

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.

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(Volume II)

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

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5 JOEL MEDGEBOW, ESQUIRE

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19

20 ALSO PRESENT:

21 22 TAMMI BOSKE, PARALEGAL

23

24

25

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2 Witness Direct

3 JAMES TRACY

4 By Mr. Curley:

4

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1 THEREUPON:

2 (Continued from Volume I.)

3 \* \* \* \* \*

4 BY MR. CURLEY:

5 Q. Is that what you're telling me?

6 A. As I recall it was two, possibly three times.

7 And I responded asking for clarification on the policy.

8 And I did fill out the forms and I was terminated.

9 Q. How many times do you think they should have  
10 to ask you before they can take some action?

11 A. Well, it depends on whether they're acting in  
12 a discriminatory fashion. All of my colleagues don't  
13 fill out these forms for similar sorts of on-line  
14 activity.

15 Q. Do you ever say to them, look, nobody else is  
16 filling them out so I should haven't have to either.

17 Did you say that?

18 A. No.

19 Q. Why not?

20 A. I don't think there was an opportunity  
21 necessarily for that. I can't specifically recall.

22 But I do recall individuals stating to me that they  
23 didn't take the policy seriously or they didn't fully  
24 understand it. They would jest about the seeming  
25 ineptitude of the administration to not be able to get

1 its act together in terms of being able to define the  
2 policy and enforce the policy. And perhaps that was by  
3 design.

4 For example, Timothy Lenz, his remark to me in the  
5 library in October of 2015 that -- they're making it up  
6 as they go along.

7 Q. Is it fair to say that you didn't take this  
8 policy seriously?

9 A. I don't think, based upon the documents that  
10 we've received in production and the testimonies of the  
11 defendants, the FAU defendants, I don't think that the  
12 university or the university administration has taken  
13 the policy seriously.

14 Q. Well, I'm only asking you how you felt about  
15 it. Did you take it seriously?

16 A. I think if it were clarified to me, the  
17 appropriateness the applicability of the policy, and the  
18 fair use of the policy across the board, and I think  
19 that I would have taken the policy more seriously. I  
20 think that's one of the number one rules of management  
21 is to provide your employees with a reason why you're  
22 doing something. AT least that was how I was thought.

23 And there was never any clear reason. I simply saw  
24 this as a way to trap James Tracy in a Catch 22.

25 Q. So, you didn't take it seriously; is that what

1 you're telling me? Because your view was out of the  
2 norm?

3       **A.** No, I took it very seriously. Seriously  
4 enough to articulate my concerns to the administration;  
5 to David Williams, to Defendant Coltman, and ask for  
6 answers why were all faculty be required to check off  
7 electronically as a precondition to accepting their  
8 terms of employment, and understanding I think a fairly  
9 comprehensive understanding of the outside activities  
10 policy.

11       And there were no training sessions, nothing in  
12 terms of faculty being able to understand the full  
13 contours of the policy and the ramifications of not  
14 complying. That was a -- that was a tremendous concern  
15 to me.

16       And an equal concern was the fact that the union  
17 was not doing anything to raise the alarm. On the  
18 contrary, it was doing nothing. We're dealing with this  
19 --

20       But there was no effort on behalf of the union  
21 defendants to state to the faculty that aside from Tim  
22 Lenz, who was a union supporter and backer -- not an  
23 officer. But September 12, 2014, you had him  
24 articulating concern in the faculty senate.

25       Yet Marshall DeRosa, who was completely anti-union

1 articulating almost an identical concern. They're on  
2 opposite ends of the political spectrum. Same concern  
3 about this policy and about economic freedom and all of  
4 this.

5 So, this was playing out in the context of all  
6 that, and I don't think that my requests for  
7 clarification on the policy were anything extravagant,  
8 and are, in fact, provided for under the CVA. The  
9 faculty can take in governance issues and express  
10 concerns with respect to the policy, how it's being  
11 implemented and so forth without fear of reproach,  
12 without fear of any sort of discipline.

13 So, I don't believe I was doing anything that  
14 probably should not have been expected of me as a former  
15 union officer or simply a member of the bargaining unit.

16 **Q.** You aware of anybody else that had refused to  
17 check the box?

18 **A.** I don't know if everyone, or if even a  
19 minority of faculty really looked at the box close. It  
20 was a very pithy explanation of a policy that was,  
21 again, in transition, in flux.

22 **Q.** How many people told you that you ought to  
23 just go ahead and check the box, fill out the form. And  
24 if they did something you could grieve them later, but  
25 go ahead and do it? Comply and grieve.

1           **A.**    Well, if that advice, what if that order or  
2 demand is something that is not constitutional?

3           **Q.**    I'm not getting into constitution. I'm just  
4 asking you how many people told you to do that? I see  
5 it all over emails. I'm just wondering how many people  
6 told you that.

7           MR. LEO: Object to form.

8           THE WITNESS: My recollection is that there  
9 was an email communication with Defendant Zoeller,  
10 and that's the only -- that's the only one that I  
11 recall.

12 BY MR. CURLEY:

13           **Q.**    Moats didn't tell you to do that?

14           **A.**    I had no communication with Moats until  
15 December 17th at 2015. No direct communication.

16           **Q.**    What about Williams?

17           **A.**    Well, Williams is not a member of the  
18 bargaining unit. He's a representative of the  
19 administration. But he expressed confusion on a few  
20 occasions concerning the outside activity form and how  
21 it should be applied.

22           He stated to me in October of 2015 by email that if  
23 I had outside employment then I needed to fill out the  
24 forms. That much is clear to me.

25           He spoke to -- I believe communicated with

1      Defendant Coltman, Defendant Alperin, and there was --  
2      as I recall, there was no clear-cut response in terms of  
3      compliance with the outside activities policy.

4                    MR. CURLEY: May I have the witness list?

5                    MS. BOSKE: Yeah, just let me -- we filed an  
6      amended -- so I want to make sure the names are  
7      correct.

8                    MR. CURLEY: Another one?

9                    MS. BOSKE: Yes.

10                  MR. CURLEY: Okay. So, this one is old?

11                  MS. BOSKE: No, this is recent and the dates  
12      are listed on it.

13                  MR. CURLEY: Oh, okay.

14                  MR. BOSKE: Do you want to mark it?

15                  MR. CURLEY: Yeah. Do you know what we're up  
16      to? Thanks.

17                  (Thereupon, the document was marked as Defendant's  
18      Exhibit Number 38.)

19                  MR. CURLEY: I'm going to mark as Exhibit 38 a  
20      copy of your witness list. There you go.

21                  MR. MEDGEBOW: Exhibit 38?

22                  MR. CURLEY: Yeah. 38.

23                  MR. MEDGEBOW: The Amended Witness List.

24                  MR. CURLEY: Right. According to the entry on  
25      top it was filed on July 24, 2017.

1 BY MR. CURLEY:

2 Q. Okay. We've got quite a few folks on here,  
3 but let me see what I can do to move this along.

4 You've got -- let's start with Number 2 there,  
5 Mr. Broadfield. What do you expect him to testify on  
6 your behalf? Why is he a witness for you?

7 MR. LEO: Object to form.

8 BY MR. CURLEY:

9 Q. I'm going to ask you the same thing about  
10 every one of these people?

11 A. Everyone?

12 Q. Everyone.

13 MR. LEO: I'm going to object to  
14 characterization.

15 THE WITNESS: Well, Douglas Broadfield was the  
16 grievance chair in 2013, and as we discussed today  
17 already, he assisted me in the two grievances that  
18 were filed on my behalf.

19 BY MR. CURLEY:

20 Q. So, what do you think he knows about your  
21 claims in this case that he's going to say to the Judge  
22 and the jury to help you?

23 MR. LEO: Object to form.

24 THE WITNESS: Well, he's already signed an  
25 affidavit to the effect that the actions against me

1       in 2015 were intentional and were discriminatory.

2       Specifically, as a result of my blogging.

3       BY MR. CURLEY:

4       **Q.**    When did he leave FAU?   And I have his  
5       affidavit.

6       **A.**    Somewhere -- it says in the affidavit.   And I  
7       would say in 2014.

8       **Q.**    Okay.

9       **A.**    I didn't actually know that he was gone until  
10      months later, but I had heard through the grapevine that  
11      he had gone to Miami.

12      **Q.**    Okay.   And I'll depose him, so I'll have a  
13      chance to talk to him.

14      What about Mr. Lenz, what do you expect him to say?

15      **A.**    Well, of course, we've received his testimony.

16      **Q.**    Okay.

17      **A.**    In April.

18      **Q.**    When is the last time you spoke to him?

19      **A.**    One-on-one, like you and I are speaking?

20      **Q.**    Well, in a group; otherwise, whatever.   Since  
21      his deposition have you talked to him?

22      **A.**    No.   I didn't talk with him at the deposition  
23      either.

24      **Q.**    Okay.   What about Mr. Robe.   What do you  
25      expect him to say?

1           **A.**    I do not know.  As is the case with Lenz, I've  
2   had no communication with him since his deposition.  He  
3   was going to a hockey game, and mentioned he was going  
4   to a hockey game.  And that's the last time.

5           **Q.**    All righty.  Why did you list him -- why is he  
6   listed as a witness for you?  What do you think he can  
7   say to help you?

8           MR. LEO:  Object to form.

9           THE WITNESS:  Well, I think that he's a  
10          colleague in my department.  And we've known each  
11          other since he first came to FAU.  But, more  
12          significantly, he's the -- my successor as the  
13          president of the union chapter.  So, he had an  
14          understanding of the circumstances in 2013 and how  
15          the grievance was -- and discipline and so forth  
16          were addressed.

17          BY MR. CURLEY:

18          **Q.**    All right.  What about Marshall DeRosa?  What  
19          do you think Marshall can add to this?

20          **A.**    He's a member of the political science  
21          departments, like Tim Lenz.  And I guess with both Lenz  
22          and DeRosa, they had firsthand knowledge of the  
23          reprimand or reprimands that were sustained by their  
24          colleagues in political science concerning their public  
25          statements, their statements to the press.

1       Those individuals are Kevin Wagner and Robert  
2 Rabil, who were both in political science. And Rabil  
3 spoke at the September 4th, 2015 faculty senate. That,  
4 of course, as well, as we discussed a moment ago, Lenz  
5 and DeRosa both spoke at the faculty senate meeting  
6 concerning the outside activities policy, economic  
7 freedom and the like.

8       **Q.**    You said Mr. Rabil, has he had issues about  
9 his speech?

10      **A.**    I think that these were -- this was something  
11 that he stated, yes, expressed at the faculty senate  
12 meeting on September 4th of 2015.

13      **Q.**    He stated that he'd been retaliated against  
14 for a speech that he made; is that what you're saying?  
15 Or did you say -- is he saying he's concerned about  
16 things like that?

17      **A.**    No, he had been chastised. He received a  
18 letter or an email from a member of the administration  
19 that he needs to be careful about his remarks in the  
20 media. I believe there is a media relations department  
21 these things are supposed to go through.

22      I think he is contacted infrequently by the media  
23 because of his expertise on the Middle East. And so,  
24 that's my understanding. I did not see the email or  
25 anything.

1           **Q.**    Okay. Mr. Timothy Lenz, is he tenured?

2           **A.**    Oh, yes. He's a senior professor.

3           **Q.**    What about Mr. Robe, tenured?

4           **A.**    Yes. Associate professor.

5           **Q.**    All right. How about DeRosa?

6           **A.**    Full professor, and I believe DeRosa and Lenz,  
7 as well, are both former department chairpersons of  
8 political science. So, they also have that  
9 administrative experience that I think is important to  
10 understanding things.

11          **Q.**    What about Robert Rabil, is he tendered?

12          **A.**    Rabil, yeah, we were just discussing him.

13          **Q.**    Right.

14          **A.**    I don't know if he's full professor now or  
15 not. But he is tenured, yes.

16          **Q.**    Okay. The next one is Niehan (phonetic).

17          **A.**    I think it's pronounced Niehan. He was the  
18 former faculty senate president at FAU. I believe in  
19 the college of business or economics, and was present  
20 after September 4th, 2014 faculty senate meeting.

21          **Q.**    Okay. What do you think he knows about this  
22 case?

23          **A.**    Well, once again, he was there at that  
24 important meeting. He preceded Christopher Beetle, who  
25 was the faculty senate president thereafter. And so he

1 would have an understanding of the inner workings of the  
2 faculty senate.

3 And as well, the transcripts and the recording of  
4 that September 4th, 2015 senate meeting reflect that  
5 there was a request to refer the outside activities  
6 policy to the academic freedom and, I believe, due  
7 process committee. And this was something that was  
8 contested and resisted by Christopher Beetle, the  
9 faculty senate president, at the time.

10 So, Niehan may have knowledge or an understanding  
11 of why this was done, why this was not proceeded on.

12 There's one other thing, as well, that I wanted to  
13 get in there concerning Niehan and that particular  
14 meeting, but it escapes me at the moment.

15 Q. Okay. Any of the people on your witness list,  
16 do any of these folks know anything about your personal  
17 circumstances and the termination of your employment?

18 MR. LEO: Object to form.

19 THE WITNESS: I'm not exactly sure what you're  
20 getting at. Are some of these people personal  
21 friends of mine or --

22 BY MR. CURLEY:

23 Q. No, have you -- well, as an example, have you  
24 talked to any of these people about how your employment  
25 was terminated?

1           **A.**    Let's see. Only one.

2           **Q.**    Who is that?

3           **A.**    Number 23, Shane Easton.

4           **Q.**    When was the last time you spoke to  
5           Mr. Easton?

6           **A.**    It was the day of his deposition. I was going  
7           out to the restroom. He was waiting in the waiting  
8           room, where we had the deposition, as you recall, down  
9           the street here.

10          **Q.**    Right.

11          **A.**    And told him that it would be a bit -- there  
12          was a bit of a time lag because Lenz was late for his  
13          deposition. He was being deposed earlier that day.  
14          That's the last time I spoke with him.

15          **Q.**    Okay. That's the last time. All right.

16          **A.**    And I said good-bye following his deposition.  
17          That's it.

18          **Q.**    Is it your intention to call all these people  
19          at the trial?

20          **A.**    I don't know. I think that -- I think that  
21          certainly a portion of them will be called. I don't  
22          know if all of them will be.

23          And, of course, I think that this also provides for  
24          reserving the right to add other fact witnesses and  
25          witnesses listed by other parties, and so forth, like

1 you already know.

2 Q. All right. Have you talked to any of the  
3 people on this list within the last 90 days?

4 A. Let's see. July, June, May. No, I don't  
5 think so.

6 The last -- I mentioned I spoke with Easton, that  
7 was in early April.

8 I spoke with I spoke with Mike Budd; I think that  
9 was in March of this year. Not about the case or the  
10 situation at all. It was a visit by he and his wife  
11 through -- babysit our children. They were former  
12 neighbors across the street. So, once in a while they  
13 still come by.

14 Q. Okay. Did you talk to any of them about being  
15 witnesses for you at trial?

16 A. No.

17 MR. CURLEY: Okay. Let's see here. We can do  
18 these now, I guess.

19 MS. BOSKE: There's a couple notes there.

20 MR. CURLEY: Okay. I'm sorry?

21 MS. BOSKE: I didn't know if you wanted to  
22 skip that.

23 MR. CURLEY: Oh, you want to skip that one  
24 too?

25 MS. BOSKE: No, but I know we talked about

1           that, so I didn't know if you wanted to --

2           MR. CURLEY: Yeah, let's do that. Okay. This  
3           is all of them?

4           MS. BOSKE: No, that's just 2012.

5           MR. CURLEY: Oh, okay. There's a lot of stuff  
6           in there. All right. Yeah, this is a lot.

7           There's a lot of filler in here.

8           But, here you go. This is Exhibit 39.

9           Appears to be the 2012 tax return, the less we have  
10           to carry home.

11           (Thereupon, the document was marked as Defendant's  
12           Exhibit Number 39.)

13           MR. LEO: What is it, 39?

14           MR. CURLEY: Yeah.

15           MR. LEO: Is this --

16           MR. CURLEY: It ought to be. It's Bate stamp  
17           984 through 1210. The longest tax return in the  
18           history of mankind. Okay.

19           MR. LEO: You haven't seen the insurance  
20           return yet.

21           BY MR. CURLEY:

22           **Q.** All right. Do you recognize this document,  
23           sir?

24           **A.** Yes.

25           **Q.** And is this a copy of the tax return that was

1 filed on your behalf?

2 **A.** For 2012.

3 **Q.** When did you file this?

4 **A.** I believe in 2013.

5 **Q.** And why do you say that?

6 **A.** That's -- it's for 2012 and I believe I filed  
7 in 2013.

8 **Q.** Have you filed your tax returns every year;  
9 2012, 2013, 2014, 2015? Yes, no?

10 **A.** Not consistently, no.

11 **Q.** Okay. This return here, I was trying to find  
12 a signature on it. It looks like it's unsigned. Did  
13 you sign a copy of this?

14 **A.** Well, it -- if it was through the tax return  
15 software it would have been electronically signed. I  
16 think it was through Tax Champ or --

17 **Q.** One of those. Okay. So, this is something  
18 you would have used a computer software to complete and  
19 file?

20 **A.** Yes.

21 **Q.** You did that yourself?

22 **A.** Yes.

23 MR. CURLEY: All right. Is that the next one?

24 MS. BOSKE: Uh-huh.

25 BY MR. CURLEY:

1       **Q.**    The 2012 tax return refers to Net Transactions  
2        Limited. Do you know what that is?

3       **A.**    On what page?

4       **Q.**    It's on -- let's go to -- yeah, that's a good  
5        question. 1005.

6       **A.**    Oh, yeah, I do.

7       **Q.**    And what is that?

8       **A.**    That is gold money. It's a service where they  
9        hold bullion for you off-shore and you have an  
10        electronic online.

11       **Q.**    Okay. Let me to get you to look over at 1029.  
12       There it refers to the University of Toronto Press. It  
13       says wages, tips, compensation of \$100. Do you know  
14       what that's for?

15       **A.**    That's for a review I did of a book  
16       manuscript.

17       **Q.**    Is all of the income that you earned in 2012  
18       reflected in this tax return?

19       **A.**    Yes.

20            MR. CURLEY: Okay. I guess 40's next?

21            MS. BOSKE: Uh-huh.

22            MR. CURLEY: Okay. Thanks. Oh, that's --

23            MS. BOSKE: Do you want me to put it together  
24        like that?

25            MR. CURLEY: Yeah, that's great.

1 (Thereupon, the document was marked as Defendant's  
2 Exhibit Number 40.)

3 BY MR. CURLEY:

4 Q. All right. This is Exhibit 40. I think this  
5 is the 2013 return. Take a look at that and tell me if  
6 you recognize it.

7 A. T-R-A-C-Y, uh-huh.

8 Q. This is a copy of your return. Does it  
9 reflect all of your income for 2013?

10 A. Well, my wife and I filed separately, 2013  
11 through 2016. So, investment income and so forth was  
12 reflected on her separate return. If there was any; I  
13 don't specifically recall. But that is the reason this  
14 is so thick, probably because of all the things you get  
15 from the broker.

16 Q. All right. So, this should reflect all of  
17 your income for 2013; you individually, right?

18 A. Yes.

19 MR. CURLEY: All right. What?

20 MS. BOSKE: Yep, they're all together there.

21 (Thereupon, the document was marked as Defendant's  
22 Exhibit Number 41.)

23 BY MR. CURLEY:

24 Q. All right. Let's take a look at 41.

25 MS. BOSKE: And a copy for counsel.

1 MR. CURLEY: Yeah, thanks. Machos gracias.

2 MS. BOSKE: And a copy for you.

3 MR. CURLEY: Oh, those are all the years.

4 We're going to do them all. Okay.

5 MR. LEO: Is it one --

6 MR. CURLEY: 41 you should have there.

7 MR. LEO: '13 is 40. '14 would be 41.

8 MR. CURLEY: Correct.

9 BY MR. CURLEY:

10 Q. All right. You recognize Exhibit 41 as the  
11 tax return for 2013 filed on your behalf?

12 A. Okay. Yes.

13 Q. Yeah, that's your tax return?

14 A. Uh-huh.

15 Q. Does it reflect all of your income for that  
16 year?

17 A. Again, as is the case with 2013, there were --  
18 if there was investment income or what have you, that  
19 would become reflective on my spouse's return.

20 Q. Investment income -- you wouldn't put into  
21 that earning income from speeches or publications or  
22 honorariums?

23 A. Not on her tax return, no, sir. We have a  
24 trust account with Fidelity, and so that's what I'm  
25 referring to and that's why it was the way it was.

1 (Thereupon, the documents were marked as  
2 Defendant's Exhibit Numbers 42 and 43.)

3 BY MR. CURLEY:

4 Q. Okay. Let me hand you the next two -- be 42  
5 and 43. It's 2015 and 2016. If you could look at those  
6 and let me know if those are true and correct copies of  
7 your returns for '15 and '16.

8 A. Okay. 2015 and 2016.

9 Q. Yeah, are those true and accurate copies of  
10 your returns?

11 A. I believe so, yes.

12 Q. Do they have all of your income for those  
13 years?

14 A. Yes.

15 MR. CURLEY: Okay. Are you guys producing  
16 records right now?

17 MR. LEO: Yeah.

18 MR. MEDGEBOW: It's a rolling production.

19 MR. LEO: As soon as we're getting them and  
20 we're producing them.

21 MR. CURLEY: Okay.

22 MR. LEO: You guys are a rolling production,  
23 too.

24 MR. CURLEY: Okay.

25 MR. LEO: There's a lot of documents.

1 MR. CURLEY: I understand.

2 MR. LEO: You had to ask for all the Sandy  
3 Hook Elementary records and it's quite excessive.

4 MR. CURLEY: Okay.

5 BY MR. CURLEY:

6 Q. Have you been posting any of the events that  
7 are occurring in this lawsuit on your website?

8 MR. LEO: Object to form.

9 THE WITNESS: Any events?

10 BY MR. CURLEY:

11 Q. Yeah.

12 A. No, which website?

13 Q. Any.

14 A. Well, I have the Tracy Legal Defense website,  
15 and I posted some of the documents. Some of the court  
16 documents that are publicly available.

17 Q. Why are you doing that?

18 A. To keep people apprised of what's going on in  
19 the case.

20 Q. What people?

21 A. Any people who might look for the site.

22 Q. Did you want the university to fire you?

23 A. No.

24 Q. Have you, to the best of your knowledge,  
25 produced in this case all of the documents you have

1 relating to any compensated or uncompensated  
2 professional practices, consulting, teaching or research  
3 which was not part of your assigned duties at FAU?

4       **A.**    Can you say that again? I'm sorry.

5       **Q.**    Yeah, I'm asking if you produced all the  
6 documents you have relating to the compensated or  
7 uncompensated professional practice, consulting,  
8 teaching or research which were not part of your  
9 assigned duties at FAU?

10       MR. LEO: Objection to form.

11       THE WITNESS: Documents concerning income  
12 related to those?

13 BY MR. CURLEY:

14       **Q.**    Well, we can start with income. Have you  
15 produced all documents relating to any income that you  
16 received from anything that was not part of your  
17 assigned duties at FAU?

18       MR. LEO: Object to form.

19       THE WITNESS: I know that there was a tax form  
20 that I recently came across that was issued by the  
21 Wrongs Without Remedies organization that we  
22 discussed earlier that was misfiled by me and that  
23 just reflects the \$800 payment to me for 2016. And  
24 I think that document was sought previously.

25       However, the payments were made after my

1 termination as we also discussed, and were  
2 submitted to LDF. So, that's one thing that I  
3 don't believe was turned over. But you subpoenaed  
4 the documents from Wrongs Without Remedies, their  
5 books, so you're aware of that -- of those  
6 payments.

7 MR. LEO: It was produced.

8 BY MR. CURLEY:

9 Q. Okay. Anything else that you can think that  
10 maybe we didn't get from you, but we got it or there's  
11 some other income-producing activity that you haven't  
12 produced documentation for?

13 MR. LEO: Object to form.

14 THE WITNESS: Well, production is ongoing. As  
15 far as I can -- as far as I can recollect, I  
16 believe I produced everything.

17 BY MR. CURLEY:

18 Q. Have you produced all the documents relating  
19 to any uncompensated activity that would be a  
20 professional practice, teaching or research not part of  
21 your assigned duties at FAU?

22 MR. LEO: Object to form.

23 BY MR. CURLEY:

24 Q. Global Research, for example.

25 A. Copies of articles and things like that?

1           **Q.**    Whatever you got.

2           **A.**    Well, with the memory

3           **Q.**    blog posts, I think that all of the URL's for  
4 those articles were produced to you, but not copies of  
5 the articles themselves. And most all of the -- I think  
6 that all of the articles from Global Research were  
7 produced.

8           To the best of my ability, all of the podcasts I  
9 produced, but I was able to gather sound files for.  
10 Will produce. I don't know if that's --

11           **Q.**    Were any of the podcasts missing or do we have  
12 them all?

13           **A.**    There may have been some that are missing. It  
14 depends on the ones that -- I resorted to go to YouTube  
15 because an acquaintance uploaded those to his YouTube  
16 channel, sound files of those. It was not my YouTube  
17 channel. And I downloaded audio files of those for  
18 production. But that may not complete. There may be a  
19 few more.

20           I don't have access to because I don't have access  
21 to the backend of the memory blog.

22           **Q.**    There's part of the tax documents that we got  
23 reflects a payment from the Teachers Insurance and  
24 Annuity Association. Do you know what that's for?

25           **A.**    It would be part of the -- I took money out in

1 2016, and again this year, of my retirement. And I know  
2 that the 2016 is reflected here, in the 2016 payment  
3 from TIA, that's reflected in the 2016 tax return  
4 document.

5 MR. CURLEY: Do you know what number we're up  
6 to?

7 MS. BOSKE: Oh, I'm sorry. 44. I have  
8 multiple copies.

9 MR. CURLEY: I think so. Okay.

10 (Thereupon, the document was marked as Defendant's  
11 Exhibit Number 44.)

12 BY MR. CURLEY:

13 Q. Okay. Let me hand you what we're going to  
14 mark as Exhibit 44. And ask you if you recognize that?

15 MR. LEO: You have had a chance to review the  
16 documents.

17 MR. CURLEY: What?

18 MR. LEO: You said earlier you haven't had a  
19 chance to review the documents, Joe.

20 MR. CURLEY: Some of them. I do the best that  
21 I can. I get help. I got help. You're assuming  
22 that I look through them.

23 MS. BOSKE: I was going to say -- I haven't  
24 seen these before.

25 MR. CURLEY: That's not my handwriting, let me

1 tell you.

2 MS. BOSKE: That's like I hope you have  
3 copies, because I haven't seen these.

4 MR. LEO: Yeah, that's why he's sitting next  
5 to you.

6 THE WITNESS: Okay. Yeah, I recognize that.

7 BY MR. CURLEY:

8 Q. That's a series of emails between you and  
9 Mr. Fetzer; is that correct?

10 A. Yes.

11 Q. Did you tell Mr. Fetzer on December 1st that  
12 you found out on that day that the union won't grieve  
13 the recent discipline against you?

14 A. Apparently, yeah. I don't specifically recall  
15 writing the email, but it does reflect that.

16 Q. Okay. Why did you think on December 1st,  
17 2015, you were going to have to retain your own  
18 attorney?

19 A. Well, I thought that it might be necessary, at  
20 least, to get advice concerning my situation.

21 Q. And you were getting some advice, I see, from  
22 Mr. Fetzer, right?

23 A. Well, he had been through a similar ordeal  
24 with his school. And I believe that he retained an  
25 attorney and was -- prevailed.

1           **Q.**    So, Mr. Fetzer was advising you what to do; is  
2    that right?  What you got?

3           **A.**    Well, as I mentioned, he'd been through a  
4    similar sort of situation.  So, that's one of the  
5    reasons that I was asking for his input.

6           **Q.**    I've got some things marked.  Excuse me one  
7    second.

8           At some point in time did you come to the  
9    conclusion that the union wasn't going to support you in  
10   a grievance because you believe that your actions were  
11   insubordinate and it would be cut and dry?

12           MR. LEO:  Object to form.

13           THE WITNESS:  That sounds like it resembles  
14    some language from one of my emails.

15    BY MR. CURLEY:

16           **Q.**    Right.  Did you say that?

17           **A.**    I don't know if I said those specific words.

18           **Q.**    Give me one second.

19           Did you ever tell Mike Budd that you wanted to file  
20    a lawsuit against FAU?

21           **A.**    I don't know.  I don't recall.  I would have  
22    to review the emails.  At what time; are you talking  
23    about late 2015?

24           **Q.**    Yes.  November of 2015.

25           **A.**    I don't recall.

1           **Q.**    Did you tell the union in November of 2015  
2    you'd already consulted with a lawyer?

3           **A.**    I don't know. Could I read the email you're  
4    reading?

5           **Q.**    As soon as I find it.

6           MS. BOSKE: The 11/24.

7           MR. CURLEY: This one right here. Yeah,  
8    11/24/2015.

9           MS. BOSKE: That's 32. That's what I just  
10   handed you. Sorry.

11           MR. CURLEY: It is?

12           MS. BOSKE: Yeah.

13           MR. CURLEY: All right. Let's see here.

14           Okay. This is Exhibit 32. We already marked  
15   it.

16           THE COURT REPORTER: Did you say 32?

17           MR. CURLEY: Yeah, it's already marked. It  
18   doesn't have a 32 on it.

19           MS. BOSKE: Because the one that has 32 on it  
20   is behind your papers. This is the original one  
21   here.

22           MR. CURLEY: Oh, I got ya. It looks like a  
23   copy of an early exhibit, but okay.

24           MS. BOSKE: Yeah, this is a copy of the  
25   exhibit that we marked 32, his prior exhibit. This

1       is just an extra copy.

2            MR. CURLEY: Oh, I can just give him that.

3            MS. BOSKE: Yep.

4 BY MR. CURLEY:

5            **Q.** Here's -- this is Exhibit 32. I think we  
6 marked that as previous exhibit. We were -- it was  
7 probably near the end and we were flying through things.

8            **A.** Yeah.

9            **Q.** Let me draw your attention to the one the time  
10 is 11:01 a.m., November 24th, 2015. You say thanks Mike  
11 -- or Hi, Mike. Thanks for your response. Bcc other  
12 relevant UFF officers, including Doug McKetchen.

13           I talked with Tim at some length Friday before  
14 finalizing letter and have also consulted an attorney.

15           Do you see that?

16           **A.** Yes.

17           **Q.** So, you had already talked to an attorney  
18 about proceeding, right?

19           MR. LEO: Object to form.

20           THE WITNESS: Proceeding with what?

21 BY MR. CURLEY:

22           **Q.** Whatever you were going to do, vis-a-vis FAU?

23           MR. LEO: Object to form.

24           THE WITNESS: I don't -- it was not meant in  
25 that context. I have no spoken with an attorney

1       that I had paid for or anything. It was simply an  
2       acquaintance that I knew, an attorney.

3       BY MR. CURLEY:

4       **Q.**    I see. And then the next thing, if you look  
5       above it, Doug McKetchen writes to you and says, Dear  
6       Jim. Remember there's a time window for grievances. 30  
7       days.

8       Do you see that?

9       **A.**    Yes.

10      **Q.**    So, you were well aware that you had 30 days  
11     to file a grievance, right?

12      **A.**    From the triggering event and, yes. I think  
13     that one of the things that we were asked -- that we  
14     were concerned with, or that I was seeking to bring to  
15     their attention was whether or not that triggering event  
16     took place upon the issuance of the letter or upon  
17     receipt of the letter.

18      **Q.**    Well, he says right here, consider the  
19     triggering event date for potential grievance. It looks  
20     like November 10th in this case, so December 10th would  
21     be the deadline.

22      **A.**    Uh-huh, right.

23      **Q.**    Isn't that the answer to your question?

24      MR. LEO: Object to form.

25      THE WITNESS: Partially, yes, but I think I

1       also mentioned to them, and I'd have to look -- I  
2       have a lengthy email, you know, at 7:59 p.m.

3       November 24th, 2015. I haven't thought about that  
4       in a while.

5           But I think one of my remarks here in this  
6       series of communications is that there is the  
7       possibility of getting an extension of time as  
8       well.

9           And this, I don't think -- I don't know if I  
10       stated this or not, but I was, at the time all of  
11       this was transpiring, on parental leave. I wasn't  
12       sure as to whether or not that might be a factor.

13       BY MR. CURLEY:

14       **Q.**    Uh-huh. And, yeah, so I think you told me you  
15       trust Mike Budd, right?

16       **A.**    I -- at the time all of this was going on, I  
17       think so, yes.

18       **Q.**    What about Doug McKetchen?

19       **A.**    I did not know Doug very well. I knew him --  
20       I knew of him through other people.

21       **Q.**    Okay. And it says grievances Rob. Who's Rob?

22       **A.**    What page is that?

23       **Q.**    The front page. Oh, I thought you were  
24       looking at that.

25       **A.**    Robert Zoeller, I believe.

1           **Q.**    That is Mr. Zoeller?

2           **A.**    Uh-huh.

3           **Q.**    I see. And this is the email -- see, if you  
4 look at this one, two, three, four -- fourth paragraph  
5 down, this is the email where you -- I don't know if  
6 your email will support the case to arbitration.

7           Because in terms of specific description of  
8 insubordination in my actions it's cut and dry.

9           Administration is like a mule. Regardless of how  
10 irrational it stands, the union may not think we can  
11 prevail.

12          Do you see that?

13          **A.**    Yes.

14          **Q.**    What did you mean by that?

15          **A.**    Well, there had been previous concerns brought  
16 up, I think, amongst the officers in the upper level of  
17 UFF that they will not proceed -- they may not proceed  
18 with a grievance if they do not think it can be  
19 ultimately won.

20          But this does not prevent them from filing a  
21 grievance, even if it's something that does not go to  
22 arbitration. There's a big difference between filing a  
23 grievance at the first two steps and actually carrying  
24 it through to arbitration. Primarily establishing a  
25 line of communication with the administration, the

1 administrators themselves.

2       **Q.**    Okay.

3       **A.**    I think that's -- to a large degree, that's  
4 what the grievance process entails, is the -- is the  
5 deliberation between the agreements, the grievance  
6 chair, the union officers and the administration.

7            MR. CURLEY:    Okay.  Here's the earlier Exhibit  
8            25.  I don't have another one.  I don't know if you  
9            guys have it.  So, if your counsel wants to look at  
10           it, give them a chance.  These are all, I think,  
11           attached to the complaint as well.

12           MR. LEO:    Yeah.

13 BY MR. CURLEY:

14       **Q.**    Okay.  Let me get you to look at the third  
15       page of the document, which is the report of outside  
16       activities.

17       **A.**    Yes.

18       **Q.**    Okay.  In here you declare Global Research; do  
19       you see that?

20       **A.**    Yes, uh-huh.

21       **Q.**    Why did you submit Global Research in response  
22       to this?

23       **A.**    Because of -- this was done under the -- under  
24       coercion, under extreme pressure, by the administration;  
25       specifically Defendant Coltman.

1           **Q.**    Did she tell you to write Global Research?

2           **A.**    Did she tell me to write Global Research.

3           **Q.**    Yeah.

4           **A.**    I had previously looked at these back in 2013  
5 and I did not think that that was appropriate.

6           **Q.**    So why did you write Global Research then?

7           **A.**    It was under duress.

8           **Q.**    Did she tell you to write Global Research?

9           **A.**    Defendant Coltman?

10          **Q.**    Yeah.

11          **A.**    Well, this is something that we had discussed  
12 back in 2013. They were under -- they were proceeding  
13 with the idea, however poorly informed, that this was  
14 outside activity, and thought this is what they wanted  
15 to see.

16          **Q.**    Did they say Global Research is outside  
17 activity; you need to put it in your form?

18          MR. LEO: Object to form.

19          THE WITNESS: This is what they were inquiring  
20 on back in 2013.

21 BY MR. CURLEY:

22          **Q.**    I thought the inquiries were about your blog,  
23 Memory Hole.

24          **A.**    Well, it was about Global Research as well.

25          **Q.**    Well, why isn't Memory Hole in here?

1           **A.**   Did the university ask for it?  Did the  
2 administration ask for it?

3           **Q.**    I don't know, did they?

4           **A.**    No, they just fired me.

5           **Q.**    So they didn't ask for it?

6           **A.**    They just fired me.

7           **Q.**    Okay.  What about Global Research; did they  
8 ask for that?

9           **A.**    Did they ask for me to put this -- to put  
10 Global Research on the form?

11           **Q.**    That's my question.

12           **A.**    Well, Dean Coltman, Defendant Coltman writes  
13 on Friday, December 11th, second page of this document.  
14 I am writing to reiterate clearly that you must file  
15 report on outside employment professional activity forms  
16 for 2013-2014, 2014-2015 and 2015-2016 as required by  
17 university policy article 19 of the collective  
18 bargaining agreement as directed by me in my notice of  
19 discipline dated November 20th of 2015.  Actually, it's  
20 November 10th -- dated November 10th of 2015.

21           I was under the impression that this is what they  
22 wanted for me to produce.  And if I produced this I  
23 would -- I would have complied and not be terminated.

24           **Q.**    You say that -- my question is, did they tell  
25 you to put Global Research in there, and I don't see

1 that email anywhere. Is that somewhere in Dean  
2 Coltman's email that I don't see?

3 MR. LEO: Objection, asked and answered. The  
4 document speaks for itself.

5 MR. CURLEY: I agree with that. Okay.

6 THE WITNESS: I don't see it in there either.

7 MR. CURLEY: I don't think I have anything  
8 else on here.

9 MS. BOSKE: Okay.

10 MR. LEO: Yeah, because the time, right. How  
11 much time is --

12 MR. CURLEY: I don't think we are, but I will  
13 tell you I'm nearing the end of what I can do. I  
14 think I probably have a lot more time if I wanted  
15 it, but I'm telling you I don't think I need it.

16 At least not for this.

17 You guys want to take -- why don't you take  
18 five minutes and let me organize my stuff.

19 MR. LEO: Sure. I could use a minutes.

20 MR. CURLEY: Instead of you watching me.

21 THE VIDEOGRAPHER: The time is 5:41.

22 (Thereupon, a short break was had.)

23 THE VIDEOGRAPHER: The time is 6:06. This is  
24 the beginning of DVD Number 5, video deposition of  
25 James Tracy.

1 (Off the record.)

2 BY MR. CURLEY:

3 Q. Okay. So, I asked you about why you put  
4 Global Research in here. And the next one, what is  
5 this? I can't quite read that one.

6 A. Truth Frequency Radio.

7 Q. Okay. What is that?

8 A. That is the network in Colorado that's where  
9 the podcast appears.

10 Q. Okay. Why did you disclose that one?

11 A. I frankly don't know. I was confused. They  
12 certain don't employ me.

13 Q. Okay. Now, how much time did you spend on  
14 Truth Frequency?

15 A. Well, once again, that's the weekly podcast.  
16 So, it's a few hours a week.

17 Q. Okay. And then Global Research, how much time  
18 were you spending on that at the time?

19 A. It would vary. Anyway, that was something  
20 that was coupled with the Memory Hole blog. Because I  
21 did not do anything at the time originally for Global  
22 Research. Anything that appeared there was originally  
23 published on Memory blog.

24 So, for -- because it took more additional time to  
25 modify anything for Global Research, so I, you know --

1 again, a few hours per week on the blog.

2 Q. Okay. Who is Alexendra Showenmakers  
3 (phonetic)?

4 A. That's the administrative assistant for the  
5 school communication multi-media studies.

6 Q. At some point in time did she tell you to sign  
7 the form and return it?

8 A. I think on behalf of David Williams.

9 Q. It was on behalf of David Williams. Okay.

10 Did Dave Williams ever tell you, look, you're over-  
11 complicating. Just send the forms and send them in.

12 A. It wasn't about the forms. It was about the  
13 acknowledgements of understanding.

14 Q. Okay.

15 A. The -- yes, he did say words to that effect.

16 Q. Did you ever advise -- did you ever advise FAU  
17 that you intended to develop a scholarly project  
18 deriving from contributions involving Global Research?

19 MR. LEO: Object to form.

20 THE WITNESS: Well, this was something that  
21 the grievance chair -- the UFF grievance chair and  
22 myself discussed with Defendants Alperin and  
23 Coltman back in January of 2013. I don't think it  
24 specifically involved developing a project out of  
25 particular work at Global Research, but it was more

1           hypothetical in nature.

2           In other words, yeah, if there's a topic you  
3           might discuss on the site that you further work on  
4           over the course of several months to a year to make  
5           them into a research article for publication, or a  
6           book chapter, that the door should be left open in  
7           that regard. But not an article that would have  
8           been published initially, say, a Global Research or  
9           other site.

10          BY MR. CURLEY:

11          **Q.**   Did you previous testify or tell me that your  
12        -- when you got what I'll call the last chance to sign  
13        and submit the forms by letter by December 15th, did you  
14        tell me you didn't see that until the evening of  
15        December 16th?

16          **A.**   Let's see. Would have been the evening of  
17        December 15th.

18          **Q.**   And how do you know that?

19          **A.**   By this document, number 25. But anyway, this  
20        document that was sent from Coltman to me -- or excuse  
21        me, from myself to Coltman and then from Coltman almost  
22        immediately after to the university attorneys and Diane  
23        Alperin. It was roughly received 26 or 28 hours after  
24        the deadline by me, per request.

25          **Q.**   And what was the deadline?

1           **A.**    5:00 p.m. on December 14th.

2           **Q.**    Okay.

3           **A.**    And, yeah, I opened up the email the following  
4 day.

5           **Q.**    Okay.

6           **A.**    And responded that day.

7           (Thereupon, the document was marked as Defendant's  
8 Exhibit Number 45.)

9 BY MR. CURLEY:

10          **Q.**    These are all copies of it. Let me hand you  
11 what we've marked as Exhibit 45.

12          Do you recognize this email?

13          **A.**    Yes.

14          **Q.**    Okay. Did you send this to Noemi Marin?

15          **A.**    Neomi Marin, yeah.

16          **Q.**    Why did you send her an email with the subject  
17 line research activities for annual assignment?

18          **A.**    I don't know. I think this is a follow-up to  
19 an in-person discussion that we had in October. It  
20 says, once again, this is almost five years ago.

21          That whenever there's an update in the annual  
22 assignments you are to let your immediate supervisor  
23 know and they will go into the system or what have you  
24 and revise it accordingly. And I think this was -- this  
25 was one such request.

1           **Q.**    Okay.

2           **A.**    So it was the project censored -- the censor  
3 2013 chapter.

4           **Q.**    Okay. Let me hand you what we'll mark as  
5 Exhibit 46.

6           (Thereupon, the document was marked as Defendant's  
7 Exhibit Number 46.)

8 BY MR. CURLEY:

9           **Q.**    Do you recognize this email?

10          **A.**    Yeah.

11          **Q.**    What is UDC?

12          **A.**    Union for Democratic Communications.

13          **Q.**    And what was your involvement, if any, with  
14 UDC?

15          **A.**    I was on the executive committee, or what may  
16 have been referred to as the steering committee, let's  
17 see, from back when I was in graduate school. 1999 or  
18 2000 up until maybe 2011 or 2012.

19           And then I edited their journal, Democratic  
20 Communique, which was a scholarly journal published a  
21 couple times per year.

22          **Q.**    Did you receive income from this?

23          **A.**    No. Copyright Clearance Center. I had  
24 arranged something with Eb School Publishing, which is a  
25 major academic publisher, with Democratic Communique.

1 And my recollection, once again, this was a number of  
2 years ago. This is going back to the late 2000's, 2009,  
3 2010, something like that.

4 But anyway, I developed a relationship with EB  
5 School Publishing, and our -- the Democratic Communique  
6 was open source, if you will. It was available on line,  
7 but they also included it in their index and, I think,  
8 made it available to libraries. They're a for-profit  
9 entity.

10 And so, they would send a check, and it was usually  
11 a fairly nominal amount every year. Might be 60 of \$80  
12 for the number of times that articles were downloaded or  
13 printed off the subscribing libraries.

14 **Q.** Okay. Who was the check payable to?

15 **A.** I'm pretty sure it was paid to Union for  
16 Democratic Communications of UDC treasurer, or something  
17 like that.

18 So, whenever I did receive a check, I'm pretty sure  
19 I forwarded it to the treasurer who was in charge at the  
20 time.

21 **Q.** Okay.

22 **A.** I would have known who that was when I was on  
23 the steering committee. I don't recollect who it was  
24 now.

25 (Thereupon, the document was marked as Defendant's

1 Exhibit Number 47.)

2 BY MR. CURLEY:

3 Q. I'm handing you what we're marking as Exhibit  
4 47, 1574 through 1582.

5 Did you help Lester Embree with the grievance in  
6 2013?

7 A. No.

8 Q. No?

9 A. I know that he was in what seemed to be a  
10 perpetual dispute with the administration concerning his  
11 assignments and times he was required to teach. He was  
12 an eminent scholar, so he was an endowed chair in the  
13 department, or in the department of philosophy.

14 He had frequent run-ins with the previous dean, who  
15 was Mondu Penticore (phonetic). He preceded Heather  
16 Coltman, Defendant Coltman, and dean or arts and  
17 letters.

18 Q. All right. So, hang on a second. We need to  
19 make an adjustment.

20 THE VIDEOGRAPHER: The time is 6:22. We're  
21 off the video record.

22 (Off the record.)

23 THE VIDEOGRAPHER: The time is 6:22. We're  
24 back on the record.

25 BY MR. CURLEY:

1       **Q.**    All right.  Was there anything else you wanted  
2 to say about Mr. Embree?

3           I wanted to focus your attention on the last two  
4 pages of the Exhibit 47 if I could.  The last -- on the  
5 bottom of 1581, he makes reference to some arrangement  
6 where he'd pay you \$100 for some work.  Do you see that?

7       **A.**    Second to last page, 1581?

8       **Q.**    Yeah.  He says the last paragraph:  I worry  
9 about my technical skills and so you propose that I  
10 compose an entry.  Get Doug's okay about it.  Send it to  
11 you for your reactions and then decide if you put it up  
12 for me.  If you would so this I could relax as I  
13 proceed.  If you could help me this way, give me your  
14 home address, because I would happily send you \$100 for  
15 each time you critique an entry and finally, et cetera,  
16 et cetera.  Do you see that?

17      **A.**    Oh, down here?

18      **Q.**    Yes, sir.

19      **A.**    Okay.

20      **Q.**    Yeah, that's what I was reading.  The last --

21      **A.**    Okay.  Yeah, as I recall, he came over to my  
22 house one day, and we talked about this.  He wanted --  
23 my recollection is he wanted assistance in creating a  
24 blog where he could put up these materials concerning  
25 his grievance.

1       And he wanted for -- I don't know how I would be  
2       able to help in any way with the content of the  
3       material. I think he was -- my take on this, and I'll  
4       read through this again if need be. But my take on this  
5       is that he wanted someone to format it and put it up on  
6       a WordPress blog or the equivalent.

7       **Q.**   Did he ever pay you any money for doing any  
8       work for him?

9       **A.**   I think that he gave me -- I think that he  
10      gave me \$100 or something like that.

11      **Q.**   And do you know what that was for?

12      **A.**   Well, the project -- it was for helping him  
13      with technical issues of the blog. The project never  
14      came to fruition. He ultimately did not put anything  
15      up, and I wanted to give him his money back and he  
16      wouldn't take it.

17           (Thereupon, the document was marked as Defendant's  
18      Exhibit Number 48.)

19      BY MR. CURLEY:

20      **Q.**   Okay. Let me hand you what we'll mark as  
21      Exhibit 48.

22      **A.**   And I think he passed away a couple years ago  
23      unfortunately.

24      **Q.**   All right. I'm handing you what's marked as  
25      Exhibit 48, which looks like an email from Mike Budd to

1 you, dated January 12th, 2013. Do you recognize that?

2 **A.** I -- let me -- can I read it?

3 **Q.** Sure. Of course.

4 **A.** Okay.

5 **Q.** Okay. What is Progressive Forum?

6 **A.** Deerfield Progressive Forum down in Century  
7 Village off of Hillsborough. It's a retirement  
8 community down there. Primarily, a bunch of old labor  
9 people, Marxists who are all retired and they regularly  
10 host speakers to come and address them. I think it's  
11 Saturday morning.

12 They get some big names too. I mean, they have  
13 some free-lance authors, journalists who have been down  
14 there who are really quite good.

15 **Q.** All right.

16 **A.** I think Mike addresses them on his area in  
17 film. I spoke to them a few times during the 2000's.

18 (Thereupon, the document was marked as Defendant's  
19 Exhibit Number 49.)

20 BY MR. CURLEY:

21 **Q.** Okay. I'm going to hand you 49. You  
22 recognize this email?

23 **A.** Yes, uh-huh.

24 **Q.** And the bottom looks like an email you wrote  
25 to Michael Clary (phonetic). Who is he?

1           **A.**    He's the reporter at the South Florida  
2 Sun-Sentinel who wrote a rather inflammatory piece about  
3 me that was published on or around January 7th of 2013.

4           **Q.**    You write in your email to Mr. Clary: I am  
5 writing manuscript on that episode and would like to  
6 clarify something for the record. Do you see that?

7           **A.**    Yes.

8           **Q.**    And did you send a draft of the manuscript?

9           **A.**    No.

10          **Q.**    What was the manuscript about?

11          **A.**    Well, I -- I think this was the -- when I say  
12 manuscript, it was not for a book. It was for an  
13 article, a chapter in a book that was edited by Joe  
14 Ucsinski, who's at University of Miami.

15          **Q.**    Joe Zinski?

16          **A.**    Joe -- it's U-C-S-I-N-S-K-I.

17          **Q.**    Okay.

18          **A.**    It's not as many syllables as Chossudovsky.

19          **Q.**    Right.

20          **A.**    But I think it's U-C-S or U-S-C. I always get  
21 that mixed up. But I think that book is, in fact, in  
22 its final stages and the final draft is due shortly.

23          **Q.**    All right. And you were working on that in  
24 May of 2015; is that right?

25          **A.**    I was working on early draft.

1           **Q.**    Do you have copies of that?

2           **A.**    I believe that that has been produced.

3           **Q.**    You do?

4           **A.**    I think that it has. I can doublecheck.

5           **Q.**    And what did -- if I was looking for it, how  
6 would I know that I've got it; what does it look like;  
7 what is it called?

8           **A.**    You brought it up, and I believe produced a  
9 copy of it at the -- on May 2nd because we were talking  
10 about the bridge between academic work and extra-  
11 curricular activity.

12          **Q.**    Is it called James Tracy FAU Professor  
13 Disputes Sandy Hook Massacre Account or --

14          **A.**    No, that's the title of his article.

15          **Q.**    Right.

16          **A.**    That appeared in January 2013.

17          **Q.**    What's it called? Because it just says in  
18 here I'm writing a manuscript of that episode. What  
19 episode are we referring to?

20          **A.**    What transpired from January through April or  
21 May of 2013 concerning the media and that disciplinary  
22 measures and so forth.

23          **Q.**    Okay. At that point in time, what were you  
24 intending to do with it?

25          **A.**    I believe that it was going to submitted to

1 that edited volume.

2       **Q.**    Which volume?

3       **A.**    The one that Uscinsky was editing, I believe.

4       **Q.**    Okay. All right. Thank you.

5       Do you expect to be compensated for that or were  
6 you hoping it would produce revenue?

7       **A.**    No.

8       **Q.**    It was a labor of love? No compensation?

9       **A.**    Labor of a scholar.

10      **Q.**    Okay. All right. Let's see here. Exhibit  
11 50, 5-0, guys.

12           (Thereupon, the document was marked as Defendant's  
13 Exhibit Number 50.)

14 BY MR. CURLEY:

15      **Q.**    This is a series of emails between you and  
16 Kevin Barnett. Do you recognize them?

17      **A.**    Derek, uh-huh.

18      **Q.**    Derek, sorry.

19      **A.**    I'd have to look through it for a moment, but  
20 I vaguely recognize it. It was six months ago, you  
21 know. January.

22      **Q.**    Okay.

23      **A.**    Okay.

24      **Q.**    The second page, which is 1390, it begins,  
25 Kevin, good to hear from you and you're most welcome.

1 Thank you for your support. It's a major challenge to  
2 put together such a work in the space in less than a few  
3 months. I enjoyed developing the chapter. My last  
4 intellectual work conducted while using university  
5 resources.

6 What were you referring to?

7 **A.** I wrote a -- he had edited a volume called  
8 Another French False Flag, which appears 1391. This  
9 document, the title. And he asked for a contribution  
10 from me in mid-November of 2015.

11 This was about the Paris 11/13 attacks. And so I  
12 -- I made an effort to develop a chapter. And I think  
13 that the deadline was very limited. It was due by  
14 December 15th, and I think that's when I actually  
15 submitted it.

16 But it's something that I was intent on including  
17 in my annual assignment, and discussed that with David  
18 Williams by email.

19 And as far as using university resources, I was --  
20 I think that I wrote some drafts of the chapter,  
21 gathered some information on my desktop at work.

22 **Q.** Why did you make that remark, my last  
23 intellectual work conducted while using university  
24 resources? What made you make that statement?

25 **A.** I think that I was just, in a way, kidding,

1 because Barrett and I had in common the experience of  
2 being railroaded by our academic institutions. He was  
3 terminated from his employment at University of  
4 Wisconsin ultimately because of his remarks concerning  
5 9/11. And or in or around 2005, 2006, his activities in  
6 that regard. And I was ostensibly, for using university  
7 resources.

8       **Q.**    Okay. So, your intention with this, you're  
9 saying you would have had included in your annual  
10 assignment, but you never had a chance to do that, got  
11 that?

12      **A.**    Yeah.

13      **Q.**    Did you expect to be compensated for your  
14 efforts on that?

15      **A.**    No.

16      **Q.**    Did you get paid anything for your work?

17      **A.**    From Barrett or his --

18      **Q.**    Yeah.

19      **A.**    -- imprint?

20      **Q.**    Yeah.

21      **A.**    Well, in most cases, and I think it's the case  
22 here, I believe that authors get a copy of the book  
23 their work appears in. I don't believe I may have  
24 gotten a copy of the book or may have had to have paid  
25 -- may had to have paid postage or something. But it's

1 nor monetary compensation.

2 Q. Okay. So, you got a copy of the book and  
3 that's it?

4 A. I think so.

5 MR. CURLEY: In a minute here I might be done,  
6 guys. I think that -- let me check with the boss  
7 here, and give me one minute. Yeah, off the record  
8 for just one second.

9 THE VIDEOGRAPHER: The time is 6:39. We're  
10 off the video record.

11 (Off the record.)

12 MR. CURLEY: I don't have any other questions.  
13 We'll get together, I guess, probably next week and  
14 finish up on the documents that -- are you guys  
15 done producing or is there more stuff that we're  
16 going to get?

17 MR. LEO: I have some stuff that --

18 MR. CURLEY: Yeah, let me put this on -- are  
19 we on the record?

20 THE COURT REPORTER: I was on the record. I  
21 guess he wasn't.

22 THE VIDEOGRAPHER: The time is 6:40 and we're  
23 back on the video record.

24 MR. CURLEY: Yeah, I've finished -- I've  
25 concluded with my questions. What we've agreed to

1 do is there's some rolling production that's come  
2 in on this week and hopefully finishes this week.

3                   And next week we'll schedule a time -- after  
4 the Judge has his hearings on Monday, we'll  
5 schedule a time to get together and finish up any  
6 questions that we may have regarding the new  
7 production and whatever the Judge decides we can  
8 ask or not ask about.

9                   Anything else?

10                  MR. LEO: I just to add a caveat that the  
11 agreement is really conditioned upon the Court  
12 granting the extension. We have a response due  
13 today, so I'm going to inform the Court about our  
14 agreement and our response, and explain. In the  
15 event the Court doesn't grant our extension, we are  
16 opposing the continuation based on the reason we  
17 discussed due to discovery deadlines and what not.

18                  So, I just want to make it clear because our  
19 agreement was wishful thinking that the Court would  
20 give us the additional time that we would need to  
21 brief summary judgment and what not.

22                  MS. GRIFFIN: And are you preparing the Court  
23 for these statement deadlines?

24                  MR. LEO: I am not. If anybody wants to take  
25 that up, if you just want to send me a proposed

1 joint proposal.

2 MS. GRIFFIN: We'll do that.

3 MR. LEO: Appreciate it. Thank you.

4 MR. CURLEY: Okay, guys. Have a good night?

5 THE VIDEOGRAPHER: Are we off the record?

6 MR. CURLEY: Yeah.

7 THE VIDEOGRAPHER: The time is now 6:41 at the  
8 end of DVD Number 5, the video deposition of James  
9 Tracy.

10 (Thereupon, the deposition was concluded.)

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1 CERTIFICATE  
2  
3 THE STATE OF FLORIDA)  
4 COUNTY OF PALM BEACH)  
5  
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12

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.

13  
14  
15  
16  
17 Dated this 9th day of August, 2017  
18  
19  
20  
21  
22  
23  
24  
25

JANIS TIERNEY

COURT REPORTER

NBR/XXX

1 ERRATA SHEET  
2 RECORD CHANGES HERE - DO NOT WRITE ON THE TRANSCRIPT  
3 JAMES TRACY vs. FLORIDA ATLANTIC UNIVERSITY BOARD OF  
4 TRUSTEES a/k/a FLORIDA ATLANTIC UNIVERSITY; et al.

5	PAGE/LINE	CHANGE	REASON
6	_____	_____	_____
7	_____	_____	_____
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9	_____	_____	_____
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20	_____	_____	_____
21	_____	_____	_____

22 Under penalties of perjury, I declare that I have read  
23 my deposition and that it is true and correct subject to  
24 any changes in form or substance entered here.

25 \_\_\_\_\_ (Date) \_\_\_\_\_ JAMES TRACY

1       August 9, 2017  
2       Louis Frank Leo, IV, Esquire  
3            Joel Medgebow, Esquire  
4            Attn: James Tracy  
5            Medgebow Law, P.A.  
6            4171 West Hillsboro Boulevard, Suite 9  
7            Coconut Creek, Florida 33073

8  
9            RE:    JAMES TRACY vs. FLORIDA ATLANTIC UNIVERSITY  
10            BOARD OF TRUSTEES a/k/a FLORIDA ATLANTIC  
11            UNIVERSITY; et al.

12           Dear Sir or Madam:

13           You have reserved your right to read and sign the  
14           deposition transcript in the above-captioned case to  
15           which you were the deponent.

16           This task may be accomplished by way of your  
17           attorney who may provide you with a copy of the  
18           transcript. If necessary, you may call us at the number  
19           below to schedule an appointment for you to appear at  
20           our office to read and sign the deposition transcript.  
21           An errata sheet will be provided to you at that time.  
22           Our office is open Monday through Friday from 8:00 a.m.  
23           to 5:30 p.m.

24           Respectfully,  
25           JANIS TIERNEY  
1           VERBATIM SUPPORT SERVICES  
2           12 Southeast 7th Street, Suite 702  
3           Fort Lauderdale, Florida 33301  
4           Phone (954)467-8204  
5           Fax (954)467-8214  
6           cc: Nicklaus Joseph Curley, Esquire  
7           Holly Griffin, esquire  
8           Gunster  
9           777 South Flagler Drive, Suite 500E  
10           West Palm Beach, Florida 33401  
11           Daniel Jones, Esquire  
12           FAU Office of General Counsel  
13           777 Glades Road, Room 370  
14           Boca Raton, Florida 33431

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