

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

CASE NO. 9:16-cv-80655-RLR

JAMES TRACY,

Plaintiff,

vs.

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

Defendants.

/

VOLUME II

CORRECTED TRANSCRIPT

VIDEO DEPOSITION OF HEATHER COLTMAN

TAKEN ON BEHALF OF THE PLAINTIFF

MAY 4, 2017
10:18 A.M. TO 6:47 P.M.

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1 VOLUME II
2 CORRECTED TRANSCRIPT
3 VIDEO DEPOSITION OF HEATHER COLTMAN
4 MAY 4, 2017
5 (Deposition resumed.)
6 Q **(By Mr. Leo IV) Exhibit 31, I think is where**
7 **we left off. We were talking about the Human Cost of**
8 **War.**
9 A Um-hum.
10 Q **Is that what it's entitled?**
11 MR. CURLEY: Censored 2014.
12 MR. LEO IV: Yeah, I just wanted the actual
13 what --
14 MR. CURLEY: Human Cost of War and Violence
15 MR. LEO IV: -- Professor Tracy wrote is.
16 Human Cost of War and Violence.
17 Q **(By Mr. Leo IV) You've not read this before?**
18 A No.
19 Q **This was also one of the Professor Tracy's**
20 **annual assignments, right?**
21 MR. CURLEY: Objection, form.
22 A I don't know. I'd have to look at the annual
23 assignments.
24 Q **(By Mr. Leo IV) I'm going mark this then.**
25 I'll call this PC-32.

1 (Thereupon, Plaintiff's Exhibit PC-32 was
2 entered into the record.)

3 (Thereupon, a short discussion was held off
4 record.)

5 (Deposition resumed.)

6 MR. CURLEY: Okay. What exhibit was it, 31?

7 MR. LEO IV: 32.

8 MR. CURLEY: 32.

9 Q **(By Mr. Leo IV) So, Exhibit 32 is annual**
10 **faculty report. It's actually a composite with many**
11 **reports. If you want to just skim through those and let**
12 **me you know if this refreshes your memory about**
13 **Professor Tracy's annual assignments.**

14 A Do you want me to focus on a specific year?

15 Q **If you need to look through to find you know**
16 **exhibit --**

17 A Human Cost of War and Violence, that's
18 correct.

19 Q **Yeah, exhibit -- let's start with Exhibit 31.**

20 (Thereupon, a short discussion was held off
21 record.)

22 (Deposition resumed.)

23 Q **(By Mr. Leo IV) Maybe I can help you out. Is**
24 **that it?**

25 MR. CURLEY: What page are you on?

1 MR. LEO IV: No, they're not numbered on here
2 but it's -- at the top of the page, it's kind of
3 like midway through here it says, "Annual
4 Evaluations '12-'13."

5 A '12-'13.

6 **Q (By Mr. Leo IV) I would say it's probably**
7 **right in the middle of the packet.**

8 A So, the annual faculty report of '12-'13
9 Section B creative research and scholarly
10 accomplishment?

11 **Q No, I'm looking at -- I'll show you mine. You**
12 **can tell me.**

13 A Okay, that's the -- that's the committee's
14 evaluation. That's not his report.

15 **Q This wouldn't be part of his assignment?**

16 A So -- okay, so just to be clear.

17 **Q Why don't you find this for me?**

18 A These are the reports. These are reports and
19 evaluations, not assignments.

20 **Q So, this came out of the personnel file?**

21 A Right.

22 **Q What -- what connection does this evaluation**
23 **have with the annual assignment?**

24 A Okay. So, let me -- so what happens is the
25 assignments are put on-line through the FAIR system.

1 The annual report that the faculty member completes at
2 the end of an academic year comes out on this document
3 and there is a page where -- there are sections where
4 the supervisor makes comments and does an evaluation.
5 The School of Communications is the only unit in the
6 college that actually has a personnel committee that
7 reviews the report, compares what the report says to the
8 criteria for annual evaluations and submits comments and
9 recommendation to the director of the school who then
10 will issue the final evaluation. So, they are the only
11 unit that actually has that extra document which is a
12 summary --

13 **Q Is this the beginning of it?**

14 A -- from the personnel committee. So, for
15 example in this year it says personnel committee annual
16 review form. They would have filled this out, whoever
17 the members were, submitted that to the director, he
18 would agree with this information as he is completing
19 his evaluation.

20 **Q Can you hold it little up for the camera**
21 **actually what you're showing me. Okay. And so if what**
22 **you're showing me there it says year '11-'12 --**

23 A Um-hum.

24 **Q -- that says excellent. Does that mean his --**
25 **he -- Professor Tracy was given an excellent evaluation?**

1 A By the personnel committee in the three
2 categories, yes.

3 Q Okay. So, keep going. Let's go to the year
4 **where --**

5 A '12-'13?

6 Q Yeah, '12-'13.

7 A Personnel committee handwritten report, is
8 that where we are?

9 Q Is that the one for '12-'13?

10 A Yes.

11 Q The page before that one, let's talk about.
12 Does that also go with it or where does that begin in
13 the annual faculty report for that year?

14 A So, the annual faculty report for that year
15 begins here '12-'13.

16 Q So, I can stay with you, okay.

17 A Right.

18 Q Okay.

19 A There is the section on teaching, the section
20 on research, the section on service.

21 Q So, going back to that page, the first page
22 you showed me. This is a list of his courses, Professor
23 Tracy's courses?

24 A For the evaluation period.

25 Q Okay. And one of the courses looks like it's

1 **repeated, Culture of Conspiracy.**

2 A Spring '12 and fall of 2012.

3 **Q Okay.**

4 A Fall '12.

5 **Q That means it was offered more than once?**

6 A Correct.

7 **Q Okay. And then if you look at the next page**
8 **do you see on the -- where it says curricular**
9 **development there?**

10 A Um-hum.

11 **Q It says, "Their proposed Culture of Conspiracy**
12 **undergraduate class," and then it says, "Course has not**
13 **been approved".**

14 A Okay.

15 **Q Proposed Journalism Criticism Class, Media,**
16 **War and Crisis.**

17 A Yes.

18 **Q Does that mean it was approved that course?**
19 **Media, War and Crisis.**

20 A It doesn't look like it. It looks like it's
21 been proposed at this point.

22 **Q And the Culture of Conspiracy course that was**
23 **being proposed at the time, is that what that means when**
24 **it says, "course has not been approved"?**

25 A So, there is a whole process. There is an

1 undergraduate curriculum committee for the college and
2 all new course proposals go from a department to the
3 college committee and as the college committee receives
4 these they review them, they might send back revisions
5 and then they either approve or don't approve the new
6 course. I am assuming at the time this report was
7 submitted by Dr. Tracy it had not yet been approved.

8 **Q The course Culture of Conspiracy?**

9 A Correct.

10 **Q But the course Media, War and Crisis had been
11 approved?**

12 A I have no idea. It doesn't indicate either
13 way.

14 **Q If it had not been approved it would have said
15 that it had not been approved?**

16 A I would assume so.

17 **Q Okay. Does this refresh your memory as to
18 whether the Media, War and Crisis course was cancelled?**

19 A I have no idea.

20 **Q So, the Culture of Conspiracy course at this
21 time when this report was submitted it was a proposal?**

22 A Correct.

23 **Q It had not actually been taught?**

24 A So, before a course gets through the official
25 curriculum committees because there is a college

1 committee and a university committee it can't be taught
2 with special topics number. And I can see by the course
3 number here 4930, if you go back to that first page,
4 those are called special topics number. So, as a
5 faculty member is developing and introducing a course
6 they can give it a title, they can use that special
7 topics number, run the course, very often faculty like
8 to do this before finally submitting a course proposal
9 because they want to tweak it a bit, okay.

10 **Q Okay.**

11 A So, I am assuming that it was taught as a
12 special topics in both spring '12 and fall '12 and
13 during that year it was also being proposed as a new
14 course and once it's approved at the university level it
15 gets it's own unique course number.

16 **Q And Culture of Conspiracy was given a unique
17 course number, right?**

18 A I don't know. Let's see if he taught it the
19 next year and if it had a unique course number. This is
20 why you have an associate dean. I don't see it the
21 following year. It's easy to find if it was given one,
22 it would be in the course catalog. I see it being
23 taught in '14-'15 still with the special topics number.

24 **Q So, would it be safe to say it was approved?**

25 A It looks like it had a special topics number

1 still so that would be -- no, it hadn't been given --

2 Q **No, okay.**

3 A -- some designation number yet but I don't --
4 there could be any number of reasons why that happened
5 so I don't know.

6 Q **Okay. Going back to the '12-'13 report after**
7 **that page that references the proposed courses and there**
8 **is another page that talks about his performance**
9 **evaluation, actually it's at page number 8 at the**
10 **bottom, do you see that?**

11 A Um-hum.

12 Q **So, this is 2013 is that your signature here?**

13 A Yes.

14 Q **Professor Tracy received outstanding**
15 **evaluation for everything?**

16 A Looks like it.

17 Q **Service, governance and other university**
18 **responsibilities?**

19 A Um-hum.

20 Q **Teaching and other instructional activities**
21 **and research scholarship and creative accomplishment.**

22 A Yes.

23 Q **On the next page here, who makes these**
24 **comments?**

25 A The members of the personnel committee so in

1 that year it would have been Michael Hofmann, Brad
2 Lewter, Melanie Loehwing and Fran McAfee.

3 **Q And they also said outstanding on there?**

4 A Under instruction, research and service, yes.

5 **Q Going to the next page where it says, "the**
6 **research assigned," you see that? Yeah, that one.**

7 A I don't understand why this page is here but
8 okay. And I don't know who wrote this page, but okay.

9 **Q The middle there, but you're saying you don't**
10 **know who -- who drafted this?**

11 A Correct.

12 **Q Is this typically something that would be with**
13 **the annual reports or evaluation?**

14 A Yes, typically this kind of narrative is
15 embedded in a form where it says chair's narrative if
16 this is written by the chair.

17 **Q Here it says under, "Research: Assigned. Your**
18 **research, namely a peer-reviewed article "Covering**
19 **Financial terrorism: The Greek Debt Crisis in US News**
20 **media (peer reviewed) published in the academic journal**
21 **Journalism Practice and your invited/peer reviewed work**
22 **"Human Cost of War and Violence" appear in Censored**
23 **2013. Top 25 Censored Stories and Media Analysis of**
24 **2011-2012, qualifies for an OUTSTANDING". You don't**
25 **know who wrote that?**

1 A No.

2 Q **Who -- who would at that time?**

3 MR. CURLEY: Objection, form.

4 A I would guess that normally it's the director
5 of the school but because the school does have a
6 personal committee there is some doubt in my mind that
7 perhaps the personnel committee after penning this
8 handwritten evaluation went back and did adopt the typed
9 document. It's very unusual to have a typed document
10 outside of the form so I don't know -- I don't
11 understand this.

12 Q **(By Mr. Leo IV) Okay. But you would agree
13 that the Human Cost of War and Violence was part of his
14 annual assignment? At least as what was indicated in
15 these evaluations.**

16 A Part of the annual review, it doesn't look
17 like -- I don't know, I'd have to look at the assignment
18 which is a whole separate document.

19 Q **The letter here it says, "Research: Assigned".**

20 A Right.

21 Q **Would that indicate that Human Cost of War was
22 part of the assignment?**

23 A It would indicate that whoever wrote this
24 document believed that to be the case.

25 Q **Okay. Is there any reason not to believe**

1 **that, that was part of his assignment?**

2 A I find it odd that Dr. Tracy himself didn't
3 list this as a publication because if this indeed was a
4 peer reviewed article why wasn't it listed in that
5 section of his own report.

6 **Q Where -- where are you referring to?**

7 A Section B of the annual report requires
8 faculty to fill out their creative research and
9 scholarly accomplishments, to list work under review,
10 work in progress, papers that have been published.

11 **Q Is this -- are you talking about this part of
12 the document?**

13 A This part. I know --

14 **Q It seems blank.**

15 A There is a teaching section which is Section
16 A, okay.

17 **Q Okay.**

18 A And then if you go on to three pages later
19 there is a creative research and scholarly
20 accomplishment section and that's where a faculty member
21 would normally write down every publication, works in
22 press, works under review.

23 **Q Is it possible that he submitted it in another
24 way? Like he handed it in for example with -- with this
25 paperwork.**

1 A I suppose it but why wouldn't he just put it
2 in. I mean it doesn't make sense to me, that's why I'm
3 confused as to who authored this additional piece of
4 paper. Why this is not embedded in the document? I
5 actually have never seen anything like this.

6 **Q Have you ever seen this annual report like**
7 **this?**

8 A In fact, I would wonder if I even saw it when
9 I signed this because very often I don't even see the
10 personnel committee's report because that's not for me
11 to review.

12 **Q But you were well aware of Professor Tracy's**
13 **achievements and his student's achievements with respect**
14 **to Project Censored, right?**

15 A I -- for this particular year he reports a
16 paper that he presented and the story submitted by his
17 students. He doesn't list anything else so I'm aware of
18 the two things he listed.

19 **Q Okay. Without looking at this you are aware**
20 **of Project Censored?**

21 A I got over 200 faculty in the college, they're
22 all active scholars, not specifically.

23 **Q Okay. But Project Censored was featured by**
24 **your college, wasn't it?**

25 A Probably.

1 **Q And Dr. Tracy's achievements were also**
2 **featured on by your college?**

3 A Probably, yeah, I don't doubt that.

4 **Q So, it was no secret that he was a contributor**
5 **to Project Censored and that his students were as well?**

6 A Certainly not. If he reported it here and we
7 signed off on it it was no secret.

8 **Q And the University had no problem with**
9 **Professor Tracy's teaching it seems?**

10 A No.

11 **Q Did you agree?**

12 A I would agree.

13 **Q Would you say he is an -- he was an**
14 **outstanding professor at the University?**

15 A According to his evaluations, yes.

16 **Q There was no complaints that you're aware of**
17 **concerning Professor Tracy's teaching, was there?**

18 A There was one or two complaints in spring of
19 2013.

20 **Q About his teaching?**

21 A Yes.

22 **Q What was the complaint?**

23 A If I recollect correctly a student complained
24 and dropped his course because she didn't like the
25 content of the course.



1 **Q So, it was more about the subject matter of**
2 **the course and not Professor Tracy's teaching?**

3 A If I recollect correctly, yes.

4 **Q Okay. But was there ever any complaints about**
5 **Professor Tracy's teaching methods or things he was**
6 **saying in class?**

7 A I'm not aware of any.

8 **Q Okay. Going to 2013, early 2013, you issued a**
9 **Notice of Discipline back then concerning Professor**
10 **Tracy's blog, isn't that right?**

11 MR. CURLEY: Objection, form.

12 **Q (By Mr. Leo IV) If you remember.**

13 MR. CURLEY: Are we putting an assignment into
14 the side or --

15 MR. LEO IV: Yeah, I'm -- I'm okay with that
16 for now. Yeah, I'm open for it.

17 MR. CURLEY: I think you marked it before.

18 THE WITNESS: Yup, I'm looking for it.

19 **Q (By Mr. Leo IV) Yeah, I think you've seen the**
20 **memorandum but after -- after the memorandum, I mean**
21 **would you -- would you call the January 2013 memorandum**
22 **a discipline?**

23 A The summary of the meeting?

24 **Q Right.**

25 A The summary of the meeting, no, it's not

1 discipline.

2 **Q But later in 2013 there was discipline issued**
3 **by you to Professor Tracy?**

4 MR. CURLEY: Okay. Hold on one second so I
5 can catch up. Is this what you're talking about?

6 MR. LEO IV: No, but I think she has that
7 document.

8 A I have the summary of the meeting January --

9 **Q (By Mr. Leo IV) Let me show you --**

10 A I thought we saw this.

11 **Q Let me show you PC-33. Is that what you're**
12 **looking for?**

13 (Thereupon, Plaintiff's Exhibit PC-33 was
14 entered into the record.)

15 A Yes.

16 **Q (By Mr. Leo IV) We haven't --**

17 A Yes.

18 MR. CURLEY: That is not marked? No.

19 MR. LEO IV: We marked it now. It's now PC --

20 MR. CURLEY: 33.

21 MR. LEO IV: Is it 33?

22 MR. CURLEY: Yes.

23 THE WITNESS: Yes.

24 **Q (By Mr. Leo IV) For the record this is a**
25 **Notice of Discipline dated March 28th, 2013. Just going**

1 back before we talk about this discipline notice. We
2 talked about there was a January 28th memorandum which
3 we just referenced. Professor Tracy responded in
4 February denying any obligation to submit the outside
5 employment reports for the blog, right?

6 MR. CURLEY: Objection, form.

7 Q (By Mr. Leo IV) The February 2nd letter you
8 wrote.

9 A Can you restate the question?

10 Q Professor Tracy had responded to your January
11 28th letter and he denied any obligation to submit
12 outside employment reports for his blogging?

13 MR. CURLEY: Objection, form.

14 Q (By Mr. Leo IV) Is that a fair
15 characterization of his letter to you dated February
16 2nd, 2013?

17 A He -- I don't see him denying obligation. I
18 see him saying the form is not required.

19 Q Okay. So, he was not complying with your
20 directive of January 28th to submit the form?

21 A Correct.

22 Q Okay. You didn't discipline him in February
23 of 2013 for not complying with that directive, did you?

24 A I don't believe so.

25 Q And in March 2013, you didn't discipline

1 **Professor Tracy for not complying with that directive**
2 **either, did you?**

3 A The Notice of Discipline primarily appears to
4 refer to disclaimers.

5 Q Right. And in fact there is no reference to
6 Article 19 whatsoever in the March 28th, 2013, Notice of
7 Discipline, is there?

8 A That is correct.

9 Q **Is there a reason why you didn't discipline**
10 **Professor Tracy for not submitting the outside**
11 **employment reports in early 2013, as he was directed?**

12 A I don't recall.

13 Q **Did you ever have any meetings in early 2013**
14 **concerning discipline against Professor Tracy?**

15 A I believe so I don't recall.

16 Q **When was the first meeting that you can**
17 **remember from 2013 about Professor Tracy in any**
18 **discipline concerning him?**

19 A I don't remember the dates. I do recall
20 meeting with Diane Alperin in advanced of the January 20
21 -- January 18th meeting.

22 Q **How many times did you meet with her before**
23 **your meeting?**

24 A I don't recall.

25 Q **Is there something that can help refresh your**

1 **recollection?**

2 A Probably. I'm going to guess you have it.

3 Q **I just need to find it. Give me a second.**

4 **Would notes help you?**

5 A Certainly.

6 Q **How many meetings would you say you had before**
7 **the January 18th meeting?**

8 MR. CURLEY: Objection, form.

9 A One, two, not sure.

10 Q **(By Mr. Leo IV) Would four sound correct?**

11 MR. CURLEY: Objection, form.

12 A I don't know, maybe.

13 Q **(By Mr. Leo IV) I'm going to show you what's**
14 **been marked as PC-34 for today. If you could just show**
15 **your Counsel. I do have a copy but let me make sure I'm**
16 **giving you everything.**

17 (Thereupon, Plaintiff's Exhibit PC-34 was
18 entered into the record.)

19 Q **(By Mr. Leo IV) Do you recognize these notes?**

20 A Yes, this is my handwriting; looks like four
21 meetings took place in January.

22 Q **Okay. Let's talk about the first meeting on**
23 **January 8th. What was this meeting in response to?**

24 A So as I can recall and this is going to be
25 sketchy because this is a while ago now and these are

1 just scribbled handwritten notes, they're not formal
2 meeting notes so these are just brief memories. It
3 looks to me like there were a group of people brought
4 together to respond to the fact that we had been
5 receiving a lot of attention from the media and the
6 public following a post that Dr. Tracy had made.

7 **Q And what was the post?**

8 A I believe it was in reference to the Newton
9 school shootings.

10 **Q I'm sorry Newtown?**

11 A Newtown whatever.

12 **Q Oh, Newtown.**

13 A Is it pronounced Newtown? Newtown.

14 **Q I don't know.**

15 A Newtown, Massachusetts.

16 **Q That would be the Sandy Hook School shooting?**

17 A Yes.

18 **Q And what was the blog post if you remember --**

19 MR. CURLEY: Objection, form.

20 **Q (By Mr. Leo IV) -- that -- that sparked this
21 meeting?**

22 A I don't recall a great deal of detail, I
23 believe that Dr. Tracy was questioning whether indeed
24 the event actually had taken place as described by the
25 media.

1 **Q Did the administration at FAU have a problem**
2 **with the questions that Professor Tracy was raising with**
3 **respect to Sandy Hook?**

4 A That wasn't discussed. I wasn't aware of
5 that. Their concern was the great deal of media
6 attention and community attention.

7 **Q Let's talk about the notes a little bit. Can**
8 **you just walk me through with what this means to you**
9 **when it says MJ?**

10 A MJ referred to MJ Saunders who was the
11 president of the University at that time.

12 **Q Was she at this meeting?**

13 A No.

14 **Q So, MJ just references her?**

15 A Somebody referenced her. Somebody indicated
16 that MJ had said something.

17 **Q It says, "No e-mail," on this. What does that**
18 **mean?**

19 A As I -- as I recall President Saunders had
20 indicated to somebody who was at the meeting that she
21 didn't want us e-mailing on the topic.

22 **Q On the topic of Professor Tracy?**

23 A Of the controversy surrounding the post about
24 Sandy Hook.

25 **Q And the names that appear at the top, Larry**

1 **Glick, Scott Silverstein, Jim Acton, Diane Alperin and**
2 **Lisa Metcalf. Would -- were they all in attendance at**
3 **the meeting?**

4 A Yes.

5 Q **That's why they are named here?**

6 A Yes.

7 Q **You were in attendance also?**

8 A Yes.

9 Q **Was there anybody else that's not in here who**
10 **was in attendance --**

11 A No.

12 Q **-- at the January 8th meeting? Where was this**
13 **meeting held?**

14 A In the Provost suite.

15 Q **When it says centrally handled, what does that**
16 **mean?**

17 A As I recall there was a lot -- a lot of
18 entities on campus were getting e-mails or community and
19 media attention and this meant that there needed to be
20 one central communication who would be responding so
21 that individual offices and individual people should not
22 take it upon themselves to respond to the media or to
23 respond to the public, that this would be handled
24 centrally.

25 Q **So you were instructed not to respond to**

1 **outsiders of FAU at this time?**

2 A Yes.

3 Q **Did you follow the instructions?**

4 A Yes.

5 Q **Was there ever a time that you stopped**
6 **following those instructions?**

7 A Not that I can recall.

8 Q **Going back to and it says, "no e-mail" on**
9 **this. Why would the President of the University not**
10 **want e-mails about this?**

11 MR. CURLEY: Objection, form.

12 A I don't know what she was thinking.

13 Q **(By Mr. Leo IV) Were they concerned that they**
14 **would be discoverable in a public records request?**

15 A I don't know.

16 Q **Was there any talk of that in the meeting?**

17 A Not that I can recall.

18 Q **What do you think that the president meant by**
19 **no e-mails?**

20 MR. CURLEY: Objection, form.

21 A There was a lot of anxiety and a lot of
22 confusion and things were happening quickly, my
23 assumption is we wanted to have one consistent message
24 and response from the University.

25 Q **(By Mr. Leo IV) And down here it says here,**

1 **"conspiracy theories when hired, no". What does that**
2 **mean?**

3 A I believe if memory serves that somebody asked
4 if Dr. Tracy had been an expert or a researcher on
5 conspiracy theories at the time he was hired and
6 somebody asked that question and somebody said, "No, he
7 had not been".

8 Q **At the time of this meeting Professor Tracy**
9 **was teaching a course called Culture of Conspiracy,**
10 **right?**

11 A I don't know.

12 Q **You just saw the --**

13 A Okay, probably.

14 Q **-- the annual report, doesn't it say that that**
15 **was one of the courses he was teaching?**

16 A I didn't memorize it, let's go back and look.

17 Q **'12-'13.**

18 A Spring '13, he taught communication and social
19 power, public opinion and modernity.

20 Q **What are you looking at?**

21 A At the '12-'13.

22 Q **Was he teaching Culture of Conspiracy?**

23 A No, not that semester. We're in spring '13,
24 right?

25 Q **Right. But before -- but in the 2012 he had**

1 **taught it?**

2 A Yes.

3 **Q In the fall of 2012 and in the spring of 2012**

4 **he taught Culture of Conspiracy?**

5 A Yes.

6 **Q And according to these records, at least,**
7 **after 2013, he was still teaching Culture of Conspiracy**
8 **for example, in the fall of 2014?**

9 A Yes, he taught it in fall of '14.

10 **Q Okay. Going back to the notes, when it says,**
11 **"no comments" is that referring to the press or is that**
12 **no comments to anyone?**

13 A As I recall that was an instruction that we
14 should then pass on to anybody receiving calls from
15 media or the press, don't make any comments, any
16 comments would become -- would be coming from the
17 University centrally.

18 **Q Did anybody contact you from Newtown or Sandy**
19 **Hook victims' families, for example at that time?**

20 A No.

21 **Q Did there come a time when you were contacted**
22 **by family members of victims of Sandy Hook or anyone**
23 **related to or with any relationship to the family**
24 **members?**

25 A Yes.

1 **Q When was that?**

2 A Fall -- fall '14 or '15, I'm not sure which
3 one, around an anniversary of -- of the shooting.

4 **Q And who is -- who is it that contacted you?**

5 A It was a person saying that she was a
6 representative of one of the families.

7 **Q Which family?**

8 A I don't recall, specifically.

9 **Q Was it the Pozners?**

10 A It may have been, yes.

11 **Q How about the Sotos?**

12 A I don't -- I don't know.

13 **Q Okay. What did they say, the representative?**

14 A I don't recall, specifically. There had been
15 media reports indicating their unhappiness with Dr.
16 Tracy's reports that the shooting was not real. I
17 believe something came out in the Sun Sentinel written
18 by one of the families.

19 **Q So, you're referring to the end of 2015?**

20 A I -- 2015, okay not '14. Yes, 2015.

21 **Q Yeah -- in the Sun-Sentinel?**

22 A Yes.

23 **Q And we'll come back to that. Other than that
24 and how about before that --**

25 A No.

1 **Q** -- was there any contact from any of the
2 **reported victims or --**

3 **A** No.

4 **Q** -- **representatives of that?**

5 **A** No.

6 **Q** **Going back to January 2013, it looks like the**
7 **next page on these notes is a meeting the next day, was**
8 **that -- is that what this indicates?**

9 **A** Yes.

10 **Q** **And when it says Diane is that referring to**
11 **Defendant Alperin?**

12 **A** Yes.

13 **Q** **And it says here, "Had MTG with MJ". What**
14 **does that mean?**

15 **A** I understand that to mean that Diane and I
16 were meeting and she told me she had had a meeting with
17 President Saunders.

18 **Q** **About Professor Tracy's blogging?**

19 **A** I don't know what it was about but we --
20 whatever we discussed next.

21 **Q** **Looks like you're discussing perhaps his**
22 **assignments?**

23 **A** Yes.

24 **Q** **And evaluations? Would you agree that at this**
25 **time the administration was looking for a way to**

1 **discipline Professor Tracy?**

2 A No.

3 **Q No talk of disciplining Professor Tracy came**
4 **up in these meetings in January?**

5 A No. No. As I recall this meeting the
6 president was trying to understand his assignment and
7 how it compared with others in the University.

8 **Q So, as you sit here today said are you saying**
9 **that in January 2013 there was no discussion of**
10 **discipline against Professor Tracy by the**
11 **administration?**

12 MR. CURLEY: Objection, form.

13 A Not that I was presented with.

14 **Q (By Mr. Leo IV) Okay. When was the last time**
15 **you saw these notes?**

16 A I think I briefly looked at them yesterday.

17 **Q And before that when was the last time you saw**
18 **them?**

19 A January 9th, 2013. I don't recall.

20 **Q Okay. You said something about formal notes;**
21 **is there formal notes with respect to this?**

22 A No, what I meant by that is sometimes there
23 are formal minutes of meetings. These are very informal
24 scratchings of mine.

25 **Q I see. What did you do with these notes after**

1 **the meetings?**

2 A I came back and put them in a folder. I have
3 a folder for each department and whenever there is an
4 issue related to that department that I might want to
5 keep track of I would just pop it in that folder.

6 **Q Did you put these notes into Professor Tracy's
7 file?**

8 A No, at a certain point the folder surrounding
9 issues relating to this controversy got too fat for that
10 department so I think I took them out and made a
11 separate file of things related to this incident.

12 **Q So, how would these ended up in Professor
13 Tracy's personnel file?**

14 A They weren't in his personnel file.

15 **Q And if that's where we found them what would
16 you say to that?**

17 MR. CURLEY: Objection, form.

18 A There is a personnel file of every faculty
19 members kept by HR.

20 **Q (By Mr. Leo IV) Right. And if I told you
21 these notes were found in that file would that surprise
22 you?**

23 A Yes.

24 MR. CURLEY: Objection, form.

25 **Q (By Mr. Leo IV) And if these notes were in a**

1 **publicly available personnel file that were distributed**
2 **to the media would that concern you?**

3 A Yes.

4 MR. CURLEY: Objection, form.

5 Q **(By Mr. Leo IV) Going back to the notes, when**
6 **she said -- when it says here, "DA called back to say no**
7 **more," what does that say there?**

8 A No more changes.

9 Q **What is that referring to?**

10 A To the best of my recollection we were looking
11 at the FAIR assignment to show the percentage of work
12 that had been assigned to various aspects of the
13 assignment. The middle section looks like for this year
14 zero percent had been designated for service. But it
15 looks like what was being discussed was, "No, he needs
16 to have a service assignment. We have to give him one".
17 So, it looks like I made a note that I then went back
18 into the FAIR website and revised that after the
19 conversation and it looks like then Diane called me back
20 and said, "Don't make any more changes to his
21 assignment".

22 Q **Why would she say that?**

23 MR. CURLEY: Objection, form.

24 A I don't know. My best guess is we're already
25 into the second week of classes of the spring term.

1 It's not fair to faculty to make any more changes.

2 Q (By Mr. Leo IV) Would you agree that this
3 looks like Diane Alperin and you are looking for a
4 problem with his assignments?

5 A No, I wouldn't.

6 Q Going to the next note, January 14th. When it
7 says Diane and Larry who is that referring to?

8 A Diane Alperin and Larry Glick.

9 Q And there's a lot here --

10 A Yeah.

11 Q -- I would like to ask about so. It says,
12 "Channel 12" does that say Sun --

13 A Sunday, yeah.

14 Q "Sunday 11:00 p.m. news." Was that referring
15 to a media publication?

16 A I am assuming.

17 Q About Professor Tracy's blogging?

18 A I would assume.

19 Q When it says, "Obligation to meet with him".
20 What does that mean?

21 A I really don't recall. I don't know if that
22 was a note that the University has an obligation to meet
23 with him that I might have an obligation, I just don't
24 recall. It's unclear and this is scrapped informal
25 notes so I don't know.

1 **Q Understand. Going to the BOT statement at**
2 **MTG, what does that mean?**

3 A BOT statement and meeting. To the best of my
4 recollection perhaps something was said at the Board of
5 Trustees meeting about this.

6 **Q There was a Board of Trustees meeting about**
7 **this?**

8 A No, no, no, perhaps something was said about
9 this incident at a Board of Trustees meeting around that
10 time, I don't know.

11 **Q You're not aware of a statement by the Board**
12 **of Trustees around that time?**

13 A I can't recall.

14 **Q Who would have made a statement at that time?**

15 A I have no idea.

16 **Q And it say here -- is that "Bring"?**

17 A Bring Doug.

18 **Q And that's referring to?**

19 A I believe that would have been Doug Broadfield
20 who was the UFF grievance officer at that time.

21 **Q Is this referencing the -- it says, "Tuesday**
22 **a.m." Is that referencing your meeting that was on**
23 **January 18th?**

24 A If that was a Tuesday maybe.

25 **Q It says here objectives. What's that say**

1 **after the one?**

2 A "Explore potential misconduct," and then there
3 is an arrow to violation of CBA.

4 **Q And what's between that?**

5 A Blog, when was the disclaimer put on.

6 **Q Would you agree that this looks like you're**
7 **exploring discipline for Professor Tracy's blogging?**

8 A It looks like explore potential misconduct.

9 **Q Would that include discipline?**

10 A Potentially.

11 **Q So, would you agree with me that these**
12 **meetings you were discussing disciplining Professor**
13 **Tracy for his blogging?**

14 MR. CURLEY: Objection, form.

15 A It looks to me like there is a set of three
16 things that were objectives of the meeting and one was
17 to look at when the disclaimer was put on the blog,
18 whether that was going to ultimately end up being
19 misconduct is not necessarily clear here just because
20 it's the next line down, I don't know.

21 **Q (By Mr. Leo IV) But it says, "Objective;**
22 **Explore Potential Misconduct".**

23 A Um-hum.

24 **Q Violation of CBA.**

25 A Um-hum.



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1 **Q So, would you agree you're looking for**
2 **something to discipline him for, that would be a**
3 **violation of the CBA or misconduct?**

4 A I don't recall that. From the notes it looks
5 like I was being asked to find out when the disclaimer
6 was put on the blog.

7 **Q And to explore a potential misconduct?**

8 A Potentially.

9 **Q When you say you're being asked, you're being**
10 **asked by Diane Alperin?**

11 A I can't recall specifically but she is my
12 supervisor so I would imagine so.

13 **Q Was Larry telling you to explore misconduct?**

14 A Not that I recall, no.

15 **Q It says here, "He needs to know fall out and**
16 **impact".**

17 A Um-hum.

18 **Q Who -- who is that referring to?**

19 A Dr. Tracy.

20 **Q And why would he need to know that?**

21 A To the best of my memory and I don't recall
22 exactly what we discussed then, I believe that it was
23 discussed that he should have a sense of the scope of
24 reaction we were getting from the community members both
25 regionally and internationally. And specifically for me

1 I wanted him to be aware that some of the feedback we
2 were getting was threatening and unsettling and I
3 thought he should know that.

4 Q Did you think at that time that Professor
5 Tracy's viewpoints and speech were constitutionally
6 protected or not?

7 A Oh, yes.

8 Q You did?

9 A Oh, yes.

10 Q Did you discuss with your superiors the
11 importance of protecting the First Amendment at that
12 time?

13 A Yes.

14 Q With regard to follow an impact, if something
15 that a faculty member is saying at FAU is controversial
16 what would the University tell the faculty member?

17 A By the University who do you mean?

18 Q Well, let's --

19 A I mean --

20 Q We'll use Dr. Tracy for an example. What he
21 was saying about a mass casualty event, questioning
22 whether it happened in the way that the media as it was
23 reported by law enforcement officials, was
24 controversial, right?

25 A Yes.

1 **Q What -- what would he need to know about the**
2 **following impact, for example?**

3 A I can't speak to what anybody else was
4 thinking but as a dean and as his supervisor, it's very
5 important to me that he had the freedom to express
6 whatever he wanted to express. My concern was that we
7 were getting a lot of threatening, unsettling e-mails
8 and I wanted him to be aware of that so that he could
9 make whatever arrangements he might need to make in case
10 he himself felt a similar threat.

11 **Q With respect to what Professor Tracy was**
12 **saying about Sandy Hook particularly at that time, are**
13 **you aware of what he was saying in --**

14 A I recall --

15 **Q -- late 2012?**

16 A I recall that he was questioning whether the
17 event actually took place.

18 **Q Did you share his questions?**

19 A What do you mean?

20 MR. CURLEY: Objection.

21 **Q (By Mr. Leo IV) Did you also question whether**
22 **the event took place --**

23 A No.

24 **Q -- at that time? Was there any time where you**
25 **questioned whether it took place?**

1 A No.

2 Q Have you ever investigated whether the event
3 took -- happened the way that it was reported?

4 A No.

5 Q Do you think that, that would be something
6 that the University should investigate?

7 A No.

8 Q Now, that's a part of history, Sandy Hook,
9 right? Would that be something -- I'm talking --

10 A Yes.

11 Q Yes? Sandy Hook would be a part of history?

12 A Yes.

13 Q Is that something that FAU should investigate
14 when they, for example, teach about it?

15 A When you say FAU the University as an
16 administrative structure that's not within their job, a
17 professor might.

18 Q Okay. You have a history department, right?

19 A Yes.

20 Q Is the history department teaching about Sandy
21 Hook?

22 A I have no idea.

23 Q Who would be in charge of figuring that out?

24 A There is a curriculum for the history major.

25 There are courses for the history department. Their

1 department faculty would be in charge of the curriculum
2 that's taught. They would decide whether or not they
3 were going to add contemporary history to that course
4 and they would decide whether or not and how they might
5 present that event.

6 **Q Do you typically believe what the media tells**
7 **you?**

8 A Do I typically believe what the media tell?
9 It depends which media. Breitbart, no.

10 **Q Mainstream media?**

11 A No, I'm pretty skeptical.

12 **Q Sun Sentinel?**

13 A There is always more to it than you read.

14 **Q Okay. Did you believe what Sun Sentinel is**
15 **reporting about Professor Tracy in 2013?**

16 MR. CURLEY: Objection, form.

17 A Refresh my memory, what was the Sun Sentinel
18 reporting about him in 2013?

19 **Q (By Mr. Leo IV) You tell me.**

20 A I recall that they reported -- I recall a
21 video where they went to find him on campus.

22 **Q Talking about CNN?**

23 A And interviewed him. I believe so, was it
24 CNN?

25 **Q Oh, I mean they went to his house and they**

1 **went to FAU.**

2 A I recall seeing a video of him outside his
3 office and they were, you know, I don't recall exact
4 specifics. They were asking him about the article he
5 published, about Sandy Hook.

6 **Q Were they asking about what he wrote or were**
7 **they just demonizing him?**

8 A I don't know. I don't recall.

9 **Q And making him look crazy?**

10 A He didn't look crazy.

11 **Q No, I'm saying is that what the media was**
12 **doing?**

13 A I don't know.

14 **Q You said that you haven't read Professor**
15 **Tracy's blogging, is that fair to say?**

16 A I think it's fair to say. I may have read one
17 or two of the early blogs out of curiosity. I don't
18 think I read any after that.

19 **Q Did you read the one about the unanswered**
20 **questions?**

21 A I don't recall.

22 **Q Do you remember that? Anything about the**
23 **Coroner from Sandy Hook, do you remember?**

24 A Nope.

25 **Q Are you aware of the documentaries that have**

1 **been made about Sandy Hook?**

2 A Yes, there was one on PBS it just -- yeah, PBS
3 it just came out.

4 **Q Which one was that?**

5 A I don't know, I think it's called Newtown or
6 something.

7 **Q On TV?**

8 A Yes.

9 **Q Okay. No, I'm talking about the alternative.**

10 A No, I haven't watched those.

11 **Q Media. For example, one called a meeting to
12 talk about Sandy Hook, have you heard of that one?**

13 A No.

14 **Q Any media contact by CNN or Sun Sentinel or
15 anything to you at that time in January? Did they come
16 to your office, for example?**

17 A I know CNN came to talk -- to try to find
18 someone in the college to speak to. Honestly, I don't
19 know if that was regarding Dr. Tracy and Sandy Hook or
20 regarding Dr. Poole because those two incidents were
21 very close together in the spring of 2013. There seemed
22 to be a lot of media coming to campus wanting comments,
23 I did not speak to any of them until June 2013.

24 **Q Do you recall calling Professor Tracy about a
25 visit from CNN?**

1 A Yes.

2 Q **And what did you guys talk about?**

3 A I don't recall exactly. I believe I just
4 informed him that CNN had come looking for him.

5 Q **Okay. Did you tell CNN anything about
6 Professor Tracy?**

7 A No, not that I recall.

8 Q **And before you spoke to CNN did you submit an
9 outside activity report for that --**

10 A No.

11 Q **-- communication?**

12 A No.

13 Q **Why not?**

14 A That wasn't my outside activity. That was my
15 job as dean to respond to a request to speak to a
16 faculty member.

17 Q **Going back to the 1/14 notes. Here it says,
18 "Citing Global Research as part of --"**

19 A It's like research.

20 Q **-- research assignment". It says, "It should
21 have had disclaimer or will be evaluated appropriately".**

22 **Is that what --**

23 A That's what it says.

24 Q **What does this mean?**

25 A Again, it looks like I'm trying to write

1 quickly and paraphrase conversation taking place. It
2 seems that there was discussion about whether or not the
3 work on Global Research had been cited as part of his
4 research assignment.

5 **Q You'd agree with me after looking at the --**
6 **some of the documents that Professor Tracy submitted for**
7 **his assignment that Global Research was cited in his**
8 **assignments?**

9 MR. CURLEY: Objection, form.

10 A At that point, yeah, I mean I would also state
11 that later on in February he says something different
12 about Global Research, but that's later. It looks to
13 me, as I recall, that Diane and Larry and I were trying
14 to understand his assignment, his research, the scope of
15 it, what required a disclaimer, what required
16 evaluation. It looks like these were discussion points.

17 Q **(By Mr. Leo IV) With respect to exploring**
18 **potential misconduct?**

19 A I don't recall that as part of the discussion
20 although it says that in the note so.

21 Q **Would you agree that in 2013, there was a**
22 **conscious decision to abandon any allegation against**
23 **Professor Tracy that he had not reported in his blogging**
24 **and was supposed to?**

25 MR. CURLEY: Objection, form.

1 A Can you rephrase that?

2 Q (By Mr. Leo IV) In 2013, would you agree that
3 the administration, FAU administration had abandoned any
4 allegation, that Professor Tracy had not reported his
5 blog as required by Article 19?

6 MR. CURLEY: Objection, form.

7 A I don't recall that being a clear decision.

8 Q (By Mr. Leo IV) But -- but you agree in March
9 2013 you did not discipline and nobody from FAU
10 disciplined or attempted to discipline Professor Tracy
11 for not submitting his blog which was known about at
12 this point pursuant to Article 19, right?

13 A I would agree.

14 Q And no one in 2014 from FAU disciplined or
15 attempted to discipline Professor Tracy for not
16 reporting his blog or Global Research activities in
17 2014?

18 A Correct.

19 Q Would you agree that, that would lead
20 Professor Tracy to believe that his blog that was known
21 about was not reportable?

22 MR. CURLEY: Objection, form.

23 A I don't know what he believes. I just know
24 that faculty are required to fill out outside activity
25 forms.

1 **Q (By Mr. Leo IV) In early 2015 Professor Tracy**
2 **wasn't disciplined for not reporting in '13 or '14 or**
3 **even early '15 his blog, isn't that right?**

4 A That's correct.

5 **Q And it wasn't until Professor Tracy was on**
6 **paternal leave in the fall of 2014, that he was then**
7 **disciplined for not reporting his blog on the outside**
8 **employment forms, you would agree with that?**

9 A Sure.

10 **Q Okay. Going back to 2013, it talks about**
11 **impact here. Going down to the bottom it says, "Donor's**
12 **history, etc show Brauman e-mail". What is this**
13 **referring to?**

14 A It looks like this is a list of the categories
15 of impact that this had had, not only mentioning e-mails
16 but parents calling, students leaving his class, people
17 withdrawing their applications.

18 **Q Right.**

19 A As I recall there was a donor who had
20 withdrawn the offer of a gift to the Department of
21 History because --

22 **Q Who is that?**

23 A I believe the name would have been Brauman.

24 **Q Brauman Motors, Brauman?**

25 A I don't remember. I'm sorry?

1 **Q Brauman the car dealership Brauman?**

2 A I don't believe so. I think it was a private
3 person but I am really not sure. I don't recall.

4 **Q Do you remember what donation it was he
5 withdrew?**

6 A I don't recall.

7 **Q It says here, "Brauman e-mail".**

8 A Right. So, in my recollection that would make
9 me think that perhaps there is an e-mail from Mr. or
10 Mrs. Brauman.

11 **Q Do you know the Braumans?**

12 A No, this would have been something that went
13 on in the history department.

14 **Q So, Brauman is a donor in the history
15 department?**

16 A Or would have been a donor but then they
17 withdrew their offer of support.

18 **Q I see. Do you know how much money was
19 withdrawn?**

20 A I don't recall.

21 **Q Other than Brauman any other donors that
22 you're aware of who expressed concern about Professor
23 Tracy?**

24 A I can't recall, specifically, a lot of people
25 expressed concern about the incident, some of them may

1 have been donors.

2 **Q How about Feingold?**

3 A Jeffrey Feingold?

4 **Q Yes.**

5 A He is on the Board of Trustees.

6 **Q Is he also a donor to the University?**

7 A I imagine so, not to the college, I don't know
8 of his -- any gifts to the college.

9 **Q Did Mr. Feingold ever express concern to you
10 or to anyone that you know of about Professor Tracy's
11 blogging?**

12 A Not to me, I have not spoken to Jeffrey
13 Feingold. I mean unless casually at a Board of Trustees
14 meeting.

15 **Q Did anyone from the Board of Trustees ever
16 express concern to you about Professor Tracy's blogging?**

17 A No.

18 **Q No? You don't sound sure.**

19 A I mean, I barely talk to anybody on the Board
20 of Trustees. I don't recall anybody coming and talking
21 to me about Dr. Tracy.

22 **Q How about Christopher Beetle?**

23 A Never.

24 **Q Never? Other than the referenced of Brauman
25 here you have no understanding of what the e-mail**

1 **entailed?**

2 A Correct. Correct.

3 **Q I can ask another way. Did you ever see an e-**
4 **mail from Brauman?**

5 A I may have seen it. I may have seen it at the
6 time typically when a donor first offers a gift, all of
7 those negotiations happened at the department level with
8 the development officer and then once the gift is
9 secured, I am brought in to meet the donor. It didn't
10 reach that point I didn't meet the donor, I don't
11 remember who it was exactly.

12 **Q Did you ever do any fundraising for the**
13 **victims of Sandy Hook, if you remember?**

14 A Me, personally?

15 **Q You or your college?**

16 A I think the college. I think some of the
17 staff in the college sent out an e-mail amongst the
18 staff and faculty, perhaps.

19 **Q If Sandy Hook was a contrived event or a**
20 **staged event would you agree that that was a -- that**
21 **would be fraud?**

22 MR. CURLEY: Objection to form.

23 A What would be fraud?

24 **Q (By Mr. Leo IV) If Sandy Hook, the event --**

25 A Right.

1 **Q** -- the mass shooting didn't really happen the
2 way that it was reported and as many have claimed was
3 contrived meaning manufactured or staged like a
4 production, right, Hollywood, does that explain my
5 question?

6 **A** So, you're saying if --

7 MR. CURLEY: Objection, form.

8 **A** -- if it was a staged event would a fundraiser
9 that took place in the college writes a letters be --

10 **Q** **(By Mr. Leo IV)** No, no, no, it wasn't -- it
11 wasn't that. My question was --

12 **A** It was something fraudulent?

13 **Q** **If an event like Sandy Hook was staged, right,**
14 **faked so to speak, to make millions of Americans**
15 **believed that something happened that didn't.**

16 **A** Right.

17 **Q** **Would you agree that that would be fraud?**

18 MR. CURLEY: Objection, form.

19 **A** I don't know an official formal definition of
20 fraud but I -- yeah, that would not be a good thing.

21 **Q** **(By Mr. Leo IV)** It would be misrepresenting to
22 the public something that happened that didn't, right?

23 MR. CURLEY: Objection, form.

24 **A** Correct.

25 **Q** **(By Mr. Leo IV)** And if it was done to raise

1 **money, for example, you'd agree that that would be**
2 **fraud?**

3 MR. CURLEY: Objection, form.

4 A Sure.

5 **Q (By Mr. Leo IV) Okay. Did -- you testified**
6 **earlier that there was no investigation into what**
7 **actually happened at Sandy Hook at FAU, right?**

8 A Not that I'm aware of.

9 **Q Do you think that allegations that are made by**
10 **faculty members or even outside of the faculty, that the**
11 **event was staged or faked are worthy of investigation?**

12 MR. CURLEY: Objection, form.

13 A Do I think they're worthy --

14 **Q (By Mr. Leo, IV) Right, I'm asking your**
15 **personal --**

16 A -- for investigation?

17 **Q -- personal opinion.**

18 MR. CURLEY: Same objection.

19 A I'm glad people invested the JFK shooting,
20 that the World Trade Centers come down really the way
21 they said. I mean it's all interesting and if someone
22 is investigating it, it's completely fine with me. Am I
23 particularly interested? Not really, it's fine.

24 **Q (By Mr. Leo IV) I'm just saying, would you**
25 **agree it's worthy of investigating?**

1 A Sure, it's interesting.

2 Q And if for example, FAU has been asked to
3 raise money for this event that had occurred and victims
4 -- purported victims of an event that this would be
5 something worthy of investigating?

6 MR. CURLEY: Objection, form.

7 A Would -- are you saying what would be worthy
8 of investigating is whether FAU raised money?

9 Q (By Mr. Leo IV) No, whether it actually
10 happened the way it was reported? So, for example, if
11 the allegation is made that Sandy Hook didn't happen the
12 way that they're saying it happened, that there is
13 crisis actors, that people are pretending to be victims
14 to raise money, for example, to push gun control which
15 is one popular theory, right?

16 MR. CURLEY: Objection, form.

17 Q (By Mr. Leo IV) Are you aware of this theory?

18 A Yes.

19 Q Okay. Would you agree that that's worthy of
20 investigating, particularly, when the state, University
21 is being asked to raise money to support those
22 individuals who are claiming to have been harmed, when
23 perhaps they may have not been harmed?

24 MR. CURLEY: Objection, form.

25 A Seems to me that's beyond the scope of what a

1 university's role is. But if --

2 **Q (By Mr. Leo IV) Is it?**

3 A -- an individual faculty member wants to
4 research it, that's fine.

5 **Q Let's talk about the role of University. What**
6 **is the role of University to you?**

7 A To serve the public.

8 **Q In what way?**

9 A To expand knowledge, to expand access to
10 knowledge, to create new research, to create new
11 knowledge, to educate and create livelihoods and make
12 people more enlightened and critical and --

13 **Q Would you agree that seeking the truth is part**
14 **of that mission?**

15 A Absolutely.

16 **Q Sharing the truth?**

17 A Absolutely.

18 **Q Would you agree that when you silence somebody**
19 **who questions an event, that you're taking the side of**
20 **those who say that, that person is questioning is wrong**
21 **or what have you?**

22 A I think faculty should question that, it's the
23 greatest strength of faculty.

24 **Q Would you agree with me that Professor Tracy**
25 **was silenced by FAU?**

1 A No.

2 Q **He was fired, right?**

3 A That's not silenced.

4 Q **That's not silencing him?**

5 A His research continues, doesn't it?

6 Q **Well, I can't answer that question. But my**
7 **question was whether FAU silenced Professor Tracy?**

8 A No.

9 Q **In your opinion firing someone isn't silencing**
10 **them?**

11 A No.

12 Q **At least with respect to your campus and your**
13 **University. He is no longer able to go back there and -**
14 **- and teach anymore, is he?**

15 A Correct.

16 Q **Would you agree that's -- that would be**
17 **considered silencing him?**

18 MR. CURLEY: Objection, form.

19 A No.

20 Q **(By Mr. Leo IV) No? Going back to the**
21 **concerns in 2013. During these meetings did anyone ever**
22 **say, what if Professor Tracy is right about what he is**
23 **blogging?**

24 A I don't recall anybody saying that.

25 Q **Did you ever think what if Professor Tracy is**



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1 **right?**

2 A No.

3 **Q You didn't think perhaps he is -- he's got a**
4 **right to say what he is saying?**

5 A Oh, yes, he has a right to say these things.

6 **Q Okay. Did you ever express that to your**
7 **supervisors?**

8 A Yes.

9 **Q In what way?**

10 A He has a right to say what he is saying. He
11 has academic freedom. He has protected speech. That
12 this is his work he should pursue it.

13 **Q Right. Is that why you didn't pursue any**
14 **discipline for the outside employment reports in 2013?**

15 A It's not related issues. Academic freedom has
16 nothing to do with whether or not he filled an outside
17 activity report. He has the right to research what he
18 wants to research.

19 **Q Okay. We're talking about outside activity.**

20 A Right.

21 **Q He has the right to say -- I'm sorry, not he -**
22 **- Professor Tracy had the right to say --**

23 A Yes.

24 **Q -- his viewpoints, his opinions on his own**
25 **time?**

1 A Yep.

2 Q On his personal blog and then anywhere outside
3 the University, right?

4 A And inside the University.

5 Q That would not be a reportable activity, would
6 you agree?

7 A When you are researching within your role as
8 professor it is not an outside activity.

9 Q I'm sorry, I was referring to expressing
10 personal opinions and viewpoints. Would expressing your
11 personal opinions and viewpoints be professional
12 research to you?

13 A It depends on the circumstance and depends on
14 the research area and the comments that are being made.

15 Q Do you know what professional research means?

16 A It means different things in different
17 disciplines.

18 Q Okay. How does it -- how does it -- what does
19 it mean to the faculty members at your University?

20 A Depending on their discipline it's the
21 research and scholarship they engage in related to their
22 area of study.

23 Q Okay. So, with respect to Professor Tracy
24 what would make his research scholarly, for example,
25 let's talk about that. Any research that you know of,

1 **how would it be scholarly?**

2 A As I understand it, he is an expert in media
3 and sort of American culture and media, any writings or
4 analysis or research into American media, studies in new
5 media, public opinion and modernity, this is his area of
6 expertise. That is his research and scholarship.

7 Q **So, you're saying any time he is talking about**
8 **the media that's scholarly research?**

9 A It depends what he is saying. If -- if he
10 says to a friend Anderson Cooper is an idiot, no, that's
11 not scholarly researched.

12 Q **But he is referred in the media, right? If he**
13 **is -- if he in his expert opinion thinks Anderson Cooper**
14 **is an idiot would that be scholarly opinion?**

15 A Could be perceived as one.

16 Q **Doesn't scholarly, that characterization**
17 **require something to be deemed scholarly --**

18 A Credentials you mean?

19 Q **-- or scholarship? If a work is considered**
20 **scholarly, right, what does it require?**

21 A Research data.

22 Q **Is there something else?**

23 A In science they want repeated data, repeatable
24 results.

25 Q **Is there -- do you have to do anything with**

1 **that data or that research --**

2 A Analysis.

3 **Q -- before it can be called scholarly?**

4 A Analyze it, get it peer reviewed, get it
5 published.

6 **Q That's what I'm looking for, peer review.**

7 A Okay.

8 **Q Okay, all right. So, are you saying that
9 anything Professor Tracy writes on his blog would be
10 considered scholarly?**

11 MR. CURLEY: Objection, form.

12 A If his blog says, 'I went for pizza tonight'.
13 No.

14 **Q (By Mr. Leo IV) Okay. It would require what?**

15 MR. CURLEY: Objection, form.

16 A Some kind of data and analysis and peer
17 review.

18 **Q (By Mr. Leo IV) Peer review, right. So,
19 Professor Tracy's blogging if it wasn't subject to peer
20 review, it would not be a reportable outside activity?**

21 A You know this is very great area and the
22 performing arts you don't get peer review all the time.
23 In other fields you don't necessarily have access to
24 peer review. It's very disciplined specific.

25 **Q Correct. And this is why this is left up to**

1 the determination of the faculty member who is doing the
2 activity pursuant to the guidelines that the University
3 distributes to its faculty members, right?

4 MR. CURLEY: Objection, form.

5 A And arguably the experts in the field on that
6 faculty.

7 Q (By Mr. Leo IV) Okay. But that's not listed
8 in the guidelines. The guidelines says, "Up to the
9 faculty member", right? That's what it says. It's up
10 to the faculty member to determine whether it's
11 reportable? Plain and simple, that's what the
12 guidelines says, right?

13 A That's what the guidelines says.

14 Q Okay. So, if Professor Tracy didn't think
15 that or believe that his unscholarly publications on his
16 blog, which were not subject to peer review, would not
17 qualify under the professional activity definition that
18 he has been provided by the University, would you agree
19 that there is some merit to that belief --

20 MR. CURLEY: Objection, form.

21 Q (By Mr. Leo IV) -- given what we've just
22 discussed?

23 A I could see why he thinks that.

24 Q Okay. In 2015, did you see that?

25 A There are also policies and procedures and

1 deadlines and supervisory authorities and obligations
2 and responsibilities of faculty.

3 Q **Move to strike and ask the -- of the question.**

4 **In --**

5 A Sorry.

6 Q **-- 2015 did you see --**

7 A What was the question?

8 Q **In 2015, did you see that what we just
9 discussed?**

10 MR. CURLEY: Objection, form.

11 A That being --

12 Q **(By Mr. Leo IV) That there was some merit to
13 Professor Tracy's belief that his blogging was not a
14 reportable outside activity because it was not subject
15 to peer review, it was not scholarly work?**

16 MR. CURLEY: Objection, form.

17 A As I recall what I thought in 2015, no, I did
18 not see that.

19 Q **(By Mr. Leo IV) Did you try?**

20 A I don't recall.

21 Q **Did you actually read Professor Tracy's
22 responses to David Williams and to you in November of
23 2015?**

24 A Yes.

25 Q **I'm going to show you what's been marked --**

1 **before I show you this, as you sit here today, do you**
2 **see why Professor Tracy had a problem with reporting his**
3 **blogging as directed in November of 2015, right?**

4 MR. CURLEY: Objection, form.

5 A I can see that he is presenting many other
6 problems with it.

7 Q **(By Mr. Leo IV) And you can appreciate and**
8 **understand his belief that his blogging was not a**
9 **reportable outside activity, it was not a reportable**
10 **professional activity according to FAU's policy, right?**

11 MR. CURLEY: Objection, form.

12 A I don't know.

13 Q **(By Mr. Leo IV) Let me show what's marked as**
14 **PC-35. It's a --**

15 (Thereupon, Plaintiff's Exhibit PC-35 was
16 entered into the record.)

17 MR. LEO IV: It's another one -- Jo, I think
18 you're --

19 MR. CURLEY: Yeah, I got that one.

20 MR. LEO IV: -- familiar with. I don't have a
21 copy either but.

22 Q **(By Mr. Leo IV) This was Professor Tracy's**
23 **response to your November 10, Notice of Discipline, is**
24 **that correct?**

25 A Yes.

1 **Q Looking through this packet that he provided**
2 **you today, does this refresh your recollection as to**
3 **whether Professor Tracy expressed his beliefs in 2015,**
4 **as to why his blogging would not be a reportable outside**
5 **employment or professional activity?**

6 MR. CURLEY: Objection, form.

7 A Can I clarify? The question was, do I see
8 that he -- do I understand how he outlines his beliefs?
9 Am I paraphrasing your question, correctly?

10 **Q (By Mr. Leo IV) Let me just rephrase. The**
11 **response that he provided you --**

12 A Yes.

13 **Q -- to your November 10th Notice of discipline,**
14 **would you agree that in his response that he is**
15 **explaining why his blogging is not a reportable outside**
16 **activity --**

17 MR. CURLEY: Objection, form.

18 **Q -- as part of what he is saying in that**
19 **response, would you agree?**

20 A I would agree that he is explaining his
21 beliefs, yes.

22 **Q When you received that from Exhibit PC-35, is**
23 **that where we're at?**

24 A Yes.

25 **Q What did you do?**

1 A I don't recall.

2 Q **Did you read it?**

3 A Yes.

4 Q **In November of 2015?**

5 A Yes.

6 Q **Did you respond?**

7 A I don't recall.

8 Q **Do you recall seeking guidance on responding
9 to this message?**

10 A Yes.

11 Q **Who did you seek guidance from?**

12 A Diane Alperin.

13 Q **How long do you normally take to respond to a
14 response like this, to a Notice of Discipline?**

15 MR. CURLEY: Objection, form.

16 A Given that I prefer to consult and that it is
17 preferred to consult with the Provost and legal counsel
18 it could take a week -- two weeks depending on the time
19 of year.

20 Q **(By Mr. Leo IV) Would you agree with me that
21 Professor Tracy in writing this response was trying to
22 informally resolve the discipline that you had proposed
23 in November of 2015?**

24 MR. CURLEY: Objection, form.

25 A He states that he is making an effort to

1 resolve the matter informally so that's what it sounds
2 like.

3 Q (By Mr. Leo IV) After he sent you that, did
4 you meet with Professor Tracy?

5 A No.

6 Q Did you summon him to a meeting with his Union
7 representatives to discuss the grievance or the informal
8 grievance I should say that you received?

9 MR. CURLEY: Objection, form.

10 A I don't recall. I don't believe so.

11 Q (By Mr. Leo IV) You waited until December to
12 respond?

13 A Okay.

14 Q I'm just asking. Yes?

15 A I don't know.

16 Q I'm going to show you what's been marked as
17 PC-36.

18 (Thereupon, Plaintiff's Exhibit PC-36 was
19 entered into the record.)

20 MR. LEO IV: Here is a copy for you, Counsel.

21 MR. CURLEY: Thank you.

22 Q (By Mr. Leo IV) Does this refresh your
23 recollection as to whether you waited to respond until
24 December --

25 MR. CURLEY: Objection, form.

1 Q **(By Mr. Leo IV) -- 2015?**

2 A This looks like it's part of a chain. I don't
3 know what comes before that.

4 Q **Sure. But the top of the message, what's that**
5 **say? That's from you, right?**

6 MR. CURLEY: Objection, form.

7 A That is from me but it also is going in
8 backwards order. There may have been all sorts of
9 things before that that I don't know what they are.

10 Q **(By Mr. Leo IV) I'll tell you what it looks**
11 **like to me, you tell me if I'm wrong. This looks like**
12 **you were responding to something that was unrelated to**
13 **the Notice of Discipline but you were referencing the**
14 **Notice of Discipline. You wrote to looks like Diane**
15 **Alperin and you said, "Have you had a chance to look at**
16 **JT --" Meaning James Tracy's, "-- response to the**
17 **Notice of Discipline. He wanted to response by December**
18 **1. Oh, well." You wrote that, right?**

19 MR. CURLEY: Objection.

20 A It looks like I wrote that but that is -- we
21 can't assume. That's the only communication I had with
22 Diane Alperin.

23 Q **(By Mr. Leo IV) Well, that's not what I asked.**
24 **I asked if this refreshes your recollection as to**
25 **whether you waited until December of 2015 to respond to**

1 **Professor Tracy's concerns in response to your Notice of**
2 **Discipline?**

3 MR. CURLEY: Objection, form.

4 A Yes, by December 1st we as a University had
5 not sent a response.

6 Q **(By Mr. Leo IV) Right. Why did you say, "oh,**
7 **well.?"?**

8 A I have no idea.

9 Q **Did you not really care much for Professor**
10 **Tracy at the time?**

11 A I had no feelings towards Professor Tracy.

12 Q **When you say no feelings meaning apathetic or?**

13 A No. No caring or not caring as a faculty
14 member.

15 Q **So, you didn't care for him?**

16 A No, he is a faculty member. He is an employee
17 in my college.

18 Q **Do you understand what I'm saying?**

19 A No.

20 Q **I'm saying if you had cared for him perhaps**
21 **you would have responded sooner or cared to respond?**

22 A This was a response that required the input
23 from the Vice Provost.

24 Q **It is?**

25 A I don't know what transpired between November

1 22nd and December 1st.

2 Q Let's back -- let's backup, one second. You
3 said this response required some input from the Provost?

4 A Yes.

5 Q In what way?

6 A I -- in this situation and in all situations
7 requiring any kind of response to discipline, I consult
8 with the Provost's Office.

9 Q And when you say you consult, is it required?

10 A No, but --

11 Q Okay.

12 A I'm using required in the non-legal sense. In
13 my mind, in my style of administration, I would want a
14 consultation with the Provost's Office.

15 Q Okay. Going back to November you could have
16 responded in November to Professor Tracy, right?

17 A I would want to look at the calendar and see
18 where Thanksgiving fell, if people were out of town, I
19 don't know.

20 Q Would you agree that he responded on November
21 22nd?

22 A Correct.

23 Q And after a week only then are you consulting
24 with Defendant Alperin concerning his response?

25 A I would agree that on December 1st we have an

1 e-mail where I've written to Diane Alperin. I -- my
2 recollection is, I certainly communicated this to her,
3 waive it for December 1st.

4 **Q Okay. But on December 1st you're asking her**
5 **for input?**

6 A Correct.

7 **Q What was Diane Alperin's response to this?**

8 A I don't know. I don't recall.

9 **Q And I haven't seen a response to this so**
10 **that's why -- that's why I'm asking. Did she respond to**
11 **your e-mail?**

12 A I don't remember.

13 **Q Did Diane Alperin ask you about the checkbox**
14 **again?**

15 A I don't remember.

16 **Q Were you provided with media updates**
17 **concerning Professor Tracy in the fall of 2015?**

18 A I believe on a daily basis the University
19 sends out media notes of all media, football scores,
20 anything that's appeared in the media so I get those on
21 a daily basis.

22 **Q When did that begin, the media updates?**

23 A I don't know.

24 **Q Was it in the fall of 2015 or before?**

25 A I don't know, I'd be guessing. I would guess

1 before but I don't know.

2 **Q Is there an FAU policy, that says media**
3 **reports are to be circulated to deans and administrators**
4 **on daily basis?**

5 A I don't know.

6 **Q How about with respect to Professor Tracy, was**
7 **there any directive to the press department or**
8 **communications department of the University to circulate**
9 **anything about Professor Tracy?**

10 A Not that I'm aware of.

11 **Q Let me show you what's been marked as PC-37.**

12 (Thereupon, Plaintiff's Exhibit PC-37 was
13 entered into the record.)

14 MR. LEO IV: Here is a copy underneath for
15 you, Jo.

16 MR. CURLEY: Thanks. All right, after we do
17 this I want to take a break.

18 MR. LEO IV: Sure, sure.

19 **Q (By Mr. Leo IV) Is this one PC-30 --**

20 A Seven.

21 **Q Seven? Is PC-37 an example of the press**
22 **updates that you would receive concerning Professor**
23 **Tracy?**

24 A Yes, it's an example of the kinds of press we
25 get.

1 **Q When you receive this what did you do?**

2 A I have no memory, I don't know.

3 **Q It says here conspiracy minded at FAU**
4 **professor questioning the Paris ISIS attack, right?**

5 A Right, that's what it says.

6 **Q Did that upset you?**

7 A Did what upset me? That this was a press
8 release?

9 **Q This e-mail you received, this press release?**

10 A Not really, no.

11 **Q Was this used in connection with the**
12 **discipline that was decided for Professor Tracy?**

13 A I have no knowledge of that, no.

14 **Q When did you decide what discipline you would**
15 **give Professor Tracy or the administration would give**
16 **Professor Tracy for the November Notice of Discipline?**

17 A I don't know the dates.

18 **Q You don't know the dates of --**

19 A Of the decision and it's not my decision to
20 make solely so it wasn't for me to decide.

21 **Q So, who decided that Professor Tracy should be**
22 **fired?**

23 A Ultimately hiring and firing is up to the
24 provost.

25 **Q Hiring and firing is up to the provost,**

1 **that's --**

2 A Provost Office.

3 **Q That's the policy of the University?**

4 A That's my understanding.

5 **Q Isn't that the job of the president?**

6 A We can look at policy I believe the academic
7 personnel are hired and fired by the provost. But I may
8 be wrong.

9 (Thereupon, a short discussion was held off
10 record.)

11 (Deposition resumed.)

12 **Q (By Mr. Leo IV) When we left off we were
13 talking about -- was it PC-37, the press updates, is
14 this report something you had received regularly?**

15 A Yes.

16 **Q How regularly?**

17 A Everyday.

18 **Q Didn't see many in the production like this.
19 Are you aware of any other media updates that you
20 received at that time in 2015 concerning Professor
21 Tracy?**

22 A From an FAU person, do you mean?

23 **Q From anywhere.**

24 A I mean the daily reports would have come out
25 in -- I think this is the daily report I --

1 **Q Okay.**

2 A I -- possibly others.

3 **Q I know we're going to jump out in time a**
4 **little bit. Who is the first person to call Professor**
5 **Tracy the one man argument against tenure?**

6 MR. CURLEY: Objection to form.

7 **Q (By Mr. Leo IV) To you.**

8 A If I recall and this was a long time ago and
9 these are again their casual notes. If I recall
10 statements had been made to operate administrators and
11 Diane and Larry were kind of sharing some of those. So,
12 I have no idea who said that.

13 **Q Are you referring to the January 14 notes?**

14 A Yes, I thought that's where we were.

15 **Q Yes, it says here labeled one man argument**
16 **against tenure. You don't know who labeled him?**

17 A No.

18 **Q Do you remember who said that at the meeting?**

19 A It had to be either Diana or Larry.

20 **Q You didn't say that?**

21 A No.

22 **Q Okay. Would that be the first time you've**
23 **heard that label?**

24 A Yes.

25 **Q Would -- did you agree with the label?**

1 A No.

2 Q Did you voice any objection to the
3 characterization of Professor Tracy as a -- as an
4 argument against tenure?

5 A I don't recall.

6 Q Do you think that there should be tenure?

7 A Yes.

8 Q Why?

9 A Tenure guarantees that faculty have the safety
10 security and guarantee that they can continue their
11 research in whatever field. And be free from
12 interference.

13 Q In November of 2015, did you think that
14 Professor Tracy should be fired? When you discipline
15 him in 2015 November around that time, did you think
16 that Professor Tracy should be fired in his tenure?

17 A I did not disagree.

18 Q You did not disagree?

19 A I did not disagree with the decision to fire
20 him.

21 Q In December?

22 A In December.

23 Q But in November of 2015, did you think that
24 Professor Tracy should be fired?

25 A I don't believe I had opinion at that point.

1 **Q So when you were disciplining Professor Tracy**
2 **in November specifically November 10th, 2015, at this**
3 **point on November 10th, you didn't have an opinion as to**
4 **whether Professor Tracy should be fired?**

5 A No, I was hoping he would do what we'd asked
6 him to do.

7 **Q If Professor Tracy had submitted the outside**
8 **employment forms for his personal blogging, immediately**
9 **after he got this notice, what would you have done?**

10 MR. CURLEY: Object to the form.

11 **Q (By Mr. Leo IV) It said November 11th he**
12 **signed the forms, turns them in for his blog even though**
13 **he didn't think that their report of outside activity,**
14 **what would have happened?**

15 MR. CURLEY: Object to the form.

16 A He -- nothing, he would have done what I'd
17 asked him to do and he would continue on in his
18 position.

19 **Q (By Mr. Leo IV) Having been disciplined**
20 **though?**

21 A Correct.

22 **Q So, this would have stayed in this file he**
23 **would have been disciplined for not reporting his**
24 **blogging.**

25 A Sorry, are you done?

1 **Q Right, that's the question.**

2 A My understanding is faculty can request to
3 have a Notice of Discipline removed from their file that
4 option would have been open to him.

5 **Q Do you think that's Professor Tracy should**
6 **have been disciplined in November 2015, for his view**
7 **points?**

8 A No, he wasn't disciplined for his view point.

9 **Q I'm asking do you think he should have?**

10 A No.

11 **Q Do you think that Professor Tracy should have**
12 **been disciplined for his belief, that his blogging was**
13 **not a reportable professional activity?**

14 MR. CURLEY: Objection to form.

15 A No.

16 **Q (By Mr. Leo IV) You don't think he should have**
17 **been disciplined for his belief?**

18 A No.

19 **Q Okay. So, in December when he submits the**
20 **forms to you under duress, he did, right?**

21 A He submitted the forms.

22 **Q Right. He filled them out as you had directed**
23 **just not within the time frame that you had told him to?**

24 MR. CURLEY: Object to the form.

25 A Correct.

1 **Q (By Mr. Leo IV) He's fired the next day. Is**
2 **that safe to say?**

3 MR. CURLEY: Object to the form.

4 A I believe so. I'd need to look at the
5 calendar.

6 **Q (By Mr. Leo IV) He's fired even though he**
7 **complied with the directive and turned in the forms?**

8 MR. CURLEY: Object to the form.

9 A There was a time frame listed.

10 **Q (By Mr. Leo IV) Okay. Relevant time frame he**
11 **turned in the forms, right?**

12 A I believe so.

13 **Q And he was fired?**

14 A Yes, he was fired.

15 **Q And the reasoning was that he was**
16 **insubordinate and not turning them in fast enough?**

17 MR. CURLEY: Objection to form.

18 A May I read the letter? I don't know if it
19 cites the words fast enough.

20 **Q (By Mr. Leo IV) You don't remember why you**
21 **fired him?**

22 MR. CURLEY: Objection to form.

23 A I didn't fire him.

24 **Q (By Mr. Leo, IV) You would agree that you**
25 **facilitated the firing in a way, right?**

1 MR. CURLEY: Objection to form.

2 A I won't characterize it with the word
3 facilitated.

4 **Q (By Mr. Leo IV) Did -- how would you
5 characterize your involvement with Professor Tracy's
6 firing?**

7 MR. CURLEY: He haven't given you the letter.

8 THE WITNESS: Okay, I didn't know if it was
9 here.

10 MR. CURLEY: Not in there yet.

11 MR. LEO IV: I'm looking for it but we can
12 keep asking questions while I'm searching.

13 **Q (By Mr. Leo IV) How would you characterize the
14 participation that you had in termination of Professor
15 Tracy?**

16 A I was consulted.

17 **Q You were consulted by who?**

18 A Diane Alperin.

19 **Q Would you agree that you consulted with Diane
20 Alperin as well? She didn't just go to you; you went to
21 her as well, right?**

22 A Specifically about this letter of termination?

23 **Q About discipline terminations, yeah, both.**

24 A I frequently and consistently went to Diane
25 Alperin for anything related to discipline.

1 **Q Of Professor Tracy?**

2 A Yes.

3 **Q I'm going to show you what's been marked as**
4 **PC-38.**

5 MR. LEO, IV: A copy for you, Jo.

6 MR. CURLEY: Thank you.

7 (Thereupon, Plaintiff's Exhibit PC-38 was
8 entered into the record.)

9 **Q (By Mr. Leo IV) Does this refresh your**
10 **recollection as to what we were talking about earlier?**

11 A Yes.

12 **Q Professor Tracy submitted his forms and he was**
13 **fired, when?**

14 A I don't have the date of the Notice of
15 Termination.

16 MR. LEO, IV: Let me give you one more, PC-39.
17 I don't even have a copy.

18 MR. CURLEY: I got it.

19 (Thereupon, Plaintiff's Exhibit PC-39 was
20 entered into the record.)

21 A December 16th.

22 **Q (By Mr. Leo IV) So he submitted the forms to**
23 **you, Professor Tracy submitted the forms to you, right?**

24 A Correct.

25 **Q He reported his blogging. Would you agree**

1 **with me?**

2 A I need to read some of these because of the
3 copies, it says global research, it says Montreal some--
4 I'm assuming that says Canada on-line non-profit
5 articles and media criticism analysis. Yes, he reported
6 the same thing for each document.

7 **Q Right. He reported activities that he did not
8 believe were reportable activities on these forms, would
9 you agree with that?**

10 MR. CURLEY: Objection to form.

11 A I don't know what he believed, but he reported
12 this.

13 **Q (By Mr. Leo IV) You have his memorandums, his
14 letters that you've now had a chance to review. Would
15 you agree with me that you've reported activity on the
16 outside employment forms that he did not believe was
17 actually reportable activity?**

18 A Apparently.

19 MR. CURLEY: Objection to form.

20 **Q (By Mr. Leo IV) Okay. Would you agree with me
21 based on PC-39, that the day after he submitted the
22 forms to you for his blogging he was fired?**

23 A Correct.

24 MR. CURLEY: Objection to form.

25 **Q (By Mr. Leo IV) Do you think that -- do you**

1 **think that the punishment fit the crime in this case?**

2 MR. CURLEY: Objection to form.

3 **Q (By Mr. Leo IV) Do you think that Professor**
4 **Tracy, should have been fired given what transpired here**
5 **and what you're looking at in front of you?**

6 A I recommended disciplinary action to the
7 provost. The provost then made the determination.

8 **Q That's not my question. My question was did**
9 **the punishment fit the crime, if any?**

10 MR. CURLEY: Objection to form.

11 A Yes.

12 **Q (By Mr. Leo IV) You think that Professor Tracy**
13 **should have been fired for submitting his blog on these**
14 **outside employment forms when he believed that they**
15 **weren't reportable activity in the first place to you.**

16 **Is that what you were saying?**

17 MR. CURLEY: Objection to form.

18 A I believe that the continued insubordination
19 warranted this action.

20 **Q (By Mr. Leo IV) Continued insubordination.**
21 **When you say continued, when was Professor Tracy**
22 **insubordinate for the first time?**

23 A Each time that the required outside activity
24 form was not reported would count as an incident of
25 insubordination.

1 **Q So in 2013, when you asked Professor Tracy to**
2 **submit his blog on these forms for the first time, and**
3 **he did it, would that be insubordination?**

4 MR. CURLEY: Objection to form.

5 A In my opinion when you refused to have-- to
6 follow a directive of a supervisor whether you agree
7 with it or not that is insubordination.

8 **Q (By Mr. Leo IV) Then why wasn't Professor**
9 **Tracy punished and disciplined in 2013 for**
10 **insubordination?**

11 A I don't know.

12 **Q Did you recommend discipline for his objection**
13 **to submitting his blog on these outside employment**
14 **forms?**

15 A I don't recall.

16 **Q You talked about you had recommended**
17 **discipline to the provost 2015, when was that?**

18 A This letter says Dr. Heather Coltman has
19 recommended disciplinary action for cause in connection
20 with your position. So, clearly that would have been in
21 December.

22 **Q So, this indicates, what you just read, that**
23 **you recommended Professor Tracy to be fired at that**
24 **time?**

25 A I recommended disciplinary action.

1 **Q Did you recommend that he be fired?**

2 A I don't recall.

3 **Q Did you say that this raises the level of the**
4 **termination?**

5 A I don't recall.

6 **Q Did the media and the -- the offense that you**
7 **had referenced earlier; did that affect your decision to**
8 **discipline Professor Tracy?**

9 A No.

10 **Q Why not?**

11 A That had nothing to do with his obligations as
12 a faculty member to do what his supervisor had requested
13 and what policy required.

14 **Q You were shocked by what you read in The Sun-**
15 **Sentinel, right?**

16 A Yes.

17 **Q You were shocked that Professor Tracy was**
18 **accused of harassment, right?**

19 A Yes.

20 **Q Okay. Did you investigate when you read those**
21 **allegations that were made by the Pozners in the Sun-**
22 **Sentinel, did you investigate those allegation?**

23 A If a faculty -- yes.

24 **Q How so?**

25 A The representative for the Pozner family that

1 we discussed earlier, when I communicated with her, I
2 asked if she could provide me with information
3 justifying that family's statement that they had been
4 harassed by Dr. Tracy.

5 **Q And what was the result of the investigation?**

6 A I heard nothing back from them. I didn't
7 receive any evidence.

8 **Q Wasn't that a little strange?**

9 A It was strange to hear that a faculty member
10 had been harassing someone, yes.

11 **Q Are you familiar with the HONR Network?**

12 A No.

13 **Q H-O-N-R HONR? You never heard of that?**

14 A It's vaguely ringing a bell. No, I don't know
15 it off the top of my head.

16 **Q Are you familiar with Lenny Pozner?**

17 A I believe he's the father of a child that died
18 at Sandy Hook.

19 **Q Have you ever spoken with Lenny Pozner before?**

20 A No.

21 **Q Has he ever contacted you?**

22 A No, not that I can recall.

23 **Q Who is Misty Fitch?**

24 A That's the woman who's the representative of
25 the Pozner family.

1 **Q Did you speak to Mindy Fitch or Misty Fitch?**

2 A Yes.

3 **Q You spoke to her on the telephone?**

4 A Yes.

5 **Q When was that?**

6 A Sometime in December 2015, I believe.

7 **Q Was it before or after you recommended**

8 **Professor Tracy be fired?**

9 A I don't recall.

10 **Q Did Misty Fitch tell you what Professor Tracy**
11 **had did?**

12 A She recounted to me that Professor Tracy was
13 in her words "harassing the families".

14 **Q And how was that, how was he harassing the**
15 **families?**

16 A From what I recall they reported that he had
17 requested the death certificate of one of the children
18 who had been killed at Sandy Hook.

19 **Q And did you ask Professor Tracy about these**
20 **allegations?**

21 A No.

22 **Q Why not?**

23 A I don't think that's my role.

24 **Q So you think it's appropriate for you to be**
25 **taking commentary from outsiders at FAU, who were making**

1 **accusations of criminal conduct against your faculty**
2 **members, you think it's appropriate to talk to them but**
3 **not the faculty member who was accused of the crime?**

4 A Again, it was not my role to do this. This
5 was something I took to the Provost Office and the
6 general counsel's office. This rose to a level that
7 needed their input.

8 Q **What happened to the directive not to comment?**
9 **Not to speak to outsiders about Professor Tracy and the**
10 **controversy from his blogging?**

11 **Do you remember those directives?**

12 A Yes.

13 Q **When did that change?**

14 A It didn't change.

15 Q **So, in 2015 you disobeyed your directives and**
16 **spoke with outsiders about Professor Tracy's blogging,**
17 **is that a fair characterization?**

18 A No. I did not speak to outsiders about any
19 blogging. I spoke to outsiders about the claim, that he
20 had been harassing them, and if a faculty member of mine
21 is harassing them, I wanted to know if there was
22 information that they had to share, that would be able
23 to be information I could pass on.

24 Q **Pass on for what?**

25 A To the provost and the general counsel's

1 office.

2 Q If this was after Professor Tracy had already
3 been noticed of terminations, what would the purpose be
4 of passing this information on?

5 MR. CURLEY: Objection to form.

6 Q (By Mr. Leo IV) I'm sorry?

7 A I don't see a purpose if it's after
8 terminations.

9 Q Were you looking for something to substantiate
10 the termination, perhaps?

11 A No, the -- no.

12 Q Was there any concern at the time though the
13 firing of Professor Tracy was unconstitutional? And for
14 you, did you have any concern that what you had done in
15 recommending a termination for what Professor Tracy was
16 accused of by you and by the officials at FAU, do you
17 have any concerns that that was unconstitutional?

18 A No.

19 MR. CURLEY: Objection to form.

20 Q (By Mr. Leo IV) Do you think that that
21 comports with the First Amendment?

22 MR. CURLEY: Objection to form.

23 Q (By Mr. Leo IV) Your disciplinary action in
24 this case.

25 A This disciplinary action has nothing to do

1 with the First Amendment.

2 Q **Because you say that or because of what?**

3 A It has to do with insubordination and failure
4 to follow policy and supervisors directives.

5 Q **Okay and if that directive involves reporting
6 constitutionally protected activity for approval, would
7 you agree that it does have something to do with the
8 First Amendment?**

9 MR. CURLEY: Objection to form.

10 A I don't know.

11 Q **(By Mr. Leo IV) You don't know if the First
12 Amendment is applicable in this case --**

13 MR. CURLEY: Objection to form.

14 Q **(By Mr. Leo IV) -- with respect to Professor
15 Tracy's blogging?**

16 A I don't have extensive knowledge of the First
17 Amendment and how laws applied in that regard that's why
18 you consult with the general counsel and the provost.

19 Q **Did you?**

20 A Of course.

21 Q **Did you ask about whether what you were doing
22 was constitutional?**

23 A No, because this did not appear to me to be
24 anything to do with the content of anything that
25 Professor Tracy said, this had to do with his actions as

1 a faculty member and his inability to follow supervisory
2 directions and University policy.

3 **Q Is that the rehearsed response for the**
4 **University when asked whether what they did was**
5 **unconstitutional or is it your opinion?**

6 MR. CURLEY: Objection to form.

7 A This is my opinion.

8 **Q (By Mr. Leo IV) Okay. Because it sounds like**
9 **something that's rehearsed.**

10 A Okay.

11 **Q Just from me to you.**

12 A Okay.

13 MR. CURLEY: Move to strike counsels comments,
14 appreciate your opinion.

15 **Q (By Mr. Leo IV) If faculty is given in a legal**
16 **directive or unlawful directive, do you think they**
17 **should follow it?**

18 A That's a really vague question umm --

19 **Q How is it vague?**

20 A Can you be more precise?

21 **Q How is it vague?**

22 MR. CURLEY: Objection to form.

23 **Q (By Mr. Leo IV) Do you know what unlawful**
24 **means?**

25 A Yes, against the law.

1 **Q Okay. So, if your faculty members are asked**
2 **to do something that violates the law, do you think they**
3 **should follow that directive?**

4 MR. CURLEY: Objection to form.

5 A It depends on the circumstances, it depends on
6 the law.

7 **Q (By Mr. Leo IV) Okay. Give me one --**

8 A Generally, no.

9 **Q Okay. Give me one example where something**
10 **that your faculty member or -- let's just use you for an**
11 **example, if you're a faculty member, right? You're**
12 **asked to do something unlawful, where would there be an**
13 **example where you should do that --**

14 MR. CURLEY: Objection to form.

15 **Q (By Mr. Leo IV) -- comply with the directive?**

16 A I'm thinking of an instance that makes sense
17 in my experience. There is a piano camp for children.
18 A child is in the pool and can't swim very well. I see
19 there's a problem, I'm not a certified lifeguard. I
20 haven't got background clearance to be a counselor at
21 the camp. Nevertheless, I jump in the pool and save the
22 child, that would be an example.

23 **Q How would that be unlawful to save someone's**
24 **life?**

25 A I am not certified. I am not certified to

1 save that child and I don't have authority to care for
2 that child in that circumstance. I'm making this up.

3 **Q I understand.**

4 A I mean I'm trying to give you --

5 **Q Let me say how could rescuing somebody ever be**
6 **considered unlawful?**

7 A If I'm not certified to jump in and save a
8 child from a pool one could argue that's against the
9 law, I suppose.

10 **Q Well, but why would that be against?**

11 A There is a law that says you can't deal with
12 children on campus in a camp unless you've been
13 fingerprinted and background checked by the cops.

14 **Q Are you saying that if you saw a child**
15 **drowning in the water you would not jump in --**

16 A No, I'm saying I would jump in.

17 **Q And you would think that's against the law?**

18 A I don't know. I'm making this up as we go
19 along to try to give you an example.

20 **Q Do you normally make things up as you go**
21 **along?**

22 A No.

23 **Q Okay. With respect to Professor Tracy's**
24 **termination were you making things up then?**

25 A No.

1 **Q Was the administration ever accused of making**
2 **things up in 2015, for example using the policy as a**
3 **pretext to terminate somebody, has that --**

4 A Not that I'm aware of.

5 **Q Has the thought ever crossed your mind?**

6 A That the University was using the termination
7 as --

8 **Q Using the --**

9 A -- was using this policy policies as a
10 pretext?

11 **Q Using the policy as a pretext to fire**
12 **somebody, for example like Professor Tracy because they**
13 **didn't agree with what he was saying?**

14 A No.

15 MR. CURLEY: Objection to form.

16 **Q (By Mr. Leo IV) That thought never crossed**
17 **your mind?**

18 A No.

19 **Q Have you been accused of that in this case?**

20 A I believe so.

21 **Q You testified that you didn't have the**
22 **understanding of the First Amendment or something along**
23 **those lines a moment ago, do you remember?**

24 A I don't have legal training. I don't have an
25 experience of having to analyze and interpret and you

1 know deconstruct the First Amendment so I would want
2 advice.

3 Q Okay. Do you think that a reasonable college
4 administrator would know what the First Amendment is --

5 A Yes.

6 Q -- and the legal implications of the First
7 Amendment?

8 MR. CURLEY: Objection to form.

9 A Certainly, in general terms.

10 Q (By Mr. Leo IV) And earlier you testified that
11 you were familiar with the First Amendment, right?

12 A Sure, in general terms.

13 Q Okay. Going back to the Notice of Discipline.
14 In November 10th, 2015, you were threatening Professor
15 Tracy with discipline if he didn't submit the outside
16 employment reports, right?

17 MR. CURLEY: Objection to form.

18 A I wouldn't characterize it as threatening,
19 but --

20 Q (By Mr. Leo IV) Okay. Let's go through your
21 Notice of Discipline November 10th, "Failure to meet any
22 of the requirements listed above may result in further
23 disciplinary action". Would you characterize that as a
24 threat?

25 A No.

1 **Q What is that then?**

2 A It's a warning. It's full disclosure.

3 **Q You're not threatening further disciplinary**

4 **action?**

5 A No.

6 **Q This is discipline.**

7 A Correct.

8 **Q The exhibit you're -- you're holding here?**

9 A Notice of Discipline.

10 **Q Right. I'm sorry, exhibit?**

11 A 27.

12 **Q PC-27 is actual discipline, right?**

13 A Correct.

14 **Q Professor Tracy was actually disciplined on**

15 **November 10th, 2015 for not submitting his blog on these**

16 **outside employments/professional activities forms right?**

17 A No. It was not about his blog. It was that

18 he had not acknowledge receipt of his assignment through

19 the FAIR system and he hadn't submitted the Outside

20 Employment Forms whether it contains a blog, a book, an

21 article, a lecture -- no blog is mentioned in this

22 Notice of Discipline.

23 **Q Okay. So, are you saying that every faculty**

24 **member at the University actually turns in these forms?**

25 A No.

1 **Q Okay. So, Professor Tracy hadn't turned in**
2 **forms?**

3 **A Correct.**

4 **Q And that's why he was disciplined? Do you**
5 **understand where I'm going with this?**

6 **A Yes.**

7 **Q Okay. Where am I going?**

8 **A When you go to -- where you're going?**

9 **Q You said yes.**

10 **A When a faculty --**

11 **MR. CURLEY: Tell him what he's thinking.**

12 **A In a CBA in -- faculty are required by their**
13 **own initiative to acknowledge that they are required to**
14 **fill out the outside activity forms.**

15 **Q (By Mr. Leo IV) Okay. But they're not**
16 **required to submit these forms unless they've**
17 **determined --**

18 **A Unless they determine --**

19 **Q -- that they have to?**

20 **A -- that they're engaging in outside activity.**
21 **But they do need to acknowledge that they are aware that**
22 **there is a requirement to do so and they do that by**
23 **checking the little drop-down box.**

24 **Q Okay. Well that's one of your bullet points**
25 **here, right? Acknowledge receipt of the annual**

1 **assignment with all terms and conditions?**

2 A Correct.

3 Q Right. There's not a bullet point here?

4 A Correct.

5 Q Submit the forms?

6 A Correct. He had been asked to submit the
7 form.

8 Q Right. And he's being disciplined on November
9 10th, for not submitting them, would you agree?

10 A Correct.

11 Q Okay. And then in Professor Tracy's mind he
12 had determined that his outside activity was not
13 professional activity that required to be reported?

14 A Um-hum.

15 Q He's being disciplined for that, right?

16 A Okay, I hear you.

17 Q Is that an agree-- is that a, yes, you agree
18 with me?

19 A I am hearing what you're saying and
20 acknowledging what you're saying.

21 Q Okay. So, that's a yes he's being disciplined
22 for his failure to submit his blog on these reports, --

23 MR. CURLEY: Objection to form.

24 Q (By Mr. Leo IV) -- right?

25 A And/or any other outside activity.

1 **Q Okay. And that's the only outside activity**
2 **Professor Tracy had was this blogging at that time?**

3 **A Okay.**

4 **Q On-line?**

5 **A Correct.**

6 **Q Okay. Would you agree that Professor Tracy**
7 **making that determination was his right under FAU own**
8 **guidelines?**

9 MR. CURLEY: Objection to form.

10 **A Yes, pending approval of director indeed.**

11 **Q (By Mr. Leo IV) Where is that?**

12 **A On the form where there's a signature line for**
13 **a director that --**

14 **Q We're not talking about the forms. We're**
15 **talking about policy.**

16 **A Okay.**

17 **Q The guidelines. Let's go back to the**
18 **guidelines, come on. Stay with me.**

19 **A I don't write the guidelines --**

20 **Q Report about the employment.**

21 **A -- so I don't have them memorized.**

22 **Q That's fine. But you have these, right,**
23 **available?**

24 **A Yes.**

25 **Q The link to these works?**

1 A I don't know.

2 Q You don't know of the link to this guidelines
3 work?

4 A I don't know. I've been here all day, might
5 work when I get back to the office.

6 Q Going back to the -- above section 3 again
7 where it says -- it's a page 6 once again.

8 MR. CURLEY: What's the exhibit number of
9 that? 5.

10 MR. LEO IV: This is Exhibit PC-5.

11 MR. CURLEY: Yeah.

12 Q (By Mr. Leo IV) Page 6. "Faculty and staff
13 members are primarily responsible for determining and
14 disclosing their own outside activities and financial
15 interests". Where in here after this, does it say
16 anything about pending anything?

17 MR. CURLEY: Objection to form.

18 A It does not anywhere else, however the word
19 primarily to me implies, that they have primary
20 responsibility but there are other people that do also
21 have a responsibility. That's --

22 Q (By Mr. Leo IV) Was this guidelines, were they
23 actually available to Professor Tracy the ones that
24 you're looking at right now? Were they actually -- were
25 they actually around in 2015, if you know?

1 A I don't know.

2 Q **Were these guidelines copied from another**
3 **University?**

4 A I have no idea.

5 Q **Like University of Florida for example.**

6 A I have no idea. I didn't create this.

7 Q **You don't know? Okay.**

8 A No.

9 Q **What could have been a conflict of interest**
10 **from Professor Tracy's blogging?**

11 MR. CURLEY: Objection to form.

12 Q **(By Mr. Leo IV) If you know.**

13 A I can't think of anything that would be a
14 conflict of interest from his blogging.

15 Q **Is it safe to say that there couldn't be a**
16 **conflict of interest between Professor Tracy's blogging**
17 **on his personal time and the University?**

18 MR. CURLEY: Objection to form.

19 A I can't imagine every circumstance but in
20 general I -- it's difficult to find a conflict of
21 interest.

22 Q **(By Mr. Leo IV) Would you agree that Professor**
23 **Tracy had that same difficulty in finding a conflict of**
24 **interest that could have ever have been determined by**
25 **anybody?**

1 MR. CURLEY: Objection to form.

2 A I don't know what he thought but probably.

3 **Q (By Mr. Leo IV) You know what he said, right?**

4 **That's what he was saying, right?**

5 A Okay.

6 **Q Okay or yes?**

7 A Okay, I hear you.

8 **Q But did you hear Professor Tracy, is my**
9 **question?**

10 A Yes.

11 **Q Did you read what he wrote you about this very**
12 **issue? About whether what he was doing could ever be in**
13 **conflict of interest, did Professor Tracy express those**
14 **concerns to you in writing?**

15 A Yes.

16 **Q That's what the record shows, right?**

17 A Yes.

18 **Q And did you ever take those concerns to your**
19 **superiors?**

20 A Yes.

21 **Q Okay. And their response was fire him?**

22 A Again everything related to these documents, I
23 took to the vice provost for her guidance and input in
24 final decision determinations.

25 **Q And here is my question, their response was**

1 **fire him, right?**

2 MR. CURLEY: Objection to form.

3 A Not because of his blog.

4 **Q (By Mr. Leo IV) Then what for?**

5 A The insubordination by refusing to follow
6 directives of the supervisor.

7 **Q By not reporting his blog on outside
8 employment forms for conflict of interest evaluation?**

9 MR. CURLEY: Objection to form.

10 **Q (By Mr. Leo IV) Is that a fair
11 characterization?**

12 A That is a characterization and I understand
13 you to be making.

14 **Q Would you agree with me that the University as
15 part of its reasoning indicated that there was no way
16 that they could determine whether there was a conflict
17 of interest because he had not reported those
18 activities, isn't that right?**

19 MR. CURLEY: Objection to form.

20 A Yes.

21 **Q (By Mr. Leo IV) Okay. Would you agree with me
22 that, that's ridiculous?**

23 A No.

24 **Q You're saying that the university couldn't
25 have evaluated Professor Tracy's blogging without him**

1 **reporting it on the outside employment form?**

2 A The process is initiated by the receipt of the
3 form.

4 Q **Okay. The University was reading Professor**
5 **Tracy's writing, weren't they?**

6 A I don't know.

7 Q Okay. Let's go back to your notes of 2013.
8 Well, that's on page 3; let's go to page 4 after the
9 114. What's that say at the top?

10 A JT not going to stop publishing.

11 Q **And then what?**

12 A Read his stuff.

13 Q **Who said that?**

14 A I do not recall.

15 Q **This is a meeting between you, Diane Alperin**
16 **and your general counsel?**

17 A Associate general counsel.

18 Q **And so it wasn't you that said that?**

19 A No, I'm making casual notes throughout the
20 conversation. There was probably all sorts of things
21 that were said that I didn't write down. I don't know
22 who said that.

23 Q **Is this read his stuff or read his stuff?**

24 A Good question. I don't know.

25 Q **Okay. It could be both?**

1 A Could be both.

2 Q "JT not going to start publishing," where did
3 that come from?

4 A I don't recall.

5 Q Did it come from Professor Tracy?

6 A No --

7 Q Did he tell you that he wasn't going to stop
8 writing on his blog?

9 A No, nobody --

10 MR. CURLEY: Objection to form.

11 Q (By Mr. Leo IV) How did you guys -- how did
12 you and Defendant Alperin know that he wasn't going to
13 stop?

14 A I don't recall. This note could mean so many
15 different things in different context in the course of
16 that conversation.

17 Q Okay. Let's go to the next line, First
18 Amendment, what did that mean?

19 A I don't know, I -- obviously we were talking
20 in some way about his blog in the First Amendment.

21 Q And underneath First Amendment it says find
22 winning metaphors. What does that mean?

23 A I don't recall.

24 Q Was the outside activities policy a winning
25 metaphor?

1 A That doesn't ring a bell.

2 Q Okay. Where did you look for winning
3 metaphors after this meeting?

4 MR. CURLEY: Objection to form.

5 A I didn't.

6 Q (By Mr. Leo IV) You didn't look for winning
7 metaphors?

8 A No.

9 Q Who was finding winning metaphors?

10 A I don't recall.

11 Q It's just you, Diane Alperin and the schools
12 counsel in this meeting?

13 A Correct.

14 Q Who is directed to find the winning metaphors?

15 A I don't know that anyone was directed.

16 Q So all of you were looking for winning
17 metaphors?

18 A I don't recall these. Like I said random
19 notes.

20 Q What were you trying to win?

21 A I have no idea what this refers to.

22 Q Were you trying to beat the First Amendment?

23 A No.

24 Q Do you think it's a fair question?

25 A No.

1 **Q What does this look like? First Amendment,**
2 **find winning metaphor, what does that look like, looking**
3 **at it today, as you sit here today you don't remember**
4 **what you were talking --**

5 A I don't.

6 **Q -- about then. What does it look like to you?**

7 A It looks like someone discussed the First
8 Amendment, then I put a hyphen after it, that does not
9 mean that what follows the hyphen is connected to the
10 concept of the First Amendment. This is how I write
11 notes. I write random notes. I think we're assuming a
12 lot based on my very random scrappy notes.

13 **Q What could find winning metaphors possibly**
14 **mean, when it comes right after the First Amendment?**

15 A It could mean that the conversation flowed
16 that we should look for metaphors within the First
17 Amendment to apply to James Tracy's publishing. It
18 could -- again, I can make some stuff up. I have no
19 idea.

20 **Q It says here "Not academic freedom because**
21 **this is not academic".**

22 A Um-hum.

23 **Q Who was this?**

24 A Again, I don't recall.

25 **Q You were referring to his blogging, weren't**

1 **you?**

2 A Possibly. I don't recall.

3 **Q Okay. Would you agree that Professor Tracy's**
4 **blogging was not academic or scholarly?**

5 A I don't recall what I was thinking at the day
6 of this meeting when I'm writing these casual notes.

7 **Q Okay. Well, as we sit here today we talked**
8 **earlier about whether or not the blogging rises to the**
9 **level of scholarly work, right? And we talked about**
10 **what that would require, right?**

11 A Correct.

12 **Q Okay. And you testified earlier that, it**
13 **would not be scholarly if it didn't have, for example**
14 **peer review, right?**

15 MR. CURLEY: Objection to form.

16 A I also said that in some disciplines it's very
17 different to define peer review.

18 **Q (By Mr. Leo IV) Okay.**

19 A So it depends on discipline.

20 **Q All right. Would you agree with me that this**
21 **is consistent, this note, not academic name because this**
22 **is not academic. This is consistent with the notion**
23 **that Professor Tracy's personal blogging was not**
24 **academic or scholarly. Would you agree with me on that?**

25 MR. CURLEY: Objection to form.



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1 A I would agree that on this date, in this
2 meeting, these casual notes might give that impression.
3 But that is not the full context of everything that was
4 said.

5 **Q (By Mr. Leo IV) Would you agree with me that**
6 **in 2013, that you did not pursue discipline Professor**
7 **Tracy for his blogging because of the First Amendment?**

8 MR. CURLEY: Objection to form.

9 A I never pursued discipline because of his
10 blogging and his comments related to his freedom of
11 speech.

12 **Q (By Mr. Leo IV) You never pursued discipline**
13 **because of his blogging?**

14 A Because of the content of his blogs or the
15 content of his publications.

16 **Q Well, you're referring to what you actually**
17 **attempted to discipline him for or are you talking about**
18 **the reasoning behind that? Are you referring to what**
19 **you said in your letter, are you referring to what the**
20 **reasoning behind the discipline that you attempted?**

21 A I will tell you that in 2013, '14, '15, '16
22 and '17 and all the years before that I am very
23 committed to the academic freedom of faculty.

24 **Q The next line here on the notes talks about a**
25 **hobby. It says -- is that VD means very different?**

1 A Very different, yes.

2 Q **Very different from work at the University,**
3 **right?**

4 A Um-hum.

5 Q **Would it be safe to say that you guys had it**
6 **right in 2013, in your meetings about what his blogging**
7 **was?**

8 MR. CURLEY: Objection to form.

9 A I have no way of reinterpreting these notes --

10 Q **(By Mr. Leo IV) Characterize -- I mean you**
11 **characterize Professor Tracy's blog as not academic,**
12 **hobby very different from his work at the University,**
13 **that was the truth, wasn't it in 2013?**

14 MR. CURLEY: Objection to form.

15 A I don't know that's one line of a bunch of
16 notes.

17 Q **(By Mr. Leo IV) Okay. Talking points for**
18 **University. Are these talking points that you're giving**
19 **me now?**

20 MR. CURLEY: Objection to form.

21 Q **(By Mr. Leo IV) When you're responding to**
22 **these questions are these talking points, that was my**
23 **question?**

24 A No, I'm telling you that it's very difficult
25 to extrapolate a lot of meaning from some random scrappy

1 notes.

2 Q Okay. Tell me what these notes mean to you,
3 **First Amendment fine winning metaphors, what does that**
4 **mean?**

5 A These are random things I wrote down in the
6 context of a meeting where I was with two people who
7 were more experienced than I was, who were supervisors
8 and we were sharing ideas and I was writing down things
9 I wanted to remember.

10 Q When you say random what do you mean by
11 random? You're saying the First Amendments are random?

12 A No, I'm saying the notes that I made were made
13 randomly. I'm assuming there was a lot of conversation
14 in between each note.

15 Q After these notes you decided to discipline
16 Professor Tracy in March, right?

17 A These were in January.

18 Q Right.

19 A Yeah, in March there was a discipline.

20 Q So, few months later you decide to discipline
21 him, after you discipline in March of 2013 Professor
22 Tracy and his union reps file a grievance?

23 A Um-hum.

24 Q Right? That's not the only opposition that
25 you were met with in 2013, is it?

1 A From Dr. Tracy?

2 Q **From anyone?**

3 MR. CURLEY: Objection to form.

4 A I -- I don't recall what other opposition.

5 Q **(By Mr. Leo IV) Do you recall receiving**
6 **letters concerning academic freedom for the First**
7 **Amendment?**

8 A Yes. Yes.

9 Q **And who did you receive letters from?**

10 A There is a group called FIRE I believe that
11 sent a letter to a number of university administrators.

12 Q **And how about the AAUP?**

13 A Yes, I believe that came in as well.

14 (Thereupon, Plaintiff's Exhibit PC-40 was
15 entered into the record.)

16 (Thereupon, Plaintiff's Exhibit PC-41 was
17 entered into the record.)

18 Q **(By Mr. Leo IV) I'm going to show you PC-40**
19 **and PC-41.**

20 MR. CURLEY: Thank you.

21 Q **(By Mr. Leo IV) Are these the letters that you**
22 **received?**

23 MR. CURLEY: Which one is 40?

24 THE WITNESS: AAUP.

25 MR. CURLEY: Okay.



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1 **Q (By Mr. Leo IV) Are these the letters you**
2 **received after attempting to discipline Professor Tracy**
3 **in 2013?**

4 MR. CURLEY: Objection to form.

5 A Looks like it.

6 MR. LEO IV: I'm sorry Counsel, what's the
7 objection?

8 MR. CURLEY: You said attempting to
9 discipline. I think they did discipline him.

10 **Q (By Mr. Leo IV) Did you actually discipline**
11 **professor in 2013?**

12 A Let me go back and look at the letter.

13 **Q Well, the discipline was withdrawn, was it**
14 **not? To save you a time.**

15 A It was grieved.

16 **Q Grieved and then there was a settlement,**
17 **right?**

18 A Correct.

19 **Q And the discipline was withdrawn?**

20 A Correct.

21 **Q So, would you agree that the University did**
22 **not discipline Professor Tracy in 2013, officially?**

23 MR. CURLEY: Objection to form.

24 A To my understanding, yes.

25 **Q (By Mr. Leo IV) So, when I say attempted**

1 **discipline would you say that's a fair characterization**
2 **of what happened in 2013?**

3 MR. CURLEY: Objection to form.

4 A We can parse words, but yes.

5 Q (By Mr. Leo IV) Okay. So, you would agree
6 with me that these letters, the April 16th, 2013 and the
7 April 23, 2013 letters came to you after your March 2013
8 **Notice of Discipline?**

9 A Yes.

10 Q **And what were the gist of these letters?**

11 MR. CURLEY: Objection to form.

12 A Well, the AAUP misspelled my name so that's
13 the first thing that jumps out at me. But they didn't
14 on the third page so that's okay.

15 Q (By Mr. Leo IV) **What was AAUP's concern?**

16 A As I review this now it looks like they were
17 concerned that Professor Tracy be afforded the
18 opportunity to express himself according to their
19 guidelines, Principles on Academic Freedom and Tenure.

20 Q **So, they said that this was a violation, the**
21 **discipline March of 2013, was a violation of academic**
22 **freedom in their view, AAUP?**

23 MR. CURLEY: Objection to form.

24 Q (By Mr. Leo IV) **Right?**

25 A No, they did not say it's a violation.

1 **Q What did they say?**

2 A They state on the final paragraph "The FAU
3 administration's action, if allowed to stand, sets a
4 precedent that potentially chills the spirited exchange
5 of ideas - however unpopular, offensive, or
6 controversial - that the academic community has a
7 special responsibility to protect".

8 **Q They were asking after you to protect academic
9 freedom, right?**

10 A Yes.

11 **Q And they were speaking about the discipline.**
12 **This letter is in concern the discipline that was sought**
13 **against Professor Tracy in 2013 for his blog, right?**

14 A They're expressing concern over the formal
15 letter of reprimand, yes.

16 **Q Okay. And then a few days later F-I-R-E,**
17 **Foundation for Individual Rights and Education, sends**
18 **another letter saying a little bit more, right? You**
19 **receive this letter, right?**

20 A Yes, Um-hum. I need to refresh my memory.

21 **Q You see page 3?**

22 A Um-hum.

23 **Q What's it say about the First Amendment in**
24 **that third paragraph?**

25 A That it is fully binding on public

1 Universities like FAU.

2 Q Going to the top there, the First Amend-- the
3 top of the third paragraph page.

4 A Oh sorry, third page.

5 Q The First Amendment is what?

6 A First Amendment protects Tracy's personal blog
7 entries. Do you want me to --

8 Q Do you agree with that?

9 A I am not a First Amendment scholar. I take it
10 that they very much agree with that.

11 Q When you receive this letter in 2013 you read
12 it, right?

13 A Yes.

14 Q And you read the cases that they cited in this
15 paragraph, Garsetti?

16 A Did I go and read the cases? No.

17 Q No. Did you read the cites the -- and the
18 quotes from those cases?

19 A Yes.

20 Q Pickering?

21 A At the time I would have read that, yes.

22 Q Okay. So you were made aware in April of
23 2013, that Professor Tracy's personal blog entries were
24 protected by the First Amendment, right?

25 MR. CURLEY: Objection to form.

1 A (No audible response).

2 Q **(By Mr. Leo IV) You have to answer audibly.**

3 A Yes. According to FIRE, yes.

4 Q **According to the First Amendment, right?**

5 MR. CURLEY: According to FIRE, yeah,

6 objection to form.

7 Q **(By Mr. Leo IV) When you say according to FIRE
8 are you saying, that the First Amendment doesn't protect
9 Professor Tracy's blog entries?**

10 A FIRE wrote this letter.

11 Q **Okay.**

12 A And FIRE is stating the First Amendment
13 protects Tracy's personal blog entries so FIRE is
14 stating that, I can't independently affirm that that's
15 what the First Amendment protects.

16 Q **Okay. And just for record it was Will Create
17 the director of the legal and public advocacy for the
18 Foundation for Individual Rights and Education who wrote
19 this letter?**

20 A Right, and I don't believe everything I see on
21 the news. I don't believe every word that anybody just
22 writes. I believe he wrote it, and I believe he
23 believes it.

24 Q **You're saying you don't believe that Professor
25 Tracy's blog was protected by the First Amendment now?**

1 A I didn't say that.

2 Q Does this contradict something you were told
3 or taught as a dean, with respect to First Amendment
4 Rights?

5 A No.

6 MR. CURLEY: Objection to form.

7 Q (By Mr. Leo IV) I'm sorry, when did it change
8 your view that the First Amendment protected Professor
9 Tracy's blog entries?

10 MR. CURLEY: Objection to form.

11 A It didn't change. All I was saying is
12 confirming that this sentence here was sent to us by
13 FIRE.

14 Q (By Mr. Leo IV) Right.

15 A This is the opinion of the person who penned
16 the letter.

17 Q Okay. And after this the University withdrew
18 the discipline that it was seeking against Professor
19 Tracy in 2013, right?

20 MR. CURLEY: Objection to form.

21 A Correct.

22 Q (By Mr. Leo IV) Would you agree that the
23 letters from these organizations, played a role in the
24 withdrawal or abandonment of the discipline of Professor
25 Tracy?

1 MR. CURLEY: Objection to form.

2 A I don't know.

3 Q (By Mr. Leo IV) You don't know?

4 A I don't know.

5 Q Did they play a role in your non-pursuit of
6 discipline against Professor Tracy later that year?

7 A I don't recall.

8 Q You didn't discipline Professor Tracy for his
9 blog and at the end of 2013, did you?

10 A No.

11 Q For the 2013-2014 semesters?

12 A Correct.

13 Q You didn't discipline Professor Tracy in 2014
14 at all?

15 A Correct.

16 Q Didn't send him any threatening letters or
17 notices the discipline for his blogging, right?

18 A Correct.

19 Q And he didn't in the beginning of 2015?

20 A Correct.

21 Q Okay. Are you saying that this advisement
22 about the First Amendment played no role in that?

23 A I don't recall the role that this letter
24 played.

25 Q What changed in the administration between

1 **this letter, this April 23rd, 2013 letter and the**
2 **November 10th, 2015 Notice of Discipline?**

3 MR. CURLEY: Objection to form.

4 A Sort of globally what changed you mean?

5 Q **(By Mr. Leo IV) If anything what changed that**
6 **made you think in November, that Professor Tracy's blog**
7 **was no longer protected by the First Amendment?**

8 MR. CURLEY: Objection to form.

9 A I don't know how to answer that question. A
10 lot of things changed at the University. Do you want me
11 to --

12 Q **(By Mr. Leo IV) Sure.**

13 A -- break down some of them?

14 Q **Go ahead.**

15 A Well, the president changed, the provost
16 changed, a couple of vice presidents changed. We had a
17 new strategic plan. There were new boards of trustees
18 members. There were new chairs. New faculty came to
19 faculty left. So, there's lot of change.

20 Q **Okay. Was there any change to the First**
21 **Amendment during that time that you're aware of?**

22 A Not that I'm aware of.

23 Q **Was there any case that came out that said**
24 **faculty members' blogs are no longer protected by the**
25 **First Amendment?**

1 A I don't know.

2 Q If there was you would have been made aware of
3 that, right?

4 MR. CURLEY: Objection to form.

5 A Presumably.

6 Q (By Mr. Leo IV) As all reasonable college
7 administrators would?

8 MR. CURLEY: Objection to form.

9 A Presumably.

10 Q (By Mr. Leo IV) Going back to the outside
11 employment activities. The policy was in dispute at the
12 end of 2015, would you agree with that characterization?

13 MR. CURLEY: Objection to form.

14 A Did faculty dispute the policy, is that what
15 you're asking?

16 Q (By Mr. Leo IV) Yes.

17 A There were faculty who disputed the policy,
18 yes.

19 Q Okay. And as a result of those concerns and
20 disputes of faculty members about the policy there were
21 changes that were being made to the policy at the end of
22 2015, right?

23 A I believe so. I don't recall because --

24 Q You were involved often in some of the --

25 A Yes.

1 **Q -- back and forth between --**

2 A That's right, I've told you that, yeah.

3 **Q -- provost and the colleges with respect to**
4 **this policy, right?**

5 A Yes.

6 **Q You talked of the memorandum and we've talked**
7 **about the memorandum that Provost Perry sent out in, I**
8 **believe June 2016.**

9 A Okay, I don't remember the date.

10 **Q It's in one of these files. Do you recall**
11 **making edits or responding to Defendant Alperin for**
12 **example on the outside activities changes?**

13 A Yes.

14 MR. LEO IV: Are we on 42?

15 THE WITNESS: I don't know. Yes.

16 (Thereupon, Plaintiff's Exhibit PC-42 was
17 entered into the record.)

18 **Q (By Mr. Leo IV) I'm going to show what's been**
19 **marked as PC-42 for today.**

20 MR. CURLEY: Thank you.

21 **Q (By Mr. Leo IV) Do you recognize this**
22 **document?**

23 A Yes.

24 **Q What is this?**

25 A This is -- well again there's not of complete

1 e-mail so I can't see what would have been on the second
2 page. But it looks like an e-mail from me to Diane.

3 **Q Are these your marks?**

4 A The pencil and pen, no.

5 **Q Okay. But you wrote the e-mail that's marked**
6 **up?**

7 A Yes.

8 **Q Where -- what is this concerning?**

9 A It looks to me like the chairs all discussed
10 this memo from the provost from, no, because this memo
11 came out in June. Perhaps a draft memo. Looks like
12 there are other issues that we're referring because they
13 talk about textbooks as well. Looks like I'm responding
14 to a draft and providing input from our chairs. It
15 would be helpful to have the other page that came before
16 this that might --

17 **Q I agree.**

18 A -- give us more information.

19 **Q I don't know if I have it, but just based on**
20 **what's here, it says here in Gary's memo item B second**
21 **paragraph makes faculty anxious. Since it seems that**
22 **they won't know until there's a problem whether or not**
23 **they should have engaged in the outside activity.**

24 A Um-hum, those are some concerns faculty
25 shared.

1 **Q In March of 2016?**

2 A Um-hum.

3 **Q So after Professor Tracy's fired faculty are**
4 **still anxious about what actually is an outside activity**
5 **under the policy?**

6 A Correct.

7 MR. CURLEY: Objection to form.

8 **Q (By Mr. Leo IV) Do you think it's fair that**
9 **Professor Tracy was fired for what you fired him for**
10 **given the problems that other faculty members had with**
11 **understanding the policy?**

12 MR. CURLEY: Objection to form.

13 A Short answer, yes, given -- unless you want me
14 to give a long answer.

15 **Q (By Mr. Leo IV) I'm sorry; you're saying yes**
16 **it was fair that Professor Tracy was --**

17 A Yes.

18 **Q -- fired for having a problem with the policy**
19 **that all the other faculty members are complaining**
20 **about --**

21 MR. CURLEY: Objection to form.

22 **Q (By Mr. Leo IV) -- and feel anxious about?**
23 **Um-- it was -- is that a yes?**

24 MR. CURLEY: Was that a question?

25 A Yeah.

1 **Q (By Mr. Leo IV) You think it's fair, okay.**

2 **How is it fair? I can -- you want me to preface the**
3 **question?**

4 A When you are instructed by your supervisor to
5 give comply with the policy and directed to do so the
6 other faculty did it despite not fully understanding it
7 because they knew that this was the requirement and then
8 after that they were obviously attempting to discuss it
9 and further deepen their understanding of it.

10 **Q Sounds like they were anxious, perhaps even**
11 **afraid.**

12 MR. CURLEY: Objection to form.

13 **Q (By Mr. Leo IV) Would you agree with me that**
14 **Professor Tracy was afraid to turn in the outside**
15 **employment reports?**

16 A I can't talk about his feelings.

17 **Q You read what he wrote. Did you not sense any**
18 **fear and suspicion perhaps in his words? You have his -**
19 **- you have his letters.**

20 MR. CURLEY: Objection to form.

21 A I wasn't reading to ascertain emotional state.
22 Could you repeat the question?

23 **Q (By Mr. Leo IV) Was Professor Tracy expressing**
24 **fear and uncertainty -- I'll ask it a different way. In**
25 **this, what you're reading, do you see fear and**

1 **uncertainty concerning the policy?**

2 MR. CURLEY: For the record she is looking to
3 Exhibit 35.

4 A He describes himself as feeling confused. I
5 don't hear fearful.

6 **Q (By Mr. Leo IV) Okay. But he's confused about**
7 **the policy?**

8 A That's how he describes himself, yes.

9 **Q Would you agree that when someone is afraid**
10 **they don't normally say "I'm afraid"?**

11 MR. CURLEY: Objection to form.

12 A I have no idea, I can't agree -- I can't say
13 yes or no to that I don't know.

14 **Q (By Mr. Leo IV) Did you think the Professor**
15 **Tracy was lying when he wrote that he was confused about**
16 **the policy?**

17 A I didn't consider whether or not he was lying.

18 **Q Why not?**

19 A Okay, I don't typically think our people are
20 lying when you're writing to me.

21 **Q Okay. So, is that why you didn't clarify how**
22 **the policy was being applied to him?**

23 A Is what why?

24 **Q However you felt at the time when you -- when**
25 **you read that he was confused, I mean you made a**

1 **conscious decision not to clarify the policy, right?**

2 A I made a conscious decision to send this to
3 Diane Alperin and await her guidance.

4 Q **Okay. So, when Professor Tracy asked you for**
5 **clarification or asked Williams for clarification in the**
6 **fall of 2015, there was no decision, let's clarify this**
7 **for Professor Tracy, let's explain how we're using the**
8 **policy, that didn't happen, right?**

9 A Not to my knowledge.

10 Q **Why?**

11 A I don't know.

12 Q **Because you didn't want to, isn't that right?**

13 MR. CURLEY: Objection to form.

14 A I can't answer that.

15 Q **(By Mr. Leo IV) And that's why the changes in**
16 **the policy didn't happen until after he was fired,**
17 **right?**

18 A I don't --

19 Q **The clarifications, the memorandums all of**
20 **this effort to help your faculty better understand the**
21 **policy, it didn't happen until after Professor Tracy was**
22 **fired, isn't that correct?**

23 A I don't know.

24 Q **Okay. Would you agree with me that that looks**
25 **pretty bad?**

1 MR. CURLEY: Objection to form.

2 A I don't know.

3 Q (By Mr. Leo IV) You don't think it looks bad
4 that Professor Tracy is fired after expressing his
5 confusion with the policy, right, but no other faculty
6 members are fired and clarification comes for all the
7 other faculty members after he's fired. You don't think
8 that, that looks -- that looks bad?

9 A No, other faculty followed the requirements of
10 their supervisors who filled out the forms.

11 Q Are you sure?

12 A Yes.

13 Q Earlier you testified you didn't know whether
14 faculty members were submitting their forms for their
15 blogs.

16 MR. CURLEY: Objection to form.

17 Q (By Mr. Leo IV) So, how do you know if they've
18 complied?

19 A The chair's job is to know what their faculty
20 do, and when their faculty engage in outside activity
21 insure that they have supplied the forms.

22 Q Our faculty -- I'm sorry are chairs required
23 to --

24 (Thereupon, a short discussion was held off
25 record.)

1 (Deposition resumed.)

2 (Thereupon, Plaintiff's Exhibit PC-43 was
3 entered into the record.)

4 MR. LEO IV: This is PC-43. I don't have a
5 copy even for me so you can show your Counsel what.
6 If you want Jo maybe you can read through the
7 record what it is.

8 MR. CURLEY: Yeah, that's a good idea. Bate
9 stamp that's 169 through 172, and at the top of the
10 first page an e-mail, appeared to be an e-mail from
11 David William to James Tracy dated November 2,
12 2015, 12:10 p.m. I did the bate stamp.

13 MR. LEO IV: Okay.

14 Q **(By Mr. Leo IV) Regarding this exhibit we just**
15 **cited on the record, is this what chairs are supposed to**
16 **do when faculty members expressed confusion about the**
17 **policies? Specifically with the outside activity**
18 **policy?**

19 A When you say this, do you mean write back to
20 them in an e-mail, because that's what this is.

21 Q **Well, what did he say?**

22 MR. CURLEY: Objection to form.

23 A He writes back to James Tracy.

24 Q **(By Mr. Leo IV) And what's -- what does he say**
25 **about -- about what he has to do, Tracy?**

1 MR. CURLEY: Why don't you give him the e-mail
2 so he can read what you --

3 MR. LEO IV: You want me to read it?

4 MR. CURLEY: Well, whatever --

5 MR. LEO IV: Sure.

6 MR. CURLEY: We're not sure what you're
7 referring to.

8 MR. LEO IV: Okay. David Williams write James
9 Tracy on November 2nd, "Jim, if you have outside
10 income then you have to fill out the conflict of
11 interest form that much is clear". That's all I
12 wanted to point out.

13 MR. CURLEY: Okay.

14 **Q (By Mr. Leo IV) Would you characterize this as**
15 **the appropriate way to respond to requests for**
16 **clarification about whether or not one has to report**
17 **professional activity?**

18 A It sounds to me like David Williams was
19 attempting to respond with what he knew.

20 **Q Okay. Would you agree that he's not correct**
21 **in this e-mail, David Williams, when he says if it's**
22 **outside income you have to report it?**

23 A Yes, he's not correct.

24 **Q Okay. And you testified a moment ago that the**
25 **chairs are responsible for helping faculty understand**

1 **this policy?**

2 A Yes.

3 **Q Do you see a problem with this?**

4 A Yes.

5 **Q Do you agree that given what Professor Tracy**
6 **is being told he shouldn't have been disciplined because**
7 **he's getting bad information from his chair, would you**
8 **agree with me?**

9 A No.

10 **Q Do you think that Professor Tracy should be**
11 **disciplined given what your chair incorrectly advised**
12 **him?**

13 MR. CURLEY: Objection to form.

14 A Which part of the question, so I'm --

15 **Q (By Mr. Leo IV) You said it was fair, right?**

16 A -- given what he advised.

17 **Q You said it was fair.**

18 MR. CURLEY: Objection to form.

19 **Q (By Mr. Leo IV) You said it was fair that**
20 **Professor Tracy was disciplined, right?**

21 A Yes.

22 **Q Okay. Given what David Williams said to him**
23 **which was not correct as you just testified, you think**
24 **it was fair that Professor Tracy was being disciplined**
25 **for his confusion and his non-compliance with the policy**

1 **that he had a problem with?**

2 MR. CURLEY: Objection to form.

3 **Q (By Mr. Leo IV) That the chair didn't even**
4 **explain properly and clearly didn't understand himself**
5 **in his e-mails to you, right?**

6 MR. CURLEY: Objection to form.

7 **A In other e-mails Dr. Tracy has sent other**
8 **information.**

9 **Q (By Mr. Leo IV) You're talking about Dr.**
10 **Williams?**

11 **A Doctor -- yes.**

12 **Q Yeah, right. Dr. Williams in previous e-mails**
13 **you've read today expressed his own confusion with the**
14 **policy, right?**

15 **A Um-hum.**

16 **Q Have you seen the one e-mail where he tells**
17 **Professor Tracy, that there's nothing new?**

18 **A Right, it's in here.**

19 **Q And there was something new, right?**

20 **A Yes.**

21 **Q Do you agree that that's misrepresenting the**
22 **policy?**

23 **A It is certainly an error on the part of Dr.**
24 **Williams.**

25 **Q Okay. And in this e-mail you're holding your**

1 hand, what's the exhibit number?

2 A 43.

3 Q PC-43, would you agree that this is a
4 misrepresentation was made to Professor Tracy by an
5 administrator at FAU?

6 MR. CURLEY: Objection to form.

7 Q (By Mr. Leo IV) If you have outside income
8 then you have to fill out the conflict of interest form.
9 That's false, right?

10 MR. CURLEY: Objection to form.

11 A It's not fully correct.

12 Q (By Mr. Leo IV) Not fully correct or it's not
13 correct?

14 A It's not correct.

15 Q Right.

16 A There's more to it.

17 Q There's a lot more to it, isn't it?

18 A Um-hum.

19 Q It's the subject of countless revisions and
20 drafts and memorandums and e-mails and meetings over the
21 course of the years, would you agree with me at FAU that
22 that's what was going on with your policy, the outside
23 activities, the outside employment, professional
24 activity, outside business --

25 A With the provost policy, yes.

1 **Q** -- however you call it?

2 MR. CURLEY: Objection to form.

3 **Q** **(By Mr. Leo IV)** You agree with me?

4 **A** Yes.

5 **Q** So again, let me ask again, do you think it
6 was fair that the Professor Tracy was fired for not
7 complying with the policy he didn't understand or
8 thought that it was being used in a way that was
9 unlawful?

10 **A** Setting that aside there was an insubordinate,
11 insubordination on Dr. Tracy's part. He was still
12 directed to do things.

13 **Q** Would you agree that you made up the
14 insubordination?

15 **A** No.

16 **Q** By requiring him to comply the policy he
17 didn't understand you were setting him up for
18 insubordination, would you agree?

19 **A** No.

20 **Q** Would you agree that's how it looks?

21 **A** I don't know how it looks to anyone else, no.

22 **Q** When Professor Tracy is the only professor
23 who's ever been fired or disciplined, after they didn't
24 report their activity, would you agree that it looks
25 like he's being singled out?

1 A No.

2 Q Name one other professor that's been
3 disciplined like Professor Tracy at FAU that you know
4 of?

5 A You mean fired.

6 Q **Disciplined.**

7 A Disciplined?

8 Q **Disciplined.**

9 MR. CURLEY: Objection to form.

10 A Okay, but in for anything.

11 Q **(By Mr. Leo IV) Like for Professor Tracy, was
12 my question.**

13 A Meaning?

14 Q **Name one professor who was disciplined like
15 Professor Tracy.**

16 A Okay, can you be more explicit? Because like
17 could mean the dates, it could mean the issue that was
18 raised, it could mean the process that was followed. I
19 don't know what like means in that sense.

20 Q **Give me one example of how a professor who did
21 not report a blog was disciplined?**

22 A I have not disciplined a professor for not
23 reporting a blog.

24 Q **Have you ever heard of any other dean
25 disciplining any other faculty member at FAU for not**

1 **reporting a blog?**

2 MR. CURLEY: Objection to form.

3 A No.

4 **Q (By Mr. Leo IV) Okay. Would you agree with me**
5 **that Professor Tracy didn't give or report the activity**
6 **because you already knew about it?**

7 MR. CURLEY: Objection to form.

8 A The provost already knew that I performed
9 concerts and that I was still required to fill out the
10 Outside Activity form, so --

11 **Q (By Mr. Leo IV) That's not my question. My**
12 **question was --**

13 A -- you are still required to fill out the
14 form.

15 **Q My question was, do you agree that Professor**
16 **Tracy did not need to report his blog because it was**
17 **already known about?**

18 A No.

19 **Q Are you saying that Professor Tracy's blog**
20 **wasn't known?**

21 A No.

22 **Q Okay. Would you agree with me that the**
23 **purpose of the reporting is for approval, right?**

24 MR. CURLEY: Objection to form.

25 A That's what the policy says.

1 **Q (By Mr. Leo IV) Approval of the activity.**

2 **Okay. You didn't need to report it because you want to**
3 **know about it, right?**

4 MR. CURLEY: Objection to form.

5 A Can you rephrase that?

6 **Q (By Mr. Leo IV) He didn't need to report it to**
7 **tell you about it, right, that wasn't the purpose of the**
8 **reporting, was it?**

9 MR. CURLEY: Objection to form.

10 A The purpose of reporting is so that there is
11 on file every year a report of outside activity.

12 **Q (By Mr. Leo IV) I'm not asking about**
13 **generally.**

14 A Okay.

15 **Q I am asking about whether Professor Tracy's**
16 **blog needed to be reported so you would know about it.**
17 **That wasn't why or was it?**

18 A Correct.

19 **Q Because his blog was already known.**

20 MR. CURLEY: Objection to form.

21 **Q (By Mr. Leo IV) Fair -- is that a fair**
22 **characterization --**

23 MR. CURLEY: Objection to form.

24 **Q (By Mr. Leo IV) -- of the knowledge that for**
25 **example, you had at the University?**

1 A Yes.

2 Q You knew he was blogging.

3 A Right.

4 Q You knew he had publications that had been
5 mirrored on global research, right?

6 MR. CURLEY: Objection to form.

7 A Right.

8 Q (By Mr. Leo IV) He had submitted global
9 research as a part of his annual assignment, right?

10 MR. CURLEY: Objection to form.

11 A All -- okay --

12 Q (By Mr. Leo IV) It was well known at the
13 University. Would you agree with me?

14 MR. CURLEY: Objection to form.

15 A By some at the University, okay.

16 Q (By Mr. Leo IV) By some, would you agree that
17 global research is featured and referenced on the
18 College of Arts and Letters to this day?

19 A I don't recall. Need to look at it.

20 Q All right. Let's look at it.

21 MR. LEO IV: We are on 44?

22 THE COURT REPORTER: 44.

23 MR. LEO IV: It was in track, yes.

24 MR. CURLEY: I think yeah, 44, you are right.

25 THE COURT REPORTER: It's 44.



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1 MR. LEO IV: All right.

2 (Thereupon, Plaintiff's Exhibit PC-44 was
3 entered into the record.)

4 **Q (By Mr. Leo IV) Let's start with Discipline.**

5 (Thereupon, a short discussion was held off
6 record.)

7 (Deposition resumed.)

8 A Can you repeat the question?

9 **Q (By Mr. Leo IV) The question was, whether**
10 **Professor Tracy's global research contributions were**
11 **well known. I asked -- I believe you said yes, and I**
12 **asked if whether they were featured on your college's**
13 **website. Does this refresh your recollection as to**
14 **whether his global research activity was well known and**
15 **featured on your college's website?**

16 MR. CURLEY: Objection to form.

17 A I see project censored. I don't see a
18 reference to global research. Is that implied, is that
19 hidden somewhere?

20 **Q (By Mr. Leo IV) Sure. Well, you can't really**
21 **see it on this copy but this is actually a website and**
22 **the Tracy story, you see that in the paragraph there,**
23 **the last page of Exhibit PC 44?**

24 A Um-hum.

25 **Q Did they say -- there?**

1 A Yeah, it says published by the Centre for
2 Research and Globalization and nominated bla bla bla --

3 Q **Right.**

4 A It doesn't say global research but mainly it
5 has --

6 Q **Okay. Well, that's a link --**

7 A -- so it must be the same thing.

8 Q **That's a link and let me give you a copy of**
9 **the link where it goes. Here you go. This is actually**
10 **a --**

11 A Got it. Okay.

12 Q **You see what this is?**

13 A Okay. Now, I see global research, yes.

14 Q **This is actually another reproduction of**
15 **Professor Tracy's blog on global research, right?**

16 A Down here, they cite the name of the site.

17 Q **You see that Professor Tracy's work on or**
18 **publication on global research was linked on your site.**

19 A Yes.

20 Q **Okay. So, would you agree with me that his**
21 **activities on global research, Professor Tracy's**
22 **activities, were not only well known, they were featured**
23 **on the College of Arts and Letters website, and they**
24 **still are to this day.**

25 A Okay. If this was pulled out today, sure, I

1 would agree.

2 MR. CURLEY: Objection to form.

3 Q (By Mr. Leo IV) It was found yesterday.

4 A Okay. That's probably still --

5 Q Well, printed. I should say printed
6 yesterday.

7 MR. CURLEY: 5/3/2017. Yeah.

8 Q (By Mr. Leo IV) Again, so the global research,
9 right, outside activity, would this be outside activity,
10 this global research article about the health impacts of
11 RF radiation, would that be an outside activity, what's
12 featured on the --

13 MR. CURLEY: Objection to form. Objection to
14 form.

15 Q (By Mr. Leo IV) It's featured on the website,
16 is it an outside activity?

17 A I don't believe so.

18 Q All right. I mean Project Censored is
19 featured and Professor Tracy's contributions which were
20 awarded by Project Censored are used as a marketing
21 material for your school, right?

22 MR. CURLEY: Objection to form.

23 A It would look that way.

24 Q (By Mr. Leo IV) That's what this is, right,
25 PC-44 and 45.

3 Q (By Mr. Leo IV) These are things that the
4 University uses to market itself?

5 A Correct.

6 Q And you think Professor Tracy was treated
7 fairly? Is that your testimony?

8 MR. CURLEY: Objection.

9 A Yes.

10 Q (By Mr. Leo IV) Okay. Going back to your
11 notes, in January of 2013 --

12 MR. CURLEY: Which page are you on?

13 MR. LEO IV: We left off on Tracy is not going
14 to stop publishing, writing stuff or read the
15 stuff.

16 MR. CURLEY: Okay.

17 MR. LEO IV: First amendment finding
18 metaphors.

19 Q (By Mr. Leo IV) It's your testimony that the
20 Outside Activities policy, the way it was used in 2015
21 was not a winning metaphor?

22 MR. CURLEY: Objection to form.

23 A I have no idea what -- winning metaphor might
24 be related to the Outside Activity policy, yeah, the --
25 I don't know.

1 **Q** (By Mr. Leo IV) Okay. Going to the next page,
2 116-13. So, going back to the beginning here; you had a
3 meeting on 1/8, you had a meeting on 1/9, meeting on
4 1/14 and now meeting on 1/16.

5 **A** Um-hum.

6 **Q** Is this usual --

7 **A** No.

8 **Q** -- for dealing with faculty issues?

9 **A** No.

10 **Q** Meeting with the provost office this is
11 uncommon?

12 **A** Yes.

13 **Q** And did this happen during these kinds of
14 meetings in 2015?

15 **A** Yes. There would have been one or two of
16 those kinds of meetings.

17 **Q** Did you have a meeting with, for example,
18 Kuwalik, Silversten, Acon, Alperin, Metcalf --

19 **A** No.

20 **Q** -- like the one that you had on 1/8?

21 **A** No, I don't recall that.

22 **Q** On 1/16, you said, "MJ yesterday". So, was
23 there on a meeting on the 15th also?

24 **A** I would infer that. Got somebody met with him
25 the day prior.

1 **Q Okay. And it says told her three points.**

2 A Correct.

3 **Q Who told her?**

4 A I didn't meet with MJ, so it's going to either
5 be Larry Glick or Diane Alperin, so with the people that
6 I was conversing with on the 16th.

7 **Q What does it mean by ethical standards of
8 discipline?**

9 A I believe that somebody referenced an
10 organization and it looks like the letters there, AEJMC,
11 Association of Education, Journalism, Mass Communication
12 -- I don't know that organization well, but it looks to
13 me and as I recall, I was trying to take notes and
14 capture the name of an organization, which would be
15 associated with a discipline that Dr. Tracy works in and
16 maybe somebody mentioned that that organization
17 publishes ethical standards of -- that I am guessing,
18 that is my guess.

19 **Q So, were you contacting professor
20 organizations?**

21 A No, I didn't contact that organization.

22 **Q Or professional organizations?**

23 A No, I didn't contact them.

24 **Q Well, it says, "He can't say this global
25 research was personal". What does that mean?**

1 A Honestly, I do not recall.

2 Q But you agree with me that in 2013, again,
3 global research was well known --

4 MR. CURLEY: Objection to form.

5 Q (By Mr. Leo IV) -- by at least the people on
6 his meeting and yourself, right?

7 A Yes.

8 Q Going back to the Reportable Dispute in '15.
9 Professors, they need to disclose global research in
10 2015, so that you would know about it, right, or the
11 University would know about it.

12 Do you agree with that?

13 A I don't know.

14 Q He was asked to disclose it so it could be
15 subject to approval. Would you agree?

16 MR. CURLEY: Objection. Objection to form.

17 A Most likely.

18 Q (By Mr. Leo IV) Okay. So, you would agree
19 that the University wanted those reports, those outside
20 employment, outside business reports for what arguably
21 is not professional activity. Do you agree with me?

22 MR. CURLEY: Objection to form.

23 A I don't know.

24 Q (By Mr. Leo IV) Would you agree with me that
25 if the activity on global research on Professor Tracy's

1 **blog was not scholarly, would you agree with me that**
2 **that would not be a reportable activity?**

3 A I don't know.

4 Q You don't know?

5 A I don't know.

6 Q Is there a time when you did know?

7 A I don't recall.

8 Q In 2015, did you evaluate whether or not the
9 activity that you were asking Professor Tracy to report
10 was scholarly?

11 A No.

12 Q And do you think that that's a problem?

13 MR. CURLEY: Objection to form.

14 A What's a problem?

15 Q (By Mr. Leo IV) That you didn't evaluate
16 whether or not the activity you were requiring to be
17 reported was scholarly.

18 A No.

19 Q Who is supposed to know?

20 MR. CURLEY: Objection to form.

21 A Whether or not activity is scholarly or not?

22 Q (By Mr. Leo IV) Right.

23 A Disciplinary experts. I would definitely hope
24 that the director of the school would know.

25 Q Anybody else?

1 A Faculty experts in that field.

2 Q **And the professors are supposed to know?**

3 A Correct.

4 Q **Because it's up to them to --**

5 A Correct.

6 Q **-- to determine whether it's reportable,**
7 **right? Is that right?**

8 A According to the HR policy, yes.

9 Q **Who is the first person to talk about UFF and**
10 **their involvement in any way, in 2013 or --**

11 A In the January 2013 meeting, a UFF
12 representative came with Dr. Tracy to that meeting, so
13 that will be --

14 Q **Before that. In your notes where you talk**
15 **about how have they been affected, right, looking at the**
16 **next page there.**

17 A Um-hum.

18 Q **Bottom, there is an asterix. It says, is that**
19 **FAC --**

20 A FAC, short for faculty.

21 Q **Cancel UFF. What does that mean?**

22 A If I recall correctly, and again I have to say
23 it yet one more time, these are scribbled casual notes
24 where I am making, you know, a few notes of things going
25 on in the conversation. If I recall correctly, I

1 believe there were some reports that some faculty had
2 canceled their membership in UFF but I don't know if
3 that's right. I don't recall.

4 **Q When you -- when you are telling me how they**
5 **have been affected, who are you talking to? Or is**
6 **that --**

7 A I don't recall.

8 **Q Is this a message or is this --**

9 A These are my scribbled personal notes. I
10 don't recall.

11 **Q Or is this someone telling you to tell them**
12 **how they've been affected?**

13 MR. CURLEY: Objection to form.

14 A I don't recall.

15 **Q (By Mr. Leo IV) Was Diane Alperin asking you**
16 **to find out how the union has been affected for her?**

17 A I don't recall that. That doesn't seem
18 likely.

19 **Q Going back to the January 14th notes on Page 3**
20 **there, it says here at the bottom, after that labeled**
21 **One-man Argument against Tenure, and it also says, "Will**
22 **be poster child. Quit UFF membership".**

23 **Did you write that too?**

24 A Yes, I wrote that.

25 **Q Was that your words?**

1 A This is listed under Impact, so it looks like
2 I was making a list of the reported impact.

3 Q **Is that your words or is that Diane Alperin's**
4 **words or is that Larry Glick's words?**

5 A It's my handwriting. I have no recollection
6 of who said that. I believe I was summarizing what I
7 just said about the other note that I believe some
8 faculty had apparently withdrawn their membership from
9 UFF.

10 Q **Do you think that having a discussion like**
11 **this is ethical?**

12 MR. CURLEY: Objection to form.

13 Q **(By Mr. Leo IV) When you are talking about the**
14 **One-Man Argument against Tenure, for example, you think**
15 **that's appropriate characterization of a faculty member**
16 **at FAU --**

17 MR. CURLEY: Objection to form.

18 Q **(By Mr. Leo IV) -- or an ethical**
19 **characterization?**

20 MR. CURLEY: Objection to form.

21 A These are notes from a meeting. It does not
22 mean that anybody said that or accepted that label.

23 Q **(By Mr. Leo IV) But somebody used that label?**

24 A Apparently, or I wrote that down.

25 Q **And "Will be poster child. Quite UFF**

1 **membership", was that foreshadowing or is that intent --**
2 **I am trying to figure out why would you even write that**
3 **or why would somebody even say that. May be you can**
4 **help me understand that.**

5 MR. CURLEY: Objection to form.

6 A Okay. The way these are indented, "Quit UFF
7 membership" is separate from the previous section which
8 starts "sheer reckless and irresponsible". So, --

9 Q **(By Mr. Leo IV) So, you're saying --**

10 A -- I don't believe the poster child thing
11 flows into quit UFF membership.

12 Q **So, you think the poster child is referring to**
13 **the one-man argument against tenure?**

14 A I believe so, the way those are indented and
15 listed, yes.

16 Q **Would you say that this is a nice thing to say**
17 **about a faculty member?**

18 A Absolutely not.

19 Q **So, why were you guys talking to her, I**
20 **shouldn't say you guys, so why were you and Diane**
21 **Alperin and Larry Glick talking this way?**

22 MR. CURLEY: Objection to form.

23 A I don't recall. We were discussing the impact
24 of what had happened and information was being shared
25 and I made informal scribbles.

1 **Q (By Mr. Leo IV) And "the black eye in all**
2 **faculty", who said that?**

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

4 **Q It's -- this is all referring to Professor**
5 **Tracy, right?**

6 **A I would assume so, yes.**

7 **Q And you think he was treated fairly?**

8 **A In this regard, no, I don't like that a**
9 **faculty member at the University was called these**
10 **things, apparently.**

11 **Q And what do you think about the fact that**
12 **those notes ended up in his public-personal file?**

13 **A I --**

14 **MR. CURLEY: Objection to form.**

15 **Q (By Mr. Leo IV) -- and were distributed --**

16 **A -- don't understand none of that.**

17 **Q Do you think that that would impact Professor**
18 **Tracy's reputation when notes like this are made**
19 **publicly available and distributed to, for example, the**
20 **media?**

21 **MR. CURLEY: Objection to form.**

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

23 **Q (By Mr. Leo IV) Would these notes -- where**
24 **would they be if they weren't in the file, you said they**
25 **were in your own file?**

1 A In a folder in my desk.

2 Q **Was a copy of these notes made and put into**
3 **the file or do you still have these notes?**

4 A To my knowledge, yes, I believe so.

5 Q **I must say because we didn't receive these**
6 **notes in production. Maybe you can talk to your counsel**
7 **about that and see why these notes weren't produced,**
8 **because we received -- I think there was one note, let**
9 **me -- do you need a break?**

10 MR. CURLEY: Move to strike Counsel comments
11 before we take a break. Thank you.

12 (Thereupon, a short discussion was held off
13 record.)

14 (Deposition resumed.)

15 Q **(By Mr. Leo IV) I am just going to mark this**
16 **as PC-46.**

17 (Thereupon, Plaintiff's Exhibit PC-46 was
18 entered into the record.)

19 Q **(By Mr. Leo IV) Do you recognize this**
20 **document?**

21 A Yes.

22 Q **And what's this PC-46?**

23 A This is my notes I had of the 1/18/13 meeting
24 with James Tracy and Diane Alperin.

25 Q **I am going to show you one more exhibit -- and**

1 **here is PC-47.**

2 (Thereupon, Plaintiff's Exhibit PC-47 was
3 entered into the record.)

4 MR. CURLEY: Thank you.

5 **Q (By Mr. Leo IV) These were, it looks like the**
6 **same printed notes, just some different writing on them.**

7 A Yup, and it looks like I dated the second one,
8 so this must have been the one I wrote on during the
9 meeting.

10 **Q Which one, PC --**

11 A Forty-seven.

12 **Q Forty-seven. These are meetings from -- I am**
13 **sorry, these are notes from the meeting held on January**
14 **18, 2013 with Professor Tracy?**

15 A Yes.

16 **Q Going back to the first exhibit, the PC-47,**
17 **yeah, you said these were -- you were writing this while**
18 **you were in the meeting?**

19 A I am guessing.

20 **Q Okay. When you say "Not here to debate**
21 **personal freedom of speech", was there a debate about**
22 **freedom of speech in this meeting?**

23 A No.

24 **Q So, why did you write that?**

25 A I don't recall.

1 **Q Did Professor Tracy assert his first amendment**
2 **rights in that meeting?**

3 A Not that I recall.

4 **Q When you talk about the global research, on**
5 **the notes you crossed out, "Do you consider". Is there**
6 **-- was there a reason for that?**

7 A I just don't recall. I can tell you my habits
8 when taking notes, but I can't swear that I can explain
9 this.

10 **Q What would this normally mean to you that, is**
11 **the striker?**

12 A That during the course of the meeting that no
13 longer was relevant or we got an answer or it wasn't
14 asked.

15 **Q And you wrote here, it says, "will be**
16 **evaluated".**

17 A Right.

18 **Q Did you evaluate global research?**

19 A I believe that "will be evaluated" refers to
20 whether or not global research is going to be part of
21 the research activity or not. It's we are going to
22 evaluate whether this is part of his FAU work or not. I
23 believe that's what that means but I can't recall
24 exactly.

25 **Q And a point here, it says, "global research**

1 **using analysis website, September 2001".**

2 **Do you see that?**

3 A Yes, I am assuming that that's what Dr. Tracy
4 informed me or said something about it and I made those
5 notes, so I would have that information.

6 **Q What is the date, September 2001, what is that**
7 **for?**

8 A The September 2001, I don't recall, but there
9 is a fuzzy memory in the back of my head that that's
10 when that website began.

11 **Q Sounds like it?**

12 A Yeah. And it sounds like he was telling me
13 that, he was giving me that information.

14 **Q When it says here "conflict of interest",**
15 **there's a question mark. Can you explain what that**
16 **means?**

17 A Not specifically. Again, based on my
18 knowledge of my own habits, if I wanted to ask a
19 question at a meeting, I might put a question mark in
20 front of it to say this is something I need to get an
21 answer to. So, I think that's my clue to myself that I
22 am asking Dr. Tracy if he filed the form, and if not why
23 not. But I am making this up because I am doing this
24 with the best recall I can.

25 **Q Okay. But Professor Tracy's response to the**

1 **questions about whether he had turned in the form at**
2 **this meeting, were the same as his response to your**
3 **memorandum, would you agree, that he denied the**
4 **allegation to report the blogging as an outside activity**
5 **in the policy?**

6 MR. CURLEY: Objection, form.

7 A I don't recall whether or not he said that at
8 this meeting.

9 Q **(By Mr. Leo IV) But would you agree that he**
10 **did not turn in a form for the blogging after this**
11 **meeting, immediately after this meeting?**

12 A I believe not.

13 Q **And for 2013 he never turned in a form?**

14 A I believe not.

15 Q **2014, he didn't turn in a form for his outside**
16 **employment --**

17 A Correct.

18 Q **-- activity. And in 2015, he did turn in a**
19 **form at the end of 2015 for the blogging?**

20 A Yes.

21 Q **And then he was fired the next day?**

22 A Yes.

23 Q **Do you think that Professor Tracy's blog was**
24 **the reason why he was fired?**

25 A No.

1 **Q Why not?**

2 A Well, the letter outlining the termination
3 outlines why he was terminated. So, I am going by what
4 that letter says.

5 **Q I'm going to show you what's been marked as**
6 **PC-48.**

7 (Thereupon, Plaintiff's Exhibit PC-48 was
8 entered into the record.)

9 **Q (By Mr. Leo IV) That Conflict of Interest**
10 **policy, I think. Going back to Article 19 which --**

11 (Thereupon, a short discussion was held off
12 record.)

13 (Deposition resumed.)

14 **Q (By Mr. Leo IV) I am going back to reflect the**
15 **barring agreement, Article 19. Earlier you had said**
16 **that you weren't aware of any conflict of interest that**
17 **there could be from Professor Tracy's blogging. Isn't**
18 **that right?**

19 MR. CURLEY: Objection to form.

20 A I believe that's what I said earlier.

21 **Q (By Mr. Leo IV) Looking at the policy, the**
22 **Article 19 and what conflict of interest means, do you**
23 **see any conflict of interest here, that could arise from**
24 **Professor Tracy's personal blogging?**

25 MR. CURLEY: Objection to form.

1 A Hypothetically, any possible interference, if
2 he was missing classes or meetings that he was obligated
3 to attend, that would interfere.

4 Q **(By Mr. Leo IV) Okay. Was Professor Tracy**
5 **missing any classes?**

6 A Not that I am aware of.

7 Q **So, not hypothetically speaking, talking**
8 **actual or concrete, was there any conflict of interest,**
9 **as you said here today that you can find?**

10 A No.

11 Q **Going back to 2015, December, when was the**
12 **decision to terminate Professor Tracy, when would this**
13 **actually made?**

14 A I don't know.

15 Q **Would it be the day that he was issued the**
16 **notice of termination?**

17 A I don't know. I didn't make the decision.

18 Q **Was the decision made before the notice of**
19 **termination was issued, or before that day?**

20 MR. CURLEY: Objection to form.

21 A I don't know.

22 Q **(By Mr. Leo IV) Did you ever indicate to**
23 **anyone that you wanted him to be fired, before the**
24 **notice of termination was issued?**

25 A I don't recall.

1 Q I'm going to show you PC-49.

2 (Thereupon, Plaintiff's Exhibit PC-49 was
3 entered into the record.)

4 MR. LEO IV: Here's a copy for your Counsel.

5 Q (By Mr. Leo IV) Do you recognize this
6 communication?

7 A Oh, yes, I remember this.

Q Can you explain what this is in reference to?

9 A Well, again there seems to be bits of e-mails
10 missing, so I am not seeing the whole chain. I do
11 recall seeing in the Sun-Sentinel an article, I remember
12 the article that said, "Former FAU professor" and I
13 wrote to the VP for Public Affairs "former", he is a
14 former professor. And he writes back, as you can see
15 above. So, I was surprised and taken aback by the
16 headline, in my opinion.

17 Q Were you in agreement with Peter Haull?

18 MR. CURLEY: Objection to form.

19 A I don't recall.

20 Q (By Mr. Leo IV) Looking at this today, you
21 read the exchange, does that refresh your memory as to
22 whether you agreed that you hoped it wasn't a typo or --

23 A I didn't write. He wrote that, yeah.

24 O I am saving would you agree with him?

25 A I don't recall what I thought at the time.

1 **Q You said, "I think we should believe**
2 **everything the Sun-Sentinel prints".**

3 A Yeah, that was in reference to a running joke
4 we had about the Sun Sentinel, and the quality of their
5 coverage.

6 **Q This was in response to an article that was**
7 **published in the Sun-Sentinel, right?**

8 A Yes.

9 **Q The article shocked you?**

10 A Honestly, I can't remember. Do we have the
11 article so I can refresh my memory?

12 **Q Yeah.**

13 MR. CURLEY: That's 50.

14 (Thereupon, Plaintiff's Exhibit PC-50 was
15 entered into the record.)

16 MR. CURLEY: It's 1143, Bates stamped 1143 to
17 1147.

18 MR. LEO IV: PRR2, for the record.

19 MR. CURLEY: Yes.

20 **Q (By Mr. Leo IV) Does this refresh your**
21 **recollection?**

22 A Yes, this was an article written by the
23 parents of one of the children who had been killed.

24 **Q Did you know the parents of the child?**

25 A No.

1 Q Did you know the child?

2 A No.

3 Q Do you know with personal knowledge that the
4 child was actually killed?

5 A No.

6 Q I'm going to show you what's marked as PC-51.

7 (Thereupon, Plaintiff's Exhibit PC-51 was
8 entered into the record.)

9 Q (By Mr. Leo IV) Let me just -- you can see
10 this is a compilation, PC-51 --

11 A Right.

12 Q -- of multiple messages. And what's the
13 meaning; correct me if I am wrong, that after you
14 received this article you sent it to a lot of people.

15 Is that fair to say?

16 A Yes.

Q Why would you send this to all these people?

18 A I sent it to Michael Horswell and Linda
19 Johnson because they were the associate deans and I
20 typically send them copies of anything that the Dean's
21 administrative office should know about. David
22 Williams, same thing, he was the chair of the department
23 -- sorry, the director of the school where James Tracy
24 was employed, and so I always copied the unit
25 administrator if the faculty member has a press article.

1 Lori Carney is the director of development and works a
2 lot with our donors. Very often, she will get
3 complaints from donors and I wanted her to have a heads-
4 up because I anticipated that this might result in some
5 response from the community, and I wanted her to be
6 aware that this was in the press.

7 **Q Was there a response from donors to this
8 article?**

9 A I don't recall, specifically. I know there
10 were a lot of responses.

11 **Q Do you recall whether or not the decision to
12 terminate Professor Tracy had been rendered before or
13 after this --**

14 A I don't know. I don't know when the decision
15 was made.

16 **Q Would you say it came after this article, the
17 December 10 article?**

18 MR. CURLEY: Objection. Objection to form.

19 A I don't know.

20 **Q (By Mr. Leo IV) Do you think that this article
21 played a role in the decision to terminate Professor
22 Tracy?**

23 A I don't know.

24 **Q Does that mean it's possible?**

25 A I didn't make the decision. I don't know.

1 **Q I didn't ask you if you know. I am asking if**
2 **it is possible.**

3 A You're asking me to make an opinion based on
4 the letter of termination? This was never mentioned or
5 cited, so no.

6 **Q So, it was not possible, you are saying?**

7 A I -- it's possible, but I think it is
8 unlikely.

9 **Q What makes you say it's unlikely?**

10 A Because the content of the letter of
11 termination never references this article.

12 **Q If this was one of the reasons why Professor**
13 **Tracy was fired, would the University be forthcoming**
14 **about that?**

15 MR. CURLEY: Objection to form. You can
16 answer.

17 A I don't know.

18 **Q (By Mr. Leo IV) Was there an investigation**
19 **that was conducted by the University into the**
20 **allegations that were made by the Pozners in December**
21 **10, 2015?**

22 MR. CURLEY: Objection, form.

23 A Other than my call with the woman who was the
24 family's representative, I don't know.

25 **Q (By Mr. Leo IV) You say a call, you are**

1 **referring to Misty Fitch?**

2 A Right, yeah.

3 Q **Was that the first time that you, when I say**
4 **that I am referring to December 2015, after this**
5 **article, was it the first time you started talking to**
6 **people contrary to the directive from 2013 not to**
7 **comment?**

8 A Okay. People you mean the public, you mean --

9 Q **Right.**

10 A -- you mean faculty, you mean -- who do you
11 mean?

12 Q **I am referring to in 2015, you were**
13 **communicating with people like representatives of the**
14 **Pozners you had stated, right?**

15 A Right.

16 Q **You were talking to someone named Misty Fitch?**

17 A Once, yes.

18 Q **When you say you talked to her once --**

19 A Yes.

20 Q **-- you also e-mailed her?**

21 A Yes, I believe so.

22 Q **Multiple times.**

23 A I did, okay. I recall that.

24 Q **That's what the records you produced showed**
25 **us.**

1 A Okay.

2 Q Was that the -- I am saying, was that the
3 first time these communications with someone like Misty
4 Fitch, would December 10 or after December 10, 2015 be
5 the first time you were actually communicating with
6 people like Misty Fitch?

7 A Yes.

8 Q And you would agree that that was contrary to
9 prior instruction not to comment?

10 A Yes.

11 Q And you said that you did not ask Professor
12 Tracy at that time, his side of the story?

13 A Correct.

14 Q And why would that be?

15 A I don't recall.

16 Q If -- if I can remember, as accused of crime,
17 was there a policy that you follow at the University
18 with respect to those kind of allegations or
19 accusations?

20 MR. CURLEY: Objection to form.

21 A I can't tell you a specific policy. Perhaps
22 there is one, there probably is one but certainly my
23 understanding is that we are obligated to report
24 criminal activity.

25 Q (By Mr. Leo IV) And did you report Professor

1 **Tracy for anything at that point?**

2 A No.

3 **Q Is that because he was going to be fired?**

4 A No.

5 **Q Did you ever conduct an investigation into**
6 **whether or not the University was being scammed by the**
7 **Pozners?**

8 A No.

9 **Q Or by anybody who claimed that they were**
10 **victims of a mass casualty effect like Sandy?**

11 A No.

12 **Q Have you ever thought that it's possible that**
13 **you and the University were scammed by, for example,**
14 **Misty Fitch or anybody else connected with the HONR**
15 **Network?**

16 A No.

17 **Q Is this the first time you have been asked**
18 **that question?**

19 A Yes.

20 **Q Okay. Now, the HONR Network, you said you**
21 **were not familiar with them?**

22 A You had mentioned it earlier. Again, I have a
23 vague memory of having seen something about it but I
24 can't tell you what it is.

25 **Q Would it be something on-line, perhaps you**

1 **saw?**

2 A Probably.

3 **Q Are you aware that the HONR Network has been**
4 **accused of stalking and harassing people like Professor**
5 **Tracy who research and investigate and report on an**
6 **event like Sandy Hook?**

7 A It sounds vaguely familiar that I have maybe
8 read that, yes. I haven't spent a lot of time studying
9 that.

10 **Q And if the HONR Network has been accused of**
11 **targeting researchers, people who have worked to report**
12 **truth about Sandy Hook for example, would that concern**
13 **you?**

14 MR. CURLEY: Objection to form.

15 A Not ordinarily, it doesn't affect me or my
16 work. I never heard a report that anybody at FAU was
17 being harassed by the HONR Network, so I didn't pay
18 attention. I didn't pay attention, if I did read about
19 that.

20 **Q (By Mr. Leo IV) Okay. And if the HONR Network**
21 **has worked to get researchers, you know, Sandy Hook**
22 **truthers as many of them are called, fired from their**
23 **jobs for example, would you agree that that could be**
24 **something that perhaps happened in this case?**

25 MR. CURLEY: Objection to form.

1 A I have no knowledge of that.

2 Q (By Mr. Leo IV) Would that surprise you?

3 A Yes.

4 Q Do you think it's worthy of an investigation,
5 perhaps ex post facto?

6 MR. CURLEY: Objection to form.

7 A I don't have an opinion on that. It is beyond
8 my --

9 Q (By Mr. Leo IV) So, if Sandy Hook didn't
10 happen the way that it was reported and Professor Tracy
11 was right about his suspicions and questioning of the
12 event, just saying hypothetically speaking of course,
13 and it turns out that the Pozners' are lying and this --
14 is defamation and fraud, and it's all a part of some
15 conspiracy, what would you think about that?

16 MR. CURLEY: Objection to form.

17 A That would be disappointing, that would be
18 really not comfortable to hear.

19 Q (By Mr. Leo IV) Do you think that would make
20 you re-consider your views on Professor Tracy's writing?

21 MR. CURLEY: Objection, form.

22 A What are my views on Professor Tracy's
23 writing? He has the freedom to write about this.

24 Q (By Mr. Leo IV) Okay. In 2010 -- I am sorry
25 2015 after December 10th; you were shocked by his

1 **writing, right?**

2 MR. CURLEY: Objection, form.

3 A Well, I am shocked by the article as I state
4 here. The article by the parents is shocking.

5 **Q (By Mr. Leo IV) And that was -- I believe that**
6 **was described as disgusting?**

7 A Not -- not by me.

8 **Q Sick -- I'm sorry -- sick. Linda Johnson that**
9 **was who wrote it was sick.**

10 A Okay.

11 **Q And when you say "he sent them a letter",**
12 **you're referring to Professor Tracy?**

13 MR. CURLEY: Objection, form.

14 A I assume so, yes.

15 **Q (By Mr. Leo IV) What letter did Professor**
16 **Tracy send?**

17 A The Pozners' write in their article, I
18 believe, that Dr. Tracy sent them a certified letter.

19 **Q I am sorry, can you repeat that?**

20 A The Pozners' write in the article that Dr.
21 Tracy sent them a letter, so --

22 **Q Did you ask Professor Tracy for a copy of that**
23 **letter?**

24 A No.

25 **Q Do you know, as you sit here today, what that**

1 **letter actually said?**

2 A No.

3 Q **And if the Pozners had mischaracterized the**
4 **letter in a way that served their interest and was**
5 **designed to pressure FAU into firing Professor Tracy for**
6 **a criminal conduct he never participated in, would that**
7 **be something that you should be concerned with?**

8 MR. CURLEY: Objection, form.

9 A Yes, but none of that happened.

10 Q **(By Mr. Leo IV) None of what?**

11 A I don't know of any situations where the
12 Pozners' pressured FAU to fire Dr. Tracy for any reason.

13 Q **This article right here isn't directed to FAU?**

14 A Yes.

15 Q **Or indirectly speaking to FAU and asking FAU**
16 **to do something?**

17 A Yes, it looks like they are mentioning FAU.

18 Q **Right. They want FAU to fire Professor Tracy,**
19 **that's the gist of it, would you agree with me?**

20 MR. CURLEY: Objection, form.

21 Q **(By Mr. Leo IV) I can re-characterize. This**
22 **article is an invitation to FAU to terminate Professor**
23 **Tracy. Would you agree with me?**

24 MR. CURLEY: Does it say that?

25 A No.

1 **Q (By Mr. Leo IV) Okay. What are they asking**

2 **FAU to do?**

3 A FAU has a civic responsibility to ensure that
4 it does not contribute to the ongoing persecution of the
5 countless Americans who have lost their loved ones to
6 high profile acts of violence.

7 **Q Okay. They are accusing Professor Tracy of**
8 **persecuting murder victims, right? Yes or no?**

9 MR. CURLEY: Objection. Objection, form.

10 A I don't know. I would have to read this
11 carefully.

12 **Q (By Mr. Leo IV) Okay. You read it in 2015,**
13 **right?**

14 A Yeah, right.

15 **Q Okay.**

16 A It was a long time ago.

17 **Q You thought it was shocking?**

18 A Yes.

19 **Q Professor Tracy was accused of harassing**
20 **murder victims, right?**

21 A I don't know if that's what I was shocked by.
22 All I said was this article is shocking. I don't know
23 which part there is a lot of aspects.

24 **Q You never -- you never investigated whether or**
25 **not Professor Tracy actually did what he was accused of**

1 **doing?**

2 A No.

3 **Q Do you not see a problem with that?**

4 A No.

5 **Q Before you forwarded it to how many people in**
6 **the administration?**

7 A This is a public document in the Sun-Sentinel.

8 **Q Okay. It's also an accusation of criminal**
9 **conduct against one of your faculty members that you**
10 **then forwarded it to how many people in the**
11 **administration, I am not going to count them, but it was**
12 **a lot, right? There was no investigation conducted.**

13 A Three or four, that's like --

14 **Q Because the decision was already made,**
15 **Professor Tracy was going to be terminated, right?**

16 MR. CURLEY: Objection, form.

17 A I don't know that.

18 **Q (By Mr. Leo IV) Okay. After this publication,**
19 **you received hundreds of e-mails and complaints at FAU**
20 **from other angry citizens or purported citizens?**

21 A I don't know the number, but it was a lot.

22 **Q Yeah, I have seen the production, there is a**
23 **lot.**

24 A It is not -- it's -- okay.

25 **Q It is a lot, supposed to say there is a lot.**

1 **Would you agree with me that FAU accepted the Pozners'**
2 **invitation to get rid of Professor Tracy?**

3 A I did not make the decision to terminate Dr.
4 Tracy. I don't know what went into that decision.

5 Q **Regardless of what the decision process that**
6 **you weren't involved in was, would you agree with me**
7 **that it looks like the timing of this; December 10th**
8 **Professor Tracy is harassing murder victims, December**
9 **16th he is fired.**

10 MR. CURLEY: Objection to the form.

11 Q **(By Mr. Leo IV) Do you agree with me the**
12 **timing of that is pretty coincidental?**

13 A I could agree. Some people could say there
14 was two events were linked.

15 Q **Okay. And as you sit here today, what was the**
16 **reason for Professor Tracy's termination?**

17 MR. CURLEY: Objection to the form.

18 A Insubordination.

19 Q **(By Mr. Leo IV) Insubordination. And you**
20 **believe that, the first discipline that Professor Tracy**
21 **received in the University should have been termination?**

22 MR. CURLEY: Objection to the form.

23 A The discipline that he received in December?

24 Q **(By Mr. Leo IV) Of 2015, right. Termination.**

25 A I did not make the decision to terminate.



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1 **Q Okay. I am asking you, if you believe that --**

2 **A I made a recommendation for discipline.**

3 **Q And do you agree that the first discipline**

4 **that Professor Tracy faced and was given was**

5 **termination? Yes?**

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

7 **Q You don't know if that was his first**

8 **discipline?**

9 **A I don't know if I agree.**

10 **Q You don't agree with what?**

11 **A I don't know that I agree that the first**
12 **discipline should have been termination.**

13 **Q So, you agree with me that Professor Tracy**
14 **wasn't given progressive discipline?**

15 **A No, I don't agree that, that's accurate**
16 **either. This is a decision made by the upper**
17 **administration.**

18 **Q Okay. Do you think that Professor should have**
19 **been fired?**

20 **A Yes, I have already answered that.**

21 **Q Okay. And in your words, why should Professor**
22 **Tracy have been fired?**

23 **A Of the over 200 faculty in the college, all of**
24 **them except Professor Tracy complied with policies,**
25 **complied with requests by supervisors, did what they**

1 were told. When faculty were in violation of a policy
2 and were informed of it, faculty complied with the
3 policy.

4 **Q Okay. Going back to Professor Tracy --**

5 **A Correct.**

6 **Q -- in 2013, he was told to turn in the outside**
7 **employment form.**

8 **A Correct.**

9 **Q He did not.**

10 **A Correct.**

11 **Q He was not disciplined.**

12 **A Correct.**

13 **Q So, wouldn't Professor Tracy be an example of**
14 **how that's not true, what you just said?**

15 MR. CURLEY: Objection, form.

16 **A Yes.**

17 **Q Right. So, the policy was not evenly applied.**
18 **Would you agree?**

19 MR. CURLEY: Objection to form.

20 **A I can't speak to the whole University.**

21 **Q (By Mr. Leo IV) And does that not contradict**
22 **with what you just said?**

23 MR. CURLEY: Objection to the form.

24 **A In my experience, faculty complied with**
25 **supervisors' directions.**

1 **Q (By Mr. Leo IV) The faculty that you can't**
2 **speak for because you are only in charge of one college?**

3 **A Of one college, correct.**

4 **Q Okay. I have nothing further.**

5 MR. CURLEY: Okay. We will read. Thanks a
6 lot.

7 (Deposition concluded at 6:47 p.m.)

8 (Reading and signing of the deposition by the
9 witness has been reserved.)

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1 CERTIFICATE OF OATH

2 STATE OF FLORIDA

3 COUNTY OF PALM BEACH COUNTY

4

5 I, SOFIA LUCIEN, the undersigned authority,
6 certify that HEATHER COLTMAN, personally appeared
7 before me and was duly sworn on the 4TH day of May,
8 2017.

9 Witness my hand this 24TH day of May, 2017.

10

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12

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14

15

Sofia Lucien
15 SOFIA LUCIEN, COURT REPORTER
16 NOTARY PUBLIC, STATE OF FLORIDA
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6 Public for the State of Florida, do hereby certify that
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9 TRACY vs. FLORIDA ATLANTIC UNIVERSITY BOARD OF
10 TRUSTEES, a/k/a FLORIDA ATLANTIC UNIVERSITY, et al.,
11 pending in the Palm Beach Court in and for Palm Beach
12 County, Florida, Case No.: 9:16-cv-80655-RLR, and that
13 the transcript and forgoing pages, numbered 1 to 349
14 inclusive, constitute a true and correct transcription.

15

16 Witness my hand this 24TH day of May, 2017..

17



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1 DATE: MAY 24, 2017
2 TO: HEATHER COLTMAN
C/O
3 G. JOSEPH CURLEY, ESQUIRE
GUNSTER, YOAKLEY & STEWART, P.A.
777 SOUTH FLAGLER DR., SUITE 500 EAST,
4 WEST PALM BEACH, FLORIDA 33401

5 IN RE: JAMES TRACY vs. FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES, a/k/a FLORIDA ATLANTIC UNIVERSITY,
6 et al.

7 CASE NO: 9:16-cv-80655-RLR

8 Dear Ms. Coltman,

9 Please take notice that on May 4, 2017, you gave
10 your deposition in the above-referenced matter. At
that time, you did not waive signature. It is now
11 necessary that you sign your deposition. You may do so
by contacting your own attorney or the attorney who
12 took your deposition and make an appointment to do so
at their office. You may also contact our office at
the below number, Monday - Friday, 9:00 AM - 5:00 PM,
13 for further information and assistance.

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 If you wish to waive your signature, sign your name in
17 the blank at the bottom of this letter and promptly
return it to us.

18 Very truly yours,

20 SOFIA LUCIEN, Court Reporter
Universal Court Reporting
21 (954) 712-2600

22 I do hereby waive my signature.

23 _____
24 HEATHER COLTMAN
Cc: via transcript: LOUIS LEO IV, ESQUIRE

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2	I wish to make the following changes, for the following reasons:		
3	PAGE NO.	LINE NO.	
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