

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

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

JAMES TRACY,

Plaintiff,

vs.

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

Defendants.

/

VOLUME I

VIDEOTAPED DEPOSITION OF ROBERT ZOELLER, JR.

TAKEN ON BEHALF OF THE PLAINTIFF

APRIL 17, 2017
10:10 A.M. to 5:50 P.M.

301 YAMATO ROAD SUITE 1240
BOCA RATON, FLORIDA 33431

REPORTED BY:

LINDSAY YATES, COURT REPORTER, FPR
NOTARY PUBLIC, STATE OF FLORIDA



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1 INDEX OF EXAMINATION 2 WITNESS: ROBERT ZOELLER, JR. PAGE 3 DIRECT EXAMINATION By Louis Leo, Esquire 6 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	3 1 VOLUME I 2 DEPOSITION OF ROBERT ZOELLER, JR. 3 APRIL 17, 2017 4 THE COURT REPORTER: We are now on the video 5 record. Today's date is April 17th, 2017, and the 6 time is 10:10 a.m. This is the videotaped 7 deposition of: Robert Zoeller, Jr., taken in regard 8 to the matter of: James Tracy vs. Florida Atlantic 9 University Board of Trustees, a/k/a Florida 10 Atlantic University, et al. Case number: 9:16-cv- 11 80655-RLR. We are located at: 301 Yamato Road 12 Suite 1240, Boca Raton, Florida 33431. The court 13 reporter is: Lindsay Yates with the firm of 14 Universal Court Reporting. Would counsel please 15 introduce themselves for the record. 16 MR. LEO: My name is Louis Leo IV. This is my 17 co-counsel, Joel Medgebow. We represent the 18 Plaintiff, James Tracy. Another co-counsel, 19 Matthew Benzion, will be here shortly. And we have 20 our intern here, as well, Anthony Maroun. 21 MR. MCKEE: I'm Robert McKee. I represent 22 Doctor Zoeller, as well as the other union 23 Defendants. 24 MS. GRIFFIN: Holly Griffin with Gunster. I 25 am here today also with Keith Sonderling and G.	5



<p>1 Joseph Curley, also from Gunster, also along with 2 Daniel Jones from FAU. We represent Defendants 3 FAU, Kelly, Colman, and Alperin. 4 Thereupon, 5 ROBERT ZOELLER, JR. 6 was called as witness, and after having been first duly 7 sworn, testified as follows: 8 THE COURT REPORTER: Please raise your right 9 hand and state your name for the record. 10 THE WITNESS: Robert Zoeller. 11 THE COURT REPORTER: Do you solemnly swear or 12 affirm that the testimony you are about to give in 13 this case will be the truth, the whole truth, and 14 nothing but the truth? 15 THE WITNESS: I do. 16 THE COURT REPORTER: Thank you. 17 DIRECT EXAMINATION 18 BY MR. LEO: 19 Q Good morning. 20 A Good morning. 21 Q How are you doing today? 22 A Oh, just wonderful. 23 Q You said earlier that you go by Doctor? 24 A Well, yes. I'm a Ph.D. I'm a college 25 professor.</p>	<p>6</p> <p>1 Q Which documents? 2 A The emails, the court documents that were sent 3 to me; the original filing and then the revised filings; 4 the Collective Bargaining Agreement. Those are the 5 things I can think of off the top of my head. I've 6 looked at a lot of stuff; let's put it that way, but 7 those are the things I specifically remember. 8 Q How about anything pertaining to any previous 9 testimony that's been taken in this case? 10 A The only thing I had got was an email from 11 Doctor McKee's office just with a summary of some of the 12 things that transpired at some of the depositions. 13 Q What are some of the things that transpired at 14 the previous depositions that you're aware of? 15 MR. MCKEE: I'm going to object. I think 16 that's attorney-client privilege; that's also work 17 product. 18 MR. LEO: Without explaining what your 19 attorney told you, what are you aware -- 20 A Everything I have is based on what my attorney 21 told me. 22 Q (By Mr. Leo) Without asking you for anything 23 that would be what your attorney specifically said to 24 you, are there any exhibits or documents you've reviewed 25 from previous testimony?</p> <p>8</p>
<p>1 Q Just wanted to clarify that for the record. So 2 Doctor Zoeller, have you ever given a deposition before? 3 A Many years ago, I was an expert witness, yes. 4 Q So you're familiar with the ground rules? 5 A I suppose so, yes, as my attorney has 6 explained it to me. 7 Q I'll just give you some of the ones that I 8 like to go through. There's no right or wrong answers; 9 there's only truthful answers. Is there any reason why 10 you wouldn't be able to testify truthfully today? 11 A No. 12 Q Are you under the influence of any drugs, or 13 alcohol, or medication? 14 A No medications, no alcohol. 15 Q Anything that would affect your ability to 16 remember or to testify? 17 A No. 18 Q Have you spoken with anyone other than your 19 counsel regarding your testimony today? 20 A Not specifically, no. 21 Q Anybody at FAU; any colleagues for example? 22 A Not specifically, no. 23 Q Have you reviewed any documents in preparation 24 for today? 25 A Yes.</p>	<p>7</p> <p>1 A Not that I'm aware of, no. 2 Q Any transcripts? 3 A No. 4 Q Have you spoken with any of the witnesses that 5 testified previously in this case? 6 A Over what period of time are we talking about? 7 Q Recently. 8 A Yes. I got a call from Shane Eason. 9 Q What did you speak to Shane Eason about? 10 A Shane was very upset, and I told him that 11 what's done is done and I'm moving on. 12 Q Why was Mr. Eason upset? 13 A He was upset that he felt that his testimony 14 may have done me harm, I think. And I said it is what 15 it is. I said I'm moving on and what's done is done. 16 Q What did Mr. Eason tell you he said? 17 A He didn't say specifically what he said. 18 Q Are you aware of what he said? 19 A Yes. Well, at least based on what my 20 attorneys told me. 21 Q What is your understanding as to what Mr. 22 Eason testified to? 23 MR. MCKEE: Objection. Privileged. 24 A (No response.) 25 Q (By Mr. Leo) When Mr. Eason talked to you and</p> <p>9</p>



<p>1 said he was upset, did he say what particularly made him 2 upset? 3 A I think he felt that somehow he let me down. I 4 told him that you tell the truth and that's all you can 5 do. 6 Q Did Mr. Eason tell you that he testified 7 truthfully? 8 A He didn't say either way. 9 Q We'll come back to Mr. Eason. Were there any 10 other witnesses that you spoke to? 11 A I spoke briefly with Chris Robe. 12 Q What did Mr. Robe tell you? 13 A He said he felt that his testimony was fine. 14 But other than that, there was no specifics. 15 Q Did you speak to Mr. Lenz? 16 A No. 17 Q How about Mr. McGetchin? 18 A Briefly, yes. 19 Q What did you and Mr. McGetchin discuss? 20 A What did we discuss? I just inquired as to 21 what some of the questions were. 22 Q What did he tell you? 23 A He said there were questions about the one 24 email that he had written. I remember that 25 specifically.</p>	<p>10 12 1 him know I was doing a deposition. 2 Q Who's your chair? 3 A Michael Whitehurst. 4 THE COURT REPORTER: Michael Whitehurst. 5 Q (By Mr. Leo) Did you just tell him you were 6 taking a deposition? 7 A Yeah, I told him -- well, he knows that I'm 8 being sued. 9 Q Did you talk about your testimony at all? 10 A Not specifically, no. 11 Q How about anybody within the administration at 12 FAU? 13 A No. 14 Q Any of the other defendants in this case? 15 A Well, I've talked to Michael Moats. 16 Q What did you and Moats discuss? 17 A If anything, I think just trying to refresh my 18 memory on specific issues; that sort of thing. 19 Q What sort of issues has Michael Moats helped 20 refresh your memory about? 21 A In terms of what transpired over the course 22 after the termination notice was filed. 23 Q Previously you testified that you had reviewed 24 emails. Did you review all of your emails? 25 A It's all the emails that we sent to you in the</p>
<p>1 Q Were there any other documents or 2 communications that Mr. McGetchin talked to you about? 3 A No. No documents, no. 4 Q Did he talk about the Collective bargaining 5 agreement? 6 A Yeah. Actually, I believe so. 7 Q What did you guys discuss about the Collective 8 Bargaining Agreement? 9 A What we talked about the Collective Bargaining 10 Agreement -- I don't remember specifically, but I do 11 remember we did talk about the Collective Bargaining 12 Agreement. As I remember, we said something to the 13 effect of it all comes back to the Collective Bargaining 14 Agreement, or something to that effect. 15 Q Did you talk about any particular parts of the 16 Collective Bargaining Agreement, or are you just 17 speaking generally about it? 18 A I believe just generally. 19 Q Any discussion of any of the articles 20 particularly? 21 A Not that I can recall. 22 Q Did you speak to anybody at Florida Atlantic 23 University, other than the individuals that you named 24 just a moment ago, concerning this case? 25 A I think I may have talked to my chair to let</p>	<p>11 13 1 interrogatory. As far as I know, those are all of the 2 emails that are associated and relevant to this. So 3 whatever the emails -- that's mostly what I looked at in 4 terms of preparing; Collective Bargaining Agreement and 5 any other court documents. That's primarily it, but 6 it's nothing, I believe, that you don't already have. 7 Q Other than the emails that you provided to us 8 through your counsel, are there any other emails or 9 documents that you reviewed before today, pertaining to 10 this case? 11 A I'm sorry? 12 Q Are there any other documents, other than the 13 emails and the document you've produced to us so far, is 14 there anything else that you've reviewed before today? 15 A I looked at the interrogatory again last 16 night. I can't really think of anything else. I'm not 17 saying -- that's the best of my recollection. 18 Q Speaking of the interrogatories, let me just 19 mark this. This is going to be PZ 1 for today, 20 Plaintiff's 1. Are these the interrogatories that you 21 reviewed? 22 A I believe so. It looks to be, yes. 23 (Whereupon Plaintiff's Exhibit Z-1 was marked 24 for identification.) 25 Q (By Mr. Leo) If you could just look through it</p>



<p>1 and let me know.</p> <p>2 A Yes. I looked at it last night and this</p> <p>3 appears to be the interrogatories, yes.</p> <p>4 Q I have some questions about these answers.</p> <p>5 Before we get started and talk about the</p> <p>6 interrogatories, are there any responses to these</p> <p>7 interrogatories, 1 through 11, are there any responses</p> <p>8 that you wish to change at this time?</p> <p>9 A I don't believe so. I tried to answer them as</p> <p>10 honest as I could. Again, a lot of this I'm going on</p> <p>11 memory, so these are the answers to the best of my</p> <p>12 recollection.</p> <p>13 Q So the answers that are in this document</p> <p>14 today, these answers are true and correct to the best of</p> <p>15 your knowledge today?</p> <p>16 A To the best of my memory, yes. Because a lot</p> <p>17 of this is going back in time and I'm trying to recall</p> <p>18 things. So it's to the best of my recollection.</p> <p>19 Q The last page there, is that your signature on</p> <p>20 the verification page?</p> <p>21 A Yes.</p> <p>22 Q Has anybody made any threats to you concerning</p> <p>23 this case, or concerning Professor Tracy, or the</p> <p>24 discipline against Professor Tracy?</p> <p>25 A No. I've not received any threats.</p>	<p>14</p> <p>16</p> <p>1 your colleagues?</p> <p>2 A Well, it's not a good habit of conducting</p> <p>3 union business on the FAU server, so I generally try to</p> <p>4 avoid that.</p> <p>5 Q With respect to the uff-fau.org email, is that</p> <p>6 email on FAU's server or is that a different server?</p> <p>7 A That's a different server.</p> <p>8 Q Is that a server that's owned and operated by</p> <p>9 UFF?</p> <p>10 A No, it's not owned by us, no.</p> <p>11 Q Who operates the uff-fau.org email?</p> <p>12 A I can't recall. I should know, but I can't</p> <p>13 recall off the top of my head. We pay for the service.</p> <p>14 Q When you say we, who pays for it?</p> <p>15 A The union.</p> <p>16 Q Is it the chapter?</p> <p>17 A The chapter, yes.</p> <p>18 Q Does FEA or UFF maintain that server or have</p> <p>19 any access to it?</p> <p>20 A I don't believe so, no.</p> <p>21 Q Who has access to the UFF-FAU email server?</p> <p>22 A Who has access to it? I'm not sure I</p> <p>23 understand. I'm not very technological, so I'm not sure</p> <p>24 I understand the question.</p> <p>25 Q Does UFF-FAU have a technical person or</p>
<p>1 Q Has anybody made any promises to you?</p> <p>2 A No.</p> <p>3 Q Let's talk about interrogatory number 1.</p> <p>4 You've listed some email addresses here?</p> <p>5 A Correct.</p> <p>6 Q And I've reviewed the documents that you've</p> <p>7 provided, and I saw that you primarily use two of these</p> <p>8 emails?</p> <p>9 A Correct. Zdawg and president@uff. As I</p> <p>10 indicated earlier in one of our communications -- oh,</p> <p>11 it's in the interrogatory. The last one I do not use</p> <p>12 for any work or union-related topics.</p> <p>13 Q This Schenleyrambler?</p> <p>14 A Schenleyrambler, yes.</p> <p>15 Q So you've never used that email to talk about</p> <p>16 Professor Tracy?</p> <p>17 A No.</p> <p>18 Q How about rzoeller@fau.edu?</p> <p>19 A That's my work email. You have some emails in</p> <p>20 there that I sent you -- there was some brief</p> <p>21 communication, I think, between myself and Tracy and a</p> <p>22 couple of other communications, which I forwarded to you</p> <p>23 as part of the discovery, I guess.</p> <p>24 Q Is there a reason why you would be using one</p> <p>25 of these emails and not the other to communicate with</p>	<p>15</p> <p>17</p> <p>1 somebody who is in charge of the Internet?</p> <p>2 A No. The company that maintains it, they</p> <p>3 maintain the service. Whenever I have problems with</p> <p>4 email I contact them.</p> <p>5 Q Who's the company?</p> <p>6 A I can't recall off the top of my head. Maybe</p> <p>7 if we have a break I can tell you, but I just don't</p> <p>8 remember.</p> <p>9 Q If it comes back to you we can come back to</p> <p>10 it.</p> <p>11 A It's Web Mail Pair. That's it.</p> <p>12 Q Web Mail Pair?</p> <p>13 A Yeah, P-A-I-R; Web Mail Pair.</p> <p>14 Q This says "Michael Moats is the service unit</p> <p>15 director of UFF in South Florida"?</p> <p>16 A That's correct.</p> <p>17 Q Does he have any other titles that you know</p> <p>18 of?</p> <p>19 A Not that I'm aware of.</p> <p>20 Q What's the service unit director?</p> <p>21 A That's a good question. My understanding of</p> <p>22 what Michael does is he is -- well, he's the person I go</p> <p>23 to -- the go-to person for any issues we have with the</p> <p>24 union. In other words, if I have questions about</p> <p>25 something that's going on in the union, such as a</p>

18 1 grievance or something, I may go to Michael and ask him 2 questions. So it's my understanding that he works with 3 specific colleges and universities in the South Florida 4 area, helping them with collective bargaining, helping 5 them with grievances, and to be a resource for the 6 union. At least that's the way I've always seen 7 Michael. 8 Q When you say he's a go-to person, is he the 9 first person that you go to with issues that you're 10 dealing with as president? 11 A Typically, yes. 12 Q And just for the record, are you currently 13 president of UFF-FAU? 14 A No, I'm not. Now I am vice president. 15 Meredith Mountford is now the president. 16 Q When did that change? 17 A We had election in March, and according to our 18 by-laws, April 1st Meredith -- Doctor Mountford became 19 president and I am now the vice president. 20 Q Did the change have anything to do with this 21 case? 22 A No. This was something -- I agreed to be 23 president for three years. Doctor Mountford worked 24 closely with me over the last year in anticipation that 25 she would be elected as president.	20 1 Q For example, this one you described, this is 2 for the chapter? 3 A Correct. Yes, there are executive committees 4 at each chapter. 5 Q Is there an executive committee above the 6 chapter? 7 A Well, there's the Senate, so you have UFF 8 Senate. And then yes, I think it's called a council of 9 presidents. You have that, as well. 10 Q When does the chapter executive committee -- 11 when do they meet? 12 A Typically, once a month during the fall and 13 spring semesters. 14 Q What does this committee talk about when they 15 meet? 16 A Just the day-to-day business of the chapter. 17 So we usually have a report on the budget; we usually 18 have a report on membership and recruiting; we usually 19 have a brief overview of ongoing grievances -- usually 20 without names -- we have X number of grievances and this 21 is where we're at. We would talk about social events, 22 we might talk about -- those are some of the standard 23 things. And then obviously each month there may be 24 different things that are occurring that we might have 25 to discuss.
19 1 Q Who is the current grievance or contract 2 enforcement chair? 3 A On paper that would be Doug McGetchin, Doctor 4 McGetchin. 5 Q When you say on paper -- 6 A Well, it's a committee, but he's the grievance 7 chair. But we have a committee. 8 Q Who's on the committee? 9 A That would be myself, and Doctor McGetchin at 10 this point in time. But at the time of this case there 11 were three people; that was myself, Doctor McGetchin, 12 and Doctor Lenz. 13 Q What is this committee called? 14 A It's called the grievance committee, but I 15 think more technically it would be called the contract 16 enforcement committee. 17 Q What's the executive committee? 18 A Executive committee is comprised of the 19 elected officers and senators that are elected each 20 year. 21 Q Do you refer to it as EC in your emails? 22 A Correct. 23 Q Is there any other executive committee other 24 than the one you just described? 25 A Is there any other? No.	21 1 Q At the executive committee do you make 2 decisions regarding grievances? 3 A Not typically, no. 4 Q When you discuss grievances, what's the 5 purpose of discussing them if there's no decisions that 6 are made? 7 A I'm not sure I understand the question. 8 Q Let's ask it a different way. When you're 9 talking about grievances with the executive committee, 10 what's the purpose of that? 11 A Typically, I don't discuss it with the entire 12 committee, but I will say if I discuss it with members 13 of the executive committee, it's because I value their 14 opinion. These grievances are not easy decisions to 15 make, in terms of whether we're going to file a 16 grievance, or how we're going to file. There's a lot of 17 decisions to be made. And frankly, more of the members 18 of the executive committee have more experience than 19 others, and I want to get their opinions simply because 20 they have knowledge and understanding of things that 21 might help us to make a better decision. 22 Q Who at your chapter in the executive committee 23 has the most experience, in general? 24 A I assume we're talking about at the time of 25 this case.

<p>1 Q Sure, we'll start with that.</p> <p>2 A Well, at the time it would be Chris Robe</p> <p>3 because he was the president prior to me and has been</p> <p>4 involved in the union for a long time. Mike Budd, who</p> <p>5 is technically not a member of the executive committee,</p> <p>6 but he's an at-large member. He's very active with the</p> <p>7 union and helps us with recruiting, et cetera. Also has</p> <p>8 a lot of experience over the years, also with regard to</p> <p>9 this case. Who else? Tim Lenz, who is a part of -- I'm</p> <p>10 not sure if he was technically a member of the executive</p> <p>11 committee at the time or not, but certainly he was a</p> <p>12 member of our grievance committee. Doug McGetchin,</p> <p>13 Meredith Mountford, who is vice president. Those would</p> <p>14 be the main people I think I would talk to. Those are</p> <p>15 the people who had the most experience. There may be</p> <p>16 one or two others that I may have left out, but those</p> <p>17 are the ones I remember.</p> <p>18 Q Going to Mike Budd, what's his role at UFF?</p> <p>19 A Mike Budd is an at-large member. He's no</p> <p>20 longer a fulltime faculty at FAU, he's working now as an</p> <p>21 adjunct. That would not qualify him to be a member --</p> <p>22 an in-unit member. However, he is a member of the</p> <p>23 union. He's classified as at-large. However, Mike Budd</p> <p>24 has been a leader in the union; helps us greatly with</p> <p>25 recruiting, for example, and I value his input in terms</p>	<p>22</p> <p>1 anything that we bargain. So if we bargained a</p> <p>2 raise, that doesn't affect him. He's not under the</p> <p>3 same contract we're under, if that makes sense.</p> <p>4 But he is a union member, he's just not part of the</p> <p>5 collective bargaining unit.</p> <p>6 Q (By Mr. Leo) Was Mike Budd ever an officer of</p> <p>7 UFF?</p> <p>8 A I believe so, yes.</p> <p>9 Q In what capacity?</p> <p>10 A I believe he was president. That's my</p> <p>11 understanding. I don't have any proof of that, but</p> <p>12 that's my understanding.</p> <p>13 Q Concerning UFF records, where does the chapter</p> <p>14 keep their records?</p> <p>15 A I have records that Chris Robe gave me, and I</p> <p>16 have them currently stored at my house. We now have an</p> <p>17 office and I intend to move them there. Other records,</p> <p>18 for the most part, are meeting minutes and agendas for</p> <p>19 the executive committee. Grievances, and that sort of</p> <p>20 thing, Doug McGetchin has kept those because he became</p> <p>21 the grievance chair in early 2015. Any other documents,</p> <p>22 for the most part, probably sit on my -- I have a file</p> <p>23 at UFF. So like documents related to this case, I have</p> <p>24 in my file under UFF on my computer.</p> <p>25 Q With respect to past grievances, pre-</p>	<p>23</p> <p>1 of his knowledge and experience in union activities.</p> <p>2 Q When you say at-large, that just means he's</p> <p>3 not an official?</p> <p>4 A He's not in unit. In order to be in unit you</p> <p>5 have to be a fulltime -- not necessarily fulltime -- but</p> <p>6 a tenured/non-tenured track faculty. So it would be</p> <p>7 instructors; tenured/non-tenured faculty. At this point</p> <p>8 in time he's an adjunct, and so that would not qualify</p> <p>9 him as being in unit. However, you have members of the</p> <p>10 union -- I think we have five presently -- who are not</p> <p>11 in unit. Some of them are chairs, for example. But</p> <p>12 they choose to continue to be members of the union.</p> <p>13 Q Like volunteers?</p> <p>14 A Well, they're paying for their membership, and</p> <p>15 yes, Mike volunteers his help. He's a member of the</p> <p>16 union, he's just not in unit.</p> <p>17 Q So they pay for their membership, volunteer</p> <p>18 their time, but they're not technically a member?</p> <p>19 A They are very much a member, they're just not</p> <p>20 an in-unit member.</p> <p>21 MR. MCKEE: When you state in unit, you're</p> <p>22 talking about in the bargaining unit?</p> <p>23 THE WITNESS: Right. I'm sorry. He's not in</p> <p>24 the collective bargaining unit. For example, as an</p> <p>25 adjunct, his salary would not be affected by</p>	<p>25</p> <p>1 McGetchin, where would those records be?</p> <p>2 A When I took over as president in 2014, Doug</p> <p>3 Broadfield was the grievance chair. Did not have strong</p> <p>4 communication with him. He then left suddenly from FAU</p> <p>5 in December of 2014. And when I say suddenly, I found</p> <p>6 out he was leaving when I got an email from his chair</p> <p>7 indicating that he was having a going away party. So I</p> <p>8 was very much surprised. He left for the University of</p> <p>9 Miami in December 2014. At that time, that's when I</p> <p>10 asked Doug -- not Doug, but Tim Lenz to step in as the</p> <p>11 grievance chair. We were unsuccessful in getting any</p> <p>12 documents from Doctor Broadfield.</p> <p>13 Q What steps did you -- when you say we --</p> <p>14 A I believe Doctor Lenz had tried to contact him</p> <p>15 numerous times, and said we had no success in retrieving</p> <p>16 anything from him.</p> <p>17 Q Did you ever contact Doug McGetchin --</p> <p>18 A I believe I tried --</p> <p>19 Q Sorry. Let me back up for the record. Did</p> <p>20 you ever contact Doug Broadfield?</p> <p>21 A I believe I attempted, but without success.</p> <p>22 Q How did you attempt to?</p> <p>23 A I believe it was by phone -- I believe. I</p> <p>24 don't remember. I believe at that time Tim Lenz was the</p> <p>25 grievance chair, and I had been in contact with Doctor</p>
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<p>1 Lenz, and he said he had absolutely no success in 2 getting anything from him.</p> <p>3 Q Did Doug Broadfield take all of the pre- 4 McGetchin grievance files?</p> <p>5 A I assume he did. I am not in possession of 6 them.</p> <p>7 Q Do you have Doug Broadfield's email?</p> <p>8 A No, not off the top of my head. I think I did 9 at one point in time. I believe he's at the University 10 of Miami.</p> <p>11 Q Did you ever try to email Doug Broadfield and 12 ask him for his files?</p> <p>13 A I don't believe I did, no.</p> <p>14 Q Do you see a problem with not having the 15 grievance files from the past at your chapter?</p> <p>16 A I think it's not optimal. As far as I know, 17 it's not created any problems, but no, it's certainly 18 not optimal. That's for sure.</p> <p>19 Q Let's move to interrogatory number 3. When 20 you're asked to describe your duties, you say you have 21 very limited power of authority. Can you explain what 22 you mean?</p> <p>23 A Pretty much what it says. I have an executive 24 committee, and I can't -- I don't have the same 25 authority like my boss says you need to this. He or she</p>	<p>26</p> <p>1 Q Is this somebody that you answer to? 2 A I don't believe I answer to them. The 3 executive council is a group of individuals at the UFF 4 state organization, which I believe comprises some 5 members of the other presidents of the UFF. It's a 6 group of individuals that are -- I'm not sure exactly 7 how they're selected -- but they are a group that make 8 decisions on appeals if the committee -- if the contract 9 enforcement committee would elect to not pursue 10 arbitrations, it's my understanding that I could, as 11 president, I have sole discretion to appeal to the 12 executive committee and see if they would overrule the 13 contract enforcement committee.</p> <p>14 Q So let's do like a hypothetical. Somebody 15 wants to grieve at your chapter. Do you have to go to 16 somebody from UFF?</p> <p>17 A No.</p> <p>18 Q The executive committee, do you ever ask them 19 for permission to grieve?</p> <p>20 A No, but I may ask them their opinions on a 21 grievance or specific aspects of a grievance, et cetera, 22 et cetera. Grievances typically don't go to the 23 executive committee; this is why we have a contract 24 enforcement or a grievance committee. However, 25 depending on the issue, I may talk to some members of</p>
<p>27</p> <p>1 has authority to make me do that. I don't have that 2 kind of authority. Does that make sense?</p> <p>3 Q Not really. When you say limited, you're the 4 president of the chapter, when you are president. Let's 5 talk about what your authority is. What kind of 6 authority do you have as president of UFF-FAU?</p> <p>7 A Ultimately in terms of filing grievances, it's 8 ultimately my decision whether we take something to -- 9 let's say we have a grievance and it goes to contract 10 enforcement committee of the state and they decide that 11 this is not something that should go to arbitration, I 12 can appeal it to the executive council. In terms of 13 spending I think I have some limited authority. It says 14 here expenditures over \$100 have to be authorized by me. 15 I guess the problem I have is with the word "authority". 16 If I tell someone to do something and they don't do it, 17 I don't have any way to sanction them, or I can't fire 18 them, per se. Does that make sense?</p> <p>19 Q Well, going back to you talking about the 20 grievance, you said that you have say in whether a 21 grievance can be filed?</p> <p>22 A Yes.</p> <p>23 Q You mentioned previously to appealing to an 24 executive council.</p> <p>25 A Right.</p>	<p>29</p> <p>1 the executive committee to get their opinion based on 2 their experience or other issues that may be helpful to 3 me to make a decision.</p> <p>4 Q Back in 2015 who was on the executive 5 committee for UFF?</p> <p>6 A There's about 15 people so I'd have to pull 7 that up. I mentioned some of the people already.</p> <p>8 Q Who that you can recall today?</p> <p>9 A Let's see. Myself, Meredith Mountford, Shane 10 Eason, Chris Robe. Let's see. I don't want to give 11 names because they change, so I want to be careful in 12 terms of who's on there. I can pull the list maybe when 13 we have a break if you want, and give you a more 14 complete list.</p> <p>15 Q Sure. So the executive council, when you say 16 executive council, is the same as the executive 17 committee?</p> <p>18 A No, the executive council is at the state UFF 19 level.</p> <p>20 Q That's who I was asking about. So you named 21 the executive committee members?</p> <p>22 A This is the executive committee at the 23 chapter.</p> <p>24 Q At the state level, who was on the executive 25 council?</p>



<p>1 A I don't remember at the time. It should be on 2 the UFF website. But I believe that changes, as well. 3 I know that some of them are other members -- other 4 presidents of the UFF chapters, but that's not 5 exclusively the individuals that are on there.</p> <p>6 Q Is Michael Moats on this council? 7 A I don't believe so, no.</p> <p>8 Q How about Jennifer Proffitt? 9 A That's possible, but I'm not sure. Like I 10 said, I'd have to go back and look. This is several 11 years ago, so I'd have to go back and look to see who 12 specifically who's on there.</p> <p>13 Q If you can remember, was it Marshall Ogletree? 14 A Ogletree, that's possible, but again, I'd have 15 to pull it up. I don't have the names off the top of my 16 head.</p> <p>17 Q Going back to 2015 did the UFF-FAU executive 18 committee ever meet to discuss grievances in the fall of 19 2015? 20 A No. Like I said, the UFF executive committee, 21 we do not formally meet to discuss grievances. In our 22 meetings there's usually the chair, in this case it 23 would've been Tim Lenz, or if he wasn't at the meeting 24 it would've been Doug McGetchin. We would just give a 25 brief report without names. We have X numbers of</p>	<p>30</p> <p>1 I don't know -- I'd have to look at the meeting minutes 2 and see who was there at the meeting.</p> <p>3 Q Those meetings minutes would be where? 4 A I'm in possession of them.</p> <p>5 Q Is that something you've turned over to us? 6 A No, because I don't believe it was anything 7 that you asked for.</p> <p>8 Q Do you recall whether you were asked to talk 9 about Professor Tracy at the November 6th executive 10 committee meeting? 11 A I do, yes.</p> <p>12 Q What's your recollection? 13 A My recollection is I was asked by either him, 14 or Anne (phonetic), or I believe he contacted Susan 15 Reilly and asked me to discuss it -- well, let me -- 16 could you repeat the question?</p> <p>17 Q If you were asked to discuss Professor Tracy 18 at that meeting. 19 A Yes, because at that time -- yes, I remember. 20 At that time there was no grievance or even a suggestion 21 that there was going to be a grievance.</p> <p>22 Q Concerning Professor Tracy? 23 A Correct.</p> <p>24 Q At that time had there been complaints made to 25 you or to your chapter regarding the outside activities</p>	<p>32</p>
<p>1 grievances; this is what the grievances are about. This 2 is where we're at; we're at step one, we're at step two.</p> <p>3 Q Did the executive committee at UFF-FAU ever 4 meet in 2015 to talk about the university's conflict of 5 interest outside activities policy? 6 A No. There was not specific meetings to 7 discuss either grievances or the outside activities 8 policy. It may -- and I'm not saying it was -- but it 9 could have been one of the agenda items that we may have 10 discussed, but beyond that, not specifically to meet 11 about the outside activity form. And I'm not saying it 12 was, I'm just saying it's possible it could've been.</p> <p>13 Q Going back to November of 2015, do you recall 14 meeting with the executive committee at that time? 15 A Yeah, we have executive committee meetings 16 every month. As I said, during the fall and the spring 17 we meet every month. I don't remember when the 18 executive committee meeting was. Now that I think of 19 it, I've been looking at all of these emails, I think 20 the November meeting was November 6th. That sticks in 21 my mind, like I said, looking through all these emails, 22 that date seems to stand out.</p> <p>23 Q Do you recall who you met with on November 24 6th? 25 A It's a normal executive committee meeting. I</p>	<p>31</p> <p>1 policy at the university?</p> <p>2 A At that time there were -- as far as I know, 3 there were no formal complaints. I had received from 4 Doctor Tracy email exchanges between him and his chair 5 regarding actually his annual assignment. The issue in 6 his annual assignment was related to the outside 7 activity document.</p> <p>8 Q At the November 6th meeting what did you 9 discuss about the issue, if anything? 10 A I did not discuss it at the meeting. Again, 11 typically, the executive committee meetings -- first of 12 all, this was not even at the level of a grievance, and 13 also we typically don't discuss the grievances or the 14 issues in the executive committee meetings, per se. It's 15 been that way since I've been a member unit, and it's 16 typically the way it continues to be.</p> <p>17 Q So is the reason why you didn't discuss the 18 outside activities policy, or Professor Tracy's issue, 19 because you didn't want to? 20 A I didn't think it was appropriate at that 21 time. Like I said, we typically do not discuss 22 specifics of ongoing -- at this point it wasn't even an 23 ongoing grievance.</p> <p>24 Q When you say it, what are you referring to? 25 A Doctor Tracy wanted me to approach the</p>	<p>33</p>



<p>1 executive committee, and at this point in time all I had 2 was email exchanges between him and his chair. At this 3 point in time it was mostly about not signing his annual 4 evaluation. So at this point the issue was a change in 5 the annual assignment.</p> <p>6 Q There was a change to FAU's policy regarding 7 assignment submission?</p> <p>8 A No. Well, basically you sign your annual 9 assignment in what's called a fair system, F-A-I-R. 10 Starting in either 2013 or '14, I don't recall the date, 11 when you went to sign there was a drop-down item that 12 said that as a condition of employment -- and I'm 13 paraphrasing here -- but as a condition of employment 14 you recognize your obligation to submit outside activity 15 forms per the Collective Bargaining Agreement, and it 16 referenced the regulation associated with that.</p> <p>17 Q The change to the policy --</p> <p>18 A This is not a change to the policy.</p> <p>19 Q The fair system --</p> <p>20 A Right. This is an annual assignment, it's not 21 a policy.</p> <p>22 Q So you're saying that the annual assignment 23 submission system is not part of a policy at the 24 university?</p> <p>25 A Not that I'm aware of. It is your annual</p>	<p>34</p> <p>1 policy as a condition precedent to submitting their 2 annual assignment?</p> <p>3 A Right, that's my understanding. Basically 4 they're saying that in signing the document that you're 5 saying that I affirm I'm required to report, et cetera, 6 et cetera.</p> <p>7 Q Did you see a problem with this change at the 8 time?</p> <p>9 A No. These are regulations and the Collective 10 Bargaining Agreement outside activity form is part of 11 the collective bargaining unit -- Collective Bargaining 12 Agreement, it's Article 19, and these are existing 13 regulations. Therefore, it is a condition of 14 employment. Although as it's stated here, this does not 15 say it's a condition of employment. So my recollection 16 may be incorrect.</p> <p>17 Q What's your recollection of Professor Tracy's 18 concerns about the change to this submission process?</p> <p>19 A They were everything. Not everything, but 20 they're confusing; I don't have to do it; it's a 21 violation of my First Amendment Right. But in my 22 opinion it was all over the place.</p> <p>23 Q What was all over the place, Professor Tracy?</p> <p>24 A Yes, with his push back against this.</p> <p>25 Q Was Professor Tracy the only person</p>
<p>1 assignment, it's not a policy. Basically everybody 2 receives an annual assignment. I believe all in-unit 3 members receive an annual assignment, but it's not a 4 policy.</p> <p>5 Q What was the change to the assignment 6 submission process as you recall?</p> <p>7 A As I just described. The drop-down box, so 8 when you went to sign it you said that you accept this - 9 - it's a phrase, I think it's a condition of employment.</p> <p>10 Q I think I have that. Give me a second; let me 11 grab it. Here we go. I'm going to show you what's been 12 marked as Plaintiff's Z-2 for today. Do you recognize 13 this?</p> <p>14 A It looks similar, but it doesn't match exactly 15 what I recall, which could mean that this is not right, 16 or it could mean that my recollection is not that good. 17 I seem to remember it said something to the effect that 18 it was a term and condition of employment as I remember. 19 But again, this is over a year-and-a- half ago. 20 (Whereupon Plaintiff's Exhibit Z-2 was marked 21 for identification.)</p> <p>22 Q (By Mr. Leo) Sure. Maybe my next question can 23 refresh my recollection. Was the change to the 24 assignment submission, was it that now faculty members 25 had to affirm compliance with the outside activities</p>	<p>35</p> <p>1 complaining about the outside activities policy in the 2 fall of 2015?</p> <p>3 A To the best of my recollection, I believe so. 4 There were -- at least in terms of direct communication 5 with me about the outside activity form, to the best of 6 my recollection, I don't recall anyone else at that 7 time, no.</p> <p>8 Q What about the complaints that were made in 9 September back at the university Faculty Senate meeting?</p> <p>10 A There were a number of complaints. If that's 11 the meeting that I recall, and I'm not sure which 12 meeting that was, I was present at that meeting. I 13 remember that there were a lot of complaints, not about 14 this, per se, but there were a lot of complaints about 15 Article 5, which states that if you are speaking or 16 writing -- let's say you're writing an article for a 17 newspaper, an doing an opinion piece for a newspaper, or 18 doing public speaking, that you had to specifically 19 state that you were not representing FAU. It appears 20 that in this meeting a number of faculty members had 21 been doing some public speaking or public writing for 22 which they were getting, I believe, emails from Peter 23 Hull, who was the assistant to the president, and 24 basically saying that you're in violation of the 25 article, and could be reprimanded. They were</p>



<p>1 threatening -- I would say the faculty were taking it as 2 being threatening emails. So that was a big part of 3 that meeting. I do recall, though, as this discussion 4 in the meeting continued, that the issue of outside 5 activity forms did come up, and I believe one or more 6 people did state that they felt they were, I think, 7 confusing.</p> <p>8 Q Do you recall Doctor Lenz speaking at that 9 Senate Faculty meeting?</p> <p>10 A I do.</p> <p>11 Q Do you recall another Constitutional law 12 professor speaking at that meeting, as well?</p> <p>13 A Yeah, I believe it was Marshall DeRosa. I 14 don't know that he's a Constitutional law professor, I 15 don't know if that's a correct description of his 16 credentials -- I'm not saying it isn't, but I'm not sure 17 that's quite correct. But I believe you're referring to 18 Doctor Marshall DeRosa.</p> <p>19 Q Do you recall what both of those faculty 20 members said about the policy?</p> <p>21 A I don't recall. Marshall DeRosa -- both 22 Marshall DeRosa and Doctor Lenz, like I said, as I 23 remember, the focus is mostly on what I refer to as 24 nastygrams that they were receiving from Peter Hull, and 25 when they were doing public speaking or writing articles</p>	<p>38</p> <p>1 A I don't recall that. I'm not saying he didn't 2 say that, but I don't recall that. Understand I attend 3 many, many, many meetings, and this was almost what? 4 Two years ago? A year-and-a-half ago, two years ago. 5 So it's difficult for me to remember everything.</p> <p>6 Q Let me just show you what's been marked as 7 Plaintiff's Z-3 for today. Is this the outside activity 8 form you were just speaking about a moment ago?</p> <p>9 A I believe this is the activity form as it way 10 in 2015, correct.</p> <p>11 (Whereupon Plaintiff's Exhibit Z-3 was marked 12 for identification.)</p> <p>13 Q (By Mr. Leo) Has it changed since 2015?</p> <p>14 A Yes, it has.</p> <p>15 Q How has it changed?</p> <p>16 A There's a new form and it's now, from what I 17 can tell, derived from the division of research.</p> <p>18 Q What changes in looking at this form can you 19 describe?</p> <p>20 A I'd have to look. You can pull it up and look 21 at it side-by-side. It'd be very difficult without 22 seeing the other form side-by-side, so I can't really 23 comment on that. It's similar, but it's certainly not 24 the same.</p> <p>25 Q But this was the form that the university</p>
<p>1 for the press. This was the concern -- in my 2 recollection this was the biggest focus of this very 3 passion discussion, but the outside activity forms also 4 became a part of this. I remember at one point, I 5 believe, regarding the issue that's more relevant to 6 Article 5, which is the outside reporting -- or not 7 outside reporting, but having to declare that you're not 8 associated with FAU as you speak or write, that Marshall 9 DeRosa suggested -- and I believe a motion was put 10 forward to put this to the Academic Freedom and Due 11 Process Committee of the senate, and I asked Marshall 12 why he thought that was a good idea. And he gave a very 13 eloquent rationale for that. And I was one of the 14 people that voted for that. Unfortunately, I was in the 15 minority.</p> <p>16 Q At that meeting, or the Senate Faculty 17 meeting, the faculty members were accusing the policy as 18 being used as a prior restraint. Do you recall that 19 characterization?</p> <p>20 A Which policy are you talking about?</p> <p>21 Q The outside activity policy.</p> <p>22 A They were using it as a --</p> <p>23 Q It was described as a prior restraint.</p> <p>24 A Prior restraint. I don't recall that, no.</p> <p>25 Q You don't recall DeRosa saying that?</p>	<p>39</p> <p>1 A This was the form in place at the time.</p> <p>3 Q She can't record both of us.</p> <p>4 A I'm sorry.</p> <p>5 Q This was the form the university used in 2015?</p> <p>6 A Correct. I believe it is, yes.</p> <p>7 Q Is this the form that Professor Tracy was 8 instructed to sign and turn in to you and your chapter?</p> <p>9 A I don't believe I -- that question is a little 10 -- I'm not going to answer that question, because I 11 don't think it's an appropriate question.</p> <p>12 Q What's not an appropriate question?</p> <p>13 A I didn't instruct -- you said I instructed him 14 to sign it. Let's back up. He was told -- he received 15 a -- yes. Let me think. Yes, I suggested he should 16 sign this, yes.</p> <p>17 Q Why did you tell Professor Tracy to sign this 18 form?</p> <p>19 A He had received from his dean a letter stating 20 that he had not filled out forms for the last three 21 years. And he was told that he should fill out the 22 forms. I believe at that point in time it was a letter 23 of reprimand.</p> <p>24 Q You're referring to what point in time?</p> <p>25 A This would've been -- the first time I knew</p>



<p>1 that he hadn't filled out the forms was when he received 2 a letter of reprimand from his dean, which I believe was 3 dated November 10th, but Doctor Tracy said that he had 4 not received it until November 19th. So he'd contacted 5 me and sent me a copy of the reprimand on the 19th. At 6 that point I suggested he should sign it. At some point 7 I remember saying that he should sign it, even if he 8 says under duress, that he should fill it out.</p> <p>9 Q When was the first time you told Professor 10 Tracy to sign this form?</p> <p>11 A Specifically this form, I believe it was at 12 that time.</p> <p>13 Q In November of 2015?</p> <p>14 A Yes.</p> <p>15 Q Professor Tracy brought the issue of the form 16 and the new directives at FAU concerning the assignment 17 submission to your attention before he was given a 18 notice of discipline in November, right?</p> <p>19 A Yes. Before he received the letter of 20 reprimand these were emails I was receiving from Tracy 21 in late October. I believe I received three emails. 22 These were email exchanges, and we had just a couple 23 brief exchanges between myself and Doctor Tracy. It was 24 a back and forth between he and his chair about the -- 25 not about -- basically about sign the annual assignment.</p>	<p>42</p> <p>1 understand that either. This is basic, basic, basic 2 union principle.</p> <p>3 Q Didn't understand what?</p> <p>4 A That you comply and then you fight. You don't 5 set yourself up for insubordination. You can always 6 fight, but by not complying with a direct order, you set 7 yourself up as being vulnerable to a charge of 8 insubordination.</p> <p>9 Q So are you saying that if the university 10 issued an unlawful direction or something that was 11 unconstitutional, that faculty should comply and then 12 fight?</p> <p>13 A I don't deal with hypotheticals, sir. That's 14 just a ridiculous hypothetical question.</p> <p>15 Q I'll take it away from the hypothetical 16 scenario, and I'll say if the university gives a faculty 17 member an unlawful directive, is it your advice to fight 18 it?</p> <p>19 A Ever case is different. I'm not going to try 20 to make a general statement. Every case is different.</p> <p>21 Q Professor Tracy's case, he was asked to comply 22 with what he believed to be an unlawful directive.</p> <p>23 A He believes a lot of things.</p> <p>24 Q But my question is: is your advice to a 25 professor like Professor Tracy, who's been given a</p> <p>44</p>
<p>1 Q But also the policy affirmation also, right?</p> <p>2 A Yes. The issue was that he didn't want to 3 sign -- as I recall he didn't want to sign the form -- 4 I'm sorry, the assignment -- because of this issues he 5 had with this drop-down item, and because he had issues 6 with the form, the policy, et cetera, et cetera. At a 7 certain point the emails -- so these were exchanges 8 going back -- I didn't get in the middle of that. They 9 were exchanges between him and his chair about the 10 policy. Then there was a period of about a week or a 11 week-and-a-half where I didn't get anything, and then I 12 got an email from Doctor Tracy forwarded to me. This 13 was now in November, so I want to say there was a gap of 14 a week-and-a-half, and his chair said this has been 15 referred to legal. I wasn't quite sure what that meant. 16 Obviously now I do. But I think at the time I said did 17 you not sign this? I said there's an old adage, union 18 adage that says sign then fight, or comply then fight. 19 So that's the time I recommended that he sign.</p> <p>20 Q Where does this sign then fight come from?</p> <p>21 A It's comply then fight. It's union 101. You 22 don't subject yourself to insubordination. It's 23 something you learn. And I will say as former president 24 himself -- Doctor Tracy was president of the union in 25 2009, 2010 -- I refuse to believe that he didn't know or</p>	<p>43</p> <p>1 directive that he believes to be unlawful, is your 2 advice to comply with the unlawful directive --</p> <p>3 A First you're saying he believes it to be 4 unlawful, and then you're saying it is unlawful.</p> <p>5 Q I can say both. The allegations in this 6 complaint that you've read -- it's my understanding 7 you've read it?</p> <p>8 A Yes, I have.</p> <p>9 Q The allegation is that it was unlawful. So 10 I'm not speaking hypothetically when I say that. Let me 11 just be clear.</p> <p>12 A He believes a lot of things. We did not 13 believe it was an unlawful order.</p> <p>14 Q Regardless of whether you believed it to be 15 unlawful or not, is it union policy at UFF to direct 16 faculty members --</p> <p>17 A There is no --</p> <p>18 MR. MCKEE: Let him finish the question.</p> <p>19 THE WITNESS: Okay.</p> <p>20 Q (By Mr. Leo) Is it union policy to direct 21 faculty members to comply with unlawful directives?</p> <p>22 A There's no such policy.</p> <p>23 Q When you say that there's this old adage, is 24 there a specific policy, a provision that you're 25 referring to when you say that, or is that something</p> <p>45</p>



<p>1 that somebody told you?</p> <p>2 A This is something that -- we have state 3 meetings at UFF where we discuss issues of grievances 4 and other things. This is something that, like I said, 5 I remember this before I even became president. It's 6 pretty standard. You don't set your faculty members up 7 for insubordination. You don't encourage them to set 8 themselves up for insubordination. You can always 9 fight, but insubordination is something for which you 10 can be terminated. You don't put your faculty members 11 or your members at risk for a charge of insubordination.</p> <p>12 Q When you advised or instructed Professor Tracy 13 to sign the outside activity forms, was that something 14 you came up with, or did somebody tell you tell 15 Professor Tracy that?</p> <p>16 A Something I came up with? I think it was 17 both. The term "came up with", I think, it a 18 misrepresentation.</p> <p>19 Q Let me change the question. Was the advice or 20 instruction that you gave Professor Tracy, was that 21 something that you decided to give him, or did somebody 22 tell you to tell Professor Tracy that?</p> <p>23 A Nobody told me. It was based on discussions 24 with numerous people.</p> <p>25 Q What people?</p>	<p>46</p> <p>1 A Yes, absolutely.</p> <p>2 Q What was the university asking Professor Tracy 3 to put on the forms?</p> <p>4 A To report his outside activity, per Article 5 19.</p> <p>6 Q What outside activity was the university 7 asking him to report?</p> <p>8 A Any reportable outside activity, as defined in 9 the Collective Bargaining Agreement. They didn't say 10 specifically what he had to report. They said this is 11 something of all faculty, according to the Collective 12 Bargaining Agreement, are required to report outside 13 activities defined in the Collective Bargaining 14 Agreement.</p> <p>15 Q Are you saying that the university didn't ask 16 Professor Tracy to submit his blogging to the university 17 on these forms?</p> <p>18 A I don't remember that specifically, no. What 19 I remember -- and you have the documents -- they asked 20 him to fill out outside activity reports.</p> <p>21 Q And after he was asked to do that, he asked 22 you to raise this issue with the executive committee?</p> <p>23 A No. This was before he even -- this is when 24 he was still in discussion going back and forth in the 25 emails with his department chair.</p>	<p>48</p>
<p>1 A The grievance committee; it would've been 2 Michael Moats; and it would've been a number of other 3 people. We had a number of discussions you saw by email 4 and other things. But at the end of the day I'm trying 5 to protect his job.</p> <p>6 Q How did you do that?</p> <p>7 A I wasn't successful, because what we saw 8 collectively as a committee was that they had a right to 9 ask him to complete the forms, to declare his outside 10 activity. And by refusing to do that he could be 11 subjecting himself to a charge of insubordination and he 12 could be terminated as such. So we felt -- I believe I 13 told him even if you sign it under duress, that it's by 14 far his best interest. Their asking him to do this was 15 not a violation of the Collective Bargaining Agreement.</p> <p>16 Q Ask him to do what?</p> <p>17 A To sign the forms.</p> <p>18 Q But they weren't just asking Professor Tracy 19 to sign the forms blank, were they?</p> <p>20 A I don't understand the question.</p> <p>21 Q Did the university ask Professor Tracy just to 22 sign the form and turn it in, or were they asking him 23 to --</p> <p>24 A You have to fill it out.</p> <p>25 Q -- to put something on this form?</p>	<p>47</p> <p>1 Q Professor Tracy wanted clarification about how 2 the policy was being used in October of 2015, right?</p> <p>3 A Yes, and this is what the ongoing discussion 4 was with his chair. And then I also believe that his 5 dean was also involved at some point.</p> <p>6 Q His problem with the affirmation wasn't all 7 over the place back in October of 2015, right?</p> <p>8 A He had at least three different -- three, 9 maybe four different issues.</p> <p>10 Q What were they?</p> <p>11 A They were that it's confusing; I don't have to 12 do it anyway; it's unconstitutional; and it's a 13 violation of my 2013 agreement.</p> <p>14 Q He had multiple concerns from Constitutional 15 rights to -- he had an agreement with the university, 16 right?</p> <p>17 A Yes.</p> <p>18 Q What's your understanding as to the agreement 19 that Professor Tracy had with Florida Atlantic 20 University?</p> <p>21 A I think it bears very little, if at all, on 22 this case, on this issue. This was about -- the 2013 23 issue dealt with Article 5, which has to do with having 24 to disassociate himself with any of his -- in this case, 25 I think it was his blog and a website that he had.</p>	<p>49</p>



<p>1 Q Would you agree that those are outside 2 activities? 3 A Yes. 4 Q So how is it different? 5 A Because the issue then was not reporting it as 6 an outside activity, but whether or not -- and I'm going 7 from memory, but I think specifically it was his blog 8 that he didn't have a disclaimer saying that he was not 9 associated with FAU. I believe -- again, I'm going on 10 memory; I wasn't there in 2013, I wasn't a part of this. 11 But he did, it turns out, I believe. And then the 12 university said well, that's not enough. I believe Doug 13 Broadfield and Doctor Tracy carved an agreement with the 14 university that he could continue to do his blog, and I 15 believe they had Tracy write up a disclaimer that 16 satisfied all parties. And that was the end of it. 17 Q Were you at the university in 2013? 18 A I was at the university but I wasn't really 19 involved with the union at that time. I was a union 20 member but I was, at that time, I think, my active 21 involvement with the union started right about the time 22 when this was finishing in 2013. 23 Q When was the first time that you talked to 24 Michael Moats about the issues that Professor Tracy 25 presented to you and to the chapter in 2015?</p>	<p>50</p> <p>1 grievance that was filed by your chapter concerning 2 Professor Tracy? 3 A At a certain point during all of this, yes. 4 And then also during this time, Doctor Tracy sent me the 5 grievance and the other documents concerning the 2013 6 grievance. He sent me the agreement -- you have it -- I 7 believe the agreement and the original grievance. 8 Q Was that before he was issued a notice of 9 discipline in November of 2015? 10 A I believe so, yes. 11 Q So Professor Tracy provided you with the 12 relevant documents pertaining to his discipline in 13 2013? 14 A Yes. 15 Q Is it your testimony today that the discipline 16 against Professor Tracy in 2013 was different than the 17 discipline that he was facing in 2015? 18 A It was two different issues. 19 Q Are you saying that the university didn't 20 issue a directive in 2013 to submit the outside activity 21 forms? 22 A I believe they did. 23 Q What came of that directive? 24 A Nothing as far as I know. 25 Q In 2013, what was Professor Tracy advised by</p>
<p>1 A I don't remember. It would've been sometime 2 in either late October or early November of 2015. That's 3 the best of my recollection. 4 Q Did you talk to Michael Moats before Professor 5 Tracy was issued a notice of discipline in November of 6 2015, about Tracy? 7 A I probably did, but I can't recall. You have 8 to understand Michael Moats and I talk practically every 9 day. There's a lot of back and forth about a lot of 10 things. I would imagine that Doctor Tracy would've been 11 one of those things, because that was something that was 12 ongoing at the time. 13 Q You had stated earlier that Doug Broadfield 14 took all the files for the grievances handled before 15 McGetchin filled the role, is that an accurate 16 statement? 17 A That's correct. 18 Q You said that you never spoke to Doug 19 Broadfield in 2015 to request the files? 20 A No. 21 Q Did you at any time request the files from 22 Michael Moats concerning the grievances that had been 23 handled before McGetchin filled the role? 24 A I don't recall. 25 Q Did you ever talk to Mr. Moats about the 2013</p>	<p>51</p> <p>1 the union, if you know? 2 A My understanding is that Doctor Broadfield 3 told him that he thought that he should fill out the 4 form. Doctor Tracy contends that Michael Moats told 5 him not to. I don't know the circumstances by which it 6 is, but that is my understanding. I believe that's also 7 confirmed by Doctor Tracy himself in an email that that 8 was his contention. 9 Q What was his contention? 10 A That Doctor Broadfield thought that he should 11 fill out the form and Michael Moats said that he should 12 not. That was his contention. 13 Q So Michael Moats told Professor Tracy in 2013 14 not to submit the outside activities form? 15 A That's what Doctor Tracy said. 16 Q Did Michael Moats ever tell you that that's 17 what his advice was in 2013? 18 A I believe so, yes. 19 Q So Michael Moats confirmed that he had advised 20 Professor Tracy not to submit the outside activity forms 21 for his personal blogging? 22 A That's my understanding, in 2013. 23 Q In 2013 the union filed a grievance against 24 the university regardless of Professor Tracy's outside 25 activities forms?</p>



<p>1 A Correct. The grievance was regarding -- and 2 again, I'm going by my recollection, but the original 3 reprimand he got for violating Article 5, which was 4 basically his failure to disassociate himself from FAU. 5 Q Just to clarify my question, the chapter, UFF- 6 FAU, did not tell Professor Tracy that he could not 7 grieve until he signed his outside activity forms in 8 2013, right? 9 A No, because the outside activity forms were 10 not an issue at that point. You're trying to mix apples 11 and oranges. 12 Q Are you saying the university had not directed 13 Professor Tracy to submit outside activity forms in 14 2013? 15 A They did, but this was after and part of the 16 agreement -- sign an agreement, and I believe you have 17 the documents -- said something to the effect that you 18 should fill out an outside activity form. The grievance 19 -- the reprimand and the grievance were not about 20 outside activity forms to the best of my recollection. 21 Q But are you aware of a directive in 2013 by 22 the university to submit outside activity forms for the 23 personal blogging? 24 A I'd have to look at the document. I do recall 25 that as part of the agreement he was told that he should</p>	<p>54</p> <p>1 commit a violation of the Collective Bargaining 2 Agreement. You file grievances based on a violation of 3 the Collective Bargaining Agreement, not because, as 4 Doctor Tracy said, that there's something else going on 5 here. 6 Q Just to be clear, is it your testimony that 7 Professor Tracy's November 10, 2015 notice of discipline 8 was grievable? 9 A You can file a grievance on anything. My 10 contention was there was not a violation of the 11 Collective Bargaining Agreement, and that grievances are 12 for the purposes of contesting a violation of the 13 Collective Bargaining Agreement. It was the decision of 14 the committee that there was no violation of the 15 Collective Bargaining Agreement, and demanding that he 16 complete his outside activity forms. 17 Q So when you say you can file a grievance on 18 anything, you're answer to the question of whether 19 Professor Tracy's November 10 notice of discipline would 20 be absolutely grievable because anything is grievable? 21 A You can grieve anything. It didn't rain 22 today, I thought it was going to rain today. I can 23 grieve it. 24 Q So why did you tell Professor Tracy that his 25 situation was not grievable?</p> <p>56</p>
<p>1 submit outside activity forms. Whether it was specific 2 to the blog or not -- I do recall that he was told that 3 he should submit outside activity forms. 4 Q Going back to 2015, other than Michael Moats, 5 who else did you discuss the 2013 disciplinary action, 6 or attempted disciplinary action with? 7 A I'm sure Tim Lenz would've been one person. 8 And probably Doug McGetchin because they were on the 9 grievance committee. 10 Q At any time did somebody tell you, whether it 11 was from the union or the chapter, did anybody tell you 12 that Professor Tracy's November 10 notice of discipline 13 was grievable? 14 A I don't think that term was used; was it 15 grievable. You can grieve anything. I was told in my 16 one email that I used the wrong term. I'm not a lawyer, 17 I'm sorry. 18 Q Which email are you talking about? 19 A The one I sent Doctor Tracy. I think it was 20 December 1st. This was after the contract enforcement 21 committee met and we decided whether or not we were 22 going to file a grievance. I emailed Doctor Tracy and 23 said we decided it was not grievable. I've since been 24 told that's an incorrect term. What we meant 25 specifically was there was not -- the university did not</p>	<p>55</p> <p>1 A Because I used the words -- I'm not a lawyer. 2 I'm a volunteer. I didn't understand it then. I've now 3 been told that's not the correct language. 4 Q Who told you that was not the correct 5 language? 6 A Several people. 7 Q List them. 8 A I know Tim Lenz told me that, Michael Moats 9 told me that. The experienced people told me that I 10 used incorrect language. 11 Q When did they tell you that? 12 A I guess when they saw the email. They said 13 that's not the correct language. 14 Q How did they tell you? 15 A They said anything is grievable. What you 16 mean is -- they knew what I meant. 17 Q I was referring to how. Did they tell you in 18 person, or by telephone, or by email? 19 A I think it was either in person or by phone, I 20 believe. Tim Lenz and I talked constantly during that 21 semester. As I indicated in my interrogatory, Tim Lenz 22 had an office directly below a core class that I was 23 teaching that semester. So I was meeting with Doctor 24 Lenz twice a week to discuss many things, and we were 25 trying to learn about grievances and other processes of</p> <p>57</p>

<p>58</p> <p>1 the union. So I was going to him about not just Tracy, 2 but a whole manner of things to try and learn more about 3 how the union runs and about how grievances are filed, 4 et cetera, et cetera.</p> <p>5 Q After you learned that you used the wrong 6 language, what did you do to correct the language that 7 you did use with Professor Tracy, if anything?</p> <p>8 A I didn't do anything.</p> <p>9 Q So you didn't tell Professor Tracy that you 10 were incorrect when you told him that it was not 11 grievable?</p> <p>12 A No, I didn't -- no.</p> <p>13 Q Is there any reason why you didn't tell him?</p> <p>14 A Because it wouldn't have change what we did or 15 didn't do. I didn't believe that he understood exactly 16 what we told him. We didn't feel there was a violation 17 of the Collective Bargaining Agreement.</p> <p>18 Q Did you convey that message that you were 19 incorrect to Doug McGetchin?</p> <p>20 A I don't remember.</p> <p>21 Q So you have no recollection of telling Doug 22 McGetchin that the advice you gave Professor Tracy was 23 incorrect?</p> <p>24 A No, that's a mistaken. The advice that I gave 25 him was -- basically I told him we're not filing a</p>	<p>60</p> <p>1 Professor Tracy to stay?</p> <p>2 A I believe my communication said that he had 3 talked to him about staying, and that Doctor Tracy had 4 already decided he was going to stay.</p> <p>5 Q Was that something that Mike Budd did on his 6 own, or was he asked to talk to Professor Tracy?</p> <p>7 A I believe he did that on his own. My 8 understanding was that he was talking to Doctor Tracy 9 relatively regularly. They had been colleagues together 10 in the same department, and I think they had a friendly 11 relationship, so there was an ongoing conversation 12 between Mike Budd and Doctor Tracy. But no, I did not 13 order him or tell him to talk to Doctor Tracy 14 specifically about anything.</p> <p>15 Q In fact, the opposite is true. Didn't you 16 direct the chapter not to speak to Professor Tracy?</p> <p>17 A After this went to litigation I think I told 18 people not to talk to Doctor Tracy. There was an email 19 where I said these email communications are between us 20 and not for public consumption, including Doctor Tracy.</p> <p>21 Q While we're on that, let me just show you 22 Exhibit Z-5. Is this the email that you were just 23 referencing?</p> <p>24 A This is an email from Mike Budd. 25 (Whereupon Plaintiff's Exhibit Z-5 was marked</p>
<p>59</p> <p>1 grievance, but I used the wrong term in saying that it 2 was un-grievable.</p> <p>3 Q Now you're saying two things. So just so 4 we're clear let me just mark this as an exhibit and we 5 can talk about it. I'm going to show you what's been 6 marked as Plaintiff's Z-4. Is this the email that you 7 were referring to where you just testified you were 8 incorrect?</p> <p>9 A Yes. 10 (Whereupon Plaintiff's Exhibit Z-4 was marked 11 for identification.)</p> <p>12 Q (By Mr. Leo) Just so the record is clear, you 13 never followed up with Professor Tracy to explain what 14 you meant when you said that his situation was not 15 grievable?</p> <p>16 A No, I did not. I assume he understood what I 17 meant by that.</p> <p>18 Q After you wrote this to Professor Tracy, 19 Professor Tracy responded indicating that he wished to 20 leave the union?</p> <p>21 A He said that he was leaving the union.</p> <p>22 Q The chapter, particularly one member, was it 23 Mike Budd?</p> <p>24 A Yes.</p> <p>25 Q Indicated that he was going to convince</p>	<p>61</p> <p>1 for identification.)</p> <p>2 Q (By Mr. Leo) At the top?</p> <p>3 A Yes, yes. That's exactly what it says. It's 4 for this group only. This is an internal group 5 discussion of the executive committee.</p> <p>6 Q That's not what it says.</p> <p>7 A It says these email communications are 8 sensitive, for this group only.</p> <p>9 Q So by group you're saying that was the 10 executive committee?</p> <p>11 A These are members of executive committee, and 12 I believe Mike Budd was included on that. These are the 13 people that we've discussed previously. Members of the 14 executive committee, including Mike Budd, Meredith 15 Mountford, Chris Robe, myself. I don't know if there's 16 anybody else on the emails, but this was basically an 17 impromptu discussion about the issue of Doctor Tracy's 18 situation, and this is not something that was part of 19 the decision-making process. It was good for me to hear 20 what people had to say, but it would not, in my opinion, 21 be helpful -- first of all, I have no obligation to 22 share this with anyone. And it's not helpful given that 23 the people in this communication, it was not part of the 24 formal decision-making process, and the understanding 25 that people in this communication varied greatly between</p>



<p>1 having a really good understanding of the grievance 2 process, and others who clearly did not. Some who were 3 supportive and some who were not. I wanted to hear all 4 this; it was good to get this input, but that's all it 5 was. It was an exchange between members of the 6 executive committee and Mike Budd, and that was it.</p> <p>7 Q Mike Budd had a problem with your advice? 8 A I don't think that's a correct 9 characterization. Everybody had an opinion.</p> <p>10 Q What was Mike Budd's opinion? 11 A I don't know if I can characterize it. I'd 12 have to go back and look at the email. I believe you're 13 deposing Mike Budd; that's something you can ask him.</p> <p>14 Q No, not at this time. 15 A Okay.</p> <p>16 Q In one email he asked if you were okay with 17 the administration firing Professor Tracy. Do you 18 remember that? 19 A No.</p> <p>20 Q I'm going to mark this. This is Z-6 for 21 today. 22 A I don't see my response. 23 (Whereupon Plaintiff's Exhibit Z-6 was marked 24 for identification.)</p> <p>25 Q (By Mr. Leo) Are you familiar with this</p>	<p>62</p> <p>1 Budd's email? 2 A Yeah. Well, he asked are you saying that Doug 3 and Michael Moats -- making a case the CBA has been 4 clearly violated, so clearly he understood what I was 5 saying by grievable. And I said yes, that was our 6 collective agreement that we did not think that we could 7 make a case that the Collective Bargaining Agreement had 8 been violated.</p> <p>9 Q When you say collective opinion, are you 10 referring to you and Michael Moats? 11 A No, I'm talking about the meeting we had on 12 November 30th between myself -- Michael Moats was 13 present, Doug McGetchin, and Tim Lenz.</p> <p>14 Q What time was that meeting on November 30th? 15 A I don't recall. I think it's in the emails, 16 you can get it. I believe it was afternoon sometime. 17 You have the emails. I'm sure it tells you the time.</p> <p>18 Q That's why I'm asking you. You think it was 19 in the afternoon? 20 A I think so. We had emailed back -- there was 21 an email exchange. We had tried to meet before 22 Thanksgiving, we couldn't get our schedules to work. I'm 23 almost positive it's in the emails.</p> <p>24 Q Was it before or after you met for the 25 consultation at FAU?</p>
<p>1 communication from Mike Budd? 2 A Yes.</p> <p>3 Q He's responding to your email indicating that 4 Professor Tracy's situation was not grievable, right? 5 A I assume so. I don't see the other trail 6 here. I see an email from Mike Budd, but I don't see 7 what this was in response to or what my response was. He 8 just states in his opinion that the dean's 9 administration might go after him for firing a tenured 10 faculty member. That's his opinion stated on there, but 11 I don't know in what specific context, or what my 12 response was or his response to that was.</p> <p>13 Q Well, referring to his opinion, was this the 14 first time he expressed to you his concern of what would 15 happen, or the consequences of not grieving, for 16 Professor Tracy? 17 A As far as I know, I don't recall -- I don't 18 even recall this, but I don't recall him specifically 19 saying that, no. I don't recall that.</p> <p>20 Q We're going to mark this as Z-7. Do you 21 remember this? 22 A Of course. 23 (Whereupon Plaintiff's Exhibit Z-7 was marked 24 for identification.)</p> <p>25 Q (By Mr. Leo) Was that your response to Mike</p>	<p>63</p> <p>1 A It was after consultation.</p> <p>2 Q When was consultation? 3 A I'd have to look. It was immediately before 4 this meeting.</p> <p>5 Q You laughed. Did you think that was funny? 6 A I think your accusation was funny, yeah.</p> <p>7 Q What was my accusation? 8 A I know where you're going with this, but let's 9 go ahead.</p> <p>10 Q Where am I going? 11 A You're going to say that somehow the 12 consultation was part of the evil conspiracy that I'm a 13 part of.</p> <p>14 Q Actually, I was just going to ask you about 15 consultation, but I'll take note of that. What happened 16 at the consultation? 17 A I'd have to look. Each meeting we have an 18 agenda, so I'd have to go pull the agenda up for that 19 particular meeting. Let's get on the record what the 20 consultation is so that everybody understands this.</p> <p>21 Q Sure. 22 A This is something that's part of the 23 Collective Bargaining Agreement. The union and the 24 administration under the Collective Bargaining Agreement 25 meet once a semester to discuss issues pertinent to the</p>

<p>1 union. It could be to collective bargaining -- not just 2 the union, but to the faculty. It could be collective 3 bargaining; anything that has to do with the terms and 4 conditions, working conditions, et cetera. These 5 meetings are planned well in advance because of 6 especially the schedule of the president and other 7 things. This -- and again, I'm sure there's an email 8 trail with regard to this. This consultation meeting 9 was planned well in advance before anything that came up 10 with Doctor Tracy. I plan these meetings -- I continue 11 to do this today -- I stack the meetings, because I have 12 to travel a long distance from Davie to Boca every time 13 there's a meeting. So that's 65 miles roundtrip. And 14 as a professor I don't make a lot of money, so that's a 15 lot of gas mileage on my car. So I'll typically have 16 three meetings in one day. I might have a faculty 17 assembly meeting. I'm a member of every committee known 18 to God and man. So there might be four meetings that 19 day. It's selfish on my part simply because I can knock 20 out four meetings in one day without having to drive up 21 there separately. So we had consultation that day, 22 which had absolutely nothing to do with this case. 23 Michael Moats was at the consultation meeting -- that's 24 why Michael Moats was present at this meeting, because 25 happened to be there that day, and I asked him to please</p>	<p>66</p> <p>1 can recall? 2 A It could've been Alperin, Doctor Diane Alperin 3 may've been present, but again, I'd have to go back and 4 look.</p> <p>5 Q How about Heather Coltman? 6 A No.</p> <p>7 Q Is it your testimony that Professor Tracy was 8 not discussed at this meeting? 9 A Yes, it is.</p> <p>10 Q How about during downtime between -- 11 A No.</p> <p>12 Q -- between sessions? How long was this 13 meeting? 14 A They typically go an hour. It may have gone a 15 little bit over that, but they usually are about an 16 hour. So we have to cram everything into that time. As 17 I recall, I left the meeting -- Michael Moats and I left 18 almost immediately to go to the meeting that had been 19 scheduled for the grievance committee, who was not only 20 Doctor Tracy, but we had several grievances that we had 21 to address, as well.</p> <p>22 Q How many other consultations has Michael Moats 23 participated in, other than this one? 24 A Two or three maybe. It's on an as-needed 25 basis. If we feel that we need Michael's expertise,</p>	<p>68</p>
<p>1 sit in on the meeting because if there was any advice or 2 any insight that he could give us. The decision was 3 that we took a vote between the members of the 4 committee, and it was unanimous that there was not a 5 violation of the Collective Bargaining Agreement.</p> <p>6 Q Going back to my question, thought, what did 7 you discuss at the November 20th consultation?</p> <p>8 A I would have to look it up, but these are all 9 things that had been previously placed on an agenda. And 10 again, I can tell you it had nothing to do with Doctor 11 Tracy.</p> <p>12 Q Who was at the consultation other than 13 yourself and Michael Moats?</p> <p>14 A I believe Meredith Mountford for us. She was 15 vice president at that time. And -- again, this is just 16 on memory -- I believe it would've been President Kelly.</p> <p>17 Q You said Mountford?</p> <p>18 A It would've been Doctor Mountford for the 19 union. So it would've been myself and Michael Moats for 20 the union, and then it would've been -- this is purely 21 on memory -- most of the time it was President Kelly, 22 Gary Perry, who was the provost -- is the provost. And 23 usually Larry Glick.</p> <p>24 Q Other than Kelly, Perry, and Glick, was there 25 anybody else from FAU's administration present, that you</p>	<p>67</p> <p>1 we'll ask him to sit in and help up. Otherwise, 2 typically he's not there, but there are times that we 3 may ask him. It depends on his schedule, as well.</p> <p>4 Q Why was Michael Moats needed at the November 5 30th, 2015 consultation?</p> <p>6 A I'd have to go back. Maybe if we have a break 7 I can see if I can pull it up. I don't recall. I want 8 to say -- I'm trying to remember what was going on at 9 that time. It could've been we were having issues with 10 how the annual assignments were being done. I believe -- 11 and this is all just based on my memory -- there was an 12 issue with the distribution of what's called FTE, and 13 the assignments. I believe that was a very important 14 issue, and so I asked Michael to attend that meeting 15 because we have a lot of concerns about that. I'm 16 almost positive of that now that I think of it.</p> <p>17 Q Where would you keep records pertaining to 18 this meeting?</p> <p>19 A I don't have any records. I don't take notes. 20 I typically do not take notes.</p> <p>21 Q What were you testifying that you'd need to 22 look at?</p> <p>23 A The agenda.</p> <p>24 Q Where's the agenda?</p> <p>25 A I have it on my computer. I'd be more than</p>	<p>69</p>

<p>1 happy to give it to you.</p> <p>2 Q Going back to this consultation, was there any</p> <p>3 discussion at this November 30th consultation regarding</p> <p>4 the outside activities policy at the university?</p> <p>5 A Not that I recall. Again, I'll look at the</p> <p>6 agenda. The agenda -- we stick to the agenda typically</p> <p>7 because we have very limited time to get the president</p> <p>8 and the provost's ear. So we submit an agenda, and we</p> <p>9 prepare for the meeting based on the agenda, and then we</p> <p>10 go from there. I don't recall that being an item on the</p> <p>11 agenda. It could've been, but I don't believe so.</p> <p>12 MR. LEO: Why don't we take a quick break? You</p> <p>13 can maybe look at your agenda in that time.</p> <p>14 (Whereupon a short break was observed.)</p> <p>15 (Deposition resumed.)</p> <p>16 Q (By Mr. Leo) before we went back on the</p> <p>17 record, you had stated that you wanted to clarify</p> <p>18 something?</p> <p>19 A Yes. I wanted to add something that occurred</p> <p>20 to me when I went to the bathroom. You asked about the</p> <p>21 email from Mike Budd dated December 2nd. He said</p> <p>22 because the dean of administration may go after him</p> <p>23 further and try to fire a tenured faculty member</p> <p>24 regardless of what happens with SPE. Are we okay with</p> <p>25 it? What I had learned early on in this job was</p>	<p>70</p> <p>1 A Fulltime teaching equivalence.</p> <p>2 Q What was the problem with it in 2015?</p> <p>3 A Well, nothing to do with this case, but I'll</p> <p>4 answer the question. It was basically the way your</p> <p>5 assignment is allocated. Typically our assignments are</p> <p>6 comprised of teaching service and research issue was --</p> <p>7 and continues to be -- in terms of how much credit, so</p> <p>8 to speak, you get for teaching a class. In the past the</p> <p>9 tradition was .25, and now it's -- some people were</p> <p>10 getting .2, and this was an issue. So that's why</p> <p>11 Michael was there, because this was of great concern to</p> <p>12 all of us, and frankly, continues to be.</p> <p>13 Q Going to that second item, the sustained</p> <p>14 performance evaluation document and status of tenure at</p> <p>15 FAU. Can you elaborate on this?</p> <p>16 A I can. I'm trying to remember what the status</p> <p>17 of that -- another word for this is post-tenure review.</p> <p>18 This is just a prettier version of it. I believe at the</p> <p>19 time -- because I was also on the SPE committee. Like I</p> <p>20 said, I'm in every committee known to God and man.</p> <p>21 There was a great deal of dissatisfaction with the</p> <p>22 proposed documents because it was essentially, in many</p> <p>23 people's opinion, that the document was forcing you to</p> <p>24 be re-tenured, for all intents and purposes.</p> <p>25 Q Which document are you referring to?</p> <p>72</p>
<p>1 president from various union people is that you don't</p> <p>2 make a decision to file or not file a grievance on</p> <p>3 anything but whether or not you believe that there's a</p> <p>4 violation of Collective Bargaining Agreement, not</p> <p>5 because you're afraid you may get sued or not. It</p> <p>6 should be based on whether or not there's a violation of</p> <p>7 the Collective Bargaining Agreement. So I just wanted</p> <p>8 to make that clear.</p> <p>9 Q While we were on break did you speak to</p> <p>10 anybody about the case?</p> <p>11 A I spoke to my attorney briefly.</p> <p>12 Q Other than your attorney?</p> <p>13 A No.</p> <p>14 Q your attorney provided me with I have marked</p> <p>15 here as Exhibit Z-8 for today. Is this the agenda that</p> <p>16 you were referring to earlier?</p> <p>17 A Yes, it is.</p> <p>18 (Whereupon Plaintiff's Exhibit Z-8 was marked</p> <p>19 for identification.)</p> <p>20 Q (By Mr. Leo) Does this refresh your</p> <p>21 recollection of what you discussed at the consultation?</p> <p>22 A Yes, it does. And I was correct. A big part</p> <p>23 of the discussion was that middle item, the FTE --</p> <p>24 distribution of FTE, fulltime teaching equivalence.</p> <p>25 Q What is FTE?</p>	<p>71</p> <p>1 A This is calls the sustained performance</p> <p>2 evaluation document, or like I said, most people would</p> <p>3 refer to it as post-tenure review. I think most people</p> <p>4 understand that better anyway.</p> <p>5 Q Is this SPE?</p> <p>6 A SPE, yes.</p> <p>7 Q Is that what Mike Budd was referring to in his</p> <p>8 December 2nd email?</p> <p>9 A I believe so, yes.</p> <p>10 Q Mike's email, he says, "I bring this up</p> <p>11 because the dean in admin may go after him further and</p> <p>12 try to fire a tenured faculty member regardless of what</p> <p>13 happens with the SPE. Are we okay with that?" That's</p> <p>14 what he wrote?</p> <p>15 A That's what he wrote.</p> <p>16 Q Is this concerning what you were discussing at</p> <p>17 the consultation about sustained performance evaluation?</p> <p>18 A As I read this now, I'm not sure what he meant</p> <p>19 by that. And you would have to ask him. He says</p> <p>20 regardless of what happens with the SPE -- and I swear</p> <p>21 to God I understand most of that email, but that part,</p> <p>22 I'm not sure what he's talking about.</p> <p>23 Q What was happening with the SPE at that time?</p> <p>24 A I don't recall exactly. Again, I'm going back</p> <p>25 in my time machine of what was happening exactly in</p> <p>73</p>



<p>1 November of 2015. But I know that the first iteration 2 of the SPE document caused a lot of concern from 3 faculty. Because of the way it was worded, many people 4 -- many people -- felt that it was all but taking away 5 tenure. There were a lot of concerns. As a union we 6 solicited hundreds of pages of emails from faculty 7 expressing their concerns. We penned a response, and 8 the time -- I don't remember the timing of this, but 9 this would've been around that time when this was 10 something that was a really hot item.</p> <p>11 Q So the faculty was concerned that the 12 administration was trying to get rid of tenure?</p> <p>13 A Yeah, that this document was going to do away 14 with tenure.</p> <p>15 Q Are they still concerned with that?</p> <p>16 A The final document has changed. Let's put it 17 this way. I was on the sustained performance evaluation 18 committee from the beginning to the end. The final 19 document as it came out -- this was a faculty committee 20 that voted on this. I was the only member of that 21 committee that voted against it. But I was outnumbered 22 about 14 to one. It has changed certainly from what was 23 going on in November of 2015. Not enough in my opinion, 24 but surprisingly, I have had very little push-back from 25 faculty. I expressed my concerns, I emailed faculty,</p>	<p>74</p> <p>1 the university for a raise? 2 A In collective bargaining, yes. Wait a minute, 3 in 2015? Yes. Collective bargaining, I think, started 4 shortly after this. So yes. We made numerous back and 5 forth. Collective bargaining is back and forth, back 6 and forth, back and forth.</p> <p>7 Q What was the union's first offer back in 2015? 8 A I'd have to look. Again, I can find that. But 9 I want to say it was on the order of 15 percent across 10 three years. That's my best recollection.</p> <p>11 Certainly not a lot more -- I can tell you 12 this: it was a lot more than what we finally settled 13 for.</p> <p>14 Q When you say 15 percent across three years -- 15 A Five, five, and five.</p> <p>16 Q How does that break down per semester? 17 A You're paid on a 9-month or 12-month salary, 18 so as I recall, I think it was five, five, and five.</p> <p>19 Something like that. I can go back and look. I believe 20 our offer -- our initial offering was probably close to 21 twice what we actually got.</p> <p>22 Q There was a percentage that was referenced in 23 some of the emails you produced. I believe it was one 24 percent.</p> <p>25 A I'd have to see what you're referring to,</p>
<p>1 but very little concern expressed by faculty over the 2 finalized document. I mean very little; surprisingly 3 little.</p> <p>4 Q What did you discuss at the consultation 5 regarding salaries?</p> <p>6 A That they're bad and we need more money.</p> <p>7 Q How much did you ask for at the consultation?</p> <p>8 A I don't remember. I know that previously I 9 had done a presentation on the state of salaries. So 10 this was -- even after the raises we got in our last 11 Collective Bargaining Agreement, I just saw the numbers. 12 Our faculty members, with the exception of instructors, 13 are well below the 30th percentile across the country. 14 So this was just a recurring theme that we need more 15 money. We need a lot more money.</p> <p>16 Q What was the union's request by way of a raise 17 in 2015?</p> <p>18 A I don't recall specifically what the request 19 was. This isn't collective bargaining. Collective 20 bargaining is when you make a specific request for 21 raises. In this case we were making a case for look at 22 how bad it is, you need to give us a raise. Why aren't 23 you giving us a raise, that kind of thing. Consultation 24 is different than collective bargaining in that sense.</p> <p>25 Q At any point in 2015 did you make an offer to</p>	<p>75</p> <p>1 because I'm not sure -- one percent?</p> <p>2 Q You don't recall there being a one-percent 3 offer?</p> <p>4 A No. You have to keep in mind, you're meeting 5 every other week, and sometimes more often than that. 6 And the meetings between the union people, there's 7 multiple -- in between collective bargaining sessions, 8 the collective bargaining team is meeting many times. So 9 there's a lot of numbers being thrown around. If 10 there's a one percent, that doesn't ring a bell, but it 11 might be in reference to something else. I don't know.</p> <p>12 Q Going back to Professor Tracy's issues at the 13 university, on November 30th, 2015, you testified 14 earlier that you did not speak about Professor Tracy at 15 all during the November 30th meeting?</p> <p>16 A You're talking about consultation?</p> <p>17 Q Consultation.</p> <p>18 A No, I don't remember speaking about him at 19 all, no.</p> <p>20 Q Is it possible that Professor Tracy came up 21 during the consultation?</p> <p>22 A Not that I recall, no.</p> <p>23 Q When you say you don't remember, does that 24 mean it's possible and you just don't remember it 25 happening?</p>

<p>1 A Anything's possible, but I clearly -- I should 2 say this -- I clearly do not recall him coming up in 3 this meeting either at consultation or collective 4 bargaining.</p> <p>5 Q Other than the four listed items here on this 6 November 24th email --</p> <p>7 A There's only three, I believe. Sustained 8 performance, FTE, and salaries.</p> <p>9 Q I'm sorry. Other than the three items, were 10 there any other items or issues discussed at the 11 November 30th consultation?</p> <p>12 A I honest to God can't remember. Like I said, 13 first of all, it wouldn't have been appropriate to 14 discuss Tracy at this meeting. Second of all, we have a 15 really tight timeline. We come in -- we've got three 16 topics to cover in only one hour, and these are pretty 17 important topics. So we're on target. We meet prior to 18 this and say okay, we're going to talk about SPE; what 19 are we going to say? What's our points that we're going 20 to hit? We're going to talk about FTE; what are the 21 points we're going to hit? We're going to talk about 22 salaries; what are the points we're going to hit? We try 23 to stay very much on target. My recollection is the FTE 24 was a long discussion. As I recall, that took up a 25 large portion of the meeting, because this was a really</p>	<p>78</p> <p>1 A I guess so. Because I sure as hell didn't 2 tell him that.</p> <p>3 Q Did you attend a conference with Shane Eason 4 in February of 2016?</p> <p>5 A I believe that would've been the UFF Senate.</p> <p>6 Q The UFF Senate conference?</p> <p>7 A It's not a conference. It's just Senate; UFF 8 Senate.</p> <p>9 Q You attended the conference with Shane Eason?</p> <p>10 A Senate with Shane Eason. I believe so, yes.</p> <p>11 Q You attended the Senate?</p> <p>12 A Mmmhmmm.</p> <p>13 Q How many times has Shane Eason accompanied 14 you, with respect to UFF Senate?</p> <p>15 A Probably four, five, six times.</p> <p>16 Q At the February 2016 Senate, your testimony is 17 that you never spoke to Shane Eason about Professor 18 Tracy?</p> <p>19 A I didn't say that.</p> <p>20 Q What did you tell Shane Eason about Professor 21 Tracy?</p> <p>22 A I don't specifically recall. I can tell you 23 this, and I will say it again and again. I did not talk 24 to him -- I did not tell him that I met with Larry Glick 25 to discuss Jim Tracy. I did not conspire with Larry</p> <p>80</p>
<p>1 hot-button issue at the time. To the very, very best of 2 my recollection, we pretty much stuck with these items, 3 as we typically do.</p> <p>4 Q When was the first time that you talked to 5 Larry Glick about Professor Tracy?</p> <p>6 A I don't ever remember talking to Larry Glick 7 about Professor Tracy.</p> <p>8 Q You don't remember talking?</p> <p>9 A I don't believe I did, no. I've scoured my 10 memory as long as I can, and I do not ever remember 11 speaking to him specifically about Doctor Tracy.</p> <p>12 Q What did you tell Shane Eason that you talked 13 to Larry Glick about, concerning Professor Tracy?</p> <p>14 A Given that I didn't talk to Larry Glick, I'm 15 not sure what I would've told him.</p> <p>16 Q You're aware that Shane Eason testified that 17 you confided in him that you did speak to Larry Glick 18 about Professor Tracy?</p> <p>19 A Shane Eason says a lot of things. I did not 20 talk to Larry Glick about Doctor Tracy. I did not tell 21 Shane Eason that I talked to Larry Glick about Doctor 22 Tracy.</p> <p>23 Q So if Shane Eason said that Doctor Zoeller 24 told me that he spoke to Larry Glick about Professor 25 Tracy, he's lying?</p>	<p>79</p> <p>1 Glick or anyone else to either deny him his First 2 Amendment Rights or deny him his employment, and it is 3 something that I would not even think to do. It is 4 morally repulsive to me. So not only I didn't do it, I 5 wouldn't tell him that I did it, because I didn't do it.</p> <p>6 Q But you did tell Professor Tracy to comply 7 with the university's directives in 2015?</p> <p>8 A Yes, because I wanted him to keep his job.</p> <p>9 Q And is that what happened?</p> <p>10 A No, because he refused to sign.</p> <p>11 Q He did?</p> <p>12 A Yes.</p> <p>13 Q Are you saying that Professor Tracy did not 14 turn in outside activities forms in 2015?</p> <p>15 A Yeah, after the deadline, after it was too 16 late.</p> <p>17 Q After it was too late?</p> <p>18 A Right. He had been given -- my understanding 19 is that he had been given a deadline based on everything 20 that I've seen -- he was not in communication with me at 21 that time by the way. But he turned in some forms. I 22 believe the deadline he was given -- again, I'm going by 23 memory -- was December 14th. He handed in some forms on 24 the 15th, and then received the letter of pending 25 termination on the 16th. I believe that's the timeline,</p> <p>81</p>



<p>1 again, to the best of my memory.</p> <p>2 Q Let me explain the timeline as I understand</p> <p>3 it, and then you tell me if I'm incorrect. October of</p> <p>4 2015 Professor Tracy contacts you because he's now being</p> <p>5 asked to sign outside activities forms for his personal</p> <p>6 blog?</p> <p>7 A No.</p> <p>8 Q He's not being asked to submit --</p> <p>9 A No. In October of '15 the issue was his</p> <p>10 annual assignment.</p> <p>11 Q He's asked to sign an affirmation. For today</p> <p>12 it's Exhibit Z-2?</p> <p>13 A Z-2, yes.</p> <p>14 Q He's asked to confirm that he's in compliance</p> <p>15 with the outside activities policy?</p> <p>16 A I don't believe that's what it says at all. It</p> <p>17 says I affirm that I'm required to report outside</p> <p>18 activity and any financial interest on the university's</p> <p>19 report about side employment and for professional</p> <p>20 activities as required by the regulations or policies.</p> <p>21 That's what it's asking. You're misstating.</p> <p>22 Q Okay. So in October Professor Tracy contacts</p> <p>23 you and he says I have a problem with this affirmation,</p> <p>24 and I have a problem with the policy. Is that a fair</p> <p>25 characterization of Professor Tracy's concerns in</p>	82	<p>1 Q In October he is getting communications by</p> <p>2 email?</p> <p>3 A Mmmhmmm. What I received was basically</p> <p>4 communications between him and his chair going back and</p> <p>5 forth about this, and the policies, et cetera, et</p> <p>6 cetera. I believe also initially he said there's no</p> <p>7 need for you to respond. So I'm just watching or</p> <p>8 observing these email exchanges between him and his</p> <p>9 chair, hoping that they can resolve this.</p> <p>10 Q In October Professor Tracy sends you his</p> <p>11 concerns. He also sends you his settlement agreement</p> <p>12 from 2013?</p> <p>13 A Correct, yes.</p> <p>14 Q In October of 2015 did you review the</p> <p>15 settlement agreement that he provided to you?</p> <p>16 A Yes.</p> <p>17 Q Did you review the grievance that had been</p> <p>18 filed by Doug Broadfield at that time?</p> <p>19 A I looked at everything he sent me, yes.</p> <p>20 Q You're saying you reviewed the 2017 grievance</p> <p>21 that was filed?</p> <p>22 A Yes. Like I said, everything he sent to me I</p> <p>23 did look at and read.</p> <p>24 Q So after looking at the 2013 settlement, what</p> <p>25 did you do?</p>	84
<p>1 October of 2015?</p> <p>2 A I would say so.</p> <p>3 Q In October of 2015 Professor Tracy was not at</p> <p>4 the university at the time, was he?</p> <p>5 A I'm sorry?</p> <p>6 Q Professor Tracy was not at the university</p> <p>7 physically at the time, was he?</p> <p>8 A What time?</p> <p>9 Q October of 2015.</p> <p>10 A Oh, I don't know.</p> <p>11 Q You don't know if Professor Tracy was on</p> <p>12 paternity leave?</p> <p>13 A I learned that much later.</p> <p>14 Q So you know today --</p> <p>15 A But that doesn't prohibit him from being</p> <p>16 physically on campus. So I don't know whether he was</p> <p>17 physically on campus or not. I know I learned at a</p> <p>18 later date that he was on parental leave.</p> <p>19 Q What's parental leave?</p> <p>20 A Well, I don't know whether he was on paid</p> <p>21 parental leave or not. If he was on paid parental</p> <p>22 leave, it's basically that you're on a paid leave for</p> <p>23 the purpose of taking care of a newborn child.</p> <p>24 Q So he doesn't have to be at the university?</p> <p>25 A Oh, absolutely.</p>	83	<p>1 A At that point I didn't do anything.</p> <p>2 Q Did you tell Professor Tracy that he should</p> <p>3 comply with FAU's directives?</p> <p>4 A At that point -- at some point, I don't</p> <p>5 remember -- I think I said something to the effect that</p> <p>6 people that are more experienced and wiser in these</p> <p>7 matters would say sign and then fight, but I don't</p> <p>8 remember at what point I told him that. I think I</p> <p>9 remember it was after he said that they were going to</p> <p>10 legal. But I don't remember what the date of that was.</p> <p>11 Like I said, I didn't understand at that time what they</p> <p>12 meant by going to legal with it. But I said -- I</p> <p>13 thought, as I told you previously, as I recall I got</p> <p>14 three email exchanges between him and his chair. He</p> <p>15 also at some point sent me the 2013 agreement. My hope</p> <p>16 was that they would resolve this. It even says in the</p> <p>17 Collective Bargaining Agreement that the first step is</p> <p>18 to try to resolve it. Then there was no communications,</p> <p>19 I recall, for about a week-and-a-half. I guess I had</p> <p>20 kind of assumed that maybe they had settled this and it</p> <p>21 had gone away. But then he sent me an email. I'm going</p> <p>22 to say it was November 9th, maybe, and he said now his</p> <p>23 chair told him that they were taking this to legal. And</p> <p>24 I said sign it. I said sign it and then we'll fight it.</p> <p>25 Q But before you told Professor Tracy to comply</p>	85



<p>1 with FAU's directive, did you make a determination as to 2 whether the university was in violation of the 2013 3 settlement agreement in any way? 4 A The university was in violation of it? 5 Q I'm asking if you made a determination before 6 telling Professor Tracy to comply with the directive, 7 did you make a determination as to whether the 8 university was in violation of their 2013 settlement 9 agreement? 10 A So if I understand the question, you're saying 11 in 2015, that I'm getting this stuff, they were in 12 violation in 2015? 13 Q No. I'm asking you if before you told 14 Professor Tracy to comply with FAU's directives, did you 15 investigate or make a determination, or did anybody, as 16 to whether FAU had violated their 2013 settlement with 17 Professor Tracy? 18 A No, and I'm not sure I see the connection. 19 Q You don't see connection between disciplinary 20 action that was retracted or withdrawn in 2013 against 21 Professor Tracy for his outside activities? 22 A Every case is different. As I stated before, 23 that case in 2013 was different in a number of ways. For 24 one thing, the issue was different, the settlement was 25 different. Everything -- you can't compare -- every</p>	<p>86</p> <p>1 in any way, to me or anyone else for that matter, but 2 I'll talk for myself, that there was any violation of 3 anything. So what am I going to investigate? 4 Q In October 2015 you were the president of the 5 United Faculty of Florida FAU chapter, right? 6 A Yes. 7 Q Are you saying that it wasn't your 8 responsibility or determine whether or not the 9 university was compliant with or violating agreements 10 between your members? 11 A I had no reason to believe there was a 12 violation. So what was I going to investigate? 13 Q Are you saying Professor Tracy didn't tell you 14 there may be an issue here, there may be a violation of 15 my agreement from 2013? Is that what you're saying? 16 A I'm saying that I did not see any violation of 17 an agreement. I think he -- I don't know. 18 Q Before Professor Tracy comes to you in October 19 you're in the Senate Faculty meeting, right? You were 20 there? 21 A Yes. 22 Q September 4, 2015. 23 A I'm taking your word that's the correct date 24 and everything. I believe we're talking about the same 25 meeting.</p>
<p>1 case is individual. Even if it's the same area of the 2 Collective Bargaining Agreement. Every case is 3 different. 4 Q Let me ask it in a different way. 5 A In other words, what happened in 2013 is what 6 happened in 2013. What I have to do is look at the 7 facts that are occurring in 2015. 8 Q But to answer my question -- my question was 9 whether there was an investigation or whether there was 10 a determination as to whether FAU had honored or 11 violated the agreement they had with Professor Tracy. 12 Regardless of what you told him, did anybody do that? 13 Did anybody actually look at the settlement agreement? 14 Did you do that? Did you look at it and say -- 15 A I looked at the settlement agreement. What 16 violation are you talking about? What violation are you 17 talking about? 18 Q I'm asking you if you made a determination. 19 A No, I didn't see any violation. 20 Q Okay. What did you do to determine whether or 21 not there was a violation or there wasn't a violation? 22 A That's like asking me when did you stop 23 beating your wife. This is a ridiculous question. I'm 24 sorry. This was settled in 2013. I looked at the 25 facts. This is now 2015. There was nothing to suggest</p>	<p>87</p> <p>1 Q Let me just mark this so we can confirm. I'm 2 sorry, I don't have a copy of this, but why don't you 3 take a look? This is going to be P Z-9 for today. Let 4 me know when you've had the chance to review the entire 5 document. 6 A Okay, so this is different. This appears to 7 be a discussion -- concerns brought up by faculty -- and 8 being reprimanded for such activity via letter or email 9 -- I was present at that meeting. Yeah, my signature is 10 on that. 11 (Whereupon Plaintiff's Exhibit Z-9 was marked 12 for identification.) 13 Q (By Mr. Leo) Does this refresh your 14 recollection as to what date the meeting was held? 15 A Yes, it was September 4th. 16 Q And you were present for the entire meeting? 17 A I may've missed the first couple of minutes. 18 Q Were you present when the faculty members were 19 complaining about the outside activities policy? 20 A Yes. Although, as I've stated again and 21 again, most of the discussion -- there was discussions 22 about the outside activity form, but most of the 23 discussion was focused more on what would be related to 24 Article 5. Let me read what it says here. "Concern is 25 brought up about the faculty engaging in outside</p>

<p>1 community activities and being reprimanded for such 2 activities via letter or email." The reprimand -- not 3 reprimand, but the letters, I termed them as nastygrams, 4 were basically saying you didn't disassociate yourself 5 from the university when you wrote that article for the 6 paper, or you did that interview for the media. The 7 outside activity forms did come up, but I clearly 8 remember it was not the focus of the issue. Lenz or 9 someone said they accused it as being confusing. I 10 remember the provost said no, it's not. Just follow the 11 guidelines. So it was discussed, but like I said, it 12 wasn't -- the big part of the discussion, as I remember 13 it, was related more to the issue of the disclaimer or 14 whatever you want to call it.</p> <p>15 Q Was the issue that was presented by multiple 16 faculty members in September of 2015, was that the same 17 issue that Professor Tracy had to deal with in 2013 18 regarding his disclaimer on his blog?</p> <p>19 A Yes, we're talking about Article 5.</p> <p>20 Q Now, before when you say all the cases are 21 different, would you agree with me that what the faculty 22 members was complaining about in 2015, before Professor 23 Tracy is given yet another notice of discipline, was the 24 same as the problem that Professor Tracy faced in 2013?</p> <p>25 A The issue that you're talking about here with</p>	<p>90</p> <p>1 that they were happy with, and it went away. My reading 2 of this was that he was in compliance.</p> <p>3 Q When?</p> <p>4 A In 2013.</p> <p>5 Q In 2015 was Professor Tracy in compliance?</p> <p>6 A No.</p> <p>7 Q Why?</p> <p>8 A Because he was engaging in outside activities 9 that should be reported according to the Collective 10 Bargaining Agreement.</p> <p>11 Q Which activities was he engaged in that 12 required reporting?</p> <p>13 A Well, let see. He had a blog which was very 14 much reportable. He had a book --</p> <p>15 Q Let's start there. Why was Professor Tracy's 16 blog reportable?</p> <p>17 A There's at least three reasons that I can 18 think of.</p> <p>19 Q Go ahead. What's the first one?</p> <p>20 A The first one is the topic of the blog was 21 almost indistinguishable. The things that were on the 22 blog and comprising the blog were almost 23 indistinguishable for what he was going professionally.</p> <p>24 And he continues to compare it to a Facebook page.</p> <p>25 Facebook has my family vacation, this is when we were on</p>	<p>92</p>
<p>1 the nastygrams saying you need to disclaim your 2 disassociation with FAU, it was very similar, yes.</p> <p>3 Q So Professor Tracy in 2013 gets a nastygram?</p> <p>4 A Well, yeah. He got a letter of reprimand as I 5 remember.</p> <p>6 Q And this was concerning his blogging activity?</p> <p>7 A I believe so, yes.</p> <p>8 Q And in 2013 the United Faculty of Florida 9 defended Doctor Tracy against those nastygrams or 10 letters of discipline?</p> <p>11 A They filed a grievance, yes.</p> <p>12 Q Back then they didn't Professor Tracy that he 13 needs to comply and then fight, did they?</p> <p>14 A No, but you're comparing apples and oranges.</p> <p>15 Q Aren't we comparing apples and apples?</p> <p>16 A The gist of it was he was already complying.</p> <p>17 Q In what way?</p> <p>18 A There was nothing to comply -- in other words, 19 my reading of the documents, the gist of it was he was 20 already complying.</p> <p>21 Q Who was?</p> <p>22 A Doctor Tracy. There was already a disclaimer 23 on there, and as I recall, they were saying that's not 24 enough. The agreement came down to -- and again, I'm 25 going back on memory -- is that he crafted a disclaimer</p>	<p>91</p> <p>1 Mount Kilimanjaro. It's not dealing with -- these 2 issues and things that were on his blog were directly 3 related to what he does professionally. There's a 4 donate button -- or was -- it's shut down now. There's 5 a donate button on there. He was soliciting money. I 6 don't know how much money he got, and that opens another 7 Pandora's Box for him, but that's his problem. He had a 8 donate button on there, and when you click the donate 9 button it said one of the things you're donating to was 10 Memory Hole Blog independent research. The Collective 11 Bargaining Agreement clearly states if you're doing 12 outside compensated or uncompensated professional 13 activity including research; that it needs to be 14 reported. So for all of those reasons, this is 15 something that's reportable.</p> <p>16 Q I want to go to the form real quick if you can 17 pull out the outside activities form from the exhibits 18 that are in front of you. I think it's one of these in 19 front of you.</p> <p>20 A Alright.</p> <p>21 Q And for the record, we're referring to P Z-3 22 for today. Where on this form would Professor Tracy 23 disclose his personal blog?</p> <p>24 A Name of employer/activity.</p> <p>25 Q How would he disclose it? Maybe you can walk</p>	<p>93</p>



<p>1 me through the form and how it should be disclosed. 2 A He would put the name of -- what is it? Memory 3 Hole Blog. 4 Q Now, it's not his employer, so how would he 5 list this? 6 A It's an activity. It says employer/activity. 7 I use slashes all the time. 8 Q So you're saying it's either/or? 9 A Yes. 10 Q Where are the instructions for filling out 11 this form located? 12 A They would've been on the FAU website at the 13 time. 14 Q Did you review the instructions for this form 15 at any time? 16 A Oh, I'm sure I did, yes. 17 Q Before you directed Professor Tracy to submit 18 this form for his blog, did you review the instructions 19 on the form? 20 A I'm sure I looked at them. 21 Q You say you're sure you did, but do you know 22 if you did? 23 A Again, I'm going by memory, but I'm almost 24 positive I did, yes. I looked at it. 25 Q With respect to the location, what did he put</p>	<p>94</p> <p>1 media, and the roll of the media. He talks about the 2 media and how -- how can I phrase it --- how media 3 works, how it doesn't work, how it influences or it's 4 influenced by different forces. He's an expert in the 5 media. He's also very, very involved in these issues of 6 conspiracy theories. 7 Q Is it your testimony that the personal blogs 8 of the faculty members should be disclosed pursuant to 9 the outside activities policy of the university? 10 A That's not what I'm saying. I'm saying that 11 based on the criteria we use -- based on the three 12 criteria that I stated, the close alignment of what he 13 was doing professionally, and the fact that he was 14 soliciting money, and that he was indicating that he was 15 doing research through this blog, clearly if you look at 16 the Collective Bargaining Agreement, it clearly is 17 something that needs to be reported. 18 Q Did you ask Professor Tracy what the 19 donations, if any that were received, were for on the 20 blog? 21 A It said it on the blog when you clicked on the 22 donate button, it told you what it was for and it was 23 for his independent research. 24 Q Did you ask Professor Tracy if he actually 25 received any donations?</p>
<p>1 for location? 2 A I guess wherever the blog was housed. I'm not 3 a -- I know about this much about blogs, so I'm not sure 4 how it would be reported in terms of -- the location 5 would be -- he would probably just put the Internet 6 address on there, or if it is -- I don't know how blogs 7 work, so I don't know how to answer that. 8 Q A moment ago you said that you were 9 distinguishing a blog from Facebook, but now you don't 10 know what a blog is? 11 A I know there's a distinction between Facebook 12 and a blog. Facebook pages don't have donate buttons 13 for research. 14 Q Isn't a blog just a place where people put 15 their thoughts and opinions online? 16 A I think it can be a lot more than that, sir. 17 Q Okay. In what way? 18 A In this way, a very important way. This is 19 something that's directly related to what he's doing 20 professionally. It's more or less an extension. 21 Q How did you make that determination, that what 22 Professor Tracy was doing on his personal blog was 23 directly related to what he was teaching? 24 A Because it is. He taught a course on 25 conspiracy theories. He's an expert in the area of</p>	<p>95</p> <p>97</p> <p>1 A No, I did not. 2 Q Did you ask Professor Tracy whether any of the 3 activity he was involved in on his personal blog was 4 actually compensated? 5 A No. 6 Q So you didn't know whether or not Professor 7 Tracy was actually receiving compensation for his blog? 8 A I would argue it's irrelevant. If he is 9 soliciting money -- 10 Q My question is: did you actually ask Professor 11 Tracy or investigate as to whether he was receiving 12 money? 13 A No, I did not. 14 Q So how can you make a determination as to 15 whether it was compensated or uncompensated activity? 16 A It's irrelevant. In the Collective Bargaining 17 Agreement it says compensated or uncompensated outside 18 research is something that needs to be reported. 19 Q So the problem that the faculty members had in 20 September of 2015 was this very language, was it not? 21 A What very language? 22 Q The vague, the confusing, the ambiguous 23 wording of the policy. 24 A What I'm talking about is the Collective 25 Bargaining Agreement, and there's nothing vague or</p>

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<p>1 confusing about that, sir.</p> <p>2 Q Let's talk about the Collective Bargaining</p> <p>3 Agreement then. Let's start with Article 19. What's</p> <p>4 your understanding of what reportable activity means?</p> <p>5 A I think it describes it in the article.</p> <p>6 Q I'm going to show you what's been marked as P</p> <p>7 Z-10 for today.</p> <p>8 A What version?</p> <p>9 (Whereupon Plaintiff's Exhibit Z-10 was marked</p> <p>10 for identification.)</p> <p>11 Q (By Mr. Leo) This is the version that was in</p> <p>12 effect in 2015.</p> <p>13 A Okay. Reportable outside activity, Article</p> <p>14 19.2(a) "shall mean any compensated or uncompensated</p> <p>15 professional practice, consulting, teaching, or research</p> <p>16 which is not part of the employee's assigned duties, and</p> <p>17 for which the university has provided no compensation."</p> <p>18 Q What would uncompensated activity described</p> <p>19 here be?</p> <p>20 A It could be the blog. You asked me a little</p> <p>21 while ago well, he may not have received any money.</p> <p>22 Whether he was receiving money or not, he was doing</p> <p>23 outside research, and he indicated and said he was on</p> <p>24 his blog, give me money for my outside -- my independent</p> <p>25 research. So whether he received money or not, if he's</p>	<p>1 Q Did you read the chapter?</p> <p>2 A No, I didn't read it.</p> <p>3 Q So you don't know if he contributed to the</p> <p>4 book, or if they copied his blog and put it in the book?</p> <p>5 A Okay, so if he didn't, then he didn't have to</p> <p>6 report it.</p> <p>7 Q Please answer my question. Do you know</p> <p>8 whether Professor Tracy actually contributed to that</p> <p>9 book, yes or no?</p> <p>10 A Do I know? How would I know? My</p> <p>11 understanding is yes, unless everybody in the world is</p> <p>12 lying, I guess.</p> <p>13 Q Did you read the book?</p> <p>14 A No, I didn't read the book.</p> <p>15 Q Did you talk to Professor Tracy and ask</p> <p>16 Professor Tracy if he contributed to the book?</p> <p>17 A No, I did not. If he didn't then he doesn't</p> <p>18 have a blessed thing to worry about.</p> <p>19 Q Why is that?</p> <p>20 A Because if he didn't have anything to do with</p> <p>21 the book, if he didn't contribute to the book at all,</p> <p>22 then it's -- so he didn't write the Bible either, so he</p> <p>23 doesn't have to declare the Bible either.</p> <p>24 Q Going back to your advisement and instruction</p> <p>25 that his situation was not grievable in 2015, was that</p>
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<p>1 doing outside research, that would count as an outside</p> <p>2 activity. He was a co-author or a contributor to a</p> <p>3 book, which is certainly research. I know at one point</p> <p>4 him and his co-authors were trying to get money for the</p> <p>5 book. I don't know if they received any, but the book,</p> <p>6 whether it produced a profit or not, clearly meets the</p> <p>7 criteria of outside research.</p> <p>8 Q What you're talking about now, when did you</p> <p>9 learn that? When was the first time you learned that</p> <p>10 Professor Tracy was working on a book, or that his blog</p> <p>11 was included in a book that was published?</p> <p>12 A First off, I didn't say anything about the</p> <p>13 blog being included in the book, but this was something</p> <p>14 that was going on at the time.</p> <p>15 Q I'm asking: when was the first time you</p> <p>16 learned about this book?</p> <p>17 A I don't remember exactly the first time.</p> <p>18 Q Do you know if it was his book or if it was</p> <p>19 somebody else's book?</p> <p>20 A He was a contributor to -- the title of it was</p> <p>21 No One Died at Sandy Hook.</p> <p>22 Q Did Professor Tracy write that book?</p> <p>23 A He was a contributor to it.</p> <p>24 Q In what way?</p> <p>25 A He contributed chapters.</p>	<p>1 based on your understanding of his book?</p> <p>2 A No. What it's based on, if he has outside</p> <p>3 activities, which he did, then he needs to report them.</p> <p>4 He had other outside activities, as well. He had a</p> <p>5 radio show, Real Politic.</p> <p>6 Q Was this compensated or uncompensated</p> <p>7 activity?</p> <p>8 A I have no idea, but according to the</p> <p>9 Collective Bargaining Agreement it doesn't really</p> <p>10 matter.</p> <p>11 Q Regarding the language in the article you just</p> <p>12 pointed to, Article 19, where does it define</p> <p>13 uncompensated activity?</p> <p>14 A I'm pretty sure we all know what uncompensated</p> <p>15 means. You're not getting paid for it.</p> <p>16 Q What I'm asking is: uncompensated activity is</p> <p>17 required to be reported. Where does it define that in</p> <p>18 the policy?</p> <p>19 A In the policy, I don't have the policy in</p> <p>20 front of me. I think at that point in time -- and</p> <p>21 again, I'm just going by memory -- compensation --</p> <p>22 reportable compensation -- and I'm just going by memory,</p> <p>23 so I can't say this is the absolute. But compensation</p> <p>24 means -- I think the figure was \$5,000, I think, at that</p> <p>25 time. No, let me back up. In terms of compensation --</p>
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<p>1 confusing about that, sir.</p> <p>2 Q Let's talk about the Collective Bargaining</p> <p>3 Agreement then. Let's start with Article 19. What's</p> <p>4 your understanding of what reportable activity means?</p> <p>5 A I think it describes it in the article.</p> <p>6 Q I'm going to show you what's been marked as P</p> <p>7 Z-10 for today.</p> <p>8 A What version?</p> <p>9 (Whereupon Plaintiff's Exhibit Z-10 was marked</p> <p>10 for identification.)</p> <p>11 Q (By Mr. Leo) This is the version that was in</p> <p>12 effect in 2015.</p> <p>13 A Okay. Reportable outside activity, Article</p> <p>14 19.2(a) "shall mean any compensated or uncompensated</p> <p>15 professional practice, consulting, teaching, or research</p> <p>16 which is not part of the employee's assigned duties, and</p> <p>17 for which the university has provided no compensation."</p> <p>18 Q What would uncompensated activity described</p> <p>19 here be?</p> <p>20 A It could be the blog. You asked me a little</p> <p>21 while ago well, he may not have received any money.</p> <p>22 Whether he was receiving money or not, he was doing</p> <p>23 outside research, and he indicated and said he was on</p> <p>24 his blog, give me money for my outside -- my independent</p> <p>25 research. So whether he received money or not, if he's</p>	<p>1 Q Did you read the chapter?</p> <p>2 A No, I didn't read it.</p> <p>3 Q So you don't know if he contributed to the</p> <p>4 book, or if they copied his blog and put it in the book?</p> <p>5 A Okay, so if he didn't, then he didn't have to</p> <p>6 report it.</p> <p>7 Q Please answer my question. Do you know</p> <p>8 whether Professor Tracy actually contributed to that</p> <p>9 book, yes or no?</p> <p>10 A Do I know? How would I know? My</p> <p>11 understanding is yes, unless everybody in the world is</p> <p>12 lying, I guess.</p> <p>13 Q Did you read the book?</p> <p>14 A No, I didn't read the book.</p> <p>15 Q Did you talk to Professor Tracy and ask</p> <p>16 Professor Tracy if he contributed to the book?</p> <p>17 A No, I did not. If he didn't then he doesn't</p> <p>18 have a blessed thing to worry about.</p> <p>19 Q Why is that?</p> <p>20 A Because if he didn't have anything to do with</p> <p>21 the book, if he didn't contribute to the book at all,</p> <p>22 then it's -- so he didn't write the Bible either, so he</p> <p>23 doesn't have to declare the Bible either.</p> <p>24 Q Going back to your advisement and instruction</p> <p>25 that his situation was not grievable in 2015, was that</p>
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<p>1 doing outside research, that would count as an outside</p> <p>2 activity. He was a co-author or a contributor to a</p> <p>3 book, which is certainly research. I know at one point</p> <p>4 him and his co-authors were trying to get money for the</p> <p>5 book. I don't know if they received any, but the book,</p> <p>6 whether it produced a profit or not, clearly meets the</p> <p>7 criteria of outside research.</p> <p>8 Q What you're talking about now, when did you</p> <p>9 learn that? When was the first time you learned that</p> <p>10 Professor Tracy was working on a book, or that his blog</p> <p>11 was included in a book that was published?</p> <p>12 A First off, I didn't say anything about the</p> <p>13 blog being included in the book, but this was something</p> <p>14 that was going on at the time.</p> <p>15 Q I'm asking: when was the first time you</p> <p>16 learned about this book?</p> <p>17 A I don't remember exactly the first time.</p> <p>18 Q Do you know if it was his book or if it was</p> <p>19 somebody else's book?</p> <p>20 A He was a contributor to -- the title of it was</p> <p>21 No One Died at Sandy Hook.</p> <p>22 Q Did Professor Tracy write that book?</p> <p>23 A He was a contributor to it.</p> <p>24 Q In what way?</p> <p>25 A He contributed chapters.</p>	<p>1 based on your understanding of his book?</p> <p>2 A No. What it's based on, if he has outside</p> <p>3 activities, which he did, then he needs to report them.</p> <p>4 He had other outside activities, as well. He had a</p> <p>5 radio show, Real Politic.</p> <p>6 Q Was this compensated or uncompensated</p> <p>7 activity?</p> <p>8 A I have no idea, but according to the</p> <p>9 Collective Bargaining Agreement it doesn't really</p> <p>10 matter.</p> <p>11 Q Regarding the language in the article you just</p> <p>12 pointed to, Article 19, where does it define</p> <p>13 uncompensated activity?</p> <p>14 A I'm pretty sure we all know what uncompensated</p> <p>15 means. You're not getting paid for it.</p> <p>16 Q What I'm asking is: uncompensated activity is</p> <p>17 required to be reported. Where does it define that in</p> <p>18 the policy?</p> <p>19 A In the policy, I don't have the policy in</p> <p>20 front of me. I think at that point in time -- and</p> <p>21 again, I'm just going by memory -- compensation --</p> <p>22 reportable compensation -- and I'm just going by memory,</p> <p>23 so I can't say this is the absolute. But compensation</p> <p>24 means -- I think the figure was \$5,000, I think, at that</p> <p>25 time. No, let me back up. In terms of compensation --</p>

<p>1 let me back up. In terms of a conflict of interest for 2 it to qualify as a conflict of interest, the figure was 3 \$5,000. In terms of being compensated, I don't have the 4 guidelines in front of me. The thing is, it's 5 compensated or uncompensated. You're trying to split 6 hairs, but that's what you do.</p> <p>7 Q I'm not splitting hairs. I'm just asking 8 questions about a policy that's at issue in this case. 9 For example, this policy, I don't see anything about 10 \$5,000. So maybe you can tell me where --</p> <p>11 A If you're talking about what defines conflicts 12 of interest, there was accompanying guidelines to this.</p> <p>13 Q Is there more than what's in the Collective 14 Bargaining Agreement that you rely on in interpreting, 15 or enforcing, or doing anything with respect to Article 16 19?</p> <p>17 A Not really, no.</p> <p>18 Q When you're talking about conflicts of 19 interest, where are you getting this \$5,000 requirement 20 from?</p> <p>21 A This is from the university website. This is 22 how they are attempting -- I believe they call it the 23 guidelines encompassing the conflicts of interest. 24 They're trying to identify what they consider to be 25 conflicts of interest. The whole idea of the outside</p>	<p>102</p> <p>1 research now, but I might in the future. Well, when you 2 make that kind of statement, you're basically saying 3 this is fodder or this is something I'm potentially 4 going to use for research. All of these things -- and 5 you're asking for donations for research based on the 6 blog. Research, research, research, that's very clear. 7 Compensated or uncompensated, clearly needs to be 8 reported.</p> <p>9 Q And what you're testifying to right now, is 10 that something you came up with, or is that something 11 the union told you, or is that something you read in the 12 self-serving letters written by the university?</p> <p>13 A That, number one, is an insulting question. 14 Number two, I can think, sir. I can think and I can 15 read.</p> <p>16 Q So you're repeating what you read in a letter 17 by the university? That's what it sounds like it, so 18 that's why I'm asking.</p> <p>19 A That's not what I said, and that's a complete 20 misrepresentation.</p> <p>21 Q What was the union's position with respect to 22 defending Professor Tracy in 2015, before you learned 23 about everything you just testified to?</p> <p>24 A There was no union position.</p> <p>25 Q There was no union position, that's right. So</p>	<p>104</p>
<p>1 activity report is to report activities so the 2 university can make a decision as to whether a conflict 3 of interest exists or not, and then if there's a 4 disagreement, the faculty member may file a grievance to 5 dispute that finding.</p> <p>6 Q Where does the university require the 7 reporting of social media or online activity?</p> <p>8 A It doesn't specifically require that at all. 9 It requires that any compensated or uncompensated 10 professional practice, consulting, teaching, or research 11 that's not part of the employee's assigned duties, and 12 for which the university has provided no compensation.</p> <p>13 Q So all the faculty members have Facebook 14 pages, or most of them. Are those required to be 15 reported under this policy?</p> <p>16 A Not according to my understanding. This is 17 not professional -- again, every case is different, but 18 if I'm talking about this is my family; we're on 19 vacation, that's one thing. This was directly related 20 to -- if you looked at the things that were on the 21 website, was directly related to what he was doing 22 professionally. It was almost -- and these are my words 23 -- but it was almost an extension of what he was doing 24 in the classroom and his research. And by the way, in 25 the 2013 agreement he said I'm not going to use this for</p>	<p>103</p> <p>1 they didn't defend Professor Tracy in 2015?</p> <p>2 A Who's they? Who's they?</p> <p>3 Q The union. Did the union defend Professor 4 Tracy in 2015, yes or no?</p> <p>5 A Yes. No, not in 2015. He didn't get fired 6 until 2016.</p> <p>7 Q Right. So the union did nothing?</p> <p>8 A The union gave him good advice, that frankly, 9 if he had filed, he's probably still be employed today. 10 The advice was comply with a lawful order from your 11 supervisor.</p> <p>12 Q Who made a determination that the order from 13 the supervisor was lawful?</p> <p>14 A The grievance committee, we took a vote and 15 the grievance committee and unanimously decided that the 16 grievance -- the letter of reprimand was not a violation 17 of the Collective Bargaining Agreement, that was asking 18 him to file his outside activity reports was not a 19 violation of the Collective Bargaining Agreement.</p> <p>20 Q So you, Michael Moats, and who else?</p> <p>21 A Doug McGetchin and Tim Lenz.</p> <p>22 Q We've deposed Tim Lenz and Doug McGetchin, and 23 neither of them testified that they participated in that 24 determination. So other than you and Michael Moats, was 25 there anybody else at United Faculty of Florida who</p>	<p>105</p>



<p>1 actually participated in this determination that 2 Professor Tracy had no grievable situation? 3 A No, there was no one else that participated. 4 And my distinct recollection is that I asked the members 5 of this group, the assembled individuals that were 6 there, are we in agreement that there is no violation of 7 the Collective Bargaining Agreement. And point of fact, 8 shortly after that meeting, after Tracy said I'm 9 resigning from the union, I was upset about that; that 10 he was resigning. I forwarded his letter of response -- 11 he wrote a very eloquent response to Coltman's letter of 12 reprimand. That's what I had originally sent the 13 members of the committee, and I said I want you to look 14 at this and let's make a decision whether this is 15 something we should file a grievance on. I sent it to 16 them again. I said look, we still have time to file a 17 grievance. Look at it again and see if there's anything 18 in there that you think about which we could file a 19 grievance. I said I want to give him every opportunity. 20 And that was sent, I think, I want to say on December 21 2nd or December 3rd. 22 Q Professor Tracy could have grieved on his own 23 without the union's assistance? 24 A Yes, he could have. 25 Q Why did you stop him?</p>	<p>106</p> <p>1 not grievable, you said that was the day after you sent 2 that email? 3 A We met on November 30th and I emailed him on 4 December 1st, I believe. 5 Q So on December 1st you were told that what you 6 instructed Professor Tracy was wrong? 7 A What? That doesn't even make sense. 8 Q On December 1st you emailed Professor Tracy, 9 your situation is not grievable, right? 10 A Right. 11 Q You testified earlier that you were 12 immediately told afterwards? 13 A Oh, I don't know if it was immediate or not, 14 but I was told at some point that was not proper 15 terminology. 16 Q When exactly were you told that? 17 A I don't remember. 18 Q Was it before or after -- 19 A I don't remember. 20 Q I haven't even asked the question. 21 A I don't remember, so go ahead and ask. I 22 don't remember. 23 Q My question is: was that instruction from your 24 superiors at the union, was that before the window 25 closed on Professor Tracy ability to file a grievance?</p> <p>108</p>
<p>1 A I didn't stop him. 2 Q When Professor Tracy said that he was going to 3 leave the union, why did your chapter actively stop 4 Professor Tracy from leaving? 5 A That's a misrepresentation. The chapter 6 didn't actively stop him from leaving the union. 7 Q You testified earlier that Mike Budd -- 8 A Mike Budd told me that Doctor Tracy had 9 already decided not to leave the union. If you read the 10 email he said I'm surprised Jim told me that he had 11 decided not to leave the union. Based on that email, he 12 had made that decision on his own, but there was no 13 decision by the union to tell him to quit or not to 14 quit. My response to it was to ask the contract 15 enforcement committee to look at it again, to see if 16 there was anything that they thought that we missed. 17 Q How did you convey that second thought 18 request? 19 A I emailed it. 20 Q What day? 21 A It would've been December 2nd or 3rd. 22 Q I haven't seen an email to that effect. Going 23 back to what you had said, that you were told by Michael 24 Moats and others in the union that your language to 25 Professor Tracy in your response that his situation was</p>	<p>107</p> <p>1 A I don't remember. 2 Q When would a grievance need to be filed in 3 response to the November 10th notice of discipline that 4 Professor Tracy was issued by the school? 5 A The way Article 20 reads, it's the date in 6 which the individual knew. So there was a little bit of 7 a grey area there, because the letter was dated the 9th. 8 Doctor Tracy said he didn't receive it -- or I'm sorry, 9 I believe it was dated the 10th. Doctor Tracy said he 10 didn't receive it until the 19th. But I think we had a 11 discussion before we had even made a decision about 12 whether or not to grieve this, in terms of what was the 13 30-day window. To be on the safe side, I would've say 14 probably file it by the 9th, to be on the safe side. 15 Although, if he could show that he had no knowledge of 16 the letter of reprimand until the 19th, theoretically, 17 it could've been to the 19th. You always want to air on 18 the side of being safe. In other words, you want to 19 make sure you're under that 30-day window. I wanted to 20 make sure we had a decision. So he had at least a week. 21 If he wanted to file on his own he could file on his 22 own. 23 Q But Professor Tracy was told that it was not 24 grievable right at the end of that window? 25 A No, he had over a week. I told him on the</p> <p>109</p>

<p>1 1st. He had until the 9th -- at least until the 9th to 2 file.</p> <p>3 Q And not just Professor Tracy could've filed a 4 grievance, but also the union could've filed a grievance 5 on behalf of the chapter, is that correct?</p> <p>6 A That would be incorrect. That's not how 7 chapter grievances work. If you're going to file a 8 chapter grievance, you have to show that somehow his 9 particular incident is harming the entire university. 10 And that's simply not the case.</p> <p>11 Q So you're saying to file a chapter grievance, 12 you have to show that a policy is being used in a way 13 against all faculty, that's not proper or a violation of 14 the Collective Bargaining Agreement?</p> <p>15 A The issue here was not a policy. He was told 16 that he needed to file outside activity reports, which 17 he did not do for three years. I'll come back to that, 18 I want to come back to that for a second. So he had not 19 filed this in three years. So they said you need to 20 file. You got a letter of reprimand because you're not 21 filing these reports. That's distinct to him. That's 22 not a policy. That's saying you were given a direct 23 order to file the reports. You're talking about a 24 policy. This is basically saying you need to follow the 25 Collective Bargaining Agreement and file these reports.</p>	<p>110</p> <p>1 The issue I'm hearing is confusion. He had three years 2 to clear this up. If there was an issue of confusion, 3 he hadn't filed these reports in three years. If there 4 was an issue of confusion, he had three years to clear 5 this up. Go ahead.</p> <p>6 Q You're really trying to single out Professor 7 Tracy's issues, but my questions are not -- I'm not 8 asking you about his issues. My question was whether or 9 not a chapter grievance could be filed against the 10 outside activities policy for its use universally, not 11 just against one individual. What would your answer be 12 to that?</p> <p>13 A No. Not in this particular case, no.</p> <p>14 Q So let me show you --</p> <p>15 A And I know exactly where you're going.</p> <p>16 Q Where am I going?</p> <p>17 A No, I'll wait.</p> <p>18 Q No, tell me. You see very prophetic today.</p> <p>19 A Yeah, well, because you're easy to read, but 20 go ahead.</p> <p>21 Q Am I going to April of 2016?</p> <p>22 A Yep. You're very predictable.</p> <p>23 Q Let's talk about that.</p> <p>24 A Yeah, let's talk about it.</p> <p>25 Q Why did you file a chapter grievance in April</p> <p>111</p>
<p>1 Q Is this the report you're talking about?</p> <p>2 A Yes, the file outside activity report.</p> <p>3 Q I just want to be clear for the record.</p> <p>4 A I'm not done.</p> <p>5 Q I just want to be clear for the record.</p> <p>6 A I'm not done. I'm not done.</p> <p>7 Q I just want to make sure you're referring to 8 the same exhibit we're talking about.</p> <p>9 A I'm not done.</p> <p>10 Q I'll give you a chance to finish. Let me just 11 clarify for the record, when you say report, you're 12 referring to --</p> <p>13 A That he needed to file the outside activity 14 report based on -- yes, whatever this document -- the 15 one you're holding in your hand.</p> <p>16 Q I don't have your exhibit. That's why I want 17 to make sure we're talking about the same thing.</p> <p>18 A I've got a lot of Z's in front of me.</p> <p>19 Q I don't have it. All of the exhibits are in 20 front of you. So if someone took them then we need to 21 stop the deposition and find them. Is it underneath 22 this one?</p> <p>23 A There is it.</p> <p>24 Q You can continue.</p> <p>25 A My point is this. I kind of left this out.</p>	<p>113</p> <p>1 of 2016 against the outside activities policy?</p> <p>2 A That's not what I was filing against. You 3 continue to misstate things.</p> <p>4 Q I'm going to show you what's been marked as P 5 Z-11 for today. Is this where I was going?</p> <p>6 A Yep.</p> <p>7 (Whereupon Plaintiff's Exhibit Z-11 was marked 8 for identification.)</p> <p>9 Q (By Mr. Leo) This is a chapter grievance, 10 right?</p> <p>11 A Yes, it is.</p> <p>12 Q This is a chapter grievance filed against the 13 entire conflict of interest outside activities policy 14 that FAU maintains?</p> <p>15 A No, that is a total misrepresentation of 16 facts.</p> <p>17 Q Tell me what this is, this exhibit.</p> <p>18 A What we were filing against was two documents 19 that were introduced in a Faculty Senate steering 20 meeting, that were proposing to make significant 21 additions and changes to the existing policy. 22 Specifically they were trying to fold in to the 23 guidelines -- the form itself. They were putting in -- 24 folding in requirements of the federal grant 25 requirements. So for example, one of the things was</p>



<p>1 when you're reporting financial interests that you had 2 to report all the way out to very extended family. They 3 were trying to introduce -- and again, I'm going on 4 memory -- but one of the things they wanted to introduce 5 an eight-hour rule that you couldn't engage in any 6 activity, any consulting, or at least outside activities 7 if it took up more than eight hours a week. And the 8 Collective Bargaining Agreement says that it could be a 9 conflict of interest if your activities are such that 10 they impede on your ability to do your job. Now they 11 were setting an arbitrary eight hours. In here -- we 12 were wrong actually. The significant interest above 13 \$5,000 per year, that's actually in Florida statute. 14 The important thing is what they were proposing to do 15 was to change the guidelines to a point that made it 16 very -- that went way beyond anything previously in the 17 policy. That's why we filed a chapter grievance, 18 because significant changes to the policy could affect 19 everyone. So it wasn't an existing policy, it was 20 proposed changes to a policy.</p> <p>21 Q So why wasn't something like this filed in 22 September of 2015 when all of the faculty members are 23 complaining about how that policy is being used?</p> <p>24 A First of all, all of the faculty members were 25 not complaining. So again, you say things that are</p>	<p>114</p> <p>1 say that people are confused, that's one thing. But to 2 file a chapter grievance, who is it harming? 3 Q You mean, what? Threatening letters to 4 faculty members? 5 A That was a different issue. 6 Q How is that a different issue? 7 A Because that was something that had nothing to 8 do with outside activity reporting. This was -- the 9 issue was people not disassociating themselves when they 10 were doing public speaking, or if they were writing an 11 article in the paper. The nastygrams they were getting 12 was because supposedly they weren't disassociating 13 themselves from the university. It's Article 5 vs. 14 Article 19. They're two very different issues. You 15 very conveniently try to merge them together. They're 16 separate issues; apples/oranges. 17 Q Are you suggesting that Article 19, if it's 18 being used in a way that violates Article 5, that 19 wouldn't be grievable? Is that what you're saying? 20 A That's not what I'm saying at all. 21 Q Because the complaints that I heard at your 22 Senate Faculty meeting was about use of the outside 23 activities policy, Article 19, in a way that was 24 unconstitutional. Looking at your Collective Bargaining 25 Agreement, from an outsider -- and I'll just show you</p>
<p>1 obviously to your advantage, but are complete 2 misstatements.</p> <p>3 Q I could've been referring to all of the 4 faculty members at the Senate Faculty --</p> <p>5 A And that wouldn't have been true either.</p> <p>6 Q -- that I heard on the audio --</p> <p>7 A Fine.</p> <p>8 Q So all of the faculty members I heard on the 9 audio of the Senate Faculty meeting --</p> <p>10 A But that's not all the faculty members. And 11 they were complaining --</p> <p>12 Q Okay. I'm clarifying my question for you. So 13 after all of the faculty members of the Senate Faculty 14 meeting that complained about the outside activities 15 policy on September 4th, 2015, couldn't a chapter 16 grievance could've been filed at that time for changes 17 to the policy?</p> <p>18 A No, because another problem is something 19 called the 30-day rule. If something's been on the 20 books for over 30 -- you have a 30-day window -- that's 21 just one of the problems. You have a 30-day window with 22 which to complain about an existing policy. You also 23 have the issue of -- you have to show when you file a 24 grievance, that somehow, if you're saying that a policy 25 that's been existing, how is it harming people? When you</p>	<p>115</p> <p>117</p> <p>1 what's been marked as Z-12 so we can talk about it. 2 A I don't recall those statement. 3 (Whereupon Plaintiff's Exhibit Z-12 was marked 4 for identification.) 5 Q (By Mr. Leo) You don't recall Professor Lenz, 6 or Professor DeRosa, or other professors who complained 7 they were being required to get permission before 8 engaging in an outside activity? You don't recall that? 9 A No, and you don't get permission first. As a 10 matter of fact, this actually came up in collective 11 bargaining with Article 19, around the same time. The 12 administration tried to insert language during 13 collective bargaining during 2015 and 2016 that wanted 14 to do that. They wanted you to get permission first. 15 What they wanted to do, they were saying okay, you file 16 this, but you've gotta file this before you do your 17 activity. And we shot that down. We fought that in 18 collective bargaining and said no, that's going way 19 beyond. This just says you have to report it. 20 Q Isn't that exactly what your policy says in 21 Article 19? 22 A No, it does not. 23 Q But you're saying Article 19 does not say that 24 you have to submit the activity to your supervisor for 25 approval beforehand?</p>



<p>1 A No, it doesn't say beforehand. It says that 2 you have to report it once a year. And I believe it 3 also says that if -- 4 Q 19.4. 5 A "An employee proposes or engages in outside 6 activity in outside activity shall provide his or her 7 supervisor a detailed written description of proposed 8 activity. The report shall include applicable name, et 9 cetera, et cetera." 10 Q Who proposes activity, right? 11 A In practice what has been done at FAU is a 12 person reports the activity. I believe it also says -- 13 hold on. The way it's always been, you did not have to 14 get prior permission. 15 Q Just to be clear, you're saying the university 16 never required prior approval for outside activities? 17 Is that what you're saying? 18 A Yes. You needed to report it ahead of time. 19 If you knew you were going to engage in an outside 20 activity, it was your responsibility to report it. 21 Here's the difference. And this is how we shot it down 22 in collective bargaining. They wanted to say you have 23 to get permission first, and we said wait a minute. 24 There's a lot of opportunities that faculty have to 25 speak or engage in different activities. If we're going</p>	<p>118</p> <p>1 at the university, would you say that would be violation 2 of the outside activities policy? 3 A No. Every case is different. I'm not going 4 to make blanket statements. I will say again and again, 5 his blog was very, very, very different from a Facebook 6 page. You can say it's a Facebook page. He can say 7 it's a Facebook page. In reality, it ain't a Facebook 8 page. 9 Q I didn't say it was a Facebook page. 10 A You said it's like a Facebook page. Now we're 11 really playing games. 12 Q When did I say it's like a Facebook page? 13 A She can bring it up on there. 14 Q I never said that. 15 A You're using them interchangeably. You're 16 playing a game. 17 Q No, you're using them interchangeably. I 18 listed them to you. 19 A The outside activity is -- if you have a 20 Facebook page -- he ain't dealing with landscape 21 gardening. He's dealing with something that directly 22 relates to what he does professionally. 23 Q Now you're referring to the content and his 24 blog and the content of his speech. Let's talk about 25 that. When was the first time you read Professor</p> <p>120</p>
<p>1 to wait for you to give us permission, the opportunity 2 will already have passed by. The understanding is -- 3 and has been for many years -- if you're going to engage 4 in an activity, you report it and you don't get 5 permission. If the university comes back and says well, 6 that's a conflict, then there has to be a resolution. 7 But that's been practices at FAU for as long as I can 8 remember. 9 Q How many FAU faculty submit this form that you 10 know of, at time at any time for any reason? 11 A I've submitted it. 12 Q Other than yourself. 13 A I don't know the numbers. I don't have that 14 kind of data. 15 Q Did you ask anyone at the UFF-FAU, your 16 membership, which is how many members? 17 A UFF-FAU, About 870. 18 Q Did you ask any of the members whether or not 19 they've submitted these form? 20 A No, but I know some have. We may have talked 21 about it. It came up. I know people submit it. It's 22 part of the job. And not directly dealing with this, 23 but we've talked about submitting the forms. 24 Q If no FAU faculty members have submitted forms 25 for their personal blogs, Facebook pages, social media,</p>	<p>119</p> <p>1 Tracy's blog? 2 A Probably about the time that all this stuff 3 started coming up. 4 Q When you say stuff started coming up, when was 5 the first time? Give me a month and a year. 6 A Probably in late -- I'm guessing -- and I 7 didn't really read it, per se. I just looked at it and 8 went through some of it. I may have looked at a couple 9 things. It was probably -- I don't know -- late -- 10 sometime in the fall, I'm guessing, fall semester of 11 2015, I'm guessing. 12 Q So you never looked at Professor Tracy's 13 writing on his blog before the fall of 2015? Is that 14 what your testimony is? 15 A I don't think so, no. 16 Q So in 2013 when the media blasted Professor 17 Tracy and Florida Atlantic University, you didn't look 18 at his blog back then? 19 A I don't think so, no. 20 Q What was your involvement, if any, in what the 21 university was dealing with concerning Professor Tracy's 22 blog in 2013? 23 A Virtually nothing. 24 Q Did you speak to anybody at the university in 25 2013 about Professor Tracy?</p> <p>121</p>



<p>122</p> <p>1 A There was a union meeting, and this must've 2 been right about the time -- there was a union meeting - 3 - I'm sorry, executive committee meeting. I guess it 4 was 2013. I attended probably one of the first 5 executive committee meetings I ever attended, and there 6 was a faculty member from the Department of History, and 7 he wanted to have Doctor Tracy removed from the union 8 because they had lost funding.</p> <p>9 Q Was this before or after the United Faculty of 10 Florida had filed a grievance for Professor Tracy?</p> <p>11 A I believe it was after. His argument was that 12 because of Doctor Tracy and his blog, they had lost -- a 13 donor had pulled \$50,000 in funding from the Department 14 of History.</p> <p>15 Q Which donor was it?</p> <p>16 A Oh, I don't remember. But the point is, you 17 said did I say anything to anybody. So there was a 18 discussion, and I remember saying -- and I didn't 19 realize his wife was there. I felt bad about that. 20 Doctor Tracy's wife was sitting there, but I said look, 21 I don't care what he says. I said in America you've got 22 the right to be a jerk. And I said if being a jerk was 23 an offense, I said I'd have been put in jail and thrown 24 away the key a long time ago. So I don't care if it's 25 offensive or not. If you think what he says is</p>	<p>124</p> <p>1 is different. You have to look at the individual facts. 2 Q Give me an example of one case -- 3 A Tracy. 4 Q -- where what somebody at the university, a 5 faculty member, was saying on their own time; on their 6 own personal website, blog, Facebook, whatever you want 7 to call it. Give me one example of when his 8 constitutionally protected activity would need to be 9 required to be reported.</p> <p>10 A His case. 11 Q What did Professor Tracy say or post on his 12 blog that he needed to get permission before he could 13 post?</p> <p>14 MR. MCKEE: We've been through this. He's 15 already testified about that. 16 THE WITNESS: Thank you. 17 MR. LEO: I didn't ask this question. So I'm 18 going to ask it again. 19 MR. MCKEE: He's answered it. 20 A Again, the misstatement. He doesn't need to 21 get permission prior to doing anything. He was already 22 doing it. 23 Q (by Mr. Leo) Can I direct your attention to 24 this form here? This outside activities form. Can you 25 read this one line? It says "this report of proposed</p>
<p>123</p> <p>1 terrible, he has a right to do it. I said I'm not a 2 voting member -- I don't think I was a voting member of 3 the executive committee at the time, but I said he has a 4 right to do that, and hell no, you shouldn't throw him 5 out of the union.</p> <p>6 Q So in 2013 you were standing up for Professor 7 Tracy's right to speak his mind?</p> <p>8 A I have never felt or said that anything he did 9 on his blog, in his book, on his radio show, is not 10 protected by his First Amendment Rights. I think the 11 stuff that he puts on there is -- I don't have much 12 respect for it, but it is his right to do just what he 13 does. He's exercising his First Amendment Right. The 14 university never said he doesn't have the right to do 15 it. They just said you gotta report it.</p> <p>16 Q Do you think that Professor Tracy or any 17 faculty members should be required to report their 18 constitutionally protected speech to the university for 19 approval?</p> <p>20 A It depends. You make these blanket 21 statements. Every case is independent. I'm not going 22 to make --</p> <p>23 Q What does it depend on?</p> <p>24 A Every situation is different. I'm not going 25 to make blanket statements like that. Every single case</p>	<p>125</p> <p>1 activity is completed in order to comply" -- what does 2 it say on that second sentence?</p> <p>3 A "In order to comply with the rules of the 4 university and the provisions applicable to the 5 Collective Bargaining Agreement", yes.</p> <p>6 Q Please note what?</p> <p>7 A "Must be submitted and necessary approvals 8 obtained on an annual basis." On an annual basis. That 9 doesn't mean prior to.</p> <p>10 Q Would you agree with me that this report 11 requires approval of the activity that you're disclosing 12 to the university, regardless of what it is?</p> <p>13 A It says, "in order to comply with the rules of 14 the university and provisions applicable to the 15 Collective Bargaining Agreement." The Collective 16 Bargaining Agreement says that the university will 17 determine if there is a conflict of interest.</p> <p>18 Q So you would agree with me that this form is 19 required to be submitted for approval of the activity, 20 yes or no?</p> <p>21 A No. That's a misstatement.</p> <p>22 Q This isn't conditional language, you're 23 saying?</p> <p>24 A No.</p> <p>25 Q This report and necessary approvals?</p>



<p>1 A Can I answer the question? What it says is in 2 order to comply with the rules of the university -- and 3 specifically is mentions the provisions of the 4 Collective Bargaining Agreement. What's the purpose of 5 this? The purpose of this is to identify conflicts of 6 interest.</p> <p>7 Q What conflict of interest could arise from 8 someone's personal online activity?</p> <p>9 A My personal opinion is, I don't think there 10 was a conflict of interest. If they -- and that was my 11 point in telling him to fill this out. If he filled 12 this out and reported this, my opinion -- and I just 13 stated this here a few minutes ago -- nothing that he 14 was doing that I know of was a conflict of interest. I 15 don't believe anything he was doing was in violation of 16 his First Amendment Right. But you are required to 17 report. If they'd have come back and said this is a 18 conflict of interest, we would've immediately filed a 19 grievance.</p> <p>20 Q How could the Constitution -- how could the 21 First Amendment -- let me strike that. How can this 22 policy be complied with without violating the First 23 Amendment, with respect to personal view points and 24 speech of faculty members --</p> <p>25 MR. MCKEE: Objection. Calls for a legal</p>	<p>126</p> <p>1 his chair -- he's the chair, and the chair knows he's 2 doing it but not enforcing it. How would I know that?</p> <p>3 Q By talking to people.</p> <p>4 A So I'm going to interview everybody? Do you 5 understand I have a fulltime job, and that I'm on an 6 overload? I do this as a volunteer. And I'm going to 7 launch a full-scale investigation and ask every single 8 faculty member at the university, and launch an 9 investigation?</p> <p>10 Q Well, in September of 2015 did you do that?</p> <p>11 A No, I did not do that. What was I 12 investigating?</p> <p>13 Q How many professors complained that day, on 14 September 4th, 2015?</p> <p>15 A I don't know.</p> <p>16 Q Professor Tracy wasn't one of them, was he?</p> <p>17 A Oh, you're talking about September 4th in the 18 meeting?</p> <p>19 Q Right. At the Senate Faculty meeting.</p> <p>20 A Yes.</p> <p>21 Q An opportunity for you to listen to all of the 22 faculty members who participated in that, right?</p> <p>23 A Yes.</p> <p>24 Q At that meeting multiple faculty members, not 25 including Professor Tracy, because he wasn't there,</p>
<p>1 conclusion that he's not qualified to give.</p> <p>2 MR. LEO: If you can answer the question, you 3 can.</p> <p>4 A Like he said, I'm not a legal expert. Here's 5 the thing. I don't know how many ways I can say this. 6 This was never about the First Amendment. This was about 7 reporting outside activity. I said it in 2013, I said 8 it then, I'll say it now. He needed to report these 9 things because they met the criteria here. But as far 10 as I was concerned, he had every right to do these 11 things, he just needed to report them. Nothing that I 12 saw he was doing was a conflict of interest.</p> <p>13 Q (By Mr. Leo) Article 19 is being selectively 14 enforced at the university, yes or no?</p> <p>15 A I don't know. How could I know that? I'd 16 have to talk to every single faculty. I don't have the 17 data to answer that question. I can't -- how am I 18 supposed to --</p> <p>19 Q Speaking to the faculty members that you did 20 speak to --</p> <p>21 A Let me give you a scenario. Let's say he's a 22 faculty member and he is doing something that none of us 23 know about; I don't know about, but he's not reporting 24 it. So how the hell am I supposed to know if he's 25 reporting it, or not reporting it? Or how do I know --</p>	<p>127</p> <p>129</p> <p>1 complained about the outside activities policy?</p> <p>2 A People complain about a lot of things, sir.</p> <p>3 Q Okay, but I'm not talking about people 4 complaining about anything except for the outside 5 activities policy. Faculty members complained about the 6 outside activities policy that day. They complained to 7 you, right?</p> <p>8 A No, it was an open meeting of the Senate and 9 they were complaining about that and a number of other 10 things.</p> <p>11 Q Are you a member of the Faculty Senate?</p> <p>12 A Yes, I am.</p> <p>13 Q So they were complaining to you, yes or no?</p> <p>14 A No. They were complaining specifically to the 15 provost, who was present at the Senate.</p> <p>16 Q And Defendant Kelly, who was also present?</p> <p>17 A And my response was -- Marshall DeRosa put -- 18 I'm sitting there as a member of the Senate. Marshall 19 DeRosa proposed to put this in front of the Academic 20 Freedom and Due Process Committee, which I thought was 21 one hell of a good idea. And my colleagues -- I was in 22 a minority. I thought that was a great idea.</p> <p>23 Q Who shot that idea down?</p> <p>24 A The Faculty Senate voted it down.</p> <p>25 Q Is that what happened?</p>

<p>1 A Yes.</p> <p>2 Q Or did Christopher Beetle table the issue?</p> <p>3 A No, there was a vote. There was a vote.</p> <p>4 Q There was a vote?</p> <p>5 A Of the Academic Freedom -- there was a vote</p> <p>6 put forward. There was a motion put forward that this</p> <p>7 would be taken into the Academic Freedom and Due Process</p> <p>8 Committee. I asked -- Marshall made the proposal,</p> <p>9 Marshall DeRosa, and it caught my ear. I said -- hold</p> <p>10 on, I'm not done.</p> <p>11 Q I'm going to ask you for a document. If you</p> <p>12 can just hand it to me. The one you just had.</p> <p>13 A He made a proposal, a very eloquent proposal</p> <p>14 that this should go to the Academic Freedom and Due</p> <p>15 Process Committee, which frankly, I thought was one hell</p> <p>16 of an idea that would've addressed a lot of this stuff.</p> <p>17 And my colleagues voted it down.</p> <p>18 Q Can I just direct your attention to the second</p> <p>19 paragraph on that?</p> <p>20 A Do you understand these are meeting minutes</p> <p>21 and they're incomplete?</p> <p>22 Q I do. I'd like you to read that and tell me</p> <p>23 when the vote happened. Because that's not what your</p> <p>24 meeting minutes indicate.</p> <p>25 A I don't care about the meeting minutes. I was</p>	<p>130</p> <p>1 A Well, the policy, I don't recall specifically</p> <p>2 what we did about the policy, but I can tell you this.</p> <p>3 In my mind -- and I said this before -- the bigger issue</p> <p>4 that had been brought forward -- and I'm not saying the</p> <p>5 outside activity was not an issue. But the bigger issue</p> <p>6 that particular day was regarding these nastygrams, and</p> <p>7 people doing public speaking, and being told you</p> <p>8 violated this Article 5. We sat over the course of the</p> <p>9 next several months, we worked together with the Faculty</p> <p>10 Senate, and we got that removed. That language is now</p> <p>11 removed from the Collective Bargaining Agreement. Our</p> <p>12 Article 5 reads very differently than it did in</p> <p>13 September 2015. The Senate crafted language that we</p> <p>14 adopted and put it into collective bargaining. And we</p> <p>15 addressed the issue. We continued -- since you brought</p> <p>16 up the April -- whatever it is -- we're continuing to</p> <p>17 address that.</p> <p>18 Q That's a good question. What's going on with</p> <p>19 this?</p> <p>20 A Let me back up and I'll get to this. I'm not</p> <p>21 avoiding your question. A lot of times in academia, you</p> <p>22 work through various channels, whether it's various</p> <p>23 grievances, whether it's collective bargaining. There's</p> <p>24 different issues. And some things you can solve very</p> <p>25 quickly. Some things it's a slower process. When you're</p> <p>132</p>
<p>1 there, and I'm telling you what happened. I remember</p> <p>2 very distinctly. Tim Lenz was sitting behind me,</p> <p>3 Marshall DeRosa was sitting over here, and there was a</p> <p>4 very passionate exchange between faculty members about</p> <p>5 this issue. Marshall made the proposal that this should</p> <p>6 go to the Academic Freedom and Due Process Committee,</p> <p>7 and that hadn't even occurred to me. He made a very</p> <p>8 eloquent statement as to why, and I whole-heartedly</p> <p>9 said this is a great idea.</p> <p>10 Q DeRosa said that the policy was being used as</p> <p>11 a prior restraint.</p> <p>12 A I don't recall that. I do recall that he</p> <p>13 proposed that this should go to the Academic Freedom and</p> <p>14 Due Process Committee, and I thought that was one hell</p> <p>15 of a great idea.</p> <p>16 Q In your meeting minutes there, it indicates</p> <p>17 that it was tabled.</p> <p>18 A At a certain point it was tabled, but I do</p> <p>19 recall that there was an election -- not election, a</p> <p>20 vote -- on the issue of whether it should go to Academic</p> <p>21 Freedom and Due Process.</p> <p>22 Q After this issue is discussed, tables, and</p> <p>23 then as you testified, voted on, what did you do after</p> <p>24 that to investigate the merits of the allegations that</p> <p>25 had been made about the policy?</p>	<p>131</p> <p>1 talking about change at universities, it makes glaciers</p> <p>2 look like world-class sprinters. This was the beginning</p> <p>3 of something that hopefully will be positive. This was</p> <p>4 proposed change to an existing policy. That gave us a</p> <p>5 window to go after this. Because now this is less than</p> <p>6 30 days, and this is very different. This is now you're</p> <p>7 making a change. We filed a chapter grievance. We</p> <p>8 pulled a grievance because they said well, this is</p> <p>9 something we're proposing. It's not in effect. In the</p> <p>10 meantime, we pulled it and now, what we found was more</p> <p>11 changes -- the form has changed and other changes have</p> <p>12 been made. So what we're doing now --</p> <p>13 Q Changes to the outside activities policy?</p> <p>14 A Yeah. Great, huh? Wait a minute. So what</p> <p>15 we're trying to do now is finally working with the</p> <p>16 administration. There's been kind of a change in the</p> <p>17 attitude, let's just say, in the administration. We're</p> <p>18 trying now to work collaboratively -- not</p> <p>19 conspiratorially, but collaboratively -- to try and make</p> <p>20 this a better policy, and make it a tighter alignment</p> <p>21 with the Collective Bargaining Agreement. So now</p> <p>22 everything is a better fit. The issues that were raised</p> <p>23 in that meeting we're still trying to address, and</p> <p>24 hopefully, we will address, and try and make it a better</p> <p>25 policy. If we have to do things in collective</p> <p>133</p>



<p>1 bargaining, which is coming up next year, we'll go that 2 next year, as well. It's a work in progress.</p> <p>3 Q Is the way that the policy was used -- and by 4 policy, I'm referring to the outside activities conflict 5 of interest policy. Is the way that the policy was used 6 by the university with respect to Professor Tracy in 7 2015 and 2016, is that a concern to you?</p> <p>8 A Is it a concern to me? My concern would be 9 this, and we submitted a grievance, if I even understand 10 your question. Can you rephrase your question? I want 11 to understand your question, but I don't fully 12 understand.</p> <p>13 Q As you sit here today, are you concerned, or 14 were you concerned with the way that the university used 15 Article 19 with respect to Professor Tracy's blogging?</p> <p>16 A Not that, per se, no. You keep bringing up 17 the blog. What they said was that he needed to report 18 outside activity. He was doing other things besides the 19 blog; you keep coming back to the blog. He had a book, 20 that according to you, he didn't write.</p> <p>21 Q I didn't say that. I asked you if you knew, 22 and you said you didn't know.</p> <p>23 A You know what? I don't know the earth is 24 round. I'm pretty sure it is, but I don't know that 25 it's round.</p>	<p>134</p> <p>1 A Well, in order to answer your question I need 2 some clarification. You said how it was used against 3 his blog.</p> <p>4 Q I'm not here to clarify my understanding of 5 how it was used. I'm here to ask you about your 6 understanding of how it was used. So how do you think 7 the policy was used concerning his blog? Let's just 8 start with that.</p> <p>9 A And my question was: how was it used against 10 his blog? I don't recall it as being used against his 11 blog.</p> <p>12 Q So you have no idea how the policy was used to 13 terminate Professor Tracy? Is that your testimony?</p> <p>14 MR. MCKEE: That's a different question.</p> <p>15 A That's not the question you asked. It's a 16 different question. Let's get the question straight 17 here. If you're going to ask a question, ask 18 intelligent ones.</p> <p>19 Q (By Mr. Leo) Okay. So you have a problem with 20 the way I'm asking you questions, not the actual 21 questions themselves.</p> <p>22 A You're asking questions to make assumptions 23 that are not a fact.</p> <p>24 Q My question was whether you had concerns about 25 how the policy was used. The way you're answering the</p>
<p>1 Q You were the one that was talking about apples 2 and oranges earlier, right? Was that you?</p> <p>3 A That was me.</p> <p>4 Q Okay. That sure sounds like apples and 5 oranges. We're talking about the outside activities 6 policy and how it was used to fire Professor Tracy. So 7 my question wasn't about that. My question was: were 8 you concerned --</p> <p>9 A No, you specifically mentioned the blog, and 10 you keep going back to the blog.</p> <p>11 Q My question was: were you concerned with how 12 the policy was used?</p> <p>13 A Show me where it says blog in his reprimand.</p> <p>14 Q I'm sorry, I'm not following you now.</p> <p>15 A You keep saying that he was reprimanded for 16 his blog, or that it was used against him because of his 17 blog.</p> <p>18 Q When did I say that? No. My question to you 19 was whether you were concerned with how the policy was 20 used concerning Professor Tracy's blogging. So it's 21 either I was not concerned or I was concerned.</p> <p>22 A How was it used against his blogging.</p> <p>23 Q I'm asking you whether or not you were 24 concerned. I'm not here to answer your question. I'm 25 here to ask you questions. That's how this works.</p>	<p>135</p> <p>1 question sounds like you had no concerns.</p> <p>2 A No, what you said was how it was used against 3 his blog. And that's a very different question.</p> <p>4 Q She can't record both of us at the same time, 5 so how about we do this? I'll speak, I'll pause. Then 6 you speak, and then you can pause, and then I'll speak.</p> <p>7 A How about you ask questions that can be 8 answered, and don't make assumptions that are not a 9 fact.</p> <p>10 Q So you're saying that you can't answer whether 11 or not the policy was used concerning Professor Tracy in 12 one way or another?</p> <p>13 A That's a different question than what you 14 asked. So what you're asking is how the policy was used 15 -- say it again.</p> <p>16 Q My first question was whether you were 17 concerned, are concerned or were concerned at any time.</p> <p>18 A No. You said concerned how it was used 19 against his blog. That's a very different question.</p> <p>20 And my question back to you was: when was it 21 used against his blog?</p> <p>22 Q Was he required to report his blogging, yes or 23 no?</p> <p>24 A Show me where it say that. It said that he 25 was required to report outside activity.</p>



<p>1 Q In this case that was his blogging, was it 2 not? Is there any question as to what Professor Tracy 3 was being required to report in 2015 or 2016? 4 A No, that's absolutely wrong. That is a 5 fallacious statement, sir. 6 Q How is it fallacious? 7 A Because he was doing -- not just blogging. He 8 was doing a lot of stuff. 9 Q What else? 10 A The book, the radio show. 11 Q Let's stop here, because again, this is all 12 things that you testified earlier that you didn't even 13 know about until probably this lawsuit was filed. Is 14 that a fair and accurate statement? 15 A No. I knew he had a blog, I knew he wrote a 16 book, I knew he had a radio show. 17 Q You knew he wrote a book when? When did 18 Professor Tracy write a book? 19 A Sometime in what, late 2015, I believe. 20 Q You testified earlier that you didn't read the 21 book. 22 A So what? How is that relevant? 23 Q How do you even know he wrote it? 24 A There's something called newspapers. 25 Q So you believe everything you read in the</p>	<p>138</p> <p>1 Doctor Tracy wrote a book, do you? 2 A I don't know the world is round. 3 Q Look, if you don't want to answer my 4 questions -- 5 A Your questions are ridiculous. I mean they 6 are absolutely, totally ridiculous. 7 Q My question of whether you know something or 8 not? 9 A How is that relevant to this issue? If he 10 wrote the book he needs to report it. I'm pretty damn 11 sure he wrote a book, or was a contributor to a book. 12 Q But you don't know, do you? Which is my 13 question. Whether you know. Yes or no. 14 A Do I know? I'm pretty damn sure. That's my 15 answer. 16 Q How are you sure? 17 A I've already answered this. 18 Q You haven't. 19 A Yes, I did. I most certainly did. 20 Q You've gone through a tremendous amount of 21 effort to try and evade the question. So I'm going to 22 ask you one more time as directly as possible. How do 23 you know one way or the other? 24 A I just said, it's been in the media, it's been 25 reported everywhere. So In your world everybody is</p>	<p>140</p>
<p>1 newspaper? Is that what you're saying? 2 A Oh, my God. This is getting ridiculous. 3 Q No, it was ridiculous a long time ago. It's 4 been ridiculous, but we're going to address that. So 5 let's talk about the book. You never read the book, did 6 you? 7 A How is that relevant, sir? 8 Q It's relevant because you're testifying like 9 you have, or you know about the book. 10 A That's a misstatement. That's a misstatement. 11 How am I testifying like how I read the book? 12 Q Your testimony that he wrote a book, what is 13 that based on? As we sit here today, what leads you to 14 believe that Professor Tracy wrote a book? 15 A Oh, my God. Because it's been all over the 16 media. 17 Q Is it your testimony that the media always 18 tells the truth or reports accurately? 19 A Oh, my God. 20 Q Let me just be clear. You're basing your 21 understanding that Professor Tracy wrote a book on what 22 you read in the newspaper? Is that a fair and accurate 23 representation of your testimony? 24 A Yes. 25 Q So you don't know one way or another whether</p>	<p>139</p> <p>141</p> <p>1 lying. Okay. 2 Q The media also reported that Iraq had weapons 3 of mass destruction. It led to the Iraqi war. Are we 4 really going to debate or talk about whether the media 5 lies, or why they would, or what their agenda was? I 6 mean, seriously. I'll preface my question with that. 7 A This is getting more and more ridiculous, sir. 8 Q What effect did the media have on your 9 involvement with Doctor Tracy's discipline? Since we're 10 on the topic of media. What was the effect of the media 11 reporting whether it was true or false, one way or the 12 other, anything about Professor Tracy? What was the 13 effect on you? 14 A Nothing, virtually nothing. 15 Q You had no concerns about the press? 16 A I had concerns about the press, but that does 17 not formulate my decision. When you make these 18 decisions -- when you make important decisions like 19 this -- 20 Q What important decisions are you talking 21 about? 22 A About whether we're going to file a grievance 23 or not. Or when and how we defend anybody. 24 Q When you make those decisions, what? 25 A There are always all kinds of issues that you</p>	

<p>1 have to weigh. But in terms of the media, the media 2 does not dictate what I do or don't do. 3 Q Really? So you weren't concerned about the 4 press in December of 2015 or January of 2016? 5 A I was concerned, but it is not going to 6 dictate what I do or don't do. I'm concerned about a 7 lot of things. 8 Q You just testified that you understood 9 Professor Tracy to have wrote a book because of what you 10 read in the media. Would you agree that impacted your 11 decision-making in this case? 12 A No. What I'm saying is that if he wrote a 13 book -- which I do believe he wrote a book -- that 14 qualifies as research. And if he wrote a book, which 15 you seem -- this is just getting bizarre. If he wrote a 16 book -- which yes, I do believe he wrote a book -- then 17 he needed to report it, because that is research. It's 18 outside research. 19 Q Since we're talking hypothetically, because 20 you're proposing a hypothetical, since that didn't 21 happen, if Professor Tracy's blog was copy and pasted 22 into somebody else's book, would that be a reportable 23 outside activity? If it was not Professor Tracy's book, 24 if it was somebody else's book, and it was a copy and 25 paste job from something he wrote years ago, would that</p>	<p>142</p> <p>1 Q If that outside activity that they are asking 2 him to submit on his forms was constitutionally 3 protected speech, what would your response be to that? 4 A That's not the issue. 5 Q It is the issue. 6 A Can I finish? 7 MR. MCKEE: Let him finish his answer -- 8 MR. LEO: He's not answering the question. 9 MR. MCKEE: Then you can ask another question. 10 MR. LEO: Instruct your client to answer the 11 questions and stop coming up with hypothetical -- 12 MR. MCKEE: I'm going to instruct you to let 13 him finish his answer, and then ask another 14 question. 15 MR. LEO: He's not answering the question. 16 MR. MCKEE: Who are you? 17 MR. BENZION: I'm counsel of record, sir. 18 MR. MCKEE: There's one person here conducting 19 the deposition. 20 MR. SONDERLING: Guys, maybe we should take a 21 break. 22 MR. LEO: No, I don't. We're in the middle of 23 a question. So answer the question that I just 24 asked. 25 THE WITNESS: Repeat the question and I'm</p> <p>144</p>
<p>1 be a reportable outside activity that the university 2 could require in any way on an outside activity form? 3 Whether it's three years later, four years later, ten 4 years later. 5 A I don't think so, but I'd have to investigate. 6 Q Did you investigate in this case -- 7 A You're not letting me finish answering the 8 question. I don't know the particulars of the case, and 9 it sounds to me like this is hypothetical. But I would 10 say based on what you told me, I would say probably not. 11 Q Did you conduct an investigation concerning 12 allegations that had been made by the media, by Florida 13 Atlantic University, by anybody about Professor Tracy's 14 outside activities? 15 A No. 16 Q Why not? 17 A Because it's irrelevant. 18 Q How is it irrelevant to the grievance process? 19 A Because all the Collective Bargaining 20 Agreement says -- 21 Q Turn in forms. Right? 22 A Can I finish? Collective Bargaining Agreement 23 says that if he's doing outside activities, which by all 24 indications he was, then he needs to file an outside 25 activity report, period.</p>	<p>143</p> <p>145</p> <p>1 going to answer it. 2 MR. LEO: Go ahead, please it back for him. 3 (Whereupon the record was read back.) 4 THE COURT REPORTER: If that outside activity 5 they're asking him to submit was constitutionally 6 protected speech, what would your response be to 7 that? 8 THE WITNESS: It's irrelevant. 9 Q (By Mr. Leo) How is it irrelevant? That's my 10 next question. 11 A Because there's lots of outside activities 12 that faculty do every day that is reportable, but it's 13 constitutionally protected. 14 Q Like what? 15 A Like if they're doing consulting. 16 Q How is consulting constitutionally protected? 17 A How is it not constitutionally protected? 18 Q Where in the constitution does it say that 19 consulting is protected activity? Let's start with 20 that. 21 A It's free speech. 22 Q How is it free speech to consult? 23 A You're saying consulting isn't 24 constitutionally protected? 25 Q We're speaking pretty vaguely about what</p>

<p>1 consulting is.</p> <p>2 A Can I tell you I think you're nuts?</p> <p>3 Q That's fine. You're not the first person to</p> <p>4 tell me that.</p> <p>5 A I'll bet.</p> <p>6 Q Answer my question. Where is consulting</p> <p>7 protected in the constitutionally?</p> <p>8 A Practically any speech other than yelling fire</p> <p>9 in a theatre is protected. I'll give you another</p> <p>10 example. I was an expert witness, I'm giving testimony</p> <p>11 in a court of law. That's constitutionally protected.</p> <p>12 Q Where?</p> <p>13 A There's lots of things that are</p> <p>14 constitutionally protected.</p> <p>15 Q Did you fill out a form to testify?</p> <p>16 A Let's say I'm writing a series of articles for</p> <p>17 the newspaper. I've made a contract -- let's say I'm</p> <p>18 writing articles for a national magazine. Esquire comes</p> <p>19 to me -- excuse me. Can I talk without him yacking?</p> <p>20 Q No, you can't, but you can answer the question</p> <p>21 and he can whisper in my ear all he wants.</p> <p>22 A I'll wait till you're done then.</p> <p>23 Q No problem. Go ahead.</p> <p>24 A Let's say I get contacted by Esquire magazine,</p> <p>25 and they say Doctor Zoeller, you're an expert in</p>	<p>146</p> <p>1 A No, I just said that.</p> <p>2 Q For example, when I submit this form, I'm not</p> <p>3 submitting it just to tell them what I'm doing. I</p> <p>4 submit this because I'm asking for permission to do it?</p> <p>5 A No.</p> <p>6 Q So you're saying that faculty members submit</p> <p>7 these forms --</p> <p>8 A To allow --</p> <p>9 Q -- without any expectation or understanding</p> <p>10 that they're going to have an approval process, or a</p> <p>11 monitoring process, or anything like that with respect</p> <p>12 to their activity. They just submit them and they can</p> <p>13 just do whatever they want?</p> <p>14 A No, I never said that.</p> <p>15 Q Right, because that's not what the policy's</p> <p>16 form.</p> <p>17 A What I've said again, and again, the</p> <p>18 Collective Bargaining Agreement clearly states that the</p> <p>19 purpose of reporting outside activity is to allow the</p> <p>20 university to assess whether or not there is a conflict</p> <p>21 of interest.</p> <p>22 Q Exactly. So what is the purpose of these</p> <p>23 forms? To assess a conflict of interest?</p> <p>24 A Yes.</p> <p>25 Q Can there be a conflict of interest between</p>
<p>147</p> <p>1 fitness, and lifestyle, and disease prevention. We want</p> <p>2 you to write a series of articles for us every other</p> <p>3 month, and we're going to pay you a lot of money for</p> <p>4 this. I'd have to report this as outside activity, and</p> <p>5 I'm pretty damn sure it's constitutionally protected.</p> <p>6 And you can probably think of about a dozen other</p> <p>7 examples. There's lots of things we do as faculty that</p> <p>8 are protected by free speech that still have to be</p> <p>9 reported as outside activity.</p> <p>10 Q Where'd you get this example you just gave?</p> <p>11 Where are you coming up with this example?</p> <p>12 A I pulled it out of thin air.</p> <p>13 Q Now, going back to what happened in this case,</p> <p>14 Professor Tracy blogging on his own time, you agree</p> <p>15 that's constitutionally protected activity, yes?</p> <p>16 A As far as I know, yeah.</p> <p>17 Q When the university says you need to report</p> <p>18 that for approval, you don't have a problem with that?</p> <p>19 A Yes, you have to report it. You used the word</p> <p>20 approval. It's not approval. It's to identify whether</p> <p>21 or not -- and don't play games with me -- this is an</p> <p>22 important difference. It's not approval, it's whether</p> <p>23 or not there's a violation of a conflict of interest.</p> <p>24 Q Would you agree that this outside activities</p> <p>25 form is designated to actually approve activity?</p>	<p>149</p> <p>1 the university and someone's constitutionally protected</p> <p>2 viewpoints or speech?</p> <p>3 A Not as far as I'm concerned. I said that in</p> <p>4 the beginning. I said the stuff that he was doing,</p> <p>5 while many people find it offensive, you can argue --</p> <p>6 you've seen the emails. I've said from the beginning --</p> <p>7 Q I haven't seen one email that said it's</p> <p>8 constitutionally protected speech, Doctor Tracy can do</p> <p>9 whatever he wants.</p> <p>10 A What I've said was that he has the right to</p> <p>11 say these things.</p> <p>12 Q When did you say that?</p> <p>13 A I don't know if I said it in those exact</p> <p>14 words, but I'm sitting here telling you now.</p> <p>15 Q Did you ever tell Michael Moats that Professor</p> <p>16 Tracy's speech was constitutionally protected?</p> <p>17 A Yeah.</p> <p>18 Q When did you tell Michael Moats that?</p> <p>19 A I don't remember when.</p> <p>20 Q Was it before or after Professor Tracy was</p> <p>21 fired?</p> <p>22 A I bet it was before. I told you I said in a</p> <p>23 meeting in 2013 that I felt it was constitutionally</p> <p>24 protected. I said that while I found his stuff to be</p> <p>25 offensive, he has every absolutely right in this country</p>

<p>1 as an American citizen to say what he wants on his 2 blogs. I have never felt that anything that he's done 3 is not constitutionally protected. That's not the 4 issue.</p> <p>5 Q Can I direct your attention to Article 5.2(d)?</p> <p>6 A Yes.</p> <p>7 Q What's it say?</p> <p>8 A It says "Exercise Constitutional rights 9 without institutional censorship or discipline."</p> <p>10 Q If Article 19 was being used by Florida 11 Atlantic University to violate 5.2(d), would that be 12 grievable?</p> <p>13 A Yes.</p> <p>14 Q In September of 2015 when United Faculty of 15 Florida received complaints from faculty members that 16 Article 19 was being used to censor or discipline 17 professors for engaging in their constitutionally 18 protected activity, why didn't the chapter or UFF take 19 any action?</p> <p>20 A Show me an example where that occurred.</p> <p>21 Q I'm sorry?</p> <p>22 A My English is pretty good. Show me an example 23 where the form was used and someone's Constitutional 24 rights were denied.</p> <p>25 Q I'm sorry. My question was: in September --</p>	<p>150</p> <p>1 Q So let's talk about September of 2015. Why 2 don't you tell me what you did when all of the 3 complaints came in on that day, September 4th, 2015?</p> <p>4 What did you do to, for example, make sure that 5.2(d) 5 hadn't been violated by the university?</p> <p>6 A I already told you that we changed Article 5.</p> <p>7 Q When?</p> <p>8 A I just told you that.</p> <p>9 Q What day did you change Article 5?</p> <p>10 A The Collective Bargaining Agreement was 11 ratified June 7th of last year.</p> <p>12 Q 2016. So a year after you received 13 complaints, you then addressed it?</p> <p>14 A That's a lie.</p> <p>15 Q What's a lie?</p> <p>16 A I told you what happened, and what you did is 17 a misrepresentation of the facts. We'll call it a 18 misrepresentation of facts.</p> <p>19 Q As you sit here today what have I 20 misrepresented to you today, just now?</p> <p>21 A Everything. Because what I said was -- and I 22 will repeat it again -- after that meeting the issue 23 was--</p> <p>24 Q Constitutional rights, right?</p> <p>25 A Can I answer my question? You're telling me</p>
<p>1 you think it's funny -- but in September of 2015 --</p> <p>2 A I think your line of questioning is 3 hysterical.</p> <p>4 Q It's hysterical that your chapter did nothing 5 to protect Doctor Tracy's Constitutional rights?</p> <p>6 A I think your questions go from inane to 7 ridiculous.</p> <p>8 Q Is that what you thought back in 2015 when 9 professors stood up in front of you, and the deans, and 10 the president of the university, and said that their 11 Constitutional rights were being violated? Did you 12 laugh and say it was ridiculous?</p> <p>13 A Show me where their Constitutional rights are 14 violated.</p> <p>15 Q Is that when you said in September of 2015? I 16 have the audio. I don't remember hearing you say that, 17 but --</p> <p>18 A The question was why did I not act when 19 faculty members were complaining that their 20 Constitutional rights were being violated. And I'm 21 saying show me where they were violated.</p> <p>22 Q I don't need to show you what you didn't do.</p> <p>23 The actions speak way louder than any words in this 24 room.</p> <p>25 A Oh, okay.</p>	<p>151</p> <p>153</p> <p>1 I'm not answering the question and I'm answering the 2 question. You just don't like --</p> <p>3 Q I'm just trying to help you.</p> <p>4 A Oh, yeah. You just don't like my answer. So 5 the answer to this, if I'm going to be allowed to 6 answer, immediately after this meeting we started to 7 work with the Faculty Senate on Article 5.3(d), not 8 5.2(d), because we pretty much agreed that exercising 9 Constitutional rights should be without institutional 10 censorship or discipline. On 5.3(d), I believe this is 11 the version that it was at the time, it said the 12 faculty's members of the university community have 13 rights of duties and when speaking to members of public 14 interest, faculty members shall make clear what comments 15 represent personal opinions and when they represent 16 official university positions. This is the bulk of 17 complaints that were occurring on that particular day.</p> <p>18 Q That's not what I heard.</p> <p>19 A Can I finish? People were complaining about 20 the university administration, particularly Peter Hull 21 in the president's office sending them threatening 22 emails saying that you're not disassociating yourself 23 from the university, et cetera, et cetera, et cetera. 24 There's a great deal of concern expressed about that. In 25 working with -- so immediately we started to work with</p>



<p>1 the Senate on crafting new language for this article. 2 Now, obviously you don't understand, nor do you care to 3 understand, how collective bargaining works. Collective 4 bargaining doesn't happen like that, and this is what 5 I'm trying to explain to you, but you're not really 6 interested in the truth. The truth is that we started 7 to work on this almost immediately. We crafted new 8 language. When we met in collective bargaining we 9 bargained, and got the university administration to 10 change this language. Point of fact --</p> <p>11 Q What language? 12 A Let me finish. I am not finished. Article 13 5.3(d).</p> <p>14 Q That's not what my question was about. 15 A Yes, it is. You said I did nothing.</p> <p>16 Q 5.2(d). They're two different provisions. 17 Look at it. 18 A They're directly related.</p> <p>19 Q But my question is not about your disclaimer 20 issue. My question is about censorship, institutional 21 discipline. That's what they were complaining about 22 September of 2015. I'm not misrepresenting what 23 happened at the meeting. I have the audio. 24 A Where were you at the meeting? I didn't see 25 you at the meeting.</p>	<p>154</p> <p>1 A No, it would be a misuse of Article 5.3(d), 2 and that's what we changed.</p> <p>3 Q You're saying that if the university sent a 4 faculty member a threatening letter, either threatening 5 discipline or imposing discipline, that wouldn't be 6 institutional censorship or discipline under 5.2(d)? 7 A Not necessarily. Every case is different.</p> <p>8 Q Every case is different, but we're not talking 9 about every case. 10 A Now you're coming back to this. First you say 11 you're not talking about this, and then you say we are 12 talking about this. You need to make up your mind.</p> <p>13 Q I'm not sure what you just said, but I've 14 never left the realm of 5.2(d) or the Constitution. You 15 were talking about -- 16 A I'm not aware of letters. I'm aware of 17 emails --</p> <p>18 THE COURT REPORTER: Guys, one at a time, 19 please.</p> <p>20 Q (By Mr. Leo) I don't know where you want this 21 to go, but let me take you back to my question because 22 it's about the Constitution and First Amendment rights. 23 That's the only thing this case is about. So let's talk 24 about 5.2(d), and whether you or anybody at the union, 25 for example, who may have been present at the Senate</p>	<p>155</p>
<p>1 Q I have the audio. 2 A Good.</p> <p>3 Q You want to play it? 4 A No, I don't want to hear it again.</p> <p>5 Q Yeah, we can play a couple hours of this 6 meeting if you'd like, and then we can talk about it. Or 7 we can just talk about it. Because I know what 8 happened. I listened to it. 9 A And you're unbiased.</p> <p>10 Q They're complaining about censorship, they're 11 complaining about prior restraint, they're complaining 12 about the use of the policy unconstitutionally. My 13 question is not about 5.3(d), my question was about 14 5.2(d), exercising Constitutional rights without 15 institutional censorship or discipline. 16 A And in order to file a grievance, I need to 17 show that there was a violation. So show me the 18 violation.</p> <p>19 Q A threatening letter, for example. Would that 20 be a violation of someone's Constitutional rights? 21 A Not necessarily.</p> <p>22 Q If I was a faculty member, one of your union 23 members, and I got a threatening letter telling me that 24 said I spoke without permission. Would that be a 25 violation of my Constitutional rights?</p>	<p>156</p> <p>1 Faculty meeting in September of 2015, did anything to 2 investigate about whether Constitutional rights were 3 being violated, yes or no? 4 A No. 5 Q Why not? 6 A Why? 7 Q Because you're the president of the union 8 perhaps. Wouldn't that be your job as union president, 9 to determine whether or not the Collective Bargaining 10 Agreement or the Constitution has been violated in a way 11 that is in violation of the Collective Bargaining 12 Agreement? 13 A And that's why I said show me specific cases, 14 specific incidents where there were violations of 15 people's First Amendment rights. 16 Q Like Professor Tracy's case? 17 A His First Amendment rights were not violated. 18 Q His First Amendment rights were not violated? 19 A Show me where they said he couldn't say or do 20 anything. 21 Q I'll just show you the outside activities 22 form. Take a look at where it says here this report 23 must be submitted and necessary approvals obtained on an 24 annual basis. Let's talk specifically about that 25 instruction on this form that's given to all faculty</p>	<p>157</p>



<p>158</p> <p>1 members, and was given to Professor Tracy in connection 2 with his blogging.</p> <p>3 A No, no. It was not given in connection -- 4 show me where it was in connection with his blogging.</p> <p>5 Q Did you read his notice of termination?</p> <p>6 A Yes. But we're talking --</p> <p>7 Q Did you read his discipline letters?</p> <p>8 A We're talking about the initial letter of 9 reprimand. It just said file the reports. It didn't 10 say a word about blogging.</p> <p>11 Q Exactly. File the reports. And then he 12 didn't in time, right?</p> <p>13 A Right.</p> <p>14 Q But he did, he did turn in the forms, right?</p> <p>15 As he was advised by you.</p> <p>16 A My understanding is he didn't completely 17 comply -- anyway. He filed something.</p> <p>18 Q Professor Tracy filed the forms, just like you 19 told him to do, didn't he?</p> <p>20 A He filed some forms and signed them.</p> <p>21 Q Professor Tracy submitted outside activity 22 forms for his blogging, did he not?</p> <p>23 A After the day. He filed -- I'm answering the 24 question. I'm not going to let you put words in my 25 mouth. He filed some forms and signed them.</p>	<p>160</p> <p>1 A No, he was in violation of the policy. They 2 could've written him up immediately.</p> <p>3 Q So Professor Tracy could've never complied in 4 a timely manner with the policy as it is facially, 5 right?</p> <p>6 A Well, I would agree with that. They could've 7 written him up immediately. They would've have even had 8 to ask him for the forms. They could've just said 9 you're --</p> <p>10 Q FAU could've written him up in 2013 for not 11 turning in his forms, right?</p> <p>12 A Correct.</p> <p>13 Q But FAU didn't, did they?</p> <p>14 A That's correct.</p> <p>15 Q Did FAU abandon those directives in 2013?</p> <p>16 A I don't know what they did. You're going to 17 have to ask them.</p> <p>18 Q Would you agree that Professor Tracy was not 19 instructed to submit outside activities forms in 2014 20 after he settled with the university?</p> <p>21 A No, it's part of the Collective Bargaining 22 Agreement. Everybody is instructed to do it. It's part 23 of the university's rules and regulations, it's part of 24 the Collective Bargaining Agreement. We are required by 25 a collectively bargained document that if we're doing</p>
<p>159</p> <p>1 Q What other form did he sign?</p> <p>2 A Outside activity forms. It doesn't mean that 3 he filed all of the forms he should have, it doesn't 4 mean that he filed them correctly. He did not file them 5 at the deadline. He filed them after the deadline.</p> <p>6 Q The deadline given by Heather Coltman in 2015, 7 is that what you're referring to?</p> <p>8 A I don't know when she gave the deadline 9 because he wasn't communicating with me during that 10 time.</p> <p>11 Q She asked Professor Tracy -- and by she I'm 12 referring to Defendant Coltman. She asked Professor 13 Tracy to submit four years of outside activities forms?</p> <p>14 A I believe it was three.</p> <p>15 Q Including the year that he's going into '13, 16 '14, '15, '16, right.</p> <p>17 A That's not my understanding. My understanding 18 was three years.</p> <p>19 Q Regardless, he's asked to submit years of 20 forms?</p> <p>21 A Correct, because he had not submitted them for 22 years.</p> <p>23 Q Could Professor Tracy have ever been in timely 24 compliance with this policy as it's written if he hadn't 25 submitted the forms for years?</p>	<p>161</p> <p>1 outside activities, that we are required to report them 2 so the university can access whether or not there's a 3 conflict of interest.</p> <p>4 Q Everybody at the university does not submit 5 outside activities forms, do they?</p> <p>6 A I don't know. I can't make that kind of 7 statement.</p> <p>8 Q Well, we've talked to four faculty members at 9 your university. Would it surprise you that only one of 10 them actually submitted this form before?</p> <p>11 A I can't speak to facts that I haven't seen.</p> <p>12 Q Some of the most experienced members of your 13 union did not submit this to the university at any time.</p> <p>14 Did you know that?</p> <p>15 A No.</p> <p>16 Q Professor Lenz, Professor Robe.</p> <p>17 A I haven't submitted one in the last ten years, 18 but I'm not doing anything.</p> <p>19 Q One of the faculty members that we deposed, 20 one of your union members who was a former president, 21 didn't even know what this form was. Would that 22 surprise you?</p> <p>23 A No.</p> <p>24 Q So when you say that everybody is required to 25 submit this form, you don't know that, do you?</p>

<p>1 A In writing they are, yes.</p> <p>2 Q But you don't know whether or not everybody at 3 the university is being required to submit these forms 4 one way or the other, do you?</p> <p>5 A The question is -- I think, if I understand 6 your question, is that it is clearly required in the 7 documents. However, how rigorously it's being enforced, 8 I have no way of knowing that.</p> <p>9 Q You have no way of knowing whether it's being 10 enforced?</p> <p>11 A In his case, for whatever reason, he hadn't 12 submitted for three years. Why was he -- like you said, 13 why was he not --</p> <p>14 Q You said you had no way of knowing whether 15 it's being rigorously or evenly enforced. Is that what 16 you're saying?</p> <p>17 A Right.</p> <p>18 Q Is that your answer? You had no way or 19 knowing or you have no way of knowing whether the policy 20 is being applied evenly or universally? Or is there a 21 way to find that out?</p> <p>22 A I'm not sure how you would find that out. In 23 other words, I don't know how you prove a negative. In 24 other words, how do you know -- are you doing something 25 you were supposed to report, but didn't report? The</p>	<p>162</p> <p>1 Q For example, the formation of a committee to 2 review how the policy is applied.</p> <p>3 A That's what I had hoped would've happened in 4 the Senate meeting. I don't know if you understand what 5 the Academic Freedom and Due Process Committee is, but 6 Marshall DeRosa put forward a motion to put this issue 7 forward to the Academic Freedom and Due Process. Think 8 about the term; Academic Freedom and Due Process. I 9 whole-heartedly supported that. This would have been 10 the ideal way to address this, to investigate it, and to 11 prove it.</p> <p>12 Q But not the only way?</p> <p>13 A I agree. But the faculty at the Senate voted 14 it down.</p> <p>15 Q That didn't stop United Faculty of Florida 16 from being able to do their job, right?</p> <p>17 A Well, what we're trying to do is approach it 18 in a different way, and that is to change the language 19 of the document, change the language of the Collective 20 Bargaining Agreement, so that it puts an end to this. I 21 will tell you this, though. At the end of the day, if a 22 person is in violation of the Collective Bargaining 23 Agreement, they're in violation. If he doesn't file the 24 reports for three years he's in violation and he still 25 needs to file the reports.</p>
<p>1 other side of it is this. I think when it becomes 2 obvious -- selective enforcement may be out of 3 ignorance.</p> <p>4 Q If the outside policy is or was being 5 selectively enforced, would that be a problem?</p> <p>6 A Yeah, I think so.</p> <p>7 Q Would that be grievable?</p> <p>8 A Possibly.</p> <p>9 Q Did you, or anybody acting at your direction, 10 or anybody at UFF investigate whether or not the outside 11 activities policy was being used selectively at the 12 university?</p> <p>13 A No.</p> <p>14 Q In 2015 after the complaints come in from the 15 Senate Faculty, was there any requests by any of the 16 faculty members for an investigation by UFF?</p> <p>17 A Repeat the question.</p> <p>18 Q After the complaints came in in September of 19 2015 --</p> <p>20 A Not that I recall, no.</p> <p>21 Q So you don't remember any complaints or 22 requests to have UFF come and investigate the use of the 23 policy?</p> <p>24 A When you say investigate the use of the 25 policy, what do you mean by that?</p>	<p>163</p> <p>165</p> <p>1 Q This is where I'm trying to go with you on 2 this. The September faculty meeting you had these 3 complaints about the use of the policy in a way that 4 violates Constitutional rights. You would agree with 5 that characterization, right?</p> <p>6 A Alright.</p> <p>7 Q Was the clock running on filing a grievance by 8 the chapter upon the receipt of those complaints in 9 September of 2015?</p> <p>10 A No.</p> <p>11 Q So you could have filed a chapter grievance at 12 any time after that, or is there a window?</p> <p>13 A In order to file a chapter grievance I have to 14 have some kind of hard evidence that there is potential 15 harm being done. Like I said, the route that we now are 16 pursuing -- this started in early 2016, that chapter 17 grievance is to try and now reign in the administration. 18 To try and pull them in so we can sit down and get a 19 Collective Bargaining Agreement Article 19, the policy, 20 the guidelines, and everything that fit, so that it 21 serves the faculty and the administration.</p> <p>22 Q I just want to distinguish between collective 23 bargaining and grievance. It seems like you're saying 24 that you wanted to address the outside activities issues 25 in collective bargaining. Is that fair?</p>



<p>166</p> <p>1 A Yes. I said that in an email to Tracy.</p> <p>2 Q I do remember seeing that. In November, after</p> <p>3 you say that this is a problem, one of many lately,</p> <p>4 right?</p> <p>5 A Mmmhmmm.</p> <p>6 Q He then gets a notice of discipline, right?</p> <p>7 A Right.</p> <p>8 Q Would that have been an operative event that</p> <p>9 could have been grieved by the chapter in connection</p> <p>10 with the complaints that had been levied in September by</p> <p>11 the faculty regarding the constitutionality of the</p> <p>12 policy?</p> <p>13 A No, because at the end of the day he had</p> <p>14 outside activities that he needed to report. So it</p> <p>15 doesn't obviate, if I'm using the correct word, or</p> <p>16 remove the responsibility of faculty members to file the</p> <p>17 outside activity reports.</p> <p>18 Q Regardless of what the outside activities</p> <p>19 reporting requirement, all that says, when Professor</p> <p>20 Tracy received his notice of discipline under a policy</p> <p>21 that's been complained of as being unconstitutional, my</p> <p>22 question is whether the chapter could file a grievance</p> <p>23 at that point and say this policy is not being used</p> <p>24 lawfully, properly, or it's being used in a way that</p> <p>25 violates --</p>	<p>168</p> <p>1 Q I just want to be clear about the difference</p> <p>2 between grievability and the success of a grievance. I'm</p> <p>3 speaking about -- my questions are directed towards</p> <p>4 whether a grievance can be filed.</p> <p>5 A A grievance is to be filed when there's a</p> <p>6 direct violation of the Collective Bargaining Agreement.</p> <p>7 That's when you file a grievance. When there's a clear</p> <p>8 violation of the Collective Bargaining Agreement.</p> <p>9 Q So I'm just going to show you what's been</p> <p>10 marked as Z-13 for today. Just take a look at that, and</p> <p>11 let me know if you've seen this before.</p> <p>12 A Yes. This is part of Tracy's 2013 grievance,</p> <p>13 and settlement, et cetera, et cetera.</p> <p>14 (Whereupon Plaintiff's Exhibit Z-13 was marked</p> <p>15 for identification.)</p> <p>16 Q (By Mr. Leo) Professor Tracy provided this to</p> <p>17 you among other documents in concluding his settlement</p> <p>18 agreement with the university from 2013, right?</p> <p>19 A Correct.</p> <p>20 Q Would this be something that you would want to</p> <p>21 have to hang your hat on, with respect to challenging</p> <p>22 the use of a policy in a way that was unconstitutional</p> <p>23 and violated 5.2(d)?</p> <p>24 A Well, first of all, what happened in 2015 was</p> <p>25 Article 19. This, again, you're talking about Article</p>
<p>167</p> <p>1 A I need more juice than that. I need to have -</p> <p>2 - when you file a grievance, and this is probably poor</p> <p>3 language, but I gotta have something I can hang my hat</p> <p>4 on. I gotta have something I can show -- these</p> <p>5 individuals are having their rights violated. This</p> <p>6 specifically happened, this specifically happened, this</p> <p>7 specifically happened. I need to have -- if a faculty -</p> <p>8 - usually when I file a grievance how does it happen?</p> <p>9 It's because a faculty member comes to me and says I</p> <p>10 have been violated. The university is doing something</p> <p>11 to me, and I need to get this taken care of. And then</p> <p>12 we look and see -- believe it or not, we don't always</p> <p>13 file grievances. Sometimes people come to me and say</p> <p>14 this terrible thing has happened to me, and we say well,</p> <p>15 this isn't something that's covered under the Collective</p> <p>16 Bargaining Agreement. I can't file a grievance. Or we</p> <p>17 go this is a violation and we're going to file a</p> <p>18 grievance.</p> <p>19 Q I just want to address what you just said</p> <p>20 about what you need to have to file a grievance. Earlier</p> <p>21 you said anything is grievable, right?</p> <p>22 A Theoretically -- whether there's a win or not.</p> <p>23 Q I just want to be clear --</p> <p>24 A I'm not going to file a loser. Why am I going</p> <p>25 to file a loser?</p>	<p>169</p> <p>1 5. What he was reprimanded for in 2013 was for not</p> <p>2 posting a disclaimer, or adequate disclaimer, or</p> <p>3 disassociating himself, for lack of a better term, from</p> <p>4 FAU. Let me reread this, it's been a long time.</p> <p>5 MR. LEO: sure.</p> <p>6 (Whereupon a brief discussion was held off the</p> <p>7 record.)</p> <p>8 (Deposition resumed.)</p> <p>9 Q (By Mr. Leo) You had characterized this as</p> <p>10 about something other than Constitutional rights?</p> <p>11 A Which?</p> <p>12 Q You were saying this was about something. What</p> <p>13 did you say?</p> <p>14 A Back then, and I wasn't there in 2013, but</p> <p>15 this kind of gets to what my understanding of the</p> <p>16 situation was in 2013. It says according to the</p> <p>17 Collective Bargaining Agreement, it says the faculty</p> <p>18 should make every effort to indicate that they're not</p> <p>19 speaking for the institutions. The letter from the AAUP</p> <p>20 says -- and again, this is my understanding -- the</p> <p>21 information that we, AAUP, has, indicates that Tracy did</p> <p>22 disassociate his blog from the university. His website</p> <p>23 contains a disclaimer saying that all items published</p> <p>24 here represent the views of James Tracy, and are not</p> <p>25 representative or condoned by FAU, et cetera, et cetera.</p>



<p>1 So he had complied. So there was no juice to their 2 reprimand.</p> <p>3 Q Which is why they withdrew their --</p> <p>4 A Yeah. And he wasn't in violation. So I would 5 agree that was a legitimate grievance. He hadn't done a 6 damn thing wrong.</p> <p>7 Q If the university agreed to withdraw their 8 notice of discipline from Professor Tracy's personnel 9 file as a result of the settlement, who would enforce 10 that at the union?</p> <p>11 A Who would enforce that? I'm not sure. I 12 would assume the contract enforcement committee. It 13 would be something that the union would be -- I'm not 14 even sure I understand the question.</p> <p>15 Q The question is: if FAU agreed to remove 16 something from Professor Tracy's file, in that case it 17 was the notice of discipline that they issued in 2013, 18 who at the union is tasked with enforcement of that 19 agreement, or making sure that FAU kept its end of the 20 bargain?</p> <p>21 A Let's put it this way. If the evidence was 22 that they didn't do that, then we would demand that they 23 do that. And if they did not do that then we'd file a 24 grievance.</p> <p>25 Q Are you aware of any effort by the union to</p>	<p>170</p> <p>172</p> <p>1 Q Going through your emails I noticed there was 2 some discussion about the enforceability of the 2013 3 settlement agreement that Professor Tracy and FAU 4 entered into, whether it was a valid agreement. Do you 5 recall those?</p> <p>6 A No, because what he said -- I misunderstood. 7 When he initially sent me some of the stuff, I 8 misunderstood what he was saying, and I think I fired 9 off and said something to the effect of well, now 10 they're going after you for something that happened in 11 2013. That was simply a misunderstanding on my part.</p> <p>12 Q In 2013 the university directed Professor 13 Tracy to submit the outside activities form for his blog 14 prior to their notice of discipline. After they filed a 15 notice of discipline there's no mention of the outside 16 activities forms. What would you make of that?</p> <p>17 A I think there is actually. I seem to recall 18 it saying you still need to fill out your outside 19 activity forms. I seem to remember that.</p> <p>20 Q These were directives that were issued by 21 Defendant Coltman back in 2013 prior to the notice of 22 discipline. What would you make of that?</p> <p>23 A I seem to remember there was a statement in 24 there -- and I could be wrong -- but I seem to remember 25 the settlement agreement said you're going to do this,</p>
<p>171</p> <p>1 enforce the 2013 settlement agreement that Professor 2 Tracy and FAU entered?</p> <p>3 A No. Like I said, I wasn't involved in 2013. 4 What I know is that they said -- I assume -- I don't 5 have the document in front of me. If they said they're 6 going to remove it then I assume they removed it. The 7 individual faculty member has access to their file. They 8 can see if it was removed or not. And if the faculty 9 member came to me and said it hasn't been removed, then 10 we would probably first say why hasn't this been 11 removed? You need to immediately remove this. And then 12 if they refused to remove it, you would file grievance.</p> <p>13 Q If I told you today that the notice of 14 discipline from 2013 was still in Professor Tracy's 15 publicly available personnel file, what would your 16 response be?</p> <p>17 A If they said that it was going to be removed 18 then they violated their agreement of 2013.</p> <p>19 Q Could the chapter grieve that?</p> <p>20 A No, that wouldn't be a chapter grievance.</p> <p>21 Q What would the effect of that apparent breach 22 of the terms of the 2013 agreement, what would that be 23 on what happened in 2015, if any?</p> <p>24 A I'm not sure there would be any direct 25 connection.</p>	<p>173</p> <p>1 you're going to do this, and I seem to remember a 2 statement in there that said you need to file your 3 outside activity report. That's what I recall sitting 4 here without the document in front of me. But 5 regardless, you're still required to -- I didn't see 6 anything in that agreement that says you don't file the 7 reports. The grievance was over the issue of -- and 8 again, I'm not looking at the documents -- but the 9 grievance was over what the AAUP is addressing here. 10 They're saying that he didn't make every effort to 11 indicate that he was not speaking for the institution, 12 when in fact he had.</p> <p>13 Q And then the letter from AAUP goes on to say 14 that professors, just like 5.2(d) says in your 15 agreement, are to be able to exercise Constitutional 16 rights without institutional discipline and censorship, 17 right?</p> <p>18 A Correct.</p> <p>19 Q When was the first time you saw this letter?</p> <p>20 A Probably when he sent it to me -- this is 21 still when he was going back and forth with his 22 department chair. And then he said oh, by the way, 23 here's this.</p> <p>24 Q At that time, this is before the notice of 25 discipline in November of 2015?</p>



<p>1 A Yes.</p> <p>2 Q At that time you could've filed a grievance</p> <p>3 against the university's change to the outside</p> <p>4 activities policy and the affirmation they were</p> <p>5 requiring Professor Tracy to sign. Whether or not it</p> <p>6 was going to be a successful grievance, it could've been</p> <p>7 filed?</p> <p>8 A What change?</p> <p>9 Q The affirmation that we talked about earlier.</p> <p>10 I believe it was Exhibit -- where it says I affirm.</p> <p>11 A It's not a change. It is a term and condition</p> <p>12 of employment. The Collective Bargaining Agreement and</p> <p>13 the regulation were in existence. It's just saying that</p> <p>14 you're affirming that you recognize that these policies</p> <p>15 exist.</p> <p>16 Q Why would the university need to have</p> <p>17 employees check a box affirming compliance with outside</p> <p>18 activity, Article 19, if it's a condition of employment</p> <p>19 already?</p> <p>20 A That's something you'd have to ask them. I</p> <p>21 don't know.</p> <p>22 Q Is it possible that the university was</p> <p>23 requiring faculty members to affirm compliance to</p> <p>24 extinguish any complaints about the constitutionality</p> <p>25 or improper use of the policy?</p>	<p>174</p> <p>1 coming out they said well, there's not enough people</p> <p>2 that are aware of this form, so you need to fix this. I</p> <p>3 found out about this recently. I was just Googling</p> <p>4 stuff.</p> <p>5 Q You're saying that FAU is told to fix the</p> <p>6 conflict of interest policy?</p> <p>7 A What they said was a lot of people aren't</p> <p>8 aware of it. They said a lot of people aren't complaint</p> <p>9 because they're evasive or bad people. They just not</p> <p>10 aware of the policy. So I'm guessing -- this is my</p> <p>11 guess -- this may have been a way to try and say hey,</p> <p>12 you guys need to be aware of this. Again, you're going</p> <p>13 to have to ask them.</p> <p>14 Q Did you ever have any discussions with anybody</p> <p>15 at FAU in the administration concerning the policy, any</p> <p>16 issues pertaining to the vagueness of the policy, or</p> <p>17 complaints about the policies?</p> <p>18 A Yes.</p> <p>19 Q When was the first time you can recall?</p> <p>20 A Probably about the same time all this stuff</p> <p>21 started to occur, in the fall of 2015 and rolling into</p> <p>22 early 2016. Like I said, we filed a grievance in early</p> <p>23 2016 when they're trying to make changes, and we saw</p> <p>24 this as an opportunity to really try and push back and</p> <p>25 say okay, let's fix this.</p>
<p>1 A I'll tell you what I think. This is what I</p> <p>2 think. I found out just looking at outside activity,</p> <p>3 are you aware that FAU is monitored by the state of</p> <p>4 Florida? I don't know if it's an Auditor General, but</p> <p>5 they're monitored for compliance for conflict of</p> <p>6 interest. Are you aware of that?</p> <p>7 Q Are you asking me?</p> <p>8 A Are you aware of that?</p> <p>9 Q No.</p> <p>10 A So I wasn't either. It appears that there may</p> <p>11 have been an issue, as you mentioned, that some people</p> <p>12 didn't even know about this form. So this was, in my</p> <p>13 opinion, it may've been an attempt to make sure that</p> <p>14 everybody knows about the damn form.</p> <p>15 Q Who monitors FAU?</p> <p>16 A The state of Florida.</p> <p>17 Q Anybody in particular that you can think of?</p> <p>18 A I don't know. I thought it was the Auditor</p> <p>19 General. I saw a report. There's a report from the</p> <p>20 state of Florida, that they monitor all of the state</p> <p>21 institutions, and they look at -- I guess conflict of</p> <p>22 interest is an issue. So they want to make sure that</p> <p>23 the universities are controlling the possible conflicts</p> <p>24 of interest. In the one report -- and this could just</p> <p>25 be coincidence -- but I think a year prior to this thing</p>	<p>175</p> <p>177</p> <p>1 Q Who did you talk to?</p> <p>2 A Well, we filed a grievance, so this would've</p> <p>3 been -- I think the university attorney -- it would've</p> <p>4 been Diane Alperin. I don't know if Michele Hawkins,</p> <p>5 she's the new vice provost, so I don't know if she was</p> <p>6 there or not. But this is a grievance proceeding. Like</p> <p>7 I said, the reason we pulled a grievance is because they</p> <p>8 said this is a proposed change, they weren't actually</p> <p>9 making the change. But we thought that this would be a</p> <p>10 really good way to open the door and start making some</p> <p>11 real changes to this.</p> <p>12 Q You're talking about 2016 when you filed the</p> <p>13 grievance against the policy. But before that, when's</p> <p>14 the first time you remember ever speaking to anybody at</p> <p>15 FAU administration about the policy?</p> <p>16 A I can't remember specifically. If I told you,</p> <p>17 I'd just be making up a date or a time.</p> <p>18 Q Would the Senate Faculty meeting in September</p> <p>19 of 2015 be the first time that you're aware of</p> <p>20 complaints about the policy?</p> <p>21 A It could be.</p> <p>22 Q Diane Alperin, was she present at that</p> <p>23 meeting?</p> <p>24 A Yes. I believe so, yes. I believe so.</p> <p>25 Q How about Defendant Coltman?</p>



<p>1 A I don't know. You have the signature sheet 2 here, don't you? 3 Q I want to know based on what you remember. 4 A I don't recall. I'm not sure. The discussion 5 was -- the angst was primarily directed at the provost. 6 Q Perry? 7 A Mmmhmm. 8 Q Was he the one who was issuing threatening 9 letters? 10 A No. I don't recall the letters. I recall 11 there were emails coming from Peter Hull, and people 12 like me were going who the hell is Peter Hull. It turns 13 out he's the assistant to the president. So this was 14 someone out of the president's office who was -- 15 evidently the president's office or someone at the 16 university is monitoring the media, and people were 17 writing articles and they were getting emails saying 18 well, you didn't disclaim your association with FAU. 19 Q Nothing about the form, you didn't ask for 20 permission or anything like that? 21 A No. It was about just saying that you need to 22 make a disclaimer that you're not speaking -- and that, 23 to me, was the most passionate part of the discussion. 24 Q There was one complaint from -- 25 A And like I said, again, we changed that in</p>	<p>178</p> <p>1 witness, whatever you wanted to do, you have to get 2 prior approval. We said hell no, hell no, hell, no. And 3 we fought them, and we got them to take it out. Because 4 they were going to try to make this much more onerous. 5 Q So is 19.2 the same in your new agreement? 6 A It is now, but they wanted to make it -- and I 7 have the documents of what they wanted to change it to 8 was much more -- for lack of a better term, onerous. 9 They wanted to make it so that you had to literally get 10 permission before you did anything. The way it's 11 written now, and I think you misinterpreted it. I 12 certainly know what the practice is. If you want to do 13 something then you just submit the form. Then they can 14 say whatever they want after the fact. But you don't 15 have to get prior permission. If you know what you're 16 doing -- and I would argue the stuff that he was doing 17 was constitutionally protected. I think that's what we 18 both agree. So he files a form and says I'm doing this 19 blog and you know what, there you go. He doesn't have 20 to get their permission to do this. The only time when 21 you might submit this ahead of time is if you personally 22 had a question or said I'm not sure if this is something 23 that's a conflict of interest or not. Usually where 24 those questions come in is like a financial conflict of 25 interest. Because that can get a little more</p>
<p>1 collective bargaining so that's no longer an issue. That 2 was a big issue for him back in 2013. It took two 3 years, but damnit, we made the change. 4 Q What changes were made to Article 19? 5 A The only thing that was made, and we talked 6 about that, was Article 19.7 was changed. As it reads 7 now, it says an employee engaging in outside activity 8 indicating he or she is not an institutional 9 representative. It doesn't say that anymore. It says 10 simply saying I'm a professor at FAU does not mean that 11 I speak for FAU. It basically put the onus on the 12 university. The previous policy put the onus on the 13 faculty member. Now we took that away. So his whole 14 issue in 2013 would be moot under this document for 15 Article 5. So in terms of Article 19 let me explain, we 16 had planned to try and make some changes, but for lack 17 of a better term, in collective bargaining we got 18 blindsided in that the administration wanted to make it 19 even more rigorous. And actually, you're saying that he 20 had to report it ahead of time, and that's not the case. 21 But they wanted to make it very explicit that you have 22 to get permission to do stuff, and we said hell no. 23 Q To speak? 24 A To any outside activity. So if you wanted to 25 blog, or so what we do as faculty, or be an expert</p>	<p>179</p> <p>1 complicated. 2 Q Was there ever any advisement to the other 3 member of United Faculty of Florida like the advisement 4 that was given to Professor Tracy on December 1st, 2015? 5 A Are you talking about before or since? 6 Q At any time. 7 A Yes. 8 Q Who else, other than Professor Tracy, was told 9 to submit a blog or online activity? 10 A You keep going back to blog or online 11 activity. It's any outside activity. We recently had a 12 member of the faculty in arts and letters who was told 13 that he had not filed reports of his outside activity, 14 and he should file a report, et cetera, et cetera. I 15 told him you need to go ahead and file it because it was 16 outside activity. So he did in fact file the forms. 17 Q What was the directive that whoever you're 18 speaking about -- can you identify them? 19 A I'm not sure I can or should. I'm not trying 20 to hide anything, but it's a personnel matter. So it's 21 not something I necessarily want to share a name. My 22 general advice to anybody would be if you're doing 23 outside activity, even if you're not sure, just go ahead 24 and file a form. I don't want you to get hit with 25 insubordination. Again, this also helped us to get</p>

<p>1 faculty -- not faculty -- get administration to 2 understand that we've got to work on this. So that's 3 what we're doing. But it was an outside activity. I 4 looked into it. It was something he was being 5 compensated for. It was very much related to what he 6 did professionally, but he was getting compensated for 7 it on the outside. So I'm pretty sure this falls under 8 reportable activity.</p> <p>9 Q As it's defined in 19.2(a)?</p> <p>10 A Right.</p> <p>11 Q Which could really mean anything, right?</p> <p>12 A Not necessarily, no.</p> <p>13 Q For example, teaching your kid how to ride a 14 bike?</p> <p>15 A No.</p> <p>16 Q Uncompensated teaching, would that be 17 reportable activity?</p> <p>18 A No. It also talks about --</p> <p>19 Q When you say no where are you getting your 20 opinion from?</p> <p>21 A It says professional teaching. Let me give 22 you an example. I'm really good at wines. I collect 23 wines.</p> <p>24 Q Research?</p> <p>25 A No.</p>	<p>182</p> <p>1 Q Where did you look it up?</p> <p>2 A It's called Google.</p> <p>3 Q But it's not in Article 19?</p> <p>4 A No, it was actually on a medical professional 5 website. They defined it.</p> <p>6 Q Do you typically Google to figure out what the 7 policies are asking?</p> <p>8 A No. Just out of curiosity I looked up 9 professional practice. Let me finish. At the end of 10 the day, when you're doing something that's directly 11 related to what you're doing is one thing. If you're 12 going a Facebook page saying I'm out in my garden, look 13 at my beautiful roses, I'm fly fishing in North 14 Carolina, look at the trout I caught. That's not 15 something you need to report. But if you're an expert 16 in fishing and say look, we're doing this study, we're 17 doing stuff with fish now; that arguably would be 18 something that's reportable.</p> <p>19 Q Doctor Zoeller, what do you teach at FAU?</p> <p>20 A I'm an exercise physiologist.</p> <p>21 Q If you were showing me how to do a push-up, 22 would that reportable activity that you need permission 23 for under Article 19?</p> <p>24 A No, because I do push-ups regardless.</p> <p>25 Q If you were show me how to do one, or</p>
<p>1 Q When you're collecting the wines are you doing 2 any kind of research as to the taste of the wine?</p> <p>3 A No. Here's the difference. It's a hobby, it 4 doesn't have anything to do with what I do 5 professionally. So if you let me finish. Michael 6 called me a couple weeks ago and said I want to buy a 7 gift for my son-in-law. He likes scotch. There isn't 8 much I don't know about scotch. So I talked to him for 9 a couple minutes and figured out exactly what to get. He 10 got it for the son-in-law, of future son-in-law, I guess 11 it is, and he loved it. This is my hobby. It would be 12 very different if I was -- well, it's hockey season. By 13 the way, my team is doing very well. Let's say I'm 14 coaching a hockey team. My kid is in peewee league 15 hockey, and now I decide I'm going to do a study. I'm 16 going to separate my kids out. These kids are going to 17 eat whey protein -- I don't know if you know what that 18 is, but they're going to eat protein before practice 19 every game, and these guy aren't going to eat protein. 20 And I'm going to keep track of who scores how many goals 21 and who does this. Now I'm doing something that has to 22 deal with my professional practice. I've looked up 23 professional practice. Professional practice means the 24 use or application of knowledge or learning based on 25 your profession or area of discipline.</p>	<p>183</p> <p>184</p> <p>1 Q explaining to me the proper method, or you were teaching 2 me how to do one, would that be a reportable activity?</p> <p>3 A I don't think so, no. I don't think that 4 anybody would say that you have to report that.</p> <p>5 Q Is that part of your teaching at FAU?</p> <p>6 A I started doing push-ups a long time ago, 7 before I started working at FAU.</p> <p>8 Q You see where I'm going with this.</p> <p>9 A If I was doing personal training, which would 10 maybe go a little bit further than that, then yes. I 11 think I should report that. If I'm saying Mr. Leo, I'm 12 going to do personal training with you. We're going to 13 meet every day at the gym, three days a week, and I'm 14 going to train you personally, now I think we've 15 probably crossed over into an area where I'm using my 16 professional expertise for either compensated or non- 17 compensated activity, and now I'm doing it.</p> <p>18 Q Who makes that determination?</p> <p>19 A Here's the thing. The thing is, is there a 20 conflict of interest? No.</p> <p>21 Q That doesn't obviate the requirement on policy 22 or on paper to report, right? Whether there's a 23 conflict of interest --</p> <p>24 A That's also where common sense comes in.</p> <p>25 Q Let's say for example you're online and you</p>

<p>186</p> <p>1 see an article on the Palm Beach Post about exercise, 2 and it just defies logic to you and you'd like to 3 comment underneath in the comment box on the Palm Beach 4 Post website with your understanding of the proper 5 technique or whatever it is. You want to share your 6 research or your teaching. Your own personal view and 7 possibly professional opinion, would you need permission 8 from the university? Would you need to submit an 9 outside activity form before you could actually comment 10 on the website?</p> <p>11 A I think they would laugh at you if you did 12 that, knowing the people involved especially. But just 13 in general, I think -- no. I would argue no. You don't 14 have to. But if I had a blog -- let's say I had a blog. 15 This is Zoeller's blog on how you train. You're going to 16 get huge, you're going to run a four- minute mile. Then 17 yes.</p> <p>18 Q Uncompensated?</p> <p>19 A It says compensated or uncompensated. Now I 20 would argue that yes, I probably should. Is that a 21 conflict of interest? Hell no. But --</p> <p>22 Q Would that be constitutionally protected, your 23 blog?</p> <p>24 A Of course it would. So was his blog.</p> <p>25 Q So why should you have to report that to the</p>	<p>188</p> <p>1 actually saying, so I just want to be clear for the 2 record. You don't have it in front of you, so you're 3 just paraphrasing?</p> <p>4 A No, but it's on the blog. If you click 5 donate, one of the things it said you're donating to was 6 Memory Hole Blog independent research.</p> <p>7 Q When did you click donate?</p> <p>8 A I don't remember.</p> <p>9 Q Was it before or after Professor Tracy was 10 fired?</p> <p>11 A I don't remember. I think it had to be 12 before, but I don't remember. I don't remember. I 13 don't remember.</p> <p>14 Q That wasn't what you told Professor Tracy in 15 December of 2015, right?</p> <p>16 A Number one, I don't remember when I saw the 17 donate button. That doesn't change the fact that this 18 is something that was reportable. What did I tell him 19 in December of 2015?</p> <p>20 Q My question was: you didn't tell him that he 21 had a donate button on his blog and that was a problem 22 for him, in 2015?</p> <p>23 A No. In 2015 I had virtually no communication 24 with him in December of 2015.</p> <p>25 Q Who told you to testify today that Professor</p>
<p>187</p> <p>1 university?</p> <p>2 A Because they have the right to know and to 3 evaluate whether or not there's a conflict of interest.</p> <p>4 Q Why do they have the right to know what you're 5 blogging on your own time?</p> <p>6 A It depends on what the blog is. It depends on 7 the nature of the blog. We've kind of gone around in 8 circles, but at the end of the day, if I'm doing 9 something -- and in his case -- let's bring it home. 10 You're saying I'm doing research using this blog. I'm 11 soliciting money for independent research. Whether he 12 got money or not, he says I'm doing independent 13 research, and it clearly says here if you're doing 14 independent research, you gotta report it.</p> <p>15 Q But going to Professor Tracy's issues, you 16 testified that you didn't know if he was actually 17 receiving money --</p> <p>18 A It doesn't matter.</p> <p>19 Q -- that would be required to be reported.</p> <p>20 A It doesn't matter. Well, then he's lying on 21 his blog, which is going to open another Pandora's Box 22 for him, but that's neither here nor there for this 23 issue. He's saying give me money because I'm doing 24 independent research.</p> <p>25 Q Well, you're not pointing to what he's</p>	<p>189</p> <p>1 Tracy had a donate button on his blog and that was a 2 problem?</p> <p>3 A Nobody told him that. That's something I'm 4 telling you, that I looked at that and I'm like well, 5 I'm being accused of all kinds of things here, so I have 6 to defend myself.</p> <p>7 Q So after the lawsuit was filed, that's when 8 you started to come up with these defenses to Professor 9 Tracy for the university?</p> <p>10 A No. You asked me to tell you who told me to 11 tell you. And I'm saying nobody told me to tell you 12 anything. What I'm saying is you're asking questions 13 and I'm telling you. One of the questions -- you keep 14 saying this is constitutionally protected, which I agree 15 it is. What I'm saying is that based on a number of 16 criteria, it was reportable outside activity. But it 17 wasn't just the blog. It was the book that he didn't 18 write, according to you, or he did or didn't write. It 19 was a number of things. He had the radio show.</p> <p>20 Q But none of what you're saying now, today, 21 based on what you learned after a lawsuit was filed, was 22 ever brought up in 2015, when the determination was made 23 that Professor Tracy's situation was not grievable, 24 right?</p> <p>25 A I don't know if I brought it up. We discussed</p>

<p>1 whether or not -- I don't know if we went into 2 specifics. The understanding when we met, when I looked 3 at it, it was evidence to me, and as far as I'm 4 concerned the committee, they had a right to ask him to 5 submit outside activity forms, and that he had outside 6 reportable activity.</p> <p>7 Q Would you agree that if the blog was 8 uncompensated personal blog, was not for compensation, 9 that he did not receive money for what he put on the 10 blog --</p> <p>11 A It says compensated or uncompensated.</p> <p>12 Q I didn't finish my question. My question was: 13 if Professor Tracy's blog was a personal blog where he 14 didn't receive compensation, much like a Facebook page 15 of some of your colleagues who have not turned in 16 outside activities forms for their Facebook pages, would 17 the reporting be necessary for the university to 18 actually make a determination of whether or not the blog 19 was conflict of interest?</p> <p>20 A Yes, quite possibly, yes.</p> <p>21 Q The university already knew about Professor 22 Tracy's blogging in 2015, didn't they?</p> <p>23 A That's not the point.</p> <p>24 Q That's my question. Did the university know 25 about Professor Tracy's blog in 2015?</p>	<p>190</p> <p>1 for refusing to file the outside activity reports.</p> <p>2 Q For his blogs?</p> <p>3 A No. Show me where it says that.</p> <p>4 Q You know what? I'm going to give you the 5 notice of termination. We're going to take a break. You 6 can read that again. You can read the letters, as well.</p> <p>7 Let me just give you some letters. Here, I'll go even 8 further. We're going to give you the 2013 notice of 9 discipline, Z-14 for today. Here's a copy for your 10 counsel if you guys want to take that with you.</p> <p>11 A This is 2013.</p> <p>12 (Whereupon Plaintiff's Exhibit Z-14 was marked 13 for identification.)</p> <p>14 Q (By Mr. Leo) Right. I'm going to go back to 15 all of the letters from the university. I'm going to 16 give them to you so you can review them on the break, 17 okay? Because I have questions about all of them. Then 18 maybe we can address what it was or wasn't about, his 19 discipline. Z-15, this is a November 2015 notice of 20 discipline, for the record. December 16 notice of 21 discipline we will mark as Plaintiff's Exhibit Z-16.</p> <p>22 Then Z-17 is going to be the January 5th, 2016 notice of 23 termination.</p> <p>24 A (No response.)</p> <p>25 (Whereupon Plaintiff's Exhibit Z-15 was marked</p>
<p>1 A Yes.</p> <p>2 Q So why would they need a form to monitor or to 3 evaluate his blog?</p> <p>4 A Because that's what is required in the 5 Collective Bargaining Agreement. And it's not just a 6 blog. You keep trying to make it just about the blog. 7 Sorry. It's not just about the blog.</p> <p>8 Q Doctor Zoeller --</p> <p>9 A You can try and make it whatever you want. He 10 was doing a lot of other things that also probably 11 needed to be reported. It wasn't just the blog.</p> <p>12 Q Doctor Zoeller, Professor Tracy was fired for 13 his blogging, yes or no?</p> <p>14 A No. He was fired for insubordination.</p> <p>15 Q After he didn't grieve a directive, right? Let 16 me rephrase. Could Professor Tracy have been fired for 17 insubordination had he grieved the directive he didn't 18 comply with in a timely manner?</p> <p>19 A Yes.</p> <p>20 Q What insubordination could he have been 21 charged with?</p> <p>22 A This is all make believe. This is all --</p> <p>23 Q What's all make believe?</p> <p>24 A He didn't file a grievance. He could've filed 25 a grievance. At the end of the day what he got fired</p>	<p>191</p> <p>193</p> <p>1 for identification.)</p> <p>2 (Whereupon Plaintiff's Exhibit Z-16 was marked 3 for identification.)</p> <p>4 (Whereupon Plaintiff's Exhibit Z-17 was marked 5 for identification.)</p> <p>6 (Whereupon a lunch break was observed.)</p> <p>7 (Deposition resumed in Volume II.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



<p>194</p> <p>1 CERTIFICATE OF REPORTER 2 STATE OF FLORIDA 3 COUNTY OF PALM BEACH 4 5 I, LINDSAY YATES, Court Reporter and Notary Public 6 for the State of Florida, do hereby certify that I was 7 authorized to and did digitally report and transcribe 8 the foregoing proceedings, and that the transcript is a 9 true and complete record of my notes. 10 I further certify that I am not a relative, 11 employee, attorney or counsel of any of the parties, 12 nor am I a relative or employee of any of the parties' 13 attorneys or counsel connected with the action, nor am 14 I financially interested in the action. 15 Witness my hand this 26th day of April, 2017. 16 17 18 19 20 LINDSAY YATES, COURT REPORTER, FPR NOTARY PUBLIC, STATE OF FLORIDA 21 22 23 24 25</p>	
<p>195</p> <p>1 CERTIFICATE OF OATH 2 STATE OF FLORIDA 3 COUNTY OF PALM BEACH 4 5 I, LINDSAY YATES, the undersigned authority, 6 certify that ROBERT ZOELLER, JR., personally appeared 7 before me and was duly sworn on the 17th day of April, 8 2017. 9 Witness my hand this 26th day of April, 2017. 10 11 12 13 14 LINDSAY YATES, COURT REPORTER, FPR NOTARY PUBLIC, STATE OF FLORIDA Commission No.: GG 008552 15 Commission Exp: 10/28/2020 16 17 18 19 20 21 22 23 24 25</p>	

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