

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

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

JAMES TRACY,

Plaintiff,

VS.

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

Defendants.

/

CORRECTED TRANSCRIPT

VOLUME I

DEPOSITION OF DIANE ALPERIN

TAKEN ON BEHALF OF THE PLAINTIFF

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

GUNSTER  
4855 TECHNOLOGY WAY  
SUITE 630  
BOCA RATON, FLORIDA 33431

REPORTED BY:

LORA LEE KNORR, COURT REPORTER, FPR, RPR  
NOTARY PUBLIC, STATE OF FLORIDA



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## 1 CORRECTED TRANSCRIPT

## 2 VOLUME I

## 3 DEPOSITION OF DIANE ALPERIN

4 MAY 9, 2017

5 Thereupon,

6 DIANE ALPERIN

7 was called as a witness, and after having been first  
8 duly sworn, testified as follows:

9 THE WITNESS: I do.

## 10 DIRECT EXAMINATION

11 BY MR. LEO:

12 Q My name is Louis Leo. I represent James  
13 Tracy. This is my co-counsel, Joel Medgebow, Mathew  
14 Benzion, and you know the Plaintiff --

15 A Yes.

16 Q -- James Tracy.

17 Have you ever given a deposition before?

18 A Yes.

19 Q How many times?

20 A Possibly three.

21 Q Three? And what were they for?

22 A One was in regard to a student, the trespass  
23 case. He violated trespass.24 Q Were you a party in that case or just a  
25 witness?

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1 A "A party"? What do you mean, "a party"?

2 Q **Were you a plaintiff or a defendant or were**  
3 **you just testifying --**

4 A I was part of the uni --

5 Q **-- for The University?**

6 A I was testifying for The University.

7 Q **Okay. Had you been sued or was it The**  
8 **University?**

9 A The University.

10 Q **But you weren't a party in that case?**

11 A I was familiar with the case.

12 Q **But you hadn't been sued in your own --**

13 A Correct.

14 Q **-- individual capacity.**

15 A No.

16 Q **Other than the trespass, was there --**

17 A Ah, there was another case of an employee who  
18 had been terminated.

19 Q **At FAU?**

20 A At FAU, but not part of my unit.

21 Q **Were you just testifying as a witness in this**  
22 **case?**

23 A I was testifying because of the committee I  
24 had served on.

25 Q **But that's a case you weren't a party to the**

1       **suit?**

2       A      Correct.

3       **Q      And what was the other one?**

4       A      The other one was a former employee who had  
5      been in an accident, and they called me to talk about  
6      her work when she was at FAU.

7       **Q      Okay. So you weren't a party in that case  
8      either.**

9       A      Correct.

10      **Q      So you're familiar with the ground rules. I'm  
11     going to ask you a series of questions. There's no  
12     right or wrong answers. There's only truthful answers;  
13     fair enough?**

14      A      Fair enough.

15      **Q      Is there any reason why you couldn't testify  
16     truthfully today?**

17      A      No.

18      **Q      Are you under the influence of any drugs or  
19     alcohol?**

20      A      No.

21      **Q      Any medication?**

22      A      I make medication, but not that influences my  
23      neurological operation.

24      **Q      What kind of medication?**

25      A      I have macular degeneration, so I take

1 medication for that. I take thyroid medication, and I  
2 take medication for cholesterol.

3 Q **And, as I said, there's -- that medication**  
4 **doesn't affect your ability to testify?**

5 A Correct.

6 Q **How about memory, does it affect your memory?**

7 A No.

8 Q **Have you reviewed any documents before**  
9 **testifying today?**

10 A Yes.

11 Q **What kind of documents?**

12 A Documents relating to James Tracy and the  
13 termination.

14 Q **Any documents in particular?**

15 A Read the letter that I wrote.

16 Q **Which letter?**

17 A The letter of -- Notice of Proposed  
18 Termination, Notice of Termination and the letter having  
19 to do with violation of the Settlement Agreement.

20 Q **So these are the three letters, one from**  
21 **December and two from January 2016?**

22 A Correct.

23 Q **Anything else that you reviewed?**

24 A Went over articles with my counsel.

25 Q **Without telling me what you discussed with**

1       **counsel, I just want to know what documents or**  
2       **communications -- you said there were some articles?**

3       A       Articles.

4       Q       **That you reviewed?**

5       A       No. Letters that I reviewed.

6       Q       **Letters. What kind of letters other than the**  
7       **ones you already --**

8       A       Those are the ones I told you about.

9       Q       **Oh, okay. Is there any other documents that**  
10      **you reviewed?**

11      A       I reviewed the Notice of Discipline that --  
12      Dean Coltman.

13      Q       **Was that the November 2015 notice?**

14      A       Uh-hm.

15      Q       **Anything else?**

16      A       And the grievances from 2013.

17      Q       **Professor Tracy's grievances?**

18      A       Correct.

19      Q       **And other than that, was there anything else?**

20      A       No.

21      Q       **Did you review any e-mails or communications**  
22      **from this time?**

23      A       Not at that -- not at this time, no.

24      Q       **How about notes or any writings from this**  
25      **matter?**



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1 A No.

2 Q No?

3 A No.

4 Q And, just so you know, she can't record head  
5 nods --

6 A Okay. I know. I should --

7 Q -- so yes or no or audible --

8 A No.

9 MR. LEO: Okay. Thank you.

10 I'm just gonna mark this because we're gonna  
11 get to it.

12 (Thereupon, Plaintiff's Exhibit Number PA-1  
13 was marked for identification.)

14 Q (By Mr. Leo) I'm going to show you what's been  
15 marked as PA-1. This is a copy for your attorney.

16 MR. CURELY: Thank you.

17 Q (By Mr. Leo) Just skim through this document.  
18 We've marked it as PA-1 for today. Can you just scroll  
19 through there, and take a look, and let me know if this  
20 is the interrogatories that you signed.

21 A Yes, this is the document I signed.

22 Q Have you had a chance to review the  
23 interrogatory responses before today?

24 A I think I reviewed them when I signed them. I  
25 haven't reviewed them -- which was apparently April, end

1 of April.

2 Q And you've just looked through these now.

3 A Yes.

4 Q Were these true and correct when you signed  
5 them?

6 A I believe so.

7 Q Is there any answer that you'd like to change  
8 before we get started?

9 A No, there's nothing I want to change.

10 Q Going back to preparation for today, did you  
11 speak to any of the other Defendants in this case before  
12 today?

13 A No.

14 Q Go ahead.

15 A No. I mean, preparation for today, no.

16 Q Right. Did you speak to Dean Coltman after  
17 her deposition?

18 A No.

19 Q How about Defendant Zoeller?

20 A No.

21 Q In your response to interrogatory number 1 you  
22 say, "Defendant was a colleague."

23 A Correct.

24 Q How long have you known Defendant Zoeller?

25 A Since he came to work at FAU. I don't know

1 when that was exactly.

2       **Q    Was he -- was he in one of the colleges that**  
3       **are under your control or --**

4       A    Yes.

5       **Q    And let's talk a little bit about your current**  
6       **position. It says here you're Senior Advisor?**

7       A    Correct.

8       **Q    What's a Senior Advisor?**

9       A    I'm Senior Advisor to the Provost. I've been  
10      given certain projects to do with the Provost, for the  
11      Provost, and I also have -- I'm counsel to the other  
12      Associate Provosts and the Vice Provost, and I'm also  
13      the primary personnel person for the College For Design  
14      and Social Inquiry.

15      **Q    And how long have you been the Senior Advisor?**

16      A    Since July.

17      **Q    July of?**

18      A    Of 2016.

19      **Q    2016? And what were you before Senior**  
20      **Advisor?**

21      A    I was Vice Provost.

22      **Q    And why the change?**

23      A    I had been talking to the Provost about  
24      retiring, and he asked me to stay on; and, so, since  
25      July I've been part time.

1           **Q    What was your duties as Vice Provost?**

2           A    As Vice Provost I was always -- in state of  
3 the Provost and events, and I had my primary portfolio  
4 with personnel, academic personnel.

5           **Q    So these are the Provost -- you're referring**  
6 **to Provost Perry?**

7           A    Yes.

8           **Q    Was there any other Provost that you served?**

9           A    Yes.

10          **Q    Who else?**

11          A    Provost Claiborne, Provost Pritchett, Provost  
12 Jessell and Provost Osborne. I think that's all of  
13 them.

14          **Q    And how long been -- how long were you Vice**  
15 **Provost?**

16          A    Three years.

17          **Q    So from July 2016 going back to '13?**

18          A    Uh-hm.

19          **Q    And before that you were an Associate Provost?**

20          A    Correct.

21          **Q    What's the difference between Associate and**  
22 **Vice?**

23          A    The -- when Provost Perry became Provost he  
24 wanted to promote me to Vice Provost so people would  
25 know that I was always second in command. There are

1 several Associate Provosts. There's only one Vice  
2 Provost.

3 Q So it's -- Associate would answer to the Vice  
4 Provost?

5 A Yeah, and to the Provost. The Associate  
6 Provost has specific responsibilities.

7 Q And it says here -- not in this one. So your  
8 decisions as Vice Provost were subject to review -- this  
9 is at the bottom of your response number 3. It looks  
10 like it's --there's no page numbers here at the bottom--

11 A Okay.

12 Q -- so it makes it a little tricky, but --

13 A 3?

14 Q You should see the -- you see question 4, and  
15 it's right at the top of question 4?

16 A Okay.

17 Q There you go.

18 A All right.

19 Q It says here that you report to the Provost  
20 and as Interim Provost report to the President?

21 A Correct.

22 Q When were you Interim Provost?

23 A I was -- I would have to look at my -- I was  
24 Interim Provost for one year when Provost Pritchett was  
25 Interim President and another year when President

1       Saunders was President. So I was Interim Provost for  
2       two years.

3       **Q       Before bottoming Vice Provost?**

4       A       That would be Associate Provost before I  
5       became Vice Provost.

6       **Q       And you say here as Interim Provost you report**  
7       **to the President. After that you didn't?**

8       A       Correct? Then I -- as Associate Provost I  
9       report to the Provost. It's only when I was Interim  
10      Provost that I report directly to the President.

11      **Q       I see. So there wasn't a Provost at that time**  
12      **when you were Interim?**

13      A       Correct.

14      **Q       After Interim Provost when you were Associate**  
15      **Provost and also as Vice Provost, did you report to the**  
16      **President?**

17      A       No. I report to the Provost.

18      **Q       Were your decisions reviewed by the President?**

19      A       I don't think.

20      **Q       When you were Vice Provost who made decisions**  
21      **concerning termination of faculty members?**

22      A       I did.

23      **Q       And those decisions were subject to approval?**

24      A       I advised the Provost of what I was doing.

25      **Q       But could you do it without a approval of the**

1       **Provost?**

2       A      No.

3       **Q      So, for example, if you wanted to terminate a**  
4       **factory member, what would the process be?**

5       A      I would advise the Provost of what I was  
6       doing, and he would agree or not agree.

7       **Q      So the Provost would have the say in -- the**  
8       **final say?**

9       A      He's my supervisor.

10      **Q      Did the Provost have to go to anybody else to**  
11      **make that decision?**

12      A      I believe it's his decision. I don't know if  
13      he went to anybody else.

14      **Q      In your time working for the Provost, how many**  
15      **terminations were you involved in?**

16      A      Over what period of time?

17      **Q      How long you were there?**

18      A      Over 20 years I've been in the Provost office.  
19      I'm not sure.

20      **Q      Yeah, how many do you remember?**

21      A      But I remember maybe six or seven.

22      **Q      That you were involved in?**

23      A      Yes.

24      **Q      How many did you actually, yourself,**  
25      **terminate, how many faculty members?**

1 A Well, that's what I would do, yes.

2 Q **Six or seven?**

3 A Yes.

4 Q **So you were responsible for implementing the**  
5 **termination?**

6 A Correct.

7 Q **What does that entail, the termination**  
8 **process?**

9 A Somebody would have to -- a Dean would have to  
10 bring me information. We would have to look at the  
11 facts. I would consult with the Senior Associate General  
12 Counsel, who was my advisor for employment and labor,  
13 and then I would consult with the Provost as to what the  
14 plan was, and then there is a letter, a Notice of  
15 Proposed Discipline that goes first, and then a Notice  
16 of Termination.

17 Q **With respect to the letter, do you draft the**  
18 **letters --**

19 A Yes.

20 Q **-- yourself?**

21 A Yes.

22 Q **Do those letters get sent to the Provost for**  
23 **approval?**

24 A They show them to the Provost, yes.

25 Q **Does anybody else look at the letter?**

1 A Senior Associate General Counsel.

2 Q **Do they have to approve the letter before it**  
3 **goes out?**

4 A The Senior Associate General Counsel?

5 Q **Sure.**

6 A They make recommendations.

7 Q **And how about the Provost?**

8 A He could make a recommendation. I don't  
9 remember that he did, but he could.

10 Q **Is there anybody else involved in this**  
11 **process, the termination letter process?**

12 A No.

13 Q **Does anybody contact the President of The**  
14 **University?**

15 A I don't know. I assume the Provost, who  
16 reports to the President may advise him, but I'm not  
17 part of that process.

18 Q **Doesn't the President have the express duty to**  
19 **-- and responsibility for termination of faculty**  
20 **members?**

21 MR. CURELY: Objection, form.

22 THE WITNESS: I don't understand the question.

23 Q **(By Mr. Leo) In FAU's operating procedures**  
24 **doesn't it say that the President is responsible for**  
25 **termination?**

1       A    You would have to look at the Collective  
2 Bargaining Agreement. I think it says the President or  
3 his representative.

4       **Q    Does the President appoint the Provost to**  
5 **handle these matters?**

6       A    I don't know.

7       **Q    How many terminations that you can remember**  
8 **involved the President?**

9                    MR. CURELY: Objection, form.

10                  THE WITNESS: The President is -- I don't have  
11                  direct contact with the President on this, so I  
12                  don't know.

13       **Q    (By Mr. Leo) On terminations?**

14       A    Correct.

15       **Q    Who would?**

16       A    I'm not sure. I would suspect if it's a  
17                  faculty member it would be the Provost.

18       **Q    But the President would have to know about a**  
19 **termination, right?**

20       A    I would assume that the Provost would advise  
21                  him, but I don't know.

22       **Q    Concerning the Plaintiff in this case,**  
23 **Professor Tracy, you were the one who terminated his**  
24 **employment?**

25       A    Correct.

1           **Q    And when was that decision made?**

2           A    There was a two-month period during which he  
3    was repeatedly asked to submit a form; and, so,  
4    somewhere along his refusal to comply with the request  
5    from his Director and his Dean, I started looking at  
6    that.

7           **Q    You said there was a two-month period.**

8           A    Yes.

9           **Q    When did the that period begin?**

10          A    October 2015.

11          **Q    So the decision to terminate Professor Tracy**  
12   **originated in October --**

13          A    No.

14          **Q    -- of 2015?**

15          A    No. If he had submitted the form, we would  
16   not be considering termination.

17          **Q    But my question was when the decision was**  
18   **made. You said there was a two-month period --**

19          A    Well, I'm saying is that he started -- he  
20   refused in October --

21          **Q    Okay.**

22          A    -- to comply with our procedures. He was --  
23   several times he was asked by the Director of the School  
24   of Communication, by an Associate Dean, by a secretary  
25   and by the Dean to complete the forms. As we got

1 towards -- he got a Notice of Discipline in November,  
2 and as we moved towards December, he was still not  
3 complying. I believe that was the time that we started  
4 looking at termination for cause.

5 **Q When was the time?**

6 A Sometime in early December I suspect.

7 **Q Early December? Do you have a particular date?**

8 A No.

9 **Q Was there a meeting that was held with**  
10 **yourself or anyone concerning termination?**

11 A I don't remember a meeting.

12 **Q You don't a meeting to discuss whether**  
13 **Professor Tracy should be terminated?**

14 A I believe there was a discussion. I don't  
15 remember a meeting.

16 **Q So this would have been sometime early**  
17 **December you said?**

18 A Yes.

19 **Q But you don't remember the date?**

20 A No.

21 **Q Do you know the date that he was terminated?**

22 A I believe the letter is December 16th. That's  
23 the Notice of Proposed Termination.

24 **Q And the decision would have been made before**  
25 **the 16th?**

1 A Correct.

2 Q If you had to pinpoint a day or a specific  
3 date, do you have any idea?

4 A I couldn't do that.

5 Q Was the decision made before December 15th?

6 A I believe the decision was made he had  
7 December 14th and deadline to submit, and he missed that  
8 deadline.

9 Q So the decision was made after he missed his  
10 deadline?

11 A It was -- I can't give you a date of when the  
12 decision was made.

13 Q Who was involved in the decision?

14 A Me, Senior Associate General Counsel, and then  
15 we consulted the Provost.

16 Q And when did you consult with the Provost?

17 A Probably on the 15th or the 16th.

18 Q You say probably. Is it possible --

19 A I don't have an exact -- I don't have an exact  
20 date. I don't have --

21 Q Was -- this consultation with the Provost, was  
22 that in writing?

23 A No.

24 Q Would it have been by e-mail?

25 A No.



1           **Q    No?  You would have met in person?**

2           A    Yes.

3           **Q    What was Dean Coltman's involvement in this**  
4 **process?**

5           A    I would advise her of what I was gonna do.

6           **Q    Dean Coltman indicated she recommended**  
7 **termination; is that correct?**

8           A    She recommended --

9           MR. CURELY:  Objection to form.

10          THE WITNESS:  She recommended discipline.

11          **Q    (By Mr. Leo) Did she recommend termination?**

12          A    No.

13          **Q    When did Dean Coltman recommend discipline?**

14          A    An exact date?

15          **Q    If you know.**

16          A    No, I don't know an exact date.

17          **Q    Was it in December or before that?**

18          MR. CURELY:  You're referring to 2015, right?

19          MR. LEO:  Correct, 2015.

20          THE WITNESS:  She had already sent a Notice of  
21 Discipline in November.  I don't recall a date when  
22 she recommended further discipline.

23          **Q    (By Mr. Leo) Dean Coltman referred to you a**  
24 **lot with respect to Professor Tracy; is that accurate?**

25          MR. CURELY:  Objection to the form.

1                   THE WITNESS: I don't know.

2                   **Q       (By Mr. Leo) She sent you lots of messages**  
3                   **concerning Professor Tracy in the fall of 2015?**

4                   MR. CURELY: Objection, form.

5                   THE WITNESS: In -- starting in October when  
6                   he refused to submit the forms.

7                   **Q       (By Mr. Leo) It is usual for the Deans to**  
8                   **contact you about faculty members?**

9                   A       Yes.

10                  **Q       How many faculty members are under your**  
11                  **supervision or authority?**

12                  A       About a thousand.

13                  **Q       A thousand? And how many tenure faculty**  
14                  **members?**

15                  A       About 500.

16                  **Q       And all of these faculty members are under**  
17                  **your supervision?**

18                  A       Well, they're under the supervision of the  
19                  Dean, and the Dean consults with me on issues.

20                  **Q       How many Deans do you have?**

21                  A       Now we have -- we have nine colleges, plus we  
22                  have the Dean of Graduate Studies and a Dean of  
23                  Undergraduate Studies.

24                  **Q       And, so, is there nine Deans or --**

25                  A       There's nine Deans.

1           **Q    Nine Deans?  One for each college?**

2           A    Yes.

3           **Q    Do they all answer to you?**

4           A    They all consult with me.  They answer to the  
5           Provost.

6           **Q    Dean Coltman, she -- she's the Dean of the  
7           College of Arts and Letters?**

8           A    Dorothy F. Schmidt College of Arts and  
9           Letters.

10          **Q    But she's not going to be?**

11          A    Correct.  She has secured another position.

12          **Q    Do you know when that position was secured?**

13          A    Sometime during this academic year.  I don't  
14          remember the exact date.

15          **Q    Do you know when she applied for a job?**

16          A    No.

17          **Q    When was the first time she told you she was  
18          leaving?**

19          A    I don't know the exact date.  I think --

20          **Q    Going back to your interrogatories, you  
21          referred to Dean Coltman as a colleague.**

22          A    Correct.

23          **Q    She also answers to you, so she's an employee  
24          as well?**

25          A    She consults with me, yes.

1           **Q     Her employment, is it subject to review by**  
2           **you?**

3           A     No.

4           **Q     Who did -- who does she answer to?**

5           A     She's evaluated by the Provost.

6           **Q     Who, Provost Perry?**

7           A     Yes.

8           **Q     He deals with the Deans' evaluations?**

9           A     Yes, he does evaluations of the Deans.

10          **Q     Was Dean Coltman's performance ever evaluated**  
11          **by the Provost?**

12          A     I don't know. I suspect so.

13          **Q     Was she ever demoted or punished?**

14          A     Not that I know of.

15          **Q     Was she ever promoted?**

16          A     Promoted as part of the faculty process?

17          **Q     In any way that you can --**

18          A     Oh, yeah. She came as an Assistant Professor,  
19          and she's not a Professor, so I assume she went through  
20          the promotion process. She was a faculty member in  
21          music. She was Chair of Music, and she was Interim  
22          Dean, and then she was Dean.

23          **Q     When did she become the Dean of the College of**  
24          **Arts and Letters?**

25          A     I don't remember the exact date.

1                   **Q    Was there a reason she became Dean of the**  
2 **College?**

3                   A    The -- prior to being the Dean she was the  
4 Interim Dean. When we had an opening in the Dean's  
5 position, and then Provost Perry made her a permanent  
6 Dean.

7                   **Q    Do the Deans have to have any kind of**  
8 **particular training or qualifications to become Dean?**

9                   A    Qualifications? What do you mean?

10                  **Q    I'm just asking if --**

11                  A    No.

12                  **Q    -- there's a criteria or any kind of standards**  
13 **that they to --**

14                  A    Yeah. I mean, usually there's the academic  
15 side, and usually they have some administrative  
16 experience, like she had been the Chair.

17                  **Q    How about any requirement that they understand**  
18 **certain policies and policies?**

19                  A    Sure. We do workshops all the time with the  
20 Chairs and the Deans. The State does workshops as well.

21                  **Q    How about the salvation, are the Deans ever**  
22 **evaluated for their understanding of policies?**

23                  A    Meaning giving them a test for policies? Not  
24 that I know of.

25                  **Q    No tests? And you said that the Deans are**

1       **evaluate by the Provost?**

2       A      Correct.

3       **Q      Where would the evaluations of the Deans be --**

4       A      That's confidential information, so it would  
5       be in a confidential envelope in the Provost's office.

6       **Q      Why are they confidential?**

7       A      Faculty evaluations are protected.

8       **Q      Are you aware of any evaluations that Dean  
9       Coltman was given?**

10      A      I believe she was given evaluations. Have I  
11      had them? No.

12      **Q      Was she ever given a bad evaluation?**

13      A      Not that I know of.

14      **Q      Was she given a good evaluation?**

15      A      I suspect so. She continues to be the Dean.

16      **Q      Let's talk about the Outside Activities  
17      Policy.**

18      A      Okay.

19      **Q      When did the Outside Activities Policy start  
20      at FAU?**

21      A      I don't know. I know it was in place when I  
22      began employment in 1980.

23      **Q      What did they call it back then?**

24      A      I think they called it -- your I don't know.

25      **Q      What do you call the Outside Activities**

1       **Policy?**

2       A     The Outside Employment Professional Activities  
3     Guidelines.

4       **Q     I'm sorry. You said the "Outside Activities -**

5       A     The form currently is called "The Report of  
6     Outside Employment Professional Activities Guideline  
7     Form".

8       **Q     The form?**

9       A     Yes, there's a form.

10      **Q     Well, what do you call the policy?**

11      A     The same thing, Guidelines.

12      **Q     Have you ever referred to it as the Outside  
13     Employment Policies?**

14      A     Just Employment? No.

15      **Q     Outside Employment.**

16      A     No, it's "Outside Activities".

17      **Q     How about the form, have you ever referred to  
18     the forms as the Outside Employment Forms?**

19      A     No.

20      **Q     Are you aware of the use of the term "Outside  
21     Employment Forms" when describing this policy at FAU?**

22      A     That somebody did that? I have no idea.

23      There's a lot of people at FAU.

24      **Q     There was a lot of confusion about the policy  
25     in 20151; would you agree?**

1 MR. CURELY: Objection to the form.

2 THE WITNESS: No.

3 Q (By Mr. Leo) You wouldn't agree that there was  
4 confusion about the policy in 2015?

5           A     You'd have to be more specific. What do you  
6 mean?

7 Q Do you know the word "confusion" means?

8 A I know what the word "confusion" means, yes.

9 Q In 2015 was there confusion at FAU about --

10 A By who?

11 Q By anyone.

12 A I don't know.

## 13 Q You don't know

14 A There's 4,000 employees.

15 Q Okay.

16 A Are you referring the a specific incident?

17 Q I'm just asking in general about confusion  
18 about the policy at FAU, the Outside Activities Policy.

19 Are you saying that you're not aware of any confusion?

20 A I'm aware of some things. I'm not sure what  
21 you're talking about because --

22 Q What are you aware of?

23           A     -- in 2014 we began looking at -- the Division  
24 of Research asked us to look at the policy because they  
25 were concerned about faculty who had outside businesses

1 that needed to be reported to the federal government.

2       **Q     What's the Division of Research?**

3       A     The Division of Research? The Vice President  
4 of Research is in charge of all the research that occurs  
5 at The University.

6       **Q     What kind of research?**

7       A     There is a variety of kinds of research that  
8 happens at the college --

9       **Q     So --**

10      A     -- investigation, evaluation.

11      **Q     -- when did the Division of Research take  
12 issue with the policy?**

13      A     2014.

14      **Q     And what was that about?**

15      A     They wanted some changes to the policy in  
16 terms of the number of hours a faculty member could  
17 devote to an outside activity.

18      **Q     And in 2014 the Division of Research, how did  
19 they bring this to light, their concerns?**

20       MR. CURELY: Objection to form.

21       THE WITNESS: I don't remember the exact  
22 incident. I did get a call or contact at the time  
23 from the Interim Vice President that there was a  
24 group of us who began working on revisions to the  
25 document.

1                   **Q       (By Mr. Leo) When you say "the document", what**  
2 **document is that?**

3                   A       The form and the guidelines.

4                   **Q       And before 2014, was there ever any concern**  
5 **about the policy or changes that needed to be made to**  
6 **it?**

7                   MR. CURELY: Objection to form.

8                   THE WITNESS: I don't recall.

9                   **Q       (By Mr. Leo) Was there an audit that was**  
10 **conducted by the Inspector General?**

11                  A       Yes.

12                  **Q       Was that in 2013?**

13                  A       I don't remember the date.

14                  **Q       What do you remember about the audit?**

15                  A       I remember that there was an audit where the -  
16                 - it was -- part of the audit was on Outside Employment  
17                 Forms. They selected -- I don't remember the number --  
18                 a small number of faculty, whether they had Outside  
19                 Employment Forms, and if they had Outside Activity Forms  
20                 and outside activities, and going through the audit with  
21                 the internal auditor, there were -- the decision --  
22                 there were some mistakes in that people had filed forms  
23                 when they first indicated they hadn't. Other people  
24                 hadn't, and they filed forms.

25                   In general, the audit -- there was no

1 recommendation for outside activity. They felt that  
2 there were many policies and procedures in place to  
3 inform faculty of the obligation to report outside  
4 activities.

5 Q We're talking about the form -- let me just  
6 get this marked and make sure we're talking about the  
7 same form.

8 (Thereupon, Plaintiff's Exhibit Number PA-2  
9 was marked for identification.)

10 Q (By Mr. Leo) I'm going to show you what's been  
11 marked as PA-2 for today.

12 MR. CURELY: Thank you.

13 Q (By Mr. Leo) Is this the form that you're  
14 referring to?

15 A This is the old form, correct.

16 Q This is the old form.

17 A      Correct.

18 Q When did this form -- when was it replaced?

19 A 2016.

20 Q And when exactly in 2016?

21 A I don't remember exactly.

22 Q Do you remember what mont

23 A No.

24 Q Why

25 A As I indicated, there was

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1 Division of Research that we needed to ask more specific  
2 information than this required so that they could  
3 evaluate; and, so, there was a new form.

4 Q And where would the new form be?

5 A It would be on the web site, the Human  
6 Resources web site.

7 (Thereupon, Plaintiff's Exhibit Number PA-3  
8 was marked for identification.)

9 Q (By Mr. Leo) I'm going to show you what's been  
10 marked as PA-3 for today.

11                   MR. LEO: I only have one copy, Joe, if you  
12                   want to just take a look.

13 MR. CURELY: Okay. I've seen that one.

14 THE WITNESS: Okay.

15 O (By Mr. Leo) Do you recognize this document?

16 A Yes.

17 Q PA-3? What is this?

18           A     This is an affirmation that is part of FAIR.  
19           FAIR is the assignment on line, the way we -- faculty  
20           receive their assignments. When they go to accept their  
21           assignment, this comes up that they affirm that they  
22           know they are -- they are required to report outside  
23           activities, compensated or uncompensated.

24 Q Is this affirmation -- is this still in place  
25 today?

1 A Yes.

2 Q **When did this affirmation begin?**

3 A I believe it was in 2014.

4 Q **And what was the affirmation added to the**  
5 **assignment submission process for?**

6 A Again, faculty are notified several ways to  
7 report outside activity, but, again, as response to  
8 concerns from the Division of Research we added this  
9 extra piece.

10 Q **This language, was this requested by anybody,**  
11 **this affirmation letter?**

12 A This affirmation requested by anybody?

13 Q **Yes. Who drafted this language?**

14 A This was -- there was a group that was working  
15 on this, but bottom line it was myself and Senior  
16 Associate General Counsel, but the Division of Research  
17 would have also looked at it, and there is another  
18 attorney who is the attorney for the Division of  
19 Research who would have been involved in this decision.

20 Q **This affirmation language, was this necessary**  
21 **language or was it something that The University just**  
22 **added to this process?**

23 A We believe it was necessary.

24 MR. CURELY: Objection to form.

25 Q **(By Mr. Leo) Necessary based on what?**

1           A    We wanted one other way to remind faculty that  
2 they're required to report outside employment, that it  
3 is something that they agree to when they're employed by  
4 The University. It is something that they get notice of  
5 once a year. It is something that's in the Collective  
6 Bargaining Agreement, and this is one more reminder.

7           **Q    But when I'm referring to necessary, is there  
8 anything that requires FAU, is there any regulation or  
9 policy that says FAU needs to put an affirmation to this  
10 Outside Activities Policy, for example, in the annual  
11 assignment process?**

12          A    We felt it was necessary. You're saying is  
13 there a regulation that said we needed to do this?

14          **Q    Right.**

15          A    I'm not aware of a regulation.

16          **Q    Aside from -- it sounds like you -- FAU wanted  
17 to put this into place --**

18          A    Yes.

19          **Q    -- but didn't necessarily need to; would you  
20 agree with that?**

21          A    We believed that we needed to.

22          **Q    But if you had not, if FAU had not put this  
23 affirmation in place, FAU wouldn't have been in  
24 violation of any law; would they have?**

25                    MR. CURELY: Objection to form.

1                   THE WITNESS: I don't --

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

3                   A I don't know.

4                   **Q There's no law that says FAU needs to remind**  
5 **faculty members about their reporting of outside**  
6 **activity, is there?**

7                   MR. CURELY: Objection form.

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

9                   A I'm not -- I don't know.

10                  **Q So this affirmation language, you said you**  
11 **drafted it with counsel?**

12                  A Two counsel.

13                  **Q Two attorneys?**

14                  A Yes.

15                  **Q And this was put into place in 2014?**

16                  A (Witness nods.)

17                  **Q The checkbox there, do you see that, "accept**  
18 **terms and conditions"?**

19                  A Yes.

20                  **Q When was the checkbox added to this process?**

21                  A I believe the checkbox was part of when it was  
22 added to the FAIR.

23                  **Q In '14 or --**

24                  A When it was added in '14.

25                  **Q E-mails that have been produced by FAU**

1       **indicate that this box came later. Would you --**

2       A      I don't know that.

3       **Q      -- have any knowledge to that?**

4       A      No. I thought it was added -- if there was a  
5       box and there was no -- I don't know. I'm not aware of  
6       that.

7       **Q      And you correct me if I'm wrong. My  
8       understanding was that the certification text box here,  
9       the okay --**

10      A      Right.

11      **Q      -- have been added prior to the checkbox; is  
12       that a --**

13       MR. CURELY: Form.

14       THE WITNESS: I don't know.

15      **Q      (By Mr. Leo) Is that an accurate  
16       characterization --**

17      A      I don't know.

18      **Q      -- as to the timing of things?**

19      A      That's my recollection.

20      **Q      Going back to the process, faculty members are  
21       required to check, "accept terms and conditions".**

22      A      Yes.

23      **Q      And if they have any questions or problems  
24       with this language, what would they do? Would are they  
25       supposed to do?**

1 A Talk to their supervisor.

2 Q **And if the supervisor did not understand the**  
3 **policy, what would FAU do?**

4 A They could talk to the Associate Dean, to the  
5 Dean or to me.

6 Q **Is there a procedure that you follow or that**  
7 **The University follows concerning confusion of faculty**  
8 **about policies?**

9 A Is there a procedure about confusion? No.

10 Q **Right, in handling questions, for example,**  
11 **from faculty members about this process.**

12 A Well, it's going up the chain of command.

13 Q **Have you ever been in any meetings where**  
14 **faculty members expressed confusion about the policy?**

15 A There was a meeting.

16 Q **When?**

17 A In September of -- it was 2016?

18 Q **I'm sorry?**

19 A I think it was 2016. Where the faculty set a  
20 meeting?

21 Q **Was it 2015 or 2016? Was it before or after**  
22 **Professor Tracy was fired? Let's put it that way.**

23 A It was after.

24 Q **After?**

25 A Yes.

1                   **Q    What was the confusion that was expressed at**  
2 **that meeting?**

3                   A    There was -- I would say there was  
4 consternation. There was a faculty member in Political  
5 Science, Kevin Wagner, who writes articles, ghost writes  
6 article for The Palm Beach Post, and he was writing an  
7 op-ed about Constitution Day. This is an activity that  
8 The University does every year, and he sent it to the  
9 Vice President For Public Affairs, and the Vice  
10 President For Public Affairs sent him an e-mail  
11 indicating he didn't want him to do this op-ed, and  
12 there was, at the Faculty Senate Meeting -- and I  
13 believe that e-mail circulated -- there was concern  
14 about it, 1, because somebody outside of Academic  
15 Affairs was telling him not to publish something, also  
16 because it was something talking about what the College  
17 -- that particular College does for Constitution Day.  
18 He was doing it really as part of his work; and, so,  
19 that's a discussion I remember people being concerned  
20 about, his being chastised for this.

21                   **Q    Did you say this was after Professor Tracy was**  
22 **fired or before?**

23                   A    After. I'm pretty sure -- I'd have to look,  
24 but I'm pretty sure it was September 2016.

25                   **Q    Was this the Faculty Senate meeting where**

1           **Professor Lenz gave a speech?**

2           A      Yes.

3           **Q      And Professor DeRosa?**

4           A      Yes.

5           **Q      That was September 4th, 2015, right?**

6           A      I thought it was '16.

7           **Q      Well, the records we have --**

8           A      If was before?

9           **Q      -- say it different, but --**

10          A      Okay.

11          **Q      -- if that's your memory --**

12          A      That's my memory.

13          **Q      You were present at the meeting?**

14          A      Yes.

15          **Q      For the entire meeting or --**

16          A      Yes.

17          **Q      During this meeting did you speak?**

18          A      Yes. So maybe it was '15 because I'm saying  
19          that -- what I talked about at the meeting was that we  
20          did have a group that was working on the form, the  
21          Outside Employment Form, and -- I don't know. I'd have  
22          to look at the calendar. I don't know.

23          **Q      When you refer to "the Form", you just said --**

24          A      The Outside -- I'm sorry. Outside Activity  
25          Form and the Outside Policies.



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1           **Q    That's PA-2?**

2           A    Yes, that was the form that we were revising.

3           **Q    And this is the form that you called the**  
4           **"Outside Employment Form"?**

5           A    "Outside Activity Form".

6           **Q    Which one is it?**

7           A    "Outside Activity form".

8           **Q    How many different names for this form does**  
9           **The University have.**

10          A    I don't know. This is the one form that had --

11          **Q    Did it have more than one?**

12          A    No. It only has one time.

13          **Q    I'm going to just list off some of the names**  
14          **that I've taken down as being used in either documents**  
15          **or based on witnesses in this case, and you let me know**  
16          **if this what this form is, okay?**

17           **I have "Outside Activity/Professional Activity**  
18          **Form". Is that PA-2?**

19          A    This is the form. This is what the title is.

20          **Q    Okay.**

21          A    That other people call it different things, I  
22          really -- like I said, we have 4,000 employees. I don't  
23          -- I can't --

24          **Q    Well, I'm just saying --**

25          A    I don't know what everybody calls it.

1           **Q**    I'm just gonna say the label that I've picked  
2 up from either witnesses in this case or from the  
3 documents we've received, and you tell me if this is PA-  
4 2, okay?

5           **A**    But I don't know what they're referring to.

6           **Q**    Well, you can say that. You can say I don't  
7 know what that is.

8           **A**    Okay.

9           **Q**    So I had "Outside/Professional Activity Form".  
10          Is that PA-2?

11           MR. CURELY: Objection to form.

12           THE WITNESS: No.

13           **Q**    (By Mr. Leo) That's not PA-2?

14           **A**    No.

15           **Q**    If somebody described it as that, would they  
16 be wrong?

17           MR. CURELY: Objection to form.

18           THE WITNESS: This is the name of the form.

19           The form is "Report of Outside Employment or  
20 Professional Activities."

21           MR. LEO: Right. Well, that's what's on top  
22 of this form.

23           THE WITNESS: Correct.

24           **Q**    (By Mr. Leo) I'm asking you about what people  
25 call the form.

1 A But I don't know what that person is talking  
2 about.

3 Q Okay. Well, that's your answer then.

4 A Okay.

5 Q So you never heard the term "Outside  
6 Activity/Professional Activity Form"?

7 A I don't know.

8 Q You don't know or --

9 A I've worked at The University 37 years, and  
10 you're asking me if I ever heard somebody, over 37  
11 years, say something different. I don't really know.

12 Q I'm just asking you if somebody uses that  
13 label to describe this form.

14 A I don't know.

15 Q Okay. How about "Outside Employment Form"?

16 A I don't know.

17 Q Didn't you just use that label?

18 A I corrected myself, correct?

19 Q I don't know.

20 A Yes, you did. Yeah, I heard you. I said,  
21 "Outside Activity". I corrected myself.

22 Q Okay. Well, you've called this form the  
23 "Outside Employment Form", right?

24 A It's "Outside Employment or Professional  
25 Activities". It's both.

1           **Q    Okay. But have you used the label "Outside**  
2 **Employment Form"?**

3           **A    I don't believe so.**

4           **Q    You don't believe you've used the label?**

5           **A    Correct.**

6           **Q    But you just used the label and --**

7           **A    And I corrected myself.**

8           **Q    Okay. But you would agree you used the label**  
9 **and then corrected yourself.**

10          **A    Correct.**

11          **Q    Okay. Do you always correct yourself when you**  
12 **pass use the label "Outside Employment Form"?**

13          **A    I don't know. I'm trying to be clear that**  
14 **it's an Outside Activity Form.**

15          **Q    How about just "Outside Activity Form"?**

16          **A    "Outside Activity Form". I don't know who**  
17 **uses that form.**

18          **Q    But you'd agree that that label has been used**  
19 **as --**

20          **A    I don't know.**

21          **Q    -- as describing this form, PA-2.**

22          **A    I don't know.**

23          **Q    "Report of Outside Employment Form".**

24          **A    I don't know.**

25          **Q    You don't know if that label has been used?**

1 A No.

2 Q **How about "Outside Business"?**

3 A I don't know.

4 Q **"Outside Business Form". If you look at PA-3**

5 **there --**

6 A Yes.

7 Q **-- do you see the drop-down box document?**

8 A Yes.

9 Q **Do you see the link there when it's describing**  
10 **the form at the last two sentences?**

11 A Yeah.

12 Q **It says, "The form is available at**  
13 **Fau.edu/hr/file/outside business".**

14 A Okay.

15 Q **Do you see that pdf?**

16 A Yeah.

17 Q **Does that refresh your memory as to whether it**  
18 **was described as the "Outside Business Form"?**

19 A I don't know. I just saw that. I don't  
20 remember seeing that before.

21 Q **This link, "Outside Business", do you see that**  
22 **pdf? Are you -- have you seen this link before?**

23 A I've seen the link. I didn't notice that.

24 Q **Are you aware that this link was broken?**

25 A I remember getting an e-mail at one point, but

1 | that was fixed.

## 2 Q Was it fixed?

3 A Yes.

4 Q Did you check to see if it was fixed?

5 A I have checked over time, yes.

6 Q Do you know if it's working today?

7 A I believe so, but I haven't checked today.

8 (Thereupon, Plaintiff's Exhibit Number PA-4

9 was marked for identification.)

10 Q (By Mr. Leo) I'm going to show you what's been  
11 marked as PA-4. Here's a copy for your counsel.

14 Q (By Mr. Leo) This is actually that link. Do  
15 you see the address at the top?

16 A Right.

17 Q Recently this is what came up when we pulled  
18 the link.

19 A Okay.

20 Q Would you agree that it wasn't working when  
21 this was captured, right?

22 MR. CURELY: Objection to form.

23 | Q (By Mr. Leo) Would you agree with me?

24 A It looks like whenever you did this it wasn't  
25 working, yes

1           **Q    And counsel had actually pulled up that link**  
2           **today --**

3           **A    No. You go to the HR web site. That's where**  
4           **you go.**

5           **Q    We just put the address from the -- from your**  
6           **link.**

7           **A    But I always tell them you have to go to the**  
8           **source. You go to the HR web site, you look for report,**  
9           **and there's a link to the form.**

10          **Q    Is it this link right here, the --**

11          **A    I don't know. I'd have to look at it to see**  
12          **if it's that link.**

13          **Q    All right. We can come back to that.**

14          **So this form, is this form no longer in use?**

15          **A    Correct.**

16          **Q    So this -- the PA-2 exhibit, this is actually**  
17          **a form that was discontinued you said in the 2016?**

18          **A    I believe it was 2016.**

19          **Q    And this is a form that you were referring to**  
20          **Professor Tracy refusing to sign?**

21          **A    Correct.**

22          **Q    Were there any other faculty members like**  
23          **Professor Tracy who had a problem with filling out his**  
24          **form?**

25          **A    There were -- no.**

1           **Q    Professor Tracy was the only faculty member**  
2   **who had a problem with this form?**

3           A    Define "problem". Meaning refusing to fill it  
4   out? Yes, he is the only one who refused to fill it out.

5           **Q    He was the only one who refused to fill it**  
6   **out?**

7           A    That I know of, yes.

8           **Q    How about questions about the form?**

9           A    People ask questions about the form all the  
10   time.

11           **Q    People asked questions about the PA-2 all the**  
12   **time or any other form?**

13           A    Well, I mean, people ask questions about  
14   filling out a form, and then they fill it out.

15           MR. LEO: Let me mark this. What are we on, 5?

16           I'll mark this as PA-5. There's a copy for  
17   your counsel.

18           (Thereupon, Plaintiff's Exhibit Number PA-5  
19   was marked for identification.)

20           MR. CURELY: Thank you.

21           **Q    (By Mr. Leo) What's PA-5?**

22           A    This is the new -- I believe this is the new  
23   form.

24           **Q    This is the new Outside Employment Form?**

25           A    Outside Employment or Professional Activity

1 Form.

2 Q And the date at the bottom of this form says  
3 August 2016.

4 A Okay.

5 Q Is that date significant to you?

6 A No.

7 Q Is that the date that this form was changed?

8 MR. CURELY: Objection to the form.

9 THE WITNESS: I believe it was earlier than  
10 that, but it was in 2016, I know that.

11 Q (By Mr. Leo) And is this address here at the  
12 bottom, is this where the form -- the new form, the new  
13 "Outside Employment Form" is --

14 A I don't know.

15 Q -- available?

16 A I go to the Human Resources web site. That's  
17 where I find it.

18 Q Where on here would -- on the new form would  
19 one disclose a blog?

20 A You would disclose it as your activity.

21 Q As an employment activity?

22 A As an employment/business client activity.

23 Q Like a personal blog?

24 A Is that -- if it's an outside activity? What  
25 do you mean by "personal"?

1           **Q    It's not something that is paying you money,**  
2 **for example.**

3           **A    If it's compensated or uncompensated activity**  
4 **it's to be reported.**

5           **Q    That would be a business activity?**

6           **A    It could be an activity.**

7           **Q    So if you were filling this form out for your**  
8 **blog, where would you put --**

9           **A    I don't have a blog.**

10           **Q    I'm just saying if you had a blog and you were**  
11 **a faculty member at FAU, where would you write blog?**

12           **A    I would write the name of if in -- name of**  
13 **employer/business activity, and then I would describe**  
14 **the employment activity under number 1.**

15           **Q    Where do you see name of employer/business**  
16 **activity?**

17           **A    Right here.**

18           **Q    I'm sorry.**

19           **A    Name of employer/business client activity.**

20           **Q    Right, it says, "Name of employer/business--"**

21           **A    Yeah.**

22           **Q    "-- entity/client"?**

23           **A    Yeah. So it would be -- you would write what**  
24 **it was there, and then you would describe it as well.**

25           **Q    I'm confused. So you're saying you would put**

1       **a blog as your employer if it's not your employer?**

2       A     It is your -- you're being self-employed if  
3     you're doing it yourself. Self-employment is outside  
4     activity or self-activity --

5       **Q     You're saying that a blog is self-employment?**

6       A     I'm saying it could be --

7       **Q     If what?**

8       A     -- a professional activity.

9       **Q     What would make it professional?**

10      A     Professional activity -- first of all, any  
11     outside activity that is not part of your assignment to  
12     be reported. Professional activity is activity that is--

13      **Q     One moment. Let me --**

14      A     -- related to a discipline --

15      **Q     Let me --**

16      A     -- a field or a profession.

17      **Q     Okay. Can I just stop you there because I  
18     want to go -- I want to ask questions about what you're  
19     saying. You're saying any activity that has to be --**

20      A     Professional activity.

21      **Q     Okay. I heard any activity, so --**

22      A     Sorry. I meant professional activity.

23      **Q     What activities won't need to be reported?**

24      A     I don't know. It would -- the point of the  
25     form is to report an outside activity, discuss it with

1 your supervisor. If it's part of your assignment, it  
2 doesn't need to be reported.

3 Q Okay. Again, now you're saying "outside  
4 activity". Is it outside activity or outside  
5 professional activity?

6 A The form, I believe, says, "Outside  
7 Professional Activity."

8 Q Without talking about what's in the form,  
9 let's just talk about the policy --

10 A Okay.

11 Q -- based on what you know.

12 A Yes.

13 Q What has to be reported, what kind of  
14 activity?

15 MR. CURELY: Objection to form.

16 THE WITNESS: In the Collective Bargaining  
17 Agreement it talks about outside activities. It  
18 talks about teaching, research, consulting --

19 Q (By Mr. Leo) Here. Let me --

20 A -- private practice --

21 Q I'm gonna hand you -- this is the 2012 - 2015  
22 Collective Bargaining Agreement, and it's also a  
23 document 933 in this case because you keep referring to  
24 the Collective Bargaining Agreement.

25 A Sure.

1           **Q    I want you to take a look, and let me know**  
2 **where in the Collective Bargaining Agreement it says**  
3 **what you're saying.**

4           A    You know this is not the current agreement,  
5 correct?

6           **Q    Right. This is the agreement that was in**  
7 **effect when Professor Tracy --**

8           A    Right.

9           **Q    -- was employed at FAU.**

10          A    Okay. Article 19, "Conflict of  
11 Interest/Outside Activity".

12          **Q    Okay. So --**

13          A    Okay?

14          **Q    -- where in the Collective Bargaining**  
15 **Agreement does it say any activity has to be reported?**

16          A    "Reportable outside activity shall mean any  
17 compensated or uncompensated professional practice,  
18 consulting, teaching or research, which is not part of  
19 the employee's assigned duty and for which The  
20 University is provided no compensation."

21          **Q    So the faculty members don't need to report to**  
22 **report any activity. It's only a professional practice,**  
23 **slash -- I'm sorry -- comma, consulting, teaching or**  
24 **research, right?**

25           MR. CURELY: Objection to the form.

1                   THE WITNESS: The Provost says when it doubt,  
2                   fill it out.

3                   **Q      (By Mr. Leo) Why?**

4                   A      Because you discuss it with your supervisor.  
5                   We can't --

6                   **Q      Where does it say that?**

7                   A      We cannot --

8                   **Q      In your policy where does it say that --**

9                   A      Fill it out --

10                  **Q     -- when in doubt, fill it out?**

11                  A      It doesn't say that in the policy. That's  
12                  what the Provost advises the faculty. That's what I was  
13                  telling you, but the issue is that we cannot make a  
14                  determination about the outside activity until the form  
15                  is filled out.

16                  **Q      Why?**

17                  A      Because part of the form requires how many  
18                  hours are involved. So if somebody tells me they're  
19                  going to do something as a professional activity for 40  
20                  hours a week, I have to be concerned about that.

21                  **Q      Whose determination is it that an outside  
22                  activity needs to be reported? Is it the faculty  
23                  members?**

24                  A      The faculty member has the responsibility to  
25                  report. I believe it says that.

1           **Q      Where?**

2           A      It says that either here or in the guidelines  
3 on the -- the guidelines.  Here.

4           **Q      Where would the guidelines be?**

5           A      The guidelines -- the HR guidelines, do you  
6 have those?  It's multiple pages.

7           **Q      I'm sure I do.  I'm just wondering where would  
8 they be for faculty members.**

9           A      But it's not for faculty.  This form is for  
10 all employees.

11           **Q      So are you referring to this one?**

12           A      Yes.

13           MR. LEO:  Let me mark this.

14           (Thereupon, Plaintiff's Exhibit Number PA-6  
15           was marked for identification.)

16           **Q      (By Mr. Leo) And this is the only copy I have  
17 with me, so -- this is -- for the record, it's PA-6.  
18 It's a report of Outside Employment Guidelines.**

19           MR. CURELY:  Hold on.  Okay.

20           THE WITNESS:  Okay.  So that lists the  
21           multiple regulations and requirements for employees  
22           to report outside activities.

23           **Q      (By Mr. Leo) The guidelines that you have in  
24 your hand, PA-6, when --**

25           A      Yes.

1 Q -- when were these put into effect?  
2 A I don't know.  
3 Q Was it before or after Professor Tracy was --  
4 A Before.  
5 Q -- terminated?  
6 A It's been around for a while.  
7 Q Before?  
8 A Yes.  
9 Q Can you who look at the bottom of that --  
10 A This page?  
11 Q -- last page of that document? Does it have a  
12 date on there?  
13 A No.  
14 Q Referring to the bottom of the document where  
15 it says, "The file --"  
16 A Uh-hm.  
17 Q "-- location on line --"  
18 A Uh-hm.  
19 Q Do you see where is says, "Final"?  
20 A Uh-hm.  
21 Q You don't know when that was finalized?  
22 A No.  
23 Q Would you consider the outside activity policy  
24 final or finalized?  
25 A Yes.

1           **Q    When was it finalized?**

2           A    The requirement to report?

3           **Q    The policy.**

4           A    Like I said, in 1980, when I started, and I'm  
5    sure it existed before 1980.

6           **Q    But you said that there was changes that were  
7    happening over the years?**

8           A    Trying to make it -- yes.

9           **Q    Would you agree with me that there was changes  
10   being made to the policy between 2013 and 2016?**

11          A    As I explained, there was changes to the  
12   policy that were initiated by the Division of  
13   Researching having to do with the number hours the  
14   faculty members recommend to an outside activity.

15          **Q    And that began 2014 roughly?**

16          A    The discussion began in 2014. I think that  
17   policy was finalized in 2016.

18          **Q    And there was an audit in 2013.**

19          A    I know there was an audit. I don't remember  
20   the year.

21          **Q    Did the audit prompt the Division of Research  
22   to undertake this task of reviewing the policy?**

23          MR. CURELY: Objection to the form.

24          THE WITNESS: I don't know.

25          **Q    (By Mr. Leo) But changes were underway in**

1       **2014 --**

2       A     Correct.

3       **Q     -- and 2015?**

4       A     Correct.

5       **Q     And changes were being made in 2016.**

6       A     Yes.

7       **Q     There was a memorandum that was sent out in**  
8       **2016, June --**

9       A     That's an A form.

10      **Q     Does June sound right?**

11      A     That sounds right.

12      **Q     And this came from your superior, Provost**  
13      **Perry?**

14      A     Uh-hm.

15      **Q     Did you make any changes to the policy**  
16      **yourself?**

17      A     Well, I was on a committee where we worked on  
18      the changes. I didn't do anything individually.

19      **Q     What was this committee called?**

20      A     I don't think it had a name.

21      **Q     Who was on that committee?**

22      A     Okay. Myself, the attorney for the Division  
23      of Research, the Senior Associate General Counsel that  
24      works for the Provost, three -- at least three people  
25      from the Division of Research --

1                   **Q     Do you know their names?**

2                   A     Yes. Alyssa Gaucher, G-A-U-C-H-E-R, Miriam  
3                    Campo, C-A-M-P-O, Camille Coley, C-O-L-E-Y. The two  
4                    attorneys were Jack Ludin and Larry Glick, myself.  
5                   Initially it was Jim Acton, who was in charge of Human  
6                   Resources, and then it changed to Dave Tomanio, T-O-M-A-  
7                   N-I-O, who is currently head of Human Resources, and I  
8                   believe at some point Michelle Hawkins joined the  
9                   committee as she was shadowing me, and she took the role  
10                  of Vice Provost.

11                  **Q     When was this committee formed?**

12                  A     I don't remember the exact date, but I think  
13                  it somewhere around 2014.

14                  **Q     Is the committee still in existence?**

15                  A     No.

16                  **Q     When was it disbanded?**

17                  A     When we -- when we posted the new form.

18                  **Q     You're referring to PA-5?**

19                  A     PA-5.

20                  **Q     So the committee revised PA-2 and made it into  
21                  PA-5?**

22                  A     Correct.

23                  **Q     And this happened sometime in 2016.**

24                  A     Right.

25                  **Q     All right. So that would be after Professor**

1           **Tracy was terminated for noncompliance with the policy?**

2           A     Without -- for not completing the form, yes.

3           **Q     Was Professor Tracy fired because he didn't**  
4 **complete the form?**

5           A     Yes.

6           **Q     Or was he fired because he didn't complete it**  
7 **timely?**

8           A     He didn't complete the form. He was requested  
9 several times to complete the form, and he didn't  
10 complete it.

11          **Q     Professor Tracy did submit the forms, didn't**  
12 **he?**

13          A     He submitted some forms after the deadline --

14          **Q     When was that? When was the deadline?**

15          A     -- and they were not complete. Well, there  
16 were several deadlines. I think the last one was  
17 December '14.

18           MR. LEO: We've been going for about an hour.

19           Do you want to break?

20           THE WITNESS: Can I have a bathroom break?

21           MR. LEO: Sure, yeah. That will give me time  
22 to find the --

23           THE WITNESS: Thank you.

24           MR. LEO: -- exhibits.

25           MR. MEDGEBOW: All right. We're 11:33, off

1 the record.

2 (Thereupon, the following proceedings took  
3 place at 11:42 a.m. following a short recess  
4 at 11:30 a.m.)

5 (Thereupon, Plaintiff's Exhibit Number PA-7  
6 was marked for identification.)

7 Q (By Mr. Leo) All right. When we left off we  
8 were talking about Professor Tracy's Outside Employment  
9 Forms. Let me -- I've already marked these as PA-7 for  
10 today, and I don't have a copy even for myself, so show  
11 your counsel. I think he's familiar with these.

12 MR. CURELY: Okay. So it's a seven-page  
13 exhibit. Thank you.

14 Q (By Mr. Leo) Are these the forms that  
15 Professor Tracy submitted in 2015?

16 A Yes.

17 Q You're aware that he did fill out the forms.

18 A He did fill out these forms and submitted them  
19 past the deadline.

20 Q When was the deadlines?

21 A There was -- I don't remember exactly. I know  
22 that there was several e-mails where he was asked to do  
23 it, but the last deadline the Dean kept giving him an  
24 opportunity to submit, and I believe the last deadline  
25 was December 14th.

1           **Q    And he submitted these forms in PA-5 on**  
2           **December 15th?**

3           A    15th, correct.

4           **Q    And he was terminated the next day.**

5           A    Correct.

6           **Q    Was the decision to Professor Tracy made**  
7           **before he submitted the forms?**

8           A    There was a decision where we were discussing  
9           it, but the decision wasn't made until after he  
10          submitted the forms.

11          **Q    So he turns in the forms, and then you had a**  
12          **meeting?**

13          A    Yes. I discussed it with general counsel.

14          **Q    How did you discuss it?**

15          MR. CURELY: Don't -- anything you talked  
16          about with General Counsel is privileged, so --

17          **Q    (By Mr. Leo) Who was involved in the**  
18          **discussion about Professor Tracy's termination?**

19          A    On December the 15th, 16th?

20          **Q    Yeah.**

21          A    Senior Associate General Counsel.

22          **Q    Was there anybody else in this meeting or --**

23          A    No.

24          **Q    Was there only a meeting with General Counsel-**

25          -

1 A Correct.

2 Q -- before you made the decision to terminate  
3 Professor Tracy?

4 A I don't understand the question.

5 Q Did you only meet with Senior Counsel for FAU  
6 before you terminated Professor Tracy?

7 A Correct.

8 Q You didn't meet with the Provost?

9 A I advised the Provost of what we were doing.

10 Q After the decision was made?

11 A Before the letter was sent.

12 Q The termination letter?

13 A Correct.

14 Q How about anybody else?

15 A Proposed termination letter.

16 Q The proposed termination letter. How did you  
17 advise the Provost?

18 A I advised him of the incidents, the fact that  
19 the forms were submitted late, that there were forms  
20 that were not submitted and that that is what we were  
21 gonna do.

22 Q When was the decision to fire Professor Tracy  
23 formalized?

24 A The decision -- the letter went to him on, I  
25 believe, December 16th.

1           **Q    You described it as a proposed --**

2           A    It's absolutely.

3           **Q    What do you mean by "proposed"?**

4           A    Because the -- we send a Notice of Proposed  
5       Termination. The faculty member has ten days to respond  
6       to that. We can look at that response, and we can  
7       change our decision.

8           **Q    How?**

9           A    We could decide, based on what the faculty  
10      member gives us, that this is not the appropriate thing  
11      to do.

12          **Q    Does a response have to be given to change  
13      your mind?**

14          A    Yeah, because if there's no response, why  
15      would -- I was making my decision based on the  
16      information that I had, and he did not submit any  
17      additional information.

18          **Q    Do you know why he didn't?**

19          A    No.

20          **Q    Do you know why now?**

21          A    No, I don't know why he didn't.

22          **Q    Have you read the Complaint in this case?**

23          A    Which Complaint?

24          **Q    The Second Amended Complaint.**

25          A    Yeah. Is that explaining why he didn't submit

1 the forms?

2 Q I'm just asking if you read it.

3 A I looked at it, yes.

4 Q You agree that Professor Tracy has alleged  
5 that The Union did not let him respond.

6 A I -- that's his allegation.

7 MR. CURELY: Objection to form.

8 Q (By Mr. Leo) You've read that allegation  
9 though, right?

10 MR. CURELY: Objection to form.

11 THE WITNESS: I read that, yeah. I don't know  
12 that that's --

13 Q (By Mr. Leo) Would you agree that that would  
14 be a reason that he didn't respond if he was prevented  
15 from it?

16 MR. CURELY: Objection to form.

17 THE WITNESS: He can't be prevented from  
18 responding. Maybe -- I don't know what The Union  
19 advised him, but as an individual he has the right  
20 to respond with or without The Union.

21 Q (By Mr. Leo) But you would agree that if he  
22 was prevented from responding, that would be a reason  
23 why he perhaps --

24 A I don't understand how he could be --

25 Q -- didn't?



1                   MR. CURELY: Objection to form.

2                   THE WITNESS: I don't understand how anybody  
3                   could be prevented from responding.

4                   **Q           (By Mr. Leo) Well, in the Complaint it's  
5                   alleged that he was prevented by The Union who conspired  
6                   with FAU to insure that he didn't respond. Would you  
7                   agree with that?**

8                   A           I agree that that's --

9                   MR. CURELY: Objection to form.

10                  THE WITNESS: I agree that's the allegation --

11                  MR. LEO: Okay.

12                  THE WITNESS: But I don't see how anybody can  
13                  be prevented from responding.

14                  **Q           (By Mr. Leo) You don't see how about anybody  
15                  could be prevented from responding?**

16                  A           Right.

17                  MR. CURELY: Objection to form.

18                  **Q           (By Mr. Leo) It's possible somebody could have  
19                  stopped him, right?**

20                  A           Physically?

21                  MR. CURELY: Objection to form.

22                  THE WITNESS: Well, I guess I don't understand.

23                  **Q           (By Mr. Leo) Or if, for example, somebody told  
24                  him, hey, we got your back, and we're gonna respond,  
25                  don't worry about it, wouldn't that be one way of**

1           **somebody preventing him from doing it on his own, for**  
2           **example?**

3           MR. CURELY: Objection, form.

4           THE WITNESS: I'm not aware of that.

5           **Q           (By Mr. Leo) I'm just giving you an example of**  
6           **how someone could stop someone. Would you agree with**  
7           **those -- those could be possible reasons why someone**  
8           **didn't respond within the deadlines you were provided,**  
9           **right?**

10           MR. CURELY: Objection to form.

11           THE WITNESS: I don't know. I don't  
12           understand.

13           **Q           (By Mr. Leo) I'm not asking you whether you**  
14           **have personal knowledge as to whether that actually**  
15           **happened --**

16           A           I have no personal knowledge of that.

17           **Q           At some point you learned that that was what**  
18           **was alleged, right?**

19           A           I see that it was alleged.

20           **Q           Okay. Was there ever an ex-post-facto review**  
21           **of Professor Tracy's file, for example, and**  
22           **determination made that he should be fired?**

23           MR. CURELY: Objection to form.

24           THE WITNESS: I don't understand the question.

25           **Q           (By Mr. Leo) For example, after you're sued**



1 for what you're sued in this case for, right, was there  
2 a review of Professor Tracy's termination at all?

3 A Yeah.

4 Q Nobody looked at allegations and said, well,  
5 maybe we should reconsider the grounds for termination?

6 MR. CURELY: Objection, form.

7 THE WITNESS: No.

8 Q (By Mr. Leo) At any point was there ever a  
9 reconsideration of the grounds for termination --

10 A No.

11 Q -- for Professor Tracy and his firing?

12 A No.

13 Q Had Professor Tracy responded, like he had  
14 responded, for example, in the past to the directives  
15 that Dean Coltman gave him, would they have been  
16 considered?

17 MR. CURELY: Objection to form.

18 THE WITNESS: Anything he -- any way he would  
19 have responded would have been considered.

20 Q (By Mr. Leo) Even though his responses in  
21 November and October were not responded to?

22 MR. CURELY: Objection to form.

23 THE WITNESS: I don't know -- I don't  
24 understand what you're talking about.

25 Q (By Mr. Leo) Professor Tracy was asking Dean

1           **Coltman and David Williams in 2015 for clarification**

2           **about use of the policy, right?**

3           MR. CURELY: Objection to form.

4           THE WITNESS: I understand that.

5           **Q           (By Mr. Leo) Professor Tracy was not given**  
6           **clarification about use of the policy; would you agree?**

7           A           I don't know.

8           MR. CURELY: Objection to the form.

9           (Thereupon, Plaintiff's Exhibit Number PA-8  
10           was marked for identification.)

11           **Q           (By Mr. Leo) Let me just show you what has**  
12           **been marked as PA-8, and we'll start from the beginning**  
13           **since this began in October. Do you recognize this**  
14           **document communication?**

15           A           Am I on this e-mail?

16           **Q           I don't believe so. I'm just asking if you've**  
17           **seen it before.**

18           A           I don't recall.

19           **Q           Is this the typical kind of a message that**  
20           **would come from a Department Chair to the faculty**  
21           **members?**

22           A           Yes. This was 2015? Yes.

23           **Q           Is any of this something that the Provost**  
24           **helped prepare or send to faculty members or that you**  
25           **helped?**

1 A No.

2 Q So these messages are not a form or a template  
3 for the Deans or the Chairs?

4 A No, not that I'm aware of.

5 Q So this is something that David Williams wrote  
6 on his own.

7 A Uh-hm.

8 Q When it says, "Outside Employment Forms" at  
9 the top there as a subject --

10 A Yes.

11 Q -- you'd agree that David Williams is  
12 characterizing -- this is PA-3 -- at the time, right?

13 A Correct.

14 Q The Outside Employment Form.

15 A Yes. The Outside Activity Form, yes, I see  
16 how he characterizes it.

17 Q He characterized it incorrectly, would you  
18 agree?

19 A It's an Outside Employment Form. That's part  
20 of it, but --

21 Q That's part of what?

22 A It's part of the form, his outside employment,  
23 but it's also a professional activity.

24 Q Okay. But you'd agree that the  
25 characterization that David Williams is using in this



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1       **message to faculty members is incorrect.**

2       A     It's confusing.

3       Q     Okay. Is this the same kind of message that  
4       all the Deans and Chairs send?

5       A     I don't know.

6       Q     **You see that link there, the outside business?**

7       A     Yes.

8       Q     **Do you see that pdf that Dean Coltman provided  
9       to David Williams?**

10      A     Right.

11      Q     **You'd agree that's the same broken link that  
12       we showed you earlier.**

13      A     I don't know if it's broken, but it's a link  
14       that you showed me earlier.

15      Q     **And if the link looks just like it looks in  
16       the Exhibit PA-4, if that's how it looks today, this  
17       link, would you agree with me that it's the same broken  
18       link?**

19            MR. CURELY: Objection to form.

20            THE WITNESS: I don't know. I don't know if  
21       the form is broke -- if the link is broken today.

22            It wouldn't be to this form. It would be to  
23       the new form today.

24      Q     **(By Mr. Leo) I'm referring to this link,  
25       "Outside Business" pdf.**

1           A    Why would that link be active today when that  
2 form is no longer active?

3           Q    I don't know. Are you -- do you remember that  
4 there was an allegation, at least made by people at FAU,  
5 that this link was broken back in 2015?

6           A    A while back, yes.

7           Q    And you don't remember if it was corrected or  
8 not?

9           A    I assume me it was corrected.

10          Q    You say you assume.

11          A    I asked for it to be corrected.

12          Q    Okay. But you don't know if it was.

13          A    I assume it was. I don't remember everyday  
14 that I looked at the form.

15          Q    As you sit here today, do you remember the  
16 last time that this link worked?

17          A    No, I don't know.

18          Q    Is there anybody who's tasked with making sure  
19 that links that are provided to faculty members work?

20          A    One person? No. I mean, this is a form.  
21 It's a part of Human Resources. So if the link was  
22 broken, I would contact Human Resources and tell them  
23 that it needs to be fixed, if I knew.

24          Q    Would you agree that a broken link would not  
25 be helpful to faculty members?

1           A    I think they're -- faculty are educated, and  
2 there's other ways to find the form if the link is  
3 broken.

4           **Q    What other ways?**

5           A    Contact HR and say the form is -- the link is  
6 broken, can you fix the link. And, quite honestly, we  
7 had this form before we had it on line.

8           **Q    Are you aware of what David Williams' response**  
9 **to Professor Tracy was when he expressed confusion about**  
10 **the policy?**

11          A    No.

12          **Q    Professor Tracy, he submitted his annual**  
13 **assignment without using the FAIR system --**

14          A    Correct.

15          **Q    -- right? He printed out his annual**  
16 **assignment and handed it in --**

17          A    Signed it, yes.

18          **Q    -- to David Williams?**

19          A    Yes.

20          **Q    When did you become involved in October 2015,**  
21 **if at all?**

22          A    I don't remember the exact date. I believe  
23 that David Williams wrote to the Senior Associate  
24 General Counsel about Professor Tracy's refusal to sign  
25 his assignment and to click on the affirmation.

(Thereupon, Plaintiff's Exhibit Number PA-9  
was marked for identification.)

Q (By Mr. Leo) I'm gonna show you what's been marked as PA-9.

MR. LEO: I only have one copy, Joe, if you want to take a look. I think you probably remember this one.

MR. CURELY: I do. Okay.

9 Q (By Mr. Leo) Do you recognize this  
10 communication, PA-9?

11 MR. CURELY: The bate stamp FAU 392.

12 Q (By Mr. Leo) Have you seen this before?

13 A I'm looking at it.

14 MR. CURELY: She's reading it.

15 THE WITNESS: I'm reading it. I'm looking at  
16 it now. It's vaguely familiar. I don't remember  
17 it directly.

18 Q (By Mr. Leo) You would agree that --

19 A I'm not copied on it I don't believe.

20 Q You would agree that Professor Tracy was  
21 responding to David Williams, expressing confusion about  
22 the form and concern?

1 the record to reflect that. If you can answer, go  
2 ahead.

3 Q (By Mr. Leo) Would you agree that this is  
4 Professor Tracy expressing confusion or concern about  
5 the policy?

6 A I believe he's saying that his media criticism  
7 alternative journals and blogging doesn't constitute an  
8 intellectual or creative endeavor.

9 Q He says, "Thus cannot be a conflict of  
10 interest, conflict of commitment or outside activity  
11 that is defined in the policy"?

12 A That's what he's saying.

13 Q When was the first time you were made aware of  
14 Professor Tracy's concerns about application of the  
15 policy to his blogging?

16 A After this I suspect.

17 Q Did Professor Tracy ever express concerns  
18 about the application to his blogging before 2015?

19 A I don't recall.

20 Q Do you recall, in 2013, Professor Tracy's  
21 concerns?

22 A I remember meeting with Professor Tracy in  
23 2013.

24 Q And at that meeting he expressed concerns  
25 about use of the policy --

1 A I don't.

2 Q -- with respect to his blogs?

3 A I don't recall that.

4 Q Do you recall Dean Coltman directing him to  
5 submit Outside Activities forms for his blog in 7/13?

6 A I don't recall that.

7 MR. LEO: PA-10. Let's mark that.

8 (Thereupon, Plaintiff's Exhibit Number PA-10  
9 was marked for identification.)

10 Q (By Mr. Leo) This is --

11 MR. LEO: Here's a copy for, Joe, and you can  
12 show it to her because it's actually marked the  
13 part about the Outside Employment Form.

14 THE WITNESS: Okay. Yes.

15 MR. CURELY: It looks like it.

16 MR. LEO: Yeah, you can read it.

17 MR. CURELY: When you're ready.

18 MR. LEO: I circled the part.

19 MR. CURELY: Yeah, I'm going to let her read  
20 the whole thing if she wants to.

21 MR. LEO: Sure. Just let me know when you've  
22 had a chance to review it.

23 THE WITNESS: Okay.

24 Q (By Mr. Leo) Does this refresh your  
25 recollection?



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1 A Refresh my recollection?

2 Q You'd agree that in January of 2013 Dean  
3 Coltman had asked Professor Tracy to submit the Outside  
4 Employment/Activity Form?

5 A Correct.

6 Q Professor Tracy did not submit the form  
7 following this request; isn't that correct?

8 A I don't know.

9 Q In 2013 Professor Tracy objected to reporting  
10 on PA-3, I believe, the Outside Employment Form.

11 A PA-3 is the current link. This was not in  
12 existence in 2013.

13 Q I'm sorry. The form is PA --

14 A 2?

15 Q PA-2. Just to correct the record, there was a  
16 reference to that. PA-2 is the Outside Employment Form  
17 that Professor Tracy was asked to complete?

18 A Outside Employment of Professional Activities  
19 Form.

20 Q He was asked to complete in 2015, right?

21 A Correct.

22 Q This is the same form, PA-2, that Dean Coltman  
23 was asking Professor to Tracy to complete in January of  
24 2013.

25 A Correct.

1                   **Q     The form hadn't changed between October of**  
2 **2015 and January 2013, had it?**

3                   **A     I don't believe so.**

4                   **Q     So for purposes of 2013, the Form PA-2 would**  
5 **have been the form that was at issue at the time?**

6                   **A     Correct.**

7                   **Q     Do you recall Professor's Tracy's response to**  
8 **Dean Coltman's memorandum?**

9                   **A     No.**

10                  (Thereupon, Plaintiff's Exhibit Number PA-11  
11                  was marked for identification.)

12                  **Q     (By Mr. Leo) Let me show you what's been**  
13 **marked as PA-11, and I don't have a copy, but take a**  
14 **look at that, and let me know when you've had a chance**  
15 **to review it.**

16                  MR. CURELY: Why don't you -- just for the  
17                  record, it is a letter dated February 2nd, 2013.

18                  THE WITNESS: Okay.

19                  **Q     (By Mr. Leo) Does this refresh your**  
20 **recollection as to whether Professor Tracy objected to**  
21 **or refused to provide the Outside Employment/Activity**  
22 **Form as directed by Dean Coltman in 2013?**

23                  **A     I don't remember this, but it existed. Most**  
24 **of the concern in the January meeting had to do with**  
25 **safety and the public reaction to what he was saying**

1 about the children who died at Sandy Hook Elementary  
2 School, and the other part was very clearly related to  
3 the disclaimer that we were interested in having on all  
4 his material.

5 **Q You referenced a disclaimer. Professor Tracy**  
6 **had a disclaimer on his blog before the discipline in**  
7 **2013 or at least attempted discipline, right?**

8 MR. CURELY: Objection to form.

9 THE WITNESS: I don't what you mean by  
10 attempted discipline.

11 **Q (By Mr. Leo) In 2013 Professor Tracy was not**  
12 **actually disciplined, was he?**

13 A When in 2013 are you talking about?

14 Q I'm referring to the entire year.

15 A The entire year?

16 Q Yeah. Was there an act of discipline  
17 following your meetings with Professor Tracy?

18 A Yes. Well, it was withdrawn.

19 Q It was withdrawn.

20 A It was withdrawn, yes.

21 Q So would you agree it was attempted  
22 disciplined?

23 A Yes, we were just -- because we had understood  
24 that there would be a disclaimer, and we did not feel  
25 the disclaimer was sufficient. So he was, I believe,

1 sent a Notice of Discipline. I believe it was a  
2 reprimand by Dean Coltman, but they reached a settlement  
3 agreement.

4 Q Before the Notice of Discipline in March of  
5 2013, would that be the reprimand you're referring to?

6 A That's what I'm thinking of.

7 Q Before that, you would agree that Professor  
8 Tracy denied any obligation to submit the Outside  
9 Employment/Activity Form for his blogging.

10 A      Correct.

11 Q Would you agree with me that the discipline or  
12 attempted discipline in 2013 had nothing to do with  
13 Professor Tracy's refusal to submit the Outside  
14 Employer/Activity Form?

15 A I don't have it in front of me, but my  
16 recollection is that it had to do with the disclaimer.

17 Q I'll put it in front of you.

18 A Thank you.

19 (Thereupon, Plaintiff's Exhibit Number PA-12  
20 was marked for identification.)

21 Q (By Mr. Leo) Let me show you what's been  
22 marked as PA-12. That's my last copy this. This is  
23 March 2013 Notice of Discipline?

1                   THE WITNESS: Okay.

2                   **Q**     (By Mr. Leo) Does this refresh your  
3     recollection as to the attempted discipline in March of  
4     2013?

5                   **A**     Yes.

6                   **Q**     You would agree that Professor Tracy was not  
7     disciplined in 2013 for failure to submit Outside  
8     Employment/Activity Forms.

9                   **A**     Correct.

10                  **Q**     **Why was that?**

11                  **A**     He was -- the discipline had to do with the  
12     disclaimer.

13                  **Q**     But my question was why was Professor Tracy  
14     not disciplined for failure to submit the Outside  
15     Employment/Activity Form for the blog?

16                  **A**     I don't know.

17                  **Q**     Was there an abandonment of this directive?

18                  **A**     I don't believe so.

19                  **Q**     Would you agree that professor Tracy didn't  
20     ignore obligations as Dean Coltman writes in this letter  
21     at the end there? Do you see the -- it says, "You have  
22     ignored your obligations and my directives."

23                  **A**     Under Article 5.3D. I don't have that in  
24     front of me.

25                  **Q**     Right, but I'm referring to what Dean Coltman

1       **says, and she --**

2           A     Yeah, but she said, "You ignored your  
3     obligations under Article 5.3D."

4       **Q     "And my directive."**

5           A     Correct.

6       **Q     That's what she says. Would you agree that**  
7     **Professor Tracy didn't ignore her directives? He told**  
8     **her no.**

9           MR. CURELY: Objection to form.

10          THE WITNESS: I, today -- again, I don't have  
11     5.3D in front of me, so I'm not sure what -- I  
12     believe that has to do with --

13       **Q     (By Mr. Leo) It is right there if you want to**  
14     **take a look at it.**

15          A     I believe that has to do with the disclaimer,  
16     so he did ignore that, and he chose not to do it.

17       **Q     When you say that "he ignored --"**

18          A     5.3D is recognizing that faculty as members of  
19     the community have rights and duties. When speaking on  
20     any manner of public interest, a faculty member shall  
21     make clear when comments represent personal opinions and  
22     when they represent official University positions, and  
23     she's saying that he had an obligation to do that, and  
24     he ignored that obligation.

25       **Q     Didn't you say that Professor Tracy did have a**

1 **disclaimer in 2013?**

2 A This letter is saying that he did not have the  
3 disclaimer, correct.

4 Q **The letter is saying he didn't have a**  
5 **disclaimer or --**

6 A The discipline is based on the fact -- and  
7 here's -- "The disclaimer you had at the time of our  
8 meeting, which was in January, was solely on the about  
9 page and not where the articles and postings are found.  
10 Clearly this disclaimer was ineffective as shown by the  
11 widespread misperception that your job and FAU are  
12 connected to the blog site."

13 Q **So you agree that he had a disclaimer. It**  
14 **just wasn't --**

15 A It wasn't -- it was only on the about page  
16 from what I recall and what it's saying here, and then  
17 it goes on to say that he was posting articles --  
18 letters from others, which identified FAU, identified  
19 him, Dean Coltman and myself.

20 Q **Going back to the disclaimer issue, where in**  
21 **Article 5 does it say that a faculty member who has a**  
22 **web site member it has -- the disclaimer has to be on**  
23 **every single page?**

24 A It doesn't say every single page. It says  
25 that you have to -- when speaking on a matter of public

1 interest, you shall make clear when the comments  
2 represent personal opinion and when they represent  
3 official University positions.

4           **Q     There was no dispute that Professor Tracy had**  
5 **disclaims on his blog, right?**

6           A     I don't recall whether there was a dispute or  
7 not.

8           **Q     He -- Professor Tracy had a disclaimer, and it**  
9 **said that he was not speaking on behalf of The**  
10 **University; would you agree with that?**

11          A     Without seeing that, I don't recall.

12          **Q     This is part of the reason why The University**  
13 **withdrew the threatened discipline in 2013.**

14          A     But we agreed to the settlement, what -- where  
15 the disclaimer was to be and what it said.

16          **Q     Well, the agreement was that The University**  
17 **would write a new disclaimer for Professor Tracy, and he**  
18 **would use that.**

19          A     Correct.

20          **Q     Right? And he agreed to use The University's**  
21 **disclaimer.**

22          A     Correct.

23          **Q     But there was nothing wrong with Professor**  
24 **Tracy's disclaimer at the time. It just wasn't what FAU**  
25 **had wanted. Would you agree with me on that?**

1                   MR. CURELY: Objection to the form.

2                   THE WITNESS: I don't know what that means.

3                   **Q           (By Mr. Leo) Meaning that there was a**  
4 **disclaimer, such as you said -- I'm not speaking on**  
5 **behalf of The University. Before he's noticed in March**  
6 **of 2013, there was a disclaimer there, right?**

7                   MR. CURELY: Objection to form.

8                   THE WITNESS: I haven't seen that disclaimer.

9                   Do you have a copy of it?

10                  **Q           (By Mr. Leo) Back in 2013 he did though,**  
11 **right?**

12                  A           I don't recall.

13                  **Q           You would have had to look at it to enter into**  
14 **an agreement with Professor Tracy, right?**

15                  MR. CURELY: Objection to form.

16                  THE WITNESS: I don't recall.

17                  **Q           (By Mr. Leo) In any event, the discipline was**  
18 **withdrawn.**

19                  A           Correct.

20                  **Q           Professor Tracy, in 2013, was not disciplined**  
21 **for not submitting an Outside Employment/Activity Form**  
22 **for his blog.**

23                  A           Correct.

24                  **Q           You would agree that he was -- Professor Tracy**  
25 **was directed to submit the report --**

1 A Yes.

2 Q -- about that employment in January of 2013.

3 A Correct.

4 Q In February he said no.

5 A Correct.

6 Q Why wasn't Professor Tracy disciplined right  
7 then?

8 A I don't know.

9 Q Why wasn't he treated as insubordinate --

10 A I don't know.

11 Q -- in 2013?

12 A I don't know.

13 Q Would you agree that, according to The  
14 University's use of this directive, the submit the forms  
15 or else we'll call, that in 2015 Professor Tracy was  
16 disciplined for exactly what he did in 2013?

17 MR. CURELY: Objection to form.

18 THE WITNESS: I don't know what the decision  
19 was in 2013.

20 Q (By Mr. Leo) I'm referring to 2015 now.

21 A In 2015?

22 Q In 2015 would you agree Professor Tracy was  
23 disciplined for exactly what he did in 2013?

24 MR. CURELY: Objection to form.

25 Q (By Mr. Leo) He was told to submit the forms.



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1       **He said no.**

2           A     He said no. In 2015 he was told repeatedly to  
3     submit the forms over a period of two months, and he  
4     repeatedly did not submit the forms.

5           **Q     Did he refuse and not submit the forms or was**  
6     **he asking for clarification on the policy? Obviously**  
7     **there's a different there, right?**

8           A     No, I think he was asked to submit the forms--

9           **Q     I should be --**

10          A     -- and he did not submit the forms.

11          **Q     I showed you PA-9. Let's mark this one, also.**

12          **We're on PA-13 now?**

13           MR. CURELY: Yeah.

14           (Thereupon, Plaintiff's Exhibit Number PA-13  
15           was marked for identification.)

16          **Q     (By Mr. Leo) And this is a Composite. I'll**  
17     **just staple this document, this communication. Do you**  
18     **recognize this?**

19           MR. CURELY: Give me a second here, Counsel.

20           This is date stamped 160 through 162, and it's  
21     marked as Exhibit 13.

22          **Q     (By Mr. Leo) This is the e-mail dated October**  
23     **28, 2015?**

24          A     Yes.

25          **Q     To David Williams. Have you seen this before?**

1           A    I don't recall. I don't see myself copied on  
2 it.

3           Q    **Why don't you take a look, read it, and then**  
4 **let me know when you've had a chance because I have some**  
5 **questions about it.**

6           A    Okay. Your question?

7           Q    **Would you agree that Professor Tracy was**  
8 **expressing in this e-mail, PA-13, this exchange, his**  
9 **confusion with the policy?**

10          A    No. I think he was clear on the policy. He -  
11        - I think he's correcting David Williams here; and,  
12        again, you know, Professor Tracy -- Dr. Tracy was  
13        President of The Union for several years when this  
14        policy -- the Conflict of Interest Outside Activity  
15        Policy was part of the Collective Bargaining Agreement,  
16        and I think he's clarifying here that this is -- it's  
17        not -- it's compensated or uncompensated activity, which  
18        you had shown me earlier an e-mail from David Williams  
19        where it was talking about outside employment or that's  
20        what he's quoting I think at the top there.

21          Q    **Do you agree with what Professor Tracy is**  
22 **saying to David Williams in this communication?**

23          A    I agree with that him that it's compensated or  
24        uncompensated outside activity. It's not employment.

25          Q    **But you agreed also that David Williams was**

1       **incorrect in the way he was characterizing the policy**  
2       **and the form.**

3           A      I think that David Williams was talking about  
4      the outside forms and that the characterization that had  
5      to do with employment income was incorrect in that  
6      there's nowhere on the form -- currently on the form  
7      that he signed that asked for income.

8           **Q      So you're saying --**

9           A      And I believe that Dr. Tracy knew that. It  
10     says that.

11          **Q      Knew what?**

12          A      He says to Professor Williams -- clearly  
13     states that it may or may not be compensated. He knows  
14     that's in the Collective Bargaining Agreement.

15          **Q      Okay. But you agree that he's telling David**  
16     **Williams, Professor Tracy is telling David Williams that**  
17     **he's incorrectly describing the policy to --**

18          A      Only relating to the income. That's my  
19     reading of this.

20          **Q      What about David Williams' description of the**  
21     **Outside Employment Policy is incorrect here?**

22            MR. CURELY: Objection to form.

23          **Q      (By Mr. Leo) Let's start with just -- well,**  
24     **let's make this easier. He says, "Just a friendly**  
25     **reminder that --"**

1 A Correct.

2 Q **-- if you have outside employment income, you**  
3 **will need to fill out the link Outside Employment Form."**

4 A Correct, and that's, as we've said and as  
5 Professor Tracy clarified, you're supposed to fill out  
6 the form, Outside Employment/Outside Activity for  
7 compensated or uncompensated activity.

8 Q **But let's just focus on this reminder.**

9 A Yes.

10 Q **If you have outside employment income, you**  
11 **will need to fill out the form is what he's saying,**  
12 **right?**

13 A Yes.

14 Q **Is that true?**

15 A No. You need to fill out the form. You need  
16 to fill out reported Outside Employment/Outside Activity  
17 Form if you have compensated or uncompensated  
18 professional activity that is outside of your  
19 assignment.

20 Q **Okay. But going back to what he says, he's**  
21 **saying if you have outside employment income --**

22 A Correct, and --

23 Q **-- you need to fill out the form. He didn't**  
24 **say anything else, right?**

25 A And Profess -- and Dr. Tracy clarified it in

1 his response.

2 Q Okay. But I'm not asking about what Tracy --  
3 we see what Tracy said. I'm more concerned about what  
4 David Williams is representing to Professor Tracy and to  
5 all of the faculty members that are in the department.  
6 Tracy is just one of many, right?

7 A Correct.

8 Q All he was saying is that one line.

9 A Correct.

10 Q Do you think that that is a misrepresentation  
11 David Williams made --

12 A I think --

13 Q -- about the policy?

14 A I think that the faculty who are familiar with  
15 the report, the policy and the Collective Bargaining  
16 Agreement knew that was not correct.

17 Q Okay. You think --

18 A I think that --

19 Q -- why?

20 A Dr. Tracy corrects him right here.

21 Q Okay. When was the first time you saw this  
22 correction that Professor Tracy made to your  
23 administrator who's tasked with enforcement of this  
24 policy?

25 A I don't know.

1                   **Q    Do you think faculty members should be**  
2                   **correcting administrators when it comes to policies that**  
3                   **they're tasked with enforcing?**

4                   MR. CURELY: Objection to the form.

5                   THE WITNESS: Yeah, I have no problem with  
6                   somebody telling me I made a mistake.

7                   **Q    (By Mr. Leo) David Williams went to his**  
8                   **superiors after he was given this response from**  
9                   **Professor Tracy --**

10                  A    Right.

11                  **Q    -- right?**

12                  A    I don't know.

13                  **Q    This didn't go to you?**

14                  A    Let me see.

15                  MR. LEO: Let's mark this as PA-14.

16                  (Thereupon, Plaintiff's Exhibit Number PA-14  
17                  was marked for identification.)

18                  MR. CURELY: Okay. After this exhibit I'd  
19                  like to take a break for --

20                  MR. LEO: Yeah, sure. Let's just -- I just  
21                  want to do one more just to refresh the witness'  
22                  recollection.

23                  **Q    (By Mr. Leo) Have you seen this before, PA-14?**

24                  MR. CURELY: Before you answer -- okay. Thank  
25                  you.

1                   MR. LEO: And that's PA-14. Let me --

2                   MR. CURELY: The question was have you seen it.

3                   **Q (By Mr. Leo) Have you seen that before?**

4                   A Yeah, I'm not cc'd on it.

5                   (Thereupon, Plaintiff's Exhibit Number PA-15  
6                   was marked for identification, which is  
7                   attached hereto and made a part hereof.)

8                   **Q (By Mr. Leo) Let me show you what's marked as  
9 PA-15, and let's try that one.**

10                  A Okay. So this one was sent to -- it looks  
11 like that Dr. Williams sent it to Senior Associate  
12 General Counsel who referred him to me.

13                  **Q Okay. So this e-mail that's --**

14                  A PA-15?

15                  **Q PA-15, this is an e-mail that you were -- you  
16 received?**

17                  A Yes, it looks like I did.

18                  **Q How about the PA-14, have you seen that one  
19 before?**

20                  A It looks vaguely familiar, but I don't  
21 remember specifically.

22                  **Q Would you agree that PA-14, David Williams, is  
23 expressing his own confusion with the policy --**

24                  MR. CURELY: Objection to form.

25                  **Q (By Mr. Leo) -- the Outside Activity Policy?**

1 A I don't know. He's asking some legal  
2 questions here. I don't understand them.

3 Q **He says, "I do not know the legal definitions**  
4 **and restrictions on conflict of interest", right?**

5 A Uh-hm.

6 Q **"Might we get an opinion on from legal on**  
7 **this?"**

8 A He's asking for an opinion.

9 Q **Would you believe that David Williams was**  
10 **confused about the policy --**

11 A I don't know.

12 Q **-- and that's why he was writing to Linda**  
13 **Johnson and Dean Coltman with the importance high on**  
14 **Professor Tracy's response to his request for the**  
15 **Outside Business Form?**

16 A Perhaps he was asking clarification, but I  
17 don't know what he was confused about.

18 Q **Was November 2nd the first time you were made**  
19 **aware of this matter?**

20 A I don't know.

21 Q **Did you ever meet with David Williams about**  
22 **this?**

23 A No.

24 Q **What was David Williams advised by the Provost**  
25 **office, if anything?**

1 A I don't recall.

2 Q **And did you give him any advice?**

3 A I don't recall talking to David Williams.

4 Q **Does that mean you never spoke to him about**  
5 **this?**

6 A I don't recall speaking to him, correct.

7 Q **Why wasn't Professor Tracy provided with**  
8 **clarification at this point?**

9 A I don't --

10 MR. CURELY: Objection to form.

11 THE WITNESS: I don't know.

12 Q **(By Mr. Leo) You see David Williams' response**  
13 **to Professor Tracy in some of these e-mails, right?**

14 A Which one are you talking about? There's  
15 PA-9. Is that what you're talking about?

16 Q **There's one. Do you see what David Williams**  
17 **says there?**

18 A He's clarifying that this is nothing new.

19 Q **Would you agree with me that when he said**  
20 **there's nothing new that that's not right?**

21 A No, there's nothing new in terms of the box.  
22 That box had been place before this -- the affirmation  
23 box. I thought that's what we were talking about.

24 Q **Right. Well, that was new in '15, right?**

25 A In '14.

1           **Q    According to David williams' in the other e-**  
2 **mail he says, "As far as I can tell, the affirmative**  
3 **checkbox is new, right?**

4           MR. CURELY: Where --

5           **Q    (By Mr. Leo) You have that e-mail, right?**

6           A    Yeah, he says that. Right, he does say that.

7           **Q    Why would David Williams be saying one thing**  
8 **to his administrators at FAU and something different to**  
9 **Professor Tracy?**

10          A    I don't know what he's saying to his  
11 administrators at FAU.

12          **Q    Here. Take a look at FAU --**

13          MR. CURELY: Which one --

14          MR. LEO: -- 4002.

15          MR. CURELY: Yeah, which one are you talking  
16 about?

17          MR. LEO: Sorry. There's a few e-mails here  
18 if you want to just line them up next to each  
19 other.

20          MR. MEDGEBOW: The October 27th e-mail.

21          MR. LEO: October 27th, 2015.

22          MR. MEDGEBOW: It's bated stamped on the  
23 bottom.

24          THE WITNESS: Okay. This one?

25          MR. MEDGEBOW: 0402.

1                   MR. LEO: Hang on.

2                   MR. CURELY: Here. Why don't we give these to  
3                   you these guys --

4                   MR. LEO: Yeah, let me see what you've got  
5                   there.

6                   MR. CURELY: -- because I'm looking at  
7                   different things, too.

8                   MR. LEO: Where he says, "Hi, Linda." This  
9                   one right here.

10                  MR. MEDGEBOW: That's one of them.

11                  **Q (By Mr. Leo) And then here you go. So we have**  
12 **PA-13, PA-14. Take a look at what the -- what he tells**  
13 **Linda Johnson, David Williams, when he's asking for**  
14 **suggestions. Do you see that?**

15                  A     Yes.

16                  **Q He says, "As far as I can tell, the confirm**  
17 **and checkbox is new", and then take a look at what he**  
18 **told Professor Tracy at the bottom of PA -- what's that,**  
19 **13?**

20                  MR. CURELY: Which -- no. 13 is here, this  
21                  one.

22                  MR. LEO: PA-13, FAU bate stamp 150.

23                  MR. CURELY: Yeah.

24                  MR. LEO: Do you see the bottom where he says,  
25                  "The conflict of the Interest regulations are

1 nothing new."

2 MR. CURELY: Right.

3 THE WITNESS: It is nothing new.

4 Q (By Mr. Leo) You don't think that's  
5 misleading?

6 A No.

7 Q He said there's nothing new to Professor  
8 Tracy, but then he tells Linda Johnson that the  
9 affirmative checkbox is new.

10 A We're talking about two different things.  
11 Here, on October 27th, PA-14, he's talking about the  
12 affirmative checkbox, and October 27th PA -- is that 13  
13 -- he's talking about the regulations.

14 Q Would you agree on the same day he's saying  
15 two different things to two different people?

16 MR. CURELY: Objection the form.

17 Q (By Mr. Leo) David Williams we're referring  
18 to?

19 A I don't -- I mean, we -- do you not say  
20 different things to different people in the course of a  
21 day? This is about the box. This is the about the  
22 regulations. The regulations are not new.

23 Q Would you agree that the affirmative checkbox  
24 is part of the regulations now?

25 A It's part of the process. It's part of the

1 procedure, but the regulations are -- have been around,  
2 as I said --

3 **Q Okay.**

4 A -- since I've been employed.

5 **Q But would you agree with me that the**  
6 **affirmative checkbox was added to the regulation?**

7 A It was added to the procedure.

8 **Q Right, but it's now a part of the regulations.**

9 A Part of the procedure.

10 **Q Let me show you another one.**

11 MR. CURELY: You can show her after lunch.

12 We're gonna go to lunch now.

13 MR. LEO: Yeah, this is finishing up this  
14 whole -- these are all related, so --

15 MR. CURELY: Okay.

16 MR. LEO: Yes, this is the last document.

17 MR. CURELY: All right.

18 MR. LEO: One minute, and then you can talk to  
19 your witness after.

20 MR. CURELY: Then I can eat lunch and make a  
21 phone call.

22 MR. LEO: PA -- we're on 15?

23 THE WITNESS: I guess. We have 13 and 14.

24 MR. LEO: Or is this --

25 MR. CURELY: This is Number 16. 15 was bate

1 stamped 372.

2 MR. LEO: All right.

3 MR. CURELY: Those are my doodles. Pay no  
4 attention.

5 THE WITNESS: Okay.

6 (Thereupon, Plaintiff's Exhibit Number PA-16  
7 was marked for identification.)

8 Q (By Mr. Leo) And you'll see why I'm going to  
9 this one because this is also another e-mail dated  
10 November 2nd, and it looks like it's the same day that  
11 he was referred to your office, so --

12 MR. CURELY: Do you have a copy for me or not?

13 MR. LEO: There is one for you.

14 MR. CURELY: Okay. Thank you.

15 Q (By Mr. Leo) Okay. Here's another message  
16 from David Williams to James Tracy; would you agree?

17 A Yes.

18 MR. CURELY: Okay. You're talking about 16  
19 now, okay.

20 THE WITNESS: November 22nd, 2015.

21 Q (By Mr. Leo) He writes, "If you have outside  
22 income, then you have to you fill out the Conflict of  
23 Interest Form." Let's start with that line.

24 A Okay.

25 Q Would you agree this is another

1                   **misrepresentation about the policy?**

2                   MR. CURELY: Objection to the form.

3                   THE WITNESS: I agree that its not accurate.

4                   **Q       (By Mr. Leo) Okay. And this is --**

5                   A       But it's not a conflict of interest form.

6                   It's a Report of Outside Employment/Professional  
7                   Activity Form.

8                   **Q       Right.**

9                   A       That allows us to make a decision if there's  
10                  conflict of commitment or a conflict of interest, but  
11                  it's not called a Conflict of Interest Form.

12                  **Q       And then the next line he says, "That much is  
13                  clear." Would you agree that this is, again,  
14                  mischaracterizing the policy?**

15                  A       I think he's trying to say it's clear that you  
16                  need to fill out the form, but I didn't --

17                  **Q       Where does he say that?**

18                  A       I didn't write the e-mail. You have to ask --  
19                  I didn't --

20                  **Q       But he's -- he says, "Here's Diane Alperin's  
21                  account", and then he quotes, "This was added to FAIR in  
22                  2014 in response, as I recall, to an audit and an issue  
23                  with grant application, and then he writes, "It would, I  
24                  assume, have been there when you signed previously."**

25                  A       Correct, he was.



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1           **Q    Despite the fact that he's telling Linda**  
2           **Johnson just days before that the checkbox looks new.**

3                    MR. CURELY: Objection to form.

4                    THE WITNESS: To him it looked new, but it  
5                    wasn't new.

6           **Q    (By Mr. Leo) Right. Would you agree that**  
7           **David Williams is, again, misrepresenting the policy to**  
8           **Professor Tracy on November 2nd, 2015?**

9           A      I think the issue about the income, which  
10                 Professor Tracy already had clarified that he knew that  
11                 it was compensated or uncompensated is there, but he is  
12                 clarifying that this was added in 2014, and I believe  
13                 Professor Tracy had known it before.

14           **Q    How is this response, your account that David**  
15           **Williams is providing -- this is your response, right,**  
16           **to Professor Tracy?**

17           A      I didn't respond to Professor Tracy.

18           **Q    The quote that's in his e-mail there, is that**  
19           **not your quote?**

20           A      This is my quote about the drop-down box. I  
21                 don't if I -- you don't show me here who I sent it to,  
22                 but it sounds like something I would say.

23           **Q    Well, I'm more concerned about the quote and**  
24           **why it was given to Professor Tracy. Did David Williams**  
25           **ask you to give an accounting like this that he provide**

1                   **Professor Tracy about the FAIR -- the FAIR system?**

2                   A        It was -- the comment was that it was new. It  
3                   wasn't new.

4                   Q        **No, I'm referring to David Williams came to**  
5                   **you. He was sent to the Provost --**

6                   A        Yes.

7                   Q        **-- right, and to your -- to you particularly**  
8                   **at this time.**

9                   A        Correct.

10                  Q        **On November 2nd --**

11                  A        From Senior Associate General Counsel.

12                  Q        **Right, on November 2nd David Williams brings**  
13                  **the James Tracy e-mail to your attention; is that right?**

14                  A        Yes.

15                  Q        **You had stated earlier that you did not see**  
16                  **this e-mail before or --**

17                  A        I don't --

18                  Q        **-- the one below that?**

19                  A        I don't remember it, but I do, you know,  
20                  remember clarifying that this was added before. It  
21                  wasn't new.

22                  Q        **Would you agree that the e-mail below here**  
23                  **that David Williams was responding to, is that e-mail,**  
24                  **the October 20th e-mail we just discussed earlier**  
25                  **regarding Professor Tracy's concerns about the 28 policy**

1 and how it was being used?

2 MR. CURELY: Objection to form.

3 THE WITNESS: I believe Dr. Tracy is  
4 clarifying what is the policy to David Williams.

5 Q (By Mr. Leo) Right, and then David Williams  
6 responds to him again saying incorrectly something about  
7 the policy regarding -- he calls it the "Conflict of  
8 Interest Form", right?

9 A He says you have to fill it out, yes.

10 Q If he has outside income.

11 A Yes.

12 Q But that's not true, right?

13 A Correct.

14 Q There's faculty members at FAU who had outside  
15 income who don't report the income on a Conflict of  
16 Interest Form; would you agree?

17 MR. CURELY: Objection to form.

18 THE WITNESS: I don't understand the question.

19 Q (By Mr. Leo) Does faculty members at FAU who  
20 received outside income, meaning that it's money not  
21 from FAU --

22 A Correct.

23 Q -- would you agree that there are examples as  
24 to where that's not recorded?

25 MR. CURELY: Objection to form.

1                   THE WITNESS: I don't know about that. I'm  
2                   asking everybody to fill it out.

3                   **Q           (By Mr. Leo) Are you saying you don't know if**  
4                   **there's faculty members who are not required to submit**  
5                   **the Conflict of Interest Form?**

6                   A           There's nobody who's required to submit -- no  
7                   employee is not required to submit. Why would you not  
8                   be required to submit?

9                   **Q           Well, you tell me. I mean --**

10                  A           Everybody is required to submit. I submit.

11                  **Q           You say everybody at FAU who gets income --**

12                  A           Everybody who had the --

13                  **Q           -- from outside FAU has to report that income;**  
14                  **is that what you're saying the policy is?**

15                  A           They have to report the employment. There's  
16                  no place on the form where we ask for the amount of  
17                  income.

18                  **Q           Okay. You're saying that they report the**  
19                  **employment, but if it's not employment, do they have to**  
20                  **report it?**

21                  A           Yes, professional activity. You see at the  
22                  top of the form?

23                  **Q           I'm not referring to income. Forget activity**  
24                  **for a second. Income, money coming into --**

25                  A           Compensated or uncompensated activity has to

1 be --

2       **Q**    I'm not asking about activity. I'm asking  
3    about money and income.

4       **A**    What do you mean?

5       **Q**    **About -- what do I mean by "money"?**

6       **A**    Yeah, I mean, when I say compensated or  
7    uncompensated activity, compensated activity, you're  
8    saying that you're compensated in other ways besides --

9       **Q**    **Do people --**

10      **A**    -- money?

11      **Q**    **Do people receive compensation for no**  
12   **activity? Can someone receive like a stock or a**  
13   **dividend, for example --**

14      **A**    I guess --

15      **Q**    **-- even if they don't do anything, they do**  
16   **something?**

17      **A**    I guess they could. I don't know.

18      **Q**    **Okay. Do all faculty members have to report**  
19   **all their stocks?**

20      **A**    That -- no.

21      **Q**    **No. So you would agree that would be income.**

22      **A**    I mean, then you're saying that their  
23   retirement forms?

24      **Q**    **No. I'm saying to you all, is all income --**  
25   **this is a very simple question. Is all income that**

1       **faculty members receive from outside FAU, is that**  
2       **required to be reported?**

3           A     And I'm saying that anything having to do with  
4       compensated or uncompensated activity needs to be  
5       reported.

6       **Q     Okay.**

7           MR. CURELY:    Okay.    That's it.

8           MR. LEO:    No.    We're in the middle of a  
9       question, Joe, so when she answers the question, we  
10      can break because I have a grave concern about  
11      what's gonna happen on break if we do break because  
12      the question hasn't been answered, so when she  
13      answers the question, we'll break.

14       **Q     (By Mr. Leo) Is there any example of income**  
15       **that FAU faculty members receive outside of FAU that**  
16       **does not need to be reported?**

17       A     I don't know.

18       **Q     Like an honorarium, for example, for a**  
19       **professional service, would that be an example of a**  
20       **compensated activity that doesn't need to be reported?**

21       A     I think we say something on the form about  
22       honorarium, but I'd have to look at the form.

23       **Q     You have the form right there.**

24       MR. CURELY:    All right.    Are you done with  
25       your question or are we still going?

1 MR. LEO: When she answers the question.

2 MR. CURELY: She's answered every you've asked.

3 All right. We're on break.

4 MR. LEO: We're not. We're not on break.

5 MR. CURELY: Yeah, we are.

6 MR. MEDGEBOW: No, we're not on break yet.

7 MR. LEO: We're on the record. She's looking  
8 for the thing, Joe.

9 MR. CURELY: Okay. Look for the form, then --

10 MR. LEO: I would say this is obstruction --  
11 obstruction to --

12 MR. CURELY: Well --

13 MR. LEO: Seriously. We're in the middle of a  
14 question, and you can't stop my deposition --

15 MR. CURELY: What if she wants to go on break?

16 MR. LEO: -- because you want to go on break.

17 Q (By Mr. Leo) The question is whether income  
18 outside of FAU has to be reported. That's the question,  
19 right, and whether there are examples --

20 MR. CURELY: That's another question.

21 Q (By Mr. Leo) -- of income that is not reported  
22 or doesn't need to be reported.

23 MR. LEO: And, no, she hasn't answered the  
24 question, and I'll ask counsel not to testify,  
25 especially counsel who not counsel of record in

1                   this case, for the record. So I'm going to ask the  
2                   witness one more time.

3                   **Q           (By Mr. Leo) Are there examples where income**  
4                   **outside of FAU is not reported, any money received by**  
5                   **faculty members that's not reported?**

6                   MR. CURELY: Objection, form.

7                   THE WITNESS: I'm not aware of that.

8                   **Q           (By Mr. Leo) You're not aware that there is**  
9                   **income that is not reported --**

10                  A           Correct. In other words --

11                  **Q           -- or money that's receive by faculty members**  
12                  **outside of FAU that's not required to be reported.**

13                  A           You said not report and not required to be  
14                  reported.

15                  **Q           I'm asking you --**

16                  A           They're two separate questions.

17                  **Q           Sure. I'm asking both.**

18                  A           Okay. So is there income outside that hasn't  
19                  been reported that I know isn't been reported. I don't  
20                  know if it hasn't been reported.

21                  **Q           No. I'm asking if there's a kind of income or**  
22                  **money, any kind of compensation that FAU faculty members**  
23                  **do not need to report.**

24                  A           All compensation would need to be reported.

25                  **Q           Any money has to he reported, is that what**

1 **you're saying?**

2 A No. I'm saying any income has to be reported,  
3 and compensation has to be reported. I don't know if  
4 somebody goes to -- what's the place down Broward?

5 Q **You can't ask him questions in the middle of--**

6 A I'm sorry. The casino. If you go to a casino--

7 Q **Okay.**

8 A -- and you win, I don't expect that that has  
9 been reported, as far as I know.

10 Q **Okay. Any a casino -- if someone is gambling  
11 and they win money --**

12 A Correct.

13 Q **-- they don't have to report that income;  
14 would you agree with me?**

15 A I would agree with that.

16 MR. LEO: Okay. We go can go on break. She's  
17 answered the question. Thank you.

18 MR. CURELY: Okay. Sure.

19 MR. LEO: And we'll come back to it because I  
20 have a lot more questions in that realm.

21 MR. CURELY: Fire away.

22 (Thereupon, the following proceedings took place at  
23 1:39 p.m., following a lunch recess at 12:42 p.m.)

24 Q **(By Mr. Leo) When we left off we were talking  
25 about the e-mails that were exchanged at the end of**

1       **October 2015 and early November 2015. You went through**  
2       **some of the e-mails that we've marked as exhibits.**  
3       **They're in order now, so if you wanted to flip through**  
4       **to some of the later ones, 14 --**

5           A        Which one?

6           Q        **14, 15, 16, e-mails concerning the**  
7       **representations that were made by David Williams to**  
8       **James Tracy at the end of October 2015.**

9           A        Okay.

10          Q        **When was the first time that you were made**  
11       **aware of Professor Tracy's concerns expressed to David**  
12       **Williams?**

13          A        I don't recall the exact date.

14                 (Thereupon, Plaintiff's Exhibit Number PA-17  
15                 was marked for identification.)

16          Q        **(By Mr. Leo) I'm gonna show you -- this is FAU**  
17       **153 -- FAU bate stamped 153, and for today it's PA-17.**

18                 MR. LOUIS: Here's a copy for you, Joe.

19                 MR. CURELY: Thank you.

20          Q        **(By Mr. Leo) Do you recognize this e-mail?**

21          A        Yes. I mean, I don't recognize it, but it  
22        looks from to him, to Dean Coltman.

23          Q        **This is concerning Professor Tracy and David**  
24       **Williams' exchange?**

25          A        Considering the time frame, I suspect so. It

1 doesn't say that though.

2 Q **And the subject is "Annual Assignment", right?**

3 A Correct.

4 Q **That's the subject that David Williams was**  
5 **using in, for example, his November 2nd e-mail to**  
6 **Professor Tracy that says, "Subject: Re: Annual**  
7 **Assignment". This is FAU bate stamp 391. I believe**  
8 **it's -- yeah, FAU 391. Do you see the subject there?**

9 A Yes.

10 Q **Same subject, right?**

11 MR. CURELY: As Exhibit 16?

12 MR. LEO: Right.

13 Q **(By Mr. Leo) Would you agree?**

14 A It's the same subject heading, yeah, "Subject:  
15 Re: Annual Assignment".

16 Q **So on October 29th, 2015, would that be the**  
17 **first time that you responded to Dean Coltman regarding**  
18 **this exchange between Williams and Tracy?**

19 MR. CURELY: Objection to the form.

20 THE WITNESS: I don't know.

21 Q **(By Mr. Leo) As you sit here today, is there**  
22 **any other communication that you can recall --**

23 A No.

24 Q **-- concerning Tracy and Williams' exchange?**

25 A No.

1           **Q     If you go back to PA-16, we were discussing**  
2    **earlier the representation about outside income from**  
3    **David Williams.**

4           A     Right.

5           **Q     You said that that was incorrect, what David**  
6    **Williams had said to Professor Tracy in this PA-16?**

7           MR. CURELY: Objection to form.

8           THE WITNESS: Excuse me. Can I see --

9           MR. LEO: Would you like a --

10          THE WITNESS: No, I have to see the paper,  
11          when it was prepared. Yeah, the -- as we indicate  
12          -- as I've indicated before, the Report of Outside  
13          Employment/Outside Professional Activity Form and  
14          the characterization of income, which Professor --

15          Dr. Tracy corrects, corrects Dr. Williams.

16          **Q     (By Mr. Leo) So when he, David Williams, says**  
17    **to Professor Tracy that if he has outside income, then**  
18   **he has to fill out the Conflict of Interest Form, this**  
19   **is wrong in multiple respects; would you agree?**

20          A     I agree that it's incorrect and that Professor  
21          Tracy -- Dr. Tracy knows that it's incorrect.

22          **Q     I didn't ask you what Professor Tracy knows,**  
23   **but going back to what David Williams was representing**  
24   **when he calls if the "Conflict of Interest Form", that's**  
25   **not the name of the form, right?**

1           A    Correct, that's not the name of the form.

2           Q    **And if a faculty or an employee of FAU has**  
3   **outside income, then they don't have to fill out a**  
4   **Conflict of Interest Form or any other form necessarily,**  
5   **correct?**

6           A    If a faculty member has an outside activity  
7    that is compensated or uncompensated, then they need to  
8    complete the form.

9           Q    **Right, but if an FAU faculty member has**  
10   **outside income, they're receiving money from a source**  
11   **other than FAU, they don't necessarily have to fill out**  
12   **any form for that; is that a fair or accurate statement?**

13          A    If they got a check from their grandmother,  
14   that would not be considered an income. It would be a  
15   check from their grandmother, and they don't need to  
16   report that.

17          Q    **So you're referring to a gift?**

18          A    Well, you said "money". That was before the  
19   break. You were talking about money.

20          Q    **Right.**

21          A    Here we're talking about income. Income is  
22   generally connected to an activity, correct.

23          Q    **Well, the definition of income I would refer**  
24   **to your understanding of the term. What's your**  
25   **understanding of the term "income"?**

1 A My understanding of the form, which doesn't --

2 Q **Your understanding of the form?**

3 A Of the Report of Outside

4 Employment/Professional Activity is that you're supposed

5 to report compensated or uncompensated activity.

6 Q **So what's your definition of the word "income"**  
7 **or your understanding of it?**

8 A My understanding of income is something  
9 connected to an activity.

10 Q **Can one receive income without participating**  
11 **in an activity?**

12 A I think you can receive money. I don't know  
13 that it's necessarily income. Like if you -- as I said,  
14 if you get a check from your grandmother, I think that's  
15 money, but I don't see it as income connected to an  
16 activity unless she's paying you to take her to the  
17 grocery store I guess.

18 Q **Referring to income that you're aware of, are**  
19 **you aware of any income that Professor Tracy received**  
20 **other than income from FAU at any time?**

21 A I don't know.

22 Q **Are you saying you don't know now or you don't**  
23 **know at any time?**

24 A I don't know at any time.

25 Q **Did you ever investigate to determine whether**

1       **Professor Tracy had any income outside of the income he**  
2       **was receiving from FAU?**

3       A       No, I didn't investigate that.

4       **Q       Why not?**

5       A       Why would I? I don't know. There's no reason  
6       for me to investigate that. My concern had to do with  
7       outside activity.

8       **Q       All right. Well, would an investigation to**  
9       **determine whether there was outside income be part of**  
10       **your duties or your responsibilities in enforcement of**  
11       **the policy?**

12       A       No.

13       **Q       What were your duties and responsibilities in**  
14       **connection with enforcement of the Outside**  
15       **Employment/Professional Activity Policy?**

16       A       My only responsibility is consulting with  
17       anybody who has a question about policy. I don't  
18       necessarily enforce it.

19       **Q       You said you don't necessarily enforce it --**

20       A       I don't -- it's not my -- see, everybody is  
21       reporting to somebody else, correct?

22       **Q       What do you help mean?**

23       A       James Tracy is reporting to his Director. His  
24       Director reports to the Dean. The Dean reports to the  
25       Provost.

1 | Q Okay.

2           A       I don't have enforcement obligations there  
3 unless a Dean calls me into the situation.

4 Q Were you called into the situation in October  
5 2015 regarding Professor Tracy's outside income?

6           A        That's -- in terms of his outside activity,  
7        yes, at some point I was called --I was advised of this.

8 Q Would that be PA-17, you had said the October  
9 29th e-mail to Dean Coltman. Was the first time you  
10 communicated with Dean Coltman about Professor Tracy's  
11 concerns?

12 A I don't know. Maybe. I don't know.

13 Q Looking at PA-16, you see that the quoted  
14 language that David Williams is providing Professor  
15 Tracy. That comes from your October 29th e-mail, PA-17;  
16 isn't that right?

17 A It looks like it does, yes.

18 Q So is it safe to assume that the information  
19 you provided to Dean Coltman was provided to David  
20 Williams?

21 A T assume so

22 Q So David Williams' November 2nd, 2015 e-mail,  
23 PA-16, is this the clarification that FAU provided to  
24 Professor Tracy?

25 MR. CURELY: Objection to the form.

1                   THE WITNESS: It appears that it is.

2                   **Q     (By Mr. Leo) Would you agree that it's not**  
3     **good clarification?**

4                   A     Define "good".

5                   **Q     Accurate.**

6                   A     We said this it is accurate in terms of what I  
7     said, that --

8                   **Q     You mean the quote?**

9                   A     That it was related to FAIR in the quote.

10                  **Q     Correct.**

11                  A     That was accurate.

12                  **Q     But looking at what Professor Tracy had**  
13     **written to David Williams about being misled by David**  
14     **Williams' October 20th e-mail, "Just a friendly**  
15     **reminder, if you have outside employment income, you**  
16     **need to fill out the linked Outside Employment Form",**  
17     **you'd agree that David Williams was incorrect, the**  
18     **misrepresentation in his e-mail. He actually, again,**  
19     **misstates the policy; would you agree?**

20                  A     He misstates the statement of earned income,  
21     correct.

22                  **Q     He's reaffirming his incorrect statement from**  
23     **October 20th, right?**

24                  MR. CURELY: Objection to form.

25                  THE WITNESS: Yes.



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1           **Q     (By Mr. Leo) Why didn't anybody, whether it**  
2     **was Dean Coltman or someone from the Provost office,**  
3     **like yourself, why didn't anybody correct David**  
4     **Williams?**

5           **A     I don't know.**

6           **Q     Has David Williams ever been corrected on his**  
7     **representations in this November, late October exchange?**

8           **A     I don't know.**

9                            MR. CURELY: Object to the form.

10          **Q     (By Mr. Leo) You had said that there was a**  
11     **chain of command almost with respect to the Outside**  
12     **Activities Policy?**

13          **A     There's a chain of command at The University,**  
14     **yes.**

15          **Q     The faculty reports to the Chair?**

16          **A     In this case it's a direct report.**  
17     **Communications is a school.**

18          **Q     So all of the faculty members at Professor**  
19     **Tracy's school would report to David Williams.**

20          **A     Correct.**

21          **Q     And they would seek guidance or advice from**  
22     **David Williams on compliance with this policy.**

23          **A     Yes.**

24          **Q     Do you see a problem with the Director of the**  
25     **School not clearly and accurately describing the policy**

1       **when asked about the policy?**

2                    MR. CURELY: Objection to form.

3                    THE WITNESS: What do you mean by "a problem"?

4       **Q       (By Mr. Leo) Do you see a problem with, for**  
5       **example, what David Williams did here in telling**  
6       **Professor Tracy something inaccurate about the policy?**

7       A       I believe it was not clear, but I believe  
8       Dr. Tracy understood the policy.

9       **Q       How would you know that?**

10      A       Because he says so below. He says -- he  
11      corrects David Williams in clarifying that it may or may  
12      not be compensated.

13      **Q       But then David Williams responds to that**  
14      **clarification that Professor Tracy provides to David**  
15      **Williams and says, again, something inaccurate, and then**  
16      **he quotes you.**

17      A       Well, the quote is accurate.

18      **Q       Right, but what he says before your quote is**  
19      **not accurate; wouldn't you agree?**

20      A       The asking for income is inaccurate. Asking  
21      for completing the Outside Activity Form is accurate.

22      **Q       In early November, before Dean Coltman sends a**  
23      **Notice of Discipline to Professor Tracy for not**  
24      **submitting the forms, did you, at any point, talk to**  
25      **Professor Tracy?**

1 A No.

2 Q Did you call him into your office to ask him  
3 what he thought or what his concerns were?

4 A No, I don't remember that.

5 Q Why not?

6 A I didn't. I don't -- he didn't ask to meet  
7 with me.

8 Q Did you ask to meet with him?

9 A No.

10 Q Did you ask the Dean to set up a meeting  
11 between you and Professor Tracy and the Dean?

12 A I don't -- no, I don't remember that.

13 Q Did you ask David Williams to sit down with  
14 you to talk about this issue?

15 A No, I don't remember.

16 Q At any time before the November 10 Notice of  
17 Discipline, did you make any attempt to speak with  
18 either David Williams or Dean Coltman concerning  
19 misrepresentations that had been made to Professor Tracy  
20 at that time?

21 A I don't recall that.

22 Q Would there be any record of that if there had  
23 been?

24 A I don't know.

25 Q Like a memorandum of a meeting, if there had



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1   **been a meeting for example?**

2       A    I don't usually do memorandums of the meeting.

3       Q    **Going back to the November -- early November,**

4   **where was Dean Coltman at the time when David Williams**

5   **is e-mailing --**

6            MR. CURELY: Objection to form.

7       Q    **(By Mr. Leo) -- her, and she's e-mailing you?**

8       A    Physically?

9       Q    **Was she at the campus or was she somewhere**  
10   **else?**

11      A    I don't know.

12           (Thereupon, Plaintiff's Exhibit Number PA-18  
13           was marked for identification.)

14      Q    **(By Mr. Leo) Let me show you what is marked as**  
15   **-- this is PA-18.**

16           MR. LEO: Here's a copy for you, Joe.

17           MR. CURELY: Thank you.

18      Q    **(By Mr. Leo) This is FAU 371 bate stamp.**

19      A    Uh-hm.

20      Q    **It's an e-mail from Health Coltman dated**  
21   **November 2nd, 2015. Do you see where she says, "Just**  
22   **landed"?**

23      A    Yes.

24      Q    **"And will call tomorrow." Does this refresh**  
25   **your recollection as to whether Dean Coltman was**

1       **somewhere or anywhere?**

2       A     I would expect when she said that she was  
3       somewhere.

4       **Q     Was she out of town or do you know?**

5       A     I don't know.

6       **Q     What did you discuss on your call?**

7       A     I don't recall.

8       **Q     That you had a call with Dean Coltman?**

9       A     It says here that we were gonna talk. I don't  
10      know if we did. There are two items here in this e-mail.

11      **Q     Who is Dietrich Chair?**

12      A     Dietrich Chair is an Endowed Chair in The  
13      College.

14      **Q     An Endowed Chair?**

15      A     Yes, an Eminent Scholar Chair.

16      **Q     And their name is Dietrich?**

17      A     That's the name of the donor, not a name of a  
18      person.

19      **Q     It's a donor, Dietrich?**

20      A     Dietrich.

21      **Q     Oh, so Chair is the last name? No.**

22      A     No, it's an Eminent Scholar. Somebody has  
23      funded this position, and it's in their name.

24      **Q     When you say, "We need to discuss this in  
25      Dietrich Chair when you return", what do you mean?**

1           A    Well, I assume we're -- we're -- I assume  
2 we're gonna meet talking about the annual assignment and  
3 the Dietrich Chair. I'm not sure where we were in that  
4 process, whether we were looking to put somebody in that  
5 chair or not. There was somebody in that chair who was  
6 no longer in the chair.

7           Q    **So it's a position you were trying to fill?**

8           A    I don't recall. I would have to look.

9           Q    **Does it have anything to do with Professor**  
10           **Tracy?**

11           A    No.

12           Q    **And you said you don't recall what you**  
13           **discussed with Dean Coltman?**

14           A    Correct.

15           Q    **Did Dean Coltman tell you anything about**  
16           **Professor Tracy at that time?**

17           A    I don't recall.

18           Q    **At what point was it decided that Professor**  
19           **Tracy was going to be disciplined in November?**

20           MR. CURELY: Objection to the form.

21           THE WITNESS: Are you talking about the notice  
22           that Dean Coltman sent him?

23           Q    **(By Mr. Leo) Right. Was that decided on**  
24           **November 3rd --**

25           A    I don't.

1           **Q    -- during your call?**

2           A    I don't recall.

3           **Q    You don't know?**

4           A    No.

5           **Q    Dean Coltman deferred to you on discipline.**

6           A    For the Notice of Termination, not for the  
7       Notice of Discipline.

8           **Q    She didn't ask you for help with the Notice of  
9       Discipline?**

10          A    She did not. She consulted with me, but she  
11       is the one who did that. That was the discipline.

12          **Q    Did she send you a draft or did you prepare a  
13       draft for her?**

14          A    I didn't prepare a draft for her. She may  
15       have sent me a draft.

16          **Q    Whose idea was it to discipline Professor  
17       Tracy for the Outside Activity Policy in 2015?**

18          A    I assume it was -- you mean the Notice of  
19       Discipline, the November 10th notice?

20          **Q    Yes.**

21          A    I assume it was her idea.

22          **Q    And if Dean Coltman deferred to you or at  
23       least she testified that she deferred to you on that,  
24       would she be mistaken?**

25          A    On November 10th?



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1 MR. CURELY: Objection to form.

2 Q (By Mr. Leo) No. If, in general, Defendant  
3 Coltman testified that she relied upon your directive  
4 or --

5 A She would consult with me.

6 Q But if she said that you were the one who  
7 decided to discipline him --

8 MR. CURELY: Objection to form.

9 Q (By Mr. Leo) -- or initiate discipline, would  
10 that be incorrect?

11 A I'm not saying it's incorrect. I'm saying we  
12 had a discussion. I don't know what she said.

13 Q And when you met with Dean Coltman, when was  
14 that?

15 MB. CUBETLY: Objection to form.

16 THE WITNESS: When I met with Dean Coltman for  
17 what?

18 (By Mr. Leo) In November

19           A       I don't remember when I met with her in  
20           November

21 Q Did you meet with her?

22 A I don't have recollection of that

23 Q Was there any other faculty members at FAU or  
24 administrators who were involved in this process at the  
25 time, early November 2015, leading up to the Notice of

## 1 Discipline?

2 A Not that I'm aware of.

## 3 Q How about Jason Ball?

4 A Jason Ball is Associate Provost and CIO.

5 | Q What's CIO?

6 A Chief Information Officer.

7 Q You say he's Assistant Provost?

8 A Associate.

9 Q Associate Provost. Does he answer to you?

10 A He reports to the Provost.

11 Q He reports to only the Provost or does he also  
12 report to you?

13 A No. He reports to the Provost.

14 Q What was Jason Ball's involvement in Professor  
15 Tracy's discipline, if any?

16 A He wasn't involved in the discipline.

17 Q Did he send you anything in connection with  
18 Professor Tracy?

19 A I believe I asked Jason as Chief Information  
Officer if Professor Tracy had affirmed this before  
21 since we've had this drop box there before, and I  
22 believe he told me yes. You probably have an e-mail  
23 there.

24 (Thereupon, Plaintiff's Exhibit Number PA-19  
25 was marked for identification.)

1 Q (By Mr. Leo) I'm gonna show what's marked as  
2 PA-19 for today, and this is -- for the record, it's FAU  
3 368 through 370, and there's a copy underneath there for  
4 you, Joe.

5 MR. CURELY: Thank you.

6 Q (By Mr. Leo) Does this refresh your  
7 recollection about Jason Ball's involvement?

8           A     Correct, involvement with asking him for  
9 information. He wasn't involved in the termination.

## 10 Q Who is Nary Baran?

11 A I believe she's somebody who works for Jason  
12 Ball.

13 Q Is she -- in this e-mail below here, is this  
14 something you requested for her?

15 A I asked Jason, yes.

16 Q You asked Jason for --

17 A I asked him --

18 Q -- his annual assignment?

19 A No. I asked if he had acknowledged the  
20 affirmation box before because it had been in place  
21 before, and he had acknowledged it before.

22 Q Where does it say that?

23 A He did sign previous versions to the 2015  
24 academic year; so, therefore, the statement was  
25 acknowledged by James on July 8th, 2015 on what you have

1 PA-19.

2 Q So this is Nary saying that Professor Tracy  
3 signed the statement in July of 2015?

4 A Correct.

5 Q Where would that record be though?

6 A That's what I asked them to look at in the  
7 system.

8 Q Would you agree that there's no record  
9 attached to this e-mail or following this e-mail?

10 A Just showing his assignment, and if he had  
11 accepted his assignment he would have affirmed that in  
12 the box.

13 Q The checkbox though, it's not checked, would  
14 you agree with me, on 370?

15 A I don't -- I can't tell from this whether the  
16 checkbox is checked or not. I don't know what it looks  
17 like when it's checked.

18 Q Well, the -- what I'm saying what's provided  
19 by -- what's been provided by FAU here, 36 -- I'm sorry  
20 -- 370, page 3 of this, which accompanies this e-mail,  
21 would you agree it's not checked?

22 A I can't -- I can't read that it's not checked.

23 Q In this picture here?

24 A In this picture here, right.

25 Q Do you see the checkbox?

1       A    I see the checkbox. I don't know when -- when  
2 you check it, it might go away. I don't know what it  
3 looks like.

4       **Q    I'm just referring to what's on this exhibit.**

5       **This is a picture of a checkbox that's not checked.**

6       A    Right, the exhibit is a checkbox of the  
7 certification test. I don't know.

8       **Q    I'm just saying this is Exhibit -- FAU 370 is**  
9 **part of a composite now in this exhibit. This is PA-19.**  
10 **Would you agree with me that this checkbox on this**  
11 **document is not checked? There's a blank square there.**

12      A    I agree there's a picture of it. I can't tell  
13 if it's checked or not.

14      **Q    I'm sorry. You can't tell?**

15      A    I said I can't tell if it's checked or not.

16      **Q    You can't?**

17      A    No.

18      **Q    Do you see a check?**

19      A    I don't see a check. I don't think what it  
20 would look like if it was checked.

21      **Q    Can you turn -- can you turn it for the**  
22 **camera? Yeah. Do you see that little white box there at**  
23 **the bottom?**

24      A    Yes, I do see the box.

25      **Q    All right. Do you see a checkmark on that**

1 **box?**

2 A I don't know what a checkbox would look like  
3 on this box.

4 **Q You don't know what a checkbox looks like?**

5 A Yes.

6 **Q Wouldn't it look like a check?**

7 A No, I don't know if it would look like a  
8 check.

9 **Q Or something, right, an X or a mark?**

10 A I don't know. I don't what you click on. It  
11 just goes into the system.

12 **Q Would you agree with me that this -- in  
13 exhibit is an empty box?**

14 A It's an empty box? No, there's just a mention  
15 in the box.

16 **Q This little square right here, for the record,  
17 do you see what I'm referring to?**

18 A Yes, I do.

19 **Q A little square.**

20 A Yes.

21 **Q And you agree that's an empty square?**

22 A I believe that's an empty square, yes.

23 **Q Is this a checkbox to you, this little square?**

24 A I think that -- and I would have to go into  
25 the system -- that you would click on okay, and then you

1 would sign your assignment.

2 Q Right, this --

3 A One is for the assignment. One is for the  
4 affirmation.

5 Q But you have to check this box to indicate you  
6 accept the terms and conditions, right?

7 A Electronically, correct.

8 Q Okay. So you agree that this drop-down box,  
9 this screen shot that was provided to us as FAU 370, is  
10 not the checked in this picture.

11 A In that is picture, correct.

12 Q Okay. Is this what you received from Jason  
13 Ball and Nary Baran in November of 2015?

14 A I remember the e-mail. I don't know if I  
15 received the rest of the material, but perhaps I did.

16 Q She writes, smiley face, "and I'm thinking  
17 Diane is referring to the certification checkbox where  
18 the faculty is acknowledging that they are required to  
19 report outside activities.

20 A Right.

21 Q He did sign a previous version; so, therefore,  
22 this statement was acknowledged by James, but there's  
23 nothing here that shows he signed anything; would you  
24 agree?

25 A I agree --

1                   MR. CURELY: Objection to form.

2                   THE WITNESS: I agree that the screen shot  
3                   doesn't show that he checked it, but I'm being told  
4                   by an official of OIT that he did.

5                   **Q (By Mr. Leo) Okay. Did you ask for a copy of**  
6                   **what he signed?**

7                   A       No.

8                   **Q       Or a copy of the checked box?**

9                   A       No.

10                  **Q      Why not?**

11                  A       My -- I wanted to know if he was aware of the  
12                  box before. This tells me that he was and that he  
13                  didn't have a problem with it before.

14                  **Q      Going back to the checkbox, when you look at**  
15                  **FAU 370 on that page 3, this is the same checkbox as**  
16                  **Exhibit PA-3; would you agree?**

17                  A       PA-3?

18                  **Q      Yeah, or if there's a difference, let know.**

19                  A       It looks like the same.

20                  **Q      This is the affirmation language that was**  
21                  **added in 2014; is that correct.**

22                  A       Correct.

23                  **Q      Is this accurate, this affirmation language?**

24                  A       I believe so.

25                  **Q      It says, "I affirm that I am required to**

1 **report any outside activity compensated or**  
2 **uncompensated."**

3 A Correct.

4 Q **That's correct?**

5 A That is accurate.

6 Q **Is that what the policy says?**

7 A Yes.

8 Q **Can you turn to Article 19 and show me where**  
9 **it says that?**

10 A Now, as I indicated, in addition to the  
11 Collective Bargaining Agreement, when employees are  
12 hired they sign a form acknowledging that they're  
13 supposed to report outside activity, and they get an e-  
14 mail every year. Any employees -- this is Article 19.4  
15 "Any employee who proposed to engages in outside  
16 activity shall provide his or her supervisor a detailed  
17 written description of the proposed activity."

18 Q **Right, but what's 19.2 say, 19.2(a)?**

19 A It has "Reportable outside activities shall  
20 mean any compensated or uncompensated professional  
21 practice, consulting, teaching or research, which is not  
22 part of the employee's assigned duties and for the which  
23 The University is provided no compensation."

24 Q **So would you agree with me that it's not any**  
25 **outside activity? It's any -- anything that's listed**

1       **here in 19.2(a)?**

2                    MR. CURELY: Objection the form.

3       **Q           (By Mr. Leo) Would you agree with me on that?**

4       A           I would agree that this is part of that.

5       **Q           Would you agree that the affirmation language**  
6       **omits from this certification text in this box that says**  
7       **"okay" here and requires faculty to accept terms and**  
8       **conditions, would you agree that this omits the**  
9       **definition of a reportable outside activity?**

10                  MR. CURELY: Objection to form.

11                  THE WITNESS: No, I'm not sure what you're  
12                  saying. Excuse me again.

13       **Q           (By Mr. Leo) Do you know what the word "omit"**  
14       **means?**

15       A           Yes, I do.

16       **Q           Okay. Would you agree that the affirmation**  
17       **language here does not reference or indicate the words**  
18       **"any compensated or uncompensated professional practice,**  
19       **consulting, teaching or research, which is not part of**  
20       **the employee's assigned duties and for which The**  
21       **University is no compensation"?**

22                  A           Well, this says, "Reportable outside  
23                  activity", and this says, "outside activity, report any  
24                  outside activity."

25       **Q           When you say "this", you're referring to --**

1 A The affirmation box.

2 Q **The affirmation box.**

3 A Correct.

4 Q **The affirmation box says --**

5 A Echoes the definitions of reportable outside  
6 activity.

7 Q **Well, it doesn't echo it if it was --**

8 A This is reportable outside activity, and then  
9 it defines it in here. It says, "Report any outside  
10 activity, compensated or uncompensated."

11 Q **When you say "echo", what do you mean by**  
12 **"echo"?**

13 A I'm saying that in quotes here it says,  
14 "Reportable outside activity", and then here it says,  
15 "Report any outside activity." I think that's saying  
16 the same thing.

17 Q **You think it's saying the same thing how?**

18 A Yes, it says the same thing.

19 Q **Well, in the affirmation box it omits, would**  
20 **you agree, professional practice, consulting, teaching**  
21 **or research?**

22 A Right.

23 Q **Right?**

24 A But that's what's -- it says, "Report outside  
25 activity", and here it says, "Reportable outside

1 activity."

2 Q Would you agree that the affirmation box is a  
3 lot broader than the Collective Bargaining Agreement  
4 language?

5 A No, not necessarily.

6 Q Would you agree that the affirmation box here  
7 does not, quote, reference any specific outside activity  
8 that is specifically and precisely listed in the  
9 Conflict of Interest Policy in the Collective Bargaining  
10 Agreement?

11 A Now, if you want to go to the guidelines  
12 that --

13 Q No, I want to go --

14 A -- those are much more detailed.

15 Q I want to look at this drop-down box --

16 A Okay. The drop-down box --

17 Q -- and the affirmation language.

18 A -- says, "Reportable outside activity", and  
19 that is defined in the Collective Bargaining Agreement.

20 Q And this says -- it says, "I affirm that I am  
21 required to report any outside activity compensated or  
22 uncompensated."

23 A Correct.

24 Q "And any financial interest", right? Would  
25 you agree that it left out a bunch of important words

1       **that are from the Article 19 of the Collective**

2       **Bargaining Agreement?**

3       A       But I think if you look at reportable outside  
4       activity it's defined in the Collective Bargaining  
5       Agreement.

6       **Q       Okay. But where is it listed or specified in**  
7       **this affirmation?**

8               **Did you hear what he said?**

9       A       No, I didn't hear what he said.

10      **Q       The definition doesn't say, on this**  
11      **affirmation --**

12      A       No, it doesn't.

13      **Q       -- reportable outside activity.**

14      A       It sends you links where it explains it.

15      **Q       Would you agree that it doesn't say reportable**  
16      **outside activity, those words?**

17      A       It say report of -- "to report any outside  
18      activity."

19      **Q       Right. Would you agree it's using different**  
20      **language, different words than what's in Article 19?**

21      A       No, I think it's still -- a reportable outside  
22      activity is similar to report any outside activity.

23      **Q       I didn't ask it if was similar. I asked if it**  
24      **uses different words.**

25      A       It says, "report", and it says, "reportable".

1 It says, "outside". That says, "outside". This says,  
2 "Activity." It says, "Activity".

3 Q **Would you agree with me that it's not using**  
4 **the language that's in your Collective Bargaining**  
5 **Agreement word for word --**

6 A I think it's --

7 Q -- as probably should be required --

8 MR. CURELY: Objection to the form.

9 Q **(By Mr. Leo) In clarifying the policy wouldn't**  
10 **you want to use the same language?**

11 MR. CURELY: Objection to the form.

12 THE WITNESS: I think it uses the same  
13 language, in my view.

14 Q **(By Mr. Leo) It uses some of the same words;**  
15 **is that what you're saying?**

16 A Yes, it this says, "Report out -- this says,  
17 "reportable", and this says "only report --"

18 Q **All right.**

19 A So the able is missing there.

20 Q **When you say "this", you're referring to this**  
21 **affirmation box, right?**

22 A Correct.

23 Q **This affirmation box, would you agree with me,**  
24 **does not use the word "professional practice"?**

25 A Correct.

1           **Q     Okay.**

2           A     It's just referring to what is defined here as  
3     reportable outside activity.

4           **Q     I'm just talking about how many of the words**  
5     **that it doesn't use, and you just let me know if it does**  
6     **or it doesn't. Does the affirmation box that's in PA-3,**  
7     **does it use the word "consulting"?**

8           A     No.

9           **Q     Does it use the word "teaching"?**

10          A     No.

11          **Q     Does it use the word "research"?**

12          A     No.

13          **Q     Does it use the words, "which is not part of**  
14     **the employee's assigned duties"?**

15          A     No.

16          **Q     Does it use the words "for which The**  
17     **University is provided no compensation"?**

18          A     No.

19          **Q     Okay. So you would agree with me that it**  
20     **omits much of the definition of a reportable outside**  
21     **activity from this affirmation.**

22            MR. CURELY: Objection to form.

23            THE WITNESS: It doesn't include some of it.

24          **Q     (By Mr. Leo) Was that on purpose?**

25          A     On purpose?

1 MR. CURELY: Objection to form.

2 Q (By Mr. Leo) Was this language designed to  
3 omit these words?

4 A No.

5 Q Who drafted this affirmation?

6 A The attorneys.

7 Q Okay. What was the reason for drafting this  
8 language --

9 MR. CURELY: Objection to form.

10 Q (By Mr. Leo) -- in this affirmation?

11           A     To, once, again, remind faculty that they are  
12 to report outside activity.

13 Q How did this remind faculty that -- of what  
14 the policy is without using the words of the policy?

15 A Well, number 1, I believe that using  
16 reportable outside activity does remind them of that,  
17 and then it takes them to the --

## 18 Q Where did they use that word?

19 A What, "remind"?

20 Q "Reportable outside activity", the term you  
21 just used.

22 A It says, "Report any outside activity."

23 Q Would you agree that's not the term you just  
24 used?

25 A What did I say?

1           **Q    You said, "When it says reportable outside**  
2 **activity" and I'm assuming when you say "it", you're**  
3 **referring to this drop-down box, this affirmation --**

4           **A    I'm sorry. It says, "Report any outside**  
5 **activity."**

6           **Q    Right. It doesn't limit --**

7           **A    It eliminated --**

8           **Q    It doesn't use the proper term, "reportable**  
9 **outside activity", which is a term of art in your**  
10 **Conflict of Interest/Outside Activity Policy in your**  
11 **Collective Bargaining Agreement, right?**

12           MR. CURELY: Objection to form.

13           THE WITNESS: What do you mean by that, "term  
14           of art"?

15           **Q    (By Mr. Leo) If you look at Article 19 -- you**  
16 **have it in front of you there?**

17           **A    Yes, I do.**

18           **Q    19.2(a).**

19           **A    Yes.**

20           **Q    That's a term of art, "Reportable outside**  
21 **activity", right?**

22           MR. CURELY: Objection to form.

23           THE WITNESS: I don't know what a term of art  
24           means.

25           **Q    (By Mr. Leo) A terms that means something**

1           **specifically --**

2           A       Okay.

3           **Q       -- to you or to is whoever is using it.**

4           A       Okay.

5           **Q       In this case, Collective Bargaining Agreement,**  
6           **that would be something that you would use, right, as a**  
7           **Vice Provost?**

8           A       What do you mean I would use?

9                    MR. CURELY: Objection to form.

10          **Q       (By Mr. Leo) This definition, this term for**  
11          **Provost activity --**

12          A       Yes.

13          **Q       -- is a term for you as an administrator at**  
14          **FAU, right?**

15          A       Yes.

16          **Q       It's also a term for faculty members at FAU.**

17          A       Okay.

18          **Q       And employees, right?**

19          A       And all employees, right.

20          **Q       This is for all employees at FAU to refer to**  
21          **and to --**

22          A       This is only for faculty that are part of the  
23          Collective Bargaining Agreement.

24          **Q       Okay. So the faculty members and the**  
25          **administrators --**

1 A Right.

2 Q -- to enforce this agreement or rely upon this  
3 agreement --

4 A Right.

5 Q -- this is a term of art, "reportable  
6 activity", defined by Article 19.

7 A Okay.

8 Q Would you agree with me?

9 A I do. I've never heard the term "term of art"  
10 as something that's in the Collective Bargaining  
11 Agreement, but if that's what you're trying to say, that  
12 reportable outside activity is a term of art in your --

13 Q I'll give you Google. "Term of art is a word  
14 of a phrase that has the precise, specialized meaning  
15 within a particular field or profession." Is that okay  
16 for a definition of the term?

17 MR. CURELY: Objection to form.

18 Q (By Mr. Leo) We'll use that term. We'll use  
19 that definition. Don't use mine. Use that one. So  
20 would you agree that Provost activity is a specialized  
21 term that's used by FAU, and it comes from Article 19,  
22 Conflict of Interest/Outside Activity --

23 MR. CURELY: Objection to form.

24 Q (By Mr. Leo) -- that you have to front of you  
25 there?

1       A     I agree that reportable outside activity is a  
2 form that's in the Collective Bargaining Agreement. It  
3 is a term that's in the Collective Bargaining Agreement.

4       Q     **Okay. And would you agree with me that that**  
5 **term itself is omitted. It's not used in this**  
6 **affirmation box at all?**

7            MR. CURELY: Objection to form.

8            THE WITNESS: I believe -- I see that it says,  
9            "report any outside activity." It is not in quotes  
10          as it was in the Collective Bargaining Agreement.

11       Q     **(By Mr. Leo) Right. It's not used in the**  
12 **words -- the words "Reportable Outside Activity", all**  
13 **capitals in the first wording --**

14       A     Right.

15       Q     **-- that's not used in this affirmation, right?**

16       A     Right.

17       Q     **Would you agree that that create confusion?**

18       A     No.

19       Q     **You say that as a matter of fact.**

20       A     Yeah, I don't think it creates confusion. I  
21          think people know about reporting outside activity.

22       Q     **And do you think that like a broken link in**  
23 **this affirmation would also create confusion --**

24       A     No.

25       Q     **-- if a faculty member were to decide to click**

1       **this link to see what it said, and it says, "Looking for**  
2       **something --**

3       A       No.

4       Q       **-- and there was nothing there?**

5       A       I think that they didn't follow up and find  
6       out where they can find the form.

7       Q       **But who would they follow up with?**

8       A       They could follow up with their supervisor.

9       They could follow up with Human Resources because it's  
10      their form.

11      Q       **And if they went to their supervisor, for**  
12      **example, David Williams, and he did not explain the form**  
13      **or the policy correctly, would that create confusion?**

14      A       I don't know.

15      Q       **Was there a time when somebody said that they**  
16      **were confused about the policy to you?**

17      A       I meet with a lot people who ask me questions  
18      about the form. I can't say definitively who expressed  
19      concern about the form.

20      Q       **In September of 2015 you at the Senate Faculty**  
21      **meeting?**

22      A       Correct.

23      Q       **And there was a lot of confusion expressed**  
24      **about the form that today, right?**

25      A       It was -- as I said, it was about the

1 interchange between a Vice President and a faculty  
2 member.

3 **Q I'm sorry. What was it about the interchange?**

4 A The interchange with Kevin Wagner. I think --

5 **Q You're saying that his complaints or confusion**  
6 **expressed to the faculty was concerning one example?**

7 A That was what instigated it. This was the  
8 meeting where you had Marshall DeRosa and Tim Lenz.  
9 Kevin Wagner was part of there as a partner, and they  
10 were upset with the e-mail that Kevin Wagner had  
11 received from the Vice President of Public Affairs  
12 asking him not to publish an op-ed in the Palm Beach  
13 Post.

14 **Q Are you saying that the -- the meeting was**  
15 **just about this op-ed or was --**

16 A No. This is a regular Faculty Senate meeting.  
17 It has an agenda.

18 **Q Right.**

19 A As part of that agenda one of the faculty --  
20 excuse me. Sorry.

21 **Q Don't worry about it. Talk with me.**

22 A One of the faculty was discussing community  
23 engagements and the interested faculty being engaged in  
24 the community, and as a result of that they raised the  
25 e-mail that Kevin had received from the Vice President

1 asking him not to publish an op-ed and how can you ask  
2 people to be involved in the community when you then are  
3 trying to ask them not to publish an op-ed, which had to  
4 do with the Constitution Day.

5       **Q     Uh-hm. Would you agree with me that the**  
6 **discussion started with a discussion about that**  
7 **activity?**

8       A     No, it started with a discussion with  
9 community engagement.

10      **Q     An outside activity came out --**

11      A     Right, because community engagement could be  
12 an activity that's assigned.

13      **Q     Right, and it could be an activity that's not**  
14 **assigned.**

15      A     Correct.

16      **Q     And the confusion and the uncertainty that**  
17 **arised at this Senate Faculty meeting came from**  
18 **discussion about the Outside Activity Policy, not from--**

19      A     It came from --

20      **Q     -- not from Wagner's experience, but from the**  
21 **policy itself; would you agree?**

22      A     The discussion started with community  
23 engagement, and then it went to the e-mail that Kevin  
24 Wagner had received, and we --

25      **Q     Right, that was one of the --**

1       A    It was the only issue, I mean, in terms from  
2 the concern that came from Marshall DeRosa and Tim Lenz.  
3 It had to do with what the e-mail -- what Kevin Wagner  
4 was told not to do.

5       **Q    And, more specifically, it came from the**  
6 **concern that faculty share of Mr. Wagner that they had**  
7 **to get permission before they spoke to anyone, for**  
8 **example, outside The University, right?**

9       A    This is specific, somebody writing an op-ed  
10 for the Palm Beach Post.

11      **Q    Is that what you remember or did you listen to**  
12 **this meeting and --**

13      A    This is what I remember from the meeting,  
14 and --

15      **Q    How many faculty members spoke that day about**  
16 **the outside activity policy?**

17      A    I don't know.

18      **Q    More than one?**

19      A    My recollection is Tim Lenz and Marshall  
20 DeRosa. I don't know if there were others. Those were  
21 the two --

22      **Q    There were several, right?**

23      A    I don't know. The minutes reflect that. I  
24 don't have it.

25      **Q    Would it help to listen to it?**

1 A You want me to listen to it?

2 Q I want you to tell me about, you know, what  
3 your experience was and what happened. So if playing  
4 the audio will help you to refresh your recollection,  
5 I'm okay wit it.

6 A Sure.

7 Q It's about 20 minutes, just so you're aware,  
8 okay? We'll play that, and just make sure --

9 MR. CURELY: Play away. I've heard it.

10 MR. LEO: Not all of it, Joe.

11 MR. CURELY: Not all of it --

12 MR. LEO: Well, if you only heard it from me,  
13 that was only part of the meeting.

14 MR. CURELY: Okay. I'll object.

15 MR. MEDGEBOW: Don't worry. You still have  
16 two lawyers in here.

17 MR. LEO: There's an abundance of those.

18 (Thereupon, the following proceedings were  
19 taken down of a recording from Mr. Leo's  
20 computer.)

21 A VOICE: All opposed? The motion carries.

22 MR. LEO: Is that okay?

23 THE WITNESS: Uh-hm.

24 A VOICE: Okay. This brings us down to the  
25 business items, and there are two. The first is

1           that, as any of you may know, community engagement  
2           is a key part of the strategic plan for The  
3           University, and as faculty it behooves us to  
4           involve ourselves as much as possible when figuring  
5           out what opportunity to engage in at this  
6           University is going to look like in the future.

7           For that reason, I am going to form an ad hoc  
8           committee to address this question from media  
9           faculty, one representative from each college.

10           You've seen the charge. It's attached to the  
11           -- to the agenda here today, and the members of  
12           this committee will be invited to serve on the  
13           President's Task Force, which is being chaired by a  
14           guy called Ron Nyan and by -- so you will be --  
15           anybody serving on this committee will be invited,  
16           also, to play a role in that other committee. This  
17           will be a Senate Committee.

18           The members of this committee is open  
19           Senators, of course, but also to all faculty in The  
20           University, and we will be taking nominations be  
21           using e-mail done to Arcadia, and we will be hoping  
22           to form that committee at the next Senate meeting.

23           A VOICE: Can we take questions -- will you  
24           take questions about that?

25           A VOICE: I will take questions about that.

1                   A VOICE: In the spirit of providing the  
2 administration with a right about this initiative,  
3 I'd like to say one thing, and that is please call  
4 off your dogs until you get your act together when  
5 it comes to community, and by calling off the dogs,  
6 I mean the administration has been sending faculty  
7 members who are engaged in outside activity nasty  
8 letters, letters of discipline or letters that  
9 threaten faculty members that are engaged in  
10 outside activity with discipline, and this should  
11 stop until the administration gets its act  
12 together, and by getting its act together I mean  
13 this initiative says that we're supposed to  
14 increase outside activity, increase faculty  
15 meetings and with the community.

16                   We support this, but the very actions that  
17 I've been describing are discouraging this  
18 activity.

19                   There's a lot of fear and uncertainty, and if  
20 you read the language in our Collective Bargaining  
21 Agreement about outside activity, it says that  
22 rights should occur in Collective Bargaining  
23 Agreements that other universities in the State,  
24 that they don't report all professional-related  
25 activity, paid or unpaid if it's not part of our

1 assignment. No one knows what that means. The  
2 Deans don't know what this means. Faculty  
3 supervisors don't know what this means, and until  
4 there's some clarity about what else that activity  
5 has to be reported, I would recommend, as a -- good  
6 decent advice that any new faculty member who asks  
7 their supervisor or their peer about what kind of  
8 outside activity they've engaged in, I would say do  
9 nothing because any outside activity exposes you to  
10 risk, and that risk includes discipline up to  
11 dismissal from The University.

12 This is serious, and no one knows what outside  
13 The University is targeting. There have been a  
14 change in the language in the Collective Bargaining  
15 Agreement, and I understand where this comes from.

16 The President is right to try to get more  
17 control of The University. The previous  
18 administration had to deal with some scandals, and  
19 this effort to gain control of faculty makes some  
20 sense, but the way this is being done is creating  
21 danger problems.

22 For you to come to us asking for more  
23 engagement and outside activity, while some other  
24 arm at The University is sending these nasty  
25 letters, that's a problem, and if the problems gets

1 -- eventually will have to be addressed with the  
2 Freedom of Information Act request because there's  
3 a great deal of suspicion that you can say or write  
4 or do something, but if you should write or do  
5 something that the administration disagrees with,  
6 you're gonna get one of these nasty letters put in  
7 your personnel file, and that's some kind of -- and  
8 it's not what we want.

9 We want to encourage this activity. This is  
10 serious. It's an extremely important part of The  
11 University's future growth and development, but  
12 it's ruining things, which are frustrating us.

13 A VOICE: So let me respond to some of the  
14 points you've made. So at least one of the  
15 specific instances that you're talking about -- I  
16 became aware of this Tuesday, and since then I've  
17 been doing a big of leg work. I've had lengthy  
18 conversations, both with Peter Hall, the Dean of  
19 Public Affairs, and with Provost Perry about this  
20 very issue, and I agree that there are some things  
21 to be clarified. I -- if the terms of the  
22 Collective Bargaining Agreement are to be changed,  
23 that, of course, is something to be argued, and  
24 that should run through The Union, and we should  
25 have a conversation about that. I came away from

1 the meetings that I've had less concerned than I  
2 was at the beginning, and I understand that Peter  
3 Hall has reached out to the person that said that I  
4 heard from them Tuesday and that there is an event  
5 to resolve the situation.

6 One of the things that all of us as faculty  
7 should be aware of -- I put it this way to Peter.

8 FAU sits, I think here certainly, as in the  
9 epitome of a do-it-yourself University, rather than  
10 be fresh and do it, right? And in this instance  
11 there was an event coming up that a faculty member  
12 had organized and, in fact, had secured external  
13 funding to help support, which is exemplary of what  
14 faculty should be doing at this University and  
15 should technically be encouraged, however, it  
16 needed to be to advertised. And, so, in an effort  
17 to do that, the faculty member had not gone through  
18 the Public Affairs Office and the Media Relations  
19 Department.

20 The -- what I want to tell -- the message I  
21 want to get out to faculty generally is that the  
22 Media Relations Department is -- has a renewed,  
23 bigger and is eager to assist with exactly that  
24 sort of problem; and we, as faculty -- we need to  
25 recognize, first of all, that those resources are

1           there for us to use; and, second of all, that we  
2           have a responsibility to take advantage of them  
3           because we don't want to have every department at  
4           The University raving every individual faculty  
5           member running their own media relations operation.

6           We have -- we have to proceed strategically on  
7           many, many fronts, and I think it behooves us as  
8           faculty to approach this administrative wing first  
9           rather than after the fact. And, so, this is one  
10           of the things that I came away with.

11           The other thing -- I still have some questions  
12           to ask and some conversations to have. And, so, I  
13           don't know if we should talk further about that  
14           because I still need to the find the facts about --  
15           in order to actually have my own opinion, and  
16           you're asking me the opinion.

17           A VOICE: The problem is far broader than just  
18           who gets to speak to The University, speak to the  
19           press. For example, if a faculty member publishes  
20           a book and wants to give a talk at the Boca Raton  
21           Library, do they have to go to this Executive Vice  
22           President to get permission to do that? These are  
23           the kinds of questions that have to get addressed  
24           because those --

25           A VOICE: Right.

1                   A VOICE: -- supervisors can tell their  
2                   faculty member that they can do that without  
3                   getting permission, and if someone says something  
4                   in a public address that the media covers and The  
5                   University reacts strongly against that, they're  
6                   going to be disciplined for that.

7                   A VOICE: I share your opinions about this,  
8                   and I want the faculty -- I think that there should  
9                   be the ability to take initiative in these -- in  
10                   these efforts that we're going to have. I'm still  
11                   trying to figure out exactly what the policy is at  
12                   the moment, and I'm not sure that I understand. So  
13                   we can have a conversation about that when the time  
14                   comes.

15                   I would also suggest that this might be the  
16                   very type of issue that is going to come up in the  
17                   Community Engagement Committee that we're trying to  
18                   put together. We need to have an approach to this  
19                   problem that will work for the faculty because the  
20                   faculty will be the stage that's engaging in the  
21                   community with any event.

22                   Ron, did you have a comment that you wanted to  
23                   add?

24                   A VOICE: Only, again, Jeff, I've gotta know  
25                   about the particular issues involved and the issues

1 have been raised, but the agenda of the community  
2 engagement initiative is one that I think can  
3 benefit the faculty, but I feel to the extent there  
4 are misunderstandings, if there are, or adjustments  
5 need to be made, I think the purpose is to move  
6 forward with every opportunity for the faculty to  
7 have greater engagement in the community and also  
8 to communicate that. So perhaps, to the extent  
9 that our issue can be raised -- and obviously  
10 you're raising some here today -- that's why the  
11 Senate should have been doing this, not as separate  
12 from, but also incorporate into the larger  
13 University.

14 And, so, I thank you for bring up the issues  
15 so that hopefully more people who have real concern  
16 in this area will run and stand it and will be a  
17 part of the committee. We need a moratorium on  
18 defending the letters addressing discipline for  
19 faculty members who are engaging in outside  
20 activities.

21 A VOICE: I want to -- so I think I'm gonna  
22 take a comment from Provost Perry because I think  
23 it's germane to what's been set forth, and then I'm  
24 going to --

25 A VOICE: Sure.

1                   A VOICE: -- and then I'm going to call on  
2                   you.

3                   Provost?

4                   PROVOST PERRY: Okay. Thank you, Mr.  
5                   President and for giving me the ability to say what  
6                   I have to say. I would just like to say we -- all  
7                   of us work too hard on this comment by our faculty.

8                   You are experts in your field. That's why you're  
9                   employed here as far as that, at The University,  
10                  but regulations (inaudible) is if you follow what  
11                  is laid out in the Collective Bargaining Agreement  
12                  -- and I'll read you the section that is pertinent  
13                  to this -- it's hard to decipher, but it's from 3,  
14                  Section D.

15                  This has been a part members shall make clear,  
16                  when comments represent personal opinions and when  
17                  they represent official University opinions.

18                  That's (inaudible) and all we are, all of us at The  
19                  University, not just the administration sentiments,  
20                  but the advisors and orders under the Collective  
21                  Bargaining Agreement.

22                  A VOICE: Senator, I'm Chair of the Academic  
23                  Re-Review Process, the (inaudible) -- for a year,  
24                  and this is very serious matter. I have a couple  
25                  of questions, one of which is by what authority the

1 Vice President has of Public Affairs writing  
2 letters to the faculty?

3 I also saw this list of arguments that do not  
4 agree with the Provost, absolutely, initially in  
5 the display, but also (inaudible) -- The  
6 University, I mean, that's almost as a reign, but  
7 we have to get prior approval. I consider this a  
8 form of final restraint of academic freedom for  
9 academics to engage in the community without  
10 getting the permission note from the  
11 administration.

12 I have a colleague that was taken into the  
13 woodshed because he wrote an op-ed letter to the  
14 local (inaudible). This is highly inappropriate.  
15 I don't think we need a Committee of Community  
16 Engagement when it comes to academic freedom, and  
17 if I'm right, I don't get what the Collective  
18 Bargaining Agreement is.

19 We have certain rights in our academics to  
20 engage in the community, speak our mind, to engage  
21 and participate in the (inaudible), and I agree  
22 with Ted. We need to have a committee that assists  
23 for us, and this Vice President, who is not an  
24 academic, to stop writing letters to professors. I  
25 don't want to have to get a permission note before

1 I write something on the internet or go to a  
2 meeting someplace that's unrelated to The  
3 University. This is absurd. It's insane.

4 And, secondly and thirdly, the scandal that  
5 Jim refers to, that's not a scandal from faculty  
6 members. That's a scandal of the Administration,  
7 the previous Administration and how they handled  
8 it, but I --

9 A VOICE: So let me --

10 A VOICE: Please explain to me -- perhaps the  
11 President could -- why the Vice President is  
12 writing letters to academic professors that more  
13 than capsizes them for engaging in their First  
14 Amendment Right.

15 A VOICE: I don't know the person that wrote  
16 that letter. I haven't seen the letter, but he  
17 seems to be surprised that there had been some  
18 further discussion. So I -- again, I agree with a  
19 lot of what you said. I do think --

20 A VOICE: You do not agree.

21 A VOICE: I do think that -- that it's  
22 important to have a robust academic environment  
23 here for academic freedom and the exercise. I  
24 think that -- I think that there's a conversation  
25 to be had about this issue of what needs to be

1 reported and what does not.

2 A VOICE: Well, what --

3 A VOICE: And we certainly do not --

4 A VOICE: -- needs to be reported?

5 A VOICE: Excuse me. We certainly will not  
6 put up with a -- (Thereupon, the following  
7 proceedings took place following the playing of the  
8 recording on Mr.

9 Leo's computer.)

10 THE WITNESS: Excuse me. Can we just take a  
11 break, and I'll be right back --

12 MR. LEO: Yeah.

13 THE WITNESS: -- because I really need to go  
14 to the ladies' room.

15 MR. LEO: Off the record.

16 (Thereupon, the following proceedings were  
17 taken of a recording from Mr. Leo's computer  
18 at 3:41 p.m., following a short recess at 3:35  
19 p.m.)

20 A VOICE: This issue of what needs to be  
21 reported and what does not, and we certainly will  
22 not put up with --

23 A VOICE: Then what needs to be reported and  
24 what does not?

25 A VOICE: We certainly must not end up with a

1 with a situation where the content of what a  
2 faculty member says ends up being the deciding  
3 factor in whether action is taken, right? So I  
4 think that, particularly as we push forward on this  
5 issue, which is essential to the University's  
6 strategic vision for where we want to go, that they  
7 we need to think very seriously about these issues,  
8 and I think that the situation that all of us are  
9 talking weekly about is an example that we should  
10 keep in mind as we have these conversations, but I  
11 think that we need to have these conversations  
12 civilly and to try to come to some sort of shared  
13 vision of how this process is going to work at FAU,  
14 and that is what we need to focus on going forward  
15 I believe.

16 A VOICE: But there's the problem. We're  
17 going someplace, and where that place is seems to  
18 be a departure from academic freedom. If there's  
19 academic freedom and a professor or academic makes  
20 the disclaimer I am not speaking behalf of my  
21 employer --

22 A VOICE: What I just said was that we need to  
23 have a conversation about how this scenario would  
24 play out in the future right, and how and what role  
25 academic freedom has played in this -- to what

1 extent academic freedom may or may not have been  
2 compromised in this scenario and then how the  
3 process should work in the future to minimize any  
4 adverse impact.

5 A VOICE: So would you --

6 A VOICE: So I'm going to ask to table any  
7 further discussion or questions about this because  
8 it is premature because I don't know enough about  
9 the specifics of this instance, and I welcome any  
10 of you to talk to me privately about this. I don't  
11 know if we can go further playing this game --

12 A VOICE: That's not what he said. This is  
13 why we have these discussions. There's nothing to  
14 be private about. It impacts the faculty. The  
15 Senators' records --

16 A VOICE: But at the moment it is not a  
17 faculty -- we're just saying what the impact has  
18 been. So this is not a conversation that we can  
19 have probably at the moment.

20 A VOICE: I don't understand why not. That's  
21 why we're here. This is a discussion forum.

22 A VOICE: Could I say something, please?

23 A VOICE: Yes.

24 MR. RABIL: Thank you. I go to the media a  
25 lot, of half from Iran, China, and I need everybody

1 to comment, and I can tell you this, I will never  
2 say anything that goes against the interests of The  
3 University, and I make that sure when I go over TV,  
4 what I like, or go over, including U.S. government,  
5 and I go to them on a frequent basis, but this is  
6 okay with me, but what you are saying here -- and  
7 this is where it does not sit well with me, and I  
8 feel a type of disappointment really, and I  
9 received that e-mail, and this was the e-mail sent,  
10 and it's extremely important to know that FAU has a  
11 requirement, including, but not limited to  
12 receiving permission from the Office of University  
13 of Publication and the Office of the Provost prior  
14 to speaking to the media, including the student  
15 media every single time we engage in class  
16 activity.

17 So what you are saying, already you have  
18 movement in the direction to curb us from talking  
19 to the media, and here I am someone that I consider  
20 myself extremely loyal, and I love FAU, and I  
21 consider FAU my home. So this is really  
22 conflicting for us.

23 A VOICE: Okay. So I am not aware of this e-  
24 mail, and I think that this is an issue where we  
25 need to have a conversation about how this is

1 supposed to work at this University. I don't know  
2 that this is the place for it because we have not  
3 had an opportunity as a group to look at the facts  
4 around this situation. So what I am asking is that  
5 we approach this at a later meeting.

6 MS. ALPERIN: Would it be appropriate to send  
7 this to the Academic Freedom --

8 A VOICE: I don't think that that is warranted  
9 at this time. The Academic Freedom Process  
10 Committee should -- there is nothing to send to  
11 them at the moment as far as I raise.

12 MS. ALPERIN: Okay.

13 A VOICE: No, there's not.

14 A VOICE: Of course there is.

15 A VOICE: There is not.

16 All right. I see more and more hands that are  
17 up, so -- but I assume, Chris, that as you go  
18 through deliberations over the next week or two  
19 that if you do find some cause that you would refer  
20 it at that point.

21 A VOICE: Yes, I would. I do not know what's  
22 going to be on the agenda for next time around.

23 MS. ALPERIN: Well, then that's it for today,  
24 and until it's settled what the policy is, that  
25 should not be (inaudible) until the policy is

1           settled, but no more threatening letters should be  
2           sent. I don't know where they originated from, and  
3           certainly it seems as if it's not always clear, but  
4           I think it does seem like a reasonable request, so  
5           I believe it should be forwarded and appropriately  
6           addressed because it's impossible and it seems as  
7           if the letters are an indication that a policy has  
8           been made without our input, then a policy is being  
9           enacted without being fully (inaudible).

10           A VOICE: Thank you.

11           A VOICE: The problem is very simple. Dr.  
12           Sadik and freedom of expression are  
13           incompatible.

14           A VOICE: Okay. Thank you.

15           A VOICE: Fred, and then we will shut off.

16           A VOICE: Yeah, I think -- I don't -- I think  
17           it's shut off. Does that work?

18           A VOICE: Yes, just the point here, Kim said -  
19           - raised the question does a person wanting to  
20           speak at the public library to discuss his book,  
21           possibly even to sell copies of it, does he need  
22           permission from the Office of Public Affairs before  
23           making such a speech? We know that he has to say  
24           any opinions that I express here to not represent  
25           The University.

1           If he doesn't do that, he's in trouble, and he  
2        should be in trouble, but does he have to get  
3        permission.

4           Kim asked the question. Robert gave the --  
5        gave an example of where he was told he needed to  
6        ask permission before giving a talk or suggesting  
7        that by -- it was suggested by the nature of that  
8        correspondence.

9           Can we know from -- we've got top  
10        administrators here. Can we know the answer to  
11        that question and why is it not appropriate for  
12        that question, if there is a conflict on it, to be  
13        referred now to Academic Freedom and due process?

14           That's how I understood what Academic Freedom  
15        and Due Process was supposed to do.

16           A VOICE: Okay. Does anybody want to comment  
17        on that?

18           A VOICE: As Provost, I would just re-state  
19        what I said earlier. We will actively try to solve  
20        this problem, if appropriate, in the future and  
21        necessary as (inaudible). I would they would, very  
22        simply, (inaudible) an objective problem. I would  
23        just like to say (inaudible) show you no such  
24        policy (inaudible).

25           A VOICE: I would also add that one of the

1           things that I've done this week is to look at the  
2           form that needs to be filled out, and it's a little  
3           -- it's confusing about whether it applies in this  
4           hypothetical scenario that you're talking about. I  
5           understand that there is a revision to that form  
6           because of new federal laws surrounding grants and  
7           conflicts of interest and so forth. So the form is  
8           currently being revised, and I hope that we see a  
9           draft of that form soon.

10           (Thereupon, the following proceedings took  
11           place following the recording from Mr. Leo's  
12           computer.)

13           **Q       (By Mr. Leo) You were there for that?**

14           A       Yes, I was.

15           **Q       Would you agree that several faculty members**  
16           **other than Lenz and DeRosa also expressed confusion and**  
17           **uncertainty about the policy?**

18           A       About --

19           MS GRIFFIN: Form.

20           THE WITNESS: Sorry.

21           MS. GRIFFIN: Form. Joe stepped out.

22           MR. LEO: She's objecting. That's fine. You  
23           can answer the question.

24           THE WITNESS: Most of the discussion  
25           identified four other faculty in addition to Tim

1 Lenz and Marshall DeRosa.

2 Q **(By Mr. Leo) That was my next question.**

3 A And the concern was about writing or speaking  
4 in public and what we call about the disclaimer, about -  
5 - if you're speaking on behalf of The University or your  
6 on own behalf. So, yes, I did hear that discussion.

7 Q **Some of the terms that I wrote down here,**  
8 **there was the word "prior restraint". Have you heard**  
9 **that before this meeting in 2015?**

10 A I mean, in general in my life have I heard  
11 that term? No, I heard it at this meeting, and you see  
12 -- you could, I believe, sense from the discussion how  
13 upset the faculty were that Dr. Wagner was being told  
14 not to publish an op-ed.

15 Q **I didn't hear the name Wagner come up. When**  
16 **did you hear that?**

17 A Well, I knew that this was what it was about  
18 because I was aware of the e-mail that had been sent to  
19 Dr. Wagner before this meeting.

20 Q **So when the one faculty member says that**  
21 **someone was taken to the woodshed, that was Wagner?**

22 A Yes. I will say that, again, one, two, three  
23 of these people that were speaking were part of the  
24 Political Science Department that Dr. Wagner was a part  
25 of. I think they knew what was going that on. I will

1 say having been at the meeting there were many people at  
2 that meeting that were lost because they did not -- they  
3 were not aware of the e-mail, meaning "lost" that they  
4 didn't know the specifics.

5       **Q      The gentleman who spoke after DeRosa with an**  
6 **accent, who was that?**

7       A      That was Robert Rabil.

8       **Q      Robert Rabil?**

9               THE REPORTER: R-A-B --

10          THE WITNESS: R-A-B-I-L.

11       **Q      (By Mr. Leo) And he said that he was**  
12 **disappointed and saw that this was a movement in the**  
13 **direction of curbing I believe --**

14       A      I don't know what he said, but I do know that  
15 Dr. Rabil is an expert on the Middle East. He speaks  
16 publicly, and he said he was disappointed. Now, there  
17 was an e-mail -- I think he's the one that referenced  
18 another e-mail that Provost Perry was trying to explain  
19 at the end because they were talking about an e-mail  
20 that was from the VP of Public Affairs and the Provost,  
21 and it wasn't from the Provost.

22       **Q      (By Mr. Leo) Was Rabil in receipt of a letter**  
23 **from FAU or an e-mail?**

24       A      No. I think it was a general e-mail he was  
25 talking about.

## 2 | Outside Activity Forms?

3 A I don't know.

4 Q He 's also a blogger; isn 't that right?

5 A I don't know.

6 Q You're not aware of Professor Rabil has a  
7 blog?

8 A I 'm not aware, no.

9 (Thereupon, Plaintiff's Exhibit Number PA-20  
10 was marked for identification.)

11 Q (By Mr. Leo) Let me show you what's been  
12 marked as PA-20 --

13 A Okay.

14 Q -- for t

15 MB - LEO: Joe

16 is one of those blogs.

17 MR. CURELY: Do y

18 MR. LEO: Do you have a copy of

19 MR. CURELY: Actually I don't know that I

20 MR. MEDGEBOW: It was in a composite.

21 MR. LEO: Yeah, it was in a composite

22 last week --

23 MR. CURTIS

24 Mr. LEO: -- but h

25 MR. CURELY: Thank you.

100% of the time, the system is able to correctly identify the target class for the test samples.

1                   MR. LEO: Actually why don't we -- this is  
2                   actually a clearer copy. Let's -- can we swap it  
3                   out?

4                   MR. CURELY: Sure. Here you go.

5                   MR. LEO: This one is a lot darker. Here you  
6                   go, Joe.

7                   MR. CURELY: Thank you.

8                   **Q (By Mr. Leo) Is this Professor Rabil that we**  
9                   **just heard speak on the --**

10                  A     Yes.

11                  **Q -- Senate Faculty meeting in 2015?**

12                  A     Right.

13                  **Q Does this refresh your recollection as to**  
14                  **whether Professor Rabil has a blog?**

15                  A     This is the first I've seen of it.

16                  **Q And you said you're not aware if he's**  
17                  **disclosed the blog?**

18                  A     I'm not aware, no.

19                  **Q Would this be a reportable activity under**  
20                  **Article 19?**

21                  A     I don't know if this is part of his  
22 assignment.

23                  **Q Looking at it --**

24                  A     It could be part of his assignment.

25                  **Q And it could also not be a part of his**

1       **assignment?**

2       A     I believe -- I mean, he is an expert on the  
3     Middle East. He's speaking on the Middle East. His  
4     work and lifelong learning is part of The University.

5       **Q     And the blog itself, this is the first time**  
6     **you've seen it?**

7       A     Yes. It this a blog?

8       **Q     Sitting here today --**

9       A     Is this what a blog is? I don't --

10      **Q     You tell me.**

11      A     I don't blog. So to me this something that  
12     could be on his web site. He's explaining who he is.

13      **Q     You're saying you don't know what a blog is?**

14      A     I'm saying that this doesn't look -- I don't  
15     know what a blog is, no. I don't blog. I don't  
16     Facebook. I don't Twitter. I don't Tweet. I'm old. I  
17     call people on the phone.

18      **Q     But your employees do, right?**

19      A     I don't know. I assume this -- my employee --  
20     I mean, I guess my employees do that, but to me this  
21     looks like on a screen shot from -- that could be on his  
22     FAU web site.

23      **Q     Do you see the address though at the bottom?**

24      A     Robert Rabil. Is says, "FAU.edu". That's his  
25     e-mail address.

1 Q Is there a url? Do you know what a url  
2 address is? I don't have my copy, so --

3 MR. CURELY: Here you go.

4 Q (By Mr. Leo) The bottom one.

5 A Robertrabil.com.

6 Q Right. Is that an FAU e-mail?

7 | A No.

8 Q I'm sorry. FAU url?

9 A No.

10 Q So you agree this is not an FAU blog, but it  
11 is a web site that belongs to a factory member at your  
12 school.

13 A Yes.

14 MR. CURELY: Objection the to form.

15 Q (By Mr. Leo) Has Professor Rabil ever been  
16 directed to submit an Outside Employment Form for this  
17 activity?

18 A I don't know.

19 Q Well, will he be?

20 A I don't know.

21 Q Now that you've seen it, are you going to send  
22 him a letter about it?

23 A This would not be my responsibility anymore.

24 Q Whose responsibility would it be?

25 A It would be the Dean and the Vice Provost, the

1 current Vice Provost.

2           **Q    Is this something that now that you've seen**  
3           **this you're going to bring it to their attention?**

4           **A    I don't know. I have to look at it.**

5           **Q    Wouldn't this be something that should be**  
6           **brought to their attention?**

7           MR. CURELY: Objection to form.

8           THE WITNESS: I don't know. I have to think  
9           about it.

10          **Q    (By Mr. Leo) You'd have to think about whether**  
11          **or not his outside activities should be reported?**

12          **A    No. It should be reported, but I don't know**  
13          **if it's reported. I don't know -- you asked me if he's**  
14          **been report told to report it. I don't those questions.**  
15          This is not my responsibility anymore.

16          **Q    Whose responsibility is it now?**

17          **A    It's his Chair, his Dean and the Vice Provost.**

18          **Q    And who is the Vice Provost now?**

19          **A    Michelle Hawkins.**

20          THE REPORTER: Hopkins?

21          THE WITNESS: Hawkins, H-A-W-K-I-N-S.

22          THE REPORTER: One or two L's?

23          THE WITNESS: Excuse me? Two L's, Michelle.

24          **Q    (By Mr. Leo) When did it stop being your**  
25          **responsibility?**

1           A    When my portfolio changed in July 2016. I  
2    don't know sign Outside Activity forms anymore.

3           Q    **How many Outside activity Forms have you**  
4    **signed?**

5           A    I don't know. Hundreds, probably over course  
6    of time.

7           Q    **Do you have final say in whether the activity**  
8    **is approved?**

9           A    Yes.

10          Q    **How long has that been?**

11          A    Oh, I guess since maybe 2003.

12          Q    **So from 2003 to 2016 you had final say in the**  
13   **approval of outside activities?**

14          A    Yes.

15          Q    **Would you agree with me that this form -- I'm**  
16   **going back to the form that was in effect when Professor**  
17   **Tracy was still employed. I think it was PA --**

18          A    PA-2?

19          Q    **2. This is the form that you're referring to**  
20   **when you said that you would sign off on it?**

21          A    Yes.

22          Q    **So the Outside Employment Forms, they would go**  
23   **to you directly or how --**

24          A    No.

25          Q    **-- would they go to you?**

1           A    No. The would go -- the employee submits it.  
2   It goes to the Chairperson or the Supervisor. Then it  
3   goes to the Dean. If it has to do with research, if  
4   they answered yes to question 5-A or 5-B, then it needs  
5   to go to the Division of Sponsored Research. They need  
6   to approve it. They can turn it down, and then it would  
7   come to me if they're faculty.

8                   Don't forget this form is for all employees,  
9   so it would go to the different Vice Presidents if  
10   they're in different units, and the Provost would  
11   approve the -- the outside form for his direct reports.

12           **Q    So the outside activity would have to be  
13   reported and approved.**

14           A    Yes.

15           **Q    That's the purpose of --**

16           A    The form.

17           **Q    -- this form.**

18           A    Yes.

19           **Q    And this form is not optional.**

20           A    Correct.

21           **Q    Would you agree that all faculty members are  
22   not submitting these forms?**

23           A    I don't know. I hope they are.

24           **Q    Is there anyone who's tasked with ensuring  
25   that all faculty members have submitted these forms?**

1           A    Tasked for that?  No.  I mean, that's why  
2  we're adding it to the FAIR assignment to make sure  
3  everybody is aware of it.

4           **Q    And, as we discussed earlier, the adding to**  
5  **the FAIR system, you're talking about the checkbox?**

6           A    Yes, the affirmation box.

7           **Q    That wasn't required by FAU.  That's something**  
8  **they chose to do on their own.**

9           A    They chose to do it.

10          **Q    You would agree that the Outside Activities**  
11  **Policy doesn't originate from an affirmation box in**  
12  **FAIR.  It comes from Article 19, right?**

13          A    I don't understand the question.

14          **Q    The obligation to submit these forms for**  
15  **approval, that doesn't come from the FAIR assignment**  
16  **process.  It comes from --**

17          A    No.  It's a reminder in the FAIR assignment  
18  process, but the obligation is part of Human Resources  
19  and the Collective Bargaining Agreement.

20          **Q    When you say "Human Resources" --**

21          A    The Division of Human Resources because all  
22  employees are required to report.  I am not covered by  
23  the Collective Bargaining Agreement, but I'm still  
24  required to report outside activity.

25          **Q    So you, yourself, would have to report**

1       **pursuant to another policy.**

2       A      Yes.

3       Q      **But you're not subject to the Collective**  
4       **Bargaining Agreement reporting. That's only for**  
5       **faculty?**

6       A      Yes, and Union faculty. We have faculty that  
7       not part of the Collective Bargaining Agreement.

8       Q      **So the origin of the faculty's obligation to**  
9       **report an outside activity comes from Article 19 of the**  
10      **Collective Bargaining Agreement for faculty members.**

11      A      Correct, for in-unit faculty. We have out-of-  
12      unit faculty as well.

13      Q      **Okay.**

14      A      College of Medicine is out of unit, Proper  
15      Branch is out of unit.

16      Q      **So the CBA would not govern them.**

17      A      Correct?

18      Q      **With respect to this form, you testified that**  
19      **P-2 -- I'm sorry -- PA-2 is no longer in use.**

20      A      Correct.

21      Q      **Now, if a faculty member hasn't submitted**  
22      **forms for 13, 14, for example, or anything year, which**  
23      **form would you use to ask them to submit it?**

24      A      I would ask them to submit the current form.

25      Q      **The current one?**



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1 A Yeah.

2 Q Going back to -- in 2015 Professor Tracy was  
3 asked to submit this form, PA-2, for multiple years of  
4 blogging; isn't that right?

5 A He was asked to you submit the form for  
6 outside activity for multiple years, yes.

7 Q Other than his blogging, this blogging, what  
8 other activity would you have expected him to report?

9 A He reported about this podcast. He reported  
10 about articles that he submitted to -- I think it's a  
11 Canadian research site. He should have reported about  
12 the Memoryhole, and I learned about a book that he had  
13 contributed to that he had not reported that activity.

14 Q So this is what you were -- in 2015 were  
15 expecting to be on the PA-2, the Outside --

16 A Correct.

17 Q -- Employment or Professional Activity Form.

18 A Right.

19 MR. CURELY: Objection to form.

20 Q (By Mr. Leo) When he submitted the forms in  
21 2015, that was under duress; would you agree?

22 MR. CURELY: Objection to form.

23 THE WITNESS: No.

24 Q (By Mr. Leo) Do you know what the word  
25 "duress" means?

1           A     Yes, but he was asked to submit it. He was  
2 repeatedly asked to submit it, and he repeatedly  
3 refused.

4           **Q     The term "duress", as defined by Google is --**

5           MR. CURELY: Why don't you use Wikipedia?

6           MR. LEO: We can go to Wikipedia. How about  
7 Miriam Webster?

8           **Q     (By Mr. Leo) "Wrongful and unusually unlawful  
9 compulsion as, for example, threats of violence. That  
10 would be duress.**

11          A     He wasn't threatened with violence. He wasn't  
12 threatened with law. He was asked to complete a form.

13          **Q     But he was threatened; would you agree?**

14          A     I don't think he was threatened. I think he  
15 was asked. He was asked repeatedly. He was asked by  
16 the secretary. He was asked by his Director. I don't  
17 think he was threatened with physical harm.

18          **Q     What kind of conflict of interest could there  
19 have been with respect to Professor Tracy's blogging?**

20          A     I don't know because he never submitted the  
21 form.

22          **Q     Are you saying that you didn't evaluate  
23 Professor Tracy's blogging to see if there was a  
24 conflict of interest?**

25          A     He didn't submit a form. I can't evaluate

1 something without the form.

2 Q But my question was whether there was a  
3 conflict or --

4 A No.

5 Q -- or did you make a determination as to  
6 whether there was a conflict?

7 A Until I had the form I couldn't have  
8 determined a conflict.

9 Q You couldn't have or you didn't want to?

10 A I wouldn't have until I saw the form. How can  
11 I determine something when I don't know how much time  
12 it's taking him to do his outside activities because we  
13 have conflict of commitment and conflict of interest.

14 Q Okay. Well, going to Article 19, the  
15 different conflicts, you mentioned one, conflict of  
16 commitment.

17 A Right.

18 Q Let's talk about that.

19 A Okay.

20 Q Let's get my Article 19 up here. If you want  
21 to just turn to that.

22 A I have it.

23 Q Where do you see the conflict of commitment or  
24 -- what you just said in Article 19?

25 A To me conflict of commitment is 2, "Any

1 activity that interferes with the full performance of  
2 the employee's professional or official responsibilities  
3 or obligations."

4           **Q    Okay. Isn't there an evaluation for faculty**  
5 **members?**

6           A    An annual evaluation, yes.

7           **Q    Was Professor Tracy evaluated?**

8           A    I believe so. I don't know. I --

9           **Q    You don't know if he was evaluated?**

10          A    I don't know if he was evaluated. I assume he  
11 was evaluated, and I assume if he wasn't evaluate he  
12 would complaint about that.

13          **Q    If there was an evaluation, wouldn't it set**  
14 **forth a conflict of time commitment, for example, if,**  
15 **for example, he wasn't at class and missing his**  
16 **obligations?**

17          A    His evaluation would have to do with teaching,  
18 his research and his service and any other outside  
19 activity. Any outside administration, other  
20 administration would do it. I haven't seen his  
21 evaluations, so I don't know what they say.

22          **Q    So you're saying you didn't look at his**  
23 **evaluations at any point?**

24          A    No.

25          **Q    And in 2015 you didn't look as his evaluations**

1       **to see if there was a problem with his teaching or --**

2       A      I looked at --

3       **Q      -- professional --**

4       A      I looked at his SPOT.

5       **Q      What's a SPOT?**

6       A      SPOT is Student Perception of Teaching. It's  
7       a form that's completed at the end of every semester  
8       that the students complete, and it's public -- the  
9       scores are public information.

10      **Q      I'm gonna show you -- we're not gonna mark  
11       this because it's extensive here, and it's not really  
12       necessary, but go ahead and take a look at this  
13       composite of evaluations, and let me know if this is  
14       what you're referring to when you talk about  
15       evaluations.**

16      A      An annual evaluation form? This must be the  
17       form for that college.

18      **Q      Yeah, there's several in there. So why don't  
19       you take a look at the whole thing, and let me know once  
20       you've had a chance to review it.**

21      A      This is covering the academic year 11/12, the  
22       form that I'm looking at.

23      **Q      You've had a chance to review the evaluations?**

24      A      Yes.

25      **Q      Would you agree with me that Professor Tracy**

1       **had outstanding evaluations?**

2       A      Yes.

3       **Q      And there's not a blemish on his evaluations**  
4       **that I could see.  Is there anything that you would --**

5       A      I think there was, in general, yes.  I think  
6       there was some concern in one semester about student  
7       complaints, but --

8       **Q      What were students complaining about?**

9       A      It says here, "Undergraduate students in MMC-  
10      1540, fall 2014 were displeased because the instructor  
11      insisted the students put personal electronic devices  
12      away. Instructor also failed to inform students in MC-  
13      1540 of what specific material would be covered on  
14      exams."

15      **Q      And what was --**

16      A      Putting -- I mean, that's the evaluator's  
17      comment.

18      **Q      Uh-hm.  From what year?**

19      A      It says fall 2014.  "I would say control of  
20      electronic devices by faculty on students is an issue",  
21      and that was Dr. Williams.

22      **Q      Were you, at any time, tasked with the**  
23      **approval of these annual evaluations --**

24      A      No.

25      **Q      -- or use of them in any way?**



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1 A No.

2 Q When you were reviewing Professor Tracy's  
3 employment records, wouldn't this be one of the records  
4 that you would review before determining discipline?

5 A No.

6 Q Why not?

7 A Because we were not disciplining him for his  
8 performance as a faculty member.

9 Q In your disciplinary notices you indicated  
10 that there may have been a conflict of time commitment.

11 A I said if the forms had been completed, we  
12 would have had a discussion. That would be one of the  
13 discussion points, but he was never disciplined for his  
14 performance as a factory member. He wouldn't -- he  
15 wasn't.

16 Q But with respect to the allegation of -- that  
17 there could have been a time commitment -- that's at  
18 least what I read in your termination notices --

19 A Yeah, there could have been.

20 Q Was there ever a determination that there was  
21 an actual conflict of time commitment?

22 A No, because the form wasn't completed.

23 Q Just so you know, she has to record me and  
24 then you. She can't record us both at the same time.

25 A Okay. Sorry. You finish.

1           **Q    The question was whether there was any actual**  
2 **conflict of time commitment that you were aware of at**  
3 **any point.**

4           A    We could not make that determination because  
5 the form had not been completed.

6           **Q    When you say you can't make the determination,**  
7 **is that one of choice or were there other ways to make**  
8 **the determination.**

9           A    No, there's no other way to make a  
10 determination unless someone completes the form someone.

11          **Q    For example, if you looked at his evaluations**  
12 **and saw that there was no concern about time commitment**  
13 **or conflict, wouldn't that be one way?**

14          A    I would not look at the evaluations. That's  
15 not part of the process for me.

16          **Q    So you're saying that the evaluation of the**  
17 **faculty members and how they're using their time, which**  
18 **is probably -- it's part of that evaluation, right?**

19          A    These evaluations are kept at the department  
20 or the school level, okay? I would expect that the  
21 Director would make that determination before he signed  
22 the Outside Employment Form.

23          **Q    Made what determination?**

24          A    If this was a conflict of time.

25          **Q    So we're going back to actually whether the**

1       **Director gets the form.**

2       A     Correct. He has to have the form to make a  
3     decision.

4       **Q     Right. Whose determination is it under the**  
5     **current guidelines --**

6       A     First it's --

7       **Q     -- to actually --**

8                MR. CURELY: Wait a minute. Let him finish  
9     his question.

10              MR. LEO: Thanks, Joe.

11       **Q     (By Mr. Leo) Whose determination is it as to**  
12     **whether or not there needs to be a form submitted?**

13       A     I believe that the documents say it's  
14     primarily the faculty member and the employee's  
15     responsibility to submit the form.

16       **Q     And you're referring to which document?**

17       A     Which document, the form?

18       **Q     Where it makes -- sets forth that obligation.**

19       A     Okay. First of all, when an employee is  
20     hired, they're told of a report, that they must report  
21     outside activity. That used to be a form that they  
22     signed. It's now a form that's electronic. As they  
23     sign in they're reporting outside activity is part of  
24     the Collective Bargaining Agreement. It's part of the  
25     Personnel Guidelines and --

1           **Q    Let me just see if this is the form you're**  
2 **referring to.**

3            MR. CURELY:  Were you finished?

4            THE WITNESS:  No.  I was trying to think of  
5            all --

6                   (Thereupon, Plaintiff's Exhibit Number PA-21  
7                   was marked for identification.)

8           **Q    (By Mr. Leo) I'll let you continue.  Just I'm**  
9 **showing you what's been marked as PA-21.  Is that the**  
10 **form for new employees that you're referring to?**

11          A    Yes.

12          **Q    And, for the record, it's FAU bate stamp 233.**  
13 **You can continue.  What were you saying about this form?**

14          A    I'm just saying there's a form when they  
15           originally are hired.  This now is part of their what we  
16           call on-boarding and workday, which is our new on-line -  
17           - it's not new anymore -- Human Resources Employee's  
18           Account.  HR also sends out a notice every August about  
19           his client -- filling out the form.

20                   We've talked about the Collective Bargaining  
21           Agreement.  We also have a faculty handbook that's given  
22           to all faculty when start, and it is on line, and that  
23           also talks about outside employment and personnel policy  
24           for all employees.  It's talks about outside employment.

25          **Q    This FAU 233, is this form something that**

1           **Professor Tracy had to sign?**

2           A     I -- I really don't know.

3           Q     **Well, I haven't seen one with his signature on**  
4 **it, so --**

5           A     I don't know. I would just -- I don't know.

6           Q     **This form, you would agree -- FAU 233 or PA-**  
7 **21, this also uses different language than what's in the**  
8 **Article 19.**

9           A     Yes, I see that.

10          Q     **You see that they call it -- it says, "Report**  
11 **of Outside Business."**

12          A     Correct.

13          Q     **"Or Professional Activity."**

14          A     Correct.

15          Q     **And it says here, "I am required to report**  
16 **outside business activity, professional activity,**  
17 **conflict of interest or conflict of commitment prior to**  
18 **commencement of such activities.**

19          A     Correct.

20          Q     **Would you agree that this does not encompass**  
21 **personal activities?**

22                    MR. CURELY: Objection to form.

23                    THE WITNESS: What do you mean, "personal"?

24          Q     **(By Mr. Leo) Non-professional activities, for**  
25 **example.**

1                   MR. CURELY: Objection to form.

2                   THE WITNESS: Like?

3                   **Q (By Mr. Leo) Mowing a lawn without**  
4 **compensation, would that be --**

5                   A     Correct. If you're mowing a lawn without  
6 compensation, I would say you don't have to report that.

7                   **Q How about writing a book without compensation?**

8                   MR. CURELY: Objection to form.

9                   THE WITNESS: That's a professional activity.

10                  **Q (By Mr. Leo) Writing a book?**

11                  A     Writing a book is a professional activity for  
12 faculty --

13                  **Q Necessarily?**

14                  A     Yes.

15                  **Q Any kind of book.**

16                  A     Well, what kind of book are you talking about?

17                  A comic book could be a professional activity. We have

18                  --

19                  **Q Well, let's say that you're a faculty member,**  
20 **and you're teaching about conspiracies, and you write a**  
21 **book about something you researched in general, not**  
22 **necessarily a conspiracy, but something you've**  
23 **researched, and you're not going to be compensated for**  
24 **that book. Would that be a professional activity or --**

25                  A     Yes.

1                   MR. CURELY: Objection to form.

2                   THE WITNESS: I have to slow down so you can--

3                   **Q     (By Mr. Leo) What would make it professional?**

4                   A     It's professional because it's writing a book,  
5 and you're a faculty member, and that would be a  
6 professional activity.

7                   **Q     So any time somebody writes a book, if they're  
8 a faculty member, that's a professional activity?**

9                   A     I would see that as a professional activity,  
10 yes.

11                  **Q     Let's say a faculty member writes a children's  
12 book --**

13                  A     Yes.

14                  **Q     -- for their own kids --**

15                  A     Yes.

16                  **Q     -- and doesn't sell it, they just give it to  
17 their children.**

18                  A     Just give it to their children?

19                  **Q     Yeah.**

20                  A     No, but if they gave it broader than their  
21 children I would say it's a professional activity.

22                  **Q     So you'd agree that that's different than what  
23 you said. Anytime you write a book, you're a faculty  
24 member, it's professional.**

25                  MR. CURELY: Objection to form.

1           **Q       (By Mr. Leo) I mean, that's what you said,**  
2       **right?**

3           A       Yes.

4           **Q       So there are examples where you write a book,**  
5       **and it's not a professional activity.**

6           A       If you write the book just for your children,  
7       then I would say it's not on professional activity. If  
8       you write a book that is more broadly disseminated,  
9       which is usually the reason people write books, I would  
10      say that it's a professional activity.

11           **Q       What's a creative activity?**

12           A       And at The University we talk about research  
13      scholarship and creative activity. Creative activity is  
14      because of the College in the -- Dorothy F. Schmidt  
15      College of Arts and Letters. We have a Department of  
16      Music, a Department of Visual Arts and Art History and  
17      Department of Theater, and they -- their production of a  
18      play, performance of -- a piano recital, exhibit at a  
19      gallery is creative activity.

20           **Q       Do you receive reports of activity or outside**  
21      **activity at FAU --**

22           A       No.

23           **Q       -- like an outside business activity report or**  
24      **something like that?**

25           A       Are we talking about one of these forms again?

1 Q Not one of those. I'll just -- let me just  
2 show you this, and tell me if this is something you've  
3 seen before.

4 (Thereupon, Plaintiff's Exhibit Number PA-22  
5 was marked for identification.)

6 MR. LEO: This is PA-22 for today. It's FAU  
7 bate stamp 7013 through 714. Joe, I don't have a  
8 copy here for myself this time.

9 END OF VOL. 1

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## 1 CERTIFICATE OF OATH

2 THE STATE OF FLORIDA

3 COUNTY OF PALM

4

5 I, LORA LEE KNORR, the undersigned authority,  
6 certify that DIANE ALPERIN, personally appeared before  
7 me and was duly sworn on the 9th day of May, 2017.

8

9 Witness my hand this 23rd day of May, 2017.

10

11

12

13



14

LORA LEE KNORR, COURT REPORTER  
NOTARY PUBLIC, STATE OF FLORIDA  
Commission No.: FF198698  
Commission Expires: 4/30/2019

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## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF PALM BEACH

4

5 I, LORA LEE KNORR, Court Reporter and Notary  
6 Public in and for the State of Florida, do hereby  
7 certify that I was authorized to and did  
8 stenographically report the foregoing deposition of  
9 DIANE ALPERIN, and that the transcript is a true and  
10 complete record of my notes.

11

12 I FURTHER CERTIFY that I am not a relative,  
13 employee, attorney or counsel of any of the parties,  
14 nor am I a relative or employee of any of the parties'  
15 attorneys or counsel connected with the action, nor am  
16 I financially interested in the action.

17

18 Witness my hand this 23rd day of May, 2017 at Boca  
19 Raton, Palm Beach County, Florida.

20

21

22

Lora Lee Knorr  
23 LORA LEE KNORR, COURT REPORTER, FPR, RPR,  
NOTARY PUBLIC, STATE OF FLORIDA

24

25

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