

CASE NO. 15-cv-324-C

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

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

**SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and THE REGIONAL
UNIVERSITY SYSTEM OF OKLAHOMA,**

Defendants.

**DEFENDANTS SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND THE REGIONAL UNIVERISTY SYSTEM OF OKLAHOMA'S
MOTION TO PARTIALLY QUASH PLAINTIFF'S
SECOND AMENDED NOTICE OF ORAL DEPOSITION
UNDER FED. R. CIV. P. 30(B)(6)**

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UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

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Case No. CIV-15-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY
SYSTEM OF OKLAHOMA,

Defendants.

**DEFENDANTS SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA'S
MOTION TO PARTIALLY QUASH PLAINTIFF'S SECOND AMENDED
NOTICE OF ORAL DEPOSITION UNDER FED. R. CIV. P. 30(b)(6)**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), ("Defendants"), and pursuant to Fed. R. Civ. P. 45, files this Motion to Partially Quash Plaintiff's Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6). *Plaintiff's Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6)*, attached as Exhibit 1. Defendants further seek an order from this Court relieving Defendants from any requirement to produce persons to testify or identify documents on specific matters

contained in Plaintiff's Notice served on Defendants on August 9, 2017. ¹In support hereof, Defendants submit the following:

INTRODUCTION

The Federal Rules of Civil Procedure allow a party seeking information from a corporate entity to serve a notice of deposition requiring the corporation to designate a person to testify in a deposition on specified topics. *See* Fed. R. Civ. P. 30(b)(6). Under the Federal Rules, a party may subpoena and/or notice the deposition of a corporation through a "30(b)(6) deposition." Rule 30(b)(6) provides:

Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

Id.

Under Rule 30(b)(6), a party to a lawsuit may notice the deposition of a corporation, as opposed to naming an individual agent or employee of the corporation expressly, provided that the party "describe with *reasonable particularity* the matters for examination." *Id.* (emphasis added). The "reasonable particularity" requirement

¹ Despite numerous discussions among counsel, the parties have been unable to resolve their disputes regarding Plaintiff's 30(b)(6) Notice.

will be enforced by the court and a generic notice of deposition is not sufficient. *See, e.g., Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1058 (7th Cir. 2000). "[T]he requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and ***that are relevant to the issues in dispute.***" *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 638 (D. Minn. 2000) (emphasis added); *see also Alexander v. Federal Bureau of Investigation*, 188 F.R.D. 111, 114 (D. D.C. 1998) (rejecting notice to depose on "any matters relevant to this case" as not meeting the "reasonable particularity" requirement).

Fed. R. Civ. P. 30(b)(6) was intended to cut through the tactics of bandying by introducing the concept of an organizational deposition: while a human would testify, that human was appearing not in his or her individual capacity but as the voice of the corporation or partnership or whatever form the deposed organization took. Although Rule 30(b)(6) does not expressly limit the subject matter or number of topics that may be questioned in the deposition, the discovery protections available to an individual deponent are also available to a corporate representative. *See Fed. R. Civ. P. 26(c)* (permitting the court to make certain rulings "necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense").

BACKGROUND

Rachel Tudor, Plaintiff-Intervenor ("Tudor") failed to meet the standards required to attain tenure at SEOSU. Therefore, Tudor was not offered tenure after her application was submitted for consideration. Tudor then filed various charges of

discrimination against SEOSU with the U.S. Department of Education and the EEOC. Over the course of the ensuing months and years, the EEOC, and then Plaintiff, actively interviewed no less than twenty-five (25) employees of Defendants (and many were interviewed twice), and collected numerous documents and records from both Defendants. After nearly five (5) years of interviews and document gathering, Plaintiff finally filed its lawsuit. It would be an understatement to say that Plaintiff's opportunity to learn about its case (and anything that might be even be tangentially related) has been significant. During formal discovery, Plaintiff propounded written requests to Defendants. Those included, in pertinent part, twenty-seven (27) requests for production of documents made on August 17, 2015, to which the Defendants responded with over thirteen thousand (13,000) pages of documents. Plaintiff has also deposed twenty (20) individuals relating to the matter, with each deposition lasting approximately seven and a half (7 ½) hours.

STANDARD OF REVIEW

Under Rule 45 of the Federal Rules of Civil Procedure, the Court must, upon a timely motion, quash or modify any subpoena that "subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). In determining whether a subpoena is unduly burdensome and unreasonable, the Court must consider the facts of the case, "such as the party's need for the documents and the nature and importance of the litigation." *WIWA v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). Six factors are considered in making this determination, including "(1) **relevance** of the information requested; (2) the need of the party for the documents; (3) the

breadth of the document request; (4) the *time period* covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the *burden* imposed.” *Id.* (emphasis added). Furthermore, when non-parties are subpoenaed for documents, the court also considers “the expense and inconvenience to the non-party.” *Id.*

Federal Rule of Civil Procedure 45(d)(1) requires that an “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” (Emphasis added). The Rule states that the court must “quash or modify a subpoena that: (iii) requires disclosure of privileged or other protected matter . . . ; or (iv) subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3).

ARGUMENT AND AUTHORITY

Attached for the Court’s ease of reference, as Exhibit 2, is a table presenting in detail Plaintiff’s matters and Defendants’ specific objections to each of those matters.

I. PLAINTIFF’S REQUESTS ARE OVERLY BROAD, UNDULY BURDENSOME, AND LACK RELEVANCE TO THE MATTER.

Plaintiff’s Matter Nos. 1, 2, 3, 4, 9, 10, 11, and 12 are not relevant and not likely to lead to the discovery of admissible evidence. Plaintiff’s Matter Nos. 5, 6, 8, 13, 15 and 17 are overly broad and unduly burdensome. In the notice issued to Defendants, Plaintiff seeks nineteen (19) categories of documents and topics, some of which span a period of ten (10) years ,and many of which have no relevance to the claims or defenses asserted by the parties to this action. Nor do these topics have any probative value on issues of alleged discrimination on the part of Defendants. Finally, even if

the topics have some marginal relevance to this case, that relevance is significantly outweighed by the over breadth and burdensomeness of Plaintiff's requests. *See U.S. v. Butler*, 429 F.3d 140 (5th Cir. 2005) (finding subpoena was properly quashed as unduly burdensome and overly broad where it sought documents in twenty-eight categories over a period of seventeen years); *Williams v. City of Dallas*, 178 F.R.D. 103, 110 (N.D. Tex. 1998) (document subpoena was facially overbroad where not limited by reasonable restrictions on time); and *In re Duque*, 134 B.R. 679, 683 (S.D. Fla. 1991), on remand, 154 B.R. 93 (S.D. Fla. 1993) (determination of subpoena's reasonableness requires court to balance interests served by complying with subpoena against those served by quashing it). For these reasons, Defendants request portions of the subpoena served on Defendants be quashed as set forth throughout.

II. PLAINTIFF'S REQUESTS ARE DUPLICATIVE AND CUMULATIVE.

Plaintiff's Matter Nos. 6, 7, 14, 15, 16, and 17 are unreasonably cumulative and duplicative. In Matter No. 7, Plaintiff seeks testimony from the person most knowledgeable relating to "[t]he identities of individuals interviewed by Dr. Claire Stubblefield in connection with her investigation of Dr. Tudor's complaints and/or grievances and the existence of any notes made by Dr. Stubblefield concerning those interviews" are duplicative. Undisputedly, Dr. Claire Stubblefield is the person most knowledgeable. On May 17, 2016, Dr. Stubblefield was deposed from 8:30 A.M. to almost 5:00 P.M. During the course of her extremely lengthy deposition, Dr. Stubblefield testified extensively regarding (1) people she spoke with concerning her investigation into the claims and/or grievances of Tudor, and (2) the related

documentation. To the best of Dr. Stubblefield's recollection, she provided all the names and substance of each of those conversations. No representative of Defendant possesses this same knowledge.

Of the roughly thirteen (13) interviewee names provided by Dr. Stubblefield, Plaintiff has deposed six (6) of those individuals, and had the opportunity to depose or speak with the others. Plaintiff has had ample opportunity to question these individuals on their recollections and conversations with Dr. Stubblefield. Defendants should not be required to produce a witness to provide duplicative deposition testimony regarding subject matters that have already been testified to, even if Plaintiff believes its prior deposition inquiries were deficient. In addition, the most knowledgeable witness, Dr. Stubblefield has retired. There is no current employee of Defendants that has the requisite knowledge to testify about this matter.

The same is true regarding the identification of relevant documents. Defendant has already delivered all notes/memos/emails made by Dr. Stubblefield concerning her interviews with any person associated with Tudor's complaints and/or grievances. Plaintiff's request is duplicative and cumulative. Defendants are not in possession of any additional notes/memos/emails made by Dr. Stubblefield, and no witness other than Dr. Stubblefield has the requisite knowledge.

Matter No. 14 requesting "[t]he factual basis for Defendants' contention that Dr. Tudor 'failed to take advantage of the academic and professional opportunities offered to her by the University Defendants,' including but not limited to 'ignor[ing] the academic and professional advice she received from University leadership'" is

unreasonably duplicative and cumulative because Plaintiff has already deposed multiple people on this topic, including, but not limited to, Lucretia Scoufos, John Mischo, Doug McMillan, and Larry Minks. All have testified regarding the opportunity for Tudor to make improvements to her submission and reapplication for tenure at a later date. There are no additional witnesses with the requisite knowledge that can testify on this matter.

Matter No. 16 requires Defendants to produce a witness to testify regarding the creation and authenticity of two exhibits produced during depositions taken by Plaintiff. This request is unreasonably cumulative and duplicative. Plaintiff has already deposed Lucretia Scoufos and John Mischo, both of whom signed the document. There are no additional witnesses with the requisite knowledge that can testify on this matter.

In Matter No. 17, Plaintiff requests “[t]he contents of Dr. Tudor’s file from Southeastern’s School of Arts and Sciences when Dr. Scoufos provided a copy of that file to Dr. Stubblefield on or about August 17, 2011.” This matter is also unreasonably cumulative and duplicative because Plaintiff deposed Lucretia Scoufos and questioned her at length about this subject matter. As have most other witnesses in this case, Dr. Scoufos has recently retired from SEOSU. Therefore, there are no representatives of Defendant with the requisite knowledge that can testify on this matter.

Plaintiff attempts to justify the need for additional testimony and documentation because fact witnesses have provided conflicting testimony or have

been unable to recall certain facts regarding this matter. Unfortunately, because of Plaintiff's inexplicable delay of over seven (7) years from the time of the alleged incidents giving rise to this litigation to the date of the depositions of the witnesses, specific memories of those events may be imperfect. In addition, many of the individuals that Dr. Stubblefield mentioned in her deposition no longer work for Defendants because of retirement, thereby exacerbating the burdensome nature of trying to elicit additional information based on Plaintiff's demands. Defendants have no other documents or testimony that will help refresh the memories of these witnesses. Defendants should not be required to produce a representative to testify on topics already thoroughly covered in discovery, and for which a representative would have no first-hand knowledge. Plaintiff's Matter Nos. 6, 7, 14, 15, 16, and 17 are unreasonably cumulative and duplicative.

III. PLAINTIFF'S REQUESTS FOR FACTUAL SUPPORT OF DEFENDANTS' AFFIRMATIVE DEFENSES IS CUMULATIVE AND SEEKS PRIVILEGED WORK PRODUCT.

Plaintiff's Matter Nos. 8 and 13 seek testimony relating to "[t]he factual basis for all affirmative defenses and defenses [Defendants] asserted in its Answer to Plaintiff's Complaint and its Answer(s) to Plaintiff-Intervenor's Complaint." Specifically, Plaintiff is seeking factual support for the following: Failure to conciliate in good faith, failure to exhaust administrative remedies, failure to mitigate damages, laches, and after-acquired evidence. These matters are overly broad and do not identify the matter to be covered with reasonable particularity.

a. Failure to Conciliate in Good Faith

Defendants contend that Plaintiff failed to adequately conciliate, or settle, discrimination charges filed with the EEOC before filing suit. Title VII imposes a duty on the EEOC to attempt conciliation of a discrimination charge prior to filing a lawsuit. Title VII of the Civil Rights Act of 1964, 78 Stat. 241, 42 U.S.C. § 2000e *et seq.* That obligation is a key component of the statutory scheme. In pursuing the goal of “bring[ing] employment discrimination to an end,” Congress chose “[c]ooperation and voluntary compliance” as its “preferred means.” *Ford Motor Co. v. EEOC*, 458 U.S. 219, 228, 102 S.Ct. 3057 (1982) (quoting *Alexander v. Gardner–Denver Co.*, 415 U.S. 36, 44, 94 S.Ct. 1011 (1974)). By way of background, pursuant to the enforcement procedure set forth in Title VII of the Civil Rights Act of 1964, if the EEOC finds that there is reasonable cause to believe a violation of Title VII has occurred, it “shall endeavor to eliminate any ... alleged unlawful employment practice by informal methods of conference, conciliation and persuasion.” § 2000e–5(b). That language is mandatory, not precatory. *Cf. National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101, 109, 122 S.Ct. 2061 (2002) (noting that the word “shall” admits of no discretion). And the duty it imposes serves as a necessary precondition to filing a lawsuit. Only if the Commission is “unable to secure” an acceptable conciliation agreement—that is, only if its attempt to conciliate has failed—may a claim against the employer go forward. § 2000e–5(f)(1). Indeed, the EEOC is precluded from filing suit unless it “has been unable to secure from the respondent a conciliation agreement acceptable to the Commission.” The EEOC’s

(and subsequently Plaintiff's) failure to conciliate in good faith is evidenced by their refusal to meet with Defendants and refusal to attempt conciliation before sending the matter to the Department of Justice ("DOJ") for litigation. Plaintiff and the EEOC are the sole sources of direct knowledge regarding their failure to conciliate in good faith. Further, even if Plaintiff were to take the absurd position that it cannot communicate with EEOC regarding this topic, Plaintiff already had the opportunity to depose the investigator from the EEOC regarding the investigation and, as such, already knows the facts relating to conciliation and/or the lack thereof. No representative of Defendant possesses this knowledge.

b. Failure to Exhaust Administrative Remedies

Failure to exhaust administrative remedies was thoroughly briefed in detail in Defendant's Motion to Dismiss Plaintiff/Intervenor's Complaint in Part and Brief in Support [Doc. 30]. An elementary requirement for suit under Title VII is that, before bringing an action against an employer for an unlawful employment practice, an employee must file a complaint with the EEOC within 180 days after the unlawful practice occurred. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109 (2002) (citing 42 U.S.C. § 2000e-5(e)). At a minimum, this requires "a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of," and "each discrete act of discrimination (such as termination, failure to promote, denial of transfer, or refusal to hire)" must "be described in and the subject of a timely filed charge." *Montes v. Vail Clinic, Inc.*, 497 F.3d 1160, 1166 (10th Cir. 2007) (citations omitted). "If the employee does not submit

a timely EEOC charge, he or she may not proceed to court.” *Id.* at 1163. Tudor attempted to circumvent the EEOC requirement for conciliation and, instead, chose to directly take this matter to the DOJ for the initiation of the current litigation. Throughout discovery, Tudor has continued to manufacture new allegations of discrimination (most recently, failure to provide insurance to cover medical needs specifically related to transgenders), which was never raised in her charges of discrimination). To the extent Plaintiff and/or Tudor attempt to raise claims of discrimination that were not properly exhausted, Defendants maintain a defense of failure to exhaust administrative remedies. A 30(b)(6) deposition is not warranted for this topic. Plaintiff and Tudor have ample information about the claims asserted by Tudor in her charge of discrimination. Plaintiff’s request for testimony on this topic is simply designed to glean attorney work product and/or to harass and annoy Defendants.

c. Failure to Mitigate Damages

Defendants contend that Tudor failed to mitigate her damages, creating a falsely inflated claim for damages for the alleged discrimination. “A plaintiff in an employment discrimination case must mitigate damages by diligently ‘seeking and accepting new employment substantially equivalent to that from which he was discharged.’” *Shirazi v. Childtime Learning Center, Inc.*, No. CIV-07-1289-C, 2008 WL 4792694, at *2 (W.D. Okla. Oct. 31, 2008), (*quoting Miller v. AT & T Corp.*, 250 F.3d 820, 838 (4th Cir.2001)). Tudor failed to mitigate her damages in numerous ways. First, Tudor chose not to follow the advice of her colleagues and superiors which

counseled Tudor to remove her tenure application, improve her portfolio and re-submit at a later date. When Tudor was offered the opportunity to withdraw her application in order to correct the deficiencies contained therein, she declined. Second, Tudor was informed that her employment with Defendants was not going to be renewed months before her employment agreement expired, yet failed to seek alternative employment for several months. Third, Tudor failed to make any serious effort to seek a tenure track position after leaving her employment with Defendants. Plaintiff's counsel has been provided ample opportunity to review material, depose witnesses, and conduct discovery on these topics. Further, Tudor is the only person with first-hand knowledge of her job search efforts, subsequent termination from Collins College, later job searches, and continued unemployment. No representative of Defendant possesses this knowledge. Any additional discovery requirements imposed on Defendants would be cumulative.

d. Laches

Defendants contend that Tudor's claims are barred by the defense of laches. Laches consists of two elements, inexcusable delay in instituting suit and prejudice resulting to the defendant from such delay. Its existence depends upon the equities of the case, and not merely upon the lapse of time. *Alexander v. Phillips Petroleum Co.*, 130 F.2d 593, 605 (10th Cir. 1942) (citing *O'Brien v. Wheelock*, 184 U.S. 450, 493, 22 S.Ct. 354, 370 (1902)). Here, Plaintiff and Tudor delayed the filing of this litigation until four (4) years after Tudor ceased employment with SEOSU and eight (8) years since the alleged discrimination. In those years, Plaintiff and Tudor had ample

opportunity to gather necessary information and prepare all of the various claims and allegations set forth in their Complaints. Defendants, on the other hand, were not provided the opportunity to gather evidence for their defense and preserve the memories of witnesses or preserve the integrity of a file in preparation for litigation. As a result, memories of witnesses have faded in terms of specific recollection of events, and Plaintiff and Tudor appear to want to use this to highlight “inconsistencies” in Defendants’ witness’s testimony/statements vs. documentation created years earlier. Depositions have been taken and, as Plaintiff points out, memories are inconsistent. The defense of Laches involves a legal argument regarding the prejudicial effects of Plaintiff’s inexcusable delay. No representative of Defendant can testify about Plaintiff’s delay, or supposed justification for it. There is no 30(b)(6) type of information that can be provided.

e. After-Acquired Evidence

As Defendants have advised Plaintiff, Defendants are not currently in possession of any documents that would support this defense. *See August 22, 2016 Email Exchange*, attached as Exhibit 4², *see also August 17, 2017 Email from Valerie Meyer*, attached as Exhibit 5. Should Defendants come into possession of any of these documents, Defendants will provide those in a timely manner to Plaintiff and Tudor. Unless and until information is obtained, this defense will not be asserted at trial.

² The parties have engaged in numerous discussions in an effort to reach a resolution regarding stipulations narrowing the matters contained in Plaintiff’s *Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6)*, however, Plaintiff continues to broaden the scope of proposed stipulations resulting in the parties being unable to agree to said stipulations.

Therefore, there is no information to produce or testimony to be provided regarding this matter, however Defendants maintain this defense as discovery is still ongoing.

IV. PLAINTIFF'S DEMAND FOR PRACTICES AND POLICIES REGARDING DOCUMENT RETENTION IS UNDULY BURDENSOME

Plaintiff's Matter Nos. 1 and 2 are irrelevant and unduly burdensome. They seek the person most knowledgeable, one each to RUSO and SEOSU, on the "practices and policies regarding document retention and destruction, including ESI, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including ESI, as related to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case."

There has been no evidence of document destruction by Defendants in this case. The nonexistence of documents to support Plaintiff's claims of discrimination does not justify seeking testimony on this irrelevant and unduly burdensome topic. Plaintiff has repeatedly refused to provide justification for seeking testimony in this area. Plaintiff deposed numerous witnesses regarding policies and procedures, including document retention. Due to Plaintiff's unnecessary eight (8) year delay in the filing of this litigation, persons most knowledgeable, for the periods at issue in this case, i.e. 2007-2011, about the "practices and policies regarding document retention and destruction, including ESI, generally and *related to the above-captioned case...*" (emphasis added), were previously deposed, are, retired, and are no longer employees of Defendants. Knowledge of Defendants' representatives is

limited to current policies and procedures, and Defendants have agreed to produce witnesses to testify on this topic.

V. PLAINTIFF’S DEMANDS FAIL THE IMPORTANCE TEST AND ARE NOT PROPORTIONATE TO THE NEEDS OF THE CASE AS SET FORTH IN FED. R. CIV. P. 26.

Plaintiff’s Matter Nos. 4 and 12 fail the importance test set forth in Fed. R. Civ. P. 26. Rule 26(b)(1) states, “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any parties claim or defense and proportional to the needs of the case” when the following five factors are taken into account: (i) the importance of the issues at stake in the action; (ii) the amount in controversy; (iii) the parties’ relative access to relevant information; (iv) the parties’ resources; and (v) the importance of the discovery in resolving the issues.” Plaintiff’s demands for things such as “backup systems for ESI for all employees and administrators from August 2007 through the present” fail to meet the importance standard of Rule 26. As the Rule puts it, such demanded discovery is not of substantial “importance [to] the issues at state in the action.” Fed. R. Civ. P. 26(b)(2)(C)(iii). To satisfy the importance test of Rule 26, the discovery must be “more than tangentially related to the issues that are actually at stake in the litigation. *Flynn v. Square One Distribution, Inc.*, No. 6:16-MC-25-ORL-37TBS, 2016 WL 2997673, at *4 (M.D. Fla. May 25, 2016).

Plaintiff’s Matter Nos. 1, 2, 3, 4, 5, 9, 10, 11, and 12 are not proportionate to the needs of the case. .As several District Courts have held, proportionality is often a question of “whether discovery production has reached a point of diminishing returns,” and about the “marginal utility” of additional discovery once the core

discovery in the case has been completed. *Abbott v. Wyoming Cty. Sheriff's Office*, No. 15-CV-531W, 2017 WL 2115381, at *2 (W.D.N.Y. May 16, 2017) (Considerations of proportionality can include reviewing whether discovery production has reached a point of diminishing returns. *See Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-CV-7126 (JMF), 2016 WL 6779901, at *3 (S.D.N.Y. Nov. 16, 2016) (“Rule 26(b)(1)’s proportionality requirement means [that a document’s] ‘marginal utility’ must also be considered.”) (citations omitted); *Updike v. Clackamas County*, No. 3:15-CV-00723-SI, 2016 WL 111424, at *1 (D. Or. Jan. 11, 2016) (“There is a tension, however, among the objectives of Rule 1. As more discovery is obtained, more is learned. But at some point, discovery only yields diminishing returns and increasing expenses. In addition, as more discovery is taken, the greater the delay in resolving the dispute. Finding a just and appropriate balance is the goal, and it is one of the key responsibilities of the court in managing a case before trial to assist the parties in achieving that balance.”). Stated another way, proportionality is a method to avoid going in circles or getting sidetracked. The burden of persuasion lies with Plaintiff bearing the burden of establishing relevance. Plaintiff has already had wide access to materials, and subjected Defendants to significant burden in gathering, reviewing, and producing information, witnesses, and documents. Plaintiff’s requests for “[Defendant’s] backup systems for ESI for all employees and administrators” over a ten (10) year period, lack not only relevance and fail to convey the importance of these matters as they pertain to this litigation, but also lack proportionality to the needs of the case as envisioned in Rule 26.

CONCLUSION

For the reasons stated above, Defendants maintain that Plaintiff's wide ranging demands for testimony and identification of documents are duplicative, cumulative, and overly burdensome as presented in its current form. Accordingly, Defendants respectfully request the Court Partially Quash Plaintiff's Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6).

Alternatively, Defendants submit that Plaintiff should be required, in the interest of fairness and judicial economy, to clarify the basis for requesting the documents and information sought through the aforementioned Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6), and state specifically how the documents and information have any relevance or connection to the claims or defenses at issue in this litigation.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court grant this motion and any and all other relief the Court deems appropriate.

Respectfully submitted,

/s/ Timothy M. Bunson

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JEB E. JOSEPH, OBA #19137

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Attorneys for Defendants Southeastern

Oklahoma State University and The Regional

University System of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August 2017, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/Timothy M. Bunson

Timothy M. Bunson

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

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

**PLAINTIFF UNITED STATES'
SECOND AMENDED NOTICE OF ORAL DEPOSITION UNDER FED. R. CIV. P.
30(b)(6)**

To: Defendants, Southeastern Oklahoma State University and the Regional University System of Oklahoma, through their attorneys of record, Dixie Coffey and Jeb Joseph, Oklahoma Attorney General’s Office, 313 N.E. 21st Street, Oklahoma City, Oklahoma 73105, Dixie.Coffey@oag.ok.gov and Jeb.Joseph@oag.ok.gov.

Plaintiff-Intervenor, Rachel Tudor, through her attorneys of record, Ezra Young and Brittany Novotny, 30 Devoe, 1a, Brooklyn, NY 11211 and 42 Shepherd Center, 2401 N.W. 23d Street, Oklahoma City, Oklahoma 73107, ezraiyoung@gmail.com and BNovotny@nationlit.com.

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 26 and 30, Plaintiff United States of America (“United States”) will take the deposition(s) by oral examination of Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma at Dodson Court Reporting & Legal Video, 425 NW Seventh Street, Oklahoma City, Oklahoma 73102 on August 23, 2017, beginning at 8:30 am that day and continuing until

completed. The deposition(s) will be recorded by stenographic means and will be conducted before a person who is authorized by law to administer oaths.

Pursuant to Fed. R. Civ. P. 30(b)(6), the City shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf with respect to the matters listed below and identify any relevant documents. Plaintiff requests that Defendants identify the person(s) who will testify no later than August 11, 2017. The United States reserves the right to amend this notice.

DEFINITIONS AND INSTRUCTIONS

Unless a contrary meaning appears in the context of a specific description of a matter on which examination is requested, the following definitions apply to this notice:

1. “Person” includes any natural person, firm, association, partnership, joint venture, company, corporation, or entity.
2. “Identity,” “identification,” and “identify,” when used with respect to a person who is an individual, includes the person’s full name and, where applicable, current or former position or title at the named entity, or any entity acting on behalf of or in concert with the Defendants. If the person is an entity and not an individual, “identity,” “identification,” and “identify,” includes the full name of the entity and the name of an individual contact person at the entity.
3. Any reference to “employees” includes current and former employees.
4. The term “document” refers to, without limitation: electronically stored information, correspondence, memoranda, email, computer files, photographs, reports, records, notes, annotations, diaries, chronologies, written statements, letters, telegrams, studies, reports, messages, analyses, invoices, bills, books, magazines, newspapers, booklets, tapes, logs, calendars, circulars, bulletins, notices, instructions, minutes, questionnaires, surveys, charts,

spreadsheets, graphs, and other communications or records, including drafts, exhibits, attachments, and addenda of any of the foregoing items.

5. The term “electronically stored information” means any data or information retrievable from any source on which electronic data is created or retained (*i.e.*, stored, archived), including email, files, text messages, hard drive (whether internal or external), flash or removable drive, server, network, third-party ISP server, CD, DVD, disk, software, personal digital assistant, Blackberry, smart phone, tablet, computer, cellular telephone, pager, text messaging service, and video or audio surveillance system.

6. “Communication” means any oral or written or electronic transmittal of information or request for information made from one person to another, including recordings, correspondence, memoranda, notes, e-mail, text messages, instant messages, internet chat messages, other messages, teletypes, telexes, conversations, discussions, lectures, briefings, and all other forms of oral, written, or electronic exchanges.

7. “Including” means including, but not limited to.

8. “Southeastern” means Southeastern Oklahoma State University as well as elected or appointed officials, current or former employees, independent contractors, officers, agents, attorneys, trustees, representatives, and any other persons or entities acting on its behalf.

“RUSO” means the Regional University System of Oklahoma as well as elected or appointed officials, current or former employees, independent contractors, officers, agents, attorneys, trustees, representatives, and any other persons or entities acting on its behalf.

9. “Relate(s) to” (also “Related to” and “Relating to”) means pertaining to, supporting, relating to, respecting, regarding, describing, referring to, evidencing, reflecting, showing, mentioning, discussing, constituting, contradicting, refuting, or in any way logically or factually

connected to the matter discussed. In addition, as to documents, “relate(s) to” means consulted, generated from, reviewed, collected, or relied upon.

10. The use of the singular form of any word shall include the plural and vice versa. The present tense includes the past and future tenses. Words in the masculine, feminine or neutral form shall include each of the other genders. The disjunctive includes the conjunctive and vice versa as necessary to bring within the scope of this Notice all matters that might otherwise be construed to be outside of its scope.

11. “Defendants’ Bates” shall refer to documents produced with Defendants’ prefix of “OAG/DLC/USA v. SOSU - CIV-15-324/”.

MATTERS

1. Defendant Southeastern’s practices and policies regarding document retention and destruction, including ESI, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including ESI, as related to Dr. Tudor’s internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case.

2. Defendant Southeastern’s practices and policies regarding the implementation of a litigation hold, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including electronically stored information, as related to Dr. Tudor’s internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case;

3. Defendant Southeastern's efforts to locate, identify, search, collect and/or produce documents, including electronically stored information, responsive to Plaintiff's Requests for Production of Documents;
4. Defendant Southeastern's backup systems for ESI, for all employees and administrators, from August 2007 through the present;
5. The authenticity of the documents produced by Southeastern in response to Plaintiff United States' Requests for Production in this case;
6. Defendant Southeastern's practices and policies regarding the retention and disposition of notes created by Dr. Claire Stubblefield in connection with Dr. Tudor's grievances and/or complaints, the investigation of those grievances and/or complaints, Dr. Tudor's complaints to the U.S. Department of Education, and Dr. Tudor's complaints to the U.S. Equal Employment Opportunity Commission;
7. The identities of individuals interviewed by Dr. Claire Stubblefield in connection with her investigation of Dr. Tudor's complaints and/or grievances and the existence of any notes made by Dr. Stubblefield concerning those interviews;
8. The factual basis for all affirmative defenses and defenses Southeastern asserted in its Answer to Plaintiff's Complaint and its Answer(s) to Plaintiff-Intervenor's Complaint;
9. Defendant RUSO's practices and policies regarding document retention and destruction, including ESI, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including ESI, as related to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case;

10. Defendant RUSO's practices and policies regarding the implementation of a litigation hold, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including electronically stored information, as related to as related to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case;

11. Defendant RUSO's efforts to locate, identify, search, collect and/or produce documents, including electronically stored information, responsive to Plaintiff's Requests for Production of Documents;

12. Defendant RUSO's backup systems for ESI, for all employees and administrators, from August 2007 through the present;

13. The factual basis for all affirmative defenses and defenses RUSO asserted in its Answer to Plaintiff's Complaint and its Answer(s) to Plaintiff-Intervenor's Complaint;

14. The factual basis for Defendants' contention that Dr. Tudor "failed to take advantage of the academic and professional opportunities offered to her by the University Defendants," including but not limited to "ignor[ing] the academic and professional advice she received from University leadership."

15. The creation and authenticity of Defendants' Bates 005279-005286 (Plaintiff's deposition Exhibit 30) and EEOC000239 (Plaintiff's deposition Exhibit 117), including the process of preparing them, who was involved, what the roles of those involved were, and the sources of all of the information in those documents;

16. The creation and authenticity of Defendants' Bates 007392-7393 (Plaintiff's deposition Exhibit 85) and EEOC000972-973 (Plaintiff's deposition Exhibit 115)), including the process of

preparing them, who was involved, what the roles of those involved were, and the sources of all the notations in those documents.

17. The contents of Dr. Tudor's file from Southeastern's School of Arts and Sciences when Dr. Scoufos provided a copy of that file to Dr. Stubblefield on or about August 17, 2011.

18. Whether and where the emails in Plaintiff's deposition Exhibit 50 (EEOC000919-20) were previously and/or are presently saved in the email accounts used by Charles Weiner, Douglas McMillan, Lucretia Scoufos, Larry Minks, and Charles Babb. Also, whether these emails were previously and/or are presently identified as 'read' or 'unread' in the email accounts used by Charles Weiner, Douglas McMillan, Lucretia Scoufos, Larry Minks, and Charles Babb.

19. All documents reviewed and all persons communicated with, by each Fed. R. Civ. P. 30(b)(6) designee, relating to this deposition.

Respectfully Submitted,

Date: August 9, 2017

GREGORY B. FRIEL
Deputy Assistant Attorney General
Civil Rights Division

DELORA L. KENNEBREW
Chief
Employment Litigation Section

By:

/s/ Meredith L. Burrell
MEREDITH L. BURRELL (MD no number issued)
Deputy Chief
Employment Litigation Section

/s/ Allan K. Townsend
ALLAN K. TOWNSEND (ME Bar No. 9347)

/s/ Shayna M. Bloom
SHAYNA M. BLOOM (D.C. Bar 498105)

/s/ Valerie L. Meyer
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Senior Trial Attorneys

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Valerie.Meyer@usdoj.gov

Attorneys for Plaintiff United States

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff United States' Notice of Oral Deposition under Fed. R. Civ. P. 30(b)(6) was served upon the attorneys identified in the notice via Federal Express and email at the addresses identified in the notice on the date below.

Date: August 9, 2017

/s/ Allan K. Townsend
Allan K. Townsend
Senior Trial Attorney

OBJECTION TABLE

#	Matter	Defendants Objections
1	Defendant SEOSU's practices and policies regarding document retention and destruction, including ESI, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including ESI, as related to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case.	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Attorney-client privilege; • Attorney work product doctrine; • Not proportionate to the needs of the case.
2	Defendant SEOSU's practices and policies regarding the implementation of a litigation hold, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including electronically stored information, as related to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case.	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Attorney-client privilege; • Attorney work product doctrine; • Not proportionate to the needs of the case.
3	Defendant SEOSU's efforts to locate, identify, search, collect and/or produce documents, including electronically stored information, responsive to Plaintiff's Requests for Production of Documents	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Attorney-client privilege; • Attorney work product doctrine; • Not proportionate to the needs of the case.
4	Defendant SEOSU's backup systems for ESI, for all employees and administrators, from August 2007 through the present	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Not proportionate to the needs of the case.

5	The authenticity of the documents produced by SEOSU in response to Plaintiff United States' Requests for Production in this case.	<ul style="list-style-type: none"> • Overly broad; • Unduly burdensome; • Not proportionate to the needs of the case.
6	Defendant SEOSU's practices and policies regarding the retention and disposition of notes created by Dr. Claire Stubblefield in connection with Dr. Tudor's grievances and/or complaints, the investigation of those grievances and/or complaints, Dr. Tudor's complaints to the U.S. Department of Education, and Dr. Tudor's complaints to the U.S. Equal Employment Opportunity Commission	<ul style="list-style-type: none"> • Overly broad; • Unduly burdensome; • Unreasonably cumulative and duplicative.
7	The identities of individuals interviewed by Dr. Claire Stubblefield in connection with her investigation of Dr. Tudor's complaints and/or grievances and the existence of any notes made by Dr. Stubblefield concerning those interviews.	<ul style="list-style-type: none"> • Unduly burdensome; • Unreasonably cumulative and duplicative.
8	The factual basis for all affirmative defenses and defenses Southeastern asserted in its Answer to Plaintiff's Complaint and its Answer(s) to Plaintiff-Intervenor's Complaint	<ul style="list-style-type: none"> • Overly broad; • Fails to identify the matter to be covered with reasonable particularity.
9	Defendant RUSO's practices and policies regarding document retention and destruction, including ESI, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including ESI, as related to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case.	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Attorney-client privilege; • Attorney work product doctrine; • Not proportionate to the needs of the case.
10	Defendant RUSO's practices and policies regarding the implementation of a litigation hold, generally and related to the above-captioned case, including litigation hold instructions to ensure the retention of relevant documents, including electronically stored information, as related to as	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Attorney-client privilege;

	related to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and the above-captioned case.	<ul style="list-style-type: none"> • Attorney work product doctrine; • Not proportionate to the needs of the case.
11	Defendant RUSO's efforts to locate, identify, search, collect and/or produce documents, including electronically stored information, responsive to Plaintiff's Requests for Production of Documents.	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Attorney-client privilege; • Attorney work product doctrine; • Not proportionate to the needs of the case.
12	Defendant RUSO's backup systems for ESI, for all employees and administrators, from August 2007 through the present.	<ul style="list-style-type: none"> • Relevance; • Not likely to lead to the discovery of admissible evidence; • Not proportionate to the needs of the case.
13	The factual basis for all affirmative defenses and defenses RUSO asserted in its Answer to Plaintiff's Complaint and its Answer(s) to Plaintiff-Intervenor's Complaint.	<ul style="list-style-type: none"> • Overly broad; • Fails to identify the matter to be covered with reasonable particularity.
14	The factual basis for Defendants' contention that Dr. Tudor "failed to take advantage of the academic and professional opportunities offered to her by the University Defendants," including but not limited to "ignor[ing] the academic and professional advice she received from University leadership."	<ul style="list-style-type: none"> • Unduly burdensome; • Unreasonably cumulative and duplicative.
15	The creation and authenticity of Defendants' Bates 005279-005286 (Plaintiff's deposition Exhibit 30) and EEOC000239 (Plaintiff's deposition Exhibit 117), including the process of preparing them, who was involved, what the roles of those involved were, and the sources of all of the information in those documents.	<ul style="list-style-type: none"> • Overly broad; • Unduly burdensome; • Unreasonably cumulative and duplicative; • Attorney work product doctrine; • Unreasonably cumulative and duplicative.
16	The creation and authenticity of Defendants' Bates 007392-7393 (Plaintiff's deposition Exhibit 85)	<ul style="list-style-type: none"> • Unreasonably cumulative and duplicative.

	and EEOC000972-973 (Plaintiff's deposition Exhibit 115)), including the process of preparing them, who was involved, what the roles of those involved were, and the sources of all the notations in those documents.	
17	The contents of Dr. Tudor's file from SEOSU's School of Arts and Sciences when Dr. Scoufos provided a copy of that file to Dr. Stubblefield on or about August 17, 2011.	<ul style="list-style-type: none"> • Vague; • Overly broad; • Unreasonably cumulative and duplicative.
18	Whether and where the emails in Plaintiff's deposition Ex. 50 (EEOC000919-20) were previously and/or are presently saved in the email accounts used by Charles Weiner, Douglas McMillan, Lucretia Scoufos, Larry Minks, and Charlies Babb. Also, whether these emails were previously and/or presently identified as "read" or "unread" in the emails accounts used by Charles Weiner, Douglas McMillan, Lucretia Scoufos, Larry Minks, and Charlies Babb.	
19	All documents reviewed and all persons communicated with, by each Fed. R. Civ. P. 30(b)(6) designee, relating to this deposition	

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

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

DEPOSITION OF CLAIRE STUBBLEFIELD, PhD

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN OKLAHOMA CITY, OKLAHOMA

ON MAY 17, 2016

REPORTED BY: LESLIE A. FOSTER, CSR

United States of America vs
Southeastern Oklahoma State University

Page 2

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Dixie L. Coffey
Attorneys at Law
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LITIGATION DIVISION
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Oklahoma City, Oklahoma 73105

Also Present:

Charles Babb
Rachel Tudor

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

(The following exhibits were marked during the deposition of Claire Stubblefield and were attached to the transcript for identification purposes.)

NO.	DESCRIPTION	PAGE
103	AUDIO FILE VN520017.WMA.	11
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* * * * *

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(The following exhibits were marked in previous depositions and were attached to the transcript for identification purposes.)	
NO.	PAGE
7	53
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28	.153
29	.104
30	.184
43	.10
55	.147
65	.183
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1 S T I P U L A T I O N S

2 It is hereby stipulated and agreed by and

3 between the parties hereto, through their respective

4 attorneys, that the deposition of CLAIRE STUBBLEFIELD,

5 PhD, may be taken on behalf of the Plaintiff(s) on May

6 17, 2016, in Oklahoma City, Oklahoma, by Leslie A.

7 Foster, Certified Shorthand Reporter for the State of

8 Oklahoma, pursuant to Federal Rules of Civil Procedure.

9 It is further stipulated and agreed by and

10 between the parties hereto, through their respective

11 attorneys, that all objections, except as to the form of

12 the question and responsiveness of the answer, are

13 reserved until the time of trial, at which time they may

14 be made with the same force and effect as if made at the

15 time of the taking of this deposition.

16 * * * * *

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25

United States of America vs
Southeastern Oklahoma State University

Page 6	Page 8
<p>1 WHEREUPON, 2 CLAIRE STUBBLEFIELD, PhD, 3 of lawful age, being first duly sworn, deposes and says 4 in reply to the questions propounded as follows: 5 EXAMINATION 6 BY MR. TOWNSEND: 7 Q. Good morning, Dr. Stubblefield. 8 A. Good morning. 9 Q. My name is Allan Townsend. I'm an attorney 10 with the United States Department of Justice representing 11 the United States in this case against Southeastern 12 Oklahoma State University and the Regional University 13 System of Oklahoma. 14 Could you please state and spell your name. 15 A. Claire Stubblefield, C-L-A-I-R-E 16 S-T-U-B-B-L-E-F-I-E-L-D. 17 Q. And it's Dr. Stubblefield. Correct? 18 A. That is correct. 19 Q. What is your home address? 20 A. 830 Franklin Drive, Ardmore, Oklahoma 73401. 21 Q. Do you have any plans to relocate from that 22 address any time soon? 23 A. No. 24 Q. What's your date of birth? 25 A. 7/19/48.</p>	<p>1 my questions. If that's the case, please let me know. 2 If you do not indicate otherwise, I'm going to assume 3 that you understood my question. Is that fair? 4 A. Yes. 5 Q. From time to time, the attorney for 6 Southeastern Oklahoma State University and the Regional 7 University System of Oklahoma may object to some of my 8 questions. If he does not indicate that you should not 9 answer the question, you'd still need to answer the 10 question. Is that understood? 11 A. Yes. 12 Q. This isn't intended to be an endurance contest, 13 so we can take breaks if you need to. I just ask that if 14 there is a question pending, you answer the question 15 before we take a break. Is that fair? 16 A. Yes. 17 Q. Have you ever been convicted of a crime? 18 A. No. 19 Q. Is there anything today that would prevent you 20 from giving accurate and truthful testimony such as 21 certain medication? 22 A. No. 23 Q. And is it your understanding that counsel for 24 the Oklahoma Attorney General's office represents you in 25 this matter?</p>
Page 7	Page 9
<p>1 Q. Have you ever had your deposition taken before? 2 A. No. 3 Q. All right. I'm going to go over what I like to 4 call the ground rules of a deposition just to make sure 5 we're all on the same page as to how we're going to 6 proceed today. 7 As you can see, there is a court reporter 8 taking down everything that we say, so it's important 9 that every -- all the communication be verbal. So your 10 responses to my questions need to be verbal. A nod of 11 the head can't be transcribed well. 12 Do you understand that? 13 A. Yes. 14 Q. Similarly, sounds like uh-huh or huh-uh can't 15 be transcribed clearly either, so yes or no would be what 16 you would need to use. Does that make sense? 17 A. Yes. 18 Q. Because she's -- the court reporter's trying to 19 take down everything we say, it's important that we don't 20 talk over one another. So it's important for you to let 21 me finish my question before you begin your answer, and I 22 will let you finish your answer before I start my next 23 question. Is that fair? 24 A. Yes. 25 Q. It's possible that you won't understand some of</p>	<p>1 A. Yes. 2 Q. What did you do to prepare for your deposition 3 today? 4 A. Slept. 5 Q. Did you meet with attorneys from the Oklahoma 6 Attorney General's office to prepare for your deposition? 7 A. Yes. 8 Q. When was that? 9 A. Friday. 10 Q. Did you meet with them on any other occasions 11 other than Friday to prepare for your deposition? 12 A. No. 13 Q. How long did you meet with them on Friday? 14 MR. JOSEPH: Object to the form. 15 A. Two hours. 16 Q. (BY MR. TOWNSEND) Did you review any documents 17 to prepare for your deposition? 18 A. No. 19 Q. Did you review any documents when you met with 20 attorneys from the Oklahoma Attorney General's office on 21 Friday? 22 A. No. 23 Q. Have you signed a statement in connection with 24 this case? 25 A. No.</p>

**United States of America vs
Southeastern Oklahoma State University**

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<p>1 Q. Have you provided a recorded statement in 2 connection with this case? 3 A. No. 4 Q. Do you recall being interviewed by an EEOC 5 investigator in connection with the EEOC's investigation 6 of Dr. Tudor's charge? 7 MR. JOSEPH: Object to the form. 8 A. I remember talking to you. 9 Q. (BY MR. TOWNSEND) Do you remember -- well, hold 10 on. Strike that. 11 I'm showing you what's been previously marked 12 as Plaintiff's Exhibit 43. 13 A. Uh-huh. 14 Q. Just please take a look at that letter. Does 15 this refresh your recollection that you were interviewed 16 by Kathy Nusz, an EEOC investigator, in connection with 17 her investigation of Dr. Tudor's charge of 18 discrimination? 19 A. Yes. 20 Q. And was I also at that interview? 21 A. Yes. 22 Q. And was that interview in February of 2012? 23 A. I'm not sure. 24 Q. Please take a look at the third page of 25 Plaintiff's Exhibit 43 and let me know if that refreshes</p>	<p>1 S-T-U-B-B-L-E-F-I-E-L-D. 2 Q: And your job title? 3 A: My job is affirmative action officer. 4 Director of diversity and inclusion, special assistant to 5 the president. 6 (Conclusion of audio recording.) 7 Q. (BY MR. TOWNSEND) All right. We've just 8 listened to the first 22 seconds of file name 9 VN520017.WMA. Dr. Stubblefield, was that your voice on 10 the recording? 11 A. Yes. 12 Q. Did you know that that interview was being 13 recorded when you were giving it? 14 MR. JOSEPH: Object to the form. 15 A. Yes. 16 Q. (BY MR. TOWNSEND) Did you tell the truth during 17 that interview? 18 A. Yes. 19 Q. Where did you grow up? 20 A. Be a little bit more specific, please. 21 Q. Where did you spend your childhood? 22 A. What time period? When? 23 Q. Say from when you were born to when you 24 graduated high school. Where did you live? 25 A. Oklahoma, Texas, and Missouri.</p>
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<p>1 your memory about whether the interview took place in 2 February of 2012. 3 A. No. 4 Q. Do you -- do you remember approximately when 5 your interview with the EEOC investigator took place? 6 A. No. 7 (Plaintiff's Exhibit 103 has been 8 marked for identification purposes 9 and made a part of the record.) 10 Q. (BY MR. TOWNSEND) Plaintiff's Exhibit 103 is a 11 audio recording that is file named VN520017.WMA. It's 12 been Bates numbered EEOC4, 5, 6, 7. I'm going to play 13 the first 22 seconds of that file, Dr. Stubblefield. 14 Please listen. 15 THE COURT REPORTER: Do you want me to 16 transcribe this? 17 MR. TOWNSEND: No, I don't think it's 18 necessary. Unless -- well, let's go off the record. 19 (Off the record at 8:36 A.M.) 20 (On the record at 8:37 A.M.) 21 (The audio was then transcribed as 22 follows:) 23 Q: Would you please state your name for 24 the record? 25 A: Claire Stubblefield,</p>	<p>1 Q. Where did you go to college? 2 A. More specific. 3 Q. Where did you go to college for your 4 undergraduate work? 5 A. University of Missouri one semester, Columbia. 6 Langston University the next semester, and that's where I 7 got my bachelor's degree. 8 Q. Where's Langston University located? 9 A. Langston, Oklahoma. 10 Q. And what year did you get your bachelor's 11 degree? 12 A. 1971. 13 Q. And did you attend school for a master's 14 degree? 15 A. Yes. 16 Q. What school was that? 17 A. University of Central Oklahoma, Edmond, 18 Oklahoma. 19 Q. What years did you attend University of Central 20 Oklahoma? 21 A. I don't know. 22 Q. Do you remember what year you obtained your 23 master's degree? 24 A. 1989. 25 Q. And you -- strike that.</p>

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<p>1 Have you obtained a master's degree from any 2 university other than University of Central Oklahoma? 3 A. No. 4 Q. And you have a doctorate. Correct? 5 A. Yes. 6 Q. Where -- what -- strike that. 7 What school did you attend for your doctorate 8 work? 9 A. University of Oklahoma, Norman, Oklahoma. 10 Q. And what years did you attend University of 11 Oklahoma in Norman? 12 A. '89 to '92. 13 Q. And you obtained your PhD from the University 14 of Oklahoma? 15 A. Yes. 16 Q. Was that in 1992? 17 A. Yes. 18 Q. What was your PhD in? 19 A. Continuing professional higher ed 20 administration and adult education. 21 Q. When did you start working at Southeastern 22 Oklahoma State University? 23 A. August of 1992. 24 Q. Did you start working at Southeastern Oklahoma 25 State University after you obtained your PhD from</p>	<p>1 A. Yes. 2 Q. What position did you hold after that 3 coordinator of services position? 4 A. Director office of diversity and assistant 5 professor. 6 Q. Did you hold those two positions, director 7 office of diversity and assistant professor, at the same 8 time? 9 A. Yes. 10 Q. What years did you hold those positions? 11 A. I was at Ardmore for -- '97. I'm -- I don't 12 know. I don't know. 13 Q. Do you remember what year you became assistant 14 professor? 15 MR. JOSEPH: Object to the form. 16 A. I don't know. 17 Q. (BY MR. TOWNSEND) Did you become assistant 18 professor the same year that you became director of 19 office diversity? 20 A. I don't know. I don't know. 21 Q. Have you held any other positions at 22 Southeastern other than the three that you've identified 23 so far? 24 A. Yes. 25 Q. What was the other one?</p>
Page 15	Page 17
<p>1 University of Oklahoma? 2 A. No. 3 Q. I'm just going to refer to Southeastern 4 Oklahoma State University as Southeastern. 5 A. Fine. 6 Q. Is that okay? 7 A. Yes. 8 Q. When you started working at Southeastern, what 9 was your position? 10 A. Coordinator of services at the Ardmore Higher 11 Education Center, Ardmore, Oklahoma. 12 Q. And so you started that job in August of 1992. 13 Correct? 14 A. Yes. 15 Q. And did you start -- strike that. 16 What was the next job that you held at 17 Southeastern after that coordinator of services position 18 in Ardmore? 19 A. Clarify that, please. 20 Q. What part of my question don't you understand? 21 A. The part that I asked you to rephrase, please. 22 The whole question. 23 Q. Have you held any other positions at 24 Southeastern other than that coordinator of services 25 position that you mentioned?</p>	<p>1 A. Expanded role in the office of diversity, which 2 then included equity, compliance, and diversity. I 3 became affirmative action officer, Title IX coordinator, 4 and special assistant to the president. 5 Q. Do you remember when you became affirmative 6 action officer? 7 A. No. 8 Q. Do you even have an approximate idea of when 9 you became affirmative action officer? 10 A. No. Just kind of a gradual thing. No, I 11 don't. 12 Q. Do you remember what decade it was? 13 A. I don't know. 14 Q. Is there anything that would refresh your 15 memory? 16 A. If you have something, that would be great. 17 Q. I -- that's what I'm trying to ask you. Can 18 you think of anything that would refresh your memory on 19 these dates? 20 A. Resume, vitae. 21 Q. Do you know whether your vitae was produced in 22 discovery in this case? 23 A. I don't know. 24 Q. What is your current position at Southeastern? 25 A. Director office of equity compliance and</p>

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<p>1 diversity, affirmative action officer, Title IX 2 coordinator, special assistant to president, and ADA 3 compliance officer. 4 Q. Have you now identified all the positions that 5 you've held in your time working at Southeastern? 6 A. Current -- I'm also associate professor. 7 Q. Do you remember when you became associate 8 professor? 9 A. I don't know. 10 Q. So from the time that you started working at 11 Southeastern in 1992, have you continued to work at 12 Southeastern until today? 13 A. Yes. 14 Q. Do you have any relatives that work at 15 Southeastern? 16 A. No. 17 Q. Do you have any relatives who have ever worked 18 at Southeastern? 19 A. No. 20 Q. Would it be fair to say that you depend on your 21 pay from Southeastern for your livelihood? 22 A. Yes. 23 Q. When you became associate professor at 24 Southeastern, did you also get tenure? 25 MR. JOSEPH: Object to the form.</p>	<p>1 and leadership department the EIL department. Is that 2 okay? 3 A. Yes. 4 Q. Who was the dean that oversaw the EIL 5 department the first time you applied for tenure? 6 A. I don't remember. 7 Q. Do you remember who the dean -- who oversaw the 8 EIL department was whenever you applied for tenure the 9 second time? 10 A. I don't remember. 11 Q. The two years that you applied for tenure, were 12 they back-to-back years? 13 A. Yes. 14 Q. Do you remember who the deans were that oversaw 15 the EIL department during the time period that you were 16 in the EIL department? 17 MR. JOSEPH: Object to the form. 18 Q. (BY MR. TOWNSEND) Let me strike the question. 19 Was there more than one dean that oversaw the EIL 20 department during the period of time that you were in the 21 EIL department? 22 A. Yes. 23 Q. Do you remember who those deans were? 24 A. Not without remember -- something to help me 25 remember, no.</p>
Page 19	Page 21
<p>1 A. I don't know. 2 Q. (BY MR. TOWNSEND) Did you apply for promotion 3 to associate professor and tenure at the same time? 4 A. I don't remember. 5 Q. At some point did you receive tenure at 6 Southeastern? 7 A. Yes. 8 Q. Did you have to apply for tenure more than 9 once? 10 A. Yes. 11 Q. How many times did you have to apply for tenure 12 before you received it? 13 A. Two times. 14 Q. What department at Southeastern were you in 15 when you applied for tenure? 16 A. Education, instruction, and leadership. 17 Q. Who was the department chair of the education, 18 instruction, and leadership department when you applied 19 for tenure the first time? 20 A. I don't remember. 21 Q. Do you remember who the department chair was of 22 the education, instruction, and leadership department the 23 second time you applied for tenure? 24 A. I don't remember. 25 Q. I'm going to call the education, instruction,</p>	<p>1 Q. How many deans oversaw the EIL department 2 during the period that you were in the EIL department? 3 A. I'm not sure. 4 Q. Was there a vice president of academic affairs 5 at Southeastern during the years that you applied for 6 tenure? 7 A. Yes. 8 Q. Do you remember who that was? 9 A. I'm not sure. I don't really remember. I 10 don't remember. I'm not sure. 11 Q. Are there certain people who you think it might 12 have been? 13 A. Yes. 14 Q. Who are those people? 15 A. Jesse Snowden, Doug McMillan, Larry Minks. 16 Q. Anyone else? 17 A. No. 18 Q. Why did you apply for tenure twice? 19 A. The first time I had a deficiency in my 20 portfolio. 21 Q. Who believed you had the deficiency in your 22 portfolio? 23 A. I had gotten word that there was a deficiency, 24 that some of the items -- two items were not in the 25 portfolio.</p>

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<p>1 Q. Who gave you word that there were two items 2 that were not in your portfolio? 3 A. I don't recall but it was not anyone from 4 administration. 5 Q. At the time that you were applying for tenure, 6 was there a multilevel process that tenure applicants had 7 to go through? 8 A. Be a little bit more specific. 9 Q. Sure. When you applied for tenure, did your 10 tenure portfolio have to be reviewed by a promotion and 11 tenure committee of faculty from the EIL department? 12 A. There was a -- there was a process, yes. 13 Q. Could you describe that process? 14 A. My own response, it was multilevel, and I don't 15 remember each and every step. That's a long time ago. 16 Q. Do you remember what level your application was 17 when you got word that there was things missing from your 18 portfolio? 19 A. It was en route to administration. We called 20 it across the street. 21 Q. So would it have been en route to the dean, 22 then? 23 A. No. 24 Q. Who would it have been en route to? 25 A. Academic affairs.</p>	<p>1 Q. Did somebody communicate to you that you had 2 the option to withdraw your application? 3 A. Yes. 4 Q. Who was that? 5 A. Doug McMillan. 6 Q. And why was he the one communicating to you 7 that you had the option to withdraw your application? 8 MR. JOSEPH: Object to the form. 9 A. A friend, a confidant. 10 Q. (BY MR. TOWNSEND) Did he work in the academic 11 affairs office at the time? 12 A. Yes. 13 Q. You -- strike that. 14 Do you still consider Dr. McMillan to be -- 15 strike that again. 16 Do you still -- do you still consider Doug 17 McMillan to be a friend? 18 A. Friendly, yes. 19 Q. And I think you said at that time that Doug 20 McMillan informed you of the option to withdraw your 21 application, that he was a friend and confidant. Right? 22 A. Yes. 23 Q. Did he continue to be your friend and confidant 24 after that point in time? 25 A. Friendly, yes.</p>
Page 23	Page 25
<p>1 Q. And were you informed in writing of the 2 deficiencies in your portfolio? 3 A. Not initially. 4 Q. When were you informed of the deficiencies in 5 your portfolio in writing? 6 A. In the transition process across the street. 7 So I'm not sure who exactly gave -- mentioned it to me. 8 I do not know. It was not in writing until later. 9 Q. So -- so when you got this information that 10 there were deficiencies in your portfolio, what did you 11 do with respect to your application? 12 A. Eventually withdrew the process. 13 Q. When you say "eventually," what do you mean by 14 that? 15 A. When I got wind -- that's a bad term. 16 When I became aware that there were some 17 deficiencies, I wanted the opportunity to fix those. And 18 it wasn't critical that I go through that year. I had 19 several other years before, you know, I -- that I could 20 do it. I didn't have the pressure of -- of now or never. 21 So I withdrew it and that's what I did. 22 Q. How did you withdraw it? Did -- strike that. 23 To withdraw your application, did you have to 24 put something in writing? 25 A. I don't recall that.</p>	<p>1 Q. Was there ever a point in time where he stopped 2 being your friend and confidant? 3 A. I don't believe so. 4 Q. When Doug McMillan told you about your option 5 to withdraw your application for tenure, did he identify 6 the deficiencies in your portfolio? 7 A. The way that's posed is difficult for me to 8 answer because my meeting with him was not an official 9 meeting. I basically bursted in his office. I went in 10 and said, "I hear that I'm not going to make it through 11 the first -- this time." That's all. He did not call 12 for me. I did not make an appointment. There was 13 nothing -- nothing official about that. And I actually 14 was out of line. 15 Q. What did he say when you burst into his office 16 and asked him that question? 17 A. "What's -- what's wrong?" You know, and I told 18 him that I'd heard that I was -- there was some things 19 deficient and had -- and had he received it. 20 He said they had just come over, so, no. 21 Really, no. And so just disappointment in that. There's 22 some disappointment in -- in not getting it. 23 And I -- so I just looked at it and he said, 24 you know, that's kind of what it was. That was how it 25 happened. And I had to inject that it was not an</p>

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<p>1 official "Come over." I had not received a letter. I 2 basically went in and said, "I need help." There were 3 not a lot of people that I knew because I wasn't from 4 that -- you know, wasn't from Durant. He had been very 5 helpful to me, very supportive. 6 Q. Did he discuss your options at that point with 7 respect to your application? 8 A. Yes. He did indicate there were options. 9 Q. What were those options? 10 A. That I could withdraw and not have to complete 11 the whole process because it could be very different if I 12 went through the whole process. 13 Q. Were there any other options that he 14 communicated to you? 15 A. Not that I recall. 16 Q. Do you remember whether he spoke to you about 17 what could potentially happen if you did not withdraw 18 your application at that point? 19 A. I don't recall. 20 Q. Are you familiar with the term transgender? 21 A. Yes. 22 Q. What does that term mean to you? 23 A. It has different -- I consider it a 24 psychological and physical change from a gender that one 25 was born into or with.</p>	<p>1 violence, those issues that are all -- that are subsumed 2 under the Title IX amendments and regulations. 3 Q. Would you have any involvement with 4 investigations regarding Title IX in your role as Title 5 IX coordinator? 6 A. Yes. 7 Q. What would that involvement be? 8 A. To oversee that process. Early on, they -- 9 they have -- they have evolved to more of an oversight. 10 Q. At some point as affirmative action officer, 11 were you yourself conducting investigations into 12 discrimination allegations? 13 A. Yes. 14 Q. And at some point you stopped doing that as 15 affirmative action officer? 16 A. Emerged. It's a different role. 17 Q. How did your role change as affirmative action 18 officer? 19 A. I'm sorry. I misunderstood. The role as 20 affirmative action officer has not changed. 21 Q. Were you thinking about the Title IX 22 coordinator position when you said it's changed? 23 A. That's correct. 24 Q. So your role as affirmative action officer, has 25 that led you to conduct investigations of allegations of</p>
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<p>1 Q. Based on your understanding of what transgender 2 means, do you know any transgender people other than 3 Dr. Tudor? 4 A. Not that I'm aware of. 5 Q. Do you know whether any other transgender 6 people ever worked at Southeastern other than Dr. Tudor? 7 A. Not that I'm aware of, no. 8 Q. One of the positions you held at Southeastern 9 was affirmative action officer. Correct? 10 A. Correct. 11 Q. Do you still hold that position? 12 A. Yes. 13 Q. Could you briefly describe what the job duties 14 are of the affirmative action officer. 15 A. To -- very similar, I guess, to the Title IX. 16 But the responsibility is if there is a feeling of 17 discrimination or harassment, I'm to oversee that process 18 of investigating and looking into that. 19 Q. And you said that's similar to the Title IX 20 coordinator position as well? 21 A. It has some similarities, yes. 22 Q. What -- strike that. 23 Could you briefly describe your job duties as 24 Title IX coordinator. 25 A. Title IX is responsible for sexual harassment,</p>	<p>1 employment discrimination? 2 A. Yes. 3 Q. And as affirmative action officer, was one of 4 your duties to ensure that the university complied with 5 employment discrimination laws? 6 A. Yes. 7 Q. And if you could have done something to prevent 8 the violation of an employment discrimination law and you 9 failed to do that, you could have gotten disciplined for 10 that. Correct? 11 A. I'm not sure how you stated that. 12 Q. If you could have done something to prevent the 13 violation of an employment discrimination law in 14 connection with a complaint that you knew of and you 15 failed to do that, you could have gotten disciplined for 16 that. Right? 17 A. And how are you -- how are you defining 18 disciplined? 19 Q. Disciplined by the university. Sorry. 20 Disciplined by Southeastern. 21 A. I have responsibilities -- any one in any role 22 who does not fulfill their responsibilities can be, I 23 assume, disciplined. I don't know really what you're -- 24 you need to give me more. 25 Q. Well, if you could have done something to</p>

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<p>1 prevent the violation of an employment discrimination law 2 as affirmative action officer and you intentionally 3 failed to do that, could you have gotten fired? 4 MR. JOSEPH: Object to the form. 5 A. I don't know. 6 Q. (BY MR. TOWNSEND) If you could have done 7 something to prevent the violation of an employment 8 discrimination law and you intentionally failed to do so, 9 could you have gotten disciplined by Southeastern in any 10 way? 11 MR. JOSEPH: Object to the form. 12 A. I don't know. 13 Q. (BY MR. TOWNSEND) Did anyone ever tell you that 14 if you intentionally failed to prevent employment 15 discrimination from happening, that you could be 16 disciplined? 17 MR. JOSEPH: Object to the form. 18 A. Did anyone tell me that? 19 Q. (BY MR. TOWNSEND) Yes. 20 A. Clarification, did someone walk up to me and 21 ask me that? I'm not following you. I'm not -- 22 Q. Instead of tell, let's say communicate to you 23 in any way that you could be disciplined for 24 intentionally allowing employment discrimination to occur 25 at Southeastern.</p>	<p>1 to do something that you should have done to prevent 2 employment discrimination? 3 A. Yes. 4 Q. What is that understanding? 5 A. That there are federal guidelines that must be 6 followed. 7 Q. And what could happen to you as an affirmative 8 action officer if you failed to follow those guidelines? 9 A. I have a duty: Prompt and unbiased looking and 10 investigation. That's the law. 11 Q. And what could happen to you at Southeastern if 12 you did not perform that duty? 13 MR. JOSEPH: Object to the form. 14 A. The same as any other individual who works 15 there that does not do their -- what they've been hired 16 to do. 17 Q. (BY MR. TOWNSEND) And what is that? 18 A. There's a possibility of any -- with anyone 19 disciplinary action. 20 Q. Have you ever been disciplined before at 21 Southeastern? 22 A. No. 23 Q. Has anyone ever accused you of violating 24 employment discrimination laws? 25 A. Yes.</p>
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<p>1 MR. JOSEPH: Object to the form. 2 A. Restate that again. 3 MR. TOWNSEND: Could you read the question 4 back. 5 THE COURT REPORTER: "Question: Instead of 6 tell, let's stay communicate to you in any way that you 7 could be disciplined for intentionally allowing 8 employment discrimination to occur at Southeastern." 9 A. And my question is who? Whom -- who told me 10 this? That's what I'm trying to figure out. Do I know 11 that or did someone come and tell me that? I'm not sure 12 what you're asking me. 13 Q. (BY MR. TOWNSEND) Well, let's ask the question 14 a different way, then. Was it your understanding that if 15 you could have prevented employment discrimination for 16 occurring -- from occurring and you intentionally failed 17 to do so, that Southeastern could discipline for you for 18 that? 19 MR. JOSEPH: Object to the form. 20 A. No. The way you're posing it, no. 21 Q. (BY MR. TOWNSEND) Why are you saying the way 22 I'm posing it, no? 23 A. I do not understand what you're asking me. 24 Q. As affirmative action officer, do you have an 25 understanding of what could happen to you if you failed</p>	<p>1 Q. Who is that? 2 A. Rachel Tudor, Dr. Tudor. 3 Q. Anyone else? 4 A. No. 5 Q. Have there ever been any grievances filed 6 against you at Southeastern? 7 MR. JOSEPH: Object to the form. 8 A. Dr. Tudor. 9 Q. (BY MR. TOWNSEND) Anyone else other than 10 Dr. Tudor file grievances against you? 11 A. No. 12 Q. Have you ever received any training on 13 conducting employment discrimination investigations? 14 A. Yes. 15 Q. How many times have you gone through such 16 training? 17 A. Every year. 18 Q. Every year starting from when? 19 A. I'm not sure. 20 Q. Every year since you've been affirmative action 21 officer? 22 A. Yes. 23 Q. How many times a year do you get this training? 24 A. It's been as high as three. Gone to NELI. 25 THE COURT REPORTER: I'm sorry?</p>

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1 THE WITNESS: National -- well, it's where
2 lawyers go to get training.
3 THE COURT REPORTER: What was it called.
4 THE WITNESS: N-E-I -- N-E-L-I.
5 THE COURT REPORTER: Thank you.
6 Q. (BY MR. TOWNSEND) What does NELI stand for?
7 A. Trying to think of -- National Educational Law
8 Association.
9 And ATIXA, A-T-I-X-A. That's for Title IX
10 coordinators. It's a national association. I've gone at
11 least every year and as we have -- whenever they're in
12 the state, Southeastern participates helping setting some
13 of those up, so at least two times a year. Maybe even
14 more.
15 Q. And who conducts these trainings at NELI,
16 N-E-L-I?
17 A. Those are all your -- your associates. They're
18 attorneys. They're attorneys. You can look that up, if
19 you'd like. And they're -- they're gone -- everyone goes
20 to those that's involved. All attorneys that deal with
21 educational law. And others who choose to come.
22 Q. Where would those trainings for NELI take
23 place?
24 A. They're all over the country.
25 Q. So am I correct that you would have to travel

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1 from Southeastern to someplace for these NELI
2 conferences?
3 A. That's correct.
4 Q. And then ATIXA?
5 A. Yes.
6 Q. Where did those trainings occur?
7 A. ATIXA can be held locally, if an institution
8 chooses to do that. The RUSO did do that for us because
9 it could be kind of expensive. They have different
10 levels of education. They have coordinators, then they
11 have investigator training, so -- and it also could be
12 all over the country.
13 Q. So is it just training on conducting
14 investigations when you go to these NELI conferences, or
15 is there other types of training that occur?
16 A. Say that again.
17 Q. Sure. So take the NELI conferences.
18 A. Yes.
19 Q. At those NELI conferences, do you get trained
20 in only conducting investigations, or are there other
21 subjects of training?
22 A. Other subjects of training.
23 Q. Was conducting investigations a subject of your
24 training every time you went to a NELI conference?
25 A. That's a large part of the conference. Or

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1 especially early on when Title IX was really coming out.
2 That was why people went. And so they geared
3 primarily -- I think they probably -- not as much now. I
4 don't know. I have not been in the last four years to
5 NELI. Extremely expensive.
6 Q. So in the last four years, where have you
7 gotten training on doing investigations?
8 A. Every conference that I've gone to, NCAA, I
9 attend their conferences. They always have a large
10 component that deals with Title IX. There's no place
11 that you can go now. They don't -- they don't have a
12 large component, but I keep my ATIXA involvement. That's
13 the premier everyone usually -- that I'm aware of, that's
14 the premier institution in this area.
15 Q. Have you done ATIXA training every year that
16 you've been affirmative action officer?
17 A. That's correct.
18 Q. And every year, one of the topics of the ATIXA
19 trainings is conducting investigations?
20 A. Yes.
21 Q. Did the -- strike that.
22 Has the training that you've received on how to
23 conduct investigations -- let me strike that.
24 Have you ever received training on how to
25 document your work during an investigation?

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1 A. Yes.
2 Q. When did you first receive that type of
3 training?
4 A. I don't remember.
5 Q. Was it before you investigated Dr. Tudor's
6 complaint?
7 A. Oh, yes.
8 Q. And during that training, prior to you
9 investigating Dr. Tudor's complaint, about how to
10 document your investigations, what were you -- what were
11 you trained on? Let me strike that because that's a bad
12 question.
13 During this period of time, prior to you
14 investigating Dr. Tudor's complaint, when you received
15 training on documenting your work during an
16 investigation, could you describe what the trainers
17 advised you to do in that respect?
18 MR. JOSEPH: Object to the form.
19 A. I'm not sure I understand you.
20 There is a standard that anyone that's doing a
21 case -- there's some things that one does, but I'm not
22 understanding what you're specifically asking me.
23 Q. (BY MR. TOWNSEND) What is that standard that
24 you just referenced?
25 A. Well, collecting information, talking to the

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1 people who emerge as -- might have information about
 2 something, writing that information down, just continuing
 3 to dig. Just continuing to try to find out as much --
 4 because no one presents all of the story, or it's at
 5 least slanted in their direction. So you -- as a name
 6 comes up, as a situation comes up, you follow that lead
 7 to come to an acceptable -- go as far as you can.
 8 Q. So is part of that standard, then -- I think
 9 you said writing down what witnesses tell you is
 10 important?
 11 MR. JOSEPH: Object to the form.
 12 A. I would say so.
 13 Q. (BY MR. TOWNSEND) Have you ever received
 14 training on how to assess witness credibility during
 15 investigations?
 16 A. That's all discussed, yes.
 17 Q. And that was discussed in trainings that you
 18 went through prior to investigating Dr. Tudor's
 19 complaint?
 20 A. What -- what are you saying? Define
 21 credibility and -- and setting that up. Could you give
 22 me a little more?
 23 Q. When I'm referring to cred -- credibility, I'm
 24 talking about when you need to assess whether one witness
 25 is telling the truth and another witness isn't if they

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1 give you conflicting accounts of what happened.
 2 A. And the question is what, again?
 3 Q. Did you receive training, prior to your
 4 investigation of Dr. Tudor's complaint, in how to assess
 5 witness credibility?
 6 A. It's discussed, yes.
 7 Q. I wanted to ask you some questions about
 8 training that employees at Southeastern received. Did
 9 you have any role as affirmative action officer in
 10 training employees on employment discrimination laws?
 11 A. Yes.
 12 Q. What was your role in that respect as
 13 affirmative action officer?
 14 A. Help coordinate it, oftentimes present it.
 15 Q. And how often were employees at Southeastern
 16 required to be trained on employment discrimination laws?
 17 A. I don't know prior to me -- I don't -- I don't
 18 know.
 19 Q. Since you've been affirmative action officer,
 20 how frequently have employees at Southeastern been
 21 required to undergo training on employment discrimination
 22 laws?
 23 A. It was a factor even prior to me coming over.
 24 This was -- this has always been a standard that new
 25 employees received -- they'd have to watch a video,

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1 answer questions, sign off. Things have been broadcast
 2 through SOLD programs, discussed in faculty meetings,
 3 those kinds of things. It's been -- it's been done a
 4 myriad of different ways, always looking for the next
 5 best way to present it.
 6 Q. Has it ever been the case that there is
 7 mandatory annual training for Southeastern employees on
 8 employment discrimination?
 9 A. Yes.
 10 Q. When was that the case?
 11 A. For the whole -- I'm not sure. I'm not sure
 12 about the date.
 13 Q. Was it the case while you were -- strike that.
 14 Was it the case while you've been affirmative
 15 action officer?
 16 A. That's correct.
 17 Q. Has it been the case the entire time you've
 18 been affirmative action officer?
 19 A. No.
 20 Q. Do you remember what period of time in which
 21 you were affirmative action officer where it wasn't
 22 required that Southeastern employees undergo annual
 23 training on employment discrimination?
 24 A. It's all -- I need to clarify a point. It's
 25 always been necessary, but mandatory is something else.

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1 Q. What is the distinction you're drawing between
 2 necessary and mandatory there?
 3 A. One -- mandatory in my definition has to do
 4 with if one does not take it, there is something that
 5 must be done or some kind of a sanction of some kind, as
 6 opposed to it's the right thing to do, let's get it done.
 7 To me, they're very different.
 8 Q. So were there periods of time when you were
 9 affirmative action -- strike that.
 10 Have there been periods of time since you've
 11 been affirmative action officer where there was mandatory
 12 training for employees at Southeastern on employment
 13 discrimination laws under the definition of mandatory
 14 that you just described?
 15 A. Repeat that.
 16 MR. TOWNSEND: Could you read that back,
 17 please?
 18 THE COURT REPORTER: "Question: So were there
 19 periods of time when you were affirmative action --
 20 strike that."
 21 "Have there been periods of time since you've
 22 been affirmative action officer where there was mandatory
 23 training for employees at Southeastern on employment
 24 discrimination laws under the definition of mandatory
 25 that you just described?"

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1 A. Yes.
 2 Q. (BY MR. TOWNSEND) And what periods was that?
 3 A. I'm not sure. I'm not sure.
 4 Q. Were those mandatory trainings occurring when
 5 you became affirmative action officer?
 6 MR. JOSEPH: Object to the form.
 7 A. I'm not sure.
 8 Q. (BY MR. TOWNSEND) At some point while you were
 9 affirmative -- strike that.
 10 At some point while you've been affirmative
 11 action officer, have those mandatory trainings been
 12 instituted?
 13 A. Yes.
 14 Q. And approximately how long after you became
 15 affirmative action officer were those mandatory trainings
 16 instituted?
 17 MR. JOSEPH: Object to the form.
 18 A. I'm not sure.
 19 Q. (BY MR. TOWNSEND) Did the mandatory trainings
 20 for employees on employment discrimination at
 21 Southeastern ever stop occurring after they started
 22 occurring?
 23 A. No.
 24 MR. JOSEPH: Object to the form.
 25 Q. (BY MR. TOWNSEND) So it's the case today that

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1 Southeastern employees have to go through mandatory
 2 employment discrimination training?
 3 A. Yes.
 4 Q. And do they have to do that every year?
 5 A. Yes.
 6 Q. And you have an estimate as to how long that's
 7 been occurring that they've had to undergo that mandatory
 8 training?
 9 A. No.
 10 Q. Has any of the training that employees receive
 11 on employment discrimination law discuss transgender
 12 people at all?
 13 MR. JOSEPH: Object to the form.
 14 A. I don't recall.
 15 Q. (BY MR. TOWNSEND) Have you ever received
 16 training on employment discrimination laws and how they
 17 relate specifically to transgender people?
 18 A. Restate that again.
 19 THE WITNESS: Could you please read it back?
 20 THE COURT REPORTER: "Question: Have you ever
 21 received training on employment discrimination laws and
 22 how they relate specifically to transgender people?"
 23 A. I don't recall.
 24 MR. JOSEPH: Allan, we've been going a little
 25 over an hour. Would this be an opportune time to take a

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1 brief break?
 2 MR. TOWNSEND: Sure. Let's take a break.
 3 (Off the record at 9:31 A.M.)
 4 (On the record at 9:47 A.M.)
 5 Q. (BY MR. TOWNSEND) Dr. Stubblefield, as
 6 affirmative action officer, is one of your
 7 responsibilities also to investigate complaints of
 8 retaliation made by employees who believe they were
 9 retaliated against for making a complaint about
 10 discrimination?
 11 A. Yes.
 12 Q. Is there a position at Southeastern called
 13 human resources director?
 14 A. Restate that.
 15 Q. Is there a position at Southeastern called
 16 human resources director?
 17 A. No.
 18 Q. Is there a human resources department at
 19 Southeastern?
 20 A. No.
 21 Q. Is there a human resources office at
 22 Southeastern?
 23 A. No.
 24 Q. Do you know who Cathy Conway is?
 25 A. Yes.

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1 Q. During the 2009 to 2011 timeframe, what was her
 2 position at Southeastern?
 3 A. Director of human resources.
 4 Q. And did -- strike that.
 5 Do you understand the term human resources
 6 director to be different than director of human
 7 resources?
 8 A. No.
 9 Q. When I asked before if there was a position of
 10 human resources director, you said, "No." Is there a
 11 reason why?
 12 A. Yes.
 13 Q. Why is that?
 14 A. That department does not -- it's not in
 15 existence.
 16 Q. Let me make sure that we're clear on the
 17 timeframe I'm talking about, then, so we don't get that
 18 confusion again. I'm going to focus in on the 2009 to
 19 2011 timeframe with these next questions. Okay?
 20 So during that timeframe, were you, as
 21 affirmative action officer, responsible for investigating
 22 complaints of retaliation from employees who believed
 23 they were retaliated against for filing a discrimination
 24 complaint?
 25 MR. JOSEPH: Object to the form.

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<p>1 A. I need you to restate that. I need you to 2 restate that. 3 MR. TOWNSEND: Could you read back the 4 question? 5 THE COURT REPORTER: "Question: Let me make 6 sure that we're clear on the timeframe I'm talking about, 7 then, so we don't get that confusion again. I'm going to 8 focus in on the 2009 to 2011 timeframe with these next 9 questions. Okay?" 10 "So during that timeframe, were you, as 11 affirmative action officer, responsible for investigating 12 complaints of retaliation from employees who believed 13 they were retaliated against for filing a discrimination 14 complaint?" 15 A. Stated that way, I'm not able to answer that. 16 Q. (BY MR. TOWNSEND) All right. Let's back up, 17 then. During this time period we're talking about, 2009 18 to 2011 timeframe, were there policies in place at 19 Southeastern that prohibited retaliation against 20 employees for making employment discrimination 21 complaints? 22 A. Yes. 23 Q. And if an employee, during that timeframe, 24 complained of such retaliation, who would handle the 25 investigation of that retaliation complaint?</p>	<p>1 A. When it became my responsibility. 2 Q. Did it become your responsibility at some point 3 during the 2009-'11 timeframe? 4 A. Yes. 5 Q. At what point was that? 6 A. I don't remember exactly. 7 Q. Did it become your responsibility before 8 Dr. Tudor filed her discrimination complaint? 9 A. Yes. 10 Q. And during this 2009 to 2011 timeframe, was it 11 your responsibility to investigate sex discrimination 12 complaints filed by employees? 13 A. One more time, please. 14 Q. All right. Let me back up. Up till now, I've 15 been referring to employment discrimination complaints, 16 so in this question I'm asking about sex discrimination 17 in particular. 18 A. Uh-huh. 19 Q. Okay? 20 A. (Witness nodding head.) 21 Q. So during this 2009 to 2011 timeframe, were you 22 responsible for investigating sex discrimination 23 complaints that employees filed? 24 A. Clarification, are you talking about gender? 25 Q. Yes.</p>
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<p>1 A. I don't know. 2 Q. Did you ever investigate a complaint of 3 retaliation as affirmative action officer? 4 A. Yes. 5 Q. During this 2009-2011 timeframe? 6 A. A period. 7 Q. What do you mean by "a period"? 8 A. You asked about a critical time period was 2009 9 through '11. 10 Q. Right. During that timeframe, did you 11 investigate any retaliation complaints? 12 A. During the time, yes. 13 Q. How many? 14 A. I don't recall. 15 Q. And were you the person, during that timeframe, 16 who was responsible at Southeastern for investigating 17 those types of retaliation complaints? 18 A. I don't recall. 19 Q. Did the HR director, during that timeframe, 20 have any responsibility for investigating retaliation 21 complaints? 22 A. Yes. 23 Q. And how was it determined whether you would 24 investigate a retaliation complaint or somebody else 25 would investigate it?</p>	<p>1 A. Yes. 2 Q. And was that your responsibility this whole 3 2009 to 2011 timeframe? 4 A. No. 5 Q. At what point was it not your responsibility? 6 A. I don't remember. I don't remember. 7 Q. During the 2009-2011 timeframe, was it the case 8 that it stopped being your responsibility at some point 9 to investigate sex discrimination complaints? 10 MR. JOSEPH: Object to the form. 11 A. Say it one more time. 12 Q. (BY MR. TOWNSEND) Sure. In 2009 was it your 13 responsibility to investigate sex discrimination 14 complaints filed by employees? 15 A. No. 16 Q. In 2010 was it your responsibility to 17 investigate sex discrimination complaints filed by 18 employees? 19 A. I would need to refresh the date. Not sure. 20 Q. At the time that Dr. Tudor filed her 21 discrimination complaint, was it your responsibility to 22 investigate sex discrimination complaints at 23 Southeastern? 24 A. Yes. 25 Q. During this 2009-2011 timeframe, what were</p>

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<p>1 supervisors at Southeastern supposed to do if they 2 received a complaint of sex discrimination from an 3 employee? 4 MR. JOSEPH: Object to the form. 5 A. I don't recall. 6 Q. (BY MR. TOWNSEND) Did supervisors during this 7 2009-2011 timeframe receive any training on what they 8 should do if they received an employment discrimination 9 complaint? 10 A. I don't recall. Nine to '11, I don't recall. 11 Q. Were you a supervisor during that 2009-2011 12 timeframe? 13 A. How are you defining supervisor? 14 Q. Did you have any employees that you supervised 15 during that 2009-2011 timeframe? 16 A. I'm not sure I can answer that how you have it 17 stated. 18 Q. Why not? 19 A. I don't understand what you're asking me. 20 Q. What is it that you don't understand about my 21 question? 22 A. I don't understand what you're asking me, the 23 way you phrased the question. 24 Q. During this 2009-2011 timeframe, did you 25 complete performance evaluations for any employees?</p>	<p>1 Q. Did that training cover what supervisors were 2 supposed to do if they received a discrimination 3 complaint from an employee? 4 A. Yes. 5 Q. And what did the training say about that? 6 A. I don't recall everything. I don't recall. 7 Q. Did you have an expectation as affirmative 8 action officer that if a supervisor received a complaint 9 from an employee about discrimination, that the 10 supervisor would bring it to your attention? 11 A. Yes. 12 Q. Why did you have that expectation? 13 A. Because I was the affirmative action officer at 14 some point in that relevant time period. 15 Q. And was that expectation communicated to 16 supervisors? 17 A. I don't recall. 18 Q. In your time as affirmative action officer, did 19 a supervisor ever bring to your attention that an 20 employee had complained to them about discrimination? 21 A. Yes. 22 Q. How many times did that happen, approximately? 23 A. I don't recall. 24 Q. Do you think it happened more than a hundred 25 times?</p>
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<p>1 A. No. 2 Q. Did you have the authority, during this 3 timeframe we're talking about, to discipline any 4 employees? 5 A. I'm not sure I understand what you're asking. 6 I don't understand. 7 Q. During the 2009-2011 timeframe, were there any 8 employees who assisted you in your role as affirmative 9 action officer? 10 A. No. 11 Q. Have you ever undergone any training that 12 supervisors at Southeastern were required to undergo? 13 A. Yes. 14 Q. When was that? 15 A. I think '11. I'm not sure. I would have to 16 refresh the date. 17 Q. When you said, "I think '11," you mean I think 18 2011? 19 A. That's correct. 20 Q. And do you have an understanding as to why you 21 were undergoing that training that supervisors were 22 undergoing? 23 A. Yes. 24 Q. What was that reason? 25 A. I chose to do it. And I scheduled it.</p>	<p>1 A. No. 2 Q. Do you think it happened more than 50 times? 3 A. No. 4 Q. Do you think it happened more than 25 times? 5 A. No. 6 Q. Do you think it happened more than 15 times? 7 A. I don't know. 8 Q. Do you think it happened more than five times? 9 A. I'm not sure. 10 Q. Do you think it happened more than once? 11 A. Yes. 12 Q. All right. These are the exhibits that we have 13 used in previous depositions. 14 A. Uh-huh. 15 Q. It's in a binder, as you can see. And there's 16 tabs with numbers on them indicating the number of the 17 exhibit, so I'm going to be referring to some of these 18 exhibits in this binder. 19 A. Okay. 20 Q. First one that I'd like you to turn to is 21 Exhibit -- Plaintiff's Exhibit 7. 22 A. (Witness complying with request.) 23 Q. As you can see, there are Bates numbers at the 24 bottom of each page, at the bottom right corner. And for 25 Plaintiff's Exhibit 7, they run from EEOC 303 to EEOC</p>

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<p>1 349. 2 A. Is there no 304? 3 Q. 304's not in there? Is it on the back of the 4 first page? 5 A. Yes. 6 Q. Okay. Good. 7 So I wanted to call your attention specifically 8 to Section 4.4.6 of Plaintiff's Exhibit 7. It starts on 9 page No. EEOC 322 and goes on to pages 323 and 324. 10 A. 322. 11 Q. Are you there? 12 A. I am. 13 Q. If you go to page EEOC 323, there are some 14 numbered paragraphs towards the top of the page. Do you 15 see where I'm looking? Do you see where I'm looking? 16 A. I see where you're -- what you have 17 highlighted. 18 Q. Oh, just for the record, I think you're looking 19 across at my notes. The exhibit you're looking at isn't 20 highlighted. Right? 21 A. No. 22 Q. Okay. So No. 2, the first No. 2 that occurs on 23 page EEOC 323 begins "Where more than one type of 24 complaint is present." Do you see where I'm looking? 25 A. Uh-huh. Yes.</p>	<p>1 violation of due process), a copy of the harassment or 2 discrimination complaint must be sent to the AAO for 3 investigation. A grievance with multiple grounds is 4 heard by one hearing committee. The FEC" -- strike that. 5 "The FAC chair and AAO will discuss and determine the 6 appropriate appeals process under which such a grievance 7 will be heard." 8 Did I read that correctly? 9 A. Yes. 10 Q. The FAC in that paragraph, what is that 11 referring to? Do you know? 12 A. If we go on to the paragraph No. 3, it says 13 "The chair of faculty appellate committee," so I would -- 14 I don't know. I would guess that's it. 15 Q. So you're saying, based on your reading of 16 this, it appears that FAC is referring to faculty 17 appellate committee? 18 A. Yes. 19 Q. Did -- as affirmative action officer, did you 20 ever have discussions with the FAC chair to determine the 21 appropriate appeals process under which a grievance that 22 involved multiple complaints would be heard? 23 MR. JOSEPH: Object to the form. 24 A. I don't recall. 25 Q. (BY MR. TOWNSEND) Do you recall ever receiving</p>
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<p>1 Q. And this paragraph refers to the AAO. Do you 2 see that? 3 A. Yes. 4 Q. Is that referring to affirmative action 5 officer? 6 A. Yes. 7 Q. All right. Was this the policy that was in 8 place, 4.4.6 in Plaintiff's Exhibit 7, when you 9 investigated Dr. Tudor's discrimination complaint? 10 MR. JOSEPH: Object to the form. 11 A. I don't know. The date -- what's the date on 12 this document? 13 Q. (BY MR. TOWNSEND) On the first page of 14 Plaintiff's Exhibit 7 it says "Revised 08/1998" towards 15 the top of the page. 16 A. Uh-huh. 17 Q. With that information, can you say whether the 18 Policy 4.4.6 in Plaintiff's Exhibit 7 was the policy in 19 place at the time Dr. Tudor filed her discrimination 20 complaint? 21 A. I don't recall. 22 Q. So going back to page EEOC 323. The paragraph 23 that says "Where more than one type of complaint is 24 present," it reads in full, "Quote, where more than one 25 type of complaint is present (i.e., sexual harassment and</p>	<p>1 a complaint that alleged discrimination that you needed 2 to investigate as well as a violation of another policy 3 at the university? 4 MR. JOSEPH: Object to the form. 5 A. I don't remember. 6 Q. (BY MR. TOWNSEND) In connection with 7 Dr. Tudor's discrimination complaint, did you have any 8 discussions with any members of the faculty appellate 9 committee? 10 A. I don't remember. 11 Q. If you go on to page EEOC 324 in Plaintiff's 12 Exhibit 7, there's a heading towards the bottom of the 13 page called "Appeal." 14 Do you see that? 15 A. Yes. 16 Q. Did you follow this policy with respect to 17 discrimination complaints that you investigated during 18 this 2009-2011 timeframe? 19 MR. JOSEPH: Object to the form. 20 A. I don't re -- I don't recall. I don't 21 remember. 22 Q. (BY MR. TOWNSEND) All right. I want to move on 23 to a different one and question you, so we don't need to 24 refer to Exhibit 7 anymore at this point. 25 A. Is this the only faculty -- I mean, policy and</p>

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<p style="text-align: right;">Page 58</p> <p>1 procedure that you have or are we -- or are all questions 2 referring to the -- the revised '98? Are there other -- 3 other iterations of this? 4 Q. There are other iterations of the academic 5 policies and procedures manual that I have. 6 A. Uh-huh. 7 Q. This version is Bates stamped EEOC because it 8 was provided to the EEOC during their investigation. 9 A. Okay. Thank you for that. 10 Q. With that clarification, would you be able to 11 answer any of the questions that I asked about 12 Plaintiff's Exhibit 7 that you didn't remember the 13 answers to? 14 A. And what -- is that here? 15 MR. JOSEPH: Object to the form. 16 Q. (BY MR. TOWNSEND) We were just talking about 17 Plaintiff's Exhibit 7. That's the -- 18 A. This -- 19 Q. -- the policies that we were going over. And 20 I -- well, let's go back to it. 21 So going back to EEOC 324 Bates number in 22 Plaintiff's Exhibit 7, under the heading "Appeal," with 23 my representation that this policy was provided to the 24 EEOC in connection with their investigation of 25 Dr. Tudor's charge of discrimination, can you say whether</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. (BY MR. TOWNSEND) What types of discrimination 2 complaints have you investigated as affirmative action 3 officer? 4 MR. JOSEPH: Object to the form. 5 A. I don't remember. 6 Q. (BY MR. TOWNSEND) Do you remember any of the 7 kinds of discrimination complaints you've investigated as 8 affirmative action officer? 9 A. I don't recall. 10 Q. Have you ever investigated any race 11 discrimination complaints as affirmative action officer? 12 A. I don't remember. 13 Q. Have you ever investigated any complaints of 14 sexual harassment as affirmative action officer? 15 A. I don't remember. 16 Q. Have you ever investigated any complaints of 17 disability discrimination as affirmative action officer? 18 A. I don't recall. 19 Q. Have you ever investigated any complaints of 20 religious discrimination as affirmative action officer? 21 A. I don't recall. 22 Q. Have you ever investigated any complaints of 23 age discrimination as affirmative action officer? 24 A. I don't recall. 25 Q. Have you ever investigated any complaints of</p>
<p style="text-align: right;">Page 59</p> <p>1 this appeal process described under the heading "Appeal" 2 was something that you followed during the 2009-2011 time 3 period? 4 A. I don't recall. 5 Q. All right. We can move on to a different one 6 in questioning apart from Plaintiff's Exhibit 7. 7 How many complaints of sex discrimination have 8 you investigated as affirmative action officer at 9 Southeastern? 10 A. I don't know. 11 Q. Have you investigated more than one? 12 A. Yes. 13 Q. More than five? 14 A. I don't remember. 15 Q. Do you remember whether you investigated any 16 during the 2009-2011 timeframe? 17 A. I don't recall. 18 Q. Do you recall Dr. Tudor's discrimination 19 complaint alleging sex discrimination? 20 A. Some of it. 21 Q. And other than Dr. Tudor's complaint, have you 22 ever investigated a complaint of sex discrimination 23 before? 24 MR. JOSEPH: Object to the form. 25 A. I don't remember.</p>	<p style="text-align: right;">Page 61</p> <p>1 national origin discrimination as affirmative action 2 officer? 3 A. I don't recall. 4 Q. When you conduct investigations as affirmative 5 action officer at Southeastern, is it your practice to 6 take notes of what people tell you during the 7 investigation? 8 A. Yes. 9 Q. Do you do that in every investigation that you 10 conduct? 11 A. No. 12 Q. Is there a reason why you don't take notes in 13 connection with some investigations? 14 A. Yes. 15 Q. What is that reason? 16 A. Clarify your question. 17 Q. I asked you if there was a reason why you don't 18 take notes in certain investigations and you said, "Yes," 19 and I'm wondering what that reason is. 20 A. I don't understand certain kinds. I'm not 21 understanding that. 22 Q. Is there a reason why you would not take notes 23 during an investigation? 24 A. Yes. 25 Q. And what is that reason?</p>

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<p style="text-align: right;">Page 62</p> <p>1 A. Taping. 2 Q. So you're referring to if you taped the 3 interview? 4 A. Uh-huh. 5 Q. Sorry. 6 A. There could be instances, yes. 7 Q. Any other reasons why you would not take notes? 8 A. No. 9 Q. When you investigated Dr. Tudor's 10 discrimination complaint, did you interview witnesses? 11 A. Yes. 12 Q. Did you take notes of those witness interviews? 13 A. Yes. 14 Q. What kind of notes? 15 A. Written. 16 Q. Handwritten? 17 A. Yes. 18 Q. And did you take handwritten notes with every 19 witness that you interviewed in connection with that 20 investigation? 21 A. No. 22 Q. Was there a reason for not taking handwritten 23 notes in connection with some of those witness 24 interviews? 25 A. Restate.</p>	<p style="text-align: right;">Page 64</p> <p>1 discrimination complaint that you did not take notes of 2 their interviews? 3 A. I can't answer it that way. I can't answer it 4 the way you asked me. 5 Q. Who were the witnesses that you spoke to in 6 connection with Dr. Tudor's discrimination complaint that 7 you did take notes of what they said? 8 A. Ask it one more time. 9 MR. TOWNSEND: Can you repeat that question? 10 THE COURT REPORTER: "Question: Who were the 11 witnesses that you spoke to in connection with 12 Dr. Tudor's discrimination complaint that you did not 13 [sic] take notes of what they said?" 14 A. Is that what you meant? 15 Q. (BY MR. TOWNSEND) No. I think -- well, let me 16 ask the question again. I think -- 17 THE COURT REPORTER: Did take notes. I'm 18 sorry. I said "did not," didn't I? 19 MR. TOWNSEND: Yes. 20 THE COURT REPORTER: I'm sorry. I'm sorry. 21 Let me read that back one more time. 22 MR. TOWNSEND: Okay. Read it again. Thank 23 you. 24 THE COURT REPORTER: "Question: Who were the 25 witnesses that you spoke to in connection with</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Sure. 2 Actually, let me ask it a different way. Did 3 you record any of the witness interviews that you 4 conducted in connection with Dr. Tudor's discrimination 5 complaint? 6 A. No. 7 Q. Do you remember which witnesses' interviews you 8 did not take notes for in connection with Dr. Tudor's 9 discrimination complaint? 10 A. Yes. 11 Q. Who were they? 12 A. Ones that would not give me permission to do 13 so. 14 Q. So there were witnesses who told you that they 15 did not want you to write notes during your investigation 16 of Dr. Tudor's complaint? 17 A. Restate that. 18 Q. There were witnesses who told you during your 19 investigation of Dr. Tudor's discrimination complaint 20 that they did not want you to take notes when you 21 interviewed them? 22 MR. JOSEPH: Object to the form. 23 A. That's not what you asked me before. 24 Q. (BY MR. TOWNSEND) So who were the witnesses who 25 you interviewed in connection with Dr. Tudor's</p>	<p style="text-align: right;">Page 65</p> <p>1 Dr. Tudor's discrimination complaint that you did take 2 notes of what they said?" 3 MR. JOSEPH: Object to the form. 4 A. Okay. I don't recall. 5 Q. (BY MR. TOWNSEND) Was there a reason why you 6 did not take notes of some witnesses' interviews in 7 connection with Dr. Tudor's discrimination complaint? 8 A. I don't recall. 9 Q. I think that you said that there were witnesses 10 who told you that they would not want you to take notes 11 of what they said. Is that right? 12 A. No. 13 MR. JOSEPH: Object to the form. 14 Q. (BY MR. TOWNSEND) So did you take notes of 15 every conversation you had with witnesses in connection 16 with Dr. Tudor's discrimination complaint? 17 A. Yes. 18 Q. And were all of those handwritten notes? 19 A. Yes. 20 Q. Did you record any conversations that you had 21 with witnesses in connection with Dr. Tudor's 22 discrimination complaint? 23 MR. JOSEPH: Object to the form. 24 A. State that again. 25 Q. (BY MR. TOWNSEND) Let me state it a different</p>

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1 way. Was there any recording made of any of the
2 conversations that you had with witnesses in connection
3 with Dr. Tudor's discrimination complaint?
4 MR. JOSEPH: Object to the form.
5 A. I was not permitted.
6 Q. (BY MR. TOWNSEND) Who didn't permit you?
7 A. Dr. Tudor.
8 Q. Anyone else?
9 A. Dr. Parrish.
10 Q. Anyone else?
11 A. Dr. Cotter-Lynch.
12 Q. Anyone else?
13 A. Mark Spencer, I believe. I don't know anyone
14 else. He -- strike Mark Spencer. I don't -- I don't
15 remember.
16 Q. Did Dr. Tudor say why she did not want you to
17 record your conversation with her?
18 A. Yes.
19 Q. What -- what did she say?
20 A. "I don't want you to."
21 Q. Did she say why she didn't want you to?
22 A. She just said, "I don't want you to." I asked
23 permission.
24 Q. Did you ask her why she didn't want you to?
25 A. No.

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1 Q. Did Dr. Parrish say why she didn't want you to
2 record your conversation with her?
3 A. Yes.
4 Q. What was the reason?
5 A. "I don't feel comfortable being on tape."
6 Q. Was that the only reason Dr. Parrish gave?
7 A. I didn't pursue it.
8 Q. But that was the only reason that Dr. Parrish
9 gave for why she didn't want you to record her was that
10 she didn't feel comfortable. Right?
11 A. She didn't want to.
12 Q. Dr. Cotter-Lynch, did she say why she didn't
13 want you to record her -- your conversation with her?
14 A. She didn't want it on tape.
15 Q. Did she say why?
16 A. No.
17 Q. Did you ask every witness that you interviewed
18 in connection with Dr. Tudor's discrimination complaint
19 if you could record the conversation?
20 A. I don't recall every.
21 Q. Was it your practice to ask to record certain
22 witnesses' invest -- strike that.
23 Was it your practice, in conducting
24 investigations, to try to record interviews of certain
25 types of witnesses?

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1 MR. JOSEPH: Object to the form.
2 A. Certain types? I don't understand that.
3 Q. (BY MR. TOWNSEND) Let me ask it a different
4 way. Was there a reason why you would not ask the
5 witness if you could record your conversation with them
6 while you were conducting an investigation as affirmative
7 action officer?
8 MR. JOSEPH: Object to the form.
9 A. Repeat that.
10 Q. (BY MR. TOWNSEND) All right. So let me just
11 back up. I think we've established that in connection
12 with investigations that you conducted as affirmative
13 action officer, you recorded some interviews but not
14 others. Right?
15 A. Uh-huh. Yes. Yes.
16 Q. Was there a reason for -- let me strike that.
17 And I also think we've established that you did
18 not ask every witness that you interviewed in connection
19 with discrimination investigations if you could record
20 the conversation. Is that right?
21 MR. JOSEPH: Object to the form.
22 A. I'm not sure I understand.
23 Q. (BY MR. TOWNSEND) Am I correct that there are
24 some witnesses that you've interviewed in connection with
25 investigations that you did not ask them if you could

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1 record the interview?
2 A. That would be true, yes.
3 Q. So my question is, is there some sort of
4 rationale that you have for asking some witnesses if you
5 can record the interviews in connection with
6 investigations but not others?
7 A. I don't understand. It's not clear.
8 Q. What are the reasons why you would not ask a
9 witness to record the interview during an investigation?
10 MR. JOSEPH: Object to the form.
11 A. Formal versus informal. Dr. Tudor made it
12 clear that she had a complaint that she wanted to move
13 forward with.
14 Q. (BY MR. TOWNSEND) So when there is a formal
15 complaint, was it your practice to ask every witness that
16 you interviewed in investigating that complaint if you
17 could record the conversation?
18 A. That has been common practice, yes.
19 Q. Was it ever not your practice?
20 A. When I first started.
21 Q. When did it become your practice?
22 A. As more training, new practices.
23 Q. Did it become your practice before Dr. Tudor
24 filed her discrimination complaint?
25 A. Yes.

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<p>1 THE WITNESS: It is freezing in here. 2 THE COURT REPORTER: Do you want me to turn it 3 down? 4 THE WITNESS: Yes, please. 5 THE COURT REPORTER: We'll go off the record 6 real quick. 7 (Off the record at 10:28 A.M.) 8 (On the record at 10:29 A.M.) 9 Q. (BY MR. TOWNSEND) So the handwritten notes you 10 took in connection with Dr. Tudor's complaint that you 11 investigated, what did you do with those handwritten 12 notes? 13 A. Put them in a folder. 14 Q. And did the folder have a particular title? 15 A. I don't recall. 16 Q. Where did you keep the folder? 17 A. Locked with all the files. 18 Q. Where was the filing cabinet? 19 A. It's not a filing cabinet. It's a filing unit 20 with lock -- under lock, and I'm the only one that has 21 the key. 22 Q. Are those handwritten notes still in that 23 filing unit? 24 A. I don't know. 25 Q. Is there any reason why they wouldn't be?</p>	<p>1 A. No. 2 Q. How did you know you were supposed to prepare 3 these investigation reports? 4 A. I don't understand. 5 Q. Strike that question. 6 In writing those investigation reports, did you 7 believe it was important to document the complaints that 8 you investigated? 9 A. Yes. 10 Q. Why is that? 11 A. Are you asking -- ask me that again. 12 Q. Why did you believe it was important to 13 document the complaints you investigated in your reports? 14 A. It's part of the job. I don't -- I don't 15 understand your -- I don't understand your question. Why 16 would someone not be a professional? I'm not 17 understanding. 18 Q. Well, that could be a response to my question. 19 So are you saying that one of the reasons why 20 you documented the complaints in the investigation report 21 was because you believe that's what a professionally-done 22 report should have? 23 A. I believe so. 24 Q. And did you believe it was important to 25 document your findings on all of the discrimination</p>
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<p>1 A. No. 2 Q. At the -- let me strike that. 3 In connection with investigations of employment 4 discrimination that you've conducted, have you ever 5 written a report describing your findings? 6 A. Yes. 7 Q. Did you do that in every investigation that you 8 conducted? 9 A. Yes. 10 Q. What was the purpose of writing those reports? 11 A. That's part of the procedure. 12 Q. Do you have an understanding of why that's part 13 of the procedure? 14 A. I'm not sure I understand you. 15 Q. What procedure are you referring to? 16 A. In responding to -- re -- ask me that again. 17 Q. I asked you what was the purpose of writing 18 those investigative reports, and you said it was 19 procedure. And my question is. What procedure are you 20 referring to? 21 A. Filing a complaint. One wants to know what the 22 disposition of that would be. 23 Q. And was there some sort of written procedure at 24 Southeastern for what should be in these investigation 25 reports?</p>	<p>1 complaints that you investigated in your reports? 2 A. I don't remember. 3 Q. Do you believe that it's important for an 4 investigation report to explain what you found in 5 connection with your investigation? 6 A. Yes. 7 Q. And is one of the reasons it's important to do 8 that so that the complainant knows that you investigated 9 all of his or her complaints? 10 MR. JOSEPH: Object to the form. 11 A. I have not an answer. 12 Q. (BY MR. TOWNSEND) Well, why is it important to 13 document the findings in the investigation reports? 14 A. Why would it not be? 15 Q. But you said it is important. It is -- 16 A. It is to me. 17 Q. That's what I'm asking. Why do you believe 18 it's important to document the findings in the 19 investigation reports? 20 A. A level of professionalism. 21 Q. Did you share your investigation reports with 22 complainants? 23 A. I don't recall. 24 Q. Did you share your investigation report with 25 Dr. Tudor in connection with your investigation of her</p>

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<p style="text-align: right;">Page 74</p> <p>1 complaint? 2 A. I don't recall. 3 Q. Was one of the reasons why it was important to 4 you to document your investigations in investigation 5 reports so that there was documentary proof that you had 6 investigated the complaints? 7 A. Yes. 8 Q. When you investigate a discrimination 9 complaint, the person that is being complained about, do 10 you have a certain term that you use for that person? 11 Let me strike that question. 12 I'm going to use the term respondent to refer 13 to a person that's being accused of discrimination in 14 connection with your investigations. Does that term make 15 sense to you? 16 A. Yes, it does. 17 Q. Okay. Have you ever asked a respondent in an 18 investigation whether it was appropriate for you to 19 investigate a complaint against him? 20 A. No. 21 MR. JOSEPH: Object to the form. 22 Q. (BY MR. TOWNSEND) Do you think that would be 23 appropriate to ask a respondent? 24 MR. JOSEPH: Same objection. 25 A. No.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Why not? 2 A. I don't have another response. It would not be 3 appropriate. I have no other response to that. 4 Q. Do you think it would be highly inappropriate 5 to ask a respondent, if you were the affirmative action 6 officer, what you should put in your investigation 7 report? 8 MR. JOSEPH: Object to the form. 9 A. I don't know what -- I don't know what you're 10 asking. I guess my question to you is, why would you ask 11 someone if it would be appropriate? I don't get that at 12 all. I don't understand what you're asking me. 13 Q. (BY MR. TOWNSEND) I am not inferring that it is 14 appropriate in any way or -- 15 A. Let's move on. 16 Q. -- affirmative action -- 17 A. I don't understand that. 18 Q. Hold on. We can't talk over one another. 19 Okay? So I'm just trying to clarify my question. 20 I'm not -- I'm not implying at all that it 21 would be appropriate for an affirmative action officer to 22 ask a respondent what he or she should put in his or her 23 investigation report. 24 A. Uh-huh. 25 Q. Do you understand that? You said "uh-huh."</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. (BY MR. TOWNSEND) Why not? 2 A. I don't know. 3 Q. Would one of the reasons be that the respondent 4 would have a conflict of interest in determining what 5 should and shouldn't be investigated? 6 A. Restate that. 7 MR. TOWNSEND: Can you read it back? 8 THE COURT REPORTER: "Question: Would one of 9 the reasons be that the respondent would have a conflict 10 of interest in determining what should and shouldn't be 11 investigated?" 12 A. That's -- I still don't -- 13 Q. (BY MR. TOWNSEND) Have you ever asked a 14 respondent what would be appropriate for you to say in 15 your investigation report? 16 A. No. 17 Q. And is there a reason why? 18 A. Why -- no. 19 Q. Well, let me strike that question. 20 A. Excuse me. I'm sorry. 21 Q. Do you think it would be appropriate for an 22 affirmative action officer at Southeastern to ask a 23 respondent what the respondent thinks should be written 24 in the investigation report? 25 A. No.</p>	<p style="text-align: right;">Page 77</p> <p>1 But you have to -- 2 A. Continue. 3 Q. -- verbalize your response. Okay. 4 I am not implying that it would be appropriate 5 for an affirmative action officer at Southeastern to ask 6 a respondent what the affirmative action officer should 7 put in his or her investigation report. Was -- did you 8 understand me to be suggesting the opposite? 9 A. I didn't know what you were asking. And I 10 agree with that statement that you just made. 11 Q. And it may be easily apparent to you why it 12 would be inappropriate for an affirmative action officer 13 to ask a respondent what he or she should put in her 14 investigative report, but for the record I'd just like to 15 have you verbalize your reasons for why you think that 16 way. Can you do that? 17 A. Yes. 18 Q. Please do so. 19 A. I think it would be inappropriate for any 20 affirmative action officer to ask a respondent what 21 should be said or what should be written or what should 22 be documented. 23 Q. And why is that? 24 A. Affirmative action officer is asking the 25 questions, and they're asking the questions to obtain</p>

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1 information, period.
 2 Q. Have you ever found that a complaint that you
 3 investigated as affirmative action officer had merit?
 4 A. I'm not understanding.
 5 Q. Do you know what I mean when I say "sustain a
 6 complaint"?
 7 A. Enlighten me.
 8 Q. When I say sustain, I mean that you found that
 9 the complainant's complaint -- let me strike that.
 10 When I say sustained, I mean that you found, in
 11 connection with an employment discrimination complaint,
 12 that discrimination had occurred. Is that okay for me to
 13 use that term, sustained? Do you understand -- let me
 14 strike that.
 15 A. I do.
 16 Q. Do you understand what I mean by sustained now?
 17 A. I do.
 18 Q. Okay. Have you ever sustained an employment
 19 discrimination complaint in connection with one of your
 20 investigations as affirmative action officer at
 21 Southeastern?
 22 A. I don't recall.
 23 Q. Is there anything that would refresh your
 24 memory?
 25 A. I don't know.

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1 Q. Would you consider it to be noteworthy that you
 2 had sustained a discrimination complaint?
 3 MR. JOSEPH: Object to the form.
 4 A. I'm not following that question.
 5 Q. (BY MR. TOWNSEND) Let me ask it a different
 6 way. If you had sustained a discrimination complaint in
 7 connection with one of your investigations, do you think
 8 that you would remember?
 9 A. I don't know.
 10 Q. Do you recall learning that the U.S. Department
 11 of Education sent Southeastern Oklahoma State University
 12 a letter indicating that Dr. Tudor had filed a complaint
 13 against the university?
 14 A. Yes.
 15 Q. And how did you learn of that?
 16 A. My name's on it. I received those on our
 17 campus.
 18 Q. And was there a process in place at
 19 Southeastern for handling the process of responding to
 20 discrimination complaints filed with the U.S. Department
 21 of Education?
 22 MR. JOSEPH: Object to the form.
 23 A. I don't know.
 24 Q. (BY MR. TOWNSEND) Did you have any role in
 25 responding to the complaint filed with the U.S.

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1 Department of Education?
 2 A. Yes.
 3 MR. JOSEPH: Object to the form.
 4 Q. (BY MR. TOWNSEND) Did you also, at some point,
 5 learn that a complaint had been filed by Dr. Tudor with
 6 the U.S. Equal Employment Opportunity Commission?
 7 A. Yes.
 8 Q. Were you involved in responding to both the
 9 complaint filed with the U.S. Department of Education and
 10 the complaint filed with the U.S. Employment -- Equal
 11 Employment Opportunity Commission?
 12 A. Yes.
 13 MR. JOSEPH: Object to the form.
 14 A. Yes.
 15 Q. (BY MR. TOWNSEND) During the timeframe when
 16 Dr. Tudor filed her complaint with the U.S. Department of
 17 Education, was there a normal point of contact at
 18 Southeastern for dealing with the EEOC and the Department
 19 of Education?
 20 MR. JOSEPH: Object to the form.
 21 A. I don't remember.
 22 Q. (BY MR. TOWNSEND) Did you serve as the point of
 23 contact with the U.S. Department of Education when you
 24 learned of Dr. Tudor's complaint?
 25 MR. JOSEPH: Object to the form.

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1 A. I don't recall.
 2 Q. (BY MR. TOWNSEND) Did you serve as the point of
 3 contact for Southeastern in connection with the EEOC's
 4 investigation of Dr. Tudor's complaint?
 5 MR. JOSEPH: Object to the form.
 6 A. I don't recall.
 7 Q. (BY MR. TOWNSEND) Do you know what I mean when
 8 I say "point of contact"?
 9 A. Enlighten me.
 10 Q. Sure. I mean you were the person that the EEOC
 11 would contact if they wanted information from
 12 Southeastern.
 13 With that clarification, were you the point of
 14 contact for Southeastern in connection with the EEOC's
 15 investigation?
 16 A. I don't recall.
 17 Q. If we go back to -- you can turn to Plaintiff's
 18 Exhibit 43.
 19 A. (Witness complying with request.)
 20 Q. Plaintiff's Exhibit 43 is the letter we were
 21 looking at earlier this morning. Right?
 22 A. Uh-huh. Yes.
 23 Q. And this letter's addressed to you. Correct?
 24 A. Yes.
 25 Q. And it's signed -- well, strike that.

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<p>1 It's from Kathy Nusz, senior federal 2 investigator. Right? 3 A. Yes. 4 Q. Did you communicate with Ms. Nusz in connection 5 with the EEOC investigation? 6 A. Yes. 7 Q. And did anybody else at Southeastern 8 communicate with Ms. Nusz -- let me strike that. 9 What was -- strike that. 10 Were you serving as Southeastern's point of 11 contact for Ms. Nusz? 12 A. Yes. 13 Q. And -- 14 A. Could I hear your original question that you 15 asked me? 16 Q. The one you just answered? 17 A. No. Two back. 18 Q. Oh, I don't even remember. 19 THE WITNESS: Could you read it back? 20 Q. (BY MR. TOWNSEND) Let's move on because I don't 21 think it's -- 22 A. I would like to have that, if you don't mind. 23 When you ask me about if we were the -- if I was the 24 primary contact or something. 25 Q. I was using the term point of contact, but</p>	<p>1 MR. JOSEPH: Object to the form. 2 A. I don't recall. 3 Q. (BY MR. TOWNSEND) All right. I'm going to 4 shift gears to a different line of questioning. 5 A. May I stand for a second, please? 6 Q. Oh, sure. 7 MR. JOSEPH: I was just about to say, we've 8 gone a little -- about an hour now -- 9 MR. TOWNSEND: Certainly. 10 MR. JOSEPH: Would it maybe be a good time to 11 take a break? 12 MR. TOWNSEND: Certainly. 13 (Off the record at 10:50 A.M.) 14 (On the record at 11:05 A.M.) 15 Q. (BY MR. TOWNSEND) So like I said before the 16 break, I wanted to switch gears here a little bit. 17 A. Okay. 18 Q. It's your understanding -- right -- that 19 Dr. Tudor is a transgender woman? Correct? 20 A. That's my understanding. 21 Q. When did you learn that Dr. Tudor was a 22 transgender woman? 23 A. When she came to my office. When she -- she 24 communicated with me that she needed to talk, that she 25 had a complaint.</p>
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<p>1 you're going to get a transcript -- 2 A. Okay. 3 Q. -- of this deposition so you can see exactly 4 what the question was -- 5 A. Okay. 6 Q. -- at a later time. 7 A. Thank you. 8 Q. All right. Had you ever served as point of 9 contact in connection with an EEOC investigation before 10 Dr. Tudor's complaint? 11 MR. JOSEPH: Object to the form. 12 A. Yes. 13 Q. (BY MR. TOWNSEND) How many other times? 14 A. I don't recall. 15 Q. Was that being part of -- strike that. 16 Was being point of contact in connection with 17 EEOC investigations part of your normal job duties as 18 affirmative action officer? 19 MR. JOSEPH: Object to the form. 20 A. I don't remember. 21 Q. (BY MR. TOWNSEND) Do you know of anybody else, 22 other than yourself, who has served as a point of contact 23 between Southeastern and the Equal Employment Opportunity 24 Commission in connection with one of the Equal Employment 25 Opportunity Commission's investigation?</p>	<p>1 Q. And this is the complaint that you investigated 2 that we've been talking about? 3 A. Yes. 4 Q. And just so I'm clear, was there more than 5 one -- let me strike that. 6 Was the first time that she complained about 7 discrimination to you in connection with her promotion 8 and tenure application? 9 A. I had a gap there. 10 Q. Sure. 11 A. Repeat it. 12 Q. You wrote an investigative report in connection 13 with your investigation of Dr. Tudor's complaint. Right? 14 A. Yes. 15 Q. Were there any other complaints that Dr. Tudor 16 made prior to that investigation that you investigated? 17 A. Not that I recall. 18 Q. So when you're saying that the first time you 19 learned that Dr. Tudor was a transgender woman was when 20 she came in to make a complaint of discrimination, that 21 was in connection with the discrimination that you -- 22 complaint that you investigated that you wrote the report 23 about. Right? 24 MR. JOSEPH: Object to the form. 25 A. I'm not sure I'm getting all the points in</p>

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<p>1 there, but --</p> <p>2 Q. (BY MR. TOWNSEND) I'm just trying to nail down</p> <p>3 the timeframe here.</p> <p>4 A. I didn't know her prior -- if that's what</p> <p>5 you're asking me. I didn't know Dr. Tudor or had --</p> <p>6 hadn't come in contact with Dr. Tudor other than the</p> <p>7 first time it was communicated, either her call or</p> <p>8 e-mail. I'm not sure just -- I don't know if she called</p> <p>9 and asked for an appointment or if she wanted to talk to</p> <p>10 me. I'm not sure about that.</p> <p>11 Q. So did you hear anything when Dr. Tudor</p> <p>12 switched from presenting as a man at work to a woman at</p> <p>13 work about that transition? At the time that it</p> <p>14 happened?</p> <p>15 A. No. I didn't know Dr. Tudor.</p> <p>16 Q. But did you hear anything about her gender</p> <p>17 transition --</p> <p>18 A. No.</p> <p>19 Q. -- at the time?</p> <p>20 A. Did not know of her.</p> <p>21 Q. Have you ever spoken to anybody about the issue</p> <p>22 of what restroom Dr. Tudor used after she started</p> <p>23 presenting as a woman at work?</p> <p>24 MR. JOSEPH: Object to the form.</p> <p>25 A. Ask that once again, please.</p>	<p>1 transition from AAO to AAO. And she just wanted to talk</p> <p>2 about doing the best for Dr. Tudor, and we just -- it was</p> <p>3 not an official sit-down, pencil-and-paper communication.</p> <p>4 It was, "How best can we serve her?"</p> <p>5 What -- she says, "I've never, you know, been</p> <p>6 involved in this before. In your training have you</p> <p>7 picked up anything that would make this an easier</p> <p>8 transition for -- for Dr. Tudor on our campus or anywhere</p> <p>9 she is?"</p> <p>10 And so we talked about the bathroom issue. She</p> <p>11 said that's probably the biggest one as far as how she</p> <p>12 feels, you know, in the transition.</p> <p>13 Q. So had Ms. Conway, at that point, made a</p> <p>14 decision about what she thought was appropriate with</p> <p>15 respect to Dr. Tudor's restroom use when you had this</p> <p>16 conversation with her?</p> <p>17 A. Restate what you asked.</p> <p>18 MR. TOWNSEND: Go ahead and repeat it.</p> <p>19 THE COURT REPORTER: "Question: So had</p> <p>20 Ms. Conway, at that point, made a decision about what she</p> <p>21 thought was appropriate with respect to Dr. Tudor's</p> <p>22 restroom use when you had this conversation with her?"</p> <p>23 A. I don't understand what you're -- how you're</p> <p>24 asking that.</p> <p>25 Q. (BY MR. TOWNSEND) Well, you said --</p>
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<p>1 MR. TOWNSEND: Can you repeat it?</p> <p>2 THE COURT REPORTER: "Question: Have you ever</p> <p>3 spoken to anybody about the issue of what restroom</p> <p>4 Dr. Tudor used after she started presenting as a woman at</p> <p>5 work?"</p> <p>6 A. Yes.</p> <p>7 Q. (BY MR. TOWNSEND) Who was that?</p> <p>8 A. Cathy Conway.</p> <p>9 Q. And when was that conversation?</p> <p>10 A. I don't know exactly. It was before it</p> <p>11 became -- no. I don't know when it -- it was.</p> <p>12 Q. Was it after you investigated Dr. Tudor's</p> <p>13 discrimination complaint?</p> <p>14 A. No.</p> <p>15 Q. Was it during your investigation of Dr. Tudor's</p> <p>16 discrimination complaint?</p> <p>17 A. I don't recall. I really don't recall.</p> <p>18 Q. What was the context in which Ms. Conway</p> <p>19 brought it up?</p> <p>20 MR. JOSEPH: Object to the form.</p> <p>21 Q. (BY MR. TOWNSEND) Strike that.</p> <p>22 What was the context in which you had this</p> <p>23 discussion with Ms. Conway about the restroom that</p> <p>24 Dr. Tudor used?</p> <p>25 A. Ms. Conway -- it was beginning of the -- the</p>	<p>1 A. What is a decision? I'm not sure the -- the</p> <p>2 decision. What -- what are you talking about?</p> <p>3 Q. All right. Let me clarify. When you're</p> <p>4 having -- when you had this discussion with Ms. Conway</p> <p>5 about Dr. Tudor and her restroom use, was Ms. Conway</p> <p>6 still undecided as to what she thought was appropriate</p> <p>7 with respect to Dr. Tudor's restroom use?</p> <p>8 A. I'm not still understanding that question.</p> <p>9 What decision? I'm not understanding a decision.</p> <p>10 Q. The decision I'm talking about is the decision</p> <p>11 in Ms. Conway's mind about what she thought. Do you --</p> <p>12 did Ms. Conway express what she was thinking as far as</p> <p>13 what would be appropriate for Dr. Tudor and her restroom</p> <p>14 use?</p> <p>15 A. There's not --</p> <p>16 MR. JOSEPH: Object to the form.</p> <p>17 A. -- an appropriate -- what are you -- I don't --</p> <p>18 still don't get it.</p> <p>19 Q. (BY MR. TOWNSEND) All right. Let's approach</p> <p>20 this another way. Could you describe what was discussed</p> <p>21 between you and Ms. Conway during that conversation?</p> <p>22 MR. JOSEPH: Object to the form.</p> <p>23 A. Yes.</p> <p>24 Q. (BY MR. TOWNSEND) What was discussed?</p> <p>25 A. I guess it's the same response I had before.</p>

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1 "How best can we help Dr. Tudor?"
 2 Q. Did Ms. Conway have any ideas on how best to
 3 help Dr. Tudor in that situation?
 4 A. No, not really. I think she possibly called
 5 other people, but I don't -- we just talked about what
 6 would be best for -- you know, what do we -- what could
 7 we come up? How could we help her? And I think my -- I
 8 don't know what conversation Dr. Tudor had with Cathy.
 9 I'm not aware of that conversation. But it -- it
 10 appeared -- well, I don't know. That would be an
 11 incorrect way to answer it.
 12 It was just what can we do. I mean, we've
 13 done -- we've talked about other people, what do we do?
 14 Someone who's broken their foot, you know, what are some
 15 suggestions that we could give people to make whatever
 16 their issue is a little bit more, you know, palatable for
 17 them to be continue doing what they're doing?
 18 And it appeared that -- and you might ask
 19 Dr. Tudor what she and Cathy talked about. But it
 20 appeared that somewhere in that, the conversation of the
 21 restroom came up. I can't --
 22 Q. Was it your understanding when you were talking
 23 to Ms. Conway that Ms. Conway had already spoken to
 24 Dr. Tudor about the restroom issue?
 25 A. That seemed to -- to be a -- what I recall.

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1 Q. Did you have any advice that you gave to
 2 Ms. Conway in this conversation about how to address the
 3 issues that she brought to your attention?
 4 A. Find out --
 5 MR. JOSEPH: Object to the form.
 6 A. Find out what Dr. Tudor thinks she needs.
 7 Q. (BY MR. TOWNSEND) Did Ms. Conway believe that
 8 she had that information about what --
 9 A. I can't --
 10 Q. -- Dr. Tudor needed?
 11 A. I can't say what she thought she had. I don't
 12 know.
 13 Q. Did Ms. Conway say anything to indicate that
 14 she had information about what Dr. Tudor needed?
 15 A. My understanding -- well, I don't -- I don't --
 16 I don't -- I'm not following real well on that one, how
 17 you're asking that.
 18 Q. Did you have an understanding from your
 19 conversation with Ms. Conway that Ms. Conway had spoken
 20 to Dr. Tudor and Dr. Tudor had said what restroom she
 21 would like to use?
 22 A. I don't know that -- I don't know. I don't
 23 know if there was a -- a preference. I don't know. I
 24 don't know.
 25 Q. Was there any discussion about Dr. Tudor using

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1 a unisex restroom when you talked to Ms. Conway?
 2 MR. JOSEPH: Object to the form.
 3 A. I don't know. There would -- there are a
 4 number -- that's the one I like to use when I was in that
 5 building.
 6 Q. (BY MR. TOWNSEND) Did Ms. Conway -- let me
 7 strike that.
 8 I think you referred to the -- the restroom
 9 issue as one of the biggest issues in dealing with the
 10 gender transition. Did Ms. Conway explain why?
 11 A. I did not say that.
 12 Q. Okay. I thought I heard you say that, but
 13 let's -- let's strike that question, then.
 14 All right. Was there anybody else involved in
 15 this conversation with you and Ms. Conway about Dr. Tudor
 16 that we've been discussing?
 17 A. Regarding the -- that bathroom issue? Is that
 18 what we're talking about?
 19 Q. Regarding -- well, did you have more than one
 20 conversation with Ms. Conway around this same time about
 21 Dr. Tudor?
 22 A. Not that I recall.
 23 Q. So during this one conversation, was there
 24 anyone else present?
 25 A. No.

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1 Q. And where was the conversation?
 2 A. In Ms. Conway's office.
 3 Q. How long do you think the conversation lasted?
 4 A. It's not long.
 5 Q. Did anyone take notes during the conversation?
 6 A. No.
 7 Q. Have you told me everything you remember about
 8 that conversation with Ms. Conway?
 9 A. I believe so. Is it possible to say that that
 10 was not a formal meeting? I was not called down to her
 11 office. I -- because of the -- I go into HR. It was
 12 then HR, to talk about any number of things. And so I
 13 stopped by. So it was not a formal "Let's meet and talk
 14 about Dr. Tudor." It was not that.
 15 Q. Thank you for that clarification.
 16 Do you know of anybody at Southeastern -- a
 17 student, employee, faculty, anybody at Southeastern --
 18 who had a negative reaction to Dr. Tudor being
 19 transgender?
 20 A. Not that I'm aware of.
 21 Q. Do you know of anyone at Southeastern --
 22 faculty, student, administrator, employee, anyone -- that
 23 think transgender people are acting inappropriately by
 24 being transgender?
 25 A. Not that I know of.

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<p style="text-align: right;">Page 94</p> <p>1 MR. JOSEPH: Object to the form. 2 A. Not that I'm aware of. 3 Q. (BY MR. TOWNSEND) Do you know of anyone who's 4 talked about whether Dr. Tudor had surgery or other forms 5 of medical treatment as part of her gender transition? 6 A. Was I aware? Please repeat. 7 MR. TOWNSEND: Sure. Go ahead. 8 THE COURT REPORTER: "Question: Do you know of 9 anyone who's talked about whether Dr. Tudor had surgery 10 or other forms of medical treatment as part of her gender 11 transition?" 12 A. No. 13 Q. (BY MR. TOWNSEND) Do you have any opinions 14 about what restrooms transgender people should use? 15 A. No. 16 Q. Do you think it's appropriate for a transgender 17 woman -- somebody who was assigned male sex at birth and 18 now identifies as female -- to use the women's restroom? 19 MR. JOSEPH: Object to the form. 20 A. Pee and let pee. Whatever -- it's not -- no. 21 Q. (BY MR. TOWNSEND) All right. I wanted to turn 22 back to Dr. Tudor's discrimination complaint. 23 A. Uh-huh. 24 Q. So how did you first become aware that 25 Dr. Tudor wanted to make a complaint of discrimination?</p>	<p style="text-align: right;">Page 96</p> <p>1 litany of things. And it was amended several times. 2 Q. Was one of the things that she complained about 3 that she was being discriminated against because of her 4 sex or gender? 5 MR. JOSEPH: Object to the form. 6 A. I don't recall. 7 Q. (BY MR. TOWNSEND) Was one of the things that 8 she was complaining about that she was being 9 discriminated against because she was Native American? 10 A. No, not that I recall. 11 Q. Do you recall anything else that was discussed 12 at that meeting with Dr. Tudor? 13 A. No. It was long. That's the only thing I 14 remember. 15 Q. Did you take handwritten notes during the 16 meeting? 17 A. Some -- some. 18 Q. And would those notes have been saved in the 19 filing unit that you described earlier? 20 A. Possibly. Probably -- possibly. 21 Q. That filing -- 22 A. I don't know. 23 Q. Oh, sorry. Were you done? 24 A. I'm -- yes. 25 Q. All right. I was just asking if you were done</p>
<p style="text-align: right;">Page 95</p> <p>1 A. As I mentioned earlier, I'm not sure if she 2 called me first, if she e-mailed me first. I'm not -- I 3 don't know. I don't recall the initial. 4 Q. But it -- you initially learned that she wanted 5 to file a discrimination complaint somehow from Dr. Tudor 6 herself? 7 A. That's correct. 8 Q. And what was the first thing that you did in 9 response to learning that Dr. Tudor wanted to file 10 discrimination complaint? 11 A. Asked for a meeting. 12 Q. And the meeting that you asked for was with 13 Dr. Tudor? 14 A. That's correct. 15 Q. And did you have that meeting? 16 A. Yes. 17 Q. Was there anyone else present at that meeting? 18 A. No. 19 Q. And what was discussed at that meeting? 20 A. Her complaint, whether she wanted to -- the 21 question, is this a formal complaint or are we talking 22 through -- are we talking through defining, you know, so 23 she said this is a formal complaint. 24 Q. And what was she complaining about? 25 A. We would have to -- there were -- there were a</p>	<p style="text-align: right;">Page 97</p> <p>1 with your response because it sounded like I interrupted 2 you. 3 A. Well, I -- I can't visualize what's all in 4 there. 5 Q. Okay. 6 A. And some -- I didn't know, really, how to 7 respond. 8 Q. So this filing unit that you described earlier 9 that we're referring to now, who has access to it? 10 A. I do. 11 Q. Are you the only one who has access to it? 12 A. That is correct. 13 Q. Is it like a closet of some kind? 14 A. It's actually a built -- it was built in a room 15 because we didn't have enough cabinets. 16 Q. So is it a room that's adjoining your office? 17 A. It's in that same area. It's all in kind of 18 like a suite sort of thing. 19 Q. And -- 20 A. It used to be an office. Actually, it was my 21 office at one point. 22 Q. Have you ever removed documents from that 23 filing unit that you put in there? 24 A. Yes. 25 Q. And destroyed them?</p>

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<p>1 A. No.</p> <p>2 Q. And how do you organize the files in that</p> <p>3 filing unit? Is it by employee name, for instance?</p> <p>4 A. Yes.</p> <p>5 Q. So the -- the documents that would pertain to</p> <p>6 your investigation of Dr. Tudor's complaint would be in a</p> <p>7 file called what?</p> <p>8 A. Tudor.</p> <p>9 Q. All right.</p> <p>10 So after this meeting with Dr. Tudor regarding</p> <p>11 her discrimination complaint that you just described,</p> <p>12 what did you do next in connection with her complaint?</p> <p>13 A. Ask her to immortalize that. And you have a</p> <p>14 copy of the -- the information she sent to me.</p> <p>15 Q. So you wanted her to put her complaint in</p> <p>16 writing. Right?</p> <p>17 A. Right. To make sure we knew exactly what she</p> <p>18 was asking for, what she wanted out of it, yes.</p> <p>19 Q. And so did you -- strike that.</p> <p>20 So after you asked her for that written</p> <p>21 complaint, what did you do next in connection with the</p> <p>22 investigation?</p> <p>23 A. I think started looking, you know, after seeing</p> <p>24 what she had, started to dissect and extrapolate</p> <p>25 information, so I would come up with a -- kind of a plan</p>	<p>1 complaint, one, two, or three days, I got another amended</p> <p>2 form from -- from Dr. Tudor. So I think I've had about</p> <p>3 three other iterations, other iterations of amendments to</p> <p>4 the original complaint.</p> <p>5 Q. So did you receive the first iteration of an</p> <p>6 amended complaint from Dr. Tudor before you had done</p> <p>7 anything other than develop your investigative plan?</p> <p>8 A. I don't recall.</p> <p>9 Q. Did your plan for the investigation change at</p> <p>10 all after you received the first amendment to Dr. Tudor's</p> <p>11 complaint?</p> <p>12 A. Change? No.</p> <p>13 Q. So after you received -- strike that.</p> <p>14 After you developed your investigation plan,</p> <p>15 what was the first step that you took in connection with</p> <p>16 the investigation?</p> <p>17 A. I'm not sure. I'm not -- I'm not sure. I</p> <p>18 don't -- I'm not sure if I -- I'm not sure.</p> <p>19 Q. Do you remember speaking to witnesses as an</p> <p>20 initial step in your investigation?</p> <p>21 A. You're asking me if I spoke to witnesses? Is</p> <p>22 that the question?</p> <p>23 Q. No. What I'm asking is after you developed</p> <p>24 your investigation plan, was the first thing that you did</p> <p>25 to execute that plan speak to witnesses?</p>
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<p>1 of action at that point, who to contact, what's the --</p> <p>2 the different levels that she -- where it crossed. It</p> <p>3 was -- it's a lot that goes into that, as you know.</p> <p>4 Q. So am I correct, then, that you asked Dr. Tudor</p> <p>5 for a written complaint and then after you received that</p> <p>6 written complaint is when you began to do this</p> <p>7 investigation --</p> <p>8 A. That's correct.</p> <p>9 Q. -- and planning that you just described?</p> <p>10 A. Yes.</p> <p>11 Q. So when you developed this plan for the</p> <p>12 investigation, did you write down the plan?</p> <p>13 A. Yes.</p> <p>14 Q. Did you type it up or was it just in</p> <p>15 handwriting?</p> <p>16 A. Oh, handwriting.</p> <p>17 Q. And would you have saved those notes with other</p> <p>18 handwritten notes from connection -- in connection with</p> <p>19 the investigation?</p> <p>20 MR. JOSEPH: Object to the form.</p> <p>21 A. I don't know.</p> <p>22 Q. (BY MR. TOWNSEND) So after you formulated this</p> <p>23 plan for the investigation, what did you do next in</p> <p>24 connection with the investigation?</p> <p>25 A. I think -- within two days of getting the</p>	<p>1 A. I don't recall.</p> <p>2 Q. Was there anything that your investigation plan</p> <p>3 called for other than speaking to witnesses?</p> <p>4 A. I don't recall. I'd have to look at notes.</p> <p>5 Q. Did you plan to request documents of any kind</p> <p>6 in connection with the investigation?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you remember requesting documents of any</p> <p>9 kind in connection with the investigation?</p> <p>10 A. Yes.</p> <p>11 Q. What documents did you request?</p> <p>12 A. Portfolios.</p> <p>13 Q. Anything else?</p> <p>14 A. That's all I recall.</p> <p>15 Q. Whose port -- excuse me. Strike that.</p> <p>16 Whose portfolios did you request?</p> <p>17 A. Cotter-Lynch, Parrish -- these are --</p> <p>18 Dr. Parrish, I think Mark Spencer. I think. I don't</p> <p>19 know. I know those two specifically.</p> <p>20 Q. So you're sure about Drs. Cotter-Lynch and</p> <p>21 Parrish, but not Spencer?</p> <p>22 A. That's correct.</p> <p>23 Q. Did you ask for Dr. Tudor's portfolio?</p> <p>24 A. I don't recall.</p> <p>25 Q. And when we're talking about portfolios here,</p>

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1 are you talking about the portfolios that Drs. Parrish
2 and Cotter-Lynch submitted in connection with their
3 applications for promotion and tenure?
4 A. I can't answer that like that.
5 Q. Why?
6 A. Because I can't answer that the way you ask it.
7 Q. What were the portfolios that you requested
8 from Drs. Parrish and Cotter-Lynch?
9 A. The best representation that they had of their
10 tenure and -- and promotion portfolios.
11 Q. Any other documents that you recall reviewing
12 in connection with your investigation of Dr. Tudor's
13 discrimination complaint?
14 A. Not that I can recall.
15 Q. During the course of your investigation, do you
16 recall learning that Dr. Tudor had filed a complaint with
17 the U.S. Department of Education?
18 A. Yes.
19 Q. And did that information impact your
20 investigation in any way?
21 A. No.
22 Q. Did you have discussions with anybody about the
23 complaint that Dr. Tudor filed with the U.S. Department
24 of Education?
25 A. Expand on that, please.

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1 Q. Did you talk to anybody about the complaint
2 that Dr. Tudor filed with the U.S. Department of
3 Education at the time that you learned that she had filed
4 that complaint?
5 A. Yes.
6 Q. Who was that?
7 A. Our attorney.
8 Q. Are you talking about Charles Babb?
9 A. Correct.
10 Q. Anybody else that you talked to about the
11 Department of Education complaint in that timeframe?
12 A. Yes.
13 Q. Who else?
14 A. I mentioned it to the president that there was
15 one.
16 Q. And you're -- you're referring to President
17 Larry Minks. Right?
18 A. Yes.
19 Q. What all did you and Dr. Minks discuss with
20 respect to the complaint that Dr. Tudor filed with the
21 Department of Education?
22 A. That it exists, it exists, and he wants to know
23 if anything from the federal government comes in. So it
24 exists. And it was FYI.
25 Q. I wanted to refer you to Plaintiff's

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1 Exhibit 29.
2 A. Just a moment.
3 MR. TOWNSEND: Let's go off the record for a
4 second.
5 (Off the record at 11:34 A.M.)
6 (On the record at 11:35 A.M.)
7 Q. (BY MR. TOWNSEND) You can take a moment to look
8 at this, but my question is, is this the letter you
9 presented to Dr. Minks informing him that Dr. Tudor had
10 filed the complaint with the U.S. Department of
11 Education?
12 A. No.
13 Q. Have you ever seen Plaintiff's Exhibit 29
14 before?
15 A. Hold on, please. This is not -- your question
16 to me was what?
17 Q. Have you ever seen Plaintiff's Exhibit 29
18 before?
19 A. I don't recall.
20 Q. So how did you learn the department -- strike
21 that.
22 How did you learn that Dr. Tudor had filed a
23 complaint with the U.S. Department of Education?
24 A. I received -- I'm trying to see if that's the
25 one. I received the communication from the district in

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1 Oklahoma City that -- I'd have to find it. I'm not --
2 I'm not sure.
3 Q. All right. And when you informed Dr. Minks --
4 strike that.
5 When you informed President Minks that a
6 complaint had been filed by Dr. Tudor with the U.S.
7 Department of Education, what, if anything, did he say?
8 A. "Keep me informed."
9 Q. What did you understand him to mean by that?
10 A. As things progress, keep him informed.
11 Q. So it was your understanding, after your
12 conversation with him, that he wanted you to report to
13 him information about the Department of Education's
14 process?
15 A. No.
16 MR. JOSEPH: Object to the form.
17 Q. (BY MR. TOWNSEND) What did you understand him
18 to mean by keep him informed?
19 A. That's the same response he gives me when I'm
20 working on anything. My response is to let him know that
21 I'm working on a particular issue; not to give specifics
22 or anything else.
23 Q. So it was your understanding he wanted you to
24 work on tasks related to the Department of Education
25 complaint?

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<p style="text-align: right;">Page 106</p> <p>1 A. That's -- I -- yes. 2 Q. So did you -- well, I think we've established 3 you've interviewed witnesses in connection with 4 Dr. Tudor's discrimination complaint. Right? 5 A. Yes. 6 Q. Who were the witnesses that you interviewed? 7 A. I can't give you a complete list. I'm sorry. 8 I'll leave out someone. 9 Q. That's fine. Who do you remember talking to in 10 connection with your investigation of Dr. Tudor's -- 11 A. Okay. 12 Q. -- discrimination complaint? 13 A. I talked with Cotter-Lynch, Parrish, Paula 14 Allen. Let me look on here. 15 Q. You're looking at Plaintiff's Exhibit 43 -- 16 A. Correct. 17 Q. -- just for the record -- 18 A. Yes. 19 Q. -- to -- and you're looking at that to try and 20 refresh your memory? 21 A. Yes. 22 Q. Okay. Please do so. 23 A. Randy Prus -- what was the question again? 24 Q. What witnesses did you speak to -- 25 A. Witnesses. Okay.</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I'm thinking. I haven't said anything. 2 Q. Oh, I'm sorry. I thought you said uh-huh. 3 Sorry. 4 A. I don't recall. There are others, but I -- I 5 think those were -- I'm not -- I need to refresh. I 6 think Paula Allen is one, also. 7 Q. You had identified her before. 8 A. Okay. 9 Q. Did you speak with Dr. Jesse Snowden in 10 connection with your investigation of Dr. Tudor's 11 discrimination complaint? 12 A. I don't recall. 13 Q. Did you interview President Minks in connection 14 with your investigation of Dr. Tudor's discrimination 15 complaint? 16 A. I don't recall. 17 Q. Did you take handwritten notes during all of 18 these interviews with witnesses during your investigation 19 of Dr. Tudor's discrimination complaint? 20 A. Some notes, yes. 21 Q. Were there certain witnesses that you 22 interviewed where you did not take handwritten notes? 23 A. No. 24 Q. Were there any witnesses that you interviewed 25 where you took typewritten notes?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. -- in connection with your investigation of 2 Dr. Tudor's discrimination complaint? 3 A. Okay. 4 Q. So far you've identified Dr. Cotter-Lynch, 5 Dr. Parrish, Dr. Allen, and Dr. Prus. 6 A. Uh-huh. 7 Q. Is there anyone else? 8 A. Yes. Mark Spencer, Doug McMillan, Lucretia 9 Scoufos. There were others. Jane McMillan and others. 10 I'm not sure. 11 Q. Did you speak with Dr. John Mischo in 12 connection with your investigation of Dr. Tudor's 13 discrimination complaint? 14 A. I don't remember whether I did, sir. 15 Q. Did you speak with Charles Weiner in connection 16 with your investigation into Dr. Tudor's discrimination 17 complaint? 18 A. I believe so. I'm not -- I can't recall. I 19 think so. 20 Oh, Lisa Coleman. 21 Q. So you spoke to Dr. Coleman in connection with 22 your investigation of Dr. Tudor's discrimination 23 complaint? 24 A. Uh-huh. 25 Q. You have to say --</p>	<p style="text-align: right;">Page 109</p> <p>1 A. No. 2 Q. Did you speak with a person named Jana Legako 3 in connection with your investigation of Dr. Tudor's 4 discrimination complaint? 5 A. Yes. 6 Q. Who is Jana Legako? 7 A. Legako is an attorney who has worked with -- I 8 don't know if -- but she's connected with the other ones. 9 She is their attorney of record. 10 Q. So at the time that you were conducting your 11 investigation into Dr. Tudor's discrimination complaint, 12 Ms. Legako was an attorney who worked at a different 13 institution within the Regional University System of 14 Oklahoma? 15 MR. JOSEPH: Object to the form. 16 A. I'm not sure. 17 Q. (BY MR. TOWNSEND) All right. I'm going to call 18 the Regional University System of Oklahoma RUSO for 19 short. Is that okay? 20 A. Yes. 21 Q. Did you speak to a person named Beth Kerr in 22 connection with your investigation of Dr. Tudor's 23 discrimination complaint? 24 A. No, not that I recall. I better say for the 25 record I'm -- I don't know.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Q. Who is Beth Kerr? 2 A. She is the attorney -- one of the attorneys at 3 University of Central Oklahoma. It's one of her 4 responsibilities. 5 Q. And was that her position at the time you were 6 investigating Dr. Tudor's discrimination complaint? 7 A. I might have -- not have the right title for 8 her, but I know she's an attorney. 9 Q. Did you speak with a person named Brad Morelli 10 in connection with your investigation of Dr. Tudor's 11 discrimination complain? 12 A. He's also at University of Central Oklahoma. 13 Q. What was his position at the time you were 14 investigating Dr. Tudor's -- 15 A. I think -- 16 Q. -- discrimination complaint at the University 17 of Central Oklahoma? 18 A. He's also an attorney. I believe. I don't 19 know what his position is. Nor Beth. 20 Q. Did you speak to Charles Babb in connection 21 with your investigation of Dr. Tudor's discrimination 22 complaint? 23 A. Yes. 24 Q. What did you discuss with Dr. Cotter-Lynch when 25 you met with her in connection with Dr. Tudor's</p>	<p style="text-align: right;">Page 112</p> <p>1 they -- she said they were -- I remember the term 2 similarly situated as far as -- 3 Q. (BY MR. TOWNSEND) Did you take that similarly 4 situated statement to mean that Dr. Cotter-Lynch was 5 claiming that she thought that Dr. Tudor's qualifications 6 for promotion and tenure were just as good as 7 Dr. Cotter-Lynch's? 8 MR. JOSEPH: Object to the form. 9 A. I want to make sure I understand you. Make 10 sure. Read it one more time. 11 MR. TOWNSEND: Go ahead. You can back the 12 question, please. 13 THE COURT REPORTER: "Question: Did you take 14 that similarly situated statement to mean that 15 Dr. Cotter-Lynch was claiming that she thought that 16 Dr. Tudor's qualifications for promotion and tenure were 17 just as good as Dr. Cotter-Lynch's?" 18 A. As hers, yes. 19 Q. (BY MR. TOWNSEND) Is there anything else that 20 you talked to Dr. Cotter-Lynch about? 21 A. No. 22 Q. What did you talk to Dr. Parrish about in 23 connection with your investigation of Dr. Tudor's 24 discrimination complaint? 25 A. I asked her the same question about -- about</p>
<p style="text-align: right;">Page 111</p> <p>1 discrimination complaint? 2 A. Her interpretation of the -- her portfolio as 3 it related to Dr. Tudor's, if she was aware. 4 Q. And what did Dr. Cotter-Lynch say about that? 5 A. If -- Dr. Cotter-Lynch indicated that she felt 6 her portfolio was similar -- similarly situated as far as 7 Dr. Tudor's and -- and Dr. -- Dr. Tudor and -- both of 8 theirs were compatible. 9 Q. So just to make sure I understand. So are you 10 saying that Dr. Cotter-Lynch thought -- let me strike 11 that. 12 Dr. Cotter-Lynch said to you that she thought 13 that based on a comparison of Dr. Cotter-Lynch's 14 portfolio -- 15 A. Her -- 16 Q. Okay. Let me ask the question again, then -- 17 A. Uh-huh. 18 Q. -- with that clarification. 19 A. Uh-huh. 20 Q. So Dr. Cotter-Lynch told you that she thought 21 that based on her comparison of her portfolio with 22 Dr. Tudor's portfolio, that they were equally qualified 23 for tenure? 24 MR. JOSEPH: Object to the form. 25 A. I'm not sure if those were her words, but</p>	<p style="text-align: right;">Page 113</p> <p>1 the two portfolios, how would they -- if they were 2 looking at them, what -- and -- and Dr. Parrish had not 3 seen Dr. Tudor's. And Dr. Parrish indicated that she had 4 not seen -- that Dr. Tudor had not seen her portfolio. 5 But she said hers was different. 6 Q. So you started saying one thing in that answer 7 and then you said a different thing, so I want to just 8 make sure I'm understanding what you meant. 9 A. Okay. 10 Q. Dr. Parrish told you that Dr. Tudor had not 11 seen Dr. Parrish's portfolio. Right? 12 MR. JOSEPH: Object to the form. 13 A. Say that another way. 14 Q. (BY MR. TOWNSEND) Sure. When you were speaking 15 with Dr. Parrish -- 16 A. Uh-huh. 17 Q. -- in connection with your investigation of 18 Dr. Tudor's discrimination complaint, you asked her -- 19 you said the same question that you asked 20 Dr. Cotter-Lynch regarding a comparison between 21 Dr. Parrish's portfolio and Dr. Tudor's portfolio. 22 Right? 23 MR. JOSEPH: Object to the form. 24 A. Yeah. That's what you asked. 25 Q. (BY MR. TOWNSEND) And Dr. Parrish told you when</p>

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<p style="text-align: right;">Page 114</p> <p>1 you were speaking with her that Dr. Tudor had not seen 2 Dr. Parrish's portfolio? 3 A. Yes. 4 Q. Did Dr. Parrish say when you were speaking to 5 her that she had not seen Dr. Tudor's portfolio? 6 A. Yes. That's -- 7 Q. So did you then get a view from Dr. Parrish one 8 way or the other as to what she thought about Dr. Tudor's 9 qualifications compared to her own? 10 MR. JOSEPH: Object to the form. 11 A. Dr. -- no. 12 Q. (BY MR. TOWNSEND) Was there anything else that 13 you spoke to Dr. Parrish about in connection with 14 Dr. Tudor's discrimination complaint? 15 A. I'm not sure -- you'll have to restate that. 16 Q. Did you speak with Dr. Parrish more than once 17 in connection with your investigation of Dr. Tudor's 18 discrimination complaint? 19 A. Oh, no. 20 Q. And did you speak to her about anything else 21 other than what you've already told me when you spoke to 22 her about Dr. Tudor's discrimination complaint? 23 A. Yes. 24 Q. What else did you and Dr. Parrish discuss? 25 A. What made her portfolio different than anyone</p>	<p style="text-align: right;">Page 116</p> <p>1 remember if you said -- strike that. 2 Do you remember speaking with Dr. Allen about 3 Dr. Tudor's discrimination complaint? 4 A. Yes. Vaguely. 5 Q. What did you and Dr. Allen discuss? 6 A. Again, portfolios. 7 Q. And this is Paula Smith Allen. Correct? 8 A. Yes. 9 Q. She was in the English, humanities, and 10 languages department at the time? 11 A. I believe so. I don't know. 12 Q. And that's the first time I've used English, 13 humanities, and languages department as a term. Is it 14 okay with you if I refer to it as the EHL department? 15 A. Humanities. Let's just say humanities. 16 Q. You want me to refer to it as the humanities 17 department? 18 A. Uh-huh. 19 Q. That's fine. All right. So what did you and 20 Dr. Allen discuss? 21 A. Portfolios. 22 Q. And did you ask Dr. Allen to compare 23 Dr. Tudor's portfolio to anybody else's? 24 A. Say that again. 25 Q. Did you ask Dr. -- let me ask it a different</p>
<p style="text-align: right;">Page 115</p> <p>1 else's. 2 Q. What did Dr. Parrish say about that? 3 A. Dr. Parrish indicated that her portfolio was 4 extensively longer, but her expertise was writing 5 technical journals for the federal government. High 6 level, highly technical. So that was her gift. That's 7 what she was really good at. 8 And she did lots -- she did research, so she 9 had the research component, but the -- the manner in 10 which and the kinds of things that she produced was very 11 different than anybody in her department. That's the way 12 she explained it to me. So to make a comparison would be 13 difficult. 14 Q. Was there anything else that you talked to 15 Dr. Parrish about in connection with your investigation 16 of Dr. Tudor's discrimination complaint? 17 A. Not that I can recall. 18 Q. And I can't remember if I asked this with 19 respect to Cotter-Lynch. Did you take notes when you met 20 with Dr. Cotter-Lynch? 21 A. Yes. 22 Q. Did you take notes when you met with 23 Dr. Parrish? 24 A. Yes. 25 Q. What did you -- let me strike that. I can't</p>	<p style="text-align: right;">Page 117</p> <p>1 way. Did you ask Dr. Allen to make a comparison between 2 her portfolio and somebody else's? 3 A. I can't answer it that way. 4 Q. Well, you said that you talked to Dr. Allen 5 about portfolios. 6 A. Uh-huh. 7 Q. Could you be more specific about what you mean 8 about talking about portfolios? 9 A. I asked her to share her portfolio and how she 10 would interpret it and if she had seen Dr. Tudor's. 11 Q. Uh-huh. Had she seen Dr. Tudor's? 12 A. My recollection is yes. 13 Q. And did you ask Dr. Allen -- 14 A. No. Strike that. I'm not sure that I ask her 15 that. I'm not sure. I ask -- I'm not sure what I 16 exactly asked Dr. Allen, but it was portfolio related. 17 Q. All right. Is there anything else you remember 18 about your discussion with Dr. Allen? 19 A. No. It was not lengthy. 20 Q. Do you remember who was on Dr. Tudor's 21 promotion and tenure committee from the EA -- from the 22 humanities department? 23 A. No. 24 Q. Do you remember speaking to Dr. Allen about the 25 promotion and tenure committee that considered</p>

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1 Dr. Tudor's application for promotion and tenure?
 2 A. I don't recall.
 3 Q. Is there anything else you remember about your
 4 discussion with Dr. Allen in connection with your
 5 investigation of Dr. Tudor's discrimination complaint
 6 that you haven't told me already?
 7 A. No.
 8 Q. Did you take notes when you spoke to Dr. Allen?
 9 A. Yes.
 10 Q. And would you -- strike that.
 11 And did you save those notes with the other
 12 notes that you took in connection with the investigation?
 13 A. I don't know.
 14 Q. What did you speak to Dr. Prus about in
 15 connection with your investigation of Dr. Tudor's
 16 discrimination complaint?
 17 A. I don't recall.
 18 Q. Do you remember why you wanted to speak to
 19 Dr. Prus in connection with your investigation?
 20 A. No.
 21 Q. Did you speak to Dr. Spencer in connection with
 22 your investigation of Dr. Tudor's discrimination
 23 complaint?
 24 A. Yes.
 25 MR. JOSEPH: Object to the form.

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1 Q. (BY MR. TOWNSEND) What did you discuss with
 2 Dr. Spencer?
 3 A. The -- the portfolio is one of the items we
 4 discussed.
 5 Q. What portfolio are you referring to?
 6 A. His tenure portfolio.
 7 Q. What did you and Dr. Spencer discuss with
 8 respect to his portfolio?
 9 A. The documentation. It was quite a bit. I
 10 don't recall the whole conversation. But he seemed very
 11 familiar with Dr. Tudor and her process.
 12 Q. Did you speak to Dr. Spencer about his
 13 promotion and tenure application process?
 14 A. Yes.
 15 Q. What did you speak to him -- strike that.
 16 What did you and he discuss on that topic?
 17 A. His process is -- is foggy. I'm not sure. I
 18 don't remember all that we discussed in that area.
 19 Q. When you say it was foggy, you mean are you --
 20 A. I don't recall.
 21 Q. Your memory is foggy?
 22 A. I don't recall the entirety of that
 23 conversation.
 24 Q. Do you remember why you were talking to him
 25 about his promotion and tenure process?

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1 A. I -- I don't -- I don't recall. It had
 2 something to do with the complaint. His name was in her
 3 original complaint. And that's as -- that's all I can
 4 recall at this point.
 5 Q. Did you speak to him at all about his views on
 6 how Dr. Tudor's portfolio compared to his?
 7 A. I can't remember. I can't remember.
 8 Q. Is there anything else you remember discussing
 9 with Dr. Spencer in connection with your investigation of
 10 Dr. Tudor's discrimination complaint that you haven't
 11 told me about already?
 12 A. Yes.
 13 Q. What else did you -- do you remember speaking
 14 to him about?
 15 A. In his discussion, he indicated that he had
 16 been -- he had spoken with Dr. Tudor quite a bit about
 17 the -- the process and how the process had changed over
 18 time. And I do recall right before I left, he says, "You
 19 know, I might have given her some incorrect information."
 20 And I said, "Well, you know, that's between you-all."
 21 Q. What process were you just referring to when
 22 you said the process?
 23 A. Well, I'm not sure exactly if he was talking
 24 about understandings that different committees had --
 25 they -- I think he was part -- he was a member of several

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1 organizations, faculty organizations, and extensive
 2 conversation about T & P process. And I do recall him
 3 saying that maybe it was shared that, in his
 4 interpretation of helping Dr. Tudor, he might have given
 5 her some of the proposed changes -- as opposed to what
 6 stood at the time. And so I basically nodded and said,
 7 "Well, I'm sure you did your best." And that's where we
 8 left it.
 9 Q. So the -- the process that you and he were
 10 talking about related to getting a promotion and tenure.
 11 Is that right?
 12 A. Say that one more time.
 13 Q. The process that you and Dr. Spencer were
 14 talking about related to the process for getting a
 15 promotion and tenure?
 16 A. Uh-huh. Yes.
 17 Q. Is there anything else you remember about your
 18 discussions with Dr. Spencer in connection with your
 19 investigation of Dr. Tudor's discrimination complaint?
 20 A. No.
 21 Q. And did you take notes during your conversation
 22 with Dr. Spencer?
 23 A. Yes.
 24 Q. And you would have saved those notes with the
 25 rest of the notes from the investigation?

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1 A. I don't recall.
 2 Q. Did you speak to Dr. Coleman in connection with
 3 your investigation of Dr. Tudor's discrimination
 4 complaint?
 5 A. Yes.
 6 Q. What do you recall discussing with Dr. Coleman?
 7 A. I think I posed the -- I don't recall that
 8 whole -- I don't recall a lot of that one. It's --
 9 Q. Did you take notes during your conversation
 10 with Dr. Coleman?
 11 A. Uh-huh. Yes.
 12 Q. I think before you said you may have spoken to
 13 Dr. Snowden in connection with Dr. Tudor's discrimination
 14 complaint. Is that right?
 15 A. I would need to refresh my memory on that one.
 16 Q. That's what I'm wondering. Are -- do you --
 17 are you -- do you know, now that we've talked about some
 18 of these interviews, whether you spoke to Dr. Snowden or
 19 not?
 20 A. I don't remember.
 21 Q. What did you discuss with Doug McMillan in
 22 connection with your investigation of Dr. Tudor's
 23 discrimination complaint?
 24 A. The issues of her portfolio and could there be
 25 any -- his assessment of the portfolio because I'm not an

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1 expert on those.
 2 Q. Was there anything else that you spoke to him
 3 about?
 4 A. I think I had two conversations.
 5 Q. Over the course of those two conversations, was
 6 there anything else that you spoke to him about?
 7 A. The -- the discrimination -- the second
 8 conversation was a discrimination complaint that I had
 9 received.
 10 Q. So the first conversation you had with Doug
 11 McMillan related to his assessment of Dr. Tudor's
 12 promotion and tenure portfolio. Is that right?
 13 A. Uh-huh. That's what I recall.
 14 Q. Okay. And what did he say about Dr. Tudor's
 15 portfolio during that discussion?
 16 A. The -- the question that I posed to
 17 Dr. McMillan is, can you think of any -- is there any
 18 reason -- what were the reasons for -- for -- I can't --
 19 I'm trying to remember for sure how I asked that. I'm
 20 not sure. I'll -- I'll give it some thought.
 21 Q. Were you trying to determine what Doug
 22 McMillan's reasons were for not recommending Dr. Tudor
 23 for promotion and tenure when you spoke to him?
 24 A. Yes.
 25 Q. And you asked him questions to try and get

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1 those reasons?
 2 A. Yes.
 3 Q. And do you remember what he said the reasons
 4 were?
 5 A. Yes.
 6 Q. What did he say?
 7 A. He indicated that there were several items that
 8 were deficient in her portfolio.
 9 Q. Which items did he say were deficient?
 10 A. Let's see. It was presentations, so I -- that
 11 would be research. That would be under the umbrella of
 12 research. And service.
 13 Q. So he said --
 14 A. Scholarship -- teaching was fine.
 15 Q. So let me -- strike that question I just
 16 started.
 17 You said he mentioned something about
 18 presentations. What did he say about presentations?
 19 A. Well, he -- he indicated that presentations --
 20 you know, it's national, state refereed and not -- they
 21 have a weightedness to them. If the ones that Dr. Tudor
 22 had been involved with were the Native American
 23 Symposium, which was -- that publication is not refereed,
 24 but it's a -- it's a nice conference. And there was an
 25 issue with an open mike discussion -- I mean,

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1 presentation. I'm -- I don't know what that all means,
 2 but open mike and that my interpretation of that was that
 3 that was not acceptable as a scholarly presentation. So
 4 that's all I recall about that.
 5 Q. Is there anything else you recall about your
 6 conversation with Doug McMillan regarding Dr. Tudor's
 7 portfolio --
 8 A. No.
 9 Q. -- that you haven't already told me?
 10 A. No.
 11 Q. All right. And then you said you had a second
 12 conversation with Doug McMillan in connection with your
 13 investigation of Dr. Tudor's discrimination complaint
 14 about discrimination. Right?
 15 A. Yes. And I don't know the time period. How --
 16 how long after.
 17 Q. What was discussed during that conversation
 18 with Doug McMillan about discrimination?
 19 A. Were there any -- I wanted to be made aware if
 20 there were any reasons other than the ones we had talked
 21 about earlier that be -- could be seen as discriminatory
 22 or have a retaliation as a basis.
 23 Q. So what did you ask Dr. McMillan --
 24 A. Specifically --
 25 Q. -- during that?

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1 A. -- asked him that.
 2 Again, tell me the -- because I -- I'm not sure
 3 about the time period, if it was a week later, ten days
 4 later, if she had gotten her letter yet, I'm -- that, I
 5 would have to refresh my memory on.
 6 Q. At the time you were talking to Dr. Doug
 7 McMillan regarding discrimination --
 8 A. Uh-huh.
 9 Q. -- the second conversation --
 10 A. Uh-huh.
 11 Q. -- had you been informed by Dr. Tudor that she
 12 believed Dr. Doug McMillan had religious beliefs related
 13 to transgender people?
 14 MR. JOSEPH: Object to the form.
 15 A. It was in one of her -- one of her amendments.
 16 I'm not sure which one it was that came up, but I think
 17 it was after that point. I don't know. I don't recall.
 18 I really don't.
 19 Q. (BY MR. TOWNSEND) So do you recall whether you
 20 asked Doug McMillan about his religious beliefs as they
 21 pertain to transgender people?
 22 A. At some point, yes, I asked him that.
 23 Q. What did he say?
 24 A. He said that conversation never happened with
 25 his sister. That was where that all -- I'm not sure

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1 about where in the process her indication that Jane
 2 McMillan had -- I'm not sure which of the amendments and
 3 iterations that one came out.
 4 Q. Did he say, though, that he did not have any
 5 religious beliefs related to transgender people?
 6 A. If we're understanding at -- make sure we're --
 7 I want to make sure we're communicating. At what point?
 8 Which -- you want the second conversation or when did he
 9 say or when did I ask him? I'm not sure what you're
 10 asking.
 11 Q. Sure. Well, let me just make it clear, then.
 12 Doug McMillan's religious beliefs didn't come up as a
 13 topic when you spoke to him the first time about
 14 Dr. Tudor's --
 15 A. No.
 16 Q. -- portfolio. Right?
 17 A. That's correct.
 18 Q. Okay. So during this second conversation where
 19 you're speaking to him about discrimination, did you ask
 20 him what his religious beliefs were with respect to
 21 transgender people?
 22 A. I don't remember. I don't think it was asked
 23 that way.
 24 Q. Did you ask him whether he had ever said
 25 anything to anyone about his religious beliefs about

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1 transgender people?
 2 A. Yes.
 3 Q. What did -- what did you ask him on that topic?
 4 A. Had he discussed -- somehow -- again, we need
 5 to get our days together so that I can probably be -- to
 6 answer it in the way that would be most correct.
 7 Q. So did you have --
 8 A. Somehow I talked to Jane and then some others.
 9 It was just lots of people that I talked to over the
 10 course of a couple weeks.
 11 Q. So do you think that you spoke to Doug McMillan
 12 more than two times in connection with --
 13 A. That's possible.
 14 Q. -- your investigation?
 15 A. Now that we've talked about it.
 16 Q. So at any point during your investigation of
 17 Dr. Tudor's discrimination complaint --
 18 A. Uh-huh.
 19 Q. -- did you ask Doug McMillan what his religious
 20 beliefs were as they pertained to transgender people?
 21 A. Not the way you're asking, no. I can't answer
 22 that.
 23 Q. Did you collect any information in connection
 24 with your investigation of Dr. Tudor's discrimination
 25 complaint about Doug McMillan's religious beliefs as they

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1 pertain to transgender people?
 2 A. Not stated that way.
 3 Q. What do you mean when you say, "Not stated that
 4 way"?
 5 A. Not stated that way.
 6 Q. Meaning, you didn't ask in the exact words I
 7 just stated?
 8 A. That is correct.
 9 Q. All right. Let me ask the question again.
 10 A. Please.
 11 Q. At any point during your investigation of
 12 Dr. Tudor's discrimination complaint, did you collect any
 13 evidence or any information about Dr. McMillan's
 14 religious beliefs?
 15 A. No.
 16 Q. Did you ask Dr. McMillan how he felt about
 17 transgender people?
 18 A. Yes.
 19 Q. What did he say?
 20 A. He says it doesn't matter.
 21 Q. What did you take that to mean?
 22 A. I think of everything that you're going to ask
 23 me, this is the most problematic for me because I'm
 24 talking about someone who I've talked to about
 25 discrimination from the time I got to Southeastern. He

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<p style="text-align: right;">Page 130</p> <p>1 has never, never mentioned he disliked anybody. He was 2 my confidant as far as discrimination, what people talk 3 about, what hurts people, and humanity. 4 And for you to ask me that and continue to ask 5 me if he was prejudiced when I know what he's done for 6 me, I take offense to that. Now, every time it comes up, 7 I will probably be equally as pissed about this. But 8 that's the one person who I have never heard say 9 anything, anything, about people of color. 10 He -- he always said do the right thing for the 11 right reasons. We constantly said that to each other 12 because I've been upset about things, he's been upset 13 about things, and we say the same thing. Do the right 14 thing for the right reasons. So his Baptist background 15 or any other background does not preclude his stand on 16 humanity. And I stand by that. I want a break. 17 MR. TOWNSEND: Certainly. 18 (Off the record at 12:18 P.M.) 19 (On the record at 1:23 P.M.) 20 Q. (BY MR. TOWNSEND) All right, Dr. Stubblefield. 21 We just returned from a lunch break. Is there any reason 22 that you could not continue to give truthful testimony 23 today? 24 A. No. 25 Q. Before our lunch break, we were talking some</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Indirectly, yes. 2 Q. Did you file any complaints about the racial 3 slur? 4 A. No. It was a one-time occurrence. 5 Q. So when you learned that Dr. Tudor was 6 complaining about Doug McMillan discriminating against 7 her -- 8 A. Sorry. 9 Q. -- did you have the same reaction in your mind 10 about that complaint that you had just before we stopped 11 for lunch in response to my question? 12 A. Say -- please repeat that. 13 MR. TOWNSEND: Can you read the question back? 14 THE COURT REPORTER: "Question: Did you have 15 the same reaction in your mind about that complaint that 16 you had just before we stopped for lunch in response to 17 my questions?" 18 MR. JOSEPH: Object to the form. 19 Q. (BY MR. TOWNSEND) All right. I'll ask it 20 again. 21 A. Okay. 22 Q. All right. I'll ask it a different way. 23 So when Dr. Tudor told you that she had a 24 complaint about Dr. McMillan discriminating against her, 25 in your mind, what did you think about her making that</p>
<p style="text-align: right;">Page 131</p> <p>1 about Doug McMillan. 2 A. Yes. 3 Q. And you have described him as a confidant. Is 4 there anything in particular that he's helped you with in 5 the past with respect to your employment at Southeastern? 6 Other than the -- the instance that you told me about 7 earlier about your promotion and tenure application? 8 A. Yes. 9 Q. What is that? 10 A. I'm trying to remember the first time that 11 we -- there was an older faculty member -- oh, it was in 12 the early 1997, '96 that made a racial slur. That person 13 retired, actually, the next year, so they were old. 14 Older than I am. Old. And I discussed it with him. 15 Q. And was he helpful? 16 A. Yes. 17 Q. How so? 18 A. He just indicated that, you know, the rules -- 19 some people had not moved with the world and that that 20 individual was -- would be retiring and if it became an 21 issue, you know, if it happened again, let him know. 22 Q. What was Dr. McMillan's position at that time 23 when you were talking to him? 24 A. I think he -- I'm not sure. Not sure. 25 Q. Was he your supervisor?</p>	<p style="text-align: right;">Page 133</p> <p>1 complaint, given what you knew about Doug McMillan? 2 A. It was something I was -- I needed to find out. 3 Because that would have surprised me. 4 MR. TOWNSEND: Let's go off the record for a 5 second. 6 (Off the record at 1:27 P.M.) 7 (On the record at 1:28 P.M.) 8 Q. (BY MR. TOWNSEND) Was there a process for you 9 to recuse yourself from doing an investigation as 10 affirmative action officer if you were in a situation 11 where you didn't think you could be impartial? 12 A. I would be able to say I don't want to do that, 13 yes. 14 Q. What was the -- what would have been the 15 process for doing that? 16 A. I don't know because I've never had to do that. 17 But I would feel empowered to do that. 18 Q. Why would you have felt empowered to do that? 19 A. Because there's not -- because I feel that I 20 could do that. I just -- I don't want to do this for 21 some reason. 22 Q. Was there some sort of written procedure or 23 policy on what you would need to do to recuse yourself in 24 that way? 25 A. Not that I'm aware of.</p>

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<p>1 Q. Is -- do you know whether Doug McMillan is 2 planning to retire from Southeastern? 3 A. Yes. 4 Q. Do you know why he's planning to retire? 5 MR. JOSEPH: Object to the form. 6 A. It's -- was an offer that all administrators 7 that had a combination of years with the institution. He 8 was one of 33 that met the formula. 9 Q. (BY MR. TOWNSEND) Did he tell you his reasons 10 for retiring? 11 A. We were all offered the same package. 12 Q. But did he tell you that he was retiring 13 because of that package he was offered? 14 A. Yes. 15 Q. And are you retiring? 16 A. Yes. 17 Q. When is your retirement date? 18 A. Not that I'm counting, but I think it's 28 19 days. I'm sorry. Excuse me. I'm sorry. 20 Q. Do you have any plans to travel for an extended 21 period of time after you retire? 22 A. Extended? No. 23 Q. Have you told me everything you remember about 24 your conversations with Doug McMillan in connection with 25 your investigation of Dr. Tudor's discrimination</p>	<p>1 could look at, was that she was told that her portfolio 2 was -- was not going to make it through the process, it 3 appeared, and if she were -- were to have -- if she would 4 withdraw it, they could request an additional year for 5 her to complete whatever was -- was -- was lacking. 6 Q. Is there anything else you remember Dr. Scoufos 7 telling you during your conversation with her in 8 connection with your investigation of Dr. Tudor's 9 discrimination complaint? 10 A. Not that I can recall. 11 Q. Did you take notes during your conversation 12 with Dr. Scoufos? 13 A. Yes. And I used that information in my 14 writeup. 15 Q. Did you take notes during your conversation 16 with Dr. McMillan? Strike that. 17 During your conversations with Dr. McMillan in 18 connection with your investigation of Dr. Tudor's 19 discrimination complaint, did you take notes? 20 A. Yes. Some. 21 Q. Did you speak with Jane McMillan in connection 22 with your investigation of Dr. Tudor's discrimination 23 complaint? 24 A. Yes. 25 Q. And what did you talk to Jane McMillan about?</p>
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<p>1 complaint? 2 MR. JOSEPH: Object to the form. 3 A. Yes, I believe so. 4 Q. (BY MR. TOWNSEND) All right. Did you talk to 5 Dr. Lucretia Scoufos in connection with your 6 investigation of Dr. Tudor's discrimination complaint? 7 A. Yes. 8 Q. What did you talk to Dr. Scoufos about? 9 A. About the complaint as it was presented to me. 10 There was an issue with -- indicated there was an issue 11 with her tenure and promotion. "Can you tell me what was 12 said to Dr. Tudor," just to recount, from her 13 perspective, what happened. 14 Q. And what did Dr. Scoufos say? 15 A. She recounted, as was indicated in my -- the 16 writeup that I did, finding of fact. 17 Q. Do you remember what that was? 18 A. Not all of it, no. 19 Q. What do you remember? 20 A. I recall -- and, again, this is six years ago. 21 But what I recall is that she met -- it was more than 22 just Dr. Tudor and Dr. Scoufos. I think -- there was 23 another individual there. And I can't recall if it was 24 Mischo. I'm not sure. And they indicated -- my 25 recollection, and if I -- if you have something that I</p>	<p>1 A. The conversation that Dr. Tudor -- Tudor had 2 mentioned about Jane and her -- depictions of her 3 brother. 4 Q. And -- 5 A. His Baptist sensibilities, I think was the term 6 that was used. 7 Q. What did Jane McMillan say about that? 8 A. She said -- I'm trying to -- her exact words 9 were, I definitely did not say anything about -- I did 10 not use any of those terms, as far as he did not use any 11 of those terms, I think was the way it was said. And I 12 never did talk to him about her at all. 13 Q. Did you ask Jane McMillan about Doug McMillan's 14 religious beliefs regarding transgender people? 15 A. Yes. 16 Q. And what did she say those beliefs were? 17 A. I ask if -- let me clarify that. I want to 18 make sure that we're -- we're getting it. The statement 19 that was in her complaint was about the -- that doctor -- 20 that Dr. McMillan had said he was either offended or 21 something because of -- of his Baptist sensibilities. 22 She said she did not say that and he did not say that. 23 That was not said. And she wrote a letter to that 24 effect. 25 Q. Did you ask her, even if the statement wasn't</p>

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1 made by Dr. McMillan or by Jane McMillan, whether Jane
2 McMillan had any knowledge of Doug McMillan's religious
3 beliefs as they pertained to transgender people?
4 A. Repeat that.
5 Q. Sure. So irrespective of whether Jane McMillan
6 made a comment about Doug McMillan's religious beliefs to
7 Dr. Tudor, did you ask Jane McMillan if she knew what
8 Doug McMillan's religious beliefs were about transgender
9 people?
10 MR. JOSEPH: Object to the form.
11 A. I don't know.
12 Q. (BY MR. TOWNSEND) When you say "I don't know,"
13 are you meaning you don't remember if you asked her, or
14 is it -- or are you saying you don't know because there's
15 something with my question you're unclear on?
16 A. Yes.
17 Q. All right. Do you remember asking Jane
18 McMillan whether she had any knowledge about Doug
19 McMillan's religious beliefs as they pertained to
20 transgender people?
21 A. No.
22 Q. Did you take notes when you spoke to Jane
23 McMillan in connection with your investigation of
24 Dr. Tudor's discrimination complaint?
25 A. Yes.

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1 Q. Is there anything else that you remember
2 discussing with Jane McMillan during your investigation
3 that you haven't described already?
4 A. Yes.
5 Q. What else?
6 A. I ask her if she has -- had spent any time with
7 Dr. Tudor. And knowing that she was a counselor, she
8 couldn't give me very much, but she said she had spent
9 some time with her.
10 Q. So Jane McMillan was a counselor at
11 Southeastern?
12 A. That's correct.
13 Q. And from your conversation with Jane McMillan,
14 it was your understanding that she had counseled
15 Dr. Tudor in some way?
16 A. No. I don't -- no.
17 Q. You had said -- I think you -- I think you said
18 that Jane McMillan told you that she couldn't tell you
19 everything that she and --
20 A. No. No.
21 Q. -- Dr. Tudor talked about?
22 A. No. I said her -- Jane, being a counselor --
23 Q. Uh-huh.
24 A. -- is very protective of that -- whatever
25 information she has about anybody, that's -- but she did

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1 say she had had conversations with Dr. Tudor.
2 Q. Well, did -- did --
3 A. But not professional.
4 Q. Oh.
5 A. Not in a professional -- this is a small
6 campus. People each lunch together, have conversations,
7 but it was not related to anything that they may or may
8 not have discussed in a client-counselor relationship.
9 Q. Did Jane McMillan say anything to indicate that
10 she was not providing you with some sort of information
11 because of her role as a counselor?
12 A. No.
13 MR. JOSEPH: Object to the form.
14 Q. (BY MR. TOWNSEND) Was it your impression that
15 Jane McMillan was being somewhat guarded on what she told
16 you because she's a counselor?
17 A. No.
18 Q. Why did you mention that her being a counselor
19 when you were explaining what she told you?
20 A. The mere reason that you asked me what was my
21 profession. That is what she does on campus. And she
22 indicated in her -- in her complaint of Jane McMillan. I
23 would have never known that there was a relationship of
24 any kind, professional or personal.
25 Q. When you're saying "her complaint," you're

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1 talking about Dr. Tudor's --
2 A. Dr. Tudor.
3 Q. -- complaint?
4 A. Excuse me. Yes.
5 Q. We just talked over one another. So when you
6 were responding -- strike that.
7 When you were saying "her complaint," you were
8 talking about Dr. Tudor's complaint.
9 A. That's correct. Yes.
10 Q. Right?
11 A. Thank you for clarifying.
12 Q. Did you know Jane McMillan before you
13 interviewed her in connection with Dr. Tudor's
14 discrimination complaint?
15 A. Yes.
16 Q. How did you know her?
17 A. We've -- she's been on several committees,
18 we've worked together. With violence, working with
19 students and the safe kinds of things, violence. She's
20 worked on -- she was in the diversity committee, several
21 committees over the years.
22 Q. Do you have a sense of whether she's close
23 to -- well, strike that.
24 Doug McMillan is Jane McMillan's brother.
25 Correct?

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<p>1 A. That's my understanding. 2 Q. Do you have a sense of whether they have a 3 close relationship? 4 A. No. 5 Q. Do you know whether they have a close 6 relationship or not? 7 A. No. 8 Q. Did you speak to Charles Weiner in connection 9 with your investigation of Dr. Tudor's discrimination 10 complaint? 11 A. Yes. If I'm the -- yes. 12 Q. What did you speak to Dr. Weiner about in 13 connection with Dr. Tudor's discrimination complaint? 14 A. The only thing that I recall was about a 15 faculty -- a committee that he was -- he was responsible 16 for. And I'm not -- I'm not even going to give it a 17 name. But I think it was part of an appeal. I'm not 18 sure. 19 Q. Did you take notes when you spoke to Dr. Weiner 20 in connection with your investigation? 21 A. I'm not sure. 22 Q. Did you speak to President Minks in connection 23 with your investigation of Dr. Tudor's discrimination 24 complaint? 25 A. Yes.</p>	<p>1 A. Yes. 2 Q. Did you -- strike that. 3 What did you send to her? 4 A. I don't recall what all I sent. 5 Q. Did you send her a draft of your investigation 6 report? 7 A. I'm not sure. 8 Q. Do you remember making any revisions to 9 anything you wrote in connection with the investigation 10 because of advice you got from Ms. Legako? 11 A. Yes. 12 Q. What did -- strike that. 13 What revisions did you make? 14 A. Noun-verb agreements. 15 Q. Anything else? 16 A. No. 17 Q. What do you mean by "noun-verb agreements"? 18 A. I have a tendency to not line them up 19 sometimes. The -- kind of verb agreement as I write. I 20 was not an English major, so occasionally I will put the 21 wrong verb or something like that. So they were 22 technical. Maybe I should say technical issues in 23 writing. 24 Q. Were those the only revisions that you made in 25 response to Ms. Legako's --</p>
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<p>1 MR. JOSEPH: Objection to form. 2 Q. (BY MR. TOWNSEND) What did you and President 3 Minks discuss? 4 A. I don't recall. I know there was -- I don't 5 recall. 6 Q. Did you take notes during that conversation? 7 A. No. Probably not. 8 Q. Is there a reason why you didn't take notes? 9 A. I just didn't take notes that I recall. 10 Q. I'm going to butcher this name. Is it Jana 11 Legako? 12 A. Legako. 13 Q. Legako. 14 A. Uh-huh. 15 Q. Okay. You spoke to Ms. Legako in connection 16 with your investigation of Dr. Tudor's discrimination 17 complaint? 18 A. Yes. 19 Q. What did you and Ms. Legako discuss? 20 A. I asked her if she would be available to -- to 21 review the information that I'd submitted to her -- 22 see -- as a lawyer, if she could give me any suggestions 23 or places where I might need to do some additional 24 things. Just as a professional courtesy. 25 Q. And did she do that for you?</p>	<p>1 A. Yes. 2 Q. -- feedback? 3 A. Yes. 4 Q. Did you speak to Beth Kerr in connection with 5 your investigation of Dr. Tudor's discrimination 6 complaint? 7 A. No. 8 Q. Did you speak to Brad Morelli in connection 9 with your investigation of Dr. Tudor's discrimination 10 complaint? 11 A. No. 12 Q. Did you speak to Charles Babb -- 13 A. Yes. 14 Q. -- in connection with your investigation? 15 A. Yes. 16 Q. Did Mr. Babb give you any advice on the 17 investigation? 18 A. Restate that. 19 Q. What did you and Mr. Babb discuss? 20 A. His -- 21 MR. JOSEPH: I'm going to object to the form on 22 that, too. 23 Q. (BY MR. TOWNSEND) What did you and -- I want to 24 restate it because of the objection. 25 What did you and Mr. Babb discuss with respect</p>

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<p style="text-align: right;">Page 146</p> <p>1 to Dr. Tudor's discrimination complaint? 2 A. I -- I don't recall. Just -- I don't recall. 3 Q. Did you take notes during that conversation? 4 A. Some. Yes. 5 Q. Do you remember what -- let me strike that. 6 I think you said before that you reviewed some 7 portfolios in connection with the investigation. Was 8 that right? 9 A. Reviewed? That's incorrect. 10 Q. Well, all right. Let me ask it a different 11 way. I think you said before that you obtained copies of 12 portfolios in connection with the investigation. Is that 13 right? 14 MR. JOSEPH: Object to the form. 15 A. I didn't say that. 16 Q. (BY MR. TOWNSEND) Let me ask this a different 17 way, then. What, if any, documents did you obtain in 18 connection with your investigation of Dr. Tudor's 19 discrimination complaint? 20 A. I don't recall. 21 Q. During your investigation of Dr. Tudor's 22 discrimination complaint, did you do your own comparison 23 of Dr. Tudor's qualifications for promotion and tenure as 24 compared to anyone else's? 25 A. No.</p>	<p style="text-align: right;">Page 148</p> <p>1 (Plaintiff's Exhibit D, see date)." 2 Did I read that correctly? 3 A. Yes. 4 Q. And then the next sentence states "Policy 5 states unequivocally that I have the right to be informed 6 of the Committee's decision within ten days of the 7 rendering of a verdict." 8 Did I read that correctly? 9 A. Yes. 10 Q. Did you speak to Dr. Weiner about this issue of 11 the delay in him providing Dr. Tudor with the committee's 12 decision? 13 A. Yes. 14 Q. What did he say about it? 15 A. Dr. Weiner indicated that the committee had 16 made a decision; however, it was not orally -- orally 17 recorded. And as he looked at -- or I guess went over 18 the policy, it says it has to be orally taken. So my 19 understanding from him, he said that was the reason they 20 had to go back and vote orally so it'd be on record. 21 Q. So it was your understanding that the faculty 22 appellate committee had to record, like, with a tape 23 recorder -- 24 A. Yes. 25 Q. -- their oral vote?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Did you speak to Dr. Mischo in connection with 2 Dr. Tudor's discrimination complaint? 3 A. I don't remember. 4 Q. Could you please turn to Plaintiff's 5 Exhibit 55. 6 A. Uh-huh. 7 Q. Please take a moment to peruse this document. 8 And my question is going to be, is this the complaint 9 that Dr. Tudor provided to you in the beginning of your 10 investigation of her discrimination complaint. 11 A. I'm finished. 12 Q. Is that, Plaintiff's Exhibit 55, the complaint 13 that Dr. Tudor submitted to you on or around August 30, 14 2010? 15 A. Yes. 16 Q. If you go to page 2 of Plaintiff's Exhibit 55, 17 it's Bates numbered with the defendant's Bates label 18 ending with the number 1280. Towards the middle of the 19 page, nine lines down, there's a sentence that begins 20 "The Faculty Appellate Committee." Do you see that? 21 A. Yes. 22 Q. All right. That sentence reads "The Faculty 23 Appellate Committee met and rendered a judgment in my 24 favor on March 22nd. However, Dr. Weiner did not inform 25 me of the committee's decision until April 29th</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Yes. 2 Q. And Dr. Weiner told you that the reason the 3 letter to Dr. Tudor was delayed was because there was a 4 delay in recording that oral vote? 5 MR. JOSEPH: Object to the form. 6 A. I don't -- 7 Q. (BY MR. TOWNSEND) Let me ask the question a 8 different way. 9 Dr. Weiner told you that there was a delay in 10 informing Dr. Tudor of the faculty appellate committee's 11 decision because of this delay in getting the oral vote 12 recorded? 13 MR. JOSEPH: Object to the form. 14 A. No. 15 Q. (BY MR. TOWNSEND) I thought that's what you had 16 said so let me ask it again. 17 A. Okay. 18 Q. Why was there a delay in getting Dr. Tudor the 19 decision from the faculty appellate committee? 20 MR. JOSEPH: Object to the form. 21 A. I don't know. 22 Q. (BY MR. TOWNSEND) Did Dr. Weiner confirm when 23 you talked to him in connection with your investigation 24 of Dr. Tudor's complaint that the faculty appellate 25 committee had met and rendered a judgment in Dr. Tudor's</p>

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<p style="text-align: right;">Page 150</p> <p>1 favor on March 22, 2010?</p> <p>2 MR. JOSEPH: Object to the form.</p> <p>3 A. I missed the first part of what you said.</p> <p>4 MR. TOWNSEND: Can you repeat the question?</p> <p>5 THE COURT REPORTER: "Question: Did Dr. Weiner</p> <p>6 confirm when you talked to him in connection with your</p> <p>7 investigation of Dr. Tudor's complaint that the faculty</p> <p>8 appellate committee had met and rendered a judgment in</p> <p>9 Dr. Tudor's favor on March 22, 2010?"</p> <p>10 MR. JOSEPH: Same objection.</p> <p>11 A. That's not clear.</p> <p>12 Q. (BY MR. TOWNSEND) So going back to Plaintiff's</p> <p>13 Exhibit 55, page 2, Dr. Tudor is alleging that the</p> <p>14 faculty appellate committee met and rendered a judgment</p> <p>15 in her favor on March 22nd. Correct?</p> <p>16 A. That's what's stated.</p> <p>17 Q. Did you confirm that that happened?</p> <p>18 A. I don't recall.</p> <p>19 Q. And then Dr. Tudor also said Dr. Weiner did not</p> <p>20 inform her of the committee's decision until April 29th.</p> <p>21 Right?</p> <p>22 A. That's what's written.</p> <p>23 MR. JOSEPH: Object to the form.</p> <p>24 Q. (BY MR. TOWNSEND) Did you confirm when</p> <p>25 Dr. Weiner informed Dr. Tudor of the committee's</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Yes.</p> <p>2 Q. That sentence reads "And here is where another</p> <p>3 egregious violation of my rights to due process and equal</p> <p>4 rights occurs, Dr. McMillan fails to mail the letter to</p> <p>5 me until June 9 (Plaintiff's Exhibit F), almost six weeks</p> <p>6 later."</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Did you, in connection with your investigation</p> <p>10 of Dr. Tudor's complaint, speak to Doug McMillan about</p> <p>11 the allegation in that sentence that I just read?</p> <p>12 A. I don't remember.</p> <p>13 Q. Did you do anything in your investigation to</p> <p>14 determine whether Exhibit F to the complaint was mailed</p> <p>15 six weeks after it was dated?</p> <p>16 A. I don't remember.</p> <p>17 Q. Go to the fifth page of Plaintiff's Exhibit 55.</p> <p>18 A. (Witness complying with request.)</p> <p>19 Q. The paragraph at the bottom of the page that</p> <p>20 begins "In conclusion."</p> <p>21 A. Uh-huh.</p> <p>22 Q. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. The second sentence of that paragraph reads,</p> <p>25 "University president (who was Dr. Jesse Snowden), and</p>
<p style="text-align: right;">Page 151</p> <p>1 decision?</p> <p>2 A. I don't know.</p> <p>3 THE WITNESS: It's cold.</p> <p>4 MR. TOWNSEND: Let's go off the record for a</p> <p>5 second.</p> <p>6 (Off the record at 2:02 P.M.)</p> <p>7 (On the record at 2:03 P.M.)</p> <p>8 Q. (BY MR. TOWNSEND) So did Dr. Weiner tell you</p> <p>9 that he would have informed Dr. Tudor sooner about the</p> <p>10 faculty appellate committee's decision if there had not</p> <p>11 been this issue with the recording?</p> <p>12 A. I don't remember.</p> <p>13 MR. JOSEPH: Object to the form.</p> <p>14 Q. (BY MR. TOWNSEND) Okay. Did you determine</p> <p>15 whether Dr. Tudor was informed of the faculty appellate</p> <p>16 committee's decision within ten days of them rendering</p> <p>17 their decision?</p> <p>18 A. I don't remember.</p> <p>19 Q. All right. On the third page of Plaintiff's</p> <p>20 Exhibit 55 --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- a little bit more than halfway down the</p> <p>23 page, ten lines from the bottom, there's a sentence</p> <p>24 towards the end of that line that begins "And here is."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 153</p> <p>1 Interim Vice President for Academic Affairs, Doug</p> <p>2 McMillan, repeatedly met with Dr. Spencer, went over his</p> <p>3 tenure portfolio, instructed him how to revise it,</p> <p>4 invited him to provide supplemental material which</p> <p>5 included articles that he had submitted or planned to</p> <p>6 submit for publication, and allowed him to fully explain</p> <p>7 and discuss his contributions to the university as well</p> <p>8 as providing him ample opportunity to proffer any,</p> <p>9 'quote, verification, unquote,' required."</p> <p>10 Did I read that correctly?</p> <p>11 A. I read the same way. Yes.</p> <p>12 Q. Did you investigate whether Doug McMillan had</p> <p>13 met with Dr. Spencer and done the things that Dr. Tudor</p> <p>14 described in that sentence?</p> <p>15 A. I don't remember.</p> <p>16 Q. All right. Please turn to Plaintiff's</p> <p>17 Exhibit 28.</p> <p>18 A. Yes.</p> <p>19 Q. Plaintiff's Exhibit 28 appears to be an e-mail</p> <p>20 that you forwarded -- strike that.</p> <p>21 Plaintiff's Exhibit 28 appears to be two</p> <p>22 e-mails between you and Kathy Conway. Is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall these e-mails?</p> <p>25 A. Yes.</p>

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1 Q. In your e-mail to Cathy Conway sent
2 September 3, 2010 at 9:47 A.M., the second sentence
3 states "I have shared these questions with Dr. McMillan."
4 Did I read that correctly?
5 A. Yes.
6 Q. And the Dr. McMillan you were referring to
7 there was Doug McMillan. Correct?
8 A. Yes.
9 Q. Why did you share these questions with Doug
10 McMillan?
11 A. It was information that was just gained for
12 Cathy, went to a workshop, picked up this information. I
13 shared it with about 15 other individuals.
14 Q. Why did you tell Ms. Conway that you shared the
15 questions with Doug McMillan?
16 A. I don't recall.
17 Q. Is there a reason you didn't tell her that you
18 shared the questions with anyone other than Doug
19 McMillan?
20 A. No.
21 Q. Who else did you share these questions with?
22 A. Dr. Tudor.
23 Q. Did you send Dr. Tudor an e-mail forwarding
24 these questions from Ms. Conway?
25 A. No.

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1 Q. How did you share these questions with
2 Dr. Tudor?
3 A. I -- after this conversation (indicating) or
4 this information had come and became part of my
5 presentations to faculty and staff, it also became part
6 of a handout that was given to everyone who came in for a
7 case. Or had an issue. Like, if we're going to play,
8 we're going to play by the equal -- this is what -- how
9 you establish your case. And I gave it to the
10 complainant, respondents, that became part of what I gave
11 to everyone.
12 Q. In Cathy Conway's e-mail to you that's in
13 Plaintiff's Exhibit 28, the first sentence refers to a
14 disgruntled faculty member. Do you see that?
15 A. I see that.
16 Q. Was she referring to -- well, strike that.
17 Did you take that to be referring to Dr. Tudor?
18 A. No.
19 Q. Who did you think she was referring to?
20 A. A disgruntled faculty member.
21 Q. The sentence that we're talking about reads in
22 full "I attended an employment law seminar yesterday and
23 was reminded of prima fascia, and I thought of the
24 disgruntled faculty member."
25 Did I read that correctly?

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1 A. Yes.
2 Q. It sounds from the sentence -- wouldn't you
3 agree -- that she's speaking about somebody that you
4 would understand who she meant. Right?
5 A. No. That's an assumption.
6 MR. JOSEPH: Object to the form.
7 Q. (BY MR. TOWNSEND) Did you have any idea who she
8 was talking about, Ms. -- strike that.
9 Did you have any idea who Ms. Conway was
10 talking about when she said the disgruntled faculty
11 member in her e-mail?
12 A. No.
13 Q. Did you ask her?
14 A. I don't recall.
15 Q. Did you talk to Ms. Conway at all about
16 Dr. Tudor's discrimination complaint?
17 A. Yes.
18 Q. What did you and Ms. Conway discuss?
19 A. That I received it and that I was moving
20 forward with the investigation of it. There's no more to
21 say.
22 Q. Was that discussion prior to Ms. Conway sending
23 you this e-mail that's in Plaintiff's Exhibit 28?
24 A. I don't recall. I think so.
25 Q. So was there any -- strike that.

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1 Were there any other disgruntled faculty
2 members that you were aware of -- well, strike that
3 again.
4 Did you consider Dr. Tudor at this time to be a
5 disgruntled faculty member?
6 A. How are you defining disgruntled?
7 Q. How would you define disgruntled?
8 A. You asked the question.
9 Q. Well, I'm trying to give you a -- I'm trying to
10 settle on a definition of the term disgruntled that we
11 can agree on so --
12 A. Just share with me what you might believe --
13 you know, think it is, and we'll -- I'll -- we'll come to
14 some -- some answer.
15 Q. All right. By disgruntled, let's say it means
16 a faculty member who is dissatisfied with how they were
17 treated.
18 A. Yes. I can agree on that.
19 Q. Did you consider at the time that Dr. -- strike
20 that.
21 At the time that Cathy Conway sent you this
22 e-mail that's in Plaintiff's Exhibit 28, did you consider
23 Dr. Tudor to be a disgruntled faculty member?
24 A. I don't remember the timeframe. I don't. I
25 don't know.

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<p style="text-align: right;">Page 158</p> <p>1 Q. Plaintiff's Exhibit 55 --</p> <p>2 A. Okay.</p> <p>3 Q. -- which was Dr. Tudor's discrimination</p> <p>4 complaint --</p> <p>5 A. Uh-huh. Hold on.</p> <p>6 Q. -- is dated August 30, 2010. Correct?</p> <p>7 A. Uh-huh. Yes.</p> <p>8 Q. And the e-mail that Cathy Conway sent to you</p> <p>9 that's Plaintiff's Exhibit 28 --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- is dated September 3, 2010.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Right?</p> <p>14 A. Yes.</p> <p>15 Q. So given those dates, can you say whether you</p> <p>16 believed at the time that Ms. Conway sent you this e-mail</p> <p>17 that's in Plaintiff's Exhibit 28, whether you believed</p> <p>18 Dr. Tudor to be a disgruntled faculty member?</p> <p>19 A. No.</p> <p>20 MR. JOSEPH: Object to the form.</p> <p>21 A. I can't answer that.</p> <p>22 Q. (BY MR. TOWNSEND) Did you ever consider</p> <p>23 Dr. Tudor to be a disgruntled faculty member?</p> <p>24 A. She was upset. She was upset that -- did I</p> <p>25 ever consider her disgruntled? I don't recall that.</p>	<p style="text-align: right;">Page 160</p> <p>1 member discrimination complaints around the time of this</p> <p>2 September 3, 2010, e-mail other than Dr. Tudor's?</p> <p>3 A. I don't recall.</p> <p>4 (Plaintiff's Exhibit 104 has been</p> <p>5 marked for identification purposes</p> <p>6 and made a part of the record.)</p> <p>7 Q. (BY MR. TOWNSEND) I'm showing you what's been</p> <p>8 marked Plaintiff's Exhibit 104.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Is this the e-mail that you sent to Doug</p> <p>11 McMillan with the information from Plaintiff's Exhibit 28</p> <p>12 that Cathy Conway provided to you.</p> <p>13 A. Yes.</p> <p>14 Q. Did you know that Doug McMillan had forwarded</p> <p>15 your e-mail to Lucretia Scoufos?</p> <p>16 A. No.</p> <p>17 Q. Did you send the information that Cathy Conway</p> <p>18 provided to you in Plaintiff's Exhibit 28 to Dr. Scoufos?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did Doug McMillan have any questions about the</p> <p>21 content of your e-mail that you sent to him that's in</p> <p>22 Plaintiff's Exhibit 104?</p> <p>23 A. Did he -- say that again, please, I'm sorry.</p> <p>24 THE COURT REPORTER: "Question: Did Doug</p> <p>25 McMillan have any questions about the content of your</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. So you've never considered Dr. Tudor to have</p> <p>2 been a disgruntled faculty member?</p> <p>3 MR. JOSEPH: Object to the form.</p> <p>4 A. No -- no -- no answer for that. I don't know.</p> <p>5 I don't recall. I never did call her that.</p> <p>6 Q. (BY MR. TOWNSEND) Right. But under the</p> <p>7 definition that we agreed on for what disgruntled</p> <p>8 means --</p> <p>9 A. And what's that again, the definition?</p> <p>10 Q. Somebody who was dissatisfied with the way they</p> <p>11 were treated.</p> <p>12 A. That -- I could say yes to that.</p> <p>13 Q. So you considered at some point Dr. Tudor to be</p> <p>14 a disgruntled faculty member?</p> <p>15 MR. JOSEPH: Object to the form.</p> <p>16 A. That's saying something that I'm not saying.</p> <p>17 She's dissatisfied, yes, she's dissatisfied. So if you</p> <p>18 want to say that's disgruntled, fine. But that is --</p> <p>19 these are two different things.</p> <p>20 Q. (BY MR. TOWNSEND) At the time that Ms. Conway</p> <p>21 sent you this September 3, 2010, e-mail that's in</p> <p>22 Plaintiff's Exhibit 28, were you investigating any other</p> <p>23 faculty member discrimination complaints?</p> <p>24 A. I don't recall.</p> <p>25 Q. Did you talk to Ms. Conway about any faculty</p>	<p style="text-align: right;">Page 161</p> <p>1 e-mail that you sent to him that's in Plaintiff's Exhibit</p> <p>2 104?"</p> <p>3 A. No.</p> <p>4 MR. JOSEPH: Object to the form.</p> <p>5 Q. (BY MR. TOWNSEND) Did Doug McMillan reply to</p> <p>6 your e-mail that's Plaintiff's Exhibit 104?</p> <p>7 A. Not that I can recall.</p> <p>8 Q. Did Dr. Scoufos have any questions about the</p> <p>9 content of your e-mail that's in Plaintiff's Exhibit 104?</p> <p>10 MR. JOSEPH: Object to the form.</p> <p>11 A. No.</p> <p>12 (Plaintiff's Exhibit 105 has been</p> <p>13 marked for identification purposes</p> <p>14 and made a part of the record.)</p> <p>15 Q. (BY MR. TOWNSEND) Is Plaintiff's Exhibit 105 an</p> <p>16 e-mail from Dr. Tudor to you subject retaliation?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall receiving this e-mail?</p> <p>19 A. Yes.</p> <p>20 Q. And for the record, the e-mail is Bates</p> <p>21 numbered EEOC36. What did you do in response to the</p> <p>22 information -- let me strike that.</p> <p>23 What, if anything, did you do in response to</p> <p>24 the information contained in this e-mail?</p> <p>25 A. I don't recall.</p>

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<p style="text-align: right;">Page 162</p> <p>1 Q. Do you remember meeting to discuss the issues 2 raised in this e-mail with Dr. Tudor? 3 A. I don't recall. We met more than once. 4 Q. The first sentence of this e-mail, Plaintiff's 5 Exhibit 105, states "Are you aware that the 6 administration has decided not" -- strike that. 7 Let me start over. The first sentence of 8 Plaintiff's Exhibit 105 reads "Are you aware that the 9 administration has decided to not allow me to apply for 10 tenure, question mark?" 11 Did I read that correctly? 12 A. Yes. 13 Q. Do you remember having a conversation with 14 Dr. Tudor about her claim that the administration had 15 decided not to allow her to apply for tenure? 16 MR. JOSEPH: Object to the form. 17 A. Is this different than her -- what she sent to 18 me that we went over earlier over her complaint? 19 Q. (BY MR. TOWNSEND) Plaintiff's Exhibit 105 is 20 dated October 7, 2010, so it would have been sent after 21 Plaintiff's Exhibit 55, I believe. 22 A. And restate the question, please. 23 Q. Certainly. Did you meet with Dr. Tudor to 24 discuss her claim that the administration had decided to 25 not allow her to apply for tenure?</p>	<p style="text-align: right;">Page 164</p> <p>1 e-mail that Dr. Tudor sent to you subject letter on 2 October 7, 2010? 3 A. Yes. 4 Q. And for the record, that e-mail is Bates 5 numbered EEOC 40. 6 Is Plaintiff's Exhibit 107 the letter that 7 Dr. Tudor attached to the e-mail that's Plaintiff's 8 Exhibit 106? 9 A. I don't -- I'm not -- I don't know. 10 Q. Have you ever seen Plaintiff's Exhibit 107? 11 A. Yes. 12 Q. Did you look at it in connection with your 13 investigation of Dr. Tudor's discrimination complaint? 14 A. Yes. 15 Q. In connection with your investigation of 16 Dr. Tudor's complaint, did you -- strike that. 17 In Plaintiff's Exhibit 106, the second sentence 18 reads "Just to be clear, it is factually incorrect in 19 reference to the offer that was made last year." 20 Did I read that correctly? 21 A. Yes. 22 Q. And in Plaintiff's Exhibit 107, the first 23 paragraph sentence -- second sentence reads, "You will 24 recall that during the review of your 2009-2010 academic 25 year application, you were extended an offer which would</p>
<p style="text-align: right;">Page 163</p> <p>1 A. I don't recall. 2 Q. Did you investigate the reasons why the 3 administration had decided not to allow Dr. Tudor to 4 apply for tenure? 5 A. Yes. 6 MR. JOSEPH: Object to the form. 7 Q. (BY MR. TOWNSEND) What did you do to 8 investigate that complaint? 9 A. I don't recall. 10 Q. Do you remember if you spoke to any witnesses 11 in connection with your investigation of Dr. Tudor's 12 discrimination complaint about Dr. Tudor not being 13 allowed to apply for tenure? 14 MR. JOSEPH: Object to the form. 15 A. I don't recall. 16 (Plaintiff's Exhibit 106 has been 17 marked for identification purposes 18 and made a part of the record.) 19 Q. (BY MR. TOWNSEND) Handing you what I've marked 20 Plaintiff's Exhibit 106. 21 (Plaintiff's Exhibit 107 has been 22 marked for identification purposes 23 and made a part of the record.) 24 Q. (BY MR. TOWNSEND) And what I've marked 25 Plaintiff's Exhibit 107. Is Plaintiff's Exhibit 106 an</p>	<p style="text-align: right;">Page 165</p> <p>1 have allowed you an additional year to strengthen your 2 portfolio and hopefully obtain tenure and promotion." 3 Did I read that correctly? 4 A. That's the way it's read, yes. 5 Q. Did you investigate what the terms of that 6 offer were that was referred to in that sentence? 7 A. Yes. 8 Q. What did you determine? 9 A. That if she were to -- if Dr. Tudor were to 10 withdraw her portfolio prior to making the -- the -- the 11 full trip, she would be able to strengthen her portfolio, 12 submit it again, which would have extended her time. 13 Q. Did Dr. Tudor say that's what the offer was 14 that was made to her? 15 MR. JOSEPH: Object to the form. 16 A. I don't recall. 17 Q. (BY MR. TOWNSEND) Let me ask it a different 18 way. Was there any difference in the accounts of 19 Dr. Tudor and other witnesses that you interviewed over 20 the terms of this offer? 21 MR. JOSEPH: Object to the form. 22 A. State it again in another way, please. 23 Q. (BY MR. TOWNSEND) Sure. Did Dr. Tudor agree 24 that the terms of the offer described in the first 25 paragraph of Plaintiff's Exhibit 107 were the terms that</p>

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<p style="text-align: right;">Page 166</p> <p>1 were extended to her? 2 A. No. 3 Q. What did she contend were the terms of the 4 offer? 5 A. Let's see what she has here. We would have to 6 go back to her complaint. I think that was 48. Her 7 complaint to me. Was it 50 -- 8 Q. You're talking about Plaintiff's Exhibit 55? 9 A. 55. 10 Q. Uh-huh. I don't think that will help you 11 because she's making this complaint after that one, I 12 think. But if you -- 13 A. I believe she -- I believe that she entertained 14 that she talked about that. 15 Q. Oh, okay. You may be right. 16 A. I believe. 17 Q. Go ahead and take a look. I may be wrong. 18 A. Give me a second. 19 Q. Please take a look at Plaintiff's Exhibit 55 20 and let me know if it refreshes your recollection about 21 what Dr. Tudor told you regarding the offer. 22 A. You might look at page 2 of 55 and see what you 23 think. 24 First, second, it's kind of hard to read this 25 paragraph so I think it's on April 6th. You might read</p>	<p style="text-align: right;">Page 168</p> <p>1 you consider to be the respondents in this complaint. 2 Let me ask this a different way. 3 Did you consider Doug McMillan to be a 4 respondent to this complaint? 5 A. I don't recall. 6 Q. Well, do you remember we agreed on what 7 respondent meant before lunch? Do you remember what we 8 agreed on as far as that goes? 9 A. Refresh my memory, please. 10 Q. We agreed that respondent meant somebody in 11 connection with one of your investigations that was 12 accused of discriminating against somebody. 13 A. Okay. 14 Q. So with that definition, was Doug McMillan a 15 respondent in Dr. Tudor's complaint? 16 A. I don't recall. 17 Q. Do you remember, based on your review of 18 Plaintiff's Exhibit 55 today, whether Dr. Tudor accused 19 Dr. McMillan of discriminating against her? 20 A. I don't know. 21 Q. At any point in your investigation of 22 Dr. Tudor's discrimination complaint, did you consider 23 Doug McMillan to be a respondent? 24 A. I don't recall. 25 MR. JOSEPH: Object to the form.</p>
<p style="text-align: right;">Page 167</p> <p>1 that. 2 Q. So you're referring to the sentence that begins 3 "On April 6th," on page 2 of Plaintiff's Exhibit 55 that 4 is eight lines from the bottom? 5 A. Correct. 6 Q. And did you speak to Dr. Tudor as well as 7 reading this in her complaint about what happened at this 8 meeting on April 6th? 9 A. Yes. 10 Q. And did she say anything different than what's 11 described here in writing about the meeting? 12 A. She repeated that. 13 MR. JOSEPH: Hey, Allan, we've been going a 14 little bit longer than an hour now. Would this be a 15 decent time for a break? 16 MR. TOWNSEND: Sure. A brief one, though. I 17 want to try and get through these documents in a timely 18 fashion. 19 (Off the record at 2:30 P.M.) 20 (On the record at 2:38 P.M.) 21 Q. (BY MR. TOWNSEND) Let's go back to, for a 22 moment, Plaintiff's Exhibit 55, Dr. Stubblefield. That's 23 Dr. Tudor's complaint dated August 30, 2010. 24 A. Uh-huh. 25 Q. So I just wanted to get an understanding of who</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. (BY MR. TOWNSEND) At any point in connection 2 with your investigation of Dr. Tudor's discrimination 3 complaint, did you understand her to be claiming that 4 Dr. McMillan had discriminated against her? 5 A. I don't remember. 6 Q. Handing you what's been marked Plaintiff's 7 Exhibit 108. 8 (Plaintiff's Exhibit 108 has been 9 marked for identification purposes 10 and made a part of the record.) 11 Q. (BY MR. TOWNSEND) Plaintiff's Exhibit 108 is a 12 three-page document Bates number EEOC 37 to EEOC 39. Is 13 this additional information that you received from 14 Dr. Tudor regarding her discrimination complaint? 15 MR. JOSEPH: Object to the form. 16 Q. (BY MR. TOWNSEND) Oh, please don't mark on it. 17 A. Okay. You didn't tell me that prior to this 18 time. 19 Q. I'm sorry. I'm sorry. 20 A. Okay. Do you want to remark this one with 21 yours? 22 MR. TOWNSEND: Did you-all write on your 23 copies? Let's go off the record. 24 (Off the record at 2:43 P.M.) 25 (On the record at 2:43 P.M.)</p>

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1 Q. (BY MR. TOWNSEND) All right. You -- you put a
2 line with your pen on the first page of Plaintiff's
3 Exhibit 108. Correct?
4 A. Yes.
5 Q. Did -- what -- what is the mark that you put on
6 there?
7 A. A black line.
8 Q. And what words is it underneath?
9 A. "Objective evaluation."
10 Q. All right. I just wanted to make that clear
11 for the record.
12 A. Yes.
13 Q. So my question -- going back to my question
14 was, is Plaintiff's Exhibit 108 a memorandum that you
15 received from Dr. Tudor with additional information
16 related to her discrimination complaint?
17 A. I think so. I was trying to read it.
18 Q. Go ahead and take your time.
19 A. Okay. Restate the question.
20 Q. Is Plaintiff's Exhibit 108 a memorandum that
21 Dr. Tudor sent to you in connection with her
22 discrimination complaint?
23 A. Yes.
24 Q. In light of the information in Plaintiff's
25 Exhibit 108, do you consider Dr. Doug McMillan to have

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1 been a respondent in connection with your investigation
2 of Dr. Tudor's discrimination complaint?
3 A. I don't recall.
4 Q. Well, in Plaintiff's Exhibit 108 on the second
5 page, last paragraph, Dr. Tudor is accusing Dr. McMillan
6 of discrimination. Correct?
7 A. Yes, she does.
8 Q. So wouldn't that make him a respondent?
9 A. I don't have an answer for that.
10 Q. Why not?
11 A. This is an assertion. I don't -- I don't
12 understand. That's my response.
13 Q. Well, can we agree that I -- well, I thought
14 before that we had agreed on a definition of the term
15 respondent so that we could use it as shorthand during
16 the deposition --
17 A. Uh-huh.
18 Q. -- is what -- is the reason why I asked you to
19 you agree to it.
20 A. Yes.
21 Q. And we agreed that respondent meant somebody
22 who was accused of discrimination in connection with one
23 of your investigations. Is that right?
24 MR. JOSEPH: Object to the form.
25 A. I don't understand.

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1 Q. (BY MR. TOWNSEND) What did you understand to --
2 A. Are you saying that any assertion establishes
3 that an individual is a respondent? Is that what you're
4 saying? Clarify that.
5 Q. Yes. What I'm saying is if a complainant
6 identifies a person as someone who discriminated against
7 him or her, that person would be characterized as a
8 respondent in connection with your investigations. For
9 purposes of this deposition.
10 A. I can't answer that. I don't know.
11 Q. All right. Let me -- let me go back, then.
12 Remember -- remember earlier today before lunch I was
13 asking you whether it would be appropriate for an
14 affirmative action officer to ask a respondent what she
15 should put in her investigation report?
16 A. I do remember.
17 Q. Okay. So let's replace respondent with just
18 person accused of discrimination. Would it be
19 appropriate for an affirmative action officer to ask a
20 person accused of discrimination in the investigation
21 what she should put in her investigation report?
22 A. Accused of?
23 Q. That's the word I used, I think. Yes.
24 A. I still don't understand. That makes no sense
25 to me.

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1 Q. You don't understand the word accused? I can
2 use a different word if that's the confusion.
3 A. The semantics is what I'm having a problem
4 with.
5 Q. All right. Would it be inappropriate for an
6 affirmative action officer, in connection with an
7 investigation of a discrimination complaint, to ask the
8 person who the complainant believes discriminated against
9 him or her what the affirmative action officer should put
10 in the investigation report?
11 A. Believes to -- believe, suspects, to me that's
12 a difference in a criminal and one who even is arrested.
13 You don't know at that point. You don't know. I don't
14 know if he's a respondent or not. She's accusing.
15 Q. Uh-huh.
16 A. She's accusing.
17 Q. Uh-huh. So --
18 A. I have no -- that's all -- that's all I can say
19 about that.
20 Q. All right. So if a -- let me strike that.
21 As affirmative action officer, when you
22 investigate a discrimination complaint, you're looking at
23 whether a particular person discriminated against the
24 complainant. Right?
25 A. Yes. We can agree.

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1 Q. So as affirmative action officer, would it be
2 appropriate to ask the person that you're
3 investigating -- whether they discriminated -- what you
4 should put in your investigation report?
5 A. To make sure I'm understanding, you're asking
6 me if I would ask someone who was being investigated if I
7 should do something or should not do something?
8 Q. Right.
9 A. That would be inappropriate.
10 Q. Okay.
11 (Plaintiff's Exhibit 109 has been
12 marked for identification purposes
13 and made a part of the record.)
14 Q. (BY MR. TOWNSEND) Showing you what's been
15 marked Plaintiff's Exhibit 109. Plaintiff's Exhibit 109
16 is an e-mail Bates numbered EEOC 44.
17 A. Uh-huh.
18 Q. Is Plaintiff's Exhibit 109 an e-mail that you
19 sent to Doug McMillan and his reply dated October 14,
20 2010?
21 A. Yes.
22 Q. In your e-mail you ask Doug McMillan "Have you
23 had the opportunity" -- strike that.
24 You ask him "Have you had opportunity to
25 discuss case with C. Babb, question mark?"

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1 A. Uh-huh.
2 Q. Did I read that question correctly?
3 A. Yes.
4 Q. Why did you believe that Doug McMillan was
5 going to be speaking with -- well, strike that.
6 C. Babb there is referring to Charlie Babb.
7 Correct?
8 A. Yes.
9 Q. Why did you believe that Dr. McMillan was going
10 to be speaking with Mr. Babb --
11 MR. JOSEPH: Object to the form.
12 Q. (BY MR. TOWNSEND) -- about this case?
13 A. It doesn't -- I don't pick it up to say -- I
14 don't see that it says about this case.
15 Q. It says "Have you had opportunity to discuss
16 case with C. Babb?" Right?
17 A. Yes.
18 Q. What case were you referring to there?
19 A. I don't know.
20 Q. Well, the subject of your e-mail is Tudor
21 Retaliation. Correct?
22 A. And that could also go to the second part, if
23 not -- that's -- I don't -- I don't understand.
24 Q. Well, that -- my last question was just the
25 subject of your e-mail was Tudor Retaliation.

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1 A. Uh-huh.
2 Q. Correct?
3 A. Yes. That's correct.
4 Q. Were you referring to her retaliation complaint
5 when you were saying "case" in that first sentence of
6 your e-mail?
7 A. I don't recall.
8 Q. And then the second sentence of your e-mail to
9 Doug McMillan dated October 14, 2010, that's in
10 Plaintiff's Exhibit 109 states "If not, please ask him if
11 I need to write a formal letter to her with my findings."
12 Did I read that correctly?
13 A. Yes.
14 Q. Do you know whether Doug McMillan ever spoke to
15 Mr. Babb about whether you needed to write a formal
16 letter to Dr. Tudor with your findings?
17 A. No.
18 Q. Did you ever get an answer to your question
19 about whether you needed to write a formal letter to
20 Dr. Tudor with your findings?
21 A. Yes.
22 Q. How did you get that?
23 A. In speaking with Mr. Babb.
24 Q. And what did he tell you?
25 A. I don't recall specifically.

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1 Q. Did he tell you what, if anything, you needed
2 to say about Dr. Tudor's retaliation complaint in your
3 findings?
4 A. Yes.
5 Q. What did he say?
6 A. I don't recall.
7 Q. Did you take notes when you had that discussion
8 with Dr. -- I mean -- sorry. Strike that.
9 Did you take notes when you had that discussion
10 with Mr. Babb?
11 A. Yes.
12 Q. Were they handwritten notes?
13 A. Yes.
14 Q. Would you have saved those notes with the rest
15 of the notes that you took during your investigation of
16 Dr. Tudor's discrimination complaint?
17 A. I don't know.
18 (Plaintiff's Exhibit 110 has been
19 marked for identification purposes
20 and made a part of the record.)
21 Q. (BY MR. TOWNSEND) I'm showing you what's been
22 marked Plaintiff's Exhibit 110. Please take a moment to
23 peruse this document. But my question is, is this an
24 amended discrimination complaint that Dr. Tudor provided
25 to you.

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<p>1 Is that, Plaintiff's Exhibit 110, an amended 2 complaint that you received from Dr. Tudor? 3 A. Yes. 4 Q. And -- strike that. 5 Showing you what I've marked as Plaintiff's 6 Exhibit 111. 7 A. Uh-huh. 8 (Plaintiff's Exhibit 111 has been 9 marked for identification purposes 10 and made a part of the record.) 11 Q. (BY MR. TOWNSEND) Plaintiff's Exhibit 111 is an 12 e-mail that's two pages Bates numbered EEOC 66 to EEOC 13 67. Is this an e-mail from Jana Legako to you dated 14 January 9, 2011? 15 MR. JOSEPH: Object to the form. 16 Q. (BY MR. TOWNSEND) I'll strike the question. 17 Does Plaintiff's Exhibit 111 contain an e-mail 18 from Jana Legako to you dated January 9, 2011? 19 A. Yes. 20 Q. Do you recall receiving this e-mail? 21 A. (Witness nodding head.) 22 Q. Do you recall receiving the e-mail from 23 Ms. Legako that's in Plaintiff's Exhibit 111? 24 A. Yes. 25 Q. The second paragraph from the bottom on page 1</p>	<p>1 your report who the qualified, unbiased, and objective 2 third party was that you had review the portfolios of all 3 the tenure applicants? 4 A. Possibly. Would you like me to take the time 5 to read it? 6 Q. Sure. 7 A. Finished. 8 Q. All right. After reviewing Plaintiff's 9 Exhibit 17, do you know who on Plaintiff's Exhibit 111 10 Ms. Legako is referring to as the third party who 11 reviewed tenure portfolios? 12 A. No. 13 Q. In the second to last paragraph of the first 14 page of Plaintiff's Exhibit 111? 15 A. No. 16 Q. Ms. Legako said that your request to do that 17 was, "Quote, textbook perfect." Do you have any 18 difference of opinion with her on that? 19 A. Of course not. 20 Q. Why do you think it would have been a good idea 21 to have a third party review the portfolios of tenure 22 applicants? 23 A. It needed to be someone who had those 24 credentials -- or, I mean, had done extensive amounts of 25 that.</p>
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<p>1 of Plaintiff's Exhibit 111 begins "Quote, your request to 2 have a qualified, unbiased, and objective third party 3 review the portfolios of all tenure applications was, 4 'quote, textbook perfect, unquote.'" 5 Did I read that correctly? 6 A. Yes. 7 Q. Who was the qualified, unbiased, and objective 8 third party that you had review the portfolios of all the 9 tenure applicants? 10 A. I don't recall without additional help. 11 Q. Do you remember why you thought it was a good 12 idea to have a qualified, unbiased, and objective third 13 party review the portfolios -- 14 MR. JOSEPH: Object to the form. 15 Q. (BY MR. TOWNSEND) -- of all the tenure 16 applicants? 17 A. I don't recall. 18 Q. Let's take a look at your investigation 19 report -- 20 A. Okay. 21 Q. -- see if that might refresh your memory. 22 That's Plaintiff's Exhibit 17. Is Plaintiff's 23 Exhibit 17 your report? 24 A. Yes. 25 Q. And would you be able to tell by looking at</p>	<p>1 Q. Of what? 2 A. Of reviewing portfolios. 3 Q. Do you think it would matter whether that 4 person reviewing them worked at Southeastern? 5 A. Just a general question. Ask it one more time, 6 please. 7 Q. Sure. The third party who would be reviewing 8 portfolios, do you think it would have been important 9 that that person worked at Southeastern or not? 10 A. I don't know. 11 Q. In looking at Plaintiff's Exhibit 17, your 12 report, I was trying to figure out who Ms. Legako might 13 be referring to. And on page 4 of Plaintiff's Exhibit 14 17 -- 15 A. Just a minute. 16 Q. -- the third full paragraph where it says 17 "Dr. Randy Prus," do you see that? 18 A. Yes. 19 Q. I thought that might be who she was referring 20 to. But do you not think so? 21 A. Do I not think so? 22 MR. JOSEPH: Object to the form. 23 Q. (BY MR. TOWNSEND) Well, let me state it a 24 different way. Do you think Ms. Legako was referring to 25 Dr. Prus when she made these statements in Plaintiff's</p>

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<p style="text-align: right;">Page 182</p> <p>1 Exhibit 111 about having a third party review the 2 portfolios? 3 A. I don't know. 4 Q. Do you remember asking Ms. Legako what she 5 meant by having a third party review the portfolios in 6 her e-mail? 7 A. I don't recall. Six years ago, I don't know. 8 Sorry. 9 Q. I don't expect your memory to be perfect. I 10 just have to ask the questions. I'm showing you what's 11 been marked Plaintiff's Exhibit 112. 12 (Plaintiff's Exhibit 112 has been 13 marked for identification purposes 14 and made a part of the record.) 15 Q. (BY MR. TOWNSEND) Is Plaintiff's Exhibit 112 a 16 document that you prepared? 17 A. Yes. 18 Q. And why did you prepare it? 19 A. It -- it helps me stay more organized. 20 Q. Did you prepare this during the time that you 21 were investigating Dr. Tudor's complaints? 22 A. Yes. 23 Q. On the second page of Plaintiff's Exhibit 112 24 in the entry 9/8/10 -- 25 A. Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. Did you speak to him? 2 A. Yes. 3 Q. And what did he say? 4 A. He just said he would immortalize his thoughts 5 and send a letter. That's all I can remember. I don't 6 know if it was -- whom it was to or who I even directed 7 him to send it to. I do not recall. 8 Q. So do you believe that Dr. Snowden wrote 9 Plaintiff's Exhibit 65 in response to a request that you 10 made of him? 11 A. I'm not sure but I believe so. I'm not sure. 12 I did speak with him. 13 Q. All right. Please turn to Plaintiff's 14 Exhibit 30. 15 A. (Witness complying with request.) 16 Q. Plaintiff's Exhibit 30 is Bates numbered with 17 the defendant's Bates number No. 5279 to 5286. Is this a 18 document that Southeastern provided to the EEOC in 19 response to a request for information from the EEOC about 20 Dr. Tudor's charge of discrimination? 21 MR. JOSEPH: Object to the form. 22 A. I don't know. I don't recall. 23 Q. (BY MR. TOWNSEND) Have you ever seen 24 Plaintiff's Exhibit 30 before? 25 A. May I have time to read it?</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. -- you mention a letter from emeritus interim 2 president and retired VPAA Jesse Snowden. Do you see 3 that? 4 A. Yes. 5 Q. Could you please look at Plaintiff's Exhibit 65 6 and let me know if that is the letter you're referring to 7 there. 8 A. Six five? 9 Q. Yes. 10 A. Restate the question. 11 Q. Is Plaintiff's Exhibit 65 the letter that you 12 were referring to on page 2 of Plaintiff's Exhibit 112 in 13 the entry 9/8/10? 14 A. Yes. 15 Q. Did you ask Dr. McMillan to get this letter 16 from Dr. Snowden, Plaintiff's Exhibit 65? 17 MR. JOSEPH: Object to the form. 18 A. I don't recall. 19 Q. (BY MR. TOWNSEND) Do you recall how you 20 received Plaintiff's Exhibit 65? 21 A. No. 22 Q. Does this refresh your recollection as to 23 whether you spoke with Dr. Snowden in connection with 24 your investigation? 25 A. Yes.</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. If you could just peruse it just to determine 2 whether you've ever seen it before, I would appreciate 3 it. 4 A. I don't recall. I didn't write it. 5 Q. Do you recall whether Plaintiff's Exhibit 30 6 was included in documents that you sent to the EEOC in 7 response to a request for information from the EEOC? 8 A. I don't recall. 9 Q. Do you know who wrote Plaintiff's Exhibit 30? 10 A. No. It would be conjecture. 11 (Plaintiff's Exhibit 113 has been 12 marked for identification purposes 13 and made a part of the record.) 14 Q. (BY MR. TOWNSEND) I'm showing you what's been 15 marked as Plaintiff's Exhibit 113. Is Plaintiff's 16 Exhibit 113 a memorandum that you provided to 17 Dr. Scoufos? 18 A. Yes. 19 Q. Regarding the -- Dr. Tudor's EEOC charge? 20 A. Yes. 21 Q. And attached to that memorandum was this -- the 22 second, third, and fourth pages of Plaintiff's 23 Exhibit 113? 24 A. Yes. 25 Q. Did you provide the second, third, and fourth</p>

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<p style="text-align: right;">Page 186</p> <p>1 pages of Plaintiff's Exhibit 113 to anybody other than 2 Dr. Scoufos? 3 A. Yes. 4 Q. Who else did you provide it to? 5 A. I don't recall. It was a number of 6 individuals. 7 Q. How did you decide who to provide pages 2 8 through 4 of Plaintiff's Exhibit 113? 9 A. From the complaint received. They list the 10 individuals. 11 Q. The complaint you're referring to is 12 Dr. Tudor's charge of discrimination? 13 A. To the EE -- to the EEOC. 14 Q. So was it your understanding that the EEOC 15 provided you with a list of names of people who should 16 receive the second, third, and fourth pages of 17 Plaintiff's Exhibit 113? 18 A. Yes. 19 (Plaintiff's Exhibit 114 has been 20 marked for identification purposes 21 and made a part of the record.) 22 Q. (BY MR. TOWNSEND) I'm showing you what's been 23 marked Plaintiff's Exhibit 114. Is Plaintiff's 24 Exhibit 114 a memorandum that Dr. Scoufos sent to you 25 enclosing copies of Dr. Tudor's file from the School of</p>	<p style="text-align: right;">Page 188</p> <p>1 (Plaintiff's Exhibit 115 been marked 2 for identification purposes and made 3 a part of the record.) 4 Q. (BY MR. TOWNSEND) I'm showing you what's been 5 marked Plaintiff's Exhibit 115. Have you ever seen 6 Plaintiff's Exhibit 115 before? 7 A. I'm not sure. It's probably in our packet. I 8 don't know. 9 Q. On the second page of Plaintiff's Exhibit 115, 10 there's a line called "Dean's comments." Do you see 11 that? 12 A. Uh-huh. 13 Q. And on that line it appears to say "This 14 acknowledge of receipt of this document; however." Is 15 that how you read it? 16 A. Yes. 17 Q. Do you recognize the handwriting of the person 18 who wrote that however? 19 A. No. 20 Q. Do you know who wrote "however" there? 21 A. No. 22 Q. Do you know if that was written there after you 23 received Dr. Tudor's file from Dr. Scoufos? 24 A. I requested it, it came to me, and you-all 25 received it. That's the only chain that I'm aware of.</p>
<p style="text-align: right;">Page 187</p> <p>1 Arts and Sciences? 2 A. Yes. 3 Q. Do you remember why Dr. Scoufos sent you copies 4 of Dr. Tudor's file from the School of Arts and Sciences? 5 A. As a request from the EEOC. 6 Q. Do you know where that file from the School of 7 Arts and Sciences was kept? 8 A. No. 9 Q. Did you forward the file that you received from 10 Dr. Scoufos with this memo to the EEOC? 11 A. To the best of my recollection, yes. 12 Q. Were there any changes made to the file after 13 you received it before sending it to the EEOC? 14 A. No. 15 Q. Do you know whether there were any changes made 16 to the file between the date that you requested it from 17 Dr. Scoufos and the date that she sent it to you? 18 MR. JOSEPH: Object to the form. 19 A. I requested it and I received it. That's the 20 only thing I can attest to. 21 Q. (BY MR. TOWNSEND) You don't remember whether 22 there was any indication that anything had been changed 23 in Dr. Tudor's file between when you asked Dr. Scoufos 24 for it and when you received it? 25 A. I had no indication of that.</p>	<p style="text-align: right;">Page 189</p> <p>1 (Plaintiff's Exhibit 116 has been 2 marked for identification purposes 3 and made a part of the record.) 4 Q. (BY MR. TOWNSEND) I'm showing you what's been 5 marked Plaintiff's Exhibit 116. 6 A. Uh-huh. 7 Q. Plaintiff's Exhibit 116 is a two-page document 8 Bates numbered EEOC 2 to EEOC 3. Do you recall receiving 9 this letter from Kathy Nusz? 10 A. Yes. 11 (Plaintiff's Exhibit 116 been marked 12 for identification purposes and made 13 a part of the record.) 14 Q. (BY MR. TOWNSEND) On the second page of 15 Plaintiff's Exhibit 116 are requests for documents and 16 information that Ms. Nusz wanted. Is that correct? 17 A. Yes. 18 (Plaintiff's Exhibit 117 has been 19 marked for identification purposes 20 and made a part of the record.) 21 Q. (BY MR. TOWNSEND) Showing you what's been 22 marked Plaintiff's Exhibit 117. Is Plaintiff's Exhibit 23 117 information that Southeastern provided in response to 24 request No. 8 in Plaintiff's Exhibit 116? 25 A. I didn't produce this. I don't know where it</p>

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<p style="text-align: right;">Page 190</p> <p>1 came from. 2 Q. "This" meaning Plaintiff's Exhibit 117? 3 A. Yes. I'm sorry. 4 MR. JOSEPH: Allan, we've been going just over 5 an hour. The witness is standing up. I don't know if 6 she wants to stretch or not. But would this be a good 7 moment to take a quick break? 8 THE WITNESS: I would like to request that, 9 please. 10 MR. TOWNSEND: Sure. 11 (Off the record at 3:39 P.M.) 12 (On the record at 3:47 P.M.) 13 Q. (BY MR. TOWNSEND) All right. Let's turn back 14 to Plaintiff's Exhibit 17, your investigation report. It 15 should be in the binder. 16 A. Uh-huh. 17 Q. Of 17. Sorry. Not 117. 18 A. Oh, 17. 19 Q. Yes. 20 A. Yeah. 21 Q. All right. On page 2 of Plaintiff's 22 Exhibit 17, there's a heading called Complaint 4. Do you 23 see that? 24 A. Uh-huh. Yes. 25 Q. And you wrote this. Right?</p>	<p style="text-align: right;">Page 192</p> <p>1 Next paragraph, "At each level of review, the 2 applicant's application portfolio reviewed on several 3 criteria: Effective classroom teaching, creative 4 achievements, scholarly/creative achievements, and 5 contributions to university or profession and 6 performance. 7 And it goes on to say "Following the review of 8 each level a recommendation is made," and the -- the -- 9 the rest of it. 10 Q. So -- 11 A. Now, the reason -- please -- please ask. 12 Q. No. Continue. I thought you were finished. 13 A. Now, it was my belief that Dr. Tudor's 14 statement that there were any other reasons but the three 15 criteria that are listed -- scholarly, creative 16 achievement, contributions to the university or 17 profession or performance, not teaching, or 18 administrative duties were the only reasons that I was 19 able to ascertain why she didn't -- it was issues 20 pertaining to those three. Not discriminating or 21 retaliation. 22 Q. All right. I wanted to go back to Plaintiff's 23 Exhibit 110, which is one that you looked at earlier 24 today. 25 A. Uh-huh.</p>
<p style="text-align: right;">Page 191</p> <p>1 A. Yes. 2 Q. And it reads the first sentence "On 3 October 13th alleged that McMillan's decision to not 4 allow your T & P application to progress was, quote, not 5 based on fact or prejudices and that his note to you 6 [Rachel Tudor] lacks knowledge, thought, and reason, 7 vital against bigotry, unquote." 8 Did I read that correctly? 9 A. Yes. 10 Q. All right. Did you reach a finding on that 11 complaint? 12 A. I did not find it to be true. 13 Q. Could you please point to -- well, strike that. 14 Did you write, in Plaintiff's Exhibit 17, your 15 findings on that complaint? 16 A. I'd like to call your attention to a finding 17 for Complaint 3, "A review of the RUSO Policy 3.5 and 18 Southeastern Policy 4.6.3 provides detail of the 19 procedure of review in the tenure process and the 20 criteria which are -- which an applicant is to be 21 evaluated." 22 "The review of the applicant and portfolio is 23 to be made first by the T & P committee of each 24 department; next by the department head," and each -- and 25 then the sentence continues.</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. On page 4 of Plaintiff's Exhibit 110, there's a 2 heading called "Retaliation Complaint." Correct? 3 A. Yes. Yes. 4 Q. And in this retaliation complaint, the first 5 sentence states "On October 17, Scoufos informed me that 6 Dr. Doug McMillan has decided to refuse to allow me to 7 apply for tenure and promotion." 8 Did I read that correctly? 9 A. That's what's here, yes. 10 Q. Does your investigation report, Plaintiff's 11 Exhibit 17, address Dr. McMillan's -- strike that. 12 Does your investigation report, Plaintiff's 13 Exhibit 17, address Dr. Tudor's allegation that 14 Dr. McMillan decided to refuse to allow her to apply for 15 tenure and promotion? 16 MR. JOSEPH: Object to the form. 17 A. Ask the question again, please. 18 Q. (BY MR. TOWNSEND) Does Plaintiff's Exhibit 17 19 address Dr. Tudor's allegation that Dr. McMillan decided 20 to refuse to allow her to apply for tenure and promotion? 21 A. I would think it does, yes. 22 Q. Could you point to where in Plaintiff's 23 Exhibit 17 it addresses that allegation? 24 A. The -- I'll refer you to the findings in 3 25 again that I read. That there were legitimate reasons</p>

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<p style="text-align: right;">Page 194</p> <p>1 why and not retaliation. And it has to do with the 2 effective classroom teaching, style creative 3 achievements, contribution to the university or 4 professor -- profession and performance, not teaching and 5 administrative duties. 6 Q. So on page 4 of Plaintiff's Exhibit 17, where 7 you were just reading findings for complaint 3, that 8 heading Findings for Complaint 3 is supposed to refer to 9 Complaint 3 on page 2 of Exhibit -- Plaintiff's 10 Exhibit 17. Right? 11 A. I'm getting my numbers confused here. 12 Q. We're still on Plaintiff's Exhibit 17. 13 A. Yes. 14 Q. All right. Page -- the page that's Bates 15 numbered with the defendant's Bates number ending in 1799 16 where it says "Findings for Complaint 3." 17 Do you see that? 18 A. Yes. 19 Q. All right. That heading "Findings for 20 Complaint 3" indicates that you're referring to Complaint 21 3 as it appears in -- on page 2 of Plaintiff's Exhibit 22 17, which is Bates numbered with a defendant's Bates 23 number ending in No. 1797. Right? 24 A. In part, yes. 25 Q. Why do you say "in part"?</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. So -- I see. So under the heading "Grievance" 2 where you have descriptions for Complaints 1, 2, 3, and 4 3 in Plaintiff's Exhibit 17 -- 4 A. Uh-huh. 5 Q. -- does that describe all the complaints that 6 you investigated in connection with Dr. Tudor's 7 discrimination complaint? 8 MR. JOSEPH: Object to the form. 9 A. I would need a little bit more time than we 10 have today. It took weeks to do her investigation. 11 Literally weeks of nothing else but her complaints. 12 Q. (BY MR. TOWNSEND) Did you -- let me strike 13 that. 14 In preparing Plaintiff's Exhibit 17 and 15 describing Dr. Tudor's complaints on pages 1 and 2 of it, 16 did you believe it was important to provide a summary of 17 all of her complaints that you investigated? 18 A. Yes. 19 Q. And did you do that? 20 A. Yes. 21 Q. Could you please point to me where under the 22 heading "Grievance" in Plaintiff's Exhibit 17 you 23 described Dr. Tudor's complaint about not being allowed 24 to apply for promotion and tenure? 25 MR. JOSEPH: Object to the form.</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Let me find the -- we've looked at a couple of 2 these today. I'm trying to find the first complaint 3 received from Dr. Tudor. 4 Q. That's Plaintiff's Exhibit 55. 5 A. I'm looking for the one we were just on. My 6 response to her. Was that 17? 7 Q. Yes. 8 A. Yes. Okay. Okay. I'm reading under 9 "Grievance," 1796, "On Thursday, September the 9th, the 10 formal discrimination complaint process began. To 11 determine the merit of your complaint, it was necessary 12 to identify whether different treatment was afforded 13 another similarly-situated faculty member engaged in the 14 tenure and promotion process. Your seven-page [sic] 15 complaint outlines seven to 7-8 points of grievance. 16 Subsequently, as you and I discussed each claim, 17 commonality was cited, and you agreed to establish three 18 primary items for elimination [sic]." 19 And that the other -- the amended things -- 20 this -- were subsumed in there. Every specific point did 21 not get a different heading. If there was no 22 discrimination, there was no discrimination. If there 23 was no retaliation, there was no retaliation. 24 Q. Okay. 25 A. If the number was not mentioned.</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Did you indicate that there was a summary? 2 That -- restate your -- your question to me. 3 MR. TOWNSEND: Could you read my question? 4 THE COURT REPORTER: "Question: Could you 5 please point to me where under the heading "Grievance" in 6 Plaintiff's Exhibit 17 you described Dr. Tudor's 7 complaint about not being allowed to apply for promotion 8 and tenure?" 9 A. The one prior to that was this is a summary and 10 that was the summary. And the summary, in my opinion, is 11 not specific illumination on every single point. 12 Q. (BY MR. TOWNSEND) Did you summarize under the 13 heading "Grievance" in Plaintiff's Exhibit 17 Dr. Tudor's 14 complaint that she was not permitted to apply for 15 promotion and tenure? 16 A. I still don't understand what you're asking me. 17 Q. Is there a summary of Dr. Tudor's complaint 18 that she was not permitted to apply for promotion and 19 tenure under the heading of "Grievance" of Plaintiff's 20 Exhibit 17? 21 A. I'm not clear what you're asking. 22 MR. TOWNSEND: Would you read back the 23 question? 24 THE COURT REPORTER: "Question: Is there a 25 summary of Dr. Tudor's complaint that she was not</p>

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<p style="text-align: right;">Page 198</p> <p>1 permitted to apply for promotion and tenure under the 2 heading of "Grievance" of Plaintiff's Exhibit 17?" 3 A. Oh. 4 Q. (BY MR. TOWNSEND) Could you help me to clarify 5 the question so that you can understand it? I don't 6 understand what you don't understand. 7 A. And I don't understand what you don't 8 understand. No, I cannot. I don't recall. 9 Q. Is there any reference under the heading 10 "Grievance" in Plaintiff's Exhibit 17 to Dr. Tudor's 11 complaint that she was not permitted to apply for 12 promotion and tenure? 13 A. Under Findings Complaint 1. 14 Q. I was looking under "Grievance" where you 15 summarized the complaints. Under that heading, was there 16 any reference to the complaint that Dr. Tudor made about 17 not being allowed to apply for promotion and tenure? 18 A. I still believe it's subsumed in this 19 information without specific reference maybe to the word. 20 Q. All right. I wanted to turn back to 21 Plaintiff's Exhibit 112. 22 A. Yes. 23 Q. This is your timeline? 24 A. Yes. 25 Q. On the second page of Plaintiff's Exhibit 112</p>	<p style="text-align: right;">Page 200</p> <p>1 A. Do I delete any e-mails? Yes. 2 Q. How do you decide which e-mails to delete and 3 which ones not to? 4 A. Those that are not work related. 5 Q. So all work-related e-mails that you receive or 6 send at work are not deleted? 7 A. Very -- yes. I would say that. 8 Q. And are your e-mails ever archived? 9 MR. JOSEPH: Object to the form. 10 A. I -- I don't know. 11 Q. (BY MR. TOWNSEND) Do you know what I mean by 12 archive? 13 A. I believe I do. 14 Q. Where -- how do you store your e-mails? 15 A. I don't know -- 16 MR. JOSEPH: Object to the form. 17 A. -- how they do it. 18 Q. (BY MR. TOWNSEND) Do you use certain software 19 like Microsoft Outlook at work? 20 A. You'd have to talk with the IT department. I 21 don't know. 22 Q. You use software to look at e-mail, though. 23 Right? 24 A. Yes. 25 Q. Does that software enable you to create folders</p>
<p style="text-align: right;">Page 199</p> <p>1 is an entry dated 9/6/10. Did you see that? 2 A. Yes. 3 Q. It says "Dr. Stubblefield conferred with legal 4 counsel regarding the discrimination charges." 5 Did I read that correctly? 6 A. Yes. 7 Q. What legal counsel were you referring to there? 8 A. I'm not sure. I don't recall. 9 Q. Did you confer with Mr. Babb around this time? 10 Of -- 11 A. I'm not sure. I talked to him often. 12 Q. What did you and Mr. Babb discuss regarding the 13 discrimination charges? 14 A. I don't recall. That's six years ago. 15 MR. JOSEPH: Object to the form. 16 Q. (BY MR. TOWNSEND) Where it says on 9/6/10 that 17 you conferred with legal counsel, do you have any 18 recollection of what you conferred about with legal 19 counsel at that time? 20 MR. JOSEPH: Object to the form. 21 A. No. 22 Q. (BY MR. TOWNSEND) I wanted to ask you some 23 questions about your e-mail practices at work. 24 A. Uh-huh. 25 Q. Do you ever delete any e-mails at work?</p>	<p style="text-align: right;">Page 201</p> <p>1 where you can sort e-mail? 2 A. Yes. 3 Q. And do you have folders like that? 4 A. Yes. 5 Q. And do you know what folder e-mails related to 6 Dr. Tudor's discrimination complaint would have been put 7 into? 8 A. They're not in one spot. They're not all in 9 one area -- one folder. 10 Q. What folders would they be in? 11 A. They could be in just a regular inbox. 12 Q. Any others? 13 A. But there is a Tudor folder. 14 Q. Any other folders where e-mails related to her 15 discrimination complaint might be? 16 A. No. 17 Q. Oh, the e-mails -- strike that. 18 If you had e-mailed with Mr. Babb regarding 19 Dr. Tudor's discrimination complaint, would you have 20 saved that in the Tudor folder? 21 MR. JOSEPH: Object to the form. 22 A. I don't remember. 23 Q. (BY MR. TOWNSEND) Is there a certain folder 24 that you have in your e-mail where you save all e-mails 25 to and from Mr. Babb?</p>

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1 A. I don't remember.
 2 Q. Is there a folder called Babb?
 3 A. No.
 4 MR. TOWNSEND: Let's go off the record.
 5 (Off the record at 4:08 P.M.)
 6 (On the record at 4:16 P.M.)
 7 EXAMINATION
 8 BY MR. YOUNG:
 9 Q. Good afternoon, Dr. Stubblefield. My name's
 10 Ezra Young. We met earlier today. I represent
 11 Intervenor Dr. Rachel Tudor. Do you understand that the
 12 ground rules that Mr. Townsend discussed with you this
 13 morning about the deposition are still in effect?
 14 A. Yes.
 15 Q. Okay. Good. And before we get started, I just
 16 wanted to thank you to continuing to bear with us. I
 17 realize it is quite a long day.
 18 A. Thank you.
 19 Q. Okay. Earlier today you were discussing with
 20 Mr. Townsend a conversation that you recall having with
 21 Cathy Conway about Dr. Tudor's restroom use.
 22 A. Yes.
 23 Q. During that conversation with Cathy Conway, did
 24 Ms. Conway bring up whether anyone had filed any
 25 complaints about Dr. Tudor's restroom use?

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1 A. No.
 2 Q. No? Did Cathy Conway bring any other potential
 3 issues to your attention regarding Dr. Tudor's
 4 transition?
 5 A. No.
 6 Q. So the conversation was limited simply to
 7 restroom use?
 8 A. Yes.
 9 Q. Okay. Did Cathy Conway mention to you during
 10 that conversation whether she had spoken to anyone else
 11 about Dr. Tudor's restroom use?
 12 A. Yes.
 13 Q. Who did she say that she had spoken to?
 14 A. Dr. Tudor.
 15 Q. Did Ms. Conway mention that she had spoken to
 16 anyone other than Dr. Tudor?
 17 A. Yes.
 18 Q. Who -- who was that?
 19 A. Charlie Babb.
 20 Q. Did Ms. Conway tell you what she talked to
 21 Mr. Babb about?
 22 A. Is there -- are there -- were there -- yes.
 23 Q. What did Ms. Conway tell you that she and
 24 Mr. Babb talked about regarding Dr. Tudor's restroom use?
 25 A. She just asked was there anything that she

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1 should be aware of or are there any -- any legal issues
 2 that she needed to be aware of so that she could, you
 3 know, share those with Dr. Tudor.
 4 Q. Do you recall anything else about those legal
 5 issues?
 6 A. No. It was a -- a new experience, and she just
 7 really wasn't sure other than just being as kind as
 8 possible. We just didn't know.
 9 Q. Was it your understanding that Ms. Conway spoke
 10 to Mr. Babb to get legal advice about --
 11 A. I'm not sure what that was about. You would
 12 have to ask Ms. Conway.
 13 Q. Do you happen to recall what pronouns
 14 Ms. Conway used to refer to Dr. Tudor when you were
 15 talking to Ms. Conway about the restroom issue?
 16 MR. JOSEPH: Object to the form.
 17 A. I -- I just recall Dr. Tudor.
 18 Q. (BY MR. YOUNG) Uh-huh.
 19 A. We try to give --
 20 Q. Call everyone by their title?
 21 A. Uh-huh.
 22 Q. Okay. You testified earlier today that it was
 23 your personal preference to use the handicap restroom in
 24 the Morrison Building. Is that correct?
 25 A. Yes.

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1 MR. JOSEPH: Object to form.
 2 Q. (BY MR. YOUNG) Can you tell me why it's your
 3 personal preference to use that restroom?
 4 A. It's the biggest and the nicest bathroom in
 5 that building.
 6 Q. Are there other handicap restrooms on
 7 Southeastern's campus other than the one in Morrison?
 8 A. Yes. I think --
 9 Q. Where are those located?
 10 A. Every building. I would -- I would be
 11 guessing. I don't know. Exactly.
 12 Q. Other --
 13 A. And that's a unisex bathroom. It's not
 14 considered -- it doesn't have -- I don't believe it has a
 15 handicap on the front. I just think it's -- I'm not sure
 16 what it says. I think it's just -- I've been over there
 17 four or five years. There is a rail in there, so -- but
 18 I think it's -- I think it's on the outside. It's
 19 just -- I don't know. I would be guessing.
 20 Q. Do you -- do you happen to recall what signs
 21 are posted on that restroom?
 22 A. That's what I'm trying to get now. No. At one
 23 point, I had a picture but I don't know.
 24 Q. What type of picture?
 25 A. I don't know. It was just like a -- I couldn't

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1 remember so it was -- it was just a -- like a little
 2 phone -- like a -- a phone photo or something like that.
 3 Q. So, like, a picture of a telephone?
 4 A. No, no, no, no, no, from a cell phone.
 5 Q. Okay. So do you know why there would be --
 6 A. I think in the -- in the -- what we sent to the
 7 EEOC.
 8 Q. Uh-huh.
 9 A. There was information about the bathroom. You
 10 might check that file. Because there was questions about
 11 the bathrooms.
 12 Q. And you -- you started working at Southeastern
 13 in 1992. Is that correct?
 14 A. That's correct. Yes.
 15 Q. Thank you. Thank you. Do you -- do you recall
 16 if, in 1992, there was a handicap restroom located in the
 17 Morrison Building?
 18 A. I have no idea.
 19 Q. So you mentioned throughout today when you were
 20 talking to Mr. Townsend that you had a number of
 21 conversations with Mr. Babb concerning Dr. Tudor's
 22 complaints of discrimination. Is that correct?
 23 A. A number?
 24 Q. Let me rephrase that. Have you -- did you have
 25 more than one conversation with Mr. Babb regarding

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1 Dr. Tudor's complaint of discrimination?
 2 A. Yes.
 3 Q. Did you have more than five conversations with
 4 Mr. Babb regarding Dr. Tudor's complaint of
 5 discrimination?
 6 A. Yes.
 7 Q. Did you have more than ten conversations with
 8 Mr. Babb regarding --
 9 A. I would not know. Anything over that, I don't
 10 know.
 11 Q. Okay.
 12 A. Might be too many or not enough. I don't know.
 13 Q. But -- but you're pretty certain that it was
 14 more than five conversations?
 15 A. More than five that I can say yes to.
 16 Q. Okay. Is that your typical practice to call
 17 the general counsel at RUSO to discuss a complaint of
 18 discrimination that you were investigating?
 19 A. I've --
 20 MR. JOSEPH: Object to the form.
 21 A. Yes.
 22 Q. (BY MR. YOUNG) So in every complaint of
 23 discrimination that you've investigated as the
 24 affirmative action officer, you've contacted RUSO's
 25 general counsel to get guidance?

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1 A. On everything pretty much that I do.
 2 Q. To your understanding, what is the relationship
 3 between Southeastern and RUSO's general counsel? Does
 4 RUSO's general counsel represent the university?
 5 MR. JOSEPH: Object to the form.
 6 A. Represent the university?
 7 Q. (BY MR. YOUNG) Southeastern.
 8 Let me rephrase that. To your understanding,
 9 does RUSO general -- RUSO's general counsel represent the
 10 interests of Southeastern?
 11 MR. JOSEPH: Object to the form.
 12 A. Restate that.
 13 Q. (BY MR. YOUNG) Okay. Let me ask that question
 14 a different way.
 15 A. Okay.
 16 Q. And hopefully we'll understand each other a
 17 little bit better. To your understanding, when you reach
 18 out to Mr. Babb, who is the general counsel of RUSO, and
 19 he gives you advice or feedback on a particular question,
 20 is he giving you advice that reflects the interest of
 21 Southeastern, or is he giving you neutral advice?
 22 MR. JOSEPH: Object to the form.
 23 A. Ask that one more time. We're getting closer.
 24 Q. (BY MR. YOUNG) Okay.
 25 A. Ask that one more time.

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1 Q. Let's try it one more time. When you call
 2 Charlie Babb --
 3 A. Uh-huh.
 4 Q. -- who is the general counsel of RUSO, and you
 5 ask him for some advice about a legal matter, is the
 6 advice that Mr. Babb is giving you -- is that advice that
 7 is in the interest of the university or is it neutral
 8 advice?
 9 MR. JOSEPH: Object to the form.
 10 A. I don't understand. It's --
 11 Q. (BY MR. YOUNG) Okay.
 12 A. You're not quite there.
 13 Q. Approximately how many years have you had the
 14 title of affirmative action officer?
 15 A. I wasn't sure this morning and I'm still not
 16 sure. But ten-ish, ten, eleven-ish.
 17 Q. And just so we're all clear, can you define for
 18 me what affirmative action is?
 19 A. You might want to refer -- at this point of the
 20 day, no, I can't give you a litany of all the things.
 21 Q. Can you just generally describe for me what
 22 affirmative action is?
 23 A. It has to do with making sure that the rights
 24 of an individual under the protected classes or just
 25 people are not discriminated against or given equal

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<p style="text-align: right;">Page 210</p> <p>1 opportunity to make that the best environment possible. 2 Q. To your understanding, has that been the 3 operational meaning of it, affirmative action, throughout 4 your time at Southeastern? 5 A. That's been mine. 6 Q. To your understanding, is the affirmative 7 action officer autonomous, or does the affirmative action 8 officer report to a specific person at Southeastern? 9 MR. JOSEPH: Object to the form. 10 A. Restate that. Do I have to have permission? 11 I'm not sure what you're -- 12 Q. (BY MR. YOUNG) When you conduct an affirmative 13 action investigation -- 14 A. Uh-huh. 15 Q. -- do you report your findings to a supervisor 16 or someone who has veto power over what your findings 17 are? 18 A. No. 19 Q. In your role as affirmative action officer, do 20 you ever have to interpret what Southeastern's 21 affirmative action policy means? 22 A. In what context? 23 Q. Let me give you a hypothetical -- 24 A. Okay. 25 Q. -- example, and maybe that'll help -- help us</p>	<p style="text-align: right;">Page 212</p> <p>1 his rights -- 2 A. Yes. 3 Q. -- and a question arises -- 4 A. Uh-huh. 5 Q. -- as to whether race discrimination violates 6 the affirmative action policy, are you the person who 7 would read the policy and figure out whether a violation 8 had occurred or -- 9 A. I would be one of them, yes. 10 Q. Are there other people who would read the 11 policy to figure out if a violation occurred? 12 A. Yes. 13 Q. Who would those persons be? 14 A. I would confer with Charlie Babb. 15 Q. Can you explain to me why you would confer with 16 Babb? 17 A. Because I trust his opinion. 18 Q. What if in the same hypothetical we were 19 talking about -- 20 A. Uh-huh. 21 Q. -- you had decided that in your opinion the 22 black faculty member had been discriminated on the basis 23 of race and then you conferred with Mr. Babb and Mr. Babb 24 told you that in his opinion the black faculty member had 25 not been discriminated on the basis of race, how would</p>
<p style="text-align: right;">Page 211</p> <p>1 here. For example, if a black faculty member files an 2 affirmative action complaint -- 3 A. Uh-huh. 4 Q. -- and alleges race discrimination -- 5 A. Uh-huh. 6 Q. -- because she was denied a promotion, if there 7 was a question about whether that person experienced some 8 sort of harm that violates the affirmative action policy, 9 who would interpret the policy to figure out if a 10 violation occurred? Would that be you or someone else? 11 MR. JOSEPH: Object to the form. 12 A. The way you stated it, it's difficult to give 13 you a response to that. 14 Q. (BY MR. YOUNG) Can you tell me how it's 15 difficult and maybe we can rephrase that? 16 A. We've gotten to answers, so if you just ask me 17 one more time in a different way, and I bet we'll -- 18 we'll be there. 19 Q. Okay. 20 A. I understand the part about the -- the reason 21 why they would ask for my opinion. I got that. 22 Q. Okay. If you're doing affirmative action 23 investigation and you have a black faculty member -- 24 A. Uh-huh. Got that. 25 Q. -- who alleges someone discriminated against</p>	<p style="text-align: right;">Page 213</p> <p>1 you reconcile that? 2 A. That's hypothetical -- 3 MR. JOSEPH: Object to the form. 4 A. Hypothetical, I can't answer that. 5 Q. (BY MR. YOUNG) Have you ever been in a 6 situation where you and Mr. Babb disagreed about whether 7 the affirmative action policy at Southeastern had been 8 violated? 9 A. Have we been in disagreement? Not that I can 10 recall. 11 Q. When we first started talking this afternoon, 12 you told me that in 2007, when Dr. Tudor transitioned and 13 started presenting as female, that was a new thing for 14 Southeastern. Is that correct? 15 MR. JOSEPH: Object to the form. 16 A. I wasn't aware that there was anyone other than 17 Dr. Tudor, and I didn't know her then. 18 Q. (BY MR. YOUNG) So you had never in all of your 19 time at Southeastern prior to Dr. Tudor coming had an 20 opportunity to evaluate the affirmative action policy and 21 figure out whether transgender people were protected by 22 it. Is that correct? 23 MR. JOSEPH: Object to the form. 24 A. Does equal opportunity -- I mean, I don't 25 have -- there's nothing that says tall people, short</p>

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<p style="text-align: right;">Page 214</p> <p>1 people, people who are weight challenged. 2 Q. (BY MR. YOUNG) Uh-huh. 3 A. To me, it is what it is. It's affirmative 4 action for everybody that's at the campus. So when you 5 said have I had the opportunity to evaluate it as it 6 pertained to -- to transgender, no, I had not. 7 Q. Okay. I'm going to draw your attention to 8 Plaintiff's Exhibit 111. It's going to be the loose 9 leaf. 10 A. Almost there. Could I see the front of that, 11 please? Legako. Okay. 12 Q. Yes. 13 A. Yes. 14 Q. Okay. 15 A. It was at the bottom. I'm sorry. 16 Q. That's not a problem. So Plaintiff's 17 Exhibit 111 is an e-mail chain between you and Ms. Jana 18 Legako? 19 A. Yes. 20 Q. Do you recall why you reached out to Ms. Legako 21 for assistance on this -- on Dr. Tudor's discrimination 22 case? 23 A. I don't recall. 24 Q. Had you ever reached out to Ms. Legako before 25 when you were investigating another discrimination matter</p>	<p style="text-align: right;">Page 216</p> <p>1 A. There's not -- it was not listed in the 2 affirmative -- as a specific protected class at that 3 time. 4 Q. So what does it mean if a particular status 5 isn't listed as a protected class? 6 A. What you ask and what I interpret that you ask 7 is, is -- was her being transgender -- did that limit how 8 I would respond to her? And the answer to that is, no. 9 She is still part of -- of -- you know, she gets the 10 same -- we don't discriminate for race, color, creed, 11 natural origin, and now it's sexual orientation and 12 sexual identity and those kinds of things. But that's 13 still the same -- it was still the same. She was not 14 chosen or picked out or being picked on. 15 Q. So in 2010 when Dr. Tudor filed her 16 grievances -- 17 A. Uh-huh. 18 Q. -- the ones you've investigated -- 19 A. Yes. Yes. 20 Q. -- just to clarify matters, gender identity was 21 not listed as a protected status in Southeastern's 22 affirmative action policy? 23 A. Not that I recall. 24 Q. Does that mean if someone filed a grievance 25 complaining about gender identity discrimination that</p>
<p style="text-align: right;">Page 215</p> <p>1 seeking her advice? 2 A. No. I'm not sure how her name came to me. 3 Q. Okay. Let me draw your attention to the second 4 page. It's marked EEOC 67. It's an e-mail from you to 5 Ms. Legako. And it looks like it was sent on 6 December 15, 2010. First line of that e-mail reads 7 "Thank you so much for agreeing to lend a legal eye to a 8 very interesting case." 9 Did I read that correctly? 10 A. Yes. 11 Q. Does that happen to refresh your memory about 12 why you reached out to Ms. Legako about Dr. Tudor's 13 complaint? 14 A. No. Sorry. 15 Q. When you were investigating Dr. Tudor's 16 complaint, did you ever consider whether transgender 17 people were protected under Southeastern's affirmative 18 action policy? 19 A. If they were protected? 20 Q. Yes. 21 MR. JOSEPH: Object to the form. 22 A. They were not part of the protected class, but 23 they are part of the -- our family. 24 Q. (BY MR. YOUNG) What do you mean by "not part of 25 the protected class"?</p>	<p style="text-align: right;">Page 217</p> <p>1 that grievance could not be addressed under 2 Southeastern's affirmative action policy? 3 A. It does not mean that. 4 Q. So what does it mean? So what is -- 5 A. Every -- every complaint, every allegation is 6 investigated. 7 Q. I'm going to draw your attention -- we're still 8 looking at Plaintiff's Exhibit 111. 9 A. Uh-huh. 10 Q. It looks like the last paragraph on the first 11 page, and I read just a sentence of that for you. "In 12 addition, being transgender is not a protected status, 13 period." 14 I'm sorry. It's the first page of Plaintiff's 15 Exhibit 111. 16 A. Oh, okay. 17 Q. I apologize. Let me do that again. 18 Plaintiff Exhibit 111, the last paragraph, 19 first sentence, I'm going to read it to you. "In 20 addition, being transgender is not a protected status." 21 Did I read that correctly? 22 A. Yes. That is what it reads. 23 Q. Okay. What significance did this sentence have 24 to you, that being transgender is not a protected status? 25 A. It was not a separate entity. It still was</p>

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1 under any harassment. It's not a -- it's not acceptable.
 2 Q. Any harassment including harassment because
 3 someone is transgender?
 4 A. That's correct.
 5 Q. I'm going to direct you to Plaintiff's
 6 Exhibit 110. It's also going to be a looseleaf thing.
 7 It's Dr. Tudor's amended complaint --
 8 A. Uh-huh.
 9 Q. -- dated October 28, 2010.
 10 A. 108?
 11 Q. 110.
 12 A. Yes.
 13 Q. Okay. So on page 2 of Plaintiff's Exhibit 110
 14 about mid way through the page, there's a sentence that
 15 starts with "Taken individually, any one of these events
 16 evidence a hostile attitude arising from discrimination.
 17 Taken collectively, they demonstrate a pattern of
 18 calculated adversarial behavior intended to thwart my
 19 equal opportunity to advance in employment, an
 20 opportunity protected by policy and law."
 21 Did I read that correctly?
 22 A. I -- I found it late, but yes.
 23 Q. Okay. In this phrase "hostile attitude," what
 24 was your understanding of what Dr. Tudor was referring to
 25 with that phrase?

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1 A. I'm not sure what Dr. Tudor was asking -- what
 2 she was -- she's a very good writer. Very strong writer
 3 and very prolific writer, so I don't know.
 4 Q. Did you ever ask Dr. Tudor what she meant by
 5 "hostile attitude"?
 6 A. She told me. She --
 7 Q. What's your recollection of what Doctor told
 8 you about what she meant by "hostile attitude"?
 9 A. She believed that -- my recollection is that
 10 she believed that because she didn't get what she wanted,
 11 it was hostile. And the reasons were discriminatory.
 12 Q. And when you just said "didn't get what she
 13 wanted to get," do you mean the application for promotion
 14 and tenure? Is that what --
 15 A. That's my assumption.
 16 Q. Okay. Do you happen to recall if Dr. Tudor
 17 complained to you about any other hostilities in the
 18 workplace that were unrelated to the tenure and promotion
 19 application?
 20 A. I don't recall. If you can refresh my memory.
 21 Q. If Dr. Tudor would have complained to you about
 22 other hostilities unrelated to the tenure and promotion
 23 application, would you have investigated those?
 24 A. Give me an example --
 25 MR. JOSEPH: Object to the form.

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1 A. -- on what you're talking about.
 2 Somebody took her parking place? I mean, I'm
 3 not sure what you're asking.
 4 Q. (BY MR. YOUNG) If Dr. Tudor complained to you
 5 about a kind of discrimination other than the tenure and
 6 promotion process --
 7 A. Sure.
 8 Q. -- would you have investigated that?
 9 A. Yes. Yes. Yes.
 10 Q. And even if the kind of discrimination she
 11 complained about was on account of her being transgender?
 12 A. Discrimination is discrimination.
 13 Q. I'm going to direct your attention to -- looks
 14 like page 4 of Plaintiff's Exhibit 110. There's a
 15 heading that says "Retaliation Complaint" towards the
 16 bottom.
 17 A. Yes.
 18 Q. Okay. Two paragraphs above that, I'm going to
 19 read you the sentence. "I would also like to document
 20 the fact that Dr. Scoufos repeatedly uses inappropriate
 21 pronouns in speaking to and about me. But though
 22 Dr. Scoufos's use of inappropriate pronouns is
 23 intermittent, it has occurred too often to be
 24 attributable to mere carelessness."
 25 Did I read that correctly?

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1 A. That's what's here.
 2 Q. Did you ask Dr. Tudor about this allegation
 3 that Dr. Scoufos used inappropriate pronouns with her?
 4 A. Yes.
 5 Q. What do you recall Dr. Tudor telling you about
 6 that?
 7 A. I recall asking her what was intermittent, and
 8 I asked what was inappropriate pronouns.
 9 Q. And what's your recollection of what Doctor
 10 told you is intermittent?
 11 A. She just said it's not -- I remember her saying
 12 "Not often." I'm not sure how often she saw Dr. Scoufos,
 13 either.
 14 Q. All right.
 15 A. I don't know if they saw each other once a
 16 month, once every five months. I don't know.
 17 Q. And what was your recollection of what Doctor
 18 told you was inappropriate pronouns?
 19 A. Using he rather than she.
 20 Q. Anything else?
 21 A. No.
 22 Q. Did you investigate this allegation that
 23 Dr. Scoufos repeatedly used inappropriate pronouns to
 24 talk to --
 25 A. I talked to Dr. Scoufos about it.

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<p style="text-align: right;">Page 222</p> <p>1 Q. Did you take any other steps to investigate 2 this allegation? 3 A. I asked others if they had heard anything. And 4 I don't know if I can give you a litany of those 5 individuals, but I did ask if anyone had heard, you know, 6 occasion -- had occasion to hear Dr. Scoufos call her 7 anything other than she. 8 Q. And did any of the people that you talked to 9 tell you that Dr. Scoufos used inappropriate pronouns -- 10 A. No. 11 Q. -- with Dr. Tudor? 12 Okay. And just for the record, you don't 13 recall any of the people who you talked to? 14 A. Not really because I -- I do not, no. 15 Q. Draw your attention to Plaintiff's Exhibit 17. 16 It's going to be in the big binder in front of you. 17 A. Yes. I'm there. 18 Q. Okay. So Plaintiff's Exhibit 17 is a copy of 19 your findings and conclusion on the gender 20 discrimination -- 21 A. Yes. 22 Q. -- complaint filed by Dr. Tudor. Where in your 23 report does it discuss Dr. Tudor's allegation that 24 Dr. Scoufos used inappropriate pronouns with her? 25 A. The quick preview of this, I don't -- let's</p>	<p style="text-align: right;">Page 224</p> <p>1 Dr. Tudor? 2 A. No. It's not here. 3 Q. Okay. Is there any place on this 4 investigatory -- 5 A. My timeline? 6 Q. Your timeline. 7 A. No, not on my timeline. 8 Q. And just turning back to Plaintiff's Exhibit 17 9 one more time. 10 A. Yes. Oh, 17? 11 Q. 17. 12 A. Oh. 13 Q. Excuse me. Your report. 14 Just to clarify, a few moments ago you said 15 that you would need more time to review Plaintiff's 16 Exhibit 17 -- 17 A. Uh-huh. 18 Q. -- to figure out if you have anything 19 discussing the inappropriate pronoun allegation. 20 Is that correct? 21 A. Uh-huh. 22 Q. Just to clarify, we've been talking about 23 Plaintiff's Exhibit 17 between myself and Mr. Townsend 24 with you -- 25 A. Uh-huh.</p>
<p style="text-align: right;">Page 223</p> <p>1 see. I'm unable to pinpoint it right now. 2 Q. Okay. Did you take notes when you spoke to 3 Dr. Scoufos about the allegation that she used 4 inappropriate pronouns with Dr. Tudor? 5 A. Yes. 6 Q. I'm going to draw your attention to Plaintiff's 7 Exhibit 112. It's going to be a loose leaf. 8 A. Oh, yes. Yes. 9 Q. So on the page marked EEOC 1185 -- 10 A. Yes. 11 Q. -- there's an entry for September 17, 2010. 12 Is that correct? 13 A. Yes. 14 Q. Okay. I'm going to read what that says. It 15 says "10:30-Meeting with Dean Scoufos. She indicated 16 that she did not say anything of an intimidating nature 17 to Dr. Tudor. In fact, Dr. Scoufos was aware that she 18 (Dr. Tudor) was running out of time to extend her options 19 for T & P. In Dr. Scoufos's characteristic, low, slow 20 southern dialect, imparted what she felt was a possible 21 solution to address the deficiencies." 22 Did I read that correctly? 23 A. Yes. 24 Q. Does that entry say anything about asking 25 Dr. Scoufos about using inappropriate pronouns with</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. -- for quite some time today. 2 A. Uh-huh. 3 Q. And yet you still need additional time to 4 review it to find discussion -- 5 A. I would like -- 6 Q. -- about pronouns? 7 MR. JOSEPH: Object to the form. 8 A. Yes, I would. 9 Are you saying that this is a -- everything 10 that I've ever done or ever said or ever investigated, is 11 that what you're thinking this is? That's the point I'm 12 asking. 13 Q. (BY MR. YOUNG) No, Dr. Stubblefield. I'm 14 merely trying to understand what is or is not contained 15 in these documents. You're the expert. You're the ones 16 who wrote them. 17 A. Okay. 18 Q. You're the one -- 19 A. I'm saying that this is a compilation of major 20 points. It may or may not be in here. Every 21 conversation, every -- every sentence that I ask every 22 person is not included here (indicating). 23 Q. You -- you -- you wrote Plaintiff's 24 Exhibit 112. 25 A. Yes, I wrote it.</p>

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<p style="text-align: right;">Page 226</p> <p>1 Q. Correct?</p> <p>2 You said it's a compilation of lots of</p> <p>3 documents and notes and other things you collected?</p> <p>4 A. Just trying to keep things in the progress.</p> <p>5 Q. Okay.</p> <p>6 A. Yes. Yes. What I did on what day.</p> <p>7 Q. Are all the materials that you compiled to</p> <p>8 create Plaintiff's Exhibit 112 contained in the folder</p> <p>9 marked Tudor that you said was in that file room adjacent</p> <p>10 to your office?</p> <p>11 A. I don't know. It should be.</p> <p>12 Q. Is there a reason why you don't know if all of</p> <p>13 the documents that you created while you were doing the</p> <p>14 investigation of Dr. Tudor's complaints is contained in</p> <p>15 the investigatory file in the room adjacent to your</p> <p>16 office?</p> <p>17 MR. JOSEPH: Object to the form.</p> <p>18 A. Six years.</p> <p>19 Q. (BY MR. YOUNG) When the EEOC asked you for</p> <p>20 copies of your investigatory records --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- that are pertinent to Dr. Tudor's</p> <p>23 grievances, did you give the EEOC all of the</p> <p>24 documentation that you?</p> <p>25 A. Yes. Each box.</p>	<p style="text-align: right;">Page 228</p> <p>1 MR. JOSEPH: And, Ezra, just for the record,</p> <p>2 the one you gave me doesn't have any Bates numbers on it.</p> <p>3 Does the one that has been introduced have Bates numbers</p> <p>4 on it?</p> <p>5 MR. YOUNG: It does not have Bates numbers on</p> <p>6 it.</p> <p>7 MR. JOSEPH: Okay. So just for the record,</p> <p>8 we're looking at a three-page front and back document</p> <p>9 with no Bates numbers on it.</p> <p>10 Q. (BY MR. YOUNG) Dr. Stubblefield, this is an</p> <p>11 e-mail. Correct?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Dated May 8, 2015.</p> <p>14 A. Uh-huh.</p> <p>15 Q. And it appears to be from Lucretia Scoufos to a</p> <p>16 number of people who work at Southeastern. Is that</p> <p>17 correct?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And under the cc line, your name appears there,</p> <p>20 Claire Stubblefield. Is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Just going to read you what the body of the</p> <p>23 e-mail says on the first page.</p> <p>24 A. Uh-huh.</p> <p>25 Q. "Department chairs & all faculty, please follow</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. So if there are no documents in the set of</p> <p>2 documents that you gave to the EEOC discussing the</p> <p>3 inappropriate pronoun allegation, to your understanding,</p> <p>4 no such documents exist?</p> <p>5 MR. JOSEPH: Object to the form.</p> <p>6 A. None were destroyed. Everything should be in</p> <p>7 those boxes.</p> <p>8 Q. I'm going to hand you an exhibit that we're</p> <p>9 going to mark Plaintiff's Exhibit 118.</p> <p>10 A. Okay.</p> <p>11 (Plaintiff's Exhibit 118 has been</p> <p>12 marked for identification purposes</p> <p>13 and made a part of the record.)</p> <p>14 Q. (BY MR. YOUNG) I'll give you a moment to look</p> <p>15 this over. Oh, Dr. Stubblefield, may I see that for a</p> <p>16 moment?</p> <p>17 A. Sure.</p> <p>18 MR. YOUNG: I marked the wrong exhibit. Can we</p> <p>19 go off the record for a second?</p> <p>20 (Off the record at 4:49 P.M.)</p> <p>21 (On the record at 4:49 P.M.)</p> <p>22 Q. (BY MR. YOUNG) For the record, I am handing the</p> <p>23 witness, Dr. Stubblefield, the correct exhibit marked</p> <p>24 Plaintiff's Exhibit 118 without any notes from counsel on</p> <p>25 it.</p>	<p style="text-align: right;">Page 229</p> <p>1 the directive from Dr. Stubblefield in her e-mail below.</p> <p>2 Also, department chairs, along with full-time faculty,</p> <p>3 will you please make sure that all adjuncts are informed</p> <p>4 that this addition is to be included in all 2015-16</p> <p>5 syllabi beginning with the Summer 2015 syllabi?"</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes, you did.</p> <p>8 Q. And on the second page, it's marked page 2,</p> <p>9 appears to be an e-mail from you dated Friday, May 8,</p> <p>10 2010.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Do you recognize this e-mail?</p> <p>13 A. Yes.</p> <p>14 Q. In this -- this -- the body of this e-mail</p> <p>15 reads "President Burrage added two new categories of</p> <p>16 protected status to the SE discrimination policy, I ask</p> <p>17 that the attached combined policy statements be added to</p> <p>18 publications and '15-'16 syllabi until further notice.</p> <p>19 Thank you. If discussion is needed, do not hesitate to</p> <p>20 call."</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. And on the last page of this exhibit, there's a</p> <p>24 heading it's bolded, it reads "Equal Opportunity</p> <p>25 Statement."</p>

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1 Did I read that correctly?
 2 A. Yes.
 3 Q. Okay. And on the fourth line, which appears to
 4 be a list of protected statuses. Is that correct?
 5 A. Yes.
 6 Q. And they read, "Race, color, national origin,
 7 sex, sexual identity, sexual orientation," and they go
 8 on. Is that correct?
 9 A. Yes.
 10 Q. Why did you send this e-mail on May 8, 2015,
 11 seeking for the syllabi to have this new
 12 nondiscrimination statement to be included?
 13 A. If I recall, that is the date in which the
 14 federal government indicated that those are to be
 15 included. It was done that same day or the next day.
 16 Q. Did you receive some sort of notification from
 17 an agency of the federal government notifying you of this
 18 requirement?
 19 A. I'm trying to think exactly. I can't recall
 20 exactly how it came. That's six years ago. But I know
 21 it was something that we needed to do right away.
 22 Q. Just, the date of your e-mail on page 2, it
 23 May 8, 2015. So that was about a year ago. Is that
 24 correct?
 25 A. Okay.

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1 Q. To your knowledge, did including the additional
 2 statuses of sexual identity and sexual orientation change
 3 the rights of any students at Southeastern with regards
 4 to filing claims of discrimination on the count of sexual
 5 identity?
 6 A. Change rights, no.
 7 MR. JOSEPH: Object to the form.
 8 Q. (BY MR. YOUNG) So if there was no change in
 9 rights, why was it important to amend the policy?
 10 MR. JOSEPH: Object to the form.
 11 A. Other institutions had done it and it was -- it
 12 was -- our president believed that that would be
 13 something to do -- would be a good thing to do.
 14 Q. (BY MR. YOUNG) Dr. Stubblefield, who currently
 15 evaluates your performance? Every year?
 16 A. I'm direct report to the president.
 17 Q. And who's the current president at
 18 Southeastern?
 19 A. Sean Burrage.
 20 Q. And do you happen to recall who evaluated your
 21 performance in the 2010-2011 school year?
 22 A. Whoever the current president was at that time.
 23 Q. Do you happen to recall if you had a favorable
 24 evaluation in 2010?
 25 A. They've all been favorable. Yes.

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1 Q. Earlier today, you told Mr. Townsend that to
 2 your recollection, despite having attended many trainings
 3 on equal employment law, affirmative action, Title IX,
 4 and various other policies, you'd never received any
 5 specific training on transgender discrimination. Is that
 6 true?
 7 MR. JOSEPH: Object to the form.
 8 A. NCAA did a wonderful job of that. NCAA.
 9 Q. (BY MR. YOUNG) Do you happen to recall when you
 10 attended training with the NCAA --
 11 A. Pardon?
 12 Q. -- on transgender --
 13 Do you happen to recall when you attended the
 14 training at NCAA on transgender discrimination?
 15 A. No. Not -- not-- I mean, I go every year. I
 16 didn't go this year.
 17 Q. Okay. Do you happen to recall if you attended
 18 the training on transgender discrimination at the NCAA
 19 prior to Dr. Tudor filing her grievance?
 20 A. I didn't go -- I didn't go to that NCAA at that
 21 time.
 22 Q. So at the time you investigated Dr. Tudor's
 23 grievance, you had not received any formal training on
 24 transgender discrimination. Is that correct?
 25 A. Actually, that's not correct.

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1 Q. Okay. Can you tell me why that's not correct?
 2 A. I'm trying to think of a date when legal issues
 3 specifically, as they related -- specifically related to
 4 transgender became a topic of conversation. Excuse me.
 5 Even -- and I can't put a -- a date. But nothing was --
 6 the information basically is what I told you earlier.
 7 You just -- you still can't retaliate against somebody.
 8 You know, you still -- no discrimination so, that's --
 9 that's it. You know, I wouldn't have handled her case
 10 any differently.
 11 Q. Do you recall receiving specific training on
 12 transgender persons' rights to access a restroom that
 13 matches their gender identity?
 14 A. There was discussion of that at NELI.
 15 Q. And did you --
 16 A. That's becoming a topic at that point.
 17 Q. Did you attend the NELI conference that you
 18 just referenced prior to handling Dr. Tudor's grievance?
 19 A. I believe so. I'm not sure. I'm not sure.
 20 Q. Have you received formal training on whether
 21 using inappropriate pronouns for a transgender person is
 22 a form of discrimination?
 23 A. I'm not sure.
 24 Q. If you had been offered the opportunity to take
 25 training courses on transgender discrimination, would you

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1 have taken those courses?
2 MR. JOSEPH: Object to the form.
3 A. I don't know. I try to go to everything I can
4 to be knowledgeable.
5 Q. (BY MR. YOUNG) Did you ever have any
6 discussions with Mr. Babb about whether transgender
7 persons had a right to use a restroom that matches their
8 gender identity?
9 A. I don't recall that conversation specifically,
10 no.
11 Q. Did you ever have a conversation with Mr. Babb
12 regarding whether transgender people have a right to be
13 referred to by pronouns that match their gender identity?
14 A. I don't recall.
15 MR. JOSEPH: Ezra, just fair warning that --
16 MR. YOUNG: We've got about two minutes.
17 MR. JOSEPH: -- about 50 seconds.
18 MR. YOUNG: Yeah. I think that's all the
19 questions I have today.
20 Plaintiff Intervenor would like to keep the
21 deposition open in case there are documents produced in
22 discovery that have already been requested that we'd like
23 to question Dr. Stubblefield about.
24 MR. TOWNSEND: United States would like to keep
25 the deposition open for the same reason.

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1 MR. JOSEPH: We'll object to that, obviously.
2 For the time being, the witness just needs to
3 tell this nice court reporter if you would like to read
4 and sign the transcript she's preparing --
5 THE WITNESS: Yes.
6 MR. JOSEPH: -- or if you'd like to waive that
7 right.
8 So just tell her.
9 THE WITNESS: I would like to read and sign.
10 MR. TOWNSEND: Before we go off the record, I
11 just wanted to thank Dr. Stubblefield for her time today.
12 THE WITNESS: Thank you.
13 MR. TOWNSEND: I know it's been a long time and
14 I appreciate your being here.
15 MR. YOUNG: I'd also like to thank
16 Dr. Stubblefield. Thank you for bearing with us.
17 (Deposition concluded at 4:59 P.M.)
18
19
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23
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J U R A T

STATE OF _____ }
COUNTY OF _____ } SS:

I, CLAIRE STUBBLEFIELD, PhD, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

CLAIRE STUBBLEFIELD, PhD

Subscribed and sworn to before me, a Notary Public in and for the State of Oklahoma by said witness, _____, on this, the _____ day of _____, 20____

NOTARY PUBLIC

My Commission Expires: _____
My Commission Number: _____

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C O R R E C T I O N S H E E T

NAME: Claire Stubblefield, PhD
CASE: U.S. & TUDOR vs. SOSU
DATE: May 17, 2016
REPORTER: Leslie A. Foster, CSR

PG/LN	CORRECTION	REASON FOR CORRECTION
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C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Leslie A. Foster, a certified shorthand reporter within and for the State of Oklahoma, certify that CLAIRE STUBBLEFIELD, PhD, was sworn to testify the truth; that the deposition was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the testimony of the witness; that the deposition was taken on May 17, 2016, at 8:32 A.M., at the offices of Dodson Court Reporting & Legal Video, Inc., 425 Northwest Seventh Street, Oklahoma City, Oklahoma; that I am not an attorney for or a relative of either party, or otherwise interested in this action.

Witness my hand and seal of office on May 24, 2016.

LESLIE A. FOSTER, CSR
For the State of Oklahoma
CSR #01917

United States of America vs
Southeastern Oklahoma State University

Claire Stubblefield

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United States of America vs
Southeastern Oklahoma State University

Claire Stubblefield

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From: [Kindanne Jones](#)
To: [Meyer, Valerie \(CRT\)](#); [Townsend, Allan \(CRT\)](#); [Burrell, Meredith \(CRT\)](#); [Bloom, Shayna \(CRT\)](#)
Cc: [Dixie Coffey](#); [Jeb Joseph](#); [Lori Cornell](#); [Ezra Young](#); [Jillian T. Weiss, Esq.](#)
Subject: RE: Follow-up on our 30(b)(6) Conference
Date: Monday, August 22, 2016 6:58:11 PM

DOJ/Tudor Team,

Thank you for your consideration of Southeastern's IT person. To be candid, I'm not sure if or when he will be willing to travel to DC in light of his wife's surgery. (I know I said earlier it was his daughter's surgery but I received further information today corrected that detail – it is his wife who is having surgery.) I have not discussed the question of travel with him but we will certainly make him available for deposition in Oklahoma City. The matters Southeastern's IT person would testify to would be matters 1, 2, 3, 4 and 18 to the extent you seek ESI information regarding from Southeastern that is not privileged.

I think it might be best to have another conversation regarding these other matters. We are clearly making progress but somethings might be best to hash out in conversation rather than emails.

For example, we don't object to your inquiries into Southeastern and RUSO's litigation hold practices, in general and there may be some inquiries regarding the hold that are specific to this matter that are not necessarily objectionable. But, I do object to questions regarding conversations/communications between attorneys and clients regarding the litigation hold implemented. For example, a question regarding whether IT could or did implement a litigation hold on electronic calendars entries would not be objectionable but questions regarding conversations between counsel & the client regarding the hold would be. An example for non-ESI issue would be handwritten notes. General questions regarding the retention and hold process regarding handwritten notes are fine. But you have already been informed that Stubblefield's notes have been preserved and a privilege asserted. Dr. Stubblefield testified about the presence of her notes. I do not understand what you are seeking, besides standard practices. It would be helpful to discuss this before we file a motion for protective order.

With regard to the issue of spoliation, DOJ has no reason to believe there has been spoliation, at least from defendants. The only party involved who should actually be held responsible for "spoliation" is Tudor, who admittedly failed to retain any electronic information she has. And of course, she has known about the possibility of litigation probably before any other party. If memory serves, Tudor destroyed all evidence on her computer that might be helpful to this case and has made no effort to recover this information. I also seem to recall Tudor's counsel admitting she had completely failed to advise Tudor of her duty to preserve documents.

With regard to e-mail searches, I'm certain this is an issue Jeb can address when he returns. If Jeb can't clear this up then I'm sure we can present an IT person who can testify but this doesn't really seem like something where testimony is required. I'm probably oversimplifying the issue but whether defendants' searched for the ESI version of documents that had been produced in hard copy seems like a simple question for a discovery conference, not a deposition.

As we discussed, we have no objection to matter 18. I have not received a copy of Dr. McMillan's deposition so I cannot address whether you have accurately portrayed his testimony regarding Exhibit 50 but I recall telling you that to the extent it is available we should be able to tell you if and where the email was saved and if it was or is presently identified as read or unread by the individuals listed in matter 18.

On matter 5, we should be able to enter into a stipulation regarding policies and procedures which were in effect during the time period specified in your email. Please submit the proposed stipulation regarding the policies. With regard to the Scoufos file, it is my understanding that our bates stamped number 1013-1300 is a true and correct copy of the document Dr. Scoufos provided to Dr. Stubblefield on or about August 17, 2011. It looks like these matters are resolved.

With regard to matters 15 & 16, Exhibits 30 & 117 were prepared and submitted to the EEOC by Southeastern in response to EEOC's initial request for information when Tudor filed her charge of discrimination. If I understand, this is not in dispute. I do not understand what further information you require regarding these documents. You have not only deposed but interviewed all witnesses you wanted to regarding these matters. Southeastern's position was laid out in the statement. That witnesses have conflicting recollections 5 years later is simply a fact we will all have to deal with. You have questioned the persons with first-hand knowledge. If they do not recall or their recollections vary, there is no one else to refresh their recollections. As to Exhibits 85 & 115 (Tudor's evaluation), you have inquired of the witnesses who signed these documents. Again, their memory is all that we have. You cannot get a different answer out of Southeastern. It would be nice if Southeastern could simply pick and choose between the different recollections and memories but I'm not aware of any authority compelling it do so. I'm certain you will point out all discrepancies, regardless of their significance or relevance when this matter goes to jury trial. Ultimately, it will be for the jury to decide what happened. However, to be clear, it is these types of lost memories and inconsistent recollections that, at least in part, form the basis for our claim for laches. DOJ/EEOC sat on this case for years, while memories faded and witnesses retired. You had the authority and manipulated the running of the statute of limitations. Now, you claim we must pick and choose between the inconsistent memories. Please show me the law that supports this position. These inquiries are cumulative. You have all the non-privileged information we have. I know of no authority that compels defendants to now be forced to select between these faded and/or inconsistent memories only so you can point out the fact that one memory is inconsistent with another. Please let me know if you have any authority for this position. Otherwise it is our position this inquiry is cumulative and unduly burdensome.

With regard to matters 8 & 13, affirmative defenses and defenses, our position is no different than yours. We should not be required to simply marshal the evidence for you. [Doc. 89, pp. 18-20] Your request is cumulative and simply seeks our work product. I have advised you, we have no evidence to support the claim of after-acquired evidence at this time and assured you that if such evidence is discovered we will let you know. I also told you we are not seeking this type of evidence at this time. Hence there is no one or information to produce on this matter. The failure to exhaust is a legal defense that has been discussed and was outlined in our motion to dismiss. With the exception of the failure to promote/denial of tenure claims, Tudor did not properly or timely exhaust administrative remedies. As you were quick to point out during our conversation last week, DOJ

appears to have acknowledged this problem while Tudor has not. Therefore, to be clear, the failure to exhaust defense is directed at Tudor's claims and our evidence is the charge of discrimination and related documents. The failure to conciliate in good faith relates primarily to the evidence on comments made by the EEOC – ie that this was not a case for conciliation and their/Tudor's refusal to even meet face to face and attempt conciliation before sending this matter over to DOJ for litigation. It also includes DOJ and Tudor's refusal to engage in good faith discussions during the settlement conference. Of course, these types of conversations occurred between attorneys and during settlement discussions. This information will not be used at trial and has no bearing on the issue of discrimination. It was preserved in the answer and would only become an issue in post-trial motions. I'd suggest we defer further discovery on this matter until it becomes an active issue in the case in light of the many issues both sides will raise regarding privileges and settlement discussion confidentiality clauses. The issue of damages is still in full discovery but you have the evidence we have regarding Tudor's failure to mitigate. She refused the offer & advice she was given to withdraw her tenure application, work on her portfolio and reapply in two years. In addition, Tudor failed to seek work for several months even though she knew her employment with Southeastern was not going to be renewed. Also, Tudor made no serious effort to seek a tenure track position after leaving her employment with Southeastern. Counsel for DOJ and Tudor have had ample opportunity to explore the facts regarding the offer and advice she was provided with the multiple witnesses who have been interviewed and deposed. Any further discovery on this topic is cumulative. The other two types of information are not within defendants' scope of knowledge. This information that has been acquired from Tudor and through discovery of third parties and it has been provided to you. Finally, because neither Tudor or DOJ have provided full information regarding damages, defendants have not had the opportunity to fully develop this defense and other issues may arise.

So, further discussions are probably warranted though I know the clock is ticking. It appears the major remaining issues relate to privilege communications/attorney work product and the litigation hold; ESI search inquiries – which can hopefully be cleared up with a discussion with Jeb; matters 16 & 17 which are cumulative; and 8 & 13 regarding the "factual basis" inquiries. Please let me know if you think we can clear up these matters. Also, if we need more time to do so, perhaps we could set the rest of the deposition off. Jeb should be back in the office tomorrow, if he's not too ill. I look forward to hearing from you tomorrow.

Thanks for your commitment to working on these issues.

Kindy

From: Meyer, Valerie (CRT) [mailto:Valerie.Meyer@usdoj.gov]
Sent: Monday, August 22, 2016 10:57 AM
To: Kindanne Jones; Townsend, Allan (CRT); Burrell, Meredith (CRT); Bloom, Shayna (CRT)
Cc: Dixie Coffey; Jeb Joseph; Lori Cornell; Ezra Young; Jillian T. Weiss, Esq.
Subject: RE: Follow-up on our 30(b)(6) Conference

Dear Kindy:

Thank you for the update.

With respect to our response to your Daubert motion regarding Dr. Parker, thank you for confirming that our deadline to respond is September 1. We will file something with the Court stating that the parties agree that September 1 is our deadline to respond so that the Court does not treat your Daubert motion as a motion in limine for purposes of the briefing schedule.

Regarding your request to postpone a portion of Friday's 30(b)(6) deposition of Defendants, could you please identify the matter numbers you are requesting to postpone? We do not oppose a postponement of some of the matters given the conflict for your IT representative (for example, matters 4 and 12 regarding the backup of ESI) but want to be certain we understand and agree as to which matters will proceed on Friday. We appreciate your willingness to extend our deadline to respond to your anticipated Motion for Summary Judgment should information related to the postponed 30(b)(6) topics be relevant to our summary judgment response. We also may request that you make your IT representative available for deposition in Washington, DC (at the time we produce Drs. Parker and Brown for their depositions) in order to conduct all three out-of-time depositions at the same time.

As a follow-up to our conversation last week and your August 19 message below, the United States is willing to further narrow several matters in its amended 30(b)(6) notice. As you know, the amended notice is the result of our willingness to narrow the topics once already, which we did based on Defendants' stipulation that RUSO and Southeastern are a single employer for purposes of this case. Based on your representations to us during our call, we are willing to further narrow some matters if Defendants stipulate to certain facts as set forth below.

Matters 1 and 9: As we explained to you during our call, we are entitled to know whether Defendants followed applicable document retention policies as they pertain to Dr. Tudor's internal grievances, her complaints to the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, and this case. In addition to the lack of clarity regarding the existence of Dr. Stubblefield's notes of witness interviews she conducted as part of her investigation of Dr. Tudor's complaint, it is unclear whether other ESI was retained or not. For example, Defendants previously advised us that calendar entries prior to 2012 did not exist, yet several emails containing calendar meeting invitations or acceptances prior to 2012 were part of the ESI Defendants produced pursuant to the Court's Rule 502(d) Order, which seems inconsistent with a lack of calendar entries. To assist us in understanding what information should have been retained under Defendants' own policies and practices, what actually was retained, and what should have been produced, we are entitled to inquire about Defendants' document retention practices and policies. Therefore, we cannot further narrow this topic.

Matters 2 and 10: As we understand it, Defendants take the position that all information about their litigation hold practices and policies is not discoverable because you contend that litigation holds are subject to attorney-client privilege and are attorney work product. Defendants also take the position that they reasonably anticipated litigation once they received notice of Dr. Tudor's DOE complaint. First, the United States does not agree that the steps Defendants took to preserve documents is privileged information. Indeed, the Defendants have produced documents showing some of the steps they took to preserve documents. (Pl. Ex. 113). Second, our 30(b)(6) notice requests information about litigation hold policies and practices not only related to this case, but

also generally, and information about general practices in the absence of reasonably-anticipated litigation is not privileged. Third, as we explained during our call, we are concerned about Defendants' failure to preserve evidence, including Dr. Stubblefield's notes. Information about when Defendants instituted a litigation hold in this case, as well as the scope and distribution of that hold, is relevant to the issue of spoliation. Therefore, we cannot further narrow this topic.

Matters 3 and 11: We are entitled to find out what efforts Defendants made in connection with responding to our Requests for Production, particularly with respect to ESI. While Defendants produced a significant amount of ESI once compelled to do so by the Court, questions remain about the manner in which the searches were conducted. For example, well prior to the production of ESI in June 2016, Defendants conducted a "test search" of Dr. Prus's email account, the results of which did not include a single email between Dr. Prus and Dr. Scoufus. Based on the June 2016 ESI production, however, we know that there were several emails between Drs. Prus and Scoufus that were, presumably, retained in Dr. Scoufus' email account. As a result, it is not clear to us whether the "test search" of Prus and other efforts by Defendants to locate responsive documents met their discovery obligations under the Federal Rules of Civil Procedure. We also do not know, for example, whether Defendants searched for the ESI versions of documents that they produced in hard copy only (as was requested by the United States). ESI versions of documents produced in hard copy might contain metadata that would shed light on the identity of the drafters, for instance (*see* Matter 15 below). Therefore, we cannot further narrow this topic.

Matter 18: As we explained to you during our call, Dr. McMillan testified that he did not receive the emails contained in Exhibit 50. This matter, which primarily seeks metadata regarding those emails, seeks information which may prove or disprove that assertion. Therefore, we cannot further narrow this topic.

Matters 4 and 12: It is our understanding that Defendants have no objection to these topics.

Matter 5: In its Requests for Admission propounded on July 8, 2016, the United States sought admissions from Defendants that would have eliminated the need for additional authentication of multiple documents. Defendants' denials, partial denials, or incomplete responses necessitate further authentication of those documents. If Defendants will stipulate as to the authenticity of all of the documents identified below, or the identical copies of those documents that contain Defendants' bates numbers, then the United States will withdraw Matter 5. Please note that if Defendants decline this offer, the United States may seek authentication of additional documents produced by Southeastern in response to the United States' Requests for Production during the 30(b)(6) deposition.

- Defendants' responses to our Requests for Admission did not adequately identify the years during which the contents of Southeastern's Academic Policies and Procedures Manual ("APPM") produced to the EEOC during its investigation were in effect. As a result, we request that Defendants stipulate that the following portions of the APPM were in effect during the 2008-2009, 2009-2010, and 2010-2011 academic years. If part of the APPM was not in effective during all three of those academic years, please advise us of the dates so that we may work together to craft a stipulation that is accurate and meets our authentication needs.

- EEOC000252-EEOC000428
- EEOC00300-301 (Pl. Ex. 6)
- EEOC000303-349 (Pl. Ex. 7)
- EEOC000265 (Pl. Ex. 31)
- Defendants' Bates Range 006929-6931 (Pl. Ex. 33)
- Defendants' Bates Range 006955-6956 (Pl. Ex. 34)
- EEOC000299-300 (Pl. Ex. 51)
- Similarly, we request that Defendants stipulate that certain portions of the RUSO Policy Manual referenced in Requests for Admission 7(a) and 8(a) (DOJ000016-133) were in effect during the 2008-2009, 2009-2010, and 2010-2011 academic years. Again, if this is not accurate, please identify the dates so that we may work together to craft a stipulation that is accurate and meets our authentication needs.
 - Chapter 3 (Academic Affairs)
 - Chapter 5.1 (Equal Opportunity)
 - Chapter 5.2 (Affirmative Action)
 - Chapter 5.6 (Sexual Harassment)
 - Chapter 5.7 (Racial and Ethnic Policy)
- We request that Defendants stipulate that EEOC000734-001020 (or the identical copies of these documents with Defendants' bates numbers) is a true, correct, and complete copy of all documents provided by Lucretia Scoufos to Claire Stubblefield on August 17, 2011 in connection with Dr. Stubblefield's investigation of Dr. Rachel Tudor's grievance and described by Dr. Scoufos as Dr. Tudor's complete file from Southeastern's School of Arts and Sciences (See EEOC000824).

Matters 15 and 16: With respect to Plaintiff's Deposition Exhibits 30 and 117, fact witnesses have provided conflicting testimony regarding these documents or have been unable to recall facts about these documents, such as who drafted them. We believe that the opportunity for Defendants, as institutions, to prepare to testify about this topic may provide information and recollections beyond that which the fact witnesses offered during their earlier depositions. In addition, we are entitled to know which of the conflicting facts offered by fact witnesses that the Defendants will adopt as organizations. Therefore, we cannot narrow this topic.

Matters 6 and 7: As we explained to you during our call, Dr. Stubblefield's deposition testimony indicated that she took handwritten notes during each witness interview she conducted as part of her investigation of Dr. Tudor's complaint. Her testimony also indicated that these notes would have been retained in her file unit, to which no one other than Dr. Stubblefield had a key. When we requested the production of these notes, which had not previously been produced, Defendants told us that they had produced all non-privileged notes and provided the United States with a brief privilege log that indicated that some of Dr. Stubblefield's notes may have been withheld. More recently, in response to the United States' First Set of Requests for Admissions, the Defendants stated that they had "produced all of Dr. Stubblefield's existing notes made in the course of her investigation of Dr. Tudor's complaints and/or grievances that still exist." Furthermore, Dr. Stubblefield testified to recording some witness interviews and Dr. Scoufos testified that Dr. Stubblefield recorded her interview, but no such recordings have been produced. It is unclear when such recordings and notes last existed or whether they still exist and whether Dr. Stubblefield (as

Affirmative Action Officer) has any different or additional document retention obligations as compared to other employees of Defendants. Although Dr. Stubblefield has provided her recollection of events, the United States is entitled to know whether Defendants, as institutions, adopt the same version of events and will make the same assertions about the existence of such documents and recordings now that they have had the opportunity to search for those items.

Matters 8 and 13: Defendants take the position that the United States is not entitled to know their factual basis for the affirmative defenses and defenses they asserted in their Answers, contending that it would reveal attorney work product for them to provide those facts. The United States believes that this is too broad an application of the attorney work product doctrine, and that our request for factual information is appropriate. Defendants asserted multiple affirmative defenses in their Answers, including failure to exhaust administrative remedies, failure to conciliate in good faith, failure to mitigate damages, laches, after-acquired evidence, and lack of a single employer relationship between RUSO and Southeastern (which defense Defendants have now withdrawn by stipulating that RUSO and Southeastern are a single employer). Defendants now represent that they have “no evidence” to support the after-acquired evidence but apparently intend to preserve that defense in the event additional discovery arises to support it. If Defendants withdraw their after-acquired evidence defense altogether, then the United States would not explore this particular defense during its deposition. Absent such a withdrawal, we are willing to narrow the scope of this matter to the following affirmative defenses or defenses: Failure to exhaust administrative remedies, failure to conciliate in good faith, failure to mitigate damages, laches, and after-acquired evidence.

Matter 14: The United States is willing to withdraw this matter in light of Defendants’ response to Interrogatory 17.

Matter 19: As we clarified for you during our call, we are entitled to know which individuals the designees communicated with in preparation for the depositions (other than attorneys providing legal advice) and do not intend to intrude upon attorney-client communications relating to the preparation of the designees.

If you will agree to any of the stipulations set forth above, please let us know by noon on Wednesday, August 24.

Sincerely,
Valerie Meyer

From: Kindanne Jones [<mailto:kindanne.jones@oag.ok.gov>]

Sent: Monday, August 22, 2016 10:47 AM

To: Townsend, Allan (CRT) <Allan.Townsend@crt.usdoj.gov>; Meyer, Valerie (CRT) <Valerie.Meyer@crt.usdoj.gov>; Burrell, Meredith (CRT) <Meredith.Burrell@crt.usdoj.gov>

Cc: Dixie Coffey <dixie.coffey@oag.ok.gov>; Jeb Joseph <jeb.joseph@oag.ok.gov>; Lori Cornell <lori.cornell@oag.ok.gov>

Subject: RE: Follow-up on our 30(b)(6) Conference

Thanks Allan. My motion for protective order is almost ready but I'll hold off. It would be great if we can work this out.

Also, I have learned that one of the witnesses who is in the best position to testify on some of the 30(b)(6) deposition topics may not be available. SOSU's IT representative's daughter is having surgery this week (August 24 & 25) and I don't know whether he will be available on the 26. I feel confident he won't be prepared by the 26. Also, I have just received word that Jeb (who has been out of the office) is ill and his return may be delayed. This will further hinder our ability to fully prepare and present the IT/ESI component of the 30(b)(6) as this is his area of expertise and he is most familiar with those issues in this case.

Would you consider agreeing to continue at least that portion of the deposition to a later date. I know it may be until after discovery cut-off. Of course, if it turns out that you need some information from that deposition to respond to any summary judgment that is filed, we would not object to an extension of your time to respond for that reason.

Finally with regard to your question regarding the deadline to respond to the Daubert motion, it is fine with us that you have until September 1 or 2 to respond now that we have an agreement to take Dr. Parker's deposition at a later time.

Kindy

From: Townsend, Allan (CRT) [<mailto:Allan.Townsend@usdoj.gov>]
Sent: Monday, August 22, 2016 7:36 AM
To: Kindanne Jones; Meyer, Valerie (CRT); Burrell, Meredith (CRT)
Cc: Dixie Coffey; Jeb Joseph; Lori Cornell
Subject: RE: Follow-up on our 30(b)(6) Conference

Kindy,

We have given more thought to the 30(b)(6) notice in light of our conversation last week. We are finishing up our written position now and plan to send you something later today (hopefully this morning).

Allan K. Townsend
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section--PHB
601 D Street, NW
Washington, DC 20579
(202) 305-3302

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From: Kindanne Jones [<mailto:kindanne.jones@oag.ok.gov>]
Sent: Friday, August 19, 2016 2:36 PM
To: Townsend, Allan (CRT); Meyer, Valerie (CRT); Burrell, Meredith (CRT)
Cc: Dixie Coffey; Jeb Joseph; Lori Cornell
Subject: Follow-up on our 30(b)(6) Conference

Greetings DOJ team,

Have you given any thought to narrowing any of the topics/matters contained in your 30(b)(6) notice we discussed Tuesday? I'll be working on the motion to quash/protective order later today and through the weekend and would like to avoid any unnecessary disputes.

Also, even though it is not wholly related to your 30(b)(6) notice, I have confirmed that at this time, we have no evidence to support the "after-acquired evidence" affirmative defense. It was asserted in the answer to preserve the defense and avoid the need to amend. In light of current circumstances, we will not be pursuing the defense, unless information that is currently unknown is discovered. Of course, we understand the significance of the date of discovery the evidence and do not intend to spend significant time seeking information that will fit into this category. If circumstances do change, we will advise you accordingly. I hope this puts your minds at ease and alleviates any need to engage in further discovery on this matter.

I look forward to hearing from you on narrowing your 30(b)(6).

Kindy

Kindanne C. Jones
Deputy Attorney General
Litigation Division
Office of the Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
405.522.2920 - Office
405.521.4518 - Fax

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From: [Meyer, Valerie \(CRT\)](#)
To: [Jeb Joseph](#); [Townsend, Allan \(CRT\)](#); [Dixie Coffey](#); [Kindanne Jones](#)
Cc: [Ezra Young](#); [Bloom, Shayna \(CRT\)](#); [Lori Cornell](#); [Tim Bunson](#)
Subject: RE: U.S. and Tudor v. SEOSU and RUSO: deposition scheduling
Date: Thursday, August 17, 2017 4:25:23 PM
Attachments: [Stips in connection w 30b6 2017-8-17.docx](#)

Dear Jeb:

I am writing with regard to the matters identified for deposition in our Second Amended 30(b)(6) notice.

As we set forth in our email dated August 22, 2016, we will not narrow the topics in matters 1 & 9, 6 & 7, 2 & 10, 3 & 11, and 15 & 16. We have already discussed our position on those topics at length, both in phone conversations and over email. Our position remains the same and we intend to proceed with those topics.

As we also set forth in our email dated August 22, 2016, it is our understanding that Defendants have no objection to matters 4 & 12. Kindy also stated in her email dated August 22, 2016 that Defendants have no objection to matter 18.

For matter 17, which you raised in your email below, we note that Kindy's email dated August 22, 2016 already stated that Defendants would stipulate that Defendants' Bates number 1013-1300 is a true and correct copy of what Dr. Scoufus provided to Dr. Stubblefield on August 17, 2011. If Defendants execute the attached stipulation referencing Bates range EEOC000734-001020 (which is the copy provided to the EEOC during its investigation), then we will withdraw matter 17.

We will withdraw matter 5 if Defendants execute the attached stipulations, including stipulations regarding the authenticity of documents produced by Defendants during the course of this litigation (including the EEOC's investigation) and the time periods during which certain policies were in effect.

If Defendants are still requesting that we withdraw matter 14, please let us know. We are willing to do so based on Defendants' August 8, 2016 response to Interrogatory 17.

As to matter 19, we have already stated that we do not intend to intrude on attorney-client communications relating to the preparation of 30(b)(6) designees. To the extent Defendants believe a particular question intrudes on such communications, counsel may assert an objection to that effect during the deposition. Therefore, we will not withdraw or narrow matter 19.

Finally, with respect to matters 8 & 13 regarding the factual basis for affirmative defenses and defenses, the United States' August 22, 2016 email offered to narrow these matters to the following affirmative defenses or defenses: failure to exhaust administrative remedies, failure to conciliate in good faith, failure to mitigate damages, laches, and after-acquired evidence. With respect to the after-acquired evidence defense, Defendants advised us on August 22, 2016 that they have "no evidence to support the claim of after-acquired evidence at this time" and "are not seeking this type of evidence at this time," yet will not withdraw that defense. Therefore, if Defendants agree to withdraw all objections (other than attorney-client privilege) to the United States' Interrogatory 14 and agree to supplement that interrogatory response immediately should Defendants obtain such

evidence at any time before trial, the United States also will agree to remove the after-acquired evidence defense from the scope of matters 8 & 13.

Please note that we have noticed all topics for August 23, 2017 and expect to proceed on all topics on that date. In the event that Defendants will only produce the IT representatives for SEOSU and RUSO on that date, please identify the specific matter numbers for which they will be designated and provide dates when designees on the other topics will be made available. In addition, please identify the individuals who will be designated for all other remaining matters as soon as possible, as we requested that information be provided to us no later than August 11, 2017, and have not received it.

We also wish to address Kindy's remark during our recent phone conversation about the applicable time limits for the United States' Rule 30(b)(6) deposition of Defendants. As is clear from the 2000 Amendment committee notes for Rule 30, "[f]or purposes of this durational limit, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition." Therefore, the United States does not agree to limit the Rule 30(b)(6) deposition to a total of seven hours.

Sincerely,
Valerie

From: Jeb Joseph [mailto:jeb.joseph@oag.ok.gov]
Sent: Wednesday, August 09, 2017 4:30 PM
To: Meyer, Valerie (CRT) <Valerie.Meyer@crt.usdoj.gov>; Townsend, Allan (CRT) <Allan.Townsend@crt.usdoj.gov>; Dixie Coffey <dixie.coffey@oag.ok.gov>; Kindanne Jones <kindanne.jones@oag.ok.gov>
Cc: Ezra Young <ezra.i.young@gmail.com>; Bloom, Shayna (CRT) <Shayna.Bloom@crt.usdoj.gov>; Lori Cornell <lori.cornell@oag.ok.gov>; Tim Bunson <tim.bunson@oag.ok.gov>
Subject: RE: U.S. and Tudor v. SEOSU and RUSO: deposition scheduling

Dear Counsel,

- (1) Regarding Plaintiff's 30(b)(6) Notice, at this time, we are still trying to determine who would be the appropriate person(s) to serve as 30(b)(6) witnesses on the non-IT topics. As a general matter, though, it appears that a number of these non-IT items were either already covered, or should have been covered, by fact witnesses already deposed. For example, Items 6 and 7 relate to the work of Dr. Claire Stubblefield. She already gave a lengthy deposition in this case over these types of subjects. Similarly, Item 17 relates to Dr. Scoufus' handling of materials six years ago. Like Dr. Stubblefield, Dr. Scoufus already gave a lengthy deposition in this case. Please advise.
- (2) Regarding possible stipulation(s) in order to narrow topics of inquiry in these depositions, and in Discovery generally, can you please provide a current, clear, and concise list of the items to which you suggest the group's stipulation?

Thank you,
Counsel for the Defendants

From: Meyer, Valerie (CRT) [<mailto:Valerie.Meyer@usdoj.gov>]
Sent: Tuesday, August 08, 2017 3:02 PM
To: Jeb Joseph <jeb.joseph@oag.ok.gov>; Townsend, Allan (CRT) <Allan.Townsend@usdoj.gov>; Dixie Coffey <dixie.coffey@oag.ok.gov>; Kindanne Jones <kindanne.jones@oag.ok.gov>
Cc: Ezra Young <ezra.i.young@gmail.com>; Bloom, Shayna (CRT) <Shayna.Bloom@usdoj.gov>; Lori Cornell <lori.cornell@oag.ok.gov>; Tim Bunson <tim.bunson@oag.ok.gov>
Subject: RE: U.S. and Tudor v. SEOSU and RUSO: deposition scheduling

Dear Jeb:

In response to your request for the United States' 30(b)(6) deposition notice, I am attaching the amended notice that we previously sent to you on August 11, 2016. We intend to re-notice the same topics for deposition on August 23, 2017. Thank you for agreeing to produce the RUSO and SEOSU IT representatives as 30(b)(6) designees on that date. Will you also produce any other necessary designees on August 23? Please identify the designees you will produce on August 23 no later than August 11.

I am also attaching the parties' last correspondence regarding potential narrowing of the topics contained in our amended notice. As discussed in my email dated August 22, 2016, the United States is willing to narrow some matters if Defendants stipulate to certain facts. If Defendants wish to enter such stipulations, or otherwise further discuss the topics in our amended notice, please let us know as soon as possible.

Best,

Valerie

From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]
Sent: Monday, August 07, 2017 4:50 PM
To: Townsend, Allan (CRT) <Allan.Townsend@crt.usdoj.gov>; Dixie Coffey <dixie.coffey@oag.ok.gov>; Kindanne Jones <kindanne.jones@oag.ok.gov>
Cc: Ezra Young <ezra.i.young@gmail.com>; Bloom, Shayna (CRT) <Shayna.Bloom@crt.usdoj.gov>; Meyer, Valerie (CRT) <Valerie.Meyer@crt.usdoj.gov>; Lori Cornell <lori.cornell@oag.ok.gov>; Tim Bunson <tim.bunson@oag.ok.gov>
Subject: RE: U.S. and Tudor v. SEOSU and RUSO: deposition scheduling

Dear Allan,

Thank you for your response. As indicated in our August 3, 2017 e-mail, Defendants plan to depose Dr. Parker in Illinois, and Dr. Brown in Tennessee. Defendants do not agree to take those depositions in Washington, D.C. Please let us know which of the proposed dates you

would like to present these experts at those locations, and the costs and fees associated with their depositions. If Plaintiff's counsel is unwilling or unable to travel, (or if the witnesses are unable to travel), Defendants would consider taking each of these experts remotely via closed circuit or similar real-time video conferencing mechanism (assuming any technical or logistical issues could be satisfactorily resolved). That way, neither the attorneys nor the witnesses would travel, and accordingly more dates and flexibility should be available. If Plaintiff's counsel is willing to entertain this resource-saving measure which should benefit all involved, please advise. Dr. Brown's unavailability on any date other than August 16 is unacceptable, and therefore, absent you providing another option as to the date, we will have no choice but to notice him for deposition within the Discovery period allotted by the Court's current scheduling order. If you wish to reach an agreement to present Dr. Brown outside of the Discovery period, we will consider that, but we insist that the deposition take place before October 1, because we will need to use the time after that date to prepare for trial.

With respect to the availability of Defendants' witnesses on August 23 and 24, 2017, at present the RUSO IT representative and the SEOSU IT representative can be made available on August 23, 2017 in Oklahoma City. Mr. Babb can be made available in Oklahoma City on August 24. If these dates are acceptable to you, please advise. Send us the relevant 30(b)(6) and deposition notices right away so that we can make sure that your intended areas of inquiry are addressed.

Thank you,
Counsel for the Defendants

From: Townsend, Allan (CRT) [<mailto:Allan.Townsend@usdoj.gov>]

Sent: Friday, August 04, 2017 4:26 PM

To: Dixie Coffey <dixie.coffey@oag.ok.gov>; Kindanne Jones <kindanne.jones@oag.ok.gov>; Jeb Joseph <jeb.joseph@oag.ok.gov>

Cc: Ezra Young <ezra.i.young@gmail.com>; Bloom, Shayna (CRT) <Shayna.Bloom@usdoj.gov>; Meyer, Valerie (CRT) <Valerie.Meyer@usdoj.gov>

Subject: RE: U.S. and Tudor v. SEOSU and RUSO: deposition scheduling

Dixie,

I'm writing in response to your email below. We maintain that the depositions of Drs. Brown and Parker should occur in Washington, as previously agreed by the parties. Depositing them in Washington would be far less costly than depositing them where they work in Johnson City, Tennessee, and Urbana, Illinois. It would be relatively difficult and more costly for you to travel to the small regional airports closest to Johnson City and Urbana, as opposed to traveling to Washington. Of course, by conducting the depositions in Washington, the United States would not have to pay for our team to travel and would only have to pay for Drs. Brown and Parker to travel. Furthermore, it is less expensive for Ezra to travel to Washington than for him to travel to Johnson City and Urbana. Thus, for purposes of minimizing the cost of discovery, we request that you accept our offer to host the depositions in Washington and our offer to pay for the costs for Drs. Brown and Parker to travel to Washington.

On the dates in September that you identified in your email, Dr. Parker is available but Dr. Brown is

not. The United States' availability on those dates in September would depend, however, on whether you are willing to conduct the depositions in Washington. If we did not have to travel, more of those dates would work for us. As I indicated in my previous email, the only date that Dr. Brown is available for a deposition between now and the close of discovery is August 16. We informed you that he was available during that week in August when the parties negotiated the deadlines in the most recent scheduling order. If you want to take Dr. Brown's deposition after the close of discovery, we can provide you with dates when he would be available but his schedule is very busy and it may not be until close to trial.

I will provide you with the information you requested about the costs and fees Defendants would have to pay for Dr. Brown's and Dr. Parker's deposition time next week. As your question implies, the Defendants are responsible for paying those costs and fees pursuant to Fed. R. Civ. P. 26(b)(4) (E).

As my previous email requested, please let us know by August 7 if the dates that we have selected for Mr. Babb's deposition and the 30(b)(6) deposition will not work. If you do not indicate that they do not work, we will issue notices for them on August 9. Since it appears from your email that you are available for depositions on September 12-15 and 19-21, we will ask Ms. House if any those dates work for her.

Thank you,
Allan

From: Dixie Coffey [<mailto:dixie.coffey@oag.ok.gov>]
Sent: Thursday, August 3, 2017 12:04 PM
To: Townsend, Allan (CRT) <Allan.Townsend@crt.usdoj.gov>; Kindanne Jones <kindanne.jones@oag.ok.gov>; Jeb Joseph <jeb.joseph@oag.ok.gov>
Cc: Ezra Young <ezra.i.young@gmail.com>; Bloom, Shayna (CRT) <Shayna.Bloom@crt.usdoj.gov>; Meyer, Valerie (CRT) <Valerie.Meyer@crt.usdoj.gov>
Subject: RE: U.S. and Tudor v. SEOSU and RUSO: deposition scheduling

Allan,

Thank you for your email addressing the remaining discovery. Unfortunately, we are unable to depose Dr. Brown on August 16. It is currently our plan to depose Drs. Parker and Brown in their respective locations of Illinois and Tennessee in September. Please let us know of their availability on these dates: September 12-15, 19-21. Most likely, each deposition can be completed in ½ day, but we would like to set aside a full day for each to be safe. We will also need to know what costs and fees of these experts you're contending Defendants will be responsible for related to taking these depositions.

We are uncertain of the availability of our 30(b)(6) witnesses and Mr. Babb on the proposed dates of August 23 and 24, , but will notify you when we have more information.

Thank you,

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

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From: Townsend, Allan (CRT) [<mailto:Allan.Townsend@usdoj.gov>]
Sent: Tuesday, August 01, 2017 12:33 PM
To: Kindanne Jones <kindanne.jones@oag.ok.gov>; Dixie Coffey <dixie.coffey@oag.ok.gov>; Jeb Joseph <jeb.joseph@oag.ok.gov>
Cc: Ezra Young <ezra.i.young@gmail.com>; Bloom, Shayna (CRT) <Shayna.Bloom@usdoj.gov>; Meyer, Valerie (CRT) <Valerie.Meyer@usdoj.gov>
Subject: U.S. and Tudor v. SEOSU and RUSO: deposition scheduling

Kindy, Dixie, and Jeb,

I am writing regarding the remaining depositions that will need to be completed if a settlement agreement is not reached. The depositions that the United States still needs to take are (1) the Rule 30(b)(6) deposition of the Defendants; (2) Mr. Babb's deposition; and (3) Ms. House's deposition. We will send out amended deposition notices for the 30(b)(6) deposition and Mr. Babb's deposition for August 23 and 24, respectively, both of which will take place in Oklahoma City. We will send those amended deposition notices to the Defendants on or before August 9. If those dates or location do not work for you or your witnesses, please let us know on or before August 7. We assume that, even though he is no longer working for RUSO, you will produce Mr. Babb for his deposition without the need for a subpoena but please let us know if our assumption is incorrect. With respect to Ms. House, we need to determine when she is available and where we would need to depose her but dates that would work for the United States and Plaintiff-Intervenor are September 12 and 13. If September 12 and/or 13 do not work for you, please let us know.

The Defendants previously indicated that they wanted to depose the United States' expert witnesses, Drs. Brown and Parker, as well as conduct a 30(b)(6) deposition of the EEOC. We do not know when the EEOC would be available for a 30(b)(6) deposition but the United States and Plaintiff-Intervenor would be available for that deposition on September 12 or 13. Dr. Brown's schedule is very tight; between now and the close of discovery, he is only available for a deposition on August 16. Dr. Parker's schedule is more flexible than Dr. Brown's and, as such, the Defendants should propose dates for when they would want to take his deposition. As we previously agreed, the United States would pay for Drs. Brown and Parker to travel to our offices here in Washington, DC, and the Defendants could take their deposition here. If the Defendants wanted to make just one trip to Washington for the depositions of Drs. Brown and Parker, those could be scheduled on August 16 and 17. If the Defendants want to take the depositions of Drs. Brown and Parker on August 16 and 17, we ask that the Defendants inform us, as required by Local Rule 30.1(a)(2), by tomorrow, August 2.

It is our understanding that Plaintiff-Intervenor may want to resume or reopen other depositions and we invite the parties to discuss the scheduling of any such depositions as well.

Please let us know if you would like to discuss any of this.

Thank you,

Allan K. Townsend
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section--PHB
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Washington, DC 20579
(202) 305-3302

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The United States will withdraw Matter 5 if the Parties execute the following seven stipulations:

- 1) The Parties hereby stipulate to the authenticity, within the meaning of Federal Rules of Evidence 901 and 902, of all documents produced by Defendants during the course of discovery in this litigation. The Parties further stipulate that they waive all objections based on authenticity or foundation as to the admissibility of such documents. The Parties stipulate and agree that there will be no requirement at trial or any other proceeding before this Court to separately establish the authenticity or identification of any of these documents.
- 2) The Parties hereby stipulate to the authenticity, within the meaning of Federal Rules of Evidence 901 and 902, of all documents produced by Defendants to the United States Equal Employment Opportunity Commission during its investigation of charges of discrimination filed by Dr. Tudor on September 9, 2010 and July 12, 2011 and identified with Bates numbers EEOC000001 and EEOC000004-004553. The Parties further stipulate that they waive all objections based on authenticity or foundation as to the admissibility of the documents. The Parties stipulate and agree that there will be no requirement at trial or any other proceeding before this Court to separately establish the authenticity or identification of any of these documents.
- 3) The Parties hereby stipulate that the portions of Defendant Southeastern's Academic Policies and Procedures Manual ("APPM") identified by Bates number, below, were in effect during the 2008-2009, 2009-2010, and 2010-2011 academic years:
 - a. EEOC000252-EEOC000428, including EEOC000300-301 (Plaintiff's deposition exhibit 6), EEOC000303-349 (Plaintiff's deposition exhibit 7), EEOC000265 (Plaintiff's deposition exhibit 31), and EEOC000299-300 (Plaintiff's deposition exhibit 51);
 - b. OAG/DLC/USA v. SOSU – CIV-15-324/006929-6931 (Plaintiff's deposition exhibit 33); and
 - c. OAG/DLC/USA v. SOSU – CIV-15-324/006955-6956 (Plaintiff's deposition exhibit 34).

The Parties further stipulate that these documents are admissible as a business record under Fed. R. Evid. 803(6), without the need to call a custodian or other qualified witness and without a certification that complies with Rule 902(11) of the Federal Rules of Evidence.

- 4) The Parties hereby stipulate that the following portions of Defendant RUSO's Policy Manual, Bates number EEOC005015-5127, were in effect during the 2008-2009, 2009-2010, and 2010-2011 academic years:
 - a. Chapter 3 (Academic Affairs), EEOC005064-5084;
 - b. Chapter 5.1 (Equal Opportunity), EEOC005105;
 - c. Chapter 5.2 (Affirmative Action), EEOC005105;
 - d. Chapter 5.6 (Sexual Harassment), EEOC005109-5111; and
 - e. Chapter 5.7 (Racial and Ethnic Policy), EEOC005111-5112.

The Parties further stipulate that these documents are admissible as a business record under Fed. R. Evid. 803(6), without the need to call a custodian or other qualified witness pursuant to Rule 803(6)(D) and without a certification that complies with Rule 902(11) of the Federal Rules of Evidence.

- 5) The Parties hereby stipulate to the authenticity, within the meaning of Federal Rules of Evidence 901 and 902, of the documents identified with Bates numbers DOJ000851-909 ("Salaries in OK

State System of Higher Ed, 2014-15”) and DOJ000792-850 (“Salaries in OK State System of Higher Ed, 2013-2014”). The Parties further stipulate that they waive all objections based on authenticity or foundation as to the admissibility of such documents. The Parties stipulate and agree that there will be no requirement at trial or any other proceeding before this Court to separately establish the authenticity or identification of any of these documents. The Parties further stipulate that these documents are admissible as a business record under Fed. R. Evid. 803(6), without the need to call a custodian or other qualified witness pursuant to Rule 803(6)(D) and without a certification that complies with Rule 902(11) of the Federal Rules of Evidence.

- 6) The Parties hereby stipulate to the authenticity, within the meaning of Federal Rules of Evidence 901 and 902, of the documents identified with Bates numbers EEOC002239-2474 (Portfolio of Margaret Cotter-Lynch submitted by Defendants to the EEOC), EEOC001676-2238 (Portfolio of Virginia Parrish submitted by Defendants to the EEOC), and EEOC003521-3576 (Portfolio of Mark Spencer submitted by Defendants to the EEOC). The Parties further stipulate that they waive all objections based on authenticity or foundation as to the admissibility of such documents. The Parties stipulate and agree that there will be no requirement at trial or any other proceeding before this Court to separately establish the authenticity or identification of any of these documents. The Parties further stipulate that these documents are admissible as a business record under Fed. R. Evid. 803(6), without the need to call a custodian or other qualified witness pursuant to Rule 803(6)(D) and without a certification that complies with Rule 902(11) of the Federal Rules of Evidence.
- 7) The Parties hereby stipulate to the authenticity, within the meaning of Federal Rules of Evidence 901 and 902, of the documents identified with Bates numbers OAG/DLC/USA v. SOSU – CIV-15-324/007504 (Plaintiff’s deposition exhibit 63) and OAG/DLC/USA v. SOSU – CIV-15-324/012992 (Plaintiff’s deposition exhibit 66). The Parties further stipulate that they waive all objections based on authenticity or foundation as to the admissibility of such documents. The Parties stipulate and agree that there will be no requirement at trial or any other proceeding before this Court to separately establish the authenticity or identification of any of these documents. The Parties further stipulate that these documents are admissible as a business record under Fed. R. Evid. 803(6), without the need to call a custodian or other qualified witness pursuant to Rule 803(6)(D) and without a certification that complies with Rule 902(11) of the Federal Rules of Evidence.

The United States will withdraw Matter 17 if the Parties execute the following stipulation:

- 8) The Parties hereby stipulate that the documents identified by Bates numbers EEOC000734-001020 are a true, correct, and complete copy of all documents provided by Dr. Lucretia Scoufos to Dr. Claire Stubblefield on August 17, 2011, in connection with Dr. Stubblefield’s investigation of Dr. Rachel Tudor’s grievance. The Parties further stipulate that the documents identified by Bates number above are a true, correct, and complete copy of what was described by Dr. Scoufos (in Bates number EEOC000824) as Dr. Tudor’s complete file from Southeastern’s School of Arts and Sciences. The Parties further stipulate that they waive all objections based on authenticity or foundation as to the admissibility of these documents. The Parties stipulate and

agree that there will be no requirement at trial or any other proceeding before this Court to separately establish the authenticity or identification of any of these documents.