wasn't privy
 9 right, to the --
 10 (Thereupon, a short discussion was held off
 11 record.)
 12 (Deposition resumed.)
 13 **Q (By Mr. Leo) I'm going to show you what's been**
 14 **marked as PR 15 since we're talking about grievances.**
 15 (Thereupon, Plaintiff's Exhibit PR 15 was
 16 entered into the record.)
 17 **Q (By Mr. Leo) Are you familiar with this**
 18 **grievance?**
 19 A No. So, this was a chapter grievance, got it.
 20 No, I, not but --
 21 **Q Are you familiar with -- you're not familiar**
 22 **with this?**
 23 A Yeah, I haven't read it, to be honest, but I
 24 do recall them bringing it up, yeah.
 25 **Q You recall who, Zoeller?**

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1 A I believe so. We're discussing it during a
 2 executive committee meeting.
 3 **Q So, -- and according to the stamp at the**
 4 **bottom here, looks like it was filed in April of last**
 5 **year --**
 6 A Okay.
 7 **Q -- after Professor Tracy's termination.**
 8 A Right.
 9 **Q This grievance is -- are these from an**
 10 **outsider looking in perspective, it's narrowed to very**
 11 **particular change in the policy language.**
 12 A I mean, I'm not -- I didn't know the
 13 particular language in this, yeah.
 14 **Q I just noticed it had no reference to freedom**
 15 **of speech, Article 5.2, you know, nothing about**
 16 **constitutionally protected activities being targeted by**
 17 **the University.**
 18 A Right.
 19 **Q So, my question is whether you were aware that**
 20 **the grievance that was filed did not include those**
 21 **issues?**
 22 A Yeah, I wasn't aware of that but at the same
 23 time -- once again, it gets tricky because this outside
 24 activity thing -- although it has implications to what
 25 you're saying, in some way you don't want to get hung up

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1 on all that, you want to get more into technicalities at
 2 there are going to get into.
 3 **Q Right.**
 4 A I'm not necessarily disturbed by that, you
 5 know, but I wasn't aware of the language they did or
 6 didn't use with it.
 7 **Q And I notice with this filing that this is not**
 8 **filed by an outside attorney --**
 9 A Right.
 10 **Q -- it looks to be filed by Zoeller and**
 11 **McGetchin.**
 12 A Um-hum, on behalf of the chapter.
 13 **Q On behalf of the chapter, right?**
 14 A Yeah.
 15 **Q Did you have any involvement in this**
 16 **grievance?**
 17 A No.
 18 **Q Did they ask you for your input?**
 19 A I don't believe so.
 20 **Q Do you think it's missing anything?**
 21 A I have no idea, you know, what I mean? Like I
 22 said, I don't know enough about it to even make that
 23 comment.
 24 **Q Going back to the complaints in September of**
 25 **2015, at that meeting you hear these complaints from**

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1 **faculty members, does the clock start running on filing**
 2 **a grievance?**
 3 A No.
 4 **Q Even though there's been threatening letters**
 5 **and what --**
 6 A Well, it depends on the particular cases
 7 you're talking about, yeah. Right, yes, there's been -
 8 - well, it was complicated. It really -- I don't know
 9 if you want to get into details but it was like --
 10 **Q Yeah.**
 11 A -- they gave letters of warning of discipline.
 12 So, they weren't letters of discipline.
 13 **Q Notice of notice of possibly could be**
 14 **discipline?**
 15 A I mean, yeah. So, obviously the union takes a
 16 conservative view of it like these are letters of
 17 discipline in spite of what their -- I don't remember to
 18 be honest, this is really in the weeds, even beyond me,
 19 right, so the main -- I was at least privy to that
 20 problem, right. There was language in the letters that
 21 sort of distanced it from being a letter of reprimand,
 22 but it was implicitly did it. So, I don't know the
 23 specificity of like Doug McGetchin and Tim Lenz with
 24 that kind of --
 25 **Q Let me distinguish between chapter grievance**

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1 **and an individual grievance or FAU faculty member**
 2 **grieving, is there a difference between chapter**
 3 **grievance and individual grievance?**
 4 A Well, usually the sense of a chapter grievance
 5 would be more broadly applied than necessarily an
 6 individual one. I mean, they all jeopardized the
 7 contract to some letter. For example, you know, when I
 8 defended Deandre Poole, although it wasn't a chapter --
 9 well, first of all if there is not -- if the grievant
 10 doesn't want to grieve it, right, the Chapter might do
 11 it anyway because it would set --
 12 **Q Precedent?**
 13 A Right, but we never have that happen when I
 14 was president. So, Deandre Poole's example is a good
 15 one, it's clearly about -- was about academic freedom
 16 but he wanted to individually pursue it so it had the
 17 implication anyway.
 18 **Q So, in September of 2015 -- I think it was**
 19 **September 4th was when this meeting was --**
 20 A Yeah.
 21 **Q Is there a clock running on filing as chapter**
 22 **grievance on --**
 23 A I don't know, yeah.
 24 **Q On use of the policy as a --**
 25 A That's tricky. I don't know because I think

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1 it depends on the whole set when the individual people
 2 got those letters themselves, right?
 3 **Q That's the operative --**
 4 **Q Yeah, window. I think it's usually that. I**
 5 **don't think you could ever a senate, right, to do that**
 6 **because there's -- although even administration might**
 7 **say things, right, that are problems I can -- actually**
 8 **enforce it that's usually when the grievance would**
 9 **happen.**
 10 **Q Right.**
 11 A And I know people did have letters prior to
 12 that. So, I would say at least some.
 13 **Q In the meeting I recall there was talk of**
 14 **referring the complaints or the issue that was being**
 15 **discussed as Outside Activities policy to an Academic**
 16 **Freedom and Due Process Committee.**
 17 A That's right.
 18 **Q Was a committee ever formed?**
 19 A I think there was one existed already because
 20 I helped form that a long time ago with the Deandre
 21 Poole thing, right, back in 2013.
 22 **Q So, did this -- did these complaints since**
 23 **September, 2015 get referred to committee?**
 24 A I don't know because I'm not part of the -- I
 25 don't think I was part of the senate then. So, I know

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1 some people wanted it but I don't know whatever
 2 happened.
 3 **Q Who was in-charge of making that decision?**
 4 A The senate president.
 5 **Q Christopher Beetle?**
 6 A Right.
 7 **Q In my recollection of the audio recording is**
 8 **that he shot that down.**
 9 A Once again, I don't recall -- I mean, you
 10 might be right but I don't recall that specificity of
 11 that.
 12 **Q But he tabled it.**
 13 A Yeah, maybe that's it.
 14 **Q But that's the way they described it and the**
 15 **basis he gave was because he didn't know enough about**
 16 **it.**
 17 A Okay.
 18 **Q To your knowledge, was those issues ever**
 19 **raised again in senate faculty meetings?**
 20 A I don't know because I didn't regularly attend
 21 and I don't know if the academic due process and freedom
 22 committee brought it up themselves to, right, they're a
 23 standing committee in addition.
 24 **Q They're not a committee within UFF-FAU ?**
 25 A No.

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1 **Q So, they're like stand alone or --**
 2 A Yeah, they're like ad hoc or -- I don't know
 3 ad hoc but they're committee of -- subcommittee of the
 4 faculty senate.
 5 **Q Can they grieve?**
 6 A Well, yeah, any faculty member can grieve, I
 7 guess.
 8 **Q Okay. So, any faculty member can grieve**
 9 **outside of UFF?**
 10 A What do you mean?
 11 **Q Does UFF have the exclusive right to file a**
 12 **grievance?**
 13 A No.
 14 **Q So, none UFF member could file their own**
 15 **grievance --**
 16 A Sure.
 17 **Q -- would it be on the similar form like this?**
 18 A I don't know. I doubt it actually but -- I
 19 don't know.
 20 **Q Are there different forms that are used?**
 21 A I don't know. You know what, I don't know
 22 because like I said I only know UFF.
 23 **Q Okay. Now, Professor Tracy could've grieved**
 24 **on his own in 2015, right?**
 25 A Um-hum.

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1 (Thereupon, a short discussion was held off
 2 record.)
 3 (Deposition resumed.)
 4 MR. LEO: I think we're good. Do you want to
 5 follow up?
 6 CROSS EXAMINATION
 7 BY MS. HEFFNER:
 8 **Q Yeah. Do you have any personal knowledge of a**
 9 **plan or conspiracy to terminate James Tracy between UFF**
 10 **and the University?**
 11 A No.
 12 MS. HEFFNER: Okay. That's it.
 13 THE COURT REPORTER: Done?
 14 MR. LEO: Yeah.
 15 THE COURT REPORTER: Okay. You have the
 16 option to read this if it's -- or waive it.
 17 THE WITNESS: Yeah, waive it.
 18 (Deposition concluded at 4:03 p.m.)
 19 (Reading and signing of the deposition by the
 20 witness has been waived.)
 21
 22
 23
 24
 25

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1 **Q Are you aware of Professor Tracy's attempt to**
 2 **leave UFF?**
 3 A Only through e-mails, you know, I think you
 4 have that one about Mike Bud about, so I think that's
 5 where I learned about it, quite honestly.
 6 **Q And they convinced Professor Tracy to stay?**
 7 A Right.
 8 **Q Are you aware of who was in involved in --**
 9 A I don't.
 10 **Q -- keeping Professor Tracy in UFF-FAU ?**
 11 A I don't know, right.
 12 **Q And I just want to ask generally about your**
 13 **experience in dealing with complaints from faculty**
 14 **members --**
 15 A Um-hum.
 16 **Q -- are you aware of any other faculty member**
 17 **other than Professor Tracy who has been disciplined for**
 18 **not disclosing their social media or online speech to**
 19 **the University?**
 20 A Like I said, not that I'm aware of. It
 21 doesn't mean necessarily it didn't happen but it was not
 22 brought to our attention.
 23 **Q Okay.**
 24 A Yeah.
 25 **Q Just a quick break, few minutes.**

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

1 CERTIFICATE OF OATH
2 STATE OF FLORIDA
3 COUNTY OF PALM BEACH
4
5 I, JESSICA COOPER, the undersigned authority,
6 certify that CHRIS ROBE personally appeared before me
7 and was duly sworn.
8
9 Witness my hand and official seal this 3RD day of
10 APRIL, 2017.

11
12
13
14 _____
15 JESSICA COOPER, FPR, COURT REPORTER
16 NOTARY PUBLIC, STATE OF FLORIDA
17 Commission No.: FF 943563
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