

UNITED DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

ASE 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 I

VIDEOTAPED DEPOSITION OF JOHN W. KELLY

TAKEN ON BEHALF OF THE PLAINTIFF

MAY 17, 2017
10:00 A.M. TO 7:15 P.M.

GUNSTER
4855 TECHNOLOGY WAY, #630
BOCA RATON, FLORIDA 33431

REPORTED BY:
JAIME KOGANOVSKY, COURT REPORTER
NOTARY PUBLIC, STATE OF FLORIDA



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1 APPEARANCES OF COUNSEL

2 ON BEHALF OF THE PLAINTIFF:

3 LOUIS LEO, IV, ESQUIRE
4 MATTHEW BENZION, ESQUIRE
5 MEDGEBOW LAW, P.A.
6 4171 West Hillsboro Boulevard, Suite 9
7 Coconut Creek, Florida 33073
8 954-478-4223
9 louis@floridacivilrights.org

7 ON BEHALF OF THE DEFENDANT:

8 G. JOSEPH CURLEY, ESQUIRE
9 GUNSTER, YOAKLEY & STEWART, P.A.
10 777 South Flagler Drive, Suite 500 East
11 West Palm Beach, Florida 33401
12 jcurley@gunster.com
13 (FAU DEFENDANTS)

11 ON BEHALF OF THE DEFENDANT:

12 KATHERINE HEFFNER, ESQUIRE (via telephone)
13 CAIR Florida
14 8076 N. 56th Street
15 Tampa, Florida 33617
16 heffner@cair.com
17 (Counsel for Union Defendants)

16 ALSO PRESENT:

17 DANIEL JONES, FAU Representative
18 DAVID KIAN
19 JAMES TRACY, Plaintiff



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DIRECT EXAMINATION

By LOUIS LEO, IV, Esquire

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VOLUME I

VIDEOTAPED DEPOSITION OF JOHN W. KELLY

MAY 16, 2017

THEREUPON,

JOHN W. KELLY,

was called as a witness by the Plaintiff and, having
been first duly sworn, testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. LEO:

Q Good morning.

A Good morning.

Q Do you prefer Mr. Kelly or Dr. Kelly?

A It doesn't matter.

Q Are you a Phd holder?

A Yes.

Q Okay. So Dr. Kelly's fine?

A That's fine.

**Q All right. Dr. Kelly, have you ever given a
deposition before?**

A No.

**Q All right. So let's just go over some ground
rules. The court reporter's trying to record everything
we're saying, so if you can let me ask a question first
and then -- then respond --**



1 A Okay.

2 Q -- audibly, if possible. The head nods and
3 the uh-hums are -- are unable to be recorded so --

4 A Okay.

5 Q Is that fair?

6 A Yes.

7 Q Sometimes there may be an objection from
8 counsel, unless your counsel has instructed you not to
9 answer, you can answer the question.

10 A Okay.

11 Q Is that fair?

12 A Sure.

13 Q Is there any reason why you couldn't testify
14 truthfully today?

15 A No.

16 Q Are you under the influence of any drugs or
17 alcohol, any controlled substance?

18 A No.

19 Q Any -- anything that would affect your ability
20 to remember or to testify?

21 A No.

22 Q Let's start with some background. Where do
23 you work now?

24 A Florida Atlantic University.

25 Q And what's your title?



1 A President.

2 Q And how long have you been president?

3 A Three years and one month.

4 Q And before FAU, where did you work?

5 A Clemson University.

6 Q And in what capacity?

7 A Vice president.

8 Q Vice president of the university?

9 A Yes.

10 Q And how long were you vice president?

11 A For 17 years.

12 Q And before you were president -- vice

13 president at Clemson, what was your --

14 A I was the -- what I was called is school
15 director at Clemson.

16 Q School director?

17 A And before that a department head, and before
18 that faculty member.

19 Q What department were you the head of?

20 A Horticulture.

21 Q Horticulture?

22 A Horticulture, plant sciences.

23 Q And you say you were also a professor?

24 A Yes.

25 Q You said you were a professor of what?



1 A Plant sciences, horticulture.

2 Q Plant sciences. Were you tenured?

3 A Yes.

4 Q Are you tenured now?

5 A Yes.

6 Q Can you explain that, what that means for your
7 position now?

8 A Typically when you're tenured at one
9 university, if you move into another university they
10 decide if you can be tenured at that university. So
11 when I came here the faculty of the biological sciences
12 department gave me tenure to -- to move, that's pretty
13 traditional for universities.

14 Q So if for some reason you weren't president,
15 you would be -- be a professor?

16 A Yes.

17 Q Do you believe in tenure?

18 A Absolutely.

19 Q Why?

20 A I think it's an important process for freedom
21 of speech, for being able to say what you want to your
22 classes and hope that your classes are able to listen to
23 diversity of opinions, to publish things that may not be
24 considered the norm, but things that cause people to
25 reflect and look in different directions.



1 **Q I apologize if I'm not looking at you when**
2 **you're talking, I'm taking notes while you speak. You**
3 **were speaking of freedom of speech, how -- how does that**
4 **work with tenure?**

5 A Well, as a faculty member if you have a
6 viewpoint that's, say, different from other people's
7 viewpoints, you have the right to express that, and the
8 tenure process usually takes into account your
9 publication record, the types of the things you produced
10 from your own research, it takes into account your
11 teaching, and the way you teach, the way you treat your
12 students, it takes into account -- typically the third
13 component would be service to the institution. So each
14 of those things are evaluated by your peers and by your
15 supervisor, and then they move up the academic chain to
16 -- the process typically for tenure would be start at
17 the department level, then you move to whatever the next
18 layer of administration, some places that's a school,
19 other places that might be straight to the dean. And it
20 goes from the dean to the provost, and then, at least at
21 FAU, the provost then makes recommendations for tenure,
22 and then I approve those recommendations.

23 **Q You're talking about recommendations to become**
24 **tenured?**

25 A Yes.



1 **Q Do -- does one have the freedom of speech**
2 **before they become tenured?**

3 A Yes.

4 **Q Have you ever been accused of not protecting**
5 **the First Amendment?**

6 A No.

7 **Q Has anybody ever accused your administration**
8 **of not protecting the First Amendment?**

9 MR. CURLEY: Objection to form. That's very
10 broad.

11 THE WITNESS: Not to my knowledge.

12 BY MR. LEO:

13 **Q You say not that you're -- you're aware of.**
14 **Has there ever been any allegations, that you know of,**
15 **against FAU for violating the First Amendment?**

16 A Not that I know of.

17 **Q Well, you said that you -- you've been the**
18 **president for three years?**

19 A Yes.

20 **Q You began 2014?**

21 A March of '14.

22 **Q March of '14. How were you selected as**
23 **president?**

24 A It was a interview process that began with a
25 search firm that ended up going pretty fast. It was --



1 I was aware of the position in December, decided to
2 apply the 1st of January, and then in January they
3 interviewed ten candidates from the pool, and then the
4 following week brought three back for final interviews,
5 and I was selected from one of those three.

6 **Q Who did you interview with?**

7 A The board of trustees. The first time was a
8 search committee, and then the second time was the board
9 of trustees.

10 **Q Who is on the search committee?**

11 A It's a wide range of people, it's probably, I
12 don't know, maybe as many as 15 to 20 people.

13 **Q And what kind of interview was this, what --**
14 **what did the process entail?**

15 A So you first send in written materials and
16 they look at the written materials, and I think they
17 also probably use the typically idea, at least when I've
18 done interviews or searches, ask the search firm for --
19 for their guidance, and then the members of the
20 committee take a look at the materials and decide who
21 they're going to bring in for a formal interview. In
22 the interview typically they'll be a series of questions
23 that they ask the respondent, and that person's answers
24 are then weighed by the search firm and by the committee
25 that is -- is formed by the university. Then they



1 decide how far down they're going to narrow the list,
2 sometimes they don't narrow it very far. It could be as
3 many as five or more candidates brought back for a final
4 interview, or it may be one -- they may just pick one at
5 that point and bring one or two, typically it would be
6 more than that, and this time it was three. It went from
7 ten after the first to three.

8 **Q It's like Survivor?**

9 A A little bit like that.

10 **Q Do you interview together with the other**
11 **candidates or --**

12 A No, separate. Everything's separate.

13 **Q All right. You said your first -- you go to**
14 **the search committee and then the board of trustees?**

15 A Yes.

16 **Q If you -- at any time you need to take a**
17 **break, bathroom or whatever, just let me know and we'll**
18 **accommodate you.**

19 A Okay.

20 **Q Going back to the interview process to become**
21 **president. You said it was a search committee and then**
22 **the board of trustees?**

23 A Yes, sir.

24 **Q And after the interview process, then -- then**
25 **what happens?**



1 A You wait. You wait. You have no idea, you
2 don't have a clue. Because of Florida Sunshine laws you
3 -- you find out a lot more about a search than you would
4 at most universities. So, you know, because of Sunshine
5 laws I did know who the final three candidates would be,
6 and then you end up waiting. So I was here in town, my
7 interview finished, and I was getting ready to catch a
8 flight back and they called me and told me that I had
9 gotten the job. And then they were holding -- holding a
10 reception in the Ballroom House. So their goal had been
11 to pick a candidate that week.

12 **Q When you say they, are you referring to the --**
13 **the board?**

14 A The board.

15 **Q Why did they pick you?**

16 A I guess because of my academic career. I had
17 been at Clemson University, and we had successfully
18 moved from the 78th rank academic university in the
19 country, to the 20th ranked by U.S. News & World Report,
20 and -- and I was a big part of that process. So I
21 worked literally day and night on the things we needed
22 to do as a university to get better.

23 **Q What -- what was the problem at FAU at the**
24 **time?**

25 A The what?



1 MR. CURLEY: Objection to form.

2 BY MR. LEO:

3 Q What was the problem at FAU, you said that you
4 had -- you wanted to make the university better, in what
5 ways?

6 A No. I think any president that comes in, you
7 want somebody who's going to make the university better;
8 I think I just had a good track record of doing so.
9 There were other strong candidates in the pool without
10 question, but fortunately I was picked.

11 Q Why did FAU need to be improved?

12 MR. CURLEY: Objection.

13 THE WITNESS: Every university is always
14 trying be improving.

15 THE COURT REPORTER: I'm sorry, could you say
16 your answer again?

17 THE WITNESS: Every university is always
18 trying to be improving.

19 BY MR. LEO:

20 Q Just going back to ground rules. When he
21 makes an objection she has to record that, as well, so
22 if you could let him make his objection and then -- then
23 you can answer.

24 A Okay.

25 Q Was there anything in particular at FAU before



1 you arrived that -- that was a concern for the board of
2 trustees?

3 A I don't know.

4 Q Did they convey, and by they, I mean, the
5 Board of Trustees, did they convey any problems that
6 they were having at the university at the time?

7 A No. It was very much a solicitation to get
8 you to apply.

9 Q Were there any issues, that you are aware of,
10 concerning faculty members?

11 A No.

12 Q Any particular faculty member who may have
13 been a problem at the university?

14 A The only issues I was aware of is just, you
15 know, as you're searching for the -- learning as much as
16 you can in the media and on the websites about a
17 university, obviously I was trying to find out, in a
18 short period of time, because I was potentially looking
19 at other positions, too, what types of things were going
20 on at the university.

21 Q And when you had applied or were going through
22 this -- this process to apply for the presidency, what
23 did you learn about FAU?

24 A Well, that -- a couple of media issues. I
25 mean, one was the -- there was an issue around Stomp on



1 Jesus, is what it became called by the media, and that
2 was a faculty member who had been teaching a class and
3 had done some things that some people objected to, so
4 that was in the media; of course James Tracy's material
5 was in the media, the football coach having had -- been
6 accused of doing some things that were inappropriate and
7 being terminated was in the media. So there were
8 several, I'd say, media events that were out there about
9 the university.

10 **Q What was your understanding of the controversy**
11 **surrounding James Tracy in 2013?**

12 A I just knew that it was about -- the piece I
13 saw was about Sandy Hook.

14 **Q What was it about Sandy Hook?**

15 A A disagreement about whether Sandy Hook
16 actually happened.

17 **Q You said there was a piece?**

18 A It was one of the clips that comes up when --
19 when you do a media search about Florida Atlantic
20 University.

21 **Q Was it a news clip?**

22 A I think so, yes.

23 **Q What was the -- the news outlet that -- if you**
24 **can remember?**

25 A I have no idea. You know, it was just one of



1 these -- you do a search of Florida Atlantic University,
2 and you kind of go through the -- the things that come
3 up on a search engine.

4 **Q Was it a -- a video?**

5 A I don't remember seeing a video.

6 **Q Was it -- are you referring to the Anderson**
7 **Cooper clip?**

8 A I really don't remember that part.

9 **Q Was there a particular article or anything**
10 **that you recall reading at the time?**

11 A No.

12 **Q What kind of transition process is there for -**
13 **- for the president?**

14 A A new president?

15 **Q Yes.**

16 A Well, I came fairly fast. I mean, I ended up
17 spending about another three months, two and a half -- I
18 got the job, I think it was -- I'm not positive about
19 the date, but somewhere around January 17th, I'm not
20 sure about that date, and then I took the job on March
21 1. So there were really about six weeks to close out
22 everything I was doing at the university, which were a
23 lot of -- I had six campuses I was in charge of, so it
24 was a lot of things to close down.

25 **Q At Clemson?**



1 A At Clemson. And then moved here first by
2 myself, and then my family joined me later. And I got
3 here and literally started work March 1.

4 **Q Is there a briefing or any kind of catching**
5 **you up to speed on issues that are outstanding or need**
6 **to be addressed at FAU?**

7 A Most of it in the beginning was political. We
8 were in a legislative session, and recognizing that the
9 existing interim president had a lot of skills, and he
10 had been at the university a long time, he was very
11 helpful just to, kind of, catch me up on what were the
12 legislative priorities for the university, what we need
13 to try to accomplish with getting funding for the
14 institution, why were those things important, and so
15 that was, kind of -- my first few weeks were really just
16 an emersion in making sure that we didn't, what they
17 call, waste a legislative session. So I relied heavily
18 on the interim president.

19 **Q And who was the interim president?**

20 A Dennis Crudele.

21 **Q How about any contact with Mary Jane Saunders?**

22 A No.

23 **Q You didn't talk to her --**

24 A No.

25 **Q -- about her time at FAU?**



1 A No.

2 Q Were there any outstanding issues with Mary
3 Jane Saunders --

4 A Not that I'm aware of.

5 Q -- or her presidency?

6 A Not -- I mean, not that I'm aware of.

7 Q Going back to -- you said it was political in
8 the beginning. Is it political, the presidency, in
9 general?

10 A If you're not doing -- since you're a state
11 university, if you're not paying attention to what you
12 need out of a legislature, obviously you -- you don't do
13 as well. You have to figure out things that you feel
14 like the legislature has an interest in supporting, and
15 then ideas that you believe the university can be very
16 good at, and then try to develop a proposal around those
17 ideas to get funding. An example would be, we have two
18 of the worlds greatest research enterprises on our
19 Jupiter campus, and for us not to develop our piece of
20 that enterprise so that we're an equal partner with them
21 would be a huge mistake from the research funding
22 standpoint. So Jupiter became one of the early
23 initiatives that we pushed, and even though I didn't
24 push that -- I mean, I wasn't the one who initiated that
25 idea, I could easily see that that was a great idea to



1 follow through on.

2 **Q How much fundraising do -- do you do as a**
3 **president at FAU?**

4 A Huge amount.

5 **Q When you say huge amount, can you describe it?**

6 A Well, in dollars it's not a huge amount, not
7 compared to where I came from. Where I came from we
8 were running a -- a one billion dollar campaign, so I
9 had a large portion of that campaign in my portfolio.
10 Usually you delegate those responsibilities to your vice
11 presidents, and the president plays, what they call a --
12 somewhat of an endorsement and a figurehead role, and --
13 and then a closer on very large gifts. FAU is not as
14 developed on its fundraising side as Clemson University
15 was, so for Clemson we were doing a -- a billion dollar
16 capital campaign at the time I was there, which ended up
17 being successful by the time I got here. The fundraising
18 at FAU was somewhere around, seems like it was \$14
19 million or so a year.

20 **Q When you came?**

21 A I think that's about the number that it was
22 when I came here.

23 **Q And what is it now?**

24 A It's almost 30 million now. We've had two
25 record years in a row.



1 **Q And where do you -- where does the university**
2 **generally raise money from?**

3 A Most of it's from private individuals. So our
4 latest gift is a seven and a half million, or \$7.25
5 million gift from the Sandler family for the School of
6 Social Work.

7 **Q Are any of the gifts to the university**
8 **conditional?**

9 A Sometimes. So, I'll use the Sandler gift as
10 an example, it's conditional based on the naming of the
11 school. So in exchange for the gift, the school is
12 named the Sandler School of Social Work, or the Phyllis
13 & Harvey Sandler School of Social Work. Sometimes it's
14 a scholarship that is conditional on the terms of which
15 the donor wants that scholarship delivered. So my wife
16 and I do a scholarship at the university, and we
17 typically use it as a gap scholarship, and that's -- you
18 usually set that direction at the beginning of how
19 you'll use it, which means that a student that doesn't
20 have enough money, this is not designed to be their full
21 ride, this is designed to be the piece that helps
22 fulfill some obligation that they may need, and they'll
23 have the resources to. We are working with a donor
24 right now whose scholarship would be for first time in
25 college kids, so it's somebody who has no role model, or



1 no -- no family role model that -- that's ever been to
2 college, and then it's designed to give them a complete
3 support system when they go. So it's not as if the donor
4 can take their money back; so you sign a contract with
5 the donor, here's the obligations of the university, and
6 then here's the obligations for the donor, and then you
7 would have to litigate that if the obligations weren't
8 met on either side.

9 **Q Has any donors to FAU ever threatened to**
10 **withdraw their donation if certain conditions aren't**
11 **met?**

12 A Sometimes, yeah.

13 **Q Can you give us an example?**

14 A Well, when they --

15 MR. CURLEY: I just want to say, you -- at
16 some point if you get into the specifics of donor
17 information --

18 THE WITNESS: That's true.

19 MR. CURLEY: -- there's confidentiality issues
20 here.

21 THE WITNESS: That's true.

22 MR. CURLEY: I'm going to trust you that you
23 know where to draw the line, but --

24 THE WITNESS: I'll do it without names, then.
25 Because if a donor wants to name something

1 specifically, but that donor wants things that we
2 are not willing to -- to do, we would reject it.
3 If the donor told us, for instance, that we want to
4 name this and we would like this person to be the
5 department chair, we would not do that. They don't
6 have any authority to come in and make any internal
7 decisions about the university, they can only
8 provide the support for the naming opportunity.

9 BY MR. LEO:

10 Q With respect to any threats made by donors,
11 were -- were any donations or threats of withdrawal of
12 donations ever made concerning Professor Tracy?

13 A Not to me.

14 Q Are you aware of any -- anything like that to
15 anybody else?

16 A No.

17 Q Before you became president, had any donors
18 made any threats concerning Professor Tracy that you're
19 aware of?

20 A No.

21 Q Going back to your duties as president, are
22 they outlined in the operating procedures?

23 A I'm assuming they are.

24 Q We'll call this PK1. For the record this is
25 the FAU board of trustees board operation policies and



1 **procedures.**

2 (Whereupon, the referred-to documents were marked as
3 Plaintiff's Exhibit PK1 for Identification.)

4 BY MR. LEO:

5 **Q I've handed you what's been marked PK1 for**
6 **today. Do you recognize this -- this document?**

7 A I have seen it, but I haven't read it, like --

8 **Q What is this document?**

9 A It's policies for the board of trustees.

10 **Q Let me just also get this marked PK2.**

11 (Whereupon, the referred-to documents were marked as
12 Plaintiff's Exhibit PK2 for Identification.)

13 BY MR. LEO:

14 **Q And just let me know once you've had a chance**
15 **to review that.**

16 A Okay.

17 **Q And I'm also going to hand you what has been**
18 **marked as PK2.**

19 MR. LEO: Here's a copy for you.

20 MR. CURLEY: Thank you.

21 BY MR. LEO:

22 **Q Do you recognize PK2?**

23 A Yes.

24 **Q These are your interrogatory responses,**
25 **correct?**



1 A Right.

2 Q That's your signature on the last page?

3 A Yes.

4 Q And have you had a chance to review these
5 before today?

6 A I have.

7 Q And were these responses true and correct when
8 you signed this?

9 A Yes.

10 Q If I can turn your attention to page, if I
11 remember, let me just -- it looks like Page 4, Question
12 3 at the bottom there.

13 A Duties?

14 Q Yes. It says, "Set forth your duties and
15 responsibilities, all powers you possess over FAU
16 officials, agents, personnel or faculty." You see your
17 answer?

18 A Yes.

19 Q You just directed us to the -- the board of
20 operating policies and procedures, right?

21 A Right.

22 Q So let me ask you, what -- what are -- what,
23 that's not in the operating procedures that you
24 provided, if any -- anything, would be also the
25 responsibility or -- or power that you have?



1 A I'm not sure what you mean.

2 Q Are all of your powers and duties expressly
3 outlined in the operating procedures, PK1 --

4 A I didn't go through them real carefully, but I
5 assume so.

6 Q All right. If I could just turn your
7 attention to Page 9 of the operating procedures, Section
8 4.6.

9 A Okay.

10 Q Just turning to the -- the list here of powers
11 and duties, 1 through, looks like 27, it goes all the
12 way to the top of Page 12. Is 1 through 27, are these
13 all your powers and duties?

14 A Yes. Most of these, you know, then become
15 delegated, obviously, there's no way one person does all
16 this.

17 Q Is there anything that's not listed in 1
18 through 27 of the board operating procedures and
19 policies that's also your powers or duties?

20 MR. CURLEY: Objection to form.

21 MR. LEO: I -- I can ask it another way if
22 you'd like.

23 MR. CURLEY: Well, the issue is the wanting to
24 the read them all and then go, okay, I think it's
25 all covered or it's not covered.



1 I don't --

2 BY MR. LEO:

3 Q Why don't -- why don't you take look at 1
4 through 27. Just, you know, read through the list there
5 and let me know if there's anything missing that's also
6 within your duties or powers at FAU?

7 MR. CURLEY: Take your time.

8 THE WITNESS: There's -- no, there's nothing
9 in here I don't actually have someone do for me;
10 but, yes, this is consistent with my duties.

11 BY MR. LEO:

12 Q You're not aware of anything that's missing
13 from this -- this list?

14 A I'm not aware of anything.

15 Q All right. Let me just turn your attention to
16 Number 10. It says one of your powers is to, "Establish
17 and implement policies and procedures to recruit,
18 appoint, transfer, promote, compensate, evaluate,
19 reward, demote, discipline, and remove personnel in
20 accordance with regulations, rules, or policies approved
21 by the BOT and applicable collective bargaining
22 agreements." Do you see that?

23 A Yes.

24 Q Is this your -- currently something that
25 you're in -- in charge of?



1 A Yes. It's delegated, but ultimately I'm the
2 responsible party to the board.

3 **Q So ultimately any decisions involving this**
4 **list here, including discipline and removal of**
5 **personnel, you're responsible for?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: It's -- it's a responsibility of
8 someone else, but I'm the --the liaison to the
9 board.

10 BY MR. LEO:

11 **Q You say it's the responsibility of someone**
12 **else, who -- who is responsible for it?**

13 A The provost pretty much do that, it depends on
14 the area.

15 **Q You said the provost?**

16 A That's for the faculty, I think it comes to
17 staff. There are essentially nine vice presidents that
18 all these duties get delegated to depending on who works
19 for them and what their responsibility is. So when you
20 think of every area, you're talking about personnel,
21 every one of those nine areas has personnel and they
22 have their own set of bylaws and procedures that one
23 goes through to both reward and to provide evaluations
24 of -- of their staff.

25 **Q When you say it's delegated, is -- is that**



1 **done in a particular manner, the delegation?**

2 A Yes, it's the responsibility of that
3 individual.

4 **Q How are they given the responsibility; is it**
5 **oral, you just tell them it's their responsibility, or**
6 **is there something in writing that actually delegates?**

7 A Is that in writing, David, or --

8 MR. CURLEY: I can't answer you. No, I can't
9 do that.

10 BY MR. LEO:

11 **Q You can't ask.**

12 A I can't ask a question. Then I don't know.

13 MR. CURLEY: You can just say I don't know,
14 it's fine.

15 THE WITNESS: It's expected, I'll say that,
16 you know. That is expected.

17 BY MR. LEO:

18 **Q You said you don't know if it's delegated in**
19 **writing?**

20 A I don't know.

21 **Q Or in another way?**

22 A It's just when you're meeting with, you know,
23 the individual people they know this is their duty. So
24 whether it's in a written format from me, I don't know.

25 **Q All right. If you can --**



1 A I have a vice president of administration that
2 handles a lot of that, and then the general counsel
3 handles any matters that are legal obligations that an
4 individual has.

5 **Q So which vice president is in charge of**
6 **discipline of personnel?**

7 MR. CURLEY: Objection to form.

8 THE WITNESS: Any one of them can be.

9 BY MR. LEO:

10 **Q You said -- you said there's nine?**

11 A Yes.

12 **Q All right. So all nine vice presidents can --**
13 **can discipline personnel?**

14 A Yes.

15 **Q Are -- is each vice president assigned certain**
16 **personnel that they can discipline, or how does that**
17 **work?**

18 A The people that work in their unit, yes, under
19 their supervision. I only have nine employees, the
20 board has one.

21 **Q Which vice president was in charge or**
22 **delegated the -- the power to discipline Professor**
23 **Tracy?**

24 A The provost.

25 THE COURT REPORTER: I'm sorry?



1 THE WITNESS: It would be the provost, all
2 faculty.

3 BY MR. LEO:

4 Q The provost -- when you say provost, you're
5 referring to Perry?

6 A Yes.

7 Q Provost Perry. And when was Provost Perry
8 delegated the -- the power to discipline Professor
9 Tracy?

10 A It would have been before I arrived.

11 MR. CURLEY: Objection to form.

12 BY MR. LEO:

13 Q You said it would have been before you
14 arrived?

15 A I don't know what time.

16 THE COURT REPORTER: I'm sorry?

17 THE WITNESS: I don't know what time it would
18 have been, it would have been before I arrived.

19 BY MR. LEO:

20 Q How about former Vice Provost Alperin, did --
21 does she have the power, or did she have the power to
22 discipline Professor Tracy?

23 A If she did it would be under the provost.

24 Q Why was Diane Alperin, why was she removed
25 from her position as vice provost?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: I -- I don't know. I think she
3 wanted to retire.

4 BY MR. LEO:

5 Q You said you think she might have retired?

6 MR. CURLEY: He said he thinks that she wanted
7 to retire.

8 THE WITNESS: I think she wanted to retire.

9 MR. LEO: She can't record the head nod.

10 BY MR. LEO:

11 Q Okay. Did the removal happen on -- while you
12 were president --

13 A Yes.

14 Q -- of Alperin?

15 MR. CURLEY: Objection to form.

16 BY MR. LEO:

17 Q What do the -- what procedures does the
18 provost, particularly Provost Perry, have to follow to
19 remove personnel?

20 A He needs to go through the faculty manual and
21 he has to comply with any kind of union related
22 procedures. He has a complete set of guidelines that
23 are typically delegated; again, he doesn't personally do
24 all of that, obviously.

25 Q And other than the manual and union related



1 **procedures, does he have to present the decision to**
2 **discipline personnel to anybody else?**

3 A Yes.

4 **Q Who would he have to present that to?**

5 A It would come to me, not for approval, but
6 just for information.

7 **Q When you say not for approval, what do you**
8 **mean by that?**

9 A Well, I delegate those responsibilities. So we
10 have something like 3,300 employees at the university,
11 about 1,000 of those are faculty; and there's no way for
12 me to be involved in every decision, so the provost
13 makes those decisions.

14 **Q Since you've been president at FAU, how many**
15 **personnel have been disciplined?**

16 A I have no idea.

17 **Q Do you know how many FAU personnel have been**
18 **removed --**

19 A No.

20 **Q -- since you became president?**

21 A No.

22 MR. CURLEY: Objection to form.

23 BY MR. LEO:

24 **Q When did you first become aware of Professor**
25 **Tracy's blog?**



1 MR. CURLEY: Objection to form.

2 THE WITNESS: I really don't know.

3 BY MR. LEO:

4 Q You testified earlier the you had read about
5 Professor Tracy or learned about him from the media --

6 A I don't remember anything about a blog until
7 later, I don't know when that was.

8 Q So in 2013, you had testified you had been
9 aware of some media coverage of Professor Tracy at FAU?

10 A Uh-hum.

11 Q You weren't aware of the blogging at that
12 time?

13 A Honestly, if you would have asked me, I
14 probably wouldn't have known what a blog was. I was not
15 that familiar with all the other internet pieces.

16 Q What is a blog?

17 A I assume it's, now, a place where people post
18 their own opinions about things, and people come to
19 listen to those, whether it be exercise or viewpoints on
20 other things.

21 Q You said you assume, are you --

22 A I just don't have the time to, you know, do
23 those kind of things. I don't spend time on the
24 internet.

25 Q I'm sorry, are you saying you're not certain



1 **what a blog is today?**

2 A I'm assuming that what you mean by the word
3 blog is that it's a place where a person posts opinions
4 and then gathers opinions of others, or input from
5 others.

6 Q Do you know how many FAU personnel are -- are
7 currently blogging?

8 A I don't.

9 Q Are you aware of any other faculty members,
10 other than Professor Tracy, who have been disciplined
11 for their blogging?

12 MR. CURLEY: Objection to form.

13 THE WITNESS: You know, there were a lot of
14 people before I got here, so I don't have any idea.

15 BY MR. LEO:

16 Q You say a lot of people --

17 A I mean, there were a lot of people doing
18 things with the internet before I ever got here, so I
19 don't know who -- who, in history, has ever been having
20 that issue with a blog. I don't know.

21 Q So, as you sit here, can you name any faculty
22 member who's ever been disciplined, other than Professor
23 Tracy, for their blog?

24 MR. CURLEY: Objection to form.

25 THE WITNESS: Not that I know of. I don't know.



1 BY MR. LEO:

2 Q Is it safe to say that Professor Tracy was the
3 first professor at FAU to have been removed or
4 terminated for his blogging?

5 MR. CURLEY: Objection to form.

6 THE WITNESS: I don't have any idea.

7 BY MR. LEO:

8 Q Do you have an opinion about the
9 constitutionality of Professor Tracy's termination?

10 A No.

11 Q Do you think that the termination was
12 constitutional?

13 A I think all processes were followed to have
14 been assured of that.

15 Q When you say all processes, what are you
16 referring to?

17 A All of the guidelines that were required for
18 any termination. I rely on my people to follow their
19 policies.

20 Q Would you agree that the -- the processes
21 could be followed and the termination could still be
22 unconstitutional?

23 MR. CURLEY: Objection to form.

24 THE WITNESS: I don't know.

25 BY MR. LEO:



1 **Q You don't know if the firing could be**
2 **constitutional, or what -- what don't you know?**

3 MR. CURLEY: Objection to form.

4 THE WITNESS: I don't know.

5 BY MR. LEO:

6 **Q So you're saying it's possible it could have**
7 **been unconstitutional?**

8 MR. CURLEY: Objection to form.

9 THE WITNESS: No, I didn't say that.

10 BY MR. LEO:

11 **Q But you said you don't know?**

12 A I said I don't know.

13 **Q Have you ever been contacted by anybody after**
14 **the termination to express that it was unconstitutional?**

15 A Not to my knowledge.

16 **Q Nobody ever said, President Kelly, you can't**
17 **fire Professor Tracy, his blogging is constitutionally**
18 **protected?**

19 A Not to my knowledge.

20 **Q Going back to the processes, you said that all**
21 **of them were -- were followed. What processes are you**
22 **familiar with with respect to Professor Tracy's**
23 **termination?**

24 A I know there are appeal processes that one can
25 -- can exercise, that's -- that's true in any of our



1 disciplinary, it doesn't matter if you're a grounds
2 worker or what, you do have the right to appeal a
3 decision, and those are heard through the system, but
4 with 3,300 employees you -- obviously all that's
5 delegated.

6 **Q And --**

7 A And each vice president becomes responsible
8 for the execution of those duties.

9 **Q Was there ever a review by -- by you of the**
10 **termination itself?**

11 A No.

12 **Q Did you ever review the termination or the**
13 **decision to terminate?**

14 A What does review mean?

15 **Q Look at it.**

16 A Was I aware of it?

17 **Q Look at it after the fact?**

18 A No.

19 **Q How about before the decision was made, did**
20 **you --**

21 A No.

22 **Q -- review the decision making process at all?**

23 A No.

24 **Q Were you ever consulted by anybody from the**
25 **provost office before the firing happened?**



1 A No.

2 Q Was there ever contact from anybody else in
3 your administration concerning the discipline of
4 Professor Tracy before it happened?

5 A No.

6 Q When did you learn that Professor Tracy was
7 going to be disciplined in 2015?

8 A Some time, I think, in December.

9 Q And do you remember the date?

10 A No.

11 Q And what's the first -- when was the first
12 time that you were contacted, that you can remember?

13 A It seems to me it was about -- some time in
14 December there was a discussion about failure to submit
15 some of the forms that were required, and a decision had
16 been made to -- to move forward.

17 Q Who made the decision?

18 A It would be the provost, the provost office.

19 Q Was it Provost Perry?

20 A It would have to be the provost office, yes.

21 Q Was it -- do you know if it was Perry who made
22 the decision, or was it somebody who worked for Perry?

23 A It would be in his office. I don't know which
24 person is actually the person, it could have been
25 Alperin.



1 **Q Anybody other than the provost office who was**
2 **involved in the termination, that you're aware of?**

3 A No.

4 **Q Are you familiar with Dean Coltman,**
5 **C-O-L-T-M-A-N?**

6 A Yes.

7 **Q Was she involved in the disciplinary process**
8 **in 2015, for Professor Tracy?**

9 A I would assume so -- she's in -- I would
10 assume she -- because she's in the provost office and
11 she reports to the provost. All deans report to the
12 provost.

13 **Q You had indicated that Professor Tracy may**
14 **have been terminated for not submitting forms. Are you**
15 **familiar with the forms?**

16 A Conflict of interest forms, outside interest
17 forms.

18 **Q What are the conflict of interest forms?**

19 A Basically you divulge -- I'm required to do
20 it, everybody's required to do it, you divulge outside
21 interests that you have so that the institution can make
22 decisions about whether there's a potential conflict,
23 and if there is a conflict then the institution usually
24 tries to address that conflict. It happens in our
25 research office very frequently.



1 **Q You called it a conflict of interest form and**
2 **something else, what was the other one, was it outside**
3 **interest?**

4 A Well, outside interest being potential
5 conflicts of interest.

6 **Q Is there other -- another name for this form?**

7 A Maybe, I don't know.

8 **Q Would that also be the outside employment**
9 **form?**

10 A Could be.

11 **Q Outside business, do they also call it that?**

12 A It could be.

13 **Q Do you know how many names they have for this**
14 **form?**

15 A I -- I don't know. I'm sure there's one
16 universal name and others fall under it as examples.

17 **Q Let me just make sure we're talking about the**
18 **same form. PK -- let's call it PK3 for today.**

19 (Whereupon, the referred-to documents were marked as
20 Plaintiff's Exhibit PK3 for Identification.)

21 BY MR. LEO:

22 **Q This is a document entitled Report of Outside**
23 **Employment of Professional Activity --**

24 MR. CURLEY: Thank you.

25 BY MR. LEO:



1 **Q -- for FAU Employees. Is this the -- the form**
2 **that you were just talking about?**

3 A I'm assuming this is it.

4 **Q You referred to it as the conflict of interest**
5 **form, is that how you generally understand the -- the**
6 **form?**

7 A Well, when it comes -- it may not be applied
8 to all areas, but when it comes, for instance, to me
9 personally, I'm required to divulge any of the boards
10 that I'm on in case there might be any conflict of
11 interest with the university, or if there were a
12 researcher and they're doing research on some particular
13 technology, but they're also a member of some company's
14 board, they would report that to be sure that there was
15 a separation between their university duty and this
16 outside entity. So as a result, I don't serve on any
17 boards that are anything other than non-profit boards.

18 **Q Do you fill out this form, PK3?**

19 A I fill out something similar to this.

20 **Q You said something similar --**

21 A I mean, I'm not sure this is the exact form,
22 but I fill out a form that goes to the board.

23 **Q Do you recall ever filling out this one, PK3?**

24 A I don't remember if this is --this is the one.

25 **Q Is there a different form for the president?**



1 A Let me ask David if I -- I can't ask David.

2 MR. CURLEY: No, no.

3 THE WITNESS: I don't know.

4 BY MR. LEO:

5 **Q Let me -- I may have another form. We'll mark**
6 **this as PK4.**

7 (Whereupon, the referred-to documents were marked as
8 Plaintiff's Exhibit PK4 for Identification.)

9 BY MR. LEO:

10 **Q Let me show what has been marked as PK4, and**
11 **for the record this is also FAU 511 and 512, Bates**
12 **stamp. Do you recognize PK4?**

13 MR. CURLEY: Give us a minute here.

14 THE WITNESS: I don't recognize it, but I'm
15 sure it's an FAU form.

16 BY MR. LEO:

17 **Q You said you don't recognize this form?**

18 A I'm sure it's an FAU form, but I'm not sure.

19 **Q So this is -- this is --**

20 A When it says FAU on it.

21 **Q This isn't -- PK4 is not the form that you**
22 **fill out?**

23 A No. Mine's basically just a -- letting the
24 board know that I don't have any outside conflicts.

25 **Q So when you let the board know you don't have**



1 **any conflicts, you don't use PK3 or PK4?**

2 A I don't know. I don't remember doing this
3 form.

4 **Q When's the last time you submitted a conflict**
5 **of interest form that you can remember?**

6 A It goes every year to the board. It goes to
7 the state, actually.

8 **Q And do you remember what part of the year you**
9 **would have filled it out?**

10 A My administrative person hands me the form, I
11 fill it out.

12 **Q Are you ever required to check off any terms**
13 **or conditions on the computer when you submit the form?**

14 A Somebody would do that for me, I don't do
15 that.

16 **Q So you don't actually fill out the form**
17 **yourself?**

18 A The form I fill out is a signature to a state
19 of Florida verifying that I don't have any conflicts of
20 interest.

21 **Q But it's not PK3 or PK4?**

22 A I don't remember these forms, no.

23 **Q And then what do you do with the form that you**
24 **fill out?**

25 A It goes to a file into the Board of Trustees



1 to my chairman.

2 Q Who -- when you say it goes, how -- how does
3 it go?

4 A It's just informing the chairman of the board.

5 Q I'm saying, but -- how does it actually get
6 there, do you hand it to a particular --

7 A I give it to my vice president for
8 administration and she handles it with the secretary.

9 Q Who -- who is your vice president for
10 administration?

11 A Stacy Volnick.

12 Q Stacy Volnick.

13 A Volnick.

14 Q Is that V-O-L-N-I-C --

15 A K.

16 Q K. So you would hand Stacy Volnick a conflict
17 of interest form, and then she would bring it to the --
18 the board?

19 A Any time I join any board I don't wait for a
20 form, any time I join any board I inform the board
21 chair.

22 Q Not on a form?

23 A Any time I join the board, at the moment I
24 join the board I inform the board chair.

25 Q You inform them how?



1 A Either orally or in writing.

2 Q On another form that's not PK3 or PK4?

3 A Right.

4 Q And you would give the form to Stacy Volnick,
5 and then she would give it to the -- the Board of
6 Trustees?

7 A Yes.

8 Q Do you have access to the forms that you
9 filled out?

10 A I assume somewhere in my office they're there.

11 Q Where would they be kept?

12 A In files.

13 Q Is there a particular file?

14 A I -- I -- I don't know. There's hundreds of
15 pieces of paper everyday.

16 Q If you could just hold onto those forms, there
17 may be a request for those forms at some point.

18 A Uh-hum.

19 Q So going back to PK3 and PK4. You said you're
20 not familiar with these forms at all?

21 A No.

22 Q Are you aware of any complaints that have been
23 made by FAU personnel concerning PK3 or PK4?

24 A Not that I can recall.

25 Q Are you aware of complaints that Professor



1 **Tracy made concerning PK3?**

2 A No.

3 **Q Going back to conflict of interest. What --**
4 **what is a conflict of interest?**

5 MR. CURLEY: Objection to form.

6 THE WITNESS: Well, it's determined really as
7 a discussion between the individual and the
8 supervisor.

9 BY MR. LEO:

10 **Q What do you mean by that?**

11 A Well, each of the employees has
12 responsibilities to the institution, and then when it
13 comes to your supervisor they determine whether that
14 conflict of interest or that outside employment creates
15 a conflict of interest, and it's just for information
16 purposes to describe whether there's a potential
17 conflict of interest.

18 **Q Earlier we were talking about blogging. What**
19 **kind of conflict of interests could come from a faculty**
20 **member's blog?**

21 MR. CURLEY: Objection to form.

22 THE WITNESS: I -- I'm not aware.

23 BY MR. LEO:

24 **Q I'm sorry?**

25 A I'm not aware.



1 **Q You say you're not aware of any potential**
2 **conflict of interest that could arise from a blog?**

3 MR. CURLEY: Objection to form.

4 THE WITNESS: Depends on, I think, the
5 individual circumstances and what that person felt
6 like was a conflict of interest.

7 BY MR. LEO:

8 **Q A moment ago you were talking about outside**
9 **employment. Is the conflict of interest focused on**
10 **outside employment or outside income?**

11 MR. CURLEY: Objection to form.

12 THE WITNESS: Well, I'm -- I think that's one
13 aspect of it. I mean, there could be other aspects.

14 BY MR. LEO:

15 **Q Which policy is this -- this outside**
16 **employment professional activity form, what does -- what**
17 **policy does this come from at FAU?**

18 MR. CURLEY: Objection to form.

19 THE WITNESS: It will take me a minute to
20 look. I mean, it could be under many of them.

21 I know that with the faculty it deals with
22 also the union, not just the university. It was
23 negotiated part of collective bargaining, so it
24 could be Number 10.

25 BY MR. LEO:



1 **Q Is there a particular policy that these forms**
2 **are -- are used in connection with at FAU?**

3 MR. CURLEY: Objection to form.

4 THE WITNESS: It is what?

5 BY MR. LEO:

6 **Q Is there a particular policy at FAU the --**
7 **that PK3, for example, is used in connection with?**

8 MR. CURLEY: Objection to form.

9 BY MR. LEO:

10 **Q Or a rule?**

11 MR. CURLEY: Objection to form.

12 THE WITNESS: I mean, I -- it would be
13 speculation on my part as to which one of these,
14 but it was all negotiated between, I know the union
15 and the -- the administration.

16 I mean, 10 would make sense that it might be
17 under that. I would have to go further and dig
18 into that; policies and procedures to recruit,
19 appoint, transfer, promote, compensate, evaluate,
20 and reward --

21 THE COURT REPORTER: If you're reading I need
22 you to slow down.

23 THE WITNESS: I'll just say Number 10, and
24 then let them read it. They've got it, too.

25 MR. CURLEY: So the record's clear, Dr.



1 Kelly's referring to Exhibit Number 1.

2 BY MR. LEO:

3 Q PK1.

4 A I can look at the rest of these, too, it may
5 be more than one.

6 Q Are you familiar with Article 19 of the
7 collective bargaining agreement?

8 A No.

9 Q Let me show you what's been marked as PK5 for
10 today.

11 MR. CURLEY: Okay. Do you have the whole
12 thing or is this just --

13 MR. LEO: Well, the CBA is right here.

14 MR. CURLEY: Okay.

15 MR. LEO: If you want to --

16 MR. CURLEY: Well, just -- I'd say put it
17 right there in case.

18 MR. LEO: Yeah. In case you want to look at
19 the -- this -- just for the record, Article 19 has
20 been extracted from the 2012, 2015 collective
21 bargaining agreement and is --

22 MR. CURLEY: How do you get Page Number 1 on
23 it?

24 MR. LEO: It's just for the exhibit, it's --
25 the text -- other than the page numbers, there is--



1 MR. CURLEY: It's all there -- you're
2 representing it's all there?

3 MR. LEO: Yeah. I'm representing I've
4 literally copied and pasted the -- the text from
5 Article 19 --

6 MR. CURLEY: Okay.

7 MR. LEO: -- into PK5.

8 MR. CURLEY: Okay. I'll accept that
9 representation.

10 MR. LEO: Just so we don't have to put
11 hundreds of pages of the collective bargaining
12 agreement into the record.

13 (Whereupon, the referred-to documents were marked
14 as Plaintiff's Exhibit PK5 for Identification.)

15 BY MR. LEO:

16 Q My question is only concerning Article 19.

17 A And what was your question.

18 Q Are you familiar with -- with Article 19, the
19 conflict of interest/outside activities?

20 A I mean, I know we have one, I don't get -- you
21 know, get into details of exactly what's in it, it's
22 been previously negotiated.

23 Q When you're talking about conflict of
24 interest, or the conflict of interest form, or the
25 policies surrounding that form, is this where that comes



1 **from, Article 19?**

2 A I'm assuming. I mean, this -- this is pretty
3 clear on at least defining what conflicts of interest
4 seem to be.

5 **Q Is -- is the definition that's listed in this**
6 **article, is that the definition that your office uses?**

7 A You know, again, I delegate all these to other
8 vice presidents, so each one has their own set of
9 expectations and discussions depending on what the
10 subject matter would be.

11 **Q Is there different expectations concerning the**
12 **conflict of interest outside activities policy in the**
13 **administration?**

14 A Well, for instance, a research VP would be
15 much more focused on whether a conflict of interest was
16 perhaps around a certain patent issue. The provost is
17 much more about the faculty and the faculty's role in
18 the institution. A conflict of interest with one of my
19 personal direct reports might be that I think they're
20 spending too much time doing something that I don't want
21 them doing, and that can be a board that they're serving
22 on that takes an inordinate amount of time. That would
23 be the same thing with my board and me, my board chair
24 saying you're spending too much time on economic
25 development boards; okay, I'll cut back.



1 **Q Has anybody ever said that you're spending too**
2 **much time on an outside activity?**

3 A No, I try to regulate it myself.

4 **Q Are you aware of any allegations that have**
5 **been made against faculty members who are spending too**
6 **much time on outside activities?**

7 A I haven't kept up with the -- the number of
8 discussions that might go on about that. I'm sure there
9 are many discussions.

10 **Q You said you're sure that there are**
11 **discussions, who -- who would have these discussions?**

12 A Usually I would think it would be the
13 department here and the dean, and if there was a real
14 problem it would go to another level.

15 **Q Are you aware of any discussions, that you can**
16 **describe, that have occurred while you were at FAU about**
17 **any outside activities or --**

18 A No.

19 **Q -- any conflicts of interest?**

20 A Well, let me take it back. I think there were
21 some discussions about just being sure that the faculty
22 that were doing research were certain that the research
23 activities were -- there was a separation between
24 anything that might be done with a company and with the
25 university.

1 **Q Are you aware of any complaints that have been**
2 **made about any faculty member who had an outside**
3 **activity that they -- they didn't report?**

4 **A Oh, Mr. Tracy -- Dr. Tracy.**

5 **Q Other than Dr. Tracy, are there any other**
6 **faculty members?**

7 **A Not that I'm aware of.**

8 **Q Is it safe to say Professor Tracy was the only**
9 **faculty member that you're aware of who's been accused**
10 **of having an outside activity that he didn't report?**

11 **A To my knowledge, that he didn't report.**

12 **Q But, to your knowledge, is there any other**
13 **faculty members who have been accused of --**

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

15 **Q -- not reporting --**

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

17 **Q -- an outside activity?**

18 **A Not to my knowledge.**

19 **Q What do you know of Professor Tracy's outside**
20 **activity that was not reported?**

21 **A All I know is that he had a blog, and was**
22 **supposed to report the blog, and apparently has not done**
23 **so.**

24 **Q So Professor Tracy was disciplined for not**
25 **reporting his blog?**



1 MR. CURLEY: Objection to form.

2 THE WITNESS: I -- I don't know that. I was
3 not involved in any of the disciplinary actions, so
4 I don't know exactly everything that might have
5 gone to a discussion.

6 BY MR. LEO:

7 Q Have you had a chance to review any of the
8 disciplinary notices that were issued concerning
9 Professor Tracy?

10 A Not that I recall.

11 Q You discussed earlier that -- about conflicts
12 of interest which could arise from a blog, I believe you
13 said that you couldn't point to any particular conflict
14 of interest?

15 A Not that I'm aware of or I can recall, I
16 should say.

17 Q As you sit here today, are there -- are there
18 any conflicts of interest, that you're aware of, from
19 Professor Tracy's blog? Conflicts of interests --

20 A Personally, I'm not aware.

21 Q Conflicts between --

22 A I have not sat down and gone through all the
23 forms or anything of the discussions.

24 Q So you're not aware of any conflict of
25 interest between Professor Tracy's blogging and FAU?



1 A I'm not personally aware. I have not seen any
2 of that discussion.

3 **Q When you say you're not personally aware, is**
4 **there a non-personal?**

5 A It would be where somebody came down and said
6 this, this, this, and this; no.

7 **Q At any point --**

8 A And I'm assuming there's an appeal process or
9 -- if there's a disagreement about somebody having a
10 conflict of interest, there must be. In other cases I
11 know there's a way to appeal those processes.

12 **Q Are you referring to the grievance process?**

13 A I'm not sure if it's a grievance or if it's an
14 appeal, could be either. An appeal could just be like a
15 further discussion, or I made a mistake, or I disagree
16 completely and I want to grieve.

17 **Q Are you aware of whether or not Professor**
18 **Tracy attempted to appeal his discipline in 2015?**

19 A In 2015? I was told he did not.

20 **Q Who told you that Professor Tracy did not**
21 **attempt to appeal?**

22 A The provost.

23 **Q The provost. You said you haven't reviewed**
24 **any of the disciplinary notices that were issued to**
25 **Professor Tracy?**



1 A Have what?

2 Q You haven't reviewed any of the disciplinary
3 notices that were issued to Professor Tracy?

4 A No.

5 THE COURT REPORTER: If I could just ask you
6 guys to speak one at a time, please.

7 BY MR. LEO:

8 Q She just wants us to speak one at a time --

9 A I'm sorry.

10 Q -- so she can record both.

11 A Okay.

12 Q You said you didn't review the disciplinary
13 notices issued to Professor Tracy?

14 A Not that I recall.

15 Q Is there a reason why you didn't?

16 A No.

17 Q Would you agree that the disciplinary notices
18 would be relevant to your duties as president?

19 A If -- if there was an appeal to the notice.

20 Q Does there have to be an appeal to the
21 disciplinary action for you to review it?

22 A Depends on the process -- processes up to the
23 provost; I asked him were all the processes followed, he
24 said it was. I delegate that responsibility.

25 Q But you could still review the -- the



1 **discipline?**

2 A You could.

3 **Q Was there a reason why you didn't review the**
4 **discipline?**

5 A No. We have -- I mean, we do have 3,300
6 people, so...

7 **Q Did Professor Tracy's termination have**
8 **anything to do with the -- the negative publicity that**
9 **FAU had received concerning Professor Tracy's blog?**

10 MR. CURLEY: Objection to form.

11 THE WITNESS: Not to my knowledge.

12 BY MR. LEO:

13 **Q And you say not to your knowledge, is it --**
14 **does that mean it's possible that the negative --**

15 A It just means I don't -- I don't know. I
16 didn't have anything to -- involved in that discussion.

17 **Q You said that you became aware of Professor**
18 **Tracy's discipline in December of 2015?**

19 A I think that's when it was, '15 or -- I think
20 it was '16. I don't remember what year it was. It had
21 to be '15, it was -- it was earlier.

22 **Q Did you receive any complaints about Professor**
23 **Tracy to your office?**

24 A We get a lot of letters. I don't read them,
25 but we get letters.

1 **Q You don't read any of the letters that go to**
2 **your office?**

3 A I occasionally read them, but I have two
4 accounts, I have one that comes to me personally, and
5 then I have one called president which --

6 MR. CURLEY: Don't -- don't put that on --

7 MR. LEO: What's that?

8 MR. CURLEY: Don't put your e-mail address on
9 the record.

10 THE WITNESS: Oh, don't put it on the record,
11 please, yes. Well, I have two accounts, so one
12 account is universal so anybody that has something
13 they want to say to FAU, they -- they say to that
14 account, and then -- that's read by somebody else,
15 so I don't read that. There's no way to keep up
16 with the quantity of e-mails that come in through
17 those accounts. There's everything about I don't
18 like my grade, to --

19 BY MR. LEO:

20 **Q Just going back to, this is PK2, your**
21 **interrogatories. You are referring to the personal e-**
22 **mails. Without naming them, are the personal e-mails**
23 **that you listed here, are those the ones that you were**
24 **referring to?**

25 A Where is it?



1 **Q In PK2, the interrogatory responses. Maybe**
2 **underneath --**

3 A Something under there.

4 **Q I think it's outlined in there.**

5 MR. CURLEY: Was there an answer that you
6 wanted him to look at or --

7 MR. LEO: Yeah. If you'd look at the first
8 question, that's page -- Page 3 going into Page 4.

9 THE WITNESS: Is it one that starts disclosed
10 outside, is that --

11 BY MR. LEO:

12 **Q Yeah. It says, "Pursuant to the court order**
13 **that personal e-mail addresses not be disclosed", and**
14 **then you see how it has two e-mails listed here?**

15 MR. CURLEY: Don't put those on the record.

16 BY MR. LEO:

17 **Q Right. I'm not going to read them into the**
18 **record, but I just want you to look at those two address**
19 **that are listed there. Are those the two personal e-**
20 **mail addresses that you were just referring to?**

21 A Number 1 has been inactive for a long time,
22 there's a typo there, too.

23 **Q And then the second one is -- is currently**
24 **active?**

25 A It is, but that's rarely used, yeah.



1 **Q** Did you ever use that second e-mail, the
2 Gmail, did you ever use that to communicate about this
3 case?

4 A Not to my knowledge. I really almost never
5 use it.

6 **Q** Did you ever use the Gmail to communicate
7 about Professor Tracy in any way?

8 A No, I can't imagine I would.

9 **Q** You mentioned earlier that you had two FAU e-
10 mails, that's on the previous page, President@fau.edu
11 and Jkelly@fau.edu.

12 A Yes.

13 **Q** Are these the two e-mails that you primarily
14 use at FAU?

15 A Yes.

16 **Q** You had mentioned that one of these is a
17 personal or --

18 A I don't know if you call it personal --

19 **Q** That you use --

20 A -- they're public. But, I mean, the one that
21 I -- my VP's and others communicate with me is the --
22 the second one.

23 **Q** The second one.

24 A The first one anybody can communicate to.

25 **Q** So President is the public e-mail and Jkelly



1 **is the internal --**

2 A Right.

3 Q -- e-mail?

4 **Who monitors or has access to the president at**
5 **President@fau.edu e-mail?**

6 A My secretary, the VP for administration.

7 Q **Is that Volnick?**

8 A Yes. And I'm not sure who else, I mean, it's
9 -- it's one of those that only another, you know, direct
10 report would have access to. It could be our legal
11 group, but I don't know if anybody at legal has access.
12 I don't really care who has access to that one, I just
13 want the questions usually answered; it's questions like
14 why did my daughter not get in school, how come I can't
15 find a parking space close enough to this, so it --
16 lots, and lots, and lots of questions that come to
17 there, and somebody just tries to answer the ones they
18 can.

19 Q **Who's your secretary?**

20 A Lill DuKate.

21 Q **Okay. And I was just going based on your**
22 **website here. Who's Rita Gelin?**

23 A She's also a secretary.

24 Q **Does she also have access to the e-mail?**

25 A I don't think so.



1 **Q So only --**

2 A Could be that she does when I'm out of town or
3 something. Most of the ones that come there are not,
4 you know, the urgent ones, but in case there is an
5 urgent one, we sometimes will assign someone to look.

6 **Q So only Stacy Volnick, Lill DuKate, and you**
7 **have access to the president e-mail?**

8 A Yes.

9 **Q Who's Peter Hull?**

10 A He's a VP for public relations. He might have
11 access, too, I don't know.

12 **Q Your website says vice president for public**
13 **affairs.**

14 A Public affairs, sorry. Yeah.

15 **Q It's public affairs?**

16 A Affairs, yes.

17 **Q Okay. And what's Peter Hull's job?**

18 A His job is to develop our promotional
19 materials for the university, advertisements, anything
20 that deals with brochures that we produce as a
21 university, internal video that we produce as a
22 university, my responses sometimes to donors or others
23 who are asking questions. I do a multitude of letters
24 to people, so he helps put those letters together.

25 **Q Hull actually drafts -- he'll draft the**



1 **letters?**

2 A Well, somewhat. I draft most of them, but
3 then he'll -- he'll handle the -- clean-up what I said
4 and make it sound better.

5 **Q Is there anything else that he does for you?**

6 A Let's see. If we do a promotional event on
7 campus, so when we do a big donor announcement or
8 something like that, he handles all of the -- whatever
9 it might be; the backdrops, the stage, all that kind of
10 thing. So it's really the public relations side of the
11 university, as well as communication with the board of
12 governors. Every -- every university in Florida has
13 somebody like him.

14 (Whereupon, a brief recess was had and the
15 proceedings resumed as follows:)

16 BY MR. LEO:

17 **Q Before we broke we were talking about Peter**
18 **Hull, I think you were describing his duties. You were**
19 **talking about the PR side?**

20 A Right.

21 **Q So Peter Hull, he handles public relations --**

22 A Yes.

23 **Q -- for your office?**

24 A Yes.

25 **Q Does he handle complaints that are made to**



1 **your office?**

2 A Sometimes, depends on what it is. I mean,
3 he's everything from April Fool's Day jokes, to somebody
4 doesn't like, to you name it, so sometimes he'll handle
5 those.

6 **Q Was Peter Hull in charge of receiving**
7 **complaints for Professor Tracy or about Professor Tracy?**

8 A Actually, I don't know. Most of those go to
9 that president account, and obviously we don't respond
10 to those.

11 **Q When you say that we don't respond to those,**
12 **you're referring to the complaints?**

13 A We typically don't respond to -- I mean, we
14 have -- we have people that complain about a lot of
15 different things, and if we responded to everything it
16 would take forever, and then usually a response creates
17 a second question, so we respond to things we can fix.
18 If somebody's talking about whatever, the traffic gate
19 doesn't work; well, we'll, you know, do a push button
20 and have somebody go fix the traffic gate, or if
21 somebody's saying that there's mold growing in my dorm
22 room, we'll have somebody go look at that. But
23 typically it's not a personal response, because all
24 those do is create more direct; now do this for me, now
25 do that for me, now would you do this for me, I want a



1 copy of that. And we don't have that much personnel to
2 handle those things, and I'm not sure Peter actually
3 does it as much as people in his office do.

4 **Q Whose responsibility is it to read all of the**
5 **e-mails that come to President@fau.edu?**

6 A It varies. Typically, I mean, there are times
7 when we just get overwhelmed with other duties, we're
8 not -- we're not heavily staffed, and so if -- if
9 there's -- sometimes I might even see some of them, but
10 not often. Sometimes I check just to see am I missing
11 anything really important that, you know, should -- I
12 should know about that people aren't telling me; but
13 typically Stacy Volnick tries to monitor those, and --
14 and her job becomes to shuttle them to another place
15 where somebody can actually respond. So if it's a
16 financial aid question a kid has, we send it over to the
17 financial aid office, or we send it to the provost
18 office who will then ask somebody in financial aid. But
19 some things you just can't answer, I mean, they're just,
20 I don't like the seat I got at the play last night;
21 well, I'm sorry.

22 **Q Does Stacy Volnick, does she shuttle**
23 **complaints to you?**

24 A Sometimes.

25 **Q Why would she shuttle a complaint to you?**



1 A It could be something that we didn't know had
2 happened, it could be that somebody tried to, let's say
3 -- to get in to talk to me about something, and they
4 came over here and tried to get an appointment, and they
5 actually should have been able to get through the -- I'd
6 say the -- the different people to talk to me, and they
7 didn't get that chance. So she would then make sure
8 that -- she might not even forward the e-mail as much as
9 she might just tell me, you know, the guy that owns this
10 company said you said to come by and see him Thursday,
11 and you missed the appointment; okay, well I got to do
12 something about that. But that's the business card I
13 give out -- give out to everybody, so it could be
14 anybody to I want to get the internships for my company
15 that you mentioned to me, or I heard you speak at this
16 and I want to get that, and so all that stuff I -- I
17 never -- I never notice or never see.

18 **Q Did Stacy Volnick ever shuttle any complaints**
19 **about Professor Tracy to you?**

20 A It's possible. You know, sometimes when --
21 when there's a whole lot going on with something; if
22 there's an event that caused a whole lot of responses,
23 she might let me know that we're getting a lot of action
24 about this or a lot of people concerned about that. And
25 I just -- it makes me aware of -- of something.



1 **Q Do you recall ever receiving a complaint about**
2 **Professor Tracy from Stacy Volnick?**

3 A Not that I recall, but it -- not from her
4 personally, for sure, but it could have been that there
5 was -- I mean, I did get e-mails about James and -- but,
6 you know, I get e-mails about a lot of stuff.

7 **Q How did Stacy Volnick feel about Professor**
8 **Tracy?**

9 A I don't know. Honestly, we don't sit down and
10 discuss it.

11 **Q Did Stacy Volnick ever express agreement or**
12 **disagreement with the way that Professor Tracy was dealt**
13 **with in December of 2015?**

14 A Not to me.

15 **Q Do you recall her ever e-mailing you that she**
16 **was happy about Professor Tracy's termination?**

17 A No.

18 **Q Do you recall her ever sending you any**
19 **articles in support of FAU's decision to terminate**
20 **Professor Tracy?**

21 A I don't recall her sending anything.

22 **Q But it's possible?**

23 A It's possible. I mean, I get e-mails that say
24 a lot of stuff that comes in.

25 **Q What, if any, influence does Stacy Volnick**



1 **have on your decision making?**

2 A All the VP's have some decision making
3 responsibility, they -- I trust them, you know, they --
4 they do their jobs. She has a tough job. She has, you
5 know, all the police on campus, so any security issues
6 that come up from any event we do, anything that deals
7 with grounds, it's like she has all the stuff that most
8 people would not be thrilled with. Anything that
9 becomes a -- a matter because of police, if it's a
10 student arrest, she and Peter are usually involved in,
11 you know, figuring out what's the university's response
12 to whatever's needed relative to somebody using drugs,
13 or somebody getting caught beating up somebody on
14 campus, or any of those kind of events. She tends to be
15 our person who's busy at nights and on the weekends; any
16 time anything happens she's usually the first call.

17 **Q When you say anything happens, anything --**

18 A It's anything. Hurricane's coming, it's all
19 clear at this campus. Okay. We got to get food to the
20 students who got left. 100 kids are left, we've got to
21 get food over to those kids. So she's the -- the one
22 that, kind of, handles any administrative function that
23 keeps the university running.

24 **Q What's her role in disciplinary action, if**
25 **any?**



1 A She has her own employees that -- that she --
2 have worked for her, and then she has to manage those
3 employees. So out of the employees we have, we have
4 about a little over 3,000, about 1,000 are faculty, and
5 around 2,000 are staff, and -- so within that 2,000 that
6 are staff, a large number of those are in her area. All
7 the facilities, every air conditioner that goes out that
8 somebody has to get fixed, all that stuff she handles.

9 **Q Did Stacy Volnick have any role in Professor**
10 **Tracy's discipline or termination?**

11 A No.

12 **Q And if Stacy Volnick was sending you e-mails**
13 **concerning Professor Tracy, would you -- how would you**
14 **characterize that?**

15 A Just an awareness. She does that on lots of
16 different things, send me an awareness so that I know
17 that -- usually it's something that has gone out on
18 campus, that I'm aware that Building 37 doesn't have any
19 air conditioning today, so that when I go to a meeting,
20 if somebody asks me a question, I'm at least aware.

21 **Q Was Stacy Volnick ever critical of tenure?**

22 A No.

23 **Q Did she ever agree that tenure should not be**
24 **absolute?**

25 A We -- actually, she and I never discussed



1 tenure. It's not in her area of responsibility. She
2 doesn't have anybody that's tenured in her area, that I
3 know of.

4 **Q Did she ever send you anything that said,**
5 **tenure be damned?**

6 A Not that I know. Other people have said that
7 to me, but I don't remember Stacy ever saying anything
8 like that.

9 **Q But who is the other people that have said**
10 **that to you?**

11 A Oh my gosh, you name it. Laundry list.
12 There's not a president in America that doesn't here
13 that.

14 **Q Who do you typically hear that from?**

15 A Oh, you hear it from people out in the
16 community, you hear it from even some of our own people
17 -- not our own people as much here, but you hear people
18 that are on the grounds crew that would say; yeah, well,
19 they got tenure, I don't. Yeah, they do. That's
20 freedom of speech protected from their academic
21 standing.

22 **Q That's -- that's your viewpoint?**

23 A No, no, I'm very supportive of tenure.

24 **Q Is anybody in the administration, that you're**
25 **aware of, has a problem with tenure at FAU?**



1 A They wouldn't be working there if they did.

2 Q You said that Stacy Volnick never expressed
3 agreement with the termination of Professor Tracy to
4 you?

5 A Not to my awareness.

6 Q Did anybody in your office express agreement
7 with the termination?

8 A Not that I'm aware of.

9 Q Are the staff members who are listed on your
10 website, are -- the staff contacts, are these all your
11 employees?

12 A Who are they --

13 Q I'll just --

14 A -- because it may not be current, sometimes
15 it's not.

16 Q I'll list them off for you. There's Peter
17 Hull --

18 A Yes.

19 Q -- vice president for public affairs. He's
20 still in that position?

21 A That's correct.

22 Q Stacy Volnick, vice president of
23 administrative affairs and chief administrative officer?

24 A That's correct.

25 Q Lill DuKate, senior administrative assistant?



1 A Yes.

2 Q Linda Elliot, assistant to the vice president
3 for academic --

4 A She works for Stacy, not me.

5 Q Okay. Is her title assistant to vice
6 president for administrative affairs?

7 A Maybe, something like that.

8 Q Rita Gelin, G-E-L-I-N, executive secretary?

9 A She would work for Stacy, too, or Lill. I'm
10 not sure which one she works for.

11 Q Lenora Gilbert?

12 A She works for Stacy.

13 Q She's coordinator of presidential events?

14 A Right. Yeah.

15 Q Andrew LaPlant?

16 A He's what I call a secretary to the board;
17 it's not really the true secretary of the board, David
18 Kian is more of the true secretary of the board, but
19 Andrew does all the board prep.

20 Q You said David Kian?

21 A Yes.

22 Q And who's that?

23 A This guy right down here (indicating).

24 Q Oh, okay. He's sitting here today. You said
25 he's secretary to the board?



1 A Is that your official -- I'm not allowed to
2 you ask you a question.

3 **Q No, you're not.**

4 A He has a responsibility for managing the --
5 the board meeting and making sure all rules and
6 protocols are followed. Andrew is more of, like,
7 putting the agenda together, making sure the slides
8 work, so Andrew's role is very much a staff, whereas
9 David's more -- very much a follow the legal procedures.

10 **Q So for Andrew LaPlant, when it says director**
11 **of board operations and chief aide, is that an accurate**
12 **title?**

13 A That's probably okay, yeah. That's probably
14 accurate.

15 **Q Who's the chief aide to LaPlant?**

16 A His -- most of his responsibilities are to the
17 board, so I -- you know, I write the board occasionally
18 a message, and when I send a message to the board they
19 will -- Andrew will be the one that does a proofread and
20 -- and then the mail out of that. If the board meeting
21 is coming up, and we just had a board meeting, so all
22 the logistics for the board meeting he makes sure are
23 there; that's everything from deciding what we're going
24 to eat for lunch, to which board members are there,
25 which committees are meeting, what slides need be ready



1 at what time for each presentation, so he's -- he's not
2 the person that gives advice on protocol or strategy to
3 the board, he's more of the -- almost like a
4 administrative assistant to the board.

5 **Q Does --**

6 A But he works for Stacy.

7 **Q Oh, that -- that was my next question, is who**
8 **does LaPlant answer to?**

9 A Stacy.

10 **Q Stacy Volnick. Does he answer to you?**

11 A No.

12 **Q So Andrew LaPlant, he answers only to Stacy**
13 **Volnick, or does he answer to anybody else?**

14 A Only to Stacy.

15 **Q And who does Stacy Volnick answer to?**

16 A Me.

17 **Q Would you agree that LaPlant indirectly**
18 **answers to you, as well?**

19 A Since he's in -- he physically sits in my
20 office, so I communicate with him on things. If -- if
21 she's not in or something I'll say, Andrew, have you
22 made the board aware of whatever --

23 **Q You --**

24 A -- the football game has been moved from
25 Saturday to Friday night, you know, that kind of thing.



1 **Q So Mr. LaPlant actually sits -- sits in your**
2 **office?**

3 A No. Well, my office has about seven offices
4 outside it, so it would be like this -- I'm not sure
5 what this suite looks like, but there's one main office
6 and the secretary's out there, then my office is next to
7 that, and then there are offices as you go toward the
8 entry door.

9 **Q So if you or Stacy Volnick need something from**
10 **Andrew LaPlant, his office is --**

11 A It's right -- the first office when you come
12 in the president's office.

13 **Q It's the first office. Okay. Does Andrew**
14 **LaPlant, does he draft documents to the board?**

15 A Typically not.

16 **Q Who would draft a communication from your**
17 **office to the board of trustees?**

18 A Probably Peter or Stacy, sometimes me, depends
19 on what it's about. Sometimes David if it's a matter
20 that's -- requires any kind of action on the board,
21 David might help draft it, David Kian.

22 **Q Who drafted the notice to the board of**
23 **trustees concerning Professor Tracy's termination?**

24 A That's a good question. It may be David, I'm
25 not sure. I can't ask him.



1 **Q David Kian?**

2 A It may be.

3 **Q Did you draft a notice to the board?**

4 A No.

5 **Q Did you have any say in the draft before it**
6 **was --**

7 A Not to my knowledge.

8 **Q -- finalized?**

9 A I don't remember having any.

10 **Q When were you made aware that FAU was**
11 **terminating Professor Tracy?**

12 A I don't remember the day. It was, I think
13 after they were -- there hadn't been any response to
14 whatever the time period was to make a response which
15 enacted a -- a termination, but I don't remember what
16 days it was for.

17 **Q If a message goes to the board from your**
18 **office, it would have originated at your office, would**
19 **you agree with that?**

20 MR. CURLEY: Objection to form.

21 THE WITNESS: Well, no, the -- it could go
22 from other offices.

23 BY MR. LEO:

24 **Q Like a notice of termination, for example, of**
25 **a tenured faculty member?**



1 MR. CURLEY: Objection to form.

2 THE WITNESS: I would say that most messages
3 that go to the board would go through me or one of
4 my VP's, it would be unusual if the board got a
5 message from someone who was not a VP or me.

6 BY MR. LEO:

7 Q Did the notice to terminate Professor Tracy to
8 the board, so notice to the board of that, did that go
9 through you?

10 MR. CURLEY: Objection to form.

11 THE WITNESS: I don't recall. I'm not sure
12 who it went through.

13 MR. LEO: Are we on PK6?

14 MR. BENZION: Uh-hum.

15 (Whereupon, the referred-to documents were marked
16 as Plaintiff's Composite Exhibit PK6 for
17 Identification.)

18 BY MR. LEO:

19 Q I'm going to show you what has been marked as
20 PK6 for today. And, for the record, this is also PRR
21 2542 through 2544, Bates stamp. If you could just take
22 a look at this -- this composite, let me know once
23 you've had a chance to review it.

24 A Okay.

25 Q Going to Page 3, at the bottom of PRR 250 --



1 **2544, was this the statement that was issued to the**
2 **Board of Trustees by your office concerning Professor**
3 **Tracy's termination?**

4 A I don't know who -- it may have gone with one
5 of these other e-mails, I don't know which one it went
6 with. I mean, it's not unusual the board would get some
7 kind of a message, a formal message that I wouldn't be
8 involved in.

9 **Q Back to my question, is this the actual**
10 **statement that was sent by your office to the board?**

11 A I don't know.

12 MR. CURLEY: Objection to form.

13 THE COURT REPORTER: I'm sorry. Your answer,
14 I don't know?

15 THE WITNESS: I don't know.

16 BY MR. LEO:

17 **Q You don't know if --**

18 A I don't know if that particular document --
19 there's no signature on that one, there's a signature on
20 the prior and the other prior -- or I don't -- not a
21 signature, but an acknowledgment of who sent it.

22 **Q Well, did --**

23 A I don't know if those were -- did they go at
24 the same moment? Oh, I don't know how it went.

25 **Q I don't know either. This was produced to us,**



1 **so that's why I'm asking.**

2 A I mean, did you get it as an attachment to
3 this?

4 Q **This was produced -- you see the Bates stamps**
5 **here at the bottom?**

6 A Okay.

7 Q **It's 2542, 2543, 2544, so it's produced to us**
8 **chronologically like this.**

9 A Does that mean, like, five minutes apart, a
10 minute apart, or --

11 Q **Meaning we -- we received the documents --**

12 A Oh.

13 Q **-- this was first, this was second, this was--**

14 A Okay.

15 Q **-- third in the production. However, you**
16 **indicated that there should be a signature here?**

17 A I -- I just don't know who it came from.

18 Q **The -- the statement regarding James Tracy?**

19 A Right. I mean, the other two documents
20 clearly say that David Kian sent them, or appear to. It
21 doesn't say that, but his name is at the bottom. This
22 one doesn't have a name at the bottom, so I don't know
23 who -- who sent them.

24 Q **Looking at Mr. Kian's message he -- he writes,**
25 **"The attached statement has been posted to the**



1 **university's home page."**

2 A Oh, okay. He wrote that. Okay.

3 Q Is -- is that what he's referring to, this PR
4 2544, the statement regarding James Tracy?

5 MR. CURLEY: Objection to form.

6 THE WITNESS: I don't -- I mean, I assume so,
7 but I don't know.

8 BY MR. LEO:

9 Q Concerning the -- the e-mail from Mr. Kian,
10 was this e-mail -- was this reviewed by you before it
11 was sent?

12 A Most likely not.

13 MR. CURLEY: Objection to form.

14 BY MR. LEO:

15 Q And you see the e-mail from Andrew LaPlant,
16 it's -- actually there's two e-mails from Andrew
17 LaPlant. It looks like on 2 -- PRR 2542, the bottom
18 message says from Andrew LaPlant.

19 A I see that.

20 Q And then you find the --

21 A The first one?

22 Q Right.

23 A 2542.

24 Q That was the first e-mail from Andrew LaPlant,
25 and on the second page, PR 2543, there's another e-mail



1 **from Andrew LaPlant.**

2 A And what -- and what was the question?

3 Q Just -- just directing your attention to that.

4 A Okay.

5 Q You see the e-mail's from Andrew LaPlant, but
6 then at the bottom it has David Kian's name. Does that
7 mean that David Kian drafted the e-mail and it sent by
8 Andrew LaPlant?

9 A Typically that's what it would mean. Just so
10 that Andrew handles, you know, all the things that end
11 up going back and forth, some are thank you for sending
12 this, it doesn't become David having all those e-mails
13 coming back; or could you please tell me more about
14 that, then Andrew can go get more information. So
15 typically one of our VP's, if it's going to a board,
16 typically the whole board would use Andrew as the --
17 essentially the secretary to -- to send that.

18 Q But you said you don't know who -- who
19 actually drafted the e-mail?

20 MR. CURLEY: Objection to form.

21 THE WITNESS: I assume by David's name being
22 on it that he did, but maybe going from Andrew it
23 wouldn't be unusual for one of our vice presidents,
24 particularly our legal vice president to represent
25 anything that dealt with a personnel matter, to



1 draft the -- the document.

2 BY MR. CURLEY:

3 Q The statement on the third page, it says --
4 it's dated December 16th, 2015, and also that's the same
5 day that's listed on the first two pages as the dates in
6 these e-mail communications, would you agree with me?

7 A Appears to be.

8 Q Was this the day that your office notified the
9 Board of Trustees for the first time that Professor
10 Tracy was being terminated?

11 MR. CURLEY: Objection to form.

12 THE WITNESS: I don't know that it was the --
13 the first time, if they were aware of the fact that
14 there was going to be a -- a -- if -- if there had
15 been no appeal or not, I --

16 I don't know. So this is -- it appears to be,
17 and I -- again, the dates are -- I don't know the
18 dates. It appears to be the acknowledgment that --
19 that it has actually happened, the termination has
20 happened; not that there's a termination pending or
21 anything like that, but it's happened.

22 BY MR. LEO:

23 Q So the termination had occurred prior to this
24 notice being sent to the board?

25 A It says he has ten days to respond to the



1 notice after which final action will be taken, so it
2 appears to be the announcement of the action.

3 **Q** Concerning the -- the directions that are
4 given to the -- the trustees and the e-mail
5 correspondence in PK6, whose directions are these?

6 A I don't know.

7 **Q** You see where it says, "Please do not reply
8 all to this e-mail"?

9 A Yes.

10 **Q** Is that an instruction that came from David
11 Kian, or did somebody else give that instruction?

12 MR. CURLEY: Objection to form.

13 THE WITNESS: I don't know; but, I mean, if
14 David's name -- assuming that David saw everything
15 that went in it before his name was attached, then
16 he would have read it. I don't know who wrote that
17 note.

18 BY MR. LEO:

19 **Q** Does the board of trustees have the ability to
20 weigh in on the decision that was made to terminate
21 Professor Tracy?

22 A No.

23 **Q** Why not?

24 A They just don't.

25 **Q** Is that why they were instructed not to reply?



1 A I don't know.

2 Q Are decisions that are made concerning
3 personnel termination, are they subject to review by the
4 board of trustees?

5 A Not to my knowledge.

6 Q After this message was sent to the trustees,
7 did you receive any responses from any of the trustees?

8 A Not that I'm aware of.

9 Q Before this message was sent, did you receive
10 any communications from the Board of Trustees concerning
11 Professor Tracy?

12 A No.

13 Q Did you, at any point, contact any of the
14 trustees on your own concerning Professor Tracy?

15 A No.

16 Q When it says here, "Because we are at the
17 outset of what may be a long administrative and judicial
18 process, I must request that you refrain from any
19 comment about this action at this time."

20 A Which one is that?

21 Q This is the third paragraph of --

22 A Okay. I see.

23 Q -- Andrew LaPlant's message. Do you see that?

24 A Yes.

25 Q Where's this coming from?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: My assumption is it's coming
3 from David, because his name's at the bottom of the
4 correspondence.

5 BY MR. LEO:

6 Q On December 16th was your office concerned
7 about a long administrative judicial process concerning
8 Professor Tracy's termination?

9 MR. CURLEY: Objection to form.

10 THE WITNESS: I mean, it's not something I was
11 thinking about, but it may be something others was
12 thinking about.

13 BY MR. LEO:

14 Q Did anybody express those concerns to you?

15 A There was a concern that it could take a while
16 to get everything settled.

17 Q When you say settled, what do you mean by
18 that?

19 A To where there was a final decision.

20 Q When you say final decision?

21 A Well, it says above, "The university has
22 certain procedural rights to challenge an intended
23 termination decision before it is final." So I don't
24 know how long things take to get final.

25 Q When was the decision to terminate Professor



1 **Tracy finalized?**

2 A I don't know. I don't know. I don't know the
3 date.

4 **Q On December 16th, is it your testimony that**
5 **the decision had not been finalized?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: This says challenge an intended
8 termination date -- termination decision before it
9 is final. Have the right to procedural rights,
10 which I assume means a grievance or appeal, I'm
11 assuming that's the case.

12 BY MR. LEO:

13 **Q So is it your testimony that the decision to**
14 **terminate is subject to an appeal before it's a final**
15 **decision?**

16 A Well --

17 MR. CURLEY: Objection to form.

18 THE WITNESS: It says here written, "If a
19 decision becomes final, faculty have further rights
20 to a grievance process which includes binding
21 arbitration, and as is the case with any employer,
22 university employees may always challenge in court
23 adverse employment actions that affect certain
24 statutorily or constitution protected rights." So
25 I'm assuming that's what it refers to.



1 BY MR. LEO:

2 Q At any point did you make a determination as
3 to whether Professor Tracy's termination affected
4 constitutionally protected rights?

5 MR. CURLEY: Objection to form.

6 THE WITNESS: No.

7 BY MR. LEO:

8 Q Is there a reason why not?

9 A I'm -- I'm not involved in the termination.

10 Q When you say you're not involved, earlier you
11 testified that --

12 A All the procedurals -- things that happen go
13 through the provost office.

14 Q You'd agree that, according to the board
15 operating procedures, you're ultimately responsible
16 for --

17 A I'm ultimately responsible to the board, yes.

18 Q For decisions --

19 A But I delegate --

20 Q -- like termination?

21 A But I delegate those responsibilities to the
22 vice presidents.

23 Q Even though those responsibilities are
24 delegated, would you agree that it's ultimately your
25 responsibility --



1 MR. CURLEY: Objection to form.

2 BY MR. LEO:

3 Q -- to oversee and to ensure compliance with --

4 A It goes to the university, yes.

5 Q I'm sorry, she can't record us both, so --

6 MR. LEO: Were you able to get that?

7 THE COURT REPORTER: "It goes to the
8 university, yes."

9 BY MR. LEO:

10 Q You would agree it's your ultimate
11 responsibility to ensure that those who you delegated
12 certain powers to are following the procedures, and
13 duties, and responsibilities that have been bestowed by
14 you by the university?

15 A There is a responsibility of the president to
16 -- to handle the whole university, and then that's
17 delegated at every university to others.

18 Q Would you agree that you're the boss of FAU?

19 MR. CURLEY: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. LEO:

22 Q So anything that the vice provost -- the
23 provost do pursuant to the delegation of those duties
24 would ultimately fall under your responsibility?

25 MR. CURLEY: Objection to form.



1 BY MR. LEO:

2 Q Would you agree?

3 A I would say that the president is ultimately
4 responsible for the university, individuals within that
5 administration have direct responsibility for fulfilling
6 their jobs and they're evaluated on their performance
7 and their jobs?

8 Q Is it part of your responsibility to ensure
9 compliance with federal law?

10 A Through our compliance officer, yes.

11 Q When you say through a compliance officer,
12 what do you mean by that?

13 A We have a person who's in charge of compliance
14 that follows federal laws.

15 Q Who is -- who's that person?

16 A That is -- what's her name? Morgan Kim.

17 Q I'm sorry, Morgan?

18 A Morgan Kim.

19 Q Kim, K-I-M?

20 A K-I-M.

21 Q And who's Morgan Kim?

22 A Morgan Kim is the chief compliance officer for
23 the university.

24 Q Was Morgan Kim ever asked to determine whether
25 federal law was complied with with respect to Professor



1 **Tracy's discipline and termination?**

2 A I don't know.

3 **Q Did you ever contact Morgan Kim concerning**

4 **Professor Tracy's termination?**

5 A No.

6 **Q Did you ever contact Morgan Kim with --**

7 **concerning the discipline against Professor Tracy?**

8 A No.

9 **Q Was there ever a determination made by anybody**
10 **in your office that there was compliance with federal**
11 **laws with respect to Professor Tracy's discipline and**
12 **termination?**

13 A That would have -- at the time Morgan Kim
14 reported to the chief legal counsel, David Kian, and
15 subsequently the Board of Governors had required that
16 the chief compliance officer report to the president, so
17 this was subsequent to that that she reported to me. So
18 she would have reported with David Kian on anything that
19 was about compliance.

20 **Q So you're saying at the time that Professor**
21 **Tracy was terminated, Kim would have reported to Kian**
22 **about compliance with federal law?**

23 A Yes.

24 **Q But do you have any personal knowledge**
25 **concerning whether Kim actually did report to Kian?**



1 A I don't know.

2 Q And you said that changed --

3 A Yes.

4 Q -- afterwards?

5 A The board of governors has required all
6 compliance to report to the president.

7 Q When did that change happen?

8 A Just recently.

9 Q Do you know why that change happened?

10 A I think they just felt that compliance and
11 audit should be two separate functions. An audit had
12 reported typically to presidents and compliance had not,
13 so they felt like it should -- we should not have
14 compliance and audit as one group.

15 Q What's the difference between compliance and
16 audit?

17 A Audit goes in and looks at, say, more
18 typically things like expenditures; is money being spent
19 the way it's supposed to be spent, did you do the
20 bidding processes right, are you charging the same
21 amount for everybody that comes to some event, so it's
22 more looking at the -- the financial functions of the
23 university. Compliance deals with any kind of
24 discrimination type of issues, issues that are about
25 employment, terminations, all those kinds of things,



1 were procedures followed.

2 Q Has there ever been an audit of FAU concerning
3 the outside activities policy?

4 A I don't know.

5 Q Are you aware of any allegations that FAU's
6 not in compliance with federal law?

7 A No.

8 Q Would you agree that the First Amendment to
9 the United States Constitution is one of the federal
10 laws the FAU must comply with?

11 A Yes.

12 Q Would you also agree that the First Amendment
13 to the constitution is -- is covered by Section 23 of --
14 I'm sorry, Subsection 23 of Section 4.6 of your board
15 operating procedures?

16 MR. CURLEY: Objection to form.

17 BY MR. LEO:

18 Q If you want to look at Exhibit PK1. You just
19 -- you just passed by it. There you go.

20 A Where is it?

21 Q Subsection 23 of the -- the page you just had,
22 actually. Next page. There you go. Right there. Go
23 back. One more. See at the bottom, Subsection 23 --

24 A Yes.

25 Q -- in parentheses? It says, "To ensure



1 compliance with federal and state laws, rules,
2 regulations, and other requirements which are applicable
3 to university." The question was, would you agree that
4 the First Amendment to the United States Constitution is
5 one of -- one of the federal and state laws, rules,
6 regulations encompassed by Subsection 23?

7 A Yes.

8 Q And just to be clear, your testimony is that
9 you -- you're not sure if there was compliance with
10 federal law with respect to Professor Tracy's
11 termination?

12 MR. CURLEY: Objection to form.

13 THE WITNESS: No, I didn't say that.

14 BY MR. LEO:

15 Q What did you tell me?

16 A I -- I did not --

17 MR. CURLEY: Objection to form.

18 THE WITNESS: I didn't ensure that Morgan
19 Kim discussed that.

20 BY MR. LEO:

21 Q You didn't ensure that Morgan -- Morgan and
22 Kian discussed Professor Tracy's termination?

23 A I did not personally ensure that, I assume
24 that happens because she is in the office right next to
25 him, and he would have involved her in this decision.



1 **Q As you sit here today, do you know, one way or**
2 **another, whether the termination of Professor Tracy was**
3 **in compliance with federal law?**

4 MR. CURLEY: Objection to form.

5 THE WITNESS: Knowing David Kian, I -- I'm
6 sure it would be.

7 BY MR. LEO:

8 **Q But do you know?**

9 MR. CURLEY: Objection to form.

10 THE WITNESS: No, it's delegated.

11 BY MR. LEO:

12 **Q Well, when you say it's delegated, earlier you**
13 **testified that you're not sure how it's delegated?**

14 MR. CURLEY: Objection to form.

15 THE WITNESS: No, for anything legal David
16 Kian has that responsibility for the university, I
17 trust his decision making.

18 BY MR. LEO:

19 **Q Right. But the delegation itself, you had**
20 **testified you weren't aware of how the delegation --**

21 A Oh, he -- he -- he makes somebody else in his
22 office that he uses to handle that particular work, so
23 in his office that would most likely be Morgan Kim.

24 **Q Let me just ask it a different way. So what**
25 **I'm -- I'm asking about how the delegation of these**



1 responsibilities was made, if -- if there was one.

2 You've indicated you weren't sure if it was in writing
3 or in another form --

4 A True.

5 Q -- earlier that's -- that's what you testified
6 to, at least that's -- that's what I remember. Is that
7 a fair --

8 A That's fine.

9 Q -- characterization?

10 A I don't follow every piece of paper that goes
11 between the individuals.

12 Q And if you'd look at Subsection 27 on the next
13 page there. You see what it says about designations and
14 delegations?

15 A Yes.

16 Q You see how it says towards the bottom here,
17 "A delegation has to be in writing."?

18 MR. CURLEY: Objection to form.

19 THE WITNESS: Yes, I see that.

20 BY MR. LEO:

21 Q Just -- let me just read this, it says, "To
22 further delegate the vice presidents and other
23 appropriate university personnel, the authority as
24 described herein, so long as such delegation is in
25 writing specifies whether the authority can be further



1 delegated, and the conditions for same, and a copy of
2 such delegations filed in the office of the general
3 counsel." Are you aware of any such writing?

4 MR. CURLEY: Objection to form.

5 THE WITNESS: It would -- I would assume it
6 would be in office of general counsel, that would
7 be his responsibility.

8 BY MR. LEO:

9 Q I mean, we're talking about writing. We're --
10 I'm referring to a delegation of the powers, duties, and
11 authority that's vested with the university. Are you
12 saying that there is -- there's -- to your knowledge,
13 there's been a delegation of the -- let's just -- for
14 the record, Subsection 23, to ensure compliance with
15 federal and state laws?

16 A My assumption; yes, sir. Yes.

17 Q You say your -- your assumption, but you don't
18 know for certain if there has been?

19 A I mean, I don't have the legal document in
20 front of me, and it's not something I sit around with,
21 so yes.

22 Q All right. So you don't know if there is a
23 writing that specifies whether the authority can be
24 further delegated?

25 A At this moment, I don't know.



1 Q Or the conditions for the delegation?

2 A No.

3 Q And that would be a question we should direct
4 to the office of general counsel?

5 A Yes.

6 Q Okay. Going back to the -- Article 19, PK5.
7 Is this one of the policies that's also outlined in the
8 board of operating procedures under Subsection 10? I
9 believe you had earlier testified that --

10 A What was the number?

11 Q -- something to that effect. I just want to--

12 A What was the number?

13 Q Subsection 10 -- well, I'm -- I guess you
14 could put PK5 next to the PK1, and just take a look at
15 Subsection 10 in the board operating procedures.

16 A Okay. So what were you -- what was your
17 question?

18 Q The question was whether Article 19, which is,
19 for today, PK5, it would be a conflict of
20 interest/outside activity policy at FAU, is that
21 encompassed by Subsection 10 of the operating procedures
22 or PK1 for today?

23 MR. CURLEY: Objection to form.

24 BY MR. LEO:

25 Q That's subsection 10 of Section 4.6 that



1 **you're -- it looks like you have in front of you.**

2 A Is that this (indicating)?

3 Q **Yeah. The question is whether Article 19 is**
4 **encompassed by Subsection 10?**

5 MR. CURLEY: Objection, form.

6 BY MR. LEO:

7 Q **I'll ask it another way. Does Subsection 10**
8 **of Section 4.6, of the FAU Board of Trustees operating**
9 **procedures, does that encompass the Article 19 conflict**
10 **of interest outside activity policy?**

11 MR. CURLEY: Same objection.

12 THE WITNESS: I mean, it seems to, but I -- I
13 don't know. I'm assuming it does.

14 BY MR. LEO:

15 Q **Is Article 19 used to discipline and remove**
16 **personnel at FAU?**

17 MR. CURLEY: Objection to form.

18 THE WITNESS: My assumption, it would be.

19 BY MR. LEO:

20 Q **Article 19 was used to discipline and remove**
21 **Professor Tracy, isn't that correct?**

22 MR. CURLEY: Objection to form.

23 THE WITNESS: I don't know if that's the
24 article or not. I mean, I'm not familiar with the
25 article numbers, I don't know if there's another



1 article or not.

2 BY MR. LEO:

3 **Q You say you don't know if Article 19 was used**
4 **to discipline and remove Professor Tracy?**

5 A I personally don't know because I wasn't
6 directly involved, my assumption is it would be.

7 **Q And after you were made aware of the**
8 **discipline and determination of Professor Tracy, did you**
9 **investigate the grounds or rational that was used by**
10 **those you delegated the power to?**

11 MR. CURLEY: Objection to form --

12 THE WITNESS: No, because --

13 MR. CURLEY: -- asked and answered.

14 THE WITNESS: -- it goes to our legal office
15 to manage.

16 BY MR. LEO:

17 **Q And you would agree if the Article 19 was used**
18 **in a way that violated federal law, ultimately the**
19 **responsibility would fall on you?**

20 MR. CURLEY: Objection of form.

21 THE WITNESS: I think that if I understood it
22 correctly, Article 19 was something that was
23 negotiated by the university with the faculty and
24 union on conflict of interest, it's my assumption.

25 BY MR. LEO:



1 **Q** But my question was if Article 19, the outside
2 activity/conflict of interest policy was used to violate
3 federal law, you'd agree that that would -- the
4 responsibility for that would fall on you?

5 MR. CURLEY: Objection to form.

6 THE WITNESS: Ultimately the president is
7 responsible --

8 MR. CURLEY: Asked and answered.

9 THE WITNESS: -- at the university.

10 MR. LEO: You -- were you able to get all of
11 that?

12 THE COURT REPORTER: Yes.

13 MR. LEO: Yeah.

14 BY MR. LEO:

15 **Q** And as you sit here today, you said there's --
16 there has not been a determination, that you're aware
17 of, that Article 19 was or was not used unlawfully?

18 A No, but we can get that information.

19 **Q** You say we can get the information?

20 A You said used unlawfully?

21 **Q** Right.

22 A I don't know of any instance we would use it
23 unlawfully.

24 **Q** And as you sit here today, you're not aware of
25 whether or not the policy was used unlawfully with



1 **respect to Professor Tracy?**

2 A I don't know that they used unlawfully.

3 Q Would you agree that if the policy was used as
4 a pretext to terminate Professor Tracy or to discipline
5 Professor Tracy for what he was expressing on his blog,
6 would you agree that that would be unlawful?

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I would have to ask our general
9 counsel, I don't know.

10 BY MR. LEO:

11 Q You'd have to ask your general counsel that --
12 if the policy was used as a pretext --

13 A If this policy is what was used for the
14 determination --

15 Q The determination --

16 A -- as -- as worded here.

17 Q The determination to discipline and terminate
18 Professor Tracy?

19 MR. CURLEY: Objection --

20 THE WITNESS: I assume that all --

21 MR. CURLEY: Objection to form.

22 THE WITNESS: -- legal protocols were
23 followed, but I have not had that discussion.

24 BY MR. LEO:

25 Q Do you know what pretext is?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: What?

3 BY MR. LEO:

4 Q Pretext?

5 A Pretext?

6 Q Pretext, P-R-E-T-E-X-T.

7 A What do you mean by it?

8 Q The definition of pretext is a reason given in
9 justification of a course of action that is not the real
10 reason. Does that ring a bell?

11 A I can understand what you're saying.

12 MR. CURLEY: Objection, form.

13 BY MR. LEO:

14 Q Are you -- have you heard of pretext before?

15 A Yes.

16 Q In what context?

17 A Just when someone -- with the pretext that
18 this might have happened.

19 Q Pretext would be like making something up --

20 A Possibly.

21 Q -- to discipline or fire a faculty member,
22 right?

23 A Right.

24 MR. CURLEY: Objection to form.

25 BY MR. LEO:



1 **Q** Would you agree with me, without having to
2 speak to counsel, that if Professor Tracy was fired
3 under pretextual grounds, as in Professor Tracy was
4 fired for his speech using the outside activities
5 policy, would you agree with me that that would be
6 unlawful?

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I -- I don't know. I don't know
9 enough about the specifics of the law. I believe
10 my people would not do that.

11 BY MR. LEO:

12 **Q** You say you don't have the specifics about the
13 law. You testified earlier that you're aware of the --
14 the First Amendment, right?

15 A Yes.

16 **Q** What's the First Amendment say?

17 A Freedom of speech.

18 MR. CURLEY: Objection to form.

19 BY MR. LEO:

20 **Q** You say freedom of speech?

21 A I don't know all the -- the long language of
22 it, but freedom of speech, essentially.

23 **Q** And what's freedom of speech mean to you?

24 MR. CURLEY: Objection to form.

25 THE WITNESS: Exactly that, freedom of speech.



1 BY MR. LEO:

2 Q When you say exactly that, are there
3 limitations of free speech?

4 MR. CURLEY: Objection to form.

5 THE WITNESS: Not in my opinion.

6 BY MR. LEO:

7 Q So would you agree Professor Tracy's person
8 blog was protected by the First Amendment?

9 MR. CURLEY: Objection to form.

10 THE WITNESS: I have no idea. I have not ever
11 seen his blog.

12 BY MR. LEO:

13 Q Would you agree with me that the viewpoints
14 and expressions of your faculty members at FAU are
15 protected by the First Amendment?

16 A Yes.

17 MR. CURLEY: Objection to form.

18 BY MR. LEO:

19 Q Would you also agree with me that if a faculty
20 member was disciplined or terminated for their
21 viewpoints and expressions in any form, that that would
22 violate the First Amendment?

23 MR. CURLEY: Objection to form.

24 THE WITNESS: It would seem to.

25 BY MR. LEO:



1 **Q Would you agree with me that Professor Tracy**
2 **was disciplined and terminated for the viewpoints and**
3 **expressions that he had --**

4 MR. CURLEY: Objection to form.

5 BY MR. LEO:

6 **Q -- expressed --**

7 A No.

8 **Q -- that would be unlawful?**

9 A Oh, it would be unlawful? I'm not a lawyer,
10 so I don't know, but I would assume so.

11 **Q It would be unlawful because it would violate**
12 **the First Amendment, right?**

13 MR. CURLEY: Objection to form.

14 THE WITNESS: I would assume so.

15 BY MR. LEO:

16 **Q As you sit here today, you said there -- you**
17 **haven't done an investigation as to whether Professor**
18 **Tracy's termination violated the First Amendment?**

19 A No.

20 **Q Going back to the outside activities/conflict**
21 **of interest policy. If I can direct your attention to**
22 **PK2, the interrogatories, Question Number 5.**

23 A So identify all persons?

24 **Q Right. The question asked to identify all**
25 **persons, including but not limited to FAU officials,**



1 employees, agents, and university faculty members
2 involved in the enforcement of FAU's outside
3 activities/conflict of interest policy, and with respect
4 to each individual identified, set forth their
5 responsibilities and duties related to the policy.

6 There was an objection to overbroad and unduly
7 burdensome, and then it says, "All FAU employees,
8 including all faculty and staff are required to comply
9 with the outside activities/conflict of interest policy,
10 and are therefore involved, along with supervisors,
11 department chairs, directors, and deans in the policy's
12 enforcement." Was that your response?

13 A Yes.

14 Q Was that response true and correct when you
15 answered these interrogatories?

16 A Yes.

17 Q Where does this language come from?

18 MR. CURLEY: Objection to form.

19 BY MR. LEO:

20 Q Beginning with all FAU faculties and then
21 ending in the policy's enforcement, it's --

22 A It just comes from our --

23 Q -- lines 2 through 5.

24 A -- our documents inside the university. I
25 mean, I don't have those documents in front of me,



1 that's from legal help.

2 **Q Which -- which documents does that language**
3 **come from?**

4 MR. CURLEY: Objection to form.

5 THE WITNESS: I don't know.

6 BY MR. LEO:

7 **Q There are some documents referenced in this**
8 **answer, are any of those documents where that language**
9 **comes from?**

10 MR. CURLEY: Objection to form.

11 THE WITNESS: I don't know. I assume so.

12 I don't write these legal opinions.

13 BY MR. LEO:

14 **Q Did you have a chance to review the documents**
15 **that you listed in response to Interrogatory Number 5?**

16 A No, I did not read all those documents.

17 **Q So when you referenced those documents in**
18 **response to Interrogatory Number 5, why did you do that?**

19 A I'm referring to the legal counsel for advice
20 on whether we did or not.

21 **Q So legal counsel listed these documents, not**
22 **you, is that what you're saying?**

23 MR. CURLEY: Objection to form.

24 THE WITNESS: They would have advised me that
25 those would be the documents that would --



1 information we'd be residing on.

2 BY MR. LEO:

3 Q But you did not review the documents, is that
4 your testimony?

5 A Yes.

6 Q So you don't know if this language is in those
7 documents?

8 A I reside -- rely on my legal counsel to be
9 sure that they have followed all protocols, as I've said
10 several times.

11 Q You were relying on legal counsel in providing
12 this language that all employees are -- including all
13 faculty and staff are required to comply with the
14 outside activities policy and involved, along with
15 superiors, department chairs, directors, and deans in
16 the policy's enforcement?

17 MR. CURLEY: Objection, form.

18 THE WITNESS: Our expectation is that's so.

19 BY MR. LEO:

20 Q You say your expectation, what were your
21 expectations?

22 A Our expectations; we follow all legal
23 documents of the university.

24 Q But my question is, and particularly this
25 interrogatory is directed at the outside activities



1 policy. Are you saying that all faculty members and
2 employees are involved in enforcement of the policy?

3 A I'm saying all are covered by the policy.

4 Q Would you agree that this response that you
5 provided in response to Interrogatory Number 5 indicates
6 that everyone at FAU is involved in enforcement of the
7 policy?

8 A It says all FAU employees, including faculty
9 and staff are required to comply with the outside
10 activities/conflict of interest policy, and therefore
11 involved, along with supervisors, chairs, deans, and
12 directors in the policy's enforcement --

13 Q Right.

14 A -- as expected.

15 Q So all FAU --

16 A That was the answer.

17 Q -- employees, faculty, and staff are involved
18 in enforcement of the policy?

19 A Are required to comply.

20 Q And involved?

21 A And involved.

22 Q But you don't know what document that you
23 listed here actually says that, is that your testimony?

24 A That's my -- that's my testimony.

25 Q Are you familiar with the additional



1 **explanation that was provided to faculty members by the**
2 **university regarding this policy?**

3 MR. CURLEY: Objection to form.

4 THE WITNESS: I don't know -- what -- what are
5 talking -- are you talking to -- about?

6 BY MR. LEO:

7 **Q The report -- the Florida Atlantic University**
8 **report of outside employment or professional activity**
9 **form/additional explanation?**

10 A No.

11 **Q You're not familiar with that? Let me show**
12 **you what's been marked as PK7 for today. And for the**
13 **record, this is also FAU 506 through 510.**

14 (Whereupon, the referred-to documents were marked as
15 Plaintiff's Exhibit PK7 for Identification.)

16 BY MR. LEO:

17 **Q Are you familiar with PK7?**

18 A I've heard of it, but I am not familiar verse-
19 by-verse with it.

20 **Q Was this document sent to you at some point?**

21 A When I was employed here it was.

22 **Q You see on Page 4, the -- the last page, it**
23 **has a date?**

24 A Okay.

25 **Q It says, June 2016. Is that the date that you**



1 **were provided this memo?**

2 A Oh, I don't know with this specific memo, but
3 I was aware of the outside interest.

4 **Q The outside interest?**

5 A The outside interest form, outside employment
6 form. This (indicating).

7 **Q You know it as the outside interest form?**

8 A It's called many things.

9 **Q It's called many different things at FAU,**
10 **isn't that right?**

11 MR. CURLEY: Objection, form.

12 THE WITNESS: Well, it has a very specific
13 name at FAU, I'm just saying from my past I've
14 called it different things.

15 BY MR. LEO:

16 **Q For the record, again, we're talking about PK3**
17 **when we're talking about the form. Is that correct,**
18 **the --**

19 A Well, this says report of outside employment.

20 **Q Right.**

21 A So, I mean, you're handing me a document, I'm
22 -- I'm assuming that's the correct document. That's what
23 it says it is.

24 **Q Right. But you described the form as**
25 **something different than what's entitled, at least on**



1 **PK3, it says report of outside employment of**
2 **professional activity?**

3 A Yeah. The specific wording, I don't know,
4 but --

5 Q **I just want to make sure that we're talking**
6 **about the same form.**

7 A Okay. Well, I do, too, but whatever form
8 you're talking about is the one that we -- whatever we
9 legally follow is what's given to people.

10 Q **Um --**

11 A I don't know the exact name of the form, I
12 delegate that.

13 Q **Is the -- the conflict of interest form, is**
14 **that the same form?**

15 A That's what -- I think it is the same form.
16 That's what we used to call it where I was --

17 Q **The outside interest --**

18 A Outside interest.

19 MR. CURLEY: Objection to form.

20 THE WITNESS: Anything that's of interest to
21 making sure the there are no violations of what
22 would be university policy.

23 BY MR. LEO:

24 Q **So you're --**

25 A For some people that could be something like



1 you're employing your spouse, that's a conflict of
2 interest for you to employ your own spouse.

3 **Q Is the purpose of the report of outside**
4 **employment or professional activity for FAU employees**
5 **form, PK3, is the purpose to ensure compliance with all**
6 **policies or just one policy?**

7 A My understanding is for the policy of conflict
8 of interest, which is defined.

9 **Q Article 19?**

10 MR. CURLEY: Objection to form.

11 BY MR. LEO:

12 **Q PK5?**

13 MR. CURLEY: Objection to form.

14 THE WITNESS: I'm assuming so, yes.

15 BY MR. LEO:

16 **Q I just want to be clear, because I believe you**
17 **stated that it's to ensure compliance with all policies.**

18 A No.

19 MR. CURLEY: Objection to form.

20 THE WITNESS: I didn't mean -- all policies
21 related to outside employment.

22 BY MR. LEO:

23 **Q So when you say the conflict of interest form,**
24 **or the outside interest form, just so we're clear, no**
25 **confusion between us for today, you're referring to PK3?**



1 MR. CURLEY: Objection, form. It's like the
2 fifth time you asked.

3 BY MR. LEO:

4 Q Or PK4? I mean, I just want to make sure
5 we're talking about the same form.

6 MR. CURLEY: Objection, form.

7 THE WITNESS: So what is the difference in
8 these two? Both of them have the same title.

9 BY MR. LEO:

10 Q My question was, when you refer to the
11 conflict of interest form or outside interest form, are
12 you referring to PK3 or PK4, or both?

13 A And my question was which one? They have,
14 both, the same title.

15 Q Right.

16 A And there's one with an 8/23/16 date on it,
17 this other one is not dated.

18 MR. CURLEY: He's asking you if you know, and
19 if you don't know, say I don't know.

20 THE WITNESS: I don't know.

21 BY MR. LEO:

22 Q When you describe the outside interest form,
23 what are you -- what are you generally referring to?

24 A There are forms that every university that I'm
25 aware of have that require people to report their



1 outside interests. They may vary from institution to
2 institution, those typically are negotiated with the
3 faculty or with the union in this case.

4 **Q Going back to PK7, the report for outside**
5 **employment additional explanation, is this -- was this**
6 **provided to faculty in connection with the outside**
7 **interest forms?**

8 MR. CURLEY: Objection to form.

9 THE WITNESS: I don't know. I don't know.

10 BY MR. LEO:

11 **Q You don't know if PK7 was provided to faculty**
12 **members?**

13 MR. CURLEY: Objection to form.

14 THE WITNESS: I don't know.

15 BY MR. LEO:

16 **Q Why was an additional explanation necessary**
17 **for faculty members?**

18 MR. CURLEY: Objection, form.

19 THE WITNESS: I don't know.

20 BY MR. LEO:

21 **Q Are you aware of any confusion that was**
22 **expressed by faculty members about the policy?**

23 A Not to me.

24 **Q Has there ever been any complaints made by**
25 **faculty about the administration's use of this policy?**



1 MR. CURLEY: Objection, form.

2 THE WITNESS: I don't know.

3 BY MR. LEO:

4 Q Did anybody ever complain to you that the
5 policy was being used as a prior restraint?

6 A Not that I recall.

7 Q Do you know what a prior restraint is?

8 A No.

9 Q The definition of prior restraint is the --
10 I'm sorry, the judicial suppression of material that
11 would be published or broadcast in the grounds that it
12 is harmful. Let's use a different one, because that's
13 not my understanding of the term either.

14 According to Wikipedia, it's also referred to
15 as prior censorship or prepublication censorship. Does
16 that sound familiar to you?

17 MR. CURLEY: Objection to form.

18 BY MR. LEO:

19 Q Censorship imposed usually by a government or
20 expression that prohibits particular instances of
21 expression?

22 A I don't know about expressions. Sometimes if
23 there's classified research it's possible that there's a
24 limitation on publication.

25 Q The term prior restraint, though, have you



1 **ever heard that term used by FAU faculty members before?**

2 A Not that I recall.

3 **Q Going back to the outside employment policy.**

4 **When you say everyone is tasked with enforcement of the**
5 **policy, are there any exceptions to that?**

6 A Not to my knowledge. I mean, when I say
7 everyone, I'm also not talking about every single person
8 in the university.

9 **Q Has there ever been any allegations made that**
10 **the policy was being selectively enforced?**

11 A Not to my knowledge.

12 **Q Are all faculty members at FAU required to**
13 **submit the report of outside employment or professional**
14 **activity for FAU employees?**

15 A I don't know if all are -- I mean, I don't
16 know if adjunct faculty or others are or not; I don't
17 know if a visiting lecture is, I don't know.

18 **Q Are you aware of any faculty members who have**
19 **been disciplined for not submitting one of these, other**
20 **than Professor Tracy?**

21 A I don't know.

22 **Q Has there ever been an investigation into the**
23 **outside activities policy by the administration?**

24 MR. CURLEY: Objection of form.

25 THE WITNESS: I don't know.



1 BY MR. LEO:

2 Q Have you ever asked anyone in your office to
3 look into this policy and how it's being used?

4 MR. CURLEY: Objection, form.

5 THE WITNESS: No.

6 BY MR. LEO:

7 Q Anybody outside the university who has
8 complained about the policy to you?

9 A Not that I'm aware of.

10 Q Or investigated the policy?

11 A Not that I'm aware of.

12 Q There was a senate faculty meeting in
13 September of 2015, do you remember that?

14 A No.

15 Q Do you attend the faculty senate meetings?

16 A I usually go once a semester or somewhere
17 along those lines. The provost usually attends all of
18 those for me.

19 Q Do you review the audio of the meetings that
20 you're not participating in?

21 A No.

22 Q And as you sit here today, do you recall being
23 at a faculty senate meeting in 2015?

24 A I probably would have been. We were in the
25 middle of strategic planning at that time.



1 **Q What is strategic planning?**

2 A It's meeting with all the faculty in the
3 university to develop a tenure plan for the university.

4 **Q Can you describe this plan?**

5 A Yes. It's -- lays out the goals and
6 objectives for operations between 2015 and 2025, and it
7 was put into place in March of 2015, after the provost
8 and I met with every academic department in the
9 university. It has essentially four pillars and -- what
10 we call pillars, research areas of emphasis, and then
11 platforms which are areas that we wanted to strengthen
12 across the entire university.

13 **Q And what are the four pillars?**

14 A Health aging, neuroscience, remote sensing,
15 and environmental and ocean engineering.

16 **Q Any other areas or pillars?**

17 A No.

18 **Q And what was this strategic plan in response**
19 **to?**

20 A Forming a strategy for the university for the
21 next ten years.

22 **Q Was this your idea or was it somebody else's?**

23 A It was mine.

24 **Q Does this strategy involve public relations?**

25 A To some extent.



1 **Q And in what way?**

2 A Building the brand of the university, doing a
3 better job communicating with alumni, keeping our
4 constituents more informed about the university,
5 building a new website so that it's more relevant to the
6 current group of students who might be interested in
7 coming to the university.

8 **Q Do you recall a committee that was formed or**
9 **being formed regarding faculty engagement with the**
10 **outside, or people outside FAU?**

11 A No.

12 **Q Do you recall the senate faculty meeting --**

13 A Do you mean community engagement?

14 **Q There you go, community engagement.**

15 A Yeah, there's a -- a group that does community
16 engagement.

17 **Q Community engagement, what's -- what's that**
18 **about?**

19 A There's a Carnegie delegation that gives you a
20 designation, and we are required by the Board of
21 Governors to become a Carnegie classified engagement
22 university; engagement means building relationship with
23 the economic development community, building
24 relationships with non-profits in the area, and being
25 able to fill out this document that captures all of that

1 work that the faculty do so that you can document the
2 university's role in building the community.

3 **Q Do you recall any discussion about the**
4 **community engagement committee, is -- is there such a**
5 **committee?**

6 A Yes.

7 **Q Do you recall any discussion about that**
8 **committee at a senate faculty meeting?**

9 A No.

10 **Q Do you recall any complaints about the outside**
11 **activities policy when the topic of community engagement**
12 **came up at a faculty senate meeting?**

13 A No. It's been very positive, it's actually
14 given credit for a lot of work that was being done by
15 the faculty. It's led by a former faculty senate
16 president to, kind of, capture all the work that the
17 faculty have been doing, and maybe not getting as much
18 credit for as they'd like.

19 **Q Are you familiar with a Professor named Lenz?**

20 A Who?

21 **Q Lenz, L-E-N-Z.**

22 A No.

23 **Q Timothy Lenz. You've never met him before?**

24 A I don't recall meeting him.

25 **Q Do you recall him ever speaking at a senate**



1 **faculty meeting to your administration?**

2 A No.

3 **Q Saying something to the effect, call off your**
4 **dogs?**

5 A No.

6 **Q No? What kind of scandals were there at FAU**
7 **before your arrival?**

8 MR. CURLEY: Objection to form.

9 THE WITNESS: Scandals?

10 BY MR. LEO:

11 **Q Yeah.**

12 A I don't know if there's anything I would call
13 a scandal, there were a lot of things that people
14 disagreed with or had strong opinions about.

15 **Q You had talked about some of those earlier --**

16 A Uh-hum.

17 **Q -- being Stomp on Jesus, there was something**
18 **involving a football -- football coach?**

19 A Yes.

20 **Q What was that about?**

21 A A football coach was accused of -- of -- I'm
22 not sure if it was having drugs or using drugs or --
23 anyway, there was a dismissal of a football coach for
24 some activities that were not considered consistent with
25 the university.



1 **Q What about the football field, is there a --**

2 A There was also a large group of people that
3 objected to the naming of the football field for the GO
4 Group, which is a private prison group.

5 **Q Would you consider these scandals?**

6 A No.

7 **Q What would you call a scandal?**

8 A Huge embezzlement of any kind of funds at the
9 university would be a scandal; but these are incidents
10 that happen at every university in the country. There's
11 30,000 people there at that university, and there are
12 going to be things that happen at any town of that size.

13 **Q Are you familiar with Professor Tracy's**
14 **controversy in 2013, concerning discipline that was**
15 **attempted at that time by FAU?**

16 A No.

17 **Q You talked -- talked a little bit earlier**
18 **about what you had seen in the media about that.**

19 A If that was the incident around the --

20 **Q Were you ever made aware of letters that were**
21 **sent to FAU and to FAU's former president, Mary Jane**
22 **Saunders, from the Association of University Professors?**

23 A No.

24 **Q AAUP, are you familiar with AAUP?**

25 A Yes.



1 **Q Are you familiar with FIRE?**

2 A I don't think so.

3 **Q Foundation for Individual Rights and**
4 **Education?**

5 A No.

6 **Q So you're not aware that they sent letters to**
7 **your predecessor?**

8 A No.

9 **Q I'm going to show you what has been marked at**
10 **PK8.**

11 MR. LEO: I only have one copy --

12 MR. CURLEY: Okay.

13 MR. LEO: -- if you want to take a look.

14 MR. CURLEY: I've got that one.

15 (Whereupon, the referred-to documents were marked
16 as Plaintiff's Exhibit PK8 for Identification.)

17 BY MR. LEO:

18 **Q If you can just take a look at this letter,**
19 **and let me know once you've had a chance to review it.**

20 MR. CURLEY: Are you going to ask him
21 questions about its content?

22 MR. LEO: Well, it depends on once he reads it.

23 MR. CURLEY: Well, that's what I was going to
24 say, does he need to read the whole thing or -- if
25 he does, that's fine.

1 MR. LEO: If this refreshes his recollection.

2 MR. CURLEY: Okay. Go ahead and read.

3 I'm going to -- let's take a quick break, I
4 have to use the restroom.

5 (Whereupon, a brief recess was had and the
6 proceedings resumed as follows:)

7 BY MR. LEO:

8 Q During the break you -- did you have a chance
9 to review the --

10 A I skimmed it, yeah.

11 Q -- letter from FIRE? Just turn your attention
12 to the second page there. I believe it says -- in that
13 --the second --the second big paragraph. No, you got it.

14 MR. CURLEY: The second page?

15 MR. LEO: The second page is -- is -- yeah, on
16 the exhibit.

17 THE WITNESS: Okay.

18 BY MR. LEO:

19 Q And, for the record, this is PK8, right?

20 A Yes.

21 MR. CURLEY: Yeah.

22 BY MR. LEO:

23 Q Just read that second paragraph, the first
24 sentence. The second -- second big paragraph.

25 MR. CURLEY: The one that begins memory --



1 BY MR. LEO:

2 Q The third paragraph, "The First Amendment",
3 you see that?

4 A The First Amendment?

5 Q The sentence that starts with, "The first
6 Amendment", what does it say?

7 A "The First Amendment protects Tracy's personal
8 blog entries." Is that the one?

9 Q Yeah. You testified that this letter, you
10 haven't seen it before today?

11 A No. When I came I didn't read anybody's old -
12 - all the messages. I had a new set of
13 responsibilities, and I didn't want to get embedded in
14 GO, or a student getting hit by the president's car, or,
15 you know, any of those things, so I didn't read any of
16 the prior correspondence.

17 Q Were you provided with those correspondences?

18 A Not to my knowledge.

19 Q There's no briefing by the administration for
20 you when you went into office?

21 A I did briefings, but it was -- am I going too
22 fast for you?

23 THE COURT REPORTER: No, it's okay. I just --

24 THE WITNESS: Okay.

25 THE COURT REPORTER: -- I got it.



1 THE WITNESS: I did briefings, but it really
2 was about where are we going next, it wasn't really
3 about what was this, what was that, what was this,
4 it was moving forward.

5 BY MR. LEO:

6 Q Was there ever a briefing on Professor Tracy's
7 blog and -- when you became president?

8 A Not that I recall.

9 Q Do you agree with the statement in FIRE's
10 letter there --

11 MR. CURLEY: Objection to form.

12 BY MR. LEO:

13 Q -- the First Amendment protects Professor
14 Tracy's blog postings?

15 MR. CURLEY: Objection to form.

16 THE WITNESS: I assume it does, I don't know.
17 I don't know why it would not. I don't know
18 anything about blog rules or any of that kind of
19 thing.

20 BY MR. LEO:

21 Q Was Professor Tracy disciplined for not
22 reporting his blog --

23 MR. CURLEY: Objection.

24 BY MR. LEO:

25 Q -- in 2015?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: That was my understanding.

3 He was requested to fill out the forms.

4 BY MR. LEO:

5 **Q For his blog?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: I don't know if it was for the
8 blog or it was for outside interest. I'm not sure
9 what it was, I think it's the blog.

10 BY MR. LEO:

11 **Q Are you aware of any other outside activities**
12 **that Professor Tracy was undertaking prior to his**
13 **discipline in 2015, other than his personal blogging?**

14 A I don't know.

15 **Q And I believe I may have asked you earlier,**
16 **but let me just ask again, if Professor Tracy was**
17 **disciplined for not reporting his personal blogging,**
18 **would that be constitutional?**

19 MR. CURLEY: Objection to form.

20 THE WITNESS: I don't know.

21 BY MR. LEO:

22 **Q Do you think a college administrator should**
23 **know if a discipline is -- for a blog is constitutional**
24 **or not?**

25 MR. CURLEY: Objection to form.



1 THE WITNESS: I think you should certainly
2 check with legal counsel to understand.

3 BY MR. LEO:

4 Q Did you ever ask your legal counsel if
5 Professor Tracy's blog could be the basis for
6 discipline?

7 A No.

8 Q Why not?

9 A It just didn't occur to me to ask them.

10 Q Have you seen the notice of proposed
11 discipline termination that was issued by defendant
12 Alperin in this case?

13 A I think I saw a copy of it one time.

14 Q Let me show you what's been marked as PK9 for
15 today. This is a December 16th notice of proposed
16 discipline termination.

17 MR. CURLEY: You gave me two copies.

18 MR. LEO: Oh, I'm sorry.

19 MR. CURLEY: That's all right, I just thought
20 you might need it.

21 (Whereupon, the referred-to documents were marked
22 as Plaintiff's Exhibit PK9 for Identification.)

23 THE WITNESS: Okay.

24 BY MR. LEO:

25 Q Is this fair, though, that you may have read



1 **this previously?**

2 A If I did, I didn't read all the details.

3 **Q Why not?**

4 A Well, I know the process would have been
5 followed carefully and --

6 **Q What makes you say that?**

7 A I just know our people are extremely
8 thorough--

9 **Q Was --**

10 A -- and I can't understand why he wouldn't just
11 fill out the form, actually. Doesn't make a --

12 **Q You don't understand why who didn't fill out**
13 **the form?**

14 A The form -- James didn't fill out the form.

15 **Q He did fill out form, didn't he? You see that**
16 **second paragraph on the second page?**

17 A "On the evening".

18 THE COURT REPORTER: On the what?

19 THE WITNESS: Is it, "On the evening"?

20 BY MR. LEO:

21 **Q It says here, "You submitted activity forms**
22 **for your work on only two outside activities".**

23 A And it says there that you admit to using
24 university resources since 2014.

25 **Q Right.**



1 A This contradicts your prior representations to
2 the dean, you should not have filed these activity
3 reports because the university's not involved.

4 Q Right. You see -- you see before that where
5 it says the -- the activity forms were submitted?

6 A I see it says they were submitted.

7 Q When Vice Provost or former Vice Provost
8 Alperin is referring to activity forms, she's referring
9 to the P3 -- PK3, the report of outside employment or
10 professional activity for FAU employees form?

11 MR. CURLEY: Objection to form.

12 BY MR. LEO:

13 Q Right?

14 MR. CURLEY: Objection to form.

15 BY MR. LEO:

16 Q You'd -- you'd agree with me that this is the
17 activity form, PK3, that she's referring to?

18 MR. CURLEY: Objection to form.

19 THE WITNESS: It doesn't say that, but I would
20 assume that's the case.

21 BY MR. LEO:

22 Q Is activity form another name for the form
23 that's used by the FAU administration? And, for the
24 record, I'm referring to PK3, report of outside
25 employment for professional activity --



1 A Professional activity. I guess so.

2 Q If you go down to the next paragraph, Vice
3 Provost Alperin says, "You again failed to submit any
4 activity reports for the three years in question for
5 your blog, which you clearly spend time and resources
6 maintaining and contributing to. You have yet again
7 deprived the university of the forms needed to assess if
8 a conflict exists for the blog activity, or if
9 university resources are being used." Do you see that?

10 A What paragraph?

11 Q This is the following paragraph on Page 2.

12 A In addition, uh-huh.

13 Q It starts with in addition, yes. It starts
14 with, "In addition you may -- you remain recalcitrant
15 with your refusal to provide activity reports on other
16 activities that may be in conflict with your employer."

17 A Okay.

18 Q Do you see that?

19 A (The witness nods head.)

20 Q Would you agree that former Vice Provost
21 Alperin is disciplining and terminating Professor Tracy
22 for not reporting his personal blog?

23 MR. CURLEY: Objection.

24 BY MR. LEO:

25 Q According to this letter?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: Just having managed to look at
3 this instead of studying the whole concept of
4 everything that went on in those discussions, I
5 don't know. In the wording it appears that there -
6 - her perception was there were additional forms
7 and activities to be reported and were not
8 reported, and that others have been falsely
9 reported.

10 BY MR. LEO:

11 Q According to Defendant Alperin?

12 A According to her, yes.

13 Q You'd agree that those other activities she is
14 expressly describing as his personal blog in -- in this
15 case?

16 MR. CURLEY: Objection to form.

17 BY MR. LEO:

18 Q Would you agree with me?

19 THE WITNESS: It says -- she says you're --
20 you are engaged in outside activity on global
21 research and your personal blog.

22 BY MR. LEO:

23 Q She wrote and underlined right before your
24 personal blog.

25 A Yes, that's what I'm looking at.



1 **Q** Would you agree that the personal blog was
2 part of the reasoning -- I should say the -- the failure
3 to report the personal blog on PK3, the report of
4 outside employment or professional activity form, was
5 part of the reason why Professor Tracy was terminated,
6 would you agree?

7 A I don't know if that was part of her
8 reasoning. It does say, "You admitted that you were
9 engaged in outside activity on global research in your
10 personal blog. You failed to submit any activity
11 reports for three years in question for your blog, which
12 you clearly spent time and resources maintaining and
13 contributing". So she's documenting, I think, the
14 issue.

15 **Q** That Professor Tracy did not report his
16 personal blog on the outside employment professional
17 activity form?

18 MR. CURLEY: Objection to form.

19 THE WITNESS: That seems to be what she's
20 saying.

21 BY MR. LEO:

22 **Q** You'd agree with me that this looks like
23 Professor Tracy's being disciplined and terminated for
24 not reporting his personal blogging activity to the
25 university?

1 A I don't know if that's the whole context of
2 the dismissal.

3 **Q What's the whole context?**

4 A I don't know.

5 **Q We talked a little bit earlier about what**
6 **conflicts of interest could arise from a personal blog,**
7 **and I don't believe you could give an answer to that, is**
8 **that correct?**

9 MR. CURLEY: Objection to form.

10 THE WITNESS: I think you're required to
11 report these things. The instance where someone
12 might object to some of that of the time you're
13 using, or a personal computer, or a university
14 computer being used for personal business, I'm
15 assuming all those things are taken into
16 consideration.

17 BY MR. LEO:

18 **Q What is the university's policy on use of**
19 **university equipment?**

20 A To --

21 **Q Not even outside --**

22 A I don't know specifically, I'd have to ask
23 general counsel.

24 **Q You don't know the university's policy?**

25 A I mean, generally you do not use it for your



1 personal use, but --

2 Q For example, a phone, are you allowed to use a
3 phone at the university for your personal use?

4 MR. CURLEY: Objection to form?

5 THE WITNESS: Yes, if you reimburse for it.

6 BY MR. LEO:

7 Q You reimburse for what?

8 A For the portion you use for personal.

9 Q You mean like using it to place long distance
10 calls?

11 A You're supposed to, yes.

12 MR. CURLEY: Objection to form.

13 BY MR. LEO:

14 Q If you're using a phone and it didn't create
15 any cost or additional expense to the university, would
16 that be something you'd have to report?

17 A I don't know. I don't know.

18 Q You don't have to report your use of the
19 telephone for local calls that don't cost any money to
20 the university, do you?

21 A Not for local calls, no.

22 Q Are you aware of any faculty who are asked to
23 report use of a telephone --

24 A I assume so.

25 Q I'm sorry, you assume --



1 A That you are.

2 Q **If it creates expense?**

3 A If it creates an express.

4 Q **But if there's no expense to the university,**
5 **who that would reportable activity?**

6 A I don't know.

7 Q **Going to the use of a computer. Does faculty**
8 **members at -- or do faculty members at FAU, do they need**
9 **to report the use of their computer if it doesn't result**
10 **in any additional expense to the university?**

11 A I don't know what the university policy is,
12 because some people could be downloading huge files or
13 things like that, I guess, on their -- on their
14 computer; if it was for personal, there may be a charge.

15 Q **Isn't the university policy that incidental**
16 **use of university equipment that doesn't result in**
17 **additional expense to the university or depreciation of**
18 **the equipment, aren't those exceptions to --**

19 A I don't know the exact wording.

20 Q **You don't know the -- the policy on using**
21 **equipment?**

22 A I don't know the exact wording.

23 Q **Would you agree with me that Defendant Alperin**
24 **is, in her letter here, indicating that she is unable to**
25 **determine whether a conflict exists because Professor**



1 **Tracy did not report the personal blogging?**

2 A She seems to indicate that the failure to
3 report is making it difficult for her to make an
4 assessment.

5 **Q As to whether there's a conflict of interest?**

6 A As to whether there was a conflict of
7 interest.

8 **Q And, again, what -- what kind of conflict of**
9 **interests could have arised from Professor Tracy's**
10 **personal blog?**

11 MR. CURLEY: Objection to form, asked and
12 answered.

13 THE WITNESS: I don't know.

14 BY MR. LEO:

15 **Q Would you agree with me that Professor Tracy**
16 **is being disciplined, according to this letter, for**
17 **failure to report his blog postings?**

18 MR. CURLEY: Objection to form, asked and
19 answered.

20 THE WITNESS: It seems to be one of the
21 reasons for him failing to report.

22 BY MR. LEO:

23 **Q On the second or the next paragraph it says,**
24 **"Disclosure and management of your outside activities**
25 **necessary and reasonable." Do you agree with that?**



1 A Where do you see that?

2 Q It's after the -- the paragraph we just read,
3 "You publicly engage", you see that -- that line? "You
4 publically engage in external personal activity that
5 requires your time and effort, disclosure and management
6 of the your outside activity is necessary and
7 reasonable. It is for the administration to decide,
8 with your input, if a conflict exists and how to manage
9 a conflict where necessary." Do you see that?

10 A Yes.

11 Q Do you agree with that statement that
12 disclosure and management of Professor Tracy's outside
13 activity, in this case personal blogging, was necessary
14 and reasonable?

15 A I think that's our university policy.

16 Q Which policy?

17 A For making sure you disclose outside
18 activities.

19 Q But my question is about Professor Tracy's
20 activity in this case, the personal blog as we just
21 discussed. Do you believe that disclosure and
22 management of a personal blog of a faculty member, like
23 Professor Tracy's, is necessary and reasonable?

24 A That was a conclusion that she came to.

25 Q That's not what I'm asking. I'm asking



1 **whether you, as president of FAU, believe that**
2 **disclosure and management of personal blogging**
3 **activities is necessary and reasonable?**

4 A It would seem to be logical.

5 **Q In what way?**

6 A I don't know how much time it takes and how
7 much effort's spent on doing the blogging, I have no
8 idea. I've never done a blog, don't have one, never
9 responded to a blog, so I don't know how much -- if
10 that's something you do all day long, have to stop
11 activities and go do, I don't know. But I think to let
12 people know, just so that there is no disclosure
13 problem, no conflict of interest, then that would make
14 seemingly very easy sense to just do it.

15 **Q You indicated previously that you couldn't**
16 **provide a conflict of interest that could come from**
17 **personal blogging, right?**

18 MR. CURLEY: Objection.

19 THE WITNESS: I don't know.

20 MR. CURLEY: Objection to form.

21 BY MR. LEO:

22 **Q So how could disclosure of a personal blog be**
23 **necessary and reasonable if you're not aware of a**
24 **conflict of interest that could come from it?**

25 MR. CURLEY: Object to form.



1 THE WITNESS: You know, you could say that
2 about anything in the world. You breed dogs --

3 BY MR. LEO:

4 Q Right. But we're not talking about breeding
5 dogs.

6 A -- I don't know what conflict of interest
7 could come from that, but there could be. It would make
8 logical sense that whatever you're doing as a business,
9 or as a company, or as a function outside of the
10 university that uses your university expertise, you
11 would divulge it.

12 Q Would you agree that breeding dogs is not
13 protected by the First Amendment?

14 A Yes.

15 Q But personal blogging is?

16 MR. CURLEY: Objection to form.

17 THE WITNESS: I would assume what you say is,
18 I don't know about the time that you're using to
19 put into it.

20 BY MR. LEO:

21 Q Is there an exception to the First Amendment
22 that says that if you put a certain amount of time into
23 the protected speech, it suddenly is no longer protected
24 by the First Amendment?

25 MR. CURLEY: Object to form.



1 THE WITNESS: This is not about protected
2 speech, this is about the amount of time he invests
3 in a blog.

4 BY MR. LEO:

5 Q When you say this is not about protected
6 speech, what are you referring to?

7 A When you -- when you were talking about why he
8 didn't fill out a form, they're asking that they be able
9 to see what the activity is and have a document on the
10 activity.

11 Q So we're clear, are you saying that PK3, the
12 report of outside employment of professional activity,
13 is something that anybody who has a personal blog at FAU
14 should be disclosing on this form?

15 A I don't know. I don't know how that policy is
16 -- I don't know how -- who -- who has blogs, I don't
17 know anything about blogging. She's asking for --

18 Q So you --

19 A -- a disclosure of outside activities.

20 Q Well, on this letter she's terminating
21 Professor Tracy for not disclosing his personal blog,
22 would you agree?

23 MR. CURLEY: Objection to form, asked and
24 answered.

25 THE WITNESS: I'm not sure that's the reason



1 alone, but that letter is a termination letter.

2 BY MR. LEO:

3 Q Would you agree with me that at the bottom of
4 that Page 2, it is alleged that Professor Tracy has
5 committed misconduct and has violated CBA Article 19?
6 Do see that last sentence on Page 2?

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I'm sure that was reviewed by
9 our counsel and that that would be accurate.

10 BY MR. LEO:

11 Q So you would agree that Professor Tracy was
12 accused by FAU of engaging in misconduct in violating
13 Article -- Article 19, because he did not disclose his
14 personal blog on a report of outside employment or
15 professional activity form?

16 MR. CURLEY: Objection to form.

17 THE WITNESS: I think he was seeming -- he was
18 asked repeatedly and failed to comply with it; if
19 that's the case on anything and there's no
20 compliance, you would not have a policy that was
21 enforceable.

22 BY MR. LEO:

23 Q You say he was asked and did not comply. Do
24 you know if he was asked?

25 A I assume so, I mean, I trust my people.



1 **Q You're assuming based on Defendant Alperin's**
2 **letter --**

3 **A Yes.**

4 **Q -- that he was asked. Are you aware of what**
5 **Professor Tracy's response to the first request to turn**
6 **in --**

7 **A No.**

8 **Q -- forms was?**

9 **A No.**

10 **Q Are you aware that the university, by and**
11 **through Defendant Coltman, had requested outside**
12 **employment/professional activity forms for Professor**
13 **Tracy's personal blog in January of 2013?**

14 **A No.**

15 **Q Are you aware that the university attempted to**
16 **discipline Professor Tracy in 2013?**

17 **A No.**

18 **Q You're not aware of that?**

19 **A No.**

20 **Q Was anybody in your office aware that**
21 **Professor Tracy was -- or at least the university was**
22 **attempting to discipline Professor Tracy in 2013?**

23 **A Not that I know of.**

24 **Q Who determines the progressive discipline?**

25 **A The supervisor.**



1 **Q The supervisor of who?**

2 A Decides, and then it goes to -- eventually to
3 general counsel.

4 **Q Do you have any role in determining whether**
5 **discipline is progressive or not?**

6 A No.

7 **Q Looking at this discipline in this instance,**
8 **termination for not submitting a personal blog to the**
9 **university for approval, would you say that that is**
10 **progressive discipline?**

11 MR. LEO: Objection to form.

12 THE WITNESS: I don't know what the prior
13 circumstances were.

14 BY MR. LEO:

15 **Q You don't know what the circumstances prior to**
16 **Professor Tracy being --**

17 A You mentioned something in 2013, I don't know
18 anything about that.

19 **Q She can't record us both.**

20 **You don't know what the circumstances prior to**
21 **the termination --**

22 A I don't know. I don't know what the
23 circumstances were.

24 **Q At any point did you attempt to learn what the**
25 **circumstances were?**



1 A No.

2 **Q Do you believe that all faculty members at FAU**
3 **should be reporting their personal blogging on a report**
4 **of outside employment/professional activity form?**

5 MR. CURLEY: Objection to form.

6 THE WITNESS: It depends on what a blog is;
7 you know, you tell me. One blog could be you --
8 you responded to somebody on a blog, another one
9 could be that you actually keep your own blog, I
10 have no idea what kind of time each of those takes.

11 BY MR. LEO:

12 **Q We discussed earlier what a blog is, right?**
13 **You had indicated you knew what a blog was, right?**

14 A Essentially.

15 **Q What's a -- what's a blog?**

16 A It's a place where you post things; and the
17 only thing I know is, like, an exercise blog. So you can
18 put your stuff out there, people can look at what you're
19 saying, and decide if they want to use that particular
20 kind of exercise, or health regime, or whatever they
21 want to do, and then frequently they may respond to
22 people.

23 **Q Would you agree the a personal blog would be**
24 **outside the scope of a report of outside employment**
25 **form?**



1 MR. CURLEY: Objection.

2 THE WITNESS: It appears to me that some of
3 these are not just personal, that -- and I'm not
4 saying Professor Tracy's is, but they're also
5 commercial where you're trying to make money
6 through the -- through the blogging, and so if
7 those are the case, I would think you would at
8 least want to recognize that's an income stream.

9 BY MR. LEO:

10 Q When I say personal, I'm not referring to
11 commercial.

12 A Okay.

13 Q So a personal blog, would you agree, would be
14 outside the scope of an outside employment form?

15 MR. CURLEY: Objection to form.

16 THE WITNESS: I don't think so. I haven't
17 investigated, I've never looked at his blog, I have
18 no clue.

19 BY MR. LEO:

20 Q Are you aware that administrators at FAU are
21 calling PK3, the report of outside employment or
22 professional activity for FAU employees, they're calling
23 this form the outside employment form?

24 A No.

25 Q Are you aware that they also call it the



1 **outside business form?**

2 A No.

3 **Q Would you agree that -- that using different**
4 **terms to describe the same form would be confusing to**
5 **faculty members?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: Depends. If the title on there
8 is one thing, it would be pretty clear, I would
9 think, whatever the written title.

10 People may use words to describe it that are
11 different from the title, but the title should be
12 consistent.

13 BY MR. LEO:

14 **Q If the form is being called the outside**
15 **employment form, and FAU administrator's asking a**
16 **faculty member to disclose a personal activity that's**
17 **not employment to that faculty member, because they're**
18 **not compensated for it, would you agree that the faculty**
19 **member should not report that personal activity on an**
20 **outside employment form?**

21 MR. CURLEY: Objection to form.

22 THE WITNESS: I would encourage them to read
23 what the form was, and then fill out the form based
24 on what it was asking for.

25 BY MR. LEO:



1 **Q** Let's -- let's look at PK3 for a second, the -
2 - the form. There you go.

3 Where would a faculty member disclose a
4 nonemployment or uncompensated personal activity on this
5 form?

6 MR. CURLEY: Objection to form.

7 THE WITNESS: I assume where it would say name
8 of activity, employer/activity, and so what the
9 activity was -- because it also says both of those,
10 you could say, well, is it -- are you an employer,
11 are you an active participant.

12 BY MR. LEO:

13 **Q** Do you see where it says proposed
14 employment/activity, and it's the second, looks like a
15 header in black, like a black bar?

16 A Yeah. Yeah.

17 **Q** Underneath there it says, name of -- or nature
18 of employment/activity, please check all that apply?

19 A Right.

20 **Q** Where would one check for their personal
21 uncompensated activity?

22 A I'd say other professional activity.

23 **Q** One should check other professional activity
24 if it's not compensated or employment activity?

25 A Well, if it takes time. It may not be paid



1 time, but it takes time.

2 **Q What's professional mean?**

3 A I think it uses your professional expertise.

4 **Q Where would that be defined for faculty**
5 **members?**

6 A I don't know if it's defined in -- in any
7 place, I mean, a person's professional expertise. You
8 could ask what -- what is a my professional expertise;
9 at one time it was one thing, now it's another thing.

10 **Q It's up to the faculty member to decide**
11 **whether their activity is reportable, isn't that right?**

12 A The faculty member and supervisor if they
13 disclose it.

14 **Q When you say and the supervisor --**

15 A If they disclose it.

16 **Q Is -- so it's your understanding that it's not**
17 **just up to the faculty member to decide if their**
18 **activity's reportable?**

19 A I would assume that the supervisor would
20 encourage them to support activity -- report activity
21 that was being questioned. And I, as a supervisor,
22 would encourage my outside -- or my vice presidents to
23 report activity that was being conducted that was
24 outside their scope of work.

25 **Q If there's a conflict between a faculty and**



1 **their supervisor, let's say a faculty member and the**
2 **supervisor with respect to what's reportable or not, how**
3 **is that resolved?**

4 A I don't know.

5 Q **Have you been made aware of any conflicts like**
6 **that?**

7 A No.

8 Q **Have you ever been made aware that the**
9 **supervisors or the chairs of the departments on your**
10 **watch were in conflict with faculty members regarding**
11 **the outside activities policy?**

12 A No.

13 Q **Are you familiar with David Williams?**

14 A Who?

15 Q **David Williams?**

16 A No.

17 Q **You've never heard of him before?**

18 A I don't think so.

19 Q **If a chair of a department; like, for example,**
20 **David Williams, I understand he's the chair of the**
21 **school of communications, if he was misrepresenting the**
22 **policy to faculty members, would that be a problem?**

23 MR. CURLEY: Objection to form.

24 THE WITNESS: I certainly would want him to do
25 it correctly if it's not being done correctly.



1 BY MR. LEO:

2 Q Has it ever been brought to your attention
3 that David Williams was misrepresenting the outside
4 employment policy?

5 A No.

6 Q I'm going to show you what's been marked as
7 PK10 for today. This is a document entitled Report of
8 Outside Employment Guidelines, Florida Atlantic
9 University Guidelines on Conflict of Interest, Conflict
10 of Commitment, and Outside Activities, Including
11 Financial Interests. Are you familiar with this
12 document?

13 A No.

14 (Whereupon, the referred-to documents were marked as
15 Plaintiff's Exhibit PK10 for Identification.)

16 BY MR. LEO:

17 Q You've never seen this before?

18 A I may have, but I see lots, and lots, and lots
19 of documents.

20 Q If I could just turn your attention to, let's
21 see here, Page 6 -- 6 of 14. It's the fourth paragraph
22 down starting with faculty and staff. Do you see that?

23 A Yes.

24 Q It says, "Faculty and staff members are
25 primarily responsible for determining and disclosing



1 **their own outside activities and financial interests."**

2 **Do you see that?**

3 A Uh-hum.

4 **Q Would you agree with me that this is the --**
5 **the policy on the report of outside employment at FAU?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: No, I don't know.

8 BY MR. LEO:

9 **Q You don't know if this is the policy?**

10 A I -- I don't know.

11 MR. CURLEY: Objection.

12 THE WITNESS: I mean, it says the report of
13 the outside employment guidelines, it doesn't say
14 policy.

15 BY MR. LEO:

16 **Q Looking at this Page 6, this paragraph about**
17 **who's responsible for determining and disclosing outside**
18 **activities, would you agree with me that there's no**
19 **reference to a superior or any other administrator**
20 **making that determination?**

21 MR. CURLEY: Objection to form.

22 THE WITNESS: I mean, it would seem to me it's
23 inherent that they have to -- if they're going to
24 discuss and disclose they have to talk to someone,
25 they can't just be nobody, so that would be their



1 supervisor. It says, faculty and staff members are
2 primarily responsible for determining and
3 disclosing -- which I assume that would be the case
4 of everybody -- their own outside activities and
5 financial interests.

6 And I don't know who they would prepare and
7 discuss that with, if it wasn't a supervisor.

8 BY MR. LEO:

9 **Q It doesn't say here that faculty and staff**
10 **members are required to discuss with their supervisor or**
11 **their superiors anything, right?**

12 MR. CURLEY: Objection to form.

13 THE WITNESS: Where would they report it to
14 then? I mean, you have to give it to your
15 supervisor, it's the only person who can determine
16 whether the activity has any conflict of interest.

17 BY MR. LEO:

18 **Q My question is focused on these guidelines**
19 **here. And it just says, "Faculty and staff members are**
20 **primarily responsible for determining and disclosing**
21 **their own outside activities and financial interests."**
22 **You'd agree with me on that, right?**

23 MR. CURLEY: Objection to form.

24 THE WITNESS: That's what the words say.

25 BY MR. LEO:



1 **Q But there's nothing in this paragraph which**
2 **indicates that that determination is subject to**
3 **approval, discussion, anything like that, would you**
4 **agree?**

5 MR. CURLEY: Objection to form.

6 THE WITNESS: Well, if I read it I would
7 assume that meant that I had to disclose it with my
8 boss, I would not assume that I just can decide if
9 I want to or not.

10 BY MR. LEO:

11 **Q Would you agree with me that this also doesn't**
12 **tell the faculty or staff member who they must disclose**
13 **their own outside activities and financial interest to?**

14 A Well, then it begs the question they should
15 ask. I mean, you could add another sentence that says
16 disclose this to your supervisor, but that would almost
17 be inherent, I think, in anybody's understanding of the
18 university if you're working there.

19 **Q But it's not there. It's not -- it doesn't**
20 **say anything about --**

21 A The words are not there.

22 **Q In fact, it's not anywhere in this entire**
23 **policy or guidelines.**

24 MR. CURLEY: Objection to form.

25 BY MR. LEO:



1 **Q Isn't that right?**

2 MR. CURLEY: Have you the read the entire
3 policy?

4 THE WITNESS: No.

5 MR. LEO: Why don't we do this, let's take a
6 lunch break, half hour. You can take a copy of
7 this with you --

8 MR. CURLEY: He's not going to read it on his
9 lunch break. We're going to take 30 minutes, he's
10 going to eat lunch.

11 MR. LEO: Sure. Sure. You don't have to read
12 it if you don't want to, but I'm going to ask about
13 it so --

14 MR. CURLEY: Okay.

15 MR. LEO: We'll stop 1:43, and you said half
16 hour, 30 minutes, come back at 2:15.

17 MR. CURLEY: Okay. We'll be here.

18 (Whereupon, a brief recess was had for lunch)

19 (Whereupon, Volume I was concluded.)
20
21
22
23
24
25



1 CERTIFICATE OF OATH

2 STATE OF FLORIDA

3 COUNTY OF BROWARD

4
5 I, JAIME KOGANOVSKY, Professional Reporter, and
6 Notary Public in and for the State of Florida at Large,
7 certify that the witness, JOHN W. KELLY, personally
8 appeared before me and was duly sworn.

9
10 WITNESS my hand and official seal this 24th day of May,
11 2017.

12 *Jaime Koganovsky*

14 _____
15 JAIME KOGANOVSKY,
16 Notary Public, State of Florida My commission
17 Notary #FF004068 expires, April 30, 2017
18
19
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1 REPORTER'S DEPOSITION CERTIFICATE

2
3 I, JAIME KOGANOVSKY, Court Reporter and
4
5 Notary Public, certify that I was authorized to and did
6
7 stenographically report the videotaped deposition of
8
9 JOHN W. KELLY, the witness herein; that a review of the
10
11 transcript was requested; that the foregoing pages
12
13 numbered from 1 to 367, inclusive, is a true and
14
15 complete record of my stenographic notes of the
16
17 deposition by said witness; and that this computer-
18
19 assisted transcript was prepared under my supervision.

20
21 I further certify that I am not a relative,
22
23 employee, attorney or counsel of any of the parties,
24
25 nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action.

DATED this 25th day of May, 2017.

Jaime Koganovsky



JAIME KOGANOVSKY



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