

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
RACHEL TUDOR,	)	
	)	
Plaintiff-Intervenor,	)	
v.	)	CASE NO. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY, and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**UNITED STATES’ MOTION TO COMPEL DEPOSITION TESTIMONY OF
CHARLES BABB AND FOR SANCTIONS WITH INCORPORATED BRIEF**

I. Introduction

Pursuant to Rule 37(a)(3)(B)(i) of the Federal Rules of Civil Procedure, Plaintiff, the United States of America (“United States”), requests that the Court (1) overrule attorney-client privilege objections that Defendants asserted during the deposition of Regional University System of Oklahoma General Counsel Charles Babb because Defendants had already waived those privileges; (2) compel Mr. Babb to appear for a continuation of his deposition where he may be questioned about the communications for which privilege has been waived; and (3) sanction Defendants for improperly instructing Mr. Babb not to answer questions where attorney-client privilege had been waived. Counsel for the United States, Dr. Tudor, and Defendants have conferred telephonically

but have not been able to resolve these disputes.¹

II. Background and Summary of Argument

In response to the United States' written discovery requests, Defendants have produced several written communications regarding Dr. Tudor between Mr. Babb and employees who worked at Southeastern. Defendants also allowed three fact witnesses to testify about their conversations and communications with Mr. Babb about Dr. Tudor, her gender transition, and grievances she filed. As discussed more fully below, Defendants did not assert any privilege over the disclosed documents that Mr. Babb wrote or received, and they permitted Southeastern employees to testify about their conversations with Mr. Babb without objection.

The United States noticed the deposition of Mr. Babb in order to explore his knowledge relating to the subject matters already disclosed in documents and witness testimony, as well as other subjects. On April 12, 2016, counsel for Defendants e-mailed counsel for the United States to say that while they agreed to a date for Charles Babb's deposition, they "had concerns regarding [the United States'] efforts to inquire into privileged areas." Ex. A (E-mail from D. Coffey to A. Townsend dated Apr. 12, 2016). They requested that the United States outline the areas it would inquire into so that they could make a "determination as to whether [Defendants] need[ed] to seek protection from the Court prior to his deposition." *Id.*

On May 6, 2016, the United States sent Defendants a letter outlining planned areas

¹ The United States, Dr. Tudor, and Defendants could not confer in-person because counsel for the United States is located in Washington, D.C. Thus, a personal conference was "infeasible." See Local Rule 37.1.

of inquiry. *See* Ex. B (Letter from A. Townsend to D. Coffey and J. Joseph dated May 6, 2016). Defendants' counsel did not respond with any objections or move for a protective order. On May 18, 2016, counsel for the United States and Dr. Tudor (collectively referred to herein as "Plaintiffs") took the deposition of Mr. Babb. Ex. C (Babb Dep.) at 1. Mr. Babb is RUSO General Counsel, a position he held during the time Dr. Tudor worked for Southeastern Oklahoma State University ("Southeastern"). *Id.* at 12.

Even though Defendants (a) permitted, without objection, their witnesses to testify about communications they had with Mr. Babb and (b) produced written communications to and from Mr. Babb, Defendants' counsel instructed Mr. Babb not to respond to questions during his deposition about these same oral and written communications on the basis of attorney-client privilege. These instructions were improper because privilege had been waived, and as a result, the Court should compel the Defendants to produce Mr. Babb for a continuation of his deposition to answer questions about these communications. The Court should also impose sanctions against the Defendants for instructing Mr. Babb not to respond to questions about these communications without first seeking a protective order.

III. Argument

A. Defendants' Instructions to Mr. Babb Not to Answer Questions on the Basis of Attorney-Client Privilege Were Improper Because the Privilege Was Waived.

1. Legal Standard for Waiver of Privilege

Federal Rule of Civil Procedure 26(b)(5) states that when a party withholds information otherwise discoverable by claiming that the information is privileged, the

party must expressly make that claim. The Tenth Circuit has made clear that the confidentiality of attorney-client communications must be “jealously guarded by the holder of the privilege lest it be waived.” *In re Qwest Comm’ns Int’l Inc.*, 450 F.3d 1179, 1185 (10th Cir. 2006) (internal citation and quotation marks omitted). It is similarly clear that Defendants have the burden of establishing the applicability of the privilege. *Motley v. Marathon Oil Co.*, 71 F.3d 1547, 1550 (10th Cir. 1995) (internal citation omitted)); *see also Davis v. PMA Companies, Inc.*, No. CIV-11-359-C, 2012 WL 3922967, at *1 (W.D. Okla. Sept. 7, 2012) (Cauthron, J.) (applying state law and finding that the party asserting attorney-client privilege has the burden of clearly showing its applicability) (internal citation omitted).

In *United States v. Bernard*, the Tenth Circuit explained that “[a]ny voluntary disclosure by the client is inconsistent with the attorney-client relationship and waives the privilege.” 877 F.2d 1463, 1465 (10th Cir. 1989). “It is beyond dispute that, in the context of a deposition, an objection asserting attorney-client privilege must ordinarily be raised when the question seeking privileged material is asked.” *Prince Lionheart, Inc. v. Halo Innovations, Inc.*, 06-CV-324, 2007 WL 2728343, at *5 (D. Colo. Sep. 18, 2007) (finding that privilege had been waived and citing 8 Fed. Prac. & Pro. Civ. 2d § 2016.1, at 228–29 (1994)). If a party does not object to a question seeking attorney-client privileged information at a deposition and privileged information is disclosed, the party has waived the privilege over that information. *Id.* at *5-6; *AHF Community Dev., LLC v. City of Dallas*, 258 F.R.D. 143, 148-49 (N.D. Tex. 2009) (privilege waived due to lack of objection at deposition to questions about privileged documents).

Moreover, when a party waives privilege over communications, the scope of that waiver is determined by the scope of the privileged information disclosed. *Prince Lionheart*, 2007 WL 2728343 at *6. Courts examining the issue have determined that waiver opens up discovery to all privileged communications regarding the same “subject matter” as the disclosed privileged communications. *Kovacs v. Hershey Co.*, 04-CV-1881, 2006 WL 2781591, at *6 (D. Colo. Sep. 26, 2006); *see also United States v. Collis*, 128 F.3d 313, 320 (6th Cir. 1997).

Defendants did not take the actions necessary to preserve attorney-client privilege. Quite the contrary, Defendants not only produced written communications between Southeastern employees and RUSO’s General Counsel, but they permitted Plaintiffs to explore those communications during several depositions without objection. Specifically, during the depositions of Cathy Conway, Charles Weiner, and Bryon Clark, the Defendants waived any privilege over communications these witnesses testified they had with Mr. Babb because the Defendants did not object to questions about those communications. Defendants also waived privilege over written communications between these witnesses and Mr. Babb when the Defendants produced those written communications in discovery.

Given these privilege waivers, counsel for the United States was surprised when Defendants instructed Mr. Babb not to answer questions about these communications during his deposition. This was particularly so since, per the Defendants’ request, the United States had provided a list of some of the topics that it planned to cover during Mr. Babb’s deposition in advance of the deposition and Defendants did not move for a

protective order. *See, e.g., Resolution Trust Corp. v. Dabney*, 73 F.3d 262, 266-77 (10th Cir. 1995) (where attorneys were concerned, prior to a deposition, that privilege might foreclose certain lines of inquiry, rules of civil procedure called for party to apply for a pre-deposition protective order). Instead, the Defendants produced Mr. Babb for a deposition and, on approximately forty occasions, counsel for Defendants asserted attorney-client privilege and instructed Mr. Babb not to answer questions.

2. *Defendants Improperly Instructed Mr. Babb Not to Answer Questions About Communications with Cathy Conway.*

Ms. Conway served as the Human Resources Director at Southeastern in 2007 when Dr. Tudor transitioned from presenting as a man at work to presenting as a woman. Ex. D (Conway Dep.) at 15, 18, and 31. During Ms. Conway's deposition, she testified about conversations she had with Mr. Babb about Dr. Tudor's gender transition. Ms. Conway testified that, after she learned of Dr. Tudor's gender transition, she sent Mr. Babb a letter from Dr. Tudor's health care provider and called Mr. Babb to confer about Dr. Tudor's gender transition. *Id.* at 31-32. Ms. Conway went on to testify in detail about conversations she had with Mr. Babb regarding Dr. Tudor's gender transition including, but not limited to, the issue of what restrooms were available for Dr. Tudor to use at Southeastern. *Id.* at 39-44, 55, 57-58, 61-64, 73-75, 124-27.

Ms. Conway testified about questions she asked Mr. Babb and information and advice he provided to her. Defendants also produced Ms. Conway's notes from conversations she had with Mr. Babb about Dr. Tudor's gender transition and permitted Ms. Conway to answer questions about those notes. *Id.* at 58 and 61-64 and Ex. E. (Pl.

Ex. 26) at 4.² At no time during Ms. Conway's deposition did counsel for Defendants instruct Ms. Conway not to answer a question about her communications with Mr. Babb on the basis of privilege or any other reason.

During Mr. Babb's deposition, counsel for Plaintiffs questioned him about his communications with Ms. Conway regarding Dr. Tudor's gender transition. Unlike at Ms. Conway's deposition, Defendants' counsel objected to this line of questioning and instructed Mr. Babb not to answer questions about his communications with Ms. Conway on the basis of attorney-client privilege. Ex. C (Babb Dep.) at 21-23, 34, and 176. Since Mr. Babb attended Ms. Conway's deposition, counsel for the United States also asked Mr. Babb if Ms. Conway testified inaccurately at her deposition about her communications with him. Defendants' counsel objected to this question on the basis of attorney-client privilege, too. *Id.* at 23-24. Because Defendants had waived the asserted privilege, these instructions not to answer were improper.

3. *Defendants Improperly Instructed Mr. Babb Not to Answer Questions About Communications with Charles Weiner.*

Dr. Weiner served as Assistant Vice President for Academic Affairs at Southeastern between 2008 and 2010. Ex. F (Weiner Dep.) at 14-15. During the 2009-10 academic year, Dr. Weiner served as the President's designee tasked with responding to a grievance that Dr. Tudor filed. *Id.* at 78 and Ex. G (Pl. Ex. 46). In this grievance, Dr. Tudor requested that Southeastern's Vice President for Academic Affairs, Douglas McMillan, and the Dean who oversaw Dr. Tudor's department, Lucretia Scoufos, be

² In this Motion, the United States will refer to deposition exhibits used during its depositions, i.e. Plaintiff's Exhibits, with the abbreviation "Pl. Ex."

compelled to explain to Dr. Tudor why they had opposed her application for promotion and tenure. Ex. G (Pl. Ex. 46). Southeastern's Faculty Appellate Committee ("FAC") considered Dr. Tudor's grievance and notified Dr. Weiner that they believed Drs. McMillan and Scoufos should explain to Dr. Tudor why they opposed her promotion and tenure application. Ex. F (Weiner Dep.) at 81-82 and Ex. H (Pl. Ex. 47). Dr. Weiner testified at his deposition that, while he worked on a letter regarding the FAC's recommendation, he conferred with Mr. Babb. Ex. F (Weiner Dep.) at 83-84. Dr. Weiner testified that Mr. Babb provided him advice on what Dr. Weiner should say in the letter to Dr. Tudor regarding the grievance. *Id.*

Dr. Weiner stated that he wrote emails addressed to Mr. Babb, Dr. McMillan, Dr. Scoufos, and President Minks on April 1, 2010, that, in part, summarized his discussion with Mr. Babb about Dr. Tudor's grievance. Ex. F (Weiner Dep.) at 92-99 and Ex. I (Pl. Ex. 50). The April 1 emails also summarized a discussion that Dr. Weiner had with Mr. Babb about whether Southeastern had notified Dr. Tudor of whether it would reappoint her for the following academic year. Ex. F (Weiner Dep.) at 94-95. Dr. Weiner testified that none of the recipients of the April 1 emails, including Mr. Babb, expressed any disagreement with what Dr. Weiner said in his emails. *Id.* at 94 and 97-99. At no time during Dr. Weiner's deposition did counsel for Defendants instruct Dr. Weiner not to answer a question about his communications with Mr. Babb on the basis of privilege or any other reason.

In contrast, during Mr. Babb's deposition, counsel for the United States asked Mr. Babb if he discussed Dr. Tudor's grievance with Dr. Weiner. Ex. C (Babb Dep.) at 54-55

and Ex. H (Pl. Ex. 47). Counsel for the United States also asked Mr. Babb whether Dr. Weiner had correctly summarized his discussion with Mr. Babb in his April 1, 2010 emails. Ex. C (Babb Dep.) at 68-69 and Ex. I (Pl. Ex. 50). Unlike at Dr. Weiner's deposition, Defendants' counsel instructed Mr. Babb not to answer questions about his communications regarding Dr. Tudor's grievance and the April 1, 2010, emails on the basis of attorney-client privilege. Ex. C (Babb Dep.) at 54-55 and 68-69. Because privilege had been waived, these instructions not to answer were improper.

4. *Defendants Improperly Instructed Mr. Babb Not to Answer Questions About Communications with Bryon Clark.*

Dr. Bryon Clark testified that he served as the administrative liaison in connection with an October 11, 2010 grievance Dr. Tudor filed regarding Southeastern's refusal to permit her to apply for promotion and tenure. Ex. J (Clark Dep.) at 117-18 and Ex. K (Pl. Ex. 15). Dr. Clark testified that Southeastern's FAC considered Dr. Tudor's October 11 grievance and determined that Southeastern should permit her to apply for promotion and tenure. Ex. J (Clark Dep.) at 121-22. He said that Southeastern's President designated an administrator ("designee") to decide whether Southeastern should comply with the FAC's recommendation, and the designee decided that Southeastern should not comply with the recommendation. Ex. J (Clark Dep.) at 122-24, 141-42, and Ex. L (Pl. Ex. 74). Dr. Clark also testified that the FAC and the President's designee then met in an attempt to reach a joint decision on a resolution to the October 11 grievance but they were unable to reach an agreement. Ex. J (Clark Dep.) at 124-25 and Ex. L (Pl. Ex. 74).

Dr. Clark testified that after the President's designee and the FAC failed to agree

on a resolution to the grievance, Dr. Clark contacted Mr. Babb, told him about the impasse, and asked for advice on what to do next with the October 11 grievance. Ex. J (Clark Dep.) at 125-27. Dr. Clark said he told Mr. Babb that he was going to draft a procedure for the next steps in the grievance process and asked Mr. Babb if he would review the procedure. *Id.* After drafting a procedure, Dr. Clark shared it with Mr. Babb and Mr. Babb approved it. Ex. J (Clark Dep.) at 127-30, Ex. C (Babb Dep.) at 92-93, and Ex. M (Pl. Ex. 121). At no time during Dr. Clark's deposition did counsel for Defendants instruct Dr. Clark not to answer a question about his communications with Mr. Babb on the basis of privilege or any other reason.

During Mr. Babb's deposition, counsel for the United States questioned Mr. Babb about his communications with Dr. Clark and the procedure that Dr. Clark developed for dealing with the impasse between the FAC and the President's designee. Ex. C (Babb Dep.) at 91-92 and 95-96. Unlike during Dr. Clark's deposition, counsel for Defendants instructed Mr. Babb not to answer these questions about his communications with Dr. Clark on the basis of attorney-client privilege. *Id.* Because Defendants had waived privilege, these instructions not to answer were improper.

B. The Court Should Permit the Plaintiffs to Continue Mr. Babb's Deposition to Question Him on the Subject Matter of His Communications with Ms. Conway, Dr. Weiner, and Dr. Clark.

Defendants' waiver of privilege associated with the communications discussed above extends to the entire subject matter at issue in the communications, and the Court should permit the Plaintiffs to question Mr. Babb about those communications. *See Kovacs v. Hershey Co.*, 04-CV-1881, 2006 WL 2781591, at *6 (D. Colo. Sep. 26, 2006);

see also United States v. Collis, 128 F.3d 313, 320 (6th Cir. 1997).

In this case, because Defendants allowed witnesses to testify about their communications with Mr. Babb at their depositions and because Defendants produced attorney-client communications in discovery, the Defendants have waived privilege regarding the following subject matters: (1) Ms. Conway's communications with Mr. Babb in 2007 regarding Dr. Tudor's gender transition including, but not limited to, discussions about Dr. Tudor's restroom use; (2) Dr. Weiner's communications with Mr. Babb regarding his work on Dr. Tudor's grievance about Dr. McMillan's and Dr. Scoufos's refusal to explain why they opposed her promotion and tenure application; (3) Dr. Weiner's communications with Mr. Babb about whether Southeastern had notified Dr. Tudor of the renewal of her contract during the 2009-10 academic year; and (4) Dr. Clark's communications with Mr. Babb regarding Dr. Tudor's October 11, 2010, grievance. The Court should permit the Plaintiffs to question Mr. Babb on these topics.

C. Monetary Sanctions, In the Form of Costs for Continuing Mr. Babb's Deposition, Are Appropriate.

Under Fed. R. Civ. P. 30(d)(1), counsel may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to suspend a deposition in order to present a motion under Fed .R .Civ. P. 30(d)(3). *Resolution Trust Corp. v. Dabney*, 73 F.3d 262, 266 (10th Cir. 1995) (affirming, in large part, district court's imposition of sanctions on attorneys for asserting privileges without sufficient basis).

Fed. R. Civ. P. 37(a)(5) provides that if a motion to compel is granted, a court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees, unless the failure to respond to the discovery request was substantially justified or it would be unjust to award costs. Here, the United States requests that the Court order a continuation of Mr. Babb's deposition and compel Mr. Babb to respond to questions about these communications.

The United States also requests that the Court order the Defendants to pay the costs associated with the continuation of Mr. Babb's deposition including, but not limited to, the costs for the United States' and Dr. Tudor's counsel to travel to Oklahoma City for the continued deposition. The United States would not object to Defendants, in the alternative, producing Mr. Babb for the continuation of his deposition at the United States' office in Washington, D.C. Other courts have awarded similar costs to the movant prevailing on a motion to compel deposition testimony. *See, e.g., Biovail Labs., Inc. v. Anchen Pharm., Inc.*, 233 F.R.D. 648, 654-55 (C.D. Cal. 2006) (deposition improperly terminated) (internal citation omitted). Having received the deposition notice for Mr. Babb and a letter with the anticipated areas of inquiry, Defendants did not seek any relief but instead produced Mr. Babb, only to object on the basis of attorney-client privilege dozens of times. This resulted in motions practice and wasted time and money, making the United States' requested relief completely appropriate.

III. Conclusion

Even though the United States provided Defendants with advance notice of certain areas of inquiry they planned to explore during Mr. Babb's deposition, and even though attorney-client privilege on these topics had been waived during other witnesses' depositions, Defendants did not move for a protective order. Instead, they produced Mr. Babb but then instructed Mr. Babb not to answer dozens of questions on the basis of attorney-client privilege. The United States respectfully asks the Court to order Mr. Babb's testimony on the topics discussed herein and to order Defendants to pay costs of resetting his deposition. An order granting the requested relief is attached to this Motion.

Date: June 24, 2016

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Principal Deputy Assistant Attorney General
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Attorneys for Plaintiff United States

CERTIFICATE OF SERVICE

I certify that I served this document on all counsel of record through the Court's electronic filing system on the date below.

Date: June 24, 2016

/s/ Shayna Bloom

Townsend, Allan (CRT)

From: Dixie Coffey [dixie.coffey@oag.ok.gov]
Sent: Tuesday, April 12, 2016 4:00 PM
To: Townsend, Allan (CRT); Jeb Joseph
Cc: Bloom, Shayna (CRT); Jillian T. Weiss, Esq.; Ezra Young; Brittany Novotny
Subject: RE: depositions

Allan,

Your email is correct, but the deposition schedule for the first week of May will likely be Snowden on May 3, Clark on May 4 and Mischo on May 5, due to teaching schedules. With depositions on May 16-18, we have no other available dates the weeks of May 2 or May 16th, with the possible exception of the half day deposition on May 6 that I mentioned previously. I will not know until tomorrow about Ross Walkup's availability the week of May 23, or whether he will allow our office to accept service of the subpoena, but I suspect that he will. We can accept service for the remaining witnesses' subpoenas.

While we have agreed to the proposed date for Charlie Babb's deposition, we have some concerns regarding your efforts to inquire into privileged areas. Would you please outline the areas which you intend to question him about, so that we can make a determination as to whether we need to seek protection from the Court prior to his deposition?

I will notify you tomorrow after I have more information regarding Ross Walkup.

Thanks,

Dixie L. Coffey
Assistant Attorney General
Litigation Division, Office of the Attorney General
Phone:(405)522-2891; Fax (405) 521-4518

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From: Townsend, Allan (CRT) [<mailto:Allan.Townsend@usdoj.gov>]
Sent: Tuesday, April 12, 2016 7:48 AM
To: Dixie Coffey; Jeb Joseph
Cc: Bloom, Shayna (CRT); Jillian T. Weiss, Esq.; Ezra Young; Brittany Novotny
Subject: RE: depositions

Dixie,

I will get back to you regarding your question about conducting Dr. Minks' deposition in Ardmore on May 19.

Thank you for confirming the availability of Dr. Mischo, Dr. Clark, Dr. Snowden, Mr. Babb, and Dr. Stubblefield. Based on your email, the schedule for their depositions will be as follows:

Mischo – May 3 in Sherman

Clark – May 4 in Sherman

Snowden – May 5 in Sherman

Babb – May 17 in Oklahoma City

Stubblefield – May 18 in Oklahoma City

I assume, as they did before, that Drs. Mischo, Clark, and Snowden have agreed to let you accept service of their subpoenas via mail. Will Mr. Babb and Dr. Stubblefield authorize you to accept service of their subpoenas via mail as well?

Your email did not indicate whether Mr. Walkup is available for a deposition during the dates that I identified in my April 1, 2016, email. Do you know whether any of the remaining dates that I identified in my April 1 email will work for his deposition? Also, will Mr. Walkup authorize you to accept service of his subpoena by mail?

Thanks,

Allan K. Townsend
Senior Trial Attorney
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Employment Litigation Section--PHB
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From: Dixie Coffey [<mailto:dixie.coffey@oag.ok.gov>]
Sent: Monday, April 11, 2016 7:07 PM
To: Townsend, Allan (CRT); Jeb Joseph
Cc: Bloom, Shayna (CRT); Jillian T. Weiss, Esq.; Ezra Young; Brittany Novotny
Subject: depositions

Allan,

It looks like the proposed depositions dates of May 3,4 and 5th, in Sherman, TX will work, with some possible rearranging of the witnesses, Mischo, Clark and Snowden. May 6th is out, with a slight possibility of taking a witness' deposition that could be completed in the time frame of 8:30-12:30 that day.

We can present Charlie Babb in OKC on May 17 and Dr. Stubblefield in OKC on May 18. Could you depose Dr. Minks in Ardmore, OK on May 19? His availability for deposition in OKC on that date is uncertain.

Thanks,

Dixie L. Coffey
Assistant Attorney General
Litigation Division, Office of the Attorney General
Phone:(405)522-2891; Fax (405) 521-4518

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Civil Rights Division

DLK:MLB:AT:SB:VM
DJ 170-59N-31

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Via E-Mail and U.S. Mail

Dixie Coffey
Jeb Joseph
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Oklahoma City, Oklahoma 73105

May 9, 2016

Re: *United States & Tudor v. Southeastern Okla. State Univ. & Reg. Univ. Sys. of Okla.*,
5:15-CV-00324-C (W.D. Okla.)

Counsel:

This letter is to respond to Defendants' request that the United States set forth the expected topics to be explored during the deposition of Regional University System of Oklahoma General Counsel Charles Babb, scheduled for May 18, 2016. We are still preparing for Mr. Babb's deposition and do not yet have a final list of topics that we plan to cover. However, we currently plan to seek discoverable information from him regarding the following areas:

- (1) Dr. Tudor's gender transition in 2007 and Defendants' actions related to it;
- (2) Dr. Tudor's grievances and Defendants' responses to those grievances;
- (3) Revisions to Southeastern Oklahoma State University's ("Southeastern") policies and procedures;
- (4) Dr. Tudor's separation from Defendants in 2011;
- (5) Training of employees on how to conduct an investigation; and
- (6) Training of employees about what protections are available under Title VII of the Civil Rights Act ("Title VII") and how to avoid litigation in the Title VII context.

Based on the testimony of other witnesses during their depositions, information in documents we have obtained in discovery, and the nature of these topics, we believe that Mr. Babb has discoverable information on all of these topics.

Thank you for your attention to this matter.

Sincerely,

Delora L. Kennebrew
Chief
Employment Litigation Section

By: 

Allan K. Townsend
Shayna Bloom
Valerie L. Meyer
Trial Attorneys
Employment Litigation Section

cc: Jillian Weiss
Ezra Young
Brittany Novotny

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
Plaintiff(s),	)	
RACHEL TUDOR,	)	
Plaintiff Intervenor,	)	
-vs-	)	No. 5:15-CV-00324-C
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY, and	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
Defendant(s).	)	

DEPOSITION OF CHARLES BABB

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN OKLAHOMA CITY, OKLAHOMA

ON MAY 18, 2016

REPORTED BY: LESLIE A. FOSTER, CSR

A P P E A R A N C E S

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Kindeanne Jones
Rachel Tudor

T A B L E O F C O N T E N T S

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* * * * *

P L A I N T I F F (S)' E X H I B I T L I S T

(The following exhibits were marked
in previous depositions and were
attached to the transcript for
identification purposes.)

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E X H I B I T L I S T C O N T I N U E D

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* * * * *

Charles Babb

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1 WHEREUPON,

2 CHARLES BABB,

3 of lawful age, being first duly sworn, deposes and says
4 in reply to the questions propounded as follows:

5 EXAMINATION

6 BY MR. TOWNSEND:

7 Q Good morning, Mr. Babb.

8 A Good morning.

9 Q We've met many times before. My name, as you
10 know, is Allan Townsend. I represent the United States
11 in a lawsuit against Southeastern Oklahoma State
12 University and the Regional University System of
13 Oklahoma.

14 Could you please state and spell your full name
15 for the record.

16 A Charles, C-H-A-R-L-E-S; Keith, K-E-I-T-H; Babb,
17 B-A-B-B.

18 Q And what is your home address?

19 A 1300 Jamestown -- it's all one word -- Edmond,
20 Oklahoma 73003.

21 Q Do you have any plans to relocate any time
22 soon?

23 A No, sir.

24 Q What's your date of birth?

25 A 

Charles Babb

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1 Q Have you ever had your deposition taken before?

2 A Yes, sir.

3 Q When was the last time?

4 A Late '80s, early '90s. That's the best I can
5 do. I was a -- asked to be an expert for -- in a
6 bankruptcy matter for bankruptcy fees. I did some
7 bankruptcy work back then.

8 Q So you've appeared at all the depositions so
9 far in this case. Correct?

10 A Correct.

11 Q So that was the depositions of Dr. Tudor,
12 Dr. Prus, Ms. Conway, Dr. Weiner, Dr. Snowden, Dr. Clark,
13 Dr. Mischo, and Dr. Stubblefield. Correct?

14 A Yes.

15 Q So I go through the same what I call ground
16 rules for all those depositions, but I think I'll -- I'll
17 do an abbreviated version so -- since you've sat through
18 them all already.

19 I guess one of the -- one of the ground rules I
20 wanted to discuss was just if you want to take a break,
21 this isn't an endurance contest, like I always say, so
22 just let me know if you want to take a break. But if
23 there's a question pending, I just ask that you answer
24 the question before we take the break. Is that fair?

25 A Yes.

Charles Babb

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1 Q Have you ever been convicted of a crime?

2 A No.

3 Q Is there anything today that would prevent you
4 from giving accurate and truthful testimony, such as
5 medication that you're taking?

6 A No.

7 Q What did you do to prepare for the deposition
8 today?

9 A I had a meeting with Dixie and Jeb.

10 Q When was that?

11 A Last week.

12 Q Have you had more than one meeting with Dixie
13 or Jeb to prepare for your deposition?

14 A No.

15 Q Did you review any documents to prepare for
16 your deposition?

17 A Yes.

18 Q What documents were those?

19 A I don't recall.

20 Q Do you recall how many there were?

21 A No.

22 Q Were they documents that have been produced in
23 discovery in this case?

24 A Yes.

25 Q How long did you meet with Dixie and Jeb to

Charles Babb

10

1 prepare for your deposition?

2 A Approximately two hours.

3 Q Have you signed a statement in connection with
4 this case?

5 A No.

6 Q Have you provided a recorded statement in
7 connection with this case?

8 A No.

9 Q How long have you lived in Oklahoma?

10 A Approximately fifty-five years.

11 Q And I didn't do the math when you told me your
12 date of birth. Are you --

13 A Sixty-three.

14 Q -- always -- oh, you're sixty-three. Okay.
15 So where did you live before you moved to
16 Oklahoma?

17 A I was born in New York City, lived there for
18 approximately six or eight weeks, moved to Washington
19 state, lived there for a couple of years, then we moved
20 to Oklahoma. And in the late '80s, early '90s, I was in
21 Texas for about five years.

22 Q Did you go to college?

23 A Yes.

24 Q Where did you go to college?

25 A Went to college at Phillips University in Enid,

Charles Babb

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1 Oklahoma. No longer exists. It's -- but that's -- it
2 was there at the time. Texas Christian University,
3 University of Tulsa School of Law.

4 Q When did you get your law degree?

5 A 1983.

6 Q Have -- strike that.

7 When did you get your law license?

8 A October 1983.

9 Q And where are you licensed?

10 A I'm licensed in the state of Oklahoma. I'm
11 licensed in the state of Texas; it's currently on what
12 they call inactive status. I'm licensed in all the U.S.
13 district courts in Oklahoma, in the northern and western
14 districts of Texas, 10th Circuit, 5th Circuit U.S.
15 Supreme Court.

16 Q Have you ever been disciplined by any licensing
17 authority that governs lawyers?

18 A No.

19 Q Has there ever been a bar complaint filed
20 against you?

21 A No.

22 Q I wanted to shift gears here a little bit. Do
23 you know any transgender people other than Dr. Tudor?

24 A Not that I'm aware of.

25 Q All right. Where have you worked other than --

Charles Babb

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1 let me strike that.

2 How long have you worked for the Regional
3 University System of Oklahoma?

4 A Eleven years, ten months. Excuse me. Nine
5 months.

6 Q If I refer to the Regional University System of
7 Oklahoma as RUSO, would that be okay with you?

8 A Yes, sir.

9 Q And when you were hired to work at RUSO, what
10 position were you hired into?

11 A General counsel.

12 Q Has that been your position since you started
13 working at RUSO?

14 A Yes.

15 Q Where did you work before you started working
16 at RUSO?

17 A State of Oklahoma Attorney General's office.

18 Q How long did you work for the Oklahoma Attorney
19 General's office before -- well, strike that.

20 How long did you work at the Oklahoma Attorney
21 General's office?

22 A Little over seven years.

23 Q Why did you separate from the Oklahoma Attorney
24 General's office?

25 A I was offered the position as general counsel

Charles Babb

13

1 at RUSO. I thought it would be a nice change from
2 litigation.

3 Q And then where did you work prior to the
4 Oklahoma Attorney General's office?

5 A State of Oklahoma Department of Corrections.

6 Q How long did you work there?

7 A Little over one year.

8 Q What was your position with the Oklahoma
9 Department of Corrections?

10 A Assistant general counsel.

11 Q And what was your title when you were with the
12 Oklahoma Attorney General's office?

13 A Assistant attorney general.

14 Q Have you ever been terminated from a job?

15 A No.

16 Q In your time working at RUSO, have you ever
17 been disciplined?

18 A No.

19 Q Do you have any relatives that have ever worked
20 for RUSO?

21 A No.

22 Q Do you have any relatives that have ever worked
23 at Southeastern Oklahoma State University?

24 A Not that I'm aware of.

25 Q Is it all right with you if I refer to

Charles Babb

14

1 Southeastern Oklahoma State University as Southeastern?

2 A Yes.

3 Q Has anyone ever accused you of unlawfully
4 discriminating against them before?

5 A No.

6 Q In your time at RUSO, who have been your
7 supervisors?

8 A The -- I'm hired by the board of regents.

9 Q So the board of regents has been your
10 supervisor your entire time as general counsel at RUSO?

11 A Yes.

12 Q Do you receive performance evaluations from the
13 board of regents?

14 A Yes.

15 Q Is there -- strike that.

16 Do all of the regents participate in that
17 evaluation?

18 A I don't know.

19 Q How is the board of regents structured? Let me
20 strike that. That might be an unclear question.

21 Is there, like, a chair of the board of
22 regents?

23 A Yes.

24 Q And how many regents are on the board?

25 A Nine.

Charles Babb

15

1 Q Has that always been the case since you've been
2 at RUSO?

3 A There's nine slots. They haven't always been
4 filled.

5 Q And who currently are the regents for RUSO?

6 A Jeff Dunn, Lake Carpenter, Gary Parker, Terry
7 Matlock, Susan Winchester, Mike Mitchel, Connie Reilly,
8 Joy Hofmeister, Mark Stansberry.

9 Q Which one of those people is the chair of the
10 board of regents right now?

11 A Jeff Dunn.

12 Q How long has he been chair?

13 A Eleven months.

14 Q Who immediately preceded him as chair?

15 A Susan Winchester.

16 Q How long was she chair?

17 A One year.

18 Q Is there a term limit on being chair of the
19 board of regents?

20 A No.

21 Q At some point was Connie Reilly the chair of
22 the board of regents?

23 A Yes.

24 Q When was that?

25 A I don't recall.

Charles Babb

16

1 Q Could you briefly describe your job duties as
2 general counsel at RUSO.

3 A I'm the lawyer for the board -- excuse me --
4 and provide legal advice to the board and the six
5 universities that are in the system.

6 Q Is part of your job as general counsel
7 answering questions about what RUSO policies say?

8 A Could you clarify that?

9 Q Sure. Is part of your job to answer questions
10 from people within RUSO or RUSO institutions who have
11 questions about whether something is addressed in a RUSO
12 policy?

13 MS. COFFEY: Object to form.

14 Q (BY MR. TOWNSEND) Let me strike that question
15 and ask it a different way.

16 A Sorry.

17 Q As general counsel for RUSO, are you familiar
18 with RUSO policies that govern faculty?

19 MS. COFFEY: Object to form.

20 A Yes.

21 Q (BY MR. TOWNSEND) And if an administrator at a
22 university within RUSO has a question about what those
23 policies call for in a certain situation, is part of your
24 job to answer their questions if they call upon you?

25 MS. COFFEY: Object to form.

Charles Babb

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1 A To provide my legal interpretation, yes.

2 Q (BY MR. TOWNSEND) Does -- strike that.

3 Is there a written job description for general
4 counsel of RUSO?

5 A Yes.

6 Q Has there been a written job description for
7 general counsel at RUSO since you've been general
8 counsel?

9 A I don't recall.

10 Q As general counsel, you need to be familiar
11 with policies at the different RUSO institutions that
12 govern faculty?

13 MS. COFFEY: Object to form.

14 A There's no way I can do that.

15 Q (BY MR. TOWNSEND) Why not?

16 A There's six universities. They each have their
17 own policies. And so beyond just the faculty policies,
18 there's staff policies, student policies, police
19 department policies, athletic department policies.

20 Q Are you ever called upon by a RUSO institution
21 to answer questions about what those institutions'
22 policies provide for?

23 MS. COFFEY: Object to form.

24 A Say that again. I'm sorry.

25 Q (BY MR. TOWNSEND) Sure. Do people from the

Charles Babb

18

1 RUSO institutions ever contact you to ask for advice on
2 what their institution's policies require in certain
3 situations?

4 A Legal advice, yes.

5 Q So have you become familiar with some of the
6 RUSO institutions' policies through providing the advice
7 on those policies?

8 MS. COFFEY: Object to form.

9 A I can't recall.

10 Q (BY MR. TOWNSEND) Are you familiar with the
11 policies at Southeastern that govern faculty during the
12 period of time that Dr. Tudor -- strike that.

13 Are you familiar with the policies that govern
14 faculty at Southeastern during the 2009 to 2011
15 timeframe?

16 MS. COFFEY: Object to form.

17 A I don't recall.

18 Q (BY MR. TOWNSEND) Do you ever review the
19 policies of the different RUSO institutions to determine
20 whether there is any conflict between those and RUSO
21 policy?

22 MS. COFFEY: Object to form.

23 A Yes.

24 Q (BY MR. TOWNSEND) In what instances have you
25 done that?

Charles Babb

19

1 A I don't recall.

2 Q Are there -- if -- strike that.

3 If there is a policy change at a RUSO
4 institution to that institution's policies, do you
5 typically look at those policy changes to determine
6 whether they're consistent with RUSO policy?

7 MS. COFFEY: Object to form.

8 A No.

9 Q (BY MR. TOWNSEND) Is there somebody that does
10 look at new policies at RUSO institutions to determine
11 whether they're consistent with RUSO policy?

12 MS. COFFEY: Object to form.

13 A I don't know.

14 Q (BY MR. TOWNSEND) Are you aware of any
15 inconsistencies between Southeastern's policies as they
16 existed in the 2009-2011 timeframe and RUSO policies as
17 they existed at that time?

18 MS. COFFEY: Object to form.

19 A I don't recall.

20 Q (BY MR. TOWNSEND) Is it fair to say that you
21 depend on your pay from RUSO for your livelihood?

22 A Yes.

23 Q If you were found to have unlawfully
24 discriminated against an employee of RUSO or one of
25 RUSO's institutions, could you be fired?

Charles Babb

20

1 MS. COFFEY: Object to form.

2 A That would be one of the possible --
3 possibilities, yes.

4 Q (BY MR. TOWNSEND) If you could have done
5 something to prevent the violation of a RUSO employee's
6 rights or the rights of an employee at a RUSO institution
7 and you failed to do so, could that result in you being
8 disciplined?

9 MS. COFFEY: Object to form.

10 A So just so I'm clear, there's a -- you're
11 asking me if a employee's rights are getting ready to be
12 violated or have been violated?

13 Q (BY MR. TOWNSEND) If an employee's rights have
14 been violated --

15 A All right.

16 Q -- and you could have done something to have
17 prevented that from happening and you failed to do so,
18 could you be disciplined for that?

19 MS. COFFEY: Object to form.

20 A I don't know.

21 Q (BY MR. TOWNSEND) Have you ever been friends
22 with anyone who worked at Southeastern?

23 A No.

24 Q Have you ever socialized outside of work with
25 anyone who worked at Southeastern?

Charles Babb

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1 A No.

2 Q Do you believe that Dr. Tudor should be
3 permitted to use women's restrooms?

4 A Yes.

5 Q Why is that?

6 A She's presenting as a woman; she would be
7 permitted to use the bathroom as she's presenting.

8 Q Do you have that same belief with respect to
9 all transgender women?

10 MS. COFFEY: Object to form.

11 A Yes.

12 Q (BY MR. TOWNSEND) Do you know of any other
13 transgender people who have worked at Southeastern other
14 than Dr. Tudor?

15 A No.

16 Q Do you know of any transgender people who have
17 worked at RUSO?

18 MS. COFFEY: Object to form.

19 A No.

20 Q (BY MR. TOWNSEND) Do you know any transgender
21 people who have worked at any RUSO institutions other
22 than Southeastern?

23 A No.

24 Q At some point did you learn that, when
25 Dr. Tudor was working at Southeastern, she was going to

Charles Babb

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1 be transitioning from presenting as a man to presenting
2 as a woman?

3 A Yes.

4 Q How did you learn of that?

5 A I received a call from Cathy Conway.

6 Q And what did she tell you?

7 A She told me that Dr. Tudor had brought in a
8 court order, a name change court order, and had advised
9 the HR staff that she would be presenting as a woman.
10 That's as much as I can recall.

11 Q Do you remember what you said during that
12 telephone conversation?

13 A As far as legal advice that I gave to her?

14 Q Anything that you said to her during that
15 telephone conversation. Do you remember anything?

16 MS. COFFEY: Is your question whether he
17 recalls, or are you asking what he recalls? Because I
18 will instruct him not to answer as to any advice he gave,
19 based on attorney-client privilege.

20 MR. TOWNSEND: Oh, okay. Well, my question was
21 does he recall.

22 MS. COFFEY: Okay.

23 MR. TOWNSEND: We'll get to that question next.

24 A Some.

25 Q (BY MR. TOWNSEND) All right.

Charles Babb

23

1 A I recall some.

2 Q What did you tell Ms. Conway during that
3 telephone conversation?

4 MS. COFFEY: Instruct him not to answer.
5 Attorney-client privilege.

6 Q (BY MR. TOWNSEND) After that conversation with
7 Ms. Conway, did you speak with anyone else regarding
8 Dr. Tudor's gender transition?

9 A At any time?

10 MS. COFFEY: Object to form.

11 Q (BY MR. TOWNSEND) Well, let me ask the
12 question a little differently, then, because I see
13 your -- why you're unclear.

14 Who was -- after that conversation with
15 Ms. Conway, who was the next person that you spoke to
16 about Dr. Tudor's gender transition?

17 A I don't recall.

18 Q Did you speak to Ms. Conway more than once
19 about Dr. Tudor's gender transition?

20 A I don't recall.

21 Q You attended Ms. Conway's deposition. Correct?

22 A Yes.

23 Q And during her deposition, she described some
24 of the conversations that she had with you about
25 Dr. Tudor's gender transition.

Charles Babb

24

1 A Yes.

2 Q Do you remember whether she misstated anything
3 that you -- that she said -- let me strike that question,
4 ask it again.

5 Do you remember if she misstated in her -- let
6 me strike that again.

7 In her descriptions of what she says you told
8 her regarding Dr. Tudor's gender transition, was there
9 anything inaccurate in what she said?

10 MS. COFFEY: Object to form. Attorney-client
11 privilege. Instruct him not to answer.

12 MR. TOWNSEND: All right. Our position is
13 that, with respect to these two objections you've made
14 with the attorney-client privilege, that the privilege
15 has been waived. I realize that you're not going to
16 agree with me on that, but I just wanted to make that
17 position on the record.

18 Q (BY MR. TOWNSEND) Have you ever talked with
19 anybody about what restroom Dr. Tudor should use?

20 A No.

21 Q Have you ever talked with anybody about what
22 restrooms Dr. Tudor could use at Southeastern?

23 MS. COFFEY: I'm going to instruct you not to
24 answer to the extent you're revealing attorney-client
25 privilege conversations.

Charles Babb

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1 Q (BY MR. TOWNSEND) With that instruction, can
2 you answer my question?

3 THE WITNESS: Could you repeat it back? Sorry.

4 THE COURT REPORTER: "Question: Have you ever
5 talked with anybody about what restrooms Dr. Tudor could
6 use at Southeastern?"

7 MS. COFFEY: Same objection and instruction.

8 MR. TOWNSEND: And we take the position that
9 the privilege has been waived, again.

10 A No.

11 Q (BY MR. TOWNSEND) When you learned of
12 Dr. Tudor's gender transition, did you look for guidance
13 anywhere on what restrooms transgender people should be
14 permitted to use in the workplace?

15 MS. COFFEY: Allan, I'm going to instruct him
16 not to answer. You're asking him work product, what
17 efforts he took. I guess to the extent he can answer
18 without it being work product.

19 Q (BY MR. TOWNSEND) Let me ask a different
20 question, then.

21 MR. TOWNSEND: I take the position that
22 privilege has been waived.

23 Q (BY MR. TOWNSEND) But let me ask a different
24 question, because I assume you're going to follow the
25 instruction not to answer it?

Charles Babb

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1 A Correct.

2 Q Okay. Was it your understanding -- strike
3 that.

4 Did you anticipate litigation at the time that
5 Dr. Tudor informed -- let me strike that.

6 Did you anticipate litigation at the time you
7 learned from Ms. Conway that Dr. Tudor was going through
8 a gender transition?

9 A No.

10 Q So I'm going to go back to my other question.
11 Did you look for guidance anywhere on what restrooms
12 transgender people should be permitted to use in the
13 workplace when you learned from Ms. Conway of Dr. Tudor's
14 gender transition?

15 MS. COFFEY: Object to form. Same objection.

16 Instruct you not to answer to the extent it's
17 work product or attorney-client privilege.

18 Q (BY MR. TOWNSEND) With that instruction, can
19 you answer the question?

20 A No.

21 Q Do you have an understanding of how long
22 transgender women are supposed to live as women before
23 getting sex reassignment surgery?

24 MS. COFFEY: Object to form.

25 A No.

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1 Q (BY MR. TOWNSEND) Have you ever told anyone
2 that transgender women need to live as women for a year
3 before they can get that sex reassignment surgery?

4 MS. COFFEY: Instruct him not to answer to the
5 extent you're revealing attorney-client privilege.

6 A Follow counsel's instruction.

7 MR. TOWNSEND: All right. Again -- well, let's
8 just say unless I say other -- well, strike that.

9 I don't want to have to keep saying I -- I
10 think the privilege has been waived so we can save time.
11 So I'll just say if I think the privilege has not been
12 waived instead of -- you know, if I -- if I agree with
13 you on your assertion of privilege, I will say so.

14 MS. COFFEY: That'll be good.

15 MR. TOWNSEND: Okay.

16 MS. COFFEY: How many times are you going to
17 say that? Never.

18 MR. TOWNSEND: Well, we'll find out.

19 MS. COFFEY: Got it.

20 MR. TOWNSEND: Okay.

21 Q (BY MR. TOWNSEND) So who else did you
22 communicate with about Dr. Tudor's gender transition
23 other than Ms. Conway?

24 MS. COFFEY: Object to form. Timeframe?

25 Q (BY MR. TOWNSEND) Oh, okay. I think I got lost

Charles Babb

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1 because of privilege objections. I think I asked you
2 this earlier. Who did you speak with next after you
3 spoke with Ms. Conway about Dr. Tudor's gender
4 transition?

5 MS. COFFEY: And he answered he couldn't
6 recall.

7 A I don't recall.

8 Q (BY MR. TOWNSEND) Oh, you don't recall. Okay.
9 In the -- do you recall Dr. Tudor's gender
10 transition occurring in -- strike that.

11 Do you recall learning of Dr. Tudor's gender
12 transition in the summer of 2007?

13 A Yes.

14 Q In 2007 who else other than Dr. -- strike that.
15 In 2007 who else other than Ms. Conway did you
16 speak to about Dr. Tudor's gender transition?

17 MS. COFFEY: Object to form.

18 A I don't recall.

19 Q (BY MR. TOWNSEND) Do you recall talking to
20 Dr. Snowden about Dr. Tudor's gender transition at any
21 time?

22 A At any time?

23 Q Yes.

24 A I don't recall.

25 Q Do you recall speaking with Sharon Robinson

Charles Babb

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1 about Dr. Tudor's gender transition at any time?

2 A I don't recall.

3 Q Do you recall speaking to Doug McMillan about
4 Dr. Tudor's gender transition at any time?

5 A Yes.

6 Q When was that?

7 A I don't recall.

8 Q Did you speak to Doug McMillan more than once
9 about Dr. Tudor's gender transition?

10 A Possibly.

11 Q Did you speak to Doug McMillan in 2007 about
12 Dr. Tudor's gender transition?

13 A I don't recall.

14 Q Can you give me an estimated timeframe for when
15 your conversation with Doug McMillan about Dr. Tudor's
16 gender transition occurred?

17 MS. COFFEY: Object to form.

18 A It would have been around the time of the EEOC
19 charge was filed. After -- after the EEOC charge was
20 filed.

21 Q (BY MR. TOWNSEND) What do you remember
22 discussing with regard to Dr. Tudor's gender transition
23 with Doug McMillan?

24 MS. COFFEY: Instruct him not to answer.
25 Attorney-client privilege.

Charles Babb

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1 Q (BY MR. TOWNSEND) How long was your
2 conversation about Dr. Tudor's gender transition with
3 Doug McMillan?

4 A I don't recall.

5 Q Was anyone else present when you had this
6 conversation with Doug McMillan?

7 A It was via telephone, so I don't know. There's
8 nobody that I knew of.

9 Q During that discussion with Doug McMillan about
10 Dr. Tudor's gender transition, were any documents
11 discussed?

12 A I don't recall.

13 Q Have you ever -- did -- strike that.
14 Did you ever speak to Dr. Mangrum about
15 Dr. Tudor's gender transition?

16 A I don't know.

17 Q Did you ever talk to Ross Walkup about
18 Dr. Tudor's gender transition?

19 A No.

20 Q Did you ever talk to John Mischo about
21 Dr. Tudor's gender transition?

22 A I don't know.

23 Q Have you ever spoken to Dr. Tudor about her
24 gender transition?

25 A No.

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1 Q Is there anybody else at Southeastern who you
2 recall speaking to about Dr. Tudor's gender transition
3 that I haven't already identified?

4 MS. COFFEY: Object to form.

5 A Not that I can recall.

6 Q (BY MR. TOWNSEND) This last series of questions
7 I've been asking if you had spoken to any of these people
8 about Dr. Tudor's gender transition. Did you take that
9 to also mean whether you communicated with them through
10 e-mail when you were responding to my questions?

11 MS. COFFEY: Object to form.

12 A Yes.

13 Q (BY MR. TOWNSEND) Have you ever spoken with
14 anybody about the potential for negative reactions from
15 students at Southeastern to Dr. Tudor's gender
16 transition?

17 MS. COFFEY: Object to form. And I guess I'll
18 instruct you not to answer if it's attorney-client
19 privilege. I'm sorry.

20 MR. TOWNSEND: Well, I'm going to say I -- as
21 I've indicated before, I think the privilege has been
22 waived. I'm continuing to take the approach that unless
23 I agree with you on the privilege -- you can assume that
24 I don't agree with you on the privilege assertion unless
25 I say otherwise. But with respect to this question, I

Charles Babb

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1 didn't ask about who he -- I didn't ask about the
2 substance of the communications with somebody. I just
3 asked whether they occurred with anybody, not in the
4 context of legal advice.

5 MS. COFFEY: Well, I disagree because you
6 clarify -- you -- you specified ever spoken with anyone
7 regarding the potential for negative reaction by
8 students, so I think that you've -- now you're getting
9 much more specific about conversations; and, therefore,
10 for him to disclose that, if it was in the exchange of
11 attorney-client conversations, that I would instruct him
12 not to answer.

13 Q (BY MR. TOWNSEND) Okay. Based on the
14 instruction from your attorney, Mr. Babb, can you answer
15 the question?

16 A Not that I recall.

17 Q Have you ever discussed with anyone potential
18 negative reactions from employees at Southeastern to
19 Dr. Tudor's gender transition?

20 MS. COFFEY: Same objection and instruct not to
21 answer to the extent it includes attorney-client
22 conversations, privileged conversations.

23 Q (BY MR. TOWNSEND) Given that instruction, can
24 you answer the question?

25 A No.

Charles Babb

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1 Q Do you have any information about anyone at
2 Southeastern having a negative reaction to Dr. Tudor's
3 gender transition?

4 A No.

5 Q Have you received information from any source
6 that any students or employees at Southeastern had any
7 concerns with Dr. Tudor using the women's restroom after
8 her gender transition?

9 A Not that I recall.

10 Q Do you have any information about what
11 restrooms Dr. Tudor used at Southeastern after her gender
12 transition?

13 A No.

14 Q Do you have any information about whether any
15 employees at Southeastern had moral or religious beliefs
16 about Dr. Tudor's gender transition being inappropriate?

17 A No.

18 Q Have you ever spoken -- strike that.
19 Have you ever communicated with anybody about
20 whether Dr. Tudor had surgery as part of her gender
21 transition?

22 A Not that I recall.

23 Q Have you ever communicated with anybody about
24 whether Dr. Tudor had any other form of medical treatment
25 as part of her gender transition?

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1 A Not that I recall.

2 Q We're going to turn to this big binder here,
3 exhibits. Would you look at Plaintiff's Exhibit 25,
4 please.

5 A Okay. I'm there.

6 Q When was the first time you saw Plaintiff's
7 Exhibit 25?

8 MS. COFFEY: Object to form.

9 Q (BY MR. TOWNSEND) Well, let me strike that
10 question because of the form objection.

11 Plaintiff's Exhibit 25 is a copy of a letter
12 dated April 4, 2007, from Felicia Porter. Correct?

13 A Yes.

14 Q When is the first time you saw a copy of this
15 letter?

16 A Cathy Conway would have sent this to me along
17 with the court order, the name change order.

18 Q Did you discuss this letter with Ms. Conway
19 during your conversation with her about Dr. Tudor's
20 gender transition?

21 MS. COFFEY: Object and instruct you not to
22 answer on the basis of attorney-client privilege.

23 Q (BY MR. TOWNSEND) Did you share a copy of this
24 letter with anybody after you received it from
25 Ms. Conway? And "this letter," I mean Plaintiff's

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1 Exhibit 25.

2 MS. COFFEY: Object to form.

3 A Not that I recall.

4 Q (BY MR. TOWNSEND) How did you receive this
5 letter, Plaintiff's Exhibit 25, from Ms. Conway?

6 A I don't recall.

7 Q Did Ms. Conway ever send you e-mails with
8 attachments around this time period in April of 2007?

9 A I don't recall.

10 Q Did you do anything in response to this letter
11 when you received it?

12 MS. COFFEY: Object to form. Instruct him not
13 to answer on the basis of attorney-client privilege.

14 Q (BY MR. TOWNSEND) Could you please turn to
15 Plaintiff's Exhibit 6.

16 A Okay. I'm there.

17 Q Plaintiff's Exhibit 6 is a Policy 3.7.4 Role of
18 the Faculty. It's a two-page document beginning on page
19 EEOC 300 and continuing on to EEOC 301. Are you familiar
20 with this Policy 3.7.4, role of the faculty?

21 A Did you ask me if I've seen it before?

22 Q Are you familiar with it?

23 A Familiar with it? I've seen it before.

24 Q Was this policy in effect at Southeastern
25 during the time period when Dr. Tudor worked there?

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1 A I don't know.

2 Q Did you review documents that Southeastern sent
3 to the EEOC in connection with Dr. Tudor's charge of
4 discrimination prior to them being sent to the EEOC?

5 A Yes.

6 Q Was one of the documents sent to the EEOC the
7 portions of the academic policies and procedures manual
8 at Southeastern as they pertained to the role of the
9 faculty?

10 A I don't recall.

11 Q Going on to the second page of Plaintiff's
12 Exhibit 6. The first full sentence reads "The governing
13 board and president should on questions of faculty
14 status, as in other matters where the faculty has a
15 primary responsibility, concur with the faculty judgment
16 except in rare instances and for compelling reasons,
17 which should be stated in detail."

18 Did I read that correctly?

19 A Yes.

20 Q Is that sentence consistent with RUSO policy as
21 it existed at the time that Dr. Tudor worked at
22 Southeastern?

23 MS. COFFEY: Object to form.

24 A And the question was is it consistent? Or
25 inconsistent? I'm sorry.

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1 MR. TOWNSEND: Could you read him the question
2 again?

3 THE COURT REPORTER: Yeah.

4 "Question: Is that sentence consistent with
5 RUSO policy as it existed at the time that Dr. Tudor
6 worked at Southeastern?"

7 A To my recollection, RUSO didn't have such a
8 policy at that time.

9 Q (BY MR. TOWNSEND) Do you know if it was the
10 policy at Southeastern at the time that Dr. Tudor applied
11 for promotion and tenure that the governing board and
12 president should on questions of faculty status concur
13 with the faculty judgment except in rare instances of
14 compelling reasons?

15 MS. COFFEY: Object to form.

16 A I don't recall.

17 Q (BY MR. TOWNSEND) Have you ever -- strike that.
18 Are you familiar with any guidance on what the
19 term "compelling reasons" means with respect to how it's
20 used in Southeastern policies?

21 MS. COFFEY: Object to form.

22 A Not that I recall.

23 Q (BY MR. TOWNSEND) What do you think "compelling
24 reasons" means in the context of this sentence in
25 Plaintiff's Exhibit 6 that I read?

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1 A Well, I haven't done any research. I haven't
2 looked for similar policies in other schools, so I don't
3 know that I could give you my opinion.

4 Q If you were going to research what the term
5 meant, what would you do?

6 A How would I go about it?

7 Q Yes.

8 A Well, I'd get on Westlaw and do some research
9 on Westlaw. I would do some research on the NACUA
10 website, N-A-C-U-A, website. I'd look and see if there
11 were any Oklahoma cases. I would check with Southeastern
12 to see if there's any precedent. Probably other things
13 would come up during the -- during the research to lead
14 me down other research trails.

15 Q What does NACUA stand for?

16 A National Association College and University
17 Attorneys.

18 Q Why would you consider Southeastern precedents
19 in researching what the term "compelling reasons" means?

20 A To see if they had a practice; whereas, they
21 might not have a written policy where they have a
22 practice of how they've interpreted that in the past.

23 Q You think it would be important in interpreting
24 policy to ensure consistency in practice from the past?

25 MS. COFFEY: Object to form.

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1 A I think that's a factor.

2 MS. COFFEY: Are you -- if you're done with
3 that exhibit, is this a good time for a break?

4 MR. TOWNSEND: Well, we can take a break, if
5 you want to. It's not really a good time, but like I
6 said, if you want a break and there's not a question
7 pending, we can take one.

8 MS. COFFEY: Well, I was waiting for you to
9 finish that exhibit.

10 MR. TOWNSEND: Oh, I'm done with that exhibit,
11 yes.

12 MS. COFFEY: Okay. We'll take a quick break.

13 (Off the record at 9:48 A.M.)

14 (On the record at 10:03 A.M.)

15 Q (BY MR. TOWNSEND) When the RUSO board of
16 regents has evaluated your performance, have you ever
17 received a written evaluation?

18 A Yes.

19 Q How often -- strike that.

20 How many times have you received written
21 evaluations of your performance from the RUSO board of
22 regents?

23 A I don't recall.

24 Q Is there a regular time period in which you're
25 supposed to receive written evaluations?

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1 A No.

2 Q So there's no annual evaluation practice with
3 respect to you?

4 A Correct.

5 Q When's the last time you received a written
6 performance evaluation from the RUSO board of regents?

7 A It's been over a year ago. I don't recall
8 exactly.

9 Q More than five years?

10 A No.

11 Q More than three years?

12 A No.

13 Q If any of the witnesses who have testified at
14 depositions in this case misstated something they told
15 you or something you told them, do you believe that you
16 would have an ethical obligation to notify us of that?

17 MS. COFFEY: Object to form.

18 A So I just want to clarify your question. If --
19 if a witness who's testified in this case misstated
20 something that I said to them?

21 Q (BY MR. TOWNSEND) Let me break the question
22 down.

23 A Okay.

24 Q It was a compound question. That might have
25 been the form objection.

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1 If a witness who testified at a deposition in
2 this case at the deposition misstated something that you
3 told them, do you believe that you have an ethical
4 obligation to correct that misstatement and inform us of
5 what actually was stated?

6 MS. COFFEY: Instruct him not to answer.

7 You're just trying to end around to get to
8 attorney-client privilege information.

9 Q (BY MR. TOWNSEND) All right. That was not my
10 intention. And I -- I'm just trying to get a sense of
11 what you believe your ethical obligations are with
12 respect to -- well, let's -- let's approach this a
13 different way.

14 Do you believe that you have ethical
15 obligations as an attorney to ensure that false
16 information does not go uncorrected when it occurs in a
17 deposition that you are participating in in your role as
18 RUSO general counsel?

19 MS. COFFEY: Object to the form. I'll instruct
20 him not to answer.

21 Mr. Babb is not here to testify regarding any
22 kind of ethical obligations he has with respect to this
23 litigation, and that's what you're asking him. If you
24 want to ask him more general questions regarding his role
25 as RUSO counsel. But with respect to this litigation, I

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1 will instruct him not to answer with respect to his --
2 what he believes his obligations or his opinions or his
3 advice is.

4 MR. TOWNSEND: All right. I'm just going to
5 note that I think the speaking objection was
6 inappropriate.

7 Q (BY MR. TOWNSEND) And let me preface the next
8 question by saying I'm not asking you for any privileged
9 information. Any information -- well, strike that.

10 I'm not asking you about communications that
11 you've had with anybody. I'm just asking about your
12 understanding about your ethical obligations as a lawyer.
13 All right?

14 A Okay.

15 Q Is it your understanding that as a lawyer you
16 have an ethical obligation to ensure that false
17 statements made under oath in connection with cases
18 you're participating in do not go uncorrected?

19 MS. COFFEY: Object to form.

20 A It's my understanding that my ethical
21 obligation as an officer of the court is to ensure that
22 false information is not presented to the court and that
23 I'm not a party to presenting false information to the
24 court. I'm not sure I answered your question.

25 Q (BY MR. TOWNSEND) So if there were -- if --

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1 strike that.

2 So if you knew that there was false information
3 in any of the deposition transcripts that have been taken
4 in this case, you believe you would have an ethical
5 obligation to point out that false information if it was
6 presented to court?

7 MS. COFFEY: Object to form. Instruct him not
8 to answer with respect to his role as the -- as an
9 attorney for RUSO, his involvement in this litigation,
10 and any attorney-client privilege.

11 MR. TOWNSEND: All right. I disagree that this
12 is calling for privileged information.

13 MS. COFFEY: Allan, you're trying to figure out
14 whether --

15 MR. TOWNSEND: No more speaking objections.

16 MS. COFFEY: -- any single witness has
17 misstated anything. And I objected to him answering
18 previously because it was attorney-client privilege.

19 My objections to this line of questioning is
20 because I perceive you trying to get that information
21 through him and then accusing him of violating his
22 ethical obligation if he disagrees with what a witness
23 testified to. That's the basis for my objection and for
24 my instruction.

25 MR. TOWNSEND: All right. Again, I'm going to

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1 say speaking objection, just then as before, is
2 inappropriate.

3 MS. COFFEY: I disagree.

4 Q (BY MR. TOWNSEND) So I assume you're going to
5 follow the instruction not to answer that question.
6 Correct?

7 A Correct. Correct.

8 Q Could you turn to Plaintiff's Exhibit 26.

9 A Okay. I'm there.

10 Q On the fourth page, Plaintiff's Exhibit 26,
11 Bates number DOJ 12. This is a page with handwritten
12 notes on it. Correct?

13 A Yes.

14 Q Is it your understanding these are Ms. Conway's
15 handwritten notes from her conversation with you?

16 A That's my recollection of her testimony, yes.

17 Q In the bottom left-hand corner of her notes, it
18 says "10th Circuit." Do you see that?

19 A Yes, sir.

20 Q Do you have an understanding of what 10th
21 Circuit case she was referring to there?

22 A I'm having trouble reading some of her writing,
23 but I don't recall.

24 Q Could you turn to Plaintiff's Exhibit 7.

25 A Okay. I'm there.

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1 Q Could you turn to page EEOC 322 -- I'm sorry.
2 EEOC 332.

3 A (Witness complying with request.)

4 Q Is that the page that has 4.6.3 in the middle?

5 A Yes.

6 Q The first sentence of this policy reads "The
7 normal procedure for granting tenure is initiated by the
8 faculty member during the fifth, sixth, or seventh year
9 of service with the university in a tenure track
10 position."

11 Did I read that correctly?

12 A Yes.

13 Q Is this normal procedure the procedure that was
14 followed at Southeastern during the time that Dr. Tudor
15 applied for promotion and tenure?

16 A I don't know.

17 Q Is this procedure of -- strike that.

18 Is the sentence that I just read reflected in
19 RUSO's policies?

20 A I think so.

21 Q Is it the normal procedure -- strike that.

22 Has it ever been the normal procedure -- strike
23 that question, too.

24 During the time that you've been RUSO general
25 counsel, has it ever been the procedure at any other RUSO

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1 institutions that the normal procedure for granting
2 tenure is initiated by the faculty member during the
3 fifth, sixth, or seventh year of service to the
4 university?

5 MS. COFFEY: Object to form.

6 A Just for clarification, has this sentence been
7 in the policy of any of the other RUSO schools? Is
8 that --

9 Q (BY MR. TOWNSEND) Yeah. Let's --

10 A Or I can have her read the question back.

11 Q No. Why don't you answer that question.

12 Has that sentence ever appeared in the policies
13 of any other RUSO institutions?

14 MS. COFFEY: Object to form.

15 A I -- I don't recall.

16 Q (BY MR. TOWNSEND) Is -- whether it's the --
17 strike that.

18 Regardless of whether it's the exact same words
19 in the RUSO -- other RUSO institutions' policies, is the
20 substance of this sentence reflected in other RUSO
21 institutions' policies?

22 MS. COFFEY: Object to form.

23 A I don't recall.

24 Q (BY MR. TOWNSEND) Would you turn to
25 page EEOC 334 in Plaintiff's Exhibit 7.

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1 A Okay.

2 Q At the top of this page it says "4.6.4 Concepts
3 Regarding Tenure." Correct?

4 A Yes.

5 Q So towards the end of that Section 4.6.4,
6 there's a sentence that reads "Once the tenure process
7 has been initiated, it must be completed."

8 Do you see that?

9 A Yes.

10 Q Did I read that correctly?

11 A Yes.

12 Q Was this also a RUSO policy?

13 MS. COFFEY: Object to form.

14 Q (BY MR. TOWNSEND) Well, let me ask it a
15 different way.

16 Under RUSO policies as they existed in
17 2009-2011 timeframe, was it the case that once the tenure
18 process has been initiated it had to be completed?

19 A I can't recall.

20 Q You're familiar with the practice at
21 Southeastern of the administration permitting professors
22 to withdraw their applications for tenure. Correct?

23 MS. COFFEY: Object to form.

24 A That's what I've been told is their practice.

25 Q (BY MR. TOWNSEND) Do you believe that practice

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1 is consistent with this policy that I've just read?

2 A It appears that there is a conflict between the
3 written policy and the practice.

4 Q Have you spoken to anybody about the conflict
5 between this written policy and practice?

6 MS. COFFEY: Object to form.

7 A Not that I recall.

8 Q (BY MR. TOWNSEND) Were you aware of this
9 conflict before I just pointed it out?

10 MS. COFFEY: Object to form.

11 Q (BY MR. TOWNSEND) Let me ask it a different
12 way. Were you aware of that conflict before just now?

13 A I don't recall.

14 Q So if you'll go to -- in Plaintiff's Exhibit 7,
15 page EE0C 335, at the top of that page, there is a
16 sentence that begins "Noteworthy achievement." Do you
17 see that?

18 A Yes.

19 Q And this sentence is in connection with
20 Policy 4.6.5 Guidelines for Achieving Tenure, which
21 starts on the previous page. Right?

22 A Yes.

23 Q So at the top of page EE0C 335, it reads,
24 "Noteworthy achievement in classroom teaching and on at
25 least one other criterion, research/scholarship,

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1 contributions to the institution and profession, or in
2 appropriate instances performance of nonteaching or
3 administrative duties."

4 Did I read that correctly?

5 A Correct.

6 Q That phrase "contributions to the institution
7 and profession," is that also sometimes referred to as
8 service?

9 MS. COFFEY: Object to form.

10 Q (BY MR. TOWNSEND) Well, let me ask it a
11 different way. That phrase "contributions to the
12 institution and profession," is that sometimes at
13 Southeastern referred to as service?

14 MS. COFFEY: Object to form.

15 A I don't recall.

16 Q (BY MR. TOWNSEND) Do you recall anyone ever
17 equating the phrase "contributions to the institution and
18 profession" with the concept of service?

19 MS. COFFEY: Object to form.

20 A Not to my recollection.

21 Q (BY MR. TOWNSEND) When I say "service" in the
22 context of determining a professor's qualifications for
23 tenure, do you know what I mean?

24 A I think I do.

25 Q What is it that you think I mean?

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1 A I think you mean that service to the
2 university.

3 Q So if you -- if you turn to Section 4.6.1 of
4 Plaintiff's Exhibit 7, it's on page EEOC 331.

5 A Okay. I'm there.

6 Q This is a Policy 4.6.1 Academic Tenure on that
7 page. Correct?

8 A Yes.

9 Q The third sentence under the heading 4.6.1
10 Academic Tenure reads "While specific responsibilities of
11 faculty members may vary because of special assignments
12 or because of the particular mission of an academic unit,
13 all evaluations for tenure shall address at a minimum
14 whether each candidate has achieved excellence in, (1)
15 teaching; (2) research or creative achievement; (3)
16 professional service; and (4) university service."

17 Did I read that correctly?

18 A Yes.

19 Q Is this taken from a RUSO policy?

20 A Appears to be.

21 Q Do you believe that sentence that I just read
22 from 4.6.1 is consistent with the sentence that I read
23 from Section 4.6.5 on EEOC 335?

24 MS. COFFEY: Object to form.

25 A I don't know that I've ever looked at that to

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1 evaluate and opine.

2 Q (BY MR. TOWNSEND) Do you remember in
3 Dr. Snowden's deposition a series of questions about the
4 sentence on page EE0C 335 that I read?

5 A I seem to.

6 Q Do you remember Dr. Snowden saying that he
7 believed that sentence that I read beginning with
8 "noteworthy achievement" was inconsistent with RUSO
9 policy"?

10 A I seem it recall that was his testimony, yes.

11 Q Did you explore whether he was correct that it
12 was inconsistent with RUSO policy?

13 MS. COFFEY: Object to -- instruct him not to
14 answer.

15 What do you mean did he explore?

16 Q (BY MR. TOWNSEND) Did you do anything to
17 determine whether Dr. Snowden was correct that it was
18 inconsistent with RUSO policy?

19 MS. COFFEY: Instruct him not to answer.
20 Attorney-client privilege. Work product.

21 Q (BY MR. TOWNSEND) Well, I'm not asking about
22 any communications. I'm just asking what you did.

23 MS. COFFEY: Or whether, I guess, for -- can he
24 answer -- he can answer yes or no, but he can't answer
25 what.

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1 MR. TOWNSEND: Okay. Well, that was -- can you
2 read my question back --

3 MS. COFFEY: I apologize.

4 MR. TOWNSEND: -- before the objection.

5 THE COURT REPORTER: "Question: Did you do
6 anything to determine" -- oh, before the objection? I'm
7 sorry.

8 "Question: Did you explore whether he was" --

9 MR. TOWNSEND: Oh, no. No. No. You were
10 reading the right one. "Did you do anything to
11 determine," that was the one I wanted answered.

12 THE COURT REPORTER: Okay.

13 "Question: Did you do anything to determine
14 whether Dr. Snowden was correct that it was inconsistent
15 with RUSO policy?"

16 A No.

17 Q (BY MR. TOWNSEND) Is there a reason why you
18 didn't?

19 MS. COFFEY: Object. Instruct him not to
20 answer.

21 MR. TOWNSEND: On what basis?

22 MS. COFFEY: Attorney-client privilege. Also
23 comes to rationale.

24 Q (BY MR. TOWNSEND) Are you aware of any written
25 guidance on what the term "excellence" means in that

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1 sentence in Section 4.6.1 on page EEOC 331 in Plaintiff's
2 Exhibit 7 that I read?

3 MS. COFFEY: Object to form.

4 A Where we at again? I'm sorry.

5 Q (BY MR. TOWNSEND) Sure. We're on page EEOC 331
6 in Plaintiff's Exhibit 7 --

7 A Okay.

8 Q -- under 4.6.1.

9 A Okay.

10 Q And I read that sentence that has the one, two,
11 three, and four in it in the first paragraph.

12 A Right.

13 Q All right?

14 A I'm there. Okay.

15 Q And in that sentence there's the term
16 "excellence." Correct?

17 A Yes.

18 Q Have you -- strike that.

19 Are you aware of any guidance on what that term
20 "excellence" means?

21 MS. COFFEY: Object to form.

22 A No.

23 Q (BY MR. TOWNSEND) Are you aware of anyone at
24 Southeastern ever inquiring what the term "excellence"
25 meant in this context?

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1 MS. COFFEY: Object to form.

2 A I don't recall.

3 Q (BY MR. TOWNSEND) At some point did you learn
4 that Dr. Tudor had filed a grievance regarding
5 Dr. Scoufos's and Dr. McMillan's refusal to provide her
6 an explanation for their reasons for not recommending she
7 receive promotion and tenure?

8 A Yes.

9 Q How did you learn of that grievance?

10 A I don't recall.

11 Q When did you learn of that grievance?

12 A I don't recall.

13 Q Did you learn of the grievance during the
14 academic year in which Dr. Tudor filed it?

15 MS. COFFEY: Object to form.

16 A I think so.

17 Q (BY MR. TOWNSEND) And did somebody inform you
18 of Dr. Tudor's grievance?

19 A Yes.

20 Q Who was that?

21 A I don't recall.

22 Q When they informed you of the grievance, did
23 you have a discussion about the grievance with them?

24 MS. COFFEY: Object and instruct him not to
25 answer on the basis of attorney-client privilege.

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1 Q (BY MR. TOWNSEND) Could you please turn to
2 Plaintiff's Exhibit 47.

3 A Okay.

4 Q All right. This is an FAC recommendation on
5 the grievance that I'm referring to. So I just want to
6 be -- I just want you to be clear that when I'm talking
7 about the grievance, I'm talking about the grievance that
8 is discussed in this exhibit. Okay?

9 A Okay.

10 Q Did you have any discussions with Larry Minks
11 about this grievance?

12 MS. COFFEY: Objection. Instruct him not to
13 answer on the basis of attorney-client privilege.

14 Q (BY MR. TOWNSEND) Did you have any discussions
15 with Doug McMillan about this grievance?

16 MS. COFFEY: Same objection.

17 Q (BY MR. TOWNSEND) Did you have any discussions
18 with Lucretia Scoufos?

19 MS. COFFEY: Same instruction.

20 Q (BY MR. TOWNSEND) Did you have any discussions
21 with Charles Weiner about this grievance?

22 MS. COFFEY: Same objection.

23 MR. TOWNSEND: And I'll reiterate that we take
24 the position that the privilege has been waived, but I'm
25 not going to say that after every assertion of the

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1 privilege.

2 MS. COFFEY: Yeah.

3 MR. TOWNSEND: I will just indicate that I
4 agree with the privilege assertion if I do, but otherwise
5 it can be assumed that I don't.

6 Q (BY MR. TOWNSEND) Before the FAC issued its
7 recommendation in Plaintiff's Exhibit 47, do you know
8 whether any deans at Southeastern had provided
9 explanations to candidates on why the deans opposed their
10 promotion and tenure applications before the president
11 ruled on the application?

12 MS. COFFEY: Object to form.

13 A I do not know.

14 Q (BY MR. TOWNSEND) Before the FAC's
15 recommendation on Dr. Tudor's grievance, which is in
16 Plaintiff's Exhibit 47, do you know whether any vice
17 presidents of academic affairs or interim vice presidents
18 of academic affairs at Southeastern provided explanations
19 to candidates for why they were not recommending they
20 receive promotion or tenure before the president ruled on
21 that application?

22 MS. COFFEY: Objection to form.

23 A I do not know.

24 Q (BY MR. TOWNSEND) Do you recall at
25 Dr. Snowden's deposition him saying that it was his

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1 practice when he was vice president of academic affairs
2 to provide explanations to candidates when he recommended
3 that they did not receive promotion and tenure?

4 A I don't recall that.

5 Q Do you know whether anyone considered -- strike
6 that.

7 Do you know whether anyone at Southeastern
8 considered looking at past practice when deciding --
9 strike that.

10 I'm going to show you what I'm marking
11 Plaintiff's Exhibit 119.

12 (Exhibit 119 has been marked for
13 identification purposes and made a
14 part of the record.)

15 Q (BY MR. TOWNSEND) Plaintiff's Exhibit 119 is a
16 memorandum Bates numbered PI 1195 to PI 1197. Do you
17 recognize this memorandum?

18 A Yes.

19 Q Is this a memorandum that you prepared for Doug
20 McMillan?

21 A Yes.

22 Q Why did you prepare this memorandum?

23 MS. COFFEY: Object. Attorney-client
24 privilege. Instruct him not to answer.

25 Q (BY MR. TOWNSEND) Did you send this memorandum

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1 to Doug McMillan?

2 A Yes.

3 Q Did someone ask you to prepare this memorandum?

4 MS. COFFEY: Instruct him not to answer.

5 Attorney-client privilege.

6 Q (BY MR. TOWNSEND) If you go to page PI 1196, at
7 the bottom there's a paragraph that starts "I do not find
8 anything."

9 Do you see that?

10 A Yes.

11 Q And that goes onto the next page. Right?

12 A Correct.

13 Q And in this paragraph -- well, the first --
14 strike that.

15 The first sentence of this paragraph reads "I
16 do not find anything in the RUSO policy which suggests
17 that anyone should provide a rationale for not following
18 the recommendation of a department committee."

19 Did I read that correctly?

20 A Yes.

21 Q And in this memorandum you're addressing
22 whether anyone in Southeastern's administration would be
23 required by RUSO policy to provide a rationale for not
24 following the recommendation of a department committee.
25 Correct?

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1 MS. COFFEY: Object to form.

2 A I believe that's true.

3 Q (BY MR. TOWNSEND) Did you look at
4 Southeastern's past precedent on this issue while you
5 were preparing this memorandum?

6 MS. COFFEY: Instruct him not to answer. Work
7 product.

8 Q (BY MR. TOWNSEND) Do you think past precedent
9 at Southeastern would be relevant to determining
10 Southeastern's policy with respect to this matter that
11 you were writing about in Plaintiff's Exhibit 119?

12 A With regards to this first sentence or the
13 whole topic of the memo?

14 Q The whole topic.

15 A It would be something to look at, yes.

16 Q Do you know whether anyone looked at that past
17 practice in considering Dr. Tudor's -- let me strike
18 that.

19 Do you know whether anyone in Southeastern's
20 administration considered that past practice in
21 determining what to do with respect to Dr. Tudor's
22 grievance?

23 A I don't recall.

24 Q Could you please turn to Plaintiff's
25 Exhibit 45.

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1 A Okay.

2 Q Plaintiff's Exhibit 45 is the letter that
3 Dr. Weiner sent with respect to Dr. Tudor's grievance,
4 the one we've been talking about that's reflected in
5 Plaintiff's Exhibit 47. Correct?

6 A Yes.

7 Q Do you recall during Dr. Weiner's deposition
8 him explaining why this letter was not sent sooner than
9 it was?

10 A I don't recall.

11 Q Do you recall Dr. Weiner testifying that he was
12 instructed to wait until after the president ruled on
13 Dr. Tudor's promotion and tenure application before
14 notifying her of the FAC's recommendation on her
15 grievance?

16 A That sounds familiar.

17 Q And do you recall him saying that he believed
18 that the policy on the amount of time that the
19 administration had to respond to an FAC recommendation
20 was violated with respect to this grievance?

21 A I seem to recall that was his testimony, yes.

22 Q Do you know whether anyone at RUSO did anything
23 to determine whether Dr. Weiner's account of what
24 happened, namely the violation of that policy, was
25 correct?

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1 MS. COFFEY: Object to form.

2 Let me -- are you asking him --

3 MR. TOWNSEND: No. No speaking objections,
4 please.

5 MS. COFFEY: Are you asking him with respect to
6 after Dr. Weiner's deposition or back in 2010?

7 MR. TOWNSEND: I asked -- read back the
8 question that I asked before the objection.

9 THE COURT REPORTER: "Question: Do you know
10 whether anyone at RUSO did anything to determine whether
11 Dr. Weiner's account of what happened, namely the
12 violation of that policy, was correct?"

13 Q (BY MR. TOWNSEND) Do you understand my
14 question?

15 A Yes.

16 Q All right. Please answer.

17 A I don't know.

18 Q When was the first time that you learned of
19 Dr. Weiner's account of what happened with respect to
20 this grievance that we've been discussing that's
21 reflected in Plaintiff's Exhibit 47?

22 A When you say "account," you're talking about
23 the ten-day -- we're still talking about the ten-day rule
24 violation?

25 Q Yes.

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1 A Is that -- okay.

2 I -- I don't recall if I knew about it or heard
3 about it before his deposition.

4 Q You attended his interview with the EEOC
5 investigator who investigated Dr. Tudor's charge of
6 discrimination. Correct?

7 MS. COFFEY: Object to form.

8 A I think he was one of the ones I sat in on.

9 Q (BY MR. TOWNSEND) Would you turn to Plaintiff's
10 Exhibit 43.

11 A Okay. I'm there.

12 Q On Plaintiff's Exhibit 43, there are a list of
13 witnesses that EEOC investigator Kathy Nusz indicated she
14 would like to interview. Correct? I'm referring to --

15 A Yes.

16 Q Okay. Sorry. And you sat in on some of those
17 interviews. Correct?

18 A Yes.

19 Q Do you remember which ones you sat in on?

20 A Lawrence Minks, Doug McMillan, Ross Walkup,
21 Bryon Clark, Claire Stubblefield, Cathy Conway, Lucretia
22 Scoufos, I think John Mischo, I think Charles Weiner, and
23 Jane McMillan. Maybe Randy Prus.

24 Q Any other witnesses interviewed by the EEOC
25 during their investigation whose interviews you sat in

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1 on?

2 A Not that I recall.

3 Q The EEOC investigator recorded those
4 interviews. Correct? Strike that.

5 The EEOC investigator recorded the interviews
6 that you sat in on. Correct?

7 MS. COFFEY: Object to form.

8 A I believe so. I remember her talking about she
9 was having some problems with the recorder, didn't
10 understand the recorder. There were some -- there was
11 some discussion about the recorder, and I -- I -- it was
12 her intent to. I think she did.

13 Q (BY MR. TOWNSEND) Did you also make your own
14 recordings of the interviews that you sat in on?

15 A Yes.

16 Q Do you know of anything that would call
17 Dr. Weiner's credibility into question on the issue of
18 how Dr. Tudor's grievance was handled?

19 MS. COFFEY: Object to form.

20 I'll instruct you not to answer to the extent
21 you'd have to reveal attorney-client privilege and work
22 product. To the extent that you don't, you can answer.

23 A I don't know.

24 Q (BY MR. TOWNSEND) Is there information
25 responsive to that question that you know of that you

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1 can't provide to me because of objection from counsel?

2 A No.

3 Q Please turn to Plaintiff's Exhibit 50.

4 A Okay.

5 Q Plaintiff's Exhibit 50 are two e-mails from
6 Charles Weiner dated April 1, 2010. Correct?

7 A Yes.

8 Q And it indicates you were cc'd on both of these
9 e-mails. Correct?

10 A Yes.

11 Q Do you recall receiving these e-mails?

12 A I don't recall.

13 Q Well, let me ask a different way. Did you
14 receive these e-mails?

15 A I don't recall.

16 Q In the e-mail, the bottom of the first page of
17 Plaintiff's Exhibit 50 Bates numbered EE0C 919 it says
18 "Good morning, all. I had the most interesting
19 conversation with Charlie Babb yesterday in regard to the
20 Tudor appeal."

21 Did I read that correctly?

22 A Yes.

23 Q Do you recall that conversation with Dr. Weiner
24 that he was referring to in this e-mail?

25 A I don't recall.

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1 Q Is there any reason that you can think of why
2 in the April 1, 2010, timeframe you would not receive an
3 e-mail that was sent from Dr. Weiner's e-mail address to
4 your e-mail address?

5 A No.

6 Q And then if you go further down that e-mail
7 from Dr. Weiner that begins towards the bottom of the
8 first page of Plaintiff's Exhibit 50, there's a list of
9 policies starting with -- well, it's hard to see. It's
10 cut off. But starting with the policy called "Role of
11 the President."

12 Do you see that?

13 A Yes.

14 Q And the fourth policy on that list is 4.6.3
15 Procedure for Granting Promotion and Tenure, which is on
16 the second page of Plaintiff's Exhibit 50. Correct?

17 A Yes.

18 Q Do you recall discussing that policy with
19 Dr. Weiner in connection with the Tudor grievance?

20 A I do not recall.

21 Q Do you recall ever discussing that policy with
22 Dr. Weiner?

23 A No.

24 Q Then, on the second page of Plaintiff's
25 Exhibit 50, there is a bulleted list.

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1 Do you see that?

2 A Yes.

3 Q And the last bullet on that list begins "Our
4 options are twofold." Correct?

5 A Yes.

6 Q And then on the first page of Plaintiff's
7 Exhibit 50, the e-mail that Dr. Weiner sent at 9:38 A.M.
8 refers to those two options on the second page of
9 Plaintiff's Exhibit 50. Correct?

10 A Appears to, yes.

11 Q Have you read this document before?

12 A I'm sure I have.

13 Q So in the last bullet on the bulleted list on
14 the second page of Plaintiff's Exhibit 50, it discusses
15 options that would be available if the president denied
16 Dr. Tudor's application for promotion and tenure.
17 Correct?

18 A Could you repeat that, please?

19 MR. TOWNSEND: Go ahead and read back the
20 question.

21 THE COURT REPORTER: "Question: So in the last
22 bullet on the bulleted list on the second page of
23 Plaintiff's Exhibit 50, it discusses options that would
24 be available if the president denied Dr. Tudor's
25 application for promotion and tenure. Correct?"

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1 MS. COFFEY: Object to form.

2 A It looks to me like it's talking about the
3 appeal, the grievance that we've been talking about, the
4 non -- Dr. Scoufos and McMillan not giving reasons with
5 the grievance.

6 Q (BY MR. TOWNSEND) Yes. Plaintiff's Exhibit 50
7 does discuss that issue, but it also discusses the fact
8 that written notice had not been provided to Dr. Tudor by
9 March 1 regarding her renewal. Right?

10 MS. COFFEY: Object to form.

11 A Yes.

12 Q (BY MR. TOWNSEND) And that is an issue in
13 addition to this issue of Drs. McMillan and Scoufos
14 providing Dr. Tudor with reasons for their
15 recommendations. Correct?

16 MS. COFFEY: Object to form.

17 A The issue of not getting notice before
18 March 1st?

19 Q (BY MR. TOWNSEND) Right.

20 A It is being discussed in this memo, yes.

21 Q In that last bullet on the bulleted list, the
22 fourth sentence reads "The second option would be to let
23 her reapply for tenure and promotion next year, provide
24 her with the reasons as to why she was denied this year,
25 and inform her that if she doesn't get tenure next year,

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1 then she will not be reappointed."

2 Did I read that correctly?

3 A Yes.

4 Q And do you understand there to be a typo in
5 that sentence?

6 MS. COFFEY: Object to the form.

7 Q (BY MR. TOWNSEND) Between does and get?

8 MS. COFFEY: Object to form.

9 Q (BY MR. TOWNSEND) Should it say -- sorry. Let
10 me ask the question a different way.

11 If Dr. Tudor had gotten tenure the next year,
12 then she would have been reappointed. Correct?

13 MS. COFFEY: Object to form.

14 A Yes.

15 Q (BY MR. TOWNSEND) So is it your understanding
16 in this last bullet on the bulleted list on the second
17 page of Plaintiff's Exhibit 50, Dr. Weiner was discussing
18 options available if Dr. Tudor did not receive tenure?

19 MS. COFFEY: Object to form.

20 A That's what it appears to be, yes.

21 Q (BY MR. TOWNSEND) And the last paragraph of
22 Plaintiff's Exhibit 50, it states "Charlie, I hope I have
23 stated everything correctly."

24 Did I read that correctly?

25 A Yes.

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1 Q Charlie is referring to you. Correct?

2 A Yes.

3 Q Did Dr. Weiner state everything correctly in
4 his e-mail?

5 MS. COFFEY: Object to the form to the extent
6 it requires you to reveal attorney-client privileged
7 conversations.

8 Are you thinking? You're not answering.

9 THE WITNESS: I'm not answering. Okay.

10 MR. TOWNSEND: Oh, okay.

11 MS. COFFEY: We can do this for ten more
12 minutes.

13 THE WITNESS: Sorry.

14 MS. COFFEY: So --

15 MR. TOWNSEND: Thank you for that, Dixie.

16 Q (BY MR. TOWNSEND) Second sentence of that last
17 paragraph in Plaintiff's Exhibit 50 states "I am sure
18 that President Minks and Drs. McMillan and Scoufos will
19 have questions for you."

20 Did I read that correctly?

21 A Yes.

22 Q Did they have questions for you about
23 Dr. Weiner's e-mails that he sent on April 1st that are
24 in Plaintiff's Exhibit 50?

25 A I don't recall.

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1 Q And then the last sentence of that last
2 paragraph states "If I have misspoke in any way, please
3 correct me by providing the correct information."

4 Did I read that correctly?

5 A Yes.

6 Q Did you provide any information to President
7 Minks, Dr. McMillan, or Dr. Scoufos correcting anything
8 that Dr. Weiner said in this e-mail?

9 MS. COFFEY: Instruct you not to answer to the
10 extent you would be revealing attorney-client privileged
11 information.

12 A I don't recall.

13 Q (BY MR. TOWNSEND) What is your practice with
14 respect to e-mails that you receive at your work e-mail
15 address at RUSO? Do you -- well, let me strike that
16 question.

17 Do you ever delete e-mails that you receive at
18 your work e-mail account at RUSO?

19 A Yes.

20 Q Which ones do you delete?

21 MS. COFFEY: Object to form.

22 Q (BY MR. TOWNSEND) Well, let me ask it a
23 different way, then. What is your normal practice with
24 respect to deleting e-mails that you receive at your work
25 e-mail address at RUSO?

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1 A I delete e-mails that I receive from -- and I
2 don't know the proper pronunciation e-zines -- e-zines,
3 from different groups that send out daily or weekly
4 e-mails about what's happening in the profession and the
5 world of higher ed.

6 I delete e-mails that -- where if there -- if
7 it's an internal e-mail inside the RUSO administrative
8 office, the sender keeps the e-mail, and so the receiver
9 can delete the e-mail. And so sometimes I delete those
10 as the receiver.

11 I delete e-mails that -- that discuss if I'm
12 going to lunch with somebody and what time we're going to
13 meet for lunch. That's just a scheduling kind of e-mail.
14 I'll -- not all those, but some of those I delete. I
15 save a lot of e-mails. I save a lot of my e-mails. So
16 those are the general categories of the e-mails that I
17 delete -- that I delete from my inbox.

18 Q Was that your same practice back in April of
19 2010?

20 A Yes.

21 Q And if Dr. Weiner had sent these e-mails that
22 are in Plaintiff's Exhibit 50 to you, under your normal
23 e-mail deletion practice, would you have deleted them?

24 A No.

25 Q Do you know whether these e-mails are in your

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1 e-mail on your computer right now?

2 A I don't know. They're -- I -- I -- we've got a
3 server that saves and backs up, and so it's -- it's
4 either on my computer or on the server.

5 MS. COFFEY: We've been going over an hour.
6 Let's take a quick break if we could.

7 MR. TOWNSEND: Sure.

8 (Off the record at 11:11 A.M.)

9 (On the record at 11:26 A.M.)

10 Q (BY MR. TOWNSEND) Would you please turn to
11 Plaintiff's Exhibit 14.

12 A Okay.

13 Q Second page of Plaintiff's Exhibit 14 is a memo
14 from Doug McMillan. Correct?

15 A Appears to be, yes.

16 Q And in the first page -- paragraph of that
17 memo, he's describing an offer that was presented to --
18 well, strike that.

19 The first paragraph of that memo, he's
20 describing an offer that he claims was presented to
21 Dr. Tudor. Correct?

22 MS. COFFEY: Object to form.

23 A Yes.

24 Q (BY MR. TOWNSEND) At some point, did you learn
25 that the offer described in Dr. McMillan's memo had been

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1 extended to Dr. Tudor?

2 MS. COFFEY: Object to form.

3 Q (BY MR. TOWNSEND) Well, let me strike that
4 because obviously you know about it now because you just
5 read the memo.

6 When did you first learn that Dr. McMillan was
7 claiming that that offer had been extended to Dr. Tudor?

8 MS. COFFEY: Object to form.

9 A I don't recall.

10 Q (BY MR. TOWNSEND) Was it around the time that
11 that memo, the second page of Plaintiff's Exhibit 14, was
12 dated?

13 A I don't recall.

14 Q How did you first learn that that offer that
15 Dr. McMillan described in his memo was supposedly
16 extended to Dr. Tudor?

17 MS. COFFEY: Object to form.

18 A I don't recall.

19 Q (BY MR. TOWNSEND) Do you recall speaking with
20 Dr. McMillan about this purported offer before it was
21 supposedly extended to Dr. Tudor?

22 A I don't recall.

23 Q Do you remember communicating with anyone about
24 this purported offer before it was supposedly extended to
25 Dr. Tudor?

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1 A And you said before?

2 Q Before it was --

3 A Before it was --

4 Q -- extended to Dr. Tudor?

5 A I don't know.

6 Q Do you know whether RUSO had ever approved
7 extending an assistant professor's probationary period in
8 the manner that was described in that first paragraph of
9 Doug McMillan's memo, second page of Exhibit 14?

10 MS. COFFEY: Object to form.

11 A Yes.

12 Q (BY MR. TOWNSEND) How many times had that
13 happened before this date in the memo that we're looking
14 at?

15 A I don't know.

16 Q More than once?

17 A Yes.

18 Q More than ten times?

19 A Yes.

20 Q More than 20?

21 A Yes.

22 Q More than a hundred?

23 A Could have.

24 Q In what circumstances would RUSO approve
25 extending an assistant professor's probationary period

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1 in -- at this timeframe we're looking at in the memo?

2 A At the recommendation of the president.

3 Q Yes.

4 A Yes. I mean, that's my answer.

5 Q Oh, okay.

6 A Under those circumstances.

7 Q So whenever the president recommended
8 probationary periods be extended for assistant
9 professors, RUSO has agreed with the recommendation?

10 MS. COFFEY: Object to form.

11 A I'm not aware any time that they didn't follow
12 the president's recommendation. Does that --

13 Q (BY MR. TOWNSEND) Did you express your views to
14 anyone about the appropriateness of making this purported
15 offer to Dr. Tudor?

16 A I think that gets into attorney-client
17 privilege.

18 MS. COFFEY: I'll instruct him not to answer.

19 MR. TOWNSEND: All right. It was a yes or no
20 question. Are you still instructing him not to answer?
21 I didn't ask what the communications were. I just
22 asked --

23 THE WITNESS: So repeat.

24 MR. TOWNSEND: -- a yes or no question.

25 Can you -- can you repeat the question I asked

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1 before he said, "I think that gets into attorney-client
2 privilege"?

3 THE COURT REPORTER: "Question: Did you
4 express your views to anyone about the appropriateness of
5 making this purported offer to Dr. Tudor?"

6 MR. TOWNSEND: Are you going to stand by your
7 objection?

8 A I'm rethinking.

9 MS. COFFEY: Well, can you answer yes or no --

10 THE WITNESS: I'm thinking.

11 MS. COFFEY: -- without revealing
12 attorney-client privilege.

13 MR. TOWNSEND: Okay.

14 MS. COFFEY: If he can't do that, then I'll
15 instruct him not to answer.

16 MR. TOWNSEND: Okay. Thank you for that
17 clarification.

18 A I still think that's attorney-client privilege
19 whether I expressed the opinion or not.

20 MS. COFFEY: I'll instruct him not to answer on
21 that basis.

22 MR. TOWNSEND: Well, we disagree on whether
23 privilege would cover that question but I'll move on.

24 Q (BY MR. TOWNSEND) Could you turn to Plaintiff's
25 Exhibit 71. Plaintiff's Exhibit 71 is a two-page

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1 document. First page with the defendant's Bates number
2 ending in 144 and the second page is defendant's Bates
3 number ending in 1152.

4 A I'm there.

5 Q On the first page of Plaintiff's Exhibit 71,
6 second paragraph, it begins, "Quote, at 11:15 a.m. a
7 conference call with Charlie Babb (legal counsel for the
8 RUSO board) began."

9 A Yes.

10 Q Do you see where I'm looking?

11 A Yes, sir.

12 Q Did I read that sentence correctly?

13 A Yes, sir.

14 Q It says here that you provided information on
15 the legal definition of discrimination in the workplace
16 and offered guidance to the FAC regarding how to properly
17 proceed when a grievance of discrimination in the
18 workplace is filed. Right?

19 A Yes, sir.

20 Q Did you provide that guidance as it's stating
21 you did here?

22 MS. COFFEY: Objection. Attorney-client
23 privilege.

24 Q (BY MR. TOWNSEND) Have you -- do you remember
25 this faculty appellate committee meeting that's described

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1 in Plaintiff's Exhibit 71?

2 A I do not recall this one.

3 Q Have you ever provided legal -- strike that.
4 Have you ever provided guidance to a faculty
5 appellate committee at Southeastern on the legal
6 definition of discrimination in the workplace?

7 MS. COFFEY: Objection. Instruct him not to
8 answer. Attorney-client privilege.

9 Q (BY MR. TOWNSEND) Was it your understanding
10 when you were providing information on the legal
11 definition of discrimination in the workplace to a
12 faculty appellate committee that they were to keep the
13 information you provided to them confidential?

14 MS. COFFEY: Object to the form.

15 Q (BY MR. TOWNSEND) Let me strike that question
16 and ask it a different way. Have you ever told members
17 of a faculty appellate committee to keep what you told
18 them confidential?

19 A Not that I recall.

20 Q Are you the attorney that represents the
21 faculty appellate committee at Southeastern?

22 A Yes.

23 Q You consider the faculty appellate committee to
24 be your client?

25 A One of them, yes.

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1 Q And that was the case -- strike that.

2 And that has been the case the entire time
3 you've been RUSO general counsel?

4 A Yes.

5 Q If you'll turn back to Plaintiff's Exhibit 43.

6 A Okay.

7 Q Charla Hall appears on this list of witnesses
8 that the EEOC wanted to interview in connection with
9 their investigation. Correct?

10 A Yes.

11 Q And Charla Hall, according to Plaintiff's
12 Exhibit 71, was on the FAC handling that grievance.
13 Correct?

14 A What was the number? 71?

15 Q 71.

16 A Yes.

17 Q Did you sit in on Charla Hall's interview with
18 the EEOC investigator?

19 A No.

20 Q Did you inform the EEOC investigator that
21 communications between you and the FAC were privileged?

22 MS. COFFEY: Object to form.

23 A No.

24 Q (BY MR. TOWNSEND) Is there a reason why you did
25 not inform the EEOC investigator that communications

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1 between you and the FAC were privileged?

2 MS. COFFEY: Object to form.

3 A My recollection was that I was informed that I
4 couldn't sit in on -- I could only sit in on
5 administrative people, administrative employees, and not
6 line employees, for want of a better word, line
7 employees.

8 THE COURT REPORTER: Are you saying line?

9 THE WITNESS: Line, L-I-N-E, yes, ma'am.
10 Nonadministrative.

11 Q (BY MR. TOWNSEND) And you agreed to that?

12 A I didn't know that I had a choice, so yes.

13 Q Did you understand that you had a choice as to
14 whether the EEOC investigator could ask for
15 attorney-client privileged communications from witnesses?

16 MS. COFFEY: Object to form.

17 THE WITNESS: Could you read that back? I'm
18 sorry.

19 THE COURT REPORTER: "Question: Did you
20 understand that you had a choice as to whether the EEOC
21 investigator could ask for attorney-client privileged
22 communications from witnesses?"

23 A No.

24 Q (BY MR. TOWNSEND) So was it your understanding
25 that during the EEOC's investigation, if the EEOC

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1 investigator asked a witness questions that would require
2 them to divulge privileged information, you couldn't do
3 anything to stop the EEOC investigator from getting that
4 information?

5 MS. COFFEY: Object to form.

6 A Not to my knowledge.

7 Q (BY MR. TOWNSEND) So did you believe during the
8 EEOC investigation that if the EEOC investigator asked
9 for privileged information from a witness, that you had
10 some ability to prevent the witness from providing that
11 privileged information?

12 MS. COFFEY: Object to form.

13 A Not that I recall.

14 Q (BY MR. TOWNSEND) Did you ever write down
15 instructions that you gave to the FAC?

16 MS. COFFEY: Object to form.

17 A The FAC in 71 or just any FAC? Well, the
18 answer's going to be the same.

19 Q (BY MR. TOWNSEND) All right. Both is what I'm
20 asking.

21 A Not that I recall.

22 Q Did the FAC at this time period reflected in
23 Plaintiff's Exhibit 71 have the authority to consider
24 whether a grievant had been discriminated against?

25 MS. COFFEY: Object to form.

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1 A I don't recall.

2 Q (BY MR. TOWNSEND) Is there anything that would
3 refresh your recollection?

4 A The policy and procedures manual for the
5 faculty appellate committee, the appeal, and maybe the
6 decision. Probably the decision.

7 Q If you look --

8 A Well, it looks like they decided they didn't
9 have the authority.

10 Q What are you -- why -- why are you saying that?

11 A Page 1152 of Exhibit 71 saying they're not
12 empowered to address the issue -- well, due process, not
13 discrimination.

14 Q So the second page of Plaintiff's Exhibit 71
15 Bates numbered with the defendant Bates number ending in
16 1152, it doesn't say anything about whether they're
17 empowered to address discrimination. Right?

18 MS. COFFEY: Object to form.

19 A Correct. It does not say anything about
20 discrimination.

21 Q (BY MR. TOWNSEND) If you turn to Plaintiff's
22 Exhibit 7.

23 A Okay.

24 Q If you'll go to page EEOC 322.

25 A Okay.

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1 Q The top of that page says "4.4.6 Faculty
2 Grievance Policy."

3 A Yes.

4 Q Do you think this policy would refresh your
5 memory as to whether the FAC had the authority to
6 determine whether a grievant had experienced
7 discrimination?

8 A I don't know.

9 Q Why don't you take a look at Section 4.4.6 in
10 Plaintiff's Exhibit 7 and let me know if it refreshes
11 your memory about whether the FAC that was handling the
12 grievance reflected in Plaintiff's Exhibit 71 had the
13 authority to address whether discrimination had occurred.

14 MS. COFFEY: Object to form.

15 A It appears that they do.

16 Q (BY MR. TOWNSEND) Have you ever discussed with
17 any FAC whether discrimination against someone because
18 they are transgender is illegal?

19 A I don't recall.

20 Q Have you ever said at any -- well, strike that.
21 Have you given trainings on the law to
22 employees at Southeastern?

23 A Yes.

24 Q During any of those trainings, have you ever
25 discussed whether discrimination against transgender

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1 people is illegal?

2 MS. COFFEY: Object to form.

3 A Yes.

4 Q (BY MR. TOWNSEND) How many trainings have you
5 done where you addressed that topic?

6 A I don't recall.

7 Q When was the last time you did a training that
8 addressed that topic at Southeastern?

9 A I don't recall.

10 Q Did you do a training at Southeastern that
11 addressed that topic while Dr. Tudor worked there?

12 A Yes.

13 Q And how many trainings did you do at
14 Southeastern that addressed that topic while Dr. Tudor
15 worked there?

16 A I don't recall.

17 Q At the time that you did that training where
18 you addressed the topic of discrimination against
19 transgender people, had Dr. Tudor, to your knowledge,
20 complained about discrimination yet?

21 MS. COFFEY: Object to form.

22 A Not to my knowledge.

23 Q (BY MR. TOWNSEND) What did you say at that
24 training about the topic of discrimination against
25 transgender people?

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1 MS. COFFEY: Object to form.

2 A I know what I typically say. I'm not -- and I
3 suspect that I said that at this one. But --

4 Q (BY MR. TOWNSEND) What -- what did you
5 typically say about discrimination against transgender
6 people?

7 A I would --

8 MS. COFFEY: Object to form.

9 A I would talk about how it was in the context of
10 respectful workplace and that there were certain
11 protected classes that the law protected, certain classes
12 that weren't protected, recognized by law that weren't
13 protected, and that transgender was one of the classes
14 that was not protected.

15 And that while there may not be a legal reason
16 for -- while it might not be illegal, that it was still
17 not -- that it wasn't appropriate to discriminate against
18 anyone for anything other than whether they're doing
19 their job or not.

20 Q (BY MR. TOWNSEND) Have you given any trainings
21 at any RUSO institutions where you provided that
22 information that you just described since Dr. Tudor filed
23 her charge of discrimination with the EEOC?

24 A Yes.

25 Q And where was that?

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1 A I don't recall.

2 Q Do you remember when it was?

3 A No.

4 Q Did you prepare anything in writing in
5 connection with that training?

6 A Yes.

7 Q And do you keep those writings that you prepare
8 for trainings in your own files?

9 A Yes.

10 Q Have you ever given a training where you
11 provided information on discrimination against
12 transgender people where you indicated that being
13 transgender is a protected class?

14 MS. COFFEY: Object to form.

15 A No.

16 Q (BY MR. TOWNSEND) At some point did you learn
17 that Southeastern had decided not to permit Dr. Tudor to
18 apply for promotion and tenure?

19 MS. COFFEY: Object to form.

20 A Yes.

21 Q (BY MR. TOWNSEND) Did you learn of that during
22 the 2010-11 academic year?

23 A Yes.

24 Q How did you learn of that decision not to
25 permit Dr. Tudor to apply for promotion and tenure?

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1 A I learned in the context of being asked for
2 legal advice.

3 Q Where were you when you learned of this
4 information?

5 A Sitting in my office.

6 Q So did you learn of this information over the
7 phone?

8 A Yes.

9 Q Going back to Plaintiff's Exhibit 50.

10 A Five-oh?

11 Q Yes.

12 A Okay. I'm there.

13 Q Did you speak to anyone about Plaintiff's
14 Exhibit 50 in connection with the decision not to permit
15 Dr. Tudor to apply for promotion and tenure?

16 MS. COFFEY: I'm sorry. I did not hear the
17 question, so I don't know whether to object.

18 MR. TOWNSEND: That's okay. Please read it
19 back.

20 THE COURT REPORTER: "Question: Did you speak
21 to anyone about Plaintiff's Exhibit 50 in connection with
22 the decision not to permit Dr. Tudor to apply for
23 promotion and tenure?"

24 MS. COFFEY: Instruct you not to answer to the
25 extent it would reveal attorney-client privileged

Charles Babb

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1 information.

2 Q (BY MR. TOWNSEND) What's your understanding as
3 to why Southeastern refused to let Dr. Tudor apply for
4 promotion and tenure?

5 A Only what was explained to me during the course
6 of giving legal advice.

7 Q So you have no understanding of the reasons why
8 Southeastern refused to let Dr. Tudor apply for promotion
9 and tenure apart from the set of communications that you
10 believe are privileged?

11 MS. COFFEY: Object to form.

12 A Correct.

13 Q (BY MR. TOWNSEND) Going back to Plaintiff's
14 Exhibit 14, second page.

15 A Okay.

16 Q This is the October 5, 2010, memo sent from
17 Douglas McMillan that we were talking about earlier.
18 Correct?

19 A Correct.

20 Q Is there anything in the second paragraph of
21 that memo that you believe inaccurately describes policy
22 at Southeastern at that time?

23 MS. COFFEY: Allan, to the extent you're asking
24 his legal opinion, I'm going to instruct him not to
25 answer.

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1 Q (BY MR. TOWNSEND) I'm not asking for your legal
2 opinion, so I'll make that clarification.

3 MS. COFFEY: Thank you.

4 THE WITNESS: Okay. Could you read the
5 question back? Thank you.

6 THE COURT REPORTER: "Question: Is there
7 anything in the second paragraph of that memo that you
8 believe inaccurately describes policy at Southeastern at
9 that time?"

10 A I don't know.

11 Q (BY MR. TOWNSEND) Did you review a draft of
12 this memorandum that's the second page of Plaintiff's
13 Exhibit 14 before Dr. McMillan issued it?

14 MS. COFFEY: Object and instruct him not to
15 answer on the basis of attorney-client, attorney work
16 product.

17 MR. TOWNSEND: Do you see there are other memos
18 that were issued to Dr. Tudor in relation to her
19 application for tenure and promotion and her grievances?
20 If I ask Mr. Babb if he reviewed drafts of any of those
21 before they were issued, will your objection -- will you
22 continue to object based on attorney-client privilege?

23 MS. COFFEY: Yes. And work product.

24 Q (BY MR. TOWNSEND) I'm showing you what's been
25 marked Plaintiff's Exhibit 120.

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1 (Plaintiff's Exhibit 120 has been
2 marked for identification purposes
3 and made a part of the record.)

4 Q (BY MR. TOWNSEND) Have you ever seen
5 Plaintiff's Exhibit 120?

6 MS. JONES: Do you have any extra copies or is
7 this a new exhibit?

8 MR. TOWNSEND: I don't have any other copies.
9 I'm sorry.

10 MS. COFFEY: Do you want to see it?

11 MS. JONES: Is this a new one?

12 A And the question is, have I seen this before?

13 Q (BY MR. TOWNSEND) Yes.

14 A I seem to recall it, yes.

15 Q Did you speak with the FAC in connection with
16 their consideration of the grievance reflected in
17 Plaintiff's Exhibit 120?

18 A Not to my recollection.

19 Q Do you remember during Dr. Mischo's deposition
20 him mentioning a Professor Heartman who Dr. Mischo said
21 had applied for promotion and tenure at Southeastern,
22 been denied by the president, and then applied again?

23 A I don't remember the name. Is that the faculty
24 member that applied the same time that Dr. Mischo did?
25 Is that --

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1 Q Yes.

2 A I remember him testifying about that, yes.

3 Q Do you know whether anyone at RUSO or
4 Southeastern determined whether Dr. Mischo's recollection
5 of that professor's applying for promotion and tenure
6 after the president had denied him was correct?

7 MS. COFFEY: Object and instruct him not to
8 answer. Attorney-client privilege and work product.

9 Q (BY MR. TOWNSEND) Do you know of any documents
10 related to that professor's application for promotion and
11 tenure, the one that Dr. Mischo said applied again after
12 the president had denied him?

13 MS. COFFEY: Object to form.

14 A Am I aware of any documents? Is that --

15 Q (BY MR. TOWNSEND) Yes.

16 A No, I'm not.

17 Q Do you remember learning that the FAC at
18 Southeastern and the administration had reached an
19 impasse over what to do about Dr. Tudor's grievance
20 regarding whether she could apply for promotion and
21 tenure?

22 A Just so I'm clear, the Ross Walkup and the FAC
23 couldn't agree on a recommendation to the president? Is
24 that -- when you say impasse, that's what -- that's the
25 one you're talking about?

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1 Q Yes.

2 A And do I remember becoming aware of that?

3 Q Yes.

4 A Yes.

5 Q Did you become aware of it around the time that
6 the impasse was occurring?

7 A Yes.

8 Q How did you become aware of it?

9 MS. COFFEY: Instruct him not to answer to the
10 extent you'd be revealing attorney-client privileged
11 communications.

12 Q (BY MR. TOWNSEND) Did you speak to Dr. Clark
13 about the impasse?

14 A Yes.

15 Q And what did you and Dr. Clark discuss?

16 MS. COFFEY: Instruct you not to answer.
17 Attorney-client privilege.

18 (Plaintiff's Exhibit 121 has been
19 marked for identification purposes
20 and made a part of the record.)

21 Q (BY MR. TOWNSEND) Showing you what's been
22 marked Plaintiff's Exhibit 121.

23 MS. JONES: Got an extra one this time?

24 MR. TOWNSEND: Yes.

25 Q (BY MR. TOWNSEND) Plaintiff's Exhibit 121 are

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1 two e-mails between you and Dr. Clark. Correct?

2 A Yes.

3 Q Please take a look at Plaintiff's Exhibit 72
4 and 73.

5 A Okay. I'm there.

6 Q Is the procedure that's described by Dr. Clark
7 in Plaintiff's Exhibit 72 and 73 the procedure that was
8 attached to his e-mail in Exhibit 121?

9 MS. COFFEY: Is -- so the record's clear, there
10 is no attachment as a part of Exhibit 121.

11 MR. TOWNSEND: Exhibit 121 is just a one-page
12 document.

13 MS. COFFEY: Okay.

14 MR. TOWNSEND: Yes. That's Bates numbered with
15 the defendant's Bates number ending in 5674.

16 MS. COFFEY: What's the pending question?

17 THE COURT REPORTER: "Question: Is the
18 procedure that's described by Dr. Clark in Plaintiff's
19 Exhibit 72 and 73 the procedure that was attached to his
20 e-mail in Exhibit 121?"

21 MS. COFFEY: Object to form.

22 A Just for clarification, counsel, this -- the
23 paragraph that says "Therefore, given the scenario above;
24 on Plaintiff's Exhibit 73, do you see --

25 Q (BY MR. TOWNSEND) Yes. I see what you're --

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1 A Okay. And then the third line down it says
2 "Except italicized red text." My exhibit doesn't show
3 red text. Are -- are -- we think that that's the
4 italicized part in Bullet 2?

5 Q I believe so.

6 A Okay.

7 Q Although I don't have a version with red text
8 either, but I take it to mean that it's italicized --

9 A That's the only -- I'm sorry.

10 Q Go ahead.

11 A I talked over you. That's the only italicized
12 part that I'm seeing.

13 THE WITNESS: Question again? Sorry.

14 THE COURT REPORTER: "Question: Is the
15 procedure that's described by Dr. Clark in Plaintiff's
16 Exhibit 72 and 73 the procedure that was attached to his
17 e-mail in Exhibit 121?"

18 A I don't know.

19 Q (BY MR. TOWNSEND) Do you know whether Dr. Clark
20 used a different procedure to address Dr. Tudor's
21 grievance than the one that he sent to you in his e-mail
22 that's Plaintiff's Exhibit 121?

23 MS. COFFEY: Object to form.

24 A I don't recall.

25 Q (BY MR. TOWNSEND) Do you recall what the

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1 procedure that Dr. Clark attached to his e-mail that's in
2 Plaintiff's Exhibit 121 stated?

3 MS. COFFEY: Object to form.

4 A I do not.

5 Q (BY MR. TOWNSEND) In Dr. Clark's e-mail that's
6 in Plaintiff's Exhibit 121, he ends his e-mail
7 "Questions, e-mail or call me. (580)745-2064." Did I
8 read that correctly?

9 A Yes.

10 Q Do you remember if you had any questions for
11 Dr. Clark about the procedure he attached to his e-mail?

12 A I don't recall.

13 Q Did you review the procedure that Dr. Clark
14 attached to his e-mail that's in Plaintiff's Exhibit 121?

15 A Yes.

16 MS. COFFEY: Object. I will object and
17 instruct you not to answer further to the extent you'll
18 reveal attorney work product or attorney-client
19 privileged information.

20 Q (BY MR. TOWNSEND) It looks from the times on
21 these e-mails in Plaintiff's Exhibit 121 that you
22 reviewed Dr. Clark's proposed procedure almost
23 immediately upon receiving it. Is that right?

24 MS. COFFEY: Object to form.

25 A It's what it appears.

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1 Q (BY MR. TOWNSEND) If -- do you recall -- strike
2 that.

3 Do you recall Dr. Clark contacting you again
4 about the procedure to use in connection with Dr. Tudor's
5 grievance after you sent him this e-mail that's in
6 Plaintiff's Exhibit 121?

7 MS. COFFEY: Object to form.

8 A No.

9 Q (BY MR. TOWNSEND) Do you know why Dr. Clark
10 needed to come up with a new procedure in connection with
11 this grievance?

12 MS. COFFEY: Object. Instruct him not to
13 answer on the basis of attorney-client, work product
14 privileges.

15 Q (BY MR. TOWNSEND) Do you know whether it had
16 ever happened at Southeastern that the FAC and the
17 president's designee had been unable to come to an
18 agreement on a grievance?

19 MS. COFFEY: Same objection to the extent that
20 you have to reveal privileged information.

21 A Not to my knowledge.

22 Q (BY MR. TOWNSEND) Did you have an understanding
23 that Dr. Minks, president of Southeastern, was one of the
24 people who decided not to permit Dr. Tudor to apply for
25 promotion and tenure when you were reviewing the

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1 attachment to Dr. Clark's e-mail in Plaintiff's
2 Exhibit 121?

3 MS. COFFEY: Object to form.

4 A I don't recall.

5 Q (BY MR. TOWNSEND) Is it your understanding that
6 President Minks was one of the people that decided not to
7 permit Dr. Tudor to apply for promotion and tenure at --
8 at Southeastern?

9 MS. COFFEY: Object to form.

10 A I don't recall.

11 Q (BY MR. TOWNSEND) Could you please turn to
12 Plaintiff's Exhibit 74.

13 A Okay.

14 Q Have you ever seen this document before? So my
15 question was just have you ever seen this before.

16 A Not that I recall.

17 Q If you look on page 1 of Plaintiff's Exhibit 74
18 under "Opening Comments," there's a No. 2 that begins,
19 "Interim VP Doug McMillan."

20 Do you see that?

21 A Yes.

22 Q So if you go on to the next page of Plaintiff's
23 Exhibit 2, page PI 1245, letter C under No. 2 says "Due
24 to the content within the memorandum, Dr. McMillan was in
25 communication with President Minks and received approval

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1 to proceed with issuing the October 5, 2010, memorandum
2 to Dr. Rachel Tudor."

3 Did I read that correctly?

4 A Yes.

5 Q So based on that sentence I just read, it
6 appears that President Minks approved the decision to not
7 permit Dr. Tudor to apply for promotion and tenure.
8 Correct?

9 MS. COFFEY: Object to form.

10 A I don't know. I mean, that's what the sentence
11 says.

12 Q (BY MR. TOWNSEND) Right. That's what I'm
13 asking. Is that -- am I --

14 A That's what the sentence says, yes.

15 Q And before today, did you know that President
16 Minks was involved in that decision?

17 A Not that I recall.

18 Q Going back to Plaintiff's Exhibit 73.

19 A Okay.

20 Q The last bullet point states that the president
21 will have final and binding authority to make a decision
22 on Dr. Tudor's grievance regarding whether she could
23 apply for promotion and tenure. Right?

24 MS. COFFEY: Are you looking at Bates
25 page 5673?

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1 MR. TOWNSEND: Uh-huh.

2 MS. COFFEY: Are you --

3 MR. TOWNSEND: Yes.

4 MS. COFFEY: -- summarizing the last bullet
5 point or asking him if that's what it says verbatim?

6 MR. TOWNSEND: Dixie, please no speaking
7 objections. Obviously I didn't read it.

8 Q (BY MR. TOWNSEND) Would you prefer I read it?
9 Here, I'll read it.

10 MS. COFFEY: What's your question?

11 MR. TOWNSEND: Let -- let me just read it.
12 Please no more speaking objections.

13 MS. COFFEY: I asked you what your question
14 was.

15 MR. TOWNSEND: That's a speaking objection. If
16 he needs clarification, he can ask for it. Okay?

17 MS. COFFEY: Okay. Thank you.

18 Q (BY MR. TOWNSEND) The last bullet point on
19 Plaintiff's Exhibit 73, the last sentence reads "Because
20 the grievant and respondent(s) were provided an
21 opportunity to appeal the decision of the hearing
22 committee and/or VPAA (or president's designee) to the
23 president the decision rendered by the president shall be
24 considered final and binding; the case will then be
25 closed and the president's decision shall be put into

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1 effect."

2 Did I read that correctly?

3 A Yes.

4 Q So is this saying that the president would have
5 final and binding authority to determine whether to
6 permit Dr. Tudor to apply for promotion and tenure in
7 response to her grievance?

8 MS. COFFEY: Allan, I'm going to object to you
9 asking a witness to interpret a paragraph.

10 THE WITNESS: Question, please.

11 THE COURT REPORTER: "Question: So is this
12 saying that the president would have final and binding
13 authority to determine whether to permit Dr. Tudor to
14 apply for promotion and tenure in response to her
15 grievance?"

16 A That's what it says, yes.

17 Q (BY MR. TOWNSEND) If the president made the
18 decision about whether to permit Dr. Tudor to apply for
19 promotion and tenure that was the subject of Dr. Tudor's
20 grievance, do you think it's appropriate for the
21 president to be making a decision on that grievance
22 that's final and binding?

23 MS. COFFEY: I'll object to the extent you're
24 asking him his opinion as to what the president can or
25 can't do. That's not the basis for this deposition.

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1 I'll instruct you not to answer.

2 MR. TOWNSEND: Are you claiming privilege?

3 MS. COFFEY: His interpretation of what is
4 appropriate and proper is his legal opinion.

5 Q (BY MR. TOWNSEND) Could somebody other than the
6 president of Southeastern have been the final and binding
7 authority on Dr. Tudor's grievance?

8 MS. COFFEY: Object to form.

9 A I don't know.

10 Q (BY MR. TOWNSEND) Would there be anything --
11 strike that.

12 Is there any RUSO policy that addresses what
13 should happen if a president of a RUSO institution is
14 accused of wrongdoing?

15 A The matter could be brought to the board.

16 Q Is that process, for bringing a matter to the
17 RUSO board in the case of a president of a RUSO
18 institution allegedly doing something improper, in
19 writing?

20 MS. COFFEY: Object to form.

21 A I'd have to look. I don't know.

22 Q (BY MR. TOWNSEND) If a president of a RUSO
23 institution is accused of unlawfully discriminating
24 against an employee, is there a written policy describing
25 how a complaint about that discrimination should be

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1 ultimately decided?

2 MS. COFFEY: Object to form.

3 A Not that I recall.

4 MS. COFFEY: Is this a good time for a lunch
5 break?

6 MR. TOWNSEND: Yes.

7 (Off the record at 12:41 P.M.)

8 (On the record at 1:56 P.M.)

9 Q (BY MR. TOWNSEND) Mr. Babb, just returned from
10 a lunch break. Is there anything that would prevent you
11 from continuing to give truthful and accurate testimony
12 today?

13 A No.

14 Q I wanted to ask you a few more questions about
15 your e-mail practices. If -- strike that.

16 When there are messages that are unread in your
17 e-mail, are they just in your inbox?

18 A No.

19 Q Is there a certain place where you save unread
20 messages?

21 A The unread messages are in the spam filter. I
22 don't read those. The ones in my inbox, I read all
23 those.

24 Q Would your spam filter filter out e-mails from
25 RUSO institutions?

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1 A I don't remember that ever happening, so no.
2 And I check my spam filter occasionally to make sure that
3 it's not capturing e-mails that didn't need to be
4 captured.

5 Q So do you do that before emptying -- strike
6 that.

7 Do you do that before emptying the spam folder?

8 A I never empty the spam folder.

9 Q So all the spam e-mails that you ever get just
10 stay in your spam folder?

11 A I think our system may roll them out after
12 30 -- roll them off after 30 days, maybe, but I don't
13 know.

14 Q Do you read all the e-mails that are sent to
15 you from Southeastern employees?

16 A Yes.

17 Q Could you take a look at Plaintiff's Exhibit
18 109? It was one from yesterday so it's not in the binder
19 yet.

20 A Okay.

21 Q Looking at Plaintiff's Exhibit 109, it's Bates
22 numbered EEOC 44.

23 A Yes. I -- actually, it's two-page or the one
24 that I've got's two page.

25 THE COURT REPORTER: I may have paper clipped

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1 it incorrectly.

2 MR. TOWNSEND: Let me see what you've got.

3 MS. COFFEY: The next Bates page is 03.

4 MR. TOWNSEND: I think that's incorrect. Let's
5 go off the record for a second.

6 (Off the record at 2:00 P.M.)

7 (On the record at 2:01 P.M.)

8 Q (BY MR. TOWNSEND) This was an exhibit that was
9 introduced during Dr. Stubblefield's deposition
10 yesterday. Right?

11 A Yes.

12 Q Had you seen this -- strike that.

13 Have you -- had you seen these e-mails prior to
14 yesterday?

15 A No.

16 Q In Dr. Stubblefield's e-mail to Dr. McMillan in
17 this Plaintiff's Exhibit 109, she's asking him, "Quote,
18 have you had opportunity to discuss case with C. Babb?"

19 Did I read that correctly?

20 A Yes. Yes.

21 Q Did you discuss Dr. Tudor's retaliation claim
22 with Dr. McMillan?

23 MS. COFFEY: Instruct you not to answer.
24 Attorney-client privilege.

25 Q (BY MR. TOWNSEND) Do you know whether

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1 Dr. Stubblefield's question about whether she needed to
2 write a formal letter that she's raising in her e-mail to
3 Doug McMillan was ever answered?

4 MS. COFFEY: Object to the extent it requires
5 attorney-client privileged conversations.

6 Q (BY MR. TOWNSEND) With that instruction, are
7 you able to answer?

8 A I do not recall.

9 Q Is there anything that would refresh your
10 recollection?

11 A Not that I know of.

12 Q Did you speak to Dr. Stubblefield around this
13 time period of October 2010.

14 A I'm sure I did.

15 Q Did you speak to Doug McMillan during this same
16 time period, October 2010?

17 A Yes.

18 Q In the 2010-2011 academic year, how often would
19 you talk to Doug McMillan?

20 MS. COFFEY: Object to form.

21 A I don't know.

22 Q (BY MR. TOWNSEND) During that academic year, do
23 you remember how often you spoke to Dr. Stubblefield?

24 A No.

25 Q Why do you believe that you talked to Doug

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1 McMillan during the October 2010 timeframe?

2 A Dr. Tudor had filed her -- one of her
3 grievances in October of 2010, so I'm sure that I would
4 have talked to him around -- during that month during
5 that time period.

6 Q Is that the same reason why you believe you
7 talked to Dr. Stubblefield during that October 2010 time
8 period?

9 A One of them, yes.

10 Q What's the other one?

11 A I don't know.

12 Q During this timeframe in October 2010, did RUSO
13 policy say anything about whether Dr. Stubblefield would
14 need to put her findings on Dr. Tudor's retaliation claim
15 in writing?

16 A No.

17 Q Did Southeastern's policy around this
18 October 2010 timeframe indicate whether Dr. Stubblefield
19 would need to put her findings on Dr. Tudor's retaliation
20 complaint in writing?

21 A I don't recall.

22 Q Could you please take a look at Plaintiff's
23 Exhibit 17.

24 A Okay.

25 Q This is Dr. Stubblefield's report beginning

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1 with Bates No. defendant's prefix ending in No. 1796 --
2 right -- and going to defendant's Bates number with a
3 prefix 1801?

4 A Yes.

5 Q When's the first time you saw a copy of the
6 report that is Plaintiff's Exhibit 17?

7 A I don't recall.

8 Q Would it have been around the time that it was
9 issued in January of 2011?

10 A I don't recall.

11 Q Did you see a copy of this report while
12 Dr. Tudor was still working at Southeastern?

13 A I -- I don't recall.

14 Q Did you see a draft of this report before
15 Dr. Stubblefield issued it?

16 MS. COFFEY: Object. Attorney-client and work
17 product.

18 Q (BY MR. TOWNSEND) If you go to page 2 of
19 Plaintiff's Exhibit 17, there's a heading called
20 "Complaint 3." Do you see where that is?

21 A Yes, sir.

22 Q And then the second sentence of that paragraph
23 reads "Named members of the administration include
24 Drs. Larry Minks, SE president; Doug McMillan, acting
25 executive president for academic affairs; Lucretia

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1 Scoufos, dean of arts and sciences; and Charles Weiner,
2 assistant vice president for student learning and
3 institutional research."

4 Did I read that correctly?

5 A Yes, sir.

6 Q So then if you go to the second-to-the-last
7 page of Plaintiff's Exhibit 17, it has the defendants
8 Bates number ending in 1800.

9 A Okay.

10 Q Under conclusion, Dr. Stubblefield indicated
11 here that Dr. Tudor had the right to appeal her
12 determination. Correct?

13 A That's what it says, yes.

14 Q And the appeal was to be made to the president
15 of Southeastern. Correct?

16 A Yes.

17 Q If Dr. Stubblefield had determined that
18 President Minks had discriminated against Dr. Tudor,
19 would there have been a different process required for an
20 appeal of that determination than to the president?

21 A I don't know.

22 Q So it's possible that the policy at
23 Southeastern could have permitted President Minks to
24 appeal to himself a determination that he discriminated
25 against Dr. Tudor?

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1 MS. COFFEY: Object to the form.

2 A I don't know.

3 Q (BY MR. TOWNSEND) Would it conflict with RUSO
4 policy if Dr. Stubblefield had found that Dr. Minks had
5 discriminated against Dr. Tudor and the appeal of that
6 determination could be made by Dr. Minks to himself?

7 MS. COFFEY: Object to form.

8 A Conflict with RUSO policy? Is that --

9 Q (BY MR. TOWNSEND) Yes.

10 A Not that I know of.

11 Q Could you please take a look at Plaintiff's
12 Exhibit 20.

13 A Okay.

14 Q Do you remember receiving a copy of the memo
15 that's Plaintiff's Exhibit 20 in connection with
16 Dr. Tudor's charge of discrimination?

17 A There's some documents here in this --

18 Q I don't think those are part of the exhibit.

19 A Well --

20 MR. TOWNSEND: Let's go off the record for a
21 second.

22 (Off the record at 2:15 P.M.)

23 (On the record at 2:15 P.M.)

24 Q (BY MR. TOWNSEND) All right. Plaintiff's
25 Exhibit 20 is two-page document. It's Bates numbered

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1 with the defendant's Bates prefix, ending in 1106, and
2 going to 1107.

3 Did you receive a copy of the memo that is
4 Plaintiff's Exhibit 20 in connection with the EEOC's
5 investigation of Dr. Tudor's charge of discrimination?

6 A My recollection, the charge was not sent to me
7 by the EEOC. I've seen this two-page document before in
8 other charges, so I didn't receive it from the EEOC.

9 Q Did you receive it from any source during the
10 investigation of Dr. Tudor's charge of discrimination?

11 A I don't recall. Well, wait a minute. What was
12 the question?

13 MR. TOWNSEND: Go ahead and read it back.

14 THE COURT REPORTER: "Question, did you receive
15 it from any source during the investigation of
16 Dr. Tudor's charge of discrimination?"

17 A Yes.

18 Q (BY MR. TOWNSEND) Did you do anything to retain
19 documents in response to this notice of Plaintiff's
20 Exhibit 20?

21 A Yes.

22 Q What did you do?

23 A I made sure that I didn't delete any files that
24 related to Dr. Tudor, including e-mails, hard copies --
25 hard documents, didn't destroy documents, didn't delete

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1 documents.

2 Q Do you know whether anyone else at RUSO took
3 similar steps to retain documents when you did?

4 A I don't recall.

5 Q Do you know whether any RUSO staff other than
6 yourself received a copy of Plaintiff's Exhibit 20 during
7 Dr. Tudor's charge of discrimination investigation?

8 A If I had an assistant general counsel, I would
9 have shown it to him or her and directed that they comply
10 with it. Otherwise, I don't recall.

11 Q Did you have an assistant general counsel
12 during the time period when the EEOC was investigating
13 Dr. Tudor's charge of the discrimination?

14 A I don't recall.

15 Q Do you have an assistant general counsel now?

16 A Yes.

17 Q How long has -- strike that.

18 How long have you had an assistant general
19 counsel? Well, strike that.

20 I take it from your previous response there
21 have been periods of time when you've been general
22 counsel at RUSO where there has not been assistant
23 general counsel. Is that right?

24 A Correct.

25 Q What periods of time were you general counsel

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1 and there were not assistant general counsels?

2 MS. COFFEY: Object to form.

3 A When I first started. And I just -- I don't
4 recall when we were permitted to add an assistant general
5 counsel to our staff. I just don't recall the date.

6 Q (BY MR. TOWNSEND) Once you were permitted to
7 add an assistant general counsel to your staff, did you
8 always have an assistant general counsel after that?

9 A There's been some periods of time when one
10 would leave and we'd -- and hire a replacement that we --
11 that there wouldn't be.

12 Q Is that the only time periods when there
13 wouldn't be an assistant general counsel since the
14 position was approved?

15 A Yes. Excuse me.

16 Q Do you know of any actions Southeastern took to
17 preserve documents in response to Plaintiff's Exhibit 20?

18 A I do not know.

19 Q Could you please turn to Plaintiff's
20 Exhibit 30.

21 A Okay.

22 Q Do you recognize this document?

23 A It appears to be Dr. Tudor's -- I take that
24 back. Appears to be responses to Dr. Tudor's
25 allegations.

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1 Q Do you know who wrote this document?

2 A I do not.

3 Q Did you review any drafts of this document?

4 MS. COFFEY: Object. Instruct him not to
5 answer. Attorney-client privilege and work product.

6 Q (BY MR. TOWNSEND) Do you recognize this as a
7 document that was submitted by Southeastern to the EEOC
8 in response to Dr. Tudor's allegations?

9 MS. COFFEY: Object to form.

10 Q (BY MR. TOWNSEND) Let me ask it a different
11 way. Strike the question.

12 Is it your understanding that Southeastern
13 submitted Plaintiff's Exhibit 30 to the EEOC?

14 A I don't recall.

15 Q Did you speak to anyone at Southeastern around
16 the time that Dr. -- strike that.

17 Did you speak to anyone at Southeastern around
18 the time that Southeastern was responding to requests for
19 information from the EEOC regarding Dr. Tudor's charge of
20 discrimination?

21 MS. COFFEY: Object to form.

22 A I don't know what time period it was -- the
23 response was sent in. I don't recall the -- that time
24 period, so I don't know.

25 Q (BY MR. TOWNSEND) Did you review any of the

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1 documents that Southeastern provided to the EEOC in
2 connection with its investigation of Dr. Tudor's charge
3 of discrimination before Southeastern submitted them to
4 the EEOC?

5 MS. COFFEY: Object. Instruct the witness not
6 to answer on the basis of privilege.

7 Q (BY MR. TOWNSEND) In Plaintiff's Exhibit 30,
8 Dr. Tudor is referred to as both -- strike that.

9 In Plaintiff's Exhibit 30, both male and female
10 pronouns are -- are used to refer to Dr. Tudor. Do you
11 have an understanding of why that is?

12 MS. COFFEY: Object to form. Do you want to
13 point out to the witness where you're referring to?
14 Allan, are you going to point out what it is that you're
15 questioning him about? Are you asking him whether the
16 pronoun he and she both appear in the document number 30?

17 MR. TOWNSEND: My question is what it is. If
18 you need it to be read back to you, let me know.

19 MS. COFFEY: Well, object to the form.

20 MR. TOWNSEND: That's noted.

21 THE WITNESS: Could you read it back please?

22 THE COURT REPORTER: "Question: In Plaintiff's
23 Exhibit 30, Dr. Tudor is referred to as both -- strike
24 that."

25 "In Plaintiff's Exhibit 30, both male and

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1 female pronouns are -- are used to refer to Dr. Tudor.
2 Do you have an understanding of why that is?"

3 A No.

4 Q (BY MR. TOWNSEND) On page 3 of Plaintiff's
5 Exhibit 30, second paragraph, second sentence reads
6 "There was some concern that female students and female
7 employees who knew Dr. Tudor as male may be uncomfortable
8 with and threatened by a male preoperative Dr. Tudor in
9 the female restroom while presenting as a female."

10 Did I read that correctly?

11 A Yes.

12 Q Are you aware of any concerns about female
13 students and female employees being uncomfortable or
14 threatened by Dr. Tudor in the female restroom while
15 presenting as a female?

16 A No.

17 Q At the time that you found out of Dr. Tudor's
18 gender transition, were you concerned that female
19 students and female employees who knew Dr. Tudor as male
20 might be uncomfortable with and threatened by a male
21 preoperative Dr. Tudor in the female restroom while
22 presenting as a female?

23 MS. COFFEY: Object to form.

24 A No.

25 Q (BY MR. TOWNSEND) The next sentence in that

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1 paragraph reads "Dr. Tudor's use of the female restrooms
2 preoperative could also lead to possible liability and
3 complaints from students, parents, and coworkers."

4 Did I read that correctly?

5 A Yes.

6 Q Were you ever concerned that Dr. Tudor's use of
7 the female restrooms preoperative could lead to possible
8 liability for Southeastern?

9 MS. COFFEY: Object to form.

10 A No.

11 Q (BY MR. TOWNSEND) Were you ever concerned that
12 Dr. Tudor's use of the female restrooms preoperative
13 could lead to complaints from students, parents, and
14 coworkers?

15 MS. COFFEY: Object to form.

16 A Yes.

17 Q (BY MR. TOWNSEND) When were you concerned about
18 that?

19 A Right after we were informed of the transition.

20 Q And why were you concerned?

21 A I was concerned that students, parents, and
22 coworkers would make complaints.

23 Q Did you do anything to address that concern?

24 MS. COFFEY: Object.

25 Instruct you not to answer to the extent it

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1 intrudes on attorney-client privilege or work product.

2 Q (BY MR. TOWNSEND) Was anything done at
3 Southeastern to address the concern that students,
4 parents, and coworkers might complain about Dr. Tudor
5 using the female restroom?

6 MS. COFFEY: Object to form and same
7 instruction as to privileged information.

8 MR. TOWNSEND: Are you instructing him not to
9 answer the question or just not to answer to the extent
10 that it might --

11 MS. COFFEY: To the extent he would reveal
12 privileged information or work product.

13 Q (BY MR. TOWNSEND) All right. With that
14 instruction, can you answer my question?

15 A No.

16 Q Were you ever concerned that people might be
17 threatened by Dr. Tudor using the female restroom?

18 MS. COFFEY: Object to form.

19 A No.

20 Q (BY MR. TOWNSEND) All right. The next
21 paragraph on page 3 of Plaintiff's Exhibit 30 begins,
22 "However, a private unisex restroom." Do you see where
23 I'm looking?

24 A Yes.

25 Q The first sentence says "However, a private

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1 unisex restroom existed on the second floor of the
2 Morrison Building and although Dr. Tudor's office is on
3 the third floor, the unisex bathroom in some way is maybe
4 more convenient than the women's bathroom on the third
5 floor."

6 Did I read that correctly?

7 A Yes.

8 Q Do you have an understanding of why it would
9 possibly be more convenient for Dr. Tudor to have used
10 this unisex restroom than the women's restroom on the
11 third floor?

12 MS. COFFEY: Object to form.

13 A No.

14 Q (BY MR. TOWNSEND) All right. If you turn to
15 page 7 of Plaintiff's Exhibit 30.

16 A Okay.

17 Q The third full paragraph begins "Southeastern
18 could have non-renewed."

19 A Yes.

20 Q The sentence -- the first sentence of that
21 paragraph states "Southeastern could have non-renewed
22 Dr. Tudor's appointment before March 1, 2009, whereby
23 academic year 2008-09 would have been Dr. Tudor's last
24 year of employment at Southeastern."

25 Did I read that correctly?

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1 A Yes.

2 Q What are the reasons that an assistant
3 professor could be non-renewed during this time period
4 that that sentence is discussing?

5 A The decision to non-renew a -- any faculty
6 member that's nontenured is similar to an at-will
7 employee. So if -- if Southeastern had decided that they
8 no longer needed Dr. Tudor's services or that her
9 services weren't adequate or that they -- for whatever
10 reason as -- same as an at-will employee, so that's when
11 they could have -- then they can non-renew that
12 appointment.

13 Q Do you know if any assistant professors at
14 Southeastern had -- have ever been non-renewed before the
15 end of the seven-year probationary period?

16 MS. COFFEY: Object to form.

17 A I can't recall.

18 Q (BY MR. TOWNSEND) If Southeastern during this
19 time period we're talking about here, in '09, '10, had
20 wanted to non-renew an assistant professor, what would be
21 the process that they would have to go through?

22 A Under RUSO board policy, the university would
23 need to send a written letter to the faculty member on or
24 before March 1st of that academic year.

25 Q And at that point, would the faculty member

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1 have any appeal rights?

2 A No.

3 Q Does RUSO -- at -- at the time we're talking
4 about here, in 2009-2010, did RUSO's policies say
5 anything about when it would be appropriate to non-renew
6 an assistant professor?

7 MS. COFFEY: Object to form.

8 A Yes.

9 Q (BY MR. TOWNSEND) What did they say?

10 A Discretion of the president.

11 Q Is that all you remember them saying?

12 A That's all I remember the policy saying, yes,
13 is that it's up to the discretion of the president.

14 Q Could you please take a look at Plaintiff's
15 Exhibits 116 and 117 there in the looseleaf there.
16 They're not in the binder yet.

17 A (Witness complying with request.)

18 Q So --

19 A Okay.

20 Q The second page of Plaintiff's Exhibit 116
21 contains requests for information from the EEOC in
22 connection with its investigation of Dr. Tudor's charge.
23 Correct?

24 A Yes.

25 Q And then Plaintiff's Exhibit 117 appears to be

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1 responses to Request No. 8 in Plaintiff's Exhibit 116.

2 Is that right?

3 MS. COFFEY: Object to form.

4 A And the question was that 117 appears to be the
5 response to No. 8 on the second page of 116?

6 Q (BY MR. TOWNSEND) Yes.

7 MS. COFFEY: Object to form.

8 A Yes.

9 Q (BY MR. TOWNSEND) Do you know who prepared
10 Plaintiff's Exhibit 117 in response to the EEOC's
11 questions?

12 A I collected the information.

13 Q So under 8A on Plaintiff's Exhibit 117, there's
14 a reference to Southwestern Oklahoma State University.
15 Correct?

16 A Yes.

17 Q And it says under Southwestern Oklahoma State
18 University "Quote, the president declined to recommend
19 tenure in March 2010 on the following three members of
20 the SWOSU faculty. All three were allowed to reapply for
21 tenure in the fall of 2010, and all three were granted
22 tenure in March 2011."

23 And then it lists the faculty. Correct?

24 A Yes.

25 Q During this time period, March 2010 -- strike

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1 that.

2 During this time period of 2010-2011, did
3 Southwestern Oklahoma State University policy provide
4 that the normal procedure for applying for tenure was to
5 do so in the fifth, sixth, or seventh year, similar to
6 Southeastern's policy?

7 A I don't recall.

8 Q If Southwestern's policy did not have that same
9 or similar procedure to Southeastern, would it have been
10 in conflict with RUSO policy?

11 MS. COFFEY: Object to form.

12 A I don't recall.

13 Q (BY MR. TOWNSEND) Then at the bottom of the
14 page under B, it states, "No tenure applications from the
15 charging party's department [education, instruction, and
16 leadership] have been denied by the Regional University
17 System of Oklahoma."

18 Did I read that correctly?

19 A Yes.

20 Q Dr. Tudor, though, was not in the education,
21 instruction, and leadership department. Is that right?

22 A I don't recall.

23 Q Wasn't Dr. Tudor in the English, humanities,
24 and languages department?

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

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1 Q Do you know whether it's the case that at the
2 time that Plaintiff's Exhibit 117 was prepared for the
3 EEOC, that no tenure applications from the charging
4 party's department had been denied by the Regional
5 University System of Oklahoma?

6 MS. COFFEY: Object to form.

7 Q (BY MR. TOWNSEND) Let me strike the question.
8 At the time that Plaintiff's Exhibit 117 was
9 prepared for the EEOC, do you know whether it was the
10 case that no tenure applications from Dr. Tudor's
11 department at Southeastern had been denied by the
12 Regional University System of Oklahoma?

13 MS. COFFEY: Object to form.

14 A That's my understanding.

15 Q (BY MR. TOWNSEND) Do you think it's possible
16 that the phrase "education, instruction, and leadership"
17 in Plaintiff's Exhibit 117 was a typo?

18 MS. COFFEY: Object to form.

19 A That's possible.

20 Q (BY MR. TOWNSEND) Would you please turn to
21 Plaintiff's Exhibit 115.

22 A Okay.

23 Q This is a document that was marked as an
24 exhibit during Dr. Stubblefield's deposition yesterday.
25 Right?

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1 A I don't know. I wasn't monitoring the exhibits
2 as they were marked.

3 Q Do you remember seeing Plaintiff's Exhibit 115
4 prior -- strike that.

5 Do you recall seeing Plaintiff's Exhibit 115
6 before it was marked as an exhibit in a deposition?

7 MS. COFFEY: Object to form.

8 A Yes.

9 Q (BY MR. TOWNSEND) When did you see it first?

10 A I don't know. I don't recall.

11 Q Do you remember how it was brought to your
12 attention first?

13 MS. COFFEY: Object to form.

14 Q (BY MR. TOWNSEND) Strike the question.

15 Do you remember how it was first brought to
16 your attention?

17 MS. COFFEY: Object to form.

18 A I don't recall.

19 Q (BY MR. TOWNSEND) Did you first see it after
20 Dr. Tudor had filed her charge of discrimination with the
21 EEOC?

22 MS. COFFEY: Object to form.

23 A I don't recall.

24 Q (BY MR. TOWNSEND) Do you remember anything
25 about the circumstances in which you first saw

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1 Plaintiff's Exhibit 115?

2 A The first time I remember seeing it or the
3 first time I saw it?

4 Q First time you remember.

5 A First time I remember seeing it was -- my
6 recollection is that this is the document -- a document
7 that when you came to Southeastern -- I don't remember
8 the date, but whenever you came to Southeastern for some
9 additional interviews, that we looked for the -- the back
10 of this document to wherever the -- however -- where --
11 the rest of the document.

12 Q Was that the first time that you saw this
13 document --

14 MS. COFFEY: Object to form.

15 Q (BY MR. TOWNSEND) -- that you remember?

16 A That I remember, yes.

17 Q Do you remember Dr. Scoufos indicating during
18 that interview that the word "however" on the dean's
19 comments line on page 2 was not her handwriting?

20 A I don't remember that.

21 Q Do you know whose handwriting that is?

22 A I do not.

23 THE WITNESS: Could we take a break?

24 MR. TOWNSEND: Sure.

25 THE WITNESS: Thanks.

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1 (Off the record at 2:50 P.M.)

2 (On the record at 2:56 P.M.)

3 Q (BY MR. TOWNSEND) Could you please turn to
4 Plaintiff's Exhibit 37.

5 A Okay. I'm there.

6 Q Okay. Plaintiff's Exhibit 37 are faculty
7 senate minutes dated January 19, 2011, and they begin
8 with Bates number PI 400 and go to Bates number PI 407.
9 If you go to page PI 403, No. 4 on that page, it says
10 "Motion-that each of the following recommendations
11 (considered separately) for amending the APPM be
12 forwarded to the Administration."

13 Do you see where I'm looking?

14 A Yes, sir.

15 Q All right. Under that it says "Amendment One."
16 Do you see that?

17 A Yes.

18 Q And then on the next page, page PI 404, there
19 is underlined text showing the amendment that the faculty
20 senate voted on. Correct?

21 MS. COFFEY: Object to form.

22 A I don't know.

23 Q (BY MR. TOWNSEND) Okay. Do you remember around
24 this time, the spring semester of 2011, Southeastern
25 considering whether to amend it's nondiscrimination,

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1 equal opportunity, and affirmative action policy to
2 include sexual orientation and transgender
3 identification?

4 MS. COFFEY: Object to form.

5 And instruct you not to answer to the extent it
6 requires divulging attorney-client information or work
7 product information.

8 Q (BY MR. TOWNSEND) With that instruction, are
9 you able to answer?

10 A I don't recall that.

11 Q Do you recall around this same time period RUSO
12 considering whether to amend any of its
13 nondiscrimination, equal opportunity, or affirmative
14 action policies to include sexual orientation or
15 transgender identification?

16 MS. COFFEY: Same objection and same
17 instruction as to the previous question.

18 Q (BY MR. TOWNSEND) Are you able --

19 A I don't --

20 Q -- to answer?

21 A I'm sorry. I don't recall.

22 Q Do you recall Southeastern's nondiscrimination
23 policy changing to include sexual identity as a protected
24 status?

25 MS. COFFEY: Object to form.

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1 A No.

2 Q (BY MR. TOWNSEND) Do you remember RUSO changing
3 its nondiscrimination policy to include sexual identity
4 in the policy?

5 A No.

6 MS. COFFEY: Object to form.

7 MR. TOWNSEND: Let's go off the record for a
8 second.

9 (Off the record at 3:01 P.M.)

10 (On the record at 3:02 P.M.)

11 Q (BY MR. TOWNSEND) In connection with the EEOC
12 investigation of Dr. Tudor's charge of discrimination, do
13 you recall anyone at Southeastern or RUSO discussing
14 whether Title VII prohibited discrimination based on
15 gender identity?

16 MS. COFFEY: Instruct the witness not to answer
17 on the basis of attorney-client privilege and work
18 product.

19 Q (BY MR. TOWNSEND) During the course of the
20 EEOC's investigation of Dr. Tudor's charge of
21 discrimination, did Southeastern indicate to the EEOC
22 that it believed that discrimination based on gender
23 identity was not covered by Title VII?

24 MS. COFFEY: Allan, would you please state the
25 basis for your belief that you have the ability to ask

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1 Mr. Babb questions about what took place during the EEOC
2 investigation? You were present during all of it.

3 MR. TOWNSEND: No, I'm not going to be
4 answering questions. I'm not being deposed here.

5 MS. COFFEY: Well, if you can't state a basis
6 for a relevancy to that question, then move on.

7 MR. TOWNSEND: Are you going to instruct him
8 not to answer?

9 MS. COFFEY: To the extent it is asking for
10 information in the realm of the attorney-client privilege
11 and work product doctrine, yes.

12 MR. TOWNSEND: If I ask any more questions
13 regarding the EEOC investigation, are you going to
14 instruct him not to answer?

15 MS. COFFEY: I'm not going to give you an open
16 door to try to come back and ask him any question you
17 want to about the EEOC investigation.

18 MR. TOWNSEND: So are there any questions about
19 the EEOC investigation that you will permit Mr. Babb to
20 answer?

21 MS. COFFEY: There's probably the possibility
22 of some type of question that doesn't intrude on the
23 attorney-client privilege or the work product doctrine.

24 But if you're asking whether he knew whether
25 the investigation took place, obviously the answer is no.

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1 But you're asking him questions about interviews with
2 witnesses in which you participated in and whether or not
3 he recalls them making a certain statement or whether a
4 certain document was presented in response to the EEOC
5 investigation and it's irrelevant.

6 MR. TOWNSEND: That wasn't my question. My
7 question was --

8 MS. COFFEY: I answered your question as to
9 whether or not there was any question about the EEOC
10 investigation I would allow him to answer. I said I'm
11 sure it is possible that some question could be posed
12 that does not intrude on the privilege.

13 Q (BY MR. TOWNSEND) All right. The last -- the
14 last question I asked, though, was about what
15 Southeastern indicated to the EEOC. And my question was,
16 do you know whether Southeastern indicated to the EEOC
17 that it believed that Title VII did not cover
18 discrimination against somebody because of their gender
19 identity.

20 MS. COFFEY: Are you asking him about an
21 interview?

22 MR. TOWNSEND: Please, no speaking objections.

23 MS. COFFEY: No, I'm --

24 MR. TOWNSEND: I didn't ask him about an
25 interview.

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1 MS. COFFEY: I'm going to ask you to clarify.
2 If you're going to ask him questions about the EEOC
3 investigation in order to get into potentially
4 attorney-client priveledged information, I'm entitled to
5 know specifically what information you're seeking.

6 MR. TOWNSEND: Please read my question back.

7 THE COURT REPORTER: The original one?

8 MR. TOWNSEND: Yes. Before the objection.
9 Well, the -- not the original one -- before, the one I
10 just asked, the last question I just asked.

11 THE COURT REPORTER: "Question: All right.
12 The last -- the last question I asked, though, was about
13 what Southeastern indicated to the EEOC. And my question
14 was, do you know whether Southeastern indicated to the
15 EEOC that it believed that Title VII did not cover
16 discrimination against somebody because of their gender
17 identity."

18 MS. COFFEY: Instruct him not to answer to the
19 extent it requires you reveal any attorney-client
20 priveledged information or work product information.

21 To the extent you can answer it without
22 revealing that information, you may do so.

23 A I don't recall.

24 Q (BY MR. TOWNSEND) Could you turn to Plaintiff's
25 Exhibit 36.

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1 A Okay.

2 Q Is Plaintiff's Exhibit 36 a document that you
3 prepared?

4 A Plaintiff's Exhibit 36 has what looks like
5 handwritten underlines, notes, scribbles. I did not
6 prepare those. As far as the typewritten document, yes,
7 I did.

8 Q The last page of Plaintiff's Exhibit 36 Bates
9 number PI 1994, could you please turn to that.

10 A Okay.

11 Q Do you see where it says, "Tip #2: The
12 Modified Miranda Warning"?

13 A Yes, sir.

14 Q This is a tip that you provide to faculty at
15 RUSO institutions?

16 A Yes.

17 Q How long have you been giving this advice?

18 A I don't recall.

19 Q This document states it was prepared March 25,
20 2009, on the first page. Correct?

21 A Yes.

22 MS. COFFEY: Object to form.

23 Q (BY MR. TOWNSEND) Had you given this advice
24 prior to that?

25 MS. COFFEY: Object to form.

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1 A I don't recall.

2 Q (BY MR. TOWNSEND) Do you still give this advice
3 to faculty at RUSO institutions?

4 MS. COFFEY: Object to form.

5 Q (BY MR. TOWNSEND) Let me strike the question.
6 Do you still give the advice that's in Tip
7 No. 2 on the last page of Plaintiff's Exhibit No. 36 to
8 RUSO faculty?

9 MS. COFFEY: Object to form.

10 A Yes.

11 Q (BY MR. TOWNSEND) Do you follow this advice
12 yourself?

13 A Try to.

14 Q All right. On the last Page of Plaintiff's
15 Exhibit 36, there's also, "Tip #3: Learn to 'Issue
16 Spot.'"

17 Do you see that?

18 A Yes.

19 Q And then it says "Familiarize yourself with the
20 hot issues, discrimination and/or harassment (student,
21 faculty, and staff.)"

22 "(Race, age, gender, transgender,
23 physical/psychological/learning disability, national
24 origin, religion, sexual orientation, political)."

25 Did I read that correctly?

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1 A Yes.

2 Q When you gave this presentation, what did you
3 say about transgender?

4 MS. COFFEY: Object to form.

5 Q (BY MR. TOWNSEND) In connection with this Tip
6 No. 3?

7 A I don't recall.

8 Q Have you given this same presentation "Legal
9 Briefing: Legal Issues for Faculty," more than one time?

10 A Yes.

11 Q Do you remember what you typically would say
12 about transgender when you gave that Legal Issues for
13 Faculty presentation?

14 MS. COFFEY: Object to form.

15 A Typically, by the time I get to this point in
16 the presentation, I'm either out of time or only have one
17 or two minutes and so I just hit the points, and so I --
18 I don't recall beyond that.

19 MR. TOWNSEND: Let's take a short break.

20 MS. COFFEY: Okay.

21 (Off the record at 3:13 P.M.)

22 (On the record at 3:22 P.M.)

23 Q (BY MR. TOWNSEND) Did you ever speak to Larry
24 Minks about any of the grievances that Dr. Tudor filed?

25 MS. COFFEY: Instruct you not to answer to the

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1 extent you would be revealing attorney-client privileged
2 information.

3 Q (BY MR. TOWNSEND) Do you ever -- strike that.

4 Did you ever speak to Larry Minks about any
5 complaint of discrimination or retaliation that Dr. Tudor
6 filed?

7 MS. COFFEY: Same instruction.

8 Q (BY MR. TOWNSEND) Did you ever speak to
9 Mr. Walkup about any of Dr. Tudor's grievances?

10 MS. COFFEY: Same instruction.

11 Q (BY MR. TOWNSEND) Did you ever talk to
12 Mr. Walkup about any of Dr. Tudor's complaints of
13 discrimination?

14 MS. COFFEY: Same instruction.

15 MR. TOWNSEND: Okay. I'm ready to pass the
16 witness to Mr. Young. Before I do, I just wanted to
17 state for the record that we consider many of the
18 privileges that have been asserted today to have been
19 waived because of documents produced in discovery,
20 testimony given without objection in prior depositions,
21 and potentially other reasons, so we're reserving the
22 right to file a motion to compel and seek sanctions
23 because of Defendant's instructions to the witness not to
24 respond to questions. For that reason, we want to keep
25 the deposition open.

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1 We also want to keep the deposition open in the
2 event documents or information that was previously
3 requested in discovery is produced and we want to
4 question the witness about those documents or
5 information.

6 So with that, I'll pass the witness to
7 Mr. Young.

8 MR. YOUNG: Can we please go off the record?

9 (Off the record at 3:23 P.M.)

10 (On the record at 3:26 P.M.)

11 EXAMINATION

12 BY MR. YOUNG:

13 Q Good afternoon, Mr. Babb.

14 A Good afternoon.

15 Q We've met before --

16 A Right.

17 Q -- but for the record, my name is Ezra Young.

18 I represent Plaintiff Intervenor Rachel Tudor.

19 Do you understand, Mr. Babb, that all the
20 ground rules that Mr. Townsend went over with you this
21 morning before the deposition are still in effect right
22 now?

23 A Yes.

24 Q Okay. Earlier today, you testified that
25 interpreting Southeastern policies contained in the

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1 academic policies and procedure manual, that it is
2 sometimes appropriate to take into consideration what you
3 termed as university precedent. Is that correct?

4 MS. COFFEY: Object to form.

5 A Yes.

6 Q (BY MR. YOUNG) What did you mean by "university
7 precedent"?

8 A The manner in which the university has
9 interpreted its policies prior to this point in time or
10 practices that have evolved over the years in that
11 particular area; decisions that have been made by the
12 administrators -- decisions, if any, that have been made
13 by the administrators that are currently in office.

14 Q Does that complete your answer?

15 A I'm sure there's other things, but that's all I
16 can think of right at the moment.

17 Q How would one go about figuring out what
18 university precedent is for a particular policy?

19 MS. COFFEY: Object to form.

20 A I would talk to people at the -- at that
21 university about any experiences that they've had with
22 that policy. I might -- I might draw on my own personal
23 knowledge. I may have personal knowledge of how they've
24 acted before. If the people who held the office
25 previously to the current officeholders and I -- and they

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1 were still around, I might reach out to them or might ask
2 others to reach out to them. There may be others I just
3 can't think of.

4 Q (BY MR. YOUNG) Would you review written records
5 that might immortalize a past decision that looks like
6 it's pertinent to the specific policy you were assessing?

7 MS. COFFEY: Object to form.

8 A If they were available, yes.

9 Q (BY MR. YOUNG) Are personnel records held by
10 the vice president of academic -- academic affairs at
11 Southeastern available to you as general counsel with
12 RUSO?

13 MS. COFFEY: Object to form.

14 A I don't know who holds the records.

15 Q (BY MR. YOUNG) Let me clarify --

16 A But whoever they are, I would have access to
17 them.

18 Q Have you ever reviewed records held by the vice
19 president of academic affairs at Southeastern in an
20 attempt to discern what university precedent is at
21 Southeastern --

22 MS. COFFEY: Object.

23 Q (BY MR. YOUNG) -- as to a specific policy
24 contained in the academic policies and procedures manual?

25 MS. COFFEY: Object to form.

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1 A Not that I recall.

2 Q (BY MR. YOUNG) Can I draw your attention to
3 Plaintiff's Exhibit 6.

4 A Okay. I'm there.

5 Q On the first page of Plaintiff's Exhibit 6,
6 Bates marked EEOC 300, there's a bold heading that reads
7 "3.7.4 Role of Faculty."

8 A Yes.

9 Q And on the second page on EEOC -- Bates marked
10 EEOC 301, first line at the top, first full sentence
11 reads "The governing board and president should on
12 questions of faculty, as in other matters where the
13 faculty has a primary responsibility, concur with the
14 faculty judgment except in rare instances and for
15 compelling reasons, which should be stated in detail."

16 Did I read that correctly?

17 A Yes.

18 Q Did you ever have an occasion to interpret this
19 section of Policy 3.7.4?

20 MS. COFFEY: Object to form.

21 A Yes.

22 Q (BY MR. YOUNG) On more than one occasion?

23 A I don't recall.

24 Q Did you review this policy in reference to
25 Dr. Tudor's application for promotion and tenure at

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1 Southeastern?

2 MS. COFFEY: Object to the form. Instruct the
3 witness not to answer to the extent your answer would
4 reveal attorney-client privilege information or work
5 product information.

6 A Can't answer.

7 Q (BY MR. YOUNG) As to RUSO's policies and
8 procedures, is it appropriate to take into consideration
9 past precedent when you're interpreting those policies
10 and procedures?

11 MS. COFFEY: Objection. Asked and answered.

12 MR. YOUNG: I don't believe it was as to RUSO's
13 policies and procedures. The previous question was to
14 Southeastern.

15 MS. COFFEY: You don't think this morning? No,
16 I'm talking about this morning. Allan's covered all
17 this. You can answer.

18 A What was the question, again?

19 THE COURT REPORTER: "Question: As to RUSO's
20 policies and procedures, is it appropriate to take into
21 consideration past precedent when you're interpreting
22 those policies and procedures?"

23 A Yes.

24 Q (BY MR. YOUNG) And how would you go about
25 discerning what past precedent is in the context of

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1 RUSO's policies and procedures? What sorts of documents
2 or persons would you speak to?

3 A During what timeframe?

4 Q Between 2009 and 2011.

5 A During that period of time -- by then, I had
6 been general counsel for almost five years, five to seven
7 years, the executive director had been general counsel
8 for ten years before me, so between the two of us, we had
9 a pretty good recollection of what the precedent had been
10 for interpreting RUSO policy for the last fifteen years.

11 Q So between 2009 and 2011, you would only
12 consider your own experience as general counsel as well
13 as the pre -- prior experience of the then-serving
14 executive director of RUSO to discern what RUSO's past
15 precedent?

16 MS. COFFEY: Object to form.

17 A No.

18 Q (BY MR. YOUNG) What other records or persons
19 would you confer with in order to discern what RUSO's
20 past precedent was during that period, then?

21 A It was --

22 MS. COFFEY: Object. Form.

23 A It would depend on the issue.

24 Q (BY MR. YOUNG) Okay. Let me give you an
25 example of an issue, then, and maybe that'll help clarify

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1 matters. If you were presented with a university policy
2 of one of RUSO's universities that appeared to conflict
3 with the policy in RUSO's own policies and procedures
4 manual, who would you confer with at RUSO? What
5 documents would you review to discern whether there was a
6 past precedent that gave you guidance on how to reconcile
7 those conflicts?

8 MS. COFFEY: Object to form.

9 A I don't know.

10 Q (BY MR. YOUNG) Okay. Let's switch gears. You
11 previously testified that you provided training to
12 Southeastern faculty and staff on employment
13 discrimination and other workplace issues. Is that
14 correct?

15 A Yes.

16 Q Did these trainings cover federal and state
17 equal employment opportunity laws?

18 A Yes.

19 Q Did these trainings speak to a university's own
20 specific antidiscrimination and affirmative action
21 policies as well?

22 MS. COFFEY: Object to form.

23 A No.

24 Q (BY MR. YOUNG) Is there a reason why your
25 trainings only touched on federal and state equal

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1 opportunity laws and not university-specific policies?

2 A Yes.

3 MS. COFFEY: Object to form.

4 Q (BY MR. YOUNG) What's that reason?

5 A When I would be asked to come and do the
6 training, whoever from that university would let --
7 would -- would tell me that they conducted training on
8 their policies and so would I just come and -- and give
9 an overview, overall policy, overall discussion.

10 Q And in your consideration, an overall
11 discussion excluded the university specific
12 antidiscrimination and affirmative action policies. Is
13 that correct?

14 MS. COFFEY: Object to form.

15 A No.

16 Q (BY MR. YOUNG) Okay. Can you please explain
17 why you answered no?

18 A Because I wasn't asked to talk about it. And
19 so I didn't -- I don't -- I don't think that the
20 university's antidiscrimination policy is excluded from
21 the overall. But I just wasn't asked to talk about it.
22 I generally had an hour to talk and rarely covered
23 everything that they wanted me to cover as it was.

24 Q Can you please turn to Plaintiff's Exhibit 36.

25 A Okay.

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1 Q I believe you previously testified that
2 Plaintiff's Exhibit 36 is a document that you prepared
3 that you used in some of these trainings we were just
4 talking about. Is that correct?

5 MS. COFFEY: Object to form.

6 A Yes. Minus the handwritten marks.

7 Q (BY MR. YOUNG) And I believe that you
8 previously testified that during some of the workshops
9 that you used Plaintiff's Exhibit 36 as a teaching tool
10 and that you discussed transgender discrimination. Is
11 that correct?

12 MS. COFFEY: Object to form.

13 A I don't know that I specifically would talk
14 about transgender discrimination. It's in the paper.

15 Q (BY MR. YOUNG) So are you saying that you have
16 no recollection of ever discussing transgender
17 discrimination during one of these workshops?

18 A No.

19 MS. COFFEY: Object to form.

20 A I'm saying that I don't know if I did every
21 time. I thought that was the question, if I presented --
22 if I talked about it in my presentations. I took that to
23 mean every time, so sorry for misinterpreting.

24 Q (BY MR. YOUNG) No problem.

25 On some occasions when you gave this

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1 presentation, did you discuss transgender discrimination?

2 MS. COFFEY: Object to form.

3 A Yes.

4 Q (BY MR. YOUNG) And do you recall what the
5 substance of that discussion was?

6 A Pretty much as I described this morning.

7 Q Can you just refresh my memory as to what that
8 was?

9 A That my presentation is in terms of maintaining
10 a respectful workplace. And I talk about
11 antidiscrimination laws and that discrimination -- that
12 illegal discrimination can only occur if it violates the
13 law and the person is in a protected class, and that
14 there are certain classes of persons who are not in a
15 legally protected class and so would not be subject to
16 those laws, but that we still don't discriminate against
17 people just because they're not part of a protected
18 class. We still don't discriminate, that that doesn't --
19 doesn't add to, doesn't contribute to, a respectful
20 workplace by discriminating against anybody other than
21 whether they do their job or not.

22 Q And is it your understanding that transgender
23 persons are not in a legally protected class? Is that
24 correct?

25 MS. COFFEY: Object to the form. Asking for a

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1 legal conclusion.

2 A In 2009 they were not, in my opinion. In my
3 opinion, that despite the -- the goings on across the
4 country, in the 10th Circuit, to my -- my opinion,
5 they're not a protected -- transgender is not a protected
6 class.

7 Q (BY MR. YOUNG) Why do you think in the
8 10th Circuit specifically transgender persons are not in
9 a protected class?

10 A I haven't researched other circuits.

11 Q Well, but I was asking you about why you formed
12 the belief that in the 10th Circuit, transgender persons
13 are not in a protected class.

14 A That's -- that's the result of my research.

15 Q What sorts of materials did you review in your
16 research to come to that conclusion?

17 A I don't recall. Looked at lots of materials.

18 Q Court decisions?

19 A Court decisions.

20 Q Statutes?

21 A Interpretations of statutes.

22 Q What about administrative guidance from federal
23 agencies?

24 MS. COFFEY: Ezra, do you have any sort of
25 guidance on transgenders that you would like to question

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1 him about?

2 MR. YOUNG: Dixie, please no speaking
3 objections.

4 MS. COFFEY: No, my question is just that. You
5 asked him if he reviewed administrative guidances, and I
6 ask you if you had a particular one that you would like
7 to question him about. If you're going to ask him if he
8 reviewed it, show it to him, if one existed.

9 MR. YOUNG: Please no speaking objections.

10 Q (BY MR. YOUNG) You can answer the question, if
11 you can.

12 A I don't recall.

13 Q When we were just talking about whether
14 transgender -- you consider transgender persons in
15 protected status, when we were using "protected status,"
16 do you understand that to refer to under state and/or
17 federal law?

18 A Well, my legal conclusion? My legal opinion?

19 Q No. I'm just trying to clarify to make sure
20 that we're both talking about the same thing right now.

21 When I said "protected status," did you mean
22 recognized as a protected status under state and/or
23 federal law?

24 A Yes.

25 Q Did you understand transgender persons to be in

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1 a protected status under Southeastern's own policies and
2 procedures in 2009?

3 MS. COFFEY: Object to form.

4 A I don't recall.

5 Q (BY MR. YOUNG) If Southeastern's policies and
6 procedures contain language in them that created
7 transgender persons into a protected status, would
8 transgender persons be legally protected against
9 discrimination --

10 MS. COFFEY: Object to form.

11 Q (BY MR. YOUNG) -- on the basis of that status?

12 MS. COFFEY: And it calls for a legal
13 conclusion. I'll instruct him not to answer to the
14 extent you're asking him to give a legal conclusion.

15 A I can't answer.

16 Q (BY MR. YOUNG) Okay. I'm going to draw your
17 attention to Plaintiff's Exhibit 31.

18 A Okay.

19 Q Have you seen Plaintiff's Exhibit 31 before?

20 A I don't recall.

21 Q Are you familiar with Southeastern's academic
22 policies and procedures manual?

23 A I know that they have one.

24 Q And are you aware that Southeastern provided a
25 copy of its policies and procedures manual to the EEOC?

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1 A I don't recall.

2 Q Under the heading "1.8 Nondiscrimination, Equal
3 Opportunity, and Affirmative Action Policy," contains
4 some language speaking to protected statuses in various
5 laws that require nondiscrimination. Is that correct?

6 MS. COFFEY: Object to form.

7 A Yes.

8 Q (BY MR. YOUNG) Seven lines down from the first
9 paragraph that appears under the heading 1.8 --

10 A Okay.

11 Q -- it lists different statuses.

12 Is that correct?

13 MS. COFFEY: Object to form.

14 A Yes.

15 Q (BY MR. YOUNG) In the context of this policy,
16 do you understand the statuses that are listed there
17 seven lines down to be protected statuses?

18 MS. COFFEY: Object to form. Calls for a legal
19 conclusion.

20 A That's my legal opinion, yes.

21 Q (BY MR. YOUNG) And in that list of statuses
22 seven lines down, do you see the term "sex"?

23 A I do.

24 Q Do you understand the term "sex" within this
25 policy to apply to transgender persons?

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1 MS. COFFEY: Objection. You're asking for a
2 legal conclusion again, and this witness is not being
3 presented to test -- to testify about the legal effects
4 of Southeastern's policies.

5 MR. YOUNG: Thank you. I understand. I'll
6 reiterate no speaking objections, please.

7 MS. COFFEY: Okay. I'll instruct him not to
8 answer to the extent you're asking for his legal
9 conclusions.

10 MR. YOUNG: Okay. Understood.

11 Q (BY MR. YOUNG) Mr. Babb, can you answer or are
12 you not responding at the instruction of your attorney?

13 A Not responding at the instruction of my
14 attorney.

15 Q Thank you.

16 Draw your attention to Plaintiff's Exhibit 32.

17 A Okay.

18 Q On Plaintiff's Exhibit 32, there is a heading a
19 little bit above midway through the page that reads "1.8
20 Nondiscrimination, Equal Opportunity, and Affirmative
21 Action Policy."

22 Did I read that correctly?

23 A Yes.

24 Q Okay. And, again, I'm going to direct you
25 about seven lines down from that first paragraph that

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1 appears under the heading. And it appears to be that
2 there's a list of protected statuses. Is that correct?

3 A Same as --

4 MS. COFFEY: Object to form.

5 A Yeah. It looks like the same list as on 731.

6 Q (BY MR. YOUNG) Again, about seven lines down
7 about midway through that line, I'm going to draw your
8 attention to the term "sex."

9 Do you see that?

10 A Yes.

11 Q And after that term, do you see a term "sexual
12 identity"?

13 A Yes.

14 Q Did plaintiff's Exhibit 31 contain the term
15 "sexual identity"?

16 MS. COFFEY: Object to form. Why are you
17 asking him whether two exhibits are the same? That's
18 what you're asking him. Right? Whether 32 contains the
19 same wording.

20 MR. YOUNG: Ms. Coffey, again, I'm going to
21 request for no speaking objections.

22 MS. COFFEY: No. Ezra, you are wasting all of
23 our time today. There is no reason to ask a witness to
24 testify whether or not the same wording is included in
25 two documents. He didn't create either document, you

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1 haven't established his knowledge as to who did create
2 it; you're simply asking him whether or not they contain
3 the same words. Why?

4 MR. YOUNG: Again, please no speaking
5 objections, Ms. Coffey.

6 MS. COFFEY: No. I will -- there is no basis
7 for your questions. There's no relevancy, no likely to
8 lead to admissible evidence on your question, and
9 therefore it is outside the scope of discovery.

10 MR. YOUNG: Are you done?

11 MS. COFFEY: If you're done asking those types
12 of questions.

13 Q (BY MR. YOUNG) Mr. Babb, do you need the court
14 reporter to read back my question?

15 MS. COFFEY: His question was whether sexual
16 identity -- the words "sexual identity" exists in
17 document Exhibit No. 31.

18 A I don't see it.

19 Q (BY MR. YOUNG) Okay. Mr. Babb, in your role as
20 general counsel of RUSO, are you responsible for
21 reviewing changes to Southeastern's academic policies and
22 procedures manual before they come into effect?

23 MS. COFFEY: Object to form.

24 A No.

25 Q (BY MR. YOUNG) Do you know if any person at

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1 RUSO is responsible for reviewing changes to
2 Southeastern's academic policies and procedures manual
3 before they come into effect?

4 MS. COFFEY: Object to form.

5 A Yes.

6 Q (BY MR. YOUNG) And who is that person at RUSO
7 that's responsible for reviewing changes?

8 A There's not anybody. You didn't --

9 Q Oh.

10 A I thought the question was do I know --

11 MS. COFFEY: It was.

12 A -- if there's anyone at RUSO who is responsible
13 for reviewing the policies. Yes, I know whether there's
14 some -- whether there is or not.

15 Q (BY MR. YOUNG) Okay. And your --

16 A And -- and the answer is there is not.

17 Q There is not. Okay.

18 A I mean, sorry for any confusion. I --

19 Q That's all right.

20 A -- was just trying to answer the question.

21 Q No problem. Do you have any knowledge as to
22 why Plaintiff's Exhibit 31 does not contain the term
23 "sexual identity" but Plaintiff's Exhibit 32 does contain
24 that term?

25 MS. COFFEY: Object to form.

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1 A No.

2 Q (BY MR. YOUNG) Can you please turn to
3 Plaintiff's Exhibit 118 on the second page. It'll be one
4 of the looseleaf.

5 A Okay.

6 Q This appears to be an e-mail sent by Claire
7 Stubblefield dated May 8, 2015. Is that correct?

8 A No.

9 Q Second page of Plaintiff's Exhibit 118.

10 A I'm sorry.

11 Q No problem.

12 A Page 2?

13 Q Yes.

14 A And your question again, I'm sorry.

15 Q Just attempting to identify the document.

16 MS. COFFEY: For the record, Exhibit 118 does
17 not have any Bates numbers on it. Do you know the source
18 of this -- how it -- how you or Allan came to be in
19 possession of it?

20 MR. YOUNG: I believe this Plaintiff's Exhibit
21 118 was marked during Dr. Stubblefield's deposition, and
22 the source of the document was noted at the time. I
23 believe it was produced in documents produced by
24 defendants that were not Bates marked.

25 MS. COFFEY: We have produced no documents in

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1 this case that haven't been Bates --

2 MR. YOUNG: I would advise --

3 MS. COFFEY: So you don't know the source of
4 the document. Is that what you're saying?

5 MR. YOUNG: I do not recall at this time.

6 MS. COFFEY: Allan, do you know the source of
7 this document?

8 MR. YOUNG: It came from y'all in connection
9 with the search of either Dr. Mischo or Dr. Prus's e-mail
10 accounts.

11 MS. COFFEY: Oh, you mean the test search? And
12 those documents weren't supposed to -- have not been, I
13 guess, verified to be documents to be produced in this
14 case yet. Right?

15 MR. TOWNSEND: We can talk about this off the
16 record.

17 MS. COFFEY: All right.

18 MR. TOWNSEND: That way --

19 MS. COFFEY: Let the record reflect that --

20 MS. JONES: This needs to be on the record.

21 MS. COFFEY: Yeah. It does need to be on the
22 record. Exhibit 118 is a document that was produced as
23 part of a test search to search the e-mails of various
24 people's e-mails within Southeastern. And that my
25 understanding -- extent of my understanding is that these

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1 documents have not been officially produced, nor should
2 have been utilized in discovery until an agreement had
3 been reached. Is that correct?

4 MR. TOWNSEND: That is not correct.

5 MS. COFFEY: You disagree with that position?

6 MR. TOWNSEND: Yes.

7 MS. COFFEY: How so?

8 MR. TOWNSEND: There was no agreement like you
9 just suggested.

10 MS. COFFEY: There was no agreement as to the
11 documents that were produced during the test search?

12 MR. TOWNSEND: No.

13 MS. COFFEY: That's your position, there was no
14 agreement in any documents produced in the test search
15 could be utilized as part of this production?

16 MR. TOWNSEND: At no point was there any
17 agreement that documents that were produced in response
18 to searches of Drs. Mischo and Prus's e-mail accounts
19 would not be used in discovery.

20 MS. COFFEY: I disagree with that position.
21 You can go on.

22 MR. YOUNG: Thank you.

23 MS. JONES: Is there anything else?

24 Q (BY MR. YOUNG) Okay. Start over, Mr. Babb.

25 A Okay.

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1 Q Page 2 of Plaintiff's Exhibit 118 --

2 A All right.

3 Q -- appears to be an e-mail sent by Claire
4 Stubblefield date stamped May 8, 2015.

5 Is that correct?

6 A That's what it says.

7 Q Okay. I'm going to read you the body of this
8 e-mail. "President Burrage added two categories of
9 protected status to the Southeastern discrimination
10 policy. I ask that the attached combined policy
11 statements be added to publications and the '15-'16
12 syllabi until further notice. Thank you. If discussion
13 is needed, do not hesitate to call."

14 Did I read that correctly?

15 A Yes.

16 Q At any point in time, did you become aware that
17 Southeastern added two new categories of protected status
18 to its discrimination policy?

19 A Yes.

20 Q At what point in time did you become aware?

21 A During yesterday's deposition of
22 Dr. Stubblefield.

23 Q And that was the -- to clarify. That was the
24 first time you became aware?

25 A That's my recollection.

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1 Q And I'm going to have you look at -- let's see.
2 It looks like the last page of Plaintiff's Exhibit 118.
3 It's not numbered.

4 A (Witness complying with request.)

5 Q I'm going to read you the language that comes
6 after the bolded heading that says "Equal Opportunity
7 Statement. In compliance with Title VI of the Civil
8 Rights Act of 1964, Executive Order 11246 as Amended,
9 Title IX of the Education Amendments Act of 1972,
10 Sections 503 and 504 of the Rehabilitation Act of 1973,
11 and other federal laws and regulations, Southeastern
12 Oklahoma State University does not discriminate on the
13 basis of race, color, national origin, sex, sexual
14 identity, sexual orientation, age," and it goes on.

15 Did I read that correctly?

16 A Up till the point where you quit, yes.

17 Q Okay. Are you aware of any other RUSO
18 institution that has a similar equal opportunity
19 statement, which includes the term sexual identity?

20 MS. COFFEY: Object to form.

21 A I don't recall.

22 Q (BY MR. YOUNG) I'm going to have you turn to
23 Plaintiff's Exhibit 78. It should be in the binder.

24 A Okay. 78?

25 Q Yes.

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1 A Okay. I'm there.

2 Q Have you seen Plaintiff's Exhibit 78 before?

3 A Only when it was introduced as an exhibit in
4 this case.

5 Q Did you ever review drafts of the document that
6 eventually became Plaintiff's Exhibit 78?

7 MS. COFFEY: Object to the extent your answer
8 would require you to reveal attorney-client privileged
9 information or work product.

10 A No.

11 Q (BY MR. YOUNG) Could you please turn to the
12 page Bates marked DOJ 380.

13 A Okay.

14 Q It looks like the last full paragraph on DOJ
15 380 falls under a heading that reads "Follows Fair and
16 Ethical Policies and Practices." Is that correct?

17 MS. COFFEY: Where are you?

18 MR. YOUNG: Sorry. I'm on DOJ page 380.

19 MS. COFFEY: What are you asking under the
20 follows -- the heading "Follows Fair"?

21 MR. YOUNG: "Follows Fair and Ethical Policies
22 and Practices."

23 THE WITNESS: Processes.

24 MR. YOUNG: Processes.

25 MS. COFFEY: All right.

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1 THE WITNESS: Yes.

2 Q (BY MR. YOUNG) Okay. I'm going to read you
3 the first sentence of the second paragraph that falls
4 under that heading.

5 MS. COFFEY: If you're going to ask him to
6 interpret this policy or this document --

7 MR. YOUNG: Dixie --

8 MS. COFFEY: -- I will object. So I'm just --

9 MR. YOUNG: Understand.

10 MS. COFFEY: If you're going to, then --

11 MR. YOUNG: Understood.

12 MS. COFFEY: -- then I will ask you to state a
13 basis for the question.

14 MR. YOUNG: Understood.

15 MS. COFFEY: All right.

16 Q (BY MR. YOUNG) Mr. Babb, I'm going to again
17 read you the first sentence of the second paragraph that
18 falls under that heading. "Policies and procedures are
19 reviewed and updated on a regular basis and are
20 communicated, interpreted, and applied objectively and
21 consistently."

22 Did I read that correctly?

23 A Yes.

24 Q I'm going to read you one more sentence. "The
25 University, RUSO, and OSRHE update and revise their

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1 respective policies and procedures as needed for
2 compliance with state and federal statutes and
3 regulations."

4 Did I read that correctly?

5 A Yes.

6 Q To your understanding, are those two sentences
7 accurate? Do they accurately represent how RUSO and RUSO
8 universities update the respective policies and
9 procedures?

10 A Yes.

11 Q Okay. I'm going to have you look at DOJ page
12 381. Should be right next to that.

13 A Okay.

14 Q Do you see a figure labeled "Figure 3-1,
15 Process used to modify the academic policies and
16 procedures manual"?

17 A Yes.

18 Q Okay. Can you please take a moment to acquaint
19 yourself with that figure.

20 A Okay.

21 Q To your understanding -- understanding, does
22 Figure 3-1 accurately represent the process Southeastern
23 uses to modify the academic policies and procedures
24 manual?

25 A I don't know.

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1 MS. COFFEY: Object to form.

2 Q (BY MR. YOUNG) Can you please explain your
3 answer? Are you not aware if any of this is accurate, or
4 is there a specific part of the figure?

5 MS. COFFEY: Object to form.

6 A Not being on the Southeastern campus, I'm -- I
7 don't -- I'm not aware of the processes that they use to
8 modify their policies.

9 Q (BY MR. YOUNG) I'm going to draw your attention
10 to a part of the chart. There is some labels on the
11 left-hand side of the chart one reads "Change Initiated
12 By," the one directly below that reads "Change Submitted
13 To," and one directly below that reads "Policy Vetting"?

14 A Yes.

15 Q And there's a box?

16 A Right.

17 Q Yeah. In that box there's a heading that says
18 "Potential Interactions and Consultations."

19 Did I read that correctly?

20 A Yes.

21 Q And it looks like five bullet points down it
22 lists "Legal Counsel." Did I read that correctly?

23 A Yes.

24 Q Do you have any understanding of to whom the
25 label "Legal Counsel" refers to?

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1 A No.

2 Q Does Southeastern Oklahoma State University
3 have its own legal counsel?

4 MS. COFFEY: Object to form.

5 A Not in-house.

6 Q (BY MR. YOUNG) So who is Southeastern's legal
7 counsel?

8 MS. COFFEY: Object to form.

9 A I'm the general counsel. They've hired other
10 legal counsel outside for different -- different things.

11 Q (BY MR. YOUNG) So you consider yourself to be
12 general counsel of Southeastern in addition to RUSO?

13 A Well --

14 MS. COFFEY: Object to form. Misstates his
15 testimony.

16 A No. I'm general counsel -- I'm general counsel
17 to RUSO and Southeastern is part of RUSO.

18 Q (BY MR. YOUNG) So it's your understanding that
19 Southeastern and RUSO are essentially under the same
20 umbrella as the same entity?

21 A Yes.

22 Q Do you have any knowledge as to the processes
23 that Southeastern has used to modify its academic
24 policies and procedure manual at any time?

25 MS. COFFEY: Object to form.

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1 A Just for clarification, the entire process they
2 used at any time?

3 Q (BY MR. YOUNG) Let's -- let's limit it to make
4 it a little bit easier for you to answer that question.
5 Are you aware of the processes that Southeastern used to
6 modify its academic policies and procedures manual from
7 2009 to 2011?

8 MS. COFFEY: Object to the form.

9 A Again, the entire process that they use to do
10 it during that time? That -- is that your question? If
11 that's your question, the answer is no.

12 Q (BY MR. YOUNG) Do you have knowledge about any
13 parts of the processes that Southeastern used to modify
14 its policies and procedures manual between 2009 and 2011?

15 MS. COFFEY: Object to form.

16 A I don't recall.

17 Q (BY MR. YOUNG) Do you recall if you ever spoke
18 to an administrator at Southeastern between 2009 and 2011
19 about the processes that Southeastern uses to modify its
20 policies and procedures manual?

21 MS. COFFEY: Object to form.

22 A I don't recall.

23 Q (BY MR. YOUNG) Is there any sort of document
24 that I could show you that would help refresh your
25 memory?

Charles Babb

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1 A I -- I don't know of any. There may be, but --

2 Q Okay. That's fine. Let's --

3 A I'm not aware of any documents that would
4 refresh my recollection on that.

5 Q Okay.

6 Let's switch gears and go to a different topic.
7 You previously testified that a faculty member at
8 Southeastern can file a grievance against the president
9 of Southeastern for wrongful discrimination directly to
10 the RUSO board. Is that correct?

11 MS. COFFEY: Object to form.

12 A I believe that's right.

13 Q (BY MR. YOUNG) Was it possible for a faculty
14 member to file such a grievance against the president of
15 Southeastern for wrongful discrimination directly to the
16 RUSO board in 2010?

17 MS. COFFEY: Object to form.

18 A Yes.

19 Q (BY MR. YOUNG) Is there a RUSO policy that
20 spells out the process for filing such a grievance?

21 A No.

22 Q How were faculty members at Southeastern made
23 aware that they could file a grievance against the
24 president directly with the RUSO board in 2010?

25 MS. COFFEY: Object to form.

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1 A I don't know.

2 Q (BY MR. YOUNG) I'll have you look again at
3 Plaintiff's Exhibit 78. Apologize.

4 A Okay. I'm there.

5 Q I'm going to have you look at the page that's
6 Bates marked DOJ 345.

7 A Okay.

8 Q There's a heading in the middle of the page
9 that is bolded that reads "Southeastern Follow-up:
10 Comprehensive System for Documenting Complaints and
11 Resolutions in the area of Opportunity and Affirmative
12 Action, in parentheses, Assurance."

13 Did I read that correctly?

14 A Yes.

15 Q Okay. Can you read the paragraph that falls
16 under that heading and let me know when you're done
17 reading it.

18 A Okay.

19 Q Are you familiar with the Internet-based
20 recording system referenced here as EthicsPoint?

21 A Yes.

22 Q What is EthicsPoint?

23 A It's a online service that is separate from
24 RUSO, so -- and it -- it's pretty well explained here, I
25 think. It provides an ability for people to go online or

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1 to call toll-free to register a complaint about any of
2 the schools.

3 Q Does that complete your answer?

4 A That's a very short thumbnail of it, of what
5 EthicsPoint is.

6 Q Do you have any knowledge as to why RUSO
7 adopted that EthicsPoint system in 2011?

8 MS. COFFEY: Object to form.

9 A Yes.

10 Q (BY MR. YOUNG) Can you please tell me why RUSO
11 adopted the EthicsPoint system in 2011?

12 MS. COFFEY: Instruct you not to answer to the
13 extent you have to reveal attorney-client privilege.
14 Otherwise you may answer.

15 A There had been a presentation by the Oklahoma
16 State University business officer about detecting fraud
17 at their university and the success that they had had.
18 They advised that they had used EthicsPoint. And the
19 RUSO audit and finance committee liked the idea, so we
20 reached out to EthicsPoint and eventually the board
21 approved contracting with EthicsPoint.

22 Q (BY MR. YOUNG) Does RUSO still utilize the
23 EthicsPoint system?

24 A Does RUSO what?

25 Q Currently utilize the EthicsPoint system --

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1 A Yes.

2 Q -- to process complaints?

3 A Yes.

4 Q Can a faculty member at a university -- RUSO
5 university file a discrimination complaint using
6 EthicsPoint?

7 A Yes.

8 Q Who would investigate a discrimination
9 complaint filed by a faculty member via EthicsPoint?

10 A It would depend on the situation.

11 Q Can you give me an example of a situation and
12 explain who would investigate --

13 MS. COFFEY: Object to form.

14 Q (BY MR. YOUNG) -- such a complaint?

15 MS. COFFEY: Object to form.

16 A Whenever someone files a complaint with
17 EthicsPoint, they can do so anonymously. And then it's
18 my understanding that it goes through the EthicsPoint
19 server and then is sent to me.

20 I then have a point of contact with each
21 university. We discuss who would investigate. It's
22 pretrained investigators for each school. Unless it's a
23 complaint about the president, then it doesn't go to
24 that -- then -- we don't talk to the school until we've
25 talked to the president about who's going to investigate.

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1 And then that process would involve getting the board,
2 executive members involved in deciding who would
3 investigate, if it were the president that were being --
4 the accusations against the president.

5 Q (BY MR. YOUNG) Prior to RUSO's adoption of
6 EthicsPoint, was there any set process for handling
7 complaints made against a university president in the
8 RUSO system?

9 MS. COFFEY: Object to form. Asked and
10 answered.

11 A Was there a set policy? Is that your question?
12 I'm sorry.

13 Q (BY MR. YOUNG) Let me rephrase my question.
14 Was there an established process for handling complaints
15 filed against a RUSO system president prior to the
16 adoption of EthicsPoint?

17 MS. COFFEY: Object to form.

18 A It was ad hoc.

19 Q (BY MR. YOUNG) And the ad hoc process -- as
20 you understand it, were you typically, as general counsel
21 of RUSO, involved in determining who would investigate a
22 complaint against the president at a RUSO university
23 school?

24 MS. COFFEY: Object to form.

25 A Your word "typically" throws me off. I may or

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1 may not be involved in that decision.

2 Q (BY MR. YOUNG) Now that the EthicsPoint system
3 has been adopted, is it required for you to be involved
4 in determining who will investigate a complaint that's
5 made against a president at a RUSO university school?

6 A It's not required, no.

7 Q Mr. Babb, you attended Dr. Snowden's
8 deposition. Correct?

9 A Yes.

10 Q Do you recall Dr. Snowden testifying during his
11 deposition in this case that in his opinion in 2010 and
12 2011, there was no established process for faculty
13 members to file grievances against a university president
14 directly with RUSO?

15 MS. COFFEY: Object to form.

16 A I don't recall that testimony.

17 Q (BY MR. YOUNG) If I were to tell you that
18 Dr. Snowden testified that in his opinion in 2010 and
19 2011, there was no established process for faculty
20 members to file grievances against a university president
21 directly with RUSO, do you believe that testimony as I
22 have just related it to you right now is accurate?

23 MS. COFFEY: Object to form. Instruct the
24 witness not to answer as to the accuracy of a witness's
25 testimony in this case.

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1 Q (BY MR. YOUNG) Mr. Babb, are you declining to
2 answer?

3 A Yes. On the advice of counsel.

4 Q And that advice is based upon attorney-client
5 privilege?

6 MR. YOUNG: I wasn't clear for the grounds for
7 not answering.

8 MS. COFFEY: Make sure I understand what you're
9 asking him. If he heard during Dr. Snowden's deposition
10 that Dr. Snowden testified in a certain manner and you're
11 asking Mr. Babb whether Dr. Snowden's testimony was
12 correct.

13 MR. YOUNG: To clarify.

14 MS. COFFEY: Whether he agrees with
15 Dr. Snowden's testimony.

16 MR. YOUNG: That to Mr. Babb's knowledge --

17 MS. COFFEY: Right.

18 MR. YOUNG: -- do you believe -- here, let me
19 rephrase the question to avoid this issue.

20 MS. COFFEY: Okay.

21 MR. YOUNG: Or attempt to avoid this issue.

22 Q (BY MR. YOUNG) Let's give it one more time. To
23 your knowledge, Mr. Babb, in 2010 and 2008, was there an
24 established process for faculty members filing grievances
25 against the university president RUSO?

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1 A Sorry. You said 2010, 2008.

2 Q Sorry.

3 A That threw me off right then.

4 Q I apologize.

5 A I didn't listen to the rest of it.

6 Q No problem. Let's -- one more time.

7 A Okay.

8 Q To your knowledge, Mr. Babb, in 2010 and

9 2011 --

10 A Okay.

11 Q -- was there an established process for faculty
12 members at RUSO universities to file grievances against a
13 university president directly with RUSO?

14 A And I believe I testified there was no written
15 policy to that effect.

16 Q Are you aware of any faculty member at a RUSO
17 institution filing a grievance against a university
18 president directly with RUSO?

19 MS. COFFEY: Did you say university president
20 or precedent?

21 MR. YOUNG: President.

22 MS. COFFEY: Okay.

23 A I know we've had them come in. But I couldn't
24 tell you when or who or what school.

25 Q (BY MR. YOUNG) Okay. Let's switch topics.

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1 Mr. Babb, you currently serve as the general counsel of
2 RUSO. Do you have an assistant general counsel serving
3 under you right now?

4 A Yes.

5 Q Do you have more than one assistant general
6 counsel serving under you right now?

7 A No.

8 Q Are there any mechanisms in place which allow
9 you to recuse yourself from serving as legal counsel --
10 counsel on a particular matter if you believe you have a
11 conflict of interest?

12 MS. COFFEY: Object to form.

13 A Can I recuse myself if I think there's a
14 conflict? Is that -- I mean, there's not a --

15 Q (BY MR. YOUNG) Yes.

16 A -- a policy on it, but yes. If I think there's
17 a conflict, then I recuse myself.

18 Q Have you ever recused yourself from a
19 particular matter because you believe there to be a
20 conflict of interest?

21 A Yes.

22 MS. COFFEY: Object to form.

23 Q (BY MR. YOUNG) Have you recused yourself from a
24 matter in the last six years because you believe there is
25 a conflict of interest?

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1 MS. COFFEY: Object to form.

2 A Yes.

3 Q (BY MR. YOUNG) Have you recused yourself more
4 than one time in the last six years because you believed
5 you had a conflict of interest?

6 MS. COFFEY: Object to form.

7 A Yes.

8 Q (BY MR. YOUNG) Are there any written policies
9 which clarify that you have the ability to recuse
10 yourself if you believe that there's a conflict of
11 interest?

12 MS. COFFEY: Object to form.

13 A No.

14 Q (BY MR. YOUNG) To your understanding, does your
15 past practice of recusing yourself, when you believe
16 there is a conflict of interest, establish a RUSO
17 precedent for the practice of recusing yourself?

18 MS. COFFEY: Object to form.

19 A No.

20 Q (BY MR. YOUNG) Why do you believe that no
21 precedent is established based upon your past practices
22 of recusing yourself where you have identified a conflict
23 of interest?

24 MS. COFFEY: Object to form.

25 A My understanding of your question was, does it

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1 establish a RUSO precedent. And I don't think that it
2 does.

3 Q (BY MR. YOUNG) Okay. In your opinion, why does
4 it not establish a RUSO precedent?

5 A It's just my opinion.

6 Q One more question about EthicsPoint and then
7 we're going to move on to a different subject. To your
8 recollection, did RUSO start using EthicsPoint because
9 RUSO was concerned about fraud at any particular RUSO
10 institutions?

11 A No.

12 Q So the adoption of the EthicsPoint system was
13 simply because RUSO believed it to further best
14 practices. Is that correct?

15 MS. COFFEY: Object. Misstates his prior
16 testimony. He's already testified about why they adopted
17 it. Are you asking him again why they adopted it?

18 Q (BY MR. YOUNG) Would you like the question to
19 be read back?

20 A Yes, please.

21 MR. YOUNG: Would you please read back the
22 question?

23 THE COURT REPORTER: "Question: So the
24 adoption of the EthicsPoint system was simply because
25 RUSO believed it to further best practices. Is that

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1 correct?"

2 MS. COFFEY: Same objection.

3 A I'm not sure what was in the minds of the
4 regents when they voted to adopt EthicsPoint.

5 Q (BY MR. YOUNG) Did you ever speak to any of the
6 regents about why they voted to adopt the EthicsPoint
7 system?

8 MS. COFFEY: Object to the extent you would be
9 revealing attorney-client privileged information, and I
10 would instruct you not to answer if it would require you
11 to reveal that information.

12 A I don't think I can answer that question.

13 Q (BY MR. YOUNG) You previously testified that
14 you spoke with Cathy Conway about Dr. Tudor's gender
15 transition in 2007. Is that correct?

16 A Yes.

17 Q And during that conversation you discussed
18 Dr. Tudor's restroom use. Is that correct?

19 MS. COFFEY: Objection. Objection. Instruct
20 him not to answer based on attorney-client privilege.

21 Q (BY MR. YOUNG) Do you recall what pronouns
22 Ms. Conway used during your conversation with her about
23 Dr. Tudor's gender transition to refer to Dr. Tudor?

24 MS. COFFEY: Object to form.

25 A I do not.

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1 Q (BY MR. YOUNG) Would it have stood out in your
2 mind if Ms. Conway had used male pronouns to refer to a
3 female member of the Southeastern faculty?

4 MS. COFFEY: Objection. Are you referring to
5 2007 when Dr. Tudor notified that she -- that he was
6 going to begin presenting as a female? You ask him if it
7 stood out in his mind about a female faculty member, and
8 you have not at this point put on the record who the
9 female faculty member is that you're referring to. So
10 object to form.

11 MR. YOUNG: Can you please read back my
12 question before that objection? Thank you.

13 THE COURT REPORTER: "Question: Would it have
14 stood out in your mind if Ms. Conway had used male
15 pronouns to refer to a female member of the Southeastern
16 faculty?"

17 MS. COFFEY: Objection.

18 A I suppose if I knew the faculty member, it
19 would stand out.

20 Q (BY MR. YOUNG) Do you recall what pronouns you
21 used during your conversation with Ms. Conway to refer to
22 Dr. Tudor?

23 MS. COFFEY: Object to form.

24 A I do not.

25 Q (BY MR. YOUNG) At any point in time, have you

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1 used male pronouns to refer to Dr. Tudor?

2 MS. COFFEY: Object to form.

3 A Not to my knowledge.

4 Q (BY MR. YOUNG) At any point in time do you
5 recall employees of Southeastern using male pronouns to
6 refer to Dr. Tudor?

7 MS. COFFEY: Object to form.

8 A After the transition?

9 Q (BY MR. YOUNG) Saying any point in time.

10 MS. COFFEY: Object to form.

11 A I don't recall.

12 Q (BY MR. YOUNG) Are you aware -- aware of
13 whether Southeastern had a written policy speaking to
14 which restrooms transgender persons should use in the
15 Southeastern campus in 2007?

16 MS. COFFEY: Object to form.

17 A I don't know.

18 Q (BY MR. YOUNG) Are you aware if Southeastern
19 currently has a written policy which speaks to which
20 restrooms transgender persons should use on its campus?

21 MS. COFFEY: Object to form.

22 A I don't know.

23 Q (BY MR. YOUNG) Does RUSO have a written policy
24 which speaks to which restrooms transgender persons
25 should use on RUSO university campuses?

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1 A No.

2 MS. COFFEY: Object to form.

3 Q (BY MR. YOUNG) To your knowledge, does RUSO
4 currently permit transgender persons to use restrooms
5 consistent with their gender identity at RUSO
6 institutions?

7 MS. COFFEY: Object to form.

8 A Yes.

9 Q (BY MR. YOUNG) And what did you -- what
10 particular facts are you basing your answer upon?

11 A We don't have a policy -- RUSO does not have a
12 policy that specifies one way or the other, and so -- I
13 mean, so the person can use whatever restroom they're
14 comfortable with.

15 Q Does that complete your answer?

16 A Yes.

17 Q Are you aware of there being any current
18 transgender staff, faculty, or students at RUSO
19 institutions?

20 MS. COFFEY: Object to form.

21 A Not aware of current. Southeastern had a
22 student, transgender male, a couple of years ago. But I
23 don't know if that student still attends.

24 Q (BY MR. YOUNG) How did you become aware that
25 Southeastern had a transgender male student a couple

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1 years ago?

2 A I think that the vice president for student
3 affairs, Sharon Robinson, called me.

4 Q Did you speak to Vice President Robinson more
5 than one time about the transgender students at
6 Southeastern?

7 MS. COFFEY: Object to form. Misstates prior
8 testimony.

9 A I don't recall.

10 Q (BY MR. YOUNG) Without disclosing the contents
11 of your conversation with Vice President Robinson, do
12 you, as we're sitting here right now, recall the
13 substance of your conversation with Ms. Robinson?

14 A I do not.

15 Q Do you recall if you took notes during that
16 conversation with Ms. Robinson?

17 A I don't recall.

18 Q Do you recall if during that conversation you
19 gave Ms. Robinson legal advice in your capacity as
20 general counsel at RUSO?

21 A Yes.

22 Q Is the transgender student that we just
23 mentioned that you said became aware of a couple years
24 ago at Southeastern the only transgender faculty, staff
25 member, or student that you're aware of other than

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1 Dr. Tudor at a RUSO institution?

2 MS. COFFEY: Object to form.

3 A I'm recalling other conversations, but I'm not
4 recalling which universities. They weren't -- it wasn't
5 Southeastern, and I don't recall whether they were
6 students, faculty, or staff.

7 Q (BY MR. YOUNG) But to clarify, these persons
8 who you're recalling were persons somehow affiliated with
9 RUSO institutions. Is that correct?

10 A Either a student, faculty, or staff, yes.

11 Q Mr. Babb, you're currently licensed to practice
12 law in the state of Oklahoma. Is that correct?

13 A Yes, sir.

14 Q And you were licensed to practice law in
15 Oklahoma between 2009 and 2011. Is that correct?

16 A Yes, sir.

17 Q In the state of Oklahoma, do licensed attorneys
18 have to complete continuing legal education coursework to
19 maintain their license to practice law?

20 A Yes, sir.

21 Q And did you take CLE coursework between 2009
22 and 2011?

23 A Yes, sir.

24 Q Did you take any courses on professional
25 responsibility or legal ethics during that period?

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1 A They're courses that count towards -- you have
2 to have one hour of ethics. They're courses that count
3 towards ethics. Took those classes.

4 Q Do you happen to recall if you took any courses
5 that covered Title VII or other equal opportunity laws
6 between 2009 and 2011?

7 A I don't recall.

8 Q Have you taken CLE courses on Title VII or
9 other equal opportunity laws at any point in your legal
10 career?

11 A Yes, sir.

12 Q Would you happen to recall when the most recent
13 course was that you took?

14 A No, sir.

15 Q Have you ever taken the continuing legal
16 education course which spoke to transgender issues,
17 specifically?

18 A Yes, sir.

19 Q And when did you take the most recent course
20 that spoke to transgender issues?

21 A I don't recall.

22 Q Do you happen to recall if it was prior to
23 Dr. Tudor's gender transition in 2007?

24 A The most recent would have been after.

25 Q Do you recall if you took any continuing legal

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1 education courses which touched on transgender issues
2 prior to 2007?

3 A Yes, sir.

4 Q Do you recall the substance of any of those
5 courses?

6 A Some.

7 Q Can you tell me to the best of your
8 recollection what those courses covered?

9 A The -- there was a course put on by NACUA, the
10 National Association of College and University Attorneys,
11 it was in connection with, I believe, employment law.
12 Employment issues in the workplace. And part of one of
13 the presentations had to do with transgender issues in
14 the workplace.

15 Q Do you happen to recall which specific issues
16 were discussed?

17 A We talked about -- they talked about name
18 change issues, they talked about bathroom issues, those
19 are the two issues that stand out.

20 Q Do you happen to recall what the content of
21 that course was with regards to bathroom issues?

22 A My recollection of the content was that
23 bathroom issues would probably be the biggest issue on a
24 campus, having to do with transgender individuals.

25 Q Do you happen to recall why bathroom issues

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1 were framed as the biggest issue?

2 A I mean, I -- it's the same issue that's going
3 on today in North Carolina. I mean, that's -- back in
4 2006 or seven, whenever I took this class, it was the --
5 that was the issue that was most prevalent on other
6 campuses, and they were sharing that information with us.

7 Q Did the course provide you with any information
8 regarding best practices for how to deal with bathroom
9 issues?

10 A My recollection was that you -- that the best
11 practice was to permit the person to use the bathroom of
12 their choice. And that if they had any other questions
13 or issues, you know, to deal with that, that they should
14 refer to their -- that the -- that the transgender person
15 should deal with their -- whoever's assisting them with
16 their transition, psychologist, psychiatrist, mental
17 health professional, whoever that might be, that whatever
18 that person -- however that person directed them, that
19 that's what they should do.

20 Q Do you happen to recall if during that course
21 there was any information presented to you regarding a
22 one-year test or a one-year period which a transgender
23 person lives in their chosen gender for a year prior to
24 undergoing surgery?

25 A I seem to recall that there was something along

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1 that line that -- that that was the accepted practice
2 or -- in the -- in the gender dysphoria treatment, is
3 that before undergoing surgery, that most surgeons would
4 suggest, require -- I don't remember the exact terms --
5 that a person present as the gender that they were --
6 before they had the surgery.

7 Q Do you happen to recall if during the course
8 that we've been discussing the instructor or instructors
9 presented information about any federal cases that dealt
10 with transgender issues in the workplace?

11 MS. COFFEY: Object to form.

12 A I don't recall that.

13 Q (BY MR. YOUNG) Do you keep copies of the
14 certificates that you receive from continuing legal
15 education courses?

16 A We don't get certificates, to my knowledge,
17 so --

18 Q Are you -- are you issued any sort of document
19 or record that memorializes that you've completed a CLE
20 course?

21 MS. COFFEY: Object to form.

22 A Nothing issued to me. I mean, it goes to the
23 bar, the bar determines whether I've completed enough or
24 not. Certifies that I'm -- met my quota for the year.

25 Q (BY MR. YOUNG) How do you communicate to the

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1 Oklahoma bar that you completed CLE courses?

2 MS. COFFEY: Object to form.

3 A If the courses -- is approved -- preapproved by
4 the bar, then whoever the sponsor is, whoever the person
5 is that puts on the -- the continuing ed forwards the
6 information to the bar. We have to sign in in the
7 morning and then sign in at -- at the afternoon session
8 that we attended. And that those sheets are forwarded to
9 the bar.

10 If it's a course that's not -- hasn't been
11 preapproved, then I would have to get information from
12 them, submit the -- the agenda and the -- and the
13 materials to the bar and the bar would review them to
14 determine whether or not they were -- count. And then
15 either award the credit or deny the credit.

16 Q (BY MR. YOUNG) Do you happen to recall if the
17 course we were just speaking about was preapproved?

18 MS. COFFEY: Objection to form.

19 A Yes.

20 Q (BY MR. YOUNG) And was the course that we've
21 just been talking about preapproved?

22 A Yes.

23 Q I'm going to switch topics, Mr. Babb. Almost
24 done. I promise.

25 Earlier today, you testified that you had

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1 communications with several different persons at
2 Southeastern regarding Dr. Tudor's gender transition.
3 Correct?

4 MS. COFFEY: Objection. Misstates his prior
5 testimony.

6 Q (BY MR. YOUNG) Do you need me to rephrase the
7 question?

8 A Yeah. I'm not --

9 Q That's fine.

10 A Not following you. Sorry.

11 Q Okay. Did you previously testify that you
12 spoke to more than one person at Southeastern about
13 Dr. Tudor's gender transition?

14 A I'm -- I'm not recalling what I testified
15 about --

16 Q Okay.

17 A -- honestly.

18 Q Did you speak to more than one person at
19 Southeastern about Dr. Tudor's gender transition?

20 A I'm not sure.

21 Q Do you recall speaking to more than one person
22 at Southeastern about Dr. Tudor's 2009-2010 tenure and
23 promotion application?

24 MS. COFFEY: Object to form.

25 A Yes.

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1 Q (BY MR. YOUNG) Do you recall speaking to more
2 than one person at Southeastern about Dr. Tudor's faculty
3 appellate committee appeals related to her 2009-2010
4 tenure and promotion application?

5 MS. COFFEY: Object to form.

6 A Yes.

7 Q (BY MR. YOUNG) Do you recall speaking to more
8 than one person at Southeastern about Southeastern's
9 decision to not permit Dr. Tudor to apply for tenure and
10 promotion in 2010-2011?

11 MS. COFFEY: Object to form.

12 A Yes.

13 Q (BY MR. YOUNG) Without disclosing to me any
14 information that would violate attorney-client privilege,
15 just to be clear here, the persons who you spoke to at
16 Southeastern, did you believe that you were speaking to
17 them in your capacity as an attorney?

18 MS. COFFEY: Object to form.

19 A Yes.

20 Q (BY MR. YOUNG) And you believed all of those
21 persons who you spoke to to be your clients?

22 MS. COFFEY: Object to form.

23 A Yes.

24 Q (BY MR. YOUNG) As a general matter, do you
25 believe that you have an ethical obligation to abide by

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1 Oklahoma rules of professional responsibility?

2 MS. COFFEY: Object to form.

3 A Yes.

4 Q (BY MR. YOUNG) Are you aware of Oklahoma's
5 rules of professional responsibility obligating you to
6 disclose conflicts of interest to clients?

7 MS. COFFEY: Object to form.

8 A Yes.

9 Q (BY MR. YOUNG) I want to draw your attention to
10 Plaintiff's Exhibit 50.

11 A Okay.

12 Q And, again, I'm going to preface this with, the
13 questions I'm about to ask you, Mr. Babb, I'm not
14 attempting to get you to disclose any information that's
15 protected by attorney-client privilege.

16 A All right.

17 Q Okay. Plaintiff's Exhibit 50 is a set of
18 e-mails, both are dated April 1, 2010. Is that correct?

19 A Appears to be, yes.

20 Q Okay. And the parties listed on this e-mail
21 appear to be Dr. Weiner, Dr. McMillan, Dr. Minks,
22 Dr. Scoufos, and yourself. Is that correct?

23 A Yes.

24 Q Around the time of plaintiff's -- Plaintiff's
25 Exhibit 50, did you have privileged conversations with

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1 Dr. Weiner?

2 MS. COFFEY: Objection. Asked and answered.
3 Previously instructed the witness not to testify
4 regarding any conversations he had with Dr. Weiner that
5 would violate the attorney-client privilege.

6 MR. YOUNG: Understood. I'm merely asking if
7 any such conversations occurred; not the contents of
8 those conversations.

9 MS. COFFEY: Okay. But I -- I -- my
10 recollection is his answer this morning was that he --
11 you -- Allan asked him about conversations.

12 Well, answer. That's fine. I think it has
13 been answered, so to the -- the question is did you have
14 privileged conversations with Dr. Weiner around
15 April 2010 --

16 MR. YOUNG: Yes.

17 MS. COFFEY: -- regarding the contents of all
18 this?

19 A Yes.

20 Q (BY MR. YOUNG) Around April 2010 did you also
21 have privileged conversations with Dr. McMillan?

22 A I don't recall.

23 Q Around April 2010 did you have priveledged
24 conversations with Dr. Minks?

25 A I don't recall.

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1 Q Around April 2010, did you have privileged
2 conversations with Dr. Scoufos?

3 A I don't recall.

4 Q I'm going to have you turn to Plaintiff's
5 Exhibit 121.

6 A Okay.

7 Q Plaintiff's Exhibit 121 appears to be an e-mail
8 chain between yourself and Dr. Clark. Is that correct?

9 A Yes.

10 Q And this e-mail appears -- set of e-mails
11 appears to be January 24, 2011. Is that correct?

12 A Yes.

13 Q Did you previously testify that around
14 January 2011 you had priveleged conversations with
15 Dr. Clark?

16 A I believe that was my testimony.

17 Q The second e-mail that appears on Plaintiff's
18 Exhibit 121, just going to read the first sentence of it
19 to you. "Attached is a draft of protocols/procedures to
20 complete the Tudor grievance dated 11 October 2010.
21 Given the lack of agreement between the president's
22 designee and the hearing committee, the existing policy
23 did not address this scenario."

24 Did I read that correct?

25 A Yes.

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1 Q And you understand that this line from the
2 e-mail I just read is in relation to Dr. Tudor's
3 October 11, 2010, grievance. Correct?

4 A Yes.

5 Q At any point in time -- without disclosing to
6 me anything that you believe is protected by
7 attorney-client privilege -- have you disclosed to
8 someone at Southeastern that you had a conflict of
9 interest because you had previously spoken to someone
10 else at Southeastern about the same issue?

11 MS. COFFEY: Object to form. Instruct him not
12 to answer to the extent he would reveal attorney-client
13 privileged information or work product.

14 A I can't answer.

15 Q (BY MR. YOUNG) You previously testified it --
16 there have been occasions where you've recused yourself
17 from handling certain matters when you were general
18 counsel at RUSO. Correct?

19 A Yes.

20 Q Did any of those recusals involve issues at
21 Southeastern?

22 A Yes.

23 Q Have you recused yourself from issues at
24 Southeastern on more than one occasion?

25 A Yes.

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1 Q Without divulging to me the content of the
2 matter or who you spoke to, do you recall if you recused
3 yourself from any matter at Southeastern in 2011?

4 A I don't recall.

5 Q Do you recall if you recused yourself from any
6 matter at Southeastern because you believed you had a
7 conflict of interest in 2010?

8 MS. COFFEY: Object to form.

9 A I'm just not recalling exactly when it was.

10 Q (BY MR. YOUNG) But without divulging to me the
11 contents or the specific situation, in your head as
12 you're sitting here right now, you do recall specific
13 instances at Southeastern where you recused yourself?

14 A Yes.

15 MS. COFFEY: Objection. Asked and answered.

16 Q (BY MR. YOUNG) Okay. Mr. Babb, in your role
17 as general counsel of RUSO, do you review items like the
18 health plans given to RUSO employees to ensure that they
19 comply with equal employment opportunity laws?

20 A No.

21 Q Is any person affiliated with RUSO tasked with
22 reviewing health insurance policies to ensure they comply
23 with equal employment opportunity laws?

24 A I don't know.

25 Q Are you aware of any staff, faculty member

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1 affiliated with a RUSO institution filing a grievance
2 claiming that a provision of a health insurance policy
3 violated equal employment opportunity laws?

4 A No.

5 Q Are you aware of any policy at RUSO that
6 prohibits discrimination in health insurance policies
7 that are given to faculty or staff members at RUSO
8 institutions?

9 MS. COFFEY: Object to form.

10 A Those topics would fall under the general
11 rubric of discrimination grievances. I'm not sure what
12 your question was, but -- but you -- if somebody -- if
13 somebody could -- if somebody filed a grievance because
14 they objected to -- because they felt aggrieved from
15 discrimination under the health policies?

16 Q (BY MR. YOUNG) Yes.

17 A In my mind, that would fall under the
18 discrimination policy -- antidiscrimination policy and
19 somebody could file a grievance under the --

20 Q And based upon your knowledge of RUSO policies,
21 who would handle such a grievance?

22 A I don't know. It would -- it would be
23 dependent on where it came in from.

24 Q If a faculty member at Southeastern filed a
25 grievance alleging that part of the health insurance

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1 policy was discriminatory, do you know in that situation
2 who would handle such a grievance?

3 MS. COFFEY: Object to form. Asks for a
4 hypothetical.

5 A I don't know.

6 Q (BY MR. YOUNG) Do you know where the health
7 insurance policies that are given to faculty members at
8 Southeastern -- where those policies originated or who
9 chooses those policies?

10 MS. COFFEY: Object to form.

11 A Yes.

12 Q (BY MR. YOUNG) Can you please explain your
13 answer?

14 A What timeframe?

15 Q 2007.

16 A In 2007 the RUSO schools were insured by the
17 OSEEGIB Board and I'm -- I don't even know what the --
18 all the letters are, much less what they stand for.

19 Q Can you spell out that acronym for our court
20 reporter?

21 A I'm not sure I can.

22 Q Okay.

23 A Leave it blank and I'll put it in there. But
24 it's the -- it was the State employee insurance plan,
25 whatever.

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1 Q To your --

2 A And --

3 Q Sorry.

4 A And that group, that board, would decide what
5 insurance was going to cover State employees. And then
6 they would then send us the premium and we'd pay it.

7 Q To your understanding, in 2007, did RUSO have
8 any input on deciding which policies that OSEEGIB Board
9 chose?

10 MS. COFFEY: Object to form.

11 A Not that I recall.

12 Q (BY MR. YOUNG) To your understanding in 2007,
13 was there any mechanism in place that allowed a faculty
14 member at Southeastern to file a grievance with the
15 OSEEGIB Board?

16 MS. COFFEY: Object to form.

17 A I don't know.

18 MS. COFFEY: We're almost out of time.

19 MR. TOWNSEND: Understood.

20 Q (BY MR. YOUNG) Do you know what entity
21 currently chooses the health insurance plans which are
22 given to faculty members at Southeastern?

23 A Yes.

24 Q What entity is that?

25 A It's called the OKHEEI Group, O-K-H-E-E-I,

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1 Oklahoma Educator -- Education -- Oklahoma Higher Ed -- I
2 don't know. I'm not sure what they stand for. It's an
3 interlocal group -- interlocal group formed under
4 Oklahoma statutes of the six RUSO schools, the
5 administration office, plus six two-year colleges that
6 form the OKHEEI board that was formed to purchase health
7 insurance because we weren't happy with OSEEGIB, so we
8 did an RPF and chose Blue Cross Blue Shield.

9 Q One last question because I realize we're just
10 about out of time.

11 Without divulging anything that you believe is
12 protected by attorney-client privilege, Mr. Babb, have
13 you ever in your capacity as RUSO general counsel been
14 asked to review a health plan at a RUSO institution to
15 determine whether it complies with equal employment
16 opportunity laws?

17 A I have not.

18 MR. YOUNG: Okay. Thank you so much, Mr. Babb,
19 for your time today. I appreciate it. We will see you
20 again tomorrow.

21 THE WITNESS: Yep.

22 MR. YOUNG: For the record, Plaintiff
23 Intervenor would like to keep the deposition open in case
24 there are documents produced in discovery that have
25 already been requested that we would like to question the

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1 witness about.

2 MR. TOWNSEND: And just for the record, I would
3 like to thank Mr. Babb for his time today.

4 MS. COFFEY: Just note that we do not agree
5 that the depo should remain open, and that we will read
6 and sign.

7 (Deposition concluded at 5:01 P.M.)

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J U R A T

STATE OF _____)
COUNTY OF _____) SS:

I, CHARLES BABB, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

CHARLES BABB

Subscribed and sworn to before me, a Notary Public in and for the State of Oklahoma by said witness, _____, on this, the _____ day of _____, 20__

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____

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REASON FOR CORRECTION

[illegible]

C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Leslie A. Foster, a certified shorthand reporter within and for the State of Oklahoma, certify that CHARLES BABB was sworn to testify the truth; that the deposition was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the testimony of the witness; that the deposition was taken on May 18, 2016, at 8:41 A.M., at the offices of Dodson Court Reporting & Legal Video, Inc., 425 Northwest Seventh Street, Oklahoma City, Oklahoma; that I am not an attorney for or a relative of either party, or otherwise interested in this action.

Witness my hand and seal of office on May 26, 2016.

LESLIE A. FOSTER, CSR
For the State of Oklahoma
CSR #01917

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UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF OKLAHOMA
UNITED STATES OF AMERICA,)
et al.)
)
Plaintiff,)
)
VS.) Civil Action No.
) 5:15-CV-00324-C
)
SOUTHEASTERN OKLAHOMA STATE)
UNIVERSITY, et al.)
)
Defendant.)

ORAL DEPOSITION OF
CATHY CONWAY
MARCH 10, 2016

ORAL DEPOSITION OF CATHY CONWAY, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and -numbered cause on the 10th day of March, 2016, from 8:58 a.m. to 4:52 p.m., before Chrissa K. Mansfield-Hollingsworth, CSR in and for the State of Texas, reported by machine shorthand, at the offices of U.S. Attorney's Office, located at 600 East Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure.

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8 ALSO PRESENT:

9 Ms. Rachel Tudor

10 Mr. Charles K. Babb

1 A. 1998 through 2014.

2 Q. And what -- what years -- do you still work at
3 Southeastern?

4 A. No.

5 Q. What years --

6 A. Well --

7 Q. Oh, sorry.

8 A. Part time.

9 Q. All right.

10 A. Temp.

11 Q. Let me clean up the transcript here. Let's try
12 that again. Do you still work at Southeastern?

13 A. I have this academic year.

14 Q. And you said part time you work there?

15 A. Yes.

16 Q. When did you stop working at Southeastern full
17 time?

18 A. September 1st, 2013.

19 Q. And when did you start working at Southeastern?

20 A. January 15, 1999.

21 Q. And am I correct to assume that during the time
22 that you and your husband worked for Southeastern, that
23 you depended on the pay that you received from
24 Southeastern for your livelihood?

25 A. Partially.

1 A. No.

2 Q. In your time at Southeastern, have you ever
3 been disciplined for anything?

4 A. No.

5 Q. So when you were hired at Southeastern, it was
6 as human resources director, correct?

7 A. Yes.

8 Q. Was that the position you held through the date
9 that you -- through the date -- is that the position you
10 held from the date of hire through the date that you
11 stopped working full time?

12 A. Yes.

13 Q. Did you have another title after you stopped
14 working full time?

15 A. Yes.

16 Q. What was that?

17 A. Special assistant to the vice-president of
18 business affairs.

19 Q. And how many hours a week did you work when you
20 went off full time to that special assistant job?

21 A. Ten to fifteen hours a week.

22 Q. And have you been working 10 to 15 hours a week
23 fairly consistently since you went part time?

24 A. No.

25 Q. When did you stop working 10 to 15 hours a

1 that you received in fiscal year 2012/2013; is that
2 right?

3 A. Yes.

4 Q. Do you remember attending any training other
5 than what's listed here in fiscal year 2012/2013?

6 A. No.

7 Q. All right. I'm going to shift gears a little
8 bit. At some point you learned that Dr. Tudor was going
9 to be changing her gender presentation at work, correct?

10 MS. COFFEY: Object to form.

11 A. Yes.

12 Q. (By Mr. Townsend) How did you learn that
13 first?

14 A. Jan Brown told me that Dr. Tudor had come in to
15 human resources to change her name.

16 Q. When did Ms. Brown tell you that?

17 A. It was approximately a day or two before
18 June 1st, I believe.

19 Q. Where were you when she told you that?

20 A. In my office.

21 Q. Was there anybody else there?

22 A. Not that I recall.

23 Q. What, if anything, did you do with that
24 information that Ms. Brown gave you?

25 A. I reviewed it and I called Charlie Babb.

1 Q. Did Ms. Brown give you something in writing?

2 A. Yes.

3 Q. What did she give you?

4 A. She gave me a name change court document and
5 she gave me a letter from a counselor from Dallas,
6 Texas.

7 Q. What court was the court document from, do you
8 remember?

9 A. It was in Oklahoma. I don't remember which
10 county.

11 (Exhibit Number 25 marked)

12 Q. (By Mr. Townsend) I'm showing you what I've
13 marked Plaintiff's Exhibit 25. Is Plaintiff's
14 Exhibit 25 the letter from the counselor that Ms. Brown
15 gave you?

16 A. Yes.

17 Q. Did you provide this letter to Mr. Babb?

18 A. I did.

19 Q. Did you provide it to anybody else?

20 A. No.

21 Q. The last sentence of the first paragraph of
22 this letter states, Therefore, she should be treated
23 with respect and afforded all the rights and privileges
24 of a female. Did I read that correctly?

25 A. Yes.

1 Dr. Tudor's gender transition prior to you contacting
2 Dr. Tudor about her gender transition that you remember
3 that you haven't told me already?

4 MS. COFFEY: Object to form.

5 A. Yes.

6 Q. (By Mr. Townsend) What else?

7 A. Jan contacted the health insurance company and
8 they made the change for her name, the name change and
9 gender change to female.

10 Q. All right. After you spoke with your staff
11 about Dr. Tudor's gender transition, who did you speak
12 to next about her gender transition?

13 A. Charlie Babb.

14 Q. And when did that discussion occur with Charlie
15 Babb?

16 A. Probably the same day if Charlie was in his
17 office and available.

18 Q. Do you remember what you discussed with
19 Mr. Babb that day?

20 A. Yes.

21 Q. What was it?

22 A. That an employee had come in with a name change
23 and was going through -- to be presenting herself as
24 female.

25 Q. What did he say about that?

1 A. Well, he told me to send the documents to him.
2 I told him what documents I had received. And it was a
3 new -- a new experience and I needed some guidance, if
4 he had any for me.

5 Q. What else was discussed during that
6 conversation with Mr. Babb?

7 A. Well, I don't recall if it was that
8 conversation or if Charlie reviewed the materials and
9 then we talked.

10 Q. What else did you talk about at that point?

11 A. We talked about review of policies, any
12 applicable policies or possibly applicable policies. He
13 explained to me about the period of time an individual
14 goes through prior to the sex reassignment surgery
15 that's typically a year to give the person an
16 opportunity to make their decision before surgery. We
17 talked about -- or he advised me about something that
18 was being discussed, he thought, at the time. He wasn't
19 sure if it had been approved yet in the Tenth Circuit
20 about the use of bathroom facilities during this time;
21 that in another circuit or circuits, a person during
22 the -- during the year of transition pre-op had to use a
23 bathroom of the same biological sex.

24 Q. Anything else you remember about that
25 discussion with Mr. Babb?

1 A. He advised me that if Dr. Tudor asked anyone,
2 me or her supervisors, for advice about which
3 presentation, male or female, that she should be advised
4 to seek an opinion from and advice from her counselor or
5 her counsel, the licensed professional counselor,
6 perhaps, you know, that was an example, not me or her
7 department chair or any of the supervisors or others.
8 We may have discussed who I would advise and what I
9 would advise them as far as letting them know she was
10 changing her name, her presentation may change, that I
11 was available in case they needed my assistance or
12 needed to discuss policy with me or anything that
13 might -- anything they might want to ask me about as
14 human resources director regarding the policy,
15 procedure.

16 Q. Who's the they in that sentence that you're
17 referring to?

18 A. They would be -- at the time, it was Dr. Micho,
19 department chair; Dr. Mangrum, dean; and Dr. McMillan,
20 vice-president of academic affairs.

21 Q. Is there anything else you remember about that
22 conversation with Mr. Babb?

23 A. I think I've covered -- covered it.

24 Q. So you had said one of the things you talked to
25 Mr. Babb about was a review of policies. Which policies

1 did you review with him?

2 MS. COFFEY: Object to form.

3 A. There's a sexual harassment policy and
4 reporting information, and the second was the
5 nondiscrimination, equal employment, affirmative action
6 policy.

7 Q. (By Mr. Townsend) Who brought those policies
8 up during the conversation with you and Mr. Babb, you or
9 him?

10 A. I don't recall.

11 Q. Do you remember why you were -- what the
12 purpose was for discussing the policies?

13 A. Well, the policies may have been applicable and
14 they apply to all employees with employment. They also
15 apply to students.

16 Q. Was there some reason related to Dr. Tudor's
17 gender transition that you reviewed those policies with
18 Mr. Babb?

19 MS. COFFEY: Object to form.

20 A. Yes.

21 Q. (By Mr. Townsend) What was that?

22 A. I always discussed policies with Mr. Babb
23 whenever there was any issue or anything new or
24 different or any questions or concerns. It was a
25 standard conversation with Charlie Babb.

1 Q. Would you -- well, strike that. Was
2 Dr. Tudor's gender transition under the category of
3 something new and different?

4 A. Yes, at Southeastern it was.

5 Q. Was she the first transgender employee to work
6 at Southeastern, to your knowledge?

7 A. Yes.

8 Q. You said that Mr. Babb explained to you about
9 the process of waiting a year before having sex
10 reassignment surgery, right?

11 MS. COFFEY: Object to form.

12 A. Yes.

13 Q. (By Mr. Townsend) Did you have an
14 understanding of where he had gotten that information?

15 MS. COFFEY: Object to form.

16 A. No, I don't believe so. I don't recall that.

17 Q. (By Mr. Townsend) You said that you spoke --
18 one of the things you spoke to Mr. Babb about was
19 restroom usage, Dr. Tudor's restroom usage in
20 particular?

21 MS. COFFEY: Object to form.

22 Q. (By Mr. Townsend) Is that correct?

23 MS. COFFEY: Object to form.

24 A. About restrooms.

25 Q. (By Mr. Townsend) Did you and he discuss what

1 restroom Dr. Tudor should use?

2 A. No.

3 Q. Did you discuss -- well, was there any
4 discussion about Dr. Tudor possibly using a single-stall
5 restroom?

6 MS. COFFEY: Object to form.

7 A. Yes.

8 Q. (By Mr. Townsend) What was that discussion?

9 A. That I let Dr. Tudor know that there was a
10 unisex handicap bathroom available to her that was not
11 mandatory. It was her choice. And there was another
12 bathroom in the student union that was a family
13 bathroom.

14 Q. Anything else you talked to Mr. Babb about with
15 respect to restrooms during this conversation we've been
16 talking about?

17 MS. COFFEY: Object to form.

18 A. No.

19 Q. (By Mr. Townsend) Did you talk to anyone other
20 than Mr. Babb about -- let me strike that. Did you talk
21 to anyone other than Mr. Babb and Dr. Tudor about
22 Dr. Tudor's restroom use?

23 MS. COFFEY: Object to form.

24 A. Only about -- only to the extent that there was
25 the bathroom available to her, that it was not

1 Q. Did Dr. McMillan, Dr. Mangrum or Dr. Micho have
2 any questions for you during this meeting?

3 A. I don't recall any questions.

4 Q. Do you recall any of their reactions to the
5 news that you were providing to them?

6 A. Nothing specific. A nod or an okay.

7 Q. Do you remember anything you discussed with
8 Mr. Babb about Dr. Tudor's gender transition after the
9 June 1st call with Dr. Tudor?

10 MS. COFFEY: Object to form.

11 A. I would have advised Charlie that I had
12 contacted Dr. Tudor and her response.

13 Q. (By Mr. Townsend) Do you remember what, if
14 anything, Mr. Babb said regarding that news?

15 MS. COFFEY: Object to form.

16 A. No.

17 Q. (By Mr. Townsend) Did you always talk to
18 Mr. Babb with respect to these conversations about
19 Dr. Tudor's gender transition over the phone?

20 MS. COFFEY: Object to form.

21 A. I believe so.

22 Q. (By Mr. Townsend) Did anyone that you spoke to
23 about Dr. Tudor's gender transition have any views about
24 whether her gender transition was appropriate?

25 MS. COFFEY: Object to form.

1 Q. (By Mr. Townsend) Did you ever receive any
2 information about her using the women's restroom after
3 that?

4 A. No.

5 Q. Do you know when Dr. -- or let me strike that.
6 So this conversation on June 1st, 2007 you had with
7 Dr. Tudor was during the summer before school began in
8 the fall semester, correct?

9 A. Correct.

10 MS. COFFEY: Object to form.

11 A. Yes.

12 Q. (By Mr. Townsend) Was Dr. Tudor working that
13 summer?

14 MS. COFFEY: Object to form.

15 A. I don't believe she was.

16 Q. (By Mr. Townsend) So when she returned to work
17 for the fall semester of 2007, did you see her at all
18 presenting as a woman at that point?

19 A. No.

20 Q. When she returned to work, did anyone express
21 anything about the way she was dressed?

22 MS. COFFEY: Object to form.

23 A. No.

24 Q. (By Mr. Townsend) I think you said that in one
25 of the conversations you had with Mr. Babb about

1 Dr. Tudor's gender transition, the issue of surgery came
2 up, correct?

3 MS. COFFEY: Object to form.

4 A. Yes.

5 Q. (By Mr. Townsend) Did you talk to anybody
6 other than Mr. Babb about Dr. Tudor having sex
7 reassignment surgery?

8 A. Possibly Ross Walkup, possibly my staff who saw
9 this letter.

10 Q. You're pointing to --

11 A. The letter from --

12 Q. -- Plaintiff's Exhibit 25, correct?

13 A. Yes, because it's written on the document that
14 we maintained in human resources.

15 Q. Anyone else that you would have spoken to about
16 Dr. Tudor possibly having sex reassignment surgery?

17 A. I don't believe so.

18 MS. COFFEY: Allan, is this a good time for
19 a break?

20 MR. TOWNSEND: Sure.

21 (Recess from 10:12 a.m. to 10:26 a.m.)

22 MR. TOWNSEND: Back on the record.

23 (Exhibit Number 26 marked)

24 Q. (By Mr. Townsend) I'm going to hand you what
25 I'll mark as Plaintiff's Exhibit 26.

1 Should I give this to you to give to Bridgette, question
2 mark. Had you talked to Dr. McMillan about Dr. Tudor's
3 name change before you sent this e-mail?

4 A. I may have. I don't recall.

5 Q. Is there anything that would refresh your
6 memory?

7 A. Only if Dr. McMillan recalls if I called him to
8 tell him Dr. Tudor was changing her name.

9 Q. If you had -- strike that. Then the last
10 sentence of your June 4th, 2007 e-mail to Dr. McMillan
11 says, If you are planning to discuss Dr. Tudor with the
12 department chair and dean, would you like me to be there
13 and advise them about the two university policies I
14 discussed with Dr. Tudor about last week, question mark.
15 Do you remember talking to Dr. McMillan about those
16 university policies that you referenced in that sentence
17 prior to sending him this e-mail?

18 A. No.

19 Q. The fourth page of Exhibit 26 appears to be
20 some handwritten notes. Do you recognize those notes?

21 A. Yes.

22 MS. COFFEY: For the record, will you
23 indicate the Bates number?

24 MR. TOWNSEND: Sure. The Bates number of
25 the page is DOJ 12.

1 MS. COFFEY: Thanks.

2 Q. (By Mr. Townsend) Are those your handwritten
3 notes?

4 A. Yes.

5 Q. It appears to say Call Charlie in the middle of
6 the notes. Is that -- am I reading that correctly?

7 A. Yes.

8 Q. Do these notes reflect a call that you had with
9 Mr. Babb?

10 A. Yes.

11 Q. All right. There is a -- there is a portion of
12 the notes that is circled. Do you see that right to the
13 left of where it says Call Charlie?

14 A. Yes.

15 Q. Can you read what's in that circle?

16 A. Yes.

17 Q. Please do so.

18 A. Employer came up with a policy that people to
19 use bathroom according to current biological status.

20 Q. Then directly below that circle in handwriting
21 that is vertical as opposed to horizontal across the
22 page there's some handwriting that appears to start by
23 saying, Tenth Circuit. Is that correct?

24 A. Yes.

25 Q. Could you read what it says.

1 A. Tenth Circuit -- yes.

2 Q. Please do so.

3 A. Tenth Circuit, case pending, hasn't ruled yet,
4 but some, I can't make out that exactly, circuits
5 protected by Title VII for transition year. And then
6 there's two lines drawn to the circled part.

7 Q. And then there's a word with two lines
8 underneath it that looks like available. Is that what
9 it says?

10 A. Yes.

11 Q. So in the center of this note, does it say
12 Call -- it says Call Charlie, right?

13 A. Yes.

14 Q. And then what does it say right below Charlie?

15 A. RE, colon.

16 Q. And then what does it say right below RE colon?

17 A. Handicapped, unisex bathroom.

18 Q. And then bathroom is underlined twice, right?

19 A. Yes, as is available.

20 Q. And then what does this other text on the note
21 say that you haven't read yet?

22 A. This is all new to us too, but we think that
23 the best option, and then there's a line, is for this --
24 is for -- this is some of my shorthand, for you to use
25 this restroom, your choice.

1 Q. Was that something that Mr. Babb thought you
2 should tell Dr. Tudor?

3 A. Yes. That meaning the last statement I read.

4 Q. Did anyone else participate in this call where
5 you took these notes?

6 A. No.

7 Q. All right. The next page of the Exhibit 26,
8 Bates Number DOJ 13. These are additional handwritten
9 notes. There appears to be two notes on this page; is
10 that right?

11 A. Yes.

12 Q. One of them is on -- looks like it's on a piece
13 of paper that says Express Personnel Services; is that
14 right?

15 A. Yes.

16 Q. And then the other note is below that one. It
17 looks like it was on some lined paper; is that right?

18 A. Yes.

19 Q. All right. The note on the paper that says
20 Express Personnel Services at the top, am I correct that
21 it says, 6-1-07, Dr. Tudor, (580) 931-9743?

22 A. Yes.

23 Q. And that was Dr. Tudor's phone number?

24 MS. COFFEY: Object to form.

25 A. Yes.

1 anyone express a concern about how students would react
2 to Dr. Tudor's transition?

3 A. No.

4 Q. Did you have any concerns about how students
5 would react to Dr. Tudor's gender transition?

6 A. No.

7 Q. Why not?

8 A. I don't know how students would react to her
9 gender transition. I couldn't possibly know how they
10 would react.

11 Q. Did you think that there was a possibility that
12 some of them would react negatively?

13 MS. COFFEY: Object to form.

14 A. Yes.

15 Q. (By Mr. Townsend) Did you discuss that
16 possibility of a negative reaction from students with
17 anyone?

18 A. Yes.

19 Q. Who?

20 A. Charlie Babb.

21 Q. Anyone else?

22 A. No.

23 Q. When did you have that discussion with
24 Mr. Babb?

25 A. I don't recall exactly.

1 Q. Was it around the time of Dr. Tudor's gender
2 transition in the summer of 2007?

3 A. Yes.

4 MS. COFFEY: Object to form.

5 A. Yes.

6 Q. (By Mr. Townsend) Was it during one of the
7 conversations with Mr. Babb that you've already
8 testified about?

9 MS. COFFEY: Object to form.

10 A. I believe so.

11 Q. (By Mr. Townsend) Did anyone express concern
12 about the possibility of employees of the university
13 having a negative reaction to Dr. Tudor's gender
14 transition?

15 MS. COFFEY: Object to form.

16 A. Yes.

17 Q. (By Mr. Townsend) Who was that?

18 A. Me.

19 Q. What did -- what was your concern about
20 employees possibly having a negative reaction to
21 Dr. Tudor's gender transition?

22 A. That they may not understand. They may be
23 confused. It was different for those who had known her
24 before.

25 Q. Who did you express that concern to?

1 A. Charlie Babb.

2 Q. Anyone else?

3 A. I don't think so.

4 Q. Was -- strike that. Did you express that
5 concern to Mr. Babb during the same summer 2007 time
6 period that we've been talking about?

7 A. Yes.

8 Q. What was his reaction to that concern?

9 A. I don't recall exactly. We discussed -- as we
10 did any issue, we would discuss. There were the
11 policies, and the policies for Rachel applied to
12 everyone. I'm sure we discussed that.

13 Q. Did you have any discussions with anyone about
14 the type of clothes Dr. Tudor would wear after her
15 gender transition?

16 A. No.

17 Q. Did you have any conversations with anyone
18 about any makeup Dr. Tudor would wear after her gender
19 transition?

20 A. No.

21 Q. Did you hear about anyone talking about
22 clothing that Dr. Tudor wore after her gender
23 transition?

24 A. No.

25 Q. Did you hear anyone talking about the makeup

1 A. No.

2 Q. Did you talk to anyone about what sex
3 reassignment surgery was?

4 A. Yes.

5 Q. And who was that?

6 A. Charlie Babb.

7 Q. And did he tell you what the term sex
8 reassignment surgery meant?

9 A. Yes.

10 Q. Okay. And what did he tell you that it meant?

11 A. Well, changing from male to female or female to
12 male --

13 Q. And --

14 A. -- biologically.

15 Q. So when you say changing, what are you
16 referring to changing?

17 A. For the surgery?

18 Q. Yes. Because you mentioned surgery involves
19 changing from one thing to another, if I remember
20 correctly. And I just wanted to know: What is it that
21 needs to be changed?

22 MS. COFFEY: Object to form.

23 A. You asked me about sex reassignment surgery.

24 Q. (By Ms. Weiss) Correct.

25 A. The physical aspects of the human body.

1 Q. Any particular physical aspects that you're
2 referring to?

3 A. Genitalia.

4 Q. Anything else?

5 A. Male to female, perhaps breasts.

6 Q. Okay. Anything else?

7 A. The surgery itself. I don't know that much
8 about the surgery. If there's more involved, I don't
9 know.

10 Q. When you say the surgery, are you referring to
11 one particular kind of surgery or are you referring to a
12 number of different kind of surgeries? I guess I'm not
13 clear what you mean by surgery.

14 MS. COFFEY: Objection, form.

15 Q. (By Ms. Weiss) What do you mean by the
16 surgery?

17 A. Sex reassignment surgery, not the transition --
18 not anything else involved in the transition.

19 Q. And you mentioned, and correct me if I'm wrong,
20 two different types of surgery. You mentioned surgery
21 on genitalia and surgery on breasts. Is that what I
22 just heard?

23 MS. COFFEY: Object to form.

24 A. I don't know if it's two different surgeries.

25 Q. (By Ms. Weiss) Okay. Well, the reason I

1 mention it is because I wanted to know are there other
2 kinds of surgery that you're aware of that are
3 associated with sex reassignment surgery?

4 A. No.

5 Q. What would you say the purpose is of someone
6 undergoing sex reassignment surgery?

7 MS. COFFEY: Object to form.

8 Q. (By Ms. Weiss) Okay. Let me ask it this way:
9 Do you have an understanding of the purpose in
10 undergoing sex reassignment surgery?

11 A. Yes.

12 Q. And what would that be?

13 A. To physically, as far as what we've discussed,
14 being reassigned from one sex to another.

15 Q. Any other purposes that you can think of or
16 that you're aware of?

17 MS. COFFEY: Object to form.

18 Q. (By Ms. Weiss) I'll ask it one at a time. Are
19 there any other purposes that you're aware of?

20 A. No.

21 Q. Is one of the purposes of sex reassignment
22 surgery to ensure that transgender people can use a
23 restroom that matches their gender identity?

24 MS. COFFEY: Object to form.

25 Q. (By Ms. Weiss) You can answer the question, if

1 you understand it.

2 A. Could you repeat it, please?

3 Q. Yes. Is one of the purposes of sex
4 reassignment surgery to ensure that transgender people
5 can use the restroom that matches their gender identity?

6 MS. COFFEY: Same objection.

7 A. No, unless law requires it.

8 Q. (By Ms. Weiss) Unless law requires what?

9 A. If there was a law that required a surgery.

10 Q. Do you mean if there's a law that requires a
11 surgery in order to use a bathroom?

12 A. No. Anyone can use a bathroom.

13 Q. Let me rephrase that. Laws that would dictate
14 which sex uses which restrooms?

15 A. Yes.

16 Q. And are you aware of any such laws that govern
17 Southeastern University?

18 A. No, not --

19 Q. Okay. What steps did you take to learn more
20 about transgender people after Dr. Tudor came out as a
21 transgender woman?

22 MS. COFFEY: Object to form.

23 A. I just sought advice from my general counsel.

24 Q. (By Ms. Weiss) Okay. Did you read any books
25 on transgender issues?

1 STATE OF TEXAS)

2 COUNTY OF GRAYSON)

3

4

5 I, Chrissa K. Mansfield-Hollingsworth, Certified
6 Shorthand Reporter, duly qualified in and for the State
7 of Texas, do hereby certify that, pursuant to
8 stipulation of hereinbefore set forth, there came before
9 me CATHY CONWAY who was by me duly sworn to testify the
10 truth, the whole truth and nothing but the truth of her
11 knowledge concerning the matters in controversy in this
12 case; and that she was thereupon carefully examined upon
13 her oath and her examination reduced to typewriting by
14 me or under my supervision; that the deposition is a
15 true record of the testimony given by the witness;
16 that review of the deposition was requested by the
17 witness and/or a party, same to be sworn to and
18 subscribed by said witness before any Notary Public
19 pursuant to stipulation of the parties.

20 I further certify that I am neither attorney nor
21 counsel for nor related to or employed by any of the
22 parties to the action in which this deposition is taken,
23 and further that I am not a relative or employee of any
24 attorney or counsel employed by the parties hereto or
25 financially interested in the action.

1 In witness whereof, I have hereunto set my hand and
2 affixed my seal this 17th day of March, 2016.



3
4 *Chrissa K. Mansfield*

Chrissa K. Mansfield-Hollingsworth

5 CSR No. 8269, Expires 12/31/17

Ken Owen & Associates, LP

6 Firm Registration Number: 115

801 West Avenue

7 Austin, Texas 78701

512.472.0880

8 ken@kenowen.com



6/1/2007

3:45 pm

Called Dr. Rachel Tudor

580-931-9743

Advised Dr. Tudor of SOSU Policies:

1.8 Nondiscrimination, Equal Opportunity, Affirmative Action Policy;

7.4 Sexual Harassment Policy

Advised Dr. Tudor that he should:

- discuss with chair and dean your gender presentation at SOSU
- you should seek any advice or opinion about which gender presentation to use from your counselor or psychologist
- handicap restroom 2nd floor Morrison Hall is available but it is not mandatory
- this is all new to us, too, and the best option for you may be to use this restroom
- in addition there is a family restroom in the new Student Union.

Dr. Tudor thanked me for my professionalism.

DOJ000009

Cathy Conway

From: Doug McMillan
Sent: Tuesday, June 05, 2007 12:36 PM
To: Cathy Conway
Cc: Bridgette Hamill
Subject: RE: Data Sheet w/Name Change for Dr. Tudor

Cathy,

Please give the form directly to Bridgette. I am not a reliable pass through. I would like for you to meet with C.W. and Dr. Mischo to discuss this further. I will ask Bridgette to schedule a meeting for us as soon as possible.

Thanks,

doug

From: Cathy Conway
Sent: Mon 6/4/2007 2:36 PM
To: Doug McMillan
Subject: Data Sheet w/Name Change for Dr. Tudor

Hi Dr. McMillan,

I have a data sheet form with the name change for Dr. Tudor. Should I give this to you to give to Bridgette?

If you are planning to discuss Dr. Tudor with the department chair and dean, would you like me to be there and advise them about the two university policies I discussed with Dr. Tudor about last week?

Thanks,

Cathy

Cathy Conway, Human Resources Director

Southeastern Oklahoma State University

Pho: (580)745-2162

FAX: (580)745-7484

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6/5/2007

DOJ000010

Cathy Conway

From: Cathy Conway
Sent: Monday, June 04, 2007 2:37 PM
To: Doug McMillan
Subject: Data Sheet w/Name Change for Dr. Tudor

Hi Dr. McMillan,

I have a data sheet form with the name change for Dr. Tudor. Should I give this to you to give to Bridgette?

If you are planning to discuss Dr. Tudor with the department chair and dean, would you like me to be there and advise them about the two university policies I discussed with Dr. Tudor about last week?

Thanks,

Cathy

Cathy Conway, Human Resources Director

Southeastern Oklahoma State University

Pho: (580)745-2162

FAX: (580)745-7484

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6/4/2007

DOJ000011

EXPRESS PERSONNEL SERVICES

Call Charlie

see handwriting artist last afternoon

yes all news no. 1 for putting in (last after)

www.expresspersonnel.com

www.expresspersonnel.com

1914 N. Grand
Sherman, TX 75090
Fax (903) 893-9131

DOJ000012

6/1/16
3:40
Dr. Judon 580-931-9743
EXPRESS PERSONNEL SERVICES

2 police
inf. 1.8. North American & 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6/19/16 1:30
Met w/ Doug, Dr. Mangum
& Dr. Nisebo
u

SOSU Policies

1.8 Nondiscrimination, Equal Opportunity & Affirmative Action Policy;

7.4 Sexual Harassment

Discuss w/ Chair & Dean

Name change from T. R. Tudor, III to Rachel Jona Tudor

Advise what his gender presentation will be at SOSU

Advice/Opinion about which gender presentation to choose

Dr. Tudor should seek from his counselor or psychologist

SOSU should not advise

Restroom

Handicap restroom 2nd floor Morrison Hall is available but not mandatory

This is all new to us, too, but we think that the best option is for Dr. Tudor to use this restroom.

In addition, there is also a family restroom in new Student Union

u
Misebo
u

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)
et al.)
 Plaintiff)
)
vs.) CASE NO. 5:15-CV-00324-C
)
SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY et al.)
 Defendant)

ORAL DEPOSITION
DR. CHARLES WEINER
March 11, 2016

ORAL DEPOSITION OF DR. CHARLES WEINER, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 11th day of March, 2016, from 8:38 a.m. to 2:27 p.m., before Cheryl Duncan, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of U.S. Attorney's Office, 600 E. Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES

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ALSO PRESENT:

Dr. Rachel Tudor
Charles Babb

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1	48	03-03-10 and 03-04-10 e-mails between R. Tudor and C. Weiner, Bates marked EEOC 000174	90
2			
3	49	03-21-10 and 03-22-10 e-mails between J. Knapp, L. Prather and J. Reid, Bates marked EEOC 001481 - 001482	90
4			
5	50	04-01-10 e-mails between C. Weiner, D. McMillan, L. Minks and L. Scoufos, Bates marked EEOC 00919 - 00920	92
6			
7	51	Policy 3.7.3, Bates marked EEOC 00299 - 00300	99
8			
9	52	03-31-10 and 04-06-10 e-mails between R. Tudor and C. Weiner, Bates marked EEOC 00177	99
10			
11	53	04-16-10 and 04-20-10 e-mails between C. Weiner and R. Tudor, Bates marked EEOC 00180	100
12			
13	54	05-07-10 letter to L. Minks, Bates marked EEOC 00185	106
14			
15	55	08-30-10 Complaint from Dr. R. Tudor	110
16			
17	56	08-30-10 document to L. Minks from Dr. R. Tudor, Bates marked OAG 001158 - 001175	123
18			
19	57	09-16-10 e-mails between C. Weiner, C. Stubblefield and R. Tudor, Bates marked EEOC 00031 - 00033	124
20			
21	58	12-02-11 and 12-06-11 e-mails between G. Johnson, C. Weiner, W. Fridley, T. Stiefer, N. Hill, V. Guarnera and R. Mayers, Bates marked EEOC 00077 - 00078	129
22			
23			
24			
25			

1 professor?

2 A. Yes.

3 Q. What are those?

4 A. Director of assessment, director of
5 institutional research, assistant vice-president for
6 academic affairs, coordinator of accreditation.

7 Q. Any others?

8 A. Oh, I can't remember right offhand.

9 Q. What, what years did you serve as assistant
10 vice-president for academic affairs?

11 A. Can I ask you a question?

12 Q. If you don't understand my question, you
13 may.

14 A. I wasn't -- when I moved over to the
15 administration building, I wasn't always an assistant
16 vice-president. Do you want to know the exact years
17 that I served as an assistant vice-president?

18 Q. Yes, but then I'll ask you another question
19 based on what you just told me.

20 A. Jeess, 2000 -- 2008 maybe.

21 Q. You started in 2008 as assistant
22 vice-president of academic affairs?

23 A. Yes.

24 Q. And then what year did you stop being
25 assistant vice-president over academic affairs?

1 A. 2010.

2 Q. And you -- I think you were saying earlier
3 that you worked in the office of academic affairs in
4 a different capacity other than assistant
5 vice-president. Is that right?

6 A. Yes, that is right.

7 Q. What capacity were you working there in the
8 office of academic affairs other than as assistant
9 vice-president?

10 A. Those, those positions that I named off
11 earlier.

12 Q. So the director of assessment, director of
13 institutional research and the coordinator of
14 accreditation titles were all when you were working
15 in the office of academic affairs?

16 A. That is correct.

17 Q. How much time -- strike that.

18 What years did you work in the office
19 of academic affairs?

20 A. I worked in it for ten years, so I -- jees,
21 2000, 2001, something like that.

22 Q. So 2000 or 2001 to 2010?

23 A. Yes.

24 Q. Do you, do you remember your interview with
25 the U.S. Equal Employment Opportunity Commission

1 with the decision that's reflected in Plaintiff's
2 Exhibit 45, the April 29, 2010 letter?

3 A. Yes.

4 MR. JOSEPH: Object to the form.

5 Q. How so?

6 A. I was the president's designee.

7 Q. How did you learn that you were the
8 president's designee on -- well, let's back up.
9 Would you characterize Plaintiff's Exhibit 46 -- I
10 mean, did you handle Plaintiff's -- did -- strike
11 that.

12 Did Southeastern handle Plaintiff's
13 Exhibit 46 as a grievance in accordance to the
14 grievance policy 4.4.6 that's in Exhibit 7?

15 MR. JOSEPH: Object to the form.

16 A. Yes.

17 Q. Just so that we're clear in talking
18 about -- well, strike that.

19 So how did you learn that you would be
20 the president's designee with respect to Plaintiff's
21 Exhibit 46?

22 A. I was the president's designee on all
23 grievances and complaints filed by the faculty. They
24 just came to me.

25 Q. So, so the way that policy 4.4.6 in Exhibit

1 vice-president and send it out.

2 Q. So it appears from the dates on Plaintiff's
3 Exhibit 46 and 47 that the faculty appellate
4 committee completed its work within 30 days. Is that
5 correct?

6 A. Yes.

7 Q. So do you -- did you, as the president's
8 designee with respect to Plaintiff's Exhibit 46,
9 attend any of the discussions of the faculty
10 appellate committee where they discussed Plaintiff's
11 Exhibit 46?

12 A. I am the ex officio member of the
13 committee.

14 Q. My Latin is a little rusty. What does
15 "ex officio" mean?

16 A. I sit in on the meetings, but I don't get
17 to vote.

18 Q. So after -- let me strike that.

19 Did you speak with anybody else about
20 Plaintiff's Exhibit 46 other than the faculty
21 appellate committee members before they completed
22 their work on March 25th, 2010?

23 A. No.

24 Q. After -- so let me back up for a second.
25 Plaintiff's Exhibit 47, do you recall receiving this

1 from the faculty appellate committee?

2 A. Yes.

3 Q. All right. So after you -- well, strike
4 that.

5 How did you receive it? How did they
6 provide it to you?

7 A. I don't remember exactly how they gave it
8 to me.

9 Q. Do you remember having a discussion with
10 them about their decision after you received it?

11 A. I thanked them for their, for their work, I
12 thanked them for their efficiency. I appreciated it
13 and told them their duties were finished.

14 Q. So after you received the faculty appellate
15 committee's decision, which is Plaintiff's Exhibit
16 47, what did you do next according to policy?

17 A. I wrote the letter.

18 Q. The letter you're referring to is
19 Plaintiff's Exhibit 45?

20 A. Yes.

21 Q. How long after you -- how long after March
22 25th, 2010, when you received Plaintiff's Exhibit 47,
23 did you finish writing the letter that is Plaintiff's
24 Exhibit 45?

25 MR. JOSEPH: Object to the form.

1 A. I had it done before the 31st of March.

2 Q. Did you speak with anybody about the
3 faculty appellate committee's decision, which is
4 Plaintiff's Exhibit 47, other than the faculty
5 appellate committee, before you finished writing the
6 letter that is Plaintiff's Exhibit 45?

7 A. Yes.

8 Q. Who did you speak to?

9 A. Charlie Babb.

10 Q. And why did you speak with Mr. Babb?

11 A. I wanted to make sure that I was writing it
12 correctly.

13 Q. Did you normally do that when you wrote
14 these type of letters?

15 A. Yes.

16 Q. And did you meet with Mr. Babb in person?

17 A. No.

18 Q. Did you call him on the phone?

19 A. Yes.

20 Q. How many times did you talk to him with
21 respect to writing the letter that's Exhibit --
22 Plaintiff's Exhibit 45?

23 A. Writing this specific letter?

24 Q. Yes.

25 A. I don't recall.

1 Q. What did Mr. Babb tell you?

2 A. He basically helped me with the wording,
3 how to write it, you know, just so I didn't say
4 something that was -- that shouldn't have been in
5 there or something.

6 Q. Looking at Plaintiff's Exhibit 45, could
7 you point to any of the language in it that you
8 remember Mr. Babb helping you with.

9 A. He helped me with a better understanding of
10 the sections 3.7.3 and 3.7.4. The rest of it is me.

11 Q. What did you need help with with respect to
12 3.7.3 and 3.7.4?

13 A. To make sure that I was interpreting the
14 policy correctly.

15 Q. And did Mr. Babb confirm that you were
16 interpreting it correctly?

17 A. Yes.

18 Q. So when you called him, the interpretation
19 of 3.7.3 and 3.7.4 that's reflected in Plaintiff's
20 Exhibit 45 was already your interpretation?

21 A. Yes.

22 Q. At some point around this time, were you
23 asked to look into what Southeastern's options were
24 with respect to Dr. Tudor's employment after denial
25 of her promotion and tenure application?

1 Q. Plaintiff's Exhibit 50 is an e-mail -- two
2 e-mails from you, dated April 1st, 2010, Bates
3 numbered EEOC 919 and going on to EEOC 920. Do you
4 recognize these e-mails?

5 Do you recognize these e-mails?

6 A. Yes.

7 Q. The e-mail that you wrote on April 1st,
8 2010 at 9:28 a.m., it begins halfway down the first
9 page, the first sentence states, I had the most
10 interesting conversation with Charlie Babb yesterday
11 in regard to the Tudor appeal. Did I read that
12 correctly?

13 A. Yes.

14 Q. The Tudor appeal that you're referring to
15 in that sentence was Plaintiff's Exhibit 46, right?

16 A. Correct.

17 Q. So going further down that e-mail, in the
18 first paragraph on the second page, the page that's
19 Bates number EEOC 920, there's a paragraph -- that
20 paragraph begins, each one of these policies played a
21 role in this appeal. Do you see what paragraph I'm
22 talking about?

23 A. Yes.

24 Q. The second to last sentence in that
25 paragraph states, I will admit that I had difficulty

1 writing the letter and was very appreciate of
2 Charlie's comments with regard to it. Did I read
3 that correctly?

4 A. Yes.

5 Q. Is the letter that you're referring to in
6 that sentence Plaintiff's Exhibit 45?

7 A. Yes.

8 Q. All right. Then below that paragraph is a
9 bulleted list of points. Do you see that?

10 A. Yes.

11 Q. The last bulleted point states -- or
12 starts, our options are twofold. Do you see that?

13 A. Yes.

14 Q. Is this -- in this point in the bulleted
15 list, you're talking about what Southeastern's
16 options were if Dr. Tudor's promotion and tenure
17 application were denied by President Minks, right?

18 A. Yes.

19 Q. So you're saying in this paragraph, one
20 option in that event would be to let Dr. Tudor
21 reapply for tenure and promotion the next year.

22 A. Correct.

23 Q. And did anyone who you wrote to on this
24 e-mail think that that was not an option?

25 MR. JOSEPH: Object to the form.

1 Q. Let me rephrase it.

2 Did anyone you wrote this e-mail to
3 say to you that they did not think this was an
4 option?

5 A. No.

6 Q. The third bullet on this list says, since
7 this was her terminal year in the process, Charlie
8 wanted to know if we gave her that information in
9 writing before March 1st. Did I read that correctly?

10 A. Yes.

11 Q. Why did Charlie -- well, strike that.

12 The "Charlie" in that sentence is
13 Mr. Babb, right?

14 A. Yes.

15 Q. Why did Mr. Babb want to know if Dr. Tudor
16 had been given the information about this being her
17 terminal year before March 1st?

18 MR. JOSEPH: Object to the form.

19 A. Because they have to be notified by March
20 1st if they're not going to be reappointed.

21 Q. Had it already been decided that Dr.
22 Tudor -- strike that.

23 Who had indicated that they did not
24 want to reappoint Dr. Tudor?

25 MR. JOSEPH: Object to the form.

1 Q. Let me strike the question.

2 Had anyone indicated at this point
3 that you were writing this e-mail that they did not
4 want to reappoint Dr. Tudor the following year?

5 A. No.

6 Q. Then why were you looking into what would
7 have to be done before not reappointing her?

8 A. Policy.

9 Q. What do you mean by that?

10 A. It's policy. You have to let them know
11 before March 1st if they're going to be reappointed.

12 Q. Do you have to let them know either way,
13 whether they're going to be reappointed by March 1st?

14 A. Yes.

15 Q. And then on the first page, the e-mail that
16 you wrote that begins, let me put an addendum on to
17 my previous e-mail. Do you see where I'm looking?

18 A. Yes.

19 Q. What are you correcting in this e-mail that
20 you said in the previous e-mail?

21 A. I don't, I don't know.

22 Q. It says -- in the previous e-mail on that
23 second page, that third bullet point that I read, you
24 said, since this was her terminal year. Do you see
25 that?

1 A. Yes.

2 Q. And then in -- on the first page, in the
3 e-mail that begins, let me put an addendum, you're
4 indicating here that you were mistaken and this is
5 not her terminal year, correct?

6 MR. JOSEPH: Object to the form.

7 A. Correct.

8 Q. So even after making that correction in the
9 mistake you made about it being her terminal year,
10 you're still saying in this e-mail that after the
11 president denied Dr. Tudor's application for
12 promotion and tenure, one option would be for her to
13 apply again the next year?

14 A. Correct.

15 Q. Did any one of the -- strike that.

16 The people that are on this e-mail
17 that you are sending are Dr. McMillan, Dr. Minks,
18 Dr. Scoufos and Mr. Babb, right?

19 A. Correct.

20 Q. Did any of them reply to any of these
21 e-mails to you?

22 A. I don't recall.

23 Q. Did you send any more e-mails to any of
24 them regarding Dr. Tudor's grievance?

25 A. I don't know.

1 Q. Did you have any discussions with
2 Dr. McMillan about what you wrote in this e-mail
3 after you wrote it?

4 A. I don't remember.

5 Q. Did you have any discussions with
6 Dr. Minks --

7 A. No.

8 Q. This is an instance where you've got to
9 wait until I finish my question.

10 A. Oh, I thought you were.

11 Q. That's okay. It happens.

12 Did you have any conversations with
13 Dr. Minks about what you wrote in these e-mails after
14 you wrote them?

15 A. No.

16 Q. Did you have any conversations with
17 Dr. Scoufos about what you wrote in these e-mails --
18 and by "e-mails," I'm still referring to Plaintiff's
19 Exhibit 50 -- after you wrote them?

20 A. I don't recall.

21 Q. Did you have any conversations with
22 Mr. Babb about these e-mails after you wrote them?

23 A. I don't recall.

24 Q. Did anyone -- did any of the people who
25 were sent these e-mails, Dr. McMillan, Dr. Minks,

1 Dr. Scoufos, Mr. Babb, express to you any
2 disagreement with anything that you said in these
3 e-mails?

4 MR. JOSEPH: Object to the form.

5 A. No.

6 Q. So it was part of your job to -- as
7 assistant vice-president of academic affairs to
8 interpret these policies that you were interpreting
9 in these e-mails, right?

10 A. Yes.

11 Q. And none of these people that you sent the
12 e-mails to, Doug McMillan, Larry Minks, Lucretia
13 Scoufos, Charlie Babb, expressed any disagreement
14 with your interpretation of these policies in this
15 e-mail?

16 MR. JOSEPH: Object to the form.

17 Q. Is that right?

18 A. That is correct.

19 Q. Let me -- I'm sorry, I'm going to have to
20 ask it again because he objected, just to make sure
21 it's clean.

22 Neither Doug McMillan, nor Larry
23 Minks, nor Lucretia Scoufos, nor Charlie Babb
24 expressed any disagreement with the interpretation of
25 policies that you wrote in Plaintiff's Exhibit 50,

1 right?

2 A. Right.

3 MR. JOSEPH: Object to the form.

4 (Exhibit 51 marked)

5 Q. I'm showing you what I've marked
6 Plaintiff's Exhibit 51.

7 MR. TOWNSEND: Go off the record for a
8 second.

9 (Brief interruption)

10 Q. Plaintiff's Exhibit 51 is -- contains a
11 policy 3.7.3, role of the president. Do you see
12 that?

13 A. Yes.

14 Q. Is this the policy you were referencing in
15 Plaintiff's Exhibit 50 towards the bottom of the
16 first page where it says 3.7.3, role of the
17 president?

18 A. Yes.

19 (Exhibit 52 marked)

20 Q. I'm going to show you what I'm marking as
21 Plaintiff's Exhibit 52. Plaintiff's Exhibit 52 is an
22 e-mail Bates numbered EE0C 177. There appears to be,
23 at the bottom of the page, an e-mail from you to
24 Dr. Tudor, and at the top of the page an e-mail from
25 Dr. Tudor to you. Do you recall receiving that

1 STATE OF TEXAS
2 COUNTY OF DALLAS
3

4 REPORTER'S CERTIFICATE
5 ORAL DEPOSITION OF DR. CHARLES WEINER
6 March 11, 2016
7

8 I, the undersigned Certified Shorthand Reporter
9 in and for the State of Texas, certify that the facts
10 stated in the foregoing pages are true and correct.

11 I further certify that I am neither attorney or
12 counsel for, related to, nor employed by any parties
13 to the action in which this testimony is taken and,
14 further, that I am not a relative or employee of any
15 counsel employed by the parties hereto or financially
16 interested in the action.

17 SUBSCRIBED AND SWORN TO under my hand and seal
18 of office on this the 18th day of March, 2016

19
20 
21 Cheryl Duncan, CSR

Texas CSR 3371

22 Expiration: 12/31/16

KEN OWEN & ASSOCIATES, L.P.

23 Firm Certificate No. 115

801 West Avenue

24 Austin, Texas 78701

512.472.0880

25 *The original correction/sig. pages were returned on April 15th, 2016.*

1 WITNESS NAME: Dr. Charles Weiner

2 DATE OF DEPOSITION: March 11, 2016

3 CHANGES AND SIGNATURE

4 PAGE LINE CHANGE REASON

5 33 16 NO

6 41 2 I don't know BECAUSE I don't really know

7 42 9 I don't know BECAUSE I don't really know

8 46 516 I don't know BECAUSE I don't really know

9 70 9 have seen

10 95 11 they're not going to - Should have been stated
11 this way

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25

1 I, DR. CHARLES WEINER, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.

4
 5 

6 DR. CHARLES WEINER

7
 8 THE STATE OF Oklahoma)
 9 COUNTY OF Bryan)

10
 11 Before me, Dr. Charles Weiner, on this day
 12 personally appeared DR. CHARLES WEINER, known to me
 13 or proved to me on the oath of or through
 14 _____ (description of identity card
 15 or other document) to be the person whose name is
 16 subscribed to the foregoing instrument and
 17 acknowledged to me that he/she executed the same for
 18 the purpose and consideration therein expressed.

19 Given under my hand and seal of office on this
 20 7th day of April, 2016.



23 

24 NOTARY PUBLIC IN AND FOR
 25 THE STATE OF Oklahoma

My Commission Expires: 4-23-18



Notice of Appeal

To: President Larry Minks

From: Dr. Rachel Tudor

Re: Promotion and Tenure

Date: February 26, 2010



FILE COPY

Dear President Minks:

I request a hearing before the Faculty Appellate Committee to review my application for promotion and tenure. In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, I believe Dr. Scoufos and Dr. McMillan should provide their rationales for not supporting the recommendation of EHL's Promotion and Tenure Review Committee for my tenure and promotion. This information is important in order for faculty to understand their criteria and in what ways their criteria differs from our own. I would like to call the Faculty Appellate Committee's attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

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EEOC000927

only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The Faculty Appellate Committee's commission authorizes them to investigate and recommend action in reference to "due process". Due process is not merely a technical concept assuring that every "i" is dotted and every "t" is crossed, but a promise that insures policy is practiced in good faith. Due process is practice that promotes confidence among faculty in administration and provides vital and timely feedback to promotion and tenure committees, department chairs, and candidates in order that all parties may actively participate and be partners in a process vital to the health and well-being of the university. In this instance, Dr. Scoufos and Dr. McMillan did not provide an explanation of their

respective rationales for finding my case a "rare instance" or identify any "compelling reasons" for disagreeing with the conscientious, deliberative decision of senior, experienced faculty in the English, Humanities, and Languages department.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Tudor", with a long horizontal flourish extending to the right.

Dr. Rachel Tudor

Department of English, Humanities & Languages
PMB 4036
rtudor@se.edu
580-745-2588

cc: Dr. Douglas McMillan



TO: Dr. Weiner

FROM: Dr. James Knapp (chair of committee), Dr. Larry Prather, Dr. Jon Reid

DATE: March 25, 2010

RE: Appeal of Dr. Rachel Tudor

On February 26, 2010, Dr. Rachel Tudor issued a formal request to President Larry Minks for a hearing before the Faculty Appellate Committee (FAC). The basis of Dr. Tudor's appeal is that due process has not been followed in regard to her application for promotion and tenure. Specifically, Dr. Tudor is asserting that Dr. Scoufos (Dean of the School of Arts and Sciences) and Dr. McMillan (Interim Vice-President for Academic Affairs) have declined her request for promotion and tenure without providing a detailed explanation of their rationale despite the fact that the English, Humanities, and Languages Promotion and Tenure Review Committee voted to approve her application.

Three members of the FAC (Dr. James Knapp, Dr. Larry Prather, and Dr. Jon Reid) met on Monday, March 22, 2010 to consider the appeal of Dr. Tudor. The FAC supports Dr. Tudor's position that due process has not been followed based on section 3.7.4 of the Policies and Procedures manual of Southeastern Oklahoma State University. In particular, the FAC has referred to the following portion of section 3.7.4:

"The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which **should be stated in detail**" (emphasis added by Dr. Knapp).

It is the recommendation of the FAC that both Dr. Scoufos and Dr. McMillan provide a detailed, written explanation that clearly delineates the factors that have led to their decision to decline Dr. Tudor's application for promotion and tenure.

Lucretia Scoufos

From: Charles Weiner
Sent: Thursday, April 01, 2010 9:38 AM
To: Doug McMillan; Larry Minks; Lucretia Scoufos
Cc: 'Babb, Charlie'
Subject: FW: Rachel Tudor

Importance: High
Sensitivity: Confidential



Let me put an addendum on to my previous email. Records indicate that she started at SE in 2004 so this is not her terminal year. Next year will be her terminal year. The two options are still viable. Dismiss her without cause or let her reapply. In either instance she will need to be notified by March 1st that she is not being reappointed or if she doesn't get tenure, than she will not be rehired.

Chip

Charles "Chip" Weiner, Ed.D.

Assistant Vice President for Academic Affairs
Director of Student Learning and Institutional Research
Coordinator, HLC/NCA Accreditation
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80.745.7504 (fax)
cweiner@se.edu

Southeastern Oklahoma State University

From: Charles Weiner
Sent: Thursday, April 01, 2010 9:28 AM
To: Doug McMillan; Larry Minks; Lucretia Scoufos
Cc: 'Babb, Charlie'
Subject: Rachel Tudor
Importance: High
Sensitivity: Confidential

Good Morning All:

I had the most interesting conversation with Charlie Babb yesterday in regard to the Tudor appeal. I will try and enumerate everything that we talked about but there are places my handwriting is hard to read. First I will start off with the Fridley appeal. Charlie said everything there was fine, no problem. The Tudor appeal however has many different angles to it. First of all he concurred that the policies in question were conflicting. In this appeal there are four different policies at play. They are:

- 3.7.3 – Role of the President
- 3.7.4 – Role of the Faculty
- 4.4.6 – Faculty Grievance Policy

4.6.3 – Procedure for Granting Promotion and Tenure

Each one of these policies played a role in this appeal. She filed her grievance under section 3.7.4 focusing on the part about reasons having to be provided if there was an adverse action taken. She requested that Drs. McMillan and Scoufos provide her with reasons as to why their recommendation was to deny granting tenure and promotion. The fallacy here is that the faculty member is provided an opportunity to request a due process hearing before any adverse action has been taken. According to Charlie this really isn't a due process issue but an administrative policy issue; however, it is stated that way in our Policies and Procedures Manual. She requested a due process hearing and based upon her complaint, the Faculty Appellate Committee met on March 22, 2010, and agreed with her grievance that reasons must be provided. I will admit that I had difficulty writing the letter and was very appreciate of Charlie's comments in regard to it. Here are the things that Charlie and I talked about in regard to this appeal:

- The policy does not require the dean or the VP to provide reasons
- The authority is vested in President and if he chooses to do so, he may provide reasons as to why
- Since this was her terminal year in the process Charlie wanted to know if we gave her that information in writing before March 1st
- If we did not provide her with written notice by March 1st than we are in violation of that policy (our policy is pulled directly from the RUSO policy)
- Our options are twofold – at this point we can give her written notice that next year will be her last year at SE. If we give it to her now than we meet the March 1, 2011, deadline and we don't have to provide her any reason at all for anything. She is just being dismissed without cause. The second option would be to let her reapply for tenure and promotion next year, provide her with the reasons as to why she was denied this year, and inform her that if she does get tenure next year than she will not be reappointed. In this way we also meet the March 1st deadline.

If I understood Charlie correctly it would be in our best interest, and RUSO's best interest, to provide her with another year at Southeastern based upon the options presented above.

Charlie – I hope I have stated everything correctly. I am sure that President Minks and Drs. McMillan and Scoufos will have questions for you. If I have misspoke in anyway please correct me by providing them with the correct information.

Chip

Charles "Chip" Weiner, Ed.D.

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 Director of Student Learning and Institutional Research
 Coordinator, HLC/NCA Accreditation
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A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. ALLAN TOWNSEND
MS. VALERIE MEYER
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FOR THE PLAINTIFF/INTERVENOR:

MR. EZRA YOUNG
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FOR THE DEFENDANT:

MR. JEB JOSEPH
STATE OF OKLAHOMA, OFFICE OF THE ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, Oklahoma 73105
405.521.3921
jeb.joseph@oag.ok.gov

ALSO PRESENT:

Ms. Rachel Tudor
Mr. Charles K. Babb

1 **Dr. Tudor had filed another grievance after the**
2 **August 30th, 2010 grievance?**

3 MR. JOSEPH: Object to form.

4 A. No, I don't, just that it was after this one.
5 I think it was a subsequent one submitted in the Fall.

6 **Q. How did you become aware that there was a**
7 **subsequent grievance submitted in the Fall of 2010?**

8 A. I don't recall specifically.

9 **Q. Were you asked to do something with respect to**
10 **the fall 2010 grievance filed by Dr. Tudor?**

11 A. I was -- again, I served as the administrative
12 liaison that the Faculty Appellate Committee that was
13 being charged with hearing that particular grievance.

14 **Q. Do you recall the nature of the allegations**
15 **Dr. Tudor made in that Fall 2010 grievance?**

16 A. No.

17 **Q. Do you recall who the Respondents were in that**
18 **Fall 2010 grievance?**

19 A. No.

20 **Q. Did you see a copy of the Fall 2010 grievance**
21 **filed by Dr. Tudor?**

22 A. Yes.

23 **Q. I'm going to ask you to turn to what has been**
24 **marked as Plaintiff's Exhibit 15.**

25 A. (Witness complies)

1 **Q. If you could look at the first page of**
2 **Plaintiff's Exhibit 15 and let me know when you're done.**

3 A. (Witness reading document) Okay.

4 **Q. Based on the first page of Plaintiff's**
5 **Exhibit 15, do you believe you've seen this document**
6 **before?**

7 A. Yes.

8 **Q. When do you believe you've seen it?**

9 A. In Fall 2010.

10 **Q. What is this document, to the best of your**
11 **knowledge?**

12 A. By looking at the first page, it appears to be
13 a grievance submitted by the complainant, Dr. Rachel
14 Tudor.

15 **Q. Does the first page of this document match your**
16 **recollection of the written grievance that you received**
17 **in Fall 2010 from Dr. Tudor that you were previously**
18 **describing?**

19 MR. JOSEPH: Object to the form.

20 A. The first page seems similar, but not seeing
21 the rest of it, I don't -- it looks that way.

22 **Q. After you received Dr. Tudor's Fall 2010**
23 **grievance, did you convene a Faculty Appellate Committee**
24 **Hearing Committee?**

25 A. I believe so.

1 **Committee meeting?**

2 MR. JOSEPH: Object to the form.

3 A. Yes.

4 **Q. Do you remember the date of that meeting?**

5 A. No.

6 **Q. Do you remember who else was present at that**
7 **meeting?**

8 A. No.

9 **Q. Do you remember who, if anyone, you asked to**
10 **submit information in response to Dr. Tudor's grievance?**

11 MR. JOSEPH: Object to the form.

12 A. No.

13 **Q. Do you remember the outcome of the Hearing**
14 **Committee -- strike that. Do you remember any**
15 **recommendations the Hearing Committee made in response**
16 **to Dr. Tudor's October 11th, 2010 grievance?**

17 A. Repeat, please. Sorry.

18 MS. MEYER: Could you read the question
19 back?

20 (Requested portion read back)

21 A. Yes.

22 **Q. What do you remember about that?**

23 A. That the committee met and recommended that
24 Dr. Tudor be allowed to reapply, I believe. I'm not
25 sure of the wording.

1 **Q. Having recalled the committee recommended that**
2 **Dr. Tudor be allowed to reapply, are you referring to**
3 **reapply for tenure?**

4 A. Yes.

5 **Q. And having recalled what the Hearing**
6 **Committee's recommendation was, do you have any further**
7 **recollections about the nature of Dr. Tudor's**
8 **October 11th, 2010 grievance?**

9 A. No.

10 **Q. After the Hearing Committee recommended that**
11 **Dr. Tudor be allowed to reapply, what happened next with**
12 **respect to her grievance?**

13 A. The recommendation of the committee was
14 provided to Vice-President Ross Walkup, I believe.

15 **Q. Why was it provided to Vice-President Walkup?**

16 A. Since Dr. McMillan had previously been
17 identified as a Respondent in other grievances, he could
18 not serve as the person that would take the
19 recommendation and act upon it. So the President
20 identified Ross Walkup, R-O-S-S W-A-L-K-U-P, as the
21 Vice-President to consider the recommendation and act
22 upon it.

23 **Q. Was it your understanding that Douglas McMillan**
24 **had been named as a Respondent in Dr. Tudor's**
25 **October 11th, 2010 grievance?**

1 A. No, I don't specifically recall that, but he
2 had been identified in previous grievances that we
3 talked about, therefore, he could not serve as a VP in
4 that role identified in the policy.

5 **Q. And what was Dr. Walkup's role with respect to**
6 **the Hearing Committee's recommendations?**

7 A. Don't recall the specific requirements set
8 forth in the policy, but he was instead of the VPAA
9 where recommendations would go forward.

10 **Q. And what was your understanding of what action**
11 **Dr. Walkup as --**

12 A. Mr. Walkup.

13 **Q. Mr. Walkup?**

14 A. Sorry to interrupt.

15 **Q. Thank you for the correction. I appreciate it.**
16 **I get used to saying doctor a lot. What was your**
17 **understanding of what Mr. Walkup's role as President's**
18 **designee was supposed to be in responding to the Hearing**
19 **Committee's recommendation?**

20 A. That role of either the VPAA or of somebody
21 else as named is to take the recommendation of the
22 Hearing Committee and then do their consideration of
23 that recommendation and make a final determination at
24 their level of whether to accept the recommendation or
25 reject the recommendation.

1 **Q. Do you know what decision Mr. Walkup made with**
2 **respect to the Hearing Committee's recommendation on**
3 **Rachel Tudor's October 11th, 2010 grievance?**

4 A. Yes.

5 **Q. What was that decision?**

6 A. He did not concur with the recommendation of
7 the Faculty Appellate Committee.

8 **Q. After Mr. Walkup did not concur with the FAC's**
9 **recommendation, what happened next?**

10 A. The policy indicates that the VPAA, or the
11 person responsible for making that, meets with the
12 Faculty Appellate Committee to try to make a consensus
13 or joint decision with regard to the recommendation or
14 with regard to the grievance, I guess.

15 **Q. Do you know whether Mr. Walkup actually met**
16 **with the Hearing Committee regarding Rachel Tudor's**
17 **October 11th, 2010 grievance?**

18 A. Yes.

19 **Q. And did they meet?**

20 A. Yes.

21 **Q. And what were the results of that meeting?**

22 MR. JOSEPH: Object to the form.

23 **Q. If you know.**

24 A. I was not at the meeting, but it was conveyed
25 to me by both the Chair of the Faculty Appellate

1 Committee and Vice-President Walkup that they could not
2 reach an agreement, that they agreed to disagree.

3 **Q. Did you have separate conversations with the**
4 **Chair of the Faculty Appellate Committee and Mr. Walkup?**

5 A. I believe so.

6 MR. JOSEPH: Object to form.

7 **Q. Do you recall anything else about your meeting**
8 **with the Chair of the Faculty Appellate Committee in**
9 **that instance?**

10 A. I asked both parties whether or not additional
11 meetings between the two groups, the VP and the Faculty
12 Appellate Committee, would bear fruit and then reach a
13 consensus decision. Both parties indicated, no, that
14 further deliberation would not assist in them reaching a
15 consensus. One said they agreed; the other said they
16 didn't agree.

17 **Q. Anything else you recall about your**
18 **conversation with the Chair of the Faculty Appellate**
19 **Committee?**

20 A. No.

21 **Q. Anything else that you recall about your**
22 **conversation with Mr. Walkup about that grievance?**

23 A. No.

24 **Q. After the Chair of the Faculty Appellate**
25 **Committee and Mr. Walkup told you they did not believe**

1 additional meetings would be fruitful, what happened
2 next in the processing of that October 11th, 2010
3 grievance?

4 A. The policy, as written at that time, to my
5 recollection, did not have a process or a follow-up of
6 what to do if there wasn't a consensus reached between
7 the Faculty Appellate Committee and the person
8 responsible, in this case, Vice-President Walkup, for
9 reaching a joint decision.

10 Q. Is this the first time that the Faculty
11 Appellate Committee and the Vice-President or
12 President's designee, where necessary, had not been able
13 to reach a concurrence?

14 A. This is the only time that I was a part of the
15 process and the only time I'm aware of this happening.

16 Q. Given the state of the policy as you described
17 it, did you take any action next?

18 A. Yes.

19 Q. What action did you take?

20 A. I contacted general counsel about what could or
21 should be done in terms of, for lack of better terms,
22 getting this off the high center because a joint
23 consensus, a joint decision could not be made between
24 the two parties.

25 Q. Do you recall when you did that?

1 A. No, I do not.

2 Q. And I'm sorry, did you identify that Charlie
3 Babb was the general counsel that you spoke with?

4 A. Yes, Charlie Babb was the general counsel.

5 Q. Did you speak to him on the telephone or in
6 person?

7 A. Telephone.

8 Q. And did you explain the situation you were in
9 to Mr. Babb?

10 MR. JOSEPH: Object to the form.

11 Q. You can answer.

12 A. Would you please clarify.

13 Q. What did you tell Mr. Babb specifically?

14 A. That the two parties involved, Faculty
15 Appellate and Vice-President Walkup, could not reach a
16 joint decision with regard to the appeal. And that
17 further meeting -- both parties indicated that further
18 meetings would not change either person's or either
19 entity's position that they currently had.

20 Q. And what was Mr. Babb's response?

21 A. I don't specifically recall.

22 Q. Do you recall anything else that was said
23 during that conversation?

24 A. I believe I indicated if I drafted something,
25 then, to get us off of high center, if he would review

1 that to make sure it was appropriate and fair to all
2 parties involved.

3 Q. Was it your idea to draft something to address
4 the situation?

5 A. Yes.

6 Q. When you were dealing with the situation where
7 the Faculty Appellate Committee and the VP or
8 President's designee could not come to a consensus, did
9 you research whether that situation had ever occurred
10 before?

11 A. I don't recall.

12 Q. At the end of your conversation with Mr. Babb,
13 did you have an understanding of what steps you were
14 going to take next?

15 A. No.

16 Q. After the conversation with Mr. Babb ended,
17 what did you do next with respect to Dr. Tudor's
18 October 11th, 2010 grievance?

19 A. I drafted a proposal to move the grievance
20 forward.

21 Q. Did you consult with anybody while you were
22 drafting that proposal?

23 A. Not while I was drafting.

24 Q. Did you consult with anybody after you had
25 drafted the proposal?

1 A. After drafting, I shared a copy with general
2 counsel to make sure it was appropriate.

3 **Q. Did you have a conversation with the general**
4 **counsel after you shared that with him?**

5 A. Not that I recall.

6 **Q. And, again, any time we're referring to the**
7 **general counsel here, we're talking about Mr. Babb,**
8 **correct?**

9 A. Yes.

10 **Q. Did you communicate with Mr. Babb in any way**
11 **about your proposal after you shared it with him?**

12 A. Via e-mail.

13 **Q. So Mr. Babb responded to you via e-mail?**

14 A. I believe so.

15 **Q. And what did he say in that e-mail?**

16 A. I don't specifically recall.

17 **Q. Did he suggest any changes to the drafted**
18 **proposal?**

19 A. Not that I recall.

20 **Q. Did he tell you that he thought that your**
21 **drafted proposal was a good idea?**

22 A. I don't recall what he specifically said.

23 **Q. Did he otherwise indicate that it was okay for**
24 **your drafted proposal to be given to other people at**
25 **Southeastern?**

1 A. I do not recall specific conversations like
2 that, but it would not move forward without some sort of
3 approval that it was within the appropriate framework to
4 get this situation resolved.

5 **Q. So if Mr. Babb told you that there was an issue**
6 **with your drafted proposal, you would not have moved**
7 **forward with it; is that correct?**

8 A. Depends on the context.

9 **Q. In what context would you have moved forward**
10 **with it if Mr. Babb had told you there was an issue with**
11 **it?**

12 A. I can't envision a context that he might have
13 said otherwise. I don't know.

14 **Q. After you received the e-mail response from**
15 **Mr. Babb, what did you do next with your drafted**
16 **proposal?**

17 A. I shared the proposal with the Grievant and
18 Respondent for comments, or Respondents.

19 **Q. Did you share it with anybody between when you**
20 **received the response from Mr. Babb and when you shared**
21 **it with the Grievant and Respondent or Respondents?**

22 A. Not that I recall.

23 **Q. And how did you share it with the Grievant and**
24 **Respondent or Respondents?**

25 A. Via e-mail.

1 **Q. So at the time that you were drafting**
2 **Exhibit 73, you knew who the Respondents were, correct?**

3 A. Yes. I would have read through the document.

4 **Q. And if at the time you were drafting**
5 **Plaintiff's Exhibit 73 you had known that the President**
6 **of Southeastern was named as a Respondent to the**
7 **grievance, would you have drafted a policy that then**
8 **allowed the President to have the authority to make a**
9 **final and binding decision on that same grievance?**

10 MR. JOSEPH: Object to the form.

11 A. Not without checking with general counsel to
12 make sure it doesn't usurp the authority of the
13 President as provided by the governing board.

14 MS. MEYER: Let's go off the record and
15 take a quick break.

16 (Recess from 2:52 until 3:04)

17 **Q. Dr. Clark, did you see Mr. Walkup's decision**
18 **stating that he didn't agree with the Faculty Appellate**
19 **Committee's recommendation?**

20 A. Yes.

21 MS. MEYER: I'm going to ask the court
22 reporter to mark a three page -- strike that --
23 four-page document Bates labeled PI 1244 to PI 1247.
24 It's Plaintiff's Exhibit 74.

25 (Exhibit 74 marked)

1 Q. Dr. Clark, you've just been handed what's been
2 marked as Plaintiff's Exhibit 74. If you could, please
3 read the .1 -- all of the first page, including .1 and
4 2. And .2 continues onto the second page.

5 A. Just through .2, all parts?

6 Q. Yes.

7 A. Okay. (Witness reading document) Okay.

8 Q. Based on the portions that you've read, do you
9 recognize Plaintiff's Exhibit 74?

10 A. It looks similar to what I saw originally, yes.

11 Q. Do you have any reason to think that this is
12 not Mr. Walkup's recommendation regarding Rachel Tudor's
13 October 11th, 2010 grievance?

14 A. No.

15 Q. On Page 2, .2C, it references that Dr. McMillan
16 was in communication with President Minks and received
17 approval to proceed with issuing the October 5th, 2010
18 memorandum to Rachel Tudor. Do you see that?

19 A. Yes.

20 Q. So it appears that President Minks and
21 Dr. McMillan were involved in making the decision about
22 whether or not Rachel Tudor should be permitted to
23 reapply for tenure, correct?

24 MR. JOSEPH: Object to the form.

25 A. I don't recall what the October 5th, 2010

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF OKLAHOMA

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Case No:
5) 5:15-CV-00324-C
6 RACHEL TUDOR,)
7 Plaintiff-Intervenor)
8))
9 v.))
10 SOUTHEASTERN OKLAHOMA STATE)
11 UNIVERSITY, and)
12 THE REGIONAL UNIVERSITY SYSTEM)
13 OF OKLAHOMA,)
14 Defendants.)

11 REPORTER'S CERTIFICATION

12 ORAL DEPOSITION OF

13 BRYON K. CLARK

14 MAY 4, 2016

15 *****

16 I, Cheryl K. Perlich, Certified Shorthand
17 Reporter in and for the State of Texas, hereby certify
18 to the following:

19 That the witness, BRYON K. CLARK, was duly
20 sworn by the officer and that the transcript of the oral
21 deposition is a true record of the testimony given by
22 the witness;

23 I further certify that pursuant to FRCP Rule
24

1 30(f)(1) that the signature of the deponent:

2 _X_ was requested by the deponent or a party
3 before the completion of the deposition and is to be
4 returned within 30 days from date of receipt of the
5 transcript. If returned, the attached Errata contains
6 any changes and the reasons therefor;

7 ___ was not requested by the deponent or a
8 party before the completion of the deposition.

9 I further certify that I am neither counsel
10 for, related to, nor employed by any of the parties or
11 attorneys to the action in which this proceeding was
12 taken. Further, I am not a relative or employee of any
13 attorney of record in this cause, nor am I financially
14 or otherwise interested in the outcome of the action.

15 Subscribed and sworn to on this the 12th day
16 of May, 2016.

17
18 -----
19 Cheryl K. Perlich, CSR #3349
20 Expiration Date: 12/31/17
21 Ken Owen & Associates
22 Firm Registration No. 115
23 801 West Avenue
24 Austin, Texas 78701
25 800.829.6936



1

Complainant: Dr. Rachel Tudor

Respondent: Dr. Doug McMillan

October 11, 2010

RECEIVED

OCT 11 2010

President's Office

Grievance

Complaint

On October 7th Dean Scoufos informed me that Dr. Doug McMillan has decided to refuse to allow me to apply for tenure and promotion. Dr. McMillan's unprecedented action is not supported by policy, procedure, or practice. In fact, his act is so far removed from the normalcy of practice that it represents an alarming expansion of the power of the office of Interim Vice President of Academic Affairs and an unparalleled diminishing of the rights and responsibilities of tenure-track and tenured faculty at Southeastern.

Dr. McMillan's order is in violation of RUSO policy. RUSO specifically prohibits retaliation for filing a grievance or complaint (RUSO 5.6; 5.7).

Evidence

Dr. McMillan claims in his letter delivered to me October 7, 2010 (Exhibit A) that his unprecedented decision is based of his BELIEF that (1) alleged deficiencies in scholarship and service in my 2009-2010 application have not been remedied, (2) allowing my application to proceed would be a waste of the time of faculty and administration, and (3) that there would be an "inflammation" of relations between the administration and faculty.

However, he offers no evidence except his unwarranted opinion to support his belief.

In reference to the claim of alleged deficiencies in scholarship and service, I offer the following evidence. In Dr. McMillan's letter dated April 30, 2010 (Exhibit B), Dr. McMillan claims that the administration was unable to verify that I was a co-editor of two editions of the Native American Symposium *Proceedings*. My 2010-2011 application provides unequivocal testimony from the other editor, Dr. Mark Spencer, that I did indeed co-edit two editions of the *Proceedings*. In fact, I presently have eight articles accepted by peer-reviewed scholarly journals, three conference papers, edited two editions of the Native American Symposium *Proceedings*, and one chapter in an anthology of postcolonial literature to my credit. It is an empirical and uncontestable fact that my scholarly record significantly exceeds the scholarly record of other candidates who were granted tenure and promotion. In reference to service, of course I have another year of service to the university since my 2009-2010 application, but more importantly I have letters of reference from the Tenure and Promotion Committee (Exhibits C, D, E, and F) that recommended me for tenure and promotion in 2009-2010 specifying in detail my service and value to the university. In addition, I revised my 2010-2011 application to specifically detail my service. My additional service and the revision of my application should address any perceived or alleged deficiencies in regard to service. I call upon the Committee's knowledge of the tenure and promotion process to be cognizant of the fact that an alleged deficiency in service may simply be a matter of presentation.

In reference to Dr. McMillan's second rationale for prohibiting my 2010-2011 application moving forward, (2) allowing my application would be a waste of the time of faculty and administration. My initial reaction is that this is an example of an *argumentum ad ignorantiam*. One simply may not make a claim about something without looking at the evidence or consulting someone who is familiar with the evidence. Dr. McMillan has not viewed my 2010-2011 application or talked with anyone who has. This brings up another important

point. In our department the Chair reviews applications and advises candidates on whether or not, in their reasoned judgment, the application merits submitting to the Tenure and Promotion Committee. Our Chair, Dr. Prus, has already reviewed my 2010-2011 application and granted permission to proceed. Dr. Prus was as surprised as I was to discover Dr. McMillan's halting of the process, especially in view of the fact that Dr. McMillan made the decision without consulting him. As a matter of fact, a significant amount of time has already been invested in my 2010-2011 application by the faculty—as evidenced by the letters of recommendation for tenure and promotion by Drs. Allen, Cole, Parrish, and Spencer, as well as the review of my portfolio by the Chair of my department, Dr. Prus. Furthermore, reviewing applications for tenure and promotion is one of the responsibilities of the faculty and administration. Policy and procedure does not allow administrators to shun duties and responsibilities simply because they BELIEVE it may be a waste of time. I assure the Committee that my colleagues do not feel reviewing my application would be a waste of their time. Indeed, my respect for my colleagues is such that if they were to express an opinion that it would be a waste of their time to review my application—I would voluntarily halt the process myself.

In reference to the third point in Dr. McMillan's letter, (3) that allowing my application to proceed would result in an "inflammation" of relations between the administration and faculty. This claim contradicts Dr. McMillan's second (2) claim inasmuch as he assumes that the faculty Tenure and Promotion Committee will recommend me for tenure and promotion again and that the administration will reject their recommendation again. Dr. McMillan's assertion is troubling on many levels. For example, it demonstrates a conscious disingenuousness in reference to claims (1) and (2). The fact is, the tension between authoritarianism and participatory democracy (aka "shared governance") will be exacerbated, "inflamed," by the unprecedented act of arbitrarily and unilaterally suspending the right of tenure-track faculty to

address any alleged deficiencies in an application in a subsequent application for tenure and promotion within the time limits provided by RUSO 3.3.4. In addition, Dr. McMillan's newfound assertion of the power of the office of Interim Vice President of Academic Affairs to refuse to allow candidates to address alleged deficiencies effectively removes the purpose of the explanatory letter from the president, required by policy (*Policy and Procedures Manual* 3.7.4). Dr. McMillan's exercise of a new power by the office of Interim Vice President of Academic Affairs not only renders the president's explanatory letter meaningless, but arguably makes it an act of cruelty if it contains easily remedied technical deficiencies; such as letters from the Tenure and Promotion Committee justifying their decision to recommend a candidate for tenure and promotion, or readily obtainable documentation of accomplishments, while the same candidate is prohibited from offering a subsequent application that addresses the president's concerns. Furthermore, it is unjustifiably punitive to begin forbidding ensuing applications for tenure and promotion because the process has recently become adversarial instead of cooperative.

Finally, since the alleged rationales for deciding to halt my application are demonstrably spurious, one must wonder whether or not Dr. McMillan's decision is simply an act of retaliation for exercising rights afforded to the faculty and citizens. This semester I have exercised my rights as a provided by the policy and law to file a grievance and complaint against Dr. McMillan.

RUSO (5.6; 5.7) specifically prohibits retaliation for exercising my clearly delineated rights. It is important for the Committee to consider whether or not Dr. McMillan's unprecedented act will have a chilling effect on other faculty exercising their rights under policy and law. As a matter of fact, I consider this issue important enough by itself to warrant the Committee recommending Dr. McMillan rescind his decision.

Unfortunately, Dr. McMillan introduces a claim that is extraneous to the purpose of his letter—which is to prohibit the advancement of my application and provide the rationale for his action. I am referring to his assertion that an offer was made to me in April 2010 to renew my contract for the 2010-2011 year and to allow me to reapply for tenure and promotion in 2011-2012. I am uncertain why he would introduce this extraneous assertion into his letter except as an attempt to misrepresent me as being uncooperative and to present himself in a favorable light. However, there are significant factual errors in respect to his account of the purported offer. The offer he is referring to was proffered by Dean Scoufos under most peculiar circumstances. Dr. Mischo, who was the Chair of our department in 2009-2010, and I were called to Dean Scoufos' office in April 2010. Dean Scoufos said I may be allowed to reapply for tenure only (not promotion) in the 2010-2011 academic year if I withdrew my 2009-2010 application. She demanded an immediate decision. I asked for the offer in writing, and she refused. I asked what would be the requirements for the administration to approve a tenure only application, and she refused to discuss the specific requirements with me. When I asked for more time to consider the offer, she threatened to not renew my contract "for cause" for the 2010-2011 academic year (the date set by policy for non-renewal without cause had already passed). The offer, as described in the letter delivered to me October 7, 2010, purports to be one in which I am not allowed to apply for either tenure or promotion in the 2010-2011 academic year, but may apply for tenure and promotion in 2011-2012. This is patently false. (I welcome you to contact Dr. John Mischo in reference to the offer and the circumstances surrounding the offer to verify which account is accurate.) The offer, as described by Dr. McMillan, could not have been legitimately made because only the Board of Regents may approve the renewal of a tenure-track faculty member after seven years (RUSO 3.3.4; *Policy and Procedures Manual* 4.6.4). The 2011-2012 academic year would be my eighth year. Unless Dr.

McMillan had consulted and received approval from the Board of Regents, he did not have the authority to make such an offer. I simply could not accept as legitimate or bona fide an offer that Dr. McMillan refused to put in writing, especially under the unpleasant and threatening conditions in which it was made. Again, my apologies to the Committee for having to think about a matter that is entirely extraneous to issue at hand. Please do not allow it to distract you.

Relief

Civil society is dependent on a shared set of common expectations and values. One of the most important shared common values in a democratic society is that everyone is treated equally and given the same opportunities as other members of the community.

I am only asking that the Committee recommend that I be afforded the same opportunity as other members of our community. Preserving due process is the express commission of the Faculty Appellate Committee. As an institution of higher education, whose mission and responsibility is to promote a more equitable and just society, Southeastern has a duty to exemplify not only the letter of the law, but the spirit as well.

THEREFORE, I ask the committee to RECOMMEND that Dr. McMillan rescind his decision and allow my application for tenure and promotion to move forward.

Respectfully submitted,



Dr. Rachel Tudor

¹ A "right" in a democratic society may be defined as a practice which is routine and expected. Indeed civil society depends upon members of society interacting with one another in predictable and equitable ways.



Exhibit A

OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-060

MEMORANDUM

580-745-222
FAX 580-745-747
WWW.SE.ED

TO: Rachel Tudor

FROM: Douglas N. McMillan, *DNM*
Interim Vice President for Academic Affairs

RE: Application for Tenure and Promotion during the 2010-2011 Academic Year

DATE: October 5, 2010

I have been informed by the Dean of the School of Arts and Sciences that you plan to submit a portfolio for tenure and promotion again for this academic year of 2010-2011. You will recall that during the review of your 2009-2010 academic year application you were extended an offer which would have allowed you an additional year to strengthen your portfolio and hopefully obtain tenure and promotion. Pursuant to policy, academic year 2010-2011 is your seventh year of tenure probation and therefore your terminal year at Southeastern. In my letter of April 30, 2010 I outlined certain deficiencies in scholarly activity and service which needed correcting in your portfolio. You were offered the opportunity to teach at Southeastern during the 2010-2011 and 2011-2012 academic years and then reapply for tenure and promotion during the 2011-2012 academic year if you would withdraw your 2009-2010 application. This offer, in effect, would have given you two years to correct the deficiencies in scholarly activity and service, which were outlined in my letter to you on April 30, 2010. To my astonishment, you declined this offer. At the time the offer was made it was my opinion that one year was insufficient for correcting the deficiencies in your portfolio. This is still my opinion.

After reviewing the Academic Policy and Procedure Manual, I find no policy that allows for an application for tenure in a subsequent year after being denied tenure and promotion in the previous year. The policy states that an application for tenure may occur in the fifth, sixth or seventh year. I recognize that the policy does not proscribe a subsequent application, however, since there is no specific policy, which addresses this issue, I believe the administration is charged with the responsibility of making a decision which is in the best interests of the university. I believe that allowing you to reapply for tenure and promotion so soon after your most recent denial is not in the best interests of the university. This is especially true given the nature and extent of needed improvement and the short amount of time which has passed since the portfolio deficiencies were enumerated. It is my opinion that allowing you to reapply will be disruptive to the School of Arts and Sciences, create unnecessary work for both your department and the administration, and will potentially inflame the relationship between faculty and administration. It is my decision as acting chief academic officer that your application/request and portfolio will not be accepted for review for the 2010-2011 academic year.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



Exhibit B

OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-0601

580-745-2221
FAX 580-745-7471
WWW.SE.ED

MEMORANDUM

TO: Dr. Rachel Tudor

FROM: Douglas N. McMillan, Ph.D. *DM*
Interim Vice President of Academic Affairs

RE: Denial of Application for Tenure and Promotion

DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fail to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

OAG/DLC/USA v. SOSU - CIV-15-324/005652

appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.

Exhibit C

20 September 2010

Dear Tenure and Promotion Committee:

I am writing in support of Rachel Tudor's application for tenure and promotion to Associate Professor in the Department of English, Humanities, and Languages. I have known Dr. Tudor since 2004, and she has been an asset to the department of English, Humanities, and Languages, to our students, and to the greater Southeastern Oklahoma State University community. Dr. Tudor is sincerely and deeply interested in the success of our students, and she conscientiously makes every effort to determine how she can best serve the students while drawing their attention to the values and the conflicts that inform Western culture in general and American culture, in particular. As a specialist in Native American literature and culture within the context of American history and literature, and as a Native American herself, she is highly cognizant of the fraught situation that arises when Native American literature is taught as separate and distinct from American literature. She performs her culture's ethos by insightfully pointing to the disparities that exist between Native American and American culture; but she accomplishes this pointing in such a way that one is gently led both to understand the disparities and the idea that since these cultural differences are not necessary but chosen, different choices could be made.

Dr. Tudor's teaching is exemplary. She has been nominated in the past two consecutive years for the Faculty Senate Excellence in Teaching Award for the School of Arts and Sciences. The most recent departmental evaluation of Dr. Tudor's teaching supports those nominations and points, in particular, to the mindful way in which the class is taught and the emphasis that is placed on student success and how to achieve it in the given assignment--constructing PowerPoint slides for ancient humanities. In his assessment letter, a faculty observer positively notes the camaraderie between Dr. Tudor and her students and commends her for the careful way she places the day's work in the context of the course. Her teaching reflects the numerous courses she has taken in the Curriculum Instruction and Development in Technology at Southeastern to hone her skills in creating hybrid courses that draw upon online and in-class activities. She has also participated in numerous leadership development courses and assisted in student crisis interventions.

In terms of curriculum, Dr. Tudor has constructed several new courses for the department including one on Great Books, which she suggested in response to a student survey of desired departmental changes. She also devised the course on Native American literature and worked in tandem with the renowned Native American scholar, Rennard Strickland, who taught a course on our campus at the invitation of OSLEP, or the Oklahoma Scholar-Leadership and Enrichment Program, after Dr. Tudor suggested to me that he would be a

good speaker for OSLEP to consider. As the OSLEP representative on our campus at the time, I took her suggestion to OSLEP and they immediately tendered the invitation to Dr. Strickland to be the OSLEP guest lecturer at Southeastern in 2007, the first OSLEP speaker at Southeastern since the 1990's.

The OSLEP program requires that there be a campus coordinator to work with the visiting scholar to help devise the course and assess student involvement. Dr. Tudor took on this task and executed it successfully. Dr. Strickland then became the keynote speaker at Southeastern's biennial Native American Symposium for 2007, a conference that Dr. Tudor helped to coordinate as a member of the Native American Symposium Committee.

As the narrative of Dr. Tudor's experience with the OSLEP program suggests, her service has been an asset to a community far wider than that of Southeastern alone. By serving on the Native American Symposium committee since 2004 and by making suggestions in terms of theme and speaker more than once, Dr. Tudor has served the greater Southeastern community as well. In 2005 she suggested that the topic be "Native Women in the Arts, Education, and Leadership" and was a key player in seeing to it that Native American radio host Jacqueline Battiste attended the 2005 symposium.

Since 2009, Dr. Tudor has also served as a Faculty Senator, elected by the faculty at large. She has served as Chair of the Assessment, Planning, and Development Committee, the most innovative committee of the English, Humanities, and Languages Department. She has also served on hiring committees and on the Five-Year Program Review Committee that I chaired, in which she made a very valuable written contribution that thoughtfully articulated the teaching mission of the department.

It is perhaps in the area of scholarship in which Dr. Tudor has made a great breakthrough in the year 2010. While she has co-edited the Native American Conference proceedings on two occasions and has had articles accepted for publication before this year, 2010 has been a banner year for numerous publications in a broad array of venues that range from regional publications, to Native American collections, to philosophy journals, all indicative of Dr. Tudor's interest in Native American studies, American literature, humanities, and philosophy. In addition to her teaching, service, and scholarship in the world of academia, Dr. Tudor is also an accomplished artist and poet.

Dr. Tudor's passion for teaching and her commitment to her students' success are matched by the high expectations she has for her own scholarship and university service. She will be a thoughtful contributor to any department that is fortunate enough to hire her. If you have any questions or concerns, I would be happy to visit by phone or email.

Sincerely,

Lisa L. Coleman, Ph.D.
Honors Program Director
Professor of English



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

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September 10, 2010

To Whom It May Concern:

Dr. Rachel Tudor has asked me to write a recommendation letter in support of her application for tenure and promotion, which I am very pleased to do. I have known and worked with Rachel for the past six years since she joined our department here at Southeastern, and I have always considered her an exceptionally valuable asset. Indeed, I was on the committee that originally selected her application from among the many we received and voted to hire her.

Although she made a bit of a slow start, Rachel has recently become one of our most active scholars, with six articles either published or accepted for publication in peer-reviewed journals over the last two years. Her primary emphasis has been on the Native American novel, to which she brings a thoroughly informed and nuanced theoretical perspective, situating it firmly within wider international contexts, such as Latin American magic realism and Euro-American postmodernism. Her achievement in this area is truly impressive and outstanding.

As a teacher, my impression of Rachel is equally laudatory. I know she is always exhaustively prepared for her classes, and projects a demeanor of quiet authority and assured professionalism. Above all, she is interested in challenging the students, many of whom come from a very narrow and limited rural background, with alternative and diverse perspectives on a host of contemporary issues. Several have expressed to me how she convinced them to view matters quite differently than they did before taking her class, and always in the direction of greater tolerance and understanding for those unlike ourselves. On this front alone she makes a major contribution to our department.

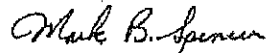
Finally, Rachel has also established an solid service record. She is in her second year as a member of the Southeastern Faculty Senate, and before that she served for three years as chair of our Assessment, Planning, and Development Committee, compiling and writing the annual assessment report. This is by far the most important departmental committee, as it oversees all aspects of curriculum development and assessment, potentially charting the course for years to come. In addition, Rachel has been one of the key members of the Native American Symposium Committee, which I chair, helping to

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

plan and stage the event every other year. For the 2005 and 2007 symposia, Rachel further served as co-editor with me of the published proceedings, reading and commenting on all the papers submitted, and joining in the selection of those to include.

In short, I can recommend Rachel most highly in all three dimensions of academic performance: scholarship, teaching, and service. I firmly believe she is more than deserving of tenure and promotion at this time.

Sincerely,

A handwritten signature in cursive script that reads "Mark B. Spencer".

Mark B. Spencer
Associate Professor of English and Humanities

Exhibit E

SOUTHEASTERN

A CENTURY OF BUILDING FUTURES

September 17, 2010

To whom it may concern:

I am writing to recommend Dr. Rachel Tudor for Tenure and Promotion to Associate Professor within the Department of English, Humanities, and Languages.

I have known Dr. Tudor since her interview and hire. I came to realize her intense interest in teaching, her impressive knowledge in the several fields of English studies, including Native American studies, and her conscientious endeavors (and resulting successes) in teaching those subjects. One of Dr. Tudor's peer teaching observation letters notes that her classroom planning and practices reflect that, as an instructor, she is "knowledgeable, respectful, humorous, helpful, thoroughly prepared, and technologically proficient." Dr. Tudor spends considerable time in the design and implementation of the courses she teaches and maintains high standards for her students in academic achievement.

Dr. Tudor's academic/scholarly record is impressive as well. Beside the academic record that she carried when she came to Southeastern, she has recently presented at least one conference and has had a paper accepted at another. She likewise has had several articles accepted for publication recently by journals well respected in our field. Dr. Tudor also is a creative writer, collecting her poetry and other personal writing in several chapbooks.

As a colleague, Dr. Tudor endeavors to carry (at least) her share of the workload within the department. I recall that, while still a relative newcomer within the EHL Department, Dr. Tudor led an assessment effort by the department with alacrity and foresight over a several-year period. She participates on committees and participates actively in planning and assessment. She works effectively with both faculty and staff members, and her demeanor is always professional regardless of the circumstances.

I have the advantage of having the office next to Dr. Tudor's, which I believe gives me some insight into the efforts she makes toward these different duties and endeavors. Though Dr. Tudor has a very quiet demeanor, she is generally hard at work in her office when I come in every morning, no matter how early I arrive. She is often still working in the late afternoon and evening.

I find Dr. Tudor to be a likeable, responsible, and a professional colleague in all respects pertinent to professional life within the University community, and I hope that the University will recognize and acknowledge Dr. Tudor's efforts and worthiness through the Tenure and Promotion process.

Sincerely,



Dr. Paula Smith Allen
Professor of English

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES
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Exhibit F



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4127
DURANT, OK 74701-0609

September 27, 2010

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FAX 580-745-7406
www.SE.EDU

Dear Tenure and Promotion Committee,

I am writing this letter to recommend Dr. Rachel Tudor for tenure and for promotion to Associate Professor. Since August 2004, Dr. Tudor has been a valuable asset to Southeastern Oklahoma State University, to the English, Humanities, and Languages Department (EHL), and to the students.

Dr. Tudor's scholarship interests are rich and varied with seven articles accepted for publication in prestigious journals for the year 2010 as well as publications from previous years of research, including the year 2009. In addition, Dr. Tudor has been invited to present her work at a variety of conferences and symposiums.

In regards to service, Dr. Tudor has been instrumental in the preparation of assessment documents and has participated in work on other committees for the EHL Department. She is a vital member of the department through her service, astute thinking, contributions, and collegiality. However, Dr. Tudor's service extends beyond the department as she currently serves on the Faculty Senate, has served and participated in the Oklahoma Scholar Leadership Enrichment Program (OSLEP), and has been a tireless supporter, worker, and committee member for the Native American Symposium.

Dr. Tudor's teaching is quite effective with solid student evaluations and with two nominations (2008 and 2009) for the SOSU Faculty Senate Teaching Award. In addition, and quite significantly, students benefit from Dr. Tudor's interests, scholarship, and expertise via the variety of courses she teaches for the EHL Department.

As a Native American and as a specialist in Native American culture, history, and literature, Dr. Tudor brings the richness of diversity through her heritage and through her scholarship to Southeastern Oklahoma State University; to the English, Humanities, and Languages Department; to the courses she currently teaches of composition, humanities, literature, and philosophy; and, most importantly, to the students.

As a fellow faculty member and co-worker, I appreciate the opportunity to work with such a fine scholar and educator. Thank you for the opportunity to recommend Dr. Rachel Tudor for tenure and for promotion to Associate Professor.

Sincerely,

Virginia A. Parrish, Ph.D.
Associate Professor
English, Humanities, & Languages Department
PMB 4234
Southeastern Oklahoma State University
Durant, Oklahoma 74710
Office phone: 580.745.2594
E-mail: vparrish@se.edu

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



OFFICE OF VICE PRESIDENT FOR BUSINESS AFFAIRS

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January 3, 2011

To: Dr. Rachel Tudor, Grievant
Dr. Doug McMillan, Respondent
Dr. Charla Hall, Chair Faculty Appellate Committee, Hearing Committee

From: Ross A. Walkup, President's Designee *RW*

Subject: Grievance filed October 11, 2010 |

Complaint: Dr. McMillan's order (dated October 5, 2010) to refuse to allow Dr. Tudor to apply for tenure and promotion for FY2010-2011 is in violation of RUSO policy.

Relief Sought: Dr. McMillan to rescind his decision and allow Dr. Tudor application for tenure and promotion to move forward in FY2010-2011.

Recommendation of Faculty Appellate Committee: Unanimously agreed that Dr. Rachel Tudor should be allowed to apply for tenure and promotion during the FY2010-2011 academic year. The committee based their decision solely on the written documentation submitted and did not deem it necessary to call witnesses. Consequently, no recording was made.

Received recommendation from Faculty Appellate Committee on December 10, 2010

Designee's deadline for reporting: January 3, 2011

Designee to submit report to: Grievant, Respondent, and the Faculty Appellate Committee

OPENING COMMENTS:

1. President Minks has been given the authority for administration of Southeastern Oklahoma State University by the Board of Regents of the Regional University System of Oklahoma (RUSO) in RUSO Policy 1.4 Philosophy d): "That the responsibility for administration of each university is delegated to each university president".
2. Interim VP Academic Affairs Doug McMillan was given authority to issue the memorandum dated October 5, 2010 to Dr. Rachel Tudor from the memo titled "Assignment of Presidential Duties - Short Term Absence" (see attachment A).
 - a. During the time period leading up to and including October 5, 2010, President Minks was out of town attending to university business.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

PI001244

- b. President Minks has issued in his absence "The Assignment of Presidential Duties-Short Term Absence" which delegates the administration of each major function to each respective vice president (business affairs, student affairs, and academic affairs).
 - c. Due to the content within the memorandum, Dr. McMillan was in communication with President Minks and received approval to proceed with issuing the October 5, 2010 memorandum to Dr. Rachel Tudor.
3. Southeastern's Academic Policies and Procedures 4.6.3 Procedure for Granting Promotion and Tenure: "The normal procedure for granting tenure is initiated by the faculty member during the fifth, sixth, or seventh year of service to the University in a tenure-track position."
- a. The word "or" is a coordinating conjunction introducing alternatives. The policy reads that a faculty member can make application in one of the following years (fifth or sixth or seventh).
 - b. The interpretation of this policy that has been followed by previous chief academic officers, (Dr. Robinson, Dr. Snowden and Dr. Minks) is: Once a faculty member received notification that the president denied his/her application for tenure, the following year (sixth or seventh) is the terminal year for that faculty member. The only way for a faculty member to not be subject to the "terminal year rule" is for that faculty member to withdraw his/her application prior to being notified by the president on denial of application. No exceptions can be found in reviewing past cases. Dr. Sturch was under a different policy where application started with a list of eligible faculty members developed by the school leadership and was based on "time and rank". Dr. Wylie was not able to be contacted.
4. RUSO Policy 3.3.4 Periods of Appointment and Tenure: "Seven (7) years shall be the maximum probationary period for the eligible faculty member to become eligible for tenure. If at the end of seven (7) years any faculty member has not attained tenure, there will be no renewal of appointment for the faculty member unless a specific recommendation for waiver of policy from the president to the contrary is approved by the Board each year."
- a. President Minks directed Dr. McMillan to communicate a solution to Dr. Tudor whereby she would not be subject to the "terminal year rule" and that he was willing to request a waiver from the Board. A solution that would allow two years (FY2010-2011 and FY2011-2012) to work on her portfolio and apply in her eighth year for tenure. A solution that included withdrawing her application. This communication was done through Dr. Scoufos in early April prior to President Mink's action to deny her application for tenure and promotion. Dr. Tudor did not withdraw her application thereby President Minks notified her of denying her application.
5. Communication of the review process followed the procedures outlined in RUSO Policy 3.3.5 where the chair reported the results of the committee's vote (simple majority approved), separate from his own (approved), to the dean who then forwarded that recommendation as well as her own (denied), to the chief academic officer who then forward that recommendation as well as his own (denied) to the president. This same policy does not specifically place a value of one recommendation over another but it does allow a recommendation for tenure to come directly from the chief academic officer or from the president of the university without prior recommendation from the division or department. This implies that the Board does recognize the recommendation by the chief academic officer and the president of the university above the division or department.

SUMMARY:

1. FY2008-2009 (fifth year): Dr. Tudor submitted her application and withdrew it while still being considered by the Promotion and Tenure Review Committee.
2. FY2009-2010 (sixth year): Dr. Tudor submitted her application and was denied tenure and promotion by President Minks.
 - a. Communication of the review process followed the procedures outlined in RUSO policy 3.3.5. where the chair reported the results of the committee's vote (simple majority approved), separate from his own (approved), to the dean who then forwarded that recommendation as well as her own (denied) to the chief academic officer who then forwarded that recommendation as well as his own (denied) to the president. Dr Tudor received notification of recommendation at each step of the review process.
 - b. Prior to initiating the recommendation for denial, President Minks agreed with Dr. McMillan that Dr. Tudor was warranted a consideration to not be subject to the terminal year rule as stated in RUSO Policy 3.3.4. President Minks was ready to request such waiver and directed Dr. McMillan to communicate to Dr. Tudor such a solution that was contingent upon Dr. Tudor withdrawing her application. This would allow her two years (FY2010-2011 and FY2011-2012) to work on her portfolio and apply in her eighth year for tenure. This communication was done through Dr. Scoufos in early April. Dr. Tudor did not withdraw her application.
3. FY2010-2011 (seventh year): Dr. Tudor is in her terminal year and cannot make application for tenure.

CONCLUSION:

I do not concur with the Faculty Appellate Committee recommendation and instead support the action taken by Dr. McMillan in his memorandum dated October 5, 2010 informing Dr. Tudor that her application for tenure and promotion would not be accepted for review in FY2010-2011.

Attachment A

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

ASSIGNMENT OF PRESIDENTIAL DUTIES --- SHORT TERM ABSENCE

In the event of a short term absence, the President will delegate authority to selected administrators in order to facilitate the management of Southeastern Oklahoma State University. The selected administrators will be representative of each major functional group (i.e., Business Affairs, Student Affairs, and Academic Affairs) and will be expected to perform respective decision making in consultation with the functional areas affected by the decision. The President may appoint one designee who will be ultimately accountable for the decision. The President's designees will be governed by the regulations of The Board of Regents of the Regional University System of Oklahoma, the Oklahoma State Regents for Higher Education, and Oklahoma Statutes.

Also, in keeping with past practice, when the President is not on campus and not readily accessible by phone, there should be at least one Vice President on campus to whom anyone can go for consultation/information. On those rare occasions when the President and all Vice Presidents are off campus, the President may designate an Assistant Vice President to whom any emergency could be referred.

Office of the President
July 6, 2009

PI001247



Bryon Clark

From: Babb, Charlie [cbabb@ruso.edu]
Sent: Monday, January 24, 2011 2:11 PM
To: Bryon Clark
Subject: RE: Addition to Grievance Policy

Dr. Clark: I think this works. Please give me a call if you have anything in particular that you question. Charlie

Charles K. Babb, General Counsel
Regional University System of Oklahoma
Voice: 405-942-8817
Fax: 405-942-8847

From: Bryon Clark [mailto:BKClark@se.edu]
Sent: Monday, January 24, 2011 1:57 PM
To: Babb, Charlie
Subject: Addition to Grievance Policy

Charlie:

Attached is a draft of protocols/procedures to complete the Tudor grievance dated 11 October 2010 given the lack of agreement between the President's Designee and the Hearing Committee; the existing policy did not address this scenario. I also have attached the grievance policy for your use.

I anticipate your response.

Questions, e-mail or call me (580-745-2064).

Cordially,

Bryon