

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

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

JAMES TRACY,

Plaintiff,

VS.

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

Defendants.

/

CORRECTED TRANSCRIPT

VOLUME II

DEPOSITION OF DIANE ALPERIN

TAKEN ON BEHALF OF THE PLAINTIFF

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

GUNSTER  
4855 TECHNOLOGY WAY  
SUITE 630  
BOCA RATON, FLORIDA 33431

REPORTED BY:

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



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<p>1 APPEARANCES OF COUNSEL  2 ON BEHALF OF THE PLAINTIFF:  3 LOUIS LEO IV, ESQUIRE  4 JOEL MEDGEBOW, ESQUIRE  5 MATTHEW BENZION, ESQUIRE  6 MEGEBOW LAW, P.A. &amp; BENZION LAW, P.A.  7 4171 West Hillsboro Boulevard Suite 9  8 Coconut Creek, Florida 33073  9 Louis@floridacivilrights.org  10 Joel@meedgebowlaw.com  11 Mab@benzionlaw.com  12 ON BEHALF OF THE DEFENDANTS, FLORIDA ATLANTIC  13 UNIVERSITY, ET AL.:  14 GERALD J. CURELY, JR., ESQUIRE  15 HOLLY GRIFFIN, ESQUIRE  16 KEITH E. SONDERLING, ESQUIRE  17 GUNSTER, YOAKLEY &amp; STEWART, P.A.  18 777 South Flagler Drive  19 Suite 500 East  20 West Palm Beach, Florida 33401  21 Jcurely@gunster.com  22 Hgriffin@gunster.com  23 Ksonderling@gunster.com  24 ON BEHALF OF THE UNION:  25 KATHERINE HEFFNER, ESQUIRE (via telephone)  26 CAIR  27 8076 North 56th Street  28 Tampa, Florida 33617  29 Kheffner@CAIR.com  30 ALSO PRESENT:  31 DANIEL A. JONES, ESQUIRE  32 FLORIDA ATLANTIC OFFICE OF GENERAL COUNSEL  33 777 Glades Road, Room 370  34 Boca Raton, Florida 33431  35 Djones89@fau.edu  36 DR. JAMES TRACY, Plaintiff  37  38  39</p>	<p>201</p> <p>1 INDEX OF EXHIBITS  2 EXHIBIT DESCRIPTION PAGE  3 PA-23 REPORTING FOR OUTSIDE BUSINESS 213  4 PA-24 UNIVERSITY EQUIPMENT, FACILITIES AND  5 SERVICES USE POLICY 225  6 PA-25 NOTICE OF DISCIPLINE LETTER TO  7 DR. TRACY DATED 11/10/15 230  8 PA-26 E-MAIL DATED 11/09/15 231  9 PA-27 NO EXHIBIT MARKED  10 PA-28 LETTER DATED 4/23/13 TO PRESIDENT  11 MARY JANE SAUNDERS 264  12 PA-29 WEB PAGE FROM DOROTHY F. SCHMIDT  13 COLLEGE OF AND LETTERS, FAU 268  14 PA-30 HANDWRITTEN NOTES 271  15 PA-31 LETTERS: WHY JAMES TRACY, FAU'S  16 CONSPIRACY THEORIST, SHOULD RESIGN 293  17 PA-32 E-MAIL STRING 300  18 PA-33 LETTER FROM DR. TRACY, 11/12/15  19 TO DEAN HEATHER COLTMAN 312  20 PA-34 E-MAIL DATED 12/1/15 313  21 PA-35 E-MAIL DATED 12/11/15 321  22 PA-36 E-MAIL DATED 11/18/15 339  23 PA-37 E-MAIL STRING 353  24 PA-38 MEMORANDUM TO FACULTY DATED  25 MARCH 2015 359  26 PA-39 MEMORANDUM TO FACULTY DATED  27 JUNE 2016 361  28 PA-40 LETTER DATED 5/2/16 FROM  29 MOHAMMAD ILYAS, DEAN 361  30  31</p> <p>202</p> <p>1 INDEX OF EXAMINATION  2 WITNESS: DIANE ALPERIN  3 DIRECT EXAMINATION  4 By Mr. Leo 197  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p>203</p> <p>1 CORRECTED TRANSCRIPT  2 VOLUME II  3 DEPOSITION OF DIANE ALPERIN  4 MAY 9, 2017  5 CONTINUED DIRECT EXAMINATION  6 BY MR. LEO:  7 Q Have you seen this before?  8 A I haven't seen this before.  9 Q Do you know what this is?  10 A It looks like it's a report of faculty who  11 have submitted this report of outside employment or  12 professional activity.  13 Q And it's called "The Outside Business Report",  14 right?  15 A Correct.  16 MR. CURELY: Objection to form.  17 Q (By Mr. Leo) Would who know about this report?  18 A I don't know where it came from. Where did  19 you get it?  20 Q From your counsel.  21 A My counsel? I haven't seen it. I mean, I  22 assume that it came from -- looking at the people on  23 it --  24 Q So my question was going to be --  25 MR. CURELY: Hold on.</p> <p>204</p>
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<p>1       THE WITNESS: If you look -- since it includes  2       faculty and non-faculty, it had to come from  3       someplace outside of Academic Affairs.  4       <b>Q (By Mr. Leo) This is some kind of a</b>  5       <b>spreadsheet that is compiled by The University?</b>  6       MR. CURELY: Objection to form.  7       THE WITNESS: I don't know.  8       <b>Q (By Mr. Leo) You never have access to this</b>  9       <b>information?</b>  10      A   I've never seen it, correct.  11      <b>Q So how do you know if someone has reported an</b>  12       <b>activity or not?</b>  13      A   I don't understand your question.  14      <b>Q When you're asked to determine whether someone</b>  15       <b>has submitted their outside business forms --</b>  16      A   I look --  17      <b>Q How would you know?</b>  18      A   I look in their credential file to see if we  19       have a copy of it or I ask Human Resources if they have  20       a copy of it.  21      <b>Q Is there a master list somewhere?</b>  22      A   I don't know. This looks like it might be a  23       list, but I'm not aware of it.  24      <b>Q The only years that we were provided are</b>  25       <b>these --</b></p>	<p>205</p> <p>1       <b>employment forms yourself?</b>  2       A   I submit outside employment forms myself.  3       <b>Q For what activity?</b>  4       A   Now or in the past?  5       <b>Q At any time.</b>  6       A   Any time? I would say in the past I have --  7       when I was still part of the Department of Social Work  8       and for a time while I was in the Provost Office I  9       supervised -- I'm a -- I was a licensed clinical social  10      worker, and I supervised people who needed supervision  11      for licensure. I did that off campus for compensation  12      and on campus uncompensated.  13      <b>Q And you reported that?</b>  14      A   Yes.  15      <b>Q On P-2?</b>  16      A   Yes, and then --  17      <b>Q I'm sorry. PA-2.</b>  18      A   -- I have -- currently I have two outside  19      employment forms approved by the Provost, form PA-5. I  20      live in Delray Beach, and I am a member of the Delray  21      Beach Homeless Task Force, and I am also on the Board of  22      Directors of Family Cross of South Palm Beach County,  23      which is an agency that seeks -- that works with  24      homeless families and seeks to make them sustainable and  25      independent.</p> <p>207</p>
<p>1       A   12/13.  2       <b>Q Was there a discontinuation of this list or --</b>  3       A   I'm not aware of this list.  4       <b>Q Okay. My next question is where would non-</b>  5       <b>professional or non-business activity reported go on --</b>  6       <b>in this or anything else like this? Is there something</b>  7       <b>like it?</b>  8       A   This looks like --  9       MR. CURELY: Objection to form.  10      THE WITNESS: It looks like it's -- it looks  11       like the column that's named "Outside Business"  12       includes all sorts of activities.  13      <b>Q (By Mr. Leo) Do faculty have access to this</b>  14       <b>list, if there is one?</b>  15      MR. CURELY: Objection to form.  16      THE WITNESS: I don't know.  17      <b>Q (By Mr. Leo) And who should we ask about this</b>  18       <b>document, if you were going to point us in the direction</b>  19       <b>of someone who would know?</b>  20      A   I don't know. I guess my first -- again,  21       since this includes people and student affairs and  22       parking and transportation -- that I would ask Human  23       Resources please -- fiscal plans. These are all must  24       employees that are outside of Academic Affairs.  25      <b>Q Have you ever been asked to submit outside</b></p>	<p>206</p> <p>1       <b>Are these compensated activities?</b>  2       A   No.  3       <b>Q They're uncompensated?</b>  4       A   Uncompensated.  5       <b>Q And you report them?</b>  6       A   Yes.  7       <b>Q Why?</b>  8       A   Based on the guidelines this is outside  9       activity, and it is tied to -- it can be tied to my  10      profession, and I feel it's important to report, and I  11      think it says in there the guidelines to report activity  12      on a board or on a task force.  13      <b>Q When you say it's tied to your profession,</b>  14       <b>what does that mean?</b>  15      A   Social work. I think working -- I think that  16      people see me on these committees as having some  17      knowledge of homelessness because of my background in  18      social work.  19      <b>Q But is there a connection between your, I</b>  20       <b>guess, area of expertise or your profession and</b>  21       <b>reportability?</b>  22      A   I don't understand the question.  23      <b>Q You had indicated that it's part of your</b>  24       <b>profession --</b>  25      A   Right.</p> <p>208</p>



209 1 <b>Q</b> -- these outside committees. 2   A But I'm required to report, and that's why I'm 3 reporting. 4 <b>Q</b> You're required to report the -- 5   A The activity. 6 <b>Q</b> -- the activity that you're undertaking -- 7   A Correct. 8 <b>Q</b> -- or is it your interpretation that you're 9 required to report it? 10   A I believe I'm required to report like every 11 other employee. 12 <b>Q</b> The policy doesn't say, Diane Alperin, your 13 social work -- 14   A No, it doesn't say Diane Alperin report. 15 <b>Q</b> -- outside of The University is required. 16   A It says employee should report. 17 <b>Q</b> Right. So you interpreted the policy in a way 18 that you believe you need to report, right? 19   A Correct. You have -- 20 <b>Q</b> The policy doesn't say Diane Alperin has to 21 report anything that's connected -- 22   A It doesn't say -- 23 <b>Q</b> -- with social work or -- 24   THE REPORTER: Hold it. 25   THE WITNESS: I'm sorry. It doesn't have	211 1   referring to. 2   THE WITNESS: No. I'm sorry. (H), not (G). 3   "A business activity, including service on the 4 Board of Directors in the same discipline or 5 field." So I believe that these guidelines -- 6 you'd need to report those activities. 7 <b>Q</b> (By Mr. Leo) You've interpreted them that way, 8 but could it also be interpreted that you're not 9 required to report -- 10   A I don't see that. 11 <b>Q</b> -- one -- a business activity that's not a 12 business activity, it's not being compensated? 13   A Business activities doesn't mean it has to be 14 compensated. 15 <b>Q</b> What's business mean? 16   A It's an agency that's running. It's a 17 business. 18 <b>Q</b> I thought you're helping the homeless people. 19 How is it a business? 20   A There's an agency that's supported that has 21 money to help the homeless people. 22 <b>Q</b> Would you agree that's not really a business? 23   A I believe it is a business. 24 <b>Q</b> Isn't it a business about making money? 25   A I think --
210 1   everybody's name in the policy. 2   MR. LEO: Right. 3   THE WITNESS: But in the Report of Guidelines 4 it says that you should report -- let me see. It's 5 a time commitment. 4. "Outside activities when 6 these are in the same field" and that is the 7 faculty of staff member and -- 8 <b>Q</b> (By Mr. Leo) You're reading from the 9 guidelines? 10   A I'm reading from PA-6. 11 <b>Q</b> Okay. 12   A And then -- 13 <b>Q</b> And which page is that? 14   A What? 15 <b>Q</b> Which page are you reading from? 16   A PA-6. Let me get back to that page. Page 5, 17 number 5. "Outside Activities, particularly when these 18 are in the same field as that of the faculty", and then 19 there I think in another place -- 20 <b>Q</b> You're referring to number 5 that says, 21 "Outside activities or financial interest in an entity 22 which competes with The University's core activities"? 23   A Which I have a special expertise, yes, and 24 then if you go to page 8 (G) -- 25   MR. CURELY: This is Exhibit 6 she's been	212 1   MR. CURELY: Objection to form. 2   THE WITNESS: -- making money to provide 3 support or homeless families -- 4 <b>Q</b> (By Mr. Leo) That sounds like -- = 5   A We don't exist -- 6 <b>Q</b> -- public, like a benefit entity or some kind 7 of a public service, not a business. A business would 8 be about making money, and that's it, right? 9   A When we apply for grants we have to show our 10 business profile and our funding. 11 <b>Q</b> Okay. That's because of -- 12   A Did you want these back? 13 <b>Q</b> Is that because of donations or grants you're 14 receiving? 15   A They would do everything, donations, grants, 16 people want to see what -- you didn't mark that, so I 17 didn't -- 18 <b>Q</b> Yeah, we can leave it right here for now, but 19 going back to the interpretation of the policy wherein 20 you have reported these activities, arguably those 21 activities may not be necessarily reportable. 22   A I believe they were necessarily reporting. 23 <b>Q</b> No, I understand what you said that you 24 believe, but couldn't somebody else in similar positions 25 assert an argument that given the language of the --

213  1 both Article 19 as well as The Guidelines, that an 2 uncompensated professional activity does not necessarily 3 have to be reported? For example, if there's no time 4 commitment conflict in the faculty member's eyes? 5 A One, I don't see you have an activity with no 6 time. 7 Q No, I'm saying conflict of time. 8 A So I believe that the only way -- what I 9 reported could not be reported is if it was part of my 10 assignment. 11 Can we have a little break? 12 MR. CURELY: Sure, let's take 5. 13 MR. LEO: Yeah, sure. 14 (Thereupon, the following proceedings took place at 15 3:45 p.m., following a short recess at 3:35 p.m.) 16 Q (By Mr. Leo) All right. Getting back to the 17 Report of Outside Employment, I'm going to show you -- 18 this is FAU 506. It's entitled "Reporting For Outside 19 Employment." This is FAU 506 through 510. On the 20 second page here, FAU 5007, it's entitled "Florida 21 Atlantic University Report of Outside Employment or 22 Professional Activity Form, Additional Explanation." 23 A Would you like that back to -- 24 Q Yeah, this is going to be PA-23. 25 (Thereupon, Plaintiff's Exhibit Number PA-23	215  1 Professor Tracy's termination? 2 A Yes. 3 Q What do you make of this distinction between 4 financial interest and significant financial interest? 5 A This is -- 6 MR. CURELY: Objection, form. 7 THE WITNESS: This is -- 8 Q (By Mr. Leo) Is there a difference? 9 A This is, as I indicated, much of the impetus 10 for the change in the form, and this explanation comes 11 from the Division of Research, and this is part of 12 regulations having to do with federal grants, and that's 13 why this is added, and this is -- a good author of this 14 article was the attorney for -- this document -- I'm 15 sorry -- was the attorney for the Division of Research. 16 Q Which attorney was that? 17 A Jack Lubin. 18 Q So, correct me if I'm wrong, faculty members 19 don't need to report financial interest unless they 20 exceed \$5,000? 21 MR. CURELY: Objection to form. 22 Q (By Mr. Leo) According to this Additional 23 Explanation. 24 A Yes, this has to do with sponsored research. 25 Q I'm referring to where it says, "significant
214  1 was marked for identification.) 2 Q (By Mr. Leo) When you were referring earlier 3 to HR and Additional Explanation, is this what you were 4 referring to? 5 A No. The HR document is the guidelines 6 document. 7 Q Oh, PA -- 8 A That was -- I was showing you. Yes, PA-6, and 9 that's -- 10 Q PA-6. 11 A PA-6, and this is also a document that's on 12 the HR web site, this Additional Explanation. 13 Q When was this "Additional Explanation" 14 provided to faculty? 15 MR. CURELY: Which one are we referring to? 16 MR. LEO: PA-23. 17 THE WITNESS: PA-23, which is the "Florida 18 Atlantic University Report of Outside Employment or 19 Professional Activity Form, Additional Explanation." 20 Q (By Mr. Leo) And when was this Additional 21 Explanation provided to faculty members? 22 A It says June 2016 at the end of the document. 23 I believe it was posted at the same time the new form 24 was put up. 25 Q So this was provided to faculty members after	216  1 financial interest --" 2 A Correct. 3 Q -- in the middle of the page there, and that's 4 page 1? 5 A The indent under significant financial 6 interest. 7 Q Right. Well, my question is whether -- if 8 it's less than \$5,000, does it need to be reported? 9 MR. CURELY: Objection to form. 10 THE WITNESS: For responsive research? No, I 11 assume not. This is not my area of expertise. 12 Q (By Mr. Leo) For any financial interest. 13 MR. CURELY: Objection to form. 14 THE WITNESS: Correct. 15 Q (By Mr. Leo) So, according to this Additional 16 Explanation, only a significant financial interest would 17 have to be disclosed? 18 A No. 19 MR. CURELY: Objection to form. 20 THE WITNESS: This has to do with an 21 investigator, a researcher. 22 Q (By Mr. Leo) Where are you getting that from? 23 A "Significant financial interest is defined as 24 a financial interest consisting of one or more of the 25 following interests of the Investigator." Investigator

217 <p>1 with a capital "I" has to do with a researcher, and 2 those of the investigator's spouse or children that 3 reasonably appears to be related to the Investigator's 4 institutional responsibilities." 5 <b>Q</b> So these who are deemed Investigators this 6 applies to. 7 A Yes. 8 <b>Q</b> Who is an Investigator? 9 A Somebody who has responsive research. 10 <b>Q</b> Where is Investigator defined? 11 A There is other documents that have to do with 12 significant financial interests that are part of the 13 Division of Research. 14 <b>Q</b> Referring to the guidelines, do you see -- 15 MR. CURELY: Can you be more specific? 16 MR. LEO: This is PA-6. 17 <b>Q</b> (By Mr. Leo) For now when I say, "The 18 Guidelines", that's what I'm referring to. 19 A Okay. 20 <b>Q</b> I'm referring to PA-6, the document entitled 21 "Guidelines." 22 A Right. 23 <b>Q</b> If you can, just look at subsection capital B. 24 A B? Do you know what page? Oh, you're on that 25 line.</p>	219 <p>1 report a significant financial interest that would 2 reasonably appear to be affected by the proposed or 3 funded research activity", and it goes on. Is this 4 where Investigator is defined? 5 A Uh-hm. 6 <b>Q</b> Is that what you're referring to? 7 A Yes, it's -- the end of the paragraph talks 8 about "an Investigator is defined as a Principal 9 Investigator, Pro Principal Investigator or any other 10 employee responsible for the design, conduct or 11 reporting of the proposed or funded research or 12 educational activity." 13 <b>Q</b> Uh-hm. Would you agree with me that the -- 14 there's a \$10,000 cap in The Guidelines that you were 15 just reading, if you keep going down to the third 16 paragraph under Capital subsection B? 17 A Yes. It states, "A significant financial 18 interest and not expected to exceed \$10,000 over the 19 next 12 months." 20 <b>Q</b> So in the Guidelines it talked about a \$10,000 21 cap, but in the Additional Explanation it's referring to 22 a \$5,000 cap for Investigators. You agree with that? 23 A Yes. 24 <b>Q</b> The -- has this discrepancy been brought to 25 your attention before?</p>
218 <p>1 <b>Q</b> Yes, it's not numbered. It's in bold, 2 "Federal Reporting Requirement --" 3 A Okay. Yeah, I see that. 4 <b>Q</b> -- and evading the responsive project." 5 MR. CURELY: She's there. 6 <b>Q</b> (By Mr. Leo) If you just read that first and 7 second paragraph underneath the subsection in capital 8 B -- 9 A Do you want me to read it our loud or you just 10 want me -- 11 <b>Q</b> No, you can read it to yourself. 12 A Okay. Okay. 13 <b>Q</b> It's quite extensive. The question I have is 14 about the term "Investigator". You see in that second 15 paragraph it refers to the term? 16 A Right. 17 <b>Q</b> Is this where you're indicating it was 18 defined? 19 A Right. 20 <b>Q</b> "Any employee submitting a grant or contract 21 proposal to the Public Health Service or The National 22 Science Foundation or other government agency through 23 The University or conducting a research or educational 24 activities pursuant to such a federal grant or contract 25 at The University as a --" quote -- "Investigator, must</p>	220 <p>1 A I don't know if it's a discrepancy. I 2 believe -- 3 MR. CURELY: Objection to form. 4 THE WITNESS: -- that the Additional 5 Explanation is because of the change in the federal 6 guidelines. 7 <b>Q</b> (By Mr. Leo) And the federal guidelines that 8 are referenced in this document, the -- PA-6 -- 9 A Right. 10 <b>Q</b> It says, "Federal regulations require The 11 University manage, reduce or eliminate any actual or 12 potential conflicts of interest that may be presented by 13 certain compensated outside activities and other 14 financial interest of persons involved in sponsored 15 research projects funded by the government. Is that 16 your understanding of the federal regulations? 17 A Uh-hm. 18 <b>Q</b> Are there any federal regulations that govern 19 uncompensated activity? 20 A I'm only aware of -- I don't know. The only 21 thing that this relates to is federal regulations that 22 have to do with research. 23 <b>Q</b> And compensated activity. 24 A That's the question that I understand the 25 federal government asks.</p>

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

<p>1 using FAU equipment for anything.  2 <b>Q When did he indicate that?</b>  3 A Back in 2013 I believe.  4 <b>Q Where?</b>  5 A In a conversation with Dean Coltman and  6 myself.  7 <b>Q In January 2013?</b>  8 A Yes.  9 <b>Q And what did he say?</b>  10 A I believe he said he was not using FAU  11 equipment.  12 <b>Q In response to a question?</b>  13 A I don't know that we asked him a specific  14 question.  15 <b>Q So Professor --</b>  16 A I don't remember. It's 2013. It's five  17 years. I don't --  18 <b>Q But you remember him saying I didn't use</b>  19 <b>equipment.</b>  20 A Yes.  21 <b>Q Pretty good memory.</b>  22 (Thereupon, Plaintiff's Exhibit Number PA-24  23 was marked for identification.)  24 <b>Q (By Mr. Leo) Let me show you PA-24. Do you</b>  25 <b>recognize this document?</b></p>	<p>225</p> <p>1 <b>Q No more than normal depreciation of equipment</b>  2 <b>experienced and, 2, use of the facilities and/or</b>  3 <b>services will not result in added expense to The</b>  4 <b>University.</b>  5 A That would be a determination that when the  6 form was submitted and if it was evaluated and signed by  7 the Director and then sent up the chain of command.  8 <b>Q But going back to my question, are these the</b>  9 <b>exceptions to use of equipment approval?</b>  10 MR. CURELY: Objection to form.  11 THE WITNESS: These are the exceptions that  12 are written on this form.  13 <b>Q (By Mr. Leo) And it says here, "The use of</b>  14 <b>these resources will be allowed on a non-interference</b>  15 <b>basis to the extent 1 and 2.</b>  16 A Right.  17 <b>Q So it's allowed if they're not depreciating</b>  18 <b>the equipment and causing added expense to The</b>  19 <b>University.</b>  20 A Correct.  21 <b>Q That's it. Would you agree with me that</b>  22 <b>that's the incidental use policy at FAU?</b>  23 MR. CURELY: Objection to form.  24 THE WITNESS: That's the non-interference  25 basis.</p> <p>227</p>
<p>1 A Yes, it's a form that we use.  2 <b>Q What's this form for?</b>  3 A This is -- if you're using University  4 equipment.  5 <b>Q So PA-24 --</b>  6 A "For use with reported outside employment or  7 professional activity form, an employee who engages  8 outside activity cannot normally expect to use  9 University equipment facilities and/or services. The  10 use of these resources will be allowed only on a non-  11 interference basis to the extent that no more than  12 normal depreciation of equipment is experience in the  13 use of facilities and/or services will not result in  14 added expenses to The University."  15 <b>Q All right. Is that the definition of</b>  16 <b>incidental use?</b>  17 A I think it's talking about use, what you need  18 to record.  19 <b>Q And if it falls into exceptions that you just</b>  20 <b>read, it would not require permission to use the</b>  21 <b>equipment, right?</b>  22 A What exceptions?  23 <b>Q The two you just read.</b>  24 A Oh, if it didn't require a depreciation or  25 result in expenses?</p>	<p>226</p> <p>228</p> <p>1 <b>Q (By Mr. Leo) And the definition of incidental</b>  2 <b>use.</b>  3 MR. CURELY: Objection to form.  4 <b>Q (By Mr. Leo) Right?</b>  5 A I don't see those as the same.  6 <b>Q Going back to The Guidelines, A-9 --</b>  7 A A --  8 <b>Q Where you actually were are reading from that</b>  9 <b>same are page, under reporting requirements, "The</b>  10 <b>following outside activities and financial interest must</b>  11 <b>be reported."</b>  12 A Okay. 9? There's no 9. There's 8 --  13 <b>Q Where it says in bold -- there it is. There</b>  14 <b>it is.</b>  15 A Oh, I see. So there was a letter sent to  16 them.  17 <b>Q Right. Look at subsection A underneath that</b>  18 <b>bold language.</b>  19 A "Outside activities in which there was more  20 than incidental use of University facilities, equipment  21 and/or services, these must be reported."  22 <b>Q Right. This is saying that if it is more than</b>  23 <b>incidental use --</b>  24 A Correct.  25 <b>Q -- it must be reported.</b></p>



<p>229</p> <p>1 A Right.  2 Q So if it wasn't more than incidental use, it  3 doesn't need to be reported --  4 A Correct.  5 Q -- would you agree?  6 A But he reported it.  7 Q Who?  8 A Dr. Tracy.  9 Q Dr. Tracy reported his use of FAU equipment --  10 A Correct.  11 Q -- because he was threatened if he didn't  12 report it, right?  13 A I don't agree that he was threatened.  14 Q Okay. Let's talk about these threats. You  15 don't agree that Professor Tracy was threatened?  16 A I believe he was asked. He was asked  17 repeatedly to submit the Outside Employment Form. I  18 don't think he was asked specifically to fill out The  19 University Equipment Facilities and Services Form, but I  20 could be incorrect.  21 Q Doesn't this all go together?  22 A It does if you're using equipment and  23 facilities.  24 MR. LEO: Are we on 25, PA-25?  25 THE WITNESS: Oh, that's the next one? Yes.</p>	<p>231</p> <p>1 Q Right. So on November 10, 2015, Dean Coltman,  2 with your -- she cc'd you, but did she get permission to  3 send this?  4 A I think we talked about it, but she wrote it.  5 She sent it.  6 Q Did you help her write it?  7 A No.  8 Q You didn't help her draft it?  9 A No. She drafted it to my recollection.  10 Q Did she send you a draft?  11 A I don't recall.  12 (Thereupon, Plaintiff's Exhibit Number PA-26  13 was marked for identification.)  14 Q (By Mr. Leo) I'm going to show you what's been  15 marked as PA-26 for today.  16 MR. LEO: Here's a copy for you, Joe.  17 MR. CURELY: Thank you.  18 MR. LEO: This is also PRR-919 and 920.  19 Q (By Mr. Leo) Would you agree this is a draft  20 of the November 10 Notice of Discipline that was sent to  21 you and Lawrence Glick dated November 9th, 2015? Did  22 this refresh your recollection?  23 A Yes.  24 Q This is a draft that Dean Coltman sent to you  25 and to Lawrence Glick?</p>
<p>230</p> <p>1 (Thereupon, Plaintiff's Exhibit Number PA-25  2 was marked for identification.)  3 Q (By Mr. Leo) Let me show you what's been  4 marked as PA-25.  5 MR. LEO: Here's another extra copy, Joe.  6 MR. CURELY: Thank you.  7 Q (By Mr. Leo) This is the November 10 Notice of  8 Discipline.  9 A Right.  10 Q You've seen this before, right?  11 A Yes.  12 Q And is it your testimony that this is not a  13 threat?  14 A This is asking Dr. Tracy to fill out --  15 acknowledge receipt of his annual assignment and his  16 Outside Employment Forms for the last three years and  17 that failure to do that will result in disciplinary  18 action.  19 Q Well, "It says failure to do that will result  20 in further --"  21 A "May result." May result.  22 Q "May result in further disciplinary action."  23 A Correct.  24 Q So this is actually disciplinary action.  25 A Yes, it's Notice of Discipline.</p>	<p>232</p> <p>1 A Correct.  2 Q Did you make note of this draft?  3 A There are changes between the final and the  4 draft, but I don't know who made the suggestion.  5 Q Do you see what's been changed?  6 A Yes.  7 Q What was changed?  8 A At the end, which is standard language, "This  9 disciplinary action and the reprimand is subject to  10 Article 20 of the BOT/UFF Collective Bargaining  11 Agreement --  12 THE REPORTER: Subject to the what?  13 THE WITNESS: Okay. "Subject to BOT/UFF  14 Collective Bargaining Agreement, and that's  15 standard language and discipline, and then there is  16 a different -- I'm not sure what difference means.  17 In the final draft he is asked to acknowledge  18 receipt of his annual assignment in FAIR and submit  19 the Outside Employment Forms. In the draft he's  20 asked to acknowledge the terms and conditions of  21 his assignment, and I don't know -- at this point I  22 don't recall what the difference was, why that was  23 removed.  24 Q (By Mr. Leo) Before this was sent to Professor  25 Tracy on November 10, 2015, did you have a meeting to</p>

233 <p>1 discuss this discipline? 2 A I don't recall that. 3 Q And you agree that Professor Tracy objected to 4 submitting the forms for his blogging and had requested 5 clarification before this Notice of Discipline. 6 A I do believe that he objected. 7 Q And there was no attempt to speak with 8 Professor Tracy before disciplining him? 9 A I don't know. I did not speak to Professor 10 Tracy about this. 11 Q With all the confusion that was happening, you 12 know, and all the complaints that were expressed in 13 September of 2015, why was Professor Tracy treated 14 differently? 15 MR. CURELY: Objection to form. 16 THE WITNESS: I don't believe he was treated 17 differently. 18 Q (By Mr. Leo) Well, everybody else was 19 communicated with without discipline up until this 20 Notice of Discipline; would you agree? 21 A Who? 22 Q For example, the faculty members who had 23 expressed their confusion and concern. You were talking 24 to them. 25 A Yeah, but they did not -- they did not refuse</p>	235 <p>1 Q -- changes underway? 2 A What does the -- the changes did not negate 3 the obligation to file the report. 4 Q Okay. But -- 5 A There is still a report to be filed now, and 6 there was a report to file then, and there was a report 7 to file when I came to work at FAU in 1980, and it 8 probably existed before then. 9 Q Would you agree that the faculty members' 10 understanding of the policy is shaped by the application 11 of the policy over the years and use of the policy? 12 MR. CURELY: Objection to form. 13 THE WITNESS: I would have to really think 14 about that. I don't know. 15 Q (By Mr. Leo) Take your time. 16 A We always -- you know, we always ask for 17 feedback when we change the form, when we changed -- we 18 added the explanation. That was circulated through the 19 Division of Research. It was circulated through the 20 Deans, the Chairs, the faculty. It went to Faculty 21 Senate. It went to Union. Everybody is involved with -- 22 The University believes in shared government, and 23 everybody's input is respected. 24 Q Was Professor Tracy's input respect in the 25 fall of 2015?</p>
234 <p>1 to submit a form of Outside Employment Activity. 2 Q Do you -- 3 THE REPORTER: Did not what? I'm sorry. 4 THE WITNESS: I'm sorry. The faculty -- are 5 you talking about the faculty that were at the 6 Senate meeting? 7 MR. LEO: Sure. 8 THE WITNESS: I don't know that I had -- I did 9 not have a discussion with them about their refusal 10 to submit an Outside Employment/Professional 11 Activity Form. 12 Q (By Mr. Leo) You had a discussion with the 13 faculty members in September of 2015 about their 14 confusion about the policy, the forms, and was changes 15 that were happening at the time, right? 16 A Yes, there were changes that were happening, 17 yes. 18 Q So why didn't you speak to Professor Tracy and 19 say there's changes that are happening, I know there's a 20 lot of confusion, you know, and here's how we're using 21 this policy and why? 22 A That would not be what I would do. 23 Q You wouldn't tell the faculty member that 24 there's -- 25 A That's --</p>	236 <p>1 A I don't know that he sent me anything that 2 specifically asked for input into the policy -- 3 Q Well, he objected. 4 A -- of the form. 5 Q He objected based on his own concerns about 6 the use of the policy in a way that violated his rights, 7 right? 8 MR. CURELY: Objection to form. 9 THE WITNESS: It didn't violate his rights by 10 submitting the form. I don't believe that. 11 Q (By Mr. Leo) I'm not asking what you believe. 12 I'm asking what Professor Tracy said to his superiors, 13 David Williams, Dean Coltman, to you, whether it was 14 forwarded to you or directly to you. You're aware of 15 what he was saying, right? 16 A I'm aware of some of the e-mails. I don't 17 remember. 18 Q There's a few that we've already gone over if 19 you want to take a look at them again or I can summarize 20 them. 21 A Yeah. 22 Q Professor Tracy, from what I see, was 23 expressing his concern that the policy was being used in 24 a way that been violated his rights, his constitutional 25 rights. He was also concerned that it was perhaps a</p>



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<p>1 breach of the Settlement Agreement that he had entered    2 into with FAU and yourself in 2013; is that a fair    3 characterization?    4 MR. CURELY: Objection to form.    5 THE WITNESS: I don't -- I mean, I'm not gonna    6 characterize what he said, but his rights were not    7 abridged. The Settlement Agreement had to do with    8 the disclaimer. I don't think it said anything    9 about outside employment and activity.    10 Q (By Mr. Leo) What makes you think his rights    11 were not abridged?    12 A Because he didn't submit the form. If he had    13 submitted the form and I had said, after consultation,    14 that this is not an acceptable outside activity, then I    15 would -- he would have to a chance to say why are you    16 saying that. So when a faculty member submits a form --    17 and even sometimes -- I mean, sometimes the Director    18 talks to them, but sometimes it comes to me, and I have    19 a concern, I call the Dean and say this person says    20 they're gonna do 40 hours at Palm Beach State College,    21 and I don't see how they can do 40 hours for FAU and 40    22 hours for Palm Beach College.    23 Q But that wasn't Professor Tracy --    24 A That wasn't Professor Tracy, but what I'm    25 saying is if the form had been submitted, then there</p>	<p>1 did after the deadline.    2 Q Right. Would you agree that there would have    3 never been a deadline the would have been timely after    4 the years had passed and Professor Tracy hadn't reported    5 those years?    6 A I think there was a deadline given to him by    7 the Dean, and that's --    8 Q In 2015.    9 A Yes.    10 Q The first deadline wasn't in 2015 though.    11 A It was 2013.    12 Q Right. So there's a deadline given in 2013 by    13 Dean Coltman to Professor Tracy in January of 2013, and    14 he objects.    15 A Yes.    16 Q And he's not disciplined for that.    17 A As far as I know.    18 Q Would you agree that The University abandoned    19 discipline at that point --    20 MR. CURELY: Objection to form.    21 Q (By Mr. Leo) -- for not submitting the form?    22 A I don't know what decision was made at that    23 point.    24 Q You weren't involved in that process?    25 A No, not back then, no.</p>



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<p>1 A Okay.</p> <p>2 Q Right?</p> <p>3 A As far as I know.</p> <p>4 Q The first time he submits forms for anything</p> <p>5 is late 2015 --</p> <p>6 A Correct.</p> <p>7 Q -- after the threat of termination; would you</p> <p>8 agree?</p> <p>9 A He was disciplined, and he -- oh, and you're</p> <p>10 saying a letter -- a Notice of Term -- in the letter</p> <p>11 from Dean Coltman we talk about for the discipline.</p> <p>12 Q Right. He submits them under duress; would</p> <p>13 you agree with that characterization?</p> <p>14 A I think he had an obligation --</p> <p>15 MR. CURELY: Objection to form.</p> <p>16 THE WITNESS: -- to submit.</p> <p>17 Q (By Mr. Leo) An obligation that The</p> <p>18 University created for him.</p> <p>19 A Created for all its employees. He was not the</p> <p>20 only employee who needed to submit outside employment.</p> <p>21 I don't think you're -- I can't remember. Outside</p> <p>22 activity --</p> <p>23 Q Wouldn't you agree that this policy is</p> <p>24 confusing?</p> <p>25 A No.</p>	<p>1 MR. BENZION: I didn't interrupt the witness,</p> <p>2 I didn't.</p> <p>3 MR. LEO: All right.</p> <p>4 MR. CURELY: I understand, but I need to say</p> <p>5 this, okay?</p> <p>6 MR. LEO: Go for it, Joe.</p> <p>7 MR. CURELY: Sometimes we hear you. Sometimes</p> <p>8 we don't, and I know you're not doing on purpose,</p> <p>9 but just try and be conscious of it, okay, because</p> <p>10 sometimes it gets a little bit long, okay?</p> <p>11 MR. MEDGEBOW: It can confuse people.</p> <p>12 MR. CURELY: I get confused easily on --</p> <p>13 MR. LEO: You need a break? The court</p> <p>14 reporter has indicated she needs a break, so let's</p> <p>15 give her --</p> <p>16 MR. CURELY: Okay. Let's take 5.</p> <p>17 (Thereupon, the following proceedings took place at</p> <p>18 4:25 p.m., following a short recess at 4:15 p.m.)</p> <p>19 Q (By Mr. Leo) All right. So we were talking</p> <p>20 about October, November of 2015, and we were talking</p> <p>21 about Professor Tracy's objection before we broke, and</p> <p>22 we had briefly talked about the confusion that can arise</p> <p>23 from calling the policy different things. You agree</p> <p>24 with that?</p> <p>25 A We talked about that, yes, I agree.</p>
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<p>1 trying to make it clearer; and, as I said before, a lot  2 of that initiative came from research and the  3 requirements for federal reporting.  4 <b>Q Did you say anything at the Senate Faculty</b>  5 <b>meeting about the policy?</b>  6 A I don't remember if it was at that meeting. I  7 do remember commenting at a meeting that we had a  8 committee that was working on the documents. I don'  9 know if it was that meeting or not.  10 <b>Q There's one more minute left on this audio.</b>  11 A Okay.  12 <b>Q I'm going to play it, and you tell me if this</b>  13 <b>is --</b>  14 A If it's me?  15 <b>Q If it's you, okay?</b>  16 A We'll see.  17 <b>Q Fair enough?</b>  18 A I identified earlier that I'm not --  19 MR. LEO: Let me just back this up a minute  20 and a half.  21 (Thereupon, the following proceedings were  22 taken from a recording from Mr. Leo's  23 computer.)  24 A VOICE: I will also add that one of the  25 things that I've done this week is to look at the</p>	<p>245</p> <p>1 that form soon so that it becomes clear, you know,  2 how it would work in that scenario.  3 (Thereupon, the following proceedings took  4 place following the playing of the recording  5 from Mr. Leo's computer.)  6 MR. LEO: Why don't I just play it through,  7 and then when you're done, let me know.  8 (Thereupon, the following proceedings were  9 taken from a recording from Mr. Leo's  10 computer.)  11 MS. ALPERIN: You're talking about the Outside  12 Employment Form?  13 A VOICE: I am.  14 MS. ALPERIN: Yes, we are -- we'll definitely  15 get a draft because we're both trying to get a  16 change to that for about a few years. We're  17 still working on it, but I agree that there needs  18 to be clarity as to what -- there needs to be a,  19 specially from the Division of Research, clarity of  20 all (inaudible) confidential. I think it's rare  21 that we're --  22 (Thereupon, the following proceedings took  23 place following the recording from Mr. Leo's  24 computer.)  25 THE WITNESS: Okay.</p> <p>247</p>
<p>1 form that needs to be filled out, and it's a little  2 bit -- it's confusing about whether it applies in  3 this hypothetical scenario that you're talking  4 about. I understand that there's a revision to  5 that form because of new federal laws surrounding  6 grants and conflict of interest and so forth. So  7 the form is currently being revised, and I hope  8 that we'll see that -- a draft of that form soon so  9 that it becomes clear, you know, how it would work  10 in the -- in that scenario.  11 MS. ALPERIN: Are you speaking about the  12 outside employment form?  13 A VOICE: I am.  14 MS. ALPERIN: Yes, we are looking at that, and  15 we're both trying to get it changed.  16 (Thereupon, the following proceedings took  17 place following the playing of the record from  18 Mr. Leo's computer.)  19 MR. LEO: Here. Let me play it back.  20 MR. CURELY: Yeah, do it again, will you?  21 (Thereupon, the following proceedings were  22 taken from a recording from Mr. Leo's  23 computer.)  24 A VOICE: So the form is currently being  25 revised, and I hope that we'll see that draft of</p>	<p>246</p> <p>248</p> <p>1 <b>Q (By Mr. Leo) I had trouble hearing what you</b>  2 <b>said. Maybe you can tell me what you were saying.</b>  3 A I think I was acknowledging the person  4 speaking right before that, Chris Beetle. He's the  5 President of Faculty Senate, and he was aware that we  6 were working on a revision of the form. He was asking  7 that the form come to the Faculty Senate for review, and  8 I was just acknowledging that we were working on it, and  9 we would come to Faculty Senate, and there was something  10 I couldn't hear, but I think that was the gist of what I  11 was saying.  12 <b>Q So in September of 2014 Chris Beetle is</b>  13 <b>expressing confusion about the policy clearly, right?</b>  14 A He's asking about the form, and he's tieing it  15 to the e-mail that he had seen from Peter Hill to Kevin  16 Wagner.  17 <b>Q Right. Would you agree that Christopher</b>  18 <b>Beetle said on more than one occasion that he was</b>  19 <b>confused and did not understand the policy itself?</b>  20 A In this meeting or --  21 <b>Q In the Senate Faculty meeting we just played</b>  22 <b>the audio for.</b>  23 A And, again, he did say that, and I think he  24 tieing it to the direction that Kevin Wagner has been  25 given by the Vice President of Research I think -- I</p>

249 1 mean, Vice President of Public Affairs. They mentioned 2 that several times. 3 <b>Q So you agree that Christopher Beetle was</b> 4 <b>confused about the policy.</b> 5 A About the policy as it related to the faculty 6 members in particular, yes. 7 <b>Q I didn't hear those words, but I heard him say</b> 8 <b>multiple times, without caveat or specifying a</b> 9 <b>particular case, "I'm still trying to figure out the</b> 10 <b>policy." I mean, I believe that is the one of the</b> 11 <b>examples he used.</b> 12 A Well, I think it is part of the case because 13 this was a faculty member who was told directly in an e- 14 mail from a Vice President not to publish on op-ed. 15 <b>Q Right. Well, this is one --</b> 16 A So this -- 17 <b>Q -- one example of -</b> 18 A Well -- 19 <b>Q -- a concern from one faculty member, right?</b> 20 MR. CURLEY: You have to let her finish. 21 THE WITNESS: I think that was the discussion, 22 and that was concern -- 23 <b>Q (By Mr. Leo) All right.</b> 24 A -- at this meeting. 25 <b>Q And after the discussion that we heard -- and</b>	251 1 <b>document earlier, right?</b> 2 A Yes. 3 <b>Q Did you read this before disciplining</b> 4 <b>Professor Tracy in November of 2015?</b> 5 A I would suspect so. I don't really recall. 6 <b>Q Earlier there was -- part of this e-mail was</b> 7 <b>objected to. Would you agree that this is the full e-</b> 8 <b>mail between David Williams and James Tracy on October</b> 9 <b>27th and October 28th, 2015?</b> 10 A As far as -- I mean, I don't know if there was 11 another e-mail. 12 <b>Q It's not another e-mail. This is the full</b> 13 <b>exchange between James Tracy and David Williams between</b> 14 <b>October 28th, 2015 and October 27th concerning his</b> 15 <b>objections to submitting the Outside Employment Form.</b> 16 A This is the full e-mail that you have shown 17 me. I don't know if there was another response from 18 David Williams to back to James Tracy. I'm not aware of 19 one, but I don't know if there is one. 20 <b>Q All right. You see where he says to David</b> 21 <b>Williams, Tracy says, "Given your leadership role, I'm</b> 22 <b>frankly taken aback at the dismissiveness you exhibit</b> 23 <b>toward my concerns, both here and elsewhere in the</b> 24 <b>presence of other faculty. As you are well aware, since</b> 25 <b>2013 I've been subjected to undue harassment and</b>
250 1 <b>we can let what they said speak for themselves -- what</b> 2 <b>did you do?</b> 3 A I continued to work -- I mean, I continued to 4 work on the -- with my group on a policy and the form 5 until everybody had reviewed it as part of faculty 6 government. As I said, it had gone through Division of 7 Research, Academic Affairs, the Deans, the Chairs, the 8 faculty, and it went back to Faculty Senate, and then it 9 was finally, I believe, posted in spring of 2016. 10 <b>Q After Professor Tracy is fired for not</b> 11 <b>completing the form?</b> 12 A Correct. 13 <b>Q So is it fair that when we're talking about</b> 14 <b>"the form", we're referring to what -- that's PA-2, 2015</b> 15 <b>version of the Outside Employment Form?</b> 16 A I'll have to go find it. PA-2, correct. 17 <b>Q So Professor Tracy was fired for not</b> 18 <b>completing a form that was undergoing changes --</b> 19 A He was -- 20 <b>Q -- at the time.</b> 21 A He was -- part of his termination had to do 22 with insubordination for refusing to file -- use a form 23 that was in place at the time. 24 <b>Q Going back to his actual objection, let me</b> 25 <b>just -- confirming again, this is PA-13. You read this</b>	252 1 <b>surveillance by the FAU administration and like-minded</b> 2 <b>colleagues as a result of the above issue. I apologize</b> 3 <b>if this is an inconvenience for you to address, and I</b> 4 <b>cannot, in good faith, sign off on a document with such</b> 5 <b>implications and potential repercussion." Did you read</b> 6 <b>that in November 2015?</b> 7 A I suspect I did. 8 <b>Q Why did you not call Professor Tracy in to</b> 9 <b>alleviate any concerns he had that the policy was being</b> 10 <b>used in a way that would hurt him?</b> 11 A I believe that's the responsibility of the 12 Director and the Dean. It's not my responsibility. 13 <b>Q The Director of the School --</b> 14 A Right. 15 <b>Q -- who can't provide accurate information</b> 16 <b>about the policy to the faculty members?</b> 17 MR. CURELY: Objection to form. 18 <b>Q (By Mr. Leo) And needs to go to legal for an</b> 19 <b>opinion, is that what you're saying?</b> 20 A I'm saying that the first line is discussing 21 it with the faculty member and the Director and the 22 Dean. 23 <b>Q All right. Would you agree that that failed,</b> 24 <b>that the Director could not help, in this case,</b> 25 <b>Professor Tracy in understanding and complying with the</b>

253 <p>1 policy? 2 A I don't know what Dr. Tracy understood. 3 Q I'm not asking what Dr. Tracy understood. I'm 4 asking whether the Director of the School was unable to 5 help Professor Tracy or to clarify the policy in a way 6 that would be accurate. 7 A I don't know. 8 Q Looking at this today -- you have now all of 9 the e-mails, again, in front of you -- do you think that 10 David Williams accurately explained the policy to 11 Professor Tracy in October 2015? 12 A I don't know what he explained to Dr. Tracy. 13 Q Well, it's right there. 14 A I do know that we -- as we've mentioned 15 before, it's unfortunate that the termination was 16 mentioned, but it's also clear that Dr. Tracy, who was 17 President of the UFF, understood that that was not 18 correct. 19 Q What about Professor Tracy's Presidency did 20 you mean has to do with this? 21 A That he should be familiar -- he is saying 22 that he understands what outside activity is, 23 compensated or uncompensated. He -- 24 Q Well, what does that have to do with UFF? 25 A Because that has to do with the Collective</p>	255 <p>1 which was now required by the federal government for 2 Investigators. 3 Q Which Professor Tracy wasn't. 4 A He was not. 5 Q Okay. 6 A It was also saying that had to do with family 7 members of an Investigator, and then there was the 8 recommendation that faculty not do more than 8 hours of 9 outside activity a week. 10 Q Professor Tracy's concerns were that the 11 policy was being used unlawfully. That was part of his 12 concern, right? 13 A I believe he expressed that. I don't know. I 14 don't know what that means. 15 Q He says, "In light of the above, I would be 16 much more comfortable electronically signing the annual 17 assignment with these qualifications if the 18 administration or its counsel can produce a signed 19 statement asserting its position that my personal 20 activity, media criticism, alternative journalism 21 blogging in no way constitutes legitimate 22 intellectual/creative endeavors, and thus cannot be 23 considered a conflict of interest, conflict of 24 commitment or outside activity." Would you agree that 25 he wasn't provided with that?</p>
254 <p>1 Bargaining Agreement. The collective bargaining is in 2 the Collective Bargaining Agreement. 3 Q Right, but this is not -- 4 A But he's familiar -- 5 Q -- right from the Collective Bargaining 6 Agreement. 7 A But he's familiar with the Collective 8 Bargaining Agreement. He's familiar with what it says 9 about reporting. 10 Q Right, which is why he objected, right, 11 because his language has been changed, just like the 12 faculty members were complaining about in the Senate 13 Faculty meeting. The language had been changed from the 14 Collective Bargaining Agreement. It was now being even 15 more broader; would you agree? 16 MR. CURELY: Objection to form. 17 THE WITNESS: No. 18 Q (By Mr. Leo) You don't agree that the policy 19 was being broadened? 20 A I think the policy was becoming more specific 21 in terms of the Division of Research, what they were 22 requiring to be reported. 23 Q How would it be more specific? 24 A Because it was asking for -- it was asking for 25 -- by the financial -- significant financial interest,</p>	256 <p>1 MR. CURELY: Objection to form. 2 THE WITNESS: I cannot make that decision 3 without the information that's on the form. 4 Q (By Mr. Leo) You can't make a decision as to 5 whether he has a conflict of time commitment? 6 A Yes. He's asking us to make a decision to say 7 that we would not consider it a conflict of interest, a 8 conflict of commitment or an outside activity without 9 seeing the form. 10 Q Okay. Would you agree that the form requires 11 approval? 12 A Yes. 13 Q What makes you think that The University can 14 require approval of a personal activity like blogging? 15 A I believe that we decided that this was 16 professional activity. 17 Q Who decided that? 18 A When it would be reported we would make that 19 decision. 20 Q Okay. So you would agree that by putting it 21 on on form you're subjecting yourself to approval of 22 that activity. 23 A The activity, correct. 24 Q So it's, in essence, saying to FAU you can 25 regulate this activity or you can approve it or</p>

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<p>1 <b>disapprove it.</b></p> <p>2 A Correct.</p> <p>3 Q Okay. Would you agree that that's a prior</p> <p>4 restraint with respect to speech?</p> <p>5 A No, it's not.</p> <p>6 Q If, for example, I submitted to you my blog</p> <p>7 for my speech on this form for approval, I'm needing to</p> <p>8 get permission by submitting that form, right?</p> <p>9 MR. CURELY: Objection to form.</p> <p>10 THE WITNESS: I'm not asking you to submit</p> <p>11 your blog to me for approval. I'm asking you to</p> <p>12 tell me what your activity is and how many hours a</p> <p>13 week you spend in that activity. At no time was he</p> <p>14 asked to submit the blog.</p> <p>15 Q (By Mr. Leo) Why would you need to ask faculty</p> <p>16 members how much they spend writing or blogging or doing</p> <p>17 anything on their own personal time?</p> <p>18 A Because faculty are in an unusual place in</p> <p>19 that their time is very much their own. We have to show</p> <p>20 to the State that they are working 40 fours a week.</p> <p>21 This is made up of teaching, research, service and</p> <p>22 sometimes administration.</p> <p>23 This form allows us to see how much time they</p> <p>24 may be spending on an outside activity. I think in both</p> <p>25 the Collective Bargaining Agreement and all our</p>	<p>1 An activity would be looked at what the activity was and</p> <p>2 the amount of time it took.</p> <p>3 Q Where does it say "any activity that</p> <p>4 interferes"?</p> <p>5 A 19.2(b)2.</p> <p>6 Q Okay. Any activity which interferes with the</p> <p>7 full performance.</p> <p>8 A Full performance.</p> <p>9 Q Okay. Are you saying that the only way to</p> <p>10 evaluate if something is interfering with the</p> <p>11 performance would be to ask a faculty member to submit a</p> <p>12 form about it?</p> <p>13 A Yes.</p> <p>14 Q So you can't evaluate a faculty member's</p> <p>15 performance without a form?</p> <p>16 A I'm evaluating it in context of the outside</p> <p>17 activity.</p> <p>18 Q Okay. Why would you do that? Why wouldn't</p> <p>19 you just look at their performance at school, their</p> <p>20 teaching and what they're doing on the job and say,</p> <p>21 well, you're not doing a good job in this area or that</p> <p>22 area? What does the outside committee have anything to</p> <p>23 do with the faculty member's performance unless they're</p> <p>24 not doing their job?</p> <p>25 MR. CURELY: Objection to form.</p>
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<p>1 documents we talk about that we encourage faculty to</p> <p>2 have outside activity, but we do have to be concerned</p> <p>3 that they are meeting their commitment to The University</p> <p>4 with a salary that's paid for by the taxpayer.</p> <p>5 Q Would you agree you're lumping together a lot</p> <p>6 of things that really have no particularly express</p> <p>7 requirements in your own Collective Bargaining</p> <p>8 Agreement, like the time commitment thing that you just</p> <p>9 described, you have to evaluate a time commitment or a</p> <p>10 potential conflict. That's not in the Collective</p> <p>11 Bargaining Agreement; would you agree?</p> <p>12 A I'd have to look at it again, but it says that</p> <p>13 an activity, which interferes with the full performance</p> <p>14 of an employee, professional or institutional</p> <p>15 responsibilities. So, yes, if somebody is working 40</p> <p>16 hours someplace else, I think that's interfering with</p> <p>17 their full performance.</p> <p>18 Q You're not talking about Professor Tracy</p> <p>19 because he wasn't working anywhere else.</p> <p>20 A Yeah, I -- no, you're asking me to explain</p> <p>21 what I said, why is say a time commitment is one of the</p> <p>22 things that we look at.</p> <p>23 Q So even if it's not in your Collective</p> <p>24 Bargaining Agreement, you look at it.</p> <p>25 A I think it says any activity which interferes.</p>	<p>1 Q (By Mr. Leo) Do you want me to rephrase?</p> <p>2 A Yeah, rephrase it because I think both --</p> <p>3 Q Why do you need to have a form about an</p> <p>4 outside activity to evaluate one's performance on the</p> <p>5 job?</p> <p>6 A I think that if a person has no outside</p> <p>7 activity, their performance is evaluated on the job. I</p> <p>8 think that if a faculty member is submitting a form</p> <p>9 saying that they have an outside activity, I see it as</p> <p>10 the obligation of their director supervisor and the Dean</p> <p>11 to evaluate if this is going to interfere with the</p> <p>12 performance of their duties.</p> <p>13 Q Do you know what pretext is?</p> <p>14 A Explain it to me.</p> <p>15 Q Making up something so you can find something</p> <p>16 wrong, for example.</p> <p>17 A I don't see that's making something up.</p> <p>18 Q I'm just -- I had asked you if you know what</p> <p>19 pretext was.</p> <p>20 A Yes, but you're saying it's making something</p> <p>21 up.</p> <p>22 Q Right.</p> <p>23 A I'm not making something up.</p> <p>24 Q Making faculty members submit their speech</p> <p>25 outside of The University, for example, so that you can</p>

<p>1 evaluate whether or not that's a conflict with their  2 time commitment --  3 A I'm not asking --  4 Q -- how is there a connection?  5 A I'm not asking someone to submit their speech.  6 Q No. You're asking them to report how many  7 hours they're speaking outside of The University, for  8 example; would you agree?  9 MR. CURELY: Objection to form.  10 Q (By Mr. Leo) That's what you would ask them to  11 put on the form, how many hours are you spending on your  12 blog? Is that what you're saying?  13 A It may be. It may be teaching somewhere else.  14 It may be doing research --  15 Q But we're not talking about teaching. We're  16 talking about blogging, for example. Let's start with  17 just blogging, okay?  18 A Uh-hm.  19 Q Why would a faculty member need to tell you  20 how many hours they're blogging on their own time?  21 MR. CURELY: Objection to form.  22 Q (By Mr. Leo) Why?  23 A So the Director can evaluate if that would  24 interfere with their obligations to The University.  25 Q You would agree that a blog posting of a</p>	<p>261  1 the First Amendment?  2 Q I don't know.  3 A I don't many recall being accused of violating  4 the First Amendment.  5 Q All right. For the record, this is a  6 Constitution of the United States, and we have here  7 Amendment 1 dated 1791.  8 A Okay.  9 MR. LEO: Joe, do you want to take a look and  10 make sure it's the First Amendment?  11 MR. CURELY: Okay. Let's see here. It looks  12 like it to me. There you go.  13 MR. LEO: I hope so.  14 THE WITNESS: Okay. "Congress shall make no  15 law respecting an establishment of religion or  16 prohibiting the free exercise thereof, or abridging  17 the freedom of speech or of the press or the right  18 to people peaceably to assemble and to petition the  19 government for a redress of grievances."  20 Q (By Mr. Leo) Does this refresh your  21 recollection as to what the First Amendment says?  22 A Yes.  23 Q You've received letters concerning Professor  24 Tracy's blogging from organizational groups that protect  25 faculty rights, right?</p>
<p>262  1 faculty member is protected by the First Amendment,  2 wouldn't you?  3 MR. CURELY: Objection to form.  4 THE WITNESS: I believe the concept is,  5 correct.  6 Q (By Mr. Leo) Do you know what the First  7 Amendment says?  8 A No. Tell me.  9 Q You don't know what the First Amendment is?  10 A I know in general that it has to do with free  11 speech. Does it have to do with other things as well?  12 Q Are you saying you've never looked at the  13 First Amendment before?  14 A Yes, I have. Did I look at it today? No.  15 Q Would you like me it show it to you?  16 A Sure.  17 Q All right. I was hoping to pull out my  18 Constitution today. And, just to be clear, when is the  19 last time you looked at the First Amendment?  20 A I don't know. I really don't recall.  21 Q Has anybody ever accused you of violating the  22 First Amendment before?  23 A No.  24 Q Never?  25 A Never? Why would they accuse me of violating</p>	<p>262  1 A I believe there were University-received  2 letters, yes.  3 Q You were also sent these letters.  4 A Okay.  5 Q Yes?  6 A I don't know. You have to show me. Show me  7 them.  8 Q Here. I'll show you one of them I have for  9 you, PA-28.  10 (Thereupon, Plaintiff's Exhibit Number PA-28  11 was marked for identification.)  12 MR. LEO: Here's a copy for Joe.  13 MR. CURELY: Thank you.  14 Q (By Mr. Leo) Do you recognize this letter?  15 A Yes.  16 Q On the last page there it says that you were  17 cc'd on this letter.  18 A Okay.  19 Q As well as a lot of other FAU personnel; would  20 you agree?  21 A Okay. Yes.  22 Q Did you read this letter when you got it?  23 A Probably.  24 Q Well, you see page -- well, it says 3 at the  25 top here. It's actually the second page. Do you see</p>

265 <p>1 that? 2 A Uh-hm. 3 Q Do you see the second big paragraph? 4 A Uh-hm. 5 Q It says, "The First Amendment protects Tracy's 6 personal blog entries." 7 A Probably at the time -- 8 Q Do you see that? When did that change? 9 A Why did it change? 10 Q No. I'm asking when did the First Amendment 11 stop protecting Professor Tracy's personal blog entries? 12 MR. CURELY: Objection to form. 13 THE WITNESS: I don't know why -- when 14 Professor Tracy's blog entries was stopped. 15 Q (By Mr. Leo) No. My question was when did the 16 First Amendment stop protecting Professor Tracy's 17 personal blog entries? 18 MR. CURELY: Objection to form. 19 THE WITNESS: I don't see that it stopped. 20 Q (By Mr. Leo) Would you agree that requiring 21 Professor Tracy to report his personal blog entries 22 would not comport with the First Amendment? 23 MR. CURELY: Objection to form. 24 THE WITNESS: He was not required to report 25 his entries. He was required to report his</p>	267 <p>1 A The activity. 2 Q All right. I just want to be clear for the 3 record. When we're talking about -- the personal 4 blogging or are you talking about some other activity? 5 A Well -- 6 MR. CURELY: Objection to form. 7 Q (By Mr. Leo) If you're talking about another 8 activity, tell me so I can under -- be on the same page. 9 A Well, he's reported two activities, correct. 10 Q Which ones? 11 A He reported his -- I think it's Canadian 12 research. 13 Q Are you talking about Global Research? 14 A Global research. Thank you. 15 Q Would you agree that Global Research is a 16 mirror site that mirrors blogs? 17 MR. CURELY: Objection to form. 18 THE WITNESS: I don't know what it is. 19 Q (By Mr. Leo) You don't know? 20 A No. 21 Q Did you, at any point, determine whether or 22 not Global Research was a reportable activity? 23 A He reported it on December 15th. 24 Q He reported it long before that, didn't he? 25 MR. CURELY: Objection to form.</p>
266 <p>1 activity. 2 Q (By Mr. Leo) Which was what you his blogging, 3 right? 4 MR. CURELY: Objection the form. 5 THE WITNESS: His activity. 6 Q (By Mr. Leo) At the time of this blogging in 7 2015. 8 MR. CURELY: Objection to form. 9 THE WITNESS: I didn't ask to read his blogs. 10 Q (By Mr. Leo) Why not? 11 A All we asked was to report the activity. I'm 12 not assessing the content of his blog. 13 Q But how do you know if it's reportable 14 activity? 15 A Because when he reports it it says how many 16 hours he's working, and it's an activity. 17 Q So you're saying once Professor Tracy puts his 18 blog on the outside employment form, then it's now a 19 reportable activity. 20 MR. CURELY: Objection to form. 21 Q (By Mr. Leo) Is that what you're saying? 22 A I'm saying it's a reportable activity. 23 Q At what point? 24 A When he's doing it. 25 Q The blogging?</p>	268 <p>1 Q (By Mr. Leo) Are you suggesting that Professor 2 Tracy hid Global Research from The University? 3 A No. 4 Q You were well aware of Global Research years 5 before he submitted it on a form under the threat of 6 discipline; would you agree? 7 MR. CURELY: Objection to form. 8 THE WITNESS: I was aware of it. 9 Q (By Mr. Leo) Right. Global Research was not 10 only something that you discussed with Professor Tracy 11 and Dean Coltman in 2013, right -- 12 A Uh-hm. 13 Q -- it was also used in FAU's marketing 14 materials on their web site? 15 A Oh, I don't know about that. 16 Q You don't know that The University posted 17 Global Research reference material on the web site? 18 A No, I don't know that. 19 Q Would that be an outside activity or would 20 that be an inside activity? 21 A It depends if he was doing it as part of his 22 assignment. 23 (Thereupon, Plaintiff's Exhibit Number PA-29 24 was marked for identification.) 25 Q (By Mr. Leo) Here. I'll show you PA-29, and</p>



<p>1 let's just gather this, Composite PA-29.</p> <p>2 A Is this the web site? This is the school's</p> <p>3 web site?</p> <p>4 Q Look at the url at the bottom. Does it look</p> <p>5 like --</p> <p>6 MR. CURELY: Go ahead and read it.</p> <p>7 Q (By Mr. Leo) For the record, this is PA-29.</p> <p>8 It's Fau/edu/scms/project_sensor2015.php. It says,</p> <p>9 "Featured story on the College of Arts and Letters</p> <p>10 School of Communication and Multimedia Studies." Have</p> <p>11 you seen this before?</p> <p>12 A No.</p> <p>13 Q You see what I was referring to when I said</p> <p>14 that Global Research was referenced in this featured</p> <p>15 story?</p> <p>16 A Yes.</p> <p>17 Q The link was to James Tracy's publication,</p> <p>18 Help Impact of RF Radiation, Media Blackout on Smart</p> <p>19 Meter Dangers, published by the Center for Research on</p> <p>20 Globalization in January 2014.</p> <p>21 A Correct, and a study of the impact of</p> <p>22 everybody on their cell phone.</p> <p>23 Q Right, that's a whole 'nother can of worms,</p> <p>24 but you agree that the article that's linked to</p> <p>25 ProjectSensor.org/endangers-smart-meters, the source to</p>	<p>269</p> <p>1 Professor Tracey at that meeting?</p> <p>2 MR. LEO: Before that.</p> <p>3 THE WITNESS: Before that?</p> <p>4 Q (By Mr. Leo) You had several meetings; isn't</p> <p>5 that right?</p> <p>6 A With Professor Tracy.</p> <p>7 Q Not with Professor Tracy. With other FAU</p> <p>8 officials.</p> <p>9 A I don't recall.</p> <p>10 MR. LEO: Let me just have this marked. We're</p> <p>11 gonna call it PA-30 for today.</p> <p>12 (Thereupon, Plaintiff's Exhibit Number PA-30</p> <p>13 was marked for identification.)</p> <p>14 Q (By Mr. Leo) Just take a look at these notes,</p> <p>15 and let me know if this refreshes your recollection</p> <p>16 about meetings that were held in January of 2013.</p> <p>17 MR. CURELY: Objection to form.</p> <p>18 THE WITNESS: I don't know whose notes these</p> <p>19 were. They're not my notes.</p> <p>20 Q (By Mr. Leo) Dean Coltman testified that these</p> <p>21 were her notes from those meetings --</p> <p>22 A Okay.</p> <p>23 Q -- just last week.</p> <p>24 MR. CURELY: I'll be right back.</p> <p>25 MR. LEO: Do you need to use the restroom?</p>
<p>270</p> <p>1 the article is Global Research --</p> <p>2 A Global Research.</p> <p>3 Q -- that ca link, and this is, I'm pretty sure,</p> <p>4 on the school's web site. Would this be an outside</p> <p>5 activity?</p> <p>6 A No. This is work that I -- and I'll have to</p> <p>7 read it again, but this is work that he was doing with</p> <p>8 the students, and I don't know if he reported this as</p> <p>9 part of his -- this article as part of this assignment,</p> <p>10 but --</p> <p>11 Q It's more likely this would be part of the</p> <p>12 annual assignment.</p> <p>13 A Right.</p> <p>14 Q The Global Research, in some instances, was</p> <p>15 made a part of Professor Tracy's annual assignment?</p> <p>16 MR. CURELY: Objection to form.</p> <p>17 THE WITNESS: It may have been.</p> <p>18 Q (By Mr. Leo) Based on the nature of the</p> <p>19 publication on that site.</p> <p>20 A Yes.</p> <p>21 Q In 2013 you had meetings with Dean Coltman and</p> <p>22 other officials at FAU about Professor Tracy before the</p> <p>23 first round of disciplining.</p> <p>24 MR. CURELY: Objection to form.</p> <p>25 THE WITNESS: The first -- well, the -- was</p>	<p>270</p> <p>272</p> <p>1 THE WITNESS: Yes.</p> <p>2 LEO: We'll go on a 5-minute break, that's</p> <p>3 fine. Any time you need to take a moment --</p> <p>4 (Thereupon, the following proceedings took place at</p> <p>5 5:14 p.m., following a short recess at 5:02 p.m.)</p> <p>6 Q (By Mr. Leo) Before we broke you were</p> <p>7 reviewing the notes from Dean Coltman from January 2013.</p> <p>8 Does this refresh your recollection about those</p> <p>9 meetings?</p> <p>10 A Somewhat. It does indicate that we had a</p> <p>11 meeting.</p> <p>12 Q When it says, "Diane", that's referring to</p> <p>13 you?</p> <p>14 A Yes.</p> <p>15 Q And the dates at the top here, 1/18/13, 1/9,</p> <p>16 1/14, 1/16, these were each individual meetings that</p> <p>17 were held at The University or the dates of meetings?</p> <p>18 A They're dates of meetings. I don't know if --</p> <p>19 well, I would assume the 1/8 meeting is an actual</p> <p>20 meeting. The others I'm not sure if they're meetings or</p> <p>21 they're phone calls.</p> <p>22 At one point in one of them she says, 1/16/13,</p> <p>23 Larry G. on the phone. So I don't know how many of</p> <p>24 theses were -- other than the first one it looks like it</p> <p>25 was -- it might have been a meeting. The others may be</p>

<p>1 meetings or phones calls. I don't know.</p> <p>2 <b>Q The first note, the 1/8/13 --</b></p> <p>3 A Yes.</p> <p>4 <b>Q -- it says at the top, "Larry Glick, Scott</b></p> <p>5 <b>Silverstein, Jim Actins, Diane Alperin, Lisa Metcalf."</b></p> <p>6 <b>Were those all the names of officials who were in</b></p> <p>7 <b>attendance at the meeting?</b></p> <p>8 A I would expect so.</p> <p>9 <b>Q Do you recall where this meeting was held?</b></p> <p>10 A No.</p> <p>11 <b>Q Where it says, "MJ", is that referring to the</b></p> <p>12 <b>President at the time?</b></p> <p>13 A I assume so.</p> <p>14 <b>Q Mary Jane?</b></p> <p>15 A Mary Jane Saunders.</p> <p>16 <b>Q And it says here, after this, "No e-mail on</b></p> <p>17 <b>this." What does that mean to you?</b></p> <p>18 A I don't know.</p> <p>19 <b>Q Dean Coltman indicated that it may have been a</b></p> <p>20 <b>directive from the President not to e-mail about</b></p> <p>21 <b>Professor Tracy's controversy at the time?</b></p> <p>22 MR. CURELY: Objection to the form.</p> <p>23 <b>Q (By Mr. Leo) Would that be accurate?</b></p> <p>24 A I don't know what she meant.</p> <p>25 <b>Q When it says, "Centrally handle, no comments."</b></p>	<p>273</p> <p>1 A I don't remember a meeting, but there must</p> <p>2 have been some interaction with her if she was taking</p> <p>3 notes. Did she say it was a meeting?</p> <p>4 <b>Q You're talking about Dean Coltman?</b></p> <p>5 A Yes, because I don't --</p> <p>6 <b>Q She indicated that these notes reflected</b></p> <p>7 <b>meetings that were held.</b></p> <p>8 A Okay.</p> <p>9 <b>Q It says here, "Had meeting with MJ." Did you</b></p> <p>10 <b>meet with the President before this meeting?</b></p> <p>11 A I don't recall.</p> <p>12 <b>Q Dean Coltman indicated that she hadn't met</b></p> <p>13 <b>with the President. It must have been you.</b></p> <p>14 A Okay.</p> <p>15 <b>Q That's why I wanted to ask you if you recall</b></p> <p>16 <b>meeting with President Mary Jane Saunders at any point</b></p> <p>17 <b>regarding Professor Tracy.</b></p> <p>18 A At some point. I don't know when it was.</p> <p>19 <b>Q Do you recall what was discussed?</b></p> <p>20 A I -- she was -- as I said, there were a lot of</p> <p>21 issues, a lot of incidents happening that year, and she</p> <p>22 was concerned with the public reaction.</p> <p>23 <b>Q Did you have a meeting about the public</b></p> <p>24 <b>reaction of Professor Tracy's blogging?</b></p> <p>25 A That may have been one of the topics.</p> <p>275</p>
<p>1 <b>Does that ring a bell?</b></p> <p>2 A This particular year there were a lot of</p> <p>3 things occurring, and there was a decision at some point</p> <p>4 -- and I don't know if it refers to it -- that all the</p> <p>5 e-mails, phone calls should be reported centrally and</p> <p>6 that there would be a central response.</p> <p>7 <b>Q When you say "central --"</b></p> <p>8 A Centrally in the President's Office.</p> <p>9 <b>Q Okay. So the President's Office was handling</b></p> <p>10 <b>comments about Professor Tracy?</b></p> <p>11 MR. CURELY: Objection to form.</p> <p>12 THE WITNESS: I believe so.</p> <p>13 <b>Q (By Mr. Leo) And this was in early 2013.</b></p> <p>14 A It says January 2013, yes.</p> <p>15 <b>Q Okay. Just making sure. It says here, "MJ</b></p> <p>16 <b>did not like my e-mail." Did Dean Coltman write an e-</b></p> <p>17 <b>mail that the President did not like?</b></p> <p>18 A I don't -- that's what she says there. I</p> <p>19 don't know what that's about.</p> <p>20 <b>Q You don't remember an e-mail that was not</b></p> <p>21 <b>liked?</b></p> <p>22 A No.</p> <p>23 <b>Q Let's go to the next page here. This just has</b></p> <p>24 <b>your name at the top, "Diane." On 1/9 did you have a</b></p> <p>25 <b>meeting with Dean Coltman, 1/9/13?</b></p>	<p>274</p> <p>1 <b>Q What did the President of the FAU, again, say</b></p> <p>2 <b>about Professor Tracy's blogging?</b></p> <p>3 A I don't remember anything specific other than</p> <p>4 he needed to have a consistent message to the public, to</p> <p>5 both, you know, as I said -- people all over campus were</p> <p>6 getting phone calls, and they would be centrally</p> <p>7 accepted, and the secretaries, etcetera shouldn't have</p> <p>8 to listen to what was being said or respond to it.</p> <p>9 <b>Q Looking at these notes, does this refresh your</b></p> <p>10 <b>recollection about any changes that were being made at</b></p> <p>11 <b>the time?</b></p> <p>12 A Well, that first comment, I don't know -- it</p> <p>13 looks like they're talking about his research</p> <p>14 assignments, his service assignment.</p> <p>15 <b>Q Do you see the bottom there? It looks like it</b></p> <p>16 <b>says, "I revised FAIR after this conversation."</b></p> <p>17 A It says, "DA called back to say no more</p> <p>18 changes." I don't know what that means.</p> <p>19 <b>Q When it says, "DA", she's referring to you?</b></p> <p>20 A Yes.</p> <p>21 <b>Q Is that your initials?</b></p> <p>22 A Yes.</p> <p>23 <b>Q And you don't know what changes she's</b></p> <p>24 <b>referring to?</b></p> <p>25 A No.</p> <p>276</p>



<p>1    Q   Was the FAIR system changed after this course  2   or this meeting?  3    A   I don't know.  4    Q   You had testified that there was a change made  5   in 2014 to the affirmation language.  6    A   Correct?  7    Q   Was that in response to Professor Tracy?  8    A   No.  9    Q   No?  10   A   No.  11   Q   Going to the next page, 1/14, Diamond and  12   Larry.  13   A   Okay.  14   Q   Do you remember this meeting?  15   MR. CURELY: Objection to form.  16   THE WITNESS: Not specifically.  17   Q   (By Mr. Leo) Looking at these notes,  18   objective. It says here, underneath where it sys, "Bring  19   Doug", do you see that?  20   A   Yes.  21   Q   "Objectives: 1. Explore potential  22   misconduct." What's that referring to?  23   A   Well, the next sentence says -- one was  24   disclaimer put on, that there was no disclaimer that  25   would -- could be misconduct.</p>	<p>277</p> <p>1   this is January 14th --  2    Q   2013.  3    A   2013, okay.  4    Q   Right. Yeah, these notes all are in the same  5   month.  6    A   So I suspect this was our discussion since it  7   says, "Bring Doug in preparation for our January 18th  8   meeting with Professor Tracy."  9    Q   So you and Dean Coltman were exploring  10   Professor Tracy's blog at that time?  11   A   At that time -- I don't know what you mean by  12   "explore".  13   Q   Well, it says here, "Explore potential  14   misconduct."  15   A   That had to do with the disclaimer.  16   Q   And then there's an arrow. "It's a violation  17   of CBA."  18   A   Without a disclaimer.  19   Q   Okay. Was Dean Coltman tasked with exploring  20   his conduct?  21   A   I think she was tasked with seeing if there  22   was a disclaimer.  23   Q   And did she follow her objectives?  24   A   I believe that's what we discussed on the 18th  25   with Dr. Tracy.</p>
<p>1    Q   So were you talking about exploring potential  2   misconduct for Professor Tracy's blog?  3    A   I'm not sure.  4    Q   When it says, "Objectives", whose objectives  5   were -- was Dean Coltman indicating?  6    A   I assume they were hers.  7    Q   She said the same thing about you?  8    MR. CURELY: Objection to form.  9    Q   (By Mr. Leo) She testified she believed that  10   she was just taking notes and that you and Larry Glick  11   were the ones that were doing the talking.  12   MR. CURELY: You're mischaracterizing the  13   testimony.  14   MR. LEO: Well --  15   MR. CURELY: You can only testify as to your  16   recollection.  17   Q   (By Mr. Leo) I'm telling you what I heard last  18   week. So if that's different, you'll have an  19   opportunity to review the transcript, and you can make  20   that determination later. Who was exploring potential  21   misconduct? Let's rephrase the question.  22   A   It would have been Dean Coltman if she was  23   looking at the web site if there was a disclaimer or --  24   you know, I think this was -- this is one -- I think  25   this is January 14th, not 1/14, correct? Do you believe</p>	<p>278</p> <p>280</p> <p>1    Q   Okay. And you see the number 3 here, "Citing  2   Global Research as part of research assignment. Should  3   have had disclaimer or it will be evaluated  4   appropriately."  5    A   That was -- I think there was some back and  6   forth with the Director. I believe it was Dr. Marin as  7   to whether the Global Research would be part of his  8   assignment.  9    Q   Based on what you've seen, the Global Research  10   was a part of the annual assignment.  11   A   Uh-hm.  12   Q   In 2013 FAU was well aware of Global Research,  13   right?  14   A   It appears that way.  15   Q   Did you ever look on Global Research to see  16   what Professor Tracy had posted?  17   A   In 2013?  18   Q   At any time.  19   A   Perhaps. I don't recall specifically.  20   Q   Going down here to where it says, "impact --"  21   A   Yes.  22   Q   It says, "Hundreds of e-mails calling for  23   termination --"  24   A   Correct.  25   Q   "-- and appalled at admin."</p>

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



285 <p>1 Q Did FAU conduct an investigation into the 2 veracity of Professor Tracy's blog posts at any point? 3 A No. 4 Q Why not? 5 A That would not be my role to collect -- to 6 assess what he was saying. 7 Q Well, for example, I'm aware that FAU issued a 8 public statement. 9 A That was the President I believe. I don't 10 know. I didn't issue a public statement. 11 Q I don't have it in the front of me, but before 12 issuing a public statement on the matter was an 13 investigation conducted? 14 A I don't know. 15 Q For example, if FAU wished condolences to 16 those who lost their lives at Sandy Hook -- 17 A Did we do that? I don't know. 18 Q You tell me. 19 A I don't know. I'm not aware of that. 20 Q But you're not aware of any investigation that 21 took place concerning Sandy Hook? 22 A The investigation that Dr. Tracy did? 23 Q No. I'm asking if The University investigated 24 Sandy Hook. 25 A Not to my knowledge.</p>	287 <p>1 didn't happen the way that it was reported, who would 2 investigate that? 3 A Could you rephrase that question? 4 Q If a faculty member had reported or had 5 written that an event which is the basis for fundraising 6 at The University for any reason, who would investigate 7 those allegations? 8 MR. CURELY: Objection to form. 9 Q (By Mr. Leo) Let me -- do you want me to 10 rephrase it? 11 A Yes, because I'm not following you. 12 Q For example, Professor Tracy has on his blog 13 in 2012 -- he's writing about unanswered questions from 14 Sandy Hook, and he's questioning whether the event 15 happened the way it is reported -- 16 A Okay. 17 Q -- that it was reported. Who would 18 investigate what Professor Tracy is writing at The 19 University, if anybody? 20 A Nothing if --no, nobody would have to do that. 21 Q If, for example, in this case FAU started 22 fundraising for victims of this event that's being 23 questioned by a faculty member and you're aware of that, 24 the questions that he has asked, right, are you saying 25 there that would be no investigation before fundraising</p>
286 <p>1 Q The University, FAU, did some fundraising for 2 the victims of Sandy Hook; is that correct? 3 A I'm not aware of that. 4 Q You're unaware of that fact? You have no 5 knowledge of that? 6 A No. 7 Q Would that be something that -- who -- let me 8 rephrase. Who would be involved in fundraising for The 9 University? 10 MR. CURELY: Objection to form. 11 THE WITNESS: There's a variety of -- I mean, 12 it could be -- I can't imagine that -- I don't know. 13 It's the foundation, students and individuals. 14 I'm not aware. I don't recall if anybody was 15 organizing that. 16 Q (By Mr. Leo) Do the individual colleges have 17 their own abilities to fundraise? 18 A They fundraise. They generally fundraise for 19 themselves. 20 Q Do they need permission to do that? 21 A Back then, yes. I think we had a central 22 office that The University called Advancement at the 23 time, and we tried to coordinate those events. 24 Q If, for example, a faculty member is alleging 25 an event that's the forming the basis for fundraising</p>	288 <p>1 for these people? 2 A That's not my area. I don't know if The 3 Foundation -- what they investigate before they do 4 fundraising. Again, most of the fundraising the do is 5 for The University. 6 Q Right. If it was fundraising for somebody 7 outside The University, would that be an outside 8 activity? 9 A If an individual was doing fundraising? 10 Q Or The University was fundraising. 11 MR. CURELY: Objection to the form. 12 Q (By Mr. Leo) For someone else outside of The 13 University? 14 A If an individual was doing fundraising, that 15 would be an outside activity. If the -- what I'm 16 thinking now is we encourage contributions to the United 17 Way. That's part of what The University does. Whether 18 they have investigated the United Way -- 19 Q Right. 20 A -- before they made that decision, I'm not 21 aware of that. 22 Q Would that be an outside activity if The 23 United Way was doing a fundraiser or sanctioned by the 24 school, at the school? 25 A No, that would be part of what The University</p>

289 1 is sponsoring. 2 <b>Q And if it was alleged that the event that</b> 3 <b>they're fundraising for is a fraud or a hoax, for</b> 4 <b>example, would that be something that you would be</b> 5 <b>tasked with investigating or who --</b> 6 A I would suspect if it was a fraud it would be 7 the police, the FAU police and -- working in conjunction 8 with counsel. 9 <b>Q Would that be a conflict of interest inquiry</b> 10 <b>as well for a committee or anything like that?</b> 11 MR. CURELY: Objection to form. 12 THE WITNESS: Not to me. If you're saying 13 fraud, that would be -- 14 <b>Q (By Mr. Leo) What is the FAU Conflict of</b> 15 <b>Interest Committee?</b> 16 A There is a committee through the Division of 17 Research where -- and, again, I'm not part of this. I'm 18 not the person who is appointed to that, but we do 19 allow, as we say, conflict of interest, but it has to be 20 managed. 21 <b>Q When you say, "The Committee", who is on The</b> 22 <b>Committee?</b> 23 A It's appointed by the Division of Research. I 24 don't know who's on The Committee. 25 <b>Q All right. Does it still exist today?</b>	291 1 <b>to the notes from January 14th, 2013, under impact here</b> 2 <b>it talks about a Braman e-mail --</b> 3 A No, I -- 4 <b>Q -- donors, history, etcetera, show Braman e-</b> 5 <b>mail. What's that about?</b> 6 A I don't know. I looked at that. I don't 7 know. 8 <b>Q Was he a donor?</b> 9 A I don't know. I don't know if that's related 10 to the history donor who withdrew his donation. 11 <b>Q Who is that?</b> 12 A I don't know the name. 13 <b>Q The history donor?</b> 14 A That there was somebody who was making a 15 donation to the Department of History, and they withdrew 16 it. I believe it was in the papers. 17 <b>Q Is that why the Department of History wrote a</b> 18 <b>letter condemning Professor Tracy in 2013?</b> 19 MR. CURELY: Objection to form. 20 THE WITNESS: I believe that there was a 21 letter. I was one of the people on the letter. Do 22 you have the letter? Do you have the letter? 23 MR. LEO: No, that's why I'm asking about it. 24 THE WITNESS: Okay. It was in the Palm Beach 25 Post.
290 1 A I believe so. 2 <b>Q Was the Conflict of Interest Committee ever</b> 3 <b>formed to evaluate Professor Tracy's blog?</b> 4 A No. 5 <b>Q Or any of Professor Tracy's outside</b> 6 <b>activities?</b> 7 A Not that I know of. 8 <b>Q Who would the Conflict of Interest Committee</b> 9 <b>investigate, if anyone?</b> 10 A I'm not saying it's an investigation. What 11 I'm saying is if a faculty member -- and, again, having 12 to do with research -- is doing something that a 13 conflict needs to be managed, they work out a management 14 plan. 15 <b>Q I see. Who or which faculty member that</b> 16 <b>you're aware of is currently being managed or --</b> 17 A I'm not aware. 18 <b>Q -- by The Committee?</b> 19 A It's not a committee that I work with. 20 <b>Q Have you heard of a monitoring plan before?</b> 21 A I assume it's part of the Conflict of Interest 22 Management Plan, that there would be a monitoring plan. 23 <b>Q How does monitoring work?</b> 24 A I don't know. That's not something that I do. 25 <b>Q Okay. We can come back to that. Going back</b>	292 1 <b>Q (By Mr. Leo) Oh, you're referring to the</b> 2 <b>History Department here?</b> 3 A But I think it was more than -- the people who 4 signed it were more than history faculty, but I do know 5 that the History Department was concerned that they lost 6 the donation, but I don't know who -- I don't think it 7 was only history faculty who signed the letter, but 8 without seeing the letter, I'm not sure. 9 <b>Q In October 2013 there was another letter</b> 10 <b>written by faculty members and administrators. Are you</b> 11 <b>familiar with that one?</b> 12 A No. 13 <b>Q It was published in the Palm Beach Post.</b> 14 A It wasn't the one that I was just talking 15 about was by faculty only? 16 <b>Q I think it's different.</b> 17 A Okay. 18 <b>Q You're referring to -- there was a letter from</b> 19 <b>the History Department, and there was a letter from, I</b> 20 <b>believe, three faculty members.</b> 21 A Okay. Because I'm only familiar with the one. 22 <b>Q Which one?</b> 23 A The three faculty members. 24 <b>Q That was the one that was telling Professor</b> 25 <b>Tracy he should resign?</b>

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<p>1 A Yes, that's my recollection.</p> <p>2 Q Okay. Speaking of that letter, when was that brought to your attention?</p> <p>3 A I believe one of the faculty who was a signature on the letter either called or e-mailed me to tell me that it was going to appear in the Palm Beach Post.</p> <p>4 (Thereupon, Plaintiff's Exhibit Number PA-31 was marked for identification.)</p> <p>5 Q (By Mr. Leo) I'm going to show you what's marked as PA-31. Is that letter you're referring to?</p> <p>6 A Okay. Let me look at it.</p> <p>7 Q I think it ends at the top of page 2.</p> <p>8 A I thought this is just --</p> <p>9 Q Yeah, I think it ends at the top of page 2.</p> <p>10 Q The rest of it may be commentary or part of the article as it is today at least on line.</p> <p>11 A Yes, I'm familiar with the first letter from Dr. Morton Kollander, also. I do not recall the letter from Dr. Morani.</p> <p>12 Q Who brought this to your attention, this publication?</p> <p>13 A I read the Palm Beach Post everyday.</p> <p>14 Q So you saw it in the paper when it was published?</p>	<p>1 I think there were other people who expressed concerns about his conclusions based on his looking at photographs of what happened, and that's -- and I believe that's what -- I believe -- that's a long time ago -- that's what they're saying.</p> <p>2 Q (By Mr. Leo) Did Dr. Morton, Professor Kollander, Professor Wilson, did they actually conduct an investigation into what Professor Tracy was saying?</p> <p>3 A I don't know.</p> <p>4 Q And you said FAU didn't do an investigation either.</p> <p>5 A Correct.</p> <p>6 Q So does FAU normally allow faculty members to disparage other faculty members using the Palm Beach Post as a medium?</p> <p>7 A Do we allow --</p> <p>8 MR. CURELY: Objection to form.</p> <p>9 MR. LEO: Right.</p> <p>10 THE WITNESS: I don't have control over faculty disparaging each other.</p> <p>11 Q (By Mr. Leo) That wasn't the only way that they disparaged him, these professors, in the Palm Beach Post, but they also put this in Professor Tracy's mailbox; isn't that right?</p> <p>12 MR. CURELY: Objection to form.</p>
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<p>1 A Yes, and Dr. Morton had e-mailed me that it was going to be published.</p> <p>2 Q Did Dr. Morton provide an Outside Activity Report for this publication?</p> <p>3 A I don't recall.</p> <p>4 Q And was this an approved activity?</p> <p>5 A A letter to the editor?</p> <p>6 Q Yes.</p> <p>7 A I don't recall.</p> <p>8 Q Did you approve of this publication?</p> <p>9 A I didn't approve or disapprove. I just read it.</p> <p>10 Q Would you agree that this letter is defamatory?</p> <p>11 MR. CURELY: Objection to the form.</p> <p>12 THE WITNESS: I believe it's their opinion. Their speech.</p> <p>13 Q (By Mr. Leo) That he not an academic? That's an opinion?</p> <p>14 A I think.</p> <p>15 MR. CURELY: Objection to form.</p> <p>16 Q (By Mr. Leo) Professor Tracy is an academic, right?</p> <p>17 MR. CURELY: Objection to form.</p> <p>18 THE WITNESS: He was a faculty member at FAU.</p>	<p>1 THE WITNESS: I don't know.</p> <p>2 Q (By Mr. Leo) You don't if it was put in his mailbox?</p> <p>3 A Correct.</p> <p>4 Q This was distributed to all faculty by somebody with access to all of the faculty's mailbox; would you agree?</p> <p>5 MR. CURELY: Objection to form.</p> <p>6 THE WITNESS: I -- what I recall was that the copy of what was printed in the Post was put in the mailboxes of the faculty of the School of Communication. I don't know who did it.</p> <p>7 Q (By Mr. Leo) Are you saying you weren't aware that this publication, this letter was put into Professor Tracy's mailbox and other faculty members' mailboxes?</p> <p>8 A I was aware --</p> <p>9 MR. CURELY: Objection to form.</p> <p>10 THE WITNESS: Sorry.</p> <p>11 Q (By Mr. Leo) You were aware of what?</p> <p>12 A I was aware of that a copy of the letter -- yeah, letter in the Palm Beach Post was put in the mailboxes of the faculty of the School of Communication.</p> <p>13 Q Who has access to the mailboxes?</p> <p>14 A I don't know. I would say everybody. I don't</p>

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<p>1 know -- I don't recall where the mailbox is in that  2 school. Every school is a little bit different.  3 <b>Q</b> <b>Can any faculty member put mail in anybody's</b>  4 <b>mailbox?</b>  5 A Could be.  6 <b>Q</b> <b>They have access to the mailbox?</b>  7 A Maybe access -- I mean, it's not -- I don't  8 know what it's like in the School of Communication, but  9 in most departments and mine it's an mailbox. It's not  10 locked. It's a slot, and people can come by and put  11 things in the slot, including students or staff.  12 <b>Q</b> <b>Did you ever, at any point, identify who</b>  13 <b>distributed this letter in The University?</b>  14 A No.  15 <b>Q</b> <b>Do faculty members have permission to</b>  16 <b>distribute mail to all faculty members?</b>  17 A Yes.  18 <b>Q</b> <b>They can go into the mailroom freely and</b>  19 <b>distribute mail however they want?</b>  20 A Yes, especially if this is in their  21 department, their school.  22 <b>Q</b> <b>Were any of these faculty member, Morton</b>  23 <b>Kollander or Wilson, from the School of Communications?</b>  24 A No, but they were in the College of Arts and  25 Letters, but we don't know who distributed it, the</p>	<p>1 <b>telling them that they're not an academic, and they</b>  2 <b>should resign?</b>  3 A This is their opinion. It's free speech.  4 <b>Q</b> <b>Okay. But can an opinion be harassment,</b>  5 <b>especially if it's a nasty opinion that contradicts</b>  6 <b>actual facts, for example, for example, calling somebody</b>  7 <b>an academic or saying that they're not an academic when</b>  8 <b>they actually are an academic.</b>  9 MR. CURELY: Objection to form.  10 THE WITNESS: So are you asking to restrict  11 their speech?  12 <b>Q</b> <b>(By Mr. Leo) I'm sorry. Am I asking you --</b>  13 A Yes, to restrict their speech.  14 <b>Q</b> <b>-- to restrict their speech?</b>  15 A Yes.  16 <b>Q</b> <b>Well, who said that these people can't speak?</b>  17 A They didn't.  18 <b>Q</b> <b>Was telling them that they can't distribute</b>  19 <b>this mail, this letter to everybody's mailbox, would</b>  20 <b>that be restricting their speech?</b>  21 A They have already spoken. It was already in  22 the paper.  23 <b>Q</b> <b>Right, so was there a reason for them to stick</b>  24 <b>it in everyone's mailbox at --</b>  25 A I don't know who did it.</p>

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<p>1 26, 2013 to Diane Alperin from Jim Tracy.</p> <p>2 A Uh-hm.</p> <p>3 Q You can see he's asking for your help.</p> <p>4 A Right.</p> <p>5 Q Right? Is it safe to say that nobody was disciplined?</p> <p>6 A I'm not aware of anybody being disciplined.</p> <p>7 Q For this publication, PA-32.</p> <p>8 A Yes, I'm not aware of anybody being disciplined, no.</p> <p>9 Q Would you agree that The University condoned this behavior?</p> <p>10 A MR. CURELY: Objection to form.</p> <p>11 THE WITNESS: No.</p> <p>12 Q (By Mr. Leo) How did they not condone it?</p> <p>13 A MR. CURELY: Objection to form.</p> <p>14 Q (By Mr. Leo) Do you know what the definition of what condone means?</p> <p>15 A No. Tell me.</p> <p>16 Q According to Google it means, "accept and allow to continue."</p> <p>17 A It's --</p> <p>18 MR. CURELY: There's no question.</p> <p>19 THE WITNESS: This article was published in the Palm Beach Post, and it was distributed. I</p>	<p>1 Palm Beach Post is acceptable behavior for an FAU faculty member?</p> <p>2 MR. CURELY: Objection to form.</p> <p>3 THE WITNESS: I'm not gonna restrict free speech.</p> <p>4 Q (By Mr. Leo) Whose?</p> <p>5 A These professors.</p> <p>6 Q So if faculty members at your University are name calling -- let's see, in this example Morton, Kollander and Wilson say that James Tracy spins a tall tale about nothing, you think that's free speech?</p> <p>7 A I think that's their opinions, don't you?</p> <p>8 Q Well, if they didn't investigate Sandy Hook, and they didn't read what Professor Tracy wrote, then I would argue that's defamation. That's what that looks like to me, but, again, I'm a lawyer, and I see things a little differently than other people, but going back to what you saw in 2013, you sawing nothing wrong with this letter, PA-32, when you saw this in the Palm Beach Post?</p> <p>9 A No.</p> <p>10 Q You see nothing wrong with faculty members disparaging their colleagues in publication, in print to everybody in South Florida. You see nothing wrong with that, just so we're clear for the record.</p> <p>11 MR. CURELY: Objection to the form.</p>
<p>1 don't know what investigation Dr. Marin did. I</p> <p>2 don't know is she was -- I'm not aware of who --</p> <p>3 MR. LEO: Right.</p> <p>4 THE WITNESS'S: We know who wrote the letter,</p> <p>5 but I don't know who distributed it.</p> <p>6 Q (By Mr. Leo) You never had a meeting with Professor Morton --</p> <p>7 A No.</p> <p>8 Q -- about this letter? You never had a meeting with Professor Kollander?</p> <p>9 A No.</p> <p>10 Q Never had a meeting with Professor Tom Wilson?</p> <p>11 A Not as far as I know.</p> <p>12 Q How about Professor Narayan?</p> <p>13 A No. I wasn't aware that -- I must tell you</p> <p>14 that I don't remember this. Was this published in The Post as well? I'm not aware -- I don't remember it at all.</p> <p>15 Q In fact, he refers to Professor Tracy as some idiot exercising his freedom, again, he calls idiot.</p> <p>16 That kind of behavior is tolerated, faculty members name calling one another?</p> <p>17 A Again, I wasn't of this. That's his opinion.</p> <p>18 Q Do you think a faculty member expressing an opinion that another faculty member is an idiot in the</p>	<p>10 THE WITNESS: The clear answer is no.</p> <p>11 Q (By Mr. Leo) Okay. And you think that if somebody from FAU publishes a statement like Professor -</p> <p>12 - I'm sorry -- James Tracy should not resign from FAU because he has upset people or brought shame to The University. He should resign because he is not an academic. Do you think that's an acceptable comment from FAU faculty members, former administrators to publish in the Palm Beach Post?</p> <p>13 A I think that was their opinion.</p> <p>14 Q Okay. But these are three faculty members that were employed at FAU when they published this opinion.</p> <p>15 A Correct.</p> <p>16 Q Okay. And you said that you don't know if they submitted a form and asking permission to publish this before they did?</p> <p>17 A Correct.</p> <p>18 Q Would you agree that The University acquiesced and accepted this publication afterwards by not disciplining them or doing anything for that matter?</p> <p>19 A As far as -- I don't know what their supervisors did.</p> <p>20 Q Do you know what workplace bullying is?</p> <p>21 A I think I know what -- yes, I know what</p>

<p>1 bullying is.</p> <p>2 Q Would you think this is bullying?</p> <p>3 A No.</p> <p>4 Q Would you consider telling another -- a</p> <p>5 colleague or another employee of your job that they</p> <p>6 should resign because they're not an academic, that's</p> <p>7 not bullying?</p> <p>8 MR. CURELY: Objection to form.</p> <p>9 THE WITNESS: I think that's their opinion.</p> <p>10 They're not --</p> <p>11 Q (By Mr. Leo) Can opinions be bullying --</p> <p>12 A They're not --</p> <p>13 Q -- if expressed in a way --</p> <p>14 A They're not his --</p> <p>15 MR. CURELY: You need to let her talk. You</p> <p>16 guys can't talk can't talk at the same time.</p> <p>17 Finish your question. She'll answer it.</p> <p>18 Q (By Mr. Leo) Can an opinion be bullying?</p> <p>19 A In the abstract?</p> <p>20 Q I'm not asking about abstract. I'm asking can</p> <p>21 an opinion be bullying?</p> <p>22 A These are not his supervisors.</p> <p>23 Q If I told my colleague you're not an academic,</p> <p>24 you should resign, is that me expressing my opinion or</p> <p>25 am I bullying him?</p>	<p>305</p> <p>1 THE WITNESS: No.</p> <p>2 Q (By Mr. Leo) You think this is acceptable</p> <p>3 behavior from an FAU faculty member.</p> <p>4 A I think it's their opinion.</p> <p>5 Q Okay. Their opinion that's expressed in a</p> <p>6 format that you condone; would you agree?</p> <p>7 MR. CURELY: Objection to form. You're</p> <p>8 beating this up pretty good here, counsel. How you</p> <p>9 doing time-wise, guys?</p> <p>10 MR. MEDGEBOW: We got a little more than an</p> <p>11 hour.</p> <p>12 MR. SONDERLING: Seriously?</p> <p>13 MR. MEDGEBOW: Seriously.</p> <p>14 MR. LEO: We're just getting wound up.</p> <p>15 MR. CURELY: I want an inspector general in</p> <p>16 here to monitor this thing.</p> <p>17 Q (By Mr. Leo) All right. Going back to the PA-</p> <p>18 33, did you respond to Professor Tracy?</p> <p>19 A No. I don't recall responding to Professor</p> <p>20 Tracy. Where is --</p> <p>21 Q You didn't write him back and say --</p> <p>22 A -- 33? Do I have 33?</p> <p>23 Q You should.</p> <p>24 A Oh, 32, my attempts to resolve the event?</p> <p>25 Q I'm sorry, 32, PA-32.</p>
<p>306</p> <p>1 A I think that's expressing your --</p> <p>2 MR. CURELY: Objection to form.</p> <p>3 THE WITNESS: That's expressing your opinion.</p> <p>4 Q (By Mr. Leo) Expressing my opinion. Now, if I</p> <p>5 did that in a way that was threatening, would that now</p> <p>6 bullying?</p> <p>7 MR. CURELY: Objection to form.</p> <p>8 THE WITNESS: What is your relationship?</p> <p>9 Q (By Mr. Leo) Let's say I'm a co-worker, I'm in</p> <p>10 a different division, but I decide I'm gonna take my</p> <p>11 opinion, I'm gonna publish it in the Palm Beach Post,</p> <p>12 and I'm gonna print out that opinion, and I'm gonna put</p> <p>13 it in every single's mail -- every single faculty member</p> <p>14 at The University's mailbox so everyone see my opinion,</p> <p>15 including the person that I'm targeting, right, you're</p> <p>16 telling me that's not workplace bullying?</p> <p>17 MR. CURELY: Objection to form.</p> <p>18 THE WITNESS: I think it's their opinion.</p> <p>19 Q (By Mr. Leo) And not bullying.</p> <p>20 MR. CURELY: Objection to form.</p> <p>21 THE WITNESS: I didn't see this as bullying.</p> <p>22 Q (By Mr. Leo) I'm sorry?</p> <p>23 A I didn't see this as bullying.</p> <p>24 Q Do you see it as bullying now?</p> <p>25 MR. CURELY: Objection to the form.</p>	<p>308</p> <p>1 A PA-32. No, I don't recall responding to</p> <p>2 Professor Tracy.</p> <p>3 Q So when Professor Tracy asked if you could --</p> <p>4 when he wrote you said, "His attempts to resolve this</p> <p>5 event described in the attached e-mail has been</p> <p>6 unacceptable -- I'm sorry --</p> <p>7 A Unsuccessful.</p> <p>8 Q -- unsuccessful. I'm interested in better</p> <p>9 understanding what happens to be a campaign of personal</p> <p>10 harassment against me on several fronts within my</p> <p>11 college." There was no followup on that?</p> <p>12 A No.</p> <p>13 Q So --</p> <p>14 A Not that I recall.</p> <p>15 Q -- if a faculty member tells you that he's</p> <p>16 being harassed by other faculty members, you don't</p> <p>17 respond to him?</p> <p>18 A Not necessarily.</p> <p>19 Q Not even I don't think this is harassment,</p> <p>20 sorry?</p> <p>21 A I don't recall responding to him.</p> <p>22 Q Would you agree that that's ignoring him?</p> <p>23 A I think there were employees at The University</p> <p>24 who felt that -- taken in context of what he was doing</p> <p>25 to the parents of the children who died in Sandy Hook,</p>



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<p>1 that that was harassment.</p> <p>2 <b>Q What was he doing to the parents of the</b>  <b>3 children who died in Sandy Hook?</b></p> <p>4 A He was saying that -- and I don't remember</p> <p>5 exactly what the point, but he was saying that this</p> <p>6 event didn't occur.</p> <p>7 <b>Q When did he say that?</b></p> <p>8 A I don't remember exactly. I'd have to go back</p> <p>9 and look.</p> <p>10 <b>Q Do you normally take what the media says about</b>  <b>11 people as truth?</b></p> <p>12 A No.</p> <p>13 <b>Q You agree that the news is not always right?</b></p> <p>14 A Correct.</p> <p>15 <b>Q And that they have their own agenda, the</b>  <b>16 media.</b></p> <p>17 A Some media.</p> <p>18 <b>Q Right, but they have their own agenda --</b></p> <p>19 A I think -- No. I think there's all sorts of</p> <p>20 media out there. I didn't can't just globally that the</p> <p>21 media has their own agenda.</p> <p>22 <b>Q Would you agree that the media, as we know it</b>  <b>23 as the mainstream media, is owned by a handful of</b>  <b>24 corporations?</b></p> <p>25 A Oh, I don't know. That's not my area.</p>	<p>1 THE WITNESS: I agree that they say in the</p> <p>2 first sentence that he's an associate professor of</p> <p>3 communication. I agree that infuriated the public</p> <p>4 because we were getting bad feedback, and I guess</p> <p>5 at this point he had also indicated that the Boston</p> <p>6 Marathon Bombing also didn't happen, that it was</p> <p>7 staged, it happened, it was staged, correct?</p> <p>8 <b>Q (By Mr. Leo) And you read this?</b></p> <p>9 A I read this, yes.</p> <p>10 <b>Q Where did you read that he said that the</b>  <b>Boston Bombing was staged been?</b></p> <p>12 A I believe that I read it on the Memoryhole</p> <p>13 blog --</p> <p>14 THE REPORTER: Memoryhole what?</p> <p>15 THE WITNESS: Memoryhole blog, B-L-O-G, but I</p> <p>16 really don't have -- I did not -- I agree that --</p> <p>17 well, let me see.</p> <p>18 <b>Q (By Mr. Leo) Do you agree that James Tracy</b>  <b>19 spun tall tales out of nothing?</b></p> <p>20 A No. I do believe that he looked at pictures</p> <p>21 and events, and he did believe that they were staged. I</p> <p>22 don't believe --</p> <p>23 <b>Q Did you talk to Professor Tracy about this?</b></p> <p>24 A No.</p> <p>25 <b>Q So how do you know what he believed?</b></p>
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<p>1 <b>Q You don't know that?</b></p> <p>2 A No, I don't know that.</p> <p>3 <b>Q Let's -- so we'll move on that. So was this</b>  <b>4 the first time this PA-32 -- was this the first time</b>  <b>5 that you ignored something that Professor Tracy sent to</b>  <b>6 you?</b></p> <p>7 A I don't know.</p> <p>8 <b>Q Is this standard procedure for dealing with a</b>  <b>9 faculty member that one disagrees with?</b></p> <p>10 A Disagrees with.</p> <p>11 <b>Q Right.</b></p> <p>12 A Why would --</p> <p>13 <b>Q Would you ignore him because you didn't like</b>  <b>14 what he was saying on his blog?</b></p> <p>15 A No. I ignored it because it's the</p> <p>16 responsibility of the Director of the school to do the</p> <p>17 investigation.</p> <p>18 <b>Q Did you agree with Professor Morton, Kollander</b>  <b>19 and Wilson when they wrote that Professor Tracy should</b>  <b>20 resign in 2013?</b></p> <p>21 A No. No.</p> <p>22 <b>Q You didn't agree with them?</b></p> <p>23 A No.</p> <p>24 <b>Q What did you disagree with in their letter?</b></p> <p>25 MR. CURELY: Objection to form.</p>	<p>1 A No, I don't talk to him about that. You asked</p> <p>2 me my opinion. That's my opinion.</p> <p>3 <b>Q Do you agree that Professor Tracy is not an</b>  <b>4 academic?</b></p> <p>5 A No. He was a faculty member at FAU.</p> <p>6 <b>Q So is he an academic.</b></p> <p>7 A Yes.</p> <p>8 <b>Q And at all times material to this case he was</b>  <b>9 an academic.</b></p> <p>10 A Yes.</p> <p>11 <b>Q Going back to November 2015 -- I'm going to</b>  <b>12 show you what's been marked as PA-33.</b></p> <p>13 (Thereupon, Plaintiff's Exhibit Number PA-33</p> <p>14 was marked for identification.)</p> <p>15 MR. LEO: And I don't have a copy for you,</p> <p>16 Joe, but I think you've seen this one.</p> <p>17 MR. CURELY: Oh, yeah.</p> <p>18 <b>Q (By Mr. Leo) This was Professor Tracy's</b>  <b>19 response to the November 10 Notice of Discipline; isn't</b>  <b>20 that right?</b></p> <p>21 A It looks like it.</p> <p>22 MR. CURELY: You guys, I don't know which or</p> <p>23 who's responsible for that agreement.</p> <p>24 MR. LEO: I'm having outside commuter's words.</p> <p>25 Were you doing some of that?</p>

<p>1           MR. CURELY: Well, that's what I'm here for.</p> <p>2   <b>Q (By Mr. Leo) You agree that's Professor</b></p> <p>3 <b>Tracy's response to the November 10 Notice of</b></p> <p>4 <b>Discipline?</b></p> <p>5   A   It appears to be.</p> <p>6   <b>Q And in his response, without belaboring</b></p> <p>7 <b>everything he said in there, he expressed confusion</b></p> <p>8 <b>about the policy still, right?</b></p> <p>9   A   He expressed that confusion, yes.</p> <p>10   <b>Q And he was upset and concerned that he wasn't</b></p> <p>11 <b>given clarification --</b></p> <p>12   A   He expresses that.</p> <p>13   <b>Q -- by his superiors.</b></p> <p>14   A   Yes.</p> <p>15   <b>Q Did you review this response with Dean</b></p> <p>16 <b>Coltman?</b></p> <p>17   A   I don't recall.</p> <p>18   <b>Q Dean Coltman, did she ask you for guidance in</b></p> <p>19 <b>responding to it?</b></p> <p>20   A   I don't recall.</p> <p>21       (Thereupon, Plaintiff's Exhibit Number PA-34</p> <p>22       was marked for identification.)</p> <p>23   <b>Q (By Mr. Leo) I'm going to show you what's been</b></p> <p>24 <b>marked as PA-34.</b></p> <p>25   MR. LEO: I don't have a copy, Joe.</p>	<p>313</p> <p>1           <b>THE WITNESS:</b> I believe in paragraph 2 she's</p> <p>2       saying, "I am writing to reiterate clearly that you</p> <p>3       must file Report of Outside Employment or</p> <p>4       Professional Activity Forms for 2013/14, 2014/15</p> <p>5       and 2015/16 as required by University policy found</p> <p>6       Article 19 of UFF FAU BOT Collective Bargaining</p> <p>7       Agreement and as directed by me in my Notice of</p> <p>8       Discipline dated November 20th, 2015. This is not</p> <p>9       optional."</p> <p>10   <b>Q (By Mr. Leo) This is clarification?</b></p> <p>11   A   I believe it's clarification.</p> <p>12   <b>Q This clarifies that the policy is not being</b></p> <p>13 <b>used in a way that would violate --</b></p> <p>14   A   No, this would --</p> <p>15   <b>Q -- his Settlement Agreement, for example? I'm</b></p> <p>16 <b>sorry. Let me just finish so she can get a break.</b></p> <p>17   A   Sorry.</p> <p>18   <b>Q You're saying that this clarifies that the</b></p> <p>19 <b>policy is not being used in a way that violates the</b></p> <p>20 <b>Settlement Agreement that was entered in 2013?</b></p> <p>21   A   The Settlement Agreement had to with</p> <p>22       disclaimers. It didn't have to do with outside activity.</p> <p>23   <b>Q Why didn't Dean Coltman say that?</b></p> <p>24   A   Why would she say that?</p> <p>25   <b>Q Well, he's asking you for clarification to</b></p>	<p>315</p>
<p>1   <b>Q (By Mr. Leo) Does this e-mail refresh your</b></p> <p>2 <b>recollection as to whether Dean Coltman asked you for</b></p> <p>3 <b>guidance with respect to the response to this PA-3?</b></p> <p>4   A   I see that I was sent this. I don't remember</p> <p>5       how I responded.</p> <p>6   <b>Q Let me show you how Dean Coltman, and here's a</b></p> <p>7 <b>copy for Joe.</b></p> <p>8       MR. CURELY: Thank you.</p> <p>9   <b>Q (By Mr. Leo) Was this the advice you gave to</b></p> <p>10 <b>Dean Coltman on how to respond to Professor Tracy's</b></p> <p>11 <b>November 22nd letter?</b></p> <p>12   A   I don't recall.</p> <p>13   <b>Q Do you believe that Dean Coltman ultimately</b></p> <p>14 <b>ignored much of what Professor Tracy was saying and</b></p> <p>15 <b>asking for?</b></p> <p>16   A   Well, she's saying --</p> <p>17       MR. CURELY: Objection to form.</p> <p>18       THE WITNESS: She says, "You claim you were</p> <p>19       confused. I have now addressed that." I'm sorry."</p> <p>20       Because you claim that you were confused and I</p> <p>21       have now addressed that, I will extend the deadline</p> <p>22       to submit these reports to me.</p> <p>23   <b>Q (By Mr. Leo) How did Dean Coltman address</b></p> <p>24 <b>that?</b></p> <p>25       MR. CURELY: Objection to form.</p>	<p>314</p> <p>1           <b>make sure that their -- this directive doesn't conflict</b></p> <p>2 <b>with that agreement or isn't a violation of the</b></p> <p>3 <b>agreement, right? Isn't that what he wrote in that long</b></p> <p>4 <b>letter that you just read?</b></p> <p>5       MR. CURELY: Objection to form.</p> <p>6   <b>Q (By Mr. Leo) No. Don't read it again. Let's</b></p> <p>7 <b>stick to what you know. You just had a chance to read</b></p> <p>8 <b>it. You read it for about 15 to 20 minutes --</b></p> <p>9       A   Okay.</p> <p>10   <b>Q -- okay? So based on what you just read,</b></p> <p>11 <b>without looking at it again --</b></p> <p>12       MR. CURELY: Objection to form.</p> <p>13   <b>Q (By Mr. Leo) -- would you agree with me that</b></p> <p>14 <b>she did not clarify that the policy was not being used</b></p> <p>15 <b>in a way that violated the Settlement Agreement, Dean</b></p> <p>16 <b>Coltman, in her letter --</b></p> <p>17       A   I agree in her letter she doesn't --</p> <p>18   <b>Q -- doesn't even talk about a Settlement</b></p> <p>19 <b>Agreement.</b></p> <p>20       A   Yes, I agree that she didn't talk about the</p> <p>21 <b>Settlement Agreement.</b></p> <p>22   <b>Q Right, so she -- Dean Coltman didn't provide</b></p> <p>23 <b>clarification on the Settlement Agreement. Did she</b></p> <p>24 <b>respond to anything about free speech?</b></p> <p>25       MR. CURELY: Objection, form.</p>	<p>316</p>

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<p>1       THE WITNESS: She says that she reviewed his  2       arguments --  3       <b>Q (By Mr. Leo) But doesn't respond.</b>  4       A -- relating to outside activity, research,  5       claim of free speech and academic freedom.  6       <b>Q But doesn't respond to any of those arguments.</b>  7       A Not in this letter.  8       MR. CURELY: Objection to form.  9       <b>Q (By Mr. Leo) Right. Would you agree with me</b>  10      <b>that Dean Coltman ignored Professor Tracy's argument in</b>  11      <b>this November 22nd letter?</b>  12      A No.  13      <b>Q Let me ask you another question. Would Dean</b>  14      <b>Coltman have the authority to not discipline Professor</b>  15      <b>Tracy at this point?</b>  16      A Yes.  17      <b>Q Without you or anybody from the Provost, she</b>  18      <b>could say, you know what, I'm not gonna discipline</b>  19      <b>Professor Tracy any further.</b>  20      A Correct?  21      <b>Q So could have also have said I'm not going to</b>  22      <b>require forms for the blog based on free speech</b>  23      <b>concerns.</b>  24      A No.  25      MR. CURELY: Objection to form.</p>	<p>1       <b>2015 letter?</b>  2       A I don't recall. I don't deny. I don't  3       remember discussing it with her.  4       <b>Q Did she draft this letter or did you or</b>  5       <b>something else?</b>  6       MR. CURELY: Objection to form.  7       THE WITNESS: I don't know. I believe she  8       drafted it.  9       <b>Q (By Mr. Leo) Did somebody send her this</b>  10      <b>language to use?</b>  11      A I don't know.  12      <b>Q Was this drafted by an attorney for FAU, for</b>  13      <b>example?</b>  14      A Maybe. I don't know.  15      <b>Q Who would know the answer to that question?</b>  16      A I guess Dean Coltman.  17      <b>Q And if she didn't know?</b>  18      A I don't know who would know.  19      <b>Q Okay. Going back to the discipline in this</b>  20      <b>instance, Professor Tracy was given a deadline of when,</b>  21      <b>December 14th; is that what it says?</b>  22      A Yes.  23      <b>Q At 5:00 p.m.?</b>  24      A Yes.  25      <b>Q Was that a Friday?</b></p>



<p>321</p> <p>1 including termination.  2 A Yes.  3 Q Would you agree with me that this did not  4 clear up any confusion for Professor Tracy?  5 MR. CURELY: Objection to form.  6 Q (By Mr. Leo) -- this letter?  7 A I don't know.  8 Q Nonetheless, Professor Tracy did submit the  9 form that he was directed, albeit it was the next day,  10 December 15th.  11 A Correct.  12 MR. CURELY: Object to the form.  13 Q (By Mr. Leo) Tuesday.  14 A He submitted some forms on December 15th.  15 Q Okay. My question now is was the decision to  16 fire Professor Tracy -- was it before this letter was  17 sent on Friday, December 11th, 2015? Was the decision  18 made already?  19 MR. CURELY: Exhibit 35.  20 (Thereupon, Plaintiff's Exhibit Number PA-35  21 was marked for identification.)  22 Q (By Mr. Leo) PA-35. You still got it in front  23 of you, right?  24 A Yeah, I'm looking at it.  25 Q Yeah.</p>	<p>323</p> <p>1 Q (By Mr. Leo) When you say two months, do you  2 mean three years?  3 A From October -- no. I'm talking about from  4 October 20th when --  5 Q But wasn't he asked in January of 2013?  6 A Right, but he wasn't disciplined for that.  7 Q Right.  8 A Correct.  9 Q Doesn't that create some confusion perhaps  10 from the part of Professor Tracy?  11 A No.  12 MR. CURELY: Objection to form.  13 Q (By Mr. Leo) So you admit that he was directed  14 in January of 2013 to submit the form for his blog.  15 A That's in a letter, yes.  16 Q Okay. He doesn't.  17 A Correct.  18 Q And he's not disciplined for it.  19 A As far as I know.  20 Q In 2013.  21 A Correct.  22 Q He's not asked again to submit the form  23 until--  24 A October.  25 Q -- October of 2015.</p>
<p>322</p> <p>1 MR. CURELY: She has an e-mail, and you keep  2 saying letter. I just don't want to be confused  3 about it.  4 THE WITNESS: I think that we were moving in  5 that direction, and clearly if he had submitted the  6 correct form, he would not have gotten a Letter of  7 Termination post termination. On what basis --  8 Q (By Mr. Leo) Are you saying that he would have  9 been fired had he turned them in on Monday?  10 A Correct. If he turned them all in even on  11 Tuesday.  12 Q He turned them in on Tuesday.  13 A But he didn't complete the Memoryhole blog.  14 He didn't --  15 Q You're saying he didn't --  16 A He did not include that. It was not what he  17 submitted.  18 Q So he didn't include his personal blog on the  19 Outside Employment Form --  20 A Correct.  21 Q -- and he was fired for that.  22 MR. CURELY: Objection to form.  23 THE WITNESS: Because he had been repeatedly  24 asked for two months to submit these forms.  25 Insubordination. He didn't complete the form.</p>	<p>324</p> <p>1 A Right.  2 Q Years later.  3 A Right.  4 Q Years after no discipline has been implemented  5 for his refusal to submit the forms for his blog in  6 2013, right?  7 A Correct.  8 Q Do you not see any problem with that?  9 A No.  10 Q You think it's okay that he wasn't disciplined  11 in 2013?  12 A I see that he was asked in 2015 to submit the  13 forms accepting his assignment and --  14 Q After The University --  15 MR. CURELY: You have to let her finish her  16 answer, okay?  17 MR. LEO: Okay. Or I can ask another  18 question, and I'll ask --  19 MR. CURELY: And interrupt her, sure.  20 MR. LEO: It's my deposition. If I want to  21 conduct it this way, then that's my prerogative.  22 MR. CURELY: Fine. I made my objection.  23 Q (By Mr. Leo) Going to the years that went by  24 from January 2013 to October 2015, you don't see any  25 problem with the University's position with respect to</p>

<p>1 perhaps acquiescence?</p> <p>2 A I didn't know that he didn't submit the forms.</p> <p>3 Q You didn't know that he didn't submit the</p> <p>4 forms?</p> <p>5 A It's not my role to monitor who submits the</p> <p>6 forms.</p> <p>7 Q You just said though that you knew that he</p> <p>8 didn't submit the form in 2013, right?</p> <p>9 A In 2013, but subsequent to that until 2015,</p> <p>10 when he objects, that's when this becomes an issue.</p> <p>11 Q But weren't you exploring potential misconduct</p> <p>12 in 2013?</p> <p>13 A No. We were exploring --</p> <p>14 Q That's not what Dean Coltman wrote down in her</p> <p>15 notes from your meeting in January 2013?</p> <p>16 A That's what she wrote down in her notes.</p> <p>17 Q In meetings with you.</p> <p>18 A Yes, but that's --</p> <p>19 Q And she testified that she didn't say anything</p> <p>20 about exploring misconduct, so through process of</p> <p>21 elimination, that leaves either you or FAU general</p> <p>22 counsel.</p> <p>23 MR. CURELY: I'm gonna object to counsel's</p> <p>24 statement for the record.</p> <p>25 Q (By Mr. Leo) Would you agree?</p>	<p>325</p> <p>1 A In 2013.</p> <p>2 Q When was there a threat to Professor Tracy's</p> <p>3 safety?</p> <p>4 A There was many e-mails and phone calls of</p> <p>5 people who wanted him fired.</p> <p>6 Q So --</p> <p>7 A I don't know -- you know, like I said, there</p> <p>8 were many e-mail, so I'm not sure what they all said.</p> <p>9 Q Did you ever talk to anybody who made threats</p> <p>10 to Professor Tracy?</p> <p>11 A Personally, I don't recall.</p> <p>12 Q So you possibly did?</p> <p>13 A I may have.</p> <p>14 Q Did you ever speak to somebody named Posner?</p> <p>15 A No.</p> <p>16 Q Did you speak to Lenny Posner?</p> <p>17 A No.</p> <p>18 Q How about his spouse, Veronica?</p> <p>19 A No.</p> <p>20 Q Did you speak to anyone from the Soto family?</p> <p>21 A No.</p> <p>22 Q Any family from Sandy Hook?</p> <p>23 A I believe there were e-mails. I don't</p> <p>24 remember phone calls.</p> <p>25 Q You were forwarded e-mails from people who</p>	<p>327</p>
<p>1 MR. CURELY: Move to strike.</p> <p>2 MR. LEO: That's something that can be</p> <p>3 determined later, and we can address those</p> <p>4 objections later.</p> <p>5 Q (By Mr. Leo) But given Defendant Coltman last</p> <p>6 week testified that she did not explore potential</p> <p>7 misconduct based on her notes that she testified to,</p> <p>8 would you agree with me that FAU or whoever was in this</p> <p>9 meeting was exploring potential misconduct in early</p> <p>10 2013?</p> <p>11 MR. CURELY: I object and move to counsel's</p> <p>12 comments, which are extraneous, just for the</p> <p>13 record.</p> <p>14 MR. LEO: You can answer the question. His</p> <p>15 objections are noted for the record.</p> <p>16 THE WITNESS: I don't remember being directed</p> <p>17 to explore misconduct.</p> <p>18 Q (By Mr. Leo) Did you direct Dean Coltman to</p> <p>19 explore misconduct?</p> <p>20 A I don't recall that.</p> <p>21 Q Is it possible you did?</p> <p>22 A I don't recall. We were really focused on the</p> <p>23 safety of the -- of Dr. Tracy, the safety of his</p> <p>24 students, the --</p> <p>25 Q When?</p>	<p>326</p> <p>1 were connected with these folks.</p> <p>2 A Yes.</p> <p>3 Q Misty Fitch, does that ring a bell?</p> <p>4 A No.</p> <p>5 Q You don't remember getting an e-mail about</p> <p>6 Misty Fitch?</p> <p>7 A No, I don't remember.</p> <p>8 Q She was connecting Dean Coltman with the</p> <p>9 Posner family in 2015; does that ring a bell?</p> <p>10 A I remember somebody who contacted Dean</p> <p>11 Coltman, but I didn't have contact with them.</p> <p>12 Q Dean Coltman was having contact with these</p> <p>13 people though.</p> <p>14 A Yes.</p> <p>15 Q You're aware of that.</p> <p>16 A I believe that most of the initial calls came</p> <p>17 into the School of Communication and to Arts and Letters</p> <p>18 and then to the President and then to the Provost.</p> <p>19 Q Right, there was lots of complaints about</p> <p>20 Professor Tracy --</p> <p>21 A Right.</p> <p>22 Q -- based on a defamatory op-ed in the Sun-</p> <p>23 Sentinel that accused Professor Tracy of harassment,</p> <p>24 right?</p> <p>25 MR. CURELY: Objection to form.</p>	<p>328</p>



<p>1 THE WITNESS: You're talking about 2015 now.  2 MR. LEO: Right.  3 THE WITNESS: Yes.  4 Q (By Mr. Leo) The Posners wrote an op-ed in the  5 Sun-Sentinel December 10th, 2015, right?  6 A Correct.  7 Q Did that affect your judgment in this case?  8 A No.  9 Q And the decision that was made on December 16,  10 2015.  11 A No.  12 Q You had said that the decision -- you were  13 getting there?  14 A Correct.  15 Q What was it that you said?  16 A Well --  17 Q When exactly do you think a decision was made?  18 A The day that we sent the letter.  19 Q On the 16th.  20 A Yes.  21 Q But you said that it was in your mind before  22 that that this was gonna be a termination?  23 A Could be.  24 Q Would you agree that that would be the first  25 official discipline that Professor Tracy faced for not</p>	<p>329</p> <p>1 discipline with the December discipline.  2 A Correct.  3 Q This was all stemming from the same offense.  4 A Yes.  5 Q So you would agree that the discipline between  6 November and December stems from the same conduct.  7 A Correct.  8 Q Okay. The first discipline is just a nasty  9 note or a letter, the November 10 notice or you called  10 it a reprimand?  11 MR. CURELY: Objection to form.  12 Q (By Mr. Leo) Is that -- that's discipline,  13 right?  14 A A reprimand is discipline, yes.  15 Q So the first discipline then would be the  16 letter in the file, a reprimand.  17 A Yes.  18 Q The next discipline was that termination?  19 A Yes.  20 Q And that was after Professor Tracy turned in  21 the forms albeit he was missing one for his personal  22 blog.  23 A Correct.  24 Q Do you agree with that?  25 A Yes.</p>	<p>331</p>
<p>1 turning in the forms?  2 MR. CURELY: Objection to form.  3 THE WITNESS: No, I thought he just -- got  4 disciplined November 10th from Christine Coltman.  5 Q (By Mr. Leo) Okay. So November 10th was the  6 first discipline for not turning in the forms for the  7 blog.  8 A Yes.  9 Q And the next wave stemmed from the same exact  10 offense.  11 A Yes.  12 MR. CURELY: Objection to form.  13 Q (By Mr. Leo) The December discipline was  14 termination.  15 MR. CURELY: You said defense or offense?  16 MR. LEO: Same exact offense.  17 MR. CURELY: Okay. Sorry.  18 Q (By Mr. Leo) The offense of not turning in the  19 forms, that's what we're talking about, right?  20 A So it looks like you're saying offense, not  21 defense.  22 MR. CURELY: Yeah, I thought he said defense.  23 I'm sorry.  24 Q (By Mr. Leo) I may have just said it fast, and  25 I apologize. I'm referring to comparing the November</p>	<p>330</p> <p>1 Q Were you present on November 30th at the  2 meeting between FAU officials and Union officials?  3 MR. CURELY: Objection to form.  4 THE WITNESS: November 30th?  5 Q (By Mr. Leo) November 30th, 2015 there was a  6 consultation that was held. Do you remember that.  7 A No, I don't go to consultations. Usually it's  8 consultations with the President and then the Provost ad  9 legal counsel.  10 Q Okay.  11 A I don't remember that consultation.  12 Q Is it possible that you were there?  13 A No, not usually -- not at that time. There  14 was a time many, many years ago where I was the only  15 person in consultation, but that changed under Dr.  16 Saunders where she wanted to do the consultations  17 herself, and I believe Dr. Kelly has done the  18 consultations himself.  19 Q So you weren't in a meeting with Defendant  20 Zoeller, Moes, Kelly, Glick at any time?  21 MR. CURELY: Objection to form.  22 THE WITNESS: At any time?  23 Q (By Mr. Leo) That you can remember.  24 A I remember one consultation. This was after  25 we had posted the new Outside Activity Form --</p>	<p>332</p>



<p>1   <b>Q</b> And --</p> <p>2   A -- and the new Additional Explanation, yes,</p> <p>3 and the -- when the Union does consultation they send an</p> <p>4 agenda to The President --</p> <p>5   <b>Q</b> Uh-hm.</p> <p>6   A -- and my recollection is that Bob Zoeller</p> <p>7 sent an agenda that included outside activity, and --</p> <p>8   <b>Q</b> But this was after Professor Tracy was fired?</p> <p>9   A Yes. This was --</p> <p>10   <b>Q</b> How about before --</p> <p>11   A After the new form --</p> <p>12   <b>Q</b> Okay.</p> <p>13   A -- was posted. So that's how I know because</p> <p>14 their concern was they would sign the form, meaning the</p> <p>15 Union -- and I don't recall if I was there for the whole</p> <p>16 meeting or only that meeting. They had no problem with</p> <p>17 the new form.</p> <p>18   They were concerned about the pieces that we</p> <p>19 were required to add because of research, the fact that</p> <p>20 we were recommending that faculty not do more than 8</p> <p>21 hours of outside activity, the fact that there was</p> <p>22 significant and financial interest included family.</p> <p>23 That's my recollection of their concerns that were</p> <p>24 discussed at the consultation, and I believe Mike Moes</p> <p>25 was at that meeting.</p>	<p>333</p> <p>1   A The -- the meeting was -- well, first you</p> <p>2 asked me about Zoeller, and Moes was not here.</p> <p>3   <b>Q</b> Okay.</p> <p>4   A Okay? We -- the meeting was on collective</p> <p>5 bargaining. Management was there. The Union had</p> <p>6 representatives there.</p> <p>7   <b>Q</b> Where did this request for extension -- where</p> <p>8 did this happen?</p> <p>9   A I'm getting to that?</p> <p>10   <b>Q</b> Okay.</p> <p>11   A Okay? So we were doing collective bargaining.</p> <p>12 We were taking a break, and my recollection is that Bob</p> <p>13 Zoeller asked to speak to Larry Glick.</p> <p>14   <b>Q</b> About Tracy.</p> <p>15   A I wasn't sure what it was about at that point.</p> <p>16 He asked to speak to Larry. They -- we meet in the</p> <p>17 Provost conference room for bargaining. They went</p> <p>18 across to the BOT room, which was empty, and I can't</p> <p>19 recall if I went over on my own or whether they called -</p> <p>20 - asked me to come in, but the discussion was that -- as</p> <p>21 you see, it was the middle of December. The Union was</p> <p>22 trying to secure an attorney for Dr. Tracy, and they</p> <p>23 were trying to secure a meeting for him with the</p> <p>24 attorney.</p> <p>25   It was a complicated time because it was the</p>
<p>1   <b>Q</b> This was after Tracy was fired though.</p> <p>2   A Yes.</p> <p>3   <b>Q</b> Before Tracy was fired, did you have a meeting</p> <p>4 with Moes, Zoeller in any way?</p> <p>5   A No.</p> <p>6   <b>Q</b> Can I turn your attention to interrogatories?</p> <p>7 This is the first exhibit, so let's go back. Do you see</p> <p>8 there, not the last page where you signed, but the page</p> <p>9 before that --</p> <p>10   A Okay.</p> <p>11   <b>Q</b> -- second to last? And, for the record, this</p> <p>12 is PA-1. This is interrogatory responses.</p> <p>13   A Okay.</p> <p>14   <b>Q</b> This is the question about meetings with UFF.</p> <p>15   A Correct.</p> <p>16   <b>Q</b> And it says here on -- "On or about December</p> <p>17 18th, Defendant Alperin attended a Collective Bargaining</p> <p>18 meeting. Defendant Zoeller and Larry Glick were both</p> <p>19 present. During a break in the meeting Defendant</p> <p>20 Zoeller requested an extension of time for planning to</p> <p>21 respond to the Notice of Termination. Such request was</p> <p>22 granted.</p> <p>23   A Okay.</p> <p>24   <b>Q</b> Does this refresh your recollection as to</p> <p>25 whether you had a meeting with Zoeller?</p>	<p>334</p> <p>1   middle of December. It was holidays, and he had already</p> <p>2 received the Notice of Proposed Termination, and he had</p> <p>3 10 days to respond to that, which would have been</p> <p>4 December 26th.</p> <p>5   <b>Q</b> How did you know that the Union was trying to</p> <p>6 secure an attorney for Tracy?</p> <p>7   A That's what Bob Zoeller told Larry and then</p> <p>8 told me, that they were trying to do this, and could we</p> <p>9 delay sending the Letter of Termination. Part of it was</p> <p>10 because they want -- they were trying to do this, and</p> <p>11 the other part was December 26th The University would</p> <p>12 have been closed, and could we delay until The</p> <p>13 University reopened in January, and we agreed to that.</p> <p>14   <b>Q</b> You had stated that this was a complicated</p> <p>15 time?</p> <p>16   A They said it was complicated because it was</p> <p>17 the middle of December, it was holidays, and they were</p> <p>18 having trouble contacting attorneys and having time for</p> <p>19 Professor Tracy to meet with the attorney.</p> <p>20   <b>Q</b> Professor Tracy was on parental leave for that</p> <p>21 semester.</p> <p>22   A Correct.</p> <p>23   <b>Q</b> His leave ended -- was it the week of the 11th</p> <p>24 of December, if you know?</p> <p>25   A I don't know. He gets -- he was paid</p>



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<p>1 throughout the period.</p> <p>2 <b>Q</b> No consideration was given to Professor Tracy</p> <p>3 for being on parental leave when these directives were</p> <p>4 being made?</p> <p>5 MR. CURELY: Objection to form.</p> <p>6 THE WITNESS: No.</p> <p>7 <b>Q</b> (By Mr. Leo) Do you agree that Professor Tracy</p> <p>8 has four children?</p> <p>9 A Do I know that? Yes.</p> <p>10 <b>Q</b> And that he had a newborn child at the time?</p> <p>11 MR. CURELY: Objection to form.</p> <p>12 THE WITNESS: I don't know how old the child</p> <p>13 was, but I knew that he was on paid parental leave.</p> <p>14 <b>Q</b> (By Mr. Leo) Parental leave is usually after a</p> <p>15 child is born?</p> <p>16 MR. CURELY: Objection to form.</p> <p>17 THE WITNESS: Either that or just before.</p> <p>18 MR. LEO: Okay.</p> <p>19 THE WITNESS: Whenever.</p> <p>20 <b>Q</b> (By Mr. Leo) Was that why these directives</p> <p>21 were made around that time?</p> <p>22 A No.</p> <p>23 <b>Q</b> Was this a design to prevent Professor Tracy</p> <p>24 from responding in a timely fashion?</p> <p>25 A No.</p>	<p>1 <b>Q</b> (By Mr. Leo) In fact, mid December you guys</p> <p>2 were -- I'm sorry. You, you and the FAU administration</p> <p>3 were circulating revisions to the policy; isn't that</p> <p>4 right?</p> <p>5 A Probably.</p> <p>6 <b>Q</b> Probably or that's what was happening?</p> <p>7 A Well, I don't remember. I know that we were</p> <p>8 revising, and we were circulating. I don't know</p> <p>9 remember the exact dates.</p> <p>10 MR. LEO: Are we on 26?</p> <p>11 MR. CURELY: Oh, no. You're way past that.</p> <p>12 MR. MEDGEBOW: 36.</p> <p>13 (Thereupon, Plaintiff's Exhibit Number PA-36</p> <p>14 was marked for identification.)</p> <p>15 <b>Q</b> (By Mr. Leo) Let me show you what's been</p> <p>16 marked as PA-36; and, just for the record, this is also</p> <p>17 FAU 666 through 670.</p> <p>18 A Okay.</p> <p>19 <b>Q</b> Does this refresh your recollection as to the</p> <p>20 revisions that were happening at the time?</p> <p>21 MR. CURELY: Do you have a copy for me?</p> <p>22 MR. LEO: I don't even have one for me, so --</p> <p>23 MR. CURELY: Okay. Hang on a second because</p> <p>24 that's not one I'm familiar with, so I need to look</p> <p>25 at it.</p>
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<p>1 <b>Q</b> Would you agree that it's not very fair to</p> <p>2 Professor Tracy to be making these kinds of directives</p> <p>3 when he's on parental leave?</p> <p>4 MR. CURELY: Objection to form.</p> <p>5 THE WITNESS: No.</p> <p>6 <b>Q</b> (By Mr. Leo) Are you saying this wasn't a</p> <p>7 conscious decision?</p> <p>8 A No.</p> <p>9 <b>Q</b> Given the complaints that were made in</p> <p>10 December of 2015, just a month before these directives</p> <p>11 began, do you think that Professor Tracy was treated</p> <p>12 fairly?</p> <p>13 A Yes.</p> <p>14 <b>Q</b> Do you think it was fair not to provide</p> <p>15 Professor Tracy with clarification about use of the</p> <p>16 policy?</p> <p>17 MR. CURELY: Objection to form.</p> <p>18 THE WITNESS: I think he was given</p> <p>19 clarification from the Dean to complete the forms.</p> <p>20 <b>Q</b> (By Mr. Leo) While the Dean is sending</p> <p>21 threatening letters to Professor Tracy, you're actually</p> <p>22 undergoing revisions on the Outside Activity Policy at</p> <p>23 the time; isn't that right?</p> <p>24 MR. CURELY: Objection to form.</p> <p>25 THE WITNESS: Correct.</p>	<p>1 MR. LEO: Sure, take your --</p> <p>2 MR. CURELY: But she's going to look at it.</p> <p>3 What did you say, it 666 through 670?</p> <p>4 MR. LEO: 670, yeah.</p> <p>5 MR. CURELY: Okay.</p> <p>6 <b>Q</b> (By Mr. Leo) You agree that there was</p> <p>7 revisions that were happening?</p> <p>8 MR. CURELY: Hang on one second.</p> <p>9 MR. LEO: Okay.</p> <p>10 MR. CURELY: Okay. All right. Go ahead.</p> <p>11 Thank you.</p> <p>12 <b>Q</b> (By Mr. Leo) Does that refresh your</p> <p>13 recollection as to whether there were revisions that</p> <p>14 were happening concerning the Outside Activity Policy in</p> <p>15 November of 2015?</p> <p>16 A Right, this is a revision, suggested revision</p> <p>17 to the form.</p> <p>18 <b>Q</b> So you agree that there were changes that were</p> <p>19 being made in November of 2015 to the Outside --</p> <p>20 A Correct, because he says --</p> <p>21 <b>Q</b> -- Activity Policy?</p> <p>22 A -- that the new form --</p> <p>23 THE REPORTER: I'm sorry.</p> <p>24 <b>Q</b> (By Mr. Leo) Changes that were being made to</p> <p>25 the Outside Activity Policy, end of question.</p>



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<p>1       THE REPORT: Oh, that was? Okay.    2       MR. LEO: Do you want me to say it again?    3       THE REPORTER: I didn't get the rest of the    4       question. I have it down. I have it.    5       <b>Q (By Mr. Leo) Did you hear my question?</b>    6       A    Yes, I agree that, as we had said, that we    7       were working on revisions. There was a group of people    8       working on it, and this is a draft of one of the    9       revisions that we were working on the form that was    10       finalized. I believe we agreed in the spring of 2016.    11       <b>Q There's changes being made to the form for the</b>    12       <b>policy?</b>    13       A    Yes, the form.    14       <b>Q There was changes being made to the</b>    15       <b>explanations for the policy?</b>    16       A    Correct.    17       <b>Q Explanations that were given to faculty</b>    18       <b>members?</b>    19       MR. CURELY: Let him finish his question.    20       <b>Q (By Mr. Leo) I just -- well, I'm going one by</b>    21       <b>one, one by one with you. So there was changes being</b>    22       <b>made --</b>    23       MR. CURELY: You gotta pause when you're ready    24       for her to answer, and then she'll answer.    25       <b>Q (By Mr. Leo) There were changes that were</b></p>	<p>1       A    For all employees, but the impetus for the    2       changes came from the Division of Research.    3       <b>Q It didn't come from the faculty meeting when</b>    4       <b>Professor Lenz says nobody knows that this means?</b>    5       A    We were already in the process of looking at    6       it at that point.    7       <b>Q Right. So in September in 2015 it was already</b>    8       <b>a problem?</b>    9       A    It was already --    10       MR. CURELY: Objection to form.    11       THE WITNESS: -- a process that we were    12       working on.    13       <b>Q (By Mr. Leo) Would you agree or disagree with</b>    14       <b>Professor Lenz that nobody at FAU knew what was a</b>    15       <b>reportable outside activity?</b>    16       A    I don't --    17       MR. CURELY: Objection to form.    18       THE WITNESS: I don't agree with Professor    19       Lenz.    20       <b>Q (By Mr. Leo) Okay. One of the reasons that</b>    21       <b>you terminated Professor Tracy was that he didn't</b>    22       <b>disclose a book; is that your understanding?</b>    23       A    Is that what's in the letter?    24       <b>Q You mentioned it earlier. You said that he</b>    25       <b>didn't tell you about a book?</b></p>
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<p>1       <b>being made to the form?</b>    2       A    Correct.    3       <b>Q There were changes that were being made to the</b>    4       <b>explanations?</b>    5       A    Correct.    6       <b>Q There were memorandums that were being</b>    7       <b>drafted?</b>    8       A    Possibly.    9       <b>Q And this was all designed to clear up any</b>    10       <b>confusion about the policy.</b>    11       MR. CURELY: Objection to form.    12       THE WITNESS: The primary responsibility --    13       the primary impetus for this came from the Division    14       of Research.    15       <b>Q (By Mr. Leo) But this was to help clarify the</b>    16       <b>policy, right?</b>    17       A    Especially during --    18       MR. CURELY: Objection to form.    19       THE WITNESS: Yes, responsible Investigators    20       and research. That was the primary.    21       <b>Q (By Mr. Leo) I'm sorry?</b>    22       A    The primary impetus came from the Division of    23       Research.    24       <b>Q Was it for the Division of Research or was it</b>    25       <b>for faculty members and staff?</b></p>	<p>1       A    I think I wrote a separate letter. I didn't    2       know about the book.    3       <b>Q Okay. What book was it that Professor Tracy</b>    4       <b>didn't disclose?</b>    5       A    I believe it's called, "Nobody Died at Sandy    6       Hook".    7       <b>Q Did Professor Tracy actually write that book?</b>    8       A    He has a chapter in the book, and he is    9       identified as a faculty member at FAU in the book.    10       <b>Q How do you know that?</b>    11       A    Because I was -- somebody sent me -- told me    12       about the book.    13       <b>Q Who told you about the book?</b>    14       A    It was an e-mail after the -- my recollection    15       is that it was an e-mail or a phone call after the -- I    16       believe that the Posner letter and the Sun-Sentinel    17       editorial were about the same time in December, correct?    18       You don't remember an editorial in the Sun-Sentinel or    19       you asked me about the --    20       <b>Q I can't tell you one way or another.</b>    21       A    Okay. You don't have the letter, Posner's    22       letter?    23       <b>Q I'm just say that that's really not how this</b>    24       <b>goes. I ask the questions, and then --</b>    25       A    Okay. But you were the one who mentioned the</p>

345 <p>1 Posners' letter. 2 <b>Q</b> But I'm only asking about his book. 3 A Okay. But it was after that that -- 4 <b>Q</b> After what? 5 A After what -- the December issue became, 6 again, an issue with the Posners' letter in the Sun- 7 Sentinel that people started contacting us again about 8 Dr. Tracy and it was at that point, my recollection, 9 that somebody told us about the book. 10 <b>Q</b> After he's gonna be fired? 11 A I'd have to look. I don't think so. 12 <b>Q</b> You don't know? 13 A No, because I think my letter to him -- 14 <b>Q</b> Do you know if he wrote the book? 15 A He never -- he is identified as the author of 16 a chapter in the book. 17 <b>Q</b> Okay. Does it sound about right that a 18 chapter from the book may have been copied from his 19 blog? 20 A Oh, I don't know. I didn't read the book. 21 <b>Q</b> You didn't read the book? 22 A No, I didn't read the book. 23 <b>Q</b> But you used it as a basis for accusing him of 24 misconduct. 25 MR. CURELY: Objection to form.</p>	347 <p>1 <b>Q</b> So how do you know that Professor Tracy wrote 2 it or contributed to it? 3 A I went to the beginning where he is indicated 4 as one of the authors of one of the chapter. 5 <b>Q</b> Okay. Let's stop there. Wait. So Professor 6 Tracy is indicated in this book as an author of a 7 chapter. 8 A Correct. 9 <b>Q</b> Okay. Do you know, as you sit here today, 10 whether Professor Tracy received compensation for his 11 contribution to his book? 12 A I don't know. 13 <b>Q</b> All right. Back in January of 2015, did you 14 know that? 15 A Yes. 16 <b>Q</b> In December of 2015 did you know whether or 17 not Professor Tracy received compensation for this book? 18 A No. 19 <b>Q</b> And if Professor Tracy did not receive 20 compensation for this book in December of 2015 -- right? 21 You listening? 22 MR. CURELY: Objection to form. 23 <b>Q</b> (By Mr. Leo) I just want to make sure you're 24 paying attention because you're looking at the book. 25 A Well, yes. I'm trying -- I'm sorry. I'm</p>
346 <p>1 THE WITNESS: Because he didn't use the 2 disclaimer because he identified himself as a 3 faculty member at FAU. 4 <b>Q</b> (By Mr. Leo) In a book that he didn't write? 5 A I don't know that he didn't write it. 6 <b>Q</b> Have you seen this? 7 A Yes. I haven't seen that, no. 8 <b>Q</b> Is this the book? 9 A I don't know. I've seen -- 10 <b>Q</b> Here it is. I'm gonna hand you the book. 11 A Okay. 12 <b>Q</b> Who wrote the book? 13 A Jim Fetzer and -- or the editor for Jim Fetzer 14 and Mike -- 15 MR. CURELY: You're reading that -- 16 THE WITNESS: -- Talisman. 17 MR. CURELY: --from what he just gave you, 18 right? 19 THE WITNESS: Yes. 20 MR. CURELY: Okay. 21 <b>Q</b> (By Mr. Leo) Right. This is the book, "Nobody 22 Died At Sandy Hook", right? 23 A Yes, looks like it. I never saw this book. 24 <b>Q</b> You never read it. 25 A I didn't read it, no.</p>	348 <p>1 looking at where he's listed as a contributor and a 2 professor at FAU. 3 <b>Q</b> Okay. So why don't you give me the book. 4 MR. CURELY: I'd like -- let me look at it. 5 <b>Q</b> (By Mr. Leo) He can look at the book, that's 6 fine. I just want your attention for a second. 7 A Okay. 8 <b>Q</b> The book, in December of 2015, you didn't read 9 it then. 10 A Correct. I just read that he was a 11 contributor and that he had contributed a chapter. 12 <b>Q</b> Somebody accused Professor Tracy of writing 13 this book though; isn't that right? 14 A Contributed to it. 15 <b>Q</b> Right. Do you know when this book was 16 actually drafted or published? 17 A Uhm -- 18 MR. CURELY: Wait a minute. Hold on. 19 <b>Q</b> (By Mr. Leo) No, I'm just asking whether you 20 know. 21 MR. CURELY: Just wait a second. 22 <b>Q</b> (By Mr. Leo) Without looking at it if -- I 23 mean, do you know? 24 A I would have looked at it at the time. I 25 don't know now.</p>

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<p>1 Q Okay. Because I'm asking -- because this is a  2 book, and you tell me when it was drafted. I can do  3 that.</p> <p>4 A Okay.</p> <p>5 Q I just want to know if you knew when it was  6 you actually published.</p> <p>7 A At the time I probably did. I don't recall.</p> <p>8 Q Okay. Concerning books in general -- I'm  9 going away from this book for a second -- a book does  10 not necessarily have to be reported on an outside  11 activity even if one writes it; isn't that right?</p> <p>12 A Why wouldn't it?</p> <p>13 Q We talked about this a little earlier, didn't  14 we?</p> <p>15 A I know.</p> <p>16 Q If a faculty member -- and I'm just going to  17 ask you to put the book down because I want to talk  18 about books in general without any distractions.</p> <p>19 A All right. But it was --</p> <p>20 Q Because it's a great book, and you should read  21 it --</p> <p>22 A -- published in October 2015.</p> <p>23 Q -- and we can get you a copy if you'd like it.</p> <p>24 A The second edition is May 2016.</p> <p>25 MR. CURELY: So the first time edition was --</p>	<p>1 Professor Tracy wrote a book and didn't tell you about  2 it?</p> <p>3 MR. CURELY: Objection to form.</p> <p>4 THE WITNESS: No.</p> <p>5 Q (By Mr. Leo) It wouldn't be different than  6 what you at least were told about the book?</p> <p>7 A No.</p> <p>8 Q Going back to books in general, if a faculty  9 member writes a book, they don't necessarily have to  10 report the book on an Outside Employment Form, right?</p> <p>11 MR. CURELY: Objection to form.</p> <p>12 How we doing time-wise?</p> <p>13 MR. LEO: I'd like her to answer the question.</p> <p>14 Q (By Mr. Leo) Do you want me to ask it another  15 way?</p> <p>16 A I think I -- I believe if a faculty member  17 is writing a book, that would be part of their  18 assignment or part of an outside activity.</p> <p>19 Q So the question is should a faculty member  20 writing a book be reported as an outside activity?</p> <p>21 A It could be.</p> <p>22 Q It could be or must it?</p> <p>23 A Again, if it's writing it as part of their  24 assignment, then it would be an outside activity.</p> <p>25 Q All right. But, just so we're clear about the</p>



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



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<p>1 which faculty member of which book or anything about it.      2 It just says, "a faculty member is writing a book." So      3 how can you deduce what the book was written for or that      4 it was part of an annual assignment or anything like      5 that?      6 A I don't know if -- it might have been in a      7 prior discussion.      8 Q Are you saying that you met with this Dean --      9 A Yes.      10 Q -- before answering these questions?      11 A I know I met --      12 Q -- about this form?      13 MR. CURELY: Let him finish his question.      14 Q (By Mr. Leo) Did you meet with the Dean before      15 answering these questions to ask about which faculty      16 member wrote a book?      17 A I don't know. I may have.      18 Q Would you agree that this looks like general      19 questions and general answers from you?      20 MR. CURELY: Objection to form.      21 THE WITNESS: Yes, they're answers from me.      22 Q (By Mr. Leo) And this is just a month after      23 Professor Tracy has been terminated for not reporting a      24 book on an Outside Activity Form?      25 A Correct.</p>	<p>1 (Thereupon, Plaintiff's Exhibit Number PA-38      2 was marked for identification.)      3 MR. LEO: Joe, if you want to look at the date      4 stamp. I don't have another copy of that.      5 THE WITNESS: That's general counsel's      6 handwriting.      7 Q (By Mr. Leo) That was going to be my next      8 question. Is this your handwriting?      9 A No. That's General Counsel, Senior General      10 Counsel.      11 Q It's Larry Glick's handwriting?      12 A Yes.      13 Q Okay.      14 MR. CURELY: Just hang on a second.      15 MR. LEO: I'm sorry. That's PA-38, right?      16 MR. MEDGEBOW: Yes.      17 Q (By Mr. Leo) This isn't your handwriting.      18 A No.      19 Q Okay. Let's put it aside. Aside from just      20 the question, this draft memorandum, was it circulated      21 to you?      22 A I don't know.      23 MR. LEO: And are we ready?      24 MR. CURELY: Oh, yeah.      25 MR. LEO: Oh, okay. I thought you guys were</p>
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<p>1 MR. CURELY: Objection to form.      2 Q (By Mr. Leo) Do you think that Professor Tracy      3 was treated fairly after looking at this?      4 A Yes.      5 Q You don't think that this conflicts with the      6 reasoning in your termination letter?      7 A No.      8 Q You don't see the conflict there?      9 A No.      10 Q You don't think that that's inconsistent with      11 what you told Dean Ilyas and what you told Professor      12 Tracy is not different?      13 A I would have to find that letter that I wrote      14 to Professor Tracy and --      15 Q It's part of the public record. You can      16 review that on your time.      17 A Have you marked it ever?      18 MR. CURELY: No, he did not.      19 MR. LEO: No. No. We're probably not gonna      20 have time to get to it, so --      21 MR. CURELY: I'll show you that letter.      22 THE WITNESS: I thought that had to do with      23 the disclaimer.      24 Q (By Mr. Leo) Well, keep going. Let's look at      25 the memorandum draft, PA-38. This is FAU --</p>	<p>1 looking at it.      2 MR. CURELY: No.      3 Q (By Mr. Leo) Going back to the e-mail --      4 MR. CURELY: Which one?      5 MR. LEO: FAU 306.      6 Q (By Mr. Leo) This is the letter to Dean Ilyas?      7 A Yes.      8 MR. CURELY: That's Exhibit 37, okay.      9 MR. LEO: Yes, 37.      10 Q (By Mr. Leo) This was in response, FAU -- I'm      11 sorry. PA-37 was in response to questions from faculty      12 members in February of 2016, right?      13 A Yes.      14 Q Would you agree that there were still      15 confusion at that point in February of 2016 from faculty      16 members and even the Deans at FAU --      17 MR. CURELY: Objection to form.      18 Q (By Mr. Leo) -- about the policy?      19 A I think they were asking questions, and I was      20 trying to answer them.      21 Q Right. So you would agree there was confusion      22 about the policy.      23 A I think there were questions.      24 Q Is that why Gary Perry released a memorandum      25 in June of 2016?</p>

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<p>1 A In when?</p> <p>2 Q June of 2016. It was in response to questions</p> <p>3 from faculty members in February of 2016.</p> <p>4 MR. CURELY: Objection to form. We don't have</p> <p>5 that here.</p> <p>6 THE WITNESS: I don't have that.</p> <p>7 (Thereupon, Plaintiff's Exhibit Number PA-39</p> <p>8 was marked for identification.)</p> <p>9 Q (By Mr. Leo) I'm gonna show you -- here's a</p> <p>10 memorandum, FAU 568 through 571. For today it's PA-39.</p> <p>11 Do you recognize this memorandum?</p> <p>12 MR. CURELY: Hang on a second. Take a look at</p> <p>13 it. Do you have a copy for me or no?</p> <p>14 MR. LEO: Sure.</p> <p>15 MR. CURELY: Thank you.</p> <p>16 MR. LEO: Here's the next one. Here's a copy</p> <p>17 for you, Joe.</p> <p>18 MR. CURELY: Okay.</p> <p>19 MR. LEO: Yeah, the next one is gonna be --</p> <p>20 MR. CURELY: PA-40?</p> <p>21 MR. LEO: PA-40.</p> <p>22 (Thereupon, Plaintiff's Exhibit Number PA-40</p> <p>23 was marked for identification.)</p> <p>24 Q (By Mr. Leo) Have you had a chance to look at</p> <p>25 that?</p>	<p>1 he was terminated. There was a form in place when</p> <p>2 he was terminated.</p> <p>3 Q (By Mr. Leo) And do you think that that policy</p> <p>4 was final when he was terminated or it was undergoing</p> <p>5 changes?</p> <p>6 A It was final. That was the policy that we</p> <p>7 were following. Then we were changes, and we were -- to</p> <p>8 that policy, but that policy didn't change in that it</p> <p>9 said people no longer needed to report outside activity.</p> <p>10 Q Who was the one who said that you needed to</p> <p>11 find winning metaphors to the First Amendment?</p> <p>12 A Oh, I don't know.</p> <p>13 Q Going back to meeting with Dean Coltman in</p> <p>14 2013 --</p> <p>15 A Right.</p> <p>16 Q -- someone brought up winning metaphors to the</p> <p>17 First Amendment, right?</p> <p>18 A I don't recall that discussion.</p> <p>19 Q Was the Outside Activity Policy the winning</p> <p>20 metaphor for --</p> <p>21 A I don't know what --</p> <p>22 Q -- getting rid of Professor Tracy?</p> <p>23 A No.</p> <p>24 MR. CURELY: Objection to form.</p> <p>25 THE WITNESS: No. I don't know what a winning</p>
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365 <p>1 Q You just saw an e-mail where you answered 2 several questions -- 3 A Yes, I did. 4 Q -- from Dean Ilyas. 5 A Ilyas, yes. 6 MR. CURELY: Let him finish. 7 Q (By Mr. Leo) Right. Why didn't you do this 8 for Professor Tracy -- 9 MR. CURELY: Objection to form. 10 Q (By Mr. Leo) -- what you did for Dean Ilyas 11 and the faculty members who had questions about the 12 policy in February of 2015? 13 A I don't know. 14 Q You could have, right? 15 A I don't recall. 16 Q Would you agree that you didn't want to? 17 A No, I wouldn't agree. 18 Q Would you agree that you and Dean Coltman and 19 FAU's administrators were tired of the controversy 20 surrounding Professor Tracy's blogging at the time? 21 MR. CURELY: Objection to form. 22 THE WITNESS: No. 23 Q (By Mr. Leo) In 2015 you didn't want to get 24 rid of Professor Tracy? 25 A No.</p>	367 <p>1 Q (By Mr. Leo) You can answer. 2 A I don't know. 3 Q You don't if Dean Coltman provided 4 clarification -- 5 A I think she provided what she thought was 6 clarification. 7 MR. CURELY: You're out of time, but you got 8 like five minutes, so try and -- 9 MR. SONDERLING: I got six minutes, for the 10 record. I know that you guys have different time. 11 MR. CURELY: Six minutes is fine, however, I'm 12 saying if there's something you haven't asked -- 13 MR. LEO: I have a very important question. 14 MR. CURELY: Okay. 15 Q (By Mr. Leo) How was Professor Tracy's 16 termination progressive? 17 A He received a Notice of Discipline. 18 Q In November? 19 A In November, yes. That was November, and he 20 did not respond to requests from his Director, from his 21 Dean, from others to fill out the forms over a period 22 starting in October 30th until December, and that's when 23 the decision was made to terminate. 24 Q You say he did not respond. He did respond. 25 You just looked at those responses.</p>
366 <p>1 Q Would you agree that the e-mails that were 2 exchanged between FAU administrators paint a different 3 picture? 4 MR. CURELY: Objection to form. 5 THE WITNESS: No. 6 Q (By Mr. Leo) Have you reviewed those e-mails? 7 A Are these the e-mails you gave me today? 8 Q Some of them. Like when Dean Coltman writes 9 Professor -- about Professor Tracy's request for a 10 response. Professor Tracy had requested a December 1st 11 response or at least a response by December 1st. Dean 12 Coltman wrote to you and say, "Oh, well" about that, 13 right? 14 A I don't know what that means. 15 Q She wasn't concerned about getting Professor 16 Tracy a response by the deadline that he asked for, 17 right? 18 MR. CURELY: Objection to form. 19 THE WITNESS: I don't know. 20 Q (By Mr. Leo) And Dean Coltman didn't provide 21 Professor Tracy with any kind of clarification on the 22 questions that he had about the policy and how it was 23 being used with respect to his outside activity, right? 24 MR. CURELY: Objection to the form, asked and 25 answered.</p>	368 <p>1 A He didn't complete the form. 2 Q Right, but he did respond to those Directors. 3 A He responded to Dean Coltman. 4 Q Right. He said, "I'm confused about this 5 policy", and I'm suspicious is what he ultimately was 6 saying in these letters, right? 7 MR. CURELY: Objection to form. 8 THE WITNESS: Well, I could see -- yes, I can 9 see that. 10 Q (By Mr. Leo) Because he was targeted in 2013 11 perhaps for his blogging. 12 MR. CURELY: Objection to form. 13 THE WITNESS: Why was he targeted? By who? 14 Q (By Mr. Leo) By your administration. 15 A Current administration? 16 Q You remember what happened in 2013, right? 17 A Yes. 18 Q Attempted discipline, withdrew the 19 discipline-- 20 A Correct. 21 Q -- the Settlement Agreement -- 22 A -- we wanted to suspend. 23 Q Right. Going back to the Settlement Agreement 24 in 2013, who was tasked with removing the discipline in 25 2013 from Professor Tracy's file?</p>

<p>1 A It would have -- it would have been in -- I    2 don't know when it was. I would have been removed from    3 his credential file.    4 <b>Q It would have been. Was it?</b>    5 A It was. Yes, it was.    6 <b>Q Who removed it?</b>    7 A I don't know if I removed it or my secretary    8 removed it.    9 <b>Q As you sit here today, you don't know if you</b>    10 <b>removed it?</b>    11 A I don't recall in 2013 if I physically went to    12 his credential file and removed it or my secretary    13 removed it.    14 <b>Q Okay. Who is your secretary?</b>    15 A Irma Bennett.    16 <b>Q Are you saying Irma Bennett would have removed</b>    17 <b>it if it wasn't you?</b>    18 A I may have asked her to do it or I did it. I    19 don't recall.    20 <b>Q And if the 2013 attempted discipline was still</b>    21 <b>in Professor Tracy's file when it was requested by</b>    22 <b>Professor Tracy, would that surprise you?</b>    23 A I don't believe it was in his personnel file    24 when he requested it.    25 <b>Q But how do you know?</b></p>	<p>369</p> <p>1 <b>Q (By Mr. Leo) Would you agree with me that was</b>    2 <b>the whole point of the agreement?</b>    3 MR. CURELY: Objection to form. Whatever the    4 agreement says it says.    5 <b>Q (By Mr. Leo) My question was who removed it</b>    6 <b>from the file?</b>    7 A As I believe it was removed from the file. As    8 I said, I don't recall if it was me or I asked my    9 secretary to do it.    10 <b>Q As you sit here today, do you know if it was</b>    11 <b>ever removed?</b>    12 A I believe it was.    13 <b>Q Based on that what belief?</b>    14 A I don't -- I believe that we abided by the    15 agreement.    16 <b>Q But if you didn't physically go and take it</b>    17 <b>out of the personnel file, how do you know it was</b>    18 <b>removed?</b>    19 A I believe when -- that it was removed. I    20 believe that when my secretary went to look for the    21 Settlement Agreement and it wasn't in the file that it    22 was in the grievance file. A grievance file is always    23 separate from a personnel file.    24 <b>Q But we're not talking about the settlement</b>    25 <b>Agreement. We're talking about the discipline that you</b></p> <p>371</p>
<p>1 A I believe that he e-mailed Irma Bennett and    2 asked her for a signed copy of the Settlement Agreement.    3 <b>Q Okay. But --</b>    4 A She look -- I'm still answering your question.    5 <b>Q Okay.</b>    6 A She looked in his personnel file or what we    7 call the credential file, which is in the Provost's    8 office, and there was nothing there, and I believe she    9 advised him of that.    10 <b>Q What about his public personnel file?</b>    11 MR. CURELY: Form.    12 THE WITNESS: Let me finish my statement.    13 Then she said to me that he was looking for the    14 Settlement Agreement, and she had looked in his    15 credential file, and it wasn't there, and I said it    16 wouldn't be in his credential file. It would be in    17 the grievance file. So then she went and found it,    18 and I believe she faxed or scanned a copy and sent    19 it to Dr. Tracy.    20 <b>Q (By Mr. Leo) But the agreement was with</b>    21 <b>respect to his personnel file, right, not a credential</b>    22 <b>file. It was publicly available personnel file. That</b>    23 <b>was the agreement. It was remove the discipline from</b>    24 <b>his personnel file.</b>    25 MR. CURELY: Form.</p>	<p>370</p> <p>1 <b>Q agreed, signed saying that it would be removed from his</b>    2 <b>file. That was a contract; was it not? That was the</b>    3 <b>agreement.</b>    4 A Yes.    5 <b>Q Okay. And you didn't personally remove it.</b>    6 A I don't recall if I did or not.    7 <b>Q As you sit here today, you have no personal</b>    8 <b>knowledge as to whether --</b>    9 A I have no memory of --    10 <b>Q -- it was actually removed pursuant to your</b>    11 <b>agreement; would you agree with me?</b>    12 A I believe that it was removed.    13 <b>Q To answer my question, you have no personal</b>    14 <b>knowledge if --</b>    15 A I can't recall if --    16 <b>Q -- it was actually removed.</b>    17 A I can't recall whether I went back to the file    18 and removed it or not.    19 <b>Q So it's possible it was never removed, right?</b>    20 A I believe it was removed.    21 <b>Q And if it wasn't removed, would you agree that</b>    22 <b>FAU breached its agreement in September of 2013 by not</b>    23 <b>removing it?</b>    24 A I believe we had an agreement to remove it. I    25 believe we removed it.</p> <p>372</p>

<p>373</p> <p>1 Q All right. We can end as soon as you answer 2 the question.</p> <p>3 MR. CURELY: She's answered it about five 4 times.</p> <p>5 MR. LEO: No. No. She's giving the answer 6 she wants to give, which is not answering the 7 question.</p> <p>8 I believe I removed it is not saying whether 9 or not it was removed.</p> <p>10 THE WITNESS: I'm saying that you're asking --</p> <p>11 MR. CURELY: It's okay. He's just -- counsel 12 can beat you up. He doesn't like your answers, so 13 he wants you to change it, and I move to strike his 14 comments and go back and --</p> <p>15 MR. LEO: Sure. Then I will move to strike 16 your nonresponsive answer when you say, "I believe 17 I removed it."</p> <p>18 Q (By Mr. Leo) I asked you if you had personal 19 knowledge as to whether it was removed or not. I 20 believe it was removed it not answering that question, 21 and I'm sorry, it's not --</p> <p>22 MR. CURELY: But that's your opinion.</p> <p>23 MR. LEO: -- so I'll move to strike your 24 response.</p> <p>25 Q (By Mr. Leo) And I'll ask you what, as you sit</p>	<p>375</p> <p>1 MR. LEO: Should we? 2 MR. CURELY: Yes, please.</p> <p>3 Q (By Mr. Leo) Let me just say, final answer, 4 you believe you removed it or you know or you don't 5 know? Which one is it?</p> <p>6 MR. CURELY: That's the best answer she's got. 7 MR. LEO: No answer, that's --no, no response. 8 You think that's a response. 9 MR. CURELY: Yes, I do. Okay. She'll read. 10 We're done, and I gave you -- 11 MR. LEO: Correct, and we'll certify the 12 question. Why don't you go ahead -- we're going to 13 order standard, and we'll take it up with the 14 Court.</p> <p>15 THE REPORTER: Read? 16 MR. LEO: She said she's gonna read. 17 MR. CURELY: Read. 18 THE REPORTER: And do you want a copy? 19 MR. CURELY: Yes. 20 THE REPORTER: What's your pleasure? 21 MS. GRIFFIN: E-Tran. 22 (Thereupon, the deposition was concluded at 23 7:15 p.m.) 24 25</p>
<p>374</p> <p>1 here today, can you point to to testify based on your 2 belief that it was removed?</p> <p>3 MR. CURELY: Okay. Tell him one more time, 4 and then we're done.</p> <p>5 THE WITNESS: I believe it was removed. You're 6 talking about something that was five years ago.</p> <p>7 Q (By Mr. Leo) Do you believe that you went and 8 actually physically removed it from the file?</p> <p>9 A I don't recall if I physically removed it.</p> <p>10 Q Okay. So you don't know. It's not you 11 believe. It's you don't know, right?</p> <p>12 A I don't recall if I physically --</p> <p>13 MR. CURELY: This is being argumentative. 14 That's --</p> <p>15 MR. LEO: This is just evasive responses to a 16 question, so -- I don't remember, I don't recall, I 17 don't believe. No, trust me. We're all acquainted 18 with evasive responses.</p> <p>19 Q (By Mr. Leo) So when you say, "I believe I 20 removed it", my question wasn't whether you believe you 21 did. My question was whether you know. So it's a 22 simple I don't know or I do know. I believe is not a 23 response. It's not answering the question. So should we 24 certify it?</p> <p>25 MR. CURELY: Yeah, go ahead.</p>	<p>376</p> <p>1 CERTIFICATE OF REPORTER 2 STATE OF FLORIDA 3 COUNTY OF PALM BEACH 4 5 I, LORA LEE KNORR, Court Reporter and Notary 6 Public in and for the State of Florida, do hereby 7 certify that I was authorized to and did 8 stenographically report the foregoing deposition of 9 DIANE ALPERIN, and that the transcript is a true and 10 complete record of my notes. 11 12 I FURTHER CERTIFY that I am not a relative, 13 employee, attorney or counsel of any of the parties, 14 nor am I a relative or employee of any of the parties' 15 attorneys or counsel connected with the action, nor am 16 I financially interested in the action. 17 Witness my hand this 22nd day of May, 2017 at Boca 18 Raton, Palm Beach County, Florida. 19 20 21 22 23 LORA LEE KNORR, COURT REPORTER, FPR, RPR, NOTARY PUBLIC, STATE OF FLORIDA 24 25</p>

<p>1 CERTIFICATE OF OATH  2 THE STATE OF FLORIDA  3 COUNTY OF PALM  4  5 I, LORA LEE KNORR, the undersigned authority,  6 certify that DIANE ALPERIN, personally appeared before  7 me and was duly sworn on the 9th day of May, 2017.  8  9 Witness my hand this 21st day of May, 2017.  10  11  12</p> <p>13 LORA LEE KNORR, COURT REPORTER  NOTARY PUBLIC, STATE OF FLORIDA  14 Commission No.: FF198698  Commission Expires: 4/30/2019  15  16  17  18  19  20  21  22  23  24  25</p>	<p>377</p> <p>1 ERRATA SHEET  2 I wish to make the following changes, for the following  reasons:  3 PAGE NO. LINE NO.  4 _____ CHANGE _____  5 REASON _____  6 _____ CHANGE _____  7 REASON _____  8 _____ CHANGE _____  9 REASON _____  10 _____ CHANGE _____  11 REASON _____  12 _____ CHANGE _____  13 REASON _____  14 _____ CHANGE _____  15 REASON _____  16 _____ CHANGE _____  17 REASON _____  18 _____ CHANGE _____  19 REASON _____  20 _____ CHANGE _____  21 REASON _____  22 _____ CHANGE _____  23 REASON _____  24  25 SIGNATURE DATE</p> <p>378</p> <p>1 May 23, 2017  2 Diane Alperin  C/O GERALD J. CURELY, ESQUIRE  3 GUNSTER, YOAKLEY &amp; STEWART, P.A.  777 South Flagler Drive, Suite 500 East  4 West Palm Beach, Florida 33401  5 IN RE: JAMES TRACY V. FLORIDA ATLANTIC UNIVERSITY, ET  AL.  6  7 Dear Ms. Alperin:  8 Please take notice that on Monday, May 9th, 2017  you gave your deposition in the above-referenced  matter. At that time you did not waive your signature.  9 It is now necessary that you sign your deposition. You  may do so by contacting your own attorney or the  attorney who took your deposition and make an  appointment to do so at their office.  10  11 You may also contact our office at the below number  12 Monday through Friday, 9:00 a.m. - 5:00 p.m. for  further assistance  13  14 If you do not read and sign your deposition within  thirty (30) days, the original, which has already been  15 forwarded to the ordering attorney, may be filed with  the Clerk of the Court.  16  17 If you wish to waive your signature, sign your name in  the blank at the bottom of this letter and promptly  18 return it to us. Very truly yours, Lora Lee Knorr,  Court Reporter Universal Court Reporting (954) 712-2600  19  I do hereby waive my signature.  20  21  22  23 DIANE ALPERIN  cc: Via transcript: Louis Leo, IV, Esq.  24 Gerald J. Curely, Jr. Esq.  25</p>
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<p style="text-align: center;">\$</p> <p><b>\$10,000</b> 219:14,18,20</p> <p><b>\$5,000</b> 215:20 216:8 219:22</p> <p style="text-align: center;">1</p> <p><b>1</b> 216:4 227:15 263:7 277:21 300:24</p> <p><b>1/14</b> 272:16 277:11 278:25</p> <p><b>1/16</b> 272:16</p> <p><b>1/16/13</b> 272:22</p> <p><b>1/18/13</b> 272:15</p> <p><b>1/8</b> 272:19</p> <p><b>1/8/13</b> 273:2</p> <p><b>1/9</b> 272:15 274:24</p> <p><b>1/9/13</b> 274:25</p> <p><b>10</b> 230:7 231:1,20 232:25 312:19 313:3 331:9 336:3</p> <p><b>10:20</b> 200:18</p> <p><b>10th</b> 329:5 330:4,5</p> <p><b>11/09/15</b> 203:7</p> <p><b>11/10/15</b> 203:6</p> <p><b>11/18/15</b> 203:19</p> <p><b>111/22/15</b> 203:15</p> <p><b>11th</b> 318:25 320:5,11,16 321:17 336:23</p> <p><b>12</b> 219:19</p> <p><b>12/11/15</b> 203:18</p> <p><b>12/13</b> 206:1</p> <p><b>13/14</b> 238:8</p> <p><b>14th</b> 278:25 279:1 291:1 319:21</p> <p><b>15</b> 316:8 353:15</p>	<p><b>15th</b> 267:23 321:10,14</p> <p><b>16</b> 329:9</p> <p><b>16th</b> 329:19</p> <p><b>1791</b> 263:7</p> <p><b>18th</b> 279:7,24 281:6 334:17</p> <p><b>19</b> 213:1 315:6</p> <p><b>19.2(b)2</b> 259:5</p> <p><b>197</b> 202:3</p> <p><b>1980</b> 235:7 283:17</p> <p><b>1st</b> 366:10,11</p> <p style="text-align: center;">2</p> <p><b>2</b> 227:2,15 293:13,15 300:24 315:1 354:1</p> <p><b>20</b> 232:10 316:8</p> <p><b>2012</b> 238:18,21 282:9 287:13</p> <p><b>2013</b> 225:3,7,16 237:2 238:7,10,22 239:11,12,13</p> <p><b>2015/16</b> 315:5</p> <p><b>2016</b> 203:23 214:22 250:9 341:10 349:24 350:2 353:15</p> <p><b>2017</b> 200:18 204:4 376:17 377:7,8 378:1,7</p> <p><b>20th</b> 315:8 323:4</p> <p><b>213</b> 203:3</p> <p><b>21st</b> 377:8</p> <p><b>225</b> 203:4</p> <p><b>22nd</b> 314:11 317:11 376:17</p> <p><b>23</b> 378:1</p> <p><b>230</b> 203:6</p> <p><b>231</b> 203:7</p> <p><b>25</b> 229:24</p>	<p>269:20 277:5</p> <p><b>2014/15</b> 315:4</p> <p><b>2015</b> 203:21 231:1,21 232:25 233:13 234:13 235:25 238:22 239:8,10 241:5 243:20 250:14 251:4,9,14 252:6 253:11 266:7 312:11 315:8 319:1 320:11,16 321:17 323:25 324:12,24 325:9 328:9 329:1,5,10 332:5 338:10 340:15,19 343:7 347:13,16,20 348:8 349:22 350:6 365:12,23</p> <p><b>2015/16</b> 315:5</p> <p><b>2016</b> 203:23 214:22 250:9 341:10 349:24 350:2 353:15</p> <p><b>2017</b> 200:18 204:4 376:17 377:7,8 378:1,7</p> <p><b>20th</b> 315:8 323:4</p> <p><b>213</b> 203:3</p> <p><b>21st</b> 377:8</p> <p><b>225</b> 203:4</p> <p><b>22nd</b> 314:11 317:11 376:17</p> <p><b>23</b> 378:1</p> <p><b>230</b> 203:6</p> <p><b>231</b> 203:7</p> <p><b>25</b> 229:24</p>	<p><b>26</b> 301:1 339:10</p> <p><b>264</b> 203:9</p> <p><b>268</b> 203:11</p> <p><b>26th</b> 336:4,11</p> <p><b>271</b> 203:12</p> <p><b>27th</b> 251:9,14</p> <p><b>28th</b> 251:9,14</p> <p><b>293</b> 203:13</p> <p style="text-align: center;">3</p> <p><b>3</b> 264:24 280:1 300:25 356:4</p> <p><b>3:35</b> 213:15</p> <p><b>3:45</b> 213:15</p> <p><b>30</b> 378:14</p> <p><b>300</b> 203:14</p> <p><b>306</b> 353:2 360:5</p> <p><b>308</b> 353:2</p> <p><b>30th</b> 332:1,4,5 367:22</p> <p><b>312</b> 203:16</p> <p><b>313</b> 203:17</p> <p><b>32</b> 300:19 307:24,25</p> <p><b>321</b> 203:18</p> <p><b>33</b> 307:18,22</p> <p><b>33073</b> 201:5</p> <p><b>33401</b> 201:12 378:4</p> <p><b>33431</b> 200:21 201:21</p> <p><b>33617</b> 201:17</p> <p><b>339</b> 203:19</p> <p><b>35</b> 321:19</p> <p><b>353</b> 203:20</p> <p><b>359</b> 203:21</p> <p><b>36</b> 339:12</p> <p><b>361</b> 203:23,24</p>
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