

Jury Trial - Volume 3
November 15, 2017

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

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|-----------------------------|---|-----------------------|
| DR. RACHEL TUDOR, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. CIV-15-324-C |
| |) | |
| SOUTHEASTERN OKLAHOMA STATE |) | |
| UNIVERSITY and THE REGIONAL |) | |
| UNIVERSITY SYSTEM OF |) | |
| OKLAHOMA, |) | |
| |) | |
| Defendants. |) | |
| |) | |

VOLUME 3
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ROBIN J. CAUTHRON
WEDNESDAY, NOVEMBER 15, 2017; 9:15 a.m.
OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography,
transcript produced by computer.

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November 15, 2017

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1 (Proceedings held on November 15, 2017.)

2 THE COURT: Be seated.

3 I am prepared to rule on the Conway deposition.

4 All objections made by defendant are overruled except
5 those to -- on page 175 concerning healthcare.

6 I will permit the counterdesignations to be read without
7 limiting your direct examination of this witness because they
8 are so brief and simply place some things in context.

9 I will direct the plaintiff to read these in order. Even
10 though they may not be what you have designated, I want them
11 just read straight through.

12 Ms. Coffey, I'm told you may have something before the
13 jury comes in?

14 MS. COFFEY: Yes, Your Honor, a couple of procedural
15 matters.

16 When we concluded yesterday afternoon, there was the
17 issue of the availability of Judge Richard Ogden. As I had
18 represented to the Court yesterday, Judge Ogden's schedule,
19 due to Judge Ogden having to take responsibility for his own
20 docket, Judge Stuart's docket, and Judge Dixon's Friday
21 morning docket, the judge is unavailable until -- at any
22 possible time would be Friday afternoon. That would only be
23 if the morning docket doesn't have carry over for arguments to
24 be taken care of.

25 Late last night, I received an e-mail after I notified,

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1 early evening, plaintiff's counsel of Judge Ogden's schedule.
2 So I received an e-mail asking if we would agree that he could
3 be presented by deposition as a result of him being
4 unavailable.

5 I would represent to the Court that Judge Ogden's
6 schedule this week does not constitute unavailability under
7 the federal rules. Had plaintiff's counsel done their job
8 diligently and served Judge Ogden in a timely manner, as
9 opposed to 24 hours before they asked for him to appear, any
10 conflict could have been taken care of, and they failed to do
11 so.

12 So his deposition designations -- I mean, we used defense
13 strategy of not questioning during there, so we don't have
14 that opportunity. So it's extremely prejudicial, in addition,
15 to allow Judge Ogden to testify during our case on Friday
16 afternoon.

17 Now, I understand that if, for some reason, plaintiff's
18 case is still going on come Friday afternoon, that that would
19 be a different issue.

20 MS. NOVOTNY: Yes, Judge. In regards to the time of
21 the service, it wasn't until November 1st --

22 THE COURT: Just step to the podium. You don't have
23 to speak right into it.

24 MS. NOVOTNY: Sure.

25 So it wasn't until November 1st that we even had a

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1 for-sure trial date. The local rules require seven days
2 between the filing of the subpoenas onto the docket to the
3 time that they're allowed to be served.

4 So with the late notice of all the dates in this trial,
5 it was very difficult to get everybody served in any more
6 timely manner.

7 MS. COFFEY: May I address that, Your Honor?

8 THE COURT: Well, it's just not reasonable. It's
9 not reasonable to -- and perhaps I am speaking from my own
10 experience more than I usually do, but you can't just uproot a
11 judge from a docket and misput hundreds of lawyers and clients
12 and witnesses and parties for your benefit.

13 You have to plan ahead with somebody like that. The more
14 busy someone is, the more burden is placed on them with short
15 notice. And you could have served him well before -- what is
16 today? -- well before Monday, is the day he was actually
17 served to appear here on Tuesday.

18 It places an undue burden on him, and it's not a
19 reasonable time. I'll leave it open for now for whether he
20 can appear on Friday or, if some hole opens up in his
21 schedule, that he can come some other time.

22 So I'm not going to -- well, I will rule that he is not
23 unavailable.

24 Okay. What else?

25 MS. COFFEY: Your Honor, this morning at 7:30 a.m.,

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1 plaintiff filed a subpoena to appear and testify to
2 Dr. Charles Weiner. That subpoena requires Dr. Weiner to
3 appear at 9:00 a.m. tomorrow morning.

4 We haven't had any opportunity to talk to Dr. Weiner, but
5 Your Honor ruled yesterday 24 hours' notice is not reasonable.
6 And plaintiff's counsel contradicted Your Honor's order and
7 went ahead and filed the subpoena anyway, which I think --

8 THE COURT: I have to find not only that it's not
9 reasonable, but that it places an undue burden. Without more
10 information, I can't find that.

11 If it is a burden to him, then my ruling will be he
12 cannot testify -- or will not be forced to testify. But I
13 think it's premature to do that at this time.

14 MS. COFFEY: Your Honor, my reading of the rule is
15 that unreasonable notice or undue burden, and definitely the
16 unreasonable notice is applicable in this case.

17 THE COURT: It sounds like a marching band on the
18 roof.

19 MS. COFFEY: They're having more fun.

20 THE COURT: Well, let me just take a peek at the
21 rule.

22 MS. COFFEY: Your Honor, we don't know that
23 Dr. Weiner has been served. The subpoena was filed. We had
24 communicated --

25 THE COURT: Okay. Let's not worry about something

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1 that hasn't arisen.

2 MS. COFFEY: Right.

3 THE COURT: Anything else?

4 MS. COFFEY: No, Your Honor.

5 THE COURT: Do you have witnesses this morning?

6 MR. YOUNG: Yes, we do, Your Honor. I'm going to --
7 also wanted to say that we do have a draft verdict form as you
8 requested.

9 THE COURT: May I have it?

10 MR. YOUNG: Yes, you may.

11 May I approach?

12 THE COURT: Just hand it to her.

13 MR. YOUNG: Thank you.

14 THE COURT: Please have your next witness brought in
15 while the jury is coming in.

16 MS. NOVOTNY: Plaintiff calls Dr. John Mischo.

17 (Jury enters.)

18 THE COURT: Good morning. Be seated.

19 Please face the clerk and be sworn, sir.

20 (Witness duly sworn.)

21 THE COURT: Be seated.

22 WHEREUPON, JOHN MISCHO, Ph.D., after having been first
23 duly sworn, testifies in reply to the questions propounded as
24 follows:

25 **DIRECT EXAMINATION**

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1 BY MS. NOVOTNY:

2 Q. Good morning, Dr. Mischo. Thank you for taking time out
3 of your schedule, as the jurors and our witnesses have all
4 done this week, to help us get a better understanding of some
5 things that took place at Southeastern Oklahoma State
6 University.

7 THE COURT: Ms. Novotny, let me interrupt you. In
8 case this noise is causing you some alarm, we are having it
9 checked into. We think there may be either a marching band on
10 the roof or the air conditioner is struggling. So it's being
11 checked.

12 All right. Thank you.

13 MS. NOVOTNY: Thank you.

14 Q. (BY MS. NOVOTNY) Dr. Mischo, what year did you first
15 begin working at Southeastern?

16 A. 1992.

17 Q. What was your title at that time?

18 A. Assistant professor.

19 Q. And after some time, you gained tenure there. And when
20 was that?

21 A. 1998.

22 Q. Okay. And when did you come to know Dr. Rachel Tudor?

23 A. When she was hired as an assistant professor.

24 Q. And did you have anything to do with that hiring?

25 A. I was on the hiring committee and part of the department

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1 that voted on the hire.

2 Q. Can you -- did you say you were on the hiring committee?

3 A. Yeah, there was a hiring committee which I was on. And
4 then the department as a whole then voted on the candidate.

5 Q. Okay. Great.

6 And so it's fair to say you're familiar with Dr. Tudor's
7 entire career at Southeastern?

8 A. Yes.

9 Q. And at the time that Dr. Tudor was hired, what was your
10 position at Southeastern?

11 A. I would have been an -- I believe an associate professor.

12 Q. And did you have tenure at that time?

13 A. Yes.

14 Q. Now, at some point after Dr. Tudor was hired, did you get
15 promoted again?

16 A. I became department chair, yes. Well, I was also
17 promoted to full professor.

18 Q. And what were some of your duties as chair of the
19 department?

20 A. The department chair would schedule classes, was the
21 primary responsibility; monitor faculty; advise students;
22 advise faculty.

23 Q. Okay. Did you have a role in tenure and promotion
24 decisions as chair of the department?

25 A. Yes.

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1 Q. And just to clarify, what department was that?

2 A. English, Humanities, and Languages.

3 Q. Thank you.

4 Now, what was your role as a department chair as it
5 pertains to tenure and promotion decisions?

6 A. The tenure and promotion committee would meet and either
7 recommend or not recommend a candidate applicant for promotion
8 and/or tenure and then would submit that recommendation to me
9 as department chair, and then I would myself then either
10 recommend or not recommend the promotion and/or tenure.

11 Q. Great.

12 Now, I want to take you back to the summer of 2007. Do
13 you recall a meeting in the summer of 2007 at Southeastern
14 regarding Dr. Tudor's gender transition?

15 A. Yes.

16 Q. And do you recall how many people were there and who was
17 there?

18 A. I can remember that Dean Mangrum, and Cathy Conway, the
19 HR person, was there. I'm not certain. I think there were
20 about four other people besides me, but I can't recall
21 everyone who was there.

22 Q. Okay. And I know it was a long time ago, so I
23 understand.

24 Now, do you recall anything that stuck out to you about
25 that meeting?

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1 A. The first thing I recall was that I was called to that
2 meeting without any indication of what the meeting was going
3 to be about was the first thing that surprised me that I can
4 recall, yes.

5 Q. Did anything else about that meeting stick out to you?

6 A. The meeting, as I recall, had had to do with Dr. Tudor's
7 use of restrooms.

8 Q. And was any kind of decision or rule put in place
9 regarding Dr. Tudor's restroom usage at that time?

10 A. It was determined that Dr. Tudor would use the, I guess,
11 unisex -- called unisex bathroom in the building.

12 Q. Do you remember where that bathroom was?

13 A. It's on the second floor of the building.

14 Q. Do you recall if that was on the same floor where
15 Dr. Tudor taught her classes?

16 A. No, it was one floor below.

17 Q. Was it on the same floor that Dr. Tudor had her office?

18 A. No. Dr. Tudor's office was on the third floor, and her
19 classrooms are on the third floor.

20 Q. Did you ever have any other meetings with administration
21 officials at Southeastern where other women in your department
22 were specifically directed to use a particular restroom?

23 A. No.

24 Q. So other women were allowed to use the ladies room
25 without the administration interfering?

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1 MR. BUNSON: Objection, Your Honor. Leading.

2 THE COURT: Sustained.

3 Q. (BY MS. NOVOTNY) Did administrators ever tell you to use
4 a specific restroom?

5 A. No.

6 Q. Other than at that meeting in the summer of 2007, did
7 anyone else ever raise any concern to you about where
8 Dr. Tudor used the restroom?

9 A. No.

10 Q. Would it be fair to say the administration was singling
11 Dr. Tudor out in regards to restroom usage?

12 MR. BUNSON: Objection, Your Honor. Leading.

13 THE COURT: Overruled.

14 THE WITNESS: Can you repeat the question, please.

15 Q. (BY MS. NOVOTNY) Yeah.

16 Would it be fair to say the administration seemed to be
17 singling Dr. Tudor out in regards to restroom usage?

18 A. That would be hard to say. I don't know of any other
19 situation like that that I'm aware of. So I don't know that I
20 could say.

21 Q. At any time in your tenure at Southeastern have you had
22 any other professors directed to use a specific restroom?

23 A. Not that I know, no.

24 Q. All right. Let's go back to talking about Dr. Tudor's
25 work.

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1 Now, you testified earlier that as department chair you
2 were familiar with Dr. Tudor's work; is that correct?

3 A. Correct.

4 Q. Now, there's been testimony in this case that Dr. Rachel
5 Tudor applied for tenure and promotion a couple of times.

6 Does that strike you as out of the ordinary?

7 A. No.

8 Q. So is it common for professors to sometimes have to apply
9 a second time?

10 A. I don't know that I would say it's common, but it does
11 occur that someone might apply twice or even three times.

12 Q. All right. I want to get into some exhibits here.

13 MS. NOVOTNY: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q. (BY MS. NOVOTNY) I'd like to direct our attention to
16 Plaintiff's Exhibit 70, which is the first one there in that
17 packet there, Dr. Mischo.

18 Does that exhibit look familiar to you?

19 A. Yes.

20 Q. And could you tell us what this is.

21 A. It is an e-mail recommending to the dean that Dr. Tudor
22 be awarded tenure and promotion to associate professor.

23 Q. And did you send this e-mail?

24 A. Yes.

25 MS. NOVOTNY: Your Honor, I'd like to move that

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1 Plaintiff's Exhibit 70 be entered into evidence.

2 MR. BUNSON: No objection, Your Honor.

3 THE COURT: Admitted.

4 Q. (BY MS. NOVOTNY) Can you explain to the jury here today
5 why you determined that Dr. Tudor should be awarded tenure and
6 promoted to the rank of associate professor?

7 A. That would have come from several years of working with
8 Dr. Tudor and then having looked through her portfolio,
9 which -- basically the application for tenure and promotion,
10 which I looked at. And I found that it was sufficient, that
11 it merited the promotion and tenure.

12 Q. And did you find it was sufficient in all three
13 categories that were to be evaluated?

14 A. Yes.

15 Q. I'd like for you to turn to Exhibit 72 -- Plaintiff's
16 Exhibit 72. I'm sorry.

17 Does Plaintiff's Exhibit 72 look familiar to you?

18 A. Yes. It's been a while, but this -- yeah, I do. This
19 does look familiar.

20 Q. Okay. And can you tell us what that is.

21 A. This is a memo to Dr. Tudor from the dean, Scoufos, of
22 arts and sciences recommending to deny tenure to Dr. Tudor and
23 to give Dr. Tudor a one-year terminal appointment.

24 Q. And did you receive a copy of this letter at the time it
25 was sent as well?

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1 A. I don't recall. I see my name cc'd at the bottom, so I
2 imagine I did.

3 Q. So, typically, if you're cc'd on something and it's
4 identified there in the normal course of business, you would
5 have received that; correct?

6 A. Correct.

7 MS. NOVOTNY: Your Honor, I'd like to move that
8 Plaintiff's Exhibit 72 be entered into evidence, if not
9 already.

10 MR. BUNSON: No objection, Your Honor.

11 THE COURT: Admitted.

12 Q. (BY MS. NOVOTNY) Do you recall what you thought when you
13 got a copy of this memo? I know it was a long time ago, so
14 take your time.

15 A. I would have thought that this was extremely unusual --
16 certainly unprecedented, in my experience -- to offer a
17 one-year terminal position at the same time of denying tenure
18 or promotion.

19 Q. Without any reasoning provided in that memo, did you have
20 any knowledge as to why your department's recommendation for
21 tenure should have been denied?

22 A. No.

23 Q. Was there anything about Dr. Tudor's reputation that
24 might have come into play?

25 A. I don't think so.

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1 Q. Now, do you see the date on this memo?

2 A. Yes.

3 Q. And that was January 12th, 2010?

4 A. Correct.

5 Q. Did you agree with Dean Scoufos's recommendation here?

6 A. I don't know that it was my position to agree or disagree
7 with it. Perhaps I don't understand the question.

8 Q. Okay. I'll withdraw.

9 Now, in that January 12th, 2010, memorandum we're looking
10 at, it says, "Based on the available documentation."

11 Do you have any idea what that would have meant?

12 A. That would have meant the application portfolio or binder
13 that would have been submitted as part of the application.

14 Q. When you reviewed that binder -- or portfolio, as you
15 call it -- did you feel like there was anything missing from
16 it?

17 A. No.

18 Q. I'd like to direct our attention now to the next exhibit
19 in your packet there, which is Plaintiff's Exhibit 77.

20 Now, do you recognize that memorandum?

21 A. Yes, I've seen this before. I'm not sure that I got a
22 copy of it at that time, but yes.

23 MS. NOVOTNY: May I get clarification from the
24 Court? I'm sorry. I can't recall.

25 Had Plaintiff's Exhibit 77 been entered with a previous

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1 witness?

2 THE COURT: No. It was identified but never
3 offered.

4 MS. NOVOTNY: Okay.

5 Q. (BY MS. NOVOTNY) Now, just looking at that particular
6 memorandum, is there anything about it that sticks out to you?

7 A. Yes. I would say in the next-to-last paragraph there is
8 a statement from the vice president for academic affairs
9 about -- it says, "There are no letters of recommendation from
10 tenured faculty members in her department."

11 Q. Now, why does that stand out to you, Dr. Mischo?

12 A. That really was not a requirement, to get letters from
13 one's own colleagues. And it's not really a procedure that we
14 followed at that time.

15 And, in fact, I thought it was inappropriate that members
16 of the tenure and promotion committee also write letters of
17 recommendation.

18 So it was not unusual at all for faculty to apply to
19 tenure and promotion without any letters of recommendation
20 from within the department from their colleagues.

21 So that strikes me as strange.

22 The same paragraph, it says, "The single-sentence
23 recommendations for promotion and tenure from the committee do
24 not give it justification."

25 And what strikes me as odd about that is that, at that

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1 point, the recommendation from that committee was supposed to
2 be simply a one-sentence statement as opposed to a
3 justification.

4 Q. Thank you.

5 MS. NOVOTNY: Your Honor, if defendants don't
6 object, I'd like to admit Plaintiff's Exhibit 77. It is a
7 document created by them.

8 MR. BUNSON: No objection, Your Honor.

9 THE COURT: Admitted.

10 Q. (BY MS. NOVOTNY) And what is the date on this second
11 memorandum?

12 A. January 12th, 2010.

13 Q. So that's the same date as the previous memorandum that
14 just said that Dr. Tudor was being denied; correct?

15 A. Okay. Which other one? I'm sorry.

16 Q. The one we were looking at just before, Plaintiff's
17 Exhibit 72. I'm sorry.

18 A. 72?

19 Q. Yes.

20 A. Okay. I'm sorry. We're looking at 72 and 77?

21 Q. Yes.

22 A. Okay. Yeah, I -- we're looking at 77 and 72; is that
23 correct?

24 Q. Yes.

25 A. I want to make sure I have --

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1 Q. Yes, sir.

2 A. Okay.

3 I'm sorry. What was the question?

4 Q. Now I forgot the question.

5 MS. NOVOTNY: May I have the question read back?

6 THE COURT: No. Just ask another one.

7 MS. NOVOTNY: All right.

8 Q. (BY MS. NOVOTNY) Those were both dated the same date;
9 correct?

10 A. Correct.

11 Q. Now, you already discussed the disagreement with the
12 assertion that Dr. Tudor would need faculty -- tenured faculty
13 recommendation letters as part of that packet; correct?

14 A. Correct.

15 Q. And there's also an assertion in here that there's little
16 documentation of service activity in Dr. Tudor's portfolio
17 other than routine departmental assignments.

18 Is that something you would agree with?

19 A. Okay. This is --

20 Q. This short paragraph here.

21 A. The second paragraph --

22 Q. Yes.

23 A. -- of the body?

24 I recall that Dr. Tudor was involved in some Native
25 American symposium events and organizing the conference. I

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1 recall that.

2 Q. Was the Native American symposium at Southeastern a
3 fairly big deal for the school?

4 A. I would say yes.

5 Q. So would it be pretty prestigious to be a part of that
6 symposium?

7 MR. BUNSON: Objection, Your Honor. Leading.

8 THE COURT: Sustained.

9 Q. (BY MS. NOVOTNY) Let me phrase it another way.

10 How did you feel about the Native American symposium?

11 A. I thought it was a very good thing for Southeastern to
12 have. It was a national conference, and we brought in some
13 very well-respected and renowned Native American scholars and
14 speakers.

15 Q. Thank you.

16 Okay. I'd like to now direct your attention to
17 Plaintiff's Exhibit 76.

18 Do you recognize Plaintiff's Exhibit 76, Dr. Mischo?

19 A. Yes.

20 Q. And can you tell us what that document is?

21 A. I need to review it here, please.

22 Q. Sure.

23 THE COURT: I'm sorry. I can't hear you.

24 THE WITNESS: I'm sorry. I need to review the
25 e-mail.

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1 THE COURT: Oh.

2 THE WITNESS: Okay. I'm not sure. What is the
3 question?

4 Q. (BY MS. NOVOTNY) Do you recognize this document, and can
5 you tell us what it is?

6 A. Yes. Dr. Tudor had looked through her portfolio and
7 found that one of those letters from January 12th had been
8 taken out and a different one put in under that same date.

9 Q. And those would have been the two memorandums we were
10 just looking at on the screens; is that correct?

11 A. Yes.

12 Q. And did you -- did you draft part of this e-mail and
13 receive the other part of this e-mail?

14 A. I'm sorry?

15 Q. You drafted the e-mail that's at the top of the exhibit;
16 correct?

17 A. It says "from." Yes, I did.

18 Q. And you were the receiver of the e-mail from Dr. Tudor on
19 the bottom of this exhibit?

20 A. Correct.

21 MS. NOVOTNY: Your Honor, I'd like to ask that
22 Plaintiff's Exhibit 76 be entered into evidence.

23 MR. BUNSON: No objection, Your Honor.

24 THE COURT: Admitted.

25 MS. NOVOTNY: I'm not sure I can read that now.

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1 Q. (BY MS. NOVOTNY) As we're looking at this e-mail exchange
2 between yourself and Dr. Tudor, can you recall how you felt at
3 the time that you drafted this e-mail?

4 A. Well, obviously, I think I would have been concerned that
5 changes to the portfolio had been made, and apparently without
6 any notification to the candidate or to the department chair,
7 which -- I was not department chair at that time. I had
8 resigned the year prior to this.

9 Q. Okay. And who was the department chair at the time?

10 A. Dr. Randy Prus.

11 Q. Is that the Randy that's mentioned in your e-mail here?

12 A. Yes.

13 Q. Okay. Now, did Dean Scoufos ever talk to you about why
14 that letter was placed into Dr. Tudor's portfolio?

15 A. No.

16 Q. And this exchange between you and Dr. Tudor, this was in
17 September of 2010, and the previous documents we were looking
18 at were dated in January of 2010.

19 So this is -- this is nine months later; correct?

20 A. Correct.

21 Q. And so at no time, until September 14th or 15th of 2010,
22 at that time you were not aware of the second memorandum that
23 had a further explanation in there?

24 A. No. Once -- once the binder, the portfolio, is -- once
25 it leaves my office, I do not see it again.

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1 Q. After you saw the reasoning provided by Dean Scoufos in
2 that second letter or memorandum, did you -- where Dean
3 Scoufos was denying your and your department's recommendation
4 of tenure and promotion, did you believe that Dr. Tudor was
5 being treated similarly to other faculty members at
6 Southeastern?

7 MR. BUNSON: Objection, Your Honor. She's
8 testifying for the witness and leading.

9 THE COURT: Overruled.
10 You may answer.

11 THE WITNESS: Okay. Can I have the question again,
12 please?

13 MS. NOVOTNY: Sure. And I'll try to make it a
14 little better that time.

15 I'm sorry. I'm a little nervous up here today, folks.
16 It's been a little while since I've been in front of a jury.

17 Q. (BY MS. NOVOTNY) Now, after you saw the reasoning
18 provided by Dean Scoufos for denying your department's
19 recommendation and your recommendation of tenure and
20 promotion, did you believe that Dr. Tudor was being treated
21 similarly to other faculty members at Southeastern?

22 A. No.

23 Q. What stood out to you about how she was being treated
24 differently?

25 A. In my experience there at Southeastern, there had never

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1 been a tenure track faculty member that had been offered an
2 eighth year or an extra year. The period of probation is
3 seven years. And that is, as I understood it, absolute. So
4 an extra or eighth year was very much, to my experience,
5 unprecedented.

6 Q. Thank you.

7 I'd like to now direct your attention to Plaintiff's
8 Exhibit 92, which is the last exhibit in that packet I handed
9 you there.

10 Do you recognize Plaintiff's Exhibit 92?

11 A. Yes.

12 Q. And can you tell us what this is?

13 A. This would be a department chair's yearly or annual
14 evaluation of Dr. Tudor as a faculty member.

15 Q. And did you participate in the creation of this
16 evaluation?

17 A. Yes. This was mine.

18 Q. And is that your signature on the second page of the
19 exhibit next to "Department Chair"?

20 A. Yes.

21 MS. NOVOTNY: Your Honor, I'd like to move that
22 Plaintiff's Exhibit 92 be entered into evidence.

23 MR. BUNSON: No objection, Your Honor.

24 THE COURT: Admitted.

25 Q. (BY MS. NOVOTNY) I'll first direct you to the first page

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1 of this document, and I'll make sure it's all on here for
2 everybody.

3 Now, in this document here, it looks like it is set up in
4 some different categories.

5 Can you explain what those categories are there?

6 A. The first is effective classroom teaching. Category
7 No. 2 is scholarship or research. Category 3, service to
8 institution, professional, and public. Category 4,
9 performance of administrative duties, which did not apply to
10 Dr. Tudor.

11 Q. Okay. And looking at the first category, then, effective
12 classroom teaching, what was your conclusion about Dr. Tudor's
13 performance for the 2008-2009 year?

14 A. I checked the "Commendable" box.

15 Q. Is there a comment there? Did you write that comment
16 there as well?

17 A. It says, "Dedicated to developing online courses."

18 Q. Okay. And at the time of 2008-2009, was online courses
19 something new that was being done at Southeastern?

20 A. I would say relatively new, yes.

21 Q. Was it helpful to have a professor willing to engage in
22 something new and try to embark on that for the university?

23 A. Yes.

24 Q. Now, the second category there, scholarship, can you tell
25 us what conclusions you came to about Dr. Tudor's scholarship?

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1 A. I checked "Outstanding" in that box.

2 Q. And you also had some comments; correct?

3 A. It says "Published article," and then in parentheses "in
4 press," which means that it had been accepted but had not
5 actually been printed, in print.

6 Q. Okay. And there's been some testimony in the case up to
7 now that getting peer-reviewed scholarly articles published is
8 something that's expected of somebody applying for tenure.

9 Does that sound accurate to you?

10 A. Yes.

11 Q. And do you know if Dr. Tudor had more than one article at
12 that time?

13 A. I don't recall.

14 Q. Okay. Now, there's also a third box for service to
15 institution.

16 Can you explain why you checked the "Commendable" box
17 there?

18 A. I don't recall. It would have been based on another
19 document which would have listed some of Dr. Tudor's service
20 things, which I don't have in front of me, so I don't know
21 exactly --

22 Q. Sure.

23 A. -- why.

24 That was my evaluation, that it was commendable. I don't
25 recall on what specifically it was based.

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1 Q. Okay. But do you generally agree that, had you
2 checked -- you checked the "Commendable" box because you had
3 reason to believe that she had been participating in service
4 to the institution and her profession?

5 A. Yes.

6 Q. I want to draw your attention to the second page of this
7 document now, and this is the signature page here.

8 Now, it looks like your signature's here, and the date is
9 11-20-2009.

10 Do you notice any other date on that page?

11 A. Next to the dean's signature, it -- I can't read --
12 excuse me. I can't read it. It looks like 04-06-10.

13 Q. Does that date of April 6, 2010, stand out to you at all?

14 A. No.

15 Q. Well, do you recall a meeting that you attended with
16 Dr. Tudor and Dean Scoufos on or around April 6th, 2010?

17 A. Yes.

18 Q. This would have been a few months after the January memos
19 we were looking at a few moments ago.

20 Can you explain generally what you recall of that meeting
21 in April of 2010?

22 A. I think there may have been more than one meeting with
23 Dr. Tudor and I and the dean, but the one I remember focused
24 on the denial of tenure and promotion and the offering of the
25 one-year terminal position.

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1 Q. Was there any other kind of offer made in that meeting?

2 A. I don't think so. I don't remember.

3 Q. Would it help to refresh your memory?

4 A. Yes.

5 Q. Okay.

6 MS. NOVOTNY: Ezra, can you pull Dr. Mischo's
7 deposition? I don't remember the number now.

8 Q. (BY MS. NOVOTNY) Okay. Well, while he's looking for
9 that -- now, at the time that the meeting of April 6, 2010,
10 were you still department chair at that time?

11 A. Yes.

12 Q. And is that why you were accompanying Dr. Tudor to that
13 meeting?

14 A. Yes.

15 Q. Okay. Do you remember at any time in that meeting
16 feeling like there was some kind of an ultimatum given to
17 Dr. Tudor?

18 MR. BUNSON: Objection, Your Honor. Leading.

19 THE COURT: Overruled.

20 THE WITNESS: An ultimatum?

21 Q. (BY MS. NOVOTNY) Yes.

22 A. What I recall is that the dean made clear that
23 Dr. Tudor's application for tenure and promotion would be
24 denied and that Dr. Tudor should not go forward with it but
25 instead would -- or should take the one-year position, that

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1 either Dr. Tudor accepted the one-year position or she would
2 not be given that extra year.

3 Q. So you would not describe that meeting as Dr. Tudor being
4 given a generous offer by Southeastern?

5 A. No.

6 Q. Okay. Now, did this discussion of Dr. Tudor being asked
7 to withdraw and take the one-year terminal appointment, was
8 that ever put in writing to Dr. Tudor at that meeting?

9 A. Not at the meeting. I don't recall anything in writing.

10 Q. Does that seem strange for something that would be --
11 that Southeastern would describe as a generous offer, that
12 they wouldn't be willing to put that in writing?

13 A. Is it strange?

14 Q. Yes.

15 A. Yes. I would say that's unusual.

16 Q. Thank you.

17 Now, you mentioned earlier that you're no longer the
18 chair of the English, Humanities, and Language department at
19 Southeastern?

20 A. Correct.

21 Q. I might go back just a second. I'm going to withdraw
22 that last question.

23 You'd previously testified at a deposition for this case;
24 is that correct?

25 A. Correct.

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1 Q. Do you recall at that deposition testifying that the
2 administrators didn't have the power to give such an offer?

3 A. I don't recall testifying to that. It sounds like
4 something I would have said.

5 Q. So you don't dispute that that was your testimony at that
6 time?

7 A. If it's in the deposition, I don't dispute it, no.

8 Q. Okay. Let's go back to -- now, you stepped down as chair
9 of the English, Humanities, and Language department at
10 Southeastern.

11 When was that?

12 A. That would have been after the spring of 2010, spring
13 semester.

14 Q. Okay. And was there a reason that you stepped down?

15 A. There were several reasons.

16 Q. Can you explain to the jury here today what your
17 reasonings for stepping down as chair were?

18 A. I had been department chair for seven years, and one
19 thing, I wanted to return to full-time teaching. And I was
20 not, at that point, really interested in continuing with all
21 of the administrative -- with the administrative duties that
22 came with being department chair.

23 Q. Okay. Do you recall anything else that led you to step
24 down as chair?

25 A. The morale of the faculty was quite low at that point,

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1 and I think we had -- at the university level, we had an
2 atmosphere which was not very pleasant or something I wanted
3 to continue dealing with.

4 Q. Do you remember describing it as a lack of shared
5 governance?

6 A. Yes.

7 Q. And what do you mean by "a lack of shared governance"?

8 A. A lack of shared governance would be something where
9 administration and faculty are not working together. I would
10 say where administration makes decisions without notifying
11 or -- without notifying the faculty or justifying decisions.

12 Q. And is shared governance something that's important to an
13 institution such as Southeastern, in your opinion?

14 A. I think it is. I think it is valuable, yes.

15 Q. And do you recall also describing a lack of transparency
16 as well?

17 A. Yes.

18 Q. And can you explain why you felt there was a lack of
19 transparency?

20 A. Going back to the exhibits, I would look to the letter or
21 memo from Dean Scoufos which denied tenure and promotion
22 without any justification as to why. To me, that would be not
23 being transparent.

24 Q. So this particular memorandum?

25 A. Yes.

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1 Q. Did the administration's treatment of the Dr. Tudor
2 matter, in regards to her tenure and promotion, have anything
3 to do with you stepping down as chair?

4 A. I would say yes. It was one of several things that
5 pretty much persuaded me that I was no longer interested in
6 any sort of administrative -- administrative role, and, again,
7 wanting to get back to full-time teaching.

8 Q. Sure.

9 Now, did being a department chair come with a pay raise?

10 A. A small one, yes.

11 Q. Did stepping down from that role mean you had to give up
12 that small pay raise?

13 A. Yes.

14 Q. And so, because of a lack of shared governance, a lack of
15 transparency, and how Dr. Tudor was treated by the
16 administration, you voluntarily took a pay cut; is that
17 correct?

18 A. Yes.

19 Q. All right. One more question before I hand you over.

20 Let's go back to that meeting we discussed earlier, the
21 one in 2007 concerning specific instruction for Dr. Tudor
22 regarding bathroom usage.

23 Looking back at that meeting, with all the context now
24 that you have of the kind of work that Dr. Tudor did after
25 bravely facing her colleagues as the woman she is, do you

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1 think that Dr. Tudor was just never going to get a fair shake
2 from the administration at Southeastern?

3 MR. BUNSON: Objection, Your Honor. Calls for
4 speculation.

5 THE COURT: Overruled.

6 THE WITNESS: Okay. Could you repeat the question?

7 Q. (BY MS. NOVOTNY) Sure.

8 So going back to that meeting that we were discussing
9 earlier, the meeting about the bathroom rules that were
10 specifically applied to Dr. Tudor, with all the context you
11 now have looking back at all those years and the kind of work
12 that Dr. Tudor did and bravely facing her colleagues as the
13 woman who she is, do you think that Dr. Tudor was just never
14 going to get a fair shake from the administration at
15 Southeastern?

16 A. At that time, I did not know. I could not say.

17 MS. NOVOTNY: Okay. Thank you. I will pass you off
18 to the State.

19 THE COURT: Mr. Bunson.

20 MR. BUNSON: Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. BUNSON:

23 Q. Good morning, Dr. Mischo.

24 A. Good morning.

25 Q. I'd like to start with the meeting that you just

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1 referenced, the 2007 meeting regarding Dr. Tudor's transition.

2 Do you recall that?

3 A. This is the one about the bathroom, using the bathrooms?

4 Q. Yes, sir.

5 A. Yes.

6 Q. And in your testimony you indicated that it was
7 determined that Dr. Tudor would use the unisex restroom; is
8 that correct?

9 A. Yes.

10 Q. Were you part of that determination?

11 A. No.

12 Q. Do you know who made that determination?

13 A. I do not know.

14 Q. Do you know whether or not Dr. Tudor was offered the
15 privacy of a single-occupant restroom as a courtesy?

16 A. I don't know.

17 Q. Dr. Mischo, if you would, refer back to Exhibit 70,
18 Plaintiff's Exhibit 70.

19 A. Okay. I'm sorry. 70?

20 Q. Yes, sir.

21 A. Okay.

22 Q. And you recall that was the e-mail from you to
23 Dr. Tudor --

24 A. Right.

25 Q. -- recommending her for tenure and promotion; correct?

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1 A. Right.

2 Q. Do you have your reasoning in there as to why you
3 recommend her for tenure and promotion?

4 A. No.

5 Q. And you talked earlier about transparency being
6 important.

7 Do you recall that testimony?

8 A. Yes.

9 Q. And you see that there is no reasoning in there as well;
10 is that correct?

11 A. Correct.

12 Q. Would that also be considered, at least on some level, a
13 lack of transparency?

14 A. I think the function of this letter was to -- was to
15 notify the candidate, not so much to justify or explain.

16 Q. Did you ever give her an explanation as to why you
17 recommended her for tenure and promotion?

18 A. There was a form, as part of the application that I
19 filled out, which would have involved some checking of boxes.
20 But other than that, I think that was it in terms of
21 explanation to Dr. Tudor.

22 Q. Thank you, Dr. Mischo.

23 Is it fair to say that, during your time of Dr. Tudor's
24 tenure and promotion process as well as during your time as
25 department chair, that you disliked the role of administration

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1 in that process?

2 A. Certainly some days I disliked administration. Not every
3 day, but, yes, there was --

4 Q. And if you had your way, you'd rather have a department
5 that was run by faculty rather than a chair or an
6 administration, wouldn't you?

7 A. The -- yeah. My sort of thinking is that a department
8 chair is not a head or boss but rather sort of a coordinator
9 and that it should be the faculty, rather than an individual,
10 making important decisions.

11 Q. Do you recall how tenure and promotion committees were
12 formed at Southeastern? And if so, how is it formed?

13 A. At this point in time or back in the time we're looking
14 at, the tenure and promotion committees would be five tenured
15 faculty at associate or full-professor level.

16 Q. And, Dr. Mischo, do you make the selection of those five
17 individuals?

18 A. Yes.

19 Q. Does anybody else give you feedback about those five
20 individuals?

21 A. I can't remember, but I think the list of the tenure and
22 promotion committee might have gone to the dean. I'm not
23 certain of that, though.

24 Q. But you were the one who selects those five people;
25 correct?

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1 A. Correct.

2 MR. BUNSON: May I approach, Your Honor?

3 THE COURT: Yes.

4 Q. (BY MR. BUNSON) Dr. Mischo, do you recognize that
5 document?

6 A. Yes.

7 Q. What is that document, Doctor?

8 A. The first e-mail to Dr. Tudor is a notification of the
9 constitution of her tenure and promotion.

10 MR. BUNSON: At this time, Your Honor, I'd move for
11 Defendant's Exhibit 199 to be admitted.

12 THE COURT: Any objection?

13 MS. NOVOTNY: No objection.

14 THE COURT: It will be admitted.

15 MR. BUNSON: Thank you.

16 Q. (BY MR. BUNSON) Now, Dr. Mischo, with that document
17 specifically, do you recall who you appointed to Dr. Tudor's
18 2009 tenure and promotion committee?

19 A. Yes.

20 Q. Who are they?

21 A. Dr. Coleman, the committee chair; Dr. Prus; Dr. Allen;
22 Dr. Spencer; Dr. Parrish.

23 Q. And if you could, Dr. Mischo, again, in the e-mail that
24 you're writing to Dr. Tudor, you say that "I have appointed
25 your tenure and promotion committee." Correct?

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1 A. Correct.

2 Q. Did anyone influence who you put in any of those
3 positions?

4 A. I'm sorry. Could I have the question again?

5 Q. I'll ask it differently.

6 You are the one who made that determination; correct?

7 A. Yes.

8 Q. Did anyone tell you to put any one of those five members
9 on that committee?

10 A. No.

11 Q. Did anyone tell you who to put as the chair of that
12 committee?

13 A. No.

14 Q. Thank you.

15 Just taking a quick step back. Do you recall
16 specifically who you appointed to Dr. Tudor's 2008 tenure and
17 promotion committee?

18 A. No.

19 Q. Thank you.

20 And in that same exhibit, do you see that Dr. Tudor has
21 objected to Dr. Coleman serving as chair of her committee?

22 A. Correct.

23 Q. And that's because Dr. Tudor accused Dr. Coleman of
24 discrimination; isn't that correct?

25 A. I know Dr. Tudor objected to Dr. Coleman. I'm not -- I

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1 don't quite recall why.

2 Q. So you don't recall Dr. Tudor ever accusing Dr. Coleman
3 of discrimination?

4 A. Maybe not in those terms. I don't recall, but I know
5 Dr. Tudor did not think Dr. Coleman -- from this e-mail and I
6 think subsequent discussion I think I had with Dr. Tudor, did
7 not think Dr. Coleman would be good or fair in that position.

8 Q. But you left Dr. Coleman on her committee; correct?

9 A. Yes.

10 Q. Did you communicate your reasonings for leaving
11 Dr. Coleman on Dr. Tudor's tenure and promotion committee to
12 Dr. Tudor herself?

13 A. I told Dr. Tudor that, in my opinion, that I thought
14 Dr. Coleman would be capable of being objective and being a
15 fair committee chair. I recall discussing that in person.

16 Q. Thank you, Doctor.

17 Would you agree that the process of evaluating tenure and
18 portfolio promotions -- let me strike that question.

19 Would you agree that the process of evaluating tenure and
20 promotion portfolios and each of the criteria within them is
21 inherently subjective?

22 A. Yes.

23 Q. And when judging scholarship, people can view the same
24 act, same piece of evidence, and view it differently; is that
25 correct?

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1 A. Yes.

2 Q. Can professionals have differing views but still be
3 respectful?

4 A. Yes.

5 Q. And two people can look at the same portfolio and come to
6 completely different conclusions, can't they?

7 A. Yes.

8 Q. When it comes to the area of scholarship, at the time you
9 were evaluating the portfolio, what was more important,
10 quantity or quality?

11 A. In terms of scholarship?

12 Q. Yes, sir.

13 A. If I had to say, I would say they both mattered, but
14 certainly quantity in the sense of, I think, one or two
15 publications would be -- would be, to me, necessary; 1.5
16 maybe.

17 At an institution like ours, the quality of the journal
18 doesn't matter as much as it would at a research institution.
19 So I think it would be fair to say that I would look at it
20 certainly in terms of both quality and quantity, but
21 definitely there had to be kind of a minimal kind of output of
22 scholarship articles.

23 Q. Dr. Mischo, you were asked earlier if you recall giving a
24 deposition in this case on May 5th, 2016.

25 Do you recall that?

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1 A. Yes.

2 MR. BUNSON: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. BUNSON: Page 66, lines 11 through 16.

5 Q. (BY MR. BUNSON) Doctor, would you please turn to page 66.

6 A. Okay.

7 Q. Just to yourself and not out loud, please read lines 11
8 through 16.

9 A. Okay.

10 Q. In that, didn't you testify that at the time, when you
11 were asked whether or not quantity or quality was more
12 important, your singular answer was "quantity"?

13 A. Okay. I think just prior to this we were talking about
14 scholarship. I think I might not -- are we talking about --
15 this refers to service --

16 Q. My apologies.

17 A. -- as to quantity.

18 Q. You're correct.

19 A. Yes.

20 Q. If you could, then, please turn to page 81.

21 A. Okay.

22 Q. And to yourself, please read lines 3 through 7.

23 A. Okay.

24 Q. Earlier you testified that one or two articles, maybe one
25 and a half publications, was enough.

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1 Do you recall that testimony?

2 A. Yes.

3 Q. After reading that, does that refresh your recollection
4 as to how much you insisted or --

5 MS. NOVOTNY: Objection, Your Honor. He already
6 testified to the one and a half without needing the
7 deposition.

8 THE COURT: I don't know if you're impeaching or
9 refreshing his recollection. Either read it or let him read
10 it and then ask him the question.

11 Q. (BY MR. BUNSON) Dr. Mischo, will you please -- in your
12 deposition, if you could follow along starting at Line 3, you
13 were asked:

14 "Question: And what would you normally tell professors
15 about the type of scholarship they would have to get tenure?

16 Answer: Typically, I would say you would need one and a
17 half publications."

18 Is that correct?

19 A. Yes.

20 MS. NOVOTNY: Objection. Duplicative.

21 THE COURT: Sustained.

22 Q. (BY MR. BUNSON) Dr. Mischo, do you recall talking to
23 Dr. Tudor about her opinion that she needed at least one and a
24 half publications in her portfolio?

25 A. Did I talk to Dr. Tudor about that?

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1 Q. Yes.

2 A. We would have, as a course of procedure with every
3 untenured faculty member, the department chair, I would meet
4 with each one of them at the beginning of each academic year,
5 and we would go over their plan -- their development plan,
6 what they were going to do for that year. And we would talk
7 about in terms of where are you in terms of the three
8 categories moving toward tenure?

9 So we would have talked about, again, service --
10 teaching, research, and service.

11 Q. And at that meeting you would have instructed her that it
12 was your recommendation that at least one and a half
13 publications be in her portfolio; is that correct?

14 A. That was --

15 MS. NOVOTNY: Objection. Asked and answered.

16 THE COURT: Sustained.

17 Q. (BY MR. BUNSON) Did you have that meeting with Dr. Tudor
18 before she applied for tenure in 2008?

19 A. The yearly meeting, I don't recall if it was before or
20 after the portfolio was submitted.

21 Q. Well, you have an annual review with her every year; is
22 that correct?

23 A. Well, we have a meeting at the beginning of the academic
24 year in August or September. And then the evaluation is done
25 at the end of the semester, sometime in April or at the end of

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1 the academic year in April. So there would be beginning and
2 ending discussions.

3 Q. Doctor, do you know how many publications Dr. Tudor had
4 in her 2008 portfolio?

5 A. I don't remember.

6 Q. Do you remember reviewing that portfolio?

7 A. I -- it's been a while. I don't recall. I know I looked
8 through it, of course, but I don't recall the details.

9 Q. Do you know how many publications Dr. Tudor had in her
10 2009 portfolio?

11 A. No, I don't remember.

12 Q. But you recall looking at that portfolio too; correct?

13 A. I must have. I don't remember, again, looking at it.
14 There were, again -- there was more than one, so...

15 Q. Earlier, you were asked to review the evaluation of
16 Dr. Tudor.

17 Do you recall that?

18 A. The annual?

19 Q. Yes, sir. It's Plaintiff's Exhibit 92, if you'd like to
20 look at it.

21 A. Right.

22 Q. And under "publication" it says "published article"; is
23 that correct?

24 A. Right.

25 Q. That would imply it was one article; correct?

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1 A. One article at that point which was scheduled, right. It
2 was in press. It was accepted to be published.

3 Q. So, at that time, if you had known that Dr. Tudor had
4 more articles, you would have implied "articles," wouldn't
5 you?

6 A. I think what the -- the comment that says "published
7 article" would refer to this academic year. So what that
8 would refer to would be during this time period, '08-'09, that
9 there would have been one published.

10 Now, I don't recall if there were others before or not.

11 Q. And if Dr. Tudor submitted a 2008 portfolio with zero
12 publications in it, that would not be following your
13 recommendation of at least one and a half; is that correct?

14 A. Correct.

15 Q. If she had submitted a 2009 portfolio with only one
16 article, that would still not be following your minimum of at
17 least one and a half publications; is that correct?

18 A. Correct.

19 Q. And yet you recommended Dr. Tudor for tenure even though
20 she didn't meet your own criteria for publications necessary
21 for tenure; is that correct?

22 A. I think there may have been -- again, we get into that
23 issue of one and a half articles.

24 The one and a half, you can't publish a half an article.
25 So what the one-half would have referred to would have been

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1 maybe something else, maybe a book review or something which
2 was not an article, but it was a kind of publication if not an
3 article per se.

4 Q. But if she had one, that would still be less than one and
5 a half, per your recommendation; correct?

6 A. Right.

7 Q. Dr. Mischo, do you recall a meeting you had with
8 Dr. Tudor in 2009 where you informed Dr. Tudor that you didn't
9 think she was on track for tenure because she was lacking in
10 both the areas of research and scholarship?

11 A. Once again, please.

12 Q. Do you recall a meeting you had with Dr. Tudor in 2009
13 where you informed her that you didn't think she was on track
14 for tenure because she was lacking in both the areas of
15 research and scholarship?

16 A. I can't remember that.

17 Q. Doctor, if you could turn to your deposition, page 136,
18 lines 4 through 22.

19 A. Okay.

20 Q. In that, you were asked specifically, "Did you ever tell
21 Dr. Tudor that you did not think she was going -- or she was
22 doing what she needed to do to become qualified for tenure?"

23 The answer you said was, "I think I did, yes."

24 A. Okay, yeah. At some point I would have in that five-year
25 period. I think earlier in the five-year period, I had

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1 discussed with Dr. Tudor the necessity by the end of the
2 five-year period to again have something.

3 Q. And at this time, you were asked, "What did you tell
4 Dr. Tudor she was not doing that she needed to do to become
5 qualified for tenure?"

6 And your answer was, "It would have been -- it would have
7 involved the research or scholarship."

8 Is that correct?

9 A. Yes.

10 Q. As the chair of the department, Dr. Mischo, do you review
11 the full portfolios of every candidate for tenure and
12 promotion?

13 A. Yes.

14 Q. Can you please turn to page 156 of your deposition,
15 please, lines 3 through 7.

16 You were asked, "Did you typically read the entire
17 portfolio of applicants for promotion and tenure?"

18 Did I read that question correctly?

19 A. Yes.

20 Q. Your answer was, "No, not if they included a syllabus or
21 something like that. I'm not going to read all of those, no.
22 Scanned through them."

23 Is that accurate?

24 A. Yes.

25 Q. So you didn't necessarily review every portfolio for

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1 tenure and promotion; is that correct?

2 A. I reviewed every portfolio but not every page, no.

3 Q. Thank you for that clarification.

4 THE COURT: Let me stop you here, and we will take
5 our morning recess.

6 Don't discuss the case or permit others to discuss it
7 with you. Be back in the jury deliberation room at eleven
8 o'clock, and we'll be in recess.

9 (In recess from 10:40 a.m. to 11:05 a.m.)

10 (The following proceedings were had out of the presence
11 of the jury with all parties present.)

12 THE COURT: Be seated.

13 Ms. Coffey, Linda has told me what you want to raise. I
14 never gave any instructions in the courtroom because there
15 weren't any witnesses here.

16 Let me instruct all of you, had there been witnesses
17 present in the courtroom, my instruction to them would have
18 been, do not discuss your testimony with anyone except the
19 lawyers present in the courtroom today and make no attempt to
20 listen to or discover what any other witness testified to.

21 Now, I believe you can follow that instruction still
22 meeting in the same place with your witnesses or relaxing in
23 the same -- whatever you're doing down there, and you're
24 permitted to talk -- you-all are permitted to talk to the
25 witnesses. They just can't talk to each other.

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1 So observe that order, please.

2 Anything else?

3 MS. COFFEY: No.

4 THE COURT: Okay. Bring the jury in.

5 (Jury enters.)

6 THE COURT: Be seated, please.

7 Please continue.

8 Q (BY MR. BUNSON) Dr. Mischo, we're almost done, but I
9 just have a few things that I need to clarify if you don't
10 mind.

11 A. Okay.

12 Q. Earlier, you testified that the offer from the
13 administration, from Dean Scoufos, for the eighth year of
14 tenure track was unusual; is that correct?

15 A. Yes.

16 Q. And it's unusual because typical tenure track is seven
17 years; correct?

18 A. Correct.

19 Q. So the offer to obtain an eighth year -- sorry. The
20 offer for an eighth year to obtain tenure is what you felt was
21 unusual; is that correct?

22 A. Yes.

23 Q. Dr. Mischo, as department chair, did Dr. Tudor ever
24 complain to you about any restrictions placed on her?

25 A. Not that I remember, no.

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1 Q. No complaints of bathroom restrictions; is that correct?

2 A. Correct.

3 Q. No complaints of makeup restrictions; is that correct?

4 A. Correct.

5 Q. No restrictions of dress code restrictions; is that
6 correct?

7 A. Yes.

8 Q. And absolutely no complaint she was being mistreated
9 because she was transgender; is that correct?

10 A. Yes.

11 Q. Did you ever personally observe anyone criticizing the
12 way Dr. Tudor dressed?

13 A. No.

14 Q. Did you ever personally observe anyone criticizing
15 Dr. Tudor's makeup?

16 A. No.

17 Q. Did you ever personally observe anyone complaining about
18 which restroom Dr. Tudor used?

19 A. No.

20 Q. And if you had personally witnessed any of that
21 discrimination towards Dr. Tudor or had Dr. Tudor reported it
22 to you, you would have reported it; correct?

23 A. Yes.

24 MR. BUNSON: Thank you. No further questions.

25 THE COURT: Redirect?

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REDIRECT EXAMINATION

1

2 BY MS. NOVOTNY:

3 Q. Thank you, Dr. Mischo.

4 When you were talking to Attorney Bunson from the AG's
5 office a moment ago, he asked about whether the unisex
6 restroom for Dr. Tudor was being provided as a courtesy.

7 Now -- just a second. I lost my note. Sorry. Did
8 Dr. Tudor have any say in which restroom she could use?

9 A. I don't think --

10 MR. BUNSON: Objection, Your Honor. Calls for
11 speculation.

12 THE COURT: You may answer if you know.

13 THE WITNESS: I don't think so.

14 Q. (BY MS. NOVOTNY) And at that 2007 meeting, it was not
15 indicated that she had been given a say in that; is that
16 correct?

17 A. I didn't get the impression that Dr. Tudor had a say in
18 that, no.

19 Q. Okay. Now, another thing that you were being asked about
20 on cross-examination is, you know, whether Dr. Tudor had done
21 enough to earn tenure in 2008.

22 I don't think, you know, anybody is disputing it, but is
23 it possible for someone to have not earned tenure in 2008 but
24 corrected deficiencies in areas they may have been lacking in
25 so that they were qualified to earn tenure by 2009?

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1 A. Yes. There is the five- to seven-year probation period.
2 So one can apply for tenure fifth, sixth, and seventh year and
3 improve if necessary.

4 Q. Okay. And did Dr. Tudor publish articles between the
5 2008 application and the 2009 application for tenure?

6 A. I can't remember.

7 Q. Fair enough.

8 And is it possible that she did?

9 A. Pardon?

10 Q. Is it possible she did based on you looking at the
11 exhibit earlier of her '08-'09 review?

12 A. Yes. I know she did publish some after I resigned as
13 department chair, which I did -- which I did not know of as
14 chair.

15 Q. Now, there was also some testimony on cross-examination.
16 You indicated that Dr. Coleman was on Dr. Tudor's committee
17 for tenure.

18 Now, did Dr. Coleman's tenure committee end up
19 recommending Dr. Tudor for tenure?

20 A. I can't remember which -- which year was this? I get the
21 years mixed up.

22 Q. Sure.

23 I believe it was the Defendant's Exhibit 199.

24 MS. NOVOTNY: I'm sorry, Tim. I thought we'd be
25 done with your exhibits.

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1 MR. BUNSON: I'm happy to provide them.

2 Q. (BY MS. NOVOTNY) Does this document refresh your memory a
3 little bit?

4 A. Okay. Yes.

5 Q. Was this the committee that ultimately determined that
6 Rachel Tudor had earned tenure?

7 A. Yes.

8 Q. Thank you.

9 Also, on cross-examination, there seemed to be some
10 discussion about tenure being inherently subjective.

11 When you say "subjective," do you mean arbitrary or do
12 you mean that in a different way?

13 A. No, I don't mean subjective in the sense of arbitrary,
14 no, no.

15 There are -- it's subjective, but the subjective
16 judgments are based on some standards that are -- that we do
17 have in our policy and procedure manual.

18 Q. If Dr. Tudor were to be awarded a return to Southeastern
19 University, would you welcome her back?

20 A. Yes.

21 Q. Do you feel like she did earn the tenure and deserves the
22 tenure she earned?

23 A. I recommended that, yes.

24 MS. NOVOTNY: Okay. Nothing further.

25 THE COURT: Redirect -- I mean, recross?

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1 MR. BUNSON: Thank you, Your Honor. Very brief.

2 **REXCROSS-EXAMINATION**

3 BY MR. BUNSON:

4 Q. Dr. Mischo, you just testified on redirect that the
5 policy states that a candidate can apply in their fifth,
6 sixth, and seventh year; is that correct?

7 A. Yes.

8 Q. Now, if the policy were to say "fifth, sixth, or seventh
9 year," that would be different, wouldn't it?

10 A. Yes.

11 MR. BUNSON: Thank you. No further questions.

12 THE COURT: You may step down.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. YOUNG: Your Honor, Dr. Tudor's calling Dr. Mark
16 Spencer. Co-counsel is running to our witness room to go grab
17 Dr. Spencer.

18 THE COURT: Stand and stretch if you need it.

19 MR. YOUNG: Sorry, Your Honor. They're talking
20 about literature. It's herding cats.

21 THE COURT: Please step right up here next to the
22 witness stand -- right up here -- and then face the clerk and
23 be sworn.

24 (Witness duly sworn.)

25 THE COURT: Be seated.

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1 WHEREUPON, MARK SPENCER, Ph.D., after having been first
2 duly sworn, testifies in reply to the questions propounded as
3 follows:

4 **DIRECT EXAMINATION**

5 BY MR. YOUNG:

6 Q. Good morning again, Dr. Spencer.

7 You told me before we came in that you're a little hard
8 of hearing. So if you can't hear me, let me know. Okay?
9 Because I want to make sure that you hear me. And do the same
10 for the lawyers at the attorney general's office.

11 So, Dr. Spencer, do you work at Southeastern?

12 A. Yes.

13 Q. What is your job title?

14 A. Professor of English and Humanities.

15 Q. Do you have tenure?

16 A. Yes.

17 Q. If you could slow down a little bit because the court
18 reporter needs to transcribe what we're saying. It's easier
19 if it's a little bit slower.

20 A. Okay.

21 Q. When did you start working at Southeastern?

22 A. 2001. August 2001.

23 Q. And have you worked at Southeastern from 2001 to present?

24 A. Correct.

25 Q. Okay. What department do you work in?

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1 A. The department of English, Humanities, and Languages.

2 Q. Have you been in the English department the whole time?

3 A. Yes.

4 Q. Okay. So, Dr. Spencer, I want to talk a little bit with
5 you about your own experience applying for tenure.

6 Do you recall what year you applied for tenure?

7 A. I guess it would have been 2006.

8 Q. Do you recall how your department promotion and tenure
9 committee voted on your application?

10 A. Yes. They voted -- it was a bit of a split vote. They
11 voted for tenure but not promotion to assistant professor.

12 Q. Do you know what the vote was at the next level in the
13 process? Do you know who would -- let me withdraw that
14 question.

15 What person or entity voted on the application after the
16 promotion and tenure committee?

17 A. Who did it go to next?

18 Q. Yes.

19 A. Department chair, John Mischo.

20 Q. Do you recall what Dr. Mischo's vote was on your
21 application?

22 A. He concurred with the faculty committee.

23 Q. Okay. And we're just going to go through all the stages.

24 A. Sure.

25 Q. Okay. Who does the application go to after the

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1 department chair?

2 A. It goes to C.W. Mangrum, who was dean of arts and
3 sciences.

4 Q. And do you recall what Dean Mangrum's decision was on
5 your application?

6 A. Yes. He was for both tenure and promotion to associate
7 professor from assistant.

8 Q. Okay.

9 A. I may have misspoke and said assistant before. You start
10 out as assistant, then you're promoted to associate.

11 Q. Can you explain to the jury, is it typical that someone
12 applies for both tenure and promotion at the same time?

13 A. Right, normally. That was an unusual move for the
14 committee to do on my part, to split them.

15 Q. Okay. So after the dean, who does it go to?

16 A. The academic vice president, who would have been Doug
17 McMillan at the time.

18 Q. Okay. So I want to ask you some questions about your
19 experiences with Doug McMillan and this tenure application in
20 particular.

21 So what was Doug McMillan's decision?

22 A. It was negative on both, neither tenure nor promotion.

23 Q. Was that surprising to you? Was that surprising to you?

24 A. I'm still not quite understanding what you're saying.

25 Q. I'm sorry.

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1 Was that Dr. McMillan's decision on your application
2 surprising to you?

3 A. Oh, yes. Actually, the faculty one was surprising too.
4 So that was very surprise -- a shock, in fact. I mean...

5 Q. Once you found out about Doug McMillan's decision on your
6 application, did you do anything to try to get more
7 information?

8 A. I spoke to John Mischo, who was the chair, a little bit.
9 And, at that time, there was not any requirement to provide a
10 written explanation, so I only got, oh, a little bit -- I
11 think it was, like, lack of collegiality or something, and
12 then later it was something to the effect of minimal
13 publications were the problem.

14 Then that's when I decided on my own to intervene in the
15 process.

16 Q. Was it because tenure is important?

17 A. Oh, yeah. I mean, your future at the school hangs on it.
18 You either get tenure or you're out in a tenure-track
19 situation.

20 Q. Okay. So why don't we talk a little bit about what you
21 did to try to intervene.

22 A. Right.

23 Q. Who did you try to talk to after John Mischo?

24 A. Well, I decided to start at the bottom, basically, with
25 John Mischo, the chair, going over it. And then I went to

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1 talk to C.W. Mangrum. And then I went to talk to Doug
2 McMillan.

3 And then I asked Doug McMillan -- I planned all along to
4 basically go over his ahead essentially to Snowden. And I
5 asked him at that meeting if it was -- if he minded if I went
6 on to Snowden as well.

7 So that was my -- my intention from the beginning was
8 basically to start an appeal all the way in the process.

9 Q. Appeal all the steps of the way because it was important?

10 You decided early on in the process that you would appeal
11 it all the way up because getting tenure is important?

12 A. Oh, certainly. Sure.

13 Q. Okay. So you talked to the dean, you talked to the vice
14 president for academic affairs. And, eventually, you talked
15 to -- I think you said Jesse Snowden was the president at the
16 time?

17 A. No. It was -- Jesse Snowden was acting president.

18 Q. Jesse Snowden held the position of president or fill-in
19 president for a while; right?

20 A. Jesse Snowden was.

21 Q. Okay. Did the dean, the vice president, and the
22 president, they were all open to talking to you about your
23 application even though a final decision hadn't been made?

24 A. Oh, yeah. Yeah.

25 Q. Was there any hesitancy?

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1 A. No, none. I didn't encounter any. I simply -- at each
2 stage, you know, I would talk to the secretary, requested an
3 appointment, and it was given to me.

4 Q. And that was the same for Vice President McMillan and
5 Jesse Snowden?

6 A. Yes.

7 Q. Okay. I'm going to talk to you a little bit about your
8 conversations with Interim President Snowden. Okay?

9 So you spoke with him; right?

10 A. Uh-huh. Yes.

11 Q. In person?

12 A. Yes.

13 Q. Okay. What did you speak about? What did you tell him?

14 A. I basically said that Doug McMillan had turned me down on
15 both cases, and I didn't really agree with that decision, you
16 know, because I wanted to find out reasons why.

17 Because, as I say, at that time -- you know, currently,
18 they're expected to give a written assessment, where at that
19 time they were not.

20 And so, you know, basically I was looking for an
21 explanation. And then I was going to press my case if -- you
22 know, depending on what he said.

23 Q. Did you feel like you had a right to try to make a case
24 for yourself?

25 A. Yes. Yeah.

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1 You know, especially -- I mean, tenure is such a critical
2 point in an academic career, that a person's -- you know, the
3 rest of their career is on the line. And so they definitely
4 should get feedback on it.

5 As I say, at that time there was not even a written
6 statement. You know, Doug McMillan's letter was just, like,
7 one line, "I do not" -- in capital letters -- "recommend
8 tenure, and I do not" -- capital letters -- "recommend
9 promotion."

10 Q. So did you talk to interim president Snowden about your
11 qualifications in the area of scholarship and research?

12 A. Right.

13 Q. So can you just tell me generally what you talked about?

14 A. Well, it was based on what I said to -- Doug McMillan's
15 response to me was to send a few --

16 MR. BUNSON: Objection, Your Honor. Hearsay.

17 THE WITNESS: Pardon?

18 THE COURT: Do you have an argument this falls
19 outside the hearsay rule?

20 MR. YOUNG: I do not, Your Honor.

21 THE COURT: All right.

22 Don't testify as to what someone told you, only what you
23 did or said.

24 THE WITNESS: Even in an interview with that person?

25 THE COURT: Yes.

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1 THE WITNESS: Okay.

2 Q. (BY MR. YOUNG) It's odd. I'm sorry.

3 A. Okay.

4 Q. Just, as we're going forward, you're one of the few who
5 hasn't been questioned before. When there's an objection,
6 just wait until the judge tells you --

7 A. Okay.

8 Well, that was -- the whole pitch of my conversation to
9 Jesse was that this is what Doug said.

10 Q. Uh-huh.

11 A. And I had a -- so I had a remedy in which I had articles
12 in my second dissertation that I could send out. So I
13 basically -- from the beginning, my intention with Jesse
14 Snowden was to tell him that why don't I just send these out
15 now? You know, rather than waiting another year and
16 reapplying, I could have them out in a matter of weeks, you
17 know. And I did, and a couple of them were accepted.

18 So he agreed with that, and he said he would have to talk
19 it over with Doug, basically, that would be okay with him, and
20 for me to give him a list of the articles I had sent out. He
21 said that he didn't have to send on a decision to the regents
22 until about June 1st or something. So this was in March. So
23 there was a couple of months.

24 So I sent the articles out and compiled a list and sent
25 in -- sent it to him, and then he okayed the recommended

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1 tenure and promotion, also based -- partly based on the dean's
2 judgment is another reason why he was recommending both, in
3 addition to, you know, my proposal to send the articles out.

4 Q. Okay. So in your situation, it was possible, once you
5 got feedback from Interim President Snowden, to fix something
6 within a few months' time?

7 A. Right. To send articles, right. He said there was --
8 this was in March or so, I believe, and he said he didn't have
9 to send the decision on --

10 MR. BUNSON: Objection, Your Honor. Hearsay again.

11 THE COURT: Well, I'm not sure who the speaker even
12 is, but move on.

13 MR. YOUNG: I will.

14 Q. (BY MR. YOUNG) So I know this was a long time ago, but do
15 you remember how many articles you had in your portfolio
16 before all these conversations with those administrators?

17 A. Yeah. I had a full published article, and I had a short
18 conference -- I mean, excuse me -- a short -- it's called
19 explicator. It's a little short article explicating a small
20 point. And I had conference papers I had delivered, and I had
21 proceedings from the Native American Symposium that I was the
22 principal editor for.

23 So I felt that was a sufficient body of scholarship
24 there, basically.

25 Q. But when you were told that wasn't a sufficient body of

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1 scholarship, you wanted to fix it; is that right?

2 A. Well, I was under the understanding that was enough. In
3 other words, that's why it was a bit of surprise to me, all
4 this, you know, in terms of what the expectations were.

5 Then if I had known that I needed more articles, I would
6 have sent those out earlier because I basically had them ready
7 in my second dissertation.

8 Q. Okay.

9 MR. YOUNG: Your Honor, may I approach the witness?

10 THE COURT: Yes.

11 Q. (BY MR. YOUNG) Dr. Spencer, do you recognize the exhibit
12 that's been marked as Plaintiff's Exhibit 48?

13 A. Yes.

14 Q. Can you tell me what it is?

15 A. It's the letter telling me -- informing me that he's
16 recommending my tenure and promotion.

17 MR. YOUNG: I'd like to move to enter Plaintiff's
18 Exhibit 48 into evidence.

19 MR. BUNSON: No objection, Your Honor.

20 THE COURT: Admitted.

21 Q. (BY MR. YOUNG) So in your case -- then we'll move on from
22 this -- despite the vice president voting against you, you
23 were able to get tenure because you were able to fix things
24 before your application went to the interim president; is that
25 right?

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1 A. Right, yeah. It was before he was required to give a
2 decision. I know what the time line was, so I went to see him
3 before his decision would...

4 Q. So let's move on and let's talk a little bit about
5 Dr. Tudor. Okay?

6 So you used to work with Dr. Tudor; right?

7 A. Correct.

8 Q. Okay. Are you aware that Dr. Tudor applied for tenure in
9 the 2009-2010 cycle?

10 A. Yes.

11 Q. Did you serve on Dr. Tudor's promotion and tenure
12 committee that year?

13 A. Yes.

14 Q. Do you recall reviewing her tenure portfolio?

15 A. Recall reviewing it? Yes.

16 Q. Is there anything that sticks out in your mind about it?
17 Was it a typical portfolio for the department?

18 A. This was the second time, right, in 2009? Right?

19 Q. Right.

20 A. The letter was -- the letter of application was
21 unprofessionally written. I mean, it basically did not -- I
22 mean, my heart sort of sank when I first read it. It was
23 like, this is not the way you present a letter --

24 Q. Uh-huh.

25 A. -- in an application.

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1 And then -- but otherwise, I mean, I -- she now had
2 publications, an online article. For me, that was sufficient.
3 So I more or less decided that I was going to vote in her
4 favor before I even went to the meeting, you know, based on
5 the portfolio.

6 Q. I assume you've reviewed a lot of tenure portfolios by
7 now at Southeastern. Is that true?

8 A. What now? I'm sorry.

9 Q. I'll just assume, since you've been at Southeastern for a
10 while, that you've reviewed many tenure portfolios. Is that
11 true?

12 MR. BUNSON: Objection, Your Honor. Leading.

13 THE COURT: Overruled.

14 Go ahead and answer.

15 Q. (BY MR. YOUNG) Have you reviewed many tenure portfolios
16 as a professor at Southeastern?

17 A. Reviewed many of them? About four of them, I think,
18 perhaps, maybe five. I can't --

19 Q. Okay. At the time you reviewed Dr. Tudor's 2009-2010
20 portfolio, was there anything missing from it, like a section
21 missing, documents missing?

22 A. No, not that I -- not that I recall. There were three
23 binders, so it seemed, if anything, there was too much. I was
24 under the impression that we had a set format we were supposed
25 to submit and -- but I think one binder contained student

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1 recommendations -- or, you know, student evaluations
2 basically.

3 So that was a bit unusual as well. I didn't have a
4 multivolume portfolio to look over before or since.

5 Q. Do you recall reviewing most of the documentation in that
6 portfolio?

7 A. Well, there were a lot of, you know, evaluation letters.
8 It was all of them. Would have been helpful. I looked them
9 over.

10 And what I -- from my -- you know, talking to students
11 and other ways, I -- my impression was that she was doing, you
12 know, a good job in the classroom. So I really had no reason
13 to -- you know, I certainly wasn't going to -- I mean, it was
14 this thick of every evaluation that had been done since she'd
15 been there.

16 Q. That's fair, sir.

17 Other than the candidate letter, which you didn't
18 particularly like, you didn't see any other problems with the
19 application?

20 A. No. The only -- it wasn't a strong application because
21 there was just the one article. But, as I said, my own
22 opinion is that an institution like ours, that the research
23 element is, you know, exaggerated. We're primarily a teaching
24 institution. That should be our focus. So as long as there
25 was something.

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1 Jesse Snowden had had a remark on what he thought was
2 appropriate, and that's what I was going by. I don't know if
3 it's appropriate for me to --

4 THE COURT: Just wait for a question.

5 THE WITNESS: Okay. I was just trying to explain my
6 reasons behind my thought.

7 MR. YOUNG: I'll try to help you.

8 Q. (BY MR. YOUNG) Had you been told at some point by Jesse
9 Snowden that there was a particular standard at Southeastern
10 when it came to scholarship and research?

11 A. I had not been told personally, but I had heard it.

12 Q. Was that standard that you only needed one publication?

13 A. No. It was that zero is not enough. That's what he said
14 basically, that there needed to be some scholarly engagement,
15 you know --

16 Q. Okay.

17 A. -- essentially is what -- here again, I guess I'm
18 reporting that secondhand, you know. So I -- he never told me
19 that personally, but...

20 Q. Okay. Do you personally believe that Dr. Tudor deserved
21 tenure in 2009-10?

22 A. Yes. I voted for her. It was not a strong application,
23 but I voted for her. It was, you know -- I would even say it
24 was weak, but it was adequate.

25 Q. Okay. But when you say it wasn't strong, that means it

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1 just wasn't way over the bar; is that right?

2 A. Well, it was -- I mean, I've described it generally
3 speaking. It was still weak, but it was adequate. It was
4 enough for me to vote for her, you know.

5 Q. Have you had other applications -- you said you reviewed
6 four to five -- other portfolios that were similarly -- that
7 they met the standard?

8 A. Yes. It's always weakness in publications, is the
9 weakness. And it would be slicing it pretty thin to call hers
10 weaker than others that got tenure.

11 Q. Would you agree that that would be singling her out?

12 A. I'm not sure. I wouldn't -- it's slicing it pretty thin
13 is the way I would describe it. I mean, ultimately, it's a
14 bit of a judgment call, you know, but it's just -- the
15 other -- the other people in the department got tenure on --
16 they were not much stronger. It's almost always weakness.
17 Not many publications is the weakness.

18 Q. Okay. I'm almost done with you, and then you're free.

19 I'd like to fast-forward to Dr. Tudor's 2010-11
20 application.

21 Did you write a letter of recommendation for Dr. Tudor
22 for that application?

23 A. Yes.

24 Q. Okay.

25 MR. YOUNG: Your Honor, may I approach the witness?

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1 THE COURT: Yes.

2 Q. (BY MR. YOUNG) Dr. Spencer, do you recognize the document
3 I just handed to you?

4 A. Yes.

5 Q. Can you tell me what it is?

6 A. It's my recommendation letter I wrote in September 2010.

7 Q. Your recommendation for Dr. Tudor?

8 A. Right. In applying -- well, it was for applying for
9 tenure, and I wrote a similar letter for other universities if
10 she needed it to apply for. It was essentially the same
11 letter.

12 Q. Okay.

13 MR. YOUNG: I'd like to move to enter Plaintiff's
14 Exhibit 164 into evidence.

15 MR. BUNSON: No objection, Your Honor.

16 THE COURT: Admitted.

17 Q. (BY MR. YOUNG) So, Dr. Spencer, do you stand by what you
18 wrote in this letter? Is this accurate, to your recollection?

19 A. I would -- I'm trying to help her out a little bit, you
20 know, but as -- and, you know, I don't remember specifically
21 seeing -- in other words, this portfolio was never distributed
22 to us. I think when she asked me to write the letter, I
23 probably must have -- she must have sent me a CV of some sort,
24 but I don't recall that.

25 But I had heard from other faculty members and knew that

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1 she had sent some articles out and was -- in fact, judging --
2 when I see the letter again, I must have seen her CV and that
3 she had five or six articles listed there. And then
4 subsequently that year she won the award for scholarship, you
5 know, I mean, from the faculty senate. So, I mean, there was
6 a lot of -- there was a lot of scholarly activity.

7 As I said, in terms of teaching, I had -- I'd only had
8 favorable impressions. So I was prepared to vote for her the
9 first time. So this application was definitely stronger, so
10 there was no reason why I would change my mind.

11 Q. At some point did you meet with Claire Stubblefield about
12 Dr. Tudor?

13 A. Yes.

14 Q. Do you remember generally what that meeting was about?

15 A. Yes. She just wanted to go over my -- just like we
16 pretty much did, in terms of what was my process, how did that
17 go, basically.

18 Q. When you say "process," do you mean your tenure process?

19 A. Right. Well, the whole story of my intervention, you
20 know, which supposedly was unusual. I mean, she was
21 definitely of the opinion that you shouldn't be allowed to
22 intervene like that.

23 Q. Who is of that opinion?

24 A. Claire.

25 Q. Do you have any idea what she was basing that opinion on?

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1 A. She said to let the process play out, was the words
2 that --

3 MR. BUNSON: Objection, Your Honor. Hearsay and
4 calls for speculation.

5 THE COURT: I'm not sure what we're talking about.
6 Can you define what intervention we're talking about?

7 MR. YOUNG: Thank you, Your Honor.

8 Q. (BY MR. YOUNG) Did you talk to Claire Stubblefield about
9 your own tenure experience and the fact that you had talked
10 with administrators before Interim President Snowden made a
11 decision on your application

12 A. Right. Yes.

13 Q. Okay.

14 A. It's kind of a complicated story, you know, as I've just
15 detailed it. So she wanted to hear the story from me,
16 essentially, what had happened. That's what she was --

17 Q. Okay. And a moment ago, before -- it's a confusing
18 process. I think -- were you trying to say that Claire
19 Stubblefield said that your opportunity to talk to the
20 administration was unusual or something like that?

21 A. At least she --

22 MR. BUNSON: Objection, Your Honor. Leading and
23 calls for hearsay.

24 THE COURT: Sustained.

25 MR. YOUNG: Okay.

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1 Q. (BY MR. YOUNG) Did you talk to Claire Stubblefield about
2 anything else other than your own tenure application process?

3 A. No, no. I just...

4 Q. Did Claire Stubblefield ask you any questions about the
5 quality of Dr. Tudor's portfolio?

6 A. No. All she wanted to know was my story, basically.

7 Q. Do you recall whether she took notes during that meeting?

8 A. I don't recall her taking notes, actually. She may have,
9 but I don't remember seeing her do that.

10 Q. Do you remember if she asked you follow-up questions?

11 A. I -- I mean, as best as I can recall, it was mostly me
12 just rehearsing what I had done, essentially, and her
13 thinking -- I mean, the reason I -- because if you -- if you
14 can't intervene in the process, then it's all over when the
15 final decision comes down. Then what can you do? Where is
16 your appeal of any sort?

17 So that was my -- why I -- that's why I intervened, and
18 I'm not really sure that I can agree with the notion that a
19 person -- I think there should be some sort of appeal, you
20 know, especially when you're not getting a written -- you
21 know, you're not getting a detailed explanation of what the
22 deficiencies are, you know.

23 To me, that's academic malpractice, basically, to be
24 turning down someone and not giving them full explanation, and
25 preferably in writing, as to why the application is deficient.

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1 Q. Okay. One last -- or two questions for you. Then I'll
2 turn you over to the State.

3 If you had a say in things, would you be okay with
4 Dr. Tudor returning to the English department at Southeastern?

5 A. I don't have any particular problem. I mean, I'm
6 retiring. I don't know if that's relevant in another year or
7 so. But, I mean, no.

8 Q. Okay.

9 MR. YOUNG: We can just let it cut off there, and
10 I'll turn you over to the State. Okay? And then I'll come
11 back up, couple more questions, and then you get to go back to
12 Durant.

13 THE COURT: Mr. Bunson.

14 MS. COFFEY: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. BUNSON:

17 Q. Dr. Spencer, you indicated and testified earlier that
18 your process was unusual.

19 Is that a fair characterization?

20 A. Claire said that it was. You know, I had no -- I had no
21 reason -- to me, it was perfectly natural, that you should be
22 able to go talk to whomever. So it was news to me, you know.
23 That was the argument that she was presenting, that you should
24 not intervene in the process.

25 Q. So it's not unusual for disagreement to occur at various

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1 levels, is it?

2 A. No, not necessarily. I mean...

3 Q. And, in fact, in your case, there was lots of
4 disagreement, wasn't there?

5 A. Oh, yeah, definitely.

6 Q. And, Dr. Spencer, Plaintiff's Exhibit 48, the letter from
7 Jesse Snowden recommending you for tenure and promotion, do
8 you have that in front of you?

9 A. Uh-huh.

10 Q. Is there any reason Dr. Snowden gives for recommending
11 your tenure and promotion?

12 A. Is there any reasoning? I mean --

13 Q. Correct.

14 A. No, there's no explanation really.

15 Q. Do you recall giving Dr. Tudor any advice on her
16 portfolio prior to its submission?

17 A. Only -- the advice I gave was immediately after my
18 experience in 2006-2007, and I gave it to several other
19 faculty members as well.

20 Q. And what was that advice?

21 A. I wouldn't go up for tenure without two articles.

22 Q. And you sat on her 2008-2009 application committee,
23 didn't you?

24 A. Yes.

25 Q. How many articles did she have in that one?

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1 A. There were none in the first one.

2 Q. So she ignored your advice?

3 A. Apparently. I was surprised.

4 Q. How many articles did she have in her 2009 portfolio?

5 A. There was one that was going to be -- I can't -- I think
6 it was -- it was accepted, which more or less counts as
7 published if you get a letter back from the, you know -- and
8 the two articles was not necessarily my opinion. It was
9 merely just, this was my experience had been -- because it's
10 not just our department; you've got to get through the other
11 levels as well that I -- you know, I -- if anybody -- if I had
12 had any hint that I needed more than what I had had, I would
13 have done it. But nobody -- I never got any -- I never had
14 any hint from anybody that I needed more.

15 Q. Then you --

16 A. Here, it's clear that you do. So I told a couple of
17 other -- I told Jani -- the other faculty members who were
18 coming up for tenure, you know, to help out junior colleagues,
19 spare yourself the trouble, you know, that what -- you know,
20 that would be the safe level, and I wouldn't go up without
21 that. Trying to help them out.

22 Q. And you earlier classified Dr. Tudor's 2009-2010
23 portfolio as weak but adequate. Is that accurate?

24 A. Right. Because I voted for her. I mean, I've said it
25 was weak, but I voted for it in the end and was prepared to

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1 vote for it when I went into the meeting.

2 Q. Dr. Spencer, I want to make sure that we're clear. Some
3 of these questions are just yes or no. I don't --

4 A. Okay. Okay.

5 Q. I don't want to take too much time, if it's okay.

6 Did Dr. Tudor follow the format you expected in her
7 2009-2010 portfolio?

8 A. No, not really. I wasn't sure -- I'd only heard what the
9 format was to be, but it struck me that it wasn't following,
10 yeah.

11 Q. And weren't those expectations of the formatting set by
12 the dean at the time?

13 A. Yes.

14 Q. Had you ever reviewed a multivolume portfolio other than
15 Dr. Tudor's?

16 A. No, but Dr. Tudor may have been my first one. I was
17 trying to think about that, you know, in the other questions.
18 I believe that may have been the first one that I sat on.

19 Q. And, Dr. Spencer, the cover letter you talked about and
20 you referred to as unprofessional, that's the first impression
21 that a candidate's portfolio is presented to the committee;
22 isn't that correct?

23 A. Yes.

24 Q. Okay. Do you recall any indication or suggestion made by
25 the chair, Lisa Coleman, or anyone else that stood out as a

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1 reason that the committee may have voted to give a weak but
2 adequate portfolio and a bizarre cover letter a vote for
3 tenure and promotion in 2009-10?

4 A. Lisa Coleman did raise the transgender issue.

5 Q. And do you feel that that had any influence on the
6 committee?

7 A. Here -- it's just my impression. If anything, I did feel
8 that it was going against -- against her, and then -- like
9 people -- this gets thrown out there and people talk about it
10 and you can't get a really clear sense. No one says whether
11 they think that this should make a difference or not. It sort
12 of sits there.

13 Then, finally, it's -- then you call an end to the
14 meeting and a vote is taken and it was the majority to
15 approve. I can't remember the precise numbers on the vote.
16 It's anonymous, but it may have been 4-1, if I -- I think it
17 was 4-1, but I couldn't swear to that.

18 Q. Doctor, you just testified it was going bad. So what
19 were you talking about?

20 A. That was just a general -- you know, I've seen this
21 before in other ones where, you know, the discussion is out
22 there and people are making negative comments and you're
23 getting kind of a sense of which way it's going to go before
24 the vote occurs. And that's a very subjective sense, but that
25 was -- you know, I've seen that happen before, where it seems

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1 that -- where at first people are being critical, and then you
2 get a sense that, well, this is, you know -- but then it goes
3 the other way.

4 It seems like it's almost always been a sense, first,
5 that it's critical and kind of negative and then it sort of
6 turns in favor. I don't think I've ever been on one where
7 everybody comes out in the beginning and says that -- it's
8 very positive and then for later criticisms to have it go the
9 other way and deny.

10 Q. But Dr. Tudor's transgender status was something that the
11 committee considered during their deliberations or at least
12 was brought up by Lisa Coleman?

13 A. Lisa Coleman brought it up. But to what extent anyway --
14 it was irrelevant to me, I mean, that was for sure. But to
15 what extent anyone else considered it, I can't say, you know,
16 for sure.

17 Q. Dr. Spencer, we've talked a bit and we've heard quite a
18 bit of testimony about the Native American Symposium.

19 How were you involved with the Native American Symposium?

20 A. I'm the primary organizer of it.

21 Q. How many years have you been the primary organizer?

22 A. Since -- oh, there was another faculty member named Chad
23 Litton. He was one of the original founders. So he was with
24 us from 2003.

25 From 2005 until the present, I've been the primary

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1 organizer of the academic portion of, you know, organizing the
2 papers, putting the conference together.

3 As a co-chair there was Dan Althoff and then another
4 person who ran the Native American Institute, Chris Wesberry
5 became co-chair, but the heart of it is the academic
6 conference, and I was always the primary organizer there.

7 Q. Is it a lot of work to put on the Native American
8 Symposium?

9 A. It's a fair amount. Once I get all this in my computer,
10 it's, you know -- you know, it's a matter of e-mail addresses.
11 Once you've done it a few times, you know, the templates from
12 one symposium are in my computer, and then I just type in the
13 new version.

14 But, I mean, it lasts over a number of months. I have to
15 maintain contact with the people who send proposals, you know.
16 Then when I get them, I put together a schedule, things like
17 that.

18 So, I mean, it's a significant -- it's been my primary
19 service contribution to the school, basically, in my own
20 tenure and promotion process.

21 Q. Have you ever worked with Dr. Tudor on the Native
22 American Symposium?

23 A. Yes.

24 Q. And there's been testimony that Dr. Tudor was a co-editor
25 of the Native American Symposium. Was that reflective of her

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1 work, or was it mostly just in title?

2 A. She read the papers. That is pretty standard. I mean, I
3 have no qualms about putting her as co-editor on it.

4 I mean, I did most of the actual sort of editing of the
5 individual ones and formatted them on my computer, but she --
6 you know, I gave her the papers, she read them, made some
7 comments, and that's pretty typical in academic settings.

8 Q. You indicated that Dan Althoff was your co-chair.

9 So the years you worked with Dr. Tudor, was it you,
10 Dr. Tudor, and Dan Althoff only who worked on the Native
11 American Symposium?

12 A. There were one or two other -- Jane McMillan, Doug
13 McMillan's sister, was on it. There were a couple of other
14 people that would come and go, you know, over the years, a
15 number of symposiums.

16 Q. Was the work evenly split amongst all of you?

17 A. Most of the -- the other members primarily helped on the
18 event itself, which was crucial. I mean, they needed to be
19 there and would show up for -- there would be several
20 meetings, at least, leading up to the event and -- so they
21 were very helpful, and I listed them as active members on the
22 committee.

23 But in the sense that, you know -- I was -- in terms of
24 organizing the academic conference, in particular -- sometimes
25 we did some additional more local events, and Chris Wesberry

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1 in particular was doing those. And Dan was contacting our
2 primary speaker and, you know, arranging some of that.

3 But organizing the conference part itself, I was always
4 the person essentially doing it.

5 Q. And, Doctor, I just want a number here. If you had to
6 assess a percentage to the work you did yourself, what would
7 that percentage be?

8 A. I would -- it would be over half. It would be, you know,
9 maybe even as much as 60 percent perhaps, yeah.

10 Q. If you had to assess a percentage of the work Dan Althoff
11 performed, what percentage would you give --

12 A. Maybe around 20.

13 Q. And just so that we aren't talking over each other, I'm
14 going to need you to let me finish my question, because she's
15 trying to get everything down. Is that okay?

16 A. Sure.

17 Q. Thank you.

18 So you were at 60, and you put Dan Althoff at 20 percent;
19 is that correct?

20 A. Yeah, give or take 5 or 10, you know, percent, maybe.
21 You know, 5 percent anyway. I would say I did over half.

22 Q. If you had to assess a percentage of the work Dr. Tudor
23 and everyone else performed, what would that percentage be?

24 A. It would be in the 20 to 25 percent.

25 Q. So are you saying that Dr. Tudor herself was responsible

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1 for that 20 to 25 percent?

2 A. No. There would be some other people, but she -- I would
3 definitely put her -- she was the next most active, you know,
4 after -- me, Dan, and Rachel, I would say.

5 MR. BUNSON: I have no further questions at this
6 time.

7 THE COURT: Redirect?

8 **REDIRECT EXAMINATION**

9 BY MR. YOUNG:

10 Q. Dr. Spencer, before you came into the courtroom, we were
11 having a conversation about odd things in tenure portfolios.

12 Do you remember that?

13 A. Of -- which about the tenure portfolios?

14 Q. That sometimes professors applying for tenure put odd
15 things in their portfolios.

16 A. Oh, right, right. Okay.

17 MR. BUNSON: Objection, Your Honor. Mr. Young is
18 testifying for him.

19 THE COURT: Sustained.

20 Q. (BY MR. YOUNG) Okay. Have you had occasion to review
21 portfolios other than Dr. Tudor's, where there were things in
22 the portfolio that didn't make sense to you?

23 A. No, not really, because everyone else pretty closely
24 adhered to Lucretia Scoufos's model. I mean, she was very
25 particular about how it had to be. And I don't think I saw a

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1 single portfolio after that that didn't conform, you know,
2 slavishly, you know, in terms of which type of plastic folder
3 and which way it opened as opposed to -- even.

4 I know I certainly did when I went up for full professor.

5 Q. So if Dean Scoufos hadn't clearly communicated her
6 preferences to someone, would it be hard for a portfolio to
7 look the way she wanted it to look?

8 MR. BUNSON: Objection, Your Honor. Calls for
9 speculation.

10 THE COURT: Overruled.

11 THE WITNESS: I didn't find -- I mean, it was a bit
12 of a pain, and, you know, I thought it was silly of her to
13 some extent, I mean, even to which way the plastic folder
14 should open.

15 But, in the end, it made -- it made kind of a nice
16 product in the end.

17 BY MR. YOUNG:

18 Q. I understand that. I asked you a different question.

19 It sounds like Dean Scoufos had very particular
20 preferences; is that right?

21 A. Right.

22 Q. If Dean Scoufos hadn't been really careful and explained
23 that to someone, would it be hard for them to comply with
24 those preferences?

25 MR. BUNSON: Objection, Your Honor. Calls for

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1 speculation.

2 THE WITNESS: It wasn't for me when I did it.

3 MR. YOUNG: Okay.

4 THE COURT: Move on.

5 Q. (BY MR. YOUNG) I think you said during cross-examination
6 that Dr. Tudor was the co-editor of the Native American
7 Symposium; is that right?

8 A. Yes.

9 Q. How would someone who wasn't deeply involved in the
10 symposium figure out who's a co-editor of the proceedings?

11 A. Well, I -- I invited her to be, you know, basically.

12 Q. Different question.

13 How would someone on the outside figure out if someone is
14 the co-editor of the Native American Symposium proceedings?
15 Is there a book? Is there an announcement?

16 A. Oh, someone on the outside trying to determine?

17 Q. Yeah.

18 A. Well, that would be a difficult publication, you know,
19 unless it's spelled out in the introduction sometimes. Yeah,
20 they'd have to ask me.

21 Q. If you were asked, would you have been able to identify
22 who your co-editors were?

23 A. Sure.

24 Q. Did the cover of the Native American Symposium
25 proceedings have the co-editors on it?

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1 A. Yes. Lucretia Scoufos was a co-editor of one -- you
2 know, a symposium or two before. I think I even had Chad
3 Litton's name on there, but that was more -- I think he had
4 just received papers and stuff, but....

5 Q. I think you testified during cross that during your own
6 tenure application, that the vast majority of your service was
7 the Native American Symposium; is that right?

8 A. For the most -- there was some other department service.
9 I had been on committees.

10 I've never been -- I'm not as interested in university
11 politics, so I've actually more or less tried to stay out of
12 the university-wide-level things.

13 So the symposium was my kind of larger university. But I
14 was very active in the department, so I don't think that my
15 service was deficient in any way. But I definitely did not go
16 out of the way like other faculty members have and been -- you
17 know, I could have been more active at the university level,
18 but I didn't want to be.

19 Q. Would it be unusual for a professor seeking tenure in the
20 English department to do service in a lot of different areas
21 instead of mainly in one?

22 A. Sure. I mean, it's -- the joke is that nobody is denied
23 tenure because of service, you know. So, I mean -- so if
24 people want to be slackers, you can be a slacker in that
25 regard.

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1 But other people -- you know, some people have it more --
2 you know, their own personal sense of either obligation or
3 wanting to make a contribution and so forth.

4 So, yes, some people are -- I mean, in fact, you usually
5 wind up with kind of a core group that does most of the
6 university-wide things in the faculty senate and elsewhere.

7 Q. Do you have any awareness as to whether Dr. Tudor's
8 service was cited as a reason to deny her tenure?

9 A. I never heard anything to that effect or saw it. It
10 wasn't -- I didn't see anything why it should be.

11 MR. YOUNG: That's it. Thank you.

12 THE COURT: Any redirect?

13 MR. BUNSON: No, Your Honor.

14 THE COURT: You may step down. Thank you.

15 (Witness excused.)

16 THE COURT: Call your next witness.

17 MS. NOVOTNY: Plaintiff calls Dr. Randy Prus.

18 THE WITNESS: Leave these here?

19 THE COURT: Yes.

20 Please come right up here, face the clerk, and be sworn.

21 (Witness duly sworn.)

22 THE COURT: Be seated.

23 WHEREUPON, RANDY PRUS, Ph.D., after having been first
24 duly sworn, testifies in reply to the questions propounded as
25 follows:

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DIRECT EXAMINATION

1

2 BY MS. NOVOTNY:

3 Q. Hello there, Dr. Prus. Thank you for coming here and
4 taking time out of your schedule, as the jurors have had to do
5 and many other witnesses.

6 I'm going to try to keep this short for us.

7 When did you start working at Southeastern Oklahoma
8 State?

9 A. August 1991.

10 Q. And what was your title when you began?

11 A. Assistant professor.

12 Q. And what's your title at Southeastern currently?

13 A. Professor and chair.

14 Q. And what are you chair of?

15 A. The department of English, Humanities, and Languages.

16 Q. Great.

17 Now, when did you become chair of the department of
18 English, Humanities, and Languages?

19 A. August 2010.

20 Q. And as chair of the department and previously just being
21 a member of the department along with Dr. Tudor, would you say
22 you were pretty familiar with Dr. Tudor's work?

23 A. Yes.

24 Q. Okay. And you were on, in fact, a committee that had
25 something to do with Dr. Tudor's tenure and promotion; is that

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1 correct?

2 A. Correct. I was on the tenure promotion committee in
3 2009.

4 Q. And can you help explain for us here today what your role
5 on that committee in 2009 was?

6 A. My role was to review the portfolio, attend the meeting,
7 discuss the merits of the portfolio and her work in the
8 department. And a vote was taken, and the results were passed
9 on to the department chair.

10 Q. Okay. And do you recall what that vote was?

11 A. Yes.

12 Q. Okay. And what was that vote?

13 A. The vote was 4 to 1 in favor of tenure and promotion.

14 Q. So the committee then at that point recommended tenure
15 for Dr. Tudor?

16 A. The committee did, yes.

17 Q. And who was the one dissenter?

18 A. Me.

19 Q. Okay. And what was your reasoning for voting against
20 tenure at that time?

21 A. Well, I -- the cover letter lacked professional
22 competence. Dr. Tudor made an argument that three people on
23 campus who weren't qualified for tenure deserved tenure, and,
24 therefore, she did.

25 And as writing instructors, we teach for audience and

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1 purpose. And she was addressing this to a group of people
2 with doctorates and tenure -- and tenure. It didn't make
3 sense.

4 Q. I see. And so you didn't -- you disagreed with the cover
5 letter.

6 Did you know of any publications that Dr. Tudor had at
7 that time?

8 A. She had one.

9 Q. Okay. And were there other professors who had earned
10 tenure that had only one publication at that time?

11 A. I can't speak -- I don't remember.

12 Q. Okay. Now, ultimately, though, the committee votes and
13 takes a position as a committee; is that correct?

14 A. Correct.

15 Q. And do you stand behind the committee's decision to --

16 A. Well, as part of the committee, yes.

17 Q. Okay. So you stand behind the committee's decision to
18 recommend tenure and promotion?

19 MR. JOSEPH: Objection, Your Honor. Leading.

20 THE COURT: Sustained.

21 Q. (BY MS. NOVOTNY) Were you familiar with Dr. Tudor's work
22 other than publications and the cover letter you spoke of?

23 A. In 2009?

24 Q. Yes.

25 A. Yes. I visited her classroom once or twice. Twice, I

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1 think.

2 Q. What was your impression of Dr. Tudor as a teacher?

3 A. Still had work to do. She could have been more engaging,
4 energetic, but she was plugging away.

5 Q. Are all tenured professors energetic and engaging?

6 A. "Aren't all"? I don't understand your question.

7 Q. I said, "Are all tenured professors engaging and
8 energetic?" Let me strike that and rephrase.

9 So you said that Dr. Tudor was not necessarily energetic
10 and engaging. Are there tenured professors who are tenured
11 but are not engaging and energetic people?

12 MR. JOSEPH: Objection, Your Honor. That's just a
13 confusing question.

14 THE COURT: I understand it.

15 Can you answer that?

16 THE WITNESS: Are there tenured professors who
17 aren't engaging?

18 Q. (BY MS. NOVOTNY) Yeah.

19 A. Sure.

20 Q. Okay. That's all I was asking.

21 All righty. You know what? That is -- well, no. I had
22 a couple other questions.

23 Did administrators ever come to you and tell you which
24 bathroom you should use specifically?

25 A. No.

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1 Q. Did you know of any other English professors who were
2 told and given direction to use a specific restroom while they
3 were at work?

4 A. No.

5 Q. Did you know that Dr. Tudor was instructed to only use
6 one restroom specifically?

7 A. At the time, no, but I've heard allegations since then.

8 Q. Okay. But you've never heard of any other professor
9 being told what specific restroom to use?

10 A. That's correct.

11 MR. YOUNG: Okay. That's all I have. Thank you.

12 THE COURT: Mr. Joseph?

13 MR. JOSEPH: Thank you, Your Honor.

14 Given the limited direct examination and the university's
15 intention to call this witness in its case in chief, we
16 request permission to examine outside the scope of plaintiff's
17 direct questioning at this time.

18 MS. NOVOTNY: I'm going to object to that on
19 relevance and duplicativeness.

20 We've heard lots of testimony from many witnesses
21 about --

22 THE COURT: I don't think you can actually lodge
23 that objection until you've heard any question asked.

24 Certainly, I will consider those on a case-by-case basis.

25 But for the convenience of both the witness and the jury,

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1 I think it's entirely logical, if you intend to recall this
2 witness, that you simply do your inquiry now so that it will
3 not be necessary to recall.

4 MR. JOSEPH: That's precisely what I'd like to do,
5 Your Honor.

6 THE COURT: I know.

7 Having said that, obviously, this is not going to be as
8 short as direct, so I think we'll go ahead and break for
9 lunch.

10 Let me instruct you not to discuss the case or permit
11 others to discuss it with you.

12 Until about 15 minutes ago, you were going to get a long
13 lunch hour because we had a criminal matter scheduled at one
14 o'clock, but that's now been continued.

15 So I'll ask you to be in the jury assembly room at 10
16 after 1:00.

17 Counsel, the meeting we had planned during lunch hour, I
18 will postpone until the end of the trial day.

19 We'll be in recess.

20 (In recess from 12:15 p.m. to 1:15 p.m.)

21 (Jury enters.)

22 THE COURT: Be seated.

23 Please continue.

24 MR. JOSEPH: Thank you, Your Honor.

25

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CROSS-EXAMINATION

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BY MR. JOSEPH:

Q. Dr. Prus, I'm not sure if this happened on the original examination, but will you please state your name for the record, please.

A. Randy Thomas Prus.

Q. Dr. Prus, I believe you testified earlier that you are currently the chair of the EHL department at Southeastern; is that correct?

A. Correct.

Q. What are your duties there as chair?

A. My duties are to make schedules for full-time and adjuncts, approximately 24 faculty; evaluate faculty, and handle any kind of questions that come up. I represent the department on academic council and other committees as well.

Q. And do you have any duties in the tenure and promotion review and application process?

A. Yes. After it goes to the department committee, it comes to the department chair, who provides an evaluation and passes it on to now the vice president.

Q. And do you teach any student classes in addition to these other duties you mentioned?

A. I teach two classes.

Q. Okay. And do you know the plaintiff, Dr. Rachel Tudor?

A. Yes, I do.

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1 Q. Okay. And just very briefly, how do you know Dr. Tudor?

2 A. She was -- she worked in the department from 2004 to
3 2011.

4 Q. Okay. Are you -- were you the chair at the department of
5 EHL when Dr. Tudor first applied for tenure?

6 A. No, I wasn't.

7 Q. And were you the chair of the EHL department the second
8 time she applied for tenure in 2009-2010?

9 A. No, I wasn't.

10 Q. Okay. If you would, in brief, walk the jury through the
11 duties of a member of a tenure and promotion committee -- a
12 member of that committee -- in the EHL department during that
13 2009-2010 time frame.

14 A. We were -- we'd review the portfolio and the candidate's
15 work in the department and the university. We discussed the
16 merits, generally based on teaching, scholarship, and service.
17 Then we'd vote on whether to approve or -- to recommend or not
18 recommend tenure and promotion.

19 And the chair of that committee then writes up the report
20 and passes that on to the department chair and notifies the
21 candidate of the result.

22 Q. Okay. And in 2009-2010, when Dr. Tudor applied for
23 tenure, I believe you testified earlier that you individually
24 were not in favor of granting tenure. Is that accurate?

25 A. Yes.

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1 Q. Okay. And I believe you mentioned an application letter,
2 and you said it was poor. Was that your word?

3 A. It wasn't professionally competent. I think that's the
4 term I used.

5 Q. Okay. Was -- can you expand briefly on what you mean by
6 that?

7 MS. NOVOTNY: Objection. He's already testified to
8 this.

9 THE COURT: Sustained.

10 MR. JOSEPH: Okay.

11 Q. (BY MR. JOSEPH) In terms of the letter, did it appear to
12 you that the letter understood its intended audience?

13 MS. NOVOTNY: Objection. He's already testified to
14 that. Duplicative.

15 THE COURT: Sustained.

16 MR. JOSEPH: Okay.

17 Q. (BY MR. JOSEPH) In terms of her portfolio, was there a
18 collection of poetry included with that document?

19 A. It was a collection of poems in a journal with "open mic"
20 put on top of it.

21 Q. And by "open mic," do you know what that term means?

22 A. I know it's in reference to sometimes open poetry
23 readings where people can just gather to read.

24 I wasn't sure -- it seemed as if she were passing off
25 journal -- a personal journal as a form of publication.

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1 Q. And, in your opinion in 2009-2010, was that an
2 appropriate publication for a tenure and portfolio
3 application?

4 A. No, it wasn't.

5 Q. Okay. Is Corey Delashaw a tenured member of the faculty?

6 A. No, she isn't.

7 Q. Okay. Is Kim McGeehee?

8 A. No, he wasn't -- he's retired since, but he wasn't at the
9 time.

10 Q. Okay. And was Theresa Anderson at that time a tenured
11 member of the faculty?

12 A. No.

13 Q. Okay. So to the extent that Dr. Tudor's portfolio
14 referenced them, do you have an opinion about whether or not
15 that was appropriate?

16 A. It wasn't appropriate.

17 Q. What is a chapbook?

18 A. A chapbook is a small collection of poetry, 20, 30, 40
19 pages maybe.

20 Q. And is the chapbook the same thing as the open mic book
21 that you referenced a moment ago?

22 A. No. Chapbooks have their own publishers.

23 Q. Okay. Did Dr. Tudor include any chapbooks in her
24 portfolio?

25 A. Not that I -- except for the open mic. That's the only

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1 one I recall.

2 Q. Okay. And was there anything that you found problematic
3 with Dr. Tudor's actual publication or publications in the
4 2009-10 application committee meeting?

5 A. It seemed to be -- there weren't very many recent
6 references, and the field is somewhat dynamic. And it didn't
7 show -- didn't quite show promise; right?

8 As I think I might have mentioned -- maybe I didn't --
9 tenure for me is not just a reward but a promise of what
10 further work one is going to do in a field, and I didn't see
11 that promise.

12 Q. And by that you mean a promise from the candidate
13 demonstrating potential?

14 A. Yeah.

15 Q. Okay. Did you consider Dr. Tudor's work on Southeastern
16 University's Native American Symposium to be a work of
17 scholarship or was it a work of service?

18 A. A work of service, I would categorize it.

19 Q. Did you consider it to be noteworthy for appropriate
20 purposes of tenure and promotion?

21 A. It certainly wasn't outstanding, but it was -- it added
22 to it.

23 Q. Okay. How many -- I believe you may have testified to
24 this; I just couldn't hear you earlier.

25 How many total professors were on Dr. Tudor's 2009-10

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1 application committee?

2 A. Five.

3 Q. Okay. And was there discussion between the members of
4 the committee in meeting about whether or not to recommend
5 Dr. Tudor for tenure that year?

6 A. Yes, there was discussion.

7 Q. Okay. Is there anything about that discussion you can
8 share with us?

9 A. That I can share with you?

10 It was pretty extensive and it -- the meeting was
11 probably at least an hour or so. It was discussed longer than
12 most committees.

13 Q. Okay. Earlier today we heard testimony from Dr. Mark
14 Spencer.

15 Was Dr. Mark Spencer on the same committee that you were
16 thinking of in 2009-2010?

17 A. Yes.

18 Q. Okay. And Dr. Spencer testified that the issue of
19 Dr. Tudor's transgender status came up in that committee
20 discussion.

21 Do you remember that?

22 A. Not directly.

23 Q. Okay.

24 A. But I think it was in the room.

25 Q. Okay. And was it in the room in a positive light?

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1 A. Yes.

2 Q. Do you remember anyone specifically mentioning it in a
3 positive light?

4 A. I don't remember anyone mentioning it, but there were --
5 I know one colleague, and maybe two --

6 MS. NOVOTNY: Objection. Hearsay.

7 THE COURT: Don't know.

8 I think you've answered the question. Stop and wait for
9 another.

10 THE WITNESS: Okay.

11 Q. (BY MR. JOSEPH) Dr. Prus, did you have an additional
12 thought that you wanted to share with us?

13 A. Well, I was going to say that, in my sense, the
14 transgender issue was there because I know at least one
15 colleague who didn't read the portfolio and perhaps another
16 one as well based on their discussion of the portfolio.

17 Q. And so when you say they didn't read the portfolio, what
18 does that mean?

19 MS. NOVOTNY: Objection. Calls for speculation.

20 THE COURT: Overruled.

21 Go ahead. You can answer.

22 THE WITNESS: Oh, okay.

23 Repeat that.

24 Q. (BY MR. JOSEPH) Sure. I think I -- I apologize.

25 I think you said it was in the room, and I think you said

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1 one or two people didn't read the portfolio. And I asked you
2 what you meant by that, "didn't read the portfolio."

3 A. Well, when discussing the letter, for example, they
4 didn't know what we were referring to.

5 Q. Was there any sense on your part that other members of
6 the committee didn't understand the significance or the lack
7 thereof of the inclusion of the open mic material?

8 A. Yeah. I don't think they understood the nature of poetry
9 and poetry publications, yeah.

10 Q. Okay. And, Dr. Prus, is poetry one of the subjects that
11 you teach?

12 A. Yes.

13 Q. Okay. Do you consider yourself fairly well versed in
14 poetry?

15 A. Yes.

16 Q. Okay. So I believe you were telling us that one or two
17 members of the committee, you think, maybe didn't read the
18 portfolio, and that, as a result of that, what leads you to --
19 what leads you to connect that with the fact that there was
20 some consideration of Dr. Tudor's transgender status?

21 MS. NOVOTNY: Objection. Calls for speculation.

22 THE COURT: Overruled.

23 THE WITNESS: Because the support for Dr. Tudor
24 without considering the portfolio leads me to that conclusion.

25 Q. (BY MR. JOSEPH) Now, you still voted -- you individually,

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1 I mean, still voted within the committee not to recommend
2 Dr. Tudor for tenure that year, didn't you?

3 A. Correct.

4 Q. Were you worried about being accused of being transphobic
5 or a bigot?

6 A. No.

7 Q. Okay. Ultimately, that committee did vote to recommend
8 Dr. Tudor's tenure, did it not?

9 A. Correct.

10 Q. After Tudor's tenure and promotion packet left your
11 committee, where did it go next?

12 A. To the department chair.

13 Q. And did you personally deliver it to the department
14 chair?

15 A. No. It would have been the chair of the committee. I'm
16 thinking it might have been Dr. Coleman. I'm not exactly sure
17 who chaired it, but I didn't.

18 Q. Is that Dr. Lisa Coleman?

19 A. Yes, yes.

20 Q. Okay. Was Dr. Lisa Coleman one of the one or two people
21 in the room that you felt like may not have read the
22 portfolio?

23 A. Yes.

24 Q. Okay. Did Dr. Scoufos -- who was Dr. Scoufos at that
25 time?

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1 A. At that time, she was the dean of Arts & Sciences.

2 Q. And did Dr. Scoufos recommend Dr. Tudor's tenure and
3 promotion portfolio be recommended for tenure?

4 A. She did not recommend.

5 Q. Okay. After Dean Scoufos reviewed the tenure and
6 promotion application, do you know where it went next?

7 A. To Vice President McMillan.

8 Q. Okay. And did Dr. McMillan recommend tenure for
9 Dr. Tudor's application that year?

10 A. No.

11 Q. After Vice President McMillan had reviewed and made his
12 recommendation, where did Dr. Tudor's portfolio go then?

13 A. To the president, President Minks.

14 Q. And, to your knowledge, did then President Minks
15 recommend Dr. Tudor for tenure?

16 A. He did not recommend.

17 Q. Okay. To your knowledge, did Dr. Tudor have the
18 opportunity to withdraw her tenure and promotion portfolio in
19 the '09-'10 year before it was denied?

20 A. I don't have firsthand information on that, but that's
21 what I understand the situation to be.

22 Q. Okay.

23 THE COURT: Unlike the usual situation, both of you
24 are too close to the mics. You're popping. If you'll just
25 back up a little bit.

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1 MR. JOSEPH: I'm sorry if I'm blowing anyone's
2 eardrums out, Your Honor. I apologize.

3 Q. (BY MR. JOSEPH) Dr. Prus, did anyone in particular take
4 over any duties that were slotted for Dr. Tenure [sic] had she
5 been given tenure and promotion?

6 A. No.

7 Q. Okay. As the current chair of the English, Humanities,
8 and Languages department at Southeastern, do you think it
9 would be a good thing for that department if Dr. Tudor came
10 back to work there now?

11 A. No.

12 Q. Do you think it would be a good thing for those students
13 if Dr. Tudor came back to work now?

14 A. No.

15 Q. Do you think it would be a good thing for the university
16 if Dr. Tudor came back to work there now?

17 A. No.

18 Q. Okay.

19 MR. JOSEPH: Nothing further, Your Honor.

20 Thank you, Dr. Prus, ladies and gentlemen.

21 THE COURT: Ms. Novotny.

22 MS. NOVOTNY: Judge, if I may approach briefly just
23 to confer?

24 THE COURT: Yes.

25 (The following proceedings were had at the bench and out

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1 of the hearing of the jury.)

2 MS. NOVOTNY: I just want to make sure to clarify
3 that, because of the strange situation under Rule 611, so I'm
4 allowed to cross on anything that he brought up?

5 THE COURT: Yes.

6 MS. NOVOTNY: Okay.

7 THE COURT: Sure.

8 MS. NOVOTNY: I just wanted to make sure we were
9 clear. Thank you.

10 THE COURT: Uh-huh.

11 (The following proceedings were had in open court with
12 all parties present and within the hearing of the jury.)

13 **REDIRECT EXAMINATION**

14 BY MS. NOVOTNY:

15 Q. All right. Dr. Prus, thanks for sticking with us still
16 here.

17 On examination just a moment ago, you indicated that
18 there was a collection of poems in the journal that was part
19 of Dr. Tudor's portfolio.

20 Is poetry something that's part of the English,
21 Humanities, and Languages department?

22 A. Yes.

23 Q. Yeah.

24 And do you consider yourself more of a poetry expert or
25 more of a tenure expert?

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1 A. Poetry expert.

2 Q. Thank you.

3 And while you may have had issues with Dr. Tudor's
4 2009-2010 portfolio, isn't it true that you actually helped
5 Dr. Tudor improve her portfolio for the 2010-2011 cycle so
6 that she could have a better chance at meeting some of the
7 deficiencies that you felt were there?

8 A. That is true.

9 Q. And did she take direction from you and make improvements
10 that you felt were improving her chances of getting tenure
11 that next time around?

12 A. If she made the changes I recommended. I didn't see the
13 final portfolio because it never got to the chair.

14 Q. Sure.

15 Were you aware that she was getting additional works
16 published between the 2009-10 application and the 2010-2011
17 publication?

18 A. Yes.

19 Q. Would that additional work -- publication of
20 peer-reviewed works, would that have been something that would
21 have strengthened her chances of tenure, in your eyes?

22 A. Yes.

23 Q. Now, you indicated that you thought your colleagues maybe
24 didn't fully read her 2009-2010 portfolio?

25 A. That's correct.

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1 Q. Isn't it true that many folks who review tenure
2 applications will, you know, skim certain parts of it and
3 focus on the parts that they think are most important?

4 MR. JOSEPH: Objection, Your Honor. Calls for
5 speculation.

6 THE COURT: Overruled.

7 THE WITNESS: I would hope not, but I'm sure they
8 do.

9 Q. (BY MS. NOVOTNY) Now, you indicated before that you were
10 not necessarily sure you would welcome Dr. Tudor back.

11 Do you think other faculty in the English department
12 would welcome Dr. Tudor back at Southeastern?

13 MR. JOSEPH: Objection, Your Honor. Calls for
14 speculation.

15 THE COURT: Overruled.

16 You may answer if you know.

17 THE WITNESS: I -- we didn't discuss it formally as
18 a department, but informally, I spoke with my colleagues, and
19 it might be split at best, you know. There are a few -- there
20 are those who would object to it for a variety of reasons.

21 Q. (BY MS. NOVOTNY) Now, you are currently the chair of a
22 department at Southeastern.

23 Is your boss at Southeastern in the room right now?

24 A. Yes.

25 Q. So many professors move up the ranks and eventually move

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1 into administration.

2 I think we've heard testimony that Dr. Scoufos was a
3 professor before she was dean.

4 Do you have plans on a next move of getting into the
5 administration?

6 A. No.

7 Q. I want to come back to that 2010-2011 tenure application.

8 Did something happen at some point that stopped Dr. Tudor
9 from being able to proceed with that application?

10 A. Dr. Tudor and I were called into the dean's office, and
11 we had to sign for letters. And I believe it was -- I can't
12 remember the exact wording, but she was stopped from -- told
13 that she couldn't come up for tenure.

14 Q. Was this unusual to you?

15 A. It was unusual being called into the dean's office to be
16 handed a letter, yes.

17 Q. Were you given any notice before that meeting about what
18 the meeting would be about?

19 A. No.

20 Q. And hadn't you, in fact, been putting together
21 Dr. Tudor's committee to review her new tenure application?

22 A. As per the policy and procedures manual, yes.

23 Q. And so the policy and procedures, as you understood them,
24 allowed Dr. Tudor to correct any deficiencies that
25 Dean Scoufos found in the prior year and that she should have

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1 the right to have that independently reviewed in 2010-2011;
2 correct?

3 A. I'm not sure because I'm not sure -- when this situation
4 happened in 2010 -- it was September, I think, and I started
5 the job August 1st. So much of this was ongoing with the
6 prior chair.

7 Q. Were you aware that Dean Scoufos had been the person who
8 issued the denial of Dr. Tudor's tenure application in
9 2009-2010, when you were helping Dr. Tudor with her 2010-2011
10 application?

11 MR. JOSEPH: Objection, Your Honor. Misstates
12 evidence.

13 THE COURT: I don't understand the question.
14 There's too much in there. Break it down.

15 MS. NOVOTNY: Understood.

16 Q. (BY MS. NOVOTNY) So in 2009-2010, you were on that
17 committee that voted to give Dr. Tudor tenure, and then
18 Dean Scoufos ended up issuing a recommendation not for tenure
19 after that came to her office; is that correct?

20 A. Correct.

21 Q. And was Dean Scoufos still the person who was going to be
22 getting the application after it moved through the committee
23 again?

24 A. In 2009?

25 Q. In 2010-2011. I'm sorry.

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1 A. Yeah. She would have been part of the process.

2 Q. When you applied for tenure, was your application and
3 portfolio perfect?

4 MR. JOSEPH: Objection, Your Honor. Relevance.

5 THE COURT: Sustained.

6 Q. (BY MS. NOVOTNY) Do you think that Dr. Tudor's 2010-2011
7 application would have merited tenure?

8 A. Certainly the department and the chair. How the dean and
9 vice president would have perceived it, I'm not sure.

10 Q. And you were, in fact, chair in 2010-2011?

11 A. Yes.

12 Q. And so you would have thought that that application did
13 merit tenure?

14 A. Yes.

15 MS. NOVOTNY: Nothing further.

16 THE COURT: Anything else?

17 MR. JOSEPH: Very briefly, Your Honor.

18 **RECROSS-EXAMINATION**

19 BY MR. JOSEPH:

20 Q. Dr. Prus, you mentioned, in examination by opposing
21 counsel, the policies and procedures.

22 Are you referring to the Academic Policies and Procedures
23 Manual?

24 A. Correct, correct.

25 Q. Okay. And under the APPM, doesn't it say that applicants

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1 may apply in their fifth, sixth, or seventh year?

2 A. I believe so. The policy has been revised recently.

3 Q. Well, thank you for that clarification. Let me rephrase
4 my question, then.

5 Was it your understanding in 2009-2010 school year that
6 the academic policy and procedure manual said an applicant may
7 apply in their fifth, sixth, or seventh year?

8 A. That sounds -- that sounds right.

9 Q. And that's different than fifth, sixth, and seventh year,
10 isn't it?

11 A. Sure.

12 Q. Okay.

13 MR. JOSEPH: Nothing further. Thank you, Your
14 Honor.

15 THE COURT: You may step down.

16 (Witness excused.)

17 THE COURT: Call your next witness.

18 MR. YOUNG: Your Honor, we're calling Dr. James
19 Knapp. My co-counsel will get him. For the benefit of
20 everyone in this room -- thank you, Dr. Prus; it's good seeing
21 you -- Dr. James Knapp will be the last doctor of the day.

22 THE COURT: Good.

23 MR. YOUNG: Yes.

24 THE COURT: While we're waiting on him, let me see
25 counsel at the bench.

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1 MR. YOUNG: Yes.

2 (The following proceedings were had at the bench and out
3 of the hearing of the jury.)

4 THE COURT: So who else do you have?

5 MR. YOUNG: Mindy House. She's on the list. I
6 think she's in the middle.

7 THE COURT: And that's all?

8 MR. YOUNG: Yes.

9 THE COURT: Are you going to call Cathy Conway?
10 Sherri, let's be off the record. This is just
11 scheduling.

12 (Bench conference held off the record with all counsel.)

13 (The following proceedings were had in open court with
14 all parties present and within the hearing of the jury.)

15 THE COURT: Please come right up here. Step right
16 up here beside the witness stand and face the clerk and be
17 sworn.

18 (Witness duly sworn.)

19 THE COURT: Be seated.

20 WHEREUPON, JAMES KNAPP, Ph.D., after having been first
21 duly sworn, testifies in reply to the questions propounded as
22 follows:

23 **DIRECT EXAMINATION**

24 BY MR. YOUNG:

25 Q. Hi. Good afternoon, Dr. Knapp. Thanks for making the

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1 drive up here.

2 You can put that microphone -- it will move, and you can
3 bring it up to where it's comfortable. If I can't hear you,
4 I'll just tell you. And just like the deposition, ask,
5 answer.

6 A. Okay.

7 Q. Dr. Knapp, what's your occupation?

8 A. Professor.

9 Q. Where do you work?

10 A. Southeastern Oklahoma State University.

11 Q. When did you first start working at Southeastern?

12 A. In the fall of 1995.

13 Q. Are you a tenured professor?

14 A. Yes.

15 Q. So you yourself have gone through the tenure process at
16 Southeastern?

17 A. Correct.

18 Q. And what's your current job title?

19 A. Professor of sociology.

20 Q. Okay. Dr. Knapp, are you familiar with, I guess, the
21 booklet titled the Academic Policies and Procedures Manual at
22 Southeastern?

23 A. Yes.

24 Q. What is it?

25 A. It is a manual that guides the activities of the

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1 university.

2 Q. Okay. Does that manual have a section with policies on
3 the tenure process?

4 A. Yes.

5 Q. To your knowledge, are the policies in the -- can I call
6 it the APPM?

7 A. Okay.

8 Q. Okay. So, to your knowledge, are the policies in the
9 APPM the only policies at Southeastern that govern the tenure
10 process?

11 A. To the best of my knowledge, yes.

12 Q. Are those the same policies you yourself replied upon
13 when you went up for tenure?

14 A. Yes.

15 Q. Okay. Dr. Knapp, have you ever served on a faculty
16 appellate committee at Southeastern?

17 A. Yes.

18 Q. Do you happen to recall how many?

19 A. I believe it was three.

20 Q. You're smiling at me. Okay.

21 Did all of those committees involve Dr. Rachel Tudor?

22 A. Yes.

23 Q. Are those the only committees you've ever served on? Let
24 me withdraw that question.

25 Are those three committees the only faculty appellate

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1 committees that you have served on at Southeastern?

2 A. Yes.

3 Q. Okay. Let's talk about the first faculty appellate
4 committee that you served on. Okay.

5 Do you know when about that grievance was filed?

6 A. No.

7 Q. Okay. I believe during your deposition you testified
8 that that grievance was filed in early 2010, but I'm going to
9 give you an exhibit to help you out. Okay?

10 MR. YOUNG: Your Honor, may I approach?

11 THE COURT: Yes.

12 MR. YOUNG: Thank you.

13 Q. (BY MR. YOUNG) Do you recognize Plaintiff's Exhibit 32?

14 A. Yes.

15 Q. What is it?

16 A. It is an e-mail written by me to Dr. Weiner.

17 Q. Okay.

18 MR. YOUNG: I would like to move to introduce into
19 evidence Plaintiff's Exhibit 32.

20 MR. BUNSON: No objection, Your Honor.

21 THE COURT: Admitted.

22 MR. YOUNG: Okay.

23 Q. (BY MR. YOUNG) So does Plaintiff's Exhibit 32 refresh
24 your memory as to when exactly you were part of the first
25 appellate committee involving a grievance with Dr. Rachel

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1 Tudor?

2 A. Yes.

3 Q. Okay. You said that you -- I'm sorry. For me to follow,
4 you said you wrote this e-mail?

5 A. Yes.

6 Q. Okay. I'm going to ask you some questions about this
7 grievance.

8 Do you recall what this first grievance was about?

9 A. Generally, yes.

10 Q. Okay. So why don't you explain to the jury what this
11 first grievance was about.

12 A. Dr. Tudor had applied for tenure and promotion, and it
13 had been denied. And it came to the faculty appellate
14 committee.

15 Q. Okay. Was Dr. Tudor seeking specific relief from the
16 faculty appellate committee?

17 A. That, I don't recall.

18 Q. Okay. Was Dr. Tudor just grieving that she had been
19 denied tenure or was she asking for an explanation?

20 A. No. Can you give me a minute to read it?

21 Q. Yes, of course.

22 A. Would you ask your question again?

23 Q. Yes.

24 Do you recall what Dr. Tudor was asking the faculty
25 appellate committee for when she filed in grievance?

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1 A. The dean and vice president for academic affairs had
2 denied her application and were not providing a detailed
3 explanation for why they had denied it.

4 Q. Okay. So, I believe, in this exhibit, Plaintiff's
5 Exhibit 34, which you wrote, you state that you thought that a
6 policy in the Academic Policies and Procedures Manual,
7 Policy 3.7.4, required that the administrators provide an
8 explanation to Dr. Tudor for why they denied her tenure
9 application. Is that right?

10 A. Not required.

11 Q. Can you explain?

12 A. Recommended.

13 Q. Recommended. Okay.

14 A. It says "should."

15 Q. So can you explain how you are distinguishing between
16 "required" and "should"?

17 A. Well -- and I had placed the emphasis on this in the
18 document.

19 Q. Uh-huh.

20 A. "Concur with the faculty judgment except in rare
21 instances and for compelling reasons which should be stated in
22 detail."

23 So I don't believe it was saying that it is a requirement
24 that they be stated in detail. So that's why I would use the
25 word "recommended."

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1 Q. Okay. Let me give you another exhibit.

2 MR. YOUNG: Your Honor, may I approach the witness
3 one more time?

4 THE COURT: Yes.

5 MR. YOUNG: Thank you.

6 Q. (BY MR. YOUNG) Dr. Knapp, do you recognize this exhibit?

7 A. Yes.

8 Q. What is it?

9 A. It is an e-mail.

10 Q. Did you send this e-mail?

11 A. Yes, I did.

12 Q. Okay.

13 MR. YOUNG: I would like to move to enter
14 Plaintiff's Exhibit 34.

15 MR. BUNSON: No objection, Your Honor.

16 THE COURT: Admitted.

17 Q. (BY MR. YOUNG) Okay. Dr. Knapp, so do you see that
18 e-mail at the bottom? You can use that screen next to you or
19 the paper in front of you. It's the same document.

20 A. Okay.

21 Q. Do you see the e-mail at the bottom of the second page of
22 that exhibit that I just handed you?

23 A. Yes.

24 Q. Okay. And on that e-mail, it looks like -- I'm sorry.
25 It looks like there's a photocopy error. It sounds like one

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1 of the fellow members of your committee is saying that they
2 think that Dr. Scoufos and Dr. McMillan should provide a
3 rationale to Dr. Tudor; is that right?

4 A. Yes.

5 Q. Does that mean that Dr. Scoufos and McMillan had the
6 option to provide the rationale?

7 A. I'm not sure about that.

8 Q. Can you explain that?

9 A. The committee is recommending --

10 Q. Uh-huh.

11 A. -- that they provide their rationale.

12 As an individual, I would hope they would provide their
13 rationale, but I don't -- again, I don't know if they are
14 required to do so.

15 Q. Would it be unusual for administrators, high-up
16 administrators at Southeastern, like the dean and the vice
17 president for academic affairs, to not follow the collegial
18 recommendation of the faculty appellate committee?

19 MR. BUNSON: Objection, Your Honor.

20 Mischaracterizes testimony and calls for speculation.

21 THE COURT: Overruled.

22 You may answer, if you know.

23 THE WITNESS: Could you ask the question again?

24 Q. (BY MR. YOUNG) Well, I'll try.

25 Would it be unusual for high-up administrators at

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1 Southeastern, like the dean and vice president for academic
2 affairs, to not follow the collegial recommendation of the
3 faculty appellate committee?

4 A. I don't know.

5 Q. Did you personally believe that Dr. McMillan and
6 Dr. Scoufos should provide an explanation to Dr. Tudor?

7 A. Yes, I believe that personally.

8 Q. Can you explain why you have that personal belief?

9 A. If I had applied for tenure and promotion and had been
10 denied, I'd like to know why.

11 Q. I'm going to go back to Exhibit 32. That was, I believe,
12 the first page I handed you. Okay. I'm trying to make that
13 readable.

14 So Plaintiff's Exhibit 32, it says that you and the other
15 members of the faculty appellate committee together agreed
16 that you thought that dean -- I'm sorry, Dr -- McMillan and
17 Dr. Scoufos should give explanation to Dr. Tudor; is that
18 right?

19 A. Yes.

20 Q. When you -- did you discuss the faculty appellate -- did
21 you discuss as a group this issue before you issued this
22 decision as a group?

23 Let me withdraw that question. It was a really bad
24 question.

25 You conversed with other members of the faculty appellate

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1 committee before the committee recommended that administrators
2 give -- give an explanation to Dr. Tudor; right?

3 A. Yes.

4 Q. Did anyone on the committee think that the administrators
5 should not give an explanation to Dr. Tudor?

6 A. No.

7 Q. Okay. When the faculty appellate committee met and
8 discussed this, were there particular rules, policies,
9 precedents, anything that you looked at as a group to come to
10 your decision?

11 A. We referred to the policies and procedures manual.

12 Q. Do you think it would have been inappropriate for the
13 faculty appellate committee to look outside of the policies
14 and procedures manual to make its decision?

15 A. I don't know why we would have wanted to.

16 Q. Why is that?

17 A. Well, we had a specific task in front of us, and it
18 seemed that the most -- the most logical point of reference
19 was the policies and procedures manual.

20 Q. Do you think it's important that policies on tenure are
21 written down?

22 A. Yes.

23 Q. Do you think it's important that the tenure process is
24 transparent?

25 A. As much as possible, yes.

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1 Q. Sitting here today, do you still agree with the decision
2 that the faculty appellate committee made in this March 25th,
3 2010, document?

4 A. Yes.

5 Q. Okay. I'd like to fast-forward to the 2010-11 term. And
6 I'd like to -- because you were on three of these. I'm only
7 going to talk about the third one now. Okay?

8 A. Okay.

9 Q. So in the 2010-11 time frame, if a professor applied for
10 and didn't receive tenure at Southeastern, were they typically
11 allowed to reapply for tenure?

12 A. Yes, unless the window had closed.

13 Q. What's "the window"?

14 A. Well, a person has a window of time to apply for tenure
15 and promotion. Generally, they begin on a tenure track --

16 Q. Uh-huh.

17 A. -- and they have four years to demonstrate, for lack of a
18 better way of saying it, their worth to the university.

19 Q. Uh-huh.

20 A. And then, I believe it's beginning in the fifth year,
21 they can apply for tenure and promotion. If they choose not
22 to, they could apply in their sixth year. If they choose not
23 to or if they were denied, they could apply in their seventh
24 year.

25 But if they do not have tenure either because they didn't

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1 apply or because they were denied, if that's not complete by
2 the end of the seventh year, then generally they're asked to
3 move on.

4 Q. I'm sorry. Just to clarify something, so it was your
5 understanding in this time frame, 2010-11, that someone who is
6 denied on a tenure application but still had time left within
7 their seven-year term, they could reapply?

8 A. Yes, within that window.

9 Q. Is there anything specifically that informs your
10 understanding of what the policy or rule was at Southeastern
11 in that time frame?

12 A. I believe the policies and procedures manual.

13 Q. Did you look at the policies and procedures manual really
14 carefully when you were part of these faculty appellate
15 committees?

16 A. That, I can't remember.

17 Q. Fair enough.

18 So I'm going to introduce another exhibit. Let's see if
19 I've got this right.

20 MR. YOUNG: Your Honor, may I approach the witness
21 one more --

22 THE COURT: Yes.

23 MR. YOUNG: Thank you.

24 Q. (BY MR. YOUNG) Dr. Knapp, do you recognize Plaintiff's
25 Exhibit 116?

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1 A. Yes.

2 Q. What is it?

3 A. It's my handwriting.

4 Q. Okay.

5 MR. YOUNG: Based on that alone, Your Honor, I'd
6 like to admit Plaintiff's Exhibit 116 into evidence.

7 MR. BUNSON: No objection, Your Honor.

8 THE COURT: Admitted.

9 Q. (BY MR. YOUNG) So can you describe to the jury what these
10 are -- I assume these are your handwritten notes. So what are
11 these notes from?

12 A. This would have been a meeting of another faculty
13 appellate committee in which I was summarizing our purpose for
14 meeting.

15 Q. And what was the purpose of that meeting?

16 A. Let me finish reading it.

17 Q. No problem.

18 A. And our response to Dr. Tudor's appeal. That was all in
19 this document.

20 Q. Do you remember what Dr. Tudor was appealing in this
21 instance?

22 A. She wanted to apply again for tenure and promotion, and
23 Dr. McMillan had sent her a letter that said it was -- it was
24 too soon after being denied for her to apply again.

25 And Dr. Tudor appealed that decision, and the faculty

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1 appellate committee supported Dr. Tudor's appeal.

2 Q. Can you educate the jury a little bit about why the
3 faculty appellate committee, in this third instance, supported
4 Dr. Tudor?

5 A. There was not a policy that we could find that said she
6 couldn't. And as a faculty appellate committee, we would
7 generally side with the faculty in matters where the policies
8 and procedures manual didn't say anything.

9 Q. If there were a policy that foreclosed reapplication, do
10 you think that the faculty appellate committee would have
11 still sided with Dr. Tudor?

12 A. If there was a policy that said she could not?

13 Q. Yes.

14 A. I can't speak for the whole committee, but if a policy
15 said she could not, then that's what I would have supported,
16 that she could not if the policy was in place.

17 Q. Do you think it would have inflamed the relations between
18 the faculty and the administration if Dr. Tudor had been
19 allowed to reapply for tenure in 2010-11?

20 A. No.

21 MR. BUNSON: Objection, Your Honor. Calls for
22 speculation.

23 THE COURT: Overruled.

24 THE WITNESS: Sorry.

25 No.

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1 Q. (BY MR. YOUNG) What's the basis of your answer?

2 A. I voted for -- I thought she should be allowed to
3 reapply. The faculty appellate committee thought she should
4 be allowed to reapply. We weren't speaking for all the
5 faculty, but I didn't think it would create unnecessary
6 tension between the faculty and the administration.

7 Q. Do you have any recollection of how the Southeastern
8 administration responded to the faculty appellate committee's
9 decision in this third appeal?

10 A. I can't remember.

11 Q. Okay. I have one more exhibit for you, and it's out of
12 order. I apologize. I had it at the bottom of my stack.

13 MR. YOUNG: May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. YOUNG: Thank you.

16 Q. (BY MR. YOUNG) Dr. Knapp, do you recognize Plaintiff's
17 Exhibit 97?

18 A. Yes.

19 Q. Can you tell me what it is?

20 A. May I have a moment to read it --

21 Q. Yes.

22 A. -- or glance through it?

23 Q. Yes.

24 A. It appears to be a summary of the faculty appellate
25 committee's response to a grievance dated October 11th of

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1 2010.

2 MR. YOUNG: Your Honor, I would like to admit
3 Plaintiff's Exhibit 97 into evidence.

4 MR. BUNSON: No objection, Your Honor.

5 THE COURT: Admitted.

6 Q. (BY MR. YOUNG) Now, sitting here today, Dr. Knapp, do you
7 still agree with the decision that this third faculty
8 appellate committee made?

9 A. Yes.

10 Q. Okay. I have a few more questions for you, and then
11 we're done.

12 Dr. Knapp, do you recall agreeing with me during your
13 deposition that you had never heard of a professor at
14 Southeastern encountering the sort obstacles that Dr. Tudor
15 did during her tenure and promotion process?

16 A. Yes.

17 Q. For you, is there anything that makes Dr. Tudor's process
18 stand out from other tenure processes -- or examples?

19 A. Yes.

20 Q. What is that?

21 A. I had to be on the faculty appellate committee three
22 times.

23 Q. So this isn't normal?

24 A. Not for me. And I don't think it's normal for the
25 faculty.

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1 Q. Okay. At the time that you sat on those faculty
2 appellate committees, was there ever any discussion about
3 Dr. McMillan's role in Dr. Tudor's tenure process?

4 A. Yes.

5 Q. Can you tell me just generally what those conversations
6 were about?

7 A. It seemed that the application was stopping with
8 Dr. McMillan.

9 Q. Are you aware of Dr. McMillan stopping any other faculty
10 member's tenure application at Southeastern?

11 A. No.

12 Q. Sitting here today, do you still believe that Dr. Tudor
13 should have been permitted to reapply for tenure in 2010-2011?

14 A. Yes, as long as the window was not closed.

15 Q. Okay.

16 MR. YOUNG: Thank you, Dr. Knapp. That's all I
17 have.

18 **CROSS-EXAMINATION**

19 BY MR. BUNSON:

20 Q. Good afternoon, Dr. Knapp. I'm going to try to get
21 through this pretty quickly.

22 Did Dr. Tudor ever inform any of the three faculty
23 appellate committees you sat on that she was offered an
24 opportunity to withdraw her application and resubmit it?

25 A. Not that I remember.

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1 Q. Did Dr. Tudor inform the committee that had she taken the
2 offer, she would have -- it would have granted her an eighth
3 year at the university in order to obtain tenure and
4 promotion?

5 A. Not that I recall.

6 Q. And you recall earlier testifying about the Academic
7 Policies and Procedures Manual; is that correct?

8 A. Yes.

9 Q. And that that manual describes the role of faculty and
10 administration in the tenure and promotion decision process?

11 A. Yes.

12 Q. And per the policies, do you think that faculty and
13 administration have an equal voice in the decision-making
14 process when it comes to tenure and promotion?

15 A. Generally, yes.

16 Q. Now, you were handed some exhibits about the denial of
17 Dr. Tudor's requests; correct?

18 A. Yes.

19 Q. And one of those was the faculty appellate committee's
20 determination that says that they should give their reasoning
21 for denying Dr. Tudor's tenure application; is that correct?

22 A. Yes.

23 Q. It doesn't say -- does the policy say when they should
24 give that feedback?

25 A. Not the part that's in -- excuse me. Not the part that's

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1 in the response that I wrote.

2 Q. With your understanding of the Academic Policies and
3 Procedures Manual, is there anything that says when that
4 feedback should be coming?

5 A. Not that I'm aware of.

6 Q. Didn't the administration ultimately tell Dr. Tudor the
7 reasons for her denial?

8 A. I don't recall.

9 Q. Earlier, you also said that, as a member of the faculty
10 appellate committee, you generally side with the faculty.

11 Do you recall that?

12 A. Yes.

13 Q. And you especially side with the faculty if the policy is
14 silent; is that correct?

15 A. Yes.

16 Q. And, here, the policy was silent; correct?

17 A. Yes.

18 Q. So it wasn't that the policy wasn't being followed; it
19 was just that there was no guideline. Is that also correct?

20 A. Yes.

21 Q. Do you know of anyone that has ever been denied tenure by
22 the president or at the president's level and then allowed to
23 reapply after that?

24 A. No.

25 Q. But you do know that faculty can withdraw their

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1 applications or portfolios in the tenure and promotion process
2 and resubmit them at a later date; correct?

3 A. I know that now.

4 MR. BUNSON: Thank you, sir. No further questions.

5 THE COURT: Redirect?

6 **REDIRECT EXAMINATION**

7 BY MR. YOUNG:

8 Q. I'll try to make this real quick, and then you can drive
9 home.

10 Dr. Knapp, is there -- at the time you were on these
11 three faculty appellate committees, was there any policy in
12 the Academic Policies and Procedures Manual that specifically
13 said that, if application was denied by the president of the
14 university, that there was no possibility for reapplication?

15 A. Not that I'm aware of.

16 Q. Do you think, if there were such a rule, you would have
17 been aware of it after these three grievances?

18 A. I think we would have looked pretty closely in the
19 policies and procedures manual --

20 Q. Okay.

21 A. -- for something like that.

22 Q. One last question.

23 Are you still confident that you still to this day agree
24 with your decision as part of the first faculty appellate
25 committee as well as the third faculty appellate committee?

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1 A. Yes.

2 MR. YOUNG: Okay. Thank you. Nothing further.

3 THE COURT: You may step down.

4 (Witness excused.)

5 THE COURT: Call your next witness.

6 MR. YOUNG: Calling Ms. Mindy House, Melinda "Mindy"
7 House. One of my colleagues will go get her.

8 THE COURT: Please come forward. Come right up here
9 next to the witness box and face the clerk and be sworn.

10 (Witness duly sworn.)

11 THE COURT: Be seated right here. We need to be
12 able to hear you, so speak into that microphone.

13 THE WITNESS: Yes, ma'am.

14 WHEREUPON, MELINDA HOUSE, after having been first duly
15 sworn, testifies in reply to the questions propounded as
16 follows:

17 **DIRECT EXAMINATION**

18 BY MR. YOUNG:

19 Q. Good afternoon, Ms. House.

20 A. Good afternoon.

21 Q. Thank you for being patient with us today.

22 Ms. House, did you used to work at Southeastern?

23 A. Yes, sir.

24 Q. Why don't we start back to when you first started working
25 at Southeastern. Okay?

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1 When about was that?

2 A. August of '98.

3 Q. Have you had other family members who have worked at
4 Southeastern?

5 A. My husband worked there, when he went through his
6 undergraduate and master's, as a campus police officer.

7 Q. Okay. And when did you stop working for Southeastern?

8 A. February -- well, January, February of '16.

9 Q. 2016?

10 A. 2016.

11 Q. Okay. And did your husband stop working for Southeastern
12 at some point?

13 A. Yes. He got his master's in education, and then he
14 became a manager at a company in -- MEMC in Sherman, Texas.
15 Then he was going to come back to Southeastern and be a police
16 officer, but he passed away.

17 Q. Okay. Do you feel like you have deep ties to
18 Southeastern?

19 A. Yes.

20 Q. Can you share with the jury how strongly you feel about
21 Southeastern?

22 A. When I started at Southeastern, I started in Upward
23 Bound, which is a TRIO program for low-income first-generation
24 students. All those kids became my kids. My boys -- in fact,
25 my husband would -- he was a swimmer. So on all-sports

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1 weekend, he would do swimming with the kids.

2 When he passed away, my kids were raised with my Upward
3 Bound kids because they were 3 and 9. So I had to take them
4 with me.

5 I went from there to academic affairs office, from
6 academic affairs to the dean of school of arts and sciences,
7 to the dean of instruction, which merged.

8 My mom worked for Southeastern per se. She ran the
9 credit union, the teachers' credit union. My dad has worked
10 at Southeastern back in the '80s. So -- my sister graduated
11 from there. My brother-in-law graduated from there.

12 My husband is buried in a Southeastern police uniform.
13 So I have very strong ties.

14 Q. Thank you for sharing that with us.

15 A. You're welcome.

16 Q. Have you ever had conversations with Douglas McMillan,
17 the former vice president of academic affairs at Southeastern,
18 where he shared with you his religious beliefs?

19 MR. BUNSON: Objection, Your Honor. This is
20 hearsay.

21 THE WITNESS: Do you contend this falls outside the
22 hearsay rule?

23 MR. YOUNG: I merely asked if she ever had such
24 conversations, not what was said.

25 THE COURT: All right.

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1 THE WITNESS: Yes.

2 Q. (BY MR. YOUNG) Okay. Did you think the conversations you

3 had with Douglas McMillan where religion was brought up were

4 appropriate?

5 A. No. It had to do with my employment.

6 Q. Did Douglas McMillan make an employment decision --

7 A. Yeah.

8 Q. -- on the basis of his religion?

9 A. Yes.

10 Q. Did that make you feel uncomfortable?

11 A. Yes.

12 Q. Did Douglas McMillan frequently bring up his religion at

13 work?

14 A. I don't know frequently, but, yes --

15 Q. Okay.

16 A. -- occasionally from time to time.

17 Q. Okay. I'm going to focus on the time that you worked

18 with Dean Lucretia Scoufos. Okay?

19 Do you remember when about you started working for Dean

20 Lucretia Scoufos?

21 A. I want to say it was '08. Dr. Mangrum had retired, and

22 she came in as a -- from a chair of a department to the dean.

23 Q. And when about did you stop working for Dean Scoufos?

24 A. January, February 2016.

25 Q. Okay. What was your position when you worked with

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1 Dean Scoufos?

2 A. I was her administrative assistant.

3 Q. So as Dean Scoufos's administrative assistant, did you
4 have opportunity to be around her and talk with her a lot?

5 A. Yes.

6 Q. Did you overhear conversations?

7 A. Yes.

8 Q. Okay. So I'm going to ask you about things you may have
9 witnessed having to do with Dr. Tudor's 2009-10 tenure
10 application. Okay?

11 A. Okay.

12 Q. I think other folks in this trial have testified about
13 e-mails that you've been on.

14 Did you schedule meetings for Dean Scoufos?

15 A. Yes.

16 Q. Is that one of the big parts of your job?

17 A. Yes.

18 Q. Okay. Do you recall Dr. Tudor meeting with Dean Scoufos
19 sometime in the tenure process?

20 A. Yes.

21 Q. What do you recall?

22 A. I think she met with her twice. I know she met with her
23 for a portfolio review.

24 The dean started meeting with all of the faculty. She
25 adopted how she wanted each portfolio to look, you know, the

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1 same. And so she had them put them in sleeves, certain
2 sleeves, books, binders, and in a certain category order. So
3 she met with her then.

4 And then I recall that she met with her and -- I want to
5 say it was Randy Prus, Dr. Prus, the chair. I'm not sure what
6 that meeting was about; I just know she had me write an
7 acknowledgment form for her -- for Dr. Tudor to sign.

8 Q. Okay. We'll get back to that later.

9 So you worked for Dean Scoufos for a number of years?

10 A. Yes.

11 Q. What was Dean Scoufos's usual practice when a portfolio
12 came into the dean's office, a tenure portfolio for review?

13 A. When they would all come in, then she would review them
14 one at a time. And then she would write her recommendation of
15 whether to or against and put that in. Then we were to send
16 those over to Dr. McMillan.

17 Q. Because Dr. McMillan was the next step --

18 A. Step.

19 Q. -- on the process?

20 A. Yes.

21 Q. Okay. Was there anything unusual that you recall about
22 how Dean Scoufos dealt with Dr. Tudor's tenure application?

23 A. I know that there were conversations back and forth over
24 the phone with Dr. McMillan and there were some rewrites of
25 her letters as far as whether she wanted to agree or disagree.

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1 Q. I'm sorry. When you say "agree or disagree," agree or
2 disagree with whom, if you know?

3 A. With the committee or with herself, you know, saying that
4 she agreed that she should get tenure or that she shouldn't
5 get tenure. Her recommendation, I guess is what I'm saying.

6 Q. Okay. So did you ever see Dean Scoufos act like that
7 with a tenure application before or after?

8 A. No.

9 Q. So it was unusual for you?

10 A. Yes.

11 Q. Okay. To your recollection, did Dean Scoufos get in
12 contact with Doug McMillan before Dean Scoufos wrote a letter
13 on Dr. Tudor's tenure application?

14 A. Yes. They spoke before the portfolio went over to his
15 office.

16 Q. Was that, in your observation, unusual?

17 A. Yes.

18 Q. Did you ever see it happen at any other time she reviewed
19 a portfolio?

20 A. No.

21 Q. Do you know how Dean Scoufos ultimately voted on
22 Dr. Tudor's portfolio? Do you know what Dean Scoufos's
23 decision was on Dr. Tudor's application?

24 A. It was not to renew.

25 Q. Okay. I'm going to move you forward in time a little

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1 bit. Okay?

2 Do you recall Dean Scoufos having a meeting with
3 Dr. Tudor a little bit after Dean Scoufos voted to deny
4 Tudor's application?

5 A. I think that's when she came back and wanted the
6 acknowledgment paper that she wanted me to write saying that
7 whatever she was giving Dr. Tudor, that Dr. Tudor had received
8 it.

9 Q. Okay. I'm going to move you forward in time a little bit
10 again, in the 2010-11 school year. Okay?

11 Do you recall any meeting between Dean Scoufos,
12 Dr. Tudor, and anyone else that school year?

13 I'll withdraw that question.

14 I believe earlier you mentioned that you recalled at some
15 point -- maybe you don't recall the date --

16 A. Yeah.

17 Q. -- that there was a meeting between Dr. Tudor, I think
18 you said Randy Prus, and Dr. Scoufos.

19 Do you recall that?

20 A. Yes.

21 Q. Do you recall anything unusual about that meeting?

22 A. No. I mean, Dr. Tudor didn't look happy when she left,
23 and the dean was upset after she left because she did not sign
24 a piece of paper.

25 Q. Who didn't sign a piece of paper?

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1 A. Dr. Tudor.

2 Q. Okay. I'll move you forward in time a little bit again.

3 At some point while Dr. Tudor was still working at
4 Southeastern, were you asked to monitor Dr. Tudor's blog?

5 A. Yes.

6 Q. Who asked you to monitor Dr. Tudor's blog?

7 A. Dean Scoufos.

8 Q. Do you know what the purpose of you monitoring that blog
9 was?

10 A. She had found out that some students and some faculty had
11 started a petition and a blog, and so she had me go through
12 and print those off on a daily basis and look up and see what
13 faculty were supporting and what students, if they were
14 students, were supporting.

15 And she, I'm assuming, kept those in a file. I printed
16 them and gave them to her.

17 Q. Was that an unusual thing for Dean Scoufos to tell you to
18 do?

19 A. Yes.

20 Q. Had you ever been asked to do anything like that before?

21 A. No.

22 Q. Did Dean Scoufos appear upset when you identified
23 students and faculty who supported Dr. Tudor?

24 A. Yes. She didn't know the students, but she knew the
25 faculty members. And so she was upset that they were

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1 supporting Dr. Tudor.

2 I think it was Meg Cotter-Lynch and Dr. Spencer were two
3 of the ones that I recall.

4 Q. Was Dean Scoufos very upset? annoyed? How would you
5 describe her reaction?

6 MR. BUNSON: Objection, Your Honor. Calls for
7 speculation.

8 THE COURT: Sustained.

9 MR. BUNSON: Dean Scoufos can talk about that.

10 THE COURT: Sustained.

11 Q. (BY MR. YOUNG) Did Dean Scoufos visibly show a reaction?

12 A. Yes.

13 Q. Could you describe the reaction you saw?

14 A. She was very upset. She was mad. It became obvious to
15 myself and -- at the way that she spoke about these professors
16 from then on.

17 Q. Okay.

18 A. Is that what you mean?

19 Q. Yes. Thank you.

20 Either when Dr. Tudor still worked at Southeastern or
21 after she left, did you ever hear administrators say negative
22 things about Dr. Tudor because she is transgender?

23 A. Yes.

24 Q. Did you hear negative things from Douglas McMillan?

25 A. Yes.

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1 MR. BUNSON: Objection. That's hearsay, Your Honor.

2 Q. (BY MR. YOUNG) Did you hear negative things --

3 THE COURT: Wait a minute.

4 I'm sorry. What?

5 MR. BUNSON: The objection was this is hearsay.

6 THE COURT: Come to the bench.

7 (The following proceedings were had at the bench and out
8 of the hearing of the jury.)

9 THE COURT: How do you contend this is not hearsay?

10 MR. YOUNG: Statements by party opponents. These
11 are decision-makers in the high levels of the administration
12 who have said negative things about Dr. Tudor. They are
13 contending that these people --

14 THE COURT: All right.

15 Your response?

16 MR. BUNSON: My response, Your Honor, is all of
17 these witnesses can testify as to what they said. These
18 aren't -- I completely disagree that these are statements
19 against interests or statements that can't be cleared up --

20 THE COURT: Why?

21 MR. BUNSON: -- by the person themselves. She's
22 saying she heard it. It's still an out-of-court statement.

23 THE COURT: Yes. And it was said by Dr. McMillan
24 and Dean Scoufos, who are policymakers for your client. That
25 makes them parties. And any statement against interest by a

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1 party can be used against that party. That makes it not
2 hearsay.

3 If you have an argument --

4 MS. COFFEY: I don't think it's clear that she heard
5 these. It sounded like she was repeating.

6 MR. YOUNG: I can make it more clear, Your Honor.

7 THE COURT: Yeah. But I think it's important that
8 this is an exception to the hearsay rule. If it's said by
9 Dean Scoufos or Dr. McMillan or Mr. Minks, I guess, or
10 Dr. Whoever -- Minks, you may cross on that.

11 MR. YOUNG: Thank you, Your Honor.

12 MR. BUNSON: Thank you, Your Honor.

13 (The following proceedings were had in open court with
14 all parties present and within the hearing of the jury.)

15 Q. (BY MR. YOUNG) Sorry for that interruption. I tried to
16 warn you about objections. Stop talking, and we'll try to
17 stop talking too.

18 Let me just backtrack one question so we can move on.

19 I believe what I was asking is, at any point either after
20 Dr. Tudor was working at Southeastern or after Dr. Tudor left
21 Southeastern, did you hear administrators at Southeastern say
22 negative things about Dr. Tudor because Dr. Tudor is a
23 transgender woman?

24 A. Yes.

25 Q. Okay. Did you hear negative things from Dr. McMillan?

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1 A. Yes.

2 Q. Did you hear negative things from Dr. Scoufos?

3 A. Yes.

4 Q. Did you hear negative things from both of those persons
5 on more than one occasion?

6 A. Yes.

7 Q. Okay. I'm going to ask you about some specific
8 statements.

9 Did Dr. Scoufos ever tell you that it was weird that
10 Dr. Tudor is a transgender woman?

11 A. Yes.

12 Q. Do you recall Dr. Scoufos showing you a picture of
13 Dr. Tudor and making fun of her?

14 MR. BUNSON: Objection, Your Honor. This is
15 leading.

16 THE COURT: Sustained.

17 MR. YOUNG: Okay.

18 Q. (BY MR. YOUNG) Do you recall having a -- do you recall
19 having a conversation with Dr. Scoufos where she was
20 referencing a picture of Dr. Tudor?

21 MR. BUNSON: Objection, Your Honor. Still leading.

22 THE COURT: I'll give you that one. Overruled.

23 MR. YOUNG: Thank you.

24 Q. (BY MR. YOUNG) I'll ask it again.

25 Do you recall a conversation between you and Dr. Scoufos

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1 where Dr. Scoufos was referencing a picture of Dr. Tudor?

2 A. Yes. She was sitting in a chair, Dr. Tudor was, and she
3 referenced that she was trying to look feminine but that she
4 isn't.

5 Q. Did Dr. Scoufos ever criticize Dr. Tudor's clothing
6 choices?

7 A. Yes.

8 Q. What do you recall?

9 A. The dean is very fashion-forward. You know, she's very
10 well put together. And she just said that Dr. Tudor was
11 trying to dress like a female but that she's not.

12 Q. Did Dr. Scoufos ever criticize Dr. Tudor's voice?

13 A. Yes.

14 Q. On more than one occasion?

15 A. Yes.

16 Q. What was the criticism?

17 A. That Dr. Tudor was trying to have a -- like a whispering
18 voice to not sound so -- like a male, and that it was very
19 raspy.

20 Q. Did Dr. Scoufos ever mock Tudor's voice?

21 A. Yes.

22 Q. Did Dr. Scoufos ever imitate Tudor's voice?

23 A. Yes.

24 Q. On more than one occasion?

25 A. Yes.

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1 Q. Do you recall the period when Dr. Tudor started first
2 complaining about discrimination at Southeastern, just
3 generally?

4 A. Generally, yes.

5 Q. Okay. Did Dr. Scoufos ever tell you that she,
6 Dr. Scoufos, thought that Dr. Tudor was using the fact that
7 she was transgender to complain unfairly about things?

8 A. Yes.

9 Q. Did Dr. Scoufos ever comment to you and ask you whether
10 Dr. Tudor had had "the surgery"?

11 A. Yes.

12 Q. Did you ever overhear Doug McMillan mocking, making fun
13 of, or making negative comments about Dr. Tudor?

14 A. I didn't hear him making fun of Dr. Tudor. I did hear
15 a -- not a nice comment.

16 Q. Okay. Did you ever hear Doug McMillan say that he didn't
17 agree with Dr. Tudor's lifestyle?

18 A. Yes.

19 Q. Did you ever overhear Doug McMillan tell Dean Scoufos
20 that he did not think that Dr. Tudor should be allowed to use
21 the women's restroom?

22 A. Yes. He said that he had never told Dr. Tudor that she
23 could not use the women's restroom, but that he did not
24 believe or feel like she should be allowed to.

25 Q. From your perspective, as someone who is working around

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1 these administrators and on the Southeastern campus, did it
2 seem like Dr. Tudor was enduring hostilities?

3 A. Yes.

4 Q. If you were in Dr. Tudor's shoes, would you have found it
5 hostile?

6 A. Yes.

7 Q. I'm going to flash forward.

8 After this lawsuit was filed, did you ever witness
9 Dean Scoufos tell department chairs and other administrators
10 at Southeastern that they should not dig for documents needed
11 for the litigation?

12 A. Yes. She told -- I think it was Claire Stubblefield
13 asked for some information and that they needed it in a
14 certain amount of time frame. And a few of those department
15 chairs came in and stated that, because of the timeline, they
16 didn't know if they could fulfill that deadline and some of
17 the people that were in certain positions were no longer in
18 those positions, so getting them to go back and pull stuff
19 would be hard as well.

20 So she told them that -- not to manufacture anything, but
21 that they also didn't have to dig for anything.

22 Q. Were you concerned -- were you personally concerned by
23 that comment?

24 A. Yes.

25 Q. Can you explain to the jury why you were concerned?

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1 A. Because I didn't feel that hiding anything from anyone
2 was going to do justice for either side.

3 Q. You mean Dr. Tudor or Southeastern?

4 A. Right.

5 Q. Okay. After this lawsuit was filed, did you ever hear
6 Dr. Scoufos tell someone at Southeastern that, if Dr. Tudor
7 won her lawsuit and returned to Southeastern, that Dr. Scoufos
8 and Dr. McMillan would quit?

9 A. Yes.

10 MR. BUNSON: Objection, Your Honor. This is
11 hearsay.

12 THE COURT: Overruled.

13 THE WITNESS: Oh, I can answer?

14 Q. (BY MR. YOUNG) You can answer.

15 A. Yes.

16 Q. What do you recall about that conversation that you
17 heard?

18 A. Dr. Weger came into the office and was sitting in front
19 of my desk --

20 THE COURT: I'm sorry. I misunderstood who the
21 speaker was.

22 That objection is sustained.

23 MR. YOUNG: Okay. Let me reframe the question.

24 Q. (BY MR. YOUNG) What did you hear -- and only answer the
25 question I'm asking.

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1 What did you hear Dean Scoufos say to Dr. Weger?

2 A. That if Dr. Tudor came back to the university to work,
3 that her and Dr. McMillan would quit and no longer work there.

4 MR. YOUNG: May I approach, Your Honor?

5 THE COURT: The witness or --

6 MR. YOUNG: Approach you for a second with counsel.

7 THE COURT: Yes.

8 MR. YOUNG: Thank you.

9 (The following proceedings were had at the bench and out
10 of the hearing of the jury.)

11 MR. YOUNG: I believe you held in abeyance so you
12 could see or hear in context whether witnesses could testify
13 about the circumstances of the retirement of some of the key
14 decision-makers at Southeastern. This witness is prepared to
15 testify about those circumstances.

16 So I wanted to not ask it in front of the jury but to do
17 it here first.

18 MS. COFFEY: Your Honor, the ruling was that they
19 could testify; they couldn't make any assumptions as to why
20 somebody retired.

21 This witness has laid no foundation for that whatsoever.
22 She just testified that if Dr. Tudor returned to campus, they
23 would quit. Dr. Tudor hasn't returned to campus. Those two
24 individuals retired, and it had nothing to do with this case,
25 and there's no evidence to show otherwise.

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1 MR. YOUNG: That's not the context, Your Honor, and
2 I can share it here if you need that first.

3 THE COURT: Context of what?

4 MR. YOUNG: What the testimony is going to --

5 THE COURT: What is her testimony going to be?

6 MR. YOUNG: She is going to state that she does have
7 knowledge of the circumstances surrounding why Scoufos left,
8 and it was because she was fired because of what she had to do
9 with Dr. Tudor.

10 THE COURT: Is Dr. Scoufos going to be a witness?

11 MS. COFFEY: Absolutely, Your Honor.

12 THE COURT: That can't come in through this witness.

13 MR. YOUNG: May I reserve that? Dr. Scoufos
14 testified at her deposition that she retired from Southeastern
15 of her own volition, that it was not discipline, and it
16 nothing to do with Dr. Tudor or this case.

17 THE COURT: Okay.

18 MR. YOUNG: So I need this witness to testify to
19 this so I can use it to impeach Dr. Scoufos.

20 THE COURT: You can't impeach another witness with
21 this witness.

22 MR. YOUNG: Okay. Thank you, Your Honor.

23 (The following proceedings were had in open court with
24 all parties present and within the hearing of the jury.)

25 Q. (BY MR. YOUNG) Now, Ms. House, a few more questions. I

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1 can only ask you a couple of questions about this issue, so
2 listen carefully to the questions I am asking you. Okay?

3 When about did Dean Scoufos announce that she was going
4 to retire from Southeastern?

5 A. It was towards the end of 2015. She had been out with
6 open heart surgery.

7 Q. Uh-huh.

8 A. And so when she came back, she had a meeting with
9 Dr. McMillan, and then she -- day after that, she announced
10 that she was going to retire.

11 Q. Do you have any reason to believe that Dean Scoufos did
12 not seek out retirement?

13 A. Yes.

14 Q. Can you share your reason for thinking that with the
15 jury?

16 A. When she was out with her heart surgery and her rehab, I
17 specifically asked her, because they were doing buyouts, if
18 she was going to retire. And she said, no, that she didn't
19 work that hard to come back to retire and had me working on
20 different things that were going to be in the future,
21 symposiums and lectureships and stuff.

22 Q. Okay. Did Dr. Scoufos ever tell you that she thought
23 Claire Stubblefield was an idiot who gave too much information
24 regarding Dr. Tudor's issues at Southeastern out to the EEOC
25 and through this lawsuit?

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1 A. Yes.

2 Q. Now, Ms. House, I know this part is sort of painful, but
3 it's relevant.

4 Were you fired from Southeastern?

5 A. Yes.

6 Q. Why do you believe you were fired from Southeastern?

7 A. I believe I was fired from Southeastern because of this
8 case.

9 Q. And what informs your belief?

10 A. Because the information that was given to me is not
11 factual. All the appeals process that I went through, even
12 the committee said that there was no evidence to support. And
13 I was vocal with the treatment of Dr. Tudor, that I didn't
14 think it was right. And I had some professors tell me that
15 that's the reason, that anybody that was remotely around
16 higher admin during this is all gone. So...

17 Q. Sitting here today, do you regret being vocal about how
18 wrong it was what happened to Dr. Tudor at Southeastern?

19 A. No. I regret I lost my job. I regret that -- I'm
20 sorry --

21 Q. It's okay.

22 A. -- that there were certain things said about me that were
23 not true, said about my boys that were not true, that I'd
24 given my life to Southeastern and that this was the way that I
25 was going out the door.

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1 But, no, right's right. So I don't regret it, saying
2 anything in support of Dr. Tudor.

3 MR. YOUNG: Thank you so much, Ms. House.

4 THE WITNESS: You're welcome.

5 **CROSS-EXAMINATION**

6 BY MR. BUNSON:

7 Q. Good morning -- or good afternoon, Ms. House. How are
8 you?

9 A. I'm okay. How are you?

10 Q. I'm wonderful. Thank you.

11 You have a personal ax to grind here, don't you?

12 A. No, sir.

13 Q. You indicated you were terminated from Southeastern; is
14 that correct?

15 A. Yes, sir.

16 Q. And you were terminated on March 10th, 2016; isn't that
17 correct?

18 A. Officially, yes, sir.

19 Q. And the reason you are no longer at Southeastern and you
20 were terminated was because of a, quote, lack of academic
21 integrity and dishonesty; isn't that correct?

22 A. No, sir.

23 Q. Would it help if I showed you some documents to refresh
24 your recollection?

25 A. No. I know what I was told, but none of that happened.

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1 Q. So you were told you were being terminated for lack of
2 academic integrity and dishonesty; is that correct?

3 A. No. I was told, when I was brought in, that there was an
4 accusation that a student worker did my son's online math
5 homework. He didn't take an online math class. And that was
6 two years prior.

7 And that -- Dean Scoufos told me that they -- I don't
8 know who "they" are -- had settled with this letter she gave
9 me saying that I had until three o'clock the next day to
10 either resign and get my vacation paid for or not resign and
11 get nothing.

12 MR. BUNSON: Your Honor, may I approach?

13 THE COURT: Yes.

14 Q. (BY MR. BUNSON) Ms. House, will you please turn to Tabs 2
15 and 3 of the documents I've handed you.

16 A. Okay.

17 Q. What is Tab 2?

18 A. It's a second page of a letter from Dr. -- or from
19 Micah Kelly.

20 Q. Who is -- I believe it's Micah D. Knight, isn't it, at
21 the very top?

22 A. I'm sorry. Yes.

23 Q. Who is Micah D. Knight?

24 A. She's a lawyer.

25 Q. So you hired a lawyer to represent you in this process of

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1 your termination; correct?

2 A. I hired a lawyer to get my vacation pay and to advise me
3 whether I could be terminated without any kind of cause.

4 Q. If you'd like to go ahead and review that letter, I'm
5 happy to give you some time.

6 A. Okay. Yes, sir.

7 Q. How long is that letter?

8 A. A page and a half.

9 Q. Anywhere on that first page it talks about you not
10 getting your back pay?

11 A. On the first page?

12 Q. Yes, ma'am.

13 A. No.

14 Q. And on the second page, about how long is the text on
15 that second page?

16 A. A paragraph and two sentences and a half.

17 Q. And does that talk about your back pay?

18 A. It says -- yes, that I'm entitled to receive full
19 payment.

20 Q. So in a page-and-a-half letter, one small paragraph that
21 talks about your back pay, you're saying you weren't informed
22 as to why you were being terminated?

23 A. Not when I was -- what I was informed, when she gave me
24 the letter, was that there was an accusation made from a
25 student worker in our office. And so that's when I went to

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1 Micah Kelly -- or Micah Knight.

2 Q. What is this letter dated?

3 A. The 27th of January.

4 Q. And so you weren't terminated until March; correct?

5 A. Correct. Because I appealed.

6 Q. Okay. We'll get to that in a moment.

7 If you could, though, there is -- in that first
8 paragraph, there is a highlighted sentence.

9 Are you telling me that, based on that highlighted
10 sentence, you didn't know what you were being accused of on
11 January 27th, 2016?

12 A. Yes. I said Dr. Scoufos told me that I was accused of a
13 student worker doing my son's homework.

14 Q. And that was considered an act of dishonesty and lack of
15 academic integrity, wasn't it?

16 A. Per Southeastern's policy, I'm assuming.

17 Q. You can look at Tab 3 if you'd like.

18 A. "It was the opinion of the committee." Is that what
19 you're looking at?

20 Q. Yes, ma'am.

21 A. Yes.

22 Q. So per the policy, you had committed an act of
23 academic --of dishonesty and lack of academic integrity;
24 correct?

25 A. I was accused, yes.

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1 Q. You appealed that decision, you said; correct?

2 A. Yes. I got the opportunity after I hired the lawyer.

3 Q. And you accused Southeastern of retaliation against you
4 for being outspoken in your disagreement over how Dr. Tudor
5 was treated; isn't that correct?

6 A. Yes.

7 Q. And was there an investigation into your claims of
8 retaliation?

9 A. I don't understand.

10 Q. You accused the university of retaliating against you.

11 A. I understand that part.

12 Q. And there was an investigation as to whether or not
13 retaliation occurred, wasn't there?

14 A. Are you talking about the meeting with the first
15 committee?

16 Q. Just do me a favor, ma'am, if you wouldn't mind. You can
17 turn to Tab 5.

18 A. Yes, sir.

19 Q. And that is the investigation by the affirmative action
20 office, isn't it -- or the determination of the affirmative
21 action office?

22 A. Who is the affirmative action office? I didn't meet with
23 an affirmative action office.

24 Q. Who did you meet with, ma'am?

25 A. I met with the dean and then my lawyer, and then they

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1 called me and said that -- I met with the committee, and they
2 asked questions. And that's when they told me who was the one
3 that made the allegation. They said that Dean Scoufos was the
4 one that made the allegation and gave me a Title IX piece of
5 paper. So then I had -- that was it.

6 Then I met with -- after that, I met with Claire
7 Stubblefield and Dean Scoufos and asked them how I had did a
8 Title IX because I hadn't discriminated against anyone.

9 And Dr. Stubblefield told me that it was a "two-fo," that
10 the Title IX came in because of my letter from Micah on
11 Dr. Tudor. And that was basically the only thing that was
12 asked or said about affirmative action there.

13 Q. Did your attorney write this letter on your behalf?

14 A. The first letter -- or the only letter? Yes, sir.

15 Q. If you would, go back to Tab 2, then, highlighted
16 section, second paragraph. Read it to yourself.

17 A. On the first page?

18 Q. Yes, ma'am. Does this refresh your recollection as to
19 whether or not you, through your attorney, accused Doug
20 McMillan of retaliating against you?

21 A. No. I said that he did. I felt that he did.

22 Q. Okay. So you have -- now, you said that Doug McMillan
23 accused you of -- or retaliated against you because of your
24 outspoken support of Dr. Tudor; correct?

25 A. Yes. That's how I feel.

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1 Q. And an investigation was conducted; correct?

2 A. Not a full investigation.

3 Q. Were you part of that investigation?

4 A. I don't know what you're talking about. Are you talking
5 about the meeting with the group of people? They didn't ask
6 very much. They just asked me why I felt that Dr. McMillan
7 would retaliate against me and had he ever done anything to --
8 on his belief system. And I said, yes, that he was going
9 to --

10 THE COURT: Stop, stop. I don't believe this is
11 responsive.

12 Try again.

13 MR. BUNSON: I'm sorry, Your Honor. I lost my
14 place.

15 Q. (BY MR. BUNSON) Was there an investigation into your
16 claims of retaliation by Dr. McMillan?

17 A. To my opinion, no. To your opinion, I'm assuming yes.

18 Q. And do you know what the determination was regarding your
19 accusation of retaliation by Dr. McMillan?

20 A. No.

21 Q. In fact, the committee found that there was no evidence
22 to indicate that the charges by you were instigated by
23 Dr. McMillan; isn't that correct?

24 A. Yes, I'm assuming.

25 Q. And this comment you made about Dr. Scoufos is the one

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1 that had comments from the students. Do you recall that?

2 A. The comments that -- when she told me in my first meeting
3 with her?

4 Q. Bad question.

5 Your lack of academic integrity and dishonesty had to do
6 with the fact that you were accused of having work-study
7 students do your son's homework; isn't that correct?

8 A. That was the allegation.

9 Q. And they provided testimony in forms of both personal and
10 written affidavits, didn't they?

11 A. One did. The other one sent an e-mail. I guess that's
12 written.

13 Q. So written and verbal/oral testimony to the fact that you
14 asked them to do this; is that correct?

15 A. Yes.

16 Q. If you could, turn to Tab 6, please.

17 Do you recall this document?

18 A. The counseling report?

19 Q. Yes, ma'am.

20 A. Yes.

21 Q. What is a counseling report?

22 A. It's where they gave me the allegations in writing.

23 Q. And if you could, just quickly flip over to page 2, red
24 box.

25 Is that your signature?

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- 1 A. Yes.
- 2 Q. What's the date?
- 3 A. February 12th.
- 4 Q. Of?
- 5 A. 2016.
- 6 Q. And you indicate in there you do not agree; right?
- 7 A. Yes.
- 8 Q. But you were -- you received the fullest of the charges
- 9 and accusations of your acts of dishonesty and lack of
- 10 academic integrity within this document, didn't you?
- 11 A. Yes.
- 12 Q. And after multiple investigations, a pretermination
- 13 hearing, you requested and were granted an appeal hearing,
- 14 weren't you?
- 15 A. That was the meeting with Kyle Stafford, Claire
- 16 Stubblefield, and the dean.
- 17 Q. You can turn to Tab 11 if you'd like.
- 18 A. Yes.
- 19 Q. Okay. Do you recall getting that letter?
- 20 A. Yes.
- 21 Q. What was that letter dated?
- 22 A. April 4th.
- 23 Q. Who's the letter from?
- 24 A. Dr. Bryon Clark.
- 25 Q. And it indicates that you -- that he has been put in

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1 charge of putting together an appeals committee regarding your
2 discharge; correct?

3 A. Yes.

4 Q. And he tells you who's going to be on that committee;
5 right?

6 A. Yes.

7 Q. So you were granted an appeal.

8 If you could turn to Tab 12.

9 And the appeal committee determined you had committed an
10 act of academic dishonesty and that termination was
11 appropriate; isn't that correct?

12 A. In the bottom -- in the last paragraph?

13 Q. Yes.

14 A. That's what this says, yes.

15 Q. And is that signed by the people that were on your
16 appeals committee per the letter that you were sent?

17 A. Yes.

18 Q. So after a pretermination hearing, multiple
19 investigations, and now an appeal, all parties, all
20 committees, everybody, agreed that you committed lack of
21 academic integrity and acts of dishonesty; is that correct?

22 A. That's what they say.

23 Q. Okay. Now, to get into some of your testimony from
24 earlier, you testified to reactions before and after meetings
25 between Dr. Tudor and Dr. --

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1 THE COURT: Let me stop you. I was going to try to
2 get through with this witness, but I think we all need a
3 break.

4 Please do not discuss the case. Be back in your room at
5 3:15. And we'll be in recess.

6 (Jury exits.)

7 (In recess from 3:00 p.m. to 3:15 p.m.)

8 (Jury enters.)

9 THE COURT: Be seated.

10 Please proceed.

11 Q. (BY MR. BUNSON) Ms. House, would you mind turning to
12 Tab 11 of that packet again just real quick?

13 A. Yes.

14 Q. On the third page of that, you'll see a bulleted list of
15 names.

16 A. The list at the top?

17 Q. It's a bulleted list of names about three-quarters down,
18 third page, Tab 11.

19 A. Yes.

20 Q. Okay. Thank you.

21 A. Uh-huh.

22 Q. Those are the names of the appeals committee; correct?

23 A. Yes.

24 Q. And two of those committee members were secretaries like
25 yourself; correct? Their title is right next to their name.

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1 A. Oh. Yes.

2 Q. The first name, Ms. Elizabeth Brittingham?

3 A. Brittingham, yes.

4 Q. Brittingham. My apologies.

5 A. No, that's okay.

6 Q. Do you know who she is?

7 A. Yes, sir.

8 Q. You asked for her to be appointed to this committee,
9 didn't you?

10 A. Yes.

11 Q. Okay.

12 A. That was the only name I got --

13 Q. Okay.

14 A. -- or the only position I got.

15 Q. And the other two were a help desk director and
16 coordinator of disability services.

17 Do you see that?

18 A. Yes.

19 Q. So the secretaries on there, they were your peers,
20 weren't they?

21 A. I did not work closely with Faith Huddleston. She was in
22 a different division. I was academic; she was student.

23 Q. But a secretary would be your peer in terms of your level
24 at the university; correct?

25 A. I would assume so.

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1 Q. Okay. And Ms. Brittingham, you did know her; correct?

2 A. Yes.

3 Q. And if you could go to Tab 12, second page, the red box.

4 A. Yes.

5 Q. What's the second name signed on there?

6 A. Elizabeth Brittingham.

7 Q. And her signature would show that she concurs with the
8 appeals committee's decision; correct?

9 A. You would have to ask her.

10 Q. This is a report that was authored by her committee;
11 correct?

12 A. Yes.

13 Q. Okay. Earlier, you talked about an employment decision
14 that Doug McMillan made about you based on his religion.

15 A. Yes.

16 Q. What employment decision was that?

17 A. When I was moved over to the dean's for arts and
18 sciences.

19 I was vice president's administrative secretary, Jesse
20 Snowden, and he became interim president. So when
21 Dr. McMillan was interim vice president, he said that he was
22 going to downsize the office, and so that meant that he was
23 going to do away with my position.

24 But because of his biblical belief that the Bible says
25 that we take care of our widows, that he would go talk with

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1 Dr. C.W. Mangrum and see if I could transfer over there
2 because their secretary was leaving.

3 Q. So that decision was a positive decision, wasn't it?

4 A. As far as?

5 Q. Either having a job or not having a job.

6 A. If you look at it that way, yes.

7 Q. You told us earlier that Dean Scoufos and Dr. McMillan
8 said negative comments related to Dr. Tudor being transgender.

9 Do you recall that?

10 A. Yes.

11 Q. You never repeated -- or reported these accusations
12 before you were under investigation or during your
13 investigation, did you?

14 A. Report to who?

15 Q. The equal employment opportunity officer.

16 A. There was -- no.

17 Q. And you knew the investigation into Dr. Tudor's tenure
18 denial; right?

19 A. Yes.

20 Q. This was in 2010, 2011, and 2012; right?

21 A. Yes.

22 Q. And yet you never reported any of these statements to
23 Southwestern -- Southeastern's affirmative action officer, did
24 you?

25 A. No, because it would not have done any good.

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1 Q. You didn't report these statements to anyone, did you?

2 A. My dean.

3 Q. Lucretia Scoufos?

4 A. Yes.

5 Q. So six years after Dr. Tudor's tenure denial, you started
6 claiming your firing was because of your support for
7 Dr. Tudor; isn't that correct?

8 A. Six years?

9 Q. Yes, ma'am.

10 A. You mean when I got let go, that I said it was -- I felt
11 that it was part of that?

12 Q. Yes. When you were terminated --

13 A. Yes.

14 Q. -- you are claiming that that was because you were
15 supporting Dr. Tudor; right?

16 A. Yes.

17 Q. And that was six years -- six years after her denial of
18 tenure; correct?

19 A. Yes.

20 Q. So you think that requiring student aides to do your
21 son's homework had nothing to do with your firing?

22 A. I didn't do that.

23 Q. So you're calling Justin Harp and Cristin Morgan liars?

24 A. I guess so.

25 Q. If you could turn to Tab 12, please.

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1 This is that appeals committee's determination; correct?

2 A. Yes.

3 Q. And in the final paragraph, it says, "One of the
4 students, Cristin Morgan, explained to us different versions
5 of events" -- or "a different version of events." My
6 apologies.

7 "She asserted that over the course of at least two days
8 she was asked to spend between two and three hours on course
9 work that was not merely a study guide and completed
10 computer-based modules in a course-management system on
11 Ms. House's workstation computer, including at times when
12 Ms. House temporarily left the office.

13 "This claim is supported by a second student, Justin
14 Harp, who was unavailable to us at the time of the
15 informational hearing but whose corroborating statement was
16 available to us."

17 Did I read that correctly?

18 A. Yes.

19 Q. So you still maintain that they are liars?

20 A. Yes.

21 Q. Ms. House, so the appeals committee, pretermination
22 committee, and all investigating bodies determined that you
23 lied, didn't they?

24 A. No.

25 Q. Which one didn't?

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1 A. Well, they even state back here that it says, "The
2 mitigating factors in this case include that the facts in
3 question are from two years, cover relatively brief episode
4 over the course of overall employment, and that there is no
5 allegation of any ongoing or systematic issues with integrity
6 on the part of the appealing party. For this reason, we
7 believe discharge was not the only possible course but only
8 one of the menu of options that could have reasonably been
9 pursued."

10 Q. And the following paragraph, if you will, says, "That
11 said, committing an act of academic dishonesty while working
12 in the office of the executive dean of academic affairs is
13 particularly serious."

14 Did I read that correctly?

15 A. Yes, sir.

16 Q. "The conduct that we believe happened here meets the
17 handbook's list of actions that at least minimally qualify an
18 employee for discharge as a penalty."

19 Did I read that correctly?

20 A. Yes, sir.

21 Q. "With discharge being one of the appropriate options for
22 penalty and with it being exercised here in fair accordance
23 with the text of the handbook, we find it appropriate to
24 uphold the decision upon appeal."

25 Did I read that correctly?

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1 A. Yes.

2 Q. So you still maintain that they did not say that you
3 lied?

4 A. Yes.

5 Q. Do you maintain that they hold that you committed acts of
6 academic dishonesty?

7 MR. YOUNG: Objection. Asked and answered, Your
8 Honor.

9 THE COURT: Sustained.

10 Q. (BY MR. BUNSON) So based on all these findings of all of
11 these different committees --

12 A. Two committees.

13 MR. YOUNG: Objection. Asked and answered.

14 THE COURT: It hasn't been asked yet. I don't know.

15 Q. (BY MR. BUNSON) So there is no reason -- sorry.

16 So based on the fact that the appeals committee,
17 pretermination committee, and all investigations into this
18 allegation against you determined that you were dishonest, is
19 there any reason to think that you wouldn't lie here today?

20 A. Because I'm not dishonest.

21 Q. Were you friends with Lucretia Scoufos?

22 A. As far as close friends --

23 Q. Yes.

24 A. -- or business friends?

25 Q. Friends. You can decide.

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1 A. Not "friend" friends. I worked with her for many years.

2 Q. Are you friends with her now?

3 A. No.

4 MR. BUNSON: No further questions.

5 THE COURT: Redirect?

6 **REDIRECT EXAMINATION**

7 BY MR. YOUNG:

8 Q. Ms. House, is Dean Scoufos the one who first accused you
9 of dishonesty?

10 A. Yes.

11 Q. And is Dean Scoufos the one who first notified you that
12 you were going to be terminated?

13 A. Yes.

14 Q. And at some point did Claire Stubblefield conduct an
15 investigation?

16 A. No, not till after they got my letter from Micah Knight.
17 Then they said -- they sent a letter -- Claire Stubblefield
18 sent an e-mail saying that they were extending my leave of
19 absence past the three o'clock the next day to another day.
20 And then that's when they had a committee.

21 Q. Last year --

22 A. Uh-huh.

23 Q. -- did you receive a subpoena in this case to testify at
24 a deposition?

25 A. Yes.

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1 Q. Were you prepared to tell the truth at that deposition?

2 A. Yes.

3 Q. Was that deposition canceled by the lawyers involved and
4 not you?

5 A. Yes.

6 Q. Did you tell the truth today, Ms. House?

7 A. Yes.

8 Q. Was it hard for you to come here today?

9 A. Yes.

10 Q. Are you losing money from work to be here today?

11 A. Yes.

12 Q. Sitting here today, do you regret your decision to bury
13 your husband in his Southeastern uniform?

14 A. I do and I don't.

15 Q. Can you explain that answer?

16 A. I do because I never felt like the dishonesty that goes
17 on and that I've seen would get this bad. And I don't because
18 I love Southeastern even after everything. It's still home.
19 So no.

20 MR. YOUNG: Nothing further, Your Honor.

21 MR. BUNSON: Nothing further.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: Call your next witness.

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1 MR. YOUNG: Your Honor, respectfully, plaintiff
2 rests.

3 May I approach?

4 THE COURT: Yes.

5 MR. YOUNG: Thank you.

6 (The following proceedings were had at the bench and out
7 of the hearing of the jury.)

8 MR. YOUNG: Thank you, Your Honor. Respectfully,
9 plaintiff would like to move for a directed verdict. I'm
10 prepared to make arguments today or we can make them tomorrow.

11 THE COURT: Well, I certainly don't want to hear
12 them today.

13 How -- what do you think is your best guess on your
14 evidence now?

15 MS. COFFEY: Well, before I get there, defendants
16 also would like to move for a directed verdict.

17 Is it on the record, plaintiff has rested?

18 THE COURT: Yes.

19 MS. COFFEY: Okay. So plaintiff is not going to
20 present deposition testimony of Cathy Conway during your case?

21 MR. YOUNG: (Shakes head.)

22 But we reserve the right, if there's no directed verdict,
23 to present rebuttal.

24 MS. COFFEY: I think that we --

25 THE COURT: Sherri, we'll be off the record.

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1 (Bench conference held off the record with all counsel.)

2 (The following proceedings were had in open court with
3 all parties present and within the hearing of the jury.)

4 THE COURT: This is a point in the trial where the
5 lawyers and I need to have some time to do several things, and
6 I don't want you to have to sit there and listen to us
7 whisper. And it may take long enough that it will be by the
8 end of the day that we're finished anyway.

9 So, once again, I'm going to send you home early. I
10 think it really is a nice day today, although I can't vouch
11 for that.

12 I will instruct you not to discuss the case, of course,
13 or permit anyone to discuss it with you. Do not expose
14 yourselves to any media accounts. Don't do any independent
15 research, Facebook, social media, Twitter, blog, or anything
16 else. Please be in the jury assembly room downstairs by 9:15
17 tomorrow, and we will excuse you.

18 I will expect counsel in chambers.

19 And we'll be in recess.

20 (In recess at 3:45 p.m.)

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REPORTER'S CERTIFICATE

I, SHERRI GRUBBS, Federal Official Court Reporter in and for the United States District Court for the Western District of Oklahoma, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 15th day of November, 2017.

/S/ SHERRI GRUBBS_____

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter