

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.

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By Mr. Leo

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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?



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?



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 head 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 can 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 month?**

23 A No.

24 **Q Why was the form changed?**

25 A As I indicated, there was concern from the



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 **Q (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.



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.**

12 MR. CURELY: Thank you. Here. I'll take that
13 one.

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 it 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



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.



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

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

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

8 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?**

23 MR. CURELY: I just want to put an objection
24 on the record. It's not -- the document is not
25 complete, and she's not copied with it. So I want



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?



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?**

24 MR. CURELY: March 28th, 2-13 is the date for
25 Exhibit 12.



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.



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 bated 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.



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 be 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 I 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.



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



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?



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 MR. CURELY: Objection to form.

16 THE WITNESS: When I met with Dean Coltman for
17 what?

18 Q (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
20 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 Echos 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 having 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 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.



1 **Q Has Professor Rabil -- has he submitted**
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 today.**

15 MR. LEO: Joe, you may recognize this. This
16 is one of those blogs.

17 MR. CURELY: Do you have a copy?

18 MR. LEO: Do you have a copy of this one?

19 MR. CURELY: Actually I don't know that I do.

20 MR. MEDGEBOW: It was in a composite.

21 MR. LEO: Yeah, it was in a composite from
22 last week --

23 MR. CURELY: Okay.

24 Mr. LEO: -- but here's another copy.

25 MR. CURELY: Thank you.



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?



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?**



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
15 NOTARY PUBLIC, STATE OF FLORIDA
16 Commission No.: FF198698
17 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 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorneys or counsel connected with the action, nor am
15 I financially interested in the action.
16

17 Witness my hand this 23rd day of May, 2017 at Boca
18 Raton, Palm Beach County, Florida.
19
20
21

22 

23 LORA LEE KNORR, COURT REPORTER, FPR, RPR,
24 NOTARY PUBLIC, STATE OF FLORIDA
25



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