

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 II

VIDEOTAPED DEPOSITION OF ROBERT ZOELLER, JR.

TAKEN ON BEHALF OF THE PLAINTIFF

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

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BOCA RATON, FLORIDA 33431

REPORTED BY:

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



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<p>1 INDEX OF EXAMINATION  2 WITNESS: ROBERT ZOELLER, JR.  3 DIRECT EXAMINATION  By Louis Leo, Esquire</p> <p style="text-align: right;">PAGE</p> <p>6</p>	<p>198</p> <p>1 VOLUME II  2 DEPOSITION OF ROBERT ZOELLER, JR.  3 APRIL 17, 2017</p> <p>4 Q (By Mr. Leo) Before we broke I gave you some  5 documents; some notices that were issued by FAU. Which  6 of those documents that I gave you have you seen before?  7 A I've seen all of them.  8 Q You've seen all of them before?  9 A Yeah.  10 Q Had you reviewed these documents prior to your  11 determination that Professor Tracy's situation was not  12 grievable?  13 A Well, the one document, the January 5th letter  14 was the notice of termination. The attorney was in  15 charge of that. But if you're talking about -- you have  16 a November 20 -- or 2013 document. I'd seen that. I  17 can say that Doctor Tracy sent me that, I guess it was  18 in late October. Then the November 10th document I saw.  19 He said he got it on the 19th. I think he contacted me  20 and then sent it to me.  21 Q I didn't give you two documents that I saw  22 outside that I wanted you to take a look at. I'm going  23 to show you first Z-18 for today. Are you familiar with  24 this document?  25 A Not as familiar. I wish I had this on break</p>



201  1 so I could've looked at it. 2 (Whereupon Plaintiff's Exhibit Z-18 was marked 3 for identification.) 4 <b>Q (By Mr. Leo) You can read it.</b> 5 A Well, we're on a time limit here. I believe 6 I've seen this, but let me just read through it to 7 refresh my memory. Yeah, I do remember seeing it. I 8 just need to refresh my memory. Alright. 9 <b>Q Does that refresh your recollection as to</b> 10 <b>whether Professor Tracy was directed in 2013 to submit</b> 11 <b>outside activity forms?</b> 12 A Yes. 13 Q Are you aware of the advisement that Michael 14 Moats gave to Professor Tracy in response to this 15 directive in January of 2013? 16 A Not directly, no. 17 Q Were you aware at any point that Michael Moats 18 had directed Professor Tracy not to submit outside 19 activity forms for his blogging? 20 A That is my understanding, but don't know the 21 context of which that occurred. 22 <b>Q When did that become your understanding?</b> 23 A I don't remember. I'm honestly not trying to 24 be evasive. I just don't remember. 25 <b>Q Did Professor Tracy tell you that he wrote a</b>	203  1 A That's not my recollection. 2 <b>Q In December of 2015 didn't Professor Tracy</b> 3 <b>respond to Michael Moats, and copy you on</b> 4 <b>communications, wherein Moats denied giving that</b> 5 <b>advisement?</b> 6 A I know there was an exchange. I don't recall 7 the specific exchange. 8 <b>Q I'm going to show you what's been marked as Z-</b> 9 <b>20 for today.</b> 10 A That's what Doctor Tracy says. 11 (Whereupon Plaintiff's Exhibit Z-20 was marked 12 for identification.) 13 <b>Q (By Mr. Leo) You're copied on this exchange,</b> 14 <b>right?</b> 15 A Yes. 16 <b>Q Does this refresh your recollection as to</b> 17 <b>whether Professor Tracy informed you and Michael Moats</b> 18 <b>of the advisement that he had received from Michael</b> 19 <b>Moats in 2013?</b> 20 A Yes. It states -- Tracy states that Moats 21 gave him -- he wrote this letter, the attached letter, 22 under consultation from Michael Moats. 23 <b>Q Right. Z-19 is the letter that he attached to</b> 24 <b>this email?</b> 25 A Yes, okay.
202  1 letter to Defendant Coltman shortly after receiving this 2 directive in 2013? 3 A I believe so. If I'm not mistaken, I think I 4 had a copy of it. 5 <b>Q I'm going to show you what's been marked as Z-</b> 6 <b>19 for today. Is that the letter you're referring to?</b> 7 A Yeah, I recognize some of the wording that 8 looks familiar. Again, I wish I had this on break. 9 (Whereupon Plaintiff's Exhibit Z-19 was marked 10 for identification.) 11 <b>Q (By Mr. Leo) You can read it. Take as long as</b> 12 <b>you need. I do have some questions as to the content.</b> 13 A Okay. 14 <b>Q Does this refresh your recollection as to</b> 15 <b>whether Professor Tracy provided you with his response</b> 16 <b>to Defendant Coltman's January 2013 directive to submit</b> 17 <b>outside activity forms?</b> 18 A I believe her letter was January 28th, his 19 response was February 2nd; both 2013. 20 <b>Q Defendant Moates counseled Professor Tracy in</b> 21 <b>writing this response, this February 2nd, 2013 response.</b> 22 <b>Isn't that correct?</b> 23 A I have no knowledge to that at all. 24 <b>Q Professor Tracy didn't tell you that Moats had</b> 25 <b>counseled him in writing this response?</b>	204  1 <b>Q My question is: was December 20th the first</b> 2 <b>time that you were made aware of the advisement and</b> 3 <b>consultation from 2013, or had you learned that before</b> 4 <b>that?</b> 5 A I would have to go back and look. I want to 6 say this was the first time I was aware the letter -- 7 and again, this is going on my recollection which is far 8 from perfect. There was a lot of stuff going on. I 9 believe this is the first time. I was aware of the 10 letter, I was not aware this had been done in 11 consultation with Michael Moats, or at least according 12 to Doctor Tracy, in consultation with Michael Moats. 13 <b>Q Looking at these communications, particularly</b> 14 <b>the January 28th directive from Defendant Coltman, as</b> 15 <b>well as Professor Tracy's response to that directive,</b> 16 <b>would you agree with the characterization of the</b> 17 <b>timeline in that January of 2013, FAU is directing</b> 18 <b>Professor Tracy to submit outside activities forms for</b> 19 <b>his blogging, and in response, Professor Tracy, as</b> 20 <b>directed by UFF, denies FAU's request for these forms on</b> 21 <b>the grounds that the blogging is not reportable outside</b> 22 <b>activity. Is that a fair and accurate representation?</b> 23 A Let me read it more closely. 24 <b>Q Sure, take your time.</b> 25 A Well, in the letter of the 28th, this



205 <p>1 particular letter seems to be focusing more on the 2 website as opposed to a blog. It talks about, in the 3 fourth paragraph, they're talking more specifically 4 about the global research site. It just says we asked 5 you to tell us more about this, et cetera, et cetera. 6 <b>Q Do you see that next paragraph after the one</b> 7 <b>you just read?</b> 8 A Okay. "I asked you whether you completed the 9 outside activity report, you replied you had not. You 10 should complete this required form and return it to the 11 director for approval by February 1st." 12 <b>Q Now, turning to Professor Tracy's February 2nd</b> 13 <b>response to this directive, if you take a look at what</b> 14 <b>he says regarding the directive --</b> 15 A I see it. Do you have a specific question? 16 <b>Q As to whether this refreshes your</b> 17 <b>recollection--</b> 18 A Yes. 19 <b>Q As to Professor Tracy's response to those</b> 20 <b>initial directives --</b> 21 A Correct. 22 <b>Q Earlier when you testified, you had indicated</b> 23 <b>this was different. In 2015 the directives were</b> 24 <b>different than the directives in 2013. Looking at this</b> 25 <b>now, do you want to change your testimony as to whether</b></p>	207 <p>1 for identification.) 2 <b>Q (By Mr. Leo) Is there anything in this</b> 3 <b>settlement addressing outside activity forms in any way?</b> 4 A No, there's not. 5 <b>Q Would you agree that FAU abandoned any</b> 6 <b>complaint or issue with Professor Tracy's failure in</b> 7 <b>2013 to submit outside activity forms when they entered</b> 8 <b>this settlement agreement?</b> 9 A It certainly would appear that way. 10 <b>Q Was any of this that we just discussed</b> 11 <b>addresses by Michael Moats prior to the determination on</b> 12 <b>December 1st or November 30th, regarding the</b> 13 <b>grievability of Professor Tracy's 2015 notice of</b> 14 <b>discipline, the first one in November?</b> 15 A Not that I recall, although, I have to be 16 honest and say that it's possible he may have. I just 17 don't recall. I'm just trying to be as honest as I can. 18 There's a lot, specifically in that meeting, that I 19 don't recall. 20 <b>Q Was FAU trying to use the outside activity</b> 21 <b>form as a pretext to fire Professor Tracy or discipline</b> 22 <b>him for his speech?</b> 23 A I have no evidence of that. 24 <b>Q Would you agree that this is evidence of that?</b> 25 A No. There's nothing in here that says he's</p>
206 <p>1 <b>it was different back then?</b> 2 A The directive was -- I think it was an issue 3 of the timing. What I recall is it was a directive for 4 him to fill out the form. I didn't dispute that. What 5 I wasn't sure is whether it was before or after the 6 settlement. But I do remember them telling him that he 7 needed to fill out the outside activity form. So I've 8 never disputed that. 9 <b>Q In 2013, FAU, through Defendant Coltman,</b> 10 <b>directs the Plaintiff, Professor Tracy, to submit</b> 11 <b>outside activity forms for his blog. Professor Tracy,</b> 12 <b>after consultation and advisement from UFF and Michael</b> 13 <b>Moats, responds denying any obligation on Professor</b> 14 <b>Tracy's part to submit these forms. And afterwards FAU</b> 15 <b>abandons any discipline or any further directives for</b> 16 <b>those forms. Would you agree with that</b> 17 <b>characterization?</b> 18 A That would appear to be true. 19 <b>Q Going back to the settlement agreement, you</b> 20 <b>had mentioned there was something in there about the</b> 21 <b>forms. Let me just put this in the record as Z-21.</b> 22 <b>Just take a look and let me know when you've had a</b> 23 <b>chance to review that.</b> 24 A Okay. 25 (Whereupon Plaintiff's Exhibit Z-21 was marked</p>	208 <p>1 not required. The settlement agreement doesn't say no, 2 you don't have to complete the forms. But to answer 3 your question, the short answer is no. 4 <b>Q The settlement agreement also does not say</b> 5 <b>that Professor Tracy has to complete the forms for his</b> 6 <b>blogging, right?</b> 7 A This is true, but the Collective Bargaining 8 Agreement does, and university regulations say that he 9 does. 10 <b>Q Where in the Collective Bargaining Agreement</b> 11 <b>does he say that Professor Tracy has to submit outside</b> 12 <b>activity forms for his personal blog?</b> 13 A It doesn't say -- and you keep going back to 14 personal blog, and it's just inappropriate, and 15 misleading, and lacks integrity. It states that you 16 have to report any outside activity. So it's not 17 specific to blogs. 18 <b>Q Isn't that what the problem -- isn't that the</b> 19 <b>problem that all the faculty members who complained in</b> 20 <b>September of 2015 had, that the wording of the policy</b> 21 <b>was problematic, and that nobody knows at the university</b> 22 <b>knows what they're actually requiring to be reported?</b> 23 A That's an over-statement. It was nobody knows 24 and everybody's confused. No. The answer is no, I 25 don't agree with that.</p>



<p>1   <b>Q</b> So when Doctor Lenz stated that nobody at the  2 university knows what outside activity means --  3   A Doctor Lenz says a lot of things. He can say  4 whatever he wants.  5   <b>Q</b> So you disagree with that characterization?  6   A I think it's an over-statement, yes. When  7 you're in the middle of a passionate discussion, terms  8 like nobody, never, always, those kinds of terms are  9 used, but rarely are they an accurate description of  10 reality.  11   <b>Q</b> Why didn't United Faculty of Florida use  12 anything that happened in 2013 concerning Professor  13 Tracy in 2015?  14   A Because it was 2015, and they had asked him to  15 file outside activity reports, and it was pretty clear  16 that he had reportable outside activity. Their request  17 for him to file outside activity reports was not a  18 violation of the Collective Bargaining Agreement.  19   <b>Q</b> Did you determine that Professor Tracy's 2013  20 discipline, grievance, settlement was irrelevant, or was  21 that somebody else that made that determination?  22   A Nobody determined anything was irrelevant.  23 Again, it's like asking me when did I stop beating my  24 wife, and really inappropriate, but it is what it is.  25 Like I said, we met -- the grievance committee met and I </p>	<p>209</p> <p>1 the grievability of the November of 2015 notice of  2 discipline to Professor Tracy, was there any discussion  3 of the 2013 grievance or settlement?  4   A Again, I do not recall that, but again, I  5 don't have a strong recollection of what was discussed  6 at the meeting. So I don't recall that, but I don't  7 completely rule it out. To the best of my recollection,  8 I don't believe so. My memory of that meeting is very  9 minimal at best. And again, I'm not trying to be  10 evasive; I'm here under oath and I take that very  11 seriously. I just don't remember all that well. You  12 have to understand I probably go to a dozen meetings a  13 week, sometimes more than that. So some things I  14 remember really well, some things maybe not so well. To  15 be perfectly honest, I don't recall that. No, I don't  16 recall the discussion of the 2013 grievance.  17   <b>Q</b> Was 2015 your first year as president?  18   A No, I started in 2014.  19   <b>Q</b> In 2015, you made some reference to you had  20 some time issues, a lot on your plate, something along  21 those lines?  22   A Yeah. Yes, I'm really, really, really busy.  23   <b>Q</b> How much time would you say in 2015 when  24 Professor Tracy was facing discipline again, that you  25 committed to his issues?</p> <p>211</p>
<p>1 consulted with. I consulted with Tim Lenz multiple  2 times during that fall semester, because I had access to  3 him in his office. We discussed this and many other  4 things. But it was a decision -- ultimately, I made the  5 decision, but it was based on discussion, and I remember  6 distinctly taking a vote amongst the people that were  7 there at the grievance committee meeting on November  8 30th.  9   <b>Q</b> Who voted?  10   A It was the committee as a whole; it was me,  11 McGetchin, and Lenz. Michael Moats was there, but he  12 was just there in an advisory capacity, so to speak.  13   <b>Q</b> Wasn't McGetchin in a transitional capacity at  14 the time?  15   A Yes, but he was member of the committee.  16   <b>Q</b> But having no experience in the realm of  17 grievances, what if any effect, does his vote have?  18   A He's a member of the committee. He has a  19 vote. Some of us are experienced -- you had Lenz, who  20 was very experience, you had me, probably arguably  21 somewhere in the middle, and Doug, who was relatively  22 inexperienced. But if you have a team some players are  23 rookies and some players are seasoned veterans. But  24 they're all part of the team.  25   <b>Q</b> At the committee meeting where you voted on </p>	<p>210</p> <p>1   A I don't know. I can't say. I don't know. I  2 don't know. When I say my plate's loaded, I'm teaching  3 three classes, I'm the graduate coordinator for my  4 program, there's other grievances that are being filed.  5 Let's just put it this way. I take this all very  6 seriously, and I read everything, and I try to make an  7 intelligent decision. At the time, for example, when he  8 first started emailing, I really tried to read all of  9 this stuff associated with outside activity. I'm trying  10 to get myself prepared to see is there something here  11 that's in violation of the Collective Bargaining  12 Agreement. I did what I thought what a union  13 representative should do to make an intelligent and  14 appropriate decision.  15   <b>Q</b> Do you think that a union representative at  16 FAU should direct its members to comply with directives  17 that are grievable?  18   A Yes. Depending on the situation, because  19 again, the old adage is comply and then fight. It  20 depends entirely on the situation. You can always  21 grieve it. If you get found to be insubordinate you can  22 get terminated. So like I said, the old adage when I  23 started getting involved in the union that I learned  24 years ago was you comply and then fight.  25   <b>Q</b> You ever heard the old adage if your mother </p> <p>212</p>



<p>1 <b>told you to jump off a bridge, would you?</b></p> <p>2 A It has nothing to do with this. I mean, come</p> <p>3 on. You're reaching, dude. You're reaching.</p> <p>4 <b>Q Am I really?</b></p> <p>5 A Yeah.</p> <p>6 <b>Q If FAU told you to kill somebody at the</b></p> <p>7 <b>university, would you comply and then fight it?</b></p> <p>8 A Of course not.</p> <p>9 <b>Q It's a slippery slope here, you see.</b></p> <p>10 A No, it's not. You're trying to make something</p> <p>11 out of nothing, and I get it, because you've got</p> <p>12 nothing.</p> <p>13 <b>Q That's an interesting statement considering</b></p> <p>14 <b>what we have is you directing a member of your faculty</b></p> <p>15 <b>to comply with an unlawful and unconstitutional</b></p> <p>16 <b>directive.</b></p> <p>17 A That's what you say. I don't agree that it's</p> <p>18 unlawful and unconstitutional. That's what you say.</p> <p>19 <b>Q Sure, but that's a question for the jury. So</b></p> <p>20 <b>tell the jury right now why you told Professor Tracy to</b></p> <p>21 <b>comply with an unconstitutional directive.</b></p> <p>22 A I just told you.</p> <p>23 MR. MCKEE: He's been asked that and he's</p> <p>24 answered it no less than three times.</p> <p>25 Don't answer it.</p>	<p>213</p> <p>1 A Go ahead.</p> <p>2 <b>Q Was that good or bad advice, Doctor Zoeller?</b></p> <p>3 A It was solid advice. If he had turned it in</p> <p>4 as I instructed him at the time that he was supposed to</p> <p>5 turn it in, and complied with the university's</p> <p>6 directive, it's my personal opinion that we wouldn't be</p> <p>7 here today.</p> <p>8 <b>Q What are you basing that opinion on?</b></p> <p>9 A That's my opinion.</p> <p>10 <b>Q Let's change the do a scenario do a</b></p> <p>11 <b>hypothetical since that's what we're doing here. If he,</b></p> <p>12 <b>Professor Tracy, had grieved in November of 2015 the</b></p> <p>13 <b>directive to turn in the forms, would we be here today?</b></p> <p>14 A I don't know.</p> <p>15 <b>Q So how can you say one way or the other --</b></p> <p>16 A That's my opinion.</p> <p>17 <b>Q How do you know?</b></p> <p>18 A Because he would not have been guilty of</p> <p>19 insubordination.</p> <p>20 <b>Q Right. Is that why you told him to submit the</b></p> <p>21 <b>forms?</b></p> <p>22 A Yes.</p> <p>23 <b>Q Would he have been guilty of insubordination</b></p> <p>24 <b>regardless of whether he turned in the forms, because</b></p> <p>25 <b>they were asking for four years of forms?</b></p> <p>215</p>
<p>1 Ask another question.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 MR. LEO: I'm sorry. When did I ask him</p> <p>4 anything along these lines?</p> <p>5 THE WITNESS: Are you kidding me?</p> <p>6 MR. MCKEE: He's told me no less than three</p> <p>7 times.</p> <p>8 MR. LEO: What has he told me, Bob? Go ahead.</p> <p>9 Tell me what he said.</p> <p>10 MR. MCKEE: He's told you that he directed or</p> <p>11 suggested to Doctor Tracy that he comply by filling</p> <p>12 out the form, and if something were to happen as a</p> <p>13 result of filling out the form, he could complain</p> <p>14 about it.</p> <p>15 MR. LEO: I said why. Why? That was my</p> <p>16 question, Bob.</p> <p>17 MR. MCKEE: His answer was because he believed</p> <p>18 that the form had to be filled out and submitted.</p> <p>19 MR. LEO: Why?</p> <p>20 THE WITNESS: And I don't want him to get</p> <p>21 fired.</p> <p>22 <b>Q (By Mr. Leo) Now Professor Tracy gets fired</b></p> <p>23 <b>after he turns in the form, within days --</b></p> <p>24 A He turned it in late.</p> <p>25 <b>Q I'm not done with my question.</b></p>	<p>214</p> <p>216</p> <p>1 A No.</p> <p>2 <b>Q What are you basing that opinion on?</b></p> <p>3 A Because they said give us the forms. They're</p> <p>4 saying give us the forms. Insubordination means very</p> <p>5 simply not responding to a direct order, a reasonable</p> <p>6 direct order.</p> <p>7 <b>Q Like in 2013?</b></p> <p>8 A Can I finish? He was given a direct order.</p> <p>9 My feeling was I don't want you to get fired. So fill</p> <p>10 out the form so they can't use insubordination. If they</p> <p>11 say that any of these things are a conflict of interest,</p> <p>12 I'm going to file a damn grievance in a heartbeat.</p> <p>13 Because I think about the only thing that you and I</p> <p>14 agree on is that everything that he did, as far as I can</p> <p>15 tell, is constitutionally protected. There's nothing</p> <p>16 wrong with what he was doing, but it was reportable --</p> <p>17 he keeps doing things that are reportable outside</p> <p>18 activities. You're probably not going to believe me,</p> <p>19 but I didn't want him to get fired.</p> <p>20 <b>Q How could he ever not insubordinate after he</b></p> <p>21 <b>did not comply with the directive in 2013?</b></p> <p>22 A Because they gave him a chance. They said --</p> <p>23 because now they're saying just fill out the forms.</p> <p>24 They're all but saying here, fill out the forms. If</p> <p>25 they wanted to hit him with -- they could have hit him -</p>



<p>1 - if their goal was -- they could've hit him with  2 insubordination. They could've said you didn't fill out  3 the forms, we're filing insubordination. They said fill  4 out the forms. If he fills out the forms he's making a  5 good-faith effort, he's doing what he's been told to do.  6 He's not insubordinate. But if he doesn't fill out the  7 forms, this is a directive saying fill out the forms --  8 and I think they said if you don't that there's going to  9 be -- bad things are going to happen afterwards if you  10 don't. They basically say as a penalty of further  11 disciplinary action, if I'm not mistaken. Like I said,  12 you're not going to believe me and that's fine and good.</p> <p>13 Q It's doesn't matter what I believe, Doctor  14 Zoeller. What we have here is a record that says a very  15 different thing than what you're saying today. So  16 looking at the record here, in 2015, it's your testimony  17 that had he submitted the forms he wouldn't have been  18 fired?</p> <p>19 A I think there's a good chance he would not  20 have been. Let's put it this way. By not filling out  21 the forms it gave them a perfect reason to fire him.</p> <p>22 Q Why didn't they fire him in 2013? Why didn't  23 they fire him in 2014?</p> <p>24 A I can't answer that question. That's  25 something you're going to have to ask them.</p>	<p>217</p> <p>1 A Because at the end of the day he still was not  2 in compliance with the Collective Bargaining Agreement.  3 Can I finish? Whether they were watching the story or  4 not, whether they were following up with this, why they  5 weren't tracking his outside activity forms, I have no  6 idea. That's something you're going to have to ask  7 them. At the end of the day, the Collective Bargaining  8 Agreement clearly states that he has a requirement to  9 submit those forms. And that's what we go by. Is there  10 a violation of the Collective Bargaining Agreement? And  11 them asking him to file these outside activity forms is  12 not a violation of the Collective Bargaining Agreement.</p> <p>13 Q (By Mr. Leo) In 2015, when you and Michael  14 Moats decide that Professor Tracy's notice of discipline  15 is not grievable --</p> <p>16 A That's a misstatement. It wasn't me and  17 Michael Moats. See, this is a misstatement of facts.</p> <p>18 Q Your words in your email is what I just  19 repeated.</p> <p>20 A Show me that. I want to see that.</p> <p>21 Q I've already given it to you.</p> <p>22 A Show me. Show me where it's at.</p> <p>23 Q Go ahead and take a look. It was one of the  24 first exhibits I gave you.</p> <p>25 A It says we met.</p>
<p>1 Q And nobody asked that question in 2015 at  2 United Faculty of Florida, for example, at your  3 grievance meeting?</p> <p>4 A Not that I'm aware of, no.</p> <p>5 Q Why? You didn't care.</p> <p>6 A Oh, come on.</p> <p>7 Q You sit here today and you act like you  8 protect the Constitution and you care about --</p> <p>9 MR. MCKEE: Is that a question?</p> <p>10 MR. LEO: I'm asking a question. I'm in the  11 middle of a question, Bob, and I ask you to not  12 interrupt me.</p> <p>13 MR. MCKEE: No. I'll interrupt when I think  14 it's appropriate.</p> <p>15 MR. LEO: Well, it's my deposition, so if  16 you're going to interrupt me you can take a walk,  17 or we can certify all of this.</p> <p>18 MR. MCKEE: Certify what you want.</p> <p>19 MR. LEO: My question was: why in 2015 when  20 you're having a grievance meeting about Professor  21 Tracy's rights and the responsibilities under the  22 Collective Bargaining Agreement, didn't somebody  23 say why didn't they fire you in 2013 for this, or  24 discipline you for not complying with this  25 directive?</p>	<p>218</p> <p>1 Q Read what you wrote.</p> <p>2 A We met with Michael Moats and discussed the  3 situation at length. It was our collective decision.</p> <p>4 Q Collective decision what?</p> <p>5 A That this situation is not grievable.</p> <p>6 Collective. You said me and Michael Moats. We was not  7 just -- we met with Michael Moats. So for about the  8 14th time, it was me, Doug McGetchin, Tim Lenz, and  9 Michael was there as an outside advisor. He wasn't even  10 directly involved with it at this point.</p> <p>11 Q So it was you, Michael Moats, Tim Lenz, who's  12 an advisor --</p> <p>13 A Tim Lenz is part of the grievance committee.</p> <p>14 Q But he wasn't the chair at the time?</p> <p>15 A No.</p> <p>16 Q It was McGetchin that was the chair?</p> <p>17 A Technically McGetchin was the chair.</p> <p>18 Q And he had no experience in grievances?</p> <p>19 A That's not true. He had some experience. He  20 was learning the ropes. But to say he had no experience  21 is simply not true. At that point in time we had filed  22 a number of grievances. He started -- let's see. He  23 had probably, I'm guessing, about six months of  24 experience. Was it a lot of experience? No. But to  25 categorize it as no experience simply isn't true.</p> <p>220</p>



<p>221</p> <p>1 Q He had no experience in dealing with Professor 2 Tracy's issues, right? 3 A Neither did I. 4 Q What efforts did you, or McGetchin, or anybody 5 acting at your direction take to actually learn about 6 the issues in 2013, prior to making your collective 7 decision that the notice of discipline was not 8 grievable? 9 A I read everything that he sent me. I read it 10 very carefully. He also wrote a letter of response, and 11 we relied heavily on that. When he got the notice of 12 termination that he says he got on November 19th, we 13 read that. You're trying to characterize that we 14 somehow just blew this off, and what you just said a 15 little while ago, you didn't care, is completely a lie. 16 Q I don't need to characterize it that way. 17 That's what the record shows. 18 A No, that's what you say the record shows. 19 Q Please tell me right now what you actually did 20 to defend Professor Tracy in this case. You. Let's 21 just talk about you for starters. What did you do? 22 A Examined all the facts to the best of my 23 knowledge, and made a decision based on what -- 24 ultimately the decision to file a grievance is based on 25 whether there was a violation of the Collective</p>	<p>223</p> <p>1 university is acting. Joint action. How did anything 2 that you did defer from what the university was doing in 3 2015? Give me one example of how what you were doing 4 was any different. 5 A I don't know what they were doing. What I did 6 was I -- 7 Q You knew what they were doing. 8 A I looked at the facts of the case, I made a 9 decision based on -- for the 20th time, that there was 10 no clear violation of the Collective Bargaining 11 Agreement. And none of the committee members disagreed 12 with that assessment. We took a vote, the members 13 present agreed by their vote that there was no clear 14 violation of the Collective Bargaining Agreement. 15 Q I think everybody here would agree that the 16 notice of discipline from November 10th, 2015, including 17 yourself sitting here today, would agree that this 18 notice is actually grievable. Would you agree? 19 A You can grieve anything. 20 Q So how can you sit here today and say it's the 21 truth or it's fact, your collective decision that it's 22 not grievable in 2015? Do you see the problem here? 23 A No. 24 Q You don't see a problem with your testimony? 25 A No.</p>
<p>222</p> <p>1 Bargaining Agreement. And in looking at all of the 2 facts, for about the 10th time, there was no clear 3 violation of the Collective Bargaining Agreement. 4 They're asking him to file outside activity forms. It's 5 clearly within their prerogative. 6 Q You call that defending Professor Tracy? 7 A I call it the truth and the facts. 8 Q You call the decision the November 10th notice 9 of discipline is not grievable is the truth and facts? 10 A It was not a violation of the Collective 11 Bargaining Agreement. 12 Q Who are you speaking for right now? You, the 13 union, or the university? 14 A I'm speaking for the union. I'm the person 15 that makes -- ultimately the decision sits with me. I'm 16 not speaking for the university. And frankly, I'm 17 insulted by that insinuation. 18 Q It's an accusation. You've been accused of 19 what's called joint action. 20 A You can accuse me of a lot of things. 21 Q Do you know what joint action means? 22 A I'm guessing, but go ahead. 23 Q I'm just asking you. 24 A I think you called it conspiracy. 25 Q No. We call it acting in a way that the</p>	<p>224</p> <p>1 Q You don't like Professor Tracy, right? 2 A Do I like him? No, not personally. 3 Q You don't like what Professor Tracy is saying? 4 A There's lots of people that we don't like. 5 Q You don't like what Professor Tracy said in 6 his blog, right? 7 A That's probably a fair statement. 8 Q You didn't want to defend him? 9 A I don't have a choice. It's my job to defend 10 him. As I've said in emails, and numerous times, it's 11 not about whether I like him or not. It's about what 12 his rights are under the Collective Bargaining 13 Agreement. I said as I sat here, and of course you 14 don't believe me and I don't really care, I don't like 15 him and I don't like the things that he said. But like 16 I said, probably the only thing we agree on is the stuff 17 that he was doing is constitutionally protected. But 18 them asking him to file the reports was not a violation 19 of his Constitutional rights. Nobody said he couldn't 20 do or say anything. If they would have said upon filing 21 these forms, Doctor Tracy, this is a conflict of 22 interest, or any way, shape, or form, you can't do this, 23 I would've filed a grievance in a heartbeat, and quite 24 frankly, I think we would have won. 25 Q Like in December of 2015 when they fired him</p>



<p>1 for his blogging? Let's talk about that. December 16th-</p> <p>2 A They assigned an attorney.</p> <p>3 Q December 16th, let's talk about that. I don't</p> <p>4 want to talk about his attorney right now.</p> <p>5 A Oh, I bet you don't.</p> <p>6 Q I want to talk about what he was fired for.</p> <p>7 Go to page two of December 16th, 2015 notice of proposed</p> <p>8 discipline. For the record, this is the notice of</p> <p>9 proposed discipline dated December 16th, 2015, that was</p> <p>10 issued by Florida Atlantic University after Professor</p> <p>11 Tracy did not file a grievance in response to the</p> <p>12 November 10th, 2015 notice of discipline. Do you</p> <p>13 disagree with that characterization, Doctor Zoeller?</p> <p>14 A Say that again.</p> <p>15 Q Do you disagree with the characterization that</p> <p>16 this document reflects a notice of proposed discipline</p> <p>17 termination that Professor Tracy was issued by Florida</p> <p>18 Atlantic University after he failed to grieve the</p> <p>19 directive issues on November 10th, 2015, and after he</p> <p>20 then turned in his forms as he was directed by you?</p> <p>21 A Well, he did not turn in his forms as he was</p> <p>22 directed by me. First of all, he was directed by the</p> <p>23 university to turn in the forms on December 14th. He</p> <p>24 turned then in on December 15th. So he turned them in</p> <p>25 after the day -- they gave him conditions and he turned</p>	<p>225</p> <p>1 blog. Again failed to submit any outside activity</p> <p>2 reports for the three years in question for your blog,</p> <p>3 which you clearly spend time and resources maintaining</p> <p>4 and contributing to. You have yet again to provide the</p> <p>5 university the forms needed to assess if a conflict</p> <p>6 exists for the blog activity." So would you agree now</p> <p>7 that Professor Tracy was fired for not disclosing his</p> <p>8 blog on outside activity forms?</p> <p>9 A That and among other things. It also states</p> <p>10 you refuse to file a form for the last three years.</p> <p>11 Where does it say -- you remain recalcitrant in refusal</p> <p>12 to provide outside activity forms for other activities</p> <p>13 that may be in conflict. So the blog was one of a</p> <p>14 number of activities.</p> <p>15 Q Sure. More vague and ambiguous language that</p> <p>16 served the university. We're familiar with the text,</p> <p>17 okay. My question about --</p> <p>18 A Then why are you asking me the question?</p> <p>19 Q -- this is: was Professor Tracy fired for not</p> <p>20 complying with the November 10 directive, or fire for</p> <p>21 not turning in forms for three years?</p> <p>22 A The November 10th directive indicated that he</p> <p>23 needed to file the forms -- where's the November 10th</p> <p>24 directive?</p> <p>25 Q Here's a copy, but there's one that's marked</p> <p>227</p>
<p>1 them in late.</p> <p>2 Q He turned them in on December 15th, is that</p> <p>3 what you said?</p> <p>4 A I believe that's the date. I may have my</p> <p>5 dates off, but I believe they gave him -- and by the</p> <p>6 way, at this point in time he had no contact with me</p> <p>7 whatsoever. He did this -- whatever he did or didn't</p> <p>8 do, he did on his own. It says here the deadline was</p> <p>9 December 14th and he submitted them on the 15th.</p> <p>10 Q Right. And that second paragraph, Defendant -</p> <p>11 - this is Alperin is writing this?</p> <p>12 A Yes.</p> <p>13 Q Defendant Alperin writes, "On the evening of</p> <p>14 December 15th" --</p> <p>15 A What page is that?</p> <p>16 Q Page two, second paragraph. "On the evening</p> <p>17 of December 15th, 2015, you sent the dean an email that</p> <p>18 you did not see per prior email message with the missed</p> <p>19 deadline, because you were on parental leave and did not</p> <p>20 check your email account." She goes on to say, "later</p> <p>21 that night on December 15th you submitted outside</p> <p>22 activity forms for your work on only two outside</p> <p>23 activities." You go down to the next paragraph after</p> <p>24 she says, "Professor Tracy admitted he was engaged in</p> <p>25 outside activity on global research.ca and your personal</p>	<p>226</p> <p>1 right there.</p> <p>2 A The November 10th directive told him to file</p> <p>3 the forms. They gave him several opportunities.</p> <p>4 Q And then he turned them in, right?</p> <p>5 A Late. The deal was you file by --</p> <p>6 Q What deal?</p> <p>7 A Go tell the IRS hey, I filed my taxes, but I</p> <p>8 filed them late.</p> <p>9 Q Apples and oranges, Doctor Zoeller.</p> <p>10 A No, I don't think so, pal. I don't think so.</p> <p>11 They gave him a date to file it by. He did not file it</p> <p>12 on the date. He did not file all the forms that he</p> <p>13 needed to fill out. He filled out some forms.</p> <p>14 Q But you see what happened here, Doctor</p> <p>15 Zoeller?</p> <p>16 A Well, I'm sure you're going to tell me.</p> <p>17 Q You accuse me of playing games. Would you</p> <p>18 agree that the university was playing games with</p> <p>19 Professor Tracy in 2015, just like they had played games</p> <p>20 with him in 2013?</p> <p>21 A What does that mean, playing games? Can you</p> <p>22 explain that?</p> <p>23 Q I'm asking you.</p> <p>24 A Well, I don't understand the question. What's</p> <p>25 playing games?</p> <p>228</p>



<p>229</p> <p>1 Q Setting a trap. He could've never been timely 2 on his forms for the past three years in 2015. Wouldn't 3 you agree?</p> <p>4 A They told him to turn it in, so he would've 5 very much been timely.</p> <p>6 Q Let me get this one the record, okay. Me then 7 you. Professor Tracy could've never been timely in the 8 submission of outside activity forms for his blog for 9 three years --</p> <p>10 A Yes, he could have.</p> <p>11 Q -- wouldn't you agree?</p> <p>12 A No. They said turn them in. If he would've 13 turned them in we would've fought. We would've said he 14 turned them in and there's no conflict of interest. You 15 told him that you need to file. They said give us the 16 forms for the last three years. File the forms. In my 17 opinion I don't think -- I don't know all the stuff he 18 was doing, but everything I'm aware of, I don't feel was 19 a conflict of interest, and I would agree was 20 constitutionally protected. It is my opinion, based on 21 this, that if he would've given them the forms reporting 22 all of his outside activity for the last three years, we 23 would've fought like hell if they would've said in any 24 way he was in violation. He would've fulfilled -- he 25 would've complied with their requests to file the forms,</p>	<p>231</p> <p>1 going to discipline you?</p> <p>2 A They didn't say they were going to discipline. 3 They said just fill out the forms. They said we're 4 going to discipline you if you don't. After he refused 5 to give them the forms, they said we're going to 6 discipline you if you don't give us the forms.</p> <p>7 Q "Failure to meet any of the requirements 8 listed above" --</p> <p>9 A Where are you reading from?</p> <p>10 Q It's November 10th, 2015 notice of discipline, 11 bottom of the page. This is Defendant Coltman. She 12 writes, "Within 48 hours of receipt of this letter, 13 you're required to acknowledge receipt of your 14 assignment with all terms and conditions. Submit 15 outside activity employment forms for '13-'14, '14-'15, 16 '15-'16." Would you agree with me that's about four 17 years of forms they're asking for?</p> <p>18 A It's three academic years.</p> <p>19 Q Three, four, five, and six.</p> <p>20 A Yeah. '13-'14 is one year, '14-'15 is one 21 year, '15-'16 is one year. So it's three years.</p> <p>22 Q So they're asking him in 2015 to submit the 23 past three years?</p> <p>24 A Yes.</p> <p>25 Q And then the next year of activity.</p>
<p>230</p> <p>1 even though they were late. And he would've also 2 reported the outside activity. There's no conflict of 3 interests that I'm aware of. So they could have done 4 whatever they wanted to, but I think they would've had 5 an extraordinarily weak case, because he would've 6 complied. To this day, I don't think that he was doing 7 anything that was a conflict of interest.</p> <p>8 Q Going back to Professor Tracy's 2013 dealings 9 with the university regarding this very issue, he was 10 issued a directive in 2013 to submit the outside 11 activity for his blog. He denied that directive based 12 on the consultation and advice of Moats and United 13 Faculty of Florida. How could he, in 2015 having done 14 that, ever not be in violation?</p> <p>15 A I just answered that. You just asked me and I 16 just answered it.</p> <p>17 Q I didn't get the answer from you. So I'm 18 confused. Explain to me how Professor Tracy would have 19 not been insubordinate in 2014 after not submitting his 20 form for 2013 or 2014.</p> <p>21 A Because they said in 2015 just give us the 22 forms.</p> <p>23 Q They said just give us the forms?</p> <p>24 A They said give us the forms.</p> <p>25 Q Did they say give us the forms and we're not</p>	<p>232</p> <p>1 A I don't see that on here. It just says '13- 2 '14 -- they're asking for the forms specifically for the 3 three years.</p> <p>4 Q '15-'16 goes into the next year, right?</p> <p>5 A Yes.</p> <p>6 Q Would you agree that asking for '15-'16 would 7 be asking for activity that hasn't happened yet?</p> <p>8 A Possibly.</p> <p>9 Q And the last line here, "Failure to meet any 10 of the requirements listed above may result in further 11 disciplinary action."</p> <p>12 A Right. Well, he's already been disciplined.</p> <p>13 Q Right. Which is grievable, right?</p> <p>14 A No. I said that the notice of discipline in 15 November 10th, we determined this was not something -- 16 they're asking him to file these were not a violation of 17 the Collective Bargaining Agreement.</p> <p>18 Q Professor Tracy could have grieved this notice 19 of discipline on November 10th, could've filed a 20 grievance, yes or no?</p> <p>21 A Yes.</p> <p>22 Q You could've filed a grievance in response to 23 this November 10 notice of discipline? You could have 24 literally, physically filed a grievance for Professor 25 Tracy?</p>

<p>233</p> <p>1 A You can file grievance over anything.  2 Q Answer my question.  3 A Yes.  4 Q McGetchin could have filed a grievance to the  5 notice of discipline in 2015? He could've filed a  6 grievance?  7 A Yes. You can file a grievance over anything.  8 Q I'm going to keep going. The chapter, as a  9 chapter could have grieved this notice of discipline?  10 A No, we already discussed -- why do we keep  11 going over the same thing? No.  12 Q Because you're not answering the question.  13 A No. The answer is no.  14 Q You're saying the chapter --  15 A No.  16 Q Let me just be clear here.  17 A N-O.  18 Q Let me preface the question then. If I asked  19 the same question to your colleagues that have more  20 experience than you at the university and United Faculty  21 of Florida, and all of them stated that it absolutely  22 could have been done by your chapter, in response to the  23 November 10th, 2015 notice of discipline.  24 A You can do anything you want, but it's not --  25 would not be a valid grievance. You can file -- I can</p>	<p>235</p> <p>1 Florida Atlantic University, when you did not grieve the  2 November 10th of 2015 notice of discipline. Did you  3 decide that on your own?  4 A I didn't decide that at all.  5 Q Who helped you or directed you not to grieve  6 the notice of discipline in November of 2015?  7 A No one directed me, again, for about the 40th  8 time. We met as a committee. We discussed the issue.  9 I discussed this with Tim Lenz on a number of occasions.  10 We met again on November 30th with Doug McGetchin and  11 Michael Moats. We discussed it, and we came to a  12 decision. I also -- and I don't know why you don't have  13 the email, because I'm almost positive I forwarded it  14 with the other 400 emails, that I resent his letter --  15 Doctor Tracy's letter in response to the November 10th  16 letter. And I said please look at this again. I want  17 to give him any possible consideration. I don't really  18 see where there's a violation, but see if you see  19 anything. I did not get a response from anyone. I will  20 say it again. No one directed me to do anything. The  21 idea that I'm to do the bidding of FAU is insulting, and  22 unsubstantiated by any facts, sir.  23 Q The record speaks to itself, Doctor Zoeller.  24 A Yeah, it sure does.  25 Q And like you said, had there been a grievance,</p>
<p>234</p> <p>1 file anything.  2 Q I'm not asking about validity.  3 A Why would I file an invalid grievance?  4 Q Why would you defend Professor Tracy? Good  5 question, right? Why?  6 A Why would I defend him if he was doing  7 something -- if they were violating his rights under the  8 Collective Bargaining Agreement, then we would have  9 filed a grievance. The letter of November 10th, 2015,  10 asking him to report his outside activity is not a  11 violation of the Collective Bargaining Agreement.  12 Q Did somebody at the university give you this  13 to say to me today?  14 A No, and I am insulted by that remark.  15 Q Did somebody at the university give you that  16 back in November of 2015 --  17 A No, they did not.  18 Q When you made your determination that this  19 notice of discipline was not grievable?  20 A No, and I resent that insinuation.  21 Q So you just decided on your own to serve --  22 A You ask the same questions over and over  23 again.  24 Q I'm not asking the same question. I'm asking  25 if on your own you decided to serve the interest of</p>	<p>236</p> <p>1 we might not be here today.  2 A And if my grandma had wheels, she'd be a  3 wagon.  4 Q Going back to what you told Shane Eason, did  5 you tell Shane Eason that you met with Larry Glick and  6 talked about Professor Tracy?  7 A No, I didn't, because I never met with Larry  8 Glick to discuss about James Tracy.  9 Q Are you saying under oath and under the  10 penalty of perjury that you never had a conversation  11 with Larry Glick concerning Professor Tracy at all?  12 A That's correct. To the very, very, very best  13 of my knowledge I certainly did not meet with Larry  14 Glick -- I don't remember meeting with Larry Glick one-  15 on-one on anything. The only times that I can ever,  16 ever recall meeting with Larry Glick was in  17 consultation, when there was a group of people, in  18 collective bargaining, when there's a group of people,  19 and grievances, where there's a group of people. To the  20 best of my knowledge, and I've racked my brain, I don't  21 think we ever discussed Tracy at all. And I don't ever  22 remember meeting with him one-on-one about anything.  23 Q Okay. Going back to December of 2015, who was  24 the first person at United Faculty of Florida to direct  25 the UFF-FAU members not to communicate with Professor</p>



<p>1 <b>Tracy?</b></p> <p>2 A In December of 2015, I don't know.</p> <p>3 <b>Q Were you the first person by email to tell the</b></p> <p>4 <b>group, the executive or the grievance committee --</b></p> <p>5 A Yes, and we've already discussed this. This</p> <p>6 was an internal discussion between members of the</p> <p>7 executive committee. And for the reasons I've stated</p> <p>8 previously, I felt this would not be productive for us</p> <p>9 to share this with Jim.</p> <p>10 <b>Q When was the first time that United Faculty of</b></p> <p>11 <b>Florida directed anybody not to let Professor Tracy</b></p> <p>12 <b>respond to the notices that had been issued by Florida</b></p> <p>13 <b>Atlantic University?</b></p> <p>14 A What respond? I don't even understand the</p> <p>15 question.</p> <p>16 <b>Q My question was: who was the first person at</b></p> <p>17 <b>United Faculty of Florida, whether it was you, Moats,</b></p> <p>18 <b>anybody above your ranks, to direct members of United</b></p> <p>19 <b>Faculty of Florida not to let Professor Tracy respond to</b></p> <p>20 <b>the university's notices?</b></p> <p>21 A When you say respond, what do you mean by</p> <p>22 respond to the university's notices? I don't even</p> <p>23 understand the question.</p> <p>24 <b>Q Do you know what he word respond means?</b></p> <p>25 A Yes, but I'm not sure I understand the</p>	<p>237</p> <p>1 case is resolved, but that is another issue. What is</p> <p>2 the university's last work day before the holiday, and</p> <p>3 when do they resume? Trying to determine the logistics</p> <p>4 of the ten-day window, and don't let Jim respond."</p> <p>5 (Whereupon Plaintiff's Exhibit Z-22 was marked</p> <p>6 for identification.)</p> <p>7 <b>Q Jim is Professor James Tracy, right?</b></p> <p>8 A I assume, but I'll be honest with you, I don't</p> <p>9 even understand what that means.</p> <p>10 <b>Q You don't understand what don't let Jim</b></p> <p>11 <b>respond means?</b></p> <p>12 A Respond to what? I'm not sure responding to</p> <p>13 what.</p> <p>14 <b>Q What's subject of this message?</b></p> <p>15 A Notice of proposed discipline.</p> <p>16 <b>Q Does that refresh your recollection as to what</b></p> <p>17 <b>Michael Moats instructed you to not let Jim respond to?</b></p> <p>18 A Let's put it this way. I was obviously a</p> <p>19 recipient of this email, but until today -- and I've</p> <p>20 looked through these a million times -- I didn't even</p> <p>21 pay any attention to that. My understanding -- was the</p> <p>22 date on this? The 16th. My understanding is that the</p> <p>23 attorney was going to work with Jim and us to file a</p> <p>24 notice -- I'm sorry, a response -- help Jim craft a</p> <p>25 response. Why he said that, I don't know. I didn't</p>
<p>1 question. You're saying respond in what way? What are</p> <p>2 you talking about?</p> <p>3 <b>Q In any way.</b></p> <p>4 A And did I tell members of the --</p> <p>5 <b>Q The question was: who was the first one? I</b></p> <p>6 <b>didn't ask you if you did.</b></p> <p>7 A I still don't understand the question.</p> <p>8 <b>Q The question is: who was the first United</b></p> <p>9 <b>Faculty of Florida officer, director, member, whoever,</b></p> <p>10 <b>who instructed the union or the members not to let</b></p> <p>11 <b>Professor Tracy respond to the university?</b></p> <p>12 A I'm not aware that anybody stopped him from</p> <p>13 responding to the university.</p> <p>14 <b>Q That's not my question. I said who was the</b></p> <p>15 <b>first one --</b></p> <p>16 A Well, it didn't happen. So how can it be</p> <p>17 first?</p> <p>18 <b>Q Let me show you what's been marked as Z-22 for</b></p> <p>19 <b>today. Take a look at this directive, and let me know</b></p> <p>20 <b>if this refreshes your recollection as to my question.</b></p> <p>21 A "Sun Sentinel has the story on their website,</p> <p>22 I guess. University provided a press release, which I</p> <p>23 believe violates chapter 10." -- I'm sorry -- "1012.91</p> <p>24 Florida Statutes, which makes disciplinary action</p> <p>25 confidential and exempt from public record until the</p>	<p>238</p> <p>240</p> <p>1 tell Jim to respond, not to respond. I didn't make any</p> <p>2 kind of response to this. I don't recall seeing this.</p> <p>3 <b>Q To answer my question, was Michael Moats the</b></p> <p>4 <b>first one at United Faculty of Florida to direct the</b></p> <p>5 <b>chapter not to let Jim respond?</b></p> <p>6 A That's what it says.</p> <p>7 <b>Q Did anybody else from United Faculty of</b></p> <p>8 <b>Florida say the same thing that Michael Moats had said</b></p> <p>9 <b>in December of 2015?</b></p> <p>10 A Not that I'm aware of. Let's just put it this</p> <p>11 way. There was a very real intent to respond to the</p> <p>12 notice to proposed discipline.</p> <p>13 <b>Q Why?</b></p> <p>14 A Because that's standard procedure. You get a</p> <p>15 ten-day window to respond, and the normal procedure is</p> <p>16 that the faculty member, him and/or his representative</p> <p>17 or in conjunction, file a response to a notice of</p> <p>18 proposed discipline. It's pretty standard.</p> <p>19 <b>Q Would you agree that in 2013 that the union</b></p> <p>20 <b>was successful in defending Professor Tracy against</b></p> <p>21 <b>FAU's disciplinary action?</b></p> <p>22 A Yes.</p> <p>23 <b>Q Why would the union change its strategy in</b></p> <p>24 <b>2015, and now require Professor Tracy to comply with the</b></p> <p>25 <b>directive that it previously advised him not to comply</b></p>



<p>1 with?</p> <p>2 A I wasn't present in 2013. I gave him the best</p> <p>3 possible advice that I thought I could give in the</p> <p>4 interest of trying to preserve his job. I did not want</p> <p>5 him to be found insubordinate, and therefore, I advised</p> <p>6 him to fill out the form and then grieve after.</p> <p>7 Q If Professor Tracy had filed a grievance, or</p> <p>8 had the union filed a grievance for him, or had the</p> <p>9 chapter filed the grievance in November of 2015 after</p> <p>10 the November 10 notice of discipline, could the</p> <p>11 university have terminated or disciplined Professor</p> <p>12 Tracy in December of 2015, while a grievance was</p> <p>13 pending?</p> <p>14 A I don't know.</p> <p>15 Q Going back to December of 2015, did anybody at</p> <p>16 United Faculty of Florida raise concerns about the</p> <p>17 outside activities policy and a more significant issue</p> <p>18 in this case, than just Professor Tracy filling out</p> <p>19 these forms?</p> <p>20 A Say it again.</p> <p>21 Q Did anybody at United Faculty of Florida in</p> <p>22 2015 express concerns about the outside activities</p> <p>23 policy and a more significant issue than just Professor</p> <p>24 Tracy not submitting the forms at that time?</p> <p>25 A I believe so, yes.</p>	<p>241</p> <p>1 activity. They're claiming that Jim's blog contains</p> <p>2 outside activity. And he even goes on to say that</p> <p>3 social media like Facebook, which seems very blog-like,</p> <p>4 could fall within the scope of this policy.</p> <p>5 A And we've already had this discussion, and I</p> <p>6 don't agree.</p> <p>7 Q But these are the concerns of your colleagues</p> <p>8 who have more experience than you at United Faculty of</p> <p>9 Florida, wouldn't you agree?</p> <p>10 A Yes, and they're not the president. I have to</p> <p>11 make the decision, and I took everyone -- everyone</p> <p>12 weighed in on this. I took everybody's opinion and I</p> <p>13 weighed it all.</p> <p>14 Q Was Chris Robinvited to the November 30th</p> <p>15 grievance meeting?</p> <p>16 A No, he was not a member of the grievance</p> <p>17 committee, and that's inappropriate. You know that, and</p> <p>18 you're just reaching, my man.</p> <p>19 Q I know what?</p> <p>20 A That he was not part of the grievance</p> <p>21 committee.</p> <p>22 Q Why?</p> <p>23 A Because he wasn't a member of the grievance</p> <p>24 committee. You have a grievance committee, he was doing</p> <p>25 recruiting. Everybody has different jobs. Why were you</p>
<p>1 Q Was Chris Robone of those members who</p> <p>2 expressed concern?</p> <p>3 A I believe so.</p> <p>4 Q I'm going to show you what's been marked as Z-</p> <p>5 23 for today. Could you just take a look at it and let</p> <p>6 me know --</p> <p>7 A I'm familiar with it.</p> <p>8 (Whereupon Plaintiff's Exhibit Z-23 was marked</p> <p>9 for identification.)</p> <p>10 Q (By Mr. Leo) So let's talk about it. In</p> <p>11 bullet point three, is this the first time that Rob</p> <p>12 conveyed his concerns about the outside activities</p> <p>13 policy? Was this email the first time, on December</p> <p>14 17th, or had he expressed these concerns to you</p> <p>15 previously?</p> <p>16 A I can't recall.</p> <p>17 Q Are the emails around this time, December</p> <p>18 16th, December 17th, is this the first time that your</p> <p>19 executive committee was communicating about the</p> <p>20 grievability of Professor Tracy's disciplinary action?</p> <p>21 A I can't remember if it was the first time or</p> <p>22 the second time. It was about this time. In terms of</p> <p>23 whether it was the first time or not, I can't recall.</p> <p>24 Q Looking at what Professor Robsays here, it</p> <p>25 talks about the very broad definition of outside</p>	<p>242</p> <p>244</p> <p>1 not a member of the committee?</p> <p>2 Q Nobody invited me.</p> <p>3 A These are ridiculous questions.</p> <p>4 A I would be a part of the committee if you guys</p> <p>5 invited me.</p> <p>6 A Oh, okay.</p> <p>7 Q Going back to Chris Robconcerns --</p> <p>8 A Let me finish. I took -- as I said before,</p> <p>9 Chris Robmade this argument. I believe Mike Budd made</p> <p>10 this argument. Some people said the hell with him. So</p> <p>11 I didn't take any of those -- I took everything</p> <p>12 together, I weighed everything, and I made a decision,</p> <p>13 again, based on looking at the Collective Bargaining</p> <p>14 Agreement. And the point of fact was that what he was</p> <p>15 doing on that blog was a hell of a lot more than a</p> <p>16 Facebook page.</p> <p>17 Q Give me one example of Professor Tracy's</p> <p>18 blogging that was a hell of a lot different than</p> <p>19 Facebook.</p> <p>20 A Independent research. Give me money for my</p> <p>21 independent Memory Blog research.</p> <p>22 Q What research?</p> <p>23 A Well, if he wasn't doing any research, then</p> <p>24 he's soliciting money under false pretenses.</p> <p>25 Q What money?</p>



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<p>1 A He's soliciting money.</p> <p>2 Q <b>What money?</b></p> <p>3 A Soliciting. It doesn't matter.</p> <p>4 Q <b>Give me one example of one dollar he solicited that you know of.</b></p> <p>5 A It doesn't matter. It said donate.</p> <p>7 Q <b>You're just making things up sitting here today, aren't you, Doctor Zoeller?</b></p> <p>9 A No, I'm not. It's called web archiving. Go on and pull it up. You're saying there wasn't a donate button.</p> <p>12 Q <b>I'm saying, first of all, when did you actually look at Professor Tracy's blog to come to whatever conclusion you've come to?</b></p> <p>15 A I don't remember.</p> <p>16 Q <b>You testified earlier that you looked at an archive?</b></p> <p>18 A I said you can go on web archive because now it's closed. So you can go back and look at it.</p> <p>20 Q <b>So the first time you looked at Professor Tracy's blog was after it had been shut down?</b></p> <p>22 A No, that's not the first time I looked at his blog. I don't remember when it was, but the reason I mentioned web archive is because you can go on there and look and see that there was a donate button.</p>	<p>1 A No, it's because I don't remember. My answer is I don't remember.</p> <p>3 Q <b>Give me one person that you talked to from your executive committee about what you just said.</b></p> <p>5 There was a donation button, for example. Give me the first time you talked about Professor Tracy's donation button.</p> <p>8 A How many times can I say I don't remember?</p> <p>9 Q <b>Is that because you didn't tell anybody about it?</b></p> <p>11 A It's because I don't remember.</p> <p>12 Q <b>Let's talk about the press. You didn't like the press?</b></p> <p>14 A Well, there were saying a lot of bad things about him. They weren't exactly -- a lot of them weren't exactly on his side.</p> <p>17 Q <b>They were lying about him, wouldn't you agree?</b></p> <p>18 A No, I don't use lie. But they were making assumptions that were not --</p> <p>20 Q <b>Are you saying that the media was telling the truth when they accused Professor Tracy of harassing murder victims? Was that true or false? Let's just start with that one. Did Professor Tracy harass murder victims, yes or no?</b></p> <p>25 A I would say yes.</p>

  

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1 Q **Where in any of your emails that you've produced to us do you talk about anything that you're talking about right now?**

4 A There's lots of things I don't talk about in there. So how it that relevant?

6 Q **How is it relevant to your investigation or determination that Professor Tracy's disciplinary action wasn't grievable? Is that what you're asking me?**

9 A No, that's not what I'm asking you.

10 Q **It would be relevant, wouldn't it?**

11 A What would be relevant?

12 Q **What was on Professor Tracy's blog, what the university was requiring to be reported. These issues should've been raised before a determination as to whether or not the notice was grievable.**

16 A Just because I didn't put it in an email doesn't mean I wasn't aware of the issues.

18 Q **I'm just asking: when did you talk about it, other than today? I hear what you're saying today and that's all noted for the record. Tell me the first time you talked about any of this.**

22 A I don't remember. We had a million emails, meetings, discussions. I don't remember.

24 Q **Is it because you didn't talk about it back in 2015?**

1 Q **Based on what?**

2 A Based on the fact that he was calling -- he described them as so-called parents, said they were making millions of dollars from this.

5 Q **How is that harassment?**

6 A If I was that parent I think I would be pretty upset.

8 Q **Do you know what harassment is?**

9 A Go ahead and tell me.

10 Q **I'm asking you if you know. I'm not going to tell you.**

12 A I have my understanding of harassment.

13 Q **What is your understanding of harassment?**

14 A Harassment is to do things that are insulting or harmful to someone, either in terms of their -- it could just be simply doing something that's hurtful to them in terms of -- it could be verbiage. It could be yelling at someone. In this case it was a barrage of email activity -- or not email activity, but activity that basically called into question whether or not this guy's son even existed. He filed it. By the way, he filed -- my understanding -- go ahead.

23 Q **Did you ever look up the definition of harassment when the accusation that Professor Tracy harassed anybody was made?**

<p>1 A Did I look at the definition? No. At the end  2 of the day, you asked me if I agreed. I agreed this is  3 what was said in the press. What's that got to do with  4 me?</p> <p>5 <b>Q You didn't like the press, right?</b></p> <p>6 A I didn't like the things they were saying.  7 The things they were saying was assuming -- they were  8 making a lot of statements based on false assumptions.</p> <p>9 <b>Q Was it your concern in 2015 that the press was</b>  10 <b>making false statements about Professor Tracy, or was</b>  11 <b>your concern that you were going to have to be</b>  12 <b>implicated or have to acknowledge that you represented</b>  13 <b>this man? Which one was it?</b></p> <p>14 A It was both.</p> <p>15 <b>Q Which one was more important to you?</b></p> <p>16 A They were all important. It was all part of  17 the whole mess.</p> <p>18 <b>Q Let's start with the first one, that they were</b>  19 <b>making false statements about Professor Tracy.</b></p> <p>20 A Yes, they were.</p> <p>21 <b>Q What did you do to correct those false</b>  22 <b>statements that were being made?</b></p> <p>23 A I worked with Jennifer Proffit. There was one  24 particularly bad article, I think, in the Sun Sentinel.  25 And I worked with Jen Proffitt to make a response to</p>	<p>249</p> <p>1 A I don't know if anybody told me. This is  2 pretty standard. You don't want to -- you want to  3 control the narrative. Talking to the press -- a lot of  4 these people were not on his side, and you're just  5 fueling the fire. If there's a fire, the last time I  6 checked, the best way to stop a fire was not by pouring  7 gasoline on it. I gagged myself, I didn't say anything  8 to the press. I refused to talk. What we did was,  9 eventually we made very carefully-constructed press  10 releases to the press, to make it clear where we stood.  11 But for him to go on there and continue to talk about  12 conspiracy theories and other things, is just not  13 helping the case. I don't have the authority to tell  14 him anything, and he went on there -- his attorney told  15 him not to do this. He ignored it. So we don't have  16 the authority.</p> <p>17 <b>Q Doesn't he have the right to talk to whoever</b>  18 <b>he wants?</b></p> <p>19 A And I have the right to tell him don't do it.  20 I said don't do it. I think that was damn good advice.  21 That was my advice. Don't talk to the press. Do I have  22 the authority? I don't have any authority. I can't  23 make him do anything.</p> <p>24 <b>Q I understand what you're saying, but going</b>  25 <b>back to --</b></p>
<p>250</p> <p>1 them. The thing is, getting into battle with the press,  2 in our opinion, was not a good idea. But we did craft  3 several statements. But one in particular that Jen  4 Proffitt worked on, I helped her to refute something  5 that had been said -- I think it was in the Sun Sentinel  6 that we thought was particularly irresponsible.</p> <p>7 <b>Q Did you tell Professor Tracy not to talk to</b>  8 <b>the press?</b></p> <p>9 A I don't know if I directly told him or not,  10 but I sure as hell thought it was a good idea.</p> <p>11 <b>Q I'm going to show you what's been marked as Z-</b>  12 <b>24 for today. Take a look at that and let me know when</b>  13 <b>you've had a chance to review it.</b></p> <p>14 A Okay, yes. I told him to stop talking to the  15 press. This would've been right after he got fired.  16 (Whereupon Plaintiff's Exhibit Z-24 was marked  17 for identification.)</p> <p>18 <b>Q (By Mr. Leo) What authority do you have to</b>  19 <b>tell anybody at FAU not to speak to anybody, let alone</b>  20 <b>the press?</b></p> <p>21 A I don't have authority. That's what I'm  22 telling him, you shouldn't talk to the press. He  23 obviously ignored me.</p> <p>24 <b>Q Who told you to tell Professor Tracy not to</b>  25 <b>talk to the press?</b></p>	<p>252</p> <p>1 A It was in his best interest as far as, I  2 think, virtually everyone.</p> <p>3 <b>Q Whose best interest was it for a directive not</b>  4 <b>to respond to the press, particularly allegations that</b>  5 <b>just a moment ago characterized as false?</b></p> <p>6 A Because they have already made up their minds.  7 You're not going to change their minds. And again,  8 you're fueling the fire.</p> <p>9 <b>Q That was in United Faculty of Florida's best</b>  10 <b>interest or is that in FAU's best interest?</b></p> <p>11 A In his best interest. Not FAU or United --  12 this was his best interest.</p> <p>13 <b>Q Did United Faculty of Florida, whether it was</b>  14 <b>Michael Moats, Jennifer Proffitt, Marshall Ogletree, did</b>  15 <b>any of them tell you not to let Professor Tracy talk to</b>  16 <b>the press?</b></p> <p>17 A No.</p> <p>18 <b>Q did any of the United Faculty of Florida folks</b>  19 <b>tell you to not let Professor Tracy respond to official</b>  20 <b>directives or notice of discipline letters?</b></p> <p>21 A There was an email from Michael that said  22 don't let him respond. Like I said, I don't even  23 remember seeing that.</p> <p>24 <b>Q What was the basis for that instruction?</b></p> <p>25 A I don't know. You're going to have to ask</p>



<p>1 Michael Moats. You'll have him here tomorrow so you can 2 ask him.</p> <p>3 <b>Q When you write to Meredith Mountford in this</b> 4 <b>email, what indiscretions were you talking about?</b></p> <p>5 A Where? I don't see.</p> <p>6 Q You write, "Jim is between a rock and a hard 7 place. It turns out there were probably, quote, 'other 8 indiscretions'."</p> <p>9 A Where he was doing things like using 10 university equipment, using university facilities to 11 support some of his activities. My understanding -- at 12 the time I didn't realize he had a radio show and was 13 doing other things, but my understanding was that he was 14 using university equipment, and that was a direct 15 violation with the Collective Bargaining Agreement.</p> <p>16 <b>Q What equipment was Professor Tracy using?</b></p> <p>17 A He said in his conversation with me that he 18 was using -- he said he used his computer. He also -- 19 Chris Rob-- I believe he testified in his deposition 20 that he was using his office to do interviews.</p> <p>21 <b>Q Wouldn't that be an incidental use of</b> 22 <b>university equipment?</b></p> <p>23 A That's not my call. What I said was -- I 24 termed it as indiscretion.</p> <p>25 <b>Q Why would you term it as an indiscretion?</b></p>	<p>253</p> <p>1 <b>described, from your office on your computer? Would you</b> 2 <b>be violating school policy?</b></p> <p>3 A I don't think it would constitute an outside 4 activity.</p> <p>5 <b>Q How is that any different than Professor Tracy</b> 6 <b>using the school computer to write on his blog or</b> 7 <b>anywhere on the Internet?</b></p> <p>8 A We've already been there. Because his blog 9 was more than just a Facebook page. I don't know what 10 he was going with his computer. He admitted to the 11 university that he was using his computer for outside 12 activities. Whether it was his blog, I don't know. I 13 didn't see what was on there. He admitted to me in a 14 phone conversation that he was using university 15 equipment for outside activities.</p> <p>16 <b>Q And you didn't ask him for details on that,</b> 17 <b>right?</b></p> <p>18 A Not at that point in time, no.</p> <p>19 <b>Q Because you didn't care?</b></p> <p>20 A No, and I resent that. I resent that. That 21 is a false statement. Talk about lying.</p> <p>22 <b>Q Why didn't you ask him if you cared?</b></p> <p>23 A Because we had other stuff to move on to. I 24 was trying to figure out how we were going to deal with 25 this pending termination.</p> <p>255</p>
<p>1 A Because I think it's an accurate term. You're 2 not being discreet.</p> <p>3 <b>Q Are you saying that university faculty are not</b> 4 <b>permitted to use their computers or their offices to</b> 5 <b>express their viewpoints or opinions?</b></p> <p>6 A No. You're not supposed to use it for outside 7 activities. Again, it's Article 19.</p> <p>8 <b>Q And if the outside activity is a</b> 9 <b>constitutionally protected activity --</b></p> <p>10 A It's irrelevant. You keep going back to that. 11 It's irrelevant. You're trying to make something that's 12 not there. It doesn't say anything about whether it's 13 constitutionally protected or not. What it says is with 14 outside activity, if you're going to use university 15 facilities that you need to notify them.</p> <p>16 <b>Q Going back to the analogy that we used</b> 17 <b>earlier, if you were sitting in your office using your</b> 18 <b>faculty-issued computer to browse the Internet, and you</b> 19 <b>wanted to respond to an article in the Palm Beach Post</b> 20 <b>on exercise, would you be indiscreet if you commented on</b> 21 <b>that article?</b></p> <p>22 A Probably better if I use my home computer, 23 yes. I think that would be more appropriate.</p> <p>24 <b>Q Would you be violating any policy at the</b> 25 <b>university by commenting on the article that I just</b></p>	<p>254</p> <p>1 <b>Q I'm going to show you what's been marked as Z-</b> 2 <b>25, because we don't have a lot of time, and I have a</b> 3 <b>lot of ground to cover. Do you recognize this</b> 4 <b>communication from Michael Moats?</b></p> <p>5 A Yes. I don't remember what the quote was, but 6 I think the quote was taken from years ago. The quote 7 from Chris Rob-- 8 (Whereupon Plaintiff's Exhibit Z-25 was marked 9 for identification.)</p> <p>10 <b>Q (By Mr. Leo) What was the quote?</b></p> <p>11 A I don't remember, but if I do remember the 12 quote was taken -- if I recall correctly -- Chris Rob 13 quote was taken from years ago. They cut and pasted a 14 quote from years ago.</p> <p>15 <b>Q From 2013 when the university union was</b> 16 <b>defending Professor Tracy? Is that when it was?</b></p> <p>17 A Possibly.</p> <p>18 <b>Q So the quote was Robdefending Professor Tracy?</b></p> <p>19 A I don't know what the quote was.</p> <p>20 <b>Q Is that a fair --</b></p> <p>21 A I don't know the quote, so I'm not going to 22 comment on it. This was taken completely -- this is 23 another example of bad press. They were quoting people 24 from something that happened in 2013 and applying it to 25 something that happened in 2016.</p> <p>256</p>



<p>257</p> <p>1 Q Here's my next question. How could Chris Rob 2 if he's commenting on United Faculty of Florida 3 defending Professor Tracy in 2013, how could that be 4 hurting Professor Tracy's case?</p> <p>5 A I don't know. I don't even know what the 6 quote was.</p> <p>7 Q You didn't talk to Michael Moats about this 8 email?</p> <p>9 A I talked to him about a lot of stuff. I don't 10 recall.</p> <p>11 Q I see. You don't remember or you don't want 12 to remember?</p> <p>13 A I don't remember.</p> <p>14 Q I just want to be clear for the record.</p> <p>15 A No, that's not being clear for the record. 16 It's a cheap shot, and that's all you've got.</p> <p>17 Q Let's talk about another email I have here, 18 from Doug McGetchin. Are you familiar with Doug 19 McGetchin's communications in December of 2015?</p> <p>20 A Yes, I am.</p> <p>21 Q Have you had a chance to review all of his 22 communications he sent you back then?</p> <p>23 A I believe so, yes.</p> <p>24 Q McGetchin didn't like Professor Tracy's blog?</p> <p>25 A No, he did not.</p>	<p>259</p> <p>1 Q So in the November 30th, 2015 grievance 2 committee, McGetchin didn't say this?</p> <p>3 A This was the first time that he had expressed 4 this to me.</p> <p>5 Q Would you agree that the characterization of 6 don't defend this guy if you can avoid it is unethical?</p> <p>7 A No. I think he's expressing an opinion. He 8 said if you can avoid it --</p> <p>9 Q How is that not unethical?</p> <p>10 A Don't defend him if -- the only way -- I don't 11 know how you avoid it. You'd have to ask Doug why he 12 said this. I will tell you this, because I was taken 13 aback by this. I called him the next day and had a very 14 long conversation with him, and told him I was taken 15 aback, and told him that's not how this works. We don't 16 have a choice. It doesn't matter whether you like him 17 or not. He has rights under the Collective Bargaining 18 Agreement. Are you even listening to what I'm saying?</p> <p>19 Q Yeah, I'm multitasking.</p> <p>20 A My students try to do that, and they're not 21 very good at it either. I told him in no uncertain 22 terms that this is not acceptable and not how we do 23 business. If you don't like him, that's one thing. I 24 don't particular like him either. But this is about 25 violations under the Collective Bargaining Agreement,</p>
<p>258</p> <p>1 Q And he told you he didn't want to represent 2 him?</p> <p>3 A Yes, he did.</p> <p>4 Q Let me show you Z-26. Is this an email from 5 Doug McGetchin to you?</p> <p>6 A Yes, it is.</p> <p>7 (Whereupon Plaintiff's Exhibit Z-26 was marked 8 for identification.)</p> <p>9 Q (By Mr. Leo) This is dated December 17th, 10 2015. What's he talking about?</p> <p>11 A He's talking about the time. This is the 30- 12 day rule. We have to file within 30 days. It looks 13 like the administration have been incredibly 14 accommodating. I believe what he's saying is they gave 15 him multiple chances to file the forms.</p> <p>16 Q You would describe as incredibly 17 accommodating?</p> <p>18 A That's how he describes it.</p> <p>19 Q Threats of discipline are incredibly 20 accommodating?</p> <p>21 A That's how he described it.</p> <p>22 Q when he says don't defend this guy if you can 23 avoid it, was that the first time McGetchin conveyed his 24 opinion and wish that you not defend Professor Tracy?</p> <p>25 A Yes.</p>	<p>260</p> <p>1 and we have every obligation to defend him in terms of 2 his rights under the Collective Bargaining Agreement. 3 You better understand that as a grievance chair that we 4 don't make decisions based on whether we like what 5 people put on their blog or not. It's based on whether 6 or not there's a violation of the Collective Bargaining 7 Agreement, and his rights under that Collective 8 Bargaining Agreement. And personal likes and dislikes 9 have nothing to do with this.</p> <p>10 Q By this time it's December 17th, Professor 11 Tracy is already being fired officially by the 12 university, right?</p> <p>13 A On the 16th he was given a notice of 14 termination -- pending termination.</p> <p>15 Q But Professor Tracy's ability to grieve the 16 November 10, 2015 notice of discipline, that ship had 17 sailed by this point?</p> <p>18 A That's correct.</p> <p>19 Q And that ship sailed because the chapter 20 didn't grieve for him or on its own, right?</p> <p>21 A And he had an opportunity to grieve himself. 22 He stated in an email, he said are you going to grieve 23 this or shall I?</p> <p>24 Q What was your response to that?</p> <p>25 A I said I didn't feel it was grievable.</p>

<p>1    Q    It was more than that, right? You told him  2    sign the forms and then we'll grieve.  3    A    There were two different issues. We said that  4    we didn't feel that this was grievable. And in the  5    meantime, I told him fill out the forms, yes. So  6    there's two different issues. They said fill out the  7    forms. Yes. We told him to fill out the forms. We  8    thought that was a wise course of action in his best  9    interest. At the same time them asking him to fill out  10   the forms was not a violation of the Collective  11   Bargaining Agreement. He could've filed -- we gave him  12   plenty of time. He was notified on December 1st. He  13   had at least until December 9th. If he wanted to file a  14   grievance on his own, he could've done that. He clearly  15   indicated that he understood that.  16   Q    Going back to what Chris Robsaid about -- I'm  17   sorry -- strike that. Going back to what Michael Moats  18   said in his email just two days after this email, and he  19   provided you with a link. We've got the link. I'm just  20   going to read the quote from it. Quote, "Every faculty  21   member has the right to say whatever they want outside  22   of the university as a citizen. How would you feel if  23   you lost your job because of something you wrote on your  24   personal blog?" Does that refresh your recollection to  25   what Chris Robsaid in the link that Michael Moats sent</p>	<p>261</p> <p>1    that the statement used in 2015 would actually help  2    Professor Tracy?  3    A    Not really, because again, this was more bad  4    reporting. The issue was not whether he had done  5    anything on his personal blog. He was terminated for  6    insubordination.  7    Q    That's the university's position, right?  8    A    That's what they fired him for, yes.  9    Q    So why would you not be giving the union's  10   position in 2015, after they've now given theirs on the  11   record and it's been reproduced thousands of millions of  12   times on the Internet?  13   A    I don't even understand the question. The  14   union's position, I've explained the union's position  15   about 100 times.  16   Q    You actually haven't explained the union's  17   position, but let's talk about that. You said change  18   the narrative. You were trying to change the narrative.  19   What was the narrative that United Faculty of Florida  20   was trying to change in this case?  21   A    What are you referring to?  22   Q    I'm referring to what you said. You were  23   talking about changing the narrative. How did you  24   change --  25   A    I've said a lot of things here today. What</p>
<p>1    you on December 19th, 2015?  2    A    I'd have to see the context. Do I have this  3    here?  4    Q    It's on the web. We just pulled up the link  5    that's in the email that Michael Moats wrote to you.  6    A    So what did it say?  7    MR. LEO: You want to show it to him?  8    THE WITNESS: That's not why he lost his job.  9    Q    (By Mr. Leo) But going back to the statement  10   that Michael Moats made, that Chris Robs not helping  11   anyone and is hurting this case, how could this hurt  12   Professor Tracy's case?  13   A    I don't know. You're going to have to ask  14   Michael Moats that.  15   Q    In sitting here today, would you agree or  16   disagree with Michael Moats' statement in this email  17   dated December 19th? Was that statement that we just  18   read together, was that helping anyone?  19   A    It was -- not that I can see, but I don't know  20   what was in Michael's mind. In my mind, as I'm looking  21   at it and sitting here in 2017, looking at it I don't  22   see anything in particular there that's good or bad.  23   Q    Was it helping anyone? Would you agree that  24   the statement by Chris Robeven though it was taken out  25   of context and it was given in 2013, would you agree</p>	<p>262</p> <p>1    are we talking about?  2    Q    We're talking about the press, we're talking  3    about United Faculty's narrative. What was United  4    Faculty's narrative?  5    A    Oh. I didn't say change narrative. What I  6    said is you want to try and control the narrative. In  7    other words, when you speak to the press, you want to  8    make sure that you're saying things that are absolutely  9    in your best interest. By going on, and on, and on  10   about the Posner's, or about the conspiracy theories,  11   and other things is probably not going to help you.  12   Q    Who was going on, and on about conspiracy  13   theories?  14   A    He was.  15   Q    Was Chris Robwhen they wrote in 2013, was  16   Chris Robtalking about the Posner's or conspiracy  17   theories?  18   A    No.  19   Q    He was talking about Professor Tracy's right  20   to say what he wanted on his own time?  21   A    Yes.  22   Q    Why wasn't the union saying that in 2015, just  23   like Robhad said in 2013? Why were they afraid of that?  24   A    We weren't afraid of anything. We were  25   dealing with the fact that -- he was fired for</p>



<p>1 insubordination. He was not fired for what he said on  2 his blog. He was fired because he didn't file outside  3 activity reports.</p> <p>4 <b>Q For his blog, right?</b></p> <p>5 A No. You can keep saying that. You can say it  6 100 times and it doesn't make it true.</p> <p>7 <b>Q I don't need to say it. It was in the notice  8 of discipline.</b></p> <p>9 A It says any outside activity. Whether it's  10 the blog or not, it's any outside activity. He has to  11 report any outside activity.</p> <p>12 <b>Q Going back to the December 16th notice of  13 termination --</b></p> <p>14 A Yes, you're taking things out of context.</p> <p>15 <b>Q I'm taking what out of context? That  16 Professor Tracy was fired for his blog?</b></p> <p>17 A Yes.</p> <p>18 <b>Q And that's what's on his December 16th notice  19 of termination, that's the whole issue in this case?</b></p> <p>20 A No, it's not the whole issue. That's a  21 misrepresentation. He has a responsibility as an  22 employee to report outside activity on outside activity  23 forms. You remain recalcitrant with your refusal to  24 provide outside activity forms for other activities that  25 may be in contrast with your employer. So it's not just</p>	<p>265</p> <p>1 Tracy agreed to have an attorney represent him on  2 December 18th.</p> <p>3 <b>Q I'm going to show you what's been marked as Z-</b></p> <p>4 <b>27. Do you recognize that?</b></p> <p>5 A FEA has retained Thomas Johnson as legal  6 counsel for you. Okay.</p> <p>7 (Whereupon Plaintiff's Exhibit Z-27 was marked  8 for identification.)</p> <p>9 <b>Q (By Mr. Leo) Does that refresh your  10 recollection as to who made determination to bring in an  11 attorney for Professor Tracy?</b></p> <p>12 A It doesn't say who made the decision.</p> <p>13 Ultimately, if I understand the process, ultimately the  14 decision was Doctor Tracy's, because he completed an  15 agreement to have an attorney represent him.</p> <p>16 <b>Q Did Professor Tracy ask you to find him a  17 lawyer?</b></p> <p>18 A No, and I did not do that. You're going to  19 make this bad? We found him a lawyer and this is bad?</p> <p>20 <b>Q I'm sorry, what are you saying?</b></p> <p>21 A Do you understand English?</p> <p>22 <b>Q Yeah, but I don't really understand your use  23 of it.</b></p> <p>24 A I'm trying to figure out where you're going  25 with this, but I'm sure you're going to find something</p>
<p>1 about the blog. They mention specifically the blog, but  2 they also state that there are other activities with  3 which you remain in -- the term they used is  4 recalcitrant. You refuse to provide activity reports  5 for other activities.</p> <p>6 <b>Q With respect to your duties and  7 responsibilities at United Faculty of Florida, do you  8 always adopt the university's position on issues?</b></p> <p>9 A That's a mischaracterization.</p> <p>10 MR. MCKEE: Just listen to the question and  11 answer the question.</p> <p>12 THE WITNESS: No.</p> <p>13 <b>Q (By Mr. Leo) Would you agree with me that  14 you're now adopting Florida Atlantic University's basis  15 for termination?</b></p> <p>16 A No. That's your bias representation of the  17 facts.</p> <p>18 <b>Q Going back to December of 2015, who made the  19 decision at United Faculty of Florida to bring in a  20 lawyer for Professor Tracy?</b></p> <p>21 A That was made -- I don't know who made the  22 decision, but he agreed to -- he signed an agreement to  23 have an attorney represent him. So I believe it was  24 initiated -- I believe it was initiated by Michael  25 Moats, and he had an attorney. He agreed -- Doctor</p>	<p>266</p> <p>268</p> <p>1 nefarious --</p> <p>2 <b>Q The question was: who made the decision to  3 hire Professor Tracy a lawyer? You said Michael Moats.</b></p> <p>4 A I said I thought Michael Moats may have  5 initiated the process. How would FEA know about this  6 unless Michael contacted FEA? I don't think FEA has  7 powers of clairvoyance.</p> <p>8 <b>Q Would you agree that this email sent by  9 Michael Moats to you on December 18th, 2015 indicates  10 that FEA made the decision to hire an attorney for  11 Professor Tracy?</b></p> <p>12 A They retain an attorney, but ultimately,  13 again, the decision was Doctor Tracy's, because if  14 Professor Tracy didn't complete the contract it doesn't  15 matter what FEA says or does. He agreed to it.</p> <p>16 <b>Q Let's talk about your communications with  17 Professor Tracy's union-appointed attorney, Thomas  18 Johnson. When was the first time you spoke with Thomas  19 Johnson?</b></p> <p>20 A I believe it was December 20th, we had a  21 teleconference.</p> <p>22 <b>Q What was discussed during this teleconference?</b></p> <p>23 A What we were going to do going forward, or  24 what he was going to do going forward.</p> <p>25 <b>Q What did you tell Thomas Johnson, if anything?</b></p>

<p>1 A I cannot remember for the life of me. I 2 remember what we had agreed to collectively on what he 3 was going to pursue.</p> <p>4 Q Did you ever tell Thomas Johnson not to file a 5 response to the notice of termination?</p> <p>6 A No.</p> <p>7 Q Did you ever tell Thomas Johnson that 8 Professor Tracy should resign?</p> <p>9 A No.</p> <p>10 Q Did you ever tell Thomas Johnson that 11 Professor Tracy had a weak case?</p> <p>12 A I think he said he had a weak case.</p> <p>13 Q But to answer my question, did you ever tell 14 Thomas Johnson that you thought that Professor Tracy had 15 a weak case?</p> <p>16 A I didn't think it was strong, yes.</p> <p>17 Q Let me show you what's been marked as Z-28. 18 Do you recognize this?</p> <p>19 A That's Mike's opinion. (Whereupon Plaintiff's Exhibit Z-28 was marked 20 for identification.)</p> <p>22 Q (By Mr. Leo) Regarding the facing firing, 23 James Tracy doubles down article. What was your 24 response to the article?</p> <p>25 A I don't think I responded at all.</p>	<p>269</p> <p>1 may be some contribution from some other people.</p> <p>2 Q When the chapter is saying -- well, this isn't 3 the chapter. This is UFF?</p> <p>4 A Yes.</p> <p>5 Q Would you have input on what UFF is saying in 6 this?</p> <p>7 A Yes. Let me read it. I don't see anything 8 that I disagree with.</p> <p>9 Q Do you agree with this?</p> <p>10 A Yes.</p> <p>11 Q Do you agree that United Faculty of Florida 12 ensured that Professor Tracy's rights were being 13 protected?</p> <p>14 A Yes. What was the date of this? I believe 15 this was sometime after his termination, or his pending 16 notice of termination. So yes.</p> <p>17 Q Are you saying that UFF protected Professor 18 Tracy when they didn't grieve for him in November of 19 2015?</p> <p>20 A Yes.</p> <p>21 Q Earlier you testified that United Faculty of 22 Florida waived Professor Tracy's right to file a 23 grievance in response to that directive in November?</p> <p>24 A We didn't waive anything. Again, for the 25 400th time, we looked at the Collective Bargaining</p>
<p>270</p> <p>1 Q Internally to United Faculty of Florida, did 2 you respond to anybody?</p> <p>3 A I may have.</p> <p>4 Q When Mike asks are you in touch with Jennifer 5 in the case and the governor's role, what does that 6 mean?</p> <p>7 A I don't know what he means by the governor's 8 role.</p> <p>9 Q Is there a governor at UFF?</p> <p>10 A No. I assume he's talking about the governor 11 of the state of Florida. I have no idea what Mike Budd 12 is talking about there.</p> <p>13 Q What would the governor of Florida's role be, 14 if any?</p> <p>15 A I have no idea.</p> <p>16 Q Let me show you what's been marked as Z-29. 17 Do you recognize this?</p> <p>18 A Yes. This is a release that we gave to the 19 press or directly to the faculty at FAU. It was one of 20 the two.</p> <p>21 (Whereupon Plaintiff's Exhibit Z-29 was marked 22 for identification.)</p> <p>23 Q (By Mr. Leo) Who drafted this?</p> <p>24 A I believe it was mostly Jennifer Proffitt, but 25 I believe I helped with some of the wording. And there</p>	<p>270</p> <p>272</p> <p>1 Agreement and we looked at the issue. Under the 2 Collective Bargaining Agreement they had a right to ask 3 for him to submit letters -- or reports of outside 4 activity. So his rights, in our opinion, were not 5 violated in that case. Otherwise, we would have filed a 6 grievance. I've said this over, and over, and over.</p> <p>7 Q But to go back to my question, in November 8 2015, early December 2015, no grievance was filed by 9 United Faculty of Florida in response to the November 10 10th, 2015 notice of discipline?</p> <p>11 A That is correct, and neither did Doctor Tracy 12 file one.</p> <p>13 Q Because he was a member of United Faculty of 14 Florida, right?</p> <p>15 A No. As he understood being a past president, 16 and as he indicated in his email, and clearly understood 17 that he could've filed a grievance on his own.</p> <p>18 Q Doesn't United Faculty of Florida have the 19 exclusive right to grieve on behalf of its members?</p> <p>20 A No. That's an incorrect statement.</p> <p>21 Q That's an incorrect statement? Okay. Do you 22 have Article 20 in front of you or should we mark it?</p> <p>23 A Let me put it to you this way. We have 24 members right now that are filing grievances on their 25 own.</p>

<p>1   <b>Q</b>   Because you won't represent them?</p> <p>2   A   No. Because they elected to have an attorney</p> <p>3   represent them. This, for whatever reason, people elect</p> <p>4   to have an attorney represent them in a grievance</p> <p>5   process.</p> <p>6   <b>Q</b>   How many of those faculty members did you</p> <p>7   advise that their situation was not grievable?</p> <p>8   A   I don't think any.</p> <p>9   <b>Q</b>   Do you think that the advisement the situation</p> <p>10   was not grievable had an impact on Professor Tracy in</p> <p>11   November of 2015 or December of 2015?</p> <p>12   A   I have no idea.</p> <p>13   <b>Q</b>   You don't think that you and Michael Moats</p> <p>14   telling Professor Tracy that his situation was not</p> <p>15   grievable deterred him from filing a grievance on his</p> <p>16   own?</p> <p>17   A   Michael Moats did not tell him that. I told</p> <p>18   him that, like I said. And no. He was the president of</p> <p>19   the union. He knows better. He's not na He</p> <p>20   understands.</p> <p>21   <b>Q</b>   So your incorrect advice played no role in</p> <p>22   Professor Tracy's inability to grieve in early 2015, is</p> <p>23   that you're saying today?</p> <p>24   A   That's what I'm saying.</p> <p>25   <b>Q</b>   Okay. I'm going to mark this as Z-30. If you</p>	<p>273</p> <p>1   already decided that he was not leaving the union.</p> <p>2   <b>Q</b>   Can you go ahead and look through Article 20</p> <p>3   while you have it in front of you, and tell me where</p> <p>4   inside this procedure or policy there is a sign the</p> <p>5   forms, then grieve, or some kind of --</p> <p>6   A   No, no. There wouldn't be anything like that.</p> <p>7   That's a ridiculous question.</p> <p>8   <b>Q</b>   You don't need to look, right?</p> <p>9   A   That's a ridiculous question.</p> <p>10   <b>Q</b>   Right. And it's ridiculous advisement to sign</p> <p>11   the forms and then grieve, because it's not part of your</p> <p>12   Collective Bargaining Agreement, right?</p> <p>13   A   Right, because let's get fired for</p> <p>14   insubordination. We tried to prevent him from getting</p> <p>15   fired for insubordination.</p> <p>16   <b>Q</b>   If the union had grieved the November 10</p> <p>17   directive on Tracy's behalf, Tracy would not have been</p> <p>18   charged with insubordination while the grievance was</p> <p>19   pending?</p> <p>20   A   While the grievance was pending, but if he</p> <p>21   still refused to file the form -- we file a grievance</p> <p>22   when there's a clear violation of the Collective</p> <p>23   Bargaining Agreement. There was no clear violation of</p> <p>24   the Collective Bargaining Agreement.</p> <p>25   <b>Q</b>   Show me in Article 20 where it says the union</p>	<p>275</p>
<p>1   <b>Q</b>   could just take a look at section 20.5.</p> <p>2   A   "UFF shall has exclusive right to represent</p> <p>3   any employee in an Article 20 grievance unless an</p> <p>4   employee elects self-representation or to be represented</p> <p>5   by legal counsel."</p> <p>6   (Whereupon Plaintiff's Exhibit Z-30 was marked</p> <p>7   for identification.)</p> <p>8   <b>Q</b>   (By Mr. Leo) Did Professor Tracy do that in</p> <p>9   November or December of 2015?</p> <p>10   A   No, he did not.</p> <p>11   <b>Q</b>   In early December of 2015 members of your</p> <p>12   organization, United Faculty of Florida-FAU, convince</p> <p>13   Professor Tracy not to leave the union, isn't that</p> <p>14   right?</p> <p>15   A   No. That's what you said. That's not what I</p> <p>16   said. Mike Budd said, on his own, he was going to talk</p> <p>17   to him about this without informing me, that he was</p> <p>18   going to ask him to stay in the union, but he said I was</p> <p>19   surprised to learn that Jim had decided not to leave the</p> <p>20   union. So based on my reading of the email, Doctor</p> <p>21   Tracy had already made that decision. There was no</p> <p>22   directive from anyone to tell him to stay in the union</p> <p>23   or not to stay in the union. This was Mike Budd</p> <p>24   independently communicating with Doctor Tracy, and if I</p> <p>25   remember the email, he stated that Doctor Tracy had</p>	<p>274</p> <p>1   <b>Q</b>   only filed grievances when you believe it's a winner.</p> <p>2   A   That's not what I said.</p> <p>3   <b>Q</b>   When it's a clear -- what were your words?</p> <p>4   A   When it's a clear violation of the Collective</p> <p>5   Bargaining Agreement.</p> <p>6   <b>Q</b>   Clear violation of the Collective Bargaining</p> <p>7   Agreement, are the words that you used?</p> <p>8   A   Yes.</p> <p>9   <b>Q</b>   Show me where it says that in the grievance</p> <p>10   policy of your Collective Bargaining Agreement.</p> <p>11   A   It says a grievance shall mean a dispute filed</p> <p>12   on a form referenced in Section 20.3(c) concerning the</p> <p>13   interpretation or application of a specific term or</p> <p>14   provision of this agreement.</p> <p>15   <b>Q</b>   I'm sorry, did you answer my question?</p> <p>16   A   Yes, I read it.</p> <p>17   <b>Q</b>   Which section is it?</p> <p>18   A   It's 20.3(a). The term grievance shall mean a</p> <p>19   dispute filed on a form referenced in Section 20.3(c)</p> <p>20   concerning the interpretation or application of a</p> <p>21   specific term or provision of this agreement.</p> <p>22   <b>Q</b>   Where does it say that Professor Tracy's</p> <p>23   grievance had to be valid for the union to file it? A</p> <p>24   clear violation, to use your words.</p> <p>25   A   Why am I going to file something that's not</p>	<p>276</p>



<p>1 valid?</p> <p>2 <b>Q Why did you file a grievance in April of 2016</b></p> <p>3 <b>and then retract it?</b></p> <p>4 A Because I made a mistake. Because at the time</p> <p>5 the grievance had not gone into effect yet. We had</p> <p>6 filed a grievance because one of the problems was we</p> <p>7 were getting hit with this 30-day window. So we wanted</p> <p>8 to file a grievance, and make sure we filed in a timely</p> <p>9 manner.</p> <p>10 <b>Q Professor Tracy's concern in November --</b></p> <p>11 <b>before November, in October of 2015, was the</b></p> <p>12 <b>interpretation or application of a specific term or</b></p> <p>13 <b>provision of the Collective Bargaining Agreement, was it</b></p> <p>14 <b>not?</b></p> <p>15 A It was mostly with the policy, it wasn't with</p> <p>16 the Collective Bargaining Agreement.</p> <p>17 <b>Q It doesn't matter.</b></p> <p>18 A Yes, it does. What he said in his email was,</p> <p>19 if you go by the letter of the law -- and I'm</p> <p>20 paraphrasing here -- if you go by the letter of the law,</p> <p>21 it's probably not going to stand up in arbitration,</p> <p>22 which means a trier of fact would not see this as a</p> <p>23 valid grievance.</p> <p>24 <b>Q Does that make it not grievable?</b></p> <p>25 A No. We've been down this road 100 times. You</p>	<p>277</p> <p>1 <b>Q What is your job as a union? What do you do?</b></p> <p>2 A One of our major jobs is to defend the</p> <p>3 Collective Bargaining Agreement.</p> <p>4 <b>Q Were you defending the Collective Bargaining</b></p> <p>5 <b>Agreement when you did not grieve --</b></p> <p>6 A Yes, because --</p> <p>7 <b>Q I'm not done with my question. Were you</b></p> <p>8 <b>defending your contract, the Collective Bargaining</b></p> <p>9 <b>Agreement, when you did not grieve in 2015 for</b></p> <p>10 <b>violations or alleged violations of the Collective</b></p> <p>11 <b>Bargaining Agreement?</b></p> <p>12 A Yes.</p> <p>13 <b>Q Yes what?</b></p> <p>14 A Yes, we were defending the Collective</p> <p>15 Bargaining Agreement.</p> <p>16 <b>Q How?</b></p> <p>17 A The decision was made based on the Collective</p> <p>18 Bargaining Agreement. The decision isn't always what</p> <p>19 the grievant wants.</p> <p>20 <b>Q Let me ask you this question, because I asked</b></p> <p>21 <b>your colleagues and I was a little troubled by their</b></p> <p>22 <b>responses. So let's see what you say. Not filing a</b></p> <p>23 <b>grievance in response to the directives and the</b></p> <p>24 <b>discipline that was issued against Professor Tracy in</b></p> <p>25 <b>2015, did you waive anybody else's rights to challenge</b></p> <p>278</p>	<p>280</p> <p>1 can grieve anything, but I'm not going to file a</p> <p>2 grievance that's not in compliance --</p> <p>3 <b>Q You denied Professor Tracy his right to file a</b></p> <p>4 <b>grievance in November of 2015.</b></p> <p>5 A I am not required to file a grievance.</p> <p>6 There's nothing that says I have to file a grievance.</p> <p>7 The decision is made by me, and my decision was not to</p> <p>8 file --</p> <p>9 <b>Q Where does it say that the decision is made by</b></p> <p>10 <b>the president of the United Faculty of Florida?</b></p> <p>11 A It's made by the union, and my understanding</p> <p>12 is I'm the guy that ultimately the decision -- the</p> <p>13 contract enforcement committee also voted on this. His</p> <p>14 right is to -- he had a right to ask to file a</p> <p>15 grievance. We made a decision as a group to not file</p> <p>16 the grievance because there was no violation of the</p> <p>17 Collective Bargaining Agreement. We didn't deny --</p> <p>18 there were no rights denied.</p> <p>19 <b>Q You denied him his right to file --</b></p> <p>20 A That is not his right.</p> <p>21 <b>Q It's not his right under Article 20 to file a</b></p> <p>22 <b>grievance --</b></p> <p>23 A Correct.</p> <p>24 <b>Q -- using his union that he pays dues to?</b></p> <p>25 A It is not his right.</p> <p>1 <b>those directives again in the future?</b></p> <p>2 A No.</p> <p>3 <b>Q So for example, if Chris Robwho hasn't</b></p> <p>4 <b>submitted his outside activity forms for his social</b></p> <p>5 <b>media accounts, if he get a letter saying to submit</b></p> <p>6 <b>outside activities forms for his Twitter, Facebook,</b></p> <p>7 <b>whatever it is, can he grieve, or can the chapter grieve</b></p> <p>8 <b>now that the union never grieved these directed in 2015</b></p> <p>9 <b>when they were used in that way before?</b></p> <p>10 A Yes.</p> <p>11 <b>Q So he can grieve?</b></p> <p>12 A Yes. It doesn't preclude a grievance from</p> <p>13 being filed, if I understand the question.</p> <p>14 <b>Q Are you saying that with certainty that he can</b></p> <p>15 <b>grieve?</b></p> <p>16 A I've asked the question of senior university</p> <p>17 officials in another case, and I got a clear response</p> <p>18 that said that these decisions do not set precedence. I</p> <p>19 asked -- I don't remember who, but I asked a senior</p> <p>20 university official and that was the response I got.</p> <p>21 <b>Q You asked a senior FAU official?</b></p> <p>22 A UFF official.</p> <p>23 <b>Q Another example, McGetchin, he's got a Twitter</b></p> <p>24 <b>account. He's on there a lot talking politics. If the</b></p> <p>25 <b>university asks McGetchin to submit an outside</b></p>
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<p>1 activities form today, let's say, or in the future, was  2 his right to challenge that kind of directive waived in  3 the fall of 2015?</p> <p>4 A No, it's my understanding that no. You just  5 asked the same thing.</p> <p>6 Q Is it possible? Under the Collective  7 Bargaining Agreement -- under the terms of your  8 grievance --</p> <p>9 A No. My understanding is no. That it does not  10 set a precedent.</p> <p>11 Q But is it possible?</p> <p>12 A I suppose so, but I asked the question of a  13 senior UFF official, and they said it wasn't in response  14 to this. But it does not set a precedent, no.</p> <p>15 Q Is that what Chris Roband Meredith Mountford,  16 and all of the other professors who were emailing you in  17 the fall off 2015, is that what their concern was their  18 concern was, about the impacts of the discipline of  19 Professor Tracy on the entire faculty? Isn't that what  20 they were emailing you about?</p> <p>21 A Say that again. I'm not sure --</p> <p>22 Q For example, when Mike Budd says are we okay  23 with this, in his email to you concerning your decision  24 and Michael Moats' decision not to grieve. Was that his  25 concern?</p>	<p>1 for me to be accurate?</p> <p>2 A No, you need to just say the grievance  3 committee.</p> <p>4 Q But I'm referring to the emails in my  5 question. The emails that you received from faculty  6 members, union members, like Mike Budd, Chris Rob  7 Meredith Mountford, all of them seemed concerned based  8 upon my reading of their emails. They're emails to you.  9 So you would be better equipped to answer this question,  10 which is why I'm asking it. Were they concerned that  11 the union was waiving faculty rights to challenge the  12 use of the outside activities policy in this way, the  13 way that it was used against Professor Tracy?</p> <p>14 A No, I don't see that. Show me where you're  15 getting that from.</p> <p>16 Q So you're saying that no faculty member was  17 concerned about this, that the union should be  18 protecting Tracy?</p> <p>19 A You're asking me about the emails that  20 occurred between me and a number of members of the  21 executive committee. I did not get that from the  22 emails.</p> <p>23 Q My question was about the emails, but about  24 the faculty concern, particularly the union members who  25 were faculty members, who expressed to you in email</p>
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<p>1 A You're mischaracterizing it. This was not my  2 decision and Michael Moats decision. This was a based  3 on a meeting of the grievance committee, where there was  4 a unanimous vote that this was not something that  5 violated the Collective Bargaining Agreement.</p> <p>6 Q But to answer my question, my questions is  7 about --</p> <p>8 A Well, quit making misstatements.</p> <p>9 Q I'm only repeating what was in your emails.</p> <p>10 A No, you're mischaracterizing what was in my  11 emails. We've already been down that road.</p> <p>12 Q I don't even understand what you're saying  13 right now. Are you saying --</p> <p>14 A That's part of the problem.</p> <p>15 Q -- you didn't make a decision, Michael Moats  16 didn't make a decision that it wasn't grievable?</p> <p>17 A We collectively made a decision that this was  18 not a violation of the Collective Bargaining Agreement.</p> <p>19 Q So what am I saying that's different?</p> <p>20 A You're saying me and Moats. It wasn't just me  21 and Moats. It was the collective bargaining team.</p> <p>22 Q Do I need to say including, but not limited  23 to?</p> <p>24 A The grievance committee.</p> <p>25 Q Do I need to say including, but not limited to</p>	<p>1 their concerns about use of the policy. Not just about  2 Professor Tracy's issues with the policy, but the use of  3 the policy in the way in which it was being used at the  4 university in 2015. Are you saying that none of those  5 faculty members had concerns, that Professor Tracy,  6 tenured-faculty member being fired for not turning in  7 his prior restraint form, they weren't concerned that  8 this could be impacting the rest of the faculty members,  9 that this could be used in the same way?</p> <p>10 A I think it was a concern of all of us. The  11 concern when he was terminated was, while he was fired  12 for insubordination, at the end of the day, he was  13 terminated for not filing the forms.</p> <p>14 Q So was your concern about the policy after or  15 before the termination? Because you just agreed that's  16 all of our concern, right?</p> <p>17 A That's a misrepresentation again. That wasn't  18 the issue for me. The issue was initially, he was asked  19 to file the forms. There was nothing that violated  20 Collective Bargaining Agreement and demanding he  21 complete the forms.</p> <p>22 Q Going back to the hiring of an attorney for  23 Professor Tracy, is it normal for attorneys more than  24 200 miles away from the university to be appointed for  25 your members?</p>

<p>1 A I don't know, but I'm pretty sure him being 2 200 miles away in this day and age is pretty irrelevant. 3 Q I'm just asking if it was normal. Has any 4 other attorney been appointed for any other faculty 5 member that you know of? 6 A I don't know. I think we were concerned with 7 getting him the best legal representation. 8 Q When you talked to the union, UFF officers, 9 what was Ogletree's input, if any, on the discipline 10 that Professor Tracy faced? 11 A Pretty minimal. 12 Q What does that mean? 13 A Exactly that. He wasn't directly involved in 14 the case. This was something that was happening at a 15 local chapter. 16 Q So why is he in so many emails? 17 A Because at this point now it's escalating to 18 another level, where UFF as a whole is involved, and FEA 19 is involved, because we have an attorney for him. So 20 now this is no longer just something that's being dealt 21 with at the chapter level. It's now gone up to another 22 level. 23 Q When did that happen? When did it go up to 24 the next level? 25 A When we hired the attorney.</p>	<p>285</p> <p>1 Florida-FAU chapter could've filed a chapter grievance 2 in response to the December notice of discipline 3 termination on behalf of the chapter. Could that have 4 happened? 5 A A meteor could strike us right now. That 6 could happen, too. Yes. 7 Q Why didn't the chapter file a chapter 8 grievance to protect the rights of all faculty members 9 faced with similar discipline like Professor Tracy? 10 A The case hadn't even been decided yet. It 11 didn't even occur to me, and I'm not sure it would occur 12 to anyone else. We were focused on trying to figure out 13 how we were going to save his job. 14 Q Who figured that out? 15 A Who figured what out? 16 Q How to save Professor Tracy's job? 17 A We were trying to figure out what was the best 18 course of action at this point, now that he had received 19 the letter of termination, what the heck were we going 20 to do. 21 Q Is that what you guys were trying to do? 22 A Yes, but I'm sure you're going to insinuate 23 something else. 24 Q What am I going to insinuate? 25 A I don't know, but I'm sure it's coming.</p>
<p>1 Q It didn't happen before that? 2 A No. 3 Q When you say we hired the attorney, did you 4 have any role in hiring the attorney? 5 A When UFF-FEA hired the attorney. 6 Q Ogletree, what was his concerns to you about 7 the chapter's role in the discipline? 8 A I don't recall him having any specific 9 concerns, so I'm not sure what you're talking about. 10 Q How many attorneys are you familiar with being 11 hired for union members, to your knowledge? 12 A I'm not directly aware of attorneys being 13 hired. My understanding is usually the only time an 14 attorney is hired is in a case of termination. 15 Q The hiring of an attorney did not preclude the 16 chapter from filing a grievance in this case, did it? 17 A In my understanding it most definitely did. 18 The attorney was now in charge. 19 Q Of Professor Tracy's case? 20 A Yes. 21 Q But that didn't preclude United Faculty of 22 Florida-FAU from filing a chapter grievance, did it? 23 A No, but it would be irrelevant. 24 Q Regardless of what you think is irrelevant or 25 relevant, the question is: whether the United Faculty of</p>	<p>286</p> <p>288</p> <p>1 Q I'll just ask you. Was anybody at United 2 Faculty of Florida trying to get Professor Tracy to 3 resign? 4 A There was -- Michael Moats had, I guess, a 5 discussion with Larry Glick. I guess it was the day 6 after he was terminated, I think. And there had been a 7 discussion at that point in time, as I understand it, 8 that an option would be for a grievance to be filed 9 prior to his -- well, let's back up. He received a 10 letter of termination on the 16th of December. Under 11 normal circumstances, he had ten days -- the standard 12 procedure is he would have ten days to file a response 13 to the pending termination. On the 26th of December the 14 university, unless they changed their mind, would follow 15 through with the termination as described in the letter. 16 My understanding -- and this is in the interrogatory. 17 As a matter of fact, let me get the interrogatory. I'm 18 just going to read from the interrogatories. "My 19 understanding is that Michael Moats learned from FAU's 20 counsel that since FAU's notice of termination dated 21 December 16th, 2015 provided the Plaintiff ten days to 22 respond. FAU was prepared" -- 23 Q Are you going to read the whole thing? I 24 don't need you to read it, I got it. 25 A When you're talking about resigning, one of</p>

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<p>1 the options would've been that he could've resigned    2 during that time prior to the final decision of    3 arbitration.</p> <p>4 <b>Q But to go back to my question, who at United</b>  <b>5 Faculty of Florida was trying to get Professor Tracy to</b>  <b>6 resign?</b></p> <p>7 A I don't know if anybody is trying to get him    8 to resign. That was an option.</p> <p>9 <b>Q Are you saying that you were not copied or</b>  <b>10 included on any communications, for example, with</b>  <b>11 Michael Moats where he was telling Professor Tracy he</b>  <b>12 should resign, because there's likely a valid reason to</b>  <b>13 terminate him?</b></p> <p>14 A I don't recall that. Nobody said you have to    15 resign, nobody said you need to resign. It was an    16 option.</p> <p>17 <b>Q Did you ever tell Professor Tracy he should</b>  <b>18 resign?</b></p> <p>19 A No, what I told him was that this was an    20 option. And my opinion was that he didn't have a strong    21 case. I said there were advantages to resigning. I    22 asked him -- I basically described to him what's here in    23 the interrogatories. I asked him, I said do you want us    24 to continue to pursue this? Because at this point --    25 I'm not finished. This was a day after he had gotten</p>	<p>1 to explore all options. In the meantime, to answer your    2 question, I was trying to work to put together a    3 grievance. We ultimately did put together a grievance    4 and gave it to the attorney.</p> <p>5 <b>Q Did you ever have any telephone conversations</b>  <b>6 with Larry Glick?</b></p> <p>7 A No.</p> <p>8 <b>Q Did you ever talk to Larry Glick about</b>  <b>9 Professor Tracy?</b></p> <p>10 A I've already told you that. No.</p> <p>11 <b>Q Going back to the United Faculty of Florida's</b>  <b>12 response to the press, you spend a great deal of time</b>  <b>13 dealing with the press, did you say?</b></p> <p>14 A No. I didn't respond. They called me    15 numerous times. My response was not to respond.</p> <p>16 <b>Q Somebody named Travis, did you speak to</b>  <b>17 somebody named Travis from Sun Sentinel?</b></p> <p>18 A Yes, for about ten seconds, and as usual, he    19 just took something out of context.</p> <p>20 <b>Q What did he take out of context?</b></p> <p>21 A I made a statement to the effect that there    22 was -- I think said there was a lot of stuff going on    23 here -- that might not have been him actually. All I    24 said was there's a lot of stuff going on here that you    25 guys don't understand. I said I can't talk about it now</p>



293 <p>1 continuing to talk about conspiracy theories and other 2 things. 3 <b>Q Do you think it would've been in Professor</b> 4 <b>Tracy's best interest not to respond to defamatory</b> 5 <b>publications and accusing him of criminal harassment?</b> 6 A Yes. I think it would've been in his best 7 interest to say nothing. I don't know at that point in 8 time what was being said in the press, but the press had 9 already made up its mind on a lot of things. They were 10 reporting things. It's standard practice that you don't 11 speak to the press. I didn't respond. 12 <b>Q Standard where?</b> 13 A Anywhere. 14 <b>Q Anywhere?</b> 15 A Yeah. Well, let me ask you something. I'll 16 make a statement. I've noticed he's been awfully quiet 17 since you've taken over. 18 <b>Q Who?</b> 19 A You. 20 <b>Q Who's been quiet?</b> 21 A Him. 22 <b>Q Professor Tracy?</b> 23 A Mmmhmmm. 24 <b>Q Have you tried to talk to him?</b> 25 A I'm talking about in the news and his</p>	295 <p>1 MR. LEO: That's exactly how this works. 2 MS. GRIFFIN: Not according to the Florida 3 Civil Rules of Procedure. 4 MR. LEO: We're going to continue. 5 THE WITNESS: No. I have a job. 6 MR. MCKEE: You've got until quarter to six. 7 Then we're out of here. 8 MR. LEO: So quarter to six, that's what the 9 Federal Rules of Civil Procedure say? 10 MR. MCKEE: They say one day, seven hours. 11 MS. GRIFFIN: Seven hours. 12 MR. LEO: So we've been going at it for seven 13 hours, guys? 14 MS. GRIFFIN: Six hours, 18 minutes. 15 MR. LEO: Let's get through it, and if we need 16 to we'll move for leave to continue. 17 <b>Q (By Mr. Leo) So let's talk about what you just</b> 18 <b>said. What defense do you have to the allegation that</b> 19 <b>you failed Professor Tracy's Constitutional rights in</b> 20 <b>this case?</b> 21 A When were his Constitutional rights violated? 22 <b>Q When the university asked him to submit his</b> 23 <b>constitutionally protected speech to the administration</b> 24 <b>for censorship.</b> 25 A That's a misrepresentation of --</p>
294 <p>1 interaction with the papers. 2 <b>Q Have you been monitoring Professor Tracy's</b> 3 <b>activities since this case has been filed?</b> 4 A Yes. 5 <b>Q How so?</b> 6 A I just Google James Tracy. 7 <b>Q How often do you look at James Tracy on</b> 8 <b>Google?</b> 9 A A couple times a week. 10 <b>Q What are you looking for?</b> 11 A Just to see what he's saying or doing. 12 <b>Q Are you looking for something that you can use</b> 13 <b>as a defense in this case?</b> 14 A Not necessarily, no. Just to see what he's 15 saying about what's going on in the case. 16 <b>Q Are you obsessed with James Tracy?</b> 17 A He's filing false charges against me in 18 Federal Court. 19 <b>Q Let's get to that, because it's on my long</b> 20 <b>list of things to talk about.</b> 21 A Well, you've got about 25 minutes, so make the 22 best of it. 23 <b>Q I actually have as long as I need, so if we</b> 24 <b>need to go over to tomorrow, we can do that.</b> 25 MR. MCKEE: No, we're not going that.</p>	296 <p>1 <b>Q Of what? What's it a misrepresentation of?</b> 2 A They didn't ask him to present things for 3 censorship. They asked him to submit outside activity 4 reports. You're tacking on all the other stuff. 5 <b>Q Tacking on what? The fact that you failed to</b> 6 <b>grieve in November and December of 2015?</b> 7 A I didn't fail to grieve. We made a decision 8 not to grieve. 9 <b>Q What's your defense to what you described</b> 10 <b>earlier as an incorrect decision?</b> 11 A That's not an incorrect decision. The wording 12 was incorrect. You've asked me -- how many times are 13 you going to ask me this? 14 <b>Q As you sit here today what facts or evidence</b> 15 <b>do you have that support your affirmative defense that</b> 16 <b>Professor Tracy failed on his own to file a grievance in</b> 17 <b>November or December when he was strung along by the</b> 18 <b>union?</b> 19 A Nobody strung him along. That's a 20 misrepresentation. 21 <b>Q You didn't tell Professor Tracy that if he</b> 22 <b>files the forms that the union would grieve? You didn't</b> 23 <b>tell him that?</b> 24 A Yes. 25 <b>Q And you don't think that was unlawful?</b></p>



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<p>1 A No.</p> <p>2 Q You don't think that telling somebody to</p> <p>3 comply with the --</p> <p>4 A It was not unlawful.</p> <p>5 Q You don't think that telling somebody to</p> <p>6 comply with an unconstitutional, unlawful directive --</p> <p>7 A You say it's unconstitutional and unlawful. I</p> <p>8 think you're full of beans.</p> <p>9 Q Okay, well, we'll see what a jury has to say</p> <p>10 about that. Going back to my question, what evidence do</p> <p>11 you have that Professor Tracy actually chose not to on</p> <p>12 his own file a grievance in November of 2015, when he</p> <p>13 was asking you to do it for him?</p> <p>14 A Because he said are you going to file it or</p> <p>15 shall I? He was also president of the union for two</p> <p>16 years. He understood exactly how these processes work.</p> <p>17 He's not a participant in this.</p> <p>18 Q Was he the president when he was facing --</p> <p>19 A Can I finish my answer to my question? He was</p> <p>20 not a participant in this. He had been president of</p> <p>21 the union for two years. He understood very well how</p> <p>22 all this works.</p> <p>23 Q So in November of 2015 who was the president</p> <p>24 of the United Faculty of Florida at that time?</p> <p>25 A I was.</p>	<p>1 Our decision was it was not grievable.</p> <p>2 Q Are you saying that wasn't advice?</p> <p>3 A No.</p> <p>4 Q Are you saying that wasn't direction?</p> <p>5 A No. It was a decision.</p> <p>6 Q That wasn't an instruction?</p> <p>7 A No.</p> <p>8 Q Is this -- what would you call it? This non-</p> <p>9 advice, what is it?</p> <p>10 A It was a decision of the grievance committee.</p> <p>11 Q So the decision that you made, and the</p> <p>12 decision that Michael Moats made, and the decision that</p> <p>13 others who participated in this collective decision,</p> <p>14 McGetchin, maybe Lenz --</p> <p>15 A Not maybe Lenz. I took a vote of the members</p> <p>16 that were present, and they voted and said --</p> <p>17 Q Do you think that decision was lawful?</p> <p>18 A Yes.</p> <p>19 Q That this man had no right to file a grievance</p> <p>20 in November or early December of 2015?</p> <p>21 A I didn't say he had no right. You're saying</p> <p>22 that.</p> <p>23 Q I'm asking you whether that was a lawful</p> <p>24 advisement.</p> <p>25 A It wasn't advice. It was a decision of the</p>



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<p>1 Professor Tracy's case?</p> <p>2 A There may be a question on that.</p> <p>3 Q Did the union file a grievance with respect to</p> <p>4 the progressive -- or any discipline that was used</p> <p>5 against Professor Tracy in this case?</p> <p>6 A Michael Moats prepared a grievance and gave it</p> <p>7 to Tom Johnson, his attorney.</p> <p>8 Q Was that a little late in January of 2016, to</p> <p>9 file a grievance against discipline that's issued in</p> <p>10 November?</p> <p>11 A This has nothing to do with a November</p> <p>12 grievance.</p> <p>13 Q He's given a November 10 notice of discipline,</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q It was grievable the moment he received that,</p> <p>17 was it not?</p> <p>18 A Yes.</p> <p>19 Q Isn't it a little late in January of 2016 to</p> <p>20 file a grievance concerning that discipline?</p> <p>21 A Yes.</p> <p>22 Q That answers my question. Thank you. Going</p> <p>23 back to Mr. Broadfield, Doug Broadfield, you said you</p> <p>24 never spoke with him. Did he ever try to contact you</p> <p>25 concerning Professor Tracy's situation?</p>	<p>1 that Doug Broadfield had the files.</p> <p>2 A I assume he did.</p> <p>3 Q We asked you earlier whether you tried to get</p> <p>4 the files from him, and you said you did try.</p> <p>5 A I believe Tim Lenz did, yes.</p> <p>6 Q Regardless, wouldn't it be relevant, the files</p> <p>7 that Doug Broadfield had concerning Professor Tracy and</p> <p>8 every faculty member at that university?</p> <p>9 A This was 2013. This is 2015.</p> <p>10 Q This was not 2013. Let me show you. This is</p> <p>11 Z-31. What is this?</p> <p>12 A I'm talking about information that he had was</p> <p>13 from three years ago.</p> <p>14 Q Z-31 for the record. What date is that on</p> <p>15 that email?</p> <p>16 A The email is on the 16th -- the 6th of '16.</p> <p>17 (Whereupon Plaintiff's Exhibit Z-31 was marked</p> <p>18 for identification.)</p> <p>19 Q (By Mr. Leo) January.</p> <p>20 A What transpired was three years ago.</p> <p>21 Q So he tries to call you in December of 2015.</p> <p>22 You don't call him back. That's what you just testified</p> <p>23 to, is it not what you said?</p> <p>24 A No.</p> <p>25 Q You said it would've been in December when he</p>

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1 A Yes.

2 Q When was that?

3 A Probably in December.

4 Q What did you say to him?

5 A I didn't respond to him.

6 Q Why?

7 A Because it was none of his business.

8 Q The man who represented Professor Tracy in

9 2013 and defended him on behalf of your union?

10 A He was no longer --

11 Q Let me finish my question. The man, Doug

12 Broadfield, who defended Professor Tracy in 2013, are

13 you saying it was none of his business when they

14 disciplined him again?

15 A He was no longer a member -- he was no longer

16 involved with UFF-FAU.

17 Q But he had the files, didn't he?

18 A Tracy gave me everything I had.

19 Q Broadfield was your grievance and contract

20 chair at UFF-FAU, was he not?

21 A That's true, yes.

22 Q He took all of the files that he had with him,

23 didn't he?

24 A I don't know what he did with the files.

25 Q That's what McGetchin testified to, he said

1 contacted you.

2 A He emailed me in December -- I'm sorry. This

3 was January 6th, 2016.

4 Q so was this his first or second attempt at

5 trying to reach you?

6 A As far as I know, this was his first attempt

7 to try and reach me.

8 Q So you want to correct the statement you made

9 about his contacting you in December?

10 A No, he didn't contact me at all. What I found

11 out from his department chair was that he was leaving.

12 He didn't contact me at all. He wasn't even going to

13 tell me that he was leaving the university.

14 Q I don't have any more questions about that.

15 Let's talk about Z-32, another email that you're

16 included on. Take a look at that, please?

17 A Okay.

18 (Whereupon Plaintiff's Exhibit Z-32 was marked

19 for identification.)

20 Q (By Mr. Leo) Where she says union members are

21 now getting it from all sides. What did she mean by

22 that?

23 A I don't know.

24 Q And when she says while Jim deserves due

25 process, our members deserve fair and accurate

<p>305</p> <p>1 representation to the press by their union officers.    2 Were Meredith Mountford and other union members    3 concerned about UFF's lack of participation in the    4 public realm as to what was happening with respect to    5 Professor Tracy?    6 A I don't know what other union members were    7 saying. We had responded in several cases to this, so    8 I'm not sure what she's talking about. We did release    9 responses to the media. You conveniently left out the    10 fact that Jen Proffitt made a long and very eloquent    11 response to something that was very negative that was    12 stated in the Sun Sentinel. And we did make several    13 press releases to the media detailing our involvement in    14 the case.    15 Q I'm going to show you what's been marked as Z-    16 33. Is that one of the statements you're referring to?    17 A Yes, I believe so. Yes, and this was January    18 9th.    19 (Whereupon Plaintiff's Exhibit Z-33 was marked    20 or identification.)    21 Q (By Mr. Leo) I'm going to show you what's been    22 marked as Z-34. Is this another one of the statements    23 you're referring to?    24 A Yes.    25 (Whereupon Plaintiff's Exhibit Z-34 was marked</p>	<p>307</p> <p>1 Michael Moats, and possibly Jen Proffitt.    2 (Whereupon Plaintiff's Exhibit Z-35 was marked    3 or identification.)    4 Q (By Mr. Leo) Let's talk about that meeting.    5 What did you discuss with Ogletree, Proffitt, Johnson,    6 and anybody else who participated in that call?    7 A At this point in time, I honestly do not    8 remember. And I'm not trying to be evasive; I    9 understand I'm under oath, but I don't recall.    10 Q Was there anybody at FEA other than Michael    11 Moats, Ogletree, Proffitt that participated in that    12 call?    13 A Tom Johnson.    14 Q He works for FEA?    15 A I believe so. No, my mistake, he doesn't.    16 Q Going to Tom Johnson's role, what is your    17 understanding of Tom Johnson's role? Did he just    18 represent Professor Tracy, or did he also represent    19 United Faculty of Florida?    20 A He represented Jim Tracy. He was put the    21 attorney that was put in charge of his representation at    22 the time.    23 Q Did anybody at United Faculty of Florida    24 represent to you that Thomas Johnson represented United    25 Faculty of Florida, as well, and it was his job to keep</p>
<p>306</p> <p>1 or identification.)    2 Q (By Mr. Leo) One you described as being from    3 Jennifer Proffitt?    4 A Yes.    5 Q This is long after Professor Tracy is already    6 officially fired, right?    7 A Yes.    8 Q Would you say it's a little late to give a    9 statement on Professor Tracy's termination when he's    10 already been fired?    11 A No.    12 Q Well, when we talk about shaping the    13 narrative, in December of 2015 did the union, did    14 Jennifer Proffitt, did anybody at UFF attempt to defend    15 Professor Tracy in the press?    16 A No, we didn't feel --    17 Q Thank you. That was the only question I had.    18 Going to meetings that you had with United Faculty of    19 Florida officers, I'm going to show you what's been    20 marked as Z-35. Is this communication concerning a    21 meeting that you had with Ogletree and Thomas Johnson?    22 A Yes. Let's see. Yeah, I can't remember. I    23 believe -- I don't remember who all was at that. I'm    24 pretty sure Ogletree was at the meeting. I believe Tom    25 Johnson would've been at the meeting, myself, probably</p>	<p>308</p> <p>1 them from being sued?    2 A I think Marshall said something to that    3 effect. I'll be honest with you, in terms of the legal,    4 I'm not a lawyer. So my understanding is my    5 understanding, that he was representing, Tom Johnson. I    6 think what he was referring to was that he was there to    7 make sure that we were -- my reading of his    8 communication was that he was there to make sure that we    9 were doing our due diligence in terms of defending his    10 rights.    11 Q I'm going to show you what's been marked as Z-    12 36. Can you take a look at this, and then tell me what    13 Jennifer Proffitt is referring to when she says that    14 she's going to give you some cover?    15 A Because there were some people that were very    16 critical of us in terms of defending him, I guess. I    17 didn't feel I needed any cover. I believe what she's    18 talking about is that there are people that -- although    19 I don't think I was confronted by anybody -- that were    20 saying that we were bad for representing Doctor Tracy.    21 I guess her assumption was that there were people at FAU    22 that felt that we shouldn't be defending them. And so I    23 guess she was just saying it to make it look like this    24 was coming from above.    25 (Whereupon Plaintiff's Exhibit Z-36 was marked</p>

<p>1 or identification.)</p> <p>2 <b>Q (By Mr. Leo) There were faculty members who</b></p> <p>3 <b>felt that United Faculty of Florida was not doing enough</b></p> <p>4 <b>to defend Professor Tracy or the chapter, isn't that</b></p> <p>5 <b>right?</b></p> <p>6 A I think there were feelings on both sides.</p> <p>7 <b>Q Going to early January when you're talking to</b></p> <p>8 <b>Ogletree and Proffitt and you're talking about Professor</b></p> <p>9 <b>Tracy's mental health, was it everybody's opinion -- I'm</b></p> <p>10 <b>referring to those who participated in the conversation,</b></p> <p>11 <b>Ogletree, Johnson, Proffitt -- that Professor Tracy was</b></p> <p>12 <b>crazy?</b></p> <p>13 A I can't speak to what everybody thought.</p> <p>14 <b>Q Did anybody tell you from those ranks,</b></p> <p>15 <b>president, executive director at United Faculty of</b></p> <p>16 <b>Florida, both of them, did any of them tell you that</b></p> <p>17 <b>they thought that Professor Tracy was crazy?</b></p> <p>18 A No. Marshall indicated, I think in an email,</p> <p>19 that he thought counseling might be a good idea.</p> <p>20 <b>Q Where was that coming from, that counseling</b></p> <p>21 <b>would be a good idea?</b></p> <p>22 A Because I guess what Marshall perceived his</p> <p>23 behavior was less than rational at this time.</p> <p>24 <b>Q And this is the behavior that you were</b></p> <p>25 <b>describing earlier, of commenting on matters of public</b></p>	<p>309</p> <p>1 did that my wife would divorce me. That's what I think</p> <p>2 I said.</p> <p>3 <b>Q And did you tell Jen Proffitt and Marshall</b></p> <p>4 <b>Ogletree something along those lines, as well?</b></p> <p>5 A I said that I was concerned what these actions</p> <p>6 were doing for his family. He had a wife and four kids.</p> <p>7 And I even asked him. When he was terminated I asked</p> <p>8 him, I said how is your family holding up under this?</p> <p>9 This is part of what my opinion of poor decision-making.</p> <p>10 This is a family that he has that's affected by all</p> <p>11 this. And that's just my opinion. But like I said, he</p> <p>12 had four kids and a wife at home, and in my opinion, he</p> <p>13 seemed more concerned about his conspiracy theories than</p> <p>14 he did his family. That's my opinion.</p> <p>15 <b>Q Did you investigate any of Professor Tracy's</b></p> <p>16 <b>conspiracy theories?</b></p> <p>17 A A little bit.</p> <p>18 <b>Q In what way?</b></p> <p>19 A I read what some of the questions are that</p> <p>20 have been raised about the Sandy Hook shooting.</p> <p>21 <b>Q What kind of investigation did you do?</b></p> <p>22 A I wouldn't call it investigation. I'm an</p> <p>23 academic. So as an academic you try to keep an open</p> <p>24 mind. So I started to look into some of these things.</p> <p>25 And the more I looked into it, the less credible it</p>
<p>310</p> <p>1 <b>concern? For example, school shootings that perhaps may</b></p> <p>2 <b>have never happened?</b></p> <p>3 A I think it was going way beyond that. I think</p> <p>4 a lot of it had to do with how he was behaving in this</p> <p>5 particular case.</p> <p>6 <b>Q You say how he behaved. How had he behaved?</b></p> <p>7 A Making poor decisions, making poor judgments.</p> <p>8 <b>Q Like letting United Faculty of Florida</b></p> <p>9 <b>represent him? Would that be a poor decision?</b></p> <p>10 A I'm not even going to answer that.</p> <p>11 <b>Q You have to.</b></p> <p>12 A No.</p> <p>13 <b>Q Going to his blog and Professor Tracy in</b></p> <p>14 <b>general, have you ever made comments about Professor</b></p> <p>15 <b>Tracy or his wife to Shane Eason?</b></p> <p>16 A No.</p> <p>17 <b>Q Have you ever made comments about Professor</b></p> <p>18 <b>Tracy or his wife about anybody else at United Faculty</b></p> <p>19 <b>of Florida, like Ogletree, Proffitt?</b></p> <p>20 A I don't know what you mean. What do you mean</p> <p>21 by that?</p> <p>22 <b>Q Like I don't know why she's still with him.</b></p> <p>23 <b>Would that be something that you would've said to Shane</b></p> <p>24 <b>Eason, for example?</b></p> <p>25 A I might have said something to the effect if I</p>	<p>312</p> <p>1 appeared to me.</p> <p>2 <b>Q So you were researching Sandy Hook?</b></p> <p>3 A I wouldn't call it researching. I was reading</p> <p>4 up on it. I went on his blog a couple times, I listened</p> <p>5 to some of the talk shows, I read different things.</p> <p>6 <b>Q Did you share any of your observations with</b></p> <p>7 <b>any of the other faculty members of the university?</b></p> <p>8 A Not that I recall.</p> <p>9 <b>Q Did you share your observations with United</b></p> <p>10 <b>Faculty of Florida?</b></p> <p>11 A I think I said that I didn't believe that</p> <p>12 there was much credibility to it.</p> <p>13 <b>Q Did you report any of your research</b></p> <p>14 <b>concerning --</b></p> <p>15 A It wasn't research. It didn't reach the level</p> <p>16 of research.</p> <p>17 <b>Q What's the level of research that required</b></p> <p>18 <b>reporting to the university? At what point? How many</b></p> <p>19 <b>things do you have to look at?</b></p> <p>20 A Research, as defined, that's not research.</p> <p>21 <b>Q What's research?</b></p> <p>22 A Research is when you are collecting data or</p> <p>23 information, and that you're doing it for the purpose of</p> <p>24 disseminating this information in a formalized venue.</p> <p>25 In other words, you create a hypothesis, you go through</p>



<p>313</p> <p>1 an IRB protocol, and you collect data.  2 <b>Q That's a pretty broad definition.</b>  3 A No, it's not a broad definition at all.  4 <b>Q I'm sorry, I meant specific. That's a very</b>  5 <b>specific definition.</b>  6 A That's what research is.  7 <b>Q Do you use Google to look up words a lot?</b>  8 A I use Google for a lot of stuff.  9 <b>Q Google says that research means investigate.</b>  10 A Well, that's not an academic definition of  11 research.  12 <b>Q Where is the academic definition of research</b>  13 <b>at Florida Atlantic University?</b>  14 A As an academic, I can tell you what it is.  15 Research is what I just described.  16 <b>Q No, I asked where. Where is the definition?</b>  17 A Probably on the -- I don't know where the  18 definition is.  19 <b>Q Where is it for purposes of understanding or</b>  20 <b>complying with Article 19 of the Collective Bargaining</b>  21 <b>Agreement? That's something that you would know since</b>  22 <b>you're tasked with enforcement of the agreement, right?</b>  23 A I don't even understand your question. You  24 don't understand what research is. You clearly don't  25 understand what research is.</p>	<p>315</p> <p>1 A They're all reported. They're part of my job.  2 <b>Q How many of those did you ask for permission</b>  3 <b>before reporting them?</b>  4 A Virtually all of them.  5 <b>Q So you filled out an outside activities form</b>  6 <b>for each one of those?</b>  7 A They're not outside activities. You don't  8 even understand what you're talking about.  9 <b>Q So we're comparing apples and oranges, right?</b>  10 A No. You don't have a clue what you're talking  11 about. That's the problem.  12 <b>Q Yeah, it seems like nobody at FAU has a clue</b>  13 <b>about --</b>  14 A No, that's you.  15 <b>Q -- about what research actually means</b>  16 <b>according to their own policies, which is why we're here</b>  17 <b>today.</b>  18 A That's a total and utter mischaracterization.  19 <b>Q Okay, sure. Did you consider that the</b>  20 <b>university was trying to discipline Professor Tracy</b>  21 <b>because they didn't like what he was saying?</b>  22 A Did I consider it? Sure, I considered it.  23 <b>Q And if that was happening, would that not have</b>  24 <b>been grievable?</b>  25 A No, because you have to prove things.</p>
<p>314</p> <p>1 <b>Q How is research defined in connection with</b>  2 <b>Article 19, which says research must be reported, right?</b>  3 A Yes. Research is what I just described. When  4 you create a hypothesis, you do your investigating for  5 the purpose of -- it becomes research when it is  6 reported.  7 <b>Q It's whatever the university wants it to be,</b>  8 <b>isn't that right?</b>  9 A No, that's not true.  10 <b>Q Research is defined however the university</b>  11 <b>sees fit at any given time at FAU --</b>  12 A No, that's not true.  13 <b>Q -- now and back when they fired Professor</b>  14 <b>Tracy for his research?</b>  15 A No, that's BS.  16 <b>Q But you have nothing to point to, no</b>  17 <b>guidelines or instructions that actually define</b>  18 <b>research. So you're just telling me what your opinion</b>  19 <b>of research is?</b>  20 A No, I'm a researcher. I've published 70  21 publications in the scientific literature.  22 <b>Q When?</b>  23 A Over the last 20 years.  24 <b>Q How many of those did you report to Florida</b>  25 <b>Atlantic University that you were publishing?</b></p>	<p>316</p> <p>1 <b>Q So Article 5.2(d) just depends on what you</b>  2 <b>think about it?</b>  3 A No. 5.2(d) is something you keep inserting  4 into this process that was irrelevant.  5 <b>Q 5.2(d), the right of all faculty members at</b>  6 <b>Florida Atlantic University members to engage in</b>  7 <b>constitutionally protected activity without</b>  8 <b>institutional discipline or censorship, is whatever I</b>  9 <b>want it to mean?</b>  10 A No. When -- I keep asking you this. When  11 were his Constitutional rights violated? When did this  12 happen? When did they tell him he couldn't do or say  13 anything?  14 <b>Q Well, that's something the jury will have to</b>  15 <b>decide, because I can't answer that question.</b>  16 A I know you can't answer the question, because  17 it didn't happen.  18 <b>Q No, I can answer it but I'm not going to,</b>  19 <b>because this is not how this works. If you want to</b>  20 <b>depose my client or FAU, you have the right to do that.</b>  21 <b>So I encourage you to do it. Going to -- just one more</b>  22 <b>question about collective bargaining. How did you get</b>  23 <b>three to four percent raise over -- what did you say it</b>  24 <b>was, three years?</b>  25 A We got an eight percent raise over three</p>

<p>1 years.</p> <p>2 <b>Q Eight percent? I thought it was 15 percent.</b></p> <p>3 A That's what we were asking for. That's what</p> <p>4 we settled for.</p> <p>5 <b>Q How'd you get that?</b></p> <p>6 A By collective bargaining.</p> <p>7 <b>Q Did collective bargaining include offering</b></p> <p>8 <b>Professor Tracy's job to the university?</b></p> <p>9 A No, and I resent that. You're sick, dude.</p> <p>10 <b>Q I'm sick?</b></p> <p>11 A Yes. In order for me to -- that --</p> <p>12 <b>Q I'm sick because I asked the question?</b></p> <p>13 A Yes, that you could even insinuate that I</p> <p>14 would do such a thing.</p> <p>15 <b>Q I didn't insinuate. I asked it.</b></p> <p>16 A Yeah, well, why are you asking it?</p> <p>17 <b>Q You're taking offense to it --</b></p> <p>18 A Yes. I'm very offended by it. I'm very</p> <p>19 offended by it.</p> <p>20 <b>Q So there was no quid pro quo in giving up</b></p> <p>21 <b>Professor Tracy's tenure?</b></p> <p>22 A No, no.</p> <p>23 <b>Q Did anybody at the administration make any</b></p> <p>24 <b>treats or promises?</b></p> <p>25 A No, no.</p>	<p>317</p> <p>1 A I don't refer to it as a threat.</p> <p>2 <b>Q So you don't think that a notice of discipline</b></p> <p>3 <b>issued to Doctor Tracy was a threat?</b></p> <p>4 A It was a notice of pending discipline.</p> <p>5 <b>Q And it wasn't grievable -- as you sit here</b></p> <p>6 <b>today -- we already know you told Professor Tracy it was</b></p> <p>7 <b>not grievable in November and December of 2015. But as</b></p> <p>8 <b>you sit here today was that November 10 notice of</b></p> <p>9 <b>discipline, was it grievable, yes or no?</b></p> <p>10 A You can file on anything, yes.</p> <p>11 MR. LEO: I have no further questions.</p> <p>12 MR. MCKEE: Nothing further. He'll read.</p> <p>13 MR. LEO: FAU? No? Okay.</p> <p>14 (Deposition concluded at 5:49 p.m.)</p> <p>15 (Reading and signing of the deposition by the</p> <p>16 witness has been reserved.)</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>1 MR. MCKEE: Let him finish the question.</p> <p>2 THE WITNESS: There were no threats or</p> <p>3 promises.</p> <p>4 <b>Q (By Mr. Leo) No threats or promises ever, like</b></p> <p>5 <b>the threat that was made to Professor Tracy if he didn't</b></p> <p>6 <b>turn in his forms he'd be fired. And then when he</b></p> <p>7 <b>turned them in and was fired? Like that threat?</b></p> <p>8 A That's not a threat.</p> <p>9 <b>Q There were lots of threats that were made,</b></p> <p>10 <b>weren't there?</b></p> <p>11 A No, that's not a threat.</p> <p>12 <b>Q You're saying Professor Tracy wasn't</b></p> <p>13 <b>threatened in November of 2015?</b></p> <p>14 A He was given notice of pending termination.</p> <p>15 <b>Q He was threatened with discipline if he didn't</b></p> <p>16 <b>submit forms.</b></p> <p>17 A That's not a threat. You used the term</p> <p>18 threat.</p> <p>19 <b>Q That's not a threat? Turn in forms or you may</b></p> <p>20 <b>face discipline. That's not a threat?</b></p> <p>21 A No, that's not a threat.</p> <p>22 <b>Q Okay. Well, Google says that a threat is a</b></p> <p>23 <b>statement of an intention to inflict pain, injury,</b></p> <p>24 <b>damage, or other hostile action if something is not</b></p> <p>25 <b>done.</b></p>	<p>318</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF PALM BEACH</p> <p>4</p> <p>5 I, LINDSAY YATES, Court Reporter and Notary Public</p> <p>6 for the State of Florida, do hereby certify that I was</p> <p>7 authorized to and did digitally report and transcribe</p> <p>8 the foregoing proceedings, and that the transcript is a</p> <p>9 true and complete record of my notes.</p> <p>10 I further certify that I am not a relative,</p> <p>11 employee, attorney or counsel of any of the parties,</p> <p>12 nor am I a relative or employee of any of the parties'</p> <p>13 attorneys or counsel connected with the action, nor am</p> <p>14 I financially interested in the action.</p> <p>15 Witness my hand this 26th day of April, 2017.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 LINDSAY YATES, COURT REPORTER, FPR</p> <p>21 NOTARY PUBLIC, STATE OF FLORIDA</p> <p>22</p> <p>23</p> <p>24</p> <p>25</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.

13 LINDSAY YATES, COURT REPORTER, FPR  
14 NOTARY PUBLIC, STATE OF FLORIDA  
Commission No.: GG 008552  
15 Commission Exp: 10/28/2020  
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321

ERRATA SHEET	
2	I wish to make the following changes, for the following reasons:
3	PAGE NO. LINE NO.
4	_____ CHANGE
5	REASON _____
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19	REASON _____
20	_____ CHANGE _____
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23	REASON _____
24	SIGNATURE _____ DATE _____

322

1 DATE: April 26, 2017  
2 TO: Robert Zoeller, Jr.  
3 C/O Robert McKee, Esquire  
Robert F. McKee, P.A.  
1718 East Seventh Avenue Suite 301  
Tampa, Florida 33605  
4  
5 IN RE: James Tracy vs. Florida Atlantic University  
Board of Trustees, et al.  
CASE NO: 9:16-cv-80655-RLR  
6  
7 Dear Mr. Zoeller,  
8 Please take notice that on April 17, 2017, you  
gave your deposition in the above-referenced matter.  
At that time, you did not waive signature. It is now  
necessary that you sign your deposition. You may do so  
by contacting your own attorney or the attorney who  
took your deposition and make an appointment to do so  
at their office. You may also contact our office at  
the below number, Monday - Friday, 9:00 AM - 5:00 PM,  
for further information and assistance.  
12  
13 If you do not read and sign your deposition within  
thirty (30) days, the original, which has already been  
forwarded to the ordering attorney, may be filed with  
the Clerk of the Court.  
14  
15 If you wish to waive your signature, sign your name in  
the blank at the bottom of this letter and promptly  
16 return it to us.  
17 Very truly yours,  
18  
19 LINDSAY YATES, COURT REPORTER, FPR  
Universal Court Reporting  
(954)712-2600  
20  
21 I do hereby waive my signature.  
22  
23 ROBERT ZOELLER, JR.  
Cc: via transcript: Louis Leo, Esquire  
Robert McKee, Esquire  
Holly Griffin, Esquire  
24  
25



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