

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

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. CIV-15-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY SYSTEM
OF OKLAHOMA,

Defendants.

**DEFENDANTS SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA'S
FIRST MOTION IN LIMINE AND
REQUEST FOR EXPEDITED BRIEFING AND RULING**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), (collectively "University Defendants" or "the State"), submit this First Motion in Limine to exclude certain hearsay testimony. The State moves this Court to order the Plaintiff and Plaintiff-Intervenor, (collectively "Plaintiff"), through counsel and/or other means, to refrain from stating, referencing, implying, or suggesting in any writings, opening statements, questions, answers, objections, arguments, closing statements, or other utterances or statements, or by means of any device, any of the following hearsay Items:

1. That an SEOSU employee “warned [Intervenor] that [SEOSU] Vice-President for Academic Affairs” Douglas McMillan “had inquired whether Dr. Tudor could be fired because her ‘transgender lifestyle’ offended his religious beliefs,” as alleged in Paragraph 15 of Plaintiff’s Complaint [Doc. 1], and Paragraph 40 of Plaintiff-Intervenor’s Complaint [Doc. 24].

2. That Intervenor was told by a SEOSU “human resources employee” that the SEOSU human resources employee told Vice-President Douglas McMillan “that Southeastern could not fire [Intervenor] because she was transgender,” as alleged in Paragraph 15 of Plaintiff’s Complaint [Doc. 1], and Paragraph 40 of Plaintiff-Intervenor’s Complaint [Doc. 24].

3. That Intervenor was told by Jane McMillan that SEOSU Vice-President for Academic Affairs Douglas McMillan told his sister, (Jane McMillan), that “transgender people [are] a ‘grave offense to his [religious] sensibilities,” as alleged in Paragraph 17 of Plaintiff’s Complaint [Doc. 1], and Paragraph 42 of Plaintiff-Intervenor’s Complaint [Doc. 24].

4. That Intervenor was told that Vice-President for Academic Affairs Douglas McMillan “made statements that were repeated to [Dr. Tudor] that her gender expression and gender identity were offensive to [McMillan],” as alleged in Paragraph 136 of Plaintiff-Intervenor’s Complaint [Doc. 24].

ARGUMENT AND AUTHORITY

I. THE MOTION IN LIMINE STANDARD AND ADMISSIBILITY

“A motion *in limine* is a request for the court’s guidance concerning an evidentiary question.” *Cox Liquidating Trust ex rel. CDX Liquidating Trustee v. Venrock*, 411 B.R. 571, 578 (N.D. Ill 2009). Though “not explicitly authorized by the Federal Rules of Evidence,” motions *in limine* may be ruled upon by trial judges “pursuant to their authority to manage trials.” *Id.* The burden is on the moving party to establish that the evidence is not admissible. *Id.* A motion in limine is also supposed “to exclude the introduction of either irrelevant evidence, cf. FRE 401, or evidence, though relevant, [that] is either more prejudicial than probative, confusing or is a waste of time. Cf. FRE 403.” *In the Matter of Rambus Inc., A Corp.*, 9302, 2003 WL 21223850, at *1 (MSNET Apr. 21, 2003). As set forth more fully below, the purported evidence listed as Items 1 - 4 above, are inadmissible hearsay and more prejudicial than probative. All four items should be excluded from use at the trial in this matter.

Evidence which is not relevant is not admissible. Fed. R. Evid 402. Even relevant evidence may be excluded where its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403. Relevant evidence is defined under the Rules as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the

evidence.” Fed. R. Evid. 401. The four Items at issue cannot satisfy this relevancy test. Their probative value is extremely low, given that the only witness who claims to know anything about them is Intervenor, and even her recollection is both vague and conflicting. Further, the danger of unfair prejudice created by their introduction into evidence is very high.

II. HEARSAY

Hearsay is a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Fed. R. Evid. 801(c). In the absence of an exception, hearsay evidence is not admissible. Fed. R. Evid. 802; *see also U.S. v. Cooper*, 286 F.Supp.2d 1283 (D.Kan.2003) (granting motion in limine to exclude hearsay evidence); *Hillman v. U.S. Postal Service*, 171 F.Supp.2d 1174 (D.Kan.2001) (same). Moreover, hearsay within hearsay is also inadmissible unless “each part of the combined statements conforms with an exception to the rule [against hearsay].” Fed. R. Evid. 805.

Each of the four Items listed above is hearsay. Also, each includes instances of “double hearsay,” or “hearsay within hearsay,” under the Federal Rules of Evidence. Further, none of the hearsay exceptions properly apply to Items 1 - 4 or their subparts. Therefore, these four Items are not admissible, and the Court should preclude their introduction and any reference to them. Even if all parts of the hearsay information in Items 1 - 4 were somehow each found to meet appropriate exceptions to the prohibition against hearsay evidence, these Items should still be excluded as set forth below.

Intervenor's sworn testimony thus far is from definitive on this subject. When asked by Defendants' counsel whether or not Intervenor has accused Dr. Douglas McMillan of making discriminatory comments about Intervenor, the response was "I wouldn't characterize it in [pre]cisely those terms." (*Deposition of Intervenor*, attached as Exhibit 1, at p. 225, ln. 13-17). Intervenor does not ever testify to having any firsthand knowledge of Douglas McMillan making any comment about firing someone due to a transgender status. Instead, Intervenor testified that an SEOSU employee, Cathy Conway, relayed to Intervenor the question supposedly made by Dr. McMillan to Conway. When asked about who told Intervenor about Dr. McMillan's comment or question, Intervenor testified "that – I believe it was Cathy Conway." *Id.* at p. 226, ln. 1-4. Intervenor then testified further that, "I believe she [Cathy Conway] was the person who conveyed that information to me." *Id.* at p. 226, ln. 7-8. Other than this purported and uncorroborated exchange, there is no evidence of any kind that Dr. Douglas McMillan ever asked that question of Cathy Conway. Cathy Conway expressly denied that (a) Dr. McMillan ever made comments like that to her, and she also denied that (b) she ever told Intervenor anything like that. (*See Excerpts of EEOC Interview of Cathy Conway*, attached as Exhibit 2 and *Deposition of Cathy Conway*, attached as Exhibit 3). Aside from the fact that this remark appears to have been fabricated or imagined by Intervenor, its inherent unreliability coupled with its double-hearsay nature means it is not worthy of further consideration, and it should be excluded. As discussed in Section IV below, each individual (besides Tudor) who supposedly took part in the hearsay statements denies that

any of the alleged exchanges ever took place. For example, Cathy Conway told Plaintiff's counsel and the EEOC investigator on February 8, 2012 that she never had these conversations:

EEOC: Did Dr. McMillan call you and ask you if she could be terminated?

Cathy Conway: No.

EEOC: Did he make the statement that this offended his beliefs?

Cathy Conway: No.

EEOC: He didn't make that statement to you?

Cathy Conway: He did not.

(Ex. 2, p. 2, lns. 15-20).

Jane McMillan (sister of Douglas McMillan) was interviewed on February 9, 2012 by Plaintiff's counsel and the EEOC investigatory. The following exchange took place:

EEOC: Okay that you told her that it was good that she was not going to be judged by Dr. McMillan, that true?

Jane McMillan: No.

EEOC: Did you tell Dr. Tudor that Dr. Doug McMillan had a problem with her lifestyle that it offended his religious beliefs?

Jane McMillan: No.

(*Excerpts of EEOC Interview of Jane McMillan*, attached Exhibit 4, p. 1, lns. 23-28).

Similarly, during his February 8, 2012 interview by Plaintiff's counsel and the EEOC investigator, Dr. McMillan himself denied making these statements. He was questioned by Plaintiff's counsel and investigator at that time, with the following results:

EEOC: Do you have any religious beliefs . . .

Doug McMillan: Yea I have personally.

EEOC: . . . about gay and lesbian, bisexual, transgender, people being immoral?

Doug McMillan: That I apply to other people? No.

EEOC: Do they make you uncomfortable?

Doug McMillan: No.

EEOC: Do you have any objections to their lifestyle?

Doug McMillan: Objection, no.

...

EEOC: Did you inquire of human resources or anybody else if the charge party [Intervenor] could be terminated because of her lifestyle?

Doug McMillan: No never. That's a complete fabrication.

(Excerpts of EEOC Interview with Doug McMillan, attached as Exhibit 5, p. 14, lns. 1-8; 23-24). These unreliable and unfairly prejudicial double-hearsay Items should be excluded.

III. REMOTENESS AND VAGUENESS OF ALLEGED STATEMENTS

Although the Plaintiffs' Complaints are less than specific about the circumstances of Items 1 - 4, it appears that the statements in question (set out in Paragraphs 15 and 17 of Plaintiff's Complaint [Doc. 1]; Paragraphs 40 and 42 of Intervenor's Complaint [Doc. 24]) are alleged to have occurred in the summer of 2007. This temporal location is based on the reading of Paragraphs 14 - 17 together. As noted, there is no corroboration for either the substance of these purported exchanges, or that the exchanges ever occurred at all. As discussed above, the alleged declarants deny such statements were made. Further, these alleged statements are extremely remote from the issues at hand in this case.

Paragraphs 24 and 29 of Plaintiff's Complaint allege it was in the summer of 2009 that Dr. Tudor made preparations to apply for tenure and promotion, and Intervenor submitted her application in October 2009. Paragraph 33 of Plaintiff's Complaint alleges in February 2010 Dr. McMillan sent a letter to Intervenor opposing the application for tenure and promotion. Thus, it was at least two and a half (2 1/2) years after the alleged

remarks (either by or about Dr. McMillan) in Items 1-4 that Dr. McMillan had any involvement in Dr. Tudor's tenure process. The comments outlined in Items 1-4 are way too remote in time to be truly probative or admissible here. *See Thompson v. State Of Oklahoma*, 202 F.3d 283 (10th Cir. 2000) (properly excluding "material [that] is attenuated in time from the years in question" included in an affidavit executed some four or five years after the fact); *Utah State Farm Bureau Fed'n v. Nat'l Farmers Union Serv. Corp.*, 198 F.2d 20, 24 (10th Cir. 1952) (noting that the trial court was properly within its province to exclude some testimony tending to connect Farmers Union representatives with the Communist Party as too remote in time and based on hearsay); *Joffe v. Vaughn*, 873 P.2d 299, 304 (Okla.Ct.App.1993) (upholding trial court's discretion to exclude evidence "too remote in time and relevance"); and *Stouffer v. State*, 738 P.2d 1349, 1355 (Okla.Crim.App.1987) (ex-wife's knowledge of victim's drinking habits "was too distant [after living apart for fifteen months] to establish a then current pattern of ... conduct or to be relevant, or to qualify as impeachment evidence").

In *McGrath v. Clinton*, the court there found that an employee's separation from work two years after the filing of his EEOC charge, and sixteen months after the conclusion of the EEOC's investigation were "adverse action outside the timeframe from which a jury could infer a causal relationship. 674 F. Supp. 2d 131, 148 (D.D.C. 2009), *aff'd*, 666 F.3d 1377 (D.C. Cir. 2012) (*citing Clark County Sch. Dist. v. Breeden*, 532 U.S. at 273-74, 121 S.Ct. 1508 (citing cases with three to four month intervals between protected conduct and adverse employment action as too remote to infer a causal

relationship); *Mayers v. Laborers' Health and Safety Fund of North America*, 478 F.3d 364, 369 (D.C. Cir. 2007) (“[T]he eight- or nine-month gap between the final protected activity ... and the [adverse employment action] is *far too long*”). Similarly, the United States District Court for the Northern District of Mississippi found statements made at a time too remote from the alleged adverse action could not “demonstrate any animus.” *Brewer v. All. Healthcare Servs.*, No. 4:11CV130-SA-JMV, 2013 WL 1896132, at *5 (N.D. Miss. May 6, 2013) (citing *Guthrie v. Tifco Indus.*, 941 F.2d 374, 379 (5th Cir.1991), *cert. denied*, 503 U.S. 908, 112 S.Ct. 1267 (1992) (statements made one year before adverse **employment** action held too vague and **remote** in time to establish discrimination); *Tillman v. S. Wood Preserving of Hattiesburg, Inc.*, 377 F. App'x 346, 2010 U.S. App. LEXIS 9181, at *6, 2010 WL 1778831 (5th Cir.2010) (affirming district court's dismissal of all claims based on **events** occurring more than 180 days prior to filing of EEOC charge).

Intervenor's first EEOC charge is alleged to have been filed on September 9, 2010, (Paragraph 8 of Plaintiff's Complaint), which is more than three (3) years after the supposed hearsay statements outlined in Items 1-4. It is also important to note that Intervenor's EEOC charge does not mention anything about these supposed statements. Plaintiff's lawsuit was filed on March 30, 2015, nearly eight (8) years after the uncorroborated hearsay statements in Items 1-4. Given the authority cited above, the two and a half (2 1/2) year gap between the alleged hearsay statements and Intervenor's tenure denial, the three (3) year gap between Items 1-4 and Intervenor's first EEOC

charge, and the more than eight (8) year span between the alleged statements and Plaintiff's lawsuit, these double-hearsay statements are too remote in time to be of sufficient probative value in this litigation and to a trier of fact. Therefore, Items 1-4 should be excluded.

IV. HIGH DANGER OF UNFAIR PREJUDICE - LOW PROBATIVE VALUE

The Defendants deny discriminating against Plaintiff, and specifically deny discriminating against Plaintiff due to her transgender status. Vice President of Academic Affairs Douglas McMillan, his sister, Jane McMillan, and SEOSU Human Rights official Cathy Conway, each and all deny that the alleged exchanges (set out above as Items 1 - 4), ever took place. (*See* Exs. 1-5)¹. There are no independent documents, (contemporaneous or otherwise), recording or memorializing any such alleged exchanges as Items 1 - 4. Only Plaintiff alleges that the statements described in Items 1 - 4 even occurred. Plaintiff offers no independent corroboration of these self-serving allegations. In the absence of any corroborating witness or document, such self-serving allegations by a plaintiff have very low probative value. *See AIOI Nissay Dowa Ins. Co. v. Prosignt Specialty Mgmt. Co.*, 563 F. App'x 68, 69, fn 1. (2d Cir. 2014) (“...probative value of . . . evidence is suspect, insofar as the supposedly corroborating interpretations may amount to self-serving readings. . .”); and *Green Gas Delaware Statutory Trust v. Comm'r of Internal Revenue*, No. 13698-10, 2016 WL 3909765, at *37 (T.C. July 14, 2016)

¹Notably, Plaintiff's lead counsel in the current litigation was present for, and participated in, all four (4) of the interviews/depositions reflected in these five (5) Exhibits.

(evidence “corroborated only by the self-serving testimony . . . ha[s] little to no probative value. . . “).

By contrast, the danger of unfair prejudice to the University and RUSO is extremely high. The Tenth Circuit cited approvingly to the following commentary from 4 Weinstein & Berger, Weinstein’s Evidence, at ¶ 805[01]: Certainly, the trial judge has discretion under Rule 403 to exclude a statement of multiple hearsay, **even if each included portion meets the requirements of an exception**, when [s]he finds the statement so unreliable that its probative value is substantially outweighed by the danger of prejudice and confusion.

Boren v. Sable, 887 F.2d 1032, 1036 (10th Cir. 1989).

Even if Plaintiff and Intervenor were able to point to appropriate exceptions to the rule against hearsay, given the direction provided by Fed. R. Evid. 402 and 403, the inherently unreliable and uncorroborated nature of Items 1 - 4, coupled with the great danger of prejudice and confusion those items present, the Court should exclude each of the hearsay Items, as well as any reference to their substance.

V. EXPEDITED BRIEFING AND RULING

Given that the Parties’ dispositive motions will be due on or before September 1, 2016, Defendants respectfully request that the Court impose an expedited briefing schedule on this particular issue. Defendants ask that Plaintiffs’ responses (if any) to this motion be due on or before August 19, 2016, and that Defendants’ Reply be due on or before August 24, 2016. Defendants respectfully ask for a ruling on this issue prior to the September 1, 2016 dispositive motion deadline, to potentially alleviate inadmissible evidence from dispositive motion pleadings.

CONCLUSION

Plaintiff's self-serving allegations of the above-described double-hearsay statements (all of which are wholly denied by the alleged speakers) are so remote in time, inherently untrustworthy, and so dangerously prejudicial to a fair and unbiased resolution of this matter that the Court should exclude them entirely, as set forth herein.

Respectfully submitted,

/s/Jeb Joseph

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2016, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ Jeb Joseph
Jeb Joseph

1 Q -- that led you to believe he discriminated
2 against you because you're Native American?

3 A Yes.

4 Q What?

5 A In the letter that he composed outlining
6 the reasons for the denial of tenure and promotion,
7 as well as his memo prohibiting me from applying in
8 the last year at Southeastern. In both of those
9 documents, he demonstrates an un- -- a disrespectful
10 attitude toward Native American scholarship, Native
11 American service, Native American culture, in
12 general, and me in particular.

13 Q Okay. You -- you have accused Dr. McMillan
14 of making several discriminatory comments about
15 you; is that right?

16 A I wouldn't characterize it in cisely
17 (phonetic) those terms.

18 Q Okay. Well, you are claiming that
19 Dr. McMillan asked somebody at Southeastern if they
20 could fire you because you're transgender; is that
21 right? Is that correct?

22 A Yes. We're -- we're moving on to a -- I
23 was confused about whether we were continuing with
24 the Native American questions. And this is in
25 reference to being transgender. Yes, he -- he did --

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I was informed --

Q By who?

A -- that -- I believe it was Cathy Conway.

Q So you believe that Cathy Conway told you

that Dr. McMillan asked if you could be fired because you're transgender?

A I believe she was the person who conveyed that information to me.

Q Okay. Well, you sound uncertain. Are you certain that Cathy Conway told you Dr. McMillan asked her if you could be fired because you're transgender?

A Okay. That question's a little bit confusing. Could you rephrase it?

Q Are you certain that Cathy Conway told you that Dr. McMillan asked if you could be fired because you're transgender?

A To the best of my knowledge, Cathy Conway -- in a conversation with Cathy Conway, the information was conveyed to me that Dr. McMillan asked if I could be terminated because I'm transgender.

Q Did she share that with you on more than one occasion?

A No.

Q When did she tell you that?

Interview of Cathy A. Conway

February 8, 2012

(Also present Charlie Babb, General Counsel, RUSO (CKB) and
Allan K. Townsend, Senior Trial Attorney, U.S.D.O.J. (AKT))

Kathy Nusz, EEOC: I just wanted to run through, I'm here on an investigation. I'm with the EEOC a charge of discrimination filed by Rachel Tudor against the university. And I'll be asking you questions today, I would just ask that, I'm not going to swear you in but like a court of law that you tell the truth. I am going to turn this on and I'll have you state your name for the record.

EEOC Okay will you state your name for the record?

CC **Cathy A. Conway.**

EEOC **And your job title?**

CC **Human Resources Director.**

EEOC What was your date of hire?

CC January 15, 1999.

EEOC And were you hired as the HR Director?

CC Yes.

EEOC When did you find out that Dr. Tudor was transitioning?

CC It was probably a day or two before June 1st, late May, 2007.

EEOC And how did you find out?

CC Dr. Tudor came to Human Resources to present a legal document letting us know she was changing her name.

EEOC Had you known about this prior to her coming to HR?

CC No.

EEOC This was just new news?

CC Yes.

EEOC Okay. When was it decided and who decided that she was to use another restroom?

CC There was no decision that she was to use another restroom. It was suggested to her that there was another restroom, and it was not mandatory, but she might consider using it.

EEOC You made the suggestion?

1 CC Yes.

2 EEOC Did someone make that suggestion to you?

3 CC Uh Charlie Babb and I spoke about bathroom facilities. This was the first time we'd ever
4 experienced this.

5 EEOC There's no other transgender?

6 CC Not to my knowledge.

7 EEOC Did she use another restroom, did she follow that direction?

8 CC I have no idea.

9 EEOC Okay I guess you contacted Mr. Babb to get direction?

10 CC Yes and talk about.

11 EEOC Were there, of course I guess at this time, most everyone else in her department was made
12 aware and....

13 CC The semester had ended and most of the faculty were gone. It was like May so it was between
14 spring and summer semester. I don't know if any of them knew at that point.

15 EEOC Did Dr. McMillan call you and ask you if she could be terminated?

16 CC No.

17 EEOC Did he make the statement that this offended his beliefs?

18 CC No.

19 EEOC He didn't make that statement to you?

20 CC He did not.

21 EEOC Did he make any statements about her transition?

22 CC He just listened when I told him that she was transitioning.

23 EEOC And you told him why?

24 CC I told him two of our policies.

25 EEOC What are those?

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.

1 Q. (By Mr. Townsend) You previously said that you
2 had a discussion with Dr. McMillan, Dr. Mangrum and
3 Dr. Micho about the gender -- Dr. Tudor's gender
4 transition, correct?

5 A. Yes.

6 Q. Have you told me everything you remember about
7 that conversation?

8 A. No, not today.

9 Q. What -- what all did you discuss during that
10 meeting?

11 A. That Dr. Tudor was changing her name and may be
12 presenting as a female. There would be a change of her
13 name in the system. I possibly mentioned a change in
14 her name on her door; that if she asked them for their
15 opinion about which gender to present, they should not
16 try to give her any opinion or assistance, that they
17 should advise her to contact her psychologist, counselor
18 or someone like that; that -- the same information I
19 provided about the bathroom, what was available, that it
20 was not mandatory for Dr. Tudor, it was her choice; the
21 two policies, of course, and that if anyone who reported
22 to them such as Dr. Tudor or any of the faculty or
23 students with any questions, concerns, they should refer
24 them to the policy. And if they needed my assistance,
25 to let me know.

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 **A. I don't know about their views. They said**
2 **nothing about their views to me.**

3 Q. (By Mr. Townsend) Do you know whether any of
4 the people that you talked to about Dr. Tudor's gender
5 transition have any moral objection to transgender
6 people?

7 MS. COFFEY: Object to form.

8 A. Could you repeat the question?

9 **Q. (By Mr. Townsend) Do you know whether any of**
10 **the people that you spoke to about Dr. Tudor's gender**
11 **transition have any moral objection to transgender**
12 **people?**

13 **A. No.**

14 MS. COFFEY: Object to form.

15 **Q. (By Mr. Townsend) Do you know whether any of**
16 **the people that you spoke to about Dr. Tudor's gender**
17 **transition have any religious objection to transgender**
18 **people?**

19 **A. No.**

20 MS. COFFEY: Object to form.

21 Q. (By Mr. Townsend) Do you know what restroom
22 Dr. Tudor used after this June 1st conversation that you
23 had with her?

24 MS. COFFEY: Object to form.

25 A. No.

1 review?

2 A. Page 4, For example, the one at the top.

3 Q. You're referring to the allegation that reads,
4 For example, Dr. Douglas McMillan, interim president for
5 academic affairs, made an inquiry to human resources to
6 see if I could be terminated because, quote, my
7 lifestyle offends his religious beliefs, unquote, right?

8 A. Yes.

9 Q. What do you -- what do you remember doing with
10 respect to the response to that allegation?

11 A. I just read it. My name is on it there.

12 Q. Do you remember reading it to ascertain whether
13 it was accurate?

14 MS. COFFEY: Object to form.

15 Q. (By Mr. Townsend) Let me strike that question.
16 Did you read this response to this allegation to make
17 sure it was accurate?

18 MS. COFFEY: Object to form.

19 A. Yes.

20 Q. (By Mr. Townsend) Is it accurate?

21 MS. COFFEY: Object to form.

22 A. The paragraph in which I am denying that
23 statement made by Dr. McMillan I know for a fact is
24 accurate. The paragraph above it is accurate.

25 Q. (By Mr. Townsend) Were there any other

Interview of Jane McMillan

February 9, 2012

(Also present Charlie Babb, General Counsel, RUSO (CKB) and
Allan K. Townsend, Senior Trial Attorney, U.S.D.O.J. (AKT))

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EEOC You know why we're here. I'm investigating a complaint that was filed by Rachel Tudor against the university. I'm not going to swear you in today, I would just ask that you be truthful.

JM Okay.

EEOC What is your title?

JM I'm the director of the counseling center.

EEOC You counsel students?

JM Yes.

EEOC And your date of hire?

JM June 1st of '92

EEOC And when you were hired, what were you hired in as?

JM Director of counseling center.

EEOC And that's what you've done all the time. Okay we've had some statements made that you had a discussion with Dr. Tudor prior to her going up for tenure and one of the statements that you made was that "It's good that she's not going to go up your brother, Doug McMillan is your brother correct?"

JM He's my younger brother yes.

EEOC Okay that you told her that it was good that she was not going to be judged by Dr. McMillan, that true?

JM No.

EEOC Did you tell Dr. Tudor that Dr. Doug McMillan had a problem with her lifestyle that it offended his religious beliefs?

JM No.

EEOC Do you know what your brother's religious beliefs are on gay and lesbian?

- 1 JM She didn't leave her office at that time, I stayed with her for a while and then eventually
2 returned to my own office since I had demands that I needed to take care of.
- 3 EEOC Okay so you left her there?
- 4 JM In her office.
- 5 EEOC Okay so how was she getting home?
- 6 JM We didn't really talk that that, if we did I don't remember. She seemed comfortable
7 when I offered to stay longer but she was comfortable and some of her departmental
8 colleagues had stopped by, said hello and so....
- 9 EEOC Okay so any other conversations that you had?
- 10 JM Not at that time but we've had multiple conversations over the years.
- 11 EEOC Have you spoken with her since she left school?
- 12 JM Yes I have.
- 13 EEOC I need one more piece of paper over here. You got anything?
- 14 AKT What did you and Dr. Tudor talk about since she's left the school?
- 15 JM She sent me an email this past May I don't know the exact day I say around May 22nd or
16 so of 2011 and then she followed that up with a phone call within a day or two after
17 that. The phone call she initially asked if I was angry at her and I indicated no and she
18 asked if I had received her email; and I said yes and she wondered why I hadn't
19 responded, it didn't request a response, I didn't, I just didn't and so in the course of that
20 conversation...
- 21 EEOC What was the email about?
- 22 JM It was a pretty lengthy email in which she was talking about having, it's gonna take me a
23 second, let me try and collect my thoughts.
- 24 EEOC That's fine. I'll get a drink of water.
- 25 JM I guess the main points that I can remember at this time included that she felt that my
26 brother, Dr. McMillan, had been or had held acrimonious beliefs about transgendering
27 individuals and that she had gotten that impression from a prior lunch we had had. I
28 told her at that time that I never had any conversation with Doug about that...
- 29 EEOC A prior lunch that you had with Dr. Tudor?

1 JM Uh huh yea, a couple of years before this phone conversation. She said that perhaps
2 our conversation had been more general in nature. We again talked a little bit about
3 being in an area that was a fundamentally Baptist Bible belt area....

4 EEOC Did you bring that up?

5 JM Uh she did.

6 EEOC Okay.

7 JM She also in the email had indicated that something about how she felt her, I don't think
8 she used the word "treatment" but the course of her tenure process and outcome sent
9 a non-supportive message to gay, lesbian, bi, transgendering students, seems like there
10 was some more regarding that.

11 EEOC Did she say students or students and faculty or.....?

12 JM I would have to look at the email to tell you for sure, I want to say it was students...

13 EEOC Okay.

14 JM But I'm not positive on that Kathy.

15 EEOC Okay.

16 JM She also had said in the email that she knew that I couldn't say anything because of
17 being a family member, she knew I wouldn't be able to say anything because she knew
18 the administration here would retaliate against me; none of those statements are true.

19 EEOC Did you tell her that?

20 JM I did. I did. Every time I tried to either clarify or gain more information from her about
21 where she was getting this, she didn't become anymore clear, in fact she got angry at
22 one point and I really didn't try to continue the conversation much after that. I told her
23 that I wished her well and that I'd like to stay in contact with her. And I know there
24 were other parts of the email and the conversation but like I said, I'd have to look at it to
25 try to remember anything else. It's the best that I can recall right now.

26 EEOC Well that was a while ago so, I can understand that?

27 AKT When was the last time you looked at that email that she sent you?

Interview of Doug McMillan

February 8, 2012

(Also present Charlie Babb, General Counsel, RUSO (CKB) and
Allan K. Townsend, Senior Trial Attorney, U.S.D.O.J. (AKT))

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Kathy Nusz, EEOC: I think I've met you before.

DM Really?

EEOC I don't know. Did you work at another college?

DM No. I've always been here.

EEOC Huh. Oh well. Oh well.

EEOC Of course you know why I'm here. I'm Kathy Nusz; I'm from the EEOC investigating a charge filed by Rachel Tudor against the university. I'm not going to swear you in today but I would ask that you be truthful and answer like you were in a court of law.

DM OK

EEOC I am going to turn the recorder on and I'll have you state your name and we'll begin the questions.

DM OK

EEOC Will you please state your name?

DM Douglas McMillan

EEOC Okay and your title?

DM Interim Vice President for Academic Affairs.

EEOC And your date of hire?

DM Was January 8, 1990, no that was my hire at the university. Are you asking for my current position....?

EEOC You very first hire date. And your job title at hire?

DM Assistant professor, Psychology.

EEOC And your promotions?

DM Let's see, of course I'm a full professor now still retain faculty rank, but 4 or 5 years after hire, I was promoted to associate professor as a part of that or a little bit later than that, I was also named as department chair. Then around 1999 I think, it's pretty close, I was joined the central administration as Assistant Vice President of Academic Affairs, shortly after that I was promoted

1 EEOC Do you have any religious beliefs....

2 DM Yea I have personally.

3 EEOC about gay and lesbian, bisexual, transgender, people being immoral?

4 DM That I apply to other people? No.

5 EEOC Do they make you uncomfortable?

6 DM No.

7 EEOC Do you have any objections to their lifestyle?

8 DM Objection, no. You mean do I ...? I don't understand that question. I assume that's their
9 lifestyle, not my lifestyle.

10 EEOC What's your religious tent.... is it...what religion are you?

11 DM I'm Baptist Christian.

12 EEOC Okay. Does your religious tent have an objection to gay, lesbian, bisexual, transgender?

13 DM Okay, what do you mean by religious tent I'm not sure?

14 EEOC The Baptist belief.

15 DM I would say generally the Baptist belief teaches that that's a not a biblical lifestyle.

16 EEOC Okay.

17 DM Let me say this about that question. I don't believe my personal faith is something that I get to
18 beat people over the head with and make decisions about as vice president. I think we would
19 be in a pretty sorry situation if whoever was in charge got to dictate how everybody else lived
20 and the faith they have. The only way my personal beliefs comes into play, is I believe I'm
21 required to, and I'm being honest to you, required to the best of my abilities to have fairness in
22 the workplace as I do my work And that's what I've attempted to do.

23 EEOC Did you inquire of human resources or anybody else if the charging party could be terminated
24 because of her lifestyle?

25 DM No never. That's a complete fabrication.

26 EEOC Have you heard that statement before?

27 DM I've heard it, and I've seen it and read it on blogs.

28 EEOC Me to.