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November 16, 2017

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

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

VOLUME 4
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ROBIN J. CAUTHRON
THURSDAY, NOVEMBER 16, 2017; 9:15 a.m.
OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography,
transcript produced by computer.

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1 (Proceedings held on November 16, 2017.)

2 (The following proceedings were held outside of the
3 presence of the jury with all parties present.)

4 THE COURT: Be seated.

5 Before the jury is brought in, I want to make a record on
6 a couple of things.

7 First of all, Sherri became aware last night and made me
8 aware that transcripts were being posted online as soon as
9 they're being provided to Mr. Young.

10 I don't even know the name of the website. What is it,
11 Mr. Young?

12 MR. YOUNG: Your Honor, I dealt with it. There was
13 a miscommunication.

14 THE COURT: I understand that; I'm just making a
15 record.

16 MR. YOUNG: Oh. It's a nonprofit called Equality
17 Case Files. My understanding is that all the transcripts have
18 been removed at this time.

19 I still have the transcripts, obviously, but --

20 THE COURT: Of course.

21 MR. YOUNG: Yeah.

22 THE COURT: Well, to their credit, they were
23 excluding everything that was done outside the presence of the
24 jury, so there were no bench conferences or other meetings
25 like this that were included in that transcript, only the

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1 testimony.

2 I've never had this come up before, and I don't know what
3 the rules are or if there are any rules. It makes me very
4 uncomfortable.

5 Even though I have told this jury not to look online and
6 even though there are no bench conferences, I would very much
7 prefer that we try to keep this as sanitized, if that's the
8 proper word, as we can.

9 So I know that you have since had those removed, and my
10 request to you is that they not be posted or otherwise
11 available publicly where the jury could see them until this
12 trial is over.

13 MR. YOUNG: Yes, Your Honor.

14 THE COURT: Secondly, I heard counsel very, very
15 briefly on the motions for judgment as a matter of law in
16 chambers yesterday as we started our instruction conference.

17 I indicated to counsel I -- my inclination is simply to
18 deny motions at this time, but I'm not going to do that since
19 you haven't had an opportunity to make a record. But I am
20 going to hold them in abeyance, and we'll go forward with the
21 defendants' evidence and argue them at a time -- or allow you
22 to make your record at a time that is more convenient for the
23 jury.

24 Finally, Ms. Conway, we had decided yesterday -- or maybe
25 I had decided unilaterally -- that we would take her first

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1 thing this morning so we wouldn't have to be moving the
2 jury around. I have been made aware that she would much
3 prefer testifying after lunch due to her health, and that's
4 fine.

5 At this point, we think we're going to be in the
6 ceremonial courtroom no sooner than 1:30. And, Ms. Coffey, I
7 understand you would prefer to finish whatever witness is
8 testifying before we begin her even if it's not at a time she
9 expects.

10 MS. COFFEY: Your Honor, we can do it however is
11 most convenient for the Court and the jury.

12 I just thought if we were -- if Sherri was still set up
13 here because of some matter at 1:00 p.m., it might be just as
14 convenient to go ahead and conclude with whatever witness is
15 on the stand and then make the move, but whatever the Court
16 decides.

17 At the lunch break, if we could just let Ms. Conway know,
18 she will be ready.

19 THE COURT: Okay. We're still up in the air about
20 where we're going to be, so it's better for us to wait until
21 noon to find out.

22 I had told the jury, and you-all are aware, of the
23 attorney admissions ceremony. I had forgotten that we also
24 have a supervised release revocation at one o'clock. We don't
25 think that's going to take very long. If it does, I will

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1 probably just move it to the end of the day and continue with
2 you, but just be aware that our lunch hour will be longer than
3 you expect.

4 Okay. Anything else from you before I have the jury
5 brought in?

6 MR. YOUNG: Yes, Your Honor.

7 There's one matter I was discussing with Ms. Coffey
8 before we started for the day, and I wanted to put it on the
9 record just so we have a record.

10 Ms. Coffey had raised the concern that Dr. Tudor has
11 subpoenaed -- though we withdrew some of those subpoenas and
12 worked out agreements with witnesses who we're potentially
13 calling as rebuttal witnesses. And I say potentially calling
14 because we're not -- defendants haven't told us which
15 witnesses they're bringing.

16 Some of those witnesses are here today. One of them in
17 particular is planning on coming up later today just in case
18 he's needed.

19 Ms. Coffey has represented that she has spoken with one
20 of those witnesses, that she doesn't represent him, but she's
21 trying to tell us what is a burden on him and what is not a
22 burden on him. I just wanted to put it on the record that we
23 are talking frankly with these folks who have agreed to be
24 here voluntarily as potential rebuttal witnesses. We're
25 trying not to inconvenience anyone.

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1 THE COURT: This is a problem that is not yet a
2 problem, so --

3 MR. YOUNG: Yes, Your Honor.

4 THE COURT: -- I don't need to solve it.

5 I do want to say one thing, Mr. Young: Rebuttal
6 witnesses are very strictly limited. It has to be truly in
7 rebuttal and not part of your case in chief.

8 MR. YOUNG: We understand that, Your Honor. The
9 only reason why we have multiple is because we don't know
10 which witnesses they are calling.

11 THE COURT: All right.

12 MR. YOUNG: Thank you, Your Honor.

13 THE COURT: Linda, get the jury.

14 (Jury enters courtroom.)

15 THE COURT: Be seated, and good morning.
16 Defendant, call your first witness.

17 MS. COFFEY: Your Honor, defendants call
18 Dr. Lucretia Scoufos.

19 THE COURT: Please step right up here to the witness
20 stand and face the clerk and be sworn.

21 (Witness duly sworn.)

22 THE COURT: Please be seated.

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

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DIRECT EXAMINATION

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BY MS. COFFEY:

Q. Good morning.

A. Good morning.

Q. Could you please state your name?

A. Lucretia Scoufos.

Q. Dr. Scoufos, are you retired?

A. Yes.

Q. What was your job immediately before retirement?

A. I was executive dean for academic affairs.

Q. Where?

A. At Southeastern Oklahoma State University.

Q. When did you retire?

A. In June 2016.

Q. Where did you grow up?

A. In Oklahoma. Ada, Oklahoma.

Q. What is your college education?

A. I have a bachelor's degree from East Central State University in education with an emphasis in English and theater.

I have a master's degree from the University of Oklahoma in human relations, and I have a Ph.D. from the University of Oklahoma in communication.

Q. What was your first job after you obtained your degrees?

A. I started teaching at Alabama State University.

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1 Q. What was your position there?

2 A. I went in as an instructor because I had not completed my
3 dissertation. And the agreement was, when I completed my
4 dissertation, I would automatically receive the appointment of
5 assistant professor, which I did. That completed my Ph.D.

6 Q. While you were at Alabama State University, did you ever
7 apply for tenure?

8 A. Yes.

9 Q. Were you successful?

10 A. Yes.

11 Q. At some point you left Alabama State University?

12 A. Yes. I left Alabama State University to come to
13 Southeastern in 2001 because I wanted to be close to my son
14 and his family, who also lived in Oklahoma. They had just had
15 two grandsons, and I wanted to be near them. I confess.

16 Q. What year was this?

17 A. 2001.

18 Q. What was your position that you were hired at at
19 Southeastern?

20 A. I was hired as assistant professor because that was the
21 position that was being advertised, although I had left ASU as
22 an associate professor.

23 So I came in with the agreement, at the end of two years,
24 that I could receive associate professor, depending upon that
25 probationary period, which I did.

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1 Q. The promotion to associate professor, did it come with
2 tenure?

3 A. Yes.

4 Q. At some point did you become department chair?

5 A. Yes. I became department chair in 2003.

6 Q. And which department were you the chair of?

7 A. Communication and theater.

8 Q. Did you have any further promotions while you were at
9 Southeastern?

10 A. Yes. I was appointed full professor.

11 Q. Did you remain as department chair until you left
12 Southeastern?

13 A. No. I was a department chair for five years because, in
14 2008, I received the appointment of dean for the school of
15 arts and sciences.

16 Q. Did you remain in that position until you left
17 Southeastern?

18 A. No. In December 2011, I received the appointment of, at
19 that time, dean of instruction.

20 Q. What is dean of instruction?

21 A. In this case, it was the first time that had been done at
22 Southeastern. And that simply meant that I went from dean of
23 the school of arts and sciences to the dean of all of the
24 academic schools on campus, which there were three academic
25 schools.

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1 Q. At the time that you became dean of instruction, did
2 another individual take over as dean of the school of arts and
3 sciences?

4 A. No. There were no other deans -- no other academic deans
5 except me.

6 Q. What were your duties as dean?

7 A. A dean is, first of all, a liaison between faculty and
8 upper administration. And those duties include making sure
9 that we have qualified faculty in the classrooms, making sure
10 that our accreditation requirements are met and the
11 requirements of RUSO are met, and being sure that the classes
12 have faculty in a timely manner when classes begin in the
13 spring and fall and summer.

14 As dean, I met with the department chairs once a week so
15 we could coordinate all of the requirements that we were
16 supposed to do, grow in areas, exchange ideas, and make
17 sure -- of course, the ultimate of the dean is with the
18 faculty, as with the university, is to provide a quality
19 education for our students and to be cognizant at all times
20 about their welfare.

21 Q. Did your responsibilities as dean include tenure review?

22 A. Yes.

23 Q. I'm sorry. Portfolio review for tenure or promotion?

24 A. Yes, as it did for chair, department chair.

25 Q. Were you involved in the promotion and tenure process at

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1 Alabama State University? Not your own process, but were
2 you -- did you review portfolios at Alabama State University
3 to determine or make recommendations regarding tenure?

4 A. No.

5 Q. Approximately how many --

6 A. I'm sorry. As associate professor, yes, I did.

7 Q. Okay.

8 A. I'm sorry.

9 Q. Is it an easy process to review someone's portfolio?

10 A. No. No, it is not an easy process. It's a very huge
11 responsibility, and it takes time.

12 Q. Okay. Can you describe succinctly, if possible, what is
13 involved when you are performing portfolio reviews?

14 A. Well, there are three areas that an applicant is
15 responsible for, and that's teaching; research, which is also
16 referred to as scholarship; and service.

17 So, first of all -- I mean, this is the way I do it.
18 There is no certain way that anybody -- somebody might look at
19 scholarship before they look at service.

20 I always start with the letters -- with the letter of
21 application because that's a requirement from the candidate.
22 I review that.

23 Then I review the letters of recommendation. If there
24 are letters of support, I review those, because this is the
25 order that the portfolio is put in.

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1 And from there, I go to teaching, scholarship, and
2 service simply because that's the order.

3 Q. Have you ever received training on how to perform a
4 portfolio review?

5 A. Yes. Not formal training where I got a certificate or
6 credit, but when I went to -- well, before -- before I went to
7 ASU, we looked at portfolios when I was at OU as a graduate
8 student because I was very fortunate to have a professor who
9 was interested, when we got where we were going, that we knew
10 what we were doing.

11 So we were well-acquainted with portfolios there from a
12 graduate student point of view.

13 Then, when I got to ASU, I was really, really lucky
14 because the dean that I had there, the dean of arts and
15 sciences, the very first week that new hires came in, he met
16 with all of us and he explained in detail the process of going
17 up for promotion and tenure, explained if you did not receive
18 promotion and tenure that you would be dismissed without
19 cause, meaning you wouldn't be told.

20 Because I remember raising my hand and saying, "If I
21 don't get promoted and tenured, you aren't going to tell me
22 why?"

23 And he said, "That's right. We are not required to."

24 So it was that detailed. And then he told us what was
25 expected to go into the portfolio, how to lay it out, and the

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1 important points of a portfolio. So --

2 Q. Is the review process at Alabama State similar to the
3 review process that you applied at Southeastern?

4 MS. GALINDO: I'm going to object as to relevance,
5 Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: Yes. When I came to Southeastern,
8 Southeastern's review policy was exactly the same as ASU's.

9 Q. (BY MS. COFFEY) How many portfolio reviews do you think
10 you've probably done for -- when you're considering somebody
11 for tenure or for promotion?

12 A. Well, considering that I have sat on committees -- review
13 committees as a colleague and as a faculty member before I
14 became chair or dean, I would say probably 100.

15 And I say that because I've been in higher ed now as an
16 associate professor -- from the time I became an associate
17 professor at ASU, then I was allowed to sit on review
18 committees for people who were going up for promotion and
19 tenure for the associate professor level.

20 So having done that for at least 20 years, if I did five
21 a semester -- which some semesters I did much more than that
22 as dean, when I became dean of instruction, because I had to
23 review all of the portfolios in all the schools for all the
24 faculty.

25 Q. Okay. Dr. Scoufos, when did you first meet Rachel Tudor?

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1 A. When she had made an appointment to have a session with
2 me about how to -- how to make a portfolio. So that was the
3 first time I met her, when she came to the office for that.

4 Q. Was that normal for you to meet with candidates that were
5 submitting their portfolios for tenure?

6 A. Yes, because -- I was so taken with what my dean had done
7 at ASU, I thought this is a great idea to do something of that
8 nature.

9 However, the first semester that I was dean of arts and
10 sciences, I received some portfolios that were not up to
11 standard. I'm not talking about the content of their work;
12 I'm talking about the formatting of the portfolio. They were
13 more like scrapbooks.

14 And so I thought, we need to change this. We'd already
15 changed that in the department of communication and theater.
16 So that's when I thought --

17 MS. GALINDO: I'm going to object, Your Honor, to
18 the form of the answer. Move to strike.

19 THE COURT: I won't strike it.

20 But, Ms. Coffey, I'll instruct you to make sure that this
21 doesn't evolve into a narrative beyond answering the question.

22 MS. COFFEY: Yes, Your Honor.

23 THE WITNESS: So then I just --

24 THE COURT: Stop. Let me tell you, just listen to
25 the question and answer it, and then stop and wait for another

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1 one. Don't just start talking and keep talking. Just answer
2 the question.

3 THE WITNESS: Yes, Your Honor.

4 Q. (BY MS. COFFEY) Dr. Scoufos, when you would meet with
5 these candidates, what generally did you discuss with them?

6 A. I discussed what had to be -- what was required to be in
7 the portfolio, what was recommended to be in the portfolio,
8 and the order that the content should be in, and the format.

9 Q. Did you have one of these meetings with Dr. Tudor in the
10 fall of 2009 before she submitted her portfolio?

11 A. Yes. By her request, which was standard.

12 MS. COFFEY: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 Q. (BY MS. COFFEY) Would you please read that document.

15 THE COURT: Wait. Is it in evidence?

16 MS. COFFEY: I'm sorry.

17 Q (By MS. COFFEY) I did not mean to read out loud -- I did
18 not mean for you to read it out loud.

19 THE COURT: Okay.

20 Q. (BY MS. COFFEY) Dr. Scoufos, do you recognize the
21 document I just presented to you, Plaintiff's Exhibit 121?

22 A. Yes.

23 Q. What is it?

24 A. It's my summary of the meeting I had with Dr. Tudor, in
25 my handwriting.

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1 Q. What was the date of that meeting?

2 A. It was set for August 31st, 2009, at 2:30.

3 MS. COFFEY: Move for the admission of Plaintiff's
4 Exhibit 121.

5 THE COURT: I'm assuming, if it's on the plaintiff's
6 list, there is no objection. If you want to object, just
7 speak up; otherwise, I will admit it without hearing from you.

8 MS. GALINDO: No objection, Your Honor.

9 Q. (BY MS. COFFEY) Dr. Scoufos, do you recall your meeting
10 with Dr. Tudor?

11 A. Yes.

12 Q. What did you discuss with Dr. Tudor in that meeting?

13 A. Her portfolio, what needed to go in it, why it would --
14 why those particular things were necessary, and then I
15 addressed her questions.

16 Q. Dr. Scoufos, how long did this meeting with Dr. Tudor
17 last?

18 A. At least an hour.

19 Q. Why are you so certain it lasted at least an hour?

20 A. Because I never did have one of those meetings that
21 lasted less than an hour, but most of them went over an hour.

22 Q. What would take an hour to discuss with Dr. Tudor?

23 A. Because I would give a packet, and we would -- and a list
24 of the requirements and examples. I would have a portfolio
25 from a colleague -- with his permission -- that's an exemplar

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1 portfolio, and I would have one of my portfolios there to use
2 as examples.

3 So then I said, this -- we do this and this, and here's a
4 way to do it. And it takes quite some time to go through
5 that. There are quite a few points on that page and the
6 packet. They're going through the packet as I go through it.

7 Q. Did you discuss with Dr. Tudor the requirement of a
8 certain number of publications for a portfolio?

9 A. I don't ever discuss a certain number of publications
10 with anyone.

11 Q. Do you believe that Dr. Tudor was aware of the number of
12 publications she needed to obtain tenure?

13 A. I would think she would be because the department chairs
14 discuss that with their faculty.

15 MS. GALINDO: Objection. Calls for hearsay.

16 THE COURT: Overruled.

17 Q. (BY MS. COFFEY) Dr. Tudor testified that her meeting with
18 you was very short and you wouldn't answer any substantive
19 questions.

20 Is that accurate?

21 A. No.

22 Q. Why not?

23 A. Because, first of all, it isn't a short meeting because
24 of the material I have to cover. And I answer all questions
25 that were directed, including the questions that Dr. Tudor

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1 had.

2 Q. Do you recall any of Dr. Tudor's questions?

3 A. Yes. I recall that she had brought a number of artifacts
4 in, plaques, et cetera, and wanted to know if she could submit
5 those.

6 And I said, you can't put them in the portfolio, but you
7 could take photographs of them and put those in the portfolio,
8 and also reminded her again that we have a certain number of
9 pages. And that was a requirement that Dr. Snowden, when he
10 was vice president for academic affairs, that he put into
11 place, that there was a limited number of pages that could go
12 in.

13 Q. Did you discuss with Dr. Tudor the formatting of her
14 portfolio?

15 A. Yes. That's standard.

16 Q. Did you have any discussion about Dr. Tudor's tenure and
17 promotion committee?

18 A. Yes. In part -- one part of the portfolio meeting is to
19 explain how the committee is made up. And, in this case -- I
20 always tell what each department does. And so I explained to
21 her the way that the committee would be done in her
22 department.

23 MS. GALINDO: I'm sorry, Your Honor. I would like
24 to make a running objection that the witness is answering in
25 narratives.

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1 THE COURT: Well, I'm not sure this was. Again,
2 just answer the question that is asked, and then stop and wait
3 for another one.

4 Q. (BY MS. COFFEY) Did Dr. Tudor bring up the topic of Lisa
5 Coleman during this meeting?

6 A. Yes. It was during that discussion of the committee that
7 she brought up -- because I had said, in that department,
8 everybody -- you have enough people in that department who
9 were professors and associated professors that you will not
10 need to go outside your department to complete the review
11 committee.

12 And so she asked if Dr. Coleman would be on it. I said,
13 "Oh, of course. She's a full professor and highly esteemed in
14 the department and across the university."

15 Q. What concern did Dr. Tudor express about Dr. Coleman
16 serving on her committee?

17 A. She said that she -- in essence, she said that she didn't
18 want Dr. Coleman on her committee. And of course I asked why.

19 Shall I go on?

20 Q. Yes.

21 A. I asked why, and she said that --

22 MS. GALINDO: Objection. Calls for hearsay.

23 THE COURT: Overruled.

24 Q. (BY MS. COFFEY) Go ahead. You can answer.

25 A. Dr. Tudor said the reason that she did not want Lisa

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1 Coleman on her committee is that -- "she" being Dr. Tudor --
2 would go on trips with the honors students, usually to Dallas,
3 for different art events, and after -- this is a term that
4 Dr. Tudor used -- "after her change," Dr. Coleman never did
5 ask her to go again.

6 Q. What did Dr. Tudor -- what is your understanding
7 Dr. Tudor meant by "after her change"?

8 A. I didn't know. And so -- then I said, "Explain that to
9 me again."

10 So she said -- she used that term again, "After her
11 change."

12 Well, I wasn't -- so I said, "I'm sorry. I don't know
13 what you're talking about when you say 'change.'"

14 Then she told me that she had had a sex change so -- and
15 reiterated that Dr. --

16 MS. GALINDO: Objection, Your Honor, to the
17 characterization.

18 THE COURT: Overruled.

19 Q. (BY MS. COFFEY) Dr. Scoufos, let me clear this up so
20 that -- would it have been possible that Dr. Tudor told you
21 that she was now presenting as a female rather than discussing
22 any type of surgical procedure?

23 MS. GALINDO: Object to the form of the question,
24 Your Honor.

25 THE COURT: Overruled.

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1 Q. (BY MS. COFFEY) Was it your understanding that Dr. Tudor
2 was now presenting as female based on what she explained to
3 you?

4 A. Yes.

5 Q. So did you address her concern regarding Lisa Coleman?

6 A. I was -- I was surprised, shocked, and amazed because --
7 and as I told Dr. Tudor, Lisa Coleman is one of the most
8 open-minded people on campus or anywhere, and I never had
9 known her to be prejudicial about anybody about anything.

10 Q. Who, if anyone, did you pass on Dr. Tudor's concern
11 regarding Lisa Coleman?

12 A. Her chair, Dr. Mischo, immediately after that meeting.

13 Q. Did you ever have an opportunity to learn from Lisa
14 Coleman whether these honors bus trips were taking --
15 continuing to take place after Dr. Tudor's change?

16 A. Yes.

17 Q. What did she say?

18 A. In a meeting with the whole department where Dr. Tudor
19 was present also, Lisa was expressing a concern about the
20 transportation.

21 MS. GALINDO: I'm going to object to hearsay, Your
22 Honor.

23 THE COURT: Do you have an argument this falls
24 outside the hearsay rule?

25 MS. COFFEY: Your Honor, I'll just rephrase my

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1 question.

2 THE COURT: All right.

3 Q. (BY MS. COFFEY) Did you have an understanding, after a
4 discussion with Lisa Coleman, regarding whether these honor
5 trips had continued to take place?

6 A. I did have that discussion, and they had stopped because
7 they couldn't get adequate transportation.

8 Q. Did you have any reason to believe, after you learned
9 that, that Lisa Coleman was making a decision to exclude
10 Dr. Tudor because she was transgender?

11 A. No.

12 MS. GALINDO: Objection. Calls for speculation.

13 THE COURT: Overruled.

14 THE WITNESS: No. I had no reason.

15 MS. COFFEY: May I approach, please?

16 THE COURT: Yes.

17 Q. (BY MS. COFFEY) Dr. Scoufos, do you recognize the
18 document I just handed you?

19 A. Yes.

20 Q. What is it?

21 A. It's a -- an e-mail from John Mischo to me.

22 MS. COFFEY: I'd move for the admission of
23 Plaintiff's Exhibit 122.

24 THE COURT: It will be admitted.

25 Q. (BY MS. COFFEY) Dr. Scoufos, if you could please go down

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1 to the bottom half of the page with respect to an e-mail from
2 Rachel Tudor to John Mischo.

3 A. Yes.

4 Q. Could you please read that first sentence? Read the
5 whole paragraph, if you don't mind. I apologize.

6 A. From --

7 Q. Read it out loud.

8 A. "From Rachel Tudor to Mischo"?

9 MS. GALINDO: Objection, Your Honor. This is
10 duplicitous testimony and, under the best evidence rule, the
11 jury will have that exhibit.

12 THE COURT: Overruled.

13 MS. COFFEY: I'll make it quicker.

14 Q. (BY MS. COFFEY) Doesn't Dr. Tudor e-mail John Mischo
15 saying that she'd already discussed this issue with you and
16 that you and she agreed Dr. Spencer would chair her committee
17 and that the one person that would not be on the committee is
18 Dr. Coleman?

19 Is that an accurate description of this e-mail?

20 MS. GALINDO: Objection. Leading.

21 THE COURT: Overruled.

22 THE WITNESS: That's what is stated in the e-mail.

23 Q. (BY MS. COFFEY) Now, then -- is that your handwriting --

24 A. Yes.

25 Q. -- that begins at -- and what does that handwriting say?

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1 A. "This absolutely" -- and I left out "is" -- "fabricated
2 from beginning to end. This was never discussed when I met
3 with" -- no. "This was never discussed! Meet with Dr. Mischo
4 and Dr. Tudor immediately."

5 Q. Dr. Scoufos, who appoints the chairman of a tenure and
6 review committee?

7 A. It's done in concert, and the department chair --

8 Q. Let me ask you this, then: As dean, were you responsible
9 for appointing the committee -- the committee chair for
10 Dr. Tudor?

11 A. No.

12 Q. Who was?

13 A. Dr. Mischo.

14 Q. Did you end up having -- let me ask you this: How did
15 you address this problem that Dr. Tudor and Dr. Mischo were
16 raising in this e-mail?

17 A. I called John for clarification, her -- Dr. Mischo.

18 Q. Did you ever meet with Dr. Tudor to discuss what she was
19 claiming in this e-mail?

20 A. Dr. Mischo and Dr. Tudor and I did meet.

21 Q. At the end of that meeting, what was concluded with
22 respect to Rachel Tudor's indications that you-all had agreed
23 regarding her committee members?

24 Did Dr. Tudor concur that she was mistaken in her
25 representations regarding who you-all agreed would be on her

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1 committee?

2 A. Yes.

3 MS. COFFEY: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 Q. (BY MS. COFFEY) Dr. Tudor -- Dr. Scoufos, if you could
6 take a few moments, seconds, please, to flip through and tell
7 me if you recognize this document as Dr. Tudor's 2009
8 portfolio

9 MS. COFFEY: The witness is looking at Plaintiff's
10 Exhibit No. 1.

11 Q. (BY MS. COFFEY) Dr. Scoufos, I may represent to you
12 whether you -- whether it's complete or not, does it -- do
13 you -- does this appear to be Dr. Tudor's 2009 portfolio?

14 A. No.

15 Q. Okay. It's not her portfolio at all or it's not the same
16 portfolio that you reviewed?

17 A. It's not the same portfolio that I reviewed.

18 Q. All right. Let's go back to -- when you -- when you
19 received Dr. Tudor's -- I'm sorry.

20 Dr. Scoufos, when you received Dr. Tudor's portfolio in
21 2009, what was your first impression of it?

22 A. My first impression was that I couldn't believe -- I
23 couldn't believe her portfolio because we had had that session
24 to discuss what was to go in the portfolio.

25 And, of course, the very first thing I read was her

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1 letter of application, because that's required, and it was not
2 like any letter of application nor the sample that I gave her
3 and that we talked about what should go in that application.
4 So I was shocked over that.

5 And then I went to the letters of recommendation, and she
6 had a letter from Robert -- Dr. Robert Tudor -- a
7 recommendation for Dr. Robert Tudor when he applied at
8 Southeastern. That was before he was hired. And a person can
9 only be evaluated during that particular period of time after
10 they're hired and the work they've done up until the time they
11 apply for promotion and/or tenure.

12 After receiving the first promotion and tenure, let's
13 just say from assistant to --

14 Q. Let me stop you right there. I'm sorry.

15 So is your concern that she submitted something that
16 pertained to her work prior to coming to Southeastern?

17 MS. GALINDO: Objection. Leading.

18 THE COURT: Overruled.

19 THE WITNESS: Yes. And that is not taken into
20 consideration at any level.

21 When you apply for the next level for associate
22 professor -- I mean, for professor after being awarded
23 associate professor, you can't use anything that you used to
24 get to be associate professor. It's for that period of time
25 that you are at a certain rank only.

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1 I was also --

2 Q. (BY MS. COFFEY) I'm sorry.

3 MS. COFFEY: I will move for admission of
4 Plaintiff's Exhibit 1.

5 THE COURT: It's already admitted.

6 MS. COFFEY: Okay. Thank you.

7 Q. (BY MS. COFFEY) Do you recall reviewing Dr. Tudor's
8 portfolio with respect to service and scholarship?

9 A. Yes.

10 Q. Do you -- what is your recollection of your conclusion?

11 A. Her scholarship was lacking.

12 Q. Why?

13 A. She had only one publication and -- by a peer review, and
14 so her scholarship was lacking.

15 Her service had taken place during the last parts --
16 because she had applied -- she had submitted a portfolio the
17 year before for promotion and tenure and withdrew it because
18 Mark Spencer told her --

19 Q. Let me stop you there.

20 But an application that is submitted the previous year is
21 not part of consideration in a 2009 review; correct?

22 A. Right.

23 Q. Okay. So you've indicated the lack of scholarship. You
24 had some concerns regarding her service?

25 A. Yes.

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1 MS. GALINDO: Object to leading, Your Honor.

2 THE COURT: Overruled.

3 THE WITNESS: Yes, because the service that she did
4 had taken place during the last part of her -- of her tenure
5 as assistant professor.

6 Q. (BY MS. COFFEY) All right.

7 A. So she had not done anything consistently throughout that
8 time.

9 Q. All right. With respect to -- you mentioned earlier that
10 you had some concerns with her application letter.

11 Do you recall, as you sit here today, what your concerns
12 were?

13 A. Her -- my concern was that she was questioning the policy
14 and stated that the secretary of the department, Theresa
15 Anderson, who wrote a letter of recommendation, and Corey
16 Delashaw, who also wrote a letter of recommendation, that they
17 should be promoted and tenured before Dr. Tudor, that they
18 deserved it more.

19 Well, of course, we don't -- secretaries don't have
20 tenure and neither do -- they are not put on a probationary
21 period for tenure and promotion. So that didn't even apply.

22 Q. Would you say that those recommendations were not
23 appropriate for her to include in this portfolio?

24 A. No, because --

25 Q. Let me ask you this: Were those recommendations

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1 appropriate for Dr. Tudor's 2009 portfolio?

2 A. No.

3 Q. Why not?

4 A. Because they were not from her colleagues and they were
5 not from any colleagues at any other university that she might
6 have worked with.

7 Q. Okay.

8 A. It isn't what was there as much as what wasn't there.

9 Q. What do you mean by that?

10 A. Recommendations usually come from people in your field,
11 in your department, and people who know your work.

12 Q. Dr. Tudor didn't have any recommendations from anybody
13 within the English department at Southeastern?

14 A. No.

15 Q. You briefly reviewed this earlier. And, based upon your
16 review, are there documents missing from Plaintiff's Exhibit 1
17 that you recall being a part of Dr. Tudor's 2009 application?

18 A. The recommendation for Robert Tudor comes to mind
19 immediately because it isn't here.

20 Q. What about --

21 A. And --

22 Q. Go ahead.

23 A. -- I didn't see Corey Delashaw's. Did I just overlook
24 it?

25 Q. I don't think so. So Corey Delashaw had a recommendation

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1 in the 2009 portfolio?

2 A. Yes.

3 Q. Do you recall -- this packet contains a recommendation
4 letter from Kim McGehee.

5 Do you recall whether Kim McGehee's recommendation was in
6 Dr. Tudor's 2009 portfolio?

7 A. I don't recall that it was there, and he isn't in her --
8 he's in Spanish, so it wouldn't --

9 Q. Is he a tenured professor? Was he at the time, Kim
10 McGehee?

11 A. I don't know.

12 Q. Okay.

13 MS. COFFEY: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 Q. (BY MS. COFFEY) I've handed you what has been marked as
16 Plaintiff's Exhibit 77.

17 Do you recognize this document?

18 A. Yes.

19 Q. What is it?

20 A. It's an e-mail from me to Dr. McMillan with my
21 recommendation to deny tenure.

22 MS. COFFEY: I move for the admission of Plaintiff's
23 Exhibit 77.

24 THE COURT: It's already admitted.

25 MS. COFFEY: Okay. Sorry.

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1 Q. (BY MS. COFFEY) Why did you recommend that Dr. Tudor be
2 denied tenure in 2009?

3 A. Because her portfolio did not reflect in any way that she
4 should receive tenure. After five or six years, if a person
5 has not met the qualifications and requirements and the
6 criteria for promotion and tenure, it isn't likely that
7 they're going to.

8 Q. All right. Do you recall that Meg Cotter-Lynch went up
9 for tenure in this same year, 2009?

10 A. Yes.

11 Q. Were Dr. Cotter-Lynch's -- was Dr. Cotter-Lynch's
12 portfolio comparable to Dr. Tudor's?

13 A. Absolutely not.

14 Q. Why not?

15 A. Dr. Cotter-Lynch had an outstanding portfolio, and her
16 record certainly would rival any assistant professor going up
17 for promotion and tenure.

18 Q. Let's go back a little bit.

19 Do you recall your meeting with Dr. Cotter-Lynch prior to
20 her submitting her portfolio?

21 A. Yes, I do.

22 Q. Was that a lengthy meeting?

23 A. Yes.

24 Q. Did Dr. Cotter-Lynch ask you a lot of questions?

25 A. She asked questions --

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1 MS. GALINDO: I'm going to object as to relevance,
2 Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: She asked questions.

5 Q. (BY MS. COFFEY) With respect to the information you
6 provided to Dr. Cotter-Lynch, was that similar to the
7 information you provided to Dr. Tudor?

8 A. It's exactly the same information that I provide
9 everybody. The questions may vary from the applicant, but the
10 information I provide is always the same, and then I address
11 their questions, which may not be the same and usually not.

12 Q. When you recommended tenure denial for Dr. Tudor, you
13 were aware that her tenure and review committee and her
14 department chair had recommended her for tenure; correct?

15 A. Yes.

16 Q. Did you have any concerns that you were going against
17 their recommendation?

18 A. My concern was why they passed on her portfolio.

19 Q. At some point did you learn that Dr. Mischo regretted
20 having recommended Dr. Tudor for tenure in 2009?

21 A. Yes.

22 MS. GALINDO: I'm going to object, Your Honor.
23 Calls for hearsay.

24 MS. COFFEY: I'll move on, Your Honor.

25 THE COURT: All right.

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1 Q. (BY MS. COFFEY) After you submitted your recommendation
2 for tenure denial, at some point Dr. Tudor asked you for an
3 explanation of that -- of your recommendation; right?

4 A. Yes.

5 Q. Did you give her that -- did you give her that
6 explanation?

7 A. No.

8 Q. Why not?

9 A. Because it wasn't policy.

10 Q. What do you mean?

11 A. We don't --

12 Q. I'm sorry. Let me -- I'll just help you.

13 It wasn't -- were you allowed to provide that --

14 A. I was not.

15 Q. -- explanation?

16 A. I was not.

17 Q. Who determined that, that you were not allowed to do
18 that?

19 A. Well, it's determined through the practice of the
20 university and --

21 Q. Did anybody instruct you that you were not to provide
22 her --

23 A. Yes.

24 Q. -- an explanation?

25 Who?

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1 A. Dr. McMillan.

2 Q. Do you recall providing Meg Cotter-Lynch with an
3 explanation of why you recommended her tenure?

4 A. What? I'm sorry?

5 Q. Did you provide Meg Cotter-Lynch a detailed explanation
6 as to why you recommended her tenure?

7 A. No.

8 MS. COFFEY: May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 Q. (BY MS. COFFEY) Dr. Scoufos, do you recognize this
11 document that is identified as Defendants' Exhibit 59?

12 A. Yes.

13 Q. What is it?

14 A. It's a memo to me from Dr. Tudor.

15 MS. COFFEY: I'd move for the admission of
16 Defendants' Exhibit 59.

17 THE COURT: Already admitted.

18 MS. COFFEY: I'm sorry. I'll withdraw that request.

19 Q. (BY MS. COFFEY) Dr. Scoufos, do you recall -- let's go to
20 a meeting that you had, this meeting, April 6th of 2010.

21 Do you recall having a meeting with Dr. Tudor in which
22 Dr. Mischo was present?

23 A. Yes.

24 Q. What happened at that meeting?

25 A. I -- I'm not sure.

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1 Q. What was the purpose of that meeting?

2 A. The purpose of the meeting was for me to advise Dr. Tudor
3 that if -- if she would withdraw her application -- I mean,
4 her -- withdraw her application to reapply, that she would be
5 allowed not only the extra year that had already been given
6 her after she had been denied promotion and tenure, but an
7 additional year to that. So that would give her two years to
8 go -- to reapply.

9 Q. Was she told that she must withdraw her tenure
10 application in order to obtain this extra year?

11 A. Yes. That -- that was the condition. If she would
12 withdraw her application to reapply -- this isn't her first
13 application, but to reapply, that she would be given an
14 additional year to the additional year that she had already
15 been given.

16 Q. Well, you -- to be clear, because she'd already applied
17 for tenure but withdrawn her tenure application in 2008;
18 correct?

19 A. She'd already -- she applied once.

20 Q. Right.

21 A. And she --

22 Q. She withdraw that application?

23 A. At the committee level.

24 Q. I'm sorry. I'm just trying to move us fast forward so
25 that we're clear as to where we are.

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1 So this offer you gave to her in April of 2010, was this
2 an offer you came up with and were making her?

3 A. No. This was --

4 Q. Whose offer was it?

5 A. This was an offer that came down from President Minks and
6 Vice President McMillan.

7 Q. All right. You read this -- is that your handwriting in
8 the upper right corner of the document?

9 A. Yes.

10 Q. Is this how you recall -- is this what you recall took
11 place during this meeting?

12 A. Yes.

13 Q. All right. Why was -- let me go back.

14 The additional time. If she wasn't given this additional
15 time, she would be approaching her seventh year in the school
16 year of 2010-2011; right?

17 A. Right.

18 Q. And, normally, a professor that hasn't obtained tenure
19 within seven years must leave; correct?

20 A. Correct.

21 Q. So this offer was allowing her an eighth year to obtain
22 tenure; correct?

23 A. Yes.

24 Q. What was the purpose of allowing her this extra time?

25 A. The same reason -- well, in order to -- for her to bring

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1 her portfolio forward in a manner -- to do things -- to get
2 her scholarship and service and teaching up to par and then
3 reapply so she would have a better chance. Because if she
4 went up the very next year, she wouldn't have had time to
5 correct the deficits in her portfolio. She would have only
6 had a summer to do that. So --

7 Q. All right.

8 A. -- the recommendation was we'll give you another year to
9 bring it up to par, correct the deficits, and then apply that
10 next year.

11 Q. All right. And you presented this offer to Dr. Tudor;
12 correct?

13 A. Yes.

14 Q. Did you tell her it was a gift?

15 A. Yes, I did.

16 Q. Why?

17 A. Because it was a gift. It was a -- it's unheard of. And
18 to give her the opportunity -- she had nothing to lose. It
19 was a gift because she had already -- at the end of that next
20 year -- we already gave her one year.

21 Q. All right.

22 A. But to give her another year, two years after she had
23 been terminated, that's a gift.

24 Q. I'm sorry. You don't mean she had been terminated. She
25 hadn't been terminated, correct, at this time? She hasn't

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1 been terminated; right?

2 A. Perhaps I'm not using that word correctly, but --

3 Q. Tenure denial because her --

4 A. Tenure denial.

5 Q. Again, so there's no confusion, if an applicant withdraws
6 their tenure application during the process, they are not
7 officially denied tenure during that process; correct?

8 A. Correct.

9 Q. That's what happened in 2008; right?

10 A. Yes.

11 Q. Okay. So this letter then -- this letter written from
12 Dr. Tudor to you, she's rejecting the offer; correct?

13 A. Yes.

14 Q. During your meeting, did Dr. Tudor ever ask you to put
15 this offer in writing?

16 A. No.

17 Q. Can you find any indication in her letter to you
18 rejecting the offer where she's asked for this offer to be
19 placed in writing?

20 A. No.

21 Q. Did you advise Dr. Tudor as to whether or not she should
22 accept this offer?

23 A. No.

24 Q. Why not?

25 A. Because it wasn't within my purview to advise her on

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1 anything. I did say that it was a gift, and Dr. Mischo agreed
2 that it was a gift.

3 Q. Were you involved in the decision in the fall of 2010 as
4 to whether Dr. Tudor could reapply for tenure?

5 A. I'm sorry. Would you repeat that?

6 Q. In the fall of 2010, you're aware that Southeastern
7 determined that Dr. Tudor would not be allowed to reapply for
8 tenure; right?

9 A. Right.

10 Q. Were you involved in that decision?

11 A. No.

12 Q. Dr. Tudor [sic], Mindy House testified yesterday. Did
13 Mindy House work in the -- your department as dean of arts and
14 sciences?

15 A. Yes.

16 Q. What was her job title?

17 A. She was executive assistant to the dean.

18 Q. Is it your understanding that Ms. House accused you of
19 making some fairly ugly discriminatory statements yesterday?

20 A. I'm sorry?

21 Q. Is it your understanding that Mindy House has accused you
22 of making several discriminatory statements?

23 A. No.

24 Q. Okay. Did you ever make statements that Dr. Tudor was
25 trying to look feminine?

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1 A. (Shakes head.)

2 THE COURT: Yes or no.

3 Q. (BY MS. COFFEY) You must say yes or no.

4 A. I'm sorry. No.

5 Q. Did you ever criticize Dr. Tudor's clothing choices?

6 A. No.

7 Q. Did you generally make fun of Dr. Tudor?

8 A. No.

9 Q. Do you recall Mindy House ever doing any of those things
10 I just asked you about?

11 A. Mindy would make snarky remarks about Dr. Tudor.

12 Q. Did Mindy make snarky remarks about other faculty and
13 staff as well?

14 A. Yeah. Yes.

15 Q. Did you direct Mindy to follow Dr. Tudor's Facebook page
16 or blog and report back to you what people were saying about
17 you?

18 A. Absolutely not. As a matter of fact, I asked -- because
19 Mindy would follow -- I don't know about blogs. I just know
20 about Facebook. That she would follow, and then she would
21 tell me. It was just very disturbing. And I'm not one to add
22 misery to my life if I don't have to. So I said, "Mindy,
23 don't tell me what's on Facebook. Don't tell me what you
24 hear. It's just upsetting, and I'd rather not hear it." So
25 she didn't anymore.

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1 Q. When the affirmative action officer was doing an
2 investigation regarding Dr. Tudor's discrimination complaints,
3 did you ever instruct your staff not to diligently look for
4 documents that had been requested?

5 A. Absolutely not. I knew where all the documents were.

6 Q. Dr. Scoufos, are you aware that Dr. Tudor is accusing you
7 of discriminating against her because she's transgender?

8 A. Yes. Yes, I am.

9 Q. And how do you feel about that?

10 MS. GALINDO: I'm going to object, Your Honor.
11 Calls for speculation.

12 THE COURT: Overruled.

13 THE WITNESS: Well, besides being highly insulting,
14 it's -- it's very hurtful to be accused of something so
15 despicable, so reprehensible as discrimination of any kind to
16 anybody.

17 Q. (BY MS. COFFEY) Have you ever been -- other than
18 Dr. Tudor, have you ever been accused of discriminating
19 against somebody?

20 A. No.

21 Q. What role did Dr. Tudor's transgender status play in your
22 determination to not recommend tenure?

23 A. It didn't play at all.

24 Q. When you evaluated Dr. Tudor on her merits in 2009, what
25 did you determine with respect to whether she was qualified

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1 for tenure?

2 A. I'm sorry?

3 Q. When you reviewed Dr. Tudor's portfolio in 2009, you
4 reviewed it on the merits; correct?

5 A. Absolutely.

6 Q. And what was your decision based upon her merits?

7 A. That she didn't qualify for promotion and tenure.

8 Q. When one is denied tenure at a university, is that the
9 end of their academic career completely?

10 A. At that university.

11 Q. Do they have the ability to go to another college or
12 university and have a successful career?

13 A. Yes, they do, and that was part of the reason that she
14 was given another year. That was the reason that she was
15 given another year, so she could look for employment.

16 Q. If somebody is denied tenure at one university, does it
17 ruin their professional reputation?

18 A. I -- I would suppose not. It depends, I guess, why they
19 were terminated.

20 MS. COFFEY: Pass the witness, Your Honor.

21 THE COURT: We'll take our morning break. Don't
22 discuss the case or permit others to discuss it with you. Be
23 back in the jury deliberation room at 20 till.

24 And we'll be in recess.

25 (Jury exits courtroom.)

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1 (In recess from 10:20 a.m. to 10:45 p.m.)

2 (Jury enters courtroom.)

3 THE COURT: Please be seated.

4 Ms. Galindo, you may cross-examine.

5 MS. GALINDO: Thank you, Your Honor.

6 THE WITNESS: I just needed a little mint.

7 THE COURT: Proceed.

8 MS. GALINDO: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 BY MS. GALINDO:

11 Q. Now, Dean Scoufos, you and I don't know each other --

12 A. No.

13 Q. -- right?

14 We just had an opportunity to visit just for a few
15 minutes?

16 A. Yes.

17 Q. You understand I have a job to do this morning?

18 A. Yes.

19 Q. Now, you know someone by the name of Mindy House or
20 Melinda House?

21 A. Yes.

22 Q. And she was your assistant; is that right?

23 A. Yes.

24 Q. And a pretty special person, am I right?

25 A. Very, very.

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1 Q. In fact, you trust her with your life; is that correct?

2 A. I did trust her with my life because she saved it. That
3 was another Mindy in another time.

4 Q. How long did she work with you?

5 A. She -- when I became dean of arts and sciences in 2008,
6 she was already the assistant there to the former dean. So
7 from 2008 through 2016.

8 Q. That's a long time.

9 A. A very long time.

10 Q. So when you testified just last year, I believe --

11 A. Yes.

12 Q. -- you said, "I think I could trust Mindy with my life
13 and, in fact, I did"?

14 A. Yes, I did say that. And at that time I meant it.

15 Q. And when you came in in 2008, did you say you established
16 some new rules for tenure?

17 A. No. I established -- I established new guidelines for
18 portfolios.

19 Q. And that would certainly impact how tenure would be
20 reviewed?

21 A. No.

22 Q. Well, you've discussed that you thought the rules called
23 for messy portfolios; correct?

24 A. I'm sorry?

25 Q. You've testified that the former rules called for messy

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1 portfolios; isn't that correct?

2 MS. COFFEY: Objection. Misstates the witness's
3 testimony.

4 THE WITNESS: No.

5 THE COURT: Overruled.

6 THE WITNESS: No, what I --

7 Q. (BY MS. GALINDO) "No" is your answer?

8 A. "No" is my answer.

9 Q. And isn't it true there's nothing requiring
10 recommendation letters?

11 A. That's absolutely true.

12 Q. But you were incredibly harsh on Dr. Tudor's application
13 because of the recommendation letters; isn't that right?

14 A. They're not required, but once you put them in the
15 portfolio --

16 Q. Is that a yes or a no, ma'am?

17 A. Would you restate the question so I can answer it yes or
18 no?

19 Q. You testified that recommendation letters are not
20 required; correct?

21 A. That's correct.

22 Q. Yet you were incredibly harsh on Dr. Tudor's review of
23 her application because of the recommendation letters; isn't
24 that right?

25 A. That's right.

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1 Q. You've testified before that tenure is about image. And
2 image is important with you, isn't it?

3 A. I don't think I've ever used the word "image."

4 Q. So when you told that to an EOC investigator --

5 MS. COFFEY: Objection. Outside the scope of
6 direct.

7 THE COURT: Overruled.

8 You may answer.

9 THE WITNESS: I don't recall ever using the word
10 "image," so I don't know what the question was at the time.

11 Q. (BY MS. GALINDO) And can we agree that if I ask a
12 question and it's just a yes or no, that you'll be happy to do
13 that?

14 A. I'm sorry. Yes, I will be happy to do that.

15 Q. Thank you, ma'am.

16 And you've also said that portfolios should be a
17 reflection of who the professor is; correct?

18 A. No.

19 Q. So when you stated that to the investigator, you
20 misstated that?

21 MS. COFFEY: Objection, Your Honor. Assumes facts
22 not in evidence.

23 THE COURT: Overruled.

24 Q. (BY MS. GALINDO) Yes or no?

25 A. Yes, I misstated that.

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1 Q. And you discounted a letter of recommendation because it
2 characterized Dr. Tudor differently? Yes or no.

3 A. Ask the question again, please.

4 Q. You discounted a letter of recommendation touting
5 Dr. Tudor because of a mischaracterization about Dr. Tudor?

6 A. I don't know how to answer that, because I don't know --
7 I don't recall anything about that.

8 Q. You've testified this morning, you've testified in 2016,
9 you talked about this to the investigator in 2012, and you
10 said, quote, I'm shocked that she submitted a letter that
11 referred to her under a different name.

12 Do you remember that?

13 A. That's out of context, but I do remember that.

14 Q. You said that; correct?

15 A. I did say that in context.

16 Q. And what does that have to do with her qualifications?

17 A. It wasn't because it was under a different name; it was
18 because it was submitted as a recommendation for Dr. Robert
19 Tudor when he applied at ASU.

20 It was not within the time period after he was hired and
21 during that work period.

22 Q. And I understand you've testified to that this morning,
23 but wouldn't the events of how you viewed the portfolio for
24 Dr. Tudor be fresh on your mind more so in 2012 than today?
25 Yes or no.

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1 A. Certainly, yes.

2 Q. So if you didn't say anything about the letter being out
3 of time or outside the scope or window of time then, that
4 would be more accurate, wouldn't it?

5 A. I'm sorry. I'm not following you.

6 Q. So if you discounted the letter for Dr. Tudor -- now
7 you're saying you discounted one of those letters because it
8 was outside a time frame, but that's not what you said in
9 2012.

10 You understand that? Yes or no.

11 A. I understand what you're saying, yes.

12 Q. And you made revisions to the rules concerning tabs, the
13 table of contents; is that true?

14 A. There were no rules.

15 Q. But did you make rules for that? Yes or no?

16 A. These were suggestions. They did not have to do them.
17 There were no rules, and I didn't make any rules.

18 Q. So --

19 A. These were guidelines.

20 Q. So you made guidelines.

21 Guidelines are a lot like rules; correct?

22 MS. COFFEY: Objection. Argumentative.

23 THE COURT: Overruled.

24 THE WITNESS: Not to me. A guideline is something
25 that I can take or leave; a rule is something I must abide by.

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1 Q. (BY MS. GALINDO) But if you're judging a document or a
2 person or their job or performance by a guideline, it sure
3 sounds like a rule; right?

4 A. It doesn't sound like a rule to me.

5 I always made it clear in those sessions --

6 Q. I'm sorry. I haven't asked another question.

7 You said you didn't bring your personal life to the
8 university; correct?

9 A. When did I say that? I don't know that I said that.

10 Q. You're married to Dr. Snowden?

11 A. Yes.

12 Q. Would you agree with Dr. Snowden that a good way to
13 remove bias from tenure review is to have review from your
14 peers at maybe another university?

15 A. That would be a good policy. Yes, I get -- yes, I agree.

16 Q. You spent, you said, an hour with the -- with Dr. Tudor
17 when she requested an appointment to discuss her application;
18 correct?

19 A. Yes.

20 Q. And it seems to me, based on your notes, you spent the
21 bulk of that talking about Dr. Coleman; isn't that right?

22 A. No.

23 Q. You said you were shocked because Dr. Coleman wouldn't
24 hold it against her for being transgender because she's
25 liberal; is that right? Yes or no.

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1 A. I would have to have "liberal" defined. I called her
2 open-minded and unprejudicial. I don't recall ever having
3 called her liberal.

4 Q. You don't recall telling the investigator that?

5 A. I do not recall having ever called her liberal.

6 Q. And open-mindedness, if -- why was that a unique criteria
7 for Dr. Tudor on who she wanted to chair the committee?

8 A. Because Lisa Coleman is so open-minded, I could hardly
9 believe that she would in any way discriminate against
10 Dr. Tudor or anyone else for a choice that they made as an
11 adult pertaining to their lifestyle.

12 Q. So you're saying she wouldn't judge her for being
13 transgender; correct? Yes or no.

14 A. Correct.

15 Q. So you right away, right out the gate, started
16 classifying Dr. Tudor's portfolio in the transgender stack; is
17 that correct?

18 A. No.

19 Q. I notice we've seen lots of exhibits this morning with
20 your handwriting.

21 Wouldn't it be prudent -- you've done this a long time;
22 right?

23 A. Right.

24 Q. And your decisions affect people's lives profoundly;
25 correct?

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1 A. Correct.

2 Q. In fact, one's professional reputation follows us around
3 like a shadow for our whole lives; correct?

4 A. In some cases.

5 Q. Mostly; right?

6 A. I don't know.

7 Q. And with such pivotal, momentous decisions, where you
8 don't get many bites at the apple, wouldn't it make sense, if
9 you sat there and reviewed what you felt was the criteria for
10 the submission of an application for tenure, to make sure that
11 individual understood everything by reducing the memorandum to
12 writing and having them sign off on it? Wouldn't that make
13 sense?

14 A. Which memorandum?

15 Q. You have a paper trail, correct, allegedly, of what
16 transpired, in your words, during those meetings; correct?

17 A. Right.

18 Q. But none of those things gave Dr. Tudor an opportunity to
19 review if, in fact, those matters were discussed with her so
20 that maybe we could confirm it with her signature.

21 Do you understand that? Yes or no.

22 A. I understand that, yes.

23 Q. And you'd agree with me her signature doesn't confirm
24 what you've written down; correct?

25 A. Correct.

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1 Q. You think highly of Dr. Mischo?

2 A. I only know him in a professional manner, and he was
3 chair when I became dean. And --

4 Q. Is that a yes or a no, ma'am?

5 A. Yes. Otherwise, he wouldn't have remained chair.

6 Q. So if Dr. Mischo has testified what you're calling a gift
7 was an ultimatum, you disagree with him?

8 A. I disagree with that. It was not an ultimatum; it was a
9 choice, an option.

10 Q. Dean Scoufos, I believe we agreed that you'd answer the
11 question --

12 A. I'm sorry.

13 Q. Thank you.

14 A. I thought I was.

15 Q. On such an important matter, was it wrong for Dr. Tudor
16 to request someone who would be fair to chair the faculty
17 committee?

18 A. Absolutely.

19 Q. You mentioned that Plaintiff's Exhibit 1, the 2009
20 portfolio, is incomplete.

21 Is that your testimony? Yes or no.

22 A. No, that isn't my testimony.

23 Q. You said there are matters that are not in Plaintiff's
24 Exhibit 1; correct?

25 A. That's correct, but the rest of that portfolio, I have

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1 not seen.

2 Q. What are the contents of that portfolio? Please recite
3 them.

4 A. Of this portfolio?

5 Q. Of the portfolio you feel would be the complete 2009
6 portfolio.

7 A. It isn't a matter of it being complete or incomplete; it
8 isn't the same information that was in the other portfolio.
9 There wouldn't be a complete or incomplete.

10 There was information in the other portfolio that isn't
11 here, and there's information in this portfolio that wasn't in
12 the first one. I have not seen most of this.

13 Q. Now -- so I'm a little confused. Is it complete or not
14 complete? Yes or no. One of those. Which is it?

15 MS. COFFEY: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: Sustained.

18 Q. (BY MS. GALINDO) You discounted Dr. Tudor's cover letter;
19 correct?

20 A. It wasn't a cover letter. It was a letter of
21 application.

22 Q. I appreciate that.

23 The letter of application, you held that against
24 Dr. Tudor when you reviewed her tenure application; correct?
25 Yes or no.

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1 A. It was not a valid letter of application.

2 Q. You didn't like that she referenced other individuals who
3 are staff members in that letter?

4 A. What I didn't like, and I --

5 Q. Is that a yes or a no?

6 A. No.

7 THE COURT: Ms. Galindo, not every answer can be yes
8 or no. She's entitled to give an answer.

9 MS. GALINDO: Thank you.

10 THE COURT: Not a narrative, but an answer.

11 MS. GALINDO: Thank you, Your Honor.

12 THE COURT: You may answer.

13 THE WITNESS: Would you state the question again,
14 please?

15 Q. (BY MS. GALINDO) You denied in part Dr. Tudor's tenure
16 based on that application letter; correct?

17 A. Yes.

18 Q. And your testimony has been because it referenced other
19 staff members?

20 A. No. I discounted the letter of application because it
21 wasn't about Dr. Tudor. It included the policies that are not
22 in place, such as giving secretaries tenure or giving
23 instructors tenure when that is not allowed.

24 The letter of application was supposed to be about
25 Dr. Tudor and not a narrative on what should be done. And she

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1 certainly would not be in a position to say that the secretary
2 and an instructor from another department should be promoted
3 and tenured.

4 It wasn't about them. And I'm not discrediting those two
5 people, because that secretary is a premiere secretary on that
6 campus, one of the top if not the top. That instructor is a
7 premiere instructor.

8 But it was not appropriate, it was not applicable, and it
9 was not -- it was not in the interest of Dr. Tudor. It had
10 nothing to do with those two people.

11 Q. (BY MS. GALINDO) So an expression of respect for
12 colleagues, including -- including other staff members as
13 colleagues, that was just not satisfactory?

14 A. It wasn't that she put that in. It is that it wasn't --
15 it didn't pertain to a letter of application that was supposed
16 to be about her.

17 They were not going up for promotion and tenure; she was.
18 So the letter of application is to show why she believed that
19 she should get promoted and tenured.

20 Q. Isn't it true that this ultimatum that was given to
21 Dr. Tudor, it had a very narrow timeline; right? By 5:00 p.m.
22 that day; isn't that right?

23 A. Yes.

24 Q. So you -- someone has to make a -- Dr. Tudor had to make
25 a determination about the rest of her life within a few hours?

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1 That sounded reasonable to you?

2 A. I was given the directive to give that option to
3 Dr. Tudor. It was not my decision. I was not part of the
4 discussion. I was given a directive by the president and the
5 vice president for academic affairs to present that option.

6 There was no ultimatum. Her deadline was at five
7 o'clock. President Minks set the deadline; I simply relayed
8 it.

9 Q. I'm sorry if I didn't ask that clearly enough.

10 That ultimatum -- how many hours did she have to agree to
11 that?

12 A. She had until five o'clock. And I don't recall the time
13 we met, but it was a few hours.

14 Q. And just like this (snaps fingers), her future was gone,
15 right, because of that ultimatum?

16 A. It was not an ultimatum; it was an option, a choice for
17 her. Her future wasn't gone just like that, because she could
18 choose to stay two years and reapply at that time to get her
19 portfolio in line. It was a gift.

20 Q. But at 5:00 p.m. that changed; correct?

21 A. At 5:00 p.m. is the deadline that President Minks set,
22 and I do not know his reason because it was not discussed with
23 me, but it was --

24 Q. I'm sorry. I didn't ask you his reason; right?

25 A. -- a directive.

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1 Q. Sorry about that.

2 I believe we've heard that the ultimatum was to give her
3 more time to find another job. And you've also testified --

4 A. No, that was the first year.

5 Q. If I may finish, ma'am. I'm sorry.

6 A. I'm sorry.

7 Q. Just so you know, the court reporter can't take this down
8 if we're both speaking at the same time.

9 So you've characterized the message from Dr. McMillan and
10 Dr. Minks, correct, as a gift that ended at 5:00 p.m. in two
11 different respects: One, it gives her more time to submit and
12 work on her portfolio, or to look for other employment.

13 Which is it?

14 A. That option given her was to give her time to work on her
15 portfolio for the next year and then resubmit it the second
16 year.

17 Before this came up, she was given a year after being
18 denied promotion and tenure to stay on campus, to continue
19 with her duties, and have the opportunity to have time to find
20 another job.

21 Those are two different occasions and two different
22 years. And it was a gift.

23 Q. But you'd agree, when you're making such important
24 decisions -- and not just professional, but -- you know that
25 Dr. Tudor, just like you testified today, wanted to be at

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1 Southeastern to be near her family; right?

2 A. I don't know why. I wasn't there when she came.

3 Q. But being close to family, it doesn't get more important
4 than that; right?

5 A. I think that it's important.

6 Q. And she had until 5:00 p.m. to decide her job, where
7 she'd live, and how that would affect her family.

8 You understand that; right?

9 A. I do not interpret that the same way.

10 Q. Now, do you know Dr. Knapp?

11 A. Yes.

12 Q. You know that he served on the appellate review
13 committees?

14 A. Yes.

15 Q. And he said it would have been something the -- that when
16 tenure was denied, it should have been explained to Dr. Tudor.

17 Do you agree with that?

18 A. At that juncture, I do not agree with that.

19 Q. But you've testified it's -- that you don't have a
20 problem with folks asking you questions, what do they need to
21 do.

22 So an explanation, wouldn't that have helped a decision
23 that was necessary by 5:00 p.m? Wouldn't it have provided
24 guidance to her?

25 A. That's why we were making the offer, so we could guide

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1 her through another year to resubmit it at the end of that
2 year rather than submitting it the next year when she didn't
3 have time to bring her portfolio up to par.

4 That's why it was a gift. She wanted to submit -- to
5 reapply that very next fall. We were already in the spring.
6 She couldn't do -- she couldn't get it done by that time.

7 So we said, okay. And by "we," I had nothing to do with
8 that, but I'm going to say "we" for the university.

9 So we said, if you'll withdraw your portfolio, because
10 you don't have time to bring it up to par, you just don't have
11 time to get all this done that you need to get done, so we're
12 going to --

13 MS. GALINDO: I'm going to move to strike as
14 nonresponsive.

15 THE COURT: Just ask another question.

16 MS. GALINDO: Thank you, Your Honor.

17 Q. (BY MS. GALINDO) Your testimony this morning was that you
18 had -- you were not part of the decision-making as to what
19 would happen ultimately to Dr. Tudor at the university; is
20 that right?

21 A. That's right.

22 MS. GALINDO: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. (BY MS. GALINDO) Do you know a gentleman by the name of
25 Mr. Babb?

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1 A. Yes.

2 Q. Who is that?

3 A. He is the attorney for the university.

4 Q. And he tells you what the law is, you go over rules with
5 him; correct?

6 A. Right.

7 Q. And he gives you guidance on how not to break the rules
8 and law; correct?

9 A. Correct.

10 Q. And you consulted with him, along with Dr. McMillan and
11 Dr. Minks; isn't that right?

12 A. I did not consult with him. I was in Dr. McMillan's
13 office, and Dr. McMillan called him. And I didn't consult
14 with him with Dr. Minks.

15 Q. So you were never privy to those discussions. Is that
16 your testimony?

17 A. To what Mr. Babb said?

18 Q. Yes. The advice he gave with respect to Dr. Tudor and
19 her employment at Southeastern University.

20 A. I was there in Dr. McMillan's office, and they had a
21 telephone conversation, and I was present.

22 MS. GALINDO: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. (BY MS. GALINDO) I've got what's Exhibit 5.

25 Do you recognize that?

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1 A. I vaguely recall this.

2 THE COURT: I'm sorry. I didn't hear you.

3 THE WITNESS: I vaguely recall.

4 Q. (BY MS. GALINDO) What is that? That's an e-mail from
5 you; correct?

6 MS. COFFEY: Objection, Your Honor. The witness has
7 not identified the document yet. Counsel is testifying.

8 THE WITNESS: It's an e-mail to me, not from me.

9 Q. (BY MS. GALINDO) Is that your name at the top?

10 A. It's from Charles Weiner to Dr. McMillan, Larry Minks,
11 and Lucretia Scoufos. It isn't from me; it's to me.

12 Q. And you'd agree that you're one of the decision makers in
13 this e-mail identified by Dr. Weiner?

14 A. I don't --

15 Q. Do you need a few minutes to refresh your --

16 A. I just remember this vaguely, but this wasn't about
17 giving her another year to resubmit, as I recall.

18 Q. But do you recognize that e-mail?

19 MS. COFFEY: Your Honor, could --

20 THE COURT: Would you go to the podium so that I
21 could hear you?

22 I'm sorry. What?

23 MS. COFFEY: Your Honor, we just wanted her to
24 return to the podium so we could hear her questions.

25 Q. (BY MS. GALINDO) Have you had an opportunity to refresh

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1 your memory?

2 A. Yes.

3 Q. And in that e-mail, which is Exhibit 35, you are included
4 in it by the attorney with respect to -- in addition to
5 Dr. Minks and Dr. McMillan; correct?

6 A. Yes.

7 Q. So you were a decision maker in what happened with
8 respect to Dr. Tudor's employment at Southeastern; right?

9 MS. COFFEY: Objection, Your Honor. Misstates the
10 evidence that's already been introduced, and it misstates the
11 witness's testimony.

12 THE COURT: The witness can speak for herself.
13 Overruled.

14 THE WITNESS: I became -- when I wrote my opinion
15 after reviewing her portfolio and not recommending her for
16 promotion and tenure but to give her another year in her
17 terminal year -- that would have been the next year -- in
18 order that she could look for other employment.

19 To look for other employment isn't stated anywhere, I
20 don't believe. That was my decision.

21 I was not party to the decision on whether to let her
22 reapply the following year and to give her an additional year.
23 I was not part of that decision.

24 I made my recommendation to get -- to let her have an
25 additional year in her terminal year. That was the following

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1 year. I made that recommendation. I put it in writing. That
2 is not unusual.

3 But I was not part of the decision to let her have
4 another year so that she could reapply. One year so she could
5 look for employment but not with any stipulation that she
6 could reapply. Just that she would have another year, her
7 terminal year.

8 And then it was given to me as a directive to give her
9 the option, if she would withdraw her application, that we
10 would add another year to that first year we had given her so
11 that she could reapply then.

12 I was not part of that decision.

13 MS. GALINDO: Your Honor, I'd like to move to
14 introduce Plaintiff's Exhibit 35.

15 THE COURT: 35?

16 MS. GALINDO: Yes, Your Honor. I apologize. I may
17 have misspoke it.

18 THE COURT: I thought you said 5.

19 MS. GALINDO: I --

20 THE COURT: Any objection?

21 MS. COFFEY: No objection.

22 THE COURT: Admitted.

23 Q. (BY MS. GALINDO) You'd agree that this is a letter that
24 reviews the rules, correct, that the --

25 A. Yes.

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1 Q. -- university should follow?

2 A. Yes.

3 Q. You'd also agree that there is confirmation that the
4 rules are conflicting; correct?

5 MS. COFFEY: Objection, Your Honor. Misstates the
6 evidence. This witness did not write this document. This
7 witness is not --

8 THE COURT: This witness can answer for herself.
9 Answer the question.

10 THE WITNESS: I'm sorry. I don't know what the
11 question is.

12 Q. (BY MS. GALINDO) Isn't it true that, while citing the
13 rules that are to be followed with respect to employment,
14 specifically with respect to Dr. Tudor's employment, there is
15 a statement that the rules are, in fact, in conflict? Isn't
16 that right?

17 A. Yes.

18 Q. And it provides that there were options; correct?

19 A. Correct.

20 Q. What were those options as --

21 A. Are you talking about the bullet points --

22 Q. Can you go to page 2 of -- I'm sorry.

23 A. The bullet points?

24 Q. Page 2, yes, ma'am.

25 A. Yes.

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1 Q. And it refers to two options; correct?

2 A. Yes.

3 Q. And it was e-mailed to you; correct?

4 A. Yes.

5 Q. So you were a part of the decision-making?

6 A. No.

7 Q. So it was -- you were inadvertently included?

8 A. Because I received this does not mean that I was part of
9 that decision-making.

10 I was apprised of this. I was not part of the decision
11 to give her that second year to reapply if she withdrew. That
12 was made by Dr. Minks and perhaps -- I don't know if there was
13 a directive to Dr. McMillan from Dr. Minks, but it was
14 ultimately Dr. Minks's decision. I was not party to that
15 decision. I was not part of it.

16 A directive was given to me to make that -- give her that
17 option and to say the deadline. I was doing exactly what I
18 was told.

19 Q. And you were told a lot; right? This was different, this
20 tenure application, wasn't it?

21 A. It was -- it was different inasmuch as she had, as I
22 recall, appealed not being told, but nothing else -- and that
23 started it being different.

24 But we did not give reasons. When I came to
25 Southeastern, Dr. Snowden was vice president for academic

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1 affairs. I was a faculty member.

2 When Dr. Snowden left, Dr. Minks came in as vice
3 president for academic affairs. That policy was in place with
4 Dr. Minks, that we would not discuss why somebody was not
5 promoted and tenured. That was before Dr. Tudor.

6 Q. So I apologize, because maybe I asked a poorly worded
7 question.

8 My question is Dr. Tudor's application was treated
9 differently because, before you made a decision, you were
10 talking to Dr. McMillan about it; right?

11 A. No.

12 Q. You were talking to Randy Prus about it; right?

13 A. No.

14 Q. Are you telling this jury that you never reached out to
15 find out about what the poetry reference in the portfolio is?

16 A. That is not unusual for me to do that. I called -- I
17 didn't contact Randy first. I contacted Lisa Coleman first
18 to -- because we have open mic and communication.

19 Therefore -- and this was in English, in the department of
20 English.

21 I wanted a clarification if an open mic meant the same
22 thing in English -- in the English department as it did in the
23 communication department.

24 So I called Lisa Coleman to find out what was an open mic
25 in English. Lisa Coleman said, "I don't know. I'm not

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1 familiar with that."

2 So then she said, "Call Randy. He will know."

3 So I called Randy, and he said it's simply when -- for
4 example, at a coffeehouse, you can get up and read your own
5 poem.

6 That is not unusual for me to do that. I've done that
7 many times before Dr. Tudor. If there is something that I'm
8 not clear about, I've called other professors at other
9 universities to find out information that I was not clear on.

10 Q. But isn't it curious that, with respect to Dr. Tudor's
11 application, you called the individuals that spoke unfavorably
12 regarding Dr. Tenure's [sic] --

13 A. No.

14 Q. -- Dr. Tenure's tenure application; is that right?

15 A. No, that is not right.

16 I did not know who had spoken for or against her. I had
17 no idea what even the vote was on the committee, her review
18 committee.

19 I never knew that -- and I still don't know that Lisa or
20 Randy Prus spoke against her. Those -- those decisions for
21 those committees are supposed to be kept confidential.

22 Unfortunately, when Dr. Tudor went up the first time, it
23 wasn't confidential because Mark Spencer told her that they
24 had unanimously voted against her and she should withdraw.
25 That was the year before. Nor did I know about that.

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1 Q. When did you make your decision with respect to
2 Dr. Tudor's tenure application?

3 A. When I finished reviewing her portfolio.

4 Q. What was the date?

5 A. I don't know the date right offhand, but it would have
6 been in January.

7 Q. Of what year?

8 A. Well, she --

9 Q. 2010?

10 A. -- went up in '9-'10. So it would have been January '10.

11 MS. GALINDO: May I approach, Your Honor?

12 THE COURT: Yes.

13 Q. (BY MS. GALINDO) I've got what's been marked as
14 Plaintiff's Exhibit 127.

15 Do you recognize that?

16 THE COURT: Please return to the podium once you've
17 given her the document.

18 MS. GALINDO: Thank you, Your Honor. I'm learning,
19 Judge. Thank you.

20 THE WITNESS: We discussed this again after that.

21 Q. (BY MS. GALINDO) But the date here is April 30th, 2010;
22 correct?

23 A. Right. But I had two other discussions about open mics,
24 and then there was another expression that I wasn't -- open
25 mic chapbook.

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1 This was after I had already asked about it before.

2 MS. GALINDO: Your Honor, at this time I'd like to
3 move to introduce Plaintiff's Exhibit 127.

4 MS. COFFEY: No objection.

5 THE COURT: Admitted.

6 Q. (BY MS. GALINDO) So part of your consideration in January
7 was with respect to the open mic? Yes or no.

8 A. Yes.

9 Q. Yet in this e-mail dated April 30th, 2010, about three
10 months later, you're getting a response.

11 "Lucretia, I don't know" -- I apologize, Dean. Is that
12 your first name?

13 A. It is.

14 Q. "I don't know of an open mic publisher. I take the term
15 to mean unpublished or self-collected. Poetry generally
16 circulates in communities of mostly small journals," and it
17 goes on and on, and it answers your question; correct?

18 A. Correct. My first time I talked, it was on the phone --

19 Q. Yes or no.

20 A. Yes.

21 Q. And did you go back after this e-mail and review
22 Dr. Tudor's application again? Yes or no.

23 A. No.

24 Q. And you understand that the allegations of discrimination
25 is that -- it's because Dr. Tudor's transgender; correct? You

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1 understand that?

2 A. I didn't understand what you said, the first part of your
3 sentence.

4 Q. You do understand that the allegation of discrimination
5 involves the fact that Dr. Tudor's transgender; correct?

6 A. Yes.

7 Q. So did you misspeak earlier when you said something
8 different?

9 A. I didn't know that I had been asked if it was about
10 discrimination. So if I said that I didn't know that it was
11 about discrimination, I would have been -- I was misspoken --
12 I had misspoken, because it's always been about
13 discrimination.

14 Q. Is it your testimony that Mindy House came in here and
15 lied under oath about the environment, about the comments, and
16 about the torment coming from your office with respect to
17 Dr. Tudor?

18 A. If she testified to that, I vehemently disagree.

19 Q. Are you calling her a liar?

20 A. If she testified to that, I will say she lied.

21 Q. Would you agree with me that there seems to be a certain
22 level of disrespect for individuals that aren't professors at
23 your university?

24 A. I would certainly disagree with anybody who said that
25 there's a certain disrespect for people who are not faculty --

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1 did you say faculty or professors?

2 Q. Professors.

3 A. Absolutely, I disagree with that.

4 Southeastern --

5 THE COURT: You answered the question.

6 Q. (BY MS. GALINDO) The recommendation from someone in the
7 Spanish department -- correct?

8 A. Yes.

9 Q. -- isn't that included under -- isn't the Spanish
10 department under the English, Humanities, and Languages?

11 A. Yes.

12 Q. There was another letter you said from -- was it a
13 secretary?

14 A. Yes. Theresa Anderson. I don't recall --

15 Q. Is that a yes or a no?

16 A. I said, yes, Theresa Anderson.

17 Q. And none of those were acceptable; right?

18 A. Wrong.

19 Q. Which ones were acceptable?

20 A. I did not discount what Theresa Anderson said. I did not
21 discount what Corey Delashaw said. It isn't what -- I do not
22 recall ever having seen Dr. McGehee's letter. The first time
23 I saw that was just recently when I saw the portfolio that I
24 have now that I hadn't seen.

25 That isn't disregarded. That's a case of it isn't what

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1 was there; it's what wasn't there, that there were no letters
2 from her colleagues, no letter from her department chair.

3 So while Theresa Anderson, whom I revere highly, she's
4 not in a position to give a recommendation on a person's
5 teaching, scholarship, and service.

6 I didn't discount them. I would never discount anybody's
7 recommendation unless it was not within the time frame that
8 the person was going up for promotion and tenure.

9 Q. But your testimony is you don't even need a
10 recommendation letter; correct?

11 A. And that is -- that's in the stipulations on the packet
12 that I give. It is not a requirement; it is a recommendation.

13 Q. And --

14 A. But if you're going to put it in, it should be -- it
15 should be according to guidelines.

16 Q. And those guidelines, you seem to have a fixation with
17 tabs and table of contents and those things; right?

18 A. I do not have a fixation on them. I think that it
19 benefits the applicant to have a well-organized portfolio
20 because people don't read a portfolio the same way.

21 So if I pick up a portfolio and I want to go immediately
22 to scholarship, as some people do who are reviewing it, then
23 you have a tab and you can go right to it. If somebody else
24 wants to go to teaching, they can go right to it.

25 It's just a matter of convenience. As with a teacher in

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1 a classroom giving an assignment, they will give a format for
2 a paper they want.

3 Now, some faculty will say that's a requirement and if
4 you don't do that, that's 5 points off the top. Other faculty
5 will say, I would like for it to be in this format.

6 Q. And you do not --

7 A. It's just a recommendation. It's not a requirement. It
8 wasn't a requirement for her to make an appointment with me.
9 That is simply if somebody wants to come and go over their
10 portfolio. No one requires it. It is on the part of the
11 faculty's request. I never have said anybody has to do this,
12 and I've never said to the people who come, if you don't do it
13 this way, you can't pass.

14 Q. But --

15 A. I do make it clear --

16 THE COURT: Okay. Stop.

17 Q. (BY MS. GALINDO) But you judge applications based on
18 that; right? You said before you got to Southeastern, you
19 thought the portfolios were messy; isn't that right?

20 THE COURT: We have been over this, Ms. Galindo.
21 Please move on to something new.

22 MS. GALINDO: Thank you, Your Honor.

23 Q. (BY MS. GALINDO) You testified about -- so the faculty
24 committee can recommend tenure; correct?

25 A. Yes.

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1 Q. And are you of the opinion that the administration should
2 seriously consider that recommendation?

3 A. Yes.

4 Q. And it was discounted, wasn't it, in Dr. Tudor's case?

5 A. I don't think it was discounted.

6 Q. Flatly ignored?

7 A. No. This is the reason that we have this system. It's a
8 checks-and-balance.

9 For example, sometimes --

10 THE COURT: That's enough.

11 Q. (BY MS. GALINDO) Did you work under Dr. Minks?
12 Dr. McMillan? Who were the presidents at the university while
13 you were there?

14 A. When I came, Chancellor Glen Johnson was the president,
15 and then Dr. Turner was the president, and then Dr. Minks was
16 the president, and then President Sean Burrage. I don't think
17 I left any out.

18 Q. Seems to be there's a lot of changes, correct, at that
19 level?

20 A. Yes, it would seem so.

21 Q. Yet the faculty, they have staying power at Southeastern;
22 right?

23 A. If they're tenured.

24 Q. They become part of Southeastern; right?

25 A. Yes.

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1 Q. A tenured professor becomes part of the image of
2 Southeastern; right?

3 A. Right.

4 Q. And so when they --

5 A. I don't know what you mean by "image," but...

6 Q. They become part of who the university is; correct?

7 A. Correct.

8 Q. They become part of the history of that university?

9 A. Right.

10 Q. Administrators come and go; right?

11 A. Right.

12 Q. And so when they said Dr. Tudor -- they, the faculty,
13 voted that Dr. Tudor should be part of it, part of who the
14 university is -- and Dr. Tudor is transgender -- the rules
15 weren't followed and the law was broken; isn't that right?

16 A. No. Nor did they say anything -- transgender was never
17 mentioned at any level from the time she applied. That was
18 not a consideration for me. And that's the only person I can
19 speak for. It was neither here nor there.

20 The portfolio either stands on its own or it does not, no
21 matter what gender anybody is, no matter what their sexual
22 orientation is, no matter what. It stands alone.

23 Q. Now, those presidents you've mentioned -- Dr. McMillan --

24 A. No, he wasn't a president. He was a vice president.

25 Q. I'm sorry. Vice president -- you're right -- of academic

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1 affairs.

2 Dr. Minks; right?

3 A. Yes.

4 Q. They've all had numerous big titles at Southeastern;
5 correct?

6 A. Yes.

7 Q. From one to the next big title; right?

8 A. Right.

9 Q. In fact, when you look at their careers, those promotions
10 seem to be handed out like candy by Southeastern; isn't that
11 right?

12 A. I don't think any promotion is handed out like candy.

13 Q. Well, do you remember when Dr. Minks left Southeastern?

14 A. Yes.

15 Q. He was asked to leave; right? Yes or no.

16 A. I don't know.

17 Q. But even with an exit, he was given an honorary title,
18 wasn't he?

19 A. He received a title.

20 Q. And what was that title?

21 A. I don't know that title.

22 Q. It was a distinguished title of president. What is it?

23 MS. COFFEY: The witness has already testified she
24 doesn't know the title.

25 THE COURT: Sustained. Get to something new.

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1 MS. GALINDO: Thank you, Your Honor. Thank you.

2 Q. (BY MS. GALINDO) Do you think, when Mindy House was
3 terminated, that was right?

4 A. That went before two committees, six people, I believe,
5 on each committee. That's twelve people who recommended her
6 termination based on the evidence that they gathered.

7 Q. Did you leave one person off the list of presidents?

8 A. I might -- that's what I said. I might have left one
9 off.

10 Q. One of those you left off was your husband; isn't that
11 right?

12 A. It was -- oh, he was interim president. I hope nobody
13 tells him that I left him off. He was interim president for
14 one year. I think it was one year. It might have been less.

15 Q. Dr. Prus was the only faculty member that disagreed as to
16 Dr. Tudor; correct?

17 A. I don't know that.

18 Q. Well, you're pretty close to Dr. Prus; correct?

19 A. Close inasmuch as he's an outstanding department chair
20 and I was his dean.

21 Q. And you're saying you don't know that because it's
22 supposed to be confidential?

23 A. I don't know that because it's confidential, but I also
24 know that we were advised from the very first not to discuss
25 it at all.

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1 So I do not know who voted or how they voted. But I
2 wouldn't have known that even if there was no contention. I
3 do not know how anybody votes.

4 Q. But you told the EEOC investigator that Dr. Prus -- and
5 you agreed -- when is this going to be over? And that you
6 were talking to Dr. Claire Stubblefield. Is that right?

7 A. Randy asked me when would we be able to discuss it. And
8 I said, I don't know when we can -- when we will ever be able
9 to discuss it.

10 He asked me a simple question, and I gave him a simple
11 answer because that's what we were advised, not to discuss it.
12 And we didn't.

13 Q. So is it your testimony under oath today that you weren't
14 alleging that Dr. Tudor was crying wolf?

15 A. That I alleged that she was crying wolf?

16 Q. Yes.

17 A. I don't recall ever saying that she was crying wolf.

18 Q. One last thing.

19 A. I don't even use that expression, "crying wolf."

20 Q. One last thing.

21 It's offensive, isn't it?

22 A. I don't know if it's offensive. It's just not an
23 expression that I use. I know it goes back to the little boy
24 who cried wolf.

25 Q. When Rachel transitioned, even in that short period of

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1 time your husband was president, it was during that time that
2 Dr. Tudor transitioned, wasn't it?

3 A. I don't know.

4 MS. GALINDO: I'll pass the witness.

5 THE COURT: Redirect.

6 MS. COFFEY: No questions, Your Honor.

7 THE COURT: You may step down.

8 (Witness excused.)

9 THE COURT: We will -- I wanted seven more minutes
10 from this, but we'll take our lunch break. Don't discuss the
11 case or permit others to discuss it with you.

12 I have a -- what I hope will be a very brief criminal
13 matter at one o'clock. In line with my full civics lesson to
14 you, if you want to attend that, it's a supervised release
15 revocation. Once again, it will not be wildly entertaining,
16 but you're welcome to come if you want.

17 Because of that, I'm going to have you be back in your
18 room at 1:30. Again, if you wish to attend the attorney
19 admission seminar, it's on the third floor, as far east -- the
20 courtroom to the far east.

21 We will -- I believe -- do we have a courtroom?

22 THE CLERK: 301.

23 (Court confers with the clerk off the record.)

24 THE COURT: We're going to take the next witness by
25 videoconference, and ours doesn't work. So don't come back to

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1 this room and don't let Doug bring you back to this room.

2 Although some -- if you're up here for the revocation
3 hearing, you'll already be up here. But, anyway, we're going
4 to be on the third floor at 1:30 taking that one witness, and
5 then we will return up here.

6 So Linda will collect those, and they will magically
7 appear on the third floor.

8 THE CLERK: Put your name in them somewhere.

9 THE COURT: We'll be in recess.

10 (In recess from 11:50 a.m. to 1:35 p.m.)

11 (Jury enters courtroom.)

12 THE COURT: Members of the jury, the next witness
13 will be Cathy Conway. Due to personal issues, she is in
14 Durant, or I suppose -- yes, she's in Durant. So we're taking
15 her testimony by videoconference.

16 You should not discount this witness because she's not
17 here personally, but she is present in Durant and will, in all
18 other respects, be exactly like any other witness.

19 Proceed.

20 MS. COFFEY: Thank you, Your Honor.

21 THE COURT: Where do you need to be to do that?
22 Ms. Conway?

23 MS. CONWAY: Yes.

24 THE COURT: I'm going to ask you to raise your right
25 hand and be sworn by the clerk to testify truthfully.

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1 (Witness duly sworn.)

2 WHEREUPON, CATHY CONWAY, Ph.D., testifying via
3 videoconference, after having been first duly sworn, testifies
4 in reply to the questions propounded as follows:

5 **DIRECT EXAMINATION**

6 BY MS. COFFEY:

7 Q. Could you please state your name.

8 A. Cathy Conway.

9 Q. Ms. Conway, where do you live?

10 A. I live in Durant, Oklahoma.

11 THE COURT: Can you-all hear her?

12 JUROR MALLORY: Yeah, but barely.

13 THE COURT: Louder?

14 JUROR MALLORY: Please.

15 Q. (BY MS. COFFEY) Have you lived in Durant all of your
16 life?

17 A. No. I have been here for about 18 years.

18 Q. Ms. Conway, if you briefly could tell the jury why you're
19 testifying remotely.

20 A. Yes. I don't mind sharing that.

21 I am receiving chemo treatments for breast cancer. And I
22 get sick frequently. And I just didn't want that to happen in
23 the courtroom.

24 Q. Are you --

25 A. Also, the distance. The distance can be a problem for me

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1 sometimes.

2 Q. Ms. Conway, are you retired from Southeastern Oklahoma
3 State University?

4 A. Yes, I am.

5 Q. When did you retire?

6 A. I retired September 1st, 2013.

7 Q. What was your position when you retired?

8 A. I was human resources director.

9 Q. Do you have a college degree?

10 A. Yes.

11 Q. What --

12 A. I have a bachelor's of science from East Texas State
13 University. That's Texas A&M at Commerce now.

14 And I have a master's of public administration from Troy
15 State University, European region, which was through the
16 Department of Defense in Germany.

17 Q. Why the Department of Defense?

18 A. My husband worked for the -- was in the military for 20
19 years when he retired.

20 Q. Ms. Conway, what HR experience did you have before you
21 became Southeastern's human relations director -- human
22 resources director?

23 Excuse me.

24 A. I worked at Oklahoma State University as a benefits
25 coordinator in their personnel office, and I also worked for

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1 the division of engineering technology as an administrative
2 associate working with four academic departments.

3 Q. When did you begin your job at Southeastern?

4 A. That started on January 15th, 1999.

5 Q. What job -- what was your job title when you began in
6 '99?

7 A. It was human resources director.

8 Q. So you remained human resources director until you
9 retired in 2013?

10 A. Yes, I did.

11 Q. Can you tell us what your job duties included as HR
12 director?

13 A. Yes. I was responsible for benefits for faculty and
14 staff. That included insurance and retirement.

15 And I was responsible for payroll for the faculty, staff,
16 and students.

17 I was responsible for compensation classification and for
18 ADA, helping faculty and staff with accommodations.

19 I did training, was responsible for training from the HR
20 office, such as the sexual harassment policy and how to
21 report.

22 Workers' compensation, I was responsible for that and for
23 training of faculty and staff and supervisors on that -- in
24 those areas.

25 I also updated policies in the staff handbook. I was

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1 responsible for EEO employment laws.

2 Our office opened positions, ran advertisements, advised
3 interview committees, and had workshops for them on how to
4 properly conduct interviews. They were given some of the
5 policies to make sure they understood Equal Employment
6 Opportunity. And we closed positions.

7 Q. You yourself, did you receive any training to perform
8 your job as HR director?

9 A. Yes, I received training. I went to workshops, webinars.
10 Sometimes the training was on the campus; sometimes it
11 was in different locations.

12 Q. In your 14 years as HR director, would you say you
13 received training approximately every year?

14 A. Yes. There were several workshops and -- every year.

15 Q. Ms. Conway, how did you learn that Dr. Tudor was going to
16 begin presenting as a female?

17 A. She dropped off some papers at the human resources
18 office. There was a letter from Feleshia Porter, and there
19 was a court document for a name change.

20 Q. Do you recall the letter from Feleshia Porter? Let me go
21 further. Did you ever see those documents?

22 A. Yes. One of my staff -- she gave those to one of my
23 staff at the front desk, and my staff brought that to me.

24 Q. Do you recall what the letter from Feleshia Porter said?

25 A. Yes. It notified me that Dr. Tudor was going to begin

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1 presenting as a female, and she should be given all the rights
2 and privileges of a female.

3 Q. After you received these papers, what did you do?

4 A. I faxed them to our general counsel, Charlie Babb, and
5 called him to seek guidance and direction.

6 Q. Why did you believe that Charlie Babb could provide you
7 guidance and direction?

8 A. He was the general counsel for our university as well as
9 five others. And I always contacted Charlie if there was an
10 issue or anything that was different if I needed guidance from
11 him.

12 Q. Was he able to provide you the guidance that you needed?

13 A. Yes, I thought he did -- he was.

14 Q. Ms. Conway, you have a document there, I think, to your
15 right.

16 Have you received an exhibit marked Exhibit 15?

17 A. Yes.

18 Q. The bottom right-hand corner of that document, is there a
19 note DOJ0009?

20 A. Yes.

21 Q. All right. Do you recognize -- if you'll look at the
22 first page, do you recognize that document?

23 A. Yes, I do.

24 Q. What is it?

25 A. These are the notes that I prepared when I called

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1 Dr. Rachel Tudor on June 1st of 2007.

2 Q. If you would please --

3 MS. COFFEY: I'd move for the admission of
4 Plaintiff's Exhibit 15.

5 THE COURT: Admitted.

6 Q. (BY MS. COFFEY) Ms. Conway, if you would please turn to
7 the page that is -- has the last two numbers in the bottom
8 corner of 1-2.

9 A. Yes.

10 Q. What does this page reflect?

11 A. Well, these are my written notes of when I talked to
12 Charlie Babb to seek guidance.

13 Q. What topics does this note indicate you discussed with
14 Mr. Babb?

15 A. Well, Charlie Babb explained to me that, in the process
16 of a transgender being in transition, that that was typically
17 for a year approximately and that, after that time, they may
18 consider having sex reassignment surgery.

19 MS. NOVOTNY: Objection. Hearsay.

20 THE COURT: I'm sorry?

21 MS. NOVOTNY: Objection, hearsay.

22 THE COURT: Do you have an argument this falls
23 outside the hearsay rule?

24 MS. COFFEY: These are Ms. Conway's notes taken
25 contemporaneously during her discussion with Charlie Babb.

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1 MS. NOVOTNY: I'm specifically referring to Charlie
2 Babb's understanding of anything related to transgender
3 healthcare. I don't believe he's qualified as an expert on
4 the standards of care.

5 THE COURT: Well, is that your objection, or is it
6 hearsay?

7 MS. NOVOTNY: Well, it's hearsay and it's being
8 offered for the truth of the matter asserted.

9 THE COURT: Even if she has notes, if it was a
10 statement made by an out-of-court witness, then it is hearsay
11 unless you have some argument that an exception applies.

12 Q. (BY MS. COFFEY) Ms. Conway, if you could -- in my
13 following questions, if you would -- I'll do my best to keep
14 you from testifying about what somebody else told you.

15 Are there any other topics that you've discussed with
16 Charlie that you haven't already told this Court about?

17 A. On this exhibit or --

18 Q. Yes.

19 A. Yes. On this exhibit, he explained to me that there was
20 discussion currently about the use of public restrooms and --

21 MS. NOVOTNY: I'm going to renew the hearsay
22 objection.

23 THE COURT: Ms. Conway, if you could avoid saying
24 what he said to you, just what you said or did.

25 THE WITNESS: Oh, okay.

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1 The use of -- there was a discussion about the use of
2 public restrooms, and a transgender person who had not yet
3 gone through sex reassignment surgery, but that should not be
4 an issue in our state.

5 Q. (BY MS. COFFEY) Did you --

6 A. Currently in the Tenth --

7 Q. I'm sorry. I interrupted you. Go ahead and finish.

8 A. Currently in the Tenth Circuit, it was just discussion,
9 and that's our circuit.

10 Q. Okay. During this discussion with Mr. Babb, did the two
11 of you come to any conclusion regarding Dr. Tudor's bathroom
12 use?

13 A. Yes. That she has -- had every right to use any restroom
14 that was there for her.

15 But there was also another restroom that was a
16 single-stall, unisex, handicapped restroom that was in her
17 building, that if she felt more comfortable using that
18 restroom, he felt I could offer that to her, make her aware of
19 that.

20 Q. Ms. Conway, what concerns, if any -- let me -- did you
21 have any specific concerns regarding Dr. Tudor and her
22 bathroom use?

23 A. Well, it was really that -- yes.

24 That Dr. Tudor may for the first time -- she had left the
25 university setting at the end of spring semester as Dr. Robert

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1 Tudor, and she was starting new in the fall semester as
2 Dr. Rachel Tudor.

3 And I felt it was possible that, with the faculty and
4 staff and the students who knew her before, the fact that
5 Dr. Tudor was returning and they were returning, that it might
6 be possible that the first time that Dr. Tudor presents
7 herself and it happens to be in the women's restroom, there
8 might be a -- for example, a student who, you know, might not
9 react in a really positive way.

10 And, therefore, there was another bathroom that, if she
11 felt more comfortable using it, we could offer that to her.

12 Q. After you concluded your conversation with Mr. Babb, did
13 you seek advice from anybody else regarding Dr. Tudor's
14 transition?

15 A. Yes, I did. I'm sorry. This is the notes.

16 Yes. Sharon Robinson.

17 Q. And --

18 A. Sharon Robinson was --

19 Q. Go ahead. Who is Sharon Robinson?

20 A. Sharon was vice -- she was the vice president of student
21 affairs, but, more specifically, she was the ADA campus
22 coordinator.

23 And I contacted her because I wanted to be sure if that
24 particular restroom was for anyone who wanted to use it, that
25 it wasn't just for handicapped individuals.

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1 Q. At the conclusion of your conversation with Ms. Robinson,
2 did you feel you had an understanding of how it would be
3 appropriate to deal with the bathroom issue with Dr. Tudor?

4 A. Yes, I did.

5 Dr.-- Sharon Robinson told me that, you know, it was
6 definitely Dr. Tudor's choice and that it would be okay if we
7 wanted to offer that to her as an accommodation.

8 It was something that would make her -- she felt would
9 make her feel more comfortable, that I should definitely
10 advise her to seek advice from her licensed counselor,
11 psychologist about that, if she had any questions or concerns.

12 Q. How, if at all, did Sharon Robinson's advice differ from
13 Charlie Babb's advice to you?

14 A. I felt it -- it was very much the same.

15 Q. If you'll look at the first page of Plaintiff's Exhibit
16 15, what is that first page?

17 A. 009?

18 Q. Yes.

19 A. Yes, that's --

20 Q. Yes, 009.

21 What is that?

22 A. Yes, those are -- those are my notes on my call to
23 Dr. Rachel Tudor on June 1st, 2007, 3:45 p.m.

24 Q. How do you know that your call was with Dr. Tudor on June
25 1st, 2007, at 3:45 p.m.?

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1 A. Because I put them in my notes.

2 Q. Does this document indicate -- well, let me go back.
3 Why did you call Dr. Tudor?

4 A. Well, I called Dr. Tudor to advise her about several
5 different things.

6 Q. Does this document indicate what you discussed with
7 Dr. Tudor?

8 A. Yes.

9 Q. What did you discuss with Dr. Tudor?

10 A. Well, I first told her about the two policies that I felt
11 were relevant for her. I wanted to make sure that she
12 remembered those and that she understood where to find them
13 and went over those policies with her, the nondiscrimination
14 equal opportunity affirmative action policy and also the
15 sexual harassment policy.

16 Q. Why did you --

17 A. And she indicated -- she indicated to me that she didn't
18 know --

19 MS. NOVOTNY: Objection, Your Honor --

20 THE COURT: Stop.

21 Q (BY MS. COFFEY) Ms. Conway, let me stop you. I'm sorry.
22 I think there's a delay in here from the time an objection is
23 made until the time it's coming to you. So if you'll just
24 pause for a moment.

25 MS. NOVOTNY: May we approach, Your Honor?

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1 THE COURT: Yes.

2 (The following proceedings were had at the bench and out
3 of the hearing of the jury.)

4 MS. NOVOTNY: This starts getting into their
5 *Faragher/Ellerth* defense, which they don't have the -- to the
6 hostile work environment claim. She's claiming that these
7 policies covered Dr. Tudor at the time, and these policies did
8 not clearly cover Dr. Tudor at the time.

9 MS. COFFEY: Objection, Your Honor. She's going to
10 testify that she discussed the policies with Dr. Tudor. She
11 can --

12 THE COURT: Okay. Regardless of the defense, it's
13 fair that she discussed it with the plaintiff. So overruled.

14 MS. NOVOTNY: Fair enough.

15 MS. COFFEY: We can't put the exhibit up on the
16 screen because, in order to do that, it shuts off the remote.

17 MR. YOUNG: It takes the --

18 MS. COFFEY: I think it takes the --

19 THE COURT: Are they still here?

20 MS. NOVOTNY: They don't have picture-in-picture.

21 THE COURT: The question is, is there a way to
22 display an exhibit in here -- there wouldn't be because this
23 is -- it's all connected. I can't say why they --

24 MS. COFFEY: Perhaps after Ms. Conway is through
25 testifying, when we get back to the other courtroom, we can

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1 just display to the jury the exhibit?

2 THE COURT: Actually, there have been so many
3 exhibits that have not been shown to the jury, I don't think
4 these will make a difference.

5 MS. COFFEY: Okay.

6 THE COURT: All right. Thank you.

7 (The following proceedings were had in open court with
8 all parties present and within the hearing of the jury.)

9 Q. (BY MS. COFFEY) Ms. Conway, why did you discuss the two
10 policies with Dr. Tudor?

11 A. Well, because they're -- they're for her protection.
12 They're there to ensure that she's treated as she should be in
13 a respectful workplace, and that if she has any -- anyone who
14 she feels has sexually harassed her, that she knows how to
15 report that.

16 Q. As far as you know, neither of those policies contained
17 the word "transgender," did they?

18 A. No, they did not.

19 Q. Did you discuss -- well, was it your understanding that
20 Dr. Tudor could obtain protection pursuant to those policies?

21 A. Yes, definitely. She was an employee and she was female.

22 Q. If you'll look back to the first page, what else does it
23 indicate you discussed with Dr. Tudor?

24 A. That she should discuss with her chair and dean her
25 gender presentation at Southeastern, what that will be; to let

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1 them know she has changed her name; that she should seek any
2 advice or opinion about which gender presentation to use from
3 her counselor or her psychologist; that she should not ask any
4 of us at the university for our opinion about which gender,
5 male or female, she should use -- presentation she should use.
6 We were not qualified.

7 And I let her know there was the handicap restroom on --
8 that was unisex and private at the second floor of Morrison
9 Hall that was available. It was a few steps down the hall if
10 she took the elevator. It was directly across from the
11 elevator. And that this was not mandatory; this was her
12 decision, her choice.

13 I told her that this is all new to us too, because it was
14 the beginning of the fall semester -- she was, as I stated
15 before, coming back to work as her new presentation, her new
16 name, and it was new for others -- and that the best option
17 for her may be to use that restroom.

18 Q. All right. Let me direct you to back up.

19 A. In --

20 Q. I'm sorry. Were you through?

21 A. Well, in addition, there was a family restroom that was
22 in the student union.

23 Q. All right. Ms. Conway, if you would go back up, do you
24 see on your notes where it says "advised Dr. Tudor that he
25 should" and then with a colon?

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1 A. Yes.

2 Q. Okay. Why did you use the male pronoun in that
3 statement?

4 A. Well, I think I used it because I was just becoming
5 aware -- had just been told that she was going to change her
6 name, that she was probably going to present as female, and
7 I -- I think it was just -- I just used it subconsciously. I
8 just wasn't used to that.

9 Q. Ms. Conway, at the time that you had the conversation
10 with Dr. Tudor on June 1st, at that point had you ever seen
11 her physically presenting as a female?

12 A. No, I had not.

13 Q. Dr. Tudor testified that in your conversation you gave
14 her the mandate that she had to use this single-stall
15 bathroom.

16 Is that correct?

17 A. No, that's not correct.

18 Q. In your call with Dr. Tudor, did you instruct her on how
19 she should wear her makeup?

20 A. No, I did not.

21 Q. Did the subject of makeup come up in your discussion?

22 A. No, it did not.

23 Q. Did you discuss with Dr. Tudor how she should dress?

24 A. No, I did not.

25 Q. Did that subject come up at all in your conversation?

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1 A. No, it did not.

2 Q. Dr. Tudor testified that she believed you were suggesting
3 that she not dress like a drag queen.

4 Is that your recollection of the conversation?

5 A. No. That did not happen.

6 Q. At any time while Dr. Tudor was at Southeastern, did you
7 place any restrictions on her regarding her bathroom use?

8 A. No. She was free to use any bathroom she wanted to use.

9 Q. Do you have any knowledge of anyone else placing any
10 bathroom restrictions on Dr. Tudor?

11 A. No, I do not.

12 Q. At any time, did you place any restrictions on her
13 regarding her makeup or her dress?

14 A. No, I did not.

15 Q. Are you aware of anybody else placing such restrictions
16 on Dr. Tudor?

17 A. No.

18 Q. When you were discussing the policies with Dr. Tudor, did
19 you advise her that, if she were to wear short skirts or
20 wear -- or use inappropriate makeup, that she would be
21 sexually harassing her male colleagues?

22 A. No, I did not.

23 Q. Was your purpose of going over these policies with
24 Dr. Tudor to help her or to threaten her?

25 A. Oh, it was definitely to help her. They're in place to

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1 protect her.

2 Q. How did this conversation between you and Dr. Tudor end?

3 A. Well, she thanked me for the information, and she thanked
4 me for my professionalism.

5 Q. Now, Dr. Tudor claims that she thanked you for your
6 professionalism for not firing her.

7 Is that what she thanked you for?

8 A. No.

9 Q. Was there any discussion of firing Dr. Tudor in your
10 June 1st, 2007, conversation?

11 A. No, there was not.

12 Q. Did you ever have any discussion with anybody at
13 Southeastern as to whether somebody could fire Dr. Tudor
14 because she was transgender?

15 A. No.

16 Q. Let me take you to the top of that first page, where it
17 indicates the 3:45 p.m.

18 Dr. Tudor testified that this phone call took place in
19 the evening after dark. Is that correct?

20 A. No, that's not correct. It took place at 3:45 p.m.

21 Q. Do you recall having any discussion -- well, let me move
22 forward. I'm sorry.

23 If you will turn to the very last page of that document
24 with the Bates number 0014.

25 What is this page?

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1 A. This reflects notes from a meeting I had with Dr. Doug
2 McMillan; Dr. Mangrum, who was the dean; and Dr. Mischo, who
3 was the department chair for English, Languages and -- well, I
4 can't remember -- English, Languages and -- I don't remember
5 the last of it now.

6 Q. Do you -- what was the purpose of this meeting?

7 A. It was to advise her direct supervisors in the reporting
8 chain of command, so to speak, that Dr. Tudor was making a
9 change and had a new name. And I wanted to be sure they
10 understood the policies and things I had discussed with
11 Dr. Tudor.

12 Q. When did this meeting take place?

13 A. It was on June 19th, 2007, at 1:30 p.m.

14 Q. How do you know that?

15 A. Well, I wrote that in my notes. I documented my notes.

16 Q. Do you always document your notes with a typed version?

17 A. Not always. Sometimes my notes are a lot more legible.
18 And when they're -- when I can read them easily, then I don't.
19 But if I can't read them and they have some shorthand
20 versions -- you know, a little bit of scribbling that it's
21 difficult for me to read sometimes, then I type those up.

22 Q. On this page reflecting your June 19th meeting, it
23 indicates at the top "SOSU policies."

24 Why did you discuss the nondiscrimination and sexual
25 harassment policies with Dr. Tudor's supervisory chain of

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1 command?

2 MS. NOVOTNY: I renew the objection from earlier.

3 THE COURT: Just a minute. I'm sorry.

4 What objection are you renewing? Oh, the one you
5 mentioned at the bench?

6 MS. NOVOTNY: Yeah, the one from the bar.

7 THE COURT: Overruled.

8 Q. (BY MS. COFFEY) Let me repeat the question.

9 Why did you discuss these policies with the individuals
10 in Dr. Tudor's supervisory command at that meeting?

11 A. I discussed these policies. I wanted to review them with
12 these individuals because they were her supervisors and they
13 needed to be sure and understand that these protected
14 Dr. Tudor as well as others.

15 And Dr. Tudor or any of the faculty or students in that
16 department who had any -- Dr. Tudor or any of the others who
17 had any concerns or questions may go to them, and they needed
18 to be prepared to advise them that these policies were in
19 place.

20 Q. During your employment at Southeastern, did you ever hear
21 from any of these individuals that they had received any type
22 of complaint from either Dr. Tudor or others on campus
23 concerning Dr. Tudor's transgender status?

24 A. No, I did not.

25 Q. If you'll look at the second-to-the-last line.

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1 Because the jury is unable to see this document, would
2 you -- at this point, would you mind reading that line that
3 begins with "this is."

4 A. "This is all new to us too, but we think that the best
5 option is for Dr. Tudor to use this restroom."

6 Q. Who is "we" when you say "we think the best option"?

7 A. Well, I think that really applies mostly to me because I
8 felt like, because this was new, the beginning of the new
9 semester, that it may be the best option for her.

10 Q. In your discussion with Dr. Tudor regarding her bathroom
11 usage, did she indicate any problem or express any desire as
12 to use any particular restroom?

13 A. No, she did not.

14 Q. Why did you think the single-stall bathroom would be a
15 good option for Dr. Tudor?

16 A. Well, again, she could use any restroom she wanted. I
17 told her it was not mandatory.

18 But, again, this was the beginning of the semester. She
19 was coming back to the workplace as Dr. Rachel Tudor, where
20 she had been Dr. Robert Tudor before. And, I mean, she could
21 experience something from someone that was insensitive,
22 especially at the beginning when it was new for her and for
23 others. And that was the reason.

24 This might be a more comfortable, private restroom that
25 was an option for her.

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1 Q. Do you think that -- during your conversation, was it
2 your belief that Dr. Tudor thought you were giving her an
3 order or a mandate regarding bathroom use?

4 A. No, I didn't think that at all. I felt I had been very
5 clear and she understood.

6 Q. Did you believe --

7 A. She never --

8 Q. Go ahead.

9 A. She never had any questions for me. She never indicated
10 that -- anything. She just listened to me.

11 Q. Based upon your role as HR director and that June
12 conversation with Dr. Tudor, did you believe that Dr. Tudor
13 knew she could come to you with any complaints or grievances
14 regarding the issues you discussed with her?

15 A. Yes, I believed she knew she could do that.

16 Q. Did Dr. Tudor know how to file a grievance at
17 Southeastern?

18 A. Yes, I believe she did. She had the information.

19 MS. NOVOTNY: Objection.

20 THE WITNESS: She had the --

21 MS. NOVOTNY: I renew the objection from the bench.

22 THE COURT: Overruled.

23 Q. (BY MS. COFFEY) Go ahead.

24 My question --

25 A. Yeah, she had the -- oh.

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1 Q. Go ahead. Sorry.

2 A. Well, I -- could you repeat the question?

3 Q. I can.

4 Why do you believe that Dr. Tudor knew that she could
5 file a grievance?

6 A. Well, she had the policies I had reminded her of. She
7 also had -- she was a faculty member. She was a member of
8 the -- there was something called the faculty senate. And the
9 faculty senate is well represented by faculty, and they --
10 some of the faculty do go to the faculty senate for review of
11 anything that's -- any issues they may have.

12 And I believe she knew she also had the faculty senate
13 that could assist her if she had any difficulties.

14 Q. During your discussion or at any time thereafter, do you
15 believe that Dr. Tudor thought she was not protected by these
16 policies?

17 A. No. I had no indication of that. I thought she knew
18 that she was protected.

19 MS. COFFEY: I have no further questions.

20 THE COURT: Ms. Novotny.

21 **CROSS-EXAMINATION**

22 BY MS. NOVOTNY:

23 Q. Thank you for being with us today. It's Ms. Conway, yes?

24 A. Mrs. Conway.

25 Q. Okay. Mrs. Conway. Well, we've had a lot of doctors in

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1 this case so far, so I just wanted to make sure I got the
2 title correct.

3 Now, a few moments ago you testified regarding a June
4 2007 call with Dr. Tudor.

5 Something you did not talk about when you talked about
6 that call is a -- why did you mention Dr. Doug McMillan in
7 that call if there was no discussion of her job status at that
8 time?

9 MS. COFFEY: Objection, Your Honor. It misstates
10 the witness's prior testimony. There was no mention of her
11 and --

12 THE COURT: Well, she can speak for herself.

13 THE WITNESS: Yes. I didn't -- I didn't say that
14 Dr. McMillan was part of the call. If I did, it would have
15 been that he was another supervisor in that direct line of
16 supervision going up the administrative channel.

17 Q. (BY MS. NOVOTNY) And it is true that you did mention
18 Dr. McMillan's name in that call?

19 A. It's not in my notes that I did. I told you it was
20 possible, but I can't say for certain.

21 Q. Do you recall giving a deposition in this case on March
22 10th of 2016?

23 A. Yes.

24 Q. Do you recall testimony at that time indicating that Vice
25 President McMillan's name did come up in that call?

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1 A. I may have said that because he was one of her
2 direct-line supervisors. I mean, I'm not disputing that.

3 Q. Okay. Now, you indicated that you received the letter in
4 Plaintiff's Exhibit 15 notifying you that Tudor should be
5 treated as female and afforded the same rights and privileges
6 as other females; is that correct?

7 A. Well, I don't have that letter in front of me, but I did
8 receive a letter from -- from her licensed psychologist, yes.

9 Q. And you've just testified just a moment ago that that
10 letter said that she should be treated as female and afforded
11 the same rights as other females; correct?

12 A. That is correct, yes.

13 Q. Now, isn't it true that there are no other female
14 professors at Southeastern that you've had discussions with
15 regarding their specific bathroom usage?

16 A. That's true.

17 Q. So only -- only Dr. Tudor was singled out, then; correct?

18 A. Dr. Tudor was -- I didn't feel was singled out --

19 Q. This --

20 A. -- but she's the only one I did speak to.

21 Q. This calls for a yes or no.

22 THE COURT: She's entitled to give an answer.

23 THE WITNESS: She was the only one that I talked to
24 about that.

25 Q. (BY MS. NOVOTNY) At any time during --

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1 A. Yes.

2 Q. At any time during your career as the human resources
3 director at Southeastern, did you have any conversation with
4 any other female professor regarding what restroom they should
5 be using?

6 A. Well, in my role with the ADA, I can't say I didn't
7 have -- during my entire years there that I didn't have any
8 other conversation if someone needed accommodation, needed a
9 handrail or something in one of the restrooms in their
10 building. I do remember there was a female who needed that.
11 So I can't say that she was the only one.

12 Q. She was just the only one that was told she could only
13 use a specific restroom; correct?

14 A. That's not correct. No, that's not correct. She was not
15 told it was the only restroom. She was told that was an
16 option, not mandatory.

17 Q. Did -- isn't it true that Dr. Tudor didn't need any
18 accommodation because she was not disabled in any way?

19 A. No, she didn't need specifically accommodation, but if
20 there was another restroom where she might feel more
21 comfortable or desire some privacy, that was available to her,
22 as well as anyone else. But that was available to her.

23 Q. I want to direct your attention back to the notes of your
24 meeting with Drs. McMillan, Mangrum, and Mischo.

25 A few moments ago you read the section that said, "This

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1 is all new to us too. We think the best option is for
2 Dr. Tudor to use this restroom."

3 Does that sound like it's she can use any restroom or
4 that we've decided this is the option and we've decided that
5 for Dr. Tudor?

6 A. It means that this may be the best option for her, but
7 the comment above that clearly states that this is not
8 mandatory. That was available, but that was not mandatory.

9 Q. Isn't it true that you never asked Dr. Tudor what her
10 preference was?

11 A. That's true. It was her choice. It wasn't my business
12 what her choice was. It was her choice to make.

13 Q. Yet you seemed to make that choice for her?

14 A. I -- I don't feel I did. I felt I made it clear it was
15 an option for her.

16 Q. You indicated that one of the reasons for this was that
17 you had concerns that some students and faculty may be
18 uncomfortable; isn't that right?

19 A. Yes, they might not understand, that's correct. But that
20 might make Dr. Tudor uncomfortable.

21 Q. Isn't it true, though, that the only person that you
22 discussed the possibility of a negative reaction with was
23 Charles Babb?

24 A. Yes, I believe that's correct.

25 Q. And isn't it true that no other faculty member or staff

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1 member or student came to you to specifically request that
2 they were on -- that they had an uncomfort with Dr. Tudor
3 being in the women's restroom?

4 A. Yes, that's correct.

5 Q. A few moments ago you also talked about how part of your
6 job as human resources director was to ensure that Dr. Tudor
7 knew that she worked in a respectful workplace; correct?

8 A. That's correct, yes.

9 Q. Did you get a copy of Plaintiff's Exhibit 237 that I
10 submitted to counsel to get to you?

11 A. No, I did not. I don't have that.

12 MS. COFFEY: I'm sorry. Counsel, when did you
13 submit that to me?

14 MS. NOVOTNY: Yesterday evening per the judge's
15 request.

16 MS. COFFEY: I apologize. I'm not familiar with
17 that document. We can certainly send that document to her.

18 THE COURT: Do you have it in electronic form where
19 you could e-mail it?

20 MS. NOVOTNY: We could, Your Honor.

21 MS. COFFEY: We do.

22 MR. YOUNG: I could e-mail it, Your Honor. We just
23 need the wi-fi password.

24 THE COURT: It's a trick. It's a trick.

25 MR. YOUNG: We might have a hotspot, Your Honor.

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1 One second.

2 THE COURT: Ms. Conway, would it be easier for you
3 to get that by e-mail or fax?

4 THE WITNESS: I don't think there's anyone here. I
5 don't know where the fax is here. So by e-mail.

6 THE COURT: Okay. We'll work on it.

7 THE WITNESS: And the door magically opened.

8 Yes. There's an individual here who can -- that can be
9 e-mailed to him, and he can print that for me.

10 Dixie, that would be Mike.

11 THE COURT: M-I-K-E?

12 THE WITNESS: Yes.

13 THE COURT: Does he mind his name and e-mail address
14 being broadcast in this courtroom?

15 MR. YOUNG: Your Honor, might I suggest I get it
16 from President Burrage?

17 MS. COFFEY: It's on its way right now to Mr. Davis.

18 THE COURT: Okay. It's already on its way.

19 Thank you.

20 Can you ask about something else while she's getting it?

21 MS. NOVOTNY: Sure.

22 Q. (BY MS. NOVOTNY) Are you aware that Dr. Weiner testified
23 in his deposition that he -- that he ordered you to bar Tudor
24 from using the women's restroom?

25 A. No.

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1 Q. That doesn't sound accurate to you?

2 A. No, that's not accurate. That never happened.

3 Q. Before your June 1st, 2007, call with Dr. Tudor, had you
4 met Dr. Tudor at that point?

5 A. No, I had not met Dr. Tudor.

6 Q. But you indicated that, because you already knew
7 Dr. Tudor as male is why you used male pronouns even after
8 receiving the letter from Dr. Tudor's therapist; correct?

9 A. Well, that's correct. I worked on salary surveys and
10 other documents that were in the system.

11 For example, IPEDS with the Department of Education,
12 every year, I did that salary survey. Some of the pages broke
13 faculty down between male and female.

14 That was one of the reasons that I knew of faculty who I
15 had not met, as, you know, whichever sex that I had to put in
16 these salary surveys. And there were several of those.

17 That's an example of how I worked with faculty and knew
18 their names, even though I had not met them, and their
19 genders.

20 Q. And you -- it's your testimony that you don't dispute
21 that Dr. Tudor is female and should be treated as female?

22 A. No, I don't dispute that. No.

23 Q. Have you ever seen Dr. Tudor dressed in any other way or
24 presenting in any other way than female?

25 A. Not to my knowledge, no.

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1 Q. Is that exhibit there yet by chance?

2 A. It's not here yet. I'm sorry.

3 Q. Okay.

4 MS. NOVOTNY: I'm looking for something else, Your
5 Honor.

6 Q. (BY MS. NOVOTNY) Are you aware -- do you recall your
7 deposition in March of 2016, when the subject of Dr. Tudor's
8 gender came up at that time?

9 A. Yes, I do.

10 Q. And isn't it true that at your deposition you indicated
11 that you didn't know Dr. Tudor's gender?

12 A. I -- if I said that, it was that I didn't know which
13 gender she would be presenting when she came to work in the
14 fall, not that I didn't know at all.

15 I had information from -- also from Feleshia Porter.

16 Q. It looks like you did get a copy of our Exhibit 237;
17 correct?

18 A. Yes.

19 Q. And looking at Exhibit 237, does that look familiar to
20 you?

21 A. No, I don't remember that.

22 Q. Isn't this an e-mail that was from you to Claire
23 Stubblefield, as well as a response from Dr. Claire
24 Stubblefield?

25 A. Yes, it is. I just don't recall that.

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1 MS. NOVOTNY: I move to admit Plaintiff's
2 Exhibit 237 into evidence.

3 MS. COFFEY: No objection.

4 THE COURT: Admitted.

5 Q. (BY MS. NOVOTNY) Now, since we're not able to project
6 this to the jury, can I have you read the section of your
7 e-mail to Claire, starting with "Claire."

8 A. Yes.

9 "Claire, Lucretia's name is spelled Scoufos. Also, under
10 findings Complaint 3, Southeastern needs to be capitalized.
11 It will be interesting to see Charlie's comments. You did a
12 very good job of writing your report. Did Bridgette have any
13 helpful information for you? If Dr. Tudor requests to see T&P
14 info in his personnel file, I'll need to send him to
15 Bridgette."

16 Q. Now, isn't this e-mail dated November 18th, 2010?

17 A. Yes, it is.

18 Q. And that's a full three years after you first learned of
19 Dr. Tudor's gender transition; correct?

20 A. Yes, that's correct.

21 Q. And you testified earlier that you only used "his" in
22 that first e-mail because it was just new to you.

23 Was it still new to you three years later?

24 A. Well, I can't say that it was new to me, but there was
25 nothing intentional about that. I didn't talk about Dr. Tudor

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1 except, you know, when she first made the transition.

2 Obviously, I did in November of 2010.

3 Q. And isn't it true that Dr. Stubblefield responded, "Now,
4 now, it's her personnel file"?

5 A. Oh. She did. Yes, she was correcting me.

6 Q. And you testified earlier that Dr. Tudor should have been
7 able to feel comfortable coming to you if she had concerns
8 about her treatment at Southeastern; correct?

9 A. Yes. She should have been comfortable coming to me, yes.

10 Q. Don't you think it would be difficult to feel comfortable
11 coming to somebody who's not showing the respect of her as a
12 female that she had sought?

13 A. Well, I don't feel I was being disrespectful. I think I
14 made a mistake, and I should have used the correct pronouns.

15 Q. Three years later, it was just a simple mistake? You
16 hadn't --

17 A. Yes, I --

18 Q. You testified a moment ago you hadn't known Dr. Tudor any
19 other way in person.

20 MS. COFFEY: Objection, Your Honor. Argumentative.

21 THE COURT: Well, at least let her answer one
22 question before you ask another.

23 MS. NOVOTNY: I'm sorry, Your Honor.

24 THE COURT: So ask one.

25 Q. (BY MS. NOVOTNY) Now, if -- as you read that e-mail, one

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1 of the things that you indicated in that e-mail was noticing a
2 misspelling of Dr. Scoufos's name, yet you just made a simple
3 mistake about a gender pronoun; is that correct?

4 MS. COFFEY: Same objection.

5 THE COURT: Sustained. Move on.

6 Q. (BY MS. NOVOTNY) I want to direct your attention now --
7 did you get a copy of Plaintiff's Exhibit 17?

8 A. No. No, I did not.

9 MS. COFFEY: It's on its way. We weren't aware when
10 these -- anyway, they're on their way.

11 MS. NOVOTNY: I didn't know if you had sent them all
12 together or not.

13 I apologize for the wonkiness of this. This is a new
14 thing for all of us here, I think.

15 MS. COFFEY: Counsel -- I'm not certain that these
16 exhibits have exhibit numbers on them because these were the
17 exhibits that the plaintiffs -- this is the manner that
18 plaintiff sent them to us. So you may need to refer to a
19 Bates number to direct the witness.

20 MS. NOVOTNY: Thank you, Dixie. I appreciate that.

21 Q. (BY MS. NOVOTNY) This would be an exhibit that has 04701
22 in the bottom right-hand corner.

23 A. Yes, I see that exhibit.

24 Q. And do you recognize that e-mail in that exhibit?

25 A. Yes, I do.

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1 Q. And is one of those e-mails an e-mail from you to
2 Dr. Stubblefield?

3 A. Yes, it is.

4 Q. And then there is a response from Dr. Stubblefield;
5 correct?

6 A. Yes.

7 MS. NOVOTNY: I move to admit Plaintiff's Exhibit 17
8 into evidence.

9 MS. COFFEY: No objection.

10 THE COURT: Admitted.

11 MS. NOVOTNY: If I can find my place here. Oh,
12 goodness. I'm sorry. Now I've lost my -- let's see here.
13 Where did that go? Sorry about that.

14 Q. (BY MS. NOVOTNY) Okay. Looking at Plaintiff's
15 Exhibit 17, this e-mail between you and Dr. Stubblefield,
16 could you please read the part that you wrote on
17 September 3rd, 2010, starting at "Claire."

18 A. "Claire, I attended an employment law seminar yesterday
19 and was reminded of prima facie, and I thought of the
20 disgruntled faculty member. This is a great place to start
21 with any inquiry or formal investigation, and Charlie always
22 asks questions like this.

23 "I'm sure I've heard this before, but it is always good
24 to be reminded. The prima facie case, this is the
25 burden-shifting test by which most discrimination cases are

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1 judged."

2 Q. That's enough for that. I think that gets the effect
3 there.

4 Now, in that first paragraph, you indicated you thought
5 of "the disgruntled faculty member."

6 Isn't it true that that disgruntled faculty member was
7 Dr. Tudor?

8 A. I can't say that for certain.

9 Q. Wouldn't you say that if a major complaint was lodged
10 against the university regarding discrimination, you would
11 probably remember that?

12 A. I might not because there may be other issues going on at
13 the university. I cannot say for certain that this was about
14 Dr. Tudor.

15 Q. Isn't it true that Dr. Stubblefield was in the process of
16 investigating Dr. Tudor's claim at that time?

17 A. Well, from the other document you showed me, it was --
18 that was -- well, that was in November. So, no, I can't say
19 for certain based on the date on this e-mail.

20 Q. Isn't it true that in -- that you would have considered
21 Dr. Tudor to be disgruntled in September of 2010, though?

22 A. Well, if you're looking at my testimony from 2016, I
23 think I was asked if I would have considered her disgruntled,
24 and I said yes, she was dissatisfied.

25 Q. And there weren't any other employees that you would have

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1 considered disgruntled at that time, were there?

2 A. No, I cannot say that that's a true statement. There may
3 have been others, yes.

4 MS. NOVOTNY: Nothing further.

5 THE COURT: Redirect?

6 MS. COFFEY: No redirect, Your Honor.

7 THE COURT: Thank you, Ms. Conway. We are excusing
8 you. I don't know how to turn these cameras off, but we'll
9 work on it.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: Thank you. We need to re-set up
13 upstairs on 5, and that takes Sherri at least 10, 15 minutes.
14 So we're going to go ahead and take our break now. Don't
15 discuss the case. Don't permit others to discuss it with you.

16 Linda, do you want them downstairs or upstairs?

17 THE CLERK: I'm going upstairs. Ask them what they
18 want to do.

19 THE COURT: Do you want to go downstairs or
20 upstairs?

21 Okay. Linda will get you through the magic doors, and be
22 in your room at three o'clock. We will be in recess until
23 then.

24 (Jury exits courtroom.)

25 (In recess from 2:40 p.m. to 3:00 p.m.)

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1 (Jury enters courtroom.)

2 THE COURT: Be seated.

3 Call your next witness.

4 MR. JOSEPH: Thank you, Your Honor. Defendants call
5 Dr. Doug McMillan to the stand.

6 THE COURT: Please step right up here to the witness
7 box, face the clerk, and be sworn.

8 (Witness duly sworn.)

9 THE COURT: Be seated.

10 WHEREUPON, DOUG McMILLAN, Ph.D., after having been first
11 duly sworn, testifies in reply to the questions propounded as
12 follows:

13 **DIRECT EXAMINATION**

14 BY MR. JOSEPH:

15 Q. Dr. McMillan, please state your name for the record.

16 A. Doug McMillan.

17 Q. And where do you work?

18 A. I work for myself. I'm an independent consultant.

19 Q. And what kind of consulting work do you do, sir?

20 A. I work with special education departments working with
21 children that are in their programs.

22 Q. And did you previously work at Southeastern Oklahoma
23 State University?

24 A. I did.

25 Q. And are you retired from Southeastern now?

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1 A. I am.

2 Q. What year did you start working as a professor at
3 Southeastern?

4 A. 1990.

5 Q. And did you ultimately attain the rank of full professor
6 at Southeastern?

7 A. I did.

8 Q. And as professor, did you then attain tenure at
9 Southeastern as well?

10 A. I did.

11 Q. During your time at Southeastern, did you serve on any --
12 in any interim positions?

13 A. Yes. I served in several interim positions: interim
14 dean of the McCurtain County campus of Southeastern, interim
15 vice president for academic affairs for a year, and I believe
16 also interim dean of the school of behavioral science -- or
17 education and behavioral sciences.

18 Q. What was your last full-time position at Southeastern?

19 A. Vice president for academic affairs.

20 Q. And what year did you first become an interim vice
21 president for academic affairs?

22 A. I believe that was 2007, I believe.

23 Q. And when did you first become full vice president for
24 academic affairs?

25 A. I served -- let's see. 2008 or '9, I was appointed again

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1 as interim vice president and served for a couple of years as
2 interim then, and then was made permanent vice president after
3 that. So it probably would have been about 2011 or so.

4 Q. Were you ever vice president for anything besides
5 academic affairs?

6 A. Yes.

7 Q. What was that?

8 A. Vice president for educational outreach and project
9 development.

10 Q. And in that role what were your duties as vice president
11 for educational outreach?

12 A. For the most part I developed and managed the outreach
13 campuses and learning sites that Southeastern runs. There are
14 several of them, including a McCurtain County branch campus
15 and several off-campus sites.

16 Q. Did you enjoy that work?

17 A. I did.

18 Q. Okay. Did you hold any assistant or associate titles as
19 vice president for academic affairs before becoming fully and
20 permanently vice president for academic affairs?

21 A. Yes. I was -- when I first went to central
22 administration, I was assistant vice president for academic
23 affairs. And then, approximately two years later, I was
24 promoted to associate vice president of academic affairs.

25 Q. And in that role as vice president for academic affairs,

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1 can you just briefly tell the jury what your duties were
2 there.

3 A. For vice president of academic affairs?

4 Q. Yes.

5 A. Basically, I was the chief academic officer or the
6 administrator that was in charge of the instructional side of
7 the university. That's overseeing the departments, the
8 schools, the work of the deans, the -- what most of us would
9 think of as the real educational part of the university.

10 Q. And, in that role, did you have any responsibilities
11 regarding financial management or budgeting?

12 A. Yes. Yeah.

13 Q. Did you have any obligations or duties regarding hiring?

14 A. I did, yes.

15 Q. And did you play any role in the tenure and promotion
16 review process?

17 A. I did.

18 Q. Is the tenure and review -- excuse me.

19 At the time that you were in that role, was the tenure
20 and promotion application review process a multilevel one?

21 A. Yes.

22 Q. And as the vice president for academic affairs, what
23 level did you play in that multilevel role -- multilevel
24 review process? Excuse me.

25 A. The -- probably need to tell you a little bit about the

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1 process.

2 The -- it started with the faculty member making
3 application in the form of a portfolio that included several
4 artifacts that were -- had to do with the three areas of
5 teaching, scholarship, and service that the faculty member had
6 done during their time prior to applying for tenure.

7 That then moved to a departmental committee. Then, from
8 there, it moved to the department chair. Then, from there, it
9 went to the dean of the school. And then, after going to the
10 dean of the school, it went to me for review.

11 Q. And when you did your part of that review, if you could
12 please just tell the jury a little bit about how you undertook
13 that particular level of review.

14 A. Okay. When I received a portfolio, I went through it
15 page by page, looked at it very closely, looking, again, for
16 the three areas of responsibility that a faculty member has
17 and determining whether there was some noteworthy -- what the
18 policy calls noteworthy and exceptional examples of work in
19 those three areas; again, teaching, scholarship, and also
20 service.

21 And I in particular looked for a consistent engagement in
22 those three areas. The policy calls for both a qualitative
23 and a quantitative analysis.

24 I think the easiest way to understand this is, when you
25 make a decision to tenure a university faculty member,

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1 depending on the length of their career, you're looking at a
2 commitment of state and university dollars of 1 -- it can be
3 up to 1.5 million to 2 million dollars, depending on the
4 length of their career, for salary and benefits.

5 So when I look at a portfolio, what I really want to do
6 is try to make sure that, during that time when they were
7 nontenure, they demonstrate a real consistent commitment to
8 those three areas that I identified.

9 Q. Thank you, Dr. McMillan.

10 In particular as it's important to this case, were you
11 involved in the 2009-2010 tenure and promotion application
12 process for Dr. Rachel Tudor?

13 A. Yes.

14 Q. And what was your involvement in that process?

15 A. It was very much as I described.

16 I received the portfolio from the dean of that school,
17 Lucretia Scoufos, and began doing my review of that portfolio.

18 MR. JOSEPH: Your Honor, if I may, may I approach
19 the witness?

20 THE COURT: Yes.

21 MR. JOSEPH: I've handed the witness what has been
22 marked as Defendants' Exhibit 77.

23 Q (BY MR. JOSEPH) I'll ask you, Dr. McMillan, do you
24 recognize that document?

25 A. I do.

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1 Q. And if you could please tell the jury what that document
2 is.

3 A. This document is a letter written by Lucretia Scoufos to
4 me after she conducted her review of the portfolio with her
5 recommendation concerning the -- whether or not Dr. Tudor
6 should be granted tenure.

7 Q. And did you actually receive that document as a part of
8 that tenure process?

9 A. Yes, I did.

10 MR. JOSEPH: Your Honor, I'll move for introduction
11 into evidence of this exhibit.

12 MS. NOVOTNY: No objection.

13 THE COURT: Admitted.

14 MR. JOSEPH: Thank you, Your Honor.

15 Q. (BY MR. JOSEPH) And you mentioned Dr. Scoufos. What was
16 her role at that time?

17 A. She was, I believe, the dean of the school of arts and
18 sciences at that time.

19 Q. And who was the president of Southeastern at the time of
20 that memorandum?

21 A. Dr. Larry Minks.

22 Q. Okay. Was Dr. Tudor advised by you that her tenure and
23 promotion application was likely to be denied?

24 A. I directed Dr. Scoufos to have that conversation with
25 her.

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1 Q. And, to the best of your knowledge, did Dr. Scoufos have
2 that conversation?

3 A. She told me that she did.

4 Q. Dr. McMillan, did you offer Dr. Tudor the chance or the
5 opportunity to withdraw her 2009-2010 application for tenure
6 prior to it being finally denied if she agreed to take two
7 years to beef up her portfolio and resubmit it at a later
8 date?

9 A. Yes, I did.

10 Q. And did you have President Larry Minks's permission to
11 extend that offer to Dr. Tudor?

12 A. Yes, I did.

13 Q. Was it your opinion at that time that Dr. Tudor should
14 accept that offer?

15 A. Yes.

16 Q. Was it your understanding that professors could apply for
17 tenure exactly once, assuming they didn't withdraw it before
18 denial?

19 A. Yes.

20 Q. As far as you know, was it made clear to Dr. Tudor that
21 if she had -- if she didn't withdraw her 2009-2010
22 application, that it was going to be denied?

23 A. That's what Dr. Scoufos indicated to me.

24 Q. To the best of your knowledge, did Dr. Tudor take the
25 opportunity to withdraw her application before its denial?

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1 A. No, she did not.

2 Q. Were you surprised by that?

3 A. I was extremely surprised by that.

4 Q. Was it your understanding that Dr. Scoufos made it clear
5 in her communication to Dr. Tudor that they would not be able
6 to apply if that application were, in fact, denied?

7 A. Yes.

8 Q. Did you ultimately notify Dr. Tudor of the reasons that
9 her tenure application was ultimately denied?

10 A. Yes.

11 MR. JOSEPH: May I approach the witness again, Your
12 Honor?

13 THE COURT: Yes.

14 Q. (BY MR. JOSEPH) Dr. McMillan, I've handed you a document
15 labeled Defendants' Exhibit 5, and I'll ask you, have you ever
16 seen this document before today?

17 A. I have. There's a second page, though, to it. Is it on
18 the back? Okay. Thank you.

19 Q. I'll ask you, do you recognize that two-page document?

20 A. I do.

21 Q. And what is that document?

22 A. That's a memorandum that I wrote to Dr. Tudor delineating
23 the reasons for denying -- or recommending that her tenure be
24 denied.

25 MR. JOSEPH: Your Honor, I'll offer into evidence

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1 Defendants' Exhibit 5 at this time.

2 MS. NOVOTNY: No objection, Your Honor.

3 THE COURT: I am backwards from the upstairs
4 courtroom. I don't know which direction to look.

5 It will be admitted.

6 MR. JOSEPH: Thank you, Your Honor.

7 Q. (BY MR. JOSEPH) Dr. McMillan, were you ever suspended or
8 given written warning while you were employed at Southeastern?

9 A. No.

10 Q. Were you ever verbally counseled for any sort of
11 misconduct on your part at Southeastern?

12 A. No.

13 Q. To the best of your knowledge, did Dean Scoufos recommend
14 Dr. Tudor for tenure and promotion during that 2009-10
15 application process?

16 A. Did she -- could you restate that?

17 Q. Sure.

18 To the best of your knowledge, did Dean Lucretia Scoufos
19 recommend Dr. Tudor receive tenure and promotion during that
20 '09-'10 application process?

21 A. No.

22 Q. Did you, as vice president for academic affairs,
23 recommend that Dr. Tudor receive tenure and promotion during
24 that 2009-10 process?

25 A. No.

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1 Q. Now, after the vice president for academic affairs
2 reviews a tenure and promotion application packet, where would
3 it go for its next level of review?

4 A. It goes to the president for the final review.

5 Q. Okay. And did the president, in 2009-2010, which I
6 believe you said was Larry Minks, did President Minks
7 recommend Dr. Tudor for receiving tenure and promotion that
8 year?

9 A. No.

10 Q. Did Dr. Tudor have the opportunity to withdraw her
11 application packet in 2009-10 in order to improve upon it
12 later for a subsequent year?

13 A. Yes.

14 Q. Dr. McMillan, some witnesses earlier in this trial have
15 testified about the Academic Policies and Procedures Manual,
16 or the APPM.

17 Do you know what that document is?

18 A. I do.

19 Q. Okay. Dr. McMillan, are you familiar with the APPM, at
20 least in general?

21 A. I am.

22 Q. Does the Academic Policies and Procedures Manual say, at
23 the time of the 2009-2010 application for Dr. Tudor, that a
24 professor may apply for tenure in their fifth, sixth, and
25 seventh year, or does it say they may apply in their fifth,

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1 sixth, or seventh year?

2 A. It said in their fifth, sixth, or seventh year.

3 Q. Okay. Does the use of the word "or" suggest a
4 disjunctive or conjunctive nature at that point?

5 A. Disjunctive.

6 Q. Meaning that it was one time --

7 A. Yes.

8 Q. -- not three times?

9 A. Yes.

10 Q. In your opinion, would it be good for the university if
11 Dr. Tudor were to return to work at Southeastern today?

12 A. I would see that as a very difficult situation.

13 Q. Okay. In your opinion, are there better-qualified
14 professional educators who should be teaching at Southeastern
15 before Dr. Tudor?

16 A. Yes.

17 Q. Did you ever tell Cathy Conway to threaten Dr. Tudor in
18 any way?

19 A. No.

20 Q. Did you ever ask Cathy Conway if you could summarily fire
21 any of your employees, including Dr. Tudor?

22 A. No.

23 Q. Did you ever tell Cathy Conway to tell Dr. Tudor or any
24 other employee at Southeastern --

25 MS. NOVOTNY: Objection. Leading.

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1 Q. (BY MR. JOSEPH) -- how they should dress?

2 THE COURT: Overruled.

3 THE WITNESS: I'm sorry. Could you state that
4 again?

5 Q. (BY MR. JOSEPH) Sure.

6 Did you ever tell Cathy Conway to order Dr. Tudor or any
7 other employee at Southeastern how they should dress?

8 A. No.

9 Q. Did you ever tell Cathy Conway to direct Dr. Tudor or
10 anyone else at Southeastern how they should wear their makeup
11 if they chose to do so?

12 A. No.

13 Q. Did you ever tell Cathy Conway which bathroom Dr. Tudor
14 should or should not be able to use?

15 A. No.

16 Q. Did you ever ask any employee at Southeastern to treat
17 Dr. Tudor differently because of her gender?

18 A. No.

19 Q. In your view, did Dr. Tudor act too unfeminine after her
20 gender transition?

21 A. No.

22 Q. In your view, did Dr. Tudor dress in a way that was too
23 unfeminine after her gender transition?

24 A. No.

25 Q. Dr. McMillan, who was Dr. Joe Licata?

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1 A. He was a dean of the school of education and behavioral
2 sciences several years ago.

3 Q. And do you remember roughly what time frame Dr. Licata
4 was dean?

5 A. Oh, gosh. I don't. I'm sorry.

6 Q. Okay. That's all right.

7 Do you know Dr. Claire Stubblefield?

8 A. I do.

9 Q. Do you remember when Dr. Claire Stubblefield applied for
10 tenure and promotion at Southeastern Oklahoma State
11 University?

12 A. I do.

13 Q. And do you have any recollection about whether, when
14 Dr. Stubblefield first applied for tenure and promotion, if
15 her department committee and her department chair thought that
16 she should get tenure?

17 A. No, I don't believe that they did.

18 Q. Okay. Do you remember whether Dean Licata identified any
19 deficiencies in Dr. Stubblefield's tenure and promotion
20 portfolio when she first applied?

21 A. Yeah, I misspoke.

22 The -- it's my recollection that she did get the
23 department chair's recommendation but that she did not get the
24 recommendation of the dean.

25 Q. Okay. And at the time that she got her department

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1 recommendation but did not have her dean's recommendation yet,
2 were you in the tenure and review process at that point?

3 Did you have a role to play?

4 A. No. I believe at that time I was an assistant or
5 associate vice president.

6 Q. Okay. Did -- to the best of your knowledge, did Dr.
7 Stubblefield receive any advice about whether or not she
8 should continue with her application that year or withdraw it?

9 A. Yeah. My recollection, based on a conversation with her,
10 is she was counseled to withdraw it and improve, particularly
11 the scholarship area of her portfolio, and resubmit it.

12 Q. Do you remember having any conversations with
13 Dr. Stubblefield at that time about --

14 A. Yes.

15 Q. And do you remember what advice you gave her?

16 A. I advised her to withdraw it and to strengthen the
17 portfolio and resubmit it.

18 Q. And do you remember whether or not Dr. Stubblefield was
19 very upset about that?

20 A. She was.

21 Q. Very upset?

22 A. Yes, I would say so.

23 Q. Okay. Do you remember whether or not Dr. Stubblefield
24 ultimately followed the advice that you and Dean Licata had
25 both offered to her about withdrawing?

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1 A. She did.

2 Q. And do you remember if she then went on to beef up her
3 own portfolio?

4 A. She did.

5 Q. And do you remember if, in a following year, she
6 ultimately resubmitted her application and was granted tenure?

7 A. Yes, she did.

8 Q. When you visited with Dr. Stubblefield about whether or
9 not she should withdraw her portfolio, did you tell her that
10 you didn't think her portfolio was quite where it needed to
11 be?

12 A. I discussed it with her and advised her to take the
13 opportunity to strengthen the portfolio.

14 Q. And when you did that, were you trying to discourage her?

15 A. No. Trying to help her.

16 Q. Dr. McMillan, does it hurt you personally that Dr. Tudor
17 has accused you of being a bigot?

18 A. Very much so.

19 Q. Has it hurt your family personally?

20 A. It has, yeah. They know me to be a very different man
21 than that, a man that tries to do right by people.

22 And to experience that allegation and realize how I had
23 been -- false allegations had been made against me, I think,
24 was very hurtful to them.

25 Q. Do you have children, sir?

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1 A. I do.

2 Q. Does it hurt them?

3 A. Yes.

4 Q. Dr. McMillan, did you go into counseling in order to help
5 people?

6 A. I did.

7 Q. Did you go into education to help people?

8 A. I did.

9 Q. Did you offer Dr. Tudor an opportunity to withdraw her
10 2009-2010 tenure application in the hopes that she would
11 ultimately beef it up and be successful two years later?

12 A. Yes, I did.

13 Q. Dr. McMillan, do you recall a time that, because of
14 organizational restructuring, a woman who worked at
15 Southeastern by the name of Mindy House was going to be let go
16 as a part of that restructuring?

17 A. Yes.

18 Q. And, sir, did you take it upon yourself at that time to
19 help move her into another department and another office so
20 she could continue her employment at the university?

21 A. I did.

22 Q. Dr. McMillan, was part of the reason for your efforts in
23 that regard that you believe your faith encourages you to look
24 out for people in need, particularly people such as widows?

25 A. Yes.

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1 Q. Dr. McMillan, you're aware, are you not, that some people
2 involved in this litigation have suggested that you are not
3 able to be fair in your work at Southeastern because you're a
4 person of faith?

5 MS. NOVOTNY: Objection, Your Honor. This has not
6 been brought up at this point.

7 THE COURT: Overruled.

8 THE WITNESS: I'm sorry. Would you say it again,
9 please?

10 Q. (BY MR. JOSEPH) Sure, Dr. McMillan.

11 Are you aware that some of the people involved in this
12 litigation have suggested that you were not able to be a fair
13 administrator at the university because of your faith?

14 A. I am.

15 Q. How do you feel about that?

16 A. Personally, it feels like an extreme distortion of my
17 faith and a stereotypical view of my faith and personally
18 doesn't fit with my track record of dealing with people in my
19 role as a college administrator.

20 Q. Dr. McMillan, in addition to being a professional
21 educator and college administrator, I think you testified
22 earlier that you're also a professional psychologist; is that
23 right?

24 A. That's correct.

25 Q. And is that counseling psychology?

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1 A. My degree is in -- my doctoral degree and my master's
2 degree are in counseling psychology. My work is primarily
3 with kids in school that are involved in special education.

4 Q. Dr. McMillan, do you find that, as a professional
5 educator, professional administrator, professional counselor
6 or psychologist, that your faith and being a professional are
7 mutually exclusive?

8 A. No.

9 Q. A person can still be a person of faith and do a good job
10 at work; right?

11 A. That's correct, yeah.

12 MR. JOSEPH: I have no further questions, Your
13 Honor. Thank you.

14 THE COURT: Ms. Novotny?

15 MS. NOVOTNY: All right.

16 **CROSS-EXAMINATION**

17 BY MS. NOVOTNY:

18 Q. Thank you, Dr. McMillan, for being here today.

19 I've got a lot of exhibits here that potentially have to
20 do with you, Doctor.

21 Dr. McMillan, you indicated that, when Dr. Tudor was
22 recommended for tenure by her department and then turned down
23 at the next level by Dean Scoufos, that you hoped that she
24 would be able to improve her portfolio and apply again for
25 tenure the next year; is that correct?

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1 A. The only thing I would say different is it's a
2 recommendation. She wasn't turned down at that level. It may
3 be a fine difference, but it was a recommendation.

4 Q. So it's recommended --

5 A. Right.

6 Q. -- versus not recommended?

7 A. Right. That's correct.

8 Q. Okay. Now, Dr. Tudor, when she was originally
9 recommended for tenure, that was in December of 2009; correct?

10 A. That sounds right.

11 Q. And then she was not recommended for tenure in January of
12 2010, and that was a decision made between Dean Scoufos and
13 yourself; is that correct?

14 A. No, that's not the way it works. The -- I believe your
15 timeline may be off by a month, but I'm not sure about that.

16 But the -- Dr. Scoufos -- really, all levels of the
17 review process are independent of one another. There's not
18 really any discussion that goes on from one level to the next
19 other than the -- you do see the recommendations that were
20 made at the lower levels.

21 Q. So is it your testimony that the memorandum that's placed
22 in Dr. Tudor's portfolio dated January 12th, 2010, that's a
23 discussion between you and Dean Scoufos, that you had not
24 discussed Dr. Tudor's portfolio with Dean Scoufos at that
25 time?

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1 A. Prior to the -- to the memorandum that she -- that she
2 wrote me or the letter? Is that your question?

3 Q. Yeah.

4 A. No, we had not discussed it, that I recall, other than
5 her maybe saying there was one coming up that she had some
6 concerns with.

7 Q. Do you recall that there was a memorandum that was
8 sent -- that indicates it was sent from Dean Scoufos to you on
9 January 12th, 2010, that indicates some kind -- that indicates
10 that one of the reasons for denial of Dr. Tudor's tenure was
11 the inclusion of open mic chapbooks as part of her portfolio?

12 A. I don't recall specifically.

13 Q. I'm trying to --

14 A. I do know that that became a point of discussion later,
15 but I don't recall at that point.

16 MS. NOVOTNY: May I have just a moment, Your Honor?
17 I need to find this misplaced exhibit.

18 THE COURT: Yes.

19 MS. NOVOTNY: May I approach, Your Honor?

20 THE COURT: Yes. I'm going to instruct you not to
21 say a word.

22 (Court has discussion off the record.)

23 THE COURT: All right.

24 Q. (BY MS. NOVOTNY) Do you recall reaching out to anyone in
25 around April of 2010 to get more information about these open

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1 mic chapbooks?

2 A. I don't know specifically when the date was, but I did
3 ask Dr. Scoufos, if she did not know what they were, to go
4 ahead and ask the department chair or someone that she trusts
5 in the department to find out about them.

6 Q. All right. I'm going to take your attention back to
7 Defendants' Exhibit 5, which I believe is up there already.

8 A. Okay.

9 Q. And can you tell me what that is?

10 A. That's a letter -- yeah. That's a letter from me to
11 Dr. Tudor regarding the reasons why she -- I didn't
12 recommend -- or that she wasn't going to be granted tenure at
13 that time.

14 Q. And what's the date on that letter?

15 A. It's April 30th, 2010.

16 Q. Okay.

17 MS. NOVOTNY: Did we admit Plaintiff's 127 already?

18 THE COURT: Yes.

19 MS. NOVOTNY: Okay. I thought we had. I just
20 wanted to confirm.

21 Q. (BY MS. NOVOTNY) So on -- April 30th, 2010, is the date
22 that you indicated to Dr. Tudor that part of the reason for
23 her denial was the open mic chapbook material.

24 And isn't it true that you only learned of that material
25 on April 30th of 2010 of what that even was?

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1 A. I don't know when the date was. I don't recall.

2 Q. Do you recognize this document on the screen at all?

3 A. No.

4 Q. You indicated you had reached out to Dr. Prus and/or Dean
5 Scoufos to --

6 A. I had asked Dr. Scoufos, if she didn't know, to check
7 with someone.

8 Q. Okay. And so you got that information on April 30th,
9 2010, and then put that into the denial letter; isn't that
10 true?

11 A. I don't know when I received it. I did receive it. I
12 assume it was prior to the time of writing this letter, but I
13 don't know.

14 Q. I'm going to direct your attention to Plaintiff's Exhibit
15 96.

16 MS. NOVOTNY: May I approach, Your Honor?

17 THE COURT: Yes.

18 Q. (BY MS. NOVOTNY) Does Plaintiff's Exhibit 96 look
19 familiar to you?

20 A. I'd have to take time to read it.

21 Q. Take a second.

22 Are you able to identify this yet?

23 A. It's addressed to me, but I don't recall it specifically.

24 Q. Typically, if a memorandum at your school was addressed
25 to you, would you say that you would have received that

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1 document?

2 MR. JOSEPH: Objection, Your Honor. Calls for
3 speculation.

4 THE COURT: Overruled.

5 THE WITNESS: I would hope so.

6 MS. NOVOTNY: I'd like to move to have Plaintiff's
7 Exhibit 96 entered into evidence.

8 MR. JOSEPH: Your Honor, the witness has testified
9 he doesn't remember receiving this. I don't know that it's
10 authenticated.

11 THE COURT: Counsel, come up.

12 (The following proceedings were had at the bench and out
13 of the hearing of the jury.)

14 THE COURT: Are you telling me that you want them to
15 call Mr. Babb in rebuttal to testify this is an e-mail he sent
16 to Dr. McMillan?

17 MR. JOSEPH: I'm not telling you that, Your Honor.
18 I'm just saying I don't think this witness has authenticated
19 this document. I think there is some question about the
20 authenticity of this document, but if you want us to stipulate
21 it's an authentic document for the purposes of this --

22 MS. NOVOTNY: If we can't authenticate it this way,
23 then we'll have to go the route of having Charles Babb come to
24 authenticate it.

25 THE COURT: That seems like a huge waste of time

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1 unless you have a real reason to doubt its authenticity.

2 MR. JOSEPH: We'll just --

3 MS. NOVOTNY: It was authenticated during Mr. Babb's
4 deposition.

5 MR. JOSEPH: Mr. Babb could be called to testify
6 here.

7 THE COURT: So...

8 MR. JOSEPH: For now, we'll withdraw the objection,
9 Your Honor.

10 (The following proceedings were had in open court with
11 all parties present and within the hearing of the jury.)

12 THE COURT: Okay. 96 will be admitted.

13 Q. (BY MS. NOVOTNY) Plaintiff's Exhibit 96, this was a
14 memorandum from Charlie Babb, the general counsel of RUSO, to
15 you; is that correct?

16 A. It appears so.

17 Q. Is there any reason why you would have been seeking out
18 Charlie Babb's advice as to what RUSO policy was regarding
19 tenure was at that time?

20 A. I don't recall.

21 Q. I'm going to direct you now to Plaintiff's Exhibit 148.

22 MS. NOVOTNY: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. (BY MS. NOVOTNY) Does Plaintiff's Exhibit No. 148 look
25 familiar to you?

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1 A. Could I have a minute to look over it?

2 Q. Sure.

3 I'm sorry. This is -- no, this isn't the same one.

4 Have you had a chance to look that over?

5 A. I'm about halfway through it.

6 THE COURT: Do you have a question?

7 Q. (BY MS. NOVOTNY) Are you ready?

8 A. I'm ready, yes.

9 Q. Thank you.

10 This has also been discussed earlier in testimony.

11 Does this look -- so this e-mail from Charles Weiner to
12 you, Dr. Minks, and Dr. Scoufos look familiar?

13 A. Vaguely, it does.

14 MS. NOVOTNY: I'd like to move to admit Plaintiff's
15 Exhibit 148.

16 MR. JOSEPH: No objection, Your Honor.

17 THE COURT: Admitted.

18 Q. (BY MS. NOVOTNY) I'd like to draw your attention to the
19 second page of this exhibit, and specifically this bullet
20 point here, the final bullet point.

21 Do you see that?

22 A. Yes.

23 Q. Isn't it true that you intended for Dr. Weiner to provide
24 you some kind of reasoning to be able to let go of Dr. Tudor
25 without providing any rationale?

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1 A. No.

2 MR. JOSEPH: Objection, Your Honor. Calls for
3 speculation.

4 THE COURT: Overruled.

5 THE WITNESS: No.

6 Q. (BY MS. NOVOTNY) All right. I'll try to move this along
7 quickly. I'm sorry. There are a whole lot of documents with
8 your name on them, and I just wanted to make sure I got to the
9 right ones here.

10 Now, on direct examination you talked about your faith.
11 Is there a reason why you felt the need to discuss your faith
12 here today?

13 MR. JOSEPH: Objection, Your Honor. I asked a
14 question about it.

15 THE COURT: Sustained.

16 MS. NOVOTNY: Okay.

17 Q. (BY MS. NOVOTNY) Are you friends with Dr. Claire
18 Stubblefield?

19 A. Work friends, I was, with her.

20 Q. Did you think it was okay that your friend Claire was the
21 one assigned to investigate you when a charge of
22 discrimination was raised against you?

23 A. That was her job responsibility, and I didn't believe it
24 to be unfair.

25 Q. So you think it's okay for somebody's friend to be their

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1 investigator?

2 A. I think in a close working relationship, it was hard to
3 avoid a situation like that. And she'd always demonstrated
4 she was able to be fair.

5 Q. Isn't it true that you didn't meet Dr. Tudor in person
6 until the 2009-2010 school year?

7 A. I don't recall when I met Dr. Tudor.

8 Q. Or is the first time you met Dr. Tudor at your deposition
9 in 2016?

10 A. I don't -- I don't recall.

11 Q. Do you recall, when your deposition was taken, that you
12 indicated you didn't know which restroom transgender people
13 should use?

14 A. I don't recall that.

15 Q. Let me ask you this: If someone asks you if you like
16 steak or lobster, does that mean you can't like both?

17 MR. JOSEPH: Objection, Your Honor. Relevance.

18 THE COURT: Are you going to link this up to
19 something?

20 MS. NOVOTNY: Planning on it.

21 THE COURT: Overruled, but speed it up.

22 THE WITNESS: What was the question again?

23 Something about steak and lobster?

24 Q. (BY MS. NOVOTNY) Well, isn't it true that you can like
25 both steak and lobster?

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1 A. Yes. Sure.

2 Q. Okay. And isn't it true, then, that you -- well, scratch
3 that.

4 Isn't it true that when big decisions are made, you would
5 typically remember those decisions?

6 A. Yes, I would assume so.

7 Q. And wouldn't it be a very big decision if you're making a
8 decision that's taking food off of someone's table?

9 A. That would be a big decision.

10 Q. And in the case of Dr. Tudor, don't you think it seemed
11 strange that there's a January 12th, 2010, memorandum
12 indicating one of the reasons that her tenure was denied or
13 not recommended at that time was due to these open mic
14 chapbooks that you didn't learn about until April 30th of
15 2010?

16 A. I don't recall when I learned about them.

17 Q. Okay.

18 MS. NOVOTNY: Nothing further.

19 THE COURT: Redirect?

20 MR. JOSEPH: No, Your Honor. Thank you.

21 THE COURT: You may step down.

22 (Witness excused.)

23 THE COURT: Call your next witness.

24 MR. JOSEPH: Thank you, Your Honor.

25 THE COURT: Please step right up next to the witness

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1 box --

2 MR. JOSEPH: Defendants call Dr. Claire Stubblefield
3 to the stand.

4 THE COURT: -- and face the clerk and be sworn.
5 (Witness duly sworn.)

6 THE COURT: Be seated right here.

7 WHEREUPON, CLAIRE STUBBLEFIELD, Ph.D., after having been
8 first duly sworn, testifies in reply to the questions
9 propounded as follows:

10 **DIRECT EXAMINATION**

11 BY MR. JOSEPH:

12 Q. Please state your name for the record.

13 A. Dr. Claire Stubblefield.

14 Q. Dr. Stubblefield, where did you get your bachelor's
15 degree?

16 A. Langston University, Langston, Oklahoma.

17 Q. And what year was that?

18 A. 1971.

19 Q. And do you have a master's degree?

20 A. I do.

21 Q. Where did you get your master's degree, Dr. Stubblefield?

22 A. University of Central Oklahoma, Edmond, Oklahoma.

23 Q. What year was that?

24 A. '89.

25 Q. And I'm calling you "Doctor."

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1 Do you have a Ph.D., Dr. Stubblefield?
2 A. I do.
3 Q. And where did you get your Ph.D.?
4 A. University of Oklahoma, Norman, Oklahoma.
5 Q. And what year was that?
6 A. 1992.
7 Q. Okay.
8 A. 1992.
9 Q. And what was the subject of your Ph.D. at OU,
10 Dr. Stubblefield?
11 A. I was a W.K. Kellogg fellow. Our area of emphasis was
12 continuing professional higher ed administration, adult
13 education.
14 Q. After you got your Ph.D. at OU, did you end up at some
15 point working at Southeastern Oklahoma State University?
16 A. Yes.
17 Q. And while you were working at Southeastern, did part of
18 your work involve being a teaching professor?
19 A. Yes.
20 Q. And what subject did you teach?
21 A. I was in the school of education.
22 Q. And while you were working at Southeastern, did you also
23 serve, for some time at least, as the director of the
24 university's office of diversity and inclusion?
25 A. Yes.

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1 Q. In addition to those duties, did you also, at some point
2 at Southeastern, serve as their affirmative action officer?

3 A. Yes.

4 Q. Were there any other positions or titles that you held at
5 different times while you were working at Southeastern?

6 A. Yes.

7 Q. Could you please tell the jury a few of those.

8 A. I was the director -- we called it institutional
9 diversity and inclusion, the affirmative action officer,
10 special assistant to the president. Those are a few of the
11 titles that I had.

12 Q. What was the last position, full-time position, that you
13 held at Southeastern Oklahoma State University?

14 A. The Title IX coordinator, affirmative action officer, and
15 special assistant to the president.

16 Q. While you were employed at Southeastern Oklahoma State
17 University, did you receive any training about how to promote
18 diversity and address discrimination on a college campus?

19 A. Yes.

20 Q. What were some of the outside entities from which you
21 received training in that regard?

22 A. The NMCI, National Multicultural Institute, out of
23 Washington, D.C. Also NACUA. That's the National Council for
24 University and College Attorneys, N-A-C-U-A. The
25 Multicultural Institute, also out of Washington, D.C. ATIXA,

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1 A-T-I-X-A, was another one. The National Education Institute.
2 The Texas Law Conference. Encore was another one. There are
3 numerous.

4 Q. It sounds like a lot. Okay.

5 Did any of those trainings address the subject of racial
6 discrimination?

7 A. Yes.

8 I also wanted to mention that I was also a certified
9 mediator for the State of Oklahoma.

10 Q. Okay. Did any of the trainings that you just listed
11 address gender discrimination?

12 A. Yes.

13 Q. Did any of those training sessions address sexual
14 harassment in the workplace?

15 A. Yes.

16 Q. Over how many years, roughly, would you say that you
17 attended training at these different outside institutions
18 while you were working at Southeastern?

19 A. Goodness. I would say the longest of them was the NMCI,
20 the Multicultural Institute. I probably went to them for six
21 or seven years.

22 I went to -- there was another one I went to a lot.

23 ATIXA. I went to -- I'm trying to think of the longest ones.

24 One was Encore. I'm not sure if I mentioned that earlier.

25 Q. You did.

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1 A. I went to Encore probably -- I think I got a 20-year
2 ribbon for that one.

3 Q. What kinds of things at "Incore" or Encore did they train
4 you on?

5 A. It was -- they had different caucuses. And one in
6 particular was -- it was specifically for black employees who
7 worked at predominantly white institutions.

8 And that one, I did workshops with them. I was a
9 panelist. I was, you know, part of interviewing panelists.
10 So it was an incredible organization for my growth.

11 Q. And when you say your growth, do you mean your personal
12 growth as --

13 A. Personal growth.

14 Q. -- an African-American working at a predominantly
15 Caucasian institution of higher ed?

16 A. Yes. Yes.

17 Q. Did any of these training seminars or outside entities
18 that provided you training deal with the challenges of
19 minorities in general facing in higher education?

20 A. Yes.

21 MS. GALINDO: I'm going to object, Your Honor. I'm
22 not sure where we're going with this.

23 THE COURT: Overruled.

24 Q. (BY MR. JOSEPH) In addition to what you told us about
25 Encore, could you tell us another -- just single, one

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1 example -- of another situation where you received training
2 about perhaps minority or other groups in higher ed that
3 needed specific training for you?

4 A. Let's see. Probably every organization where there were
5 numbers of professionals that were people of color, we're able
6 to spend time together, whether -- maybe not as professionally
7 structured as those at Encore, but there was also a side group
8 with Encore that's called JDOT, which is also -- which deals
9 with -- it was a think tank, how to survive, things to do,
10 need to be aware of.

11 Because what we found out is many of us felt marginalized
12 by -- or our work questioned. So we talked about -- many were
13 chancellors, professors, deans, diversity officers, had some
14 of the same kinds of experiences that I had. So we spent a
15 lot of time together in this national think tank.

16 Some of the discussions were done through conferences,
17 phone conferences. So that was a lot of it. It was
18 incredible.

19 Q. Is it fair to say that, based on your training that
20 you've described and what you said your personal experience,
21 that feeling marginalized in higher education is something
22 that you have personally experienced?

23 A. Yes.

24 Q. Okay. But you've learned how to identify that and help
25 correct it?

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1 A. Yes.

2 Q. Okay. Now, in addition to all of that training that you
3 received, during the employment time at Southeastern when you
4 were working there, did you ever provide or give training to
5 any faculty or staff at Southeastern?

6 A. Yes. Yes.

7 Q. What types of subjects did you give training to the
8 Southeastern employees?

9 A. We had Title IX training. We had harassment,
10 discrimination, supervisor's training in those areas. So not
11 only faculty and staff, but also the leadership. Let's see.

12 Q. What was, in general, the purpose of you providing that
13 training to Southeastern employees?

14 A. It had been a commitment of ours to make sure that we
15 have a welcoming environment for everybody. And to do that,
16 people need to -- first of all, need to know what the rules
17 are, and then they need to know what the institution is trying
18 to do: have a welcoming environment for students and staff.

19 Q. Dr. Stubblefield, is it fair to say that combating
20 discrimination is a personal calling for you?

21 A. Yes.

22 Q. Is it fair to say that promoting inclusion and diversity
23 has been a part of that lifelong calling for you?

24 A. Yes. Lifelong, yes.

25 Q. Now, in your role --

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1 A. Excuse me. My sinuses are draining.

2 Q. Now, in your role as the affirmative action officer at
3 Southeastern, was part of your job to take in complaints from
4 employees?

5 A. Yes.

6 MR. JOSEPH: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 Q. (BY MR. JOSEPH) Dr. Stubblefield, I've handed you what
9 has been marked Defendants' Exhibit 72. And I'll just ask you
10 to take a quick look at that and let me know if you recognize
11 that document.

12 A. Yes.

13 Q. And, Dr. Stubblefield, what is that document?

14 A. This is a document that I sent to Dr. Tudor letting her
15 know -- or giving her receipt of her complaint, letting them
16 know the day I got it and that I would like to have a
17 preinvestigation session with her, and the date was given and
18 the time and the place.

19 MR. JOSEPH: Your Honor, if I may, can I put this on
20 the overhead for the jury?

21 THE COURT: If you get it admitted.

22 MR. JOSEPH: Okay. I move to admit Defendants'
23 Exhibit 72, Your Honor.

24 THE COURT: Any objection? Ms. Galindo?

25 MS. GALINDO: No objection, Your Honor.

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1 THE COURT: Admitted.

2 MR. JOSEPH: All right. Lori is beating me to the
3 punch. It's already on the screen.

4 Q. (BY MR. JOSEPH) Now, Dr. Stubblefield, we've put on the
5 screen for the jurors the same document you have in your hand.
6 Can you see it there on your screen as well?

7 A. Yes.

8 Q. Do you see there in the first paragraph over there on the
9 right-hand side, you say you've received a complaint of
10 discrimination dated 31 August 2010?

11 A. Yes.

12 Q. And in the following sentence, if you would, just read to
13 the jury that single sentence that begins "to assure."

14 A. "To assure that I fully understand the specific nature of
15 your concerns, a preinvestigative session on Thursday,
16 September the 9th, at 2:00 p.m., is scheduled. The meeting
17 will take place in Admin 303 (the old political science
18 classroom). Your complaint is lengthy and is replete with
19 information, so brevity and preciseness are necessary."

20 Q. Dr. Stubblefield, did you actually meet with Dr. Tudor
21 about that complaint?

22 A. Yes.

23 Q. And, in a nutshell, can you tell the jury what Dr. Tudor
24 was alleging as you recall in that August 30th, 2010,
25 complaint?

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1 MS. GALINDO: Objection. Calls for hearsay.

2 THE COURT: I'm sorry?

3 MS. GALINDO: I'm sorry, Your Honor. I
4 misunderstood the question.

5 THE COURT: Restate the question.

6 MR. JOSEPH: Sure, sure.

7 Q. (BY MR. JOSEPH) Dr. Stubblefield, in a nutshell, can you
8 tell the jury what was alleged in that August 30th, 2010,
9 complaint submitted by Dr. Tudor.

10 A. It was extremely long, but, basically, she was claiming
11 that she was denied tenure because of her gender and her race.

12 Q. And what gender, if you recall, did she identify in that
13 complaint?

14 A. Female.

15 Q. And what race did she identify in that complaint, if you
16 recall?

17 A. Native American.

18 Q. And, as a result of that meeting, did you initiate an
19 investigation?

20 A. Yes.

21 Q. And if you could just briefly, Dr. Stubblefield, tell the
22 jury what you did to investigate Dr. Tudor's complaints.

23 A. The first thing I wanted to do was to digest. She had
24 numerous complaints that were overlapping.

25 So after we understood specifically what they were, I

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1 asked her to fill out a form that stated specifically what the
2 issues were and to get it back.

3 And she got it back, I think, the next day. Then, at
4 that point, I began to start the investigation.

5 I guess I'll stop there.

6 Q. Okay.

7 MR. JOSEPH: May I approach the witness again, Your
8 Honor?

9 THE COURT: Yes.

10 Q. (BY MR. JOSEPH) Dr. Stubblefield, I've handed you what is
11 labeled as Defendants' Exhibit 74.

12 A. Yes.

13 Q. And I'll just ask you if you recognize that document.

14 A. Yes. This was an amended complaint. I actually got two
15 complaints; one, another complaint, and then an amended
16 complaint. So this is the third of three.

17 Q. And, Dr. Stubblefield, do you actually remember receiving
18 this document, Exhibit 74?

19 A. Yes.

20 MR. JOSEPH: I move this document, Defendants'
21 Exhibit 74, be admitted into evidence, Your Honor.

22 MS. GALINDO: Your Honor, may we approach?

23 THE COURT: Yes.

24 (The following proceedings were had at the bench and out
25 of the hearing of the jury.)

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1 MS. GALINDO: Your Honor, with respect to the
2 Defendants' Exhibits, we were never provided paper copies of
3 those, as required.

4 MR. JOSEPH: I do not believe that's the case, Your
5 Honor, but I would defer to my legal assistant.

6 THE COURT: Where is she? Defendants' Exhibit 74, you
7 don't --

8 MS. GALINDO: And 73.

9 MR. YOUNG: There are several exhibits where they're
10 just missing.

11 THE COURT: How long do you have with this witness?

12 MR. JOSEPH: I will be finished with this witness,
13 Your Honor, by roughly 4:30. I suspect within five minutes,
14 plus or minus, 4:25, 4:35.

15 THE COURT: I can't take this anymore.

16 MR. JOSEPH: Okay.

17 THE COURT: It's been too long a day.

18 MR. JOSEPH: Your Honor, in the interest of just
19 saving some backache and heartache, let me see if I can just
20 move it along at a decent clip and maybe get done in the next
21 10 to 15 minutes.

22 THE COURT: What are you going to have?

23 MS. GALINDO: I should be pretty short and sweet.
24 10 or 15.

25 THE COURT: How many more witnesses do you have?

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1 MR. JOSEPH: Exactly one, Your Honor.

2 THE COURT: Oh, really?

3 MR. JOSEPH: Jessie Snowden. And given the timing,
4 I did not tell him to be here this afternoon because I figured
5 this would be pretty close to quitting time. But he is in
6 town. If you want us to get him here --

7 THE COURT: Oh, no, no. I don't want to get him
8 here.

9 MR. JOSEPH: Okay.

10 THE COURT: I assume he won't take very long.

11 MR. JOSEPH: I would put him in that 30-minute range
12 also, Your Honor.

13 THE COURT: So he may be our last witness in the
14 morning and then we're done?

15 MR. JOSEPH: God willing, Your Honor, yes.

16 THE COURT: Okay. I'm going to send the jury home.
17 We'll finish her in the morning. I want to discuss with you
18 about timing, your rebuttal witnesses, instructions,
19 arguments.

20 MR. YOUNG: Yes, Your Honor.

21 THE COURT: But not today.

22 MR. JOSEPH: Thank you, Your Honor.

23 MS. GALINDO: Thank you, Your Honor.

24 MR. YOUNG: Thank you, Your Honor.

25 (The following proceedings were had in open court with

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1 all parties present and within the hearing of the jury.)

2 THE COURT: I take full responsibility for this
3 early day. I have -- I am too old for this. I'm just
4 exhausted. So we're going to call it a day today.

5 I will instruct you not to discuss the case or permit
6 others to discuss it with you. Don't do any independent
7 research, including Google, blogging, Twittering, Facebooking.

8 I think we're going to have some things to take care of
9 in the morning, so I'll have a 9:30 start so you won't have to
10 wait on us.

11 Be downstairs in the jury assembly room before 9:30. I
12 hope you have a pleasant evening, and we'll see you tomorrow.

13 You can go. We are staying here.

14 (Junior exits courtroom.)

15 THE COURT: You can step down.

16 MR. JOSEPH: Thank you, Your Honor.

17 THE WITNESS: Thank you.

18 THE COURT: We'll finish you tomorrow morning.

19 THE WITNESS: Thank you.

20 THE COURT: I'm sorry that we can't do it today, but
21 I just can't.

22 I believe it was Ms. Novotny that showed me the notebook
23 with an empty blank -- nothing behind Exhibit --

24 MS. NOVOTNY: 74.

25 THE COURT: -- 74.

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1 So do you --

2 MR. YOUNG: Your Honor, we were also missing 73.

3 THE COURT: Are those the only two?

4 MR. YOUNG: No. There are a bunch of missing
5 exhibits. We told them that they're just blank pages in their
6 notebooks.

7 THE COURT: Well, you're not contending that they
8 were never produced to you, are you?

9 MR. YOUNG: Well, there were some late-produced
10 electronic copies. We're just a little bit worried. There
11 are just a bunch of blank sheets.

12 MS. COFFEY: They've all been produced
13 electronically. It may be some exhibit that we revised and
14 sent via e-mail after providing the exhibit books, but they
15 have them electronically.

16 THE COURT: Well, I'll direct you to provide them
17 paper copies marked as you have them marked before tomorrow
18 morning. I let you-all do it; I'll let them do it too.

19 I have a more final, more complete set of instructions.
20 I have been going through these and noticed several typos, but
21 I don't believe any of the changes I'm going to make to these
22 have any substance.

23 So tomorrow morning at, let's say, 8:45 in my office, I
24 will have a -- I will sit down with you for an informal
25 instruction conference.

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1 I'll ask the plaintiffs -- the plaintiff to commit at
2 that time as to rebuttal witnesses, if any. And you'll have
3 to justify those to me.

4 What else did I tell you we were going to do?

5 MR. YOUNG: I believe the verdict form, which we
6 already discussed at the previous meeting earlier today.

7 MR. JOSEPH: All I recall is that we were going to
8 talk about scheduling.

9 THE COURT: Okay. There is a verdict form in these.
10 I didn't get a chance to talk to Jeff, so I don't know if
11 you-all approved this or not, but we can settle on it tomorrow
12 morning.

13 Apparently, we will get this to the jury tomorrow.

14 So how long do you want for closing argument.

15 Plaintiff?

16 MR. YOUNG: Perhaps the same as what you gave us for
17 opening, about 15 minutes.

18 THE COURT: Is 15 minutes sufficient?

19 MS. COFFEY: 15 minutes, Your Honor.

20 THE COURT: Do you want to split yours?

21 MR. YOUNG: Yes.

22 Sorry, Your Honor. We're very tired too. It's been a
23 long day. Sorry.

24 THE COURT: That's fine. You just have to have more
25 in your opening section than your ending section.

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1 MS. GALINDO: I apologize. We'd like 45 minutes.

2 THE COURT: Oh, no. Oh, God, no.

3 MS. GALINDO: 30 minutes?

4 THE COURT: I'll give you 20.

5 MR. YOUNG: Thank you, Your Honor.

6 MS. GALINDO: Thank you.

7 THE COURT: How do you want to split it?

8 MS. GALINDO: 15 and 5?

9 MR. YOUNG: Yes.

10 MS. NOVOTNY: Yes.

11 THE COURT: The question then becomes -- I don't
12 know who's going to open with the 15, but when you get to the
13 end of that, do you want us to turn a light on and tell you to
14 sit down, or do you want that to come off the second segment
15 and just keep talking?

16 MS. GALINDO: I think a light would be encouraging
17 at that point.

18 THE COURT: Okay. And so you get 20 minutes too.
19 Is that sufficient?

20 MS. COFFEY: That's sufficient.

21 MR. JOSEPH: That sounds great, Your Honor.

22 THE COURT: Of course it is.

23 Okay. 8:45 in chambers. We'll be adjourned for the
24 evening.

25 (In recess at 4:30 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 16th day of November, 2017.

/S/ SHERRI GRUBBS_____

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter