Case No. 18-6102/ 18-6165

In the United States Court of Appeals for the Tenth Circuit

DR. RACHEL TUDOR,
Plaintiff-Appellant/Cross-Appellee

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,
Defendants-Appellees/Cross-Appellants

On Appeal from the United States District Court for the Western District of Oklahoma, Case No. 5:15-cv-324-C, Hon. Robin Cauthron

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Expert Report of Robert Dale Parker, Ph.D.

U.S. et al. v. Southeastern Okla. St. Univ. et al., 5:15-cv-00324-C (W.D. Okla.)

This report compares the qualifications for promotion and tenure of Professor Rachel Tudor of Southeastern Oklahoma State University (which I will refer to as "Southeastern") to the qualifications of other faculty in Professor Tudor's department who were granted tenure and promotion. The comparison is based on the materials in the list attached to this report. They include the promotion portfolios of Professor Tudor and of four other faculty in the Department of English, Humanities, and Languages at Southeastern: Professors Janet Leigh Barker, Margaret Cotter-Lynch, Virginia A. Parrish, and Mark Spencer. (Professor Tudor's complete 2009 portfolio was not available. I reviewed those portions of her 2009 portfolio that were available, and I also reviewed her 2010 portfolio.)

I recognize and respect that Professors Barker, Cotter-Lynch, Parrish, and Spencer each earned promotion and tenure at Southeastern. In no way do I question their qualifications or Southeastern's decision to recognize their qualifications. Rather, I take it as self-evident that Southeastern's decision to award Professors Barker, Cotter-Lynch, Parrish, and Spencer promotion and tenure defines a level of qualifications that Southeastern, by its own standards, has decided merits promotion and tenure. My charge in this report is to address whether, in my carefully considered professional judgment, Professor Tudor met Southeastern's standards for promotion and tenure, based on a comparison between her qualifications and the qualifications of her colleagues. Therefore, my assignment was not to question the qualifications of any of Professor Tudor's colleagues. Instead, my assignment was to apply Southeastern's official written policies for promotion and tenure to a comparison between the qualifications of Professor Tudor and the qualifications of her colleagues whose achievements were recognized as meriting promotion and tenure. In the end, I believe Tudor's portfolios indicate that she was more qualified for promotion and tenure than some of her colleagues who received promotion and tenure, but that opinion should not be interpreted to mean that any of her colleagues whose portfolios I have reviewed here should not have received promotion and tenure.

Credentials of the Reviewer

I have been asked to begin this report by summarizing my credentials. I am a professor of English at the University of Illinois, where I have taught since 1984. After completing a PhD in English in 1980 at Yale University, I taught at Yale and then at the University of Michigan. A widely published scholar and a recipient of the University of Illinois's highest awards for both undergraduate and graduate teaching, I have also received our Department of English's award for distinguished service, been named as a University Scholar, and been awarded a named appointment (a recognition for the university's most distinguished faculty). My teaching and scholarship have focused on the study of American literature, including Native American literature, the specialty of Professor Tudor, and on the overall study of how we can best teach about literature, interpret it, and research about it. I have participated in the deliberations for over a hundred promotions at my own university and served a two-year term on the appeals committee for promotions in the College of Liberal Arts and Sciences (serving as acting chair for part of the first year and as chair in the second year). Several times the Dean of the College or

the Provost (who oversees the entire university's faculty) have asked me to serve on special appeals committees to advise them regarding rejected cases for promotion. Colleges and universities across the United States routinely ask me to review the records and publications of faculty under consideration for promotion. I have also been elected to five-year terms on the Executive Committee of the Division on Twentieth-Century American Literature and the Division on American Indian Literatures of the Modern Language Association, and have served as chair of each of those committees. I have served as well on the faculty board of the University of Illinois Press, the scholarly book publisher housed at my university, and on the editorial or advisory boards of 5 different scholarly journals, including such distinguished journals as *American Literary History, Modern Fiction Studies,* and *Studies in American Fiction.* Editors working for scholarly book publishers and for scholarly journals routinely ask me to review the work of scholars whose manuscripts they are considering for possible publication. I therefore have a wide acquaintance with the expectations for college and university faculty in departments of English, with the protocols for faculty promotions, and with the evaluation of scholarship in English. (For more information about my experience and background, please see the copy of my curriculum vitae attached to this report as Exhibit 1.[1])

Faculty Ranks, Tenure, and the Criteria for Faculty Promotions

According to Southeastern's Academic Policy and Procedures Manual, "The academic ranks of the University are professor, associate professor, assistant professor, and instructor" (section 4.5.1 Academic Rank). While some colleges and universities have more than just the "instructor" rank for non-professorial faculty, Southeastern's distribution of faculty ranks conforms to national standards. Professorial faculty at Southeastern (assistant professors, associate professors, and professors) are on what is called the tenure track (4.6 Tenure), meaning that they either have tenure or may eventually become eligible for tenure (4.6.2 Periods of Appointment and Tenure). Nationally, promotion from assistant professor to associate professor ordinarily includes the awarding of tenure. While Southeastern does not require promotion to associate professor to accompany the award of tenure, its policies make it likely that promotion to associate professor and tenure would come together. The policies stipulate that faculty members must serve for 5 years before receiving tenure, and they normally serve those 5 years in a professorial rank (4.6.2 and 4.6.5), which for beginning professors means the rank of assistant professor. The criteria for promotion (4.5.2 Promotion in Rank) and for achieving tenure (4.6.1 Academic Tenure) are similar (although the "noteworthy achievement" standards in 4.6.5 and 4.5.2.1 differ), and the same "Promotion and Tenure Review Committee" considers candidates for promotion and for tenure (4.6.3). In each of the cases under review in this report, a decision to promote an assistant professor to associate professor has accompanied a decision to award tenure, and the same portfolio was submitted for both purposes.

According to Southeastern's Policy and Procedures Manual, "Tenure is defined as continuous reappointment which may be granted to a faculty member in a tenure-track position" (4.6.1 Academic Tenure). At Southeastern, therefore, as at other colleges and universities in the United States, when faculty earn tenure, that means that they cannot be dismissed except in the

[1] For information about my hourly rate for services in connection with this case, please see Exhibit 2.

rare case of extreme circumstances (4.6.7 Causes for Dismissal or Suspension of Tenured Faculty). Tenure provides job security, but job security is not the ultimate purpose of tenure. Instead, in the American university system, tenure provides job security so that faculty will feel free to experiment and take risks in their teaching and scholarship without fearing that their experiments will put their employment at risk. For that reason, tenure lies at the foundation of the bold, innovative teaching and ambitious academic standards that have made American colleges and universities the envy of the world.

College and university professors work in three areas: teaching, research/scholarship, and service. This standard national practice matches the stated policy of Southeastern, which says that "Teaching, research, and service are the triad of professional responsibilities at the University" and that "Evaluation of faculty performance considers these three areas" (4.4.1). In that vein, Southeastern's policies base promotions on "the faculty member's performance in the categories of (1) effective classroom teaching, (2) scholarship, (3) service to institution, profession, and public, and (4) performance of non-teaching/administrative duties/assignments" (4.4.2 Faculty Evaluation System). Similarly, "all evaluations for tenure shall address at a minimum whether each candidate has achieved excellence in (1) teaching, (2) research or creative achievement, (3) professional service, and (4) University service" (4.6.1 Academic Tenure). As at any other school, therefore, when Southeastern considers a candidate for promotion from assistant professor to associate professor with tenure, or from associate professor to full professor, it reviews the candidate's record in teaching, research/scholarship, and service.

Some schools define themselves as teaching schools. In teaching schools, the faculty usually teach more classes and have more modest expectations for research. Teaching schools focus decisions about promotion and tenure primarily on teaching and secondarily on research and service.

Southeastern's "Faculty Development and Evaluation Policies" define it as "primarily a teaching University" (4.4.1 Introduction), which is the norm for regional universities. Except for faculty who are assigned non-teaching administrative duties, Southeastern faculty are supposed to be evaluated primarily on teaching. The written policies say that 15-25% of the evaluation should be based on scholarship and 15-25% on service, with the exact percentages to be negotiated, and with the remaining 50-70% of the evaluation based on teaching (4.4.2.1 Procedures). Southeastern's policy statement consistently and repeatedly lists teaching as the first criterion for decisions about promotion and tenure. For example, it says that faculty appointed to associate professor must show "Demonstrated effective classroom teaching, research/scholarship, contributions to the institution and profession, and, in appropriate instances, successful performance of non-teaching or administrative duties" (4.5.2.1 General Guidelines). The same policy statement includes a review of the principles of "Effective Classroom Teaching" (4.5.2.2) before its parallel sections reviewing the principles of "Research/Scholarship" (4.5.2.3) and service, which it describes under the two categories of "Contributions to the Institution and Profession" (4.5.2.4) and "Performance of Non-Teaching or Administrative Duties" (4.5.2.5). The Guidelines for Achieving Tenure also list teaching first, naming "Demonstrated effective classroom teaching" before "research/scholarship, contributions to the institution and profession, and, in appropriate instances, successful performance of non-teaching or administrative duties" (4.6.5). Indeed, the same section of the Guidelines (4.6.5)

requires "Noteworthy achievement in classroom teaching," while only requiring "at least one" of "research/scholarship, contributions to the institution and profession, or, in appropriate instances, performance of non-teaching or administrative duties." By making noteworthy achievement in teaching a requirement without requiring noteworthy achievement in each of the other categories, Southeastern's policies underline the central role of teaching over every other category of faculty work.

The central focus on teaching is repeated many times across the Academic Policy and Procedures Manual, with teaching always listed first, as it is in every document that I have seen from Southeastern and relating to this process. For example, the "Southeastern Oklahoma State University Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet" form begins with a section for teaching before it provides sections for scholarship and service. Southeastern's central focus on teaching more than on scholarship and service is standard for a regional university.

Comparing the Portfolios: An Overview

How then does the picture of Tudor's teaching, scholarship, and service, as represented by her 2009 and 2010 portfolios, compare to the picture of teaching, scholarship, and service in the promotion portfolios of the other candidates? To make that comparison, we must take into account the results of the promotion process for each candidate.

Overall, Cotter-Lynch's portfolio indicates the strongest case for promotion and tenure among all the portfolios. After that, with Tudor's 2009 portfolio as a gauge for comparison, I rank Professor Spencer's and Tudor's portfolios tied for second strongest, followed closely by Professor Barker's portfolio. Spencer's portfolio indicates the strongest service record, with a record equal to Tudor on teaching and below Tudor on scholarship.

As I will indicate below, Barker's portfolio presents a slightly less convincing case for the strength of her teaching than we see in the portfolios of Tudor or Spencer. It also presents a scholarly profile stronger than Spencer's, roughly equivalent to or slightly stronger than Tudor's in 2009, while not nearly as strong as Tudor's in 2010.

Next, I rank Parrish's portfolio fifth out of the five portfolios (or sixth out of six, when we include Tudor's 2010-2011 portfolio). Parrish ranks roughly in the same range as Barker, Spencer, and Tudor in the factual information provided about teaching, lower than Spencer in service, and lower than all the others in scholarship. As noted above, I do not question Parrish's qualifications for promotion and tenure. Quite the contrary. I trust Southeastern's decision to award her the promotion and tenure that she earned. But the portfolios show an even stronger record for Tudor than they show for Parrish. Given that Parrish's record was recognized as worthy of promotion and tenure, it follows logically that a reasonable observer of the portfolios would conclude that Tudor's even stronger record would also win recognition as worthy of promotion and tenure.

The comparisons change when Tudor's 2010 portfolio, with its additional publications and testimonials from colleagues, is considered in place of her 2009 portfolio. While Cotter-

Lynch still ranks first, I see Tudor as a strong second, well above Spencer, Barker, and Parrish. I see no reasonable grounds for ranking Tudor's 2010 portfolio anywhere below second. The comparisons below will explain the observations and logic behind these conclusions.

Summary of rankings				
	Overall	**Teaching**	**Scholarship**	**Service**
1	Cotter-Lynch	Cotter-Lynch	Cotter-Lynch	Cotter-Lynch
2	Tudor 2010-2011	Tudor 2010-2011	Tudor 2010-2011	Spencer
3	Spencer, Tudor 2009-2010	Parrish, Spencer, Tudor 2009-2010	Barker, Tudor 2009-2010	Everyone else, roughly
4	(tie, as noted in row 3 above)	(tie, as noted in row 3 above)	(tie, as noted in row 3 above)	(tie, as noted in row 3 above)
5	Barker	(tie, as noted in row 3 above)	Spencer	(tie, as noted in row 3 above)
6	Parrish	Barker	Parrish	(tie, as noted in row 3 above)

Teaching

None of the documents anywhere in the array of documents I have been provided questions the high quality of Tudor's teaching. In Tudor's 2010 promotion portfolio, there is extensive documentation of her effective teaching from before the date of the 2009 portfolio, including two very favorable letters reporting classroom observations of her teaching by her department chair, Professor John Brett Mischo, one from February 2007 and one from March 2009. The 2010 portfolio also includes very favorable reports of classroom visits by Professor Randy Prus from April 2006 and February 2009 as well as an unsigned 2008 department chair's summary of student evaluations, presumably written by Mischo. The summary is very favorable. For example, it twice reports that "Responses were overwhelmingly positive."

The 2010 portfolio also provides yet more testimony in praise of Tudor's teaching in a very favorable letter reporting a May 2010 classroom observation from Professor F. Daniel Althoff, as well as extremely favorable letters from September 2010 reporting on Tudor's

teaching (and on her scholarship and service) from Professors Paula Smith Allen, Parrish, and Spencer and from the director of the Honors Program, Professor Lisa L. Coleman. Collectively, these letters and evaluations, along with nominations for a teaching award in both 2008 and 2009, present an extremely strong picture of Professor Tudor's excellence in teaching at Southeastern.

The question arises, then, how the record of Tudor's teaching, as represented by her 2009 and 2010 portfolios, compares to the record of teaching in the portfolios of the other candidates for promotion, namely, Professors Barker, Cotter-Lynch, Parrish, and Spencer. While I have done my best to compare the different portfolios' records of teaching, the evidence in their portfolios does not point to large differences between most of the candidates. All the candidates show strong teaching records.

Cotter-Lynch

I rank Cotter-Lynch's teaching more highly than Tudor's primarily because Cotter-Lynch was nominated for a teaching award each year she has taught at Southeastern, and in 2007 she also won the teaching award. The nominations and the award seem like a strong sign of excellent teaching. Other evidence also testifies to a strong record of teaching for Cotter-Lynch. The letters from senior colleagues who have observed her teaching are strong, as they are for Tudor. Like many of the other candidates' portfolios, Cotter-Lynch's portfolio includes sample syllabi. (Syllabi are course plans distributed to the students. They typically describe course goals, procedures, assignments, schedules, and other information about the course.) Cotter-Lynch's sample syllabi, representing 3 of the 9 different courses she has taught, are excellent. They are professionally composed and clearly, practically organized. They show a convincing sense of how to address her students at the point where the students begin and then bring them into the goals of her courses. The printouts of her computerized course evaluations show consistently high ratings, above institutional averages. While printouts are provided for only a small number of her courses, and only from one semester (Spring 2007), leaving open the question of how representative they may be, the printouts nevertheless show that she has attracted extremely high student evaluations for at least some of her courses. I attach little significance to the individual student evaluation forms selected from many different courses, because submitting only selected evaluation forms allows the instructor to pick and choose evaluations, whether they are representative or not. Similarly, I attach little significance to testimonies from a small number of individual students, because with so many students taught over a number of years, individual student testimonies could easily be unrepresentative.

Tudor

Similarly, we have ample evidence that Tudor is an excellent teacher. Unlike Cotter-Lynch's portfolio, Tudor's 2009 portfolio provides considerable information about her teaching for each course, in the form of substantial paragraphs of description. These impressively written paragraphs reveal a carefully reasoned teaching imagination and an impressive depth and breadth of thought and knowledge about teaching and about the humanities. They also show an admirable adaptability, both in general and regarding the needs of the particular students who enroll in her courses and at Southeastern in general. Her courses look extremely well adapted to

the specific population of students who take each different course. Tudor's portfolio documents an unusually extensive pattern of seeking out training in the use of technology for teaching, and the descriptions of her courses, both from her and from her colleagues, back up her extensive use of teaching technologies. The commitment to seek out additional training shows an impressive dedication to teaching. Tudor says that she "welcomed any interested colleagues to observe my classrooms." She also says that reports from those observations are included in her portfolio, but they are not included in the version of the 2009 portfolio that I was provided, which I understand is incomplete. They do appear in the 2010 portfolio, and—as noted above—they are very favorable and convincing. Like Cotter-Lynch, Tudor includes selected individual student evaluations, but again, I attach little significance to selected individual evaluations, as compared to a complete set of evaluations from every student in a course, or still better, from every student in every course. But none of the portfolios under review provides complete sets of evaluations. Tudor explains that she asked to have her classes evaluated by "statistical data analysis" but was told by Professor Mischo "that the department could not afford it." She acknowledges that "statistical data . . . is available from" her "first year of teaching at Southeastern," but says that it "does not accurately present my present skills or abilities and will not be included in my application." That seems reasonable, because statistical data reporting student evaluations from a teacher's first year of teaching at a new institution do not provide a reliable picture of that teacher's effectiveness in future years. None of the other candidates' portfolios provide statistical data reporting student evaluations from their first year at Southeastern. Barker and Cotter-Lynch include such data from a later year, but only for one semester, which (as noted above) puts in question whether the data they provide is representative. Tudor's 2009 portfolio includes no syllabi, perhaps because she includes an extensive description of each course, as noted above, or perhaps because the version of the portfolio that I have is incomplete. Her 2010 portfolio includes 2 syllabi. While the font of the syllabi is too small, they are extraordinary syllabi, among the best I have ever seen and certainly the best I have seen from Southeastern (with no disrespect to the others). They do not include the reading schedule, which she provides online, but they are extremely well-pointed to the particular body of students, to their level of experience, to what will help them learn procedurally and intellectually, and to what will help them learn to understand the value of what they study.

Spencer

Like Tudor, Spencer has an excellent teaching record. He provides helpful descriptions of each course, as Tudor does in her 2009 portfolio. While the descriptions do not show the depth of thought and imagination visible in Tudor's descriptions, they indicate a responsible, successful, hard-working teacher. He also provides a letter reporting a favorable classroom observation by Assistant Professor Caryn M. Witten. It seems unusual to rely on an evaluation from another professor of the same rank. The letter may be sincere, but one assistant professor evaluating another assistant professor could find that their shared circumstances make it difficult to provide a frank evaluation. Spencer also submits several selected individual student evaluation forms. As noted above for the other portfolios, selected individual evaluations are nice, but they are not very meaningful, because there is no way to tell whether they accurately represent other students' experience. Nevertheless, Spencer also lists two teaching award nominations and provides strong summaries from the department chair of the course evaluations for two different courses. Spencer's portfolio includes excellent sample syllabi. They are well-thought-through

and clear. In the courses that focus on novels, however, he may assign too much reading for students to complete and absorb in one course. He also gives a large proportion of class time to student presentations and to essays that the students write while in class. The student presentations and essays written during class may leave too little time for class discussion of the large number of books that Spencer requires the students to read. If I were evaluating his teaching, I would ask him to make sure that he had thought through the advantages and disadvantages of assigning so much reading and using so much class time for student presentations and writing, but I would also defer to his judgment about how to design a course that best matches his teaching style with the material for the course. Overall, both Tudor and Spencer have strong teaching records, without sufficient information in their portfolios to rank either above the other.

Parrish

Like Tudor and Spencer's portfolios, Parrish's portfolio shows a strong teaching record. Parrish was nominated once for a teaching award. She fills out her list of courses with itemized, bulleted, brief descriptions. Later in the portfolio, she also provides extremely detailed, professional descriptions of each course. In the realm of supporting documents, she provides a selection of seemingly unsolicited emails testifying to her good teaching, including 4 from students and one from a teacher of her past students. As indicated above, I do not put much weight on such documents, because with so many students taught over a number of years, individual student testimonies could easily be unrepresentative. They are like the selected individual student evaluation forms that I also put little weight on. Parrish provides several of those as well. Perhaps a poor teacher would not have such documents to submit, but I would expect that any decent teacher would have many documents like that to choose from. You can have one appreciative student in an otherwise unsuccessful class, so a letter or evaluation from one student does not prove much. Nevertheless, Parrish also submits reports of teaching evaluations by Professor Allen and Professor Witten (who by the time of her report is an associate professor). Both reports are confidently favorable and indicate high competence in Parrish's teaching. Parrish provides a large selection of extremely thorough syllabi. Her syllabi are well-designed to speak to the population of business-oriented students who typically take her classes in technical and professional writing. She also shows an appealing range as a teacher, for she skillfully adapts her thorough organization and sense of her students' needs to the very different needs of the students who take her screen-writing classes.

Barker

Barker's portfolio includes concrete, favorable reports about her teaching from Professors Allen, Mischo, Parrish, and Witten. Like her colleagues, she provides individual student evaluations and complimentary emails from students. But as described above, such documents cannot reliably testify to an overall record of good teaching. Barker has taught only 3 different courses during her years at Southeastern, far fewer than her colleagues. Tudor has taught 13 different courses, Cotter-Lynch 9 different courses, and Parrish and Spencer have each taught 7 different courses. Barker's portfolio includes syllabi and accompanying materials for 2 of her 3 courses. The materials for her course in Technical and Professional Writing are clear and practical. Her syllabus seems to think through every concern and issue without getting heavy-

handed about its foresight and advice. The materials for her Children's Literature course are imaginative, rigorous, and demanding. They skillfully address an audience of students who may not be experienced with as much reading as she assigns and may have difficulty fitting it into their schedules. She gives them precise directions while still leaving them space to use their imagination to work within those directions. The sample assignments look helpful for inexperienced students, and Barker even provides a handout of advice from previous students about how to do the work. The range and quantity of assigned reading are impressive. I wonder what would happen with a looser structure, but I much respect the careful thought that went into the design of this course. Students should learn a great deal from Barker's classes.

Like Cotter-Lynch, Barker provides statistical printouts of teaching evaluations, but also like Cotter-Lynch, she provides such statistics for only a small selection of courses. In a letter recommending Barker for promotion with tenure, Lucretia C. Scoufos, Dean of the School of Arts and Sciences, writes that Barker's "student ratings are consistently excellent, well above the university and national norms**.**" The data in the portfolio are not consistent with this claim. The portfolio provides two sets of evaluation statistics, each following a different set of questions and a different pattern of reporting the results. For one course from 2010, the printouts report responses to two key questions. Specifically, for the "overall evaluation of this class," they report a mean (an average) of 4.56 on a scale of 1 to 5. For "Overall, I would rate the teaching ability of the instructor," they report a mean of 4.88. These are extremely high numbers, though no information is provided to indicate how they compare to university or national norms. For 3 courses in 2007, a different system of printouts reports responses to one key question, "Overall, I rate this instructor a good teacher." On that question, Barker's 3 courses had a mean of 4.50. Course by course, they received a 4.53, 4.33, and 4.55. (The printouts also report a unit mean (presumably referring to Barker's department) for that question of 4.62, higher than Barker's mean, and they report an institutional mean (presumably referring to Southeastern) of 4.46, just under Barker's mean. All these numbers are remarkably high for Barker as well as for the unit and the institution, which raises a question about whether enough faculty members' courses were surveyed to produce a reliable sample for comparison. Regardless, these numbers do not match Scoufos's claim that Barker's "ratings are consistently . . . well above the university and national norms." 4.50 is not "well above" 4.46, and it is lower than the mean for Barker's own departmental colleagues.

Scoufos also repeats a claim that appears in a letter recommending promotion and tenure from department chair Randy Prus, who writes that "In the department's recent Assessment Report for Distance Learning, Dr. Barker's on-line classes have the highest rate of retention." As in the case of isolated course evaluations that may not represent a consistent pattern, the information provided here is too selective for us to determine its value. When we have information about only one candidate, from only one short period (in this case, one isolated detail from a "recent" report), we cannot tell whether the information carries weight, or whether unrepresentative information has been cherry-picked so that, intentionally or not, it misrepresents the larger picture.

Amid the uncertainty caused by the inconsistent statistics, I do not feel confident about ranking Barker's teaching compared to the other candidates. There is no doubt that Barker's portfolio presents a strong teaching record. Even so, I would cautiously rank her teaching below

the teaching of most of her colleagues, so far as one can see from the limited evidence of the portfolios. Specifically, the comparative statistics indicate that Barker's courses attracted evaluations slightly below the unit mean. And unlike Cotter-Lynch, Parrish, Spencer, and Tudor, Barker was not nominated for a teaching award. I am therefore inclined to rate Barker's teaching highly, but not as highly as the teaching of the other faculty in this pool of portfolios.

Scholarship

For research/scholarship (which I will refer to as scholarship), I will review the portfolios of Professors Cotter-Lynch, Barker, Spencer, and Parrish and then compare them to the portfolio of Professor Tudor.

It may help to review the standards for judging scholarship before looking at the scholarly records of the individual candidates. When a college or university considers a candidate for promotion and tenure, it judges the record of scholarship on the basis of what the candidate has done since arriving at that college or university. Earlier work may serve as a potential predictor of future work and, in that light, may help an institution decide to hire someone. But when it comes to deciding whether to award a professor promotion or tenure, an institution considers what the candidate has done since arriving at that institution.

In contemporary college and university English departments, scholarship is an umbrella term that includes publishing critical discussions about literature, publishing research about literature or related topics, or publishing creative writing. It also includes presenting such work at professional conferences. These standard procedures for characterizing scholarship match Southeastern's written policies, which describe faculty scholarship as "research or creative achievement" (4.6.1 Academic Tenure; see also 4.5.2.3 Research/Scholarship). We can judge scholarship by considering one or more of five different markers of scholarly accomplishment:

1) Number and length of publications and presentations.

• Books. A book counts far more than an article, not only because it includes more writing but also because it requires more research and a larger scale of thinking.

• Articles. A substantial article counts more than a brief, minor article.

• Conference presentations. A conference presentation counts far less than an article, because conference presentations are unpublished, so that they are not available for other scholars to consult. They are presented orally and heard only by whoever happens to show up for the presentation, sometimes a very small number of people. They are also typically shorter than articles and not as fully backed up with cited evidence, because cited evidence is difficult to provide orally. While they are usually peer-reviewed (see #2 below), peer reviewers for conference presentations typically review only a short summary of the presentation, in part because at the time of peer review the full presentation has often not yet been written.

• Book reviews. A book review that simply reports on a book may prove useful for readers but carries almost no value as a scholarly accomplishment and as a credential for promotion and tenure. A book review that includes a serious scholarly discussion may count for a little more but does not usually represent original scholarship.

2) Peer-review. Peer-reviewed publication is the gold standard of scholarly achievement. When scholars complete a manuscript of their writing, they submit it to a scholarly journal or a scholarly book publisher. If the editors at a journal or publisher that uses peer review believe that the manuscript is promising, then they will send it to scholarly experts to review. Often, to ensure the experts' objectivity, they include no indication of who wrote the manuscript. The scholarly experts, known as peer reviewers, review the manuscript to determine if it meets the standards of the journal or publisher, and then to recommend that the journal or publisher publish the manuscript or decide not to publish it. Typically, at least two experts must agree that the manuscript deserves publication before the editors will decide to accept it for publication. Publications that are not peer-reviewed usually receive little or no credit for a promotion unless they are invited (as in number 3 below) or actually read (as in number 4 below) and seriously responded to by other scholars (as in number 5 below). More prestigious journals and book publishers tend to set higher standards and conduct more intense peer review. Most peer-reviewed manuscripts are not accepted for publication, because they do not survive the process of peer review successfully. Proposals for conference presentations also go through peer review, except, sometimes, when they are invited. By contrast, book reviews are not peer-reviewed.

   In this report, I provide documented evidence, whenever it is available, to indicate whether a journal or other publication uses peer review, taking such evidence from the *Modern Language Association Directory of Periodicals* (as described below) or from a journal's own website. All such documents (including websites) are itemized in the list of accompanying documents attached to this report.

3) Invitations to contribute to a scholarly journal, to a book that includes chapters or articles by different scholars, or to a scholarly conference. For well-established scholars, that is to say, scholars who have published extensively and whose publications have attracted widespread respect from other scholars, invitations can replace peer review.

4) Actually reading the work and judging its quality and importance.

5) Published responses by other scholars.

Numbers 3 and 5 do not apply to the portfolios under consideration for this report, as none of them provides any evidence of invitations to contribute or of published responses to the work under examination. I will therefore compare the candidates' scholarship by focusing on categories 1, 2, and 4.

Cotter-Lynch

At the time she submitted her portfolio in 2009, Professor Cotter-Lynch's scholarship seemed to be on an upward trajectory, though it had not yet led to much publication. She had published one article about teaching, published without peer review by an online education company that I was not familiar with, a company that nevertheless gave the article an award. She provides a web address for the article, but the link is dead, and the article no longer appears elsewhere on that website. I found it, nevertheless, on the Wayback Machine (https://web.archive.org/web/20080509122634/http://ablemedia.com/ctcweb/consortium/cotterlynchancientbiography.html), an online archive of websites removed from their original locations and otherwise no longer available. This article reports Cotter-Lynch's day-by-day teaching strategy, including lesson plans and lecture notes, for part of one course, a part that focuses on the ancient historians Plutarch and Suetonius. While it makes no original scholarly contribution, it is an exceptional report and model of teaching, as good as any report of a professor's teaching strategy that I have seen. It speaks in sympathetic and practical terms to Southeastern freshman at the skill and knowledge level they bring to her class, and it also stretches them to develop skills of reading, interpretation, and reflection on writing and on civics that they can take with them to other courses and to the remainder of their lives. I learned several teaching strategies about how to get beginning students to expand their curiosity and their skill at interpretation. While it is unfortunate that this article is not easier to find, a publication of this kind suits a teaching-centered university such as Southeastern especially well. When Southeastern's policies describing faculty scholarship list what counts as scholarship at Southeastern, they begin with "adaptations of knowledge to the learning environment" (4.5.2.3 Research/Scholarship). Cotter-Lynch's article does not provide original scholarship, but it skillfully adapts already existing knowledge to the learning environment.

In 2009, when Cotter-Lynch submitted her portfolio, she was also the coeditor of a nearly complete book that collects scholarly essays from ten different scholars, a book that had a contract with Palgrave-Macmillan, a very respected publisher. When her promotion was under consideration, the book manuscript was scheduled to go through peer review soon. The contract reflects the publisher's expectation that the manuscript would pass successfully through peer review, but that process had not yet taken place when Cotter-Lynch was under consideration for promotion. She lists her own article in the book as peer-reviewed, but says the book had not yet gone through peer review, so it is not clear whether the peer review for the article was completed or anticipated. Most schools would not count an article in a book edited by the candidate as a credential toward that candidate's own promotion, but if the article successfully passes through peer review, then it seems to me worth crediting. Cotter-Lynch had another article manuscript undergoing peer review at the time she submitted her portfolio. She also reports that a Palgrave-Macmillan editor had expressed interest in the book manuscript she was working on. Such interest is a good thing, but the project had not yet reached the concrete stage of a finished book manuscript, let alone a manuscript that had gone through peer review and been accepted for publication. Therefore, it was far too early for that manuscript to count as a publication. Cotter-Lynch had also published one additional article and one book review, but they were published before she arrived at Southeastern. Her only publication since arriving at Southeastern was thus the article about teaching Plutarch and Suetonius.

Without any published work included in the portfolio for me to read and evaluate, I read the series of unpublished manuscripts included in the portfolio. They are excellent work. They offer a concrete, imaginative, and professional contribution to active discussions in current scholarship. As specialized studies of the history of early medieval women, early medieval women's writings, and the interpretation of early medieval accounts of dreams, they would require a specialist in those areas to provide a full evaluation of exactly how they fit into recent scholarship. But even someone such as myself, a non-specialist in those areas who has a more general acquaintance with medieval studies and a broad acquaintance with the history of literary criticism and with contemporary literary criticism, can see that these are very promising works. They consist of 3 conference presentations, somewhat repeating each other and not in the final forms they might eventually take in published work, plus the manuscript of the article to be included in the book that Cotter-Lynch was co-editing, and the other article manuscript then under consideration at a journal. Here and there they have a minor rough passage, especially (as one might expect) in the conference papers. For example, the article for the co-edited book confuses the theoretical concept of interpellation with another term, interpolation, which has a completely different meaning. (A peer reviewer should catch such things.) Nevertheless, Cotter-Lynch understands the concept well and uses it rigorously, and all her work seems imaginatively and constructively keyed to advancing active interests in the contemporary scholarly study of medieval women, their writings, and other writings about them, key areas in contemporary medieval studies.

Through the South Central Modern Language Association, Cotter-Lynch received a grant for a one-month residency at the Newberry Library, a major research library. Such a grant is an indicator of serious scholarship in progress. Since her arrival at Southeastern, she presented her work at 7 different conferences (her statement says she gave 4 presentations, but 7 appear on her list of presentations), including such major conferences as the International Medieval Congress, which is the major conference for medieval studies, and the conferences of the American Comparative Literature Association and the Modern Language Association. She also took a leadership role by organizing sessions at the Medieval Congress and leading a seminar at the Comparative Literature Conference. No one else in this set of portfolios has nearly so strong a record of presenting work at conferences. That record of strong conference presentations contributes to the impression that Cotter-Lynch's work was on an upward trajectory, with publications perhaps about to appear, even though, during her years at Southeastern, and by the time of this promotion, she had only one publication.

Barker

During her time at Southeastern, Professor Barker presented 4 papers at the major conference for the study of children's literature and volunteered to chair a session at that same conference. She does not provide her actual conference papers, but she does provide summaries of them. Her paper on the popular novel *Holes* is clever, smart, and well-informed. Her paper on three historical novels by Christopher Paul Curtis shows a keen understanding of the novels' racialized contexts. And her paper on Curtis's novel *The Watsons Go to Birmingham—1963,* which she expanded into an article, shows an excellent sense of the novel's tone and its changes in tone. The earliest of these conference papers, on girls in nineteenth-century fiction, seems less

original and rather forced into the theme of the conference, but otherwise relatively soundly conceived.

During her time at Southeastern, Barker also published a deeply researched, deeply thought-through article, "Racial Identification and Audience in *Roll of Thunder, Hear My Cry* and *The Watsons Go to Birmingham—1963*." This article appeared in *Children's Literature in Education,* an established education journal and a good venue for a scholar from a teaching-focused university such as Southeastern. Barker's article is slow-moving and too long, but it is thorough and useful. Drawing on a wide range of surprisingly detailed research, Barker builds well-observed interpretations of the two novels she discusses. Noting that African American readers have received more attention in discussions of these novels, she also attends to white and, more broadly, non-black readers, and she compares the different contexts of response for differently positioned readers. Unlike many other critics who write about racially-inflected topics, Barker genuinely has read and understood the body of scholarship known as "critical race theory," and she imaginatively brings it to bear on strategies for interpreting children's literature. She concludes with a thoughtful, practical discussion of strategies for teaching racially conscious children's literature to readers who may believe that we live, or should live, in an age of race-blind teaching. This article will serve as a valuable reference for teachers from middle school through high school, and for university teachers of future teachers.

Barker's portfolio includes a letter testifying to the strength of her scholarship from Professor Lynne Vallone, a distinguished scholar of children's literature at Rutgers University—Camden. Dean Scoufos's letter recommending promotion and tenure for Barker makes much of the letter from Vallone, and the Faculty Promotion and Tenure Evaluation worksheet names the letter from Vallone, along with Barker's published article, as the two facts testifying to Barker's outstanding scholarship. But Vallone's letter notes frankly that Barker was Vallone's student, and that Vallone directed Barker's dissertation, which disqualifies the letter as a reliable indicator of Barker's credentials. Relying on that letter is the academic equivalent of relying on a parent testifying to the wonders of her own child. Vallone has a conflict of interest, because Barker's success in winning promotion and tenure would provide a credential testifying to Vallone's own success.

<u>Spencer</u>

Professor Spencer published a 326-page scholarly book and a 20-page scholarly article before arriving at Southeastern, but publications from before his arrival at Southeastern are not relevant to his consideration for promotion and tenure at Southeastern. When he applied for promotion and tenure, he had published only one book review during his time working at Southeastern. His portfolio provides a link for the review. The link no longer works, but I found it at another address (https://scholarworks.iu.edu/journals/index.php/tmr/article/view/16706/22824). It is professional and thoughtful work, but as a brief and modest book review, it does not represent a substantial contribution to original scholarship.

He also had 2 articles accepted for publication and scheduled to appear. His portfolio does not provide copies of the articles, but I acquired them through my university library. They

appeared in peer-reviewed journals, *The Explicator* and *Eureka Studies in Teaching Short Fiction.* According to the *Modern Language Association Directory of Periodicals, Eureka Studies* accepts a high percentage (60%) of the manuscripts submitted for its consideration, making it a comparatively easier journal to publish in, and thus making an article in *Eureka Studies* a less impressive credential than an article in most other journals. (For more about the *Modern Language Association Directory,* see below.) *The Explicator* had a certain vogue in the 1940s and 1950s, when it was new and represented a new trend sometimes known as "explication," but for many decades now it has had a reputation for publishing undistinguished work. Department chair Mischo writes, in his December 1, 2006 letter to Dean Mangrum about Spencer: "there is a question as to the research significance of a venue such as *Explicator* and its standards of scholarly depth." I believe that most informed scholars share that skepticism. It is difficult for a journal that publishes extremely short articles, as *The Explicator* does, to publish scholarship with ambition and depth.

Spencer's article in *The Explicator,* a short, thoughtful reading of a famous poem by Emily Dickinson, argues skillfully for a new interpretation of the poem's understanding of the Christian afterlife. The article is only one page long, however, and it does not address any other critics' interpretations of the poem, even though a great many previous critics have written about the poem, as Spencer acknowledges. My own view is that Spencer's plausible interpretation needlessly narrows the poem to one model of the Christian afterlife, but I would like to see the advantages and disadvantages of Spencer's interpretation played out, in relation to other critics' interpretations, at greater length.

The other article works on a larger scale both in length (10 pages) and in research. It offers a point-by-point comparison of William Faulkner's most famous short story, "A Rose for Emily," Robert Bloch's novel *Psycho*, and Alfred Hitchcock's film made from the novel. Spencer notes that others have mentioned similarities among these works, but he sets out to describe the similarities more extensively. He suggests that Hitchcock's film makes few changes to the novel, but that those few changes heighten the film's similarity to Faulkner's story. Spencer grounds the article in his own experience teaching the 3 works together and implies that others might try the same in their own teaching, an approach that makes the article speak to the teaching-centered focus of Southeastern. As a Faulkner scholar myself, I would like to see a little more engagement with other critics' interpretations of the story, but this is a reasonably well-researched article, proficiently executed with modest but interesting and plausible claims.

As I will indicate in the next paragraph, Spencer had a third article accepted while he was under consideration for promotion and tenure, an article about George Garrett's novel *Death of the Fox.* In this article, Spencer draws on wide knowledge and research but has nothing new to say about his topic. Most of the article summarizes the novel's plot. We teach our students not to summarize plot, because if people want plot, they can just read the novel. The task of the critic is not to describe the novel, but to interpret it. When Spencer is not describing plot, he mostly just describes the novel's approach to its topic or focuses on recounting what Garrett himself or others have said about the novel, sometimes noting whether he agrees, but not providing any fresh or extended interpretation. Spencer shows a vast knowledge of materials and issues in and around *Death of the Fox* and a vast knowledge of other novels to compare it to. While this article shows more knowledge than Spencer's other articles, it is nevertheless weaker work.

According to a May 18, 2016 letter from the Department of Justice to the writer of this report, "In the Spring of 2007, Dr. Spencer sent out four articles for publication and supplemented his portfolio with that information." These 4 article manuscripts "were all ultimately published." After Spencer submitted the article manuscripts, Southeastern President "Snowden, based on Dr. Spencer's supplemented portfolio, recommended that Dr. Spencer receive tenure and promotion." Only one of the 4 articles was accepted before Snowden's decision, the article on *Death of a Fox,* though Spencer "is not sure whether he informed President Snowden" of that acceptance before Snowden's decision. One of the articles was published by a journal that Spencer submitted to after Snowden's decision.

After this precedent was set, providing decisive credit to Spencer's submission of 4 article manuscripts, Tudor's 2009 portfolio listed 11 submitted article manuscripts. It looks extremely peculiar that Spencer would be given so much credit for 4 submitted manuscripts, reported late in the process, that the mere report of submitting those manuscripts would reverse a recommendation against promotion and turn it into a recommendation for promotion, and yet Tudor was not given the same credit for nearly 3 times as many submitted manuscripts, reported 4-6 months earlier in the promotion-and-tenure-review process.

One could understand if Tudor were not credited for submitting article manuscripts, so long as the same standard had applied to Spencer. But it appears that Spencer was given a great deal of credit for a category of scholarly production when Tudor was not given the same credit for a great deal more production in the same category. That glaring contradiction stands out even when we consider only Tudor's 2009 portfolio, without even taking into account her far more extensive 2010 portfolio.

Parrish

During her time as an assistant professor at Southeastern, Professor Parrish produced nothing that can count for a record of scholarly publication within Southeastern's definition of "Scholarship/Research" (4.5.2.3). Like many of her colleagues, she published a number of items before she arrived at Southeastern, but after she began working at Southeastern she did not publish work that would count as scholarship. She did write 2 government reports, together totaling 4 pages. They are not peer reviewed, and they are not items I would consider scholarship or publications. They are work done on the side, not as part of her job as a professor. She also reviewed a textbook manuscript and a textbook proposal for commercial publishers. Being asked to do those reviews is not a sign of scholarly distinction. Textbook publishers do not ordinarily ask professors to review such things based on the distinction of the professors. Rather, they look for people who teach courses that might assign the published textbooks, trying to find professors at all different types of schools in different regions of the country. They hope to get useful suggestions for the manuscripts from a variety of different markets, but they also hope that the manuscript reviewers will themselves assign the books if they are published. In that context, Parrish's completion of those manuscript reviews may indicate good citizenship, but it does not count as scholarship. Parrish lists 10 presentations at conferences or other events before she arrived at Southeastern, but only one since arriving at Southeastern, and that one is a local presentation at Southeastern itself, which usually disqualifies a presentation from counting as

scholarship in a promotion portfolio. A presentation of that kind counts as service, not as scholarship.

Parrish's sole publication from her time at Southeastern that comes even close to being scholarship consists of one three-page, non-peer-reviewed book review that merely summarizes the book. As noted earlier, in line with standard procedures, a book review that simply reports on a book does not count as scholarship. That standard procedure for judging book reviews matches Southeastern's written definition of scholarship, which describes scholarship as "the pursuit of new knowledge," and which provides a list of the different kinds of faculty scholarship, a list that does not include book reviews. It does include "articles in refereed [meaning peer-reviewed] or editor-evaluated publications" (section 4.5.2.3 Research/Scholarship). But book reviews are not articles, are not refereed or peer-reviewed, and are rarely editor-evaluated. Parrish's book review, which simply describes the book she reviews without providing any notable research or thinking of her own, does not advance the pursuit of new knowledge. Because Parrish's record shows no scholarship produced during her time at Southeastern, I see no reasonable cause for rating her record of scholarship above the record of scholarship for Professor Tudor, whose record as a scholar is far stronger both in quantity and in quality.

As noted earlier, I am not suggesting that Parrish did not deserve to receive promotion to associate professor with tenure. I have described her record of scholarship here merely so that I could compare her record to the record of Tudor and the other professors whose portfolios I have reviewed.

Tudor

In comparing Professor Tudor's record of scholarship to the scholarly records of her colleagues, I will first consider her 2009 portfolio and then her 2010 portfolio. In her 2009 portfolio, Tudor reports one presentation at a regional conference and one at Southeastern. The presentation at Southeastern would count toward service rather than scholarship. She also reports one article accepted for publication by *The Texas Review,* "Romantic Voyeurism and the Idea of the Savage." *The Texas Review* is not well-known outside its region, but it is a peer-reviewed journal. It is also a selective journal, meaning that it accepts a low percentage of submissions. I was not provided a copy of that article for the 2009 portfolio. (I was provided a copy for the 2010 portfolio, which I will address below.) As noted above, she also lists an unusually large number of articles submitted but not yet accepted. I was provided a copy of one of those articles, "Historical and Experiential Postmodernism: Native American and Euro-American," published in a peer-reviewed journal, the *Journal of Contemporary Thought* in 2009 (and added to Tudor's 2009 portfolio in February, 2010, according to emails from Southeastern provided by the Department of Justice). Just as a matter of counting, let us put these two peer-reviewed articles from the 2009 portfolio into comparative perspective. Aside from Tudor, only Barker had a published, peer-reviewed article. Cotter-Lynch had one accepted and published article, not peer-reviewed. Spencer had 2 accepted and not yet published articles (or 3, if we count the supplementary information that, as noted above, Spencer cannot recall whether he provided), each of them peer-reviewed, one of them extremely short, and none of them in highly selective journals. Spencer also had a book review. Parrish, with only a book review that merely

summarizes the book under review, had no publications that count as scholarly publication within Southeastern's definition of "Scholarship/Research" (4.5.2.3).

In that context, it is hard to see any good reason why the worksheets from the Dean of the School of Arts and Sciences, Lucretia Scoufos, and the Interim Executive Vice President for Academic Affairs, Douglas N. McMillan, assign Tudor's scholarship the possibly fatal rating of "needs improvement" (3 on a scale of 1 to 5). Granted, Scoufos dated her worksheet on January 14, 2010, before the news of Tudor's second accepted article in February, 2010. Scoufos writes in her January 12, 2010 letter that "there appears to be only one peer-reviewed paper . . . accepted, but not yet published." (In an English department, it could sound demeaning to refer to an article as a "paper," as if it were only a conference paper, but that is not the case in all fields, and I do not know Scoufos's field.) As noted above, Cotter-Lynch had no peer-reviewed articles. Barker had only one. And Spencer, at the same point in the process, had two accepted but not yet published peer-reviewed articles, short enough so that together they total less production than Tudor's one article, even without taking into account Tudor's report of many submitted articles. Less than a year earlier, on February 12, 2009, Scoufos recommended Parrish for promotion and tenure, even though Parrish had no articles. In those comparative contexts, I find Scoufos's evaluation of Tudor puzzling.

McMillan's evaluation of Tudor stands out as even more puzzling. McMillan signed the transmittal form for Tudor's 2009 portfolio on February 10, 2010. The next day, February 11, an email from Scoufos indicates that McMillan approved the decision to add to Tudor's portfolio the new information that she had a second accepted article. Indeed, McMillan's April 30, 2010 letter purporting to explain the reasons for the decision to deny Tudor's application for promotion and tenure acknowledges that Tudor has "two publications" that "do appear to be examples of work which meet[s] the excellent and noteworthy standard" required for promotion and tenure. As noted above, McMillan's worksheet, which is undated, assigns Tudor's scholarship the same possibly fatal rating assigned by Scoufos. Either McMillan completed the worksheet before learning of Tudor's additional publication, in which case the comparatively low rating on the worksheet should not have been relevant to McMillan's decision reached after learning the new information, or he completed the worksheet later and yet gave Tudor's scholarship the same rating that Scoufos gave it even though by that point Tudor had doubled her production of accepted, peer-reviewed articles. Either way, the rating and the decision are strikingly inconsistent with the decisions reached about the other candidates.

I have also seen one worksheet for Barker (undated and unsigned, so that I cannot tell whose ratings it records). Barker published less than Tudor, but this worksheet gives Barker an "outstanding" for scholarship (5 on a scale of 1 to 5). I have not seen worksheets for the other candidates, and reasonable people could debate the comparison between Tudor's 2009 and Barker's, and possibly Spencer's, records of published scholarship or scholarship accepted for publication. But even though different evaluators could reasonably rank Barker's, Spencer's, and Tudor's 2009 records of scholarship in different sequences, they could not reasonably put them in entirely different categories. And by no reasonable measure can Tudor's scholarship in 2009 rate lower than Parrish's scholarship, let alone so much lower that it lands in an entirely different category. And all that applies only if we simply *count* the publications.

If we take the more responsible path of actually reading Tudor's publications, then her scholarship stands out still more for its serious substance. The article about "Historical and Experiential Postmodernism" does not break major new ground, and it was published in a journal published in India that does not appear to be very selective and is not widely distributed in the United States. But it provides a sophisticated and well-informed synthesis, very valuable for teachers, and a more convincing sign of Tudor's own preparation for teaching than the usual pattern of articles that say something more original but not very meaningful. I appreciate the way that this article provides a genuinely critical yet still sympathetic distance on what other scholars and critics of Native American writing have said before Tudor. It has a substance equaled in these portfolios only in the article by Barker and in Cotter-Lynch's excellent work in progress, which at the time of her portfolio was not yet completed or accepted for publication. It is exactly the kind of scholarship that best serves a faculty member at a teaching-centered university.

While Tudor's 2009 portfolio already places her scholarly record second (roughly tied with Barker) among the 5 candidates' portfolios, her 2010 portfolio shows an even much stronger scholarly profile, stronger than Cotter-Lynch's in terms of actual accomplished publication, and far stronger than Parrish's and Spencer's portfolios, if still not as strong as Cotter-Lynch's, in terms of my own judgment of the actual written work. In addition to the 2 articles mentioned above, the 2010 portfolio includes another 6 articles published or accepted for publication, making a total of 8 articles. (It also includes a ninth article that editors asked her to revise for additional consideration, a standard practice that most accepted article manuscripts go through before they are accepted for publication.) Nothing in the pool of portfolios compares to this burst of publication from Tudor. The articles are relatively rather than completely up-to-date with current scholarship. Nevertheless, she did the work and had the skill and talent to do it well, both according to my own judgment and according to the judgment of objective peer reviewers. The journals (and in one case, edited book of essays) where these articles were slated to appear vary, and none of them is a top-flight journal. It is difficult for a scholar with the limited scholarly resources of a teaching-centered university like Southeastern to publish with a top-flight publisher or journal. The only publisher or journal in the entire set of portfolios that is even in the realm of a distinguished place to publish would be Palgrave-Macmillan, where Cotter-Lynch has a contract for her not yet peer-reviewed co-edited book manuscript. At the same time, 7 of the 8 places where Tudor has published articles or had articles accepted for publication rely on peer review (*ASEBL Journal, The Atrium, Diesis, Journal of Contemporary Thought, Research and Criticism, Teaching American Literature,* and *The Texas Review*). The remaining article was published in a book called *Diasporic Consciousness,* published by a German publisher, VDM Verlag, which does not use peer review, though the editor of the book would still have done her own review before deciding whether to accept the article. The peer review that Tudor's publications went through provides an objective standard of outside judgment unparalleled across the pool of portfolios under consideration. And it provides that objective standard of outside judgment for a total of 7 different publications. Perhaps someone could get lucky once or maybe even twice and slip an unworthy manuscript through the process of peer review. But that could not happen repeatedly. It could not happen 7 times.

I am extremely familiar with the process of peer review. I regularly peer review scholarly manuscripts for distinguished academic journals and book publishers. My own scholarly writing has gone through peer review numerous times, and I have coached and advised numerous less

experienced colleagues and former graduate students through the process. But I do not ask you merely to rely on my professional judgment. Instead, to illustrate the process of peer review in objective terms that do not rely on my own professional judgment, I have consulted the Modern Language Association Directory of Periodicals, the largest and most authoritative database of information about scholarly journals of literature and language. The Modern Language Association is the premier professional organization for the study of languages and literatures, and I have access to their database through EBSCO (a collection of electronic databases) at our library at the University of Illinois. EBSCO is also available at Southeastern, as I know because Tudor's syllabi indicate that she requires her students to use it through the Southeastern Library. Of Tudor's 8 articles, one appears in a book collection, which would not be listed in a directory of periodicals. The other 7 articles were published or accepted for publication in journals. Five of those journals appear in the directory. Of the remaining 2 articles, one appears in *Research and Criticism,* which is not listed in the directory, but which says on its website (http://www.pencraftinternational.com/bookclub.htm) that it conducts blind peer review (meaning that the reviewers do not see the names of the scholars whose work they review, the most objective form of peer review). The other appears in *Diesis,* which says on its website that it conducts blind peer review (http://www.diesisjournal.org/submissions). The Modern Language Association Directory of Periodicals also includes the 3 journals where Spencer had work accepted for publication and the one journal where Barker published.

The charts below show the directory's information about peer review for the 5 listed journals where Tudor has published, followed by the journals where Spencer and Barker have published. As neither Cotter-Lynch nor Parrish published in any journals between the time they arrived at Southeastern and the time they submitted their applications for promotion and tenure, the charts below are complete. I have calculated the acceptance rate based on the number of articles published per year divided by the number of article manuscripts submitted per year. Attached to this report, you will find copies of the printouts from the directory, the source of the information in the charts below, as well as copies of the websites listed above for *Research and Criticism* and *Diesis.*

Journals for Tudor's published articles	Article manuscripts submitted per year	Articles published per year	Acceptance rate	Number of peer readers
ASEBL Journal	13	3	23%	2
The Atrium	100	24	24%	4
Journal of Contemporary Thought	30-40	25	63-83%	2
Teaching American Literature	100	20-25	20-25%	2
The Texas Review	250	6	2%	5

Journals for Spencer's published articles	Article manuscripts submitted per year	Articles published per year	Acceptance rate	Number of peer readers
Eureka Studies in Teaching Short Fiction	50	30	60%	3 minimum
Explicator	300	100	33%	2-3
Lamar Journal of the Humanities*	50	10	20%	4

*As described earlier, Spencer had an article accepted in *Lamar Journal of the Humanities* late in the process of his consideration for promotion and tenure, and he does not remember whether he notified administrators of the acceptance. Therefore, it is not clear whether this journal is relevant for the chart above, but it is included, nevertheless, in the interest of considering the full range of possibly relevant data.

Journal for Barker's published article	Article manuscripts submitted per year	Articles published per year	Acceptance rate	Number of peer readers
Children's Literature in Education	"Varies"	20	Not calculable without information about the number of manuscripts submitted per year.	2

The information in these charts is far more reliable as an objective measure of Tudor's scholarship than the hunch of an administrator at Southeastern, who may not know the field and who may bring non-objective considerations into the decision-making process.

As an experienced scholar in the field, I will also provide brief evaluations of the 5 additional publications included in Tudor's 2010 portfolio and not in her 2009 portfolio, as well as brief evaluations of her other 2 new articles listed in the 2010 portfolio but not provided in that portfolio.)

- "Latin American Magical Realism and the Native American Novel." This article is knowledgeable, intelligent, and wise. It has a narrow focus, zeroing in on a critique of one particular scholarly book that may not need such a careful consideration, but the consideration is very well done.

- "*Pearl:* A Study in Memoir and First Person Narrative Poetry." This is an intelligent and proficient article, well researched through 2000. Some individual comments in the article could use revision to point them better at a scholarly audience, but the work overall shows genuine promise for a young scholar.

- "Romantic Voyeurism and the Modern Idea of the Savage." This article is intelligent, knowledgeable, and wide-ranging, more useful for teachers than we might find in the tight focus of a typical scholarly article. A few individual points could use revision, but again, the wisdom and ability stand out.

- In "The Ethics and Ethos of Eighteenth-Century British Literature" Tudor compares two eighteenth-century novels, *Pamela* and *Evelina,* to a postcolonial twentieth-century novel, *Wide Sargasso Sea,* which itself revises the nineteenth-century novel *Jane Eyre.* Tudor discusses how differences in social power shape these novels, focusing on gender, class, and race, a fairly predictable approach in contemporary criticism. The distinctiveness of the article comes in the comparison across centuries, including the argument that ideas made explicit in the later novel also play a large role in the earlier novels, even though the earlier novels show less awareness of those ideas.

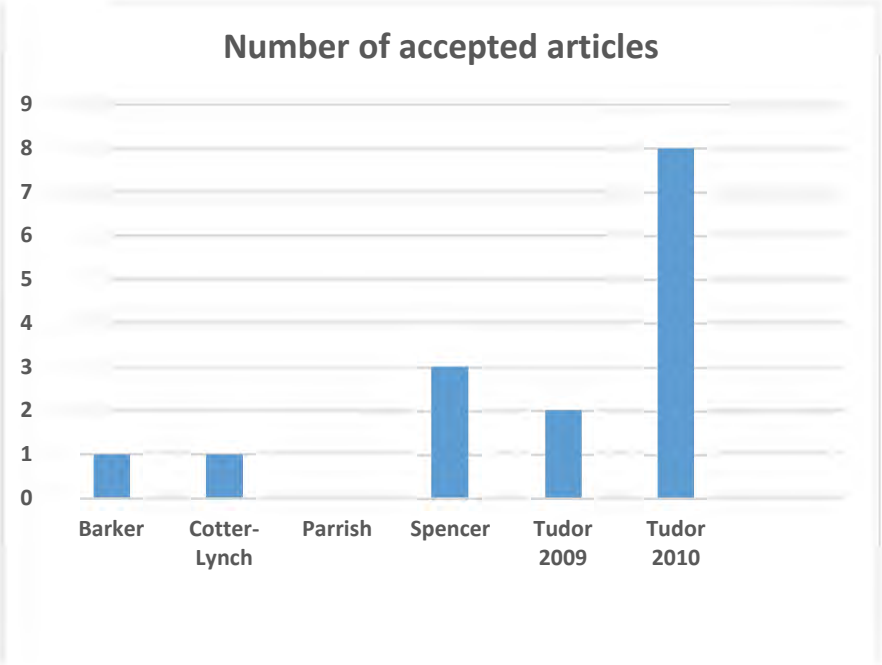
- "A Reading of Jonathan Swift's 'A Modest Proposal' Using Roman Jakobson's Poetic Function" offers a skillful, intelligent, and sophisticated reading of Swift's rhetoric and style. The grafting of Jakobson's famous essay with Swift's most famous essay comes across like a teaching exercise by a smart and ambitious beginner, though in that sense it helpfully addresses strategies for teaching Swift to undergraduates. I would like to see the impressively detailed reading of Swift's language complemented by more dialogue with what other critics have said about it, but this is smart and imaginative work.

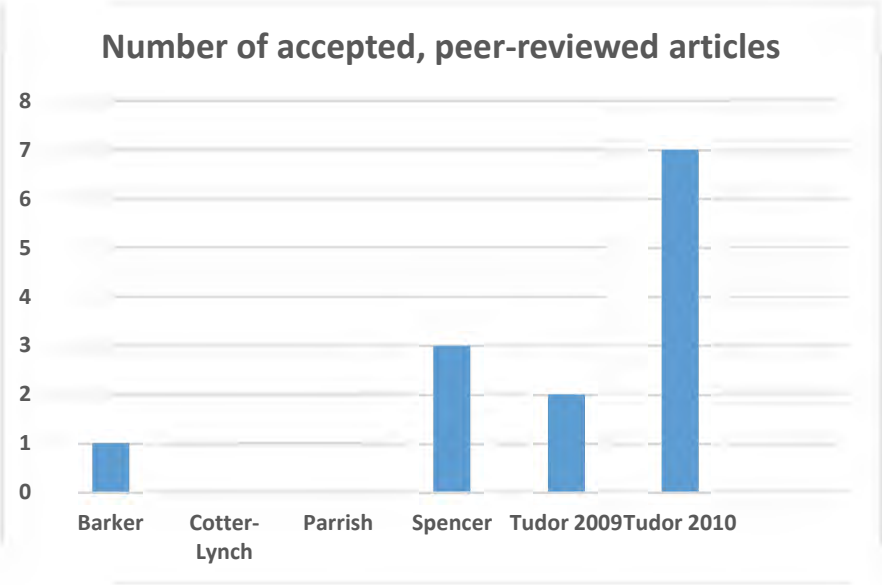
- "The Memoir as Quest: Sara Suleri's *Meatless Days.*" A very solid article that can prove useful to people who teach or write about Suleri's popular memoir. While this article is published in a South Asian journal that few readers in the United States will find, it makes sense to publish there about Suleri's memoir of growing up in South Asia.

- "*The Ancient Child* and *House Made of Dawn:* A New Interpretation." This article about N. Scott Momaday, a Pulitzer-Prize-winning, widely taught Native American novelist, is Tudor's best work. It provides a strong interpretation deeply engaged with other critical responses. With updating, a more specific title, and perhaps an occasional cut of more personal reflections, this article definitely has the potential to appear in a distinguished journal of literary criticism.

Overall, Tudor's articles move across a wide range of materials, with a focus on Native American studies and fiction. They also address related topics such as colonial and postcolonial writers, including Suleri and the Irish writer Jonathan Swift, in line with the common tendency of scholars to interpret Native American writing together with other postcolonial writing.

The charts below illustrate the number of accepted articles and the number of accepted, peer-reviewed articles for each candidate. (These charts include Spencer's third article even though the administrators at Southeastern may not have known of its acceptance when they decided to recommend him for promotion and tenure.)





Service

Based on the portfolios available for consideration, it is difficult to draw meaningful distinctions among the service records of the 5 different candidates for promotion. The only meaningful differences I can readily identify come from Cotter-Lynch's nomination for an award for excellent service, and her service beyond Southeastern in organizing conference panels and leading a seminar of other scholars. I do not know how difficult it is to receive a nomination for excellent service, but the other candidates have not listed such a nomination or provided leadership in national settings beyond campus. Much of Barker's service seems to follow from

her classroom role as a teacher of future teachers of English, but I do not have enough information to judge how much such work goes routinely with the courses she taught or indicates an extra contribution on her own initiative, except to say that she also volunteered at the community elementary schools. Apart from those considerations, all the candidates seem to have similar records of service. Except for Barker, they all played roles on their department's Assessment, Planning, and Development Committee, which both Spencer and Tudor have chaired. Barker and Tudor also served on the Five-Year program Review committee, while Spencer and Tudor played key roles in organizing Southeastern's biannual Native American Symposium. Tudor's 2010 portfolio also indicates that she began working to organize a Gay Straight Alliance on campus and to provide other support and resources for LGBT students at Southeastern. Tudor and Cotter-Lynch both served on committees that hire new faculty, a crucial and extremely time-consuming task. All the candidates pitched in to help with the Honors program or other more or less routine tasks here and there. Spencer served as faculty advisor for the local chapter of Sigma Tau Delta, the international English Honor Society. Parrish and Tudor each served on the Faculty Senate, elected by their colleagues from across the University.

Given the difficulty of making meaningful distinctions among the service records of the various candidates, it seems perplexing that all the candidates except Tudor were considered by the administrators beyond their department to have served the University with distinction. Probably no one was better qualified to judge Tudor's service than those colleagues who worked with her most closely. Here is what they say.

- Professor Paula Smith Allen's 2010 letter says that "As a colleague, Dr. Tudor endeavors to carry (at least) her share of the workload within the department. I recall that, while still a relative newcomer . . . , Dr. Tudor led an assessment effort by the department with alacrity and foresight over a several-year period. She participates on committees and participates actively in planning and assessment. She works effectively with both faculty and staff members, and her demeanor is always professional regardless of the circumstances."

- Professor Lisa L. Coleman's 2010 letter praises Tudor's contribution to designing new courses, working on the Native American Symposium, serving the community, serving as a Faculty Senator, and working on department committees.

- Parrish's 2010 letter says that "Dr. Tudor has been instrumental in the preparation of assessment documents," praises her work on department committees, and says that "She is a vital member of the department through her service, astute thinking, contributions, and collegiality." She also praises Tudor for service "beyond the department as she currently serves on the Faculty Senate, has served and participated in the Oklahoma Scholar Leadership Enrichment Program . . . , and has been a tireless supporter, worker, and committee member for the Native American Symposium."

- Spencer's letter joins the chorus of praise for Tudor's service. "She is in her second year," he writes, "as a member of the Southeastern Faculty Senate, and before that she served for three years as chair of our Assessment, Planning, and

> Development Committee, compiling and writing the annual assessment report. This is by far the most important departmental committee, as it oversees all aspects of curriculum development and assessment, potentially charting the course for years to come." Spencer calls Tudor "one of the key members of the Native American Symposium Committee," which he chairs. He praises her for "helping to plan and stage the event every other year. For the 2005 and 2007 symposia," he adds, Tudor "served as co-editor with me of the published proceedings, reading and commenting on all the papers submitted, and joining in the selection of those to include."

Surely it means a great deal that these colleagues who have worked so closely with Tudor think so highly of her contributions to service. The evidence in the portfolios indicates that Tudor and her colleagues work together to distribute the service more or less equally among themselves. Indeed, the similarity among the different candidates' service records throws into doubt the very possibility of seeing Tudor's service as less than the service of her colleagues. To judge her service as deficient would require a similar conclusion for at least 3 of the 4 other candidates who were deemed qualified for promotion and tenure. Therefore, I see no reasonable grounds for ranking Tudor's service in such a way that it would contribute to denying her the promotion and tenure that her colleagues were granted for the same level of work for the University that they all served.

Once we put all this information and all these comparisons together across the 5 candidates' records of teaching, scholarship, and service, the facts speak for themselves. The facts show no reasonable, objective, or fair grounds for denying Professor Tudor the same promotion that was granted to her colleagues.

Robert Dale Parker
Professor of English
University of Illinois

June 6, 2016

List of Documents Considered for This Report

This report was based on the following documents.

- Article by R. J. Tudor, "Historical and Experiential Postmodernism: Native American and Euro-American." OAG/DLC/USA v. SOSU – CIV-15-324/004931-50.

- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachael J. Tudor, submitted by Lucretia C. Scoufos,1/14/10. OAG/DLC/USA v. SOSU – CIV-15-324/001137-38.

- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachel J. Tudor, submitted by John Brett Mischo, 11/29/09. OAG/DLC/USA v. SOSU – CIV-15-324/001133-34.

- Memorandum on the subject of promotion and tenure recommendation (regarding Virginia A. Parrish), submitted by Lucretia C. Scoufos, 2/12/09. OAG/DLC/USA v. SOSU – CIV-15-324/007384.

- Memorandum of notification of promotion and tenure status (regarding Virginia A. Parrish), submitted by Larry Minks, 2/16/09. OAG/DLC/USA v. SOSU – CIV-15-324/007383.

- Letter approving promotion of Virginia Parrish, from Michael D. Turner, 4/20/09. OAG/DLC/USA v. SOSU – CIV-15-324/007381.

- Letter recommending Margaret W. Cotter-Lynch for promotion and tenure, from Lucretia C. Scoufos, 1/14/10. PI001960.

- Memorandum of notification of promotion status (regarding Margaret Cotter-Lynch), submitted by Douglas N. McMillan, 2/15/10. OAG/DLC/USA v. SOSU – CIV-15-324/007437.

- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Virginia Parrish, submitted by John Brett Mischo, 11/30/08. OAG/DLC/USA v. SOSU – CIV-15-324/007389-90.

- Letter recommending tenure and promotion for Virginia Parrish, from John Brett Mischo, 11/26/08. OAG/DLC/USA v. SOSU – CIV-15-324/007386-87.

- Letter recommending tenure and not promotion for Mark Spencer, from John Brett Mischo, 12/1/06. OAG/DLC/USA v. SOSU – CIV-15-324/007506-07.

- Letter recommending tenure and promotion for Mark Spencer, from C. W. Mangrum, 1/11/07. OAG/DLC/USA v. SOSU – CIV-15-324/007505.

- Letter recommending tenure and not promotion for Mark Spencer, from Douglas McMillan, 2/12/07. OAG/DLC/USA v. SOSU – CIV-15-324/007504.

- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachel J. Tudor, submitted by Douglas N. McMillan, not dated. OAG/DLC/USA v. SOSU – CIV-15-324/007703-04.

- Letter not recommending tenure and promotion for Rachel J. Tudor, from Lucretia C. Scoufos, 1/12/10. EEOC000855.

- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Janet Barker, not attributed or dated. OAG/DLC/USA v. SOSU – CIV-15-324/007470-71.

- Letter notifying Janet Barker of the decision to approve her promotion to associate professor with tenure, from Larry Minks, May 1, 2011. DOJ000156-57.

- Excerpt from Southeastern Academic Policies and Procedures Manual regarding the "Role of the Faculty" and "Faculty Participation." EEOC000300-01.

- Letter recommending tenure and not promotion for Mark Spencer, from Douglas McMillan, 2/12/07. A different version of the other letter on the same topic from the same day. OAG/DLC/USA v. SOSU – CIV-15-324/012992.

- Excerpt from Southeastern Academic Policies and Procedures Manual regarding "Rank and Promotion" and "Tenure." EEOC000327-35.

- Memorandum to Rachel Tudor from Douglas N. McMillan regarding denial of application for tenure and promotion, 4/30/10. EEOC000892-93.

- Promotion and Tenure Portfolio of Virginia A. Parrish. EEOC001676-2238.

- Promotion and Tenure Portfolio of Margaret Cotter-Lynch. EEOC002239-2474.

- Promotion and Tenure Portfolio of Rachel Tudor, 2010. EEOC003086-3271.

- Promotion and Tenure Portfolio of Mark Spencer. EEOC003521-3576.

- Portions of Promotion and Tenure Portfolio of Rachel Tudor, 2009. PI001308-35.

- Promotion and Tenure Portfolio of Janet L. Barker, 2010. DOJ000158-330.

- Letter recommending tenure and promotion for Margaret Cotter-Lynch, from John Brett Mischo, 11/29/09. PI001959.

- Letter recommending tenure and promotion for Margaret Cotter-Lynch, from Douglas McMillan, 1/14/10. OAG/DLC/USA v. SOSU – CIV-15-324/007437.

- Excerpt from Southeastern Academic Policy and Procedures Manual regarding "Faculty Development and Evaluation Policies." EEOC000317-21.

- Letter approving tenure and promotion of Mark Spencer, from Jesse O. Snowden, 4/18/07. OAG/DLC/USA v. SOSU – CIV-15-324/007503.

- Letter to Robert Dale Parker from the Department of Justice, 5/18/16.

- Copies of emails from Prafulla Kar, Rachel Tudor, John Mischo, and Lucretia Scoufos documenting a new publication by Tudor, February 4 and February 11, 2010, and November 30, 2010. EEOC000063-64.

- Letter to Robert Dale Parker from the Department of Justice, 6/2/16.

- Southeastern's "Faculty Senate Awards Policy," Southeastern PDF provided by the Department of Justice.

- Article by Mark B. Spencer, "Dickinson's Because I Could Not Stop for Death."

- Article by Mark B. Spencer, "William Faulkner's 'A Rose for Emily' and *Psycho*."

- Article by Mark B. Spencer, "Recreating the Early Modern in the Postmodern: George Garrett's *Death of the Fox.*"

- Article by Rachel Tudor, "A Reading of Jonathan Swift's 'A Modest Proposal' Using Roman Jakobson's Poetic Function."

- *The Atrium* (journal) Fall 2010.

- Article by Rachel Tudor, "The Ethics and Ethos of Eighteenth-Century British Literature."

- Article by Margaret Cotter-Lynch, "Teaching Ancient Biography."

- Article by Jani L. Barker, "Racial Identification and Audience in *Roll of Thunder, Here My Cry* and *The Watsons Go to Birmingham—1963*."

- Entries from the *Modern Language Association Directory of Periodicals* for the following journals: *ASEBL Journal, The Atrium, Journal of Contemporary Thought, Teaching American Literature, The Texas Review, Explicator,* and *Eureka Studies in Teaching Short Fiction,* accessed March 2, 2016

- Entry from the *Modern Language Association Directory of Periodicals* for *Children's Literature in Education,* May 4, 2016

- Entry from the *Modern Language Association Directory of Periodicals* for *Lamar Journal of the Humanities,* accessed May 18, 2016

- Website of journal *Research and Criticism,* http://www.pencraftinternational.com/bookclub.htm, accessed May 10, 2016

- Website of journal *Diesis,* http://www.diesisjournal.org/submissions, accessed May 10, 2016

- *The Atrium* (journal) website from 2013, accessed June 4, 2016.

- *Diesis* (journal) website from 2010, accessed June 4, 2016.

- *Teaching American Literature* website (journal) from fall 2009, accessed June 4, 2016.

COPY

OFFICE OF THE PRESIDENT

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4236
DURANT, OK 74701-0609

580-745-2500
FAX 580-745-2515
WWW.SE.EDU

MEMORANDUM

TO: Rachel Tudor

FROM: President Larry Minks

RE: Application for Tenure and Promotion to Associate Professor

Date: April 21, 2010

This memo is to inform you that I have decided to deny your application for tenure and promotion to associate professor. As suggested by The Academic Policy and Procedures Manual 3.7.4 Role of the Faculty, I have delegated the responsibility to Dr. McMillan for providing you with the reasons for my denial. He will be in contact with you as soon as possible to delineate these reasons.

Dear Colleague.

I hope you will pardon this intrusion, but I am obliged to share some personal information with you. Please allow me to premise my disclosure with an acknowledgement of how much I value being a member of this community of educators and learners. I have labored my entire life to be a contributing member of such a community, and I feel privileged to be here. I want to be clear about this, because my retiring personality may have been misinterpreted by some as unfriendliness. The reason for this letter is that after a lifetime of searching, and with the assistance of professional guidance, I have come to the conclusion that I am also a member of another community—the transgender. Unfortunately, this community is frequently misunderstood, often ridiculed, widely discriminated against, and sometimes subject to violence. Hence, the necessity for this letter. I do not want being a member of the transgender community to cause discomfort or anxiety to members of my academic community. Please allow me to share a few basic facts about transgenderism. It is a part of one's core identity and is present from birth. Some say that it is not a choice, but I believe everything one does is an act of will with purpose. For me, the choice is either to be reclusive and unhappy, or to strive to find a place in life where I may be true to my core identity and create personal and professional relationships based on openness free from fear. Next, it is important to know that a transgender person is not a transvestite or crossdresser—it is not sartorial, it is physiological. I, for instance, have been following a physician prescribed regimen of hormone adjustment therapy for months. Finally, transgenderism has nothing to do with sex or sexual orientation. Perhaps the confusion comes from the unfortunate fact that our language uses "sex" and "gender" as synonyms. In actuality, transgenderism is a human and civil rights issue, and it should not be taboo to discuss it.

I assure you that I will continue to comport myself in a professional manner with attention to my responsibilities. I hope you will look on this occasion, as I do, as an opportunity for education and personal growth.

You probably have questions that I have not addressed. You are welcome to discuss them with me. My most pressing question is how you will respond to my revelation. I will listen to your opinion and value your advice.

Presently, I am planning on transitioning at the beginning of the Fall semester. I have legally changed my name to Rachel. After I transition, please address me by my new name with corresponding pronouns. I am keenly aware the period of transition will be confusing and awkward for everyone. Please let me know if there is anything I can do to put you at ease.

Very best regards,

R. Tudor

From: **Claire Stubblefield** /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD
Subject: TudorConclusion Letter
To: Microsoft Exchange

Now Now. It ' s HER personnel file J

From: Cathy Conway
Sent: Thursday, November 18, 2010 3:49 PM
To: Claire Stubblefield
Subject: RE: TudorConclusion Letter
Sensitivity: Confidential

Claire,

Lucretia ' s name is spelled Scoufos. Also, under Findings, Complaint 3, Southeastern needs to be capitalized.

It will be interesting to see Charlie ' s comments. You did a very good job of writing your report. Did Bridgette have any helpful information for you? If Dr. Tudor requests to see T & P info in his personnel file, I will need to send him to Bridgette. . .

Thanks,
Cathy

Cathy A. Conway
Director, Human Resources
Southeastern Oklahoma State University
1405 N. 4th Avenue
Durant, OK 74701-0609
Pho: 580.745.2162
FAX: 580.745.7484
Email: cconway@se.edu

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From: Claire Stubblefield
Sent: Thursday, November 18, 2010 1:20 PM
To: Cathy Conway
Subject: TudorConclusion Letter

NEED FEEDBACK. Can you help?

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

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

TRANSCRIPT OF DOCKET CALL

BEFORE THE HONORABLE ROBIN J. CAUTHRON

WEDNESDAY, NOVEMBER 1, 2017; 9:30 a.m.

OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography, transcript produced by computer.

The argument to keep any dress code evidence out is denied.

The expert reports. Again, I'm not certain I understand what the argument is about or may become about, but I will tell you this, no expert can testify to anything not included in his or her expert report.

And that is -- seems to be the basis of your objection to Dr. Robert Parker and Dr. Brown.

Dr. Brown adds an additional problem for me in that I don't know how any of that is relevant.

Mr. Young, can you tell me the relevance of his testimony?

MR. YOUNG: Yes, Your Honor.

I believe he is potentially not relevant now that you've issued your decision on the summary judgment.

His relevance was really only going towards issues as to the definition of sex, which I believe is no longer something that should be presented to the jury at trial.

To the extent that the defendants are attempting to renew that argument, we would want to bring Dr. Brown in as an expert to educate the jury.

MS. COFFEY: Your Honor, we do not intend to dispute the definition of sex.

THE COURT: All right. So he's not going to testify because he's not relevant.

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 6th day of November, 2017.

/S/ SHERRI GRUBBS

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

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

VOLUME 1

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ROBIN J. CAUTHRON

MONDAY, NOVEMBER 13, 2017; 9:00 a.m.

OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography, transcript produced by computer.

A P P E A R A N C E S

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(Proceedings had on November 13, 2017.)

THE COURT: We are here in Tudor vs. Southeastern outside the presence of the jury. I've raced through three motions this morning, which may need to be addressed before we start and they may not.

I'll start with plaintiff's motion to admit Conway by deposition.

Defendants have a response?

MS. COFFEY: Your Honor, yes. The defendants oppose plaintiff's motion.

This matter was resolved by the Court at docket call on November 1st when defendants asked permission to present Ms. Conway via remote.

Ms. Conway is comfortable with presenting herself via remote. There are no difficulties. Plaintiff's counsel raised a question or difficulty of providing exhibits to the witness, all of which can be handled very easily either via e-mail or via Federal Express if necessary. There literally is no basis for plaintiff's motion.

THE COURT: Well, do you concede that the witness is unavailable?

MS. COFFEY: No, Your Honor.

THE COURT: So if she is subpoenaed, she will appear here?

MS. COFFEY: We raised that with Your Honor a couple

of weeks ago.

THE COURT: The problem --

MS. COFFEY: Yes?

THE COURT: -- is that plaintiffs are entitled to put on their case in chief before you put on yours, and they are not required, if she's unavailable, to put her on by video conference. They can use her deposition for that purpose if she's unavailable.

That doesn't mean you can't call her by video conference. You would be limited in what your -- you can't repeat yourselves, but you can cross-examine based on the direct examination. That's how I see the resolution of this.

I assume that the portions you have designated are only those necessary to support your case in chief and what you want to present on plaintiff's behalf.

MR. YOUNG: Yes, Your Honor.

THE COURT: I will permit you to do that. You cannot do it today.

MR. YOUNG: Okay, Your Honor.

THE COURT: You can look at those designations, object, counterdesignate, whatever you want to do. Again, you won't be able to question her about anything that comes out in her deposition. We're not going to repeat it.

MS. COFFEY: Your Honor, if Ms. Conway indicates that, because of her health, that she would be willing to come

up here and testify live Tuesday or Wednesday, whichever day plaintiff wanted her, would that be acceptable?

THE COURT: Of course. If she's available, that deposition can't be used, but you-all need to work that out and know what you're facing because you only have a day or two to look at their designation and counterdesignate or object.

MS. COFFEY: Thank you, Your Honor.

THE COURT: The defendants' motion to strike trial exhibits, I'm not sure that I understand this.

Is the only absence that you're complaining of the case number?

MS. COFFEY: Your Honor, there's no identification on plaintiff's exhibits that they've provided, so that if I were to utilize one of plaintiff's exhibits to cross-examine a witness, when you look at the bottom, it has the discovery Bates number on it. It has no identification.

THE COURT: No exhibit number?

MS. COFFEY: No exhibit number.

THE COURT: Okay. I'm not concerned about the case number. We all know what case this is, even though local rules require it.

MR. YOUNG: Yes, Your Honor.

THE COURT: But they have to have exhibit numbers.

Has that been done?

MR. YOUNG: Well, this is the first time the

defendants have raised this issue.

THE COURT: It's a rule.

MR. YOUNG: I understand, Your Honor. But both sides have struggled getting the exhibits to each other. In good faith, we agreed to tell each other if we saw deficiencies. We have corrected defendant's exhibits multiple times.

Today is the very first time they have said that the exhibit number is missing. I apologize. We can attempt to reprint them all and give them to them. We can attempt to send them new electronic copies, all marked with an exhibit at the bottom of them.

THE COURT: Do you have sticker numbers on each exhibit?

MR. YOUNG: I have stickers in my bag we can place on there, Your Honor.

THE COURT: That should have been done days if not weeks ago.

MR. YOUNG: Yes, Your Honor.

THE COURT: Well, do it. Until it is done, none of your exhibits are admissible.

MR. YOUNG: Okay.

THE COURT: Plaintiff's motion to strike, have you had a chance to look at this, Ms. Coffey?

MR. BUNSON: I'm sorry, Your Honor.

THE COURT: "No"?

MR. BUNSON: Yes, we have had a chance to review it.

THE COURT: As to the first issue, the failure to mitigate, do you have any objection?

MR. BUNSON: Your Honor, yes, actually, we do have an objection.

One, though the Court's order of 11-2 indicates that they could withdraw this claim, thereby making the failure to mitigate moot, unfortunately, they failed to document that -- the Collins College documents serve more than just a failure-to-mitigate purpose. They are, in fact, relevant for two very important purposes.

First, it goes to Dr. Tudor's credibility as to her own assessment of her teaching abilities, and it also demonstrates that Dr. Tudor has a pattern of claiming discrimination whenever a decision is made that doesn't benefit her.

Furthermore, the entire motion is a motion in limine, which, according to this Court's scheduling order, was due October 10th. None of the issues raised in plaintiff's motion was in any way new or novel.

THE COURT: Well, this is a response to a ruling I made last week, and, because of that, it's certainly timely. Or it's not untimely. I'll say it that way.

I'm not really prepared to rule on the second one of these.

The one I am ready to rule on is the fourth issue that asks me to strike your defense, that transgender persons are not protected by Title VII. To the contrary, I have cited the Tenth Circuit law that says they are not simply by means of being transgender. Gender is protected.

Your theory of this case throughout has been that you are not complaining that transgender persons were treated differently, but that Dr. Tudor, once she was a woman, was treated differently. That's permissible, but I'm not going to strike that defense because I have agreed with it.

As to the others, if something comes up today that you need a ruling on these, approach the bench before you go any further.

MR. YOUNG: Yes, Your Honor.

THE COURT: How long do you want for opening statement?

MR. YOUNG: Less than 15 minutes, Your Honor.

THE COURT: Is 15 minutes sufficient?

MS. COFFEY: 15 minutes, Your Honor.

THE COURT: All right. Call for the jury, please.

MR. JOSEPH: Your Honor, may we invoke the rule at this time before the jury gets here?

THE COURT: Yes.

MR. JOSEPH: Thank you, Your Honor.

THE COURT: Are there persons in the courtroom

expected to be called as witnesses in this case?

MR. YOUNG: Just Dr. Tudor, Your Honor.

THE COURT: Of course, she's exempted from the rule. No one else? All right.

Counsel, I'll ask you to look to your own witnesses. If somebody comes in that you know will be a witness, let me know or you go tell them to leave.

(Jury enters courtroom.)

THE COURT: Be seated.

I don't think I probably told you to sit in the same seats you were in when you left, because you're not doing that right now.

So I have my seating chart, which is no good where you're sitting now.

Ms. Taylor, I need you back here, Mr. Payton next to her, Ms. Hall in the third seat, and Ms. Fields in the fourth. Ms. Norton, you're in the third seat, Mr. Mallory in the fourth.

Now, let me say good morning to you, now that I know who's who. I'm going to call the roll just to make sure for the record that you're all here.

Ms. Taylor. Mr. Payton. Ms. Hall. Ms. Fields. Mr. Mallory. Ms. Norton. Ms. Morse. And Ms. Rogers.

If you would, please, take those same seats every time you come back in the courtroom.

Good morning to you.

Let me ask you first if any of you have had any experience, since we were here last week, that would interfere with your ability to be a fair and impartial juror. Any answer to give me that would be different from one that you gave me last week?

I'll ask you to stand, raise your right hands, and be sworn by the clerk to try this case.

(Impaneled jury duly sworn.)

THE COURT: Be seated.

Now that you have been sworn, I am going to give you some preliminary instructions to guide you in your participation in this trial.

It will be your duty to find from the evidence what the facts are. You and you alone are the judges of the facts, but you have to apply to those facts the law as I give it to you. You must follow that law whether you agree with it or not. Nothing I may say or do during the course of this trial is meant to indicate what I think your verdict should be. That is entirely for you to decide.

The evidence from which -- the evidence from which you will find the facts consists of testimony that you hear here in the courtroom, any documents or other things received into evidence, and any facts that the lawyers agree to or stipulate to.

Certain things are not evidence and must not be considered. First, statements, arguments, and questions by lawyers are not evidence. Second, objections to questions are not evidence, and you shouldn't be influenced by any lawyer's objections or by my rulings on them.

If I sustain an objection, ignore the question. If I overrule the objection, treat the answer as you would any other.

Any testimony that I may exclude or tell you to disregard is not evidence. Finally, anything you see or hear outside the courtroom is not evidence and shouldn't be considered in deciding this case.

There are two kinds of evidence, direct and circumstantial. Direct evidence is direct proof of a fact, like the testimony of an eyewitness. Circumstantial evidence is proof of a chain of facts or circumstances from which you can infer that facts exist.

The classic law school example of this is, if you see someone walking on the beach, that's direct evidence. If you see footprints in the sand, that's circumstantial evidence that someone has been walking there.

Keep in mind that you can consider both kinds of testimony or evidence equally and also that it will be entirely up to you to decide how much of any witness's testimony to accept or reject.

This is a civil case, and the plaintiff has the burden of proving her case by what is called a preponderance of the evidence. That means the plaintiff has to produce evidence which, considered in light of all the facts, leads you to believe that what she claims is more likely true than not true.

To put it differently, if you were to put the plaintiff's evidence and the defendants' evidence on opposite sides of the scale, the plaintiff has to make that scale tip somewhat in her favor. If she does not, your verdict must be for the defendants.

Those of you who have sat on criminal cases or watched TV will know -- will have heard of "proof beyond a reasonable doubt." That is not the standard in this case, and you should put it out of your mind.

As to your conduct as jurors, as I have explained to you, you must decide this case based solely on the evidence presented right here in this courtroom. This means you can't conduct any independent research, you shouldn't consult dictionaries or reference materials, you shouldn't search the internet or websites.

Until you retire to deliberate, you may not discuss the case with anyone, not among yourselves or with anyone else, and you should expose yourself to absolutely no media accounts of this trial.

I don't think I told you last week, when I gave you most of this instruction, that you also shouldn't blog or use social media about your experience as jurors. That can possibly compromise any verdict that is reached by this jury.

We want to keep you in a little bubble, and we can't do that, but we're going to get as close to that as we can. It requires your cooperation.

This case is what happens inside this courtroom, and we don't want you reaching out to anybody else to talk about the case or anyone else to talk to you.

If you want to take notes during the trial, you may. There are implements and instruments under your chairs or maybe at the end --

THE CLERK: They're under there.

THE COURT: Under your chairs. Okay.

Taking notes is a very personal issue. It helps some people pay attention; other people, it's a total distraction.

So if you take notes, please remember these things:

Don't pay so much attention to your notes that you forget to listen to the witness. When you get to the jury deliberation room, don't pay too much attention to any one juror's notes. You should consult your collective memory, and the fact that somebody has it in their notes doesn't necessarily make it so.

If you take notes, always leave the pads under your chair

in the courtroom. Don't ever walk out with them. We will maintain their security.

If you choose not to take notes, that's perfectly fine. Sometimes even doodling helps you listen. So just make sure you're paying attention is all I want you to do.

I want to introduce my staff.

Over here is Jeff Lynch. He is a lawyer. He works for me. He will act as your bailiff when you retire to deliberate.

Linda Goode is the court clerk assigned to my courtroom. As you have seen, she administers oaths; she keeps up with the exhibits.

Over here, Sherri Grubbs, who takes down every word on her magic machine. She will occasionally throw her hands up when people are talking at the same time.

I'm Judge Cauthron, by the way.

We are the people you will see throughout this trial. We would like to make this as pleasant as we can for you. If there's anything at all you need, please let one of us know, and we will help you if we can.

My schedule is roughly 9:00 to 4:00 or 4:30. I like to get you out of here before the worst of the traffic. We will take an hour for lunch at midday and a 15-minute break morning and afternoon. If you need a break, if you can't hear, if you need anything while we're in the courtroom, just let me know,

and I will accommodate you if I possibly can.

The participants in the trial all have water available to them. It's only fair that you do too. So you may bring water in with you. I'd ask that it's only water because it's very easily tipped over at your feet, where it's necessary to keep it. So a bottle or a cup of water is fine to bring back.

Finally, as you saw during jury selection, there are times when the lawyers come to the bench to have a conversation with me outside of your hearing.

I encourage you to stand and stretch whenever that happens or when we're waiting for a witness or at any pause in the trial. You will be amazed at how hard it is to sit still all day long. That's really the hardest part of jury service, is sitting all day long. So when you get a chance, stand up, stretch, and you'll feel a lot better at the end of the day.

The trial begins with each side making an opening statement. An opening statement is not evidence and it's not argument. It's a blueprint of what that lawyer intends to prove during the trial, aided for your assistance.

After the plaintiff and defendant have made an opening statement, the plaintiff will present her witnesses, whom the defendant may cross-examine. At the close of plaintiff's case, defendant may present witnesses, who plaintiff may cross-examine.

After all the evidence is in, I will instruct you as to

the law, and then the lawyers will argue -- make their closing arguments, attempting to persuade you to their point of views.

At that point, the case will be yours to deliberate.

That is how a trial proceeds. We are now ready for opening statement from plaintiff.

MR. YOUNG: Thank you, Your Honor.

We're all here today because the government broke the law. They violated rules. They changed rules so that they could break the law. They made up new rules that were only imposed on Rachel Tudor.

Last week, when you were selected for this jury, my colleague, Marie Galindo, told you that we were all here to right wrong.

Ultimately, you're going to be asked to answer three very simple questions.

The first one: Is it okay to make someone miserable at work just because they are different?

The second one: Is it okay to deny someone something they earned just because they are different?

Third question: Is it okay to attack someone because they complain when they were mistreated?

Now, at Southeastern Oklahoma State University -- I'll say right now that I'm going to call it Southeastern. It's a mouthful. Okay?

So at Southeastern Oklahoma State University, a handful

Dr. Tudor sits here today without a job and without tenure but not because of transgender discrimination, simply because she did not want to earn her tenure. She did not want to take advantage of the opportunity that Southeastern gave her.

What is a university if it is not a place that fosters ideas, encourages personal growth, encourages difference, supports change? That was the campus of Southeastern. That is the environment that Rachel Tudor worked in. Southeastern gave her an opportunity to accomplish -- to work in that environment and to accomplish her career goal, and she simply refused and cried wolf.

So at the end of this trial, ladies and gentlemen, I will ask that you find in favor of our defendants, Southeastern Oklahoma State and the Regional University System of Oklahoma.

Thank you.

THE COURT: Plaintiff, call your first witness.

MR. YOUNG: Dr. Rachel Tudor.

(Witness duly Rachel.)

THE COURT: Be seated.

WHEREUPON, RACHEL TUDOR, Ph.D., after having been first duly sworn, testifies in reply to the questions propounded as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good morning, Rachel.
A. Good morning.
Q. Okay. So I know that you're a quiet speaker, so I'm just going to remind you, if I can't hear you, I'm going to tell you to lean a little bit forward. Okay?
A. Okay.
Q. Thank you.

Rachel, can you tell me a little bit about what you loved about Southeastern?

A. There are so many things. I really loved the students because they reminded me of me when I was a student. Many of them came from the same background that I came from. Many of them were the first in their families to attend college. They had families who sacrificed, as my family did, so that they may be able to attend college. They wanted nothing more than their families to be proud of them.

And I really enjoyed helping them reach their goals and attending graduation, seeing their families smiling, proud of their accomplishments.

I really loved working with my colleagues. They're some of the best people I've ever known in my life. They're very wonderful and supporting friends.

Q. Can you tell me about your favorite class that you taught at Southeastern.
A. I enjoyed teaching all of my classes. I particularly

enjoy teaching Early Humanities, I would say.
Q. Is there a particular reason why you loved Early Humanities?
A. Many of my favorite books come from that period; for instance, Homer's Odyssey and the Iliad.
Q. Okay. Well, I wasn't a huge fan of the Odyssey when I read it, but is there something in particular that you loved about teaching the Odyssey?
A. Yeah. It's actually become more meaningful, perhaps sustaining for me, because it's the story of a person, Odysseus, trying -- his long journey home and the many obstacles and difficulties that he has to overcome to make his way home.
Q. Is there something in particular that you loved about teaching the Iliad?
A. Oh, yes. A lot of -- I think perhaps some people's view of the Iliad may be colored by the film "Troy" and that. They may think of it as a war story or a story about vengeance, but it's really a story about love is more important than vengeance and the strength of love over vengeance.
And that's -- it's particularly meaningful for me because I really -- I think of Southeastern as my home. And the love I have for my friends and the students, that is what's important to me. And the Iliad inspiration because it's -- it's a very poignant example of the -- of the power of love

over vengeance.
Q. Rachel, is this lawsuit for you about vengeance?
A. No, not at all.
Q. What is this lawsuit about for you?
A. It's about doing the right thing. It's about fairness and justice. It's about giving me a chance to contribute and to give back to so many who have made my accomplishments possible.
Q. Rachel, I'm going to take you back. When did you first start working at Southeastern?
A. In the fall of 2004.
Q. Okay. What was your job title when you were hired?
A. Tenure track assistant professor.
Q. Okay. Can you explain to us all what exactly being on tenure track means.
A. It means that all of your work is part of a process, with the end goal being tenure.
Q. Do all of the folks who teach at Southeastern, are all of them on tenure track or tenured?
A. Not all of them.
Q. Okay. So is it significant if someone is hired on tenure track?
A. Yes, it's very significant.
Q. Okay. Can you explain to us all in your own words -- and I know that there's a technical meaning, but just in your own

words so we can all understand -- what exactly is tenure?

A. It's a promotion based on merit.

Q. Okay. Now, Rachel, we're obviously all here today because you went through a gender transition. So I need to ask you some questions.

Can you explain in your own words why you went through a transition in 2007.

A. Because it's who I am. I'm Rachel Tudor. I'm a woman.

Q. Was it hard having to tell people in your life that you were going through that gender transition?

A. Well, you never know how someone is going to react. So there's some anxiety. No one wants to lose friends or have anyone think poorly of them or -- so there is some anxiety, but I have to say my colleagues in my department and my students, they were very welcoming and accepting.

And it's one of my best memories at Southeastern, is how warm and accepting they were.

Q. Now, when you went through this gender transition in 2007, were there any other transgender professors at Southeastern?

A. No.

Q. To your knowledge, have there, since you -- outside of you, have there ever been any transgender professors at Southeastern?

A. No.

Q. What about any other worker at Southeastern, any person employed at Southeastern, out as transgender?
A. No.
Q. So you were the first?
A. Yes.
Q. At the time you were there, had you ever heard of there being any transgender students at Southeastern?
A. At the time, no.
Q. So it was just you?
A. Yes.
Q. How did that feel?
A. I tried not to make a big deal of it. I just wanted to do my job. And I think that I had proved myself. I had several years of service there. And I had earned the respect of my colleagues and my students. They allowed me to continue and be welcome.
Q. Can you explain to us all how you went about telling the Southeastern administration you were going to go through this gender transition?
A. Yes. I gave a letter from my therapist to human resources.
Q. Okay. What happened after that?
A. I received a call at home in the -- later in the evening, which was very unusual. That's simply not the way things are normally done.

Normally, if -- say, for instance, somebody from HR wanted to visit with a professor about something, they would e-mail us and then would schedule a time to meet either at the HR offices or in our offices. So to receive a phone call at home in the evening was very unusual. And I was very anxious about -- to receive such an unusual phone call under unusual circumstances as that.

Q. So who was it that called you?

A. Cathy Conway.

Q. Okay. Can you tell me a little bit about what was said during that call?

A. She told me that Doug McMillan, when he discovered that I'm transgender, that he wanted to summarily fire me. And she told me that she told him that he couldn't do that. And she told me that if I agreed to follow certain rules, that I would be allowed to continue to work at Southeastern.

Q. I take it from your voice it was a hard phone call?

A. It was -- it was not pleasant. It was frightening. I had -- before that phone call, I had -- I had no idea that I might lose my job because simply being here I am. I thought maybe some people may not like me or that -- you know, something like that.

But I had -- it was very frightening to be confronted at home in a phone call late at night from the head of H.R. and told that the vice president of academic affairs wanted to

summarily fire me. That was truly frightening. That's how I'd describe it.

Q. I'm going to ask you a few more questions about that call, but it comes to me now that she probably explained what exactly the vice president for academic affairs is to a professor.

So what is that position?

A. That's a very important position. For example, whenever the president is off campus, he's acting president. He has a great deal of authority and power on the campus.

So when the president is not there, he acts as the president. So it's a very powerful position.

Q. And in the, I guess, Southeastern hierarchy, are professors under the vice president for academic affairs?

A. Yes, we are.

Q. Okay. Now, I'm going to ask you a few more questions. You mentioned that Cathy Conway brought up some rules.

Can you take me through those rules a little bit?

A. Yeah.

Q. Okay.

A. She said that I was not allowed to use the women's restroom.

She -- I'm so sorry. I have such a bad cold. That's why I have the cough drops. I'm really sorry.

Q. That's okay, Rachel.

A. That I wasn't allowed to use the women's restroom, that I could only use the single-occupant restroom. That was on the second floor of the building I work in, which is Morrison.

She also talked about my appearance, the clothes -- my clothes and makeup, for instance.

Q. Okay. I'm going to take you through those three rules one by one. Okay?

A. Okay.

Q. So about the restrooms. So Cathy Conway told you that you couldn't use the women's restroom?

A. Correct.

Q. And what was the restroom that you were supposed to use?

A. So single-occupant restroom on the second floor.

Q. Okay. So what building did you teach your classes in?

A. Morrison.

Q. Okay. And the restroom is in Morrison?

A. Yes.

Q. Was it on the same floor where you taught classes?

A. I taught my classes on the third floor. That's where the English department offices are as well.

Q. Is that where your office was?

A. Yes.

Q. Were there women's restrooms on that floor?

A. Yes.

Q. Were there men's restrooms on that floor?

A. Yes.
Q. Okay. Did you ever teach classes in a building other than Morrison after your gender transition?
A. Yes.
Q. Was there a bathroom in that other building that you could use?
A. Not to my knowledge.
Q. Okay. What was it like to work at Southeastern with that type of restriction on your restroom use?
A. It was -- it was humiliating. It was -- there are some practical difficulties. For instance, in the morning, I often taught back-to-back classes all morning long, sometimes from 9:00 until noon, and I'd only get a 10-minute break between classes.

So by the time I made it down to the second floor, if there was somebody in there, I may not be able to use the bathroom until after my next class.

And there's -- and if there's someone else -- an occupant in it then, it may -- I may not be able to use the restroom all morning long.
Q. Did you change anything about your routines to deal with this?
A. Well, I've never been a big coffee drinker. I know that coffee -- a lot of people have to go to the bathroom after drinking coffee, but I did enjoy orange juice with my

breakfast, and I had to cut that out because orange juice made me -- I needed to use the restroom after having orange juice. I had to cut down on just the amount of fluids in general that I consumed.

Q. So you had to plan your workday around how much liquid you drink?

A. Well, I had to -- well, it affected my -- yes. It was part of my -- before, I would usually carry a bottle of water to class, because talking and lecturing and answering questions for an hour or so at a time, and you had to take sips of -- before, I used to drink maybe a whole bottle of water through the morning.

So I had to -- you know, I couldn't do that so much. So I was -- there was -- it was -- there was accommodations I had to make to my work in order to follow the rules about the restroom.

Q. Have you ever used a women's restroom at Southeastern?

A. No, I never did.

Q. Never?

A. Never.

Q. During this same time period, I guess, between 2007, when you transitioned, and 2011, when you left, when you weren't at Southeastern, you were at a shopping mall or, I don't know, not a coffee shop because you don't drink coffee, but just out, what restroom did you use?

A. I use the women's restroom.
Q. Were there ever any problems?
A. I've never had any problem in my life using a women's restroom.
Q. So when you were out about Durant, where Southeastern is, you used the women's restroom, so long as you weren't on campus?
A. As long as I wasn't on campus, correct.
Q. No one complained?
A. No one ever complained.
Q. Okay. Let's talk about these other rules. Let's try to make this a little more efficient. We'll talk about the makeup and clothing together.

Can you tell me a little bit about what Cathy Conway told you about your makeup and clothing?
A. She talked about the length of my skirts or dresses, about -- and about my makeup.

She said -- it was rather vague, but I -- in general, I think that she was concerned that I not look like -- I hate to use the word "drag queen," but that's not me. I'm just an English professor. I'm just, you know, a woman.
Q. So did you complain about these rules -- the restroom, makeup, and clothing -- right away?
A. No, no.
Q. Can you tell me why?

A. It was quite frightening to get that phone call at home at night telling me that Doug McMillan would like to see me summarily fired and then be told by the head of human resources that I had to follow these certain rules.

I really love my job, and I was afraid to complain. Who would I complain to? These are very important, powerful people.

Q. Did you feel comfortable after this to complain to Cathy Conway about the rules she imposed?

A. No.

Q. Why --

THE COURT: Let me stop you here. We're going to take our midmorning break. I will instruct you not to discuss the case or permit others to discuss it with you. Don't be in a position to overhear conversations regarding the case.

To make that instruction easier for both you and all participants in the trial, I'm going to ask you to take your break in the -- what will ultimately be your jury deliberation room. You don't have to stay there. You can go anywhere you want to, but try to avoid that front hall so -- everyone else can use those restrooms and congregate there.

The elevators are the same no matter which hall you're on. So everyone in the courtroom, please be careful about what you say around the elevators.

I'll ask you to be back in the jury assembly room -- our

totally unnecessary security prevents you from getting back into this hallway once you leave. So we will need to -- someone will need to pick you up down there and get you back into this hallway. If you stay there and don't go anywhere, just stay there.

But wherever you are, please be back at 20 till. We'll be in recess until then.

I need to see counsel at the bench, I guess, before the jury leaves.

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

THE COURT: In this courtroom, everyone is referred to by an honorific. Dr. Tudor, Ms. Tudor, Judge Tudor, whatever you want to call her, but not Rachel. That goes for every witness, every lawyer, everyone else.

This is painful. You need to get in, get the facts you want to get, and get out. I always give anyone a little leeway in getting some background from the witness or a party, 10 or 15 minutes, to learn who you are, where you're from.

You've done that with the Iliad and the Odyssey. So, you know, we need to be relevant, we need to be efficient, and we need to be in recess.

MR. YOUNG: Yes, Your Honor.

MS. COFFEY: Thank you, Your Honor.

(The following proceedings were had in open court with

all parties present and within the hearing of the jury.)

(In recess from 10:21 a.m. to 10:45 a.m.)

(Jury enters.)

THE COURT: Be seated.

Please continue.

MR. YOUNG: Thank you, Your Honor.

Q. (BY MR. YOUNG) Dr. Tudor, before the break, we were talking about some rules that you were given by Cathy Conway, just to refresh your memory.

At any point did any of your colleagues in the English department complain to you about your transition?

A. No. I never heard any complaints.

Q. What about any of your students or former students?

A. No, no complaints whatsoever.

Q. At any point in Southeastern were you ever apprised of a complaint about you?

A. No.

Q. Okay. Dr. Tudor, when did you first -- when did you first start to prepare to apply for tenure?

A. Tenure track professors start preparing as soon as they start working. All of our work is counted toward our -- toward tenure.

Q. Okay. Are there particular areas that a professor is evaluated in for tenure?

A. Yes. Teaching, scholarship, and service.

Q. I'm going to take you to those -- back through those one by one. Okay?

Can you tell me what sort of things one would do to demonstrate good teaching?

A. Yes. Design courses, effectively teach those courses, get feedback from peer reviews. That's when our colleagues would come and visit our classroom and evaluate how well we're teaching. There's student evaluations as well.

Q. What sort of things would someone do to demonstrate good scholarship?

A. Publish articles, submit articles for publication, presentations at academic conferences, creative work such as, in my case, open mic chatbook, which is poetry that's meant to be performed orally, and visual art.

Q. Okay. Can you tell me a little bit about what goes into writing a scholarly article?

A. It takes -- first, it takes many years of preparation, studying -- graduate degrees in literature, a Ph.D. in your specialization. It takes years of working with leading scholars in the field getting feedback, submitting work, editing the work.

It's a profession. It takes many years of practice, engagements, study, research.

Q. So could a professor just sit down at their kitchen table one day and just write an article?

A. No. That's not the way it works.
Q. I think the last thing you talked about was service. Can you tell me what sorts of things one would do in the area of service?
A. Yes. We would serve on committees within our department and also university-wide.
We would serve on committees such as the Native American Symposium committee, which I was pretty much involved in. Serve, for instance, in the faculty senate. For instance, I served in the faculty senate on the personnel policies committee, also on the planning committee.
Q. What's the Native American Symposium?
A. It's the -- it's the premiere conference at Southeastern. Actually, it is their only conference. It's a regional conference. We'd have scholars from all over the country, even the world, attend, and students are also active participants in it. It's a -- it's also -- we also invite the community. It's how Southeastern contributes to our community and to scholarship.
Q. Okay. So I'm going to talk to you a little bit about the 2009-10 application process.
So can you tell me just generally, when does a tenure application start in the school year?
A. Well, we notify our dean and department chair in the very early part of the fall semester.

Q. Okay. So who did you notify in the early 2009 tenure application process?
A. I notified Dean Scoufos and my department chair, John Mischo.
Q. Did you meet with Dean Scoufos?
A. Yes. All tenure applicants are required to meet with the dean.
Q. Can you tell me a little bit about your meeting with Dean Scoufos?
A. Yes. I was -- I was hoping to get some feedback on my portfolio. That's what we were -- that's what we were supposed to go over during the meeting, and asked her a lot of questions, but, unfortunately, I didn't get a lot of answers.
Q. Dr. Tudor, can you explain to the jury what the purpose of the meeting with the dean is?
A. Yes. It's to help the candidate succeed in their tenure application.
Q. So what is the dean supposed to do during a meeting like that?
A. Supposed to give -- well, supposed to answer the questions a candidate has and give some concrete and specific feedback in the construction and content of the portfolio.
Q. Was there anything odd about this meeting to you?
A. Yes. As I said, I asked quite a few questions, and I didn't -- I didn't receive the answers that I needed to my

questions.
Q. Did you bring up any concerns to Dean Scoufos during this meeting?
A. At some point, Dean Scoufos asked who I'd like to be on my meeting, and I mentioned some names, as well as a concern that I -- well, I was asked if there was anybody perhaps I may not want on the committee.

I said I had a concern, but it's just a concern, that perhaps one -- perhaps one of my colleagues may not -- that may not be comfortable. That was Lisa Coleman.
Q. Was there a reason why you thought Lisa Coleman might not be comfortable?
A. It turns out it was just a misunderstanding, a miscommunication, and we worked it out.

As a matter of fact, she wrote an outstanding letter for my -- for a subsequent portfolio recommending me for tenure.
Q. Okay. But you told Dean Scoufos that you were concerned about Coleman. Yes?
A. Yes, I had a concern.
Q. Do you know what Dean Scoufos did with that concern?
A. I found out later, when I talked to my department chair about who would actually be on my committee, I found out that Dean Scoufos had placed Lisa Coleman as the chair of my tenure committee.
Q. Dr. Tudor, can you explain to the jury what the

significance of being the chair of the committee is?
A. The chair is the person responsible for directing the committee members, the tenure committee members, their activities. It's like the head of a department, a manager, a team leader, a very important and formative role on the committee.
Q. Okay. To your knowledge, did Dean Scoufos ever talk to Lisa Coleman about your concern?
A. Not to my knowledge.
Q. So the only thing that Dean Scoufos did was make Lisa Coleman the chair?
A. Correct.
Q. Dr. Tudor, can you explain very generally to the jury what a tenure portfolio is.
A. A tenure portfolio is a collection of evidence documenting the worthiness of a candidate for tenure.
Q. What is a tenure portfolio? How is it composed? Is it in a binder? Is it loose documents?
A. It's in a binder with specific sections.
Q. Okay. Can you tell me, just very generally, some of the, you know, kinds of -- like, the pieces of paper that would go in a tenure portfolio? What goes in it?
A. Yes. Our CV, which is a -- a CV is a very detailed résumé. It's many, many pages in length. Also, a cover -- a cover letter. It would also have copies of letters of

recommendation, for instance, from my colleagues and peers. It would also contain copies of articles that had published. It would contain programs where I have made presentations at conferences. Mine contained evidence of my open mic chatbook. For instance, it would contain student evaluations and peer evaluations.

Q. So Dr. Tudor, your 2009-2010 portfolio, did you include evidence of the three criteria: teaching, scholarship, and service?

A. Yes, I did.

Q. Did you yourself put together that portfolio?

A. Yes, I did.

Q. Do you remember how long it took you to put that together?

A. It's a very time-consuming process, gathering all of those materials, asking for letters of reference, revising my CV, et cetera, composing my cover letter. It's -- it's -- it would have been weeks.

Q. Okay. I'm going to touch on something very briefly, and then we'll move on.

Dr. Tudor, during defendants' opening, they mentioned that you wrote a cover letter where you talked about the department secretary.

A. Yes. Theresa Anderson.

Q. Can you tell the jury why you talked about Theresa

Anderson?

A. Yes. She's a department secretary. She was -- that title really doesn't say the service that she rendered to the department.

She was the reason why we could all do our jobs. She kept the trains running on time. And she had been there for many years, and I had -- her office is right next to mine. I had the highest degree of respect for her. And I did allude, in my cover letter, that I wished there was an option for her to be tenured as well so she could have that type of security.

It was -- I did not mean to be disrespectful to the process. It was purely out of my respect and admiration for her work and her contributions to our department.

And I really do wish there was some sort of policy at Southeastern so -- so people like Theresa Anderson could have the same type of security that professors do.

Q. Okay. Dr. Tudor, just one clarification. As to your scholarship, did you continue to work on scholarship throughout the 2009 application process after you put together that, what I assume, is a very big portfolio?

A. Yes, I did.

Q. Okay. Can you explain sort of why someone continues to work on scholarship?

A. Yes. Because tenure, it's -- well, it's awarded for your cumulative work. And I -- I love scholarship. I love

research and writing, even -- I would continue no matter what. I just love learning.

Q. Off the top of your head, how many articles have you written, scholarly articles?

A. Approximately a dozen.

Q. Okay. So after you meet with Dean Scoufos, who did you meet with next?

A. My department chair, John Mischo.

Q. Do you remember what was said during that meeting, more or less?

A. Yes. He examined my portfolio and handed it back to me. He seemed -- he seemed pleased with the composition of the portfolio.

Q. Okay. Does a department chair have a special role in the tenure application process?

A. Yes. The department chair gets a vote.

Q. Okay.

A. And the department chair also allows the process to move forward.

Q. So what happened after meeting with John Mischo? What was the next step in the process?

A. I gave my portfolio back to John to give to the tenure committee.

Q. Okay. When about did you learn what the tenure committee did on your portfolio?

A. Right before the Christmas break.
Q. How did the tenure committee vote?
A. The tenure committee voted to award me tenure.
Q. How did that feel?
A. It was like the best Christmas gift ever. I was -- I was -- I was -- it was -- it's hard to explain. It's something that I worked for my entire -- entire life. And it's -- however hard I worked for it, actually having it -- I mean, actually the anticipation of having it at hand, it was surreal. It was -- it was just, as I said, the best Christmas ever.
Q. Was getting tenure going to change your life?
A. Yes. And not only -- and more importantly, not only my life, but my family made quite substantial sacrifices to help me get my education, especially my oldest sister. And I wanted to help her also to get a home. And I was thinking -- also, I would like to have a home in Durant.
Q. Did you start looking for a home?
A. Yes. I started looking online at houses near campus. I like living by campus. I could just walk to campus.
Q. At this point, when you heard from the department that they were going to award you tenure, had you ever heard of anyone who was granted tenure by the department who didn't ultimately get tenure?
A. No. To my knowledge, that had never happened in all of

Southeastern's history.

Q. At that point, were you concerned at all that the administrators wouldn't honor the department's decision?

A. I had -- I was still hearing the echo from the conversation with Cathy Conway where Doug McMillan said he wanted me summarily fired, but I -- I thought they would follow the rules and the 100-plus-year tradition that Southeastern had of honoring the decision of their tenure committees.

MR. YOUNG: Your Honor, plaintiffs exchanged exhibits with defendants during the break that are properly marked. My understanding is, they will object if they have a substantive objection.

At this time, I'm going to proffer Plaintiff's Exhibit No. 72.

Your Honor, may I approach the witness and hand her --

THE COURT: Yes.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Tudor, do you recognize Plaintiff's Exhibit No. 72?

A. Yes.

Q. What is it?

A. This is the notification I received from Lucretia Scoufos that she was recommending denying -- denying my application for tenure, as well as -- well, effectively fire me,

recommending that I be given a one-year terminal appointment that would end that year.

Q. So you were up for a promotion, and Dean Scoufos wanted to deny it and she wanted you fired?

A. Yes.

Q. Had you ever heard of something like that happening before?

A. No, no. This was -- it was really -- it was shocking and, again, very, very frightening because I had never heard of anyone, not only being denied tenure after the tenure committee had recommended for it, but also to be -- to be terminated like this, for their appointment to be canceled.

Q. Can you tell me how you felt when you got that letter?

A. I -- I remember -- I remember the very day when I read it. It's one of those events where everything's -- crystallizes in your memory, because, after I read this, I was in a state of shock, really.

I was -- I read it right before I was scheduled to teach a class. I remember walking past Theresa Anderson's desk into the hallway. And Randy Prus, one of my colleagues, was coming into the office. And he said hi to me. And I couldn't even say hi to him. I was just in a state of shock.

And I just look -- I remember the expression on his face because I always say hi to my colleagues when I pass them. I'm never rude like that. But I was -- that was the state of

mind that I had when I received this -- this letter.
Q. So did this letter from Dean Scoufos explain why she was recommending that you be denied tenure?
A. No, it doesn't explain.
Q. What did you do after you got this letter?
A. Excuse me if I have a cough drop.
I contacted Dean Scoufos via e-mail to ask if she could give me some information, some rationale for why she was denying me tenure, and why she was recommending my termination.
Q. What did Dean Scoufos do?
A. She said that she did not discuss these things via e-mail, that I should make an appointment with her assistant, Mindy House. And so I did. I contacted Mindy House and made an appointment to speak with Dean Scoufos in person.
Q. Okay. And did you meet with Dean Scoufos?
A. Yes. And John Mischo, my department chair, he came with me to meet with Dean Scoufos.
Q. So can you tell the jury what happened during that meeting.
A. Yes. It was very odd, because she had -- she had e-mailed me -- a response to my e-mail saying she didn't discuss these issues via e-mail, that I had to make an appointment with Mindy House to talk to her in person.
So my expectation -- and also my department chair's

expectation, John Mischo -- was that we -- was that -- the expectation was we would get an explanation from her about why she was denying me tenure.

But, instead, she told us that she -- that she was not going to give us an explanation until after President Minks made his decision.

Q. Can you explain to the jury, Dr. Tudor, why it was important -- if Dean Scoufos had denied your application, why you needed to know her rationale at that point in time?

A. Yes. If there was something missing from the portfolio, if there was something that I could do to supplement it or to answer any questions she may have if she was confused by something or misunderstood something in my portfolio, I'd hoped that I would be given the opportunity to explain or to understand what was happening because my tenure portfolio would then be going -- would be going to other people to see, and I wanted to correct anything that was correctable.

Q. Dr. Tudor, at any point did you learn of any professors at Southeastern who were given the opportunity to make corrections or have a conversation with someone midstream?

A. Yes, my colleague, Mark Spencer. I visited with him, as I did with the other colleagues in my office after receiving this notification. And we were all equally shocked.

And Mark Spencer encouraged me to talk to --

MS. COFFEY: Objection, Your Honor. The witness is

testifying about hearsay. Mr. Spencer can come and testify about their conversation.

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

MR. YOUNG: One moment, Your Honor.

Excited utterance, Your Honor.

THE COURT: Sustained.

MR. YOUNG: Okay.

Q (BY MR. YOUNG) Why don't we move on, Dr. Tudor.

So, at this point, you couldn't get an explanation from Dean Scoufos. What happened next in the tenure process? What was the next step?

A. The application would go to Douglas -- Doug McMillan, the vice president of academic affairs.

Q. Okay.

MR. YOUNG: Your Honor, I'm going to -- may I approach the witness to give her Plaintiff's Exhibit 167?

THE COURT: Yes.

MR. YOUNG: Thank you, Your Honor.

Q. (BY MR. YOUNG) Dr. Tudor, do you recognize Plaintiff's Exhibit 167?

A. Yes.

Q. What is it?

A. This is the notification that I received from Doug McMillan notifying me that he was not recommending me for a

promotion and tenure.

MR. YOUNG: Your Honor, may I propose that Plaintiff's Exhibit 167 be admitted into evidence?

THE COURT: Any objection?

MS. COFFEY: No objection, Your Honor.

THE COURT: Admitted.

Q. (BY MR. YOUNG) So, Dr. Tudor, does Doug McMillan's letter give you any explanation?

A. No, there's no explanation whatsoever.

Q. At this point in time, had you ever heard of the vice president for academic affairs not following the recommendation of the department before on a tenure application?

A. No. To my knowledge, this had never happened before.

Q. What did you do next after you got this letter?

A. I contacted Doug McMillan to ask for an explanation.

Q. How did you contact Doug McMillan?

A. Via e-mail.

Q. Did he respond?

A. That I needed to set an appointment. And I contacted his assistant to set up an appointment to visit with him as well.

Q. Okay. Did you ever have that meeting with Doug McMillan?

A. No, I didn't. He canceled it a few -- just a few minutes before it was supposed to occur. He told me that he wouldn't meet with me until after -- after the faculty appellate

committee had reached a decision.

Q. Okay. So why don't we help the jury here, Dr. Tudor.

At some point, did you file a grievance with the faculty appellate committee?

A. Yes, the faculty -- yes, I filed a grievance with the faculty appellate committee.

Q. Okay. Let me help the jury again.

Did you file more than one grievance with the faculty appellate committee?

A. Yes, I did.

Q. Okay. So let's talk about the first grievance. When did you file the first grievance?

A. When -- after Lucretia Scoufos refused to give me the reasons for denying me tenure, I filed a grievance because the rules state very clearly that an applicant is entitled to an explanation if an administrator disagrees with the tenure promotion committee.

And since I had made a good faith effort to get that explanation and she had refused to provide one, my only alternative was to file with the faculty appellate committee to -- to get that explanation, to follow the rules.

Q. Do you remember what happened after you filed that grievance? What was the next big thing?

A. In reference to the faculty appellate committee?

Q. In reference to your tenure process in 2009-10.

Well, let me word this differently.

Did you meet with Dean Scoufos in early April 2010?

A. Yes. In April, yes, we did.

Q. Okay. Can you tell me who was at that meeting?

A. Yes. It was, again, John Mischo. John Mischo and I, we were called to a meeting in Dean Scoufos's office, and neither one of us had an idea of what that was about. And when we arrived, Dean Scoufos demanded that I withdraw my application for tenure and promotion.

Q. Had you ever heard of such a thing before?

A. No, no. It was -- it was a complete surprise. I had no expectation of that ever happening.

Q. So in April 2010 at the time of this meeting, was your application still live?

A. Yes, it still had not -- I still had not heard from President Minks yet.

Q. Okay. And Dean Scoufos asked you to withdraw it?

A. I wouldn't say "asked"; it was more in the form of a demand and even a threat.

Q. Why did it feel like a demand or a threat?

A. Well, at some point, I asked her if -- if the demand to withdraw my application, if this was her idea or if it was Doug McMillan's idea.

And, in response, she said that she met with Doug McMillan and also Larry Minks, and the three of them decided

that I should -- decided to demand that I withdraw my application for tenure.

And when I requested further explanation, she told me -- well, I made mention of the fact that even if -- well, of course, Minks hadn't ruled on it yet, so it made it seem that I still have another year, my seventh year, to apply for tenure. And she said the rules say that you may apply; it doesn't mean that we have to let you apply. And I took that as a threat.

Q. Did you fear retaliation?

A. Yes. That was -- I felt that if I didn't accede to the demand to withdraw my application, that there would be a retaliation as she had stated.

Q. Was there anything that you asked for during that meeting from Dean Scoufos?

A. Yes, I asked -- well, she said, in return for withdrawing my application, that, in the following year, I could -- I may be allowed to apply for tenure, and then the year after that, for promotion. And I asked for that offer in writing, asked for it in writing, and she refused to put the offer in writing. And so I feared, under the -- many unusual circumstances that had been happening, that wasn't a legitimate offer.

And, also, because, you know, earlier, she had recommended that I be terminated at the end of the year. And

so it was very important to me to get something in writing, to get that offer in writing, so I would have some security, some proof of what had happened in that office. And she refused to put anything in writing.

Q. Did you ever explain to Dean Scoufos why you didn't accept her offer?

A. Yes. I wrote to her later, and I told her that -- that I couldn't -- I couldn't -- that I didn't view it as a legitimate offer if it wasn't in writing. And she -- and since she refused to put it in writing, I was going to go ahead and let the -- I was not going to withdraw my tenure application.

Q. Did Dean Scoufos ever respond to you?

A. No. That was the end of that.

Q. Okay. What was the next big step in the tenure and promotion process, Dr. Tudor?

A. It would go -- it went to President Larry Minks.

Q. Do you recall when about you heard a decision from Larry Minks?

A. Yes. I believe it was near the end of the semester, perhaps late April. I was notified that he was also denying my application for tenure.

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

THE COURT: Yes.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Tudor, I've handed you an exhibit marked Plaintiff's Exhibit 168. Do you recognize this document?

A. Yes. This is the notification I received -- this is the notification I received from Larry Minks that he was denying my application for tenure.

MR. YOUNG: Your Honor, may I propose that this exhibit be admitted as Plaintiff's Exhibit 168?

MS. COFFEY: No objection, Your Honor.

THE COURT: Admitted.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Tudor, to your mind, was there anything unusual about this letter?

A. Yes. It states that Doug McMillan will be giving me his -- President Minks's rationale for denying me tenure but that President Larry Minks would not be giving me that. It would be -- it would be via Doug McMillan.

And I thought that was very strange that one administrator would write the rationale for another administrator.

Q. At this point in time when you got this letter from Larry Minks, had Doug McMillan ever given you his rationales for why he voted against you?

A. No, he had not. And he had also failed to reschedule the appointment that he had promised me after the faculty

appellate committee had reached their decision.
Q. Why don't we talk about that, that first grievance with the faculty appellate committee, Dr. Tudor.
What did the faculty appellate committee decide?
A. The faculty appellate committee decided that Dean Scoufos and Doug McMillan both should follow the rules, that the rules stated that they are obligated to give a candidate for tenure their reasons for denying that application when it goes -- particularly when it goes against the decision of the tenure committee.
Q. Did Doug McMillan and Lucretia Scoufos comply with that order?
A. No. I never received an explanation from Lucretia Scoufos or Doug McMillan for their reasons for denying me tenure that year.
MR. YOUNG: Your Honor, may I approach the witness?
THE COURT: Yes.
MR. YOUNG: Thank you.
Q. (BY MR. YOUNG) Dr. Tudor, I've handed you Plaintiff's Exhibit No. 30.
Do you recognize this document?
A. Yes.
Q. What is it?
A. It is a letter that I received from Charles Weiner, the assistant vice president for academic affairs.

Q. Okay. Can you tell me --

MR. YOUNG: Once again, Your Honor, may I propose that this be admitted as Plaintiff's Exhibit 30?

MS. COFFEY: I'm sorry, Your Honor. It's just that the way they handed us the exhibits, I'm having difficulty finding the exhibit that they're referring to.

I don't see an Exhibit 30, a marked Exhibit 30. I apologize.

No objection, Your Honor.

THE COURT: Admitted.

Q. (BY MR. YOUNG) Now, Dr. Tudor, I want you to tell me very generally about this letter.

What does Dr. Weiner say in it?

A. Well, he informs me -- and this is the first notification I had of the decision of the faculty appellate committee -- that they had decided that Scoufos and McMillan owed me an explanation. He said, however, they're not going to provide that explanation. Instead, McMillan is going to give me Minks's -- the rationale for Minks's decision, but they're not going to give me their reasons.

Q. At the time you got this letter, did the things it said in it make any sense to you?

A. It was -- it was -- I was -- well, first, I was very, very shocked that they wouldn't honor the decision of the faculty appellate committee.

I'm sorry. It's -- could you please ask that again. I'm not sure if I --

Q. Yeah.

I mean, at the time you got this letter --

A. Uh-huh.

Q. -- did you believe that you were entitled to rationales from Doug McMillan and Lucretia Scoufos?

A. According to the rules, I did, yes.

Q. So did you believe that the rules required that the administration comply with the faculty appellate committee's decision?

A. Yes, and so did the faculty appellate committee.

Q. When about did you get the letter from Dr. Weiner?

A. It's dated April 29th.

Q. What year?

A. Oh, I'm sorry. 2010.

Q. Do you remember getting the letter on or about that date?

A. Approximately.

Q. Okay. So, Dr. Tudor, you talked earlier about a letter that you were supposed to get from Larry Minks that was supposed to contain -- I'm sorry.

You talked earlier about a letter you were supposed to get from Doug McMillan which contained Larry Minks's rationales; right?

A. Yes.

MR. YOUNG: Your Honor, may I approach the witness? I'd like to hand her Plaintiff's Exhibit 79.

THE COURT: Yes.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Tudor, do you recognize Plaintiff's Exhibit 79?

A. Yes. It's a memorandum to me from Doug McMillan.

MR. YOUNG: Your Honor, may I propose that this be admitted as Plaintiff's Exhibit 79?

MS. COFFEY: No objection, Your Honor.

THE COURT: Admitted.

Q. (BY MR. YOUNG) So, Dr. Tudor, can you tell me what the date is on this letter.

A. April 30th, 2010.

Q. When did you get this letter?

A. I believe this was the letter that I received in June, sometime in June 2010.

Q. Before this, had you ever gotten a letter that had a date that was so old from a Southeastern administrator?

A. No. No, I had never -- I had never had that experience, and I'd never heard of such a thing.

Q. Okay. Other than the date, was there anything else that was odd about this letter, to you?

A. Just the purported rationales for denying me tenure and promotion seemed very odd.

Q. What were the particular things that you found odd about those rationales?

I'm sorry. These were the first rationales you had ever received; right?

A. Yes.

Q. So what was odd about them?

A. Well, for instance, in terms of research and scholarship, he says that two publications and one presentation at a regional symposium, that those things certainly merit -- or meet the standard, but then he looks at other activities. So it could be considered bonus activities that he claimed didn't quite meet the bar and cited those as a supposed rationale to deny me tenure and promotion.

Q. So, Dr. Tudor, at this point in time, did you know other professors in the English department who had received tenure?

A. Yes.

Q. How many publications did those professors have when they got tenure on average?

A. Fewer than mine.

Q. How few?

A. As little as one.

Q. Okay. But Doug McMillan told you that two publications wasn't enough?

A. Correct.

Q. And it wasn't enough because your bonus activities

weren't good enough, even though your two publications were good enough?

A. Correct.

Q. Okay. Dr. Tudor, does Doug McMillan talk about your service in this letter?

A. Yes.

May I elaborate? There's one other peculiar thing about the scholarship --

Q. Sure.

A. -- that really stood out to me as well.

I edited two of the proceedings from the symposium in 2006 and 2008, and he -- and there's a claim here that they couldn't find -- that they couldn't verify those publications. But those publications are on display in a display case in the library which is literally next door to the administration building in full view.

So I had been very -- it had struck me as very odd that they -- he couldn't verify that I'd actually edited those -- those proceedings from the symposium.

Q. Dr. Tudor, can you explain to the jury, what symposium are you talking about?

A. The Native American Symposium.

Q. The very big symposium, the only conference at Southeastern?

A. Correct. Our regional conference.

Q. Dr. Tudor, I don't know how many folks in the room might know this, but what does the cover of a proceeding publication look like?

A. The -- the cover would state the year in which the proceeding occurred. It would state the theme of the proceedings. We had different themes for different years.

And then it would state who edited the proceedings. All of those were displayed very prominently on the front cover of the journal.

Q. After you edited a proceeding, were any copies of it sent out to administrators at Southeastern?

A. Yes, copies were sent directly to the different administrators.

So, once again, it struck me as very -- very peculiar that Doug McMillan was unfamiliar with who edited the proceedings from our only conference when, not only was there a copy on display in our library, but also a copy had been sent personally to Doug McMillan.

And while he's writing -- perhaps I'm -- again, purportedly on behalf of Larry Minks, and, certainly, Larry Minks would have received a copy of the proceedings as well with my name prominently displayed on the cover.

Q. Dr. Tudor, are you a member of the Chickasaw Nation?

A. I'm sorry.

Q. It's okay. I'll repeat the question.

Dr. Tudor, are you a member of the Chickasaw Nation?
A. Yes, I am.
Q. Did you take pride in being a professor of Chickasaw heritage at Southeastern?
A. I would phrase it as it was an honor to represent Chickasaw Nation in my service at Southeastern.
Q. Was it important to you to participate in the Native American Symposium?
A. Yes, it was important.
Q. Okay. Dr. Tudor, let's try to move on.
Was there anything odd about McMillan's critique of your service in this letter?
A. Yes. It does not -- it doesn't -- it doesn't acknowledge my service on the Native American Symposium committee.
It also fails to note my service on -- there's a statewide program in Oklahoma called the Oklahoma -- it was OSLA, Oklahoma Scholarship Leadership Enrichment program, which is a very prestigious -- it's a very prestigious honor for all the universities in Oklahoma. It's hosted at different universities on different years and different occasions. And the year that Southeastern hosted it, I was honored to teach with the renowned scholar Rennard Strickland, who was a dean of law at the University of Oklahoma.
And I consider that one of the highlights of my service. It was just a tremendous honor to participate in that.

Q. Now, Dr. Tudor, so you talked about some oddities and some criticisms that didn't make sense to you. I want to ask you something more specifically.

Was there anything in Doug McMillan's letter that made you believe that you would not be allowed to reapply for tenure the next year?

A. No, nothing.

Q. So it doesn't say there's a rule that says you can't apply?

A. No.

Q. Okay. Did you have any concerns at this point in time, in June when you got this letter dated in April, that you wouldn't be allowed to reapply?

A. Well, I was -- I was confident that the rules allowed me to reapply.

After what had happened the past year, I was -- there was some anxiety that the administration may not follow those rules. And I was still -- the veiled threat from Scoufos was still echoing in my mind.

But the rules are the rules. And so I was moving forward and I was hoping that they would follow the rules and I'd be allowed to reapply and put all this behind me.

Q. At this point in time, Dr. Tudor, had you ever heard of a rule at Southeastern that if you didn't get tenure one year at any stage, that you couldn't try the next year?

A. No, never.
Q. Dr. Tudor, I think you mentioned that you served on the faculty senate at one point at Southeastern?
A. Yes, that's correct.
Q. Did you ever serve on the rules committee at Southeastern?
A. There's -- it's a type of -- yes. Yes, it could be -- could be construed that. It's faculty policies and procedures committee, which deals with rules governing faculty.
Q. And rules governing tenure processes for faculty; right?
A. Yes, absolutely.
Q. If there had been a rule, would you have known?
A. Yes.
Q. Did you work hard on that committee?
A. Yes. Yes, that was a very labor-intense committee.
Q. By chance, did Doug McMillan recognize your service on that committee in that letter?
A. No.
Q. And, Dr. Tudor, I'm going to fast-forward a little bit. Okay?
Did you file some complaints in August 2010?
A. Yes.
Q. Okay. Multiple complaints?
A. Yes.
Q. Okay. Did you file a discrimination complaint with

Claire Stubblefield?
A. Yes.
Q. Did you file a complaint with the faculty appellate committee?
A. Yes.
Q. Did you file a complaint with the U.S. Department of Education?
A. Yes.
Q. Dr. Tudor, can you tell the jury why you filed so many complaints in August 2010?
A. Well, there's a couple of reasons. So I wanted there to be a record of what had happened. I wanted to let the responsible parties know that rules had been -- rules had been egregiously broken. I wanted things to be fixed. I mean, it seems to me that things were very broken there and they needed to be fixed.
Q. Were you hurt at that point?
A. Yes.
Q. Can you explain to the jury why you were hurt?
A. I'd always -- I had followed the rules. I had done everything that was expected of me, even more. I'd worked very, very hard for something. And in spite of -- in spite of that, I was -- I was denied my reward for my -- for my work.
What else?
I was -- sorry. Can you -- I got lost a little bit in my

explanation.
Q. I asked you if you were hurt.
A. Yeah.
Q. Is it painful for you to talk about this?
A. Yes. I was -- I was hurt for myself. I was hurt for my colleagues. I was hurt for Southeastern. I was -- it was a very painful disappointment all around.
Q. Okay. Now, Dr. Tudor, so those three complaints you filed, were they all different, the substance of them?
A. The substance of them was the same.
Q. So you were basically sending this same complaint to a bunch of different folks?
A. Yes. Each one had their own responsibilities, and I believe that they needed to be notified so they could provide the appropriate fixes.
Q. So, Dr. Tudor, let's again fast-forward a little bit.
Did you try to apply for tenure in the 2010-11 cycle?
A. Yes, I did.
Q. When did you start preparing to apply?
A. Well, applying for tenure is a continuous process, but I started putting my portfolio together when I -- when it was returned to me at the -- right before the beginning of the fall semester 2010.
Q. You got that portfolio back from -- would it have been Larry Minks's office or somewhere else?

A. From Larry Minks's office, yes.
Q. Okay. Can you tell me a little bit about how you started assembling that 2010-11 portfolio?
A. Yes. Since a portfolio is based upon all of your work, I simply -- to prepare the next portfolio, what I needed to do was update my CV, which is that long, detailed résumé. So I needed to include the other work and publications that I had -- had done since the previous application.

I updated my cover letter. I added some new reference letters, for example, from Mark Spencer; from Lisa Coleman -- she wrote me, as I mentioned earlier, a very powerful recommendation for tenure -- from Virginia Parrish, another colleague; and from Kim McGehee. They all wrote me new letters.

I removed some of the old letters. For instance, Theresa Anderson, our secretary, not only had I wrote about her in my previous cover letter, but I also included a letter of reference from her. I thought it was relevant because she sat right next to me and she heard my interaction with students and how well that I got along with students. And I thought that was very important information, but some administrators didn't. Well, as you heard in the opening, Theresa Anderson -- they took it as disrespectful that I included Theresa Anderson in my cover letter and as a reference.

So I removed a reference to her, a new cover letter, and

I also removed her letter of recommendation for me in my updated portfolio.

Let's see. What else?

I added new publications and just a few miscellaneous other things that would go in a portfolio, but those are the main things that I did.

Q. Let me ask you a specific question. You said you added new publications.

A. Yes.

Q. That's the same thing as articles?

A. Yes. Yes, articles.

Q. How many articles did you have at that point? Do you remember?

A. Well, there was a number -- well, there were several that had -- there were more that had been accepted for publication. And there was also, actually, published articles. So during that -- during the course of the 2010-2011 cycle, I had approximately a dozen publications during that cycle.

I'm not sure at any given time what the number was during that period. But, cumulatively, it turned out, during that cycle, to be approximately a dozen.

Q. Okay. At that point in time, did you know anyone in the English department, tenured or untenured, who had that number of published articles?

A. No. No.

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

THE COURT: Yes.

Q. (BY MR. YOUNG) Dr. Tudor, I've handed you what has been marked as Plaintiff's Exhibit 164.

Do you recognize the front page of this document?

A. Yes.

Q. What is it?

A. It's my -- my tenure portfolio for the year 2010-2011.

Q. Did you assemble that document?

A. Yes.

MR. YOUNG: Your Honor, may I propose this be admitted as Plaintiff's Exhibit 164?

MS. COFFEY: Objection, Your Honor. Dr. Tudor's 2010-2011 portfolio was never submitted for tenure review at Southeastern. She compiled it, but it was never admitted. And, therefore, there is no relevancy to this document.

THE COURT: Overruled. I will admit it.

Q. (BY MR. YOUNG) So I think earlier you testified, Dr. Tudor -- you don't need to look at it right now.

A. Okay.

Q. Earlier, you testified -- I know you know it well.

Earlier, you testified that you took your 2009-10 application -- I assume it was in a binder -- and you composed the new application; right?

A. Correct.
Q. When you were in the process of doing that, did you discover anything?
A. Yes. One of the things which I removed from the old portfolio was the denial letters from Lucretia Scoufos, Doug McMillan, and Larry Minks.
Q. And did you notice anything about Lucretia Scoufos's letter that was in the portfolio?
A. Yes. It was a different letter than the one that John Mischo and myself had received.
Q. Okay.
MR. YOUNG: Your Honor, I'd like to use the document projector to publish a document to the jury.
THE COURT: Only if it's been admitted.
MR. YOUNG: Okay. Let me bring it -- thank you, Your Honor.
Your Honor, may I approach the witness?
THE COURT: Yes.
MR. YOUNG: Thank you, Your Honor.
Q. (BY MR. YOUNG) Dr. Tudor, do you recognize what has been marked as Plaintiff's Exhibit 77?
A. Yes.
Q. What is it?
A. This is authored by Lucretia Scoufos, and it has the reasons, rationales, why she denied my tenure application.

Q. Had you ever seen this letter before you got back the portfolio?
A. No, I had not.
Q. Is there anything about the date on this letter that you find interesting?
A. Yes. The date is exactly the same as the letter which she sent to me and my department chair, John Mischo. So it appears that this letter is backdated.
Q. Were you concerned when you discovered this letter?
A. Yes, I was concerned and shocked.
Q. Do you remember what you did?
A. I contacted John Mischo and shared with him this information, and he shared my concern and dismay.
Q. Had you ever heard of this happening before?
A. No, never.
Q. Did you reach out to anyone else to talk about this letter?
A. Yes. I informed Claire Stubblefield about the existence of this backdated letter, and I talked to my colleagues in my department about its existence as well.
Q. Did Claire Stubblefield respond to you at all when you reached out to her?
A. She simply acknowledged that she received the information, but she didn't -- but otherwise, no.
Q. Okay. So, Dr. Tudor, let's put our focus back on the

2010-11 application. Okay?

After you assembled the portfolio, what happened? What was the next step in the process?

A. I notified Dean Scoufos, Lucretia Scoufos, that I would be applying for tenure in 2010-2011.

Q. Did Dean Scoufos respond to you?

A. She sent me an e-mail saying that since we have -- I'm so sorry. I'm coughing so much.

Q. That's okay.

A. She sent me an e-mail that said since we had met the previous year to discuss the portfolio, she saw no need to meet with me again to discuss this year's portfolio. And so we wouldn't -- so we would not be meeting in person to discuss it.

Q. Did you find that odd?

A. Well, yes. I mean, the purpose of the meeting was to discuss the content of the portfolio and to make sure that an applicant -- that the applicant succeeds; right? And I had added -- I had added quite a bit to my portfolio. And it would have been helpful to discuss those issues with her.

Q. Did you meet with anyone else about your 2010-11 application?

A. Yes. Randy Prus. He became the new department chair after John Mischo stepped down.

Q. Okay. Did you talk to Randy Prus about your application

in 2010-11?
A. Yes. I gave him a copy of my portfolio for his review.
Q. Did he give you any feedback?
A. Yes. I --
MS. COFFEY: Objection, Your Honor. Hearsay. Dr. Prus is noticed as a witness, can come in and testify about what he told Dr. Tudor.
THE COURT: Are you going to ask her what he said?
MR. YOUNG: No. I was just asking if he gave her any feedback.
THE COURT: All right. Overruled.
Q. (BY MR. YOUNG) Did Randy Prus give you any feedback?
A. Yes.
Q. Did he send you any edits on your portfolio?
A. Yes.
Q. Was the feedback helpful to you?
A. Yes, it was very helpful.
Q. Can you tell me why it was helpful?
A. Well, I always appreciate the feedback from any of my colleagues, and especially my department chairs. And he had seen many of my colleagues -- a number of people succeed in their tenure application.
So I respected -- I respected the changes that he wanted me to make, and we talked through them. And by the time I was finished, I think we were both very confident that my tenure

application 2010-2011 would succeed.
Q. Do you trust Randy Prus's judgment?
A. Yes.
Q. Is he a truthful person?
A. Yes.
Q. Dr. Tudor, why don't we move forward in time.
Do you know what happened after you met with Randy Prus? What was the next step in your 2010-11 application?
A. Randy Prus began assembling the tenure review committee to look at my portfolio and to make a decision on my tenure application for that year.
Q. Dr. Tudor, did something significant happen in early October 2010?
A. Yes. Randy Prus and myself received -- we received notice to go to Dean Scoufos's office.
Q. Did Dean Scoufos tell you what that meeting was about before you arrived?
A. No. We -- she did not tell me, and she did not tell Randy Prus either. When I went to his office, we walked over to Dean Scoufos's office together. Her office is in a different building. He had no idea what the meeting was about.
Q. Was that unusual?
A. I believe so, yes. He's the department chair. I believe that he should be kept in the loop about -- and -- about

anything that happens with the faculty that he's responsible for in his department.

Q. Before you went to this meeting, did you have any idea what it could possibly be about?

A. No.

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

THE COURT: Yes.

Q. (BY MR. YOUNG) Dr. Tudor, I've handed you what I've marked as Plaintiff's Exhibit 84.

Do you recognize this document?

A. Yes.

Q. What is it?

A. This is the letter that I received when I went -- when Randy Prus and I went to Lucretia Scoufos's office. She presented this memo from Doug McMillan to us.

MR. YOUNG: Your Honor, may I propose this be admitted as Plaintiff's Exhibit 84?

MS. COFFEY: No objection, Your Honor.

THE COURT: Admitted.

Q. (BY MR. YOUNG) Okay. Without reading this letter, Dr. Tudor, tell the jury generally what it says.

A. It says that --

MS. COFFEY: Objection, Your Honor. The document speaks for itself. There's no need for a witness to summarize the document.

THE COURT: Sustained.

MR. YOUNG: Okay.

Q. (BY MR. YOUNG) Dr. Tudor, what was discussed at this meeting with Dean Scoufos, Randy Prus, and yourself?

A. About how the rules allowed me to reapply. Doug McMillan had made the decision that I was not to be allowed to reapply for tenure promotion in 2010-2011.

Q. Was there anything odd about the fact that it was Doug McMillan who made that decision?

A. Yes. It seemed -- it seemed very peculiar that he would make that decision. It was also very peculiar that Lucretia Scoufos would be handing -- would be giving me a memo from him instead of going to his office.

There's a number of -- it was all peculiar. Randy and I, we were both blindsided by this.

Q. So you've had a lot of interactions with Doug McMillan by this point. At any point did Doug McMillan reach out to you and offer to meet with you in person to just talk it out?

A. No, he never did.

Q. Did you ever see Doug McMillan during the 2010-11 school year?

A. No, I did not.

Q. When was the last time you saw Doug McMillan?

A. I think it was at a deposition.

Q. For this case?

A. For this case.
Q. Dr. Tudor, was -- this meeting with Dean Scoufos, was this the first time you were told you would not be allowed to reapply for tenure?
A. Yes, it was.
Q. Did being barred from reapplying for tenure make any sense to you?
A. No. No, not only did it not make any sense, it -- I wonder what the opposite of not making sense is. It flew in the face of the way things -- of the rules and the way things should have been handled.
Q. Had you ever heard at this point in time of a professor being barred from reapplying for tenure?
A. No. No, I had not. And I asked around. And nobody that -- you know, people had been there many, many years longer than I. They had never heard of such a thing either ever.
Q. Was any explanation given to you for why you weren't being allowed to reapply for tenure?
A. That it would tear the university apart, inflame tensions, something to that effect.
Q. It would inflame tensions?
A. Yes. I -- I believe that was referring to what had happened in the previous year when that -- the administration had violated the rules and also violated the orders of the

faculty appellate committee.

It did raise tensions between the faculty and the administration for them to so egregiously violate the rules and also the outcome of the body -- the faculty appellate committee, whose mission -- whose purpose on campus was to make sure that any disagreements between faculty and the administration were resolved amicably.

So there were -- I believe those are the tensions he was referring to.

Q. So around the time you got this letter in early October 2010, had Doug McMillan seen your 2010-11 tenure application?

A. No.

Q. Did he have any way of knowing what was inside of it?

A. No.

Q. Was it different from your previous application?

A. Yes.

Q. Can you just briefly summarize for the jury significant differences.

MS. COFFEY: Objection, Your Honor. Between the two portfolios, each speak for themselves. There's no need for Dr. Tudor to summarize the differences between the two.

THE COURT: I believe she already has. If there's anything that you haven't already testified to that's different, please tell us.

To that extent, you're overruled.

THE WITNESS: Uh-huh. Well, there are a number of articles that had been published or accepted for publication. Since scholarship was one of the purported areas of weakness, that was a very substantial -- I think that was a very substantial difference. It -- although, I met -- the standard before this was far in excess of what was required by then.

Q. (BY MR. YOUNG) Just generally, you made other changes to it; correct?

A. Yes, as I had mentioned earlier.

Q. Okay. Now, Dr. Tudor, what did you do when you got this letter from Doug McMillan?

A. I notified Claire Stubblefield of this latest development. It's self-evident that this was retaliation. So I added that to my complaint.

I also filed another grievance with the faculty appellate committee because this was another egregious violation of the rules. The rules allow me to apply in my seventh year. And so I took to the faculty appellate committee so that they could make a decision whether or not I should be allowed to reapply.

Q. So, Dr. Tudor, can you explain to the jury why it was a big deal, why you had to reapply the seventh year?

A. Yes. Tenure-track faculty are only given seven years to be granted tenure or else we're fired. That's the end of our career.

Q. So your livelihood was on the line?
A. Yes, my livelihood, my future. And a tenure-track professor, if we don't -- if we don't get tenure, it's a huge black mark on our reputation. It's almost -- it's really impossible to overcome that kind of black mark on our reputation.

So not only would I lose my livelihood, but my career and what I had worked for my whole life, it would have been over.

Q. When this was happening, did you tell your sisters what was happening at Southeastern?
A. No. I -- even though -- no. Even though I knew that I qualified and my colleagues -- you know, they voted. I was qualified. I was still -- I was too ashamed and humiliated, and I didn't know how to explain it to people like my sisters who had never had the opportunity to attend college. To them -- you know, it's -- universities and colleges, they're almost a magical place. You can't imagine this type of mischief going on.

But mostly I was -- I was just embarrassed. I was embarrassed for Southeastern. I was embarrassed for myself. It was humiliating. I know it would be very -- I couldn't bring that kind of hurt to them.

Q. Did you ever tell your sisters what happened at Southeastern?

MS. COFFEY: Objection, Your Honor. This is kind of

getting into an extremely irrelevant area regarding who she told about her experiences at Southeastern.

THE COURT: You need to turn that mic toward you.

MS. COFFEY: I apologize.

THE COURT: I heard you, but speak up.

I don't understand the relevance to this.

MR. YOUNG: She is seeking damages to compensate her for harm to professional reputation as well as garden-variety emotional distress damages. Her testimony is relevant to how these events impacted her.

MS. COFFEY: Your Honor, what she told her sisters has no effect on her professional reputation.

THE COURT: I'll permit it.

MR. YOUNG: Thank you, Your Honor.

Q. (BY MR. YOUNG) Dr. Tudor, I'll repeat my question.

Did you ever tell your sisters what happened to you at Southeastern?

A. No. They -- they both passed away before -- they passed away during the -- while -- during these years I've been trying to get my job and reputation back. I never told them.

Q. Okay. Dr. Tudor, I'm going to quickly go through your complaint with Claire Stubblefield.

You said that you filed a complaint, I think, in the beginning of the fall semester, and then you supplemented it after that letter from Doug McMillan; is that right?

A. Yes.
Q. Okay. Let's talk a little bit about that complaint.
To your knowledge, what did Claire Stubblefield do with your complaints?
MS. COFFEY: Objection, Your Honor. This witness can't testify what Claire Stubblefield did with --
THE COURT: If you know. To your knowledge.
THE WITNESS: It's -- I -- to my -- to my knowledge, she failed to investigate the retaliation claim. She failed to --
MS. COFFEY: Objection, Your Honor. Again, she's testifying about something she --
THE COURT: Do you know what happened? Do you know what she did?
THE WITNESS: It was in her report.
MR. YOUNG: Well, here, let me withdraw that question, Your Honor, and ask her a different question.
THE COURT: All right.
Q. (BY MR. YOUNG) Dr. Tudor, did you converse with Claire Stubblefield during the pendency of her investigation?
A. On a couple of occasions.
Q. Did you exchange e-mails with Claire Stubblefield during the pendency of her investigation?
A. Yes.
Q. Okay. Was there anything, from your perspective, based

on your interactions -- personal interactions with Claire Stubblefield, was there anything that was odd during this investigation?

MS. COFFEY: Objection. Relevancy, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yeah. Well, she didn't seem to know how to handle a complaint involving a transgender person. For instance, when I mentioned to her that Lucretia Scoufos had used a male pronoun in reference to me, she didn't seem concerned. She didn't seem very interested in asking follow-up questions.

I was very concerned about the amount of time that was elapsing. The substance of my complaint, for instance, in 2010-11, about being allowed to reapply, there's a lot of things that have to be done. The tenure committee has to meet; they have to vote. So that's deadlines are passing.

Q. (BY MR. YOUNG) Okay. Dr. Tudor, at any point did you try to help Claire Stubblefield learn more about transgender folks who experience discrimination?

A. I forwarded a letter to her from the Department of Education with specific guidance.

Q. Why did you forward that to her?

A. To familiarize her with the issues and to help her investigation.

Q. So you were trying to help her?

A. Yes.
Q. Okay. Did Claire Stubblefield ever talk to you about the documents that you sent her to try to help her?
A. No.
Q. Did you have any particular concerns about Claire Stubblefield's investigation in November 2010?
A. Yes, I -- I knew that the deadlines for the tenure committee meeting, the department chair review of my portfolio, were approaching. There was a lot of work to be done. And I became increasing concerned about the expiration of those deadlines, and I -- and I contacted her to express those concerns.

And she -- she gave me different -- she led me to believe she was almost finished. And then she kept on delaying and delaying and delaying, and I was becoming increasingly alarmed.

Q. Did you have any particular concerns about Claire Stubblefield's investigation in December 2010?
A. December was -- that was the deadline for the tenure promotion committee to make their recommendation.
Q. Did you hear from Claire Stubblefield in December 2010?
A. I still had not received her -- she still had not completed her report. She had still not concluded her investigation.
Q. Okay. Dr. Tudor, while Claire Stubblefield's

investigation was going on, did she ever tell you that she was friends with Doug McMillan?

A. No, she never mentioned that.

Q. If you had been told that Claire Stubblefield was friends with Doug McMillan, would you have asked for someone else to have done that investigation?

A. Yes, of course. Someone who could be objective.

Q. Why is that?

A. Because everybody is entitled to a fair hearing from a neutral party to look at the evidence and consider it.

Q. Do you think Doug McMillan was entitled to a fair investigator?

A. Everybody's entitled to a fair investigator.

Q. If someone had accidentally chosen one of your friends to investigate a complaint, would you have asked for a different investigator to be chosen?

A. I would have expected a different investigator to be chosen. That's only fair.

Q. Okay. At any point during the investigation, did Claire Stubblefield talk to you about whether you, as a transgender person, were protected from sex discrimination?

A. No.

Q. Okay. Let's fast-forward a bit to January 2011.

You eventually heard from Claire Stubblefield about her decision?

A. Yes.
Q. Very generally, can you tell me what the final decision was from Claire Stubblefield.
A. Well, her final decision made no mention of my complaint about retaliation. Her final report made no mention of me being denied the opportunity to apply in 2010-2011. It didn't address the -- the substance of my complaint about the 2009-2010 application inasmuch as she didn't consider the testimony of members of my tenure committee or my department chair.

It's -- her conclusions seemed to be based entirely upon the testimony of the people who discriminating -- discriminated against me saying they didn't discriminate against me and not on the evidence.

Q. Did you give Claire Stubblefield evidence?
A. Yes.
Q. Now, let me -- I messed up. So let's go back a little bit.

When the investigation was still going on with Claire Stubblefield, did you tell her that things felt hostile at Southeastern?
A. Yes.
Q. Did you two discuss that a bit?
A. A bit, yes.
Q. Did Claire Stubblefield ever give you a finding on

whether you were experiencing hostilities at Southeastern?
A. No, no. Again, when I said that, I mean I would complain to her, but then she wouldn't ask follow-up questions or seem interested in my -- in my complaint.
Q. Did you do your best to tell Claire Stubblefield everything that she asked of you?
A. Yes.
Q. If she'd asked you more questions, would you have answered them honestly?
A. Of course.
Q. Okay. So when you got Claire Stubblefield's decision, what did you do?
A. The only thing the rules allowed me to do, which was appeal to President Minks.
Q. Did you complain about President Minks in your complaint to Claire Stubblefield?
A. Yes.
Q. So the rules required you to let President Minks make a decision as to whether he was the one who discriminated against you?
A. That -- that's correct. That's -- yes.
Q. What did President Minks decide?
A. President Minks decided that he had not discriminated against me.
Q. Did the rules allow you to do anything else after that?

A. No.
Q. Okay. Let's talk about the third faculty appellate complaint. I think you mentioned earlier you filed that around the time you got that October 2010 letter from Dr. Doug McMillan. Is that correct?
A. That's correct.
Q. Okay. Can you just briefly say what you complained about in that complaint.
A. That complaint was based on Doug McMillan not allowing me to apply for tenure in 2010-2011.
Q. Okay. Did you ever find out what the faculty appellate committee decided on that third complaint?
A. Yes. The faculty appellate committee decided that the rules allowed me to apply in 2010-2011 and that I should be allowed to apply in that year.
Q. And that's all you were asking for, the opportunity to apply?
A. Yes, that's correct.
Q. You wanted to be judged on your merits?
A. Yes, absolutely.
Q. That's it?
A. Yes.
Q. Okay. What happened after the faculty appellate committee ordered the administration to let you reapply?
A. The president's designee, Ross Walkup, disagreed with the

faculty appellate committee's decision.
Q. What happened after that?
A. Well, there was an impasse because this had never -- there was an impasse. Bryon Clark made up new rules.
Q. Why don't you explain who Bryon Clark is first. Who was he at the time?
A. He -- he worked under Doug McMillan.
Q. Someone who worked under Doug McMillan made up rules?
A. About -- yes. Yes, he made up the rules to apply to my case.
Q. For a complaint about Doug McMillan?
A. For a complaint about Doug McMillan, correct.
Q. Okay.
MR. YOUNG: Your Honor, may I approach the witness?
THE COURT: Yes.
Q. (BY MR. YOUNG) Dr. Tudor, I've handed you an exhibit marked Plaintiff's Exhibit 54.
Do you recognize this document?
A. Yes.
Q. What is it?
A. I'm sorry. It's from Bryon Clark, informing -- to me, right.
Q. I'm sorry. What type of --
A. So Bryon Clark informing me of the -- just a moment -- of what had happened with the impasse between the president's

designee, Ross Walkup, and the -- what he was going to do next, the new rules.

Q. Okay.

MR. YOUNG: Your Honor, may I propose that this be admitted as Plaintiff's Exhibit 54?

MS. COFFEY: No objection, Your Honor.

THE COURT: Admitted.

MR. YOUNG: Okay. Your Honor, if I may approach the witness one more time?

THE COURT: Yes.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Tudor, I've handed you a document that's marked Plaintiff's Exhibit 55.

Do you recognize this document?

A. Yes.

Q. Just very briefly, what is it?

A. I believe these are the new rules that Bryon Clark had made up.

Q. Okay.

MR. YOUNG: Your Honor, may I propose that this be admitted as Plaintiff's Exhibit 55?

MS. COFFEY: Objection, Your Honor. Lack of foundation. It's extremely unclear what this document is.

THE COURT: Do you want to follow up?

MR. YOUNG: Yes, Your Honor. May I ask the witness

a question to provide that foundation?

THE COURT: Yes.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Tudor, what is Plaintiff's Exhibit 54, that earlier document? Is it a letter? an e-mail? What is it?

A. It appears to be an e-mail.

Q. Okay. Below the date part of that document, is there any attachment icon?

A. Yes.

Q. And what does an attachment icon indicate?

A. That there is an attachment to the e-mail that is the subject of the e-mail.

Q. Having looked at that document, Plaintiff's Exhibit 54, do you recall receiving an attachment to the e-mail you got from Bryon Clark?

A. Yes.

Q. Okay. Now, having refreshed your recollection, what is Plaintiff's Exhibit 55?

A. The attachment to the e-mail in Exhibit 54.

Q. Okay.

THE COURT: Any objection?

MS. COFFEY: No objection, Your Honor.

THE COURT: It will be admitted.

MR. YOUNG: Thank you, Your Honor.

THE COURT: And we will break for lunch.

Don't discuss the case. Don't permit anyone to discuss it with you. Don't expose yourselves to any discussions. Don't blog. Don't tweet. Don't Facebook.

I think I'll have you report to the jury assembly room instead of upstairs so we can bring you-all up together. And please report back there at the jury assembly room on the first floor at 1:15.

Until that time, we'll be in recess.

(Jury exits.)

(Lunch break from 12:15 p.m. to 1:15 p.m.)

(Jury enters.)

THE COURT: Be seated.

Please continue.

MR. YOUNG: Thank you, Your Honor.

Q. (BY MR. YOUNG) Dr. Tudor, before we broke for lunch, I was asking you about your third faculty appellate committee complaint, and we were talking a little bit about Plaintiff's Exhibit 54 and 55, the rules, and Bryon Clark.

Do you recall that?

A. Yes.

Q. Okay. So can you tell me just a little bit about what these rules were supposed to do, these new rules?

A. They were supposed to address what happens when an impasse between the president's designee occurs and the

faculty appellate committee.
Q. Now, I think you previously testified that you were on the faculty senate?
A. Correct.
Q. And you were on some committee in the faculty senate that had something to do with rules; right?
A. Correct. The faculty -- yes. Yes.
Q. Okay. Were new rules at Southeastern supposed to be approved by the faculty senate committee that you were on?
A. Yes, they were.
Q. Were these rules that Bryon Clark imposed on you run through the faculty senate committee?
A. No, the committee never saw these rules. We were never -- we never discussed them. They were never brought to us.
Q. To your knowledge, was that the correct way for new rules to be made at Southeastern?
A. No, it was actually against the rules to make new rules this way.
Q. Yet again. Okay.
Dr. Tudor, did you complain to Bryon Clark about these rules?
A. Yes, I -- yes, I did.
Q. Why did you complain?
A. Because there's a procedure to create new rules, which

was -- which involved the faculty senate and also the committee that I -- that I served on. And these rules were not being followed.

It was also the substance of the new rules, which basically made -- not basically -- it made Minks the decider in a case involving him as a person who was complained against once again.

Q. So what happened when you complained to Bryon Clark about these new rules?

A. He implemented them anyway. I had to abide by these new rules despite my objections to fairness and procedure and established rules and practices.

Q. To your knowledge, did Southeastern ever use these new rules for anyone other than you?

A. No. To my knowledge, I'm the only person these rules ever applied to.

Q. Did you follow these new rules?

A. Yes. Yes, I always follow the rules.

Q. Yeah. So you followed the rules.

So, under these new rules, your faculty appellate committee decision, the favorable one, was sent to Larry Minks; is that right?

MS. COFFEY: Objection, Your Honor. He's leading the witness.

THE COURT: Sustained. Avoid leading your own

witness.

MR. YOUNG: Yes, Your Honor.

Q. (BY MR. YOUNG) Dr. Tudor, under these rules, what was the next step in your faculty appellate grievance, this third one we've been talking about?

A. It was sent to Larry Minks.

Q. Okay. But you won at the faculty appellate committee level; correct?

A. Correct.

Q. So, under these rules, did you have to appeal a decision you won?

MS. COFFEY: Same objection. Leading.

THE COURT: Overruled.

THE WITNESS: Yes. Yes, I had to appeal a ruling I had won to the person I complained about.

Q. (BY MR. YOUNG) Had you ever heard of anything like that happening before?

A. No. No, never.

Q. What did President Minks ultimately do?

A. He decided that he was -- that he was right in the beginning. He decided for himself, in other words. He decided for himself.

Q. Did the new rules allow you to do anything else after Larry Minks made that decision?

A. No.

Q. There was nowhere else you could go to?
A. No.
Q. Dr. Tudor, I want to fast-forward a little bit to April 2011.
When did the school year end at Southeastern?
A. It ends in May.
Q. Okay. So about a month before the school year ended, your last year at Southeastern, after all of your complaints were done and all of the appeals were over, did you do anything else to complain?
A. I started a blog. And there was a petition that was started online to go to RUSO, the Regional University System of Oklahoma, and I posted a link to that on my blog.
Q. Okay. Let's take those a little bit apart. Okay?
A. Okay.
Q. Let's talk about your blog first.
Can you tell me a little bit about why you started a blog.
MS. COFFEY: Objection, Your Honor. Relevancy.
THE COURT: Overruled.
THE WITNESS: I thought at -- well, for Southeastern, it's a public institution, I thought it's very important for the public to know what is happening, so we can -- when there's problems and rules are being broken, so those rules can be fixed so that we can move forward.

Q. (BY MR. YOUNG) Was your blog only about what happened at Southeastern?
A. To my recollection, yes.
Q. Okay. Is what you posted on that blog true?
A. Yes.
Q. Okay. I think you mentioned a petition to the Regional University System of Oklahoma.

For the jury, I'm just going to say I'm going to call the Regional University System of Oklahoma RUSO so we can save time and it's easier, just like Southeastern.

Okay. So you mentioned a petition to RUSO.
A. Yes.
Q. Can you tell me a little bit about how you learned about this petition.
A. That's -- my colleagues at Southeastern, one of my -- one in particular started the blog, but more than one was interested in trying to do something to try to right the wrong. And they started this petition.

And a number of faculty members, former faculty members, for instance, the professor who was on the hiring committee who hired me back in 2004, who is now retired, he and his wife both signed the petition. Numerous students, members of the community, professors in my field around the country, they all signed the petition as well.
Q. Was this an online petition?

A. Yes, it was.
Q. Okay. Do you know what happened with that petition?
A. Yes. One of my -- one of my colleagues at Southeastern printed the -- printed out the petition and delivered a copy to RUSO.
Q. Okay. What was the name of that colleague?
A. Dr. Meg Cotter-Lynch.
Q. And she was in the English department with you?
A. Yes.
Q. Are you close with Meg Cotter-Lynch?
A. We're friends.
Q. Were you good friends?
A. Yes, yes.
Q. Okay. Do you know what happened with that petition ultimately?
A. I know it was delivered to RUSO, and they received it. I don't know what they did with it after they received it.
Q. Did anyone from RUSO ever reach out to you, talk to you, ask you what happened?
A. Not to my recollection.
Q. Your entire time at Southeastern, had you ever heard of a petition being sent to RUSO asking it to do something on behalf of a professor?
MS. COFFEY: Objection, Your Honor. Leading.
THE COURT: Sustained.

Q. (BY MR. YOUNG) Okay. Dr. Tudor, did anyone else at Southeastern, in the spring 2011 term, do anything to try to help you?

Let me ask you a slightly different question.

Did the faculty senate at Southeastern do anything on your behalf in the spring 2011 term?

MS. COFFEY: Objection. Leading, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes. The faculty senate was very concerned about the rules being violated. And, also, they were very concerned that the faculty appellate committee, their decision had been ignored, and that new rules had been made that just applied to me.

And some, they -- they passed a resolution ordering the president to honor their -- the decision of the faculty appellate committee, and that was sent to President Larry Minks.

Q (BY MR. YOUNG) Do you know what Larry Minks did in response to that order from the faculty senate?

A. He ignored it.

Q. Had you ever heard of something like that happening before?

MS. COFFEY: Objection, Your Honor. Leading.

THE COURT: Overruled.

THE WITNESS: No. To my knowledge, that had never

happened before.
Q. (BY MR. YOUNG) Okay. When you were at Southeastern, were there any specific rules protecting transgender people from sex discrimination?
A. No.
Q. While you were at Southeastern, did anyone ever try to pass any such rules?
A. Yes. The faculty senate amended the policies, the rules, and -- to include gay and transgender people. And that was sent to Doug McMillan, but he did not include it in our policy handbook.
Q. Can you just explain to the jury why the faculty senate would send something like that to Doug McMillan.
A. As the vice president of academic affairs, he was the person who was responsible to receive -- to receive rules from the faculty senate.
Q. But he didn't honor that decision?
A. Correct.
Q. When about did the faculty senate try to add those protections at Southeastern?
A. It was in spring 2011.
Q. So after all this had happened?
A. Yes.
Q. Dr. Tudor, are you familiar with Southeastern's excellence in scholarship award?

A. Yes. It's a very high honor that the faculty senate awards to faculty.
Q. Did you ever get the excellence in scholarship award?
A. Yes. I was very, very honored to receive the faculty senate award for excellence in scholarship.
Q. When did you get that award?
A. In 2011.
Q. Dr. Tudor, I want to talk to you a little bit about what it was like for you to leave Southeastern. So fast-forward to May 2011.

What was it like working at Southeastern once you knew that you weren't being allowed -- you weren't allowed to reapply for tenure and that you would have to leave?
A. It was very hard. I never imagined that I wouldn't continue working there throughout my working life.

I had envisioned my future there. I spent a lot of days in my office just -- so that's -- that's a grieving -- leaving my jobs, leaving my friends. It was very hard to say goodbye to them and to my students.

Perhaps one of the most difficult parts of leaving, people knowing that I'm leaving, my students -- they had heard that I would be leaving. They would come by to comfort me. Many -- a number of them shed tears. And I tried -- it was very hard to put on a brave face and say -- I ended up comforting them. That was the hardest part, because I love my

students so much.

It was very hard, but it's also one of my best memories as to -- because it's not often that faculty professors get to hear from their students how much they've meant in their lives. So even though it's one of the most painful memories for me, it's also -- it's also one of the memories I treasure the most, saying goodbye to my students.

Q. Dr. Tudor, did you keep following Southeastern's rules the rest of your time there?

A. Yes, I did.

Q. Every single day?

A. Yes.

Q. You kept teaching your classes?

A. Yes.

Q. Did you turn in your grades on time?

A. Yes.

Q. Is that important to you?

A. Yes. Yes, it's -- yes, of course. Yes, I -- I tried to do my best and utmost for my students to the very last minute I was there.

Q. Dr. Tudor, how did you talk to your colleagues in the English department about the circumstances under which you were leaving Southeastern?

A. I had talked to them from the beginning about what was happening, and so they were well aware. So it didn't -- so

they were very supportive all along, and they were always trying to help me.

As a matter of fact, near the end, Meg Cotter-Lynch came to me. She said that some of the faculty -- for instance, Virginia Parrish, they wanted to have a --

MS. COFFEY: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

THE WITNESS: Well --

Q. (BY MR. YOUNG) I'll ask you a different question, Dr. Tudor.

Did you have a goodbye party at Southeastern?

A. Meg Cotter-Lynch asked me if I wanted a goodbye party. She said some of the faculty wanted to do that for me. And I said let's delay the party until I return. We'll have -- we'll have the party when I get back.

Q. So even at the very end, you had hope that you'd return?

A. Yes. Yes, I did. I knew what happened was against the rules. I knew that I had very carefully documented what had happened. I knew that everybody in my department and the faculty senate, colleagues across campus, everybody knew what had happened to me and how wrong it was.

I had every confidence that eventually -- eventually, the rights -- the wrongs would be righted, and I would be able to return to my home in Durant.

Q. At some point, did you reach out to the U.S. Equal

Employment Opportunity Commission?
A. Yes. Yes.
Q. Why did you do that?
A. Because the law had been broken. What they did was sex discrimination.
Q. Did you tell the U.S. Equal Employment Opportunity Commission the truth?
A. Yes, I did.
Q. Okay. Dr. Tudor, let's talk a little bit more about how this has affected you.
How did losing your job at Southeastern financially affect you?
A. It was my only source of income. So, financially, you know, I was devastated.
Q. At the time you left Southeastern, were you supporting family members?
A. I tried to help my sisters and their children whenever I -- whenever I was able, of course.
Q. Do you remember about what you were making a month when you left Southeastern, what your final salary was?
A. Approximately $5,000 a month.
Q. Okay. Did you lose your benefits when you left Southeastern?
A. Yes, I lost all my benefits and retirement.
Q. So can you just name some of those benefits for me that

you lost.
A. Health, vision, dental, and retirement.
Q. Can you tell me a little bit about how it felt to lose those benefits.
A. No longer having health insurance, I was concerned if I got ill or if I was in an accident, what would I -- what would I do? How could I afford the cost of hospitalization or medicine? I was very concerned. I was 48 years old, I believe, when I was fired. So I was worried about my retirement.

Oklahoma has something called vestment. So you have to be vested. You have to work so many years to get retirement benefits. And I had seven years at Southeastern and some additional time as a teaching fellow at the University of Oklahoma, but it wasn't enough to be vested, to my understanding. And so I was worried what was going to happen to me in my retirement years.

Q. Were you worried at all that you wouldn't be able to find another job again with retirement benefits?
A. Yes, extremely worried, because anyone who is denied tenure, that's -- that is usually the end of their career. It's a black mark that, professionally, you really can't recover from.
Q. Did you eventually find a new job?
A. I'm so sorry.

Q. It's okay. I'll repeat the question.
A. I heard what you asked.
Q. Okay.
A. Yes, I eventually did find another job. Well, I found a job teaching at a community college. That did not include tenure.
Q. Dr. Tudor, can you explain to the jury what the difference is teaching at a four-year school and teaching at a community college for a professor?
A. Yes. Community colleges, their minimum requirement for faculty is ordinarily a master's degree, not a -- whereas universities usually require a Ph.D.

The expectations are also very different. For example, at Southeastern, faculty members with the Ph.D.s are expected to teach courses in their specialization, what we went to school for, what we spent many years studying, so we could pass that on to our students.

Community colleges, generally, it's composition and perhaps an introductory literature course, very different skill set between a university faculty and a community college faculty.

Q. At that community college, were you able to teach the kinds of courses that you had loved to teach at Southeastern?
A. I was -- no. No, I taught some introductory literature courses, which, of course, I -- I think I'm -- that my Ph.D.

studies qualify me for, but mostly it was composition. And I never had the opportunity to teach upper-level courses in my field, what my training and education prepared me for.

Q. Do you recall when about you got that new job?

A. It was in the fall of 2012, approximately 18 months after the last date that I worked at Southeastern.

Q. So you were unemployed for a big chunk of time?

A. For 18 -- approximately 18 months.

Q. Can you tell me a little bit about what it was like to try to make ends meet.

A. Well, it was -- it was very tough. I mean, I didn't know when or if I would ever be employed again. I -- just some practical matters, such as not using the air-conditioning in the summer or turning on the heat in the wintertime, not traveling.

I have a 2001 Saturn. I was always afraid if I -- afraid of breaking down, I couldn't afford to get it repaired. So I couldn't travel.

I certainly couldn't afford to go out to eat with friends.

Q. Did you change the kinds of food you ate?

A. Yes. I cut -- I cut down from three meals to two meals a day. Mostly, it was, like, oatmeal, rice, beans, a lot -- was a large part of my diet.

When I had to get new clothes, I usually got them at

Goodwill.

Q. Did you develop any health problems when you were unemployed?

A. Yes. I couldn't afford to see a dentist regularly, and I developed cavities in my wisdom teeth, which -- I had to have my wisdom teeth removed, which is not easy when you're 50 years old.

Q. Dr. Tudor, you mentioned before that not getting tenure is a black mark. And I want you to sort of explain that a little bit more for all of us nonacademics.

Why is not getting tenure a black mark? What does that broadcast to people?

A. It's usually assumed that the person didn't receive tenure because of something that they did, that -- it's not -- people don't think that maybe there was rules being broken, that maybe something askew was happening. They usually think it's the person who didn't get tenure, that somehow they're unworthy, unqualified. There's -- it's just almost impossible to recover your reputation once that happens.

Q. How does it feel to you as a scholar and academic to have to navigate looking for jobs with a CV that shows you didn't get tenure?

A. It's -- well, there -- I'm thinking of two things: humiliating and frustrating. I don't know which one is more.

It's frustrating to send out literally 100 applications -- more than 100 applications and not receive a single job interview. It's humiliating to have that on my résumé that -- on my CV as a résumé that I had been denied tenure because everyone who sees it will simply think that somehow I'm unqualified or unfit.

Q. Dr. Tudor, I'm going to ask you a little bit how you felt working at Southeastern between 2007 and 2010, so around when you first had to endure those rules we talked about earlier.

But before you learned about being denied tenure by those administrators, how did it feel to be at work?

A. Well, on the one hand, I was always anxious because I felt like I was under surveillance about my appearance after that conversation with Cathy Conway. And I was also anxious knowing that Doug McMillan had wanted me fired to begin with. But, on the other hand, I loved my colleagues, I loved the students, I loved doing research.

I had a -- I was -- I had a very -- I was very engaged with activities such as -- I was sort of a fitness enthusiast. I liked to run, and I attended Pilates and yoga classes. I liked to go bike riding early in the morning. I liked to take my dog out to the -- take her out to the park. I enjoyed having lunch with my -- with my colleagues. So I -- of course, there was anxiety, but, overall, it was a pretty good quality of life.

Q. Dr. Tudor, the last period you were at Southeastern -- so after you learned about the tenure denial from those administrators to your very last day -- how did it feel?
A. That was very different. I became extremely depressed. I was -- I stopped exercising. I stopped doing those activities that I had -- that I had engaged in before. I developed chronic insomnia. I felt anytime I was sleeping, I wasn't working, I wasn't doing more. I became somewhat concerned for -- that after I was retaliated, that maybe my friends and colleagues may be retaliated against as well on campus. So I stopped socializing as much.

I live just a few blocks from Southeastern, and the park that I went to was very close by. Maybe it was the depression or just because of -- I stopped going to the dog park during the day. I used to take my dog out in the morning, when it was still dark, before I went to work, then in the evening after dark.

I think that sort of symbolizes how I felt. It was a very dark and sad time for me.
Q. Did you cry at all?
A. I -- I did. It's not something that -- I'm not usually -- I don't usually like to emote in public, but it became increasingly hard for me not to. Sometimes tears just ran down my cheeks and I couldn't stop them.
Q. Did you ever cry at work?

A. Sometimes.
Q. Did you cry in your office at work?
A. Sometimes.
Q. That hadn't really happened before all of this stuff happened?
A. No. No, it's very unusual for me.
Q. So, Dr. Tudor, did you feel ashamed about the fact that you were unemployed after you left Southeastern?
A. Yes, even though -- even though I followed all the rules, I felt that people would look at me as if I hadn't followed the rules, as if I had done something wrong, and that I was being -- that I was somehow being justly punished for breaking rules.
Q. I think you said when you worked at Southeastern, you lived in a little house near campus; is that right?
A. Correct.
Q. When did you move out of that little house?
A. About 18 months after my last day at Southeastern.
Q. Because you had gotten a new job?
A. Correct.
Q. Okay. What was it like packing up your house?
A. Well, I had lived there in that same house, in the shadow of Southeastern, for eight and a half years, which is the longest I had lived anywhere in my life.
So it was very hard. I was moving to a one-bedroom

apartment, so I couldn't take a lot of the things that were in my house. So I had to give a lot of things away to my neighbors and just put something -- putting other things just out for anyone who needed them. They could just come by and take them off the curb. Other things, I packed up in boxes and I -- a lot of those boxes, I still haven't unpacked to this day.

The other part is it's just painful, opening those boxes, and part of it is also because I still have the hope and expectation of returning to Durant and to Southeastern.

Q. After all this, after everything you went through there, you still want to go back; is that right?

A. Yes, yes.

Q. So can you explain to the jury why it is, this many years later, after all that happened to you, that you want to go back?

A. Yes. Well, the people who broke the rules -- Lucretia Scoufos, Doug McMillan, and Larry Minks -- are no longer at Southeastern.

The people who supported me, the people who care about me, my colleagues in my department, almost all of them are still there. And I still -- I still keep in contact with them, and they are still my best friends. And I know that they would -- they would have that party they talked about those years ago to welcome me back.

And I -- I loved everything about teaching at Southeastern, and I would like nothing more than to go back and do the job that I did so well for so many years.

Q. Dr. Tudor, the State brought up money during their opening.

For you, what is this case about?

A. This case is me getting my job back. I want to work. I've always just wanted to be able to do my job, just like I think anybody else would want to, especially if you've trained for something, you've worked for something your entire life. You just want to -- and my students and my colleagues, they all told me I did a great job while I was there. It was never a question of my being a good teacher there. So that's -- I just want to do what I love doing.

Q. After all of this, do you think, truthfully, if given the opportunity to go back and teach, you could put this all behind you and teach?

A. Yes. Yes, of course. Yes. The classroom, it's -- I call it my clean, well-lighted place. It's where I feel safe and secure. My department is a place where I feel welcome and at home.

The students were always -- were always welcoming, and I see no downside to it. It's -- I can't think of any reason not to return.

Q. Dr. Tudor, is there anything else that you want to say

before I pass you off to Attorney Coffey?

A. I would just like to reiterate that this is not about money. I just want my job back. I just want to go home and see my friends again.

MR. YOUNG: Okay. Thank you. That's it for my direct examination.

THE COURT: Ms. Coffey.

CROSS-EXAMINATION

BY MS. COFFEY:

Q. Good afternoon, Dr. Tudor.

You just finished telling the jury about a lot of things that you lost after you left Southeastern, didn't you?

A. Yes.

Q. And how hard it was on you and what the pain and suffering that you've gone through.

If you had accepted that offer, though, that President Minks asked Dean Scoufos to make you, to give you another year for tenure, you wouldn't have lost any of that, would you?

A. Are you referring to the offer that I asked to be put in writing so -- is that the offer --

Q. Yes. I think you know I'm referring to the April 2010 offer that was made to you that "Please withdraw your application so that we don't have to deny you tenure, so that we don't have to say that next year is your terminal year, so that we can give you the time to bolster your portfolio and

apply for tenure."

That's the conversation that I'm talking about.

Had you accepted President Minks' offer, none of these things that you lost would have existed, would they?

MS. NOVOTNY: Objection to the characterization of that as an offer.

THE COURT: Overruled.

THE WITNESS: I'm sorry. I'm a little bit confused. Could you please explain the question to me?

Q. (BY MS. COFFEY) Back when you received your offer in April of 2010. You just indicated that it was the offer that you had asked to be in writing.

When you rejected that offer that same afternoon, on April 6th of 2010, when you rejected that offer, you didn't mention anything about asking that offer to be in writing, did you?

A. I asked for the offer to be in writing if it was legitimate.

Q. So when you rejected -- when you wrote to Dr. Scoufos, indicating that you were rejecting the offer she had made that afternoon, are you telling this jury that in that written rejection, you asked that that offer be made in writing? Because you didn't. You didn't ask for it in writing. If you had wanted it in writing, why wouldn't you have indicated that in your rejection?

MS. NOVOTNY: Objection. The counsel is testifying here.

THE COURT: Ms. Novotny, this is Mr. Young's witness. Only Mr. Young may make the objections.

MR. YOUNG: Your Honor, I respectfully make the same objection.

THE COURT: Sustained.

Q. (BY MS. COFFEY) When is it that you asked for that offer to be put in writing?

A. When my department chair and I were in the office with Scoufos, I asked for the offer to be put in writing if it was legitimate.

Q. You're aware that Dean Scoufos has testified previously in this case and indicated there was never an offer -- you never requested that offer be in writing; right?

You sat there in her deposition and you heard her testify to that, didn't you?

MR. YOUNG: Objection, Your Honor. Counsel is seeking hearsay.

THE COURT: Overruled.

MS. COFFEY: I'm trying to pull up an exhibit, Your Honor.

THE COURT: Has it been admitted?

MS. COFFEY: No, Your Honor, it has not.

THE COURT: Nothing can be shown to the jury until

it is admitted.

MS. COFFEY: Your Honor, would you like me to approach to get one of the exhibits to show the witness? Our copy for the witnesses are, I think, up there.

THE COURT: How many? Oh, yes, yes. Absolutely.

MS. COFFEY: May I hand these to the witness, Your Honor?

THE COURT: Yes.

Q. (BY MS. COFFEY) All right. Dr. Tudor, I've handed you what's been marked as Defendants' Exhibit 59. It is a memo written from you to Dean Scoufos on April 6th of 2010.

Do you recognize this as the memo that you wrote, absent Dean Scoufos's handwriting?

A. Excuse me. Could you ask the question again?

Q. Is this the memo that you wrote to Dean Scoufos on April 6th of 2010 regarding the April 6th, 2010, meeting?

A. It appears so.

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

THE COURT: Any objection?

MR. YOUNG: No objection, Your Honor.

MS. COFFEY: It doesn't appear to be working. Can I stand over here?

THE COURT: Uh-huh. Just speak up.

MS. COFFEY: All right.

Q. (BY MS. COFFEY) Dr. Tudor, this memo of yours written to Dean Scoufos, it doesn't say anything in there about you asking that that offer be made in writing, does it?
A. This particular memo does not.
Q. Is there another memo that you wrote regarding that meeting in which you indicate that you requested it be in writing?
MR. YOUNG: Objection, Your Honor, to this exhibit. This is not the exhibit that plaintiffs received. This has additional handwriting and markings on it.
MS. COFFEY: I disagree, Your Honor.
THE COURT: Well, you asked her to identify it absent --
MS. COFFEY: She did.
THE COURT: -- Dr. Scoufos's handwriting, which I'm assuming that is; correct?
MS. COFFEY: Correct.
THE COURT: Just cover that up for now. We'll get it straightened out later.
Q. (BY MS. COFFEY) All right. Dr. Tudor, again I ask you, where in this memo does it indicate that you had asked for that offer to be put in writing
A. As I answered that question before, it doesn't appear in this particular memo.
Q. But you told this jury that that was one of the reasons

why you didn't want to accept that offer, that it was so important to you that it be put in writing and they refused.

But if that had been the case, you would have put that in the memo in which you rejected your offer, wouldn't you?

A. Not necessarily.

Q. I mean, had you put that in the memo and they had understood that that was the basis for the rejection, they would have had an opportunity to put it in writing for you, wouldn't they?

A. Dean Scoufos was very clear that one of their objections to the offer was because it was not in writing. I said that to her in person.

Q. I'm sorry. I thought you said that Dean Scoufos was very clear, that she made it clear. You're not saying that Dean Scoufos made it clear to you that she wouldn't put it in writing, are you?

A. Yes. She said that she would not put it in writing.

Q. Again, I mean, you didn't think that was important enough to put that in your rejection of the offer?

MR. YOUNG: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

Q. (BY MS. COFFEY) Now, Dr. Tudor, you also said that you had some concerns, and one of the reasons you asked for it in writing is because perhaps they wouldn't stand by that offer.

Is that what you testified to earlier?
A. I believe I testified if it wasn't in writing, it was not a legitimate offer.
Q. So the fact that they offered you the opportunity to withdraw your tenure application, withdraw it before President Minks denied it, and they would give you another year, that that was not a legitimate offer, in your mind?
A. Well, the entire meeting with Lucretia Scoufos was very -- very, very bizarre. I had doubts as to the legitimacy of that offer, and Scoufos said that she had met with McMillan and Minks, and yet Minks had not yet ruled on my application.
Q. Your department chair, John Mischo, was there with you, wasn't he?
A. I believe so.
Q. So certainly he could have backed up any offer that was made to you, couldn't he?
A. (No response.)
Q. Do you recall Dean Scoufos telling you, after she presented President Minks' offer, telling you that it was a gift?
A. May I answer the previous question?
I believe that John -- no. I know John Mischo agreed with me that the offer should have been in writing, any legitimate offer would be in writing.
Q. Dr. Tudor, Dr. Mischo, if he believes that, can come and

testify to that, but Dr. Mischo was there with you when the offer was made; correct?

I'm sorry. You answered that previously. He was there with you?

A. Yeah.

Q. So -- but you recall when Dean Scoufos told you that it was a gift, this offer; right?

A. I do not recall that term "gift," and I would not characterize it as a gift.

Q. You're aware that Dr. Mischo has testified that he concurred that she did indicate that that was a gift?

A. My recollection -- Dr. -- I believe Dr. Mischo characterized it as a, quote, ultimatum.

Q. And the ultimatum was -- the ultimatum was you needed to withdraw your tenure application so the president wouldn't have to deny it; right? That was the ultimatum, if you would withdraw it, resubmit in 18 months, they wouldn't have to deny it; right?

A. I believe John Mischo is best qualified to explain what he meant when he used -- described this offer as ultimatum.

Q. Now, Dr. Tudor, you indicated that you filed so many complaints because you needed to make a record to get things fixed; right?

A. That was one of the reasons I believe I testified to.

Q. Okay. You have testified probably five or six times

today that you were told that Dr. McMillan wanted to fire you, haven't you?
A. I don't recall the exact number of times, but I have testified that he wanted fire me.
Q. Yet in not a single complaint that you filed at Southeastern, not a single complaint of yours mentions you were threatened with the fact that Dr. McMillan indicated he wanted to fire you.
Why not?
A. I'm not sure that's accurate.
Q. Well, there's no written complaint that you submitted to Southeastern in which you are complaining about one of these poor work conditions or work rules that Cathy Conway placed on you; right?
A. I'm not sure that's accurate either.
Q. All right. Can you identify a complaint that you submitted to Southeastern in which you are complaining about the work conditions that Cathy Conway placed on you during that phone call in June of 2007?
A. I recall using the term "hostile" in one or more complaints. I'd have to see the complaints to refresh my memory.
Q. I will submit to you there isn't a single written complaint that you have filed at Southeastern that complains about these supposed work conditions that Cathy Conway placed

on you.

But what I asked you earlier is where did you complain about this threat that Doug McMillan wanted to fire you?

A. Again, I'd need to refresh my memory by looking at my complaints.

Q. Well, isn't it the real reason why you can't recall it is because Cathy Conway never told you that?

MR. YOUNG: Objection, Your Honor. Attorney Coffey is testifying.

THE COURT: I'm sorry? I didn't hear that.

MR. YOUNG: Ms. Coffey is testifying for the witness.

THE COURT: Overruled.

Q. (BY MS. COFFEY) Would you like me to repeat the question?

A. Yes, please.

Q. Isn't the reason why you never complained that Dr. McMillan supposedly wanted to fire you is because Cathy Conway never told you that?

A. No. That's absolutely untrue.

Q. Now, you sat through Cathy Conway's deposition, didn't you?

A. Yes.

Q. You heard Cathy Conway testify that she never told you that?

A. I don't specifically recall her testimony.

Q. You heard Doug McMillan testify he never told Cathy Conway, he never told her, he never asked her whether you could be fired?
A. Is that a question?
Q. Yes. You heard that testimony by Doug McMillan, didn't you?
MR. YOUNG: Objection, Your Honor. Again, these are witnesses that are going to be called. They can testify as to what they believe to be true.
THE COURT: She's allowed to impeach with others' testimony. Overruled.
MR. YOUNG: Yes, Your Honor.
THE WITNESS: He may have testified -- he may have said that, but I don't recall.
Q. (BY MS. COFFEY) Okay. So you have testified that you filed all these complaints, again, because you wanted to make a record, you wanted to get things fixed.
Well, if in 2007, as soon as Southeastern is notified of your transition, you are threatened with the idea that a vice president of academic affairs is asking if you can be fired, don't you think that would have been something significant to make a record of?
A. Are you asking in reference to a formal complaint? As I testified earlier, who would I -- he was the head of H.R. and vice president of academic affairs. Who would I complain to

at that time?
Q. Dr. Tudor, you testified about your family earlier and that you wanted to help your sisters, didn't you?
A. Yes.
Q. At any time while you were at Southeastern, were you supporting your sisters?
A. On occasion.
Q. Okay. You wanted the jury to hear that testimony because you wanted them to understand the financial burden that you were undergoing. Is that why?
A. I believe the reason was so that the jury could understand what the job -- that job meant not only to me, but my relatives who had helped me get my education and my desire to repay their sacrifices when I could.
Q. You wanted to repay their sacrifices, but you didn't pay child support, did you?
MR. YOUNG: Objection, Your Honor. Relevance.
THE WITNESS: That's absolutely --
THE COURT: Sustained.
Q. (BY MS. COFFEY) Dr. Tudor, who makes up the faculty appellate committee?
A. Tenured faculty members.
Q. It's all faculty, isn't it? No administrators; right?
A. As far as I know.
Q. All right. Well, is there some reason why you think

there would be an administrator on the faculty appellate committee?

A. Faculty members perform many roles. So sometimes faculty members are appointed to administrative roles and then they return to becoming a teacher and educator, like me.

Others -- so I don't know if a member of the faculty appellate committee may have been designated administrator at some time and then returned to faculty or an administrator may have performed faculty duties.

Q. Okay. So it's fair to say, though, that while they're serving on the faculty appellate committee, they are serving in the role of faculty; right?

A. That's -- in general, I'd say that characterization is accurate.

Q. All right. So it's not very often the faculty appellate committee finds against a faculty member, is it?

A. The faculty appellate committee raise the evidence. If the faculty member was at fault, then they would rule against the faculty member. If they broke the rules -- if the administration broke the rules, they'd find against the administration. Whoever broke the rules, they would find against.

Q. You have referred at least a few times that the faculty appellate committee orders, that they issued orders.

That's not really true, is it? All they do is issue --

they come down with a recommendation; right?
A. The way that -- the way that the administration has always responded to it has been --
Q. I'm sorry.
A. -- as if they were directives.
Q. But my question to you -- yeah. My question is that the faculty appellate committee -- I mean, they issue a nonbinding recommendation to the administration; right?
A. Obviously, the administration did not honor their decision, so it's nonbinding.
Q. Well, it's not a directive. The administration is not required to follow it; right?
A. It's true that the faculty appellate committee has no -- has no way to enforce its decisions, what it's decided as findings of fact.
Q. Let's jump to the tenure review process. You've never sat on a tenure review committee; right?
A. That's correct.
Q. So you can't testify as to what's required with respect to the review and the vote of denial or recommendation of tenure, can you, from the committee's perspective?
A. From the committee's perspective?
Q. I'm sorry. That was really a bad question. I apologize.
Because you've never sat on a tenure review committee, you can't testify about exactly what takes place during a

tenure review committee, can you?
A. Since I have not sat on a tenure review committee, that's -- it's accurate to say that I can't testify to what occurs in a tenure review committee.
Q. When you applied for tenure in 2008 and the committee voted 5-0 against recommending you for tenure, you chose to withdraw your tenure application that year, didn't you?
A. I'd say that's a mischaracterization.
Q. You didn't withdraw it? So you sent it on up for further consideration?
A. No. You said a vote of 5-0. The tenure committee has one vote; the department chair has one vote.
Q. Dr. Tudor, let's go back. You've never sat on a tenure review committee, as you just testified; right?
A. Correct.
Q. There are five members on a tenure review committee at Southeastern, or at least there was at the time you submitted your --
MR. YOUNG: Objection, Your Honor. Assumes facts not in evidence.
THE COURT: Just a moment. She's asking. He can answer if he knows.
Q. (BY MS. COFFEY) When you submitted your portfolio for review in 2008 and again in 2009, there were five members each year that sat on that tenure and review committee; right?

A. Correct.
Q. And each one of those committee members had a vote; right?
A. That's incorrect.
Q. But, again -- and what do you base that on?
A. The testimony of my department chairs in their depositions, they stated that the tenure committee has one vote.
Q. I'm not sure which depositions you're referring to, but you sat in the deposition of Randy Prus?
A. And John Mischo, both of them.
Q. And John Mischo. And both of them talked about the tenure review votes in 2008 of 5-0 and 2009 of 4-1; correct?
A. I believe they explained that the tenure committee has one vote and the department chair has one vote.
Q. Well, that one vote is determined, though, then by everybody in the committee votes, right, and the majority wins? Is that how the one vote is determined?
A. Again, as you stated, I have not served on one, so I -- John Mischo or Randy Prus would be the people to ask how the process actually works within the close confines of the tenure review committee.
Q. Then let's go back to 2008. So the five members vote no, which results in a vote at a tenure review denying recommendation of tenure for you.

So at that point you withdrew your tenure application, didn't you?
A. It's accurate to say that I -- that I took back my application in 2008-2009, as I testified to.
Q. Okay. So you withdrew after it didn't pass a particular level.
Why didn't you do the same in 2010? You knew it hadn't passed at least two levels. You knew that Dean Scoufos and Dr. McMillan had both indicated they would recommend tenure denial; right?
A. I think there's two questions there.
Q. Okay. There are.
You knew in 2010, before that April meeting, that Dr. Scoufos had denied tenure recommendation for you; right?
A. I had received notification from Lucretia Scoufos that she was denying my tenure application and recommending my termination at the end of that current year.
Q. You also learned that Vice President McMillan was recommending tenure denial for that year; correct?
A. I had also received notice from Doug McMillan that he was also denying my tenure application.
Q. Dr. Tudor, is there a difference when I said that you knew that they had recommended tenure denial versus you receiving a notice?
I mean, are you suggesting there's something suspicious

about receiving a notice as opposed to just learning that they had recommended your tenure denial?

A. I'm -- I'm not following why you're confused.

Q. Well, I'm asking you what I think is a yes-or-no question.

Did you know that Dean Scoufos had recommended tenure denial, and instead of saying yes, you said, "Well, I had received notice."

So you knew; right?

A. Yes, I was confirming that.

Q. Okay. So at either one of those levels, after you knew that Dr. Scoufos had denied your tenure -- or was going to recommend tenure denial, why didn't you withdraw it then?

A. They refused to give me any rationale or reasons for the denial of tenure.

Q. Okay. And is the same thing true, then, for that's why you didn't withdraw when Dr. McMillan -- when you learned that Dr. McMillan was recommending tenure denial?

A. Dr. McMillan also failed to follow the rules by giving me any reason or rationale for his decision.

Q. Dr. Tudor, you have told this jury a few times today that they failed to follow the rules because they failed to give you an explanation.

The rule -- the policy is that at the end of the tenure process, the president may provide an explanation for tenure

denial. That's the rule, isn't it?
A. That is not the way that the faculty appellate committee interprets the rules or that I interpret the rules, or that -- the rules.
Q. It is certainly the way that -- a document that you have testified about earlier, that's certainly the way Chip Weiner interpreted that rule, isn't it, that the president has the option at the end of tenure denial to provide an explanation?
Do you remember being told that?
A. Dr. Weiner said that even though the faculty appellate committee had decided that Lucretia Scoufos and Doug McMillan were obliged to give me their explanations under the rules, that instead -- instead, Douglas McMillan would write a letter to me on behalf of Larry Minks, giving Larry Minks's reasons for denying me tenure.
That's my recollection of the Weiner letter.
Q. And that wasn't my question.
My question was, the rule is that the president, at his discretion, may provide an explanation for tenure denial.
That's the rule, isn't it?
A. I don't believe that's accurate.
Q. Well, when your attorney is asking you questions and you kept referring to "the rule, the rule," if there really was a rule that required at each step of the process to provide an explanation, where is it?

There isn't any rule. There is no rule that requires Dean Scoufos or Dr. McMillan to provide an explanation to you in the middle of the process; right?

A. Is that -- I lost the question in there with --

Q. I think back -- can you identify the rule that you keep claiming existed that required an explanation during the middle of the tenure process?

A. Yes. It's the rule that the faculty appellate committee ruled on. They said that they were obliged under the rules to give me those explanations.

Q. And when it was all said and done, when you refused to withdraw your tenure application so the president had no choice but to deny you tenure, you then were given an explanation for the tenure denial, weren't you?

A. Was there two questions there? It's hard for me to follow you. I'm sorry.

Q. After you were denied tenure, you let it go all the way through the process, you refused to withdraw, and President Minks denied your tenure, you were then provided an explanation, weren't you?

A. By Douglas McMillan of Minks's rationale.

Q. All right. Now, you indicated earlier that the reason it was important that you had known somewhere through the process would be so that you could change something.

Am I correctly characterizing your testimony?

A. I think my testimony was more substantial than that.
Q. Well, change or correct anything if it needed to be done.
A. Well, I think I also referenced that I could clarify any misunderstanding; that I could answer any question that, for instance, Lucretia Scoufos or Doug McMillan would have at any point; that if they needed any more information, that I could provide it.

So there was -- again, I don't recall everything I testified to earlier, but it was more than simply the one thing that you asserted.

Q. But isn't the process set up in this manner: That a candidate submits their tenure portfolio, and, once it's submitted, there can't be any changes, you don't make additions? If the portfolio that you submitted is insufficient, it stands on its own; right?
A. No, that's absolutely false. That's incorrect.
Q. So you think you could have added things to your portfolio in 2009? Is that what you're claiming, that you could have added or changed things to your portfolio after you learned of the reason for a denial at any level?
A. Portfolios have been amended before. So it's perfectly permissible, yes.
Q. After you submitted your portfolio, you were allowed -- in 2009, you were allowed to add to that portfolio another publication, weren't you?

A. There was additional publications. I believe John Mischo included it as well.
Q. I'm sorry. Was it your publication or John Mischo's publication?
A. You asked if it was -- I believe the question was, was it allowed to be amended?
Q. Yeah.
A. And that's why I was talking about John Mischo, who was the department chair and who I submitted my portfolio to.
Q. No. I'm sorry, Dr. Tudor.
I mean, my question was, after you submitted your portfolio at the beginning of the process in 2009, you were allowed to add another publication to it somewhere in the process, weren't you?
A. I believe -- I can't recall specifically. If you could refresh my memory, I'd be happy to answer that question.
Q. That's okay. The individual that was involved in that submission can testify that you were permitted to do that.
When you submitted your portfolio in 2008, you did it with the advice of Mark Spencer telling you that you needed two publications, didn't you?
A. I don't recall that.
Q. You didn't have any publications when you submitted your portfolio in 2008, did you?
A. I believe that's inaccurate.

Q. Why?
A. The University of Oklahoma has a journal called World Literature Today, and I had published a book review in that. That's a publication.
There's different types of publications.
Q. You agree with me, wouldn't you, that what's really important about publication is that they're quality, peer-reviewed publications; right?
A. I'm sorry. Could you ask the question again.
Q. Do you understand what a peer-reviewed publication is?
A. Yes.
Q. And it's important in your portfolio, each candidate, that they have peer-reviewed publications; correct?
A. That's a part of a larger portfolio, correct.
Q. Are you suggesting it's not required?
A. I'm simply trying to give you an accurate picture of a portfolio, which is a cumulative -- which is the cumulative work of a tenure-track faculty member that has many, many components, including peer-reviewed articles.
Q. You testified about the meeting that Dean Scoufos had with you before you submitted your 2009 tenure portfolio.
Do you remember that?
A. Yes.
Q. Okay. So when Dean Scoufos met with you, she went through a sample portfolio packet with you, didn't she, trying

to -- explaining to you how your portfolio was supposed to be submitted, what order, and what needs to be in there; right?
A. I'd say that's a mischaracterization of what she actually did.
Q. So are you telling the jury that she didn't go over this packet with you?
A. The way that you described the packet, I believe, is inaccurate.
Q. Describe the packet for me.
A. I think what you're referring to is a list of technical requirements for the portfolio, such as font size and the size of the binder, perhaps the different -- the packet refers to technical requirements, not substantive requirements. I believe that's why we're -- I believe your question was -- may have confused the jury.
Q. Well, I'll tell you what, since it took me so long to pull the last exhibit out of the notebook, I'll wait until a break to pull out the promotion packet so we can talk about it so I won't be so confusing. So I apologize.
During this meeting with Dean Scoufos, did you take notes about what was needed for your portfolio?
A. I don't recall.
Q. Do you recall in your deposition that you testified that you took notes at the meeting but you didn't save them?
A. That would be -- if it -- that would be helpful to

refresh my memory. Thank you.
Q. Did you not think it was important to save notes that you had taken during this meeting?
A. Any substantive comments about the portfolio would have been extremely valuable. I wish I had received them.
Q. Can you identify a single question that you asked Dean Scoufos that she refused to answer during that meeting?
A. Does that -- the gist of the questions, yes.
Q. Do you remember when I asked you that same question during your deposition?
Of course, it's been a while, March of 2016, but I asked you that same question, if you could recall a single specific question that you're claiming she wouldn't answer. You couldn't recall a single one.
A. Thank you for the clarification, as I just answered the gist, but not any specific, concrete question. That's why I said "the gist." But any specific question...
Q. And your recollection is the gist of the conversation is that Dean Scoufos refused to answer any substantive questions you posed to her about what your portfolio needed to contain?
A. I'm sorry. Could you ask me that again.
Q. Yeah. I mean, you keep saying that you can't recall specifics but you recall the gist of the conversation with Dean Scoufos when she's meeting with you to tell you what you need to do to submit your portfolio.

And the gist of that conversation, as you recall, is that she refused to answer any substantive questions you posed to her?
A. Correct.
Q. You were present at Dean Scoufos's deposition, weren't you?
A. Yes.
Q. Is it safe to say that her recollection and her testimony regarding her over-one-hour session with you is significantly different than your recollection?
A. I think there's two questions there. I don't know how -- there's a question about how long her session was with me when you say "over an hour," and then --
Q. You heard Dean Scoufos testify that she met with you for at least an hour to discuss what you needed in your 2009 portfolio; right?
A. That she testified to that?
Q. Yes.
A. She may or may not. The deposition lasted, as you know, many of them, all day. And they occurred over several years. If you'd like to refresh my memory with an excerpt from the deposition, I'd be happy to answer it.
Q. What I'm asking you is, is your recollection of that meeting significantly different than Dean Scoufos's recollection?

A. I remember that we testified that different -- that different things occurred during that meeting.
Q. That's the same meeting where you accused Dr. Coleman of discrimination, isn't it?
A. I --
Q. Yes or no, was that the same meeting that you accused Dr. Coleman of discrimination?
MR. YOUNG: Objection. Mischaracterizes testimony.
THE COURT: He can answer for himself. Overruled.
MR. YOUNG: Herself, Your Honor.
THE COURT: I'm sorry.
MR. YOUNG: Thank you, Your Honor.
THE WITNESS: I would not characterize it that way.
Q (BY MS. COFFEY) Are you claiming that you didn't accuse Lisa Coleman of discrimination?
A. I believe I raised a concern, but I think that's different than the way that you had characterized it.
Q. Dr. Tudor, do you remember in your deposition when you indicated that you voiced a concern?
A. Yeah.
Q. And then, though, do you remember me showing you discovery responses where you said, "I was informing Dean Scoufos of her responsibility to determine whether or not Lisa Coleman was discriminating against me"?
A. If you could refresh my --

Q. Is that correct?

Is that -- as you sit here today, is that how you depict your conversation with Dean Scoufos, that you were informing her of her responsibility to determine whether or not Lisa Coleman had discriminated against you?

A. And it would help if you could refresh my memory with that document you're looking at. I don't have that.

Q. Well, what I'm looking at are my notes. I'm asking you if my statement is an accurate depiction of your conversation with Dean Scoufos.

A. Okay.

Q. Were you or were you not asking her to look into discrimination by Lisa Coleman because you're transgender?

A. I voiced a concern that there may be possible -- that may be a possibility.

Q. Okay.

THE COURT: Let me stop you here. We'll take our afternoon break. Please don't discuss the case, don't allow others to discuss it with you.

Dr. Tudor, to you, counsel, jury, everyone, I apologize. I often get my gender pronouns mixed up. It just matters more in this case, and I need to be more careful.

We'll be in recess until three o'clock.

(Jury exits.)

(In recess 2:45 p.m. until 3:00 p.m.)

(Jury enters.)

THE COURT: Be seated.

Proceed.

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

THE COURT: Yes.

MS. COFFEY: I've handed the witness what's been marked as Defendants' Exhibit 82.

Q (BY MS. COFFEY) Dr. Tudor, can you identify that document?

A. It says it's an application portfolio for promotion to associate professor rank with tenure status.

MS. COFFEY: I move for the introduction of Defendants' Exhibit 82.

THE COURT: Mr. Young, any objection?

MR. YOUNG: No objection, Your Honor.

THE COURT: Admitted.

Q. (BY MS. COFFEY) Dr. Tudor, we had talked a little while ago, and I could not get exhibits pulled quickly enough, so I waited until the break. But what I've presented to you is the tenure packet we had discussed earlier.

This is the packet that Dean Scoufos gave to you when she met with you in 2009; right?

A. It contains the technical aspects of the portfolio: where our name should be, the font size, the table of contents.

THE COURT: Dr. Tudor, let me ask you to listen carefully to the question that is asked and answer that question. Many of these can be answered with yes or no, which would make this process very much faster.

THE WITNESS: Yes.

THE COURT: This, for example, is a yes-or-no question.

THE WITNESS: Yes, Your Honor. I apologize. Thank you.

Q. (BY MS. COFFEY) Dr. Tudor, it does, it sets forth several sections that are required to be in your portfolio packet; right?

A. Yes.

Q. For instance, there's a table of contents that shows Sections 1, 2, 3, and 4, which require credentials, teaching achievements, research and scholarship, and service proceedings; right?

A. Yes.

Q. Are these the technical matters that you had testified about earlier that Dean Scoufos went over with you?

A. Yes.

Q. And you talked about a letter of application to be included in your portfolio, didn't you?

A. Yes.

Q. The transmittal form, that's a department form; that's

not something that's prepared by the candidate. Right?
A. Yes.
Q. Then there's a section to be included, not in order, of credentials; correct?
A. Yes.
Q. And there's a Section 2 for teaching achievements; right?
A. Yes.
Q. Research and scholarship section; correct?
A. Yes.
Q. Section 4, service proceedings; right?
A. Yes.
Q. When Dean Scoufos provided you this packet, did you have questions or concerns about what needed to be provided in each section?
A. Yes.
Q. Did she answer those concerns?
A. No.
Q. Without asking you -- retreading over old testimony, are these the questions and concerns that you claim that you posed to her that you can't remember but you're certain that she didn't answer them?
A. With this exhibit refreshing my memory, I certainly do recall what these headings -- asking questions about various headings, what they referred to, what would be good examples, and how those different examples would be evaluated by her and

others reviewing my portfolio.
Q. Okay. And is it your testimony that you posed each of those questions to her and she refused to answer them?
A. Those types of questions.
Q. Now, before the break, we were discussing your -- this same session with Dean Scoufos, but we were discussing the issue of accusing Lisa Coleman of discrimination.
Do you remember that testimony?
A. Yes.
Q. You told Dean Scoufos that you didn't want Lisa Coleman on your tenure committee, didn't you?
A. That's incorrect.
That's a mischaracterization, let's say, to be precise. It's a mischaracterization.
Q. Did you tell her that you did want Lisa Coleman on your tenure review committee?
A. She asked me who I wanted on the committee and who I would prefer not to be on the committee.
And, in reference to the question, who would you prefer not to be, so it's not -- do not -- I'm sorry. I don't mean to quibble about --
THE REPORTER: Excuse me.
(Brief interruption.)
Q. (BY MS. COFFEY) So you told Dean Scoufos that you would prefer that Lisa Coleman not be on your tenure and review

committee; correct?
A. I responded to her question, who would I prefer not to be.
Q. And you told her that Lisa Coleman had discriminated against you ever since your transition because she wasn't including you on bus trips that the honors college was taking; right?
A. That's incorrect.
Q. Okay. Were you accusing Lisa Coleman of discrimination because you were being excluded from honors trips?
A. My concern was that pretransition, I was attending the trips with the honors classes, and posttransition I hadn't been invited. And that was my concern.
Q. So that concern was enough to ask Dean Scoufos to look into whether or not Lisa Coleman was discriminating against you; right? That was your purpose?
A. Again, I was responding to Dean Scoufos's question, who I would prefer not to be on my -- not to be on my committee.
Q. Do you remember at your deposition when I posed this question, "So were you or were you not suggesting that Lisa Coleman discriminated against you?"
Answer: "I was informing Dean Scoufos of her responsibility to determine whether or not Lisa Coleman was discriminating against me."
A. I don't recall that particular exchange. If you could

refresh my memory, I would --

Q. Would you like to see your deposition?

MS. COFFEY: May I approach the witness?

THE COURT: Please provide the page number and line number for counsel.

MS. COFFEY: This would be Dr. Tudor's deposition, page 183, lines 22 through 25, page 184, line 1.

May I approach?

THE COURT: Yes.

Q. (BY MS. COFFEY) Dr. Tudor, if you would please turn to page 183 of your deposition -- 183, line 22.

A. I found it.

Q. Beginning on line 24, wasn't this your testimony?

"I was informing Dean Scoufos of a responsibility to determine whether or not Lisa Coleman was discriminating against me."

A. That's a mischaracterization in context.

Q. Okay. But that's what your testimony was that day; right?

A. That is very misleading to the jury without the context.

Q. You later learned that the honors trips had stopped -- I'm sorry. I'm through with your deposition for now, if you wouldn't mind closing it.

Thank you. I'm sorry. I just don't want you to be distracted and think I'm referring to it when I'm referring to

papers down here.

So you later discovered that the honors trips stopped because the bus wasn't running; isn't that right? There had been no honors trips for at least a few years; correct?

A. There was -- there was some problem with -- the honors trips had ceased.

Q. Okay. And it wouldn't have been that hard for you to find out whether those trips had been taking place before you accused Dr. Coleman of discrimination, would it?

A. That's a gross mischaracterization. It was a concern.

Q. Okay. But it wouldn't have been very hard for you to find out whether your concern was legitimate, would it?

Couldn't you have asked Dr. Coleman about whether the honors trips were taking place?

A. Yes.

Q. Okay. But you didn't, did you?

A. At some point, I did.

Q. Now, when you finished your meeting with Dean Scoufos that day, there was no agreement from Dean Scoufos that Lisa Coleman would not serve on your committee, was there?

A. It was my understanding.

Q. Okay. And then that misunderstanding was cleared up through a series of e-mails with your department chair and then a subsequent meeting between you and Dean Scoufos and Dr. Mischo, wasn't it?

A. So could you ask that question again.
Q. Was your understanding, when you left that meeting, that Dr. Coleman would not serve on your committee? And that's what you told Dr. Mischo, isn't it?
A. I believe that -- I believe the reason she asked me the question at the time --
Q. I'm sorry. What -- that wasn't my question. I don't even remember what it was.
You told Dr. Mischo through an e-mail that Dean Scoufos had assured you that Lisa Coleman -- that you-all had agreed that Lisa Coleman would not serve on your committee and that instead Mark Spencer would be your chair; right?
A. I believe I e-mailed or talked to Dr. Mischo when I learned that Lucretia Scoufos had appointed Lisa Coleman as a chair of my tenure committee after asking me if there's anyone I'd prefer not to be on my committee.
Q. And then that was all cleared up, and Dean Scoufos made it clear in a meeting with you and Dr. Mischo that that had never been an agreement between you; right?
A. That's incorrect.
Q. Okay. There was never any discussion in your meeting with Dean Scoufos either that Dr. Althoff would serve on your committee; right?
A. That's incorrect.
Q. Are you saying that Dean Scoufos agreed that Dr. Althoff

would be on your tenure review committee?
A. He was one -- I believe that he was one of the people I mentioned in reference to the question who would I prefer to be on my committee.
Q. You never apologized to Lisa Coleman for having that concern or for accusing her of discriminating against you because you're transgender, did you?
A. Lisa and I talked at length, and there was no -- it was simply a concern and a misunderstanding. There was no need for an apology, and she wrote me an excellent letter recommending me for tenure. And the committee that she chaired recommended me for tenure as well.
We are Facebook friends.
Q. Did you ever tell Dean Scoufos that you had cleared up the issue of the honors trips?
A. I don't recall if I told her or if Mischo -- I don't recall how -- I don't recall.
Q. Okay. Let's go back to this June 2007 -- the phone call that you had with Cathy Conway.
Did you complain in 2007 to the EEOC about that phone conversation?
A. In 2007?
Q. Yes.
A. No.
Q. Well, you testified earlier that you didn't believe that

Southeastern's discrimination policies protected transgenders.
Am I stating your prior testimony correctly?
A. I believe that's what I was told.
Q. Well, I'm not asking what -- are you claiming that Cathy Conway told you that Southeastern's policies don't protect transgenders?
A. I'm sorry. What was the --
Q. Did Cathy Conway tell you in that June 2007 phone call that Southeastern's discrimination policies do not protect transgenders?
A. That was my understanding.
Q. She specifically gave you the sexual harassment policy and the discrimination policy, and she discussed them with you and told you that if you had any problems, these were the policies, this is how you could address them.
A. Is that a question?
Q. Didn't you think that was odd if she's also suggesting to you that they don't protect transgenders?
A. She raised the question -- she raised the policy of sexual harassment in reference to restricting me from using the women's restroom and the rules about my dress. She said that would be construed as sexual harassment and I could be fired immediately.
Q. So now you're claiming that, when she placed these work conditions on you of how you dress and your makeup and the

bathroom usage, that she told you that if you -- that if you didn't follow those rules, that it can be viewed as you sexually harassing somebody else?

A. Words to that effect.

Q. Tell me what those words are.

A. I don't recall the exact words, but that was my understanding.

Q. When you testified in March of 2016, you never mentioned anything like that that Cathy Conway told you. You never said, "She told me that if I wore makeup a certain way, I would be sexually harassing others." You never testified that she told you, if you wore short skirts or other inappropriate dress, from what you're saying today, that that would be sexually harassing others -- other colleagues, other students. I don't know.

You never testified to that back then. Did you just forget it?

A. It was in my understanding. It was in context.

Q. Because she never said, "If you dress this way or if you wear makeup in a certain way or if you use a certain bathroom, you will be sexually harassing someone else." She never said that to you, did she?

A. I don't remember the precise words after all these years, but it was my understanding.

Q. How is it that you have a different understanding as you

sit here today than you ever did in 2016 or when you filed your EEOC complaint?

A. I don't believe --

Q. None of those accusations are there, but you're just remembering them today?

A. I don't believe that's an accurate characterization.

Q. You agreed in your deposition when I said you thanked -- when the conversation ended with Cathy Conway, you thanked her "for your professionalism."

You agreed that you thanked her "for your professionalism."

Do you remember that?

A. And not firing me, as McMillan had asked her to do. That was specifically in reference to that.

Q. So you're claiming that you thanked her for not firing you? You thanked -- "Thank you for your professionalism. Thank you for not firing me." Was that the context?

A. I believe the job of a person who's in charge of H.R. is not to allow administrators to break the rules and summarily fire faculty or employees.

Q. Dr. Tudor, that wasn't my question. I understand that's your belief, but my question, though, was specific.

You thanked Cathy Conway for her professionalism because she wasn't going to fire you. Is that what you're claiming you said?

A. It was in reference to that specific act.
Q. So in your deposition when I asked you if you recall thanking Cathy Conway for her professionalism in discussing with you these transgender issues, including the use of a particular bathroom, you said, "I don't recall stating those words."
And I said, "Something to that effect?"
Your answer was, "I may have complimented her on her professionalism."
Is your testimony different today?
A. May I refresh my memory with that deposition?
Q. You may.
A. What page are we on?
Q. Please turn to page 309 of your deposition. 309, line 14 through 23.
A. This ends on page -- this ends on page 232.
Q. I'm sorry. What?
A. This ends on page 232.
Q. Oh, okay. I'm sorry. Volume II.
MS. COFFEY: May I approach the witness?
THE COURT: Yes.
THE WITNESS: What was the page number again?
Q. (BY MS. COFFEY) All right. Page 309, line 14 through 23.
So line 22 and 23, your answer is, "I may have complimented her on her professionalism."

That's what you said, isn't it?
A. Yes, yes.
Q. And then on lines 24, 25, and 26, I said, "Okay. Just now when I asked you that question, you didn't want to admit that. You acknowledged that you thanked her for her professionalism. Is that true?"
"Answer: And I said I may or may not."
Is that your testimony?
A. Yes.
Q. You didn't testify in March of 2016 that you thanked Cathy Conway for her professionalism for not firing you because you didn't say that, did you?
A. This is -- in context you'll notice that attorneys --
Q. No. Dr. Tudor, my question now is not what you said in your deposition in context. Nowhere in that deposition does it say, "I thanked her for her professionalism for not firing me."
So my question to you is you didn't testify about it in March 2016 because Cathy Conway didn't say that to you, did she?
A. That's --
Q. Nobody thanks somebody for not firing -- no one says, "Thank you for your professionalism. Thank you for not firing me."
A. That's inaccurate. There's objections in here. So I was

not allowed -- there's -- there seems to be legitimate reasons why there are objections here, and it's very confusing, the questions that you're asking and my responses. People were talking over each other. So I'm --

Q. Dr. Tudor, the question is very simple. The question is you thanked Cathy Conway for her professionalism.

And you said, "I may have complimented her" --

MS. GALINDO: Objection, Your Honor. May we approach?

Q. (BY MS. COFFEY) -- "on her professionalism."

What is confusing about that question?

THE COURT: Approach the bench.

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

MR. YOUNG: She's not letting the witness answer the question. She keeps interrupting.

THE COURT: If this witness would only answer a question, I would stand up and cheer. This is painful. I don't know if you-all are watching the jury, but it's equally painful for them.

You do have to let her answer the question even if she's never going to answer a question.

And Sherri has now thrown her hands up once. Once she starts, it keeps going. So don't talk over her.

MS. COFFEY: All right.

THE COURT: While I've got you up here, Jeff and I are working on instructions. We believe that this needs a verdict form with special interrogatories. You-all have not submitted a proposal. We would like to have one from you tomorrow morning.

MS. GALINDO: We may have one additional request for an instruction based on the defendants' opening with respect to what the remedial -- what the remedy is.

THE COURT: Submit away. They're not final until they're final.

MS. GALINDO: Thank you, Your Honor.

THE COURT: But they will become final. So do it quickly. I mean, do it by tomorrow.

MR. YOUNG: Just to clarify, Your Honor, because I know we have other mutual issues of the jury instructions. By tomorrow, it's only the requirement that we have the verdict form with the special interrogatories? Or are you seeking all of the jury instructions finalized?

THE COURT: Well, we plan -- the way I do it is you begin with Jeff and he mediates just to the extent you can agree. We were planning on starting that process either tomorrow afternoon or Wednesday morning.

You can still submit additional instructions, but we'd like to get --

MR. YOUNG: Just wanted to clarify. Thank you, Your

Honor.

THE COURT: Uh-huh.

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

Q. (BY MS. COFFEY) Dr. Tudor, let's talk about some other things that you discussed with Cathy Conway in that 2007 telephone call.

She discussed with you the option of using a unisex, single-stall bathroom, but she never told you that that's the only bathroom you could use at Southeastern, did she?

A. That's incorrect.

Q. If she made the demands such as you say, tell me what she said.

A. She said I was not allowed to use the women's restroom, that I may only use the single-occupant restroom on the second floor of Morrison.

Q. So you couldn't use any other unisex bathroom on campus?

A. I don't believe there was another single-occupant bathroom on campus at that time.

Q. Dr. Tudor, of course there was. Are you familiar with the student union?

A. I believe the student union was under construction at that time.

Q. There's been a student union. You're referring now to the new student union.

As you sit up there today, you can't testify that there were no other unisex bathrooms on campus, can you?
A. At that time, I had no knowledge of other single-occupant --
Q. Did you ever go back to Cathy Conway --
I apologize. Are you done? Dr. Tudor, I didn't let you finish. I started talking.
At no point did you go back to Cathy Conway and tell her this was causing a problem, did you?
A. No.
Q. Did you ever ask about using other bathrooms?
A. To Cathy Conway?
Q. Yes.
A. No.
Q. Now, you know Cathy Conway testified that that's not the conversation that she claims that she had with you and that, instead, it was a conversation to assist you in using a bathroom that you were most comfortable with. And during that conversation, the two of you agreed that perhaps the unisex bathroom might be the most beneficial bathroom to you as you began your transition; right?
A. Are you asking me if that's her testimony or is that --
Q. No. I'm asking you -- yes, that's Cathy Conway's -- that's what you heard Cathy Conway testify to, isn't it?
A. It would help if I could see her testimony to refresh my

memory.

THE COURT: If you don't know the answer, the answer would be "I don't know."

THE WITNESS: Thank you. I don't recall.

Q. (BY MS. COFFEY) Okay. When Cathy Conway called you, did you bring up any issues that you thought you might have to face as you began your transition?

A. I don't recall.

Q. It took you a long time to come to the decision, didn't it? Meaning, the decision to transition was a process that you had been going through for at least a few months, if not several months, before you notified Southeastern.

Is that an accurate description?

A. It's something that a person lives with their entire life.

Q. Okay. So when you gave those documents to the human resources department that indicated you were going to begin presenting as a female in the fall of 2007, had you given any thought to the issues that you might face there at Southeastern, specifically, you know, whether there would be any questions about bathrooms, whether you needed to give any explanation to students or to faculty members?

Had you given any thought to those issues?

A. I gave thought to many, many issues. Those are probably among them.

Q. So did you make any suggestions to Cathy Conway regarding the bathroom that you would feel comfortable using?
A. No.
Q. Why not?
A. Because she called me at home in the late evening and, I mean, that's --
Q. Excuse me real quick. You keep referring to "late evening." What time was that phone call?
A. It was -- I recall it was dark outside. I don't know precisely what time it was.
Q. Okay.
A. I had been -- it was enough time for me to be off work, to come home, to walk my dog in the park, to eat our dinner. So that was -- for me, it was late. I'm usually a very early riser.
Q. So my question, though, you didn't bring up any issues, give any assistance to Cathy Conway regarding problems that you thought you might face; right?
A. Under the circumstances, I was frightened and alarmed. No.
Q. And you never reported -- you never submitted any complaint about the conditions that Cathy Conway placed on you to Southeastern?
A. At that time, no.
Q. At any time before you left the university in May of

2011, you never submitted any complaint talking about these conditions that Cathy Conway supposedly placed on you in that June 2007 call, did you?

A. I'd have to refresh my memory with my complaints.

Q. Dr. Tudor, you've had a lot of time to prepare for your testimony today, haven't you?

A. Yes.

Q. And you can't think of a single written complaint that you submitted to Southeastern concerning those conditions, can you?

A. Excuse me. I was coughing. I didn't hear all of your question.

Q. You cannot think of a single written complaint that you submitted to Southeastern to address these conditions that you've been testifying about, can you?

A. I can't recall the specifics of every complaint.

Q. You, earlier this afternoon -- maybe it was this morning -- that you applied to over 100 colleges and universities to find a job when you left Southeastern; right?

A. Correct.

Q. Can you explain why, through discovery, over 70 of those colleges notified us that they had not received any job application from you?

MR. YOUNG: Objection, Your Honor. That assumes facts not in evidence.

THE COURT: The witness may answer if she knows.

THE WITNESS: I have no idea why you would suggest that.

Q. (BY MS. COFFEY) Well, I would suggest it -- do you remember in your deposition when you testified that you had applied to over 100 colleges and universities but that you had minimal, if any, documentation to verify those applications?

A. They're online applications, and I submitted my application online.

Q. Do you remember telling me during your deposition that your computer had been destroyed and, therefore, you didn't have any of those documents?

A. I -- I don't recall using the word "destroyed." There was --

Q. Corrupted?

A. I'm not sure what --

Q. Let me make it quick then. Do you recall saying that the reason that you didn't have most of these job applications or responses from these universities is because something went wrong with your computer, so you had lost a lot of it?

A. I don't recall that.

Q. Do you have any idea how many of those universities you applied to were for tenure-track positions?

A. I don't know.

Q. But you testified earlier how important tenure-track

position is. Wouldn't it be important to know whether you were applying for a tenure-track position?

A. I was applying for employment. I was unemployed. Every job was important to me.

Q. Okay. So you obtained a job at Collin College, and you talked about the classes you were teaching there.

Did you dislike teaching the English comp classes?

A. No.

Q. And you taught English comp classes while at Southeastern; right?

A. Yes.

Q. And you were nonrenewed for your job at Collin College; right?

MR. YOUNG: Objection, Your Honor. We believe this evidence has been excluded.

THE COURT: Sustained.

Q. (BY MS. COFFEY) Dr. Tudor, since you've left Southeastern, have you ever been criticized for your teaching abilities?

A. Everybody's criticized, so, yes.

Q. In fact, Collin College students criticized you greatly for your teaching, didn't they?

MR. YOUNG: Objection, Your Honor. Again, this evidence has been excluded.

May we approach?

THE COURT: Sustained. Yes.

MR. YOUNG: Thank you.

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

THE COURT: Ms. Coffey, I sustained this objection to all this testimony this morning, didn't I?

MS. COFFEY: No, you didn't, Your Honor.

MR. JOSEPH: Your Honor, my notes from this morning say that with regard to the defendant -- the motion in limine in that, that you were going to hold it in abeyance.

THE COURT: Yes. I've thought about what you said, the reasons that you want it in. In my mind, I sustained it. I just forgot to announce it.

I believe that Southeastern succeeds or fails on what it knew at the time it failed to renew tenure. What happened later opens a whole slew of rebuttal evidence and other things that are wasting time. Given today's testimony, I don't think we need any more of that.

I think there are other ways to attack her credibility and her view of her teaching short of going to the job and opening up all the details.

So I am sorry. I thought I had already ruled on it. That's all out.

MS. COFFEY: May we then make sure that on redirect he doesn't allow Dr. Tudor to testify about today how she

loves to teach, she's a good teacher, she feels like she can go back in the classroom and perform well, because that's what she testified to on direct. She's proven otherwise.

THE COURT: Well --

MR. YOUNG: Your Honor -- sorry to interrupt you, Your Honor.

Respectfully, we need the decision to cut off her back pay at your invitation for a strategic reason that was very clear. We filed it with the Court so they would have time in advance to be aware of it so they could prepare.

THE COURT: I do want to make sure all of you agree -- let me ask if all of you agree that both front pay and reinstatement come from me.

MS. COFFEY: Yes.

MR. YOUNG: Yes, Your Honor.

THE COURT: If I want more testimony about that once they have returned a verdict, I can get it. I am going to instruct them any evidence regarding Collin County performance -- not the job itself, the performance -- should be disregarded. Okay?

MR. YOUNG: Thank you, Your Honor.

THE COURT: There's a reason for this rule.

MR. BUNSON: I understand, Your Honor. The question I have, though, is, we have Collin College and we have Seminole State College, or Holly Newell. Does that also --

THE COURT: Yes.

MR. BUNSON: -- Holly Newell?

THE COURT: Yes.

MR. BUNSON: Thank you, Your Honor.

MR. YOUNG: Thank you, Your Honor.

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

THE COURT: It turns out I had not made a ruling I thought I had made.

I'm going to instruct the jury that any evidence regarding the plaintiff's performance while at Collin County College or Collin College is irrelevant, shouldn't be considered by you.

Please proceed.

Q. (BY MS. COFFEY) Dr. Tudor, you should have in front of you Plaintiff's Exhibit 84 that was introduced earlier.

A. I've found it.

Q. I believe you testified earlier --

MR. YOUNG: Objection, Your Honor. This exhibit has hearsay markings on it. This is not the marked exhibit the defendants gave us or that we entered.

THE COURT: Do you have a clean copy?

MS. COFFEY: Do we have a clean copy?

I'll go back to this one.

THE COURT: Well -- okay.

MS. COFFEY: I'm sorry. If the machine was working, we could do it electronically.

THE COURT: The wonders of modern technology. Here they are.

MS. COFFEY: Yes. While you're at it, will you pull Exhibit 30?

Q. (BY MS. COFFEY) Dr. Tudor, Exhibit 84, I think you previously had identified as a memo that you received from Doug McMillan on October 5th of 2010. Is that correct?

A. Yes, yes.

Q. Let me draw your attention, Dr. Tudor, to the first -- the first line -- first three, four lines in the second paragraph.

Dr. McMillan told you that "After reviewing the academic policy and procedure manual, I find no policy that allows for an application for tenure in a subsequent year after being denied tenure and promotion in the previous year."

That's what it says; right?

A. That's what Doug wrote.

Q. Now, you testified that the rule -- that there is no rule -- in fact, that the rule allows you to continue resubmitting every year if you want to during your fifth, sixth, and seventh year; right?

A. One of the rules, yes, we're allowed to do that.

Q. Dr. McMillan is informing you he finds no rule that would

allow for that after it's denied through the full process; right?
A. That is his -- what he wrote.
Q. Is it your understanding that Dr. McMillan came to that conclusion based on the policies and procedures that had been followed in the past by Southeastern?
A. I don't know how he came to that conclusion. It's inaccurate.
Q. As you sit here today, you are completely familiar with the fact that tenure -- I'm sorry -- that faculty members can withdraw their tenure portfolio at any step in the process; right?
A. Applicants, yes.
Q. Okay. But you can't identify a single person that has allowed it to go all the way to the top and the president denied it and then they were allowed to reapply, can you?
A. I believe that's because administration usually honors the tenure and promotion committee's decision.
Q. I'm sorry. Dr. Tudor, my question was, as you sit here today, you cannot identify a single person that went through the entire tenure process and was denied at the president's level and then was allowed to reapply for tenure, can you?
A. I know of no other case like mine.
Q. The answer is no to my question, though, isn't it?
A. (No response.)

Q. Now, is it fair to say that nobody really knows, including you, what happens in other faculty members' tenure processes?
A. The tenure --
Q. Let me ask you a more specific question.
It's possible that professors withdraw their tenure application and other faculty members may not know that they have ever applied; right?
A. That's possible.
Q. Okay. And you testified that yours is the only situation in which the administration disagreed with a decision by the tenure and review committee. That's what you testified to; right?
A. I believe it was to the -- I'm sorry.
I believe my testimony was that no one who had been approved for tenure by their department had been denied tenure by the administration.
Q. Okay. Now, your counsel had discussed or had you discuss earlier, but there are five levels, right, of the tenure review process: the tenure review committee, the department chair, then the dean of the college, the vice president of academic affairs, and then the president; right?
A. Yes.
Q. And you're familiar with the term "shared governance"; right?

A. Yes.
Q. And is it fair to say that that term partly relates to sharing the governing of the university between both the faculty and the administration?
A. Very complex concept. That's part of it.
Q. Okay. That's part of it.

So if what you're trying to tell the jury is that the tenure committee is the one that gets to decide who gets tenure, there would be no purpose for the next level of the dean, the next level higher of the VP of academic affairs, or the president; right?
A. I think that's an inaccurate characterization of what I said.
Q. Are you suggesting they should just rubber-stamp those applications when they come out of the committee?
A. That's inaccurate.
Q. Each person or each level, whoever is doing that review at each of those levels, has an independent obligation to Southeastern and to that candidate to thoroughly review the portfolio to determine if it is sufficient for tenure; right?
A. Yes.
Q. If you will turn to Plaintiff's Exhibit 30.

I'll tell you what, Dr. Tudor, while we're waiting to put the exhibit up, let me ask you, this is the April 29th letter to you from Charles Weiner; correct?

A. Yes.
Q. This is the one that you testified about earlier where you talked about the rule, that there was a rule that you be provided reasons. But let me direct you to the second paragraph after the word "provided" and semicolon.
"However, it needs pointed out that there is no policy that stipulates that the vice president and/or the dean is compelled to provide reasons as to why tenure and promotion were denied. The president's authority, as delegated to him from the RUSO board of regents, is clearly spelled out in Section 3.7.3 in the policies and procedures manual.
"This section, and I quote, states that it is the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice."
He's telling you that there is no rule that you be provided an explanation in the middle of the tenure process; right?
A. This is advice -- this is Charles Weiner, who worked under Doug McMillan's interpretation.
Q. But that is what Charles Weiner's letter to you is telling you, correct, that there is no rule that has the interpretation that you testified to; right?
A. These are his words. This is what he says, yes.

Q. If you'll look to, in the third paragraph, where he says, he "reviewed all the pertinent facts and noted that in Section 3.7.4 there is no requirement for anyone, including the president, to state their reasons if their recommendation is different than the recommendation of the department tenure and promotion committee."

That's what it says; right?

A. That's what it says.

Q. But it's your testimony that there's a different rule that specifically says the reason should be provided; is that right?

A. Yes.

Q. Okay. Where is that rule?

A. It's in the policy and procedures handbook. It's what the faculty appellate committee ruled on.

Q. Okay. Well, this jury hasn't been presented that rule, have they?

A. I believe we have a professor who served on the faculty appellate committee who will be testifying, Dr. Knapp.

MS. COFFEY: May I have a moment to consult with counsel, Your Honor?

THE COURT: Yes.

Well, we'll just take an early day. I know the first day is always the hardest.

Don't discuss this case. Don't permit others to discuss

it with you. Don't expose yourself to any media accounts of this case. If there's something in the paper, just have somebody else cut it out and you can read it afterward.

Don't do any independent internet or other research about this case. Don't blog, don't tweet, don't Instagram, don't Facebook, or whatever else I don't even know to tell you.

Please be in the jury assembly room. I believe we'll try to start at 9:15. We won't try to start; we will start at 9:15. That gives us a little bit of wiggle room.

Please be in the jury assembly room before 9:15. We will start at that time.

I will excuse you now and see you tomorrow.

(Jury exits.)

THE COURT: I understand that defendants have been at a disadvantage without having marked exhibits. I take it from the exchange a few minutes ago that you now have them.

No?

MR. BUNSON: They are not all marked, Your Honor. We'll just have to give them some back.

MR. YOUNG: We are almost there.

THE COURT: This is just not acceptable. You have to be able to put your fingers on those documents. I think this thing works. I think it's just not hooked up somehow between your computer and it. I don't know what you-all are going to do, but we have got to be more efficient with

exhibits.

Dr. Tudor, you have got to answer a question directly or it's just going to keep on being asked, and that's going to take a lot more time than it needs to take.

Counsel, have your instructions with regard to proposed jury instructions and verdict forms.

And we'll be adjourned until 9:15 tomorrow.

(In recess at 4:00 p.m.)

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 13th day of November, 2017.

/S/ SHERRI GRUBBS

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

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

VOLUME 2

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ROBIN J. CAUTHRON

TUESDAY, NOVEMBER 14, 2017; 9:15 a.m.

OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography, transcript produced by computer.

(Proceedings held November 14, 2017.)

THE COURT: Be seated, please.

I didn't get up here with it, but I've read the defendants' motion to quash.

What is the plaintiff's response?

MS. NOVOTNY: Judge, respectfully, before we get to the motion to quash, I'd like to ask Your Honor, after conferring with counsel shortly after adjournment yesterday, the plaintiff has asked us to request a mistrial in this matter on the grounds of the jury has been so prejudiced by comments from the bench using male pronouns to describe Dr. Tudor on two different occasions, as well as the improper cross-examination regarding the Collin College evaluations, that a fair and impartial jury trial is no longer possible.

Plaintiff's claim is inherently based on the way she was treated as a woman after her transition. By having Your Honor insinuate she's a man, this completely destroys the plaintiff's claim.

I trust it was an inadvertent mistake, but it takes that -- but if just one juror takes that comment as the position that the Court truly believes Dr. Tudor to be a man -- and I saw visible reactions from the jurors on the second time -- then Dr. Tudor cannot succeed.

Whether you call it unringing the bell or putting the toothpaste back in the tube, there's just no way that a

limiting instruction can undo the damage that's now been done.

Considering the gravity of the situation and that this means justice delayed for our plaintiff, we needed to recess yesterday afternoon to confer with Dr. Tudor before asking for this relief. And we're bringing this to the Court as soon as practicable so as to protect the jury's time and the Court's time.

We ask that a mistrial be ordered and that this case be set for preferential setting on the next possible trial docket.

THE COURT: I truly apologize, and I did apologize yesterday. I tend to think it tends to prove your case more than disprove it, frankly.

But as to the Collin County, I instructed the jury to disregard that. As to the -- my misspeaking of pronouns, I don't think that needs an instruction. I think it's clear. I would gladly limit that, if you want me to, but I've already apologized for it.

I'm not going to grant a mistrial. I don't believe it rises to that.

MS. NOVOTNY: Well, in that case, Your Honor, I'd like to move that I be withdrawn as local counsel due to irreparable differences between counsel and strategy and ask that the plaintiff be given time to obtain new local counsel.

THE COURT: Well, I will allow you to withdraw if

you wish, but I'm not going to continue this. We'll just proceed with nonlocal counsel.

MS. GALINDO: Your Honor, if I may?

THE COURT: Yes.

MS. GALINDO: Your Honor, as I see it, the Sixth Amendment requires that I not only be -- that there be due process but also the effective assistance of counsel.

And, unfortunately, I believe there is a difference in -- a conflict of personalities that I think will prejudice Dr. Tudor in this case, and I would also respectfully ask to withdraw in this matter.

THE COURT: Have all of you discussed this with Dr. Tudor?

MS. GALINDO: Yes, Your Honor.

MS. NOVOTNY: Yes, Your Honor.

THE COURT: Mr. Young, are you prepared to proceed on your own?

MR. YOUNG: Honestly, Your Honor, I think it would be too prejudicial to Dr. Tudor. I do know this case very well, but there are a great number of witnesses, a lot of documents, and a lot of work, and I did not prepare to handle this trial all by myself.

If I do not have an option, I will continue to represent Dr. Tudor.

THE COURT: Well, I'm not going to continue this

while new counsel is sought. This is something that should have been worked out long ago.

I don't know what the problem is. I don't want to know what the problem is. If you tell me you have a conflict, I will take your word for it.

If this is with Dr. Tudor's permission and she's been -- has this discussed with her, then we go forward.

MS. NOVOTNY: Just a moment, Your Honor.

THE COURT: Meanwhile, Mr. Young, you are prepared to respond to the motion to quash?

MR. YOUNG: Yes, ma'am. If I may start with Dr. Fridley first.

Apologies.

THE COURT: Just come to the podium.

MR. YOUNG: Okay. Thank you, Your Honor.

THE COURT: Uh-huh.

MR. YOUNG: So I heard from Dr. Fridley last night. I think he had a misunderstanding as to what the legalese is with the subpoena. He didn't realize he could just call me to tell me there was a conflict directly. And I believe that in good faith. We talked around, I think, midnight, so I guess early this morning.

He explained to me that there are some scheduling issues on his end, but he would be happy to come first thing Thursday. That's what he thinks the soonest is he can come

without inconveniencing himself.

THE COURT: All right.

MR. YOUNG: He agreed to that. He asked me to tell you that directly, Your Honor.

THE COURT: All right. How about Judge Ogden?

MR. YOUNG: So I heard from defendants' counsel, I think, toward the end of the trial day -- I think slightly after we ended yesterday -- and they advised me for the first time that Judge Ogden has a scheduling issue, and they gave me a number to call. I assume it's the clerk or someone.

I have not yet called that number. I planned on calling that number, because I got it late in the day, at the first break in the day to see if there is a way to accommodate Judge Ogden's schedule.

THE COURT: All right. Well, I'll just hold it in abeyance.

MS. COFFEY: Your Honor, I'm sorry. You're holding in abeyance the motion to quash both deposition and notices -- I'm sorry -- both subpoenas?

THE COURT: Yes. As far as their being required to be here today, they are not. If I have to go that far, I will grant it as to today. But if both witnesses can be accommodated so that their schedules do not prohibit them from being here, then I will deny it.

Actually, as it stands, I'm not going to grant it because

the subpoenas have been issued, and I don't want you to have to do that again. But I will say that it is not reasonable to serve them at 11:00 a.m. yesterday and expect them to be here today.

Beyond that, I won't go until I know what their future difficulties are.

MR. YOUNG: Thank you, Your Honor.

MS. COFFEY: Your Honor, may I say I think there's outstanding subpoenas, meaning subpoenas that have also been filed that have not been served on witnesses, that are commanding appearances on Wednesday and Thursday.

And again, those --

THE COURT: Mr. Young, I'll just tell you that for almost anyone, one day's notice would be not reasonable. For many people, two day's notice is not reasonable.

So if you intend on calling these people, get them served or don't serve them at all.

MR. YOUNG: Yes, Your Honor.

THE COURT: And are counsel ready to do what?

MS. NOVOTNY: Your Honor, I withdraw -- I withdraw my motion to withdraw.

MS. GALINDO: Your Honor, I would respectfully do the same for Dr. Tudor.

THE COURT: All right. Please bring the jury in.

Mr. Young, did you have the proposed verdict form ready

yet?

MR. YOUNG: We don't quite, Your Honor. I can -- I think the soonest I could get it is this afternoon. I believe yesterday you told us on the record this afternoon, and I need a little bit of extra time.

THE COURT: I thought I said this morning, but as long as -- as soon as you can, we need to start working on these.

MR. YOUNG: Understood, Your Honor. Thank you.

THE COURT: All right. Ms. Coffey, you had not given up the witness. I believe you were conferring with co-counsel.

MS. COFFEY: That is correct. I do have a few questions.

Could I raise a couple of issues with Your Honor before the jury comes in?

THE COURT: Yes.

MS. COFFEY: With respect to the plaintiff's exhibits, the unmarked exhibit issue, we discovered this morning, there are two issues.

While they put exhibit stickers on page 1 of all of our exhibits, several exhibits have multiple pages, so that if we only use portions of those exhibits, they're still not identified.

But worse, the witness copies of the plaintiff's

exhibits, none of them are marked with exhibit numbers.

THE COURT: Are these -- are these your exhibits up here?

MR. YOUNG: Those are the courtesy copies for the Court, yes, Your Honor.

THE COURT: Are they marked?

MR. YOUNG: They are marked with tabs, Your Honor. I had spoken with Ms. Goode ahead of time and I asked her, and my understanding was if they were marked with tabs, that was fine, the Court copies.

THE COURT: Let's just make this the witness copies.

MR. YOUNG: Your Honor, the witness copies that are over there are also marked with tabs, as are the copies that were given to defendants. They're in binders with tabs that say 1, 2, 3, 4, 5, 6.

MS. COFFEY: So when we pull an exhibit, Your Honor, and put it in front of the witness, this is what it looks like. This is a Bates number used in discovery. It has no identification of the exhibit number.

MR. YOUNG: Well, Your Honor, respectfully, we did put stickers on, I think, the first 200 and something of them. I think we need 20 more stickers.

MS. COFFEY: You did. I mean, we're not -- we acknowledge that. It's just that if a document -- an exhibit is more than one page, it's not marked as to an exhibit

number.

THE COURT: Well, I don't know that it ever is.

MS. COFFEY: When we do -- all of ours are because we use the case number, the trial exhibit number. It's all on there together, and it shows that it's all applicable to that exhibit.

THE COURT: Well, I can certainly tell that the exhibit behind Tab 24 is more than one page, but it's all Exhibit 24. You can refer to the Bates stamp number --

MS. COFFEY: Okay.

THE COURT: -- or the page number of the exhibit, whichever is easier. It's not the way I'd have it done, but it's the way it is. We'll do the best we can.

Wait a minute.

THE CLERK: Okay.

THE COURT: Was there something else?

MS. COFFEY: Yes. I have a question with respect to the Collin College documents.

Would we be permitted to question Dr. Tudor about student evaluations that she received there to impeach her on her testimony regarding her teaching abilities?

THE COURT: No.

MS. COFFEY: Thank you, Your Honor. Nothing further.

MR. YOUNG: Nothing further, Your Honor.

THE COURT: All right.

(Jury enters.)

THE COURT: Be seated.

And good morning. Welcome back. I hope you will forgive our delay, but we were trying to take care of some matters that will ultimately save your time, so we're now ready to proceed.

Dr. Tudor, if you will resume the stand, I will simply remind you that you're still under oath to testify truthfully.

CONTINUING CROSS-EXAMINATION

BY MS. COFFEY:

Q. Good morning, Dr. Tudor.

A. Good morning.

Q. I know you had a long day yesterday, and I'll do my best not to keep you up here much longer.

Yesterday, you testified -- let me ask you: Yesterday, do you recall testifying that writing scholarly articles sometimes can take many years?

A. Yes.

Q. So wouldn't that justify President Minks' position and Dr. McMillan and Dean Scoufos's position that they believed that in order to allow you to strengthen your scholarship, that you needed longer than that five-month period to strengthen your scholarship?

A. No.

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

THE COURT: Yes.

Q. (BY MS. COFFEY) Dr. Tudor, I just handed you -- I've handed you what is Plaintiff's Exhibit 1.

Can you identify that document?

A. It is a cover letter in support of an application for tenure promotion.

Q. This is the cover letter that you included with your 2009 tenure application at Southeastern; correct?

A. It appears so.

Q. All right. Thank you. I don't have any further questions about that exhibit.

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

THE COURT: Yes.

MS. COFFEY: I'm sorry. May I move for the admission of Plaintiff's Exhibit 1?

THE COURT: Any objection?

MR. YOUNG: No objection so long as plaintiff can later introduce the full version of that exhibit.

THE COURT: Well, I'm assuming this is the full version. No? This is not the entire Exhibit 1?

MS. COFFEY: No, Your Honor, it is the full exhibit of Exhibit 1. I only put up page 1 on the screen. Dr. Tudor has the full letter.

MR. YOUNG: Okay. Then no objection, Your Honor.

THE COURT: Admitted.

MS. COFFEY: May I approach the witness?

THE COURT: Yes.

Q. (BY MS. COFFEY) Dr. Tudor, I hand you what has been marked as Plaintiff's Exhibit 15.

THE COURT: It needs to be admitted before you display it.

Q. (BY MS. COFFEY) If you will look at the two pages that I've handed you. Do you recall sitting in Cathy Conway's deposition, and she testified about these two pages of exhibits?

I'm sorry. Let me ask it this way: Do you recall Cathy Conway identifying these two pages of exhibits as her handwritten notes from her phone call with you on June 1st, 2007, and then her typed-up version of those notes?

A. I don't recall it specifically.

Q. Okay. At the top of this document, it says, "6-1-2007, 3:45 p.m., called Dr. Rachel Tudor."

Is that your phone number under that?

A. I believe it was at the time.

Q. All right. And then further down it says, "Advised Dr. Tudor of SOSU policies."

Is that correct?

A. That's what it says.

Q. Okay. Is it your testimony that you do not recall ever

seeing this document before?
A. I do not recall.
Q. Okay. You don't have any reason to dispute Cathy Conway's note, though, that this phone call took place at 3:45 p.m. on June 1st of 2007, do you?
A. Yes, I do.
Q. Do you have any documentation that would dispute it?
A. No.
Q. Okay. You testified yesterday that this phone call occurred late in the evening.
Do you recall that testimony?
A. Yes.
Q. And you also testified that your phone indicated that it was a call from Southeastern's human resources.
Do you recall that?
MR. YOUNG: Objection. Mischaracterizes testimony.
THE COURT: The witness can speak for herself.
THE WITNESS: No, I don't. No.
Q. (BY MS. COFFEY) So if Cathy Conway testifies that she talked with you at 3:45 p.m. on June 1st, 2007, is she being honest with this courtroom?
A. It may have been that date, but the time is incorrect.
Q. All right.
MS. COFFEY: No further questions, Your Honor.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Dr. Tudor, on cross-examination yesterday, you were asked to recall a lot of conversations and deposition testimony; is that correct?

A. Yes.

Q. Did you ask, in response to some of those questions, to be provided with documents to refresh your memory?

A. Yes, I did.

Q. If you had been provided with the documents you had requested, would that have helped refresh your memory?

A. Yes, it would have helped.

Q. Dr. Tudor, you were asked yesterday whether, at your deposition, you thanked -- you said that you thanked Cathy Conway for her professionalism; is that right?

A. That's right.

Q. At your deposition, were you asked why you thanked Cathy Conway for her professionalism?

A. No, I was not.

Q. If you had been asked at your deposition why you thanked Cathy Conway, would you have testified truthfully?

A. Yes.

Q. And yesterday, when you testified that you thanked Cathy Conway for not firing you, that was the reference to professionalism.

Was that telling the truth?
A. Yes, correct.
Q. At your deposition, were you asked whether Cathy Conway told you that Southeastern's policies protected you from sex discrimination as a transgender woman?
MS. COFFEY: Objection, Your Honor. Leading.
THE COURT: Overruled.
THE WITNESS: No.
Q. (BY MR. YOUNG) If you had been asked that question at your deposition, would you have told the truth?
A. Yes, of course.
Q. Did Cathy Conway tell you that Southeastern's sexual harassment and nondiscrimination policies protected you from sex discrimination as a transgender woman?
A. No, she did not.
Q. Did Cathy Conway tell you that transgender women were protected from sex discrimination during that phone call in June of 2007?
A. No.
Q. Now, during that phone call with Cathy Conway, when she told you that you could not use the women's restroom at Southeastern and you could only use single-stall restrooms, did she tell you where those restrooms were located?
MS. COFFEY: Objection, Your Honor. Leading and mischaracterizes the testimony.

THE COURT: Overruled.

THE WITNESS: No.

Q. (BY MR. YOUNG) Did Cathy Conway provide you with a map of Southeastern so you could find single-stall restrooms?

A. No.

Q. So after that conversation, you had to figure out on your own where those restrooms were located?

A. Yes.

Q. Dr. Tudor, a few times during your cross-examination, you said you recalled some gist of the conversation with different folks at Southeastern but you didn't recall the exact words; is that right?

A. That's correct.

Q. Is there a reason why you only remembered the gist of some of those conversations?

A. It was many years, many years ago. But I remember the gist because they were very important, but I didn't remember the exact words or phrases that may have been used.

Q. But you're certain that you've consistently told the truth about what you recall?

A. Yes.

Q. And you're certain that you remember the important parts of those conversations?

A. Yes.

Q. Okay.

MR. YOUNG: Nothing further.

THE COURT: Recross.

MS. COFFEY: Nothing further, Your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

THE WITNESS: Thank you.

MR. YOUNG: Your Honor, we're just pulling our witness from the witness room. He's just down the hall.

THE COURT: Who is your next witness?

MR. YOUNG: Dr. Robert Parker.

THE COURT: Please step right up here, wend your through however you can, and face the clerk and be sworn.

(Witness duly sworn.)

WHEREUPON, ROBERT PARKER, Ph.D., after having been first duly sworn, testifies in reply to the questions propounded as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good morning, Dr. Parker.

A. Good morning.

Q. Before we get started, I'm just going to say that that little binder in front of you, that white binder, there are going to be a number of exhibits. Don't look at it yet because I'm going to introduce them one by one. Okay?

Wonderful.

Dr. Parker, what is your occupation?

A. I'm a university professor.

Q. Where do you work?

A. At the University of Illinois.

Q. Dr. Parker, can you move the microphone a little bit closer to yourself?

A. Sure.

Q. I know it's a little awkward.

A. How is that?

Q. Better.

A. Can everybody hear me okay? Thank you.

Q. So, Dr. Parker, where are you a university professor?

A. At the University of Illinois.

Q. How long have you been at the University of Illinois?

A. Since 1984.

Q. Do you recall about how many years you've been a professor?

A. So that's, altogether, 35 years.

Q. Okay. Dr. Parker, do you have a particular area of specialty?

A. Yes, I do. American literature, mostly post-1900, but all across American literature, and what we call critical theory.

Q. So it's a very specific kind of English professor; is

that right?
A. Yes. And within that, I have specialties as well.
Q. Wonderful.
Dr. Parker, what schools have you taught at before?
A. I've taught at Yale University and at the University of Michigan before I came to the University of Illinois.
Q. Okay. Dr. Parker, where did you go to college?
A. I went to Brown University in Rhode Island and then to Yale University.
Q. And what degrees did you get from Yale University?
A. They have more degrees than most schools, so I got a master's a degree in what they call an M.Phil., which is a bigger master's degree, and a Ph.D.
Q. Your Ph.D. is in the field of English?
A. Yes, it is.
Q. Imagine, as an English professor, you've written a lot of publications.
How many articles or books have you published?
A. Ten books and 25 articles, plus a few more in the pipeline.
Q. Dr. Parker, can you please explain to the jury what it means for a publication to be peer-reviewed?
A. Yes, yes.
For a publication to be peer-reviewed means that when it's in manuscript, so written but not published, it's

submitted to the editors. And then if the editors think that it's a likely -- or may well be worthy of publication, they send it out to other experts in the area who judge it. And if usually at least two of those think that it's worthy of publication for that particular either journal or publisher, then it goes to the next level. And then, based on that, the editors, and possibly others with them, make the final decision.

So when something is peer-reviewed, it's met an especially high standard of outsider judgment before it gets to be published. And that's really the gold standard of what makes something a respectable and a highly admired accomplishment to publish in a peer-reviewed forum.

Q. Do professors in the field of English have a general understanding of what peer review means?

A. Oh, absolutely.

Q. Is that a fair universal standard?

A. Absolutely. Standard.

Q. Dr. Parker, how many of your own publications would be considered peer-reviewed under the definition you just gave us?

A. Under the definition I just gave you, seven of my articles and nine of my ten books. The reason that they're not all peer-reviewed is that once you've published a lot of peer-reviewed materials, then sometimes you get requested. So

that's another gold -- that's, like, the second gold standard. You get requested to publish things.

So since I've published things through peer review, I now often get requests to publish. Sometimes those go through peer review; sometimes editors give them stringent review without the peer review.

Q. Okay. Thank you, Dr. Parker.

Now, Dr. Parker, do you have a particular area of study where you work in the most?

A. Yes. As I indicated, American literature.

So one of my areas where I've worked the most is Native American literature. I've also written a lot on the novelist William Faulkner, and a variety of other areas. But those would be the areas where I work the most.

I should say -- I mentioned I also write a lot about the study of literature and English in general without focusing on one specific period. So that engages me with a wide variety of different areas of study within English.

Q. Dr. Parker, do you regularly read, write, discuss publications written by professors about Native American literature?

A. All the time.

Q. Do you regularly read publications in your field produced by professors outside of your university?

A. All the time. That's mostly what I do read.

Q. Is it important that you engage with publications produced by professors outside of your home university?
A. Absolutely.
Q. Can you explain to the jury why that's important?
A. Because the conversation about the things that we study is not a small conversation with the people you happen to know; it's a broader conversation with other people who share those interests across the United States and across other countries as well. And that's part of what makes it so interesting to those of us who care a lot about it.
Q. Dr. Parker, do you also publish in the field of English more broadly?
A. Yes, I do.
Q. Do you regularly read publications written by professors who write in other areas of English?
A. Certainly, both for my own interest and for teaching.
Q. Dr. Parker, do you have any experience serving on the editorial board or advisory board of any scholarly journals?
A. Yes, five different journals.
Q. Have you ever been asked to help editors of scholarly journals choose articles for application?
A. All the time. It keeps me busy.
Q. What types of articles have you reviewed?
A. I've reviewed articles all across Native American literature, all across American literature. Some editors seem

to have picked me out as someone to go to when the article doesn't fit into one area.

Q. Do you feel fairly confident, having more than 35 years' experience as an English professor, reading articles from all across the board in the area of English?

A. Of course. I do it all the time. I do it for my own interest, and I do it because others ask me to do it.

Q. Okay. Dr. Parker, I'm going to ask you some questions about promotion and tenure.

A. Uh-huh.

Q. I think it would be very helpful for our jury to sort of understand these concepts better coming from an expert.

Dr. Tudor [sic], generally, in a university setting, can you explain to me what the significance is of a professor applying for promotion from assistant professor to associate professor with tenure?

A. That's the big one.

That's the -- in the humanities especially, English and related fields, there are two big milestones in your career. One is just getting the job, because hundreds of people apply typically for one job. So that's a big deal.

Then the next milestone is getting promotion to associate professor and tenure. That's when you've arrived. It's a cause for celebration, a sense of accomplishment, a sense of fulfillment. It's a marker of having done something really

substantial in your career.
Q. Did you celebrate it when you yourself won tenure?
A. Yes. In my case -- in my case, my colleagues had made it pretty clear that it was coming, so it wasn't as much of a one-moment milestone, but I certainly did. And I certainly helped my colleagues celebrate theirs, yes.
Q. Okay.
A. And if they don't, I make sure that they do.
Q. Dr. Parker, in your experience, does getting tenure more or less mean the same thing at all American universities?
A. Oh, yes. It's a national standard.
Q. Can you just explain again for the jury why it's important for a professor to get tenure.
A. Oh, sure. Sure.

Part of the reason it's a national standard is that there's an organization that sets up the definitions and procedures for it, the American Association of University Professors.

Why is it important?

Well, once somebody has tenure, they feel free to experiment, to try different ways of teaching, try different ways of thinking, try different ways of studying and writing about what they study.

And that means that they can use their imagination more. They can take a risk without fear that, oh, that risk didn't

go well, I could lose my job or I could make my boss angry or something like that.

Instead, the idea is that tenure encourages imagination, and that's what's made the American universities so special. That's what made the American universities the envy of the world because you have faculty who can try all different things and continually move forward towards a better way to do this, a better way to think about this. An experiment that takes us in new directions and expands what we know and understand, that's founded on tenure.

THE COURT: Could I ask you to slow down a little when you speak?

THE WITNESS: Thank you very much. Yes, I will. And, please, if I need to, ask me again. Sorry. Thank you.

MR. YOUNG: He's wonderful to talk to, but he does speak a little fast.

Q. (BY MR. YOUNG) Okay. Dr. Parker --

A. I can't really tell if this is loud enough or not. So please do let me know if it's not.

Q. We will. Thank you, Dr. Parker.

Dr. Parker, in your time as an English professor, have you reviewed promotion portfolios?

A. Many.

Q. About how many portfolios do you think you've reviewed?

A. Over 100, well over 100.

Q. So that's a big number, 100 portfolios. Can you maybe explain to the jury how you came up with that, because I don't think I'd remember.
A. I counted all those that I could remember because I thought I might get asked this question.
Q. Uh-huh.
A. So I went down the list of all the colleagues I could think of. I went through my e-mails of reviews I've done for other universities. I added them all up. And I didn't count those that I couldn't remember, but those that I remembered were well over 100.
Q. So there might be even more portfolios than just the ones you could find e-mails for and that you could remember?
A. Right. I counted 130 totally.
Q. Okay. That's a lot of portfolios.
A. This fall --
Q. Just this fall?
A. -- just this fall. It's been a busy fall.
Q. Dr. Parker, when you've reviewed promotion portfolios in the past, what sorts of things did you look at to make a decision on that portfolio?
A. You look at what we call the curriculum vitae, or the CV, which is academic fancy language for résumé except it's much fuller.
A résumé is typically concise, one page. A CV can go any

number of pages to include -- it's supposed to include everything in someone's academic record.

So you look at that, and you read that carefully in the context of your having read many, many before. In my case, thousands before. And you look at all the supporting documents.

You look at any records of -- people's teaching records, any records of any publications they might have, any records of their service to the university and to the field.

And if you are a principal person assigned for evaluating that, as I often am, then you read the publications as well.

Q. Dr. Parker, you said these portfolios have a lot of documents in them. You started with the CV.

Is the CV really important?

A. It's the core.

Q. Why is it the core?

A. Because it lists everything that someone has done that could possibly have any relevance to their consideration for promotion and for tenure.

Q. So a CV is not like -- I don't know. Some people leave things off their résumés. Do professors leave things off their CVs?

A. Well, you can't -- it could go for thousands of pages if you put everything in your life. They should not leave off any professional activities. So all their professional

activities should be listed there, particularly if there are things that are publicly available.

You don't list every meeting you've had with a student or something like that, but yes.

Q. So because everything is listed on a CV, would a more senior professor such as yourself, does your CV contain older publications from when you were just starting your career?

A. Yes.

Q. As well as recent ones; right?

A. Yes.

Q. Okay. Personally, has your work improved over time?

A. I think so. I'm not always sure. I'm not always the person to judge, but I think so.

Q. Okay.

A. It's grown in lots of ways and expanded, yes.

Q. Is that normal for a CV, to just, you know, capture a snapshot over the course of your career, improvements, ups, downs?

A. Well, everything.

Q. Okay.

A. You don't leave something off if you think it's not your best. Everything's there.

Q. Okay. So it would be odd if someone left something off just because they didn't think it was their absolute best work?

A. Oh, yes.
Q. Have you ever been asked to review portfolios from universities outside of your own?
A. Yes, routinely.
Q. Do you have any estimate as to how many of those portfolios you've reviewed from outside your own university?
A. I counted because I thought you might ask.
Q. Yes.
A. So I counted 25. I'm assuming I'm not forgetting any. I went back through my records. I turned down three this year because I wanted to be able to focus on this process.
Q. By "this process," you mean this case?
A. That's correct.
Q. Thank you.
Dr. Parker, do American universities have similar criteria for tenure?
A. Yes.
Q. Are you familiar with the tenure and promotion rules at Southeastern?
A. Yes. I've read them.
Q. How did you become familiar with Southeastern's tenure rules?
A. They were provided to me. I read them, and I read them in the context of the standard procedures that apply nationally.

Q. Okay. And, Dr. Parker, if I use the phrase -- or the name Academic Policies and Procedures Manual, are you familiar with what I'm talking about?
A. I have read certain pages of that; I was not provided the whole manual. But I read the pages of that manual that I was provided.
Q. Okay. And what is your understanding of what that manual is?
A. It -- the parts of it that I read lay out -- lay out the procedures for what it takes to get tenure and what it takes to get promotion and what it -- how Southeastern defines the different ranks of faculty.
So, for example, assistant professor, associate professor, and professor.
Q. Okay. And just going forward for my sake and for the jury's sake, is it okay if I call that rule book the AAPM?
A. Sure.
Q. Thank you. It will make it a little easier to get through this.
What type of school is Southeastern?
A. It's a teaching school, a teaching university, and explicitly defines itself as a teaching university in that manual.
Q. So, Dr. Parker, can you explain to the jury what does it mean for a school to be a teaching university?

Does that mean it produces teachers?
A. No, no.
Q. What does that mean?
A. It might -- it probably does -- but that's not what it means.
It means that the faculty are expected, most of all, to concentrate on their teaching among the various things they do. And it means that in consideration for promotion and tenure, that their teaching is the most important consideration. That's what counts most at Southeastern and at other teaching schools.
Q. So, Dr. Parker, I mean, I went to college, but I don't know a lot about how colleges work.
How would one figure out what type of school Southeastern is? What would you look for?
A. Well, it's pretty ordinary for and important for a regional university to be a teaching school. It wouldn't take -- someone in the field wouldn't have to figure anything out; they would already know that automatically.
When I have my graduate -- when my graduate students are applying for faculty positions at different universities, I make sure that they do know, if they don't already. And if there's any doubt, I tell them to ask or to read the school's procedures, to look at what the faculty do at that school because it's very important they know what kind of school it

is before they either go there or apply for a position there or interview for a position there because that tells them what's expected of them when they -- if they get the job and what they should be prepared to discuss in the interview process.

Q. I'm going to ask you a more specific question about that.

So, presumably, professors at teaching universities also engage in other activities other than teaching; is that right?

A. Certainly.

Q. But is teaching given a special weight --

A. Yes.

Q. -- at teaching universities?

A. Yes. In fact, those procedures actually give a mathematical breakdown that emphasizes the importance and centrality of teaching at Southeastern. And that's ordinary. That's easily recognizable. It's standard.

Q. So, Dr. Parker, for the purposes of your testimony today, did you review some portfolios from professors at Southeastern?

A. Yes, I did.

Q. Do you recall the portfolios that you reviewed?

A. Yes, I do.

Q. Which portfolios did you review?

A. I reviewed -- just to go through them alphabetically, I reviewed a portfolio from Dr. Barker, a portfolio from

Dr. Cotter-Lynch, a portfolio from Dr. Parrish, a portfolio from Dr. Spencer, and a 2009-10 portfolio from Dr. Tudor, and a 2010 and '11 portfolio from Dr. Tudor.

MR. JOSEPH: Objection, Your Honor. Misstates facts not in evidence.

THE COURT: Well, it's his answer. You'll be entitled to cross-examine him on it.

Q. (BY MR. YOUNG) I'm counting six portfolios; is that right?

A. That is correct.

Q. Okay. We are going to introduce the portfolios as exhibits. So bear with me one moment.

Actually, Dr. Parker, I believe Plaintiff's Exhibit No. 1 is in that stack of papers in front of you. You can also find it in the binder. That might be easier.

Do you see Plaintiff's Exhibit No. 1?

A. P-1?

Q. P-1.

A. Yes.

Q. Do you recognize that document?

A. It appears to be the portfolio from Dr. Tudor from 2009. And I referred to it as 2009-2010 that I just referred to. I don't know what the objection was, but that's what I was referring to, this document here.

Q. And, Dr. Parker, do you have any understanding as to

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically transmitted a copy of the foregoing Appendix to the Clerk of the Court by using the ECF System for filing and automatic service of Appendix to all counsel of record herein.

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Case No. 18-6102/ 18-6165

In the United States Court of Appeals for the Tenth Circuit

DR. RACHEL TUDOR,
Plaintiff-Appellant/Cross-Appellee

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,
Defendants-Appellees/Cross-Appellants

On Appeal from the United States District Court for the Western District of Oklahoma, Case No. 5:15-cv-324-C, Hon. Robin Cauthron

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PLAINTIFF-APPELLANT/CROSS-APPELLEE DR. RACHEL TUDOR'S APPENDIX VOLUME 7 OF 9

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070-145	11/14/2017	263	297-372	Vol. 2 Cotter-Lynch Testimony
146-151	11/15/2017	264	376, 379-383	Vol. 3 Conway Deposition Ruling
152-198	11/15/2017	264	384-430	Vol. 3 Mischo Testimony
199-231	11/15/2017	264	431-463	Vol. 3 Spencer Testimony
232-242	11/15/2017	264	463-474	Vol. 3 Prus Testimony

whether Plaintiff's Exhibit No. 1 is the full portfolio from 2009-10?

A. My understanding is that it is not complete.

Q. Do you know what documents are in that partial portfolio there?

A. Yes.

Q. What documents? You don't have to read them one by one. You can just --

A. Well, the core document of the CV -- and there's a letter or statement or application -- various schools call it various things -- from Dr. Tudor.

There's some letters in support of the promotion and tenuring, and there was one of her articles and various testimonies from various people, students primarily, about her teaching.

I might have missed one document or so here or there, but that's basically what it includes.

Q. Okay. Dr. Parker, I'm going to hand you a document that I've marked as Plaintiff's Exhibit 165.

MR. YOUNG: May I approach the witness?

THE COURT: Yes. Take them all up there.

MR. YOUNG: Yes, Your Honor.

Q. (BY MR. YOUNG) So, Dr. Parker, can you turn to Plaintiff's Exhibit 165?

I believe 165 is in one of those stacks, Dr. Parker.

A. Oh.
Q. It will have a number on it.
Dr. Parker, it's in the stack to your right. Yeah.
A. Here it is.
Q. So can you look at the first page of Plaintiff's Exhibit 165?
A. Yes.
Q. Well, after the cover.
A. Yes.
Q. Do you recognize Plaintiff's Exhibit 165?
A. Yes, I do.
Q. What is it?
A. This is the portfolio for Dr. Mark Spencer.
Q. Have you seen this portfolio prior to today?
A. Yes.
MR. YOUNG: Your Honor, I would like to move to enter Plaintiff's Exhibit 165 into evidence.
MR. JOSEPH: Your Honor, we object. I don't think he's created this document. There's a witness available who can authenticate its creation, but I don't think he can do that.
THE COURT: Come to the bench.
(The following proceedings were had at the bench and out of the hearing of the jury.)
THE COURT: Is Dr. Spencer going to testify?

MR. YOUNG: He is, Your Honor, but to the extent that defendants plan on asking Dr. Parker whether he actually reviewed these documents which were discussed in his expert report, it's kind of hard for him to testify if he can't at least let the jury know that he's seen these.

THE COURT: Are you seriously debating the authenticity of this?

MR. JOSEPH: It's just the matter of fact is, he didn't create this document.

THE COURT: But he reviewed it.

MR. JOSEPH: Certainly.

THE COURT: He can testify as to his review. You're free to cross-examine. This, to me, is a total waste of time.

MR. JOSEPH: Okay.

THE COURT: What else are you going to offer and let's see if we can do it without all this falderol.

MR. YOUNG: Okay. Just the other portfolios that he reviewed.

THE COURT: Which are which exhibits?

MR. YOUNG: I believe it's 162, 163. We already did 164 yesterday, 165.

THE COURT: And 166?

MR. YOUNG: That should be it. They're all in a row.

MR. JOSEPH: And we will concede certainly that he

reviewed those documents. I just didn't want to leave the impression that he had created those or that those were the complete documents as presented to the committees.

THE COURT: You are free to ask him all about that, but I'm going to admit all those. That's 162 -- Linda? Linda?

I'm admitting 162, 163, 165, and 166.

Thank you.

MR. YOUNG: Thank you, Your Honor.

MR. JOSEPH: Thank you, Your Honor.

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

Q. (BY MR. YOUNG) Okay. Dr. Parker, sorry about that.

So you've seen Plaintiff's Exhibit 165 before; correct?

A. Yes.

Q. That's Mark Spencer's --

A. Is there some water somewhere?

Q. Dr. Parker, tell me when you're ready.

A. I'm ready. Thank you.

Q. Okay. Sorry for the brief interruption.

So, Dr. Parker, you've seen Mark Spencer's portfolio before, Exhibit 165?

A. Yes, I have.

Q. Okay. And let's go through these other ones pretty quickly.

Dr. Parker, have you seen Exhibit 162 before? It's going to be in that teal binder to your right.
A. This?
Q. Yes. And I think you can just kind of open up the first page of that.
A. 162?
Q. 162.
THE COURT: Remember that your right is his left.
MR. YOUNG: Oh, I'm sorry.
THE WITNESS: I just figured that out.
MR. YOUNG: Thank you, Your Honor. I'm bad at that even outside of this context.
THE WITNESS: Yes, I have seen this.
Q. (BY MR. YOUNG) What is it?
A. This is the portfolio from Dr. Parrish.
Q. Can you please turn in that same binder to Exhibit 163.
A. Yes, I have seen this.
Q. What is it?
A. This is the portfolio from Dr. Cotter-Lynch.
Q. Okay. Dr. Parker, can you go to one of those short stacks of documents in front of you and find Exhibit 166?
A. Yes, that's right here.
Q. What is it?
A. It's the portfolio from Dr. Barker.
Q. And have you seen it before?

A. Yes, I have.
Q. Dr. Parker, can you look at Exhibit 164. It should be in that larger stack in front of you.
A. Yes.
Q. Have you seen that one before?
A. Yes, I have.
Q. What is it?
A. This is the 2010-11 exhibit -- or portfolio from Dr. Tudor.
Q. Wonderful.

Okay. So I'm just going to let you know and the jury know, we're done with those exhibits for right now. The only one that we're going to use is that little white binder in front of you. So you don't have to worry about the scary stack of papers anymore.

Okay. So, Dr. Parker, are -- all those exhibits that we went through, you reviewed them prior to today?
A. Yes, I did.
Q. Did you review them all carefully?
A. Yes, I did.
Q. Okay. And, Dr. Parker, is it your understanding that all of those portfolios you reviewed except for the two portfolios of Dr. Tudor were successful at Southeastern?
A. Yes, it is my understanding.
Q. So those are the very same portfolios, to your

understanding, that other professors at Southeastern turned in that won them tenure other than Dr. Tudor's two portfolios?

A. That's correct.

Q. Dr. Parker, are those portfolios all from professors in Southeastern's English department?

A. Yes.

Q. Dr. Parker, do you know whether those portfolios were turned in around the same time that Dr. Tudor applied for tenure?

A. They were.

Q. Now, Dr. Parker, can you tell the jury a little bit about what method you used to review these portfolios?

I mean, they look big and scary. How do you go about reviewing something like that?

A. It's an absolutely standard method. You begin with the core document, the CV, and then that connects to all the other documents, and you read the documents, you study them, and you put them in the context of your familiarity with national standards and national procedures.

Q. Did you review every page of those documents?

A. Yes, I did.

Q. Did it take you a while?

A. Yes.

Q. Okay. I believe you.

Dr. Parker, did you make any assumptions about the

portfolios when you read them?
A. I understood that those four portfolios from Barker, Cotter-Lynch, Parrish, and Spencer were cases that won promotion and tenure. And I took it on face value that they deserved the promotion and tenure that they won. So that's an assumption.
Q. Okay. Can you tell us, and tell the jury more specifically, is there any significance to making that assumption on your part?
A. Sure. When you see a group of portfolios that were rewarded with promotion and tenure, that sets a bar, it sets a standard, and it implies that other people who meet that same bar would also -- if things were fair, would also be rewarded with promotion and tenure.
Q. Okay. Can you just remind the jury how you went about reviewing these specific portfolios? What was your process?
A. You begin with the opening document, the table of contents and so on, to familiarize yourself with the rather elaborate array of documents across the portfolio.
You study the core document, the CV, and you put it in the context of understanding the story, in effect, that somebody's career tells and how they move from one thing to another, what different courses they teach, how those courses relate to each other, how they relate to what they do in their research, what they actually do in their research. You look

at their service record.

And then you look to see that corroborated or backed up or verified by the long array of additional documents, and you read them all, and you read them all in the context of your familiarity with having read many such documents before and participated in many discussions of them, formally with committees and formal proceedings and reports written in response to them, and informally in constant, routine discussion among other professors.

Q. So when you were given those documents to review, you knew what to do with them?

A. Certainly.

Q. Do you have any doubt about that?

A. No.

Q. So, Dr. Parker, I think the jury has heard before that there are three areas that are considered when it comes to tenure: scholarship, teaching, and service. And I want to take you through those one by one.

A. Okay.

Q. What sort of information can you get if you look at the scholarship sections of a portfolio?

A. You see what someone's published; you see how it tells a story of what their interests are; you read it; you put it in the context of similar discussions.

And each of those discussions in a publication engages,

as I said before, in a dialogue with what other people who share those interests also write about, and you see how someone joins that discussion or perhaps doesn't join it, depending on the publication.

But that's what they're expected to do. They're expected to join the conversation about that particular topic and move it forward and advance it.

Q. So when looking at the scholarship portion of the portfolio, is it correct to say that you were looking for the substance of the articles, not just how many were there published?

A. All those things.

Q. All of those things. So substance; how many were there published?

A. Yes.

Q. Okay. What can you discern from looking at the teaching portion of a portfolio? What information can you glean from that?

A. You look at what someone's taught. Again, you look at a story, how one course leads to another. Maybe they teach similar courses at higher and lower levels. How do they change from one to another? How do they adapt to the particular circumstances?

You look at the documentation that describes how they teach, the materials they provide to their students, the

responses that the students provide, the observations and reports that other faculty produce on -- based on observing their teaching.

Q. Okay. And lastly, when you look at the service portion of a portfolio, what sorts of things are you looking for when someone looks at that service portion?

A. You're looking for a good citizen. You're looking for someone who can back that up because a group of faculty have to work together. They depend on each other.

Each person has to pull their oar, and you look for someone who contributes by working on this committee that they're assigned and volunteering for that committee that they're not assigned.

And you look to see if someone is respected, then they get assigned more committees. And you look to see the importance of the committees, if there's any documentation that indicates that. Sometimes you need the description to get the importance; sometimes it's self-evident.

THE COURT: Slow down.

THE WITNESS: Thank you.

Q. (BY MR. YOUNG) So, Dr. Parker, you use the word "committees" a lot.

A. Yes.

Q. Are committees, like, a big deal? Is that a big thing when it comes to service as a university professor?

A. Some of them are. Many of them are. Some are not such a big deal. It depends on the committee.

But the single area of service that is most describable on a CV would be committee work.

Q. Okay. And, in your experience, do most professors have a general understanding similar to your own?

A. Absolutely.

Q. Have you served on a lot of committees?

A. Yes.

Q. Have you served on too many committees?

A. Yes.

Q. Okay. Dr. Parker, is there any information -- let me withdraw that question.

Dr. Parker, when reviewing a portfolio, is it appropriate for someone to consider information or documents that are not in that portfolio when making a tenure decision?

A. No.

Q. Can you explain to the jury why not?

A. Well, the portfolio -- if you consider the portfolios, then you consider each candidate in the same way. That's what makes it fair.

If you start bringing things other than the portfolio in, well, that will -- ordinarily, people would immediately object to that. That would open the door to bias, to misinformation, to personal whim, to all sorts of inappropriate things.

That's how you establish a standard of treating everybody by the same yardstick, so that you judge someone on the work that they do, which is represented in that portfolio, not on whether you like the way somebody looks or whether they had a good conversation with you three years ago or something like that. That's not professional.

You judge the candidates on the material in the portfolio. That's the only way to produce a fair process.

Q. Dr. Parker, have you ever, before this case, in your review of all of those other portfolios and with colleagues you know, have you ever known a professor who has not gotten tenure before and had to reapply?

A. Yes.

Q. Have you ever reviewed any of those portfolios?

A. Yes.

Q. On a committee at your university?

A. On appeals committees where -- that consider appeals, yes.

Q. Now, would it be appropriate in a situation like that one, where someone didn't get tenure one year and reapplied the next year, to consider documentation that was in that earlier portfolio?

A. No.

Q. Can you explain to the jury why not?

A. That's not -- it needs to be an independent consideration

of the material before you forward that process in that year. Something was in doubt if somebody's doing it again, and that's not -- that's extraneous. That's other stuff. That's not part of the consideration. That would be considered a real violation of protocol and fairness. I've never heard of that.

Q. So, Dr. Parker, is it true to say, then, that the portfolio in front of the decision maker in this context, tenure portfolio, should be the only thing that's considered, only the things in that portfolio?

A. Yes.

Q. You're absolutely certain of that?

A. Yes.

Q. Okay. Now, Dr. Parker, did you write a report about these portfolios that you reviewed for this case?

A. Yes, I did.

Q. Did you spend a long time writing that report?

A. Yes, I did.

Q. Do you remember how many hours you spent?

A. No. Lots.

Q. A lot?

A. Hundreds.

Q. Hundreds.

So you know these portfolios really well?

A. There's probably -- I don't know -- 2,000 pages. So I'm

not going to say I have 2,000 pages memorized, but I think I'm familiar with all the most important pages.

Q. Okay, Dr. Parker.

MR. YOUNG: I would like to move to enter Plaintiff's Exhibit 160 for the limited purpose -- I don't know, Your Honor, if this is the appropriate means of doing this -- for the limited purpose for allowing him to point to a chart that he made as a demonstrative to help the jury understand what he's going to talk about next.

MR. JOSEPH: Your Honor, I don't know that a demonstrative exhibit was proposed in the pretrial report on this. I'm not exactly sure what counsel is talking about.

MR. YOUNG: Well, may I move to introduce the report, Your Honor?

THE COURT: Do you have an objection to the report?

MR. JOSEPH: We don't have an objection to that admission, Your Honor, no.

THE COURT: All right. I'll admit 160.

MR. YOUNG: Thank you, Your Honor.

Q. (BY MR. YOUNG) Dr. Parker, can you please use the skinny binder, the white binder. I think it's under the stacks of portfolios. Yeah, there you go.

If you can go to Tab P-160. That's Plaintiff's Exhibit 160.

Okay. Dr. Parker, is that the report you wrote?

A. Yes.
Q. Okay. Dr. Parker, I want you to turn to page 5 of that report. And I will do my best to use the fancy video thing.
MR. YOUNG: Does anyone know how to get rid of those green marks?
MR. JOSEPH: May I approach to help him, Your Honor?
THE COURT: Yes.
MR. YOUNG: Thank you. Thank you.
Q. (BY MR. YOUNG) Hopefully everyone can see that chart on their screens.
Dr. Parker, can you see that chart on that screen next to you?
A. Yes. It's a bit blurry, but I can see it.
Q. Okay. So, Dr. Parker, can you explain to the jury how you created this chart?
A. I -- as we said before, I studied each of the portfolios. I studied them in the context of national standards and lots and lots of experience of reading these kinds of materials and discussing them both informally with many, many other professors and through formal proceedings. And I appraised how the different portfolios and the cases made in those portfolios compared to each other.
Q. And, Dr. Parker, I see there's -- it says summary of rankings. Then there are numbers: 1, 2, 3, 4, 5, 6.
Can you explain what something ranked in the 1 row means?

A. Yes. That indicates the strongest case of the six cases for promotion and for tenure.
Q. And does it go down from there so the No. 2 row is the second strongest case, and the third row is the third strongest case, and so on?
A. Yes.
Q. Okay. And then no offense to you, Dr. Parker, but there's some little writing that says "tie" --
A. Yes.
Q. -- in some of those rows.
Can you explain to the jury what that means?
A. Yes. Any sports fan will know, but not everybody is a sports fan. So it means that, say, in the first row on the left, the overall, that -- that Spencer and Tudor, under No. 3, were tied in the third position. So there's nobody else who comes in fourth, because that fourth row is, in effect, taken up by one of the first four who fit into those top three categories.
It's very complicated to explain, but it's very simple.
Q. So, Dr. Parker, I notice that you don't have any indications on this chart that suggests that someone at Southeastern, including Dr. Tudor, didn't merit tenure; is that right?
A. That is correct.
Q. So, in your expert opinion, this is how, if you only

looked at the portfolios, someone would appropriately rank these; is that right?

A. Oh, definitely, yes.

Q. And you're sure of that?

A. This is how someone -- when you say "this is how," I want to make sure I understand what you mean.

If you mean would someone else come up with the same ranking? I expect that someone else would come up, another qualified person, would come up with either the exact same or a very similar ranking.

MR. JOSEPH: Objection, Your Honor. Calls for speculation.

THE COURT: Sustained.

Q. (BY MR. YOUNG) Okay. This chart represents how you would rank these portfolios based on your expertise

A. Based on my expertise and my understanding of standard procedure, yes.

Q. You wrote this report about a year ago, something like that?

A. Somewhat more than that.

Q. Okay. My mistake. It's been a long case.

Do you still -- the chart that's here on this screen that the jury is looking at, do you still stand by these rankings?

A. I do.

Q. You're certain?

A. Yes, I am.
Q. Okay.
THE COURT: Let me stop you here, and we'll take our morning break. Don't discuss the case or permit others to discuss it with you. Please be back -- do I have any smokers or are you-all staying up here during the breaks?
Okay. Then if you're staying here, be back in this room at ten till. We'll be in recess.
(Jury exits.)
(In recess from 10:30 to 10:55 a.m.)
(Jury enters.)
THE COURT: Be seated.
Please proceed.
MR. YOUNG: Thank you, Your Honor.
Q. (BY MR. YOUNG) Welcome back, Dr. Parker.
So, Dr. Parker, I want to go with you through all of these portfolios. To make it really efficient, I'm going to go with you by criteria for all of them. So I'm going to talk to you about the teaching aspects of all of these portfolios, the scholarship aspects of all of these portfolios, and the service aspects of all of these portfolios.
Just in case you need them, they're in front of you, and also your report is in front of you. But to the best of your ability, I just want you to use your own words to explain to the jury some of these questions I'm going to ask you. Okay?

Now, Dr. Parker, can you explain very generally how you evaluate a professor's teaching by looking at only a portfolio?

A. Yes. There's a lot of relevant material that gives you a lot of information.

You have the syllabi that they provide that are kind of like pamphlets that guides the students through the class. They give the assignments, the schedules, the procedures, the policies, and the understanding of what the course and how the teacher approaches the course. So you learn a lot from that.

Then these portfolios also have a lot of reports from individual students, a lot of reports from faculty who observe the teaching, a lot of sample materials that are part of the course, handouts, guides, suggestions to the students, assignments, things like that.

Q. I just have one clarification question; then we can move on.

So a syllabus. I know I've received many of those in my life. Does a lot of work go into making a syllabus?

A. It should. Not everybody does, but, yes.

Q. So you wouldn't just, like, list the books you have someone read; there's more process to it?

A. Especially today. Computers have grown that process a lot. So a syllabus is often very long, yes. And it represents the whole concept and design of the class.

Q. Do professors all do syllabi the same way?
A. No.
Q. So it's normal for syllabi to look slightly different from professor to professor?
A. Yes.
Q. Is there something that makes a particular syllabi a good one?
A. A lot of things. It should be clear. It should anticipate -- students get worried. So they sometimes create unclarity where there is no unclarity. So it should anticipate the kinds of things that will worry students and address them and help them with that.

There are often university policies that it's helpful to explain: grading, disability questions, things like that. So a good syllabus has those things.

A good syllabus, again, tells a story of how the course will develop and how the students will learn across the length of the course.

Q. Is a good syllabus an important part of being a good professor?
A. Yes.
Q. Can you tell the jury a little bit about what the strengths of Tudor's teaching portion of her portfolio? Let's start with the 2009 one.
A. Okay. Yes, because there are the two.

There are wonderful descriptions of each of the courses in the 2009 portfolio. I really enjoyed seeing her describe how she started teaching the course in one way, saw some strengths and weaknesses, made some adjustments, reimagined the course based on the students' responses, based on the kinds of teaching materials that were available to use.

That was fun to me, to see someone thinking through each course and thinking of the course in terms of the kinds of students that that particular course was attracting. So that was really interesting.

Other materials included, as I said, responses from individual students, responses from -- the 2009, that didn't have -- so responses from individual students and things like that. There wasn't as much in the 2009 as there was in the 2010.

Q. And your understanding is you have a partial version of the 2009 portfolio; is that right?

A. That is correct.

Q. Okay. Are there some things that could have been improved in Tudor's teaching portion portfolios? Take them together, the 2009 and the 2010.

A. The 2010 didn't do as much to describe the individual courses. I don't know why there was a change, but, for some reason, there was a change there. It wasn't that there was something that I would have noticed something missing if I

hadn't already read the fuller descriptions in the 2009.

And I thought that -- I don't want to make too big of a deal of it, but I did think that the font was too small for the syllabi. That may seem like a small matter, but if you have older students who have difficulty reading smaller print or students with disabilities, I think that was a poor choice. It's not unusual, but I wouldn't recommend it.

Q. Is that something that could have been easily fixed, font size?

A. Oh, sure. Also, if a student asks for -- maybe these syllabi were available electronically; I don't know. But sometimes students with disabilities want them electronically, and then they can easily enlarge them.

Q. So a fairly minor thing?

A. Fairly minor, yes.

Q. Okay. Dr. Parker, can you remind us all how important effective teaching is at a teaching university like Southeastern?

A. It's the center and the definition of how the university understands its role, as it should be. It's there to serve students primarily, and you do that through teaching.

That's how Southeastern defines itself in its own policies in that policy manual, Section 4.4.1. It says it exactly, that Southeastern is a teaching school. Anybody in the field nationally would know and understand that.

Q. So, Dr. Parker -- and if you want to make reference to your chart, the jurors have it on a screen in front of them. So maybe you can just describe it or you can point.

How did Dr. Tudor's teaching across both of her portfolios compare to the other professors at Southeastern who you looked at?

A. Well, you could see that it's a teaching school because they all did a good job with their materials. It was really impressive.

So each one had its own style, which is also good to have variety, but I would say overall they more fully -- the syllabi were more fulsome than many other syllabi at other institutions.

In the 2010 Tudor portfolio, there were, I believe, ten testimonials from other faculty to Tudor's teaching, based either on direct observation or on reading and summarizing the students' evaluations of her teaching.

So that stood out as a particular strength, but each one -- I could go through them one by one if you want. I don't know what you would like. But each one had a lot of strengths and a little bit different style.

Q. I have a specific question for you about Dr. Tudor's specific portfolio.

Is it a big deal to have so many positive references from peers, from other professors?

A. It's -- especially at a small school, that's a lot of people. So that seems like a pretty strong and convincing indication.

Q. To your knowledge, professors who do teaching reviews like that -- I assume they're pretty common -- do they take that job seriously?

A. I come out of -- when I observe a class, I probably come out with typically -- I don't know -- 1500 words of notes. Then I spend several hours turning that into a written report, and then my colleagues read it, and then they meet and discuss it. So, yes.

Q. To your knowledge, just generally, do professors who get those types of reviews take them seriously?

A. It will vary from school to school whether they actually see them or not.

Q. Uh-huh.

A. But they will discuss them with the people who wrote them, whether they see the document or not.

So, yes, of course. They typically get nervous when they're being observed. It's an anxious but important moment for them.

It was unusual that in Tudor's portfolios she brought out that she invited any of her colleagues to visit her classes and observe them at any time. That was unusually open.

Q. Why is that unusually open?

A. Because it indicates that you have a willingness to get input from anybody at any time and that you have the confidence to be observed at any time and the confidence to be able to respond to your teaching.

When I observe someone's teaching, I let them choose a specific time, but she was open to any time.

Q. Can you tell me a little bit about how Dr. Tudor's teaching, as you discerned it from both of her portfolios, compared to the teaching strengths of her other colleagues in the English department?

A. Again, they were all impressive; they were all strong.

One of the differences in Tudor's is that she taught more courses than anybody else, more different courses. So that's especially valuable because it allows a department flexibility as student enrollments change or needs change.

Maybe something happens to someone and they can't teach in a given year or semester, someone else who can teach a lot of different courses is valuable because they can plug that person into different courses. So that was one thing that stood out.

I forget exactly what you were asking. Sorry. Did I answer your question?

Q. So, overall, Dr. Tudor's teaching, as demonstrated by the portfolios you reviewed, the 2009 and 2010 one, how it compared to her colleagues, the other portfolios.

A. It was very strong, and the others were also very strong. There was not -- you didn't look at these and think this one is much weaker than the others or this one is much stronger than the others. They were all stronger than I'm accustomed to seeing.

Q. You did, though, on that chart up there -- you did rank --

A. Oh, yes.

Q. -- the portfolios, though, according to teaching?

A. Right.

Q. That second column.

A. That's right, yes.

Q. And --

A. So -- okay. If that's what you're asking, overall, if you rank them -- I was asked to rank them, so I did. It was hard to make those distinctions among the -- in the area of teaching because they were all strong.

But, nevertheless, I thought that, amongst the -- amongst all of them, as you can see on the chart, that the second strongest was the 2010 portfolio from Tudor. And I thought that tied for third would be her 2009 portfolio.

And the difference between the -- the biggest differentiation there between the 2009 and 2010 was those many testimonials from her colleagues that were in the 2010 that were not in the 2009.

Q. Can you remind the jury, how at a teaching school like Southeastern should Tudor's effective teaching, as demonstrated through her portfolios, be weighed in the tenure process?

A. It's absolutely essential.

If that -- if there is not a strong teaching record, then I would not expect the person to get promotion and tenure, and it would be the most important consideration.

Q. So not the only consideration, but you're certain it's the most important consideration?

A. That is correct. That's what the -- that's what the rules also state in that manual.

Q. Okay. That manual is the thing that we're going to call the AAPM?

A. Yes.

Q. Okay. Now, I'm going to take you through scholarship. And, again, to speed this up, we're going to talk about all the portfolios at once --

A. Okay.

Q. -- with obvious focus on Dr. Tudor's portfolios.

Can you explain to me very generally how you go about evaluating a professor's scholarship just by looking at the portfolio?

A. Well, the portfolios often included the scholarship. They always listed and describe the scholarship.

So you read those items one by one, and you read any descriptions of them, and you read that in the context of doing this all the time. It's a perfectly standard process. And if they were provided in the portfolio, you read that.

There was one case where they were not provided, and I went and got the publications from the library at my university. That was for Spencer.

Q. So I'm going to ask you a little bit about that.

So you said that some of the publications for Dr. Mark Spencer weren't provided to you, but, as a professor, you knew how to go about getting those things?

A. Yes.

Q. Is that pretty standard?

A. Absolutely.

Q. Would it be surprising to you if someone couldn't find articles if they're a tenured professor?

A. Yes, that would be unimaginable.

Q. Unimaginable. Okay.

One clarification question: What if it were a really obscure article, like, it were published by an in-house press or it was published long ago? If it were an academic article, would most tenured professors, in your experience, know how to track that article down somehow?

A. Oh, yes. Some would be harder than others, but there is a way to get it if it's been published.

Q. Do you think that that's an essential skill that someone who's received tenure before might have, the ability to track down articles?

MR. JOSEPH: Objection, Your Honor. This is outside the scope of the report.

THE COURT: Is it?

MR. YOUNG: I think to the extent that he's testifying about how he went about getting these articles and it's something that's within his expertise to do, Your Honor, it's within scope.

THE COURT: Well, it is cumulative. I thought that was going to be your objection.

MR. YOUNG: Okay.

THE COURT: You've already gotten it. Move on.

MR. YOUNG: I can move on, Your Honor. Thank you.

Q. (BY MR. YOUNG) I'm going to move on, Dr. Parker, if that's okay.

So, Dr. Parker, to your understanding, what sorts of activities count toward scholarship?

I think we've talked a lot about articles. We have an understanding what those have. Are there other things other than articles?

A. Yes. The most important things are the actual publications. Overwhelmingly, the most important things are those publications, which could be articles or it could be

books, though there are no books in any -- published books in any of these portfolios. So it's article-centered.

Other things could be supporting evidence but not central evidence. So those could be presentations made at conferences or -- well, presentations made at conferences. There are different kinds of conferences, but, yes, that would be secondary.

Q. Just to clarify, when you say "conferences," are these, like, academic conferences?

A. Yes. Those are conferences where professors and potential professors and other interested people from -- often from around the world, depending on the conference, or across the nation or sometimes local conferences, get together to share their research with each other. And those are a helpful way of trying out research while it's on its way to getting developed to where it might get published.

But they are much less important than the actual publication because only the people at the conference hear that, whereas a publication is accessible to anyone who's interested.

Q. So when you're reviewing scholarship of one of these portfolios, do you just look at the CV? What do you look for to evaluate its quality?

A. Well, again, you look at it in the context of familiarity with the patterns that academic careers follow. And you look

at it with a familiarity with the kinds of research. You can often tell a lot just from -- a title of an article might place it in a conversation or a dialogue or a style or an approach.

You look at where it was published and what kind of reputation that has and how widely accessible and known that material -- how easily accessible and known that publication might be.

And you read it, ideally. If you're evaluating something in your field, you read it.

Q. You clarified there, if you're evaluating something in your field.

Are there insights that someone who's a specialist, someone who's an English professor, bring special experience or expertise to reading other articles in the field of English?

A. Oh, absolutely. It would be almost a foreign language sometimes to people who were not in the field.

It would vary from article to article. Some articles are written for a wider audience and some for a narrower audience.

Q. So let's talk a little bit about Dr. Tudor's scholarship in her 2009-10 portfolio.

A. Yes.

Q. Did you see any evidence of scholarship in that portfolio?

A. Yes. There was a presentation at a local conference. So that wouldn't count for much.

And there were two articles that would count a good deal.

Q. Okay. And how did you review those two articles? Were they in that portfolio, that portfolio you got?

A. One was. And I read it, and I judged it in that context.

And the other was in the 2010 portfolio. So I did not read that one until I read the 2010 portfolio.

Q. Can you just explain to the jury how the article was in the portfolio but it wasn't physically in it?

A. Excuse me. Thank you.

It was listed, but it wasn't provided.

Q. Listed where?

A. Listed in the CV.

Q. Okay. Now, you mentioned that there were two articles in that 2009-10 portfolio listed on the CV.

Were those two articles peer-reviewed?

A. Off the top of my head, I remember definitely that one was. I believe both were, but I'd have to check.

Q. Okay. Well --

A. I'm pretty sure both were.

Q. Well, the jury will have the benefit of your exhibit.

A. Right. I can check here if you --

Q. I'll proffer to you that both were, and you say both were in your report.

A. Okay. There was one somewhere in the 2010 that wasn't, and I'm not sure I'm remembering which one it was.
Q. It's okay. We can move on.
Why are peer-review articles important evidence of scholarship?
A. Because it's not just based on just one person's opinion or somebody's friendship with the editor or something -- if there is a friendship with the editor or something like that.
It's other people from -- who often don't even know whose work they're reviewing who are giving an independent judgment based on that. So when I peer review work, I usually don't even know whose work it is; I'm just judging the work as an outside observer.
So that's why that really establishes the credibility of that publication.
Q. I just want to ask you one clarification question there.
So you said a lot of the time that you review articles, you don't know whose article that is.
Is that because there's no identifying information on the article; you're just looking at the article?
A. The editors take off the name.
Q. And that, in your experience, is a good way to keep things neutral?
A. Oh, yes. That's the whole reason for it.
Q. So how did Dr. Tudor's scholarship in her 2009 portfolio

compare to the scholarship of other professors in Southeastern's English department?

A. Well, very strongly.

If you -- if you look -- I don't know if you want to look at this chart, then you can see that she published more than -- I'm sorry. In which portfolio?

Q. One moment. Let me give you -- let me project a different page of this.

A. Okay.

Q. I think I know what you're doing.

Are you looking for this, Dr. Parker?

A. Sure.

Q. Okay.

A. So as you can see from this chart here, she published a lot more than the other -- the other candidates published and a lot more in numbers of articles, a lot more in peer-reviewed articles. And it wasn't even close.

And I should note here that this lists Spencer as three, but actually there's no record of whether one of those was included in the portfolio. So it might be two.

So the numbers -- there's just a huge difference. And that seems pretty clear, something that I can't imagine how someone could argue with that. So it also then depends on reading the articles and how serious were they? How good were they? How strong were they? How much did they advance a

discussion forward? And they were really good at that.

Q. I'm just going to move this. This is partially my fault. I'm not great with this little projector.

I think the top chart is the number of accepted articles?

A. Yes.

Q. This other chart is the number of accepted peer-review articles?

A. That's correct.

Q. So those charts are a little bit different; right?

A. Yes.

Q. What's the difference?

A. The difference is -- I don't know if you can see them both at once, but one -- if you can shrink it perhaps.

But one of the -- one of Tudor's articles was not peer-reviewed, and one of Cotter-Lynch's articles -- or Cotter-Lynch's only article was not peer-reviewed.

This is where reading the materials is also a huge part of the process, because you might wonder, well, why do I rank Cotter-Lynch the strongest even though she published less?

Her work was that good.

Q. Uh-huh.

A. It was truly, extremely good. So even though she didn't publish as much, I actually ranked hers even stronger than those who published more because the difference was that strong.

Other than that, there wasn't as much difference among the different articles, but I did think that Tudor's was well above the others.

Q. Dr. Parker, in your expertise from what you know about teaching universities, is it unusual for a professor at a teaching university just going up for tenure to have as many articles as Professor Tudor had?

A. Yes. Not unheard of, but unusual.

Q. Okay. Dr. Parker, did you review a worksheet evaluation completed by Dean Lucretia Scoufos for Tudor's 2009-10 portfolio?

A. I did.

Q. Tell me about that worksheet. What did you glean from it?

A. I can go into more detail, if you'd like, but it ranked Tudor's teaching highly, and it ranked her research and her service very low.

Q. Well, let's talk about research. When you say "research," you mean scholarship; yes?

A. Yes.

Q. So --

A. Research and scholarship in this context mean the same thing.

Q. Mean the same thing?

A. And that can get a little confusing to people who may not

be used to that.
Q. Okay. Were -- Scoufos's criticisms of Dr. Tudor's scholarship, were they consistent with how Scoufos evaluated other professors in the English department?
A. No.
Q. How were they inconsistent?
A. Well, you have someone who is publishing and rated low in research. And then you have, in other portfolios, someone who is publishing either less or not significantly at all, and they were rated higher.
Q. In your opinion, did Scoufos's -- I'm going to focus just on the scholarship evaluation she gave to Dr. Tudor.
Did that evaluation make sense?
A. I didn't understand it.
Q. Did you try hard to understand it?
A. I tried to understand it by comparing it to the others, and I couldn't find any consistency there.
Q. Did you also review a worksheet evaluation completed by Vice President Doug McMillan?
A. I did.
Q. Can you tell the jury a little bit about what your review of that worksheet revealed to you?
A. Yes. It would be the same as what we just said about --
Q. Scoufos.
A. -- Scoufos's.

And, again, the teaching was rated highly, and the service and research were rated low. And I didn't understand how one could reach those conclusions in comparison to the other portfolios. It seemed inconsistent.

Q. Inconsistent because the other portfolios set a bar?

A. That's correct.

Q. Okay.

A. A bar below what Tudor accomplished.

Q. Thank you.

So let's talk a little bit about what you discovered when you reviewed the scholarship portion of Tudor's 2010 portfolio.

A. There was a huge burst of publication. Those articles had mostly been submitted, I should say, at the time of the 2009 portfolio.

And part of the inconsistency there was that Spencer's portfolio was given credit for submitting, I believe it was, four articles, not accepted for publication, not published, but for submitting them. And Tudor's was not given credit for having submitted 11. So I didn't understand that inconsistency there.

And then when you get to the 2010 portfolio, most of those articles had been accepted, and many of them had been published by that point. So they had crossed that next big hurdle.

It's one thing to submit something and another thing for it to get accepted. And that's the key line there. And, still, I didn't see anything to indicate that she was given credit for those accomplishments. It didn't at all match the way other people were given credit for their accomplishments.

Q. So can we talk a little bit about the differences between Tudor's 2009 and 2010 portfolios when it comes to scholarship?

You said there was a huge burst?

A. Yes.

Q. What's the numerical breakdown?

A. Well, as you can see on this chart, we're talking about eight articles accepted or published -- either accepted or accepted and published, and seven of those peer-reviewed. And the previous year it was two.

So that's a burst from two to eight. That's a huge increase, and it's a large number regardless.

Q. Just to clarify things because academic stuff is weird.

A. Sure.

Q. What does it mean to submit an article, to have it accepted, and then to have it published?

Just simple terms, if possible.

A. So if you write it and then you send it to the editors, that's submitting it.

Q. Okay.

A. When the editors put it through this process of reading

it, studying it, comparing it to other work, having peer reviewers read it, study it, report on it, then having the editors consider those reports, perhaps with other editors in discussion, and then decide either to accept it or not to accept it. So that's the next hurdle.

And then it's just an administrative process between acceptance and publication. But until it's published, no one else has it to read. So that's an important hurdle, but it's not any more of an accomplishment.

Q. Okay. And professors know these things?

A. Oh, yes.

Q. Okay. Now, how many of Tudor's articles in the 2010 portfolio would be considered to be peer-reviewed, the gold standard you talked about before?

A. Seven out of eight.

Q. Is that significant?

A. Very much.

Q. Can you just remind us why that's significant?

MR. YOUNG: I can move on, Your Honor.

Q. (BY MR. YOUNG) Dr. Parker, let's move on to service.

Can you explain to me very generally how you went about evaluating a professor's service by looking at the portfolio?

A. Yes. They list what they've done for their service on their CV, and then they had -- there were reports from other professors evaluating their service, particularly in Tudor's

case in the 2010 portfolio. And sometimes they listed nominations for an award for extraordinarily strong service.

And I should have said that as well for the teaching. That was also the case, that some of them were nominated for an award for an exceptional teaching or, in one case, even won that award.

Q. So when you're looking at the service section of a portfolio, what kind of documents evidence good service?

A. Well, primarily that list, but it's also helpful to have the experience to put that list in context.

So when someone says, for example, that they're on the committee that is in charge of hiring new faculty --

Q. Uh-huh.

A. -- that you know is a major committee because that's one of the most important things the faculty can do. Those are the people -- the people who they hire are the people who will teach the next group of students. So that's really important.

So Tudor and Cotter-Lynch were both on that committee. So that's an example. You look at that and you know that that's a really important committee and an extremely time-consuming committee because you've got so many people who want those jobs. So it's a lot of applications to read, interviews, and important decisions to make. And you have to work with other people through that process. It's extremely time-consuming. That's a really important committee.

Other times, you don't necessarily know how important the committee is unless there's testimony to it. So there was an assessment committee that Tudor chaired for several years. And you have people --

THE COURT: Wait, wait. Take a long, slow, deep breath.

THE WITNESS: Thank you.

So there was an assessment committee that Tudor chaired for several years, and you have letters from her colleagues describing that as an extremely important committee, even perhaps the most important in the department.

That tells you, again, that that's an important committee and that that work is extremely -- is the sort of work that you assign to someone who you trust to do a good job.

And they also reported that she did do a good job.

Q. (BY MR. YOUNG) So how did Tudor's service in both the portfolios, 2009 and 2010, compare to the evidence of service that you saw in those other portfolios?

A. I was impressed by the service records of all the candidates. It was hard to differentiate between them.

There was even more, I thought, for Spencer and Cotter-Lynch. So I put them a little higher, just a little bit, and the nominations for the service award that they had as well.

So it was impressive that there seemed to be a group

spirit, that people pulled their oar and each took their turns at the same kinds of service. And that made it, as a group, very impressive and hard to rank one above the other.

Tudor, for example, was elected by the faculty -- not just the department, but the faculty -- to the faculty senate. That suggested that other people trusted her and valued her responsibility and her decision-making.

And other candidates -- other portfolios indicated similar responsible activities by each of the candidates. So they were all very strong. It didn't seem that you could put one in a completely different category from the others.

Q. So were there any meaningful differences between Tudor's two portfolios and the rest of them when it comes to service?

A. Not major, meaningful differences in ranking them, but they did do somewhat different things from one person to another. But they all contributed impressively. There were slight differences in ranking.

Q. As to your ranking?

A. Yes.

Q. Having reviewed all of these portfolios, do you see any reason why Southeastern administrators would rank Tudor's service lower than the other successful candidates you looked at?

A. I see no reason why they would do that.

Q. Nothing?

A. I don't see anything.
Q. Okay. Dr. Parker, before I pass you off to one of my colleagues at that lovely table over there, I'm just going to ask you to tell the jury what your ultimate takeaway is here.
A. Thank you.
THE COURT: Let me have counsel at the bench, please.
(The following proceedings were had at the bench and out of the hearing of the jury.)
THE COURT: We have the distinct disadvantage in this case of almost every witness being a Ph.D., which makes them all experts even if they're not testifying as experts, which means they're going to talk forever if you let them.
I'm not going to permit you to ask a question like this of this or any other witness. We have got to rein this thing in.
MR. YOUNG: Yes, Your Honor.
THE COURT: You are repeating a whole lot of stuff. Any question that begins, "Can you remind the jury," means that it's already been said once. I'm going to start jumping in.
MR. YOUNG: Yes, Your Honor.
THE COURT: I don't want to embarrass you or anybody else, but we've got to move this along.
MR. YOUNG: Yes, Your Honor.

THE COURT: Okay?

MR. YOUNG: Your Honor, if it's okay, may I just tell them a brief takeaway.

THE COURT: The report is in evidence.

MR. YOUNG: Okay.

THE COURT: If you have a specific question that does not repeat what he's already said, which I can't believe, then ask it. But, no, you can't ask an open-ended question like that of a Ph.D.

MR. YOUNG: Yes, Your Honor.

MR. JOSEPH: If brevity is the soul of wit, let us have soul today.

THE COURT: Yes.

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

Q. (BY MR. YOUNG) Dr. Parker, I'm going to withdraw that last question I asked you, and I'm going ask you a different final question, then I'll pass you off.

I believe you previously stated that you had written this report about a year and a half ago or so.

Has anything changed in your mind since you wrote that report about the evaluations or assertions you made in it?

A. About the evaluations or the assertions, no.

As I reread it, I sometimes thought I could phrase a phrase a little better or I saw a typo or two or things like

that, but nothing of substance.

MR. YOUNG: Okay. I'm going to pass the witness. Thank you, Your Honor.

THE COURT: Mr. Joseph?

MR. JOSEPH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOSEPH:

Q. Dr. Parker, you've never served as a university president, have you?

A. No, I have not.

Q. Okay. Have you ever served as a vice president for academic affairs?

A. No, I have not.

Q. Have you ever served as the dean of a college?

A. No.

Q. Okay. Dr. Parker, do you agree that professional people in the same workplace can have legitimate differences of opinion without it being discriminatory?

A. Yes.

Q. Dr. Parker, I can't remember if you said this or not, but is it your opinion that student evaluations should play a role in an applicant's tenure and promotion portfolio packet?

A. It depends on how they're presented.

Q. Okay. And would you agree with me that, if a professor only submits positive evaluations, that may be showing a

skewed picture to the committee?
A. May be?
Q. Okay.
A. Hold it. Excuse me. I'm asking if that's what you're asking. It may be -- I mean, I don't understand how to answer that question.
Q. Let me ask --
A. If you ask me whether it is or it isn't, I can answer. But I don't know how to answer "may be."
Q. Okay. Let me see if I can focus it a little bit.
A. Sure.
Q. Would it be your opinion that it is a more accurate depiction of a professor if they include both positive and negative student evaluations in their promotion packet?
A. Can I take a little flexibility to try and answer your question?
THE COURT: No. Answer the question.
THE WITNESS: I don't know how to answer that question. It's not phrased in a way that I understand as matching actual circumstances.
Q (BY MR. JOSEPH) Okay. Have you ever seen a portfolio that includes both positive and negative student evaluations?
A. Yes.
Q. Okay. Did you find that more helpful than a portfolio that only included, for example, positive evaluations?

A. Yes.
Q. Okay. Dr. Parker, did you offer Dr. Tudor a job at your university?
A. No.
Q. Okay. And just so we're clear, has she applied for a job at your university?
A. I don't know.
Q. Okay. If she did, would you hire her?
A. If she did when?
Q. If she applied for a job in 2009, would you hire her at your university?
A. No.
Q. Okay.
A. Well, excuse me. It depends on the job.
Q. Okay. If she were applying for the position of tenure track professor in 2009 at your university, would you hire her?
A. No. She would be too advanced.
Q. Okay. In 2008 and 2009, Dr. Tudor submitted a tenure and promotion portfolio, didn't she?
A. I don't know.
Q. Okay. Would it surprise you to learn that she did?
A. No.
Q. Would it surprise you to learn that she withdrew that application?

A. No.
Q. Were you on any of Dr. Tudor's tenure and promotion committees?
A. No.
Q. Were you given Dr. Tudor's 2008 application portfolio in your review?
A. No.
Q. Okay. Did you actually sit down and review Dr. Tudor's tenure and promotion packet as it was submitted to the 2009 committee?
A. I don't know. I don't know what was submitted.
Q. So it's fair to say that you don't have any idea what the 2009 application committee actually looked at, do you?
A. It's not fair to say that I don't have any idea.
Q. Would it be fair to say that you'd have an incomplete idea?
A. Yes.
Q. Okay. Do you have a complete copy of Dr. Tudor's 2009 application portfolio anywhere?
A. No.
Q. Okay. Have you ever seen one?
A. No.
Q. Is it your testimony today that the materials that you reviewed to prepare your expert report in this case looked exactly like Dr. Tudor's tenure and promotion portfolio as it

was received in 2009 by that committee?
A. No.
Q. Okay. Dr. Parker, on page 16 of your report, you state that, quote, Dr. Tudor's 2009 portfolio listed 11 submitted article manuscripts.
But you don't actually know for certain what was in her portfolio in 2009, do you?
A. I know that it listed 11 submitted manuscripts.
Q. How do you know that? Because you actually saw the portfolio in 2009?
A. I saw that part of the portfolio that said that.
Q. But, again, you don't know what the complete portfolio held; correct?
A. I don't know everything that was in the portfolio.
Q. Okay. Dr. Parker, does neatness and organization count in tenure and promotion applications?
A. I'm not sure how to even answer that question. I -- it's not an issue that I've ever heard coming up.
I suppose you can imagine a hypothetical case where that might be -- might come up as an issue, but I would think somebody would -- if that was an issue, somebody would address it before a decision was made.
Q. Is that because most people applying for tenure and promotion understand what's expected of them?
A. Most people? Yes, most people do.

Q. Okay.
A. "Most" meaning more than 51 percent -- 50 percent. I don't know that everybody understands.
Q. Okay. I would agree with you. Most -- not necessarily everyone understands.
In the review of the tenure and promotion packets, if the dean of the college in this case will testify that she expected all portfolios to match a certain format, would you agree that that's a reasonable expectation?
A. If the candidates are informed of that.
Q. Okay. And if the candidates deviate from that, would it be expected that that would count against them?
A. In my experience, they frequently do deviate from it. They're nervous, and they don't process everything they're told.
Q. Okay. So mistakes happen; right?
A. Yes.
Q. Okay. So without Dr. Tudor's complete 2009-10 portfolio, do we have any idea whether or not Dr. Tudor's portfolio complied with the dean's technical and formatting requirements?
A. I have not seen those requirements, so I can't comment on that.
Q. Okay. Dr. Parker, did you read Dr. Tudor's candidate letter in support of application for tenure and promotion?

A. When?
Q. Well, the one that was submitted purportedly with her 2009 application.
A. Yes.
Q. Okay. Do you have a copy of that in front of you? Just for reference, it is Plaintiff's Exhibit 1. I'm not sure what book you have in front of you, sir.
A. I believe I saw that portfolio. I don't remember it being that number. It's one of these.
MR. YOUNG: Mr. Joseph, it's the small white binder. It should be the first exhibit in it.
THE WITNESS: Here?
MR. YOUNG: Yes. I'm just trying to help you out.
MR. JOSEPH: Thank you, Counsel. Anything to speed this along and help the witness get where he needs to be.
THE WITNESS: Do you want me to find the copy?
Q. (BY MR. JOSEPH) Yes, if you don't mind, please, sir.
It's -- it has been entered into evidence. So if it's all right with Her Honor, I'd like to put it on the overhead. This may help things -- may help you find it.
A. Here it is.
Q. Okay. You found it, sir?
A. Yes. It's probably easier to read here than on the screen.
Q. Okay. Now, do you know if this particular letter was

included with Dr. Tudor's 2009 and '10 application?
A. It's part of the application as I have the application here.
Q. Okay. And just to clarify, you were provided that by counsel for plaintiff; correct?
A. I don't know the legal terms to be able to answer that question.
Q. Okay. Let me ask you this way: You didn't get it from the university, did you?
A. That is correct.
Q. Okay. Do you see in that letter, which is part of Plaintiff's Exhibit 1, it says in the first line -- doesn't Dr. Tudor write, "I believe that every worker deserves tenure and promotion in exchange for the sacrifice of one's life," and then goes on, "opportunities, et cetera."
Did I read that correctly?
A. Actually not.
Q. Okay. Would you like to read that for me, please?
A. "I believe that every worker deserves tenure and promotion in exchange for the sacrifice of years of one's life and opportunities, et cetera."
Q. Okay.
A. Sorry. You skipped some words and --
Q. That's okay. That's okay. I appreciate the clarification.

But mere sacrifice of one's years and opportunities isn't how tenure works, is it?

A. You're correct.

Q. Okay. If you'll look with me at the second paragraph in that letter, Dr. Tudor writes that she has requested letters of support from, quote, "three colleagues whom I most admire and respect at Southeastern."

Do you see where I am, sir?

A. Yes, I do.

Q. Then she goes on to list the department secretary, a full-time Spanish instructor, and a full-time history instructor.

Do you see that?

A. Yes, I do.

Q. Now, do you have any understanding, sir, if either of those two instructors were tenured members of the faculty?

A. I would expect they could not be.

Q. Okay. And why would you expect that?

A. Because there's nothing to indicate that they are tenure track faculty members, which would define those who are eligible for tenure according to standard practice and Southeastern's rules.

Q. Okay. In terms of the department secretary, do you have any understanding about whether or not she was a tenured member of the faculty?

A. She would not be.
Q. Okay. And why do you make that conclusion, sir?
A. Because she's not a member of the faculty if she's a secretary to the faculty.
Q. Okay. Now, isn't part of being a good writer knowing your audience?
A. Yes.
Q. And who was the intended audience of this letter, as you understand it?
A. There would be a series of levels that would read it at different parts of the process, and I don't know exactly who is participating at each level.
Q. Would you agree with me probably the first level would be a departmental committee?
A. That's typical.
Q. Okay. And who typically sits on a departmental committee?
A. Faculty in the department.
Q. And is it restricted to tenured faculty typically?
A. Yes.
Q. Okay. And above the faculty committee, do you know what the next level is for review of tenure and promotion at Southeastern?
A. I have not seen a document laying this out. So I could surmise it from the other documents. But various levels of

administrators.
Q. I don't want you to speculate. I just was curious if you had seen such a diagram.
If you would, drop down in that same letter where we were just looking, sir, and you'll find a sentence towards the bottom about three lines up that begins "their letters."
Would you mind reading that to the jury, please.
A. The whole sentence?
Q. Yes, sir.
A. "Their letters in support of my candidacy for tenure and promotion demonstrates a generosity of spirit that shames a policy that denies them the same benefit."
Q. Now, is there any grammatical error in that sentence, sir?
A. Yes.
Q. What is that grammatical error?
A. That "Their letters in support of my candidacy for promotion demonstrates," so that's what we call an agreement error.
Q. That would be that the noun or the subject doesn't agree with the verb; is that correct?
A. That's correct.
Q. Do you think it would have been important to a reviewing member of a committee if they had seen subject/verb disagreements in the candidate's opening letter?

A. Important? No.
Q. No? Okay.
Ideally, wouldn't a cover letter be free of grammatical errors in an English Ph.D.'s application for tenure?
A. Ideally, it would.
Q. Okay. Did you find any grammatical errors in the cover letter of Dr. Cotter-Lynch?
A. I don't remember.
Q. Okay. What about Dr. Spencer?
A. I don't remember.
Q. What about Dr. Barker?
A. Barker, I don't remember.
Q. Okay. Now, you alluded to it earlier, but do you have an understanding, sir, that the tenure and promotion review process at Southeastern is a multilevel process?
A. Yes.
Q. And is that the case at your own university?
A. Yes.
Q. Okay. Feel free to take a drink. I don't want to rush you.
Is that the -- is the fact that a tenure and promotion process is a multilevel process pretty standard at American universities today?
A. Yes.
Q. Okay. Do you know, other than perhaps the departmental

committee, any of the steps of review in the process at Southeastern as it stood in 2009 and '10?

A. There's some descriptions of it in the policies and procedures manual. I don't remember all of those details, but it goes through the department committee, then the department head and then -- or chair, and then it goes to a dean, vice president, and the president. Something like that, yeah.

Q. That's pretty good, sir.

Do you concede that an administration has a role to play in the tenure and review process?

A. "Concede" is a loaded word. Do I understand or accept that? Yes.

Q. Okay. Very good.

And in your professional opinion, is it possible for people in the same workplace at different levels to have legitimate differences of opinion without it being discriminatory?

A. Yes, it is possible.

Q. Okay. Dr. Parker, one of the things you testified about earlier was about peer review, and you said, "Outside judgment is the gold standard."

Do you remember that testimony, sir?

A. Yes.

Q. Okay. Isn't part of the reason that a tenure and promotion portfolio application is judged not only by members

of the applicant's department but also by other levels above to create part of that independent review that you lauded earlier?

A. It's not part of that independent review, but that is -- part of the reason is to have -- I don't know about independent, but to have an additional perspective.

Q. An additional perspective is valuable in this process, isn't it, sir?

A. Sometimes -- yes. Yes, it is.

Q. Okay. I'm sorry. Did you have something, sir?

A. You said "an additional perspective."

It can be, let's say. It depends on the perspective.

Q. Okay. Fair enough.

Dr. Parker, you testified earlier about a worksheet plaintiff's counsel asked you about regarding Dean Scoufos and three ratings that the dean, she gave to Dr. Tudor during that 2009 process.

A. Yes.

Q. And you remember, you also were questioned about and testified about a similar worksheet by then-vice president for academic affairs Dr. McMillan; correct?

A. Yes.

Q. I believe your testimony was that somehow those -- that each of those worksheets was inconsistent with the department assessment; is that correct? Or was it inconsistent with your

assessment?
A. It was inconsistent with the overall university's assessment of the other candidates.
Q. Okay. But they were consistent with one another, weren't they?
A. Those two from Scoufos and McMillan?
Q. Yes, sir, the dean and the vice president both.
A. Yes, they were.
Q. And you indicated earlier that there are a lot of people -- I believe -- and correct me if I'm misquoting you, but I believe you testified that there are a lot of people that apply for jobs as professors in higher education and that makes each position very competitive.
Was that a fair statement of your testimony?
A. Yes.
Q. Okay. So it's really important that we get the best professors for each position; isn't that correct?
A. Yes.
Q. Particularly if we're being good stewards of state resources; correct?
A. That's correct.
MR. JOSEPH: If I may have a moment, Your Honor, with counsel.
THE COURT: Yes.
MR. JOSEPH: Dr. Parker, thank you for your time.

Nothing further, Your Honor.

THE COURT: Redirect?

MR. YOUNG: Thank you, Your Honor. If we could approach very briefly.

THE COURT: All right.

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

MR. YOUNG: So, Your Honor, during Mr. Joseph's cross, he asked Dr. Parker whether it is possible for administrators at a university to have a different evaluation of portfolios than others without it being discrimination.

There's a motion in limine filed by defendants that -- seeking to limit Dr. Parker's testimony to not talk about the ultimate issue of discrimination, simply the merits of these portfolios.

I wanted to approach to ask permission to ask one rehabilitation question, just the converse of the question already asked, to balance things out, whether it's possible that discrimination is a reason to deny tenure. That's the only question I would like to ask.

THE COURT: Okay.

MR. YOUNG: Thank you, Your Honor.

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

MR. YOUNG: We'll try to make this really quick,

Dr. Parker, so you can get home.

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Dr. Parker, is it usual that someone would give any weight to a withdrawn tenure application in the evaluation of a new tenure application?

A. I don't know why anyone would.

Q. Have you ever evaluated a tenure case where you did that?

A. No.

Q. Do you know of one that your colleagues did, where they did that, they gave weight to a withdrawn application from a prior year?

A. No.

Q. Dr. Parker, have you ever recommended that someone not get tenure because their application wasn't neat enough?

A. No. I would just ask them to make it neater.

Q. So that's not a significant issue when it comes to tenure application evaluations?

A. Not at all.

Q. Have you voted to grant someone tenure as part of a committee or an appeals board where the application wasn't neat?

A. Certainly.

Q. More than one?

A. It's so trivial that I have no idea how many, but it's

not unusual.

Q. Okay. Dr. Parker, I believe on cross you were asked questions about letters of recommendation from nontenured professors.

Is it typical for a candidate to have letters of recommendation from tenured professors in a department in which they're applying for tenure?

A. Different schools have different terminology. So there might be letters of recommendation; there might be reports.

So is it typical for them to have -- can you say that again? From nontenured professors?

Q. Yes.

A. No, it is not typical.

Q. Would the existence of -- sorry. Strike that.

Would the presence of letters of recommendation from nontenured professors in a tenure application portfolio weigh against that portfolio's overall merits?

A. I -- it's just not substantive. I would expect someone would be told "Take that out and put something else in" before it even got to the next level.

But if they didn't, it would look odd, but it wouldn't be -- it wouldn't address the issues of the case.

Q. And that's because there are tenured professors on the actual committee that meets?

A. That's right.

Q. Okay. Now, you were also asked a question that I'm going to ask the inverse of.

I believe you testified on cross that people can have legitimate differences of opinion on the same portfolio; correct?

A. Yes.

Q. Is it possible that, where there is a difference of opinion, that discrimination has factored into that decision?

A. Is factored into the --

Q. I'm sorry. Let me withdraw that question and ask it in a way that makes sense. Then we can finish up. Okay.

Is it possible that there can be a difference of opinion because a decision maker's discriminatory bias is factored into their decision?

MR. JOSEPH: Objection. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I'm sorry. I can answer the question?

THE COURT: Yes, you may.

THE WITNESS: Of course it's possible.

Q. (BY MR. YOUNG) Last question, Dr. Parker.

When professors in the same department go up for tenure at the same time, are they in competition with each other to get tenure?

A. Not usually. There might be some schools where that's done sometimes. We make a point of telling our candidates

that they are not, but I've heard just in lore that sometimes that happens at some schools. I've never seen it happen, but it might happen.

Q. Any evidence that you were presented with that indicated that professors at Southeastern in the same department, when they went up for tenure, were in competition with each other?

A. I don't know anything about that.

MR. YOUNG: Okay. Thank you, Dr. Parker. That's all.

THE COURT: Redirect. I mean, recross.

MR. JOSEPH: Thank you, Your Honor.

RECROSS-EXAMINATION

BY MR. JOSEPH:

Q. Dr. Parker, one of the portfolios you indicated that you reviewed as a part of your review process was Dr. Mark Spencer's application; is that correct?

A. That's correct.

Q. Now, that was from 2006, wasn't it?

A. I believe so. I'd have to check to be sure.

Q. Well, I'll represent to you that it was, according to your report, 2006. Now, that's quite a few more years before Dr. Tudor's application, is it not?

A. I wouldn't call three years "quite a few."

Q. So you agree with me that her application in 2009 is the one that you should be focusing on?

A. I didn't say that.
Q. Okay. What are you saying about that?
A. I read each application and judged -- I focused on all the applications that I read.
Q. Okay. And I believe, just to clarify, you said you were not provided with Dr. Tudor's 2008 application which she withdrew; is that correct?
A. That is correct.
Q. Okay. Dr. Parker, you said it is not typical to have letters from a nontenured professor in your portfolio.
Is that correct?
A. Yes.
Q. I just wanted to make sure that was clear.
Okay. And you said if they had such letters, you might just tell them to take it out. Is that what you said?
A. Yes.
Q. Okay. Now, who would, in that case, be the person telling the applicant to take out the letters?
A. I would expect it would ordinarily be other people in that person's department.
Q. And that would be --
A. If it didn't happen at that level, I would expect it would then happen at the next level.
Q. The dean or something?
A. Maybe a secretary before the dean, yes, or perhaps a

dean.
Q. Okay. Would that be, then, something that you would regard as professional advice from one educator to another?
A. Yes.
Q. And would not it behoove the applicant to follow that professional advice?
A. Yes.
Q. Okay. Dr. Parker, in your report, you didn't actually make any findings of discrimination, did you?
A. That is correct.
Q. Okay.
MR. JOSEPH: No further questions.
Thank you, Your Honor.
THE COURT: You may step down.
(Witness excused.)
THE COURT: Call your next witness.
MR. YOUNG: Meg Cotter-Lynch. We need to go get her from the witness room, Your Honor.
THE COURT: All right.
Please step right up here next to the witness box, face the clerk, and be sworn.
(Witness duly sworn.)
THE COURT: Be seated.
WHEREUPON, MEG COTTER-LYNCH after having been first duly sworn, testifies in reply to the questions propounded as

follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Just checking to make sure. Good afternoon.

A. Good afternoon.

Q. Dr. Cotter-Lynch, do you work at Southeastern?

A. I do.

Q. When did you first start working at Southeastern?

A. I started in August of 2005.

Q. I'm just going to ask you to slow down a little bit and maybe move that microphone a little closer. You don't have to hunch.

A. Yes, I do. I started working there in August of 2005.

Q. What was your job title at hire?

A. At hire, I was hired as assistant professor of English.

Q. Were you on tenure track at hire?

A. Yes, I was.

Q. What is your current job title?

A. My current job title, I am professor of English and director of the honors program.

Q. Can you explain to the jury what the honors program is?

A. Yeah. It's an academic program across different majors. We bring in 40 highly able students a year and give them cocurricular activities, specialized curriculum, stuff like that.

Q. I'm going to ask you to slow down a little bit.
A. Oh, sorry.
Q. I know.
Are you considered a member of Southeastern's administration?
A. I kind of have a weird hybrid position.
I'm a tenured full professor of English, and I have a 50 percent course reduction to serve as honors director. So technically I'm 50/50 faculty/administration.
Q. Okay. Do you know Rachel Tudor?
A. Yes.
Q. How do you know her?
A. We worked together for years, we're good friends. I first met her at my interview, actually, when I first interviewed for the job.
Q. Was she on the hiring committee or --
A. I honestly don't remember. It's a small department, so I met everybody. But I do remember I had a -- kind of a break, where I was sitting in the faculty lounge area in the department, and she very kindly came in and answered some of my questions about the university. So that was the first time I met her.
Q. 2005, that was before her gender transition?
A. Yes. Yes.
Q. Okay. To your knowledge, how many transgender people

have worked at Southeastern? You've been there since 2005.
A. To my knowledge, Rachel is the only one.
Q. So no one before Rachel, no one after?
A. Not that I know of.
Q. Okay. Let's talk a little bit about Rachel's gender transition.

Can you tell me in your own words what you remember?
A. Sure. Actually, I remember it pretty clearly. It was August of 2007. It was my first day back after maternity leave. My oldest child was born in the spring of 2007.

She came around and handed me a letter, which she apparently handed to everyone in the department, that explained that she was transgender and she would be transitioning at the start of the school year.
Q. Can you look in that small white notebook in front you.
A. Uh-huh.
Q. And there should be a little tabbie on the side that says "P-201." I think it's towards the end.
A. Yes.
Q. Do you recognize this document?
A. Yes.
Q. What is it?
A. It's the letter that she gave me in August of 2007.

MR. YOUNG: Your Honor, I'd like to move to enter Plaintiff's Exhibit 201 into evidence.

THE COURT: Any objection?

MR. JOSEPH: No objections, Your Honor.

THE COURT: It will be admitted.

MR. YOUNG: Okay.

Q. (BY MR. YOUNG) Now that it's been admitted, I'm going to put part of the letter on the overhead.

Okay. So you said that you recall that Dr. Tudor gave folks in the department this letter?

A. Yes.

Q. Do you know if she gave everyone in the department this letter?

A. I believe she did.

Q. Do you know how she presented the letter to other people in the department?

A. I don't. I know she knocked on my office door and handed it to me. I assume she did something similar with the other members of the department.

Q. So I have a specific question for you.

Do you have any recollection of how the other female members of the English department responded to Rachel's gender transition?

A. Yes. When we got the letter, we all got together and agreed that we wanted to invite her to lunch to show that we supported her and we were on her side and make sure that she felt comfortable.

From the letter, you can see that she was very kind of hesitant; she didn't want to bother us; she was worried about the reaction. And we wanted to make clear to her that she was our friend and we were all going to go to lunch together.

Q. Did you all go to lunch together?

A. Yes.

Q. Do you recall if Dr. Tudor's gender transition was an issue for anyone in the English department?

A. Not that I remember. There was basically acceptance without much discussion amongst my colleagues.

Q. If there had been a problem, do you think you would remember it?

A. Yes.

Q. Do you recall whether there were any problems with any of the students that took classes in the English department with regards to Dr. Tudor's gender transition?

A. Not to my knowledge at all. I did have a few students come by my office and ask questions. They had not encountered a transgender person before, so they came and said, hey, what is this?

But it was always very polite and seeking information. I never heard anyone say anything ugly at all.

Q. Okay. Let's move on and talk a little bit about Southeastern's tenure policies when Dr. Tudor worked there. I'm trying to give you a timeline there.

Do you remember roughly what the tenure policies were when Dr. Tudor was there?
A. Yes.
Q. When did you apply for tenure?
A. The same year as Rachel. She and I went through the process at the same time in the same department.
Q. So Dr. Tudor applied twice at least.
A. Sorry.
Q. What year did you --
A. I applied in 2009-2010.
Q. Okay. And you feel like you have a pretty solid recollection of what those policies were?
A. Yes.
Q. Okay. In 2009-2010, what were the areas that a candidate had to qualify in to get tenure?
A. Teaching, scholarship, and service.
Q. And, to your recollection, in how many of those areas of teaching, scholarship, and service did a candidate have to be excellent in?
A. Two.
Q. Are you sure about that?
A. (Nods head).
Q. Why are you so sure?
A. Well, I had multiple conversations with Dr. John Mischo, who was at the time department chair, prior to going up for

tenure. And that was always -- you were expected to be competent in everything but to excel at two.

Q. Okay. I'm going to have you look in that binder in front of you. It's going to be towards the beginning at Plaintiff's Exhibit 2. When you get there, I want you to tell me whether you recognize this document.

A. Yes.

Q. What is it?

A. It is the qualifications or the kind of expectations to earn promotion and tenure in the English department.

I was given this document actually at my job interview. When I asked about what the expectations were, I was given this.

MR. YOUNG: I'm going to move to enter Plaintiff's Exhibit 2 into evidence.

MR. JOSEPH: I'm sorry. What year was that?

THE WITNESS: I was given it at my job interview in 2005.

MR. JOSEPH: Okay.

We have no objection, then, Your Honor.

THE COURT: Admitted.

Q. (BY MR. YOUNG) I'm just going to put the first page up here. That's a multipage document; is that right, Dr. Cotter-Lynch?

A. Yes.

Q. Okay. So can you tell me why you got this document at your job interview?

A. Sure. When you get a tenure-track job, the -- what it means is that you have a probationary period, is what it's called, between five and seven years, depending upon the university, where you are basically being evaluated for tenure.

And, at the end of that time, you are evaluated by your colleagues, and they decide whether or not to give you promotion and tenure.

So a pretty standard question. I was certainly trained all through school that when you interview for a job, you ask for those expectations so you know what you're working towards when you have the job.

Q. To your understanding, were the criteria that are delineated in Plaintiff's Exhibit 2 the criteria for the English department in effect in 2009?

A. The English department was still looking at them.

At some stage, Dr. Minks, who was president, put out a kind of blanket statement that no one was to use departmental qualifications. We were only supposed to look at the Academic Policies and Procedures Manual, which --

MR. JOSEPH: Your Honor, objection. Based on hearsay as to what the president's statement was.

THE COURT: Overruled.

Q. (BY MR. YOUNG) You can continue.
A. Okay.
So that was a cause for concern amongst faculty because we'd been including Rachel, but including other people on the tenure track that we'd been hired and given these qualifications, and then were told that the president didn't want departmental specifications.
But, within the department, we were told that if you follow these, you'll be fine. Don't worry about it.
Q. Can you explain to the jury what the relationship was, to your understanding, in 2009, as to basically the relationship between these department criteria and those policies in the Academic Policies and Procedures Manual?
A. Sure. The Academic Policies and Procedures Manual is for all faculty in all different disciplines. And what's considered, for instance, exemplary research is different whether you're a chemist or an English professor or an artist; right?
So these departmental guidelines are meant to give some specificity. The ones in the Academic Policies and Procedures Manual are really general. They're "you should be good at teaching, you should be active in scholarship, you should be a good citizen in the university."
But these give more specification that's discipline-specific. What does that look like in the case of

an English professor?
Q. I'm going to ask you to look at another document that's in that binder. It will be marked Plaintiff's Exhibit 3. So it should be right after that.
A. Uh-huh.
Q. Do you recognize this?
A. Yes. This is the Academic Policies and Procedures Manual.
MR. YOUNG: Your Honor, I'd look to move to enter Plaintiff's Exhibit 3 into evidence.
MR. JOSEPH: No objection, Your Honor.
THE COURT: Admitted.
MR. YOUNG: Thank you.
Q (BY MR. YOUNG) And now that it's been admitted into evidence --
MR. JOSEPH: Actually, one point of clarification: I think the witness's testimony was that it was the full manual. This appears to be just an excerpt; is that right?
THE WITNESS: Yes. I'm only looking at part of it.
MR. JOSEPH: Okay.
No objection, Your Honor.
Q. (BY MR. YOUNG) So, Dr. Cotter-Lynch, I'm going to draw your attention to -- I'm just going to be fancy here with this if I'm doing this right -- to the policy that starts on page 1 of that exhibit and goes on to the second page, but the jury

should have the benefit of both because I put them together. Okay?

To your recollection, what is Policy 3.7.4?

A. It's delineating what the role of the faculty is versus the administration, where the faculty have kind of primary responsibility and where the administration has responsibility.

Q. Okay. And I want to draw your attention to the last paragraph on that first page, and I believe it continues on onto the last page.

Are you familiar with this section?

A. Yes.

Q. What does this section of the policy mean to you?

A. So the policy says that "Faculty status and related matters are primarily faculty responsibility. This area includes appointments, reappointments, decisions not to reappoint, promotions, and granting of tenure and dismissal."

So this means that it's expected that you're evaluated by your peers. So when you're going up for promotion or tenure, there's a committee process. Your peers in the department -- and, in some cases, outside the department if your department is really small -- are asked to evaluate your work because they're the people who are -- they see you every day, they work with you every day, they know what you're doing best. So this lays that out.

It's also, I'll add, taken almost verbatim from the American Association of University Professors. It's called the red book. It's their book of standard practices in the profession nationwide.

So this language is almost exactly what's there, and then it was put in our procedures manual, which is what you would expect. It's a national standard.

Q. To your recollection, was Policy 3.7.4, the version I have projected right there and the one in front of you, was this policy in effect in 2009?

A. Yes.

Q. You're pretty sure of that?

A. Yeah, I'm sure it was in effect. I'm not sure it was followed.

Q. We'll get to that later.

Under your understanding of this policy, if administrators did not agree with the decision of a department on a tenure application, what was supposed to happen?

A. The end of that paragraph says it pretty clearly.

"The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."

So it's rare for the administration to overturn what the

faculty has said. It very rarely happens. And if they do, they're supposed to explain why.

Q. To your understanding, was that the pretty universal standing at Southeastern in 2009?

A. Yes. In 2009, I was not aware of any situation in which the administration had overturned the faculty.

Q. But in such a situation, this would be the rule of governance?

A. Yes. If they did, they were supposed to explain why.

Q. Okay. Can you explain your understanding of how someone would go about complying with this rule?

What sort of explanation is supposed to be given?

A. Well, I can tell you, in my own tenure process, at every stage.

So it was -- first, a departmental committee looks at your qualifications. Then, at that point -- things have changed a bit.

So it started with the department committee. Then it would go to the department chair, then the dean, then the vice president, then the president.

And at each stage there's a -- elsewhere in the Academic Policies and Procedures Manual, it lays out what that process is and when everybody is supposed to have their say.

And I got letters at each stage explaining the evaluation of the people who were evaluating me. We thought you were

good at this, these were areas of weakness. I got explanatory letters during that process.

Q. Who were the administrators who gave you those explanatory letters in 2009 and 2010?

A. The department chair was John Mischo, the dean was Lucretia Scoufos, and the vice president was Doug McMillan.

Q. Did you get a letter from President Minks?

A. I honestly -- I'm sure I did at some stage, but I honestly don't remember.

Q. But you do remember two detailed letters from McMillan and Scoufos?

A. I know I got detailed letters from Mischo and Scoufos. I don't remember, off the top of my head, what the one from McMillan said. But I certainly felt like I was getting feedback along the way.

Q. And you were approved at every stage?

A. Yes.

Q. Okay. I want to take you back to the beginning of your tenure process in 2009.

Did you meet initially with Dean Scoufos?

A. Yes.

Q. Was it one meeting?

A. It was one quite long meeting.

Q. Okay.

A. We went maybe an hour and a half at least.

Q. Can you briefly summarize what happened during that meeting?
A. Yes. She gave me exceptionally detailed instructions for how to compose my tenure portfolio.

She kind of walked me through what basically every page should have. She told me what font to use. She told me what store to go to to buy which shade of blue binder that would match the school colors. It was really detailed.
Q. Did you ask questions during that meeting?
A. Yes, I did. And I took extensive notes, which at some stage the EEOC took.

But, yeah, I asked questions about kind of exactly what should go in each section, how much detail I should provide, stuff like that.
Q. Would you say that you had substantive questions, things beyond just how the binder looks and where the dividers go?
A. My questions were mostly about stuff like she wanted me to include the conference -- the conference schedules for conferences that I had presented at. And I would ask things like, it's 200 pages long, do you really want all 200 pages?

And she kind of dialed back a little bit and said if you just photocopy the parts where your name is mentioned, that's good enough.
Q. Do you recall asking any questions that Dean Scoufos didn't answer?

A. No.
Q. Did you feel like Dean Scoufos was trying to help you?
A. Yes.
Q. Now, at the beginning of your 2009 application cycle, you and Dr. Tudor were in the same department, the English department; right?
A. Yes.
Q. Did you have any feeling that you were in competition with other candidates for tenure who were going up at the same time?
A. Oh, no, not at all. I mean, the expectation and hope is that we all get tenure. This year, we have two people going up from the same department. The expectation, hope is that they both will get tenure.
Q. Has that always been the case while you've been at Southeastern?
A. Yes, definitely.
From the department's standpoint, we would like to keep good people. So our hope is to -- our hope is to be able to give tenure to our colleagues.
Q. Have you ever heard an administrator at Southeastern say otherwise?
A. What do you mean by "otherwise"?
Q. Suggest or state outright that people in the same department going up for tenure at the same time are in

competition with one another?
A. No.
Q. Have you discussed tenure issues with administrators at Southeastern?
A. Well, before I went up, I discussed kind of my own process, what the expectations were, how that was going to go.
After tenure, I've been active in trying to rewrite some of the policies to hopefully make them better and make sure more bad things don't happen.
Q. Okay. We'll also get to that later.
A. Yeah.
Q. Dr. Cotter-Lynch, I just want you to look at Plaintiff's Exhibit 163. I believe it is in the teal binder to your left. And I believe there's a tab that will say "163." You just need to look at the first page.
A. Okay.
Q. Do you recognize that first page?
A. Yes.
Q. And what's that document?
A. It looks like my tenure portfolio.
Q. From the 2009-10 cycle?
A. Yes, this is my -- the second page clarifies that. It's my tenure portfolio from 2009-2010.
Q. Now, do you recall at some point keeping a copy of that portfolio?

A. Yes. I've, to this day, kept it in my home.
Q. Is that usual for a professor, to keep a copy of an old application?
A. No. Most people -- what we call cannibalize it. I mean, it's all --
Q. You can put it down.
A. It's all documents that we use; right? So syllabi, articles we've written, stuff like that. So it's not unusual to pull stuff out of it and use it.

Most people, when they go up for full professor, which is the next available promotion, most people, I think, like, actually use the same binder and the same tabs and just update it to be able to basically simplify things.

Q. Why didn't you -- I think the word you used was "cannibalize."

Why didn't you cannibalize your 2009 portfolio?
A. It was suggested to me by Claire Stubblefield that I might want to secure my tenure portfolio in case of legal action. So I did.
Q. Do you know in what context that statement was made?
A. In the investigation of a complaint that Rachel had made about her process.
Q. Okay. Let's talk a little bit about what you know about Dr. Tudor's attempt to apply for tenure in 2010. So this was after you already got tenure yourself.

Easy question: Do you recall if Dr. Tudor tried to apply for tenure in 2010?
A. Yes.
Q. How did you first learn about that?
A. I mean, I think I was always aware that she was going to. I guess in -- so the way our procedures work, you can choose to go up in your fifth, sixth, or seventh year.
Rachel started one year before I did. So I went up in my fifth year, which was her sixth year. So -- and I was aware that she had withdrawn early on in the prior year and was planning on going up the same year as me.
Q. At some point in the 2010-11 cycle, did you learn that Dr. Tudor was banned from reapplying for tenure?
A. Yes.
Q. Okay. I'm going to have you look in that binder, the small one, the white one --
A. Okay.
Q. -- at something that should be marked P-84, Plaintiff's Exhibit 84.
MR. YOUNG: And I believe this has already been admitted into evidence.
THE COURT: Yes.
Q. (BY MR. YOUNG) Okay. Dr. Cotter-Lynch, do you recognize Plaintiff's Exhibit 84?
A. Yes.

Q. When did you first see it?
A. I believe Rachel showed it to me in October of 2010.
Q. When you first saw this document, did you think there was anything odd about it?
A. Yes.
MR. JOSEPH: Objection, Your Honor. This witness isn't qualified to give opinions about this letter.
THE COURT: The question is permissible.
THE WITNESS: I thought it seemed ridiculous because what I saw in the letter did not at all match what I had observed of Rachel's work and what I knew of what had happened.
Q. (BY MR. YOUNG) Now I want to draw your attention to a particular paragraph in this letter.
I'll let the jury find it so I don't waste their time.
In this letter, does it say something to the effect of that allowing Dr. Tudor to apply in the 2010 cycle would, quote, unquote, inflame the relationship between faculty and administration?
A. Yes.
Q. What do you think about that statement?
A. I find it laughable -- I did then; I do now -- for two reasons.
One is the faculty and the administration did not get along at that stage. Dr. McMillan and Dr. Scoufos were not

popular. And it was difficult to believe that things would get worse, and then, of course, they did because the faculty was so upset that Rachel was not allowed to reapply.

So, in fact, not allowing her to reapply made things worse.

Q. Now, Dr. Cotter-Lynch, was it your understanding at the time of this letter, October 2010, that Southeastern's rules allowed professors to reapply for tenure?

A. That was my understanding.

Q. Did you have any reason to think otherwise at that point --

A. No.

Q. -- in time?

Had you ever heard of another professor not being allowed to reapply?

A. No, I had never heard of another professor being barred from reapplying.

Q. Dr. Cotter-Lynch, are you familiar with something at Southeastern called the faculty appellate committee?

A. Yes.

Q. Okay. Do you know whether Dr. Tudor filed any grievances with the faculty appellate committee?

A. Yes, she did.

Q. Do you know if she filed one in response to Dr. McMillan's letter projected up there?

A. Yes, she did.
Q. Did you write a letter to the faculty appellate committee in support of Dr. Tudor?
A. Yes, I did.
Q. Okay. I'm going to have you look at Plaintiff's Exhibit 170. It's also in that binder in front of you.
THE COURT: Before you do, we're going to break for lunch.
I will, of course, instruct the jury not to discuss the case or permit others to discuss it with you.
Please be back -- if you want to eat your lunch over here, you're welcome to; but if you don't, if you leave the fifth floor, then be back in the jury assembly room on the first floor at 1:30.
We'll be in recess.
(Jury exits.)
(Lunch recess from 12:30 p.m. to 1:30 p.m.)
(Jury enters.)
THE COURT: Be seated.
We have Christy filling in for Linda, who is in a meeting. She'll be back in not very long. We thank Christy for joining us today. And you may proceed.
MR. YOUNG: Thank you, Your Honor.
Q. (BY MR. YOUNG) Before we get started again, Dr. Cotter-Lynch, just a gentle reminder if you could slow

down a teeny bit. Thank you.

I believe right before we broke for lunch, I was asking you about the faculty appellate committee.

Do you know whether Dr. Tudor filed any complaints with the faculty appellate committee?

A. Yes, I believe she did.

Q. Okay. Do you know if she filed one with regards to that letter that's still projected on that screen written by Doug McMillan?

A. Yes. It's my understanding that she appealed that to the faculty appellate committee.

Q. Did you participate in any way in that appeal process?

A. I wrote a letter in support of Rachel to the appellate committee.

Q. Okay. I'd like you to look in that binder that's in front of you at something that should be marked Plaintiff's Exhibit 170.

A. Yes.

Q. Okay. Do you recognize this document?

A. Yes. That's the letter that I wrote to the appellate committee.

MR. YOUNG: Your Honor, may I introduce into evidence Plaintiff's Exhibit 170?

MR. JOSEPH: No objections.

THE COURT: Admitted.

MR. YOUNG: Thank you.
Q. (BY MR. YOUNG) Dr. Cotter-Lynch, that's a two-page letter; is that right?
A. Yes, that is correct.
Q. Can you tell me why you wrote this letter?
A. Because, as I mentioned before lunch, I thought Dr. McMillan's decision was ridiculous and that there was clear evidence showing why what he said was not true. And so I laid all of that out in a letter.
Q. Had you ever written a letter like this before?
A. No.
Q. Have you written a letter like this since?
A. Similar in type when I was president of the AAUP chapter, but, after this, obviously.
Q. Okay. Is everything you wrote in this letter true?
A. To my knowledge, yes.
Q. So the jury later on will have the benefit of reading this letter for themselves if they desire, but can you tell us what you think are the most important points you make?
A. Sure. So Doug McMillan cited deficiencies in Rachel's service and scholarship as reasons for, first of all, denying her tenure in the 2009-2010 school year and then for not allowing her to reapply. His assertion was that her qualifications were clearly not sufficient for promotion, and so it would be a waste of everyone's time for her to reapply.

So in this letter I laid out specifically her qualifications in service and scholarship, clear evidence that she was very active in service, took on -- she was chair of a committee called the assessment, planning, and development committee, which basically means writing all the reports. It was a really big thing to take on before tenure.

I remember, at the time that she took it on, I thought it was kind of unfair to make someone who didn't have tenure do something so time-consuming, writing all the assessment reports, but she did it, and she did it well.

She was also on the faculty senate. She brought in something called OSLEP, Oklahoma Scholar-Leadership something Program, but they're statewide classes where students from all over the state come to a university to study with a particular expert.

The only time in my memory or that I've heard of that one of those took place at Southeastern -- usually, they're, like, at OU -- but Rachel arranged to have one at Southeastern. So that was a big deal that she took that on.

And then in terms of scholarship, she published so many more articles than anybody else. It's -- I can't understand why there would be any question about her scholarship. She clearly had more than I did -- I got tenure -- and more than most other people who get tenure in our department.

So I laid all of that out.

Q. Dr. Cotter-Lynch, are you aware that Claire Stubblefield conducted an investigation into Dr. Tudor's complaints at Southeastern starting in 2010?
A. Yes.
Q. Okay. Why don't you tell me a little bit about what you personally know about that investigation.
A. She called me into her office at one stage -- I honestly don't remember the date -- and asked me some questions about Rachel's complaint.
I remember that Claire was sick. She told me she was sick when she got --
MR. JOSEPH: Objection, Your Honor. Hearsay.
THE COURT: Please don't report what somebody said to you.
WITNESS: Okay.
THE COURT: Just what you said or did.
WITNESS: So the meeting was relatively short. She asked me some questions.
MR. JOSEPH: Same objection, Your Honor.
THE COURT: Overruled.
Q. (BY MR. YOUNG) You can keep going.
A. She -- that's the meeting in which she told me that I should save my tenure -- or secure my tenure portfolio -- which I was surprised by but paid attention to -- and then also, at the end of the meeting, her demeanor kind of changed

and she told me to look out for Rachel.

MR. JOSEPH: Same objection, Your Honor.

THE COURT: Sustained.

Q. (BY MR. YOUNG) How did you first learn that this investigation was going on?

A. So I'm not sure about the question. So how did I find out about Rachel's appeal or --

Q. Claire Stubblefield's investigation.

A. Oh. I honestly don't remember. I mean, I remember that I was called into her office, obviously, and asked questions, but I don't remember when I first learned about it.

Q. That meeting with Claire Stubblefield, was it a formal interview? Was it -- do you have any idea what it was?

A. I think it was a formal interview. She took notes. It was in her office.

Q. You said it was fairly short. Do you have an estimate of the length -- estimation of length?

A. I don't.

Q. Okay. In your opinion, were you asked a lot of questions?

A. No, I don't think so.

Q. Do you remember whether you were asked any follow-up questions?

A. Like after that initial meeting with her?

Q. Well, during that first meeting.

A. Oh, during that meeting.

I honestly don't remember. The two things I remember really clearly about the meeting were when she told me about the portfolio and about Rachel.

Q. Was that the first time, to your awareness, that anyone at Southeastern has been asked to preserve their portfolio?

A. As far as I know, yes.

Q. After your meeting with Claire Stubblefield, did you have any impression, based upon that meeting alone, as to whether Claire Stubblefield was prepared to resolve Dr. Tudor's complaint in her favor?

MR. JOSEPH: Objection, Your Honor. She's not qualified to evaluate Dr. Stubblefield's investigation.

THE COURT: Sustained.

Q. (BY MR. YOUNG) Was there anything odd about the meeting to you?

A. Well, yes, that she told me to save my tenure portfolio.

MR. JOSEPH: Objection, Your Honor, on hearsay.

THE COURT: Please don't report what anyone said to you.

THE WITNESS: Okay.

THE COURT: Only what you said or did.

THE WITNESS: Okay.

Q. (BY MR. YOUNG) With that instruction, is there anything else you can say about that meeting?

A. No.
Q. Okay. Was there any follow-up meetings between you and Claire Stubblefield?
A. No.
Q. So, Dr. Cotter-Lynch, are you familiar with Southeastern's harassment and nondiscrimination policies generally?
A. Yes.
Q. Do you have any recollection of more or less what those policies were when Dr. Tudor worked there?
A. Yes. I remember they did not include protections for gender expression and identity, sexual orientation, because I remember that was something that the faculty senate was trying to get included, and they were not successful in doing that until several years later.
Q. Do you have an understanding of what protections for -- I think you said gender identity and expression, what those protections were supposed to do at Southeastern?
A. Well, I know that my concern -- and, to my understanding, the concern of the faculty senate -- was that the lack of clear language in the policy was interpreted by some that that would not be protected.

That was, to my understanding -- at least certainly why I was hoping to have it included, and my understanding was that other faculty were of the same opinion.

Q. Do you have a recollection of when you first became concerned that Southeastern's policies didn't have specific language to protect transgender people from sex discrimination?
A. I don't think I really thought about it until the faculty senate proposed the change. Then I was like, oh, yeah, of course, that's a good idea. But I hadn't really thought about it before then.
Q. Do you have any recollection of when the faculty senate first proposed that?
A. I know that Rachel was on the personnel policies committee at that time. So it was before her dismissal.
Q. Okay. Dr. Cotter-Lynch, when Dr. Tudor was still employed at Southeastern, did you ever run into her in the women's restroom on that third floor of Morrison where you-all worked?
A. No, I did not.
Q. Was that unusual to not ever see a female faculty member use the women's restroom near the offices?
A. Not necessarily. I mean, all of our offices are on the same floor and most of our classrooms are in the same place, so you do run into people because of -- we're teachers; right? So there's certain times you can go and certain times you can't. So depending upon your schedule any given semester -- like, there are people this semester who I see all the time

and people who I never see just because of how schedules do or don't line up.

So I never really thought of the fact that I didn't see Rachel.

Q. At some point did you talk with Dr. Tudor about which restroom she used at Southeastern?

A. Yes. I believe it was during the 2010-2011 year when I first found out that she had been instructed to use a different restroom.

After that, I did notice her coming out of it sometimes. But, honestly, it wasn't anything I ever paid attention to prior to that.

Q. Dr. Cotter-Lynch, I'm going to ask you a few questions about how your life has changed after getting tenure, because you applied the same year that Dr. Tudor applied.

MR. JOSEPH: Objection, Your Honor. Is this relevant?

THE COURT: What is the relevance of this?

MR. YOUNG: I think it goes to -- potentially to damages, Your Honor, to the extent that Dr. Tudor has a loss from not getting tenure that she deserved and to have the jury educated about what significance there is to get tenure. And how someone's life is changed because of it illustrates that.

THE COURT: If you limit it to the issue of damages, you may go ahead.

MR. YOUNG: Okay.

MR. JOSEPH: Just note an ongoing objection based on the fact that the expert already testified to that sort of thing.

THE COURT: Well, that's what I'm saying don't ask about. We've heard about that. Only as to the money.

MR. YOUNG: Your Honor, may we approach?

THE COURT: Yes.

MR. YOUNG: Thank you.

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

MR. YOUNG: I just want to be cautious and do it out of the earshot of the jury. I'm agreeable as to the money, but I believe professional reputation is also part of this, so what impact does tenure have on someone's reputation.

THE COURT: Dr. Parker has testified at length, as has Dr. Tudor. Unless this is something different --

MR. YOUNG: I think Dr. Cotter-Lynch is well positioned to say how someone who went up at the exact same time with credentials she'll testify are the same --

THE COURT: She'll testify as to what reputation is worth --

MR. JOSEPH: If there's a dollar --

THE COURT: -- which she is she's likely to have lost, that's okay.

MR. YOUNG: Yes.

THE COURT: We haven't heard that yet. This other stuff --

MR. YOUNG: I know, Your Honor.

THE COURT: All right.

MR. YOUNG: I just wanted to clarify. Thank you.

MR. JOSEPH: Thank you, Your Honor.

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

Q. (BY MR. YOUNG) So, Dr. Cotter-Lynch, I'm going to ask you a few questions about some changes in your life since you got tenure. Okay?

Let's start with the money because that's probably the easiest.

A. Uh-huh.

Q. Did you get a pay raise when you got tenure?

A. Yes, I did.

Q. Do you remember approximately what that was?

A. I don't remember exactly. It was -- it's on the salary card. It's standard for everyone. Somewhere between 3,500 and 5,000, maybe.

I know that between pre-tenure, promotion to tenure, and then promotion to full, the difference is about $10,000, so the two promotions.

Q. Is that a significant pay increase, given what your

pay -- base salary is?
A. Yes, it's about a 20 percent pay raise.
Q. Okay. For you, did getting tenure -- I don't know -- bolster your professional reputation in the academic community?
A. Oh, absolutely. There's a clear difference in what are called junior faculty versus senior faculty and in terms of the kind of opportunities that are available to you.
So most scholarly activities -- so conferences, publications -- they actively seek to have senior faculty included, whether on a conference panel, in a book project, something like that.
So there's been a clear shift for me post-tenure -- before tenure, I had to kind of apply and submit and ask to be included in things. And, after tenure, I'm usually asked. And I'm invited often to more things than I can actually do.
So that's a very clear shift in how your career works once you have that recognition.
Q. In addition to those things, as a professor at Southeastern, does getting tenure sort of change the way you interact at the campus?
A. It certainly did for me.
One of the purposes of tenure is to allow professors to speak up and participate more. You can say things that might be unpopular or pitch ideas that might not work, but the idea

is that then you can be more actively involved in the conversations on campus.

I certainly got very noisy after tenure. Part of that was, quite frankly, motivated by what had happened to Rachel and my being upset about that, but...

Q. Did you feel safer complaining at that point, after you had tenure?

A. Yes. I mean, I figured that it would be harder for them to fire me. So that makes it a little easier.

Q. When you were going up for tenure, did you have any understanding of what would happen to you if you didn't get it within the seven years you had allotted at Southeastern?

A. So if I didn't get tenure at all at Southeastern and had to leave?

Q. (Nods head.)

A. I mean, the year I was up for tenure, I did apply out. So I applied to other universities, which is not unusual.

Honestly, I was not really worried about getting tenure. My husband was going up the same year at a much more competitive university. So we both went on the market, applied for other jobs, kind of as insurance.

But if you don't get tenure at all and just lose your job, it looks bad, so --

MR. JOSEPH: Objection, Your Honor. Speculation.

THE COURT: Overruled.

THE WITNESS: So, I mean, had I not gotten tenure and had to leave, honestly, I would probably be teaching high school at this stage, which is a fine thing to do, but it's a different career.

I'm married. I have two kids. So moving is not super easy. So we may have looked elsewhere. My husband's job might have turned out to be more mobile if I didn't have a job too. It's easier to move. I mean, I'm unemployed.

But, certainly, my professional life would be entirely different and a lot of just my life generally would look very different.

Q. (BY MR. YOUNG) Have you served on hiring committees at Southeastern in the English department?

A. Yes.

Q. Can you just tell me generally how a hiring committee in the English department looks at a candidate who has not gotten tenure in a previous job?

A. It looks very suspicious. Hiring for a tenure-track job in English is super competitive. The hiring committees I have been on at Southeastern, we've had in the neighborhood of plus or minus 50 applicants for one job.

At other schools -- I know I applied for a job where there were over 400 applicants. I would say, average, probably 100. So it's really competitive to get a tenure-track job.

And when you're looking at applicants, there's kind of the sense of -- what you're trying to do is judge whether this person is going to be successful at your university. What we want to do is hire in someone who's going to do a good job and who's going to get tenure and stay with us. That's our goal.

So we're trying to judge that from the application that we have in front of us. If you see someone who has been at another university for seven years -- we know that that's the probationary period as assistant professor -- and then nothing, what that tells us is that that's someone who went through the probationary period, tried to get tenure, and didn't. I mean, that's a pretty easy thing to read from a résumé.

So that then makes us suspicious; right? If they couldn't do it once, what makes us think that they could do it again? So that causes us pause.

Certainly, it's competitive enough that, if there's any strike against you, you're not going to get an interview.

Q. Okay. I'm going to talk to you a little bit about what you know about how Dr. Tudor's experience at Southeastern those last couple of years, how it affected her.

You're good friends with Dr. Tudor; is that right?

A. Yes.

Q. And you've been friends with her both when she was at Southeastern and continuing till today?

A. Yes. Yes.
Q. Okay. When Dr. Tudor was at Southeastern, what kinds of changes did you see after she was denied for tenure?
A. She was -- so I guess I'll start in the fall of 2010, which is when I found out about the issues with her being denied tenure and not being allowed to reapply.

She seemed worried and kind of down. But, initially, she was kind of very determined to -- she would go through the internal grievance policies. Our hope at that stage is that it would work; right? So something wrong was done. We will get this corrected. Policy wasn't followed. Here's the appeals process. We'll go through it.

So at that stage she was very -- I think she was worried and upset, a bit angry, but still hopeful with the process.

That changed over the course of that school year as it became clear that those processes weren't working. She was really trying to do everything she could to work through the established processes to try and get this fixed, and there was all kinds of craziness going on. The policies just weren't being followed. The appeals process was not being followed.

MR. JOSEPH: Objection, Your Honor. This witness is not the arbiter of whether or not those policies were followed.

THE COURT: You can testify to things you know.

THE WITNESS: Okay.

THE COURT: Not to assumptions --

THE WITNESS: Okay.

THE COURT: -- or speculation or what someone told you. Just testify as to what you know. If you know that, then you can testify to it.

THE WITNESS: Okay.

Yeah. So I know that the appeals committee found in Rachel's favor and that the -- the Academic Policies and Procedures Manual at the time that the appeals committee initially found in her favor, to my reading of the policies, required the president to listen to that decision.

That Academic Policies and Procedures Manual was changed in order to -- the language was changed so that the president did not necessarily have to listen to that appeals decision. And that happened -- that change happened, to my memory, on a snow day in February when we weren't on campus, after the appeals committee had made its decision but before the president would have been expected to take his action.

So the appeals process went through, the committee found in her favor, then policy was changed, and the president did not abide by the decision of the appeals committee.

Q. (BY MR. YOUNG) To your recollection, has anything like that happened ever at Southeastern?

A. No. We were all very taken aback by that.

MR. JOSEPH: Objection, Your Honor. The witness

continues to use the word "we" without declaring who those "we" are.

THE COURT: Overruled.

Q. (BY MR. YOUNG) Okay. How would you describe Rachel after her gender transition but before the tenure denial?

A. She seemed happy. I mean, not every day. We all have bad days; right? But she -- she's always been a pleasant person.

So, I mean, I remember seeing her in the hallways and thinking that she kind of -- this is going to sound cheesy -- but kind of exuded positivity. She was a pleasant presence. She seemed happy. She clearly loves teaching. If you see her in the classroom, there's no question that she really enjoys working with students. So that was certainly my impression of her prior to all this.

Q. Did she complain a lot?

A. No, not at all. She's very slow to complain. I -- yes.

Even through all of this, I mean, through the appellate process and all of that, I was -- I would say to her, "Can I do something? Can I go to complain to people? Who else can we get involved?"

And she was like, "No, we're going to follow the process" --

MR. JOSEPH: Objection, Your Honor. Hearsay.

THE COURT: Overruled.

Q. (BY MR. YOUNG) You can continue.
A. She asked me to basically not kick up a fuss. She wanted to follow the process and follow the rules.
Q. After Dr. Tudor was denied tenure, do you remember any particular changes about her demeanor, the way she interacted with folks, anything like that?
A. Clearly, 2010-2011, that school year, was very, very difficult for her. I mean, she started off kind of down and angry. I mean, not lashing out at people, but a wrong has been done and not --
MR. JOSEPH: Your Honor, what's the basis of this witness's knowledge of the witness's -- of the plaintiff's emotional state of anger or not?
THE COURT: Is that an objection?
MR. JOSEPH: It is an objection. I'm sorry.
THE COURT: Overruled. You may cross-examine.
Q. (BY MR. YOUNG) You may continue.
A. By the end of the school year, she was clearly despondent, very, very down, obviously upset that she was being fired.
There was one occasion when I remember calling her in the evening. When she picked up, she'd obviously been crying. She was very kind and appreciative when I called, but she was clearly upset. And this was very difficult for her.
Q. Have you kept in touch with Rachel regularly since she

left Southeastern?
A. Yes, I have.
Q. In your opinion, based on when you knew Rachel before the tenure denial happened and after --
A. Uh-huh.
Q. -- does Rachel seem like the same person that she used to be?
A. I mean, she's always been kind of a quiet, unassuming person, very kind, very smart, very funny, but not -- shy. She's definitely shy.

And she's become much more kind of reserved, kind of -- yeah, much more hesitant to interact with people in the world, for understandable reasons. This has been really tough. I mean, this has been hanging over her head for seven years now. So I completely understand, but it's been very difficult.
Q. Is Rachel the sort -- is Dr. Tudor the sort of person who tries to pick a fight?
A. No, not at all. She's -- as I mentioned, she's quite soft-spoken. She is very much someone who wants to do her job and not make waves. She gets along with just about everybody that I know, and she's not at all someone to pick a fight at all.

This is -- she never would have wanted to be here. This is not her -- not what she would have chosen at all.
Q. As a senior member of the English department at

Southeastern, would you personally have any concerns if Dr. Tudor were to return?

A. None at all. I'd be very happy to have her back.

Q. Can you explain why you would be happy to have her back?

A. She's really good at what she does. She's an excellent teacher. When she was there, she taught -- she taught several classes.

One of the classes that she taught very regularly was our introduction to philosophy class, which our undergraduates can take as part of their general education. So whatever major you are, this is one of the classes that fulfills your requirements.

During the time that she was teaching it, our enrollments in that class doubled. We had to add another section because so many people wanted to take that class with her.

I, at the time, was also teaching a course called Critical Approaches to Literature, which is kind of the first class that most English majors take as part of their English major, and I regularly had a couple of students a semester on average in that class. When I asked them why did they choose to become an English major, they would say "Dr. Tudor" and say, "I took a class with her. It was great. This inspired me to love books. I want to be an English major."

So, clearly, she's a really gifted teacher. She loves books. She's very empathetic. She gets students. She's not

just passionate about her topic but also passionate about interacting with students. And then she's just a pleasant person to have around.

So if you have someone who's good at their job and you like to hang out with, that's really what you hope for.

Q. Have things at Southeastern changed since Rachel left?

A. Yes, dramatically.

Q. Will you explain?

A. Sure. I mean, they've changed in lots of ways. The administration has almost entirely turned over.

So Sean Burrage became president about two years ago. Doug McMillan is gone. Lucretia Scoufos is gone. Our administrative structure has completely changed. That's all a good thing from my perspective.

Going back to kind of sooner after Rachel's departure, from my own -- for my own sake, I was super angry about what happened to Rachel. And I was very -- I was angry going to school every day. I hated going to my job that fall of 2011 because I was so angry about what had happened.

And, for my own sake, somewhere about halfway through that fall, I came to the decision that I had to either get a new job because I did not want to spend the next 25 years going to a place I hated, or I had to try and help change the place. And those were really the only options that I was willing to live with because I did not want to live my life

that angry.

So at that stage I started talking to some other faculty. There was a lot of discontent amongst the faculty at that time. Many of us were very unhappy with the behavior of the administration in Rachel's case but also for other reasons as well.

In December of 2011, there was some administrative restructuring so that Lucretia Scoufos, who had been dean of arts and sciences, became dean of instruction. So instead of being one of three deans, she was then the only dean. She was the dean of everybody.

That was announced on a Friday. Over the weekend, I sent out an e-mail to some of my friends and said we need seven people to start a chapter of the American Association of University Professors; who's in? By Monday, we had eight members.

So we had our first meeting in January. 20 faculty -- I'm sorry -- 30 faculty members showed up, and we founded a chapter that January.

The reason for doing that, the American --

MR. JOSEPH: Your Honor, objection to relevance.

THE COURT: Well, I think we've gone so far beyond the question.

THE WITNESS: Okay.

MR. YOUNG: I can cut her off.

Q. (BY MR. YOUNG) Thank you. A lot of professors, AAUP chapter. Okay.

Dr. Cotter-Lynch, have you done anything personally to try to bring Dr. Tudor back to Southeastern?

A. Yes. Obviously, I supported her through the appeals process when she was there.

Starting in -- it would have been April, I guess, when it was clear that everything internal at Southeastern wasn't going to work, I had been asking Rachel repeatedly, but finally she said, okay, you can talk to people.

So I wrote to the regents. I spoke to some people in a professional organization that I belong to, and I asked them to look at what was going on and write letters to the regents. I started an online petition. I posted publicly on Facebook about what was going on and basically talked to anybody I thought would listen about what was going on.

Q. I'm going to have you -- this is one that I have on me.

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

THE COURT: Yes.

Q. (BY MR. YOUNG) Dr. Cotter-Lynch, I just handed you an exhibit that's marked as Plaintiff's Exhibit 25.

Do you recognize that?

A. Yes.

Q. What is it?

A. It is the online petition that I started in, I believe,

April of 2011, when it was about a month before Rachel's ultimate -- she had been told that she would be fired effective May 30th at that stage.

So I started this petition addressed to the regents to --

Q. I'll stop you right there for a sec.

MR. YOUNG: Your Honor, I'd like to move to enter into evidence Exhibit 25.

MR. JOSEPH: Your Honor, we'll object on the basis of relevance and hearsay.

THE COURT: I will admit Plaintiff's 25.

Q. (BY MR. YOUNG) Okay. Dr. Cotter-Lynch, let me try to break up your testimony with some questions so we can put you in the right direction. Okay?

So I believe you testified that you're the one who created this petition; is that right?

A. Yes. Yes.

Q. Can you tell us all why you created this petition?

A. Because I wanted to demonstrate to the regents that what certain administrators at Southeastern were doing was not popular, that it was both generally wrong on just kind of basic what's right and wrong standards, but that also that there was a lot of support amongst Rachel's colleagues, both inside and outside Southeastern, and her students. A lot of students signed as well.

Q. Did professors sign?

A. Yes.
Q. Professors in and outside of Southeastern?
A. Yes.
Q. So what did you do with this petition once it was, I guess, done?
A. I printed it out -- well, I called Sheridan McCaffree at RUSO and asked her how to have it delivered. And I wanted to -- I just think it makes more of an impression if you deliver something physically instead of electronically.

So I -- I got from her the mailing address and that I could send stuff to the individual regents at the address she gave me in Oklahoma City.

So I printed out copies of the -- full copies -- like, big ole copies -- for each of the regents and put them each into individual envelopes addressed to the regents, but then got one of those Priority Mail boxes and put them all in there and sent it to Oklahoma City.
Q. Did RUSO ever respond to you once you sent off that box full of documents?
A. No.
Q. Never?
A. (Shakes head.)
Q. After you mailed off this petition to the regents, did you do anything else to try to bring Dr. Tudor back to Southeastern?

A. I'm trying to remember. I certainly kept talking to Rachel and talked to her about the various measures she took outside of Southeastern.

The national AAUP sent a couple of letters to Southeastern. I know she appealed to the EEOC. At that stage, she was taking action outside the university.

Q. Do you recall having a conversation with the new president of Southeastern, Sean Burrage, in 2014?

A. Yes. I talked to him more than once in 2014.

Q. Sorry. Bad question.

In 2014, did Douglas McMillan still work at Southeastern?

A. Yes.

Q. Do you recall having a conversation with now-President Burrage about statements made by Doug McMillan?

A. Yes. So --

MR. JOSEPH: I'm going to object to hearsay, Your Honor.

THE COURT: Well, you answered the question. Ask another.

And don't report what somebody said to you, only what you said or did.

THE WITNESS: Okay.

Q. (BY MR. YOUNG) What did you say to Sean Burrage in 2014?

A. I went to see Sean Burrage with my colleague Virginia Parrish. We went on behalf of the AAUP chapter, which had

voted at our last meeting to send me and Virginia to talk to Sean.

The concern that was discussed at the meeting, that was voted on, was that he would -- Sean was the new president, and the chapter was concerned that --

MR. JOSEPH: Your Honor, objection. This is not responsive to the question counsel posed.

THE COURT: I've forgotten the question.

MR. YOUNG: Honestly, Your Honor, I did too. Let me just ask a new question and we'll get her back on track. Okay? I'm sorry. It's a little awkward.

Q. (BY MR. YOUNG) What was the concern that you had that drove you --

A. I was concerned that Sean had been told, and perhaps believed, by Doug McMillan that the faculty --

MR. JOSEPH: Objection, Your Honor. This is hearsay.

THE COURT: Counsel, come to the bench.

MR. YOUNG: Yes, Your Honor.

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

THE COURT: Ph.D.s. We're only at the beginning of the Ph.D.s.

What is it you want to elicit?

MR. YOUNG: There's a statement against interest

that I'm trying to get in, Your Honor, an exception to hearsay.

THE COURT: Whose?

MR. YOUNG: Sean Burrage.

THE COURT: So she's going to tell us what Sean said?

MR. YOUNG: To her.

MR. JOSEPH: First of all, as far as we know, the president -- I don't know what the statement is, Your Honor.

But in terms of -- that's still hearsay. Unless he's got some description of what this statement is and what this statement is against which interest, I think it's still hearsay.

Well, certainly the current president was not there at the time of Tudor's tenure process.

THE COURT: And that is the beginning of the problem. How do you get around that?

MR. YOUNG: It has to do with what Sean Burrage discovered when he became president of Southeastern.

THE COURT: And so what you're really trying to get in is that Mr. McMillan -- Doctor, whoever, McMillan -- is a bad guy, a really bad guy?

MR. YOUNG: Yes. I think we're all clear on that at least, even if we're not clear on the rules.

THE COURT: You're going to have to have somebody

testify that can testify to bad acts, not what people said.

I don't see --

MR. YOUNG: There's -- I'm sorry, Your Honor. There is an act involved. This is an action.

MR. JOSEPH: An act that Parrish herself observed? Without personal knowledge, she can't testify about that.

MR. YOUNG: She's talking about a conversation that she had, a statement against interest from the president of Southeastern.

THE COURT: Tell me what she's going to say he said.

MR. YOUNG: Okay. Not word for word, but more or less she's going to say that Sean was told by Doug McMillan that the faculty did not want Rachel Tudor back and that influenced how they have dealt with things so far.

Meg is going to say that the faculty wanted to hold a vote to decide whether it was -- what the faculty's position was because they feared that their position was being lied to about by Doug McMillan to influence Sean.

THE COURT: Well, she can testify that they were going to take a vote, if I heard you correctly, in response to a concern --

MR. YOUNG: Yes.

THE COURT: -- Burrage raised.

She can't say -- it's just totally outside of time. It's two years later, if I understand correctly, new

administration.

MR. YOUNG: Well, at that point, Your Honor, respectfully, Sean Burrage was the only new administrator. All of the other folks were still there.

And defendants, part of their case is that Dr. Tudor wasn't needed there, she was a troublemaker, she wasn't supported by folks. It's pretty strong that the faculty had this strong belief.

THE COURT: You can certainly have her testify about what the faculty was proposing to do or didn't do or -- just in response to what? No. It's too far outside the time period we're talking about, and it's hearsay on hearsay. So --

MR. YOUNG: Okay. I can limit it to the action of the faculty.

THE COURT: Right.

MR. YOUNG: To her understanding.

THE COURT: Yes.

MR. YOUNG: I can do that. Thank you, Your Honor.

MR. JOSEPH: Thank you, Your Honor.

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

Q. (BY MR. YOUNG) Okay. Dr. Cotter-Lynch, I think we've worked through it.

So I'm going to ask you a specific question. If you can

listen carefully --

A. Okay.

Q. -- to that question and only answer that question, not the question I asked you earlier. Okay?

In 2014, did the Southeastern faculty want to have a vote on whether the faculty wanted Dr. Tudor back at Southeastern?

A. In 2014, Chris Moretti, who was --

THE COURT: No, no.

Q. (BY MR. YOUNG) No, no. To your knowledge.

I think we scared her.

A. I don't know how to answer the question because I can't speak for every single faculty member I can -- can I say what the AAUP chapter voted on?

Q. Yes.

A. Okay. So the AAUP chapter voted that they would like me and Virginia -- which we did. Virginia and I, with the approval of the chapter, met with President Burrage and told him that we believed the faculty supported Rachel coming back and that the faculty senate was willing to poll the faculty to prove that.

Q. Was there a particular reason why the AAUP chapter had that vote?

A. Yes.

I'm waiting for the objection.

We heard a rumor --

MR. JOSEPH: Objection, Your Honor. Hearsay.

THE WITNESS: Yeah.

MR. YOUNG: Yeah.

Q. (BY MR. YOUNG) But there was a reason?

A. Yes.

Q. Okay. At some point, were you the president of the AAUP chapter at Southeastern?

A. Yes, for four years from 2012 to 2016.

Q. While you were the president of the AAUP chapter, did you have a general understanding of sort of the desires of the faculty at Southeastern?

A. I tried very hard to. One of the explicit role of the AAUP chapter is to serve as an advocate for the faculty. So I certainly made an effort to talk to faculty, get an idea of what was going on.

Also, in my role as president, faculty knew -- and I had several faculty do this -- come to me with concerns, observations within the limits of what was permissible to me. I would keep those confidential or allow people -- people came and told me stuff that they might not tell everybody.

Q. Okay. Let's fast-forward a bit.

Today, would you recommend Southeastern as a good place for transgender students to attend?

A. I would be very hesitant to do that.

Q. Why?

MR. JOSEPH: Objection, Your Honor. This witness is not an expert on student life.

THE COURT: Well, it's just not relevant.

MR. YOUNG: Okay. I believe the next one is relevant, though, Your Honor.

Q. (BY MR. YOUNG) Today, Dr. Cotter-Lynch, would you recommend that transgender professors apply for positions at Southeastern?

MR. JOSEPH: Same objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: No, I would not.

Q. (BY MR. YOUNG) Can you please explain why.

A. Because of what happened to Rachel. That has not been made right, and I continue to have concerns.

Q. What would it take for you to no longer have concerns?

A. I want her to come back to her job. She earned it. That would make it clear.

Q. Has the Southeastern administration ever given the English department a voice in the decision as to whether Rachel Tudor can come back?

MR. JOSEPH: Objection, Your Honor. That's outside this witness's knowledge.

THE COURT: Overruled.

You may answer if you know.

THE WITNESS: The English department specifically or

the faculty in general?
Q. (BY MR. YOUNG) The English department specifically.
A. There was the tenure vote in 2009-2010 that said that she should get tenure. Since then, there has been no official query by the administration about whether or not they think Rachel should come back.
Q. Do you have any specific knowledge as to whether the English department would vote to bring Rachel back -- I'm sorry -- Dr. Tudor back if they could?
A. There's seven tenured people in the department right now. Five of them are testifying in her favor in this trial.

MR. JOSEPH: Objection, Your Honor. Assumes facts not yet in evidence. Also calls for speculation.

THE COURT: Overruled.

Q. (BY MR. YOUNG) Is there anyone in Southeastern's English department right now that you know for a fact does not want Rachel Tudor to return to Southeastern?
A. No.

MR. YOUNG: Okay. That's it. Short and sweet.

THE COURT: Mr. Joseph?

MR. JOSEPH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOSEPH:
Q. Dr. Cotter-Lynch, after Dr. Tudor's transition from presenting herself as male to presenting herself as female,

did she dress in a feminine way, in your opinion?
A. Yes.
Q. You never told Dr. Tudor how she should or shouldn't dress, did you?
A. No.
Q. Okay. I'm assuming, but I'll just ask, you never criticized Dr. Tudor's attire? Did you ever criticize her makeup?
A. No.
Q. You never personally observed -- well, who is Dr. Randy Prus?
A. He is currently the department chair.
Q. Okay. And at the time of Dr. Tudor's 2009 application for tenure and promotion in the English department, what role did Dr. Randy Prus play in that process, to your knowledge?
A. He was, at that point, not yet chair. He was a professor in the English department, and he was on the tenure and promotion committee.
Q. Okay. And have you ever personally observed Dr. Randy Prus, the current department chair and former member of Dr. Tudor's committee on tenure and promotion, did you ever personally observe him criticize Dr. Tudor's attire?
A. No.
Q. Did you ever personally observe him criticize Dr. Tudor's makeup?

A. No.
Q. Did you -- you never personally observed Dr. Lucretia Scoufos, the former dean, criticizing Dr. Tudor's attire, did you?
A. No.
Q. You never personally observed Dr. Douglas McMillan, former vice president for academic affairs, criticizing Dr. Tudor's attire either, did you?
A. No. I don't recall ever seeing the two of them interact.
Q. You never personally observed Dr. Larry Minks, the former president of the university, criticizing Dr. Tudor's attire or makeup, did you?
A. No.
Q. But all of those people -- Dr. Randy Prus, Dr. Dean Scoufos -- Lucretia Scoufos, Vice President McMillan, and President Minks -- all agreed that Dr. Tudor's 2009-2010 tenure and promotion packet did not merit tenure that year; isn't that correct?
A. I believe so.
Q. You never personally observed any member of the English, Humanities, and Languages department criticizing Dr. Tudor's attire, did you?
A. No.
Q. You never personally observed any staff members of the EHL department criticizing Dr. Tudor's attire, did you?

A. No.
Q. You never personally observed any students criticizing Dr. Tudor's attire, did you?
A. No.
Q. If you had observed people at Southeastern criticizing Dr. Tudor's attire, you would have said something to them, wouldn't you?
A. I believe so.
Q. You probably would have even reported to the affirmative action officer or an outside reporting entity, wouldn't you?
A. Not necessarily, because I've observed other people being criticized, and I speak up, but I don't file --
Q. So you never made such a report to anybody, did you?
A. No.
Q. Okay. You never personally observed anyone complaining about which restroom Dr. Tudor used, did you?
A. No.
Q. Either before her transition or after?
A. (Shakes head.)
Q. You never personally observed anyone making fun of which restroom Dr. Tudor used either before her transition or after, did you?
A. No.
Q. If you had observed someone making fun of Dr. Tudor's restroom choice or restroom usage, you would have spoken up

about that, don't you think?
A. Yes.
Q. In 2008-2009 academic calendar year -- or academic year -- excuse me -- Dr. Tudor's tenure and promotion application committee members voted unanimously to deny her tenure application that year, didn't they?
A. To my knowledge, yes. I was not on the committee, but that's what I've heard.
Q. Okay. Tenure track is a promotion -- is a probationary appointment, isn't it?
A. (Nods head.)
THE COURT: Please answer yes or no.
THE WITNESS: Yes.
MR. JOSEPH: Thank you, Your Honor.
Q. (BY MR. JOSEPH) You're doing fine otherwise. I appreciate that, Dr. Cotter-Lynch.
I think I just asked, but let me make sure.
Tenure track is a probationary appointment; correct?
A. Yes.
Q. Okay. So probationary suggests that it's not guaranteed; correct?
A. Yes.
Q. Okay. The committee, in 2008-2009, for Dr. Tudor's tenure and promotion -- I think you just said, but I just want to be clear -- you were not on that committee; is that

correct?
A. That is correct.
Q. Okay. Were you on Dr. Tudor's 2009-2010 tenure and promotion application committee?
A. I was not. I did not have tenure yet --
Q. Okay.
A. -- and you can't be on a committee until you have tenure yourself.
Q. So you did not actually sit and review her tenure and promotion application packet as it was submitted in 2008, did you?
A. No.
Q. And you did not actually sit and review Dr. Tudor's tenure and promotion application packet as it was submitted to that committee in 2009, did you?
A. No.
Q. Do you have a complete copy of Dr. Tudor's tenure and promotion application from 2008?
A. No.
Q. Do you have a complete copy of Dr. Tudor's tenure and promotion application as it appeared to that 2009 tenure committee?
A. No.
Q. Have you ever seen a complete copy of Dr. Tudor's tenure and promotion application as it appeared to the 2009-2010

committee?
A. I have not.
Q. If -- and I think you testified earlier, but I just wanted to clarify.
You went up in 2009 and 2010; correct?
A. That's correct.
Q. And you still have a copy of the portfolio that you submitted that year?
A. I do.
Q. Okay. If Dr. Tudor didn't keep a copy of that, doesn't that suggest that she wasn't particularly proud of it?
A. No, because she put together -- she used it to put together her 2010-2011 portfolio, which I have seen.
Q. Dr. Tudor -- I mean -- excuse me.
The tenure and promotion review process at Southeastern, both at the time that Dr. Tudor went up and now, is a multilevel process, isn't it?
A. It is.
Q. Okay. And I think you may have mentioned this briefly, but -- or maybe not. Excuse me.
The tenure and promotion process at most American universities is a multilevel process, isn't it?
A. Yes.
Q. Okay. And at Southeastern in particular, that process begins in the subject area department with a committee

meeting; correct?
A. Yes.
Q. And then that moves up to the department chair?
A. Yes.
Q. And then to the dean?
A. Yes.
Q. Then to the academic vice president or --
A. In the 2009-2010 year, that was correct. We no longer have a dean.
Q. Okay. But then after the dean to the vice president for academic affairs; correct?
A. Yes.
Q. And then to the president?
A. Yes.
Q. And then, ultimately, the president has to make a recommendation that goes up to the board of regents, doesn't it?
A. Yes. In pretty much every case, the president is considered a rubber stamp.
Q. Okay. So regarding your own tenure application process, the former dean, Lucretia Scoufos, gave you fairly detailed guidelines, I think you said earlier, about what to follow in terms of the appearance, the content, that sort of thing, of your application, didn't she?
A. Yes.

Q. Did you follow those guidelines to the best of your ability?
A. To the best of my ability, yes.
Q. Can professional people in a workplace have legitimate differences of opinion without it being discriminatory?
A. On some topics, yes.
Q. Do you respect Dr. Randy Prus?
A. I do.
Q. Do you trust him?
A. Yes.
Q. Do you respect Dr. Claire Stubblefield, the former affirmative action officer at the school?
A. I have concerns about her.
Q. Did you trust Dr. Stubblefield's word?
A. Which word in particular?
Q. In general, did you find Dr. Claire Stubblefield -- you worked with Dr. Claire Stubblefield -- at least your tenure there overlapped at the university; correct?
A. Yes. Yes.
Q. Did you trust Dr. Stubblefield?
A. I was aware that her job was --
Q. Did you trust her? It may be a yes-or-no question.
A. If it has to be a yes-or-no question, the answer is no.
Q. Okay. If Dr. Claire Stubblefield testifies that she conducted, in her opinion, a conscientious and thorough

investigation of Dr. Tudor's discrimination and retaliation complaints, do you believe her?

A. I really have no basis to know.

Q. Okay. Have you received any formal training on how to conduct investigations into claims of discrimination?

A. Yes.

I attended a Title IX training here in Oklahoma City with several other faculty/administrator staff.

Q. That was another yes-or-no question.

A. Yes.

Q. I'm sorry, Your Honor -- I mean, I'm sorry, Dr. Cotter-Lynch.

When was that?

A. After tenure, but Claire was still in charge of it. So I'm guessing three, four years ago. I don't remember precisely.

Q. Did Dr. Stubblefield put on that training?

A. It was put on by RUSO. Charlie Babb led it.

Q. Okay. Did Dr. Stubblefield facilitate or make any partial presentation in that seminar?

A. Not that I recall.

Q. Okay. Did you ever observe any specific event of racial discrimination at Southeastern?

A. I've heard people say unpleasant things, but nothing that's systemic.

Q. Did you personally ever observe anything?
I'm sorry?
A. I've heard people say unpleasant things but nothing that I would consider systemic.
Q. Okay. But did you ever observe any specific event?
A. I'm not sure what you mean by "event."
Q. Well, did you -- I mean, you and I both know what an event is, what that word means just at a basic level; right?
A. Right.
Q. Okay.
A. Does it -- so, for instance, a student using language that I do not like regarding people of color, yes, I have seen that. And I have said, "We need to talk about appropriate language."
Q. And did you speak directly with the person using that language?
A. Uh-huh.
Q. And did you report it to the affirmative action officer?
A. No.
Q. Why not?
A. Because I considered it part -- when it happens in a classroom environment, I consider that part of my job as an educator.
There was one occasion I did have a student in a Composition II class once who was straight-up avowed white

supremacist, and that got reported. It went -- Charlie Babb was involved in that one.

Q. Okay. Did you ever witness any event of specifically gender discrimination at Southeastern?

And, again, I'm asking for witnessing an event, not hearing unspecified rumors.

A. I have both experienced myself and observed others be subject to comments about appearance that I don't much like.

I have been --

Q. Did you report those?

A. No.

Q. Why not?

A. Because if you reported it every time it happened, you wouldn't do anything else. It happens --

Q. You'll agree with me, won't you, Dr. Cotter-Lynch, that things don't get fixed unless they're reported?

A. No, I don't. I mean, I think reporting things is one way to do it. In most cases, when someone says something inappropriate, it's a one-time thing.

I would hope that usually it can be handled by a conversation. Perhaps you go one layer up. Hopefully, you can handle it that way. As far as pulling all the alarm bells and going all the way up the hierarchy, that's --

Q. For a large -- I'm sorry.

For a large institution like a university to take action,

doesn't someone have to say something?
A. Saying something and filing an official appeal are not the same thing.
Q. Okay.
You and I have met before; correct?
A. Yes.
Q. And I think you told me in at least one of our visits that the specific issue of transgender rights is a personal cause for you; right?
A. I mean, equality generally is something that is important to me, and transgender rights is part of that.
Q. Okay. And didn't you describe yourself as -- and I'm paraphrasing, so I apologize if I misquote you -- a gender studies Ph.D. with a hyphenated last name that takes very seriously this issue?
A. My academic specialty is gender studies and early Christianity.
Q. Do you accept that the administration at any university has a role to play in the tenure and promotion review process?
A. Yes.
Q. Okay. Do you allow for the possibility that two professional people at different levels in a hierarchy can review the same tenure and promotion portfolio and come to two different conclusions?
A. Yes.

Q. Dr. Cotter-Lynch, you testified earlier this afternoon that in roughly the time frame of 2010, you said the faculty and administration did not get along at all, and Dr. Scoufos and Dr. McMillan were not popular.

Do you remember saying that?

A. Yes, I do.

Q. Isn't it true that a rift between an academic side of an institution and the administration side of an institution can cause hurt feelings?

A. Yes.

Q. And isn't it true that those hurt feelings can be legitimate hurt feelings but not discriminatory?

A. Yes.

Q. Did you ever advise Dr. Tudor to hold on to her 2009-2010 tenure and promotion portfolio?

A. No, I did not.

Q. Even after Dr. Stubblefield advised you to do so?

A. By that point, Rachel had already put together her 2010-11 portfolio. So that seemed relevant, the relevant one.

Q. You testified earlier that if you hadn't gotten tenure at Southeastern, you might be teaching high school, which, although it's a noble thing to do, I think you said it's just not your chosen career path; is that correct?

A. Yes.

Q. Did you ever suggest to Dr. Tudor that she teach at a

high school level?
A. I may have. I honestly don't remember. We've had several conversations about her career possibilities and path.
Q. Did you ever suggest to Dr. Tudor that she might apply at a smaller school than Southeastern?
A. I think she's applied to almost every kind of school.
Q. I mean, did you ever give her that advice specifically?
A. I don't think so. There are not that many schools that are smaller than Southeastern, obviously. We're pretty small.
Q. Okay. Did you tell Dr. Tudor to turn down the chance offered to her to withdraw her 2009-2010 application portfolio and resubmit it in the following year or two?
A. I had no knowledge of any of that until the following fall.
Q. The faculty appellate committee, you mentioned a couple of times, its relationship to the administration is advisory, not mandatory; correct?
A. That depends upon your reading of the Academic Policies and Procedures Manual and when you read it.
So it changed --
Q. Would you agree with -- I'm sorry. I didn't mean to cut you off.
A. Oh, it changed.
Q. Would you agree with me that that is at least a legitimate interpretation of that?

A. To my reading at the time that Rachel appealed, it was the -- it looked to me like the decision of the appeals committee was binding.
Q. But to answer my question again, is it or is it not a legitimate interpretation of that rule that it is advisory and not mandatory?
A. I don't think so.
Q. Okay. And on what do you base that?
A. The -- in part, on the passage of the Academic Policies and Procedures Manual that was entered into evidence saying that the faculty should have deciding -- the deciding role in these matters.

Also, it's my understanding that if you have an appeals process, an appeals committee, you should abide by its findings. That's why it exists.

If you have the --
Q. Could a nonfaculty member file an appeal with the faculty appellate committee?
A. There are separate structures for faculty and staff. So there is a structure for staff, but it would go through a different committee.
Q. A different body?
A. Yes.
Q. Okay. You are not the chair of the department, are you, currently Dr. Cotter-Lynch?

A. No.
Q. Have you ever been the chair of the English, Humanities, and Languages department there at Southeastern?
A. I have not.
Q. If the current chair of the department has a different opinion about whether or not Dr. Tudor should return or would be welcomed back at Southeastern, do you think that would be for a discriminatory reason?
A. In Randy's case, no.
Q. So you'd accept that Dr. Prus could have a legitimate different opinion of the situation than you and still be a professional?
A. He and I have discussed our difference of opinion over Rachel's 2009-2010 portfolio.
Q. And, again, if he has a different opinion about you -- about Dr. Tudor coming back to the university today --
A. Uh-huh.
Q. -- that's what I'm asking you.
Do you allow for the possibility that he holds that view legitimately and for nondiscriminatory reasons?
A. I would ask for his reasons, but I like him. I would hope he could come up with one that is nondiscriminatory.
Q. Okay.
MR. JOSEPH: May I have a moment with co-counsel, Your Honor?

THE COURT: Yes.

MR. JOSEPH: Thank you.

Q. (BY MR. JOSEPH) One quick question, Dr. Cotter-Lynch.

A. Uh-huh.

Q. If tenure is expected to be denied at Southeastern at any level in that multilevel process you described, whether it's the committee, like in Dr. Tudor's first case, that voted unanimously to recommend against it, or if it happens at the vice president's level, an applicant typically has the ability to withdraw that application at that time, do they not?

A. We have rewritten -- "we" being the faculty -- have rewritten the tenure and promotion policy since Rachel went up to specifically define that. There is now a specifically defined period when that can happen.

At the time that she went up, that was not defined.

Q. But you know now, do you not, as you sit here today, that the administration in 2009-2010 offered Dr. Tudor the opportunity to withdraw her portfolio, beef it up, and file it -- resubmit it in a year or two; isn't that correct?

A. I was not in that meeting, and I have heard divergent reports of that meeting. So I cannot say what happened.

Q. Do you have any reason to believe that that offer was not made, anything you've actually observed?

A. I don't think I have any way to judge that.

MR. JOSEPH: Okay. Nothing further for this witness

at this time. Thank you.

Thank you, Dr. Cotter-Lynch.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Thank you, Dr. Cotter-Lynch. I believe on cross-examination you were trying to share something with the jury about Dr. Prus and his difference of opinion as to the 2009 application for Dr. Tudor.

Have you had any conversations with Dr. Prus or know anything about Dr. Prus's opinions on Dr. Tudor's 2010 application?

A. I believe that he -- to my knowledge, I have -- well, I had a conversation with him about that a week or two ago, in which he said that he --

MR. JOSEPH: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

Q. (BY MR. YOUNG) Do you have any reason to believe that Dr. Prus would oppose Dr. Tudor returning to Southeastern?

MR. JOSEPH: Objection, Your Honor. That witness can testify.

THE COURT: Yes, he can. Let's move on.

MR. YOUNG: Okay. Yes, Your Honor.

Q. (BY MR. YOUNG) Dr. Cotter-Lynch, based on what you know about Dr. Tudor and how denial of tenure has affected her, how

can we fix what happened?

MR. JOSEPH: Objection, Your Honor. Cumulative.

THE COURT: Sustained.

MR. YOUNG: Okay.

Q. (BY MR. YOUNG) Dr. Cotter-Lynch, do you have any reason to doubt the truthfulness of Dr. Tudor?

A. No.

Q. Has she ever lied to you?

A. No.

Q. Has Dr. McMillan ever lied to you?

A. Yes.

Q. More than one time?

A. Yes.

Q. What about Dr. Scoufos?

A. She has said things that are misleading.

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

MR. JOSEPH: Nothing further for this witness, Your Honor. Thank you.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. YOUNG: Yes, Your Honor. I believe, based upon a recent filing from defendants, we would like to enter deposition designations of Ms. Cathy Conway into the record. but I need to confer with my colleague real quick because

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 14th day of November, 2017.

/S/ SHERRI GRUBBS

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

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

VOLUME 3

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ROBIN J. CAUTHRON

WEDNESDAY, NOVEMBER 15, 2017; 9:15 a.m.

OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography, transcript produced by computer.

(Proceedings held on November 15, 2017.)

THE COURT: Be seated.

I am prepared to rule on the Conway deposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. NOVOTNY: Sure.

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

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

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

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

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

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

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

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

Okay. What else?

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

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

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

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

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

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

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

MS. COFFEY: They're having more fun.

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

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

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

that hasn't arisen.

MS. COFFEY: Right.

THE COURT: Anything else?

MS. COFFEY: No, Your Honor.

THE COURT: Do you have witnesses this morning?

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

THE COURT: May I have it?

MR. YOUNG: Yes, you may.

May I approach?

THE COURT: Just hand it to her.

MR. YOUNG: Thank you.

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

MS. NOVOTNY: Plaintiff calls Dr. John Mischo.

(Jury enters.)

THE COURT: Good morning. Be seated.

Please face the clerk and be sworn, sir.

(Witness duly sworn.)

THE COURT: Be seated.

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

DIRECT EXAMINATION

BY MS. NOVOTNY:

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

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

All right. Thank you.

MS. NOVOTNY: Thank you.

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

A. 1992.

Q. What was your title at that time?

A. Assistant professor.

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

A. 1998.

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

A. When she was hired as an assistant professor.

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

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

that voted on the hire.
Q. Can you -- did you say you were on the hiring committee?
A. Yeah, there was a hiring committee which I was on. And then the department as a whole then voted on the candidate.
Q. Okay. Great.
And so it's fair to say you're familiar with Dr. Tudor's entire career at Southeastern?
A. Yes.
Q. And at the time that Dr. Tudor was hired, what was your position at Southeastern?
A. I would have been an -- I believe an associate professor.
Q. And did you have tenure at that time?
A. Yes.
Q. Now, at some point after Dr. Tudor was hired, did you get promoted again?
A. I became department chair, yes. Well, I was also promoted to full professor.
Q. And what were some of your duties as chair of the department?
A. The department chair would schedule classes, was the primary responsibility; monitor faculty; advise students; advise faculty.
Q. Okay. Did you have a role in tenure and promotion decisions as chair of the department?
A. Yes.

Q. And just to clarify, what department was that?
A. English, Humanities, and Languages.
Q. Thank you.
Now, what was your role as a department chair as it pertains to tenure and promotion decisions?
A. The tenure and promotion committee would meet and either recommend or not recommend a candidate applicant for promotion and/or tenure and then would submit that recommendation to me as department chair, and then I would myself then either recommend or not recommend the promotion and/or tenure.
Q. Great.
Now, I want to take you back to the summer of 2007. Do you recall a meeting in the summer of 2007 at Southeastern regarding Dr. Tudor's gender transition?
A. Yes.
Q. And do you recall how many people were there and who was there?
A. I can remember that Dean Mangrum, and Cathy Conway, the HR person, was there. I'm not certain. I think there were about four other people besides me, but I can't recall everyone who was there.
Q. Okay. And I know it was a long time ago, so I understand.
Now, do you recall anything that stuck out to you about that meeting?

A. The first thing I recall was that I was called to that meeting without any indication of what the meeting was going to be about was the first thing that surprised me that I can recall, yes.
Q. Did anything else about that meeting stick out to you?
A. The meeting, as I recall, had had to do with Dr. Tudor's use of restrooms.
Q. And was any kind of decision or rule put in place regarding Dr. Tudor's restroom usage at that time?
A. It was determined that Dr. Tudor would use the, I guess, unisex -- called unisex bathroom in the building.
Q. Do you remember where that bathroom was?
A. It's on the second floor of the building.
Q. Do you recall if that was on the same floor where Dr. Tudor taught her classes?
A. No, it was one floor below.
Q. Was it on the same floor that Dr. Tudor had her office?
A. No. Dr. Tudor's office was on the third floor, and her classrooms are on the third floor.
Q. Did you ever have any other meetings with administration officials at Southeastern where other women in your department were specifically directed to use a particular restroom?
A. No.
Q. So other women were allowed to use the ladies room without the administration interfering?

MR. BUNSON: Objection, Your Honor. Leading.

THE COURT: Sustained.

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

A. No.

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

A. No.

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

MR. BUNSON: Objection, Your Honor. Leading.

THE COURT: Overruled.

THE WITNESS: Can you repeat the question, please.

Q. (BY MS. NOVOTNY) Yeah.

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

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

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

A. Not that I know, no.

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

Now, you testified earlier that as department chair you were familiar with Dr. Tudor's work; is that correct?
A. Correct.
Q. Now, there's been testimony in this case that Dr. Rachel Tudor applied for tenure and promotion a couple of times.
Does that strike you as out of the ordinary?
A. No.
Q. So is it common for professors to sometimes have to apply a second time?
A. I don't know that I would say it's common, but it does occur that someone might apply twice or even three times.
Q. All right. I want to get into some exhibits here.
MS. NOVOTNY: Your Honor, may I approach?
THE COURT: Yes.
Q. (BY MS. NOVOTNY) I'd like to direct our attention to Plaintiff's Exhibit 70, which is the first one there in that packet there, Dr. Mischo.
Does that exhibit look familiar to you?
A. Yes.
Q. And could you tell us what this is.
A. It is an e-mail recommending to the dean that Dr. Tudor be awarded tenure and promotion to associate professor.
Q. And did you send this e-mail?
A. Yes.
MS. NOVOTNY: Your Honor, I'd like to move that

Plaintiff's Exhibit 70 be entered into evidence.

MR. BUNSON: No objection, Your Honor.

THE COURT: Admitted.

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

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

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

A. Yes.

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

Does Plaintiff's Exhibit 72 look familiar to you?

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

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

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

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

A. I don't recall. I see my name cc'd at the bottom, so I imagine I did.
Q. So, typically, if you're cc'd on something and it's identified there in the normal course of business, you would have received that; correct?
A. Correct.
MS. NOVOTNY: Your Honor, I'd like to move that Plaintiff's Exhibit 72 be entered into evidence, if not already.
MR. BUNSON: No objection, Your Honor.
THE COURT: Admitted.
Q. (BY MS. NOVOTNY) Do you recall what you thought when you got a copy of this memo? I know it was a long time ago, so take your time.
A. I would have thought that this was extremely unusual -- certainly unprecedented, in my experience -- to offer a one-year terminal position at the same time of denying tenure or promotion.
Q. Without any reasoning provided in that memo, did you have any knowledge as to why your department's recommendation for tenure should have been denied?
A. No.
Q. Was there anything about Dr. Tudor's reputation that might have come into play?
A. I don't think so.

Q. Now, do you see the date on this memo?
A. Yes.
Q. And that was January 12th, 2010?
A. Correct.
Q. Did you agree with Dean Scoufos's recommendation here?
A. I don't know that it was my position to agree or disagree with it. Perhaps I don't understand the question.
Q. Okay. I'll withdraw.
Now, in that January 12th, 2010, memorandum we're looking at, it says, "Based on the available documentation."
Do you have any idea what that would have meant?
A. That would have meant the application portfolio or binder that would have been submitted as part of the application.
Q. When you reviewed that binder -- or portfolio, as you call it -- did you feel like there was anything missing from it?
A. No.
Q. I'd like to direct our attention now to the next exhibit in your packet there, which is Plaintiff's Exhibit 77.
Now, do you recognize that memorandum?
A. Yes, I've seen this before. I'm not sure that I got a copy of it at that time, but yes.
MS. NOVOTNY: May I get clarification from the Court? I'm sorry. I can't recall.
Had Plaintiff's Exhibit 77 been entered with a previous

witness?

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

MS. NOVOTNY: Okay.

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

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

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

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

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

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

So that strikes me as strange.

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

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

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

Q. Thank you.

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

MR. BUNSON: No objection, Your Honor.

THE COURT: Admitted.

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

A. January 12th, 2010.

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

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

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

A. 72?

Q. Yes.

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

Q. Yes.

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

Q. Yes.

A. I want to make sure I have --

Q. Yes, sir.
A. Okay.
I'm sorry. What was the question?
Q. Now I forgot the question.
MS. NOVOTNY: May I have the question read back?
THE COURT: No. Just ask another one.
MS. NOVOTNY: All right.
Q. (BY MS. NOVOTNY) Those were both dated the same date; correct?
A. Correct.
Q. Now, you already discussed the disagreement with the assertion that Dr. Tudor would need faculty -- tenured faculty recommendation letters as part of that packet; correct?
A. Correct.
Q. And there's also an assertion in here that there's little documentation of service activity in Dr. Tudor's portfolio other than routine departmental assignments.
Is that something you would agree with?
A. Okay. This is --
Q. This short paragraph here.
A. The second paragraph --
Q. Yes.
A. -- of the body?
I recall that Dr. Tudor was involved in some Native American symposium events and organizing the conference. I

recall that.
Q. Was the Native American symposium at Southeastern a fairly big deal for the school?
A. I would say yes.
Q. So would it be pretty prestigious to be a part of that symposium?
MR. BUNSON: Objection, Your Honor. Leading.
THE COURT: Sustained.
Q. (BY MS. NOVOTNY) Let me phrase it another way.
How did you feel about the Native American symposium?
A. I thought it was a very good thing for Southeastern to have. It was a national conference, and we brought in some very well-respected and renowned Native American scholars and speakers.
Q. Thank you.
Okay. I'd like to now direct your attention to Plaintiff's Exhibit 76.
Do you recognize Plaintiff's Exhibit 76, Dr. Mischo?
A. Yes.
Q. And can you tell us what that document is?
A. I need to review it here, please.
Q. Sure.
THE COURT: I'm sorry. I can't hear you.
THE WITNESS: I'm sorry. I need to review the e-mail.

THE COURT: Oh.

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

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

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

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

A. Yes.

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

A. I'm sorry?

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

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

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

A. Correct.

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

MR. BUNSON: No objection, Your Honor.

THE COURT: Admitted.

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

Q. (BY MS. NOVOTNY) As we're looking at this e-mail exchange between yourself and Dr. Tudor, can you recall how you felt at the time that you drafted this e-mail?
A. Well, obviously, I think I would have been concerned that changes to the portfolio had been made, and apparently without any notification to the candidate or to the department chair, which -- I was not department chair at that time. I had resigned the year prior to this.
Q. Okay. And who was the department chair at the time?
A. Dr. Randy Prus.
Q. Is that the Randy that's mentioned in your e-mail here?
A. Yes.
Q. Okay. Now, did Dean Scoufos ever talk to you about why that letter was placed into Dr. Tudor's portfolio?
A. No.
Q. And this exchange between you and Dr. Tudor, this was in September of 2010, and the previous documents we were looking at were dated in January of 2010.
So this is -- this is nine months later; correct?
A. Correct.
Q. And so at no time, until September 14th or 15th of 2010, at that time you were not aware of the second memorandum that had a further explanation in there?
A. No. Once -- once the binder, the portfolio, is -- once it leaves my office, I do not see it again.

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

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

THE COURT: Overruled.

You may answer.

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

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

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

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

A. No.

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

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

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

Q. Thank you.

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

Do you recognize Plaintiff's Exhibit 92?

A. Yes.

Q. And can you tell us what this is?

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

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

A. Yes. This was mine.

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

A. Yes.

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

MR. BUNSON: No objection, Your Honor.

THE COURT: Admitted.

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

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

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

Can you explain what those categories are there?

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

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

A. I checked the "Commendable" box.

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

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

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

A. I would say relatively new, yes.

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

A. Yes.

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

A. I checked "Outstanding" in that box.
Q. And you also had some comments; correct?
A. It says "Published article," and then in parentheses "in press," which means that it had been accepted but had not actually been printed, in print.
Q. Okay. And there's been some testimony in the case up to now that getting peer-reviewed scholarly articles published is something that's expected of somebody applying for tenure.
Does that sound accurate to you?
A. Yes.
Q. And do you know if Dr. Tudor had more than one article at that time?
A. I don't recall.
Q. Okay. Now, there's also a third box for service to institution.
Can you explain why you checked the "Commendable" box there?
A. I don't recall. It would have been based on another document which would have listed some of Dr. Tudor's service things, which I don't have in front of me, so I don't know exactly --
Q. Sure.
A. -- why.
That was my evaluation, that it was commendable. I don't recall on what specifically it was based.

Q. Okay. But do you generally agree that, had you checked -- you checked the "Commendable" box because you had reason to believe that she had been participating in service to the institution and her profession?
A. Yes.
Q. I want to draw your attention to the second page of this document now, and this is the signature page here.
Now, it looks like your signature's here, and the date is 11-20-2009.
Do you notice any other date on that page?
A. Next to the dean's signature, it -- I can't read -- excuse me. I can't read it. It looks like 04-06-10.
Q. Does that date of April 6, 2010, stand out to you at all?
A. No.
Q. Well, do you recall a meeting that you attended with Dr. Tudor and Dean Scoufos on or around April 6th, 2010?
A. Yes.
Q. This would have been a few months after the January memos we were looking at a few moments ago.
Can you explain generally what you recall of that meeting in April of 2010?
A. I think there may have been more than one meeting with Dr. Tudor and I and the dean, but the one I remember focused on the denial of tenure and promotion and the offering of the one-year terminal position.

Q. Was there any other kind of offer made in that meeting?
A. I don't think so. I don't remember.
Q. Would it help to refresh your memory?
A. Yes.
Q. Okay.
MS. NOVOTNY: Ezra, can you pull Dr. Mischo's deposition? I don't remember the number now.
Q. (BY MS. NOVOTNY) Okay. Well, while he's looking for that -- now, at the time that the meeting of April 6, 2010, were you still department chair at that time?
A. Yes.
Q. And is that why you were accompanying Dr. Tudor to that meeting?
A. Yes.
Q. Okay. Do you remember at any time in that meeting feeling like there was some kind of an ultimatum given to Dr. Tudor?
MR. BUNSON: Objection, Your Honor. Leading.
THE COURT: Overruled.
THE WITNESS: An ultimatum?
Q. (BY MS. NOVOTNY) Yes.
A. What I recall is that the dean made clear that Dr. Tudor's application for tenure and promotion would be denied and that Dr. Tudor should not go forward with it but instead would -- or should take the one-year position, that

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

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

A. No.

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

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

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

A. Is it strange?

Q. Yes.

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

Q. Thank you.

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

A. Correct.

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

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

A. Correct.

Q. Do you recall at that deposition testifying that the administrators didn't have the power to give such an offer?
A. I don't recall testifying to that. It sounds like something I would have said.
Q. So you don't dispute that that was your testimony at that time?
A. If it's in the deposition, I don't dispute it, no.
Q. Okay. Let's go back to -- now, you stepped down as chair of the English, Humanities, and Language department at Southeastern.
When was that?
A. That would have been after the spring of 2010, spring semester.
Q. Okay. And was there a reason that you stepped down?
A. There were several reasons.
Q. Can you explain to the jury here today what your reasonings for stepping down as chair were?
A. I had been department chair for seven years, and one thing, I wanted to return to full-time teaching. And I was not, at that point, really interested in continuing with all of the administrative -- with the administrative duties that came with being department chair.
Q. Okay. Do you recall anything else that led you to step down as chair?
A. The morale of the faculty was quite low at that point,

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

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

A. Yes.

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

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

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

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

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

A. Yes.

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

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

Q. So this particular memorandum?

A. Yes.

Q. Did the administration's treatment of the Dr. Tudor matter, in regards to her tenure and promotion, have anything to do with you stepping down as chair?
A. I would say yes. It was one of several things that pretty much persuaded me that I was no longer interested in any sort of administrative -- administrative role, and, again, wanting to get back to full-time teaching.
Q. Sure.
Now, did being a department chair come with a pay raise?
A. A small one, yes.
Q. Did stepping down from that role mean you had to give up that small pay raise?
A. Yes.
Q. And so, because of a lack of shared governance, a lack of transparency, and how Dr. Tudor was treated by the administration, you voluntarily took a pay cut; is that correct?
A. Yes.
Q. All right. One more question before I hand you over.
Let's go back to that meeting we discussed earlier, the one in 2007 concerning specific instruction for Dr. Tudor regarding bathroom usage.
Looking back at that meeting, with all the context now that you have of the kind of work that Dr. Tudor did after bravely facing her colleagues as the woman she is, do you

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

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

THE COURT: Overruled.

THE WITNESS: Okay. Could you repeat the question?

Q. (BY MS. NOVOTNY) Sure.

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

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

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

THE COURT: Mr. Bunson.

MR. BUNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BUNSON:

Q. Good morning, Dr. Mischo.

A. Good morning.

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

referenced, the 2007 meeting regarding Dr. Tudor's transition.
Do you recall that?
A. This is the one about the bathroom, using the bathrooms?
Q. Yes, sir.
A. Yes.
Q. And in your testimony you indicated that it was determined that Dr. Tudor would use the unisex restroom; is that correct?
A. Yes.
Q. Were you part of that determination?
A. No.
Q. Do you know who made that determination?
A. I do not know.
Q. Do you know whether or not Dr. Tudor was offered the privacy of a single-occupant restroom as a courtesy?
A. I don't know.
Q. Dr. Mischo, if you would, refer back to Exhibit 70, Plaintiff's Exhibit 70.
A. Okay. I'm sorry. 70?
Q. Yes, sir.
A. Okay.
Q. And you recall that was the e-mail from you to Dr. Tudor --
A. Right.
Q. -- recommending her for tenure and promotion; correct?

A. Right.
Q. Do you have your reasoning in there as to why you recommend her for tenure and promotion?
A. No.
Q. And you talked earlier about transparency being important.
Do you recall that testimony?
A. Yes.
Q. And you see that there is no reasoning in there as well; is that correct?
A. Correct.
Q. Would that also be considered, at least on some level, a lack of transparency?
A. I think the function of this letter was to -- was to notify the candidate, not so much to justify or explain.
Q. Did you ever give her an explanation as to why you recommended her for tenure and promotion?
A. There was a form, as part of the application that I filled out, which would have involved some checking of boxes. But other than that, I think that was it in terms of explanation to Dr. Tudor.
Q. Thank you, Dr. Mischo.
Is it fair to say that, during your time of Dr. Tudor's tenure and promotion process as well as during your time as department chair, that you disliked the role of administration

in that process?
A. Certainly some days I disliked administration. Not every day, but, yes, there was --
Q. And if you had your way, you'd rather have a department that was run by faculty rather than a chair or an administration, wouldn't you?
A. The -- yeah. My sort of thinking is that a department chair is not a head or boss but rather sort of a coordinator and that it should be the faculty, rather than an individual, making important decisions.
Q. Do you recall how tenure and promotion committees were formed at Southeastern? And if so, how is it formed?
A. At this point in time or back in the time we're looking at, the tenure and promotion committees would be five tenured faculty at associate or full-professor level.
Q. And, Dr. Mischo, do you make the selection of those five individuals?
A. Yes.
Q. Does anybody else give you feedback about those five individuals?
A. I can't remember, but I think the list of the tenure and promotion committee might have gone to the dean. I'm not certain of that, though.
Q. But you were the one who selects those five people; correct?

A. Correct.

MR. BUNSON: May I approach, Your Honor?

THE COURT: Yes.

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

A. Yes.

Q. What is that document, Doctor?

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

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

THE COURT: Any objection?

MS. NOVOTNY: No objection.

THE COURT: It will be admitted.

MR. BUNSON: Thank you.

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

A. Yes.

Q. Who are they?

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

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

A. Correct.
Q. Did anyone influence who you put in any of those positions?
A. I'm sorry. Could I have the question again?
Q. I'll ask it differently.
You are the one who made that determination; correct?
A. Yes.
Q. Did anyone tell you to put any one of those five members on that committee?
A. No.
Q. Did anyone tell you who to put as the chair of that committee?
A. No.
Q. Thank you.
Just taking a quick step back. Do you recall specifically who you appointed to Dr. Tudor's 2008 tenure and promotion committee?
A. No.
Q. Thank you.
And in that same exhibit, do you see that Dr. Tudor has objected to Dr. Coleman serving as chair of her committee?
A. Correct.
Q. And that's because Dr. Tudor accused Dr. Coleman of discrimination; isn't that correct?
A. I know Dr. Tudor objected to Dr. Coleman. I'm not -- I

don't quite recall why.
Q. So you don't recall Dr. Tudor ever accusing Dr. Coleman of discrimination?
A. Maybe not in those terms. I don't recall, but I know Dr. Tudor did not think Dr. Coleman -- from this e-mail and I think subsequent discussion I think I had with Dr. Tudor, did not think Dr. Coleman would be good or fair in that position.
Q. But you left Dr. Coleman on her committee; correct?
A. Yes.
Q. Did you communicate your reasonings for leaving Dr. Coleman on Dr. Tudor's tenure and promotion committee to Dr. Tudor herself?
A. I told Dr. Tudor that, in my opinion, that I thought Dr. Coleman would be capable of being objective and being a fair committee chair. I recall discussing that in person.
Q. Thank you, Doctor.
Would you agree that the process of evaluating tenure and portfolio promotions -- let me strike that question.
Would you agree that the process of evaluating tenure and promotion portfolios and each of the criteria within them is inherently subjective?
A. Yes.
Q. And when judging scholarship, people can view the same act, same piece of evidence, and view it differently; is that correct?

A. Yes.
Q. Can professionals have differing views but still be respectful?
A. Yes.
Q. And two people can look at the same portfolio and come to completely different conclusions, can't they?
A. Yes.
Q. When it comes to the area of scholarship, at the time you were evaluating the portfolio, what was more important, quantity or quality?
A. In terms of scholarship?
Q. Yes, sir.
A. If I had to say, I would say they both mattered, but certainly quantity in the sense of, I think, one or two publications would be -- would be, to me, necessary; 1.5 maybe.

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

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

Do you recall that?

A. Yes.

MR. BUNSON: May I approach, Your Honor?

THE COURT: Yes.

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

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

A. Okay.

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

A. Okay.

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

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

Q. My apologies.

A. -- as to quantity.

Q. You're correct.

A. Yes.

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

A. Okay.

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

A. Okay.

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

Do you recall that testimony?
A. Yes.
Q. After reading that, does that refresh your recollection as to how much you insisted or --
MS. NOVOTNY: Objection, Your Honor. He already testified to the one and a half without needing the deposition.
THE COURT: I don't know if you're impeaching or refreshing his recollection. Either read it or let him read it and then ask him the question.
Q. (BY MR. BUNSON) Dr. Mischo, will you please -- in your deposition, if you could follow along starting at Line 3, you were asked:
"Question: And what would you normally tell professors about the type of scholarship they would have to get tenure?
Answer: Typically, I would say you would need one and a half publications."
Is that correct?
A. Yes.
MS. NOVOTNY: Objection. Duplicative.
THE COURT: Sustained.
Q. (BY MR. BUNSON) Dr. Mischo, do you recall talking to Dr. Tudor about her opinion that she needed at least one and a half publications in her portfolio?
A. Did I talk to Dr. Tudor about that?

Q. Yes.
A. We would have, as a course of procedure with every untenured faculty member, the department chair, I would meet with each one of them at the beginning of each academic year, and we would go over their plan -- their development plan, what they were going to do for that year. And we would talk about in terms of where are you in terms of the three categories moving toward tenure?
So we would have talked about, again, service -- teaching, research, and service.
Q. And at that meeting you would have instructed her that it was your recommendation that at least one and a half publications be in her portfolio; is that correct?
A. That was --
MS. NOVOTNY: Objection. Asked and answered.
THE COURT: Sustained.
Q. (BY MR. BUNSON) Did you have that meeting with Dr. Tudor before she applied for tenure in 2008?
A. The yearly meeting, I don't recall if it was before or after the portfolio was submitted.
Q. Well, you have an annual review with her every year; is that correct?
A. Well, we have a meeting at the beginning of the academic year in August or September. And then the evaluation is done at the end of the semester, sometime in April or at the end of

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

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

A. I don't remember.

Q. Do you remember reviewing that portfolio?

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

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

A. No, I don't remember.

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

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

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

Do you recall that?

A. The annual?

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

A. Right.

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

A. Right.

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

A. One article at that point which was scheduled, right. It was in press. It was accepted to be published.
Q. So, at that time, if you had known that Dr. Tudor had more articles, you would have implied "articles," wouldn't you?
A. I think what the -- the comment that says "published article" would refer to this academic year. So what that would refer to would be during this time period, '08-'09, that there would have been one published.

Now, I don't recall if there were others before or not.
Q. And if Dr. Tudor submitted a 2008 portfolio with zero publications in it, that would not be following your recommendation of at least one and a half; is that correct?
A. Correct.
Q. If she had submitted a 2009 portfolio with only one article, that would still not be following your minimum of at least one and a half publications; is that correct?
A. Correct.
Q. And yet you recommended Dr. Tudor for tenure even though she didn't meet your own criteria for publications necessary for tenure; is that correct?
A. I think there may have been -- again, we get into that issue of one and a half articles.

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

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

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

A. Right.

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

A. Once again, please.

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

A. I can't remember that.

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

A. Okay.

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

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

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

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

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

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

Is that correct?

A. Yes.

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

A. Yes.

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

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

Did I read that question correctly?

A. Yes.

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

Is that accurate?

A. Yes.

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

tenure and promotion; is that correct?

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

Q. Thank you for that clarification.

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

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

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

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

THE COURT: Be seated.

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

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

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

So observe that order, please.

Anything else?

MS. COFFEY: No.

THE COURT: Okay. Bring the jury in.

(Jury enters.)

THE COURT: Be seated, please.

Please continue.

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

A. Okay.

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

A. Yes.

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

A. Correct.

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

A. Yes.

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

A. Not that I remember, no.

Q. No complaints of bathroom restrictions; is that correct?
A. Correct.
Q. No complaints of makeup restrictions; is that correct?
A. Correct.
Q. No restrictions of dress code restrictions; is that correct?
A. Yes.
Q. And absolutely no complaint she was being mistreated because she was transgender; is that correct?
A. Yes.
Q. Did you ever personally observe anyone criticizing the way Dr. Tudor dressed?
A. No.
Q. Did you ever personally observe anyone criticizing Dr. Tudor's makeup?
A. No.
Q. Did you ever personally observe anyone complaining about which restroom Dr. Tudor used?
A. No.
Q. And if you had personally witnessed any of that discrimination towards Dr. Tudor or had Dr. Tudor reported it to you, you would have reported it; correct?
A. Yes.
MR. BUNSON: Thank you. No further questions.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. NOVOTNY:

Q. Thank you, Dr. Mischo.

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

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

A. I don't think --

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

THE COURT: You may answer if you know.

THE WITNESS: I don't think so.

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

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

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

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

A. Yes. There is the five- to seven-year probation period. So one can apply for tenure fifth, sixth, and seventh year and improve if necessary.
Q. Okay. And did Dr. Tudor publish articles between the 2008 application and the 2009 application for tenure?
A. I can't remember.
Q. Fair enough.
And is it possible that she did?
A. Pardon?
Q. Is it possible she did based on you looking at the exhibit earlier of her '08-'09 review?
A. Yes. I know she did publish some after I resigned as department chair, which I did -- which I did not know of as chair.
Q. Now, there was also some testimony on cross-examination. You indicated that Dr. Coleman was on Dr. Tudor's committee for tenure.
Now, did Dr. Coleman's tenure committee end up recommending Dr. Tudor for tenure?
A. I can't remember which -- which year was this? I get the years mixed up.
Q. Sure.
I believe it was the Defendant's Exhibit 199.
MS. NOVOTNY: I'm sorry, Tim. I thought we'd be done with your exhibits.

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

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

A. Okay. Yes.

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

A. Yes.

Q. Thank you.

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

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

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

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

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

A. Yes.

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

A. I recommended that, yes.

MS. NOVOTNY: Okay. Nothing further.

THE COURT: Redirect -- I mean, recross?

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

RECROSS-EXAMINATION

BY MR. BUNSON:

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

A. Yes.

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

A. Yes.

MR. BUNSON: Thank you. No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

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

THE COURT: Stand and stretch if you need it.

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

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

(Witness duly sworn.)

THE COURT: Be seated.

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

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good morning again, Dr. Spencer.

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

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

A. Yes.

Q. What is your job title?

A. Professor of English and Humanities.

Q. Do you have tenure?

A. Yes.

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

A. Okay.

Q. When did you start working at Southeastern?

A. 2001. August 2001.

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

A. Correct.

Q. Okay. What department do you work in?

A. The department of English, Humanities, and Languages.
Q. Have you been in the English department the whole time?
A. Yes.
Q. Okay. So, Dr. Spencer, I want to talk a little bit with you about your own experience applying for tenure.
Do you recall what year you applied for tenure?
A. I guess it would have been 2006.
Q. Do you recall how your department promotion and tenure committee voted on your application?
A. Yes. They voted -- it was a bit of a split vote. They voted for tenure but not promotion to assistant professor.
Q. Do you know what the vote was at the next level in the process? Do you know who would -- let me withdraw that question.
What person or entity voted on the application after the promotion and tenure committee?
A. Who did it go to next?
Q. Yes.
A. Department chair, John Mischo.
Q. Do you recall what Dr. Mischo's vote was on your application?
A. He concurred with the faculty committee.
Q. Okay. And we're just going to go through all the stages.
A. Sure.
Q. Okay. Who does the application go to after the

department chair?
A. It goes to C.W. Mangrum, who was dean of arts and sciences.
Q. And do you recall what Dean Mangrum's decision was on your application?
A. Yes. He was for both tenure and promotion to associate professor from assistant.
Q. Okay.
A. I may have misspoke and said assistant before. You start out as assistant, then you're promoted to associate.
Q. Can you explain to the jury, is it typical that someone applies for both tenure and promotion at the same time?
A. Right, normally. That was an unusual move for the committee to do on my part, to split them.
Q. Okay. So after the dean, who does it go to?
A. The academic vice president, who would have been Doug McMillan at the time.
Q. Okay. So I want to ask you some questions about your experiences with Doug McMillan and this tenure application in particular.
So what was Doug McMillan's decision?
A. It was negative on both, neither tenure nor promotion.
Q. Was that surprising to you? Was that surprising to you?
A. I'm still not quite understanding what you're saying.
Q. I'm sorry.

Was that Dr. McMillan's decision on your application surprising to you?
A. Oh, yes. Actually, the faculty one was surprising too. So that was very surprise -- a shock, in fact. I mean...
Q. Once you found out about Doug McMillan's decision on your application, did you do anything to try to get more information?
A. I spoke to John Mischo, who was the chair, a little bit. And, at that time, there was not any requirement to provide a written explanation, so I only got, oh, a little bit -- I think it was, like, lack of collegiality or something, and then later it was something to the effect of minimal publications were the problem.
Then that's when I decided on my own to intervene in the process.
Q. Was it because tenure is important?
A. Oh, yeah. I mean, your future at the school hangs on it. You either get tenure or you're out in a tenure-track situation.
Q. Okay. So why don't we talk a little bit about what you did to try to intervene.
A. Right.
Q. Who did you try to talk to after John Mischo?
A. Well, I decided to start at the bottom, basically, with John Mischo, the chair, going over it. And then I went to

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

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

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

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

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

A. Oh, certainly. Sure.

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

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

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

A. Jesse Snowden was.

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

A. Oh, yeah. Yeah.

Q. Was there any hesitancy?

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

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

A. Yes.

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

So you spoke with him; right?

A. Uh-huh. Yes.

Q. In person?

A. Yes.

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

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

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

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

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

A. Yes. Yeah.

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

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

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

A. Right.

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

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

MR. BUNSON: Objection, Your Honor. Hearsay.

THE WITNESS: Pardon?

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

MR. YOUNG: I do not, Your Honor.

THE COURT: All right.

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

THE WITNESS: Even in an interview with that person?

THE COURT: Yes.

THE WITNESS: Okay.

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

A. Okay.

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

A. Okay.

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

Q. Uh-huh.

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

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

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

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

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

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

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

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

MR. YOUNG: I will.

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

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

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

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

scholarship, you wanted to fix it; is that right?
A. Well, I was under the understanding that was enough. In other words, that's why it was a bit of surprise to me, all this, you know, in terms of what the expectations were.
Then if I had known that I needed more articles, I would have sent those out earlier because I basically had them ready in my second dissertation.
Q. Okay.
MR. YOUNG: Your Honor, may I approach the witness?
THE COURT: Yes.
Q. (BY MR. YOUNG) Dr. Spencer, do you recognize the exhibit that's been marked as Plaintiff's Exhibit 48?
A. Yes.
Q. Can you tell me what it is?
A. It's the letter telling me -- informing me that he's recommending my tenure and promotion.
MR. YOUNG: I'd like to move to enter Plaintiff's Exhibit 48 into evidence.
MR. BUNSON: No objection, Your Honor.
THE COURT: Admitted.
Q. (BY MR. YOUNG) So in your case -- then we'll move on from this -- despite the vice president voting against you, you were able to get tenure because you were able to fix things before your application went to the interim president; is that right?

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

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

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

A. Correct.

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

A. Yes.

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

A. Yes.

Q. Do you recall reviewing her tenure portfolio?

A. Recall reviewing it? Yes.

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

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

Q. Right.

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

Q. Uh-huh.

A. -- in an application.

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

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

A. What now? I'm sorry.

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

MR. BUNSON: Objection, Your Honor. Leading.

THE COURT: Overruled.

Go ahead and answer.

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

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

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

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

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

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

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

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

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

Q. That's fair, sir.

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

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

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

THE COURT: Just wait for a question.

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

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

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

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

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

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

Q. Okay.

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

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

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

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

just wasn't way over the bar; is that right?
A. Well, it was -- I mean, I've described it generally speaking. It was still weak, but it was adequate. It was enough for me to vote for her, you know.
Q. Have you had other applications -- you said you reviewed four to five -- other portfolios that were similarly -- that they met the standard?
A. Yes. It's always weakness in publications, is the weakness. And it would be slicing it pretty thin to call hers weaker than others that got tenure.
Q. Would you agree that that would be singling her out?
A. I'm not sure. I wouldn't -- it's slicing it pretty thin is the way I would describe it. I mean, ultimately, it's a bit of a judgment call, you know, but it's just -- the other -- the other people in the department got tenure on -- they were not much stronger. It's almost always weakness. Not many publications is the weakness.
Q. Okay. I'm almost done with you, and then you're free.
I'd like to fast-forward to Dr. Tudor's 2010-11 application.
Did you write a letter of recommendation for Dr. Tudor for that application?
A. Yes.
Q. Okay.
MR. YOUNG: Your Honor, may I approach the witness?

THE COURT: Yes.

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

A. Yes.

Q. Can you tell me what it is?

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

Q. Your recommendation for Dr. Tudor?

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

Q. Okay.

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

MR. BUNSON: No objection, Your Honor.

THE COURT: Admitted.

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

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

But I had heard from other faculty members and knew that

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

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

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

A. Yes.

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

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

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

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

Q. Who is of that opinion?

A. Claire.

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

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

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

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

MR. YOUNG: Thank you, Your Honor.

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

A. Right. Yes.

Q. Okay.

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

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

A. At least she --

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

THE COURT: Sustained.

MR. YOUNG: Okay.

Q. (BY MR. YOUNG) Did you talk to Claire Stubblefield about anything else other than your own tenure application process?
A. No, no. I just...
Q. Did Claire Stubblefield ask you any questions about the quality of Dr. Tudor's portfolio?
A. No. All she wanted to know was my story, basically.
Q. Do you recall whether she took notes during that meeting?
A. I don't recall her taking notes, actually. She may have, but I don't remember seeing her do that.
Q. Do you remember if she asked you follow-up questions?
A. I -- I mean, as best as I can recall, it was mostly me just rehearsing what I had done, essentially, and her thinking -- I mean, the reason I -- because if you -- if you can't intervene in the process, then it's all over when the final decision comes down. Then what can you do? Where is your appeal of any sort?

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

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

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

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

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

Q. Okay.

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

THE COURT: Mr. Bunson.

MS. COFFEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BUNSON:

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

Is that a fair characterization?

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

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

levels, is it?
A. No, not necessarily. I mean...
Q. And, in fact, in your case, there was lots of disagreement, wasn't there?
A. Oh, yeah, definitely.
Q. And, Dr. Spencer, Plaintiff's Exhibit 48, the letter from Jesse Snowden recommending you for tenure and promotion, do you have that in front of you?
A. Uh-huh.
Q. Is there any reason Dr. Snowden gives for recommending your tenure and promotion?
A. Is there any reasoning? I mean --
Q. Correct.
A. No, there's no explanation really.
Q. Do you recall giving Dr. Tudor any advice on her portfolio prior to its submission?
A. Only -- the advice I gave was immediately after my experience in 2006-2007, and I gave it to several other faculty members as well.
Q. And what was that advice?
A. I wouldn't go up for tenure without two articles.
Q. And you sat on her 2008-2009 application committee, didn't you?
A. Yes.
Q. How many articles did she have in that one?

A. There were none in the first one.
Q. So she ignored your advice?
A. Apparently. I was surprised.
Q. How many articles did she have in her 2009 portfolio?
A. There was one that was going to be -- I can't -- I think it was -- it was accepted, which more or less counts as published if you get a letter back from the, you know -- and the two articles was not necessarily my opinion. It was merely just, this was my experience had been -- because it's not just our department; you've got to get through the other levels as well that I -- you know, I -- if anybody -- if I had had any hint that I needed more than what I had had, I would have done it. But nobody -- I never got any -- I never had any hint from anybody that I needed more.
Q. Then you --
A. Here, it's clear that you do. So I told a couple of other -- I told Jani -- the other faculty members who were coming up for tenure, you know, to help out junior colleagues, spare yourself the trouble, you know, that what -- you know, that would be the safe level, and I wouldn't go up without that. Trying to help them out.
Q. And you earlier classified Dr. Tudor's 2009-2010 portfolio as weak but adequate. Is that accurate?
A. Right. Because I voted for her. I mean, I've said it was weak, but I voted for it in the end and was prepared to

vote for it when I went into the meeting.
Q. Dr. Spencer, I want to make sure that we're clear. Some of these questions are just yes or no. I don't --
A. Okay. Okay.
Q. I don't want to take too much time, if it's okay.
Did Dr. Tudor follow the format you expected in her 2009-2010 portfolio?
A. No, not really. I wasn't sure -- I'd only heard what the format was to be, but it struck me that it wasn't following, yeah.
Q. And weren't those expectations of the formatting set by the dean at the time?
A. Yes.
Q. Had you ever reviewed a multivolume portfolio other than Dr. Tudor's?
A. No, but Dr. Tudor may have been my first one. I was trying to think about that, you know, in the other questions. I believe that may have been the first one that I sat on.
Q. And, Dr. Spencer, the cover letter you talked about and you referred to as unprofessional, that's the first impression that a candidate's portfolio is presented to the committee; isn't that correct?
A. Yes.
Q. Okay. Do you recall any indication or suggestion made by the chair, Lisa Coleman, or anyone else that stood out as a

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

A. Lisa Coleman did raise the transgender issue.

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

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

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

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

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

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

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

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

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

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

How were you involved with the Native American Symposium?

A. I'm the primary organizer of it.

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

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

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

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

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

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

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

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

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

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

A. Yes.

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

work, or was it mostly just in title?
A. She read the papers. That is pretty standard. I mean, I have no qualms about putting her as co-editor on it.
I mean, I did most of the actual sort of editing of the individual ones and formatted them on my computer, but she -- you know, I gave her the papers, she read them, made some comments, and that's pretty typical in academic settings.
Q. You indicated that Dan Althoff was your co-chair.
So the years you worked with Dr. Tudor, was it you, Dr. Tudor, and Dan Althoff only who worked on the Native American Symposium?
A. There were one or two other -- Jane McMillan, Doug McMillan's sister, was on it. There were a couple of other people that would come and go, you know, over the years, a number of symposiums.
Q. Was the work evenly split amongst all of you?
A. Most of the -- the other members primarily helped on the event itself, which was crucial. I mean, they needed to be there and would show up for -- there would be several meetings, at least, leading up to the event and -- so they were very helpful, and I listed them as active members on the committee.
But in the sense that, you know -- I was -- in terms of organizing the academic conference, in particular -- sometimes we did some additional more local events, and Chris Wesberry

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

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

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

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

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

A. Maybe around 20.

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

A. Sure.

Q. Thank you.

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

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

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

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

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

for that 20 to 25 percent?
A. No. There would be some other people, but she -- I would definitely put her -- she was the next most active, you know, after -- me, Dan, and Rachel, I would say.
MR. BUNSON: I have no further questions at this time.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. YOUNG:
Q. Dr. Spencer, before you came into the courtroom, we were having a conversation about odd things in tenure portfolios.
Do you remember that?
A. Of -- which about the tenure portfolios?
Q. That sometimes professors applying for tenure put odd things in their portfolios.
A. Oh, right, right. Okay.
MR. BUNSON: Objection, Your Honor. Mr. Young is testifying for him.
THE COURT: Sustained.
Q. (BY MR. YOUNG) Okay. Have you had occasion to review portfolios other than Dr. Tudor's, where there were things in the portfolio that didn't make sense to you?
A. No, not really, because everyone else pretty closely adhered to Lucretia Scoufos's model. I mean, she was very particular about how it had to be. And I don't think I saw a

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

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

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

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

THE COURT: Overruled.

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

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

BY MR. YOUNG:

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

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

A. Right.

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

MR. BUNSON: Objection, Your Honor. Calls for

speculation.

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

MR. YOUNG: Okay.

THE COURT: Move on.

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

A. Yes.

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

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

Q. Different question.

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

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

Q. Yeah.

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

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

A. Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Any redirect?

MR. BUNSON: No, Your Honor.

THE COURT: You may step down. Thank you.

(Witness excused.)

THE COURT: Call your next witness.

MS. NOVOTNY: Plaintiff calls Dr. Randy Prus.

THE WITNESS: Leave these here?

THE COURT: Yes.

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

(Witness duly sworn.)

THE COURT: Be seated.

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

DIRECT EXAMINATION

BY MS. NOVOTNY:

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

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

When did you start working at Southeastern Oklahoma State?

A. August 1991.

Q. And what was your title when you began?

A. Assistant professor.

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

A. Professor and chair.

Q. And what are you chair of?

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

Q. Great.

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

A. August 2010.

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

A. Yes.

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

correct?
A. Correct. I was on the tenure promotion committee in 2009.
Q. And can you help explain for us here today what your role on that committee in 2009 was?
A. My role was to review the portfolio, attend the meeting, discuss the merits of the portfolio and her work in the department. And a vote was taken, and the results were passed on to the department chair.
Q. Okay. And do you recall what that vote was?
A. Yes.
Q. Okay. And what was that vote?
A. The vote was 4 to 1 in favor of tenure and promotion.
Q. So the committee then at that point recommended tenure for Dr. Tudor?
A. The committee did, yes.
Q. And who was the one dissenter?
A. Me.
Q. Okay. And what was your reasoning for voting against tenure at that time?
A. Well, I -- the cover letter lacked professional competence. Dr. Tudor made an argument that three people on campus who weren't qualified for tenure deserved tenure, and, therefore, she did.
And as writing instructors, we teach for audience and

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

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

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

A. She had one.

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

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

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

A. Correct.

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

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

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

MR. JOSEPH: Objection, Your Honor. Leading.

THE COURT: Sustained.

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

A. In 2009?

Q. Yes.

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

think.
Q. What was your impression of Dr. Tudor as a teacher?
A. Still had work to do. She could have been more engaging, energetic, but she was plugging away.
Q. Are all tenured professors energetic and engaging?
A. "Aren't all"? I don't understand your question.
Q. I said, "Are all tenured professors engaging and energetic?" Let me strike that and rephrase.
So you said that Dr. Tudor was not necessarily energetic and engaging. Are there tenured professors who are tenured but are not engaging and energetic people?
MR. JOSEPH: Objection, Your Honor. That's just a confusing question.
THE COURT: I understand it.
Can you answer that?
THE WITNESS: Are there tenured professors who aren't engaging?
Q. (BY MS. NOVOTNY) Yeah.
A. Sure.
Q. Okay. That's all I was asking.
All righty. You know what? That is -- well, no. I had a couple other questions.
Did administrators ever come to you and tell you which bathroom you should use specifically?
A. No.

Q. Did you know of any other English professors who were told and given direction to use a specific restroom while they were at work?
A. No.
Q. Did you know that Dr. Tudor was instructed to only use one restroom specifically?
A. At the time, no, but I've heard allegations since then.
Q. Okay. But you've never heard of any other professor being told what specific restroom to use?
A. That's correct.

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

THE COURT: Mr. Joseph?

MR. JOSEPH: Thank you, Your Honor.

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

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

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

THE COURT: I don't think you can actually lodge that objection until you've heard any question asked. Certainly, I will consider those on a case-by-case basis.

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

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

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

THE COURT: I know.

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

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

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

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

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

We'll be in recess.

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

(Jury enters.)

THE COURT: Be seated.

Please continue.

MR. JOSEPH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOSEPH:

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

A. Randy Thomas Prus.

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

A. Correct.

Q. What are your duties there as chair?

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

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

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

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

A. I teach two classes.

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

A. Yes, I do.

Q. Okay. And just very briefly, how do you know Dr. Tudor?
A. She was -- she worked in the department from 2004 to 2011.
Q. Okay. Are you -- were you the chair at the department of EHL when Dr. Tudor first applied for tenure?
A. No, I wasn't.
Q. And were you the chair of the EHL department the second time she applied for tenure in 2009-2010?
A. No, I wasn't.
Q. Okay. If you would, in brief, walk the jury through the duties of a member of a tenure and promotion committee -- a member of that committee -- in the EHL department during that 2009-2010 time frame.
A. We were -- we'd review the portfolio and the candidate's work in the department and the university. We discussed the merits, generally based on teaching, scholarship, and service. Then we'd vote on whether to approve or -- to recommend or not recommend tenure and promotion.

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

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

Q. Okay. And I believe you mentioned an application letter, and you said it was poor. Was that your word?
A. It wasn't professionally competent. I think that's the term I used.
Q. Okay. Was -- can you expand briefly on what you mean by that?
MS. NOVOTNY: Objection. He's already testified to this.
THE COURT: Sustained.
MR. JOSEPH: Okay.
Q. (BY MR. JOSEPH) In terms of the letter, did it appear to you that the letter understood its intended audience?
MS. NOVOTNY: Objection. He's already testified to that. Duplicative.
THE COURT: Sustained.
MR. JOSEPH: Okay.
Q. (BY MR. JOSEPH) In terms of her portfolio, was there a collection of poetry included with that document?
A. It was a collection of poems in a journal with "open mic" put on top of it.
Q. And by "open mic," do you know what that term means?
A. I know it's in reference to sometimes open poetry readings where people can just gather to read.
I wasn't sure -- it seemed as if she were passing off journal -- a personal journal as a form of publication.

Q. And, in your opinion in 2009-2010, was that an appropriate publication for a tenure and portfolio application?
A. No, it wasn't.
Q. Okay. Is Corey Delashaw a tenured member of the faculty?
A. No, she isn't.
Q. Okay. Is Kim McGeehee?
A. No, he wasn't -- he's retired since, but he wasn't at the time.
Q. Okay. And was Theresa Anderson at that time a tenured member of the faculty?
A. No.
Q. Okay. So to the extent that Dr. Tudor's portfolio referenced them, do you have an opinion about whether or not that was appropriate?
A. It wasn't appropriate.
Q. What is a chapbook?
A. A chapbook is a small collection of poetry, 20, 30, 40 pages maybe.
Q. And is the chapbook the same thing as the open mic book that you referenced a moment ago?
A. No. Chapbooks have their own publishers.
Q. Okay. Did Dr. Tudor include any chapbooks in her portfolio?
A. Not that I -- except for the open mic. That's the only

one I recall.
Q. Okay. And was there anything that you found problematic with Dr. Tudor's actual publication or publications in the 2009-10 application committee meeting?
A. It seemed to be -- there weren't very many recent references, and the field is somewhat dynamic. And it didn't show -- didn't quite show promise; right?
As I think I might have mentioned -- maybe I didn't -- tenure for me is not just a reward but a promise of what further work one is going to do in a field, and I didn't see that promise.
Q. And by that you mean a promise from the candidate demonstrating potential?
A. Yeah.
Q. Okay. Did you consider Dr. Tudor's work on Southeastern University's Native American Symposium to be a work of scholarship or was it a work of service?
A. A work of service, I would categorize it.
Q. Did you consider it to be noteworthy for appropriate purposes of tenure and promotion?
A. It certainly wasn't outstanding, but it was -- it added to it.
Q. Okay. How many -- I believe you may have testified to this; I just couldn't hear you earlier.
How many total professors were on Dr. Tudor's 2009-10

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically transmitted a copy of the foregoing Appendix to the Clerk of the Court by using the ECF System for filing and automatic service of Appendix to all counsel of record herein.

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Case No. 18-6102/ 18-6165

In the United States Court of Appeals for the Tenth Circuit

DR. RACHEL TUDOR,
Plaintiff-Appellant/Cross-Appellee

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,
Defendants-Appellees/Cross-Appellants

On Appeal from the United States District Court for the Western District of Oklahoma, Case No. 5:15-cv-324-C, Hon. Robin Cauthron

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application committee?
A. Five.
Q. Okay. And was there discussion between the members of the committee in meeting about whether or not to recommend Dr. Tudor for tenure that year?
A. Yes, there was discussion.
Q. Okay. Is there anything about that discussion you can share with us?
A. That I can share with you?
It was pretty extensive and it -- the meeting was probably at least an hour or so. It was discussed longer than most committees.
Q. Okay. Earlier today we heard testimony from Dr. Mark Spencer.
Was Dr. Mark Spencer on the same committee that you were thinking of in 2009-2010?
A. Yes.
Q. Okay. And Dr. Spencer testified that the issue of Dr. Tudor's transgender status came up in that committee discussion.
Do you remember that?
A. Not directly.
Q. Okay.
A. But I think it was in the room.
Q. Okay. And was it in the room in a positive light?

A. Yes.
Q. Do you remember anyone specifically mentioning it in a positive light?
A. I don't remember anyone mentioning it, but there were -- I know one colleague, and maybe two --
MS. NOVOTNY: Objection. Hearsay.
THE COURT: Don't know.
I think you've answered the question. Stop and wait for another.
THE WITNESS: Okay.
Q. (BY MR. JOSEPH) Dr. Prus, did you have an additional thought that you wanted to share with us?
A. Well, I was going to say that, in my sense, the transgender issue was there because I know at least one colleague who didn't read the portfolio and perhaps another one as well based on their discussion of the portfolio.
Q. And so when you say they didn't read the portfolio, what does that mean?
MS. NOVOTNY: Objection. Calls for speculation.
THE COURT: Overruled.
Go ahead. You can answer.
THE WITNESS: Oh, okay.
Repeat that.
Q. (BY MR. JOSEPH) Sure. I think I -- I apologize.
I think you said it was in the room, and I think you said

one or two people didn't read the portfolio. And I asked you what you meant by that, "didn't read the portfolio."
A. Well, when discussing the letter, for example, they didn't know what we were referring to.
Q. Was there any sense on your part that other members of the committee didn't understand the significance or the lack thereof of the inclusion of the open mic material?
A. Yeah. I don't think they understood the nature of poetry and poetry publications, yeah.
Q. Okay. And, Dr. Prus, is poetry one of the subjects that you teach?
A. Yes.
Q. Okay. Do you consider yourself fairly well versed in poetry?
A. Yes.
Q. Okay. So I believe you were telling us that one or two members of the committee, you think, maybe didn't read the portfolio, and that, as a result of that, what leads you to -- what leads you to connect that with the fact that there was some consideration of Dr. Tudor's transgender status?
MS. NOVOTNY: Objection. Calls for speculation.
THE COURT: Overruled.
THE WITNESS: Because the support for Dr. Tudor without considering the portfolio leads me to that conclusion.
Q. (BY MR. JOSEPH) Now, you still voted -- you individually,

I mean, still voted within the committee not to recommend Dr. Tudor for tenure that year, didn't you?
A. Correct.
Q. Were you worried about being accused of being transphobic or a bigot?
A. No.
Q. Okay. Ultimately, that committee did vote to recommend Dr. Tudor's tenure, did it not?
A. Correct.
Q. After Tudor's tenure and promotion packet left your committee, where did it go next?
A. To the department chair.
Q. And did you personally deliver it to the department chair?
A. No. It would have been the chair of the committee. I'm thinking it might have been Dr. Coleman. I'm not exactly sure who chaired it, but I didn't.
Q. Is that Dr. Lisa Coleman?
A. Yes, yes.
Q. Okay. Was Dr. Lisa Coleman one of the one or two people in the room that you felt like may not have read the portfolio?
A. Yes.
Q. Okay. Did Dr. Scoufos -- who was Dr. Scoufos at that time?

A. At that time, she was the dean of Arts & Sciences.
Q. And did Dr. Scoufos recommend Dr. Tudor's tenure and promotion portfolio be recommended for tenure?
A. She did not recommend.
Q. Okay. After Dean Scoufos reviewed the tenure and promotion application, do you know where it went next?
A. To Vice President McMillan.
Q. Okay. And did Dr. McMillan recommend tenure for Dr. Tudor's application that year?
A. No.
Q. After Vice President McMillan had reviewed and made his recommendation, where did Dr. Tudor's portfolio go then?
A. To the president, President Minks.
Q. And, to your knowledge, did then President Minks recommend Dr. Tudor for tenure?
A. He did not recommend.
Q. Okay. To your knowledge, did Dr. Tudor have the opportunity to withdraw her tenure and promotion portfolio in the '09-'10 year before it was denied?
A. I don't have firsthand information on that, but that's what I understand the situation to be.
Q. Okay.
THE COURT: Unlike the usual situation, both of you are too close to the mics. You're popping. If you'll just back up a little bit.

MR. JOSEPH: I'm sorry if I'm blowing anyone's eardrums out, Your Honor. I apologize.

Q. (BY MR. JOSEPH) Dr. Prus, did anyone in particular take over any duties that were slotted for Dr. Tenure [sic] had she been given tenure and promotion?

A. No.

Q. Okay. As the current chair of the English, Humanities, and Languages department at Southeastern, do you think it would be a good thing for that department if Dr. Tudor came back to work there now?

A. No.

Q. Do you think it would be a good thing for those students if Dr. Tudor came back to work now?

A. No.

Q. Do you think it would be a good thing for the university if Dr. Tudor came back to work there now?

A. No.

Q. Okay.

MR. JOSEPH: Nothing further, Your Honor.

Thank you, Dr. Prus, ladies and gentlemen.

THE COURT: Ms. Novotny.

MS. NOVOTNY: Judge, if I may approach briefly just to confer?

THE COURT: Yes.

(The following proceedings were had at the bench and out

of the hearing of the jury.)

MS. NOVOTNY: I just want to make sure to clarify that, because of the strange situation under Rule 611, so I'm allowed to cross on anything that he brought up?

THE COURT: Yes.

MS. NOVOTNY: Okay.

THE COURT: Sure.

MS. NOVOTNY: I just wanted to make sure we were clear. Thank you.

THE COURT: Uh-huh.

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

REDIRECT EXAMINATION

BY MS. NOVOTNY:

Q. All right. Dr. Prus, thanks for sticking with us still here.

On examination just a moment ago, you indicated that there was a collection of poems in the journal that was part of Dr. Tudor's portfolio.

Is poetry something that's part of the English, Humanities, and Languages department?

A. Yes.

Q. Yeah.

And do you consider yourself more of a poetry expert or more of a tenure expert?

A. Poetry expert.
Q. Thank you.
And while you may have had issues with Dr. Tudor's 2009-2010 portfolio, isn't it true that you actually helped Dr. Tudor improve her portfolio for the 2010-2011 cycle so that she could have a better chance at meeting some of the deficiencies that you felt were there?
A. That is true.
Q. And did she take direction from you and make improvements that you felt were improving her chances of getting tenure that next time around?
A. If she made the changes I recommended. I didn't see the final portfolio because it never got to the chair.
Q. Sure.
Were you aware that she was getting additional works published between the 2009-10 application and the 2010-2011 publication?
A. Yes.
Q. Would that additional work -- publication of peer-reviewed works, would that have been something that would have strengthened her chances of tenure, in your eyes?
A. Yes.
Q. Now, you indicated that you thought your colleagues maybe didn't fully read her 2009-2010 portfolio?
A. That's correct.

Q. Isn't it true that many folks who review tenure applications will, you know, skim certain parts of it and focus on the parts that they think are most important?

MR. JOSEPH: Objection, Your Honor. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I would hope not, but I'm sure they do.

Q. (BY MS. NOVOTNY) Now, you indicated before that you were not necessarily sure you would welcome Dr. Tudor back.

Do you think other faculty in the English department would welcome Dr. Tudor back at Southeastern?

MR. JOSEPH: Objection, Your Honor. Calls for speculation.

THE COURT: Overruled.

You may answer if you know.

THE WITNESS: I -- we didn't discuss it formally as a department, but informally, I spoke with my colleagues, and it might be split at best, you know. There are a few -- there are those who would object to it for a variety of reasons.

Q. (BY MS. NOVOTNY) Now, you are currently the chair of a department at Southeastern.

Is your boss at Southeastern in the room right now?

A. Yes.

Q. So many professors move up the ranks and eventually move

into administration.

I think we've heard testimony that Dr. Scoufos was a professor before she was dean.

Do you have plans on a next move of getting into the administration?

A. No.

Q. I want to come back to that 2010-2011 tenure application.

Did something happen at some point that stopped Dr. Tudor from being able to proceed with that application?

A. Dr. Tudor and I were called into the dean's office, and we had to sign for letters. And I believe it was -- I can't remember the exact wording, but she was stopped from -- told that she couldn't come up for tenure.

Q. Was this unusual to you?

A. It was unusual being called into the dean's office to be handed a letter, yes.

Q. Were you given any notice before that meeting about what the meeting would be about?

A. No.

Q. And hadn't you, in fact, been putting together Dr. Tudor's committee to review her new tenure application?

A. As per the policy and procedures manual, yes.

Q. And so the policy and procedures, as you understood them, allowed Dr. Tudor to correct any deficiencies that Dean Scoufos found in the prior year and that she should have

the right to have that independently reviewed in 2010-2011; correct?

A. I'm not sure because I'm not sure -- when this situation happened in 2010 -- it was September, I think, and I started the job August 1st. So much of this was ongoing with the prior chair.

Q. Were you aware that Dean Scoufos had been the person who issued the denial of Dr. Tudor's tenure application in 2009-2010, when you were helping Dr. Tudor with her 2010-2011 application?

MR. JOSEPH: Objection, Your Honor. Misstates evidence.

THE COURT: I don't understand the question. There's too much in there. Break it down.

MS. NOVOTNY: Understood.

Q. (BY MS. NOVOTNY) So in 2009-2010, you were on that committee that voted to give Dr. Tudor tenure, and then Dean Scoufos ended up issuing a recommendation not for tenure after that came to her office; is that correct?

A. Correct.

Q. And was Dean Scoufos still the person who was going to be getting the application after it moved through the committee again?

A. In 2009?

Q. In 2010-2011. I'm sorry.

A. Yeah. She would have been part of the process.
Q. When you applied for tenure, was your application and portfolio perfect?
MR. JOSEPH: Objection, Your Honor. Relevance.
THE COURT: Sustained.
Q. (BY MS. NOVOTNY) Do you think that Dr. Tudor's 2010-2011 application would have merited tenure?
A. Certainly the department and the chair. How the dean and vice president would have perceived it, I'm not sure.
Q. And you were, in fact, chair in 2010-2011?
A. Yes.
Q. And so you would have thought that that application did merit tenure?
A. Yes.
MS. NOVOTNY: Nothing further.
THE COURT: Anything else?
MR. JOSEPH: Very briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. JOSEPH:
Q. Dr. Prus, you mentioned, in examination by opposing counsel, the policies and procedures.
Are you referring to the Academic Policies and Procedures Manual?
A. Correct, correct.
Q. Okay. And under the APPM, doesn't it say that applicants

may apply in their fifth, sixth, or seventh year?
A. I believe so. The policy has been revised recently.
Q. Well, thank you for that clarification. Let me rephrase my question, then.
Was it your understanding in 2009-2010 school year that the academic policy and procedure manual said an applicant may apply in their fifth, sixth, or seventh year?
A. That sounds -- that sounds right.
Q. And that's different than fifth, sixth, and seventh year, isn't it?
A. Sure.
Q. Okay.
MR. JOSEPH: Nothing further. Thank you, Your Honor.
THE COURT: You may step down.
(Witness excused.)
THE COURT: Call your next witness.
MR. YOUNG: Your Honor, we're calling Dr. James Knapp. My co-counsel will get him. For the benefit of everyone in this room -- thank you, Dr. Prus; it's good seeing you -- Dr. James Knapp will be the last doctor of the day.
THE COURT: Good.
MR. YOUNG: Yes.
THE COURT: While we're waiting on him, let me see counsel at the bench.

MR. YOUNG: Yes.

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

THE COURT: So who else do you have?

MR. YOUNG: Mindy House. She's on the list. I think she's in the middle.

THE COURT: And that's all?

MR. YOUNG: Yes.

THE COURT: Are you going to call Cathy Conway?

Sherri, let's be off the record. This is just scheduling.

(Bench conference held off the record with all counsel.)

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

THE COURT: Please come right up here. Step right up here beside the witness stand and face the clerk and be sworn.

(Witness duly sworn.)

THE COURT: Be seated.

WHEREUPON, JAMES KNAPP, Ph.D., after having been first duly sworn, testifies in reply to the questions propounded as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Hi. Good afternoon, Dr. Knapp. Thanks for making the

drive up here.

You can put that microphone -- it will move, and you can bring it up to where it's comfortable. If I can't hear you, I'll just tell you. And just like the deposition, ask, answer.

A. Okay.

Q. Dr. Knapp, what's your occupation?

A. Professor.

Q. Where do you work?

A. Southeastern Oklahoma State University.

Q. When did you first start working at Southeastern?

A. In the fall of 1995.

Q. Are you a tenured professor?

A. Yes.

Q. So you yourself have gone through the tenure process at Southeastern?

A. Correct.

Q. And what's your current job title?

A. Professor of sociology.

Q. Okay. Dr. Knapp, are you familiar with, I guess, the booklet titled the Academic Policies and Procedures Manual at Southeastern?

A. Yes.

Q. What is it?

A. It is a manual that guides the activities of the

university.
Q. Okay. Does that manual have a section with policies on the tenure process?
A. Yes.
Q. To your knowledge, are the policies in the -- can I call it the APPM?
A. Okay.
Q. Okay. So, to your knowledge, are the policies in the APPM the only policies at Southeastern that govern the tenure process?
A. To the best of my knowledge, yes.
Q. Are those the same policies you yourself replied upon when you went up for tenure?
A. Yes.
Q. Okay. Dr. Knapp, have you ever served on a faculty appellate committee at Southeastern?
A. Yes.
Q. Do you happen to recall how many?
A. I believe it was three.
Q. You're smiling at me. Okay.
Did all of those committees involve Dr. Rachel Tudor?
A. Yes.
Q. Are those the only committees you've ever served on? Let me withdraw that question.
Are those three committees the only faculty appellate

committees that you have served on at Southeastern?
A. Yes.
Q. Okay. Let's talk about the first faculty appellate committee that you served on. Okay.
Do you know when about that grievance was filed?
A. No.
Q. Okay. I believe during your deposition you testified that that grievance was filed in early 2010, but I'm going to give you an exhibit to help you out. Okay?
MR. YOUNG: Your Honor, may I approach?
THE COURT: Yes.
MR. YOUNG: Thank you.
Q. (BY MR. YOUNG) Do you recognize Plaintiff's Exhibit 32?
A. Yes.
Q. What is it?
A. It is an e-mail written by me to Dr. Weiner.
Q. Okay.
MR. YOUNG: I would like to move to introduce into evidence Plaintiff's Exhibit 32.
MR. BUNSON: No objection, Your Honor.
THE COURT: Admitted.
MR. YOUNG: Okay.
Q. (BY MR. YOUNG) So does Plaintiff's Exhibit 32 refresh your memory as to when exactly you were part of the first appellate committee involving a grievance with Dr. Rachel

Tudor?
A. Yes.
Q. Okay. You said that you -- I'm sorry. For me to follow, you said you wrote this e-mail?
A. Yes.
Q. Okay. I'm going to ask you some questions about this grievance.
Do you recall what this first grievance was about?
A. Generally, yes.
Q. Okay. So why don't you explain to the jury what this first grievance was about.
A. Dr. Tudor had applied for tenure and promotion, and it had been denied. And it came to the faculty appellate committee.
Q. Okay. Was Dr. Tudor seeking specific relief from the faculty appellate committee?
A. That, I don't recall.
Q. Okay. Was Dr. Tudor just grieving that she had been denied tenure or was she asking for an explanation?
A. No. Can you give me a minute to read it?
Q. Yes, of course.
A. Would you ask your question again?
Q. Yes.
Do you recall what Dr. Tudor was asking the faculty appellate committee for when she filed in grievance?

A. The dean and vice president for academic affairs had denied her application and were not providing a detailed explanation for why they had denied it.
Q. Okay. So, I believe, in this exhibit, Plaintiff's Exhibit 34, which you wrote, you state that you thought that a policy in the Academic Policies and Procedures Manual, Policy 3.7.4, required that the administrators provide an explanation to Dr. Tudor for why they denied her tenure application. Is that right?
A. Not required.
Q. Can you explain?
A. Recommended.
Q. Recommended. Okay.
A. It says "should."
Q. So can you explain how you are distinguishing between "required" and "should"?
A. Well -- and I had placed the emphasis on this in the document.
Q. Uh-huh.
A. "Concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."
So I don't believe it was saying that it is a requirement that they be stated in detail. So that's why I would use the word "recommended."

Q. Okay. Let me give you another exhibit.

MR. YOUNG: Your Honor, may I approach the witness one more time?

THE COURT: Yes.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Knapp, do you recognize this exhibit?

A. Yes.

Q. What is it?

A. It is an e-mail.

Q. Did you send this e-mail?

A. Yes, I did.

Q. Okay.

MR. YOUNG: I would like to move to enter Plaintiff's Exhibit 34.

MR. BUNSON: No objection, Your Honor.

THE COURT: Admitted.

Q. (BY MR. YOUNG) Okay. Dr. Knapp, so do you see that e-mail at the bottom? You can use that screen next to you or the paper in front of you. It's the same document.

A. Okay.

Q. Do you see the e-mail at the bottom of the second page of that exhibit that I just handed you?

A. Yes.

Q. Okay. And on that e-mail, it looks like -- I'm sorry. It looks like there's a photocopy error. It sounds like one

of the fellow members of your committee is saying that they think that Dr. Scoufos and Dr. McMillan should provide a rationale to Dr. Tudor; is that right?
A. Yes.
Q. Does that mean that Dr. Scoufos and McMillan had the option to provide the rationale?
A. I'm not sure about that.
Q. Can you explain that?
A. The committee is recommending --
Q. Uh-huh.
A. -- that they provide their rationale.
As an individual, I would hope they would provide their rationale, but I don't -- again, I don't know if they are required to do so.
Q. Would it be unusual for administrators, high-up administrators at Southeastern, like the dean and the vice president for academic affairs, to not follow the collegial recommendation of the faculty appellate committee?
MR. BUNSON: Objection, Your Honor. Mischaracterizes testimony and calls for speculation.
THE COURT: Overruled.
You may answer, if you know.
THE WITNESS: Could you ask the question again?
Q. (BY MR. YOUNG) Well, I'll try.
Would it be unusual for high-up administrators at

Southeastern, like the dean and vice president for academic affairs, to not follow the collegial recommendation of the faculty appellate committee?

A. I don't know.

Q. Did you personally believe that Dr. McMillan and Dr. Scoufos should provide an explanation to Dr. Tudor?

A. Yes, I believe that personally.

Q. Can you explain why you have that personal belief?

A. If I had applied for tenure and promotion and had been denied, I'd like to know why.

Q. I'm going to go back to Exhibit 32. That was, I believe, the first page I handed you. Okay. I'm trying to make that readable.

So Plaintiff's Exhibit 32, it says that you and the other members of the faculty appellate committee together agreed that you thought that dean -- I'm sorry, Dr -- McMillan and Dr. Scoufos should give explanation to Dr. Tudor; is that right?

A. Yes.

Q. When you -- did you discuss the faculty appellate -- did you discuss as a group this issue before you issued this decision as a group?

Let me withdraw that question. It was a really bad question.

You conversed with other members of the faculty appellate

committee before the committee recommended that administrators give -- give an explanation to Dr. Tudor; right?
A. Yes.
Q. Did anyone on the committee think that the administrators should not give an explanation to Dr. Tudor?
A. No.
Q. Okay. When the faculty appellate committee met and discussed this, were there particular rules, policies, precedents, anything that you looked at as a group to come to your decision?
A. We referred to the policies and procedures manual.
Q. Do you think it would have been inappropriate for the faculty appellate committee to look outside of the policies and procedures manual to make its decision?
A. I don't know why we would have wanted to.
Q. Why is that?
A. Well, we had a specific task in front of us, and it seemed that the most -- the most logical point of reference was the policies and procedures manual.
Q. Do you think it's important that policies on tenure are written down?
A. Yes.
Q. Do you think it's important that the tenure process is transparent?
A. As much as possible, yes.

Q. Sitting here today, do you still agree with the decision that the faculty appellate committee made in this March 25th, 2010, document?
A. Yes.
Q. Okay. I'd like to fast-forward to the 2010-11 term. And I'd like to -- because you were on three of these. I'm only going to talk about the third one now. Okay?
A. Okay.
Q. So in the 2010-11 time frame, if a professor applied for and didn't receive tenure at Southeastern, were they typically allowed to reapply for tenure?
A. Yes, unless the window had closed.
Q. What's "the window"?
A. Well, a person has a window of time to apply for tenure and promotion. Generally, they begin on a tenure track --
Q. Uh-huh.
A. -- and they have four years to demonstrate, for lack of a better way of saying it, their worth to the university.
Q. Uh-huh.
A. And then, I believe it's beginning in the fifth year, they can apply for tenure and promotion. If they choose not to, they could apply in their sixth year. If they choose not to or if they were denied, they could apply in their seventh year.
But if they do not have tenure either because they didn't

apply or because they were denied, if that's not complete by the end of the seventh year, then generally they're asked to move on.

Q. I'm sorry. Just to clarify something, so it was your understanding in this time frame, 2010-11, that someone who is denied on a tenure application but still had time left within their seven-year term, they could reapply?

A. Yes, within that window.

Q. Is there anything specifically that informs your understanding of what the policy or rule was at Southeastern in that time frame?

A. I believe the policies and procedures manual.

Q. Did you look at the policies and procedures manual really carefully when you were part of these faculty appellate committees?

A. That, I can't remember.

Q. Fair enough.

So I'm going to introduce another exhibit. Let's see if I've got this right.

MR. YOUNG: Your Honor, may I approach the witness one more --

THE COURT: Yes.

MR. YOUNG: Thank you.

Q. (BY MR. YOUNG) Dr. Knapp, do you recognize Plaintiff's Exhibit 116?

A. Yes.
Q. What is it?
A. It's my handwriting.
Q. Okay.
MR. YOUNG: Based on that alone, Your Honor, I'd like to admit Plaintiff's Exhibit 116 into evidence.
MR. BUNSON: No objection, Your Honor.
THE COURT: Admitted.
Q. (BY MR. YOUNG) So can you describe to the jury what these are -- I assume these are your handwritten notes. So what are these notes from?
A. This would have been a meeting of another faculty appellate committee in which I was summarizing our purpose for meeting.
Q. And what was the purpose of that meeting?
A. Let me finish reading it.
Q. No problem.
A. And our response to Dr. Tudor's appeal. That was all in this document.
Q. Do you remember what Dr. Tudor was appealing in this instance?
A. She wanted to apply again for tenure and promotion, and Dr. McMillan had sent her a letter that said it was -- it was too soon after being denied for her to apply again.
And Dr. Tudor appealed that decision, and the faculty

appellate committee supported Dr. Tudor's appeal.
Q. Can you educate the jury a little bit about why the faculty appellate committee, in this third instance, supported Dr. Tudor?
A. There was not a policy that we could find that said she couldn't. And as a faculty appellate committee, we would generally side with the faculty in matters where the policies and procedures manual didn't say anything.
Q. If there were a policy that foreclosed reapplication, do you think that the faculty appellate committee would have still sided with Dr. Tudor?
A. If there was a policy that said she could not?
Q. Yes.
A. I can't speak for the whole committee, but if a policy said she could not, then that's what I would have supported, that she could not if the policy was in place.
Q. Do you think it would have inflamed the relations between the faculty and the administration if Dr. Tudor had been allowed to reapply for tenure in 2010-11?
A. No.
MR. BUNSON: Objection, Your Honor. Calls for speculation.
THE COURT: Overruled.
THE WITNESS: Sorry.
No.

Q. (BY MR. YOUNG) What's the basis of your answer?
A. I voted for -- I thought she should be allowed to reapply. The faculty appellate committee thought she should be allowed to reapply. We weren't speaking for all the faculty, but I didn't think it would create unnecessary tension between the faculty and the administration.
Q. Do you have any recollection of how the Southeastern administration responded to the faculty appellate committee's decision in this third appeal?
A. I can't remember.
Q. Okay. I have one more exhibit for you, and it's out of order. I apologize. I had it at the bottom of my stack.
MR. YOUNG: May I approach, Your Honor?
THE COURT: Yes.
MR. YOUNG: Thank you.
Q. (BY MR. YOUNG) Dr. Knapp, do you recognize Plaintiff's Exhibit 97?
A. Yes.
Q. Can you tell me what it is?
A. May I have a moment to read it --
Q. Yes.
A. -- or glance through it?
Q. Yes.
A. It appears to be a summary of the faculty appellate committee's response to a grievance dated October 11th of

2010.

MR. YOUNG: Your Honor, I would like to admit Plaintiff's Exhibit 97 into evidence.

MR. BUNSON: No objection, Your Honor.

THE COURT: Admitted.

Q. (BY MR. YOUNG) Now, sitting here today, Dr. Knapp, do you still agree with the decision that this third faculty appellate committee made?

A. Yes.

Q. Okay. I have a few more questions for you, and then we're done.

Dr. Knapp, do you recall agreeing with me during your deposition that you had never heard of a professor at Southeastern encountering the sort obstacles that Dr. Tudor did during her tenure and promotion process?

A. Yes.

Q. For you, is there anything that makes Dr. Tudor's process stand out from other tenure processes -- or examples?

A. Yes.

Q. What is that?

A. I had to be on the faculty appellate committee three times.

Q. So this isn't normal?

A. Not for me. And I don't think it's normal for the faculty.

Q. Okay. At the time that you sat on those faculty appellate committees, was there ever any discussion about Dr. McMillan's role in Dr. Tudor's tenure process?
A. Yes.
Q. Can you tell me just generally what those conversations were about?
A. It seemed that the application was stopping with Dr. McMillan.
Q. Are you aware of Dr. McMillan stopping any other faculty member's tenure application at Southeastern?
A. No.
Q. Sitting here today, do you still believe that Dr. Tudor should have been permitted to reapply for tenure in 2010-2011?
A. Yes, as long as the window was not closed.
Q. Okay.

MR. YOUNG: Thank you, Dr. Knapp. That's all I have.

CROSS-EXAMINATION

BY MR. BUNSON:
Q. Good afternoon, Dr. Knapp. I'm going to try to get through this pretty quickly.

Did Dr. Tudor ever inform any of the three faculty appellate committees you sat on that she was offered an opportunity to withdraw her application and resubmit it?
A. Not that I remember.

Q. Did Dr. Tudor inform the committee that had she taken the offer, she would have -- it would have granted her an eighth year at the university in order to obtain tenure and promotion?
A. Not that I recall.
Q. And you recall earlier testifying about the Academic Policies and Procedures Manual; is that correct?
A. Yes.
Q. And that that manual describes the role of faculty and administration in the tenure and promotion decision process?
A. Yes.
Q. And per the policies, do you think that faculty and administration have an equal voice in the decision-making process when it comes to tenure and promotion?
A. Generally, yes.
Q. Now, you were handed some exhibits about the denial of Dr. Tudor's requests; correct?
A. Yes.
Q. And one of those was the faculty appellate committee's determination that says that they should give their reasoning for denying Dr. Tudor's tenure application; is that correct?
A. Yes.
Q. It doesn't say -- does the policy say when they should give that feedback?
A. Not the part that's in -- excuse me. Not the part that's

in the response that I wrote.
Q. With your understanding of the Academic Policies and Procedures Manual, is there anything that says when that feedback should be coming?
A. Not that I'm aware of.
Q. Didn't the administration ultimately tell Dr. Tudor the reasons for her denial?
A. I don't recall.
Q. Earlier, you also said that, as a member of the faculty appellate committee, you generally side with the faculty.
Do you recall that?
A. Yes.
Q. And you especially side with the faculty if the policy is silent; is that correct?
A. Yes.
Q. And, here, the policy was silent; correct?
A. Yes.
Q. So it wasn't that the policy wasn't being followed; it was just that there was no guideline. Is that also correct?
A. Yes.
Q. Do you know of anyone that has ever been denied tenure by the president or at the president's level and then allowed to reapply after that?
A. No.
Q. But you do know that faculty can withdraw their

applications or portfolios in the tenure and promotion process and resubmit them at a later date; correct?

A. I know that now.

MR. BUNSON: Thank you, sir. No further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. I'll try to make this real quick, and then you can drive home.

Dr. Knapp, is there -- at the time you were on these three faculty appellate committees, was there any policy in the Academic Policies and Procedures Manual that specifically said that, if application was denied by the president of the university, that there was no possibility for reapplication?

A. Not that I'm aware of.

Q. Do you think, if there were such a rule, you would have been aware of it after these three grievances?

A. I think we would have looked pretty closely in the policies and procedures manual --

Q. Okay.

A. -- for something like that.

Q. One last question.

Are you still confident that you still to this day agree with your decision as part of the first faculty appellate committee as well as the third faculty appellate committee?

A. Yes.

MR. YOUNG: Okay. Thank you. Nothing further.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. YOUNG: Calling Ms. Mindy House, Melinda "Mindy" House. One of my colleagues will go get her.

THE COURT: Please come forward. Come right up here next to the witness box and face the clerk and be sworn.

(Witness duly sworn.)

THE COURT: Be seated right here. We need to be able to hear you, so speak into that microphone.

THE WITNESS: Yes, ma'am.

WHEREUPON, MELINDA HOUSE, after having been first duly sworn, testifies in reply to the questions propounded as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good afternoon, Ms. House.

A. Good afternoon.

Q. Thank you for being patient with us today.

Ms. House, did you used to work at Southeastern?

A. Yes, sir.

Q. Why don't we start back to when you first started working at Southeastern. Okay?

When about was that?
A. August of '98.
Q. Have you had other family members who have worked at Southeastern?
A. My husband worked there, when he went through his undergraduate and master's, as a campus police officer.
Q. Okay. And when did you stop working for Southeastern?
A. February -- well, January, February of' 16.
Q. 2016?
A. 2016.
Q. Okay. And did your husband stop working for Southeastern at some point?
A. Yes. He got his master's in education, and then he became a manager at a company in -- MEMC in Sherman, Texas. Then he was going to come back to Southeastern and be a police officer, but he passed away.
Q. Okay. Do you feel like you have deep ties to Southeastern?
A. Yes.
Q. Can you share with the jury how strongly you feel about Southeastern?
A. When I started at Southeastern, I started in Upward Bound, which is a TRIO program for low-income first-generation students. All those kids became my kids. My boys -- in fact, my husband would -- he was a swimmer. So on all-sports

weekend, he would do swimming with the kids.

When he passed away, my kids were raised with my Upward Bound kids because they were 3 and 9. So I had to take them with me.

I went from there to academic affairs office, from academic affairs to the dean of school of arts and sciences, to the dean of instruction, which merged.

My mom worked for Southeastern per se. She ran the credit union, the teachers' credit union. My dad has worked at Southeastern back in the '80s. So -- my sister graduated from there. My brother-in-law graduated from there.

My husband is buried in a Southeastern police uniform. So I have very strong ties.

Q. Thank you for sharing that with us.

A. You're welcome.

Q. Have you ever had conversations with Douglas McMillan, the former vice president of academic affairs at Southeastern, where he shared with you his religious beliefs?

MR. BUNSON: Objection, Your Honor. This is hearsay.

THE WITNESS: Do you contend this falls outside the hearsay rule?

MR. YOUNG: I merely asked if she ever had such conversations, not what was said.

THE COURT: All right.

THE WITNESS: Yes.

Q. (BY MR. YOUNG) Okay. Did you think the conversations you had with Douglas McMillan where religion was brought up were appropriate?

A. No. It had to do with my employment.

Q. Did Douglas McMillan make an employment decision --

A. Yeah.

Q. -- on the basis of his religion?

A. Yes.

Q. Did that make you feel uncomfortable?

A. Yes.

Q. Did Douglas McMillan frequently bring up his religion at work?

A. I don't know frequently, but, yes --

Q. Okay.

A. -- occasionally from time to time.

Q. Okay. I'm going to focus on the time that you worked with Dean Lucretia Scoufos. Okay?

Do you remember when about you started working for Dean Lucretia Scoufos?

A. I want to say it was '08. Dr. Mangrum had retired, and she came in as a -- from a chair of a department to the dean.

Q. And when about did you stop working for Dean Scoufos?

A. January, February 2016.

Q. Okay. What was your position when you worked with

Dean Scoufos?
A. I was her administrative assistant.
Q. So as Dean Scoufos's administrative assistant, did you have opportunity to be around her and talk with her a lot?
A. Yes.
Q. Did you overhear conversations?
A. Yes.
Q. Okay. So I'm going to ask you about things you may have witnessed having to do with Dr. Tudor's 2009-10 tenure application. Okay?
A. Okay.
Q. I think other folks in this trial have testified about e-mails that you've been on.
Did you schedule meetings for Dean Scoufos?
A. Yes.
Q. Is that one of the big parts of your job?
A. Yes.
Q. Okay. Do you recall Dr. Tudor meeting with Dean Scoufos sometime in the tenure process?
A. Yes.
Q. What do you recall?
A. I think she met with her twice. I know she met with her for a portfolio review.
The dean started meeting with all of the faculty. She adopted how she wanted each portfolio to look, you know, the

same. And so she had them put them in sleeves, certain sleeves, books, binders, and in a certain category order. So she met with her then.

And then I recall that she met with her and -- I want to say it was Randy Prus, Dr. Prus, the chair. I'm not sure what that meeting was about; I just know she had me write an acknowledgment form for her -- for Dr. Tudor to sign.

Q. Okay. We'll get back to that later.

So you worked for Dean Scoufos for a number of years?

A. Yes.

Q. What was Dean Scoufos's usual practice when a portfolio came into the dean's office, a tenure portfolio for review?

A. When they would all come in, then she would review them one at a time. And then she would write her recommendation of whether to or against and put that in. Then we were to send those over to Dr. McMillan.

Q. Because Dr. McMillan was the next step --

A. Step.

Q. -- on the process?

A. Yes.

Q. Okay. Was there anything unusual that you recall about how Dean Scoufos dealt with Dr. Tudor's tenure application?

A. I know that there were conversations back and forth over the phone with Dr. McMillan and there were some rewrites of her letters as far as whether she wanted to agree or disagree.

Q. I'm sorry. When you say "agree or disagree," agree or disagree with whom, if you know?
A. With the committee or with herself, you know, saying that she agreed that she should get tenure or that she shouldn't get tenure. Her recommendation, I guess is what I'm saying.
Q. Okay. So did you ever see Dean Scoufos act like that with a tenure application before or after?
A. No.
Q. So it was unusual for you?
A. Yes.
Q. Okay. To your recollection, did Dean Scoufos get in contact with Doug McMillan before Dean Scoufos wrote a letter on Dr. Tudor's tenure application?
A. Yes. They spoke before the portfolio went over to his office.
Q. Was that, in your observation, unusual?
A. Yes.
Q. Did you ever see it happen at any other time she reviewed a portfolio?
A. No.
Q. Do you know how Dean Scoufos ultimately voted on Dr. Tudor's portfolio? Do you know what Dean Scoufos's decision was on Dr. Tudor's application?
A. It was not to renew.
Q. Okay. I'm going to move you forward in time a little

bit. Okay?

Do you recall Dean Scoufos having a meeting with Dr. Tudor a little bit after Dean Scoufos voted to deny Tudor's application?

A. I think that's when she came back and wanted the acknowledgment paper that she wanted me to write saying that whatever she was giving Dr. Tudor, that Dr. Tudor had received it.

Q. Okay. I'm going to move you forward in time a little bit again, in the 2010-11 school year. Okay?

Do you recall any meeting between Dean Scoufos, Dr. Tudor, and anyone else that school year?

I'll withdraw that question.

I believe earlier you mentioned that you recalled at some point -- maybe you don't recall the date --

A. Yeah.

Q. -- that there was a meeting between Dr. Tudor, I think you said Randy Prus, and Dr. Scoufos.

Do you recall that?

A. Yes.

Q. Do you recall anything unusual about that meeting?

A. No. I mean, Dr. Tudor didn't look happy when she left, and the dean was upset after she left because she did not sign a piece of paper.

Q. Who didn't sign a piece of paper?

A. Dr. Tudor.
Q. Okay. I'll move you forward in time a little bit again.
At some point while Dr. Tudor was still working at Southeastern, were you asked to monitor Dr. Tudor's blog?
A. Yes.
Q. Who asked you to monitor Dr. Tudor's blog?
A. Dean Scoufos.
Q. Do you know what the purpose of you monitoring that blog was?
A. She had found out that some students and some faculty had started a petition and a blog, and so she had me go through and print those off on a daily basis and look up and see what faculty were supporting and what students, if they were students, were supporting.
And she, I'm assuming, kept those in a file. I printed them and gave them to her.
Q. Was that an unusual thing for Dean Scoufos to tell you to do?
A. Yes.
Q. Had you ever been asked to do anything like that before?
A. No.
Q. Did Dean Scoufos appear upset when you identified students and faculty who supported Dr. Tudor?
A. Yes. She didn't know the students, but she knew the faculty members. And so she was upset that they were

supporting Dr. Tudor.

I think it was Meg Cotter-Lynch and Dr. Spencer were two of the ones that I recall.

Q. Was Dean Scoufos very upset? annoyed? How would you describe her reaction?

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

THE COURT: Sustained.

MR. BUNSON: Dean Scoufos can talk about that.

THE COURT: Sustained.

Q. (BY MR. YOUNG) Did Dean Scoufos visibly show a reaction?

A. Yes.

Q. Could you describe the reaction you saw?

A. She was very upset. She was mad. It became obvious to myself and -- at the way that she spoke about these professors from then on.

Q. Okay.

A. Is that what you mean?

Q. Yes. Thank you.

Either when Dr. Tudor still worked at Southeastern or after she left, did you ever hear administrators say negative things about Dr. Tudor because she is transgender?

A. Yes.

Q. Did you hear negative things from Douglas McMillan?

A. Yes.

MR. BUNSON: Objection. That's hearsay, Your Honor.
Q. (BY MR. YOUNG) Did you hear negative things --
THE COURT: Wait a minute.
I'm sorry. What?
MR. BUNSON: The objection was this is hearsay.
THE COURT: Come to the bench.
(The following proceedings were had at the bench and out of the hearing of the jury.)
THE COURT: How do you contend this is not hearsay?
MR. YOUNG: Statements by party opponents. These are decision-makers in the high levels of the administration who have said negative things about Dr. Tudor. They are contending that these people --
THE COURT: All right.
Your response?
MR. BUNSON: My response, Your Honor, is all of these witnesses can testify as to what they said. These aren't -- I completely disagree that these are statements against interests or statements that can't be cleared up --
THE COURT: Why?
MR. BUNSON: -- by the person themselves. She's saying she heard it. It's still an out-of-court statement.
THE COURT: Yes. And it was said by Dr. McMillan and Dean Scoufos, who are policymakers for your client. That makes them parties. And any statement against interest by a

party can be used against that party. That makes it not hearsay.

If you have an argument --

MS. COFFEY: I don't think it's clear that she heard these. It sounded like she was repeating.

MR. YOUNG: I can make it more clear, Your Honor.

THE COURT: Yeah. But I think it's important that this is an exception to the hearsay rule. If it's said by Dean Scoufos or Dr. McMillan or Mr. Minks, I guess, or Dr. Whoever -- Minks, you may cross on that.

MR. YOUNG: Thank you, Your Honor.

MR. BUNSON: Thank you, Your Honor.

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

Q. (BY MR. YOUNG) Sorry for that interruption. I tried to warn you about objections. Stop talking, and we'll try to stop talking too.

Let me just backtrack one question so we can move on.

I believe what I was asking is, at any point either after Dr. Tudor was working at Southeastern or after Dr. Tudor left Southeastern, did you hear administrators at Southeastern say negative things about Dr. Tudor because Dr. Tudor is a transgender woman?

A. Yes.

Q. Okay. Did you hear negative things from Dr. McMillan?

A. Yes.
Q. Did you hear negative things from Dr. Scoufos?
A. Yes.
Q. Did you hear negative things from both of those persons on more than one occasion?
A. Yes.
Q. Okay. I'm going to ask you about some specific statements.
Did Dr. Scoufos ever tell you that it was weird that Dr. Tudor is a transgender woman?
A. Yes.
Q. Do you recall Dr. Scoufos showing you a picture of Dr. Tudor and making fun of her?
MR. BUNSON: Objection, Your Honor. This is leading.
THE COURT: Sustained.
MR. YOUNG: Okay.
Q. (BY MR. YOUNG) Do you recall having a -- do you recall having a conversation with Dr. Scoufos where she was referencing a picture of Dr. Tudor?
MR. BUNSON: Objection, Your Honor. Still leading.
THE COURT: I'll give you that one. Overruled.
MR. YOUNG: Thank you.
Q. (BY MR. YOUNG) I'll ask it again.
Do you recall a conversation between you and Dr. Scoufos

where Dr. Scoufos was referencing a picture of Dr. Tudor?
A. Yes. She was sitting in a chair, Dr. Tudor was, and she referenced that she was trying to look feminine but that she isn't.
Q. Did Dr. Scoufos ever criticize Dr. Tudor's clothing choices?
A. Yes.
Q. What do you recall?
A. The dean is very fashion-forward. You know, she's very well put together. And she just said that Dr. Tudor was trying to dress like a female but that she's not.
Q. Did Dr. Scoufos ever criticize Dr. Tudor's voice?
A. Yes.
Q. On more than one occasion?
A. Yes.
Q. What was the criticism?
A. That Dr. Tudor was trying to have a -- like a whispering voice to not sound so -- like a male, and that it was very raspy.
Q. Did Dr. Scoufos ever mock Tudor's voice?
A. Yes.
Q. Did Dr. Scoufos ever imitate Tudor's voice?
A. Yes.
Q. On more than one occasion?
A. Yes.

Q. Do you recall the period when Dr. Tudor started first complaining about discrimination at Southeastern, just generally?
A. Generally, yes.
Q. Okay. Did Dr. Scoufos ever tell you that she, Dr. Scoufos, thought that Dr. Tudor was using the fact that she was transgender to complain unfairly about things?
A. Yes.
Q. Did Dr. Scoufos ever comment to you and ask you whether Dr. Tudor had had "the surgery"?
A. Yes.
Q. Did you ever overhear Doug McMillan mocking, making fun of, or making negative comments about Dr. Tudor?
A. I didn't hear him making fun of Dr. Tudor. I did hear a -- not a nice comment.
Q. Okay. Did you ever hear Doug McMillan say that he didn't agree with Dr. Tudor's lifestyle?
A. Yes.
Q. Did you ever overhear Doug McMillan tell Dean Scoufos that he did not think that Dr. Tudor should be allowed to use the women's restroom?
A. Yes. He said that he had never told Dr. Tudor that she could not use the women's restroom, but that he did not believe or feel like she should be allowed to.
Q. From your perspective, as someone who is working around

these administrators and on the Southeastern campus, did it seem like Dr. Tudor was enduring hostilities?

A. Yes.

Q. If you were in Dr. Tudor's shoes, would you have found it hostile?

A. Yes.

Q. I'm going to flash forward.

After this lawsuit was filed, did you ever witness Dean Scoufos tell department chairs and other administrators at Southeastern that they should not dig for documents needed for the litigation?

A. Yes. She told -- I think it was Claire Stubblefield asked for some information and that they needed it in a certain amount of time frame. And a few of those department chairs came in and stated that, because of the timeline, they didn't know if they could fulfill that deadline and some of the people that were in certain positions were no longer in those positions, so getting them to go back and pull stuff would be hard as well.

So she told them that -- not to manufacture anything, but that they also didn't have to dig for anything.

Q. Were you concerned -- were you personally concerned by that comment?

A. Yes.

Q. Can you explain to the jury why you were concerned?

A. Because I didn't feel that hiding anything from anyone was going to do justice for either side.
Q. You mean Dr. Tudor or Southeastern?
A. Right.
Q. Okay. After this lawsuit was filed, did you ever hear Dr. Scoufos tell someone at Southeastern that, if Dr. Tudor won her lawsuit and returned to Southeastern, that Dr. Scoufos and Dr. McMillan would quit?
A. Yes.
MR. BUNSON: Objection, Your Honor. This is hearsay.
THE COURT: Overruled.
THE WITNESS: Oh, I can answer?
Q. (BY MR. YOUNG) You can answer.
A. Yes.
Q. What do you recall about that conversation that you heard?
A. Dr. Weger came into the office and was sitting in front of my desk --
THE COURT: I'm sorry. I misunderstood who the speaker was.
That objection is sustained.
MR. YOUNG: Okay. Let me reframe the question.
Q. (BY MR. YOUNG) What did you hear -- and only answer the question I'm asking.

What did you hear Dean Scoufos say to Dr. Weger?

A. That if Dr. Tudor came back to the university to work, that her and Dr. McMillan would quit and no longer work there.

MR. YOUNG: May I approach, Your Honor?

THE COURT: The witness or --

MR. YOUNG: Approach you for a second with counsel.

THE COURT: Yes.

MR. YOUNG: Thank you.

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

MR. YOUNG: I believe you held in abeyance so you could see or hear in context whether witnesses could testify about the circumstances of the retirement of some of the key decision-makers at Southeastern. This witness is prepared to testify about those circumstances.

So I wanted to not ask it in front of the jury but to do it here first.

MS. COFFEY: Your Honor, the ruling was that they could testify; they couldn't make any assumptions as to why somebody retired.

This witness has laid no foundation for that whatsoever. She just testified that if Dr. Tudor returned to campus, they would quit. Dr. Tudor hasn't returned to campus. Those two individuals retired, and it had nothing to do with this case, and there's no evidence to show otherwise.

MR. YOUNG: That's not the context, Your Honor, and I can share it here if you need that first.

THE COURT: Context of what?

MR. YOUNG: What the testimony is going to --

THE COURT: What is her testimony going to be?

MR. YOUNG: She is going to state that she does have knowledge of the circumstances surrounding why Scoufos left, and it was because she was fired because of what she had to do with Dr. Tudor.

THE COURT: Is Dr. Scoufos going to be a witness?

MS. COFFEY: Absolutely, Your Honor.

THE COURT: That can't come in through this witness.

MR. YOUNG: May I reserve that? Dr. Scoufos testified at her deposition that she retired from Southeastern of her own volition, that it was not discipline, and it nothing to do with Dr. Tudor or this case.

THE COURT: Okay.

MR. YOUNG: So I need this witness to testify to this so I can use it to impeach Dr. Scoufos.

THE COURT: You can't impeach another witness with this witness.

MR. YOUNG: Okay. Thank you, Your Honor.

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

Q. (BY MR. YOUNG) Now, Ms. House, a few more questions. I

can only ask you a couple of questions about this issue, so listen carefully to the questions I am asking you. Okay?

When about did Dean Scoufos announce that she was going to retire from Southeastern?

A. It was towards the end of 2015. She had been out with open heart surgery.

Q. Uh-huh.

A. And so when she came back, she had a meeting with Dr. McMillan, and then she -- day after that, she announced that she was going to retire.

Q. Do you have any reason to believe that Dean Scoufos did not seek out retirement?

A. Yes.

Q. Can you share your reason for thinking that with the jury?

A. When she was out with her heart surgery and her rehab, I specifically asked her, because they were doing buyouts, if she was going to retire. And she said, no, that she didn't work that hard to come back to retire and had me working on different things that were going to be in the future, symposiums and lectureships and stuff.

Q. Okay. Did Dr. Scoufos ever tell you that she thought Claire Stubblefield was an idiot who gave too much information regarding Dr. Tudor's issues at Southeastern out to the EEOC and through this lawsuit?

A. Yes.
Q. Now, Ms. House, I know this part is sort of painful, but it's relevant.
Were you fired from Southeastern?
A. Yes.
Q. Why do you believe you were fired from Southeastern?
A. I believe I was fired from Southeastern because of this case.
Q. And what informs your belief?
A. Because the information that was given to me is not factual. All the appeals process that I went through, even the committee said that there was no evidence to support. And I was vocal with the treatment of Dr. Tudor, that I didn't think it was right. And I had some professors tell me that that's the reason, that anybody that was remotely around higher admin during this is all gone. So...
Q. Sitting here today, do you regret being vocal about how wrong it was what happened to Dr. Tudor at Southeastern?
A. No. I regret I lost my job. I regret that -- I'm sorry --
Q. It's okay.
A. -- that there were certain things said about me that were not true, said about my boys that were not true, that I'd given my life to Southeastern and that this was the way that I was going out the door.

But, no, right's right. So I don't regret it, saying anything in support of Dr. Tudor.

MR. YOUNG: Thank you so much, Ms. House.

THE WITNESS: You're welcome.

CROSS-EXAMINATION

BY MR. BUNSON:

Q. Good morning -- or good afternoon, Ms. House. How are you?

A. I'm okay. How are you?

Q. I'm wonderful. Thank you.

You have a personal ax to grind here, don't you?

A. No, sir.

Q. You indicated you were terminated from Southeastern; is that correct?

A. Yes, sir.

Q. And you were terminated on March 10th, 2016; isn't that correct?

A. Officially, yes, sir.

Q. And the reason you are no longer at Southeastern and you were terminated was because of a, quote, lack of academic integrity and dishonesty; isn't that correct?

A. No, sir.

Q. Would it help if I showed you some documents to refresh your recollection?

A. No. I know what I was told, but none of that happened.

Q. So you were told you were being terminated for lack of academic integrity and dishonesty; is that correct?
A. No. I was told, when I was brought in, that there was an accusation that a student worker did my son's online math homework. He didn't take an online math class. And that was two years prior.
And that -- Dean Scoufos told me that they -- I don't know who "they" are -- had settled with this letter she gave me saying that I had until three o'clock the next day to either resign and get my vacation paid for or not resign and get nothing.
MR. BUNSON: Your Honor, may I approach?
THE COURT: Yes.
Q. (BY MR. BUNSON) Ms. House, will you please turn to Tabs 2 and 3 of the documents I've handed you.
A. Okay.
Q. What is Tab 2?
A. It's a second page of a letter from Dr. -- or from Micah Kelly.
Q. Who is -- I believe it's Micah D. Knight, isn't it, at the very top?
A. I'm sorry. Yes.
Q. Who is Micah D. Knight?
A. She's a lawyer.
Q. So you hired a lawyer to represent you in this process of

your termination; correct?
A. I hired a lawyer to get my vacation pay and to advise me whether I could be terminated without any kind of cause.
Q. If you'd like to go ahead and review that letter, I'm happy to give you some time.
A. Okay. Yes, sir.
Q. How long is that letter?
A. A page and a half.
Q. Anywhere on that first page it talks about you not getting your back pay?
A. On the first page?
Q. Yes, ma'am.
A. No.
Q. And on the second page, about how long is the text on that second page?
A. A paragraph and two sentences and a half.
Q. And does that talk about your back pay?
A. It says -- yes, that I'm entitled to receive full payment.
Q. So in a page-and-a-half letter, one small paragraph that talks about your back pay, you're saying you weren't informed as to why you were being terminated?
A. Not when I was -- what I was informed, when she gave me the letter, was that there was an accusation made from a student worker in our office. And so that's when I went to

Micah Kelly -- or Micah Knight.

Q. What is this letter dated?

A. The 27th of January.

Q. And so you weren't terminated until March; correct?

A. Correct. Because I appealed.

Q. Okay. We'll get to that in a moment.

If you could, though, there is -- in that first paragraph, there is a highlighted sentence.

Are you telling me that, based on that highlighted sentence, you didn't know what you were being accused of on January 27th, 2016?

A. Yes. I said Dr. Scoufos told me that I was accused of a student worker doing my son's homework.

Q. And that was considered an act of dishonesty and lack of academic integrity, wasn't it?

A. Per Southeastern's policy, I'm assuming.

Q. You can look at Tab 3 if you'd like.

A. "It was the opinion of the committee." Is that what you're looking at?

Q. Yes, ma'am.

A. Yes.

Q. So per the policy, you had committed an act of academic --of dishonesty and lack of academic integrity; correct?

A. I was accused, yes.

Q. You appealed that decision, you said; correct?
A. Yes. I got the opportunity after I hired the lawyer.
Q. And you accused Southeastern of retaliation against you for being outspoken in your disagreement over how Dr. Tudor was treated; isn't that correct?
A. Yes.
Q. And was there an investigation into your claims of retaliation?
A. I don't understand.
Q. You accused the university of retaliating against you.
A. I understand that part.
Q. And there was an investigation as to whether or not retaliation occurred, wasn't there?
A. Are you talking about the meeting with the first committee?
Q. Just do me a favor, ma'am, if you wouldn't mind. You can turn to Tab 5.
A. Yes, sir.
Q. And that is the investigation by the affirmative action office, isn't it -- or the determination of the affirmative action office?
A. Who is the affirmative action office? I didn't meet with an affirmative action office.
Q. Who did you meet with, ma'am?
A. I met with the dean and then my lawyer, and then they

called me and said that -- I met with the committee, and they asked questions. And that's when they told me who was the one that made the allegation. They said that Dean Scoufos was the one that made the allegation and gave me a Title IX piece of paper. So then I had -- that was it.

Then I met with -- after that, I met with Claire Stubblefield and Dean Scoufos and asked them how I had did a Title IX because I hadn't discriminated against anyone.

And Dr. Stubblefield told me that it was a "two-fo," that the Title IX came in because of my letter from Micah on Dr. Tudor. And that was basically the only thing that was asked or said about affirmative action there.

Q. Did your attorney write this letter on your behalf?

A. The first letter -- or the only letter? Yes, sir.

Q. If you would, go back to Tab 2, then, highlighted section, second paragraph. Read it to yourself.

A. On the first page?

Q. Yes, ma'am. Does this refresh your recollection as to whether or not you, through your attorney, accused Doug McMillan of retaliating against you?

A. No. I said that he did. I felt that he did.

Q. Okay. So you have -- now, you said that Doug McMillan accused you of -- or retaliated against you because of your outspoken support of Dr. Tudor; correct?

A. Yes. That's how I feel.

Q. And an investigation was conducted; correct?
A. Not a full investigation.
Q. Were you part of that investigation?
A. I don't know what you're talking about. Are you talking about the meeting with the group of people? They didn't ask very much. They just asked me why I felt that Dr. McMillan would retaliate against me and had he ever done anything to -- on his belief system. And I said, yes, that he was going to --

THE COURT: Stop, stop. I don't believe this is responsive.

Try again.

MR. BUNSON: I'm sorry, Your Honor. I lost my place.

Q. (BY MR. BUNSON) Was there an investigation into your claims of retaliation by Dr. McMillan?
A. To my opinion, no. To your opinion, I'm assuming yes.
Q. And do you know what the determination was regarding your accusation of retaliation by Dr. McMillan?
A. No.
Q. In fact, the committee found that there was no evidence to indicate that the charges by you were instigated by Dr. McMillan; isn't that correct?
A. Yes, I'm assuming.
Q. And this comment you made about Dr. Scoufos is the one

that had comments from the students. Do you recall that?
A. The comments that -- when she told me in my first meeting with her?
Q. Bad question.
Your lack of academic integrity and dishonesty had to do with the fact that you were accused of having work-study students do your son's homework; isn't that correct?
A. That was the allegation.
Q. And they provided testimony in forms of both personal and written affidavits, didn't they?
A. One did. The other one sent an e-mail. I guess that's written.
Q. So written and verbal/oral testimony to the fact that you asked them to do this; is that correct?
A. Yes.
Q. If you could, turn to Tab 6, please.
Do you recall this document?
A. The counseling report?
Q. Yes, ma'am.
A. Yes.
Q. What is a counseling report?
A. It's where they gave me the allegations in writing.
Q. And if you could, just quickly flip over to page 2, red box.
Is that your signature?

A. Yes.
Q. What's the date?
A. February 12th.
Q. Of?
A. 2016.
Q. And you indicate in there you do not agree; right?
A. Yes.
Q. But you were -- you received the fullest of the charges and accusations of your acts of dishonesty and lack of academic integrity within this document, didn't you?
A. Yes.
Q. And after multiple investigations, a pretermination hearing, you requested and were granted an appeal hearing, weren't you?
A. That was the meeting with Kyle Stafford, Claire Stubblefield, and the dean.
Q. You can turn to Tab 11 if you'd like.
A. Yes.
Q. Okay. Do you recall getting that letter?
A. Yes.
Q. What was that letter dated?
A. April 4th.
Q. Who's the letter from?
A. Dr. Bryon Clark.
Q. And it indicates that you -- that he has been put in

charge of putting together an appeals committee regarding your discharge; correct?
A. Yes.
Q. And he tells you who's going to be on that committee; right?
A. Yes.
Q. So you were granted an appeal.
If you could turn to Tab 12.
And the appeal committee determined you had committed an act of academic dishonesty and that termination was appropriate; isn't that correct?
A. In the bottom -- in the last paragraph?
Q. Yes.
A. That's what this says, yes.
Q. And is that signed by the people that were on your appeals committee per the letter that you were sent?
A. Yes.
Q. So after a pretermination hearing, multiple investigations, and now an appeal, all parties, all committees, everybody, agreed that you committed lack of academic integrity and acts of dishonesty; is that correct?
A. That's what they say.
Q. Okay. Now, to get into some of your testimony from earlier, you testified to reactions before and after meetings between Dr. Tudor and Dr. --

THE COURT: Let me stop you. I was going to try to get through with this witness, but I think we all need a break.

Please do not discuss the case. Be back in your room at 3:15. And we'll be in recess.

(Jury exits.)

(In recess from 3:00 p.m. to 3:15 p.m.)

(Jury enters.)

THE COURT: Be seated.

Please proceed.

Q. (BY MR. BUNSON) Ms. House, would you mind turning to Tab 11 of that packet again just real quick?

A. Yes.

Q. On the third page of that, you'll see a bulleted list of names.

A. The list at the top?

Q. It's a bulleted list of names about three-quarters down, third page, Tab 11.

A. Yes.

Q. Okay. Thank you.

A. Uh-huh.

Q. Those are the names of the appeals committee; correct?

A. Yes.

Q. And two of those committee members were secretaries like yourself; correct? Their title is right next to their name.

A. Oh. Yes.
Q. The first name, Ms. Elizabeth Brittingham?
A. Brittingham, yes.
Q. Brittingham. My apologies.
A. No, that's okay.
Q. Do you know who she is?
A. Yes, sir.
Q. You asked for her to be appointed to this committee, didn't you?
A. Yes.
Q. Okay.
A. That was the only name I got --
Q. Okay.
A. -- or the only position I got.
Q. And the other two were a help desk director and coordinator of disability services.
Do you see that?
A. Yes.
Q. So the secretaries on there, they were your peers, weren't they?
A. I did not work closely with Faith Huddleston. She was in a different division. I was academic; she was student.
Q. But a secretary would be your peer in terms of your level at the university; correct?
A. I would assume so.

Q. Okay. And Ms. Brittingham, you did know her; correct?
A. Yes.
Q. And if you could go to Tab 12, second page, the red box.
A. Yes.
Q. What's the second name signed on there?
A. Elizabeth Brittingham.
Q. And her signature would show that she concurs with the appeals committee's decision; correct?
A. You would have to ask her.
Q. This is a report that was authored by her committee; correct?
A. Yes.
Q. Okay. Earlier, you talked about an employment decision that Doug McMillan made about you based on his religion.
A. Yes.
Q. What employment decision was that?
A. When I was moved over to the dean's for arts and sciences.

I was vice president's administrative secretary, Jesse Snowden, and he became interim president. So when Dr. McMillan was interim vice president, he said that he was going to downsize the office, and so that meant that he was going to do away with my position.

But because of his biblical belief that the Bible says that we take care of our widows, that he would go talk with

Dr. C.W. Mangrum and see if I could transfer over there because their secretary was leaving.

Q. So that decision was a positive decision, wasn't it?

A. As far as?

Q. Either having a job or not having a job.

A. If you look at it that way, yes.

Q. You told us earlier that Dean Scoufos and Dr. McMillan said negative comments related to Dr. Tudor being transgender.

Do you recall that?

A. Yes.

Q. You never repeated -- or reported these accusations before you were under investigation or during your investigation, did you?

A. Report to who?

Q. The equal employment opportunity officer.

A. There was -- no.

Q. And you knew the investigation into Dr. Tudor's tenure denial; right?

A. Yes.

Q. This was in 2010, 2011, and 2012; right?

A. Yes.

Q. And yet you never reported any of these statements to Southwestern -- Southeastern's affirmative action officer, did you?

A. No, because it would not have done any good.

Q. You didn't report these statements to anyone, did you?
A. My dean.
Q. Lucretia Scoufos?
A. Yes.
Q. So six years after Dr. Tudor's tenure denial, you started claiming your firing was because of your support for Dr. Tudor; isn't that correct?
A. Six years?
Q. Yes, ma'am.
A. You mean when I got let go, that I said it was -- I felt that it was part of that?
Q. Yes. When you were terminated --
A. Yes.
Q. -- you are claiming that that was because you were supporting Dr. Tudor; right?
A. Yes.
Q. And that was six years -- six years after her denial of tenure; correct?
A. Yes.
Q. So you think that requiring student aides to do your son's homework had nothing to do with your firing?
A. I didn't do that.
Q. So you're calling Justin Harp and Cristin Morgan liars?
A. I guess so.
Q. If you could turn to Tab 12, please.

This is that appeals committee's determination; correct?
A. Yes.
Q. And in the final paragraph, it says, "One of the students, Cristin Morgan, explained to us different versions of events" -- or "a different version of events." My apologies.
"She asserted that over the course of at least two days she was asked to spend between two and three hours on course work that was not merely a study guide and completed computer-based modules in a course-management system on Ms. House's workstation computer, including at times when Ms. House temporarily left the office.
"This claim is supported by a second student, Justin Harp, who was unavailable to us at the time of the informational hearing but whose corroborating statement was available to us."
Did I read that correctly?
A. Yes.
Q. So you still maintain that they are liars?
A. Yes.
Q. Ms. House, so the appeals committee, pretermination committee, and all investigating bodies determined that you lied, didn't they?
A. No.
Q. Which one didn't?

A. Well, they even state back here that it says, "The mitigating factors in this case include that the facts in question are from two years, cover relatively brief episode over the course of overall employment, and that there is no allegation of any ongoing or systematic issues with integrity on the part of the appealing party. For this reason, we believe discharge was not the only possible course but only one of the menu of options that could have reasonably been pursued."

Q. And the following paragraph, if you will, says, "That said, committing an act of academic dishonesty while working in the office of the executive dean of academic affairs is particularly serious."

Did I read that correctly?

A. Yes, sir.

Q. "The conduct that we believe happened here meets the handbook's list of actions that at least minimally qualify an employee for discharge as a penalty."

Did I read that correctly?

A. Yes, sir.

Q. "With discharge being one of the appropriate options for penalty and with it being exercised here in fair accordance with the text of the handbook, we find it appropriate to uphold the decision upon appeal."

Did I read that correctly?

A. Yes.
Q. So you still maintain that they did not say that you lied?
A. Yes.
Q. Do you maintain that they hold that you committed acts of academic dishonesty?
MR. YOUNG: Objection. Asked and answered, Your Honor.
THE COURT: Sustained.
Q. (BY MR. BUNSON) So based on all these findings of all of these different committees --
A. Two committees.
MR. YOUNG: Objection. Asked and answered.
THE COURT: It hasn't been asked yet. I don't know.
Q. (BY MR. BUNSON) So there is no reason -- sorry.
So based on the fact that the appeals committee, pretermination committee, and all investigations into this allegation against you determined that you were dishonest, is there any reason to think that you wouldn't lie here today?
A. Because I'm not dishonest.
Q. Were you friends with Lucretia Scoufos?
A. As far as close friends --
Q. Yes.
A. -- or business friends?
Q. Friends. You can decide.

A. Not "friend" friends. I worked with her for many years.
Q. Are you friends with her now?
A. No.

MR. BUNSON: No further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Ms. House, is Dean Scoufos the one who first accused you of dishonesty?
A. Yes.
Q. And is Dean Scoufos the one who first notified you that you were going to be terminated?
A. Yes.
Q. And at some point did Claire Stubblefield conduct an investigation?
A. No, not till after they got my letter from Micah Knight. Then they said -- they sent a letter -- Claire Stubblefield sent an e-mail saying that they were extending my leave of absence past the three o'clock the next day to another day. And then that's when they had a committee.
Q. Last year --
A. Uh-huh.
Q. -- did you receive a subpoena in this case to testify at a deposition?
A. Yes.

Q. Were you prepared to tell the truth at that deposition?
A. Yes.
Q. Was that deposition canceled by the lawyers involved and not you?
A. Yes.
Q. Did you tell the truth today, Ms. House?
A. Yes.
Q. Was it hard for you to come here today?
A. Yes.
Q. Are you losing money from work to be here today?
A. Yes.
Q. Sitting here today, do you regret your decision to bury your husband in his Southeastern uniform?
A. I do and I don't.
Q. Can you explain that answer?
A. I do because I never felt like the dishonesty that goes on and that I've seen would get this bad. And I don't because I love Southeastern even after everything. It's still home. So no.

MR. YOUNG: Nothing further, Your Honor.

MR. BUNSON: Nothing further.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Call your next witness.

MR. YOUNG: Your Honor, respectfully, plaintiff rests.

May I approach?

THE COURT: Yes.

MR. YOUNG: Thank you.

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

MR. YOUNG: Thank you, Your Honor. Respectfully, plaintiff would like to move for a directed verdict. I'm prepared to make arguments today or we can make them tomorrow.

THE COURT: Well, I certainly don't want to hear them today.

How -- what do you think is your best guess on your evidence now?

MS. COFFEY: Well, before I get there, defendants also would like to move for a directed verdict.

Is it on the record, plaintiff has rested?

THE COURT: Yes.

MS. COFFEY: Okay. So plaintiff is not going to present deposition testimony of Cathy Conway during your case?

MR. YOUNG: (Shakes head.)

But we reserve the right, if there's no directed verdict, to present rebuttal.

MS. COFFEY: I think that we --

THE COURT: Sherri, we'll be off the record.

(Bench conference held off the record with all counsel.)

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

THE COURT: This is a point in the trial where the lawyers and I need to have some time to do several things, and I don't want you to have to sit there and listen to us whisper. And it may take long enough that it will be by the end of the day that we're finished anyway.

So, once again, I'm going to send you home early. I think it really is a nice day today, although I can't vouch for that.

I will instruct you not to discuss the case, of course, or permit anyone to discuss it with you. Do not expose yourselves to any media accounts. Don't do any independent research, Facebook, social media, Twitter, blog, or anything else. Please be in the jury assembly room downstairs by 9:15 tomorrow, and we will excuse you.

I will expect counsel in chambers.

And we'll be in recess.

(In recess at 3:45 p.m.)

REPORTER'S CERTIFICATE

I, SHERRI GRUBBS, Federal Official Court Reporter in and for the United States District Court for the Western District of Oklahoma, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 15th day of November, 2017.

/S/ SHERRI GRUBBS

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

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

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.

(Proceedings held on November 16, 2017.)

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

THE COURT: Be seated.

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

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

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

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

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

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

I still have the transcripts, obviously, but --

THE COURT: Of course.

MR. YOUNG: Yeah.

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

testimony.

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

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

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

MR. YOUNG: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

MR. YOUNG: Yes, Your Honor.

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

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

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

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

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

MR. YOUNG: Yes, Your Honor.

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

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

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

THE COURT: All right.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Linda, get the jury.

(Jury enters courtroom.)

THE COURT: Be seated, and good morning.

Defendant, call your first witness.

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

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

(Witness duly sworn.)

THE COURT: Please be seated.

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

DIRECT EXAMINATION

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.

Q. What was your position there?
A. I went in as an instructor because I had not completed my dissertation. And the agreement was, when I completed my dissertation, I would automatically receive the appointment of assistant professor, which I did. That completed my Ph.D.
Q. While you were at Alabama State University, did you ever apply for tenure?
A. Yes.
Q. Were you successful?
A. Yes.
Q. At some point you left Alabama State University?
A. Yes. I left Alabama State University to come to Southeastern in 2001 because I wanted to be close to my son and his family, who also lived in Oklahoma. They had just had two grandsons, and I wanted to be near them. I confess.
Q. What year was this?
A. 2001.
Q. What was your position that you were hired at at Southeastern?
A. I was hired as assistant professor because that was the position that was being advertised, although I had left ASU as an associate professor.
So I came in with the agreement, at the end of two years, that I could receive associate professor, depending upon that probationary period, which I did.

Q. The promotion to associate professor, did it come with tenure?
A. Yes.
Q. At some point did you become department chair?
A. Yes. I became department chair in 2003.
Q. And which department were you the chair of?
A. Communication and theater.
Q. Did you have any further promotions while you were at Southeastern?
A. Yes. I was appointed full professor.
Q. Did you remain as department chair until you left Southeastern?
A. No. I was a department chair for five years because, in 2008, I received the appointment of dean for the school of arts and sciences.
Q. Did you remain in that position until you left Southeastern?
A. No. In December 2011, I received the appointment of, at that time, dean of instruction.
Q. What is dean of instruction?
A. In this case, it was the first time that had been done at Southeastern. And that simply meant that I went from dean of the school of arts and sciences to the dean of all of the academic schools on campus, which there were three academic schools.

Q. At the time that you became dean of instruction, did another individual take over as dean of the school of arts and sciences?
A. No. There were no other deans -- no other academic deans except me.
Q. What were your duties as dean?
A. A dean is, first of all, a liaison between faculty and upper administration. And those duties include making sure that we have qualified faculty in the classrooms, making sure that our accreditation requirements are met and the requirements of RUSO are met, and being sure that the classes have faculty in a timely manner when classes begin in the spring and fall and summer.

As dean, I met with the department chairs once a week so we could coordinate all of the requirements that we were supposed to do, grow in areas, exchange ideas, and make sure -- of course, the ultimate of the dean is with the faculty, as with the university, is to provide a quality education for our students and to be cognizant at all times about their welfare.
Q. Did your responsibilities as dean include tenure review?
A. Yes.
Q. I'm sorry. Portfolio review for tenure or promotion?
A. Yes, as it did for chair, department chair.
Q. Were you involved in the promotion and tenure process at

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

A. No.

Q. Approximately how many --

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

Q. Okay.

A. I'm sorry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

important points of a portfolio. So --

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

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

THE COURT: Overruled.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: I won't strike it.

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

MS. COFFEY: Yes, Your Honor.

THE WITNESS: So then I just --

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

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

THE WITNESS: Yes, Your Honor.

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

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

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

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

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

THE COURT: Yes.

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

THE COURT: Wait. Is it in evidence?

MS. COFFEY: I'm sorry.

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

THE COURT: Okay.

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

A. Yes.

Q. What is it?

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

Q. What was the date of that meeting?
A. It was set for August 31st, 2009, at 2:30.
MS. COFFEY: Move for the admission of Plaintiff's Exhibit 121.
THE COURT: I'm assuming, if it's on the plaintiff's list, there is no objection. If you want to object, just speak up; otherwise, I will admit it without hearing from you.
MS. GALINDO: No objection, Your Honor.
Q. (BY MS. COFFEY) Dr. Scoufos, do you recall your meeting with Dr. Tudor?
A. Yes.
Q. What did you discuss with Dr. Tudor in that meeting?
A. Her portfolio, what needed to go in it, why it would -- why those particular things were necessary, and then I addressed her questions.
Q. Dr. Scoufos, how long did this meeting with Dr. Tudor last?
A. At least an hour.
Q. Why are you so certain it lasted at least an hour?
A. Because I never did have one of those meetings that lasted less than an hour, but most of them went over an hour.
Q. What would take an hour to discuss with Dr. Tudor?
A. Because I would give a packet, and we would -- and a list of the requirements and examples. I would have a portfolio from a colleague -- with his permission -- that's an exemplar

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

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

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

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

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

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

MS. GALINDO: Objection. Calls for hearsay.

THE COURT: Overruled.

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

Is that accurate?

A. No.

Q. Why not?

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

had.

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

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

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

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

A. Yes. That's standard.

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

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

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

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

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

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

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

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

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

Shall I go on?

Q. Yes.

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

MS. GALINDO: Objection. Calls for hearsay.

THE COURT: Overruled.

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

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

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

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

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

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

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

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

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

THE COURT: Overruled.

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

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

THE COURT: Overruled.

Q. (BY MS. COFFEY) Was it your understanding that Dr. Tudor was now presenting as female based on what she explained to you?
A. Yes.
Q. So did you address her concern regarding Lisa Coleman?
A. I was -- I was surprised, shocked, and amazed because -- and as I told Dr. Tudor, Lisa Coleman is one of the most open-minded people on campus or anywhere, and I never had known her to be prejudicial about anybody about anything.
Q. Who, if anyone, did you pass on Dr. Tudor's concern regarding Lisa Coleman?
A. Her chair, Dr. Mischo, immediately after that meeting.
Q. Did you ever have an opportunity to learn from Lisa Coleman whether these honors bus trips were taking -- continuing to take place after Dr. Tudor's change?
A. Yes.
Q. What did she say?
A. In a meeting with the whole department where Dr. Tudor was present also, Lisa was expressing a concern about the transportation.
MS. GALINDO: I'm going to object to hearsay, Your Honor.
THE COURT: Do you have an argument this falls outside the hearsay rule?
MS. COFFEY: Your Honor, I'll just rephrase my

question.

THE COURT: All right.

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

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

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

A. No.

MS. GALINDO: Objection. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: No. I had no reason.

MS. COFFEY: May I approach, please?

THE COURT: Yes.

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

A. Yes.

Q. What is it?

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

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

THE COURT: It will be admitted.

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

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

A. Yes.

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

A. From --

Q. Read it out loud.

A. "From Rachel Tudor to Mischo"?

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

THE COURT: Overruled.

MS. COFFEY: I'll make it quicker.

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

Is that an accurate description of this e-mail?

MS. GALINDO: Objection. Leading.

THE COURT: Overruled.

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

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

A. Yes.

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

A. "This absolutely" -- and I left out "is" -- "fabricated from beginning to end. This was never discussed when I met with" -- no. "This was never discussed! Meet with Dr. Mischo and Dr. Tudor immediately."
Q. Dr. Scoufos, who appoints the chairman of a tenure and review committee?
A. It's done in concert, and the department chair --
Q. Let me ask you this, then: As dean, were you responsible for appointing the committee -- the committee chair for Dr. Tudor?
A. No.
Q. Who was?
A. Dr. Mischo.
Q. Did you end up having -- let me ask you this: How did you address this problem that Dr. Tudor and Dr. Mischo were raising in this e-mail?
A. I called John for clarification, her -- Dr. Mischo.
Q. Did you ever meet with Dr. Tudor to discuss what she was claiming in this e-mail?
A. Dr. Mischo and Dr. Tudor and I did meet.
Q. At the end of that meeting, what was concluded with respect to Rachel Tudor's indications that you-all had agreed regarding her committee members?
Did Dr. Tudor concur that she was mistaken in her representations regarding who you-all agreed would be on her

committee?
A. Yes.
MS. COFFEY: May I approach the witness, Your Honor?
THE COURT: Yes.
Q. (BY MS. COFFEY) Dr. Tudor -- Dr. Scoufos, if you could take a few moments, seconds, please, to flip through and tell me if you recognize this document as Dr. Tudor's 2009 portfolio
MS. COFFEY: The witness is looking at Plaintiff's Exhibit No. 1.
Q. (BY MS. COFFEY) Dr. Scoufos, I may represent to you whether you -- whether it's complete or not, does it -- do you -- does this appear to be Dr. Tudor's 2009 portfolio?
A. No.
Q. Okay. It's not her portfolio at all or it's not the same portfolio that you reviewed?
A. It's not the same portfolio that I reviewed.
Q. All right. Let's go back to -- when you -- when you received Dr. Tudor's -- I'm sorry.
Dr. Scoufos, when you received Dr. Tudor's portfolio in 2009, what was your first impression of it?
A. My first impression was that I couldn't believe -- I couldn't believe her portfolio because we had had that session to discuss what was to go in the portfolio.
And, of course, the very first thing I read was her

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

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

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

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

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

MS. GALINDO: Objection. Leading.

THE COURT: Overruled.

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

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

I was also --

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

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

THE COURT: It's already admitted.

MS. COFFEY: Okay. Thank you.

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

A. Yes.

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

A. Her scholarship was lacking.

Q. Why?

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

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

Q. Let me stop you there.

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

A. Right.

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

A. Yes.

MS. GALINDO: Object to leading, Your Honor.

THE COURT: Overruled.

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

Q. (BY MS. COFFEY) All right.

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

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

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

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

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

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

A. No, because --

Q. Let me ask you this: Were those recommendations

appropriate for Dr. Tudor's 2009 portfolio?
A. No.
Q. Why not?
A. Because they were not from her colleagues and they were not from any colleagues at any other university that she might have worked with.
Q. Okay.
A. It isn't what was there as much as what wasn't there.
Q. What do you mean by that?
A. Recommendations usually come from people in your field, in your department, and people who know your work.
Q. Dr. Tudor didn't have any recommendations from anybody within the English department at Southeastern?
A. No.
Q. You briefly reviewed this earlier. And, based upon your review, are there documents missing from Plaintiff's Exhibit 1 that you recall being a part of Dr. Tudor's 2009 application?
A. The recommendation for Robert Tudor comes to mind immediately because it isn't here.
Q. What about --
A. And --
Q. Go ahead.
A. -- I didn't see Corey Delashaw's. Did I just overlook it?
Q. I don't think so. So Corey Delashaw had a recommendation

in the 2009 portfolio?
A. Yes.
Q. Do you recall -- this packet contains a recommendation letter from Kim McGehee.
Do you recall whether Kim McGehee's recommendation was in Dr. Tudor's 2009 portfolio?
A. I don't recall that it was there, and he isn't in her -- he's in Spanish, so it wouldn't --
Q. Is he a tenured professor? Was he at the time, Kim McGehee?
A. I don't know.
Q. Okay.
MS. COFFEY: May I approach the witness, Your Honor?
THE COURT: Yes.
Q. (BY MS. COFFEY) I've handed you what has been marked as Plaintiff's Exhibit 77.
Do you recognize this document?
A. Yes.
Q. What is it?
A. It's an e-mail from me to Dr. McMillan with my recommendation to deny tenure.
MS. COFFEY: I move for the admission of Plaintiff's Exhibit 77.
THE COURT: It's already admitted.
MS. COFFEY: Okay. Sorry.

Q. (BY MS. COFFEY) Why did you recommend that Dr. Tudor be denied tenure in 2009?
A. Because her portfolio did not reflect in any way that she should receive tenure. After five or six years, if a person has not met the qualifications and requirements and the criteria for promotion and tenure, it isn't likely that they're going to.
Q. All right. Do you recall that Meg Cotter-Lynch went up for tenure in this same year, 2009?
A. Yes.
Q. Were Dr. Cotter-Lynch's -- was Dr. Cotter-Lynch's portfolio comparable to Dr. Tudor's?
A. Absolutely not.
Q. Why not?
A. Dr. Cotter-Lynch had an outstanding portfolio, and her record certainly would rival any assistant professor going up for promotion and tenure.
Q. Let's go back a little bit.
Do you recall your meeting with Dr. Cotter-Lynch prior to her submitting her portfolio?
A. Yes, I do.
Q. Was that a lengthy meeting?
A. Yes.
Q. Did Dr. Cotter-Lynch ask you a lot of questions?
A. She asked questions --

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

THE COURT: Overruled.

THE WITNESS: She asked questions.

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

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

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

A. Yes.

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

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

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

A. Yes.

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

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

THE COURT: All right.

Q. (BY MS. COFFEY) After you submitted your recommendation for tenure denial, at some point Dr. Tudor asked you for an explanation of that -- of your recommendation; right?
A. Yes.
Q. Did you give her that -- did you give her that explanation?
A. No.
Q. Why not?
A. Because it wasn't policy.
Q. What do you mean?
A. We don't --
Q. I'm sorry. Let me -- I'll just help you.
It wasn't -- were you allowed to provide that --
A. I was not.
Q. -- explanation?
A. I was not.
Q. Who determined that, that you were not allowed to do that?
A. Well, it's determined through the practice of the university and --
Q. Did anybody instruct you that you were not to provide her --
A. Yes.
Q. -- an explanation?
Who?

A. Dr. McMillan.
Q. Do you recall providing Meg Cotter-Lynch with an explanation of why you recommended her tenure?
A. What? I'm sorry?
Q. Did you provide Meg Cotter-Lynch a detailed explanation as to why you recommended her tenure?
A. No.
MS. COFFEY: May I approach the witness, Your Honor?
THE COURT: Yes.
Q. (BY MS. COFFEY) Dr. Scoufos, do you recognize this document that is identified as Defendants' Exhibit 59?
A. Yes.
Q. What is it?
A. It's a memo to me from Dr. Tudor.
MS. COFFEY: I'd move for the admission of Defendants' Exhibit 59.
THE COURT: Already admitted.
MS. COFFEY: I'm sorry. I'll withdraw that request.
Q. (BY MS. COFFEY) Dr. Scoufos, do you recall -- let's go to a meeting that you had, this meeting, April 6th of 2010.
Do you recall having a meeting with Dr. Tudor in which Dr. Mischo was present?
A. Yes.
Q. What happened at that meeting?
A. I -- I'm not sure.

Q. What was the purpose of that meeting?
A. The purpose of the meeting was for me to advise Dr. Tudor that if -- if she would withdraw her application -- I mean, her -- withdraw her application to reapply, that she would be allowed not only the extra year that had already been given her after she had been denied promotion and tenure, but an additional year to that. So that would give her two years to go -- to reapply.
Q. Was she told that she must withdraw her tenure application in order to obtain this extra year?
A. Yes. That -- that was the condition. If she would withdraw her application to reapply -- this isn't her first application, but to reapply, that she would be given an additional year to the additional year that she had already been given.
Q. Well, you -- to be clear, because she'd already applied for tenure but withdrawn her tenure application in 2008; correct?
A. She'd already -- she applied once.
Q. Right.
A. And she --
Q. She withdraw that application?
A. At the committee level.
Q. I'm sorry. I'm just trying to move us fast forward so that we're clear as to where we are.

So this offer you gave to her in April of 2010, was this an offer you came up with and were making her?
A. No. This was --
Q. Whose offer was it?
A. This was an offer that came down from President Minks and Vice President McMillan.
Q. All right. You read this -- is that your handwriting in the upper right corner of the document?
A. Yes.
Q. Is this how you recall -- is this what you recall took place during this meeting?
A. Yes.
Q. All right. Why was -- let me go back.
The additional time. If she wasn't given this additional time, she would be approaching her seventh year in the school year of 2010-2011; right?
A. Right.
Q. And, normally, a professor that hasn't obtained tenure within seven years must leave; correct?
A. Correct.
Q. So this offer was allowing her an eighth year to obtain tenure; correct?
A. Yes.
Q. What was the purpose of allowing her this extra time?
A. The same reason -- well, in order to -- for her to bring

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

Q. All right.

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

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

A. Yes.

Q. Did you tell her it was a gift?

A. Yes, I did.

Q. Why?

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

Q. All right.

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

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

been terminated; right?
A. Perhaps I'm not using that word correctly, but --
Q. Tenure denial because her --
A. Tenure denial.
Q. Again, so there's no confusion, if an applicant withdraws their tenure application during the process, they are not officially denied tenure during that process; correct?
A. Correct.
Q. That's what happened in 2008; right?
A. Yes.
Q. Okay. So this letter then -- this letter written from Dr. Tudor to you, she's rejecting the offer; correct?
A. Yes.
Q. During your meeting, did Dr. Tudor ever ask you to put this offer in writing?
A. No.
Q. Can you find any indication in her letter to you rejecting the offer where she's asked for this offer to be placed in writing?
A. No.
Q. Did you advise Dr. Tudor as to whether or not she should accept this offer?
A. No.
Q. Why not?
A. Because it wasn't within my purview to advise her on

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

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

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

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

A. Right.

Q. Were you involved in that decision?

A. No.

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

A. Yes.

Q. What was her job title?

A. She was executive assistant to the dean.

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

A. I'm sorry?

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

A. No.

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

A. (Shakes head.)

THE COURT: Yes or no.

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

A. I'm sorry. No.

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

A. No.

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

A. No.

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

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

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

A. Yeah. Yes.

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

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

Q. When the affirmative action officer was doing an investigation regarding Dr. Tudor's discrimination complaints, did you ever instruct your staff not to diligently look for documents that had been requested?
A. Absolutely not. I knew where all the documents were.
Q. Dr. Scoufos, are you aware that Dr. Tudor is accusing you of discriminating against her because she's transgender?
A. Yes. Yes, I am.
Q. And how do you feel about that?
MS. GALINDO: I'm going to object, Your Honor. Calls for speculation.
THE COURT: Overruled.
THE WITNESS: Well, besides being highly insulting, it's -- it's very hurtful to be accused of something so despicable, so reprehensible as discrimination of any kind to anybody.
Q. (BY MS. COFFEY) Have you ever been -- other than Dr. Tudor, have you ever been accused of discriminating against somebody?
A. No.
Q. What role did Dr. Tudor's transgender status play in your determination to not recommend tenure?
A. It didn't play at all.
Q. When you evaluated Dr. Tudor on her merits in 2009, what did you determine with respect to whether she was qualified

for tenure?
A. I'm sorry?
Q. When you reviewed Dr. Tudor's portfolio in 2009, you reviewed it on the merits; correct?
A. Absolutely.
Q. And what was your decision based upon her merits?
A. That she didn't qualify for promotion and tenure.
Q. When one is denied tenure at a university, is that the end of their academic career completely?
A. At that university.
Q. Do they have the ability to go to another college or university and have a successful career?
A. Yes, they do, and that was part of the reason that she was given another year. That was the reason that she was given another year, so she could look for employment.
Q. If somebody is denied tenure at one university, does it ruin their professional reputation?
A. I -- I would suppose not. It depends, I guess, why they were terminated.

MS. COFFEY: Pass the witness, Your Honor.

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

And we'll be in recess.

(Jury exits courtroom.)

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

(Jury enters courtroom.)

THE COURT: Please be seated.

Ms. Galindo, you may cross-examine.

MS. GALINDO: Thank you, Your Honor.

THE WITNESS: I just needed a little mint.

THE COURT: Proceed.

MS. GALINDO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. GALINDO:

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

A. No.

Q. -- right?

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Very, very.

Q. In fact, you trust her with your life; is that correct?
A. I did trust her with my life because she saved it. That was another Mindy in another time.
Q. How long did she work with you?
A. She -- when I became dean of arts and sciences in 2008, she was already the assistant there to the former dean. So from 2008 through 2016.
Q. That's a long time.
A. A very long time.
Q. So when you testified just last year, I believe --
A. Yes.
Q. -- you said, "I think I could trust Mindy with my life and, in fact, I did"?
A. Yes, I did say that. And at that time I meant it.
Q. And when you came in in 2008, did you say you established some new rules for tenure?
A. No. I established -- I established new guidelines for portfolios.
Q. And that would certainly impact how tenure would be reviewed?
A. No.
Q. Well, you've discussed that you thought the rules called for messy portfolios; correct?
A. I'm sorry?
Q. You've testified that the former rules called for messy

portfolios; isn't that correct?

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

THE WITNESS: No.

THE COURT: Overruled.

THE WITNESS: No, what I --

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

A. "No" is my answer.

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

A. That's absolutely true.

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

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

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

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

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

A. That's correct.

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

A. That's right.

Q. You've testified before that tenure is about image. And image is important with you, isn't it?
A. I don't think I've ever used the word "image."
Q. So when you told that to an EOC investigator --
MS. COFFEY: Objection. Outside the scope of direct.
THE COURT: Overruled.
You may answer.
THE WITNESS: I don't recall ever using the word "image," so I don't know what the question was at the time.
Q. (BY MS. GALINDO) And can we agree that if I ask a question and it's just a yes or no, that you'll be happy to do that?
A. I'm sorry. Yes, I will be happy to do that.
Q. Thank you, ma'am.
And you've also said that portfolios should be a reflection of who the professor is; correct?
A. No.
Q. So when you stated that to the investigator, you misstated that?
MS. COFFEY: Objection, Your Honor. Assumes facts not in evidence.
THE COURT: Overruled.
Q. (BY MS. GALINDO) Yes or no?
A. Yes, I misstated that.

Q. And you discounted a letter of recommendation because it characterized Dr. Tudor differently? Yes or no.
A. Ask the question again, please.
Q. You discounted a letter of recommendation touting Dr. Tudor because of a mischaracterization about Dr. Tudor?
A. I don't know how to answer that, because I don't know -- I don't recall anything about that.
Q. You've testified this morning, you've testified in 2016, you talked about this to the investigator in 2012, and you said, quote, I'm shocked that she submitted a letter that referred to her under a different name.
Do you remember that?
A. That's out of context, but I do remember that.
Q. You said that; correct?
A. I did say that in context.
Q. And what does that have to do with her qualifications?
A. It wasn't because it was under a different name; it was because it was submitted as a recommendation for Dr. Robert Tudor when he applied at ASU.
It was not within the time period after he was hired and during that work period.
Q. And I understand you've testified to that this morning, but wouldn't the events of how you viewed the portfolio for Dr. Tudor be fresh on your mind more so in 2012 than today? Yes or no.

A. Certainly, yes.
Q. So if you didn't say anything about the letter being out of time or outside the scope or window of time then, that would be more accurate, wouldn't it?
A. I'm sorry. I'm not following you.
Q. So if you discounted the letter for Dr. Tudor -- now you're saying you discounted one of those letters because it was outside a time frame, but that's not what you said in 2012.
You understand that? Yes or no.
A. I understand what you're saying, yes.
Q. And you made revisions to the rules concerning tabs, the table of contents; is that true?
A. There were no rules.
Q. But did you make rules for that? Yes or no?
A. These were suggestions. They did not have to do them. There were no rules, and I didn't make any rules.
Q. So --
A. These were guidelines.
Q. So you made guidelines.
Guidelines are a lot like rules; correct?
MS. COFFEY: Objection. Argumentative.
THE COURT: Overruled.
THE WITNESS: Not to me. A guideline is something that I can take or leave; a rule is something I must abide by.

Q. (BY MS. GALINDO) But if you're judging a document or a person or their job or performance by a guideline, it sure sounds like a rule; right?
A. It doesn't sound like a rule to me.
I always made it clear in those sessions --
Q. I'm sorry. I haven't asked another question.
You said you didn't bring your personal life to the university; correct?
A. When did I say that? I don't know that I said that.
Q. You're married to Dr. Snowden?
A. Yes.
Q. Would you agree with Dr. Snowden that a good way to remove bias from tenure review is to have review from your peers at maybe another university?
A. That would be a good policy. Yes, I get -- yes, I agree.
Q. You spent, you said, an hour with the -- with Dr. Tudor when she requested an appointment to discuss her application; correct?
A. Yes.
Q. And it seems to me, based on your notes, you spent the bulk of that talking about Dr. Coleman; isn't that right?
A. No.
Q. You said you were shocked because Dr. Coleman wouldn't hold it against her for being transgender because she's liberal; is that right? Yes or no.

A. I would have to have "liberal" defined. I called her open-minded and unprejudicial. I don't recall ever having called her liberal.
Q. You don't recall telling the investigator that?
A. I do not recall having ever called her liberal.
Q. And open-mindedness, if -- why was that a unique criteria for Dr. Tudor on who she wanted to chair the committee?
A. Because Lisa Coleman is so open-minded, I could hardly believe that she would in any way discriminate against Dr. Tudor or anyone else for a choice that they made as an adult pertaining to their lifestyle.
Q. So you're saying she wouldn't judge her for being transgender; correct? Yes or no.
A. Correct.
Q. So you right away, right out the gate, started classifying Dr. Tudor's portfolio in the transgender stack; is that correct?
A. No.
Q. I notice we've seen lots of exhibits this morning with your handwriting.
Wouldn't it be prudent -- you've done this a long time; right?
A. Right.
Q. And your decisions affect people's lives profoundly; correct?

A. Correct.
Q. In fact, one's professional reputation follows us around like a shadow for our whole lives; correct?
A. In some cases.
Q. Mostly; right?
A. I don't know.
Q. And with such pivotal, momentous decisions, where you don't get many bites at the apple, wouldn't it make sense, if you sat there and reviewed what you felt was the criteria for the submission of an application for tenure, to make sure that individual understood everything by reducing the memorandum to writing and having them sign off on it? Wouldn't that make sense?
A. Which memorandum?
Q. You have a paper trail, correct, allegedly, of what transpired, in your words, during those meetings; correct?
A. Right.
Q. But none of those things gave Dr. Tudor an opportunity to review if, in fact, those matters were discussed with her so that maybe we could confirm it with her signature.
Do you understand that? Yes or no.
A. I understand that, yes.
Q. And you'd agree with me her signature doesn't confirm what you've written down; correct?
A. Correct.

Q. You think highly of Dr. Mischo?
A. I only know him in a professional manner, and he was chair when I became dean. And --
Q. Is that a yes or a no, ma'am?
A. Yes. Otherwise, he wouldn't have remained chair.
Q. So if Dr. Mischo has testified what you're calling a gift was an ultimatum, you disagree with him?
A. I disagree with that. It was not an ultimatum; it was a choice, an option.
Q. Dean Scoufos, I believe we agreed that you'd answer the question --
A. I'm sorry.
Q. Thank you.
A. I thought I was.
Q. On such an important matter, was it wrong for Dr. Tudor to request someone who would be fair to chair the faculty committee?
A. Absolutely.
Q. You mentioned that Plaintiff's Exhibit 1, the 2009 portfolio, is incomplete.
Is that your testimony? Yes or no.
A. No, that isn't my testimony.
Q. You said there are matters that are not in Plaintiff's Exhibit 1; correct?
A. That's correct, but the rest of that portfolio, I have

not seen.
Q. What are the contents of that portfolio? Please recite them.
A. Of this portfolio?
Q. Of the portfolio you feel would be the complete 2009 portfolio.
A. It isn't a matter of it being complete or incomplete; it isn't the same information that was in the other portfolio. There wouldn't be a complete or incomplete.
There was information in the other portfolio that isn't here, and there's information in this portfolio that wasn't in the first one. I have not seen most of this.
Q. Now -- so I'm a little confused. Is it complete or not complete? Yes or no. One of those. Which is it?
MS. COFFEY: Objection, Your Honor. Asked and answered.
THE COURT: Sustained.
Q. (BY MS. GALINDO) You discounted Dr. Tudor's cover letter; correct?
A. It wasn't a cover letter. It was a letter of application.
Q. I appreciate that.
The letter of application, you held that against Dr. Tudor when you reviewed her tenure application; correct? Yes or no.

A. It was not a valid letter of application.
Q. You didn't like that she referenced other individuals who are staff members in that letter?
A. What I didn't like, and I --
Q. Is that a yes or a no?
A. No.
THE COURT: Ms. Galindo, not every answer can be yes or no. She's entitled to give an answer.
MS. GALINDO: Thank you.
THE COURT: Not a narrative, but an answer.
MS. GALINDO: Thank you, Your Honor.
THE COURT: You may answer.
THE WITNESS: Would you state the question again, please?
Q. (BY MS. GALINDO) You denied in part Dr. Tudor's tenure based on that application letter; correct?
A. Yes.
Q. And your testimony has been because it referenced other staff members?
A. No. I discounted the letter of application because it wasn't about Dr. Tudor. It included the policies that are not in place, such as giving secretaries tenure or giving instructors tenure when that is not allowed.
The letter of application was supposed to be about Dr. Tudor and not a narrative on what should be done. And she

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

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

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

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

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

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

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

A. Yes.

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

That sounded reasonable to you?
A. I was given the directive to give that option to Dr. Tudor. It was not my decision. I was not part of the discussion. I was given a directive by the president and the vice president for academic affairs to present that option.
There was no ultimatum. Her deadline was at five o'clock. President Minks set the deadline; I simply relayed it.
Q. I'm sorry if I didn't ask that clearly enough.
That ultimatum -- how many hours did she have to agree to that?
A. She had until five o'clock. And I don't recall the time we met, but it was a few hours.
Q. And just like this (snaps fingers), her future was gone, right, because of that ultimatum?
A. It was not an ultimatum; it was an option, a choice for her. Her future wasn't gone just like that, because she could choose to stay two years and reapply at that time to get her portfolio in line. It was a gift.
Q. But at 5:00 p.m. that changed; correct?
A. At 5:00 p.m. is the deadline that President Minks set, and I do not know his reason because it was not discussed with me, but it was --
Q. I'm sorry. I didn't ask you his reason; right?
A. -- a directive.

Q. Sorry about that.

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

A. No, that was the first year.

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

A. I'm sorry.

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

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

Which is it?

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

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

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

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

Southeastern to be near her family; right?
A. I don't know why. I wasn't there when she came.
Q. But being close to family, it doesn't get more important than that; right?
A. I think that it's important.
Q. And she had until 5:00 p.m. to decide her job, where she'd live, and how that would affect her family.
You understand that; right?
A. I do not interpret that the same way.
Q. Now, do you know Dr. Knapp?
A. Yes.
Q. You know that he served on the appellate review committees?
A. Yes.
Q. And he said it would have been something the -- that when tenure was denied, it should have been explained to Dr. Tudor.
Do you agree with that?
A. At that juncture, I do not agree with that.
Q. But you've testified it's -- that you don't have a problem with folks asking you questions, what do they need to do.
So an explanation, wouldn't that have helped a decision that was necessary by 5:00 p.m? Wouldn't it have provided guidance to her?
A. That's why we were making the offer, so we could guide

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

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

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

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

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

THE COURT: Just ask another question.

MS. GALINDO: Thank you, Your Honor.

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

A. That's right.

MS. GALINDO: May I approach, Your Honor?

THE COURT: Yes.

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

A. Yes.
Q. Who is that?
A. He is the attorney for the university.
Q. And he tells you what the law is, you go over rules with him; correct?
A. Right.
Q. And he gives you guidance on how not to break the rules and law; correct?
A. Correct.
Q. And you consulted with him, along with Dr. McMillan and Dr. Minks; isn't that right?
A. I did not consult with him. I was in Dr. McMillan's office, and Dr. McMillan called him. And I didn't consult with him with Dr. Minks.
Q. So you were never privy to those discussions. Is that your testimony?
A. To what Mr. Babb said?
Q. Yes. The advice he gave with respect to Dr. Tudor and her employment at Southeastern University.
A. I was there in Dr. McMillan's office, and they had a telephone conversation, and I was present.
MS. GALINDO: May I approach, Your Honor?
THE COURT: Yes.
Q. (BY MS. GALINDO) I've got what's Exhibit 5.
Do you recognize that?

A. I vaguely recall this.
THE COURT: I'm sorry. I didn't hear you.
THE WITNESS: I vaguely recall.
Q. (BY MS. GALINDO) What is that? That's an e-mail from you; correct?
MS. COFFEY: Objection, Your Honor. The witness has not identified the document yet. Counsel is testifying.
THE WITNESS: It's an e-mail to me, not from me.
Q. (BY MS. GALINDO) Is that your name at the top?
A. It's from Charles Weiner to Dr. McMillan, Larry Minks, and Lucretia Scoufos. It isn't from me; it's to me.
Q. And you'd agree that you're one of the decision makers in this e-mail identified by Dr. Weiner?
A. I don't --
Q. Do you need a few minutes to refresh your --
A. I just remember this vaguely, but this wasn't about giving her another year to resubmit, as I recall.
Q. But do you recognize that e-mail?
MS. COFFEY: Your Honor, could --
THE COURT: Would you go to the podium so that I could hear you?
I'm sorry. What?
MS. COFFEY: Your Honor, we just wanted her to return to the podium so we could hear her questions.
Q. (BY MS. GALINDO) Have you had an opportunity to refresh

your memory?
A. Yes.
Q. And in that e-mail, which is Exhibit 35, you are included in it by the attorney with respect to -- in addition to Dr. Minks and Dr. McMillan; correct?
A. Yes.
Q. So you were a decision maker in what happened with respect to Dr. Tudor's employment at Southeastern; right?
MS. COFFEY: Objection, Your Honor. Misstates the evidence that's already been introduced, and it misstates the witness's testimony.
THE COURT: The witness can speak for herself. Overruled.
THE WITNESS: I became -- when I wrote my opinion after reviewing her portfolio and not recommending her for promotion and tenure but to give her another year in her terminal year -- that would have been the next year -- in order that she could look for other employment.
To look for other employment isn't stated anywhere, I don't believe. That was my decision.
I was not party to the decision on whether to let her reapply the following year and to give her an additional year. I was not part of that decision.
I made my recommendation to get -- to let her have an additional year in her terminal year. That was the following

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

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

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

I was not part of that decision.

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

THE COURT: 35?

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

THE COURT: I thought you said 5.

MS. GALINDO: I --

THE COURT: Any objection?

MS. COFFEY: No objection.

THE COURT: Admitted.

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

A. Yes.

Q. -- university should follow?
A. Yes.
Q. You'd also agree that there is confirmation that the rules are conflicting; correct?
MS. COFFEY: Objection, Your Honor. Misstates the evidence. This witness did not write this document. This witness is not --
THE COURT: This witness can answer for herself. Answer the question.
THE WITNESS: I'm sorry. I don't know what the question is.
Q. (BY MS. GALINDO) Isn't it true that, while citing the rules that are to be followed with respect to employment, specifically with respect to Dr. Tudor's employment, there is a statement that the rules are, in fact, in conflict? Isn't that right?
A. Yes.
Q. And it provides that there were options; correct?
A. Correct.
Q. What were those options as --
A. Are you talking about the bullet points --
Q. Can you go to page 2 of -- I'm sorry.
A. The bullet points?
Q. Page 2, yes, ma'am.
A. Yes.

Q. And it refers to two options; correct?
A. Yes.
Q. And it was e-mailed to you; correct?
A. Yes.
Q. So you were a part of the decision-making?
A. No.
Q. So it was -- you were inadvertently included?
A. Because I received this does not mean that I was part of that decision-making.

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

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

Q. And you were told a lot; right? This was different, this tenure application, wasn't it?
A. It was -- it was different inasmuch as she had, as I recall, appealed not being told, but nothing else -- and that started it being different.

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

affairs. I was a faculty member.

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

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

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

A. No.

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

A. No.

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

A. That is not unusual for me to do that. I called -- I didn't contact Randy first. I contacted Lisa Coleman first to -- because we have open mic and communication. Therefore -- and this was in English, in the department of English.

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

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

familiar with that."

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

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

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

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

A. No.

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

A. No, that is not right.

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

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

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

Q. When did you make your decision with respect to Dr. Tudor's tenure application?
A. When I finished reviewing her portfolio.
Q. What was the date?
A. I don't know the date right offhand, but it would have been in January.
Q. Of what year?
A. Well, she --
Q. 2010?
A. -- went up in '9-'10. So it would have been January '10.
MS. GALINDO: May I approach, Your Honor?
THE COURT: Yes.
Q. (BY MS. GALINDO) I've got what's been marked as Plaintiff's Exhibit 127.
Do you recognize that?
THE COURT: Please return to the podium once you've given her the document.
MS. GALINDO: Thank you, Your Honor. I'm learning, Judge. Thank you.
THE WITNESS: We discussed this again after that.
Q. (BY MS. GALINDO) But the date here is April 30th, 2010; correct?
A. Right. But I had two other discussions about open mics, and then there was another expression that I wasn't -- open mic chapbook.

This was after I had already asked about it before.

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

MS. COFFEY: No objection.

THE COURT: Admitted.

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

A. Yes.

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

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

A. It is.

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

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

Q. Yes or no.

A. Yes.

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

A. No.

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

understand that?
A. I didn't understand what you said, the first part of your sentence.
Q. You do understand that the allegation of discrimination involves the fact that Dr. Tudor's transgender; correct?
A. Yes.
Q. So did you misspeak earlier when you said something different?
A. I didn't know that I had been asked if it was about discrimination. So if I said that I didn't know that it was about discrimination, I would have been -- I was misspoken -- I had misspoken, because it's always been about discrimination.
Q. Is it your testimony that Mindy House came in here and lied under oath about the environment, about the comments, and about the torment coming from your office with respect to Dr. Tudor?
A. If she testified to that, I vehemently disagree.
Q. Are you calling her a liar?
A. If she testified to that, I will say she lied.
Q. Would you agree with me that there seems to be a certain level of disrespect for individuals that aren't professors at your university?
A. I would certainly disagree with anybody who said that there's a certain disrespect for people who are not faculty --

did you say faculty or professors?
Q. Professors.
A. Absolutely, I disagree with that.
Southeastern --
THE COURT: You answered the question.
Q. (BY MS. GALINDO) The recommendation from someone in the Spanish department -- correct?
A. Yes.
Q. -- isn't that included under -- isn't the Spanish department under the English, Humanities, and Languages?
A. Yes.
Q. There was another letter you said from -- was it a secretary?
A. Yes. Theresa Anderson. I don't recall --
Q. Is that a yes or a no?
A. I said, yes, Theresa Anderson.
Q. And none of those were acceptable; right?
A. Wrong.
Q. Which ones were acceptable?
A. I did not discount what Theresa Anderson said. I did not discount what Corey Delashaw said. It isn't what -- I do not recall ever having seen Dr. McGehee's letter. The first time I saw that was just recently when I saw the portfolio that I have now that I hadn't seen.
That isn't disregarded. That's a case of it isn't what

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

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

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

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

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

Q. And --

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

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

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

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

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

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

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

Q. And you do not --

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

Q. But --

A. I do make it clear --

THE COURT: Okay. Stop.

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

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

MS. GALINDO: Thank you, Your Honor.

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

A. Yes.

Q. And are you of the opinion that the administration should seriously consider that recommendation?
A. Yes.
Q. And it was discounted, wasn't it, in Dr. Tudor's case?
A. I don't think it was discounted.
Q. Flatly ignored?
A. No. This is the reason that we have this system. It's a checks-and-balance.

For example, sometimes --

THE COURT: That's enough.

Q. (BY MS. GALINDO) Did you work under Dr. Minks? Dr. McMillan? Who were the presidents at the university while you were there?
A. When I came, Chancellor Glen Johnson was the president, and then Dr. Turner was the president, and then Dr. Minks was the president, and then President Sean Burrage. I don't think I left any out.
Q. Seems to be there's a lot of changes, correct, at that level?
A. Yes, it would seem so.
Q. Yet the faculty, they have staying power at Southeastern; right?
A. If they're tenured.
Q. They become part of Southeastern; right?
A. Yes.

Q. A tenured professor becomes part of the image of Southeastern; right?
A. Right.
Q. And so when they --
A. I don't know what you mean by "image," but...
Q. They become part of who the university is; correct?
A. Correct.
Q. They become part of the history of that university?
A. Right.
Q. Administrators come and go; right?
A. Right.
Q. And so when they said Dr. Tudor -- they, the faculty, voted that Dr. Tudor should be part of it, part of who the university is -- and Dr. Tudor is transgender -- the rules weren't followed and the law was broken; isn't that right?
A. No. Nor did they say anything -- transgender was never mentioned at any level from the time she applied. That was not a consideration for me. And that's the only person I can speak for. It was neither here nor there.

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

Q. Now, those presidents you've mentioned -- Dr. McMillan --
A. No, he wasn't a president. He was a vice president.
Q. I'm sorry. Vice president -- you're right -- of academic

affairs.

Dr. Minks; right?

A. Yes.

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

A. Yes.

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

A. Right.

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

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

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

A. Yes.

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

A. I don't know.

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

A. He received a title.

Q. And what was that title?

A. I don't know that title.

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

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

THE COURT: Sustained. Get to something new.

MS. GALINDO: Thank you, Your Honor. Thank you.
Q. (BY MS. GALINDO) Do you think, when Mindy House was terminated, that was right?
A. That went before two committees, six people, I believe, on each committee. That's twelve people who recommended her termination based on the evidence that they gathered.
Q. Did you leave one person off the list of presidents?
A. I might -- that's what I said. I might have left one off.
Q. One of those you left off was your husband; isn't that right?
A. It was -- oh, he was interim president. I hope nobody tells him that I left him off. He was interim president for one year. I think it was one year. It might have been less.
Q. Dr. Prus was the only faculty member that disagreed as to Dr. Tudor; correct?
A. I don't know that.
Q. Well, you're pretty close to Dr. Prus; correct?
A. Close inasmuch as he's an outstanding department chair and I was his dean.
Q. And you're saying you don't know that because it's supposed to be confidential?
A. I don't know that because it's confidential, but I also know that we were advised from the very first not to discuss it at all.

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

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

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

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

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

A. That I alleged that she was crying wolf?

Q. Yes.

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

Q. One last thing.

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

Q. One last thing.

It's offensive, isn't it?

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

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

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

A. I don't know.

MS. GALINDO: I'll pass the witness.

THE COURT: Redirect.

MS. COFFEY: No questions, Your Honor.

THE COURT: You may step down.

(Witness excused.)

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

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

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

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

THE CLERK: 301.

(Court confers with the clerk off the record.)

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

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

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

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

THE CLERK: Put your name in them somewhere.

THE COURT: We'll be in recess.

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

(Jury enters courtroom.)

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

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

Proceed.

MS. COFFEY: Thank you, Your Honor.

THE COURT: Where do you need to be to do that?

Ms. Conway?

MS. CONWAY: Yes.

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

(Witness duly sworn.)

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

DIRECT EXAMINATION

BY MS. COFFEY:

Q. Could you please state your name.

A. Cathy Conway.

Q. Ms. Conway, where do you live?

A. I live in Durant, Oklahoma.

THE COURT: Can you-all hear her?

JUROR MALLORY: Yeah, but barely.

THE COURT: Louder?

JUROR MALLORY: Please.

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

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

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

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

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

Q. Are you --

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

sometimes.

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

A. Yes, I am.

Q. When did you retire?

A. I retired September 1st, 2013.

Q. What was your position when you retired?

A. I was human resources director.

Q. Do you have a college degree?

A. Yes.

Q. What --

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

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

Q. Why the Department of Defense?

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

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

Excuse me.

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

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

Q. When did you begin your job at Southeastern?

A. That started on January 15th, 1999.

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

A. It was human resources director.

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

A. Yes, I did.

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

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

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

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

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

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

I also updated policies in the staff handbook. I was

responsible for EEO employment laws.

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

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

A. Yes, I received training. I went to workshops, webinars.

Sometimes the training was on the campus; sometimes it was in different locations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Have you received an exhibit marked Exhibit 15?

A. Yes.

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

A. Yes.

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

A. Yes, I do.

Q. What is it?

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

Dr. Rachel Tudor on June 1st of 2007.

Q. If you would please --

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

THE COURT: Admitted.

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

A. Yes.

Q. What does this page reflect?

A. Well, these are my written notes of when I talked to Charlie Babb to seek guidance.

Q. What topics does this note indicate you discussed with Mr. Babb?

A. Well, Charlie Babb explained to me that, in the process of a transgender being in transition, that that was typically for a year approximately and that, after that time, they may consider having sex reassignment surgery.

MS. NOVOTNY: Objection. Hearsay.

THE COURT: I'm sorry?

MS. NOVOTNY: Objection, hearsay.

THE COURT: Do you have an argument this falls outside the hearsay rule?

MS. COFFEY: These are Ms. Conway's notes taken contemporaneously during her discussion with Charlie Babb.

MS. NOVOTNY: I'm specifically referring to Charlie Babb's understanding of anything related to transgender healthcare. I don't believe he's qualified as an expert on the standards of care.

THE COURT: Well, is that your objection, or is it hearsay?

MS. NOVOTNY: Well, it's hearsay and it's being offered for the truth of the matter asserted.

THE COURT: Even if she has notes, if it was a statement made by an out-of-court witness, then it is hearsay unless you have some argument that an exception applies.

Q. (BY MS. COFFEY) Ms. Conway, if you could -- in my following questions, if you would -- I'll do my best to keep you from testifying about what somebody else told you.

Are there any other topics that you've discussed with Charlie that you haven't already told this Court about?

A. On this exhibit or --

Q. Yes.

A. Yes. On this exhibit, he explained to me that there was discussion currently about the use of public restrooms and --

MS. NOVOTNY: I'm going to renew the hearsay objection.

THE COURT: Ms. Conway, if you could avoid saying what he said to you, just what you said or did.

THE WITNESS: Oh, okay.

The use of -- there was a discussion about the use of public restrooms, and a transgender person who had not yet gone through sex reassignment surgery, but that should not be an issue in our state.

Q. (BY MS. COFFEY) Did you --

A. Currently in the Tenth --

Q. I'm sorry. I interrupted you. Go ahead and finish.

A. Currently in the Tenth Circuit, it was just discussion, and that's our circuit.

Q. Okay. During this discussion with Mr. Babb, did the two of you come to any conclusion regarding Dr. Tudor's bathroom use?

A. Yes. That she has -- had every right to use any restroom that was there for her.

But there was also another restroom that was a single-stall, unisex, handicapped restroom that was in her building, that if she felt more comfortable using that restroom, he felt I could offer that to her, make her aware of that.

Q. Ms. Conway, what concerns, if any -- let me -- did you have any specific concerns regarding Dr. Tudor and her bathroom use?

A. Well, it was really that -- yes.

That Dr. Tudor may for the first time -- she had left the university setting at the end of spring semester as Dr. Robert

Tudor, and she was starting new in the fall semester as Dr. Rachel Tudor.

And I felt it was possible that, with the faculty and staff and the students who knew her before, the fact that Dr. Tudor was returning and they were returning, that it might be possible that the first time that Dr. Tudor presents herself and it happens to be in the women's restroom, there might be a -- for example, a student who, you know, might not react in a really positive way.

And, therefore, there was another bathroom that, if she felt more comfortable using it, we could offer that to her.

Q. After you concluded your conversation with Mr. Babb, did you seek advice from anybody else regarding Dr. Tudor's transition?

A. Yes, I did. I'm sorry. This is the notes.

Yes. Sharon Robinson.

Q. And --

A. Sharon Robinson was --

Q. Go ahead. Who is Sharon Robinson?

A. Sharon was vice -- she was the vice president of student affairs, but, more specifically, she was the ADA campus coordinator.

And I contacted her because I wanted to be sure if that particular restroom was for anyone who wanted to use it, that it wasn't just for handicapped individuals.

Q. At the conclusion of your conversation with Ms. Robinson, did you feel you had an understanding of how it would be appropriate to deal with the bathroom issue with Dr. Tudor?
A. Yes, I did.
Dr.-- Sharon Robinson told me that, you know, it was definitely Dr. Tudor's choice and that it would be okay if we wanted to offer that to her as an accommodation.
It was something that would make her -- she felt would make her feel more comfortable, that I should definitely advise her to seek advice from her licensed counselor, psychologist about that, if she had any questions or concerns.
Q. How, if at all, did Sharon Robinson's advice differ from Charlie Babb's advice to you?
A. I felt it -- it was very much the same.
Q. If you'll look at the first page of Plaintiff's Exhibit 15, what is that first page?
A. 009?
Q. Yes.
A. Yes, that's --
Q. Yes, 009.
What is that?
A. Yes, those are -- those are my notes on my call to Dr. Rachel Tudor on June 1st, 2007, 3:45 p.m.
Q. How do you know that your call was with Dr. Tudor on June 1st, 2007, at 3:45 p.m.?

A. Because I put them in my notes.
Q. Does this document indicate -- well, let me go back.
Why did you call Dr. Tudor?
A. Well, I called Dr. Tudor to advise her about several different things.
Q. Does this document indicate what you discussed with Dr. Tudor?
A. Yes.
Q. What did you discuss with Dr. Tudor?
A. Well, I first told her about the two policies that I felt were relevant for her. I wanted to make sure that she remembered those and that she understood where to find them and went over those policies with her, the nondiscrimination equal opportunity affirmative action policy and also the sexual harassment policy.
Q. Why did you --
A. And she indicated -- she indicated to me that she didn't know --
MS. NOVOTNY: Objection, Your Honor --
THE COURT: Stop.
Q (BY MS. COFFEY) Ms. Conway, let me stop you. I'm sorry. I think there's a delay in here from the time an objection is made until the time it's coming to you. So if you'll just pause for a moment.
MS. NOVOTNY: May we approach, Your Honor?

THE COURT: Yes.

(The following proceedings were had at the bench and out of the hearing of the jury.)

MS. NOVOTNY: This starts getting into their *Faragher/Ellerth* defense, which they don't have the -- to the hostile work environment claim. She's claiming that these policies covered Dr. Tudor at the time, and these policies did not clearly cover Dr. Tudor at the time.

MS. COFFEY: Objection, Your Honor. She's going to testify that she discussed the policies with Dr. Tudor. She can --

THE COURT: Okay. Regardless of the defense, it's fair that she discussed it with the plaintiff. So overruled.

MS. NOVOTNY: Fair enough.

MS. COFFEY: We can't put the exhibit up on the screen because, in order to do that, it shuts off the remote.

MR. YOUNG: It takes the --

MS. COFFEY: I think it takes the --

THE COURT: Are they still here?

MS. NOVOTNY: They don't have picture-in-picture.

THE COURT: The question is, is there a way to display an exhibit in here -- there wouldn't be because this is -- it's all connected. I can't say why they --

MS. COFFEY: Perhaps after Ms. Conway is through testifying, when we get back to the other courtroom, we can

just display to the jury the exhibit?

THE COURT: Actually, there have been so many exhibits that have not been shown to the jury, I don't think these will make a difference.

MS. COFFEY: Okay.

THE COURT: All right. Thank you.

(The following proceedings were had in open court with all parties present and within the hearing of the jury.)

Q. (BY MS. COFFEY) Ms. Conway, why did you discuss the two policies with Dr. Tudor?

A. Well, because they're -- they're for her protection. They're there to ensure that she's treated as she should be in a respectful workplace, and that if she has any -- anyone who she feels has sexually harassed her, that she knows how to report that.

Q. As far as you know, neither of those policies contained the word "transgender," did they?

A. No, they did not.

Q. Did you discuss -- well, was it your understanding that Dr. Tudor could obtain protection pursuant to those policies?

A. Yes, definitely. She was an employee and she was female.

Q. If you'll look back to the first page, what else does it indicate you discussed with Dr. Tudor?

A. That she should discuss with her chair and dean her gender presentation at Southeastern, what that will be; to let

them know she has changed her name; that she should seek any advice or opinion about which gender presentation to use from her counselor or her psychologist; that she should not ask any of us at the university for our opinion about which gender, male or female, she should use -- presentation she should use. We were not qualified.

And I let her know there was the handicap restroom on -- that was unisex and private at the second floor of Morrison Hall that was available. It was a few steps down the hall if she took the elevator. It was directly across from the elevator. And that this was not mandatory; this was her decision, her choice.

I told her that this is all new to us too, because it was the beginning of the fall semester -- she was, as I stated before, coming back to work as her new presentation, her new name, and it was new for others -- and that the best option for her may be to use that restroom.

Q. All right. Let me direct you to back up.

A. In --

Q. I'm sorry. Were you through?

A. Well, in addition, there was a family restroom that was in the student union.

Q. All right. Ms. Conway, if you would go back up, do you see on your notes where it says "advised Dr. Tudor that he should" and then with a colon?

A. Yes.
Q. Okay. Why did you use the male pronoun in that statement?
A. Well, I think I used it because I was just becoming aware -- had just been told that she was going to change her name, that she was probably going to present as female, and I -- I think it was just -- I just used it subconsciously. I just wasn't used to that.
Q. Ms. Conway, at the time that you had the conversation with Dr. Tudor on June 1st, at that point had you ever seen her physically presenting as a female?
A. No, I had not.
Q. Dr. Tudor testified that in your conversation you gave her the mandate that she had to use this single-stall bathroom.
Is that correct?
A. No, that's not correct.
Q. In your call with Dr. Tudor, did you instruct her on how she should wear her makeup?
A. No, I did not.
Q. Did the subject of makeup come up in your discussion?
A. No, it did not.
Q. Did you discuss with Dr. Tudor how she should dress?
A. No, I did not.
Q. Did that subject come up at all in your conversation?

A. No, it did not.
Q. Dr. Tudor testified that she believed you were suggesting that she not dress like a drag queen.
Is that your recollection of the conversation?
A. No. That did not happen.
Q. At any time while Dr. Tudor was at Southeastern, did you place any restrictions on her regarding her bathroom use?
A. No. She was free to use any bathroom she wanted to use.
Q. Do you have any knowledge of anyone else placing any bathroom restrictions on Dr. Tudor?
A. No, I do not.
Q. At any time, did you place any restrictions on her regarding her makeup or her dress?
A. No, I did not.
Q. Are you aware of anybody else placing such restrictions on Dr. Tudor?
A. No.
Q. When you were discussing the policies with Dr. Tudor, did you advise her that, if she were to wear short skirts or wear -- or use inappropriate makeup, that she would be sexually harassing her male colleagues?
A. No, I did not.
Q. Was your purpose of going over these policies with Dr. Tudor to help her or to threaten her?
A. Oh, it was definitely to help her. They're in place to

protect her.

Q. How did this conversation between you and Dr. Tudor end?

A. Well, she thanked me for the information, and she thanked me for my professionalism.

Q. Now, Dr. Tudor claims that she thanked you for your professionalism for not firing her.

Is that what she thanked you for?

A. No.

Q. Was there any discussion of firing Dr. Tudor in your June 1st, 2007, conversation?

A. No, there was not.

Q. Did you ever have any discussion with anybody at Southeastern as to whether somebody could fire Dr. Tudor because she was transgender?

A. No.

Q. Let me take you to the top of that first page, where it indicates the 3:45 p.m.

Dr. Tudor testified that this phone call took place in the evening after dark. Is that correct?

A. No, that's not correct. It took place at 3:45 p.m.

Q. Do you recall having any discussion -- well, let me move forward. I'm sorry.

If you will turn to the very last page of that document with the Bates number 0014.

What is this page?

A. This reflects notes from a meeting I had with Dr. Doug McMillan; Dr. Mangrum, who was the dean; and Dr. Mischo, who was the department chair for English, Languages and -- well, I can't remember -- English, Languages and -- I don't remember the last of it now.

Q. Do you -- what was the purpose of this meeting?

A. It was to advise her direct supervisors in the reporting chain of command, so to speak, that Dr. Tudor was making a change and had a new name. And I wanted to be sure they understood the policies and things I had discussed with Dr. Tudor.

Q. When did this meeting take place?

A. It was on June 19th, 2007, at 1:30 p.m.

Q. How do you know that?

A. Well, I wrote that in my notes. I documented my notes.

Q. Do you always document your notes with a typed version?

A. Not always. Sometimes my notes are a lot more legible. And when they're -- when I can read them easily, then I don't. But if I can't read them and they have some shorthand versions -- you know, a little bit of scribbling that it's difficult for me to read sometimes, then I type those up.

Q. On this page reflecting your June 19th meeting, it indicates at the top "SOSU policies."

Why did you discuss the nondiscrimination and sexual harassment policies with Dr. Tudor's supervisory chain of

command?

MS. NOVOTNY: I renew the objection from earlier.

THE COURT: Just a minute. I'm sorry.

What objection are you renewing? Oh, the one you mentioned at the bench?

MS. NOVOTNY: Yeah, the one from the bar.

THE COURT: Overruled.

Q. (BY MS. COFFEY) Let me repeat the question.

Why did you discuss these policies with the individuals in Dr. Tudor's supervisory command at that meeting?

A. I discussed these policies. I wanted to review them with these individuals because they were her supervisors and they needed to be sure and understand that these protected Dr. Tudor as well as others.

And Dr. Tudor or any of the faculty or students in that department who had any -- Dr. Tudor or any of the others who had any concerns or questions may go to them, and they needed to be prepared to advise them that these policies were in place.

Q. During your employment at Southeastern, did you ever hear from any of these individuals that they had received any type of complaint from either Dr. Tudor or others on campus concerning Dr. Tudor's transgender status?

A. No, I did not.

Q. If you'll look at the second-to-the-last line.

Because the jury is unable to see this document, would you -- at this point, would you mind reading that line that begins with "this is."

A. "This is all new to us too, but we think that the best option is for Dr. Tudor to use this restroom."

Q. Who is" we" when you say "we think the best option"?

A. Well, I think that really applies mostly to me because I felt like, because this was new, the beginning of the new semester, that it may be the best option for her.

Q. In your discussion with Dr. Tudor regarding her bathroom usage, did she indicate any problem or express any desire as to use any particular restroom?

A. No, she did not.

Q. Why did you think the single-stall bathroom would be a good option for Dr. Tudor?

A. Well, again, she could use any restroom she wanted. I told her it was not mandatory.

But, again, this was the beginning of the semester. She was coming back to the workplace as Dr. Rachel Tudor, where she had been Dr. Robert Tudor before. And, I mean, she could experience something from someone that was insensitive, especially at the beginning when it was new for her and for others. And that was the reason.

This might be a more comfortable, private restroom that was an option for her.

Q. Do you think that -- during your conversation, was it your belief that Dr. Tudor thought you were giving her an order or a mandate regarding bathroom use?
A. No, I didn't think that at all. I felt I had been very clear and she understood.
Q. Did you believe --
A. She never --
Q. Go ahead.
A. She never had any questions for me. She never indicated that -- anything. She just listened to me.
Q. Based upon your role as HR director and that June conversation with Dr. Tudor, did you believe that Dr. Tudor knew she could come to you with any complaints or grievances regarding the issues you discussed with her?
A. Yes, I believed she knew she could do that.
Q. Did Dr. Tudor know how to file a grievance at Southeastern?
A. Yes, I believe she did. She had the information.
MS. NOVOTNY: Objection.
THE WITNESS: She had the --
MS. NOVOTNY: I renew the objection from the bench.
THE COURT: Overruled.
Q. (BY MS. COFFEY) Go ahead.
My question --
A. Yeah, she had the -- oh.

Q. Go ahead. Sorry.
A. Well, I -- could you repeat the question?
Q. I can.
Why do you believe that Dr. Tudor knew that she could file a grievance?
A. Well, she had the policies I had reminded her of. She also had -- she was a faculty member. She was a member of the -- there was something called the faculty senate. And the faculty senate is well represented by faculty, and they -- some of the faculty do go to the faculty senate for review of anything that's -- any issues they may have.
And I believe she knew she also had the faculty senate that could assist her if she had any difficulties.
Q. During your discussion or at any time thereafter, do you believe that Dr. Tudor thought she was not protected by these policies?
A. No. I had no indication of that. I thought she knew that she was protected.
MS. COFFEY: I have no further questions.
THE COURT: Ms. Novotny.

CROSS-EXAMINATION

BY MS. NOVOTNY:
Q. Thank you for being with us today. It's Ms. Conway, yes?
A. Mrs. Conway.
Q. Okay. Mrs. Conway. Well, we've had a lot of doctors in

this case so far, so I just wanted to make sure I got the title correct.

Now, a few moments ago you testified regarding a June 2007 call with Dr. Tudor.

Something you did not talk about when you talked about that call is a -- why did you mention Dr. Doug McMillan in that call if there was no discussion of her job status at that time?

MS. COFFEY: Objection, Your Honor. It misstates the witness's prior testimony. There was no mention of her and --

THE COURT: Well, she can speak for herself.

THE WITNESS: Yes. I didn't -- I didn't say that Dr. McMillan was part of the call. If I did, it would have been that he was another supervisor in that direct line of supervision going up the administrative channel.

Q. (BY MS. NOVOTNY) And it is true that you did mention Dr. McMillan's name in that call?

A. It's not in my notes that I did. I told you it was possible, but I can't say for certain.

Q. Do you recall giving a deposition in this case on March 10th of 2016?

A. Yes.

Q. Do you recall testimony at that time indicating that Vice President McMillan's name did come up in that call?

A. I may have said that because he was one of her direct-line supervisors. I mean, I'm not disputing that.
Q. Okay. Now, you indicated that you received the letter in Plaintiff's Exhibit 15 notifying you that Tudor should be treated as female and afforded the same rights and privileges as other females; is that correct?
A. Well, I don't have that letter in front of me, but I did receive a letter from -- from her licensed psychologist, yes.
Q. And you've just testified just a moment ago that that letter said that she should be treated as female and afforded the same rights as other females; correct?
A. That is correct, yes.
Q. Now, isn't it true that there are no other female professors at Southeastern that you've had discussions with regarding their specific bathroom usage?
A. That's true.
Q. So only -- only Dr. Tudor was singled out, then; correct?
A. Dr. Tudor was -- I didn't feel was singled out --
Q. This --
A. -- but she's the only one I did speak to.
Q. This calls for a yes or no.
THE COURT: She's entitled to give an answer.
THE WITNESS: She was the only one that I talked to about that.
Q. (BY MS. NOVOTNY) At any time during --

A. Yes.
Q. At any time during your career as the human resources director at Southeastern, did you have any conversation with any other female professor regarding what restroom they should be using?
A. Well, in my role with the ADA, I can't say I didn't have -- during my entire years there that I didn't have any other conversation if someone needed accommodation, needed a handrail or something in one of the restrooms in their building. I do remember there was a female who needed that. So I can't say that she was the only one.
Q. She was just the only one that was told she could only use a specific restroom; correct?
A. That's not correct. No, that's not correct. She was not told it was the only restroom. She was told that was an option, not mandatory.
Q. Did -- isn't it true that Dr. Tudor didn't need any accommodation because she was not disabled in any way?
A. No, she didn't need specifically accommodation, but if there was another restroom where she might feel more comfortable or desire some privacy, that was available to her, as well as anyone else. But that was available to her.
Q. I want to direct your attention back to the notes of your meeting with Drs. McMillan, Mangrum, and Mischo.
A few moments ago you read the section that said, "This

is all new to us too. We think the best option is for Dr. Tudor to use this restroom."

Does that sound like it's she can use any restroom or that we've decided this is the option and we've decided that for Dr. Tudor?

A. It means that this may be the best option for her, but the comment above that clearly states that this is not mandatory. That was available, but that was not mandatory.

Q. Isn't it true that you never asked Dr. Tudor what her preference was?

A. That's true. It was her choice. It wasn't my business what her choice was. It was her choice to make.

Q. Yet you seemed to make that choice for her?

A. I -- I don't feel I did. I felt I made it clear it was an option for her.

Q. You indicated that one of the reasons for this was that you had concerns that some students and faculty may be uncomfortable; isn't that right?

A. Yes, they might not understand, that's correct. But that might make Dr. Tudor uncomfortable.

Q. Isn't it true, though, that the only person that you discussed the possibility of a negative reaction with was Charles Babb?

A. Yes, I believe that's correct.

Q. And isn't it true that no other faculty member or staff

member or student came to you to specifically request that they were on -- that they had an uncomfort with Dr. Tudor being in the women's restroom?

A. Yes, that's correct.

Q. A few moments ago you also talked about how part of your job as human resources director was to ensure that Dr. Tudor knew that she worked in a respectful workplace; correct?

A. That's correct, yes.

Q. Did you get a copy of Plaintiff's Exhibit 237 that I submitted to counsel to get to you?

A. No, I did not. I don't have that.

MS. COFFEY: I'm sorry. Counsel, when did you submit that to me?

MS. NOVOTNY: Yesterday evening per the judge's request.

MS. COFFEY: I apologize. I'm not familiar with that document. We can certainly send that document to her.

THE COURT: Do you have it in electronic form where you could e-mail it?

MS. NOVOTNY: We could, Your Honor.

MS. COFFEY: We do.

MR. YOUNG: I could e-mail it, Your Honor. We just need the wi-fi password.

THE COURT: It's a trick. It's a trick.

MR. YOUNG: We might have a hotspot, Your Honor.

One second.

THE COURT: Ms. Conway, would it be easier for you to get that by e-mail or fax?

THE WITNESS: I don't think there's anyone here. I don't know where the fax is here. So by e-mail.

THE COURT: Okay. We'll work on it.

THE WITNESS: And the door magically opened.

Yes. There's an individual here who can -- that can be e-mailed to him, and he can print that for me.

Dixie, that would be Mike.

THE COURT: M-I-K-E?

THE WITNESS: Yes.

THE COURT: Does he mind his name and e-mail address being broadcast in this courtroom?

MR. YOUNG: Your Honor, might I suggest I get it from President Burrage?

MS. COFFEY: It's on its way right now to Mr. Davis.

THE COURT: Okay. It's already on its way.

Thank you.

Can you ask about something else while she's getting it?

MS. NOVOTNY: Sure.

Q. (BY MS. NOVOTNY) Are you aware that Dr. Weiner testified in his deposition that he -- that he ordered you to bar Tudor from using the women's restroom?

A. No.

Q. That doesn't sound accurate to you?
A. No, that's not accurate. That never happened.
Q. Before your June 1st, 2007, call with Dr. Tudor, had you met Dr. Tudor at that point?
A. No, I had not met Dr. Tudor.
Q. But you indicated that, because you already knew Dr. Tudor as male is why you used male pronouns even after receiving the letter from Dr. Tudor's therapist; correct?
A. Well, that's correct. I worked on salary surveys and other documents that were in the system.

For example, IPEDS with the Department of Education, every year, I did that salary survey. Some of the pages broke faculty down between male and female.

That was one of the reasons that I knew of faculty who I had not met, as, you know, whichever sex that I had to put in these salary surveys. And there were several of those.

That's an example of how I worked with faculty and knew their names, even though I had not met them, and their genders.

Q. And you -- it's your testimony that you don't dispute that Dr. Tudor is female and should be treated as female?
A. No, I don't dispute that. No.
Q. Have you ever seen Dr. Tudor dressed in any other way or presenting in any other way than female?
A. Not to my knowledge, no.

Q. Is that exhibit there yet by chance?
A. It's not here yet. I'm sorry.
Q. Okay.
MS. NOVOTNY: I'm looking for something else, Your Honor.
Q. (BY MS. NOVOTNY) Are you aware -- do you recall your deposition in March of 2016, when the subject of Dr. Tudor's gender came up at that time?
A. Yes, I do.
Q. And isn't it true that at your deposition you indicated that you didn't know Dr. Tudor's gender?
A. I -- if I said that, it was that I didn't know which gender she would be presenting when she came to work in the fall, not that I didn't know at all.
I had information from -- also from Feleshia Porter.
Q. It looks like you did get a copy of our Exhibit 237; correct?
A. Yes.
Q. And looking at Exhibit 237, does that look familiar to you?
A. No, I don't remember that.
Q. Isn't this an e-mail that was from you to Claire Stubblefield, as well as a response from Dr. Claire Stubblefield?
A. Yes, it is. I just don't recall that.

MS. NOVOTNY: I move to admit Plaintiff's Exhibit 237 into evidence.

MS. COFFEY: No objection.

THE COURT: Admitted.

Q. (BY MS. NOVOTNY) Now, since we're not able to project this to the jury, can I have you read the section of your e-mail to Claire, starting with "Claire."

A. Yes.

"Claire, Lucretia's name is spelled Scoufos. Also, under findings Complaint 3, Southeastern needs to be capitalized. It will be interesting to see Charlie's comments. You did a very good job of writing your report. Did Bridgette have any helpful information for you? If Dr. Tudor requests to see T&P info in his personnel file, I'll need to send him to Bridgette."

Q. Now, isn't this e-mail dated November 18th, 2010?

A. Yes, it is.

Q. And that's a full three years after you first learned of Dr. Tudor's gender transition; correct?

A. Yes, that's correct.

Q. And you testified earlier that you only used "his" in that first e-mail because it was just new to you.

Was it still new to you three years later?

A. Well, I can't say that it was new to me, but there was nothing intentional about that. I didn't talk about Dr. Tudor

except, you know, when she first made the transition. Obviously, I did in November of 2010.

Q. And isn't it true that Dr. Stubblefield responded, "Now, now, it's her personnel file"?

A. Oh. She did. Yes, she was correcting me.

Q. And you testified earlier that Dr. Tudor should have been able to feel comfortable coming to you if she had concerns about her treatment at Southeastern; correct?

A. Yes. She should have been comfortable coming to me, yes.

Q. Don't you think it would be difficult to feel comfortable coming to somebody who's not showing the respect of her as a female that she had sought?

A. Well, I don't feel I was being disrespectful. I think I made a mistake, and I should have used the correct pronouns.

Q. Three years later, it was just a simple mistake? You hadn't --

A. Yes, I --

Q. You testified a moment ago you hadn't known Dr. Tudor any other way in person.

MS. COFFEY: Objection, Your Honor. Argumentative.

THE COURT: Well, at least let her answer one question before you ask another.

MS. NOVOTNY: I'm sorry, Your Honor.

THE COURT: So ask one.

Q. (BY MS. NOVOTNY) Now, if -- as you read that e-mail, one

of the things that you indicated in that e-mail was noticing a misspelling of Dr. Scoufos's name, yet you just made a simple mistake about a gender pronoun; is that correct?

MS. COFFEY: Same objection.

THE COURT: Sustained. Move on.

Q. (BY MS. NOVOTNY) I want to direct your attention now -- did you get a copy of Plaintiff's Exhibit 17?

A. No. No, I did not.

MS. COFFEY: It's on its way. We weren't aware when these -- anyway, they're on their way.

MS. NOVOTNY: I didn't know if you had sent them all together or not.

I apologize for the wonkiness of this. This is a new thing for all of us here, I think.

MS. COFFEY: Counsel -- I'm not certain that these exhibits have exhibit numbers on them because these were the exhibits that the plaintiffs -- this is the manner that plaintiff sent them to us. So you may need to refer to a Bates number to direct the witness.

MS. NOVOTNY: Thank you, Dixie. I appreciate that.

Q. (BY MS. NOVOTNY) This would be an exhibit that has 04701 in the bottom right-hand corner.

A. Yes, I see that exhibit.

Q. And do you recognize that e-mail in that exhibit?

A. Yes, I do.

Q. And is one of those e-mails an e-mail from you to Dr. Stubblefield?
A. Yes, it is.
Q. And then there is a response from Dr. Stubblefield; correct?
A. Yes.

MS. NOVOTNY: I move to admit Plaintiff's Exhibit 17 into evidence.

MS. COFFEY: No objection.

THE COURT: Admitted.

MS. NOVOTNY: If I can find my place here. Oh, goodness. I'm sorry. Now I've lost my -- let's see here. Where did that go? Sorry about that.

Q. (BY MS. NOVOTNY) Okay. Looking at Plaintiff's Exhibit 17, this e-mail between you and Dr. Stubblefield, could you please read the part that you wrote on September 3rd, 2010, starting at "Claire."
A. "Claire, I attended an employment law seminar yesterday and was reminded of prima facie, and I thought of the disgruntled faculty member. This is a great place to start with any inquiry or formal investigation, and Charlie always asks questions like this.

"I'm sure I've heard this before, but it is always good to be reminded. The prima facie case, this is the burden-shifting test by which most discrimination cases are

judged."
Q. That's enough for that. I think that gets the effect there.
Now, in that first paragraph, you indicated you thought of "the disgruntled faculty member."
Isn't it true that that disgruntled faculty member was Dr. Tudor?
A. I can't say that for certain.
Q. Wouldn't you say that if a major complaint was lodged against the university regarding discrimination, you would probably remember that?
A. I might not because there may be other issues going on at the university. I cannot say for certain that this was about Dr. Tudor.
Q. Isn't it true that Dr. Stubblefield was in the process of investigating Dr. Tudor's claim at that time?
A. Well, from the other document you showed me, it was -- that was -- well, that was in November. So, no, I can't say for certain based on the date on this e-mail.
Q. Isn't it true that in -- that you would have considered Dr. Tudor to be disgruntled in September of 2010, though?
A. Well, if you're looking at my testimony from 2016, I think I was asked if I would have considered her disgruntled, and I said yes, she was dissatisfied.
Q. And there weren't any other employees that you would have

considered disgruntled at that time, were there?

A. No, I cannot say that that's a true statement. There may have been others, yes.

MS. NOVOTNY: Nothing further.

THE COURT: Redirect?

MS. COFFEY: No redirect, Your Honor.

THE COURT: Thank you, Ms. Conway. We are excusing you. I don't know how to turn these cameras off, but we'll work on it.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Thank you. We need to re-set up upstairs on 5, and that takes Sherri at least 10, 15 minutes. So we're going to go ahead and take our break now. Don't discuss the case. Don't permit others to discuss it with you.

Linda, do you want them downstairs or upstairs?

THE CLERK: I'm going upstairs. Ask them what they want to do.

THE COURT: Do you want to go downstairs or upstairs?

Okay. Linda will get you through the magic doors, and be in your room at three o'clock. We will be in recess until then.

(Jury exits courtroom.)

(In recess from 2:40 p.m. to 3:00 p.m.)

(Jury enters courtroom.)

THE COURT: Be seated.

Call your next witness.

MR. JOSEPH: Thank you, Your Honor. Defendants call Dr. Doug McMillan to the stand.

THE COURT: Please step right up here to the witness box, face the clerk, and be sworn.

(Witness duly sworn.)

THE COURT: Be seated.

WHEREUPON, DOUG McMILLAN, Ph.D., after having been first duly sworn, testifies in reply to the questions propounded as follows:

DIRECT EXAMINATION

BY MR. JOSEPH:

Q. Dr. McMillan, please state your name for the record.

A. Doug McMillan.

Q. And where do you work?

A. I work for myself. I'm an independent consultant.

Q. And what kind of consulting work do you do, sir?

A. I work with special education departments working with children that are in their programs.

Q. And did you previously work at Southeastern Oklahoma State University?

A. I did.

Q. And are you retired from Southeastern now?

A. I am.
Q. What year did you start working as a professor at Southeastern?
A. 1990.
Q. And did you ultimately attain the rank of full professor at Southeastern?
A. I did.
Q. And as professor, did you then attain tenure at Southeastern as well?
A. I did.
Q. During your time at Southeastern, did you serve on any -- in any interim positions?
A. Yes. I served in several interim positions: interim dean of the McCurtain County campus of Southeastern, interim vice president for academic affairs for a year, and I believe also interim dean of the school of behavioral science -- or education and behavioral sciences.
Q. What was your last full-time position at Southeastern?
A. Vice president for academic affairs.
Q. And what year did you first become an interim vice president for academic affairs?
A. I believe that was 2007, I believe.
Q. And when did you first become full vice president for academic affairs?
A. I served -- let's see. 2008 or '9, I was appointed again

as interim vice president and served for a couple of years as interim then, and then was made permanent vice president after that. So it probably would have been about 2011 or so.

Q. Were you ever vice president for anything besides academic affairs?

A. Yes.

Q. What was that?

A. Vice president for educational outreach and project development.

Q. And in that role what were your duties as vice president for educational outreach?

A. For the most part I developed and managed the outreach campuses and learning sites that Southeastern runs. There are several of them, including a McCurtain County branch campus and several off-campus sites.

Q. Did you enjoy that work?

A. I did.

Q. Okay. Did you hold any assistant or associate titles as vice president for academic affairs before becoming fully and permanently vice president for academic affairs?

A. Yes. I was -- when I first went to central administration, I was assistant vice president for academic affairs. And then, approximately two years later, I was promoted to associate vice president of academic affairs.

Q. And in that role as vice president for academic affairs,

can you just briefly tell the jury what your duties were there.

A. For vice president of academic affairs?

Q. Yes.

A. Basically, I was the chief academic officer or the administrator that was in charge of the instructional side of the university. That's overseeing the departments, the schools, the work of the deans, the -- what most of us would think of as the real educational part of the university.

Q. And, in that role, did you have any responsibilities regarding financial management or budgeting?

A. Yes. Yeah.

Q. Did you have any obligations or duties regarding hiring?

A. I did, yes.

Q. And did you play any role in the tenure and promotion review process?

A. I did.

Q. Is the tenure and review -- excuse me.

At the time that you were in that role, was the tenure and promotion application review process a multilevel one?

A. Yes.

Q. And as the vice president for academic affairs, what level did you play in that multilevel role -- multilevel review process? Excuse me.

A. The -- probably need to tell you a little bit about the

process.

The -- it started with the faculty member making application in the form of a portfolio that included several artifacts that were -- had to do with the three areas of teaching, scholarship, and service that the faculty member had done during their time prior to applying for tenure.

That then moved to a departmental committee. Then, from there, it moved to the department chair. Then, from there, it went to the dean of the school. And then, after going to the dean of the school, it went to me for review.

Q. And when you did your part of that review, if you could please just tell the jury a little bit about how you undertook that particular level of review.

A. Okay. When I received a portfolio, I went through it page by page, looked at it very closely, looking, again, for the three areas of responsibility that a faculty member has and determining whether there was some noteworthy -- what the policy calls noteworthy and exceptional examples of work in those three areas; again, teaching, scholarship, and also service.

And I in particular looked for a consistent engagement in those three areas. The policy calls for both a qualitative and a quantitative analysis.

I think the easiest way to understand this is, when you make a decision to tenure a university faculty member,

depending on the length of their career, you're looking at a commitment of state and university dollars of 1 -- it can be up to 1.5 million to 2 million dollars, depending on the length of their career, for salary and benefits.

So when I look at a portfolio, what I really want to do is try to make sure that, during that time when they were nontenure, they demonstrate a real consistent commitment to those three areas that I identified.

Q. Thank you, Dr. McMillan.

In particular as it's important to this case, were you involved in the 2009-2010 tenure and promotion application process for Dr. Rachel Tudor?

A. Yes.

Q. And what was your involvement in that process?

A. It was very much as I described.

I received the portfolio from the dean of that school, Lucretia Scoufos, and began doing my review of that portfolio.

MR. JOSEPH: Your Honor, if I may, may I approach the witness?

THE COURT: Yes.

MR. JOSEPH: I've handed the witness what has been marked as Defendants' Exhibit 77.

Q (BY MR. JOSEPH) I'll ask you, Dr. McMillan, do you recognize that document?

A. I do.

Q. And if you could please tell the jury what that document is.
A. This document is a letter written by Lucretia Scoufos to me after she conducted her review of the portfolio with her recommendation concerning the -- whether or not Dr. Tudor should be granted tenure.
Q. And did you actually receive that document as a part of that tenure process?
A. Yes, I did.
MR. JOSEPH: Your Honor, I'll move for introduction into evidence of this exhibit.
MS. NOVOTNY: No objection.
THE COURT: Admitted.
MR. JOSEPH: Thank you, Your Honor.
Q. (BY MR. JOSEPH) And you mentioned Dr. Scoufos. What was her role at that time?
A. She was, I believe, the dean of the school of arts and sciences at that time.
Q. And who was the president of Southeastern at the time of that memorandum?
A. Dr. Larry Minks.
Q. Okay. Was Dr. Tudor advised by you that her tenure and promotion application was likely to be denied?
A. I directed Dr. Scoufos to have that conversation with her.

Q. And, to the best of your knowledge, did Dr. Scoufos have that conversation?
A. She told me that she did.
Q. Dr. McMillan, did you offer Dr. Tudor the chance or the opportunity to withdraw her 2009-2010 application for tenure prior to it being finally denied if she agreed to take two years to beef up her portfolio and resubmit it at a later date?
A. Yes, I did.
Q. And did you have President Larry Minks's permission to extend that offer to Dr. Tudor?
A. Yes, I did.
Q. Was it your opinion at that time that Dr. Tudor should accept that offer?
A. Yes.
Q. Was it your understanding that professors could apply for tenure exactly once, assuming they didn't withdraw it before denial?
A. Yes.
Q. As far as you know, was it made clear to Dr. Tudor that if she had -- if she didn't withdraw her 2009-2010 application, that it was going to be denied?
A. That's what Dr. Scoufos indicated to me.
Q. To the best of your knowledge, did Dr. Tudor take the opportunity to withdraw her application before its denial?

A. No, she did not.
Q. Were you surprised by that?
A. I was extremely surprised by that.
Q. Was it your understanding that Dr. Scoufos made it clear in her communication to Dr. Tudor that they would not be able to apply if that application were, in fact, denied?
A. Yes.
Q. Did you ultimately notify Dr. Tudor of the reasons that her tenure application was ultimately denied?
A. Yes.
MR. JOSEPH: May I approach the witness again, Your Honor?
THE COURT: Yes.
Q. (BY MR. JOSEPH) Dr. McMillan, I've handed you a document labeled Defendants' Exhibit 5, and I'll ask you, have you ever seen this document before today?
A. I have. There's a second page, though, to it. Is it on the back? Okay. Thank you.
Q. I'll ask you, do you recognize that two-page document?
A. I do.
Q. And what is that document?
A. That's a memorandum that I wrote to Dr. Tudor delineating the reasons for denying -- or recommending that her tenure be denied.
MR. JOSEPH: Your Honor, I'll offer into evidence

Defendants' Exhibit 5 at this time.

MS. NOVOTNY: No objection, Your Honor.

THE COURT: I am backwards from the upstairs courtroom. I don't know which direction to look.

It will be admitted.

MR. JOSEPH: Thank you, Your Honor.

Q. (BY MR. JOSEPH) Dr. McMillan, were you ever suspended or given written warning while you were employed at Southeastern?

A. No.

Q. Were you ever verbally counseled for any sort of misconduct on your part at Southeastern?

A. No.

Q. To the best of your knowledge, did Dean Scoufos recommend Dr. Tudor for tenure and promotion during that 2009-10 application process?

A. Did she -- could you restate that?

Q. Sure.

To the best of your knowledge, did Dean Lucretia Scoufos recommend Dr. Tudor receive tenure and promotion during that '09-'10 application process?

A. No.

Q. Did you, as vice president for academic affairs, recommend that Dr. Tudor receive tenure and promotion during that 2009-10 process?

A. No.

Q. Now, after the vice president for academic affairs reviews a tenure and promotion application packet, where would it go for its next level of review?
A. It goes to the president for the final review.
Q. Okay. And did the president, in 2009-2010, which I believe you said was Larry Minks, did President Minks recommend Dr. Tudor for receiving tenure and promotion that year?
A. No.
Q. Did Dr. Tudor have the opportunity to withdraw her application packet in 2009-10 in order to improve upon it later for a subsequent year?
A. Yes.
Q. Dr. McMillan, some witnesses earlier in this trial have testified about the Academic Policies and Procedures Manual, or the APPM.

Do you know what that document is?
A. I do.
Q. Okay. Dr. McMillan, are you familiar with the APPM, at least in general?
A. I am.
Q. Does the Academic Policies and Procedures Manual say, at the time of the 2009-2010 application for Dr. Tudor, that a professor may apply for tenure in their fifth, sixth, and seventh year, or does it say they may apply in their fifth,

sixth, or seventh year?
A. It said in their fifth, sixth, or seventh year.
Q. Okay. Does the use of the word "or" suggest a disjunctive or conjunctive nature at that point?
A. Disjunctive.
Q. Meaning that it was one time --
A. Yes.
Q. -- not three times?
A. Yes.
Q. In your opinion, would it be good for the university if Dr. Tudor were to return to work at Southeastern today?
A. I would see that as a very difficult situation.
Q. Okay. In your opinion, are there better-qualified professional educators who should be teaching at Southeastern before Dr. Tudor?
A. Yes.
Q. Did you ever tell Cathy Conway to threaten Dr. Tudor in any way?
A. No.
Q. Did you ever ask Cathy Conway if you could summarily fire any of your employees, including Dr. Tudor?
A. No.
Q. Did you ever tell Cathy Conway to tell Dr. Tudor or any other employee at Southeastern --
MS. NOVOTNY: Objection. Leading.

Q. (BY MR. JOSEPH) -- how they should dress?

THE COURT: Overruled.

THE WITNESS: I'm sorry. Could you state that again?

Q. (BY MR. JOSEPH) Sure.

Did you ever tell Cathy Conway to order Dr. Tudor or any other employee at Southeastern how they should dress?

A. No.

Q. Did you ever tell Cathy Conway to direct Dr. Tudor or anyone else at Southeastern how they should wear their makeup if they chose to do so?

A. No.

Q. Did you ever tell Cathy Conway which bathroom Dr. Tudor should or should not be able to use?

A. No.

Q. Did you ever ask any employee at Southeastern to treat Dr. Tudor differently because of her gender?

A. No.

Q. In your view, did Dr. Tudor act too unfeminine after her gender transition?

A. No.

Q. In your view, did Dr. Tudor dress in a way that was too unfeminine after her gender transition?

A. No.

Q. Dr. McMillan, who was Dr. Joe Licata?

A. He was a dean of the school of education and behavioral sciences several years ago.
Q. And do you remember roughly what time frame Dr. Licata was dean?
A. Oh, gosh. I don't. I'm sorry.
Q. Okay. That's all right.
Do you know Dr. Claire Stubblefield?
A. I do.
Q. Do you remember when Dr. Claire Stubblefield applied for tenure and promotion at Southeastern Oklahoma State University?
A. I do.
Q. And do you have any recollection about whether, when Dr. Stubblefield first applied for tenure and promotion, if her department committee and her department chair thought that she should get tenure?
A. No, I don't believe that they did.
Q. Okay. Do you remember whether Dean Licata identified any deficiencies in Dr. Stubblefield's tenure and promotion portfolio when she first applied?
A. Yeah, I misspoke.
The -- it's my recollection that she did get the department chair's recommendation but that she did not get the recommendation of the dean.
Q. Okay. And at the time that she got her department

recommendation but did not have her dean's recommendation yet, were you in the tenure and review process at that point?

Did you have a role to play?

A. No. I believe at that time I was an assistant or associate vice president.

Q. Okay. Did -- to the best of your knowledge, did Dr. Stubblefield receive any advice about whether or not she should continue with her application that year or withdraw it?

A. Yeah. My recollection, based on a conversation with her, is she was counseled to withdraw it and improve, particularly the scholarship area of her portfolio, and resubmit it.

Q. Do you remember having any conversations with Dr. Stubblefield at that time about --

A. Yes.

Q. And do you remember what advice you gave her?

A. I advised her to withdraw it and to strengthen the portfolio and resubmit it.

Q. And do you remember whether or not Dr. Stubblefield was very upset about that?

A. She was.

Q. Very upset?

A. Yes, I would say so.

Q. Okay. Do you remember whether or not Dr. Stubblefield ultimately followed the advice that you and Dean Licata had both offered to her about withdrawing?

A. She did.
Q. And do you remember if she then went on to beef up her own portfolio?
A. She did.
Q. And do you remember if, in a following year, she ultimately resubmitted her application and was granted tenure?
A. Yes, she did.
Q. When you visited with Dr. Stubblefield about whether or not she should withdraw her portfolio, did you tell her that you didn't think her portfolio was quite where it needed to be?
A. I discussed it with her and advised her to take the opportunity to strengthen the portfolio.
Q. And when you did that, were you trying to discourage her?
A. No. Trying to help her.
Q. Dr. McMillan, does it hurt you personally that Dr. Tudor has accused you of being a bigot?
A. Very much so.
Q. Has it hurt your family personally?
A. It has, yeah. They know me to be a very different man than that, a man that tries to do right by people.
And to experience that allegation and realize how I had been -- false allegations had been made against me, I think, was very hurtful to them.
Q. Do you have children, sir?

A. I do.
Q. Does it hurt them?
A. Yes.
Q. Dr. McMillan, did you go into counseling in order to help people?
A. I did.
Q. Did you go into education to help people?
A. I did.
Q. Did you offer Dr. Tudor an opportunity to withdraw her 2009-2010 tenure application in the hopes that she would ultimately beef it up and be successful two years later?
A. Yes, I did.
Q. Dr. McMillan, do you recall a time that, because of organizational restructuring, a woman who worked at Southeastern by the name of Mindy House was going to be let go as a part of that restructuring?
A. Yes.
Q. And, sir, did you take it upon yourself at that time to help move her into another department and another office so she could continue her employment at the university?
A. I did.
Q. Dr. McMillan, was part of the reason for your efforts in that regard that you believe your faith encourages you to look out for people in need, particularly people such as widows?
A. Yes.

Q. Dr. McMillan, you're aware, are you not, that some people involved in this litigation have suggested that you are not able to be fair in your work at Southeastern because you're a person of faith?

MS. NOVOTNY: Objection, Your Honor. This has not been brought up at this point.

THE COURT: Overruled.

THE WITNESS: I'm sorry. Would you say it again, please?

Q. (BY MR. JOSEPH) Sure, Dr. McMillan.

Are you aware that some of the people involved in this litigation have suggested that you were not able to be a fair administrator at the university because of your faith?

A. I am.

Q. How do you feel about that?

A. Personally, it feels like an extreme distortion of my faith and a stereotypical view of my faith and personally doesn't fit with my track record of dealing with people in my role as a college administrator.

Q. Dr. McMillan, in addition to being a professional educator and college administrator, I think you testified earlier that you're also a professional psychologist; is that right?

A. That's correct.

Q. And is that counseling psychology?

A. My degree is in -- my doctoral degree and my master's degree are in counseling psychology. My work is primarily with kids in school that are involved in special education.

Q. Dr. McMillan, do you find that, as a professional educator, professional administrator, professional counselor or psychologist, that your faith and being a professional are mutually exclusive?

A. No.

Q. A person can still be a person of faith and do a good job at work; right?

A. That's correct, yeah.

MR. JOSEPH: I have no further questions, Your Honor. Thank you.

THE COURT: Ms. Novotny?

MS. NOVOTNY: All right.

CROSS-EXAMINATION

BY MS. NOVOTNY:

Q. Thank you, Dr. McMillan, for being here today.

I've got a lot of exhibits here that potentially have to do with you, Doctor.

Dr. McMillan, you indicated that, when Dr. Tudor was recommended for tenure by her department and then turned down at the next level by Dean Scoufos, that you hoped that she would be able to improve her portfolio and apply again for tenure the next year; is that correct?

A. The only thing I would say different is it's a recommendation. She wasn't turned down at that level. It may be a fine difference, but it was a recommendation.
Q. So it's recommended --
A. Right.
Q. -- versus not recommended?
A. Right. That's correct.
Q. Okay. Now, Dr. Tudor, when she was originally recommended for tenure, that was in December of 2009; correct?
A. That sounds right.
Q. And then she was not recommended for tenure in January of 2010, and that was a decision made between Dean Scoufos and yourself; is that correct?
A. No, that's not the way it works. The -- I believe your timeline may be off by a month, but I'm not sure about that.

But the -- Dr. Scoufos -- really, all levels of the review process are independent of one another. There's not really any discussion that goes on from one level to the next other than the -- you do see the recommendations that were made at the lower levels.
Q. So is it your testimony that the memorandum that's placed in Dr. Tudor's portfolio dated January 12th, 2010, that's a discussion between you and Dean Scoufos, that you had not discussed Dr. Tudor's portfolio with Dean Scoufos at that time?

A. Prior to the -- to the memorandum that she -- that she wrote me or the letter? Is that your question?
Q. Yeah.
A. No, we had not discussed it, that I recall, other than her maybe saying there was one coming up that she had some concerns with.
Q. Do you recall that there was a memorandum that was sent -- that indicates it was sent from Dean Scoufos to you on January 12th, 2010, that indicates some kind -- that indicates that one of the reasons for denial of Dr. Tudor's tenure was the inclusion of open mic chapbooks as part of her portfolio?
A. I don't recall specifically.
Q. I'm trying to --
A. I do know that that became a point of discussion later, but I don't recall at that point.
MS. NOVOTNY: May I have just a moment, Your Honor? I need to find this misplaced exhibit.
THE COURT: Yes.
MS. NOVOTNY: May I approach, Your Honor?
THE COURT: Yes. I'm going to instruct you not to say a word.
(Court has discussion off the record.)
THE COURT: All right.
Q. (BY MS. NOVOTNY) Do you recall reaching out to anyone in around April of 2010 to get more information about these open

mic chapbooks?
A. I don't know specifically when the date was, but I did ask Dr. Scoufos, if she did not know what they were, to go ahead and ask the department chair or someone that she trusts in the department to find out about them.
Q. All right. I'm going to take your attention back to Defendants' Exhibit 5, which I believe is up there already.
A. Okay.
Q. And can you tell me what that is?
A. That's a letter -- yeah. That's a letter from me to Dr. Tudor regarding the reasons why she -- I didn't recommend -- or that she wasn't going to be granted tenure at that time.
Q. And what's the date on that letter?
A. It's April 30th, 2010.
Q. Okay.
MS. NOVOTNY: Did we admit Plaintiff's 127 already?
THE COURT: Yes.
MS. NOVOTNY: Okay. I thought we had. I just wanted to confirm.
Q. (BY MS. NOVOTNY) So on -- April 30th, 2010, is the date that you indicated to Dr. Tudor that part of the reason for her denial was the open mic chapbook material.
And isn't it true that you only learned of that material on April 30th of 2010 of what that even was?

A. I don't know when the date was. I don't recall.
Q. Do you recognize this document on the screen at all?
A. No.
Q. You indicated you had reached out to Dr. Prus and/or Dean Scoufos to --
A. I had asked Dr. Scoufos, if she didn't know, to check with someone.
Q. Okay. And so you got that information on April 30th, 2010, and then put that into the denial letter; isn't that true?
A. I don't know when I received it. I did receive it. I assume it was prior to the time of writing this letter, but I don't know.
Q. I'm going to direct your attention to Plaintiff's Exhibit 96.

MS. NOVOTNY: May I approach, Your Honor?

THE COURT: Yes.

Q. (BY MS. NOVOTNY) Does Plaintiff's Exhibit 96 look familiar to you?
A. I'd have to take time to read it.
Q. Take a second.

Are you able to identify this yet?

A. It's addressed to me, but I don't recall it specifically.
Q. Typically, if a memorandum at your school was addressed to you, would you say that you would have received that

document?

MR. JOSEPH: Objection, Your Honor. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I would hope so.

MS. NOVOTNY: I'd like to move to have Plaintiff's Exhibit 96 entered into evidence.

MR. JOSEPH: Your Honor, the witness has testified he doesn't remember receiving this. I don't know that it's authenticated.

THE COURT: Counsel, come up.

(The following proceedings were had at the bench and out of the hearing of the jury.)

THE COURT: Are you telling me that you want them to call Mr. Babb in rebuttal to testify this is an e-mail he sent to Dr. McMillan?

MR. JOSEPH: I'm not telling you that, Your Honor. I'm just saying I don't think this witness has authenticated this document. I think there is some question about the authenticity of this document, but if you want us to stipulate it's an authentic document for the purposes of this --

MS. NOVOTNY: If we can't authenticate it this way, then we'll have to go the route of having Charles Babb come to authenticate it.

THE COURT: That seems like a huge waste of time

unless you have a real reason to doubt its authenticity.

MR. JOSEPH: We'll just --

MS. NOVOTNY: It was authenticated during Mr. Babb's deposition.

MR. JOSEPH: Mr. Babb could be called to testify here.

THE COURT: So...

MR. JOSEPH: For now, we'll withdraw the objection, Your Honor.

(The following proceedings were had in open court with all parties present and within the hearing of the jury.)

THE COURT: Okay. 96 will be admitted.

Q. (BY MS. NOVOTNY) Plaintiff's Exhibit 96, this was a memorandum from Charlie Babb, the general counsel of RUSO, to you; is that correct?

A. It appears so.

Q. Is there any reason why you would have been seeking out Charlie Babb's advice as to what RUSO policy was regarding tenure was at that time?

A. I don't recall.

Q. I'm going to direct you now to Plaintiff's Exhibit 148.

MS. NOVOTNY: May I approach, Your Honor?

THE COURT: Yes.

Q. (BY MS. NOVOTNY) Does Plaintiff's Exhibit No. 148 look familiar to you?

A. Could I have a minute to look over it?
Q. Sure.
I'm sorry. This is -- no, this isn't the same one.
Have you had a chance to look that over?
A. I'm about halfway through it.
THE COURT: Do you have a question?
Q. (BY MS. NOVOTNY) Are you ready?
A. I'm ready, yes.
Q. Thank you.
This has also been discussed earlier in testimony.
Does this look -- so this e-mail from Charles Weiner to you, Dr. Minks, and Dr. Scoufos look familiar?
A. Vaguely, it does.
MS. NOVOTNY: I'd like to move to admit Plaintiff's Exhibit 148.
MR. JOSEPH: No objection, Your Honor.
THE COURT: Admitted.
Q. (BY MS. NOVOTNY) I'd like to draw your attention to the second page of this exhibit, and specifically this bullet point here, the final bullet point.
Do you see that?
A. Yes.
Q. Isn't it true that you intended for Dr. Weiner to provide you some kind of reasoning to be able to let go of Dr. Tudor without providing any rationale?

A. No.

MR. JOSEPH: Objection, Your Honor. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: No.

Q. (BY MS. NOVOTNY) All right. I'll try to move this along quickly. I'm sorry. There are a whole lot of documents with your name on them, and I just wanted to make sure I got to the right ones here.

Now, on direct examination you talked about your faith. Is there a reason why you felt the need to discuss your faith here today?

MR. JOSEPH: Objection, Your Honor. I asked a question about it.

THE COURT: Sustained.

MS. NOVOTNY: Okay.

Q. (BY MS. NOVOTNY) Are you friends with Dr. Claire Stubblefield?

A. Work friends, I was, with her.

Q. Did you think it was okay that your friend Claire was the one assigned to investigate you when a charge of discrimination was raised against you?

A. That was her job responsibility, and I didn't believe it to be unfair.

Q. So you think it's okay for somebody's friend to be their

investigator?
A. I think in a close working relationship, it was hard to avoid a situation like that. And she'd always demonstrated she was able to be fair.
Q. Isn't it true that you didn't meet Dr. Tudor in person until the 2009-2010 school year?
A. I don't recall when I met Dr. Tudor.
Q. Or is the first time you met Dr. Tudor at your deposition in 2016?
A. I don't -- I don't recall.
Q. Do you recall, when your deposition was taken, that you indicated you didn't know which restroom transgender people should use?
A. I don't recall that.
Q. Let me ask you this: If someone asks you if you like steak or lobster, does that mean you can't like both?
MR. JOSEPH: Objection, Your Honor. Relevance.
THE COURT: Are you going to link this up to something?
MS. NOVOTNY: Planning on it.
THE COURT: Overruled, but speed it up.
THE WITNESS: What was the question again? Something about steak and lobster?
Q. (BY MS. NOVOTNY) Well, isn't it true that you can like both steak and lobster?

A. Yes. Sure.
Q. Okay. And isn't it true, then, that you -- well, scratch that.
Isn't it true that when big decisions are made, you would typically remember those decisions?
A. Yes, I would assume so.
Q. And wouldn't it be a very big decision if you're making a decision that's taking food off of someone's table?
A. That would be a big decision.
Q. And in the case of Dr. Tudor, don't you think it seemed strange that there's a January 12th, 2010, memorandum indicating one of the reasons that her tenure was denied or not recommended at that time was due to these open mic chapbooks that you didn't learn about until April 30th of 2010?
A. I don't recall when I learned about them.
Q. Okay.
MS. NOVOTNY: Nothing further.
THE COURT: Redirect?
MR. JOSEPH: No, Your Honor. Thank you.
THE COURT: You may step down.
(Witness excused.)
THE COURT: Call your next witness.
MR. JOSEPH: Thank you, Your Honor.
THE COURT: Please step right up next to the witness

box --

MR. JOSEPH: Defendants call Dr. Claire Stubblefield to the stand.

THE COURT: -- and face the clerk and be sworn.

(Witness duly sworn.)

THE COURT: Be seated right here.

WHEREUPON, CLAIRE STUBBLEFIELD, Ph.D., after having been first duly sworn, testifies in reply to the questions propounded as follows:

DIRECT EXAMINATION

BY MR. JOSEPH:

Q. Please state your name for the record.

A. Dr. Claire Stubblefield.

Q. Dr. Stubblefield, where did you get your bachelor's degree?

A. Langston University, Langston, Oklahoma.

Q. And what year was that?

A. 1971.

Q. And do you have a master's degree?

A. I do.

Q. Where did you get your master's degree, Dr. Stubblefield?

A. University of Central Oklahoma, Edmond, Oklahoma.

Q. What year was that?

A. '89.

Q. And I'm calling you "Doctor."

Do you have a Ph.D., Dr. Stubblefield?
A. I do.
Q. And where did you get your Ph.D.?
A. University of Oklahoma, Norman, Oklahoma.
Q. And what year was that?
A. 1992.
Q. Okay.
A. 1992.
Q. And what was the subject of your Ph.D. at OU, Dr. Stubblefield?
A. I was a W.K. Kellogg fellow. Our area of emphasis was continuing professional higher ed administration, adult education.
Q. After you got your Ph.D. at OU, did you end up at some point working at Southeastern Oklahoma State University?
A. Yes.
Q. And while you were working at Southeastern, did part of your work involve being a teaching professor?
A. Yes.
Q. And what subject did you teach?
A. I was in the school of education.
Q. And while you were working at Southeastern, did you also serve, for some time at least, as the director of the university's office of diversity and inclusion?
A. Yes.

Q. In addition to those duties, did you also, at some point at Southeastern, serve as their affirmative action officer?
A. Yes.
Q. Were there any other positions or titles that you held at different times while you were working at Southeastern?
A. Yes.
Q. Could you please tell the jury a few of those.
A. I was the director -- we called it institutional diversity and inclusion, the affirmative action officer, special assistant to the president. Those are a few of the titles that I had.
Q. What was the last position, full-time position, that you held at Southeastern Oklahoma State University?
A. The Title IX coordinator, affirmative action officer, and special assistant to the president.
Q. While you were employed at Southeastern Oklahoma State University, did you receive any training about how to promote diversity and address discrimination on a college campus?
A. Yes.
Q. What were some of the outside entities from which you received training in that regard?
A. The NMCI, National Multicultural Institute, out of Washington, D.C. Also NACUA. That's the National Council for University and College Attorneys, N-A-C-U-A. The Multicultural Institute, also out of Washington, D.C. ATIXA,

A-T-I-X-A, was another one. The National Education Institute. The Texas Law Conference. Encore was another one. There are numerous.

Q. It sounds like a lot. Okay.

Did any of those trainings address the subject of racial discrimination?

A. Yes.

I also wanted to mention that I was also a certified mediator for the State of Oklahoma.

Q. Okay. Did any of the trainings that you just listed address gender discrimination?

A. Yes.

Q. Did any of those training sessions address sexual harassment in the workplace?

A. Yes.

Q. Over how many years, roughly, would you say that you attended training at these different outside institutions while you were working at Southeastern?

A. Goodness. I would say the longest of them was the NMCI, the Multicultural Institute. I probably went to them for six or seven years.

I went to -- there was another one I went to a lot. ATIXA. I went to -- I'm trying to think of the longest ones. One was Encore. I'm not sure if I mentioned that earlier.

Q. You did.

A. I went to Encore probably -- I think I got a 20-year ribbon for that one.
Q. What kinds of things at "Incore" or Encore did they train you on?
A. It was -- they had different caucuses. And one in particular was -- it was specifically for black employees who worked at predominantly white institutions.
And that one, I did workshops with them. I was a panelist. I was, you know, part of interviewing panelists. So it was an incredible organization for my growth.
Q. And when you say your growth, do you mean your personal growth as --
A. Personal growth.
Q. -- an African-American working at a predominantly Caucasian institution of higher ed?
A. Yes. Yes.
Q. Did any of these training seminars or outside entities that provided you training deal with the challenges of minorities in general facing in higher education?
A. Yes.
MS. GALINDO: I'm going to object, Your Honor. I'm not sure where we're going with this.
THE COURT: Overruled.
Q. (BY MR. JOSEPH) In addition to what you told us about Encore, could you tell us another -- just single, one

example -- of another situation where you received training about perhaps minority or other groups in higher ed that needed specific training for you?

A. Let's see. Probably every organization where there were numbers of professionals that were people of color, we're able to spend time together, whether -- maybe not as professionally structured as those at Encore, but there was also a side group with Encore that's called JDOT, which is also -- which deals with -- it was a think tank, how to survive, things to do, need to be aware of.

Because what we found out is many of us felt marginalized by -- or our work questioned. So we talked about -- many were chancellors, professors, deans, diversity officers, had some of the same kinds of experiences that I had. So we spent a lot of time together in this national think tank.

Some of the discussions were done through conferences, phone conferences. So that was a lot of it. It was incredible.

Q. Is it fair to say that, based on your training that you've described and what you said your personal experience, that feeling marginalized in higher education is something that you have personally experienced?

A. Yes.

Q. Okay. But you've learned how to identify that and help correct it?

A. Yes.
Q. Okay. Now, in addition to all of that training that you received, during the employment time at Southeastern when you were working there, did you ever provide or give training to any faculty or staff at Southeastern?
A. Yes. Yes.
Q. What types of subjects did you give training to the Southeastern employees?
A. We had Title IX training. We had harassment, discrimination, supervisor's training in those areas. So not only faculty and staff, but also the leadership. Let's see.
Q. What was, in general, the purpose of you providing that training to Southeastern employees?
A. It had been a commitment of ours to make sure that we have a welcoming environment for everybody. And to do that, people need to -- first of all, need to know what the rules are, and then they need to know what the institution is trying to do: have a welcoming environment for students and staff.
Q. Dr. Stubblefield, is it fair to say that combating discrimination is a personal calling for you?
A. Yes.
Q. Is it fair to say that promoting inclusion and diversity has been a part of that lifelong calling for you?
A. Yes. Lifelong, yes.
Q. Now, in your role --

A. Excuse me. My sinuses are draining.
Q. Now, in your role as the affirmative action officer at Southeastern, was part of your job to take in complaints from employees?
A. Yes.
MR. JOSEPH: May I approach the witness, Your Honor?
THE COURT: Yes.
Q. (BY MR. JOSEPH) Dr. Stubblefield, I've handed you what has been marked Defendants' Exhibit 72. And I'll just ask you to take a quick look at that and let me know if you recognize that document.
A. Yes.
Q. And, Dr. Stubblefield, what is that document?
A. This is a document that I sent to Dr. Tudor letting her know -- or giving her receipt of her complaint, letting them know the day I got it and that I would like to have a preinvestigation session with her, and the date was given and the time and the place.
MR. JOSEPH: Your Honor, if I may, can I put this on the overhead for the jury?
THE COURT: If you get it admitted.
MR. JOSEPH: Okay. I move to admit Defendants' Exhibit 72, Your Honor.
THE COURT: Any objection? Ms. Galindo?
MS. GALINDO: No objection, Your Honor.

THE COURT: Admitted.

MR. JOSEPH: All right. Lori is beating me to the punch. It's already on the screen.

Q. (BY MR. JOSEPH) Now, Dr. Stubblefield, we've put on the screen for the jurors the same document you have in your hand.

Can you see it there on your screen as well?

A. Yes.

Q. Do you see there in the first paragraph over there on the right-hand side, you say you've received a complaint of discrimination dated 31 August 2010?

A. Yes.

Q. And in the following sentence, if you would, just read to the jury that single sentence that begins "to assure."

A. "To assure that I fully understand the specific nature of your concerns, a preinvestigative session on Thursday, September the 9th, at 2:00 p.m., is scheduled. The meeting will take place in Admin 303 (the old political science classroom). Your complaint is lengthy and is replete with information, so brevity and preciseness are necessary."

Q. Dr. Stubblefield, did you actually meet with Dr. Tudor about that complaint?

A. Yes.

Q. And, in a nutshell, can you tell the jury what Dr. Tudor was alleging as you recall in that August 30th, 2010, complaint?

MS. GALINDO: Objection. Calls for hearsay.
THE COURT: I'm sorry?
MS. GALINDO: I'm sorry, Your Honor. I misunderstood the question.
THE COURT: Restate the question.
MR. JOSEPH: Sure, sure.
Q. (BY MR. JOSEPH) Dr. Stubblefield, in a nutshell, can you tell the jury what was alleged in that August 30th, 2010, complaint submitted by Dr. Tudor.
A. It was extremely long, but, basically, she was claiming that she was denied tenure because of her gender and her race.
Q. And what gender, if you recall, did she identify in that complaint?
A. Female.
Q. And what race did she identify in that complaint, if you recall?
A. Native American.
Q. And, as a result of that meeting, did you initiate an investigation?
A. Yes.
Q. And if you could just briefly, Dr. Stubblefield, tell the jury what you did to investigate Dr. Tudor's complaints.
A. The first thing I wanted to do was to digest. She had numerous complaints that were overlapping.
So after we understood specifically what they were, I

asked her to fill out a form that stated specifically what the issues were and to get it back.

And she got it back, I think, the next day. Then, at that point, I began to start the investigation.

I guess I'll stop there.

Q. Okay.

MR. JOSEPH: May I approach the witness again, Your Honor?

THE COURT: Yes.

Q. (BY MR. JOSEPH) Dr. Stubblefield, I've handed you what is labeled as Defendants' Exhibit 74.

A. Yes.

Q. And I'll just ask you if you recognize that document.

A. Yes. This was an amended complaint. I actually got two complaints; one, another complaint, and then an amended complaint. So this is the third of three.

Q. And, Dr. Stubblefield, do you actually remember receiving this document, Exhibit 74?

A. Yes.

MR. JOSEPH: I move this document, Defendants' Exhibit 74, be admitted into evidence, Your Honor.

MS. GALINDO: Your Honor, may we approach?

THE COURT: Yes.

(The following proceedings were had at the bench and out of the hearing of the jury.)

MS. GALINDO: Your Honor, with respect to the Defendants' Exhibits, we were never provided paper copies of those, as required.

MR. JOSEPH: I do not believe that's the case, Your Honor, but I would defer to my legal assistant.

THE COURT: Where is she?Defendants' Exhibit 74, you don't --

MS. GALINDO: And 73.

MR. YOUNG: There are several exhibits where they're just missing.

THE COURT: How long do you have with this witness?

MR. JOSEPH: I will be finished with this witness, Your Honor, by roughly 4:30. I suspect within five minutes, plus or minus, 4:25, 4:35.

THE COURT: I can't take this anymore.

MR. JOSEPH: Okay.

THE COURT: It's been too long a day.

MR. JOSEPH: Your Honor, in the interest of just saving some backache and heartache, let me see if I can just move it along at a decent clip and maybe get done in the next 10 to 15 minutes.

THE COURT: What are you going to have?

MS. GALINDO: I should be pretty short and sweet. 10 or 15.

THE COURT: How many more witnesses do you have?

MR. JOSEPH: Exactly one, Your Honor.

THE COURT: Oh, really?

MR. JOSEPH: Jessie Snowden. And given the timing, I did not tell him to be here this afternoon because I figured this would be pretty close to quitting time. But he is in town. If you want us to get him here --

THE COURT: Oh, no, no. I don't want to get him here.

MR. JOSEPH: Okay.

THE COURT: I assume he won't take very long.

MR. JOSEPH: I would put him in that 30-minute range also, Your Honor.

THE COURT: So he may be our last witness in the morning and then we're done?

MR. JOSEPH: God willing, Your Honor, yes.

THE COURT: Okay. I'm going to send the jury home. We'll finish her in the morning. I want to discuss with you about timing, your rebuttal witnesses, instructions, arguments.

MR. YOUNG: Yes, Your Honor.

THE COURT: But not today.

MR. JOSEPH: Thank you, Your Honor.

MS. GALINDO: Thank you, Your Honor.

MR. YOUNG: Thank you, Your Honor.

(The following proceedings were had in open court with

all parties present and within the hearing of the jury.)

THE COURT: I take full responsibility for this early day. I have -- I am too old for this. I'm just exhausted. So we're going to call it a day today.

I will instruct you not to discuss the case or permit others to discuss it with you. Don't do any independent research, including Google, blogging, Twittering, Facebooking.

I think we're going to have some things to take care of in the morning, so I'll have a 9:30 start so you won't have to wait on us.

Be downstairs in the jury assembly room before 9:30. I hope you have a pleasant evening, and we'll see you tomorrow.

You can go. We are staying here.

(Junior exits courtroom.)

THE COURT: You can step down.

MR. JOSEPH: Thank you, Your Honor.

THE WITNESS: Thank you.

THE COURT: We'll finish you tomorrow morning.

THE WITNESS: Thank you.

THE COURT: I'm sorry that we can't do it today, but I just can't.

I believe it was Ms. Novotny that showed me the notebook with an empty blank -- nothing behind Exhibit --

MS. NOVOTNY: 74.

THE COURT: -- 74.

So do you --

MR. YOUNG: Your Honor, we were also missing 73.

THE COURT: Are those the only two?

MR. YOUNG: No. There are a bunch of missing exhibits. We told them that they're just blank pages in their notebooks.

THE COURT: Well, you're not contending that they were never produced to you, are you?

MR. YOUNG: Well, there were some late-produced electronic copies. We're just a little bit worried. There are just a bunch of blank sheets.

MS. COFFEY: They've all been produced electronically. It may be some exhibit that we revised and sent via e-mail after providing the exhibit books, but they have them electronically.

THE COURT: Well, I'll direct you to provide them paper copies marked as you have them marked before tomorrow morning. I let you-all do it; I'll let them do it too.

I have a more final, more complete set of instructions. I have been going through these and noticed several typos, but I don't believe any of the changes I'm going to make to these have any substance.

So tomorrow morning at, let's say, 8:45 in my office, I will have a -- I will sit down with you for an informal instruction conference.

I'll ask the plaintiffs -- the plaintiff to commit at that time as to rebuttal witnesses, if any. And you'll have to justify those to me.

What else did I tell you we were going to do?

MR. YOUNG: I believe the verdict form, which we already discussed at the previous meeting earlier today.

MR. JOSEPH: All I recall is that we were going to talk about scheduling.

THE COURT: Okay. There is a verdict form in these. I didn't get a chance to talk to Jeff, so I don't know if you-all approved this or not, but we can settle on it tomorrow morning.

Apparently, we will get this to the jury tomorrow.

So how long do you want for closing argument.

Plaintiff?

MR. YOUNG: Perhaps the same as what you gave us for opening, about 15 minutes.

THE COURT: Is 15 minutes sufficient?

MS. COFFEY: 15 minutes, Your Honor.

THE COURT: Do you want to split yours?

MR. YOUNG: Yes.

Sorry, Your Honor. We're very tired too. It's been a long day. Sorry.

THE COURT: That's fine. You just have to have more in your opening section than your ending section.

MS. GALINDO: I apologize. We'd like 45 minutes.
THE COURT: Oh, no. Oh, God, no.
MS. GALINDO: 30 minutes?
THE COURT: I'll give you 20.
MR. YOUNG: Thank you, Your Honor.
MS. GALINDO: Thank you.
THE COURT: How do you want to split it?
MS. GALINDO: 15 and 5?
MR. YOUNG: Yes.
MS. NOVOTNY: Yes.
THE COURT: The question then becomes -- I don't know who's going to open with the 15, but when you get to the end of that, do you want us to turn a light on and tell you to sit down, or do you want that to come off the second segment and just keep talking?
MS. GALINDO: I think a light would be encouraging at that point.
THE COURT: Okay. And so you get 20 minutes too. Is that sufficient?
MS. COFFEY: That's sufficient.
MR. JOSEPH: That sounds great, Your Honor.
THE COURT: Of course it is.
Okay. 8:45 in chambers. We'll be adjourned for the evening.
(In recess at 4:30 p.m.)

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

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically transmitted a copy of the foregoing Appendix to the Clerk of the Court by using the ECF System for filing and automatic service of Appendix to all counsel of record herein.

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Case No. 18-6102/ 18-6165

In the United States Court of Appeals for the Tenth Circuit

DR. RACHEL TUDOR,
Plaintiff-Appellant/Cross-Appellee

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,
Defendants-Appellees/Cross-Appellants

On Appeal from the United States District Court for the Western District of Oklahoma, Case No. 5:15-cv-324-C, Hon. Robin Cauthron

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PLAINTIFF-APPELLANT/CROSS-APPELLEE DR. RACHEL TUDOR'S APPENDIX VOLUME 9 OF 9

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR, Plaintiff, vs. SOUTHEASTERN OKLAHOMA STATE UNIVERSITY and THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA, Defendants.	)	Case No. CIV-15-324-C

VOLUME 5

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ROBIN J. CAUTHRON

FRIDAY, NOVEMBER 17, 2017; 9:15 a.m.

OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography, transcript produced by computer.

(Proceedings held on November 17, 2017.)

(The following proceedings were had outside the presence of the jury with all parties present.)

THE COURT: Be seated, please. Our jury is missing. We don't know where they are. Since we have a little time until they show up somewhere, I'll permit you now -- I would state for the record that I've met with counsel this morning on instructions.

Counsel are aware of what I intend to give, and this is your opportunity to make a record on what you object to being there and not being there, and we'll interrupt this if the jury comes back.

MR. YOUNG: I'm trying to find my notes. One second.

THE COURT: Mr. Young?

MR. YOUNG: Yes.

For the record, Your Honor, plaintiff has an objection to the third paragraph of the Title VII instruction. I actually don't have the appropriate copy of that construction in front of me, but the -- the third paragraph of the Court's Title VII instruction.

In that paragraph, the instruction indicates that Title VII does not protect people because they are transgender and goes on to explain the grounds under which persons are protected on account of gender under Title VII.

Dr. Tudor objects to this because she believes, first and foremost, this instruction is a bit confusing to the jury, and she would suggest that a different instruction be given.

Dr. Tudor also objects to this instruction on the grounds that defendants have waived, at the docket call on November 1st, 2017, any quibbling over the meaning of "sex" in this case. Because defendants claimed that they would not quibble over the meaning of "sex," plaintiff told the Court that our expert witness on the issue of sex and what transgender means and all of those terms was not relevant to this case.

And, lastly, plaintiff objects because she believes that this puts an additional burden on her as a transgender person in violation of the Equal Protection Clause of the Constitution.

That's plaintiff's only objection, Your Honor.

THE COURT: All right. And as I've indicated, I don't agree and will give it as directed.

Ms. Coffey.

MS. COFFEY: Your Honor, do I need to address any of Mr. Young's arguments?

THE COURT: No.

MS. COFFEY: Your Honor, defendants believe that the facts in evidence support jury instructions for spoliation of evidence and for an instruction on failure to conform to sex

stereotype.

Oh, I'm sorry. Defendants also believe that the facts in evidence support a jury instruction on mitigation of damages.

THE COURT: As I've indicated, I don't think there is a dispute about the missing evidence sufficient to support a spoliation instruction.

I believe the second one, whatever it was you said -- what was the second one?

MS. COFFEY: Failure to conform to sex stereotype.

THE COURT: I think that's included in what is given, and I don't believe there's any evidence to support the defendants' burden on mitigation. That's the reason those were excluded.

While you're there, would you make a record --

(Discussion held off the record.)

THE COURT: -- on your motion for judgment as a matter of law.

MS. COFFEY: Yes, Your Honor. We believe the facts in evidence support a motion for directed verdict on each of plaintiff's claims: plaintiff's claim of hostile work environment, plaintiff's claim for discrimination in both tenure denial and denial of reapplication for tenure, as well as plaintiff's claim for retaliation.

Therefore, we request that the Court enter a directed verdict in favor of defendants.

THE COURT: All right. Mr. Young, very quickly. We've found them.

MR. YOUNG: Thank you, Your Honor.

Well, plaintiff argues the opposite, that Dr. Tudor is entitled to a directed verdict on all of her claims. I will name them for the purposes of appeal.

Dr. Tudor's claim for hostile work environment; Dr. Tudor's discrimination claim pertaining to the 2009-2010 tenure application process on the basis of sex; Dr. Tudor's discrimination claim on the basis of sex for the 2010-11 application when she wasn't permitted to reapply for tenure; as well as Dr. Tudor's retaliation claim covering that same time period, not being permitted to reapply for tenure in 2010-11.

THE COURT: And viewing each motion -- viewing each party's evidence in the light most favorable to the nonmoving party, there is evidence on both sides which would require submitting this to the jury.

So I will overrule both motions.

And now I've lost Linda.

Yes, no.

MR. YOUNG: Thank you, Your Honor.

(Jury enters courtroom.)

THE COURT: Be seated. I welcome you once again. I bet you-all didn't even know you were lost, did you? We

couldn't find you anywhere, but we're glad to have you back.

And, Mr. Joseph, you may proceed.

MR. JOSEPH: Thank you, Your Honor.

CONTINUING DIRECT EXAMINATION

BY MR. JOSEPH:

Q. Good morning, Dr. Stubblefield.

A. Good morning.

Q. If you'll recall, yesterday afternoon I had handed you a document that was labeled Defendants' Exhibit 74.

And just to bring everyone back, I had asked you if you recognized that document and, if so, what is that document?

A. I do recognize the document, yes.

Q. And what is that document, Dr. Stubblefield?

A. This is an amended complaint sent to me by Dr. Tudor.

MR. JOSEPH: And at this time, Your Honor, I will move to admit Defendants' Exhibit 74.

MS. GALINDO: No objection.

THE COURT: Admitted.

MR. JOSEPH: Thank you.

Q. (BY MR. JOSEPH) By the time you received Defendants' Exhibit 74, that amended complaint, had you already finished your investigation that you had initiated in Dr. Tudor's complaint?

A. No.

Q. And did you, then, continue your investigation with

Dr. Tudor's amended complaint in mind?
A. Yes.
Q. Did you ultimately make any findings or conclusions as a result of your investigation?
A. Yes.
MR. JOSEPH: May I approach the witness, Your Honor?
THE COURT: Yes.
Q. (BY MR. JOSEPH) Dr. Stubblefield, I have handed you what I have labeled Defendants' Exhibit 34, and I'll ask you if you recognize that document.
A. Yes.
Q. And could you tell the jury, please, what that document is.
A. This was communication sent from me to Dr. Tudor explaining her -- the findings and conclusions on gender discrimination complaint.
Q. These are the findings and conclusions that you drafted as a result of Dr. Tudor's complaints?
A. Yes.
MR. JOSEPH: Okay. I'll move admission of this exhibit also, Your Honor.
MS. GALINDO: No objection, Your Honor.
THE COURT: Admitted.
MR. JOSEPH: Thank you, Your Honor.
Q. (BY MR. JOSEPH) Dr. Stubblefield, I'll direct your

attention to page 1 under the heading of "Grievance."
A. Uh-huh.
Q. Do you see below that and then over on to page 2 there are four bolded references to Complaint 1, Complaint 2, Complaint 3, and then Complaint 4?
A. Yes.
Q. And did those four items cover the collective issues in Dr. Tudor's multiple complaints that you were investigating?
A. Yes.
Q. If you will, please, turn to the fifth page of that exhibit, Exhibit 34.
A. Yes.
Q. And do you see the heading "Conclusion"?
A. Yes.
Q. If you would, please, just read that first sentence under "Conclusion" for the jury.
A. "After considering all the evidence, it is my decision, as the affirmative action officer for Southeastern Oklahoma State University, that neither discrimination nor retaliation is evident, and your claim is denied."
Q. And did you provide this to Dr. Tudor?
A. Yes.
Q. Okay. As someone who has experienced discrimination yourself and someone who has received training on how to identify discrimination, did you consider it to be a very

important thing to do in this case?
A. Considerably, yes.
Q. Okay. As a trained officer, affirmative action officer, is it still your opinion today that Dr. Tudor was not subjected to discrimination or retaliation at the university?
A. Yes.
Q. Okay. Dr. Stubblefield, you can set that document aside, and I want to switch gears with you just a little bit.
There's been a lot of talk in this case about tenure. Did you yourself obtain tenure at Southeastern?
A. Yes.
Q. Okay. And what academic department was that in?
A. Educational instruction and leadership.
Q. And do you remember, when you went up for tenure, did your department committee think that you deserved tenure that first year?
A. There was an issue.
Q. Did the committee vote as a committee to recommend you for tenure?
MS. GALINDO: I'm going to object to relevance, Your Honor.
THE WITNESS: I don't know.
THE COURT: Overruled.
THE WITNESS: I don't know.
Q. (BY MR. JOSEPH) Okay. Do you remember whether or not

your department chair thought that first time you applied for tenure that you deserved tenure?
A. Yes.
Q. Okay. And what was that department chair's opinion?
A. That things looked good, looked good for it.
Q. Okay. And who was your dean at that time?
A. The dean was Dr. Joseph Licata.
Q. Okay. And do you know if your dean, Dr. Licata, had an opinion on your chances of tenure that first year?
A. Yes, he did.
Q. What was his opinion?
A. He indicated that one of the books that I had provided the ISBN number, the committee was not able to locate. So they assumed that that paper did not exist nor the book, and that one more publication needed to be done to have it -- you know, as robust as it could be.
Q. Did Dr. Licata offer you any advice about what to do at that situation?
A. Yes.
Q. And what was his advice?
A. His advice was that I withdraw. If I did, indeed, have the copy of the book, to produce that. And to make the publication a little bit more robust, I needed to do another one.
Q. Beef up your publications?

A. Yes.
Q. Okay. How did that make you feel?
A. I was extremely upset about it. I thought I -- I thought I had it.
Q. You disagreed with the dean?
A. No, I won't say I disagreed. I was -- it bothered me that I didn't get it.
Q. Okay.
A. I thought I was a winner on that one.
Q. Okay. Did you consult with anybody besides Dr. Licata about whether or not you should withdraw at that time?
A. Later in the day I did. I think about an hour. I spent about 20 minutes in my car and, I guess, did the typical thing. I was kind of upset and sat there and listened to the radio and cried. And then I did go and speak to someone else.
Q. Okay. And what advice did you get then from that second person?
A. Basically the same information, that I had -- other than the publication, I had a five-and-a-half-inch portfolio, so it was a good one. I had many presentations. But I did need to do publication, another publication. And he felt that one would be sufficient, one more.
Q. Who was it that gave you that advice?
A. Dr. McMillan.
Q. That's Dr. Douglas McMillan?

A. That is correct.
Q. And what was his position at the university at that time, if you recall? And I don't want you to guess if you don't.
A. I don't recall.
Q. Okay. Did you value the professional opinions and experience of Dean Licata at that time?
A. Yes.
Q. Did you value the professional opinion of Dr. McMillan at that time?
A. Yes.
Q. What did you do with their advice?
A. I did what both of them suggested that I do, that I withdraw, resubmit the next year. And I immediately did that.
Q. After you withdraw, at that point did you then take steps to beef up your publications?
A. Yes.
Q. And when you did finally resubmit your portfolio, what was the result?
A. I was able to secure tenure.
Q. In a subsequent year?
A. Yes.
Q. Okay. As you sit here today, do you think back and think that Dean Licata and Dr. McMillan gave you good advice about withdrawing at that juncture?
A. Yes, I do.

Q. Even though you were very upset about it?
A. Yes.
Q. Are you glad you took their advice?
A. Yes.
Q. Do you feel that the advice that Dr. Licata and Dr. McMillan gave you to withdraw was based on their desire to discriminate against you?
A. No.
Q. Do you think they were trying to minimalize you?
A. No.
Q. Or marginalize you?
A. No.

MR. JOSEPH: Nothing further, Your Honor. Thank you, Dr. Stubblefield.

THE COURT: Ms. Galindo.

MS. GALINDO: Your Honor, may we approach?

THE COURT: Yes.

(The following proceedings were had at the bench and out of the hearing of the jury.)

MS. GALINDO: Your Honor, there's a number of exhibits I wanted to admit. I didn't know if you wanted us to do it here and save time in front of the jury. I didn't know what your preference was. I'm happy to do whatever Your Honor --

THE COURT: That would be great if you can agree on

them.

MS. GALINDO: Okay.

MR. JOSEPH: I don't know what the exhibits are.

MS. GALINDO: I do. I brought them with me.

Plaintiff's Exhibit 18. I tried to pull the ones you --

THE COURT: Let's be off the record, for your sake, on this.

(Discussion held off the record at the bench with all counsel.)

(The following proceedings were had in open court with all parties present and within the hearing of the jury.)

THE COURT: So this was to save time. I can now announce that the following exhibits have been admitted at the bench.

Plaintiff's 18, 82, 83, 85, 86, 88, 89, and 90, 109. And I believe that's all.

All right. You may proceed.

MS. GALINDO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. GALINDO:

Q. Good morning, Dr. Stubblefield.

A. Good morning.

Q. You and I met briefly yesterday afternoon; is that right?

A. Yes.

Q. Now, it's safe to say you have one of the most important

jobs at -- you did have one of the most important jobs at Southeastern; is that right?
A. I thought it was important, yes.
Q. Your mission, very admirable, to provide a safety net and to protect those who feel they have been mistreated; correct?
A. Yes.
Q. And you investigated allegations regarding discrimination?
A. Yes.
Q. Retaliation?
A. Yes.
Q. And hostile work environment; is that correct?
A. That is correct.
Q. And you also, on behalf of the university, facilitated interaction between the employment -- Equal Employment Opportunity Commission and the university; is that correct?
A. Yes.
Q. And there are policies and rules within the framework of your job that allows individuals like Dr. Rachel Tudor to exercise rights, to appeal, and file complaints and grievances; correct?
A. Yes. All employees.
Q. All employees. Just like Dr. Rachel Tudor?
A. That's correct.
Q. And what you do requires confidentiality; right? You're

dealing with information that is entrusted to you on some very delicate matters; is that correct?

A. Yes.

Q. You are very good friends with Dr. McMillan; correct?

A. Yes.

Q. In fact, I saw an e-mail in one of those. You were concerned about his -- you know there's something happening with his daughter, and you're concerned about her; right?

A. Yes.

Q. Do you feel that Dr. McMillan is someone who respects you?

A. Yes.

Q. Respects your work?

A. Yes.

Q. And respects your title?

A. Yes.

Q. And given that he sat down and spoke to you as the dean when you applied for tenure, you probably feel a little indebted to him; right?

A. No.

Q. You don't?

A. No.

Q. Okay. In this instance, Dr. McMillan is at the center of Dr. Rachel Tudor's complaints.

Did you disqualify yourself as the affirmative action and

EEOC liaison from reviewing and investigating?
A. No.
Q. You've done lots of training; right?
A. Extensive, yes.
Q. Our tax dollars paid for that; right?
A. Yes.
Q. And nothing in all that training encouraged you to step aside and remove what might be considered bias or give the appearance of personal bias towards someone; is that right?
A. Restate that, because I'm thinking there's a issue here. Restate your question.
Q. Are there rules that say you should be disqualified?
A. Uh-huh.
THE COURT: Yes or no, please.
THE WITNESS: Can she repeat it?
THE COURT: Well, I understood you to "uh-huh." I just need that to be a yes or no.
THE WITNESS: Oh. Yes, I will do that.
Q. (BY MS. GALINDO) Did you disqualify yourself from Dr. Rachel Tudor's investigation? Yes or no.
A. No.
Q. In fact, there were instances where you sought input from various individuals, from the H.R. director, Ms. Conway; correct?
A. Input, yes.

Q. And you sought input from Dr. McMillan; isn't that right?
A. On some parts, yes.
Q. In fact, you did that prior to finishing your report; right?
A. Yes.
Q. And when you started your investigation, there was no retaliation complaint at that point; correct?
A. I'd have to refresh. I believe it was. At that point -- I don't want to guess. I would have to look at the paperwork.
Q. Okay. And we'll talk about that in a little bit.
A. Okay.
Q. So you don't recall that in the middle of it, Dr. Rachel Tudor -- in the middle of your investigation -- I'm sorry -- Dr. Rachel Tudor said, Dr. Stubblefield, I think now I'm being retaliated against in the midst of your investigation by Dr. McMillan.

Do you remember that?

A. Yes.
Q. Based on your training, it is incumbent, it's the rules, that Dr. Rachel Tudor had an obligation, as all other employees at the university, to exhaust remedies available at the university through your department; is that right?
A. Yes.
Q. She has to do that; correct?
A. Yes.

Q. As other employees?
A. Yes.
Q. The complaint was filed on August -- the original complaint was filed on August 30th of 2010; is that correct?
And I believe Mr. Joseph handed you the report. And in that first paragraph, I think, you list that date. Am I right?
A. Yes.
Q. I think it's Defendants' Exhibit 34 maybe?
A. (Nods head.)
Q. Thank you.
And so you identified the first date of the complaint as August 30th, 2010; correct?
A. Yes.
Q. And you completed the report on January 19th of 2011; is that right?
A. Yes.
Q. And in that report, you -- you were deposed -- I'm sorry. I apologize. I'm going to go back.
You were deposed probably about eight hours, right, before testifying here today?
A. Yes.
Q. And in those eight hours, you did not find a finding that you made with respect to the hostility claim, did you?
A. I would have to see something that had that.

Q. Okay. And I apologize.

You testified on direct examination -- Mr. Joseph directed you to look at the conclusory paragraph; correct?

A. Yes.

Q. In that conclusory paragraph, you determined there was no discrimination with regard to tenure and that there was no retaliation.

Do you remember that?

A. Yes, I remember reading that.

Q. But there is no mention of a hostile work environment; correct?

A. Is that still Exhibit 34? May I ask that?

Q. I believe so. Is that your report? That's your report; right?

A. Under "Conclusions," is that what we're referring to?

Q. (Nods head.)

A. Okay. It says, "Neither discrimination nor retaliation is evident, and your claim is denied. You have the right to appeal this determination. The appeal is made" -- it gives the process for which she could -- her appeal process.

Q. Thank you.

A. Yes.

Q. Thank you for clarifying that.

And you mention in that conclusion that, based on your investigation -- you didn't mention in the conclusion that

after you consulted with Dr. McMillan, did you, in that conclusion?

A. No.

Q. You didn't mention that, after talking to HR director, you concluded that, did you?

A. Nor did I mention any of the other individuals that I talked to. That is correct.

Q. In fact, just before you wrote that report -- I believe that was on January 19th, 2011; right?

Just before, about 10 days before, you contacted also an attorney; correct? Not Mr. Babbs [sic], another attorney?

A. Yes.

Q. And you said, "Dr. Rachel Tudor is a transgender woman. Do we have to protect her?" Isn't that what you asked her, for that advice?

A. I don't believe it was that verbiage.

Q. She gave you an opinion on that; correct?

A. Could you show me where I said that to her, please?

MS. GALINDO: May I approach?

THE COURT: Yes.

Q. (BY MS. GALINDO) And I apologize. Did she give you that opinion?

A. Pardon? I'm unclear about what you're asking me. I did communicate with --

MS. GALINDO: I'm sorry, Your Honor. I was trying

to expedite this.

Q (BY MS. GALINDO) I believe -- and I apologize, Dr. Stubblefield, and to the Court and this jury. It is Exhibit 88.

Do you see that?

A. Yes. This is her --

Q. Okay.

A. Uh-huh.

Q. And do you need a minute to look over that?

A. Yes, please.

Okay. I think I'm ready. If I need to pause again, I will ask.

Q. Do you see the first sentence of that last paragraph?

A. "Please remember"?

Q. "In addition, being transgender is not a protected status." Do you remember that?

A. The last paragraph is, "Please remember." Is that the one?

Q. Last paragraph on the first page. I'm sorry.

A. The first page. All right.

Q. Yes, ma'am.

Just to be clear for the ladies and gentlemen of the jury, this was sent from the lawyer you questioned to you; correct?

A. That is correct.

Q. And then, on the second page, your response was, "Thank you so much for agreeing to lend a legal eye to a very interesting case."
A. Uh-huh.
Q. Is that correct?
A. That is correct.
Q. And before you reached out to this lawyer, you had exchanged -- I believe it was admitted yesterday -- Plaintiff's Exhibit 237.
Ms. Conway is the HR director; correct?
A. Yes.
Q. And you are the affirmative action EEOC representative -- or were -- I'm sorry -- at Southeastern?
A. Yes.
Q. And you exchanged an e-mail where she refers to Dr. Tudor's complaint -- to Dr. Tudor as "him." And you reply "her"; correct?
A. Is this the document?
Q. Yes, ma'am. And I apologize.
Can you see that?
A. Okay. Now.
Q. And do you see where the HR director, November 18th, 2010, in the middle of your investigation, says, in the second paragraph, second sentence, "If Dr. Tudor requests to see T&P info in his personnel file, I will need to send him to

Bridgette."

"His" and "him."

You then respond, "Now, now. It's her" -- capital letters -- "personnel file."

And then there's a strange little thing. Was that meant as a smiley face?

A. I don't know even what that character is.

Q. Okay. Did you investigate the director for those remarks?

A. Investigate? She was part of the investigation. I did ask her questions on numerous things, not just this.

Q. And in that report that's been admitted as Defendants' Exhibit 34 that is your final conclusion, did you note this e-mail and its language in that report?

A. No.

Q. You didn't think it was relevant?

A. I didn't think it was pervasive enough. One mention, one time, one document, no.

Q. And you said that Dr. McMillan is a good friend; right?

A. Yes. Colleague, yes.

Q. You had an instance where a professor insulted you in the worst way with a racial slur; isn't that right?

A. Yes.

Q. And Dr. McMillan told you, "Don't complain about it."

Do you remember that?

A. No.
Q. You don't? Did you complain about it?
A. I remember -- I remember telling him the incident. Yes, I did tell him about the incident.
Q. Do you need to refresh your memory from your testimony?
A. I remember the situation. You don't forget things like that.
MS. GALINDO: May I approach, Your Honor?
THE COURT: Yes.
MR. JOSEPH: Your Honor, at this time I'll object to the question before on hearsay about what someone else told this witness.
THE COURT: Overruled.
Q. (BY MS. GALINDO) So do you remember testifying on May 17th of 2016 under oath just as you are here today under oath?
A. Yes. Is this the deposition?
Q. Yes.
A. Okay.
Q. I'm sorry. This is page --
MR. JOSEPH: Your Honor, can we have counsel ask questions from the lectern, please?
THE COURT: Do you just have one copy of the deposition?
MS. GALINDO: We may have another.

MR. YOUNG: It's one of the plaintiff's exhibits. I can look up on our list and give them the number, but it's an exhibit.

THE COURT: Well, she needs to be at the podium unless it's necessary to share the document.

My question is, do you have another copy of the deposition?

MR. YOUNG: Yes, we do, Your Honor.

MS. GALINDO: Your Honor, I'm happy to go back to the podium. I'm happy with that. I'll just get a copy of it.

Do you have a copy?

MR. YOUNG: I'll pull it up.

THE COURT: Just have her look at it before you go back.

MS. GALINDO: All right. Thank you.

Q. (BY MS. GALINDO) Just to clarify, I'm looking at page 131, Line 3 and -- through 25.

A. Uh-huh.

MS. GALINDO: May I approach, Your Honor? I'm sorry.

Q. (BY MS. GALINDO) So the question was, "And you have described him as a confidante. Is there anything in particular that he's helped you with in the past with respect to your employment at Southeastern other than the instance that you told me about earlier with your promotion and tenure

application?"

You said, "Yes."

"What is that?"

"I'm trying to remember the first time, that there was an older faculty member -- oh, it was in early '97-'96 -- that made a racial slur. That person retired actually the next year. So they were old, older than I am, old. And I discussed it with him."

"And was he helpful?"

"Yes."

"How so?"

"He just indicated that, you know, the rules -- some people had not moved on in the world. He would be retiring. And, you know, if it happened again, just to let him know."

So you let it go; right?

A. No, I did not let it go. I talked to the person who said the racial slur. And what I said is, "If you ever say anything to me again, ever, it will be reported officially."

Q. But you didn't share that in the eight hours of testimony previously, did you?

A. Eight hours? Maybe not.

Q. And you never filed a complaint?

A. No.

Q. And do you remember the notes of your witness interviews that you turned over to the EEOC and the response from

Southeastern?
A. Some of them I do, yes.
Q. Do you need to refresh your memory on those?
A. If you have one specific one, yes.
Q. Thank you.
MS. GALINDO: May I approach, Your Honor?
THE COURT: Yes.
MS. GALINDO: Thank you.
Your Honor, I believe this was also admitted, 89.
THE COURT: Yes.
Q. (BY MS. GALINDO) Here you go, Dr. Stubblefield.
Does that look familiar?
A. Yes. These are part of my personal notes, yes.
Q. And those notes helped you reach your conclusions; is that correct?
A. These are some of the major ones, yes.
Q. Well, this is what you provided as part of the response from Southeastern University; correct?
A. That is correct.
Q. If you'll turn with me on Plaintiff's Exhibit 89, you talked to Dean Scoufos; correct?
A. Yes.
Q. And I believe on the third page you said you met with her at 9:30 on September 17th of 2010.
Do you remember that?

MR. JOSEPH: Objection, Your Honor. That misstates this document.

THE COURT: The witness can speak for herself.

THE WITNESS: I'm trying -- where are you referring to, the date?

MS. GALINDO: May I approach?

Q. (BY MS. GALINDO) Oh, I'm sorry. September 17th, 2010. That would be the third page.

A. Yes, I see that.

Q. Okay. You said you met with doctor -- I'm sorry -- with Dean Scoufos at 10:30; is that correct?

A. Yes.

Q. What does this mean?

"In Dr. Scoufos's characteristic low, slow, southern dialect, imparted what she felt was a possible solution to address the deficiencies."

A. And your question is?

Q. How was that helpful to determine if there was discrimination, hostility in the workplace, and whether Dr. Tudor had been retaliated against?

A. What my personal notes are telling me is that Dr. Scoufos -- and you saw her yesterday and you heard her yesterday.

Would you not agree that it's a slow southern dialect that she speaks with?

And we were talking about the deficiencies and the solution to the deficiencies. It did not elaborate on every single thing that was discussed in that meeting. These are notes to refresh my memory.

Q. How long did you work with Dean Scoufos?

A. For this instance --

Q. In your --

A. -- or this --

Q. In your career, ma'am. I'm sorry for the confusion.

A. Since she got at Southeastern. Since she arrived at Southeastern. She was on committees and other things.

Q. How long approximately?

A. One of the first committees that we were on, I think was the Native American symposium. I was a committee member -- on one of the committees for that. I think that's where I actually met her.

Q. And in that same report on September 13th of 2010, on that same page --

A. Uh-huh.

Q. -- you talked to Dr. Spencer; isn't that right?

A. Yes.

Q. And he said he had given Dr. Tudor some advice --

A. Yes.

Q. -- correct?

A. Yes.

Q. And then he said, "Now that I understand the process better, maybe I would not have advised Dr. Tudor that my request for time was atypical, but maybe a gift. I guess I'll have to recant my prior recommendation for her." Right?
A. That's what he said, yes.
Q. So she was getting different interpretations on the rules; correct?
A. That was -- this is what Dr. Spencer said to me. I don't know what she got.
Q. And he was treated differently; correct?
A. This is what Dr. Tudor said, yes.
Q. And in that same report, if you'll follow with me -- this is page 3. You sent this off as a representative; right? You sent it from Southeastern to the Equal Employment Opportunity Commission; is that correct?
A. Yes.
Q. And you Bates-stamped it; correct?
A. Yes.
Q. Now, if you'll follow with me -- that was page 3 before. And that page 3 has "1185" at the bottom.
Do you see that?
A. Yes.
Q. And then page 2, 1184, for date September 8th, 2010, it says, "my" -- the last word is "my" in that last bullet point.
Do you see that?

A. Yes.
Q. And it's on your screen as well, I believe.
A. Oh, okay. Yes.
Q. It says "my." And then if you go to 1185, there's a new entry, and that sentence is missing.
Do you see that?
A. Yes.
Q. So something's missing there; right?
A. It would appear so.
MS. GALINDO: I believe we've got what's been marked as 17, Your Honor, Exhibit 17, and it's been admitted.
THE COURT: Yes.
Q. (BY MS. GALINDO) Do you have that up there or -- I apologize.
MS. GALINDO: May I approach, Your Honor?
THE COURT: Yes.
MS. GALINDO: Thank you, Your Honor.
Let me get it here for you. Okay?
Your Honor, I believe this had previously been admitted.
THE COURT: Yes.
Q. (BY MS. GALINDO) Do you recognize that e-mail, Dr. Stubblefield?
A. Yes.
Q. That's an e-mail between you and Cathy Conway; is that correct?

A. Correct.
Q. And you responded to Cathy Conway that you shared this with Dr. McMillan; is that correct?
A. Yes, among others.
Q. You -- in your report, I noticed the heading that -- at the top, your department.
A. Oh. Yes.
Q. That changed, correct, the name of your office? And I apologize.
A. Yes, at some point.
Q. I noticed you made a decision with respect to the complaints against Mindy House, Melinda house; correct?
A. That's correct.
Q. And that correspondence seemed to be under -- in 2016, I believe, under office of equity, compliance, and diversity; correct?
A. Yes.
Q. But when Dr. Rachel Tudor was going through these challenges and interacting with your office, the word "equality" wasn't part of the department, was it, the title?
A. True, yes.
May I address that or let it go?
THE COURT: Wait for another question.
Q (BY MS. GALINDO) Is that a "yes"?
A. Yes.

MS. GALINDO: I'll pass the witness, Your Honor.

THE COURT: Redirect?

MR. JOSEPH: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. JOSEPH:

Q. Dr. Stubblefield, plaintiff's counsel showed you what they labeled Plaintiff's Exhibit 89 and admitted that. And I'm going to just put -- this is the timeline document.

A. Yes.

Q. Do you have that in front of you?

A. Yes.

Q. Now, counsel asked you if you put these -- what she called Bates numbers on the document. And I believe that means the "EEOC" and a series of digits in the lower right-hand corner.

Did you actually put those numbers on there, or did someone else do that?

A. I did not put them on --

Q. Okay.

A. -- no.

Q. Dr. Stubblefield, you had a question about whether or not you made reference in your findings and conclusions to a particular e-mail.

Did you put every single document in your findings and conclusions?

A. No.
Q. Is it fair to say that you spoke to people and reviewed evidence that wasn't necessarily mentioned by name in your final report?
A. Yes.
Q. Did the rules actually require you to disqualify yourself if there were merely an appearance to some people of bias?
A. No.
Q. Okay. Did you feel you could do your job fairly and effectively?
A. Yes.
Q. Did you ever tell anyone that you didn't have to protect Dr. Tudor?
A. No.
Q. Did your finding of no discrimination in your report encompass any hostile work environment claims, as you saw it?
A. Yes.
Q. Now, plaintiff's counsel asked you about whether or not you talked to Cathy Conway, the HR director, or talked to Doug McMillan, the vice president for academic affairs.
Didn't you also talk to Dr. Tudor?
A. Yes.
Q. Was it important, as part of your investigation, to hear from all sides involved?
A. Yes.

Q. And plaintiff's counsel also asked you some questions, I believe, about Mindy House.
A. Yes.
Q. Did you find that Mindy House had engaged in acts of dishonesty and lack of academic integrity?
A. Yes.
MS. GALINDO: May I object, Your Honor. That isn't what I -- I just asked about the document.
THE COURT: Sustained. Outside the scope.
MR. JOSEPH: Thank you, Your Honor.
Thank you, Dr. Stubblefield. No further questions.
THE COURT: Any recross?
MS. GALINDO: Briefly, Your Honor.

RECROSS-EXAMINATION

BY MS. GALINDO:
Q. You did not investigate the hostile work environment, did you?
A. I did.
Q. It's not in your report, is it?
MR. JOSEPH: Objection. Asked and answered.
THE COURT: Sustained.
Q. (BY MS. GALINDO) You --
MS. GALINDO: Your Honor, may I approach?
THE COURT: Yes.
MS. GALINDO: I can do it from here, Your Honor.

Q. (BY MS. GALINDO) Can you identify that in the report?
A. It was encompassed within it. There's not a -- from what I saw, no, I cannot put -- the word is not there, but it was part of the investigation.
Q. And you concluded there was no hostile work environment; is that correct?
A. That is correct.
Q. You're saying that all these years later in this courtroom for the first time; is that correct?
MR. JOSEPH: Asked and answered, Your Honor.
THE COURT: Overruled.
THE WITNESS: Yes.
MS. GALINDO: I'll pass the witness.
THE COURT: You may step down.
THE WITNESS: Thank you.
THE COURT: Call your next witness.
(Witness excused.)
MR. JOSEPH: Thank you, Your Honor. The defendants will call Dr. Jesse Snowden to the stand.
THE COURT: Please stand. I'm sorry.
THE WITNESS: Okay.
THE COURT: I didn't catch you soon enough. Face the clerk and be sworn.
(Witness duly sworn.)
THE COURT: Now be seated.

THE WITNESS: Okay.

MS. GALINDO: May we approach?

THE COURT: Yes.

(The following proceedings were had at the bench and out of the hearing of the jury.)

MS. GALINDO: I don't know if this is going to be helpful or not. I was just handed a stack of exhibits. So I didn't know -- did you want to --

MR. JOSEPH: I think those are the exhibits that you took to the witness. I was just handing them back to you.

MS. GALINDO: Oh, okay. I was just trying to --

THE COURT: All right.

MR. JOSEPH: Thank you, Your Honor.

MS. GALINDO: Thank you, Your Honor.

(The following proceedings were had in open court with all parties present and within the hearing of the jury.)

THE COURT: I appreciate the effort.

MS. GALINDO: Thank you, Your Honor.

WHEREUPON, JESSE SNOWDEN, Ph.D., after having been first duly sworn, testifies in reply to the questions propounded as follows:

DIRECT EXAMINATION

BY MR. JOSEPH:

Q. Dr. Snowden, please state your name for the record.

A. My name is Jessie Snowden, S-N-O-W-D-E-N.

Q. And, Dr. Snowden, do you hold a doctorate degree?
A. Yes.
Q. In what subject?
A. Geology.
Q. And where did you receive that doctorate degree?
A. When did I receive it?
Q. Where.
A. Oh, University of Missouri at Columbia.
Q. And in what year did you receive that Ph.D.?
A. 1966.
Q. Dr. Snowden, did you previously work at Southeastern Oklahoma State University?
A. Yes, I did.
Q. And are you now retired from that school?
A. Yes.
Q. What year did you first start working at Southeastern?
A. In 1999.
Q. Into what position were you first hired at that school?
A. As vice president for academic affairs.
Q. Were you hired at Southeastern with tenure?
A. Yes. I also held faculty rank in the department of physical sciences.
Q. And as a faculty member, did you have teaching duties?
A. No, I did not.
Q. Not at that time?

A. No.
Q. Okay. When you were hired with tenure at Southeastern, did you already have tenure from other schools?
A. Yes.
Q. And what were those schools, sir?
A. Let's see.
I first got tenure at Millsaps College in Jackson, Mississippi; then at the University of New Orleans; then at Southeast Missouri State University; and then at University of Arkansas at Little Rock; and then at Southeastern.
Q. Any of those schools you mentioned, did you ever serve as the dean?
A. Yes.
Q. Which ones?
A. I was dean of the college of science and engineering technology at University of Arkansas at Little Rock, and I was dean of the college of science and technology at Southeast Missouri State University.
Q. And I think I mentioned or alluded to it just a moment ago, but did you ever, at any point in your career at Southeastern, teach classes also?
A. After I retired, I taught one class in rural regional geography.
Q. Did you ever serve as interim president at Southeastern Oklahoma State University?

A. Yes, I did.
Q. And what was the time period of your service in that position?
A. From January 2007 to January 2008.
Q. So roughly a year?
A. Roughly a year.
Q. During your time as Southeastern's interim president, did you learn that Dr. Tudor, one of the faculty members on your campus, was undertaking a gender transition?
A. Yes.
Q. And do you remember how and when you found that out?
A. I believe it was in the fall of 2007. I don't remember exactly when. And the dean of the school of liberal arts told me, just informed me of it.
Q. And what was that dean's name?
A. Dean C.W. Mangrum.
Q. Dr. Snowden, do you have any understanding of what it means to be transgender?
A. Yes.
Q. Just in your own words, could you please tell the jury what your understanding of that is.
A. I think it's the -- when a person assumes a gender different from the one that's on their birth certificate.
Q. Dr. Snowden, before you came to work at Southeastern Oklahoma State University, did you personally know any people

who identified as transgender?
A. Yes, I did.
Q. And where was that?
A. At the University of New Orleans, where I taught for 21 years.
Q. Were those people that you knew as transgender, were any fellow faculty?
A. There were, I believe, two on the faculty who identified as transgender and a number of students during that period.
Q. Did you teach any of those students?
A. I don't recall that I did, but I may well have.
Q. Did you consider any of those folks to be your friends?
A. The faculty, yes.
Q. Did you have any transgender -- strike that. I'm sorry.
Dr. Snowden, in 2007 was it your understanding that Dr. Tudor was involved in a discussion about her opportunity to use a single-occupancy restroom?
A. Yes, that was brought to my attention.
Q. And did Dr. Tudor ever complain to you about what restroom she should or shouldn't use?
A. No.
Q. Dr. Snowden, when you were serving that year as interim president at Southeastern, did you send out birthday cards to employees?
A. Yes. I sent birthday cards to faculty and also Christmas

cards to faculty and staff.
Q. Do you recall sending one of those Christmas cards to Dr. Tudor?
A. Yes, I do.
Q. And does anything about the content of that note stand out in your memory?
A. I don't remember --
MS. GALINDO: Objection, relevance, Your Honor.
THE WITNESS: -- exactly what I said.
THE COURT: Just a moment.
I'm sorry?
MS. GALINDO: I'm going to object to relevance.
MR. JOSEPH: I think the relevance will be very clear with his answer, Your Honor.
THE COURT: All right. Overruled.
THE WITNESS: I don't remember exactly what I said, but I made some reference to her gender change and just wished her well with that process.
Q. (BY MR. JOSEPH) Would you characterize your note as a note of encouragement and support?
A. Yes.
Q. And, again, that was December of 2007?
A. Yes.
Q. Dr. Snowden, did Dr. Tudor ever complain to you about any dress code restrictions that were supposedly imposed upon her?

A. No.
Q. Did Dr. Tudor ever complain to you about any supposed restrictions on her makeup or how she should style her hair?
A. No.
Q. Now, Dr. Snowden, after you sent Dr. Tudor that Christmas card with the personal note of support and encouragement, did she ever come to you with any complaints about the conditions of her work environment?
A. No.
Q. Do you think she was afraid of you, sir?
A. I don't think so.
Q. Dr. Snowden, are you familiar with the term "shared governance" as it applies in higher education?
A. Yes.
Q. Very briefly, tell the jury what shared governance in higher ed means to you.
A. It means that there is faculty participation in the policy development, and also it means that faculty have a say in certain areas, such as promotion and tenure and other policies of the university. It's in the form of recommendations to the administration.
Q. And then the administration also plays a role in those things?
A. Absolutely. It's a tiered system so that decisions or recommendations go up the line from faculty to administration

and, ultimately, to the president of the university.

Q. Now, in terms of the tenure and promotion process specifically, is that also a multitiered process of shared governance?

A. Yes, it is.

Q. And as the interim president at Southeastern during that 2007 to 2008 time frame, what role, if any, did you play in the tenure and review process?

A. The president is the final -- at that time, actually made the final decision on promotion and tenure and reported that to the board.

So after the faculty committee, the department chair, the dean, and the vice president for academic affairs had all made their recommendations, I made the final call and reported that to the board.

Q. And, Dr. Snowden, when you weren't serving as the interim president, but when you were vice president of academic affairs, what duties in the tenure and promotion process did you perform?

A. I was the next-to-the-last reviewer of the promotion tenure materials, and I reviewed them very carefully and made a recommendation to the president.

Q. By that point in your career, had you reviewed a lot of tenure and promotion portfolios over the years at all of these different universities you worked?

A. Hundreds.
Q. Okay.
A. Maybe a thousand. I don't know.
Q. At some point you just stopped counting; right?
A. Yes.
Q. At each of these colleges where you worked, aside from Southeastern, did faculty and administration have a similar multitier review process?
A. Yes. This is a standard procedure.
Q. Is this fairly common across the United States?
A. Yes, I believe it is.
Q. Dr. Snowden, is part of the reason that administration reviews tenure and promotion portfolios to allow for some separation between colleagues in a department to get an outside view of things?
A. Yes. Each administrator has the responsibility of reviewing these independently and making the best decision that they can based on everything they see.
Q. Dr. Snowden, in your vast experience, have you observed any problems at smaller schools with faculty just kind of giving their colleagues a free pass?
A. I have noticed that because, you know, a small department, faculty tend to be good friends with one another, and it's difficult to make a negative recommendation in those kind of cases. And that's precisely why there's multiple

review.
Q. Dr. Snowden, is a university's -- let me ask you this.
At the time that you were working there at Southeastern, was the RUSO board pushing you or pushing the school to have more faculty accountability in that regard?
A. Yes, they were.
Q. Is a university's granting of tenure essentially a commitment to a lifetime contract with a professor?
A. Essentially, it is. Of course, their -- tenured faculty can be dismissed, but it's a very complicated procedure.
Q. At the time you were interim president, about how much did a full professor at Southeastern earn each year?
A. I'm just guessing at this because I really don't remember, but I would guess in the 80- to $90,000 range.
Q. Then in terms of a commitment by the university, on top of that for benefits, all totaled, what was the university's commitment per year, salary and benefits, to a tenured professor?
A. You can add another 40 percent or so to that. So it would be well over 100,000, roughly $125,000 total commitment.
Q. And how many years would a typical tenured professor teach at Southeastern?
A. Could be 30 to 40 years. I don't know what the average is, but 30-year and 40-year faculty are common.
Q. So considering the course of a 30- or 40-year commitment,

how important is it for the school to make the best choices about who gets tenure the first time?

A. It's absolutely important because it's a multimillion-dollar commitment on the part of the university. And those dollars are going to be paid by the taxpayers and also by future students at the university in the form of tuition.

Q. Now, Dr. Snowden, another term that's been used in this case is "tenure track."

Does "tenure track" mean that a professor is guaranteed tenure at the end of that track?

A. No. In fact, tenure track is a misnomer.

Faculty that come into a university are under probationary status, just as in businesses and industry, when you first start a job, you usually have a probationary period. For faculty, that can be up to seven years, which is probably longer than most things. But it's a year-to-year appointment at that time based on performance.

Q. Dr. Snowden, do you have any knowledge about Dr. Lisa Coleman, who served as the chair of Dr. Tudor's 2009 tenure committee, about Dr. Coleman promoting Dr. Tudor's transgender status as a reason to give her a pass to tenure?

A. No, I don't.

Q. Okay. Dr. Snowden, do you know anything about the faculty senate teaching award at Southeastern?

A. Yes.
Q. Okay. What do you know about that, in brief?
A. Unlike some other universities where I've been, it's strictly by a vote of the faculty senate.
And I don't think it's quite as meaningful as if it were reviewed by an outside panel, for example, as it is at some universities. And in some cases, I think it's probably based on friendships and that sort of thing. So probably not as weighty as it is in some institutions.
Q. In fact, people can nominate themselves for it --
A. Yes.
Q. -- can't they?
A. They can nominate themselves, that's right. I've never seen that anywhere before.
Q. Dr. Snowden, who was Joe Licata?
A. He was dean of the school of education and behavioral sciences at Southeastern Oklahoma State University.
Q. And what was your opinion of Dr. Licata?
A. Had a very high opinion of him. He was hired from the outside while I was vice president for academic affairs.
Q. So you were involved in his hiring?
A. Yes, I was.
Q. Okay. Did he do a good job there?
A. I felt he did.
Q. Was Dean Licata an effective reviewer in that multitier

tenure and promotion process we discussed?
A. Yes. He had been an administrator at a number of universities also, including Ohio State and Louisiana State University.
Q. We won't talk about LSU football. We'll just talk about the school.
A. Okay.
Q. Did you have any opinion about the work product or the character of Dr. Douglas McMillan?
A. No.
Q. You didn't have any opinion one way or the other?
A. Oh, I have an opinion. I think he was a very professional man, man of very high principles.
Q. You base that on your personal observation?
MS. COFFEY: Excuse me. Your Honor, I'm sorry. A witness has entered the room, one of plaintiff's witnesses, Dr. Weiner.
THE COURT: Okay.
MR. YOUNG: Thank you.
MS. COFFEY: Sorry for the interruption.
THE COURT: Go ahead.
MR. JOSEPH: Thank you, Your Honor.
Q. (BY MR. JOSEPH) I think I just asked you, what was your opinion of Dr. McMillan based on?
A. He served as my associate vice president for most of the

time I was vice president for academic affairs. So I worked with him on a daily basis.

Q. And he was your subordinate?

A. Yes.

Q. When you were interim president, were you the one that ultimately elevated Dr. McMillan to interim vice president of academic affairs?

A. Yes.

Q. Dr. Snowden, as the vice president of academic affairs, did you provide any guidance or training to your department chairs about how tenure portfolios should be reviewed?

A. Yes, I did. And I also did that with new faculty during their orientation process.

But I worked primarily with deans at that time but also department chairs.

Q. And were you fairly detailed about that?

A. Fairly.

Q. Dr. Snowden, are you -- in full disclosure to the jury, are you currently married to Dr. Lucretia Scoufos?

A. Yes.

Q. But she never served as dean when you were vice president for academic affairs or interim president; is that correct?

A. No.

Q. Okay. She didn't serve in that capacity?

A. No, she did not.

Q. Okay. Were you, in fact, married to someone else at the time?
A. Yes.
Q. Okay. And when you first retired from Southeastern in 2008, did you move away from Durant at that time?
A. Yes, I did.
Q. And where did you go?
A. To Norman, Oklahoma.
Q. And why did you go to Norman?
A. My wife at that time was on the faculty at the University of Oklahoma.
Q. And when you moved away to follow your then wife to Norman, did you make any recommendations to your successor about who should replace former Dean Mangrum?
A. Yes, I did. I learned shortly before I was going to retire that Dean Mangrum was also going to retire that year. And so I met with Dr. Larry Minks, who was the incoming vice president for academic affairs, and told him that Dean Mangrum was retiring.

And I also knew the financial conditions of the university at that time, and I said, you probably won't be able to do an outside search for a dean, which would be the ideal thing. And I felt that there was one person that was uniquely qualified to replace Dean Mangrum.

Q. And did you then recommend Dr. Scoufos?

A. Yes, I did.
Q. And just very briefly, based on what observations?
A. Based on her performance as department chair, primarily, and the way that department had flourished under her leadership.
Q. Dr. Snowden, during the period of a year, roughly, when you were interim president, did you typically give feedback to tenure and promotion candidates before you had finalized your decision on the portfolio?
A. No.
Q. And during the time that you were interim vice president for academic affairs, did you typically give candidates feedback before the process had concluded?
A. I wasn't interim vice president.
Q. I'm sorry. I misspoke.
When you were vice president for academic affairs.
A. Yes. With President Johnson's permission, I copied the candidates, the department chair, and, I believe, the chair of the promotion and tenure committee on my decision and also the reasons for that.
Q. And would you give that to the candidates before the president had made his decision?
A. Yes.
Q. Okay. Was that required?
A. It was not required. I just felt that that was a good

thing to do. It was a courtesy to the candidates either way. If they were being granted tenure, they could relax a little bit, because usually my recommendation was the one that ended up being -- in fact, it was in every case.

Q. And --

A. And if they were not going to be granted tenure, they needed all the time to prepare for that eventuality.

Q. To start looking for a job elsewhere?

A. Yes, to look for a job.

Q. And if another person, another professional in your same position at that point, made the business decision that they wouldn't give feedback until the process had concluded, would that be a legitimate decision?

A. It would be. And that is the way it's done at some places.

Q. Okay. Dr. Snowden, do you think that the faculty senate is the appropriate place for a faculty member to appeal a tenure decision?

A. No, I do not.

Q. Okay. Do you think the faculty sometimes regards the administration as nonacademic and interlopers?

A. I can't really speak to that, but I've seen some evidence of that from time to time.

Q. Dr. Snowden, in your vast career in higher education, was it your observation or experience that tenure applications are

either granted, withdrawn, or denied?
A. Yes.
Q. And if they are actually denied and not withdrawn before that, does the applicant then get to apply again?
A. No.
Q. And was that your experience at multiple schools in multiple states?
A. Absolutely, yes.
Q. Dr. Snowden, you remember that there's a document at Southeastern called the Academic Policies and Procedures Manual?
A. Yes, I do.
Q. Sometimes it's referred to as the APPM?
A. Yes.
Q. Okay. Under Southeastern's APPM at the time that you were vice president for academic affairs and interim president, did the policies say that an applicant could apply in the fifth, sixth, or seventh year, or did it say fifth, sixth, and?
A. It was fifth, sixth, or --
Q. Or.
A. -- seventh year.
MR. JOSEPH: No further questions, Your Honor. Thank you, Dr. Snowden.
THE COURT: We'll take our morning break before we

resume. Let me instruct you not to discuss the case or permit others to discuss it with you.

Please be back in your room at 20 after, and we'll be in recess.

MR. YOUNG: Your Honor, may we briefly approach?

THE COURT: Yes.

MR. YOUNG: Thank you. Sorry.

THE COURT: You-all go on.

(Jury exits courtroom.)

(The following proceedings were had at the bench and out of the hearing of the jury.)

MR. YOUNG: With all honesty, my overzealous co-counsel jumped up for an objection of the cross-examination that I had prepared to handle for Dr. Snowden. Marie -- Ms. Galindo can't handle it because I'm the one who prepared it.

We're very tired.

THE COURT: Okay.

MR. YOUNG: Thank you. I just wanted to disclose that. Thank you, Your Honor.

MS. COFFEY: What was that, Your Honor?

THE COURT: Somebody else objected and it's his witness. He's asking permission to take the witness.

(In recess from 11:04 a.m. to 11:25 a.m.)

(Jury enters courtroom.)

THE COURT: Be seated.

You may proceed.

MR. YOUNG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. YOUNG:

Q. Good morning, Dr. Snowden. It's good to see you again.

A. Good morning.

Q. I have a few questions for you.

Dr. Snowden, you were deposed for this case I think about a year and a half ago; is that right?

A. That's right.

Q. And do you remember at that deposition that, after some other attorneys asked you some questions, I asked you some questions?

A. Yes.

Q. Okay. I'm going to do my best to not give you a transcript from that deposition but to just help you recall things if you don't recall them. Okay?

A. (Nods head.)

Q. Thank you.

So I believe a few minutes before we did the break, towards the beginning of your testimony today, you mentioned the fact that Dr. Tudor never complained to you about restroom restrictions at Southeastern. Is that right?

A. Yes.

Q. And that was even though you were the president -- or

interim president of Southeastern in 2007?
A. Yes.
Q. Okay. Is the president or interim president at Southeastern the appropriate person for a faculty member to make a complaint of discrimination to?
A. Could be. The president usually has an open-door policy for those kinds of things, although there are other avenues, of course.
Q. Explain to the jury what the open-door policy is for the president.
A. If a faculty member or anyone, a student, wants to see the president, they can make an appointment and do that. And I'm sure that's the same policy now.
Q. Do you think that the open-door policy has been a consistent policy at Southeastern, to your knowledge?
A. To my knowledge, it has.
Q. So if a faculty member had a discrimination complaint, a retaliation complaint, they could knock on the door of the president of the university and ask for a meeting?
A. Yes.
Q. Is that how you conducted yourself when you were interim president?
A. Yes.
Q. Did you ever talk with Dr. McMillan about that open-door policy? I know you mentored him for a bit when he worked

under you.
A. I'm sure I did or he was certainly aware of it.
Q. Do you think the open-door policy at Southeastern is an important part of shared governance?
A. I hadn't thought of it that way, but, yes, it could be.
Q. Can you explain to the jury?
A. Well, if someone wants to speak directly to the president of the university, they can. They can make an appointment and do that. They don't have to go through an intermediary.
Q. Okay. So at your deposition you told me a little bit about some policies that you considered when you were interim president at Southeastern. I want to ask you about a particular one.
Did you testify at your deposition that you thought external peer review of tenure portfolios might be a good way to ensure that there's not bias in the tenure and promotion process?
A. I did say that. And that is a policy that's used at many universities.
Q. Can you explain to the jury why you think that's a good policy?
A. Well, if someone, during that probationary period, is expected to produce a body of work that will be known in their field, then people from other universities should know about their work.

And it's a practice at some schools to send those -- send their vitae around to maybe five or six external people maybe at five or six different universities and just ask them what they think of their work. Have they heard of it? What do they think the quality is?

You don't ask them whether the person should be promoted or tenured, but it's just a way to assess the quality.

Q. Do you think that gives you an important different perspective than the sort of perspective you might get from people at the same university reviewing that portfolio?

A. That's possible, yes.

Q. Just -- I believe you said that at your deposition; you can correct me if I'm wrong. But if you did external peer review in the matter that you just described, would you send those portfolios to people who were professors in the same discipline as the applicant?

A. Not only the same discipline but the same specialty within that discipline.

And it's really more appropriate for larger, more research-oriented universities, where, literally, a person is expected to develop a national reputation in their discipline before they're granted tenure.

And at a smaller school like Southeastern, that would not be the expectation necessarily.

Q. Okay. I'm not sure if you recall this part of your

deposition either, so you can correct me.

I think we talked about possibilities for problems in the abstract happening at the different levels of tenure review process.

Do you sort of vaguely recall that?

A. I vaguely do. I don't remember it exactly, but...

Q. Okay. So let's see if you remember. And if you don't, I'll move on.

Do you recall telling me that it's possible that if, at the dean level at Southeastern, the dean doesn't particularly like you, that bias might factor in -- into the decision?

A. I don't recall saying that, but, again, if that were the problem -- and I'm not saying it was in any case that I know of -- but that's another reason for the multitiered review.

Q. Okay. And then do you recall telling me that if, at the vice president for academic affairs level, the next step in the review process, there were a vice president who were a bit inexperienced or didn't like you, that bias or some other problem might factor into the decision?

A. I've never seen that at that level.

Q. But is that something that could happen?

A. Sure, it could. Everybody is human.

Q. Okay. And I just want to take you one more step in the process --

A. Okay.

Q. -- as president. Okay? A position that you're familiar with.

If at Southeastern, at the time you worked there -- not after -- bias or some other issue arose at the president's level, was there any check on the president's decision on that tenure application?

A. Not when I was there. I think the board is the final -- final body that receives that. And, at that time, the board had given that authority to the president, and the president simply reported it to the board.

It's my understanding that has changed and that the board now also reviews those, but I'm not sure exactly how that works.

Q. Do you generally recall when about that change in policy happened, that the RUSO board reviews the process?

A. I don't know.

Q. I believe at your deposition you told me it was sometime in 2012 when a system called EthicsPoint was developed or adopted.

A. Again, I don't recall.

Q. Okay.

A. It was after 2008.

Q. Okay. Definitely after 2008.

Okay. A little bit earlier today, when Mr. Joseph was asking you questions, you talked a little bit about

probationary status for tenure-track faculty, and I have a few questions for you on that.

A. Okay.

Q. I think you said tenure-track faculty have about seven years before they can -- have to get tenure or leave. Is that right?

A. That's the maximum.

Q. Maximum. Okay.

And did you say that your experience at Southeastern was that, if someone applied for tenure at any point during the probationary period and did not get it, that they would have to leave?

A. Yes.

Q. Was that a written rule at Southeastern?

A. I believe it is, and board policy.

Q. I'm sorry. Can you clarify for the jury when you say "board policy"?

A. The Regional University System of Oklahoma policy, which is the basis for all the universities' promotion and tenure policy.

Q. And if other schools in the Regional University System of Oklahoma allowed professors to reapply for tenure after being denied, would that, to you, suggest that it isn't RUSO policy that you can't reapply?

A. That's my understanding of it.

Q. Okay. But just speaking between us, would -- if -- other RUSO schools, if they allowed their professors to reapply for tenure after they had been denied, would that suggest to you that RUSO policy does not prohibit reapplication?

MR. JOSEPH: Objection. Asked and answered.

THE COURT: Overruled.

Q. (BY MR. YOUNG) That means you can answer. We have a judge now. It's a little bit different than the deposition.

I'll ask the question again. Sorry.

If there were professors at different schools and they were allowed to reapply for tenure after being denied, would it suggest to you that RUSO policy does not prohibit reapplication?

A. It might. I would have to see examples of that.

Q. Examples of folks who were allowed to reapply?

A. Right.

Q. Okay.

A. My interpretation is that you cannot.

Q. Is your interpretation based upon a policy at Southeastern?

A. Yes.

Q. Is that policy contained in the Academic Policies and Procedures Manual?

A. Yes.

Q. Okay. Is that something that you're familiar with?

A. I was familiar with it at the time I was there. Now I would not be familiar with any changes that have taken place.
Q. Okay.
MR. YOUNG: May we approach, Your Honor?
THE COURT: The bench or the witness?
MR. YOUNG: The bench, Your Honor.
THE COURT: Yes.
(The following proceedings were had at the bench and out of the hearing of the jury.)
MR. YOUNG: As a frank courtesy, Mr. Joseph, I was wondering if we could agree to admit Plaintiff's Exhibit 4. It's the section of the Academic Policies and Procedures Manual. I'll be honest. We misplaced our duplicate copy. I just wanted to be able to project one page of it. I don't think you guys dispute authenticity. I see no objections to it on the --
MR. JOSEPH: Is this the one you gave us? Which year is it?
MR. YOUNG: This is the one you gave the EEOC saying it was in place, last revised 1998, and, in fact, the time Dr. Tudor applied for promotion and tenure. It's the version we've used throughout all the depositions.
MR. JOSEPH: And so what is it --
MR. YOUNG: I was wondering if you would just agree that we could admit because I don't think anyone reasonably

disputes the authenticity.

MR. JOSEPH: No. I mean, the policy is the policy.

THE COURT: It will be admitted.

MR. YOUNG: Thank you, Your Honor.

(The following proceedings were had in open court with all parties present and within the hearing of the jury.)

THE COURT: Linda, I just admitted Plaintiff's 4.

MR. YOUNG: Okay.

Q. (BY MR. YOUNG) Sorry. I can't just hand you things in court. A few things are different.

Dr. Snowden, I'm going to show you a portion of the Academic Policies and Procedures Manual.

And you said that you thought the rule about when you could apply is in that manual; is that right?

A. I'm sorry?

Q. Sorry. Let me withdraw that line of questioning. I'm going to put something on this overhead here. Okay?

Can you see that on the screen next to you?

A. Yes.

Q. I'm going to try to make it a little bit bigger for you and the jury.

MR. JOSEPH: What exhibit number is this?

MR. YOUNG: This is Plaintiff's Exhibit 4. It's -- for the benefit of defendants, it's EEOC page 332.

Q. (BY MR. YOUNG) So, Dr. Snowden, is this the policy that

you were talking about in the Academic Policies and Procedures Manual where it says you can't reapply after you've been denied for tenure?

A. Yes.

Q. Okay. Can you tell me where exactly it says you can't reapply if you're denied?

A. It says, "During the fifth, sixth, or seventh year."

Q. So what would the wording be if it didn't have a bar on reapplication? Is there something --

A. It would say "and."

Q. Okay. So I have a question for you about that.

If we replaced the word "or" with "and," would that make sense? Wouldn't that sentence read that you apply for tenure in the fifth, sixth, and seventh year?

A. To me, that would mean that you could reapply.

Q. But would someone who got tenure reapply after they got tenure?

A. There would be no need.

Q. I just don't understand why putting an "and" there makes any more sense than an "or."

MR. JOSEPH: Objection, Your Honor. Relevance, speculation, asked and answered.

THE COURT: Overruled.

THE WITNESS: I will say this: At the seven universities where I've worked, I don't know of any case where

someone has been able to reapply for tenure after they've been denied. I'll just say that.

Q. (BY MR. YOUNG) And I respect --

A. And my interpretation of this policy is that you cannot.

Q. Because the "or" isn't an "and"?

A. Correct.

Q. Is there any reason -- other reason beyond that that's specific to Southeastern that makes you believe that this written policy specifically says you cannot reapply for tenure after you're denied?

A. I think the "or" says it.

Q. Okay. I have another question about this policy, so I'm going to leave this up like this. Okay? If you need me to move it around, just let me know. Okay?

Is your interpretation of this policy that, if you're denied at any level of the tenure and promotion process at Southeastern, that that ends things, you can't keep going?

A. Yes, that would be my interpretation.

Q. So if you're denied at the dean level, your application stops?

A. No. I'm sorry. I retract that.

No, it goes through all the levels. And it can be changed at any succeeding level going up. For example, if the dean -- and this happened to me as a dean a couple of times --

Q. Uh-huh.

A. -- did not recommend promotion and tenure, the vice president could recommend it or the president could.
Q. Okay. Let's talk about one of those situations. You don't have to give any specific professor's name. We'll just talk about the general predicament, someone being denied at one level but their application continuing to go. Okay?
Do you think it would be important to a candidate who was denied at some point in one of those levels before the application was done for them to be able to speak to someone at one of those lower levels who denied them to figure out if there was a problem?
A. Not necessarily, no.
Q. Didn't you say a little bit earlier that Southeastern had an open-door policy?
A. Well, an open-door policy to discuss things with the president.
Now, if -- the candidate is not supposed to know what the recommendation was at any level. It's important to state that these are only recommendations until it gets to the president.
Q. So the candidate is not supposed to know the decision at any level before the president votes on it?
A. Yes.
Q. But didn't you just testify earlier that you sent --
A. Yes --
Q. -- candidates letters with explanation and --

A. As vice president, I did do that, yes.
Q. I'm sorry. We need to respect our court reporter, so we don't talk over each other.
A. That was late in the process. It was at the same time it was going to the president.
Q. But before the president made a decision?
A. Yes.
Q. And you did that so that the candidate would know why a decision was made at a lower level?
A. That's correct.
Q. If a candidate didn't get an explanation, let's say at the vice president's level, and their application was going on to the president's level, at that time, under Southeastern's open-door policy which we talked about earlier, would it be appropriate for the professor to go to the vice president for academic affairs to find out why that person denied their application?
A. Why the person below the vice president did?
Q. Yeah, or the vice president.
A. Oh, sure. They can go and discuss that. With me, they could.
Q. Do you think it would violate Southeastern's open-door policy if the vice president or the dean refused to meet with a professor in that sort of situation?
A. That is optional with the person. The policy did not

require that.
Q. Okay.
A. That was my policy.
Q. Did you train Doug McMillan on that policy?
A. I believe I did. He was not directly involved with promotion and tenure when I was at Southeastern until the year I was interim president, but I believe he was aware of what I was doing.
Q. Did you talk to him about what you were doing?
A. I'm sure I did.
Q. Okay. You said it's not required by policy; it was optional, this open-door policy. Is it permissible, to your understanding at Southeastern, for someone to treat candidates for tenure and promotion inconsistently?
Let me give you an example. To talk to some candidates about a decision made on their application but not to talk to other candidates?
A. I'm not aware of that happening.
Q. Do you think it would be fair?
A. Not especially.
Q. Okay. Do you recall telling me at your deposition that you thought that wouldn't be fair?
A. I don't remember what I said, but...
Q. I think you said that, when you were still at Southeastern -- I believe you meant interim president -- that,

at that time, Doug McMillan didn't have a lot of experience reviewing tenure portfolios as an administrator. Is that right?

A. That's correct.

Q. And I know that you were interim president from -- correct me if I'm wrong -- January 2007 to January 2008; right?

A. Yes.

Q. Okay. Did Doug McMillan review any tenure portfolios that year?

A. No, they had already been reviewed. I had already done them as vice president for academic affairs. And they -- I had already sent them to the president's office, as a matter of fact.

What I did do is sit down with Dr. McMillan and go through those and explain what had happened just so he would have the -- kind of see how it was done, because, the following year, of course, he would be required to do that.

Q. When you -- would you characterize those kinds of conversations with Doug McMillan as attempts to train Doug McMillan on how to handle the tenure process as an administrator?

A. My recollection of that -- and, remember, this is 10 years ago, so --

Q. I understand.

A. -- is that we simply went through those, and I showed him the various points in each of the portfolios and showed him what I had looked at. And that was really about it.

I don't think there was much else that we did.

Q. I think you testified earlier that you have a lot of experience reviewing tenure portfolios. I think you said something like hundreds, maybe a thousand?

A. Yes, certainly hundreds.

Q. So you feel like you're pretty comfortable in how you go about reviewing those portfolios; yeah?

A. Yes.

Q. Okay. And you tried to share that wisdom with Doug McMillan?

A. Well, yes.

Q. Okay. Do you feel like he was receptive to what you were telling him?

A. I -- I don't recall exactly, but he was listening, of course.

Q. Okay. Now, do you recall dealing with a professor, Dr. Mark Spencer, while you were interim president during his tenure and promotion cycle?

A. No. I dealt with him when I was vice president.

Q. I'm sorry? You dealt with him as vice president?

A. Yes.

Q. What do you recall about that application?

A. I recall his -- when his portfolio came up, he had two publications that had been submitted but not -- were not in print yet, and I thought he was really on the borderline of being an acceptable candidate.

So I called him and asked him about those two publications. And he said, "I think they're going to be published within the period of the consideration of promotion and tenure."

And so I told him when the schedule was, when the recommendations were going to the president, and to let me know if those were published, because I was reluctant to recommend him without more evidence of scholarship.

Q. Okay. You said you were reluctant because two unpublished but written articles --

A. Yes.

Q. -- weren't enough scholarship?

A. Submitted for publication.

Q. Okay.

A. And maybe he even said accepted, but I'm not sure. I don't -- again, we're talking about 10 years ago.

Q. Okay. That's perfectly fine.

So you were the vice president for academic affairs at the time; right?

A. Yes.

Q. I just want to make sure I got the title right.

And you got the portfolio from Mark Spencer, and you had a concern --

A. Yes.

Q. -- that he was close to the mark but not quite clearly over it?

A. Correct.

Q. Do you think it was appropriate for you to reach out to Mark Spencer and point that out to him?

A. I did.

Q. Can you explain why to the jury?

A. This was a borderline case. And, again, this is a big decision to make, both for the faculty member and for the university.

And, with those additional publications, he would clearly be eligible for promotion and tenure. Without them, I probably would have recommended against it. So it was critical, if those were going to be published that year, before the recommendation went to the president, for me to know about it.

And, indeed, at least one of them, maybe both, were published. So...

Q. So just to clarify, you sought out extra information from Mark Spencer that wasn't part of his CV or otherwise in his portfolio?

A. It was there; it just was there in a form that was

incomplete in that they had not been published.

I didn't allow him to add anything to the portfolio, but I wanted to know the status of those two publications.

Q. Okay. Well, let me ask you a slightly different question, because I think we might have talked past each other there.

So I understand that you're saying that you didn't let him add anything --

A. Right.

Q. -- but you were seeking from Mark Spencer at that point, before you made an important decision, additional information from him just to clarify what the status of those articles was because that was the issue?

A. Yes.

Q. Do you think that was the right thing to do, to ask for clarification from a professor?

A. Yes, in that case.

Q. Would it be in all cases if there was a borderline case like that?

A. That's the only one -- of those hundreds I've looked at. That's the only one I've seen that was exactly that way.

Q. Okay. But if there had been another case, a similar one --

A. Yes.

Q. -- where you just needed a little bit more --

A. Yes.
Q. -- information --
A. I would have done the same thing.
Q. I'll just remind you, sir, if we can try to not speak over each other. I'll try to pause a little bit too; I speak a little fast.

Did you talk to Doug McMillan about Mark Spencer's borderline case? Is that one of the ones you handled when you were trying to show Doug McMillan how you were going through these applications?
A. I believe I did, yes.
Q. Okay. So do you think you ever discussed with Doug McMillan why you reached out to the person with this borderline case and why it was important to do that?
A. I'm sure it would have come up as we reviewed those portfolios. I don't remember specifically doing that.
Q. But it was a big enough point?
A. Yes.
Q. Okay.
A. It was a very unusual situation, so I would have definitely pointed that out.
Q. And you might not recall, because I realize that was many years ago, but do you happen to recall whether you told Doug McMillan that he should never do something like that?
A. I wouldn't have told him that.

Q. Okay.
A. He --
Q. Sorry, sir. Were you going to say something more?
A. No. I -- he would be qualified to make his own decisions, but I gave him that illustration of what could happen --
Q. Uh-huh.
A. -- in a borderline case.
Q. Just to clarify, that advice you gave him when you were commenting on what you did with Mark Spencer's application, was that based upon all of your experience in reviewing all of those hundreds of tenure portfolios?
A. Yes.
Q. At that point, how many portfolios had Doug McMillan reviewed as an administrator?
A. I don't really know. He had been a department chair, so he had done it at that level, but I don't know.
Q. Do you have any understanding as to whether he ever reviewed a tenure portfolio at that time, up to that time, outside of the department in those higher levels of administration?
A. No, I don't.
Q. Okay. Well, at Southeastern, the only levels outside of the department, right, are the dean, the vice president for academic affairs at the time, and the president; right?

A. That's correct.
Q. When you were interim president, had Doug McMillan ever held any of those positions: dean, vice president for academic affairs, or president?
A. No.
Q. Okay. So is it likely that, at that point in time, Doug McMillan had no experience reviewing those portfolios as a higher-level administrator?
A. Yes.
Q. Okay. Now, I think you said a few moments ago that you feel pretty confident that you made the right decision with Mark Spencer's application; right?
That it was a borderline case and it was okay to reach out to the candidate; right?
A. Yes.
Q. Okay. Did your decision to reach out to Mark Spencer create any precedent at Southeastern, that that was now from that day forward the proper way to deal with a situation like that?
A. I wasn't aware of any before or after. That was my decision.
Q. Okay. So, to your understanding -- because I know you were at Southeastern for quite some time -- just because some administrators happened to do things a certain way for a certain amount of time, does that change the written rules

that are in the APPM, the Academic Policies and Procedures Manual?

A. No.

Q. Okay. Have you ever heard of an administrator at Southeastern citing precedent, something that's unwritten in the rules, as a basis to make a decision on how to treat a tenure application?

A. I'm not aware of that, no.

Q. To your knowledge -- and you were at Southeastern for quite some time -- do you think that would be an appropriate thing to say, that a precedent could be created that created a rule that was outside of those written rules in the APPM?

A. No, I'm not aware of --

Q. Well, I'm not asking whether you're aware; I'm saying based upon your judgment.

You're a very seasoned administrator. Do you think that would be appropriate to --

A. No, because each new generation of administrators, they're required to follow policy, but exactly how they do that is a personal preference oftentimes, and they're not bound by the precedent of their predecessor.

Q. Okay. So if the written rules at Southeastern on tenure applications in the APPM don't clearly say -- and I know we might have different interpretations -- but don't clearly say that someone is not allowed to reapply for tenure after

they've been denied, is an administrator at Southeastern allowed to make up a rule based upon precedent?

A. I would think not.

Q. Have you ever heard of such a thing happening at Southeastern?

A. No.

Q. Do you think that would be inappropriate?

A. I do.

Q. Can you explain why?

A. Simply because, again, this is such an important -- they say this is the most important decision that an academic administrator makes, whether to keep a faculty member as a tenured faculty member. And if there's a question about that, you probably should not do it. And allowing them to apply again and again, to me, violates that principle, whether it's written or not.

Again, I've been at seven universities. I've never seen or heard of people being allowed to reapply after they've been denied tenure.

Q. But would you agree that there might be rare cases, like Mark Spencer's, exceptional cases, where things are done a little bit differently?

A. I didn't view that as being done differently.

Q. Well, how would you characterize Mark Spencer's application?

A. He -- he was very strong in the other areas. It was his scholarship, his research, that was borderline. But with those two publications, it would have been perfectly acceptable.

And that was the basis for my decision to talk to him. And my only request is if these are going to be published by a certain date -- and I cannot remember what that was; it was probably January of the next year -- let me know because it's important.

I told him at the time that I'm really -- without those two, I don't think I can recommend you.

Q. Would just two publications be enough?

A. Well, he had others, but --

Q. But the two --

A. -- two peer-reviewed, as I recall. Again, 10 years ago and I haven't seen it since, but...

MR. YOUNG: Just a couple of questions, and then I'll pass the witness, and we can be done with him and move on.

Q. (BY MR. YOUNG) Do you recall at your deposition telling me that at some point Doug McMillan asked you to write a letter explaining what you did with Mark Spencer's application?

A. Yes, he did.

Q. When Doug McMillan asked you to write that letter, did he

provide you with any of the materials that were part of Mark Spencer's application or documents?
A. No, nothing.
Q. Did you write that letter from memory?
A. Yes.
Q. Are you certain about everything that you wrote in that letter is accurate?
A. I'm not certain. Again, that was about eight years out as well.
Q. Okay. Did Doug McMillan tell you why he was asking you to write that letter?
A. I don't believe he did. I don't recall that he did. I assumed that he was -- had another case similar to it.
Q. A borderline case?
A. Yes.
Q. Okay. Just one last question.
To your recollection, based upon your interactions with Dr. Mark Spencer, did you find him to be a truthful person?
A. As far as I know. I had very little interaction with him.
Q. But based on the interactions you had with him -- because you sat with him a few times; right?
A. I had no reason to believe he was not.
Q. Has anything changed since the last time you spoke to him?

A. No. I don't think I have spoken to him since then.

MR. YOUNG: Okay. Fair enough, sir.

No further questions.

THE COURT: Redirect?

MR. JOSEPH: None, Your Honor. Thank you.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MS. COFFEY: Defendants rest, Your Honor.

THE COURT: Does plaintiff have rebuttal?

MR. YOUNG: We have a rebuttal witness. We're going to call --

MR. JOSEPH: Your Honor, may the witness step down, please?

MR. YOUNG: Oh, yes. I'm sorry.

THE COURT: I'm sorry. I thought I told you.

MR. YOUNG: Thank you, Mr. Joseph.

THE COURT: Yes. Call your witness.

MR. YOUNG: Dr. Charles Weiner.

THE COURT: While we're waiting, counsel come up.

MR. YOUNG: Yes, Your Honor.

(The following proceedings were had at the bench and out of the hearing of the jury.)

THE COURT: Tell me exactly the two areas of inquiry.

MR. YOUNG: Dr. Weiner's conversations with Cathy Conway about Dr. Tudor's restroom use.

And then, I believe, the other area is limited to Dr. -- the subject matter of an e-mail that Dr. Weiner wrote. I think it's two e-mails in a chain. I think, off the top of my head, it's Plaintiff's Exhibit 35.

MS. COFFEY: No idea.

MR. YOUNG: I believe it's Plaintiff's Exhibit 35. I believe it's April 1, 2010.

THE COURT: Okay. Well, I assume that will take no more than 10 minutes.

MR. YOUNG: I think so, Your Honor. Maybe eleven, but short.

THE COURT: Don't tell the witness what you're going to ask them.

MR. YOUNG: I will not.

THE COURT: Don't thank the witness for answering. Don't ask him what they said in their deposition unless you're going to use it to impeach.

MR. YOUNG: I will, Your Honor.

THE COURT: You-all are driving me crazy.

MR. YOUNG: Understood, Your Honor. Thank you.

(The following proceedings were had in open court with all parties present and within the hearing of the jury.)

THE COURT: Please face the clerk and be sworn.

(Witness duly sworn.)

THE COURT: I just have to ask because I can't see. Are those palm trees or marijuana plants?

THE WITNESS: I hope they're palm trees.

WHEREUPON, CHARLES WEINER, Ph.D., after having been first duly sworn, testifies in reply to the questions propounded as follows:

REBUTTAL EXAMINATION

BY MR. YOUNG:

Q. Okay. I have a few questions for you, Dr. Weiner, and we're going to try to keep this as brief as possible. Okay?

So I want to ask you a little bit about what you recall regarding conversations that you had with Cathy Conway, the former director of human resources at Southeastern around the time that Dr. Tudor went through a gender transition. Okay?

Do you recall talking to Cathy Conway about what Southeastern should do about what restroom Dr. Tudor should use?

A. Yes.

Q. What do you recall?

A. I just recall that there were issues with her using the restroom on the third floor and that we should ask her to use the restroom on the second floor.

Q. Was there a difference between the restroom on the third floor and the second floor?

A. The second floor restroom was unisex and one person could use it at a time. The third floor restroom was communal and many people could go in.
Q. A communal women's restroom?
A. Yes.
Q. Okay. Would you mind moving your mic a little bit closer. I'm just having a little bit of trouble hearing you.
A. Is that better?
Q. Thank you. Yes.
Did Cathy Conway tell you that there had been any complaints about Dr. Tudor's restroom use?
A. The complaints were that people in the department, other professors, other female professors in the department were complaining that she was using the bathroom on the third floor.
Q. Did Cathy Conway specify which professors made those complaints?
A. No.
Q. Was your only understanding of the existence of those complaints what you gleaned from what Cathy Conway told you?
A. Yes.
Q. Okay. Did you direct Cathy Conway to do anything after she told you about those complaints?
A. I could not direct Cathy to do anything.
Q. Okay.

A. So...
Q. Did you give her any advice?
A. No.
Q. I believe at your deposition you told -- you said something to the effect of -- that you told Cathy Conway that it would be best that Dr. Tudor not use the women's restroom.
Do you recall that?
A. No.
Q. Okay. Were you telling the truth when you took your deposition about a year and a half ago?
A. Yes.
Q. Okay. Did you talk to Cathy Conway about anything else with regards to Dr. Tudor's restroom use?
A. I -- I can't recall.
Q. Okay. You might not recall this, but do you recall what your position was in 2007 at Southeastern?
A. In 2007, assistant vice president for academic affairs.
Q. So that's within the higher levels of the administration; is that right?
A. Yes.
Q. Okay. In 2007 did you personally think that Dr. Tudor should not use the women's restroom before having sex reassignment surgery?
A. Yes.
Q. Can you explain that?

A. I just thought it would be in the -- in her best interest and everybody else's best interest if she used the unisex bathroom on the second floor.
Q. Did you tell Cathy Conway that?
A. Probably. I really cannot recall exactly what was said between the two of us.
Q. Okay. That's all I'm going to ask you about on that subject. And one other subject I'm going to ask you some questions about.

So, Dr. Weiner, do you recall having conversations with Charlie Babb in 2010 about tenure and promotion rules at Southeastern with regard to Dr. Tudor?
A. I remember having conversations with him. I don't remember what year it was.
Q. Okay. Fair enough.

I'm going to put something up on the projector -- you have a screen in front of you -- that has been previously entered, I believe, as Plaintiff's Exhibit 35. Okay?

Do you remember this e-mail right here, April 1, 2010?
A. Repeat your question, please.
Q. Do you recall at all writing this e-mail?
A. Yes.
Q. Okay. I'm going to show you -- sorry. It's a printed e-mail. I'm going to show you the rest of the e-mail.

THE COURT: Do you have a question?

MR. YOUNG: I was just letting him read the e-mail first, Your Honor.

THE COURT: Well, ask your question.

MR. YOUNG: Okay.

Q. (BY MR. YOUNG) I'm going to draw your attention to this bullet point at the end of this e-mail. Okay?

A. Okay.

Q. Do you recall how you arrived at the conclusions in this bullet point?

A. I do.

Q. How did you arrive at that conclusion?

A. It's in the policies and procedures manual.

Q. Okay. I'm going to put on a page of Plaintiff's Exhibit 4. And I apologize, sir. I had written on it for someone else. So apologies. Just ignore that. That's an "or" there.

Dr. Weiner, was it your understanding, at the time that you wrote that e-mail that was Plaintiff's Exhibit 35, that this policy, Policy 4.6.3, allowed a professor to reapply for tenure, even if they had been denied, so long as they did so within the seven probationary years they had at Southeastern?

A. The window was for three years, not seven years.

So they had a -- you know, they had the fifth, sixth, and seventh year in which they could apply.

And if they applied and were denied, they could apply

again.
Q. Okay.
A. That was my understanding.
Q. Okay. You worked in the academic affairs office?
A. Yes.
Q. Was it your job to know what these rules meant?
A. Yes.
Q. Are you confident, sitting here today, that you still understand or recall what these rules meant to you at the time you wrote that e-mail that's Plaintiff's Exhibit 35?
A. Yes.
Q. No uncertainty?
A. No uncertainty.
Q. Okay.

MR. YOUNG: That's all, Your Honor.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. BUNSON:
Q. Good afternoon, Dr. Weiner.

In your conversations with Cathy Conway, isn't it true that Cathy Conway just wanted to give Dr. Tudor as many restroom options as possible?
A. We discussed what would be the best possible option.
Q. To your knowledge, did Cathy Conway ever talk to Dr. Tudor after your discussion?

A. I'm not aware if she did.

MR. BUNSON: Your Honor, may I have one brief moment with my co-counsel?

THE COURT: Ever so brief.

MR. BUNSON: Ever so brief, Your Honor.

No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Any additional witnesses?

MR. YOUNG: No additional witnesses, Your Honor.

THE COURT: Does the defendant have surrebuttal?

MS. COFFEY: No, Your Honor.

THE COURT: All right. Members of the jury, that concludes the evidence in this case.

The next step is for me to instruct you as to the law, following which counsel will make their closing arguments to you.

I am ready to do that now or I'm ready to send you to lunch and come back all fresh and well fed.

My instructions probably will take about 20 minutes and then counsel have a total of 40 minutes for closing arguments. So that may influence your decision.

Do you want to go to lunch now?

We can see how the verdict is going to go in this case. I think I finally got a deciding vote down there.

Okay. We'll break for lunch.

Don't discuss the case, don't permit others to discuss it with you.

Understand that, when we come back, we'll probably have at least an hour and a half without a break. So do what you need to do before you come back in.

Please be in -- wherever you want to be. You do leave this floor to go to lunch, don't you?

Okay. Be in the jury assembly room downstairs at 1:15, and we'll be in recess.

(Jury exits courtroom.)

THE COURT: I've been meaning to rule on the remaining issue and plaintiff's motion to strike affirmative defenses.

The defendants have not asked for a *Faragher/Ellerth* instruction. I don't believe the law would support one.

I've permitted evidence of policies because it bears on so many issues, plaintiff's credibility among others.

I have -- so that motion is granted as to the defense but denied as to the evidence.

I have final instructions for counsel.

Linda.

We'll be in recess.

(Lunch recess from 12:15 p.m. to 1:15 p.m.)

THE COURT: Be seated.

(Jury enters courtroom.)

THE COURT: Be seated. I invited you in before I realized we didn't have all the parties. Sorry.

Well, it's three minutes past the appointed time. Plaintiff and counsel are not here, but I'm going to go ahead.

Members of the jury, you have heard the evidence in this case and, in a few minutes, you will hear the arguments of counsel.

It is now the duty of the Court to instruct you as to the law applicable to this case.

You will be provided a written copy of these instructions for your use during deliberations.

You are the judges of the facts, the weight of the evidence, and the credibility of the witnesses.

The weight of the evidence is not determined by the number of witnesses testifying on each side.

In determining weight or credibility, you may consider the interest, if any, that a witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice, if any has been apparent; the candor, fairness, intelligence, and demeanor of the witness; the ability of the witness to remember and relate past occurrences; the witness's means of observation and the opportunity of knowing the matters about which the witness has testified; and the inherent probability or improbability of

the testimony; and the extent to which the witness has been supported or contradicted by other credible evidence.

(Plaintiff and all plaintiff counsel enters courtroom.)

THE COURT: From all the facts and circumstances appearing in evidence and coming to your observation during the trial and aided by the knowledge that you each possess in common with other persons, you will reach your conclusions.

The arguments and statements of the attorneys are not evidence.

At times during trial, you saw lawyers make objections to questions asked by other lawyers and to answers by witnesses. This simply meant the lawyers were requesting that I make a decision on a particular rule of law.

Do not draw any conclusion from either the objections or my rulings. These are only related to the legal questions that I had to determine and should not influence your thinking.

If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

It is my job to decide what rules of law apply to the case and all the applicable laws contained in these instructions.

You must not follow some and ignore others. Even if you disagree or do not understand the reasons for some of the

rules, you are bound to follow them.

You should also ask yourself whether there was evidence that at some other time a witness did or said something or failed to do or say something which was different from or inconsistent with the testimony the witness gave during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean the witness was not telling the truth because people naturally tend to forget some things or remember some things inaccurately.

If a witness made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood. The significance of that may depend on if it had to do with an important fact or only with an unimportant detail.

The burden is upon plaintiff in a civil action such as this to prove every essential element of her claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence, the jury should find for defendants.

To establish by preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means evidence as, when considered and compared with that opposed to it, has more

convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life.

All persons stand equal before the law and are to be dealt with as equals in a court of justice. The fact that plaintiff is an individual and defendants are governmental entities should not influence your thinking either for or against either party.

The fact that a governmental entity or agency is involved as a party must not affect your decision in any way. When a governmental agency is involved, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the governmental agency.

Witnesses who, by education and experience, have become expert in some art, science, profession, or calling may state

an opinion as to relevant and material matters in which they profess to be expert and may also state their reasons for the opinion.

You should consider each expert opinion and give it such weight as you think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience or if you should conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Plaintiff's claim of discrimination based on gender is brought under a Federal law known as Title VII of the Civil Rights Act of 1964 as amended, often called Title VII.

Title VII makes it an unlawful employment practice for an employer:

1. To discriminate against any individual with respect to the terms, conditions, or privileges of employment because of such individual's gender;

2. To limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect her status as an employee because of such individual's gender;

3. Title VII does not protect people because they are transgender. Thus, for plaintiff to prevail, you must find any wrongful action occurred because of her gender or because

of a perception that that person does not conform to a typical gender stereotype.

Plaintiff alleges multiple claims against defendants. Each of the claims and the evidence applicable to the claims should be considered separately. A verdict for plaintiff or defendants as to each claim should, likewise, be considered separately.

Some evidence may pertain to more than one claim. The fact that you may find in favor of a party on one claim should not control your verdict with reference to the other claims.

Plaintiff claims that defendants intentionally discriminated against her because of her gender during the 2009-10 application cycle for tenure and by denying her the opportunity to apply during the 2010-11 tenure cycle.

Title VII prohibits an employer from intentionally discriminating against an employee by failing to promote her because of her gender.

In order to prevail on her claim, plaintiff must establish by a preponderance of the evidence the following elements:

First, that defendant denied plaintiff tenure or the opportunity to reapply for tenure;

Second, plaintiff's gender was a motivating factor for defendants' actions;

And, third, that plaintiff suffered damages as a result

of defendants' unlawful discrimination.

If plaintiff fails to prove any of the above elements by a preponderance of the evidence, your verdict must be for defendants and you need not proceed further in considering this claim.

Plaintiff claims that she was subject to a hostile work environment based upon her gender. Title VII makes it unlawful for an employee to be subject to a hostile or abusive work environment based upon the employee's gender.

In order to prevail on her Title VII claim for hostile work environment based on gender, plaintiff must establish by a preponderance of the evidence the following essential elements:

First, plaintiff was subjected to conduct by workers or supervisors at Southeastern Oklahoma State University consisting of harassment, inappropriate comments, or physical violence;

Second, such conduct was unwelcome;

Third, such conduct was based on plaintiff's gender;

Fourth, such conduct was sufficiently severe or pervasive that a reasonable person in plaintiff's position would find the work environment to be hostile or abusive;

Fifth, at the time such conduct occurred and as a result of such conduct, plaintiff believed her work environment to be hostile or abusive;

Sixth, defendants knew or should have known of the conduct;

Seventh, defendants failed to take prompt and appropriate corrective action to end the conduct;

And, eighth, plaintiff suffered some injury or damage, even if merely nominal damage, as a result of defendants' failure to take prompt and appropriate corrective action to end the conduct.

If plaintiff has not proven any of the above essential elements by a preponderance of the evidence, your verdict must be for defendants and you need not proceed further in considering plaintiff's claim for a hostile work environment.

In determining whether a reasonable person would find plaintiff's work environment hostile or abusive, you must look at all of the circumstances.

These circumstances may include the frequency of the conduct, its severity, its duration, whether it was physically threatening or humiliating, and whether it unreasonably interfered with plaintiff's work performance.

Conduct that amounts only to ordinary socializing in the workplace, such as occasional horseplay, sporadic or occasional use of abusive language, gender-, or age-related jokes, and occasional teasing, does not constitute an abusive or hostile environment. You must consider all of the circumstances and the context in which the conduct occurred.

Only conduct amounting to a material change in the conditions of employment amounts to an abusive or hostile work environment.

Plaintiff is not required to prove that her gender was the sole or exclusive reason for defendants' decisions. Plaintiff must prove only that her gender was a motivating factor in defendants' decisions.

Defendants assert there were legitimate, nondiscriminatory reasons for not promoting plaintiff. You are instructed that defendants do not have any burden of proof with respect to the reasons for their actions.

Thus, plaintiff can prevail on her claim of gender discrimination only if she proves by the greater weight of the evidence that her gender was a motivating factor in defendants' decisions to not promote her in addition to or instead of any legitimate nondiscriminatory reason or reasons.

It is not your role to second-guess defendants' business judgment. Even if you were to decide that the failure to grant tenure was neither fair nor wise nor professionally handled, that would not be enough.

In order to succeed on a discrimination claim, plaintiff must persuade you by a preponderance of the evidence that, were it not for gender discrimination, she would have been granted tenure in 2009-10 or the opportunity to reapply for tenure in 2010-11.

If you find that the stated reason or reasons given by the defendants are inconsistent or implausible or if you find that, in the actions against plaintiff, defendants substantially deviated from their own practices or customs, then you may conclude that defendants' offered explanations are a mere pretext or sham or cover-up for gender discrimination.

If you find pretext, you may also infer that plaintiff's gender was a motivating factor in defendants' employment decision. However, you are not required to draw such an inference.

If you find that defendants' explanations are not a mere pretext, you must still consider whether defendants' employment decisions were motivated by gender discrimination.

Plaintiff claims that defendants retaliated against her by denying her the opportunity to apply for tenure during the 2010-11 tenure cycle because she complained of unlawful gender harassment in the workplace.

Title VII prohibits an employer from retaliating against an employee for complaining of actions that violate Title VII.

In order to prevail on her Title VII claim for retaliation, plaintiff must establish by a preponderance of the evidence the following elements:

First, defendants were aware plaintiff had engaged in protected activity prior to the deadline for her tenure

application during the 2010-11 cycle;

Second, defendants prohibited plaintiff from submitting a tenure application during the 2010-11 tenure cycle;

Third, defendants' actions occurred because plaintiff engaged in protected activity;

And, fourth, that plaintiff suffered damage as a result of defendants' action.

"Protected activity" as used in this instruction means that plaintiff made complaints to a defendant about the alleged gender discrimination.

Alternatively, a plaintiff engages in protected activity when he or she makes complaints about discrimination to an enforcement body such as the Equal Employment Opportunity Commission and a defendant is aware of those complaints.

If plaintiff has failed to prove any of the above elements by a preponderance of the evidence, your verdict must be for defendants and you need not proceed further in considering this claim.

If you find the plaintiff has established all of the elements of any of her claims, then you must determine the damages, if any, to which she is entitled.

The fact that I instruct you on damages should not be taken by you as indicating one way or another whether plaintiff is entitled to recover anything. This is entirely for you to decide.

Damages must be reasonable and not speculative. You may award only such amount of damages as will reasonably and fairly compensate plaintiff for any injury or loss that is legally compensable.

If you should find that plaintiff is entitled to an award of damages on one or more of her Title VII claims, you may award her only such damages as you find will reasonably compensate her for the losses and injuries which you find that she sustained as a result of defendants' unlawful conduct.

You may not award damages on plaintiff's separate claim in a manner which results in a double or multiple recovery for the same harm.

Any award must fairly compensate plaintiff for her losses and injuries but must have a basis in the evidence and be reasonable in light of the evidence.

If you should find that plaintiff is entitled to damages, the following categories should be considered in determining the amount that will reasonably and fairly compensate plaintiff for her injury or loss:

Back pay damages are to compensate plaintiff for the economic injuries or losses she sustained as a result of defendants' illegal discrimination or retaliation.

You are provided a separate instruction providing you with the items that may be considered as part of any damage award for back pay.

You may also award damages for any physical or mental distress or anguish that plaintiff suffered as a result of defendants' wrongful conduct.

In evaluating the physical or mental distress of plaintiff, if any, you may consider any mental anguish, emotional pain and suffering, inconvenience, loss of enjoyment of life, damage to professional reputation, or other nonpecuniary losses which you find plaintiff experienced as a result of defendants' unlawful conduct.

Conduct by defendants that does not cause harm does not entitle plaintiff to damages. By the same token, harm to plaintiff which is not the result of unlawful conduct by defendants does not entitle plaintiff to damages.

You have heard argument that plaintiff also seeks reinstatement to employment with defendants.

You are instructed that issues of reinstatement are for the Court and you should not consider that issue during your deliberations.

Back pay damages may be awarded to compensate for the economic injuries or losses sustained as a result of defendants' unlawful conduct.

You may consider the earnings to which plaintiff proves she would have been entitled if her employment had not ended measured from the time her employment with defendants ended in May of 2011 until she began employment with Collin County --

Collin College in September of 2012. These damages are intended to put plaintiff in the economic position she would have been in if her employment with defendant had not ended.

If you find that plaintiff was retaliated against but did not suffer any actual injuries or losses, you may award nominal damages in the amount of $1.

You may not award nominal damages and back pay, emotional distress, or other compensatory damages.

I'll recognize the plaintiff for closing argument.

MR. YOUNG: Thank you, Your Honor. I'm going to move the podium. Is that okay?

THE COURT: Of course.

MR. YOUNG: Ms. Goode, do I press it or does it start running?

THE CLERK: It just starts running.

MR. YOUNG: Okay. Thank you. I'm just checking. Thank you.

The State broke the law, they violated the rules, they changed the rules so that they could break the law. They made up new rules that were only ever imposed on Rachel Tudor.

We have been here all week because a few misguided administrators did not want to accept Dr. Tudor's truth, that she is a woman, or at the very least respect her enough to let her live that truth in peace.

Instead of honoring Rachel's request, backed up by a

THE COURT: When you retire to the jury room to deliberate, you should elect one person as your presiding juror. That person will preside over your deliberations and speak for you with the clerk. You will then discuss the case with your fellow jurors to reach agreement if you can do so.

Each of you must decide the case for yourself, but you should do so only after you've considered all the evidence, discussed it fully with the other jurors, and listened to the view of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right.

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be. That is entirely for you to decide.

You must not use any method of chance in arriving at your verdict nor let sympathy or prejudice affect the outcome.

A verdict form will be sent to the jury room with you, along with these written instructions of the Court and the exhibits admitted into evidence during the trial.

I suggest you study the verdict form early in your deliberations so you know what you must decide.

The verdict must be unanimous; that is, all of you must

agree on a verdict. And when you do, presiding juror will sign the verdict. Notify the bailiff when you have arrived at a verdict so that you may return it in open court.

In a few moments you will go with the bailiff to the jury room to begin your deliberations.

If any of you have cell phones or similar devices with you, you are instructed to be sure that they are to be turned off and then turn them over to the bailiff as you enter the jury deliberation room. They will be held by the bailiff for you and then returned to you after your deliberations are completed and during any break or period when you are not deliberating.

The purpose of this requirement is to avoid any interruption or distraction during your deliberations and to avoid any question of outside contact with the jury during your deliberation.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff signed by your presiding juror.

In the message, do not tell me how you stand on your verdict. No member of the jury should ever attempt to communicate with me except by a signed writing.

You will note from the oath about to be taken by the bailiff that the bailiff, as well as other persons, is forbidden to communicate in any way or manner with any member

of the jury on any subject touching the merits of the case.

If the bailiff will come forward and be sworn.

(Jeff Lynch duly sworn as bailiff.)

THE COURT: I am sending with you one copy of my written instructions and one copy of the verdict form. I am happy to make additional copies. I just don't kill that tree until you ask me to.

So if you want more of either or both, just hand these originals out to the bailiff and tell him how many copies you want and we'll get those made.

You will also have with you all of the exhibits that have been admitted into evidence.

We would normally take an afternoon break were we in open court, and I will permit you to declare a break if you want to. But just let me caution you that you are never to discuss the case until all eight of you are behind the closed door of your jury deliberation room. If somebody leaves, then you quit talking about the case until somebody comes back.

We need to know if you take a break so that we'll know we can take a break too.

I will instruct you to follow the bailiff and begin your deliberations.

Oh. And you can take your notes with you now.

(Jury exits courtroom to begin deliberations 2:25 p.m.)

THE COURT: If you are not in the hall outside there

or somewhere -- I don't know. Linda may know where you hang out, but we need to be able to find you quickly if we get a note or a verdict.

So if you're not where Linda expects you to be, make sure she knows where you are or has a good number for you.

Are any of you leaving the courthouse?

MR. YOUNG: No, Your Honor.

MS. COFFEY: Your Honor, I may go out to my car briefly, but it would take less than five minutes.

THE COURT: It's okay.

MS. COFFEY: Okay. Well, I didn't want the representation of "no" when she left.

THE COURT: Is there anything else from counsel before we recess?

MR. YOUNG: No, Your Honor.

MS. COFFEY: No, Your Honor.

THE COURT: We'll be in recess.

(In recess at 2:25 p.m.)

(Jury deliberations from 2:25 p.m. to 4:30 p.m. Jury to return Monday, November 20, 2017, at 9:00 a.m. to resume deliberations.)

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 17th day of November, 2017.

/S/ SHERRI GRUBBS

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,

Plaintiff,

vs.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY and THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,

Defendants.

Case No. CIV-15-324-C

VOLUME 6

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ROBIN J. CAUTHRON

MONDAY, NOVEMBER 20, 2017; 12:10 p.m.

OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography, transcript produced by computer.

(Proceedings held on November 20, 2017.)

(The following proceedings were had outside the presence of the jury with all counsel present.)

THE COURT: We are on the record and outside the presence of the jury.

I have received a note indicating the jury has reached a verdict with the same initials. I don't know who that is.

I want to make a record on the two instructions I have given to the jury. One was regarding going home on Friday, and the second was this morning in response to their question regarding pay.

I just want the record to reflect that both of these responses were by agreement of counsel.

Do you confirm that, Mr. Young?

MR. YOUNG: Yes, Your Honor.

MS. COFFEY: Yes, Your Honor.

THE COURT: And Ms. Coffey? All right.

I indicated, during the trial, that the daily copy transcript should not be posted online at least until the end of the trial.

I've done some work on trying to resolve that in my own mind. There are instructions on the public website for our court which indicate that they are not avail- -- they should not be available to download for 90 days -- I suppose after the verdict?

Would you think after the verdict or after judgment? Ninety days maybe after they're prepared and handed to you. I'm not sure.

THE REPORTER: I think after they're filed.

THE COURT: After they're filed. That would make sense.

Until that time, they can be reviewed but not copied in the clerk's office. After that time, they're available to anyone who has a PACER account.

So I would instruct you, Mr. Young, to make sure those are not posted online until 90 days after they're filed, when they would be available anyway.

MR. YOUNG: Yes, Your Honor.

THE COURT: Is there anything else from counsel before I have the jury brought in?

MR. YOUNG: Nothing from plaintiff, Your Honor.

MS. COFFEY: No, Your Honor.

THE COURT: You know that your exhibits will be returned to you. You are in charge of preserving them for any appeal.

Please have the jury brought in.

(Jury enters courtroom.)

MR. BUNSON: We're missing one.

THE COURT: I know.

JUROR TAYLOR: You're still missing one.

THE COURT: We'll wait. I'm assuming he is here. Ms. Fields, are you the presiding juror?

JUROR FIELDS: Uh-huh.

THE COURT: Has the jury reached its verdict?

JUROR FIELDS: Yes.

THE COURT: Would you hand the Form of Verdict to the bailiff, please?

JUROR FIELDS: Uh-huh.

THE COURT: I will read the verdict at this time.

In the case of Dr. Tudor vs. Southeastern Oklahoma State University and the Regional University System, we, the jury, impaneled and sworn in the above-entitled cause, upon our oath finds as follows:

Section I, Hostile Work Environment Claim. Has the plaintiff proven by a preponderance of the evidence her hostile work environment claim?

The answer is "no."

Section II, Discrimination Claims 2009-10. Has plaintiff proven by a preponderance of the evidence that she was denied tenure in 2009-10 because of her gender?

The answer is "yes."

Section III, Discrimination Claims 2010-11. Has plaintiff proven by a preponderance of the evidence that defendants' decision to deny plaintiff the opportunity to apply for tenure in the 2010-11 cycle was because of her

gender?

The answer is "yes."

Section IV, Retaliation Claim. Has plaintiff proven by a preponderance of the evidence that, in retaliation for plaintiff's complaint about workplace discrimination, defendants denied plaintiff the opportunity to reapply for tenure in the 2010-11 cycle?

The answer is "yes."

Section V, If you have answered yes to any of the above, set the amount of damages to which plaintiff is entitled.

And the answer is $1,165,000.

This is dated today's date and signed by Ms. Fields as the presiding juror.

Members of the jury, for each of you I have this question: Is this your verdict?

Ms. Taylor?

JUROR TAYLOR: Yes.

THE COURT: Mr. Payton?

JUROR PAYTON: Yes.

THE COURT: Ms. Hall?

JUROR HALL: Yes.

THE COURT: Ms. Fields?

JUROR FIELDS: Yes.

THE COURT: Mr. Mallory?

JUROR MALLORY: Yes.

THE COURT: Ms. Norton?

JUROR NORTON: Yes.

THE COURT: Ms. Morse?

JUROR MORSE: Yes.

THE COURT: And Ms. Rogers?

JUROR ROGERS: Yes.

THE COURT: Members of the jury, that concludes your service in this case and your service in this term of court.

I cannot thank you enough. I know that you now know this is a much more difficult job than you thought it would be coming in.

You've obviously given this case a great deal of consideration, thought, energy, and effort. And we appreciate it.

This system of justice may not be the best, but it's the best yet devised, and it relies entirely on people like you to give us your time and energy to resolve these disputes.

I thank you very much. I know that all counsel and parties here in the courtroom thank you as well.

I will instruct you -- do they need to stop by downstairs? They probably do.

THE CLERK: I wouldn't think so.

THE COURT: Unless you need something, like a note for your employer, I don't think you need to stop by downstairs.

I am comfortable in telling you this concludes your service for this term of court unless you hear from somebody to come back, and I'm just pretty sure you won't.

You've done your jobs this time, and we thank you. I'll excuse you, have you follow the bailiff to collect your things in the deliberation room.

(Jury exits courtroom.)

THE COURT: I will instruct the -- well, I won't enter judgment on this verdict until I've resolved the questions of restatement and front pay.

I think a short round of briefing might be helpful on that.

Will there be additional evidence, Mr. Young?

MR. YOUNG: Honestly, Your Honor, would it be possible for us to think about it? I'd just like to look over the transcript and make sure it's sufficient.

THE COURT: Ms. Coffey, do you know at this point?

MS. COFFEY: Yes, Your Honor, there will be additional evidence.

THE COURT: I'd like you to give me the law first and, if it's possible, to treat it much like a motion for summary judgment with affidavits and documentary evidence.

If you know for certain you need testimony, then I would ask that you include that in your briefing as to what you need to introduce in addition to all of that.

Let's say -- let's give you-all the week off since it's Thanksgiving.

What would 14 days from next Monday be? Do you have a calendar? Oh, I have a calendar. Maybe the 11th of December. Does that sound good --

MS. NOVOTNY: Yes.

THE COURT: -- for plaintiff's brief.

Then I don't think you'll need the full 14 days. Let's have defendants' brief on the 20th and any reply by the 29th given the intervening Christmas holidays.

I will -- as I said, I'm not going to enter judgment on the jury's verdict until I have an answer on the other, I think. I don't know why I should or would.

Does it make any difference to you?

MR. YOUNG: It would make a difference, I think to plaintiffs as well as defendants, because we're entitled to costs and fees.

I believe the cost application is due 14 days from the date you enter judgment on the verdict.

THE COURT: Okay. Well, I'll just not enter judgment then.

MR. YOUNG: Okay.

THE COURT: Anything else? I don't know if I asked that or not.

MS. COFFEY: Your Honor, is this the appropriate

time, or do we submit it at some point later, for judgment notwithstanding the verdict on behalf of defendants?

THE COURT: I would say if you want to file a written motion, the same schedule would apply. Fourteen days from Monday would be your opening brief on that.

As counsel are aware, under our local rules, you are not permitted to contact the jurors or speak to them.

If they want to contact you, they may, but they won't. If you want to ask my permission to contact them, you may, but I won't give it, so just to give you a head's up on that. We'll be adjourned.

(Adjourned at 12:15 p.m.)

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 20th day of November, 2017.

/S/ SHERRI GRUBBS

SHERRI GRUBBS, RPR, RMR, RDR, CRR
State of Oklahoma CSR No. 1232.
Federal Official Court Reporter

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically transmitted a copy of the foregoing Appendix to the Clerk of the Court by using the ECF System for filing and automatic service of Appendix to all counsel of record herein.

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