

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

JAMES TRACY

Plaintiff,

vs.

FLORIDA ATLANTIC UNIVERSITY

BOARD OF TRUSTEES a/k/a FLORIDA

ATLANTIC UNIVERSITY; et al.,

Defendants.

\_\_\_\_\_/

(Volume I)  
CONTINUED VIDEO-RECORDED DEPOSITION  
OF  
JAMES TRACY

4855 Technology Way, Suite 630  
Boca Raton, Florida 33431

July 26th, 2017  
9:43 a.m. - 6:41 p.m.

1 APPEARANCES:

2  
3 For the Plaintiff:

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JOEL MEDGEBOW, ESQUIRE  
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6 Coconut Creek, Florida 33073

7 For the Defendants:

8 NICKLAUS JOSEPH CURLEY, ESQUIRE  
HOLLY GRIFFIN, ESQUIRE  
9 Gunster  
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10 West Palm Beach, Florida 33401  
11 DANIEL JONES, ESQUIRE  
FAU Office of General Counsel  
12 777 Glades Road, Room 370  
Boca Raton, Florida 33431

13  
14 ALSO PRESENT:

15 TAMMI BOSKE, PARALEGAL  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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(Exhibits retained by the court reporter.)

1 THEREUPON:

2 JAMES TRACY

3 a witness named in the notice heretofore filed, having  
4 been first duly sworn, deposes and says as follows:

5 DIRECT EXAMINATION

6 BY MR. CURLEY:

7 Q. Thank you. Mr. Tracy, I understand we're  
8 continuing your deposition today.

9 A. Yes.

10 Q. Okay. And, you remain under oath. You have a  
11 duty to tell the whole truth and nothing but the truth.

12 A. Right, sir.

13 Q. Okay. Let me start with a couple housekeeping  
14 matters. Last night via e-mail, we got a lot of  
15 documents, and I'll show you the filing pages.

16 Let me mark that as Exhibit 33.

17 (Thereupon, the document was marked as Defendant's  
18 Exhibit Number 33.)

19 BY MR. CURLEY:

20 Q. It looks like bates stamped wise, and you can  
21 confirm this for me, but it looks like we're running  
22 from 7,039 through 8,116, and the date I have on e-mails  
23 that we got, the delivery of these things is July 25th,  
24 which was yesterday, starting -- the first one looks  
25 like it's 9:12 p.m.

1           Let me hand you those. I've marked them as Exhibit  
2   33. Here's my question, sir.

3           It looks like we have production of -- well, I  
4   guess it's over 1,000 pages of documents.

5           Were you aware the documents were going to be  
6   provided to us last night?

7           **A.**   Are you directing this towards me or my  
8   counsel?

9           **Q.**   You.

10          **A.**   I didn't disclose them to you. My counsel's  
11   office did.

12          **Q.**   Okay. And, the documents that were produced  
13   last night, do you know what they were?

14          **A.**   I believe they were e-mails. There may have  
15   been recorded documents, as well, audio recordings.

16          **Q.**   These are things that you provided to your  
17   lawyers?

18          **A.**   Yes.

19          **Q.**   Okay. And, how long have you had these things  
20   in your possession?

21                MR. LEO:   Object to form.

22                THE WITNESS:   How long have I had them in my  
23   possession?

24   BY MR. CURLEY:

25           **Q.**   Yeah.

1 MR. LEO: Going to object to the form.

2 THE WITNESS: What do you mean by possession?

3 BY MR. CURLEY:

4 Q. What do you think the word possession means?

5 A. In my e-mail accounts, or --

6 Q. What do you think the word means?

7 A. To refresh my memory, do you have the request  
8 for production from June 15th of --

9 Q. What does the word possession mean?

10 A. I believe that would mean, somehow, on your  
11 person.

12 Q. Okay. And, the documents that were produced  
13 last night, they came from you, right?

14 MR. LEO: Object to form as to  
15 mischaracterization of testimony.

16 THE WITNESS: They came from counsel's office.

17 BY MR. CURLEY:

18 Q. Okay. Well, you provided them to your lawyer,  
19 right? These are documents they were providing on your  
20 behalf, correct?

21 MR. LEO: Object to form. Asked and answered.

22 THE WITNESS: I said they came from counsel's  
23 office.

24 BY MR. CURLEY:

25 Q. On your behalf. They're your lawyers, aren't

1 they?

2 MR. LEO: Object to form.

3 THE WITNESS: They were disclosed to him,  
4 concerning the case, yeah.

5 BY MR. CURLEY:

6 Q. Is Mr. Leo your attorney?

7 A. He is.

8 Q. Okay. So, the documents that were provided  
9 last night, how long have you had those?

10 A. I would have to see the documents.

11 Q. You didn't see them?

12 MR. LEO: Object to form.

13 THE WITNESS: I don't -- there are various  
14 dates. I would have to see them.

15 You're asking me to state how long those  
16 documents have been in my possession. I don't have  
17 a specific date of origination, or a date in which  
18 I had those in my possession.

19 So, I would have to see each individual one of  
20 those documents.

21 BY MR. CURLEY:

22 Q. Uh-huh. Have you had any of them more than two  
23 weeks?

24 A. I don't know.

25 Q. You don't know. Okay. Any reason you can think

1 of why you waited to produce them to us until last night  
2 at 9:00?

3 MR. LEO: Object to form.

4 THE WITNESS: Well, your third request for  
5 production was not issued to us until June 15th,  
6 2017, and I believe that we had a July 15th  
7 deadline.

8 And, we were working to comply with that to  
9 the best of our ability.

10 BY MR. CURLEY:

11 Q. Okay. So, your testimony is last night was the  
12 best you could do? Is that your testimony?

13 MR. LEO: Objection. Objection. Argumentative.

14 THE WITNESS: I cannot speak on the behalf of  
15 how the documents were processed by counsel's  
16 office.

17 I got them to them, I think, in ample time.

18 BY MR. CURLEY:

19 Q. Why did it take so long to get them to us?

20 MR. LEO: Object to form.

21 THE WITNESS: I would have to speak with  
22 counsel, concerning that, and talk about -- discuss  
23 with him how the process transpired.

24 BY MR. CURLEY:

25 Q. Now, there was another -- approximately, 3,500



1 documents produced to us on Monday. Were you aware of  
2 that?

3 A. I believe that my counsel said something about  
4 that.

5 Q. Why did it take so long to get us those back?

6 MR. LEO: Object to form.

7 THE WITNESS: I'm not sure. Once again, we  
8 were attempting to comply with the June 15th  
9 request for production.

10 BY MR. CURLEY:

11 Q. So, you have no explanation? Is that right?

12 MR. LEO: Object to form.

13 THE WITNESS: No, that's not true. I didn't  
14 say that.

15 BY MR. CURLEY:

16 Q. What's your explanation?

17 MR. LEO: Object to form.

18 THE WITNESS: My explanation is that I got  
19 those to my counsel as soon as I possibly could.

20 BY MR. CURLEY:

21 Q. Okay. And, when did you get them to your  
22 lawyers?

23 MR. LEO: Object to form. Asked and answered.

24 THE WITNESS: Once again, I would have to  
25 speak with counsel or check my e-mail account.

1           These are being produced on a rolling basis.  
2           You're going on this fishing expedition. All of  
3           these e-mails that are somehow related to my blog  
4           or what have you, I'm attempting to produce them to  
5           the best of my ability.

6           I'm not Kinko's or something along those  
7           lines. This is simply me, myself, and I, and my  
8           laptop. I'm attempting to produce those to the best  
9           of my ability to counsel.

10       BY MR. CURLEY:

11       Q.     So, it was hard for you? You're saying they're  
12       on your laptop, but it's hard for you to get them  
13       printed out or something like Kinko's would do, is that  
14       right?

15       MR. LEO:   Object to form.

16       THE WITNESS:   I'm a one man show. I don't have  
17       a staff like Windstar has.

18       BY MR. CURLEY:

19       Q.     So, why not just turn your computer over, and  
20       let us take care of that?

21       MR. LEO:   Object to form.

22       THE WITNESS:   Because, I would be very wary of  
23       you having access to my e-mail account.

24       BY MR. CURLEY:

25       Q.     Why would you worry about that?

1           **A.**    Because, I don't trust you as opposing  
2   counsel.

3           **Q.**    Okay. So, you made the decision because you  
4   don't trust us to do it yourself, right?

5           MR. LEO:  Objection. Form.

6           THE WITNESS:  Once again, I was -- this is the  
7   first time I've been through any sort of a process  
8   like this.

9           I was advised by my counsel to produce the  
10   documents to his office, and I did so.

11   BY MR. CURLEY:

12          **Q.**    You understand when you make decisions, there  
13   are consequences to your decisions, right?

14          MR. LEO:  Objection. Form.

15   BY MR. CURLEY:

16          **Q.**    You're a responsible man, right?

17          **A.**    I am.

18          MR. LEO:  Is there a question?

19   BY MR. CURLEY:

20          **Q.**    So, you make a decision -- yeah, was he a  
21   responsible guy? He said he is.

22          So, when you make decisions, there are consequences  
23   for decisions you make, right?

24          **A.**    That would depend on the decision.

25          **Q.**    Okay. Now, you've recently produced to us some

1 tax returns, right?

2 A. Yes.

3 Q. When did you have these tax returns prepared?

4 MR. LEO: Objection. Outside the scope of the  
5 limitations of the protective order entered by the  
6 court, for concerning past returns.

7 As you know, Joe, the questions are limited to  
8 only questions about the income that was declared  
9 on the returns. You can't ask him about when he  
10 filed his returns, why he filed them, why he didn't  
11 file them.

12 I think we've already addressed this. I'm  
13 going to caution Counsel that any continued effort  
14 to circumvent the court order will result in us  
15 having to terminate this deposition.

16 MR. CURLEY: Are you instructing him not to  
17 answer?

18 MR. LEO: I'm cautioning you about --

19 MR. CURLEY: I heard your caution.

20 MR. LEO: Okay.

21 MR. CURLEY: I take it under advisement. My  
22 question to you is, are you telling him not to  
23 answer or not?

24 MR. LEO: Can you please repeat the question?

25 BY MR. CURLEY:

1           Q.    When did you have the tax returns prepared  
2           that you just produced to us?

3                   MR. LEO:  Objection to outside the scope of  
4           the limitations that were afforded by the court in  
5           a protective order, and I will instruct the witness  
6           not to answer the question.

7   BY MR. CURLEY:

8           Q.    Okay. What years did you have prepared?

9                   MR. LEO:  Objection to form.

10                  THE WITNESS:  When?

11  BY MR. CURLEY:

12           Q.    I just asked you that, and your counsel told  
13           me you couldn't answer. So, why don't you tell me when?

14                   MR. LEO:  Object to form.

15                  THE WITNESS:  The federal tax returns were  
16           for, I believe, 2013 through 2016.

17  BY MR. CURLEY:

18           Q.    2013 through 2016, and when did you produce  
19           those?

20                   MR. LEO:  Object to form.

21                  THE WITNESS:  Produce those to who?

22  BY MR. CURLEY:

23           Q.    The FAU team, us, me.

24                   MR. LEO:  Object to form.

25                  THE WITNESS:  I believe, that was within the

1 past month.

2 BY MR. CURLEY:

3 Q. And, who prepared them?

4 A. Steven Tyman.

5 Q. And, how long have you been dealing with him?

6 MR. LEO: I would object again. This is  
7 outside the scope of the protective order,  
8 concerning his tax returns and tax preparation.

9 The order of the court, again, limited the  
10 scope of questions concerning Plaintiff's tax  
11 returns to only questions about the income on them.

12 This is crossing a line, Joe, and I think you  
13 know that. So, I'm going to instruct my client not  
14 to answer questions about when he prepared his tax  
15 returns, why he prepared them, how he prepared  
16 them.

17 I'm going to ask you, once again, to limit  
18 your questions to the scope of the order that was  
19 entered by this court, a protective order, limiting  
20 questions about these tax returns.

21 And, again, if we're going to continue to  
22 cross the line, if you're going to violate the  
23 court's order, we're going to shut this deposition  
24 down, because it's becoming abusive and harrasive.

25 Right off the bat, this has been harrasive,

1 argumentative, and asking questions that have  
2 nothing to do with this, over this case.

3 MR. CURLEY: Are you instructing him not to  
4 answer?

5 MR. LEO: Not to answer questions about how  
6 they were filed, when they were filed, why they  
7 were filed.

8 Your questions about his tax returns are  
9 limited to only questions about the income that was  
10 declared on those tax returns.

11 Why don't you pull out the tax returns, and  
12 ask him about them? Ask him about the income.

13 Why are you asking him about whether he  
14 actually filed them or not? Why are we doing that,  
15 Joe? It's against the protective order.

16 MR. CURLEY: You're wasting time, and you're  
17 making speaking objections. I'd prefer that you  
18 just give your instructions, and we'll move on.

19 BY MR. CURLEY:

20 Q. Your accountant or tax preparer was subpoenaed  
21 to produce documents. Are you aware of whether he's  
22 produced them or not?

23 MR. LEO: Object to form.

24 THE WITNESS: No, I'm not.

25 BY MR. CURLEY:

1           Q.    And reason that you can think of why he would  
2 not produce those documents to us?

3           MR. LEO:   Object to form.

4           THE WITNESS:   Privileged communications.

5 BY MR. CURLEY:

6           Q.    And, have you talked to him about that?

7           MR. LEO:   Objection to form.

8           THE WITNESS:   I believe that I did communicate  
9 with him briefly, yeah.

10 BY MR. CURLEY:

11          Q.    And, did you tell him that the court had  
12 ordered certain production for us?

13          MR. LEO:   Objection to form, and I'll instruct  
14 the witness not to answer the question. It calls  
15 for confidential accountant privileged  
16 communications.

17 BY MR. CURLEY:

18          Q.    As we sit here today, though, you're aware  
19 that we haven't received documents from your accountant,  
20 correct?

21          MR. LEO:   Object to form.

22          THE WITNESS:   Which documents?

23 BY MR. CURLEY:

24          Q.    The ones in his possession, he hasn't produced  
25 those --



1 MR. LEO: Woah, woah, woah, there's a  
2 difference between the -- are you talking about  
3 communications with the accountant, or are you  
4 talking about the documents that were disclosed to  
5 him to produce the returns themselves?

6 MR. CURLEY: I'm talking about any documents  
7 that -- I'm talking about -- he hasn't produced any  
8 documents to the FAU Defense.

9 You've produced some documents that you say  
10 are those documents, but your accountant hasn't  
11 produced any, correct?

12 MR. LEO: Object to form.

13 THE WITNESS: I'm not aware of whether or not  
14 he has.

15 BY MR. CURLEY:

16 Q. Okay. Have you given him instructions not to  
17 do that?

18 A. No.

19 Q. Okay. Have you resolved any claims with the  
20 union?

21 MR. LEO: Object to form. Calls for  
22 confidential mediation communications, and I'll  
23 instruct the witness not to answer the question.

24 MR. CURLEY: Whether he settled the claim with  
25 the union?

1 MR. LEO: I'm sorry. That wasn't the question.

2 BY MR. CURLEY:

3 Q. Have you settled any claims with the union?

4 A. At present, no.

5 Q. Is it your belief that the union conspired to  
6 have your employment terminated?

7 A. It is my belief that they were part of a  
8 conspiracy.

9 Q. Okay. What do you believe that the union did  
10 to cause termination of your employment?

11 A. Well, they failed to grieve on my behalf.

12 Q. Did you instruct them to do that?

13 A. I did.

14 Q. And, who did you instruct to file a grievance  
15 on your behalf?

16 A. This was back in November of 2015. I think  
17 we've been through this. I spoke with the President of  
18 the union, and I spoke with Doug McGetchin, the  
19 Grievance Chair as well.

20 Q. Who is the President of the union?

21 A. I believe I CCed documents to Michael Moats  
22 (phonetic), but it was my understanding that they were  
23 in communication with Michael Moats at that time.

24 Q. Who was the President of the union that you  
25 were referring to?

1 MR. LEO: Objection. Asked and answered.

2 THE WITNESS: Defendant Zoeller.

3 BY MR. CURLEY:

4 Q. And, you instructed him to have a grievance  
5 filed on your behalf, is that your testimony?

6 A. As I recall, we reached an understanding that  
7 the union would take up my defense between the 22nd of  
8 November and the 30th of November or so.

9 And, I was instructed by Zoeller on December 1st  
10 via e-mail that my situation, that the case was not  
11 grievable.

12 Q. How many grievances prior to that time had you  
13 participated in personally?

14 A. I'm not sure what you mean by participation.

15 Q. You, James Tracy. You've never filed a  
16 grievance?

17 MR. LEO: Objection. Asked and answered.

18 BY MR. CURLEY:

19 Q. Is that your testimony?

20 A. I have never personally filed a grievance. I  
21 have had grievances filed for me by UFL.

22 Q. How many?

23 A. Two were filed by Douglass Broadfield  
24 (phonetic) in 2013.

25 Q. Any others?

1           **A.**    No.

2           **Q.**    And, going back to -- did you retain a lawyer  
3 on your behalf?

4           **A.**    In December of 2015, on or around December  
5 20th of 2015, yes.

6           **Q.**    What was the lawyer's name?

7           **A.**    Tom Johnson.

8           **Q.**    Okay. And, did you instruct Mr. Johnson to  
9 file a grievance on your behalf?

10          **A.**    Well, I believe that that's something that  
11 would involve attorney client privilege.

12          **Q.**    Did you instruct him to file a grievance on  
13 your behalf or not?

14                MR. LEO:  Objection. It calls for  
15 attorney/client privileged communication. I'll  
16 instruct the witness not to answer the question.

17 BY MR. CURLEY:

18          **Q.**    You've taken position, sir, that the union's  
19 attorney did not serve your best interest in this case,  
20 have you not?

21                MR. LEO:  Object to form. Mischaracterization  
22 of the complaint in this case.

23                THE WITNESS:  I would have to look at the  
24 complaint to refresh my memory.

25 BY MR. CURLEY:

1           Q.    Did you read the complaint before it was  
2    filed?

3           A.    I don't have it memorized.

4           Q.    Did you read it before it was filed?

5           A.    Yes.

6           Q.    Okay. Did you look carefully at the things  
7    that were attached to your complaint, because it was  
8    filed?

9           A.    Yes.

10          Q.    Did you see, in the attachments, e-mails  
11   between you and your counsel?

12          A.    Thomas Johnson?

13          Q.    Yes, sir.

14          A.    Yes.

15          Q.    Okay. So, you knew they were attached to the  
16   complaint when you filed it, right?

17          A.    I did.

18          Q.    And, those are communications between you and  
19   your lawyer about your representation, are they not?

20               MR. LEO:   Object to form. Mischaracterization.

21               THE WITNESS:   Well, they're pertinent -- they  
22   were pertinent, I believe, to illustrating the  
23   arguments in the complaint.

24   BY MR. CURLEY:

25          Q.    What argument?

1           **A.**    The argument concerning conspiracy.

2           **Q.**    The conspiracy between the union -- was your  
3 attorney involved in that conspiracy, too?

4           MR. LEO:   Object to form. I think I need to  
5 speak to my client, here.

6           You're asking questions about attorney/client  
7 privileged communications, and I need to speak with  
8 my client to determine what communications, if any,  
9 would be protected by attorney/client privilege.

10          MR. CURLEY:   When I ask a question about  
11 communication, I think that might be appropriate,  
12 but I --

13          MR. LEO:    You've been asking about  
14 communications this entire time, for about 10  
15 minutes or so. Five or 10 minutes.

16          MR. CURLEY:   If you take -- do you intend to  
17 your client now, in the middle of a question, there  
18 will be consequences.

19          MR. LEO:    And, what are those consequences,  
20 Joe?

21          MR. CURLEY:   We'll take it up to the court  
22 that you're improperly, in the middle of the  
23 question, that doesn't ask about a communication.

24          So, those will be the consequences.

25          MR. LEO:    Joe, all I'm saying, for the record,

1 is that you're asking questions about  
2 attorney/client privileged matters, which may not  
3 be attorney/client privilege, and I need to have an  
4 understanding of what communications are at issue  
5 here.

6 So, I can maybe form an objection or not.  
7 Perhaps Dr. Tracy can share certain communications.  
8 Perhaps he can't.

9 So, I need -- comments on --

10 MR. CURLEY: After he answers my question, you  
11 can talk to him.

12 MR. LEO: What's your question?

13 MR. CURLEY: Would you read back the question,  
14 please?

15 THE COURT REPORTER: Sorry.

16 MR. CURLEY: Take your time. It's fine.

17 THE COURT REPORTER: You asked him if his  
18 attorney was involved in the conspiracy.

19 MR. CURLEY: Okay. I did. Is that a quote?

20 THE COURT REPORTER: That was the last -- no,  
21 that was the last --

22 MR. CURLEY: Can you just read the question?  
23 Thanks.

24 THE COURT REPORTER: We'll have to -- for the  
25 sound. You were asking, did you see the

1 attachments, and did you read -- it went back and  
2 forth so much, I have to go back.

3 Did you instruct him -- it says -- I kind of  
4 got lost in here. I can play it back. Did you go  
5 back -- as far as, did you instruct Thomas Johnson  
6 to file a grievance? Is that --

7 MR. CURLEY: Just the last question.

8 THE COURT REPORTER: I know, but you guys have  
9 been going back and forth all over it.

10 MR. CURLEY: Just my last question. That's all  
11 I need.

12 THE COURT REPORTER: Did you instruct him to  
13 file a grievance?

14 MR. CURLEY: No, not the last question. Last  
15 -- you had it. The question was do you think he  
16 participated in conspiracy, or words to that  
17 effect.

18 THE COURT REPORTER: I just asked that. I said  
19 that, and you said it wasn't the question.

20 MR. LEO: It wasn't verbatim.

21 MR. CURLEY: Okay. You're a court reporter.  
22 I'm looking for you to give me the quote.

23 THE COURT REPORTER: I'm trying my best, but  
24 when you go back and forth arguing, it was  
25 difficult to follow, but I can go in and listen to



1           it.

2           MR. CURLEY:   Let's take a break.

3           (Thereupon, a short recess was had.)

4           MR. LEO:   For the record, I don't know what  
5           the last question was precisely.

6           MR. CURLEY:   She was reading it. It was, was  
7           your attorney involved in a conspiracy?

8           MR. LEO:   Sure. I just wanted to state for the  
9           record that I've instructed my client.

10          He is permitted to answer questions about  
11          communications that had been disclosed, which are  
12          no longer protected by attorney/client privilege,  
13          but any other communications with his former  
14          counsel, which have not been disclosed, would be  
15          protected by both attorney/client privilege and  
16          work product privilege.

17          And, he's been instructed not to answer  
18          questions about any other communications, which  
19          have not been disclosed between he and his former  
20          counsel.

21          MR. CURLEY:   Okay. Before we go, just  
22          understand I don't agree with your position.

23          MR. LEO:   Understood.

24          MR. CURLEY:   I'm not debating you, but I want  
25          to make sure the record is clear.

1 MR. LEO: Right. We're -- a motion, and --

2 MR. CURLEY: The judge is going to resolve  
3 this.

4 MR. LEO: Sure.

5 MR. CURLEY: I think it's a subject matter  
6 waiver. It's not -- you can't make sword and shield  
7 type stuff, you know.

8 MR. LEO: Right, except there's a different  
9 subject matter, and we'll be responding to your  
10 motion, which the response is due today.

11 I'm going to let the court deal with that, I  
12 believe, Monday, which is when the hearing is  
13 schedule.

14 BY MR. CURLEY:

15 Q. Was your attorney involved in conspiracy?

16 MR. LEO: Object to form.

17 THE WITNESS: Thomas Johnson?

18 BY MR. CURLEY:

19 Q. Yeah.

20 A. I don't know.

21 Q. Did you discharge him? Did you fire him? Did  
22 you let him go? Did you relieve him of his duties as  
23 your attorney?

24 MR. LEO: Object to form.

25 THE WITNESS: Well, the agreements of -- with

1 Florida Education Association is such that if you  
2 hire other counsel, then, they discontinue payments  
3 for the counsel that they require.

4 So, in accordance with that agreement, yes,  
5 the relationship ended.

6 BY MR. CURLEY:

7 Q. You hired another lawyer to handle your case,  
8 right?

9 MR. LEO: Object to form.

10 THE WITNESS: I never hired Thomas Johnson. He  
11 was hired through the Florida Education  
12 Association.

13 BY MR. CURLEY:

14 Q. Did you hire a lawyer to handle your case?

15 MR. LEO: Object to form.

16 THE WITNESS: When?

17 BY MR. CURLEY:

18 Q. December 2015, January 2016, anywhere in the  
19 year, there.

20 A. Well, not in December, 2015. That was the  
21 attorney that was hired by Florida Education  
22 Association, Thomas Johnson.

23 Q. I know that, sir. Did you hire a lawyer for  
24 yourself?

25 MR. LEO: Object to form.

1 THE WITNESS: Yes, in January, 2016.

2 BY MR. CURLEY:

3 Q. Who did you hire?

4 A. Louis Leo.

5 Q. And, did you tell Mr. Williams that his  
6 services would no longer be required?

7 A. Mr. Johnson?

8 Q. Mr. Johnson, sorry. Thank you.

9 A. As I recall, there was e-mail communication  
10 between us, and I believe this is something that he read  
11 about in the newspaper.

12 Q. Right, and how did you respond when he said I  
13 read in the paper that you may have hired a new lawyer?

14 A. I would have to look at those e-mails,  
15 specifically. It's been months since I've seen those.

16 I don't specifically know how I responded.

17 Q. Did you continue to use his services?  
18 Mr. Johnson?

19 A. No.

20 Q. Had you instructed Mr. Johnson to file a  
21 grievance on your behalf?

22 MR. LEO: I object. It calls for  
23 attorney/client privileged communications. I  
24 instruct the witness not to answer the question.

25 THE WITNESS: My understanding is the court

1 has to --

2 BY MR. CURLEY:

3 Q. Okay. If you would, best to let your attorney  
4 make objections.

5 A. I'm sorry.

6 Q. Yeah. Other than the union, had you instructed  
7 anyone to file a grievance on your behalf?

8 A. At what time?

9 Q. Any time.

10 A. In 2013?

11 Q. No, 2015, 2016. We're talking about your  
12 termination here.

13 A. Well, you said any time.

14 Q. Okay. We're talking about your termination.  
15 Let's get serious, here.

16 MR. LEO: Object to form.

17 BY MR. CURLEY:

18 Q. That's what this is about.

19 A. Okay. Well, I want to be specific, because  
20 this is on the record.

21 I have requested, in November of 2015, which I  
22 believe that we discussed earlier, that the union act on  
23 my behalf, and defend me concerning the November 10th,  
24 2015, notice of discipline.

25 Q. Right. But, did you instruct them to file a

1 grievance?

2       **A.**    I would have to look at those e-mails. There  
3 are a number of e-mails between myself, Doug McGetchin,  
4 Bob Zoeller.

5       I would have to look at those for specificity in  
6 order to answer accurately.

7       **Q.**    You have no independent recollection. You'd  
8 have to look at e-mails. Is that right?

9       **A.**    Well, I believe, as a deponent, that's one of  
10 my rights, to ask for documents to be able to refresh my  
11 memory.

12       **Q.**    You'd be wrong. I'm entitled to ask for your  
13 memory, and that's what I'm asking for.

14       Do you remember telling somebody to file a  
15 grievance for you or not? Are you an attorney, by the  
16 way?

17               MR. LEO:  Objection to form. Compound.

18               THE WITNESS:  No.

19 BY MR. CURLEY:

20       **Q.**    Where are you getting all of your legal  
21 knowledge from?

22               MR. LEO:  Objection to form.

23               THE WITNESS:  Well, I've been observing hours  
24 and hours of depositions, and your clients have  
25 asked for documents to refresh their memory to aide

1           in their testimony, and our counsel has been  
2           forthcoming in providing the necessary documents to  
3           refresh their memories.

4   BY MR. CURLEY:

5           Q.    Is that it?

6           MR. LEO:  Object to form.

7           THE WITNESS:  Mainly so, yes.

8   BY MR. CURLEY:

9           Q.    And, is it your testimony that you're not  
10          knowledgeable enough to fill out a grievance paper on  
11          your own behalf?

12          MR. LEO:  Object to mischaracterization of the  
13          testimony.

14   BY MR. CURLEY:

15          Q.    You seem pretty educated on the legal system,  
16          don't you?

17          MR. LEO:  Object to form. Asked and answered.

18          THE WITNESS:  Not necessarily.

19   BY MR. CURLEY:

20          Q.    Can't do a grievance? Is that too complicated  
21          for you?

22          MR. LEO:  Object to form.

23          THE WITNESS:  As we discussed previously in  
24          the deposition, as well, this was something that  
25          was in most every case delegated to the Grievance

1 Chair or the Contract Enforcement Chair.

2 That was done Broadfield, who will of course  
3 be deposed later this week, from, I believe, 2009  
4 to 2013 or 2014, and then, Doug McGetchin, there  
5 after.

6 And, I think that political science professor  
7 Tim Lenz, also, helped in between to train Doug  
8 McGetchin, if I'm not mistaken.

9 But, this was always delegated, and I believe  
10 this was former UFF/FAU Chapter President Chris  
11 Robay's testimony in his deposition, but it was  
12 normal protocol to delete these duties to a  
13 Grievance Chair, who was experts in those sorts of  
14 proceedings.

15 BY MR. CURLEY:

16 Q. So, your testimony is that filling our your  
17 own grievance would be too complicated for you?

18 MR. LEO: Objection. Objection to form.  
19 Mischaracterization.

20 THE WITNESS: My testimony is, once again,  
21 that this was something that was delegated. That's  
22 something that was counted upon, and this was also  
23 something that, in many cases, even the Grievance  
24 Chair deferred to the knowledge and expertise of  
25 Michael Moats, or the Executive Director of UFF,



1       who has a much broader knowledge in terms of the  
2       whole grievance process.

3               And, so, it would make -- it would make much  
4       less sense to go it alone. It'd be tantamount to  
5       going into a courtroom pro se.

6               You would not have that body of knowledge and  
7       expertise on your side.

8       BY MR. CURLEY:

9               Q.    Are you able to fill out your own grievance or  
10      not, yes or no?

11      A.    No.

12      Q.    And, the union told you they wouldn't do it,  
13      right?

14      MR. LEO:  Object to form.

15      THE WITNESS:  The union, with their combined expertise  
16      and knowledge, stated that the case, my situation was  
17      not grievable.

18      BY MR. CURLEY:

19      Q.    So, did they tell you they wouldn't file the  
20      grievance for you or not? Yes or no?

21              MR. LEO:  Object to form. Asked and answered.

22              THE WITNESS:  I said that they informed that  
23      the case was not grievable.

24      BY MR. CURLEY:

25      Q.    Does that mean they won't file a grievance or

1 not?

2 A. Well, if you have a client come in here --

3 Q. Can you just answer my question, or is that  
4 too complicated for you?

5 MR. LEO: Objection to form.

6 THE WITNESS: Can I provide an illustration?

7 BY MR. CURLEY:

8 Q. You can answer my question.

9 MR. LEO: Objection. Asked and answered.

10 THE WITNESS: I'm doing so. If you have a  
11 prospective client come into the house and ask  
12 whether or not they have a case, and you say it's  
13 not winnable, it's something -- we don't want to  
14 help you, and I recognize the prestige, power of  
15 your firm, that would have a tremendous influence  
16 on my decision making.

17 BY MR. CURLEY:

18 Q. So, you decided not to grieve? It was your  
19 decision?

20 A. No.

21 MR. LEO: Object to the form.

22 BY MR. CURLEY:

23 Q. Most of the time, what would happen is you'd  
24 send them to another lawyer, and say lawyers have  
25 different opinions. Why don't you go talk to somebody

1 else?

2 That's how it would be handled.

3 MR. LEO: Object to form.

4 BY MR. CURLEY:

5 Q. So, when the union told you that they didn't  
6 think it was grievable, did you talk to anybody else?

7 A. UFF states they own the grievance process.

8 Q. So, did you talk to somebody else?

9 MR. LEO: Object to form. Asked and answered.

10 THE WITNESS: Who else would I talk to?

11 BY MR. CURLEY:

12 Q. How about your own attorney? How about  
13 Mr. Williams?

14 A. Johnson.

15 Q. Johnson, sorry. I keep saying Williams. Sorry.  
16 thank you. Yeah, how about Mr. Johnson?

17 A. This was -- I did not know Mr. Johnson at the  
18 time. He was not brought up until on or around December  
19 20th.

20 Q. When you got -- and, I don't want to spend a  
21 whole lot of time on this, but I want to make sure you  
22 recall this.

23 When you got the disciplinary notices from FAU, my  
24 recollection -- and I'm talking about the ones in  
25 December, 2015.

1           My recollection is -- every one of them -- at least  
2           -- almost every one of them ended by saying this is a  
3           grievable offense, right?

4           **A.**    I would have to, once again, look at those  
5           notices. Those were painful and emotional experiences.

6           **Q.**    If FAU told you that you were entitled to  
7           grieve this, would you believe that, or did you just  
8           reject FAU telling you you can grieve it?

9           MR. LEO:   Object to form.

10           THE WITNESS:   I would, once again -- it would  
11           help to be able to look at the notices.

12           BY MR. CURLEY:

13           **Q.**    They're all attached to your complaint, sir.

14           **A.**    It's been months since I've looked at the  
15           complaint, as well.

16           **Q.**    Okay. So, you have no independent recollection  
17           of seeing that FAU says I can grieve this, and thinking  
18           about that, is that right?

19           MR. LEO:   Object to form.

20           THE WITNESS:   But, if I saw that, then,  
21           that's, of course, a principal reason that I sought  
22           counsel with the union.

23           BY MR. CURLEY:

24           **Q.**    Okay. Is there any other reasons that you  
25           didn't file a grievance that you can think of, other

1 than your statement that the union told you it wasn't  
2 grievable?

3 MR. LEO: Object to form.

4 THE WITNESS: I recognize, at the time, that I  
5 was in need of aide, of counsel, of assistance, and  
6 I looked to the union for support.

7 They had aided me in the past. In 2013, for  
8 example, quite well, and so, this was a situation,  
9 which was in my view very similar, and, so, I was  
10 looking for the equivalent type of representation,  
11 and I was relying on the union.

12 There were people in the union, involved in  
13 the union, that I respected, and that's primarily  
14 why I sought their assistance.

15 BY MR. CURLEY:

16 Q. Is there any other reason that you didn't file  
17 a grievance other than the union telling you it wasn't  
18 grievable?

19 MR. LEO: Object to form. Asked and answered.

20 THE WITNESS: When the union said it was not  
21 grievable, what I heard, essentially, was that they  
22 were not going to move forward.

23 And, you can file a grievance on pretty much  
24 anything. One can file a lawsuit on pretty much  
25 anything.

1           Whether or not it would be successful is  
2           something else entirely. So, there was no reason  
3           why the union could not go ahead and grieve on my  
4           behalf.

5       BY MR. CURLEY:

6           Q.    Did you tell them that?

7           MR. LEO:   Object to form.

8           THE WITNESS:   In so many words, through  
9           e-mail, I believe that I did.

10       BY MR. CURLEY:

11          Q.    What did they say when you said, look, there's  
12          no reason why you can't do this?

13          A.    Well, I protested. I considered dropping my  
14          membership.

15          Q.    And, then, what happened?

16          A.    I was persuaded to stay on board.

17          Q.    What persuaded you?

18          A.    Mike Budd, in part.

19          Q.    What did he say to you?

20          A.    I CCed the e-mail that I sent to Zoeller,  
21          stating that I was going to go ahead and discontinue my  
22          membership, and I CCed that to Mike Budd, and he sent me  
23          an e-mail, seeking to intervene.

24          That the union was a good thing, and that they  
25          could provide support, and that I should not discontinue

1 my membership after 13 years of being a member.

2 Q. Did you trust Mike Budd?

3 A. Yes.

4 Q. Did you ask Mike Budd to file a grievance on  
5 your behalf?

6 A. Mike Budd is the -- he's -- faculty. He's  
7 membership or co-membership Director, so this would not  
8 be his area of expertise, and I don't know as to whether  
9 or not he's ever functioned as Grievance Chair.

10 Although, I believe he was FFU/FAU Chapter  
11 President, at one time.

12 Q. Did you ask him to file a grievance on your  
13 behalf?

14 A. Well, once again, as I stated, the duties are  
15 delegated. He told me to get in touch with McGetchin.

16 He's the Grievance Chair, and you got to get in  
17 touch with him in order for them to file a grievance.

18 Q. So, it's fair to say you did not ask Mr. Budd  
19 to file a grievance for you, correct?

20 A. He would not be the person to file it. It  
21 would be like me coming into your office and asking the  
22 secretary to file a lawsuit.

23 Q. Okay. Who did he -- he put you in touch with  
24 Mr. McGetchin? Is that the right name?

25 MR. LEO: Object to form.

1 THE WITNESS: McGetchin, he's the -- he was  
2 the official Grievance Chair at the time.

3 BY MR. CURLEY:

4 Q. Okay. Did you ask him to file a grievance on  
5 your behalf?

6 A. I would have to check with the succession of  
7 e-mails, but I'm quite certain that I did. This was my  
8 intent.

9 Q. Okay. What did he say?

10 A. This was something that was -- my  
11 understanding is, this was taken up with the Grievance  
12 Committee, which was something that was newly devised  
13 under Defendant's order.

14 The Grievance Committee, I believe, consisted of  
15 Doug McGetchin, Defendant Zoeller, and I'm not sure. I  
16 guess, perhaps, Timothy Lenz, and possibly Michael  
17 Moats.

18 This was a new -- this was something that was -- I  
19 had not heard of before, but this was done on or around  
20 December 1st, and voted allegedly.

21 I don't believe there are any minutes to that  
22 meeting, or record of it having transpired outside of  
23 the depositions, and the e-mails that have been  
24 disclosed by the Defendants.

25 Q. They voted to do what? You said they got



1 together and voted. What did they vote for?

2 A. Not to file the grievance. That's my  
3 understanding.

4 Q. Did you get anything in writing on that? Did  
5 they say, look, we voted? Professor Tracy, and the  
6 decision was, we're not going to file a grievance for  
7 you.

8 A. Yes, there was an e-mail.

9 Q. Okay. And, what did you do in response to  
10 that?

11 A. This is when I said that I would consider  
12 leaving the union, that I was going to go ahead and act  
13 and leave the union. They were not defending me.

14 Q. Okay. So, then, Mike Budd, I guess, you and he  
15 talked. He put you in touch with McGetchin, and what  
16 happened after that?

17 A. We communicated via e-mail, I believe.

18 Q. Yeah. Okay.

19 A. Yeah.

20 Q. E-mailed each other, communicated with each  
21 other, and he put you in touch with Mr. McGetchin. What  
22 happened?

23 MR. LEO: Objection. Asked and answered.

24 THE WITNESS: If I'm not mistaken, and it's  
25 been months since I've looked at this series of

1           communications, but I think that I spoke with  
2           McGetchin before the so-called Grievance Committee  
3           met and voted.

4           We communicated via e-mail.

5           BY MR. CURLEY:

6           Q.    Okay. Now, all of that was, you said, at the  
7           beginning of December, right?

8           A.    Late November. It must have been between,  
9           around November 20th and December 1st.

10          And, this, of course, was also taken up by the  
11          holiday, by Thanksgiving. So, they were really just a  
12          few days there as far as business might be attended to.

13          Q.    When did you get notice that your employment  
14          was being terminated? Mid-December sound right?

15          A.    Well, the notice of the intent to terminate  
16          was, I believe, December 15th or December 16th.

17          Q.    Okay.

18          A.    And, the notice of termination was the first  
19          week of January.

20          Q.    So, that all occurred after the vote that  
21          you're referring to, right?

22                MR. LEO:  Object to form.

23                THE WITNESS:  That occurred after the union's  
24          decision to not represent me with the grievance.

25           BY MR. CURLEY:

1           Q.    Okay. So, now, you've received this notice of  
2   proposed discipline and termination, and let me read the  
3   last line for you to refresh your memory.

4           The last line of the notice says, this proposed  
5   disciplinary action is subject to CBA Article 20,  
6   Grievance Procedure.

7           A.    Uh-huh. Okay.

8           Q.    Do you remember that? You were having trouble  
9   recalling that before, but I wanted to read it to you.

10          A.    Okay. And, that is the notice that was  
11   generated on December 15th or December 16th?

12          Q.    December 16th, the termination notice.

13          A.    Notice of intent to terminate?

14          Q.    Yes, sir.

15          A.    Yes.

16          Q.    So, you received that. That was after the  
17   vote. Did you bring to that to anybody in the union's  
18   attention, and say, look, even FAU acknowledges that  
19   this thing is grievable -- file a grievance?

20          A.    Yes, I shared the letter with Defendant  
21   Zoeller, Defendant Moats, and Doug McGetchin, the  
22   Grievance Chair.

23          Q.    Okay.

24          A.    I mean, it would have been minutes of having  
25   received it, if I'm not mistaken. I would have to look

1 at my e-mail log.

2 Q. I'm sure you did. It was important to you,  
3 right?

4 A. Yes.

5 Q. Okay. And, did they tell you that they still  
6 wouldn't file a grievance for you?

7 MR. LEO: Object to form.

8 THE WITNESS: I had a discussion on the  
9 telephone with Bob Zoeller and with Michael Moats  
10 that was lengthier on December 17th, 2015.

11 But, by this time, the date December 10th had  
12 passed, so the union agreed -- rather, waived the  
13 right to grieve the November 10th notice of  
14 discipline, concerning the outside activity forms.

15 BY MR. CURLEY:

16 Q. Yeah, but now, you've got the new notice. Your  
17 employment -- you have notice of intent to terminate  
18 your employment. That's a grievable matter, right?

19 A. Yes.

20 Q. Okay. Why didn't you grieve that?

21 A. Well, this was something -- this is the  
22 essence of my communications with the union.

23 Q. Okay. Why didn't you file the grievance?

24 A. Well, I talked with, again, Defendants Zoeller  
25 and Moats, and it was their decision -- I believe it was

1 Moats's decision to hire an attorney, to have FEA hire  
2 an attorney.

3 Q. To file a grievance for you? What was the  
4 purpose in hiring an attorney for you?

5 A. This was, as I was instructed, by Defendant  
6 Moats, normal protocol in the event of a potential  
7 termination.

8 Q. Okay. So, you're having conversations with  
9 these guys, and during your conversations with Moats and  
10 whoever else is on the line, did you say, look, I want  
11 you to file a grievance for me?

12 A. The telephone conversations with them?

13 Q. Yeah, you said they were rather protracted  
14 telephone calls. Yeah.

15 A. With Moats?

16 Q. Yeah, did you say Mr. Moats, I want a  
17 grievance filed for me, do it?

18 A. Well, this was over 90 minutes of  
19 conversation. It took place a couple of years ago.

20 As I recall, my concern was -- my ultimate concern  
21 was to have representation, and to be able to address  
22 this problem, to address the notice of intent to  
23 terminate, the university's pending action.

24 Q. Okay. And, did you say to him during the 90  
25 minute or so long conversation, that you wanted him or

1 that you wanted to file a grievance for you?

2 A. That was something that was discussed, and I  
3 believe, that was something I sought to emphasize.

4 Q. Emphasize. Can you tell me what you recall the  
5 discussion was?

6 A. Once again, it was some time ago. My  
7 recollection, in part, was that Moats was, among other  
8 things, suggesting that I resign from my university  
9 post.

10 Q. Why?

11 A. Because of, as what he saw as the violations.  
12 I believe this is something that was stated, in part, in  
13 his testimony and his deposition.

14 Although, I don't think that part of his testimony  
15 was factually correct.

16 Q. Did Moats tell you during this conversation  
17 that he believed that FAU had legitimate grounds to  
18 terminate your employment?

19 A. Yes, I believe so.

20 Q. What did you say to that?

21 A. I was frankly dumbfounded.

22 Q. Did anyone else tell you the same thing?  
23 Mr. Zoeller, or any other union representatives?

24 A. The only contacts I had were with Moats,  
25 Zoeller, and then, Johnson. So, with Zoeller, I believe,

1 in so many words.

2 Q. The same thing? Okay. Did you ever try and  
3 initiate contact with anyone at FAU?

4 MR. LEO: Object to form.

5 BY MR. CURLEY:

6 Q. Outside of the union, I mean, to talk about  
7 this?

8 MR. LEO: Object to form.

9 THE WITNESS: At which time?

10 BY MR. CURLEY:

11 Q. Okay.

12 A. You -- the November 10th?

13 Q. Yeah, let me give you an example. I know  
14 you're in conversations with some -- conversation is the  
15 wrong word. Let me just take the letter from Alperin.

16 You get the letter from Diane Alperin. Did you  
17 consider picking up the phone and calling her to talk  
18 about it?

19 A. After December 16th?

20 Q. Before or after.

21 MR. LEO: Object to form.

22 THE WITNESS: Well, I don't think that I did.

23 I don't think that I would walk in court and  
24 represent myself pro se, either.

25 I would seek counsel, and that's what the

1 union is there for. It's helpful as you know, as an  
2 appointed attorney, if there's conversation going  
3 on, to have a third party present as your  
4 representative in order to be able to provide any  
5 necessary recollection at a later time as to what  
6 transpired.

7 BY MR. CURLEY:

8 Q. Union is someone that would normally be on  
9 your team, right, in a situation like this?

10 MR. LEO: Object to form.

11 THE WITNESS: The union was on my team in  
12 2013.

13 BY MR. CURLEY:

14 Q. Okay. So, here, though, they're telling you  
15 they don't agree with your position. They're not going  
16 to file a grievance, and they think you were  
17 legitimately terminated, right?

18 A. Well, this all took place over the course of  
19 around five weeks. You're kind of condensing things down  
20 as if this was stated in one sentence.

21 Q. Yeah, I don't mean to imply that.

22 A. Okay.

23 Q. I'm just kind of summarizing what had  
24 happened. At some point in time, we're getting to a  
25 point where I'm hearing you say, well if the union



1 wouldn't file a grievance for me, I'm going through this  
2 process.

3 My question is, I understand normally that you  
4 would work through the union, but here, the union, it  
5 sounds like, wasn't helping you.

6 Did it occur to you to make a phone call, or make a  
7 few phone calls, inside the university to talk about  
8 what's happening?

9 A. You mean, the university administrators?

10 Q. Sure, like Dean Coltman, as an example. Pick  
11 up the phone and call and say hey, here's the situation.  
12 Let's try and work through this.

13 MR. LEO: Object to form.

14 THE WITNESS: I, once again, in a case as  
15 serious as something about a formal discipline,  
16 which is representative in the letter of November  
17 10th, and even more severe discipline on December  
18 16th, I would think the reasonable and cautious  
19 thing to do would be to speak through  
20 representation, someone more knowledgeable in these  
21 types of actions and disputes.

22 BY MR. CURLEY:

23 Q. Okay. So, all right. Did you try to go to  
24 Mr. Broadfield at any point? And, I'm talking about,  
25 again -- we're talking about 2015, 2016.

1 Did you go try and talk with him, since he'd been  
2 helpful before?

3 A. Doug was, and I believe is, at University of  
4 Miami. I think that he still does reside in Palm Beach  
5 County, but I believe he was at University of Miami.

6 So, he was somewhat out of the picture. My  
7 understanding is, excuse me I'm sorry.

8 My understanding is, is that he did contact  
9 Defendant Zoeller the first week of January of 2016,  
10 when he heard about the termination and offered his  
11 assistance.

12 Q. Okay. And, what did -- did he tell you what  
13 Mr. Zoeller said about that?

14 A. Yes, there's an e-mail of Zoeller responding  
15 saying yes, thanks, and I believe, in Professor  
16 Broadfield's affidavit, he states that this is the only  
17 communication that he had with Defendant Zoeller  
18 concerning the case.

19 Q. Is Mr. Broadfield someone capable of filing a  
20 grievance?

21 A. Yes, but he was no longer a member of United  
22 Faculty of Florida. He was a faculty of University of  
23 Miami.

24 I don't know what their situation is in terms of  
25 representation, or if they're represented by UFF or AUP,

1 I'm not sure about that, but I would believe it would be  
2 imposing on him to ask.

3 We had, I think, a good professional, collegial  
4 relationship, but I don't think we were personal friends  
5 or anything. Otherwise, I may have asked.

6 Q. So, you never asked him to, is that right?

7 A. Asked him to file a grievance on my behalf?

8 Q. Yes, sir.

9 A. I honestly don't know as to whether or not he  
10 would be allowed to do so, if he were not a member of  
11 UFF. And, again, it's important that -- I'm not sure if  
12 we're talking about between November 10th and early  
13 December, or if we're talking about December 15th  
14 through early January.

15 It's important, I think, to distinguish between  
16 these two times, because after December 20th or  
17 thereabouts, I was represented by Thomas Johnson.

18 Q. Right. I'm really talking about at any point  
19 in time there. It sounds like the union wasn't going to  
20 file a grievance, or pursue things on your behalf.

21 So, I'm trying to find out whether you asked anyone  
22 outside of the immediate union. Mr. Broadfield is an  
23 example, someone that you've worked for before and  
24 trusted to do that for you.

25 A. I spoke with Timothy Lenz, who was -- it was

1 my understanding that he was acting as Grievance Chair  
2 in fall of 2015.

3 Q. Okay.

4 A. And, I believe that you had asked about  
5 communications, concerning between myself and Tim Lenz,  
6 and I did not communicate with him via e-mail.

7 I did send him or CC him some things, I believe, in  
8 October and November to his FAU e-mail, but he does not  
9 disclose his personal e-mail to, I think, even close  
10 associates.

11 He has a distinction between his personal life and  
12 work life.

13 Q. Smart man.

14 A. Yeah. So, I got his telephone number through  
15 Bob Zoeller, and I communicated with Tim. I believe it  
16 was a 35 to 45 minute conversation, in November, around  
17 the 20th of November after I received the notice of  
18 discipline, and I wanted to discuss that with him, and  
19 filing a grievance.

20 I also spoke with Tim Lenz, I would say around  
21 October 22nd or so of 2015. We were at a function at the  
22 library, where we were speakers on a panel, and it  
23 involved scholarly publishing.

24 And, beforehand, I had -- I got there a bit early.  
25 I was on parental leave, but I saw him, and we had a

1 chance to chat briefly --

2 Q. This is Mr. Lenz, you're talking about?

3 A. Yes.

4 Q. Okay.

5 A. We had a chance to chat briefly, and he was  
6 aware of the e-mail that I sent on October 20th of 2015,  
7 because he said to me, it looks like they're making it  
8 up as they go along.

9 And, he was talking about the outside activities  
10 policy, and we kind of chuckled about that, and I think  
11 we were more or less ushered in with the event where we  
12 discussed scholarly publishing.

13 So, it was just a very brief interaction, but I do  
14 recall that specifically, and I have a good deal of  
15 respect for Professor Lenz. He had served on the Board  
16 of Trustees as the Faculty Senate President.

17 He had served in UFF, and he's stepped in with the  
18 union to assist, for example, in training the Grievance  
19 Chair in 2014, when it was not really -- nothing he  
20 necessarily had to do.

21 Q. Why didn't Mr. Lenz, then, file a grievance  
22 for you?

23 A. He told me at the conclusion of our -- towards  
24 the end of our discussion on the telephone in November  
25 of 2015, that he's no longer involved in this process,

1 and the reins had been passed to Doug McGetchin.

2 So, I'm quite certain that at that point, I  
3 contacted Doug McGetchin, and may have CCed Zoeller. I  
4 would, once again, have to look at those e-mails.

5 There were a number of them in late November of  
6 2015.

7 Q. At any point in time, did you ask for an  
8 extension of time to process your paperwork or make  
9 decisions in connection with the termination and the  
10 notice?

11 A. I requested that they do so, and that that was  
12 a possibility that I was aware of.

13 Q. And, did FAU grant an extension of time?

14 A. On the November 10th letter?

15 Q. No, on the -- I'm sorry. Let me be specific.  
16 On the December 16th notice.

17 A. I believe that because of the fact that this  
18 took place over the holidays, or it was on the eve of  
19 the holidays if you will --

20 Q. Yes.

21 A. That Michael Moats spoke with Lawrence Glick,  
22 the FAU general counsel, and there was an extension  
23 granted beyond what would have been December 27th,  
24 because they said that they were -- the FAU  
25 administration stated that it was not going to

1 acknowledge holidays or when the university was on  
2 break, concerning this matter.

3 That Larry Glick was going to go in and check his  
4 e-mail, or his campus mail on December 26th, 10 days  
5 after the letter was issued for my response.

6 He was going to make that exception. I don't  
7 understand how that would be done, because the campus  
8 was closed, and mail -- regular mail would not be  
9 processed if the workers were not there.

10 But, somehow, that's what I was told -- that it was  
11 going to be that stringent of a process, and Michael  
12 Moats contacted Glick and asked for an extension of  
13 roughly one week, or whenever everyone was back on or  
14 around January 3rd.

15 Q. And, Did Mr. Glick agree to that?

16 A. My understanding is that he did.

17 Q. What was the purpose of the extension?

18 A. My understanding is that Tom Johnson was  
19 brought in, and even though he's a quite capable  
20 attorney, I don't believe that he had ever represented  
21 anyone, any FAU employee before in a disciplinary  
22 matter.

23 And, so, he needed time to get up to speed. He  
24 needed time to review the CDA. He needed time to review  
25 documents, and so, it was not -- it was going to take

1 him some additional time to be able to do all of those  
2 things, and then, to be able to represent me adequately.

3 And, this was -- this was, once again, my first  
4 communication with him was on or around December 20th or  
5 21st.

6 I'd have to look at a retro calendar to be able to  
7 -- I do recall our conversation, though, and  
8 introduction.

9 Q. So, the idea was to give Mr. Johnson some more  
10 time to get up to speed? Is that the purpose of the  
11 extension?

12 A. I believe so. That's my recollection, because,  
13 once again, this was a completely new thing. He had  
14 mentioned to me, as well, on e-mail that he had some  
15 family function or had relatives coming in.

16 It's like December 22nd, you know.

17 Q. Sure.

18 A. So, he was not going to, you know, occupy his  
19 full attention.

20 Q. Was it your understanding that Mr. Johnson was  
21 capable of putting together and filing a grievance for  
22 you?

23 A. I believe that he was capable of doing that,  
24 yeah.

25 Q. At any point in time, did you --



1           **A.**    He did -- excuse me. I'm sorry. He did labor  
2   law, and that was his forte. I think he did first  
3   amendment claims as well, but labor law, so, yeah, I  
4   thought this was alley.

5           **Q.**    Okay. At any point in time, did you decide you  
6   did not want to file a grievance?

7           **A.**    Between, on or around December 20th and  
8   mid-January?

9           **Q.**    Let me be clear. Ultimately, we know you  
10   didn't file a grievance, and my question is did you  
11   personally decide that that's not something you wanted  
12   to do?

13          **A.**    I was being represented by Mr. Johnson,  
14   formally, at that time, and this is something that I'm  
15   not sure as to whether that would impinge upon  
16   attorney/client privilege that is presently --

17          **Q.**    I'm not asking you for his advice or your  
18   conversations with him about it one way or another. I'm  
19   just asking what you decided.

20          **A.**    I was relying on his expertise at that time.

21          **Q.**    So, whatever he counseled you to do, that's  
22   what you were going to do? Is that what you're saying?

23          **A.**    Well, as any attorney and their client does,  
24   we took part in conversation and deliberation, and  
25   considered our options.

1 Q. Did you trust his advice?

2 MR. LEO: Object to form. Also, calls for  
3 attorney/client work product. You're specifically  
4 asking about Johnson's advice.

5 MR. CURLEY: Whether he trusted him or not,  
6 that's what I'm asking.

7 MR. LEO: Object to form. You can answer.

8 THE WITNESS: Well, I'm trying to recollect my  
9 frame of mind at the time, which was somewhat  
10 disoriented.

11 I was somewhat uncertain. I think I needed  
12 guidance, and so, I was putting my trust in him.

13 BY MR. CURLEY:

14 Q. Okay. And, ultimately, I think I just ran into  
15 it when I was looking for something. Ultimately, you  
16 told him the services were no longer required, right?  
17 Does that sound right?

18 A. Well, that as -- yeah, that was later in  
19 January.

20 Q. Let's see. Oh. Yeah, here's the e-mail.  
21 Exhibit -- I guess 8D. I formally acknowledge your  
22 e-mail below.

23 As of Thursday, January 14th, 2016, at 11:05 a.m.,  
24 your legal representation, in my case, with FAU, has  
25 concluded.

1 Does that refresh your memory as to what you told  
2 him?

3 A. I recall that he had contacted me after  
4 reading something in the newspaper, and asked have you  
5 retained other counsel? And, I believe I told him that I  
6 did.

7 Q. Why didn't -- yeah, why hadn't you told him  
8 that? Why did he have to read about it in the paper?

9 MR. LEO: Object to form.

10 THE WITNESS: I'm not certain. I think that  
11 this was something that whereby I was still  
12 presenting the case, and the specifics of the case  
13 to the new counsel.

14 He was not formally on board.

15 BY MR. CURLEY:

16 Q. How did it get in the newspaper, then?

17 A. A reporter contacted me and asked me for some  
18 comments via e-mail.

19 Q. And, did you tell the reporter that you'd  
20 hired a lawyer?

21 A. I must have, yeah.

22 Q. Okay. Why did you do that?

23 MR. LEO: Object to form.

24 THE WITNESS: I believe that I was in the  
25 process of concluded hiring him. I don't know.

1 I'd have to look at the e-mail and specific  
2 dates.

3 BY MR. CURLEY:

4 Q. Had anyone counseled you that during this  
5 period of time, it was important that you not speak with  
6 the newspapers or the media about what was going on?

7 MR. LEO: Object to the extent this calls for  
8 attorney/client communications.

9 THE WITNESS: Yes, I was advised of that by  
10 Defendants Moats and Zoeller.

11 BY MR. CURLEY:

12 Q. And, you rejected that advice, right?

13 A. I would say no. I would say around December  
14 20th or December 21st, the MBC television came to my  
15 door, and the door was open because the weather was  
16 nice, and we were watching a ballgame.

17 And, I think I had my daughter down, and the  
18 particular broadcast journalist was very direct, and can  
19 I speak with you?

20 I did say a few things, and I did not give a full  
21 interview. It was from a screened door, and it was  
22 between myself and the journalist and, I think that we  
23 talked for maybe about a minute and a half or so, and  
24 then, I concluded the conversation.

25 I don't believe that I was -- I was approached by

1 newspapers, at the time, and I think I spoke with the  
2 reporter off the record, but I did not speak with the  
3 media otherwise, in anticipation of there being anything  
4 published.

5 Q. All right. Are you a person that -- is it easy  
6 dealing with the media?

7 A. Well, it depends on -- the mainstream media,  
8 I'm not at ease, no.

9 Q. You've had a lot of experience with dealings  
10 with the media, right?

11 A. I have had some, yeah. Probably more than the  
12 average person.

13 Q. Did you speak with Mr. Moats or Mr. Zoeller  
14 after talking to the reporter? Were they upset with you  
15 for doing that?

16 A. There was an e-mail from Mr. Moats, because  
17 this appeared, I believe, on the Sunday morning Today  
18 Show.

19 And, they appeared to have been monitoring the  
20 media, much like FAU, and contacted me via e-mail.

21 Moats contacted me via e-mail, and I believe stated  
22 my advice to you is to not speak to the media, and I'm  
23 reiterating that advice now.

24 Q. When you say much like FAU, what do you mean  
25 by that?

1           **A.**   Well, it's apparent by some of the produced  
2 documents that Defendant Kelly and his wife were  
3 watching the media, and any news having to do with me,  
4 between December 15th and early into January.

5           **Q.**   Your belief is that they were looking for news  
6 relating to you as opposed to any news relating to FAU?

7           **A.**   It looked as if they were looking for news  
8 related to me. I discussed me specifically in their  
9 e-mail communications.

10          **Q.**   What did they say?

11          **A.**   I believe that Ms. Kelly, which she has a  
12 hyphenated name, but Defendant Kelly's wife stated that  
13 in early January, that I was not sending the nasty  
14 things that I had said previously in press, concerning  
15 the Sandy Hook events, and Defendant Kelly said good.  
16 Let's hope it stays that way.

17           I believe this was on or around January 6th of  
18 2016, but there were -- Defendant Kelly was sending  
19 e-mails, contrary to his testimony here in this case, he  
20 was sending e-mails repeatedly, concerning articles that  
21 were published about me and my termination to the  
22 members of his family, including his wife.

23          **Q.**   Okay. and, you know that how?

24          **A.**   Pardon?

25          **Q.**   How do you know that? All the things you just

1 said about the things that they were looking at and they  
2 were communicating, how do you know that?

3 A. The documents produced by your office.

4 Q. Okay. So, you read the documents, and you draw  
5 conclusions from what they say about what they're  
6 thinking and et cetera, right?

7 MR. LEO: Object to form.

8 THE WITNESS: One can, at the very least,  
9 infer about what they are thinking, and it's in  
10 contrast to Defendant Kelly's testimony that he new  
11 nothing about the termination.

12 This was hands off. He was letting his  
13 subordinates handle everything.

14 BY MR. CURLEY:

15 Q. That's your conclusion, from reading the  
16 e-mails, is that right?

17 A. That seems readily apparent to me.

18 Q. And, what e-mail do you base that on -- or  
19 e-mails do you base that on, that it's readily apparent?

20 A. I think there must have been at least a dozen  
21 e-mails.

22 Q. Okay. What do you recall specifically in any  
23 one of those dozen e-mails that makes you draw that  
24 conclusion?

25 A. Well, he's forwarding e-mails concerning my

1 termination to their siblings, what have you, other  
2 individuals by the name of Kelly, as well as his wife,  
3 who has a FAU.edu e-mail address.

4 I can't imagine that he was just doing that willy-  
5 nilly. I would imagine that he's probably doing that  
6 with some sort of intent to follow up with the telephone  
7 conversation about it's great we got rid of this guy.

8 Q. So, these are e-mails talking about the  
9 termination of your employment?

10 A. Yes, I'm quite certain. Uh-huh.

11 Q. Because he forwarded this e-mails about the  
12 termination of your employment, your conclusion is that  
13 he was involved in the decision to terminate your  
14 employment?

15 A. I think that's ultimately up to the judge  
16 and/or jury to decide.

17 Q. That's the conclusion you've reached, right?

18 A. He was very much aware of this. I mean, I can  
19 imagine forwarding an e-mail -- excuse me, a newspaper  
20 article to my spouse or family member.

21 I wouldn't do that, I wouldn't bother them. A lot  
22 of people get upset about their e-mail boxes being  
23 flooded.

24 I wouldn't do that unless there is some degree of  
25 importance to the e-mail, especially if I were



1 University President and had such responsibilities.

2 Q. When you represent yourself as a  
3 representative of the university, that carries certain  
4 responsibilities, doesn't it?

5 A. If one does so, yes.

6 Q. You understand that.

7 A. I understand if one represents themselves as a  
8 employee of FAU, yes.

9 Q. It tends to give you more credence, doesn't  
10 it?

11 A. I don't know. You know, actually, I think  
12 probably not have a Ph.D., and necessarily that  
13 university affiliation might make one a better blogger.

14 Q. So, you feel like not being affiliated with  
15 the university has been good for you, right?

16 A. I'm not sure what you mean.

17 Q. You just said it makes a better blogger.  
18 That's what you do, right?

19 A. Well, I don't affiliate myself -- I've not  
20 affiliated myself with the university, and this was  
21 subject of the discipline of 2013.

22 The university sought for me to distance myself and  
23 my personal activities from the university, and that's  
24 why we put the disclaimer on the website, on the blog.

25 Q. That was fair for them to do, right?

1           **A.**    When that didn't work, they turned on a dime  
2           and pursued the outside activities forms. Was that fair  
3           for them to do?

4           **Q.**    Yeah, for them to insist when you're writing  
5           your blog or what have you, that you not affiliate  
6           yourself with the university.

7           **A.**    I was not writing another obscene.

8           **Q.**    So, you take objection to that?

9           **A.**    I was not writing another obscene or  
10          outrageous.

11          **Q.**    So, unless it was obscene or outrageous, in  
12          your opinion, you should be able to say that you're an  
13          FAU professor, and this is something done as part of  
14          your services for the university?

15          **A.**    Well, once again, I didn't, after the  
16          settlement agreement was forged, and we came to an  
17          agreement on the disclaimer.

18          I never went out and presented myself to the media,  
19          the mainstream media or otherwise, as being a professor  
20          at FAU. I don't believe that I ever intentionally did  
21          that.

22          That was usually -- that linkage was something that  
23          was usually established by the given journalist or  
24          editor of the given publication in most instances.

25          I had a disclaimer on my blog from March of 2012

1 stating that the views, the opinions on this blog are  
2 not representatives of the Florida -- or state  
3 university of Florida.

4 Q. How did that make you feel when the university  
5 said to you, look, you can write what you want to write  
6 about Sandy Hook, but don't attribute it to FAU?

7 Were you offended by that?

8 A. I don't think I was offended. I don't think  
9 that would be the correct word, no.

10 Q. What would be the correct word?

11 A. I'm not sure. It's something I would have to  
12 ponder. I don't think there's really anything wrong with  
13 people who work for higher education institutions to  
14 comment, to critique the media, political events, or  
15 anything along those lines.

16 I don't think there's anything wrong with that. In  
17 fact, if society does not depend on the universities to  
18 do that, who else is going to do it?

19 I don't think we can necessarily depend on  
20 mainstream news media given the linkages they have with  
21 powerful entities and in some cases, ownership, and so,  
22 I think that university faculty -- was being critics of  
23 society, freethinkers, and so forth.

24 So, I'm not sure if there's necessarily anything  
25 wrong with that. However, I did acknowledge their

1 concerns and revised the disclaimer in late 2013.

2 Q. Did the FAU ever tell you that you could not  
3 blog? Let's start with that.

4 A. Well, I think we would argue that they fired  
5 me because of my blogging, under a pretext, but was  
6 there anything overt, specific, stated by an FAU  
7 administrator, concerning my blogging to prohibit it?

8 Q. Yeah, knock it off. Hey, Professor Tracy, no  
9 more blogging. Anybody do that?

10 MR. LEO: Object to form.

11 THE WITNESS: Not in those words, but if you  
12 take, for example, the opinion piece that was  
13 written dually for the Sun Sentinel and the Palm  
14 Beach Post by, I believe, Patricia Kollander and  
15 Jeffrey Morton, and Thomas Lewis, I believe in  
16 sociology.

17 All of these people were former  
18 administrators. I think one of them at the time was  
19 functioning as an administrator at FAU, requesting  
20 that I resign.

21 This was published on or around April of 2013,  
22 as has been discussed elsewhere in other  
23 testimonies in this case.

24 I think that that certainly is a message that  
25 they were disapproving of my blogging.

1 BY MR. CURLEY:

2 Q. When you wrote your articles about -- let's  
3 focus on Sandy Hook for a minute. You wrote your  
4 articles about Sandy Hook being a fraud, did you expect  
5 everybody to agree with you and get all, hey, way to go,  
6 good job there?

7 MR. LEO: Objection. Asked and answered. I  
8 remember that one from the first deposition, Joe.

9 MR. CURLEY: Really? I thought I just made  
10 that one up.

11 MR. LEO: Sorry about the speaking.

12 MR. CURLEY: Well, that's okay.

13 THE WITNESS: Well, I could -- I think perhaps  
14 clarify what we discussed in the first part of this  
15 deposition on May 2nd.

16 I think that you take the view because part of  
17 your job is to --

18 BY MR. CURLEY:

19 Q. Are you talking about me, Curley, or --

20 A. I'm talking about FAU's legal representation.

21 Q. Okay. go ahead.

22 A. Could be you or Holly or Keith or what have  
23 you, you are taking the assumed view of the mass media  
24 that this event took place, Sandy Hook took place as  
25 they have reported it to a tee.

1 And, I think that --

2 Q. Trust me. I never take that view that the mass  
3 media is always correct.

4 A. Right. I realize that, but your position, I  
5 think, in order to perhaps persuade a jury in court is  
6 to take that view.

7 I recall in the first portion of this deposition,  
8 you held up the transcript or the book Nobody Died at  
9 Sandy Hook and all that, the theatrics.

10 I don't think that it's the job of any sort of  
11 critical thinker or academic to certainly take the world  
12 face value, and with that specific event, I think it was  
13 what I stated on my blog was much more complex,  
14 concerning the media coverage of that event.

15 It was much more complex that what it was whittled  
16 down to be in the headline, or in a sound bite to  
17 prejudice the public, and the court of public opinion,  
18 prejudiced towards me.

19 I was saying that there's much more to this event,  
20 that it should be much more carefully considered than  
21 just an episodic way.

22 Not the only event in history, but it's one of many  
23 -- it was perhaps more fragrant in that you may have had  
24 the news media complicit in presenting an event as fact,  
25 which may have only partially taken place or not taken

1 place at all, but at the very least, took place in a way  
2 that the media did not report accurately on.

3 Q. Yeah, I guess my only point is when you wrote  
4 those articles, you knew it would be controversial and  
5 not everybody would agree with you, right?

6 A. Well, this gets into the anticipation of  
7 audience of -- your audience, and I don't believe that I  
8 was -- my blog addresses an audience that would be upset  
9 by those observations.

10 I'm talking about the general readership, the  
11 commenters, the reading audience of my blog or of other  
12 sites that mirror the articles like Global Research.

13 I don't think they -- it's not to say that there's  
14 just one sort of homogenous opinion. That's not the case  
15 either, but I don't think that in real terms of media,  
16 those types of observations were regarded or could be  
17 regarded as inflammatory.

18 And, I did not necessarily anticipate that those  
19 observations would go beyond that smaller steer of  
20 discussion and readership.

21 Q. Surprise. Things like that do happen, don't  
22 they?

23 MR. LEO: Object to form.

24 THE WITNESS: On occasion.

25 BY MR. CURLEY:

1           **Q.**    Yeah. Okay. Let's take a little break. Five  
2 minutes, 10 minutes enough? Say 11:30, we'll get going  
3 again.

4           (Thereupon, a short recess was had.)

5           BY MR. CURLEY:

6           **Q.**    Okay. We're back on the record, and I want to  
7 ask you some questions about collective bargaining  
8 agreement, and in particular, focus on the conflict of  
9 interest outside activities provisions.

10          Do you know how long FAU has had a conflict of  
11 interest or outside activities policy in some form in  
12 the collective bargaining agreement? How many years back  
13 that goes?

14          **A.**    No, I believe that all of the collective  
15 bargaining agreements across the Florida university  
16 system based upon a legacy contract, and that that's my  
17 understanding.

18          **Q.**    But, you don't know how long that's been in  
19 existence?

20          **A.**    No.

21          **Q.**    Okay. How long were you affiliated with the  
22 union at FAU?

23          **A.**    As a member or an officer?

24          **Q.**    Either. Any sort of affiliation.

25          **A.**    I think that I joined the union when I began



1 when I was hired in August of 2002.

2 Q. Okay.

3 A. I believe I became more involved with the  
4 university -- shall I say union activities as far as an  
5 officer, maybe, in 2008.

6 Q. How did you become an officer in the union?

7 A. I attended a luncheon.

8 Q. And, how did that turn --

9 A. I think it's more or less -- it, in part, is a  
10 social group, and they have, at the time I was involved,  
11 they had functions in the Board of Trustees room on the  
12 third floor of the administration building.

13 And, they would have a happy hour, I think,  
14 following the faculty senate, and they would also have  
15 luncheons on Friday afternoon, maybe once every month or  
16 two.

17 And, this would include elections, and so, on  
18 occasion, you've had someone saying who you knew from  
19 the union or maybe in your departments or the college  
20 saying I'm going to nominate you.

21 I nominate you for senator, or what have you, and  
22 you'd be on the ballot, and whoever was at the luncheon  
23 that given day, would vote.

24 Q. Who nominated you to become an officer in the  
25 union?

1           A.    I'd have to think about that. The first time?

2           Q.    Yes, sir.

3           A.    I don't even -- it may have been Mike Budd who  
4 discussed it with me. I'm not certain. I don't know.

5           Q.    Whatever point it was, you agreed to serve?

6           A.    As a Senator or otherwise?

7           Q.    Whatever it was that you -- you said you were  
8 an officer in the union. You agreed to do that. You  
9 didn't say I'm not doing it, or I oppose that?

10          A.    Well, no, I was a member, and so, I agreed.  
11 There was the understanding, for example, as far as  
12 being a Senator, that the obligations were not  
13 substantial.

14          They involved, in part, attending meetings when one  
15 could, even though those were not always awfully well  
16 attended, and one had the option as well of attending  
17 the state wide meetings that were held in either Tampa  
18 or Orlando roughly once per semester to partake in  
19 those.

20          That was -- I believe the state-wide UFF Senate,  
21 and so you had the option of attending those as well. It  
22 was not every Senator. In fact, most Senators likely  
23 would not attend those functions, unfortunately.

24          At least from our chapter, there weren't as many as  
25 there probably could have.

1           Q.    Did you ever read the collective bargaining  
2 agreement while you were a member of the union?

3           A.    Well, I think that we discussed this in the  
4 first portion of the deposition on May 2nd. I had read  
5 -- I read portions of it.

6           Q.    And, let me make sure you understand my  
7 question. My question relates to, I guess, you became a  
8 member of the union sometime around 2002.

9           From that point forward, did you ever read one of  
10 the existing collective bargaining agreements?

11          A.    In its entirety?

12          Q.    Sure.

13          A.    From cover to cover?

14          Q.    You make it sound like it's 1,000 pages. How  
15 long is it?

16          A.    I believe it's about 120.

17          Q.    Right. Did you ever read --

18          A.    I don't think I've ever sat down and done a  
19 cover to cover reading of it, no.

20                It's generally regarded -- and, I think most  
21 members regard it as being a reference, if you will.  
22 It's something that the bargaining team, at any given  
23 point, and the Grievance Chair have to be very well  
24 apprised of, because they're forging a document or  
25 they're overseeing its alteration. Potential alteration.

1           Q.    At some point, and I know we talked about  
2           this, but at some point, you signed the collective  
3           bargaining agreement on behalf of the union, right?

4           A.    I believe it was the 2009/2012 bargaining  
5           agreement.

6           Q.    And, why was it that you were selected of the  
7           union members to sign it?

8           A.    I'm sorry?

9           Q.    How did you become the union member who signed  
10          the agreement as opposed to everybody else?

11          A.    I was the -- I was elected the President of  
12          the union from, I believe, 2009 through 2011.

13          Q.    Okay. let me hand you what I marked as Exhibit  
14          34. It's a section of the union agreement, I think. Let  
15          me make sure I got the dates right -- 2006 through 2009,  
16          and what it is, you got the cover page.

17          Then, you have the provisions dealing with conflict  
18          of interest/outside activities.

19          Do you see that?

20          A.    Yes.

21          (Thereupon, the document was marked as Defendant's  
22          Exhibit Number 34.)

23          BY MR. CURLEY:

24          Q.    And, is it fair to say that in the collective  
25          bargaining agreement from 2006 to 2009, there was a

1 requirement to report outside activities?

2 A. Okay. Yeah. Article 19, 2006/2009.

3 Q. We looked at this before, so I don't want to  
4 spend time on it, but in the document that was marked as  
5 Exhibit 1 which is the collective bargaining agreement  
6 from 2009 to 2012, it also has a reportable outside  
7 activity provision.

8 Does it differ from the 2006 to 2009 provision to  
9 the best of your knowledge?

10 MR. LEO: Object to form.

11 THE WITNESS: It doesn't look as though it  
12 differs between the 2006/2009 and 2009/2012.

13 BY MR. CURLEY:

14 Q. All right. And, lastly, this is the 2012  
15 through 2015 provision. Does the provision differ in  
16 this one?

17 MR. LEO: Object to form.

18 THE WITNESS: No, they appear to be the same.

19 BY MR. CURLEY:

20 Q. Okay. Do any of those provisions that you  
21 looked at require you to obtain approval for outside  
22 speech?

23 A. Outside?

24 Q. Speech.

25 MR. LEO: Object to form.

1 BY MR. CURLEY:

2 Q. Say something outside of the university, do  
3 they require that you get approval to speak your mind?

4 A. I think that would depend on how activity is  
5 defined, and that's always been a real problem.

6 This is very broad. It's a broadly construed, very  
7 broadly constructed article, as is the FAU policy.

8 And, so, speech -- include any sort of published  
9 way, any media, I would imagine including Twitter of  
10 Facebook.

11 So, to what degree does one wish to stretch this?  
12 One could conceivably --

13 Q. Anything. Is there anything in there that says  
14 before I voice my views on Twitter, to use your example,  
15 or anywhere else, is there anything in there that says  
16 you got to get somebody's approval for that?

17 MR. LEO: Object to form.

18 THE WITNESS: I think one could conceive of a  
19 scenario whereby the FAU administration does not  
20 agree with or appreciate the views of faculty  
21 members Twitter, their blog, their Facebook, and  
22 could argue that this is applicable, and you'd have  
23 violated the CBA.

24 Again, this is something that depends upon  
25 what activity is. If someone, for example, is in

1 gender and sexuality studies, do they have to fill  
2 out an outside activity form, because of the  
3 relationship with their significant other?

4 If someone is an economist, do they have to  
5 fill out an outside activity form when they partake  
6 in some program of whole economics, to be able to  
7 better define the family budget?

8 Does a mathematician have to fill out an  
9 outside activity form if they figure out how much  
10 groceries they're going to need in a given week?

11 I mean, it just -- where is the limit? Where  
12 is the end of this?

13 If I'm filming -- do I have to fill out the  
14 form when I go to attend the cinema or watch  
15 television or watch a newscast or something?

16 There's no clear demarcation, and so I think  
17 this could likely be used in a way that would be  
18 potentially abusive, unconstitutional, et cetera.

19 BY MR. CURLEY:

20 Q. Is there anything in there that says before  
21 you speak outside of the university, you need somebody's  
22 permission?

23 MR. LEO: Object to form.

24 THE WITNESS: Verbatim?

25 BY MR. CURLEY:

1           Q.    Well, show me whatever language you think  
2 prohibits you from speaking.

3           MR. LEO:   Object to form.

4           THE WITNESS:   Again, this is the way in which  
5 it is constructed, and so, I think that my response  
6 has to be in the appropriate context.

7           The way in which this language is constructed,  
8 the way in which this is applied, but to respond to  
9 your question, specifically --

10 BY MR. CURLEY:

11          Q.    Sure.

12          A.    Is that language in there?

13          Q.    Yeah.

14          A.    That speech, prohibits your speech?

15          Q.    Right.

16          A.    No.

17          Q.    Okay. Is there a language in there -- let me  
18 change my question a little bit.

19          Is there a language in there that requires you to  
20 obtain approval to engage in an outside activity?

21          A.    If there's not going to be an approval  
22 process, either explicit or implied, I'm not sure as to  
23 why one would be required to report the activities.

24          Q.    Do you know what a conflict of interest is?

25          A.    Under Florida statute?



1           Q.    In any respect.

2           A.    Well, under Florida statute, I believe  
3 Chapter 112, it primarily has to do with if you have an  
4 economic enterprise, or if you are employed by a  
5 competitor university or private school or something  
6 like that, it's fairly specific.

7           It might be construed as being something more  
8 broad.

9           Q.    But, there is Florida statutes, and I  
10 appreciate that you're familiar with that. I guess a  
11 broad definition might be something that pulls you in  
12 two different directions.

13          You know, something like that, but my question was,  
14 just are you -- you understand that there are  
15 conflictions of interests, and so, given that, let me  
16 ask you this.

17          Do you think that the university has a right to  
18 know whether you're conflicted? That you have conflicts  
19 of interest that might pull you in different directions  
20 from your job?

21               MR. LEO:  Objection to form.

22               THE WITNESS:  Different directions from your  
23 assigned duties?

24 BY MR. CURLEY:

25           Q.    Yeah, whatever you've been asked to do for the

1 university. Do they have a right to know whether you  
2 have conflicted interests?

3 A. I think that would be legitimate if it  
4 involved limiting one's performance in the way of  
5 teaching researching service, which is outlined in  
6 everyone's assignment.

7 Q. Do you do reports of outside employment or  
8 professional activity forms, are they required to be  
9 approved in advance?

10 A. For what type of activity?

11 Q. Any.

12 A. Approved by?

13 Q. Anyone.

14 A. If someone, for example, has a business or  
15 something along those lines, a for profit business or  
16 consulting or whatever the case may be, I think that is  
17 the -- that's the intent of this article and policy.

18 Q. So your opinion would not be that a collective  
19 bargaining agreement does not require advanced approval?

20 MR. LEO: Object to form.

21 BY MR. CURLEY:

22 Q. Is that correct?

23 A. Well, this is -- the whole policy, as I'm sure  
24 you're well aware, has been in flux. It was being  
25 revised when I was being terminated. When that

1 termination was proceeding. So it depends on -- I think  
2 it's important to be able to nail down what time we're  
3 talking about because in early 2013 I think that this  
4 was something that was a totally different situation  
5 versus 2016, and even then there were a great many  
6 faculty in all of the colleges I believe, some more so  
7 than others, who had questions about the outside  
8 activities policy.

9 Were uncertain whether or not they were violating  
10 it. Did not want to get in trouble. Did not want to face  
11 the same fate that I had to face, and were raising  
12 questions to their, to their department chairs and their  
13 upper administrators about the policy itself and how  
14 they were confused, the ambiguity of the policy.

15 This was something that was illustrated as well in  
16 the proceedings of September 4th, 2015, and with the  
17 faculty senate on the FAU Boca campus. There were a  
18 number of faculty that didn't understand. This is  
19 articulated, for example, by Timothy Lens (phonetic) and  
20 Marshall Derosa (phonetic) discussed this I believe in  
21 other depositions and what have you.

22 Q. Those other faculty members, Mr. Lens,  
23 Mr. Derosa, anyone else that was voicing concerns at the  
24 meeting you referred to, did any of those folks refuse  
25 to submit their outside activities forms?

1           **A.**   Who were present at the meeting, or who were  
2 protesting, or either way?

3           **Q.**   Yeah, let's say Mr. Lens, did he refuse to  
4 check the box, and did he refuse to submit his outside  
5 activity form?

6           MR. LEO:   Object to form.

7           THE WITNESS:   I'm not sure what his outside  
8 activities are. I know that he brought up in his  
9 deposition that he was involved in some political  
10 organizing, and that this, of course, was just a  
11 few months ago, so I believe that he said he was  
12 considering fill out a form or something.

13           This was in early 2017. I know that there are  
14 people present at that meeting in September of 2015  
15 who had not filled out forms for various types of  
16 blogging, social media, things like that.

17 BY MR. CURLEY:

18           **Q.**   Did any -- give me a name of someone who told  
19 you I'm not filling out this outside activities form?

20           **A.**   Chris Robay (phonetic) another former UFF FAU  
21 president, chapter president who succeeded me.

22           **Q.**   Okay. Anyone else?

23           **A.**   Shane Eason (phonetic), who's an assistant  
24 professor in my former department.

25           **Q.**   So he said I'm not filling out the form, and

1 he hadn't done it, right?

2 A. Yes.

3 Q. Okay. And anyone else?

4 A. At the -- that was at that meeting? I believe  
5 that Doug McGetchen was likely there. I know that he has  
6 a Twitter account. There are number of people, there are  
7 a number of faculty members that have social media. I  
8 would say probably 80, 90 percent of the faculty at FAU,  
9 except for maybe the senior, senior faculty have a  
10 Facebook account, and I know for a fact, I'm friends  
11 quote unquote with a lot of academics on Facebook, and  
12 they're talking about their book projects and their  
13 research and their dislike of Donald Trump all the time  
14 on social media. So it's fairly commonplace.

15 Q. So your testimony is that people you just  
16 mentioned have not done outside activities forms, is  
17 that right?

18 A. To my knowledge, they've not, but it's been  
19 months since I've communicated with them.

20 Q. Okay. But that's what they told you, right?

21 A. Excuse me, Yes.

22 Q. Okay. Is it fair to say that the collective  
23 bargaining agreement does not state that the outside  
24 employment activity has to be improved -- it has to be  
25 approved?

1           **A.**    Okay. Does it not say that in Article 19?

2           **Q.**    That's right. Does it require approval? Does  
3 it say anywhere in there that it has to be approved?

4                   MR. LEO:   Object to form.

5 BY MR. CURLEY:

6           **Q.**    Only reported.

7                   MR. LEO:   Object to form.

8                   THE WITNESS:  It states that it has to be  
9 reported, but if there is not -- again, if there's  
10 not some sort of an approval process or a capacity  
11 to contest the faculty members or the staff members  
12 outside activity then the article really doesn't  
13 have a great deal of affect.

14 BY MR. CURLEY:

15           **Q.**    Right. There's not mechanism in the article for  
16 approval of outside activities, is there?

17           **A.**    Mechanism for --

18           **Q.**    Approving outside activities? There's nothing  
19 in there about approving that.

20                   MR. LEO:   Object to form.

21                   THE WITNESS:  Well again, if -- this is  
22 something that was being revised by the university  
23 administration in late 2015, early 2016. The  
24 language is very broad, and there could be -- I  
25 would think that there is the means to approve, or

1 to not approve whatever activity it may be.

2 BY MR. CURLEY:

3 Q. But there isn't anything in -- the one you  
4 signed is the union representative. There's nothing in  
5 there that provides an approval process, is there?

6 MR. LEO: Object to form. Mischaracterizes the  
7 policy and documents.

8 THE WITNESS: That there was no specific  
9 mechanism.

10 BY MR. CURLEY:

11 Q. Right.

12 A. For an approval process at the departmental  
13 level.

14 Q. Okay. And you thought you were right when you  
15 said that, right?

16 MR. LEO: Object to form.

17 BY MR. CURLEY:

18 Q. You wouldn't have said it if you didn't think  
19 it was accurate.

20 A. Well, I was operating on the advice of the  
21 service unit coordinator.

22 Q. Let's see. You still have Memory Hold blog?

23 A. In a matter of a speaking, yes.

24 Q. Okay. When you were working at FAU, did you  
25 have any other blogs other than Memory Hold?

1           **A.**    There was a blog that I had where it was  
2           primarily re-blogging other material that was called  
3           scoopfeed.net.

4           **Q.**    Can you spell that?

5           **A.**    S-C-O-O-P-F-E-E-D dot net, and that's defunct  
6           now, but that was almost solely comprised of re-blogs of  
7           other Wordpress blogs. You had the option on the  
8           Wordpress platform to go through and essentially click  
9           and re-blog an article from another blog, and that  
10          provided a link to the other -- like an initial  
11          paragraph.

12          **Q.**    Right.

13          **A.**    And then a link to that other blog. It's kind  
14          of like Twitter in a way where you're just providing  
15          that feed that's hence the name.

16          **Q.**    Right. And when did you operate scoopfeed.net?

17          **A.**    I believe it was 2014 or 2015.

18          **Q.**    And why were you operating that?

19          **A.**    It was simply in auxiliary to the blog, and  
20          provided readers with an additional set of articles, of  
21          headlines that they might find interesting. It could  
22          have, I think, probably just as easily been fulfilled by  
23          having a Twitter feed on the other page, which I also  
24          had or Facebook. These are -- Wordpress provides for  
25          plugins where you can input these other types of social



1 media, and that acted --

2 Q. How did this scoopfeed.net, how did that loaded  
3 up? Were you the keeper of it?

4 MR. LEO: Object to form.

5 THE WITNESS: I was -- yeah, it was one of a  
6 number of blogs, that and the Memory Hole blog. Now  
7 I have Tracy Legal Defense. These are on that  
8 account.

9 BY MR. LEO:

10 Q. Okay. And how did you decide what to put in  
11 scoopfeed.net?

12 MR. LEO: Object to form, asked and answered.

13 THE WITNESS: But once again on the Wordpress  
14 platform or dashboard you have the option of  
15 looking at other Wordpress blogs, and you can  
16 subscribe to them if you want to subscribe to them,  
17 and then they will appear on your feed.

18 BY MR. CURLEY:

19 Q. Right.

20 A. Just like if you follow someone on Twitter.

21 Q. Did you -- I got the impression you were the  
22 one deciding what would appear on scoopfeed.net. Be it  
23 from other platforms or other blogs or what have you,  
24 but you're the guy that decided this is what I'm going  
25 to run through scoopfeed.net. Is that correct?

1           **A.**    Yes.

2           **Q.**    Okay. And was there some -- did you have some  
3 limitations on what you put in there or how did you  
4 decide what to put in there as opposed to everything?

5           **A.**    It would depend. I mean, there was in some  
6 cases of various political news stories that might be  
7 relevant at the time that the readership might find of  
8 interest. There could be stories having to do with  
9 ongoing research on conspiracies, things like that. So  
10 it was more or less up to my own discretion.

11          **Q.**    All right. How much time did you spend dealing  
12 with scoopfeed.net?

13                   MR. LEO:   Object to form.

14                   THE WITNESS:   I'm -- during what time or  
15 average?

16 BY MR. CURLEY:

17          **Q.**    Throw me an average is fine, weekly, monthly,  
18 whatever make the most sense to you?

19          **A.**    Well, it's difficult to say in a way because  
20 this also involved my own reading of the news and my own  
21 perusal of news stories of the given day.

22          **Q.**    Right.

23          **A.**    That I looked on that feed. So it's kind of  
24 like asking how much time do you spend looking at your,  
25 you know, your twitter feed for the given day, but I

1 would say as far as, like, uploading stuff, or --  
2 there's no work or effort involved in my formatting  
3 because it's already -- all you do is click, and it goes  
4 up there. So I would say probably, maybe about, I don't  
5 know, 20 minutes a day or something like that.

6 Q. Yeah, well that's why I asked you how decided  
7 what to put on there or not because you have to -- in  
8 order to make decisions like that you've got to read  
9 things and decide okay, this belongs on scoopfeed.net or  
10 it doesn't. All right.

11 A. Well, one would not necessarily have to read  
12 the article in its entirety because you're not putting  
13 up the article. You're providing a link for someone to  
14 go to, you know, for someone to click onto and go to  
15 that blog if they want to look at it, and whereas if it  
16 were something that were going to be on Memory Hole blog  
17 that would be something where one would read the entire  
18 piece.

19 Q. That was more personalized, Memory Hole then  
20 -- you know, I haven't seen Scoop Feed, so I apologize  
21 if it's -- I'm out there in the nether world, but I  
22 don't know if putting it on there was a -- you felt like  
23 that was a reflection on you or what you were trying to  
24 say, I'm not sure.

25 So if it was, I would think you'd spend more time

1 making sure that whatever you put on Scoop Feed is  
2 appropriate for what you're trying to say.

3 A. Right.

4 MR. LEO: Objection to form.

5 BY MR. CURLEY:

6 Q. So I get the impression that Memory Hole is  
7 more of that elegant. Scoop Feed, you spend a little of  
8 time, maybe screening might be the right word, what you  
9 put on there, but not a ton of time?

10 MR. LEO: Object to form.

11 THE WITNESS: Well once again I was -- it was  
12 a feed. It was -- to be a feed of headlines that  
13 someone was able to use as a conduit to go to a  
14 particular site, so there was not as much effort in  
15 working on that.

16 BY MR. CURLEY:

17 Q. So if you were talking to be about Scoop Feed,  
18 like someone might saying well you all look at this  
19 because that will -- if you're interested in blah, blah,  
20 that's what you'll get out of Scoop Feed. Is it  
21 something like that, or is it just everything?

22 MR. LEO: Object to form.

23 THE WITNESS: It's not everything. I think it  
24 would be along the lines of what Memory Hole blog  
25 was, which was looking at, looking at politics and

1 the media in a kind of critical yet pedestrian way.

2 BY MR. CURLEY:

3 Q. So if you like memory hole, take a look at  
4 Scoop Feed kind of thing?

5 A. I don't think I really tell -- any great deal,  
6 but if people went to the Memory Hole blog site they  
7 would see that. There were a number of -- at the bottom  
8 of Memory Hole blog, and that's -- it's still there,  
9 still fully viewable I would have RSS feeds. I think  
10 about maybe 12 or 15 sites of peer bloggers who would be  
11 producing in many cases original content or news stories  
12 or the equivalent, and if I called it the newsroom.

13 Q. I see.

14 A. And if people wanted to scroll down they could  
15 look at that assemblage of -- you know, eight to 12 RSS  
16 feeds, they're called RSS feeds, and that's a live feed  
17 of say, I think I probably had four or five articles on  
18 the given feed for each publication, global research,  
19 zerohedge.com, which is a great financial news site.  
20 Let's see SGT Report. I'm trying to think -- and some  
21 others, and then that would be contrasting some  
22 mainstream outlets too, Wall Street Journal, Financial  
23 Times as well, so people can kind of see the contrast  
24 between these.

25 Q. Did scoopfeed.net produce any revenue for you?

1           A.    No, not that I'm aware of.

2           Q.    Did you solicit donations on scoopfeed.net?

3           A.    I think that there may have been an affiliate  
4 button on there.

5           Q.    I don't know what that is. Can you explain  
6 that to me?

7           A.    Well, an affiliate button is -- it's a -- you  
8 work with a company, and the company wants to use  
9 various types of social media to generate traffic to  
10 their site. So they'll pay you --

11          Q.    Somebody clicks it, and you get a dime or  
12 something?

13          A.    Well, if that. I mean, it's not anything  
14 substantial, but I did extend that with that. I had an  
15 affiliate link on there I think, but it did not generate  
16 any revenue.

17          Q.    Okay. All right. Any other blogs other than  
18 Memory Hole and Scoop Feed that you were operating?

19          A.    At the time, no.

20          Q.    Let's go off the record for a minute.

21                (Off the record.)

22 BY MR. CURLEY:

23          Q.    Okay. Let's see here. With respect to Memory  
24 Hole blog, did you solicit donations for a research fund  
25 for that?

1       **A.**    There was a PayPal button that was placed on  
2   the page.

3       **Q.**    Okay. We talked about that before, didn't we?

4       **A.**    Briefly, I think the first -- on May 2nd, yes.

5       **Q.**    Yeah, it seems to ring a bell. What about, you  
6   mentioned with the Scoop Feed you had the button people  
7   could click on, and it might -- I know it didn't produce  
8   much, but did you have the same kind of thing for Memory  
9   Hole or not, an -- I think you call it an auxiliary?

10      **A.**    At one point or another, yeah.

11      **Q.**    How did it do on Memory Hole?

12      **A.**    Not that well. I mean, when I say not that  
13   well I think zilch.

14      **Q.**    Oh, really.

15      **A.**    I don't think that there was any -- and  
16   there's another site as well where I had a few badges on  
17   there every now and then for various merchants. Cheapo  
18   Air was one of them. You know, you've got to have  
19   traffic.

20      **Q.**    Yeah.

21      **A.**    In the hundreds of thousands or millions to be  
22   able to generate anything for those, those accounts what  
23   have you, and I didn't. I tried it. I tried it, I think  
24   probably for a few months at a time, and then I said,  
25   you know, this is just clutter on the site, and got rid

1 of it.

2 Q. What was the highest amount of traffic you  
3 were getting on Memory Hole? It must have been  
4 significant when, you know, the Sandy Hook stuff was --

5 A. It was in January of 2015.

6 MR. LEO: Object to form.

7 BY MR. CURLEY:

8 Q. And how much traffic were you getting then?

9 MR. LEO: Object to form.

10 THE WITNESS: There were some -- a handful of  
11 major news outlets that I think linked to the site  
12 because they had written an article I think about  
13 Sandy Hook.

14 BY MR. CURLEY:

15 Q. Did you keep track of how many people looked  
16 at your site, the Memory Hole blog? Is there a way to  
17 monitor how many people actually linked onto that?

18 A. Yeah, Google Analytics has something that  
19 provides very precise readouts in terms of, you know, I  
20 think like the characteristics of the audience and the  
21 like. I never -- I never used Google Analytics. Frankly,  
22 I couldn't figure it out, and I did attempt to subscribe  
23 at one point, and it didn't work, but Wordpress had  
24 something somewhat more rough or primitive in terms of  
25 your readership and the countries that they are based in



1 based on their ISP, their Internet Service Provider  
2 address.

3 Q. Okay. Do you remember how many people linked  
4 in to Memory Hole Blog in January of 2013? Was it more  
5 than 10,000?

6 A. Yes.

7 Q. More than 100,000?

8 A. I don't know, possibly, but there's also the  
9 distinction between views and visitors, and visitors is  
10 the key thing because in most cases the views were 2.5  
11 times more than the visitors because people would on  
12 average click on two or three different articles, and so  
13 as far as the visitors go in January of -- it may very  
14 well have been upwards of 100,000.

15 Q. Okay.

16 A. On average I think that there were around  
17 1,500 to 2,000 unique visitors a day.

18 Q. That's the average?

19 A. Yeah.

20 Q. Okay. Do you ever write any other names, pen  
21 names, things like that?

22 A. At the Daily Iowan when I had a column in the  
23 Daily Iowan I fashioned myself to a certain degree after  
24 William F. Buckley, and I had a picture of myself with a  
25 pipe and what have you, and I called myself J. Frederick

1 Tracy, and my column was Firing Line.

2 Q. Nice. Since that time?

3 A. No.

4 Q. Okay. I want to ask you some questions about  
5 Global Research. Approximately, on a monthly basis how  
6 many articles -- well let's talk about the time that you  
7 were working for FAU. Let's go from 2013 through 2015.  
8 How many articles would you -- did you produce on a  
9 monthly basis for Global Research?

10 A. Well, all of these articles would appear  
11 initially on my own site.

12 Q. Meaning Memory Hole?

13 A. Memory Hole blog, yes. And if they were  
14 original then I would, I would let Michelle --  
15 Dr. Chossudovsky who's the editor of Global Research, he  
16 would sometime mirror those. So I would say --

17 Q. Can you spell that name? That one's going to  
18 --

19 A. C-H-O-S-S-U-D-O-V-S-K-Y.

20 Q. Okay.

21 A. Russian.

22 Q. Yeah, for sure.

23 A. I would say three a month, two or three a  
24 month.

25 Q. Is there articles that you would write, or

1 that you would provide?

2 A. In most cases they were articles that I wrote  
3 because there was something of interest that I wanted to  
4 address on occasion. I think that Chossudovsky would  
5 approach me and say do you know anything about this, or  
6 is this of interest to you? I think that -- I count  
7 those times one on hand.

8 Q. Were any of those articles subject to peer  
9 review or not?

10 A. As far as like a formal peer review process  
11 that we discussed on May 2nd, no they're not.

12 Q. Right, no, okay.

13 A. I know that Chossudovsky has -- he's got a  
14 handful of assistants, younger people that help him out  
15 with the site because it's somewhat of a project, but if  
16 they're not they don't have any expertise in one thing  
17 or another.

18 Q. Any of the articles that you wrote for Global  
19 Research overlap with topics you were teaching at FAU?  
20 As an example, 911 for instance maybe.

21 MR. LEO: Object to form.

22 THE WITNESS: As far as the topics go?

23 BY MR. CURLEY:

24 Q. Yes, sir.

25 A. The topicality was in some cases shared, but

1 as we discussed, you know, back in May and as you  
2 suggested a moment ago these articles were not scholarly  
3 in and of themselves.

4 Q. Okay. So -- I'm sorry, did you have something  
5 else you wanted to say? I didn't mean to interrupt you.

6 A. Yeah, and I did not use or assign those in  
7 teaching or anything, any material from Global Research.

8 Q. What about the JFK assassination? Any overlap  
9 there?

10 MR. LEO: Object to form.

11 THE WITNESS: As far as the topic?

12 BY MR. CURLEY:

13 Q. My impression is I'm going on memory, but I  
14 seem to recall that you wrote for something for  
15 publication as part of your FAU assignment.

16 A. I wrote about the -- Jim Garrison.

17 Q. Right.

18 A. Who was the New Orleans District Attorney and  
19 press coverage of him? Now, in a way, certainly that's  
20 what he's best known for is investigation of the JFK  
21 assassination, but it more specifically had to do with  
22 him and how he was -- he became all --

23 Q. In the movie --

24 A. Infamous character.

25 Q. Yeah, right, sure.

1       **A.**    At the time in 67, 68.

2       **Q.**    Right.

3       **A.**    And he was depicted in a particular way in the  
4 media, so I found that of special interest. So that  
5 involved applying certain types of research on framing.

6       **Q.**    Yeah.

7       **A.**    Stories and things of the like and bringing  
8 that to journalism to the news articles that were  
9 generated about him in 67 and 68 and his investigation,  
10 which was in most cases quite disparaging. They were  
11 really -- he was hounded by the press.

12       **Q.**    Yeah, and did you cover that in Global  
13 Research as well or not?

14       **A.**    I recall briefly bringing up the article with  
15 Chossudovsky when I visited him up in Montreal. I was  
16 there for a conference where I was, I presented the  
17 Garrison paper, and he mentioned something about well,  
18 you know, maybe we could run it as an article. He had  
19 not read it or anything, and I said well it wouldn't be  
20 appropriate because its, its heavily footnoted. It's not  
21 journalistic in nature. It's geared towards an audience  
22 that reads articles and mass communication of related  
23 research, so --

24       **Q.**    So it didn't -- you didn't use it for Global  
25 Research?

1       **A.**    To publish it, no because there was just so  
2 much work I had done with it I wanted for that to be  
3 presented in a scholarly thing.

4       **Q.**    Okay. Did you ever write on Sandy Hook for  
5 Global Research?

6               MR. LEO:   Object to form.

7               THE WITNESS:   I wrote on Memory Hole blog and  
8 some of those articles appeared at Global Research.  
9 Now I wrote -- one of the things that was in Nobody  
10 Died at Sandy Hook, the edited volume was the  
11 appendix, which was my timeline, which was not a  
12 commentary or an analysis of all. It was merely a  
13 chronological timeline of events of the Sandy Hook  
14 event itself. You know, before, after, and what  
15 have you, and that was run in Global Research, and  
16 there were a couple of updates to that because it  
17 was building.

18              I think I recovered about a year and a half's  
19 worth of time. All the press that was devoted to  
20 Sandy Hook I would write a brief paragraph length  
21 summary of the article, and I will provide a link,  
22 and I put it in a timeline, and then I provided a  
23 couple of updates to Chossudovsky.

24              There's a really very interesting project  
25 that's a handful of scholars, journalists who at --

1 blanking on the name of it now, but they've got  
2 about 20 different timelines of -- that they worked  
3 on and developed online, and they began with 911,  
4 and that became famous. It became a published book,  
5 the 911 Timeline. I believe the guy's name is Paul  
6 Thompson, but they've done a variety of events, and  
7 it's just a matter of taking a particular --

8 Taking articles from the mainstream press and  
9 putting them in a timeline so someone could get an  
10 understanding of the context of the event. Who all  
11 proceeded in it and what followed, and I think it  
12 might be -- once again, I'm blanking on the name of  
13 the particular website, but it was done with that  
14 in mind, creating a timeline for the Sandy Hook  
15 event that was devoid of any sort of analysis, but  
16 just links to mainstream journalistic articles.

17 BY MR. CURLEY:

18 Q. Your timeline appeared in the book, did you  
19 give permission for them to do that?

20 A. In Nobody Died at Sandy Hook?

21 Q. Yes, sir.

22 A. Well, we discussed -- I think we discussed in  
23 May, and I was approached by Jim Fetser (phonetic),  
24 who's the co-editor of the book, and he mentioned  
25 something about doing a book, and he said he wanted to

1 use, I think, I'd have to look at the e-mails, but I  
2 think he wanted to use one or two of the articles from  
3 the blog, and if I'm not mistaken or I may have found  
4 shortly after publication that was included as the  
5 appendix. That was another website included.

6 I don't know if I necessarily provided my approval  
7 of those specific items, but I don't think that I  
8 objected post publication.

9 Q. Okay. I got the impression --

10 A. And I would need to probably revise, maybe  
11 perhaps not revise my testimony, but I think that in  
12 early May I was uncertain on that particular aspect  
13 concerning whether or not I had approved. You had asked  
14 did you come contact him instead of your objection.

15 Q. That's why I was asking you now. So you --  
16 would you say you gave him your approval or not? I'm  
17 confused.

18 A. I would say that it was my implicit approval.  
19 I did not sign any documents, which is actually what one  
20 does in a formal publication arrangement, but I did not  
21 vigorously object. I think that I --

22 Q. He talked to you about it. You had an  
23 impression that it might occur and then it occurred?

24 A. Via e-mail, yeah.

25 Q. Yeah.



1       **A.**    But in some cases I think -- yeah --

2       **Q.**    You didn't tell the guy no?

3       **A.**    Right.

4       **Q.**    Okay. I got it. All right. Did you ever write  
5 or --

6       **A.**    And I should say before we move on, I should  
7 say that I don't know if you know of any of Fetser's  
8 other work, but he's renowned in this area of research.  
9 I mean, he's world renowned aside from being a retired  
10 university professor. He's known.

11       **Q.**    I don't, but I'll take your work on that.

12       **A.**    And he's quite an agile mind as well. Perhaps  
13 eccentric in some ways, but he's also a very --  
14 Princeton graduate and taught philosophy for 35 years I  
15 believe at University of Minnesota. So he's well  
16 established, and I think regarded with some degree of  
17 fascination and awe. I could say that's a personally by  
18 those that study conspiracy research and theory of the  
19 academic level.

20       **Q.**    So you respect his opinion and his view?

21       **A.**    Yeah.

22       **Q.**    Okay. Did you ever write any -- write on  
23 topics related to media disinformation for Global  
24 Research?

25       **A.**    I probably did, yes, but again, this will be

1 something that would -- this would be something that  
2 would be at the more pedestrian level rather than  
3 scholarly level, but I think that that may be a topic  
4 that I discussed. In fact, that's a, that's a subject  
5 tag or category on the Global Research blog. It's  
6 something that I contributed to in terms -- that's one  
7 of the -- and it was before I began contributing.

8 He had -- I think he had a subject of tag of media  
9 disinformation, and that's something where -- some of my  
10 articles are categorized.

11 Q. What is Real Politic?

12 A. That's the podcast that I did for a couple of  
13 years.

14 Q. Okay. Are you still doing that?

15 A. No.

16 Q. Okay. When did you stop?

17 A. Well, I discontinued that in the -- I think  
18 the early part of 2016. I revisited that briefly  
19 directly on the network, which was truthfully -- radio.  
20 I did a handful of shows, and I had a couple of  
21 disagreements with a program director there in terms of  
22 formatting and so forth, and so I've discontinued that  
23 for the moment.

24 Q. All right. When you were doing the recording  
25 Real Politic, where did you do that?

1           A.    I did some of that at my campus office.

2           Q.    Okay. And when you were doing that did you use  
3 FAU's equipment?

4           A.    The software on the computer in some cases,  
5 yeah, to create an MP3.

6           Q.    Anything else?

7           A.    No.

8           Q.    Okay. And in putting together your programming  
9 for Real Politic --

10          A.    It was a weekly program that was an hour long  
11 interview with maybe an author or a blogger or a doctor  
12 or an attorney or someone that was, you know, had  
13 something of interest to say at least in my view.

14          Q.    Okay. And on a weekly basis how much time did  
15 you dedicate to putting on the podcast?

16          A.    Probably a few hours because it would be a  
17 matter of doing some ready of their work.

18          Q.    Who lined up your speakers?

19          A.    I did.

20          Q.    Okay. And you would do the research, and I  
21 take it it was in question and answer format, or how did  
22 you do it?

23          A.    Yes.

24          Q.    Did you rehearse with a speaker before the  
25 program, or did you just do it impromptu?

1           **A.**    More often than not it was impromptu.

2           **Q.**    Were the speakers paid, or did they provide  
3 their time free of charge?

4           **A.**    Free of charge.

5           **Q.**    Okay. Now is a good time for -- it's just  
6 about 1:00 as a matter of fact. So why don't we break  
7 for lunch, and we'll see you at 2:00?

8           (Off the record.)

9 BY MR. CURLEY:

10          **Q.**    Mr. Tracy, we had your deposition in May  
11 earlier this year, and obviously we're back and it's  
12 July. Have you made any efforts to find a job since that  
13 time?

14          **A.**    I've applied to four positions.

15          **Q.**    Okay. When did you apply for a job?

16          **A.**    In June.

17          **Q.**    That would be the first one, or did you do  
18 them all at the same time?

19          **A.**    I did them all over the course of roughly a  
20 week.

21          **Q.**    Okay. All right. All right. If you would, sir,  
22 walk me through the four places that you've applied?

23          **A.**    Auburn University, it's an assistant professor  
24 position in public relations.

25          **Q.**    Let's go through the four, and then I'll

1 circle back and ask you a few questions about it. What  
2 was the second place?

3 A. Missouri State University?

4 Q. Okay.

5 A. It's a nine month position in media studies,  
6 media theory.

7 Q. Okay. What was the third place?

8 A. Morrisville State University in New York.

9 Q. Okay.

10 A. And I think that's a generalist position in  
11 media studies.

12 Q. Okay. And what was the fourth?

13 A. St. Michaels College in Vermont, and that's  
14 also I think a generalist position in media studies, and  
15 the latter I believe the second, third, and fourth are  
16 nine month positions.

17 Q. Okay. And when did you apply at Missouri  
18 State?

19 A. All of these were applied for in the -- I  
20 think it was the first month of June.

21 Q. Okay. First week, you mean.

22 A. First week of June, excuse me.

23 Q. It's okay. All right. Any applications since  
24 that time?

25 A. No.

1 Q. Have you been hired by anyone?

2 A. No.

3 Q. Have you gotten a response from any of these  
4 universities?

5 A. The Missouri State position I had a telephone  
6 interview.

7 Q. When was that?

8 A. I would say around July 1st.

9 Q. Okay. And do you know if they filled the  
10 position yet?

11 A. I have yet to follow up with them. They said  
12 that they were planning on filling it by mid-July.

13 Q. Have you followed up with them?

14 A. Not yet.

15 Q. Do you intend to follow up with them?

16 A. Yes.

17 Q. All right. What -- have you had any other  
18 interviews?

19 A. No.

20 Q. And what was it that caused you to submit  
21 applications to these universities?

22 A. They were advertising on the job ads page of  
23 the Association for Education and Journalism and Mass  
24 Communication or AEJMC, and that's an organization I've  
25 been affiliated with for some time, and probably the one

1 that's most suited to reflect my interests and  
2 expertise.

3 Q. Okay.

4 A. It's a downtime too now for jobs. They start  
5 posting ads. Many times these searches don't really  
6 commence until August or September, so in some cases  
7 there's appropriations concerns that the given colleges  
8 and universities. They've got to get the go ahead before  
9 they run the ad and that sort of thing. So I think that  
10 there will be likely more in the coming weeks.

11 Q. All right. It's AJMEC?

12 A. AEJ --

13 Q. AEJ, I'm sorry.

14 A. Yeah, and MEC.

15 Q. MEC --

16 A. Excuse me, AEJMC, Association for Education  
17 and Journalism and Mass Communication so AEJMC.

18 Q. All right. And do they have a website that  
19 your logging onto, or how is it that you communicate  
20 through this AEJ --

21 A. Aejmc.org I'm pretty sure.

22 Q. Okay. Are you -- have you tried any other  
23 sources for employment, or are you just following  
24 AEJMEC?

25 A. I'm primarily looking at that site. I have

1 looked at Inside Higher Education. That's a publication  
2 that is kind of similar to Chronicle of Higher  
3 Education, which is better known, but Inside Higher Ed  
4 is online, and there just wasn't a great deal there.

5 Q. Are there any recruiters or headhunters or  
6 people that -- job placement folks that help in the  
7 college world?

8 A. I never heard of any colleagues using them  
9 because they might be prohibitively expensive. I don't  
10 know. I know that's the case with administrative folks,  
11 but I don't think that's so much the case with  
12 professorial posts at least in the humanities and social  
13 sciences, and then the other --

14 Auburn I've not heard anything back apart from  
15 their asking for letters of recommendation, and  
16 St. Michaels I heard from yesterday, and they turned  
17 down consideration of the application. I don't know why.

18 Q. Yeah, I was going to ask you did they give you  
19 an explanation?

20 A. No.

21 Q. Okay.

22 A. But I just got that notification yesterday,  
23 and then Morrisville State stated about two weeks ago or  
24 so that they had hired another candidate.

25 Q. Okay. Are you doing anything else at the



1 moment or over the course of the time since you've lost  
2 your job at FAU to earn an income?

3 A. As far as compensated?

4 Q. Any type of employment or any type of  
5 compensation?

6 A. No.

7 Q. Are you writing a book?

8 A. I'm in the process now of setting up my home  
9 office, and I've been -- I don't know if I mentioned  
10 this in the May 2nd deposition, but I've been without  
11 office space, so that's been something of a hindrance,  
12 and I'm in the process of reestablishing that venue now,  
13 so yeah, I attempt to proceed with those projects along  
14 those lines of both projects, both my projects.

15 Q. You haven't started anything yet?

16 A. Well I had something underway in 2015, and  
17 that was halted temporarily because of the determination  
18 and suing litigation and not having office space was a  
19 hindrance as well, so I intend to continue with that  
20 with an edited volume, and there's still interest by the  
21 publisher on that project.

22 Q. What was it that you were working on in 15?  
23 Was it a book?

24 A. Yeah.

25 Q. And when did you start working on that?

1           A.    That must have been in -- I would say in 2014.

2           Q.    Okay. Without getting into too much detail  
3 what's -- what is the subject of the book? I don't want  
4 you to give away your --

5           A.    Right.

6           Q.    Thought process.

7           A.    Well, intrigue surrounding, surrounding the  
8 government and conspiracies and so forth, research in  
9 that realm.

10          Q.    Okay. I probably asked you this before. I know  
11 you -- you don't like the term conspiracy theorists,  
12 right. Isn't that something you would not -- what I was  
13 going to ask you, would you describe yourself as a  
14 truther, or is there some label that might be that you  
15 would say this is where I belong?

16               MR. LEO:   Object to the form.

17               THE WITNESS:  I don't think that in a society  
18 that has a free flow of information and the like  
19 there should be the need for things like labels.

20 BY MR. CURLEY:

21          Q.    Yeah, I'm not big on labels either, but  
22 sometimes it's helpful when you describe, you know,  
23 where you are to other people.

24          A.    Right.

25          Q.    You know, do you ever do that, and say this is

1 the camp I fall in?

2 A. Perhaps by default I fall into various camps  
3 depending on who's doing the classification.

4 Q. Okay. Okay. With respect -- you received some  
5 funding -- let me show you this that I've got that we  
6 marked as Exhibit 35. Do we have any copies? That's 35.  
7 This is, as you can see, this is an e-mail that Bates  
8 stamped 2590, and it looks like it's from you to  
9 Mr. Choss --

10 (Thereupon, the document was marked as Defendant's  
11 Exhibit Number 35.)

12 THE WITNESS: Chossudovsky.

13 BY MR. CURLEY:

14 Q. Thank you. And you're thanking him for his  
15 support. What was his support?

16 A. When we were getting the legal defense fund  
17 established he wrote a -- I think he posted a piece on  
18 Global Research that directed potential contributors or  
19 people that might be interested to the legal defense  
20 fund site, tracylegaldefense.org.

21 Q. Okay. And when did he do that?

22 A. I believe it must have been late January of  
23 2013 --

24 Q. Sure.

25 A. Excuse me, 2016.

1           Q.    Okay.  You would say shortly before your  
2   e-mail, within a few weeks of it.  Is that a fair  
3   statement?

4           A.    One way or the other.  It may have been after,  
5   after this e-mail.

6           Q.    Oh, okay.

7           A.    There's something missing here, but apparently  
8   his e-mail to me that may provide the context.

9           Q.    Okay.  You can't recall what was in that, his  
10  e-mail to you?  I guess we don't have it.

11          A.    I think that it would have been something  
12  along the lines of we would be happy to -- or Global  
13  Research would be happy to get the word out and --

14          Q.    Let me show you Exhibit 37.  Let me know if you  
15  think that's what the missing piece is?

16                (Thereupon, the document was marked as Defendant's  
17  Exhibit Number 37.)

18                THE WITNESS:  Yeah.

19                BY MR. CURLEY:

20          Q.    That's the one?

21          A.    Pretty sure.

22          Q.    All right.  So that's an e-mail.  At the bottom  
23  of 37 is an e-mail that you sent to him, and he said  
24  fine.  I guess he put something up.

25          A.    Yeah, I just asked for probably a couple of

1 paragraphs on situations and the fund and a link to  
2 whatever people might want to find out more --

3 Q. Okay. And since January of 2016, have you  
4 continued to post articles for Global Research?

5 A. Yeah, I posted one I think last week.

6 Q. Okay. You made reference in the e-mail to  
7 providing part time assistance to Global Research. Did  
8 you ever do that?

9 A. I didn't hear back concerning that  
10 communication, and I didn't follow up.

11 Q. You've received some honorariums for your  
12 contributions to the Nobody Died at Sandy Hook book,  
13 correct?

14 MR. LEO: Object to form.

15 THE WITNESS: There were some -- there were  
16 some honorary I paid to elite contributors, yes.

17 BY MR. CURLEY:

18 Q. And did you receive some funds as a result of  
19 that?

20 A. In 2016, yes, after my termination.

21 Q. Okay. Who is David deHarry (phonetic)?

22 A. David deHarry?

23 Q. Yes. Who is that?

24 A. He's the bookkeeper for Moon Rock Books, which  
25 is Fester's imprint -- the book label that he started

1 with Mike Palacheck (phonetic).

2 Q. Okay. Are you familiar with Staples Print and  
3 Marketing Services in Crestview, Florida?

4 A. No, I don't where Crestview is.

5 Q. Okay. What about Staples Print and Marketing  
6 Services? Have you ever worked with them?

7 A. Staples Print and Marketing?

8 Q. Yes.

9 A. It doesn't ring a bell.

10 Q. What about a company called Wrongs Without  
11 Remedies, LLC?

12 A. Well, that's the LLC that they established, I  
13 believe, that Fetzer established with Gaharry to oversee  
14 the New Rock books.

15 Q. Do you have any relationship with that entity,  
16 Wrongs Without Remedies, LLC?

17 A. As a -- as an employee, or anything along  
18 those lines?

19 Q. Employee, owner, any ownership interest?

20 A. No.

21 Q. No, okay.

22 A. I didn't know that was the name of their  
23 company until I received a check.

24 Q. Yeah, let me show you what's marked as Exhibit  
25 36. Have you seen this before?

1           **A.**    No.

2           **Q.**    Okay.

3           **A.**    I was in forms about its receipt from -- by  
4   Dave Gaharry, at Wrongs Without Remedies in my books.  
5   Whenever -- I don't see a date on this, but I guess it  
6   would be in my book, the bottom one.   616.

7           **Q.**    Yeah.   Okay.   And you see, apparently, they  
8   produced documentation showing various payments to the  
9   James Tracy Build a Fence Fund; do you see that?

10          **A.**    Having pending process delivered?

11          **Q.**    Yes, sir.

12          **A.**    Yeah.

13          **Q.**    And were you previously aware that these  
14   amounts had been paid for your benefit?

15          **A.**    Yeah.   I received a second amount.

16          **Q.**    Okay.

17          **A.**    This was something that I believe in February,  
18   late January, early to mid-February 2016, Fetzer informs  
19   myself and the other contributors of the volumes that  
20   the proceeds from sales would go to the legal defense  
21   fund.

22          **Q.**    Okay.

23          **A.**    So, that was the 2,000 and \$3,000 payments.  
24   And then, these additional payments for 200, 400, 100  
25   and 100, were for honoraria for my specific

1 contributions to those books. I kept getting these  
2 checks at the time, and I deposited those in the LDF.

3 I was under the impression that this was continued  
4 remittances for royalties for the book sales, and so  
5 that -- I saw the Wrongs Without Remedies and I just  
6 went ahead and deposited directly to the LDF fund.

7 Q. Okay. Were some of these honorariums for  
8 contribution to the Boston Marathon bombing article that  
9 you wrote?

10 A. Yeah. They did two volumes. One was called  
11 Nobody Died at Sandy Hook, and the second was And Nobody  
12 Died in Boston Either. And the payments were \$100 per  
13 chapter or what effectively were -- posts.

14 And so, there was a book subsequent to this.  
15 Orlando, which has a lengthy title, Orlando and Beyond,  
16 or something, but I was asked to write a brief --  
17 actually it was a revision to a chapter. This was in  
18 mid-2016.

19 And then there was another chapter to the second  
20 edition of Nobody Died at Sandy Hook, which I wrote in  
21 January of 2016 after my termination. That really is  
22 the only original thing that I wrote for that -- for his  
23 series. And that had to do with the specifics of the  
24 termination itself and the media and so forth.

25 So, all in all, there were eight chapters or the



1 equivalent, and that's reflected in the payments of 200,  
2 400, and the \$200 payments, \$800 total.

3 Q. \$100 per chapter.

4 A. Yes.

5 Q. Okay. Does the James Tracy Legal Defense Fund  
6 keep records of its donations and donors?

7 A. Yes.

8 Q. And have you produced those records to us?

9 A. I would have to check with counsel. I believe  
10 that those have been produced, yes.

11 And that was one of the -- one of the few things  
12 that was on my mind in the May 2nd deposition when we  
13 discussed the -- rate of my residence. I have an Excel  
14 sheet with the donors and the amounts listed. And that  
15 was on my desktop on that computer that was stolen.  
16 That was one of the few things that was not backed up or  
17 shared with counsel.

18 But I did save all of the envelopes that all of the  
19 check remittances came in, and I also have doubles of  
20 trial remittances -- of donations to the legal defense  
21 fund.

22 So, I think that I've got a comprehensive listing  
23 of contributions and the names and addresses of  
24 contributors.

25 Q. The money that was -- that is advanced for

1 your defense fund, is it reported in your tax returns?

2 MR. LEO: Object to form.

3 THE WITNESS: I would have to check.

4 BY MR. CURLEY:

5 Q. Okay. Did you provide the information about  
6 the money advanced for the defense fund to your  
7 accountant?

8 MR. LEO: I object. Can you ask the question  
9 one more times?

10 MR. CURLEY: You want to read it back?

11 MR. LEO: Did you ask if he provided some  
12 information to his accountant?

13 MR. CURLEY: Yeah.

14 (Thereupon, the court reporter read back the  
15 previous question.)

16 MR. LEO: Object. Pursuant to the Court's  
17 order, questions about information provided to his  
18 accountant would be protected by the accountant  
19 privilege, and it would also be barred pursuant to  
20 the Court's order limiting the scope of questions  
21 about tax preparations.

22 So, I'll instruct the witness not answer the  
23 question.

24 MR. CURLEY: Okay. I think we all know that  
25 just because you give something to an accountant or

1 an attorney doesn't make it privileged. Are you  
2 sure about your objection there?

3 MR. LEO: You asked about information he  
4 provided to the accountant.

5 MR. CURLEY: That's right.

6 MR. LEO: In preparation for his taxes?  
7 That's ultimately what the question is asking?

8 MR. CURLEY: I'm not sure it matters --

9 MR. LEO: The question was seeking information  
10 provided to his accountant in preparation for his  
11 taxes, right?

12 MR. CURLEY: I don't think I said to prepare  
13 his taxes, but if that makes you feel better, you  
14 can add that to my question. I don't think it  
15 matters, to be honest with you. I'm just wondering  
16 what we're going to get back from the accountant  
17 whenever we get it. I don't think we've gotten  
18 this information. And I think he just said it was  
19 stolen or lost when his house was burglarized.

20 MR. LEO: For the record, plaintiff has  
21 produced the documents that he provided to his  
22 accountant. I believe they were produced Monday.  
23 I don't have them in front of me, but they've been  
24 produced. I'm sure you can ask him.

25 MR. CURLEY: Yeah, I studied them Monday

1 night, the 3,000 documents you produced.

2 MR. LEO: It wasn't 3,000 documents reflecting  
3 income, but you can ask him about those documents.  
4 You can put them in front of him.

5 But I'm just going to, again for the record,  
6 say there's a protective order concerning  
7 communications with his accountant. So, if the  
8 question is seeking information that he provided to  
9 his accountant or communications with his  
10 accountant, I think that would be violative of the  
11 order.

12 You can ask about income that was reflected on  
13 his tax returns. So, maybe if you want to put the  
14 tax return in front of him and ask him about what  
15 was on there, that would be a permissible question.  
16 But asking him what he gave his accountant, what he  
17 said to his accountant, I think all of that would  
18 be violative of the protective order that was  
19 entered by the Court concerning questions about tax  
20 preparation.

21 So, maybe you can rephrase the question to  
22 make it consistent with the protective order.

23 MR. CURLEY: I think we're going pretty good  
24 here so far.

25 Here's my problem. Three thousand some odd

1 documents were produced Monday night. I'm not  
2 hanging any conclusions on that, for better or for  
3 worse, whatever.

4 And then we've got a bunch of documents last  
5 night. I haven't looked at them; I haven't had the  
6 time to look at them. I was doing a mediation  
7 thing, trying to get ready for today.

8 So, I don't know what's in that pile of stuff.  
9 And I'm trying to figure out whatever revenue he  
10 has for damages and mitigation purposes and the  
11 like, and I need that information. So, you can  
12 either tell him not to answer, which is what you're  
13 doing.

14 MR. LEO: I'm just going to reiterate that  
15 there's a protective order and there's not supposed  
16 to be questions today about what he provided to his  
17 accountant.

18 MR. CURLEY: All right.

19 UNIDENTIFIED SPEAKER: The opposite.

20 MR. CURLEY: I know. I know. That's not what  
21 it says.

22 MR. LEO: The questions are to be limited to  
23 the documents that reflect income. So, you're  
24 asking him what he gave his account with respect to  
25 LDF in preparation for his tax returns; is that

1 correct?

2 MR. CURLEY: You have the transcript?

3 MS. GRIFFIN: From Thursday? I do not from  
4 Thursday's hearing. The Court actually  
5 specifically said that we were entitled to the  
6 documents that he gave his accountant.

7 MR. LEO: Right. Which were produced on  
8 Monday.

9 MS. GRIFFIN: And you can ask questions about  
10 the documents.

11 MR. LEO: Okay. And any complaints -- let me  
12 just state for the record, any complaint about when  
13 those documents were produced is a self-induced  
14 conundrum --

15 MR. CURLEY: I'm not making a complaint about  
16 it --

17 MR. LEO: I just want to be clear for the  
18 record.

19 MR. CURLEY: -- I'm just telling you I haven't  
20 had a chance to look at them.

21 MR. LEO: Discovery requests were served on  
22 June 15th, more than a month after plaintiff's  
23 deposition. You guys could have requested these  
24 documents a long time ago. So, this complaint  
25 about oh, I didn't have the documents in time, we

1       only had a few days for an extension to produce  
2       thousands of documents that we had to go through  
3       and prepare for production, and you guys understand  
4       that, because you're in the process of still  
5       reviewing, apparently, over a thousand emails that  
6       we still haven't gotten with respect to our request  
7       for production.

8               So, I'm not hounding you guys for that, and I  
9       would appreciate the similar courtesy not making it  
10      seem like plaintiff sandbagged this information,  
11      because that's completely ridiculous.

12             So, you have documents reflecting the income.  
13      They were produced to your office. I haven't seen  
14      them. I haven't seen you pull them out and ask him  
15      questions about them.

16             So, I would say that if you have questions  
17      about those documents, ask about them. If you have  
18      questions about what he discussed with his  
19      accountant, that would be outside of the -- you  
20      know, in violation of the order which limited the  
21      questions to questions about his income.

22             So, again, I just want to make sure that we're  
23      consistent with the ruling and any inquiry here.

24             MR. CURLEY: I'm going to move on, because I  
25      don't want to waste time on this. I haven't looked

1 at them. That's what I told you. I'm not blaming  
2 you, I'm not -- also, I'm not vindicating you by  
3 any stretch.

4 But the fact of the matter is I haven't looked  
5 at them and I asked him what they are and you're  
6 telling him not to answer.

7 MR. LEO: That's not true. Honestly, I -- the  
8 question because I was writing notes when you were  
9 asking questions and then I didn't get the full --

10 MR. CURLEY: Can you tell me what he gave the  
11 accountant or not? Just --

12 MR. LEO: If you ask him what did you give  
13 your accountant, I don't have a problem with that.

14 MR. CURLEY: What did you give the accountant,  
15 that's what I asked him.

16 MR. LEO: That's now what I wrote in my notes,  
17 so I -- your question is what did you give your --

18 MR. CURLEY: Now you got what you want. What  
19 did you give your accountant?

20 MR. LEO: You can answer it.

21 THE WITNESS: Documentation relating to my  
22 income.

23 BY MR. CURLEY:

24 Q. Did you give him the information about  
25 contributions to the defense fund?



1           **A.**    Well, the defense fund is a separate entity.  
 2           It's a nonprofit established in the State of Florida. I  
 3           don't -- I don't derive any income from the legal  
 4           defense fund.

5           **Q.**    So, did you give him that information or not?

6           **A.**    Information about donations?

7           **Q.**    About your defense fund, yeah.

8           **A.**    Donations to the defense fund?

9           **Q.**    Yeah.

10          **A.**    In 2016?

11          **Q.**    Whenever, yeah.

12          **A.**    No.

13          **Q.**    Okay.

14               MR. LEO: I apologize if I misread your  
 15               question, Joe.

16               MR. CURLEY: It's all right. We've been doing  
 17               fine with it. Don't worry about it.

18               THE WITNESS: I should say that taxes have  
 19               been paid on the contributions as well, because we  
 20               don't have nonprofit status. Federal nonprofit  
 21               status.

22               BY MR. CURLEY:

23               **Q.**    Okay. Who did the tax returns for this  
 24               entity?

25               **A.**    We have an extension till August. I filed the

1 extension.

2 Q. So, you filed the extension and this is for  
3 the defense fund you're talking about now, right?

4 A. Yes.

5 Q. The accountant -- you don't have an accountant  
6 that's involved in this or you do?

7 A. Not at present, no.

8 Q. And how did you determine that it was  
9 necessary to pay taxes on it?

10 A. My own research.

11 Q. And have you produced to us any documentation  
12 relating to -- any documentation relating to your  
13 request for an extension?

14 A. I would have produced it to counsel, if I --  
15 not directly to you, no.

16 Q. Okay. But that's the process. You give it to  
17 your lawyers and then it's their job to decide what we  
18 get or we don't get. So, that's what you've done?

19 A. I believe so, yes.

20 MR. CURLEY: All right. Do you have the tax  
21 returns? Is that where we are?

22 MS. BOSKE: Whatever you want, sir.

23 BY MR. CURLEY:

24 Q. Okay. Let's do -- would you describe yourself  
25 as an expert in communications and media and conspiracy

1 studies?

2 A. That is what is stated in the Second Amended  
3 Complaint, yes.

4 Q. And would you agree that communications, media  
5 and conspiracy theories are the primary focus of your  
6 academic research and publications?

7 MR. LEO: Object to form.

8 THE WITNESS: Not entirely, no.

9 BY MR. CURLEY:

10 Q. Is it a focus that you've made?

11 A. It is -- well, once again, would have to  
12 define what we mean by conspiracy theories, which we've  
13 previously discussed. The term itself is somewhat  
14 problematic. But certainly, that's something that I  
15 have -- I have discussed with students in my teaching.

16 Q. So, you would agree that it's part of your  
17 academic research and publications, right?

18 MR. LEO: Object to form.

19 THE WITNESS: I would -- I would say that it  
20 is -- that the cultural phenomena of conspiracies  
21 and conspiracy theories, the press representation,  
22 the media representation of the notion of  
23 conspiracy, conspiracy theories, conspiracism, all  
24 of these terms are a focus of the study and  
25 instruction. But simply conspiracy theories

1           themselves, not necessarily.

2           But since I do research the media, its  
3           significance in terms of the ways in which the term  
4           conspiracy, conspiracy theories and so forth is  
5           culturally constructive. But the ways in which it  
6           is spun and its reverberation in the boarder public  
7           spirit.

8   BY MR. CURLEY:

9           Q.    Okay. You recognize your described yourself  
10           in your complaint as an expert -- as having expertise in  
11           communications, media and conspiracy studies, right?

12          A.    Okay. Yes.

13          Q.    So, you agree that's an accurate description,  
14           right?

15          A.    Well, if one boils it down to five words,  
16           perhaps.

17          Q.    Okay.

18          A.    I think that something -- that is something  
19           has been put around being around my neck by the major  
20           media, this whole notion of -- this term conspiracy.

21          Q.    Okay. In your complaint, and I want to ask  
22           you a few questions about the complaint. Paragraph 14  
23           of your complaint, this refers to Defendant Kelly.

24           You allege that he supervised, facilitated,  
25           recommended and/or approved the discipline and

1 termination, your termination, in retaliation for  
2 engaging in constitutionally protected speech.

3 What evidence do you have to support that  
4 allegation?

5 **A.** Well, we know, for example, based upon  
6 testimony of previous deponents, as well as written  
7 documents, print documents, that President Kelly was at  
8 the September 4th, 2015, FAU Faculty Summit meeting,  
9 wherein he was lectured by two constitutional law  
10 professors, Timothy Lenz and Marshall DeRosa, concerning  
11 the unconstitutionality of the outside activities'  
12 policy, the university's outside activities' policy and  
13 the way in which it was implemented and enforced on the  
14 faculty.

15 So, that certainly is one important instance of his  
16 knowledge. He was there with his one of his chief  
17 assistants, Gary Perry, the Provost of FAU, Diane  
18 Alperin, who was the Provost for personnel, and Dean  
19 Coltman, Defendant Coltman, who was the dean of my  
20 college. So, all these administrators had, I think, a  
21 fairly good knowledge and understanding of the likely  
22 unconstitutionality of the outside activities' policy.

23 And now we have the emails between President Kelly  
24 and his family members, where he is expressing his keen  
25 interest on the Sandy Hook parents, who he claims he

1 never met, with his wife, Mrs. Kelly, and Caroline -- or  
2 Kaitlyn, I believe he name is. And subsequent emails,  
3 and there must be eight to twelve sending emails  
4 concerning my termination to his wife and to family  
5 members, and explaining how, hopefully, things will be  
6 quiet now that I am out the door.

7 Q. Okay. Anything else that you can think of?

8 A. Well, he also did meet with the union  
9 defendants and upper level administration on November  
10 30th, I believe, or December 1st. This was the same day  
11 that the so-called grievance committee met and voted not  
12 to act on my grievance concerning the November 10th,  
13 2015, notice of discipline.

14 Q. Okay. Anything else?

15 A. Those are the things that immediately come to  
16 mind.

17 We also know, I think that I was treated uniquely  
18 amongst my colleagues. We now have knowledge of the  
19 grievance affair between -- that took place with  
20 Dr. Mark Cajura (phonetic). He got a five-day  
21 suspension without pay for killing exotic fish and  
22 endangering his students in a high-speed boat on the  
23 Atlantic Ocean. And that warranted a slap on the wrist,  
24 which was contested, I believe, successfully by the  
25 union.

1           **Q.**    He filed a grievance?

2           **A.**    The union filed a grievance on his behalf and  
3 I believe delegated that situation to an attorney.

4           **Q.**    Okay. In Paragraph 148 of your Second Amended  
5 Complaint, you allege at all times material to the  
6 Second Amended Complaint, Defendant Kelly personally  
7 supervised and approved FAU officials and  
8 representatives' efforts in 2015 to discipline and  
9 dismiss Professor Tracy, retaliation for his personal  
10 blogging, with acknowledge and approval of the chairman  
11 of defendant university's board of trustees.

12           Do you have any additional evidence to support that  
13 allegation or have you told me about everything you  
14 know?

15           **A.**    Well, there are emails between him and the  
16 chairperson of the board of trustees.

17           **Q.**    What emails -- can you think of any in  
18 particular?

19           **A.**    Well, I believe that President Kelly sent an  
20 email concerning communications with an agent with one  
21 of the allegedly families that was allegedly killed at  
22 the Sandy Hook Elementary School, and he stated that he  
23 wanted to deal with the matter personally. And he  
24 forwarded that communication to the chair of the board  
25 of trustees. The chair of the board of trustees

1       responded, thanks, John.

2           **Q.**    Do you think it's inappropriate for him to  
3       suggest he's sympathetic to a parent who's lost their  
4       child?

5           **A.**    If, in fact, the event took place. A number  
6       of administrators have already said in this room that  
7       they proceeded with my termination without actually  
8       doing any sort of even pedestrian examination of the  
9       Sandy Hook event, its truthfulness, or that I may have  
10      been -- that I was allegedly involved in criminal  
11      harassment, of which I was not.

12          **Q.**    So, you think perhaps President Kelly should  
13      have investigated whether the child truly died or not  
14      before indicating sympathy to his parents; is that what  
15      you're saying?

16                MR. LEO: Object to form.

17                THE WITNESS: Well, I'm saying that he is the  
18      president of an institution of higher learning.  
19      Should we default to -- defer, rather, to mass  
20      media for in such grave circumstances?

21                You're dealing with a faculty member who's  
22      tenure. There is something called the institution  
23      of tenure. There is something called free speech  
24      in the First Amendment. He sought to steamroll all  
25      of that, and had very little, if any, knowledge to



1       act in that sort of way, aside from hearsay and the  
2       press. Even if there was an attorney that anything  
3       uttered in the press is hearsay.

4       BY MR. CURLEY:

5       Q.     What did he do to prevent you from publishing  
6       anything?

7       A.     He oversaw my termination.

8       Q.     Anything other than that?

9       A.     I'm not sure what you exactly mean. I believe  
10      that he was -- and this is something that colleagues  
11      remarked to me on, as well, that he was put in that  
12      position to go after certain faculty. That was only of  
13      his -- one of his missions, and that was one of the, I  
14      think, criteria for his selection following the  
15      administration of Mary Jane Saunders.

16      Q.     That's what you heard from others?

17      A.     It was something that the provost even said at  
18      the September 14th -- excuse me, September 4th, 2015  
19      meeting. He said I don't think you said there's some  
20      faculty that shouldn't be working here any longer.  
21      Something I published on my Memory of a Lie. This  
22      having to do more so with the post-tenure review policy,  
23      but there were a number of faculty that were concerned  
24      about that particular policy, as well as the outside  
25      activities' policy.

1           Q.    Did you attend President Kelly's deposition?

2           A.    Yes.

3           Q.    Did President Kelly say anything during his  
4 deposition that you thought was untruthful?

5           A.    Yes.

6           Q.    What?

7           A.    He stated that he was unaware of the direct  
8 circumstances of my termination, and that he had  
9 delegated any and all of these proceedings to  
10 underlings, to lower-level administration. And he was  
11 not apprised of it, so he was not concerned with it, and  
12 was not concerned with the way it was presented in the  
13 media; which is contradicted by numerous news articles  
14 that he shared with family members concerning the ways  
15 in which the event was depicted.

16          Q.    Is there any other evidence that you have that  
17 he was actually involved in the decision to terminate  
18 your employment?

19          A.    Well, I would have to look at the documents  
20 again. Perhaps read his -- or excuse me, read his  
21 deposition. I mean, I have no direct evidence,  
22 Mr. Curley, that you arrived this morning at this  
23 building in a spaceship. But there's a strong  
24 likelihood that you didn't.

25          Actually, I saw you drive in in the parking lot,

1 but if I get --

2 Q. That's okay. I get ya. I understand. Oh,  
3 let's see here.

4 Okay. What -- you made allegations that you think  
5 Dr. Alperin conspired with others to terminate your  
6 employment, right? With the union, to be specific.

7 A. Yes.

8 Q. Were you ever present during any meetings  
9 between Dr. Alperin and the union relating to your  
10 employment?

11 A. I was not personally present. No, I was not  
12 on compass in the fall of 2015, as you might recall. We  
13 do have on record that Dr. Alperin's testimony that she  
14 did -- she was at the meeting, perhaps albeit it  
15 briefly, between Lawrence Quick (phonetic), and  
16 Defendant Zoeller on, I believe, December 17th of 2015,  
17 in between or during break at the bargaining session.

18 Q. Okay. But you weren't present during that,  
19 right?

20 A. Me personally?

21 Q. Yes.

22 A. No.

23 Q. The actions that you allege Dr. Alperin took  
24 to terminate your employment, those are -- she was the  
25 person that had the authority to terminate your

1 employment, correct?

2 A. She is the -- was the associate provost in  
3 charge of personnel affairs. But I believe this is  
4 something that is done in coordination with or under the  
5 advisement of the provost, Gary Perry in this instance,  
6 but he is answerable to Defendant Kelly.

7 Q. Are you aware of her taking any actions that  
8 you wouldn't -- that you would describe as not within  
9 the scope of her employment with FAU?

10 A. I would have to look at the description of  
11 what her responsibilities are. My dealings with her in  
12 late 2015 had to do with receiving the letters that we  
13 discussed earlier.

14 Q. Okay. Did you attend her, Dr. Alperin's  
15 deposition?

16 A. Yes.

17 Q. Anything you can recall her testifying about  
18 that you believe is truthful?

19 A. I believe that she said I don't recall a  
20 number of times, where she may have, in fact, recalled  
21 information. I'm not talking about decades ago; much  
22 more recent. And that's one of the things that came to  
23 mind when I was observing her in the deposition.

24 Q. Anything else?

25 A. Well, again, it will be helpful for me to look

1 over the deposition. We certainly don't have the time  
2 to do that. But I can take a moment and think.

3 Q. Okay. Yeah, I was just asking if anything  
4 stands out in your mind.

5 A. I simply think one of the things that  
6 characterized the testimonies of Defendants Alperin and  
7 Coltman were the number of times they said I don't  
8 recall, or I don't know. I'm not sure if those -- if  
9 those -- against us. I realize that's an intangible.

10 (Off the record.)

11 THE VIDEOGRAPHER: The time is 3:05.

12 (Off the record.)

13 THE VIDEOGRAPHER: The time is 3:11 and we're  
14 back on the video record.

15 BY MR. CURLEY:

16 Q. I need to circle back to something I asked you  
17 before. The position, you said the positions you  
18 applied for, some of them were nine-month positions? Do  
19 you recall that?

20 A. Yes.

21 Q. Okay. Does that mean that they are what you  
22 call a contract position, or are they permanent  
23 positions with nine-month assignments?

24 A. They would be nine months terminal. In other  
25 words, they're not ongoing, so they're not tenure track.

1           **Q.**    When you spoke to them or you looked at the  
2           information, did they suggest that they may renew  
3           annually?

4           **A.**    Well, there's so many factors in something  
5           like that. You might be able to kind of feel out the  
6           director, the chair of the personnel committee or the  
7           chair of the departments and find out more. But it's  
8           difficult to know. I've not yet made the effort in that  
9           regard.

10          I know in many cases if you had someone come on for  
11          a nine-month position, for an instructor position, that  
12          can be renewed. And if there is an opening, a tenure  
13          track opening, then the institution legally has to do a  
14          nationwide search. You can apply for that position, and  
15          you can enroll the department and the faculty there, but  
16          that, at least in theory, should not give you an  
17          advantage in terms of the position itself.

18          **Q.**    Okay. I want to ask you about the harm you  
19          allege you've suffered as a result of the termination of  
20          your employment at FAU.

21          In Paragraph 72 and 73, you allege that you were  
22          harassed by faculty members at FAU; is that right?

23          **A.**    Yes.

24          **Q.**    Okay. How were you harassed?

25          **A.**    This had to do in part with the cancellation

1 of my course that I was supposed to teach in September  
2 -- excuse me, in the fall of 2013, which was cancelled  
3 after being put on the books. It was cancelled in April  
4 of 2013.

5 Around that time, as well, --

6 Q. You said -- I'm sorry, you said April or fall?

7 A. Well, the course was cancelled April of 2013,  
8 and it was scheduled for fall of 2013, but it was on the  
9 books in early to mid-April of 2013 after I proposed it.

10 The rationale I was given for its cancellation was  
11 that it had not filled satisfactorily. Well, frequently  
12 among students registering for courses until July or  
13 August, so it seemed somewhat premature.

14 Q. I see.

15 A. For the course to be cancelled.

16 In addition, I had some courses that were  
17 rescheduled at times that were difficult for me. I had  
18 brought this to the attention of the chairperson how  
19 this was done in coordination with the faculty member  
20 who was in charge of my area of the school.

21 Q. Could you fill in some names as you go along?  
22 You said --

23 A. The chairperson was Noemi Marin, at the time  
24 --

25 THE COURT REPORTER: Can you repeat that?

1 THE WITNESS: Yes. N-O-E-M-I M-A-R-I-N, like  
2 Marin, California.

3 And I informed Chairperson Marin about this  
4 and told her that the coordinator of multi-media  
5 studies, the school is divided into two divisions.  
6 There's communications studies and multi-media  
7 studies. I'm on the -- I was on the multi-media  
8 studies end.

9 And there's a coordinator in each of those  
10 divisions who is compensated, I think. with the  
11 course release for the year, for kind of helping  
12 management out and scheduling classes and so forth.

13 So, I had informed Dr. Marin that I -- this  
14 was not done in consultation with Gerald Sim  
15 (phonetic), who was the multi-media coordinator, at  
16 the time, and she responded by stating, well,  
17 Gerald is not my boss. That really wasn't my  
18 intent to suggest that. My intent was these  
19 decisions should be made in a collaborative sort of  
20 way between faculty and administrators.

21 BY MR. CURLEY:

22 Q. The decision you're talking about now was the  
23 timing of the class or the cancellation, or both?

24 A. Well, really both.

25 Q. Okay.



1       **A.**   Also, the timing, I was given a new class to  
2       teach that I had not taught previously at the time. It  
3       was -- that was somewhat difficult for me.

4       **Q.**   The class that was cancelled, was that Media  
5       in Crisis?

6       **A.**   Yes.

7       **Q.**   And what was the new class that you were asked  
8       to teach?

9       **A.**   Introduction to Multi-Media Studies, which  
10      would be MMC1540. It was the code.

11      **Q.**   Okay.

12      **A.**   And I believe Studies in New Media, which I  
13      taught previously, but I was rescheduled at a different  
14      time.

15      **Q.**   What was the time that it was --

16      **A.**   I believe about 3:20 in the afternoon, late  
17      afternoon.

18      **Q.**   And you wanted it -- what was your objection  
19      to that?

20      **A.**   Well, I had previously taught classes in the  
21      evening, because of childcare schedule.

22      **Q.**   So, you wanted to teach in the evening?

23      **A.**   That was the understanding that I had  
24      established with the previous director of the school, of  
25      multi-media studies.

1           Q.    All right.

2           A.    Susan Reilly.  So, there was a grievance.  
3   That was the second grievance in 2013, that Douglas  
4   Broadfield filed on my behalf.

5           Q.    Okay.

6           A.    So, that was a concern.  This was all done  
7   immediately subsequent to a meeting that Defendant  
8   Alperin had with a number of administrators, including  
9   Dean Coltman.  So, while all this shuffling and the  
10  cancellation was done, I think on like the 27th of April  
11  of 2013, the meeting was on the 26th of April of 2013,  
12  if I remember correctly.

13           And then there was a few days later the opinion  
14  piece that authored by Morton Colander and Louis that  
15  was Why James Tracy FAU's Conspiracy Theory Should  
16  Resign, which was circulated to all of the mailboxes of  
17  faculty members in my department; some 30 to 35 faculty  
18  members.  I'm not sure of the graduate students, because  
19  the grad students, teaching assistants, also have  
20  mailboxes in the mailroom.  I don't know if they were  
21  included in that circulation or not.  But I know that  
22  the -- I know that my colleagues were, fellow  
23  instructors, professors and so forth.

24           Q.    All right.  And you had attached a copy of  
25  that article, I know, to your complaint.

1       A.    I believe so, yes.

2       Q.    Yeah, it's Exhibit K, just for reference sake.

3       A.    That appeared almost at the same time in both  
4 the Sun-Sentinel and the Palm Beach Post. I know at  
5 least one of those publications still has it up.

6       Q.    What was the outcome of the grievance having  
7 to do with the scheduling of the class?

8       A.    It was ultimately withdrawn.

9       Q.    Why was it withdrawn?

10      A.    In late summer or early fall of 2013.

11      Q.    Why did you withdraw it?

12      A.    Well, the argument was made by the  
13 administration, specifically Defendant Coltman, that the  
14 grievance was filed incorrectly, or it was not filed  
15 within the allotted amount of time. And Broadfield can  
16 attest to this, argue that they were mistaken and this  
17 is something that we sat down with Anna Elkrin  
18 (phonetic) in her office on September 11 of 2013, I  
19 believe, and discussed it at length, well, probably a  
20 half hour, with her.

21           And this, I think, is why it's important to have an  
22 intermediary is -- representative, one of the reasons  
23 the three of us were there. And Dr. Broadfield and  
24 Elkrin have a good rapport, at least they did that day.  
25 And Dr. Elkrin wrote a detailed response to summarize

1 the meeting and the grievance, and its appropriateness.  
2 And concluded that it was something that was not  
3 actionable, that they would not -- they would not honor  
4 its continuance up the ladder, if you will, up the  
5 grievance process.

6 And we did not pursue that because, if I'm not  
7 mistaken, that was coincidental with the settlement  
8 agreement which was formed around September 20th of  
9 2013.

10 Q. Did you ultimately teach the class,  
11 Introduction to Multi-Media Studies?

12 A. Yes.

13 Q. And what time was it taught at?

14 A. 2:00 p.m. So, the classes are either --  
15 they're either usually at least -- my time there,  
16 they're usually offered Monday, Wednesday or Tuesday,  
17 Thursday. Or evening or for a block of time in the  
18 morning or afternoon, like three hours, but there's  
19 generally it's three contact or semester hours per week.  
20 And so for one three-hour class, it would be meeting, I  
21 believe, for two 80-minute sessions, or like one  
22 two-hour-15-minute session. This was Monday, Wednesday  
23 or Tuesday, Thursday p.m.

24 Q. All right. And was the time that it was --  
25 the dates and the times that it was ultimately taught on

1       satisfactory to you, or not?

2           **A.**    No, it wasn't satisfactory. We had to pull  
3       one of our children out of preschool she was enrolled in  
4       because of the scheduling conflict and so forth. And it  
5       was something that required renegotiation on a number of  
6       fronts.

7           **Q.**    Okay. What efforts, if any, did you take to  
8       report that you're perceiving this conduct about faculty  
9       members circulating that article. What did you do about  
10      it?

11          **A.**    I brought it to the attention of Dr. Marin,  
12      the chairperson of SCMS to engage in multi-media  
13      studies, my department. And I suggested this something  
14      that constituted harassment. And asked to know what  
15      would be done about it. She responded in a kind of -- I  
16      thought kind of obfuscatory way, there was nothing  
17      clear-cut that was actually being -- I would have to  
18      look at the email. But it was vague in terms of any  
19      sort of follow-up.

20          I waited, I think, about the five days to leak, and  
21      asked and inquired again. And there was no response.  
22      And so I forwarded the email to Dr. -- to Defendant  
23      Elkin.

24          **Q.**    And what happened then?

25          **A.**    There was no response.

1           Q.    Were there -- was there additional harassment  
2 about that or did it kind of die down?

3           A.    In 2013, I believe that -- well, we were  
4 fairly close to summer. And within a week or some,  
5 because we usually end early May. I so, I think before  
6 anyone knew it was spring break and we were in the  
7 spring term. Excuse me, summer term, summer break. And  
8 so, things die down, I believe, at that time.

9           Q.    You made reference to the first grievance.  
10 Well, the first grievance you filed was ultimately  
11 settled, and there was a settlement agreement, right?

12          A.    Yes.

13          Q.    In your view since the settlement agreement,  
14 have you honored your commitments in the settlement  
15 agreement or have you violated them?

16          A.    Between September 2013 and the end of 2015?

17          Q.    Yes, sir.

18          A.    Well, the settlements largely consisted of the  
19 administration's concerns with the disclaimer. And so,  
20 at the time I think that I worked with Broadfield and  
21 Elkin. Broadfield was the intermediary, once again, in  
22 forging language that was acceptable for the disclaimer.  
23 And this involved some back and forth between myself and  
24 Broadfield, and we flushed something out, and that was  
25 placed on the blog in where they desired.

1           Q.    Did you ever tell Mr. Moats that you violated  
2 the agreement?

3           A.    Let me finish my response to --

4           Q.    Sure.

5           A.    Because there was a disclaimer, and then there  
6 was the request that I not use my name, professor,  
7 associate professor title, in any of my postings, which,  
8 within my power, I did not do certainly on my blog  
9 anything that I edited, I did not include my name.

10          Q.    Okay. Did you ever tell Mr. Moats that you  
11 violated the agreement?

12          A.    If I did, it would have been in the telephone  
13 conversation I believe he alleges that I stated that I  
14 violated it, if I'm not mistaken. This may have been  
15 what he stated in his testimony. But it would have been  
16 involved or transpired in that phone conversation on  
17 December 17th or thereabouts of 2015.

18          I don't recollect saying that. I think that there  
19 was a misunderstanding, which has now been evidenced in  
20 a number of testimonies concerning the authorship of  
21 Nobody Died at Sandy Hook.

22          There was the belief by -- or articulated by  
23 Mr. Glick, I believe by Michael Moats, which had not  
24 looked at the book but who was under the impression that  
25 I had authored or co-authored the book, and I had done

1     neither. But there was that, there was at least that  
2     belief, I think, which imparts -- was an underlying  
3     element in what took place in December and January,  
4     December 2015 and January of 2016.

5           Q.     Somebody looked at the book Nobody Died at  
6     Sandy Hook and they see your name in there, right, in  
7     your affiliation with FAU?

8           A.     Yes. That wasn't a blog post, though.

9           Q.     Okay. Does that make a difference?

10          A.     Well, the book itself was not a blog post.

11          Q.     Okay. It's a publication.

12          A.     I mean, it was something that the editors took  
13     blog posts from my site and placed it in the books. But  
14     I didn't author the book or edit the book.

15          Q.     Did you ever ask them to remove the FAU  
16     affiliation from the book; did you ever do anything to  
17     stop that?

18          A.     In fall of 2015?

19          Q.     At any time.

20          A.     I don't believe so.

21          Q.     Then later on I guess you wrote a chapter for  
22     the second edition of the book about the terminations  
23     from FAU, right?

24          A.     Yeah.

25          Q.     And you certainly didn't shy away from talking



1 about your affiliation with FAU in that chapter, did  
2 you?

3 A. This was after the termination.

4 Q. Right. So you talked all about your  
5 affiliation or your former affiliation with FAU, right?

6 MR. LEO: Object to form.

7 THE WITNESS: I talked about the experience,  
8 the factors that were involved in the termination.  
9 Because it had not been discussed anywhere else.

10 BY MR. CURLEY:

11 Q. In your complaint -- in your complaint, I'm  
12 referring to Paragraph 48, you allege that on January  
13 11, 2013, during CNN's Keeping Them Honest, Anderson  
14 Cooper condemned you and your blogging on national  
15 television, reading out context statements from your  
16 blog and disparaging you as beyond crazy.

17 Is that allegation accurate? Did I get it right?

18 A. You're reading from the complaint?

19 Q. Yeah.

20 A. I think it's accurate, yes.

21 Q. Okay. Did Anderson Cooper's coverage of you  
22 on national TV damage your reputation?

23 A. There is certainly that potential there. I  
24 think that they wanted to put me on the spot.

25 Q. Maybe CNN?

1       **A.**    CNN, its owners, its editors.

2       **Q.**    And how did that putting you on the spot on  
3 national television on CNN affect your reputation?

4               MR. LEO:   Object to form.

5               THE WITNESS:  I don't know.  I was allowed to  
6 make a statement, and I made a statement.  CNN  
7 asked if I wanted to make a statement and I chose  
8 not to do the interview at that time because I was  
9 wary of the way in which it might be edited.  And  
10 so, I gave them a written statement and asked them  
11 to go away.

12              This was a -- this involved harassment, as far  
13 as I'm concerned on behalf of CNN, on par with  
14 something you might expect from the mafia.  I mean,  
15 there were telephone calls, there were visits to my  
16 business, to my appointments and so forth.  And  
17 just this incessant attempt to get me to speak.  
18 Which was, in my view, just over the top and  
19 unwarranted.

20       BY MR. CURLEY:

21       **Q.**    Were there any other -- is there any other  
22 coverage of you in the mainstream media that you would  
23 -- that you would characterize as hurtful or damaging to  
24 your reputation?

25       **A.**    In the mainstream media?

1           Q.    Yes, sir.

2           A.    I think that the way in which, as we  
3   discussed, conspiracy theory and the like, is discussed,  
4   is presented and disparaged, I think there have been  
5   instances in reportage on me.

6           Q.    Coverage by Anderson Cooper and CNN, do you  
7   blame FAU for that?

8           A.    Well, FAU is not in charge of CNN, but they  
9   are in charge of an institution of higher learning.  
10   They sought to distance themselves from my commentary,  
11   from the blog.

12          Q.    Do you fault them for that?

13          A.    Yes, certainly in a way.

14          Q.    Why?

15          A.    Because I think that there's nothing wrong  
16   with critiquing or questioning the mass media. What our  
17   president now refers as the fake news media. The  
18   narratives that they spin.

19               And the administration could have very easily come  
20   out and said this is one of our faculty members; he  
21   seeks to cultivate a productive discussion at the  
22   societal level concerning the mass media, he shouldn't  
23   be figuratively assassinated for that. He shouldn't be  
24   disparaged or defamed. This is something -- this is a  
25   spirit of critical inquiry that we welcome, we wish to

1 foster and we seek to foster in our students and our  
2 colleagues.

3 I think that that would have been an appropriate  
4 response. It takes a degree of courage. And in that  
5 regard, I think that there was a lack of that on behalf  
6 of the leadership of the university at the time, and in  
7 2015.

8 Q. When you published your blog and engaged in  
9 your review of Sandy Hook, you didn't run that by the  
10 university before you did it, right?

11 A. When?

12 Q. Before.

13 A. Between 2013 and 2015?

14 Q. Did you go to the university and say, look,  
15 I'm going to write a blog where I'm going to suggest  
16 that Sandy Hook is a fraud.

17 A. Well, I never suggested. I never suggested  
18 that. That's putting it in a nutshell that  
19 mischaracterizes what my remarks were. I wrote a great  
20 deal about that event and other events. But to reduce  
21 it to the notion that these things are fraud, I think,  
22 are to over-simplify things.

23 Q. Well, I'm trying to capture it.

24 A. Okay.

25 Q. And I hear ya. I understand. I'm not trying

1 to spin it like that. What I am trying to do is get you  
2 to tell me that you didn't go to the university and say  
3 this is my plan, this is what I'm going to do with Sandy  
4 Hook before you did it, right?

5 **A.** I was asked to, at one point. That was  
6 something that was brought up in our discussions  
7 concerning the disclaimer and the initial grievance  
8 between Coltman, Broadfield, myself, and at one meeting,  
9 I believe in summer of 2015, Linda Johnson was there  
10 too, who was the assistant or associate dean.

11 And Coltman said, she wanted for -- she wanted to  
12 have prior restraint. She wanted to -- she suggested to  
13 me if there's anything controversial that you might put  
14 on your blog, it would be good to let us know, to give  
15 us advance notice; to perhaps run it by us. And I  
16 thought this to be rather excessive, since it was a  
17 personal blog, and they acknowledged it was a personal  
18 blog.

19 **Q.** All right. So, here's my point. How can you  
20 expect them to embrace what you're doing or endorse what  
21 you're doing or back what you're doing if they're not --  
22 if you're not seeking their input as you're doing it?

23 It seems like you're writing these personal views  
24 and blogs and things like that, and then things happen  
25 and you're disappointed that the university isn't

1 backing your play.

2 MR. LEO: Object to form.

3 THE WITNESS: Well, I don't think it's a  
4 matter of seeking their endorsement. I don't --  
5 that's not what I'm getting at. It's rather to be  
6 there to guide, to guard free inquiry. And  
7 critical inquiry, and so forth.

8 BY MR. CURLEY:

9 Q. All right. When you wrote these --

10 A. Could you repeat the question, too, because  
11 there was a train of thought that I was following. I  
12 wanted to be able to get it --

13 Q. Well, I'll give you the gist of it. The gist  
14 of it was I got the impression you were disappointed  
15 that the university wasn't more on your team and  
16 endorsing what you were doing as an intellectual debate  
17 -- my words, not yours. And I was suggesting to you  
18 that how can you have that expectation if you're not  
19 incorporating them in the process so that they have an  
20 ability to, if you want their endorsement or you want  
21 their approval, to incorporate them in the idea and the  
22 notions so that they're either in or they're out? And  
23 that's a lot of --

24 A. Incorporate the administration?

25 Q. Whoever.

1           **A.**    The management?

2           **Q.**    Whoever's endorsement you like to have. I  
3 mean, horrible question, but, you know, in the sense of  
4 how they're framed. But if somebody wants me to be in  
5 with them, I'd sure like to know it before they do  
6 something. Don't do something, don't write some --  
7 don't publish something and then come back to me and say  
8 how come you're not endorsing this? You never asked me,  
9 that's why.

10          **A.**    Okay.

11          **Q.**    And I'm getting the impression you're upset  
12 with them because they weren't endorsing what you were  
13 doing. But, by the same token, you're saying I didn't  
14 have to ask their approval or get them involved. Okay.  
15 So be it.

16          **A.**    Well, if it's a personal blog, I don't think I  
17 was doing anything there on there that involved  
18 professional work. It was not scholarship. It was not  
19 something that was going to the scholarly journal. We  
20 discussed that, sure, in the previous.

21                But I believe that faculty members across the  
22 United States regularly embrace controversial subject  
23 matter and views perspectives, and they do so on their  
24 Twitter pages, on their Facebook pages, on their  
25 personal blogs. It could be LGBTQ, it could be climate

1 change; it could be Trump administration en mass. All  
2 of these things are done on a regular basis, but they're  
3 not regarded as being controversial or unpopular by the  
4 media or by the administration.

5 I mean they're upheld. There's a certain degree of  
6 defense or, at least, ignoring these things. I'm not  
7 sure what exactly it is. Some people call it political  
8 correctness. But there is a whole, I think a sort of  
9 political mindset in the demand and raised in the social  
10 sciences that's fairly left of center.

11 In a different time, in a different zike (phonetic)  
12 in our country's history, these might be regarded as  
13 being tremendously controversial and subject to censure,  
14 perhaps disciplinary action. And they're not today.  
15 They become passé.

16 Q. Sure.

17 A. So, that part is, I guess, how I reflect on  
18 this and think on this historically. That is how I want  
19 to operate my question.

20 Q. Okay. Did the -- well. Did the university  
21 ever come out and write an official statement condemning  
22 Sandy Hook and what you were saying about it?

23 A. The Saunders administration did in early 2013.  
24 They stated that President Saunders said we don't hold  
25 these views, we don't hold these perspectives. These



1 are done on a blog. These are not a respective view of  
2 the university.

3 This was at a time when I believe the first  
4 selectman, who was the equivalent of the city manager or  
5 the mayor of New Town wrote something that was carried  
6 in the major press about myself and identifying me with  
7 criticism of the press coverage of Sandy Hook.

8 Q. And how do you think that affected your  
9 reputation, this guy writing in major media about your  
10 coverage?

11 A. It would depend, in part, on the media, and  
12 the response of the university as well. The university  
13 is not involved in critiquing major and influential  
14 institutions such as the mass media, or the corporate  
15 institutions and so forth.

16 I said this earlier, and I don't mean to reiterate  
17 or gild the lily, but who else is going to do that? Who  
18 else would be involved in that?

19 Q. Well, assuming that to be the case,  
20 wouldn't you want to make that part of your assignment  
21 then? Shouldn't that be in your assignment?

22 A. It would depend. I don't think that much of  
23 what was produced from memory of my blog, any of what  
24 was produced any would rise to the level of a  
25 scholarship. This was something that was done on

1 personal tie. But it would be something, as far as the  
2 topics and so forth go, these were things that I was  
3 beginning to address.

4 Q. Okay. Let me ask you about another instance  
5 you put in your complaint. You're referring to -- this  
6 in Paragraph 100 of your complaint, you say on December  
7 10th, 2015, the Sun-Sentinel published another  
8 defamatory disparaging article targeting you in your  
9 employment, falsely accusing you of harassment and  
10 extra-curricular misconduct and shaming the defendant  
11 university, calling for Professor Tracy's filing. "It  
12 is time FAU reassess their priorities properly reflect  
13 the best interest of their staff, donors and, most  
14 importantly, their students."

15 Did you think that hurt your reputation?

16 A. Well, I don't think it did anything to aid my  
17 reputation, for example, wrongfully accusing me of  
18 criminal harassment, when that did not take place. But  
19 this is something that should have prompted further  
20 inquiry by my colleagues and by my supervisors at FAU,  
21 who took at face value the representation of the media's  
22 representation of Sandy Hook and so forth, as well as  
23 the representation of these individuals who purportedly  
24 authored this particular opinion piece.

25 Q. The Pozners, right?

1           A.    Yes.

2           Q.    Did you sue them for defamation?

3           A.    Who they actually are.

4           Q.    Have you sued them for defamation or some kind  
5 of injury or reputation since you claim what they said  
6 about you and themselves is untrue?

7           A.    We have not done anything at present.

8           Q.    Why not?

9           A.    Yet.

10          Q.    Why not?

11               MR. LEO:  Object, calls for attorney/client  
12 communications.

13 BY MR. CURLEY:

14          Q.    Why haven't you done anything?

15               MR. LEO:  I'll instruct the witness not to  
16 answer.  Calls for attorney/client communications.

17 BY MR. CURLEY:

18          Q.    Any other individuals at Sandy Hook Elementary  
19 harmed your reputation?

20          A.    This has primarily been the preoccupation of  
21 Mr. Posner.

22          Q.    Okay.

23          A.    And have certain suspicions about who actually  
24 was behind the burglary of my residence on December  
25 22nd.

1 Q. You think it was Mr. Posner?

2 A. I don't know.

3 Q. Well, you said you've got suspicions. Who do  
4 you think it is?

5 A. Someone who was specifically targeting my  
6 ability to access the internet, who wanted documents,  
7 perhaps.

8 Q. Who would that be?

9 A. There were a number of things that were  
10 untouched in the burglary that were valuable. But the  
11 desktop computer was not one of them.

12 Q. And who do you think it is?

13 A. I don't know.

14 Q. You think it's FAU?

15 A. It's crossed my mind.

16 Q. Really?

17 A. Yeah.

18 Q. Okay, why?

19 A. This took -- the burglary took place one week  
20 after the judge essentially allowed for the case to  
21 proceed on two counts, and asked for the -- gave us a  
22 10-day, I believe, window or deadline producing the  
23 second amended complaint. So, it's been an important  
24 time.

25 There's more to it. I think there's more to it

1     than that. But I have reason to believe it seemed to be  
2     an expert job, because there was only a -- there's a  
3     brief window of time, about 25 minutes or so.

4           Q.     Yeah, we've noted that.

5           A.     Right.

6           Q.     Yeah, we had our own suspicions; you know  
7     that?

8           A.     Yeah. We'll I've, you know, I -- we have  
9     documentation and I can show you that my wife was at the  
10    school at that time, I picked her up at that time, and  
11    all that.

12          Q.     Sometimes things aren't always what they seem,  
13    are they?

14          A.     Guess not.

15          Q.     Yeah, I guess not. Okay.

16                 THE COURT REPORTER: Would you mind if we took  
17    two minutes.

18                 MR. CURLEY: Not at all.

19                 (Thereupon, a short break was had.)

20                 THE VIDEOGRAPHER: It's 4:03 p.m. This is the  
21    beginning of DVD Number 4 of the video deposition  
22    of James Tracy. We're back on the record.

23                 MR. CURLEY: Ready?

24                 THE COURT REPORTER: Yeah.

25                 BY MR. CURLEY:

1           Q.    I want to ask you about your damages that you  
2   allege FAU and FAU defendants, and I guess the named  
3   defendants are responsible for.

4           In Paragraph 137 of your complaint you allege that  
5   as a consequence of Professor Tracy's First and  
6   Fourteenth Amendment rights, that you are entitled to  
7   compensatory, punitive damages, costs of the lawsuit, et  
8   cetera. What damages are you seeking?

9           MR. LEO: I'm just going to object to the  
10   form.

11          THE WITNESS: This would include past wages,  
12   future wages and benefits.

13   BY MR. CURLEY:

14          Q.    Okay.

15          A.    And punitive damages.

16          Q.    Okay. What about injury to your reputation?

17          A.    That's in there as well, yes, reputational  
18   damages.

19          Q.    Okay. What about any sort of pain and  
20   suffering. Are you looking for that? Have you been  
21   traumatized?

22          A.    Reputational damage in part has to do, of  
23   course, as well, with the charge of insubordination.

24          Q.    Right. What about some sort of pain and  
25   suffering? Are you claiming damages for emotional

1 distress or things like that?

2 A. I think certainly it's been an emotional,  
3 traumatic experience for me, yes.

4 Q. All right. Anything else that you can think  
5 of?

6 A. Not immediately, no.

7 Q. All right. And you said you've lost wages.  
8 Correct me if I'm wrong, but you only started looking  
9 for a new job in June of this year, right?

10 A. Yes.

11 Q. Why didn't you look for a job between June and  
12 the time you lost your job?

13 MR. LEO: Objection, asked and answered.

14 THE WITNESS: I think that we had covered this  
15 in the first half of the deposition in May. But a  
16 major concern is the reputational damage that has  
17 been sustained. And I wanted to take time between  
18 the termination and the reverberations of that when  
19 I would proceed to seek employment again.

20 And it may have to do with the fact that I,  
21 you know, I did receive an opportunity for a  
22 telephone interview a few weeks ago.

23 BY MR. CURLEY:

24 Q. Do you -- because you've now started to apply  
25 for jobs, do you think the reputational issues have

1 passed?

2 MR. LEO: Object to form.

3 THE WITNESS: I am presently uncertain about  
4 that. I don't know if they will ever fully pass.

5 BY MR. CURLEY:

6 Q. And you blame FAU for that or others?

7 MR. LEO: Object to form.

8 THE WITNESS: I think it is primarily FAU. I  
9 did have a tenured position. The circumstances  
10 leading to the termination involved my request for  
11 clarification of a very unclear and unevenly  
12 enforced policy.

13 BY MR. CURLEY:

14 Q. What about the union; do you blame them for  
15 your damages as well?

16 A. In my view, they contributed to this. They  
17 contributed to the poor handling of the entire matter.

18 Q. Well, what percentage do you fault them for  
19 what occurred here?

20 MR. LEO: Object to form. Calls for a legal  
21 conclusion.

22 THE WITNESS: It's difficult to say.

23 BY MR. CURLEY:

24 Q. Your belief is they conspired with FAU, and  
25 together they accomplished the injuries to you; is that



1 right?

2 A. My belief is that there was collusion.

3 Q. Between the union and FAU, right?

4 A. Between agents of those two entities, yes.

5 Q. To what extent do you think your injuries are  
6 caused by the Pozners, Wendy Pozner?

7 MR. LEO: Object to form.

8 THE WITNESS: Well, certainly, the definition  
9 of liable is someone states something that is  
10 demonstrably untrue. There is no truth to the  
11 statement that I was involved in criminal  
12 harassment, for example. We discussed this, if you  
13 recall, in the first portion of the deposition  
14 where I was able to affirm that there were no  
15 police reports that were filed against me  
16 concerning any of their New Town or Boca Raton  
17 where Mr. Pozner resides.

18 BY MR. CURLEY:

19 Q. So, he hasn't filed police reports, but you  
20 haven't sued him for defamation, either?

21 MR. LEO: Objection, asked and answered.

22 THE WITNESS: There's been no action in that  
23 regard at present.

24 BY MR. CURLEY:

25 Q. Do you think that Anderson Cooper going on

1 national TV and characterizing you as beyond crazy may  
2 have hurt your reputation?

3 MR. LEO: Objection, asked and answered.

4 THE WITNESS: I think that in certain respect  
5 it likely hurt his reputation. I think this was an  
6 instance where you have a prominent media figure  
7 who bent the stick too far, and a great many people  
8 came away with that conclusion. At least some of  
9 the people who shared their observations with me.

10 BY MR. CURLEY:

11 Q. So, you don't think Anderson Cooper stating on  
12 national television, on CNN, that you are beyond crazy  
13 hurt your reputation?

14 MR. LEO: Objection, asked and answered.

15 THE WITNESS: Well, people in the mass media  
16 call figures, individuals, crazy on a regular  
17 basis. Is it hyperbole on their behalf; I don't  
18 know. I guess it would appear to be. Anderson  
19 Cooper is, in many respects, more of an entertainer  
20 than a journalist.

21 BY MR. CURLEY:

22 Q. That all could be true, but it's not the  
23 answer to my question. Did he hurt your reputation or  
24 not?

25 MR. LEO: Object to form.

1           THE WITNESS: On the whole I don't believe so.  
2           I think that academics, other individuals who might  
3           take unpopular stances might be called crazy for  
4           any number of things. It's one thing to have free  
5           commentary. I think it's quite another to embark  
6           on a campaign of organized disparagement. And I  
7           think that's more characteristic of what that was a  
8           part of. It wasn't the only part of it, but it's  
9           certainly an element of it.

10           I think a lot of this -- this originated with  
11           the Sun-Sentinel, which persisted, for example,  
12           throughout 2013 in a series of remarks, opinion  
13           pieces and so forth, centering on me.

14       BY MR. CURLEY:

15           Q. Did you demand a retraction from the  
16           Sun-Sentinel?

17           A. I did send a letter to them.

18           Q. And what did your letter say?

19           A. Inviting them to a public debate, their  
20           editorial board.

21           Q. Did you demand a retraction?

22           A. I would have to look at the letter. I believe  
23           that was the crux of my letter.

24           Q. And did they respond?

25           A. Well, the editor, Howard Saltz (phonetic),

1       responded, yes.

2           **Q.**     What did he say?

3           **A.**     He said that reporters and columnists are  
4       regularly looking for interest subject matter. You are  
5       in a position to influence public opinion, and we don't  
6       believe we are libeling you.

7           **Q.**     Did he respond to your offer of a debate?

8           **A.**     He, interestingly, said we are reporters and  
9       journalists. We report the news, we don't debate or  
10      comment on it, or engage in debate, which is a real  
11      stretch.

12          **Q.**     Okay. Did Defendants Kelly, Alperin and  
13      Coltman issue any public statements about you?

14          **A.**     Well, I know Defendant Kelly did. It's my  
15      understanding that he authored or was involved in the  
16      authoring of the public statement concerning my  
17      personnel situation on or around December 16th of 2015.  
18      He sent the email to himself, so, that's something that  
19      your office produced on your client's behalf. And this  
20      was the statement that was issued to the media, I think  
21      on December 16th that discussed an internal personnel  
22      matter regarding the move to terminate my employment.

23          **Q.**     Okay. What about Defendants Alperin and  
24      Coltman, did they publish anything?

25          **A.**     Publish anything as far as a letter to the

1 editor or a column or along those lines?

2 Q. Any public statements about Professor Tracy my  
3 Coltman or Alperin?

4 A. I don't believe so. I think that was  
5 encompassed in the statement Defendant Kelly issued that  
6 I just mentioned. Their actions and so forth.

7 Q. What about Defendants Zoeller and Moats, have  
8 they made any public statements about you?

9 A. I know that Defendant Zoeller posted a rather  
10 derogatory column that was published by the Chronicle of  
11 Higher Education to the UFFFAU blog in January of 2016.  
12 But I believe, among other things referred to me as a  
13 monster who should probably not be teaching.

14 Q. Zoeller said that?

15 A. No, Zoeller was reproducing an article on the  
16 UFFFAU chapter blog and a link to the Chronicle to  
17 Higher Ed article.

18 Q. It was a link to another article?

19 A. Yeah. A chapter -- excuse me, a paragraph or  
20 two and then a link to the article. So, that's one  
21 thing off of the top of my head.

22 But as far as like publishing anything in the  
23 media?

24 Q. Yeah.

25 A. I know that this was concerned with regard to

1 the debate on tenure at that time, and the challenges to  
2 that at the state level. And the bearing that my  
3 situation might have on that debate legislatively or  
4 otherwise.

5 Q. Okay. And going back to the link that Zoeller  
6 published, did he have any -- did he say anything or was  
7 it just passing on a link?

8 A. As I recall seeing the article, it was a  
9 couple of paragraphs and then a link.

10 Q. Did you think the --

11 A. Excuse me, I'm sorry.

12 Q. Did you think that the paragraphs that Zoeller  
13 wrote were disparaging to you?

14 A. He didn't write; it was just cut and paste, so  
15 it was not him authoring the article. It was just from  
16 the Chronicle of Higher Ed. So, I don't believe, I'm  
17 quite certain, that Zoeller and Moats did not state  
18 anything publicly concerning me.

19 Now, I know that the UFFFAU, Jennifer Profit  
20 (phonetic), who was the president of UFF statewide, they  
21 did submit an op ed to the newspaper here.

22 Q. And what did it say?

23 A. I'm not sure if that may have been published  
24 by the --

25 Q. Was it defamatory to you?

1           **A.**    The other Tribune entity, as well as  
2           Sun-Sentinel. Anyway, it was something that was  
3           published in the local paper here.

4           **Q.**    Did it defame you?

5           **A.**    It was concerning union principles and  
6           defending the union, that the union is there to defend  
7           all faculty, regardless of their viewpoints.

8           **Q.**    So, how did that relate to you?

9           **A.**    Well, it was involving my case, because I  
10          think the union was criticized for providing an  
11          attorney. The union was criticized specifically by the  
12          Sun-Sentinel editorial board for providing me any aid.

13          **Q.**    I see. You may want to respond to that.

14          **A.**    I believe so.

15          **Q.**    In terms of reputational damages, how much  
16          money do you think you're entitled to for that?

17          **A.**    This is something that would, of course,  
18          influence, it would have an impact on my ability to be  
19          able to secure subsequent employment and the livelihood  
20          where I've been trained. This is something that I would  
21          have to discuss with counsel.

22          **Q.**    So, you don't know how much money you think  
23          you're entitled to injury to your reputation?

24          **A.**    From your client?

25          **Q.**    Sure. That's all I can ask you about, on

1 clients.

2 A. Yes. I would say it should be in the range of  
3 -- thousand dollars.

4 Q. I'm sorry, I couldn't hear. What did you say?

5 A. In the range of several hundred thousand  
6 dollars.

7 Q. And why is that?

8 A. Well, because I was terminated in part for  
9 insubordination, for violation of a policy, that was not  
10 well defined, it was in flux, it was still being agreed  
11 upon by FAU and the individual defendants. And was  
12 being flushed out as recently as summer of 2016, with a  
13 great deal of dissention among the FAU faculty in  
14 concern over whether or not they might also violate the  
15 policy and suffer the same or similar fate as me.

16 Q. Do you know anybody that responded, submitted  
17 their conflict of interest outside activities form that  
18 got fired for what they put in the form?

19 A. Got fired for what they put in the form?

20 Q. Yeah.

21 A. I do not know. There are many people who do  
22 not fill out the form at all who are still employed at  
23 FAU. And, of course, it's significant when we talk  
24 about article 19 to talk about the policy itself and the  
25 form itself and its appropriateness to blogging.



1           Q.    But as far as somebody submitting the form,  
2   you're not aware of anybody that got fired for what they  
3   put in their form, right?

4           A.    Fired for what they put in their form.  I  
5   don't know.

6           Q.    Punitive damages.  How much do you want for  
7   punitive damages?

8           MR. LEO:  Objection, calls for a legal  
9   conclusion, but he can answer the question.

10          THE WITNESS:  My understanding, based upon --

11          MR. LEO:  You're also just, please say you're  
12   answering based on attorney/client communications.  
13   I just caution you.

14          THE WITNESS:  I don't know if I can really  
15   discuss that without breaching attorney/client  
16   privilege.

17   BY MR. CURLEY:

18          Q.    Do you have a number in your mind as to what  
19   you seek --

20          A.    Specific dollar amount?

21          Q.    Yes, sir.

22          A.    My understanding is the quotient is typically  
23   three times what the other damages are, the total amount  
24   of the other damages.

25          Q.    So, whatever the other damages are you think

1 it should be three times that; does that sound right?

2 A. That's the understanding I have been led to  
3 arrive at.

4 Q. Okay. And in terms of pain and suffering, how  
5 have you -- what emotional distress have you suffered?

6 MR. LEO: Objection, asked and answered.

7 THE WITNESS: Well, I think that it's a very  
8 emotional traumatic experience to be terminated  
9 from a position that you spent many, many years of  
10 your life training for, that you performed well in,  
11 where you've gone above and beyond the call, in  
12 terms of what is being asked of you.

13 And suddenly to be terminated, I think that is  
14 a very challenging experience. It certainly was  
15 for me.

16 BY MR. CURLEY:

17 Q. Did you lose any sleep?

18 A. Yes.

19 Q. How are you doing now? Are you able to sleep  
20 now?

21 A. Sometimes. I will say for the most part, yes.

22 Q. Good. Okay, what about how are things at  
23 home? Are you okay with the wife and kids; things all  
24 right there? Or are you having problems that you blame  
25 on this?

1 MR. LEO: Object to form.

2 THE WITNESS: That's something I could  
3 probably spend quite a bit of time on. And I know  
4 we have restrictions here in terms of parameters,  
5 but I would say it's been challenging in that  
6 regard as well.

7 BY MR. CURLEY:

8 Q. Let me say this to you. I'm not trying to pry  
9 into your private life, but if you intend to go in front  
10 of a jury and say, look, these are the problems that  
11 I've had and I want you folks to compensate me for that,  
12 then I need you to tell me about that.

13 So, is there something you think you're entitled to  
14 be compensated for as a result of problems in your  
15 personal life?

16 A. My children say to me Daddy's no longer a  
17 professor. He did something wrong to get fired, to get  
18 terminated. They don't understand what he did wrong,  
19 but he did something wrong. You know, it's not easy to  
20 look in their eyes and attempt to explain something  
21 that's very difficult to explain.

22 So, it has to do in part with one's identity, with  
23 one's profession. That being stripped of me, not having  
24 as much resources, things like that.

25 There are a number of smaller things that

1 contribute to a larger picture. The fact that we had to  
2 take one of our daughters, who is very talented, out of  
3 gymnastics class; things like that. That might seem  
4 petty or minimal. In and of itself, perhaps it is. But  
5 that's one thing that's -- that is cumulative in terms  
6 of the quality of the domestic realm.

7 Q. Okay. Anything else you can think of?

8 A. There are a number of things that we would  
9 like to be able to do as a family, and we're restricted  
10 because of the limited wherewithal. And traveling,  
11 providing for extra-curricular activities for the  
12 children.

13 I think most of it -- much of it impacts the  
14 children. And the quality of life, for lack of a better  
15 term, and provide a roundabout term.

16 Q. Because of a lack of financial resources or  
17 other things?

18 A. That's -- it's largely tied to that.

19 Q. How many times would you guess someone from  
20 the administration asked you to fill out and complete  
21 the conflict of interest outside activity forms, in  
22 writing, from 2000 -- let's go from January 2013 through  
23 the time you were terminated?

24 MR. LEO: Object to form.

25 THE WITNESS: Well, I think that this was

1       asked of me, I believe, a couple of times. And I  
2       responded --

3       BY MR. CURLEY:

4       **Q.**    A couple meaning two?

5       **A.**    Yes.

6       **Q.**    So, you think they only asked you twice?

7       MR. LEO: Object to form.

8                   \*   \*   \*   \*   \*

9       (Continued in Volume II.)

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CERTIFICATE

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, JANIS TIERNEY, a Court Reporter, do hereby  
certify that I was authorized to and did report the  
deposition of JAMES TRACY, a witness called in the  
above-styled cause, that the witness was first duly  
sworn by me; that a review of the transcript was  
requested; and that the transcript is a true and  
complete record of my notes.

I further certify that I am not an attorney or  
counsel for any of the parties, nor related to any of  
the parties, nor financially interested in the action.

Dated this 9th day of August, 2017

JANIS TIERNEY  
COURT REPORTER

NBR/KC



1 August 9, 2017  
2 Louis Frank Leo, IV, Esquire  
Joel Medgebow, Esquire  
3 Attn: James Tracy  
Medgebow Law, P.A.  
4 4171 West Hillsboro Boulevard, Suite 9  
Coconut Creek, Florida 33073

5  
6 RE: JAMES TRACY vs. FLORIDA ATLANTIC UNIVERSITY  
BOARD OF TRUSTEES a/k/a FLORIDA ATLANTIC  
UNIVERSITY; et al.

7  
8 Dear Sir or Madam:

9 You have reserved your right to read and sign the  
deposition transcript in the above-captioned case to  
10 which you were the deponent.

11 This task may be accomplished by way of your  
attorney who may provide you with a copy of the  
transcript. If necessary, you may call us at the number  
12 below to schedule an appointment for you to appear at  
our office to read and sign the deposition transcript.  
13 An errata sheet will be provided to you at that time.  
Our office is open Monday through Friday from 8:00 a.m.  
14 to 5:30 p.m.

15 Respectfully,

16 JANIS TIERNEY

17 VERBATIM SUPPORT SERVICES

12 Southeast 7th Street, Suite 702

18 Fort Lauderdale, Florida 33301

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19 Fax (954)467-8214

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24 777 Glades Road, Room 370

Boca Raton, Florida 33431



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