

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.

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VOLUME II

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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19 JAMES TRACY, Plaintiff



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By LOUIS LEO, IV, Esquire

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## VOLUME II

VIDEOTAPED DEPOSITION OF JOHN W. KELLY

MAY 17, 2017

(The proceedings resumed as follows:)

BY MR. LEO:

Q All right. When we left off we were talking about the outside activities policy, and I believe the - the guidelines with respect to the outside activities policy. If I can just direct your attention to PK2, your interrogatory responses again. Probably one of these down here. There you go. Specifically Number 4. The question before it I think is on Page 6ish.

You see the question, it says, "State FAU's outside activities slash --

THE COURT REPORTER: It says what?

BY MR. LEO:

Q The question is Number 4 in Exhibit PK2, it's -- it asks, "State FAU's outside activities/conflict of interest policy identifying the date the policy began, all changes made to the policy, the date of those changes, and all procedures, instructions, memoranda, forms, and guidelines concerning the policy."

A Okay.

Q Your answer indicates you had no knowledge of the inception of the policy?



1           A     Right.

2           Q     Then it looks like there's an objection to the  
3 remainder of the question. So let me just ask, do you  
4 have any idea when the policy began?

5           A     No, I don't.

6           Q     With respect to the procedures, instructions,  
7 memoranda, the guidelines that I handed you before  
8 break, the report of --

9           A     This one?

10          Q     -- outside employment guidelines?

11               MR. CURLEY: I think it's Number 10.

12               MR. LEO: PK10 for today.

13               MR. CURLEY: Yeah.

14 BY MR. LEO:

15          Q     Are these instructions that are given to the  
16 faculty members?

17               MR. CURLEY: Objection, form.

18               THE WITNESS: I am not positive, but I assume  
19 so, or if -- I don't know if they were given or if  
20 they were just on the website. A lot of times we  
21 don't hand out paper anymore as much as we just  
22 refer to websites.

23 BY MR. LEO:

24          Q     Have you ever been made aware of any broken  
25 links with respect to the policy?



1           A     No.

2           Q     Have any faculty -- faculty members complained  
3     that any links weren't working that had been provided to  
4     the faculty concerning the policy?

5           A     Not to me.

6           Q     With respect to memorandums concerning the  
7     policy, is PK7, the reporting for outside employment,  
8     it's also -- it's entitled the Florida Atlantic  
9     University Report of Outside Employment or  
10    Professional Activity Form, Additional Explanation,  
11    that's FAU 507 through FAU 510. Is this a memorandum?

12          A     7?

13          Q     Yeah. PK7.

14                MR. CURLEY: The next page. What's the  
15     question?

16    BY MR. LEO:

17          Q     Is this a memorandum, PK7, concerning the  
18     outside activity/conflict of the interest policy?

19                MR. CURLEY: Objection to form.

20                THE WITNESS: I don't know if it's a memo or  
21     not. You're talking about a memo that goes to the  
22     faculty individually or --

23    BY MR. LEO:

24          Q     Just in -- is -- would this be considered a  
25     memorandum?



1 MR. CURLEY: Objection to form.

2 BY MR. LEO:

3 Q Or something different?

4 A I mean, it -- to me it sounds like a statement  
5 of policy, but I'm not sure that would be the same thing  
6 as a memorandum, what you're saying.

7 Q I believe I asked you earlier about the  
8 purpose for this explanation in PK7, and I believe you  
9 said you didn't -- you didn't know what it was for.

10 A No, I don't.

11 Q And this one -- PK7's dated June 2016, are you  
12 aware of any prior version of this additional  
13 explanation?

14 A No.

15 Q Concerning the guidelines on PK10, you see the  
16 bottom there is a link to the FAU website?

17 A My eyes are not so good, but --

18 MR. CURLEY: You mean -- you mean this small  
19 print on the bottom left-hand corner?

20 There's a bunch of links there.

21 BY MR. LEO:

22 Q In the very bottom left-hand corner, I  
23 believe.

24 MR. CURLEY: The small print.

25 THE WITNESS: FAU guidelines --





1 BY MR. LEO:

2 Q FAU.edu/hr/oeguidelines\_final.php.

3 MR. CURLEY: Okay.

4 BY MR. LEO:

5 Q That's the FAU website?

6 A FAU.edu is, I assume the rest of this HR  
7 sounds like it could be human relations.

8 Q So these guidelines were posted on FAU's  
9 website?

10 A They assume to be.

11 Q And these are for -- these guidelines are for  
12 faculty members, is that right?

13 A I'm looking to see if it's restricted to only  
14 faculty or if others -- I don't know.

15 MR. CURLEY: Object to the form.

16 BY MR. LEO:

17 Q If you could turn the page to where it says A,  
18 reporting requirements, it's Subsection A in bold.

19 MR. CURLEY: Do you know what page it's on?

20 MR. LEO: I'm sorry, I'm working from the --  
21 the website here which doesn't have page numbers.  
22 It looks like it's below.

23 THE WITNESS: Reporting requirements?

24 MR. LEO: Yeah. It's under --

25 THE WITNESS: It's Page 7.



1 MR. CURLEY: Thank you.

2 BY MR. LEO:

3 Q Under -- under the header 3, Florida  
4 Atlantic University Regulations and Procedures. You see  
5 where it says under Subsection A, reporting  
6 requirements, second sentence, "Any full-time FAU  
7 employee engaged in outside activities or holding a  
8 financial interest that must be reported is required to  
9 complete Florida Atlantic University's report of outside  
10 employment or professional activity form prior to the  
11 commencement of the outside activity."

12 Do you see that?

13 A Yes.

14 Q Do you see how it says, engaged in outside  
15 activities or holding a financial interest --

16 THE COURT REPORTER: You need to slow down.

17 Sorry.

18 MR. LEO: Sorry.

19 BY MR. LEO:

20 Q -- engaged in outside activities or holding a  
21 financial interest that must be reported.

22 And it has in call caps, REQUIRED. Would you  
23 agree with me that if a faculty member is engaged in an  
24 outside activity that need not be reported, they're not  
25 required to complete the form?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: I would assume if they were told  
3 it did not need to be reported, but I don't know  
4 that -- I mean, it says holding a financial  
5 interest must be reported unless they were told  
6 they do not need to report it by a supervisor.

7 BY MR. LEO:

8 Q You see how it says --

9 A I still would be leary of not reporting it.

10 Q You see how it says, prior to the commencement  
11 of the outside activity?

12 A Right.

13 Q Would you agree that this is a -- an approval  
14 process for the activity?

15 A I'm assuming it would be encouraging you to  
16 start -- go ahead and report at the start, not later  
17 after you've done it and then say, oops, I got caught;  
18 you know, so I'm assuming that's what they're trying to  
19 do is to say that we'd like to have you report it prior  
20 to the beginning of the activity.

21 Q And if I could turn your attention to PK3, the  
22 -- the form. There you go. You see the second sentence  
23 on the form underneath the -- the header?

24 A Please note?

25 Q "Please note that this report must be



1 submitted and necessary approvals obtained on an annual  
2 basis for any activity continuing beyond  
3 June 30 of the year referenced."

4 A Uh-hum.

5 Q Would you agree that this form and the  
6 guidelines pertaining to this policy require prior  
7 approval of the activity?

8 MR. CURLEY: Objection, form.

9 THE WITNESS: I think it's encouraging -- or  
10 it seems to me that it's encouraging you to have --  
11 if you know you're going to engage in an activity  
12 to go ahead and report it.

13 BY MR. LEO:

14 Q But regarding approvals, would you agree that  
15 it says that there is necessary approvals for the  
16 activities?

17 A I think that's what it's requesting, yes.

18 "Note that this report must be submitted and  
19 necessary approvals obtained on an annual basis for any  
20 activity beyond June 30th of the year referenced."

21 Q So would you agree with me that if this form  
22 was being used to require a faculty member to submit a  
23 personal blog, or social media, for example, that it  
24 ultimately would require prior approval of the activity?

25 A I don't know if it all requires prior, I think



1 it's encouraging that prior be given. If you -- you're  
2 going to engage in an activity, why not go ahead and ask  
3 before you indulge in it and find out it's a conflict  
4 you didn't perceive.

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

6 A Well, that's my interpretation. "Please note  
7 it must be submitted and necessary approvals obtained on  
8 an annual basis for any activity." So I think it's  
9 encouraging that you send this report in and get a prior  
10 approval.

11 **Q Right. So if we were -- strike that.**

12 **If FAU was applying this policy to a personal**  
13 **blogging activity, it would be requiring prior approval**  
14 **for that activity by using this form?**

15 MR. CURLEY: Objection to form.

16 THE WITNESS: I mean, I'm reading it just like  
17 it says it, which is that the report should be --  
18 must be submitted and necessary approvals obtained  
19 on an annual basis for the activity.

20 BY MR. LEO:

21 **Q Right. So you'd agree that the --**

22 A Every year you should submit it.

23 **Q -- that if a blog -- if a blog was being**  
24 **disclosed on this form, then the purpose of disclosing a**  
25 **blog on this form would be to obtain approval for that**



1 **activity?**

2 A Submit it and request a --

3 MR. CURLEY: Objection to form.

4 THE WITNESS: Because you -- you have to get  
5 the necessary approvals.

6 BY MR. LEO:

7 Q Right. So if the personal blog was being  
8 submitted on this form, PK3, report of outside  
9 employment or professional activity form, it would be to  
10 obtain approval for that activity, would you agree?

11 MR. CURLEY: Objection to form.

12 THE WITNESS: I'm assuming it means that you  
13 would meet with your supervisor and go over it, but  
14 it seems like it's requesting that you give  
15 approval in advance.

16 BY MR. LEO:

17 Q Right. Would you agree that that would be a  
18 prior restraint on constitutionally protected activity  
19 if this form was being used in connection with requiring  
20 a personal blog?

21 MR. CURLEY: Objection to form.

22 THE WITNESS: I'm not sure I understand the  
23 question. If what?

24 BY MR. LEO:

25 Q If this form, PK3, report of outside



1 **employment or professional activity for FAU employees**  
2 **was being used to require a faculty member to submit**  
3 **their personal blogging, would you agree that that would**  
4 **be requiring prior approval of a constitutionally**  
5 **protected activity?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: I don't know about  
8 constitutionally protected activity, I would assume  
9 that if you're spending time on a blog or anything  
10 else, you would want to get prior approval.

11 BY MR. LEO:

12 **Q Who would want to?**

13 A Whoever the faculty member was.

14 **Q Do you think --**

15 A Or the person submitting the --

16 **Q Do you think faculty members want to get**  
17 **approval before they are blogging?**

18 MR. CURLEY: Objection to form.

19 THE WITNESS: I don't know. I mean, I would -  
20 - I just -- I'm not thinking about blogging all the  
21 time. If I was going to go into whatever, the real  
22 estate business, I would certainly want to submit a  
23 form like this prior to entering that business.  
24 I'm assuming you start a blog, you know, you start  
25 it and you have no idea if there's going to be



1       anybody interested or not; well, when we find out  
2       that you started it and then there's interest, you  
3       certainly would be responsible then for -- for  
4       reporting it. The day you start a blog or the day  
5       you put a website up doesn't necessarily mean  
6       you're starting an outside activity; once it  
7       becomes something that consumes time, it becomes an  
8       activity. I think most of this would be, you know,  
9       fairly easy just to resolve with a supervisor; you  
10      want me to report this or not. These are not  
11      usually conflictual kinds of things.

12   BY MR. LEO:

13           **Q     You'd agree there's a difference between a**  
14   **real estate business and a personal blog, right?**

15           A     Depends.

16           **Q     What do you mean it depends?**

17           A     If you're -- if you had an Airbnb site and  
18   you're using Airbnb to rent properties all over the  
19   place, you're using the internet -- it may not be a  
20   blog, but you're using the internet for commerce.

21           **Q     Right. But an Airbnb would not be a blog,**  
22   **right?**

23           A     No, it's --

24           **Q     A blog would just be a website where one**  
25   **expresses their viewpoints or opinions, right?**





1           A       And perhaps generates revenue.

2           **Q       If it was a personal blog that didn't generate**  
3 **revenue, would you agree that that would be a commercial**  
4 **enterprise?**

5           MR. CURLEY:  Objection, form.

6           THE WITNESS:  It may not be a commercial  
7       enterprise, but certainly it would be reported -- I  
8       guess it would be reported.  If you're just  
9       claiming you're using that activity, you're taking  
10      time on that activity which could compete with the  
11      time the university's paying you to do a different  
12      job.

13           As you know, we expend hours, and I have kids,  
14      they spend hours on YouTube.

15       BY MR. LEO:

16           **Q       Right.  Well, the -- if a faculty member is**  
17 **spending hours on a blog, what interest does FAU have in**  
18 **regulating that activity?**

19           A       I think FAU would want to know that we're  
20      paying a lot of money for a person to spend time on a  
21      blog.

22           **Q       On their own time?**

23           A       No, not on their own time.

24           **Q       FAU's only concerned with conflicts of time**  
25 **commitment if a personal activity interfered with a**



1 **faculty member's work duties, right?**

2 A Or whatever the commerce might be, whatever  
3 the person is -- is focused on. If it interferes with  
4 the university's job -- their -- their job with the  
5 university.

6 Q Right. Okay. Do you have a blog?

7 A No.

8 Q Do you have a Facebook page?

9 A No.

10 Q How about a Twitter?

11 A I have a Twitter.

12 Q Have you reported your Twitter on the report  
13 of outside employment or professional activity report?

14 A My Twitter's only for university stuff.

15 Q Who made that determination?

16 A Me.

17 Q Is that why you didn't submit a form for it?

18 A Uh-hum.

19 Q Okay. Other than Twitter, did you have, or do  
20 you have any other social media account?

21 A No.

22 Q Do you use the internet?

23 A Yes.

24 Q To communicate with others?

25 A Yes.



1           **Q     Do you ever comment on any kind of website**  
2 **or --**

3           A     No.

4           **Q     -- respond to messages using a website?**

5           A     What do you mean by respond to messages, by  
6 e-mail?

7           **Q     Sure.**

8           A     I respond to people's e-mails.

9           **Q     Do you report your use of e-mail to the**  
10 **university?**

11          A     Every -- every university employee has an e-  
12 mail account.

13          **Q     Okay. I'm referring to your -- your use of**  
14 **the e-mail account?**

15          A     What would I report, it's a response to  
16 somebody sending me an e-mail about something.

17          **Q     Well, if you're responding personally --**

18          A     Can you come to this event tonight; okay --

19          **Q     Sure.**

20          A     -- forward it to my secretary, can I come to  
21 that event tonight?

22          **Q     Would you report your personal communications**  
23 **with other people on a report of outside employment or**  
24 **professional activity form?**

25          A     No. There's no commerce, there's no



1 employment.

2 Q Right. You made that determination?

3 A Yes.

4 Q But if somebody told you, President Kelly, you  
5 need to submit an outside employment or professional  
6 activity form for the e-mails that you're sending on  
7 your personal time, what would you say?

8 A The ones I'm sending on my personal time?

9 Q Sure.

10 A You're talking about personal e-mails or --

11 Q Yeah.

12 A -- university e-mails?

13 Q Your personal time.

14 A I'd send it in. If they say I have to do it,  
15 I would have to do it. Whatever the state requires, I  
16 have to do.

17 Q So you're saying if somebody asked you to  
18 submit a report of outside employment or professional  
19 activity for your personal e-mail time or activity, you  
20 would put it on the report of outside employment form  
21 for approval?

22 A Yeah.

23 Q You wouldn't think that that impinged on your  
24 rights at all?

25 A There are a lot of things the state require me



1 to do that impinges on my time.

2           **Q     Okay. But I'm referring to reporting your**  
3 **personal communications on your own personal time**  
4 **without compensation. You would freely submit that for**  
5 **approval?**

6           A     If that was a requirement to use university  
7 servers to do that, I would do it, absolutely.

8           **Q     But is that a requirement?**

9           A     No.

10          **Q     When you talk about time commitments, who**  
11 **measures or evaluates time commitments of FAU faculty or**  
12 **your staff?**

13          A     It's a hard thing to do, because faculty  
14 members, you know, a lot of them work at home, a lot of  
15 them have -- schedule classes and then they have  
16 research activities. It's not like a faculty member  
17 does the 37.5 hours or 40 hours and they're done --

18          **Q     Uh-hum.**

19          A     -- there's a lot of activity that a faculty  
20 member puts in, including reading new materials,  
21 preparing for lectures; it's not something that's very  
22 easy, you're going to be here from 8:00 until 5:00, as  
23 it would be with an hourly employee.

24          **Q     Is that why the university leaves it up to the**  
25 **faculty member to determine whether their activities are**



1 **a time commitment conflict?**

2 A I think that's one of the beginning points --

3 MR. CURLEY: Objection to form.

4 THE WITNESS: -- is to have the faculty member  
5 disclose how much time they're spending on an  
6 activity and then have the supervisor -- before the  
7 supervisor notices that productivity may be going  
8 down, is question whether that activity is -- is  
9 competing with the university's time.

10 BY MR. LEO:

11 **Q The starting point for a time commitment**  
12 **evaluation, what -- what would that be for --**

13 A What -- like hourly, you mean?

14 **Q For determining whether there is a conflict of**  
15 **time commitment, where would the starting point be in --**  
16 **in making that determination?**

17 MR. CURLEY: Objection to form.

18 THE WITNESS: I think it depends on the  
19 individual and what their responsibilities are.

20 So a person who's a lecturer who may be  
21 teaching four classes, full classes, 12 credit  
22 hours of classes, that may be a full load. For  
23 someone who's teaching two credit -- two classes of  
24 three credits, six credit hours, that's not a full  
25 load.



1 THE COURT REPORTER: That's not a full?

2 THE WITNESS: -- load, teaching load. And so  
3 what do you do with the rest of your time, are you  
4 doing research or -- you should be doing the  
5 equivalent of some service to the university for  
6 that time.

7 BY MR. LEO:

8 Q With respect to evaluating faculty members and  
9 how they're using their time on campus or with respect  
10 to their duties, their job duties --

11 A Uh-hum.

12 Q -- are employees evaluated?

13 A Yes.

14 Q And their performance evaluated?

15 A Yes.

16 Q And there academic evaluations, or are those  
17 the way they're evaluated?

18 A Yes.

19 Q Have you had an opportunity to review  
20 Professor Tracy's employment or academic evaluations?

21 A No.

22 Q Are you aware of any actual conflict of time  
23 commitment the Professor Tracy or his personal blog  
24 created at any time?

25 A This is the first time I've ever met him



1 today.

2 Q When Professor Tracy was going to be  
3 terminated, so we're going back to December of 2015,  
4 when you were made aware of the termination, did you  
5 ever request a copy of his personnel file?

6 A No.

7 Q Did you ever review his evaluations to see if  
8 he had a conflict of time commitment?

9 A No.

10 Q Were you made aware of whether or not there  
11 was a determination as to whether Professor  
12 Tracy had a conflict of time commitment?

13 A No.

14 Q Were you aware that Professor Tracy had all  
15 outstanding evaluations --

16 A No.

17 Q -- in his record?

18 A No.

19 Q Have you spoken to any of the other defendants  
20 in this case before today?

21 A In terms of what?

22 Q Concerning the case.

23 A No.

24 Q Have you spoken to Defendant Alperin about her  
25 testimony --





1           A     No.

2           Q     -- last week?   How about Defendant  
3   Coltman?

4           A     No.

5           Q     Going back to the termination notice from  
6   December 16, 2015, the one sent by Defendant Alperin to  
7   Professor Tracy.   This is PK9, for the record.

8                     You testified that you, at some point, read  
9   this notice?

10                    MR. CURLEY:   Objection to form.

11                    THE WITNESS:   Yes.

12   BY MR. LEO:

13           Q     Was a draft circulated or sent to you prior to  
14   the notice being sent by certified mail to  
15   Professor Tracy?

16           A     No, not to my knowledge.

17           Q     So you were informed of the notice after it  
18   was sent?

19           A     It's my understanding, yes.   I don't -- I  
20   don't recall when.

21           Q     Are you aware that Dean Coltman was aware of  
22   Globalresearch.ca before --

23                    MR. CURLEY:   Objection.

24   BY MR. LEO:

25           Q     -- terminating Professor Tracy for not



1 **reporting it?**

2 MR. CURLEY: Objection to form.

3 THE WITNESS: No.

4 BY MR. LEO:

5 **Q Were you aware that Dean Coltman was aware of**  
6 **Globalresearch.ca?**

7 A No.

8 **Q If Dean Coltman and Vice Provost Alperin were**  
9 **both aware of Globalresearch.ca, and Professor Tracy's**  
10 **blogging, would you agree that they could have evaluated**  
11 **that activity?**

12 MR. CURLEY: Objection to form.

13 THE WITNESS: I don't know. I don't know if  
14 they had enough information to evaluate it or even  
15 understand it.

16 BY MR. LEO:

17 **Q According to Defendant Alperin's letter, she**  
18 **indicated that she was deprived of the forms needed to**  
19 **assess if a conflict exists for Professor Tracy's blog**  
20 **activity. You agree with -- with that, right?**

21 MR. CURLEY: Objection to form.

22 THE WITNESS: If that's what she says.

23 BY MR. LEO:

24 **Q You see Paragraph 3 on Page 2, that middle**  
25 **sentence, and then the -- the last sentence, "You have**



1 yet again deprived the university of the form needed to  
2 assess if a conflict exists for the blog activity."

3 A Okay.

4 Q Do you agree that if Defendant Coltman and  
5 Defendant Alperin both knew about Global Research and  
6 the personal blog, what Professor Tracy was accused of  
7 not reporting, that they could have evaluated --

8 A I don't know.

9 Q -- whether there was a conflict of interest?

10 A No, I don't know if they could of or not.

11 They may have had questions that they would  
12 like to have asked, I don't know.

13 Q Earlier we talked about whether disclosure and  
14 management of a personal blog activity would be  
15 reasonable and necessary. What was your opinion on  
16 that?

17 A That it would.

18 Q So you believe that FAU faculty members should  
19 disclose their personal blog activities to the  
20 university?

21 A I think if they're doing a blog and they --  
22 they have any concern about it being conflictual with  
23 the university or with their work, they would let their  
24 supervisor know this. I mean, the supervisor and the  
25 faculty member should have constant dialogue; if they



1 say fill out this form, fill out the form.

2 **Q And if the faculty member had looked at the**  
3 **report of outside employment form and determined that**  
4 **their personal blog was not a compensated or**  
5 **professional activity that required reporting, what**  
6 **would you say to that?**

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I would encourage they have a  
9 conversation with their supervisor.

10 BY MR. LEO:

11 **Q And if their supervisor was providing them**  
12 **with incorrect information about the policy, then what**  
13 **would the faculty member do or should they do?**

14 A If they get incorrect information, hopefully  
15 they're getting further clearance of the information  
16 from someone else.

17 **Q You said earlier you weren't familiar with**  
18 **David Williams, is that correct?**

19 A That's correct.

20 BY MR. LEO:

21 **Q I'm going to show you what's been marked as**  
22 **PK11 for today.**

23 (Whereupon, the referred-to documents were marked as  
24 Plaintiff's Exhibit PK11 for Identification.)

25 MR. LEO: Here's a copy for your counsel.



1 MR. CURLEY: Thank you.

2 BY MR. LEO:

3 Q For the record, this is FAU 462. You see the  
4 top of this -- this message is dated Tuesday,  
5 October 20th, 2015, sent from David Williams to several  
6 individuals at FAU?

7 A Okay.

8 Q Do you recognize any of these names in this  
9 list of FAU --

10 A Chris Roeveyas, I think he was the -- maybe  
11 the union president right before I came here, or right  
12 when I first came here.

13 Q These are all FAU faculty members --

14 A I don't know.

15 Q -- that this was sent to?

16 A I don't know.

17 Q Do you see any problem with this message?

18 MR. CURLEY: Objection to form.

19 THE WITNESS: Problem; what do you mean?

20 BY MR. LEO:

21 Q Just looking at it, do you see any -- any  
22 problems with what David Williams is saying to the  
23 faculty members?

24 A Sounds like a supervisor -- if these are his  
25 faculty, I don't know if these are all his faculty --



1 faculty and/or staff, that he's just reminding them that  
2 if they have an outside employment form that needs to be  
3 filled out, they should fill it out.

4 **Q You see the top there it says, "F -- FW**  
5 **outside employment forms." Do you see that?**

6 A Yes.

7 **Q Would you agree that's misleading to call this**  
8 **the outside employment form?**

9 MR. CURLEY: Objection to form.

10 BY MR. LEO:

11 **Q I'm referring to PK3.**

12 A I don't know. I mean, if -- if it is, anybody  
13 can ask for clarification, what do you mean by outside  
14 employment form.

15 **Q Right. But my question is, is it misleading**  
16 **to call it just the outside employment form --**

17 MR. CURLEY: Objection to form.

18 BY MR. LEO:

19 **Q -- when it's titled something entirely**  
20 **different?**

21 A First thing I would do would be ask, what do  
22 you mean by the outside employment form.

23 **Q Right. But my question is --**

24 A I assume they have faculty meetings, and  
25 faculty can ask these questions in a meeting.



1           **Q     But is there a problem -- do you -- do you see**  
2 **problem with identifying a form as something other than**  
3 **what it's actually called on the form itself?**

4           **A     It would be more accurate to have the exact**  
5 **title; but, I mean, I could see a person making those**  
6 **assumptions if that's what he's asking for.**

7           **Q     Would you agree that PK3, the report of**  
8 **outside employment or professional activity for FAU**  
9 **employment -- FAU employees is the name of the form on**  
10 **PK3?**

11                   MR. CURLEY: Object to form.

12                   THE WITNESS: Yes, sir.

13 BY MR. LEO:

14           **Q     Right.**

15           **A     Yes. Or professional activity, yes.**

16           **Q     Right. And David Williams is referring -- in**  
17 **this e-mail, PK11, David Williams is calling the form**  
18 **the outside employment form, right?**

19           **A     Yeah. I mean, he left out two words, or**  
20 **professional activity.**

21           **Q     And then he says here, "Greetings all, just a**  
22 **friendly reminder that if you have outside employment**  
23 **income, you will need to fill out the link to outside**  
24 **employment form." And then it says, in parentheses**  
25 **below, "Thanks, David." And below that message is a**



1 message from Heather Coltman, dated also October 20th,  
2 subject, outside employment forms. You see that?

3 A Uh-hum.

4 Q And then it says, "Just a friendly reminder to  
5 have faculty fill out -- fill these out and submit for  
6 your signature". And there's a link to the outside  
7 business V2.pdf? Do you see that?

8 A Yes.

9 Q Would you read this e-mail as misleading to  
10 faculty members?

11 MR. CURLEY: Objection, form.

12 THE WITNESS: Misleading?

13 BY MR. LEO:

14 Q Right. Given what we discussed about the  
15 policy and what needs to be reported based on --

16 A I don't think it would be misleading at all.  
17 I mean, I would think a faculty member would -- if they  
18 hadn't filled it out, they'd fill it out. And if they  
19 had a question about it, they would ask their department  
20 chair, usually they have that kind of -- usually a  
21 department chair and the faculty are very close, same  
22 buildings.

23 Q So you don't think that David Williams  
24 indicating that the form only needed to be filled out if  
25 they have outside employment income is -- you don't





1 **think that's misleading?**

2 MR. CURLEY: Objection to form.

3 THE WITNESS: My -- if it came to me I would  
4 ask, what exactly do you mean by outside  
5 employment.

6 BY MR. LEO:

7 **Q Right. But --**

8 A In other words, I don't think it would be  
9 misleading. I would -- I would ask a second question if  
10 I didn't understand it.

11 **Q If a chair of the school --**

12 A You would know there's something you're  
13 supposed to turn in. And we all have things we're  
14 supposed to turn in and deadlines, and frequently you  
15 don't know all the things you're supposed to get done at  
16 what date, and so this sounds like a friendly reminder  
17 from the chair, go ahead and get these things turned in,  
18 and -- and the dean, please get them turned in, because  
19 when people don't then you've got to go back and it  
20 takes a lot more time to get everything turned in --  
21 into --

22 BY MR. LEO:

23 **Q Would you agree that PK11 -- if a faculty**  
24 **member was reading this e-mail from their chair, and it**  
25 **only said that they have to fill out an outside**



1 **employment form if they have outside employment income,**  
2 **would you agree that that's misleading because that's**  
3 **not what the policy says?**

4 MR. CURLEY: Objection to form.

5 THE WITNESS: I think it would make them want  
6 to know more about what that means.

7 BY MR. LEO:

8 **Q Wouldn't it also not remind faculty members**  
9 **that they need to fill out the outside employment form**  
10 **for activities that don't result in income?**

11 MR. CURLEY: Objection to form.

12 THE WITNESS: You could -- you could ask both  
13 questions, yes.

14 BY MR. LEO:

15 **Q So a faculty member who reads PK11 would not**  
16 **know, if they were only looking at this e-mail, that**  
17 **they need to report something other than income?**

18 MR. CURLEY: Objection to form.

19 THE WITNESS: If they did not choose to ask  
20 anybody, and went straight to the website and  
21 didn't ask anyone and didn't ask a colleague that  
22 they work with, which I really find puzzling in the  
23 academic department, that you do that without  
24 asking, what does this mean, I mean, I just -- I  
25 guess I've done them for years, so I would assume



1       that people would just do that if they didn't  
2       understand what it meant.

3 BY MR. LEO:

4       **Q       I'm going to show you PK12.**

5       (Whereupon, the referred-to documents were marked as  
6       Plaintiff's Exhibit PK12 for Identification.)

7 BY MR. LEO:

8       **Q       For the record, this is PK12, it's also**  
9       **FAU 391 through 392. Do you see this is an exchange**  
10      **between David Williams and James Tracy? The top e-mail**  
11      **is dated Monday, November 2nd, 2015. You see below that**  
12      **e-mail, it's a response -- David William's e-mail is a**  
13      **response to an e-mail sent by James Tracy on October**  
14      **28th, 2015, regarding the October 20th e-mail, which is**  
15      **PK11?**

16      A       It sounds like they should have had a  
17      discussion, not just an e-mail.

18      **Q       That's one of my questions.**

19      A       Why -- why do you send an e-mail back and  
20      forth, it would be wise to just sit down and talk it out  
21      and figure out what's wanted --

22      **Q       Right.**

23      A       -- and provide it.

24      **Q       It sounds like some of the questions I asked**  
25      **Dean Coltman and Dean Alperin -- I'm sorry, Vice Provost**



1     **Alperin, and didn't really get a response to.**

2             **Why do you think they didn't speak with**  
3     **Professor Tracy about this dispute about the policy?**

4             MR. CURLEY:  Objection to form.

5             THE WITNESS:  I would -- I would actually  
6             guess that Professor Tracy would instigate the  
7             discussion of what do you want me to turn in.

8     BY MR. LEO:

9             **Q     I'm sorry, are you saying instigate?**

10            A     Yeah.  Begin the discussion, what -- what  
11            would you like me to turn in, what is it you want me to  
12            turn in.

13            **Q     Would you agree with me that Professor**  
14     **Tracy, in his message here, dated October 28th, is**  
15     **indicating that his chair is misleading the faculty**  
16     **concerning the policy?**

17            MR. CURLEY:  Objection to form.

18            THE WITNESS:  I -- the way I would read it is  
19            the chair is trying to get a friendly reminder to  
20            people to turn in the policy, the dean has  
21            requested a copy.  The dean, and that's typically -  
22            - these people are busy.

23            Okay, the dean's asked for these, let's make  
24            sure we get them in.  He turns around, sends it to  
25            his faculty, and basically says, let's -- let's try



1 to get this in, make sure it gets in on time. If  
2 it doesn't get in on time it kicks in a whole other  
3 set of administrative problems of, okay, get this  
4 person now to do it, and then another e-mail. And  
5 most of the time it's easily handled by just  
6 sitting down and talk about it. E-mail's not  
7 always the best way to communicate everything.

8 BY MR. LEO:

9 Q You see Tracy's e-mail, right?

10 A Yes.

11 Q See when he said -- when he says that this is  
12 misleading for the reasons I stated in my 10/26 e-mail,  
13 specifically you repeatedly used the term outside  
14 employment, yet the administration's policy as evidenced  
15 in the form, and then he writes in quotes, all caps,  
16 Florida Atlantic University Guidelines on Conflict of  
17 Interest, Conflict of Commitment, and Outside  
18 Activities, Including Financial Interests?

19 A I see that.

20 Q It says, "clearly states that -- that outside  
21 activity may or may not be compensated."

22 Would --

23 A Which would still require the form to be  
24 filled out.

25 Q Right. But he's explaining to David Williams



1    **why his e-mail's misleading, right?**

2           A     Yes, it appears that way.

3           Q     And he also indicates that -- you see here, it  
4    says here at the bottom, "As you are well aware, since  
5    2013 I have been subjected to undue harassment and  
6    surveillance by the FAU administration --

7                   MR. CURLEY: Object to form.

8                   THE WITNESS: I see it.

9    BY MR. LEO:

10          Q     Right? "and like-minded colleagues as a  
11    result of the above issue."

12                  MR. CURLEY: There's no question.

13   BY MR. LEO:

14          Q     I'm just making sure you can see it.

15          A     I read this.

16          Q     He says, "I cannot in good faith sign of on a  
17    document with such implications and potential  
18    repercussions." Do you see that?

19          A     I see where he says that, yes.

20          Q     When Professor Tracy's referring to harassment  
21    and surveillance, were you aware of harassment and  
22    surveillance by the FAU administration?

23          A     No.

24          Q     Would you agree that if a faculty member  
25    believed that the outside activities policy was being



1   **used to either harass or survey the faculty member, that**  
2   **that would be a reason not to comply with the directive**  
3   **concerning that policy?**

4           MR. CURLEY:  Objection to form.

5           THE WITNESS:  My suggestion would be they go  
6           to talk to somebody else if they don't feel  
7           comfortable with their department head, if that's  
8           who they're referring to.  I'm not sure who was  
9           being referred to by FAU administration and like-  
10          minded colleagues.

11   BY MR. LEO:

12           **Q     What's a faculty member supposed to do if he**  
13   **believes that a directive he has been given is unlawful?**

14           A     I think he should bring it up with a  
15   supervisor.

16           **Q     Should the faculty member comply with the**  
17   **directive if it's unlawful?**

18           A     I think the faculty member should bring it up  
19   with a supervisor.

20           **Q     Would this be bringing it up, this exchange**  
21   **here between David Williams and James Tracy?**

22           A     He's bringing it up -- he appears to be  
23   bringing it up with an immediate supervisor.

24           **Q     Was this ever brought to your attention,**  
25   **this--**



1           A       No.

2           Q       -- dispute between David Williams and  
3 James Tracy?

4           A       No.

5           Q       On the next page there, 392, Page 2, Professor  
6 Tracy states, "In light of the above, I would be much  
7 more comfortable electronically signing the annual  
8 assignment with these qualifications if the  
9 administration or its counsel can produce a signed  
10 statement asserting its position that my personal  
11 activities, media criticism, alternative journalism,  
12 blogging in no way constitute legitimate  
13 intellectual/creative endeavors, and thus cannot be  
14 considered a conflict of interest, conflict of  
15 commitment, or outside activities as defined in the  
16 administration's policy addressing such concerns." Do  
17 you see that?

18          A       Yes.

19          Q       Why wasn't Professor Tracy given clarification  
20 that he's asking for in this e-mail?

21               MR. CURLEY: Objection, form.

22               THE WITNESS: I don't know who he tried to  
23 talk to. I would -- if it were me, I would not  
24 make this an e-mail trail, I would have a  
25 conversation with someone.





1 BY MR. LEO:

2 Q You see he's talking in this e-mail to David  
3 Williams, right?

4 A Yes.

5 Q What's David William's supposed to do when he  
6 gets a message like this from his faculty member?

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I have no idea what he -- I  
9 don't know David.

10 BY MR. LEO:

11 Q Is there a policy concerning conflicts between  
12 department chairs and faculty members?

13 A Usually there's an intervention of someone  
14 else in the admission trust to resolve it if they're  
15 brought to their attention by the dean.

16 Q Are you familiar with this affirm and check  
17 box that is referenced in this exchange?

18 A No.

19 Q When you submit your own outside employment  
20 form, are you required to check a box affirming --

21 A Mine's a piece of the paper.

22 Q Are you ever required to check a box affirming  
23 compliance with --

24 A Only when I send in my IRS materials.

25 Q Let me show you what has been marked as PK13.



1 (Whereupon, the referred-to documents were marked as  
2 Plaintiff's Exhibit PK13 for Identification.)

3 BY MR. LEO:

4 Q For the record, this is also FAU 363.

5 Have you ever seen this certification --

6 A No.

7 Q -- box before?

8 A No.

9 Q Or this affirmation language?

10 A No.

11 Q You see the -- the language there, "I affirm  
12 that I am required to report any outside activity  
13 compensated or uncompensated --

14 A Yes.

15 Q -- and any financial interests on Florida  
16 Atlantic University's report of outside employment or  
17 professional activity, as required in FAU regulations  
18 and policies."

19 A Yes.

20 Q Would you agree that this is not consistent  
21 with the policy?

22 MR. CURLEY: Objection of form.

23 THE WITNESS: How --how do you make it  
24 inconsistent?

25 BY MR. LEO:



1           **Q     When it says, "I am required to report any**  
2 **outside activity compensated or uncompensated", would**  
3 **you agree that's not true?**

4           MR. CURLEY:  Objection to form.

5           THE WITNESS:  I think until that's resolved  
6           between the -- I mean, I could see a case where a  
7           person says, I don't need to report that, someone  
8           else says you should report that, and that just  
9           happens to be your supervisor, so if that's your  
10          supervisor, then you should report it.

11  BY MR. LEO:

12          **Q     Right.  But this language right here says --**  
13 **and when it's asking a faculty member to affirm that**  
14 **they are required to report any outside activity**  
15 **compensated or uncompensated, would you agree with me**  
16 **that that's not true?**

17          MR. CURLEY:  Objection to form.

18  BY MR. LEO:

19          **Q     All faculty members are not required to report**  
20 **any outside activity compensated or uncompensated,**  
21 **right?**

22          A     I think that's picking at words.  I mean,  
23                I think most people would say I've reported the  
24                activities.

25          **Q     I'll ask it another way.**



1           A     Have a conversation --

2           **Q     Do you want me to ask it another way?**

3           A     -- conversation with a supervisor.

4           **Q     Is a faculty member required to report any**  
5 **outside activity, compensated or uncompensated?**

6           MR. CURLEY:  Objection to form.

7           THE WITNESS:  Maybe it should say any outside  
8 activities agreed to with the supervisor, you know.  
9 But I assume that happens, you have an agreement  
10 with a supervisor, you reported those.  If you --  
11 but, you know, on the other hand, if you have  
12 activities you failed to report, I would assume  
13 there would be repercussions for that.

14 BY MR. LEO:

15           **Q     You'd agree with me that -- that this**  
16 **statement is inaccurate or incorrect?**

17           A     I don't think it's inaccurate, it may have  
18 more clarification needed to --

19           **Q     So let's say a faculty member just mowed their**  
20 **lawn; uncompensated activity, they just wanted to cut**  
21 **their grass, would they have to report that outside**  
22 **activity pursuant to the policy?**

23           MR. CURLEY:  Object to form.

24           THE WITNESS:  I mean, I think we can nitpick,  
25 you know, any of these things to death.  This is,



1       like, a one minute conversation with a supervisor,  
2       do I need to report this --

3 BY MR. LEO:

4       **Q     Right.**

5       A     -- do I need to report that.

6       **Q     But I'm not asking about the conversation with**  
7 **a supervisor or --**

8       A     But then you can check the box.

9       **Q     I'm only asking about --**

10       A     The box is an electronic transmission to get  
11 the piece of paper done that 1,000 people, 3,000 people  
12 are signing, and try to be efficient about getting the  
13 paperwork turned in so it's -- it's covered.

14       **Q     When you say that this affirmation is about**  
15 **something, how do you know that?**

16       A     That's what I'm reading. They're asking you  
17 to affirm that you're required to report any outside  
18 activity and any financial interest.

19       **Q     Would you agree with me that this affirmation**  
20 **box is not a requirement at FAU?**

21       A     If the documents --

22             MR. CURLEY: Objection to form.

23             THE WITNESS: -- don't go forward, or if  
24 you're not able to then have that registered with  
25 the university, which can be -- something would



1       happen on a website -- without you clicking a box,  
2       it won't go. If I turn in my taxes and I don't  
3       click the box send, it doesn't go.

4 BY MR. LEO:

5       **Q     Right. But I'm saying this affirmation, this**  
6 **box, this is not a requirement at FAU as a condition for**  
7 **employment, is it?**

8           MR. CURLEY: Objection to form.

9           THE WITNESS: You know, I don't know all the  
10       details behind that. My guess is that when you  
11       click the box, something happens.

12 BY MR. LEO:

13       **Q     Right. So what's the purpose of having a**  
14 **faculty member affirm compliance with a policy that**  
15 **they're already supposed to be in compliance with?**

16       A     What's the -- the -- say it again.

17       **Q     What's the purpose of having a faculty member**  
18 **at FAU affirm compliance with a policy that they're**  
19 **already supposed to be in compliance with?**

20       A     I would say it's because they need to confirm  
21       that they are in compliance.

22       **Q     Would you agree with me that this language is**  
23 **intentionally broad?**

24           MR. CURLEY: Objection to form.

25           THE WITNESS: I don't know.



1 BY MR. LEO:

2 Q The words, report any outside activity  
3 compensated or uncompensated, would you agree that's  
4 broad?

5 MR. CURLEY: Objection to form.

6 THE WITNESS: Most people -- I mean, we -- we  
7 could write, you know, five paragraphs to try to  
8 explain every single detail, the easy thing to do  
9 is if you have that question, ask the supervisor.

10 BY MR. LEO:

11 Q Right. And if the supervisor doesn't  
12 understand the policy, then what would one do?

13 A Ask the supervisor's supervisor, there will be  
14 somebody that understands exactly what's intended.

15 Q What's the policy at FAU for educating  
16 administrators on its policies, is there one?

17 A Oh, there's training all the time.

18 Q Is there training on the outside activities  
19 policy?

20 A I don't know.

21 Q Who at FAU would understand this policy?

22 A Who at FAU would understand?

23 MR. CURLEY: Objection to form.

24 BY MR. LEO:

25 Q Yeah. Who at FAU would understand the policy?



1           A     All our people in the legal department.

2           **Q     What about the administrators?**

3           A     The administrators --

4                 MR. CURLEY: Object to form.

5                 THE WITNESS: -- at least at the dean level  
6                 certainly would understand it.

7 BY MR. LEO:

8           **Q     Were you aware that administrators were**  
9 **expressing confusion about the policy, as well?**

10          A     No.

11                 MR. CURLEY: I need to take a quick break.

12                 MR. LEO: All right. Five minutes.

13                 MR. CURLEY: Yeah.

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

16 BY MR. LEO:

17           **Q     When we left off we were talking about**  
18 **conflicts between supervisor and faculty, in this**  
19 **instance it --there was a dispute between David Williams**  
20 **and James Tracy concerning reportability under the**  
21 **outside activities policy. Let me mark this as PK14 for**  
22 **today.**

23                 (Whereupon, the referred-to documents were marked as  
24                 Plaintiff's Exhibit PK14 for Identification.)

25                 MR. LEO: Here's a copy for you, Joe.





1 MR. CURLEY: Thank you. This is 14?

2 MR. LEO: Yes.

3 BY MR. LEO:

4 Q And, for the record, this is also FAU 402,  
5 403, 395 and 372. This is a compilation.

6 A Okay.

7 Q Are you familiar with Alexandra Schoennakers?

8 A I don't think so.

9 Q According to --

10 THE COURT REPORTER: Could you spell that?

11 MR. LEO: Yes. It's S-C-H-O-E-N-N-A-K-E-R-S.

12 BY MR. LEO:

13 Q You see James Tracy's e-mail to Alexandra  
14 Schoennakers on October 26th, 2015? It's on Page 1 of  
15 this composite.

16 A Yes.

17 MR. CURLEY: Form.

18 BY MR. LEO:

19 Q According to FAU's website, Alexandra  
20 Schoennakers is a program assistant at School of  
21 Communications and Multimedia Studies. Does that  
22 refresh your recollection?

23 A Uh-hum.

24 Q If that's what she's named as at FAU's  
25 website, is it fair to assume that that's correct?



1 MR. CURLEY: Objection to form.

2 BY MR. LEO:

3 Q That's her title?

4 A I don't have a clue who she is.

5 Q And according to the same website, the  
6 School of Communications and Multimedia Studies, Dr.

7 David Williams is the director of the school?

8 A Okay.

9 Q Would you agree with me that PK14, composite,  
10 the e-mail exchange indicates that Professor Tracy was  
11 trying to resolve his confusion and a conflict with the  
12 director, David Williams, by contacting both David  
13 Williams and Alexandra Schoennakers?

14 MR. CURLEY: Objection to form.

15 THE WITNESS: Yeah, again, I would have  
16 suggested, I guess, they really sit down and try to  
17 do something more than e-mail back and forth,  
18 but...

19 BY MR. LEO:

20 Q Do you see anything wrong with what  
21 Professor Tracy did on October 26th or October 27th with  
22 -- when he was communicating with his supervisors at the  
23 university?

24 MR. CURLEY: Objection to form.

25 THE WITNESS: I don't see anything wrong, I



1       just -- you know, it would be like my wife and me  
2       e-mailing each other back and forth trying to  
3       resolve something, and it's easier to sit down and  
4       just say, can I do this, can I do that, what if I  
5       did this; and it appears that's not happening.

6 BY MR. LEO:

7       **Q     Are you aware of -- that Professor Tracy was**  
8       **on --**

9               THE COURT REPORTER: I'm -- I'm sorry, what?

10 BY MR. LEO:

11       **Q     Are you aware that Professor Tracy was on**  
12       **paternity leave at this time?**

13       A     No.

14       **Q     And if he was on paternity leave, that would**  
15       **be a -- a good reason to communicate by e-mail, right?**

16               MR. CURLEY: Objection to form.

17               THE WITNESS: A phone call.

18 BY MR. LEO:

19       **Q     Would you agree that a phone call doesn't**  
20       **memorialize communications?**

21       A     If this is an attempt to memorialize.

22       **Q     My question is, a phone call doesn't**  
23       **memorialize what -- communications, right?**

24       A     Yeah. And one could argue that, I guess --

25       **Q     Would you agree that?**



1           A       -- for one-on-one communication, too, but  
2 sometimes that's a much better form of communication.

3           Q       Would you agree that e-mail is a way to  
4 memorialize communications?

5           A       If that's the attempt.

6           Q       So this was a way of documenting an exchange  
7 between supervisor and faculty member?

8           A       Apparently.

9           Q       I'm going to Professor Tracy's e-mail sent on  
10 Monday, October 26th. On that second page, FAU 403, he  
11 says -- Professor Tracy says, "This unresolved concern,  
12 close -- closely parallels FAU's uneven policy that can  
13 potentially hinder faculty members, academic endeavors,  
14 and free speech referenced in Article 5.3D of the CEA.  
15 There needs to be some additional clarification on what  
16 does and does not constitute conflict of interest." Do  
17 you see that?

18          A       Yes.

19          Q       Is that why there was an additional  
20 explanation that was provided to faculty members in June  
21 of 2016?

22                   MR. CURLEY: Objection, form.

23                   THE WITNESS: I don't know.

24 BY MR. LEO:

25          Q       Was the additional explanation that was



1 **provided in June of 2016, a result of concerns and**  
2 **requests for additional clarification, like Professor**  
3 **Tracy had made on October 26, 2015?**

4 MR. CURLEY: Objection to form.

5 THE WITNESS: I don't know.

6 BY MR. LEO:

7 **Q When you see the -- where he says that the**  
8 **policy is uneven, you see that?**

9 A Yes.

10 **Q Do you agree or disagree with that?**

11 MR. CURLEY: Objection to form.

12 THE WITNESS: I don't know. I wasn't involved  
13 in that discussion --

14 BY MR. LEO:

15 **Q Do you --**

16 A -- I don't know who was in that discussion.

17 **Q Okay. Looking at this today, and -- and what**  
18 **you've reviewed today, do you agree or disagree that the**  
19 **policy, the outside activities policy was uneven?**

20 MR. CURLEY: Objection to form.

21 THE WITNESS: I have no reason to -- to say  
22 that it is uneven. I mean, I have not heard the  
23 dialogue on -- on the faculty side of why they  
24 would think it would be uneven. There are avenues  
25 to have that discussion, I have not been involved



1 in those, so I don't know why they would say it was  
2 uneven.

3 BY MR. LEO:

4 Q When you say you haven't heard from other  
5 faculty --

6 A Nope.

7 Q -- you're saying you never had any faculty  
8 members complain about the outside activity policy to  
9 me?

10 A Not to me.

11 Q Going back to the September 2015 senate  
12 faculty meeting, you -- you were there, right?

13 A Yes. Well, apparently, I'm not sure.

14 Q Do you recall several faculty members  
15 expressing their concerns about the outside activities  
16 policy?

17 A I don't, but if -- if I -- if I was there at  
18 that time, and if that was brought up, that would be for  
19 the provost to resolve, not for me. And I'm sure if I  
20 was there, the provost was there.

21 Q Going to the request for clarification from  
22 Professor Tracy in the October 26th e-mail.

23 Are you aware of any attempt to clarify the  
24 policy for Professor Tracy?

25 MR. CURLEY: Objection to form.



1 THE WITNESS: I'm not aware.

2 BY MR. LEO:

3 Q I'm going to show you what we marked as PK15.

4 MR. LEO: Here's a copy for you, Joe.

5 MR. CURLEY: Thank you.

6 (Whereupon, the referred-to documents were marked  
7 as Plaintiff's Exhibit PK15 for Identification.)

8 BY MR. LEO:

9 Q For the record, this is also Bates stamp  
10 H -- I'm sorry, HC 144, and this is a notice of  
11 discipline dated November 10, 2015.

12 A Okay.

13 Q Have you seen PK15 before?

14 A I don't recall seeing it.

15 Q This is the notice of discipline that was  
16 issued in November of 2015, by Defendant Coltman, in  
17 response to Professor Tracy's request for clarification,  
18 isn't that right?

19 A That's what it looks like.

20 MR. CURLEY: Objection to form.

21 THE COURT REPORTER: I'm sorry, your answer?

22 THE WITNESS: I said that's what it looks like.

23 BY MR. LEO:

24 Q Do you think it was fair for Dean Coltman to  
25 issue a notice of discipline in response to Professor



1 **Tracy's request for clarification about Article 19?**

2 MR. CURLEY: Objection, form.

3 THE WITNESS: I think she's doing what a dean  
4 would do in trying to get the information in.

5 BY MR. LEO:

6 **Q My question is whether it was fair --**

7 MR. CURLEY: Objection, form.

8 BY MR. LEO:

9 **Q -- to do that?**

10 A Yeah, I don't know if it was fair or not, but  
11 I think it's an attempt to go ahead and get the  
12 information in.

13 **Q Earlier you had mentioned that this dispute**  
14 **between Professor Tracy and his -- the head of his**  
15 **department should have been resolved with a discussion,**  
16 **a meeting perhaps?**

17 A Yes.

18 **Q Would you agree that a notice of discipline is**  
19 **not consistent with that resolution that you indicated**  
20 **would be appropriate?**

21 A I don't know if there were attempts for a  
22 discussion or not --

23 THE COURT REPORTER: Could you say your answer  
24 again, I'm sorry, it's --

25 THE WITNESS: I don't know if there were





1 attempts for any discussion during this time or  
2 not. I don't know if grievances had been filed, I  
3 don't know if there was a faculty committee meeting  
4 about it, I don't know what was happening during  
5 the time.

6 BY MR. LEO:

7 **Q Based on what you know, if this November 10**  
8 **notice of discipline was the response to Professor**  
9 **Tracy's request to his supervisors at his school for**  
10 **clarification, would you see that as an appropriate**  
11 **response?**

12 MR. CURLEY: Objection to form.

13 THE WITNESS: I know if I got this response, I  
14 would get on it right away.

15 BY MR. LEO:

16 **Q You would have done what?**

17 A I would get on resolving it.

18 **Q When you say resolving it, how would -- how**  
19 **would you resolve this -- this notice of discipline that**  
20 **you're receiving after you've requested clarification**  
21 **for the policy and how it's being used?**

22 A I would have a discussion and sitdown, and go  
23 through what exactly was requested and provide it.

24 **Q Do you believe that the faculty member should**  
25 **be disciplined for requesting clarification on a policy?**



1 MR. CURLEY: Objection.

2 BY MR. LEO:

3 Q Or -- or in response to requesting  
4 clarification on a policy?

5 MR. CURLEY: Objection to form.

6 THE WITNESS: I don't know the circumstances.

7 BY MR. LEO:

8 Q Do you know what Professor Tracy's response  
9 was to the November 10 notice of discipline?

10 A No.

11 Q I'm going to mark this as PK16. And  
12 unfortunately I don't have a copy, but if you want to  
13 make one or --

14 MR. CURLEY: No, I've got that one.

15 (Whereupon, the referred-to documents were marked  
16 as Plaintiff's Exhibit PK16 for Identification.)

17 MR. LEO: I think you're familiar with this.  
18 Actually, let me staple that just so it doesn't --  
19 if you want to --

20 MR. CURLEY: The copy I have has a lot more --  
21 let me count the pages.

22 MR. LEO: This is only the -- the  
23 communication, the letter.

24 MR. CURLEY: Okay. Do you know how many pages  
25 you've got here?



1 MR. LEO: It looks like 4.

2 MR. CURLEY: 1, 2, 3, 4. Yeah. This is just  
3 -- as you said, it's just the James Tracy letter,  
4 and it's four pages. There you go.

5 Do you want him to read it?

6 BY MR. LEO:

7 Q Yeah. Go ahead and take a look.

8 Have you seen this before?

9 A No. Okay.

10 Q Is it safe to say that the first time you read  
11 this was today?

12 A Yes.

13 Q How would you have responded to Professor  
14 Tracy's response to the November 10 notice of  
15 discipline?

16 A I don't know. I mean, there's so many -- such  
17 a long, long message, obviously many points of  
18 disagreement.

19 Q Is there anything in -- in here that --  
20 PK16 that you disagree with?

21 MR. CURLEY: Objection to form.

22 THE WITNESS: I -- I don't know. I don't know  
23 enough about the details of the discussion back and  
24 forth, who -- who said what to whom, who other  
25 faculty members are that are also disagreeing with



1 the policy, so this is something that has to either  
2 be worked out with the supervisor, or a  
3 disagreement -- I guess a grievance eventually was  
4 filed.

5 BY MR. LEO:

6 Q So up until this point, this is November 22nd,  
7 2015, would you agree with me that what transpired was  
8 Professor Tracy was asked to submit an outside  
9 employment form by his supervisor, he responded  
10 requesting clarification and having issue with the way  
11 the form was being described and the way the policy was  
12 being described, right?

13 MR. CURLEY: Objection to form.

14 THE WITNESS: That's what it seems.

15 BY MR. LEO:

16 Q Am I -- am I okay so far given what you've  
17 read?

18 A It seems so be his opinions.

19 Q After he requests clarification, David  
20 Williams, according to the internal communications  
21 between he and his supervisors, was referred to legal,  
22 right? Going back to PK14, this composite with David --  
23 David William's e-mails.

24 MR. CURLEY: Objection to form.

25 THE WITNESS: Okay.



1 BY MR. LEO:

2 Q Right?

3 A Okay.

4 Q Is my recounting of this, is that accurate?

5 A Yes.

6 Q David Williams doesn't provide Professor Tracy  
7 with clarification, would you agree with me?

8 MR. CURLEY: Objection to form.

9 THE WITNESS: Oh, I don't know. I understand  
10 that -- you know, I don't know what other types of  
11 clarification might have gone on verbally, we're  
12 looking at paper.

13 BY MR. LEO:

14 Q If all there is is the e-mails, would you  
15 agree that there's no e-mail where -- that you've seen  
16 so far where Professor Tracy's given an explanation or  
17 clarification about the policy?

18 MR. CURLEY: Objection, form.

19 THE WITNESS: Let me read that again.

20 Where was that one?

21 BY MR. LEO:

22 Q PK14, there's also PK12.

23 A Yeah. He says if he's refusing to sign  
24 because it would require affirmation of adherence to  
25 legal stipulations and regulations, that is one thing --



1 THE COURT REPORTER: Could you speak up,  
2 please?

3 THE WITNESS: Yes. If he is refusing to sign  
4 because it would require affirmation of adherence  
5 to legal stipulations and regulations, that is one  
6 thing, but if he is refusing to sign because the  
7 required affirmation is an overreach that exceeds  
8 legal limits -- legal requirements, well that is  
9 another thing.

10 BY MR. LEO:

11 Q Just for the record, you're reading from  
12 PK14, and that's FAU 402, right?

13 A And he says, I don't know enough to know the  
14 difference, suggesting he needs additional advice.

15 Q Right. David Williams has expressed, in this  
16 e-mail, the October 27th e-mail to Linda Johnson and  
17 Heather Coltman, that he doesn't know enough about the  
18 policy to know the difference, right?

19 MR. CURLEY: Objection to form.

20 THE WITNESS: That's -- he seems to want more  
21 information.

22 BY MR. LEO:

23 Q And he says, I do not know the legal  
24 definitions and restrictions on conflict of interest,  
25 might need to get an opinion from legal on this, right?



1           A       Where's that part?

2           Q       **The first and second sentence.**

3           A       Yes, I see it.

4           Q       **Would you agree with me that David Williams**  
5 **was referred to legal, and that -- if you look at the**  
6 **fourth page of that composite, FAU 372, it's a -- it's a**  
7 **e-mail dated November 2nd from --**

8           A       That's from Larry?

9           Q       **Yeah, there's two e-mails there. There's one**  
10 **at the top, one -- one at the bottom. Given the**  
11 **timestamp it looks like the second e-mail is the first**  
12 **e-mail. David Williams to Larry Glick, a question about**  
13 **any --**

14                   MR. CURLEY: Objection to form.

15                   THE WITNESS: And Larry refers her to -- I  
16 mean him to Dean Alperin.

17 BY MR. LEO:

18           Q       **Right. FAU 372, this exchange indicates that**  
19 **David Williams is referred to Larry Glick, and then**  
20 **Larry Glick refers Williams to Defendant Alperin, right?**

21           A       Uh-hum.

22           Q       **Earlier you had indicated that if the**  
23 **supervisor needed clarification he should go to legal,**  
24 **right?**

25           A       That's where I would start.



1           **Q     And if legal sends him to somewhere else, for**  
2 **example, Defendant Alperin, is that commonplace or --**

3           A     Considering who she was, I mean, she had -- I  
4 think at one time was the provost, if I recall  
5 correctly, but certainly had a long time of experience  
6 here at the university and worked with many, many  
7 faculty members on issues to -- to resolve them, so  
8 Larry may have felt like that was a better decision for  
9 her to be involved and try to help James.

10           **Q     Was it Senior Associate General Counsel**  
11 **Glick's determination that Professor Tracy should be**  
12 **disciplined in response to this exchange?**

13           A     I don't know. I have no idea.

14           **Q     Laurence Glick, he doesn't work at FAU, does**  
15 **he?**

16           A     Who?

17           **Q     Laurence Glick.**

18           A     No.

19           **Q     When did he leave FAU?**

20           A     I don't remember.

21           **Q     Was it following this lawsuit?**

22           A     Can I ask -- I can't ask David. I don't  
23 remember.

24           **Q     You can just say what you know, so --**

25           A     All I remember is he got paid about three





1 times what we could pay him. We would have kept him if  
2 we could.

3 **Q So he left for a better opportunity?**

4 **A Yes.**

5 **Q So his leaving the -- the school had nothing**  
6 **to do with this case?**

7 **A Oh, no. No.**

8 **Q I'm going back to the November notice of**  
9 **discipline and Professor Tracy's response. Do you know**  
10 **if Professor Tracy was ever given clarification**  
11 **following his response on November 22nd, 2015?**

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

13 **Q And how -- how would you have responded to the**  
14 **November 22nd message from Professor Tracy?**

15 **A That was not nearly enough information to get**  
16 **into this detail --**

17 **MR. CURLEY: Objection to form.**

18 **THE WITNESS: -- and obviously they have a**  
19 **whole lot more knowledge of the policy and all the**  
20 **procedures than I do.**

21 **BY MR. LEO:**

22 **Q Reading Professor Tracy's response today,**  
23 **PK16, do you believe that Professor Tracy should have**  
24 **been given an explanation that he was asking for?**

25 **A I don't know what the current status was with**



1 who he was talking to at that time, if he was expecting  
2 a response from -- directly from Heather, or was he  
3 expecting a response from Diane, or was he expecting a  
4 legal response from Larry, so I really don't know what  
5 the -- the context of an expected response would be.

6 **Q Would you agree that Professor Tracy's**  
7 **expressing confusion to Dean Coltman in response to her**  
8 **November notice of discipline --**

9 A He is.

10 **Q -- in this letter?**

11 A -- he is attempting, I think, to get  
12 clarification on some things that he would like to know  
13 better. Whether those were things that he has been told  
14 and has not done, I don't know.

15 **Q At the bottom of the first page he says, "The**  
16 **administration exhibits confusion surrounding the**  
17 **detailed policy encompassed in the conflict of interest**  
18 **document which has, in turn, confused me and faculty**  
19 **colleagues." Do you see that?**

20 A Yes.

21 **Q So you would agree he was expressing confusion**  
22 **to Dean Coltman?**

23 A He states that, yes.

24 **Q And if a faculty member is expressing**  
25 **confusion about a directive that he's being disciplined**



1     **for, how is that dealt with by the administration?**

2           A     Usually if there's no ability to resolve it  
3     with administration, then a grievance would be filed.

4           Q     You said a grievance would be filed, by -- by  
5     who?

6           A     By the faculty member.

7           Q     Do you know if a grievance was filed?

8           A     I don't know.

9           Q     After the November 22nd correspondence, did  
10    you have any contact with Dean Coltman about this  
11    matter?

12          A     No.

13          Q     How about Defendant Alperin?

14          A     No.

15          Q     Larry Glick?

16          A     No.

17          Q     You weren't made aware of the exchange between  
18    Coltman and James Tracy, in November of 2015?

19          A     No.

20          Q     Were you present for the meeting on November  
21    30th, 2015?

22          A     What is that?

23          Q     The consultation, I believe, it's called.

24          A     Is that with the union you're talking about?

25               MR. CURLEY: 2013?



1 BY MR. LEO:

2 Q 2015. November 30th, 2015, there was a  
3 consultation.

4 A Within the union?

5 Q That's what I'm asking, were you present for  
6 that?

7 A I have no idea.

8 MR. CURLEY: Objection to form.

9 BY MR. LEO:

10 Q You said you don't remember being at the  
11 meeting?

12 A I don't know what the meeting's about or who  
13 it was with, I have ten meetings a day.

14 Q Where is -- where is your agenda for the day -  
15 - is there -- is there an agenda for --

16 A Is what?

17 Q Do you have an agenda or a calendar that you  
18 use --

19 A Yes.

20 Q -- for your scheduling? Where would that be  
21 kept?

22 A It's on a -- my computer.

23 Q Are you saying you don't remember a meeting  
24 from November 30th, 2015, between the union and --

25 A There are meetings regularly with the union,



1 but I don't -- I don't know if I was at that one. I'm  
2 not at all their meetings.

3 **Q You participate in consultation?**

4 A Sometimes.

5 **Q What -- what is consultation?**

6 A Consultation is typically the provost,  
7 Larry Glick sometimes, Diane Alperin sometimes, me  
8 sometimes, and then the union representative, which  
9 sometimes includes the -- I forgot the guy's name who  
10 is, kind of, in charge of the whole union, and then  
11 faculty representatives from the university.

12 **Q When you say in charge of the union, you're**  
13 **referring to the president of the union?**

14 A No, not the president, he's the legal counsel  
15 to the union. So if we're talking about -- which is  
16 typically what the discussion is about, it's about  
17 salaries, wage increases, those kinds of things, then  
18 frequently Larry Glick might be in the room, as well as  
19 the union. I forgot the guy's name, the guy who  
20 represents the union.

21 **Q Could it be Moats?**

22 A I think that's him.

23 **Q Michael Moats?**

24 A I think so.

25 **Q When is the first time you met with Michael**



1 **Moats?**

2 A I don't know. One of these meetings.

3 **Q Did you ever meet with Michael Moats and Bob**  
4 **Zoeller?**

5 A He was in one of the meetings, yes.

6 **Q Would that be consultation?**

7 A Most likely, yeah, due to salary increases.

8 **Q Have you ever discussed Professor Tracy with**  
9 **Michael Moats?**

10 A No.

11 **Q Have you ever discussed Professor Tracy with**  
12 **Bob Zoeller?**

13 A No.

14 **Q Has anybody communicated with Michael Moats or**  
15 **Bob Zoeller concerning Professor Tracy on your behalf?**

16 A Not that I know of.

17 **Q What do you remember about your meetings with**  
18 **Michael Moats and Zoeller in late 2015?**

19 A Let's see, 2015? We were trying to negotiate  
20 a multi-year, I think that was the timeframe, multi-year  
21 contract with the union so that we wouldn't have these  
22 one year, one year, one year kinds of things. And I was  
23 trying to see if we could get a three-year contract  
24 agreed to so that faculty would have some longer term  
25 look at what might happen. And we had worked really



1 hard to improve our performance metrics with the state,  
2 so we had -- obviously to do that you had to have a  
3 revenue stream, and so we tied to tie the -- the salary  
4 increases to a revenue stream, which would be new state  
5 funds from very high performance by the university. We  
6 were eventually successful and finished in -- yeah, in  
7 '16, first place in the state in the metrics, and that's  
8 what I devoted a huge amount of my time to. The  
9 contract provided for a -- I think it was a 332 or a 322  
10 percent salary increase that would be spread over three  
11 years, and we still have one more year left on that  
12 union negotiation.

13 **Q Was the outside activities policy ever**  
14 **discussed with Michael Moats?**

15 A Not to my knowledge.

16 **Q How about Robert Zoeller?**

17 A Not to my knowledge.

18 **Q Going back to the end of November, early**  
19 **December, do you think that Professor Tracy should have**  
20 **been disciplined again after his response on November**  
21 **22nd, 2015?**

22 MR. CURLEY: Objection to form.

23 THE WITNESS: I don't know. I mean, I don't  
24 know what all those discussions were. I have no  
25 idea what -- what James was thinking, what the dean



1       was thinking, I mean, what Diane was thinking, so I  
2       -- I don't know where they were with all those  
3       discussions. I don't know who had asked for what  
4       and not gotten what they asked for, it's impossible  
5       for me to know that.

6 BY MR. LEO:

7       **Q       Looking at the November 22nd letter from**  
8 **Tracy, it indicates what Professor Tracy was thinking at**  
9 **the time, right?**

10               MR. CURLEY: Objection to form.

11               THE WITNESS: This is what he indicates, yes.

12 BY MR. LEO:

13       **Q       Just focusing on that right now, do you think**  
14 **that Professor Tracy should have been disciplined for --**  
15 **for what he expressed?**

16               MR. CURLEY: Objection to form.

17               THE WITNESS: I have no grounds -- no ground  
18       of being able to determine that based on a letter.

19 BY MR. LEO:

20       **Q       I'm going to show you what has been marked as**  
21 **PK17, and I don't have a copy.**

22               MR. CURLEY: Okay.

23       (Whereupon, the referred-to documents were marked  
24       as Plaintiff's Exhibit PK17 for Identification.)

25 BY MR. LEO:





1           **Q     Do you recognize this communication?**

2           A     Let me read it.  Sounds like an extension of a  
3 deadline, but I don't recall ever seeing anything like  
4 that.

5           **Q     You've never seen this before?**

6           A     Not to my knowledge.

7           **Q     It says here that Defendant Coltman has**  
8 **reviewed the arguments Professor Tracy presented**  
9 **relating to reporting outside activity, his research**  
10 **assignment, free speech, and academic freedom.  Are you**  
11 **aware as -- as to whether she actually did review --**

12          A     I don't know.

13          **Q     -- those arguments?  Do you know if Dean**  
14 **Coltman was receiving assistance from the provost office**  
15 **in responding to Professor Tracy concerning this**  
16 **discipline?**

17          A     I don't know.

18          **Q     Would that be unusual -- unusual if she was?**

19               MR. CURLEY:  Objection to form.

20               THE WITNESS:  I don't know -- I don't know  
21 that we've had a case like this, so I don't know if  
22 that's something -- something that would happen or  
23 not.  I don't know if other people in the office  
24 would be trying to provide information that others  
25 might know -- not know about that they would be



1 helpful to a discussion or not.

2 BY MR. LEO:

3 Q If this December 11, 2015, message to  
4 Professor Tracy was the first response from Dean Coltman  
5 to Professor Tracy's November 22nd response to the  
6 notice of discipline, would you have a problem with  
7 that?

8 MR. CURLEY: Objection to form.

9 THE WITNESS: If it's -- what? I'm sorry, say  
10 it again.

11 BY MR. LEO:

12 Q If this PK17 was the -- the first response to  
13 the November 22nd letter, the extensive letter written  
14 by Professor Tracy outlining his concerns and his  
15 confusion, would you have a problem with Dean Coltman's  
16 response for any reason?

17 MR. CURLEY: Objection to form.

18 THE WITNESS: She seems to try to make it  
19 really clear what she is wanting to have happen at  
20 this point.

21 BY MR. LEO:

22 Q How so?

23 A "I'm writing to reiterate clearly to you, you  
24 must file the report of outside employment or  
25 professional activities forms for 2013, '14 -- 2014/15,



1 and 2015/16 as required by the university policy, et  
2 cetera."

3 **Q How is that clear?**

4 A "And it's directed by me in my notice of  
5 discipline. This is not optional." It sounds like she  
6 has made a decision.

7 **Q How is -- how is this clear?**

8 A This is not optional.

9 MR. CURLEY: Objection to form.

10 BY MR. LEO:

11 **Q Right. But would you agree, Defendant Coltman**  
12 **is not providing any explanation or clarification about**  
13 **the policy whatsoever?**

14 MR. CURLEY: Objection to form.

15 THE WITNESS: She is asking for it to be done.  
16 I mean, at a point I guess you reach a point where  
17 you have to make a decision, and she's saying this  
18 is not optional.

19 BY MR. LEO:

20 **Q Would you agree that Professor Tracy could**  
21 **have been provided with an additional explanation at**  
22 **that time?**

23 A I'm sure explanations could have gone on for a  
24 long time, at some point you do have to make a decision.

25 **Q Going back to PK7, FAU 506 through 510, the**



1 **FAU report of outside employment or professional**  
2 **activity form, additional explanation.**

3 A Which one is that?

4 Q The one with the big clip art in the front.  
5 You would agree with me that Defendant Coltman didn't  
6 provide this additional explanation to Professor Tracy  
7 in response to his November 22nd letter, right?

8 MR. CURLEY: Objection, form.

9 THE WITNESS: I don't know what -- what else.

10 BY MR. LEO:

11 Q Well, Dean Coltman didn't say, attached please  
12 find the additional explanation for the outside  
13 activities policy to help clarify how the policy works  
14 and what it's being used for?

15 A In that correspondence, no, I don't know if it  
16 was said elsewhere.

17 Q She just says she reviewed his arguments, and,  
18 again, reiterates her directive from the notice of  
19 discipline from November, right?

20 MR. CURLEY: Objection to form.

21 THE WITNESS: Unless there were other  
22 correspondence that said she did not reference this  
23 article in that.

24 BY MR. LEO:

25 Q In her December 11, 2015 message, Dean Coltman



1 doesn't provide any explanation about the policy, she  
2 just says, submit the reports of outside employment or  
3 professional activity, and then says because you were  
4 confused, I'll extend the deadline, right?

5 MR. CURLEY: Objection to form.

6 BY MR. LEO:

7 Q And you see the date of this e-mail, it's  
8 December 11, 2015?

9 A Yes.

10 Q That's one day after the deadline for  
11 Professor Tracy to grieve under the collective  
12 bargaining agreement, right?

13 MR. CURLEY: Objection to form.

14 THE WITNESS: I don't know.

15 BY MR. LEO:

16 Q It's a 30-day deadline to grieve a  
17 discipline --

18 A I don't know what the deadline is for a  
19 grievance.

20 Q I'm sorry?

21 A I don't know what the deadline is for a  
22 grievance.

23 Q You'd agree the deadline she's now extending -  
24 - and this is a Friday, December 11, 2015 message --  
25 she's extending it to Monday.



1 MR. CURLEY: Objection to form.

2 BY MR. LEO:

3 Q Right?

4 MR. CURLEY: Objection to form.

5 BY MR. LEO:

6 Q The following Monday?

7 A Yes.

8 Q So Dean Coltman tells Professor Tracy in an  
9 e-mail, "I'll extend the deadline one business day".

10 MR. CURLEY: Objection to form.

11 BY MR. LEO:

12 Q If -- if it even would be a complete business  
13 day, considering it's an e-mail that was sent at 7:00  
14 p.m., and says to submit it before Monday, December  
15 14th, at 5:00 p.m.

16 MR. CURLEY: Objection to form.

17 BY MR. LEO:

18 Q Right?

19 A That's what she says, yes.

20 Q Do you think that's a fair extension of time  
21 given the circumstances?

22 A I don't know what the circumstances are  
23 relative to her trying to get things done, maybe she had  
24 out of country travel, I have no idea what it was, but  
25 I'm assuming she had tried numerous times to get



1 something signed and was giving him yet one other  
2 opportunity to.

3 **Q Was the decision to terminate Professor Tracy**  
4 **made before this e-mail was sent on December 11, 2015?**

5 MR. CURLEY: Objection to form.

6 THE WITNESS: I would assume not.

7 BY MR. LEO:

8 **Q Are you familiar with a publication that was**  
9 **made in the newspaper on December 10th, 2015, about**  
10 **Professor Tracy?**

11 A I don't know. What was it?

12 **Q It was -- it was an op-ed in the Sun Sentinel**  
13 **alleging harassment, do you remember that?**

14 MR. CURLEY: Objection to form.

15 THE WITNESS: I don't remember it. There were  
16 several articles when the decision was made.

17 BY MR. LEO:

18 **Q When was the first time you received word that**  
19 **there was some negative publicity in December of 2015,**  
20 **about Professor Tracy?**

21 MR. CURLEY: Objection to form.

22 THE WITNESS: In what -- what year?

23 BY MR. LEO:

24 **Q In December 2015?**

25 A I don't remember.



1           **Q     You indicate that you had -- had received**  
2 **communications or complaints about Professor Tracy**  
3 **around that time, is that right?**

4           MR. CURLEY:  Objection to form.

5           THE WITNESS:  Around '15?

6 BY MR. LEO:

7           **Q     Around December -- December 2015?**

8           A     It seems like that was the timeframe,  
9 somewhere around that time where people began writing.

10          **Q     Do you recall an individual named Paul Stern?**

11          A     He may have been -- yeah, maybe he's the one  
12 that wrote something in the newspaper.

13          **Q     Who is Paul Stern?**

14          A     I don't know.

15          **Q     I'm going to show you what has been marked as**  
16 **PK18 for today.**

17          MR. LEO:  Here's a copy for you, Joe.

18          MR. CURLEY:  Thank you.

19          (Whereupon, the referred-to documents were marked  
20 as Plaintiff's Exhibit PK18 for Identification.)

21 BY MR. LEO:

22          **Q     For the record, this is also PRR 183 through**  
23 **184.**

24          A     Okay.  I do remember this.

25          **Q     You remember this communication?**





1           A       I remember.

2           **Q       When you say, "Please ask Mr. Stern -- for**  
3 **Mr. Stern to put the parents of the child in direct**  
4 **contact with me, I intend to deal with this personally",**  
5 **what do you mean by that?**

6           A       Frequently when someone has lost a child, if  
7 they -- if they lose a child who is here at the  
8 university, I write them a letter; and then if it's a  
9 university student, I also give a scholarship in their  
10 name, just a letter of condolence and how sorry I am for  
11 what happened and their loss. And I felt compelled --  
12 the same thing with this -- this letter, that I'd like  
13 to send a letter just saying how sorry I am he lost a  
14 child.

15          **Q       What about Mr. Stern's communication compelled**  
16 **you to respond?**

17          A       Pardon?

18          **Q       What about Mr. Stern's communication, on**  
19 **December 11th, compelled you to respond?**

20          A       Just -- I've lost a child before and I know  
21 the pain, and so when I read about a lost child, I felt  
22 like I should respond as a spokesperson for the  
23 university that I was sorry. I never did though, I  
24 never did write the letter.

25          **Q       Is there a reason why not?**



1           A       I guess I just decided that it wasn't  
2 something maybe the family wanted to have hashed up  
3 again.

4           **Q       Did you ever speak to Mr. Stern?**

5           A       No.

6           **Q       Did you ever speak to the individual that**  
7 **Mr. Stern's referring to whose daughter lost their life?**

8           A       No.

9           **Q       What was the result of your request to Stacy**  
10 **Volnick?**

11          A       There was no follow-up, further information,  
12 nothing else happened.

13          **Q       I see you -- in this message it looks like you**  
14 **wrote to Stacy Volnick, Peter Hull, David Kian, and**  
15 **Anthony Barber?**

16          A       Yes.

17          **Q       Why did you include all of these?**

18          A       Because typically when I write a letter to one  
19 of the parents, I copy those people.

20          **Q       Mr. Stern wasn't a parent of a FAU student,**  
21 **was -- was he?**

22          A       No, I don't know Mr. Stern.

23          **Q       Do you know who Mr. Stern is referring to in**  
24 **this e-mail?**

25          A       I assumed it might be the -- one of the



1 families of -- that had been involved in the killings.  
2 And I just wanted to know who he's talking about, and  
3 that's why I was going to get in touch with him, and if  
4 I found out, then write them a letter.

5 **Q Did anyone from your office respond to**  
6 **Mr. Stern?**

7 A No, not to my knowledge.

8 **Q Stacy Volnick didn't reach out to Paul Stern?**

9 A No.

10 **Q So when you're saying, "Please ask Mr. Stern**  
11 **to put the parents of the child in direct contact with**  
12 **me", who were you talking to?**

13 A I was asking Stacy to do that.

14 **Q Do you know if she attempted to do that?**

15 A She says, "I'm sorry, please let me know if  
16 you want me to send it to you." And I -- I sent it, or  
17 she sent it to me, and I asked him to -- to do it, and  
18 then I just decided I wasn't going to write the letter.

19 **Q So you -- you don't know if Stacy Volnick**  
20 **actually contacted Mr. Stern?**

21 A No, I don't know. I'm assuming she didn't.  
22 There was no contact information, so I didn't know how I  
23 would find him anyway; a phone number, but I had no  
24 contact.

25 **Q Is this the only message you responded to that**



1 was sent to your office --

2 A I don't think so.

3 Q -- from -- from this time?

4 A I didn't read the rest of them.

5 Q At this time you had received hundreds of  
6 complaints about Professor Tracy?

7 A I don't know. I didn't read them, I mean,  
8 I assume --

9 Q I'm sorry, she just has to record me and then  
10 -- then you so we can get it all.

11 A Yeah. I -- I don't know how many letters  
12 came, I never read them.

13 Q Let me mark this as PK19. This a compilation  
14 of messages. This is, for the record, PRR 24, 25, 29,  
15 30, 31, 32, 33. And I don't need you to read every  
16 single word here, but if you could just skim through  
17 these messages and let me know if these are all messages  
18 that you received at your e-mail address, President@ --

19 MR. CURLEY: Objection to form.

20 (Whereupon, the referred-to documents were marked  
21 as Plaintiff's Exhibit PK19 for Identification.)

22 BY MR. LEO:

23 Q President@fau.edu.

24 MR. CURLEY: So this is Composite 19?

25 MR. BENZION: Yes.



1 MR. CURLEY: And you -- did you put the Bates  
2 on for the record?

3 MR. LEO: Yes.

4 MR. CURLEY: Okay. Thank you.

5 THE WITNESS: This is certainly the tone of  
6 what many of the letters that came were like.

7 BY MR. LEO:

8 Q This is just a handful of hundreds of  
9 complaints about Professor Tracy that you received at  
10 this time, isn't that right?

11 MR. CURLEY: Objection to form.

12 THE WITNESS: I didn't see them.

13 BY MR. LEO:

14 Q You didn't see any of the --

15 A I didn't read these, no.

16 Q -- e-mails in PK19? These e-mails were sent  
17 to Peter Hull, it looks like, some of them?

18 A Some.

19 Q Who made the decision to send these e-mails to  
20 Peter Hull or not send them?

21 A Whoever wrote the letter.

22 Q Would that be Stacy Volnick?

23 MR. CURLEY: Objection to form.

24 THE WITNESS: Most likely it would be, unless  
25 it comes from Stacy, which -- if it comes from



1 president it could -- it would likely be Stacy that  
2 sent it.

3 BY MR. LEO:

4 Q Was there an e-mail account that was set up to  
5 direct complaints about Professor Tracy at this time?

6 A Not to my knowledge.

7 Q Does Incident@fau.edu sound familiar?

8 A I don't know anything about it.

9 Q You don't know if Incident@fau.edu was used  
10 to --

11 A No.

12 Q -- direct complaints about Professor Tracy?  
13 You'd agree, looking at these today, that these are all  
14 calls to fire Professor Tracy?

15 MR. LEO: Objection to form.

16 THE WITNESS: Many of them are, yes.

17 BY MR. LEO:

18 Q Does this refresh your recollection as to  
19 whether there was a publication in the newspaper?

20 A Pardon.

21 Q -- alleging that Professor Tracy --

22 A I'm sorry, could --

23 Q Sorry. Does this PK19 refresh your  
24 recollection as to whether there was a publication in  
25 the media concerning Professor Tracy and alleged



1 **harassment --**

2 MR. CURLEY: Objection to form.

3 BY MR. LEO:

4 **Q -- of Sandy Hook?**

5 A I don't remember when the letter came out.

6 This one from Paul Stern is dated the 11th --  
7 well, August 14th on this one. 14 -- most of these are  
8 the 14th, so it must have been after something came out  
9 on the -- from Paul Stern.

10 **Q You're aware that Professor Tracy was accused**  
11 **of criminal harassment by one of the --**

12 A Pardon?

13 **Q You -- are you aware that Professor Tracy was**  
14 **accused of harassment by one of these alleged Sandy Hook**  
15 **victims?**

16 MR. CURLEY: Objection to form.

17 THE WITNESS: No, I don't remember that.

18 It may be a --

19 BY MR. LEO:

20 **Q Does the Pozners' sound familiar?**

21 A That name is familiar.

22 **Q Did you read the Sun Sentinel at the time?**

23 A I read the Pozner -- like the Post, yes.

24 **Q So you read --you read the op-ed by the**  
25 **Pozners'?**



1           A     Yes.

2           **Q     Would you agree that they accused Professor**  
3 **Tracy of harassment?**

4           A     I don't remember what it was. I get the post,  
5 so I saw it in the newspaper.

6           **Q     Did the complaints that were made by the**  
7 **Pozners' have any impact on the decision to discipline**  
8 **or terminate Professor Tracy?**

9           A     No.

10          **Q     You say that with certainty.**

11          A     Yes.

12          **Q     Can you justify that you were made aware of**  
13 **the decision to terminate?**

14          A     Letters about Professor Tracy have come for  
15 years, this is nothing new.

16          **Q     Right. But how do you know that they**  
17 **weren't --**

18          A     Well, I had nothing to do with it, so -- and  
19 nobody that I know of was responding to these letters.

20          **Q     The question was whether the complaints about**  
21 **Professor Tracy was impacting the decision or had an**  
22 **effect on the decision to --**

23          A     Not that I know of.

24          **Q     -- discipline or terminate Professor Tracy?**

25          A     Not that I know of.





1           **Q     So it's possible?**

2           MR. CURLEY:  Objection to form.

3           THE WITNESS:  I don't know see how it's  
4           possible.  Letters have been coming for a long  
5           time, there have been no attempts to dismiss, to my  
6           knowledge.

7  BY MR. LEO:

8           **Q     If I can direct your attention to -- back to**  
9           **the interrogatories, specifically Question Number 8.  In**  
10          **response to the question you indicate, "The media**  
11          **relations department at defendant university uses a**  
12          **third party clip service to alert defendant university**  
13          **about discussions in the press regarding the defendant**  
14          **university."  Who's the third party service that you --**

15          A     It's called -- I can't think of the name.

16                I can get you the name.

17          **Q     Maybe I can help you out, let's see.**

18          A     Cision -- Cision, C-I-S-I-O-N, maybe.

19          **Q     I don't have another copy of this, but I'll**  
20          **show what has been marked as PK20.  For the record, this**  
21          **is PRR 2054 through 2062.  On the top of this e-mail it**  
22          **says from Media Relations -- Mediarelations@fau.edu?**

23          A     It's a posting service that we still take -- I  
24          mean, it's anything that -- with whatever the  
25          surveillance market is, anything that mentions the word



1 FAU.

2 (Whereupon, the referred-to documents were marked as  
3 Plaintiff's Exhibit PK20 for Identification.)

4 BY MR. LEO:

5 **Q Is TVI's, is that the --**

6 A I don't -- maybe that is the one, but I  
7 thought it was Cision, C-I-S-I-O-N.

8 **Q Is this an alert that you're describing in**  
9 **in--**

10 A Well, this is similar.

11 **Q -- Interrogatory Number 8?**

12 A This may be the same, but it's similar.

13 It has TD things which usually you can't read  
14 because they try to, I guess take what's said and turn  
15 it into words, but then what we usually do is scowler  
16 the -- the next version for things that could be used in  
17 -- in letters that we send to donors or -- or business  
18 leaders.

19 **Q Mediarelations@fau.edu, is that where you**  
20 **would receive the alerts?**

21 MR. CURLEY: Objection to form.

22 THE WITNESS: Most likely. I don't know who  
23 answers that account.

24 BY MR. LEO:

25 **Q You see how at the top there's Note 2 on the**



1 **e-mail?**

2 A Oh.

3 **Q Who would this be sent to?**

4 MR. CURLEY: Objection to form.

5 THE WITNESS: Typically I get -- I don't know  
6 who else subscribes, but I get something.

7 I think mine comes straight from Cision  
8 though, I don't think it -- maybe we've changed  
9 services, but Media Relations would tend to send it  
10 to whoever actually requested it, so it could be  
11 deans, whoever wanted to -- to have the -- and, to  
12 my knowledge, they don't filter these, this is just  
13 what people send us.

14 BY MR. LEO:

15 **Q This is --**

16 A So you can see these are just voice scans on  
17 the TB.

18 **Q Is PK20 something that -- that you received?**

19 A Is what?

20 **Q This PK20, this -- this alert right here --**

21 MR. CURLEY: He's asking did you get that  
22 document.

23 BY MR. LEO:

24 **Q Did you -- did you receive this media alert?**

25 A I have no idea. I get these at least once a



1 week.

2           **Q     So this is -- PK20 is something you receive**  
3 **regularly?**

4           A     Where do you get PK20?

5           **Q     It's the name of the exhibit just for today.**

6           A     Oh, I'm sorry.

7           **Q     Yeah. Just so we can refer to the document.**

8           A     We get a regular something, I'm not sure it's  
9 TBI's, but the TB part is part of it, and then there is  
10 a clip service that we take.

11           **Q     So PK20, this -- it's dated December 14, this**  
12 **would have been an alert that you would have received on**  
13 **that day?**

14                   MR. CURLEY: Objection to form.

15                   THE WITNESS: Yes, most likely. I mean, I  
16 don't always get to it that day, but it comes on  
17 the day, usually, that they send it.

18 BY MR. LEO:

19           **Q     Who administers the Mediarelations@fau.edu**  
20 **account?**

21           A     I don't know.

22           **Q     Would that be Peter Hull?**

23           A     Somebody in his -- his office. I don't know  
24 who -- who it would be, but somebody down at his office  
25 would do that. It could be Josh Gomes or it could be



1 Lisa Metcalf.

2 **Q What is -- when it says publicity value, what**  
3 **does that mean?**

4 A They calculate by -- I think by the source  
5 that it's printed in, what the, so-called, media value  
6 of that would be. So if you look on Page 4, the Palm  
7 Beach Post when -- that's on a website, so it's worth 18  
8 bucks. The next website down, U.S. Daily Review is  
9 worth \$182. It's some calculation the company does of  
10 the value of what a piece of media --

11 **Q Who pays that, the -- the value?**

12 A I have no idea. We don't calculate that,  
13 that's somebody else's calculation.

14 **Q If there is a higher number, would that mean**  
15 **that it's more of a concern to FAU if it's a higher**  
16 **publicity value?**

17 A It would mean it's printed at a source that  
18 has more viewers, typically.

19 **Q So that would be more of a concern if it had a**  
20 **higher viewer --**

21 MR. CURLEY: Objection to form.

22 BY MR. LEO:

23 **Q -- number?**

24 A I mean, if you look at the ones that I'm  
25 looking at now -- so Good Morning America online about



1 an 89-year-old grandmother getting her diploma was worth  
2 \$1,236.

3 **Q You see Page 3 there at the bottom, titled**  
4 **Florida Atlantic University Called Out by Sandy Hook**  
5 **Parents?**

6 A Patch, I don't know what Patch is.  
7 \$3,000 -- \$3,700.

8 **Q Was -- was this publication a concern to you**  
9 **at the time?**

10 MR. CURLEY: Objection to form.

11 THE WITNESS: No, I don't even know what Patch  
12 is.

13 BY MR. LEO:

14 **Q Would a -- would a publication calling out**  
15 **FAU be a concern to you?**

16 A You're talking about negative press or  
17 positive press?

18 **Q Right.**

19 A I think any time the university gets press you  
20 want positive press, that's the goal at the university.  
21 If you look at the Yahoo News Outlet, it's \$6,200 for  
22 the 89-year-old grandma again, so we're happy for her.  
23 No university sets out for, you know, let's see if we  
24 can get some negative publicity.

25 **Q What was the response to the negative**



1 **publicity in December of 2015, concerning Professor**  
2 **Tracy's blogging?**

3 MR. CURLEY: Objection to form.

4 THE WITNESS: I'd have to go back and look at  
5 all that, I don't know. I don't know what the  
6 clips services were.

7 BY MR. LEO:

8 Q You say look at all -- when you say look at  
9 all that, what would you look at?

10 A These clips services. I don't know what the -  
11 - what the readership is. It all depends on how many  
12 people read it.

13 Q My question was about the response by FAU, you  
14 would look at the clip services to determine what the  
15 response was?

16 A No, the only way you would know any value --  
17 we don't look at the value, the value's attributed by  
18 whatever the clip service is. We don't come up with  
19 these numbers.

20 Q I'm going to show you what's been marked as 22  
21 -- I'm sorry, 21.

22 (Whereupon, the referred-to documents were marked as  
23 Plaintiff's Exhibit PK21 for Identification.)

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



1 BY MR. CURLEY:

2 Q When we left off we were talking about e-  
3 mails, newspaper articles. We were talking a bit about  
4 complaints that were made about Professor  
5 Tracy in early to mid-December, 2015. You also received  
6 letters in support of Professor Tracy, isn't that right?

7 A Yes.

8 Q I'm going to show you what has been marked as  
9 PK21. This is -- for the record, this is also PRR 178  
10 through 182. Are you familiar with this message to your  
11 office?

12 A I don't remember it, but we did get some  
13 letters like these four pages or so.

14 Q Did you ever respond to Winfield Abe, I think  
15 is his name?

16 A Who is that?

17 Q The gentleman who wrote this e-mail, or at  
18 least the letter looks like it's from Winfield Abe, it's  
19 there, third page that has his address in Georgia?

20 A No.

21 Q Would you agree that this -- this is a letter  
22 in support of Professor Tracy at the time?

23 A Yes.

24 MR. CURLEY: Objection to form.

25 BY MR. LEO:





1           **Q**     **Mr. Abe actually, I believe, at one point**  
2     **compares Professor Tracy to Galileo?**

3                     MR. CURLEY:  Objection to form.

4     BY MR. LEO:

5           **Q**     **I mean, simplicity.**

6                     MR. CURLEY:  Speaks for itself.

7     BY MR. LEO:

8           **Q**     **It says, "Dr. Tracy is the image of the great**  
9     **scientist, like two time Nobel Prize winner Linus**  
10    **Pauling, Phd, who had the guts to speak up about the**  
11    **dangers of the nuclear arms race and atomic bomb**  
12    **testing."  So there's a lot of comparisons being made**  
13    **here to those who had been censored in the past**  
14    **historically, right?  Did you read this message back in**  
15    **December of 2015?**

16                    A     I don't remember reading it.

17           **Q**     **Was there ever an investigation that was done**  
18    **concerning the allegations that were made, not only by**  
19    **Professor Tracy, but other concerned American citizens**  
20    **that Sandy Hook had been staged?**

21                    A     Was there ever an investigation to it?

22           **Q**     **Right.**

23                    A     I have no idea.

24           **Q**     **Have you ever, yourself, investigated whether**  
25    **or not the Sandy Hook massacre actually happened or not?**



1 A No.

2 Q No?

3 A No.

4 Q As you sit here today, do you know, with  
5 certainty, whether or not it actually happened?

6 A I'm not going to conjecture on that.

7 Q I'm sorry?

8 A I'm not going to conjecture on that.

9 Q Did you know anybody who was a victim of  
10 Sandy Hook?

11 A No.

12 Q Did you communicate with anybody who was at  
13 least claiming to be a victim of Sandy Hook?

14 A No.

15 Q How about the Pozners', did you talk to the  
16 Pozners'?

17 A Never.

18 Q Anybody from the Soto family?

19 A No.

20 Q Was anybody in the FAU administration asked to  
21 make contact with any of the purported victims of Sandy  
22 Hook?

23 A Not to my knowledge.

24 Q I'm going to show you what's been marked as  
25 PK22. For the record, this is also PRR 2223 and 2224.



1 (Whereupon, the referred-to documents were marked as  
2 Plaintiff's Exhibit PK22 for Identification.)

3 BY MR. LEO:

4 Q This is an e-mail from Diane Alperin to  
5 Laurence Glick and Gary Perry, dated Wednesday,  
6 December 16, 2015, the date that Professor Tracy was  
7 issued a notice of intent to terminate, right?

8 MR. CURLEY: Objection to form.

9 THE WITNESS: Let me read it. What's your  
10 question? I'm sorry.

11 BY MR. LEO:

12 Q This is a letter or an e-mail that was sent  
13 from Diane Alperin to Laurence Glick and Gary  
14 Perry on December 16th, 2015, the day that Professor  
15 Tracy was issued a notice of intent to terminate, right?

16 A I don't remember the date about the  
17 termination, but it's the letter you're describing.

18 Q You see how it says Heather has made contact?

19 A Yeah, I don't know what that means.

20 Q Were you ever made aware of the communications  
21 between Dean Coltman and Ryan Grainy?

22 A I don't recall.

23 MR. CURLEY: Objection to form.

24 BY MR. LEO:

25 Q Do you know --



1           A       I don't recall anything about that.

2           Q       Do you know Ryan Grainy?

3           A       No.

4           Q       Have you ever had any contact with Ryan  
5 Grainy?

6           A       I don't remember the name.

7           Q       Are you familiar with the Vicky Soto  
8 Memorial Fund?

9           A       No.

10          Q       You see how Ryan Grainy writes, "Let me just  
11 stress that the problem with Mr. Tracy's online postings  
12 is that it eggs on and encourages other hoaxers to  
13 attack the families." See that?

14          A       Yes.

15          Q       Does this refresh your recollection as to  
16 allegations that were made to FAU's administration  
17 concerning Professor Tracy's online postings in December  
18 of 2015?

19                   MR. CURLEY: Objection to form.

20                   THE WITNESS: Does it do what?

21 BY MR. LEO:

22          Q       Does it refresh your recollection as to  
23 allegations that were made about Professor Tracy's --

24          A       No.

25          Q       -- postings online?



1 MR. CURLEY: Objection, form.

2 THE WITNESS: We had lots of comments about  
3 it. We -- I mean, it's nothing new.

4 BY MR. LEO:

5 Q What was your opinion at the time about  
6 Professor Tracy's online posting?

7 A My feeling was that --

8 MR. CURLEY: At what time -- at what time?

9 MR. LEO: At the time of this e-mail, so  
10 December 16, 2015.

11 MR. CURLEY: Okay.

12 THE WITNESS: I had trouble understanding, I  
13 guess, why he kept seeming to enjoy this, but if he  
14 does, he has his right to his freedom of speech.

15 BY MR. LEO:

16 Q When you say he, who are you referring to?

17 A James.

18 Q When you say he enjoys this, what is -- what  
19 is --

20 A I'm assuming he enjoys having these people --  
21 I'm assuming they copy him blindly on letters they  
22 write, and I don't know that to be the case.

23 Q We --

24 A I don't know why they would write us, because  
25 it doesn't really -- we don't have --



1           **Q     Isn't it -- isn't clear from these e-mails and**  
2 **messages we just talked about earlier that they're**  
3 **trying to get Professor Tracy fired?**

4           MR. CURLEY:  Objection to form.

5           THE WITNESS:  Yeah, those -- those I could  
6           understand why they would target the university  
7           administration.

8  BY MR. LEO:

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

10          A     Not that I can remember.

11          **Q     H-O-N-R?**

12          A     Not that I can remember anything called that.

13          **Q     A network that's run by Winnie Pozner?**

14          A     No.

15          **Q     It doesn't ring a bell?**

16          A     No.

17          **Q     Are you aware that the HONR Network has been**  
18 **accused of cyberstalking, and disparaging, and attacking**  
19 **researchers and those to who seek to investigate and**  
20 **ensure the truth about Sandy Hook?**

21          MR. CURLEY:  Objection to form.

22          THE WITNESS:  No.

23  BY MR. LEO:

24          **Q     If Sandy Hook was a hoax, if the event was**  
25 **staged, for example, to push gun control, or to raise**



1 money to push some kind of a gun control agenda, would  
2 that be a concern of FAU?

3 MR. CURLEY: Objection to form.

4 THE WITNESS: No.

5 BY MR. LEO:

6 Q Why not?

7 A FAU is not a Sandy Hook -- we're not focused  
8 on Sandy Hook, FAU is focused on educating students.  
9 And when you say FAU, I assume you're talking about, is  
10 that the concern of the university.

11 Q Sure.

12 A So I don't follow these things. I don't  
13 follow HONR, I don't follow those places.

14 Q Would you agree that --

15 A My job is to educate the students.

16 Q Would you agree that by communicating --

17 FAU's administration, by communicating with  
18 people like Ryan Rainey to get something from Mr. Pozner  
19 looks like it was a concern at the time?

20 MR. CURLEY: Objection to form.

21 THE WITNESS: I have no idea what they were  
22 asking about getting. I don't know what was going  
23 on.

24 BY MR. LEO:

25 Q Why would Dean Coltman be contacting anyone



1 **who's making such allegations against Professor Tracy?**

2 A I have no idea.

3 **Q Was Dean Coltman tasked with communicating**  
4 **with anybody concerning Professor Tracy's discipline?**

5 A Not to my knowledge.

6 **Q Are you aware of the nasty notes that Dean**  
7 **Coltman wrote about Professor Tracy in 2013?**

8 MR. CURLEY: Objection to form.

9 THE WITNESS: No.

10 BY MR. LEO:

11 **Q No?**

12 A No.

13 **Q Have you reviewed the complaint in this case?**

14 A The who?

15 **Q Have you review the complaint in this case?**

16 A What does that mean?

17 **Q The lawsuit.**

18 A The original?

19 **Q Specifically the second amended complaints.**

20 A I reviewed the documents, yes.

21 **Q Let me show you what has been marked as**

22 **Exhibit PK23 for today.**

23 (Whereupon, the referred-to documents were marked as  
24 Plaintiff's Exhibit PK23 for Identification.)

25 MR. LEO: Of course I don't have a copy with





1 me, Joe, so --

2 MR. CURLEY: Okay.

3 MR. LEO: This is -- for the record, this is

4 Exhibit AK --

5 MR. CURLEY: These are notes from --

6 MR. LEO: -- to the second amended complaint.

7 MR. CURLEY: -- January 8th, it looks like,

8 2013.

9 MR. LEO: Yeah. The first page there, you see  
10 it's dated 1/8/13?

11 MR. CURLEY: It's six pages. Okay.

12 BY MR. LEO:

13 **Q And if you'd just look through these, and let**  
14 **me know if you recognize any of -- of the documents in**  
15 **this composite or have seen them before?**

16 MR. CURLEY: Are those the same ones that are  
17 attached to the complaint?

18 MR. LEO: AK. Yeah, Exhibit AK.

19 MR. CURLEY: Okay. Thank you.

20 THE WITNESS: Okay.

21 BY MR. LEO:

22 **Q You can -- you can have it, I have a copy**  
23 **electronically here.**

24 A And who is this from?

25 **Q Defendant Coltman testified in her deposition**



1    **that these were her notes from meetings that were held**  
2    **in January of 2013, concerning Professor Tracy's**  
3    **blogging.**

4                   MR. CURLEY:  Objection -- objection to form.  
5    BY MR. LEO:

6           **Q     And you had the opportunity to review her**  
7    **testimony -- her transcript if --**

8                   MR. BENZION:  Sorry to interrupt, I know  
9                   you're writing your own notes on the exhibit, but  
10                  those are going to be part of the record.

11                  THE WITNESS:  I just wrote Heather Coltman.

12                  MR. BENZION:  Oh, no, I understand, just --

13    BY MR. LEO:

14           **Q     And honestly, it's -- it's okay to write on**  
15    **the exhibit if the record's clear that you just wrote on**  
16    **them, that's -- again, that's okay.**

17                  MR. CURLEY:  Thank you.

18                  THE WITNESS:  Sorry about that.

19    BY MR. LEO:

20           **Q     And just for the record, you wrote -- what did**  
21    **you write on the exhibit?**

22           A     Heather Coltman notes.

23           **Q     Okay.**

24                  MR. CURLEY:  Which is what you were told by  
25                  counsel, right?



1 THE WITNESS: Yes.

2 MR. CURLEY: Okay.

3 MR. LEO: Which is what I was told by  
4 Defendant Coltman. So I'm just going to proffer  
5 that for the record.

6 MR. CURLEY: I understand, and the objection  
7 will be that his -- her testimony will speak for  
8 itself.

9 BY MR. LEO:

10 Q Looking at the first page there you see how it  
11 says, "Essentially handled, no comment", on this?

12 A Yes.

13 MR. CURLEY: Object to the form.

14 BY MR. LEO:

15 Q Obviously the testimony in the transcript of  
16 Defendant Coltman will be the best evidence of what she  
17 said about these notes, but my memory of what she  
18 testified to is that this indicated that there was a  
19 directive that was issued at the time by the  
20 administration not to comment on the controversy  
21 surrounding Professor Tracy's blogging, that it was to  
22 be centrally handled. Would you agree with -- with me  
23 that that is consistent with what -- what you would do  
24 at the time? If you were -- you were the president at  
25 the university at the time, this is perhaps something



1    **that would -- a directive that would have been issued**  
2    **concerning this kind of controversy where there's**  
3    **hundreds of complaints or messages from people about an**  
4    **issue?**

5           MR. CURLEY: I would object to that, I think  
6           it mischaracterizes her testimony. We're not going  
7           to debate what she testified, and it's  
8           inappropriate to ask one witness to comment on  
9           another witnesses testimony.

10          MR. LEO: That's not what I asked, and a the  
11          objection's noted.

12    BY MR. LEO:

13          **Q     The question is whether this kind of a**  
14          **directive is something that you, as president, would**  
15          **have issued had you been president at the time --**

16          MR. CURLEY: And I object to the form.

17    BY MR. LEO:

18          **Q     If there was a directive to essentially handle**  
19          **comments or a directive not to make comments concerning**  
20          **a controversy at the university, would that be a**  
21          **directive that you would have issued?**

22          MR. CURLEY: Objection to form.

23          THE WITNESS: I don't know. It would have  
24          depended on circumstances. If we have a -- a  
25          crisis issue on campus, and -- and I'll point to



1 something much more severe than something like  
2 this, but if we have a -- a suspect on campus, we  
3 prefer to have a central point of communication,  
4 not a bunch of people deciding their immediate  
5 opinion of the university. So frequently when  
6 there is a major media event, we try to, at least,  
7 decide who's the voice that's speaking about the  
8 university, versus everybody picking what they  
9 would say. And so I don't know, under those  
10 circumstances, how would we have handled it. We  
11 would not have been -- I'm sure the university was  
12 not well prepared for what was happening, and  
13 having -- having to somewhat decide as they were  
14 going what they were going to do.

15 BY MR. LEO:

16 Q If you could turn to page, it looks like 3.

17 At the top it says, Diane 19?

18 A 2 or --

19 Q I'm sorry, it says 114 on Page 3.

20 A Okay.

21 Q You see the -- the bottom of the -- the notes  
22 there?

23 A The bottom, impact?

24 Q Yeah. Under impact. You see how it says,  
25 donors, history, et cetera, Braman e-mail? Down the



1 middle of that blurb. Are you familiar with the Braman  
2 e-mail about Professor Tracy?

3 A No.

4 MR. CURLEY: Objection to form.

5 BY MR. LEO:

6 Q Are you familiar about any complaints that  
7 were made by any donors in the -- to the history  
8 department about Professor Tracy?

9 A No, I can't think of any.

10 Q Are you familiar with the name Braman?

11 A If it's the Braman of Miami, he's a huge cars  
12 salesman. I've never met him.

13 Q Is Braman a donor of FAU?

14 A To my knowledge, no, wish he was.

15 Q Okay. You see down here where it says, "Black  
16 eye on all faculty". It's right after reckless and  
17 irresponsible, it says, "Black eye on all faculty"?

18 A Yes.

19 Q "Labeled one man argument against tenure", and  
20 it says, "will be poster child", and then it says, "quit  
21 UFF membership". What do you make of these notes?

22 MR. CURLEY: Objection to form.

23 BY MR. LEO:

24 Q If anything?

25 A I don't -- I mean, it's -- could be one-off



1 conversations, somebody said that, that -- they may have  
2 asked, what kind of feedback are you getting; well, I  
3 got this, and I got that, and I got that. Nobody knows.  
4 It's hard when there's a big media event to determine  
5 which pieces of media are truly universal in thought and  
6 which ones are one-off comments.

7           **Q       These notes, which appear to be from January**  
8 **14, 2013, concerning Professor Tracy, Defendant Coltman**  
9 **indicated that that's what this was about during her**  
10 **testimony. If that's the case, if these are notes about**  
11 **Professor Tracy, do you think that this is appropriate**  
12 **or ethical --**

13                   MR. CURLEY: Objection to form.

14 BY MR. LEO:

15           **Q       -- to make notes like this about a faculty**  
16 **member at FAU?**

17                   MR. CURLEY: Objection to form.

18                   THE WITNESS: I'm not sure who she's making  
19 comments from. She may be explaining to people,  
20 this is what responses were given; I don't know. I  
21 would say as president, if anything happens on  
22 campus that is a huge media story that was not  
23 anticipated, not a big donor related party that you  
24 had plenty of time to prepare for, I would expect  
25 somebody to give me some kind of briefing, tell me

1       what's going on.

2               And until you get a briefing, you don't have a  
3       clue what the university is, you know, thinking  
4       versus just your random thought. So having  
5       somebody say, well, here's what we've learned, that  
6       -- it doesn't mean that's a universal thought.

7 BY MR. LEO:

8               **Q       If the dean of one of your colleges and the**  
9       **vice provost of the university were calling a faculty**  
10       **member a black eye on all faculty, would that be an**  
11       **appropriate characterization of a faculty member by**  
12       **administrators like that?**

13               MR. CURLEY: Objection to form.

14               THE WITNESS: I don't know that they're  
15       calling him that. They may be repeating what  
16       somebody else might have said and they're just  
17       bringing it up.

18 BY MR. LEO:

19               **Q       I'm not asking if that's what they were**  
20       **saying, that's a question that we asked them and that's**  
21       **a question for them, really. If a fact -- if Dean**  
22       **Coltman and Dean -- I'm sorry, Vice Provost Alperin were**  
23       **referring to Professor Tracy as a black eye on all**  
24       **faculty, would that be appropriate behavior?**

25               MR. CURLEY: Objection to form.





1 BY MR. LEO:

2 Q In your -- in your -- in your opinion?

3 A I don't know the context --

4 MR. CURLEY: Objection to form.

5 BY MR. LEO:

6 Q So if a faculty member was called a black eye  
7 on all faculty, there would be an appropriate context  
8 for that kind of a characterization?

9 MR. CURLEY: Objection to form.

10 THE WITNESS: Depends who's talking to me.

11 If I'm talking to someone it's a -- oh, he's a  
12 black eye on all faculty members. I hear stuff  
13 about everybody all the time, you know, I'm not  
14 going to go choosing that as my viewpoint.

15 BY MR. LEO:

16 Q So you're saying there could been an  
17 appropriate characterization for a faculty member as a  
18 black eye --

19 MR. CURLEY: Objection to form.

20 THE WITNESS: I said there may be people that  
21 -- that say that.

22 BY MR. LEO:

23 Q Right. But the question isn't whether they  
24 said that or not, the question is whether that would be  
25 an appropriate thing for an administrator to be saying



1 **about a faculty member.**

2 MR. CURLEY: Objection to form.

3 THE WITNESS: I don't know that that would be  
4 the case. I think that frequently if somebody does  
5 something, and just go to another case, pick the  
6 crime, somebody beats up their grad student on  
7 campus; well, that's a black eye on all faculty,  
8 somebody says that. It doesn't mean that all  
9 faculty have a black eye, it means that that  
10 incident caused faculty -- how could a faculty  
11 member beat up their grad student, that's -- that's  
12 what I meant.

13 BY MR. LEO:

14 **Q Okay. So we'll -- we'll use an example.**

15 **If Professor Tracy was being called a black**  
16 **eye on all faculty because of what he was blogging about**  
17 **and the negative attention it brought to the university,**  
18 **would that be an appropriate characterization for him?**

19 MR. CURLEY: Objection to form.

20 THE WITNESS: I have no idea. I have no idea.  
21 I have no idea of what behaviors were going on at  
22 that moment.

23 BY MR. LEO:

24 **Q Do you think --**

25 **A I have no idea how Jennings was behaving at**



1 that moment. I don't know if he was being attacked by  
2 people, I have no idea what was going on when that was  
3 happening.

4 **Q But if it -- if it was --**

5 **A** I mean, I just can't conjecture about that, I  
6 think it would depend entirely on the circumstance. He  
7 may be feeling the victim, I have no idea what was going  
8 on.

9 **Q Right. But I'm -- I'm just referring to --**  
10 **specifically to a characterization by an administrator**  
11 **that is employed by you, someone who answers to you and**  
12 **who, perhaps, you've delegated duties to. Do you think**  
13 **that your administrators, your employees should be**  
14 **calling faculty members a black eye in any -- any -- any**  
15 **time -- at any time?**

16 **MR. CURLEY:** Objection. Objection to form.

17 **THE WITNESS:** I would say in the heat of the  
18 moment people can say or write things that they  
19 would take back later, and I have no idea what that  
20 moment was like.

21 **BY MR. LEO:**

22 **Q This, for example, Exhibit AK to the second**  
23 **amended complaint that alleges constitutional rights**  
24 **violations can't be taken back, it was put into**  
25 **Professor Tracy's personnel file, these notes.**



1           **So let's talk about that context. Are these**  
2 **notes from administrators that are put into a publically**  
3 **available personnel file, are these appropriate notes --**

4           MR. CURLEY: Objection to form.

5 BY MR. LEO:

6           **Q     -- in your opinion?**

7           MR. CURLEY: Objection to form, misstates the  
8 record.

9           THE WITNESS: I have no idea to put -- how to  
10 put that in context.

11          MR. CURLEY: You're spending a lot of time on  
12 hypotheticals --

13          MR. LEO: Sure, let me ask it --

14          MR. CURLEY: -- and speculation.

15          MR. LEO: -- a different way.

16 BY MR. LEO:

17          **Q     Do you think --**

18          MR. CURLEY: You are --

19 BY MR. LEO:

20          **Q     Do you think --**

21          THE COURT REPORTER: Wait. Please, I can't  
22 write you all at the same time.

23          MR. CURLEY: You asked --

24          MR. LEO: Joe -- go ahead, Joe.

25          MR. CURLEY: Yes. Thank you. Asking him



1       hypotheticals and asking him to speculate when he  
2       wasn't even there is not a good use of your time.

3               MR. LEO: I'm not asking him -- for him to  
4       speculate. I'm asking about whether he believes  
5       making notes specifically calling faculty members a  
6       black eye is appropriate behavior for your  
7       employees that you --

8               MR. CURLEY: He's a fact witness here --

9               MR. LEO: -- you employ.

10              MR. CURLEY: -- he's not an expert on --

11              MR. LEO: I'm going to object to speaking  
12       objections and move to strike counsel's testimony,  
13       he's now testifying.

14 BY MR. LEO:

15              **Q       The question is, do you think that making**  
16       **notes about a faculty member that they're a black eye on**  
17       **all faculty, is that an appropriate thing to do as an**  
18       **FAU administrator? I'm not asking you to speculate, I'm**  
19       **asking what your opinion is.**

20              MR. CURLEY: You are. And object to the form.

21              MR. LEO: How am I asking him to speculate,  
22       Joe?

23              MR. CURLEY: You're asking --

24              MR. LEO: It's an opinion.

25              MR. CURLEY: Okay. You're asking about



1        comments were -- were maybe made when he wasn't  
2        there, and he keeps telling you he doesn't know the  
3        context. I don't want to get into it with you  
4        because I don't want -- you're right, I don't want  
5        to put things on the record, I just don't --

6                MR. LEO: I'm not asking your client to  
7        speculate.

8                MR. CURLEY: Okay.

9                MR. LEO: I'm asking President Kelly if a dean  
10       and/or a vice provost that's employed by President  
11       Kelly and FAU, if it's appropriate for them to be  
12       making notes indicating that any faculty member at  
13       FAU is a black eye on all faculty.

14               MR. CURLEY: He wasn't -- he wasn't there when  
15       these were --

16               MR. LEO: That's not what I'm asking.

17               MR. CURLEY: Okay.

18               MR. LEO: The question is whether it's  
19       appropriate for a dean and/or a vice provost of the  
20       university to be making a characterization, a note  
21       that somebody is a black eye on all faculty.

22               MR. CURLEY: Okay. I -- I -- you know my  
23       objections --

24               MR. LEO: Okay.

25               MR. CURLEY: -- I object to the form.



1           Let's proceed.

2 BY MR. LEO:

3           **Q     What's your opinion on that?**

4           MR. CURLEY: Objection to form.

5           THE WITNESS: I'll just make a similar point,  
6 and that is that people say things all the time  
7 they wish they hadn't said; and it happens between  
8 married couples, it happens between colleagues. If  
9 we're going to form an opinion about something that  
10 happened three years ago and that was appropriate,  
11 I have no idea at the moment what anger, what  
12 frustration that person felt. That does not, in  
13 any way, represent viewpoint, it's a note scribbled  
14 on paper. And I'm not going to comment on whether  
15 that is appropriate for her feeling at that moment  
16 in time, and that's all I know. I don't know who  
17 she shared that with, all I know is those were her  
18 moment of time feelings.

19 BY MR. LEO:

20           **Q     Let me tell you where we found these, again.**  
21 **Exhibit AK, these notes were found in Professor Tracy's**  
22 **publically available personnel file. Okay. So we're**  
23 **not talking about what somebody may have said in -- in**  
24 **their marriage, we're talking about what two employees**  
25 **of yours wrote, right, in notes that were put into a**



1 faculty member, who was terminated by FAU, in his file.

2 A Okay.

3 Q Okay. So let's -- now that I prefaced this  
4 question, okay --

5 MR. CURLEY: Which we dispute.

6 BY MR. LEO:

7 Q You understand, we're not talking about what  
8 was said in a marriage or what people were saying to  
9 each other in the heat of the moment, we're talking  
10 about what was on these notes that's in Professor  
11 Tracy's personnel file that Defendant Coltman has  
12 testified were hers. Okay. There's no speculation  
13 about that, Defendant Coltman admitted these were her  
14 notes. I will proffer that for the record, and -- and  
15 your counsel can make his objections, and we can go to  
16 the court on this later. But given that that is what I  
17 proffered, that these are notes written by Dean Coltman;  
18 if you look at the note there you see it says Diane and  
19 Larry at the top? She testified, Defendant Coltman,  
20 that these are notes that were written during a meeting  
21 between Defendant Coltman, Defendant Alperin, and Larry  
22 Glick. Okay. Those notes were put into Professor  
23 Tracy's personnel file. All right.

24 The note I've asked you about is specifically  
25 black eye on all faculty. Do you think that that would





1 **be an appropriate note to write about a faculty member,**  
2 **and then put into his personnel file? Let's -- let's**  
3 **leave it at that convolution.**

4 MR. CURLEY: I object to the form of the  
5 question, it misstates the testimony. You keep  
6 saying it was in his personnel file, that's not  
7 right, and you keep repeating testimony from  
8 another witness. Just ask your questions, you  
9 don't need to preface it with alleged testimony  
10 from other witnesses. I object to the form.

11 MR. LEO: The objection has been made.

12 You can answer the question.

13 BY MR. LEO:

14 **Q Do you need me to repeat the question?**

15 A Again, I'll answer it the same way, so it's  
16 not going to be a change in the answer. I do not know  
17 what she felt in the heat of the moment, what she said  
18 that reflected that feeling. So I realize that person  
19 works for me for a few more weeks, and the other one is  
20 retired. And I do not know --

21 **Q So are --**

22 A -- what the culture of the campus was like at  
23 that time.

24 **Q So you're not going to answer whether this**  
25 **would be an appropriate note from the individuals you**



1 **just named?**

2 MR. CURLEY: Objection to the form.

3 THE WITNESS: That's the answer.

4 BY MR. LEO:

5 **Q That you don't want to answer the question?**

6 A I did answer your question.

7 **Q So you don't -- you don't know if it's**  
8 **appropriate because you weren't there, is that what**  
9 **you're saying?**

10 A I was not there at the time this happened,  
11 I do not know what the response was.

12 **Q Okay.**

13 A I assumed she was trying to explain a feeling  
14 that she had, and that's an assumption.

15 **Q The one man argument against tenure comment.**

16 A The what?

17 **Q The one man argument against tenure note in**  
18 **this exhibit, Page 3, that Defendant Coltman admitted to**  
19 **writing in her deposition.**

20 MR. CURLEY: Where is that?

21 MR. LEO: At the bottom of Page 3.

22 Exhibit 23, PK23, labeled one man argument  
23 against tenure.

24 MR. CURLEY: I got it. It's right here  
25 (indicating). Okay.



1 BY MR. LEO:

2 Q Is there an appropriate way that this -- this  
3 could be -- let me just -- let me rephrase this.  
4 Labeled one man argument against tenure, is that  
5 something that a dean or a vice provost should be saying  
6 about a faculty member at FAU at any time?

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I have no idea what context  
9 that's in either.

10 BY MR. LEO:

11 Q I'm not asking what context it's in. I'm  
12 asking if -- if saying that somebody is one man argument  
13 against tenure, one of your faculty members is a one man  
14 argument against tenure, is that something that --

15 A There's no one man argument against tenure, if  
16 that's what you're asking.

17 Q I'm saying -- my question is whether a dean or  
18 a vice provost should be making those kinds of remarks  
19 about faculty members that are employed by your  
20 university?

21 MR. CURLEY: Objection to form.

22 THE WITNESS: And I'm saying there's no one  
23 man argument against tenure.

24 BY MR. LEO:

25 Q There's no note here that says, labeled one



1 **man argument against tenure on this exhibit?**

2 A No. There's -- that's written --

3 **Q Right.**

4 A -- labeled one man argument against tenure. I  
5 don't know who labeled it.

6 **Q Okay. Would you agree that these are nasty**  
7 **notes?**

8 MR. CURLEY: Objection to form.

9 BY MR. LEO:

10 **Q They're not nice?**

11 A It appears to be a note written by someone who  
12 was trying to capture what was going on and get the  
13 university to make a response; what are we going to do,  
14 that's what I would suggest it is.

15 **Q You can -- you can see that from these notes?**

16 A No, I can just guess if -- if there's a heat  
17 of the moment, you've got the news media asking for an  
18 interview, what are you going to say on the interview;  
19 you need to at least know what -- what's the situation,  
20 what's happened.

21 **Q Have you ever heard anyone in your**  
22 **administration say, Professor Tracy's the one man**  
23 **argument against tenure?**

24 A No.

25 **Q And earlier I believe you testified that if**



1 somebody had a problem with tenure, they wouldn't be at  
2 FAU anymore?

3 A What?

4 Q You said earlier if somebody had a problem  
5 with tenure, or said tenure be damned, something like  
6 that, you would -- they wouldn't be at FAU, I believe is  
7 what you said earlier, right?

8 A In what context?

9 Q We were talking about tenure, remember,  
10 earlier in the deposition?

11 A Right.

12 Q And I asked you if you believed in tenure?

13 A Yes.

14 Q Okay. You stated something to the effect that  
15 if somebody had indicated -- you said if anyone had a  
16 problem with tenure, they wouldn't be working at FAU?

17 A Right.

18 Q Do you remember saying that?

19 A Yeah.

20 Q Okay. Would you agree that somebody clearly,  
21 according to these notes, that was in this meeting, had  
22 a problem with tenure?

23 MR. CURLEY: Objection to form.

24 THE WITNESS: I don't know.

25 BY MR. LEO:



1           **Q     And they're -- they're calling Professor**  
2 **Tracy a one man argument against tenure --**

3           A     FAU --

4           **Q     -- according to this note?**

5           MR. CURLEY:  Objection to form.

6           THE WITNESS:  FAU stands for tenure, so I  
7           don't know why that would be an issue.

8 BY MR. LEO:

9           **Q     Right.  Why would your employees, your**  
10 **administrators be making arguments against tenure in any**  
11 **-- in any kind of --**

12           MR. CURLEY:  Objection to form.

13 BY MR. LEO:

14           **Q     -- situation?**

15           A     You have to ask them --

16           **Q     Right?**

17           A     I don't know.

18           **Q     Would you agree with me that making some kind**  
19 **of a argument that one faculty member is an argument**  
20 **against tenure is a problem?**

21           MR. CURLEY:  Objection to form.

22           THE WITNESS:  If -- if this is what was said,  
23           it's not what I would say.

24 BY MR. LEO:

25           **Q     Is today the first time you've seen these**



1 **notes?**

2 A Pardon?

3 **Q Is today the first time you've seen these**  
4 **notes?**

5 A Yes.

6 **Q Do you intend to talk to Dean Coltman or Vice**  
7 **Provost Alperin -- I'm sorry, former Vice Provost**  
8 **Alperin about these notes?**

9 A I doubt it.

10 **Q Why not?**

11 A Because Dean Coltman will be the provost at  
12 James Madison, and Diane Alperin's retiring.

13 **Q But Diane Alperin is still a senior adviser at**  
14 **FAU, isn't she?**

15 A She is.

16 **Q So if Diane Alperin was saying this about**  
17 **Professor Tracy in 2013, isn't that a problem?**

18 A And I don't know that Diane said it, so  
19 I'd have to ask Diane that question --

20 **Q Okay.**

21 A -- and how she meant it.

22 **Q Do you think that that's something worth**  
23 **investigating?**

24 MR. CURLEY: Objection to form.

25 THE WITNESS: If I have time. I have plenty



1 to do, and sitting here and asking a person what  
2 they said three years ago in a heat of a argument  
3 or heat of a discussion, it's probably not going to  
4 change anything.

5 BY MR. LEO:

6 **Q If these notes are about Professor Tracy -- if**  
7 **these notes were created by Dean Coltman during meetings**  
8 **with Diane Alperin, who ultimately terminated Professor**  
9 **Tracy, you don't think they're worth investigating?**

10 MR. CURLEY: Objection to form?

11 THE WITNESS: I'll see. I'll think about it.

12 BY MR. LEO:

13 **Q Would you agree that if these notes say -- say**  
14 **what they mean, or mean what they say, both --**

15 **I'll go with both -- that this would be**  
16 **evidence of pretext in the termination?**

17 MR. CURLEY: Objection to form.

18 THE WITNESS: I have no idea. The way I read  
19 these notes is somebody writing down some scribbled  
20 notes very fast, probably got a meeting coming up,  
21 need to give somebody some guidance about what we  
22 need to do.

23 BY MR. LEO:

24 **Q Okay.**

25 **A I doubt, in any way, these reflect an opinion.**





1           **Q**     Go to the next page, top of the page. "JT not  
2 going to stop publishing, read his stuff." First  
3 Amendment, find winning metaphors." What does that mean  
4 to you?

5           **A**     I have no idea.

6           **Q**     What could Diane Alperin, Heather Coltman, and  
7 Larry Glick could -- what could they have possibly been  
8 talking about for these notes to be written like this?

9           MR. CURLEY: Objection to form.

10          THE WITNESS: I don't know.

11 BY MR. LEO:

12          **Q**     Do you think that these notes are worth  
13 exploring or investigating?

14          MR. CURLEY: Objection to form.

15          THE WITNESS: If they can remember what they  
16 wrote it about. I don't know. I don't know what  
17 they meant.

18 BY MR. LEO:

19          **Q**     I believe that was what --

20          **A**     I don't know what the meaning of metaphor is.

21          **Q**     I believe that was what Defendant Coltman's  
22 answer was, she didn't know either, couldn't recall.  
23 But would you agree that this looks like Diane Alperin,  
24 Heather Coltman, and Larry Glick, in 2013, are talking  
25 about the First Amendment and finding winning metaphors?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: Whatever they think that means,  
3 I have no idea what that means.

4 BY MR. LEO:

5 **Q What could it mean?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: It could mean many things.  
8 I mean, who knows what it means. Maybe it means  
9 somebody asked about First Amendment, and they're  
10 saying this is not any violation of the First  
11 Amendment, this is the First Amendment.

12 Maybe that's what that means, that's a winning  
13 metaphor. I don't know.

14 BY MR. LEO:

15 **Q What's a winning metaphor?**

16 A To be able to say, well, we're going to defend  
17 the First Amendment. Maybe that's what they're saying.  
18 It's a winning metaphor; I have no idea what they're  
19 saying.

20 **Q You agree they're talking about James Tracy,**  
21 **though, based on --**

22 A I don't know who they're talking about.

23 You handed me a piece of paper --

24 **Q And it says JT, not going to stop publishing--**

25 A That's JT. I have no idea --



1           **Q     James Tracy?**

2           MR. CURLEY:  Objection to form.

3           THE WITNESS:  One would assume so.  If Heather  
4           said this was her notes, that would be the case.

5  BY MR. LEO:

6           **Q     But you don't think that these notes warrant**  
7           **relooking at Professor Tracy's termination?**

8           MR. CURLEY:  Objection to form.

9           THE WITNESS:  This was in '13.

10  BY MR. LEO:

11          **Q     Yeah.**

12          MR. CURLEY:  January of '13.

13  BY MR. LEO:

14          **Q     So if the same individuals that you testified**  
15          **were responsible for terminating Professor Tracy in 2013**  
16          **are writing notes like this, that's not something that**  
17          **you think should be considered with respect to**  
18          **termination that happened just a few -- a few years**  
19          **later?**

20          MR. CURLEY:  I object to the form.

21          THE WITNESS:  Seeing that this was written in  
22          '13, this was one moment in time.

23  BY MR. LEO:

24          **Q     And it should be viewed in isolation from all**  
25          **the other moments in time?**



1 MR. CURLEY: Objection to form.

2 THE WITNESS: That would be my assumption.

3 BY MR. LEO:

4 Q Do you have a problem with Professor Tracy?

5 A No.

6 Q Do you have a problem with what he was saying  
7 on his blog?

8 MR. CURLEY: Objection to form.

9 THE WITNESS: I haven't read it.

10 BY MR. LEO:

11 Q Does the fact that Professor Tracy has  
12 questioned a mass casualty event involving the death of  
13 children, does that bother you?

14 MR. CURLEY: Objection to form.

15 THE WITNESS: He happens to believe one thing,  
16 I believe another.

17 BY MR. LEO:

18 Q What does --

19 A He has his right to it.

20 Q What does Professor Tracy believe?

21 A I think he believes that the massacre didn't  
22 happen, is what he says.

23 Q And why doesn't he believe that?

24 A I have no idea. I don't do --

25 Q Did you read his blog?



1           A       No, I haven't seen his blog, I told you that  
2 earlier.

3           Q       Why is it that nobody at FAU that we've  
4 deposed so far, all three defendants have been unable to  
5 tell us anything about the blog and can't remember ever  
6 reading a blog, which was the subject of discipline?

7           A       I have no idea.

8           MR. CURLEY: Objection to form.

9           THE WITNESS: Why would I go read -- I don't -  
10       - I just don't read blogs. I don't read anybody's  
11 blog.

12 BY MR. LEO:

13          Q       How would FAU, the administration, how would  
14 it determine whether the blog was a reportable activity  
15 if they don't read it?

16          MR. CURLEY: Objection to form.

17          THE WITNESS: I have no idea.

18 BY MR. LEO:

19          Q       You talked earlier about the supervisor and  
20 the dean, that this is all their job, their job is to  
21 determine the reportability of activities, right?

22          MR. CURLEY: Objection to form.

23 BY MR. LEO:

24          Q       You're nodding, is it a yes?

25          A       Yes.



1           **Q     How can a dean determine if an activity's**  
2 **reportable if they don't even look at the activity?**

3           A     I don't know if they haven't. You're telling  
4 me they haven't, I don't know if they have or not. I've  
5 never asked anybody about his blog.

6           **Q     Why?**

7           A     I don't care about his blog.

8           **Q     He's fired for not reporting his blog.**

9           MR. CURLEY: Objection to form.

10          THE WITNESS: I'm here as a president of the  
11 university for the first time talking about this, I  
12 don't go to people's blogs, I don't spend time  
13 doing that.

14 BY MR. LEO:

15          **Q     It is possible that you're here because you**  
16 **didn't read the blog?**

17          A     I was here because I was asked to be here.

18          **Q     If you had read the blog, would you have been**  
19 **able to determine whether or not it's reportable or not?**

20          MR. CURLEY: Objection to form.

21          THE WITNESS: I don't know. I have no idea.  
22 I haven't seen the blog, I have no idea what it is.

23 BY MR. LEO:

24          **Q     But you don't care?**

25          MR. CURLEY: Objection to form.



1 THE WITNESS: I don't know enough to care.

2 BY MR. LEO:

3 Q At what point should you know enough as a  
4 president of the university?

5 A You think I should go read blogs?

6 Q If you're going to fire somebody for that  
7 blog, I would think that that's probably --

8 A I count on other people --

9 Q -- a good idea.

10 A -- to do those.

11 Q I'm sorry?

12 A I count on other people to do their work.

13 Q And if they don't do that, then what happens?

14 A Well, I certainly don't makes those decisions.

15 Q You're responsible for their decisions,  
16 though, aren't you?

17 A Ultimately.

18 MR. CURLEY: Objection to form.

19 BY MR. LEO:

20 Q Ultimately. So shouldn't you care about what  
21 -- what --

22 MR. CURLEY: Objection to form.

23 THE COURT REPORTER: Hold on. I can only take  
24 one person at a time.

25 MR. CURLEY: Objection to form. I trust their



1 judgment, answer.

2 BY MR. LEO:

3 **Q You acknowledge that the decisions that are**  
4 **made by those you delegate your powers to ultimately**  
5 **fall on you?**

6 MR. CURLEY: Objection to form.

7 THE WITNESS: Those decisions are actually  
8 left to them. I don't go around second guessing my  
9 employees.

10 BY MR. LEO:

11 **Q Right. The question is whether they fall on**  
12 **you, whether you're responsible for those decisions?**

13 MR. CURLEY: Objection to form.

14 THE WITNESS: I have to respond to what the  
15 university has done in that situation, but I put  
16 people in place that I feel like will make the  
17 right decisions.

18 BY MR. LEO:

19 **Q Right. Which is why you're responsible for**  
20 **their decisions, right?**

21 MR. CURLEY: Objection to form.

22 THE WITNESS: I'm responsible for the  
23 university. People make a lot of decisions in the  
24 university that I'm not responsible for.

25 BY MR. LEO:





1           **Q     Right. Where does the buck stop, though?**

2           MR. CURLEY: Objection to form.

3           THE WITNESS: The top of the boat.

4 BY MR. LEO:

5           **Q     That's you --**

6           THE COURT REPORTER: I'm sorry?

7           THE WITNESS: The top is where all decisions  
8 end up resolving --

9 BY MR. LEO:

10          **Q     And --**

11          A     -- but there's no way a person at the top  
12 makes any of these kinds of decisions.

13          **Q     Are you at the top top, or is there anybody**  
14 **above you?**

15          MR. CURLEY: Objection to form.

16          THE WITNESS: There's a board of trustees.

17 BY MR. LEO:

18          **Q     And do you report to the board of trustees on**  
19 **the decisions that are made on your behalf and their**  
20 **behalf?**

21          A     Some.

22          **Q     Do you report to Anthony Barbar?**

23          A     Yes.

24          **Q     And did you report to Anthony Barbar**  
25 **concerning Professor Tracy?**



1           A       In what context?

2           **Q       Did you notify Anthony Barbar that you were**  
3 **dealing with Professor Tracy personally?**

4           A       I have never dealt with him personally.

5           **Q       I'm sorry?**

6           A       I've never dealt with James personally.

7           **Q       I'm going to show you what has been marked as**  
8 **PK24. For the record, this is also PRR 185 through 186.**

9                   MR. CURLEY: Didn't we -- we mark these  
10 already once?

11                   THE WITNESS: We've already done this one.  
12 (Whereupon, the referred-to documents were marked  
13 as Plaintiff's Exhibit PK24 for Identification.)

14 BY MR. LEO:

15           **Q       You'll see this is actually another e-mail.**  
16 **And -- you're referring to PK18?**

17                   MR. CURLEY: Yeah, Stern.

18 BY MR. LEO:

19           **Q       Remember, PK18, you sent your message to**  
20 **Anthony Barbar, right?**

21           A       Yes, my -- my boss.

22           **Q       And he responded, "thank you"?**

23           A       Yes, sir.

24           **Q       And does this refresh your recollection as to**  
25 **whether you reported dealing with Professor Tracy to**



1 **your boss?**

2 A This is my message to him what I was doing  
3 with Mr. -- potentially with Mr. Stern.

4 Q You would agree that you were indicating that  
5 you intended to deal with this personally, right?

6 A Right.

7 Q And Anthony Barbar thanked you?

8 A Yes.

9 Q Did Anthony Barbar follow up with you on this?

10 A Not to my knowledge.

11 Q Why did you notify Anthony Barbar of your  
12 intentions?

13 A Because if I'm going to deal with a parent  
14 that is not a parent of FAU, I felt like he should be  
15 aware.

16 Q Earlier you testified that you never actually  
17 spoke to Paul Stern?

18 A That's correct.

19 Q Do you know if he's actually a real person?

20 A No.

21 Q So you don't know if he's making this up?

22 A I don't know.

23 Q What he says in his December 11th, e-mail?

24 A No, I don't know.

25 Q You said there was no investigation into



1 **Sandy Hook at all?**

2 A No.

3 **Q That you're aware of?**

4 A Not to my knowledge.

5 **Q Would you agree that if Sandy Hook was staged,**  
6 **that that would be fraud?**

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I don't know anything about it.

9 MR. CURLEY: Asked and answered.

10 BY MR. LEO:

11 **Q I'm asking if Sandy Hook was staged --**

12 A I would have no idea about Sandy Hook and what  
13 happened.

14 **Q Even if you didn't know, though, you could at**  
15 **least appreciate and understand that if the event never**  
16 **happened, right, and it was staged, that that would be**  
17 **fraud, would you agree?**

18 MR. CURLEY: Objection to form, asked and  
19 answered.

20 THE WITNESS: I have no idea what would happen  
21 if we found that Sandy Hook was different than --

22 BY MR. LEO:

23 **Q So you -- you have no idea if there was a**  
24 **concerted effort by anybody to defraud FAU into getting**  
25 **Professor Tracy terminated either, do you?**



1 MR. CURLEY: Objection to form.

2 THE WITNESS: I had nothing to do with anybody

3 -- talked to anybody who was talking to me about

4 James Tracy.

5 BY MR. LEO:

6 Q You say you have nothing to do with it, I see

7 an e-mail that indicates you do -- you did have

8 something to do with --

9 A No, I never contacted him.

10 MR. CURLEY: Let him finish.

11 BY MR. LEO:

12 Q Right. But you, at some point, intended to,

13 right?

14 A I never did, and my contact was to express

15 remorse for a child lost.

16 Q Would you agree that communications with

17 Paul Stern, or even indicating to your employees and to

18 your boss that you intended to communicate with

19 Paul Stern would be involving yourself in this matter?

20 A No, only as a concern for the child.

21 Q What child?

22 A The child that was lost.

23 Q Which one?

24 A Whichever one he's describing in here.

25 Q You don't know, as you sit here today, whether



1 **a child was actually lost, do you?**

2 A I don't know the child that was lost, no.

3 **Q Right. And there's no name of a child in this**  
4 **letter?**

5 A No.

6 **Q In fact, it doesn't even indicate --**

7 A That's why I --

8 **Q -- it doesn't even indicate who the parent**  
9 **was?**

10 A That's right.

11 **Q Do you think that's a -- a little strange?**

12 MR. CURLEY: Objection to form.

13 THE WITNESS: I have no way to comment on  
14 that.

15 BY MR. LEO:

16 **Q Did you ever read Professor Tracy's response**  
17 **to the Pozners'?**

18 A I don't recall.

19 **Q I'm going to show you what has been marked as**  
20 **PK25. And, for the record, this is PRR 2539, 2540,**  
21 **2541. Have you read this before?**

22 A I don't remember it, maybe I did.

23 (Whereupon, the referred-to documents were marked as  
24 Plaintiff's Exhibit PK25 for Identification.)

25 BY MR. CURLEY:



1           **Q     Who's Dorothy Russel?**

2           A     She's a CFO, or was. She's not there anymore.

3           **Q     What happened to her?**

4           A     She retired.

5           **Q     Why was she writing you?**

6           A     She didn't write it.

7           **Q     She sent you an e-mail dated December 14th,**  
8 **2539, to you and --**

9           A     Oh.

10          **Q     -- several other officials, right?**

11          A     Maybe she found the article, I don't know.

12          **Q     She --**

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

15       BY MR. LEO:

16           **Q     We left off we were talking about PK25, this**  
17 **message from Dorothy Russel sent on December 14th. Did**  
18 **you read this when you received it?**

19          A     I don't remember it, but I may have. I don't  
20       remember it now.

21          **Q     What -- what was she asking?**

22          A     I don't know.

23          **Q     She wrote perscient, question mark.**

24                THE COURT REPORTER: What is it?

25                MR. LEO: Perscient, P-E-R-S-C-I-E-N-T,



1 question mark.

2 THE WITNESS: I'm not sure what that means.

3 BY MR. LEO:

4 Q Did you respond to her?

5 A I don't think so.

6 Q You didn't ask her what she meant?

7 A I wouldn't even think of it. I'm very busy, I  
8 get e-mails all day long.

9 Q So you responded to Paul Stern's message, but  
10 not Dorothy Russels?

11 A What was the response?

12 Q You responded to --

13 A Is that a misspelling? I mean, I'm not going  
14 to send that message.

15 Q Well, I mean, she's asking, it looks like you,  
16 a question --

17 MR. CURLEY: Objection to form.

18 THE WITNESS: I don't know what she meant.

19 BY MR. LEO:

20 Q And you didn't respond to her?

21 A Not to my knowledge.

22 Q But you believe you read what James Tracy  
23 wrote that's included in this message from her?

24 A I don't remember if I read it or not.

25 Q Do you know if anybody in your administration





1 actually considered anything that Professor Tracy was  
2 saying in response to the allegations that were made by  
3 the Pozners'?

4 A Yeah, I -- I wasn't keeping up with all of  
5 that.

6 Q Is it fair to say that the university jumped  
7 on the -- the bandwagon, and agreed with what people  
8 were saying about Professor Tracy at the time?

9 MR. CURLEY: Objection to form.

10 THE WITNESS: I have no idea what the, so-  
11 called, university thought, people have a lot of  
12 different opinions.

13 BY MR. LEO:

14 Q Well, you did see what the statement was that  
15 your administration provided to the world, right?

16 MR. CURLEY: What?

17 BY MR. LEO:

18 Q The statement that was provided to the  
19 website, to the board of trustees. Can we go back to  
20 that? If I could just find my copy. On December 16th,  
21 the university issued a statement, "In light of numerous  
22 requests from media outlets and the public", right, and  
23 then the notice -- or the statement was, James Tracy's  
24 being terminated.

25 MR. CURLEY: Is this an exhibit?



1 MR. LEO: Yeah. Exhibit PK6, also PRR 2544.

2 MR. CURLEY: Let's dig it out.

3 MR. LEO: It's this one right here

4 (indicating).

5 MR. CURLEY: Yeah. Okay.

6 THE WITNESS: Okay. I don't know where it is,  
7 but...

8 MR. CURLEY: It's in here; so it should be,  
9 anyway.

10 MR. LEO: Here you go.

11 MR. CURLEY: Thank you.

12 BY MR. LEO:

13 Q You see Page 3, statement regarding James  
14 Tracy, dated December 16th, 2015, from FAU, PRR 2544?

15 A Okay.

16 Q This was the response from FAU to the media  
17 outlets and the public, right?

18 MR. CURLEY: Objection to form.

19 BY MR. LEO:

20 Q According to the statement?

21 A That's what it says.

22 Q And the statement was that the university was  
23 firing Professor Tracy, right?

24 MR. CURLEY: Objection to form.

25 THE WITNESS: That's his termination, yes.



1 BY MR. LEO:

2 Q Termination is firing, right?

3 A Yes.

4 Q It means the same thing?

5 A (The witness nods head.)

6 Q You would agree this is the day after  
7 Professor Tracy submitted his outside employment forms  
8 under duress?

9 MR. CURLEY: Objection to form.

10 THE WITNESS: Is it the 15th?

11 BY MR. LEO:

12 Q Right. The statement that's issued by FAU  
13 that Professor Tracy's being terminated was the day  
14 after Professor Tracy submitted his report of outside  
15 employment forms to Dean Coltman, isn't that right?

16 A I don't have that date in front of me, but if  
17 it's the 15th, that would be correct.

18 Q I'm going to show you what's been marked as  
19 PK26, and this is the exhibit to the, I believe it's the  
20 second amended complaint, as well.

21 MR. CURLEY: Okay.

22 MR. LEO: If you want to read that into the  
23 record, this document 9324.

24 MR. CURLEY: Yeah, 9324.

25 (Whereupon, the referred-to documents were marked



1 as Plaintiff's Exhibit PK26 for Identification.)

2 BY MR. LEO:

3 **Q Have you had a chance to look at PK26?**

4 MR. CURLEY: Do you know what exhibit it is to  
5 the complaint? I know it's in here somewhere.

6 MR. LEO: I can give you the Bates stamp on it.

7 MR. CURLEY: No, it's all right.

8 MR. LEO: I guess, for the record, this is  
9 also FAU 156, and looks like 157.

10 BY MR. LEO:

11 **Q Does this refresh your recollection as to when**  
12 **Professor Tracy submitted the outside activities forms?**

13 A I don't remember the exact date, but it  
14 appears from what he sent that that's the 15th.

15 **Q You'd agree that this exhibit shows that**  
16 **Professor Tracy sent the forms to Dean Coltman, and his**  
17 **chair, David Williams; and, in turn, Dean Coltman**  
18 **forwarded it to Larry Glick, Diane Alperin, and David**  
19 **Kian?**

20 A Yes.

21 **Q And you'd also agree that the following day**  
22 **Professor Tracy was terminated, right?**

23 A It appears to be.

24 **Q Was the decision made on December 15th?**

25 MR. CURLEY: Objection to form.



1 BY MR. LEO:

2 Q -- or another day?

3 MR. CURLEY: Objection to form.

4 THE WITNESS: I don't know.

5 BY MR. LEO:

6 Q Was the decision to terminate Professor Tracy  
7 reviewed after it was made by your office?

8 MR. CURLEY: Objection to form, asked and  
9 answered.

10 THE WITNESS: I don't know.

11 THE COURT REPORTER: I'm sorry?

12 THE WITNESS: I don't know.

13 BY MR. LEO:

14 Q At what point -- at what point did you get  
15 involved in the -- this whole controversy or matter?

16 I see -- I see e-mails as early as December  
17 11th, December 10th, in the production we've received.

18 Would -- would that be when --

19 MR. CURLEY: Objection to form.

20 THE WITNESS: Probably whenever those first  
21 e-mails were involved, I don't know what time they  
22 were.

23 BY MR. LEO:

24 Q Before Professor Tracy submitted his forms,  
25 did you ever speak with Diane Alperin about the



1 **discipline?**

2 A No.

3 **Q After Professor Tracy is terminated, did you**  
4 **ever speak with Diane Alperin about the discipline?**

5 A No.

6 **Q You never spoke to her at all about**  
7 **Professor Tracy?**

8 A Not that I recall.

9 **Q How about the provost -- Provost Perry?**

10 A He may have told me -- I'm not sure if he's  
11 the one that told me whether dismissal had happened or  
12 not, somebody told me.

13 **Q After Professor Tracy's fired, did you receive**  
14 **any communications from people supporting**  
15 **Professor Tracy asking for him not to be fired?**

16 A After the release went out?

17 **Q After the December 16th notice of termination.**

18 A I don't remember.

19 **Q Let me show you what's been marked as**  
20 **PK27. This is also PRR 133, for the record.**

21 (Whereupon, the referred-to documents were marked as  
22 Plaintiff's Exhibit PK27 for Identification.)

23 BY MR. LEO:

24 **Q Are you familiar with Loreli Hayes?**

25 THE COURT REPORTER: With who?



1 MR. LEO: Loreli, L-O-R-E-L-I, last name  
2 Hayes, H-A-Y-E-S.

3 BY MR. LEO:

4 Q Do you recall this message?

5 A No.

6 Q Did you see this before?

7 A If I did, I don't recall it. It was to the  
8 president.

9 Q Did Stacy Volnick bring this to your  
10 attention?

11 A As I said, I don't recall it. I don't recall  
12 seeing it.

13 Q How about Andrew LaPlant, did he ever talk to  
14 you about this message?

15 A No.

16 Q It says, "Dear Board of Trustees, shame on you  
17 for even --

18 THE COURT REPORTER: Slow.

19 BY MR. LEO:

20 Q "Dear Board of Trustees, shame on you for even  
21 thinking about firing James Tracy for his research.  
22 Whether you agree with his results or not, he has a  
23 right to publish and speak about them.

24 Although I have not read his work, I have  
25 researched others with the same opinion and believe



1 them. As an elementary teacher at the time of the  
2 alleged shooting it was very hard to hear the truth, I  
3 also worked in TV broadcasting for 17 years and realized  
4 that things were not right at the scene. You need to  
5 take time to read the research prevented -- presented by  
6 the alternative media." In bold it says, we have seen  
7 other institutions suppress the truth before." And then  
8 she talks about Galileo -- another reference to Galileo  
9 from an outsider of FAU concerning Professor Tracy's  
10 discipline and termination, right? Are you saying that  
11 this was never addressed, this communication by your  
12 office?

13 A I doubt it.

14 Q Would it be safe to say it was ignored?

15 A I don't know if it was ignored, I just don't  
16 recall seeing it, so I don't know. We get -- we get  
17 lots --

18 Q So Stacy -- Stacy Volnick never brought this  
19 to your attention --

20 A We get lots and lots of messages.

21 Q Right. And some of them we've seen or brought  
22 to your attention in --

23 A Some -- some were.

24 Q -- when you were responding to them.

25 A I don't recall this one.





1           Q     Would you agree that if the only response to  
2     those who have e-mailed about Professor Tracy was a  
3     response to somebody who is calling him -- calling for  
4     his termination --

5           A     Who's that?

6           Q     -- like Paul Stern, or condemning  
7     Professor Tracy, what kind of message does that send  
8     to --

9           A     Does what send?

10          Q     When you only respond to someone who condemns  
11     Professor Tracy.

12          A     I didn't respond to him, I told you.

13          Q     Well, when you only respond internally --  
14     should I caveat it? You responded to the message, not  
15     to him, you responded to --

16          A     Concern about the child, yes.

17          Q     Right. You responded to someone in your  
18     office, right, and you also included the chairman of the  
19     board of trustees?

20          A     That's right.

21          Q     As well as Peter Hull, David Kian; why this  
22     one out of all the messages really --

23          A     I think I answered that.

24                 MR. CURLEY: Many times.

25                 BY MR. LEO:



1           **Q     Well, I heard you say that when it involves**  
2 **the loss of a child, you take it personal, right?**

3           MR. CURLEY:  Objection to form.

4           THE WITNESS:  I said that if it involves a  
5     child, I try to respond personally.

6 BY MR. LEO:

7           **Q     All right.  Would you agree that all these**  
8 **messages involve the loss of a child?**

9           A     I -- I don't know.

10          **Q     Or the alleged loss of children?**

11          A     I mean, I don't know -- yeah, I just don't  
12 know anybody that says they knew the parents.

13          **Q     I'm sorry, you're saying that -- this is --**  
14 **Paul Stern is the only person who contacted FAU --**

15          A     I have no idea.

16          **Q     -- indicating that they knew the parents?**

17          A     Lots of e-mails come --

18          THE COURT REPORTER:  I'm sorry.

19          MR. CURLEY:  Please --

20          MR. LEO:  Right.

21          MR. CURLEY:  You might know where he's going,  
22     but just let him finish.

23 BY MR. LEO:

24          **Q     Other people who claim to have known parents**  
25 **of purported victims of Sandy Hook communicated with**



1 **FAU, right, it wasn't just Paul Stern?**

2 A I'm assuming.

3 Q We talked about another person, his name was  
4 Ryan -- Ryan Grainy, right, that Exhibit PK22, and  
5 Heather Coltman made contact with Ryan Grainy, according  
6 to Diane Alperin.

7 MR. CURLEY: There's no question, he's making  
8 a statement.

9 BY MR. LEO:

10 Q Right?

11 A I don't know.

12 Q You looked at PK22, right?

13 A Yes, I remember that.

14 Q You'd agree that this is an e-mail showing  
15 your administration making contact with people who  
16 claimed to know or be connected with victims of Sandy  
17 Hook, right?

18 MR. CURLEY: Objection to form.

19 THE WITNESS: If she did --

20 MR. LEO: Okay.

21 THE WITNESS: I don't know if she made the  
22 contact or not.

23 BY MR. LEO:

24 Q All right. So we have -- we have this one,  
25 this is with Ryan Grainy, we have another one involving



1 Paul Stern, and there's another one involving a person  
2 named Misty Fitch, that we're not going to mark as an  
3 exhibit or talk about, but I'm just going to ask you, do  
4 you know somebody named Misty Fitch?

5 A No.

6 Q Have you ever received a message from Misty  
7 Fitch?

8 A I have no idea.

9 Q Did you know that Heather Coltman was in  
10 contact with Misty Fitch?

11 MR. CURLEY: Objection to form.

12 BY MR. LEO:

13 Q Or that --

14 THE COURT REPORTER: Slow down. Slow down,  
15 please.

16 MR. CURLEY: You have to pause in between your  
17 questions, it's -- he can't answer and I can't  
18 object. So just take a breath.

19 BY MR. LEO:

20 Q Do you know anybody named Misty Fitch?

21 A Not that I know.

22 Q Did you know that Dean Coltman was  
23 communicating with somebody named Misty Fitch about  
24 Professor Tracy?

25 A No.



1           **Q**     Did you know that Misty Fitch was not  
2     responsive to Dean Coltman?

3           A     No.

4           **Q**     And Dean Coltman continued to follow up with  
5     Misty Fitch to try to get information about allegations  
6     that had been made about Professor Tracy?

7                     MR. CURLEY:  Objection to form.

8     BY MR. LEO:

9           **Q**     Did you know about that?

10          A     No.

11          **Q**     Would you agree that if there was an  
12     investigation going on concerning a faculty member at  
13     your university, that this would be something you should  
14     be concerned with?

15                     MR. CURLEY:  Objection to form.

16                     THE WITNESS:  I have no idea why the person  
17     didn't respond.

18     BY MR. LEO:

19          **Q**     I'm asking about whether an investigation into  
20     alleged misconduct is something that you would be aware  
21     of.

22          A     I have no idea what Heather said to a person,  
23     I don't know anything --

24          **Q**     That's --

25          A     -- about --



1           **Q**     -- not what I'm asking you. I'm asking you if  
2     **whether there was an investigation into faculty**  
3     **misconduct, if that's something that you are aware of or**  
4     **supposed to be aware of?**

5           MR. CURLEY: Objection to form, and your  
6     question is prefaced on that.

7           MR. LEO: I'm sorry?

8           THE WITNESS: What -- what are you asking?

9     BY MR. LEO:

10          **Q**     I'm asking if -- if there's an investigation -  
11     **- I'm asking a general question right now. If there's**  
12     **an investigation into a faculty misconduct, is that**  
13     **something your office would be made aware of --aware of?**

14          MR. CURLEY: Objection to form.

15          THE WITNESS: Not typically.

16     BY MR. LEO:

17          **Q**     Is that not part of the duties, perhaps, that  
18     **have been delegated?**

19          A     Yes, delegated duties.

20          **Q**     Who's in charge of investigating faculty  
21     **misconduct?**

22          A     Depends on the department and college.

23          **Q**     Would it be the provost?

24          A     Eventually.

25          **Q**     Who else might it be?



1           A       The provost can delegate it, typically I think  
2 he delegated it to Diane.

3           **Q       Alperin?**

4           A       Because it takes so much time to dig through  
5 it.

6           **Q       You're referring to Alperin --**

7           A       -- most of the time.

8           **Q       -- when you say Diane?**

9           MR. CURLEY: Again you're interrupting and she  
10 can't write it.

11          MR. LEO: All right.

12 BY MR. LEO:

13          **Q       Did Diane Alperin begin an investigation into**  
14 **Professor Tracy, or allegations that Professor Tracy had**  
15 **committed harassment?**

16          MR. CURLEY: Objection to form.

17          THE WITNESS: I don't know.

18 BY MR. LEO:

19          **Q       You don't know. When Professor Tracy was the**  
20 **subject of hundreds of complaints and even letters of**  
21 **support to your office, did you attempt to get involved**  
22 **in that controversy?**

23          A       No.

24          MR. CURLEY: Objection to form, asked and  
25 answered.



1 BY MR. LEO:

2 Q Despite the fact that e-mails indicated that  
3 you were involved in some way, that's your testimony?

4 MR. CURLEY: Objection to form, asked and  
5 answered.

6 THE WITNESS: You keep referring to a message  
7 that was never sent.

8 BY MR. LEO:

9 Q Right. I'm just -- yeah, I'm holding up  
10 PK18 for you to show you an e-mail that you sent to  
11 somebody who made an allegation against the man sitting  
12 in this room.

13 MR. CURLEY: You're mischaracterizing his  
14 testimony and an e-mail.

15 MR. LEO: Is that an objection?

16 MR. CURLEY: Yes, it is.

17 MR. LEO: Thank you.

18 MR. CURLEY: Objection to form.

19 MR. LEO: For the record -- the record is  
20 noted.

21 BY MR. LEO:

22 Q My -- I'm pointing to this exhibit now, again,  
23 PK18, and I'm referring to your testimony that you did  
24 not get involved. Would you agree that PK18 shows your  
25 involvement in the controversy surrounding Professor





1 **Tracy at that time?**

2 MR. CURLEY: Objection to form.

3 THE WITNESS: The only thing I suggested I  
4 would do would be write to a family, which I did  
5 not do.

6 BY MR. LEO:

7 Q You also -- also stated, word-for-word, I  
8 intend to deal with this personally.

9 A Which means write.

10 Q I'm sorry?

11 A Which means write.

12 Q Did you say something about writing?

13 A No.

14 Q No. Your words were, I intend to deal with  
15 this personally.

16 A If I write is that not personal?

17 Q I'm not asking about --

18 A What are you asking?

19 Q I'm asking what you wrote in your e-mail.

20 MR. CURLEY: Don't --

21 THE WITNESS: He has no idea what he's asking.

22 BY MR. LEO:

23 Q You wrote, I intend to deal with this  
24 personally, that's all you wrote there, right?

25 A Right.



1           **Q     Okay. You didn't say I'm going to write**  
2 **somebody, did you?**

3           **A     No.**

4           **Q     No. In PK18 you didn't indicate what you were**  
5 **going to do specifically, right --**

6           MR. CURLEY: Objection to the form.

7 BY MR. LEO:

8           **Q     -- other than deal with this --**

9           THE COURT REPORTER: Hold on. Hold on.

10          THE WITNESS: Which never happened, it's  
11          unsent --

12          MR. CURLEY: You're waisting your time.

13          MR. LEO: How I use my time, Joe, and I've  
14          heard you say this repeatedly, it up to me, it's my  
15          deposition. So I'm asking you again not to make  
16          speaking objections or to comment about how I'm  
17          conducting my deposition for the record, okay.

18 BY MR. LEO:

19          **Q     We've been talking about PK18, my question was**  
20 **only about what you had written in the e-mail.**

21                 Okay. You can explain that, and you can  
22 **explain it to the jury later, that's fine.**

23                 Let's talk about PK27. Somebody writes your  
24 **office and says, James Tracy should not be fired for his**  
25 **research. Your testimony was that you didn't respond to**



1     **this -- this message, PK27, would you agree with me?**

2           A     I don't know if I ever saw it.

3           Q     **You don't know if you ever saw it. Would you**  
4     **agree that if there's no response from your office in**  
5     **the production that you and your counsel have provided**  
6     **to us, the there was no response --**

7           MR. CURLEY:  Objection.

8     BY MR. LEO:

9           Q     **-- from your office --**

10          MR. CURLEY:  Objection to form.

11     BY MR. LEO:

12          Q     **-- to this message?**

13          THE WITNESS:  It could be have been responded  
14     to by somebody else.

15          MR. LEO:  Okay.

16          THE WITNESS:  I have no idea.

17     BY MR. LEO:

18          Q     **It could have been responded to, but there's**  
19     **no evidence, as you sit here today, that you can point**  
20     **to that there was an actual response, right?**

21          MR. CURLEY:  Objection to form.

22          THE WITNESS:  I'm not sure I ever knew about  
23     it.

24     BY MR. LEO:

25          Q     **Okay. How do you -- how do you make sure that**



1 **the duties that you delegate are actually done or --**

2 A I evaluate --

3 **Q -- followed?**

4 A -- all of my vice presidents for the duties  
5 they're responsible for.

6 **Q How do you evaluate -- evaluate them?**

7 A They write their goals for the year, I  
8 evaluate them based on their performance.

9 **Q Okay. When did you evaluate Diane**  
10 **Alperin's duties?**

11 A The provost does.

12 **Q When did you evaluate the provost's duties?**

13 A I write provost -- provost every year in  
14 June.

15 **Q Okay. So when would you have evaluated the**  
16 **provost, and vice provost at the time, Diane**  
17 **Alperin's, duties with respect to how Professor**  
18 **Tracy was disciplined?**

19 A I don't evaluate them based on one individual,  
20 I evaluate their whole performance for the university.

21 **Q Just so we're clear, you never evaluated**  
22 **Provost Perry or Vice Provost Alperin in their role in**  
23 **disciplining and terminating Professor Tracy?**

24 MR. CURLEY: Objection to form.

25 THE WITNESS: I evaluate them for their



1 performance and duties, and I do not evaluate  
2 Alperin.

3 BY MR. LEO:

4 **Q Okay. Where would those evaluations be?**

5 MR. CURLEY: Objection to form.

6 THE WITNESS: They're in records.

7 BY MR. LEO:

8 **Q In what records?**

9 A My records that go to the individual,  
10 personnel records.

11 **Q What specific records are you referring to?**

12 A The evaluation of the personnel.

13 **Q Is this a particular document that you're**  
14 **talking about?**

15 A Yes.

16 **Q What's the document called?**

17 A I have no idea what it's exactly called.

18 **Q And where would these documents be?**

19 A They're in our office.

20 **Q The president's office?**

21 A Yes.

22 **Q Are they in a particular filing cabinet or --**

23 A Yeah.

24 **Q Is there a specific location you can identify?**

25 A Evaluation of the provost.



1           **Q     Evaluation of the provost. And you said you**  
2 **don't -- you don't evaluate Vice Provost --**

3           A     No.

4           **Q     -- Alperin?**

5           A     No.

6           **Q     Who evaluates her?**

7           A     I assume the provost.

8           **Q     You said you assume, you don't know if he**  
9 **does?**

10          A     Well, she's an associate VP, and usually you  
11 go down by title.

12          **Q     And you say that you don't evaluate a specific**  
13 **disciplinary action?**

14          A     No.

15          **Q     Why not?**

16          A     Because it's up to the individual.

17          **Q     What individual?**

18          A     The individual that works for me, that works  
19 for somebody else, that works for somebody else. It's -  
20 - it's not like it's in one office.

21          **Q     So who falls on the sword if the discipline is**  
22 **not done properly?**

23               MR. CURLEY: Objection to form.

24               THE WITNESS: There's a grievance process.

25               BY MR. LEO:



1           **Q     I'm sorry?**

2           A     There's a grievance process.

3           **Q     So you're saying that if a discipline is not**  
4 **done properly, the only recourse is a grievance process?**

5           MR. CURLEY: Object to form.

6           THE WITNESS: Makes it apparent that there's a  
7 conflict between the person being evaluated and the  
8 evaluator, so there's a process put in place for a  
9 grievance.

10 BY MR. LEO:

11           **Q     So absent a grievance, there is no evaluation,**  
12 **after the fact, when a faculty member's disciplined?**

13           A     If there is, it would be up to the provost to  
14 do that.

15           **Q     How about after a lawsuit's filed?**

16           A     About what?

17           **Q     For example, alleging that discipline was**  
18 **unlawful?**

19           A     Well, then the whole process would go through  
20 whatever legal issues we're dealing with, and then we  
21 would evaluate the individuals that were involved as  
22 part of the process.

23           **Q     When would you evaluate that?**

24           A     Once there's been no determination as to the  
25 grievance being filed to being -- a lawsuit being filed.



1           **Q     So you're saying you would wait until there's**  
2 **final judgment?**

3           A     If there's a disagreement, the process is in  
4 place for filing a grievance.

5           **Q     Right. But we're not talking about grievance**  
6 **anymore, we're talking about after a lawsuit has been**  
7 **filed.**

8           A     Well, that's the first step. If you disagree  
9 with an evaluation, you can file a grievance.

10          **Q     But if a employee is accusing the university**  
11 **of violating their First Amendment rights, for example,**  
12 **and they skip the grievance process and go right into a**  
13 **lawsuit, then what happens?**

14          A     It turns over to our legal office.

15               MR. CURLEY: Objection to form.

16 BY MR. LEO:

17          **Q     Okay. But is there an evaluation of the**  
18 **discipline that is at issue in that lawsuit, outside of**  
19 **the -- the legal department of FAU?**

20          A     To see if the evaluations were done properly?

21          **Q     To see if the discipline was done properly.**

22          A     That's up to the individual that's in charge  
23 of that group of people, so that would be up to the  
24 provost in this case.

25          **Q     Okay. So the person who carries out the**





1 **discipline evaluates themselves?**

2 A No.

3 MR. CURLEY: Objection to form.

4 BY MR. LEO:

5 **Q You said the provost is the one who would**  
6 **evaluate this.**

7 A The provost is the one that evaluates the  
8 person who reports to him, so if it was a department  
9 head doing the evaluation, then that evaluation would be  
10 done, or the person over that person typically is a  
11 dean, sometimes an associate dean, and then sometimes  
12 there's a school director, sometimes there's a dean  
13 above that person, so it's a whole chain of command.  
14 There are 3,000 employees at the university.

15 **Q Right. Now, what happens when the provost and**  
16 **vice provost determine that there is -- that their**  
17 **action was proper, so to speak, and it's in dispute,**  
18 **what happens then?**

19 A Well --

20 MR. CURLEY: Objection to the form.

21 THE WITNESS: -- if there's a grievance we --  
22 we've already discussed, if there's a grievance  
23 filed, then the grievance is heard and a grievance  
24 committee is put together.

25 BY MR. LEO:



1           **Q     And if there's a lawsuit filed?**

2           MR. CURLEY:  Objection to form.

3           THE WITNESS:  Then we deal with our legal  
4           office.

5           BY MR. LEO:

6           **Q     So is it safe to say that the president does**  
7           **not evaluate decisions made by the provost or the vice**  
8           **provost concerning discipline?**

9           A     I'll have discussions with him, but we have  
10          1,000 faculty.

11          **Q     Right.  Let's -- let's -- let's -- instead of**  
12          **speaking generally about things, let's talk about**  
13          **specifics.  If you were presented with evidence**  
14          **suggesting that a disciplinary action that was carried**  
15          **out by somebody who you delegated the power to -- to**  
16          **discipline and to terminate, for example, a faculty**  
17          **member, what would you do?**

18          MR. CURLEY:  Objection to form.

19          THE WITNESS:  If I was presented what now?

20          BY MR. LEO:

21          **Q     If you were presented with evidence that the**  
22          **discipline that was carried out was unlawful.**

23          MR. CURLEY:  Objection to form.

24          THE WITNESS:  Well, then I'd be involved, have  
25          our legal people look more into it.



1 BY MR. LEO:

2 Q You could have -- or you could reverse the  
3 decision, right?

4 MR. CURLEY: Objection to form.

5 THE WITNESS: I don't know. I don't know what  
6 the president for that is.

7 BY MR. CURLEY:

8 Q Aren't you the boss?

9 A Yeah, but I don't know -- if I haven't done  
10 the evaluation myself, the review myself, whether I am  
11 the ultimate authority or if it ends at a different  
12 place. I don't know what the faculty manual says about  
13 that.

14 Q Have you ever reversed a decision to  
15 discipline a faculty member? I'm asking about you, just  
16 you.

17 A Career-wise, you mean?

18 Q Yeah. Have you ever reversed a decision that  
19 was made to discipline a faculty member?

20 MR. CURLEY: Objection to form.

21 THE WITNESS: I don't think so.

22 BY MR. LEO:

23 Q Have you ever reinstated a faculty member who  
24 was terminated?

25 MR. CURLEY: Objection to form.



1 THE WITNESS: I don't think so.

2 BY MR. LEO:

3 Q If the evidence in this case showed that  
4 Professor Tracy was disciplined inconsistent with the  
5 policies and regulations of the university, would you  
6 reinstate him?

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I think it depends on what the  
9 legal action tells us, what we end up with.

10 BY MR. LEO:

11 Q So you're saying you would wait for a court  
12 determination --

13 A A --

14 THE COURT REPORTER: I'm sorry, I'm sorry.

15 BY MR. LEO:

16 Q She can't record us both, so --  
17 You had stated that it depends on the legal  
18 action?

19 A I think at this point --

20 MR. CURLEY: Objection to form.

21 THE WITNESS: -- we wait to see what the legal  
22 action is.

23 THE COURT REPORTER: I'm sorry, I have to hear  
24 the answer again.

25 THE WITNESS: I think at this point we wait



1           until we see what the legal action is.

2       BY MR. LEO:

3           **Q       So you're saying that if the evidence showed**  
4 **you that the discipline was unlawful -- I'm not speaking**  
5 **about this case, I'm -- I'm speaking generally in a case**  
6 **that resulted in litigation --**

7           A       If someone brought proof --

8                   MR. CURLEY: Just wait, he's not finished.

9                   He's just making a statement, there's no  
10          question there.

11       BY MR. LEO:

12           **Q       If the evidence showed you that a discipline**  
13 **had been carried out unlawfully while there's litigation**  
14 **pending, what would you do?**

15           A       I'd like to know --

16                   MR. CURLEY: Objection to form.

17                   THE WITNESS: If there was anything unlawful,  
18          I'd like to know.

19       BY MR. LEO:

20           **Q       Okay. And if you saw how it was unlawful,**  
21 **what would you do?**

22                   MR. CURLEY: Objection to form.

23                   THE WITNESS: I have to see the circumstances.

24       BY MR. LEO:

25           **Q       I'm saying it's confirmed, we're -- we're --**



1           A       Well, I know I'm bringing that into  
2 conjecture --

3           THE COURT REPORTER: I'm sorry. I'm sorry.

4           Can I take five minutes?

5           MR. CURLEY: Yes.

6           MR. LEO: Yes.

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

9 BY MR. LEO:

10           **Q       If the outside activities policy at FAU was**  
11 **being used in a way that it's not being used for other**  
12 **faculty members, and I'm talking about**  
13 **Professor Tracy at this time, would you agree that that**  
14 **would be unfair?**

15           MR. CURLEY: Objection to form.

16           THE WITNESS: I mean, we expect to have every  
17 faculty member treated equally --

18 BY MR. LEO:

19           **Q       Right.**

20           A       -- to the policies.

21           **Q       The policies at the -- at your university**  
22 **should be applied evenly to all faculty and staff,**  
23 **right?**

24           MR. CURLEY: Objection to form.

25           THE WITNESS: The policy, regardless of race,



1           age, everything, should be treated exactly the same  
2           for any faculty member.

3 BY MR. LEO:

4           **Q       And if faculty members were complaining that**  
5 **certain faculty members were being singled out under the**  
6 **policy, would you agree or disagree with those**  
7 **complaints?**

8           MR. CURLEY: Objection to form.

9           THE WITNESS: If what? Say it again.

10 BY MR. LEO:

11           **Q       If faculty members at FAU were complaining**  
12 **that certain faculty members, like Professor Tracy, for**  
13 **example, were being singled out using the outside**  
14 **activities policy, would you agree or disagree with**  
15 **those?**

16           MR. CURLEY: Objection to form.

17           THE WITNESS: I think it would also depend on  
18 the nature; I mean, if it's three friends objecting  
19 versus the faculty senate or a large group forms a  
20 concern, but it -- until that happened, I wouldn't  
21 -- I wouldn't -- unless there's some proof to go  
22 on, I wouldn't do anything different.

23 BY MR. LEO:

24           **Q       In September of 2015, at the senate faculty**  
25 **meeting there was a request for a moratorium on sending**



1 **threatening letters under the outside activities policy,**  
2 **isn't that right?**

3 MR. CURLEY: Objection to form.

4 THE WITNESS: Under what? I'm sorry.

5 BY MR. LEO:

6 **Q Under the outside activities policy.**

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I don't know.

9 BY MR. LEO:

10 **Q All right. You don't know if there was a**  
11 **moratorium that was requested by --**

12 A I don't --

13 **Q -- faculty members?**

14 A I don't recall if it was requested or not.

15 **Q And if, for example, audio recorded at that**  
16 **meeting shows that there were requests for a**  
17 **moratorium --**

18 A On what -- what was it on?

19 **Q In September of 2015.**

20 A But what was the request of moratorium on?

21 **Q A moratorium on sending threatening letters**  
22 **under the outside activities policy.**

23 A Oh, threatening letters?

24 MR. CURLEY: Objection to form.

25 THE WITNESS: That would certainly be reviewed.





1 BY MR. LEO:

2 Q By who?

3 A Probably by the provost.

4 Q Do you know if there was review of the  
5 threatening letters that were alleged at the senate  
6 faculty meeting in 2015?

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I don't know if that was a  
9 meeting -- I was at one meeting where there was an  
10 issue, people were trying to -- I'm not sure if it  
11 was about particularly letters being sent or  
12 expressions of concerns about the policy itself, I  
13 don't really recall what content it was.

14 BY MR. LEO:

15 Q I'm just going to play a few minutes of the  
16 audio that we have from that meeting. And it's dated  
17 September 4th, 2015. Would that help refresh your  
18 recollection?

19 A I don't know what days I go to the faculty  
20 center.

21 MR. LEO: Okay.

22 (Whereupon, Mr. Leo played the audio, and the  
23 reporter transcribed what was intelligible.)

24 All in favor, I. All folks -- motion hearing.

25 Okay. This brings us down to the business



1 items, and there were two. The first is that, as many  
2 of you may know, community engagement is a key part of  
3 the strategic plan for the university, and as faculty it  
4 moves us to involve ourselves as much as possible in  
5 figuring out what our community engagement at this  
6 university is going to look like in the future. For  
7 that reason, I -- I -- I am going to form an ad hoc  
8 committee to examine this question from the faculty, one  
9 representative from each college. You see the charge  
10 that's attached to the -- to the -- to the agenda here  
11 today, and the members of this committee will be invited  
12 to serve on the president's task force, which is being  
13 chaired by some guy called (unintelligible) -- so you  
14 will be -- anybody that's serving on this committee will  
15 be invited, also, to play a role in that other  
16 committee, but this will be a senate committee. The  
17 membership of this committee is open to senators, of  
18 course, but also to all faculty in the university, and  
19 we will be taking nominations, you can e-mail to  
20 arcadia, and we will be looking formatively at the -- at  
21 the next senate meeting.

22 Will you take -- take questions?

23 I will take questions about this.

24 In the sprit of providing the administration  
25 with advice about this initiative, I'd like to say one



1 thing, and that is, please call off your dogs until you  
2 get your act together when it comes to community  
3 engagement. And by calling off the dogs, I mean, the  
4 administration has been sending faculty members who are  
5 engaged in outside activity nasty letters, letters of  
6 discipline, or letters that threaten faculty members who  
7 are engaged in outside activity with discipline. And  
8 this should stop until the administration gets its act  
9 together, and by getting its act together, I mean, this  
10 initiative says that we're supposed to increase outside  
11 activity, increase faculty engagement with the  
12 community. We -- we support this, but the very actions  
13 that I've been describing are discouraging this  
14 activity. There's a lot of fear and uncertainty, and if  
15 you read the language in our collective bargaining  
16 agreement about outside activity, it says that like --  
17 like the collective bargaining agreements that other  
18 universities in the state, that we have to report all  
19 professional related activity, paid or unpaid, if it's  
20 not part of our assignments. No one knows what that  
21 means; the deans don't know what this means, faculty  
22 supervisors don't know what this means, and until  
23 there's some clarify about what outside activity has to  
24 be reported, I would recommend, as a good piece of  
25 advice, that any new faculty member who asks their



1 supervisor or their peer about what kind of outside  
2 activity they should engage in, I would say do nothing,  
3 because any outside activity exposes you to risk, and  
4 that risk includes discipline up to dismissal of the  
5 university. This is serious, and no one knows what  
6 outside activity the university is targeting. There has  
7 been a change in the language in the collective  
8 bargaining agreement. And I understand where this comes  
9 from, the president is right, he's trying to get more  
10 control of the university. The previous administration  
11 had to deal with some scandals and --

12 (Whereupon, Mr. Leo stopped the audio  
13 recording, and the proceedings resumed as  
14 follows:)

15 BY MR. LEO:

16 **Q Let's just cut it right there. It's a quite**  
17 **extensive audio, but I think that that's enough for the**  
18 **questions I have.**

19 **Were you present when this was going on?**

20 A I remember some of that, but I don't know if I  
21 listened to it or if I was actually --

22 MR. CURLEY: You asked if he was present or --

23 BY MR. LEO:

24 **Q Were you present when --**

25 A I'm not sure if I was there or not.



1           **Q     You're not sure. Is this the first time you**  
2 **are hearing this?**

3           A     No, I've heard some of it before. I can't  
4 remember who that is speaking. Who is the -- who is the  
5 individual speaking?

6           **Q     Professor Lenz has testified that that was**  
7 **him --**

8           A     Okay.

9           **Q     -- during this senate --**

10          A     -- and what is --

11          **Q     -- meeting.**

12          A     I don't remember what department he's in.

13          **Q     I believe Professor Lenz also indicated that**  
14 **you were present when he was speaking.**

15          A     Okay. And anybody else speak to that, or is  
16 that the only one?

17          **Q     There's several faculty members and also**  
18 **administrators who speak during this auto, it's about**  
19 **24, 25 minutes.**

20          A     About the same subject?

21          **Q     Right.**

22          A     I'll go back and listen more.

23          **Q     About community engagements in the outside**  
24 **activities policy.**

25                **Does this refresh your recollection as to**



1 **whether there were complaints from faculty members**  
2 **concerning the outside activities policy?**

3 MR. CURLEY: Objection to form.

4 THE WITNESS: Well, I mean, obviously he has  
5 concerns about that related to -- we started a new  
6 initiative and -- the former faculty senate  
7 president before the one speaking started an  
8 initiative on community engagement, and there were  
9 concerns about how do you report your community  
10 engagement. And I think Professor Lenz is drawing  
11 a connection between the reporting of your  
12 community engagement activities as being a part of  
13 the reporting required for outside activities, and  
14 so maybe that's the -- the dialogue. I don't know  
15 if -- you know, exactly what the provost did or  
16 what Chris Spiegel did with that committee, but the  
17 community engagement group that he's talking about  
18 is actually quite robust at the university now,  
19 there's a huge number of people participating.

20 BY MR. LEO:

21 **Q The complaints that he's making about the**  
22 **policy, when he says nobody knows what that means, you**  
23 **remember he said that?**

24 A I hear him saying that, yes.

25 **Q He says the deans don't no what -- what it**



1 means, the supervisors don't know what it means, do you  
2 agree or disagree with -- with what he's saying or what  
3 he said?

4 A I mean, it's one person's opinion in an  
5 audience of, I don't remember how many faculty centers  
6 we have, probably 40 people in the room, something like  
7 that. So I don't know if that's a universal opinion,  
8 that's one person's opinion. It sounds like the faculty  
9 senate president was talking about putting a group  
10 together to better understand what those issues might  
11 be. And I could find out from Chris Spiegel what the  
12 faculty senate ended up doing, he's the current senate  
13 president -- actually just passed being the president.

14 Q My question is more geared toward what the  
15 administrative did after this meeting.

16 A What?

17 Q My question -- at least next question is  
18 geared towards what the administration did following  
19 this meeting. Do you know if there was an investigation  
20 into changes that had been made to the policy?

21 A I have to find out, I don't know.

22 Q I'm sorry?

23 A I have to find out, I don't know.

24 Q After you heard this back in 2015, did you do  
25 anything to find out then?



1           A       No. I know that the committee he's talking  
2 about -- being concerned about is really one of the  
3 platforms of the university, and I also know that the  
4 guy who leads that, he was a former faculty senate  
5 president, he is extremely well respected across the  
6 university and would be easily willing to listen to any  
7 faculty concerns about community engagement and what  
8 reporting might be required.

9                   Actually, within that whole program he's  
10 designed something that does allow for extensive  
11 reporting of your community engagement work, it's  
12 something that's actually become more institutionalized,  
13 I think, because of ways in which we can further engage  
14 our faculty with the community.

15           **Q       Are you aware that in 2016, after**  
16 **Professor Tracy was terminated, there was questions and**  
17 **answer sessions between deans of the colleges at**  
18 **FAU, and chairs, and faculty members about the policy?**

19                   MR. CURLEY: Objection to form.

20                   THE WITNESS: No.

21 BY MR. LEO:

22           **Q       I'm sorry?**

23           A       I -- I don't know what time you're talking  
24 about.

25           **Q       After Professor Tracy was fired for**





1 noncompliance with the outside activities policy --

2 A Right.

3 Q -- are you aware that there were meetings  
4 between deans, and supervisors, and faculty members  
5 about changes to the policy?

6 MR. CURLEY: Objection to form.

7 THE WITNESS: No.

8 BY MR. LEO:

9 Q Are you aware that there were questions and  
10 answers being provided to faculty members concerning the  
11 policy?

12 A No.

13 Q Are you aware that there were changes that  
14 were being made to the policy to clarify the policy?

15 A I don't know. But, I mean, I would assume any  
16 policies -- at the university we go through occasional  
17 revisions and updates of policies, so I don't know  
18 exactly what that committee was focused on, but there's  
19 an expectation that policies are occasionally reviewed.  
20 David Kian frequently brings the policies to our board  
21 to review updated as a university to more reflect the  
22 times.

23 Q I'm going to show you what's been marked as  
24 PK28. This is also FAU 661, for the record. I'm going  
25 to show you, also, what has been marked as PK29 and



1 **PK30.**

2 MR. LEO: I gave you too many?

3 MR. CURLEY: Yes.

4 MR. BENZION: Is that PK30?

5 MR. CURLEY: That was number -- that was 30,  
6 yeah.

7 MR. LEO: I don't have a copy for me.

8 MR. CURLEY: You don't have a copy?

9 MR. LEO: No. What was the Bates stamp on  
10 that?

11 MR. CURLEY: 29 is 616 and 617. You want him  
12 to look at them all at the same time?

13 MR. LEO: Yeah, once he's done with the first  
14 one.

15 MR. CURLEY: Okay.

16 (Whereupon, the referred-to documents were marked  
17 as Plaintiff's Exhibits PK28, 29 and 30 for  
18 Identification.)

19 MR. LEO: Here you go. Here's PK31.

20 MR. CURLEY: Thank you.

21 MR. LEO: I don't have a copy, but I have a  
22 Bates stamp for that.

23 MR. CURLEY: Bates stamp is 609, 610, FAU.

24 MR. LEO: And here's PK32.

25 MR. CURLEY: Thank you. Thank you, you can



1       just drop them.

2               MR. LEO: I actually have a copy for you, too.

3               MR. CURLEY: Okay. Thanks.

4               MR. LEO: And last, but not least, PK33.

5               MR. CURLEY: That would be 620 -- FAU 620  
6       through FAU 625.

7       (Whereupon, the referred-to documents were marked  
8       as Plaintiff's Exhibit PK 31, 32, and 33 for  
9       Identification.)

10              THE WITNESS: I don't know where the -- the --  
11       do you know whether this one has actually gone  
12       through yet? It says it was a  
13       March revision, and it was -- so I don't know if it's  
14       actually become policy yet or not. I did not know if  
15       they gave you at --

16              MR. LEO: You're referring to Exhibit -- is  
17       that PK --

18              THE WITNESS: -- information.

19              MR. LEO: -- is that PK33 you're talking  
20       about?

21              MR. CURLEY: I think that was the last one.

22              THE WITNESS: It was PK33.

23       BY MR. LEO:

24              **Q       That's the Perry memo?**

25              A       I don't know if it's still under revision or



1 if it's -- this is the final form that was -- because it  
2 says to faculty, but it doesn't look like it's ever been  
3 sent.

4 MR. CURLEY: Is there a question?

5 BY MR. LEO:

6 Q I have some questions, I was just waiting for  
7 him --

8 MR. CURLEY: Oh, okay.

9 THE WITNESS: Okay.

10 BY MR. LEO:

11 Q You've looked at Exhibit 28 through 33 now.  
12 My questions are really general towards these exhibits.

13 A Okay.

14 Q Have you seen any of these before?

15 A No.

16 Q Would you agree with me that these -- these  
17 records that have been produced by FAU indicate that  
18 changes were being made to the outside activities policy  
19 in early 2016?

20 A Changes, yeah. I would expect changes would  
21 be constantly being made, yes.

22 Q Do you know if the policy has actually been  
23 finalized?

24 A I don't know where the revised one is.

25 MR. CURLEY: Objection to form.



1 THE COURT REPORTER: I don't know where the --  
2 where the revised one is?

3 THE WITNESS: Yeah. I don't know if the  
4 revised policy has been executed or not.

5 BY MR. LEO:

6 Q Is it safe to say that Professor Tracy was  
7 terminated under a policy that was undergoing revisions?

8 MR. CURLEY: Objection to form.

9 THE WITNESS: I would say our policies are  
10 always in some state of revision, it's just a  
11 matter of what stage it is and how much revision is  
12 required.

13 BY MR. LEO:

14 Q So the answer to my question, was  
15 Professor Tracy terminated under a -- or was he  
16 terminated using a policy that was undergoing revisions  
17 at the time?

18 A I don't know. I -- it sounded to me, if that  
19 was the case with that faculty senate meeting, is that  
20 it wasn't under revision at that time. And  
21 David Kian -- usually we're revising a board policy,  
22 which this would never go to our board, but we usually  
23 go through the revisions and go through them in order --  
24 I know you can't talk -- to go through them in order of  
25 every single revision, but this being a provost policy



1 it would not require that, and whether it has to go back  
2 to faculty senate for a discussion, I don't know.

3 **Q Do all of FAU's policies undergo these kinds**  
4 **of changes?**

5 A Not all of them, but I would say over time  
6 most of them are revisited. And typically its -- it  
7 depends on -- usually when something new comes in --

8 I mean, there's a whole set of issues right  
9 now about online education and textbooks; time spent on  
10 the online education, the amount of textbooks that are  
11 online textbooks versus your intellectual property of  
12 purchased books, so there's a lot of those things that,  
13 as they come up, the faculty want to have those revised  
14 and looked at as options that they get credit for  
15 essentially out of the current policies.

16 **Q Don't faculty have a say in changes that are**  
17 **made to a policy that is agreed to in the collective**  
18 **bargaining agreement?**

19 A Yes.

20 **Q So if changes were being made without faculty**  
21 **input or approval, wouldn't that be a -- a breach of the**  
22 **collective bargaining agreement?**

23 A No, you're expected to actually propose  
24 changes. So the faculty may propose changes, the  
25 changes are considered by the administration. And you



1 can have provost policies; so the provost can make a  
2 policy, and it is a provost policy. So an example of  
3 that is there's a provost policy for post-tenure review;  
4 so a faculty member who is tenured then goes through a  
5 period where you're thoroughly reviewed by your peers  
6 again to determine if you need to go through remediation  
7 to improve or if you do -- and what time period you need  
8 to -- to make that improvement, and that could  
9 ultimately lead to termination if you don't make the  
10 improvements that are suggested. So tenure is not a --  
11 a lifetime contract.

12 **Q How many faculty members at FAU have been**  
13 **terminated using the policy that's undergoing revisions?**

14 A I don't know.

15 **Q Do you think it's fair that Professor**  
16 **Tracy was terminated using a policy that had not been**  
17 **finalized?**

18 MR. CURLEY: Objection to form.

19 THE WITNESS: I don't think any policy's ever  
20 completely finalized, they're always under some  
21 stage of -- of discussion, improvement.

22 BY MR. LEO:

23 **Q But how can you enforce a policy that's never**  
24 **finalized?**

25 A Because it's the policy at the time.



1           **Q     Would you agree that that would be confusing**  
2 **for faculty members if the policy's always change --**

3           A     Not necessarily.

4           **Q     -- if the policy's always changing?**

5           A     I don't think the policy's always changing,  
6 but there's always room for improvement in the policy;  
7 and some policies, you know, are influenced by the  
8 people who are elected to the faculty senate. So if  
9 there's a person there and they have a point where they  
10 feel like for them they're very confused about  
11 something, they may exercise their position to try to  
12 get more clarity on one specific point. And it sounded  
13 like, from that discussion, there was some initial  
14 concerns about how much time was going to be devoted to  
15 this community engagement initiative, and what credit  
16 might be given to community engagement. And so that  
17 piece, while it's not the policy we're talking about, it  
18 is somewhat of a relevant policy because sometimes you  
19 get release time to do very specific things that might  
20 not haven been historically considered part of your job,  
21 whereas historically maybe your job was considered to be  
22 teaching these classes, doing this amount of time and  
23 research, doing this amount of time of reviewing. We've  
24 added, recently, things like undergraduate education,  
25 too, which takes a lot of time, community engagement,





1 which takes a lot of time. And the goal is to get the  
2 faculty credit for those things that they are doing that  
3 are additional things required and expected by the  
4 university within the timeframe.

5 So it's always, you know, an emerging process;  
6 strategic plan's, kind of about changes as you move  
7 forward.

8 **Q I recall Professor Lenz saying that there's**  
9 **been a change to the language in the collective**  
10 **bargaining agreement when he, to me at least as an**  
11 **outsider, was speaking about the outside activities**  
12 **policy that's set forth in the collective bargaining**  
13 **agreement.**

14 MR. CURLEY: Objection to form.

15 BY MR. LEO:

16 **Q Is -- are you aware of any allegation by the**  
17 **union, FEA, UFF, the there was a change to the policy**  
18 **and any kind of grievance, for example, that resulted**  
19 **from that?**

20 A No. The only discussion I recall is there was  
21 a -- an ongoing discussion of blocks of time and how  
22 blocks of time might be used by the faculty member. So  
23 let's say you -- you have a three-hour course and that  
24 counts as one block, and so if you had a 12-hour total  
25 credit, you've got four blocks of time, how do you add



1 up those different blocks of time, and what are you  
2 expected to do for your -- your blocks of time. And  
3 some people, I think, were trying to determine what they  
4 could put into blocks that weren't just the instruction  
5 pieces, particularly if they didn't have robust research  
6 program. So if you were teaching to classes and your  
7 research productivity is not where it used to be, you  
8 weren't publishing a lot of papers and you weren't  
9 getting a lot of information out, what are you doing  
10 with these other blocks of time. So there was quite a  
11 lot of discussion about who and how you allocate those  
12 other blocks of time to fulfill your university  
13 obligation. I don't know if that's the piece he's  
14 talking about, but I do know that was something that --  
15 that they were trying to figure out more clarity to of -  
16 - of what you did in those blocks.

17 **Q Would you agree that Professor Lenz was**  
18 **recalling fear and uncertainty of faculty members with**  
19 **respect to the policy?**

20 A I mean, I don't know if he's reflecting his  
21 own concerns or if there's a -- a broad body of -- of  
22 concern. It's hard to tell from one comment.

23 **Q What he said was that if somebody asked him --**  
24 **or something to this effect -- if somebody asked him,**  
25 **you know, what to do, he'd say nothing because it could**



1 **lead to discipline including termination.**

2 MR. CURLEY: Objection to form.

3 BY MR. LEO:

4 Q Do you agree with that sentiment that he was  
5 expressing in this --

6 A I don't know where he got that from, I mean,  
7 it's his personal opinion.

8 Q If faculty members at FAU were fearful or  
9 uncertain about the policy, that would be a -- a reason  
10 to provide an additional explanation, right?

11 A I mean, the faculty members I talk to are not  
12 fearful, they're -- they're actually doing the best work  
13 I could hope for.

14 Q Right. But my -- to answer my question, if  
15 faculty members were expressing fear and uncertainty,  
16 that would be a reason to give them an additional  
17 explanation, right?

18 A For more clarity if a -- I mean, if they need  
19 a dean to give them more clarity about what it is I  
20 want, you know, can you get this done, I need this form  
21 filled out, you've got to sign this on time, those --  
22 those things, I think, were part of the discussion.

23 Q Would you agree with me that in June of 2016,  
24 there was an additional explanation provided to FAU  
25 faculty and staff about the outside activities policy?



1           A     I think they were -- the provost was trying to  
2     update them on some additional things that were going in  
3     the policy.

4           **Q     Changes --**

5           A     That's what it sounded like.

6           **Q     -- changes that were -- had been made?**

7           A     Some adjustments, yes.

8           **Q     Would you agree that the explanation was for**  
9     **faculty and staff who were confused about the policy?**

10          A     I don't know if they were confused, as much as  
11     they wanted certain things added to it; you know,  
12     sometimes it's, I don't know if I get credit for this.  
13     Well, okay, we hadn't thought about that piece that you  
14     would want credit for, why would you want credit for  
15     that. Then I understand that --

16                THE COURT REPORTER: Could you please slow  
17     down a little bit?

18                THE WITNESS: Slow down. Okay.

19                And I understand the dialogue about, you know,  
20     it's almost going to be an endless dialogue about  
21     what do you get credit for. So if you're in the  
22     college of education and you're doing after school  
23     enrichment programs for girls, is that a valid  
24     academic pursuit for a faculty member in College of  
25     Education, that you're doing these afternoon



1 activities, that you would want the university to  
2 take that as a part of your job description as a  
3 part of your responsibility. Those become --

4 BY MR. LEO:

5 Q I'm -- I'm not sure -- I'm not really  
6 following you. I mean, are we talking about his  
7 activities still, or are we talking about something  
8 different?

9 A We're talking about what the faculty member is  
10 wanting to get credit for --

11 Q Okay.

12 A -- and how they get rewarded for that --

13 Q My --

14 A -- responsibility.

15 Q My understanding of -- from the senate faculty  
16 meeting audio, from the complaints we've heard, and from  
17 the deposition testimony we've taken from several  
18 faculty members, most of whom indicated in their opinion  
19 the policy was being selectively enforced, my  
20 understanding is that was the sentiment of faculty  
21 members in 2015, and leading up to determination of  
22 Professor Tracy. My question is, was Professor Tracy  
23 the first of the FAU faculty members to be disciplined  
24 and terminated using the outside activities policy?

25 MR. CURLEY: Objection to form.



1 THE WITNESS: I don't know the history of the  
2 policy.

3 BY MR. LEO:

4 Q If Professor Tracy was the first professor to  
5 ever be disciplined or terminated for not submitting a  
6 personal blog to the university for approval, do you see  
7 a problem with that?

8 MR. CURLEY: Objection to form.

9 THE WITNESS: I don't know the whole set of  
10 circumstances.

11 THE COURT REPORTER: I don't know the what?

12 MR. CURLEY: I don't know the whole set of  
13 circumstances around what he was talking with the  
14 dean about and what the issues were, so --

15 BY MR. LEO:

16 Q That's not what I'm asking. I'm asking if  
17 Professor Tracy was the first faculty member at FAU to  
18 be disciplined and terminated for not disclosing or  
19 reporting his personal blog on an outside employment  
20 form, do you see a problem with that?

21 MR. CURLEY: Objection to form.

22 BY MR. LEO:

23 Q This -- this president that it sets?

24 MR. CURLEY: Objection to form.

25 THE WITNESS: I don't see that it sets a



1 president.

2 BY MR. LEO:

3 Q You don't see a slippery slope here?

4 MR. CURLEY: Objection to form.

5 THE WITNESS: No.

6 BY MR. LEO:

7 Q Could FAU require all faculty to report their  
8 Facebook pages using similar reasoning that they used to  
9 require Professor Tracy to submit his personal blog for  
10 approval?

11 MR. CURLEY: Objection to form.

12 THE WITNESS: If that comes up, that would  
13 have to be considered.

14 BY MR. LEO:

15 Q What would have to be considered?

16 A It would be considered by the faculty and the  
17 provost if Facebook was something that people should  
18 report, I don't know.

19 Q Has -- has to be considered by the faculty --

20 A I have no idea.

21 Q -- the administration?

22 A I have no idea.

23 Q Would you agree that Professor Tracy's  
24 termination is inconsistent with the outside activities  
25 policy?



1 MR. CURLEY: Objection to form.

2 THE WITNESS: I don't have any way to judge  
3 whether he and the dean comment -- whatever  
4 commentary they had together, whether that would  
5 fit --

6 BY MR. LEO:

7 Q Well, looking -- looking at what you looked at  
8 today --

9 A I wouldn't see anything that would suggest  
10 that a different decision would be made.

11 Q If Professor Tracy was terminated for not  
12 reporting an uncompensated personal activity, a personal  
13 blog, sharing his viewpoints and expressions freely to  
14 the world on matters of public concern, would you agree  
15 that he was disciplined or terminated inconsistent with  
16 what the policy actually says?

17 MR. CURLEY: Objection to form.

18 THE WITNESS: I don't have the -- the history  
19 of all that discussion to be able to make that  
20 decision.

21 MR. LEO: I'm just --

22 THE WITNESS: I trust the people.

23 BY MR. LEO:

24 Q Based on -- based on what I'm saying.

25 He's a --





1           A     I trust -- I trust the people who have spent  
2 hours upon hours with those policies to make those  
3 decisions, and I --

4           **Q     Have you ever trusted anybody --**

5           MR. CURLEY: Time out. How are we doing time-  
6 wise here?

7           JOE: Six minutes.

8           MR. CURLEY: Okay.

9 BY MR. LEO:

10          **Q     Have you ever trusted anybody that betrayed**  
11 **your trust?**

12          MR. CURLEY: Objection to form.

13          THE WITNESS: Academically, you're talking  
14 about?

15 BY MR. LEO:

16          **Q     In general, have you ever trusted somebody,**  
17 **and a day later betrayed your trust?**

18          A     I'm sure in general terms there's not anybody  
19 that hasn't had somebody that you thought had the level  
20 of trust and didn't have that; I think once you learn  
21 that you behave differently. I also think, though, that  
22 the behavior of the people that you're talking about I  
23 have observed nothing but excellence from, I mean,  
24 exceptional performance.

25                Our provost has been phenomenal work of the



1 time -- of the three years that he's been in that job,  
2 and I think if you ask the faculty members, that's  
3 exactly what they would tell you.

4 **Q Well, I'm not asking about their excellence in**  
5 **academia or --**

6 A I mean in fairness and everything else.

7 **Q -- or -- or employment history, I'm asking**  
8 **about the trust that you place in people. Is it**  
9 **possible that those who you trusted in this case did not**  
10 **do what they were supposed to do?**

11 MR. CURLEY: Objection to form.

12 THE WITNESS: I trust the provost, and the  
13 provost has a group of people that work for him who  
14 I also trust and he trusts, and I have to rely on  
15 people like that to make decisions, it cannot all  
16 boil up to where it's the president of the board of  
17 trustees that makes these decisions.

18 MR. LEO: Sure.

19 THE WITNESS: It can't be the person who's  
20 closest to the action and can -- to provide the --  
21 the judgment necessary for those decisions to be  
22 made. So any institution, I can't imagine any  
23 university, any corporation that every decision  
24 about a termination would go all the way up, and  
25 nobody in the -- the chain of command had any



1 responsibility, the closest to the action for  
2 making that decision.

3 BY MR. LEO:

4 **Q Would you agree that if you don't review**  
5 **decisions or evaluate the decisions, then the trust that**  
6 **you're placing in those decisions is a blind trust?**

7 MR. CURLEY: Objection to form.

8 THE WITNESS: I don't think it's blind.

9 BY MR. LEO:

10 **Q If you're not looking at what they did, then**  
11 **aren't you blindly trusting that what they did was**  
12 **right?**

13 MR. CURLEY: Objection to form.

14 THE WITNESS: I think the records show that  
15 they have always made good decisions.

16 BY MR. LEO:

17 **Q Which record?**

18 A Their academic records, the things that  
19 they've done historically to improve the college. I  
20 mean, if you look over and over, there is a history of  
21 strong decision making.

22 **Q Do you know if faculty members are afraid of**  
23 **you?**

24 A I hope not.

25 MR. CURLEY: Objection to form.



1 BY MR. LEO:

2 Q Have you ever heard a faculty member saying  
3 that you were brought in to squelch the faulty?

4 A I don't recall that.

5 Q I heard talk of Professor Lenz in the senate  
6 faculty meeting, he referenced that you were trying to  
7 get control of the faculty, are you aware of that?

8 A Professor Lenz may be one opinion, maybe you'd  
9 have to survey the whole faculty.

10 Q Do you know of any other faculty who have  
11 expressed that opinion to you?

12 A No.

13 Q Would they express that opinion to you?

14 A Probably not.

15 MR. CURLEY: Objection to form.

16 BY MR. LEO:

17 Q Right. Was that why you were brought to  
18 FAU to --

19 A To what?

20 MR. CURLEY: Objection to form.

21 BY MR. LEO:

22 Q -- to senior faculty?

23 A Nope.

24 Q If down the road there's a determination by  
25 either the court or a jury that the decision that was



1 **made to terminate Professor Tracy was unlawful, would**  
2 **you honor that decision?**

3 MR. CURLEY: Objection to form, asked and  
4 answered.

5 THE WITNESS: I don't know what we do at that  
6 time.

7 BY MR. LEO:

8 **Q Are you going to wait until that decision is**  
9 **made by the court or a jury to evaluate whether or not**  
10 **what happened to Professor Tracy was lawful?**

11 MR. CURLEY: Objection to form.

12 THE WITNESS: I'd have to discuss that.

13 BY MR. LEO:

14 **Q Is this case something that you want to**  
15 **resolve?**

16 MR. CURLEY: Objection to form.

17 THE WITNESS: I don't think anybody looks  
18 forward to these kind of cases, but I also  
19 understand that we did not bring any legal action.

20 BY MR. LEO:

21 **Q Have any offers that were made by plaintiff**  
22 **been conveyed to you?**

23 MR. CURLEY: Objection to form.

24 THE WITNESS: No.

25 BY MR. LEO:



1           **Q     I'm sorry?**

2           A     No.

3           **Q     You're not aware of any offers that were made**  
4 **by plaintiff to resolve this case?**

5           MR. CURLEY:  Objection to form.

6           THE WITNESS:  No.

7  BY MR. LEO:

8           **Q     You may want to talk to your counsel about**  
9 **that.**

10          MR. LEO:  I have no further questions.

11          MR. CURLEY:  Okay.  We'll read.  Thank you.

12          MR. LEO:  Order.

13          MR. CURLEY:  Copy.  Regular.

14          (Whereupon, Mr. Leo kept the exhibits in his  
15 possession.)

16          (Whereupon, the deposition was adjourned at  
17 7:15 p.m.)

18

19

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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 WITNESS my hand and official seal this 25th day of May,  
10 2017.

11  
12  
13  
14 *Jaime Koganovsky*

15  
16 JAIME KOGANOVSKY,  
17 Notary Public, State of Florida My commission  
18 Notary #FF004068 expires, April 30, 2017  
19  
20  
21  
22  
23  
24  
25



## REPORTER'S DEPOSITION CERTIFICATE

I, JAIME KOGANOVSKY, Court Reporter and Notary Public, certify that I was authorized to and did stenographically report the videotaped deposition of JOHN W. KELLY, the witness herein; that a review of the transcript was requested; that the foregoing pages numbered from 1 to 367, inclusive, is a true and complete record of my stenographic notes of the deposition by said witness; and that this computer-assisted transcript was prepared under my supervision.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action.

DATED this 25th of May, 2017.

*Jaime Koganovsky*



\_\_\_\_\_  
JAIME KOGANOVSKY





1 May 25th, 2017

2 G. JOSEPH CURLEY, ESQUIRE  
3 GUNSTER, YOAKLEY & STEWART, P.A.  
4 777 South Flagler Drive, Suite 500 East  
West Palm Beach, Florida 33401  
jcurley@gunster.com

5 RE : JAMES TRACY vs. FLORIDA ATLANTIC UNIVERSITY  
6 BOARD OF TRUSTEES, a/k/a FLORIDA ATLANTIC UNIVERSITY,  
et al.

7 DEPO OF: JOHN W. KELLY  
8 TAKEN : May 17th, 2017

9 Dear G. Joseph Curley, Esquire:

10 This letter is to advise you that the transcript  
11 of the deposition listed above is completed and is  
awaiting reading and signing. Please arrange to stop by  
our office to read and sign the transcript.

12 Our office hours are from 8:00 a.m. to 4:00 p.m. Monday  
13 through Friday. Depending on the length of the  
transcript, you should allow yourself sufficient time.

14 If the reading and signing has not been completed prior  
15 to the referenced date, we shall conclude that you have  
waived the reading and signing of the deposition  
transcript.

16 Your prompt attention to this matter is appreciated.

17 Sincerely,

18  
19 JAIME KOGANOVSKY cc: (copy to all counsel)  
20  
21  
22  
23  
24  
25



ERRATA SHEET		
I wish to make the following changes, for the following reasons:		
PAGE NO.	LINE NO.	
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		REASON _____
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