



John Kao &lt;jskao2681@gmail.com&gt;

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**Blough transcript**

3 messages

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**Christine Perez** <cmperezcsr@aol.com>  
Reply-To: cmperezcsr@aol.com  
To: John Kao <jskao2681@gmail.com>

Tue, Oct 4, 2011 at 10:25 AM

Hi John,

I have the Blough trial transcript ready to be picked up or I can ship it. If it's the latter, can you let me know where you'd like it shipped?

Thank you,  
Chris Perez, CSR  
Sent via BlackBerry by AT&T

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**John Kao** <jskao2681@gmail.com>  
To: cmperezcsr@aol.com

Tue, Oct 4, 2011 at 12:03 PM

Dear Chris,

Thank you for the notice! I can pick it up at San Mateo Superior Court. That might be the easiest way.

If there is a pdf or txt version that you can email, it would be nice to have that too.

Let me know where I should go to pick up the printed transcript.

Sincerely,

John Kao

[Quoted text hidden]

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**Christine Perez** <cmperezcsr@aol.com>  
Reply-To: cmperezcsr@aol.com  
To: John Kao <jskao2681@gmail.com>

Tue, Oct 4, 2011 at 12:38 PM

Hi John,

I'm actually at the courthouse in Redwood City, 400 County Center, RWC, 94063. I'll leave them (7 volumes) at the front desk in the Jury Commissioner's office on the 2nd floor. I did make an ascii for you as well, so it will be easy for me to email that to you in the meantime.

Please call if you have any questions.

Thanks very much,  
Chris Perez, CSR  
650-599-1135

Sent via BlackBerry by AT&T

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**From:** John Kao <jskao2681@gmail.com>  
**Date:** Tue, 4 Oct 2011 12:03:22 -0700



John Kao &lt;jskao2681@gmail.com&gt;

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**Blough vs. Menlo College Transcript Request (Rush)**

5 messages

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**John Kao** <jskao2681@gmail.com>  
To: cmperezcsr@aol.com

Wed, Sep 7, 2011 at 11:36 AM

Dear Christine,

I would like to proceed with the rush order we discussed for the full trial transcript of the case

Blough vs. Menlo College.

I will have a check in your name overnight delivered to the mailing address you provided in the amount of \$5000.00. You should receive it tomorrow afternoon.

I understand that your schedule may have changed and that four weeks projected completion may no longer be possible. We are happy with whatever accelerated schedule you can offer to us.

I will archive this email as a record of this transaction and include a copy with the check.

Thank you for your kind attention in this matter.

Sincerely,

John Kao

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**Christine Perez** <cmperezcsr@aol.com>  
Reply-To: cmperezcsr@aol.com  
To: John Kao <jskao2681@gmail.com>

Thu, Sep 8, 2011 at 4:21 PM

Hi John,

I've received the check for \$5,000. Thank you. I need to finish up some transcripts that have come in since we last communicated, but I should be able to begin your trial transcript on Monday. I will work diligently to get that to you as soon as I possibly can. I will shoot for the 4-week timeframe, if not sooner.

Thanks,  
Chris Perez

Sent via BlackBerry by AT&T

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**From:** John Kao <jskao2681@gmail.com>

**Date:** Wed, 7 Sep 2011 11:36:23 -0700  
**To:** <cmperezcsr@aol.com>  
**Subject:** Blough vs. Menlo College Transcript Request (Rush)  
[Quoted text hidden]

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**Christine Perez** <cmperezcsr@aol.com>  
Reply-To: cmperezcsr@aol.com  
To: John Kao <jskao2681@gmail.com>

Wed, Sep 21, 2011 at 4:38 PM

Hi John

I just wanted to give you a heads up that I hope to have this transcript to you by the week of October 3rd (early in the week). If it would be helpful to you I can possibly send electronic ascii versions as I get the volumes completed (maybe starting next week) until the total hard copy is completed. Let me know if this would be necessary

Thanks  
Chris Perez

Sent via BlackBerry by AT&T

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**From:** John Kao <jskao2681@gmail.com>  
**Date:** Wed, 7 Sep 2011 11:36:23 -0700  
**To:** <cmperezcsr@aol.com>  
**Subject:** Blough vs. Menlo College Transcript Request (Rush)

[Quoted text hidden]

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**John Kao** <jskao2681@gmail.com>  
To: cmperezcsr@aol.com

Thu, Sep 22, 2011 at 2:21 PM

Dear Chris,

Thank you for the latest information, this will help in our planning. I contacted the attorney this morning, and based on our itinerary, we do not need the information right away.

Please don't go to any extra trouble with respect to the order. If we have the transcript in the early part of October, we should have sufficient time to prepare.

Thank you for kindly for your attention.

Sincerely,

John Kao

[Quoted text hidden]

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**cmperezcsr@aol.com** <cmperezcsr@aol.com>  
To: jskao2681@gmail.com

Thu, Sep 22, 2011 at 2:29 PM

Hi John,

I appreciate that information. That assists in my planning as well. Now I can relax a little, but I will still shoot for the first week of October. I will let you know when I get it in the mail.

Thanks very much,  
Chris Perez

[Quoted text hidden]



1 PROCEEDINGS

2 DECEMBER 2, 2008 A.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING.

4 CALLING BLOUGH VS. MENLO COLLEGE. MAY I HAVE

5 APPEARANCES, PLEASE?

6 MR. LEBOWITZ: NOAH LEBOWITZ ON BEHALF OF PLAINTIFF.

7 MR. PETERS: MARK PETERS ON BEHALF OF PLAINTIFF.

8 MR. VARTAIN: GOOD MORNING, YOUR HONOR. MICHAEL

9 VARTAIN FOR THE COLLEGE. MS. ADLER IS NOT GOING TO BE HERE THIS

10 MORNING, YOUR HONOR.

11 THE COURT: OKAY. THIS IS THE TIME SET FOR MOTIONS IN

12 LIMINE. THE RECORD SHOULD REFLECT THAT I DID HAVE A LENGTHY

13 PRETRIAL CONFERENCE IN CHAMBERS WITH COUNSEL YESTERDAY TO TALK

14 ABOUT THE LOGISTICS OF THE TRIAL. AND THE ONLY MATTER OF NOTE

15 THAT I'LL GET CONFIRMED ON THE RECORD IS THAT WE DID AGREE THAT

16 TWO ALTERNATE JURORS WILL BE SUFFICIENT FOR THIS CASE; IS THAT

17 CORRECT?

18 MR. LEBOWITZ: THAT'S CORRECT, YOUR HONOR.

19 MR. VARTAIN: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: AND WE ALSO AGREED -- AND I WOULD LIKE ON

21 THE RECORD -- THAT BOTH COUNSEL DO WAIVE REPORTING OF THE JURY

22 SELECTION; IS THAT CORRECT?

23 MR. LEBOWITZ: THAT'S CORRECT, YOUR HONOR.

24 MR. VARTAIN: THAT'S CORRECT.

25 THE COURT: ALL RIGHT. FINE.

26 WE DID NOT EVEN REALLY DISCUSS THE IN LIMINE MOTIONS.

2

1 I HAVE NOT HAD A CHANCE TO LOOK AT THEM, BUT I HAVE -- AND I AM  
2 PREPARED TO HEAR FURTHER ARGUMENT, IF ANY, AND TO MAKE RULINGS  
3 ON THEM THIS MORNING. WE HAVE A JURY PANEL THAT WILL COME IN AT  
4 1:30.

5 MR. VARTAIN: MAY I PROCEED, YOUR HONOR?

6 THE COURT: I USUALLY START WITH PLAINTIFF'S MOTIONS,  
7 IF THAT'S ALL RIGHT.

8 MR. VARTAIN: THANK YOU.

9 THE COURT: IT WAS THE FIRST THROUGH SIX THAT WERE  
10 OPPOSED. LET'S START WITH PLAINTIFF'S IN LIMINE MOTION NO. 1,  
11 TO PRECLUDE THE DEFENDANT FROM RAISING THE AFFIRMATIVE DEFENSE  
12 THAT THERE WAS A BUSINESS NECESSITY FOR THE MEDICAL EXAMS IN  
13 QUESTION OR THAT THOSE EXAMS WERE JOB-RELATED.

14 I HAVE READ THE PAPERS. DID YOU HAVE ANYTHING TO ADD,  
15 MR. LEBOWITZ?

16 MR. LEBOWITZ: NOTHING BEYOND WHAT'S IN THE PAPERS,  
17 YOUR HONOR.

18 THE COURT: MR. VARTAIN, ANYTHING TO ADD TO YOUR  
19 WRITTEN OPPOSITION?

20 MR. VARTAIN: NO. I THINK MY PAPERS WERE ALL THAT I  
21 HAVE AND I THINK THAT WILL BE IT.

22 THE COURT: ALL RIGHT.

23 IN READING THE -- AND MAYBE THIS IS THE TIME TO

24 CLARIFY THE PLEADINGS AS WELL.

25 I DID REVIEW THE ANSWER TO THE SECOND AMENDED

26 COMPLAINT. AND BASED UPON THE ANSWER I WAS SATISFIED THAT THE

3

1 SECOND AFFIRMATIVE DEFENSE AND THE EIGHTH AFFIRMATIVE DEFENSE

2 WERE SUFFICIENT TO ALLOW THE DEFENDANT TO PUT ON EVIDENCE OF

3 THAT AFFIRMATIVE DEFENSE, AND I WILL DENY THAT MOTION.

4 NOW, IT WAS BROUGHT TO THE COURT'S ATTENTION YESTERDAY

5 THAT THE PLAINTIFF FILED A THIRD AMENDED COMPLAINT, AND THE

6 DEFENDANT, MENLO COLLEGE, DID NOT FILE A WRITTEN ANSWER TO THAT

7 PLEADING. IN TRYING TO DETERMINE HOW TO PROCEED, IT APPEARED

8 THAT IT WAS MOST APPROPRIATE TO PROCEED ON THE THIRD AMENDED

9 COMPLAINT AND TO DEEM MENLO COLLEGE'S ANSWER TO THE SECOND

10 AMENDED COMPLAINT ITS ANSWER TO THE THIRD AMENDED COMPLAINT.

11 DO YOU AGREE WITH THAT?

12 MR. LEBOWITZ: I DO, YOUR HONOR.

13 THE COURT: AND, MR. VARTAIN, YOU AGREE WITH THAT?

14 MR. VARTAIN: SO STIPULATED, YOUR HONOR.

15 THE COURT: GOOD. THEN THAT WILL BE THE COURT'S ORDER

16 AND, THEREFORE, THE PLEADINGS ARE TUCKED AWAY JUST NICELY FOR

17 US.

18 ALL RIGHT. LET'S MOVE ON TO IN LIMINE MOTION NO. 2,

19 FILED BY PLAINTIFF, TO PRECLUDE DEFENDANT'S RETAINED EXPERT,



20 NORMAN REYNOLDS, M.D., FROM TESTIFYING, OR THE ALTERNATIVE, TO  
21 LIMIT HIS TESTIMONY.

22 MR. LEBOWITZ, TO PRECLUDE HIM FROM TESTIMONY AT ALL  
23 SEEMS LIKE A BIG STRETCH HERE. CERTAINLY, IF ANY OF THE  
24 OPINIONS HE WERE TO GIVE AT TRIAL WERE NOT TO BE RELEVANT TO THE  
25 ISSUES, I'D ALLOW YOU TO MAKE THAT ARGUMENT AT THE TIME. BUT IN  
26 TERMS OF EXCLUDING THE TOTALITY OF HIS TESTIMONY, I DID NOT FEEL

4

1 THAT THE INFORMATION THAT HE WAS DESIGNATED TO GIVE OR THE  
2 OPINIONS WOULD INVADE THE PROVINCE OF THE JURY OR BE  
3 PREJUDICIAL. IT DOES APPEAR THAT HE MAY HAVE GIVEN SOME  
4 OPINIONS AT HIS DEPOSITION THAT DID GO BEYOND HIS DESIGNATION,  
5 AND IT APPEARS THAT HE MAY ALSO HAVE AGREED TO THAT.

6 MR. VARTAIN, THE LANGUAGE THAT I WAS LOOKING AT WAS  
7 THE OPINION THAT DR. MISSETT REACHED CONCLUSIONS THAT WERE  
8 MEDICALLY REASONABLE AND DONE IN A FAIR WAY. THAT'S WHAT  
9 DR. REYNOLDS INDICATED WOULD HAVE BEEN BEYOND THE DESIGNATION.  
10 I DON'T KNOW IF YOU'RE GOING TO BE ASKING HIM THAT QUESTION.

11 MR. VARTAIN: IT MAY BE THAT WE WILL, YOUR HONOR. I  
12 DON'T THINK -- HE GAVE HIS TESTIMONY THAT IT MIGHT BE BEYOND THE  
13 DESIGNATION, BUT I THINK THAT'S SOMETHING FOR YOUR HONOR TO  
14 DECIDE. AND, YOU KNOW, WE DIDN'T WANT TO GET INTO  
15 CROSS-EXAMINING HIM ON HOW HE READ A DESIGNATION SO...

16 THE COURT: THAT SEEMS PERFECTLY FAIR IN TERMS OF THE  
17 DEPOSITION BUT --

18 MR. VARTAIN: YEAH.

19 THE COURT: -- LET ME GO BACK TO YOUR OPPOSITION.

20 BECAUSE I THINK YOU GAVE ME -- MAYBE I HAVE IT HERE. I WANT TO

21 LOOK AT THE EXPERT DESIGNATION AGAIN. IT SEEMED LIKE IT WAS --

22 LET'S SEE.

23 MR. VARTAIN: IF YOU WOULD LIKE ME TO BRING YOU THE

24 EXPERT DESIGNATION.

25 THE COURT: I HAVE IT. I'M JUST TRYING TO LOCATE IT

26 AGAIN.

5

1 MR. LEBOWITZ: I APOLOGIZE, YOUR HONOR. IT IS

2 ATTACHED TO OUR INDEX OF EXHIBITS.

3 THE COURT: THANK YOU. AND I HAVE THAT.

4 MR. LEBOWITZ: EXHIBIT F.

5 THE COURT: I HAVE THAT, F.

6 MR. LEBOWITZ: YES.

7 THE COURT: THANK YOU. LET ME OPEN THAT UP.

8 MR. LEBOWITZ: PAGE 3.

9 MR. VARTAIN: PAGE 3, LINE 18.

10 THE COURT: WHEN THEY'RE JUST NOT TABBED IT TAKES ME A

11 LITTLE MORE TIME TO FIND IT.

12 I HAVE THAT NOW. PAGE 3?

13 MR. LEBOWITZ: YES.

14 THE COURT: YEAH.

15 SO SHOW ME HERE WHERE, MR. VARTAIN, YOU DID IDENTIFY

16 AS A SUBJECT MATTER OF DR. REYNOLDS'S TESTIMONY THE ISSUE OF  
17 DR. MISSETT REACHING CONCLUSIONS THAT WERE MEDICALLY REASONABLE.

18 MR. VARTAIN: THE LANGUAGE, YOUR HONOR, WHERE IT SAYS  
19 HE WILL TESTIFY AS TO THE DUTIES, PRACTICES AND OBLIGATIONS OF  
20 AN INDEPENDENT MEDICAL EXAMINER.

21 THE COURT: OKAY.

22 THAT WOULD BE GENERIC OF WHAT ONE WOULD DO, NOT WHAT  
23 DR. MISSETT DID.

24 MR. VARTAIN: THEN HE MOVED TO DR. MISSETT'S DUTY IN  
25 THE CIRCUMSTANCES OF THIS PARTICULAR CASE, WITH RESPECT TO  
26 REVIEWING PLAINTIFF'S MEDICAL AND PSYCHIATRIC RECORDS IN THE

6

1 COURSE OF CONDUCTING THE IME OF PLAINTIFF AND ALL RELATED  
2 MATTERS.

3 THE COURT: ALL RIGHT.

4 WELL, I WOULD CERTAINLY ALLOW DR. REYNOLDS TO TESTIFY  
5 ABOUT THE KINDS OF RECORDS THAT DR. MISSETT SHOULD HAVE REVIEWED  
6 TO DO A COMPETENT JOB, BUT NOT TO GO ON TO ENDORSING THE  
7 CONCLUSIONS DR. MISSETT REACHED. THAT'S THE PIECE THAT I THINK  
8 GOES BEYOND.

9 MR. VARTAIN: AND COULD I CLARIFY WHAT I THINK I HEAR  
10 YOUR COURT'S INCLINATION IS SO THAT I UNDERSTAND IT, YOUR HONOR?

11 THE COURT: YES, OF COURSE.

12 MR. VARTAIN: I THINK WHAT I HEAR YOU SAYING IS  
13 THAT -- AND I'M CHOOSING MY WORDS CAREFULLY SO THAT WE DON'T --

14 WE USE THIS TIME ECONOMICALLY.

15 THE COURT: OKAY.

16 MR. VARTAIN: THAT IT WOULD BE PERMISSIBLE FOR  
17 DR. REYNOLDS TO GIVE HIS OPINION OF HIS ASSESSMENT OF THE  
18 PROCESS BY WHICH DR. MISSETT CONDUCTED THE INDEPENDENT MEDICAL  
19 EVALUATION, BUT NOT TO TESTIFY WHETHER HE WOULD HAVE REACHED THE  
20 SAME EXACT CONCLUSION AS TO THE FITNESS OF THE EMPLOYEE AS THE  
21 DOCTOR DID.

22 THE COURT: YES. OKAY.

23 MR. VARTAIN: BUT I WAS GOING TO SAY THAT I THINK THAT  
24 THAT IS FAIRLY WITHIN THE SCOPE OF THE DESIGNATION. I HEAR YOUR  
25 HONOR TAKING AN ISSUE WITH THAT, AND WHAT I'D LIKE TO HAVE THE  
26 OPPORTUNITY TO -- I'D LIKE TO, FOR SURE, RESOLVE -- HAVE THE

7

1 COURT RULE ON THAT BEFORE HE TAKES THE STAND.

2 THE COURT: DIDN'T I JUST RULE ON IT?

3 MR. VARTAIN: OH, YOU DID. OKAY. YOU DID.

4 THE COURT: I THOUGHT YOU WERE RESTATING MY RULING SO  
5 YOU COULD UNDERSTAND IT.

6 MR. VARTAIN: NOW, I WILL DEEM WHAT I JUST DID  
7 RESTATING YOUR RULING. AND NOW I KNOW WHEN YOU MAKE A RULING.  
8 THIS IS YOUR SECOND RULING. NOW I KNOW HOW YOU RULE.

9 THE COURT: ALL RIGHT. ALL RIGHT.

10 MR. VARTAIN: ALL RIGHT. I GET IT. I NOW KNOW WHAT  
11 YOU WANT, YOUR HONOR.

12 THE COURT: OKAY.

13 NOW, MR. LEBOWITZ, YOUR MOTION WAS BROADER.

14 MR. LEBOWITZ: YES.

15 THE COURT: AND I AM DENYING THE MOTION AS TO EXCLUDE  
16 DR. REYNOLDS ENTIRELY. AND I BELIEVE THAT I'VE COVERED THE ONLY  
17 PORTION THAT YOU WISH TO NARROW. DID I MISS ANYTHING, THOUGH?

18 MR. LEBOWITZ: NO, YOUR HONOR. THAT IS THE SCOPE OF  
19 THE ALTERNATIVE REQUEST.

20 THE COURT: ALL RIGHT, THEN.

21 OKAY. LET'S GO ON TO PLAINTIFF'S IN LIMINE MOTION  
22 NO. 3 -- I'M SORRY. I HAVE SO MANY PIECES OF PAPER I'M TRYING  
23 TO KEEP UP WITH -- TO LIMIT THE TESTIMONY OF DEFENDANT'S EXPERT  
24 WITNESS TO CONCLUSIONS OR OPINIONS EXPRESSED IN THE DEPOSITION.

25 MR. LEBOWITZ, IN THE OPPOSITION MR. VARTAIN SUGGESTS  
26 THAT THE SITUATION WITH DR. MISSETT WAS DISTINCTLY DIFFERENT AS

8

1 A NON-RETAINED PERCIPIENT EXPERT WITNESS THAN DR. REYNOLDS. I'D  
2 LIKE TO HEAR A RESPONSE ON THAT ISSUE.

3 MR. LEBOWITZ: NORMALLY, I MIGHT AGREE WITH THAT  
4 CHARACTERIZATION, BUT NOT IN THIS CASE. BASED ON THE  
5 REPRESENTATIONS MADE BOTH BY BARRY MARSH, WHO IS DR. MISSETT'S  
6 ATTORNEY, AND BY MR. VARTAIN WHEN, ON MY INQUIRY, DURING EXPERT  
7 DISCOVERY AS TO WHETHER OR NOT THEY WERE GOING TO WITHDRAW HIS  
8 NAME OR HOW THEY WERE GOING TO USE HIM AS AN EXPERT, ESSENTIALLY  
9 REQUESTING FURTHER DEPOSITION.

10 AND BOTH MR. MARSH AND MR. VARTAIN VERY EXPLICITLY  
11 EXPRESSED -- AND I PUT THE LETTERS IN THE EXHIBITS FOR YOU --  
12 THAT HE HAD ALREADY TESTIFIED TO EVERYTHING THAT HE WAS GOING TO  
13 TESTIFY ABOUT AT TRIAL, AND THAT THEY WERE NOT GOING TO PRODUCE  
14 HIM FOR A SECOND DEPOSITION, FOR EXPERT DEPOSITION DURING EXPERT  
15 DISCOVERY. IF THAT'S THEIR POSITION, I THINK THEY'RE STUCK WITH  
16 IT. AND THAT'S THE POSITION THEY TOOK WITH ME, THAT HE'S  
17 TESTIFIED TO EVERYTHING THAT HE'S GOING TO TESTIFY ABOUT. AND,  
18 THEREFORE, THAT'S WHERE THEY ARE.

19 THE COURT: MY PROBLEM WITH THAT IS -- I DID READ  
20 THOSE LETTERS. I AGREE THAT THEY REFUSED TO MAKE HIM AVAILABLE  
21 FOR A SECOND DEPOSITION. BUT, TYPICALLY, THE CONCLUDING  
22 QUESTION AT A RETAINED EXPERT'S DEPOSITION IS, "DOCTOR, WHAT  
23 OTHER OPINIONS HAVE YOU BEEN ASKED TO RENDER?" AND THE DOCTOR  
24 SAYS, "THERE ARE NO OTHERS. I'VE GIVEN THEM ALL," OR "OH, YEAH.  
25 THERE WAS THIS OTHER ONE," AND THEY SPILL IT. AND THAT IS  
26 DEFINED IN THE SCOPE OF THEIR TESTIMONY.

9

1 IN THIS CASE, DR. MISSETT WASN'T RETAINED TO DO  
2 ANYTHING FOR THIS TRIAL. HE WAS RETAINED -- HE WAS HIRED BY  
3 MENLO COLLEGE TO PERFORM AN EVALUATION OF THE PLAINTIFF BEFORE  
4 SHE BECAME A PLAINTIFF, SO I'M STRUGGLING WITH HOW I COULD LIMIT  
5 HIS TESTIMONY. NOW, I MAY BE WILLING TO MAKE SURE THAT HE  
6 PRESENTS HIMSELF FOR A FURTHER BRIEF DEPOSITION SO THAT YOU CAN  
7 JUST BE AWARE OF ANYTHING ELSE HE'S GOING TO SAY, BUT I'M NOT

8 INCLINED TO PRECLUDE HIM FROM GIVING ALL HIS OPINIONS ABOUT THE  
9 SCOPE OF THE WORK HE DID AND WHY HE DID IT.

10 MR. LEBOWITZ: WHAT TROUBLES ME ABOUT THAT DISTINCTION  
11 IS THAT THEY DID NOT -- IN THEIR EXPERT DISCLOSURE, HE WAS NOT  
12 LISTED AS A NON-RETAINED EXPERT. HE WAS LISTED AS A RETAINED  
13 EXPERT IN THE DISCLOSURE. THERE WAS NOT A SEPARATE --

14 THE COURT: WHEN DID THAT CHANGE?

15 MR. LEBOWITZ: IT WAS NEVER -- THE EXPERT DISCLOSURE  
16 WAS MADE -- I TOOK HIS DEPOSITION DURING FACT DISCOVERY BECAUSE  
17 HE'S A PERCIPIENT WITNESS.

18 THE COURT: AND HE WAS A PARTY AT THE TIME.

19 MR. LEBOWITZ: NO, HE WAS NOT A PARTY --

20 THE COURT: WAS HE ALREADY DISMISSED?

21 MR. LEBOWITZ: -- AT THE TIME THAT I TOOK HIS  
22 DEPOSITION. HE HAD ALREADY BEEN DISMISSED. I TOOK HIS  
23 DEPOSITION PURSUANT TO SUBPOENA AS A FACT WITNESS. AND  
24 SUBSEQUENT TO HIS DEPOSITION BEING CLOSED, HE WAS THEN  
25 DESIGNATED AS AN EXPERT. AND IT WAS NOT SEPARATELY DESIGNATED  
26 AS A NON-RETAINED EXPERT AS, FOR INSTANCE, WE DO IN OUR EXPERT

10

1 DESIGNATIONS. WHEN WE HAVE TREATERS, FOR INSTANCE, OR  
2 PERCIPIENT WITNESSES WHO WILL GIVE OPINION TESTIMONY, WE  
3 DESIGNATE THEM AS NON-RETAINED EXPERTS.

4 THE COURT: I DO SEE THAT. MS. ADLER SIGNED IT. SHE  
5 HAS DOCUMENTS IT WAS A RETAINED EXPERT.

6 MR. VARTAIN: YOUR HONOR, COUNSEL IS OMITTING THAT WE  
7 SENT A SUBSEQUENT LETTER THAT SAID THAT WAS AN ERROR. I DON'T  
8 KNOW THAT HE INCLUDED IT, BUT DR. MISSETT HAS CLARIFIED THAT  
9 THAT WAS AN ERROR. HE'S A NON-RETAINED EXPERT, AND THAT'S THE  
10 LETTER THAT SAID HE WILL ONLY BE TESTIFYING ON THE OPINIONS  
11 RELATED TO HIS SERVICE AS MEDICAL EVALUATOR OF THE PLAINTIFF.

12 MR. LEBOWITZ: THAT LETTER IS IN THE PACKET WE GAVE  
13 YOU. THAT IS THE SAME LETTER WE SUBMITTED IN THE INDEX, AND  
14 THAT IS -- IT DIDN'T NECESSARILY SAY THE DESIGNATION WAS AN  
15 ERROR. IT JUST SOUGHT TO RECHARACTERIZE IN SOME SENSE WHAT  
16 THEIR DESIGNATION MEANT. THERE WAS NEVER A SUBSEQUENT  
17 DESIGNATION PRODUCED OR SERVED.

18 THE COURT: THIS WAS THE NOVEMBER 3, 2008 LETTER,  
19 INDICATING DR. MISSETT HAS NOT BEEN RETAINED BY A PARTY?

20 MR. VARTAIN: YES.

21 MR. LEBOWITZ: YES.

22 MR. VARTAIN: AND WE'VE NEVER HEARD OF THE  
23 DISAGREEMENT FROM OPPOSING COUNSEL THAT THEY DIDN'T UNDERSTAND  
24 THAT. AND HE NEVER AGAIN AFTER THAT LETTER ASKED TO TAKE HIS  
25 DEPOSITION.

26 THE COURT: AND THE DEPOSITION WAS TAKEN PRIOR TO

1 NOVEMBER 3RD?

2 MR. LEBOWITZ: YES.

3 THE COURT: OKAY.



4 SO WHEN THE DEPOSITION WAS TAKEN, DR. MISSETT WAS NO  
5 LONGER A PARTY?

6 MR. LEBOWITZ: THAT'S CORRECT.

7 MR. VARTAIN: BUT HIS ATTORNEY WAS PRESENT, YOUR  
8 HONOR.

9 THE COURT: I UNDERSTAND.

10 WELL, DR. MISSETT'S ROLE IS CENTRAL TO THIS CASE AND  
11 HIS OPINIONS ARE CENTRAL TO THIS CASE. IT APPEARS THAT -- IT  
12 DOESN'T MAKE SENSE TO ME THAT WE WOULD LIMIT DR. MISSETT'S  
13 TESTIMONY. THESE ARE OPINIONS THAT HE HAD ABOUT THE WORK THAT  
14 HE DID AS A NON-RETAINED, PERCIPIENT EXPERT WITNESS.

15 AS I SAY, MR. LEBOWITZ, IF YOU WANT HIM TO MAKE  
16 HIMSELF AVAILABLE AFTER COURT HOURS OR EVEN ON FRIDAY OF THIS  
17 WEEK, ASSUMING HIS AVAILABILITY -- BECAUSE WE'RE NOT IN  
18 SESSION -- I'D GRANT YOU THAT REQUEST, IF THAT'S WHAT YOU'D  
19 LIKE.

20 MR. LEBOWITZ: LET ME TAKE A LOOK AT HIS DEPOSITION TO  
21 MAKE ABSOLUTELY SURE.

22 THE COURT: OKAY. I DON'T KNOW IF HE'S AVAILABLE.  
23 WE'D HAVE TO FIND OUT.

24 MR. VARTAIN: I WOULD ASSIST IN THAT REGARD. I KNOW  
25 HE'S IN TOWN, YOUR HONOR.

26 THE COURT: GOOD.

1 MR. VARTAIN: I MEAN, HE TOLD ME HE HAS FOUR SUBPOENAS

2 IN DIFFERENT COURTS, BUT HE'S IN TOWN RIGHT NOW.

3 THE COURT: OKAY.

4 MR. VARTAIN: YOU'VE RULED, BUT MAY I ADD SOMETHING  
5 FOR ASSISTANCE FOR --

6 THE COURT: SURE.

7 MR. VARTAIN: THE SCOPE OF THE DEPOSITION THAT  
8 MR. LEBOWITZ TOOK, AS I READ IT THE OTHER NIGHT, WAS COEXTENSIVE  
9 WITH THE SCOPE OF THE MEDICAL EVALUATION. AND THAT'S GOING TO  
10 BE THE FOCUS OF OUR EXAMINATION, THE MEDICAL EVALUATION THAT HE  
11 TOOK. I'M NOT GOING TO ASK HIM OPINIONS ON OTHER MATTERS THAN  
12 JUST THE SCOPE OF WHAT HE DID.

13 THE COURT: WELL, AND CERTAINLY AS A NON-RETAINED  
14 EXPERT, YOU WOULD ONLY BE ABLE TO ASK HIS OPINION ABOUT THE WORK  
15 THAT HE DID AS THE MENLO COLLEGE'S CONSULTANT OR WHATEVER HIS  
16 STATUS WAS. I DON'T KNOW WHETHER -- WHATEVER IT WAS.

17 MR. VARTAIN: YEAH. AND SOME BACKGROUND ABOUT HOW  
18 MANY OF THESE HE'S DONE BEFORE AND SO ON.

19 THE COURT: OH, SURE. OF COURSE.

20 MR. VARTAIN: YEAH.

21 THE COURT: THAT'S NOT AN OPINION, THOUGH. THAT'S  
22 GOING TO BE HIS FACTUAL --

23 MR. VARTAIN: I'M THINKING THAT WITH SOME ASSISTANCE  
24 AND CLARIFYING WHAT THE INTENDED SCOPE OF HIS DIRECT IS, IF THAT  
25 CHANGES, WE WILL DO EVERYTHING WE CAN.

26 THE COURT: GOOD.

1 MR. VARTAIN: WE WILL MAKE HIM AVAILABLE. WE THINK  
2 THAT WOULD BE FAIR.

3 THE COURT: ALL RIGHT.

4 THEN AS TO DR. MISSETT, I'M GOING TO DENY THE MOTION.  
5 BUT I WILL REQUIRE THAT DR. MISSETT BE AVAILABLE FOR DEPOSITION  
6 TO FOLLOW UP ON ANY OTHER OPINIONS. COUNSEL MAY MEET AND CONFER  
7 AND DISCUSS WHETHER THAT'S NECESSARY. AND I WOULD IDENTIFY  
8 FRIDAY, DECEMBER 5TH, WHEN WE'RE NOT IN TRIAL AS AN APPROPRIATE  
9 DAY, ASSUMING DR. MISSETT CAN MAKE SOME TIME AVAILABLE IN HIS  
10 SCHEDULE. TYPICALLY, SUBPOENAS FOR OTHER CASES WOULD NOT  
11 REQUIRE TESTIMONY ON FRIDAY AFTERNOONS, SO LET'S HOPE THAT'S  
12 GOING TO BE AVAILABLE.

13 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT. BUT THE MOTION IS A LITTLE BIT  
15 BROADER AND THAT IS -- THEN AS TO DR. REYNOLDS, HE'S THE ONLY  
16 OTHER RETAINED -- HE'S THE RETAINED EXPERT, CORRECT?

17 MR. LEBOWITZ: CORRECT.

18 THE COURT: IT LOOKS AS THOUGH THE ISSUE OF  
19 DR. REYNOLDS, THAT THE DEPOSITION WAS COMPLETE, THAT HE WOULD BE  
20 LIMITED ONLY TO HIS OPINIONS THAT HE GAVE AT HIS DEPOSITION.

21 MR. VARTAIN, WAS THAT CORRECT?

22 AGAIN, I'M SORRY --

23 MR. VARTAIN: I DON'T THINK HE GOT ASKED THAT CATCHALL  
24 QUESTION, YOUR HONOR.

25 THE COURT: WELL, LET'S LOOK AND LET ME -- I HAVE A  
26 SEPARATE GROUP OF EXHIBITS, SEPARATE FROM EACH MOTION, SO I'M

1 HAVING A HARD TIME ACCESSING IT AGAIN. I'M GLAD TO TAKE THE  
2 TIME TO FIND IT, BUT I NEED TO LOOK AT THE DEPOSITION TO SEE.

3 MR. LEBOWITZ: YOU KNOW, YOUR HONOR, WE DIDN'T HAVE --  
4 WE DID HAVE, BUT I DIDN'T GIVE YOU THAT PART OF THE TRANSCRIPT.  
5 I DON'T SEEM TO HAVE IT RIGHT IN FRONT OF ME.

6 THE COURT: I HAVE PART OF DR. REYNOLDS'S DEPOSITION.

7 MR. LEBOWITZ: RIGHT. IT WAS A DIRTY-ASCII VERSION.  
8 IT WAS THE DAY AFTER IT WAS TAKEN.

9 THE COURT: RIGHT.

10 MR. LEBOWITZ: I BELIEVE I HAVE IT ELECTRONICALLY, BUT  
11 I'LL HAVE TO LOOK IT UP. AT THIS MOMENT WE CAN GET OUR COMPUTER  
12 SET UP AND --

13 MR. VARTAIN: IT MAY BE OF HELP IF I EXPLAINED WHY I  
14 OPPOSED THIS PART OF THE MOTION, YOUR HONOR.

15 THE COURT: WELL, I'M JUST LOOKING AT PAGE -- IN THE  
16 EXHIBIT THAT YOU GAVE ME, PAGE 74, THE QUESTION WAS, "WILL YOU  
17 PLEASE TELL ME ALL THE OPINIONS AND CONCLUSIONS YOU HAVE REACHED  
18 IN THIS CASE." AND THEN THE DOCTOR WENT ON TO TESTIFY. IT  
19 SEEMS TO ME THAT THAT QUESTION SHOULD COVER IT. AND SO  
20 SOMETHING -- NOW, THAT'S ONLY PART OF IT.

21 IT'S REALLY MORE OF AN ADMONITION, NOT AN ORDER, THAT  
22 DR. REYNOLDS WILL BE LIMITED TO THOSE OPINIONS. BUT I WON'T  
23 KNOW IF HE'S GIVING A NEW OPINION. AND SO THE OBJECTION, IN  
24 FACT, NEEDS TO BE STATED AT THE TIME THAT THE QUESTION IS ASKED

25 CALLING FOR AN OPINION THAT'S NOT IN THE DEPOSITION, AND THEN  
26 YOU'RE GOING TO HAVE TO SUBMIT THE DEPOSITION. AND WE'LL HAVE

15

1 TO TAKE A BREAK FOR YOU TO ESTABLISH THAT DR. REYNOLDS DID NOT,  
2 IN FACT, OFFER THE OPINION AT HIS DEPOSITION.

3 SO I LEAVE IT AT THAT, AND I'M -- AS TO DR. REYNOLDS  
4 IT'S GRANTED, BUT NEEDS TO BE ASSERTED AT EACH INSTANCE.

5 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

6 THE COURT: IN LIMINE MOTION NO. 4, TO PRECLUDE ANY  
7 EVIDENCE OR MENTION OF DEFENDANT'S NONPROFIT STATUS. YOU KNOW,  
8 AT FIRST BLUSH THAT WAS A VERY APPEALING MOTION, UNTIL I READ  
9 MR. VARTAIN'S OPPOSITION, AND IT BECAME MORE COMPLICATED.

10 THERE'S NOTHING PARTICULARLY RELEVANT ABOUT MENLO  
11 COLLEGE BEING A NONPROFIT EDUCATION INSTITUTION JUST STANDING  
12 OUT THERE BY ITSELF. HOWEVER, TO THE EXTENT THAT YOU PUT ON  
13 EVIDENCE OF MOTIVATION, IT WOULD BE APPROPRIATE FOR MENLO  
14 COLLEGE TO BE ABLE TO DEFEND BY ESTABLISHING FOR THE JURY THAT  
15 THEY DON'T HAVE A PROFIT MOTIVE. THEY MIGHT HAVE OTHER MOTIVES.  
16 THEY MAY HAVE -- DISCRIMINATION IS USUALLY ANTICOMPETITIVE, IN  
17 FACT. AND SO, YOU KNOW, I THINK THAT IF THEY -- IF THEY WERE  
18 MOTIVATED BY A DESIRE TO SAVE MONEY, THAT WOULD NOT BE UNLAWFUL  
19 DISCRIMINATION NECESSARILY. SO IT'S A COMPLICATED ARGUMENT.

20 MR. LEBOWITZ: WELL, IF I MAY?

21 WE'RE NOT ARGUING AND WE HAVE NO INTENTION OF PUTTING  
22 ON EVIDENCE THAT THERE WAS A PROFIT MOTIVE BEHIND ANYTHING THAT

23 WAS GOING ON HERE. AND SO TO THE EXTENT THAT IT WOULD SOMEHOW  
24 REBUT OUR ASSERTION THAT THERE WAS A PROFIT MOTIVE BEHIND  
25 TERMINATING OUR CLIENT, WELL, THAT'S NOT GOING TO BE PART OF THE  
26 CASE.

16

1 THE COURT: OKAY.

2 MR. LEBOWITZ: THE IDEA -- I MEAN, FOR THEM TO SAY  
3 "WE'RE AN EDUCATIONAL INSTITUTION OUT THERE TO MOLD THE MINDS  
4 OF," YOU KNOW, "CARRY FORTH AND MOLD THE MINDS OF THE NEXT  
5 GENERATION," FINE. THAT'S FAIR GAME. THAT'S WITHIN THE REALM  
6 OF CURRYING FAVOR. BUT WHEN YOU GO TO NONPROFIT STATUS,  
7 ESPECIALLY WHEN YOU TAKE IN TANDEM THEIR MOTION TO BIFURCATE AND  
8 EXCLUDE EVIDENCE OF THEIR FINANCIAL STATUS --

9 THE COURT: WELL, THE LEGISLATURE GAVE THEM THAT  
10 RIGHT.

11 MR. LEBOWITZ: I UNDERSTAND. BUT IF YOU'RE DOING  
12 THAT, AND THEN TO SAY THEY CAN COME IN AND TELL THE JURY, "WELL,  
13 WE'RE A NONPROFIT INSTITUTION AND, THEREFORE, WE DIDN'T  
14 DISCRIMINATE, BECAUSE WE'RE A NONPROFIT INSTITUTION AND WE HAVE  
15 NO PROFIT MOTIVE TO DISCRIMINATE," YOU'RE GOING BOTH WAYS ON  
16 THAT ISSUE OF FINANCIAL STATUS AND FINANCIAL BEING OF THE  
17 ENTITY.

18 IT'S ALSO CONFUSING TO THE JURY BECAUSE NONPROFIT  
19 DOESN'T MEAN, "WE DON'T HAVE MONEY." IT JUST MEANS, "WE HAVE TO  
20 PAY OUT ALL OF THE MONEY THAT WE TAKE IN EVERY YEAR." THAT'S

21 ALL NONPROFIT MEANS. IT'S JUST THAT CORPORATE DESIGNATION THAT  
22 SAYS, "WE'RE NOT ALLOWED TO TAKE A PROFIT. WE HAVE TO PAY TO  
23 OUR FACULTY, TO OUR PEOPLE, EVERYTHING ELSE."

24 THE COURT: LET'S BREAK IT DOWN A LITTLE BIT, BECAUSE  
25 I AGREE WITH YOU AND THAT'S HOW YOU PITCHED THE MOTION IN THAT  
26 GENERIC SENSE OF NONPROFIT. WHAT MR. VARTAIN FURTHER ARGUES,

17

1 THOUGH, IS HE WOULD LIKE TO PUT ON EVIDENCE THAT THERE'S NO --  
2 THERE ARE NO SHAREHOLDERS THAT WILL MAKE MORE MONEY. THERE'S NO  
3 PROFIT THAT THE INSTITUTION WILL MAKE. THERE'S NO -- HE REALLY  
4 BROKE IT DOWN.

5 AND I'M NOT ARTICULATING IT AS WELL AS YOU DID,  
6 MR. VARTAIN.

7 HE SAYS THEY'RE NOT MAXIMIZING A RETURN TO  
8 SHAREHOLDERS BECAUSE THERE ARE NONE. HE'S NOT MOTIVATED BY  
9 PERSONAL COMPENSATIONS OR BONUSES BASED ON PROFIT BECAUSE THERE  
10 IS NO PROFIT.

11 MR. LEBOWITZ: BUT NONE OF THAT IS RELEVANT, YOUR  
12 HONOR. NONE OF THAT IS RELEVANT TO ANY ISSUE IN THE CASE. AND  
13 ALL IT IS IS AN ATTEMPT TO CURRY FAVOR AND GET THE JURY TO SAY,  
14 "OH, THEY'RE A NONPROFIT ORGANIZATION, THEN WE SHOULDN'T  
15 AWARD" --

16 THE COURT: I DON'T THINK YOU SHOULD GUESS THAT  
17 THEY'RE UNAWARE OF WHAT "NONPROFIT" MEANS.

18 MR. LEBOWITZ: "WE SHOULDN'T AWARD THE PLAINTIFF SO

19 MUCH MONEY BECAUSE THEY'RE A NONPROFIT ORGANIZATION." THAT'S  
20 THE GOAL.

21 THE COURT: THAT'S DIFFERENT, THOUGH. WELL --

22 MR. LEBOWITZ: THAT'S THE GOAL OF -- AND THAT'S THE  
23 PROBLEM OF ALLOWING THAT KIND OF COMMENTARY IN FRONT OF THE JURY  
24 IS THAT INFLUENCES A PART OF THEIR DECISION MAKING THAT'S NOT  
25 RELEVANT AND HAS NO ISSUE IN THE CASE.

26 THE COURT: WELL, BUT I HAVE TO DETERMINE WHETHER THE

18

1 PROBATIVE VALUE OF THE INFORMATION IS OUTWEIGHED BY ITS  
2 PREJUDICIAL EFFECT, UNDER SECTION 352. I HAVE TO DETERMINE IF  
3 IT WILL SO PLAY ON THE SYMPATHIES OF THE JURY JUST BY THE WORD  
4 "NONPROFIT," THAT THAT WILL OUTWEIGH THE PROBATIVE VALUE OF THE  
5 EVIDENCE THAT IS OFFERED BY THE DEFENDANT. AND I DON'T ACTUALLY  
6 SEE THAT, BECAUSE I THINK IT IS -- THE ALTERNATE INFERENCE IS  
7 WHAT THE COLLEGE IS TRYING TO ADDRESS.

8 AND THAT IS THAT A LOT OF PEOPLE WERE MAKING MONEY OFF  
9 OF THIS JOB ACTION AND, THEREFORE, THEY WERE DISCRIMINATING.  
10 NOW, I DON'T KNOW IF THAT WASHES OR NOT BUT THAT'S --

11 MR. LEBOWITZ: THAT'S JUST NOT PART OF THE CASE.  
12 THAT'S NOT PART OF OUR ARGUMENT. THAT'S NOT PART OF ANY  
13 EVIDENCE.

14 MR. PETERS: IT'S NOT OUR CLAIM.

15 MR. LEBOWITZ: IT'S NOT PART OF ANYTHING THAT WE'RE  
16 PUTTING IN FRONT OF THE JURY.



17 MR. VARTAIN: WELL, THE THIRD AMENDED COMPLAINT AND  
18 THE DEPOSITION OF THE PLAINTIFF GOES ON AND ON ABOUT HOW SHE HAS  
19 EDUCATED THOUSANDS OF STUDENTS. SHE HAS DONATED HER TIME, EXTRA  
20 TIME AFTER WORK TO THE STUDENTS. SHE'S GOT A NOT-FOR-PROFIT  
21 ELEMENT TO HER CASE. AND SO FOR THE CORPORATION AND THE PEOPLE  
22 WHO WORK THERE TO TESTIFY THAT THEY HAVE A SIMILAR  
23 NOT-FOR-PROFIT ORIENTATION --

24 THE COURT: WELL, YOU KNOW, I THINK THAT IT'S THE TERM  
25 "NOT FOR PROFIT" THAT WE'RE FOCUSING ON.

26 MR. LEBOWITZ: EXACTLY.

19

1 THE COURT: NOT THE OTHER EVIDENCE OF THE ACTION. I  
2 MEAN, QUITE FRANKLY, THE MINUTE YOU SAY "MENLO COLLEGE," I THINK  
3 IT IS AS LIKELY THAT THE JURY WILL ASSUME IT'S NOT FOR PROFIT AS  
4 TO ASSUME THE OPPOSITE. BECAUSE EDUCATIONAL INSTITUTIONS, WE  
5 DON'T NORMALLY THINK OF THEM AS PROFIT-MAKING ENTITIES. IT'S A  
6 PRIVATE COLLEGE THAT CHARGES WHATEVER TUITION IT WISHES TO ITS  
7 STUDENTS, BUT THAT DOESN'T MAKE IT FOR PROFIT.

8 MR. VARTAIN: MAY I COMMENT ON THAT?

9 MR. LEBOWITZ: I THINK WHAT MR. VARTAIN JUST  
10 ARTICULATED A MOMENT AGO AS WHAT HE WOULD LIKE TO ARGUE TO THE  
11 JURY IS PERFECTLY FINE AND FAIR GAME, AS FAR AS I'M CONCERNED.  
12 AND YOU'RE ABSOLUTELY RIGHT, IT IS THAT WORD "NONPROFIT" BECAUSE  
13 IT'S SO LOADED AND IT MEANS DIFFERENT THINGS AND IT HAS MANY  
14 DIFFERENT IMPLICATIONS THAT THAT'S WHAT WE HAVE A PROBLEM WITH.

15 MR. VARTAIN: WELL, YOUR HONOR, I THINK WHAT COUNSEL  
16 IS TALKING ABOUT IS WHAT HE CAN ARGUE TO THE JURY HE THINKS IT  
17 MEANS, AND THAT HE CAN ARGUE THAT HE -- THE FACTS, HE CAN  
18 CROSS-EXAMINE ON, YOU KNOW, HOW MUCH MONEY THEY MAKE, ET CETERA,  
19 AND THEN MAKE THE ARGUMENT THAT BEING NONPROFIT DOESN'T MEAN  
20 THAT YOU DON'T NECESSARILY -- DON'T DISCRIMINATE AGAINST THE  
21 LAW.

22 SO THIS IS ALL ARGUMENT FOR THE JURY, IF HE WANTS.  
23 THE FACT -- ON THE COLLEGES, YOUR HONOR, THERE ARE NOW MANY  
24 FOR-PROFIT COLLEGES, AND THEY ARE TUNED IN THE NEWSPAPER;  
25 UNIVERSITY OF PHOENIX. THERE ARE MANY, MANY -- WE MIGHT CALL  
26 THE RECIDIVIST FOR-PROFIT COLLEGES. I DON'T REPRESENT THEM. SO

20

1 THERE'S THAT IMPLICATION OUT THERE, AND I FEEL IT'S IMPORTANT.

2 I WILL TELL YOU IT'S NOT GOING TO BE A MAJOR THEME OF  
3 THE CASE, BUT I DO HAVE A RIGHT TO DESCRIBE WHAT THE CORPORATE  
4 CHARTER IS. IT'S A CHARITABLE CORPORATION UNDER THE -- IT'S A  
5 PUBLIC -- YOU KNOW, IT'S A NONPROFIT PUBLIC BENEFIT CORPORATION.

6 THE COURT: THAT'S WHAT IT IS, NOT CHARITABLE.

7 MR. LEBOWITZ: NOT CHARITABLE.

8 I WAS GOING TO SAY WE'RE GOING REALLY FAR.

9 MR. VARTAIN: NO. IT ACTUALLY DOES HAVE CHARITABLE  
10 OBJECTIVES, AND THAT'S WHAT IT SO STATES. IT'S NOT CHARITABLE.

11 THE COURT: YOU KNOW, I AM GOING TO DENY THE MOTION  
12 BECAUSE I DO BELIEVE THAT THE COLLEGE HAS THE RIGHT TO DESCRIBE

13 WHAT IT IS, AND THAT'S PART OF WHAT IT IS. I BELIEVE THAT THEY  
14 HAVE THE RIGHT TO ADDRESS ISSUES THAT THEY FEEL THE JURY MAYBE  
15 HAVE ON THEIR MINDS.

16 IT IS ONLY INTERESTING TO ME THAT DISCRIMINATION AND  
17 PROFIT USUALLY ARE AT ODDS WITH EACH OTHER. BECAUSE IT NORMALLY  
18 WOULD PRESUME THAT BUT FOR THE DISCRIMINATION YOU'D HAVE A  
19 HIGHLY-FUNCTIONING EMPLOYEE IN WHATEVER SETTING, WHETHER IT'S  
20 PRODUCING WIDGETS OR TEACHING COLLEGE-LEVEL STUDENTS, THAT BUT  
21 FOR THE DISCRIMINATION THE EMPLOYEE WAS DOING THEIR JOB AT AT  
22 LEAST A SATISFACTORY LEVEL. AND DISCRIMINATION, BEING  
23 ANTICOMPETITIVE, OVERRIDES THE NORMAL PROFIT-SEEKING MOTIVE OF  
24 AN ORGANIZATION. THAT IS SAMUELSON ECONOMICS FROM A TO Z.

25 SO, YOU KNOW, IT'S AN INTERESTING ARGUMENT. I DON'T  
26 THINK IT PLAYS ON THE SYMPATHIES OF THE JURY. I DON'T THINK

21

1 IT'S -- THE WORD "CHARITABLE" PERHAPS WOULD. WE'RE NOT GOING TO  
2 GO THERE ON CHARITABLE. THIS IS NOT A CHARITY ORGANIZATION, BUT  
3 IT IS A NOT-FOR-PROFIT PUBLIC BENEFIT CORPORATION. IT'S AN  
4 EDUCATIONAL INSTITUTION. MY GUESS IS ITS TAX STATUS IS NOT AS A  
5 CHARITABLE ORGANIZATION. IT'S AN EDUCATIONAL INSTITUTION.

6 THAT IS SEPARATE UNDER 501(C) OF THE INTERNAL REVENUE  
7 CODE, I BELIEVE. AND ALTHOUGH I DON'T KNOW ANYTHING ABOUT MENLO  
8 COLLEGE, I BELIEVE THOSE ARE DIFFERENT DESIGNATIONS, SO LET'S  
9 STEER CLEAR OF THE WORD "CHARITABLE." BUT YOU MAY DESCRIBE WHAT  
10 THE ORGANIZATION IS. I WILL NOT RESTRICT THAT. AND SO IN

11 LIMINE NO. 4 IS DENIED.

12 LET'S GO ON TO IN LIMINE MOTION NO. 5, TO PRECLUDE ANY  
13 EVIDENCE OR TESTIMONY THAT JAMES MISSETT WAS ORIGINALLY NAMED AS  
14 A DEFENDANT IN THIS MATTER. PLAINTIFF ARGUES THAT'S IRRELEVANT  
15 AND CONFUSING TO THE JURY. IT IS MOST DEFINITELY CONFUSING AND,  
16 GENERALLY, WE HAVE A SPECIAL INSTRUCTION TO THE JURY. WHEN  
17 CLAIMS OR PARTIES ARE DISMISSED MID TRIAL AND WE DON'T EXPLAIN  
18 IT TO THEM, IT'S REALLY CONFUSING.

19 SO, MR. VARTAIN, I'M STRUGGLING TO SEE HOW THE  
20 DISMISSAL OF DR. MISSETT IN ANY WAY REBUTS PLAINTIFF'S ATTACK ON  
21 DR. MISSETT'S IMPARTIALITY, WHICH IS WHAT YOU ARGUE.

22 MR. VARTAIN: I GUESS -- I WAS ANTICIPATING THE QUERY  
23 OF THE CROSS-EXAMINATION OF DR. MISSETT, YOUR HONOR. I THINK  
24 THIS -- WHETHER OR NOT IT'S REBUTTAL WOULD DEPEND ON WHAT THE  
25 CROSS-EXAMINATION IS.

26 THE COURT: YEAH.

22

1 MR. VARTAIN: AND I PROBABLY SHOULD HAVE CONDITIONALLY  
2 OPPOSED IT AND SAID LET'S SEE WHAT THE -- LET'S SEE WHAT THE  
3 CROSS OF HIM IS.

4 THE COURT: OKAY. ALL RIGHT.

5 MR. LEBOWITZ: IF I MAY, YOUR HONOR?

6 I'M A LITTLE CONFUSED ABOUT WHAT THAT REFERENCE IS.

7 THE COURT: YOU DON'T NEED TO BE. DON'T WORRY.

8 I'M GOING TO GRANT THE MOTION.

9 MR. LEBOWITZ: THANK YOU.

10 THE COURT: I ACTUALLY FIND THAT -- UNDER SECTION 352,  
11 THAT TO INTRODUCE THE EVIDENCE THAT DR. MISSETT WAS A PARTY AND  
12 IS NOT, WOULD BE AN UNDUE CONSUMPTION OF TIME BECAUSE I'M AFRAID  
13 WE'RE GOING TO GO INTO A WHOLE TRIAL ON DR. MISSETT. HE WAS  
14 DISMISSED. I DON'T KNOW THE REASONS WHY. MAYBE BECAUSE HE  
15 DIDN'T DO ANYTHING WRONG; MAYBE BECAUSE THERE WAS OTHER REASONS  
16 FOR PLAINTIFF TO DISMISS HIM. BUT I DON'T WANT THE PLAINTIFF TO  
17 END UP TRYING THE CASE OF DR. MISSETT, WHICH WOULD BE A DETOUR  
18 WE DON'T NEED TO TAKE AT THIS TIME.

19 I WILL GRANT NO. 5.

20 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

21 THE COURT: IN LIMINE NO. 6 IS TO PRECLUDE ANY  
22 EVIDENCE OR MENTION OF DISMISSED CAUSES OF ACTION. THAT WOULD  
23 REALLY BE CONFUSING BECAUSE I DON'T EVEN UNDERSTAND WHAT THOSE  
24 WERE. THERE WAS A LOT OF -- AND IT'S TYPICAL IN COMPLAINTS THAT  
25 YOU STATE A CAUSE OF ACTION SEVERAL DIFFERENT WAYS. SO THE FACT  
26 THAT A CLAIM HAS BEEN DISMISSED I THINK, AGAIN, IT WOULD BE

23

1 CONFUSING; IT WOULD BE AN UNDUE CONSUMPTION OF TIME. I KNOW  
2 THAT IN THE FACE OF A SUMMARY JUDGMENT MOTION OR SUMMARY  
3 ADJUDICATION MOTION, SOME CAUSES OF ACTION WERE VOLUNTARILY  
4 DISMISSED. IS THAT CORRECT?

5 MR. LEBOWITZ: THAT'S CORRECT.

6 THE COURT: WHY THEY WERE DISMISSED, AGAIN, WOULD BE

7 AN UNDUE CONSUMPTION OF TIME. PLAINTIFF MAY SIMPLY HAVE DECIDED  
8 THAT IT WAS TIME TO SIMPLIFY THE CASE FOR A JURY AND NOT WORTH  
9 ATTORNEY EFFORT TO OPPOSE CLAIMS THAT WERE NOT BENEFICIAL TO HER  
10 BOTTOM LINE IF SHE WON THE CASE. SO I'M GOING TO GRANT.

11 MR. VARTAIN: COULD I BE HEARD ON THAT?

12 THE COURT: SURE.

13 MR. VARTAIN: I ONLY OPPOSED IT IN PART, YOUR HONOR.  
14 IN PART, THE WORDING OF THE MOTION WAS MUCH LARGER THAN DO NOT  
15 MENTION THAT THESE CAUSES OF ACTION WERE PART OF IT.

16 THE COURT: THAT'S CORRECT.

17 MR. VARTAIN: BUT THERE'S MUCH EVIDENCE THAT'S DEFENSE  
18 EVIDENCE FOR THE COLLEGE THAT WOULD GO BOTH TO THE  
19 DISCRIMINATION CLAIMS THAT ARE HERE, STILL HERE, AND TO THE ONES  
20 THAT WERE DISMISSED. I JUST WANTED CLARITY THAT YOU'RE NOT  
21 PRECLUDING EVIDENCE; YOU'RE PRECLUDING MENTIONING OF CAUSES OF  
22 ACTION.

23 THE COURT: I AM PRECLUDING MENTIONING OF CAUSES OF  
24 ACTION. YOU MAY SUBMIT ANY EVIDENCE TO THE JURY THAT IS  
25 RELEVANT AND OTHERWISE ADMISSIBLE. I'M MAKING NO RULING ON  
26 EVIDENCE.

24

1 MR. LEBOWITZ WOULD HAVE TO POSE AN OBJECTION ON  
2 WHATEVER GROUNDS HE THOUGHT WAS APPROPRIATE TO ANY OF THE  
3 EVIDENCE. SO I AGREE WITH YOU, BUT IT IS SIMPLY THE MENTIONING  
4 OF DISMISSED CAUSES OF ACTION. I'M RULING EXACTLY ON THE

5 LANGUAGE OF HIS MOTION, AND I APPRECIATE YOUR CLARIFICATION.

6 YOU ARE CORRECT.

7 MR. LEBOWITZ: AND, YOUR HONOR, JUST SO WE ALL ARE ON  
8 THE SAME PAGE AND I DO UNDERSTAND YOUR RULING, THERE MAY BE  
9 TIMES -- I AGREE WITH MR. VARTAIN, IN GENERAL PRINCIPLE, THAT  
10 THERE'S A LOT OF EVIDENCE THAT KIND OF GOES -- OVERLAPS AND MAY  
11 WELL HAVE GONE TO ONE OF THE DISMISSED CLAIMS BUT ALSO GOES TO  
12 THE LIVE CLAIMS.

13 THE COURT: SURE.

14 MR. LEBOWITZ: NOTICING THAT CONCEPT, THERE ARE SOME  
15 TIMES, THOUGH, WHERE THE EVIDENCE THAT IS DEDUCED IN DEPOSITION  
16 GOES BEYOND THAT AND GOES ONLY TO THE DISMISSED CAUSE OF ACTION.

17 THE COURT: YOU MAY OBJECT AT THE TIME.

18 MR. LEBOWITZ: AND THAT'S EXACTLY WHAT I UNDERSTAND.

19 THE COURT: ABSOLUTELY. I JUST CAN'T RULE ON THE  
20 ADMISSIBILITY OF EVIDENCE AT THIS STAGE.

21 MR. LEBOWITZ: I AGREE.

22 THE COURT: AND SO THAT'S --

23 MR. LEBOWITZ: I JUST WANTED TO TEE THAT UP SO WHEN IT  
24 COMES UP.

25 THE COURT: YOU'RE RIGHT. AND ABSOLUTELY YOU MAY  
26 OBJECT IF IT'S NOT RELEVANT TO THE CASE BEFORE THE JURY, I'LL

25

1 CONSIDER THAT.

2 MR. LEBOWITZ: THANK YOU.

3 THE COURT: ALL RIGHT.

4 MR. VARTAIN: MAY I ADD ONE THING, YOUR HONOR?

5 THE COURT: YES, OF COURSE.

6 MR. VARTAIN: BECAUSE LATER ON IT MAY HELP YOU.

7 THE COURT: OKAY.

8 MR. VARTAIN: THERE IS NO EVIDENCE THAT WE HAVE TO  
9 OFFER THAT ISN'T EQUALLY ADMISSIBLE, IN OUR OPINION, TO BOTH THE  
10 DISMISSED AND THE CURRENT CLAIMS. THEY'RE NOT CAPABLE OF BEING  
11 SEPARATED OUT FROM A DEFENSE PERSPECTIVE. I'M JUST LETTING YOU  
12 KNOW.

13 THE COURT: I HEAR YOU. THAT DOESN'T SURPRISE ME, BUT  
14 I'M NOT GOING TO PREJUDGE IT.

15 MR. VARTAIN: THAT'S FINE.

16 THE COURT: ALL RIGHT.

17 IN LIMINE NO. 7 WAS TO PRECLUDE THE DEFENDANT FROM  
18 ARGUING THAT PLAINTIFF COULD HAVE OR SHOULD HAVE FILED A  
19 GRIEVANCE OR OTHER INTERNAL COMPLAINT.

20 THERE'S NO OPPOSITION; IS THAT CORRECT?

21 MR. VARTAIN: THAT'S CORRECT.

22 THE COURT: AND I WILL GRANT IN LIMINE MOTION NO. 7.

23 PLAINTIFF'S MOTION NO. 8 WAS TO EXCLUDE WITNESSES FROM  
24 THE COURTROOM. THERE'S NO OPPOSITION, AND I WILL GRANT THAT.

25 NOW, MENLO COLLEGE IS ENTITLED TO A REPRESENTATIVE.

26 SOMETIMES THAT REPRESENTATIVE CHANGES. I KNOW THAT, BUT I'M



1 ONLY GOING TO ASK THAT YOU GIVE US A HEAD'S UP. I DON'T KNOW  
2 WHO YOU'RE GOING TO HAVE. ARE YOU GOING TO HAVE ANYONE FOR JURY  
3 SELECTION?

4 MR. VARTAIN: YES. THIS AFTERNOON SOMEBODY IS GOING  
5 TO COME. ACTUALLY, TWO ARE. BUT THAT'S WHAT I WANTED TO ASK  
6 YOU, YOUR HONOR. WHEN DO YOU PREFER YOUR SEQUESTRATION ORDER TO  
7 TAKE EFFECT? IN OTHER WORDS, IS IT WHEN THE FIRST WITNESS IS  
8 SWORN?

9 THE COURT: USUALLY TAKES PLACE WHEN WE PICK THE JURY,  
10 TOO.

11 MR. VARTAIN: BECAUSE I WOULD LIKE TO HAVE THE  
12 PRESIDENT AND THE VICE PRESIDENT HERE DURING THE OPENING  
13 STATEMENT, WHICH WOULD BE -- AND THEY WON'T BE HERE AGAIN EXCEPT  
14 THERE WILL BE ONE PRETTY MUCH THROUGHOUT. SO THE OPENING  
15 STATEMENT IS THE EXCEPTION TO THE SEQUESTRATION.

16 THE COURT: THEY'RE BOTH GOING TO BE WITNESSES, I  
17 PRESUME.

18 MR. VARTAIN: EVERYONE THAT WOULD BE HERE, THEY WOULD  
19 BE WITNESSES CALLED BY THE OTHER SIDE.

20 THE COURT: ALL RIGHT.

21 SO DR. LOPEZ IS THE PRESIDENT, CORRECT?

22 MR. VARTAIN: HE'S THE PRESIDENT EMERITUS. HE'S NOT  
23 THE PRESIDENT.

24 THE COURT: HE'S NOT. I'M LOOKING AT THE PAPERS; HIS  
25 NAME WAS HERE. SO HE'S NOT. WHO IS THE PRESIDENT NOW?

26 MR. VARTAIN: THE PRESIDENT IS HAIGHT, H-A-I-G-H-T,

1 NOT HITE, H-I-T-E; THAT'S A DIFFERENT ONE. LAST YEAR THERE WAS  
2 A WHOLE ADMINISTRATION CHANGE, YOUR HONOR.

3 THE COURT: AND THE NEW PRESIDENT WILL BE A WITNESS?

4 MR. VARTAIN: HE'S GOING TO BE CALLED --

5 MR. LEBOWITZ: YES.

6 MR. VARTAIN: -- BY ADVERSE.

7 THE COURT: WELL, AS I SAY, YOU'RE CERTAINLY ENTITLED  
8 TO HAVE THE ASSISTANCE OF YOUR CLIENT. YOUR CLIENT HAS THE  
9 RIGHT TO BE PRESENT. WHY TWO PEOPLE?

10 MR. VARTAIN: NO. I JUST MEANT FOR THE OPENING  
11 STATEMENT.

12 THE COURT: OKAY.

13 MR. VARTAIN: I'M NOT TALKING ABOUT DURING -- THERE'S  
14 ONLY GOING TO BE ONE PERSON HERE DURING THE WITNESS TESTIMONY,  
15 AND IT WILL USUALLY BE ONE VICE PRESIDENT. IF HE HAS TO GO AWAY  
16 FOR A DAY, SOMEONE ELSE WILL COME. BUT IT'S JUST FOR THE  
17 OPENING STATEMENT, YOUR HONOR.

18 THE COURT: WHY ARE YOU WANTING THE SECOND WITNESS TO  
19 HEAR THE OPENING STATEMENT?

20 MR. VARTAIN: BECAUSE SOME OF THEM JUST DON'T  
21 UNDERSTAND WHAT THE PLAINTIFF'S CASE IS, AND THEY WANT TO KNOW.  
22 IT'S A BIG CASE FOR THE COLLEGE.

23 MR. LEBOWITZ: I JUST --

24 MR. VARTAIN: IT'S IN THE PUBLIC RECORD. THEY'RE  
25 CONCERNED. THERE'S THIS PUBLIC CHARGE ABOUT THE COLLEGE AND IT

1 MR. LEBOWITZ: I WOULD OBJECT. ONE PERSON IS ENOUGH.

2 THE COURT: ALL RIGHT.

3 YOU KNOW, I'M NOT GOING TO MAKE AN EXCEPTION TO THE  
4 EXCLUSION OF WITNESSES. THEY'RE EXCLUDED FOR THE ENTIRE TRIAL  
5 UNTIL THEY'RE RELEASED FROM TESTIFYING. AND I'M SATISFIED THAT  
6 YOU DON'T NEED TWO REPRESENTATIVES OF THE COLLEGE TO ASSIST YOU,  
7 AND SO I'M NOT GOING TO ALLOW YOU TO DO THAT.

8 NOW, LET ME JUST SAY THAT DURING JURY SELECTION, IT'S  
9 IMPORTANT THAT YOUR CLIENT SIT WITH YOU AT COUNSEL TABLE.  
10 DEPUTY HENNESSY WILL MAKE SURE YOU HAVE CHAIRS. NO MINGLING  
11 WITH THE JURY. YOU DON'T EVEN KNOW WHO THEY ARE. THESE ARE  
12 JUST 80 PEOPLE THAT ARE GOING TO COME HERE NONE OF US KNOWS.

13 ONCE THE TRIAL STARTS, OF COURSE, YOUR CLIENT CAN SIT  
14 IN THE AUDIENCE, IF THAT'S MORE COMFORTABLE. GETS CROWDED AT  
15 COUNSEL TABLE, ESPECIALLY IF I HAVE TWO LAWYERS ON EACH SIDE.  
16 SO PLEASE FREE TO USE THE AUDIENCE CHAIRS DURING TRIAL, BUT AS  
17 SOON AS THIS AFTERNOON STARTS I NEED EVERYBODY IN THE FRONT OF  
18 THE BAR.

19 ALL RIGHT. AND MOTION NO. 9 IS THE 24-HOUR NOTICE  
20 REQUEST REGARDING WITNESSES. WE ALREADY TALKED ABOUT THAT IN  
21 PRETRIAL. IT'S NOT GOING TO BE 24 HOURS, THOUGH. I'M GOING TO  
22 SAY BY 6:00 P.M. ON THE TRIAL DAY BEFORE THAT THERE WILL BE  
23 NOTICE OF THE WITNESSES FOR THE NEXT DAY.

24 MR. LEBOWITZ: AND THE ORDER THAT THEY WILL BE CALLED  
25 OR JUST THE --  
26 THE COURT: I DON'T NEED THE ORDER THAT THEY WILL BE

29

1 CALLED. I NEED YOU TO GIVE THE LIST OF WITNESSES THAT YOU WILL  
2 CALL THE NEXT DAY. YOU CAN EXCHANGE THAT INFORMATION ORALLY  
3 BEFORE YOU LEAVE COURT. YOU MAY SEND IT BY E-MAIL OR VOICEMAIL  
4 OR FAX, AND I WILL REQUIRE THAT THE TWO OF YOU TALK AND HAVE  
5 THAT WORKED OUT AS TO HOW YOU'RE GOING TO DO IT. 6:00 P.M. IS  
6 WHEN YOU HAVE TO DO IT.

7 NOW THERE WAS THE OTHER WRINKLE THAT SOME OF THE  
8 WITNESSES PLAINTIFF WILL CALL IN HER CASE IN CHIEF ARE APPEARING  
9 ON A NOTICE TO APPEAR, AND MR. VARTAIN HAS AGREED TO FACILITATE  
10 BRINGING THOSE WITNESSES TO COURT. FOR THOSE WITNESSES,  
11 24 HOURS IS REQUIRED SO THAT THE WITNESSES KNOW THEY NEED TO BE  
12 HERE. SO THAT'S A LITTLE BIT DIFFERENT ON THE WITNESSES THAT  
13 MR. VARTAIN HAS SOME RESPONSIBILITIES FOR BRINGING TO COURT.

14 LET ME ALSO SAY ON THE RECORD, AS I DISCUSSED IN OUR  
15 PRETRIAL CONFERENCE, YOU ARE REQUIRED TO FILL THE ENTIRE COURT  
16 DAY WITH WITNESS TESTIMONY. IF IT IS NOT THE END OF THE COURT  
17 DAY AND YOU HAVE NO WITNESSES READY, I WILL DEEM THAT YOU HAVE  
18 RESTED.

19 IF YOU HAVE EXPERTS OR DOCTORS WHO ARE PERCIPIENT  
20 WITNESSES WHO NEED THEIR SCHEDULES ACCOMMODATED, I WILL DO  
21 EVERYTHING I CAN TO ASSIST THEM IN INTERRUPTING THEIR DAY AS

22 LITTLE AS POSSIBLE, EVEN SO FAR AS EXPLORING WHETHER IT WOULD BE  
23 APPROPRIATE FOR A PLAINTIFF WITNESS TO BE TAKEN DURING THE  
24 DEFENSE'S PRESENTATION OF THE CASE. I'M NOT GOING TO RULE ON  
25 THAT NOW BECAUSE IT COULD BE PREJUDICIAL TO THE DEFENDANT'S  
26 CASE, BUT HAVE THEM LINED UP SO THAT WE KNOW IN ADVANCE.

30

1 I'LL CERTAINLY ALLOW YOU TO INTERRUPT THE DIRECT  
2 EXAMINATION OF ONE OF YOUR WITNESSES, MR. LEBOWITZ, TO BRING IN  
3 ANOTHER WITNESS. I WILL NOT ALLOW YOU TO INTERRUPT THE  
4 CROSS-EXAMINATION UNLESS, OF COURSE, MR. VARTAIN AGREES. SO,  
5 AGAIN, WORK THAT OUT. IT'S YOUR CASE. YOU MAY PUT IT ON ANY  
6 WAY YOU WANT. AND IF THAT REQUIRES YOU TO PULL A WITNESS OFF  
7 THE STAND IN DEFERENCE TO ANOTHER, I'M GLAD TO MAKE THAT HAPPEN.

8 MR. LEBOWITZ: AND, ALSO, WHAT WE DISCUSSED YESTERDAY  
9 WAS THE POSSIBILITY OF USING PROFESSOR BLOUGH AS A FILL-IN WHEN  
10 THERE ARE SUBSTANTIAL GAPS, AND AS FAR AS HER DIRECT GOES --

11 THE COURT: OF COURSE.

12 MR. LEBOWITZ: -- AND BEING ABLE TO TAKE HER OUT OF  
13 ORDER.

14 THE COURT: ABSOLUTELY. I HAVE NO PROBLEM WITH THAT.  
15 THAT'S FAIRLY TYPICAL, AND I'LL LET YOU MANAGE THAT. IT CAN BE  
16 A LITTLE BIT DIFFICULT, BUT THAT'S YOUR CHOICE.

17 MR. LEBOWITZ: OKAY.

18 MR. VARTAIN: MAY I INTERJECT ONE AGENDA ITEM  
19 REGARDING MOTIONS IN LIMINE THAT I WAS GOING TO WAIT UNTIL THE

20 END, BUT IT'S NATURAL TO COME UP HERE, YOUR HONOR. I AM IN MY  
21 OFFICE NOW PREPARING A MOTION IN LIMINE TO EXCLUDE THE FIRST TWO  
22 WITNESSES ON THE PLAINTIFF'S LIST. AND I THINK I'M GOING TO --  
23 I JUST DECIDED THIS MORNING, FOR LACK OF COMPLIANCE WITH  
24 DISCOVERY, WE JUST LEARNED YESTERDAY THAT THE PLAINTIFF WAS  
25 GOING TO CALL THESE WITNESSES.

26 AND THEY WERE IDENTIFIED IN A SUPPLEMENTAL

31

1 INTERROGATORY RESPONSE ON THANKSGIVING EVE. I THEN ASKED FOR  
2 COUNSEL TO TELL ME IF THEY WERE GOING TO BE CALLED. HE WROTE A  
3 LONG LETTER OF PROTESTATION, BUT HE DIDN'T TELL ME WHETHER THEY  
4 WOULD BE CALLED, SO I JUST FOUND OUT YESTERDAY.

5 NOW, I AM GOING TO DISCUSS IT AT LENGTH AND TRY TO  
6 WORK IT OUT WITH COUNSEL, BUT BECAUSE YOU'RE TALKING ABOUT THE  
7 24 HOURS' NOTICE I JUST WANTED TO GET THAT OUT THERE.

8 THE COURT: WHO ARE THESE WITNESSES?

9 MR. VARTAIN: THEY ARE TWO FACULTY MEMBERS OF THE  
10 COLLEGE OF THE PLAINTIFF. AND THAT'S ALL -- THEY ARE NOT WITHIN  
11 MY CONTROL, BUT I'M GOING TO TRY TO WORK IT OUT WITH COUNSEL.

12 THE COURT: LET'S HOPE YOU WORK IT OUT.

13 MR. LEBOWITZ: YOUR HONOR, THESE ARE FOLKS WHO HAVE  
14 BEEN IDENTIFIED IN DISCOVERY, IN VARIOUS FORMS OF DISCOVERY AND  
15 THROUGH THE FACTS OF THE SITUATION, AS WITNESSES OR POTENTIAL  
16 WITNESSES FOR THIS CASE FOR AT LEAST TWO YEARS, IF NOT  
17 TWO-AND-A-HALF YEARS.

18 THE COURT: I GUESS THE MOTION IS NOT PENDING BEFORE  
19 ME NOW.

20 MR. LEBOWITZ: RIGHT. WE'RE MORE THAN HAPPY TO TALK  
21 ABOUT IT AND WORK IT OUT. THEY ARE UNDER SUBPOENA. THEY HAVE  
22 AGREED TO COME TESTIFY.

23 THE COURT: I'M NOT UNDERSTANDING HOW YOU SUPPLEMENT  
24 DISCOVERY RESPONSES ONE COURT DAY BEFORE TRIAL.

25 MR. VARTAIN: EXACTLY.

26 MR. LEBOWITZ: THEY DID THE SAME THE DAY BEFORE, YOUR

32

1 HONOR. THEY DIDN'T -- YOU'VE GOT TO GET THE WHOLE PICTURE HERE.

2 THE COURT: IT'S NOT BEFORE ME NOW.

3 MR. LEBOWITZ: CORRECT.

4 THE COURT: SO I WILL WAIT AND SEE WHAT THE MOTION IS.

5 MR. VARTAIN: IT WILL BE LIKELY FILED TODAY, UNLESS WE  
6 CAN WORK IT OUT.

7 THE COURT: LET'S HOPE YOU WORK IT OUT.

8 MR. LEBOWITZ: OKAY.

9 THE COURT: LET'S TURN NOW TO THE DEFENSE MOTIONS IN  
10 LIMINE. DEFENDANT'S IN LIMINE MOTION NO. 1 IS TO EXCLUDE  
11 EVIDENCE OF THE COLLEGE'S FINANCIAL CONDITION UNLESS AND UNTIL  
12 THE JURY AWARDS ACTUAL DAMAGES AND FINDS LIABILITY FOR PUNITIVE  
13 DAMAGES. THERE'S NO OPPOSITION AND IT'S MANDATORY. THAT WILL  
14 BE GRANTED.

15 MR. LEBOWITZ: YES.

16 THE COURT: IN LIMINE MOTION NO. 2 IS TO EXCLUDE  
17 EVIDENCE OR REFERENCE BEFORE THE JURY TO FRONT-PAY DAMAGES.

18 MR. VARTAIN, THIS WAS INTERESTING TO ME. YOU DID CITE  
19 FEDERAL CASES ON THIS ISSUE. I READ THE COURT OF APPEAL CASES  
20 THAT MR. LEBOWITZ CITED AND IT SEEMED TO GO WITHOUT QUESTION  
21 THAT THE JURY DECIDES FRONT PAY.

22 MR. VARTAIN: I DISAGREE, YOUR HONOR. I READ THE  
23 CLOUD CASE THIS MORNING. AND THE CLOUD CASE CITES WITH APPROVAL  
24 THE AKERMAN CASE IN THE CLOUD CASE. AND I'M READY TO ARGUE IT.  
25 I DON'T KNOW IF YOU HAVE IT IN FRONT OF YOU OR NOT.

26 THE COURT: LET ME -- I WANT TO GET THOSE CASES IN

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1 FRONT OF ME, PLAINTIFF'S OPPOSITION.

2 MR. VARTAIN: I WOULD NOT HAVE CITED -- I WOULD NOT  
3 HAVE ARGUED IT, YOUR HONOR, IF I --

4 THE COURT: I ALWAYS READ THE NEWEST CASE. I READ THE  
5 HORSFORD CASE, AND THE JURY MAY -- THE JURY GAVE A GENERAL  
6 VERDICT ON DAMAGES, INCLUDING BACK PAY AND FRONT PAY.

7 MR. VARTAIN: CAN I HAVE SOME DISCUSSIONS OF --

8 THE COURT: YEAH.

9 MR. VARTAIN: AS AN EMPLOYMENT LAWYER, I'VE DEALT WITH  
10 THIS ISSUE A LOT.

11 THE COURT: I'M SURE YOU HAVE.

12 MR. VARTAIN: THE ISSUE COMES UP -- THERE IS, OF  
13 COURSE, THE MAKE-WHOLE REMEDY IN FEHA. AND THE MAKE-WHOLE



14 REMEDY IS BACK PAY, AND THEN THE EQUITABLE REMEDY IS  
15 REINSTATEMENT. WHERE THE FRONT PAY CAN COME IN IS IF THE  
16 PLAINTIFF PROVES UP OR THE OTHER SIDE STIPULATES, THAT  
17 REINSTATEMENT IS NOT A FEASIBLE REMEDY BECAUSE THE HOSTILITY  
18 BETWEEN THE PARTIES, THE --

19 IN SOME CASES THE PLAINTIFF IS SO EMOTIONALLY INJURED  
20 BY THE PROOF, THAT SHE'S -- SHE'S DEVASTATED. SHE CAN'T WORK  
21 EITHER THERE OR ANYWHERE, IN WHICH CASE THE CLAIM IS NOT ONE FOR  
22 FRONT PAY, I.E., PAY FROM THIS EMPLOYER IN LIEU OF WHAT SHE  
23 WOULD HAVE EARNED; IT'S FOR LOSS OF EMPLOYMENT OPPORTUNITY. SHE  
24 CAN'T WORK. SHE CAN'T WORK ANYWHERE. SO THERE IS SOME  
25 CONFUSION IN THE HORSFORD CASE. THE WORDING IS A LITTLE SLOPPY,  
26 BUT --

34

1 THE COURT: YOU CAN SAY THAT ABOUT THE COURT OF  
2 APPEAL. I CAN'T.

3 MR. VARTAIN: UNCLEAR, NOT SLOPPY.

4 BUT THE FACT OF THE MATTER IS THERE IS NO AVAILABILITY  
5 UNDER FEHA FOR FRONT PAY, UNLESS THE COURT DETERMINES THAT  
6 REINSTATEMENT IS UNAVAILABLE. THERE IS NOT AN ELECTION OF  
7 REMEDY. SO IN THIS CASE, THE REASON I BROUGHT IT, YOUR HONOR,  
8 IS BECAUSE THIS CASE, THE PLAINTIFF CLAIMS SHE'S ABLE TO WORK,  
9 OTHERWISE SHE WOULDN'T HAVE A DISABILITY CASE. MOREOVER, THE  
10 EVIDENCE IS GOING TO BE THAT THE COLLEGE HAS WANTED HER BACK IN  
11 LESS OF A FULL-TIME POSITION THAN SHE'S WILLING TO COME BACK

12 FOR.

13 SO IT WOULD BE PREJUDICIAL TO GIVE AN EQUITABLE ISSUE.  
14 THAT IS, WELL, IS FRONT PAY AN ALTERNATIVE TO REINSTATEMENT IN  
15 THIS CASE TO THE JURY? THAT'S THE ISSUE. AND IT MAY BE THAT  
16 THE PROPER WAY TO HANDLE THIS IS MAYBE THE PLAINTIFF IS GOING TO  
17 PUT ON NEW EVIDENCE THAT I HAVEN'T SEEN THAT SHE DOESN'T WANT TO  
18 COME BACK TO WORK AT THE COLLEGE BECAUSE, YOU KNOW, SHE THINKS  
19 THEY HATE HER AND IT WOULDN'T BE A FEASIBLE OPTION. BUT THAT'S  
20 NOT WHAT SHE SAID IN DEPOSITION. MY ONLY POINT IS THAT WOULD BE  
21 A DISEQUITABLE DECISION FOR THE COURT.

22 THE COURT: WHAT'S INTERESTING IS -- AND WE'LL PULL  
23 THE CLOUD CASE, IF WE NEED -- IN THE --

24 MR. VARTAIN: MAY I APPROACH?

25 THE COURT: DEPUTY.

26 IN THE HORSFORD CASE -- WELL, I THINK THE COURT OF

35

1 APPEAL WAS STRUGGLING A LITTLE BIT WITH THE DAMAGES BEING IN A  
2 GENERAL VERDICT FORM. AND THAT IS OFTEN A DIFFICULT SITUATION,  
3 OFTEN DIFFICULT BECAUSE IF THERE'S A PROBLEM WITH DAMAGES, YOU  
4 HAVE TO HAVE A WHOLE NEW TRIAL. YOU CAN'T JUST HAVE A  
5 CORRECTION OF THE PORTION OF DAMAGES THAT WAS WRONG.

6 MR. VARTAIN: I WOULD LIKE TO SUGGEST, YOUR HONOR, I  
7 THINK THIS IS A VERY IMPORTANT ISSUE AND WE DO NOT WANT TO HAVE  
8 ATTORNEYS INDUCING ERROR BY, YOU KNOW, NOT CAREFUL BRIEFING FOR  
9 YOUR HONOR. I TURN THE PAGES OF THE CLOUD CASE TO THE HOLDINGS

10 THAT, I THINK -- I DON'T SUGGEST YOU READ THEM HURRIEDLY, YOUR  
11 HONOR, BECAUSE I -- THEY ARE CLEAR THAT IT'S SORT OF THE AKERMAN  
12 POSITION WHEN YOU READ IT CAREFULLY.

13 I WOULD THINK THAT THE PLAINTIFF WOULD DISAGREE WITH  
14 ME ON THAT, BUT I WOULD SUGGEST THAT WE TAKE THIS UP AT SOME  
15 OTHER TIME WHEN IT'S CONVENIENT FOR THE COURT. THE ONLY THING  
16 IT WOULD MEAN IS THAT THE PLAINTIFF WOULD NOT REFER TO THE  
17 FRONT-PAY ISSUE.

18 THE COURT: WELL, YOU'RE KNOCKING OUT \$900,000 OF HER  
19 REQUESTED DAMAGES HERE --

20 MR. VARTAIN: NO.

21 THE COURT: -- FROM THE JURY; NOT FROM THE CASE, BUT  
22 FROM THE JURY.

23 MR. LEBOWITZ: YES.

24 MR. VARTAIN: NO. I JUST WAS SAYING IF YOU WERE TO  
25 DEFER THE RULING UNTIL SOMETIME IN THE CASE, IT WOULD ONLY MEAN  
26 THAT HE WOULDN'T MENTION THE 900,000, THE FRONT-PAY ISSUE IN HIS

1 OPENING. HE COULD PUT ON WHATEVER EVIDENCE OF THE PLAINTIFF UP  
2 UNTIL THE POINT WHERE, YOU KNOW, HE SAYS, "WELL, YOU KNOW, SHE  
3 WOULD HAVE EARNED THIS MUCH." AND THAT GIVES US SOME TIME TO  
4 GRAPPLE WITH THIS. I THINK IT'S A CLEARCUT ISSUE, YOUR HONOR.

5 I JUST DON'T WANT TO HURRY YOU ON IT. IN FEDERAL LAW IT'S  
6 CLEARCUT, AND IN CALIFORNIA IT'S AKERMAN IN THIS CASE.

7 THE COURT: WELL, AKERMAN IS NOT A STATE CASE. IT'S A

8 FEDERAL CASE.

9 MR. VARTAIN: INTERPRETED IN STATE LAW.

10 THE COURT: IT'S NOT BINDING ON ME. I COULD LOOK AT  
11 IT IF YOU GAVE ME A COPY OF IT, BUT I DON'T HAVE IT.

12 MR. LEBOWITZ: YOUR HONOR, THIS IS A CLEAR ISSUE ON  
13 THE CALIFORNIA LAW. THIS HAS NEVER BEEN -- THERE'S NOT A SINGLE  
14 COURT -- THERE IS NOT A SINGLE LEGAL PRECEDENT THAT FOLLOWS THE  
15 ARGUMENT OR THE LOGIC OR ANYTHING THAT MR. VARTAIN IS TALKING  
16 ABOUT. TITLE 7 AND FEHA, THEY DIFFER. THEY'RE SIMILAR IN MANY  
17 ASPECTS, BUT WHERE THEY DIFFER MOST IS IN DAMAGES, AND IN A WAY  
18 THAT THE TITLE 7 EVOLVED, AS FAR AS DAMAGES GOES.

19 TITLE 7 WAS ORIGINALLY AN EQUITABLE STATUTE. UNTIL  
20 1991, IT WAS ONLY AN EQUITABLE STATUTE. YOU COULDN'T GET BACK  
21 PAY UNDER TITLE 7. YOU COULDN'T EVEN GET EMOTIONAL DISTRESS  
22 UNDER TITLE 7 UNTIL THE CIVIL RIGHTS ACT IN 1991. SO IT'S A  
23 VERY DIFFERENT SCENARIO, VERY DIFFERENT STRUCTURE TO THE DAMAGES  
24 ASPECT.

25 THE COURT: WHAT ABOUT THE ISSUE OF REINSTATEMENT,  
26 THOUGH? UNDER STATE LAW ARE YOU SAYING THAT REINSTATEMENT IS AN

37

1 ELECTION OF REMEDIES FOR THE PLAINTIFF AND THE DEFENDANT CANNOT  
2 ARGUE THAT REINSTATEMENT IS AVAILABLE AND, THEREFORE, WOULD BE  
3 REQUIRED IN ORDER FOR HER TO ESSENTIALLY MITIGATE HER DAMAGES?

4 MR. LEBOWITZ: I THINK IT'S A MITIGATION ISSUE.  
5 THAT'S EXACTLY WHAT THE ISSUE IS.

6 THE COURT: SO THEY CAN ARGUE REINSTATEMENT THAT SHE'S  
7 NOT DAMAGED TO THE TUNE OF ANY FRONT PAY BECAUSE SHE COULD BE  
8 REINSTATED.

9 MR. LEBOWITZ: CORRECT. AND THAT'S WHAT THEY  
10 CERTAINLY INTEND TO ARGUE, AT LEAST BY ALL SIGNALS IN THIS CASE.  
11 AND THAT IS AN ARGUMENT TO COUNTER OUR CLAIM THAT, IN FACT,  
12 THAT'S A BOGUS ARGUMENT, BASED ON THE FACTS, AND THAT THE  
13 ARGUMENT -- AND BASED ON THE OFFER THAT WAS MADE WAS A BOGUS  
14 OFFER AND WAS NOT MADE IN GOOD FAITH. AND, THEREFORE, IT IS NOT  
15 AN ELEMENT OF MITIGATION, HAVING PROVED FAILURE TO MITIGATE.

16 REALLY, ALL YOU HAVE TO DO IS LOOK AT THE VERDICT  
17 FORMS. THE MODEL VERDICT FORMS HAVE A SPACE FOR FRONT PAY.

18 THE COURT: YEAH.

19 MR. LEBOWITZ: I MEAN, IT'S RIGHT THERE IN THE CASES.  
20 AND FOR VERDICT FORM 2509, ON DISABILITY DISCRIMINATION THERE'S  
21 A SLAT FOR FRONT PAY.

22 THE COURT: THAT'S HELPFUL. 24 --

23 MR. PETERS: 2509. 2509, YES.

24 THE COURT: I DON'T HAVE A 2509 INSTRUCTION. IT'S A  
25 VERDICT FORM.

26 MR. LEBOWITZ: YES. VERDICT FORM.

1 THE COURT: OKAY.

2 IT DOESN'T ACTUALLY -- WELL, IT TALKS ABOUT FUTURE  
3 DAMAGES BUT IT DOESN'T REFERENCE FRONT PAY.

4 MR. PETERS: IT DOESN'T CALL IT THAT.

5 MR. LEBOWITZ: FUTURE ECONOMIC LOSS.

6 MR. VARTAIN: WELL, THAT'S THE POINT, YOUR HONOR.

7 IT'S THE --

8 THE COURT: WELL, THAT'S A LITTLE VAGUE.

9 MR. VARTAIN: NO. THEY'RE VERY DIFFERENT THINGS.

10 WERE THE COURT IN ITS EQUITABLE JUDGMENT TO DETERMINE THE  
11 EQUITABLE ISSUE OF WHETHER REINSTATEMENT -- THAT REINSTATEMENT  
12 WAS NOT A POSSIBLE REMEDY, THEN THE QUESTION WOULD COME UP AS  
13 THEN IS IT A MATTER FOR THE JURY TO DETERMINE HOW MUCH THE  
14 DAMAGES SHOULD BE, SINCE REINSTATEMENT IS NOT THE POSSIBLE  
15 REMEDY? THAT'S A DIFFERENT ISSUE, YOUR HONOR. WE'RE NOT THERE  
16 YET. WE'RE ON A THRESHOLD ISSUE.

17 MR. LEBOWITZ: AND, YOUR HONOR, I FULLY INTEND TO TELL  
18 THE JURY IN MY OPENING THE PRECISE NUMBER OF ECONOMIC LOSS THAT  
19 WE INTEND TO ASK THEM FOR AT THE END.

20 THE COURT: I UNDERSTAND THAT. SO I NEED TO DECIDE  
21 THIS.

22 ALL RIGHT. WELL, I DON'T THINK THAT THE INSTRUCTION  
23 IS AS -- OR THE VERDICT FORM IS DEFINITIVE. SOMETIMES THEY ARE,  
24 BUT I DON'T FIND THAT HERE. I JUST WANT TO LOOK AT THE CLOUD  
25 CASE FOR A MINUTE. LET'S GO OFF THE RECORD SO I CAN LOOK AT  
26 THIS.

1 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THIS CASE IS A LITTLE BIT CONFUSING  
3 BECAUSE IT IS A CASE WHERE DAMAGES WERE TRIED TO THE COURT. IT  
4 IS NOT A CASE WHERE THE COURT EVEN CONSIDERED WHETHER IT WAS A  
5 JURY VERSUS COURT ISSUE.

6 I DON'T THINK, MR. VARTAIN, YOU'RE ARGUING THAT FRONT  
7 PAY IS NOT AN AVAILABLE REMEDY UNDER THE RIGHT CIRCUMSTANCES.  
8 YOU'RE ARGUING THAT IT IS FOR THE COURT TO DECIDE AND NOT FOR  
9 THE JURY, CORRECT?

10 MR. VARTAIN: CORRECT.

11 THE COURT: ALL RIGHT.

12 MR. LEBOWITZ, THIS CASE DOESN'T ADDRESS THE ISSUE  
13 BEFORE US, THOUGH.

14 MR. LEBOWITZ: WELL, NO CASE ADDRESSES THE ISSUE  
15 THAT'S BEING MADE IN THE MOTION. THIS IS SOMETHING THAT IS --  
16 THIS IS A MATTER OF ROUTINE UNDER FEHA.

17 THE COURT: WHAT ABOUT THE AT&T CASE? I DIDN'T LOOK  
18 AT THAT ONE. IT WAS AN OLDER ONE.

19 MR. LEBOWITZ: THE BIHUN CASE?

20 THE COURT: BIHUN, RIGHT.

21 MR. LEBOWITZ: I DON'T HAVE IT IN FRONT OF ME, AND I  
22 APOLOGIZE.

23 THE COURT: OKAY. WE'LL GET IT.

24 DEPUTY, 13 CAL. APP. 4TH.

25 LET'S GO OFF THE RECORD.

26 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

1 THE COURT: IN LOOKING AT THE BIHUN CASE, IT LOOKS AS  
2 THOUGH THE JURY MADE ALL THE DETERMINATIONS ON FRONT PAY; AGAIN,  
3 AN ISSUE NOT DISCUSSED BY THE COURT OF APPEAL, I GUESS, BECAUSE  
4 IT DIDN'T RAISE ANY CONCERNS.

5 MR. LEBOWITZ: IF I --

6 MR. VARTAIN: NO. I DON'T THINK IT WAS APPEALED ON  
7 THAT ISSUE.

8 THE COURT: IT WAS NOT, WHICH IS REALLY MR. LEBOWITZ'S  
9 POINT IS THAT IT'S COMMON. HE'S ARGUING IT'S COMMON THAT JURIES  
10 MAKE THESE DETERMINATIONS.

11 MR. VARTAIN: I DON'T DISAGREE WITH HIM THAT EMPLOYERS  
12 DON'T RAISE THEIR RIGHTS IN THIS. I DON'T DISAGREE WITH THAT AT  
13 ALL. THE AKERMAN CASE DOES POINT OUT, THOUGH, INTERPRETING THE  
14 FEHA DECISIONS UNDER FEHA, THAT IN THIS RESPECT CALIFORNIA LAW  
15 DOES TRACK FEDERAL LAW THAT FRONT PAY IS AN EQUITABLE ISSUE.  
16 IT'S NOT A JURY ISSUE. MANY EMPLOYERS DON'T RAISE THAT. I KNOW  
17 A LOT OF DEFENSE TALK --

18 THE COURT: DOES THE AKERMAN CASE CITE ANY CALIFORNIA  
19 OPINIONS ON THAT SUBJECT?

20 MR. VARTAIN: THE CALIFORNIA CASE -- EXCUSE ME, YOUR  
21 HONOR. I AM MISSPEAKING.

22 THE ANSWER IS YES AND NO. YES, BEING THE CALIFORNIA  
23 CASE CITES THE FAIR EMPLOYMENT AND HOUSING COMMISSION DECISION,  
24 WHICH UNDER CALIFORNIA LAW HAVE INTERPRETED A VALUE. IT DOES  
25 NOT CITE ANY CONTROL IN CALIFORNIA LAW. IT WAS NOT -- IT WAS  
26 AFFIRMED ON APPEAL ON THE 9TH CIRCUIT, BUT I WILL TELL YOUR



1 HONOR, THAT LIKE THE OTHER CASES THAT ISSUE WAS NOT -- I  
2 WOULDN'T SAY THERE'S A HOLDING ON THAT ISSUE IN THE 9TH CIRCUIT;  
3 HOWEVER, I THINK THERE'S NO DOUBT THAT THIS IS AN EQUITABLE  
4 ISSUE.

5 THE COURT: YOU KNOW, IT'S INTERESTING. SO IT'S AN  
6 EQUITABLE ISSUE BUT IT'S A FACTUAL DETERMINATION. REGARDLESS OF  
7 WHO THE TRIER OF FACT IS, THERE NEEDS TO BE A FACTUAL  
8 UNDERPINNING FOR DETERMINING WHETHER OR NOT THE PLAINTIFF CAN  
9 RETURN TO THE JOB SHE IS NOT WORKING IN AT THE TIME OF TRIAL.

10 MR. VARTAIN: IN ALL THE CASES, THE REASON THE COURT  
11 IS -- IT'S AN EQUITABLE DECISION IS THE COURT HAS TO WEIGH THE  
12 COMPLETE EQUITIES BETWEEN PUTTING THE PERSON BACK IN THAT  
13 WORKPLACE VERSUS NOT. AND, USUALLY, IT'S THE EMPLOYER THAT HAS  
14 BEEN -- DOESN'T WANT THEM BACK. THAT'S NOT GOING TO BE THE  
15 PROOF HERE.

16 THE COURT: SURE.

17 MR. LEBOWITZ: WELL --

18 THE COURT: AND IN THESE CASES, INCLUDING THE CLOUD  
19 CASE AND THE BIHUN CASE, IT WAS A FAILURE TO GET A PROMOTION.  
20 IT WAS A CONSTRUCTIVE DISCHARGE. THE POSITION HAD BEEN FILLED.

21 MR. VARTAIN: HAD BEEN FILLED. WE ARE HOLDING THE  
22 POSITION FOR THE PLAINTIFF, IS GOING TO BE THE TESTIMONY.

23 THE COURT: RIGHT. AND PLUS IN A COLLEGE ENVIRONMENT  
24 THERE ARE MANY PROFESSORS, SO IT IS A LITTLE DIFFERENT. JUST SO

25 THAT I UNDERSTAND IT, THE EVIDENCE FROM THE DEFENSE SIDE WOULD  
26 BE THAT THERE IS A POSITION AVAILABLE.

42

1 MR. VARTAIN: THE EVIDENCE FROM THE -- YES. THE  
2 EVIDENCE FROM THE DEFENSE SIDE WILL BE THAT HER OFFICE IS  
3 SITTING THERE, UNDISTURBED, WAITING FOR HER, THAT SHE'S CARRIED  
4 ON A LEAVE OF ABSENCE. YOU KNOW, AS SOON AS -- IF SHE HAD  
5 ACCEPTED THE JOB THAT WE OFFERED HER, THE RETURN TO WORK FROM  
6 LEAVE, SHE WOULD HAVE BEEN WORKING HALF-TIME, AS SHE HAD ONCE  
7 BEFORE, AND AS SOON AS SHE GOT HEALTHY SHE WOULD BE WORKING  
8 FULL-TIME. THAT'S THE EVIDENCE.

9 THE COURT: OKAY.

10 I THINK THIS CAN GO TO A JURY. I'M NOT SEEING ANY  
11 DEFINITIVE CALIFORNIA LAW THAT TELLS ME THAT THIS ISSUE MUST BE  
12 TRIED TO THE COURT, AND I'M NOT INCLINED TO DO THAT. I THINK  
13 ALL THESE ISSUES CERTAINLY NEED TO BE DECIDED. THE PLAINTIFF  
14 WILL PUT ON OR MAY PUT ON EVIDENCE THAT SHE CANNOT RETURN TO  
15 WORK, EVEN IF OFFERED. AND YOU WILL COUNTER BY SAYING, "DON'T  
16 AWARD FRONT PAY BECAUSE HER OFFICE IS WAITING. HER JOB IS  
17 WAITING. STUDENTS WILL BE FILLING HER CLASSES AS SOON AS SHE  
18 RETURNS."

19 MR. VARTAIN: BUT I DON'T WANT TO PUT THAT EVIDENCE --  
20 THAT EVIDENCE IS NOT FOR THE JURY, YOUR HONOR. THAT'S EQUITABLE  
21 EVIDENCE. THAT'S THE COURT THAT WILL DECIDE IT, BECAUSE YOU  
22 DON'T WANT THE JURY DECIDING, "WELL, SHOULD SHE GO BACK OR

23 SHOULD'N'T SHE?" THAT'S WHERE THE REVERSIBLE ERROR IS.  
24 THE COURT: IT'S NOT SHOULD SHE GO BACK; IT'S, CAN SHE  
25 GO BACK? THAT'S THE DIFFERENCE. BECAUSE PROFESSOR BLOUGH CAN  
26 ALWAYS SAY, "THANK YOU, BUT NO THANK YOU."

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1 MR. VARTAIN: WELL, THEN, I GUESS THEN THE QUESTION IS  
2 IS PLAINTIFF GOING TO PUT ON THAT EVIDENCE THAT SHE CAN'T GO  
3 BACK. BECAUSE THEN, YOU KNOW --

4 THE COURT: SHE WOULD HAVE TO. BECAUSE YOU WILL  
5 CERTAINLY SAY, IF YOU'RE GOING TO OPT TO THE JURY, IF YOU'RE  
6 GOING TO AWARD ANY DAMAGES IT STOPS THE DAY THAT -- WHATEVER  
7 MAGIC DAY THAT IS.

8 MR. VARTAIN: THAT'S THE MITIGATION ISSUE, YOUR HONOR.  
9 THAT'S AN AFFIRMATIVE DEFENSE ISSUE.

10 THE COURT: YEAH.

11 MR. VARTAIN: THAT'S SOMETHING ELSE. WE WILL PUT THAT  
12 EVIDENCE ON. WHAT I'M SAYING IS WHERE THE REVERSIBLE ERROR IS  
13 GOING TO COME UP IS IF THE JURY IS AFFORDED THE DECISION AS TO  
14 WHETHER OR NOT REINSTATEMENT IS FEASIBLE UNDER THESE  
15 CIRCUMSTANCES.

16 THE COURT: YOU KNOW, WHAT'S INTERESTING, THOUGH, IS  
17 YOU'RE NOT ARGUING IT'S INFEASIBLE.

18 MR. VARTAIN: WHAT?

19 THE COURT: YOU'RE NOT ARGUING --

20 MR. VARTAIN: NO. THAT'S WHAT I'M SAYING. IT'S THE

21 REVERSE. YOU KNOW, THE SCHOOL WANTS HER BACK. THAT'S WHY THEY  
22 OFFERED THE JOB BACK. SHE SUED. SHE FILED THE SUIT AFTER  
23 SAYING, "NO. I'M NOT GOING TO ACCEPT YOUR OFFER. I'M GOING TO  
24 SUE." THAT'S WHY THIS CASE IS SO IMPORTANT, THAT THIS BE  
25 RESOLVED AS A PRELIMINARY ISSUE.

26 THE COURT: YOU'RE RIGHT, ENTIRELY. AND I'M JUST NOT

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1 SATISFIED THAT THERE'S -- THESE CASES ARE COMPLICATED BECAUSE  
2 CLOUD DAMAGES WERE TRIED TO THE COURT SO THE ISSUE COULDN'T HAVE  
3 ARISEN. AND IN THIS BIHUN CASE, THE ISSUE WAS DIFFERENT. THE  
4 ONLY ONE WAS HORSFORD, WHICH IS WHERE I STARTED. I HAPPENED TO  
5 PULL THAT ONE AND THE DAMAGES ISSUE WAS DEFINITELY TRIED TO THE  
6 JURY IN THAT CASE.

7 IN THE BIHUN CASE, MANY ISSUES WENT UP ON APPEAL.  
8 DAMAGES WERE TRIED TO THE JURY, AND THIS ISSUE WAS NOT RAISED.  
9 AND YOU PROPERLY POINT OUT THAT THE FACT THAT IT WASN'T RAISED  
10 DOESN'T MEAN THAT IT'S SETTLED LAW. IT JUST MEANS IT WASN'T  
11 RAISED.

12 BUT YOU'RE NOT GIVING ME ANY -- I DON'T HAVE ANY CASE  
13 LAW INTERPRETING THE CALIFORNIA STATUTE THAT SAYS THAT THESE  
14 DAMAGES MUST BE TRIED TO THE COURT.

15 MR. VARTAIN: AND THAT'S WHY THE FEDERAL LAW IS  
16 CONTROLLING AND THE COURT SHOULD LOOK AT THE FEDERAL LAW.

17 THE COURT: OKAY.

18 NOW, THAT WOULD BE NICE IF YOU GAVE ME ONE OF THE

19 CASES TO LOOK AT, BUT I DIDN'T GET ONE CASE TO LOOK AT.

20 MR. VARTAIN: AND I APOLOGIZE, YOUR HONOR. THAT'S WHY  
21 I'M ASKING FOR THIS TO BE BRIEFED SEPARATELY AND INDEPENDENT,  
22 BECAUSE WE DIDN'T KNOW HOW YOU WANTED CASES. WE HADN'T BEEN  
23 ASSIGNED TO YOU YET.

24 THE COURT: CALIFORNIA RULES OF COURT REQUIRE THAT ANY  
25 NON-CALIFORNIA CASE BE PROVIDED.

26 MR. VARTAIN: THAT'S TRUE, AND I APOLOGIZE.

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1 I WOULD LIKE TO REQUEST THE OPPORTUNITY TO BRIEF THE  
2 ISSUE, YOUR HONOR. I THINK IT IS THE ONLY WAY TO PREVENT AN  
3 ALMOST CERTAIN REVERSIBLE ERROR IN THIS CASES.

4 THE COURT: WELL, I'D LIKE YOU TO SHOW ME THAT CASE SO  
5 I CAN RULE IN YOUR FAVOR, BUT RIGHT NOW YOU'RE GIVING ME  
6 NOTHING.

7 MR. VARTAIN: IT WILL BE MULTIPLE FEDERAL CASES WHICH  
8 WILL BE CONTROLLING OF THE ANALOGOUS PROVISIONS OF FEHA. AND  
9 THE SUPREME COURT OF CALIFORNIA HAS INDICATED THAT THE TRIAL  
10 COURT SHOULD FOLLOW FEDERAL COURTS WHERE ANALOGOUS PROVISIONS OF  
11 STATUTE EXIST AND WHERE THERE IS NOT STATE LAW ON THE ISSUE, AND  
12 THAT'S THIS CASE. AND THAT'S WHY I REQUEST THE OPPORTUNITY TO  
13 FURTHER BRIEF THE MATTER.

14 THE COURT: WHICH MEANS YOU WANT ME TO SEND A JURY  
15 PANEL HOME, THAT'S GOING TO BE COMING IN?

16 MR. VARTAIN: NO. I HAVE A SUGGESTION, YOUR HONOR.

17 THE COURT: YES. OKAY.

18 MR. VARTAIN: AND I STARTED THE SUGGESTION BEFORE.

19 THE COURT: OKAY.

20 MR. VARTAIN: MAYBE IT IS THAT WE TAKE THIS ISSUE UP.

21 WE DON'T RESTRICT THE PLAINTIFF FROM MAKING HIS STATEMENT ABOUT  
22 WHATEVER HE WANTS TO SAY, THE \$900,000. PLAINTIFF COULD SERVE  
23 PROOF ON. WE'LL SEE WHAT SHE SAYS ABOUT SHE WANTS TO GO BACK;  
24 SHE DOESN'T WANT TO GO BACK. IT'S FEASIBLE TO GO BACK; IT'S  
25 NOT. WE'LL SEE WHAT THE PROOF IS OF HER POSITION THERE, AND  
26 BEFORE THE MATTER GOES TO THE JURY THIS IS RESOLVED THROUGH JURY

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1 INSTRUCTIONS AND THROUGH -- SO FOR EXAMPLE --

2 THE COURT: OKAY. WELL --

3 MR. VARTAIN: -- THE ECONOMIST TESTIFIES. I GUESS I  
4 HAVE SOME PREJUDICIAL IMPACT FROM THE ECONOMIST TESTIFIES ABOUT  
5 THE BIG DAMAGES. BUT I DIDN'T CITE YOU THE FEDERAL CASES, AND I  
6 DEPRIVED YOU OF THE OPPORTUNITY TO SEE THAT. AND I APOLOGIZE,  
7 BUT THAT WOULD BE THE FAIR RESOLUTION, I THINK, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. VARTAIN: I WOULD LIKE TO DEFER THAT FOR OTHER  
10 MOTION.

11 THE COURT: THAT'S A VERY GOOD SUGGESTION.

12 MR. LEBOWITZ: I WOULD LIKE TO -- JUST ONE QUICK THING  
13 IS TO LOOK AT -- AND IT'S CALIFORNIA CACCI JURY INSTRUCTION 2433  
14 ENTITLED "WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

15 DAMAGES" --

16 MR. VARTAIN: THAT'S NOT --

17 MR. LEBOWITZ: -- WHICH IS ONE OF THE CLAIMS THAT WE  
18 HAVE IN THIS CASE. THE JURY INSTRUCTION DESCRIBES WHAT DAMAGES  
19 THE JURY IS SUPPOSED TO CONSIDER: NUMBER ONE IS THE AMOUNT OF  
20 BACK PAY; NUMBER TWO IS THE PRESENT CASH VALUE OF ANY FUTURE  
21 WAGES AND BENEFITS YOU WOULD HAVE EARNED. THAT'S RIGHT THERE IN  
22 FRONT OF THE JURY.

23 THE COURT: YEAH.

24 MR. VARTAIN: BUT THAT, AGAIN, YOUR HONOR, IS WHERE  
25 THE PLAINTIFF HAS BEEN INJURED AND IS NOT ABLE TO WORK. IT IS  
26 NOT WHERE THE PERSON'S -- WHERE IT'S AN ALTERNATIVE TO

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1 REINSTATEMENT. THERE'S MANY EMPLOYMENT CASES WHERE THE  
2 DEVASTATION FROM THE DISCRIMINATION --

3 THE COURT: THAT'S NOT WHAT THIS SAYS. THIS SAYS  
4 "WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY." IT'S  
5 TALKING ABOUT IF YOU FIND THAT DEFENDANT DISCHARGED OR  
6 CONSTRUCTIVELY DISCHARGED PLAINTIFF IN VIOLATION OF PUBLIC  
7 POLICY, THEN YOU MUST DECIDE THE AMOUNT OF DAMAGES PLAINTIFF HAS  
8 PROVEN SHE'S ENTITLED TO RECOVER, IF ANY. TO MAKE THAT DECISION  
9 YOU MUST: ONE, DECIDE THE AMOUNT PLAINTIFF WOULD HAVE EARNED UP  
10 TO TODAY; TWO, ADD PRESENT CASH VALUE OF ANY FUTURE WAGES SHE  
11 WOULD HAVE EARNED FOR THE LENGTH OF TIME THE EMPLOYMENT WAS  
12 REASONABLY CERTAIN TO CONTINUE, AND THEN ADD DAMAGES FOR

13 EMOTIONAL DISTRESS.

14 MR. VARTAIN: AS I SAID, YOUR HONOR, THAT IS THAT  
15 ISSUE I RAISED BEFORE.

16 THE COURT: ARE YOU SUGGESTING THE JURY INSTRUCTION  
17 MISSTATES THE LAW?

18 MR. VARTAIN: NO, I'M NOT. I'M SUGGESTING THAT IT  
19 DOESN'T COVER -- IT WILL NOT APPLY TO THE FACTS OF THIS CASE  
20 WHERE REINSTATEMENT UNDER FEHA IS THE REMEDY; THEREFORE, THEY  
21 WILL NOT BE ABLE TO GIVE -- YOU WILL NOT BE ABLE TO GIVE THAT  
22 INSTRUCTION IF, IN FACT, APPROPRIATE REMEDY FOR THE FEHA  
23 VIOLATION IS REINSTATEMENT.

24 MR. LEBOWITZ: YOUR HONOR, REALLY WHAT HE'S TALKING  
25 ABOUT HERE AND HIS ENTIRE ARGUMENT IS ABOUT -- REALLY IT'S ABOUT  
26 MITIGATION, AND IT'S ABOUT THE LEVEL OF DAMAGES THAT WE WILL BE

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1 ABLE TO PROVE TO THE JURY, A MATTER IN DISPUTE FOR THE JURY.  
2 AND REALLY IT'S A MATTER OF WHETHER IT'S, UNDER THE FORD MOTOR  
3 COMPANY CASE, WHERE THERE WAS A BONA FIDE OFFER OF  
4 REINSTATEMENT. AND OUR EVIDENCE THAT WE WILL PUT ON IS THAT IT  
5 WAS NOT SO IT WAS REJECTED AND, THEREFORE, IT SHOULD NOT CUT OFF  
6 HER DAMAGES.

7 THAT'S WHAT THE DISPUTE -- THAT'S WHAT THE EVIDENCE  
8 GOES TO. IT HAS NOTHING TO DO WITH THE EQUITABLE REMEDY OF  
9 REINSTATEMENT.

10 MR. VARTAIN: IF THAT MATTER --



11 MAY I RESPOND, YOUR HONOR?

12 THE COURT: IN THE USE NOTES FOR THE JURY INSTRUCTION  
13 2407, THEY TALK ABOUT THE INSTRUCTION ON MITIGATION.

14 MR. VARTAIN: I'M NOT -- MITIGATION IS AN AFFIRMATIVE  
15 DEFENSE, YOUR HONOR. I'M NOT ON THE AFFIRMATIVE DEFENSES.

16 THE COURT: I KNOW.

17 MR. VARTAIN: I'M ON THE ELEMENTS OF THE CASE, AND I'M  
18 SAYING THAT THERE WAS NO FRONT PAY ABSENT THE EQUITABLE JUDGMENT  
19 OF THE COURT.

20 THE COURT: YOU KNOW WHAT I GUESS IS A LITTLE  
21 TROUBLING TO ME, IN YOUR PAPERS YOU SUGGEST THAT WHAT WAS  
22 OFFERED TO PROFESSOR BLOUGH WAS HALF-TIME WORK FOR ONE YEAR.  
23 AND I THINK THERE'S A QUESTION AS TO WHETHER HALF-TIME WORK FOR  
24 ONE YEAR IS THE SAME AS FULL-TIME WORK ON A SIX-YEAR CONTRACT.

25 MR. LEBOWITZ: CORRECT.

26 THE COURT: SO IS IT EVEN SUBSTANTIALLY SIMILAR? I

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1 BELIEVE IT IS HER ARGUMENT THAT THAT WAS NOT AN OFFER OF HER JOB  
2 BACK, AND SHE REFUSED IT IN LIEU -- AND CHOSE TO PURSUE THIS  
3 ACTION AGAINST THE COLLEGE. THERE'S NEVER BEEN -- IN THE PAPERS  
4 YOU PRESENTED TO ME -- ANY OFFER BY THE COLLEGE TO OFFER HER THE  
5 SIX-YEAR CONTRACT AT FULL-TIME THAT SHE WAS SEEKING AT THE TIME  
6 THIS ENTIRE MATTER CAME UP.

7 MR. LEBOWITZ: OR ANY FULL-TIME WORK AT ALL.

8 THE COURT: OR ANY FULL-TIME.

9 MR. VARTAIN: OKAY. NOW CAN I RESPOND?

10 THE COURT: GO AHEAD.

11 MR. VARTAIN: ACTUALLY, THE DOCTOR RELEASED HER TO  
12 HALF-TIME WORK, WHICH IS ON THE DOCTOR'S ORDER WHY THE COLLEGE  
13 ONLY OFFERED THE -- ONLY OFFERED HALF --

14 THE COURT: THAT'S DISPUTED, I THINK.

15 MR. LEBOWITZ: YEAH.

16 MR. VARTAIN: THAT'S DISPUTED. BUT THE OFFER LETTER  
17 SAID, "YOU WILL BE EVALUATED FOR YOUR SIX-YEAR CONTRACT IN THE  
18 COMING YEAR. IF YOUR TEACHING IS GOOD, YOU WILL GET THE  
19 SIX-YEAR CONTRACT." THE EVALUATION HADN'T BEEN COMPLETED  
20 BECAUSE SHE HAD GONE ON MEDICAL LEAVE. SO IT ACTUALLY PUT HER  
21 BACK IN THE STATUS QUO ANTE, SHE HAD NEVER BEEN APPROVED FOR  
22 THAT CONTRACT. SO WE WOULD SAY BUT FOR THAT HALF-TIME, WHICH  
23 WAS A MEDICAL LIMITATION, IT WAS EQUIVALENT EMPLOYMENT.

24 THE COURT: SO YOU'RE SUGGESTING MITIGATION PERTAINS  
25 TO WORK OUTSIDE OF THE FORMER EMPLOYER'S DOMAIN.

26 MR. VARTAIN: IT COULD BE ARGUED BOTH. THE LAW IN

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1 MITIGATION SAYS ANY OTHER EMPLOYMENT REASONABLY AVAILABLE, AND  
2 IT DOESN'T EVEN REQUIRE FULL-TIME EMPLOYMENT.

3 THE COURT: SURE.

4 MR. VARTAIN: IT JUST SAYS "COMPARABLE."

5 THE COURT: WELL, HALF-TIME EMPLOYMENT MIGHT MITIGATE  
6 BY 50 PERCENT THE AMOUNT. SURE.

7 MR. VARTAIN: THAT'S WHY I'M SAYING -- I'M NOT ON THE  
8 MITIGATION DAMAGES. THAT'S MY AFFIRMATIVE DEFENSE. I'M TALKING  
9 ABOUT THE PLAINTIFF'S CASE HERE.

10 THE COURT: YOU KNOW, MR. LEBOWITZ -- AND, AGAIN,  
11 MAYBE I'M GETTING TOO FAR INTO THE EVIDENCE THAT YOU WILL BE  
12 PRESENTING -- IS YOUR CLIENT ARGUING THAT SHE'S UNABLE TO GO  
13 BACK?

14 MR. LEBOWITZ: NO. WE ARE ARGUING THAT THE OFFER THAT  
15 WAS MADE WAS --

16 THE COURT: THAT, I UNDERSTAND.

17 MR. LEBOWITZ: -- IN BAD FAITH AND WAS BOGUS, AND THAT  
18 THERE HAS NEVER BEEN A SUBSEQUENT OFFER TO GO BACK TO WORK.  
19 THERE HAS NEVER BEEN A SUBSEQUENT OFFER. AND THE UNDERPINNINGS  
20 OF WHAT THEY CALL THE STATUS QUO IS THE OUTCOME OF UNLAWFUL  
21 ACTIONS. THE MEDICAL EXAM WAS UNLAWFUL; THE ORIGINAL  
22 TERMINATION WAS UNLAWFUL; THE SUBSEQUENT TERMINATION WAS  
23 UNLAWFUL. THEY'RE SAYING THAT ALL OF THOSE ARE THE BASIS FOR  
24 THEIR --

25 THE COURT: I KNOW THAT. BUT FRONT PAY PRESUMES THAT  
26 SHE CANNOT GO BACK TO HER FORMER POSITION FOR A VARIETY OF

1 REASONS.

2 MR. LEBOWITZ: THERE'S BEEN NO OFFER -- I MEAN --

3 MR. VARTAIN: THE COURT AWARDS REINSTATEMENT.

4 MR. LEBOWITZ: -- IF I COULD FINISH, PLEASE.

5 MR. VARTAIN: I APOLOGIZE.

6 MR. LEBOWITZ: THE QUESTION -- THE TESTIMONY THAT SHE  
7 WILL GIVE IS THAT SHE WAS OFFERED THIS JOB, AND SHE WROTE A  
8 COMPREHENSIVE E-MAIL BACK TO THE COLLEGE EXPLAINING WHY THIS  
9 OFFER OF REEMPLOYMENT --

10 THE COURT: OKAY. BUT WHAT IF THE COLLEGE PRESIDENT  
11 TAKES THE WITNESS STAND AND SAYS SHE CAN COME BACK TOMORROW  
12 FULL-TIME? WHAT IF YOU GET THAT TESTIMONY? THEN WE'RE DONE ON  
13 FRONT PAY, AS A MATTER OF EVIDENTIARY --

14 MR. LEBOWITZ: WE GET TO EXAMINE THE GOOD FAITH OF  
15 THAT OFFER UNDER FORD MOTOR COMPANY. WE GET TO DECIDE -- THE  
16 JURY GETS TO DECIDE WHETHER THAT'S JUST COMING IN 11TH HOUR  
17 TRYING TO CURRY FAVOR AND CUT OFF DAMAGES WHEN, IN FACT, IT'S  
18 NOT MADE IN GOOD FAITH AND IT'S JUST FOR SHOW FOR THE JURY.  
19 THAT'S A JURY QUESTION.

20 MR. VARTAIN: I THINK THAT --

21 MR. LEBOWITZ: THAT'S NOTHING BUT DISPUTED EVIDENCE  
22 THAT THE JURY GETS TO WEIGH.

23 MR. VARTAIN: I THINK I COULD HELP THE COURT WITH ONE  
24 THING, YOUR HONOR. EVEN IF THE COLLEGE HAD NOT MADE THIS  
25 OFFER THAT'S DISPUTED, WHETHER IT WAS CONTRACT -- BUT WE'RE  
26 SITTING HERE, THE COLLEGE DIDN'T MAKE AN OFFER BECAUSE THE

1 DOCTOR SAID SHE COULDN'T GO BACK. SHE'S CONTESTING. WE DON'T  
2 HAVE THAT ISSUE. THE MOTION IN LIMINE WOULD BE EQUALLY

3 MERITORIOUS BECAUSE IT WOULD STILL BE THE QUESTION IS, WOULD  
4 REINSTATEMENT ORDER FROM THE COURT BE A FEASIBLE THING TO DO?

5 IF SHE'S WILLING TO -- IF SHE'S ABLE TO COME BACK AND  
6 THE COLLEGE WOULD COMPLY IN GOOD FAITH WITH THE ORDER AND  
7 THERE'S NO UNDERLYING HOSTILITY, AS THESE CASES TALK ABOUT, YOU  
8 WOULD STILL BE IN THE POSITION WHERE NO FRONT PAY WOULD BE  
9 ALLOWABLE. IT'S IRRELEVANT TO THE QUESTION ABOUT THE --

10 THE COURT: IF I WERE TO AGREE WITH YOUR POSITION,  
11 THIS WOULD REQUIRE A BIFURCATION OF ISSUES. IS THAT CORRECT?  
12 THAT THE CASE WOULD BE TRIED TO THE JURY. PERHAPS CERTAIN  
13 EVIDENCE WOULD BE EXCLUDED FROM THE JURY. IT WOULD THEN BE  
14 PRESENTED TO THE COURT ON THE ISSUE OF REINSTATEMENT.

15 LET ME ASK YOU, BECAUSE I'M NOT SITTING ON THE GREEN  
16 WITH YOU. I'M TRYING TO UNDERSTAND IT.

17 MR. VARTAIN: YEAH.

18 THE COURT: IF THE COURT WERE TO DETERMINE THAT  
19 PROFESSOR BLOUGH COULD NOT -- REINSTATEMENT WAS NOT VIABLE, THEN  
20 UNDER YOUR POSITION HOW IS THE ISSUE OF FRONT PAY THEN DECIDED?  
21 DO YOU BRING ANOTHER JURY IN? IS IT JUST THE WHOLE -- BECAUSE  
22 EQUITY AND DAMAGES ARE GENERALLY TWO DIFFERENT THINGS. THE  
23 AMOUNT OF DAMAGES SHOULD NORMALLY NOT BE DECIDED BY THE COURT.

24 MR. VARTAIN: EXCEPT WHERE THE DAMAGES ARE THE  
25 ALTERNATIVE TO THE EQUITABLE REMEDY, AND THAT'S CLEAR IN THESE  
26 CASES.

1 THE COURT: IT IS CLEAR. OKAY.

2 MR. VARTAIN: SO WHAT I'D SAY IS, FROM A PRACTICAL  
3 POINT OF VIEW, WHAT MAY BE THE SOLUTION IS, YOUR HONOR -- AND IT  
4 MAY BE IN THE SPECIAL VERDICT FIGURING THIS OUT -- THAT IF THE  
5 JURY WERE TO FIND A WRONGFUL DISCHARGE UNDER FEHA IN YOUR  
6 SPECIAL VERDICT, THE COURT WOULD DETERMINE -- AND PROBABLY ALONG  
7 THE WAY WE WOULD BE CREATING THE RECORD TO ENABLE THE COURT IN  
8 ITS EQUITABLE DISCRETION TO DETERMINE IF REINSTATEMENT MEETS THE  
9 EQUITABLE CIRCUMSTANCES. THERE'S NOT SO MUCH HOSTILITY; THERE  
10 ARE POSITIONS THERE. THERE'S NO -- THERE IS A POSITION THERE.

11 IF THE COURT SAYS, "YES. I'M GOING TO ORDER  
12 REINSTATEMENT," THEN THERE WOULDN'T BE NO FRONT-PAY ISSUE TO GO  
13 BACK TO THE JURY. IF SHE DIDN'T TAKE THE OFFER, THAT'S TOO BAD.  
14 IF THE COURT DECIDES -- IF THE COURT SAYS, "NO. I THINK THERE  
15 IS" -- "I DO NOT AGREE THAT REINSTATEMENT IS FEASIBLE, BASED ON  
16 THE LEGAL" -- YOU KNOW, THE COURT, THEN YOU WOULD HAVE A  
17 FRONT-PAY ISSUE FOR THE JURY.

18 THE COURT: WELL, I THINK I'M GOING TO TAKE YOU UP ON  
19 YOUR OFFER TO PROCEED, TO NOT RESTRICT PLAINTIFF IN YOUR OPENING  
20 STATEMENTS AND THE PRESENTATION OF YOUR EVIDENCE WHILE THIS  
21 ISSUE IS BEING FURTHER BRIEFED AND I DECIDE IT. I WILL TAKE  
22 FURTHER BRIEFING. I'M INTERESTED IN THE NARROW ISSUE OF WHETHER  
23 THE ISSUE OF REINSTATEMENT VERSUS FRONT PAY IS ONLY TO BE  
24 DETERMINED BY THE COURT SITTING AS A COURT OF EQUITY, AS OPPOSED  
25 TO A JURY.

26 I WOULD, THEN, WANT TO KNOW IF THE COURT, UNDER YOUR

1 THEORY, MR. VARTAIN, MUST DECIDE WHETHER OR NOT REINSTATEMENT IS  
2 AVAILABLE. IF REINSTATEMENT IS NOT AVAILABLE, HOW IS THE ISSUE  
3 OF FRONT-PAY DAMAGES THEN DETERMINED WHEN THE COURT HAS MADE AN  
4 EQUITABLE DETERMINATION? BECAUSE WE'RE GOING TO HAVE ONE JURY  
5 IN THIS CASE, AND IT MAY BE THAT THE JURY CAN PROVIDE TO THE  
6 COURT THE ANSWER TO SPECIAL INTERROGATORIES TO THE JURY ON THE  
7 FACTUAL ISSUES.

8 I ALWAYS, AS A COURT OF EQUITY, HAVE THE RIGHT TO DO  
9 THAT, I BELIEVE. YOU CAN TELL ME OTHERWISE. AND THEN THE ISSUE  
10 IS, IF IT WERE TO BE BIFURCATED, IS THE EVIDENCE OF FRONT PAY,  
11 ONE PRESUMES, IS ONE ECONOMIST WHO TALKS FOR TEN MINUTES --

12 MR. LEBOWITZ: CORRECT.

13 THE COURT: -- AND GIVES THE CRUNCHED NUMBER THAT YOU,  
14 THEN, HAVE ANOTHER -- I MEAN, THIS IS VERY STRAIGHTFORWARD  
15 STUFF.

16 MR. VARTAIN: I DO AGREE.

17 THE COURT: AND WE'RE BIFURCATING ON PUNITIVE DAMAGES  
18 ANYWAY, THAT WE MAY BE CHOPPING UP THIS CASE IN WAYS THAT I NEED  
19 TO UNDERSTAND. I KNOW THE PLAINTIFF DISAGREES WITH THIS. I  
20 JUST WANT TO -- IF I START PICKING A JURY --

21 MR. LEBOWITZ: I UNDERSTAND.

22 THE COURT: -- I HAVE TO KNOW HOW LONG THE CASE MAY  
23 TAKE. I NEED TO KNOW WHAT MY JOB IS, AS OPPOSED TO THE JURY'S.  
24 BUT I'M NOT MAKING ANY OF THESE DECISIONS. I HAVE TO SAY THAT  
25 IT'S A PERPLEXING SITUATION WHERE YOU SUGGEST THAT OTHER DEFENSE

1 THAT'S WHY WE'RE NOT FINDING ANY CALIFORNIA CASE LAW ON IT.

2 MR. VARTAIN: CAN I AMPLIFY WHAT I MEANT WHEN I SAID  
3 THAT, YOUR HONOR?

4 MOST OFTEN, THE EMPLOYER DOESN'T WANT THE EMPLOYEE  
5 BACK.

6 THE COURT: I SEE.

7 MR. VARTAIN: THERE'S ANIMOSITY.

8 THE COURT: I SEE.

9 MR. VARTAIN: YOU KNOW, WHERE THEY WERE FIRED FOR, YOU  
10 KNOW -- AND THIS IS NOT THIS CASE. SO YOU DON'T HAVE THE CASE  
11 WHERE --

12 THE COURT: OF COURSE, I DON'T EVEN KNOW IF THIS ISN'T  
13 THE CASE WHERE PROFESSOR BLOUGH WOULDN'T LIKE TO COME BACK UNDER  
14 THE CIRCUMSTANCES SHE APPLIED FOR, SHE THOUGHT A NEW SIX-YEAR,  
15 FULL-TIME CONTRACT.

16 MR. LEBOWITZ: ABSOLUTELY, YOUR HONOR.

17 THE COURT: WENT THROUGH THE PROCESS, AT LEAST AT TWO  
18 LEVELS OF GETTING GREEN LIGHTS -- NOT BY PEOPLE WHO COULD GIVE  
19 HER THE CONTRACT, BUT SHE DID GET RECOMMENDATIONS. AND THEN THE  
20 BOTTOM FELL OUT AND THIS CASE ENSUED. SO, OF COURSE, IT RAISES  
21 THE ISSUE TO ME IS THAT MAYBE SHE WANTS HER JOB BACK. AND I'M  
22 NOT ASKING FOR AN ANSWER ON THAT, BUT SHE DOES NEED TO CONSIDER  
23 THAT.



24 MR. LEBOWITZ: THERE'S SO MANY THINGS TO DEAL WITH,  
25 BUT I'LL FILE A -- I'LL TAKE YOUR HONOR'S APPROACH HERE. WE'LL  
26 WAIT.

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1 THE COURT: I WILL DEFER RULING ON DEFENDANT'S IN  
2 LIMINE NO. 2. I WILL NOT RESTRICT PLAINTIFF IN ANY STATEMENTS  
3 TO BE MADE TO THE JURY. PLAINTIFF MAY PROCEED PRESUMING THAT  
4 THE ISSUE WILL BE TRIED TO THE JURY, AND THERE WILL BE NO  
5 OBJECTIONS PRIOR TO MY RULING ON THE BASIS THAT THAT IS AN ISSUE  
6 ONLY TO BE TRIED TO THE COURT. WE WILL INSTRUCT THE JURY TO  
7 DISREGARD CERTAIN EVIDENCE, AS NEED BE. IT WOULD BE MY HOPE  
8 THAT BY THE END OF THE WEEK THAT THIS ISSUE IS RESOLVED BEFORE  
9 WE GET TOO FAR ALONG.

10 MR. LEBOWITZ: THAT WAS MY QUESTION, YOUR HONOR. IF  
11 WE COULD HAVE A BRIEFING SCHEDULE ON THIS BECAUSE WE DON'T KNOW  
12 HOW TO --

13 THE COURT: I UNDERSTAND MR. VARTAIN WILL HAVE A BRIEF  
14 IN MY HANDS TOMORROW. I PRESUME HIS OFFICE IS WORKING ON IT AS  
15 WE SPEAK -- OR WILL BE.

16 MR. VARTAIN: BUT YOUR HONOR IS SMILING AS SHE SAYS  
17 THAT. MAY I COME BACK AFTER LUNCH AND SEE WHO'S THERE AND WHO  
18 CAN -- WE WILL PUT IT ON THE TOP OF THE FRONT BURNER AND --

19 THE COURT: THAT'S FINE.

20 MR. VARTAIN: BUT COULD I COMMIT AFTER LUNCH TO THE  
21 BRIEF?

22 THE COURT: ABSOLUTELY. WE WILL RETURN TO THAT.

23 LET'S SEE IF WE CAN, THEN, MOVE ON JUST A LITTLE BIT

24 MORE.

25 IN LIMINE MOTION NO. 3 IS TO EXCLUDE INADMISSIBLE

26 HEARSAY EVIDENCE OF OUT-OF-COURT OPINIONS OF TREATING MEDICAL

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1 PROVIDERS, AND THERE WAS A LIST OF FIVE DOCUMENTS. IN THE

2 OPPOSITION PLAINTIFF ARGUES THAT THESE DOCTORS WILL TESTIFY,

3 WITH THE EXCEPTION OF DR. MARCUS, WHO IS GRAVELY ILL HIMSELF.

4 AS TO -- WELL, I'M NOT GOING TO ADMIT INADMISSIBLE HEARSAY, AND

5 I DON'T THINK ANYONE IS SUGGESTING THAT. I'M WONDERING IF I

6 DON'T NEED TO WAIT AND MAKE RULINGS AS EVIDENCE IS PROFFERED AND

7 EVALUATED.

8 MR. VARTAIN: YOU KNOW, WHEN I SAW THE PLAINTIFF'S

9 WITNESS LIST, INsofar AS THEY'RE NOT CALLING -- MY FEAR WAS THAT

10 THE INADMISSIBLE EVIDENCE WOULD COME IN THROUGH THE PLAINTIFF.

11 I'M NOT FEARFUL THAT IT WILL COME IN THROUGH THE DOCTORS;

12 OBVIOUSLY, IT'S NOT HEARSAY IF THEY'RE ON THE WITNESS STAND.

13 THE COURT: EXACTLY.

14 MR. VARTAIN: BUT IF SHE'S NOT GOING TO TESTIFY UNTIL

15 AFTER THE DOCTORS, THEN I THINK YOU -- AND THEN WE CAN TAKE THIS

16 MOTION IN LIMINE UP BEFORE SHE TESTIFIES. SO I DON'T WANT HER

17 GIVING HEARSAY TESTIMONY, BUT YOU'LL HAVE A BETTER --

18 THE COURT: YEAH.

19 MR. VARTAIN, THERE ARE WAYS THAT SOME OF THIS

20 INFORMATION COULD BE ADMISSIBLE FOR NON-HEARSAY PURPOSES. FOR  
21 EXAMPLE, PROFESSOR BLOUGH CAN TESTIFY, "I BELIEVED I WAS CAPABLE  
22 OF RETURNING TO WORK BECAUSE MY DOCTOR TOLD ME," BLAH, BLAH,  
23 BLAH. IT'S NOT OFFERED FOR THE TRUTH OF WHAT THE DOCTOR TOLD  
24 OFFERED, BUT FOR THE FOUNDATION OF THE BELIEF THAT SHE HAD.

25 NOW, I DON'T KNOW WHAT SHE'S OFFERING IT FOR. THE  
26 NON-HEARSAY PURPOSE CONTINUES TO HAVE TO BE RELEVANT TO THE

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1 MATTERS BEFORE THE COURT, AND HER BELIEF SHE WAS READY TO COME  
2 BACK TO WORK MAY NOT BE A RELEVANT MATTER FOR THE JURY TO  
3 CONSIDER. BUT I THINK WE NEED TO DEFER RULING --

4 MR. VARTAIN: I THINK YOU DO.

5 THE COURT: -- ON THIS.

6 MR. VARTAIN: I WOULD LIKE TO ASK YOU TO DEFER RULING.

7 THE COURT: OKAY.

8 MR. VARTAIN: AS LONG AS PLAINTIFF IS GOING TO DEFER  
9 CALLING PLAINTIFF UNTIL AFTER THE DOCTORS ARE CALLED, I THINK IT  
10 WILL SORT ITSELF OUT.

11 THE COURT: I THINK IT WILL.

12 AND, MR. LEBOWITZ, YOU NEED TO BE READY TO EXPLAIN THE  
13 NON-HEARSAY PURPOSE OF THE INFORMATION. I WOULD APPRECIATE IT,  
14 TO THE EXTENT THAT YOU CAN, THAT BEFORE THE WITNESS TESTIFIES  
15 THAT YOU ADDRESS THESE ISSUES TO THE COURT, SO THAT WE DON'T  
16 HAVE TO HAVE A JURY SITTING, WAITING OUT IN THE HALLWAY QUESTION  
17 AFTER QUESTION. BUT I'M NOT GOING TO RULE ON THIS NOW. I'M

18 GOING TO LET YOU SEE HOW IT GOES WITH YOUR DOCTORS AND HOW  
19 YOU'RE GOING TO ASK THE QUESTIONS.

20 MR. LEBOWITZ: AND, AS WE SAID IN OUR OPPOSITION, YOUR  
21 HONOR, IT GOES TO SEVERAL DIFFERENT ISSUES IN THE CASE. IT DOES  
22 GO TO HER STATE OF MIND AND ALSO TO OUR FAILURE TO PREVENT  
23 DISCRIMINATION CAUSE OF ACTION.

24 THE COURT: IT MAY WELL, AND YOU HAVE TO OFFER A  
25 NON-HEARSAY PURPOSE FOR ADMITTING IT. THE TRUTH OF WHAT THE  
26 DOCTORS' OPINIONS ARE, IT'S NOT GOING TO COME IN FOR, EXCEPT

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1 THROUGH THE DOCTOR.

2 MR. LEBOWITZ: SURE.

3 THE COURT: AND THAT'S WHAT THE MOTION ADDRESSES.

4 ALL RIGHT. THE FOURTH MOTION IS TO LIMIT PLAINTIFF  
5 FROM CERTAIN QUESTIONING OF DR. MISSETT.

6 MR. LEBOWITZ: IF I MAY, YOUR HONOR? THIS WAS A  
7 LATE-SERVED MOTION. ON SUNDAY EVENING, ABOUT 5:00 O'CLOCK IS  
8 WHEN WE RECEIVED THIS MOTION, SO WE DID NOT HAVE A WRITTEN  
9 OPPOSITION TO IT.

10 MR. VARTAIN: AND I COULD EXPLAIN WHY THAT IS.

11 MR. LEBOWITZ: REGARDLESS OF WHY THAT IS, I'M  
12 EXPLAINING WHY YOU DON'T HAVE ANY WRITTEN OPPOSITION IN FRONT OF  
13 YOU.

14 THE COURT: I WAS A LITTLE CONFUSED BY IT.

15 MR. LEBOWITZ: WE DO OPPOSE THE MOTION.

16 THE COURT: THIS HAD TO DO WITH THE SINGLE ISSUE OF  
17 CROSS-EXAMINATION OF DR. MISSETT ON HIS OTHER WORK FOR  
18 UNIVERSITIES IN GENERAL, NOT TO MENLO COLLEGE. I WAS TRYING TO  
19 UNDERSTAND WHAT YOU WERE PROVIDING TO ME. I GATHER THAT THE  
20 EXHIBIT 38 PERTAINED TO WORK HE DID FOR SOME OTHER UNIVERSITY.

21 MR. VARTAIN: IT IS PERTAINING TO WORK THAT HE --  
22 WHERE HE WAS AN EXPERT WITNESS IN THE SUPERIOR COURT RETAINED BY  
23 MY LAW FIRM FOR ANOTHER UNIVERSITY.

24 THE COURT: OKAY.

25 NOW, TYPICALLY, MR. VARTAIN, I, DAY-IN AND DAY-OUT  
26 HEAR EXPERTS CROSS-EXAMINED: "ISN'T IT TRUE YOU ONLY TESTIFY

60

1 FOR THE DEFENSE?" "ISN'T IT TRUE YOU'VE ONLY TESTIFIED FOR THE  
2 DISTRICT ATTORNEY," THAT DR. MISSETT DOES FORENSIC WORK IN  
3 CRIMINAL CASES, "AND YOU'VE DONE THAT A THOUSAND TIMES AND  
4 YOU'VE NEVER TESTIFIED." THAT SHOWS BIAS.

5 MR. VARTAIN: I DON'T HAVE A PROBLEM WITH THAT.

6 THE COURT: OKAY.

7 MR. VARTAIN: AND I DON'T EVEN HAVE A PROBLEM WITH THE  
8 UNIVERSITY. YOU KNOW, "HOW MUCH WORK DO YOU DO FOR" --

9 THE COURT: OKAY.

10 MR. VARTAIN: I HAVE THE PROBLEM WHERE COUNSEL IS  
11 TRYING TO IMPLICATE -- I'M THE COUNSEL OF RECORD HERE IN FRONT  
12 OF THE JURY. HE IS GOING TO USE MY NAME IN FRONT OF THE JURY ON  
13 A CASE WHERE DR. MISSETT WAS RETAINED BY MENLO COLLEGE, NOT BY

14 ME. AND HE WAS RETAINED IN 2003 FOR MS. BLOUGH, LONG BEFORE  
15 THIS OTHER CASE. IT COULD REALLY CONFUSE THE JURY AND PREJUDICE  
16 THEM AGAINST ME, IF HE GETS TO USE --

17 THE COURT: I NEED TO KNOW WHAT YOU WERE PLANNING TO  
18 DO.

19 MR. LEBOWITZ: LET ME EXPLAIN THE VARIOUS ASPECTS THAT  
20 THIS IS RELEVANT.

21 WHAT THE DOCUMENT SHOWS -- LET ME FIRST EXPLAIN WHAT  
22 IT SHOWS -- IS THAT CONTEMPORANEOUSLY TO DR. MISSETT PERFORMING  
23 THE ALLEGED INDEPENDENT MEDICAL EXAM OF MY CLIENT, WHERE THE  
24 COLLEGE IS BEING REPRESENTED BY MR. VARTAIN'S OFFICE,  
25 CONTEMPORANEOUSLY WITH THAT DR. MISSETT IS BEING PAID \$20,000 TO  
26 WORK ALONGSIDE MR. VARTAIN IN ANOTHER CASE TO PROVIDE TESTIMONY

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1 TO SUPPORT, OBVIOUSLY, HIS CLIENT. NOW THAT --

2 MR. VARTAIN: SO THE ONLY LINKAGE --

3 MR. LEBOWITZ: CAN I FINISH?

4 THE COURT: HOLD ON. LET ME HEAR THIS.

5 MR. LEBOWITZ: THANK YOU.

6 AND SO THERE'S A CENTRAL ISSUE OF INDEPENDENT AND THE  
7 IDEA OF WHETHER OR NOT DR. MISSETT'S OPINIONS WERE IN ANY WAY  
8 INFLUENCED OR DIRECTED BY THE COLLEGE OR ANY OF ITS  
9 REPRESENTATIVES. NOW, YOU ADD THAT TO THE OTHER DOCUMENTARY  
10 EVIDENCE THAT SHOWS BEFORE THIS LAWSUIT WAS FILED, MR. VARTAIN  
11 WAS FAXING DIRECTLY TO DR. MISSETT INFORMATION ABOUT OUR CLAIMS

12 IN THE CASE.

13 SO OUR INITIAL LETTER THAT WE SENT TO THE COLLEGE, OUR  
14 INTRODUCTORY LETTER, VERY BRIEF, "WE REPRESENT PROFESSOR BLOUGH.  
15 WE BELIEVE THERE'RE SOME ISSUES THAT NEED TO BE WORKED OUT.  
16 LET'S TALK ABOUT MEDIATION, SOMETHING ELSE." MR. VARTAIN FAXED  
17 THAT DIRECTLY TO DR. MISSETT. SUBSEQUENT TO THAT, DR. MISSETT  
18 THEN PERFORMED A SUBSEQUENT EVALUATION OF MY CLIENT, AT WHICH  
19 TIME HE SUDDENLY REVERSED COURSE AT LEAST HALFWAY AS HIS  
20 DECISION EARLIER IN THE CASES AND HAS A DIFFERENT OPINION.  
21 SUDDENLY, EVEN THOUGH ALL THE INFORMATION IS EXACTLY THE SAME AS  
22 EARLIER.

23 NOW, THIS IS ALSO INFORMATION THAT I ASKED  
24 DR. REYNOLDS, THEIR RETAINED EXPERT, IN HIS DEPOSITION, A WEEK  
25 AGO MONDAY WAS WHEN HE WAS PRODUCED. I ASKED HIM, "WERE YOU  
26 AWARE WHEN YOU RENDERED AN OPINION" -- PART OF THE OPINION THAT

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1 DR. REYNOLDS RENDERED WAS THAT DR. MISSETT WAS INDEPENDENT IN  
2 HIS EVALUATION.

3 AND I ASKED DR. REYNOLDS -- I SAID, "DR. REYNOLDS,  
4 WERE YOU AWARE THAT CONTEMPORANEOUS TO DR. MISSETT PERFORMING  
5 THE EVALUATION THAT HE PERFORMED HERE, HE WAS EARNING \$20,000  
6 FOR EXPERT WORK RETAINED BY THE SAME LAW FIRM THAT WAS  
7 REPRESENTING THE COLLEGE AT THE SAME TIME? WERE YOU AWARE OF  
8 THAT INFORMATION?" AND HE SAID NO. I SAID, "NOW THAT YOU ARE  
9 AWARE OF THAT INFORMATION, WOULD THAT INFLUENCE OR CHANGE YOUR

10 OPINION IN ANY WAY?" AND HE SAID, "IT MIGHT."

11 MR. VARTAIN: NO. HE SAID "NOT NECESSARILY."

12 MR. LEBOWITZ: HE SAID, "IT MIGHT," AND HE HAD AN  
13 EXPLANATION. AND HE STRUGGLED. I CAN TELL YOU. I WAS THERE;  
14 MR. VARTAIN WAS NOT. HE STRUGGLED WITH THAT ANSWER. AND THAT  
15 IS SOMETHING THAT I BELIEVE I'M ENTITLED TO CERTAINLY  
16 CROSS-EXAMINE DR. REYNOLDS ON, BECAUSE HE OFFERED THE OPINION  
17 THAT DR. MISSETT WAS INDEPENDENT. THEY'RE GOING TO USE THE WORD  
18 "INDEPENDENT" 10,000 TIMES IN THIS TRIAL, AND I'M ENTITLED TO  
19 ALLOW THE JURY TO UNDERSTAND THE FULL EXTENT OF THE  
20 RELATIONSHIPS BETWEEN ALL THE PARTNERS AND PLAYERS IN THIS CASE.

21 MR. VARTAIN: I DIDN'T KNOW THAT THIS WAS GOING TO  
22 HAPPEN UNTIL I GOT THE EXHIBIT THE DAY BEFORE TRIAL. HE'S NOW  
23 MADE IT CLEAR THAT HE'S GOING TO MAKE ME THE LYNCHPIN IN THIS.  
24 I COULD NOT TRY THE CASE IN THIS CIRCUMSTANCE, YOUR HONOR.

25 THE COURT: WELL, I DON'T THINK THAT'S TRUE. I THINK  
26 THIS HAPPENS ALL THE TIME THAT -- CAN WE DO IT IN TERMS OF

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1 YOUR -- WELL, IT'S YOUR LAW FIRM, SO THAT'S NOT GOING TO HELP.

2 MR. VARTAIN: THERE IS NO WAY. HE'S MENTIONED  
3 VARTAIN. I'M GOING TO MOVE TO WITHDRAW -- AND THE OTHER THING,  
4 YOUR HONOR, THIS IS LAST-MINUTE ANTICS.

5 THE COURT: THE PROBLEM IS THAT -- THE PROBLEM I HAVE  
6 IS THAT IF YOU HIRE THE SAME EXPERT -- YOU AS COUNSEL FOR A  
7 PARTY -- THE SAME EXPERT FIVE TIMES EVERY YEAR, AND THAT EXPERT



8 DERIVES A SIGNIFICANT PORTION OF HIS OR HER INCOME FROM WORKING  
9 FOR YOU, THAT IS A LEGITIMATE AREA FOR THE JURY TO CONSIDER  
10 WHETHER OR NOT THE EXPERT'S TESTIMONY IS BIASED.

11 MR. VARTAIN: AND I THOUGHT OF THAT IN MY MOTION  
12 SUGGESTING THAT YOUR HONOR MAKE A PRELIMINARY DETERMINATION OF  
13 THOSE, TO LET YOUR HONOR HEAR WHAT HIS TESTIMONY WOULD BE ON  
14 THOSE ISSUES. THAT IS, YOU KNOW, HOW MUCH -- YOU KNOW, THE ONLY  
15 TIME HE'S EVER SERVED AS AN EXPERT WORKING FOR MY LAW FIRM IS  
16 THAT ONE CASE --

17 THE COURT: OKAY.

18 MR. VARTAIN: -- WHICH WAS A CASE FROM THE PREVIOUS  
19 YEAR. THE INSURANCE COMPANY TOOK SIX MONTHS TO SEND --

20 THE COURT: AND IT WAS A DIFFERENT COLLEGE, CORRECT?

21 MR. VARTAIN: AND IT WAS A DIFFERENT UNIVERSITY. AND  
22 I DID NOT -- I WASN'T EVEN INVOLVED WITH MENLO COLLEGE'S HIRING  
23 OF HIM IN 2003.

24 THE COURT: IN FACT, YOUR LAW FIRM DID NOT HIRE  
25 DR. MISSETT IN THIS CASE, CORRECT?

26 MR. VARTAIN: RIGHT. THE COLLEGE DID. SO THE

1 PRELIMINARY DETERMINATION WOULD NEED TO BE MADE BY YOUR HONOR AS  
2 TO WHETHER THIS HAS -- I'M GOING TO MOVE TO WITHDRAW IF MY NAME  
3 IS MENTIONED IN THIS CIRCUMSTANCE. I COULD NOT -- IT WOULD  
4 COMPROMISE MY CREDIBILITY WITH THE JURY, AND THAT'S WHAT THE  
5 ATTORNEY WANTS TO DO. THAT'S WHY I GOT THE EXHIBIT AT THE ENTH

6 HOUR. HE DIDN'T ASK DR. MISSETT ABOUT ANY OF THIS IN HIS  
7 DEPOSITION. I GOT SANDBAGGED BY IT. NOTHING WAS ASKED ABOUT  
8 WORK FOR VARTAIN GROUP IN HIS DEPOSITION. NOTHING WAS ASKED  
9 ABOUT WORK FOR THE UNIVERSITY.

10 THE COURT: WELL, LET ME --

11 MR. LEBOWITZ: YOUR HONOR, THIS IS A DOCUMENT  
12 DR. MISSETT PRODUCED EIGHT MONTHS AGO. THIS IS A DOCUMENT FROM  
13 DR. MISSETT'S FILE.

14 THE COURT: OKAY.

15 MR. LEBOWITZ: THIS IS NOT SOMETHING THAT A  
16 SANDBAGGER -- THAT I FOUND SOMEWHERE MAGICALLY. THIS IS  
17 SOMETHING THAT'S BEEN IN THE CASE SINCE LAST SUMMER.

18 MR. VARTAIN: NO. YOU SUED HIM. YOU PROPOUNDED A  
19 REQUEST FOR PRODUCTION, OF WHICH I HAD NO RIGHT TO OBJECT  
20 BECAUSE YOU PROPOUNDED ON HIM FOR ALL HIS INVOICES TO VARTAIN  
21 LAW GROUP. HE GOT ONE INVOICE FOR HIS WHOLE 20 YEARS. THIS IS  
22 THE ONE THAT WE'RE GOING TO BRING UP, AND I GOT IT IN MY TRIAL  
23 EXHIBITS. THAT'S WHY THE LATE MOTION WAS FILED.

24 MR. LEBOWITZ: I DON'T KNOW HOW TO RESPOND TO THAT.  
25 IT'S A DOCUMENT IN THE CASE THAT WAS PRODUCED IN THE SUMMER.

26 THE COURT: NOW, BECAUSE ANOTHER WAY TO HANDLE THIS --

1 AND I'M NOT SURE IT MAKES SENSE -- IS SIMPLY TO NOT ALLOW THE  
2 EXHIBIT TO COME IN, BUT TO ALLOW YOU TO ASK DR. MISSETT IF HE  
3 HAS TESTIFIED -- IF HE'S BEEN RETAINED BY OTHER UNIVERSITIES AND

4 BEEN PAID, AND HOW MUCH HE'S BEEN PAID.

5 MR. LEBOWITZ: BUT IT'S NOT THE UNIVERSITIES THAT  
6 MATTER, YOUR HONOR. LET ME ALSO ADD --

7 MR. VARTAIN: NO --

8 MR. LEBOWITZ: -- LET ME ADD A BIT OF CONTEXT TO THIS,  
9 YOUR HONOR.

10 THE COURT: BUT, MR. LEBOWITZ, THE FACTS IN THIS CASE  
11 ARE THAT DR. MISSETT WAS NOT RETAINED INITIALLY BY THE VARTAIN  
12 LAW GROUP.

13 MR. LEBOWITZ: LET ME CLARIFY.

14 MR. VARTAIN: THAT'S CORRECT.

15 MR. LEBOWITZ: THIS IS EXACTLY WHAT I WOULD LIKE TO  
16 ADDRESS. THE TESTIMONY FROM THE WITNESSES FROM STEPHANIE  
17 SAPRAI, THE DIRECTOR OF ADMINISTRATION, ESSENTIALLY H.R.,  
18 PRESIDENT LOPEZ, PROVOST SCHULTZ, DEAN PRATT. NOT ONE OF THEM  
19 WILL TAKE RESPONSIBILITY FOR HIRING OR MAKING THE DECISION TO  
20 HIRE DR. MISSETT. STEPHANIE SAPRAI, THE H.R. DIRECTOR OF  
21 ADMINISTRATION, TESTIFIED THAT THE DECISION WAS MADE IN  
22 CONSULTATION WITH COUNSEL. THAT WAS HER TESTIMONY.

23 THE COURT: BUT WHO IS THE GENERAL COUNSEL OF THE  
24 COLLEGE?

25 MR. LEBOWITZ: HE'S THE GENERAL COUNSEL FOR THE  
26 UNIVERSITY.

1 MR. VARTAIN: YOU WOULD NOT -- NO.

2 MR. LEBOWITZ: AND SO --

3 MR. VARTAIN: I WANT TO JUST STOP THERE.

4 THE COURT: WHO'S THE GENERAL COUNSEL?

5 MR. VARTAIN: THEY DON'T HAVE GENERAL COUNSEL.

6 THE COURT: OKAY.

7 MR. VARTAIN: SO WHERE DO YOU GET THIS INFORMATION

8 FROM, WHEN YOU JUST SAID ON THE RECORD THINGS YOU DON'T KNOW TO  
9 BE TRUE?

10 MR. LEBOWITZ: I'LL ADDRESS THE COURT, YOUR HONOR.

11 THE COURT: ADDRESS THE COURT.

12 MR. VARTAIN: BUT THE POINT IS, YOUR HONOR, THE FACTS

13 ARE IN 2003, THE COLLEGE HIRED DR. MISSETT. WHEN THE ISSUE

14 RE-AROSE IN 2006, THE COLLEGE DECIDED THAT SINCE DR. MISSETT --

15 THIS IS THE TESTIMONY FROM THE PLAINTIFF -- HAD HELPED THE

16 PLAINTIFF GET BACK TO WORK THROUGH HALF-TIME, THEN FULL-TIME,

17 WHY NOT SEND HER TO THE SAME PERSON. THIS WAS ALL BEFORE HE GOT  
18 RETAINED BY ME.

19 THE COURT: WHEN WAS THE SUIT FILED? 2007, IN JULY?

20 MR. LEBOWITZ: AUGUST 2007.

21 MR. VARTAIN: NO, 200- --

22 MR. LEBOWITZ: AUGUST 7, 2007.

23 MR. VARTAIN: THAT IS CORRECT.

24 THE COURT: ALL RIGHT.

25 THAT WAS A SIGNIFICANT AMOUNT OF TIME AFTER  
26 DR. MISSETT PERFORMED HIS LAST EVALUATION?

1 MR. LEBOWITZ: THAT WAS BEFORE THE COLLEGE?

2 MR. VARTAIN: SIX MONTHS.

3 MR. LEBOWITZ: IN REGARD TO THIS CASE?

4 THE COURT: IN REGARD TO THIS CASE, SIX MONTHS.

5 MR. LEBOWITZ: HIS LAST LETTER WAS IN MARCH OF '07, I  
6 BELIEVE.

7 THE COURT: SO THERE IS NO EVIDENCE THAT MR. VARTAIN  
8 HIRED DR. MISSETT FOR PROFESSOR BLOUGH'S CASE.

9 MR. LEBOWITZ: I DISAGREE WITH THAT. BECAUSE WHAT THE  
10 TESTIMONY FROM ALL OF THOSE FOUR WITNESSES I IDENTIFIED WAS THAT  
11 NONE OF THEM WILL TAKE RESPONSIBILITY FOR HIRING HIM. AND  
12 STEPHANIE SAPRAI SPECIFICALLY SAID IN HER DEPOSITION THAT THE  
13 DECISION WAS MADE IN CONSULTATION WITH COUNSEL.

14 THE COURT: HOW WOULD SHE KNOW THAT? THAT WON'T EVEN  
15 BE ADMISSIBLE, WILL IT?

16 MR. LEBOWITZ: SHE WAS THE DIRECTOR OF HR IN MAY OF  
17 2006.

18 THE COURT: IS SHE TESTIFYING, "I SPOKE TO A LAWYER"?

19 MR. LEBOWITZ: WELL, WE WERE CUT OFF, AS FAR AS ANY  
20 EXAMINATION, BY ATTORNEY-CLIENT PRIVILEGE AND STRENUOUS  
21 ATTORNEY-CLIENT PRIVILEGE OBJECTIONS, AS TO ANY DISCUSSIONS OR  
22 EVEN WHO WAS BEING -- WE WERE CUT OFF AS FAR AS EVEN IDENTIFYING  
23 THE SPECIFIC LAWYERS WITHIN THE VARTAIN LAW GROUP. SHE DID  
24 IDENTIFY THE VARTAIN GROUP, BUT BEYOND THAT WE WERE PRECLUDED  
25 FROM ASKING ANY FURTHER IDENTIFYING QUESTIONS.

26 MR. VARTAIN: CAN I ADD ONE THING?

1 THE COURT: YES.

2 MR. VARTAIN: THANK YOU.

3 THE LETTERS THAT WERE REFERRED TO BY COUNSEL THAT  
4 SUPPOSEDLY WENT FROM ME TO DR. MISSETT AND BACK, WHAT WAS LEFT  
5 OUT WAS COUNSEL'S PRE-LITIGATION CORRESPONDENCE MADE A DEMAND  
6 LETTER. HE SENT A DEMAND LETTER TO THE COLLEGE; SENT IT TO ME.  
7 HE SIMULTANEOUSLY SENT A DEMAND TO DR. MISSETT, OF WHICH I  
8 DIDN'T KNOW, FOR RECORDS OF THE COLLEGE IN DR. MISSETT'S FILE.  
9 DR. MISSETT SENT ME -- ALL HE DID WAS SENT ME A COPY OF THE  
10 LETTER.

11 THE COURT: OKAY.

12 MR. VARTAIN: I FAXED HIM A COPY OF MR. LEBOWITZ -- WE  
13 HAD A THREE-WAY CORRESPONDENCE. I NEVER TALKED TO HIM. WE HAD  
14 MUTUAL INTERESTS IN RECORDS RELEASES. THAT'S WHAT THE FAXES  
15 WERE ABOUT.

16 THE COURT: IT'S REALLY NOT A SUBJECT MATTER. THE  
17 ISSUE HERE REALLY -- IT IS, GENERALLY, A VALID AREA OF  
18 CROSS-EXAMINATION OF THE CREDIBILITY OF A WITNESS, ESPECIALLY AN  
19 EXPERT WHO DERIVES INCOME ASSOCIATED WITH A KIND OF TESTIMONY  
20 WITH A CERTAIN BENT. YOU DON'T DISAGREE WITH THAT. THE ISSUE  
21 IS NAMING YOU. AND, YOU KNOW, I THINK YOU SHOULD HAVE THOUGHT  
22 OF THIS BEFORE. IF YOU HAD RETAINED DR. MISSETT IN THE PAST,  
23 THEN YOU SHOULD HAVE SEEN THIS.

24 AT THIS POINT, I'M GOING TO DENY THE MOTION. AND YOU

25 WILL BE ABLE TO CROSS-EXAMINE. IF YOU WANT TO MAKE A MOTION TO  
26 WITHDRAW, I CAN'T STOP YOU FROM MAKING A MOTION. I'LL REVIEW IT

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1 WHEN YOU FILE IT. IF YOU WANT TO MAKE IT ORALLY, I CAN RULE ON  
2 IT.

3 MR. VARTAIN: I'D LIKE TO ASK YOUR HONOR TO TAKE THE  
4 MATTER UP EN CAMERA, WITH TESTIMONY FROM DR. MISSETT OUTSIDE THE  
5 JURY'S PRESENCE SO THAT YOU COULD DECIDE WHAT THE LIKELY  
6 PREJUDICE IS GOING TO BE. I'M VERY UNHAPPY WITH THIS. I WAS  
7 BLIND-SIDED BY THIS, YOUR HONOR. IT ISN'T ONE THAT I SHOULD  
8 HAVE THOUGHT OF. I DIDN'T GET THE RECORD. DR. MISSETT WAS SUED  
9 AND NOW YOU TELL ME I CAN'T BRING UP THE SUIT, THAT HE WAS  
10 SUED -- AND HE WAS SUED IN THIS ACTION.

11 THE COURT: I'M NOT LIMITING ANYTHING THAT YOU CAN DO.  
12 OH, THAT HE WAS SUED?

13 MR. VARTAIN: YEAH. HE WAS SUED IN THIS ACTION, WHICH  
14 IS PART OF WHERE THE DOCUMENT PRODUCTION CAME FROM. THIS JUST  
15 CAME UP, LITERALLY, ON FRIDAY WHEN I GOT MY TRIAL EXHIBITS.

16 THE COURT: ALL RIGHT.

17 MR. LEBOWITZ: HOW THE DOCUMENT WAS PRODUCED IS NOT  
18 RELEVANT TO ANYTHING.

19 THE COURT: NO. IT'S NOT RELEVANT. I THINK IT'S  
20 PROPER CROSS-EXAMINATION OF AN EXPERT WITNESS. THE JURY IS  
21 BEING ASKED TO ACCEPT HIS OPINIONS, AND BIAS IS ABOUT THE ONLY  
22 THING THEY CAN LATCH ONTO AS A REASON TO NOT BELIEVE HIS

23 OPINIONS.

24 MR. VARTAIN: ALL RIGHT. I'M GIVING NOTICE THAT I'M  
25 CALLING MR. LEBOWITZ AS A WITNESS NOW. HE SENT LETTERS TO THE  
26 COLLEGE.

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1 THE COURT: THIS CASE IS NOT GOING TO DISSEMBLE INTO  
2 THAT KIND OF --

3 MR. VARTAIN: I'M GIVING THAT NOTICE.

4 THE COURT: WELL, I MAY OR MAY NOT ALLOW YOU TO CALL  
5 HIM AS A WITNESS. I NEED A STATEMENT AS TO THE SUBJECT MATTER  
6 OF HIS TESTIMONY.

7 MR. VARTAIN: HE HAS PUT EXHIBITS IN EVIDENCE. THERE  
8 ARE EXHIBITS IN THE TRIAL EXHIBITS OFFERED BY HIM ON --  
9 CORRESPONDENCE ON BEHALF OF PLAINTIFF ON HER REASONABLE  
10 ACCOMMODATIONS. I WITHHELD CALLING -- I PUT HIM ON THE WITNESS  
11 LIST INITIALLY ON PEOPLE WITH KNOWLEDGE AND I HAVE DISCOVERY. I  
12 AM GOING TO CALL HIM ON THAT SUBJECT BECAUSE -- I WITHHELD FROM  
13 DOING IT OUT OF COURTESY TO THE OPPOSING COUNSEL. I'M NOT  
14 GETTING THAT COURTESY NOW, YOUR HONOR, SO I'M GIVING NOTICE.

15 MR. LEBOWITZ: WE, OBVIOUSLY, OBJECT. THERE'S NO --  
16 THE ONLY PURPOSE OF ANY LETTER THAT'S IN THERE IS FOR PURPOSES  
17 OF NOTICE AND COMMUNICATION.

18 THE COURT: I'M NOT GOING TO DEAL ON WHETHER OR NOT  
19 YOU CAN CALL HIM AS A WITNESS UNTIL I UNDERSTAND THE SCOPE OF  
20 THE TESTIMONY. I'VE RULED ON THE ISSUE ABOUT DR. MISSETT. AND



21 PLAINTIFF'S RIGHT TO INDICATE A CONNECTION TO THE VARTAIN LAW  
22 FIRM FOR HIRING HIM, I THINK, IS FAIR GAME. AND, AS I SAY, I'M  
23 NOT GOING TO -- YOU HAVEN'T MADE A MOTION TO WITHDRAW SO THERE'S  
24 NOTHING FOR ME TO RULE ON. YOU'VE THREATENED THAT YOU'RE GOING  
25 TO CALL MR. LEBOWITZ AS A WITNESS --

26 MR. VARTAIN: I DIDN'T THREATEN, YOUR HONOR. I PUT

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1 HIM ON THE WITNESS LIST EARLIER. I GAVE HIM NOTICE.

2 THE COURT: AND YOU'LL DO WHAT YOU'RE GOING TO DO.  
3 AND IF HE OBJECTS -- IF HIS CO-COUNSEL MAKES A MOTION TO EXCLUDE  
4 MR. LEBOWITZ AS A WITNESS, I CAN RULE ON IT AT THE TIME. I  
5 DON'T HAVE THAT MOTION BEFORE ME NOW.

6 MR. VARTAIN: OKAY. I HAVE TO NOW CONSULT WITH THE  
7 CLIENT ON THE ISSUE OF WITHDRAWAL OF COUNSEL, AND THAT MAY  
8 AFFECT THE JURY, YOUR HONOR.

9 THE COURT: WELL, YOU KNOW WHAT? WE'LL DEAL WITH IT.  
10 YOU HAVE THE LUNCH HOUR TO DISCUSS THAT WITH YOUR CLIENT.

11 MR. VARTAIN: I WILL.

12 THE COURT: YOU UNDERSTAND IT'S HIGHLY REMOTELY  
13 UNLIKELY THAT I WOULD GRANT SUCH A MOTION, BUT I WANT TO HEAR  
14 FROM YOU ON IT.

15 MR. VARTAIN: I WILL TAKE THAT INDICATION STRONGLY.  
16 AND I'LL HELP YOU MOVE THINGS ALONG ONE WAY OR THE OTHER, YOUR  
17 HONOR.

18 OKAY. THANK YOU.

19 THE COURT: ALL RIGHT, THEN.  
20 WE WILL TAKE OUR LUNCH BREAK. WE WILL COME BACK AT  
21 1:30. I KNOW I STILL HAVE THE MOTION ON DR. LIU'S TESTIMONY,  
22 BUT I DON'T THINK THAT'S PRESSING.  
23 MR. LEBOWITZ: ON THE VIDEO?  
24 THE COURT: WE'LL DEAL WITH THAT.  
25 MR. LEBOWITZ: OKAY.  
26 THE COURT: ALL RIGHT.

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1 (WHEREUPON, A LUNCH RECESS WAS TAKEN.)  
2 (WHEREUPON, JURY SELECTION PROCEEDINGS  
3 OCCURRED, WHICH WERE NOT REPORTED.)  
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1           P R O C E E D I N G S

2    DECEMBER 3, 2008 A.M.            REDWOOD CITY, CALIFORNIA

3           THE COURT: GOOD MORNING.

4           WE ARE ON THE RECORD IN BLOUGH VS. MENLO COLLEGE. WE  
5    ARE OUTSIDE THE PRESENCE OF THE JURY. THE COURT WAS PROVIDED  
6    WITH A DEFENSE MOTION TO EXCLUDE TWO WITNESSES, PROFESSORS  
7    MEDLEN AND MCDONOUGH. I DID REVIEW THE MOVING PAPERS AND THE  
8    OPPOSITION, WHICH WERE PROVIDED TO ME THIS MORNING. AND I  
9    APPRECIATE ALL THE WORK THAT WENT INTO THAT.

10          MR. VARTAIN, WILL IT BE YOU OR MS. ADLER?

11          MR. VARTAIN: I WILL ARGUE THIS, YOUR HONOR.

12          THE COURT: GOOD.

13          IN READING THE THORN CASE, I WOULD LIKE TO KNOW FROM  
14    YOU WHAT EVIDENCE YOU HAVE THAT THE INTERROGATORY ANSWERS WERE

15 WILLFULLY FALSE OR THAT COUNSEL DELIBERATELY REFRAINED FROM  
16 FINDING OUT UNTIL AFTER HE HAD ANSWERED THE INTERROGATORIES,  
17 WHICH IS THE LANGUAGE IN THORN AT PAGE 276 THAT ACTUALLY DEFINES  
18 WHAT WILLFULLY MEANS, AND NOT WHAT YOUR BRIEF SUGGESTS.

19 MR. VARTAIN: COULD I JUST -- WHAT WILLFULLY MEANS,  
20 OKAY. THE MAJOR FACT WHICH ANSWERS YOUR HONOR'S QUESTION IS THE  
21 LETTER OF -- THAT IT SHOULD HAVE BEEN KNOWN IS THE QUOTE FROM  
22 THE CASE.

23 THE COURT: BUT YOU HAVE TO READ WHAT "SHOULD HAVE  
24 KNOWN" MEANS IN THE CONTEXT OF THE THORN CASE. AND THAT IS MY  
25 CONCERN, BECAUSE "SHOULD HAVE KNOWN" SOUNDS LIKE A FAIRLY BENIGN  
26 STANDARD. BUT, IN FACT, IN THORN THE COURT SAYS THAT KNEW OR

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1 SHOULD HAVE KNOWN REALLY MEANS, IN THIS CONTEXT, WILLFULNESS IS  
2 THAT THERE WAS A DELIBERATE REFRAINING FROM FINDING OUT UNTIL  
3 AFTER THE INTERROGATORIES WERE ANSWERED.

4 MR. VARTAIN: YES, YOUR HONOR. TWO THINGS. THE  
5 OPPOSITION POINTS OUT THAT THE PLAINTIFF KNEW EARLY IN DISCOVERY  
6 ABOUT THE INFORMATION THAT THESE PEOPLE HAD. THE QUESTION IS  
7 NOT WHETHER THEY REFRAINED FROM DISCLOSING THEM AS WITNESSES AT  
8 TRIAL, BECAUSE THERE'S NO DUTY TO DO THAT. THERE'S SIMPLY A  
9 DUTY TO DISCLOSE IN THEIR INTERROGATORY RESPONSES THAT THESE  
10 PEOPLE HAVE KNOWLEDGE; NOT OF SOME ENVIRONMENT INFORMATION ABOUT  
11 THE PLAINTIFF, BUT THEY HAVE INFORMATION ABOUT THE FACTS OF HER  
12 CAUSES OF ACTION.

13 THAT'S THE INFORMATION THAT IS ADMITTED TO HAVE BEEN  
14 KNOWN WHEN YOU READ THE OPPOSITION BY THE PLAINTIFF. HAD WE  
15 KNOWN THAT THESE PEOPLE DIDN'T JUST -- THEY WEREN'T JUST HER  
16 COLLEAGUES AND THEY HAD TALKED TO SOMEBODY, BUT THE PLAINTIFF  
17 BELIEVED THEM TO HAVE FACTS IN SUPPORT OF THEIR CAUSES OF  
18 ACTION, WE WOULD HAVE DEPOSED THEM. THE OPPOSITION DISCLOSES,  
19 AS DOES IN THE LETTER OF NOVEMBER 25TH OF MR. LEBOWITZ, THAT'S  
20 IN OUR MOVING PAPERS -- AND I'LL QUOTE FROM IT, THAT THEY KNEW  
21 THAT THESE PEOPLE HAD KNOWLEDGE OF THE FACTS RELEVANT TO THE  
22 CAUSES OF ACTION IN THE CLAIMS.

23 HE SAYS IN HIS LETTER --

24 THE COURT: WHAT'S THE DATE OF THE LETTER?

25 MR. VARTAIN: THE DATE OF THE LETTER IS NOVEMBER 25TH.

26 THE COURT: I HAVE THAT ONE.

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1 MR. VARTAIN: AND THIS IS THE DATE THE DAY BEFORE  
2 THANKSGIVING. "ENCLOSED, PLEASE FIND OUR AMENDED RESPONSES.  
3 UPON REVIEWING OUR ORIGINAL AND SUPPLEMENTAL RESPONSES, WE NOTED  
4 THAT WE HAD INADVERTENTLY OMITTED THE NAMES OF MEDLEN AND  
5 MCDONOUGH." OBVIOUSLY, THEN, HE'S AGREEING THAT THOSE NAMES  
6 SHOULD HAVE BEEN ON THE EARLIER INTERROGATORY RESPONSES. "BOTH  
7 FROM OUR LIST OF INDIVIDUALS WHO HAVE KNOWLEDGE OF THE FACTS OF  
8 THIS CASE."

9 THE COURT: WELL, OF COURSE, THE COURT IS READING THE  
10 FULL LETTER.

11 MR. VARTAIN: YEAH.  
12 "OF COURSE, THIS AMENDMENT IS SIMPLY PRO FORMA BECAUSE  
13 THEIR NAMES WERE DISCLOSED LONG AGO DURING THE SECTION OF MY  
14 CLIENT'S DEPOSITION. BUT WE WANTED TO SERVE THESE AMENDED  
15 RESPONSES FOR THE SAKE OF COMPLETENESS." SO THERE'S DOZENS OF  
16 NAMES THAT HAVE COME UP IN THE DEPOSITIONS. THE QUESTION IS,  
17 WHO HAS KNOWLEDGE OF FACTS IN SUPPORT? THAT WAS INADVERTENTLY,  
18 PERHAPS, OMITTED BUT, NEVERTHELESS, THE FAILURE TO REVIEW, EVEN  
19 ON AN AMENDED -- ON A REQUEST FOR SUPPLEMENTAL RESPONSE ONE  
20 MONTH BEFORE TRIAL, TO MAKE SURE -- YOU HAVE A DUTY TO MAKE SURE  
21 YOUR PRIOR RESPONSES WERE CORRECT.

22 THE COURT: I APPRECIATE THAT. THIS CASE, THOUGH --  
23 IN LOOKING AT THE THORN CASE, THE COURT OF APPEAL LOOKED  
24 CAREFULLY AT THE STANDARD APPLIED BY THE TRIAL COURT IN GRANTING  
25 THE DRASTIC REMEDY OF REFUSING TO ALLOW WITNESSES TO TESTIFY.  
26 AND THE COURT MADE IT VERY CLEAR THAT THE TEST WAS NOT SIMPLY

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1 KNEW OR SHOULD HAVE KNOWN. WHAT THE COURT OF APPEAL GOES ON TO  
2 DO IS TO FURTHER DEFINE WHAT THAT TERM MEANS. AND IT'S FAIRLY  
3 ONEROUS.

4 YOU'RE NOW SAYING THAT IT WAS INADVERTENT BECAUSE  
5 THAT'S ALL THE LETTER SAYS. I NEED TO APPLY THE STANDARD IN  
6 THORN. I APPRECIATE THE CASE CITATION, BUT THIS LANGUAGE ON  
7 WILLFULNESS IS CONSISTENT WITH WHAT THIS COURT WOULD KNOW AS  
8 WILLFUL BEHAVIOR. "THUS, IT CAN BE SAID HERE THAT APPELLANT'S

9 COUNSEL SHOULD HAVE KNOWN OF KLUMP'S EXISTENCE AS A WITNESS IN  
10 THE SENSE THAT HE DELIBERATELY REFRAINED FROM FINDING OUT UNTIL  
11 HE HAD ANSWERED THE INTERROGATORY. SUCH CONDUCT IS WILLFUL AS  
12 THE TERM IS USED HERE."

13 MR. VARTAIN: COULD I CLARIFY SOMETHING, THEN, YOUR  
14 HONOR? I'M TRACKING YOU.

15 I DON'T THINK THE ORIGINAL -- THE FIRST SET OF  
16 RESPONSES WERE WILLFUL. WHEN WE SERVED THE ONE INTERROGATORY,  
17 "PLEASE, LOOK AT YOUR PRIOR RESPONSES AND SUPPLEMENT," THAT WAS  
18 ONLY ONE MONTH BEFORE TRIAL. THAT'S WHERE THE WILLFULNESS CAME  
19 IN, BECAUSE YOU COULD NOT REVIEW YOUR PRIOR ANSWERS AND NOT BE  
20 WILLFUL WHEN YOU KNEW THESE PEOPLE HAD KNOWLEDGE -- HE DID KNOW  
21 THAT. HE'S SAYING THAT -- AND NOT BE WILLFUL.

22 THE SECOND THING THAT I WANT TO ADD, AND THEN I'LL CUT  
23 SHORT BECAUSE I KNOW YOU'RE READY TO RULE, YOUR HONOR. THE  
24 SECOND PART OF WILLFULNESS CAME WHEN I GOT THESE ON THANKSGIVING  
25 EVE. I SENT A LETTER OFF TO THE COUNSEL, AND I SAID, "PLEASE,  
26 TELL ME IF YOU'RE GOING TO CALL THESE PEOPLE AS WITNESSES."

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1 BECAUSE IF THEY WEREN'T GOING TO BE CALLED AS WITNESSES, THE  
2 FACT THAT HE'S ADDED TWO MORE PEOPLE WITH KNOWLEDGE DOESN'T  
3 MATTER.

4 I GOT A LETTER BACK WITH ALL THIS JABBERWOCKY ABOUT,  
5 YOU KNOW, HOW -- BUT HE DIDN'T TELL ME. SO ALL WEEKEND I STILL  
6 DON'T KNOW IF THEY'RE GOING TO BE WITNESSES. I'M CALLING MY

7 CLIENT. "CAN I GET THEIR PERSONNEL FILES?" YOU KNOW, "CAN WE  
8 TRY TO TALK TO THEM?" I DIDN'T KNOW IF THEY WERE WITNESSES. HE  
9 WOULDN'T TELL ME. I CAME IN HERE ON MONDAY. I GOT THE WITNESS  
10 LIST. AND HERE'S THE WILLFULNESS. I COULD HAVE PREPARED MORE.

11 THE COURT: ALL RIGHT.

12 MR. LEBOWITZ --

13 MR. VARTAIN: ONE LAST THING IS I DON'T KNOW WHEN HE  
14 SUBPOENAED THEM. BUT THEY --

15 THE COURT: LET'S FIND OUT.

16 MR. VARTAIN: YES.

17 THE COURT: WHEN DID YOU SUBPOENA THESE WITNESSES?

18 MR. LEBOWITZ: ACTUALLY RECEIVED THEIR SUBPOENAS ABOUT  
19 TEN DAYS AGO, I WOULD SAY.

20 THE COURT: WHEN DID YOU SEND THEM OUT?

21 MR. LEBOWITZ: ON THE DAY BEFORE. WE SENT THEM BY  
22 MAIL WITH AN ACKNOWLEDGMENT OF RECEIPT, AND THEY RETURNED THE  
23 ACKNOWLEDGMENT OF RECEIPT FOR THE SUBPOENAS.

24 THE COURT: TEN DAYS AGO?

25 MR. LEBOWITZ: THAT WAS WHEN THE SUBPOENAS WERE SENT  
26 OUT. YEAH.

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1 MR. VARTAIN: DURING THAT TEN-DAY PERIOD, THEY WERE  
2 WILLFUL, YOUR HONOR. BECAUSE EVEN -- EVEN HE WOULDN'T ANSWER MY  
3 DIRECT QUESTION.

4 THE COURT: BUT AS YOU SAID -- AND I APPRECIATE



5 THAT -- IT'S NOT ABOUT A WITNESS LIST. IT'S ABOUT THE ANSWER TO  
6 THE INTERROGATORY.

7 MR. VARTAIN: WHICH WAS OUT THERE AS OF -- DURING THAT  
8 TEN-DAY PERIOD, THE RESPONSE TO THE INTERROGATORY HAD PREVIOUSLY  
9 BEEN -- THE TWO INTERROGATORIES HAD BEEN RESPONSIVE. THE  
10 AMENDMENT WAS ABOUT TO BE RESPONDED TO. FOR THOSE TWO WEEKS --  
11 AND I DON'T THINK IT'S TEN DAYS. I THINK IT'S TWO WEEKS -- THAT  
12 INFORMATION WAS WITHHELD FROM US. IN A CRITICAL PERIOD WHEN WE  
13 COULD HAVE BEEN ASKING AT THE MINIMUM THE FACTUM, WOULD THEY  
14 TALK TO US --

15 THE COURT: WELL, THERE'S NO DUTY TO AMEND  
16 INTERROGATORY RESPONSES. BUT YOU DID THE CORRECT THING AND YOU  
17 SUPPLEMENTED YOUR INTERROGATORIES, THUS REQUIRING THEM TO GIVE  
18 LATER DISCOVERY INFORMATION. SO I'M LOOKING AT THE DATE ON  
19 WHICH PLAINTIFF RESPONDED TO THE SUPPLEMENTAL INTERROGATORIES,  
20 NOT ACTIONS THAT OCCURRED AFTER THAT.

21 MR. VARTAIN: RIGHT. AND SO IT WAS IN THOSE LAST  
22 40 DAYS BEFORE TRIAL THAT THOSE -- THAT THE RESPONSE TO THE  
23 SUPPLEMENTAL INTERROGATORY WAS INACCURATE. AND I THINK IF YOU  
24 REQUEST PRODUCTION OF THE SUBPOENA, YOU WILL HAVE A BETTER DATE  
25 TO KNOW FOR HOW LONG THE WILLFULNESS -- BECAUSE CLEARLY IT WAS  
26 WILLFUL WHILE THEY WERE -- ONCE THEY WERE SUBPOENAED. HE KNEW

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1 HE WAS CALLING THEM.

2 THE COURT: BUT I DON'T THINK HE HAD A DUTY TO

3 SUPPLEMENT HIS RESPONSES.

4 MR. VARTAIN: NO.

5 THE COURT: I'M LOOKING AT AS OF THE DATE THAT THE  
6 SUPPLEMENTAL INTERROGATORIES WERE RESPONDED TO.

7 MR. VARTAIN: WHICH THEY --

8 THE COURT: AND I DON'T KNOW THE DATE OF THAT.

9 MR. LEBOWITZ: NOVEMBER 3RD, YOUR HONOR.

10 THE COURT: ALL I CAN DO IS BEG YOU TO USE TABS ON  
11 YOUR PAPERS BECAUSE I'M HAVING A REALLY HARD TIME FINDING --

12 MR. LEBOWITZ: YOUR HONOR, THESE WERE PREPARED LATE  
13 LAST NIGHT AT HOME.

14 THE COURT: NOT YOURS. I'VE GOT PLAINTIFF'S HERE. MY  
15 CLERK PUT TABS ON YOURS. I JUST DIDN'T GET TABS -- IT'S NOT SET  
16 NUMBERS.

17 MR. VARTAIN: ON NOVEMBER 3RD THE PLAINTIFF SERVED  
18 THEIR RESPONSE TO THE SUPPLEMENTAL --

19 THE COURT: WHICH EXHIBIT IS THAT OF YOURS,  
20 MR. VARTAIN?

21 MR. VARTAIN: THAT'S EXHIBIT D, YOUR HONOR.

22 THE COURT: D?

23 MR. VARTAIN: AND THOSE DID NOT IDENTIFY THE TWO  
24 PROFESSORS.

25 THE COURT: NOVEMBER 3RD?

26 MR. VARTAIN: YES.

1 THE COURT: SO I'M ONLY LOOKING AT WHAT DID THEY KNOW  
2 ON NOVEMBER 3RD.

3 MR. VARTAIN: WELL, THEN HIS LETTER SAYS THAT -- THE  
4 LETTER OF NOVEMBER 25TH THAT I PREVIOUSLY --

5 THE COURT: I'M NOT CONCERNED -- I'M CONCERNED WITH IT  
6 AS EVIDENCE OF WHAT HE KNEW ON NOVEMBER 3RD.

7 MR. VARTAIN: RIGHT. HE DIDN'T SAY THAT HE DIDN'T  
8 KNOW ON NOVEMBER 3RD THAT THEY WERE PEOPLE WITH KNOWLEDGE. HE  
9 SAID HE INADVERTENTLY OMITTED THEM. SO I DON'T THINK THE TEST  
10 IS WHETHER THE WORD PROCESSOR OR THE ATTORNEY FORGOT TO MENTION  
11 IT IN HIS --

12 THE COURT: WELL, THEN I HAVE TO DETERMINE IF IT WAS  
13 WILLFUL. I DO THINK THAT'S PART OF THE EQUATION.

14 MR. VARTAIN: OKAY.

15 THE COURT: THESE ARE HIGH STANDARDS, MR. VARTAIN.  
16 THIS SHOULD NEVER HAPPEN, THAT YOU ARE SURPRISED BY WITNESSES  
17 YOU COULD EASILY HAVE DEPOSED, ESPECIALLY PROFESSORS UNDER THE  
18 EMPLOYMENT OF YOUR CLIENT. THESE ARE NOT HARD PEOPLE TO FIND.

19 MR. VARTAIN: THAT'S RIGHT.

20 THE COURT: SO I APPRECIATE YOUR CONCERN AND, PERHAPS,  
21 OUTRAGE AT THIS BEING DUMPED ON YOU AT THE LAST MINUTE. DON'T  
22 GET ME WRONG. BUT THE STANDARD IS HIGH BECAUSE THE REMEDY YOU  
23 SEEK IS DRASTIC. AND IT DOESN'T DO YOU OR ANYONE ANY GOOD FOR  
24 ME TO SHARE YOUR OUTRAGE AND GRANT THE MOTION ONLY TO FIND THAT  
25 I WAS NOT APPLYING THE PROPER STANDARD.

26 MR. VARTAIN: TO ACCOMMODATE YOUR HONOR'S, I THINK,

1 PROPER VIEW OF THINGS, COULD I SUGGEST AN ALTERNATIVE REMEDY,  
2 THEN, TO EXCLUDE THE WITNESSES?

3 THE COURT: OKAY.

4 MR. VARTAIN: IN OUR BRIEF I CAME UP WITH THIS, WHAT I  
5 THINK YOU MIGHT FEEL AS A BURDENSOME REQUEST OF AN EN CAMERA. I  
6 THINK IF THEY'RE GOING TO BE SHORT WITNESSES, TO HAVE THEM COME  
7 IN -- OR MAYBE EVEN TO REQUIRE THE PLAINTIFF TO GIVE US, YOU  
8 KNOW, A VERIFIED STATEMENT OF WHAT THEIR INTENDED TESTIMONY IS  
9 24 HOURS BEFORE THE --

10 THE COURT: AND YOUR INTEREST IS IN LEARNING WHAT IT  
11 IS THEY'RE OFFERING IN TESTIMONY?

12 MR. VARTAIN: JUST AS IF WE WERE GOING TO TAKE A  
13 DEPOSITION.

14 THE COURT: BUT YOU DON'T WANT TO TAKE A DEPOSITION?

15 MR. VARTAIN: I WANT TO BE COURTEOUS TO OPPOSING  
16 COUNSEL. I DON'T WANT TO DELAY THINGS.

17 THE COURT: ALL RIGHT.

18 MR. VARTAIN: EITHER IN CAMERA OR A VERIFIED STATEMENT  
19 OF --

20 THE COURT: I HAVE NO NEED TO HEAR WHAT THEY'RE GOING  
21 TO SAY. YOU HAVE A LEGITIMATE NEED TO KNOW, SO I DON'T NEED TO  
22 DO IT ON THE RECORD IN COURT. I WOULD NOT ONLY ALLOW YOU TO  
23 TAKE A DEPOSITION, I WOULD REQUIRE PLAINTIFF TO PAY FOR IT. NOT  
24 YOUR FEES, BUT FOR THE COURT REPORTER. BECAUSE THIS IS A  
25 PROBLEM OF THEIR OWN MAKING. YOU COULD HAVE DONE THIS IN THE

1 BUT IF YOU'RE WILLING TO ACCEPT, ESSENTIALLY, AN  
2 AFFIDAVIT FROM EACH OF THESE PEOPLE OR A VERIFICATION THAT,  
3 "THIS IS THE SUM AND SUBSTANCE OF MY TESTIMONY," I'LL ALLOW  
4 THAT. THE PROBLEM FOR YOU, OF COURSE, IS IF THEY TESTIFY TO  
5 SOMETHING DIFFERENT, IT BECOMES COMPLICATED FOR YOU TO IMPEACH  
6 THEM.

7 MR. VARTAIN: HERE'S WHAT I WOULD SUGGEST, SINCE  
8 YOU'RE DARK ON FRIDAY, YOUR HONOR.

9 THE COURT: YES.

10 MR. VARTAIN: AND IF YOU WEREN'T GOING TO BE DARK, I  
11 WOULD WORK TO NOT -- I WANT TO KEEP THE TRIAL MOVING.

12 THE COURT: APPRECIATE THAT.

13 MR. VARTAIN: I WOULD SAY ON FRIDAY, SINCE THE  
14 PROFESSORS ARE AT THE COLLEGE, WE COULD MAKE A CONFERENCE ROOM  
15 AVAILABLE.

16 THE COURT: GOOD.

17 MR. VARTAIN: SINCE THEY REALLY ARE IN CONTROL OF  
18 THESE PEOPLE IN THAT THEY ARE IN COMMUNICATION, THAT IS THE  
19 PLAINTIFF'S ATTORNEY, FOR HIM TO BASICALLY ARRANGE FOR THEM TO  
20 APPEAR AT THE COLLEGE FOR -- I DON'T THINK IT'S GOING TO BE MORE  
21 THAN AN HOUR DEPOSITION OF EACH INDIVIDUAL.

22 THE COURT: I WOULD AGREE WITH THAT.

23 MR. LEBOWITZ: I WOULD JUST -- IF I MAY HAVE A MOMENT,

24 YOUR HONOR, TO RESPOND?  
25 THE COURT: A MOMENT.  
26 MR. LEBOWITZ: THANK YOU.

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1 WHAT I'M HAVING A HARD TIME WITH -- AND I  
2 UNDERSTAND -- WELL, LET'S START WITH THE PAGE 472 OF MY CLIENT'S  
3 DEPOSITION THAT WE ATTACHED, WHERE MR. VARTAIN SAYS, "WHO DO YOU  
4 BELIEVE HAS KNOWLEDGE OF FACTS THAT COULD HELP SUPPORT YOUR  
5 CLAIMS IN THIS CASE?" AND PART OF THE ANSWER WAS "FACULTY  
6 MEMBERS, SOME FACULTY."

7 AND LINE 19 ON 472, HE ASKED, "WHAT FACULTY MEMBERS  
8 HAVE FACTUAL INFORMATION?" ANSWER, "DR. CRAIG MEDLEN. CRAIG  
9 MEDLEN." "WHAT FACTUAL INFORMATION DOES HE HAVE?" ANSWER, "HE  
10 MET TWICE WITH ADMINISTRATION, AS FACULTY SENT A PRESIDENT,  
11 REPRESENTING ME." THIS IS INFORMATION THAT THE FACT THAT IT WAS  
12 NOT NECESSARILY WRITTEN IN A DISCOVERY INTERROGATORY RESPONSE  
13 WAS GIVEN TO THE COLLEGE IN DISCOVERY.

14 THE COURT: WAS PROFESSOR MCDONOUGH'S NAME EVER  
15 MENTIONED HERE?

16 MR. LEBOWITZ: IT WAS MENTIONED.

17 THE COURT: NOT ON SUCH A DIRECT QUESTION.

18 MR. LEBOWITZ: NOT ON SUCH A DIRECT QUESTION, THAT IS  
19 CORRECT. BUT SHE DID MENTION -- YOU KNOW, SHE SAID PLURAL,  
20 "SOME FACULTY."

21 THE COURT: THAT'S NOT HELPFUL.

22 MR. LEBOWITZ: I UNDERSTAND. BUT IT WAS NEVER  
23 FOLLOWED UP ON. BUT LET'S FOCUS ON WHAT THE EVENTS WERE. THE  
24 UNDERLYING EVENTS OF THE CASE WERE THAT PROFESSOR MCDONOUGH MET  
25 WITH PRESIDENT LOPEZ BEFORE LITIGATION.

26 THE COURT: OKAY. I APPRECIATE THAT.

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1 MR. LEBOWITZ: THE POINT IS THIS, THAT THEY KNEW --  
2 THEIR PRESIDENT KNEW THAT PROFESSOR MCDONOUGH HAD KNOWLEDGE AND  
3 MET WITH HIM ABOUT PROFESSOR BLOUGH AND HER SITUATION. SO THE  
4 COLLEGE WAS AWARE OF WHATEVER -- YOU KNOW, THAT HE WAS INVOLVED  
5 IN SOME WAY. THEY COULD HAVE INTERVIEWED HIM AT ANY TIME.

6 THE COURT: BUT BY THAT THEORY, THEY COULD INTERVIEW  
7 EVERY STUDENT WHO EVER TOOK A CLASS OF MR. BLOUGH, AND THAT  
8 WOULD BE A WILD GOOSE CHASE.

9 MR. LEBOWITZ: I WOULD SAY IT'S A LITTLE DIFFERENT  
10 BECAUSE IT'S TWO PROFESSORS WHO MET WITH THE PRESIDENT DIRECTLY  
11 ABOUT PROFESSOR BLOUGH AND HER TERMINATION. THAT'S PRETTY  
12 LIMITED.

13 THE COURT: ALL RIGHT, THEN.

14 WE HAVE TO MOVE ON. IT'S 9:15. I'M GOING TO REQUIRE  
15 THAT THE DEFENSE HAS THE -- ALLOW THE DEFENSE TO TAKE THE  
16 DEPOSITION OF THESE TWO PROFESSORS. I AM SATISFIED, HOWEVER,  
17 THAT PROFESSOR MEDLEN'S NAME WAS IDENTIFIED IN RESPONSE TO THAT  
18 DIRECT QUESTION WHO HAS FACTS ABOUT THIS CASE. SO I'LL ONLY  
19 REQUIRE PLAINTIFF TO PAY FOR THE DEPOSITION OF PROFESSOR

20 MCDONOUGH, WHOSE NAME DID NOT COME FORWARD.

21 MR. VARTAIN: MAY I TAKE BOTH DEPOSITIONS?

22 THE COURT: YOU MAY ABSOLUTELY TAKE BOTH DEPOSITIONS.

23 IT WILL BE YOUR NICKEL ON ONE AND THE PLAINTIFF'S NICKEL -- IT'S  
24 ONLY FOR THE COST OF THE COURT REPORTER.

25 MR. LEBOWITZ: I UNDERSTAND THAT, YOUR HONOR. MY  
26 ISSUE NOW IS ORDER OF WITNESSES, BECAUSE PROFESSOR MEDLEN AND

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1 PROFESSOR MCDONOUGH WERE GOING TO BE THE FIRST TWO WITNESSES  
2 THAT WE'D CALL.

3 THE COURT: WELL, AT THIS POINT WE'RE NOT GOING TO BE  
4 HAVING OPENING STATEMENTS UNTIL NEXT WEEK, SO I DON'T THINK IT'S  
5 A CONCERN. I THINK YOU'RE JUST GOING TO HAVE TO ADJUST.

6 MR. LEBOWITZ: I'M SORRY. YOU DON'T THINK WE'RE GOING  
7 TO HAVE OPENING STATEMENTS UNTIL NEXT WEEK?

8 THE COURT: WELL, IT'S WEDNESDAY AT 9:15 AND WE  
9 HAVEN'T EVEN GOTTEN THROUGH THE FIRST PANEL OF JURORS, AND  
10 THEY'RE SITTING OUTSIDE.

11 MR. LEBOWITZ: NO. I UNDERSTAND. WE HAVE A WHOLE DAY  
12 TOMORROW. I DIDN'T THINK IT WAS GOING TO TAKE A WHOLE DAY  
13 TOMORROW TO PICK A JURY.

14 THE COURT: I HOPE NOT. YOU WILL HAVE TO ADJUST YOUR  
15 ORDER OF WITNESSES.

16 MR. LEBOWITZ: AT WHICH POINT WE NEED TO WORK WITH  
17 COUNSEL, BECAUSE THE NEXT SET OF WITNESSES ARE ON NOTICE TO



18 APPEAR AS DEFENSE 776 WITNESSES.

19 THE COURT: MAYBE AT LUNCH YOU COULD GIVE MR. VARTAIN  
20 THAT LIST.

21 HE MAY REORDER.

22 MR. LEBOWITZ: WE HAVE GIVEN THE LIST ALREADY.

23 THE COURT: YOU CAN CHANGE IT.

24 MR. VARTAIN: WHAT I HEAR THE COURT SAYING IS WE'RE  
25 NOT LIKELY TO BE TAKING TESTIMONY TOMORROW.

26 THE COURT: I HOPE WE ARE.

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1 MR. LEBOWITZ: WE'LL TALK ABOUT IT OFF THE RECORD.

2 THE COURT: ARE WE DONE ON THE RECORD, THEN?

3 MR. LEBOWITZ: YES.

4 THE COURT: LET'S GO OFF THE RECORD.

5 (WHEREUPON, THERE WAS DISCUSSION OFF THE RECORD.)

6 (WHEREUPON, THE JURY SELECTION PROCESS RESUMED,  
7 WHICH WAS NOT REPORTED.)

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1                   P R O C E E D I N G S

2   DECEMBER 3, 2008 P.M.                   REDWOOD CITY, CALIFORNIA

3           THE COURT: WE'RE NOW ACTUALLY OFFICIALLY ON THE  
4   RECORD IN BLOUGH VS. MENLO COLLEGE, LADIES AND GENTLEMEN. AS  
5   YOU CAN SEE, WE'VE REARRANGED THE FURNITURE SO THAT AS JURORS  
6   YOU ALL HAVE SEATS. HOPEFULLY, YOU'RE COMFORTABLE AND YOU CAN  
7   SEE.

8           THIS AFTERNOON I'M GOING TO READ SOME INTRODUCTORY  
9   JURY INSTRUCTIONS TO YOU. THESE INSTRUCTIONS ARE DESIGNED TO  
10   HELP YOU UNDERSTAND YOUR JOB AS JURORS, BUT THEY'RE NOT ABOUT  
11   THE LAW. I FOUND THAT IT'S HARD TO UNDERSTAND THE LAW BEFORE  
12   YOU'VE HEARD SOME OF THE EVIDENCE. AND SO I'M GOING TO WAIT AND  
13   READ THOSE INSTRUCTIONS TO YOU AT THE END OF THE CASE.

14 YOU'RE GOING TO GET COPIES OF THE JURY INSTRUCTIONS SO  
15 DON'T FEEL LIKE YOU HAVE TO MADLY TAKE NOTES ON THEM, BUT YOU'RE  
16 WELCOME TO DO THAT IF THAT HELPS YOU. I AM A NOTETAKER. YOU'RE  
17 GOING TO SEE ME TAKING NOTES, EXCEPT WHEN I RUB MY HANDS BECAUSE  
18 IT HURTS TOO MUCH. IT DOESN'T MEAN ANYTHING. DON'T THINK THAT  
19 BECAUSE I'M WRITING SOMETHING DOWN THAT IT MUST BE VERY  
20 IMPORTANT. IT HELPS ME LISTEN AND FOCUS, SO THAT'S WHAT I'M  
21 DOING.

22 I JUST TAKE NOTES. SOME OF YOU MAY BE THAT WAY AS  
23 WELL. IT'S JUST SOMETHING THAT YOU GOT USED TO DOING. SO I  
24 DON'T WANT YOU TO TAKE A CUE FROM ME THAT YOU BETTER WRITE DOWN  
25 WHAT I'M WRITING, BECAUSE IT'S A BIG JOB IF YOU KEEP UP WITH ME.  
26 I HAVE PAGES AND PAGES.

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1 NOW YOU ALSO SEE THAT I HAVE OPENED UP MY COMPUTER AND  
2 YOU SEE THAT MY COURT REPORTER, CHRISTINE PEREZ, HAS JOINED US.  
3 I MENTIONED TO YOU BEFORE THAT SHE WILL MAKE A VERBATIM  
4 TRANSCRIPT OF THE PROCEEDINGS. SOMETIMES YOU'RE GOING TO HEAR  
5 MRS. PEREZ AND ME SLOWING WITNESSES DOWN BECAUSE SHE HAS TO HAVE  
6 AN ACCURATE RECORD. IT HELPS YOU AS WELL BECAUSE YOU NEED TO BE  
7 ABLE TO HEAR THEM.

8 MY COMPUTER IS OPEN BECAUSE I HAVE WHAT WE CALL  
9 REALTIME REPORTING. I ACTUALLY GET TO SEE THE TRANSCRIPT IN  
10 WORDS AS IT IS BEING TRANSCRIBED BY HER, AND IT HELPS ME TO RULE  
11 ON OBJECTIONS DURING THE TRIAL. SOME OF YOU CAN SEE IT FROM

12 WHERE YOU'RE SITTING. PLEASE DON'T TRY TO READ IT. IT IS NOT  
13 THE FINAL RECORD IN THE CASE. IT IS WHAT WE CALL HER NOTES.  
14 IT'S PRETTY GOOD, BUT HER COMPUTER IS NOT FULLY ABLE TO  
15 TRANSCRIBE INTO ENGLISH HER SHORTHAND REPORTER'S -- WHAT I CALL  
16 "CODE," BUT THE SHORTHAND THAT SHE'S PUTTING IN. SO I KNOW HOW  
17 TO WORK WITH IT. I DON'T WANT YOU TO BE DISTRACTED BY IT.

18 AND AS SOON AS I'M DONE WITH THESE INSTRUCTIONS,  
19 YOU'RE ALSO GOING TO SEE THAT I'M REALLY GOING TO TURN THIS CASE  
20 PRIMARILY OVER TO THE LAWYERS. THIS IS THEIR OPPORTUNITY TO  
21 PRESENT THEIR CLIENTS' CASE TO YOU. AND I WILL BE GIVING YOU  
22 THE LAW ON IT.

23 NOW, DURING TRIAL YOU WILL SEE, AS YOU'VE ALREADY SEEN  
24 A LITTLE BIT ALREADY, THAT WE REALLY OPERATE ON A FEW LEVELS. I  
25 LIKE TO LIKEN IT TO THE PRESENTATION OF A DRAMATIC PRODUCTION,  
26 LIKE WHEN YOU GO TO A PLAY. YOU KNOW THAT A LOT'S GOING ON WHEN

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1 THAT CURTAIN IS DOWN. AND YOU KNOW THAT WHEN THERE'S THE  
2 INTERMISSION, THAT THE PEOPLE WORKING ON THE STAGE AREN'T  
3 ACTUALLY RESTING. THEY'RE DOING LOTS OF THINGS. THAT'S WHAT  
4 HAPPENS HERE AS WELL.

5 SOMETIMES YOU END UP OUT IN THE HALLWAY BECAUSE WE  
6 STILL NEED TO GET SOMETHING DONE. I TRY VERY HARD TO HAVE THOSE  
7 THINGS DONE BEFORE YOU ARRIVE OR AFTER YOU LEAVE, BUT I CAN'T  
8 ALWAYS DO THAT. ISSUES DON'T ALWAYS ARISE IN THE NICE, NEAT  
9 TIMES YOU'D LIKE THEM. SOMETIMES THEY COME AT MESSY TIMES, WHEN

10 I HAVE TO STOP THE PROCEEDINGS AND DEAL WITH IT. BUT THAT'S THE  
11 RIGHT THING TO DO.

12 I'VE CALCULATED THAT INTO THE TIME ESTIMATE FOR THE  
13 CASE. SO IF YOU'RE SITTING IN THE HALL, PLEASE DON'T THINK THAT  
14 THIS IS EXTENDING THE TRIAL TIME. BECAUSE I KNOW THAT YOU'LL  
15 ALL BE WORRIED ABOUT THAT. I'M PRETTY GOOD AT FIGURING OUT WHAT  
16 A NORMAL TRIAL REQUIRES, AND SO DON'T WORRY. SOMETIMES I SEND  
17 YOU OUT IN THE HALL BECAUSE I ACTUALLY NEED TO TALK TO THE  
18 LAWYERS ABOUT A POINT OF LAW ON THE RECORD, MEANING MRS. PEREZ  
19 IS MAKING A TRANSCRIPT. AGAIN, DON'T WORRY ABOUT IT. IT'S JUST  
20 SOMETHING WE NEED TO DO.

21 SOMETIMES IT'S VERY BRIEF AND I WILL CALL THE  
22 ATTORNEYS UP TO WHAT WE CALL "SIDEBAR." THEY'RE GOING TO COME  
23 HERE AND WHISPER. IT'S REALLY ANNOYING TO WATCH PEOPLE WHISPER  
24 AND NOT BE ABLE TO HEAR THEM, SO WE TRY NOT TO DO THAT. AND  
25 THEN YOU'RE JUST CAPTIVES. OFTEN WHAT I WILL DO IS I'LL STEP  
26 OUT IN THE HALLWAY WITH THE LAWYERS, AS YOU'VE SEEN ME DO. THAT

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1 WAY YOU CAN STRETCH AND CHAT WHILE WE'RE IN THE HALL, AND WE  
2 DON'T HAVE TO WHISPER, SO SOMETHING GOOD FOR ALL OF US.

3 ALL THOSE THINGS GO ON. WHAT I'M TRYING TO DO IS MAKE  
4 THINGS MOVE SMOOTHLY, SO I HAVE TO MAKE A JUDGMENT ALONG THE WAY  
5 AS TO WHAT'S THE BEST FOR THIS ISSUE AT THIS TIME. SO BEAR WITH  
6 ME ON THAT. I DON'T ACTUALLY EXPLAIN IT TO YOU AS IT GOES  
7 ALONG. SO WHERE THERE'S NO ISSUE, IT'S EASIER FOR ME TO TELL

8 YOU THESE THINGS WILL HAPPEN BECAUSE I DON'T WANT TO PUT UNDUE  
9 EMPHASIS ON THINGS THAT ARE GOING ON.

10 SOMETIMES I JUST CAN'T HEAR THE WHISPER. SO WE'RE  
11 GOING IN THE HALLWAY NOT BECAUSE IT'S MORE IMPORTANT, BUT I JUST  
12 CAN'T HEAR THEM OR IT'S JUST TOO HARD. SO HELP US WITH THAT BY  
13 NOT WORRYING ABOUT IT. THAT'S REALLY ALL I'M ASKING YOU TO DO.

14 THESE INSTRUCTIONS I NEED TO READ TO YOU, IF THEY'RE  
15 CONFUSING, I'M SORRY. THESE WERE REWRITTEN RECENTLY. THIS IS  
16 WHAT WE CALL PLAIN ENGLISH, WHAT I'M ABOUT TO GIVE YOU. I  
17 DIDN'T WRITE THEM. I THINK THEY'RE EXCELLENT BUT, YOU KNOW, I  
18 LIVE WITH THEM SO THEY SOUND GOOD TO ME. I TRY TO EXPLAIN  
19 THINGS AS WELL. I DON'T INFORMALLY DESCRIBE THE LAW TO YOU,  
20 THOUGH, BECAUSE I'M AFRAID THAT I MIGHT USE A WORD THAT CHANGES  
21 THE MEANING OF THE LAW, AND SO YOU WILL SEE THAT I WILL ONLY  
22 READ THE INSTRUCTIONS ON THE LAW.

23 WHEN I TALK TO YOU ABOUT NOTETAKING, WE'RE NOT TALKING  
24 ABOUT THE LAW. I'M TRYING TO GIVE YOU SOME POINTERS TO HELP YOU  
25 BE GOOD JURORS. AND SO THAT'S THE DISTINCTION THAT I MAKE.  
26 IT'S NOT THAT I THINK ANYONE SHOULD NECESSARILY UNDERSTAND THE

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1 INSTRUCTIONS, BUT I'M GOING TO READ THEM.

2 WHEN YOU DELIBERATE -- AND YOU WILL BE INSTRUCTED ON  
3 THIS LATER -- IF YOU HAVE QUESTIONS, THERE IS A MECHANISM THAT  
4 YOU CAN SEND A QUESTION OUT TO ME, AND I WILL ANSWER IT FOR YOU  
5 IN CONSULTATION WITH THE ATTORNEYS. I DON'T ANSWER YOUR

6 QUESTIONS DURING THE TRIAL, THOUGH. SO PLEASE KEEP THAT IN  
7 MIND. AND I DON'T LET YOU ASK QUESTIONS FOR THE WITNESSES, SO  
8 PLEASE KEEP THAT IN MIND AS WELL.

9 NOW, DEPUTY HENNESSY IS GOING TO BE HERE THROUGHOUT  
10 THE TRIAL. HE'S REALLY HERE TO ASSIST YOU. PLEASE, ASK HIM ANY  
11 QUESTIONS THAT YOU WANT. AND YOU CAN ASK -- MY COURTROOM CLERK,  
12 SEAN CANE, IS ALSO HERE FOR YOU. YOU WILL SEE HE DOESN'T  
13 CIRCULATE AMONG YOU THE WAY DEPUTY HENNESSY DOES, HE'S A LITTLE  
14 HARDER TO REACH, BUT YOU'RE WELCOME TO TALK TO HIM AS WELL. ASK  
15 EITHER OF THEM ANYTHING YOU WANT. THEY WON'T NECESSARILY BE  
16 ABLE TO ANSWER YOUR QUESTION. BUT I DON'T WANT YOU TO HAVE TO  
17 WORRY ABOUT WHETHER IT'S AN OKAY QUESTION.

18 THEY ARE VERY SKILLED AND HIGHLY TRAINED, AND THEY  
19 WILL HELP YOU WHERE THEY CAN OR TELL YOU THAT THEY WILL LET ME  
20 KNOW WHAT YOUR QUESTION IS. EVERY ONCE IN A WHILE THEY MIGHT  
21 ASK YOU TO WRITE YOUR QUESTION SO THAT THEY DON'T HAVE TO BE AN  
22 INTERMEDIARY IN TELLING ME WHAT YOUR QUESTION IS. I KNOW THAT  
23 MOST OF YOUR QUESTIONS WILL BE JUST ABOUT THE LOGISTICS OF BEING  
24 A JUROR. YOUR PARKING PASS, AND WHAT YOUR EMPLOYER NEEDS, AND  
25 WHAT TIME ARE WE COMING BACK, AND THOSE THINGS THAT ARE REALLY  
26 IMPORTANT.

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1 PLEASE, FEEL FREE TO ASK DEPUTY HENNESSY. DON'T WORRY  
2 IF YOU ASK HIM SOMETHING AND HE SAYS, "I JUST CAN'T ANSWER  
3 THAT." IT'S NOT THAT IT'S A BAD QUESTION. I'M SURE IT'S A

4 GREAT QUESTION. SOMETIMES WE JUST CAN'T ANSWER THEM.

5 NOW WITH THAT BEING SAID, I HAVE TO ASK THAT YOU'RE  
6 NOT TO TALK TO ANY OF THE ATTORNEYS, ANY OF THE PARTIES OR ANY  
7 OF THE WITNESSES IN THE PROCEEDINGS. IT'S A SMALL COURTHOUSE,  
8 AND IT'S A SMALL COMMUNITY, REDWOOD CITY, WHERE WE'RE ALL GOING  
9 TO BE EATING LUNCH FOR A FEW DAYS. WE WILL ALL BE BUMPING INTO  
10 EACH OTHER. WHETHER IT'S THE COFFEE SHOP DOWNSTAIRS, THE  
11 HALLWAY.

12 TO NOD "HELLO, GOOD MORNING," IS FINE. THAT'S A  
13 COMMON COURTESY. YOU'RE GOING TO NOTICE THAT THESE LAWYERS ARE  
14 GOING TO LOOK AT YOU WITH WIDE EYES AND PANIC BECAUSE THEY DON'T  
15 WANT TO GIVE YOU THE IMPRESSION THEY'RE COZYING UP TO YOU AS  
16 JURORS. THEY'RE PROBABLY GOING TO TURN AROUND AND WALK REALLY  
17 FAST IN THE OTHER DIRECTION. BECAUSE, AS OFFICERS OF THE COURT,  
18 THEY KNOW THEY CANNOT HAVE ANY CONTACT WITH JURORS. SO HELP  
19 THEM OUT, THE PARTIES AS WELL. YOU KNOW, WE'RE ALL JUST NORMAL  
20 PEOPLE HERE, EVERY ONE OF US. BUT I CAN'T HAVE YOU MINGLING  
21 WITH THEM. THEY KNOW THEIR REQUIREMENTS, SO HELP THEM OUT.

22 THERE WILL ALSO BE WITNESSES, AND YOU AND I HAVE NO  
23 IDEA WHAT THE WITNESSES LOOK LIKE. SO YOU'VE BEEN GIVEN  
24 BADGES -- AND I SEE THAT MANY OF YOU HAVE PUT THEM ON. AND  
25 THANK YOU. WHEN YOU'RE IN THE HALLWAYS AND IN THE COURTHOUSE,  
26 IF YOU COULD WEAR THE BADGE, THAT'S GOING TO HELP. BECAUSE THE

1 WITNESSES -- THE LAWYERS WILL DISCUSS WITH THEIR WITNESSES THAT



2 IF THEY SEE SOMEONE WEARING A JURY BADGE, ZIP IT UP AND WALK  
3 AWAY.

4 IF YOU THINK YOU'RE OVERHEARING SOMEONE TALK ABOUT  
5 THIS CASE, IF YOU WOULD WALK AWAY AS WELL, I'D APPRECIATE IT.  
6 IT MIGHT NOT BE THIS CASE; IT MIGHT BE ANOTHER CASE. WE JUST  
7 DON'T WANT YOU HAVING THAT CONVERSATION TO FIGURE IT OUT. AND  
8 IF YOU CAN'T WALK AWAY, IF YOU COULD SIMPLY SAY, "EXCUSE ME.  
9 I'M A JUROR." AND, HOPEFULLY, THOSE PEOPLE WILL MOVE ALONG,  
10 WHETHER THEY ARE WITNESSES OR NOT.

11 NOW, MANY PEOPLE SPEAK MANY LANGUAGES. I ALWAYS TELL  
12 WITNESSES AND PARTIES, "WHATEVER LANGUAGE YOU SPEAK, EVERY JUROR  
13 UNDERSTANDS." BECAUSE, IN FACT, I'M SURE MANY OF YOU UNDERSTAND  
14 MULTIPLE LANGUAGES, AND SO WE HAVE INFORMED THE WITNESSES THAT  
15 THEY DON'T -- THEY'RE NOT INCOGNITO JUST BECAUSE THEY'RE NOT  
16 SPEAKING ENGLISH. BUT IF YOU UNDERSTAND WHAT THEY'RE SAYING,  
17 PLEASE TRY TO MOVE OUT OF EARSHOT; I'D APPRECIATE IT. AND THEY  
18 KNOW WHAT THEIR OBLIGATIONS ARE AS WELL.

19 YOU'RE GOING TO HAVE -- MAYBE YOU ALREADY HAVE A  
20 SCHEDULE, I THINK THAT'S BEEN PASSED OUT FOR YOU. ON THIS  
21 SCHEDULE, IF I'VE SAID WE'RE NOT IN SESSION YOU CAN COUNT ON IT.  
22 EVEN IF SOMETHING CHANGES AND I THINK WE COULD SQUEEZE SOME MORE  
23 IN, I'M NOT GOING TO DO IT. YOU CAN TAKE THIS TO THE BANK. YOU  
24 CAN WORK ON FRIDAY THIS WEEK OR WHATEVER OTHER THINGS YOU HAVE.  
25 DON'T WORRY ABOUT IT; THAT'S YOUR DAY. AND THE REST OF THE  
26 TIMES ARE NOW SET. EVERY ONCE IN A WHILE I MAY LET YOU GO EARLY

1 SO THAT WE CAN DO SOME OTHER WORK, BUT I WON'T MAKE YOU BE HERE  
2 WHEN WE'VE SAID YOU WEREN'T.

3 WITH THAT BEING SAID, THE CALENDAR ENDS ON THE 17TH.  
4 REMEMBER, I TOLD YOU I DON'T HAVE A CRYSTAL BALL. IT'S NOT THAT  
5 WE WON'T BE HERE THE 18TH, BUT FROM EVERYTHING I CAN SEE WE'RE  
6 EXACTLY ON SCHEDULE RIGHT NOW. AND I PROMISED MRS. WEST THAT  
7 SHE'S GOING TO BE HOLDING HER DAUGHTER'S HAND ON THE 17TH, AND I  
8 WON'T FORGET THAT EITHER. BUT I DON'T KNOW HOW WE'LL DEAL WITH  
9 THAT. MAYBE YOU'LL ALL HAVE GONE HOME; MAYBE WE'LL TALK TO YOU  
10 ABOUT WHAT YOUR NEEDS ARE AT THE TIME. SO WE JUST DON'T DEAL  
11 WITH IT, BUT I'M NOT FORGETTING. SO DON'T WORRY ABOUT THAT.

12 WITH THAT, LADIES AND GENTLEMEN, I'M GOING TO START  
13 READING THESE INSTRUCTIONS TO YOU. AS I'VE SAID, FEEL FREE TO  
14 TAKE NOTES, BUT YOU'LL GET A COPY OF THESE AT THE END.

15 YOU HAVE NOW BEEN SWORN AS JURORS IN THIS CASE. AND I  
16 WANT TO IMPRESS UPON YOU THE SERIOUSNESS AND IMPORTANCE OF  
17 SERVING ON A JURY. TRIAL BY JURY IS A FUNDAMENTAL RIGHT IN  
18 CALIFORNIA. THE PARTIES HAVE A RIGHT TO A JURY THAT IS SELECTED  
19 FAIRLY, THAT COMES TO THE CASE WITHOUT BIAS AND THAT WILL  
20 ATTEMPT TO REACH A VERDICT BASED ON THE EVIDENCE PRESENTED.  
21 BEFORE WE BEGIN I NEED TO EXPLAIN HOW YOU MUST CONDUCT YOURSELF  
22 DURING THE TRIAL.

23 DO NOT ALLOW ANYTHING THAT HAPPENS OUTSIDE THIS  
24 COURTROOM TO AFFECT YOUR DECISION. DURING THE TRIAL DO NOT TALK  
25 ABOUT THIS CASE OR THE PEOPLE INVOLVED IN IT WITH ANYONE,  
26 INCLUDING FAMILY AND PERSONS LIVING IN YOUR HOUSEHOLD, FRIENDS

1 AND CO-WORKERS, SPIRITUAL LEADERS, ADVISORS OR THERAPISTS. DO  
2 NOT POST ANY INFORMATION ABOUT THE TRIAL OR YOUR JURY SERVICE ON  
3 THE INTERNET IN ANY FORM. DO NOT SEND OR ACCEPT ANY MESSAGES,  
4 INCLUDING E-MAIL OR TEXT MESSAGES, TO OR FROM ANYONE CONCERNING  
5 THE TRIAL OR YOUR SERVICE.

6 YOU MAY SAY THAT YOU ARE ON A JURY AND HOW LONG THE  
7 TRIAL MAY TAKE, BUT THAT IS ALL. YOU MUST NOT EVEN TALK ABOUT  
8 THE CASE WITH THE OTHER JURORS UNTIL AFTER I TELL YOU THAT IT IS  
9 TIME FOR YOU TO DECIDE THE CASE. DURING THE TRIAL, YOU MUST NOT  
10 LISTEN TO ANYONE ELSE TALK ABOUT THE CASE OR THE PEOPLE INVOLVED  
11 IN THE CASE. YOU MUST AVOID ANY CONTACT WITH THE PARTIES, THE  
12 LAWYERS, THE WITNESSES AND ANYONE ELSE WHO MAY HAVE A CONNECTION  
13 TO THE CASE.

14 IF ANYONE TRIES TO TALK TO YOU ABOUT THIS CASE, TELL  
15 THAT PERSON THAT YOU CANNOT DISCUSS IT BECAUSE YOU ARE A JUROR.  
16 IF HE OR SHE KEEPS TALKING TO YOU, SIMPLY WALK AWAY AND REPORT  
17 THE INCIDENT TO THE COURT BAILIFF AS SOON AS YOU CAN. AFTER THE  
18 TRIAL IS OVER AND I HAVE RELEASED YOU FROM JURY DUTY YOU MAY  
19 DISCUSS THE CASE WITH ANYONE, BUT YOU ARE NOT REQUIRED TO DO SO.

20 DURING THE TRIAL DO NOT READ, LISTEN TO OR WATCH ANY  
21 NEWS REPORTS ABOUT THIS CASE. YOU MUST DECIDE THIS CASE BASED  
22 ONLY ON WHAT THE EVIDENCE -- BASED ONLY ON THE EVIDENCE  
23 PRESENTED IN THIS TRIAL AND THE INSTRUCTIONS OF LAW THAT I WILL  
24 PROVIDE. NOTHING THAT YOU SEE, HEAR OR LEARN OUTSIDE THIS

25 COURTROOM IS EVIDENCE UNLESS I SPECIFICALLY TELL YOU THAT IT IS.  
26 IF YOU RECEIVE ANY INFORMATION ABOUT THIS CASE FROM ANY SOURCE

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1 OUTSIDE OF THE COURTROOM, PROMPTLY REPORT IT TO THE BAILIFF.

2 DO NOT DO ANY RESEARCH ON YOUR OWN OR AS A GROUP. DO  
3 NOT USE A DICTIONARY, THE INTERNET OR OTHER REFERENCE MATERIALS.  
4 DO NOT INVESTIGATE THE CASE OR CONDUCT ANY EXPERIMENTS. DO NOT  
5 CONTACT ANYONE TO ASSIST YOU, SUCH AS A FAMILY ACCOUNTANT,  
6 DOCTOR OR LAWYER.

7 DO NOT VISIT OR VIEW THE SCENE OF ANY EVENT INVOLVED  
8 IN THIS CASE. IF YOU HAPPEN TO PASS BY THE SCENE, DO NOT STOP  
9 OR INVESTIGATE. ALL JURORS MUST SEE OR HEAR THE SAME EVIDENCE  
10 AT THE SAME TIME. IF YOU DO NEED TO VIEW THE SCENE DURING THE  
11 TRIAL, YOU WILL BE TAKEN THERE AS A GROUP UNDER PROPER  
12 SUPERVISION.

13 IT IS IMPORTANT THAT YOU KEEP AN OPEN MIND THROUGHOUT  
14 THIS TRIAL. EVIDENCE CAN ONLY BE PRESENTED A PIECE AT A TIME.  
15 DO NOT FORM OR EXPRESS AN OPINION ABOUT THIS CASE WHILE THE  
16 TRIAL IS GOING ON. YOU MUST NOT DECIDE ON A VERDICT UNTIL AFTER  
17 YOU HAVE HEARD ALL THE EVIDENCE AND DISCUSSED IT THOROUGHLY WITH  
18 YOUR FELLOW JURORS IN YOUR DELIBERATIONS. DO NOT CONCERN  
19 YOURSELF WITH THE REASONS FOR THE RULINGS I WILL MAKE DURING THE  
20 COURSE OF THE TRIAL. DO NOT GUESS WHAT I MAY THINK YOUR VERDICT  
21 SHOULD BE FROM ANYTHING I MIGHT SAY OR DO.

22 WHEN YOU BEGIN YOUR DELIBERATIONS, YOU MAY DISCUSS THE

23 CASE ONLY IN THE JURY ROOM AND ONLY WHEN ALL JURORS ARE PRESENT.  
24 YOU MUST DECIDE WHAT THE FACTS ARE IN THIS CASE AND, I REPEAT,  
25 YOUR VERDICT MUST BE BASED ONLY ON THE EVIDENCE THAT YOU SEE OR  
26 HEAR IN THIS COURTROOM. DO NOT LET BIAS, SYMPATHY, PREJUDICE OR

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1 PUBLIC OPINION INFLUENCE YOUR VERDICT. AT THE END OF THE TRIAL,  
2 I WILL EXPLAIN THE LAW THAT YOU MUST FOLLOW TO REACH YOUR  
3 VERDICT. YOU MUST FOLLOW THE LAW AS I EXPLAIN IT TO YOU, EVEN  
4 IF YOU DO NOT AGREE WITH THAT LAW.

5 TO ASSIST YOU IN YOUR TASK AS JURORS, I WILL NOW  
6 EXPLAIN HOW THE TRIAL WILL PROCEED. MARCINE BLOUGH FILED THIS  
7 LAWSUIT. SHE'S CALLED THE PLAINTIFF. SHE SEEKS DAMAGES FROM  
8 MENLO COLLEGE, WHO IS CALLED THE DEFENDANT. THE PLAINTIFF AND  
9 THE DEFENDANTS ARE CALLED PARTIES TO THIS CASE.

10 FIRST, EACH SIDE MAY MAKE AN OPENING STATEMENT; BUT  
11 NEITHER SIDE IS REQUIRED TO DO SO. AN OPENING STATEMENT IS NOT  
12 EVIDENCE. IT IS SIMPLY AN OUTLINE TO HELP YOU UNDERSTAND WHAT  
13 THAT PARTY EXPECTS THE EVIDENCE WILL SHOW. ALSO, BECAUSE IT IS  
14 OFTEN DIFFICULT TO GIVE YOU THE EVIDENCE IN THE ORDER WE WOULD  
15 PREFER, THE OPENING STATEMENT ALLOWS YOU TO KEEP AN OVERVIEW OF  
16 THE CASE IN MIND DURING THE PRESENTATION OF THE EVIDENCE.

17 NEXT, THE JURY WILL HEAR EVIDENCE. THE PLAINTIFF WILL  
18 PRESENT HER EVIDENCE FIRST. WHEN THE PLAINTIFF IS FINISHED, THE  
19 DEFENDANT WILL HAVE AN OPPORTUNITY TO PRESENT ITS EVIDENCE.  
20 EACH WITNESS WILL FIRST BE QUESTIONED BY THE SIDE THAT ASKS THE

21 WITNESS TO TESTIFY. THIS IS CALLED DIRECT EXAMINATION. THEN  
22 THE OTHER SIDE IS PERMITTED TO QUESTION THE WITNESS. THIS IS  
23 CALLED CROSS-EXAMINATION.

24 DOCUMENTS OR OBJECTS REFERRED TO DURING THE TRIAL ARE  
25 CALLED EXHIBITS. EXHIBITS ARE GIVEN A NUMBER OR LETTER AND  
26 MARKED SO THEY MAY BE CLEARLY IDENTIFIED. EXHIBITS ARE NOT

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1 EVIDENCE UNTIL I ADMIT THEM INTO EVIDENCE. DURING YOUR  
2 DELIBERATIONS, YOU WILL BE ABLE TO LOOK AT ALL EXHIBITS ADMITTED  
3 INTO EVIDENCE.

4 THERE ARE MANY RULES THAT GOVERN WHETHER SOMETHING  
5 WILL BE CONSIDERED EVIDENCE IN A TRIAL. AS ONE SIDE PRESENTS  
6 EVIDENCE, THE OTHER SIDE HAS THE RIGHT TO OBJECT AND ASK ME TO  
7 DECIDE IF THE EVIDENCE IS PERMITTED BY THE RULES. USUALLY, I  
8 WILL DECIDE IMMEDIATELY BUT SOMETIMES I MAY HAVE TO HEAR  
9 ARGUMENTS OUTSIDE OF YOUR PRESENCE.

10 AFTER THE EVIDENCE HAS BEEN PRESENTED, I WILL INSTRUCT  
11 YOU ON THE LAW THAT APPLIES TO THE CASE AND THE ATTORNEYS WILL  
12 MAKE CLOSING ARGUMENTS. WHAT THE PARTIES SAY IN CLOSING  
13 ARGUMENT IS NOT EVIDENCE. THE ARGUMENTS ARE OFFERED TO HELP YOU  
14 UNDERSTAND THE EVIDENCE AND HOW THE LAW APPLIES TO IT.

15 YOU HAVE BEEN GIVEN NOTEBOOKS. YOU MAY TAKE NOTES  
16 DURING THE TRIAL. DO NOT TAKE THE NOTEBOOKS OUT OF THE  
17 COURTROOM OR THE JURY ROOM AT ANY TIME DURING THE TRIAL. YOU  
18 MAY TAKE YOUR NOTES INTO THE JURY ROOM DURING THE DELIBERATIONS.

19 YOU SHOULD USE YOUR NOTES ONLY TO REMIND YOURSELF OF WHAT  
20 HAPPENED DURING THE TRIAL.

21 DO NOT LET YOUR NOTETAKING INTERFERE WITH YOUR ABILITY  
22 TO LISTEN CAREFULLY TO ALL THE TESTIMONY AND TO WATCH THE  
23 WITNESSES AS THEY TESTIFY, NOR SHOULD YOU ALLOW YOUR IMPRESSION  
24 OF A WITNESS OR OTHER EVIDENCE TO BE INFLUENCED BY WHETHER OR  
25 NOT OTHER JURORS ARE TAKING NOTES. YOUR INDEPENDENT  
26 RECOLLECTION OF THE EVIDENCE SHOULD GOVERN YOUR VERDICT AND YOU

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1 SHOULD NOT ALLOW YOURSELF TO BE INFLUENCED BY THE NOTES OF OTHER  
2 JURORS IF THOSE NOTES DIFFER FROM WHAT YOU REMEMBER.

3 THE COURT REPORTER IS MAKING A RECORD OF EVERYTHING  
4 THAT IS SAID. IF DURING THE DELIBERATION YOU HAVE A QUESTION  
5 ABOUT WHAT THE QUESTION SAID, YOU SHOULD ASK THAT THE COURT  
6 REPORTER'S RECORD BE READ TO YOU. YOU MUST ACCEPT THE COURT  
7 REPORTER'S RECORD AS ACCURATE. AT THE END OF THE TRIAL YOUR  
8 NOTES WILL BE COLLECTED AND DESTROYED OR YOU MAY TAKE THEM HOME  
9 WITH YOU. THEY ARE NOT RETAINED BY THE COURT AS PART OF THE  
10 CASE RECORD.

11 SWORN TESTIMONY, DOCUMENTS OR ANYTHING ELSE MAY BE  
12 ADMITTED INTO EVIDENCE. YOU MUST DECIDE WHAT THE FACTS ARE IN  
13 THIS CASE FROM THE EVIDENCE YOU SEE OR HEAR DURING THE TRIAL.  
14 YOU MAY NOT CONSIDER AS EVIDENCE ANYTHING THAT YOU SEE OR HEAR  
15 WHEN COURT IS NOT IN SESSION, EVEN SOMETHING DONE OR SAID BY ONE  
16 OF THE PARTIES, ATTORNEYS OR WITNESSES. WHAT THE ATTORNEYS SAY

17 DURING THE TRIAL IS NOT EVIDENCE.

18 IN THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS, THE  
19 ATTORNEYS WILL TALK TO YOU ABOUT THE LAW AND THE EVIDENCE. WHAT  
20 THE LAWYERS SAY MAY HELP YOU UNDERSTAND THE LAW AND THE  
21 EVIDENCE, BUT THEIR STATEMENTS AND ARGUMENTS ARE NOT EVIDENCE.  
22 THE ATTORNEYS' QUESTIONS ARE NOT EVIDENCE. ONLY THE WITNESSES'  
23 ANSWERS ARE EVIDENCE. YOU SHOULD NOT THINK THAT SOMETHING IS  
24 TRUE JUST BECAUSE AN ATTORNEY'S QUESTION SUGGESTS IT IS TRUE.

25 HOWEVER, THE ATTORNEYS FOR BOTH SIDES CAN AGREE THAT  
26 CERTAIN FACTS ARE TRUE. THIS AGREEMENT IS CALLED A STIPULATION.

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1 NO OTHER PROOF IS NEEDED, AND YOU MUST ACCEPT THOSE FACTS AS  
2 TRUE IN THIS TRIAL.

3 EACH SIDE HAS THE RIGHT TO OBJECT TO EVIDENCE OFFERED  
4 BY THE OTHER SIDE. IF I DO NOT AGREE WITH THE OBJECTION, I WILL  
5 SAY IT IS OVERRULED. IF I OVERRULE AN OBJECTION, THE WITNESS  
6 WILL ANSWER AND YOU MAY CONSIDER THE EVIDENCE. IF I AGREE WITH  
7 THE OBJECTION, I WILL SAY IT IS SUSTAINED. IF I SUSTAIN AN  
8 OBJECTION, YOU MUST IGNORE THE QUESTION. IF THE WITNESS DID NOT  
9 ANSWER, YOU MUST NOT GUESS WHAT HE OR SHE MIGHT HAVE SAID OR WHY  
10 I SUSTAINED THE OBJECTION. IF THE WITNESS HAS ALREADY ANSWERED,  
11 YOU MUST IGNORE THE ANSWER.

12 THERE WILL BE TIMES WHEN I NEED TO TALK TO THE  
13 ATTORNEYS PRIVATELY. DO NOT BE CONCERNED ABOUT OUR DISCUSSIONS  
14 OR TRY TO GUESS WHAT WE ARE SAYING. AN ATTORNEY MAY MAKE A



15 MOTION TO STRIKE TESTIMONY THAT YOU HAVE HEARD. IF I GRANT THE  
16 MOTION, YOU MUST TOTALLY DISREGARD THAT TESTIMONY. YOU MUST  
17 TREAT IT AS THOUGH IT DID NOT EXIST.

18 A WITNESS IS A PERSON WHO HAS KNOWLEDGE RELATED TO  
19 THIS CASE. YOU WILL HAVE TO DECIDE WHETHER YOU BELIEVE EACH  
20 WITNESS AND HOW IMPORTANT EACH WITNESS'S TESTIMONY IS TO THE  
21 CASE. YOU MAY BELIEVE ALL, PART OR NONE OF A WITNESS'S  
22 TESTIMONY. IN DECIDING WHETHER TO BELIEVE A WITNESS'S TESTIMONY  
23 YOU MAY CONSIDER, AMONG OTHER FACTORS THE FOLLOWING:

24 HOW WELL DID THE WITNESS SEE, HEAR OR OTHERWISE SENSE  
25 WHAT HE OR SHE DESCRIBED IN COURT? HOW WELL DID THE WITNESS  
26 REMEMBER AND DESCRIBE WHAT HAPPENED? HOW DID THE WITNESS LOOK,

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1 ACT AND SPEAK WHILE TESTIFYING? DID THE WITNESS HAVE ANY REASON  
2 TO SAY SOMETHING THAT WAS NOT TRUE? DID THE WITNESS SHOW ANY  
3 BIAS OR PREJUDICE? DID THE WITNESS HAVE A PERSONAL RELATIONSHIP  
4 WITH ANY OF THE PARTIES INVOLVED IN THE CASE? DOES THE WITNESS  
5 HAVE A PERSONAL STAKE IN HOW THE CASE IS DECIDED? WHAT WAS THE  
6 WITNESS'S ATTITUDE TOWARD THE CASE OR ABOUT GIVING TESTIMONY?

7 SOMETIMES A WITNESS MAY SAY SOMETHING THAT IS NOT  
8 CONSISTENT WITH SOMETHING ELSE HE OR SHE SAID. SOMETIMES  
9 DIFFERENT WITNESSES WILL GIVE DIFFERENT VERSIONS OF WHAT  
10 HAPPENED. PEOPLE OFTEN FORGET THINGS OR MAKE MISTAKES IN WHAT  
11 THEY REMEMBER. ALSO, TWO PEOPLE MAY SEE THE SAME EVENT BUT  
12 REMEMBER IT DIFFERENTLY. YOU MAY CONSIDER THESE DIFFERENCES,

13 BUT DO NOT DECIDE THAT TESTIMONY IS UNTRUE JUST BECAUSE IT  
14 DIFFERS FROM THE OTHER TESTIMONY.

15 HOWEVER, IF YOU DECIDE THAT A WITNESS HAS DELIBERATELY  
16 TESTIFIED UNTRUTHFULLY ABOUT SOMETHING IMPORTANT, YOU MAY CHOOSE  
17 NOT TO BELIEVE ANYTHING THAT WITNESS SAID. ON THE OTHER HAND,  
18 IF YOU THINK THE WITNESS TESTIFIED UNTRUTHFULLY ABOUT SOME  
19 THINGS BUT TOLD THE TRUTH ABOUT OTHERS, YOU MAY ACCEPT THE PART  
20 YOU THINK IS TRUE AND IGNORE THE REST. DO NOT MAKE ANY DECISION  
21 SIMPLY BECAUSE THERE WERE MORE WITNESSES ON ONE SIDE THAN ON THE  
22 OTHER. IF YOU BELIEVE IT IS TRUE, THE TESTIMONY OF A SINGLE  
23 WITNESS IS ENOUGH TO PROVE A FACT.

24 YOU MUST NOT BE BIASED IN FAVOR OF OR AGAINST ANY  
25 WITNESS BECAUSE OF HIS OR HER DISABILITY, GENDER, RACE,  
26 RELIGION, ETHNICITY, SEXUAL ORIENTATION, AGE, NATIONAL ORIGIN OR

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1 SOCIOECONOMIC STATUS.

2 DURING THE TRIAL, YOU WILL HEAR TESTIMONY READ FROM  
3 DEPOSITIONS OR VIDEOTAPES OF DEPOSITIONS. A DEPOSITION IS THE  
4 TESTIMONY OF A PERSON TAKEN BEFORE TRIAL. AT A DEPOSITION, THE  
5 PERSON IS SWORN TO TELL THE TRUTH AND IS QUESTIONED BY THE  
6 ATTORNEYS. YOU MUST CONSIDER THE DEPOSITION TESTIMONY THAT WILL  
7 BE READ TO YOU IN THE SAME WAY AS YOU CONSIDER TESTIMONY GIVEN  
8 IN COURT.

9 LADIES AND GENTLEMEN, THOSE ARE THE INSTRUCTIONS I'M  
10 GOING TO GET YOU STARTED WITH. AND AT THIS TIME, I'M READY TO

11 TURN OVER TO THE PLAINTIFFS TO GIVE THEIR OPENING STATEMENT.

12 MR. LEBOWITZ, ARE YOU READY?

13 MR. LEBOWITZ: I AM, YOUR HONOR.

14 THE COURT: GO AHEAD, PLEASE.

15 MR. LEBOWITZ: THANK YOU, YOUR HONOR; COUNSEL.

16 LADIES AND GENTLEMEN, BEFORE I GET STARTED I JUST

17 WANTED TO, ONCE AGAIN, THANK YOU FOR THE SACRIFICE WE KNOW

18 YOU'RE MAKING, ESPECIALLY ON BEHALF OF PROFESSOR BLOUGH. WE ARE

19 EXTRAORDINARILY THANKFUL FOR THE SERVICE YOU'RE ABOUT TO

20 PROVIDE, AND WE ARE VERY SATISFIED THAT WE WILL GET A FAIR TRIAL

21 HERE; AND WE JUST WANT TO EXPRESS OUR THANKS.

22 LADIES AND GENTLEMEN, AS I TOLD YOU YESTERDAY, THIS

23 CASE IS ABOUT THE DECISION THAT MENLO COLLEGE MADE TO TERMINATE

24 THE EMPLOYMENT OF A 29-YEAR, AWARD-WINNING PROFESSOR BECAUSE SHE

25 HAD CANCER. SHE DID NOTHING WRONG IS WHAT YOU WILL HEAR IN THIS

26 CASE. SHE DID NOTHING WRONG, EXCEPT GET CANCER.

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1 NOW, THROUGH THIS TRIAL YOU'LL GET TO MEET PROFESSOR

2 BLOUGH ON THE WITNESS STAND, AS WELL AS MANY OTHER WITNESSES,

3 AND YOU'LL GET TO KNOW WHO SHE IS. LET ME TELL YOU A LITTLE BIT

4 ABOUT WHAT SHE'S GOING TO TELL YOU. SHE GREW UP IN JOHNSTOWN,

5 PENNSYLVANIA IN THE 1960S. A SMALL TOWN IN WESTERN

6 PENNSYLVANIA.

7 IT'S ACTUALLY THE TOWN WHERE DEER HUNTER, THE MOVIE,

8 WAS FILMED. A ROUGH TOWN, BUT SHE GREW UP AND SHE WORKED HARD

9 WITH THE SMALL-TOWN VALUES THAT SHE GREW UP WITH, WORKING HARD,  
10 CONTRIBUTING TO SOCIETY, CONTRIBUTING TO THE COMMUNITY. AND  
11 GIVING BACK WAS AN ESSENTIAL VALUE THAT SHE GREW UP WITH.

12 NOW, SHE WORKED HARD AND EXCELLED AT SCHOOL. SHE, IN  
13 FACT, WAS THE VALEDICTORIAN OF HER HIGH SCHOOL, THE FIRST GIRL  
14 WOMAN THAT SHE KNEW OF IN HER GENERATION TO BE THE  
15 VALEDICTORIAN. SHE GRADUATED FIRST IN HER CLASS IN HIGH SCHOOL.

16 FROM THERE SHE WAS LUCKY ENOUGH TO GO TO AN IVY LEAGUE  
17 SCHOOL. SHE WENT TO THE UNIVERSITY OF PENNSYLVANIA, WHICH IS A  
18 BIG CITY IN PHILADELPHIA AND EXCELLED THERE AS WELL, WHERE SHE  
19 STUDIED SPANISH AND INTERNATIONAL RELATIONS. SHE SPENT AN  
20 ENTIRE YEAR IN SPAIN, GOING TO COLLEGE IN SPANISH AND LEARNING  
21 THE LANGUAGE AS SHE WENT.

22 SHE WENT FROM THERE TO CORNELL LAW SCHOOL, ANOTHER IVY  
23 LEAGUE SCHOOL AND, AGAIN, EXCELLED. SHE GRADUATED -- OUT OF 150  
24 ENTERING STUDENTS, SHE GRADUATED IN THE TOP THIRD OF HER CLASS.  
25 NOW, WHAT'S AMAZING, SHE WAS ONE OF SEVEN WOMEN IN HER ENTIRE  
26 CLASS. SHE GRADUATED IN 1977.

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1 AND WHEN SHE GRADUATED, SHE WAS COURTED BY THE BIG LAW  
2 FIRMS IN NEW YORK AND UP AND DOWN THE EAST COAST. BIG MONEY,  
3 BIG PRESTIGIOUS LAW FIRMS WANTED HER TO COME WORK FOR THEM. SHE  
4 WAS COURTED BY FEDERAL JUDGES. BECAUSE ONE OF THE MOST  
5 PRESTIGIOUS JOBS YOU CAN GET RIGHT OUT OF LAW SCHOOL IS WHAT YOU  
6 CALL AN OFFICIAL COURTSHIP, WHERE YOU WORK AS A PERSONAL

7 ASSISTANT TO A FEDERAL JUDGE FOR ONE OR TWO YEARS. AND THERE  
8 WERE FEDERAL JUDGES COMING TO HER SAYING, "WE WOULD LIKE YOU TO  
9 BE A CLERK."

10 WELL, SHE COULD HAVE GONE FOR THAT BRASS RING IN  
11 EITHER OF THOSE, BUT SHE DECIDED THAT'S NOT WHAT SHE WANTED.  
12 SHE DIDN'T WANT THE BIG MONEY OR THE BIG PRESTIGE. SHE WANTED  
13 TO GIVE BACK, AND SHE WANTED TO TEACH. AND SO WHAT SHE DID WAS  
14 SHE LOOKED FOR COLLEGES. SHE WANTED TO TEACH AT COLLEGE.

15 SO WHAT SHE DID WAS SHE LOOKED FOR WHAT WE CALL  
16 TEACHING COLLEGES. COLLEGES THAT FOCUS ON TEACHING AND THE  
17 STUDENTS, NOT THE LARGE RESEARCH INSTITUTIONS, OR THE STANFORDS,  
18 OR THE CALS, WHERE THE PROFESSORS OPERATED UNDER HUGE AMOUNTS OF  
19 PRESSURE TO WHAT WE CALL PUBLISH OR PERISH. THEY HAVE TO DO  
20 RESEARCH AND GET GOVERNMENT MONEY AND ALL THIS KIND OF STUFF.  
21 SHE WANTED TO TEACH. SHE WANTED TO BE IN THERE WITH THE  
22 STUDENTS, AND WORK WITH THE STUDENTS, AND GET INVOLVED WITH THE  
23 STUDENTS' LIVES AND HELP GUIDE THEM AND MOLD THEM.

24 AND SO FROM 1977 TO 1999, SHE LED THE WAY AT MENLO  
25 COLLEGE. WHEN SHE WAS HIRED IN 1977, SHE WAS HIRED INTO THE  
26 BUSINESS AND MANAGEMENT SCHOOL. IT'S AN UNDERGRADUATE PROGRAM

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1 AT MENLO COLLEGE. SHE WAS THE FIRST WOMAN HIRED IN THAT FACULTY  
2 POSITION. AT THE TIME THERE WAS ONLY ONE OTHER WOMAN THAT SHE  
3 KNEW OF WHO WAS ON FACULTY ANYWHERE IN THE COLLEGE, AND SHE WAS  
4 A FRENCH TEACHER, A FRENCH PROFESSOR. THAT WAS THE ONLY OTHER

5 WOMAN WHEN SHE FIRST ARRIVED.

6 AND SHE TOOK IT UPON HERSELF NOT JUST TO TEACH THE  
7 STUDENTS, BUT TO DEVELOP NEW CURRICULUM, TO LEAD THE COLLEGE  
8 FORWARD AND TO BE A LEADER IN THE COMMUNITY, TO BE THERE FOR THE  
9 STUDENTS. AND ALL THE WHILE, SHE GOT TOP STUDENT EVALUATIONS.  
10 YOU'RE GOING TO HEAR FROM A NUMBER OF FACULTY MEMBERS WHO WILL  
11 TELL YOU THAT THEY LOOKED AT HER STUDENT EVALUATIONS AND THEY'VE  
12 LOOKED AT THEIR OWN, AND THEY PREPARED THEM. AND THEY SAID  
13 PROFESSOR BLOUGH, EVEN WHEN SHE WAS HAVING TROUBLES, HER STUDENT  
14 EVALUATIONS WERE BETTER THAN THEIRS.

15 AND THIS IS SOMETHING THAT SHE MAINTAINED FOR YEARS.  
16 SHE WAS ONE OF THE LEADING PROFESSORS AT THIS COLLEGE. AND I'LL  
17 TELL YOU A LITTLE BIT ABOUT STUDENT EVALUATIONS. STUDENT  
18 EVALUATIONS ARE, AT THE END OF THE SEMESTER THEY HAND OUT FORMS  
19 TO THE STUDENTS AND THE STUDENTS RATE THE PROFESSORS, BOTH ON A  
20 NUMERICAL SCALE AND ALSO CAN WRITE COMMENTS.

21 AND FOR YEARS, AND YEARS, AND YEARS AND ALL THROUGH  
22 PROFESSOR BLOUGH'S EMPLOYMENT, THOSE STUDENT EVALUATIONS WERE  
23 THE ONLY METHOD THAT THE COLLEGE USED TO RATE FACULTY  
24 PERFORMANCE. IT WAS THE ONLY MEASURE THEY USED. THERE WAS NO  
25 PERFORMANCE REVIEW. THERE WAS NO SUPERVISOR MEETING,  
26 PERFORMANCE REVIEW, LIKE YOU SEE IN PRIVATE BUSINESSES OR

1 ANYTHING LIKE THAT. STUDENT EVALUATIONS WERE HOW THE FACULTY  
2 WERE EVALUATED EVERY SEMESTER, AND SHE ALWAYS WAS AT THE TOP.

3 SHE WAS HONORED BY THE COLLEGE, IN FACT, DURING THIS  
4 TIME. SHE WAS SENT TO OXFORD IN ENGLAND TO TEACH. SHE ACTUALLY  
5 TAUGHT AS A LECTURER AT OXFORD UNIVERSITY. SHE WAS HONORED BY  
6 THE STUDENTS. SHE WAS AWARDED THE TEACHER OF THE YEAR AWARD  
7 MULTIPLE TIMES. AND SHE WAS ADMIRED AND RESPECTED BY HER FELLOW  
8 FACULTY, AND YOU'LL HEAR THAT ON THE STAND IN THIS CASE.  
9 ADMIRED AND RESPECTED BY THE STUDENTS, AND YOU'LL SEE THAT IN  
10 THE STUDENT EVALUATIONS.

11 AND WHAT SHE FOUND WAS, AND WHAT ATTRACTED HER SO MUCH  
12 TO MENLO COLLEGE IN THE FIRST PLACE -- HOW CAN SOMEONE UP IN  
13 ITHACA, NEW YORK, GRADUATING FROM CORNELL UNIVERSITY, FIND MENLO  
14 COLLEGE OUT HERE ON THE PENINSULA? WELL, SHE DID. AND WHAT SHE  
15 FOUND ABOUT IT, AND WHAT ATTRACTED HER SO MUCH TO IT WAS WHEN  
16 SHE CAME OUT TO INTERVIEW FOR THE POSITION.

17 SHE MET WITH THE ENTIRE BUSINESS SCHOOL FACULTY, AND  
18 THEY ALL WENT OUT TO DINNER TOGETHER. AND WHAT SHE SAID AND  
19 WHAT SHE FELT WAS, THIS IS MY FAMILY. THESE ARE PEOPLE WHO ARE  
20 LONG-TERM EMPLOYEES WHO LOVE THE INSTITUTION, WHO LOVE ONE  
21 ANOTHER. THIS IS WHERE I WANT TO BE. AND THAT WAS WHAT  
22 ULTIMATELY INFLUENCED HER.

23 NOW, WHAT HAPPENED NEXT IN HER LIFE WAS THE THINGS  
24 THAT SHE STRUGGLED WITH, THAT LEAD US HERE. IN 1999, SHE TOOK A  
25 LEAVE OF ABSENCE. NOW, AT THE TIME SHE DIDN'T KNOW SHE ACTUALLY  
26 HAD CANCER, WHEN SHE TOOK THE LEAVE. ON THE FORMS YOU'LL SEE

1 WHERE SHE TOOK THE LEAVE OF ABSENCE IN '99. IT WAS TO, WHAT SHE  
2 CALLED, "RECHARGE HER BATTERIES."

3 SHE FELT ALMOST BURNT OUT. THERE WAS SOMETHING THAT  
4 WASN'T QUITE RIGHT. SHE DIDN'T QUITE UNDERSTAND WHAT WAS GOING  
5 ON. SO SHE FIGURED, MAYBE I WILL TAKE A YEAR. I'VE BEEN DOING  
6 THIS FOR 22 YEARS. MAYBE I SHOULD TAKE A LEAVE AND SEE IF I CAN  
7 RECHARGE MY BATTERIES AND DO SOMETHING.

8 SHE DID THAT AND SHE CAME BACK. SHE CAME BACK FOR A  
9 YEAR AND FOUND, YOU KNOW, IT REALLY DIDN'T WORK. THERE WAS  
10 SOMETHING GOING ON, AND HER HEALTH STARTED TO DETERIORATE. SHE  
11 STARTED GETTING MASSIVE HEADACHES. WHEN I SAY "MASSIVE," I MEAN  
12 SHE WAS INCAPACITATED, IN BED, LIGHTS OUT, NO MOVEMENT, NO  
13 STIMULATION FOR A WEEK AT A TIME. SOME PEOPLE CALL THESE  
14 MIGRAINES; I CALL THEM MASSIVE HEADACHES, COMPLETELY  
15 DEBILITATING. SHE DIDN'T KNOW WHAT WAS GOING ON. SHE COULD NOT  
16 WORK, AND SHE TOOK A DISABILITY LEAVE OF ABSENCE FROM THE  
17 COLLEGE.

18 AND IN LATE 2001, AS SHE WAS ON THIS LEAVE OF ABSENCE,  
19 SHE HAD A ROUTINE COLONOSCOPY. AND WHAT THEY FOUND WAS TUMORS.  
20 THEY DIDN'T KNOW WHAT THEY WERE. THEY KNEW THEY WEREN'T  
21 SUPPOSED TO BE THERE, BUT THEY DIDN'T KNOW EXACTLY WHAT IT WAS,  
22 AND THAT WAS IN LATE 2001.

23 SO THEY SENT HER BACK A MONTH OR TWO LATER TO HAVE A  
24 FURTHER BIOPSY AND EXAMINATION. AND WHAT THEY FOUND IN  
25 FEBRUARY 2002 WAS HER GUT WAS INTERNALLY LITTERED WITH TUMORS,  
26 TINY LITTLE TUMORS CALLED CARCINOID TUMORS. IT IS A FORM OF



1 CANCER. AND YOU'LL HEAR A LOT ABOUT CARCINOID TUMORS AND WHAT  
2 THOSE IMPACTS ARE IN SOMEONE'S LIFE, DURING THIS TRIAL.

3 SO SHE HAD HER SURGERY IN 2002. HALF OF HER COLON WAS  
4 REMOVED; SIX INCHES OF HER SMALL INTESTINE. SHE HAD TO SPEND  
5 FIVE DAYS COMPLETELY IMMOBILE IN BED AFTER THE SURGERY. AND  
6 FROM THERE, IT TOOK SIX MONTHS FOR HER TO EVEN WALK AGAIN  
7 WITHOUT ASSISTANCE FROM SOMEBODY ELSE.

8 AND WHAT'S UNIQUE ABOUT THIS RARE FORM OF CANCER,  
9 THESE CARCINOID TUMORS IS THAT THE NORMAL PROTOCOL, AND WHAT WAS  
10 PRESCRIBED FOR PROFESSOR BLOUGH, IS THAT YOU ARE ON CHEMOTHERAPY  
11 FOR LIFE. YOU KNOW, IN MOST CANCERS THAT EVERYONE HAS  
12 EXPERIENCE WITH, THERE'S USUALLY A COURSE OF TREATMENT.

13 THERE'S SURGERY, THERE'LL BE RADIATION, PERHAPS, AND  
14 THEN SOME CHEMO FOR SIX MONTHS TO A YEAR OR SOME SPAN OF TIME,  
15 BUT THERE'S AN ENDING POINT. WELL, THE STANDARD PROTOCOL FOR  
16 THIS PARTICULAR FORM OF CANCER IS CHEMOTHERAPY FOR LIFE, AND  
17 THAT'S WHAT SHE WAS PRESCRIBED IN MID 2002.

18 WELL, BY 2003, THE BEGINNING OF 2003, PROFESSOR  
19 BLOUGH, WHO HAD WORKED REALLY HARD -- SHE DIDN'T WANT TO BE  
20 INCAPACITATED FOR LIFE. SHE DIDN'T WANT TO BE ON DISABILITY FOR  
21 LIFE. THERE WAS NO WAY SHE WAS NOT GOING TO KEEP WORKING. SO  
22 SHE GOT HERSELF BACK UP ON HER FEET. AND WHAT SHE DID WAS, IN  
23 THE BEGINNING OF 2003, THE FIRST HALF OF 2003, SHE LET THE  
24 COLLEGE KNOW, I'M READY TO COME BACK. I WANT TO COME BACK. AND  
25 SHE WAS EAGER.

1 PROFESSOR BLOUGH, AND HER SMALL-TOWN VALUES AND UPBRINGING SHE  
2 HAD, WITH HARD WORK AND WORKING FOR WHAT YOU GET AND GIVING  
3 BACK, WAS THAT SHE FELT LIKE SHE WAS A BURDEN. A BURDEN ON  
4 SOCIETY, TAKING A HANDOUT FROM THE INSURANCE COMPANY OR FROM  
5 SOCIAL SECURITY FOR DISABILITY. SHE DIDN'T WANT THAT. SHE  
6 HATED IT, IN FACT. SHE HATED BEING THE TAKER INSTEAD OF THE  
7 GIVER.

8 AND SHE WAS READY, BY THE BEGINNING OF 2003, TO  
9 CONTRIBUTE AGAIN TO THE COMMUNITY, AND ESPECIALLY IN PARTICULAR  
10 TO THE MENLO COLLEGE COMMUNITY. IN RETROSPECT, PERHAPS, SHE WAS  
11 A LITTLE TOO EAGER RIGHT THEN. SHE WANTED TO COME BACK FULL  
12 TIME RIGHT AWAY. AND THE COLLEGE HAD HER SEE AN EVALUATOR TO  
13 DETERMINE WHETHER OR NOT SHE WAS FIT TO COME BACK TO WORK.

14 MADE SENSE AT THAT POINT. SHE HAD BEEN OFF FOR,  
15 ESSENTIALLY, THREE YEARS. HAD GONE THROUGH DEBILITATING,  
16 INCAPACITATING HEADACHES AND MEDICAL CONDITIONS, HAD GONE  
17 THROUGH A MAJOR ABDOMINAL SURGERY. SO IT MADE SENSE TO HAVE HER  
18 EVALUATED BEFORE SHE CAME BACK. AND THAT'S WHAT HAPPENED. AND  
19 THE EVALUATOR SAID, LET'S TRY COMING BACK HALF TIME FOR A  
20 SEMESTER. LET'S SEE IF THAT WILL HELP, AND THEN WE'LL TEST YOU  
21 OUT AND COME BACK IN THE SPRING, AND LET'S SEE IF WE CAN BRING  
22 YOU BACK TO FULL-TIME.

23 WELL, SHE DIDN'T REALLY WANT TO DO THAT BECAUSE SHE

24 WAS SO EAGER. SHE WANTED TO GET BACK AND WORK FULL TIME, BUT IN  
25 THE END, SHE DID IT. AND WHAT HAPPENED WAS IT TURNED OUT TO  
26 WORK GREAT FOR HER, BECAUSE SHE WORKED PART TIME. AND, ONCE

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1 AGAIN, SHE PERFORMED WELL. AND SHE WENT BACK TO THE EVALUATOR  
2 IN THE NEXT SPRING. AND HE SAID, "YOU'RE READY TO GO." AND  
3 THERE SHE WAS BACK AT WORK.

4 SO IN 2004, 2005 SHE WAS RIGHT BACK UP IN THAT SADDLE.  
5 SHE WAS READY TO WORK, AND SHE WAS BACK THERE CONTRIBUTING TO  
6 THE STUDENTS. SPRING OF 2004, SHE WAS BACK UP FULL-TIME AGAIN,  
7 HAD A NEW CONTRACT. FALL OF 2004, FULL-TIME, CARRYING A FULL  
8 LOAD; DOING EVERYTHING SHE HAD ALWAYS DONE. LEADING THE  
9 STUDENTS. BEING ON COMMITTEES. LEADING FACULTY COMMITTEES.

10 ONE THING YOU'LL HEAR IN THIS TRIAL IS THAT THE  
11 FACULTY ADMIRER HER SO MUCH THAT ANYTIME SHE WAS ON A FACULTY  
12 COMMITTEE, WITHOUT ANYBODY EVEN ASKING, SHE WAS IMMEDIATELY  
13 NOMINATED TO BE THE CHAIR OF THAT COMMITTEE. BECAUSE EVERYBODY  
14 KNEW SHE COULD GET THINGS DONE.

15 AND IF YOU'VE HAD ANY EXPERIENCE WITH COMMITTEES,  
16 ANYBODY KNOWS THAT COMMITTEES ARE ALWAYS GETTING BOGGED DOWN IN  
17 BUREAUCRACY, PEOPLE BICKERING, PEOPLE ARGUING, THINGS NEVER GET  
18 DONE. WELL, EVERYBODY ALWAYS PUT PROFESSOR BLOUGH AT THE TOP OF  
19 THE CHAIR BECAUSE THEY KNEW SHE WOULD CUT RIGHT THROUGH IT AND  
20 SHE WOULD GET THINGS DONE.

21 SPRING OF 2005, AGAIN, ANOTHER GREAT SEMESTER WHERE

22 SHE WAS GETTING, AGAIN, THE TOP STUDENT EVALUATIONS OF ANYBODY  
23 AROUND. EVERYBODY AGREED THAT SHE WAS THE TOP PROFESSOR IN THE  
24 COLLEGE. AND EVEN AT THAT TIME, THE PRESIDENT AT THAT TIME,  
25 BECAUSE SHE HAD BEEN OFF FOR SO LONG AND HAD WORKED HER WAY BACK  
26 INTO WORK, WAS A LITTLE CONCERNED FOR HER ABOUT WHETHER OR NOT

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1 SHE WOULD HAVE A RELAPSE, WHETHER IT WOULD BE TOO MUCH TO  
2 CONTINUE WORKING.

3 AND HE SAID, "YOU KNOW, EVEN THOUGH IT'S PART OF YOUR  
4 JOB TO DO THE COMMITTEE WORK AND TO BE ON FACULTY COMMITTEES,  
5 VARIOUS TYPES OF FACULTY COMMITTEES, WE'LL LET IT SLIDE FOR YOU.  
6 YOU DON'T HAVE TO DO IT FOR A LITTLE WHILE." YOU KNOW WHAT, SHE  
7 SAID, "NO. THAT'S OKAY. I'LL DO IT." AND SHE KEPT WORKING ON  
8 THE COMMITTEES.

9 IN FACT, AS OF 2005 BECAME CHAIR OF THE PERSONNEL  
10 COMMITTEE. AND THE PERSONNEL COMMITTEE IS A SUBSET OF THE  
11 FACULTY SENATE. AND YOU'LL HEAR A LITTLE BIT ABOUT THE  
12 PERSONNEL COMMITTEE BECAUSE IT'S WHERE FACULTY MEMBERS FIRST  
13 SUBMIT THEIR APPLICATIONS FOR CONTRACT RENEWALS. AND I SHOULD  
14 STOP FOR A MOMENT AND EXPLAIN SOMETHING. IT'S ALSO A LITTLE  
15 DIFFERENT ABOUT MENLO COLLEGE COMPARED TO LARGE UNIVERSITIES AND  
16 OTHER COLLEGES YOU MIGHT BE MORE FAMILIAR WITH.

17 THERE IS NO TENURE AT MENLO COLLEGE. A LOT OF THESE  
18 OTHER UNIVERSITIES' PROFESSORS WORK FOR FIVE, SIX, SEVEN, EIGHT  
19 YEARS AND APPLY FOR WHAT'S CALLED TENURE, ESSENTIALLY PERMANENT

20 EMPLOYMENT. THERE'S NO SUCH SYSTEM AT MENLO COLLEGE. THEY WORK  
21 ON A SERIES OF ROTATING CONTRACTS. AND FOR SOMEONE IN PROFESSOR  
22 BLOUGH'S POSITION AND HER EXPERIENCE, THE TYPICAL CONTRACT IS A  
23 SIX-YEAR CONTRACT. SO WHAT SHE WAS WORKING ON WERE A SERIES OF  
24 SIX-YEAR CONTRACTS AT THE TIME.

25 AND SO THAT'S WHAT THE PERSONNEL COMMITTEE DOES. IT  
26 TAKES THE FIRST LOOK AT THE FACULTY MEMBERS' APPLICATIONS FOR

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1 CONTRACT RENEWALS. AND SHE WAS THE CHAIR OF THAT COMMITTEE IN  
2 2005. AND EVEN IN 2005 WHEN SHE WAS BACK, SHE WAS THINKING  
3 ABOUT NEW CLASSES, NEW WAYS TO EXCITE THE STUDENTS, NEW  
4 CURRICULUM, NEW MATERIALS.

5 SHE WAS OUT DOING HER OWN RESEARCH, PUTTING TOGETHER  
6 HER OWN CLASSES AND PUTTING TOGETHER A PLAN FOR FALL 2005 OR  
7 SPRING 2006, OR AS SOON AS SHE COULD GET IT GOING. SHE WAS  
8 ACTIVE IN EVERY ASPECT OF HER TEACHING LIFE AND DOING EVERYTHING  
9 SHE COULD TO MAKE SURE THAT THE STUDENTS HAD A GREAT EXPERIENCE.

10 NOW, FALL 2005, LATE IN THE FALL, SOMETHING STARTED  
11 HAPPENING WITH PROFESSOR BLOUGH. SHE WASN'T QUITE SURE, DIDN'T  
12 QUITE KNOW -- THINGS, YOU'LL HEAR HER SAY THAT THEY CREPT UP ON  
13 HER. AND WHAT YOU'LL HEAR IS THAT THE TYPE OF CHEMOTHERAPY THAT  
14 PROFESSOR BLOUGH WAS BEING PRESCRIBED AND BEING ADMINISTERED IS  
15 NOT YOUR TYPICAL CHEMOTHERAPY. IT'S NOT THIS BIG, WHAM, YOU'RE  
16 OUT FOR A COUPLE OF DAYS AFTER THEY GIVE IT TO YOU, AND THEN IT  
17 TAKES YOU A FEW DAYS TO A WEEK TO RECOVER. IT'S NOT THAT TYPE

18 OF CHEMOTHERAPY. THIS IS A DRUG CALLED SANDOSTATIN.  
19 WITH THIS DRUG YOU GET ADMINISTERED AN INJECTION AT  
20 THE DOCTOR'S OFFICE ONCE A MONTH. AND YOUR HAIR DOESN'T FALL  
21 OUT, AND IT DOESN'T KNOCK YOU OUT RIGHT AWAY OR DO ANYTHING LIKE  
22 THAT. BUT AS OF THE FALL OF 2004, SHE HAD BEEN ON THIS  
23 CHEMOTHERAPY -- EXCUSE ME -- FALL 2005, SHE HAD BEEN ON THIS  
24 CHEMOTHERAPY FOR A GOOD TWO-AND-A-HALF, THREE YEARS. AND  
25 BECAUSE NOTHING HAPPENED SO DRASTIC RIGHT UP FRONT, SHE HADN'T  
26 RECOGNIZED THAT THERE WAS REALLY ANY PROBLEMS WITH IT. SHE

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1 THOUGHT EVERYTHING WAS OKAY, BECAUSE SHE HAD DONE SO WELL IN THE  
2 YEARS PRIOR.

3 WELL, LATE 2005, IN THE FALL SEMESTER, SO WE'RE  
4 TALKING ABOUT OCTOBER, NOVEMBER, DECEMBER, MOSTLY AROUND  
5 DECEMBER AFTER CLASSES WERE OVER, SHE STARTED NOTICING HER  
6 HEARING WASN'T SO GOOD. THERE WAS SOMETHING WRONG. PEOPLE  
7 WEREN'T BEING ABLE TO HEAR HER. HER HUSBAND HAD MADE A COMMENT  
8 ABOUT HER NOT BEING ABLE TO HEAR HIM. SHE WAS CONCERNED, SO SHE  
9 WENT TO SEE HER ONCOLOGIST.

10 AND IN LATE DECEMBER OF 2005, HER ONCOLOGIST, WHICH IS  
11 HER CANCER DOCTOR, WHO ALSO, THIS DOCTOR, DR. MARCUS, YOU'LL  
12 HEAR ABOUT, AS A MATTER OF PRACTICE ALWAYS TOOK HIS ONCOLOGY  
13 CANCER PATIENTS AS PRIMARY CARE PATIENTS. SO HE TOOK CARE OF  
14 THE WHOLE PERSON. AND SO PROFESSOR BLOUGH WENT TO SEE  
15 DR. MARCUS AND SAID, "I'M HAVING THIS PROBLEM WITH MY HEARING

16 THAT I HAVEN'T HAD BEFORE. I'M JUST NOTICING IT JUST RECENTLY.  
17 IT'S STARTING TO HAPPEN."

18 HE SAID, "OKAY. WELL," YOU KNOW, TALKED ABOUT IT.  
19 AND HE SAID, "WELL, YOU SHOULD GO SEE AN EAR, NOSE AND THROAT  
20 DOCTOR." SO THE FIRST APPOINTMENT SHE COULD GET IS LATE  
21 JANUARY 2006 FOR THE HEARING DOCTOR. WELL, IN BETWEEN WHAT  
22 HAPPENS? WELL, THE SPRING SEMESTER STARTS. JANUARY 9, 2006 IS  
23 WHEN THE SPRING SEMESTER STARTS.

24 SHE STILL HAS THE HEARING LOSS; SHE ACKNOWLEDGES IT.  
25 BUT SHE DIDN'T KNOW WHAT WAS GOING ON YET, AND SHE WAS WORKING  
26 WITH HER TREATING PHYSICIAN TO FIGURE OUT WHAT WAS GOING ON TO

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1 MAKE SURE THAT SHE COULD DEAL WITH IT. AND SHE REALLY WASN'T  
2 SURE HOW IT WAS GOING TO AFFECT HER IN THE CLASSROOM. AND  
3 BECAUSE SHE WAS SO EAGER TO WORK, SHE CONTINUED WORKING. AND  
4 SHE STARTED THE SPRING 2006 SEMESTER.

5 AND WHEN SHE WENT TO SEE THE EAR, NOSE AND THROAT  
6 DOCTOR AT THE END OF JANUARY 2006, IT WAS CONFIRMED. SHE HAD  
7 WHAT'S CALLED MILD TO MODERATE BILATERAL HEARING LOSS; HEARING  
8 LOSS IN BOTH EARS. A LITTLE BIT TO A LITTLE BIT MORE,  
9 BASICALLY, SOMETHING THAT REALLY AFFECTED HER.

10 NOW, AT THE SAME TIME, SHE ALSO NOTICED SOMETHING ELSE  
11 WAS CREEPING UP ON HER, SOMETHING ELSE PHYSICAL IN NATURE. AND  
12 THAT WAS FATIGUE. SHE REALIZED THAT SHE WAS HAVING TROUBLES  
13 GETTING UP IN THE MORNING, AND GETTING GOING, AND GETTING TO

14 SCHOOL. AND SOMETIMES, YES, SHE WAS LATE TO CLASS. SOMETIMES  
15 SHE MISSED CLASS ALTOGETHER BECAUSE SHE COULDN'T GET HERSELF  
16 THERE. SOMETIMES SHE ENDED CLASS EARLY BECAUSE BOTH SHE WAS  
17 FATIGUED, AND THE FRUSTRATION WITH HER DISCUSSION CLASSES.

18 SHE HAD SOME CLASSES WHERE DISCUSSION WAS A MAJOR  
19 COMPONENT OF THE CLASS. AND SHE COULDN'T HEAR, COULDN'T HEAR  
20 SOME OF THE STUDENTS IN THE BACK OF THE ROOM, AND COULDN'T  
21 REALLY GUIDE THE DISCUSSIONS IN THE WAY THAT SHE WANTED. AND SO  
22 SHE GOT FRUSTRATED. AND ONCE OR TWICE SHE ENDED CLASSES EARLY.  
23 SHE DIDN'T FEEL GOOD ABOUT IT. SHE WASN'T HAPPY ABOUT IT. SHE  
24 WASN'T PROUD OF IT. BUT SHE DID IT BECAUSE SHE HAD TO.

25 NOW, ALL THE WHILE SHE'S KEEPING IN TOUCH WITH THE --  
26 SHE'S KEEPING IN TOUCH WITH THE ACADEMIC DEAN, WHO IS HER BOSS.

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1 THE ACADEMIC DEAN, WHO AT THIS POINT WAS NAMED LOWELL PRATT.  
2 AND YOU'LL HEAR FROM HIM IN THIS TRIAL. AND SHE KEPT HIM  
3 ABREAST OF EVERYTHING THAT WAS GOING ON. THEY HAD SEVERAL  
4 CONVERSATIONS WHERE SHE TOLD HIM ABOUT THE PHYSICAL PROBLEMS SHE  
5 WAS HAVING IN THE CLASSROOM, THE FATIGUE AND THE HEARING LOSS.

6 SHE EVEN SENT HIM AN E-MAIL LETTING HIM KNOW THAT IT  
7 WAS PRETTY QUICKLY AFTER SHE GOT THE OFFICIAL DIAGNOSIS OF THE  
8 HEARING LOSS, THE HEARING LOSS IS WHAT'S REALLY CAUSING HER ALL  
9 THE PROBLEMS. AND SHE ASSURED HIM THAT SHE WAS WORKING ON IT  
10 WITH HER DOCTORS TO FIGURE OUT WHAT WAS GOING ON AND TO MAKE  
11 SURE SHE COULD FIX IT.



12 AND HER HEARING DOCTOR, AT THE FIRST APPOINTMENT SAID,  
13 "WE'RE GOING TO EVALUATE YOU, AND WE THINK YOU MIGHT NEED  
14 HEARING AIDS." AND SHE TOLD THAT TO THE COLLEGE, THAT SHE MIGHT  
15 NEED HEARING AIDS. AND, IN FACT, THAT SHE WOULD GET THEM IF, IN  
16 FACT, IT TURNED OUT THAT WAS THE CASE.

17 LET ME BACK UP JUST A SECOND. BECAUSE IN THE FALL OF  
18 2005 -- I TOLD YOU ABOUT THE PERSONNEL COMMITTEE AND THE  
19 CONTRACT RENEWALS. IN THE FALL 2005, PROFESSOR BLOUGH SUBMITTED  
20 HER APPLICATION FOR HER NEXT SIX-YEAR CONTRACT BECAUSE THE  
21 CURRENT CONTRACT SHE WAS ON WOULD END AT THE END OF THE SPRING  
22 2006 SEMESTER. SO THE WAY THE PROCESS WORKS IS, THE FALL BEFORE  
23 YOUR CONTRACT EXPIRES YOU SUBMIT WHAT'S CALLED YOUR DOSSIER TO  
24 THE PERSONNEL COMMITTEE. THE PERSONNEL COMMITTEE DECIDES WHAT  
25 SHOULD HAPPEN. THEY APPROVED PROFESSOR BLOUGH'S APPLICATION.

26 AND WHAT YOU SEE IN THE DOSSIER IS HER STUDENT

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1 EVALUATIONS, RECOMMENDATIONS FROM OTHER FACULTY MEMBERS AND A  
2 PLAN, A DETAILED PLAN OF ACTION THAT THE PROFESSOR IS GOING TO  
3 DO OVER THE NEXT CONTRACT PERIOD. SHE SUBMITTED ALL OF THAT, IT  
4 WAS REVIEWED BY THE PERSONNEL COMMITTEE, AND THEY APPROVED IT.  
5 THE ACADEMIC DEAN THEN LOOKED AT IT. THIS IS, AGAIN, LOWELL  
6 PRATT, THE PERSON WHO WAS AWARE THE ENTIRE TIME OF PROFESSOR  
7 BLOUGH'S PHYSICAL ISSUES IN THE CLASSROOM. HE RECOMMENDED  
8 APPROVAL. IN LATE DECEMBER OF 2005, HE RECOMMENDED APPROVAL.  
9 NOW, THEY KNEW, AGAIN, ABOUT THE FATIGUE AND THE

10 HEARING LOSS AND ALL OF THIS THROUGH SPEAKING WITH LOWELL PRATT.  
11 AND THEY KNEW THAT PROFESSOR BLOUGH WAS WORKING IT OUT WITH HER  
12 MEDICAL PROVIDERS, AND SHE TOLD THEM THAT. SHE TOLD DEAN PRATT  
13 THAT IN HER FEBRUARY 17TH E-MAIL.

14 AND WHAT SHE AND HER DOCTORS DISCUSSED HAD,  
15 ULTIMATELY, CONCLUDED OVER THE NEXT COUPLE OF MONTHS WAS THAT  
16 THE CHEMOTHERAPY WAS THE CULPRIT HERE -- OR MAYBE IT WAS THE --  
17 IT WAS REALLY MORE OF A QUESTION. IS THE CHEMOTHERAPY THE  
18 CULPRIT? AND SO THEY HAD A CHOICE. PROFESSOR BLOUGH HAD A  
19 CHOICE AT THAT POINT.

20 SHE COULD STAY ON CHEMOTHERAPY THAT SHE HAD BEEN TOLD  
21 WOULD SAVE HER LIFE AND, LIKELY, END UP ON DISABILITY AGAIN,  
22 BECAUSE SHE WAS GOING TO CONTINUE TO BE FATIGUED AND HER HEARING  
23 WAS GOING TO CONTINUE TO GO. OR SHE COULD CHOOSE TO STOP TAKING  
24 HER MEDICATION AND KEEP WORKING. SHE CHOSE TO KEEP WORKING.  
25 SHE CHOSE NUMBER TWO.

26 SO IN MARCH 2006, AGAIN, KEEPING IN FULL TOUCH WITH

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1 THE COLLEGE, SHE TOLD THE PRESIDENT, CARLOS LOPEZ, WHO YOU'LL  
2 ALSO HEAR FROM, ABOUT HER PLAN, IN CONSULTATION WITH HER DOCTOR,  
3 TO GO OFF HER CHEMOTHERAPY, TO STOP THE MEDICATION THAT HAD BEEN  
4 PRESCRIBED TO HER, TO SEE IF SHE CAN CONTINUE TO REGAIN HER  
5 STRENGTH AND, MAYBE, REGAIN HER HEARING OR, AT LEAST, STABILIZE  
6 THE HEARING LOSS.

7 AND ON MARCH 24, 2006, SHE MADE THAT DECISION IN

8 CONSULTATION WITH HER DOCTOR. SHE STOPPED HER CHEMOTHERAPY  
9 BECAUSE SHE WANTED TO KEEP WORKING. AND GUESS WHAT HAPPENED.  
10 IN APRIL 2006, SHE SAYS, "I FEEL MYSELF AGAIN. I FEEL 20 YEARS  
11 YOUNGER." SHE HAD A MEETING WITH DEAN PRATT AND TOLD HIM. AND  
12 AT THE SAME TIME, TOLD HIM THAT HER FATIGUE WAS GONE.

13 THE FATIGUE THAT HAD TROUBLED HER EARLIER IN THE  
14 SEMESTER WAS GONE. THAT HER HEARING LOSS HAD STABILIZED. SHE  
15 WASN'T LOSING HER HEARING ANYMORE. IT WASN'T GETTING ANY  
16 BETTER, BUT SHE WAS GOING TO WORK WITH HER HEARING DOCTORS TO  
17 GET HEARING AIDS.

18 AND SHE DID ASK ONE, TWO SMALL ACCOMMODATIONS.  
19 BECAUSE SHE WASN'T SURE HOW THE HEARING AIDS WERE GOING TO BE  
20 OUTFITTED RIGHT AWAY OR HOW IT WAS GOING TO WORK RIGHT AWAY, SHE  
21 ASKED FOR SMALLER CLASSROOMS AND SMALLER CLASS SIZES. AND WHEN  
22 SHE SAID SMALLER, SHE MEANT COMPARED TO WHAT SHE HAD BEEN DOING,  
23 WHICH WAS OVERLOAD IN THE SPRING OF '06. SHE HAD 126 TO 128  
24 STUDENTS. MOST FULL-TIME FACULTY HAD BETWEEN 80 AND 100, MAYBE  
25 110 STUDENTS AS FULL-TIME.

26 SO SHE WAS ALREADY DOING MORE THAN HER FAIR SHARE.

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1 AND ALL SHE WAS REALLY ASKING FOR WAS TO MAKE SURE THAT HER  
2 CLASSES WERE AT THAT NORMAL LOAD, AND THAT THEY WERE IN THE  
3 SMALLER ENVIRONMENT SO SHE WOULD BE SURE THAT THE STUDENTS WOULD  
4 BE CLOSE TO HER AND SHE COULD HEAR THEM, ESPECIALLY WITH HER  
5 HEARING AID.

6 AT THAT POINT, THE COLLEGE HAD A CHOICE TO MAKE. THEY  
7 COULD CHOOSE TO STAND BY THIS DEDICATED LONG-TERM  
8 STUDENT-FAVORED FACULTY MEMBER, OR THEY COULD IGNORE ALL THE  
9 WORK SHE HAD DONE TO GET BACK ON HER FEET AND TREAT HER AS IF  
10 SHE'D DONE SOMETHING WRONG. WELL, WHAT DO YOU THINK THEY CHOSE?

11 ON MAY 8TH, AFTER PROFESSOR BLOUGH HAD TOLD DEAN PRATT  
12 THAT SHE WAS BETTER, AFTER SHE HAD ASKED DEAN PRATT FOR THESE  
13 MINOR ACCOMMODATIONS, THE COLLEGE SAID, "IF YOU WANT TO KEEP  
14 WORKING HERE, YOU HAVE TO GO TO A MEDICAL EXAM WITH A  
15 PSYCHIATRIST." A PSYCHIATRIST. AFTER SHE'S TOLD THEM THAT HER  
16 ONLY AILMENTS WERE PHYSICAL IN NATURE. AND THAT AS PART OF THIS  
17 EXAM, SHE WOULD HAVE TO WAIVE ALL OF HER RIGHTS TO PRIVACY IN  
18 HER MEDICAL RECORDS, AND THAT SHE WOULD HAVE TO RELEASE ALL OF  
19 HER MEDICAL RECORDS TO THIS PSYCHIATRIST.

20 NOW, ON MAY 17TH SHE WENT TO THIS EXAM, BECAUSE SHE  
21 WAS CONFIDENT THAT SHE COULD DO WHAT SHE -- SHE COULD TELL THIS  
22 PSYCHIATRIST WHAT SHE HAD TOLD THE DEAN, WHICH WAS THAT SHE WAS  
23 BETTER. SHE WAS FINE. HER DOCTORS, HER TREATING DOCTORS HAD  
24 ALL SAID SHE COULD CONTINUE TO WORK. AND WHAT YOU'LL ALSO HEAR  
25 IS THAT THIS PSYCHIATRIST, THERE WERE NO LIMITS PLACED ON THIS  
26 EXAMINATION BY THE COLLEGE.

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1 THE COLLEGE NEVER TOLD THIS PSYCHIATRIST THE  
2 BOUNDARIES THAT HE WAS ALLOWED TO INQUIRE ABOUT. THE COLLEGE  
3 NEVER GAVE THIS PSYCHIATRIST A LIST OF PROFESSOR BLOUGH'S

4 ESSENTIAL JOB FUNCTIONS. THE COLLEGE NEVER GAVE THIS  
5 PSYCHIATRIST ANY INFORMATION ABOUT WHAT WAS HAPPENING WITH HER  
6 OR WHAT THE NATURE OF HER PROBLEMS WERE.

7 AND THIS IS WHAT HE DID. HE SAID, "YOU HAVE TO SIGN A  
8 WAIVER FOR ALL OF THESE MEDICAL RECORDS." AND SHE SIGNED THEM  
9 BECAUSE THAT'S WHAT SHE THOUGHT SHE WAS SUPPOSED TO DO TO GO IN  
10 GOOD FAITH THROUGH THIS EXAM. BECAUSE, AGAIN, SHE WAS CONFIDENT  
11 THAT SHE COULD CONTINUE WORKING, BECAUSE THAT'S WHAT HER  
12 TREATING DOCTORS SAID. SHE SPENT ONE TO TWO HOURS TALKING TO  
13 THE PSYCHIATRIST, DR. MISSETT.

14 YOU'LL HEAR FROM HIM DURING THIS TRIAL. HALF OF WHAT  
15 THEY WERE TALKING ABOUT WAS PROFESSOR BLOUGH'S HUSBAND. YOU'LL  
16 SEE HALF OF THE NOTES THAT DR. MISSETT TOOK WERE IN REGARDS TO  
17 PROFESSOR BLOUGH'S HUSBAND AND HER MARITAL ISSUES WITH HER  
18 HUSBAND. THERE WAS NO PHYSICAL PART OF THE EXAM. THERE WAS NO  
19 ONCOLOGICAL EXAM, NO CANCER EXAM OF ANY KIND. THERE WAS NO LAB  
20 TEST OR ANYTHING ELSE.

21 ON MAY 26, PROFESSOR BLOUGH E-MAILED THE DEAN AND  
22 PRESIDENT LOPEZ AND SAID, "I COMPLIED WITH YOUR REQUEST, BUT I  
23 WANT TO REITERATE TO YOU THAT I FEEL GREAT. MY DOCTORS HAVE  
24 SAID I CAN CONTINUE WORKING, AND ALL I WANT TO DO IS CONTINUE  
25 WORKING," THAT SHE FELT 20 YEARS YOUNGER AND SHE DID NOT WANT TO  
26 GO ON DISABILITY.

1 AND YOU'LL SEE THAT HER TREATING PSYCHIATRIST,

2 DR. LIU, WROTE A LETTER THAT SHE GAVE TO THE COLLEGE AND TO THE  
3 PSYCHIATRIST THAT SAID SHE CAN WORK. THAT DR. MISSETT, IN PART  
4 OF THE EXAM, CALLED DR. MARCUS'S OFFICE, HER ONCOLOGIST, AND  
5 DR. MARCUS RELAYED THE OPINION THAT, YES, SHE CAN CONTINUE  
6 WORKING. WELL, WHAT HAPPENED? ON JUNE 28TH, DR. MISSETT WROTE  
7 A LETTER SAYING THAT SHE CAN'T WORK NOW OR FOR THE FORESEEABLE  
8 FUTURE.

9 AND ON JULY 7TH, PRESIDENT LOPEZ WROTE A LETTER TO  
10 PROFESSOR BLOUGH SAYING, "IN SITUATIONS SUCH AS THESE, WE ARE  
11 GOING TO RELY ON THIS SECTION OF THE FACULTY HANDBOOK THAT  
12 ALLOWS US TO TERMINATE A FACULTY MEMBER IN THE EVENT OF  
13 INCAPACITY OR DEATH. AND WE ARE GOING TO EXERCISE OUR RIGHT TO  
14 TERMINATE YOU UNDER THIS CLAUSE." HER FACULTY DUTIES WERE  
15 REMOVED. SHE WAS PLACED ON WHAT THEY CALL MEDICAL LEAVE. AND  
16 SHE WAS TOLD SHE WOULD BE TERMINATED WITH A DATE OF  
17 NOVEMBER 30TH.

18 NOW, THIS IS AN ADMINISTRATIVE ISSUE, AS FAR AS  
19 MEDICAL LEAVE, BECAUSE THEY GAVE HER THE SUMMER OF, QUOTE,  
20 "MEDICAL LEAVE," AND SHE STILL HAD SOME PAY COMING TO HER UNDER  
21 HER CONTRACT. AND THEY WERE GOING TO GIVE HER, QUOTE, "GIVE"  
22 HER FAMILY MEDICAL LEAVE, UNPAID LEAVE OF ABSENCE THROUGH THE  
23 BEGINNING OF THE FALL. BUT IT WAS VERY CLEAR IN THAT LETTER, AS  
24 SOON AS THAT LEAVE WAS DONE SHE WAS TERMINATED. SHE HAD NO MORE  
25 POSITION WITH THE SCHOOL. SHE HAD NO FACULTY DUTIES. SHE WAS  
26 DONE.

1 MR. VARTAIN: YOUR HONOR, OBJECTION --

2 MR. LEBOWITZ: 29 YEARS GONE.

3 MR. VARTAIN: -- ARGUMENT.

4 THE COURT: SUSTAINED.

5 GO AHEAD. IT'S ARGUMENTATIVE.

6 MR. LEBOWITZ: AND IN THAT LETTER, THE ONLY HELP THAT  
7 THEY OFFERED PROFESSOR BLOUGH WAS TO HELP HER FILL OUT HER  
8 INSURANCE FORMS TO GO ON DISABILITY, TO GO BACK AND BE A TAKER  
9 AGAIN. NOW, PROFESSOR BLOUGH, HER ENTIRE CAREER WAS NOW HANGING  
10 IN THE BALANCE. IT WAS NOW GONE. IT HAD BEEN TAKEN AWAY FROM  
11 HER. AND THESE WERE HER FAMILY, PEOPLE, HER FRIENDS. AND WHAT  
12 HAPPENED?

13 SO A COUPLE OF DAYS LATER, TWO OF HER COLLEAGUES,  
14 PROFESSORS MCDONOUGH AND MEDLEN, WHO YOU'LL HEAR FROM IN THIS  
15 TRIAL, WENT TO THE PRESIDENT AND SAT DOWN WITH HIM IN HIS OFFICE  
16 AND SAID, "PLEASE, THIS IS RIDICULOUS. DO SOMETHING ABOUT THIS.  
17 FIX THIS." SILENCE WAS HEARD IN RETURN.

18 ON JULY 22, PROFESSOR BLOUGH SENT AN E-MAIL TO THE  
19 ADMINISTRATORS, TO CARLOS LOPEZ, PRESIDENT LOPEZ, TO DEAN PRATT.  
20 SAID, "PLEASE, HELP ME UNDERSTAND WHAT'S GOING ON HERE. MY  
21 DOCTORS, AS I'VE TOLD YOU, ARE ASSURING ME I CAN WORK." NO  
22 RESPONSE. NOBODY FROM THE COLLEGE RESPONDED TO THAT E-MAIL.

23 IN JULY AND AUGUST A MEMBER OF THE BOARD OF TRUSTEES,  
24 THE PEOPLE WHO OVERSEE THE ENTIRE COLLEGE, NIKHIL BEHL, CALLED  
25 PRESIDENT LOPEZ AND LEFT HIM A MESSAGE ON BEHALF OF PROFESSOR  
26 BLOUGH SAYING, "I WANT TO MAKE INQUIRY. I WANT TO KNOW WHAT'S

1 GOING ON." PRESIDENT LOPEZ NEVER EVEN RETURNED THE CALL. ON  
2 AUGUST 1ST, PROFESSOR BLOUGH SENT ANOTHER E-MAIL SAYING, "YOU  
3 GUYS DIDN'T RESPOND TO MY JULY 22ND E-MAIL. PLEASE, PLEASE,  
4 TELL ME WHAT'S GOING ON. MY DOCTORS HAVE TOLD ME THAT I CAN  
5 WORK."

6 AND BY THAT TIME, SHE HAD SEEN ANOTHER ONCOLOGIST  
7 ALSO, AS PART OF HER TREATMENT, AND HE HAD EXAMINED HER, AND HE  
8 SAID, "YES, YOU CAN CONTINUE WORKING." AND IN THAT AUGUST 1ST  
9 E-MAIL, SHE TOLD THE COLLEGE THAT. SHE HAD YET ANOTHER MEDICAL  
10 OPINION THAT SAID SHE COULD CONTINUE WORKING. SHE JUST WANTED  
11 TO KNOW WHAT WAS GOING ON. BUT, ONCE AGAIN, NO RESPONSE FROM  
12 THE COLLEGE.

13 FINALLY, IN AUGUST SHE SENT A THIRD E-MAIL. THE  
14 SEMESTER WAS SOON TO BEGIN, AND SHE WAS DESPERATE TO GET BACK TO  
15 WORK. SO SHE OFFERED A COMPROMISE, UNSOLICITED. SHE SAID,  
16 "I'LL WORK FOR A YEAR, AND I'LL SHOW YOU THAT I CAN DO THIS JOB.  
17 I WILL WORK A YEAR FULL-TIME, AND I WILL SHOW YOU WHAT MY DOCTOR  
18 SAID IS TRUE."

19 AND ON AUGUST 10TH, SHE FINALLY GOT A RESPONSE. AND  
20 THE RESPONSE, "THE COLLEGE'S DECISION TO TERMINATE YOUR  
21 EMPLOYMENT IS FIRM." AND AUGUST 14TH, THE COLLEGE WROTE HER A  
22 LETTER, AGAIN, CONFIRMING HER TERMINATION. THE ONLY HELP THAT  
23 WAS OFFERED IN THAT LETTER, WE'LL HELP YOU FILL OUT THOSE  
24 DISABILITY INSURANCE FORMS SO YOU CAN GO BE A TAKER AND BE ON



25 DISABILITY AGAIN.

26 MR. VARTAIN: OBJECTION --

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1 THE COURT: SUSTAINED.

2 MR. VARTAIN: -- ARGUMENTATIVE. I'D LIKE AN  
3 INSTRUCTION TO THE ATTORNEY TO NOT ARGUE AT THIS TIME.

4 THE COURT: MR. LEBOWITZ, YOU MAY CONTINUE. PLEASE  
5 UNDERSTAND THAT.

6 MR. LEBOWITZ: YES, YOUR HONOR.

7 AND THEN -- SO THE DECISION HAD BEEN CONFIRMED AS  
8 FIRM. AND THEN SOMETHING SUDDENLY -- SOMETHING HAPPENED TO MAKE  
9 THE COLLEGE CHANGE ITS TUNE. ON AUGUST --

10 MR. VARTAIN: OBJECTION.

11 THE COURT: SUSTAINED.

12 YOU MAY INFORM THE JURY OF WHAT YOUR EVIDENCE WILL  
13 ESTABLISH.

14 MR. LEBOWITZ: I APOLOGIZE, YOUR HONOR.

15 THE COURT: THANK YOU.

16 MR. LEBOWITZ: ON AUGUST 29TH, THE COLLEGE RECEIVED A  
17 LETTER, OR ASSUMED THEREAFTER, A LETTER FROM PROFESSOR BLOUGH'S  
18 ATTORNEY. ONLY AFTER THAT LETTER DID THE COLLEGE SUDDENLY SAY,  
19 "OH, WAIT A MINUTE. YOU MEAN NOW YOU'RE CONTRADICTING THE  
20 MEDICAL EXAMINER WITH THESE EXTRA MEDICAL RECORDS."

21 MR. VARTAIN: OBJECTION --

22 THE COURT: SUSTAINED.

23 MR. VARTAIN: ARGUMENTATION. IT'S AGAINST THE RULES.

24 MR. LEBOWITZ: IT'S IN THE LETTERS, YOUR HONOR.

25 MR. VARTAIN: OBJECTION.

26 THE COURT: SUSTAINED.

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1 MR. LEBOWITZ: THEY SAID, "GO BACK TO DR. MISSETT AND,  
2 AGAIN, FULLY AND UNCONDITIONALLY RELEASE ALL OF YOUR MEDICAL  
3 RECORDS TO HIM." THROUGH SEPTEMBER AND OCTOBER PROFESSOR BLOUGH  
4 ARGUED WITH THE COLLEGE AND BEGGED THE COLLEGE, PLEASE --

5 MR. VARTAIN: OBJECTION.

6 THE COURT: SUSTAINED.

7 MR. LEBOWITZ: SHE ASKED THROUGH E-MAILS TO THE  
8 COLLEGE --

9 MR. VARTAIN: YOUR HONOR --

10 THE COURT: APPROACH, COUNSEL.

11 (DISCUSSION AT THE BENCH.)

12 THE COURT: ALL RIGHT.

13 LADIES AND GENTLEMEN, I'M SORRY FOR THE INTERRUPTION.

14 MR. LEBOWITZ, YOU MAY CONTINUE.

15 MR. LEBOWITZ: THANK YOU, YOUR HONOR. I APOLOGIZE.

16 SEPTEMBER AND OCTOBER PROFESSOR BLOUGH WROTE E-MAILS  
17 TO THE COLLEGE ASKING TO BE EXAMINED, INSTEAD OF BY DR. MISSETT,  
18 BY AN ONCOLOGIST, AND THAT THE COLLEGE LISTEN TO HER ORIGINAL  
19 PHYSICIAN. ON OCTOBER 26TH THE COLLEGE WROTE HER A LETTER  
20 SAYING, "NO, DR. MISSETT IS OUR SOLE EXAMINER." SO ON

21 NOVEMBER 6TH, SHE TOLD THE COLLEGE -- JUST PRIOR TO  
22 NOVEMBER 6TH -- THAT SHE WOULD GO SEE DR. MISSETT, "BECAUSE THIS  
23 IS THE ONLY WAY YOU WILL ALLOW ME TO COME BACK TO WORK."

24 MR. VARTAIN: OBJECTION. AND THERE'S ARGUMENTATION ON  
25 THE SCREEN.

26 MR. LEBOWITZ: IT IS --

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1 MR. VARTAIN: COUNSEL, IF YOU PUT IT BACK SO THE COURT  
2 WILL BE ABLE TO SEE.

3 THE COURT: MOVE ON.

4 MR. LEBOWITZ: I SHOWED THIS TO HIM BEFORE.

5 THE COURT: MOVE ON.

6 MR. LEBOWITZ: ON NOVEMBER 6TH, THEY WENT TO ANOTHER  
7 EXAM. AGAIN, DR. MISSETT REQUIRED PROFESSOR BLOUGH TO SIGN THE  
8 WAIVER OF HER MEDICAL RECORDS.

9 MR. VARTAIN: OBJECTION AS TO THE "REQUIRED."

10 THE COURT: OVERRULED.

11 MR. LEBOWITZ: THE MEETING LASTED APPROXIMATELY ONE  
12 HOUR. THEY TALKED ABOUT DR. LIU'S RECORDS. AND, AGAIN,  
13 DR. LIU'S RECORDS, PROFESSOR BLOUGH'S TREATING PSYCHIATRIST.  
14 THERE WAS NO PHYSICAL -- THERE WAS NO ONCOLOGICAL EXAM, NO  
15 LABORATORY TESTS.

16 WHAT DR. MISSETT DID DO IS, THIS TIME WHAT HE DID  
17 DIFFERENTLY WAS TELL PROFESSOR BLOUGH AND REFER PROFESSOR BLOUGH  
18 TO SEE ANOTHER MEDICAL PROVIDER. THIS TIME WILLIAM LYNCH, A

19 NEUROPSYCHOLOGIST, TO DO A NEUROPSYCHOLOGICAL WORKUP. AND,  
20 AGAIN, PROFESSOR BLOUGH SENT AN E-MAIL TO THE COLLEGE SAYING SHE  
21 DIDN'T WANT TO GO TO HIM, BUT SHE WOULD BECAUSE THAT IS WHAT  
22 THEY WERE REQUIRING HER TO DO TO TRY TO COME BACK TO WORK.

23 BETWEEN DECEMBER 7TH AND MARCH OF 2007, PROFESSOR  
24 BLOUGH TRIED TO GET THIS PROCESS ROLLING AND GET IT COMPLETED.

25 MR. VARTAIN: OBJECTION --

26 MR. LEBOWITZ: UNFORTUNATELY, IT TOOK UNTIL MARCH,

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1 WHEN DR. MISSETT SAID, THIS TIME SHE COULD RETURN TO WORK  
2 HALF-TIME. NOW, NOTHING HAD CHANGED IN HER MEDICAL CONDITION  
3 FROM MAY IN HIS FIRST EXAM OF 2006 AND THE FALL OF 2006. BUT  
4 THIS TIME HE SAYS, SHE CAN GO BACK HALF-TIME. WELL, ON  
5 APRIL 17TH, THE COLLEGE WRITES PROFESSOR BLOUGH AN E-MAIL AND  
6 SAID, "WE DON'T HAVE ANY CLASSES FOR YOU, AND YOU ARE NO LONGER  
7 A FULL-TIME EMPLOYEE OF THE COLLEGE."

8 ON APRIL 18TH, THE COLLEGE SENT PROFESSOR BLOUGH A  
9 COBRA LETTER. THAT MEANS, TELLING YOU THAT YOU HAVE RIGHTS TO  
10 CONTINUATION OF MEDICAL INSURANCE AFTER TERMINATION. IN THE  
11 LETTER, IT SAYS THE REASON FOR SENDING THIS COBRA LETTER WAS  
12 BECAUSE OF HER, QUOTE, "TERMINATION." SO AS OF APRIL 18TH OF  
13 2007, SHE HAD BEEN TERMINATED A SECOND TIME.

14 MR. VARTAIN: OBJECTION; ARGUMENTATION, AND ANOTHER  
15 INSTRUCTION THAT THE COUNSEL --

16 THE COURT: OVERRULED.

17 MR. LEBOWITZ: IN MAY AND JUNE OF 2007, YOU'RE GOING  
18 TO HEAR A LOT ABOUT THIS, THIS OFFER OF REEMPLOYMENT FROM THE  
19 COLLEGE IN MAY AND JUNE OF 2007.

20 NOW, THIS WAS AN OFFER OF HALF-TIME, FOR ONE YEAR WITH  
21 NO GUARANTEE OF ANYTHING BEYOND THAT. IN THAT ONE YEAR, SHE  
22 WOULD BE ALLOWED TO APPLY FOR THE SIX-YEAR CONTRACT. WELL, IN  
23 AUGUST, AFTER CONSIDERING THAT OFFER AND EVERYTHING ELSE,  
24 PROFESSOR BLOUGH REJECTED THAT OFFER. AND AS SHE TOLD THE  
25 COLLEGE, SHE BELIEVED THAT THIS OFFER WAS BEING MADE IN BAD  
26 FAITH.

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1 BECAUSE THERE WAS NO SIX-YEAR CONTRACT, WHICH HAD BEEN  
2 APPROVED BY THE PERSONNEL COMMITTEE AND BY THE ACADEMIC DEAN  
3 BACK IN 2005, BECAUSE IT DIDN'T COMPENSATE HER FOR THE PAY THAT  
4 SHE LOST OVER THAT YEAR THAT SHE DIDN'T HAVE AND PREVENTED HER  
5 FROM COMING BACK TO WORK, AND THAT THERE WAS NO ACKNOWLEDGMENT  
6 FROM THE COLLEGE OF EMOTIONAL SUFFERING THAT SHE HAD SUFFERED  
7 BECAUSE OF WHAT HAD HAPPENED OVER THE PAST YEAR, AND SHE SAID  
8 BECAUSE THE COLLEGE HAD REFUSED TO PAY HER FOR THE ATTORNEYS'  
9 FEES. BECAUSE AS SHE TOLD THE COLLEGE IN THAT E-MAIL, THE ONLY  
10 REASON, THE ONLY TIME THE COLLEGE EVER RESPONDED TO HER WAS  
11 AFTER SHE GOT AN ATTORNEY AND THE ATTORNEY CONTACTED THE  
12 COLLEGE.

13 ALL SHE EVER WANTED TO DO WAS WORK, LADIES AND  
14 GENTLEMEN, FOR MENLO COLLEGE. AND WHAT WE'RE GOING TO ASK YOU

15 TO DO AT THE END OF THIS TRIAL IS TO HELP, AND TO FIX WHAT  
16 HAPPENED HERE, AND TO MAKE UP FOR THOSE THINGS THAT CAN'T BE  
17 HELPED OR FIXED. THIS COLLEGE GAVE HER LIFE MEANING. THIS WAS  
18 THE PLACE WHERE SHE COULD WORK, AND CONTRIBUTE, AND GIVE BACK.  
19 IT GAVE HER FULFILMENT.

20 YOU'LL HEAR ABOUT SOME OF THE ISSUES IN HER OUTSIDE  
21 LIFE. AND, GRANTED, SOME OF THEM ARE NOT PRETTY, AND YOU'LL  
22 HEAR ABOUT THOSE. BUT LET ME TELL YOU THAT THIS IS WHAT SHE'LL  
23 TESTIFY TO, THAT MENLO COLLEGE IS WHAT GAVE HER LIFE MEANING.  
24 IT WAS HER FAMILY. AND THAT THE SENSE OF BETRAYAL THAT SHE FELT  
25 OF THE COLLEGE REFUSING TO SPEAK TO HER OVER THE SUMMER OF 2006,  
26 AND THE FACT THAT NOBODY SPOKE TO HER FROM THE ADMINISTRATION,

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1 EITHER THE PROVOST, OR THE PRESIDENT, OR THE DEAN IN 2007.

2 AND SHE'LL TESTIFY THAT IT WAS DEVASTATING FOR HER.  
3 AND THAT WHAT WAS MOST DEVASTATING TO HER WAS THE COLLEGE'S  
4 REFUSAL TO TAKE RESPONSIBILITY FOR WHAT IT HAD DONE, AND THE  
5 COLLEGE'S TREATMENT OF HER, AND THE BAD FAITH, ESPECIALLY IN  
6 THAT OFFER OF REEMPLOYMENT IN 2007, AND HOW IT HAD NOTHING TO DO  
7 WITH THE WAY AND THE CIRCUMSTANCES THAT SHE HAD COME BACK IN  
8 2003.

9 AND WE WILL ASK YOU TO DO THIS, TO HELP AND TO FIX,  
10 AND TO MAKE UP FOR THOSE THINGS THAT CANNOT BE HELPED OR FIXED,  
11 BY RENDERING A VERDICT IN HER FAVOR IN THE AMOUNT OF \$956,921.  
12 AND WE'LL PRESENT YOU WITH AN ECONOMIST WHO WILL TELL YOU HOW HE

13 REACHED THAT NUMBER AND WHY THAT NUMBER IS IMPORTANT. WE WILL  
14 ALSO ASK YOU IN THAT VERDICT TO PROVIDE MONEY FOR EMOTIONAL  
15 DISTRESS. THIS IS TO MAKE UP FOR WHAT CAN'T BE HELPED OR FIXED.

16 AND WE WILL ALSO ASK YOU FOR A FINDING, A FINDING THAT  
17 WHAT THE COLLEGE DID QUALIFIES AS MALICE, OPPRESSION OR FRAUD.  
18 AND BECAUSE, LADIES AND GENTLEMEN, WHAT YOU'LL HEAR FROM THIS  
19 TRIAL ARE A LOT OF WORDS, ESPECIALLY FROM THE COLLEGE, A LOT OF  
20 EXPLANATION AND A LOT OF --

21 MR. VARTAIN: OBJECTION.

22 MR. LEBOWITZ: -- WHAT THE COLLEGE --

23 WHAT THEY WILL HEAR IN THE TRIAL --

24 THE COURT: GO AHEAD.

25 MR. LEBOWITZ: -- FROM THE COLLEGE.

26 WHAT YOU WILL HEAR IN THIS TRIAL FROM THE COLLEGE IS

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1 THAT THEY'RE GOING TO SAY THAT THEY LIKED HER AND THAT THEY  
2 WANTED HER BACK. WELL, LADIES AND GENTLEMEN, WHAT WE'RE GOING  
3 TO ASK YOU, AND WHAT THE EVIDENCE WILL SHOW YOU, MORE  
4 PARTICULARLY THE EVIDENCE WILL SHOW YOU, LADIES AND GENTLEMEN,  
5 THAT ACTIONS SPEAK LOUDER THAN WORDS.

6 THANK YOU VERY MUCH FOR YOUR TIME.

7 THE COURT: THANK YOU, MR. LEBOWITZ.

8 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE ANOTHER  
9 BREAK SO THAT WE CAN SET UP THE COURTROOM A LITTLE BIT  
10 DIFFERENTLY, BUT MOSTLY TO GIVE MY COURT REPORTER A BREAK. IT'S

11 BEEN A LONG TIME FOR HER. LEAVE THOSE NOTEBOOKS AND TAKE YOUR  
12 BADGES.

13 COUNSEL, MAY IT BE STIPULATED THAT AT EACH RECESS AND  
14 AT THE END OF EACH DAY, THE JURY WILL BE DEEMED TO HAVE BEEN  
15 ADMONISHED OF ITS RESPONSIBILITIES WITHOUT REPEATING THE  
16 ADMONITION IN FULL?

17 MR. VARTAIN: YES, YOUR HONOR.

18 MR. LEBOWITZ: YES, YOUR HONOR.

19 THE COURT: AND MAY IT ALSO BE STIPULATED THAT AT THE  
20 BEGINNING OF EACH SESSION, UNLESS OTHERWISE NOTED ON THE RECORD,  
21 IT WILL BE DEEMED THAT ALL COUNSEL AND PARTIES ARE PRESENT, AND  
22 ALL JURORS AND ALTERNATES?

23 MR. LEBOWITZ: YES, YOUR HONOR.

24 MR. VARTAIN: (NODS.)

25 THE COURT: THANK YOU.

26 LADIES AND GENTLEMEN, LET'S COME BACK AT 4:00 O'CLOCK.

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1 (WHEREUPON, A BREAK WAS TAKEN.)

2 THE COURT: BACK ON THE RECORD.

3 MR. VARTAIN, WOULD YOU LIKE TO GIVE YOUR OPENING  
4 STATEMENT?

5 MR. VARTAIN: YES, I WOULD. THANK YOU, YOUR HONOR.

6 THE COURT: GO AHEAD, PLEASE.

7 MR. VARTAIN: GOOD AFTERNOON, LADIES AND GENTLEMEN. I  
8 WANT TO INTRODUCE YOU, FIRST, TO MY CO-COUNSEL, LINDA ADLER, WHO



9 I DON'T THINK YOU'VE MET. MS. ADLER AND I HAVE BEEN WORKING  
10 TOGETHER FOR SEVERAL YEARS NOW, AND SHE ALSO WORKS WITH ME AT  
11 THE COLLEGE.

12 THEN THE -- I CALL HIM THE HEAD PROFESSOR OF THE  
13 COLLEGE, DR. JAMES KELLY. AND YOU'LL HEAR FROM HIM IN HIS  
14 TESTIMONY TODAY -- NOT TODAY, PROBABLY TOMORROW, HE'LL BE  
15 TESTIFYING. AND HE HAS TO GO TO WASHINGTON, PERHAPS, FOR ONE  
16 DAY BUT WILL STILL BE HERE MOST OF THE TRIAL. HE'S IN CHARGE OF  
17 THE PROFESSORS AT THE SCHOOL. HE WASN'T AT ALL THE TIME IN THE  
18 CASE, BUT IN THE LAST YEAR OF THE EVENTS THAT MR. LEBOWITZ  
19 TALKED TO YOU ABOUT, HE WAS IN CHARGE.

20 WHO ELSE SHOULD I INTRODUCE?

21 OKAY. I WILL START.

22 THE JUDGE USED THE WORD OFFICER OF THE COURT TO  
23 DESCRIBE THE ROLE OF THE ATTORNEYS. AND I TAKE THAT ROLE  
24 SERIOUSLY, BECAUSE WHAT IT MEANS TO ME IS I CAN'T JUST SAY  
25 WHATEVER I WANT TO CONVINCEN YOU TO RULE FOR MY CLIENT. I CAN  
26 ONLY SAY WHAT I KNOW AND BELIEVE TO BE TRUE, AND I CAN PRESENT

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1 THE EVIDENCE TO SUPPORT IT. AND SO THAT'S WHAT I FEEL MY OATH  
2 IS.

3 AND I'M GOING TO TRY TO PRESENT NOT JUST ONE SIDE OR  
4 ONE PART OF THE FACTS, BUT ALL OF THEM. BECAUSE, AS WE KNOW IN  
5 LIFE, EVERYTHING HAS TWO SIDES TO IT. WE KNOW YOU SHOULD LOOK  
6 AT BOTH SIDES. WE'RE GOING TO TRY AND TELL YOU BOTH, WHAT WE

7 SAW FROM THE SIDE OF PROFESSOR BLOUGH, WHO'S STILL A PROFESSOR  
8 AT THE COLLEGE. SHE'S ON LEAVE, AND WE'RE GOING TO SHOW YOU A  
9 PICTURE OF HER OFFICE. HER OFFICE IS THERE, WAITING FOR HER,  
10 THE EVIDENCE WILL SHOW THAT. AND WE'RE ALSO GOING TO SHOW YOU  
11 THE EVIDENCE FROM THE PERSPECTIVE OF THE COLLEGE.

12 SO WHEN I STAND UP AT THE END OF THE CASE, I HOPE THAT  
13 I'VE DONE A GOOD JOB AS AN OFFICER OF THE COURT TO DO THE WHOLE,  
14 BOTH SIDES, NOT JUST AS THE COUNSEL FOR THE COLLEGE. I WILL  
15 ARGUE THAT YOU SHOULD RULE FOR THE COLLEGE. BUT WHEN I PRESENT  
16 MY EVIDENCE, I'M GOING TO TRY TO MAKE SURE THAT IT'S COMPLETE  
17 AND GIVES YOU THE WHOLE THING. SO THAT'S THE FIRST THING I  
18 WANTED TO MENTION, WHAT I THINK MY JOB IS AND MS. ADLER'S.

19 THE SECOND THING I'D LIKE TO MENTION IS HOW THIS CASE  
20 IS GOING TO PROGRESS, WHAT'S GOING TO HAPPEN FIRST. BECAUSE THE  
21 JUDGE HAS TURNED IT OVER TO THE ATTORNEYS. SHE'LL CONTROL US.  
22 AND, BELIEVE ME, SHE DOES A GOOD JOB. BUT MR. LEBOWITZ AND HIS  
23 COLLEAGUES, ON BEHALF OF MS. BLOUGH GO FIRST. THEY DO ALL THEIR  
24 EVIDENCE; THEN THE COLLEGE GETS TO GIVE THEIR EVIDENCE; AND THEN  
25 WE GET TO REPLY TO EACH OTHER, AND THEN ALL THE EVIDENCE IS  
26 DONE.

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1 THE REASON I AM MENTIONING IT IS IT'S A LITTLE WEIRD.  
2 IT'S NOT WEIRD IN THAT MR. LEBOWITZ IS DOING ANYTHING WRONG.  
3 IT'S JUST UNUSUAL FOR YOU FOLKS TO REALIZE THAT, SORT OF EARLY  
4 IN HIS PART OF THE CASE, HE'S GOING TO ASK SORT OF THE TOP

5 PEOPLE AT THE COLLEGE TO COME AND TESTIFY AS HIS PART OF THE  
6 CASE.

7 AND THAT'S LEGITIMATE. HE CAN DO THAT. IT'S ALLOWED.  
8 IT'S JUST A LITTLE CONFUSING IF YOU DON'T UNDERSTAND THAT HE  
9 WANTS TO PUT SOME OF HIS INFORMATION BEFORE YOU THROUGH, MORE OR  
10 LESS, THE MOUTHS OF THE COLLEGE PEOPLE. AND WE'RE COOPERATING  
11 TO GET THE PEOPLE IN HERE. IT'S JUST A LITTLE WEIRD.

12 PLUS, I'M NOT SURE HE'S GOING TO HAVE HIS CLIENT,  
13 PROFESSOR BLOUGH, TESTIFY FIRST. SO YOU MIGHT NOT HEAR THE  
14 WHOLE STORY FROM HER. AND, AS YOU REMEMBER, THE JUDGE SAID WHAT  
15 THE ATTORNEYS TELL YOU ISN'T FACT. IT'S JUST THEM TELLING YOU  
16 WHAT THEY HOPE THE FACTS WILL BE, SO YOU'VE GOT TO HEAR FROM THE  
17 WITNESSES. AND IT'LL BE A LITTLE DISJOINTED, PERHAPS, IN THE  
18 BEGINNING. AND I'M NOT TAKING RESPONSIBILITY FOR THAT. I'M  
19 JUST GOING TO SIT HERE AND BRING THE PEOPLE IN. BUT I JUST  
20 WANTED YOU TO KNOW HOW THINGS WILL PROGRESS SO THAT WAS THE  
21 FIRST THING I WANTED TO MENTION.

22 THE SECOND THING IS THAT AT THE END OF THE CASE WE  
23 WILL GET A CHANCE TO SUMMARIZE THE EVIDENCE, AND THEN ARGUE  
24 ABOUT WHY YOU SHOULD RULE ON THIS ISSUE FOR US. I'M NOT GOING  
25 TO DO THAT NOW. I CAN'T DO IT; IT'S NOT PERMISSIBLE. I CAN  
26 JUST TELL YOU WHAT I THINK THE FACTS ARE GOING TO BE. I CAN'T

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1 TELL YOU WHAT THEY MEAN. I'M NOT GOING TO TRY TO REBUT WHAT  
2 MR. LEBOWITZ SAID. I'M JUST GOING TO TRY TO GIVE YOU A WIDE

3 PICTURE OF THE INFORMATION SO YOU CAN FOLLOW ALONG BETTER.  
4 SO WHAT AM I GOING -- WHAT'S SORT OF THE THING I WANT  
5 YOU TO REMEMBER? OVER THE WEEKEND, I HAD TO LOSE A LOT OF MY  
6 WEEKEND TO GET READY FOR THIS, AND PROBABLY YOU FOLKS ARE NOT  
7 TOO HAPPY ABOUT THANKSGIVING. MY WIFE ASKED ME, "WHAT'S YOUR  
8 CASE THEME? WHAT'S YOUR CASE THEME?" AND I DIDN'T HAVE ONE  
9 YET. AND IT WAS OUR ANNIVERSARY, AND SHE SAID, "WELL, YOU HAVE  
10 THREE KIDS, CAN'T YOU USE THE NUMBER THREE?" SO I DECIDED I'M  
11 GOING TO MAKE THINGS SIMPLE. I'M GOING TO USE THE NUMBER THREE.

12 AND THERE'S THREE MAIN ISSUES IN THE CASE. I'M GOING  
13 TO TELL YOU WHAT I THINK THOSE ARE. THERE'S THREE MAIN FACT  
14 PERIODS OF THE CASE. I'M GOING TO TRY TO ORGANIZE IT SO YOU  
15 HAVE THREE PERIODS OF TIME. AND THEN I'M GOING TO TRY TO USE  
16 THE WORD THREE, JUST AS A VEHICLE TO HELP YOU REMEMBER THE  
17 THINGS YOU WANT TO REMEMBER.

18 SO THE NUMBER THREE. THERE'S THREE -- THERE'S REALLY  
19 THREE MAIN PEOPLE IN THIS CASE. AND SOME OF WHOM MR. LEBOWITZ  
20 MENTIONED, BUT I DON'T BELIEVE ALL OF THEM ARE THAT IMPORTANT.  
21 THE THREE MAIN PEOPLE ARE TWO OF WHOM YOU'RE GOING TO HEAR  
22 TESTIFY. THE THIRD ONE, I'M NOT GOING TO TELL YOU WHO THAT IS.  
23 IT'S GOING TO BE A SECRET. THAT PERSON IS NOT GOING TO TESTIFY.  
24 IT'S JUST A LITTLE -- I'M JUST TRYING TO KEEP SUSPENSE. IT'S A  
25 LITTLE HOKEY, MAYBE.

26 THE TWO PEOPLE, REALLY, ARE DR. MISSETT AND PROFESSOR

1 BLOUGH. THEY'RE THE REAL GUTS OF THE CASE. AND I THINK MOST OF  
2 THE INFORMATION THAT WILL BE MOST IMPORTANT WILL COME THROUGH  
3 THEM. THE THIRD PERSON WON'T BE IN THE COURTROOM, BUT YOU'LL  
4 HEAR A LOT ABOUT THAT PERSON INSOFAR AS I THINK THE FACTS  
5 WILL -- OF WHAT HAPPENED TO PROFESSOR BLOUGH IN HER HEALTH GOES  
6 BACK TO THAT PERSON, AND WAS THAT PERSON'S RESPONSIBILITY. THAT  
7 PERSON DOESN'T WORK AT THE COLLEGE; NEVER HAS.

8 SO THREE SORT OF KEY PEOPLE IN THE CASE; THREE KEY  
9 TIME PERIODS. 2003, WHEN PROFESSOR BLOUGH CAME BACK FROM AN  
10 APPROVED LEAVE OF ABSENCE THE COLLEGE GRANTED HER SO SHE COULD  
11 TAKE CARE OF HER HEALTH PROBLEMS. THEY LET HER OUT OF HER  
12 CONTRACT, THE FACTS WILL SHOW, SO THAT SHE COULD GO TO HAWAII.  
13 AND SHE RESTED UP THERE, AND SHE DEALT WITH -- PRIMARILY, OUR  
14 EVIDENCE WILL SHOW, PSYCHOLOGICAL ISSUES.

15 AND THE COLLEGE WAS REALLY ENTHUSIASTIC ABOUT GIVING  
16 HER THAT OPPORTUNITY, BECAUSE SHE NEEDED IT. IN A SENSE, THE  
17 FACTS WILL SHOW, THE COLLEGE THOUGHT SHE DESERVED IT. SHE HAD  
18 DONE EVERYTHING MR. LEBOWITZ SAID, IN TERMS OF SHE WAS  
19 CONTRIBUTING WELL TO THE COLLEGE. AND SHE WAS THOUGHT OF  
20 HIGHLY.

21 WHEN SHE CAME BACK IN 2003, AS THE FACTS WILL SHOW,  
22 THE COLLEGE DID SEND HER TO AN EVALUATOR, AS MR. LEBOWITZ  
23 MENTIONED. BUT THAT EVALUATOR WAS THE DOCTOR, DR. MISSETT, WHO  
24 LATER SHE RESISTED AND SHE DIDN'T WANT TO COOPERATE WITH, AS THE  
25 FACTS WILL SHOW. SO DR. MISSETT, AS THE EVIDENCE WILL SHOW, DID  
26 A FINE JOB HELPING THE COLLEGE TRANSITION HER BACK TO FULL-TIME.

1 FIRST, HALF-TIME, BECAUSE SHE WAS TIRED FROM BEING  
2 AWAY, AND SHE WAS FATIGUED FROM HER SURGERY, AND HER CLINICAL  
3 DEPRESSION, WHICH WAS VERY SIGNIFICANT. SHE WAS UNDER LONG-TERM  
4 PSYCHIATRIC TREATMENT, WHICH THE COLLEGE HAD KNOWN, AND IT  
5 HADN'T BEEN A PROBLEM THAT SHE HAD IT. IT WAS JUST SIMPLY,  
6 WELL, SHE SHOULD COME BACK SLOWLY TO HER FULL-TIME DUTY.

7 THAT WAS ALL MANAGED BY THIS OUTSIDE PHYSICIAN, THE  
8 VERY ONE THAT THIS CASE IS REALLY ALL ABOUT, THAT THE  
9 ALLEGATION'S WE SHOULDN'T HAVE SENT HER TO HIM SEVERAL YEARS  
10 LATER FOR THE EVALUATION. THE FIRST TIME, HE DID A FINE JOB.  
11 AND THE PLAINTIFF, PROFESSOR BLOUGH, WILL TESTIFY, YOU WILL SEE  
12 IT, THAT SHE WAS GRATEFUL FOR THE WAY THE COLLEGE'S OUTSIDE  
13 PHYSICIAN MANAGED HER TO GET BACK TO WORK.

14 FIRST, THE FIRST SEMESTER WAS HALF-TIME; THEN SHE WENT  
15 BACK TO SEE DR. MISSETT. THEY JUST TALKED. HE WAS NOT HER  
16 TREATER; HE WAS JUST AN EVALUATOR. SHE HAD HER OWN  
17 PSYCHIATRIST. THE COLLEGE DIDN'T WANT TO PROVIDE HER TREATMENT,  
18 JUST HELP TO EVALUATE TO GET HER BACK TO WORK. SO THE EVIDENCE  
19 WILL SHOW THAT THEN THE NEXT SEMESTER HE SAID, "OKAY, I THINK  
20 YOU'RE READY TO GO THREE-QUARTER TIME." THE COLLEGE SAID,  
21 "SURE. WE'LL ADD MORE COURSES. NOW YOU CAN GO THREE-QUARTER  
22 TIME."

23 FINALLY, SINCE SHE KEPT DOING WELL, AS THE FACTS WILL  
24 SHOW, THE DOCTOR SAID, "OKAY, YOU'RE READY TO GO FULL-TIME."  
25 AND YOU HEARD MR. LEBOWITZ SAY SHE WAS READY. AND THE TESTIMONY

26 WILL BE THAT SHE WAS GRATEFUL TO THE DOCTOR THAT, NOW THIS CASE

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1 IS ALL ABOUT, THAT THE COLLEGE SHOULDN'T HAVE -- ACCORDING TO  
2 THE PLAINTIFF -- SENT HER TO, DR. MISSETT. AND HE WILL BE HERE,  
3 HOPEFULLY SOONER RATHER THAN LATER IN THE CASE, BECAUSE I THINK  
4 HE'S THE KEY PERSON YOU NEED TO HEAR FROM.

5 NOW, THE COLLEGE, WHEN THE COLLEGE, AS THE FACTS WILL  
6 SHOW, SENT PROFESSOR BLOUGH TO THIS PSYCHIATRIST, HE REALLY IS A  
7 PHYSICIAN WITH A PSYCHIATRIC PRACTICE. BUT PART OF HIS PRACTICE  
8 IS FOR MANY, MANY SCHOOLS, COLLEGES, EMPLOYERS, POLICE  
9 DEPARTMENTS, FIRE DEPARTMENTS, DOCTORS, DENTISTS. HE EVALUATES  
10 FOR THOSE AGENCIES, WHETHER THEIR PEOPLE ARE HEALTHY ENOUGH TO  
11 GO BACK TO WORK. SO THAT'S PART OF HIS PRACTICE.

12 AND IN 2003, PROFESSOR BLOUGH ALL WORKED OUT FINE WITH  
13 THIS PART-TIME GRADUAL RETURN. SO THAT'S WHY HE WAS SELECTED A  
14 COUPLE OF YEARS LATER, IN 2006, WHICH IS TIME PERIOD NUMBER TWO,  
15 WHEN SHE, ONCE AGAIN, HAD HEALTH PROBLEMS. YOU HEARD ABOUT THE  
16 HEARING AND THE FATIGUE. WHAT YOU DIDN'T HEAR, AND THE FACTS  
17 WILL SHOW YOU DIDN'T HEAR FROM MR. LEBOWITZ, WAS A MAJOR PROBLEM  
18 WAS SHE WAS ON MANY MENTAL MEDICATIONS FROM HER OWN  
19 PSYCHIATRIST, FOUR OR FIVE SIMULTANEOUSLY, AND THEY WERE OUT OF  
20 WHACK.

21 THE COLLEGE DIDN'T KNOW THAT. THE COLLEGE JUST SENT  
22 HER BACK TO DR. MISSETT BECAUSE HE'S THE ONE WHO HAD DONE A GOOD  
23 JOB THE FIRST TIME, AS THE EVIDENCE WILL SHOW. AND THEY

24 THOUGHT, OH, SHE LIKED HIM. LET'S SEND HER TO HIM AGAIN. BUT  
25 IT WASN'T FOR TREATMENT. IT WAS JUST TO EVALUATE MAYBE SHE  
26 NEEDS TO COME BACK AGAIN SLOWLY.

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1 SO THAT'S WHAT THE FACTS WILL SHOW ABOUT TIME PERIOD  
2 NUMBER TWO, 2006, AND TIME PERIOD NUMBER ONE, 2002. THE FACTS  
3 WILL SHOW THAT THE PROBLEM HAPPENED, THAT FOR SOME REASON -- AND  
4 I DON'T KNOW WHAT THE EVIDENCE WILL SHOW. IT COULD HAVE BEEN  
5 SOMETHING MEDICAL. BUT PROFESSOR BLOUGH DID SOMETHING THAT, I  
6 THINK THE EVIDENCE WILL SHOW, WAS UNWISE OR NOT IN HER BEST  
7 INTEREST. NOW, SHE'S AN ATTORNEY --

8 MR. LEBOWITZ: OBJECTION, YOUR HONOR.

9 THE COURT: OVERRULED.

10 MR. VARTAIN: SHE'S AN ATTORNEY. THE EVIDENCE WILL  
11 SHOW THAT SHE ACTUALLY DOES EMPLOYMENT CASES AT TIMES FOR PEOPLE  
12 SUING. YOU KNOW, SHE WAS FULL-TIME AS A PROFESSOR TEACHING LAW  
13 COURSES AT THE COLLEGE, BUT ON THE SIDE SHE DID SOME LAW, WHICH  
14 IS FINE. AND ALL THE PROFESSORS KNOW HOW TO DO THAT,  
15 CONSULTING. BUT SHE WENT TO DR. MISSETT A SECOND TIME PERIOD,  
16 NUMBER TWO, AS REQUESTED BY THE COLLEGE. SHE WAS COOPERATING.

17 SHE KNEW DR. MISSETT. SHE HAD BEEN GRATEFUL TO HIM SO  
18 THERE WAS NO PROBLEM, BUT SOMETHING HAPPENED. SHE SIGNED, AS  
19 MR. LEBOWITZ SAID, THE RELEASES SO HE COULD GATHER ALL HER  
20 DOCUMENTS, SEE WHAT ALL THE MEDICATIONS SHE WAS ON SO HE COULD  
21 DO THE EVALUATION. WITHIN A COUPLE OF WEEKS HE STARTED CALLING



22 ALL THE DOCTORS TO GET THEIR RECORDS SO HE COULD DO A COMPLETE  
23 JOB. AND, AS THE FACTS WILL SHOW, HER PSYCHIATRIST SAID, "OH,  
24 MY PATIENT, PROFESSOR BLOUGH, SAID I CAN'T SEND THE RECORDS TO  
25 YOU."

26 DR. MISSETT SAID, "WELL, I NEED ALL THE RECORDS. WE

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1 DID IT BEFORE THAT WAY." HE SAID, "I HAVE A RELEASE. SHE  
2 SIGNED THE RELEASE." HER PSYCHIATRIST, AS THE EVIDENCE WILL  
3 SHOW, SAID, "NO, MY PATIENT HAS NOT GIVEN ME" -- OR "HAS TAKEN  
4 AWAY THE AUTHORIZATION." THE EVIDENCE WILL SHOW THAT, YES,  
5 DR. MISSETT THEN WENT AHEAD AND WROTE A LETTER TO THE COLLEGE  
6 SAYING, "I CANNOT RELEASE HER TO GO BACK TO WORK."

7 IT DIDN'T SAY WHY, BECAUSE THE AGREEMENT BETWEEN  
8 PROFESSOR BLOUGH, THE COLLEGE AND DR. MISSETT WAS, DR. MISSETT  
9 WAS NOT TO RELEASE ANY PRIVATE INFORMATION. HE WAS NOT TO SAY  
10 TO THE COLLEGE WHAT WAS GOING ON WITH HER, AND THE COLLEGE  
11 DIDN'T WANT TO KNOW THAT. IT'S NOT THE EMPLOYER'S BUSINESS TO  
12 KNOW, YOU KNOW, YOU'RE HAVING PROBLEMS WITH YOUR HUSBAND, YOU  
13 HAVE THIS STUFF.

14 SO WHENEVER THEY SENT HER TO DR. MISSETT, IT WAS WITH  
15 THE UNDERSTANDING THAT HE COULDN'T TELL -- HE WOULD KEEP DOCTOR  
16 PRIVACY. SO ALL HE SAID WAS SHE'S NOT FIT TO GO BACK TO WORK,  
17 AND I DON'T THINK SHE WILL IN THE FUTURE BE. I THINK HIS  
18 TESTIMONY WILL BE -- BECAUSE HE --

19 MR. LEBOWITZ: OBJECTION, YOUR HONOR.

20 THE COURT: OVERRULED.

21 MR. LEBOWITZ: WHAT HE THINKS THE --

22 THE COURT: OVERRULED.

23 MR. VARTAIN: THE DEPOSITION OF THE PLAINTIFF OF

24 DR. MISSETT, AND THE COURT INSTRUCTED YOU THAT THAT'S TO BE

25 TAKEN AS IF HE GAVE HIS TESTIMONY HERE. HE'S ACTUALLY GOING TO

26 COME HERE, BUT I KNOW WHAT I BELIEVE HIS TESTIMONY WILL BE

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1 BECAUSE MR. LEBOWITZ GOT HIM UNDER OATH AND ASKED HIM, AND I WAS  
2 SITTING THERE.

3 SO I BELIEVE HIS TESTIMONY IS GOING TO BE THAT THE  
4 REASON HE SAID AT THAT TIME THAT HE COULD NOT RELEASE PROFESSOR  
5 BLOUGH TO GO BACK TO WORK -- AND HE SENT THE LETTER TO THE  
6 COLLEGE. HE DIDN'T SAY WHY, SO THE COLLEGE DIDN'T KNOW -- IS  
7 THAT HE COULDN'T LOOK AT THE RECORD. HE COULD NOT ASSURE SHE  
8 WAS READY BECAUSE HE DIDN'T GET TO SEE THE WHOLE FILE. WE ALL  
9 KNOW IN OUR PRACTICE, WE'RE NOT GOING TO SIGN OFF ON SOMETHING  
10 WHEN HALF THE RECORDS WE CAN'T SEE.

11 SO, AS HE TESTIFIED IN HIS DEPOSITION, AND HE'LL BE  
12 HERE AND YOU'LL BE ABLE TO EVALUATE IT, HE SAID, "I HAD NO  
13 PROBLEM WITH THAT SHE HAD CANCER. I TALKED TO HER ONCOLOGIST.  
14 HE SAID THE CANCER ISN'T KEEPING HER FROM WORK," SO CHECKED THAT  
15 OFF. HE'S GOING TO TESTIFY, I BELIEVE, "I HAD NO PROBLEM WITH  
16 THE HEARING. SHE SAID SHE WAS GOING TO GET HEARING AIDS. I  
17 BELIEVED HER. SHE HAD THE SUMMER. IT WAS GOING TO BE

18 SUMMERTIME, AND SO SHE HAD TIME TO GET THE HEARING."

19 HE SAID, "THE PROBLEM I HAD WAS WITH THE CLINICAL  
20 DEPRESSION AND THE MENTAL MEDICINE, I COULDN'T -- WITHOUT THE  
21 RECORDS, I COULDN'T SEE ALL THE MEDICATIONS SHE WAS ON, AND I  
22 COULDN'T SEE THE DOSAGES. AND FROM WHAT SHE TOLD ME," HE WILL  
23 SAY IN HIS TESTIMONY, BECAUSE HE SAID IT IN HIS DEPOSITION, "I  
24 WASN'T SURE IF SHE WAS READY TO GO BACK FULL-TIME. SO I HAD TO  
25 SEND THAT LETTER."

26 THE COLLEGE DIDN'T KNOW WHAT THE LETTER WAS GOING TO

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1 BE. THE COLLEGE DIDN'T KNOW WHAT WAS GOING TO COME IN. BUT HE  
2 SENT THIS LETTER THAT SAID SHE'S NOT READY TO GO BACK AND, "I  
3 DON'T SEE HER BEING READY FOR THE FORESEEABLE FUTURE." I  
4 BELIEVE THE DOCTOR IS GOING TO TESTIFY HE USED THE TERM  
5 "FORESEEABLE FUTURE," BECAUSE SHE WASN'T RELEASING THE RECORDS  
6 AND HE HAD NO WAY OF KNOWING IF SHE'D EVER CHANGE HER MIND.

7 SO THAT'S WHY THE COLLEGE SENT A LETTER TO HER SAYING,  
8 "YOU'RE GOING TO BE ON MEDICAL LEAVE UNTIL THE NEXT SIX MONTHS,  
9 AND YOUR FACULTY APPOINTMENT IS GOING TO LAPSE IF, BY THEN,  
10 SOMETHING DOESN'T CHANGE." SO IT WAS RIGHT FOR HER TO THINK SHE  
11 MIGHT LOSE HER JOB BECAUSE OF THE DOCTOR'S REPORT, IS WHAT I  
12 BELIEVE THE COLLEGE WILL EXPLAIN TO YOU.

13 FORTUNATELY, IN SOME WAYS FOR THE COLLEGE, AND IT  
14 COULD HAVE BEEN FORTUNATELY FOR PROFESSOR BLOUGH, THAT THE  
15 EVIDENCE IS GOING TO BE, AND I THINK IT WILL COME FROM HER

16 BECAUSE SHE SAID SO IN HER DEPOSITION, SHE CHANGED HER MIND SIX  
17 MONTHS LATER, AND SHE GAVE HER PSYCHIATRIST PERMISSION TO SEND  
18 THE RECORD TO DR. MISSETT, THE EVALUATOR.

19 BY THEN IT WAS CHRISTMAS, SO THE CLASSES HAD ALREADY  
20 BEEN ASSIGNED OUT. BUT SHE'S STILL ON MEDICAL LEAVE. AND THE  
21 COLLEGE GAVE HER HER HEALTH BENEFITS, BECAUSE THEY KNEW SHE HAD  
22 MEDICAL ISSUES. THEY DON'T USUALLY DO THAT. IF YOU'RE NOT  
23 WORKING AT ALL AFTER SO MANY MONTHS, YOU LOSE YOUR BENEFITS.  
24 BUT FOR HER, THEY MADE A SPECIAL EXCEPTION, AS THE FACTS WILL  
25 SHOW.

26 THEN THE NEXT THING THAT HAPPENED WAS, FINALLY, HER

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1 RECORDS -- SHE LET HER PSYCHIATRIST RELEASE HER RECORDS. THEY  
2 WENT TO THE EVALUATOR DOCTOR. NOW HE HAD A COMPLETE FILE. HE  
3 HAD TO UPDATE THE FILE BECAUSE NOW SIX MONTHS HAD PASSED. SO,  
4 AS MR. LEBOWITZ CORRECTLY POINTED OUT, IN MARCH -- BY NOW IT WAS  
5 ALMOST IN THE SPRING SEMESTER -- HE WROTE THE COLLEGE A LETTER  
6 AND SAID -- I THINK IT'S CLEAR. YOU'LL SEE IT. IT SAYS WHAT IT  
7 SAYS.

8 IT SAYS SHE CAN GO BACK HALF-TIME STARTING IN THE  
9 FALL. HE DIDN'T QUITE SAY IN THE FALL HALF-TIME. IT TURNED OUT  
10 IT WAS THE FALL, BECAUSE BY THEN THE SCHOOL SEMESTER HAD BEEN SO  
11 FAR GONE, TEACHERS WERE ALREADY TEACHING BECAUSE THE SCHOOL  
12 DIDN'T KNOW. SO THE COLLEGE, ONCE AGAIN, ACCEPTED THE DOCTOR'S  
13 LETTER, AS THE EVIDENCE WILL SHOW.

14 AT FIRST, AS MR. LEBOWITZ CORRECTLY POINTED OUT, THERE  
15 WERE NO CLASSES. AND THEY SAID, "WELL, WE DON'T HAVE CLASSES;  
16 IT'S MARCH OR APRIL." BUT A MONTH LATER THE EVIDENCE WILL SHOW  
17 THAT THEY KNEW THEIR PROFESSOR WAS ANXIOUS, SO THEY GOT IT  
18 TOGETHER. THEY EARLY ASSIGNED CLASSES TO HER SO SHE COULD FEEL  
19 COMFORTABLE TO GO THROUGH THE SUMMER WITHOUT WAITING. THE  
20 EVIDENCE WILL SHOW THEY ASSIGNED HER THE CLASSES, THE ONES SHE  
21 USED TO TEACH. AND THEY GAVE HER THE HALF-TIME CONTRACT THAT  
22 THE DOCTOR SAID. SAME THING AS HAD HAPPENED A COUPLE OF YEARS  
23 AGO.

24 SO THE FORTUNATE THING, THE FACTS WILL SHOW, IS THAT  
25 PROFESSOR BLOUGH FINALLY DECIDED TO RELEASE HER RECORDS, WENT  
26 BACK TO THE GOOD DOCTOR, AND THE FACTS WILL SHOW THAT HE DID A

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1 GOOD JOB. AND THEN HE DID HIS THING AND SAID, "OKAY, LET'S TRY  
2 TO GET HER BACK HALF-TIME." THE COLLEGE ACCEPTED IT, SENT HER  
3 THE CONTRACT. AS SHE WAS CONSIDERING THE CONTRACT, SHE ASKED  
4 THE COLLEGE FOR A THROUGH Z -- AND I'M NOT USING THAT TERM  
5 SARCASTICALLY -- OF HELP. IT'S CALLED IN THE LAW "DISABILITY  
6 ACCOMMODATION." I CALL IT HELP.

7 A THROUGH Z WAS GRANTED HER. IT WAS PUT IN WRITING,  
8 PUT IN HER CONTRACT. SMALL CLASSES. "WE KNOW YOU'VE GOT  
9 FATIGUE PROBLEMS. WE'LL SPACE OUT THE CLASSES SO YOU CAN TAKE A  
10 NAP IN YOUR OFFICE." TIMED IT SO HER CLASSES WOULDN'T BE BACK  
11 TO BACK, SMALLER CLASS SIZES. THEY SAID, "OH, YOU'RE ONLY GOING

12 TO BE HALF-TIME. NORMALLY, YOU WOULDN'T GET HEALTH BENEFITS.  
13 WE'LL GIVE YOU FULL-TIME HEALTH BENEFITS, EVEN THOUGH YOU'RE  
14 ONLY GOING TO BE WORKING HALF-TIME FOR THE FIRST PART."

15 THEN THIS BUSINESS ABOUT HER SIX-YEAR CONTRACT. THE  
16 LETTER, AS THE EVIDENCE WILL SHOW, SAID, "WE KNOW YOUR CONTRACT,  
17 YOUR SIX-YEAR CONTRACT PROPOSAL HAD NEVER BEEN APPROVED BECAUSE  
18 OF THE YEAR YOU WERE OUT. WE WILL PUT YOU BACK WHERE YOU WERE.  
19 IF YOU DO A GOOD JOB THIS YEAR TEACHING, YOU'LL GET YOUR  
20 SIX-YEAR CONTRACT EVALUATION." WHEN YOU READ THE LETTER, IT'S  
21 MY HOPE THAT THE EVIDENCE SHOWS THAT -- AND DR. KELLY WILL  
22 TESTIFY -- THAT THE COLLEGE WANTED HER BACK. WHY WOULD THEY DO  
23 THIS IF THEY DIDN'T WANT HER BACK?

24 HER OFFICE -- AND I'LL JUST HOLD A PICTURE UP. THE  
25 PICTURE WAS TAKEN JUST YESTERDAY. THIS IS PROFESSOR BLOUGH'S  
26 OFFICE OVER AT MENLO COLLEGE. IT'S BEEN A YEAR. THEY HAVEN'T

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1 REASSIGNED HER OFFICE. THEY DID HOLD HER ON MEDICAL LEAVE.  
2 THEY HAVEN'T TERMINATED HER. THE FACTS WILL SHOW THAT THE  
3 COLLEGE HAD NO INTEREST IN HER NOT COMING BACK.

4 MR. LEBOWITZ IS RIGHT, SHE HAD DONE A GOOD JOB MUCH OF  
5 THE TIME. IT WAS ONLY IN THESE TIMES WHEN SHE COULDN'T WORK,  
6 AND THEY GAVE HER LEAVE AFTER LEAVE AFTER LEAVE, AND THEN THIS  
7 LAST ONE, THAT ONE SPRING OF 2006, WHEN SHE HAD SO MANY  
8 DIFFICULTIES. AND I KNOW THE EVIDENCE WILL SHOW THAT THERE WAS  
9 SOMETHING GOING ON WITH HER PSYCHOTROPIC MEDICATIONS.

10 SO IN THE END, ALTHOUGH IT'S TRUE THAT THE COLLEGE  
11 ONLY SENT HER TO DR. MISSETT BECAUSE HE WAS THE ONE THAT DID THE  
12 GOOD JOB THE LAST TIME, THEY WEREN'T SENDING HER FOR A  
13 PSYCHIATRIC TREATMENT, THE EVIDENCE WILL SHOW. IT TURNS OUT  
14 THAT IT WAS PROPERLY WISE, ACCORDING TO THE EVIDENCE. BECAUSE  
15 THE PROBLEMS, AS HE TESTIFIED IN HIS DEPOSITION, WERE ONES THAT  
16 YOU WOULD WANT SOMEONE WITH A SPECIALTY IN MEDICATION OF THE  
17 BRAIN.

18 AFTER ALL, THE EVIDENCE IS GOING TO SHOW THAT THE JOB  
19 FUNCTIONS -- AND YOU HEARD ONE OF YOUR COLLEAGUES IN THE  
20 INTERVIEWS MENTION THAT --

21 MR. LEBOWITZ: OBJECTION, YOUR HONOR.

22 THE COURT: OVERRULED.

23 MR. VARTAIN: THAT IT'S RIGHT AND FAIR TO USE THE  
24 MEDICAL EVALUATION ONLY WHEN IT'S RELEVANT FOR THE JOB,  
25 JOB-RELATED. BUT THIS IS A JOB WHERE, THE EVIDENCE WILL SHOW,  
26 THE TEACHERS HAVE TO WORK RIGHT CLOSE WITH THE YOUNG PEOPLE.

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1 IT'S A THINKING JOB. COGNITIVE ABILITY, WHICH IS THE ABILITY TO  
2 THINK WELL, IS THE MOST IMPORTANT THING. SO THAT'S PRETTY MUCH  
3 GOING TO BE THE EVIDENCE AS WE SHOW IT.

4 NOW, THE LAST THING THAT WAS ON THE SCREEN WHEN  
5 MR. LEBOWITZ DID HIS OPENING, WERE ACTIONS SPEAK LOUDER THAN  
6 WORDS. AND TO THAT END, WE HAVE A LITTLE BIT OF A CLIP FROM  
7 PROFESSOR BLOUGH'S TESTIMONY, WHICH TALKS ABOUT THE ACTIONS THAT

8 THE COLLEGE DID FOR HER OVER THE YEARS, THAT WERE KIND, GENEROUS  
9 AND CONSIDERATE IN RELATION TO HER MEDICAL PROBLEMS. SO WE WANT  
10 YOU TO HEAR THAT. IT WILL BE ABOUT 15 MINUTES. AND I MAY JUST  
11 SAY ONE THING AFTERWARDS, AND THEN WE WILL GET ON WITH THE  
12 EVIDENCE.

13 THANK YOU FOR LISTENING.

14 MR. LEBOWITZ: MAY WE APPROACH, YOUR HONOR?

15 THE COURT: SURE.

16 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

17 THE COURT: COUNSEL, MAY IT BE STIPULATED THAT THE  
18 COURT REPORTER IS NOT REQUIRED TO REPORT THE VIDEOTAPE?

19 MR. VARTAIN: CORRECT, YOUR HONOR.

20 THE COURT: THANK YOU. LET'S PLAY THE VIDEOTAPE.

21 (WHEREUPON, A VIDEOTAPE WAS PLAYED.)

22 MR. VARTAIN: THE REASON I WANTED TO PLAY THAT, AND  
23 THERE WILL BE MUCH OTHER TESTIMONY, IS JUST TO LEAVE YOU WITH  
24 THE THOUGHT THAT, YES, ACTIONS DO SPEAK LOUDER THAN WORDS. I  
25 AGREE WITH MR. LEBOWITZ. THE FACTS WILL SHOW THAT THE COLLEGE  
26 DID ACT, IN ANY MANNER THAT WOULD BE VIEWED, AS THE EVIDENCE

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1 WILL SHOW, THAT THE COLLEGE OUGHT TO ACT IN THESE CIRCUMSTANCES.

2 THANK YOU FOR YOUR TIME.

3 AND THANK YOU FOR THE EXTRA FIVE MINUTES, YOUR HONOR.

4 THE COURT: LADIES AND GENTLEMEN, WE HAVE REACHED THE

5 END OF OUR COURT DAY. TOMORROW, WHEN YOU RETURN WE'RE GOING TO



6 START WITH THE PRESENTATION OF EVIDENCE. AS I TOLD YOU BEFORE,  
7 NOTHING YOU'VE HEARD TODAY HAS BEEN EVIDENCE. AND SO I ALWAYS  
8 VIEW IT, IT'S A LITTLE BIT LIKE READING THE OUTSIDE FLAP ON A  
9 BOOK WHEN YOU'RE IN THE BOOKSTORE.

10 IT'S A NICE PROMISE. NOW YOU HAVE TO SEE IF THE  
11 AUTHOR DELIVERS WHAT THE PUBLISHER PROMISES. OR THOSE ANNOYING  
12 COMING ATTRACTIONS IN MOVIES, SOMETIMES THEY'RE ABSOLUTELY RIGHT  
13 AND THEY'RE TERRIFIC. OTHER TIMES THEY HAVE CLIPS THAT ARE  
14 NEVER IN THE MOVIE, SO THINK OF IT THAT WAY. THIS IS TO HELP  
15 YOU BUT IT'S NOT EVIDENCE. AND SO TOMORROW YOU WILL GET TO HEAR  
16 THAT EVIDENCE AND SEE IT.

17 PLEASE NOTE ON THE SCHEDULE TOMORROW WE'RE STARTING AT  
18 10:00 IN THE MORNING. THE MORNINGS DIFFER. I HAVE A WHOLE  
19 CALENDAR. I'VE GOT MANY OTHER PEOPLE IN THE COURTROOM BEFORE  
20 YOU ARRIVE. JUST GATHER OUTSIDE THE COURTROOM AND DEPUTY  
21 HENNESSY WILL BRING YOU IN AT 10:00 O'CLOCK WHEN WE GET STARTED.

22 LET ME REMIND YOU, YOU ARE NOT TO FORM OR EXPRESS ANY  
23 OPINIONS IN THE CASE OR TALK TO ANYONE ABOUT ANYTHING IN REGARD  
24 TO THE CASE. I KNOW YOU MIGHT WANT TO GO HOME AND DO SOME  
25 HOMEWORK. NO HOMEWORK, NO DICTIONARIES, NO INTERNET. YOU CAN'T  
26 EVEN SIT DOWN AT DINNER TONIGHT AND SUMMARIZE WHAT YOU'VE HEARD.

146

1 EVEN IF WHOEVER YOU'RE TALKING TO IS TRUSTWORTHY, YOU'RE THE ONE  
2 WHO CAN'T DO THE TALKING. I KNOW THAT'S ARTIFICIAL. I KNOW  
3 IT'S WEIRD NOT TO BE ABLE TO TALK ABOUT YOUR DAY, BUT YOU HAVE

4 TO PROMISE ME THAT. WHEN WE'RE DONE WITH THE TRIAL YOU CAN TALK  
5 TO ANYONE ABOUT ANYTHING, BUT FOR THE NEXT FEW DAYS WHILE WE'RE  
6 IN TRIAL WE ALL HAVE TO KEEP IT ZIPPED UP.

7 ALL RIGHT. WITH THAT, LADIES AND GENTLEMEN, I WILL  
8 SEE YOU IN THE MORNING. HAVE A GOOD EVENING.

9 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

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2                   IN AND FOR THE COUNTY OF SAN MATEO  
3 DEPARTMENT NO. 3           HON. BETH LABSON FREEMAN, JUDGE

4 MARCINE BLOUGH,    )  
5                    )  
6            PLAINTIFF,    )  
7                    )  
8            VS.            )CASE NO. CIV 465027  
9                    )REPORTER'S CERTIFICATE  
10           MENLO COLLEGE, ET AL.,)  
11                    )  
12           DEFENDANTS.    )  
13                    )  
14           \_\_\_\_\_)

11 STATE OF CALIFORNIA )  
12                    ) SS  
13 COUNTY OF SAN MATEO )

15                   I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,  
17 DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 148,  
18 INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE  
19 PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

20  
21 DATED: OCTOBER 3, 2011

22  
23  
24  
25                   \_\_\_\_\_  
26           CHRISTINE M. PEREZ, CSR #10945  
                  OFFICIAL REPORTER

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2                   IN AND FOR THE COUNTY OF SAN MATEO

3

4   MARCINE BLOUGH,    )

5                    )  
6    PLAINTIFF,    )

7                    )  
8    VS.            )CASE NO. CIV 465027

9                    )  
10   MENLO COLLEGE, ET AL.,)

11                    )  
12   DEFENDANTS.    )

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11                    REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
12                    BEFORE: HONORABLE BETH LABSON FREEMAN, JUDGE  
13                    DEPARTMENT 3

14                    DECEMBER 4, 2008

15

16

17

18

A P P E A R A N C E S:

19

20

FOR THE PLAINTIFF: NOAH D. LEBOWITZ, ATTORNEY AT LAW  
MARK C. PETERS, ATTORNEY AT LAW

21

22

FOR THE DEFENDANTS: MICHAEL J. VARTAIN, ATTORNEY AT LAW  
LINDA K. ADLER, ATTORNEY AT LAW

23

24

REPORTED BY:       CHRISTINE M. PEREZ, CSR #10945

25

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(NONE WERE CALLED AT THIS TIME.)

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I N D E X

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26

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1 PROCEEDINGS

2 DECEMBER 4, 2008 A.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. WE'RE ON THE RECORD IN  
4 BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT,  
5 ALL JURORS AND ALTERNATES.

6 GOOD MORNING, LADIES AND GENTLEMEN. I'M SORRY YOU HAD  
7 TO WAIT A FEW MINUTES. I DIDN'T FINISH MY MORNING CALENDAR  
8 UNTIL A LITTLE LATER THAN I THOUGHT. AND AS YOU CAN SEE WE HAVE  
9 A STAGE CHANGE HERE, SO THAT TOOK A FEW MINUTES. THANK YOU FOR  
10 YOUR PATIENCE.

11 WE'RE READY TO GET STARTED WITH THE PRESENTATION OF  
12 EVIDENCE TODAY, AND WE'RE GOING TO GET RIGHT DOWN TO BUSINESS.

13 MR. LEBOWITZ, YOU MAY CALL YOUR FIRST WITNESS.

14 MR. LEBOWITZ: THANK YOU, YOUR HONOR. PLAINTIFF CALLS  
15 LOWELL PRATT, PURSUANT TO EVIDENCE CODE 776.

16 THE COURT: ALL RIGHT.

17 MR. PRATT, IF YOU'D COME FORWARD TO THE WITNESS STAND,  
18 PLEASE. PLEASE BE CAREFUL; WATCH YOUR STEP.

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

20 (WHEREUPON, THE WITNESS WAS SWORN.)

21 THE WITNESS: I DO.

22 THE CLERK: PLEASE BE SEATED.

23 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME

24 AND SPELL THEM BOTH FOR THE RECORD.

25 THE WITNESS: LOWELL PRATT, L-O-W-E-L-L P-R-A-T-T.

26 THE CLERK: THANK YOU.

151

1 LOWELL PRATT,

2 DULY SWORN, TESTIFIED AS FOLLOWS:

3

4 DIRECT EXAMINATION PURSUANT TO EVIDENCE CODE 776

5 BY MR. LEBOWITZ:

6 Q. GOOD MORNING, MR. PRATT.

7 A. GOOD MORNING.

8 Q. SO YOU'VE BEEN EMPLOYED AT MENLO COLLEGE AS A MEMBER  
9 OF THE FACULTY FOR APPROXIMATELY 28 YEARS; IS THAT CORRECT?

10 A. APPROXIMATELY, YES.

11 Q. AND FOR MOST OF THAT TIME, YOU'VE BEEN EMPLOYED AS A  
12 PROFESSOR?

13 A. CORRECT.

14 Q. AND WHEN YOU FIRST CAME ONBOARD WITH THE COLLEGE,  
15 PROFESSOR BLOUGH WAS ALREADY THERE?

16 A. THAT'S RIGHT.

17 Q. SO YOU'VE KNOWN HER FOR MORE THAN 25 YEARS?



18 A. THAT'S RIGHT.

19 Q. AND YOU WOULD DESCRIBE YOUR RELATIONSHIP WITH HER AS  
20 FRIENDLY; IS THAT RIGHT?

21 A. I WOULD. YES.

22 Q. YOU WOULD EVEN SAY THAT YOU HAD GOOD RAPPORT WITH HER,  
23 WOULDN'T YOU?

24 A. I WOULD.

25 Q. AND THROUGH THE TWO-PLUS DECADES OF WORKING ALONGSIDE  
26 PROFESSOR BLOUGH, YOU HAD AN OPPORTUNITY TO LEARN OF HER

152

1 REPUTATION -- HER PROFESSIONAL REPUTATION, CORRECT?

2 A. CORRECT.

3 Q. AND WHAT DID YOU LEARN?

4 A. I LEARNED THAT STUDENTS VERY MUCH LIKED HER CLASSES.

5 Q. AND HOW DID YOU LEARN THAT?

6 A. WELL, I WOULD HEAR THAT FROM STUDENTS.

7 Q. AND DID YOU ALSO HEAR THAT FROM OTHER FACULTY MEMBERS?

8 A. I THINK I DID. YES.

9 Q. AND ISN'T IT TRUE THAT YOU ALSO LEARNED OF  
10 PROFESSOR BLOUGH'S REPUTATION AND ABILITIES AS A PROFESSOR  
11 THROUGH REVIEWING STUDENT EVALUATIONS?

12 A. THAT'S CORRECT.

13 Q. STUDENT EVALUATIONS OF HER CLASSES?

14 A. THAT'S RIGHT.

15 Q. NOW, FOR THE PERIOD OF TIME THAT WE'RE GOING TO FOCUS

16 ON TODAY, FROM APPROXIMATELY 2004 THROUGH 2000 -- THROUGH THE  
17 PERIOD OF 2007, YOU WERE THE ACADEMIC DEAN OF MENLO COLLEGE,  
18 CORRECT?

19 A. YES.

20 Q. AND AS THE ACADEMIC DEAN, YOU FUNCTIONED AS THE  
21 SUPERVISOR OF THE FACULTY; ISN'T THAT CORRECT?

22 A. THAT'S CORRECT.

23 Q. IT'S YOUR JOB TO OVERSEE THE FACULTY TO MAKE SURE THE  
24 CLASSES WERE SCHEDULED, RIGHT?

25 A. THAT'S CORRECT.

26 Q. AND TO HANDLE CONCERNS OR PROBLEMS THAT ANY FACULTY

153

1 MEMBER MIGHT HAVE?

2 A. THAT'S ALSO CORRECT.

3 Q. AND TO HANDLE ANY CONCERNS THAT STUDENTS MIGHT HAVE?

4 A. YES.

5 Q. AND, REALLY, YOUR JOB AS SUPERVISOR, AS OVERSEEING THE  
6 FACULTY, MEANT THAT YOU WERE MAKING SURE THAT THE FACULTY WAS  
7 DOING THEIR JOB, RIGHT?

8 A. THAT'S RIGHT.

9 Q. AND AS PART OF THAT FUNCTION OF SUPERVISING THE  
10 FACULTY MEMBERS AND DOING YOUR JOB DUTIES, YOU WOULD REVIEW  
11 STUDENT EVALUATIONS, CORRECT?

12 A. YES.

13 Q. NOW, LET'S TALK ABOUT STUDENT EVALUATIONS FOR A

14 MINUTE. CAN YOU DESCRIBE THEM FOR US, WHAT THEY ARE?

15 A. YES. THESE ARE STUDENT EVALUATIONS OF PARTICULAR  
16 CLASSES. AND AT THE END OF EACH SEMESTER, STUDENTS WILL WRITE  
17 EVALUATIONS OF PROFESSORS AND THEY ALSO WILL RATE THEM -- OR  
18 RESPOND TO QUESTIONS, AGREE, STRONGLY AGREE. AND THESE ARE  
19 ADMINISTERED, AS I MENTIONED, AT THE END OF THE SEMESTER. AND  
20 THE FACULTY MEMBER IS NOT PRESENT WHEN THEY'RE DONE BY THE  
21 STUDENTS AND THE FACULTY MEMBER DOES NOT SEE THE EVALUATIONS  
22 UNTIL GRADES ARE SUBMITTED.

23 Q. SO LET'S BREAK THIS DOWN A LITTLE BIT.

24 AS I UNDERSTAND, STUDENT EVALUATIONS HAVE ESSENTIALLY  
25 TWO COMPONENTS, RIGHT?

26 A. THAT'S CORRECT.

154

1 Q. AND THE FIRST COMPONENT IS KIND OF A RATING --  
2 ANSWERING QUESTIONS AND RATING ON A SCALE, CORRECT?

3 A. YES. UH-HUH.

4 Q. AND THEN THE SECOND COMPONENT IS, FOR LACK OF A BETTER  
5 WORD, A WRITTEN RESPONSE, RIGHT?

6 A. WRITTEN RESPONSE. YES.

7 Q. AND THERE ARE A SERIES OF FOUR QUESTIONS ON A SHEET OF  
8 PAPER THAT THE STUDENTS ARE ASKED TO WRITE OUT THEIR ANSWERS TO,  
9 RIGHT?

10 A. I DON'T KNOW IF IT'S FOUR EXACTLY.

11 Q. NOW, WHAT HAPPENS ADMINISTRATIVELY WITH THE STUDENT

12 EVALUATIONS ONCE THEY ARE COMPLETED BY THE STUDENTS?

13 A. WELL, A COPY OF THOSE ARE GIVEN TO THE FACULTY MEMBER  
14 AND A COPY IS KEPT IN FILES IN THE ACADEMIC AFFAIRS OFFICE.

15 Q. LET'S BACK UP JUST A SECOND FROM THAT POINT.

16 I'M MORE INTERESTED IN HOW -- SO WHO IS IT THAT, FIRST  
17 OF ALL, GATHERS THE DOCUMENTS FROM THE STUDENTS ONCE THEY  
18 COMPLETE THE EVALUATIONS?

19 A. WELL, ONE OF THE STUDENTS IN THE CLASS WILL COLLECT  
20 THE EVALUATIONS AND BRING THEM TO THE OFFICE OF ACADEMIC  
21 AFFAIRS, AND STAFF THERE WILL COMPILE THEM.

22 Q. THE ANSWERS TO THE FIRST COMPONENT THAT WE TALKED  
23 ABOUT, WHERE THE STUDENTS ARE RATING THE PROFESSOR ON A SCALE --  
24 ON A NUMBER SCALE OR ON A STRONGLY AGREE OR STRONGLY DISAGREE  
25 SCALE, HOW ARE THOSE ANSWERS COMPILED?

26 A. I'M NOT EXACTLY SURE, BUT I BELIEVE THAT THERE'S A

155

1 KIND OF AN AVERAGE, THAT THEY'RE CALCULATED ON AVERAGE.

2 Q. AND THEN ONCE THEY'RE CALCULATED, THE EVALUATIONS ARE  
3 PRINTED OUT WITH THOSE CALCULATIONS?

4 A. THAT'S CORRECT.

5 Q. AND THEN ON THE SECOND COMPONENT, THE WRITTEN ANSWERS,  
6 IF I UNDERSTAND YOU, THAT THE STUDENTS' WRITTEN ANSWERS ARE  
7 SIMPLY COPIED AND COMPILED TOGETHER WITH THAT FIRST COMPONENT OF  
8 DOCUMENTS; IS THAT CORRECT?

9 A. THAT'S CORRECT. THEY'RE INCLUDED.

10 Q. AND THEY'RE COMPILED IN A SINGLE PACKET, FOR INSTANCE,  
11 FOR EVERY CLASS FOR A PARTICULAR SEMESTER. SO, FOR INSTANCE,  
12 FOR FALL 2005, BUSINESS SECTION 106, THERE WOULD BE A PACKET  
13 WITH THAT TITLE ON IT, CORRECT?

14 A. THAT'S RIGHT.

15 Q. AND THAT WILL CONTAIN ALL OF THE DOCUMENTS THAT  
16 REFLECT ALL OF THE STUDENT EVALUATIONS THAT WERE COMPLETED FOR  
17 THAT COURSE, THAT SEMESTER?

18 A. THAT'S RIGHT.

19 Q. AND WHERE IN PARTICULAR ARE THESE DOCUMENTS MAINTAINED  
20 AT THE COLLEGE?

21 A. AS I MENTIONED, THEY'RE IN THE FILES OF THE ACADEMIC  
22 AFFAIRS OFFICE.

23 Q. AND, AS THE ACADEMIC DEAN, IS THAT YOUR OFFICE?

24 A. NOT MY OFFICE. NO.

25 Q. IS THAT SOMETHING, AS ACADEMIC DEAN, YOU HAVE ACCESS  
26 TO?

156

1 A. YES.

2 Q. AND, BASED ON YOUR EXPERIENCE AS ACADEMIC DEAN, THE  
3 STUDENT EVALUATIONS ARE MAINTAINED IN THE REGULAR COURSE OF THE  
4 COLLEGE'S BUSINESS?

5 A. THAT'S CORRECT.

6 Q. AND CERTAINLY THROUGH THE TIME THAT YOU WERE ACADEMIC  
7 DEAN, THESE STUDENT EVALUATIONS WERE AN IMPORTANT PART OF THE

8 PERFORMANCE EVALUATIONS OF FACULTY MEMBERS; ISN'T THAT CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND, AGAIN, FOCUSING ON THIS TIME WHEN YOU WERE  
11 ACADEMIC DEAN, THERE WAS NO PROCEDURE OR FORMAL KIND OF  
12 PERFORMANCE REVIEW FOR FACULTY MEMBERS, WAS THERE? AT LEAST NOT  
13 ON AN ANNUAL BASIS?

14 A. WELL, THERE WAS -- YES, THERE WAS A MEETING WITH ME ON  
15 AN ANNUAL BASIS, BUT THERE WERE -- CONTRACT REVIEWS WERE THE BIG  
16 EVALUATION.

17 Q. AND THESE MEETINGS WITH YOU, THEY WERE PRETTY  
18 INFORMAL, WEREN'T THEY?

19 A. YES.

20 Q. AND UNLESS YOU HAD ANY REAL PROBLEMS, EITHER FROM  
21 COMPLAINTS FROM FACULTY MEMBERS OR OTHER STUDENTS, THERE REALLY  
22 WASN'T MUCH TO GO OVER IN THESE ANNUAL MEETINGS, RIGHT?

23 MR. VARTAIN: OBJECTION. VAGUE.

24 THE COURT: OVERRULED.

25 THE WITNESS: WOULD YOU REPEAT THE QUESTION?

26 MR. LEBOWITZ: SURE.

157

1 Q. OTHER THAN SITUATIONS WHERE YOU MAY HAVE RECEIVED A  
2 COMPLAINT ABOUT A PARTICULAR FACULTY MEMBER, EITHER FROM A  
3 STUDENT OR THE FACULTY OR YOU HAD CONCERN ABOUT THEIR  
4 PERFORMANCE, THESE ANNUAL MEETINGS WERE PRETTY ROUTINE, WEREN'T  
5 THEY?

6 A. WELL, THEY WERE ROUTINE, BUT IT WOULD BE A GOOD CHANCE  
7 TO DISCUSS WITH FACULTY MEMBERS WHAT THEY WERE DOING AND MAKE  
8 SUGGESTIONS ABOUT IMPROVEMENTS.

9 Q. YOU DIDN'T PRODUCE ANY SORT OF DOCUMENT AS A RESULT OF  
10 THESE PERFORMANCE -- THESE MEETINGS, THESE ANNUAL MEETINGS?

11 A. I DIDN'T.

12 Q. NO FORMAL PERFORMANCE REVIEWS OR ANYTHING LIKE THAT?

13 A. THAT'S CORRECT. NO. NONE.

14 Q. THE MORE FORMAL REVIEW OF FACULTY MEMBERS' PERFORMANCE  
15 WAS DONE AT THE CONTRACT RENEWAL STAGE, CORRECT?

16 A. THAT'S CORRECT.

17 Q. I WANT TO GO TO A DIFFERENT TOPIC FOR A MOMENT.

18 NOW, MENLO COLLEGE HAS A HUMAN RESOURCES DEPARTMENT;  
19 ISN'T THAT CORRECT?

20 A. YES.

21 Q. AND ISN'T IT TRUE THAT THROUGH YOUR 25-PLUS YEARS AT  
22 MENLO COLLEGE, THAT YOU NEVER RECEIVED ANY TRAINING FROM THE  
23 HUMAN RESOURCES DEPARTMENT REGARDING DISABILITY DISCRIMINATION  
24 IN THE WORKPLACE?

25 A. WE RECEIVED TRAINING. I'M NOT SURE WHAT HUMAN  
26 RESOURCES' INVOLVEMENT WAS IN IT, BUT I KNOW THAT THE COLLEGE

1 WOULD HAVE THE LAW TEAM COME ON A PERIODIC BASIS TO GIVE US,  
2 LIKE A KIND OF WORKSHOP ON ISSUES ABOUT HARASSMENT AND  
3 DISCRIMINATION.

4 Q. AND THAT WAS MOSTLY FOCUSED ON SEX HARASSMENT, WASN'T  
5 IT?

6 A. A LOT OF IT WAS; YES.

7 Q. AND, FOR INSTANCE, YOU NEVER RECEIVED ANY TRAINING  
8 FROM MENLO COLLEGE ABOUT HOW TO RECOGNIZE A REQUEST FOR  
9 REASONABLE ACCOMMODATION MADE BY AN EMPLOYEE WITH A DISABILITY;  
10 ISN'T THAT RIGHT?

11 A. CORRECT.

12 Q. SO I WANT TO DIRECT YOUR ATTENTION TO THE FALL OF  
13 2005. IN THAT TIMEFRAME, AGAIN, YOU WERE THE ACADEMIC DEAN,  
14 CORRECT?

15 A. YES.

16 Q. AND AT THAT POINT, SOMETIME IN THE END OF THE FALL  
17 SEMESTER YOU LEARNED OF SOME COMPLAINTS ABOUT PROFESSOR BLOUGH  
18 IN THE CLASSROOM; ISN'T THAT RIGHT?

19 A. THAT'S RIGHT.

20 Q. AND WHO DID YOU LEARN THAT INFORMATION FROM?

21 A. I LEARNED THAT FROM TUNDE HERZEG, WHO WAS THE -- I  
22 BELIEVE HER TITLE WAS COORDINATOR OR DIRECTOR OF ACADEMIC  
23 AFFAIRS.

24 Q. AND SOLELY IN THE FALL OF 2005, HOW MANY TIMES DID  
25 MS. HERZEG AGREE TO TALK TO YOU ABOUT PROFESSOR BLOUGH?

26 A. I'M SURE SHE DID ONCE, AND SHE COULD VERY WELL HAVE



2 Q. BUT SITTING HERE ON THE WITNESS STAND TODAY, YOU COULD  
3 ONLY REMEMBER ONE TIME FOR SURE THAT IN THE FALL 2005 SEMESTER  
4 THAT SHE SPOKE TO YOU ABOUT PROFESSOR BLOUGH?

5 A. THAT'S CORRECT.

6 Q. AND WHAT IS IT THAT SHE TOLD YOU IN THAT CONVERSATION?

7 A. WELL, I THINK SHE MENTIONED THAT SHE HEARD THAT MARCY  
8 HAD BEEN MISSING SOME CLASSES, AND THAT THIS HAD GONE ON MORE  
9 THAN ONCE.

10 Q. DID SHE TELL YOU HOW MANY TIMES?

11 A. NO, SHE DIDN'T. EXCUSE ME. SHE MAY HAVE. I DON'T  
12 REMEMBER.

13 Q. YOU DIDN'T ASK HER HOW MANY TIMES, DID YOU?

14 A. NO. I DON'T REMEMBER ASKING HER.

15 Q. YOU DON'T KNOW HOW MANY STUDENTS SPOKE WITH  
16 MS. HERZEG, DO YOU?

17 A. I DON'T KNOW THAT.

18 Q. YOU DIDN'T ASK HER HOW MANY STUDENTS HAD TALKED TO  
19 HER, DID YOU?

20 A. I DON'T BELIEVE I DID.

21 Q. FOR ALL YOU KNOW, IT COULD HAVE BEEN TWO STUDENTS THAT  
22 TALKED TO HER?

23 A. IT COULD HAVE BEEN.

24 Q. FOR ALL YOU KNOW, IT COULD HAVE BEEN ONE STUDENT?

25 A. COULD HAVE BEEN.

26 Q. HOW MANY STUDENTS DID PROFESSOR BLOUGH HAVE OR HOW

1 MANY WAS SHE TEACHING IN THE FALL SEMESTER OF 2005?

2 A. I DON'T KNOW THE EXACT NUMBER. I'D JUST HAVE TO  
3 ESTIMATE. WITH FOUR CLASSES, COULD BE AS MANY AS 80 STUDENTS.

4 Q. AS MANY AS 80. IT COULD BE MORE; ISN'T THAT RIGHT?

5 A. COULD BE MORE; COULD BE LESS.

6 Q. AND, IN FACT, WE'LL TALK ABOUT IT IN A FEW MINUTES,  
7 BUT IN THE SPRING OF 2006, PROFESSOR BLOUGH WAS TEACHING 126 OR  
8 128 STUDENTS; ISN'T THAT RIGHT?

9 A. THAT'S RIGHT.

10 Q. SO IT WOULDN'T BE OUT OF THE QUESTION THAT SHE WAS  
11 TEACHING SOMEWHERE IN EXCESS OF 80 STUDENTS IN THE FALL OF 2005;  
12 ISN'T THAT RIGHT?

13 MR. VARTAIN: OBJECTION. SPECULATION.

14 THE COURT: OVERRULED.

15 THE WITNESS: SHE COULD HAVE BEEN TEACHING THAT MANY,  
16 BUT I DOUBT IT. IT WOULD BE UNUSUAL FOR HER TO -- FOR ANY  
17 FACULTY MEMBER TO BE TEACHING THAT NUMBER.

18 MR LEBOWITZ: Q. WELL, I'M NOT SPECIFICALLY TALKING  
19 ABOUT THE 128 NUMBER. I'M TALKING ABOUT MORE THAN 80?

20 A. OH. SHE COULD HAVE BEEN, YES.

21 Q. BECAUSE TYPICALLY -- WELL, PROFESSOR BLOUGH WAS  
22 CARRYING A FULL LOAD OF CLASSES IN THE FALL OF 2005?

23 A. THAT'S CORRECT.

24 Q. AND A FULL LOAD AT MENLO COLLEGE MEANS FOUR CLASSES?

25 A. THAT'S RIGHT.

26 Q. AND TYPICALLY THERE'S AT LEAST 20 STUDENTS PER CLASS,

1 AT LEAST IN THE BUSINESS ADMINISTRATION SCHOOL?

2 A. THAT'S AN AVERAGE. YES.

3 Q. AND AS YOU SAID EARLIER, PROFESSOR BLOUGH'S CLASSES  
4 WERE PRETTY POPULAR, RIGHT?

5 A. I DON'T THINK I SAID THAT EARLIER. I MAY HAVE, YES.

6 I DID. YES, THEY WERE -- OR SHE WAS A POPULAR TEACHER.

7 Q. STUDENTS WANTED TO TAKE HER CLASSES?

8 A. YES. THEY WERE -- I THINK HER CLASSES WERE VERY  
9 INTERESTING TO STUDENTS.

10 Q. NOW, IN THE FALL OF '05, IN THIS ONE CONVERSATION YOU  
11 HAD WITH MS. HERZEG -- FIRST OF ALL, CAN YOU PLACE THAT IN TIME  
12 AT ALL OVER THE SEMESTER WHEN THAT CONVERSATION TOOK PLACE?

13 A. IT WOULD BE AFTER THE MIDDLE OF THE SEMESTER.

14 Q. SOMETIME IN THE SECOND HALF OF THE SEMESTER?

15 A. THAT'S CORRECT.

16 Q. WAS IT BEFORE THE SEMESTER ENDED?

17 A. YES.

18 Q. AND WHEN, IF YOU CAN RECALL, DID THE FALL 2005  
19 SEMESTER END, AS FAR AS CLASSES GO?

20 A. OH, ROUGHLY, DECEMBER 10TH.

21 Q. SOMETIME IN THE FIRST TWO WEEKS OF DECEMBER?

22 A. THAT'S RIGHT.

23 Q. OKAY.

24 SO THE BEST WE CAN DO TO PLACE THIS CONVERSATION WITH

25 MS. HERZEG IN TIME IS TO SAY THAT IT WAS SOMETIME BETWEEN THE  
26 MIDDLE OF THE SEMESTER AND DECEMBER 10TH; IS THAT RIGHT?

162

1 A. THAT'S RIGHT.

2 Q. NOW, WHEN MS. HERZEG GAVE YOU THAT INFORMATION THAT  
3 SOME STUDENTS HAD TOLD HER THAT PROFESSOR BLOUGH WAS MISSING  
4 SOME CLASSES, DID YOU ASK TO SPEAK WITH ANY OF THOSE STUDENTS?

5 A. NO, I DID NOT.

6 Q. DID YOU ASK MS. HERZEG TO HAVE THE STUDENTS COME AND  
7 MEET WITH YOU TO TELL YOU WHAT THEIR CONCERNS WERE?

8 A. NO, I DID NOT.

9 Q. AND MS. HERZEG NEVER TOLD YOU PRECISELY HOW MANY  
10 CLASSES PROFESSOR BLOUGH HAD ACTUALLY MISSED IN THE FALL OF  
11 2005; ISN'T THAT CORRECT?

12 A. I DON'T BELIEVE SHE DID. YES.

13 Q. NOW, AS WE SAID, SHE HAD -- PROFESSOR BLOUGH WAS  
14 HANDLING FOUR CLASSES IN THE FALL OF '05. AND THOSE CLASSES  
15 TYPICALLY MET TWO TIMES A WEEK; ISN'T THAT RIGHT?

16 A. EITHER TWO TIMES A WEEK OR THREE TIMES A WEEK.

17 Q. SO AT LEAST TWO TIMES A WEEK, CORRECT?

18 A. YES, UNLESS IT WAS A NIGHT CLASS. BUT I DON'T RECALL  
19 THAT SHE TAUGHT A NIGHT CLASS.

20 Q. HOW MANY WEEKS LONG IS THE SEMESTER?

21 A. 16 WEEKS.

22 Q. SO IF YOU HAVE -- LET'S DO A LITTLE MATH HERE.

23 YOU HAVE FOUR CLASSES PER WEEK OR FOUR CLASSES THAT  
24 SHE'S CARRYING, AND THEY'RE MEETING AT LEAST TWO TIMES EACH PER  
25 WEEK. THAT MEANS SHE HAS AT LEAST EIGHT CLASS SESSIONS PER  
26 WEEK, CORRECT?

163

1 A. YES.

2 Q. OKAY.

3 AND IF THERE IS 16 WEEKS IN THE SEMESTER AND EIGHT  
4 CLASS SESSIONS IN EACH WEEK -- CHECK MY MATH HERE -- THAT MEANS  
5 THAT SHE HAD AT LEAST 128 CLASS SESSIONS IN THE FALL SEMESTER  
6 2005, CORRECT?

7 A. ACTUALLY, THAT WOULDN'T BE CORRECT. WHEN I SAID 16  
8 WEEKS IN A SEMESTER, I INCLUDED THE FINAL EXAM.

9 Q. AND HOW MANY WEEKS IS THAT?

10 A. THAT'S ONE WEEK.

11 Q. LET'S SUBTRACT EIGHT. AT LEAST 120 CLASS SESSIONS FOR  
12 THE ENTIRE FALL 2005 SEMESTER, CORRECT?

13 A. NO. THAT WOULDN'T BE CORRECT EITHER.

14 Q. WHY NOT?

15 A. BECAUSE OF HOLIDAYS, THE THANKSGIVING HOLIDAY.

16 Q. OKAY.

17 A. AND ALSO IF SHE -- IF A FACULTY MEMBER IS TEACHING ON  
18 MONDAY, WEDNESDAY, FRIDAY, THERE ARE A COUPLE OF MONDAY  
19 HOLIDAYS; LABOR DAY, FOR INSTANCE.

20 Q. CAN WE FAIRLY ESTIMATE MAYBE FIVE DAYS OUT OF THE

21 ENTIRE FALL SEMESTER WHERE THERE WOULD BE HOLIDAYS?  
22 A. THAT WOULD BE ABOUT RIGHT.  
23 Q. OKAY.  
24 AND SO AT MOST THAT WOULD BE MAYBE TEN CLASS SESSIONS  
25 THAT WOULD BE MISSED BECAUSE OF HOLIDAYS?  
26 A. ABOUT, YES.

164

1 Q. SO EVEN BEING GENEROUS, SAYING THAT THERE'S TEN THAT  
2 SHE MISSED, THAT'S STILL 110 CLASS SESSIONS THAT  
3 PROFESSOR BLOUGH HAD FOR THE FALL 2005 SEMESTER, CORRECT?  
4 A. YES.  
5 Q. AND FROM THE INFORMATION YOU GOT FROM MS. HERZEG YOU  
6 HAVE NO IDEA HOW MANY OR HOW FEW OF THESE 110 CLASS SESSIONS  
7 PROFESSOR BLOUGH WAS ABSENT FROM; ISN'T THAT RIGHT?  
8 A. WELL, I HAD AN IDEA THAT IT WAS SEVERAL.  
9 Q. BUT, AGAIN, YOU NEVER ASKED HER HOW MANY, RIGHT?  
10 A. I DON'T BELIEVE I DID. NO.  
11 Q. SHE NEVER TOLD YOU HOW MANY?  
12 A. SHE MAY HAVE TOLD ME.  
13 Q. SITTING HERE TODAY, YOU CAN'T TELL US HOW MANY -- WHAT  
14 THAT NUMBER IS, CAN YOU?  
15 A. I CAN'T. NO.  
16 Q. NOW, DID MS. HERZEG TELL YOU ANYTHING ELSE ABOUT ANY  
17 OTHER STUDENT COMPLAINTS IN THE FALL 2005?  
18 A. I DON'T REMEMBER.

19 Q. OKAY.

20 DID SHE TELL YOU ANYTHING ABOUT ANY COMPLAINTS OF  
21 PROFESSOR BLOUGH BEING LATE TO CLASS?

22 A. SHE MAY HAVE.

23 Q. DO YOU HAVE ANY RECOLLECTION BETTER THAN "SHE MAY  
24 HAVE"?

25 A. I DON'T, NO.

26 Q. OKAY.

165

1 SO SHE MAY NOT HAVE?

2 A. THAT'S POSSIBLE.

3 Q. AND AS FAR AS ENDING CLASSES EARLY IN THE FALL OF  
4 2005, DID MS. HERZEG GIVE YOU ANY INFORMATION THAT ANY STUDENTS  
5 HAD COMPLAINED TO HER THAT PROFESSOR BLOUGH WAS ENDING CLASSES  
6 EARLY IN 2005?

7 A. I WOULD HAVE THE SAME ANSWER. SHE MAY HAVE, BUT I  
8 DON'T RECOLLECT EXACTLY.

9 Q. AND SHE MAY NOT HAVE, CORRECT?

10 A. YES.

11 Q. NOW, LET'S MOVE TO THE SPRING SEMESTER 2006 FOR A  
12 MOMENT.

13 IN THAT SEMESTER, DID YOU HEAR ANY COMPLAINTS FROM ANY  
14 SOURCE ABOUT PROFESSOR BLOUGH EITHER MISSING CLASSES OR BEING  
15 LATE TO CLASSES OR ENDING CLASSES EARLY?

16 A. YES, I DID.

17 Q. AND FROM WHAT SOURCE DID YOU LEARN THAT INFORMATION?

18 A. I LEARNED THAT FROM TUNDE HERZEG, AND ALSO FROM RACHEL  
19 TIPTON, WHO IS COORDINATOR OF -- WHO WAS AT THE TIME -- HER  
20 TITLE WAS COORDINATOR OF ACADEMIC ADVISING.

21 Q. HOW MANY CONVERSATIONS DID YOU HAVE WITH MS. HERZEG ON  
22 THE SUBJECT?

23 A. I HAD THREE OR FOUR. I ALSO HAD AN E-MAIL FROM HER.

24 Q. AND IN THOSE THREE OR FOUR CONVERSATIONS, WHAT DID  
25 MS. HERZEG TELL YOU?

26 A. SHE MENTIONED THAT THERE WERE REPORTS -- OR THAT SHE

166

1 HAD LEARNED THAT PROFESSOR BLOUGH WAS LATE FOR CLASS OR HAD CUT  
2 CLASS SHORT OR HAD MISSED -- MISSED CLASSES.

3 Q. WHEN DURING THE SPRING 2006 SEMESTER WAS THE FIRST  
4 TIME YOU HAD A CONVERSATION WITH MS. HERZEG ON THIS TOPIC?

5 A. I BELIEVE JANUARY.

6 Q. WHEN WAS THE LAST TIME YOU HAD A CONVERSATION WITH  
7 MS. HERZEG ON THIS TOPIC?

8 A. IT WOULD BE MARCH OR APRIL.

9 Q. CAN YOU DO ANY BETTER --

10 A. MARCH FOR SURE.

11 Q. FROM MARCH.

12 SO BETWEEN JANUARY AND MARCH OF 2006 IS WHEN YOU HAD  
13 THESE THREE OR FOUR CONVERSATIONS WITH MS. HERZEG?

14 A. THAT'S CORRECT.



15 Q. AND THE E-MAIL YOU REFERENCED, WHEN DID YOU RECEIVE  
16 THAT E-MAIL?

17 A. THAT WOULD BE MARCH 21ST OR 22ND, I THINK.

18 Q. DID YOU RECEIVE ANY E-MAILS AFTER MARCH 21ST OR 22ND  
19 FROM MS. HERZEG IN REGARDS TO PROFESSOR BLOUGH?

20 A. I DON'T THINK I DID. NO.

21 Q. NOW, IN YOUR CONVERSATIONS WITH MS. HERZEG REGARDING  
22 THE NUMBER OF CLASSES PROFESSOR BLOUGH HAD MISSED, DID SHE TELL  
23 YOU HOW MANY?

24 A. YES, SHE DID IN THE E-MAIL.

25 Q. OKAY. WE'LL SEPARATE THAT OUT IN A MOMENT.  
26 THAT'S THE MARCH E-MAIL?

167

1 A. RIGHT.

2 Q. I'M TALKING ABOUT CONVERSATIONS, VERBAL CONVERSATIONS  
3 YOU HAD WITH HER. DID SHE TELL YOU -- DID SHE GIVE YOU ANY IDEA  
4 WHAT THE NUMBER OF CLASSES WERE THAT SHE HAD MISSED?

5 A. YES.

6 Q. WHAT DID SHE SAY?

7 A. I CAN'T REMEMBER SPECIFICALLY, BUT SHE WOULD MENTION,  
8 "MARCY WASN'T HERE TODAY," OR "MARCY MISSED THIS CLASS OR THAT  
9 CLASS."

10 Q. OKAY. SO IF I UNDERSTAND, THESE THREE OR FOUR  
11 CONVERSATIONS WERE ON PARTICULAR DAYS WHEN PROFESSOR BLOUGH WAS  
12 ACTUALLY ABSENT?

13 A. YES.

14 Q. SO SHE WAS -- MS. HERZEG WAS COMING TO  
15 CONTEMPORANEOUSLY REPORT TO YOU THAT PROFESSOR BLOUGH WAS  
16 ABSENT?

17 A. THAT'S CORRECT.

18 Q. SO THAT'S THREE OR FOUR DAYS THAT WE'RE TALKING ABOUT,  
19 RIGHT?

20 A. THREE OR FOUR DAYS THAT SHE CAME TO ME AND WE  
21 DISCUSSED. YEAH.

22 Q. AND THAT'S THREE OR FOUR DAYS THAT PROFESSOR BLOUGH  
23 WAS ABSENT, THAT SHE WAS TELLING YOU ABOUT?

24 A. WELL, SHE -- SHE, I THINK, WAS ALSO TELLING ME ABOUT  
25 OTHER DAYS. THE E-MAIL, FOR INSTANCE --

26 Q. WE'LL GET TO THE E-MAIL. I'M JUST TALKING ABOUT THE

168

1 CONVERSATIONS, SO LET'S FOCUS ON THE CONVERSATION.

2 SO THERE WAS THREE OR FOUR CONVERSATIONS WHICH WERE ON  
3 DAYS SHE WAS REPORTING CONTEMPORANEOUSLY TO YOU THAT  
4 PROFESSOR BLOUGH WAS ABSENT THAT DAY. THAT WAS THREE OR FOUR  
5 TIMES?

6 A. YES, BUT SHE ALSO, AT LEAST ON ONE OCCASION, MENTIONED  
7 THAT THERE HAD BEEN ANOTHER DAY.

8 Q. SO AT MOST WE'RE TALKING ABOUT FIVE DAYS, THROUGH  
9 THESE CONVERSATIONS?

10 A. YES.

11 Q. OKAY.

12 AND AS FAR AS BEING LATE TO CLASS, HOW MANY TIMES --  
13 DID MS. HERZEG TELL YOU IN ANY OF THESE THREE OR FOUR  
14 CONVERSATIONS THAT PROFESSOR BLOUGH HAD BEEN LATE TO CLASS?

15 A. I BELIEVE SHE DID.

16 Q. DID SHE TELL YOU HOW MANY TIMES PROFESSOR BLOUGH HAD  
17 BEEN LATE TO CLASS?

18 A. SHE MAY HAVE. I CAN'T REMEMBER.

19 Q. SITTING HERE TODAY, CAN YOU GIVE US ANY NUMBER, AS FAR  
20 AS WHAT MS. HERZEG REPORTED TO YOU, AS FAR AS HOW MANY DAYS  
21 PROFESSOR BLOUGH WAS LATE TO CLASS IN THE SPRING OF 2006?

22 A. I WOULD SAY TWO OR THREE TIMES. I'D ESTIMATE THAT.

23 Q. AND DID MS. HERZEG TELL YOU HOW LATE PROFESSOR BLOUGH  
24 HAD BEEN TO CLASS?

25 A. SHE MAY HAVE, BUT I DON'T KNOW.

26 Q. AND SO SHE MAY HAVE AND SHE MAY NOT HAVE, AGAIN,

169

1 CORRECT?

2 A. YES.

3 Q. AND SHE MAY HAVE TOLD YOU THAT SHE WAS TEN MINUTES  
4 LATE, RIGHT?

5 A. I DON'T RECOLLECT HER SAYING THAT.

6 Q. BUT YOU DON'T RECOLLECT THAT SHE DIDN'T SAY THAT, DO  
7 YOU?

8 A. I DON'T THINK SHE SAID THAT.

9 Q. AND THE CLASSES WHERE MS. HERZEG SAID SHE REPORTED  
10 THAT SHE HAD RECEIVED REPORTS OF PROFESSOR BLOUGH ENDING EARLY,  
11 HOW MANY CLASSES, HOW MANY INSTANCES DID MS. HERZEG TELL YOU  
12 ABOUT?

13 MR. VARTAIN: COMPOUND.

14 THE COURT: OVERRULED.

15 THE WITNESS: WE'RE TALKING ABOUT THE CONVERSATIONS,  
16 NOT THE E-MAIL?

17 MR. LEBOWITZ: Q. ABSOLUTELY.

18 A. I THINK AT LEAST ONE OR TWO OR THREE.

19 Q. AND IN THOSE INSTANCES, DID MS. HERZEG TELL YOU HOW  
20 EARLY PROFESSOR BLOUGH HAD ENDED THE CLASSES?

21 A. SHE MAY HAVE. I CAN'T REMEMBER.

22 Q. AND SHE MAY NOT HAVE, CORRECT?

23 A. SHE MAY NOT HAVE. I THINK SHE DID.

24 Q. SITTING HERE TODAY, CAN YOU TELL US HOW MUCH CLASS  
25 TIME WAS MISSED BECAUSE PROFESSOR BLOUGH ENDED ANY CLASS EARLY?

26 A. I DON'T KNOW THE EXACT AMOUNT. NO.

170

1 Q. DO YOU HAVE ANY SENSE OF HOW MUCH, FROM ANY  
2 INFORMATION THAT YOU RECEIVED FROM ANY SOURCE?

3 A. THIS IS CLASSES ENDING EARLY?

4 Q. YES.

5 A. OKAY.

6 WELL, I WOULD ESTIMATE -- I DON'T KNOW -- 10; 10

7 CLASSES.

8 Q. NO. I'M NOT TALKING ABOUT HOW MANY CLASSES THAT  
9 YOU'RE GUESSING ABOUT. I'M ASKING ABOUT -- THE QUESTION IS HOW  
10 EARLY EACH OF THOSE CLASSES WERE LET OUT COMPARED TO HOW MUCH  
11 CLASS TIME IT WAS SCHEDULED FOR.

12 A. AND THIS IS FROM MY CONVERSATIONS?

13 Q. YES.

14 A. I DON'T KNOW EXACTLY. NO.

15 Q. NOW, THE E-MAIL THAT YOU RECEIVED IN LATE MARCH, MID  
16 TO LATE MARCH, THE 21ST IS WHAT YOU SAID; IS THAT RIGHT?

17 A. THE 21ST OR 22ND.

18 Q. WHAT DID THAT E-MAIL SAY?

19 A. THE E-MAIL SAID THAT SHE WANTED TO LET ME KNOW THAT  
20 MARCY HAD BEEN MISSING CLASSES AND SHE LISTED DATES, AND IT WAS  
21 FROM A PERIOD OF AROUND JANUARY 12TH UP THAT POINT. AND SHE  
22 ALSO MENTIONS THAT ONE PARTICULAR CLASS DAY -- FOR ONE  
23 PARTICULAR CLASS THE CLASS HAD BEEN LET OUT HALF AN HOUR --  
24 SEEMED TO BE LET OUT HALF AN HOUR EARLY ON A SOMEWHAT REGULAR  
25 BASIS.

26 Q. HOW LONG WERE THESE CLASSES THAT PROFESSOR BLOUGH WAS

171

1 TEACHING? HOW LONG WERE THEY SCHEDULED FOR?

2 A. WELL, THE CLASS I WAS JUST REFERRING TO WOULD BE AN  
3 HOUR-AND-A-HALF CLASS.

4 Q. SO A 90-MINUTE CLASS?

5 A. 80 MINUTES, BECAUSE YOU STARTED TEN MINUTES AFTER THE  
6 HOUR.

7 Q. AND THE INSTANCES OF EITHER ABSENCES OR BEING LATE TO  
8 CLASS OR ENDING CLASSES EARLY THAT MS. HERZEG LISTED IN HER  
9 E-MAIL TO YOU ON MARCH 21ST, THOSE COVERED THE SAME EVENTS THAT  
10 SHE HAD SPOKEN TO YOU ABOUT EARLIER IN THE SEMESTER, CORRECT?

11 A. I DON'T KNOW IF THAT'S TRUE OR NOT.

12 Q. SHE DIDN'T TELL YOU, "THESE WERE IN ADDITION TO  
13 EVERYTHING I'VE SPOKEN TO YOU ABOUT," DID SHE?

14 A. SHE DIDN'T SAY, "THESE ARE THE ONES I'VE MENTIONED TO  
15 YOU BEFORE."

16 Q. OKAY. WELL, LET'S FOCUS ON THE QUESTION.

17 SHE DIDN'T SAY TO YOU, "THESE ARE IN ADDITION TO WHAT  
18 I'VE ALREADY TOLD YOU ABOUT," DID SHE?

19 A. SHE DIDN'T SAY THAT. NO.

20 Q. NOW, LET ME SWITCH A LITTLE BIT. I'LL LET YOU KNOW  
21 WHEN I DO THIS SO I DON'T TRIP YOU UP.

22 IN YOUR FUNCTION AS ACADEMIC DEAN, YOU, AGAIN, WERE  
23 THE SUPERVISOR OF THE FACULTY MEMBERS. SO CAN YOU TELL US --  
24 WELL, LET ME ASK YOU THIS WAY. I APOLOGIZE FOR RAMBLING.

25 ONE OF THE ESSENTIAL OR CORE FUNCTIONS OF A FACULTY  
26 MEMBER'S JOB WAS TEACHING, OBVIOUSLY, CORRECT?

172

1 A. CORRECT.

2 Q. BUT THAT WASN'T THE ONLY ESSENTIAL OR CORE FUNCTION OF

3 A FACULTY MEMBER'S JOB, RIGHT?

4 A. THAT'S CORRECT.

5 Q. THERE ARE OTHER FUNCTIONS THAT A FACULTY MEMBER HAS?

6 A. YES.

7 Q. INCLUDING PARTICIPATION IN FACULTY COMMITTEES?

8 A. THAT'S RIGHT.

9 Q. AN OBLIGATION TO WORK TO DEVELOP NEW CURRICULUM?

10 A. SCHOLARSHIP. WE'RE WORKING ON KEEPING COURSES CURRENT  
11 AND EXCELLENT. YES.

12 Q. AND ANOTHER CORE OR ESSENTIAL FUNCTION OF A FACULTY  
13 MEMBER'S JOB IS TO BE AN ADVISOR TO STUDENTS?

14 A. THAT'S RIGHT.

15 Q. AND, IN FACT, AT LEAST DURING THE TIMEFRAME WHERE YOU  
16 WERE THE ACADEMIC DEAN, ISN'T IT TRUE THAT FACULTY MEMBERS WERE  
17 ASSIGNED A PARTICULAR NUMBER OF STUDENTS TO BE THE FORMAL  
18 ADVISOR FOR?

19 A. THAT'S CORRECT.

20 Q. AND THE FUNCTION OF THAT ADVISING WAS TO HELP THE  
21 STUDENTS LEARN HOW TO MANAGE COLLEGE, RIGHT?

22 A. THAT WAS PART OF IT. IT'S ALSO TO HELP THEM CHOOSE  
23 COURSES AND TALK TO THEM IF THEY'RE HAVING TROUBLE WITH COURSES.

24 Q. SOMEONE TO BE THERE FOR THE STUDENTS TO HELP THEM  
25 UNDERSTAND WHAT'S GOING ON AT THE COLLEGE?

26 A. ACADEMICALLY.

1 Q. RIGHT.

2 NOW, IS IT TRUE THAT DURING THE 2005 AND 2006  
3 TIMEFRAME, YOU NEVER RECEIVED ANY COMPLAINTS FROM ANYBODY ABOUT  
4 PROFESSOR BLOUGH'S FUNCTION INSOFAR AS PARTICIPATING ON FACULTY  
5 COMMITTEES?

6 A. NO COMPLAINTS.

7 Q. AND, IN FACT, IN THE FALL OF 2005 PROFESSOR BLOUGH WAS  
8 THE CHAIR OF THE FACULTY PERSONNEL COMMITTEE?

9 A. IN THE FALL?

10 Q. YES.

11 A. I CAN'T REMEMBER, BUT THAT WOULD SOUND RIGHT. I KNOW  
12 THAT SHE WAS THE CHAIR AT ONE POINT.

13 Q. AND DID YOU EVER FEEL THAT PROFESSOR BLOUGH WASN'T  
14 UPHOLDING HER END OF THE FUNCTION OF CREATING NEW SCHOLARSHIPS?

15 A. NO, I DIDN'T FEEL THAT.

16 Q. AND DID YOU EVER RECEIVE ANY COMPLAINTS THAT SHE  
17 WASN'T FULFILLING HER FUNCTION, HER CORE FUNCTION OF ADVISING  
18 STUDENTS?

19 A. I THINK I DID HEAR COMPLAINTS.

20 Q. WHEN WAS THAT?

21 A. SOMETIME DURING THE '05/'06 YEAR.

22 Q. AND WHAT DID YOU HEAR?

23 A. WELL, I THINK I HEARD THAT THEY WERE HAVING TROUBLE  
24 FINDING HER TO MEET WITH HER.

25 Q. DID YOU EVER TELL PROFESSOR BLOUGH THAT?

26 A. I DON'T BELIEVE I DID. NO.



1 Q. HOW MANY STUDENTS TOLD YOU THAT?

2 A. I THINK IT WAS JUST ONE TIME THAT IT WAS.

3 Q. SO THERE WAS, AT MOST, ONE TIME A STUDENT WAS UPSET  
4 THAT THEY COULDN'T FIND PROFESSOR BLOUGH?

5 A. APPROXIMATELY SO. YES.

6 Q. I'M GOING TO SWITCH TOPICS AGAIN. I'M GOING TO TALK  
7 ABOUT CONTRACT RENEWAL AND THE PROCESS OF CONTRACT RENEWAL AT  
8 MENLO COLLEGE.

9 AS ACADEMIC DEAN, CAN YOU DESCRIBE FOR US WHAT YOUR  
10 ROLE WAS, INSOFAR AS THE FACULTY CONTRACT RENEWAL PROCESS?

11 A. WELL, IT WOULD BE TO REVIEW THE CANDIDATE AND TO MEET  
12 WITH THE PERSONNEL COMMITTEE. AND IT'S A FACULTY COMMITTEE THAT  
13 ALSO REVIEWS -- THE PERSONNEL COMMITTEE WOULD MAKE  
14 RECOMMENDATIONS TO ME ON THE CONTRACT. AND THEN, AS DEAN, I  
15 WOULD MAKE A RECOMMENDATION TO THE PROVOST AND TO THE PRESIDENT,  
16 AND THE PRESIDENT WOULD MAKE THE DECISION ABOUT THE CONTRACT.

17 Q. SO IN REACHING YOUR CONCLUSIONS ABOUT WHETHER OR NOT  
18 TO RECOMMEND CONTRACT RENEWAL, YOU WOULD CONSULT WITH THE  
19 FACULTY PERSONNEL COMMITTEE, CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND YOU WOULD REVIEW WITH THE COMMITTEE WHAT THEIR  
22 RECOMMENDATIONS WERE, CORRECT?

23 A. YES, I WOULD.

24 Q. NOW, LET'S TAKE A STEP BACK FOR A MOMENT.

25 CAN YOU DESCRIBE FOR US WHAT THE FACULTY PERSONNEL

1 A. IT'S A GROUP OF FACULTY MEMBERS, FIVE OF THEM. AND  
2 THEY -- ONE OF THEIR CHARGES IS TO REVIEW FACULTY. SOMETIMES  
3 BECAUSE OF A CONFLICT OF INTEREST OR IF ONE OF THE FACULTY  
4 MEMBERS WHO'S ON THE COMMITTEE IS ALSO UP FOR REVIEW, YOU'LL  
5 HAVE ANOTHER FACULTY MEMBER STEP IN; SOMETIMES YOU'LL HAVE  
6 SUBCOMMITTEES. BUT THE PROCESS IS BASICALLY THE SAME, FACULTY  
7 REVIEWING FACULTY.

8 Q. AND AS PART OF THIS PROCESS OF THE CONTRACT RENEWAL,  
9 YOU WOULD REVIEW WHAT THE COLLEGE CALLS THE DOSSIER --

10 A. THAT'S CORRECT.

11 Q. -- OF THE FACULTY MEMBER WHO WAS REQUESTING RENEWAL?

12 A. YES.

13 Q. AND WHAT WERE TYPICALLY IN -- WHAT COMPONENTS WERE  
14 TYPICALLY IN THIS DOSSIER FOR THE FACULTY MEMBER?

15 A. WELL, YOU HAVE THE STUDENT EVALUATIONS FOR CLASSES  
16 OVER A PERIOD OF SEVERAL YEARS. YOU HAVE A STATEMENT FROM THE  
17 FACULTY MEMBER, YOU KNOW, REQUESTING CONTRACT RENEWAL AND MAKING  
18 A CASE FOR THAT. AND YOU WOULD HAVE SYLLABI FOR COURSES TAUGHT  
19 BY THE FACULTY MEMBER, AND ALSO LETTERS OF RECOMMENDATION BY AND  
20 LARGE FROM FELLOW FACULTY MEMBERS.

21 Q. SO WOULD IT BE FAIR TO SAY THAT THE STUDENT  
22 EVALUATIONS WERE AN IMPORTANT PART OF THE DOSSIER?

23 A. YES.

24 Q. AND IN THE FALL OF 2005, WHEN YOU WERE ACADEMIC DEAN,  
25 YOU REVIEWED PROFESSOR BLOUGH'S APPLICATION FOR RENEWAL OF A  
26 SIX-YEAR CONTRACT WITH MENLO COLLEGE, CORRECT?

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1 A. THAT'S CORRECT.

2 Q. AND AS PART OF THAT REQUEST TO RENEW A SIX-YEAR  
3 CONTRACT, YOU REVIEWED PROFESSOR BLOUGH'S STUDENT EVALUATIONS,  
4 CORRECT?

5 A. THAT'S CORRECT.

6 MR. VARTAIN: OBJECTION. THE WORDS "SIX-YEAR  
7 CONTRACT" LACKS FOUNDATION.

8 THE COURT: SUSTAINED.

9 MR. LEBOWITZ: Q. WHAT WAS IT THAT PROFESSOR BLOUGH  
10 WAS REQUESTING AS FAR AS A CONTRACT RENEWAL IN THE FALL OF 2005?

11 A. RENEWAL OF THE SIX-YEAR CONTRACT.

12 Q. AND SO WHEN YOU WERE CONSIDERING WHETHER OR NOT TO  
13 RECOMMEND RENEWAL FOR A SIX-YEAR CONTRACT, YOU RELIED, AT LEAST  
14 IN PART, ON THE STUDENT EVALUATIONS IN HER DOSSIER?

15 A. YES, THAT'S RIGHT.

16 MR. LEBOWITZ: CAN I HAVE EXHIBIT 57, PLEASE.

17 THE CLERK: (COMPLIES.)

18 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

19 THE COURT: YES, PLEASE.

20 (PLAINTIFF'S EXHIBIT NO. 57 WAS MARKED FOR  
21 IDENTIFICATION.)

22 MR. LEBOWITZ: Q. NOW, PROFESSOR PRATT, IF YOU COULD  
23 TAKE A LOOK AT WHAT WE'VE HANDED YOU THAT WE HAVE MARKED FOR  
24 IDENTIFICATION AS EXHIBIT 57. LOOKING AT THOSE DOCUMENTS CAN  
25 YOU TELL ME WHAT THOSE ARE?

26 A. THESE ARE COURSE EVALUATIONS FOR SPRING 2005 FOR

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1 PROFESSOR BLOUGH.

2 Q. AND AS PART OF YOUR REVIEW PROCESS FOR  
3 PROFESSOR BLOUGH'S REQUEST FOR CONTRACT RENEWAL IN THE FALL OF  
4 2005, YOU REVIEWED THESE STUDENT EVALUATIONS, CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND YOU RELIED ON THEM IN REACHING YOUR CONCLUSION,  
7 CORRECT?

8 A. THAT'S CORRECT.

9 MR. LEBOWITZ: YOUR HONOR, I WOULD ASK THAT EXHIBIT 57  
10 BE ADMITTED INTO EVIDENCE.

11 MR. VARTAIN: NO OBJECTION.

12 THE COURT: EXHIBIT 57 WILL BE ADMITTED.  
13 (PLAINTIFF'S EXHIBIT NO. 57 WAS ADMITTED INTO  
14 EVIDENCE.)

15 MR. LEBOWITZ: THANK YOU.

16 Q. NOW, LET'S TAKE A CLOSER LOOK AT THESE EVALUATIONS  
17 FROM THE SPRING OF 2005. FIRST OF ALL, CAN YOU TELL FROM THE  
18 DOCUMENT WHEN IT WAS THAT THAT PACKET OF DOCUMENTS WERE  
19 COMPILED?

20 A. I'M PAUSING HERE BECAUSE I'M A LITTLE CONFUSED. IT  
21 SAYS JULY 25, 2005. WHAT NORMALLY HAPPENS IS -- AND I DON'T  
22 KNOW IF I MENTIONED THIS. BUT, YOU KNOW, THE WORKERS OF THE  
23 OFFICE OF ACADEMIC AFFAIRS WOULD COMPILE THE STUDENT EVALUATIONS  
24 AFTER GRADES WERE SUBMITTED, SO THAT COULD BE -- SOMETIMES THEY  
25 WERE PRETTY QUICK ABOUT DOING THAT, MAYBE A COUPLE OF WEEKS OR  
26 SO, BUT IT COULD ALSO BE AS LONG AS A MONTH OR SO.

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1 Q. SO I DON'T MEAN TO QUIBBLE WITH YOU, I JUST WANT TO  
2 SEE IF IT'S REFLECTED IN HERE THAT THIS PACKET THAT WE HAVE AS  
3 EXHIBIT 57 WAS COMPILED SOMETIME IN JULY OF 2005, CORRECT?

4 A. YES.

5 Q. OKAY.

6 AND NOW I'VE COUNTED THE PAGES OF WRITTEN COMMENTS IN  
7 HERE AND I INVITE YOU TO DO THE SAME, BUT I CAN TELL YOU I  
8 COUNTED 61. WOULD YOU LIKE TO --

9 THE COURT: ARE WE GOING TO TAKE THE TIME TO HAVE HIM  
10 COUNT THE WRITTEN COMMENTS?

11 MR. LEBOWITZ: JUST THE PAGES.

12 Q. THERE ARE 61 PAGES IN HERE OF WRITTEN COMMENTS. WOULD  
13 YOU ACCEPT THAT REPRESENTATION?

14 MR. VARTAIN: OBJECTION, YOUR HONOR. NOT CREDIBLE.

15 THE COURT: WELL, I'M GOING TO OVERRULE THAT. WE'RE  
16 NOT GOING TO TAKE THE TIME FOR HIM TO COUNT THEM. THE JURY CAN  
17 COUNT THEM. THE DOCUMENT SPEAKS FOR ITSELF.

18 MR. LEBOWITZ: Q. AND WHEN YOU REVIEWED THESE  
19 EVALUATIONS, THESE SPRING 2005 EVALUATIONS DURING THE CONTRACT  
20 RENEWAL PROCESS, YOU SAW A LOT OF FAVORABLE WRITTEN RESPONSES  
21 FOR PROFESSOR BLOUGH, CORRECT?

22 A. I PROBABLY DID. YES.

23 Q. LET'S LOOK AT WHAT'S MARKED AS PAGE 770 IN THIS  
24 PACKET.

25 A. YES.

26 Q. I'LL PUT IT UP HERE.

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1 SO THIS PAGE COMES OUT OF THE PACKET, AND IT IS A  
2 REVIEW OF WHAT'S LISTED AS THE HUMANITIES 107 CLASS; HUM 107.

3 A. YES.

4 Q. DO YOU KNOW WHAT CLASS THAT IS?

5 A. I'M PRETTY SURE THAT'S DIVERSITY IN THE WORKPLACE.

6 Q. THAT'S A CLASS THAT PROFESSOR BLOUGH DEVELOPED AND  
7 TAUGHT AT MENLO COLLEGE?

8 A. I'M NOT AWARE OF HER DEVELOPING IT, BUT I COULD  
9 IMAGINE THAT SHE WOULD.

10 Q. OKAY.

11 AND IN THIS DOCUMENT THIS STUDENT WROTE, IN RESPONSE  
12 TO THE QUESTION, "WHAT IS GOOD ABOUT THIS COURSE?" THE STUDENT  
13 WROTE, "EVERYTHING," CORRECT?

14 A. CORRECT.

15 Q. AND THE NEXT QUESTION, "WHAT IS GOOD ABOUT THE

16 INSTRUCTOR?" THIS STUDENT WROTE, "GREAT. REALLY MAKES YOU  
17 THINK ABOUT THE MATERIALS."

18 SO THIS IS A PRETTY FAVORABLE REVIEW, WOULDN'T YOU  
19 SAY?

20 A. YES.

21 Q. LET'S LOOK AT 772, IF YOU WOULD.

22 A. (WITNESS COMPLIES.)

23 Q. THIS IS ANOTHER REVIEW THAT YOU READ AS PART OF THE  
24 CONTRACT RENEWAL PROCESS, CORRECT?

25 A. CORRECT.

26 Q. AND THIS STUDENT WROTE, IN RESPONSE TO THE QUESTION,

180

1 "WHAT IS GOOD ABOUT THE COURSE?" THE STUDENT WROTE, "THIS  
2 COURSE IS GOOD BECAUSE IT TEACHES YOU DIVERSITY IN THE WORLD,  
3 HOW PEOPLE FEEL ABOUT DIFFERENT ISSUES."

4 A. THAT'S CORRECT.

5 Q. AND THEN, IN RESPONSE TO THE QUESTION, "WHAT IS GOOD  
6 ABOUT THE INSTRUCTOR?" "SHE ALWAYS STATES HER OPINION IN THE  
7 ISSUES, AND IT SPARKS A GROUP DISCUSSION WHICH HELPS FOR  
8 LEARNING."

9 A. "IT STARTS A GROUP DISCUSSION."

10 Q. OKAY. WE CAN TURN TO 788.

11 NOW THIS IS A DIFFERENT CLASS. THIS IS MANAGEMENT  
12 106. ARE YOU FAMILIAR WITH THAT CLASS?

13 A. YES. I'M PRETTY SURE THAT'S THE LEGAL ENVIRONMENT

14 CLASS, BUSINESS LEGAL ENVIRONMENT.

15 Q. AND IN THIS STUDENT'S EVALUATION, IN RESPONSE TO THE  
16 QUESTION, "WHAT IS GOOD ABOUT THE INSTRUCTOR?" THIS STUDENT  
17 WRITES, "SHE IS VERY WILLING TO GIVE INDIVIDUAL ATTENTION,"  
18 RIGHT?

19 A. YES.

20 Q. AND THAT'S AN IMPORTANT ASPECT OF TEACHING AT MENLO  
21 COLLEGE, CORRECT?

22 A. IT CERTAINLY IS.

23 Q. BECAUSE MENLO COLLEGE PRIDES ITSELF ON BEING A  
24 TEACHING INSTITUTION, RIGHT?

25 A. WE DO.

26 Q. AND PRIDES ITSELF ON BEING ATTENTIVE TO ITS STUDENTS'

181

1 NEEDS, CORRECT?

2 A. THAT'S CORRECT.

3 Q. WILL YOU TURN TO PAGE 808. THIS IS ANOTHER SECTION OF  
4 MANAGEMENT 106.

5 IT'S TYPICAL, CORRECT, THAT PROFESSOR BLOUGH WOULD  
6 TEACH MORE THAN ONE SECTION OF A PARTICULAR COURSE DURING A  
7 SEMESTER?

8 A. SHE COULD. I MEAN, SOMETIMES SHE'D BE TEACHING ONE  
9 SECTION, BUT QUITE OFTEN A COUPLE OF SECTIONS OF THE COURSE.

10 Q. AND SO IN RESPONSE TO THIS -- THIS STUDENT, IN  
11 RESPONSE TO THE QUESTION, AGAIN, "WHAT IS GOOD ABOUT THE



12 INSTRUCTOR," WRITES, "THE TEACHER IS VERY CONSIDERATE AND  
13 PASSIONATE AND ALWAYS RELATES THE SUBJECT TO PRACTICAL CURRENT  
14 ISSUES."

15 A. THAT'S CORRECT.

16 Q. AND THAT, AGAIN, IS ANOTHER IMPORTANT ASPECT OF  
17 TEACHING AT MENLO COLLEGE, RIGHT?

18 A. YES. WELL, WHAT DO YOU MEAN BY THAT?

19 Q. WELL, MENLO COLLEGE PRIDES ITSELF ON BEING KIND OF A  
20 PRACTICAL INSTITUTION, CORRECT?

21 A. WELL, IT'S A MANAGEMENT COLLEGE.

22 Q. AND SO REAL-WORD EXAMPLES ARE VERY IMPORTANT TO GIVE  
23 STUDENTS IN A MANAGEMENT TYPE OF ENVIRONMENT?

24 A. THAT WOULD BE IMPORTANT. YES.

25 Q. AND SO THIS STUDENT CERTAINLY BELIEVES THAT  
26 PROFESSOR BLOUGH HAS MET THAT PART OF HER TEACHING OBLIGATION?

182

1 MR. VARTAIN: OBJECTION AS TO HEARSAY.

2 THE COURT: SUSTAINED.

3 MR. LEBOWITZ: Q. TURN TO PAGE 838, IF YOU WOULD.

4 A. (WITNESS COMPLIES.)

5 Q. THIS STUDENT WRITES -- AGAIN, THE SAME QUESTION, "WHAT  
6 IS GOOD ABOUT THE INSTRUCTOR?" THE STUDENT WRITES,  
7 "PROFESSOR BLOUGH GIVES US A GOOD INSIGHT OF HOW LAWS WORK AND  
8 HOW IT CAN APPLY TO LIFE. SHE IS A GREAT INSTRUCTOR."

9 A. YES.

10 Q. ONE LAST EVALUATION FROM THIS PACKET; PAGE 842,  
11 STARTING AT THE TOP ON THIS EVALUATION.

12 IN RESPONSE TO THE QUESTION, "WHAT IS GOOD ABOUT THIS  
13 COURSE?" THE STUDENT WRITES, "THE CLASS HAD A GOOD ATMOSPHERE  
14 FOR DISCUSSION FOR EVERY TOPIC," CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND, "WHAT IS GOOD ABOUT THE INSTRUCTOR?"  
17 "PROFESSOR BLOUGH MADE IT EASY FOR US TO TALK ABOUT ANYTHING. I  
18 FELT A SENSE OF OPENNESS WHEN IT CAME TO DISCUSSIONS."

19 A. THAT'S CORRECT.

20 Q. AND, AGAIN, DISCUSSIONS AND OPEN EXCHANGE OF IDEAS IS  
21 AN IMPORTANT PART OF MENLO COLLEGE'S MISSION, ISN'T IT?

22 A. IT CERTAINLY IS.

23 Q. NOW, YOU CAN SET THOSE ASIDE FOR A MOMENT.

24 NOW, AS YOU MENTIONED EARLIER, ALSO INCLUDED IN THE  
25 DOSSIER FOR CONTRACT RENEWALS IS LETTERS OF RECOMMENDATION FROM  
26 OTHER FACULTY MEMBERS?

183

1 A. THAT'S RIGHT.

2 Q. AND IN THE FALL OF 2005, WHEN YOU REVIEWED  
3 PROFESSOR BLOUGH'S DOSSIER, YOU SAW LETTERS OF RECOMMENDATION  
4 FOR HER FROM FACULTY MEMBERS, CORRECT?

5 A. YES.

6 MR. LEBOWITZ: IF I COULD HAVE EXHIBIT 59, PLEASE.  
7 (PLAINTIFF'S EXHIBIT NO. 59 WAS MARKED FOR

8 IDENTIFICATION.)

9 MR. LEBOWITZ: Q. NOW, PROFESSOR PRATT, I'VE JUST

10 HANDED YOU WHAT WE'VE MARKED FOR IDENTIFICATION AS EXHIBIT 59 IN

11 THIS CASE.

12 DO YOU RECOGNIZE THIS DOCUMENT?

13 A. YES, I DO.

14 Q. AND CAN YOU TELL US WHAT THIS DOCUMENT IS, JUST IN

15 GENERAL?

16 A. IT'S A LETTER OF RECOMMENDATION FROM A FELLOW FACULTY

17 MEMBER FOR MARCY.

18 Q. AND THIS IS FROM A FACULTY MEMBER NAMED JACK

19 MCDONOUGH?

20 A. THAT'S CORRECT.

21 Q. AND PROFESSOR MCDONOUGH IS A LONGTIME PROFESSOR AT

22 MENLO COLLEGE, CORRECT?

23 A. HE IS, UH-HUH.

24 Q. AND THIS LETTER WAS CONTAINED IN PROFESSOR BLOUGH'S

25 DOSSIER IN THE FALL OF 2005, CORRECT?

26 A. YES.

184

1 Q. AND YOU REVIEWED AND RELIED UPON THIS LETTER IN

2 REACHING YOUR DETERMINATION AS TO WHETHER OR NOT TO RECOMMEND

3 RENEWAL?

4 A. THAT'S CORRECT.

5 MR. LEBOWITZ: YOUR HONOR, I'D OFFER EXHIBIT 59 INTO

6 EVIDENCE?

7 MR. VARTAIN: NO OBJECTION.

8 THE COURT: EXHIBIT 59 WILL BE ADMITTED.

9 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

10 (PLAINTIFF'S EXHIBIT NO. 59 WAS ADMITTED INTO  
11 EVIDENCE.)

12 MR. LEBOWITZ: LET'S SEE IF WE CAN GET THIS FOCUSED A  
13 LITTLE BETTER. THIS IS THE BEST WE CAN. I WILL DO MY BEST TO  
14 READ IT FOR YOU.

15 (WHEREUPON, THERE WAS DISCUSSION OFF THE RECORD.)

16 MR. LEBOWITZ: Q. SO THIS LETTER THAT WE'VE MARKED AS  
17 EXHIBIT 59, A LETTER OF RECOMMENDATION FROM PROFESSOR MCDONOUGH.  
18 IN THIS LETTER THE PROFESSOR WRITES, "MARCY HAS HAD MORE THAN  
19 HER SHARE OF MEDICAL AND OTHER UNFORESEEN PROBLEMS IN THE RECENT  
20 PAST, INCLUDING A THREE-YEAR PERIOD OF ABSENCE FROM TEACHING  
21 WHILE BATTLING HER SERIOUS CONDITION."

22 AT THE TIME YOU READ THIS LETTER IN THE FALL OF 2005,  
23 YOU KNEW, ASIDE FROM THIS LETTER, THAT PROFESSOR BLOUGH HAD BEEN  
24 OUT FOR THREE YEARS ON A MEDICAL LEAVE, CORRECT?

25 A. THAT'S CORRECT.

26 Q. THIS WASN'T THE FIRST TIME YOU LEARNED ABOUT IT?

185

1 A. NO. IT WASN'T THE FIRST TIME.

2 Q. PROFESSOR MCDONOUGH GOES ON. "SHE HAS BEEN BACK WITH  
3 US FOR ABOUT A YEAR, AND SHE'S BARELY SKIPPED A BEAT IN TERMS OF

4 THE QUALITY OF HER WORK IN THE CLASSROOM AND HER CONTRIBUTIONS  
5 TO THE FACULTY COMMITTEE WORK ASSIGNMENTS," CORRECT?

6 A. THAT'S CORRECT.

7 Q. WHEN YOU READ THIS LETTER DID YOU HAVE ANY DOUBT THAT  
8 PROFESSOR MCDONOUGH WAS BEING TRUTHFUL AND HONEST IN MAKING THIS  
9 STATEMENT?

10 A. YES. I MEAN, I DIDN'T HAVE ANY DOUBT. I BELIEVE THIS  
11 IS HOW HE FELT.

12 Q. AND YOU DIDN'T HAVE ANY DOUBT THAT HE WAS BEING  
13 TRUTHFUL IN EXPRESSING TO THE REVIEWER HIS OPINION OF  
14 PROFESSOR BLOUGH'S PERFORMANCE?

15 A. YES, ABSOLUTELY.

16 Q. AND PROFESSOR MCDONOUGH GOES ON, GETS A LITTLE MORE  
17 SPECIFIC. HE SAYS, "IN ADDITION TO HER" --

18 MR. VARTAIN: OBJECTION, ARGUMENTATIVE.

19 I DIDN'T LET HIM FINISH. SORRY, YOUR HONOR.

20 THE COURT: GO AHEAD. YOU MAY CONTINUE.

21 MR. LEBOWITZ: THANK YOU.

22 Q. "IN ADDITION TO HER PAST ACADEMIC ACCOMPLISHMENTS, AND  
23 HER LEADERSHIP POSITIONS IN CAMPUS ORGANIZATIONS, AND ON FACULTY  
24 COMMITTEES DURING THIS 2004/2005 ACADEMIC YEAR, MARCY HAS SERVED  
25 AS CHAIR OF THE PERSONNEL COMMITTEE OF THE FACULTY CENTER AS  
26 WELL AS SERVING ON THE FACULTY WORKLOAD COMMITTEE," CORRECT?

1 A. YES.

2 Q. WHAT IS THE FACULTY WORKLOAD COMMITTEE?

3 A. THAT WAS AN AD HOC COMMITTEE TO LOOK AT -- JUST WHAT  
4 THE TITLE SAYS, THE FACULTY WORKLOADS AND HOW MANY CLASSES AN  
5 INSTRUCTOR SHOULD BE TEACHING DURING A GIVEN SEMESTER.

6 Q. HOW MANY FACULTY MEMBERS ARE ON THE COMMITTEE?

7 A. I DON'T KNOW. I DON'T KNOW THE EXACT NUMBER. I JUST  
8 HAVE TO ESTIMATE.

9 Q. WHAT'S YOUR BEST ESTIMATE?

10 MR. VARTAIN: IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: THE BEST ESTIMATE WOULD BE, I WOULD SAY  
13 FIVE OR SIX.

14 MR. LEBOWITZ: Q. BACK TO THE LETTER THAT WE'VE  
15 MARKED AND THAT'S IN EVIDENCE.

16 PROFESSOR MCDONOUGH GOES ON TO SAY, "ALSO MS. BLOUGH  
17 PREPARED AND TAUGHT A NEW COURSE FOR OUR SPORTS MANAGEMENT  
18 STUDENTS, CALLED 'LEGAL AND SOCIAL ISSUES IN SPORTS MANAGEMENT,'  
19 DURING THIS ACADEMIC YEAR."

20 A. CORRECT.

21 Q. SO THAT CERTAINLY WOULD FULFILL PROFESSOR BLOUGH'S  
22 OBLIGATION AS A FACULTY MEMBER TO CONTINUE WITH THE DEVELOPMENT  
23 OF CURRICULUM IN THE SCHOOL, CORRECT?

24 A. YES. THERE WASN'T ANY KIND OF OBLIGATION, BUT IT  
25 WOULD BE SOMETHING THAT A FACULTY MEMBER COULD DO AND IT WOULD  
26 BE A BENEFIT. YES.

1 Q. SO IT WAS EVEN ABOVE AND BEYOND WHAT SHE WAS REQUIRED  
2 TO DO FOR THE COLLEGE?

3 A. I WOULDN'T SAY "ABOVE AND BEYOND." IT'S ONE OF THE  
4 WAYS THAT A FACULTY MEMBER CAN SHOW GOOD TEACHING AND GOOD  
5 SCHOLARSHIP.

6 Q. PROFESSOR MCDONOUGH GOES ON FROM THERE AND SAYS, "FOR  
7 THE 2005 AND 2006 YEAR, MARCY HAS AGREED TO PREPARE FOR AND  
8 TEACH ANOTHER NEW CLASS, COMMERCIAL LAW." YOU SEE THAT?

9 A. UH-HUH.

10 Q. SHE'S ALREADY TAUGHT A NEW CLASS IN THE 2004/2005  
11 SCHOOL YEAR, CORRECT?

12 A. THAT'S CORRECT. YES.

13 Q. AND THEN SHE'S IN THE PROCESS OF DEVELOPING YET  
14 ANOTHER NEW CLASS FOR THE COLLEGE?

15 A. THAT'S WHAT IT SAYS. YES.

16 Q. AND PROFESSOR MCDONOUGH GOES ON, "FINALLY, MARCY HAS  
17 ALSO BEEN WORKING WITH THE PROVOST IN CREATING A PRE-LAW  
18 CONCENTRATION FOR SUBMISSION TO THE CURRICULUM COMMITTEE IN THE  
19 NEAR FUTURE."

20 A. THAT'S CORRECT.

21 Q. WERE YOU AWARE OF THAT WORK THAT PROFESSOR BLOUGH WAS  
22 DOING BEFORE YOU READ THIS LETTER?

23 A. YES. I WASN'T SURE -- I WASN'T SURE ABOUT THE  
24 COMMERCIAL LAW, BUT THE OTHER TWO ONES FOR SURE. YEAH.

25 Q. THE PRE-LAW CONCENTRATION --

26 A. PRE-LAW CONCENTRATION, YES.

1 Q. -- WHAT WAS THAT?

2 A. WELL, WE -- AT MENLO WE HAVE MAJORS. AND THEN WE HAVE  
3 WHAT WE CALL CONCENTRATIONS, WHICH ARE LIKE AN ACCENT ON A  
4 MAJOR. SO SOMEONE MAJORING IN MANAGEMENT COULD CONCENTRATE IN,  
5 FOR INSTANCE, SPORTS MANAGEMENT AND TAKE SIX CLASSES TO FULFILL  
6 THAT CONCENTRATION.

7 Q. SO PROFESSOR BLOUGH WAS WORKING ON A WHOLE NEW  
8 CONCENTRATION TO BE AVAILABLE FOR STUDENTS?

9 A. THAT'S CORRECT.

10 Q. PROFESSOR MCDONOUGH GOES ON AND SAYS, "SINCE HER  
11 RETURN TO CAMPUS AFTER A DIFFICULT TIME, MARCY HAS 'ABLY,'"  
12 QUOTE, "PULLED HER WEIGHT," UNQUOTE, "IN TEACHING 100-PLUS  
13 STUDENTS DURING THIS PAST SEMESTER AND HAS WORKED WITH HER 26  
14 ADVISEES AS WELL."

15 A. IT SAYS THAT. YES.

16 Q. PROFESSOR MCDONOUGH GOES ON, "IN CONCLUSION, WE ARE  
17 ALL VERY GLAD TO HAVE MARCINE BACK ON THE FACULTY WITH US. SHE  
18 REMAINS A STRONG VOICE FOR ALL GROUPS AND VIEWPOINTS ON OUR  
19 SMALL BUT DIVERSE CAMPUS POPULATION, AND ONE WHO ISN'T AFRAID TO  
20 SPEAK UP WHEN SOME OF US STRAY FROM GOOD THINKING AND PERSONAL  
21 AND POLICY ISSUES IN OUR WORK AT MENLO COLLEGE. I AM PROUD TO  
22 COUNT MARCINE BLOUGH AS MY FRIEND, AND BECAUSE OF HER GOOD MIND,  
23 GOOD HEART AND EXCELLENCE IN TEACHING, I HEARTILY RECOMMEND HER  
24 FOR APPOINTMENT."



25 A. FOR "REAPPOINTMENT."

26 Q. "REAPPOINTMENT," EXCUSE ME.

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1 THAT'S A PRETTY GOOD LETTER OF RECOMMENDATION,  
2 WOULDN'T YOU SAY?

3 A. YES, IT IS.

4 Q. AND BASED ON YOUR REVIEW OF EVERYTHING IN THE DOSSIER,  
5 INCLUDING PROFESSOR BLOUGH'S STUDENT EVALUATIONS, THE LETTERS OF  
6 RECOMMENDATIONS, INCLUDING PROFESSOR MCDONOUGH'S  
7 RECOMMENDATION -- LETTER OF RECOMMENDATION, YOU AGREED AND YOU  
8 RECOMMENDED THAT PROFESSOR BLOUGH BE GRANTED A SIX-YEAR  
9 CONTRACT; ISN'T THAT CORRECT?

10 A. THAT'S CORRECT.

11 MR. LEBOWITZ: IF I CAN HAVE EXHIBIT 5, PLEASE.

12 (PLAINTIFF'S EXHIBIT NO. 5 WAS MARKED FOR  
13 IDENTIFICATION.)

14 MR. LEBOWITZ: APPROACH THE WITNESS, YOUR HONOR?

15 THE COURT: YES.

16 MR. LEBOWITZ: Q. PROFESSOR PRATT, CAN YOU PLEASE  
17 IDENTIFY FOR US WHAT WE'VE MARKED AS EXHIBIT 5 FOR  
18 IDENTIFICATION.

19 A. YES. THIS IS A LETTER TO THE PRESIDENT OF THE COLLEGE  
20 RECOMMENDING SIX-YEAR CONTRACTS FOR TWO PROFESSORS, TWO  
21 FULL-TIME PROFESSORS.

22 Q. AND THIS IS A MEMO WRITTEN BY YOURSELF?

23 A. YES, IT IS.

24 Q. AND SIGNED BY YOU?

25 A. YES.

26 MR. LEBOWITZ: YOUR HONOR, I WOULD OFFER EXHIBIT 5

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1 INTO EVIDENCE.

2 THE COURT: ANY OBJECTION?

3 MR. VARTAIN: NONE.

4 THE COURT: EXHIBIT 5 WILL BE ADMITTED.

5 (PLAINTIFF'S EXHIBIT NO. 5 WAS ADMITTED INTO  
6 EVIDENCE.)

7 MR. LEBOWITZ: Q. SO THIS MEMO THAT YOU WROTE ON  
8 DECEMBER 19TH OF 2005 TO PRESIDENT LOPEZ, THIS WAS PART OF THE  
9 NORMAL COURSE OF CONTRACT RENEWALS AS YOU DESCRIBED EARLIER,  
10 CORRECT?

11 A. THAT'S CORRECT.

12 Q. ONCE YOU REACHED YOUR CONCLUSION TO EITHER RECOMMEND  
13 OR NOT RECOMMEND, YOU WOULD WRITE A MEMO SUCH AS THIS AND GIVE  
14 IT TO THE PROVOST AND THE PRESIDENT?

15 A. THAT'S CORRECT.

16 Q. AND IN THIS INSTANCE, AGAIN, YOU AGREED THAT  
17 PROFESSOR BLOUGH SHOULD BE GIVEN A SIX-YEAR CONTRACT, CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND THAT WAS YOUR RECOMMENDATION?

20 A. THAT'S MY RECOMMENDATION.

21 Q. NOW YOU HAVE A CAVEAT ON THIS. YOU HAVE A LITTLE  
22 SOMETHING, A MESSAGE, I GUESS, FOR THE PRESIDENT. AND YOU SAY,  
23 "I DO HAVE SOME CONCERN, HOWEVER, ABOUT MARCINE BLOUGH'S HEALTH  
24 AFFECTING HER ABILITY TO FULFILL THE OBLIGATIONS OF A FULL-TIME  
25 FACULTY MEMBER."

26 WHAT WERE YOU REFERRING TO WHEN YOU WROTE THAT?

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1 A. WELL, I WAS REFERRING TO WHAT I CONSIDERED HER  
2 EMOTIONAL STATE AT THE TIME AND HER PHYSICAL STATE AS WELL.

3 Q. TELL ME ABOUT THE EMOTIONAL STATE. WHAT WAS IN YOUR  
4 MIND THAT YOU WERE REFERRING TO, AS FAR AS HEALTH AND  
5 PROFESSOR BLOUGH'S EMOTIONAL STATE?

6 A. I KNEW SHE WAS UNDER A LOT OF STRESS BECAUSE OF HER  
7 PERSONAL -- PERSONAL PROBLEMS. THAT WAS PART OF IT. AND I  
8 THINK SHE WAS ALSO FEELING DEPRESSED AT TIMES ABOUT HER PHYSICAL  
9 HEALTH.

10 Q. LET'S TALK FOR A MOMENT ABOUT THE PERSONAL PROBLEMS.  
11 YOU AND PROFESSOR BLOUGH, LIKE YOU SAID EARLIER, WERE  
12 FRIENDLY, CORRECT?

13 A. YES.

14 Q. YOU HAD A LONG-TERM PROFESSIONAL RELATIONSHIP?

15 A. THAT'S CORRECT.

16 Q. AND OVER THOSE YEARS, PROFESSOR BLOUGH AND YOU HAD  
17 MANY CONVERSATIONS OF A PERSONAL NATURE, CORRECT?

18 A. WE HAD -- I DON'T KNOW WHAT "MANY" IS, BUT WE'D HAVE

19 CONVERSATIONS LIKE THAT.

20 Q. THERE WAS NO MAJOR INHIBITIONS BETWEEN THE TWO OF YOU  
21 AS FAR AS TALKING ABOUT PERSONAL LIFE, FAMILY LIFE, THAT TYPE OF  
22 THING?

23 A. NO MAJOR INHIBITION, NO.

24 Q. IN FACT, PROFESSOR BLOUGH IS THE TYPE TO KIND OF TELL  
25 YOU WHAT'S GOING ON IN HER LIFE, ISN'T SHE?

26 A. I'D SAY SO, YES.

192

1 Q. AND SHE'S THE TYPE THAT SOME PEOPLE MIGHT ACTUALLY  
2 CLASSIFY IN THE CATEGORY OF KIND OF TOO MUCH INFORMATION?

3 A. I DON'T KNOW. MAYBE.

4 Q. SHE TELLS YOU ABOUT THINGS THAT ARE GOING ON WITH HER  
5 HUSBAND, RIGHT?

6 A. SHE DID, YEAH.

7 Q. AND SHE TOLD YOU THAT THEY WERE -- SHE WAS HAVING SOME  
8 MARITAL PROBLEMS?

9 A. SHE CERTAINLY DID.

10 Q. SHE TOLD YOU THAT OVER A PERIOD OF TIME, CORRECT?

11 A. THAT'S CORRECT.

12 Q. AND IT WASN'T -- SHE TOLD YOU THAT, I'M SURE, IN THE  
13 FALL OF 2005, CORRECT; YOU TALKED ABOUT THAT?

14 A. THAT'S CORRECT. YES.

15 Q. BUT YOU ALSO TALKED ABOUT THAT BEFORE THE FALL OF  
16 2005, RIGHT?

17 A. I BELIEVE SO.

18 Q. EVEN IN THE SPRING OF 2005?

19 A. I BELIEVE SO, YES.

20 Q. AND THE FALL OF 2004?

21 A. I DON'T KNOW IF IT WAS 2004. IT COULD HAVE BEEN. I

22 DON'T KNOW. I CAN'T REMEMBER.

23 Q. AND SO AT LEAST OVER -- IF YOU'RE USING PROFESSOR

24 MCDONOUGH'S LETTER OF RECOMMENDATION AS A POINT OF REFERENCE, AS

25 FAR AS TIMING --

26 A. YES.

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1 Q. -- CERTAINLY, FOR THE SPRING SEMESTER OF 2005, WHILE

2 PROFESSOR BLOUGH WAS HAVING SOME EMOTIONAL DIFFICULTIES RELATED

3 TO HER MARITAL LIFE, SHE WAS STILL PERFORMING TOPNOTCH, CORRECT?

4 A. I BELIEVE SO.

5 Q. CERTAINLY, THAT GLOWING LETTER FROM PROFESSOR

6 MCDONOUGH WAS WRITTEN AT THE SAME TIME THAT PROFESSOR BLOUGH WAS

7 TELLING YOU ABOUT THE EMOTIONAL DIFFICULTIES SHE WAS HAVING DUE

8 TO HER MARITAL PROBLEMS, CORRECT?

9 A. I THINK SO.

10 Q. SO, AT LEAST FOR THAT TIME PERIOD, WE CAN BE

11 REASONABLY ASSURED THAT PROFESSOR BLOUGH'S EMOTIONAL ISSUES,

12 SUCH AS THEY WERE RELATED TO HER MARITAL PROBLEMS, DID NOT

13 INHIBIT HER ABILITY TO PERFORM AT THE COLLEGE; IS THAT CORRECT?

14 A. I THINK SO. YES.

15 Q. AND YOU ALSO TALKED ABOUT -- YOU MENTIONED TWO THINGS  
16 WHEN YOU WERE DEFINING HEALTH HERE, IN EXHIBIT 5. YOU ALSO  
17 TALKED ABOUT PHYSICAL HEALTH?

18 A. THAT'S CORRECT.

19 Q. WHAT WERE YOU REFERRING TO, AS FAR AS PHYSICAL HEALTH?

20 A. I THINK HER BATTLE WITH CANCER AND CHEMOTHERAPY. AND  
21 I ALSO REMEMBER HER MENTIONING MIGRAINE HEADACHES.

22 Q. SHE MENTIONED MIGRAINE HEADACHES IN THE FALL OF '05?

23 A. I DON'T KNOW EXACTLY WHEN SHE DID. SHE COULD VERY  
24 WELL HAVE. I THINK SHE DID.

25 Q. IT COULD HAVE BEEN EARLIER THAN THAT?

26 A. IT COULD HAVE BEEN. YES.

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1 Q. BUT, CERTAINLY, AT THAT POINT IN TIME YOU WERE  
2 REFERENCING PROFESSOR BLOUGH'S ONGOING BATTLE WITH CANCER AND  
3 CHEMOTHERAPY, CORRECT?

4 A. THAT'S CORRECT. AND FATIGUE, TOO, THAT I THINK IT  
5 CAUSED.

6 Q. AND ONE OF THE WAYS THAT BATTLE MANIFESTED ITSELF, AS  
7 FAR AS YOU WERE AWARE, WAS FATIGUE, RIGHT?

8 A. THAT WAS ONE OF THE WAYS. YES.

9 Q. AND THAT'S WHAT YOU WERE REFERENCING IN THIS -- AT  
10 LEAST IN PART IN THIS --

11 A. YES. IN PART, YES.

12 Q. AND, OF COURSE, YOU KNEW THAT INFORMATION BECAUSE

13 PROFESSOR BLOUGH WAS OPEN AND HONEST WITH YOU ABOUT HER MEDICAL  
14 SITUATION, CORRECT?

15 A. I KNEW THIS FROM MARCY. YES.

16 Q. OKAY.

17 CERTAINLY, AT THE TIME YOU WROTE THIS LETTER YOU  
18 DIDN'T FEEL THAT PROFESSOR BLOUGH WAS HIDING ANYTHING ABOUT HER  
19 MEDICAL CONDITION FROM YOU?

20 A. I DIDN'T THINK SO. NO.

21 Q. AND GOING BACK, IN THE VERY FIRST PART OF YOUR  
22 TESTIMONY HERE TODAY WE WERE TALKING ABOUT -- AND I DON'T MEAN  
23 TO MISSTATE. I JUST WANT TO REFERENCE YOU BACK TO WHAT WE WERE  
24 TALKING ABOUT. WE WERE TALKING ABOUT TRYING TO NARROW DOWN IN  
25 TIME WHEN IT WAS THAT YOU HAD HAD THAT ONE CONVERSATION YOU  
26 COULD RECALL WITH TUNDE HERZEG IN THE FALL SEMESTER OF 2005.

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1 AND WE WERE ABLE TO NARROW IT DOWN TO SOMETIME BETWEEN THE  
2 MIDDLE OF THE 2005 SEMESTER AND DECEMBER 10TH, CORRECT?

3 A. THAT'S CORRECT.

4 Q. ALL RIGHT.

5 AND SO BY THE TIME YOU WROTE THIS LETTER ON  
6 DECEMBER 19TH, RECOMMENDING A SIX-YEAR CONTRACT RENEWAL, YOU HAD  
7 ALREADY HAD THE INFORMATION FROM MS. HERZEG, CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND EVEN WITH THAT KNOWLEDGE AND WITH THE INFORMATION  
10 FROM MS. HERZEG, YOU STILL ENDORSED AND RECOMMENDED

11 PROFESSOR BLOUGH FOR A SIX-YEAR CONTRACT RENEWAL, CORRECT?

12 A. THAT'S CORRECT.

13 MR. LEBOWITZ: IF I CAN HAVE EXHIBIT 8, PLEASE.

14 (PLAINTIFF'S EXHIBIT NO. 8 WAS MARKED FOR  
15 IDENTIFICATION.)

16 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

17 Q. PROFESSOR PRATT, WE'VE HANDED YOU WHAT WE'VE MARKED AS  
18 EXHIBIT 8 FOR IDENTIFICATION. DO YOU RECOGNIZE THIS DOCUMENT?

19 A. YES, I DO.

20 Q. CAN YOU DESCRIBE FOR US, IN GENERAL TERMS, WHAT THIS  
21 DOCUMENT IS?

22 A. YES. IT'S AN E-MAIL DOCUMENT FROM MARCY TO ME,  
23 FEBRUARY 7, 2006.

24 Q. AND YOU RECEIVED THIS E-MAIL?

25 A. I DID.

26 Q. AND YOU READ THIS E-MAIL WHEN YOU RECEIVED IT?

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1 A. I DID.

2 MR. LEBOWITZ: YOUR HONOR, WE WOULD OFFER EXHIBIT 8  
3 INTO EVIDENCE.

4 THE COURT: ANY OBJECTION?

5 MR. VARTAIN: NO OBJECTION.

6 THE COURT: EXHIBIT 8 WILL BE ADMITTED.

7 (PLAINTIFF'S EXHIBIT NO. 8 WAS ADMITTED INTO  
8 EVIDENCE.)



9 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

10 WE WILL DO OUR BEST TO HELP THE JURY READ IT.

11 Q. SO EXHIBIT 8 IS AN E-MAIL THAT PROFESSOR BLOUGH WROTE  
12 TO YOU IN THE VERY FIRST WEEK OF FEBRUARY OF 2006, CORRECT?

13 A. CORRECT.

14 Q. NOW, BY THIS TIME THE SPRING 2006 SEMESTER HAD BEGUN?

15 A. THAT'S RIGHT.

16 Q. AND, IN FACT, IT HAD BEGUN ON JANUARY 9TH OF THAT  
17 YEAR?

18 A. THAT COULD BE.

19 Q. AND IN THIS E-MAIL PROFESSOR BLOUGH SAYS TO YOU,  
20 "LOWELL" -- SHE, OF COURSE, WAS FRIENDLY WITH YOU AND REFERRED  
21 TO YOU BY FIRST NAME, CORRECT?

22 A. THAT'S RIGHT.

23 Q. SAID, "LOWELL, I KNOW THAT YOU HAVE BEEN TROUBLED BY  
24 SHORT CLASSES THIS YEAR. I'VE BEEN VERY DEPRESSED THAT I DON'T  
25 HAVE THE STAMINA. HOWEVER, LAST NIGHT ON THE WAY HOME I  
26 REALIZED THAT THE PROBLEM WAS MY HEARING. FOR SOMEONE WHO RUNS

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1 ALL CLASSES WITH SUBSTANTIAL PARTICIPATION, NOT BEING ABLE TO  
2 HEAR IS IMPOSSIBLE. I AM CURRENTLY HAVING WORK DONE ON THIS  
3 PROBLEM; PROBABLY TO THE POINT OF WEARING HEARING AIDS, WHICH IS  
4 ALSO DEPRESSING. IF YOU WOULD LIKE TO TALK ABOUT THIS FURTHER,  
5 PLEASE LET ME KNOW," PARENTHESIS, "IF I CAN HEAR YOU," CLOSE  
6 PARENTHESIS. "THANKS, MARCY."

7 SO WHEN YOU READ THIS E-MAIL IN THE FIRST PART OF  
8 FEBRUARY OF 2006, WAS THIS THE FIRST YOU HAD LEARNED OF  
9 PROFESSOR BLOUGH'S HEARING PROBLEMS?

10 A. THAT'S RIGHT.

11 Q. AND SHE WAS TELLING YOU -- SHE, FIRST OF ALL, IN THE  
12 BEGINNING OF THE E-MAIL, REFERS TO SHORT CLASSES AND THAT SHE  
13 KNEW THAT YOU WERE CONCERNED ABOUT THOSE?

14 A. THAT'S RIGHT.

15 Q. AND THAT'S BECAUSE YOU AND SHE HAD TALKED ABOUT THIS?

16 A. THAT'S RIGHT.

17 Q. AND SHE HAD TOLD YOU THAT SHE, TOO, WAS CONCERNED  
18 ABOUT THE FACT THAT SHE HAD SOME -- THAT THERE WERE SHORT  
19 CLASSES?

20 A. YES, SHE DID.

21 Q. THIS WASN'T SOMETHING SHE WAS PROUD OF?

22 A. NO.

23 Q. AND IN THIS E-MAIL SHE TELLS YOU THAT IT'S HER STAMINA  
24 THAT HAS BEEN CAUSING HER PROBLEMS, CORRECT?

25 A. THAT'S CORRECT.

26 Q. AND IT'S THE STAMINA THAT IS CAUSING HER TO BE

198

1 DEPRESSED, CORRECT? HER LACK OF STAMINA, TO BE MORE SPECIFIC.

2 A. THAT'S WHAT SHE SAYS HERE. YES.

3 Q. AND LACK OF STAMINA, YOU UNDERSTAND TO BE A PHYSICAL  
4 PROBLEM?

5 A. THAT'S CORRECT.

6 Q. AND SO THE DEPRESSION THAT SHE'S TELLING YOU ABOUT IN  
7 THIS E-MAIL IS A FUNCTION OF HER PHYSICAL CONDITION, CORRECT?

8 MR. VARTAIN: OBJECTION. CALLS FOR MEDICAL OPINION.

9 THE COURT: SUSTAINED.

10 MR. LEBOWITZ: Q. AS YOU READ THIS AND UNDERSTOOD  
11 THIS E-MAIL, YOU UNDERSTOOD THAT PROFESSOR BLOUGH WAS TELLING  
12 YOU THAT IT WAS HER STAMINA AND HER PHYSICAL CONDITION THAT WAS  
13 CAUSING HER DEPRESSION, CORRECT?

14 A. SHE WAS SAYING SHE WAS DEPRESSED THAT SHE DIDN'T HAVE  
15 STAMINA.

16 Q. SO IT WAS THE STAMINA THAT WAS CAUSING THE DEPRESSION.  
17 THAT'S WHAT SHE WAS TELLING YOU?

18 MR. VARTAIN: OBJECTION, ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 MR. LEBOWITZ: Q. AND SHE ALSO TELLS YOU ABOUT HER  
21 HEARING AND HER HEARING LOSS?

22 A. YES.

23 Q. AND SHE TELLS YOU WHY IT'S FRUSTRATING TO HER THAT  
24 SHE'S HAVING SOME HEARING PROBLEMS, BECAUSE SHE CAN'T DO THE JOB  
25 THAT SHE'S SO USED TO DOING IN RUNNING DISCUSSION-BASED CLASSES,  
26 RIGHT?

1 A. THAT'S CORRECT. YES.

2 Q. AND THAT'S VERY FRUSTRATING FOR HER, CORRECT? THAT'S

3 WHAT SHE'S TELLING YOU?

4 A. YES.

5 Q. AND SO YOU UNDERSTOOD, OF COURSE, WHEN YOU READ THIS  
6 E-MAIL THAT A HEARING PROBLEM IS A PHYSICAL PROBLEM?

7 A. THAT'S CORRECT.

8 Q. AND THAT SHE WAS TELLING YOU -- PROFESSOR BLOUGH WAS  
9 TELLING YOU THAT SHE WAS HAVING AN EMOTIONAL REACTION TO THE  
10 PHYSICAL PROBLEM, CORRECT?

11 A. SHE'S TOLD ME THAT, YES.

12 Q. AND SHE INVITED YOU TO TALK WITH HER MORE ABOUT IT,  
13 RIGHT?

14 A. YES. SHE ASKED, "IF YOU'D LIKE TO TALK," YOU KNOW,  
15 "PLEASE, LET ME KNOW."

16 Q. AND THAT WAS TYPICAL OF PROFESSOR BLOUGH, RIGHT, TO  
17 TALK AND BE OPEN ABOUT HER CONDITION?

18 A. YES. THAT'S RIGHT.

19 Q. SHE ALSO TELLS YOU IN THIS E-MAIL THAT SHE'S TAKING  
20 ACTION TO SOLVE HER PROBLEMS, RIGHT?

21 A. THAT'S RIGHT. YES.

22 Q. AND SHE'S GETTING MEDICAL WORK DONE ON THE PROBLEM, AS  
23 SHE SAYS, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOU WERE SATISFIED WHEN YOU READ THIS E-MAIL THAT  
26 PROFESSOR BLOUGH WAS DOING WHAT SHE COULD TO GET HERSELF

1 HEALTHY, CORRECT?

2 A. I WAS -- I FELT THAT SHE WAS ADDRESSING THIS PROBLEM.

3 YES.

4 Q. I WANT TO SKIP AHEAD IN TIME A LITTLE BIT NOW --

5 A. OKAY.

6 Q. -- TO THE END OF THE SPRING 2006 SEMESTER?

7 A. OKAY.

8 Q. LATE APRIL, MID TO LATE APRIL INTO THE BEGINNING OF

9 MAY.

10 NOW, DO YOU RECALL A SITUATION WHERE IN THAT TIME  
11 PERIOD PROFESSOR BLOUGH CALLED OUT TO YOU ON CAMPUS, ACROSS THE  
12 COURTYARD, "LOWELL, I FEEL MYSELF AGAIN."

13 DO YOU RECALL THAT HAPPENING?

14 A. I DON'T, BUT IT COULD HAVE HAPPENED.

15 Q. AND ISN'T IT TRUE THAT IN THIS TIME PERIOD, SOMETIME  
16 IN LATE APRIL OF 2006, PROFESSOR BLOUGH TOLD YOU THAT HER  
17 FATIGUE HAD BEEN RESOLVED?

18 A. I DON'T KNOW WHEN SHE TOLD ME THAT, BUT I -- I HAD A  
19 HAZY RECOLLECTION THAT SHE SAID SHE WAS GETTING BETTER.  
20 SOMETIME DURING THAT SEMESTER SHE TOLD ME THAT.

21 Q. SO SHE TOLD YOU THAT THE FATIGUE, WHICH SHE HAD  
22 REFERRED TO EARLIER -- EARLIER IN THE SEMESTER, BOTH IN  
23 CONVERSATIONS WITH YOU AND IN THE E-MAIL TO YOU, THAT BY THE END  
24 OF THE SEMESTER SHE WAS IMPROVING?

25 A. I JUST REMEMBER SHE FELT HER HEALTH WAS BETTER. I  
26 DON'T REMEMBER SPECIFICALLY WHAT SHE SAID, BUT SHE COULD HAVE

1 SAID THAT.

2 MR. LEBOWITZ: CAN WE HAVE EXHIBIT 9, PLEASE.

3 (PLAINTIFF'S EXHIBIT NO. 9 WAS MARKED FOR  
4 IDENTIFICATION.)

5 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

6 THE COURT: YES.

7 MR. LEBOWITZ: Q. WE'VE HANDED YOU WHAT WE'VE MARKED  
8 FOR IDENTIFICATION AS EXHIBIT 9, PROFESSOR PRATT. CAN YOU  
9 REVIEW THE DOCUMENT AND LET ME KNOW WHAT -- CAN YOU DESCRIBE IT  
10 FOR US, PLEASE.

11 A. YES. THESE ARE CLASS EVALUATIONS FOR A SPORTS  
12 MANAGEMENT CLASS FOR SPRING 2006, AND THEY ARE EVALUATIONS OF  
13 MARCY BLOUGH.

14 Q. IT'S MORE THAN JUST THE SPORTS MANAGEMENT CLASS?

15 A. OH, OKAY. LOOKS LIKE YOU'VE GOT A WHOLE PACKET HERE.

16 Q. PLEASE, TAKE A MOMENT TO REVIEW AND MAKE SURE THAT  
17 IT'S MORE THAN JUST ONE CLASS.

18 A. (WITNESS COMPLIES.)

19 YES. IT'S MORE THAN ONE CLASS.

20 Q. OKAY.

21 AND YOU REVIEWED THESE COURSE EVALUATIONS OR STUDENT  
22 EVALUATIONS AT SOME POINT DURING YOUR TENURE AS THE ACADEMIC  
23 DEAN, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOU REVIEWED THEM AS PART OF YOUR SUPERVISORY

1 A. YES. AGAIN, IT'S NOT A REGULAR THING THAT I WOULD  
2 READ ALL FACULTY MEMBERS' COURSE EVALUATIONS EVERY -- AFTER  
3 EVERY SEMESTER, BUT I CERTAINLY WOULD DO THAT, YOU KNOW, WITH  
4 CONTRACT REVIEWS.

5 Q. AND, IN PARTICULAR, FOR THIS EXHIBIT 9, THE SPRING  
6 2006 COURSE EVALUATIONS FOR PROFESSOR BLOUGH, YOU DID READ THOSE  
7 IN CARRYING OUT PART OF YOUR FUNCTIONS AS THE ACADEMIC DEAN,  
8 CORRECT?

9 A. YES.

10 MR. LEBOWITZ: YOUR HONOR, WE'D OFFER EXHIBIT 9 INTO  
11 EVIDENCE.

12 MR. VARTAIN: NO OBJECTION.

13 THE COURT: EXHIBIT 9 WILL BE ADMITTED.

14 (PLAINTIFF'S EXHIBIT NO. 9 WAS ADMITTED INTO  
15 EVIDENCE.)

16 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

17 Q. NOW, IT'S THE SAME CAVEAT AS EARLIER, THAT THE JURY  
18 WILL BE ABLE TO COUNT THESE IN THE JURY ROOM. I COUNTED 70  
19 WRITTEN EVALUATIONS. WE CAN LOOK THROUGH JUST A COUPLE OF THEM.  
20 WE'RE NOT GOING TO LOOK AT AS MANY AS BEFORE.

21 WHEN YOU REVIEWED THESE, YOU SAW SOME --

22 MR. VARTAIN: MAY I INTERPOSE AN OBJECTION, YOUR  
23 HONOR? I THINK THIS IS BOTH IRRELEVANT AND CUMULATIVE.

24 IRRELEVANT BECAUSE --

25 THE COURT: OVERRULED.

26 MR. LEBOWITZ: MAY WE APPROACH IF YOU'RE GOING TO HAVE

203

1 A SPEAKING OBJECTION?

2 THE COURT: IT'S OVERRULED.

3 MR. LEBOWITZ: YOUR HONOR, I APOLOGIZE. MY NUMBERS  
4 ARE OFF ON THIS SO WE'RE GOING TO COME BACK TO THIS A LITTLE  
5 LATER. WE'RE GOING TO SET THIS ASIDE AND MOVE ON TO A DIFFERENT  
6 TOPIC, AND WE WILL RETURN TO IT. IT'S MY OVERSIGHT AND I  
7 APOLOGIZE FOR THAT.

8 THE COURT: ALL RIGHT.

9 MR. LEBOWITZ: Q. NOW, APRIL 2006, AGAIN, NEAR THE  
10 END OF THE SPRING 2006 SEMESTER, YOU HAD A MEETING WITH  
11 PROFESSOR BLOUGH, CORRECT?

12 A. I HAD ONE MEETING -- I'M NOT SURE IF I DID. NO.

13 Q. WELL, YOU HAD A CONVERSATION WITH PROFESSOR BLOUGH,  
14 DIDN'T YOU, WHERE SHE REQUESTED SOME ACCOMMODATIONS FOR THE FALL  
15 OF 2006?

16 A. YES.

17 Q. AND THAT CONVERSATION YOU HAD WITH PROFESSOR BLOUGH,  
18 THAT OCCURRED NEAR THE END OF THE SPRING 2006 SEMESTER?

19 A. THAT'S MY RECOLLECTION, YES.

20 Q. AND IN THAT CONVERSATION, YOU WERE TALKING ABOUT  
21 PROFESSOR BLOUGH'S HEARING LOSS, CORRECT?



22 A. SHE WAS TALKING ABOUT IT.

23 Q. RIGHT. SHE WAS DESCRIBING FOR YOU, AGAIN, SOME OF THE  
24 ISSUES WITH HER HEARING LOSS, CORRECT?

25 A. I THINK SO. YES.

26 Q. AND WHAT SHE ASKED YOU WAS THAT -- FOR THE FALL 2006,

204

1 SHE ASKED IF SHE COULD HAVE A COUPLE OF THINGS CHANGED ABOUT HER  
2 WORKING ENVIRONMENT, CORRECT?

3 A. I JUST REMEMBER ONE THING.

4 Q. WELL, SHE ASKED YOU FOR SMALLER CLASSROOMS; ISN'T THAT  
5 CORRECT?

6 A. I DON'T REMEMBER THAT. I DO REMEMBER THAT SHE ASKED  
7 FOR SMALLER CLASSES.

8 Q. CLASS SIZES?

9 A. NUMBER OF STUDENTS IN CLASS.

10 Q. SO, AT LEAST AS FAR AS YOU CAN RECALL, SHE ASKED YOU  
11 FOR SMALLER CLASS SIZES COMPARED TO WHAT SHE HAD BEEN TEACHING  
12 IN THE SPRING 2006 SEMESTER?

13 A. THAT'S CORRECT.

14 Q. AND, AGAIN, IN THE SPRING 2006 SEMESTER, SHE WAS  
15 CARRYING A STUDENT LOAD OF APPROXIMATELY 126 OR 128 STUDENTS,  
16 CORRECT?

17 A. THAT'S CORRECT. I WAS SHOCKED.

18 Q. THAT WAS QUITE A LOAD, WASN'T IT?

19 A. YES, FAR TOO MANY.

20 Q. AND WHEN SHE MADE THIS REQUEST TO HAVE SMALLER CLASS  
21 SIZES IN THE FALL, WHAT DID YOU TELL HER?  
22 A. WELL, I REMEMBER -- AS I SAID, I WAS SHOCKED. AND I  
23 SAID, "NO FACULTY MEMBER SHOULD HAVE THIS NUMBER OF STUDENTS."  
24 AND I SAID, YOU KNOW, "CERTAINLY, WE'LL WORK TO NOT HAVE THAT  
25 HAPPEN IN THE FALL."  
26 Q. AND SHE WAS ASKING -- SHE TOLD YOU, AT LEAST, THAT ONE

205

1 OF THE REASONS WHY SHE WANTED SMALLER CLASS SIZES WAS SO THAT  
2 SHE COULD BE SURE TO HEAR ALL THE STUDENTS, CORRECT?  
3 A. SHE MAY HAVE, YES.  
4 Q. AND THE REQUEST FOR SMALLER CLASS SIZES WAS IN THE  
5 CONTEXT OF A CONVERSATION ABOUT PROFESSOR BLOUGH'S HEARING LOSS?  
6 A. I BELIEVE SHE MENTIONED THAT, YEAH.  
7 Q. AND IN THE SAME CONVERSATION, ISN'T IT TRUE THAT  
8 PROFESSOR BLOUGH TOLD YOU THAT SHE HAD STOPPED TAKING HER  
9 CHEMOTHERAPY MEDICATION?  
10 A. I CAN'T REMEMBER. SHE MIGHT HAVE.  
11 Q. AND SHE TOLD YOU IN THIS CONVERSATION THAT IT WAS HER  
12 BELIEF THAT HER HEARING LOSS HAD BEEN CAUSED BY HER  
13 CHEMOTHERAPY?  
14 A. YES, THAT MAKES -- I'M RECOLLECTING THAT NOW, YEAH.  
15 Q. AND SHE ALSO TOLD YOU IN THIS CONVERSATION THAT HER  
16 FATIGUE HAD BEEN RESOLVED, CORRECT?  
17 A. I CAN'T REMEMBER THAT.

18 Q. SHE COULD HAVE?

19 A. SHE COULD HAVE, YES.

20 Q. AND SHE ALSO TOLD YOU IN THIS CONVERSATION THAT THE  
21 FATIGUE SHE WAS EXPERIENCING IN THE SPRING OF 2006 WAS RELATED  
22 TO THE CHEMOTHERAPY MEDICATION, CORRECT?

23 A. I THINK SHE SAID THAT. YES.

24 Q. NOW, I KNOW WE CAN'T PLACE THIS CONVERSATION IN A  
25 SPECIFIC DATE, BUT I WANT TO ORIENT YOU IN TIME A LITTLE BIT.  
26 AND THERE WAS A LETTER FROM PRESIDENT LOPEZ ON MAY 8TH -- DATED

206

1 MAY 8, 2006. DO YOU RECALL THAT LETTER?

2 A. THIS IS A LETTER TO WHOM?

3 Q. I'M SORRY. I'LL BE MORE SPECIFIC.

4 A LETTER TO PROFESSOR BLOUGH FROM PRESIDENT LOPEZ,  
5 DATED MAY 8TH, 2006?

6 A. YES. I'M PRETTY SURE I WAS COPIED ON THAT LETTER.

7 Q. ISN'T IT TRUE YOU HAND-DELIVERED THAT LETTER TO  
8 PROFESSOR BLOUGH?

9 A. I DON'T REMEMBER DOING THAT. I COULD HAVE.

10 Q. SO USING THAT LETTER AND THAT DATE AS AN ORIENTATION  
11 POINT, THE CONVERSATION WE'RE JUST TALKING ABOUT, WHERE  
12 PROFESSOR BLOUGH AND YOU ARE DISCUSSING HER HEARING LOSS, HER  
13 FATIGUE, HER CHEMOTHERAPY AND THE REQUEST FOR SMALLER CLASSES IN  
14 THE FALL, THAT CONVERSATION HAPPENED BEFORE THAT MAY 8TH LETTER,  
15 CORRECT?

16 A. THAT'S CORRECT.

17 Q. NOW YOU WERE COPIED ON THIS --

18 THE COURT: I'M SORRY. WE NEED TO TAKE A FEW MINUTES'  
19 BREAK, AND I DON'T KNOW WHERE TO INTERRUPT. I DIDN'T FIND A  
20 GOOD TIME. I'M GOING TO JUST --

21 MR. LEBOWITZ: THIS IS AS GOOD A TIME.

22 THE COURT: LADIES AND GENTLEMEN, WE'RE JUST GOING TO  
23 TAKE A STRETCH BREAK, EVEN THOUGH WE'RE GOING TO BREAK AT LUNCH.  
24 BUT I DON'T THINK WE CAN GO ANOTHER 30 MINUTES WITHOUT STANDING  
25 UP A LITTLE BIT. LET'S COME BACK AT 20 MINUTES OF.

26 THANK YOU. SORRY FOR THE INTERRUPTION.

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1 MR. LEBOWITZ: PERFECT SPOT.

2 (WHEREUPON, A BRIEF RECESS WAS TAKEN.)

3 THE COURT: WE'RE BACK ON THE RECORD.

4 MR. LEBOWITZ, YOU MAY CONTINUE.

5 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

6 I HAVE EXHIBIT 60, YOUR HONOR.

7 (PLAINTIFF'S EXHIBIT NO. 60 WAS MARKED FOR  
8 IDENTIFICATION.)

9 MR. LEBOWITZ: MAY I APPROACH THE WITNESS?

10 THE COURT: YES.

11 MR. LEBOWITZ: Q. PROFESSOR PRATT, I'VE HANDED YOU  
12 WHAT WE'VE MARKED FOR IDENTIFICATION AS EXHIBIT 60 FOR TRIAL.  
13 CAN YOU TELL US IF YOU RECOGNIZE THIS DOCUMENT?

14 A. YES. IT'S A DOCUMENT CALLED "PROFESSIONAL GOALS AND  
15 PRIORITIES," FROM MARCINE BLOUGH, 2004, 2006.

16 Q. AND, ASIDE FROM THE TITLE, WHAT DO YOU KNOW THIS  
17 DOCUMENT TO BE? THIS IS PART OF HER DOSSIER, CORRECT?

18 A. I WOULD THINK SO, YES.

19 Q. IS IT SOMETHING THAT, TYPICALLY, A PROFESSOR INCLUDES  
20 IN THEIR DOSSIER FOR THEIR CONTRACT RENEWAL?

21 A. THEY CAN, YES. THEY CAN ALSO -- JUST AS A KIND OF  
22 ANNUAL STATEMENT, AS WELL.

23 Q. AND YOU REVIEWED -- IN THE COURSE OF COMING TO YOUR  
24 CONCLUSIONS, AS FAR AS PROFESSOR BLOUGH'S APPLICATION FOR  
25 CONTRACT RENEWAL IN THE FALL OF 2005, YOU REVIEWED AND RELIED ON  
26 THIS DOCUMENT, CORRECT?

208

1 A. I DID.

2 MR. LEBOWITZ: YOUR HONOR, WE'D ASK THAT EXHIBIT 60 BE  
3 ENTERED?

4 THE COURT: ANY OBJECTION?

5 MR. VARTAIN: NO, YOUR HONOR.

6 THE COURT: EXHIBIT 60 WILL BE ADMITTED.

7 (PLAINTIFF'S EXHIBIT NO. 60 WAS ADMITTED INTO  
8 EVIDENCE.)

9 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

10 Q. NOW, JUST QUICKLY, IN THIS DOCUMENT THAT WE'VE MARKED  
11 AS EXHIBIT 60, PROFESSOR BLOUGH LAID OUT, AT LEAST THE WAY SHE

12 SET UP THE DOCUMENT, CATEGORIES OF TEACHING, SCHOLARSHIP AND  
13 SERVICE, CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND UNDER EACH HEADING, SHE DESCRIBED WHAT HER -- BOTH  
16 HER ACCOMPLISHMENTS HAD BEEN OVER THE RECENT YEAR AND WHAT HER  
17 GOALS FOR THE FUTURE WOULD BE, CORRECT?

18 A. THAT'S CORRECT.

19 Q. THANK YOU.

20 NOW, GOING BACK AGAIN TO THE END OF THE SEMESTER,  
21 TALKING EARLY MAY 2006, THE END OF THE SPRING SEMESTER, YOU  
22 MENTIONED A MOMENT AGO THAT YOU RECEIVED THAT MAY 8TH LETTER  
23 FROM PRESIDENT LOPEZ TO PROFESSOR BLOUGH, CORRECT?

24 A. CORRECT.

25 Q. AND YOU RECEIVED AND READ A COPY OF THAT LETTER?

26 A. THAT'S RIGHT.

209

1 Q. AND IN THAT LETTER YOU READ THAT THE COLLEGE WAS  
2 REQUIRING PROFESSOR BLOUGH TO GO SEE A PSYCHIATRIST, CORRECT?

3 MR. VARTAIN: OBJECTION TO THE FORM OF THE QUESTION.  
4 ARGUMENTATIVE. DOCTOR.

5 THE COURT: SUSTAINED.

6 MR. LEBOWITZ: Q. WHAT DID YOU UNDERSTAND FROM  
7 READING THAT LETTER, AS FAR AS WHAT THE COLLEGE WAS ASKING  
8 PROFESSOR BLOUGH TO DO?

9 A. WELL, I'D PROBABLY HAVE TO SEE THE LETTER TO SPEAK

10 ACCURATELY.

11 Q. WELL, YOU RECALL THAT THE LETTER MENTIONED A DOCTOR BY  
12 NAME, DR. JAMES MISSETT?

13 A. I BELIEVE SO.

14 Q. HAVE YOU EVER SPOKEN DIRECTLY WITH DR. MISSETT?

15 A. NO, I HAVEN'T.

16 Q. DID YOU EVER COMMUNICATE TO DR. MISSETT A JOB  
17 DESCRIPTION FOR PROFESSOR BLOUGH?

18 A. NO, I DIDN'T.

19 Q. DID ANYBODY EVER ASK YOU TO PUT TOGETHER A LIST OF  
20 PROFESSOR BLOUGH'S ESSENTIAL JOB FUNCTIONS FOR DR. MISSETT TO  
21 CONSIDER?

22 A. NO.

23 Q. DID YOU EVER GIVE OR PREPARE ANYTHING FOR DR. MISSETT  
24 DESCRIBING ANY OF THE PROBLEMS PROFESSOR BLOUGH HAD BEEN HAVING  
25 IN THE CLASSROOM EARLIER IN THAT SEMESTER?

26 A. NO, I DIDN'T.

210

1 Q. AND DID YOU EVER COMMUNICATE IN ANY WAY TO DR. MISSETT  
2 THE SUBSTANCE OF ANY OF YOUR CONVERSATIONS WITH PROFESSOR BLOUGH  
3 ABOUT HER HEALTH CONDITIONS?

4 A. NO, I DIDN'T.

5 MR. LEBOWITZ: CAN I HAVE EXHIBIT 17.

6 (PLAINTIFF'S EXHIBIT NO. 17 WAS MARKED FOR  
7 IDENTIFICATION.)

8 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

9 THE COURT: YES.

10 MR. LEBOWITZ: Q. YOU'RE LOOKING AT WHAT WE'VE MARKED  
11 FOR IDENTIFICATION AS EXHIBIT 17.

12 HAVE YOU SEEN THIS DOCUMENT BEFORE?

13 A. YES, I HAVE.

14 Q. CAN YOU DESCRIBE FOR US, IN GENERAL TERMS, WHAT THE  
15 DOCUMENT IS?

16 A. WELL, IT'S AN E-MAIL FROM MARCY BLOUGH TO THE  
17 PRESIDENT OF THE COLLEGE, AND TO THE PROVOST, AND TO MYSELF.  
18 AND COPIED ON IT IS THE DIRECTOR OF HUMAN RESOURCES AND THE  
19 SUBJECT IS "DISABILITY."

20 Q. AND IT WAS WRITTEN ON JULY 22ND -- OR AT LEAST THE  
21 DOCUMENT HAS A DATE OF JULY 22, 2006 ON IT?

22 A. THAT'S CORRECT. YES.

23 Q. AND YOU RECEIVED AND READ THIS DOCUMENT?

24 A. YES.

25 MR. LEBOWITZ: YOUR HONOR, WE'D OFFER EXHIBIT 17 INTO  
26 EVIDENCE.

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1 THE COURT: ANY OBJECTION?

2 MR. VARTAIN: FOR A LIMITED -- NO OBJECTION, EXCEPT IT  
3 HAS -- THERE'S A HEARSAY OBJECTION TO THE TRUTH OF THE CONTENT.

4 THE COURT: WHY DON'T YOU APPROACH.

5 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)



6 THE COURT: GO AHEAD.

7 MR. LEBOWITZ: THANK YOU.

8 Q. SO LOOKING AT EXHIBIT 17, THIS JULY 22ND E-MAIL FROM  
9 PROFESSOR BLOUGH, YOU UNDERSTOOD BY THIS TIME PROFESSOR BLOUGH  
10 HAD RECEIVED A LETTER FROM THE COLLEGE TELLING HER THAT HER  
11 EMPLOYMENT HAD BEEN TERMINATED, CORRECT?

12 A. I'M PRETTY VAGUE ON THAT.

13 Q. BUT AT SOME POINT IN THE SUMMER OF 2006, YOU  
14 UNDERSTOOD THAT PROFESSOR BLOUGH HAD RECEIVED A LETTER TELLING  
15 HER THAT SHE HAD BEEN TERMINATED FROM THE COLLEGE, CORRECT?

16 A. MY UNDERSTANDING WAS THAT SHE -- YOU KNOW, HAD TO SEE  
17 A DOCTOR AND THAT THE DOCTOR SAID THAT HE DIDN'T THINK SHE WAS  
18 READY TO TEACH.

19 Q. AND BASED ON THAT AND SUBSEQUENT TO THAT, THE COLLEGE  
20 HAD TOLD PROFESSOR BLOUGH THAT HER EMPLOYMENT WAS LAPSING AT THE  
21 COLLEGE, CORRECT?

22 A. IT SEEMED TO ME IT WAS ON HOLD.

23 Q. AND WHEN YOU READ THE JULY 22ND LETTER, YOU -- EXCUSE  
24 ME, E-MAIL, PROFESSOR BLOUGH TOLD YOU, QUOTE, "I DO NOT  
25 UNDERSTAND WHAT IS HAPPENING TO ME AND MENLO," UNQUOTE, CORRECT?  
26 THAT'S THE VERY FIRST LINE.

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1 A. THAT'S RIGHT. YES.

2 Q. AND SHE SAYS, "I'M EXTREMELY DISTRESSED AND CONFUSED  
3 BY YOUR LETTER OF JULY 8TH. I HAVE NO DESIRE TO GO ON

4 DISABILITY," UNQUOTE. DO YOU SEE THAT?

5 A. YES.

6 Q. SHE GOES ON TO SAY, "I LOVE MY JOB," RIGHT?

7 A. THAT'S CORRECT. YES.

8 Q. "I LOVE THE STUDENTS. AND I THINK WITH SOME

9 REASONABLE ACCOMMODATIONS, I CAN GO ON AT MENLO," UNQUOTE,  
10 CORRECT?

11 A. CORRECT.

12 Q. NOW, YOU NEVER RESPONDED TO THIS E-MAIL, DID YOU?

13 A. THAT'S CORRECT.

14 Q. AND YOU UNDERSTOOD FROM READING JUST THOSE COUPLE OF  
15 LINES THAT I JUST READ TO YOU, THAT PROFESSOR BLOUGH WAS ASKING  
16 FOR HELP, RIGHT?

17 A. SHE WAS STATING, YOU KNOW, THAT SHE WAS UPSET.

18 Q. SHE WAS ALSO STATING, QUOTE, "I DO NOT UNDERSTAND WHAT  
19 IS HAPPENING TO ME," CORRECT?

20 MR. VARTAIN: ASKED AND ANSWERED.

21 THE COURT: OVERRULED.

22 THE WITNESS: "TO ME AND MENLO." SHE SAYS THAT, YES.

23 MR. LEBOWITZ: YEAH.

24 Q. SO SHE WAS TELLING YOU THAT SHE WAS -- SHE WAS ASKING  
25 THE RECIPIENTS OF THIS LETTER FOR HELP IN UNDERSTANDING WHAT WAS  
26 HAPPENING, CORRECT?

1 MR. VARTAIN: OBJECTION. THAT'S HEARSAY.

2 THE COURT: SUSTAINED.

3 MR. LEBOWITZ: Q. WHEN YOU READ THIS LETTER, YOU  
4 UNDERSTOOD -- OR YOU INTERPRETED IT, CERTAINLY, THAT  
5 PROFESSOR BLOUGH WAS SEEKING ASSISTANCE IN UNDERSTANDING WHAT  
6 WAS HAPPENING TO HER, CORRECT?

7 A. I THINK SO. IT'S IMPLICIT IN THAT.

8 Q. AND THIS LETTER WAS ADDRESSED TO FOUR INDIVIDUALS, ALL  
9 MEMBERS OF THE COLLEGE ADMINISTRATION, CORRECT?

10 A. IT WAS ADDRESSED TO THREE INDIVIDUALS AND A FOURTH WAS  
11 COPIED.

12 Q. OKAY.

13 PRESIDENT LOPEZ WAS ONE?

14 A. YES.

15 Q. YOURSELF?

16 A. YES.

17 Q. PROVOST SCHULTZ?

18 A. CORRECT.

19 Q. AND IT WAS COPIED TO STEPHANIE SAPRAI, THE DIRECTOR OF  
20 ADMINISTRATION AT THE TIME?

21 A. DIRECTOR OF HUMAN RESOURCES, I BELIEVE.

22 Q. OKAY.

23 MAY I HAVE EXHIBIT 19, PLEASE.

24 (PLAINTIFF'S EXHIBIT NO. 19 WAS MARKED FOR  
25 IDENTIFICATION.)

26 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

1 THE COURT: PLEASE.

2 MR. LEBOWITZ: Q. YOU'RE LOOKING AT WHAT WE'VE MARKED  
3 FOR IDENTIFICATION AS EXHIBIT 19. CAN YOU TELL US WHAT THIS  
4 DOCUMENT IS?

5 A. THAT'S AN E-MAIL FROM MARCY ON TUESDAY, AUGUST 1ST,  
6 2006, TO THE PRESIDENT, THE PROVOST AND MYSELF. AND THE SUBJECT  
7 IS "WAITING A RESPONSE."

8 Q. AND DID YOU RECEIVE THIS LETTER? OR THIS E-MAIL,  
9 EXCUSE ME.

10 A. I RECEIVED THIS E-MAIL, YES. NOT AT THE TIME.  
11 PROBABLY NOT AT THE TIME IT WAS SENT, BUT I READ IT. I WAS ON  
12 VACATION, SO I READ IT AT SOME POINT LATTER.

13 Q. WITHIN A WEEK OR TWO OF WHEN THIS WAS SENT, YOU READ  
14 IT?

15 A. PROBABLY A COUPLE OF WEEKS OR SO.

16 MR. LEBOWITZ: YOUR HONOR, I'D OFFER THIS INTO  
17 EVIDENCE, EXHIBIT 19.

18 THE COURT: ANY OBJECTION?

19 MR. VARTAIN: SUBJECT -- NO OBJECTION, SUBJECT TO  
20 THE -- NOT OFFERED FOR THE TRUTH. IT'S A HEARSAY OBJECTION.

21 MR. LEBOWITZ: I'LL READ JUST THE FIRST SENTENCE, YOUR  
22 HONOR.

23 THE COURT: WE'LL PASS.

24 MR. LEBOWITZ: IF I COULD READ THE FIRST HALF OF THE  
25 SENTENCE, THAT WILL BE UP TO THE COMMA.

26 THE COURT: YES.

1 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

2 Q. IN THIS AUGUST 1ST E-MAIL, PROFESSOR BLOUGH WRITES TO  
3 YOU, QUOTE, "I'M SURPRISED AND DISAPPOINTED NOT TO GET A  
4 RESPONSE TO THE ATTACHED E-MAIL OF JULY 22ND."

5 DO YOU SEE THAT?

6 A. YES.

7 Q. AND WHAT SHE'S REFERRING TO IS THE ATTACHED E-MAIL,  
8 THE E-MAIL WE WERE JUST LOOKING AT, CORRECT?

9 A. THAT'S CORRECT. YES.

10 Q. AND THIS E-MAIL, THAT WE HAVE MARKED FOR  
11 IDENTIFICATION AS EXHIBIT 19, ALSO WAS ADDRESSED TO PRESIDENT  
12 LOPEZ, PROVOST SCHULTZ AND YOURSELF, CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND YOU NEVER REPLIED TO THIS E-MAIL, DID YOU?

15 A. NO, I DIDN'T.

16 MR. LEBOWITZ: SUBJECT TO RESOLVING THAT ONE ISSUE, I  
17 HAVE NO OTHER QUESTIONS, YOUR HONOR.

18 THE COURT: ALL RIGHT, THEN. WE WILL BREAK FOR LUNCH  
19 HERE.

20 ALL RIGHT, LADIES AND GENTLEMEN. WE HAVE REACHED THE  
21 LUNCH HOUR. WE'RE GOING TO BREAK NOW UNTIL 1:30. IF YOU ARE  
22 GOING TO BE IN THE BUILDING, IF YOU'D TAKE THOSE BADGES WITH YOU  
23 AND KEEP THEM ON. THAT WOULD BE GREAT. I DON'T EXPECT YOU TO  
24 WEAR THEM IN LOCAL RESTAURANTS. AND LEAVE THOSE NOTEBOOKS HERE.

25 JUST REMEMBER THAT IF YOU HEAR ANYONE YOU THINK MIGHT BE TALKING  
26 ABOUT THE CASE, JUST MOVE AWAY, BECAUSE WE'RE ALL GOING TO BE IN

216

1 CLOSE QUARTERS.

2 AND LET ME REMIND YOU, YOU'RE NOT TO FORM OR EXPRESS  
3 ANY OPINIONS ABOUT THE CASE, NOT TO DO ANY RESEARCH,  
4 INVESTIGATION OR TALK TO ANYONE ABOUT ANYTHING IN REGARD TO THE  
5 CASE. HAVE A GOOD LUNCH AND JUST GATHER OUTSIDE AT 1:30.

6 I WILL ORDER THE WITNESS TO RETURN AT 1:30.

7 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

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217

1 PROCEEDINGS

2 DECEMBER 4, 2008 P.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD AFTERNOON. WE'RE BACK ON THE RECORD  
4 IN BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE  
5 PRESENT, AND ALL JURORS AND ALTERNATES.

6 GOOD AFTERNOON, LADIES AND GENTLEMEN. WE'RE GOING TO  
7 GO RIGHT BACK TO THE EXAMINATION OF PROFESSOR PRATT, SO WE CAN  
8 FINISH WITH HIS TESTIMONY.

9 MR. LEBOWITZ, YOU MAY CONTINUE.

10 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

11 I HAVE JUST THREE MORE QUESTIONS.

12 THE COURT: OF COURSE.

13 MR. LEBOWITZ: Q. PROFESSOR PRATT, WHEN YOU WERE  
14 DEAN -- ACADEMIC DEAN IN THE FALL OF 2005 SEMESTER, DID YOU EVER  
15 ACTUALLY GO AND OBSERVE MARCINE BLOUGH TEACHING ANY CLASS?

16 A. NO, I DIDN'T.

17 Q. AND THE SAME QUESTION, THE SPRING OF 2006 SEMESTER,  
18 WHEN YOU WERE THE ACADEMIC DEAN, SUPERVISOR OF THE FACULTY, DID  
19 YOU GO AND ACTUALLY PERSONALLY OBSERVE MARCINE BLOUGH TEACH ANY  
20 CLASSES?

21 A. NO, I DID NOT.

22 Q. AS ACADEMIC DEAN, YOU HAD THE ABILITY AND AUTHORITY TO  
23 WALK IN AND OBSERVE ANY PROFESSORS TEACHING, ISN'T THAT CORRECT?

24 A. I BELIEVE I WOULD. YES.

25 MR. LEBOWITZ: THANK YOU, YOUR HONOR. I HAVE NO MORE  
26 QUESTIONS.

218

1 THE COURT: CROSS-EXAMINATION?

2 MR. VARTAIN: YES, YOUR HONOR. THANK YOU.

3 MAY I HAVE PERMISSION TO DO THIS SUBJECT TO CALLING  
4 THE WITNESS IN MY CASE IN CHIEF?

5 THE COURT: YES, YOU MAY.

6 MR. VARTAIN: THANK YOU, YOUR HONOR.

7

8 CROSS-EXAMINATION

9 BY MR. VARTAIN:

10 Q. PROFESSOR PRATT, THERE WAS SOME QUESTIONS FROM  
11 MR. LEBOWITZ ABOUT DR. MISSETT, THE INDEPENDENT MEDICAL  
12 EVALUATOR. I WANT TO TAKE YOU BACK TO THOSE QUESTIONS.

13 MR. LEBOWITZ WAS ASKING YOU, DID YOU EVER CALL HIM OR  
14 GIVE HIM ANY INFORMATION ABOUT PROFESSOR BLOUGH. DO YOU  
15 REMEMBER THOSE QUESTIONS?

16 A. YES, I DO.

17 Q. DID PROFESSOR BLOUGH EVER ASK YOU TO CONTACT THE  
18 INDEPENDENT MEDICAL EVALUATOR AND GIVE HIM ANY INFORMATION IN



19 YOUR POSSESSION?

20 A. NO.

21 Q. DID ANYONE FROM THE COLLEGE, THE HR DEPARTMENT, OR THE  
22 PRESIDENT OR ANYBODY SAY THAT THAT WAS SOMETHING YOU SHOULD BE  
23 DOING? THAT IS, GIVING INFORMATION TO THE OUTSIDE MEDICAL  
24 EVALUATOR?

25 A. NO.

26 Q. DID DR. MISSETT, THE OUTSIDE MEDICAL EVALUATOR, EVER

219

1 ASK YOU OR CONTACT YOU TO TRY TO GET INFORMATION ABOUT  
2 PROFESSOR BLOUGH?

3 A. NO.

4 Q. NOW, MR. LEBOWITZ ASKED YOU SOME QUESTIONS ABOUT  
5 E-MAILS THAT PROFESSOR BLOUGH HAD SENT YOU THAT ONE SUMMER. I  
6 THINK YOU SAID YOU WENT ON VACATION. YOU WERE GONE FOR A COUPLE  
7 OF WEEKS BEFORE READING THAT ONE E-MAIL. DO YOU REMEMBER THOSE  
8 QUESTIONS?

9 A. YES, I DO.

10 Q. AT THE TIME THAT THOSE E-MAILS IN THE SUMMER FROM  
11 PROFESSOR BLOUGH CAME TO YOU, WAS IT YOUR UNDERSTANDING THAT THE  
12 MATTER WAS ALREADY WITH THE INDEPENDENT MEDICAL EVALUATOR?

13 A. YES.

14 Q. HAD YOU RECEIVED ANY REQUESTS FROM THE COLLEGE'S HR  
15 DEPARTMENT REGARDING WRITING LETTERS BACK AND FORTH TO  
16 PROFESSOR BLOUGH ABOUT HER MEDICAL MATTERS?

17 A. NO.

18 Q. HAD THEY TOLD YOU THAT YOU SHOULD REFER ANY CONTACT  
19 FROM PROFESSOR BLOUGH ABOUT MEDICAL MATTERS TO THE HR  
20 DEPARTMENT?

21 A. COULD YOU ASK THAT QUESTION AGAIN?

22 Q. SURE.

23 WHY IS IT THAT YOU DIDN'T RESPOND TO  
24 PROFESSOR BLOUGH'S E-MAILS ONCE YOU GOT BACK FROM VACATION?

25 A. WELL, IT WAS MY UNDERSTANDING THAT ALL COMMUNICATION  
26 SHOULD GO THROUGH THE HUMAN RESOURCES DEPARTMENT.

220

1 Q. AND IN YOUR JOB AS DEAN, WAS IT SOMETHING THAT WAS  
2 NORMAL, FOR IF THERE WAS A MEDICAL ISSUE WITH A FACULTY MEMBER,  
3 AN EMPLOYEE, THAT WOULD GET HANDLED BY THE HR DEPARTMENT?

4 A. YES.

5 Q. OKAY.

6 SO THAT REQUEST TO HANDLE MATTERS WITH PROFESSOR  
7 BLOUGH ONCE SHE WAS SENT TO THE DOCTOR, THAT DIDN'T SEEM UNUSUAL  
8 TO YOU, DID IT?

9 A. NO, IT DIDN'T.

10 Q. WASN'T IT TRUE, THOUGH, THAT ONE SUMMER  
11 PROFESSOR BLOUGH ACTUALLY CALLED YOU ON THE PHONE? THAT IS, AT  
12 THE SAME TIME PERIOD WE'RE TALKING ABOUT?

13 A. IT WAS SUMMER 2006. YES, WE TALKED ON THE PHONE.

14 Q. OKAY.

15 YOU DIDN'T REFUSE TO TALK TO HER, DID YOU, ON THE  
16 PHONE?

17 A. NO. NO. I JUST SAID THAT I COULDN'T TALK ABOUT THE  
18 SITUATION.

19 Q. THE MEDICAL SITUATION?

20 A. YES.

21 Q. OKAY.

22 YOU DIDN'T SHINE HER OFF AND REFUSE TO TALK TO HER AT  
23 ALL JUST BECAUSE SHE WAS GOING TO A MEDICAL EVALUATOR, DID YOU?

24 MR. LEBOWITZ: OBJECTION, YOUR HONOR. LEADING;  
25 ARGUMENTATIVE.

26 THE COURT: OVERRULED.

221

1 THE WITNESS: NO.

2 MR. VARTAIN: Q. NOW, AT THE END OF THAT SCHOOL YEAR,  
3 THE SCHOOL YEAR THAT MR. LEBOWITZ WAS ASKING ABOUT, 2005 -- FALL  
4 2005, SPRING OF 2006, HE ASKED YOU ABOUT A CONVERSATION THAT YOU  
5 HAD WITH PROFESSOR BLOUGH WHERE SHE ASKED YOU WHETHER YOU COULD  
6 HELP HER GET CLASSES WITH FEWER STUDENTS?

7 A. YES.

8 Q. I WANT TO DIRECT YOU TO THAT CONVERSATION.

9 WHEN WAS THAT CONVERSATION, IN TERMS OF EXAM TIMES FOR  
10 THE END-OF-THE-YEAR EXAMS?

11 A. WELL, I WOULD FIGURE THAT IT WAS, YOU KNOW, CLOSE TO  
12 EXAMS OR IT MIGHT HAVE BEEN EXAM PERIOD.

13 Q. OKAY.

14 SO THAT WAS AT THE TIME OF THE YEAR WHEN THE STUDENTS  
15 ARE READY TO GO HOME FOR THE SUMMER?

16 A. AFTER THEIR EXAMS, YEAH.

17 Q. OKAY.

18 DURING THAT WHOLE YEAR, WAS IT EVER THE CASE THAT  
19 PROFESSOR BLOUGH CAME TO YOU AND SAID, "I GOT TOO MANY STUDENTS.  
20 CAN YOU LOWER THE STUDENT LOAD FOR ME OR GET ME LESS STUDENTS?"

21 A. I BELIEVE THE FIRST TIME SHE BROUGHT IT UP WAS TOWARD  
22 THE END OF THE SEMESTER.

23 Q. THE SCHOOL YEAR, IN MAY?

24 A. THE SCHOOL YEAR AT THE END OF '06.

25 Q. DURING THAT SCHOOL YEAR, HAD SHE BROUGHT IT UP TO YOU  
26 BEFORE THAT SHE WANTED YOU TO TAKE ANY ACTION TO GET HER FEWER

222

1 STUDENTS?

2 A. I DON'T BELIEVE SO.

3 Q. WAS THERE ANY DISABILITY ACCOMMODATION THAT  
4 PROFESSOR BLOUGH HAD EVER ASKED YOU FOR THROUGHOUT THE YEARS,  
5 OTHER THAN THAT SMALL -- FEWER STUDENTS ACCOMMODATION?

6 A. NO.

7 Q. WHEN MR. LEBOWITZ ASKED YOU ABOUT THAT E-MAIL WHERE  
8 PROFESSOR BLOUGH SAID SOMETHING TO YOU ABOUT BEING DEPRESSED, I  
9 WANT TO TAKE YOU BACK TO THAT ONE E-MAIL. I DON'T NEED TO PUT  
10 IT UP ON THE SCREEN. I KNOW WE DON'T NEED TO GET THE E-MAIL

11 BACK UP, BUT DO YOU REMEMBER THE E-MAIL I'M TALKING ABOUT?

12 A. YES.

13 Q. OKAY.

14 THAT'S THE E-MAIL WHERE PROFESSOR BLOUGH IS TELLING  
15 YOU SOMETHING LIKE, "I KNOW, DEAN PRATT, YOU'RE CONCERNED  
16 ABOUT I'M SHORTENING THE CLASSES." YOU REMEMBER THAT E-MAIL?

17 A. YES, I DO.

18 Q. BEFORE SHE WROTE THAT E-MAIL, HAD YOU HAD A  
19 CONVERSATION WITH PROFESSOR BLOUGH WHERE YOU TOLD HER THAT YOU  
20 WERE CONCERNED ABOUT THAT SHE WAS CANCELING OR SHORTENING  
21 CLASSES AND LETTING THE STUDENTS OUT TOO EARLY?

22 A. YES.

23 Q. DO YOU REMEMBER ANYTHING SPECIFIC ABOUT THAT  
24 CONVERSATION, OTHER THAN YOU TOLD HER THAT YOU DIDN'T WANT HER  
25 TO DO THAT?

26 A. NOTHING VERY SPECIFIC ABOUT IT. NO.

223

1 Q. OKAY.

2 DID SHE -- AT THAT TIME THAT YOU TALKED TO HER, DID  
3 SHE ASK YOU FOR ANY DISABILITY ACCOMMODATIONS?

4 A. NO.

5 Q. THE FIRST TIME SHE ASKED YOU SAID WAS AT THE END OF  
6 THE SCHOOL YEAR?

7 A. THAT'S MY RECOLLECTION.

8 Q. AND WHEN YOU SAID YOU WOULD HELP HER WITH THOSE, WERE

9 YOU TALKING ABOUT AFTER THE SUMMERTIME WHEN SCHOOL WOULD START  
10 UP?

11 A. FOR HER FALL CLASSES.

12 Q. OKAY.

13 NOW, I WANT TO TAKE YOU BACK TO THAT SPRINGTIME, THE  
14 SPRING OF 2006. YOU SAID THAT YOU HAD -- MR. LEBOWITZ ASKED YOU  
15 A NUMBER OF QUESTIONS ABOUT THIS PERSON, THIS EMPLOYEE OF YOURS,  
16 MS. HERZEG HAD TOLD YOU ON A NUMBER OF OCCASIONS THAT  
17 PROFESSOR BLOUGH WAS MISSING CLASSES, THAT THE STUDENTS HAD BEEN  
18 TELLING HER THAT?

19 A. TUNDE HERZEG.

20 Q. AND WHAT IS HER JOB? EXPLAIN TO THE JURY HOW SHE  
21 WOULD EVEN KNOW HOW MANY CLASSES THAT PROFESSOR BLOUGH WAS  
22 UNABLE -- OR MISSING?

23 A. WELL, HER JOB WAS REALLY TO ADMINISTER ACADEMIC  
24 AFFAIRS, AND SHE WOULD KNOW WHEN FACULTY MEMBERS WOULD CALL IN.  
25 IN FACT, THEY CALLED HER TO SAY THEY WEREN'T GOING TO BE IN FOR  
26 CLASSES, AND SHE PUT NOTES ON DOORS. AND SHE KNEW A LOT -- SHE

224

1 KNEW STUDENTS. SHE WAS EVEN TAKING SOME CLASSES HERSELF, ONE  
2 CLASS A SEMESTER OFTEN. AND SO SHE HAD -- YOU KNOW, SHE KNEW A  
3 LOT ABOUT WHAT WAS GOING ON IN THE BUILDING, IN BRAMER'S HALL,  
4 WHERE MOST OF THE CLASSES ARE, THE MAJORITY OF THE CLASSES.

5 Q. SO WAS IT MS. HERZEG'S JOB TO TAKE CARE OF FACULTY  
6 MEMBERS' PHONE CALLS WHEN THEY SAID THEY WERE OUT ILL, COULDN'T

7 COME TO CLASS?

8 A. YES. THAT WAS PART OF HER JOB.

9 Q. SO WHEN SHE REPORTED TO YOU THOSE THREE OR FOUR TIMES  
10 OVER THAT SPRING SEMESTER THAT PROFESSOR BLOUGH WAS MISSING  
11 CLASSES, THAT SEEMED LIKE SHE WOULD KNOW THAT INFORMATION, SO  
12 YOU TRUSTED THAT INFORMATION?

13 A. I DID.

14 Q. YOU ALSO MENTIONED A PERSON BY THE NAME OF RACHEL,  
15 WHO'S GOING TO COME HERE AND TESTIFY LATER --

16 MR. LEBOWITZ: OBJECTION, YOUR HONOR.

17 THE COURT: I'D LIKE TO HEAR A QUESTION, PLEASE.

18 MR. VARTAIN: Q. THE QUESTION WAS, YOU MENTIONED  
19 RACHEL TIPTON, WHO'S GOING TO BE HERE IN THE COURTROOM LATER.  
20 WHAT, IF ANY, COMMUNICATIONS DID YOU HAVE WITH RACHEL? AND TELL  
21 THE JURY WHAT HER JOB WAS AT THE SCHOOL THAT SPRING OF 2006.

22 A. OKAY.

23 HER JOB IS, SHE'S COORDINATOR OF ACADEMIC ADVISING.  
24 AND IN HER CAPACITY SHE WOULD MEET WITH STUDENTS REGULARLY TO  
25 TALK ABOUT THEIR SCHEDULES AND MAKE SURE THAT THEY WERE IN LINE  
26 TO GRADUATE IN A TIMELY WAY. AND SO SHE HAD A LOT OF TRAFFIC IN

225

1 HER OFFICE.

2 Q. WAS PART OF HER JOB TO TALK TO STUDENTS ABOUT THEIR  
3 PROBLEMS AND ANY CONCERNS THEY HAD WITH FACULTY MEMBERS OR  
4 ANYTHING ELSE?

5 A. WELL, IT WASN'T NECESSARILY HER JOB TO LISTEN, TO ASK  
6 THEM QUESTIONS. BUT IN HER CAPACITY, THEY WOULD OFTEN TELL HER  
7 AND STILL DO.

8 Q. WHAT DID MS. TIPTON TELL YOU IN THAT SPRING OF 2006,  
9 IF ANYTHING, ABOUT THINGS STUDENTS WERE TELLING HER ABOUT  
10 PROFESSOR BLOUGH?

11 A. SHE SAID THAT STUDENTS HAD MENTIONED MISSED CLASSES  
12 AND SHORTENING OF CLASSES.

13 Q. SO IN THE SPRING OF 2006 WAS IT, IN YOUR MIND, A  
14 SIGNIFICANTLY DIFFERENT SITUATION WITH REGARD TO ABSENTEEISM IN  
15 THE SPRING OF 2006 FOR PROFESSOR BLOUGH, AS COMPARED WITH THE  
16 FALL OF 2005?

17 A. YES. YEAH.

18 Q. NOW, I WANTED TO ASK YOU, IN REGARDS TO THAT SPRING,  
19 WITH WHATEVER CONVERSATIONS YOU HAD WITH PROFESSOR BLOUGH, DID  
20 SHE EVER TELL YOU, SHARE WITH YOU ANYTHING ABOUT THAT HER REAL  
21 PROBLEM WAS SHE HAD FOUR OR FIVE DIFFERENT MENTAL HEALTH  
22 MEDICATIONS THAT SHE THOUGHT WERE OUT OF WHACK? DID SHE EVER  
23 SAY THAT TO YOU?

24 A. I DON'T THINK SO. SHE MIGHT HAVE MENTIONED  
25 MEDICATION, BUT I DON'T REMEMBER THE FOUR OR FIVE.

26 Q. AND DID SHE EVER MENTION MENTAL HEALTH MEDICATIONS TO

226

1 YOU?

2 A. NO. NO.



3 Q. NOW, DID YOU EVER SPEAK TO PRESIDENT LOPEZ DURING THAT  
4 SPRING ABOUT WHAT YOU WERE HEARING WITH REGARD TO  
5 PROFESSOR BLOUGH'S ABSENCES FROM CLASS AND SHORT CLASSES?

6 A. YES.

7 Q. DID YOU SORT OF KEEP -- YOU SEE HIM FROM TIME TO TIME  
8 DURING EACH WORK WEEK?

9 A. I'D SEE HIM SOMETIMES BUT, YOU KNOW, SOMETIMES IT  
10 WOULD BE EVERY COUPLE OF WEEKS OR SO.

11 Q. AND WHEN YOU DID SEE HIM THAT SPRING, THERE WERE AT  
12 TIMES CONVERSATIONS WHERE YOU DISCUSSED WITH HIM WHAT THE  
13 SITUATION WAS WITH PROFESSOR BLOUGH'S ATTENDANCE?

14 A. THAT'S RIGHT.

15 Q. WHERE WAS PROFESSOR BLOUGH'S PROFESSIONAL OFFICE ON  
16 THE CAMPUS THAT SPRING?

17 A. IT WAS IN THE BUILDING ADJACENT TO THE BUILDING I WAS  
18 TALKING ABOUT, AND THE BUILDING I WAS TALKING ABOUT WAS  
19 BRAMER HALL, WHERE MS. HERZEG'S OFFICE WAS. AND MARCY'S OFFICE  
20 WAS IN FLORENCE MOORE AND UPSTAIRS ABOVE THE THEATER.

21 Q. IS THAT OFFICE STILL THERE IN THE BUILDING?

22 A. YES.

23 Q. IS IT STILL PROFESSOR BLOUGH'S OFFICE?

24 A. YES.

25 Q. WERE YOU IN THAT OFFICE RECENTLY?

26 A. YES.

1 Q. WHY WERE YOU IN THAT OFFICE?

2 A. I THINK YOU WERE -- OR YOUR FIRM WAS ASKING TO FIND  
3 MATERIALS.

4 Q. DIDN'T I SAY THAT MR. LEBOWITZ HAD ASKED FOR SOME MORE  
5 DOCUMENTS ABOUT HER DOSSIER AND TO GO AND LOOK FOR THEM?

6 A. YOU MAY HAVE. YOU KNOW, I JUST REMEMBER THE PART  
7 ABOUT THAT I NEEDED TO GO IN THERE.

8 Q. OKAY.

9 WHEN YOU WENT INTO PROFESSOR BLOUGH'S OFFICE, WAS THAT  
10 ABOUT TWO WEEKS AGO?

11 A. I THINK SO.

12 Q. WHAT DID YOU NOTICE ABOUT THE OFFICE, IF ANYTHING?  
13 DID IT LOOK LIKE IT USED TO LOOK?

14 A. IT LOOKED LIKE IT USED TO LOOK.

15 Q. SO IT HASN'T BEEN DISTURBED AT ALL BY THE COLLEGE.  
16 IT'S JUST WAITING?

17 A. AS FAR AS I KNOW.

18 MR. VARTAIN: I'D LIKE TO DIRECT YOUR ATTENTION TO  
19 DEFENSE EXHIBIT H.

20 (DEFENDANT'S EXHIBIT H WAS MARKED FOR  
21 IDENTIFICATION.)

22 MR. VARTAIN: MAY I APPROACH THE WITNESS, YOUR HONOR?

23 Q. DO YOU RECOGNIZE THIS AS THE E-MAIL THAT YOUR  
24 EMPLOYEE, MS. HERZEG, GAVE YOU IN THAT SPRING TELLING YOU HOW --

25 MR. LEBOWITZ: I DON'T MEAN TO INTERRUPT, COUNSEL, BUT  
26 OUR H IS DIFFERENT.

1 MR. VARTAIN: IT'S DEFENSE H.

2 MR. LEBOWITZ: HERE IT IS. I'M SORRY. I DIDN'T MEAN  
3 TO INTERRUPT.

4 MR. VARTAIN: IT'S OKAY.

5 MAY I PROCEED, YOUR HONOR?

6 THE COURT: YES, GO AHEAD.

7 MR. VARTAIN: Q. IS THIS THE MEMO THAT YOUR EMPLOYEE  
8 GAVE YOU LISTING AT THAT TIME A NUMBER OF ABSENCES?

9 A. IT IS.

10 Q. DID YOU READ IT AT THE TIME?

11 A. YES.

12 Q. IS THIS THE DOCUMENT THAT MR. LEBOWITZ WAS ASKING YOU  
13 ABOUT?

14 A. THAT'S CORRECT.

15 MR. VARTAIN: OKAY.

16 MAY I OFFER THAT INTO EVIDENCE, YOUR HONOR?

17 THE COURT: ANY OBJECTION TO EXHIBIT H?

18 MR. LEBOWITZ: NO OBJECTION.

19 THE COURT: EXHIBIT H WILL BE ADMITTED.

20 (DEFENDANT'S EXHIBIT H WAS ADMITTED INTO  
21 EVIDENCE.)

22 MR. VARTAIN: Q. DID YOU READ THE PART OF THIS  
23 EXHIBIT THAT AFTER THE LIST OF ABSENCES IS STATED IT SAYS, "IN  
24 ADDITION, THREE DIFFERENT STUDENTS HAVE COMMENTED THAT SHE  
25 MISSES, DISMISSES CLASS OFTEN, AS WELL AS LETS OUT CLASSES THAT

1 EARLY."

2 DID YOU READ THAT DOCUMENT?

3 A. YES.

4 Q. WAS IT CONSISTENT -- THAT SENTENCE IN THE MEMO FROM  
5 YOUR EMPLOYEE, WAS IT THE SAME THING AS THE EMPLOYEE HAD TOLD  
6 YOU WHEN YOU HAD SPOKEN TO HER OVER THE COURSE OF THE SPRING?

7 A. YEAH, IT WAS SIMILAR.

8 Q. SO THIS WASN'T THE FIRST TIME YOU LEARNED THAT  
9 PROFESSOR BLOUGH WAS NOT SHOWING UP FOR CLASS SOMETIMES OR  
10 LEAVING CLASS EARLY?

11 A. THIS WAS NOT THE FIRST TIME.

12 Q. OVER THE YEARS -- MR. LEBOWITZ ASKED YOU WHETHER OVER  
13 THE YEARS PROFESSOR BLOUGH AND YOU WERE ON FRIENDLY TERMS?

14 A. YES. WE WERE AND ARE.

15 Q. THAT'S WHAT I WAS GOING TO ASK YOU. WHAT'S THE NATURE  
16 OF YOUR RELATIONSHIP RIGHT NOW?

17 A. I HOPE IT'S GOOD.

18 Q. YEAH. THERE'S NEVER BEEN -- DESPITE THE MEDICAL  
19 EVALUATION CONTROVERSY OR EVEN THAT SHE FILED THIS LAWSUIT, AS  
20 FAR AS YOU KNOW, THERE'S NEVER BEEN ANY, FROM YOUR PERSPECTIVE,  
21 ANY REASON WHY SHE COULDN'T COME BACK TO WORK AS FAR AS  
22 COLLEGIALITY BETWEEN THE TWO OF YOU?

23 A. NO.

24 Q. OR BETWEEN ANY OF THE OTHER DEANS OR OFFICERS OF THE  
25 COLLEGE?

26 MR. LEBOWITZ: OBJECTION. CALLS FOR SPECULATION.

230

1 MR. VARTAIN: Q. AS FAR AS YOU KNOW?

2 THE COURT: YOU MAY ANSWER.

3 THE WITNESS: AS FAR AS I KNOW.

4 MR. VARTAIN: Q. YOU SEEM A LITTLE UPSET RIGHT NOW.

5 I DON'T MEAN TO GET PERSONAL, BUT DID YOU WANT TO  
6 DESCRIBE ANY FEELING YOU HAVE RIGHT NOW?

7 A. (NO AUDIBLE RESPONSE.)

8 Q. OKAY. I DON'T WANT TO IMPOSE.

9 A. IT'S JUST HARD RIGHT NOW.

10 Q. BECAUSE YOU'RE FRIENDS AND YOU'RE COLLEAGUES?

11 A. I CARE ABOUT MARCY.

12 Q. AND THAT'S ALL. I DIDN'T MEAN TO PRY.

13 WHEN YOU -- IN THAT RECOMMENDATION FOR HER TO GET  
14 ANOTHER CONTRACT, WHEN YOU WROTE THAT YOU RECOMMENDED HER BUT  
15 YOU HAD SOME CONCERNS ABOUT HER HEALTH AFFECTING WHETHER SHE  
16 COULD DO HER JOB PROPERLY, WERE YOU CONCERNED FOR HER AS WELL AS  
17 THE COLLEGE?

18 A. I WAS MOSTLY CONCERNED FOR THE COLLEGE IN REGARD TO  
19 THE CONTRACT.

20 Q. WHAT WAS YOUR CONCERN THERE THAT YOU WERE REFERRING  
21 TO, YOUR COLLEGE -- WHEN YOU SAY CONCERN FOR THE COLLEGE?

22 A. WELL, YOU KNOW, IT'S IMPORTANT THAT OUR STUDENTS COME  
23 FIRST AND THE TEACHERS WHO ARE THERE ARE ABLE TO, YOU KNOW, TO  
24 BE IN CLASS AND DO THE WORK.

25 Q. YOU KNEW WHEN YOU MADE THAT RECOMMENDATION THAT THE  
26 PRESIDENT, PRESIDENT LOPEZ, WHO'S GOING TO BE HERE THIS

231

1 AFTERNOON, THE PRESIDENT IS THE ONE WHO MAKES THE CONTRACT  
2 DECISIONS?

3 A. THAT'S CORRECT.

4 Q. AND YOU WERE KEEPING HIM POSTED OVER THE NEXT SPRING,  
5 AFTER YOU WROTE THAT RECOMMENDATION, AS TO WHAT INFORMATION YOU  
6 WERE GETTING ABOUT MARCY'S ABSENCES, CORRECT?

7 A. YES, FROM TIME TO TIME.

8 Q. DID YOU EVER SEE HIM SEND A LETTER OUT TO HER DENYING  
9 HER A CONTRACT RENEWAL?

10 A. NO.

11 Q. DID HE EVER TELL YOU THAT HE HAD DENIED THE CONTRACT  
12 RENEWAL?

13 A. NO.

14 Q. WHAT WAS YOUR UNDERSTANDING HAPPENED OVER THE NEXT  
15 SUMMER AND THE FOLLOWING YEAR WHILE THIS MEDICAL EVALUATION WAS  
16 TAKING PLACE?

17 MR. LEBOWITZ: OBJECTION. NO FOUNDATION.

18 THE COURT: SUSTAINED.

19 MR. VARTAIN: Q. DID YOU HAVE ANY CONVERSATIONS WITH

20 PRESIDENT LOPEZ OVER THAT SUMMER AND THE FALL AFTER THE MEDICAL  
21 EVALUATION WAS STARTED, WHERE HE TOLD YOU WHAT HE WAS DOING WITH  
22 HER CONTRACT APPLICATION?

23 A. NO.

24 Q. HE NEVER TOLD YOU, DID HE, THAT HE HAD DENIED IT?

25 A. NO.

26 Q. WHEN PROFESSOR BLOUGH WENT OUT ON THAT LONG LEAVE WITH

232

1 CANCER, AND HEADACHES, AND DEPRESSION, WERE YOU WORKING FOR THE  
2 COLLEGE WHEN SHE CAME BACK FROM THAT LEAVE?

3 A. YES.

4 Q. WERE YOU AWARE OF THE ACCOMMODATIONS THAT THE COLLEGE  
5 WAS MAKING FOR HER TO COME BACK IN A GRADUAL AND TRANSITIONAL  
6 BASIS?

7 MR. LEBOWITZ: OBJECTION. NO FOUNDATION.

8 MR. VARTAIN: I ASKED HIM IF HE WAS AWARE.

9 THE COURT: I THINK THIS IS THE FOUNDATION.

10 MR. VARTAIN: YEAH.

11 THE COURT: OVERRULED.

12 THE WITNESS: I WAS AWARE OF, YOU KNOW, SOMEWHAT. I  
13 DIDN'T KNOW REALLY ALL THE SPECIFICS.

14 MR. VARTAIN: Q. OKAY. YOU WEREN'T THE DEAN AT THAT  
15 TIME?

16 A. NO, I WASN'T.

17 Q. OKAY.

18 DID MARCY, AS A COLLEAGUE OF YOURS --  
19 PROFESSOR BLOUGH, EXCUSE ME -- EVER COME TO YOU AND SAY THAT THE  
20 COLLEGE WAS GIVING HER ACCOMMODATIONS THAT WERE NOT RIGHT FOR  
21 HER TO COME BACK FROM THAT LONG A LEAVE?

22 A. I DON'T REMEMBER HER SAYING THAT.

23 Q. SHE NEVER TOLD YOU THOSE ACCOMMODATIONS WERE  
24 UNSATISFACTORY, DID SHE?

25 A. NO.

26 Q. DID PRESIDENT LOPEZ EVER TELL YOU THAT THE REASON HE

233

1 DIDN'T RENEW HER APPOINTMENT WAS HER CANCER?

2 A. HE NEVER TOLD ME THAT.

3 Q. DID HE EVER TELL YOU THAT THE REASON HE DIDN'T RENEW  
4 HER APPOINTMENT WAS BECAUSE OF CHEMOTHERAPY?

5 A. NO.

6 Q. DID YOU EVER SAY THAT TO PROFESSOR --

7 A. NO.

8 Q. DID YOU EVER BELIEVE THAT WAS THE CASE, THAT THAT'S  
9 WHY THE COLLEGE HAD NOT RENEWED HER?

10 MR. LEBOWITZ: OBJECTION. CALLS FOR SPECULATION.

11 THE COURT: OVERRULED.

12 THE WITNESS: NO.

13 MR. VARTAIN: NO FURTHER QUESTIONS AT THIS TIME.

14 THE COURT: REDIRECT FOR THIS WITNESS?

15 MR. LEBOWITZ: THANK YOU, YOUR HONOR. BRIEFLY.



16

17

REDIRECT EXAMINATION

18 BY MR. LEBOWITZ:

19 Q. YOU HAVE DEFENSE H IN FRONT OF YOU?

20 A. YES, I DO.

21 Q. THIS IS THE E-MAIL THAT'S BEEN ENTERED INTO EVIDENCE  
22 AS DEFENSE H. I JUST WANT TO TALK ABOUT IT FOR A MOMENT.

23 SO, AGAIN, THIS IS MARCH 21ST, 2006, FROM MS. HERZEG  
24 TO YOU, CC'D TO THE PROVOST, LISTING IN BULLET POINT FORM SOME  
25 DATES WHERE PROFESSOR BLOUGH WAS ABSENT, CORRECT?

26 A. CORRECT.

234

1 Q. AND, AS YOU READ IT, THE FIRST ENTRY, JANUARY 12TH,  
2 SAYS, "ABSENT FOR ALL CLASSES."

3 A. YES.

4 Q. RIGHT. JANUARY 17TH, IT SAYS, "ABSENT ONLY FOR HER  
5 9:40," IF I READ THAT, "A.M. SECTION," CORRECT?

6 A. CORRECT.

7 Q. SO BY THAT, YOU UNDERSTOOD SHE WAS THERE FOR THE REST  
8 OF THE DAY THAT DAY, CORRECT?

9 A. CORRECT.

10 Q. JANUARY 30TH, "ABSENT FOR ALL CLASS SECTIONS." THAT'S  
11 THE SECOND DAY SHE HAD BEEN ABSENT FOR ALL CLASS SECTIONS THAT  
12 SEMESTER, CORRECT?

13 A. IT'S THE SECOND ONE THAT SHE NOTES ON THIS.

14 Q. ACCORDING TO MS. HERZEG, SHE'S TELLING YOU  
15 JANUARY 30TH WAS THE SECOND FULL DAY THAT PROFESSOR BLOUGH HAD  
16 BEEN ABSENT THAT SEMESTER, RIGHT?

17 A. RIGHT.

18 Q. AND THEN JANUARY 31ST, AGAIN, ABSENT ONLY FOR HER  
19 MORNING SESSION, THE 11:00 A.M. SESSION, THAT DAY, CORRECT?

20 A. CORRECT.

21 Q. AND YOU UNDERSTOOD FROM THIS THAT SHE WAS PRESENT FOR  
22 HER AFTERNOON SESSION, CORRECT?

23 A. IF SHE HAD OTHER CLASSES THAT DAY. YES.

24 Q. YOU WOULD -- I'LL LEAVE IT.

25 AND THEN MARCH 21ST, THE DAY SHE WROTE THIS E-MAIL,  
26 SHE WAS ABSENT FOR ALL CLASSES, CORRECT?

235

1 A. CORRECT.

2 Q. OKAY.

3 THERE'S NOT A SINGLE ENTRY FOR THE MONTH OF FEBRUARY,  
4 CORRECT?

5 A. CORRECT.

6 Q. AND OF WHAT SHE'S TOLD YOU, AT LEAST HERE, THERE'S  
7 ONLY THREE DAYS THROUGH MARCH 22ND WHERE PROFESSOR BLOUGH WAS  
8 ACTUALLY ABSENT FOR THE WHOLE DAY, CORRECT?

9 MR. VARTAIN: OBJECTION. "ONLY," ARGUMENTATIVE.

10 THE COURT: OVERRULED.

11 THE WITNESS: THREE DAYS FOR THE WHOLE DAY. YES.

12 MR. LEBOWITZ: OKAY.

13 Q. WHAT WAS THE LAST DAY OF CLASSES FOR THE SPRING 2006  
14 SEMESTER?

15 A. WELL, IT WOULD BE ROUGHLY MAY 2ND, SOMETHING LIKE  
16 THAT; MAY 1ST.

17 Q. SO MARCH 21ST, WHEN THIS E-MAIL WAS SENT, WAS JUST  
18 INTO THE SECOND HALF OF THE SPRING SEMESTER?

19 A. THAT'S RIGHT.

20 Q. AND JANUARY 31ST, I WANT TO DIRECT YOUR ATTENTION TO  
21 THAT DATE. DO YOU KNOW WHY PROFESSOR BLOUGH WAS ABSENT THAT  
22 DAY, OR AT LEAST ABSENT FOR THE MORNING THAT DAY?

23 A. NO, I DON'T.

24 Q. DID YOU ASK MS. HERZEG IF SHE KNEW WHY  
25 PROFESSOR BLOUGH WAS OUT THAT MORNING?

26 A. NO, I DIDN'T.

236

1 Q. SO YOU WEREN'T AWARE, FOR INSTANCE, WHETHER OR NOT  
2 PROFESSOR BLOUGH WAS AT A DOCTOR'S APPOINTMENT THAT MORNING?

3 A. I WAS NOT AWARE.

4 Q. YOU WEREN'T AWARE WHETHER OR NOT SHE WAS GETTING A  
5 HEARING TEST THAT MORNING, WERE YOU?

6 A. I WASN'T AWARE.

7 Q. MS. HERZEG NEVER TOLD YOU THAT, DID SHE?

8 A. SHE DIDN'T.

9 Q. AND YOU DIDN'T ASK HER, DID YOU?

10 A. DIDN'T ASK HER. RIGHT.

11 Q. NOW, MR. VARTAIN ASKED YOU ABOUT CONVERSATIONS WITH  
12 MS. TIPTON.

13 A. YES.

14 Q. OKAY. AND MS. TIPTON RELATED TO YOU SOME OTHER  
15 CONVERSATIONS THAT SHE HAD HAD WITH STUDENTS RELATING TO  
16 PROFESSOR BLOUGH'S BEING ABSENT OR CUTTING CLASSES SHORT?

17 A. THAT'S RIGHT.

18 Q. DO YOU HAVE ANY INFORMATION AS TO WHETHER OR NOT IT  
19 WAS THE SAME STUDENTS WHO WERE LODGING THE COMPLAINTS WITH  
20 MS. HERZEG AS WITH MS. TIPTON?

21 A. I DON'T HAVE ANY INFORMATION ABOUT THAT.

22 Q. DO YOU HAVE ANY INFORMATION AS TO HOW MANY STUDENTS  
23 LODGED COMPLAINTS WITH MS. TIPTON?

24 A. I DON'T. I DON'T RECOLLECT. SHE MAY HAVE TOLD ME,  
25 BUT I DON'T RECOLLECT IF SHE DID.

26 Q. AND SO FOR ALL YOU KNOW THE SAME STUDENTS COULD HAVE

237

1 BEEN ISSUING -- COULD HAVE BEEN EXPRESSING THEIR COMPLAINTS TO  
2 MS. TIPTON AND MS. HERZEG, CORRECT?

3 A. COULD BE.

4 Q. NOW, A MOMENT AGO THINGS GOT A LITTLE PERSONAL HERE.  
5 AND I DON'T WANT TO -- I'M GOING TO RESPECT THAT RELATIONSHIP.  
6 AND WE ALL UNDERSTAND THERE'S A LONG-TERM RELATIONSHIP HERE OF A  
7 PROFESSIONAL AND PERSONAL NATURE. BUT I DO WANT TO ASK YOU

8 THIS. UNDERSTANDING AND KNOWING THE DEPTH OF THAT RELATIONSHIP,  
9 DOES THAT HELP YOU TO UNDERSTAND THE BETRAYAL THAT  
10 PROFESSOR BLOUGH HAS FELT BY THE WAY THE COLLEGE HAS TREATED  
11 HER?

12 MR. VARTAIN: OBJECTION, ARGUMENTATIVE.

13 THE COURT: SUSTAINED.

14 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS.

15 THE COURT: THANK YOU.

16 ANYTHING ELSE FOR THIS WITNESS?

17 MR. VARTAIN: ONE QUESTION.

18 THE COURT: YES.

19

20 RE-CROSS EXAMINATION

21 BY MR. VARTAIN:

22 Q. THE ABSENCES, THE SHORT -- THE CUTTING CLASSES SHORT,  
23 BEING LATE FOR CLASSES, DID YOU EVER GIVE PROFESSOR BLOUGH  
24 PERMISSION TO DO THAT?

25 A. NO.

26 MR. VARTAIN: THANK YOU.

238

1 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

2 MR. LEBOWITZ: NO, YOUR HONOR.

3 THE COURT: MAY PROFESSOR PRATT BE EXCUSED?

4 MR. LEBOWITZ: YES, YOUR HONOR.

5 THE COURT: I UNDERSTAND HE'S SUBJECT TO RETURNING.

6 MR. VARTAIN: YES.

7 THE COURT: PROFESSOR PRATT, THANK YOU FOR YOUR  
8 TESTIMONY. YOU ARE FREE TO GO.

9 YOUR NEXT WITNESS, MR. LEBOWITZ?

10 MR. PETERS: PURSUANT TO CCP 776, PLAINTIFF CALLS  
11 MICHAEL SCHULTZ. I'M SORRY, EVIDENCE CODE.

12 THE COURT: ALL RIGHT.

13 MR. SCHULTZ, IF YOU'D COME FORWARD TO THE WITNESS  
14 STAND, PLEASE, AND STAND TO BE SWORN.

15 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

16 (WHEREUPON, THE WITNESS WAS SWORN.)

17 THE WITNESS: I DO.

18 THE CLERK: PLEASE BE SEATED.

19 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
20 AND SPELL THEM BOTH FOR THE RECORD.

21 THE WITNESS: MICHAEL SCHULTZ, M-I-C-H-A-E-L  
22 S-C-H-U-L-T-Z.

23 THE CLERK: THANK YOU.

24

25 MICHAEL SCHULTZ,

26 DULY SWORN, TESTIFIED AS FOLLOWS:

239

1 DIRECT EXAMINATION PURSUANT TO EVIDENCE CODE 776

2 BY MR. PETERS:

3 Q. GOOD AFTERNOON, MR. SCHULTZ.

4 A. HOW ARE YOU?

5 Q. GOOD.

6 COULD YOU PLEASE TELL US, ARE YOU CURRENTLY AFFILIATED  
7 WITH MENLO COLLEGE?

8 A. YES.

9 Q. WHAT IS YOUR CURRENT POSITION?

10 A. I'M AN ASSOCIATE PROFESSOR.

11 Q. AND DIRECTING YOUR ATTENTION TO THE -- HOW LONG HAVE  
12 YOU BEEN WITH MENLO COLLEGE?

13 A. SINCE 1991.

14 Q. AND THE PERIOD FROM 2004 TO 2007, ROUGHLY, WERE YOU  
15 ALSO A PROFESSOR?

16 A. 2004 TO 2007, I THINK I WAS PROVOST.

17 Q. AND WHAT WERE THE CIRCUMSTANCES -- OR COULD YOU  
18 DESCRIBE FOR US THE CIRCUMSTANCES THAT LED TO YOU BECOMING THE  
19 PROVOST FOR THAT PERIOD?

20 A. I THINK -- HOW FAR BACK DO YOU WANT ME TO GO?

21 Q. WELL, JUST BRIEFLY TO EXPLAIN TO THE JURY HOW IT WAS  
22 YOU BECAME PROVOST IN 2004.

23 A. THERE WAS AN ACADEMIC VICE PRESIDENT WHO PASSED, AND I  
24 WAS ASKED TO REPLACE HIM ON AN INTERIM BASIS. IT WAS ALSO THE  
25 DISMISSAL OF A PRESIDENT OF THE COLLEGE AND A NEW INTERIM  
26 PRESIDENT WAS SELECTED, SO THE TWO OF US WERE PUT TOGETHER AND

1 ORDERED TO DEAL WITH THAT INTERIM PERIOD.

2 Q. DID YOU ASK TO BECOME PROVOST?

3 A. NO.

4 Q. YOU WERE ASKED TO BECOME PROVOST?

5 A. YES. CORRECT.

6 Q. CORRECT?

7 A. CONSCRIPTED.

8 Q. AND YOU SERVED IN THAT POSITION UNTIL APPROXIMATELY  
9 2007, CORRECT?

10 A. I THINK ABOUT FEBRUARY 2007.

11 Q. AND WHAT HAPPENED IN FEBRUARY 2007 THAT YOU GOT TO  
12 END --

13 A. THERE WAS A NEW PRESIDENT RECRUITED AND BROUGHT IN,  
14 AND THEN THERE WAS A TRANSITION TO A NEW PROVOST AS WELL.

15 Q. DURING THE -- EITHER PRECEDING THE TIME YOU BECAME  
16 PROVOST IN 2004 OR WHILE YOU WERE THE PROVOST, DID YOU RECEIVE  
17 OR DID YOU ATTEND ANY SEMINARS THROUGH THE COLLEGE ABOUT  
18 DISABILITY RIGHTS IN THE WORKPLACE?

19 A. I REMEMBER ATTENDING A SEMINAR ON DISCRIMINATION. I'M  
20 NOT SURE THAT IT COVERED THE AMERICANS WITH DISABILITY ACT.

21 Q. WHEN WAS THAT?

22 A. I BELIEVE A COUPLE OF YEARS AGO.

23 Q. WAS THAT WHILE YOU WERE PROVOST?

24 A. YES -- OR IT MAY HAVE BEEN AFTER. IT MAY HAVE BEEN  
25 AFTER. YEAH.

26 Q. AND I WANT TO JUST FOCUS ON THE TIME PRIOR -- JUST



1 PRIOR TO BECOMING PROVOST AND WHILE YOU WERE PROVOST, DID YOU  
2 RECEIVE ANY TRAINING FROM THE COLLEGE IN TERMS OF DISABILITY  
3 DISCRIMINATION IN THE WORKPLACE?

4 A. NO. NO.

5 Q. AND CAN YOU DESCRIBE BRIEFLY FOR THE JURY WHAT -- IN A  
6 GENERAL, BRIEF SENSE WHAT YOUR RESPONSIBILITIES WERE AS PROVOST  
7 AT MENLO COLLEGE?

8 A. WELL, THERE WERE A NUMBER OF DEPARTMENTS THAT  
9 PRESIDENT WAS ULTIMATELY RESPONSIBLE FOR. THESE DEPARTMENTS  
10 INCLUDED ACADEMICS, STUDENT RESIDENTIAL LIFE, ATHLETICS, THE  
11 LIBRARY. THERE WAS ALSO A CENTER FOR INTERNATIONAL MANAGEMENT.  
12 SO THERE'S A LARGE NUMBER OF DEPARTMENTS THAT I WAS RESPONSIBLE  
13 FOR. AND, BASICALLY, PROVIDING OVERSIGHT. PRETTY MUCH HANDLING  
14 THE THINGS A PRESIDENT DIDN'T EITHER HAVE TIME TO DO OR DIDN'T  
15 WANT TO DO.

16 Q. AND DID THAT INCLUDE RESPONSIBILITIES TOWARDS THE  
17 FACULTY AT MENLO COLLEGE?

18 A. I DIDN'T HAVE DIRECT RESPONSIBILITY. THERE WAS AN  
19 ACADEMIC DEAN BETWEEN ME AND THE FACULTY, SO I DIDN'T HAVE A LOT  
20 OF CONTACT, DIRECT CONTACT WITH FACULTY.

21 Q. OKAY.

22 TO THE EXTENT, THOUGH, THAT THE PRESIDENT ASKED YOU TO  
23 ACT AS AN INTERMEDIARY OR ACT ON HIS BEHALF IN THE ISSUES  
24 INVOLVING THE FACULTY, YOU WOULD DO THAT, CORRECT?

25 A. IF HE ASKED ME TO, SURE.

26 Q. NOW, AT SOME POINT DID YOU BECOME AWARE THAT

1 PROFESSOR BLOUGH HAD ANY SORT OF MEDICAL ISSUE IN 2006?

2 A. I BECAME AWARE OF THE DETAILS AS A RESULT OF LETTERS  
3 THAT I SAW.

4 Q. OKAY.

5 A. ALTHOUGH THERE WERE -- THERE WERE SOME CONVERSATIONS  
6 WITH TUNDE HERZEG, WHO'S THE DIRECTOR OF ACADEMIC SERVICES, AND  
7 THERE WAS SOME DISCUSSION WITH LOWELL PRATT WITH REGARD TO SOME  
8 PROBLEMS PROFESSOR BLOUGH WAS HAVING.

9 Q. AND YOU REFERRED -- FIRST YOU REFERRED TO SOME LETTERS  
10 THAT MADE YOU AWARE THAT THERE WERE SOME MEDICAL ISSUES WITH  
11 PROFESSOR BLOUGH, RIGHT?

12 A. RIGHT.

13 Q. AND THE FIRST LETTER THAT YOU'RE REFERRING TO IS, IN  
14 FACT, THE LETTER FROM PRESIDENT LOPEZ TELLING MS. BLOUGH,  
15 PROFESSOR BLOUGH, THAT SHE HAD TO GO TO A PSYCHIATRIC EXAM;  
16 ISN'T THAT CORRECT?

17 A. IF THAT WAS THE FIRST LETTER, YEAH. I REMEMBER ALSO A  
18 LETTER FROM PROFESSOR BLOUGH EXPLAINING THE CIRCUMSTANCES OF  
19 2005, 2006.

20 Q. BY THE WAY, I'M SORRY, I WANT TO BACK UP JUST A  
21 MINUTE.

22 DID YOU EVER SEE THAT PROFESSOR BLOUGH HAD BEEN  
23 RECOMMENDED FOR A SIX-YEAR CONTRACT BY DEAN PRATT PRIOR TO THE  
24 SPRING 2006 SEMESTER?

25 A. SOMETIME, PERHAPS JANUARY 2006, SOMEWHERE AROUND  
26 THERE, I SAW A LETTER FROM DEAN PRATT TO PRESIDENT LOPEZ.

243

1 Q. DID YOU HAVE ANY DISCUSSIONS AT THAT POINT IN TIME  
2 WITH DEAN PRATT ABOUT THE RECOMMENDATION FOR PROFESSOR BLOUGH'S  
3 CONTRACT?

4 A. YOU KNOW, I DON'T REMEMBER WHETHER I WAS TALKING TO  
5 HIM ABOUT THAT SPECIFIC LETTER, BECAUSE I DON'T ACTUALLY  
6 REMEMBER WHEN I READ THAT LETTER. I DO REMEMBER SPEAKING TO HIM  
7 WITH REGARD TO THE INFORMATION THAT WAS PROVIDED TO ME BY  
8 TUNDE HERZEG ABOUT PROFESSOR BLOUGH MISSING CLASSES.

9 Q. OKAY. LET'S TALK ABOUT THAT.  
10 WHAT DID YOU ASK OR TALK TO DEAN PRATT ABOUT REGARDING  
11 PROFESSOR BLOUGH MISSING CLASSES?

12 A. I ASKED HIM IF HE KNEW WHAT THE PROBLEM WAS.

13 Q. AND WHAT DID HE TELL YOU?

14 A. HE SAID HE DIDN'T.

15 Q. OKAY.

16 AND DID YOU ASK HIM TO DO ANYTHING AT THAT TIME?

17 A. I ASKED HIM IF HE COULD FIND OUT WHAT THE PROBLEM WAS.

18 Q. AND DID HE AGREE TO DO THAT?

19 A. SURE.

20 Q. AND, TO YOUR KNOWLEDGE, DID HE REPORT BACK TO YOU?

21 A. I THINK A WEEK LATER HE TOLD ME THAT HE HAD SPOKEN TO  
22 PROFESSOR BLOUGH AND THAT PROFESSOR BLOUGH WAS HAVING SOME

23 PROBLEM WITH HEARING.

24 Q. DID HE TELL YOU ABOUT ANY OTHER PROBLEMS SHE WAS  
25 HAVING AT THAT POINT?

26 A. NO.

244

1 Q. DID HE SAY WHETHER HER HEARING PROBLEM, FROM HIS POINT  
2 OF VIEW, WAS A SERIOUS PROBLEM OR NOT?

3 A. IT DIDN'T SOUND LIKE IT.

4 Q. SO YOUR IMPRESSION WAS THAT DEAN PRATT WAS NOT  
5 CONCERNED ABOUT HER HEARING PROBLEM IN TERMS OF HER CARRYING ON  
6 HER TEACHING RESPONSIBILITIES?

7 A. WELL, I THINK HE MENTIONED SOMETHING ABOUT THE FACT  
8 THAT SHE HAD INDICATED THAT SHE WOULD SEE IF SHE NEEDED HEARING  
9 AIDS, AND THAT WAS REALLY THE EXTENT OF IT. IT DIDN'T SEEM LIKE  
10 HE WAS ALARMED.

11 Q. AND DID YOU DO ANYTHING TO FOLLOW UP ON THAT  
12 DISCUSSION TO DETERMINE WHETHER, IN FACT, PROFESSOR BLOUGH WAS  
13 GETTING HEARING AIDS OR DOING ANYTHING ELSE TO --

14 A. NO.

15 Q. -- RESOLVE HER HEARING ISSUE?

16 A. NO, I DIDN'T.

17 Q. DID ANYONE IN -- DURING THE TIME THAT YOU WERE  
18 PROVOST, DID ANYONE FROM MENLO COLLEGE EVER SAY TO YOU THAT THEY  
19 FELT THE PROBLEMS THAT PROFESSOR BLOUGH WAS HAVING IN THE 2005,  
20 2006 TIMEFRAME WERE A RESULT OF EMOTIONAL ISSUES?

21 A. NO.

22 Q. NO ONE EVER SAID THAT TO YOU?

23 A. NO ONE EVER TOLD ME THAT DIRECTLY.

24 Q. DID YOU EVER LEARN THAT INFORMATION INDIRECTLY DURING  
25 THAT TIME PERIOD?

26 A. NO.

245

1 Q. AND GOING BACK -- I THINK YOU MAY HAVE TESTIFIED TO  
2 THIS, BUT I WANT TO MAKE SURE I'M CLEAR.

3 WHEN WAS THE FIRST TIME YOU LEARNED THAT THE COLLEGE  
4 HAD SENT PROFESSOR BLOUGH TO SEE A PSYCHIATRIST FOR AN  
5 EXAMINATION?

6 A. I BELIEVE IT WAS SOMETIME IN JULY -- THE END OF JUNE,  
7 EARLY JULY WHEN I SAW THE LETTER THAT WAS SENT TO HER FROM  
8 PRESIDENT LOPEZ. YOU KNOW, I HAD NOT BEEN ON CAMPUS FROM RIGHT  
9 AFTER GRADUATION IN MAY UNTIL PROBABLY THE END OF JUNE.

10 Q. DID YOU HAVE ANY DISCUSSIONS WITH ANYONE ABOUT THE  
11 FACT THAT PROFESSOR BLOUGH WAS GOING TO BE SENT TO SEE A  
12 PSYCHIATRIST PRIOR TO RECEIVING PRESIDENT LOPEZ'S LETTER?

13 A. NO.

14 Q. AND SUBSEQUENTLY TO THAT, RECEIVING THAT LETTER AND  
15 YOUR UNDERSTANDING THAT SHE WAS GOING TO BE SENT TO SEE A  
16 PSYCHIATRIST, DID YOU EVER RECEIVE ANY INFORMATION FROM  
17 PROFESSOR BLOUGH STATING THAT SHE COULD -- IN FACT, WAS ABLE TO  
18 WORK?

19 A. PRIOR TO HIS LETTER?

20 Q. SURE. LET'S START WITH PRIOR TO HIS LETTER.

21 A. NO.

22 Q. OKAY.

23 HOW ABOUT SUBSEQUENT TO HIS LETTER, DID

24 PROFESSOR BLOUGH EVER PROVIDE YOU WITH ANY INFORMATION?

25 A. I THINK THAT AT SOME POINT -- AGAIN, I CAN'T REMEMBER

26 WHEN I READ IT, BUT AT SOME POINT THERE WERE COPIES OF LETTERS

246

1 FROM, I THINK, A NURSE AND ONE OF HER -- OR TWO OF HER DOCTORS

2 THAT I DID SEE. I THINK IT WAS SENT TO ME AND SEVERAL OTHER

3 PEOPLE.

4 Q. AND WHAT WAS YOUR UNDERSTANDING OF WHAT THESE DOCTORS

5 AND HEALTHCARE PROVIDERS WERE SAYING?

6 MR. VARTAIN: OBJECTION. CALLS FOR HEARSAY.

7 THE COURT: SUSTAINED.

8 MR. PETERS: Q. I BELIEVE YOU SAID ONE OF THEM -- WAS

9 ONE OF THE DOCUMENTS YOU RECEIVED FROM A NURSE WITH AN

10 ONCOLOGIST'S OFFICE?

11 A. I REMEMBER THAT, YES. YES.

12 Q. AND DID YOU DO ANYTHING AFTER RECEIVING A COPY OF THAT

13 LETTER FROM THAT NURSE IN RESPONSE TO THE LETTER?

14 A. NO, I DON'T REMEMBER DOING ANYTHING.

15 Q. DID YOU DO ANYTHING YOURSELF, AS THE PROVOST OF

16 MENLO COLLEGE, TO DETERMINE IF PROFESSOR BLOUGH AT THAT POINT IN

17 TIME WAS CAPABLE OF TEACHING?

18 A. WELL, THE CIRCUMSTANCES WERE THAT THERE WAS AN  
19 INDEPENDENT MEDICAL EVALUATION IN EFFECT. AND THE COMMUNICATION  
20 WE HAD RECEIVED FROM THE COLLEGE ADMINISTRATION WAS THAT ALL  
21 COMMUNICATION SHOULD BE HANDLED THROUGH THE PERSONNEL OR HUMAN  
22 RESOURCES DEPARTMENT, IN ORDER TO MAINTAIN CONFIDENTIALITY, IN  
23 ORDER TO MAKE SURE THAT WE WERE IN COMPLIANCE WITH ALL OF THE  
24 LAWS ASSOCIATED WITH THESE KINDS OF ISSUES.

25 Q. OKAY. THANK YOU. I APPRECIATE THAT.

26 BUT MY QUESTION IS, DID YOU, AS THE PROVOST, AT THAT

247

1 POINT DO ANYTHING YOURSELF TO INDEPENDENTLY DETERMINE OR  
2 INVESTIGATE WHETHER PROFESSOR BLOUGH WAS, IN FACT, ABLE TO  
3 TEACH?

4 MR. VARTAIN: OBJECTION --

5 THE WITNESS: NO.

6 MR. VARTAIN: I HAD AN OBJECTION.

7 THE COURT: YOU'D LIKE TO POSE IT AND STRIKE THE  
8 ANSWER?

9 MR. VARTAIN: OBJECTION. ARGUMENTATIVE; LACKS  
10 FOUNDATION.

11 THE COURT: OVERRULED.

12 MR. PETERS: Q. DID YOU EVER SPEAK WITH ANYONE FROM  
13 THE MENLO COLLEGE HUMAN RESOURCES DEPARTMENT REGARDING THE  
14 LETTER YOU RECEIVED THROUGH PROFESSOR BLOUGH FROM THE ONCOLOGIST

15 OFFICE?

16 A. I DON'T RECALL DOING SO.

17 Q. DID YOU EVER SPEAK WITH PRESIDENT LOPEZ ABOUT THAT  
18 LETTER?

19 A. I DON'T RECALL THAT. BECAUSE, AGAIN, I'M NOT SURE  
20 EXACTLY WHEN I READ THESE.

21 Q. OKAY.

22 AND MY QUESTION IS A GENERAL ONE. I JUST WANT TO MAKE  
23 SURE, DO YOU EVER RECALL SPEAKING WITH PRESIDENT LOPEZ ABOUT  
24 THAT LETTER?

25 A. I HAVE NO RECOLLECTION OF DOING THAT.

26 Q. DO YOU RECALL EVER SPEAKING WITH DEAN PRATT ABOUT THAT

248

1 LETTER?

2 A. NO.

3 Q. DID YOU EVER SPEAK WITH PROFESSOR BLOUGH ABOUT THE  
4 CONTENTS OF THAT LETTER?

5 A. NO.

6 Q. DID YOU EVER DISCUSS THE CONTENTS OF THE LETTER FROM  
7 THE ONCOLOGIST WITH ANYONE AT THE UNIVERSITY -- OR AT THE  
8 COLLEGE?

9 A. WELL, I THINK I WAS APPROACHED BY A FACULTY MEMBER WHO  
10 WASN'T NECESSARILY INTERESTED IN TALKING ABOUT THAT LETTER, BUT  
11 WAS INTERESTED IN TALKING ABOUT THE CIRCUMSTANCES AROUND THIS  
12 ISSUE.



13 Q. AND WHO WAS THAT FACULTY MEMBER?

14 A. PROFESSOR MEDLEN.

15 Q. BUT PROFESSOR MEDLEN DIDN'T SPEAK TO YOU ABOUT -- OR  
16 STRIKE THAT.

17 DID PROFESSOR MEDLEN INDICATE TO YOU THAT HE WAS AWARE  
18 OF THE LETTER FROM THE ONCOLOGIST'S OFFICE?

19 A. NO.

20 Q. DO YOU KNOW WHO AT MENLO COLLEGE ULTIMATELY MADE THE  
21 DECISION TO SEND PROFESSOR BLOUGH FOR A PSYCHIATRIC EVALUATION?

22 A. I COULDN'T SAY FACTUALLY. I MEAN, I COULD SPECULATE.

23 Q. OKAY. WE JUST WANT TO KNOW WHAT YOU KNOW.

24 A. YEAH.

25 Q. HAVE YOU EVER BEEN TOLD BY ANYONE WHO AT THE COLLEGE  
26 MADE THE DECISION THAT PROFESSOR BLOUGH WOULD HAVE TO GO TO A

249

1 PSYCHIATRIC EVALUATION?

2 A. NO.

3 MR. PETERS: COULD I HAVE EXHIBIT 17.

4 MAY I APPROACH, YOUR HONOR?

5 THE COURT: YES.

6 MR. PETERS: Q. AND I WANT TO DIRECT YOUR ATTENTION  
7 TO ONE SENTENCE --

8 A. YES.

9 Q. -- IN THE LAST PARAGRAPH, AND IT'S THE --

10 MR. VARTAIN: MAY I INTERPOSE AN OBJECTION, YOUR

11 HONOR? I THINK THIS IS GOING TO BE HEARSAY.

12 THE COURT: WHY DON'T YOU SHOW COUNSEL THE SENTENCE SO  
13 THAT WE CAN BE CLEAR ON IT.

14 MR. PETERS: SURE.

15 (COMPLIES.)

16 MR. VARTAIN: OKAY. WITHDRAW THE OBJECTION.

17 THE COURT: THANK YOU.

18 MR. PETERS: THANK YOU.

19 Q. I'LL JUST READ THE SENTENCE TO YOU. SHE STATES, "I DO  
20 NOT UNDERSTAND ANYTHING. COULD YOU PLEASE EXPLAIN MORE FULLY."

21 A. YES.

22 Q. DO YOU REMEMBER RECEIVING THIS E-MAIL FROM  
23 PROFESSOR BLOUGH?

24 A. YES.

25 Q. OKAY.  
26 FOLLOWING RECEIPT OF THIS E-MAIL FROM

250

1 PROFESSOR BLOUGH, DID YOU CALL HER?

2 A. NO.

3 Q. DID YOU E-MAIL HER?

4 A. NO.

5 Q. DID YOU EVER TALK TO HER TO EXPLAIN TO HER WHAT WAS  
6 GOING ON?

7 A. I DID NOT. AND MAY I EXPLAIN?

8 Q. SURE.

9       A. ONE IS, I DIDN'T KNOW THE DETAILS MYSELF. BECAUSE  
10       REMEMBER, THIS ALL TRANSPIRED BETWEEN MAY AND I WAS NOT EVEN ON  
11       CAMPUS. SECOND OF ALL, THERE WAS AN INDEPENDENT MEDICAL  
12       EVALUATION. I DID NOT FEEL IT WAS MY RESPONSIBILITY OR  
13       APPROPRIATE FOR ME TO INTERJECT MYSELF INTO SOMETHING THAT HAD  
14       BEEN ESTABLISHED TO DETERMINE FACTUALLY WHAT HER CONDITION WAS  
15       AND HOW FIT SHE WAS TO TEACH.

16                THAT PROCESS, IT SEEMED TO ME, MADE SENSE PROCEEDING  
17       AS IT WAS WITHOUT INTERFERENCE. MY ASSUMPTION WAS THE REASON  
18       WHY YOU WOULD SET UP SOMETHING LIKE THAT IS BECAUSE YOU DON'T  
19       WANT OUTSIDE INVOLVEMENT, YOU DON'T WANT FACULTY AND STAFF TO  
20       GET PERSONALLY INVOLVED IN SOMETHING THAT REQUIRES PROFESSIONAL  
21       KNOWLEDGE TO MAKE A RECOMMENDATION.

22       Q. SURE. THANK YOU FOR THAT EXPLANATION.

23                AND I JUST WANT TO MAKE SURE, YOU KNOW, THE JURY  
24       UNDERSTANDS AND I APPRECIATE THE REASONING FOR IT. BUT YOU  
25       DIDN'T DO ANYTHING IN RESPONSE TO THIS E-MAIL TO HELP HER  
26       UNDERSTAND WHAT WAS GOING ON --

251

1       MR. VARTAIN: OBJECTION.

2       MR. PETERS: Q. -- FOR WHATEVER REASON?

3       MR. VARTAIN: OBJECTION. ARGUMENTATIVE.

4       THE COURT: OVERRULED.

5       THE WITNESS: NO.

6       MR. PETERS: Q. AND THAT WOULD INCLUDE, JUST SO WE'RE

7 CLEAR, YOU DIDN'T SPEAK WITH PRESIDENT LOPEZ, CORRECT?

8 A. NO. NOT THAT I HAVE ANY RECOLLECTION OF DOING.

9 Q. AND YOU DIDN'T SPEAK TO DEAN PRATT?

10 A. NO.

11 Q. AND YOU DIDN'T SPEAK WITH STEPHANIE SAPRAI?

12 A. I HAVE NO RECOLLECTION OF DOING THAT.

13 MR. PETERS: EXHIBIT 19, PLEASE.

14 MAY I APPROACH, YOUR HONOR?

15 THE COURT: YES.

16 MR. PETERS: Q. SHOWING YOU WHAT HAS BEEN MARKED

17 EXHIBIT 19.

18 A. YES.

19 Q. THIS IS AN E-MAIL FROM MS. BLOUGH, AND YOU'RE INCLUDED

20 ON THE "TO" LINE. DO YOU REMEMBER RECEIVING THIS E-MAIL?

21 A. YES.

22 MR. PETERS: EXCUSE ME FOR JUST A SECOND.

23 Q. AND, PROFESSOR, DIRECTING YOUR ATTENTION TO THE FIRST

24 LINE OF THE E-MAIL, I'M JUST GOING TO READ UP TO THE COMMA. IT

25 SAYS, "I AM SURPRISED AND DISAPPOINTED NOT TO GET A RESPONSE TO

26 THE ATTACHED E-MAIL OF JULY 22ND."

252

1 YOU UNDERSTOOD AT THE TIME THAT YOU RECEIVED THIS

2 E-MAIL THAT THE ATTACHED E-MAIL OF JULY 22ND, SHE WAS REFERRING

3 TO THE PRIOR E-MAIL WE WERE JUST LOOKING AT, WHICH WAS

4 EXHIBIT 17, CORRECT?

5 A. YES.

6 Q. AND, ONCE AGAIN, I NEED TO ASK YOU, WHAT, IF ANYTHING,  
7 DID YOU DO IN RESPONSE TO THIS E-MAIL FROM MS. BLOUGH?

8 A. I DIDN'T RESPOND.

9 Q. AND, ONCE AGAIN, YOU DIDN'T SPEAK WITH PRESIDENT  
10 LOPEZ, CORRECT?

11 A. (NO AUDIBLE RESPONSE.)

12 Q. I'M SORRY. YOU HAVE TO RESPOND VERBALLY.

13 A. NO.

14 Q. I'M SORRY. WE ENDED UP WITH A DOUBLE NEGATIVE.  
15 YOU DIDN'T SPEAK WITH PRESIDENT LOPEZ?

16 A. THAT'S CORRECT.

17 Q. AND YOU DIDN'T SPEAK WITH DEAN PRATT?

18 A. THAT'S CORRECT.

19 Q. AND YOU DIDN'T SPEAK WITH STEPHANIE SAPRAI?

20 A. THAT'S CORRECT.

21 Q. AND YOU DIDN'T COMMUNICATE IN ANY WAY WITH  
22 PROFESSOR BLOUGH, CORRECT?

23 A. I THINK THAT'S CORRECT. YES.

24 MR. PETERS: IF I COULD HAVE EXHIBIT 21.

25 (PLAINTIFF'S EXHIBIT NO. 21 WAS MARKED FOR  
26 IDENTIFICATION.)

1 MR. PETERS: MAY I APPROACH, YOUR HONOR?

2 THE COURT: YES.

3 MR. PETERS: Q. THIS IS ANOTHER E-MAIL FROM

4 PROFESSOR BLOUGH. AND, ONCE AGAIN, YOU'RE ON THE "TO" LINE?

5 A. YES.

6 Q. DO YOU RECALL RECEIVING THIS DOCUMENT?

7 A. YES.

8 THE COURT: I DON'T KNOW WHAT DOCUMENT THAT IS.

9 WHAT'S THE DATE OF IT?

10 THE WITNESS: THIS IS AUGUST 7, 2006.

11 THE COURT: WAS THAT 21 OR --

12 MR. PETERS: 21.

13 THE COURT: I MISHEARD. THANK YOU.

14 MR. PETERS: Q. AND YOU SEE IN THIS E-MAIL, JUST TO

15 SUMMARIZE VERY BRIEFLY, SHE SAYS, ONCE AGAIN, SHE HASN'T

16 RECEIVED ANY RESPONSES TO HER PRIOR E-MAILS. AND THIS ONE IS

17 DATED AUGUST 7TH, CORRECT?

18 A. YES.

19 Q. AND YOU DIDN'T DO ANYTHING IN RESPONSE TO THIS E-MAIL

20 EITHER, CORRECT?

21 A. NO.

22 Q. YOU DIDN'T SPEAK TO ANY OF THOSE ADMINISTRATIVE PEOPLE

23 WE WENT THROUGH BEFORE?

24 A. I HAVE NO RECOLLECTION OF DOING THAT.

25 Q. OKAY.

26 NOW, IN 2007 SOMETHING HAPPENED AND YOU WERE NOT

1 PROVOST ANYMORE. CAN YOU JUST TELL US BRIEFLY.

2 A. A NEW PRESIDENT WAS BROUGHT IN AND THE NEW PRESIDENT,  
3 AS TYPICALLY HAPPENS, SELECTED A NEW PROVOST.

4 Q. AND WHO WAS THAT?

5 A. JIM KELLY.

6 Q. AND IS MR. KELLY STILL THE PROVOST?

7 A. YES.

8 Q. AND SO WHAT DID YOU DO ONCE THE NEW PROVOST CAME IN?

9 A. WELL, THERE WAS A TRANSITION PERIOD, AND THEN I WENT  
10 BACK TO FULL-TIME TEACHING.

11 Q. AND WAS THAT IN THE SPRING OF 2007?

12 A. I THINK THERE WAS A TRANSITION IN 2007, AND THEN I  
13 THINK I WAS DEFINITELY FULL TIME IN THE FALL.

14 Q. SO IN THE FALL OF 2007, YOU WERE BACK TO FULL-TIME  
15 TEACHING, RIGHT?

16 A. YES. DEFINITELY.

17 Q. HOW MANY CLASSES DID YOU TEACH IN THE FALL?

18 A. WELL, THE FULL-TIME LOAD IS NORMALLY FOUR CLASSES A  
19 SEMESTER.

20 Q. AND DO YOU RECALL WHICH CLASSES YOU WERE TEACHING IN  
21 FALL 2007?

22 A. I THINK SO. I THINK I WAS TEACHING TWO SECTIONS OF  
23 THE LEGAL ENVIRONMENT OF BUSINESS. I WAS TEACHING ONE SECTION  
24 OF THE SENIOR CAPSTONE CLASS. AND I THINK I WAS TEACHING ONE  
25 SECTION OF MANAGEMENT FOR A SMALL PLANET.

26 Q. AND YOU KNEW FROM PAST EXPERIENCE THAT

1 PROFESSOR BLOUGH HAD TAUGHT SOME OF THOSE CLASSES?

2 A. SURE.

3 Q. DO YOU RECALL WHICH ONES?

4 A. I KNOW DEFINITELY SHE TAUGHT LEGAL ENVIRONMENT OF  
5 BUSINESS, AND I BELIEVE IN -- I THINK I'M CORRECT, DURING 2003,  
6 2004 I HELPED PREPARE HER TO TEACH A COURSE CALLED "LEGAL AND  
7 SOCIAL ISSUES IN RESPONSE MANAGEMENT."

8 Q. AND DO YOU RECALL APPROXIMATELY WHEN YOU WERE ASSIGNED  
9 THOSE FOUR COURSES FOR THE FALL OF 2007?

10 A. I THINK IT WAS SOMETIME IN APRIL.

11 Q. OF 2007?

12 A. YES.

13 MR. PETERS: THANK YOU.

14 THAT'S ALL I HAVE, YOUR HONOR.

15 THE COURT: CROSS-EXAMINATION FOR THIS WITNESS?

16 MR. VARTAIN: YES, YOUR HONOR. THANK YOU. JUST A FEW  
17 QUESTIONS.

18

19 CROSS-EXAMINATION

20 BY MR. VARTAIN:

21 Q. IS IT CORRECT THAT THE REASON YOU DIDN'T ANSWER THOSE  
22 E-MAILS WAS YOU THOUGHT IT WASN'T YOUR BUSINESS TO GET INVOLVED  
23 IN THE MEDICAL MATTER?

24 A. YES. I THOUGHT THAT THE PROCESS WAS DESIGNED TO KEEP  
25 FACULTY AND STAFF OUT OF MEDDLING IN THIS PROCESS THAT WAS VERY



1 TO DISCOURAGE A LOT OF RUMORS AND A LOT OF PEOPLE MEDDLING IN  
2 THINGS THEY DIDN'T FULLY UNDERSTAND.

3 Q. YOU WEREN'T A PERSONAL FRIEND OF PROFESSOR BLOUGH,  
4 UNLIKE DEAN PRATT, CORRECT?

5 A. WELL, I WAS A COLLEAGUE.

6 Q. OKAY.

7 BUT YOU DIDN'T FEEL IT A PERSONAL ISSUE THAT YOU HAD  
8 TO ANSWER HER E-MAIL; IS THAT CORRECT?

9 A. NOT AT ALL. IN FACT, I FELT I'D BE DOING A DISSERVICE  
10 BECAUSE I WOULD BE INTERFERING WITH THE PROCESS THAT WAS  
11 DESIGNED BASICALLY TO HELP HER.

12 MR. VARTAIN: NO FURTHER QUESTIONS.

13 THE COURT: REDIRECT FOR THIS WITNESS?

14 MR. PETERS: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: THANK YOU.

16 AND MAY PROFESSOR SCHULTZ BE EXCUSED?

17 MR. LEBOWITZ: YES, YOUR HONOR.

18 THE COURT: THANK YOU FOR YOUR TESTIMONY. MAY I HAVE  
19 THOSE EXHIBITS BACK. THANK YOU AND YOU ARE FREE TO GO.

20 MR. LEBOWITZ: YOUR HONOR, MAY WE HAVE ONE MINUTE  
21 BEFORE WE CALL THE NEXT WITNESS TO CONFER ABOUT A DOCUMENT?

22 THE COURT: ABSOLUTELY.

23 MR. LEBOWITZ: MAY WE APPROACH, YOUR HONOR?

24 THE COURT: SURE.  
25 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)  
26 MR. LEBOWITZ: WE CALL, PURSUANT TO EVIDENCE CODE 776,

257

1 CARLOS LOPEZ.

2 THE COURT: DR. LOPEZ, IF YOU'D COME FORWARD TO THE  
3 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

4 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

5 (WHEREUPON, THE WITNESS WAS SWORN.)

6 THE WITNESS: I DO.

7 THE CLERK: PLEASE BE SEATED.

8 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
9 AND SPELL THEM BOTH FOR THE RECORD.

10 THE WITNESS: MY FIRST NAME IS CARLOS LOPEZ -- MY  
11 FIRST NAME IS CARLOS. MY LAST NAME IS LOPEZ.

12 THE CLERK: WOULD YOU PLEASE SPELL THEM BOTH FOR THE  
13 RECORD.

14 THE WITNESS: C-A-R-L-O-S; AND LOPEZ IS L-O-P-E-Z.

15 THE CLERK: THANK YOU.

16

17 CARLOS LOPEZ,

18 DULY SWORN, TESTIFIED AS FOLLOWS:

19

20 DIRECT EXAMINATION PURSUANT TO EVIDENCE CODE 776

21 BY MR. LEBOWITZ:

22 Q. GOOD AFTERNOON.

23 YOU HOLD THE TITLE OF PRESIDENT EMERITUS --

24 A. RIGHT.

25 Q. -- OF MENLO COLLEGE, CORRECT?

26 A. RIGHT.

258

1 Q. WHAT DOES THAT TITLE MEAN?

2 A. THE TITLE MEANS THAT I WAS PRESIDENT OF THE COLLEGE,

3 AND THAT I WAS RETIRED UNDER GOOD STANDING.

4 Q. AND PRESIDENT EMERITUS MEANS PRESIDENT FOR LIFE,

5 CORRECT?

6 A. NOT NECESSARILY. IT'S AN HONORARY TITLE.

7 Q. IT'S A WAY THAT THE COLLEGE OFFERS SOME RESPECT TO

8 FORMER PRESIDENTS, CORRECT?

9 A. YES. YES.

10 Q. AND YOU WERE PRESIDENT OF MENLO COLLEGE FROM THE FALL

11 OF 2004 THROUGH THE END OF DECEMBER OF 2006, CORRECT?

12 A. THAT IS CORRECT.

13 Q. AND HOW LONG IN TOTAL HAVE YOU BEEN WITH MENLO

14 COLLEGE?

15 A. I HAVE BEEN WITH MENLO COLLEGE SINCE THE FALL OF 1961;

16 THAT MAKES IT 47 YEARS.

17 Q. AND SO YOU HAVE BEEN EMPLOYED AT THE COLLEGE FOR

18 THE -- YOU WERE EMPLOYED FOR THE ENTIRE EXTENT OF PROFESSOR

19 BLOUGH'S EMPLOYMENT WITH THE COLLEGE, CORRECT?

20 A. YES.

21 Q. WHEN YOU WORKED AS A PROFESSOR, WHICH IS PRIOR TO YOUR  
22 BEING ELEVATED TO PRESIDENT IN 2004, DID YOU EVER WORK IN THE  
23 SAME SCHOOL AS PROFESSOR BLOUGH?

24 A. NO. SHE WORKED IN THE SCHOOL OF BUSINESS  
25 ADMINISTRATION; I WAS IN THE LIBERAL ARTS DIVISION.

26 Q. YOU WERE IN LIBERAL ARTS; PROFESSOR BLOUGH WAS IN

259

1 BUSINESS ADMINISTRATION. SO DID YOU EVER SIT ON ANY COMMITTEES  
2 TOGETHER?

3 A. I DON'T RECALL. AT THAT TIME WE HAD SEPARATE  
4 COMMITTEES FOR THE TWO DIVISIONS.

5 Q. I WANT TO TALK FOR A MOMENT ABOUT YOUR TENURE. I'M  
6 GOING TO FOCUS TODAY ON YOUR TENURE AS PRESIDENT, SO THE 2004 TO  
7 2006 TIME PERIOD.

8 DURING THAT TIME, THE PROCESS FOR FACULTY MEMBERS TO  
9 REQUEST CONTRACT RENEWAL ENDED WITH YOU, CORRECT?

10 A. I DON'T UNDERSTAND THE QUESTION.

11 Q. YOU WERE THE FINAL DECISION MAKER?

12 A. YES, ABSOLUTELY. I WAS THE CHIEF EXECUTIVE OFFICER.

13 Q. AND THAT WAS A FUNCTION THAT THE BOARD OF TRUSTEES HAD  
14 ENTRUSTED TO YOU?

15 A. THAT'S CORRECT.

16 Q. AND THE NORMAL PROCESS THAT YOU ENGAGED IN WAS TO --

17 WHENEVER A FACULTY MEMBER WAS SEEKING A CONTRACT RENEWAL, YOUR

18 FIRST ACTION IN REGARD TO THAT REQUEST WOULD BE TO REVIEW THE  
19 ACADEMIC DEAN'S RECOMMENDATION, CORRECT?

20 A. THAT'S CORRECT.

21 Q. SO PRIOR TO THAT POINT, YOU WERE NOT INVOLVED IN THE  
22 PROCESS AT ALL, CORRECT?

23 A. NOT AT ALL.

24 Q. AND ONCE YOU RECEIVED THAT RECOMMENDATION FROM THE  
25 ACADEMIC DEAN, WHETHER IT WAS APPROVED TO RENEW THE CONTRACT OR  
26 A RECOMMENDATION TO NOT APPROVE THE REQUEST, WHAT DID YOU DO

260

1 NEXT, TYPICALLY, IN YOUR PROCESS?

2 A. TYPICALLY, I WOULD ASK THE PROFESSOR OR THE INSTRUCTOR  
3 INVOLVED TO COME AND VISIT WITH ME. IN SOME CASES WE DIDN'T,  
4 BUT, IN GENERAL, THE PROCEDURE WOULD BE FOR ME TO INTERVIEW THE  
5 CANDIDATE -- NOT THE CANDIDATE AT THIS TIME, THE PROSPECTIVE  
6 APPOINTEE -- PERSONALLY.

7 Q. AND ISN'T IT TRUE THAT YOU NEVER REVIEWED THE DOSSIERS  
8 OF THOSE FACULTY MEMBERS?

9 A. NO, I DID NOT. I TRUSTED THAT THAT WAS THE JOB OF THE  
10 DEAN. MY ONLY ACTION WOULD BE ON THE FINAL RECOMMENDATION, AND  
11 FROM OTHER SOURCES THAT I PUT; YEAH.

12 Q. SO, BASICALLY, ONCE THE DEAN MADE HIS RECOMMENDATION  
13 TO YOU, THE DOSSIER WAS OUT OF THE PICTURE, CORRECT?

14 A. THAT'S RIGHT.

15 Q. OKAY.

16 AND YOU BASED YOUR DECISION ON WHATEVER OTHER DECISION  
17 MAKING, OTHER INFORMATION GATHERING YOU COULD DO, CORRECT?

18 A. THAT'S RIGHT.

19 Q. AND THAT GENERALLY, THOUGH NOT ALWAYS, INCLUDED AN  
20 IN-PERSON INTERVIEW WITH THE FACULTY MEMBER?

21 A. I WOULD SAY IN ALMOST EVERY CASE. I THINK THERE WAS  
22 ONE THAT WE DID NOT.

23 Q. I WANT TO CHANGE TOPICS A LITTLE BIT HERE.

24 WHEN YOU WERE THE PRESIDENT, YOU HAD WHAT I BELIEVE  
25 YOU CALL AN OPEN-DOOR POLICY IN REGARDS TO STUDENTS?

26 A. THAT'S RIGHT. I DID HAVE AN OPEN-DOOR POLICY.

261

1 Q. AND SPECIFICALLY WITH REGARD TO STUDENTS, CORRECT?

2 A. EVERYBODY WITHIN THE MENLO COLLEGE COMMUNITY, EVEN THE  
3 NEIGHBORS DROPPED IN.

4 Q. AND AS OF, SAY, THE 2005 TIME PERIOD, THE END OF THE  
5 2005 FALL SEMESTER, YOU HAD A PRACTICE WHERE YOU WOULD INVITE  
6 THE GRADUATING SENIORS IN TO HAVE A -- JUST A DISCUSSION WITH  
7 YOU, CORRECT?

8 A. I WOULD MEET WITH THEM IN ONE OF THE CLASSROOMS ALL  
9 ALONE; ONLY ONE TIME WAS THE PROVOST WITH ME.

10 Q. AND YOU DO THAT TO GET THE PERSPECTIVE FROM THOSE  
11 STUDENTS AS TO WHAT THEIR EXPERIENCE WAS, NOW THAT THEY HAVE  
12 GONE THROUGH THE WHOLE PROCESS OF THE SCHOOL?

13 A. YES. MAINLY, THEY WOULD TELL ME ABOUT AREAS THAT THEY

14 THOUGHT NEEDED IMPROVEMENT. THE NUMBER ONE COMPLAINT WAS THE  
15 FOOD, AND THE ENTERTAINMENT ON CAMPUS WAS BROUGHT UP TO PAR.

16 Q. SO STUDENTS CAN HAVE SOME PRETTY SILLY COMPLAINTS  
17 SOMETIMES?

18 A. ABSOLUTELY.

19 Q. AND AT THE END OF 2005, DO YOU RECALL HAVING SUCH A  
20 MEETING WITH SOME OF THE STUDENTS, SOME OF THE GRADUATING  
21 SENIORS?

22 A. YES. AT THE END OF -- I HAD IT EVERY SEMESTER.  
23 SOMETIMES IT WOULD BE TEN STUDENTS GRADUATING MIDYEAR, OTHER  
24 TIMES A LARGER GROUP.

25 Q. BECAUSE IN DECEMBER THERE'S NOT AS MANY STUDENTS  
26 GRADUATING AS DO IN MAY, GENERALLY?

262

1 A. 15 TO 20.

2 Q. AND DO YOU SPECIFICALLY RECALL HAVING SUCH A MEETING  
3 IN DECEMBER OF 2005?

4 A. YES.

5 Q. AND WHAT WERE THE STUDENTS -- WHAT KIND OF FEEDBACK  
6 DID YOU GET FROM THE STUDENTS IN THAT MEETING?

7 A. WELL, IT'S TOTALLY IRRELEVANT, BUT THEY WANTED A  
8 LOUNGE.

9 Q. A STUDENT LOUNGE?

10 A. A STUDENT LOUNGE SO THAT THE DAY STUDENTS COULD HAVE  
11 LUNCH. THE OTHER REQUEST WAS THAT WE TRY TO CREATE MORE

12 PARKING, WHICH WAS IMPOSSIBLE. AND THERE WAS ANOTHER ONE, THAT  
13 WE PROVIDE THE DAY STUDENTS BETTER FACILITIES TO EAT ON CAMPUS.

14 Q. DID ANY OF THE STUDENTS EXPRESS ANY CONCERNS ABOUT ANY  
15 OF THE PROFESSORS?

16 A. YES.

17 Q. HOW MANY PROFESSORS WERE BROUGHT UP OR NAMED BY THE  
18 STUDENTS IN THAT MEETING?

19 A. I WOULD SAY FIVE OR SIX.

20 Q. WHAT KIND OF THINGS WERE THE STUDENTS SAYING ABOUT  
21 THESE PROFESSORS?

22 A. WELL, THE USUAL COMPLAINT IS THAT THE PROFESSOR WAS  
23 TOO HARD, NUMBER ONE. THE SECOND COMPLAINT WAS THAT THE  
24 PROFESSOR DID NOT SHOW UP FOR CLASS OR THAT LEFT THE CLASS AND  
25 DID NOT DO WHAT THEY THOUGHT WAS A GOOD AND ADEQUATE TEACHING  
26 JOB.

263

1 Q. HOW MANY PROFESSORS FIT THAT CATEGORY IN DECEMBER OF  
2 2005, AT LEAST FROM THE STUDENTS' COMPLAINTS TO YOU?

3 A. I WOULD SAY TWO.

4 Q. AND WAS ONE OF THOSE PROFESSORS PROFESSOR BLOUGH?

5 A. YES.

6 Q. OKAY. AND WHO WAS THE OTHER PROFESSOR?

7 MR. VARTAIN: I AM GOING TO OBJECT. I DON'T KNOW THAT  
8 THAT'S RELEVANT WHO THE OTHER PROFESSOR WAS.

9 THE WITNESS: I CAN TELL YOU --



10 MR. LEBOWITZ: HOLD ON.

11 THE COURT: OVERRULED.

12 THE WITNESS: I CAN TELL YOU I DON'T REMEMBER EXACTLY  
13 THE NAME, BUT THIS IS A GENTLEMAN THAT WE HAD HAD TROUBLE  
14 BEFORE. THE DEAN AND THE PROVOST LATER INFORMED ME THAT HE HAD  
15 FORGED HIS DEGREE FROM THE UNIVERSITY OF CALIFORNIA, AND THERE  
16 WAS ABSOLUTELY NO QUESTION THAT WE WOULD NOT REHIRE THIS PERSON.

17 MR. LEBOWITZ: Q. NOW, SO THAT FACULTY MEMBER WHO WAS  
18 BEING COMPLAINED ABOUT, OTHER THAN PROFESSOR BLOUGH IN THIS  
19 MEETING, OR AT LEAST THE STUDENTS WERE EXPRESSING SOME CONCERNS  
20 ABOUT THEIR ATTENDANCE IN CLASS, THAT FACULTY MEMBER WAS NOT  
21 SENT TO A PSYCHIATRIC EXAM, WAS HE?

22 A. HE RESIGNED. HE ADMITTED THAT HE HAD FORGED THE  
23 DOCUMENT.

24 Q. WHEN WAS THAT?

25 A. I THINK IT WAS SHORTLY AFTER THAT, PROBABLY IN JANUARY  
26 OF THAT YEAR, IF I RECALL CORRECTLY.

264

1 Q. REGARDLESS, BEFORE HE RESIGNED AND TOOK HIS OWN ACTION  
2 TO RESIGN, THE COLLEGE NEVER REQUIRED HIM TO GO TO A PSYCHIATRIC  
3 EXAM, DID IT?

4 A. THERE WAS NO REASON FOR IT.

5 Q. SO THE ANSWER IS NO, YOU DIDN'T ORDER IT?

6 A. NO.

7 MR. LEBOWITZ: COULD WE HAVE EXHIBIT 10, PLEASE.

8 (PLAINTIFF'S EXHIBIT NO. 10 WAS MARKED FOR  
9 IDENTIFICATION.)

10 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

11 THE COURT: YES.

12 MR. LEBOWITZ: OKAY.

13 Q. PRESIDENT LOPEZ, WE HAVE HANDED YOU WHAT WE HAVE  
14 MARKED FOR IDENTIFICATION AS EXHIBIT 10. CAN YOU IDENTIFY,  
15 GENERALLY, WHAT THIS DOCUMENT IS?

16 A. THIS IS A LETTER THAT I SENT TO PROFESSOR BLOUGH  
17 STATING MY CONCERNS OVER THE FACT THAT HER CLASSES WERE NOT  
18 MEETING AND SEVERAL -- AND THE OTHER COMPLAINTS THAT SHE HAD  
19 LEFT EARLY, THAT SHE WAS NOT PUTTING MUCH OF AN EFFORT IN  
20 PREPARING HER CLASSES. THIS CAME FROM THE STUDENTS, AND THIS  
21 WAS -- I THINK THIS WAS A FOLLOW UP ON A MEETING THAT WE HAD.

22 Q. IS YOUR SIGNATURE ON THE SECOND PAGE OF THIS LETTER?

23 A. YES, IT IS.

24 Q. DID YOU WRITE THIS LETTER?

25 A. YES. MY SECRETARY TYPED IT, OF COURSE, BUT I TOLD HER  
26 IN GENERAL TERMS WHAT I WANTED TO TELL HER.

265

1 MR. LEBOWITZ: I WOULD OFFER THIS INTO EVIDENCE.

2 THE COURT: ANY OBJECTION?

3 MR. VARTAIN: NO OBJECTION.

4 THE COURT: EXHIBIT 10 WILL BE ADMITTED.

5 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

6 (PLAINTIFF'S EXHIBIT NO. 10 WAS ADMITTED INTO  
7 EVIDENCE.)

8 MR. LEBOWITZ: Q. OKAY. WE ARE LOOKING AT  
9 EXHIBIT 10. AND, PRESIDENT LOPEZ, IT MIGHT BE EASIER FOR YOU  
10 JUST TO READ FROM THE COPY YOU HAVE. IT'S BETTER FOCUSED.

11 SO THIS IS THE LETTER THAT YOU WROTE AND HAD  
12 HAND-DELIVERED TO AND MAILED TO PROFESSOR BLOUGH, CORRECT?

13 A. RIGHT.

14 Q. AND THIS IS SOMETHING THAT YOU DID AS PART OF THE  
15 PROCESS OF DETERMINING WHETHER OR NOT PROFESSOR BLOUGH SHOULD  
16 CONTINUE AS A PROFESSOR AT THE COLLEGE, CORRECT?

17 A. CORRECT.

18 Q. NOW, LET'S LOOK AT THE LETTER.

19 IT SAYS, YOU START, "I AM WRITING OUT OF CONCERN FOR  
20 OUR STUDENTS AND FOR YOU." YOU GO ON, "AS YOU KNOW, WE HAVE  
21 BEEN AWARE THAT YOU HAVE HAD VERY CHALLENGING HEALTH ISSUES.  
22 ONES THAT, AT DIFFERENT TIMES IN YOUR CAREER, HAVE ADVERSELY  
23 IMPACTED YOUR ABILITY TO PERFORM YOUR TEACHING OBLIGATIONS AT  
24 THE STANDARD THAT WE EXPECT OF YOU AND THAT YOU EXPECT OF  
25 YOURSELF."

26 STOPPING THERE FOR A MOMENT, WHAT WERE YOU REFERRING

266

1 TO AS TO THE VERY CHALLENGING HEALTH ISSUES AT DIFFERENT TIMES?

2 A. WELL, THE CHALLENGING HEALTH ISSUES WERE THAT SHE WAS  
3 NOT FEELING WELL, OBVIOUSLY, IF SHE HAD TO LEAVE THE CLASSROOM

4 HALFWAY THROUGH. AND THAT SHE COULDN'T MEET IN THE CLASSROOM  
5 EVERY DAY SHE WAS ASSIGNED. TO ME, THIS IS, OBVIOUSLY, A HEALTH  
6 ISSUE. I DON'T THINK OUT OF HER OWN WILLINGNESS SHE WAS JUST  
7 STAYING HOME RATHER THAN COMING TO WORK. SHE, OBVIOUSLY, WAS  
8 HAVING SOME HEALTH ISSUES.

9 Q. OKAY. AND I WANT TO FOCUS ON THE LANGUAGE WHERE YOU  
10 TALK ABOUT DIFFERENT TIMES IN HER CAREER.

11 WHAT WERE YOU REFERRING TO THERE?

12 A. WELL, I WAS NOT PRESIDENT, AND I DON'T KNOW ANY OF THE  
13 DETAILS BECAUSE IT WAS BEFORE MY TIME, BUT SHE HAD BEEN GIVEN  
14 LEAVE OF ABSENCES BEFORE DUE TO MEDICAL CONDITIONS.

15 Q. HOW DID YOU LEARN THAT INFORMATION?

16 A. WELL, OBVIOUSLY, WE ARE A VERY SMALL COMMUNITY. WE  
17 WERE ONLY 22 PROFESSORS AT THE TIME. WE KNEW EACH OTHER. WE  
18 WERE LIKE A BAND OF BROTHERS. AND I DID TALK TO DR. BLOUGH  
19 SEVERAL TIMES INFORMALLY IN THE CAFETERIA OR GOING IN OR OUT OF  
20 THE OFFICE.

21 Q. AND WHEN YOU SAY YOU SPOKE WITH PROFESSOR BLOUGH  
22 INFORMALLY, THE CAFETERIA OR GOING IN AND OUT OF THE OFFICE,  
23 YOU'RE TALKING ABOUT OVER A SPAN OF YEARS, CORRECT?

24 A. RIGHT.

25 Q. THIS IS SOMETHING THAT YOU AND PROFESSOR BLOUGH  
26 REGULARLY WOULD HAVE CONVERSATIONS IN PASSING, AS COLLEAGUES,

1 CORRECT?

2 A. WE HAVE. I IMAGINE EVERY COLLEAGUE TALKS TO EACH  
3 OTHER --

4 Q. SURE.

5 A. -- IN A CIVIL MANNER.

6 Q. YOU WOULD HOPE.

7 AND OVER THIS PERIOD OF YEARS, PROFESSOR BLOUGH WOULD  
8 SHARE WITH YOU ON OCCASION THE FACT THAT SHE WAS HAVING HEALTH  
9 ISSUES, CORRECT?

10 A. NOT MUCH THAT SHE WAS HAVING HEALTH ISSUES. SHE  
11 SEEMED TO TELL ME SHE WAS DEPRESSED.

12 Q. AND DID SHE TELL YOU WHAT IT WAS THAT WAS CAUSING HER  
13 DEPRESSION?

14 A. WELL, I WOULD SAY IN THE LAST YEAR SHE TOLD ME SHE WAS  
15 HAVING MARITAL PROBLEMS, AND SHE WAS VERY UPSET ABOUT THIS. AND  
16 I JUST HAD TO BE A GOOD LISTENER. I'M NOT A MARITAL COUNSELOR,  
17 BUT SHE WAS VERY CANDID WITH ME.

18 Q. SO YOU'RE TALKING ABOUT THIS LAST YEAR 2005, 2006  
19 ACADEMIC YEAR. HOW ABOUT BEFORE THAT, WHEN YOU AND PROFESSOR  
20 BLOUGH HAD CONVERSATIONS WHERE SHE EXPRESSED TO YOU THAT SHE WAS  
21 EXPERIENCING SOME DEPRESSION? DID SHE TELL YOU WHAT THE SOURCE  
22 OF THAT WAS?

23 A. NO. I DON'T THINK SHE SPECIFICALLY TOLD ME THAT SHE  
24 WAS EXPERIENCING DEPRESSION. IT WAS MOSTLY SMALL TALK. WE MEET  
25 HER IN THE CAFETERIA. WE MEET, MAYBE, AT THE COPY MACHINE,  
26 THOSE SORT OF THINGS, "HOW ARE YOU?" "FINE." "WELL, I'M A

1 LITTLE DEPRESSED," SORT OF THING, BUT NOTHING ELSE.

2 Q. SO AS PART OF THOSE CONVERSATIONS, YOU DIDN'T GET ANY  
3 DEPTH ABOUT THE SOURCE OR THE CAUSE OF ANY OF HER FEELINGS AT  
4 THAT TIME?

5 A. IT WAS NONE OF MY BUSINESS OTHER THAN FEELING SORRY  
6 FOR HER, WHO I CONSIDER A COLLEAGUE AND TO VISIT, MAYBE, A  
7 FRIEND, EVEN THOUGH WE DID NOT WORK IN THE SAME DEPARTMENT AND  
8 WE WERE NOT THAT CLOSE.

9 Q. AND JUST TO BE CLEAR, SO THE INFORMATION THAT  
10 PROFESSOR BLOUGH GAVE YOU PRIOR TO THE '05, '06 ACADEMIC YEAR  
11 ABOUT HER HEALTH, OR HER FEELINGS, OR HER EMOTIONS, AGAIN, THIS  
12 CATEGORY OF PROFESSIONAL COLLEGIAL CONVERSATION, CORRECT?

13 A. RIGHT.

14 Q. LET'S MOVE ON TO THE NEXT PARAGRAPH OF THE LETTER.

15 IT SAYS, "DEAN PRATT HAS SPOKEN TO YOU DURING THE  
16 CURRENT ACADEMIC YEAR OF YOUR CANCELLATIONS OF CLASSES, YOUR  
17 REPEATED SUDDEN TERMINATION OF CLASSES DURING ONGOING CLASS  
18 TIME, AND STUDENT REACTION TO YOUR PERFORMANCE. OBJECTIVE  
19 EVIDENCE OF YOUR TEACHING FUNCTIONS THIS YEAR AND YOUR OWN  
20 STATEMENTS TO THE DEAN AND ME PROVIDE FOR" -- I CAN'T READ THAT.

21 A. "PROVIDE FIRM BASIS."

22 Q. EXCUSE ME -- "FIRM BASIS FOR US TO BELIEVE THAT  
23 MEDICAL DIFFICULTIES ARE PRECLUDING YOUR CONSISTENTLY AND  
24 EFFECTIVELY CARRYING OUT YOUR FUNCTIONS AS A FULL-TIME FACULTY  
25 MEMBER."

26 DO YOU SEE THAT?

1 A. RIGHT.

2 Q. YOU WROTE THAT SENTENCE -- OR THOSE SENTENCES?

3 A. YES.

4 Q. THOSE ARE YOUR WORDS, YES?

5 A. PROBABLY IMPROVED BY MY SECRETARY WHO WAS VERY  
6 EFFICIENT, WHO CORRECTS MY SPANISH.

7 Q. YOU MENTIONED OBJECTIVE EVIDENCE IN THE MIDDLE OF THIS  
8 PARAGRAPH IN THE SECOND SENTENCE, THE THIRD LINE DOWN. WHAT  
9 OBJECTIVE EVIDENCE ARE YOU TALKING ABOUT?

10 A. WELL, THE FACT THAT EVERYBODY KNEW THAT SHE WAS NOT  
11 DOING HER CLASSES. THERE WAS AN ACADEMIC COORDINATOR, I THINK  
12 WE CALL HER DIRECTOR OF ACADEMIC AFFAIRS. AND SHE KEPT A  
13 DIARY -- SHE KEEPS A LOG OF EVERYBODY THAT MISSES CLASSES. AND  
14 THAT WAS EVIDENTLY PRESENTED TO DEAN PRATT. I NEVER SAW IT,  
15 OTHER THAN THE ACADEMIC COORDINATOR TELLING ME THAT WE DID HAVE  
16 A PROBLEM WITH PROFESSOR BLOUGH.

17 Q. OKAY.

18 SO LET'S BE ABSOLUTELY CLEAR ABOUT YOUR TESTIMONY  
19 HERE. YOU DESCRIBED THIS LOG OR RECORD THAT -- IS IT MS. HERZEG  
20 WOULD KEEP?

21 A. RIGHT.

22 Q. YOU NEVER ACTUALLY SAW THAT RECORD DURING THE SPRING  
23 2006 SEMESTER, CORRECT?

24 A. NO.

25 Q. THAT'S CORRECT, YOU NEVER SAW IT?

26 A. THAT'S CORRECT.

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1 Q. AND YOU NEVER ACTUALLY SPOKE WITH MRS. HERZEG ABOUT  
2 IT; IT'S JUST FROM DEAN PRATT THAT YOU GOT THE INFORMATION?

3 A. NO. I SPOKE WITH MS. HERZEG QUITE A BIT.

4 Q. AND YOU SPOKE WITH MS. HERZEG ABOUT THIS ISSUE?

5 A. YES.

6 Q. BUT SHE NEVER SHOWED YOU THAT LOG OR RECORD OF  
7 WHATEVER ATTENDANCE RECORD SHE WAS KEEPING, DID SHE?

8 A. NO.

9 Q. SO YOU HAVE NO IDEA HOW MANY CLASSES PROFESSOR BLOUGH  
10 ACTUALLY MISSED THAT SEMESTER, CORRECT?

11 A. I DON'T KNOW HOW MANY.

12 Q. AND YOU DON'T KNOW HOW MANY CLASSES PROFESSOR BLOUGH  
13 ACTUALLY ENDED EARLY, CORRECT?

14 A. I DON'T KNOW THAT EITHER.

15 Q. AND YOU DON'T KNOW HOW EARLY PROFESSOR BLOUGH ENDED  
16 ANY OF THOSE CLASSES, DO YOU?

17 A. NO.

18 Q. AND FOR ANY CLASSES THAT PROFESSOR BLOUGH MAY HAVE  
19 BEEN LATE FOR, YOU DON'T KNOW HOW LATE SHE MAY HAVE BEEN FOR ANY  
20 OF THOSE CLASSES, DO YOU?

21 A. NO.

22 Q. AND YOU WERE GIVEN THIS INFORMATION THAT YOU HAVE JUST



23 DESCRIBED ABOUT PROFESSOR BLOUGH'S ATTENDANCE. DID YOU REVIEW  
24 ANY OF PROFESSOR BLOUGH'S STUDENT EVALUATIONS FOR THE SPRING OF  
25 2006?

26 A. NO. I REFUSE TO LOOK AT ANY OF THE INSTRUCTORS'

271

1 STUDENT EVALUATIONS. I HAVE NEVER LOOKED AT ONE. SOMETIMES I  
2 DON'T EVEN LOOK AT MY OWN.

3 Q. SO AS A MATTER OF PRACTICE AND POLICY, ISN'T IT TRUE,  
4 PRESIDENT LOPEZ, THAT YOU NEVER LOOK AT FACULTY MEMBERS' STUDENT  
5 EVALUATIONS?

6 A. I HAVE NEVER SEEN ONE OTHER THAN MY OWN.

7 Q. AND EVEN THOUGH YOU, AS PRESIDENT, HAD ACCESS TO, FOR  
8 INSTANCE, PROFESSOR BLOUGH'S STUDENT EVALUATIONS, CORRECT?

9 A. I ASSUME SO. IF I HAD ASKED FOR IT, SHE PROBABLY  
10 WOULD HAVE BROUGHT IT TO ME.

11 Q. AND THE STUDENT EVALUATIONS SERVE AS FEEDBACK, AS AN  
12 AVENUE FOR STUDENTS TO GIVE FEEDBACK AS TO THE PERFORMANCE OF  
13 EACH FACULTY MEMBER, CORRECT?

14 A. THAT'S WHY I DON'T READ THEM. THEY DON'T SERVE AS A  
15 VEHICLE FOR INFORMATION.

16 Q. YOU DON'T THINK THOSE STUDENT EVALUATIONS GIVE YOU ANY  
17 INFORMATION AT ALL ABOUT A PROFESSOR?

18 A. THEY GIVE ME VERY, VERY LITTLE INFORMATION. THERE'S  
19 ALWAYS SOME CRACKPOT THAT SAYS, "KNOWLEDGE OF THE SUBJECT," AND  
20 HE GIVES ME A ZERO. NOW, IF YOU DON'T THINK MY KNOWLEDGE OF

21 SPANISH IS ZERO, HOW CAN I BELIEVE THAT?

22 Q. SO IT'S DIFFICULT FOR YOU TO BELIEVE NEGATIVE

23 EVALUATIONS IN A STUDENT EVALUATION?

24 MR. VARTAIN: NOW, I'M GOING TO OBJECT; ARGUMENTATIVE.

25 THE COURT: SUSTAINED.

26 MR. LEBOWITZ: Q. WELL, HAVE YOU EVER SEEN A POSITIVE

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1 STATEMENT IN ANY OF THE WRITTEN REVIEWS FOR YOUR CLASSES?

2 MR. VARTAIN: OBJECTION, IRRELEVANT.

3 THE COURT: OVERRULED.

4 THE WITNESS: MANY.

5 MR. LEBOWITZ: Q. OKAY.

6 A. I DIDN'T WANT TO SAY IT, BUT IF YOU KEPT THE RECORD OF  
7 POINTS THAT ARE ASSIGNED BY THE DEANS, I HAVE ALWAYS BEEN NUMBER  
8 ONE OR NUMBER TWO. THAT'S ONE OF THE REASONS WHY I WAS MADE  
9 PRESIDENT.

10 Q. AND DO YOU BELIEVE THOSE POSITIVE STATEMENTS WHEN MADE  
11 BY THE STUDENTS IN THE STUDENT EVALUATIONS?

12 A. TO A CERTAIN DEGREE, YES. BUT I AM NOT CONVINCED THAT  
13 THEY ARE REALLY TRUE. I DON'T THINK I WAS THAT GOOD. I MISSED  
14 CLASSES EVERY ONCE IN A WHILE.

15 Q. YOU DID MISS CLASSES EVERY ONCE IN A WHILE?

16 A. YES.

17 Q. DID THE COLLEGE EVER SEND YOU FOR A PSYCHIATRIC EXAM?

18 MR. VARTAIN: I'M GOING TO OBJECT.

19 THE COURT: SUSTAINED.  
20 MR. VARTAIN: PLEASE --  
21 MR. LEBOWITZ: SHE SUSTAINED THE OBJECTION --  
22 THE COURT: COUNSEL, I SUSTAINED THE OBJECTION.  
23 PLEASE MOVE ON.  
24 MR. LEBOWITZ: I'M TRYING TO, YOUR HONOR.  
25 THE COURT: WE ARE NOT GOING TO ENGAGE IN THAT GIVE  
26 AND TAKE.

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1 MR. VARTAIN: I APOLOGIZE.  
2 THE COURT: THANK YOU.  
3 MR. LEBOWITZ: Q. YOU MOVE ON, AND LET'S GO BACK TO  
4 THE MAY 8, 2006 LETTER.  
5 YOU SAY IN THE NEXT PARAGRAPH FROM WHERE WE LEFT OFF,  
6 "AT THIS POINT, NEAR THE END OF THE ACADEMIC YEAR, IT SEEMS  
7 PRUDENT BOTH FOR YOU AND FOR THE STUDENTS TO DETERMINE THE NEED  
8 FOR YOU TO OBTAIN AN UPDATED MEDICAL EVALUATION AS TO YOUR  
9 ABILITY TO PERFORM FACULTY FUNCTIONS WITH FULL EFFECTIVENESS."  
10 YOU SAY IN THIS PARAGRAPH "UPDATED MEDICAL  
11 EVALUATIONS." AT THE TIME YOU WROTE THIS LETTER, WERE YOU AWARE  
12 ONE WAY OR THE OTHER WHETHER OR NOT PROFESSOR BLOUGH HAD HAD A  
13 PRIOR MEDICAL EVALUATION?  
14 A. YES.  
15 Q. HOW DID YOU BECOME AWARE OF THAT INFORMATION?  
16 A. THE HUMAN RESOURCES PEOPLE LOOKED AT HER FILE, AND

17 THEY TOLD ME THAT THE REASON WHY SHE WENT ON LEAVE BEFORE WAS  
18 BECAUSE OF MEDICAL REASONS.

19 Q. WHO TOLD YOU THAT? WHICH PERSON?

20 A. I THINK IT WAS STEPHANIE SAPRAI, WAS AT TIME HUMAN  
21 RESOURCES.

22 Q. SHE TOLD YOU THAT INFORMATION BEFORE YOU WROTE THIS  
23 LETTER?

24 A. YES, OF COURSE. I WOULDN'T HAVE KNOWN THAT UNLESS --  
25 I WOULDN'T HAVE PUT IT IN UNLESS I KNEW ABOUT IT.

26 Q. DID SHE TELL YOU THAT, IN FACT, PROFESSOR BLOUGH HAD

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1 UNDERGONE A MEDICAL EVALUATION IN THE PAST?

2 A. YES.

3 Q. OKAY. GO ON TO THE NEXT PARAGRAPH.

4 IT SAYS, "WE BELIEVE THAT YOU SHOULD HAVE BEEN ON  
5 MEDICAL LEAVE FOR THIS PAST ACADEMIC YEAR, AND THAT IT IS LIKELY  
6 THAT YOU SHOULD BE ON MEDICAL LEAVE FOR THIS COMING YEAR. WE  
7 CANNOT BE JEOPARDIZING THE QUALITY OF SERVICES TO OUR STUDENTS."

8 WAS IT YOUR PARTICULAR BELIEF THAT PROFESSOR BLOUGH  
9 SHOULD HAVE BEEN ON MEDICAL LEAVE FOR THE ENTIRETY OF THE 2005  
10 AND 2006 ACADEMIC YEAR?

11 A. IT WAS NOT ONLY MY OPINION; IT WAS HER OPINION, TOO.

12 Q. WELL, AT THE TIME YOU WROTE THIS LETTER, WAS IT YOUR  
13 OPINION THAT PROFESSOR BLOUGH SHOULD HAVE BEEN ON MEDICAL LEAVE  
14 FOR THE ENTIRE 2005 AND 2006 ACADEMIC YEAR?

15 A. YES.

16 Q. AND WHAT WAS YOUR BASIS FOR BELIEVING SHE SHOULD HAVE  
17 BEEN ON LEAVE FOR THE FALL 2005 SEMESTER?

18 A. I AM NOT SURE THAT I BELIEVE IN THE FALL 2005  
19 SEMESTER, REALLY. IT WAS MORE OR LESS IN THE SPRING.

20 Q. OKAY. THAT'S MY POINT, IS YOUR LETTER MENTIONS THE  
21 PAST ACADEMIC YEAR, AND THAT INCLUDES THE FALL 2005 SEMESTER AND  
22 THE SPRING 2006 SEMESTER. SO I WANT TO MAKE SURE WE'RE ALL  
23 CLEAR AS TO WHAT YOUR INTENTION WAS WHEN YOU WROTE THIS LETTER.  
24 WERE YOU REALLY STRICTLY REFERRING TO THE SPRING 2006 SEMESTER?

25 A. NO, I WAS REFERRING TO THE WHOLE YEAR.

26 Q. WHAT --

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1 A. HER PERFORMANCE IN THE SPRING HAD BEEN SUCH THAT I  
2 THOUGHT THAT THE FIRST SEMESTER HAD GONE JUST AS BAD, PROBABLY  
3 WE JUST DID NOT FOLLOW THROUGH.

4 Q. DID YOU HAVE ANY INFORMATION ABOUT WHAT HER  
5 PERFORMANCE WAS IN THE FALL OF 2005?

6 A. YES.

7 Q. WHAT WAS THAT?

8 A. MY MEETING WITH THE STUDENTS AT THE FALL OF 2005.

9 Q. OKAY. THAT MEETING WITH THOSE 10 OR 15 STUDENTS --

10 A. RIGHT.

11 Q. -- IN DECEMBER OF 2005?

12 A. AND THE VISIT OF THE STUDENTS WHO CAME TO VISIT ME IN

13 MY OFFICE DURING MY OPEN-DOOR POLICY.

14 Q. IN 2005?

15 A. (NO AUDIBLE RESPONSE.)

16 Q. HOW MANY STUDENTS CAME TO VISIT?

17 A. I DON'T KNOW, THREE OR FOUR EVERY DAY, COMPLAINING  
18 ABOUT THE BUG IN THE LETTUCE IN THE CAFETERIA TO PROFESSOR X  
19 GIVING THE FINAL EXAM AT THE WRONG TIME.

20 Q. HOW MANY STUDENTS CAME TO YOU IN YOUR OFFICE IN THE  
21 FALL OF 2005 TO TALK TO YOU ABOUT PROFESSOR BLOUGH?

22 A. THEY DIDN'T COME TO TALK TO ME ABOUT PROFESSOR BLOUGH,  
23 BUT I WOULD SAY FOUR OR FIVE MENTIONED PROFESSOR BLOUGH.

24 MR. LEBOWITZ: YOUR HONOR, YOU MENTIONED YOU WANTED TO  
25 TAKE A BREAK AT FIVE TO 3:00.

26 THE COURT: WOULD THIS BE A GOOD TIME?

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1 MR. LEBOWITZ: SURE.

2 THE COURT: THANK YOU.

3 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE OUR  
4 AFTERNOON BREAK. LET'S COME BACK AT 3:15.

5 (WHEREUPON, A BREAK WAS TAKEN.)

6 THE COURT: WE ARE BACK ON THE RECORD.

7 MR. LEBOWITZ, YOU MAY CONTINUE.

8 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

9 AS YOU'LL NOTE, OVER THE BREAK WE FINALLY FIGURED OUT  
10 OUR TECHNICAL, AND WE NOW HAVE A MUCH CLEARER VIEW, SO IT SHOULD

11 SPEED THINGS ALONG. I'VE TURNED THE PAGE TO THE SECOND PAGE OF  
12 YOUR MAY 8TH -- OH, I'M SORRY.

13 MAY I APPROACH, YOUR HONOR?

14 THE COURT: YES.

15 MR. LEBOWITZ: Q. I TURNED THE PAGE TO THE SECOND  
16 PAGE OF YOUR MAY 8TH LETTER. AND IN THIS LETTER YOU DESCRIBE --  
17 WELL, YOU LIST A DOCTOR, A PHYSICIAN THERE, JAMES MISSETT, M.D.,  
18 PH.D., RIGHT?

19 IS THAT A "YES"?

20 A. YES.

21 Q. THANK YOU.

22 AND HOW DID YOU COME TO CHOOSE DR. MISSETT?

23 A. HE WAS CHOSEN BY THE HUMAN RELATIONS PERSON AT MENLO  
24 COLLEGE.

25 Q. STEPHANIE SAPRAI?

26 A. RIGHT.

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1 Q. THAT WAS NOT YOUR CHOICE TO CHOOSE --

2 A. NO, IT WAS NOT MY CHOICE.

3 Q. OKAY.

4 DID YOU DO ANYTHING TO INVESTIGATE WHETHER DR. MISSETT  
5 WAS THE APPROPRIATE PERSON TO SEND PROFESSOR BLOUGH FOR AN  
6 EXAMINATION?

7 A. NO.

8 Q. DID YOU DO ANYTHING TO INVESTIGATE OR FIND OUT WHAT

9 DR. MISSETT'S BACKGROUND WAS?

10 A. NO.

11 Q. AS OF MAY 8, 2006, DID YOU HAVE ANY UNDERSTANDING AS  
12 TO WHAT THE SCOPE OF THE MEDICAL EVALUATION THAT DR. MISSETT  
13 WOULD BE CONDUCTING?

14 A. NO. IT WOULD BE A GENERAL EXAMINATION, I GUESS.

15 Q. DID YOU EVER COMMUNICATE TO DR. MISSETT WHAT THE  
16 APPROPRIATE SCOPE OF HIS MEDICAL EVALUATION SHOULD BE?

17 A. NO.

18 MR. VARTAIN: OBJECTION.

19 THE COURT: OVERRULED.

20 MR. LEBOWITZ: Q. DID YOU EVER PROVIDE DR. MISSETT  
21 WITH A LIST OF PROFESSOR BLOUGH'S ESSENTIAL FUNCTIONS, ESSENTIAL  
22 JOB FUNCTIONS?

23 A. NO.

24 Q. DID YOU EVER PROVIDE DR. MISSETT WITH PROFESSOR  
25 BLOUGH'S JOB DESCRIPTION?

26 A. NO.

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1 Q. NOW, IN THE NEXT PARAGRAPH OF THIS LETTER.

2 I WANT TO READ THE NEXT FULL PARAGRAPH. STARTS WITH,  
3 "PLEASE NOTE THAT YOUR TIMELY AND FULL COOPERATION WITH THE IME  
4 IS NECESSARY FOR THE COLLEGE. PLEASE MEET WITH HIM AS HE  
5 REQUESTS, PROVIDE HIM ALL MEDICAL AND OTHER INFORMATION, AND  
6 AUTHORIZE YOUR PAST AND PRESENT HEALTHCARE GIVERS TO PROVIDE HIM



7 WITH RECORDS AND INFORMATION."

8 DO YOU SEE THAT?

9 A. YES.

10 Q. WHEN YOU WROTE THAT SENTENCE, WERE YOU GIVING  
11 PROFESSOR BLOUGH AN OPTION TO PROVIDE SOME INFORMATION TO THE  
12 DOCTOR, AS OPPOSED TO ALL OF HER INFORMATION?

13 A. NO. I THINK WE ASKED HER TO PROVIDE ALL THE RECORDS  
14 TO THE DOCTOR WHO WAS GOING TO CONDUCT THE EXAMINATION.

15 Q. YOU DIDN'T, YOURSELF, PUT ANY LIMITS ON WHAT THE  
16 DOCTOR COULD ASK HER, CORRECT?

17 A. NO.

18 Q. THAT IS CORRECT, RIGHT?

19 A. THAT'S CORRECT.

20 Q. ALL RIGHT.

21 AND YOU DIDN'T TELL PROFESSOR BLOUGH THAT SHE HAD ANY  
22 OPTIONS IN REGARDS TO HOW MUCH OF HER MEDICAL RECORDS SHE WOULD  
23 HAVE TO DISCLOSE TO DR. MISSETT, DID YOU?

24 MR. VARTAIN: OBJECTION. AMBIGUOUS AS TO "HAVE TO."

25 THE COURT: OVERRULED.

26 THE WITNESS: NO.

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1 MR. LEBOWITZ: Q. ARE THERE ANY WRITTEN POLICIES AT  
2 THE COLLEGE THAT YOU KNOW OF THAT DESCRIBE UNDER WHAT  
3 CIRCUMSTANCES THE COLLEGE MAY REQUIRE AN EMPLOYEE TO UNDERGO A  
4 MEDICAL EXAM?

5 A. I UNDERSTAND IN THE FACULTY HANDBOOK THERE'S SOME  
6 LARGER ISSUES QUOTED IN THAT LETTER.

7 Q. WE'LL GET TO THAT. BUT IS THERE A PROVISIO THAT  
8 ALLOWS -- THAT DESCRIBES ANY POLICY AT THE COLLEGE AS TO WHEN  
9 AND UNDER WHAT CIRCUMSTANCES THE COLLEGE MAY REQUIRE AN EMPLOYEE  
10 TO UNDERGO A MEDICAL EXAM?

11 A. I DON'T SPECIFICALLY KNOW ONE, BUT I THINK IT'S  
12 CLEARLY UNDERSTOOD. WE HAD A CASE BEFORE, WHERE ONE OF OUR  
13 PROFESSORS TURNED OUT SIGNS OF TB, AND WE DID REQUIRE HIM TO GO  
14 TO A DOCTOR.

15 Q. OKAY. I'M NOT TALKING ABOUT PRIOR EXPERIENCES. I'M  
16 TALKING ABOUT WRITTEN POLICY. DO YOU KNOW OF ANY?

17 A. OTHER THAN THE FACT OF THE HANDBOOK, NO.

18 Q. AND THAT'S THE SECTION THAT YOU CITED IN YOUR JULY 7TH  
19 LETTER, CORRECT?

20 A. YEAH.

21 Q. OKAY. AND ARE THERE ANY WRITTEN POLICIES AT THE  
22 COLLEGE THAT YOU ARE AWARE OF THAT SET FORTH ANY LIMITATIONS ON  
23 THE SCOPE OF ANY MEDICAL EXAM ORDERED BY THE COLLEGE?

24 A. NO.

25 Q. HAS ANYONE AT THE COLLEGE EVER EXPLAINED TO YOU UNDER  
26 WHAT CIRCUMSTANCES AN EMPLOYER, SUCH AS THE COLLEGE, MAY REQUIRE

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1 AN EMPLOYEE TO UNDERGO A MEDICAL EXAM?

2 MR. VARTAIN: THAT'S IRRELEVANT.

3 THE COURT: OVERRULED.

4 THE WITNESS: NO.

5 MR. LEBOWITZ: Q. HAS ANYONE AT THE COLLEGE EVER  
6 EXPLAINED TO YOU THAT THERE ARE LIMITATIONS AS TO THE SCOPE OF  
7 ANY SUCH MEDICAL EXAM?

8 MR. VARTAIN: OBJECTION, CALLS FOR A LEGAL CONCLUSION.

9 THE COURT: OVERRULED.

10 THE WITNESS: NO.

11 MR. LEBOWITZ: Q. NOW, ONE LAST QUESTION ON THIS  
12 MAY 8TH LETTER. WERE YOU GIVING PROFESSOR BLOUGH A CHOICE AS  
13 FAR AS GOING TO THE MEDICAL EXAM, OR WAS IT SOMETHING THAT YOU  
14 WERE REQUIRING HER TO DO AS A CONDITION OF CONTINUED EMPLOYMENT  
15 WITH THE COLLEGE?

16 A. I WAS REQUIRING IT, BUT WE HAD AGREED THAT SHE WOULD  
17 GO, VERBALLY, IN THE PREVIOUS MEETING.

18 Q. WE'LL TALK ABOUT THAT PREVIOUS MEETING, BUT I WANT TO  
19 MAKE SURE WE UNDERSTAND THIS LETTER. THAT AS A FUNCTION OF THIS  
20 LETTER, THAT YOU, AS PRESIDENT OF THE COLLEGE, WERE REQUIRING  
21 PROFESSOR BLOUGH TO GO TO THIS MEDICAL EXAM --

22 A. YES.

23 Q. -- AS A CONDITION OF CONTINUED EMPLOYMENT, CORRECT?

24 A. YES.

25 MR. LEBOWITZ: OKAY.

26 CAN WE HAVE EXHIBIT 14, PLEASE.

1 (PLAINTIFF'S EXHIBIT NO. 14 WAS MARKED FOR  
2 IDENTIFICATION.)

3 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

4 THE COURT: YES.

5 MR. LEBOWITZ: Q. I HAVE HANDED YOU WHAT WE HAVE  
6 MARKED FOR IDENTIFICATION AS EXHIBIT 14. CAN YOU LOOK AT THE  
7 THREE-PAGE DOCUMENT THAT WE HAVE. AND CAN YOU TELL ME, HAVE YOU  
8 SEEN THIS DOCUMENT BEFORE?

9 A. YES.

10 Q. THE FIRST TWO PAGES, WHAT IS IT, JUST IN GENERAL  
11 TERMS?

12 A. THE FIRST TWO PAGES ARE A LETTER FROM ME, WRITTEN IN  
13 MENLO PARK, TELLING HER WHAT THE OPINION OF DR. MISSETT WAS.

14 Q. OKAY.

15 A. AND TELLING HER THAT WE WOULD HAVE TO PUT HER ON  
16 MEDICAL LEAVE ON THE ADVICE OF THE PHYSICIAN.

17 Q. AND THE THIRD PAGE OF THE DOCUMENT IS THAT LETTER FROM  
18 DR. MISSETT, CORRECT?

19 A. RIGHT.

20 Q. AND YOU ENCLOSED THIS LETTER FROM DR. MISSETT WITH  
21 YOUR LETTER WHEN YOU SENT IT TO PROFESSOR BLOUGH, CORRECT?

22 A. MIGHT HAVE BEEN -- YEAH, ENCLOSED LETTER; YES.

23 MR. LEBOWITZ: OKAY.

24 YOUR HONOR, WE'D OFFER THIS INTO EVIDENCE.

25 THE COURT: ANY OBJECTION?

26 MR. VARTAIN: NO OBJECTION.

1 THE COURT: EXHIBIT 14 WILL BE ADMITTED.  
2 (PLAINTIFF'S EXHIBIT NO. 14 WAS ADMITTED INTO  
3 EVIDENCE.)

4 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

5 Q. I WANT TO LOOK AT THE FIRST PAGE OF YOUR JULY 7TH  
6 LETTER TO PROFESSOR BLOUGH, WHICH IS EXHIBIT 14. AND THE  
7 PARAGRAPH THAT'S IN THE MIDDLE OF THE SCREEN RIGHT HERE.

8 YOU TELL HER, AFTER RECITING WHAT HAD HAPPENED -- THE  
9 FACT THAT YOU RECEIVED THE LETTER FROM DR. MISSETT, YOU WROTE  
10 THE FOLLOWING:

11 "THEREFORE, YOU ARE PLACED ON FMLA LEAVE OF ABSENCE  
12 FOR A PERIOD OF 12 WORK WEEKS, BEGINNING AUGUST 20, 2006, ENDING  
13 NOVEMBER 30, 2006. DURING THE FMLA LEAVE, THE COLLEGE WILL  
14 CONTINUE YOUR HEALTH BENEFITS AS IF YOU ARE WORKING. DURING THE  
15 FMLA LEAVE, YOU WILL BE ELIGIBLE FOR PAY UNDER THE COLLEGE'S  
16 SHORT-TERM DISABILITY POLICY, AND YOU MAY FILE AN APPLICATION  
17 FOR LONG-TERM DISABILITY INSURANCE.

18 "YOU WILL AT THE END OF THAT TIME" -- "AT THAT TIME,"  
19 EXCUSE ME, "RECEIVE NOTICE OF A RIGHT UNDER COBRA TO ELECT  
20 CONTINUANCE OF YOUR HEALTH BENEFIT AT YOUR COST AND OTHER  
21 INSURANCE COVERAGE AS WELL. PLEASE SEE DIRECTOR OF  
22 ADMINISTRATION, STEPHANIE SAPRAI, ON THESE MATTERS."

23 IF YOU CONTINUE TO THE NEXT PARAGRAPH, "FOR THE REASON  
24 THAT DR. MISSETT HAS GIVEN THE OPINION THAT YOU ARE NOT LIKELY  
25 IN THE FORESEEABLE FUTURE TO BE ABLE TO PERFORM THE DUTIES OF

1 RESUME YOUR FACULTY DUTIES, AND YOUR APPOINTMENT WITH THE  
2 COLLEGE WILL LAPSE EFFECTIVE NOVEMBER 30, 2006. HOWEVER, THE  
3 PROVISIONS OF THE LONG-TERM DISABILITY PLAN WILL CONTINUE TO  
4 COVER YOU."

5 YOU WROTE THIS LETTER, CORRECT?

6 A. YES.

7 Q. AND YOU INTENDED TO COMMUNICATE WITH THIS LETTER, TO  
8 PROFESSOR BLOUGH, THAT HER EMPLOYMENT WITH THE COLLEGE WOULD END  
9 ON NOVEMBER 30, 2006, CORRECT?

10 A. NO.

11 Q. WHAT WAS YOUR INTENT WHEN YOU WROTE --

12 A. MY INTENT WAS TO COMMUNICATE TO HER THAT SHE WAS BEING  
13 PUT ON MEDICAL LEAVE. NOW, THE PROVISOS OF THE LAW, I GUESS,  
14 WERE THAT WE DO NOT CONTINUE AFTER SIX WEEKS, UNLESS WE SAW SOME  
15 IMPROVEMENT. AND I UNDERSTAND THAT AFTER THAT, THIS WAS  
16 RESCINDED BY THE HUMAN RESOURCES.

17 Q. OKAY. WELL, LET'S FOCUS ON THIS LETTER FIRST.

18 WHEN YOU SAY, "YOU WILL NOT RESUME YOUR FACULTY  
19 DUTIES, AND YOUR APPOINTMENT WITH THE COLLEGE WILL LAPSE  
20 EFFECTIVE NOVEMBER 30, 2006," WHAT WERE YOU INTENDING TO  
21 COMMUNICATE TO PROFESSOR BLOUGH?

22 A. THAT UNLESS THE CONDITION CHANGED, WE WILL HAVE TO  
23 LAPSE HER EMPLOYMENT WITH THE COLLEGE.

24 Q. DID YOU USE THOSE WORDS, "UNLESS HER CONDITION  
25 CHANGED"?

26 A. NO, BUT IT'S CLEARLY UNDERSTOOD IN THE PARAGRAPH, IF

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1 YOU READ IT, THAT THAT'S WHAT WE INTENDED.

2 Q. DID YOU SAY ANYWHERE IN THIS LETTER THAT THE DECISION  
3 TO TERMINATE HER EMPLOYMENT ON NOVEMBER 30TH WAS SUBJECT TO  
4 REVIEW IF HER CONDITION CHANGED?

5 MR. VARTAIN: OBJECTION, LACKS FOUNDATION.

6 THE COURT: OVERRULED.

7 THE WITNESS: WELL, IT'S VERY CLEAR HERE, WHERE IT  
8 SAYS THAT, "HOWEVER, THE PROVISIONS OF THE LONG-TERM DISABILITY  
9 PLAN WILL CONTINUE TO COVER YOU." SO, REALLY, WE WERE NOT  
10 DISMISSING HER OUTRIGHT AT THAT TIME.

11 MR. LEBOWITZ: Q. WHEN SOMEONE'S ON A LONG-TERM  
12 DISABILITY PLAN, ARE THEY EMPLOYED WITH THE COLLEGE?

13 A. I DON'T KNOW. I AM NOT A HUMAN RELATIONS EXPERT.

14 Q. AND, IN FACT, YOU USED THE LANGUAGE, "YOUR APPOINTMENT  
15 WITH THE COLLEGE WILL LAPSE." THAT MEANS HER EMPLOYMENT IS  
16 TERMINATED, DOESN'T IT?

17 A. THAT'S RIGHT.

18 Q. NOW, LET'S TURN THE PAGE.

19 THE FIRST PARAGRAPH, "YOU SHOULD NOTE THAT UNDER  
20 SECTION 3.9.3.3 OF THE FACULTY HANDBOOK, AN INVOLUNTARY  
21 TERMINATION DUE TO INCAPACITY OCCURS IN CIRCUMSTANCES SUCH AS

22 THESE, WHEREIN A FACULTY MEMBER IS UNABLE TO CONTINUE HER  
23 RESPONSIBILITIES BECAUSE OF A PHYSICAL OR MENTAL CONDITION."

24 YOU WROTE THAT, CORRECT?

25 A. RIGHT.

26 Q. AND YOU WERE RELYING ON THE SECTIONS THAT YOU CITE

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1 HERE IN THE FACULTY HANDBOOK, CORRECT?

2 A. RIGHT.

3 Q. AND YOU WERE APPLYING THAT SECTION OF THE FACULTY  
4 HANDBOOK TO THE CIRCUMSTANCES THAT WERE PRESENTED TO YOU IN  
5 REGARDS TO PROFESSOR BLOUGH, CORRECT?

6 A. IN ACCORDANCE TO THE LETTER FROM DR. MISSETT.

7 Q. I UNDERSTAND. BUT YOU WERE APPLYING THIS SECTION OF  
8 THE FACULTY HANDBOOK TO THE CIRCUMSTANCES AS THEY WERE PRESENTED  
9 TO YOU IN REGARDS TO PROFESSOR BLOUGH?

10 A. YES.

11 MR. LEBOWITZ: CAN I HAVE EXHIBIT 7, PLEASE.

12 (PLAINTIFF'S EXHIBIT NO. 7 WAS MARKED FOR  
13 IDENTIFICATION.)

14 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

15 THE COURT: YES.

16 MR. LEBOWITZ: Q. PRESIDENT LOPEZ, WE HAVE HANDED YOU  
17 WHAT'S BEEN MARKED FOR IDENTIFICATION AS EXHIBIT 7 IN THIS  
18 TRIAL. AND DO YOU KNOW WHAT THIS DOCUMENT IS?

19 A. YES. I WROTE IT, AS A MATTER OF NOTE.



20 Q. THIS IS THE MENLO COLLEGE FACULTY HANDBOOK, CORRECT?

21 A. YES.

22 Q. IT SAYS ON THE FRONT COVER THAT IT WAS APPROVED BY THE  
23 BOARD OF TRUSTEES ORIGINALLY IN AUGUST OF 1994, CORRECT?

24 A. RIGHT.

25 Q. AND THAT ANY REVISIONS CONTAINED IN THE BOOK WERE  
26 APPROVED AS OF THE 24TH OF FEBRUARY 2006, CORRECT?

286

1 A. RIGHT.

2 Q. SO IS THIS THE HANDBOOK THAT WAS IN EFFECT AT THE TIME  
3 THAT YOU WROTE THE JULY 7TH LETTER TO PROFESSOR BLOUGH,  
4 EXHIBIT 14?

5 A. YES, IT WAS.

6 MR. LEBOWITZ: YOUR HONOR, I'D OFFER THIS INTO  
7 EVIDENCE.

8 MR. VARTAIN: NO OBJECTION.

9 THE COURT: EXHIBIT 7 WILL BE ADMITTED.

10 (PLAINTIFF'S EXHIBIT NO. 7 WAS ADMITTED  
11 INTO EVIDENCE.)

12 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

13 Q. LETS TURN THEN TO SECTION 3.9.3.3, WHICH IS ON PAGE  
14 36 -- OR PL 55, DEPENDING WHICH NUMBER YOU'RE LOOKING AT.

15 HERE WE GO, "3.9.3.3, INCAPACITY OR DEATH," CORRECT?  
16 THAT'S WHAT IT'S TITLED?

17 A. YEAH, OKAY.

18 Q. OKAY.

19 AND THIS IS THE SECTION 3, AND 3.9 IS, IN GENERAL, THE  
20 SECTION THAT DESCRIBES THE CIRCUMSTANCES UNDER WHICH THE COLLEGE  
21 MAY INVOLUNTARILY TERMINATE A FACULTY MEMBER'S CONTRACT,  
22 CORRECT?

23 A. YES.

24 Q. AND THIS PARAGRAPH READS, "INVOLUNTARY DETERMINATION  
25 DUE TO INCAPACITY MEANS THAT THE PRESIDENT, IN CONSULTATION WITH  
26 THE PROVOST, ACADEMIC DEAN, AND THE PERSONNEL COMMITTEE HAS

287

1 DECIDED THAT THE FACULTY MEMBER IN QUESTION IS UNABLE TO  
2 CONTINUE HIS OR HER RESPONSIBILITIES BECAUSE OF A PHYSICAL OR  
3 MENTAL CONDITION.

4 "ANY SUCH DECISION WILL BE BASED ON THE PARTICULAR  
5 FACTS AND CIRCUMSTANCES OF THE INDIVIDUAL CASE AND WILL BE MADE  
6 IN ACCORDANCE WITH STATE AND FEDERAL LAW RELATING TO AVOIDANCE  
7 OF DISCRIMINATION AND THAT AFTER ATTEMPTS OF REASONABLE  
8 ACCOMMODATIONS, REHABILITATION AND MEDICAL LEAVES HAVE BEEN  
9 COMPLETED."

10 THIS IS THE PARAGRAPH THAT YOU WERE RELYING ON IN  
11 REACHING YOUR DECISION IN THE JULY 7TH LETTER, CORRECT?

12 A. YES.

13 Q. OKAY.

14 NOW, SHORTLY AFTER WRITING THE JULY 7TH LETTER, TWO  
15 FACULTY MEMBERS CAME TO MEET WITH YOU, DIDN'T THEY, TO TALK

16 ABOUT PROFESSOR BLOUGH?

17 A. ONE.

18 Q. CRAIG MEDLEN AND JACK MCDONOUGH CAME TO SPEAK WITH  
19 YOU?

20 A. JACK MCDONOUGH NEVER TALKED TO ME.

21 Q. IT'S YOUR TESTIMONY THAT JACK MCDONOUGH NEVER SAT IN  
22 YOUR OFFICE WITH CRAIG MEDLEN TO TALK ABOUT PROFESSOR BLOUGH?

23 A. I DON'T REMEMBER. BUT I CAN TELL YOU THAT IF THEY  
24 CAME TO SEE ME, THEY DID NOT COME TOGETHER. JACK MCDONOUGH  
25 DROPPED IN SEVERAL TIMES. DID HE DROP IN SPECIFICALLY ONE TIME  
26 TO TALK ABOUT THE CASE? MAYBE SO, BUT I DON'T RECALL.

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1 Q. WELL, LET'S TALK ABOUT, THEN, WHAT YOU DO RECALL,  
2 WHICH IS PROFESSOR MEDLEN COMING TO SPEAK WITH YOU A FEW DAYS  
3 AFTER YOU WROTE THE JULY 7TH LETTER.

4 A. RIGHT.

5 Q. WHAT DID MR. MEDLEN TELL YOU IN THAT CONVERSATION?

6 A. THAT WE WERE BEING UNFAIR, THAT POOR MARCY HAD BEEN  
7 HERE ALL THESE YEARS, AND THEN THAT WE HAD FORCED HER TO GO TO A  
8 PHYSICIAN THAT WAS UNDER OUR PAY. HE HAD ALL HIS FACTS WRONG.  
9 HE ACTED AS IF HE SHOULD BE THE JUDGE AS TO WHETHER PROFESSOR  
10 BLOUGH SHOULD COME BACK OR NOT. I EXPLAINED TO HIM THAT WE HAD  
11 A LETTER FROM A PHYSICIAN, THAT I HAD MET WITH THE DEAN AND THE  
12 HUMAN RELATIONS PERSONS -- THE PERSON. THE PROVOST WAS ABSENT  
13 FROM THE CAMPUS AT THE TIME -- AND THAT I DIDN'T SEE ANY REASON

14 TO CHANGE MY DECISION.

15 FURTHERMORE, HE WAS SPEAKING ON HIS OWN. HE WAS NOT A  
16 MEMBER OF THE COMMITTEE, OF THE PERSONNEL COMMITTEE. I THINK HE  
17 WAS THE PRESIDENT OF THE FACULTY OF THE SENATE, BUT HE DID NOT  
18 TELL ME THAT HE WAS SPEAKING ON BEHALF OF THE FACULTY SENATE.  
19 WE'VE BEEN FRIENDS FOR A LONG TIME, SO HE CAME IN AND TALKED TO  
20 ME AS A FRIEND.

21 Q. DID YOU GET AGITATED DURING THAT MEETING?

22 A. I SELDOM GET AGITATED.

23 Q. IN THAT MEETING WERE YOU?

24 MR. VARTAIN: I'M GOING TO OBJECT. IT'S IRRELEVANT.

25 THE WITNESS: I DON'T THINK I GOT AGITATED.

26 THE COURT: OVERRULED.

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1 MR. LEBOWITZ: I'M SORRY. I DIDN'T HEAR. YOU SAID  
2 YOU DON'T THINK YOU GOT AGITATED?

3 MR. VARTAIN: I GOT OVERRULED ON BY --

4 MR. LEBOWITZ: I DIDN'T HEAR THE ACTUAL ANSWER. I'M  
5 SORRY.

6 MR. VARTAIN: I'M SORRY.

7 THE WITNESS: I THINK THAT ANYBODY THAT WAS IN MY  
8 OFFICE WOULD TESTIFY THAT I NEVER GOT AGITATED.

9 MR. LEBOWITZ: Q. NOW, LET'S GO TO THE END OF YOUR  
10 TENURE AS THE PRESIDENT. DECEMBER 31, 2006 WAS YOUR LAST DAY AS  
11 PRESIDENT, CORRECT?

12 A. RIGHT.

13 Q. RIGHT.

14 AND AS OF DECEMBER 31, 2006, THE DAY YOU LEFT OFFICE  
15 AS PRESIDENT OF MENLO COLLEGE, IT WAS YOUR BELIEF THAT PROFESSOR  
16 BLOUGH'S EMPLOYMENT WITH THE COLLEGE HAD TERMINATED, CORRECT?

17 A. ABSOLUTELY NOT.

18 MR. LEBOWITZ: WELL, YOUR HONOR --

19 THE COURT: MOVE ON.

20 MR. LEBOWITZ: EXCUSE ME?

21 THE COURT: ASK ANOTHER QUESTION.

22 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

23 Q. DO YOU REMEMBER HAVING YOUR DEPOSITION TAKEN IN THIS  
24 CASE, PRESIDENT LOPEZ?

25 A. YES.

26 Q. DO YOU REMEMBER THAT THAT DEPOSITION TOOK PLACE ON

290

1 OCTOBER 2ND, 2008 IN MY OFFICE?

2 A. RIGHT.

3 MR. LEBOWITZ: MAY I APPROACH WITH THE TRANSCRIPT?

4 THE COURT: SURE; YES. YOU'VE LODGED THE ORIGINAL?

5 MR. LEBOWITZ: YES.

6 THE COURT: THANK YOU VERY MUCH.

7 MR. LEBOWITZ: YOUR HONOR, I'D LIKE TO READ FROM THE  
8 DEPOSITION.

9 Q. PRESIDENT LOPEZ, WHEN YOU HAD YOUR DEPOSITION TAKEN,

10 YOU UNDERSTOOD THAT YOU WERE UNDER OATH, CORRECT?

11 A. RIGHT.

12 Q. AND THAT YOU HAD THE SAME OBLIGATION IN THAT  
13 DEPOSITION TO TELL THE TRUTH AS YOU DO HERE TODAY?

14 A. I DO, YES.

15 MR. LEBOWITZ: OKAY.

16 YOUR HONOR, I'D LIKE TO READ PAGE 75, LINES 7 TO 23.

17 THE COURT: OKAY.

18 MR. LEBOWITZ: OMITTING THE OBJECTION.

19 THE COURT: THANK YOU.

20 GO AHEAD.

21 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

22 Q. I ASKED YOU -- AND YOU CAN READ ALONG, PLEASE.

23 "Q. AS OF THE DAY YOU LEFT OFFICE AS PRESIDENT OF

24 "MENLO COLLEGE, WHAT WAS YOUR UNDERSTANDING AS FAR AS

25 "WHAT PROFESSOR BLOUGH'S EMPLOYMENT STATUS WAS WITH

26 "THE COLLEGE?"

291

1 "A. 2006. MY UNDERSTANDING WAS THAT WE HAD

2 "TERMINATED HER EMPLOYMENT."

3 MR. VARTAIN: I'M GOING TO OBJECT. HE WAS NOT READ

4 THAT THROUGH. THE WITNESS'S ANSWER WAS NOT READ.

5 MR. LEBOWITZ: I APOLOGIZE. I DID MISS ONE LINE IN

6 THERE.

7 THE COURT: THANK YOU.

8 MR. LEBOWITZ: I'LL DO IT AGAIN.

9 "Q. AS OF THE DAY YOU LEFT OFFICE AS PRESIDENT OF

10 "MENLO COLLEGE, WHAT WAS YOUR UNDERSTANDING AS FAR AS

11 "WHAT PROFESSOR BLOUGH'S EMPLOYMENT STATUS WAS WITH

12 "THE COLLEGE?

13 "A. AS OF DECEMBER 31, 2005, WHEN I LEFT?

14 "Q. '06.

15 "A. 2006? MY UNDERSTANDING WAS THAT WE HAD

16 "TERMINATED HER EMPLOYMENT. SHE HAD REFUSED TO TAKE

17 "THE LEAVE OF ABSENCE ON MEDICAL GROUNDS.

18 "Q. WHEN YOU SAY SHE REFUSED TO TAKE A LEAVE OF

19 "ABSENCE, DO YOU MEAN THAT SHE REFUSED TO APPLY FOR

20 "DISABILITY INSURANCE?

21 "A. SHE REFUSED TO ADMIT THAT SHE HAD A MEDICAL OR

22 "MENTAL CONDITION THAT PREVENTED HER FROM TEACHING."

23 Q. NOW, OVER THE SUMMER OF 2005, DO YOU RECALL RECEIVING

24 A VOICEMAIL MESSAGE FROM A MEMBER OF THE BOARD OF TRUSTEES NAMED

25 NIKHIL BEHL?

26 THE COURT: 2005?

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1 MR. LEBOWITZ: EXCUSE ME. THANK YOU, YOUR HONOR.

2 THE COURT: THANK YOU.

3 MR. LEBOWITZ: Q. OVER THE SUMMER OF 2006, DO YOU

4 REMEMBER RECEIVING A VOICEMAIL MESSAGE FROM A MEMBER OF THE

5 BOARD OF TRUSTEES NAMED NIKHIL BEHL?

6 A. NO.

7 MR. LEBOWITZ: I HAVE NOTHING FURTHER, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 CROSS-EXAMINATION?

10 MR. VARTAIN: MAY I LEAVE THE DEPOSITION IN FRONT OF  
11 THE WITNESS FOR FURTHER READING?

12 THE COURT: ABSOLUTELY, YES. I THINK HE HAS IT.

13

14 CROSS-EXAMINATION

15 BY MR. VARTAIN:

16 Q. I WANT TO DIRECT YOUR ATTENTION TO THE PART OF YOUR  
17 DEPOSITION THAT THE ATTORNEY DID NOT READ, PLEASE.

18 MR. LEBOWITZ: OBJECTION, YOUR HONOR.

19 THE COURT: OVERRULED.

20 MR. VARTAIN: Q. WOULD YOU GO TO PAGE 79, LINE 5,  
21 PLEASE. ARE YOU THERE AT THAT PLACE, PROFESSOR EMERITUS LOPEZ?

22 A. YES.

23 Q. THANK YOU. I'M GOING TO READ YOU THE QUESTION:

24 "Q. WAS IT THE CASE THAT WHATEVER MS. BLOUGH WAS" --

25 MR. LEBOWITZ: I'M SORRY, YOUR HONOR. THERE'S  
26 OBJECTIONS IN THE RECORD, IF WE COULD HAVE RULINGS ON THEM.

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1 THE COURT: YES, OF COURSE, YOU CAN.

2 LADIES AND GENTLEMEN, DEPOSITIONS ARE A LITTLE BIT

3 STRANGE. AT TRIAL I'M HERE, AND WHEN THE ATTORNEYS HAVE



4 OBJECTIONS TO THE QUESTIONS I GET TO RULE ON THEM. YOU'VE SEEN  
5 ME DO THAT. WHEN THEY ARE AT DEPOSITION, THEY DON'T HAVE  
6 JUDICIAL SUPERVISION, AND SO THE OBJECTIONS ARE STATED AND THEY  
7 GO ON. AND SO WHEN A DEPOSITION HAS TO BE READ, FINALLY, A  
8 JUDGE GETS TO DECIDE WHETHER THE OBJECTION SHOULD BE OVERRULED  
9 OR SUSTAINED.

10 SO, LIKE YOU, I'VE NEVER SEEN THIS BEFORE. AND I'M  
11 GOING TO HAVE TO LOOK AT IT, BUT OUTSIDE YOUR PRESENCE BECAUSE  
12 WE DON'T ARGUE THE OBJECTIONS IN FRONT OF YOU. IF I SUSTAIN AN  
13 OBJECTION IN A DEPOSITION, IT'S EXACTLY LIKE A TRIAL. YOU DON'T  
14 HEAR THE ANSWER; YOU DISREGARD THE QUESTION. IF I OVERRULE IT,  
15 WE WILL READ IT.

16 SO DO WE NEED TO DO THIS ON THE RECORD OR CAN WE STEP  
17 OUT IN THE HALL? SHOULD I ASK THE JURY TO STEP OUTSIDE FOR  
18 THIS?

19 MR. VARTAIN: NO. I'LL COME OUT IN THE HALL.

20 THE COURT: FEEL FREE TO STAND UP AND STRETCH, LADIES  
21 AND GENTLEMEN, AND GET A GLASS OF WATER, IF YOU WANT. BUT I'M  
22 GOING TO HELP OUT THE LAWYERS ON THIS.

23 (WHEREUPON, THERE WAS DISCUSSION OUTSIDE THE  
24 PRESENCE OF THE JURY.)

25 THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD.  
26 THANK YOU FOR YOUR PATIENCE.

1 FOR THE RECORD, THE OBJECTIONS STATED IN THE

2 DEPOSITION AT PAGE 79, LINES 5 THROUGH 19, THE OBJECTIONS STATED  
3 THERE ARE BOTH OVERRULED.

4 AND, MR. VARTAIN, YOU MAY PROCEED WITH THE READING OF  
5 THE DEPOSITION TESTIMONY.

6 MR. VARTAIN: THANK YOU, YOUR HONOR.

7 Q. SO YOU DID SAY IN THE DEPOSITION, PROFESSOR EMERITUS  
8 LOPEZ, AS FOLLOWS, YOU WERE ASKED THE QUESTION, STARTING AT  
9 LINE -- I'M GOING TO START AT 78, LINE 25. AND THE QUESTION  
10 FROM THE ATTORNEY WAS, "AND IN THAT PERIOD OF TIME, IT WAS STILL  
11 THE CASE THAT YOUR INSTRUCTION WAS THAT ALL COMMUNICATIONS FROM  
12 THE COLLEGE TO PROFESSOR BLOUGH SHOULD COME THROUGH HUMAN  
13 RELATIONS?" AND YOU ANSWERED "YES." IS THAT CORRECT?

14 A. RIGHT.

15 Q. THE NEXT QUESTION WAS, THE ADDITIONAL PART I WANTED TO  
16 BRING UP WAS, "WAS IT THE CASE THAT WHATEVER MS. BLOUGH WAS  
17 INFORMED OF HER EMPLOYMENT STATUS AT THE END OF THAT YEAR, 2006,  
18 WAS WHATEVER HUMAN RESOURCES HAD INFORMED HER IN THEIR LETTERS  
19 TO HER?" AND YOU SAID "YES," CORRECT?

20 A. YES.

21 Q. THEN THE NEXT QUESTION WAS, "WOULD WE LOOK TO THE  
22 LETTERS FROM HUMAN RESOURCES TO MS. BLOUGH TO LEARN WHAT EXACTLY  
23 MS. BLOUGH'S EMPLOYMENT STATUS WAS AT THE END OF 2006?" AND  
24 THEN YOU ANSWERED, "YES, THAT WOULD DEFINITELY BE THE BEST  
25 RECORD," CORRECT?

26 A. RIGHT.

1 Q. AND I'M NOT GOING TO BRING OUT THOSE LETTERS NOW, BUT  
2 THERE'S LETTERS FROM HUMAN RESOURCES AT THE END OF 2006 THAT  
3 STATE WHAT HER STATUS WAS; IS THAT CORRECT?

4 A. RIGHT.

5 MR. VARTAIN: THANK YOU VERY MUCH, PROFESSOR EMERITUS  
6 LOPEZ.

7 THE COURT: ANYTHING ELSE FOR THIS WITNESS ON  
8 REDIRECT?

9 MR. LEBOWITZ: VERY BRIEFLY, YOUR HONOR.

10 THE COURT: GO AHEAD.

11

12 REDIRECT EXAMINATION

13 BY MR. LEBOWITZ:

14 Q. THE QUESTION THAT MR. VARTAIN JUST READ TO YOU, THOSE  
15 WERE ASKED BY HIM AT THE DEPOSITION, CORRECT?

16 A. YES.

17 Q. AND THROUGHOUT THE TIME THAT YOU WERE PRESIDENT, AS  
18 YOU SAID, YOU WERE THE CEO OF THE COLLEGE, CORRECT?

19 A. YES.

20 Q. AND YOU HAD THE FINAL AUTHORITY ON THE DETERMINATION  
21 OF CONTRACT STATUS OF FACULTY MEMBERS, CORRECT?

22 A. YES.

23 MR. LEBOWITZ: THANK YOU, YOUR HONOR. NO MORE.

24 THE COURT: ANYTHING ELSE, MR. VARTAIN?

25 MR. VARTAIN: NO, THANK YOU.

26 THE COURT: AND MAY PROFESSOR LOPEZ BE EXCUSED?

1 MR. VARTAIN: SUBJECT TO --

2 THE COURT: SUBJECT TO RECALL.

3 MR. VARTAIN: THANK YOU.

4 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

5 THE COURT: I'M GOING TO TAKE THOSE THINGS FROM YOU,

6 ALL OF THAT. AND, PROFESSOR LOPEZ, YOU ARE EXCUSED NOW FROM

7 YOUR TESTIMONY. THANK YOU FOR YOUR TESTIMONY, SIR.

8 THE WITNESS: THANK YOU.

9 THE COURT: MR. PETERS, ARE YOU CALLING THE NEXT

10 WITNESS?

11 MR. PETERS: YES, YOUR HONOR. PLAINTIFF CALLS

12 PURSUANT TO EVIDENCE CODE 776, TIMOTHY HAIGHT.

13 THE COURT: WHO'S THAT?

14 MR. PETERS: TIMOTHY HAIGHT.

15 THE COURT: MR. HAIGHT, IF YOU'D COME FORWARD TO THE

16 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

18 (WHEREUPON, THE WITNESS WAS SWORN.)

19 THE WITNESS: I DO.

20 THE CLERK: PLEASE BE SEATED.

21 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME

22 AND SPELL THEM BOTH FOR THE RECORD.

23 THE WITNESS: GARY HAIGHT, G-A-R-Y H-A-I-G-H-T.

24

25

GARY HAIGHT,

26

DULY SWORN, TESTIFIED AS FOLLOWS:

297

1 DIRECT EXAMINATION PURSUANT TO EVIDENCE CODE 776

2 BY MR. PETERS:

3 Q. GOOD AFTERNOON.

4 MR. HAIGHT, ARE YOU CURRENTLY EMPLOYED BY

5 MENLO COLLEGE?

6 A. YES, I AM.

7 Q. AND WHAT IS YOUR POSITION?

8 A. PRESIDENT OF THE COLLEGE.

9 Q. AND CAN YOU TELL US WHO YOUR IMMEDIATE PREDECESSOR WAS

10 AS PRESIDENT?

11 A. CARLOS LOPEZ.

12 Q. AND WHEN DID YOU BEGIN AS THE PRESIDENT OF

13 MENLO COLLEGE?

14 A. OFFICIALLY, ON THE 15TH OF DECEMBER IN 2006.

15 Q. AND PRESIDENT HAIGHT, AS THE PRESIDENT OF THE COLLEGE

16 YOU HAVE THE FINAL DECISION ON HIRING AND FIRING OF FACULTY,

17 CORRECT?

18 A. ULTIMATELY, IT GOES TO ME. CORRECT.

19 Q. AND CAN YOU TELL THE JURY, PLEASE, WHAT THE

20 STANDARD -- I UNDERSTAND MENLO COLLEGE DOES NOT HAVE TENURED

21 FACULTY. THEY ACTUALLY OPERATE UNDER CONTRACTS, CORRECT?

22 A. CORRECT.

23 Q. WHAT ARE THE STANDARD CONTRACTS FOR FACULTY MEMBERS AT  
24 MENLO COLLEGE?

25 A. WOULD BE TERMS OF ONE YEAR, THREE YEARS OR SIX YEARS.

26 Q. AND DID YOU, AT SOME POINT ONCE YOU BECAME PRESIDENT,

298

1 BECOME AWARE OF ANY EMPLOYMENT ISSUES REGARDING  
2 PROFESSOR MARCINE BLOUGH?

3 A. I KNEW, I THINK PROBABLY IN JUNE OF THAT YEAR, A  
4 RECOMMENDATION TO GIVE HER A CONTRACT FOR THE FOLLOWING -- I  
5 THINK SEPTEMBER WAS WHAT I SAW.

6 Q. YOU SAID YOU SAW SOMETHING?

7 A. A LETTER, YES.

8 Q. AND WAS THAT A LETTER THAT YOU ULTIMATELY ISSUED TO  
9 MS. BLOUGH, TO PROFESSOR --

10 A. A LETTER THAT I SIGNED, CORRECT.

11 THE COURT: I'M CONFUSED ON WHAT YEAR WE'RE TALKING  
12 ABOUT.

13 MR. PETERS: IT WAS -- I'M SORRY. IT IS 2007.

14 THE COURT: THANK YOU.

15 MR. PETERS: JULY 2007.

16 (PLAINTIFF'S EXHIBIT NO. 52 WAS MARKED FOR  
17 IDENTIFICATION.)

18 MR. PETERS: MAY I APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 MR. PETERS: Q. SO PRESIDENT HAIGHT, SHOWING YOU WHAT

21 HAS BEEN MARKED AS EXHIBIT 52, A FOUR-PAGE DOCUMENT. THE FIRST  
22 TWO PAGES, I BELIEVE, ARE A LETTER WITH YOUR SIGNATURE ON THE  
23 SECOND PAGE; IS THAT CORRECT?

24 A. IT'S MARKED PAGE 5.

25 Q. I'M SORRY. THAT'S A FAX HEADER, BUT IT'S THE SECOND  
26 SHEET OF --

299

1 A. THE SECOND SHEET, CORRECT.

2 Q. IS THAT YOUR SIGNATURE?

3 A. YES, IT IS.

4 Q. IS THIS THE LETTER YOU WERE REFERRING TO EARLIER?

5 A. YES, IT WAS.

6 Q. AND YOU SAID YOU FIRST BECAME AWARE OF THE EMPLOYMENT  
7 ISSUES WITH PROFESSOR BLOUGH WHEN YOU RECEIVED THIS LETTER; IS  
8 THAT CORRECT?

9 A. THE REAPPOINTMENT, AT THAT TIME.

10 Q. OKAY.

11 DID YOU RECEIVE ANY DOCUMENTS PRIOR TO RECEIVING THIS  
12 LETTER THAT WE HAVE MARKED AS EXHIBIT 52 REGARDING  
13 PROFESSOR BLOUGH'S EMPLOYMENT?

14 A. NO.

15 Q. AND DIRECTING YOUR ATTENTION TO THE THIRD AND FOURTH  
16 PAGES OF EXHIBIT 52, CAN YOU TELL US WHAT -- IT LOOKS LIKE IT'S  
17 ANOTHER LETTER FROM STEPHANIE SAPRAI. CAN YOU TELL US WHAT THAT  
18 DOCUMENT IS?

19 A. IT APPEARS TO BE A LISTING OF COURSES THAT SHE'D BE  
20 TEACHING IN THE FALL AND THE SPRING.

21 Q. IS THAT WHAT IS REFERRED TO AS AN APPOINTMENT  
22 AGREEMENT AT MENLO COLLEGE?

23 A. NO. I DON'T BELIEVE SO. I THINK MY LETTER IS THE --  
24 I'M THE ONLY PERSON WHO CAN APPOINT.

25 Q. OKAY.

26 AND WAS THE LETTER FROM MS. SAPRAI ENCLOSED WITH YOUR

300

1 LETTER, WHICH IS THE FIRST TWO PAGES OF EXHIBIT 52?

2 A. I DON'T KNOW.

3 Q. DIRECTING YOUR ATTENTION TO THE SECOND PAGE, THEN, OF  
4 EXHIBIT 52. AT THE TOP, YOU SEE WHERE IT SAYS, "I HAVE ENCLOSED  
5 TWO COPIES OF THIS APPOINTMENT AGREEMENT"?

6 A. YES.

7 Q. DID YOU WRITE THOSE WORDS?

8 A. NO.

9 Q. DID YOU INCLUDE THOSE WORDS IN THE LETTER THAT YOU  
10 SIGNED?

11 A. THESE WORDS WERE INCLUDED IN THE LETTER THAT I SIGNED.

12 Q. AND WHAT WAS THE APPOINTMENT AGREEMENT THERE WERE TWO  
13 COPIES OF WHICH, INCLUDED?

14 A. I DON'T KNOW.

15 Q. HAD YOU EVER SEEN THE THIRD AND FOURTH PAGES OF  
16 EXHIBIT 52 BEFORE?



17 A. NO.

18 Q. BEFORE TODAY?

19 A. NO.

20 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

21 MR. PETERS: YES, YOUR HONOR. I APOLOGIZE, BUT WE  
22 WOULD OFFER JUST THE FIRST TWO PAGES OF EXHIBIT 52 INTO  
23 EVIDENCE.

24 MR. VARTAIN: NO OBJECTION TO 52, PAGES 0476 AND 0477,  
25 YOUR HONOR.

26 THE COURT: ALL RIGHT. MAY I HAVE THAT BACK, PLEASE.

301

1 WE'RE GOING TO CHANGE IT. ALL RIGHT.

2 FOR THE RECORD, THE DOCUMENT IS GOING TO BE REMARKED  
3 TO INCLUDE ONLY THE FIRST TWO PAGES, AND THAT WILL BE CALLED  
4 EXHIBIT 52. THE OTHER TWO PAGES WILL BE MARKED WITH A  
5 SUCCESSIVE NUMBER, AND YOU CAN DEAL WITH THAT IN THE FUTURE, IF  
6 YOU WISH.

7 MR. PETERS: GREAT. THANK YOU, YOUR HONOR.

8 THE COURT: AND ARE YOU MOVING THAT INTO EVIDENCE? I  
9 DON'T THINK I ADMITTED THAT. 52, AS IT'S BEEN CHANGED, WILL NOW  
10 BE ADMITTED.

11 (PLAINTIFF'S EXHIBIT NO. 52 WAS ADMITTED  
12 INTO EVIDENCE.)

13 MR. PETERS: THANK YOU, YOUR HONOR.

14 Q. SO, PRESIDENT HAIGHT, DIRECTING YOUR ATTENTION TO WHAT

15 WE NOW HAVE AS EXHIBIT 52, A TWO-PAGE DOCUMENT. IT STARTS OUT  
16 BY SAYING, "I'M PLEASED TO OFFER YOU A ONE-YEAR, HALF-TIME,  
17 50 PERCENT FTE, FACULTY APPOINTMENT IN POSITION OF PROFESSOR AT  
18 MENLO COLLEGE."

19 THE COURT: PRESIDENT HAIGHT, HERE YOU GO.

20 THE WITNESS: THANK YOU.

21 MR. PETERS: Q. SO WHEN YOU ISSUED THIS LETTER TO  
22 PROFESSOR BLOUGH, YOU HAD DECIDED TO OFFER HER A HALF-TIME  
23 POSITION, CORRECT?

24 A. IT WAS RECOMMENDED BY THE PROVOST OFFICE THAT I  
25 ACCOMMODATE THE FACULTY MEMBER WITH GIVING HER TWO COURSES.

26 Q. AND I THINK YOU SAID THIS, BUT WHO ACTUALLY DRAFTED

302

1 THIS LETTER?

2 A. I DON'T KNOW. IT CAME FROM THE PROVOST'S OFFICE. I  
3 DON'T KNOW IF HE DRAFTED IT.

4 Q. AND DID YOU SPEAK TO ANYONE IN THE PROVOST'S OFFICE  
5 ABOUT THE FACT THAT PROFESSOR BLOUGH WAS BEING OFFERED A  
6 HALF-TIME SCHEDULE?

7 A. I'M SURE THAT WHEN THE PROVOST PROVIDED THIS TO ME,  
8 THAT HE MADE IT CLEAR THAT THIS WAS A HALF-TIME CONTRACT.

9 Q. MY QUESTION, THOUGH, IS, DO YOU RECALL SPEAKING TO THE  
10 PROVOST OR ANYONE FROM THE PROVOST'S OFFICE AT THE TIME ABOUT  
11 WHY PROFESSOR BLOUGH WAS BEING OFFERED A HALF-TIME CONTRACT?

12 A. NO, OTHER THAN AN ACCOMMODATION. BUT I CAN'T RECALL

13 SPECIFICS ABOUT THE CONVERSATION.

14 Q. THE LETTER GOES ON TO STATE, "THE TERM OF THE  
15 APPOINTMENT BEGINS ON FROM JULY 1, 2007 AND ENDS ON JUNE 30,  
16 2008."

17 SO JUST SO WE'RE CLEAR, THE INTENT OF THIS LETTER WAS  
18 TO PUT PROFESSOR BLOUGH ON A 50 PERCENT SCHEDULE FOR A FULL  
19 ACADEMIC YEAR, CORRECT?

20 A. I BELIEVE, YES.

21 Q. OKAY.

22 AND THEN THE THIRD PARAGRAPH SAYS, "DECISION BY THE  
23 PRESIDENT ON A SUBSEQUENT APPOINTMENT FOR A MULTIYEAR CONTRACT  
24 WILL FOLLOW AN ASSESSMENT OF YOUR PERFORMANCE AS A FACULTY  
25 MEMBER AND THE CURRICULAR NEEDS OF MENLO COLLEGE, THE  
26 RECOMMENDATION OF THE PERSONNEL COMMITTEE, OF THE FACULTY SENATE

303

1 AND THE RECOMMENDATION OF THE PROVOST."

2 DO YOU SEE THAT?

3 A. YES, I DO.

4 Q. AND LET ME BACK UP JUST A MINUTE.

5 WHEN YOU RECEIVED THIS LETTER FROM THE PROVOST'S  
6 OFFICE, DID YOU MAKE ANY CHANGES TO IT?

7 A. NO, I DID NOT.

8 Q. SO THE LETTER THAT WE SEE HERE AS EXHIBIT 52 IS THE  
9 LETTER, AS YOU RECEIVED IT FROM THE PROVOST'S OFFICE, WHICH YOU  
10 THEN SIGNED?

11 A. THAT'S CORRECT.

12 Q. AND HAVE YOU EVER, AS THE PRESIDENT OF MENLO COLLEGE,  
13 ISSUED A LETTER LIKE THIS THAT WAS OFFERING 50 PERCENT,  
14 HALF-TIME EMPLOYMENT TO A PROFESSOR FOR A PARTICULAR PERIOD OF  
15 TIME?

16 A. NO, I DID NOT.

17 Q. SO WAS THIS A STANDARD FORM LETTER AT THE TIME WHEN  
18 YOU RECEIVED IT, FROM YOUR PERSPECTIVE?

19 A. I DON'T KNOW THE HISTORY OF MENLO. IT'S THE FIRST ONE  
20 I SIGNED.

21 Q. AND DID YOU SPEAK TO ANYONE FROM THE PROVOST'S OFFICE  
22 ABOUT THE FACT THAT AT THE END OF HER YEAR AS A PART-TIME  
23 PROFESSOR SHE, THEN, COULD APPLY, BASICALLY, TO GET A MULTIYEAR  
24 CONTRACT AFTER THAT FIRST YEAR AT HALF TIME?

25 A. NO. WHAT THIS WAS WAS A SHORT-TERM ACCOMMODATION  
26 BASED ON THE PROVOST'S RECOMMENDATION.

304

1 Q. AND WHO WAS THE PROVOST AT THE TIME?

2 A. JAMES KELLY.

3 Q. AND DID YOU DO ANYTHING YOURSELF INDEPENDENT OF WHAT  
4 THE PROVOST WAS TELLING YOU TO DETERMINE IF PROFESSOR BLOUGH, IN  
5 FACT, NEEDED A PART-TIME SCHEDULE?

6 A. NO.

7 Q. YOU JUST RELIED ON WHAT THE PROVOST WAS TELLING YOU?

8 A. THE PROVOST IS THE HEAD OF THE FACULTY. THAT'S AN

9 OPERATIONAL POSITION. MY ROLE IS MORE STRATEGIC.

10 Q. SO I'M CORRECT THAT YOU RELIED ON THE PROVOST?

11 A. CORRECT. I'M SORRY.

12 Q. AND WHO IS STEPHANIE SAPRAI?

13 A. SHE'S THE HUMAN RELATIONS DIRECTOR.

14 Q. PRIOR TO SIGNING THIS EXHIBIT 52, DID YOU HAVE ANY  
15 DISCUSSIONS WITH STEPHANIE SAPRAI ABOUT PROFESSOR BLOUGH'S  
16 SITUATION?

17 A. NO.

18 Q. DID YOU HAVE ANY DISCUSSIONS WITH STEPHANIE SAPRAI  
19 PRIOR TO SIGNING THIS LETTER ABOUT WHETHER STEPHANIE SAPRAI  
20 BELIEVED THAT PROFESSOR BLOUGH NEEDED A PART-TIME SCHEDULE?

21 A. NO. SHE DID NOT REPORT TO ME.

22 Q. SO IT'S SAFE TO SAY YOU DIDN'T HAVE ANY DISCUSSIONS  
23 WITH HER ABOUT ANYTHING INVOLVING PROFESSOR BLOUGH WITH REGARDS  
24 TO A PART-TIME SCHEDULE PURSUANT --

25 A. THAT'S CORRECT.

26 Q. AFTER YOU SIGNED EXHIBIT 52 AND SENT IT TO

305

1 PROFESSOR BLOUGH, DID YOU HAVE ANY DISCUSSIONS AT THAT TIME,  
2 ANYTIME THEREAFTER, WITH STEPHANIE SAPRAI REGARDING  
3 PROFESSOR BLOUGH'S NEED FOR A PART-TIME SCHEDULE?

4 A. NO.

5 Q. DID YOU HAVE ANY INFORMATION FROM ANY SOURCE AT THE  
6 TIME YOU SIGNED EXHIBIT 52 REGARDING PROFESSOR BLOUGH'S PHYSICAL

7    CONDITION?

8        A.  NO.

9        Q.  DID YOU HAVE ANY INFORMATION PRIOR TO SIGNING  
10   EXHIBIT 52 REGARDING PROFESSOR BLOUGH'S MENTAL CONDITION?

11       A.  NO.

12       Q.  WHAT DID THE PROVOST, MR. KELLY --

13       A.  DR. KELLY.

14       Q.  I'M SORRY.  DR. KELLY -- DID PROVOST, DR. KELLY, TELL  
15   YOU WHY HE BELIEVED PROFESSOR BLOUGH NEEDED A PART-TIME  
16   POSITION?

17       A.  AT THE TIME I SIGNED THE CONTRACT I'M SURE THERE WAS A  
18   CONVERSATION WHEN I LOOKED AT IT, BUT I DON'T RECALL THE  
19   CONVERSATION.

20       Q.  DO YOU RECALL PROVOST KELLY EVER TELLING YOU WHY SHE  
21   WASN'T BEING GIVEN A FULL-TIME POSITION?

22       A.  I DON'T REALLY RECALL THE CONVERSATION.  THAT WAS A  
23   YEAR AND A HALF AGO.

24       Q.  DO YOU RECALL WHETHER YOU ASKED, WHETHER IT WAS THE  
25   PROVOST OR ANYONE ELSE IN THE ADMINISTRATION, PRIOR TO SIGNING  
26   THIS LETTER, WHY PROFESSOR BLOUGH WASN'T BEING GIVEN A FULL-TIME

306

1   POSITION?

2       A.  TYPICALLY, THE PROVOST WILL GIVE ME A LETTER AND  
3   EXPLAIN TO ME THAT THIS IS -- YOU KNOW, PLEASE SIGN THIS FOR  
4   THIS PARTICULAR REASON, AND I TYPICALLY WILL GO AHEAD WITH IT.

5 Q. THANK YOU.

6 BUT WHAT WE'RE INTERESTED IN IS SPECIFICALLY WHAT  
7 HAPPENED HERE, AND THAT'S WHAT I'M TRYING TO FIND OUT. AND MY  
8 SPECIFIC QUESTION IS, DID ANYONE IN THE ADMINISTRATION, FROM THE  
9 PROVOST'S OFFICE OR OTHERWISE, TELL YOU PRIOR TO SIGNING THIS  
10 LETTER, EXHIBIT 52, WHY PROFESSOR BLOUGH WAS NOT BEING OFFERED A  
11 FULL-TIME POSITION?

12 A. PRIOR OR DURING THE CONVERSATION WHERE I SIGNED IT?

13 Q. SURE.

14 A. I'M ASSUMING THAT HE HAD TOLD ME SOMETHING. I DON'T  
15 KNOW WHAT IT WAS.

16 Q. YOU DON'T RECALL ONE WAY OR THE OTHER?

17 A. NO.

18 Q. AND, AGAIN, JUST SO WE'RE CLEAR, YOU HAD AS OF THE DAY  
19 YOU SIGNED THIS LETTER, WHICH WAS JULY 17, 2007, YOU HAD NO  
20 PERSONAL KNOWLEDGE ABOUT PROFESSOR BLOUGH'S PHYSICAL CONDITION?

21 A. DIDN'T KNOW WHAT IT WAS. NO.

22 Q. HAD YOU EVER MET PROFESSOR BLOUGH?

23 A. NO.

24 Q. AND YOU RELIED ENTIRELY ON THE PROVOST IN SIGNING THIS  
25 LETTER, IN THAT THE PROVOST MADE THE DETERMINATION THAT A  
26 HALF-TIME SCHEDULE WAS APPROPRIATE?

307

1 A. THE PROVOST MADE THE RECOMMENDATION TO ME IN TERMS OF  
2 THE SCHEDULING, AND I WENT ALONG WITH IT.

3 Q. AND DO YOU KNOW IF THAT -- WELL, LET ME ASK YOU THIS.  
4 DID PROFESSOR BLOUGH ULTIMATELY BEGIN ON A HALF-TIME SCHEDULE  
5 WITH THE COLLEGE?  
6 A. NO, SHE DIDN'T.  
7 Q. HOW DO YOU KNOW THAT?  
8 A. IN AUGUST OR SEPTEMBER I WAS TOLD SHE DECIDED NOT TO  
9 COME BACK.  
10 Q. WHO TOLD YOU THAT?  
11 A. MOST LIKELY, THE PROVOST.  
12 Q. OKAY.  
13 AND WHEN HE TOLD YOU THAT, DID YOU ASK HIM WHY SHE  
14 WASN'T COMING BACK HALF TIME?  
15 A. NO.  
16 Q. DID YOU EVER SPEAK WITH YOUR PREDECESSOR, PRESIDENT  
17 LOPEZ, ABOUT WHY PROFESSOR BLOUGH WAS NOT BEING OFFERED A  
18 FULL-TIME POSITION?  
19 A. NO.  
20 Q. AND I'M NOT LIMITING IT IN TIME. YOU NEVER SPOKE TO  
21 HIM AT ANY TIME ABOUT IT, RIGHT?  
22 A. NO.  
23 Q. AND DID YOU EVER AT ANY TIME SPEAK TO LOWELL PRATT  
24 ABOUT WHY PROFESSOR BLOUGH WAS NOT BEING OFFERED A FULL-TIME  
25 POSITION?  
26 A. NO.



1 Q. AND WHO IS MR. HITE?

2 A. BOB HITE WAS THE VICE PRESIDENT OF ACCOUNTING AND  
3 FINANCE AT MENLO.

4 Q. AND WAS HE IN CHARGE OF THE HR DIVISION?

5 A. THE PERSON REPORTED TO HIM. YES.

6 Q. THAT WAS STEPHANIE SAPRAI?

7 A. CORRECT.

8 Q. AND, AT ANY POINT, DID YOU SPEAK TO MR. HITE ABOUT WHY  
9 PROFESSOR BLOUGH WAS NOT BEING OFFERED A FULL-TIME POSITION?

10 A. I DON'T BELIEVE SO. NO.

11 Q. DID YOU EVER SPEAK WITH PROFESSOR BLOUGH PRIOR TO  
12 SENDING EXHIBIT 52 TO HER -- STRIKE THAT.

13 DID YOU EVER SPEAK TO PROFESSOR BLOUGH, PRIOR TO  
14 SIGNING EXHIBIT 52, ABOUT HER CONDITION?

15 A. I'VE NEVER SEEN HER. I'VE NEVER SPOKEN TO HER.

16 Q. AND JUST SO WE'RE COVERING OUR BASES, HAVE YOU EVER  
17 COMMUNICATED WITH HER THROUGH E-MAIL, VOICEMAIL, ANYTHING?  
18 TEXT?

19 A. NO.

20 Q. DID YOU EVER SPEAK WITH CRAIG MEDLEN REGARDING  
21 PROFESSOR BLOUGH'S SITUATION?

22 A. CRAIG MEDLEN ON ONE OR TWO OCCASIONS ATTEMPTED TO  
23 SPEAK TO ME.

24 Q. AND YOU SAID "ATTEMPTED." WHAT HAPPENED?

25 A. I TOLD HIM THAT PERSONNEL MATTERS ARE NOT SOMETHING  
26 THAT WE ARE ALLOWED TO TALK ABOUT.

1 Q. AND DID MR. MEDLEN, PROFESSOR MEDLEN ATTEMPT TO SPEAK  
2 WITH YOU BEFORE OR AFTER YOU HAD SENT PROFESSOR BLOUGH THAT?

3 A. I DON'T RECALL. NO.

4 Q. AND IT WAS ON TWO OCCASIONS, YOU THOUGHT?

5 A. I THINK. AND I THINK IT HAD SOMETHING TO DO WITH THE  
6 LAWSUIT.

7 Q. OKAY.

8 A. AND HE WAS SAYING THAT THEY WERE -- YOU KNOW, I NEEDED  
9 TO GET INVOLVED, BUT I DON'T RECALL.

10 Q. DO YOU RECALL WHERE THE MEETING TOOK PLACE?

11 A. ONE, I THINK HE POPPED INTO MY OFFICE. AND I DON'T  
12 KNOW ABOUT THE OTHER ONE, IF THERE WAS ANOTHER ONE.

13 Q. OKAY.

14 AND PRESIDENT EMERITUS, CARLOS LOPEZ, TESTIFIED --

15 A. "EMERITUS."

16 Q. THANK YOU.

17 -- TESTIFIED THAT HE HAD AN OPEN-DOOR POLICY WHILE HE  
18 WAS PRESIDENT. DO YOU HAVE AN OPEN-DOOR POLICY?

19 A. I TOLD MY STUDENTS THAT MY DOOR IS ALWAYS OPEN, BUT  
20 I'M HAVING IT FIXED.

21 Q. DOES THAT WORK? OKAY.

22 CAN YOU TELL US -- AND YOU BELIEVE YOU SPOKE WITH  
23 PROFESSOR MEDLEN ON TWO OCCASIONS, OR HE ATTEMPTED TO SPEAK WITH  
24 YOU?

25 A. HE ATTEMPTED TO SPEAK ON THAT ISSUE.

26 Q. AND DO YOU RECALL ANYTHING ELSE HE SAID IN EITHER ONE

310

1 OF THOSE CONVERSATIONS?

2 A. NO. I BASICALLY SHUT HIM DOWN.

3 Q. OF THE TWO, WHEN WAS THE MOST RECENT ONE? HOW  
4 RECENTLY?

5 A. I CAN'T RECALL. I JUST KNOW THAT HE POPPED IN THE  
6 OFFICE.

7 Q. DO YOU RECALL IF ONE WAS IN 2008 VERSUS 2007?

8 A. I REALLY CAN'T RECALL. NO.

9 MR. PETERS: OKAY. THANK YOU.

10 NO FURTHER QUESTIONS.

11 THE COURT: CROSS-EXAMINATION?

12 MR. VARTAIN: YES, YOUR HONOR.

13 THE COURT: GO AHEAD.

14 MR. VARTAIN: MAY I HAVE PERMISSION, YOUR HONOR, TO  
15 MAYBE ENLARGE ON THE DIRECT IN ORDER TO, PERHAPS, AVOID THE  
16 NECESSITY OF TAKING THE PRESIDENT, AND THE JURY AND YOUR TIME IN  
17 OUR CASE IN CHIEF?

18 THE COURT: NO OBJECTION?

19 MR. LEBOWITZ: NO OBJECTION.

20 THE COURT: THANK YOU.

21 GO AHEAD, PLEASE.

22 MR. VARTAIN: THANK YOU, YOUR HONOR.

23

25 BY MR. VARTAIN:

26 Q. PRESIDENT HAIGHT, WOULD YOU PLEASE TELL US A LITTLE

311

1 BIT ABOUT WHAT YOU DID FOR A LIVING BEFORE YOU BECAME THE  
2 PRESIDENT OF THE COLLEGE IN DECEMBER OF '06?

3 A. WELL, I STARTED MY CAREER IN 1972 AS A PROFESSOR OF  
4 FINANCE BACK IN MARYLAND. AND WHEN I TURNED 50, I DECIDED TO  
5 MOVE TO CALIFORNIA. AND I TOOK THE DEAN'S POSITION AT  
6 CALIFORNIA STATE UNIVERSITY OF LOS ANGELES.

7 Q. DID YOU BRING YOUR FAMILY WITH YOU WHEN YOU CAME?

8 A. BROUGHT MY WIFE AND TWO CHILDREN.

9 Q. AND TELL US ABOUT THE JOB AT CALIFORNIA STATE  
10 UNIVERSITY OF LOS ANGELES.

11 A. CALIFORNIA STATE UNIVERSITY OF LOS ANGELES AS A DEAN  
12 OF THE BUSINESS AND ECONOMICS COLLEGE. WE HAD, OH, ABOUT 100  
13 FACULTY MEMBERS, 2,500 STUDENTS. A VERY, VERY DIVERSE FACULTY  
14 AS WELL AS VERY DIVERSE STUDENTS. WE OFFERED UNDERGRADUATE  
15 COURSES AS WELL AS MASTER'S COURSES.

16 Q. WHEN YOU SAY "DIVERSE," WHAT DO YOU MEAN?

17 A. WE HAD ALL TYPES OF ETHNICITIES, IN TERMS OF THE  
18 COLLEGE, BOTH IN STUDENT BODY AS WELL AS FACULTY.

19 Q. AND HOW LONG DID YOU SERVE AS THE DEAN OF THE BUSINESS  
20 COLLEGE AT CAL STATE?

21 A. EIGHT-AND-A-HALF YEARS.

22 Q. AND IS THAT WHEN YOU CAME TO MENLO AS THE PRESIDENT?

23 A. THAT'S -- YES. I ACCEPTED THE JOB AND LEFT MID YEAR.

24 Q. AND SO DID YOU MOVE UP HERE WITH YOUR FAMILY?

25 A. MOVED UP HERE WITH MY WIFE. MY CHILDREN ARE STILL IN

26 MY OTHER HOME.

312

1 Q. ARE THEY PAYING RENT?

2 A. THEY'RE NOT CHARGING ME FOR WATCHING THE HOUSE.

3 Q. OKAY.

4 TELL US A LITTLE ABOUT MENLO COLLEGE STUDENT BODY, IF

5 YOU WOULD.

6 A. WE'RE ABOUT 592 STUDENTS; 60 PERCENT MEN, 40 PERCENT

7 WOMEN. 40 PERCENT OF ALL OF OUR STUDENTS PARTICIPATE IN NCAA

8 ATHLETICS. WE'RE NOT DOING REALLY WELL IN THAT. WE HAVE A

9 FOOTBALL TEAM THAT HASN'T WON SINCE I'VE BEEN THERE. WE HAVE

10 70 PERCENT OF OUR -- 17 PERCENT OF OUR STUDENT BODY IS FROM

11 HAWAII. WE HAVE TEN PERCENT INTERNATIONAL STUDENTS. LET'S SEE,

12 WE HAVE STUDENTS FROM ALL AROUND THE WORLD. WE HAVE STUDENTS

13 FROM CHINA, BOTH HONG KONG, AND WE HAVE A RELATIONSHIP THAT WE

14 JUST STARTED WITH QUAN DUNG UNIVERSITY OF FOREIGN STUDIES.

15 Q. WHERE IS THAT?

16 A. IT'S IN QUAN JO. IT'S IN QUAN DUNG PROVINCE. IT'S

17 CANTONESE. AND, AS I SAID, WE'VE ALSO DONE HONG KONG. WE HAVE

18 A GROUP OF STUDENTS AND A VERY ACTIVE ALUMNAE BASE IN JAPAN. WE

19 HAVE STUDENTS FROM SOUTH AMERICA, ASIA, AFRICA, JUST ALL OVER

20 THE WORLD. IT'S A REALLY GREAT EXPERIENCE.

21 OUR STUDENT BODY -- YOU SEE THAT WE ARE FROM ATHERTON,  
22 BUT 85 PERCENT OF OUR STUDENTS ARE ON FINANCIAL AID, SO THE  
23 STUDENTS ARE ACTUALLY NOT -- THEY LOWER THE INCOME LEVEL OF THE  
24 TOWN OF ATHERTON QUITE A BIT. MANY OF THEM, THEY ARE DECENT,  
25 GOOD STUDENTS. I'VE BEEN IN FIVE UNIVERSITIES. THE KIDS THERE  
26 ARE THE BEST STUDENTS I'VE EVER -- NOT BEST STUDENTS, THEY'RE

313

1 OKAY STUDENTS. THE BEST KIDS I'VE EVER WORKED WITH.

2 Q. TELL US A LITTLE BIT ABOUT THE EDUCATIONAL PROGRAM  
3 THAT MENLO COLLEGE HAS FOR THE YOUNG PEOPLE.

4 A. WELL, IT'S A COMMUNITY. AND REALLY IN THE SENSE OF  
5 BEING A COMMUNITY, IT'S EXTREMELY SMALL. WE PRETTY MUCH KNOW  
6 EVERYONE ON CAMPUS. WE HAVE A STUDENT FACULTY RATIO OF 15-TO-1.  
7 WE DO AS MUCH OUTSIDE THE CLASSROOM AS WE DO IN THE CLASSROOM.  
8 FOR EXAMPLE, TONIGHT -- WE HAVE EXAMS NEXT WEEK, SO TONIGHT WE  
9 HAVE STUDY SLAM. AND WHAT THAT IS IS WHERE THE FACULTY MEMBERS  
10 ON A VOLUNTEER BASIS MEET WITH STUDENTS THAT ARE STRUGGLING, AND  
11 WORK WITH THEM. WE ALSO GIVE THEM FOOD. WE FIND THAT BRINGS  
12 KIDS IN.

13 WE DO A BIT OF THAT. WE PARTICIPATE IN EVERYTHING.  
14 MENLO DOES HAVE A FREE LUNCH. EVERY DAY THE FACULTY, AND STAFF  
15 AND STUDENTS HAVE LUNCH TOGETHER. IT'S A FAMILY. I PRETTY MUCH  
16 KNOW EVERYONE ON CAMPUS. IF SOMEBODY'S ON CAMPUS THAT SHOULDN'T  
17 BE, WE CAN GET AT THAT RIGHT AWAY. AND, YOU KNOW, AS I SAID, I

18 WORKED THERE FOR ABOUT TWO WEEKS AND THEN I FELL IN LOVE WITH  
19 THE PLACE. AND SO IT'S QUITE A -- IT IS QUITE A CAMPUS.

20 Q. TELL ME A LITTLE BIT ABOUT THE DISABILITY POLICIES AND  
21 PROCEDURES OF THE COLLEGE, AS FAR AS YOU KNOW THEM TO BE.

22 A. WELL, OBVIOUSLY, WE HAVE THE HUMAN RESOURCES AS WELL  
23 AS OTHER AREAS IN THE COLLEGE THAT TRY TO ACCOMMODATE PEOPLE  
24 THAT HAVE DISABILITIES. WE'RE ONE OF THE FEW PROGRAMS IN THE  
25 COUNTRY THAT ACTUALLY WORKS WITH PEOPLE THAT HAVE LEARNING  
26 DISABILITIES, THROUGH OUR TRANSITION TO COLLEGE PROGRAM. MOSTLY

314

1 PEOPLE THAT ARE DYSLEXIC. I'M A VERY SLOW READER MYSELF, AS IS  
2 THE PROVOST, I WOULD POINT OUT. HE'S PROBABLY NOT AS QUICK AS I  
3 AM, BUT WE'RE BOTH SLOW READERS. AND WE HAVE SOME STUDENTS THAT  
4 ARE ON MEDICATIONS FOR OTHER TYPES OF EMOTIONAL ISSUES. AND  
5 THAT'S A SMALL PORTION, MAYBE 25 TO 30 STUDENTS A YEAR WE TAKE  
6 UNDER THOSE CIRCUMSTANCES.

7 Q. WHEN I WAS SCHEDULING YOU TO COME TO THE COURT, YOU  
8 AND I WERE AT YOUR OFFICE THIS MORNING TRYING TO FIGURE OUT WHAT  
9 TIME THE ATTORNEYS WANTED YOU TO COME, I ASKED YOU ABOUT THIS  
10 SUBJECT. AND YOU TOLD ME A STORY THAT WAS MEANINGFUL TO YOU,  
11 ABOUT HOW THE COLLEGE WORKS WITH PEOPLE ON CAMPUS WITH  
12 DISABILITIES. COULD YOU TELL THAT ACCOUNT AND WHEN IT HAPPENED  
13 TO THE JURY, PLEASE.

14 A. WELL --

15 MR. LEBOWITZ: OBJECTION, YOUR HONOR. IT'S

16 IRRELEVANT. IT HAS NOTHING TO DO WITH THE EMPLOYMENT.

17 THE COURT: OVERRULED.

18 GO AHEAD.

19 THE WITNESS: ABOUT LAST MARCH WE HAD A -- WE HAD ONE  
20 OF OUR CAREER FAIRS OR OPEN HOUSE FOR STUDENTS. AND ONE OF THE  
21 STUDENTS THAT CAME TO THE CAMPUS WAS IN A WHEELCHAIR AND PUSHED  
22 BY HIS DAD. WHAT GOT ME IS THEY LOOKED ALIKE. AND I HAVE A SON  
23 THAT, UNFORTUNATELY, LOOKS JUST LIKE ME. AND THAT BOTHERED ME  
24 FOR A COUPLE OF MONTHS. I SPENT A GREAT DEAL OF TIME WITH THE  
25 FAMILY. I JUST -- YOU KNOW, YOUR HEART GOES OUT WHEN YOU SEE  
26 SOMETHING LIKE THAT.

315

1 AND I WAS TOLD OUR ACCOMMODATIONS AREN'T THE BEST FOR  
2 THAT, BUT IT JUST BOTHERED ME. IT BOTHERED ME FOR ABOUT THREE  
3 MONTHS, AND I GOT OVER IT. YOU PUT YOUR MIND ON OTHER THINGS.  
4 AND IN SEPTEMBER HE SHOWS UP AT THE CAMPUS. I DIDN'T THINK HE  
5 WAS GOING TO COME TO CAMPUS BECAUSE WE DON'T HAVE AS MUCH IN  
6 TERMS OF THE TYPES OF THINGS THAT SOMEBODY IN A WHEELCHAIR WOULD  
7 NEED. SO THAT, OBVIOUSLY, GOT ME INTO MY MOOD AGAIN. I FELT  
8 PRETTY BAD ABOUT IT.

9 BUT ON THE FIRST DAY WE HAVE A DINNER FOR THE FACULTY,  
10 FOR THE PARENTS AND THE KIDS. AND THIS YOUNG MAN, TURNS OUT  
11 THAT HE CAN WALK, SORT OF. HE CAN'T -- REALLY, HE STRUGGLED AND  
12 THE KIDS HELPED HIM, GOT HIM UP ON STAGE, HE WALKED THROUGH, AND  
13 CAME DOWN. WHAT WE DID -- MY CONCERN, FRANKLY, WAS I KNOW HOW



14 KIDS ARE IN HIGH SCHOOL, AND I WAS WORRIED HOW HE WOULD ADJUST  
15 ON THE CAMPUS.

16 WHAT WE DID, PRIMARILY -- AND I'D LIKE TO TAKE CREDIT  
17 FOR THE PROVOST. HE'S A SOCIAL WORKER. HE BOUGHT A MOTOR  
18 SCOOTER. AND THIS YOUNG MAN, WHEN WE FOUND OUT HE DIDN'T NEED A  
19 WHEELCHAIR AND WE HAD A MOTOR SCOOTER -- WE ENDED UP HAVING TO  
20 GET A SECOND ONE BECAUSE THE FIRST ONE WE GOT WOULD BREAK DOWN.  
21 AND HE ZIPS THROUGH CAMPUS ALL THE TIME NOW.

22 YOU KNOW, WHEN HE CAME HERE I THOUGHT THERE WOULD BE  
23 TWO CHOICES FOR ME OVER THE NEXT FOUR YEARS. IT'S GOING TO BE  
24 HARD. ONE IS AT THE END OF THE FOUR YEARS I WOULD FEEL SORRY  
25 FOR HIM. AND, OBVIOUSLY, HAVING HAD MY OWN SON LIKE THAT AND  
26 BEING FORTUNATE THAT HE IS HEALTHY; THAT WAS ONE CONCERN. BUT

316

1 THE OTHER CONCERN WOULD BE -- NOT A CONCERN, BUT THE OTHER  
2 POSSIBILITY WOULD BE THAT I'D BE EXTREMELY PROUD OF HIM.

3 HE'S WORKING WITH A BASKETBALL TEAM NOW. AND HE'S A  
4 SPORTS MAJOR, SPORTS MANAGEMENT MAJOR. HE GOES TO EVERY GAME.  
5 WE HAVE A GAME TOMORROW NIGHT THAT HE'LL BE AT. AND HE'S BEEN  
6 ADOPTED BY THE -- HE'S BEEN ADOPTED BY THE BASKETBALL TEAM.  
7 WE'VE PUT HIM IN WITH A FOOTBALL PLAYER TO -- IT'S JUST, IT WAS  
8 REALLY GOOD TO SEE -- AS I SAID, IT'S THE BEST GROUP OF  
9 STUDENTS, IN TERMS OF CARING THAT WE HAVE. IT IS A COMMUNITY.  
10 MENLO COLLEGE -- I KNOW THE WORD "COMMUNITY," USE IT ALL THE  
11 TIME, BUT IT REALLY IS. PEOPLE TAKE CARE OF EACH OTHER. WE

12 WATCH OUT FOR EVERYONE. IT'S A VERY, VERY CLOSE, CLOSE GROUP.  
13 MR. VARTAIN: THANK YOU.  
14 MR. PETERS: YOUR HONOR, WE OBJECT TO THAT ENTIRE LINE  
15 OF TESTIMONY.  
16 THE COURT: OVERRULED.  
17 MR. VARTAIN: THANK YOU.  
18 THE COURT: NO OTHER QUESTIONS?  
19 CROSS-EXAMINATION?  
20 MR. PETERS: NOTHING FURTHER, YOUR HONOR. THANK YOU.  
21 THE COURT: MAY PRESIDENT HAIGHT BE EXCUSED?  
22 MR. VARTAIN: YES, YOUR HONOR.  
23 THE COURT: AND NOT SUBJECT TO RECALL. HE'S EXCUSED?  
24 MR. VARTAIN: YES, YOUR HONOR.  
25 THE COURT: PRESIDENT HAIGHT, THANK YOU FOR YOUR  
26 TESTIMONY. YOU ARE FREE TO GO.

317

1 THE COURT: MR. LEBOWITZ, UNLESS YOU'RE DYING TO GET  
2 ANOTHER WITNESS ON THIS AFTERNOON, I THINK WE'VE PROBABLY  
3 REACHED THE END OF THE DAY.  
4 MR. LEBOWITZ: I'M MORE THAN HAPPY TO LET EVERYBODY  
5 GO.  
6 THE COURT: I BET THEY'RE HAPPY TOO.  
7 LADIES AND GENTLEMEN, AS YOU KNOW FROM THE SCHEDULE  
8 WE'RE NOT IN SESSION TOMORROW. I'M SURE YOU ALL HAVE LOTS TO  
9 CATCH UP ON BECAUSE I'VE DEPRIVED YOU OF YOUR WORK WEEK. I'LL

10 SEE YOU ON MONDAY MORNING AT 9:00 O'CLOCK. I KNOW THE MORNING  
11 SCHEDULE CHANGES, SO PLEASE KEEP AN EYE ON IT. BUT IT'S MONDAY  
12 MORNING AT 9:00. WE'LL HAVE A FULL DAY ON MONDAY. HAVE A GOOD  
13 DAY ON FRIDAY AND A GOOD WEEKEND, AND I'LL SEE YOU MONDAY  
14 MORNING.

15 I'M TOLD THAT YOU NEED TO WAIT A MINUTE. MY DEPUTY  
16 HAS SOMETHING --

17 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

18 THE COURT: I'M INFORMED THAT WE'RE GOING TO START AT  
19 9:30 ON MONDAY. I'M SORRY FOR THE MODIFICATION. SO IF YOU  
20 COULD JUST MARK YOUR CALENDARS FOR 9:30. DON'T SLEEP IN TOO  
21 MUCH, BUT I WILL SEE YOU AT 9:30. THANK YOU.

22 (WHEREUPON, THE JURORS EXITED THE COURTROOM.)

23 THE COURT: ANYTHING ELSE FOR THE RECORD TODAY?

24 MR. VARTAIN: NO, YOUR HONOR.

25 MR. LEBOWITZ: NO, YOUR HONOR.

26 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

318

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

3 DEPARTMENT NO. 3 HON. BETH LABSON FREEMAN, JUDGE

4 MARCINE BLOUGH, )

5 )  
6 PLAINTIFF, )

7 VS. )CASE NO. CIV 465027

7 )REPORTER'S CERTIFICATE  
MENLO COLLEGE, ET AL.,)

8 )  
DEFENDANTS. )  
9 \_\_\_\_\_)

10

11

STATE OF CALIFORNIA )

12 ) SS

COUNTY OF SAN MATEO )

13

14

15

I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE

16

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,

17

DO HEREBY CERTIFY THAT THE FOREGOING PAGES 149 THROUGH 319,

18

INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE

19

PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

20

21

DATED: OCTOBER 3, 2011

22

23

24

25

\_\_\_\_\_  
CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER

26

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2                   IN AND FOR THE COUNTY OF SAN MATEO

3

4   MARCINE BLOUGH,    )

5                    )  
6    PLAINTIFF,    )

7                    )  
8    VS.            )CASE NO. CIV 465027

9                    )  
10   MENLO COLLEGE, ET AL.,)

11                    )  
12   DEFENDANTS.    )

13                    )  
14   \_\_\_\_\_)

15

16                   REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
17                   BEFORE: HONORABLE BETH LABSON FREEMAN, JUDGE  
18                   DEPARTMENT 3

19                   DECEMBER 8, 2008

20

21

22

23

24   A P P E A R A N C E S:

25

26

27   FOR THE PLAINTIFF: NOAH D. LEBOWITZ, ATTORNEY AT LAW  
28                   MARK C. PETERS, ATTORNEY AT LAW

29

30

31   FOR THE DEFENDANTS: MICHAEL J. VARTAIN, ATTORNEY AT LAW  
32                   LINDA K. ADLER, ATTORNEY AT LAW

33

34

35   REPORTED BY:     CHRISTINE M. PEREZ, CSR #10945

36

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24 WITNESSES FOR THE DEFENSE: PAGE  
25  
26 (NONE WERE CALLED AT THIS TIME.)

320

1 I N D E X

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PAGE	IDENT.	EVID.
EXHIBITS FOR THE DEFENSE:		
(NONE WERE MARKED AT THIS TIME.)		

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321

1           P R O C E E D I N G S

2    DECEMBER 8, 2008 A.M.            REDWOOD CITY, CALIFORNIA

3           THE COURT: GOOD MORNING. WE'RE ON THE RECORD IN  
4    BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT,  
5    AND ALL JURORS AND ALTERNATES.

6           GOOD MORNING, LADIES AND GENTLEMEN. I HOPE YOU HAD A  
7    GOOD WEEKEND AND DIDN'T OVERDOSE ON CHRISTMAS SHOPPING OR  
8    COOKIES OR WHATEVER YOUR WEEKEND INVOLVED.

9           WE'RE GOING TO GET BACK DOWN TO WORK. I'M STILL  
10   TRYING TO MOVE RIGHT ALONG ON OUR SCHEDULE, AND I THINK WE'RE  
11   DOING THAT AND WE'RE DOING IT WELL. I APPRECIATE THE FACT THAT  
12   YOU'RE ALL HERE ON TIME; THAT HELPS US OUT A LOT. AT THE END OF  
13   THE DAY ON THURSDAY, WE FINISHED WITH A PLAINTIFF'S WITNESS.

14          AND, MR. LEBOWITZ, ARE YOU READY TO CALL YOUR NEXT  
15   WITNESS?

16          MR. LEBOWITZ: I AM, YOUR HONOR.

17          THE COURT: GO AHEAD, PLEASE.

18          MR. LEBOWITZ: PLAINTIFF CALLS PROFESSOR CRAIG MEDLEN.

19          (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)



20 THE COURT: PROFESSOR MEDLEN, IF YOU'D COME FORWARD TO  
21 THE WITNESS STAND, PLEASE, AND STAND TO BE SWORN.  
22 THE WITNESS: DO I STAND?  
23 THE COURT: YES, PLEASE.  
24 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.  
25 (WHEREUPON, THE WITNESS WAS SWORN.)  
26 THE WITNESS: YES, I DO.

322

1 THE CLERK: PLEASE BE SEATED.  
2 WILL YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
3 AND SPELL THEM BOTH FOR THE RECORD.  
4 THE WITNESS: CRAIG MEDLEN, C-R-A-I-G M-E-D-L-E-N.  
5 THE CLERK: THANK YOU.

6  
7 CRAIG MEDLEN,  
8 DULY SWORN, TESTIFIED AS FOLLOWS:

9  
10 DIRECT EXAMINATION  
11 BY MR. LEBOWITZ:

12 Q. GOOD MORNING.

13 A. HI.

14 Q. PROFESSOR MEDLEN, WHERE ARE YOU EMPLOYED?

15 A. I AM EMPLOYED AT MENLO COLLEGE IN ATHERTON.

16 Q. HOW LONG HAVE YOU BEEN THERE?

17 A. THIS IS MY 37TH YEAR.

18 Q. WHAT SCHOOL DO YOU TEACH IN? WHAT PROGRAM DO YOU  
19 TEACH IN AT MENLO COLLEGE?

20 A. I ACTUALLY STRADDLE THE LIBERAL ARTS AND THE BUSINESS  
21 PROGRAM. I TEACH ECONOMICS.

22 Q. HAS THAT BEEN THE CASE FOR THE ENTIRETY OF YOUR TENURE  
23 WITH MENLO COLLEGE?

24 A. YES.

25 Q. NOW, THROUGH YOUR -- YOU SAY 30 YEARS NOW?

26 A. THIS IS MY 37TH.

323

1 Q. 37TH YEAR.

2 THROUGH YOUR 37 YEARS AT MENLO COLLEGE, HAVE YOU EVER  
3 RECEIVED ANY TRAINING FROM THE COLLEGE ABOUT THE COLLEGE'S  
4 POLICIES REGARDING DISABILITY OR DISCRIMINATION IN THE  
5 WORKPLACE?

6 A. NO, I HAVE NOT.

7 Q. HAVE YOU EVER RECEIVED ANY TRAINING OR EDUCATION FROM  
8 THE COLLEGE ABOUT WHEN IT MAY BE APPROPRIATE FOR AN EMPLOYER,  
9 LIKE THE COLLEGE, TO SEND AN EMPLOYEE TO A MEDICAL EXAM?

10 A. NO. I HAVE NOT; NO.

11 Q. HAVE YOU EVER RECEIVED ANY TRAINING OR EDUCATION FROM  
12 THE COLLEGE ON ANY SUBJECT RELATING TO DISCRIMINATION OR  
13 HARASSMENT OF ANY KIND?

14 A. I'VE BEEN TO TWO SEXUAL HARASSMENT WORKSHOPS; ONE LAST  
15 YEAR.

16 Q. ONE AS RECENTLY AS LAST YEAR?  
17 A. YES. THAT'S CORRECT.  
18 Q. WHEN WAS THE TIME BEFORE THAT?  
19 A. GOSH, I DON'T KNOW. MAYBE TEN YEARS OR SOMETHING.  
20 Q. AND THE SUBJECT OF THOSE TRAININGS?  
21 A. IT WAS SEXUAL HARASSMENT.  
22 Q. ANYTHING ABOUT DISABILITY DISCRIMINATION IN THOSE  
23 TRAININGS?  
24 A. NOT THAT I CAN RECALL.  
25 Q. IF YOU CAN MOVE THE MICROPHONE DOWN A LITTLE CLOSER,  
26 IT MIGHT HELP. THANK YOU.

324

1 SO OVER YOUR 37 YEARS IN THE COLLEGE HAVE YOU COME TO  
2 KNOW PROFESSOR MARCINE BLOUGH?  
3 A. YES, QUITE WELL.  
4 Q. AND THROUGH YOUR INTERACTIONS, BOTH WITH STUDENTS AND  
5 FACULTY, HAVE YOU COME TO KNOW PROFESSOR BLOUGH'S REPUTATION AT  
6 THE SCHOOL?  
7 A. YES, I HAVE.  
8 Q. AND WHAT DID YOU LEARN?  
9 A. THAT SHE WAS AN EXCELLENT TEACHER. SHE GOT ALONG WITH  
10 FACULTY AND STUDENTS. SHE WAS ABLE TO BRIDGE THE GAP BETWEEN  
11 THE BUSINESS SCHOOL AND L & S, IN THE SENSE THAT SHE TAUGHT  
12 COURSES ON DIVERSITY, FOR EXAMPLE; THAT, WHILE PROBABLY  
13 TECHNICALLY IN THE BUSINESS SCHOOL, IT MADE SENSE FOR A LOT OF

14 THE MORE LIBERALLY-EDUCATED FACULTY AND THE LIBERAL ARTS. SHE  
15 WAS FRIENDLY. SHE MADE THE WORKPLACE A NICE PLACE TO BE AT.  
16 JUST A WONDERFUL PERSON, TRUTHFUL; GOOD COLLEAGUE.

17 Q. AND DID YOU EVER HAVE CAUSE -- LET ME BACK UP A  
18 SECOND.

19 YOU'RE FAMILIAR, THROUGH YOUR EXPERIENCE WITH THE  
20 COLLEGE, WITH THE CONTRACT RENEWAL PROCESS?

21 A. YES.

22 Q. AND AS PART OF THAT PROCESS, HAVE YOU EVER BEEN  
23 INVOLVED IN WRITING LETTERS OF RECOMMENDATION FOR OTHER FACULTY  
24 MEMBERS?

25 A. YES.

26 Q. HAVE YOU EVER DONE SO FOR PROFESSOR BLOUGH?

325

1 A. YES, BACK IN, I BELIEVE, 1991.

2 MR. LEBOWITZ: OKAY.

3 CAN WE HAVE EXHIBIT 58, PLEASE.

4 THE WITNESS: I MAY BE OFF A YEAR, BUT I HAVE.

5 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

6 THE COURT: YES.

7 (PLAINTIFF'S EXHIBIT NO. 58 WAS MARKED FOR  
8 IDENTIFICATION.)

9 MR. LEBOWITZ: Q. PROFESSOR MEDLEN, I'VE HANDED YOU  
10 WHAT WE'VE MARKED AS EXHIBIT 58 FOR IDENTIFICATION IN THIS CASE.  
11 CAN YOU, IN GENERAL TERMS, EXPLAIN WHAT THIS LETTER IS OR THIS

12 DOCUMENT IS.

13 A. WELL, I WAS EVIDENTLY WRITING ON BEHALF OF MARCY FOR A  
14 CONTRACT RENEWAL OF SOME TYPE.

15 Q. SO THIS IS A LETTER OF RECOMMENDATION?

16 A. YES, THAT'S CORRECT.

17 Q. AND THIS IS SOMETHING THAT YOU WROTE AS PART OF THE  
18 CONTRACT RENEWAL PROCESS WE JUST SPOKE OF?

19 A. YES. NOW, THIS WAS LIKE BACK A WHILE AGO, SO THIS IS  
20 BEFORE, I BELIEVE, THE MULTIYEAR CONTRACTS CAME IN; ALTHOUGH, I  
21 AM NOT QUITE CERTAIN OF THAT.

22 Q. OKAY. LET'S TALK ABOUT THAT FOR A MINUTE.

23 WHAT WAS THE LANDSCAPE, AS FAR AS MULTIYEAR CONTRACTS  
24 AND THAT, OVER THE HISTORY OF YOUR TERM WITH MENLO COLLEGE?

25 A. WELL, INITIALLY OVER MANY, MANY YEARS WE ALL HAD  
26 ONE-YEAR CONTRACTS. AND AT ONE POINT, AGAIN THE DATE I NOW

326

1 FORGET, WASP HELD US IN VIOLATION STANDARD ONE, WHICH DEALT WITH  
2 ACADEMIC FREEDOM. AND THEY MAINTAINED THAT IF FACULTY WERE ON A  
3 ONE-YEAR TETHER, SO TO SPEAK, THAT WE WERE NOT ABLE TO VOICE OUR  
4 OPINIONS, AND THEY RECOMMENDED MULTIYEAR CONTRACTS. AND AT SOME  
5 POINT WE CAME INTO THE MULTIYEAR CONTRACT REGIME.

6 SO ONE WOULD, FOR EXAMPLE, SPEND -- ONE WOULD HAVE,  
7 SAY, A THREE-YEAR CONTRACT, AND THE YEAR PRIOR TO THE RENEWAL  
8 PROCESS, ONE WOULD SUBMIT A SELF-EVALUATION. IT WOULD GO  
9 THROUGH WHAT WAS CALLED A PERSONNEL COMMITTEE. THE

10 RECOMMENDATION WOULD BE FORWARDED TO THE DEAN, AND THEN IT WOULD  
11 GO UP TO THE PROVOST, AND THEN THE PRESIDENT FOR THE CONTRACT  
12 RENEWAL.

13 Q. AND THIS LETTER, AGAIN, THAT WE'VE MARKED AS  
14 EXHIBIT 58, WAS A LETTER THAT YOU SUBMITTED ON BEHALF OF  
15 PROFESSOR BLOUGH DURING ONE OF THE RENEWAL PROCESSES?

16 A. IT MUST HAVE BEEN. THIS WAS A LONG TIME AGO, IN 1991,  
17 SO I'M NOT SURE THE MULTIYEAR CONTRACT HAD BEEN IN EXISTENCE AT  
18 THAT TIME.

19 Q. WHETHER IT WAS FOR A MULTIYEAR OR A ONE-YEAR, THIS WAS  
20 SOMETHING --

21 A. YEAH, EVIDENTLY.

22 MR. LEBOWITZ: YOUR HONOR, WE'D OFFER EXHIBIT 58 INTO  
23 EVIDENCE.

24 THE COURT: ANY OBJECTION?

25 MR. VARTAIN: THE ONLY OBJECTION, YOUR HONOR, IT'S  
26 AUTHENTIC, BUT 1991 IS NOT RELEVANT TO THE POINT IN TIME.

327

1 THE COURT: WELL, I'LL ALLOW IT. IT WILL BE ADMITTED.

2 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

3 (PLAINTIFF'S EXHIBIT NO. 58 WAS ADMITTED INTO  
4 EVIDENCE.)

5 MR. LEBOWITZ: Q. IF YOU CAN LOOK AT THIS LETTER.  
6 ADMITTEDLY, IT'S FROM 1991, BUT WE'LL BRING IT INTO THE PRESENT  
7 IN A MOMENT. BUT THIS LETTER, AS YOU READ IT, DID IT ACCURATELY

8 REFLECT YOUR OPINIONS OF PROFESSOR BLOUGH AT THE TIME?

9 A. YES. AND SUBSEQUENTLY. SHE'S EXCELLENT.

10 Q. THAT'S MY NEXT QUESTION, PROFESSOR MEDLEN.

11 THE OPINIONS YOU EXPRESSED HERE IN 1991 ABOUT  
12 PROFESSOR BLOUGH, DID THOSE EVER CHANGE?

13 A. NO. I MEAN, SHE WAS INNOVATIVE. SHE, FOR EXAMPLE,  
14 BROUGHT FORTH A COURSE IN DIVERSITY, WHERE SHE HAD TO RETOOL  
15 HERSELF AND LEARN ABOUT A WHOLE BUNCH OF THINGS. SHE WAS  
16 INNOVATIVE IN THE SENSE THAT SHE MADE -- SHE HAD A BUNCH OF US  
17 FACULTY BASICALLY SIT DOWN AND TAKE A COURSE WITH HER FIRST TIME  
18 AROUND ON WOMEN BUSINESS, OF WHICH I WAS A STUDENT. AND WE HAD  
19 A DISCUSSION WHILE SHE WAS WORKING OUT A COURSE THAT SHE WAS  
20 GOING TO BRING INTO THE CURRICULUM.

21 Q. AND YOU MENTION IN THE THIRD PARAGRAPH OF THIS 1991  
22 LETTER ABOUT HER -- YOU TALK ABOUT HER STUDENT EVALUATIONS AND  
23 HER AWARDS. TELL US WHAT YOU KNEW ABOUT THOSE AT THE TIME AND  
24 INTO THE FUTURE.

25 A. WELL, HER EVALUATIONS, MOST RECENTLY OF WHICH I'VE  
26 GONE OVER FOR 2005 AND 2006, ARE UNIVERSALLY POSITIVE. LIKE, I

328

1 HAVE A STACK OF, PERHAPS, AN INCH, INCH AND A HALF OF  
2 EVALUATIONS. THERE MIGHT HAVE BEEN THREE TO FIVE NEGATIVES OUT  
3 OF A BIG STACK LIKE THIS (INDICATING).

4 Q. AND, AGAIN, BACK IN 1991 YOU MENTION THE TEACHER OF  
5 THE YEAR AWARD. WHAT IS THAT?

6 A. WELL, IT ORIGINATED MANY, MANY YEARS AGO. IT WAS  
7 GIVEN BY THE STUDENTS THAT HEADED UP THE MENLO OAK. AND THEN IT  
8 WAS RECAST AND IT WAS GIVEN OUT, ESSENTIALLY BY FACULTY MEMBERS.  
9 THE PREVIOUS AWARD WINNERS BASICALLY FORMED A COMMITTEE AND THEY  
10 SELECTED THE NEXT TEACHER OF THE YEAR. AND IT WAS, YOU KNOW, AN  
11 HONOR, NOT NECESSARILY OF THE BEST TEACHER. IT SUBSEQUENTLY,  
12 APPARENTLY IN THE LAST FEW YEARS, AGAINST MY OBJECTIONS AND SOME  
13 OTHERS, HAS BECOME A KIND OF CONTEST. BUT IN THE OLD DAYS IT  
14 WAS A WAY TO HONOR ALL OF US AS RECOGNITION THAT WE ALL  
15 CONTRIBUTED TO THE WHOLE.

16 Q. AND WHO WAS IT THAT MADE THE DETERMINATION OF THE  
17 TEACHER OF THE YEAR AWARD?

18 A. WELL, INITIALLY, AGAIN, IT WAS TAKEN OUT OF THE HANDS  
19 OF THE STUDENTS OF THE MENLO OAK BECAUSE THEY WORKED TOGETHER  
20 THROUGH A PROFESSOR THAT THE ADMINISTRATION AT THE TIME DID NOT  
21 LIKE. AND, CONSEQUENTLY, IT WAS HANDED OVER TO THE  
22 ADMINISTRATION. AND THEN, SUBSEQUENTLY, THERE WAS A COMMITTEE  
23 FORMED, AGAIN, OF THOSE WHO WERE RECIPIENTS OF THE AWARD. AND  
24 IT WAS PASSED -- YOU KNOW, IT WAS KIND OF LIKE WE HONORED OUR  
25 COLLEAGUE.

26 Q. SO IT ORIGINALLY STARTED AS A STUDENT-GARNERED AWARD?

329

1 A. RIGHT. MANY, MANY YEARS AGO.

2 Q. DO YOU KNOW WHEN IT TRANSITIONED OUT OF STUDENTS  
3 INTO --



4 A. SOMEWHERE AROUND 1973, '74, AS I RECALL.

5 Q. ALL RIGHT.

6 AND FROM '74 UNTIL ABOUT WHEN WAS IT THIS KIND OF  
7 COMMITTEE, OR WHATEVER IT WAS, THE MENLO OAK? WHAT DID YOU CALL  
8 IT?

9 A. NO, THE MENLO OAK WAS THE INITIAL COMMITTEE THAT -- I  
10 SHOULDN'T SAY COMMITTEE. IT WAS THE STUDENTS; THE EDITORSHIP OF  
11 THE MENLO OAK.

12 Q. OKAY. THE NEWSPAPER?

13 A. YES.

14 Q. OKAY.

15 SO OVER THE TIME PERIOD, SAY, 1991, CAN YOU PLACE IN  
16 TIME EXACTLY WHAT KIND OF PROCESS THERE WAS FOR THE TEACHER OF  
17 THE YEAR AWARD AT THAT TIME?

18 A. WELL, HERE, AGAIN, I'M NOT SURE. YOU KNOW, IT'S  
19 DIFFICULT TO RECALL THAT ONE YEAR.

20 Q. NOW, LET'S MOVE TO THE SUMMER OF 2006, OKAY?

21 DURING THAT SUMMER, DID YOU HAVE ANY SORT OF MEETING  
22 WITH PRESIDENT CARLOS LOPEZ IN REGARDS TO PROFESSOR BLOUGH?

23 A. YES, I DID.

24 Q. WHY DID YOU GO SEE PRESIDENT LOPEZ?

25 A. MY UNDERSTANDING WAS THAT THE SCHOOL, AND CARLOS LOPEZ  
26 WAS THE PRESIDENT AT THE TIME, HAD EMPLOYED A MEDICAL

2 AS TO WHETHER OR NOT SHE COULD TEACH. AND IT CAME TO MY  
3 ATTENTION THAT THE MEDICAL INTERMEDIARY -- I BELIEVE HIS NAME IS  
4 DR. MISSETT -- HAD SAID THAT SHE WAS UNABLE TO TEACH OR  
5 SHOULDN'T TEACH, AND THAT MARCY HAD TOLD ME THAT HER HEALTH  
6 EXPERTS HAD SAID THAT SHE COULD TEACH.

7 AND UPON THE ADVICE OF DONNA LITTLE, DONNA LITTLE,  
8 MYSELF AND JACK MCDONOUGH, BOTH OF THESE PROFESSORS LONGTIME  
9 COLLEAGUES OF MINE AT THE COLLEGE, WE WERE TO GO IN AND MEET  
10 WITH CARLOS AND TRY TO PERSUADE HIM TO REHIRE MARCY AND TO  
11 BASICALLY INFORM HIM IF HE HADN'T ALREADY BEEN INFORMED THAT  
12 MARCY'S PRIMARY PHYSICIAN CAME TO A RECOMMENDATION CONTRARY TO  
13 THAT OF DR. MISSETT. SO JACK AND I WENT INTO CARLOS'S OFFICE --

14 Q. OKAY. LET'S STOP THERE. WE'LL GET INTO THE ACTUAL  
15 MEETING IN A MOMENT, BUT I WANT TO BACK UP AND JUST MAKE SURE WE  
16 UNDERSTAND EVERYTHING YOU JUST TOLD US.

17 PRIOR TO GOING TO ACTUALLY MEET WITH PRESIDENT LOPEZ,  
18 DID YOU DO ANYTHING OTHER THAN SPEAK WITH PROFESSOR BLOUGH TO  
19 GET A HANDLE ON THE SITUATION?

20 A. WELL, I EITHER ASKED FOR OR I RECEIVED IN SOME WAY,  
21 LIKE, HER STUDENT EVALUATIONS. BECAUSE I WAS INTERESTED ON WHAT  
22 BASIS THAT SHE COULDN'T PERFORM HER JOB, IF THERE WAS ANY  
23 STUDENT EVIDENCE TO THAT EFFECT. AND UPON READING HER  
24 EVALUATION AND FINDING THEM OUTSTANDING, I HANDED THEM OVER TO  
25 MY COLLEAGUE, DONNA LITTLE, TO MAKE SURE I GOT A SECOND OPINION.  
26 BECAUSE I'M NOT USED TO READING EVERYBODY'S EVALUATIONS. AND

1 DONNA LITTLE IS AN OUTSTANDING TEACHER. SHE WAS THE RECIPIENT  
2 OF THE TEACHER OF THE YEAR AWARD A COUPLE YEARS BACK, AND I  
3 WANTED TO SEE IF SHE CAME TO THE SAME CONCLUSION THAT I DID, AND  
4 SHE DID.

5 Q. AND WHEN YOU REVIEWED PROFESSOR BLOUGH'S STUDENT  
6 EVALUATIONS -- FIRST OF ALL, CAN YOU RECALL WHAT TIME PERIOD  
7 THOSE STUDENT EVALUATIONS COVERED?

8 A. THE FALL OF 2005 AND SPRING OF 2006.

9 Q. AND WHEN YOU REVIEWED THOSE FALL '05 AND SPRING '06  
10 STUDENT EVALUATIONS FOR PROFESSOR BLOUGH, DID YOU COMPARE THEM,  
11 AT LEAST IN YOUR OWN MIND, TO YOUR OWN EVALUATIONS FROM THAT  
12 SAME TIME PERIOD?

13 A. YES, I DID.

14 Q. AND WHAT DID YOU CONCLUDE?

15 A. I CONCLUDED THAT HER EVALUATIONS, IN GENERAL, WERE  
16 BETTER THAN MINE; PARTICULARLY, IN LIGHT OF THE COMMENTS. THE  
17 EVALUATIONS -- IF I MAY SAY SOMETHING -- THEY ARE COMPRISED OF A  
18 SERIES OF METRICS ON A VARIETY OF THINGS, SOME OF WHICH REALLY  
19 DON'T APPLY TO ANY PARTICULAR CLASS. WRITING, FOR EXAMPLE, I'M  
20 NOT SURE HOW MUCH WRITING IS IN A MATH CLASS. SO IT'S A KIND OF  
21 TUBE SOCK FITS ALL. BUT ONE READS THE VARIOUS METRICS IN  
22 CONJUNCTION WITH THE COMMENTS OF THE STUDENTS IN THE BACK TO GET  
23 A HOLISTIC IMPRESSION OF WHAT IS GOING ON. AND ON THAT BASIS, I  
24 THINK HER EVALUATIONS WERE EXCELLENT.

25 Q. AND DID, TO YOUR KNOWLEDGE, EITHER PROFESSOR LITTLE OR  
26 PROFESSOR MCDONOUGH PERFORM THE SAME EXERCISE?

1 A. DONNA LITTLE DID AND SHE SAID --

2 MR. VARTAIN: OBJECTION. HEARSAY.

3 THE COURT: SUSTAINED.

4 MR. LEBOWITZ: Q. NOW, WHEN YOU READ THE SPRING '06  
5 EVALUATIONS, DID YOU SEE ANY THAT WERE NEGATIVE?

6 A. I READ THE 2005/2006 CONCURRENTLY, SO I DIDN'T  
7 ACTUALLY LOOK INTO WHAT WAS HAPPENING IN 2006 AND 2005. SO  
8 I'D BE UNABLE TO ANSWER THE QUESTION THE WAY IT IS PHRASED.

9 Q. IN YOUR REVIEW OF ANY OF THE STUDENT EVALUATIONS,  
10 EITHER FALL '05 OR SPRING '06, DID YOU SEE ANY NEGATIVE  
11 EVALUATIONS IN THE SPRING COMMENTS?

12 A. YES, I DID.

13 MR. LEBOWITZ: YOUR HONOR, IF WE MAY HAVE EXHIBIT 9  
14 THAT'S IN EVIDENCE. MAY I APPROACH THE WITNESS?

15 Q. PROFESSOR MEDLEN, I'VE HANDED YOU WHAT WE'VE ALREADY  
16 ADMITTED INTO EVIDENCE AS EXHIBIT 9 FOR THIS CASE, WHICH WAS  
17 PREVIOUSLY IDENTIFIED AS THE SPRING 2006 STUDENT EVALUATIONS FOR  
18 PROFESSOR BLOUGH. AND I WANT TO DIRECT YOUR ATTENTION TO A  
19 COUPLE OF INDIVIDUAL ITEMS IN HERE.

20 SO, FIRST, I WANT TO, IF YOU CAN TURN TO PAGE 694 IN  
21 THE PACKET. YOU'LL SEE THE NUMBERS IN THE BOTTOM RIGHT.

22 A. (WITNESS COMPLIES.)

23 Q. ARE YOU WITH ME ON THAT ONE?

24 A. YES, UH-HUH.

25 Q. OKAY.

26 NOW YOU READ THIS EVALUATION. THIS WAS PRETTY

333

1 NEGATIVE.

2 A. YES.

3 Q. AND YOU TOOK THIS INTO ACCOUNT WHEN YOU CAME TO YOUR  
4 OWN CONCLUSIONS ABOUT COMPARING HER VERY REVIEWS TO YOUR OWN?

5 A. YES. I GET NEGATIVE EVALUATIONS, TOO, ON OCCASION.

6 SURE.

7 Q. HOW ABOUT 697? NOW, 697, IN THE MIDDLE ANSWERING THE  
8 QUESTION, "WHAT IS GOOD ABOUT THE INSTRUCTOR," SAYS, "SHE'S VERY  
9 UNDERSTANDING, FORGIVING, BUT SHE CAN HAVE TROUBLE HEARING  
10 OCCASIONALLY."

11 A. YES. THAT'S CORRECT. THAT'S WHAT IT SAYS.

12 Q. YOU READ THAT AT THE TIME?

13 A. YES. AND I ACTUALLY KNEW THAT SHE HAD TROUBLE  
14 HEARING.

15 Q. DID YOU CONSIDER THIS A NEGATIVE REVIEW?

16 A. NO, IT'S VERY GOOD. I LIKE IT. I CAN'T -- "I  
17 WOULDN'T CHANGE A THING," IT SAYS ON THE BOTTOM.

18 Q. OKAY.

19 GO TO 719. NOW, YOU READ THIS ONE AT THE TIME, RIGHT?

20 A. YES, UH-HUH.

21 Q. AND DID YOU CONSIDER THIS NEGATIVE?

22 A. OH, YES. THIS IS ABSOLUTELY NEGATIVE.

23 Q. OKAY.  
24 A. "CLASS IS A JOKE."  
25 Q. YOU EVER GOTTEN A REVIEW LIKE THAT?  
26 A. YES.

334

1 Q. AND YOU OBVIOUSLY CONSIDER THAT AS PART OF YOUR  
2 DETERMINATION IN REGARDS TO PROFESSOR BLOUGH'S OVERALL REVIEWS?  
3 A. YES, BECAUSE THIS IS AN INCH THICK.  
4 Q. IF YOU'D LOOK AT 720.  
5 A. (WITNESS COMPLIES.)  
6 SAME THING. THIS IS A NEGATIVE ONE.  
7 Q. AND, AGAIN, YOU TOOK THIS INTO CONSIDERATION WHEN YOU  
8 WERE MAKING YOUR ASSESSMENT OVERALL OF PROFESSOR BLOUGH'S  
9 EVALUATIONS FOR THAT SPRING?  
10 A. YES, THAT'S TRUE. IF I MAY MAKE A COMMENT? I TEACH  
11 MACROECONOMICS, AND I HAVE WILDLY DIFFERENT REVIEWS IN TWO  
12 SECTIONS OF THE SAME COURSE. WHAT HAPPENS OFTENTIMES IS YOU'LL  
13 HAVE A COLLECTION OF STUDENTS. THEY'RE ALL FRIENDS. ONE CAN  
14 INFLUENCE FIVE, YOU KNOW. SO THE METRICS DO VARY SOMETIMES.  
15 WHAT IMPRESSES ME ABOUT MARCY IS, IT DOESN'T MATTER WHICH CLASS  
16 YOU GO INTO; ON THE OVERALL BASIS THEY'RE VERY POSITIVE, OFTEN  
17 GLOWING.  
18 Q. NOW, OTHER THAN THE ONES I'VE SHOWN YOU, CAN YOU  
19 RECALL SEEING ANY OTHER NEGATIVE COMMENTS IN THOSE COMMENTS?  
20 A. NO. I REMEMBER THAT THERE WERE MAYBE FOUR OR FIVE OF

21 THESE IN THIS STACK. AND I THINK I COUNTED FOUR OR FIVE,  
22 INCLUDING THE 2005, BUT I AM NOT SURE.

23 Q. LET'S LOOK AT, IF YOU WILL, PAGE 670.

24 A. (WITNESS COMPLIES.)

25 Q. SO IF YOU READ THIS ONE IN THE TOP QUESTION, WHICH IS,  
26 "WHAT IS GOOD ABOUT THE COURSE?" THE STUDENT WRITES, "I LEARNED

335

1 A LOT ABOUT MATERIAL I WAS" -- CAN YOU READ THAT?

2 A. SURE.

3 Q. WHY DON'T YOU READ IT.

4 A. "I LEARNED A LOT ABOUT MATERIAL I WAS UNSURE ABOUT.  
5 VERY GOOD COURSE TO LET STUDENTS KNOW WHAT COULD HAPPEN AND  
6 WHAT'S GOING ON IN THE OUTSIDE WORLD WITH LAW," "LAW,"  
7 SOMETHING.

8 Q. OKAY.

9 AND THEN, "WHAT IS GOOD ABOUT THE INSTRUCTOR?"

10 A. "SHE IS AWESOME. VERY KNOWLEDGEABLE AND EXPLAINS  
11 THINGS VERY WELL." "TEXT WAS GOOD. EXPLANATIONS BETTER."

12 Q. OKAY.

13 AND SO THIS WAS -- YOU CONSIDER THIS ONE A POSITIVE  
14 ONE IN THAT SAME TIME PERIOD?

15 A. AND THERE ARE MANY LIKE THIS.

16 Q. WELL, LET'S LOOK AT ANOTHER ONE, 686.

17 MR. VARTAIN: I THINK THIS IS CUMULATIVE AT THIS  
18 POINT, YOUR HONOR.

19 THE COURT: SUSTAINED.

20 MR. LEBOWITZ: Q. SO LET'S GO BACK TO THE MEETING  
21 THAT YOU HAD WITH CARLOS LOPEZ IN THE SUMMER OF 2006. CAN YOU  
22 PLACE IN TIME WHEN THAT WAS?

23 A. I BELIEVE IT WAS SOMEWHERE IN MID JULY.

24 Q. AND WHAT DID YOU TELL PRESIDENT LOPEZ DURING THE  
25 MEETING?

26 A. I SAID THAT IT WOULD BEHOOVE THE SCHOOL AND IT WOULD

336

1 BE GOOD FOR OUR LONGTIME COLLEAGUE. CARLOS WAS A COLLEAGUE OF  
2 MARCY'S, TOO, FOR MANY YEARS. IF WE COULD FIX THIS SITUATION  
3 AND GET MARCY BACK ONBOARD. IF THERE ARE PROBLEMS, I'M SURE  
4 THAT COULD BE WORKED OUT. BUT I WAS MAINLY THERE TO COMMUNICATE  
5 TO HIM THAT IN MY CONVERSATION WITH MARCY THAT HER PRIMARY  
6 DOCTORS SAID THAT SHE COULD TEACH.

7 MR. VARTAIN: OBJECTION. HEARSAY.

8 THE COURT: SUSTAINED.

9 MR. VARTAIN: MOVE TO STRIKE.

10 THE WITNESS: THAT'S WHAT I TOLD HIM.

11 MR. VARTAIN: MOVE TO STRIKE.

12 THE COURT: LADIES AND GENTLEMEN, WHEN I SUSTAIN AN  
13 OBJECTION AFTER THE ANSWER HAS BEEN GIVEN, THAT MEANS THAT  
14 YOU'RE NOT TO CONSIDER THE ANSWER. THIS IS JUST A LITTLE PIECE  
15 OF THAT LAST ANSWER AS TO WHAT OTHERS MIGHT HAVE SAID. YOU MAY  
16 HEAR ABOUT THIS AGAIN, AND I'LL LET MR. LEBOWITZ ASK A DIFFERENT



17 QUESTION SO HE CAN SEE IF HE CAN BRING THIS INFORMATION TO YOU.

18 MR. LEBOWITZ: Q. SO THE QUESTION IS REALLY, WHAT IS  
19 IT THAT YOU TOLD PRESIDENT LOPEZ DURING THE MEETING?

20 A. THAT HER PRIMARY DOCTORS SAID THAT SHE COULD TEACH.

21 Q. AND, AGAIN, IT WAS YOURSELF, PRESIDENT LOPEZ AND WHO  
22 ELSE WAS WITH YOU?

23 A. JACK MCDONOUGH.

24 Q. AND WHO IS JACK MCDONOUGH?

25 A. JACK MCDONOUGH IS A LONGTIME COLLEAGUE. HE WORKED AT  
26 CALDWELL BANKER, IF I'M NOT MISTAKEN, FOR SOME 20 YEARS. HE'S

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1 TAUGHT A VARIETY OF COURSES IN MARKETING AND ENTREPRENEURSHIP.

2 Q. AND SO IT WAS THE TWO OF YOU TOGETHER SPEAKING WITH  
3 PRESIDENT LOPEZ?

4 A. THAT'S CORRECT.

5 Q. AND WHAT, IF ANYTHING, DID PRESIDENT LOPEZ SAY IN  
6 RESPONSE?

7 A. HE SAID THAT HE FELT BOUND BY THE DETERMINATION OF  
8 DR. MISSETT, AND THAT HE WAS AFRAID THAT IF MARCY WERE ALLOWED  
9 TO CONTINUE TO TEACH AND IF THERE WERE FUTURE PROBLEMS, THAT  
10 MENLO MIGHT BE INVOLVED IN A LAWSUIT.

11 Q. DID HE EXPLAIN WHAT HE MEANT BY THAT?

12 A. WELL, AGAIN, YOU KNOW, THIS HAS BEEN TWO YEARS AGO.  
13 BUT, YOU KNOW, MY IMPRESSION AND MY PRESUMPTION WAS A LAWSUIT BY  
14 A PARENT OR BY A STUDENT ON THE BASIS OF SOMETHING THAT MARCY

15 WOULD DO OR COULD HAVE DONE POSSIBLY IN THE FUTURE. AND I TRIED  
16 TO COUNTER HIS ARGUMENT BY SAYING THAT, AGAIN, THAT DR. MISSETT  
17 CAME TO A CONCLUSION THAT WAS CONTRARY TO HER PRIMARY DOCTORS.

18 Q. HOW DID THAT MEETING END WITH PRESIDENT LOPEZ?

19 A. YOU KNOW, AMICABLY. BUT I JUST TRIED TO, YOU KNOW,  
20 REPEAT MY ARGUMENT AND HE REPEATED HIS. AND THEN I WROTE A  
21 LETTER TO THAT EFFECT THE DAY AFTER -- OR PERHAPS EVEN THAT DAY.  
22 I DON'T RECALL. CERTAINLY, IMMEDIATELY UPON THE HEELS OF THAT  
23 MEETING -- AS A LETTER OF UNDERSTANDING AND AN APPEAL TO HIM  
24 THAT A LAWSUIT THAT PROBABLY WOULD ENSUE IF THIS THING WASN'T  
25 FIXED WOULD BE VERY, VERY BAD FOR THE SCHOOL.

26 I MEAN, PERHAPS MARCY'S HAD 2000 -- I DID A ROUGH

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1 BACK-OF-THE-ENVELOPE CALCULATION OF A COUPLE THOUSAND STUDENTS,  
2 PROBABLY AS LARGE AS 4,000 STUDENTS GOING THROUGH THE ALUMNAE  
3 NETWORK. SHE'S WELL-REGARDED BY ALUMS. IT CAN DAMAGE THE  
4 SCHOOL IN ALL KINDS OF WAYS, POSSIBLY COULD HAVE EVEN HIT THE  
5 MEDIA. IT COULD DRAIN OUR RESOURCES IF A JUDGMENT WERE AWARDED  
6 TO HER. AND I WAS TRYING TO PERSUADE HIM, AS PRESIDENT OF THE  
7 COLLEGE, TO TRY TO AVOID, ESSENTIALLY, WHAT WE'RE GOING THROUGH  
8 RIGHT NOW. I WANTED TO HEAL THIS THING.

9 Q. WAS YOUR GOAL IN GOING TO SEE PRESIDENT LOPEZ TO TRY  
10 AND CONVINCHE HIM TO BRING PROFESSOR BLOUGH BACK TO WORK?

11 MR. VARTAIN: I'M GOING TO OBJECT. HE'S LEADING THE  
12 WITNESS.

13 THE COURT: SUSTAINED.

14 MR. LEBOWITZ: Q. WHAT WAS YOUR GOAL IN GOING TO SEE  
15 PRESIDENT LOPEZ?

16 A. TO GET MARCY HER JOB BACK. SHE WAS THERE FOR OVER  
17 20 YEARS. IT'S NOT JUST HER JOB; IT'S HER IDENTITY. YOU KNOW,  
18 A DETERMINATION MADE AS TO HER FITNESS WAS MADE BY AN EMPLOYEE  
19 OF THE COLLEGE, ESSENTIALLY, FOR TWO HOURS OF EXAMINATION  
20 AGAINST 20 YEARS OF GOOD SERVICE TO THE SCHOOL. THIS SEEMED OUT  
21 OF BOUNDS TO ME.

22 Q. NOW SUBSEQUENT TO YOUR MEETING WITH PRESIDENT LOPEZ,  
23 HAVE YOU HAD ANY OTHER OCCASION TO SPEAK WITH THE COLLEGE  
24 ADMINISTRATION ABOUT PROFESSOR BLOUGH?

25 A. YES, TWICE; ONE WITH PRESIDENT HAIGHT, OUR CURRENT  
26 PRESIDENT, SOMETIME EARLY IN HIS TENURE. I BELIEVE HE CAME IN

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1 JANUARY OF 2007. I'M NOT REALLY SURE, FRANKLY. I CAME IN AND I  
2 TRIED TO PERSUADE PRESIDENT HAIGHT TO TRY, AS I SAY, FIX THIS  
3 THING. I BELIEVE I USED A METAPHOR OF A TRAIN GOING OFF THE  
4 TRACK, AND WE CAN FIX IT BEFORE THIS HAPPENS.

5 AND I SHOWED HIM THE LETTER THAT I HAD SENT TO CARLOS,  
6 AND HE READ IT. NOT OUT LOUD, BUT HIS EYEBALLS WENT DOWN THE  
7 PAGE, AND HE SAID THAT HE COULDN'T DISCUSS PERSONNEL MATTERS  
8 WITH ME LEGALLY. I SAID, "THAT'S OKAY." I JUST LIKE TO EXPLAIN  
9 TO HIM MY VIEW OF THE SITUATION, AND I THOUGHT THAT HE COULD  
10 STILL FIX THE THING TO GET MARCY BACK ONBOARD.

11 Q. SO DID YOU EXPLAIN TO PRESIDENT HAIGHT THE THINGS THAT  
12 YOU HAD EXPLAINED TO PRESIDENT LOPEZ?

13 MR. VARTAIN: OBJECTION. LEADING. CALLS FOR --

14 THE COURT: SUSTAINED.

15 MR. LEBOWITZ: Q. HOW, IF AT ALL, DID WHAT YOU SAID  
16 TO PRESIDENT HAIGHT DIFFER FROM WHAT YOU TOLD PRESIDENT LOPEZ?

17 MR. VARTAIN: SAME OBJECTION.

18 THE COURT: OVERRULED.

19 THE WITNESS: IN NO WAY WAS IT DIFFERENT.

20 MR. LEBOWITZ: Q. AND YOU SAID THERE WAS A SECOND  
21 TIME?

22 A. YES. I WAS POSSESSED OF A PIECE OF INFORMATION THAT I  
23 NOW REGARD AS ERRONEOUS, BUT MARCY AT ONE TIME TOLD ME THAT --

24 MR. VARTAIN: OBJECTION. HEARSAY.

25 THE COURT: SUSTAINED.

26 MR. LEBOWITZ: OKAY.

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1 Q. NOW, OVER THE YEARS, YOUR 37-PLUS YEARS AT THE  
2 COLLEGE, HOW WOULD YOU EXPLAIN THE -- HOW WOULD YOU DESCRIBE THE  
3 ATMOSPHERE, THE COLLEGIATE WILL AMONG THE FACULTY?

4 A. IT VARIES, YOU KNOW, OVER SIGNIFICANT PERIODS. THERE  
5 HAVE BEEN TIMES WHEN WE'RE ALL WORKING TOGETHER AND OTHER TIMES  
6 WE'RE NOT WORKING TOGETHER AT VARIANCE OF EACH OTHER.

7 Q. AND HOW ABOUT SINCE PRESIDENT HAIGHT AND PROVOST KELLY  
8 TOOK OVER THE ADMINISTRATION IN EARLY 2007? HOW HAS THAT

9 COMPARED TO THE PAST?

10 MR. VARTAIN: IRRELEVANT. OBJECTION.

11 THE COURT: SUSTAINED.

12 MR. LEBOWITZ: YOUR HONOR, IF WE MAY APPROACH?

13 THE COURT: YOU CAN APPROACH.

14 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

15 THE COURT: THE OBJECTION IS SUSTAINED.

16 MR. LEBOWITZ: Q. LET ME ASK YOU THIS,

17 PROFESSOR MEDLEN. INSTEAD OF COLLEGIALITY, LET ME ASK YOU ABOUT

18 THE RELATIONSHIP BETWEEN THE FACULTY AND THE ADMINISTRATION.

19 AND SO AS YOU TESTIFIED, THAT PRESIDENT HAIGHT CAME IN IN THE

20 BEGINNING OF 2007. CAN YOU, BASED ON YOUR EXPERIENCE, TELL US

21 WHAT THE RELATIONSHIP IS LIKE BETWEEN THE FACULTY AND THE

22 CURRENT ADMINISTRATION?

23 MR. VARTAIN: THAT'S IRRELEVANT.

24 THE COURT: I DON'T THINK THERE'S AN ADEQUATE

25 FOUNDATION LAID.

26 MR. LEBOWITZ: Q. PRIOR TO THE CURRENT

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1 ADMINISTRATION, HOW WOULD YOU DESCRIBE THE RELATIONSHIP BETWEEN

2 FACULTY -- YOURSELF AS MEMBER OF THE FACULTY.

3 THE COURT: ALL RIGHT. APPROACH.

4 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

5 THE COURT: GO AHEAD, MR. LEBOWITZ.

6 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

7 Q. PROFESSOR MEDLEN, HAVE YOU EVER HELD ANY POSITIONS ON  
8 COMMITTEES WITH MENLO COLLEGE?

9 A. YES.

10 Q. AND HOW ABOUT IN THE FACULTY SENATE?

11 A. YES.

12 Q. WHAT POSITIONS HAVE YOU HELD WITH THE FACULTY SENATE?

13 A. WELL, I WAS PRESIDENT A COUPLE YEARS BACK.

14 Q. WERE YOU PRESIDENT IN 2006?

15 A. YES, I WAS.

16 Q. AND HOW ABOUT IN 2007?

17 A. YES, 2006/2007, FOR THAT ACADEMIC YEAR.

18 Q. OKAY.

19 A. AND I WAS VICE PRESIDENT THE YEAR BEFORE. THE WAY IT  
20 WORKS IS THE VICE PRESIDENT BECOMES THE PRESIDENT THE SUBSEQUENT  
21 YEAR.

22 Q. AND THROUGH YOUR ACTIVITIES AS PRESIDENT AND VICE  
23 PRESIDENT OF THE FACULTY SENATE, YOU'VE COME TO UNDERSTAND THE  
24 RELATIONSHIP BETWEEN THE FACULTY AND THE ADMINISTRATION OVER THE  
25 YEARS?

26 A. I HAVE ONE VIEW ON IT. YES.

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1 Q. AND WHAT IS THAT?

2 THE COURT: I'M SORRY. I DON'T KNOW WHAT "ONE VIEW"  
3 MEANS.

4 THE WITNESS: MY VIEW.

5 THE COURT: OKAY. THEN I'M NOT GOING TO ALLOW IT.

6 MR. LEBOWITZ: Q. WITHOUT TELLING US WHAT YOUR VIEW  
7 IS, WHAT HAVE YOU RELIED ON IN REACHING YOUR VIEWPOINT?

8 MR. VARTAIN: IT'S IRRELEVANT. OBJECTION.

9 THE COURT: APPROACH, AGAIN. I'M SORRY, LADIES AND  
10 GENTLEMEN.

11 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

12 THE COURT: THE OBJECTION IS SUSTAINED ON THE GROUNDS  
13 OF LACK OF RELEVANCE.

14 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS, YOUR HONOR.

15 THE COURT: THANK YOU.

16 CROSS-EXAMINATION.

17 MR. VARTAIN: THANK YOU, YOUR HONOR.

18

19 CROSS-EXAMINATION

20 BY MR. VARTAIN:

21 Q. GOOD MORNING, PROFESSOR. WE MET THE OTHER DAY?

22 A. YES, WE DID.

23 Q. I'M GOING TO COVER A NUMBER OF THE TOPICS THAT  
24 MR. LEBOWITZ DID. I'M GOING TO TRY TO BE AS BRIEF AS POSSIBLE.

25 THE FIRST TOPIC I'M GOING TO TALK ABOUT IS THE MEDICAL  
26 INTERMEDIARY, DR. MISSETT. YOU BROUGHT HIM UP AS SOMETHING THAT

1 YOU DISCUSSED WITH PRESIDENT EMERITUS LOPEZ.

2 DO YOU REMEMBER THAT?

3 A. YES.

4 Q. AND YOU MENTIONED -- YOU TESTIFIED TO THE JURY THAT  
5 WHEN THE PRESIDENT WAS EXPLAINING HIS CONSTRAINTS OR  
6 LIMITATIONS, HE SAID THAT THE OUTSIDE MEDICAL EVALUATOR INFORMED  
7 THE COLLEGE THAT THE OUTSIDE MEDICAL EVALUATOR'S OPINION WAS  
8 THAT PROFESSOR BLOUGH WAS NOT THEN ABLE TO DO HER TEACHING  
9 FUNCTION; IS THAT CORRECT?

10 A. YES.

11 Q. IT IS TRUE, ISN'T IT, THAT PROFESSOR LOPEZ NEVER  
12 DISCLOSED TO YOU WHAT IT WAS ABOUT PROFESSOR BLOUGH'S MEDICAL  
13 PROBLEMS THAT HE LEARNED, IF ANYTHING, FROM DR. MISSETT. HE  
14 DIDN'T TALK ABOUT ANYTHING THAT WAS PRIVATE TO PROFESSOR BLOUGH,  
15 DID HE?

16 A. NO, HE DID NOT.

17 Q. AND WHEN YOU BROUGHT UP TO PRESIDENT LOPEZ, IN THAT  
18 MEETING THAT YOU MENTIONED, THAT YOU THOUGHT THAT THE OUTSIDE  
19 MEDICAL EVALUATOR, DR. MISSETT, WAS GIVING A MEDICAL OPINION  
20 THAT WAS DIFFERENT FROM PROFESSOR BLOUGH'S OWN PERSONAL  
21 PHYSICIANS, YOU WERE TELLING PRESIDENT LOPEZ ONLY WHAT  
22 PROFESSOR BLOUGH HAD TOLD YOU, CORRECT?

23 A. THAT'S CORRECT, BUT I WAS LATER TO SEE THE ACTUAL  
24 MEDICAL RECORDS.

25 Q. OKAY. THAT'S THE PART THE JUDGE DIDN'T WANT YOU TO  
26 TALK ABOUT.



1 A. I'M SORRY.

2 Q. YOU'RE NOT A PHYSICIAN. SO INsofar AS REVIEWING OR  
3 INTERPRETING MEDICAL RECORDS, WOULD YOU AGREE THAT PROBABLY  
4 DR. MISSETT WOULD BE MORE QUALIFIED TO REVIEW THE MEDICAL  
5 RECORDS THAN YOU WOULD?

6 A. YES.

7 Q. OKAY.

8 SO AS BETWEEN YOU REVIEWING PROFESSOR BLOUGH'S MEDICAL  
9 RECORDS AND DR. MISSETT, YOU WOULD VOTE WITH DR. MISSETT,  
10 CORRECT?

11 A. I DIDN'T GO THROUGH MARCY'S MEDICAL RECORDS. I SIMPLY  
12 SAW FROM THE PRIMARY PHYSICIANS THAT THEY THOUGHT THAT SHE COULD  
13 TEACH AND SAID SO.

14 Q. WELL, YOU KNOW THAT THEY ACTUALLY DIDN'T SAY SO MUCH  
15 AS "CAN TEACH," CORRECT? ISN'T THAT CORRECT? OKAY. HOLD ON A  
16 SECOND. I APOLOGIZE. I INTERRUPTED YOU. NOW I'M GOING TO  
17 WITHDRAW THAT QUESTION BECAUSE I CONFUSED YOU.

18 A. OKAY.

19 MR. VARTAIN: MAY I WITHDRAW THAT QUESTION?

20 THE COURT: YES.

21 MR. VARTAIN: Q. BACK TO YOU AND PROFESSOR -- AND  
22 PRESIDENT LOPEZ. WHEN PRESIDENT LOPEZ BROUGHT UP OR MENTIONED  
23 THE THING ABOUT A LEGAL PROBLEM IF HE WENT AGAINST WHAT THE  
24 OUTSIDE MEDICAL EVALUATOR'S MEDICAL OPINION WAS, PRESIDENT LOPEZ  
25 SAID TO YOU, THAT COULD CAUSE THE COLLEGE TO HAVE A LEGAL  
26 PROBLEM WITH THE STUDENTS AND THEIR PARENTS, OR WORDS TO THAT

1 EFFECT, CORRECT?

2 A. YES.

3 Q. BUT ISN'T IT TRUE THAT IT WASN'T PRESIDENT LOPEZ WHO  
4 FIRST BROUGHT UP THE SPECTER OF LEGAL PROBLEMS; IT WAS YOU,  
5 ISN'T THAT TRUE? YOU SAID TO PRESIDENT LOPEZ, "YOU'RE GOING TO  
6 HAVE A MIGHTY BIG LAWSUIT FROM PROFESSOR BLOUGH." THAT WAS WHAT  
7 STARTED OFF THE MEETING, ISN'T THAT TRUE?

8 A. NO, THAT'S NOT TRUE.

9 Q. DID YOU ACTUALLY BRING UP AT THAT MEETING THAT YOU HAD  
10 HEARD FROM PROFESSOR BLOUGH THAT SHE WAS GOING TO SUE THE  
11 COLLEGE IF SHE DIDN'T GET HER WAY?

12 A. AGAIN, THAT'S TWISTING THE WORDS.

13 Q. OKAY. I DON'T WANT TO TWIST THEM.

14 DID YOU FORGET EXACTLY HOW YOU PUT IT? IT ISN'T THAT  
15 IMPORTANT. DID YOU BRING UP IN THAT MEETING WITH PRESIDENT  
16 LOPEZ SOMETHING ABOUT THAT PROFESSOR BLOUGH HAD TOLD YOU THAT  
17 SHE WAS CONSIDERING FILING A LAWSUIT AGAINST THE COLLEGE, OR  
18 WORDS TO THAT EFFECT?

19 A. I SAID THAT IN CONJUNCTION WITH THE FACT THERE WERE NO  
20 WINNERS HERE. THAT WINNING MEANT THAT THE SCHOOL WOULD BE  
21 BETTER OFF WITH MARCY AS A PROFESSOR AND THAT THE SCHOOL WOULD  
22 BE LESS WELL OFF IF MARCY WENT AHEAD WITH THE LAWSUIT. THAT'S  
23 CORRECT. IT HAS A CONTEXT.

24 Q. OKAY.

25 I'M NOT SAYING YOU SAID ANYTHING WRONG, BELIEVE ME.

1 TOPIC OF A LAWSUIT DID COME UP FROM YOU? AND THEN THE PRESIDENT  
2 SAID, "WELL, YES, THERE MIGHT BE A LAWSUIT FROM PROFESSOR  
3 BLOUGH, BUT THE COLLEGE HAS LEGAL ISSUES OR LEGAL OBLIGATIONS TO  
4 THE STUDENTS AND THEIR PARENTS," OR WORDS TO THAT EFFECT?

5 A. I THINK THAT'S FAIR IF WE AT LEAST -- I'M NOT SURE  
6 ABOUT THE ORDER.

7 Q. THAT'S FINE.

8 A. HE MAY HAVE BROUGHT UP, YOU KNOW, THE POINT ABOUT THE  
9 LAWSUIT IF WE DIDN'T GO ALONG WITH DR. MISSETT.

10 Q. BUT, IN ANY EVENT, THE PRESIDENT EMERITUS WAS SITTING  
11 THERE WORRIED ABOUT WHAT YOU WERE SAYING IF PROFESSOR BLOUGH  
12 SUED, AND THEN HE WAS ALSO WORRIED ABOUT WHAT ARE HIS  
13 OBLIGATIONS AS THE PRESIDENT TO THE STUDENTS AND THE PARENTS; IS  
14 THAT FAIR?

15 A. YEAH, THAT'S FAIR.

16 Q. AND THE TWO OF YOU DIDN'T REACH AN AGREEMENT ON WHICH  
17 ONE WAS MORE IMPORTANT, CORRECT?

18 A. YES. WE DIDN'T REACH AN AGREEMENT. THAT'S CORRECT.

19 Q. OKAY.

20 THE PRESIDENT WAS CIVIL THROUGHOUT THIS MEETING,  
21 WASN'T HE?

22 A. YES, HE WAS.

23 Q. NOW, YOU SAID THAT THE -- I HEARD YOU SAY SOMETHING

24 LIKE THAT DR. MISSETT WAS AN EMPLOYEE OF THE COLLEGE.

25 A. WELL, AT LEAST HE WAS HIRED FOR THE PURPOSE.

26 Q. OKAY.

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1 I THINK WHAT YOU MEANT TO SAY -- AND I DON'T WANT TO  
2 GET INTO A LEGALITIES OF EMPLOYMENT. WHAT YOU, I THINK, WERE  
3 TRYING TO SAY IS THAT THE COLLEGE HAD RETAINED DR. MISSETT TO DO  
4 THIS EVALUATION OF PROFESSOR BLOUGH'S ABILITY TO WORK?

5 A. THAT'S CORRECT.

6 Q. YOU AREN'T SAYING HE'S ON THE PAYROLL?

7 A. NO, OF COURSE NOT.

8 Q. OKAY. FAIR ENOUGH.

9 WHEN YOU WERE ANSWERING MR. LEBOWITZ'S QUESTIONS ABOUT  
10 HOW VALUED PROFESSOR BLOUGH WAS, SHE WAS A GOOD COLLEAGUE TO THE  
11 FACULTY MEMBERS, SHE HAD OVER THE YEARS -- YOU HAD WRITTEN HER A  
12 LETTER OF RECOMMENDATION. SHE HAD GOOD STUDENT EVALUATIONS.  
13 REMEMBER THAT?

14 A. YES.

15 Q. BUT ISN'T IT TRUE THAT PRESIDENT LOPEZ, HE NEVER SAID  
16 ANYTHING DEROGATORY ABOUT PROFESSOR BLOUGH IN THAT MEETING, DID  
17 HE?

18 A. NO, HE DID NOT.

19 Q. HE DIDN'T SAY SHE WASN'T VALUED TO THE SCHOOL, DID HE?

20 A. HE DIDN'T MAKE A DETERMINATION EITHER WAY.

21 Q. HE DIDN'T SAY SHE WAS IN ANY WAY ANYTHING BUT SOMEONE

22 THAT HE CARED ABOUT, CORRECT?

23 A. WELL, HE DIDN'T SAY EITHER WAY.

24 Q. OKAY.

25 WHAT YOU, I THINK, CAN AGREE ON, HE DIDN'T SAY

26 ANYTHING DEROGATORY ABOUT PROFESSOR BLOUGH, CORRECT?

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1 A. NO, HE DIDN'T.

2 Q. NOR DID HE SAY ANYTHING DEROGATORY ABOUT THE FACT THAT

3 SHE HAD HAD MEDICAL PROBLEMS, DID HE?

4 A. NO.

5 Q. HE DIDN'T SAY ANYTHING DEROGATORY ABOUT HER HAVING HAD

6 CANCER, DID HE?

7 A. DEROGATORY? NO, OF COURSE NOT.

8 Q. HE DIDN'T SAY ANYTHING ABOUT THE FACT THAT SHE HAD HAD

9 PSYCHIATRIC ISSUES THAT HAD BEEN AFFLICTING HER, DID HE? HE

10 DIDN'T SAY THAT, DID HE?

11 A. HE DIDN'T TALK ABOUT HER MEDICAL CONDITION AT ALL.

12 Q. AND HE SAID NOTHING DEROGATORY ABOUT HER, CORRECT?

13 A. NOT THAT I RECALL. NO.

14 Q. NOR DID PRESIDENT HAIGHT, CORRECT?

15 A. NO, HE DIDN'T.

16 Q. HE NEVER SAID ANYTHING DEROGATORY ABOUT CANCER,

17 PSYCHIATRIC OR JUST PROFESSOR BLOUGH IN GENERAL, DID HE?

18 A. I DON'T KNOW IF HE'S EVER MET PROFESSOR BLOUGH.

19 Q. WELL, I'M NOT TALKING ABOUT WHETHER PRESIDENT HAIGHT

20 HAS MET PROFESSOR BLOUGH. I'M ASKING YOU, ISN'T IT THE CASE  
21 THAT PRESIDENT HAIGHT HAS NEVER SAID ANYTHING TO YOU THAT'S  
22 DEROGATORY ABOUT PROFESSOR BLOUGH?

23 A. NO. AS A MATTER OF FACT, AS I MENTIONED, HE SAID HE  
24 WAS -- LEGALLY COULDN'T TALK ABOUT PERSONNEL MATTERS.

25 Q. WELL, YOU DID SAY THAT, AND I APPRECIATE THAT. BUT HE  
26 DID LISTEN TO YOU IN THAT MEETING?

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1 A. YES, HE DID.

2 Q. AND HE LISTENED RESPECTFULLY, DIDN'T HE?

3 A. YES, HE DID.

4 Q. BUT HE NEVER SAID ANYTHING THAT WAS DEROGATORY ABOUT  
5 PROFESSOR BLOUGH, ISN'T THAT TRUE?

6 A. THAT'S TRUE.

7 Q. OKAY. THANK YOU.

8 DO YOU KNOW DR. MISSETT?

9 A. NO. I'VE NEVER MET HIM.

10 Q. HAVE YOU ANY FIRSTHAND INFORMATION THAT WOULD SUGGEST  
11 THAT HE'S NOT A FAIR AND IMPARTIAL MEDICAL EVALUATOR?

12 MR. LEBOWITZ: OBJECTION. NO FOUNDATION.

13 THE COURT: OVERRULED.

14 MR. VARTAIN: Q. DO YOU HAVE ANY SUCH INFORMATION?

15 A. WELL --

16 Q. I SAW -- I COULD TELL FROM YOUR BLUE EYES THAT YOU  
17 WERE CONFUSED. AND THAT MEANS EVEN THOUGH THE JUDGE LET ME ASK

18 THE QUESTION, I'M GOING TO TAKE IT BACK BECAUSE I DON'T WANT TO  
19 CONFUSE YOU.

20 YOU TOLD THE JURY THAT -- I'M NOT GOING TO TAKE THE  
21 TIME TO PUT THOSE STUDENT EVALUATIONS BACK UP THERE, BUT YOU  
22 TOLD THE JURY THAT THERE WERE FOUR OR FIVE STUDENT EVALUATIONS  
23 OF THAT WHOLE PILE OF PROFESSOR BLOUGH'S YOU LOOKED AT THAT YOU  
24 THOUGHT WERE QUITE NEGATIVE.

25 A. YES.

26 Q. AND OF THOSE FOUR OR FIVE EVALUATIONS THAT WERE QUITE

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1 NEGATIVE, SOME OF THEM SAID THINGS LIKE "SHE DOESN'T SHOW UP FOR  
2 CLASS TOO OFTEN," OR "SHE NEVER COMES TO CLASS," I THINK WAS  
3 ANOTHER ONE. DO YOU REMEMBER THOSE?

4 A. I DON'T REMEMBER IN THOSE TERMS EXACTLY THOSE WORDS,  
5 BUT THERE WAS SOME REFERENCE TO ABSENTEEISM OR SOMETHING LIKE  
6 THAT.

7 Q. OKAY.

8 SO WHEN YOU ARGUED ON PROFESSOR BLOUGH'S BEHALF TO  
9 PRESIDENT LOPEZ, YOU KNEW THAT THERE WAS AN ABSENTEEISM ISSUE,  
10 AT LEAST AS REPRESENTED BY SOME OF THE STUDENTS WHO PUT THEIR  
11 EVALUATIONS IN, CORRECT?

12 A. WELL, YES AND NO. I MEAN, IF THIS WERE A GENERAL  
13 PROBLEM, I WOULD THINK IT WOULD BE LITTERED THROUGHOUT THIS  
14 ONE-INCH SHEET OF EVALUATIONS SO...

15 Q. BUT THAT WASN'T WHAT I ASKED YOU, SIR. BUT I THINK

16 IT'S FAIR. YOU SAID IT WASN'T ALL OVER THE PLACE. BUT THERE  
17 WERE A NUMBER OF STUDENTS WHO WERE SAYING TO THE COLLEGE WORDS  
18 TO THE EFFECT OF, "SHE'S NOT COMING TO CLASS TOO OFTEN,"  
19 CORRECT?

20 A. I THINK ONE SAID THAT.

21 Q. OKAY. BUT ALL I WANT TO ASK YOU IS, YOU DIDN'T DO ANY  
22 CHECKING INTO HER ACTUAL CLASS ATTENDANCE, DID YOU?

23 A. NO.

24 Q. YOU DIDN'T TALK TO DEAN PRATT TO FIND OUT WHAT HE KNEW  
25 ABOUT HOW MUCH SHE WAS MISSING CLASS, DID YOU?

26 A. NO, I DID NOT.

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1 Q. YOU DIDN'T TALK TO MS. RACHEL TIPTON, WHO WORKS IN THE  
2 ADMINISTRATIVE OFFICE, TO FIND OUT WHAT SHE KNEW ABOUT HOW MANY  
3 STUDENTS WERE COMPLAINING ABOUT PROFESSOR BLOUGH'S --

4 A. I'M NOT SURE WHY I WOULD.

5 Q. WELL, THE ONLY REASON YOU MIGHT WOULD BE IS IF, AS THE  
6 PRESIDENT OF THE FACULTY SENATE, YOU WANTED TO DO A MORE  
7 COMPLETE SURVEY OF HOW MUCH ABSENTEEISM THERE WAS THAN JUST  
8 TALKING TO PROFESSOR BLOUGH OR THE STUDENT EVALUATIONS.

9 SO DID YOU DO ANY OF THAT KIND OF INVESTIGATION?

10 A. NO. I DIDN'T INVESTIGATE MARCY BLOUGH.

11 Q. NO, I DON'T MEAN INVESTIGATE -- I MEANT,  
12 INVESTIGATE/ASSESS HER ATTENDANCE PROBLEM. DID YOU DO THAT?

13 A. NO, I DID NOT.



14 Q. OKAY. THANK YOU.

15 YOU DIDN'T GO AND TRY TO TALK TO HER STUDENTS -- AND  
16 I'M NOT SUGGESTING YOU SHOULD HAVE, BUT YOU DIDN'T HAPPEN TO BE  
17 TALKING TO HER STUDENTS IN THE CAFETERIA TO TRY TO GET A SENSE  
18 OF THAT, DID YOU?

19 A. NO. I'VE KNOWN MARCY FOR MANY, MANY YEARS.

20 Q. NOW, YOU DID SAY THAT. AND I WAS JUST TALKING ABOUT  
21 ABSENCES IN THAT SPRING 2000 (SIC) PERIOD OF TIME. IS THAT THE  
22 WAY YOU READ MY QUESTION?

23 A. YES.

24 Q. OKAY. THANK YOU.

25 YOU MENTIONED -- I'M GOING TO NOW TALK A LITTLE BIT  
26 ABOUT -- MR. LEBOWITZ ASKED YOU ABOUT DISCRIMINATION TRAINING.

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1 REMEMBER THAT?

2 A. YES.

3 Q. YOU HAVE ATTENDED LEGAL TRAINING FROM THE COLLEGE  
4 ABOUT HOW NOT TO DISCRIMINATE, HOW NOT TO HARASS. DO YOU  
5 REMEMBER THOSE?

6 A. I REMEMBER THE HARASSMENT.

7 Q. OKAY.

8 YOU HAD A QUESTION AS TO YOU WEREN'T SURE IT HAD  
9 SOMETHING ABOUT DISABILITY IN THE TRAINING PROGRAM, CORRECT?

10 A. I DON'T RECALL IT HAD ANY.

11 Q. OKAY.

12 A. THAT'S MY RECOLLECTION.

13 Q. AND I'M GOING TO GET OUT THE DOCUMENT IN A MINUTE.

14 BUT THE REAL QUESTION I HAVE FOR YOU IS, YOU'VE NEVER BEEN IN

15 THE ADMINISTRATION, ISN'T THAT TRUE?

16 A. THAT'S CORRECT.

17 Q. SO YOU'RE NOT A PERSON WHO ACTUALLY HAS TO MAKE

18 DECISIONS FOR THE PEOPLE WHO RUN THE COLLEGE ABOUT, YOU KNOW,

19 WHEN TO PUT FACULTY ON MEDICAL LEAVE, OR WHEN TO GIVE THEM

20 PART-TIME WORK, OR WHEN TO GIVE THEM SMALLER CLASS SIZES.

21 THAT'S NEVER BEEN YOUR JOB?

22 A. THAT'S NOT MY JOB. THAT'S CORRECT.

23 Q. OKAY.

24 SO YOU HAVEN'T BEEN GIVEN TRAINING ON HOW TO DO THOSE

25 THINGS PROPERLY BUT, THEN AGAIN, YOU'VE NEVER BEEN APPOINTED TO

26 THAT KIND OF A JOB, CORRECT?

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1 A. THAT'S CORRECT.

2 Q. OKAY.

3 AND EVEN ON THE STUDENTS WITH DISABILITIES, YOU'VE

4 NEVER HAD TRAINING ON HOW TO GIVE ACCOMMODATIONS OR SPECIAL HELP

5 TO STUDENTS IN WHEELCHAIRS OR STUDENTS WITH LEARNING

6 DISABILITIES, BECAUSE THE COLLEGE HAS A SPECIAL OFFICE, HAS

7 SPECIAL PEOPLE THAT DO THAT. THE TEACHERS DON'T HAVE TO DO

8 THAT; ISN'T THAT CORRECT?

9 MR. LEBOWITZ: OBJECTION. RELEVANCE.

10 THE WITNESS: THAT'S NOT QUITE CORRECT.

11 THE COURT: OVERRULED.

12 THE WITNESS: THAT'S NOT QUITE CORRECT, BECAUSE IF WE  
13 HAVE STUDENTS THAT ARE HAVING DIFFICULTIES, WE KNOW THE PEOPLE  
14 INVOLVED THAT WE'RE TO REFER THOSE STUDENTS TO.

15 MR. VARTAIN: Q. SO THE PEOPLE THAT YOU CAN REFER  
16 STUDENTS WITH DISABILITIES TO ARE PEOPLE WHO WORK IN THE  
17 ADMINISTRATION, CORRECT?

18 A. I WOULDN'T CALL IT THE ADMINISTRATION, BUT THEY WORK  
19 IN -- YOU KNOW, THE FUNCTIONAL STUDENTS WITH LEARNING  
20 DISABILITIES, OR WE HAVE A PSYCHOLOGICAL COUNSELOR ONBOARD NOW,  
21 SHARON MOORE.

22 Q. MY ONLY QUESTION -- MY ONLY REQUEST IS FOR YOU TO TELL  
23 ME, ISN'T THERE AN OFFICE OF THE COLLEGE THAT HANDLES THE  
24 DISABILITY ISSUES FOR STUDENTS?

25 A. YES. THERE'S VARIOUS ONES.

26 Q. OKAY.

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1 SO YOU HAVEN'T BEEN TRAINED IN HOW TO HANDLE  
2 DISABILITY ISSUES FOR STUDENTS, BUT THEY DO HAVE AT THE COLLEGE  
3 A SPECIAL OFFICE FOR THAT?

4 A. YES, THAT'S CORRECT.

5 Q. OKAY.

6 I'M GOING TO TALK A LITTLE BIT ABOUT THIS CONTRACT  
7 RENEWAL PROCESS FOR FACULTY MEMBERS BECAUSE MR. LEBOWITZ ASKED

8 YOU SOME QUESTIONS ABOUT THAT. I THINK MAYBE THE BEST WAY TO  
9 SORT OF SIMPLIFY IT IS TO TALK, IF I MAY, ABOUT HOW YOUR  
10 CONTRACTS HAVE BEEN REVIEWED IN TERMS OF PROCESS. MAY I DO  
11 THAT?

12 A. YES.

13 Q. OKAY.

14 WHEN YOU GET A NEW CONTRACT FROM THE COLLEGE, DO YOU  
15 GET A LETTER SIGNED BY THE PRESIDENT?

16 A. YES, I DO.

17 MR. LEBOWITZ: YOUR HONOR, I WOULD OBJECT TO THIS LINE  
18 AS IRRELEVANT.

19 THE COURT: WHY DON'T YOU APPROACH.

20 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

21 THE COURT: THE OBJECTION IS SUSTAINED.

22 MR. VARTAIN: Q. PROFESSOR MEDLEN, IN YOUR CAPACITY  
23 AS A PRESIDENT OF THE FACULTY SENATE, YOU ARE FAMILIAR -- YOU  
24 HAVE BECOME FAMILIAR WITH THE PERSONNEL POLICIES OF THE COLLEGE  
25 IN REGARDS TO FACULTY MEMBERS?

26 A. YES.

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1 Q. AND YOU'VE BECOME FAMILIAR WITH THE FACT THAT WHEN THE  
2 COLLEGE HAS ACTUALLY APPROVED -- OR IF IT HAS APPROVED AN  
3 APPOINTMENT FOR A FACULTY MEMBER, THAT APPROVAL IS GOING TO BE  
4 EXPRESSED IN A LETTER SIGNED BY THE PRESIDENT OF THE COLLEGE,  
5 CORRECT?

6 A. THAT'S CORRECT.

7 Q. HAVE YOU EVER SEEN A LETTER SIGNED BY PRESIDENT LOPEZ  
8 OR PRESIDENT HAIGHT APPROVING PROFESSOR BLOUGH FOR A SIX-YEAR  
9 CONTRACT FOR THE PERIOD OF TIME WE'RE SITTING IN RIGHT NOW?

10 A. NO.

11 Q. AND NEITHER PRESIDENT HAS EVER TOLD YOU THAT THEY HAVE  
12 EVER SIGNED A LETTER OF APPROVAL OF SUCH A CONTRACT, CORRECT?

13 A. THAT'S CORRECT.

14 Q. WHEN YOU READ THAT STUDENT EVALUATION THAT  
15 MR. LEBOWITZ PUT UP THERE -- AND I WROTE IT DOWN. IT SAID,  
16 QUOTE, "SHE DOESN'T SHOW UP TOO OFTEN," CLOSE QUOTE -- DID YOU  
17 GO TO PROFESSOR BLOUGH AND, YOU KNOW, ASK HER -- OR TELL HER,  
18 YOU KNOW, "I'M GOING TO GO AND ADVOCATE FOR YOU TO THE  
19 PRESIDENT, BUT COULD YOU FIRST TELL ME WHAT THIS MEANS WHEN THE  
20 STUDENTS ARE SAYING YOU DON'T SHOW UP TOO OFTEN?" DID YOU DO  
21 THAT?

22 A. NO, I DID NOT.

23 Q. HAVE YOU EVER BEEN IN A POSITION OF AUTHORITY AT THE  
24 COLLEGE WHERE YOU HAD TO MAKE EMPLOYMENT DECISIONS ABOUT  
25 PROFESSORS? THAT IS, MAKE THE FINAL DECISION THAT SOMEONE'S  
26 GOING TO BE RENEWED, OR THEIR APPOINTMENT'S GOING TO BE ON HOLD,

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1 OR ANYTHING LIKE THAT? HAVE YOU HAD THAT AUTHORITY?

2 A. WHAT HAPPENS IS THAT THE PERSON --

3 Q. JUST YES OR NO, AND THEN I'LL ASK A FOLLOW UP.

4 A. NO.

5 MR. VARTAIN: OKAY. THANK YOU, SIR. THANKS.

6 NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: REDIRECT EXAM?

8 MR. LEBOWITZ: BRIEFLY, YOUR HONOR. THANK YOU.

9

10 REDIRECT EXAMINATION

11 BY MR. LEBOWITZ:

12 Q. MR. VARTAIN, A MOMENT AGO, ASKED YOU ABOUT THE  
13 PERSONNEL POLICY -- OR EXCUSE ME, YOUR TRAINING ON THE COLLEGE'S  
14 POLICIES IN REGARD TO DISABILITY DISCRIMINATION AND MADE THE  
15 DISTINCTION BETWEEN YOU BEING ON THE FACULTY, AS OPPOSED TO  
16 BEING IN THE ADMINISTRATION. DO YOU RECALL THAT TESTIMONY?

17 A. YES, UH-HUH.

18 Q. AS AN EMPLOYEE OF THE COLLEGE, HAS ANYONE FROM THE  
19 COLLEGE EVER EXPLAINED TO YOU WHAT YOUR RIGHTS AS AN EMPLOYEE  
20 ARE, AS FAR AS DISABILITY DISCRIMINATION IN THE WORKPLACE GOES?

21 A. NO.

22 Q. SO HAS ANYONE FROM THE COLLEGE EVER EXPLAINED TO YOU,  
23 FOR INSTANCE, HOW TO ASK FOR A REASONABLE ACCOMMODATION?

24 A. NO.

25 Q. AND HAS ANYONE FROM THE COLLEGE EVER EXPLAINED TO YOU  
26 WHAT YOUR RIGHTS MIGHT BE IF THE COLLEGE WERE TO ASK YOU TO GO

1 TO A MEDICAL EXAM?

2 A. NO.

3 Q. AND SKIPPING AHEAD IN YOUR TESTIMONY FROM A MOMENT  
4 AGO, TO THIS ISSUE OF CONVERSATIONS WITH EITHER PRESIDENT LOPEZ  
5 OR PRESIDENT HAIGHT ABOUT THIS SIX-YEAR CONTRACT, DO YOU  
6 REMEMBER THAT TESTIMONY?

7 WAS THE STATUS OR THE APPROVAL OR DISAPPROVAL OF  
8 PROFESSOR BLOUGH'S SIX-YEAR CONTRACT EVER A TOPIC OF  
9 CONVERSATION BETWEEN YOURSELF AND PRESIDENT LOPEZ?

10 A. YES.

11 Q. IN WHAT SENSE?

12 A. WELL, IN THAT MEETING, YOU KNOW, MY UNDERSTANDING --  
13 SHE WAS GOING UP FOR A RENEWAL, ESSENTIALLY, FOR ANOTHER  
14 SIX-YEAR CONTRACT. AND THE WAY IT WORKS IS YOU GO THROUGH THE  
15 PERSONNEL COMMITTEE, AND MY UNDERSTANDING FROM MARCY IS THAT --

16 MR. VARTAIN: OBJECTION, HEARSAY.

17 THE COURT: SUSTAINED.

18 MR. LEBOWITZ: Q. WHEN YOU WERE EXPLAINING -- WHEN  
19 YOU WERE HAVING THIS DISCUSSION WITH PRESIDENT LOPEZ ABOUT --  
20 LET ME BE MORE PRECISE.

21 IN YOUR CONVERSATION WITH PRESIDENT LOPEZ IN THAT JULY  
22 MEETING, DID YOU SPECIFICALLY TALK ABOUT PROFESSOR BLOUGH'S  
23 SIX-YEAR CONTRACT?

24 A. I DON'T RECALL.

25 Q. OKAY.

26 SO THE IDEA THAT YOU WERE ASKED ABOUT A MOMENT AGO

1 FROM MR. VARTAIN ABOUT PRESIDENT LOPEZ NEVER SAYING TO YOU, "I  
2 HAVEN'T SIGNED OFF ON HER SIX-YEAR CONTRACT," THAT WASN'T A  
3 TOPIC OF THE CONVERSATION, WAS IT?

4 A. NO.

5 Q. AND THE SAME WITH PRESIDENT HAIGHT, WAS IT EVER A  
6 TOPIC OF CONVERSATION AS TO WHETHER OR NOT PRESIDENT HAIGHT HAD  
7 ACTUALLY SIGNED OFF ON A SIX-YEAR CONTRACT?

8 A. NO.

9 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS.

10 THE COURT: ANY MORE?

11 MR. VARTAIN: JUST BRIEFLY.

12

13 RE CROSS EXAMINATION

14 BY MR. VARTAIN:

15 Q. THANK YOU, PROFESSOR MEDLEN.

16 WITH REGARD TO YOUR KNOWLEDGE OF YOUR RIGHTS AS AN  
17 EMPLOYEE OF THE COLLEGE, HAVE YOU EVER ASKED THE COLLEGE TO GIVE  
18 YOU INFORMATION ABOUT YOUR RIGHTS IN HOW TO ASK FOR DISABILITY  
19 SUPPORT MEASURE OR ACCOMMODATION?

20 A. NO. I NEVER FELT I HAD TO.

21 Q. YOU NEVER HAD ANY MEDICAL PROBLEMS THAT CAUSED YOU TO  
22 HAVE TO ASK FOR HELP FROM THE COLLEGE, IS THAT THE CASE?

23 A. WELL, I HAD STENTS PUT IN MY HEART THIS LAST YEAR, BUT  
24 I DIDN'T FEEL I HAD TO GO THROUGH A PROCESS. I FELT THAT  
25 EVERYBODY WOULD BE UNDERSTANDING.

26 Q. OKAY.



1 A. THAT'S WHAT I FELT.

2 Q. AND WERE THEY?

3 A. YES.

4 Q. EVERYONE AT THE COLLEGE WAS UNDERSTANDING OF YOUR OWN  
5 MEDICAL ISSUES, CORRECT?

6 A. YES.

7 MR. VARTAIN: NO FURTHER QUESTIONS.

8 THE COURT: ANYTHING ELSE?

9 MR. LEBOWITZ: VERY BRIEFLY.

10

11 FURTHER DIRECT EXAMINATION

12 BY MR. LEBOWITZ:

13 Q. ON YOUR ISSUE WITH HAVING THE HEART STINTS PUT IN, DID  
14 YOU TAKE ANY LEAVE OF ABSENCE?

15 A. NO, I DIDN'T.

16 Q. DIDN'T TAKE ANY TIME OFF OF WORK AT ALL?

17 A. I MIGHT HAVE MISSED A DAY. I DON'T RECALL.

18 Q. YOU WEREN'T LOOKING FOR THE ADMINISTRATION TO GRANT  
19 YOU ANY KIND OF LONG-TERM --

20 MR. VARTAIN: LEADING.

21 THE COURT: SUSTAINED.

22 MR. LEBOWITZ: Q. WERE YOU ASKING THE ADMINISTRATION  
23 TO GIVE YOU ANY SORT OF LEAVE OF ABSENCE?

24 A. NO. I FIGURED THEY WOULD DO IT IF I NEEDED IT.

25 MR. LEBOWITZ: THANK YOU.

26 THE COURT: ANYTHING ELSE FOR PROFESSOR MEDLEN?

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1 MR. VARTAIN: NO.

2 THE COURT: MAY PROFESSOR MEDLEN BE EXCUSED?

3 MR. LEBOWITZ: YES, YOUR HONOR.

4 THE COURT: PROFESSOR MEDLEN, THANK YOU FOR YOUR  
5 TESTIMONY. IF YOU WOULD HAND ME BACK THOSE DOCUMENTS ON YOUR  
6 DESK AND YOU ARE FREE TO GO.

7 THE WITNESS: THANK YOU VERY MUCH.

8 THE COURT: I THINK THIS MAY BE THE TIME TO TAKE THE  
9 BREAK, WOULDN'T IT?

10 MR. LEBOWITZ: THAT WOULD BE FINE.

11 THE COURT: LADIES AND GENTLEMEN, OUR MORNING IS A  
12 LITTLE BIT SHORTENED, BUT I'M GOING TO TAKE MY BREAK NOW BETWEEN  
13 WITNESSES. I THINK THAT'S EASIER FOR EVERYONE. LET'S COME BACK  
14 IN ABOUT 15 MINUTES, AT ABOUT TEN MINUTES OF THE HOUR.

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD  
17 OUTSIDE THE PRESENCE OF THE JURY.

18 TRJ07 HAS COME IN.

19 GOOD MORNING, TRJ07. I UNDERSTAND YOU HAVE -- I HAVE  
20 THE WRONG NAME? I'M SORRY.

21 TRJ06: I'M ACTUALLY TRJ06.

22 THE COURT: I BEG YOUR PARDON, TRJ06. YOU AND TRJ07

23 BOTH HAVE LONG, DARK HAIR. I APOLOGIZE, TRJ06.

24 TRJ06: YEAH, I JUST DISCOVERED ON FRIDAY THAT MY

25 EMPLOYER WILL ONLY PAY FOR FIVE DAYS OF JURY SERVICE. AND SO

26 SINCE THIS CASE IS SET FOR A LONG TRIAL, THAT WOULD BE AT LEAST

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1 SIX DAYS OF UNPAID. YOU KNOW, SO...

2 THE COURT: I'M SURE THAT WAS A SURPRISE TO YOU TO

3 LEARN THAT.

4 TRJ06: DEFINITELY.

5 THE COURT: AND I'M SORRY. TELL ME, WHO DO YOU WORK

6 FOR, TRJ06?

7 TRJ06: I WORK FOR A MEDICAL DEVICE COMPANY CALLED

8 ACCLARENT, A-C-C-L-A-R-E-N-T.

9 THE COURT: HOW MANY EMPLOYEES DOES THAT COMPANY HAVE?

10 TRJ06: JUST UNDER 300.

11 THE COURT: 300. OKAY. THANK YOU. I'LL TELL YOU

12 NOW. I CAN'T DISMISS YOU NOW THAT YOU'RE A SWORN JUROR. I'M

13 SORRY. I COULD HAVE CONSIDERED THAT BEFORE.

14 TRJ06: RIGHT.

15 THE COURT: AND I DON'T KNOW WHETHER I WOULD HAVE

16 DISMISSED YOU FOR HARDSHIP OR NOT, BUT NOW THAT YOU'RE A SWORN

17 JUROR, I'M SORRY. IT'S JUST TOO LATE. I AM GLAD TO CALL YOUR

18 EMPLOYER AND ASK IF THEY WILL PAY FOR YOU TO BE ON JURY DUTY.

19 TRJ06: I DON'T KNOW. I'M ACTUALLY MEETING WITH HR

20 THIS EVENING TO SEE WHAT ARRANGEMENTS CAN BE MADE, BUT IT'S IN

21 THE EMPLOYEE POLICY HANDBOOK SO...

22 THE COURT: I'M SURE IT PROBABLY IS. I REALLY NEED  
23 THAT TO BE JUROR'S RESPONSIBILITY. BECAUSE WE TALKED ABOUT IT  
24 ON DAY ONE OF JURY SELECTION. IT TOOK ANOTHER DAY TO PICK THE  
25 JURY. AND NOW THAT YOU'RE SWORN AND WE'RE WELL INTO THE  
26 EVIDENCE, I JUST CAN'T LET YOU GO. I'LL LEAVE THAT IN YOUR

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1 HANDS. IF YOU WANT ME TO CALL YOUR EMPLOYER AND ASK THEM FOR AN  
2 EXCEPTION, I'D BE GLAD TO. THEY'RE NOT REQUIRED TO, BUT I HAVE  
3 DONE THIS IN THE PAST, JUST ASKING IF IN A PARTICULAR CASE THEY  
4 WILL. THEY CAN TURN ME DOWN, AND IT'S JUST A POLITE REQUEST.

5 TRJ06: OKAY. LIKE I SAID, I'M MEETING WITH HUMAN  
6 RESOURCES THIS EVENING, AND WE'LL SEE IF THAT WOULD BE OF  
7 BENEFIT, BUT IF NOT...

8 THE COURT: OKAY.

9 I DO NEED YOU TO BE HERE EVERY DAY. DO YOU UNDERSTAND  
10 THAT?

11 TRJ06: SURE.

12 THE COURT: I'M SORRY. I'M SORRY.

13 TRJ06: I HAD ASSUMED INCORRECTLY THAT THEY WOULD PAY  
14 FOR IT.

15 THE COURT: YEAH. OKAY. ALL RIGHT. THANK YOU.

16 LET'S BRING EVERYBODY IN.

17 (WHEREUPON, THE JURORS ENTER THE COURTROOM.)

18 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD. ALL

19 COUNSEL AND PARTIES ARE PRESENT, AND THE JURORS AND ALTERNATES.

20 MR. LEBOWITZ, WOULD YOU LIKE TO CALL YOUR NEXT

21 WITNESS?

22 MR. LEBOWITZ: I WOULD, YOUR HONOR. WE CALL DR. BRUCE

23 PITHER TO THE STAND.

24 THE COURT: DR. PITHER, IF YOU'D COME FORWARD TO THE

25 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

26 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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1 (WHEREUPON, THE WITNESS WAS SWORN.)

2 THE WITNESS: I DO.

3 THE CLERK: PLEASE BE SEATED.

4 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME

5 AND SPELL THEM BOTH FOR THE RECORD.

6 THE WITNESS: BRUCE PITHER, P, AS IN PAUL, I-T, AS IN

7 TOM, H-E-R.

8 THE CLERK: THANK YOU.

9

10 BRUCE PITHER,

11 DULY SWORN, TESTIFIED AS FOLLOWS:

12 BY MR. LEBOWITZ:

13 Q. GOOD MORNING, DR. PITHER.

14 A. GOOD MORNING.

15 Q. CAN YOU PLEASE DESCRIBE FOR THE JURY WHAT YOUR

16 EDUCATION AND TRAINING IS.

17 A. I HAVE A PH.D. IN CLINICAL PSYCHOLOGY, AND I'M A  
18 LICENSED PSYCHOLOGIST.

19 Q. WHERE DID YOU RECEIVE YOUR EDUCATION?

20 A. I EARNED MY UNDERGRADUATE DEGREE AT STANFORD  
21 UNIVERSITY AND MY GRADUATE DEGREE AT THE UNIVERSITY OF NEVADA.

22 Q. WHAT GRADUATE DEGREES DO YOU HOLD?

23 A. A MASTER'S AND A PH.D.

24 Q. IN WHAT?

25 A. IN PSYCHOLOGY, CLINICAL PSYCHOLOGY.

26 Q. AND WHAT IS YOUR CURRENT OCCUPATION?

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1 A. I'M A PSYCHOLOGIST IN INDEPENDENT PRACTICE.

2 Q. WHAT DO YOU DO AS PART OF YOUR -- WHAT DO YOU DO IN  
3 YOUR INDEPENDENT PRACTICE?

4 A. I'M A PSYCHOTHERAPIST. I WORK WITH ADULTS,  
5 INDIVIDUALS AND COUPLES, AND I ALSO DO FORENSIC EVALUATIONS FOR  
6 SANTA CLARA COUNTY.

7 Q. WHAT TYPES OF FORENSICS EVALUATIONS DO YOU DO?

8 A. ABOUT TWICE A MONTH I EVALUATE DEFENDANTS FOR  
9 COMPETENCY, TO SEE IF THEY'RE COMPETENT TO STAND TRIAL, AND  
10 SOMETIMES TO EVALUATE WHETHER OR NOT THEY MIGHT BE LEGALLY  
11 INSANE.

12 Q. SO YOU'RE TALKING ABOUT CRIMINAL DEFENDANTS?

13 A. YES.

14 Q. AND WHO HIRES YOU FOR THOSE JOBS?

15 A. EITHER THE COURT OR AN ATTORNEY.

16 Q. AND DID YOU RECEIVE ANY SPECIAL TRAINING TO DO THOSE  
17 FORENSIC EVALUATIONS?

18 A. I HAVE RECEIVED TRAINING, SPECIALIZED TRAINING IN  
19 PSYCHOLOGICAL ASSESSMENT. AND OVER THE COURSE OF THE YEARS HAVE  
20 ATTENDED A NUMBER OF WORKSHOPS AND CONSULTED WITH COLLEAGUES.

21 Q. I DON'T WANT TO TALK ABOUT THE FORENSIC WORK TOO MUCH  
22 BECAUSE THAT'S NOT WHY YOU'RE HERE. BUT I DO WANT TO ASK YOU A  
23 LITTLE BIT ABOUT PART OF THE FORENSIC WORK, WHICH IS THROUGH  
24 YOUR WORK AS A FORENSIC EVALUATOR FOR THE COUNTY OF SANTA CLARA,  
25 IS IT PART OF YOUR JOB TO ASSESS WHETHER OR NOT THE CRIMINAL  
26 DEFENDANT IS TELLING YOU THE TRUTH WHEN THEY'RE RELATING THEIR

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1 PSYCHIATRIC OR PSYCHOLOGICAL PROBLEMS TO YOU?

2 A. VERY MUCH SO.

3 Q. AND WHY IS THAT?

4 A. BECAUSE THERE ARE SOMETIMES REASONS THAT DEFENDANTS  
5 WILL WANT TO APPEAR COMPETENT OR INCOMPETENT OR MIGHT WANT TO  
6 APPEAR LEGALLY INSANE OR NOT.

7 Q. AND SO IS THAT SOMETHING THAT YOU TAKE INTO  
8 CONSIDERATION WHEN EVALUATING A PARTICULAR CRIMINAL DEFENDANT?

9 A. DEFINITELY.

10 Q. OKAY.

11 NOW THAT SAME TRAINING AND EXPERIENCE, DO YOU RELY ON  
12 THAT AS WELL IN YOUR PRIVATE PRACTICE?

13 A. YES.

14 Q. AND WHY IS THAT?

15 A. BECAUSE PATIENTS ARE NOT ALWAYS FORTHCOMING ABOUT THE  
16 EXACT NATURE OF THEIR CONDITION.

17 Q. HOW LONG HAVE YOU BEEN TREATING PROFESSOR BLOUGH?

18 A. SINCE JANUARY OF THIS YEAR.

19 Q. OF THIS YEAR. AND HOW IS IT THAT SHE CAME TO YOU?

20 A. SHE WAS -- SHE FOUND ME THROUGH HER INSURANCE, I  
21 THINK, ONLINE.

22 Q. AND BASED ON YOUR --

23 LET ME ASK YOU, FIRST, ARE YOU ALSO CURRENTLY TREATING  
24 HER?

25 A. YES.

26 Q. AND HOW FREQUENTLY DO YOU SEE PROFESSOR BLOUGH FOR

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1 TREATMENT?

2 A. ONCE A WEEK.

3 Q. AND HAS THAT REMAINED PRETTY MUCH CONSTANT FROM WHEN  
4 YOU FIRST BEGAN SEEING HER?

5 A. WELL, THERE HAVE BEEN PERIODS WHEN SHE'S VISITED HER  
6 MOTHER IN PENNSYLVANIA AND SHE WASN'T ABLE TO MAKE AN  
7 APPOINTMENT, AND SHE HASN'T BEEN ABLE TO MAKE AN APPOINTMENT  
8 LAST WEEK OR THIS WEEK SINCE SHE'S IN TRIAL.

9 Q. SO ASIDE FROM THE OCCASIONAL TRIP OR OTHER CONFLICT,  
10 IS IT THE CASE THAT YOU'VE SEEN HER ABOUT ONCE A WEEK?



11 A. YES.

12 Q. OKAY.

13 AND THROUGH YOUR CONTACT WITH PROFESSOR BLOUGH, AND  
14 BASED ON YOUR TRAINING AND EXPERIENCE, HAVE YOU REACHED AN  
15 OPINION AS TO WHETHER OR NOT SHE HAS BEEN TRUTHFUL WITH YOU IN  
16 EXPLAINING HER EMOTIONAL -- HER MENTAL STATE TO YOU?

17 A. YES, I HAVE.

18 MR. VARTAIN: OBJECTION.

19 THE COURT: EXCUSE ME. SUSTAINED.

20 MR. VARTAIN: COULD I HAVE A MOTION TO STRIKE? I  
21 DON'T KNOW IF THE ANSWER CAME OUT OR NOT.

22 THE COURT: LADIES AND GENTLEMEN, IF YOU HEARD THE  
23 WITNESS ANSWER THAT QUESTION, YOU ARE TO IGNORE THAT. OF  
24 COURSE, THE CREDIBILITY OF WITNESSES IS IN THE PROVINCE OF THE  
25 JURY.

26 MR. LEBOWITZ: Q. HAVE YOU REACHED A DIAGNOSIS --

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1 A. YES.

2 Q. -- FOR PROFESSOR BLOUGH? AND WHAT IS THAT DIAGNOSIS?

3 A. WELL, AT THE TIME SHE PRESENTED FOR TREATMENT SHE WAS  
4 SUFFERING FROM MAJOR DEPRESSION. AND NOW SHE SUFFERS FROM MAJOR  
5 DEPRESSION AND PARTIAL REMISSION.

6 Q. DESCRIBE FOR US, PLEASE, HOW YOU CAME TO YOUR INITIAL  
7 DIAGNOSIS OF PROFESSOR BLOUGH?

8 A. THROUGH CLINICAL INTERVIEW.

9 Q. WHAT DID SHE TELL YOU? WHAT DID SHE TELL YOU IN THAT  
10 INTERVIEW?

11 A. WELL, SHE REPORTED SYMPTOMS WHICH ARE COMMON OF MAJOR  
12 DEPRESSION, WHICH INCLUDE LACK OF ENERGY, DIFFICULTY  
13 CONCENTRATING, HOPELESSNESS, SOCIAL WITHDRAWAL, DIFFICULTY IN  
14 SLEEPING, SOME MEDICAL COMPLAINTS SUCH AS HEADACHES AND SUICIDE  
15 IDEATIONS.

16 Q. EXPLAIN SUICIDAL IDEATIONS TO THE JURY, PLEASE.

17 A. WELL, SHE WASN'T INTENDING TO COMMIT SUICIDE AND SHE  
18 DIDN'T HAVE A PLAN. BUT ON THE OTHER HAND, IF SHE HAD GONE TO  
19 SLEEP AND NOT WOKEN UP, NOT AWOKEN THE NEXT MORNING, SHE FELT  
20 LIKE THAT COULD BE A RELIEF TO HER. SHE DIDN'T HAVE THE DESIRE  
21 TO LIVE.

22 Q. WHEN YOU MAKE THE DISTINCTION BETWEEN NOT HAVING A  
23 PLAN VERSUS HOW YOU'VE DESCRIBED HER SITUATION, WHAT DOES THAT  
24 MEAN TO YOU?

25 A. I WASN'T CONCERNED THAT SHE WAS GOING TO ATTEMPT  
26 SUICIDE.

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1 Q. AND WHAT DID SHE TELL YOU WHEN SHE FIRST CAME TO SEE  
2 YOU ABOUT THE CAUSES OF HER STATE OF MIND?

3 A. SHE SAID THAT SHE HAD BEEN LET GO OF HER JOB AT  
4 MISSION (SIC) COLLEGE, AND THAT THAT HAD BEEN A DEVASTATING  
5 EXPERIENCE FOR HER. AND SHE ALSO DESCRIBED MARITAL ISSUES WITH  
6 HER HUSBAND. SHE ALSO HAD HAD CANCER, AND IT WASN'T FULLY IN

7 REMISSION, BUT IT WAS STABILIZED. SO FAMILY, HEALTH,  
8 WORK-RELATED ISSUES.

9 Q. A MOMENT AGO I THINK YOU MIGHT HAVE MISSPOKEN. YOU  
10 SAID MISSION COLLEGE?

11 A. OH, YES.

12 Q. WHAT DID YOU MEAN TO SAY?

13 A. MENLO PARK COLLEGE.

14 Q. OR MENLO, I'M SORRY.

15 A. MENLO COLLEGE.

16 Q. DO YOU HAVE AN UNDERSTANDING OF WHERE  
17 PROFESSOR BLOUGH'S HUSBAND WORKED?

18 A. I BELIEVE HE'S A PROFESSOR OF LAW AT DE ANZA COLLEGE.  
19 MAYBE HE WORKS AT MISSION COLLEGE.

20 Q. THERE WE GO.

21 SO WHEN SHE FIRST REPORTED TO YOU WHAT THE CAUSES OF  
22 HER STATE OF MIND WERE, DID SHE RELAY TO YOU IN ANY WAY THE  
23 DEGREES, VARYING DEGREES OF EACH OF THOSE COMPONENTS?

24 A. HER JOB LOSS IS WHAT SHE SAID HAD AFFECTED HER MOST  
25 DEEPLY.

26 Q. WHAT IN PARTICULAR DO YOU RECALL HER TELLING YOU ABOUT

369

1 THAT?

2 A. SHE SAID SHE HAD WORKED THERE FOR 30 YEARS, THAT SHE  
3 PUT HER HEART INTO HER JOB, THAT SHE'D GOTTEN EXCELLENT  
4 EVALUATIONS CONSISTENTLY FROM HER STUDENTS. IT WAS THE BEST

5 PART OF HER LIFE.

6 Q. AND WHAT ABOUT HER HOME OR FAMILY LIFE DID SHE TELL  
7 YOU?

8 A. SHE SAID THAT SHE WAS HAVING DIFFICULTIES WITH HER  
9 HUSBAND, THAT HE SUFFERED FROM ALCOHOLISM AND WAS RECOVERING  
10 FROM COCAINE ADDICTION, AND HAD BEEN FOR A PERIOD A SEX ADDICT.

11 Q. AND THIS IS SOMETHING THAT PROFESSOR BLOUGH SPOKE TO  
12 YOU ABOUT?

13 A. YES.

14 Q. AND YOU TOOK ALL OF THAT INFORMATION INTO -- DID YOU  
15 TAKE ALL THAT INFORMATION INTO ACCOUNT, INCLUDING THE EMPLOYMENT  
16 ISSUES OR THE ISSUES RELATED TO HER PAST EMPLOYMENT WITH MENLO  
17 COLLEGE AND HER FAMILY ISSUES WHEN TREATING HER?

18 A. YES.

19 Q. AND OVER THE COURSE OF THE PAST YEAR THAT YOU'VE BEEN  
20 SEEING HER APPROXIMATELY ONCE A WEEK, WHAT HAVE YOU LEARNED FROM  
21 PROFESSOR BLOUGH, AS FAR AS HOW SHE'S BEEN DEALING WITH THE  
22 DISTRESS FROM LOSING HER JOB?

23 A. SHE'S HAD --

24 MR. VARTAIN: OBJECTION. LACKS FOUNDATION.

25 THE COURT: SUSTAINED.

26 MR. LEBOWITZ: Q. SINCE THAT INITIAL INTAKE THAT WE

1 JUST SPOKE ABOUT, HAS PROFESSOR BLOUGH ALSO HAD -- IN THE  
2 SUBSEQUENT SESSIONS, HAS SHE ALSO TALKED TO YOU ABOUT THE EFFECT

3 OF LOSING HER EMPLOYMENT?

4 MR. VARTAIN: OBJECTION.

5 THE WITNESS: YES.

6 MR. VARTAIN: OBJECTION. LACKS FOUNDATION.

7 THE COURT: APPROACH.

8 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

9 THE COURT: GO AHEAD, MR. LEBOWITZ.

10 MR. LEBOWITZ: THANK YOU.

11 Q. DR. PITHER, HAVE YOU REACHED ANY OPINIONS AS TO THE  
12 IMPACT THAT PROFESSOR BLOUGH'S LOSS OF EMPLOYMENT HAS HAD ON HER  
13 MENTAL STATE?

14 MR. VARTAIN: SAME OBJECTION.

15 THE COURT: OVERRULED.

16 THE WITNESS: IT'S HAD A VERY SIGNIFICANT IMPACT ON  
17 HER. AS I MENTIONED, IT WAS HER WHOLE LIFE. IT GAVE HER -- SHE  
18 FELT NEEDED, USEFUL, APPRECIATED.

19 MR. LEBOWITZ: Q. HOW DID YOU REACH THAT CONCLUSION?

20 A. WELL, WE HAD EXTENSIVE CONVERSATIONS ABOUT IT.

21 Q. WHAT HAS SHE TOLD YOU IN THOSE CONVERSATIONS?

22 A. WELL, OFTEN WHEN DISCUSSING THE LOSS OF HER JOB, SHE  
23 WOULD BURST INTO TEARS.

24 Q. ANYTHING ELSE?

25 A. AND SHE WOULD JUST TELL ME HOW USELESS SHE FELT AND  
26 HOW IT ALSO CAUSED HER FINANCIAL WORRIES.

1 Q. ANYTHING ELSE?

2 A. AND SHE MISSED HER COLLEAGUES AND FELT BETRAYED BY THE  
3 COLLEGE.

4 Q. AND THROUGH YOUR INTERACTION AND YOUR TREATMENT OF  
5 PROFESSOR BLOUGH, HAVE YOU SUGGESTED ANY TECHNIQUES TO DEAL WITH  
6 HER EMOTIONAL DISTRESS?

7 A. YES. OVER THE COURSE MANY THINGS CAME UP. WE  
8 DISCUSSED THE POSSIBILITY OF HER SEPARATING FROM HER HUSBAND. I  
9 RECOMMENDED THAT SHE PARTICIPATE IN AL-ANON, WHICH IS A SUPPORT  
10 GROUP FOR PEOPLE WHO -- FAMILY MEMBERS OF PEOPLE WHO ARE DEALING  
11 WITH ADDICTIONS. I RECOMMENDED THAT BECOME INVOLVED IN THE  
12 COMMUNITY IN SOME WAY, THAT SHE FIND OTHER ACTIVITIES. I  
13 RECOMMENDED THAT SHE DO MORE OF THE THINGS SHE LOVED TO DO, LIKE  
14 SPEND TIME IN THE OUTDOORS.

15 Q. AND HOW ABOUT WORK? DID YOU AND PROFESSOR BLOUGH EVER  
16 TALK ABOUT WORK AS POSSIBLY HELPING HER MENTAL STATE?

17 A. YES.

18 Q. WHAT DID YOU TELL HER IN THAT REGARD?

19 A. THAT IT WOULD BE REALLY NICE FOR HER IF SHE COULD  
20 POSSIBLY FIND ANOTHER POSITION.

21 Q. WHAT DID SHE TELL YOU?

22 A. THAT SHE HAD VOLUNTEERED FOR THE AMERICAN CANCER  
23 SOCIETY AND WAS ALSO LOOKING FOR OTHER EMPLOYMENT.

24 Q. NOW, YOU SAID -- EARLY IN YOUR TESTIMONY YOU MENTIONED  
25 THAT YOUR DIAGNOSIS OF PROFESSOR BLOUGH HAS CHANGED SINCE YOU  
26 FIRST SAW HER?

1 A. YES.

2 Q. AND IN WHAT WAY HAS IT CHANGED?

3 A. HER SYMPTOMS ARE MUCH LESS. SHE SEEMS TO FEEL MUCH  
4 BETTER. SHE'S MORE ACTIVE AND INVOLVED AND HOPEFUL.

5 Q. AND HAVE YOU REACHED ANY OPINION AS FAR AS A PROGNOSIS  
6 FOR PROFESSOR BLOUGH?

7 A. I EXPECT HER TO RECOVER.

8 Q. OVER WHAT PERIOD OF TIME?

9 A. THAT'S HARD TO SAY. A LOT OF IT DEPENDS ON LIFE  
10 CIRCUMSTANCES. HER MOTHER IS VERY ILL AND SHE'S DEALING WITH  
11 THAT. BUT WITHIN A YEAR.

12 Q. WITHIN A YEAR FROM NOW?

13 A. YEAH.

14 Q. OKAY.

15 NOW, WHEN PROFESSOR BLOUGH FIRST CAME TO SEE YOU, DID  
16 SHE TELL YOU ANYTHING ABOUT THE PENDENCY OF THIS LAWSUIT?

17 A. YES.

18 Q. DID SHE GIVE YOU ANY EXPECTATION IN THE BEGINNING WHEN  
19 YOU FIRST MET HER THAT SHE WAS GOING TO SEEK YOUR TESTIMONY AT  
20 TRIAL?

21 A. SHE TOLD ME, MUCH TO MY RELIEF, THAT MY TESTIMONY  
22 WOULD LIKELY NOT BE NEEDED.

23 Q. AND WHEN DID YOU FIRST LEARN THAT THAT HAD CHANGED?

24 A. ABOUT A MONTH AGO.

25 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS, YOUR HONOR.

26 THE COURT: THANK YOU.

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1 CROSS-EXAMINATION?

2 MR. VARTAIN: MAY I LODGE THE DEPOSITION OF THE  
3 WITNESS, PLEASE?

4 THE COURT: YES.

5

6 CROSS-EXAMINATION

7 BY MR. VARTAIN:

8 Q. SIR, YOU ARE NOT A PHYSICIAN, ARE YOU?

9 A. NO.

10 Q. AND THAT MEANS YOU CANNOT PRESCRIBE MEDICATIONS; IS  
11 THAT CORRECT?

12 A. THAT'S RIGHT.

13 Q. YOU CANNOT PRESCRIBE PSYCHIATRIC MEDICATIONS?

14 A. THAT'S RIGHT.

15 Q. AND ONLY A PSYCHIATRIST OR ANOTHER PHYSICIAN CAN  
16 PRESCRIBE PSYCHIATRIC MEDICATIONS?

17 A. THAT'S RIGHT.

18 Q. SO IF ONE WANTED TO EVALUATE HOW A PATIENT SUCH AS  
19 PROFESSOR BLOUGH WAS BEHAVING UNDER THE INFLUENCE OF THREE OR  
20 FOUR, FIVE PSYCHIATRIC MEDICATIONS, ONE MIGHT GO TO A  
21 PSYCHIATRIST FOR SUCH AN EVALUATION?

22 MR. LEBOWITZ: OBJECTION, YOUR HONOR, BEYOND THE  
23 SCOPE.



24 THE COURT: OVERRULED.

25 THE WITNESS: YES.

26 MR. VARTAIN: AND YOU DON'T KNOW DR. MISSETT, WHO'S A

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1 PSYCHIATRIST IN THIS COUNTY, DO YOU?

2 A. NO.

3 Q. SO YOU DON'T HAVE ANY OPINION WHETHER HE'S A GOOD

4 PSYCHIATRIST OR --

5 MR. LEBOWITZ: YOUR HONOR, MAY WE APPROACH?

6 THE COURT: YES.

7 MR. VARTAIN: I WILL JUST WITHDRAW THAT.

8 THE COURT: THANK YOU. ALL RIGHT.

9 MR. LEBOWITZ: IT'S NOT JUST THAT QUESTION, YOUR

10 HONOR.

11 THE COURT: WE WILL GO ON.

12 MR. VARTAIN: Q. DID PROFESSOR BLOUGH EVER TELL YOU

13 THAT IN 2006 SHE WAS HAVING A LOT OF TROUBLE WITH HER

14 PSYCHIATRIC MEDICATIONS?

15 A. IN WHAT YEAR?

16 Q. 2006. IN OTHER WORDS, A YEAR OR A YEAR-AND-A-HALF

17 BEFORE SHE EVEN CAME TO SEE YOU FOR THE FIRST TIME?

18 A. I DON'T RECALL HER MENTIONING THAT.

19 Q. OKAY.

20 JUST FOR THE JURY'S SAKE GETTING THE TIME PERIOD

21 CLEAR, YOU'VE JUST STARTED SEEING HER THIS YEAR, 2008?

22 A. 2008.

23 Q. SO YOU WEREN'T TREATING HER WHEN SHE HAD WHATEVER  
24 ISSUES SHE HAD OF AN EMPLOYMENT NATURE WITH MENLO COLLEGE; IS  
25 THAT CORRECT?

26 A. YES.

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1 Q. SO YOU DON'T HAVE ANY OPINION AS TO WHAT WAS GOING ON  
2 WITH HER EMOTIONALLY, EMOTIONAL DISTRESS AT THE TIME OF THE  
3 EMPLOYMENT ISSUES WITH THE COLLEGE; IS THAT CORRECT?

4 A. ONLY WHAT SHE'S TOLD ME.

5 Q. OKAY. BUT YOU HAVE NOT FORMED AN OPINION AS TO WHAT  
6 WAS THE CASE BEFORE SHE EVEN CAME TO SEE YOU, CORRECT?

7 A. NO.

8 Q. IS THAT CORRECT?

9 A. YES.

10 Q. OKAY.

11 AND YOU HAVEN'T LOOKED AT ANY PERSONNEL FILES OR ANY  
12 EMPLOYMENT DOCUMENTS TO SEE IF IT ACTUALLY IS TRUE WHAT SHE TOLD  
13 YOU, THAT SHE GOT FIRED AT THE COLLEGE?

14 A. THAT'S RIGHT.

15 Q. YOU SAID THAT YOU WERE ENCOURAGING PROFESSOR BLOUGH TO  
16 GO BACK TO WORK AS A PART OF YOUR, YOU KNOW, HEALTHY TREATMENT?

17 A. YES.

18 Q. FOR SOMEONE WITH A PSYCHIATRIC DIAGNOSIS OF CLINICAL  
19 DEPRESSION, SUCH AS YOU SAID THAT YOU DIAGNOSED PROFESSOR BLOUGH

20 WITH, GOING BACK TO WORK IS SOMETHING THAT IS TYPICALLY A GOOD  
21 THING, IF THEY'RE ABLE TO DO THE JOB FUNCTIONS, CORRECT?

22 A. YES.

23 Q. DID PROFESSOR BLOUGH EVER TELL YOU THAT THE COLLEGE  
24 GAVE HER THE OPPORTUNITY TO COME BACK TO WORK?

25 MR. LEBOWITZ: OBJECTION.

26 THE WITNESS: SHE SAID THAT THEY'D GIVEN HER THE

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1 OPPORTUNITY TO COME BACK HALF TIME.

2 THE COURT: OVERRULED.

3 MR. VARTAIN: OKAY.

4 Q. DID SHE TELL YOU THAT SHE HAD REJECTED THAT  
5 OPPORTUNITY?

6 A. YES.

7 Q. DID YOU SUGGEST TO HER THAT IF SHE WANTED TO GET  
8 HEALTHY MAYBE SHE SHOULD GO BACK TO THE COLLEGE AND ASK THEM IF  
9 THAT HALF-TIME LEVEL OF WORK WAS STILL AVAILABLE?

10 A. NO.

11 Q. DID SHE TELL YOU, IN FACT, THAT SHE DIDN'T WANT TO GO  
12 BACK THERE HALF TIME, THREE-QUARTER TIME OR ANY TIME?

13 A. SHE WAS CONCERNED ABOUT GOING BACK THERE.

14 Q. DID SHE TELL YOU THAT SHE WAS UNWILLING TO GO BACK  
15 THERE?

16 A. SHE WAVERED ABOUT THAT.

17 Q. SOMETIMES SHE FELT GOOD ABOUT IT; SOMETIMES SHE DIDN'T

18 FEEL GOOD ABOUT IT; IS THAT FAIR?

19 A. MOSTLY SHE WAS FEARFUL OF GOING BACK INTO THE  
20 SITUATION BECAUSE OF THE BAD FEELINGS THAT HAD BEEN -- WELL,  
21 BECAUSE SHE WAS SUING THE COLLEGE, SO IT WOULD HAVE BEEN AWKWARD  
22 FOR HER.

23 Q. OKAY.

24 SHE SAID THAT THE REASON SHE FELT AWKWARD ABOUT GOING  
25 BACK AND TAKING THE COLLEGE UP ON ITS OFFER TO COME BACK PART  
26 TIME WAS BECAUSE SHE WAS SUING THE COLLEGE?

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1 MR. LEBOWITZ: OBJECTION, MISSTATES THE TESTIMONY.

2 THE WITNESS: I GUESS THE MAIN --

3 THE COURT: OVERRULED.

4 THE WITNESS: -- REASON SHE OFFERED WAS THAT SHE FELT  
5 SO BETRAYED BY PEOPLE WITH WHOM SHE HAD WORKED CLOSELY FOR SO  
6 MANY YEARS.

7 MR. VARTAIN: Q. BUT ONE OF THE REASONS SHE SAID THAT  
8 SHE DIDN'T WANT TO ACCEPT THE OFFER OF THE COLLEGE TO COME BACK  
9 WAS BECAUSE SHE WAS SUING THE COLLEGE, AT LEAST ONE OF THE  
10 REASONS?

11 A. IT WAS -- I'M NOT CLEAR ABOUT THAT, FRANKLY.

12 Q. YOU'RE NOT CLEAR ABOUT WHAT?

13 A. WHETHER IT HAD TO DO WITH SUING THE COLLEGE. THE MAIN  
14 REASON SHE DIDN'T WANT TO GO BACK WAS BECAUSE SHE FELT SO  
15 BETRAYED AND LET DOWN AND DIDN'T TRUST THEM.

16 Q. I KNOW YOU SAID, "THE MAIN REASON." THAT'S WHY I'M  
17 ASKING, ISN'T IT TRUE THAT ONE OF THE REASONS THAT PROFESSOR  
18 BLOUGH GAVE TO YOU WHY SHE DIDN'T WANT TO GO BACK WAS BECAUSE  
19 SHE WAS SUING THE COLLEGE?

20 A. I DON'T RECALL IF SHE REALLY SAID THAT OR IF I JUST  
21 ASSUMED THAT.

22 Q. OKAY.

23 THE FIRST TIME SHE CAME TO SEE YOU SHE TOLD YOU SHE  
24 WAS SUING THE COLLEGE; ISN'T THAT TRUE?

25 A. I THINK SO.

26 Q. AND IN JUST ABOUT EVERY SESSION THAT YOU'VE HAD WITH

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1 HER, SOMETHING OR ANOTHER HAS COME UP FROM PROFESSOR BLOUGH  
2 ABOUT HER LAWSUIT AGAINST THE COLLEGE?

3 A. HER JOB LOSS IS THE MOST DISTRESSING ISSUE TO HER OF  
4 ALL THE ISSUES SHE'S DEALING WITH.

5 Q. I KNOW YOU SAID THAT IN ANSWER TO MR. LEBOWITZ'S  
6 QUESTIONS. I KNOW YOU SAID THAT.

7 A. BUT IT HASN'T BEEN THE FOCUS OF EVERY SESSION.

8 Q. I DIDN'T ASK IF IT WAS THE FOCUS. I ASKED YOU, IN  
9 JUST ABOUT EVERY SESSION THAT YOU'VE HAD WITH PROFESSOR BLOUGH,  
10 HASN'T SHE MENTIONED WHAT WAS GOING ON WITH HER LAWSUIT AS BEING  
11 SOMETHING THAT'S HARD ON HER?

12 A. IN MOST SESSIONS THAT'S THE CASE, YES.

13 Q. THE LAWSUIT IS A TOPIC OF CONVERSATION FROM

14 PROFESSOR BLOUGH ABOUT HER UPSETTEDNESS IN JUST ABOUT EVERY  
15 TREATMENT SESSION THAT YOU'VE HAD WITH HER?

16 A. IN MOST SESSIONS.

17 Q. YES?

18 A. YES.

19 Q. THERE'S OTHER ISSUES SEPARATE FROM HER EMPLOYMENT  
20 ISSUE WITH THE COLLEGE THAT HAS BEEN A LOT OF UPSET TO HER,  
21 BEYOND JUST THE STRESSES AND STRAINS OF THE LITIGATION OF  
22 LAWSUIT, HAVEN'T THERE?

23 A. I'M SORRY. REPEAT THE QUESTION.

24 Q. IT WASN'T A GREAT QUESTION. AND MY COUNSEL WAS --  
25 COLLEAGUE COUNSEL WAS NICE ENOUGH NOT TO POINT IT OUT.

26 OTHER THAN THE STRESSES AND STRAINS OF LITIGATION,

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1 BEING IN A COURT SETTING, GIVING DEPOSITIONS AND ALL THAT, THAT  
2 PROFESSOR BLOUGH HAS TOLD YOU IS CAUSING HER ANXIETY, SHE'S ALSO  
3 MENTIONED THERE ARE A NUMBER OF OTHER THINGS IN HER LIFE GOING  
4 ON THIS YEAR THAT HAVE BEEN CAUSING HER A LOT OF ANXIETY?

5 A. THAT'S TRUE.

6 Q. HER HUSBAND HAS BEEN PARTICULARLY -- LET'S CALL IT A  
7 BAD SPOUSE THIS YEAR. WOULDN'T THAT BE FAIR TO SAY?

8 A. WELL, I DON'T LIKE THAT PHRASE.

9 Q. I WASN'T -- YOU KNOW, I'VE BEEN MARRIED TOO LONG.

10 A. THERE HAVE BEEN DIFFICULTIES WITH HER HUSBAND.

11 Q. YES. BUT THE DIFFICULTIES HAVE BEEN VERY SEVERE THIS

12 YEAR, HAVEN'T THEY?

13 A. YES.

14 Q. HE'S BEEN -- AND I DON'T WANT TO GO THROUGH THE WHOLE  
15 LITANY, BUT HE'S BEEN IN JAIL?

16 A. YES.

17 Q. HE'S WRECKED HER CARS. HE'S WRECKED TWO CARS?

18 A. YES.

19 Q. HE'S BEEN IN TROUBLE WITH THE LAW FOR COCAINE, YES?

20 A. YES.

21 Q. HE'S MADE HER -- AND I SAY MADE, VERBALLY ABUSED  
22 PROFESSOR BLOUGH TO THE POINT OF ALMOST FORCING HER TO GO OUT  
23 AND GET ALCOHOL FOR HIM?

24 A. YES.

25 Q. IN FACT, HE THREATENS HER THAT HE'S GOING TO GO DRIVE  
26 A CAR IF SHE DOESN'T GO GET HIM THE ALCOHOL?

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1 A. THAT'S RIGHT.

2 Q. AND SHE GOES AND GETS HIM THE ALCOHOL, DOESN'T SHE?

3 A. THAT'S RIGHT.

4 Q. IS THERE A PARTICULAR DIAGNOSIS YOU GIVE TO A PERSON  
5 WHO GOES AND GETS BAD THINGS FOR THE OTHER PERSON, THAT  
6 DEPENDANT PERSONALITY DISORDER?

7 A. NO.

8 Q. OKAY. YOU HAVEN'T DIAGNOSED WITH THAT?

9 A. NO.

10 Q. OKAY.

11 SO THE HUSBAND'S BEEN A BIG SOURCE OF HER EMOTIONAL  
12 DISTRESS THIS YEAR, HASN'T IT?

13 A. YES.

14 Q. OTHER AREAS THAT HAVE BEEN A BIG ANXIETY,  
15 DEPRESSION-PRODUCING THING FOR PROFESSOR BLOUGH THIS YEAR THAT  
16 YOU'VE BEEN TREATING HER, WOULD THAT INCLUDE SOME MEMBERS OF HER  
17 FAMILY THAT HAVE BEEN ILL?

18 A. HAVE I TREATED MEMBERS OF HER FAMILY?

19 Q. NO, NO. HAS SHE HAD TO BEAR THE SADNESS OF ILLNESS OF  
20 MEMBERS OF HER FAMILY?

21 A. YES.

22 Q. TELL ME JUST A VERY LITTLE BIT. HAS SHE LOST SOME  
23 RELATIVES THIS YEAR?

24 A. WELL, HER MOTHER IS TERMINALLY ILL.

25 Q. OKAY. AND SHE'S TALKED ABOUT -- PROFESSOR BLOUGH HAS  
26 TALKED A LOT ABOUT HER MOTHER IN YOUR TREATMENT SESSIONS, HASN'T

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1 SHE?

2 A. YES.

3 Q. THAT'S BEEN A BIG SOURCE OF HER EMOTIONAL DISTRESS,  
4 CORRECT?

5 A. YES.

6 Q. AND HER BROTHER, IS THERE SOMETHING -- A SAD THING  
7 WITH PROFESSOR BLOUGH'S BROTHER?



8 A. HE SUFFERS FROM AIDS, BUT HE'S STABLE.

9 Q. OKAY. BUT THAT'S SOMETHING THAT'S, YOU KNOW, A REAL  
10 BIG WORRY TO PROFESSOR BLOUGH THAT SHE'S BROUGHT UP IN HER  
11 SESSIONS?

12 A. NOT SO MUCH. NOT HER BROTHER.

13 Q. HAS SHE BROUGHT UP HER BROTHER AT ALL --

14 A. YES.

15 Q. -- AS A SOURCE OF CONCERN OF HERS?

16 A. SHE'S CONCERNED, BUT IT'S NOT CAUSING HER SIGNIFICANT  
17 DISTRESS.

18 Q. SHE SAID THAT?

19 A. NO.

20 Q. OKAY.

21 A. SHE HAD TALKED ABOUT HIM AND SHE'S CONCERNED ABOUT  
22 HIM. SHE LOVES HIM, BUT HE SEEMS TO BE DOING OKAY.

23 Q. THERE'S SOME OTHER ILLEGAL THINGS -- YOU MENTIONED  
24 THAT HER HUSBAND, ACCORDING TO PROFESSOR BLOUGH, IS A SEXUAL  
25 ADDICT?

26 A. HE WENT THROUGH A PERIOD OF FREQUENTING PROSTITUTES.

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1 Q. AND SHE'S TALKED TO YOU ABOUT THAT DURING ALL THESE  
2 SESSIONS IN 2008, AS BEING SOMETHING THAT NATURALLY WOULD BE  
3 TERRIBLY UPSETTING TO HER?

4 A. SHE HAD MENTIONED THAT.

5 Q. AS BEING TERRIBLY UPSETTING TO HER, CORRECT?

6 A. SHE DIDN'T SAY IT WAS TERRIBLY UPSETTING, BUT ONE CAN  
7 ASSUME IT WOULD BE.

8 Q. DID YOU ASSUME IT WOULD BE?

9 A. YES.

10 Q. DID YOU FACTOR THAT INTO YOUR DIAGNOSIS HERE ON WHICH  
11 YOU'RE TELLING THE JURY?

12 A. YES.

13 Q. DID SHE TELL YOU THAT -- DID PROFESSOR BLOUGH TELL YOU  
14 THAT ONE OF THE SOURCES OF HER ANXIETY, THIS YEAR WHILE YOU WERE  
15 TREATING HER, IS THAT FEAR THAT HER PAST CANCER COULD COME BACK?

16 A. YES.

17 Q. AND THAT'S NORMAL. YOU WOULD THINK THAT'S A NORMAL  
18 SOURCE OF ANXIETY FOR A RECOVERING CANCER VICTIM, WOULDN'T YOU?

19 A. YES.

20 Q. NONE OF THESE THINGS WE'VE JUST TALKED ABOUT ARE  
21 THINGS THAT THE COLLEGE CAUSED HER. THE COLLEGE DIDN'T CAUSE  
22 HER TO HAVE THE PROBLEMS WITH THE HUSBAND, AS FAR AS YOU KNOW,  
23 DID IT?

24 A. NO.

25 Q. THE COLLEGE DIDN'T CAUSE HER TO HAVE CANCER, AS FAR AS  
26 YOU KNOW?

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1 A. NO. I WOULD SAY, THOUGH, THAT HER HAVING BEEN LET GO  
2 FROM HER JOB CONTRIBUTED TO HER MARITAL DIFFICULTIES BECAUSE IT  
3 WAS VERY STRESSFUL FINANCIALLY AND EMOTIONALLY. SO IN THAT

4 SENSE IT ADDED.

5 Q. I THOUGHT YOU TOLD ME THAT YOU WEREN'T TREATING HER  
6 WHEN THAT TIME HAPPENED THAT SHE SAYS SHE WAS LET GO. DIDN'T  
7 YOU TELL ME THAT?

8 A. THAT'S RIGHT. BUT HER CURRENT --

9 Q. OKAY.

10 A. -- HER CURRENT DISTRESS IMPACTED THE MARRIAGE.

11 Q. OKAY. I THINK WHAT YOU'RE SAYING IS WHEN SOMEBODY IS  
12 OUT OF WORK, IT'S GOING TO HAVE A TENSION IN THEIR MARRIAGE?

13 A. THAT'S RIGHT.

14 Q. BUT IF YOUR HUSBAND'S A SEX ADDICT, A COCAINE ADDICT,  
15 AN ALCOHOLIC, WOULDN'T YOU SAY THOSE THINGS ARE GOING TO BE  
16 PREDOMINANT OVER THE FACT THAT YOU, AS A SPOUSE, ARE NOT WORKING  
17 RIGHT NOW, IN TERMS OF THE IMPACT ON YOUR MARRIAGE?

18 A. ASK THAT AGAIN.

19 Q. IT WASN'T A GREAT QUESTION, AGAIN, AND MY LEARNED  
20 COUNSEL PUT UP WITH ME.

21 I'M SAYING, YOU KNOW, AS FAR AS THE IMPACT ON A  
22 MARRIAGE OF A JOB PROBLEM, WOULDN'T YOU SAY THAT IF YOUR SPOUSE  
23 IS A COKE ADDICT, AN ALCOHOLIC, SEES PROSTITUTES, WRECKS UP THE  
24 CARS, ET CETERA, IS PRETTY HIGH UP THERE?

25 A. YES, I WOULD.

26 Q. OKAY.

1 YOU DON'T ACTUALLY KNOW WHY SHE LOST HER JOB. YOU

2 JUST KNOW WHAT PROFESSOR BLOUGH TOLD YOU?

3 A. THAT'S RIGHT.

4 Q. IN FACT, YOU DON'T EVEN KNOW IF SHE LOST HER JOB,  
5 OTHER THAN WHAT PROFESSOR BLOUGH TOLD YOU BECAUSE --

6 A. THAT'S RIGHT.

7 Q. -- BECAUSE YOU KNOW THAT THE COLLEGE DID ASK HER TO  
8 COME TO WORK PART TIME?

9 A. YES.

10 Q. YOU TOLD THE LADIES AND GENTLEMEN OF THE JURY THAT  
11 RIGHT NOW PROFESSOR BLOUGH, IN YOUR JUDGMENT, IN YOUR PSYCHOLOGY  
12 JUDGMENT, IS A LOT BETTER IN TERMS OF HER DEPRESSION TODAY THAN  
13 SHE WAS WHEN SHE FIRST SAW YOU EARLIER THIS YEAR?

14 A. YES.

15 Q. AND YOU'RE EXPECTING HER, UNDER YOUR CARE, TO CONTINUE  
16 TO GET BETTER SUCH THAT YOU THINK SHE'LL BE ALL BETTER WITHIN A  
17 YEAR?

18 A. YES.

19 Q. YOU SAY THAT, EVEN THOUGH YOU KNOW THAT SHE'S HAD THIS  
20 AFFLICTION OF CLINICAL DEPRESSION FOR MANY, MANY YEARS?

21 A. YES.

22 Q. SO EVEN THOUGH SHE HASN'T BEEN WORKING AT THE COLLEGE  
23 THIS LAST YEAR OR SO, YOU'RE OF THE FIRM OPINION THAT THAT'S NOT  
24 GOING TO PREVENT HER FROM GETTING ALL BETTER WITHIN A YEAR,  
25 CORRECT?

26 A. YES.

1 Q. I ASKED YOU IF ONLY PHYSICIANS, PSYCHIATRISTS BEING  
2 ONE TYPE, CAN PRESCRIBE PSYCHIATRIC MEDICATIONS, AND YOU SAID  
3 YES.

4 A. YES.

5 Q. WHICH YOU MEAN TO SAY THAT YOU CANNOT DO MEDICATIONS?

6 A. THAT'S RIGHT.

7 Q. WHEN YOU TOLD THE JURY, WHAT ARE THE THINGS ABOUT  
8 PROFESSOR BLOUGH IN THE LAST SIX OR EIGHT MONTHS THAT GIVES YOU  
9 THE ABILITY TO DIAGNOSE HER AS STILL HAVING DEPRESSION, YOU  
10 MENTIONED FATIGUE?

11 A. YES.

12 Q. I THINK YOU MENTIONED THE LOW ENERGY?

13 A. YES.

14 Q. I THINK YOU MENTIONED THAT THERE'S A FEELING OF LACK  
15 OF -- THAT SHE REPORTS A LACK OF ABILITY TO FOCUS MENTALLY OR  
16 CONCENTRATE?

17 A. YES.

18 Q. YOU WOULD AGREE THAT THESE ARE -- THE ABILITY TO FOCUS  
19 AND CONCENTRATE ARE MENTAL FUNCTIONS THAT WE ALL HAVE?

20 A. YES.

21 Q. AND YOU WOULD AGREE THAT, AS A TEACHER, SHE WOULD HAVE  
22 TO -- THOSE ARE THE FUNCTIONS THAT ARE VERY IMPORTANT FOR A  
23 TEACHER IN THE CLASSROOM, AND PREPARING FOR CLASS, INTERACTING  
24 WITH THE YOUNG PEOPLE, FOCUSING ON THE STUDENTS IS AMONG THE  
25 MOST --

26 MR. LEBOWITZ: OBJECTION, NO FOUNDATION.

1 THE COURT: SUSTAINED.

2 MR. VARTAIN: Q. DID YOU DISCUSS WITH HER WHAT ARE  
3 THE NEEDS FOR A TEACHER?

4 A. NO.

5 Q. DO YOU KNOW -- HAVE YOU HAD ANY EXPERIENCE TREATING  
6 TEACHERS?

7 A. YES.

8 Q. SO IN THE COURSE OF TREATING TEACHERS, HAVE YOU BECOME  
9 FAMILIAR WITH THE FACT THAT WHAT TEACHERS DO, ALMOST MORE THAN  
10 ANYTHING ELSE, IS TO THINK, FOCUS, CONCENTRATE?

11 A. YES.

12 Q. SO YOU WOULD AGREE WITH ME WHEN I SAY THAT THE VERY  
13 THINGS THAT ARE TROUBLING OR HARD FOR PROFESSOR BLOUGH ARE  
14 THINGS THAT POTENTIALLY CAN LIMIT HER IN HER ABILITY TO TEACH --

15 MR. LEBOWITZ: OBJECTION, BEYOND THE SCOPE.

16 THE COURT: OVERRULED.

17 MR. VARTAIN: Q. -- FOCUSING, THINKING,  
18 CONCENTRATING, WOULD YOU AGREE?

19 A. YES. I DON'T KNOW IF SHE WAS SUFFERING FROM MAJOR  
20 DEPRESSION WHEN SHE WAS TEACHING, THOUGH.

21 Q. DIDN'T SHE TELL YOU?

22 A. I WASN'T TREATING HER THEN.

23 Q. I AM SORRY?

24 A. BECAUSE I WASN'T TREATING HER THEN.

25 Q. FAIR ENOUGH. BUT SHE DID TELL YOU THAT SHE'S HAD  
26 MAJOR DEPRESSION FOR MANY YEARS, DIDN'T SHE?

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1 A. YES, IT WAXED AND WANED.

2 Q. THAT MEANS UP AND DOWN?

3 A. YES.

4 Q. FOR ME, IT MEANS UP AND DOWN.

5 SO YOU DON'T KNOW IF IN ANY PARTICULAR TIME HER

6 CLINICAL DEPRESSION WAS UPPER OR LOWER?

7 A. THAT'S RIGHT.

8 Q. BUT YOU KNOW THAT SHE'S HAD IT FOR MANY YEARS?

9 A. YES.

10 Q. AND THAT SHE'S BEEN TREATED BY DOCTORS FOR MANY YEARS?

11 A. YES.

12 Q. AND THAT SHE'S HAD ALL THESE PSYCHIATRIC MEDICATIONS

13 FOR MANY YEARS?

14 A. YES.

15 Q. SO IF SHE WAS EXPERIENCING FATIGUE --

16 A. DIFFICULTY --

17 Q. -- DIFFICULTY TO CONCENTRATE -- AS I'M HAVING RIGHT

18 NOW -- AND SO ON, BECAUSE OF THIS CLINICAL DEPRESSION, THOSE

19 THINGS THAT COULD LIMIT HER IN HER ABILITY TO TEACH, AS FAR AS

20 YOUR EXPERIENCE WOULD TELL YOU?

21 MR. LEBOWITZ: OBJECTION, BEYOND THE SCOPE OF THE

22 DESIGNATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: YES, ALTHOUGH SHE REPORTED THAT SHE WAS  
25 HAPPIEST WHEN SHE WAS IN THE CLASSROOM. SO SHE MAY NOT HAVE  
26 BEEN EXPERIENCING DEPRESSION WHILE SHE WAS TEACHING. I DON'T

388

1 KNOW.

2 MR. VARTAIN: Q. DIDN'T SHE TELL YOU THAT IN THE  
3 SPRING OF 2006, HER MAJOR PROBLEM WAS ABILITY TO FOCUS, ABILITY  
4 TO CONCENTRATE AND TO THINK CLEARLY?

5 A. NO.

6 Q. OKAY.

7 SO YOU DIDN'T GO OVER WITH HER WHAT WAS GOING ON IN  
8 THE SPRING OF 2006, BECAUSE THAT WASN'T REALLY PART OF WHAT  
9 YOU'RE DOING IN TREATING HER TODAY, CORRECT?

10 A. THAT'S RIGHT.

11 Q. OKAY.

12 BUT IF SHE WAS SUFFERING FROM THOSE THINKING SYMPTOMS  
13 IN THE SPRING OF 2006, YOU WOULD AGREE, AS A PSYCHOLOGIST, THOSE  
14 WOULD BE CONSISTENT WITH A MENTAL HEALTH DISORDER?

15 A. YES.

16 Q. AND A PERSON WHO COULD EVALUATE A MENTAL HEALTH  
17 DISORDER IS A PSYCHIATRIST, CORRECT?

18 A. A PSYCHOLOGIST CAN ALSO EVALUATE MENTAL DISORDERS.

19 Q. BUT A PSYCHIATRIST CAN EVALUATE BOTH THE MENTAL HEALTH  
20 DISORDER AND THE MEDICATIONS THAT THE PERSON IS TAKING FOR THE



21 MENTAL HEALTH DISORDER?

22 A. THAT'S RIGHT.

23 Q. AND YOU KNOW THAT THE COLLEGE HAD HER EVALUATED BY A  
24 PSYCHIATRIST?

25 A. YES.

26 Q. SHE TOLD YOU THAT?

389

1 A. YES.

2 Q. SHE TOLD YOU IT WAS DR. MISSETT, RIGHT?

3 A. YES.

4 MR. VARTAIN: NO FURTHER QUESTIONING.

5 THE COURT: REDIRECT FOR THIS WITNESS?

6 MR. LEBOWITZ: BRIEFLY, YOUR HONOR.

7

8 REDIRECT EXAMINATION

9 BY MR. LEBOWITZ:

10 Q. DR. PITHER, OVER YOUR YEARS OF EXPERIENCE, INCLUDING  
11 PROFESSOR BLOUGH, YOU TREATED INDIVIDUALS WITH A DIAGNOSIS OF  
12 CLINICAL DEPRESSION?

13 A. YES.

14 Q. AND THROUGH YOUR EXPERIENCE TREATING PATIENTS WITH  
15 CLINICAL DEPRESSION, AND YOUR EXPERIENCE BOTH DIAGNOSING AND  
16 TREATING THEM, HAVE YOU REACHED ANY OPINIONS AS TO WHETHER OR  
17 NOT PEOPLE WITH CLINICAL DEPRESSION ARE CAPABLE OF WORKING?

18 A. YES.

19 Q. AND WHAT IS THAT OPINION?

20 A. IN MANY CASES THEY ARE, OF COURSE. MANY TEACHERS ARE  
21 DEPRESSED.

22 Q. AND SO IT'S A CASE-BY-CASE BASIS, ISN'T IT?

23 A. YES.

24 Q. SO JUST BY HAVING A DIAGNOSIS OF CLINICAL DEPRESSION,  
25 IN YOUR EXPERIENCE AND OPINION, IS THAT IN AND OF ITSELF A  
26 BARRIER TO EMPLOYMENT?

390

1 A. NO.

2 Q. NOW, MR. VARTAIN SPENT A GOOD DEAL OF TIME TALKING  
3 ABOUT PROFESSOR BLOUGH'S HUSBAND?

4 A. YES.

5 Q. AND I THINK WE CAN ALL AGREE THAT THOSE ARE SOME  
6 UNFORTUNATE CIRCUMSTANCES THAT PROFESSOR BLOUGH FOUND HERSELF  
7 IN?

8 A. YES.

9 Q. EVEN WITH EVERYTHING, ALL THE LITANY THAT MR. VARTAIN  
10 LAID OUT FOR YOU AS FAR AS THE MISDEEDS AND UNFORTUNATE ACTS OF  
11 PROFESSOR BLOUGH'S HUSBAND, WHEN YOU ANSWERED MY QUESTIONS, YOU  
12 STILL OFFERED THE OPINION THAT IT WAS THE LOSS OF JOB AT MENLO  
13 COLLEGE THAT REALLY WAS A MAJOR SOURCE OF EMOTIONAL DISTRESS FOR  
14 PROFESSOR BLOUGH. HOW IS IT THAT YOU REACHED THAT OPINION?

15 MR. VARTAIN: I'M GOING TO OBJECT. LACKS FOUNDATION.

16 THE COURT: OVERRULED.

17 MR. VARTAIN: LEADING.

18 THE COURT: OVERRULED.

19 THE WITNESS: WELL, SHE HAD BEEN HAVING MARITAL  
20 DIFFICULTIES FOR MANY YEARS, AND THAT HAD CAUSED HER DISTRESS.  
21 BUT NOT BEING ABLE TO WORK WAS THE MOST DEVASTATING THING OF ALL  
22 TO HER. I NOTICED THAT, AND I APPRECIATED THAT WHEN SHE BEGAN  
23 VOLUNTEERING FOR THE AMERICAN CANCER SOCIETY AND BEGAN WORKING  
24 AGAIN, SHE BECAME SO MUCH HAPPIER, AND ENGAGED, AND ENERGETIC.

25 MR. LEBOWITZ: Q. WHEN YOU WERE OFFERING YOUR OPINION  
26 ABOUT HOW MUCH PROFESSOR BLOUGH'S EMPLOYMENT SITUATION WITH THE

391

1 COLLEGE IMPACTED HER, WAS THERE ANYTHING IN PARTICULAR ABOUT THE  
2 EMPLOYMENT WITH MENLO COLLEGE, AS OPPOSED TO EMPLOYMENT IN  
3 GENERAL THAT INFORMED YOUR OPINION?

4 MR. VARTAIN: OBJECTION, AMBIGUOUS.

5 THE COURT: OVERRULED.

6 THE WITNESS: WELL, SHE LOVED TEACHING, AND SHE LOVED  
7 WORKING WITH THE STUDENTS. AND SHE ENJOYED HER COLLEAGUES  
8 THERE.

9 MR. LEBOWITZ: Q. ANYTHING ELSE THAT SHE TOLD YOU  
10 THAT LED YOU TO THE OPINION THAT YOU OFFERED ABOUT HER EMOTIONAL  
11 DISTRESS IN RELATION TO THE JOB AT THE COLLEGE?

12 A. IT GAVE HER LIFE MEANING.

13 Q. WHAT DO YOU MEAN BY THAT?

14 A. SHE FELT USEFUL, THAT SHE WAS CONTRIBUTING, JUST AS

15 SHE STARTED TO DO AGAIN WHEN SHE WAS VOLUNTEERING FOR THE CANCER  
16 SOCIETY.

17 Q. SO AT THE TIME THAT -- CONTEMPORANEOUSLY WITH THE  
18 EVENTS DESCRIBED TO YOU ABOUT HER HUSBAND, IS THAT THE SAME TIME  
19 THAT SHE WAS HAVING THESE FEELINGS ABOUT WORKING AT THE COLLEGE?

20 LET ME REPHRASE. THAT WAS A BAD QUESTION.

21 YOU UNDERSTOOD FROM YOUR TREATMENT THAT -- OR DID YOU  
22 UNDERSTAND FROM YOUR TREATMENT WHETHER OR NOT THE ISSUES WITH  
23 PROFESSOR BLOUGH'S HUSBAND WERE LONGSTANDING?

24 A. YES.

25 Q. AND BASED ON WHAT YOU LEARNED FROM PROFESSOR BLOUGH,  
26 HOW LONG BACK OR HOW FAR BACK DID THESE PROBLEMS GO?

392

1 A. I DON'T KNOW. YEARS.

2 Q. BACK INTO THE PERIOD OF TIME WHEN SHE WAS EMPLOYED BY  
3 MENLO COLLEGE?

4 A. YES.

5 MR. LEBOWITZ: OKAY.

6 I HAVE NO MORE QUESTIONS. THANK YOU.

7 THE COURT: RE-CROSS?

8 MR. VARTAIN: THAT'S OPENED UP A TOPIC OR TWO. MAY I  
9 PROCEED, YOUR HONOR?

10 THE COURT: YES.

11

12 RE-CROSS EXAMINATION

13 BY MR. VARTAIN:

14 Q. SIR, YOU MENTIONED IN ANSWER TO THESE QUESTIONS,  
15 VOLUNTEERING?

16 A. YES.

17 Q. WHEN PROFESSOR BLOUGH CAME TO SEE YOU, DID SHE TELL  
18 YOU WHAT SHE WAS HOPING TO RECEIVE FROM THE OUTCOME OF THIS  
19 LAWSUIT IN TERMS OF MONEY?

20 A. NO.

21 Q. DIDN'T SHE TELL YOU THAT SHE WAS HOPING TO GET A BIG  
22 SETTLEMENT?

23 A. SHE WAS HOPING -- SHE WAS HOPING TO RECEIVE A  
24 SETTLEMENT. SHE WAS HOPING AT THE LEAST TO RECEIVE LOST WAGES  
25 AND THOUGHT MAYBE IT COULD BE MORE, BUT SHE DIDN'T KNOW EXACTLY  
26 HOW MUCH.

393

1 Q. OKAY.

2 DIDN'T PROFESSOR BLOUGH TELL YOU THAT IT WAS HER  
3 INTENTION TO NOT HAVE TO WORK FOR WAGES IF SHE GOT A SETTLEMENT,  
4 THAT SHE DIDN'T WANT TO DO THAT AGAIN?

5 A. IF THE SETTLEMENT WERE LARGE ENOUGH, SHE SAID SHE'D  
6 LIKE TO VOLUNTEER AS AN ATTORNEY HELPING OTHER PEOPLE WITH --  
7 PEOPLE WHO ARE SUFFERING FROM SERIOUS ILLNESS, DEALING WITH  
8 LEGAL ISSUES.

9 Q. WHAT PROFESSOR BLOUGH TOLD YOU IS ONE OF THE THINGS  
10 SHE WANTED TO DO WITH THE SETTLEMENT WAS TO NOT HAVE TO WORK FOR

11 WAGES SO THAT SHE COULD VOLUNTEER, CORRECT?

12 A. YES.

13 Q. OKAY.

14 NOW, YOU RECALL THAT MS. ADLER MET WITH YOU AND YOUR  
15 ATTORNEY AND QUESTIONED YOU UNDER OATH AT A DEPOSITION SEVERAL  
16 WEEKS AGO?

17 A. YES.

18 MR. LEBOWITZ: OBJECTION, YOUR HONOR. HE DIDN'T HAVE  
19 AN ATTORNEY. HE SAID "YOUR ATTORNEY."

20 MR. VARTAIN: I'M SORRY. IF I SAID "YOUR ATTORNEY," I  
21 TOTALLY MISSPOKE.

22 Q. YOU DIDN'T HAVE AN ATTORNEY THERE?

23 A. NO.

24 Q. BECAUSE YOU DIDN'T WANT TO BE PAYING FOR AN ATTORNEY?

25 A. NO.

26 Q. OKAY. I GET IT.

394

1 BUT IT WAS IN YOUR OFFICE, RIGHT?

2 A. YES.

3 Q. AND YOU HAD ACCESS TO YOUR PATIENT RECORDS ON  
4 PROFESSOR BLOUGH WITH YOU?

5 A. YES.

6 Q. AND YOU HAD PREPARED YOURSELF TO GIVE YOUR TESTIMONY  
7 IN THE SAME FASHION AS YOU'VE PREPARED YOURSELF TODAY, TO SPEAK  
8 TO THE JURY, CORRECT?

9 A. YES.

10 Q. IT WAS ABOUT TWO WEEKS AGO, RIGHT?

11 A. YES.

12 Q. AND IN THAT DEPOSITION OF -- WELL, LET ME BACK UP.

13 THERE WAS SOME QUESTIONS THAT YOU ANSWERED FOR

14 MR. LEBOWITZ THAT I WANTED TO FOCUS IN ON RIGHT NOW.

15 DO YOU HAVE ANY WAY RESPONSIBLY TO APPORTION, THAT

16 MEANS ALLOCATE, TO WHAT DEGREE PROFESSOR BLOUGH'S DEPRESSION

17 RELATES TO HER MARRIAGE ISSUES, HER HUSBAND ISSUES, HER FAMILY

18 ILLNESS ISSUES, AS COMPARED WITH HER EMPLOYMENT ISSUES -- HER

19 LITIGATION, THE STRESSES AND STRAINS FROM JUST BEING IN A SUIT,

20 TO APPORTION HOW ALL OF THOSE COMPARE WITH HER STRESS FROM NOT

21 WORKING THESE DAYS AT MENLO COLLEGE?

22 A. BY FAR THE MAIN SOURCE OF HER DISTRESS WAS NOT

23 WORKING.

24 Q. DO YOU REMEMBER THAT THAT QUESTION WAS ASKED OF YOU,

25 "DO YOU HAVE ANY WAY OF APPORTIONING THE DEGREE THAT ALL THESE

26 ISSUES HAVE CAUSED HER DISTRESS," AND YOU ANSWERED NO.

395

1 DO YOU REMEMBER THAT?

2 A. NO, I DON'T. BUT I CAN'T SAY IT'S 75 PERCENT OR

3 50 PERCENT.

4 Q. SO YOU CAN'T ASSIGN ANY PARTICULAR NUMBER TO IT?

5 A. NO.

6 Q. ALL YOU CAN SAY IS YOU THINK HER NOT WORKING AT MENLO

7 IS THE NUMBER ONE AMONGST ALL THESE OTHERS?

8 A. THAT'S WHAT SHE TALKED ABOUT THE MOST, AND THAT'S  
9 USUALLY WHAT REDUCED HER TO TEARS.

10 Q. IT'S WHAT REDUCED HER TO TEARS. HER HUSBAND DIDN'T  
11 REDUCE HER TO TEARS AT ALL?

12 A. NO.

13 Q. OKAY. BUT --

14 A. SHE WAS USED TO THAT.

15 Q. WHAT?

16 A. SHE WAS USED TO DIFFICULTIES WITH HIM.

17 Q. WHAT YOU'RE SAYING IS YOU'RE GOING BY -- TELLING THE  
18 JURY THAT HER JOB ISSUES WITH MENLO WERE NUMBER ONE OF HER  
19 UPSETTEDNESS, YOU'RE GOING BY THAT'S THE ONE THAT SHE TALKED  
20 ABOUT THE MOST?

21 A. AND THAT'S WHEN SHE BROKE DOWN IN TEARS.

22 Q. OKAY. THOSE TWO THINGS?

23 A. YES.

24 Q. OKAY.

25 AND WHEN SHE CAME TO YOU FOR THE FIRST TIME, SHE  
26 TALKED ABOUT THAT SHE HAD A LAWSUIT COMING UP?

396

1 A. YES.

2 Q. AND SHE'S TALKED TO YOU ON SEVERAL OCCASIONS ABOUT HER  
3 FINANCIAL GOALS IN THIS LAWSUIT, HASN'T SHE?

4 A. I THINK ON JUST ONE OCCASION.



5 Q. ON AT LEAST ONE OCCASION SHE'S TOLD YOU WHAT HER  
6 FINANCIAL GOALS ARE?

7 A. I ASKED HER. I ASKED HER, "SO WHAT'S GOING TO HAPPEN  
8 IF YOU WIN A SETTLEMENT?"

9 Q. I SEE. ANYTHING ELSE THAT YOU'VE TALKED ABOUT IN THE  
10 WAY OF FINANCIAL GOALS OF THIS LAWSUIT?

11 A. NO.

12 MR. VARTAIN: NO FURTHER QUESTIONS. THANK YOU.

13 THE COURT: MR. LEBOWITZ, ANYTHING ELSE FOR  
14 DR. PITHER?

15 MR. LEBOWITZ: JUST TO FOLLOW UP ON THAT ONE  
16 PARTICULAR ISSUE.

17

18 FURTHER DIRECT EXAMINATION

19 BY MR. LEBOWITZ:

20 Q. YOU JUST TESTIFIED THAT IT WAS YOU THAT ASKED  
21 PROFESSOR BLOUGH ABOUT THE FINANCIAL?

22 A. YES.

23 Q. OKAY. AND CAN YOU DESCRIBE FOR US IN MORE DETAIL  
24 EXACTLY WHAT SHE WAS TELLING YOU WAS HER HOPE?

25 A. SHE WAS HOPING TO HELP PEOPLE WHO WERE IN A SIMILAR  
26 SITUATION TO HERS, THAT IS BEING VERY SICK AND HAVING THE

1 DIFFICULTY OF DEALING WITH JOB LOSS, OR INSURANCE COMPANIES, OR  
2 ALL THE LEGAL ISSUES WHICH COME UP WHEN YOU'RE VERY ILL, AND AT

3 A TIME WHEN YOU'RE LEAST ABLE TO DEAL WITH THEM.

4 Q. AND HOW DID SHE TELL YOU THAT MONEY WOULD HELP IN  
5 THAT?

6 A. THAT SHE WOULDN'T -- THAT SHE COULD AFFORD TO DO IT,  
7 BASICALLY, THAT SHE WOULD BE ABLE TO AFFORD TO DO THAT SORT OF  
8 WORK.

9 Q. DID SHE GIVE YOU ANY INDICATION ABOUT WHETHER SHE  
10 THOUGHT THAT WAS SOMETHING THAT WOULD TYPICALLY BE A PAYING JOB  
11 VERSUS A NON-PAYING JOB?

12 A. NO.

13 Q. DID SHE --

14 A. IF THE SETTLEMENT WERE LARGE ENOUGH, SHE WOULDN'T HAVE  
15 TO WORRY ABOUT HOW MUCH SHE WORKED, BECAUSE PEOPLE WHO ARE VERY  
16 ILL OFTEN CAN'T AFFORD TO HIRE ATTORNEYS.

17 MR. LEBOWITZ: THANK YOU. I HAVE NO MORE QUESTIONS.

18 MR. VARTAIN: NO QUESTIONS. THANK YOU, YOUR HONOR.

19 THE COURT: MAY DR. PITHER BE EXCUSED?

20 MR. LEBOWITZ: YES, YOUR HONOR.

21 THE COURT: DR. PITHER, THANK YOU FOR YOUR TESTIMONY,  
22 SIR, YOU ARE FREE TO GO.

23 THE WITNESS: YOU'RE WELCOME.

24 THE COURT: MR. LEBOWITZ, YOUR NEXT WITNESS?

25 MR. PETERS: THANK YOU, YOUR HONOR. PLAINTIFF CALLS  
26 SAMANTHA LIU.

1 THE COURT: AND THAT'S DR. LIU?

2 MR. PETERS: YES, DR. LIU.

3 THE COURT: DR. LIU, IF YOU'D COME FORWARD TO THE  
4 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

5 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

6 (WHEREUPON, THE WITNESS WAS SWORN.)

7 THE WITNESS: YES.

8 THE CLERK: PLEASE BE SEATED.

9 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
10 AND SPELL THEM BOTH FOR THE RECORD.

11 THE WITNESS: MY FIRST NAME IS SAMANTHA; LAST NAME  
12 LIU, L-I-U.

13

14 SAMANTHA LIU,

15 DULY SWORN, TESTIFIED AS FOLLOWS:

16

17 DIRECT EXAMINATION

18 BY MR. PETERS:

19 Q. GOOD MORNING, DR. LIU.

20 A. GOOD MORNING.

21 Q. LET ME START BY ASKING YOU TO TELL THE JURY HOW YOU  
22 KNOW PROFESSOR MARCINE BLOUGH?

23 A. I TREATED MARCY -- EXCUSE ME. CAN I GET MY RECORD,  
24 PLEASE?

25 Q. THAT WOULD BE FINE.

26 YOU BROUGHT WITH YOU YOUR FILE TODAY ON

1 PROFESSOR BLOUGH?

2 A. YES. YES.

3 I TREATED MARCINE STARTING OCTOBER 20, 2003 UNTIL  
4 JANUARY 9, 2007.

5 Q. AND WHAT TYPE OF TREATMENT DID YOU PROVIDE?

6 A. IT WAS PSYCHIATRIC TREATMENT.

7 Q. OKAY.

8 BEFORE WE MOVE ON TO THAT, COULD YOU PLEASE BRIEFLY  
9 TELL THE JURY ABOUT YOUR EDUCATIONAL BACKGROUND.

10 A. THIS IS MY CURRENT CURRICULUM VITAE. I GRADUATED FROM  
11 MEDICAL SCHOOL AT UNIVERSITY OF SOUTH FLORIDA COLLEGE OF  
12 MEDICINE, AND I WAS TRAINED AT UNIVERSITY OF CALIFORNIA  
13 SAN FRANCISCO FOR PSYCHIATRIC RESIDENCY.

14 Q. AND WHAT YEAR DID YOU GRADUATE FROM MEDICAL SCHOOL?

15 A. 1992.

16 Q. AND WHEN DID YOU DO YOUR INTERNSHIP?

17 A. INTERNSHIP WAS FROM 1992 TO 1993.

18 Q. AND DID YOU HAVE ANY SPECIALIZED AREA WITHIN THE FIELD  
19 OF PSYCHIATRY THAT YOU FOCUSED ON?

20 A. I SPECIALIZED IN FORENSIC PSYCHIATRY.

21 Q. AND WHAT IS FORENSIC PSYCHIATRY?

22 A. IT'S PSYCHIATRY RELATED TO THE LAW.

23 Q. AND AT THE SAME TIME WERE YOU PRACTICING AS A CLINICAL  
24 PSYCHIATRIST?

25 A. YES.

26 Q. NOW, ARE YOU CURRENTLY A PSYCHIATRIST?

400

1 A. NO. I'M NO LONGER PRACTICING IN MEDICINE.

2 Q. AND YOU AT SOME POINT SURRENDERED YOUR MEDICAL  
3 LICENSE, CORRECT?

4 A. YES.

5 Q. AND DID THE FACT THAT YOU HAD TO SURRENDER YOUR  
6 MEDICAL LICENSE OR YOU DID SURRENDER YOUR MEDICAL LICENSE HAVE  
7 ANYTHING TO DO WITH YOUR TREATMENT OF PROFESSOR BLOUGH?

8 A. NO.

9 Q. OKAY.  
10 WAS PROFESSOR BLOUGH INVOLVED IN ANY WAY WITH THE FACT  
11 THAT YOU SURRENDERED YOUR MEDICAL LICENSE?

12 A. NO, NOT AT ALL.

13 Q. NOW, YOU SAID PROFESSOR BLOUGH INITIALLY CAME TO SEE  
14 YOU ON OCTOBER 20, 2003; IS THAT CORRECT?

15 A. RIGHT.

16 Q. AND WHY DID PROFESSOR BLOUGH COME TO SEE YOU ON THAT  
17 DAY?

18 A. SHE WAS SUFFERING FROM DEPRESSION AND SHE WAS SEEING A  
19 PRIMARY CARE PROVIDER AT THE SAME TIME -- AT THAT TIME, AND SHE  
20 WAS TAKING ANTIDEPRESSANTS, PROZAC, EFECTOR AND ANTIANXIETY  
21 MEDICATION, XANAX. AND SHE WANTED TO SEE A SPECIALIST, NAMELY A  
22 PSYCHIATRIST, TO SEEK MORE SPECIALIZED TREATMENT.

23 Q. OKAY.

24 AND AT THAT FIRST APPOINTMENT WHEN SHE SAW YOU ON  
25 OCTOBER 20, 2003, DID YOU ASK HER ABOUT THE MEDICATIONS SHE WAS  
26 CURRENTLY ON?

401

1 A. YES.

2 Q. AND WHAT DID SHE TELL YOU WERE THE MEDICATIONS SHE WAS  
3 TAKING AT THAT POINT?

4 A. SHE WAS TAKING PROZAC, 40 MILLIGRAMS, EFECTOR  
5 150 MILLIGRAMS, XANAX 0.25 MILLIGRAMS, THREE TIMES A DAY. THOSE  
6 ARE THE PSYCHIATRIC MEDICATIONS. SHE ALSO TOLD ME THAT SHE HAD  
7 BREAST CANCER IN THE PAST, AND THAT SHE HAD MIGRAINE HEADACHES  
8 SO SHE WAS TAKING SOME CHEMOTHERAPY DRUG CALLED -- I DON'T KNOW  
9 HOW TO PRONOUNCE IT BUT IT'S SPELLED S-A-N-D-O-S-T-A-T-I-N. AND  
10 SHE WAS TAKING FOSAMAX FOR, PRESUMABLY, I THINK, OSTEOPOROSIS.  
11 AND SHE WAS TAKING MIRCETTE. IT'S SPELLED M-I-R-C-E-T-T-E. AND  
12 THIS WAS PRESCRIBED BY DR. FRED MARCUS IN REDWOOD CITY FOR HER  
13 HEADACHES.

14 SHE WAS TAKING VERAPAMIL, TOPAMAX AND MAXALT,  
15 M-A-X-A-L-T, IMITREX AND HYDROCODONE.

16 Q. AND WHAT'S HYDROCODONE?

17 A. IT'S A VICODIN.

18 Q. AND YOU ASKED HER ABOUT ALL THESE MEDICATIONS BECAUSE  
19 YOU -- WELL, WHAT WAS YOUR GOAL IN ASKING HER ABOUT ALL THE  
20 MEDICATIONS SHE WAS TAKING ON HER FIRST VISIT?

21 A. IT'S STANDARD PRACTICE. EVERY PATIENT COMES TO SEE ME

22 FOR THE FIRST TIME, I HAVE TO TAKE A DETAILED HISTORY, INCLUDING  
23 ALL THE MEDICATIONS THEY ARE TAKING.

24 Q. AND WERE YOU GOING TO BE THE PHYSICIAN WHO WAS GOING  
25 TO MANAGE HER PSYCHOTROPIC MEDICATIONS AT THAT POINT?

26 A. YES.

402

1 Q. AND I BELIEVE YOU SAID YOU TREATED HER UNTIL  
2 APPROXIMATELY JANUARY 9, 2007. SO FOR THAT APPROXIMATELY  
3 THREE -- LITTLE OVER THREE-YEAR TIME PERIOD, WERE YOU THE  
4 PSYCHIATRIST WHO WAS MANAGING PROFESSOR BLOUGH'S PSYCHOTROPIC  
5 MEDICATIONS?

6 A. THAT'S CORRECT.

7 Q. YOU WEREN'T RESPONSIBLE FOR ANY OF HER CHEMOTHERAPY  
8 MEDICATIONS, CORRECT?

9 A. NO.

10 Q. WERE YOU RESPONSIBLE FOR ANY OF HER PAIN MEDICATION?

11 A. NO.

12 Q. NOW, DURING THE TIME THAT YOU TREATED HER FOR THAT  
13 LITTLE OVER THREE YEARS, IN TERMS OF THE DOSAGE OF THE  
14 MEDICATIONS, THE PSYCHOTROPIC MEDICATIONS THAT YOU WERE INVOLVED  
15 WITH, DID HER DOSAGES FOR THOSE MEDICATIONS CHANGE DRAMATICALLY  
16 DURING THAT THREE-YEAR PERIOD, OR DID IT STAY ABOUT THE SAME, OR  
17 SOMETHING ELSE?

18 A. INITIALLY, SHE CAME IN WITH MEDICATIONS HER PRIMARY  
19 CARE PHYSICIAN PRESCRIBED AND THOSE WEREN'T VERY HELPFUL, SO I

20 CHANGED HER MEDICATIONS TO OTHER MEDICATIONS AND THOSE  
21 MEDICATIONS WERE MORE HELPFUL. SO SHE STAYED ON THOSE  
22 MEDICATIONS FOR THE MOST PART FOR THE REST OF THE TREATMENT  
23 PERIOD.

24 Q. SO WHEN -- ONCE YOU ESTABLISHED A CORE GROUP OF  
25 MEDICATIONS THAT YOU WERE PRESCRIBING HER, FROM 2003 THROUGH THE  
26 END OF 2006, IS IT FAIR TO SAY THAT HER DOSAGES REMAINED FAIRLY

403

1 CONSTANT?

2 A. YES.

3 Q. AT THE TIME THAT PROFESSOR BLOUGH FIRST SAW YOU IN  
4 LATE 2003 AND INTO EARLY 2004, WHAT WERE THE MAJOR SOURCES OF  
5 EMOTIONAL DISTRESS, FROM YOUR STANDPOINT, THAT SHE WAS  
6 EXPERIENCING?

7 A. SHE HAD A LOT OF STRESSES IN HER LIFE. INITIALLY,  
8 WHEN SHE CAME IN HER FATHER PASSED AWAY, AND THEN SHE HAD CANCER  
9 AND SHE HAD CHEMOTHERAPY. SO CHEMOTHERAPY HAD A LOT OF SIDE  
10 EFFECTS, INCLUDING EMOTIONAL SIDE EFFECTS, ANXIETY, DEPRESSION.  
11 AND TO TOP IT OFF, I THINK HER BIGGEST STRESS IS FROM HER  
12 HUSBAND.

13 Q. OKAY.

14 AND SHE WAS HAVING OR EXPERIENCING DISTRESS AS A  
15 RESULT OF THE ACTIONS OF HER HUSBAND FROM THE TIME SHE STARTED  
16 SEEING YOU IN 2003; IS THAT CORRECT?

17 A. YES, EVEN BEFORE.



18 Q. AND CAN YOU TELL US BRIEFLY WHAT -- WELL, LET'S  
19 ACTUALLY MOVE AHEAD INTO THE 2005, 2006 TIMEFRAME, SO THAT'S THE  
20 FINAL TWO YEARS YOU WERE TREATING PROFESSOR BLOUGH.

21 WAS SHE STILL EXPERIENCING STRESS AS A RESULT OF SOME  
22 OF THE ACTIONS OF HER HUSBAND?

23 A. TREMENDOUSLY.

24 Q. AND WHAT WAS HER HUSBAND DOING THAT WAS CAUSING HER  
25 DISTRESS?

26 A. HER HUSBAND WAS DOING DRUGS. SHE WAS -- I'M SORRY.

404

1 HE WAS DRINKING A LOT. HE WAS USING MARIJUANA, COCAINE. HE WAS  
2 NOT COMING HOME CONSISTENTLY. HE WAS GOING TO PROSTITUTES, AND  
3 HE WAS EMOTIONALLY ABUSING PROFESSOR BLOUGH, KEEPING HER UP AT  
4 NIGHT AND TELLING HER THINGS THAT HE DID WITH THE PROSTITUTE,  
5 DRUGS AND SO ON.

6 Q. DURING THE ENTIRE TIMEFRAME THAT YOU TREATED  
7 PROFESSOR BLOUGH, DID YOU EVER TAKE HER OUT OF WORK BECAUSE OF  
8 THE EMOTIONAL DISTRESS BEING CAUSED HER BY HER HUSBAND?

9 A. YOU MEAN RECOMMENDED HER TO STAY AT HOME AND NOT GO TO  
10 WORK?

11 Q. DID YOU EVER TAKE HER OUT ON DISABILITY?

12 A. NO.

13 Q. OKAY.

14 WHAT DID YOU RECOMMEND SHE DO IN TERMS OF DEALING WITH  
15 HER HUSBAND WHILE SHE WAS UNDER YOUR TREATMENT?

16 A. I RECOMMENDED HER TO STAY AWAY FROM HIM.

17 Q. AND IS THERE A DIAGNOSIS THAT YOU REACHED WITH REGARD  
18 TO HER RELATIONSHIP WITH HER HUSBAND?

19 A. INITIALLY -- OBVIOUSLY, HER DIAGNOSIS WAS MAJOR  
20 DEPRESSION. AND I WAS RELUCTANT TO MAKE A PERSONALITY DISORDER  
21 DIAGNOSIS, BUT LATER ON IT WAS APPARENT TO ME SHE WAS VERY  
22 DEPENDANT ON HER HUSBAND. SHE AT ONE POINT MOVED OUT OF THE  
23 HOUSE AND SEPARATED FROM HER HUSBAND, BUT IT WAS VERY DIFFICULT  
24 FOR HER. HER HUSBAND KEPT COMING BACK AND ASKING HER TO COME  
25 BACK WITH HIM AND TO LIVE WITH HIM. AND PROFESSOR BLOUGH WAS  
26 GIVING IN TO THE PRESSURE AND HAD DIFFICULTIES SEPARATING FROM

405

1 HIM. SO LATER IN THE TREATMENT, I GAVE HER A DIAGNOSIS OF  
2 DEPENDENT PERSONALITY DISORDER.

3 Q. AND THROUGHOUT THE TIME THAT YOU WERE TREATING  
4 PROFESSOR BLOUGH, IN SPITE OF THE PROBLEMS SHE WAS HAVING WITH  
5 HER HUSBAND, AS FAR AS YOU KNEW SHE WAS GOING TO WORK, CORRECT?

6 A. YES.

7 Q. AND THEN YOU SAID THAT THERE WAS ALSO SOME EMOTIONAL  
8 DISTRESS AS A RESULT OF THE DEATH OF HER FATHER?

9 A. YES. THAT WAS IN THE BEGINNING. AND LATER ON HER  
10 MOTHER BECAME ILL AS WELL, AND SHE WENT TO PENNSYLVANIA TO VISIT  
11 HER MOTHER FREQUENTLY AND TO TAKE CARE OF HER MONTHS AT A TIME,  
12 AND IT TOOK A TOLL ON HER AS WELL.

13 Q. ANY OTHER CAUSES OF EMOTIONAL DISTRESS THAT

14 PROFESSOR BLOUGH RELATED TO YOU DURING THE TIME THAT YOU TREATED  
15 HER?

16 A. SHE ALSO MENTIONED PERIODICALLY HER WORK WAS  
17 DIFFICULT, ESPECIALLY IN THE BEGINNING. SHE ASKED ME TO WRITE A  
18 LETTER TO HER WORK STATING THAT SHE WAS NOT ABLE TO WORK FULL  
19 TIME AND ASKED HER WORK TO REDUCE HER DUTY TO PART TIME.

20 Q. AND DO YOU RECALL THE TIME PERIOD THAT WAS?

21 A. EXCUSE ME?

22 Q. DO YOU RECALL WHAT TIME PERIOD THAT WAS?

23 A. THE LETTER WAS WRITTEN IN JULY 2004.

24 Q. OKAY.

25 THE COURT: WOULD THIS BE A GOOD TIME TO BREAK FOR  
26 LUNCH, MR. PETERS?

406

1 MR. PETERS: THAT WOULD BE FINE, YOUR HONOR. THANK  
2 YOU.

3 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO TAKE  
4 OUR LUNCH BREAK. WE'RE GOING TO COME BACK AT 1:30.

5 DR. LIU, I NEED YOU TO COME BACK AT 1:30 AS WELL.

6 SEE YOU THEN. PLEASE JUST GATHER OUTSIDE.

7 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

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1                   P R O C E E D I N G S  
2    DECEMBER 8TH, 2008 P.M.                REDWOOD CITY, CALIFORNIA  
3            THE COURT: WE'RE BACK ON THE RECORD IN BLOUGH VS.  
4    MENLO COLLEGE. ALL PARTIES ARE PRESENT, AND ALL JURORS AND  
5    ALTERNATES.  
6            GOOD AFTERNOON, LADIES AND GENTLEMEN.  
7            OUR WITNESS HAS RETURNED. AND LET ME REMIND YOU, YOU  
8    REMAIN UNDER OATH.  
9            GO AHEAD, MR. PETERS.

10 MR. PETERS: THANK YOU, YOUR HONOR.

11 Q. DR. LIU, BEFORE WE TOOK OUR LUNCH BREAK YOU HAD  
12 MENTIONED THAT YOU WROTE A LETTER FOR PROFESSOR BLOUGH IN JULY  
13 OF 2004?

14 A. YES.

15 Q. DO YOU RECALL THAT?

16 A. YES.

17 Q. AND I DON'T WANT TO DWELL ON THIS TOO LONG, BUT I JUST  
18 WANTED TO ASK YOU, IN THAT LETTER I THINK YOU REFERRED TO IT AS  
19 REQUESTING PART TIME. AND IF YOU'D TAKE A LOOK AT THAT LETTER,  
20 DIRECTING YOUR ATTENTION TO THE LAST PARAGRAPH.

21 A. JUST A MINUTE.

22 Q. SORRY.

23 MR. VARTAIN: COUNSEL, COULD YOU IDENTIFY FOR ME. I  
24 DON'T WANT TO INTERRUPT BUT I JUST WANT TO SEE IF I HAVE IT.

25 MR. PETERS: (COMPLIES.)

26 MR. VARTAIN: THANK YOU.

408

1 MR. PETERS: Q. YOU HAVE THE LETTER?

2 A. YES.

3 Q. AND DIRECTING YOUR ATTENTION TO THE LAST PARAGRAPH.  
4 YOU WRITE, "SHE CANNOT TAKE ANY MORE THAN WHAT SHE CAN NORMALLY  
5 HANDLE." DID YOU WRITE THAT?

6 A. YES.

7 Q. AND BY THAT WHAT WERE YOU TRYING TO TELL THE SCHOOL

8 ABOUT PROFESSOR BLOUGH'S CURRENT LOAD?

9 MR. VARTAIN: OBJECTION. LACKS FOUNDATION THAT IT  
10 EVEN WENT TO THE SCHOOL.

11 THE COURT: OVERRULED.

12 THE WITNESS: IT'S -- IT'S EVIDENT.

13 MR. PETERS: Q. YOU WERE CONCERNED THAT SHE DIDN'T  
14 HAVE MORE THAN WHAT A NORMAL LOAD WOULD BE?

15 MR. VARTAIN: OBJECTION. LEADING.

16 THE COURT: SUSTAINED.

17 MR. PETERS: Q. DR. LIU, DID YOU DELIVER THIS LETTER,  
18 THIS JULY 16, 2004 LETTER TO THE SCHOOL?

19 A. NO.

20 Q. OKAY.

21 LET'S GO FORWARD, THEN, TO 2006, WHEN YOU WERE  
22 TREATING PROFESSOR BLOUGH. AND I BELIEVE YOU TESTIFIED  
23 PREVIOUSLY ABOUT A NUMBER OF AILMENTS YOU WERE TREATING HER FOR.  
24 DURING THE TIME IN 2006, WHILE YOU WERE TREATING HER, WHAT WAS  
25 THE PRIMARY SOURCE OF THE EMOTIONAL DISTRESS SHE WAS HAVING IN  
26 THAT TIMEFRAME?

409

1 A. IN 2006, THE PRIMARY STRESS IS FROM HER HUSBAND. HER  
2 HUSBAND WAS HEAVILY INTO DRUGS, ALCOHOL. HE WAS GOING TO  
3 PROSTITUTES. THEY WERE LIVING TOGETHER AND HE WAS EMOTIONALLY  
4 ABUSIVE TO PROFESSOR BLOUGH. AND HE WAS KEEPING HER AWAKE AT  
5 NIGHT. SHE WAS NOT GETTING ENOUGH REST AND SHE HAD TO RELY ON

6 MEDICATION FOR HER TO SLEEP.

7 Q. AND WAS SHE TELLING YOU DURING THIS TIME ABOUT ANY  
8 OTHER ISSUES THAT WERE CAUSING HER EMOTIONAL DISTRESS IN 2006?

9 A. SHE HAD TO BE BACK ON CHEMOTHERAPY BECAUSE THE DOCTOR  
10 FOUND THAT IT WAS SAFER FOR HER TO BE BACK ON CHEMOTHERAPY FOR  
11 HER BREAST CANCER. AND THE CHEMOTHERAPY CAUSED HER TO BE MORE  
12 EMOTIONALLY FRAGILE.

13 Q. DID SHE DESCRIBE FOR YOU ANY OTHER ISSUES SHE HAD WITH  
14 CHEMOTHERAPY IN TERMS OF PHYSICAL SYMPTOMS?

15 A. SHE SAID THE CHEMOTHERAPY CAUSED HER TO HAVE SOME SIDE  
16 EFFECTS OF HEARING LOSS.

17 Q. AND DID SHE EVER RELATE TO YOU WHETHER SHE DID  
18 ANYTHING IN TERMS OF ADJUSTING HER CHEMOTHERAPY TO ADDRESS HER  
19 HEARING LOSS?

20 MR. VARTAIN: OBJECTION. HEARSAY.

21 THE COURT: SUSTAINED.

22 MR. PETERS: Q. DID PROFESSOR BLOUGH EVER DESCRIBE  
23 FOR YOU WHAT THE EFFECTS WERE IN TERMS OF HER TEACHING THAT THE  
24 HEARING LOSS WAS HAVING ON HER?

25 MR. VARTAIN: EXCUSE ME, YOUR HONOR. SAME OBJECTION.

26 THE COURT: SUSTAINED.

1 MR. PETERS: Q. IN 2006, WAS THERE ANYTHING ELSE  
2 CAUSING PROFESSOR BLOUGH EMOTIONAL DISTRESS?

3 A. YES. HER MOTHER WAS ILL AND SHE WAS VERY WORRIED

4 ABOUT HER. SHE WAS VERY ILL, ACTUALLY, AND PROFESSOR BLOUGH WAS  
5 HAVING TO GO VISIT HER AND TAKE CARE OF HER IN PENNSYLVANIA.

6 Q. AND PREVIOUSLY YOU TESTIFIED THAT ONE OF THE AREAS  
7 THAT WAS CAUSING HER STRESS WAS HER EMPLOYMENT SITUATION WITH  
8 MENLO COLLEGE?

9 MR. VARTAIN: OBJECTION, LEADING.

10 THE COURT: OVERRULED.

11 MR. PETERS: Q. DO YOU RECALL THAT TESTIMONY?

12 A. YEAH. SHE WAS TOLD BY MENLO COLLEGE --

13 MR. VARTAIN: OBJECTION, HEARSAY.

14 THE COURT: COUNSEL, WOULD YOU APPROACH?

15 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

16 THE COURT: THE OBJECTION IS SUSTAINED.

17 MR. PETERS: Q. DR. LIU, IN 2006, DID YOU DETERMINE  
18 THAT PROFESSOR BLOUGH, IN FACT, WAS SUFFERING FROM EMOTIONAL  
19 DISTRESS?

20 A. YES.

21 Q. AND WHAT DID YOU BASE THAT OPINION ON?

22 A. WELL, FROM WHAT SHE HAD TOLD ME OF ALL THE STRESSES  
23 THAT SHE WAS EXPERIENCING AND MY OBSERVATION IN THE SESSIONS  
24 THAT SHE WAS NOT DOING WELL IN THE SESSIONS. SHE EXPRESSED A  
25 LOT OF DEPRESSIVE SYMPTOMS, ANGER AND A LOT OF STRESS.

26 Q. AND DURING HER SESSIONS IN 2006 WITH YOU, WAS ONE OF

1 THE ISSUES THAT WAS DISCUSSED HER EMPLOYMENT SITUATION AT



2 MENLO COLLEGE?

3 A. YES.

4 Q. AND WHAT DID SHE TELL YOU ABOUT HER EMPLOYMENT  
5 SITUATION AT MENLO COLLEGE IN 2006?

6 MR. VARTAIN: OBJECTION.

7 THE COURT: SUSTAINED.

8 MR. PETERS: Q. DID YOU ARRIVE AT ANY CONCLUSIONS IN  
9 TREATING PROFESSOR BLOUGH THAT -- STRIKE THAT. I'M SORRY.

10 GOING BACK TO THE ISSUE WITH PROFESSOR BLOUGH WITH THE  
11 HEARING LOSS, DID SHE EVER TELL YOU SHE HAD GONE OFF THE  
12 SANDOSTATIN?

13 MR. VARTAIN: OBJECTION, HEARSAY.

14 THE COURT: WHY DON'T YOU APPROACH.

15 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

16 THE COURT: THE OBJECTION IS SUSTAINED.

17 MR. PETERS: Q. HOW OFTEN -- IN HE FIRST HALF OF  
18 2006, HOW OFTEN DID YOU TREAT PROFESSOR BLOUGH?

19 A. FIRST HALF OF 2006?

20 Q. YES, ROUGHLY.

21 A. SHE CAME IN ONCE A WEEK.

22 Q. AND THEN THE SECOND HALF OF 2006, WAS IT ABOUT THE  
23 SAME?

24 A. YEAH. USUALLY SHE COMES IN ONCE A WEEK, UNLESS SHE  
25 WENT ON VACATION -- OR EITHER WENT ON VACATION OR ANY SPECIAL  
26 CIRCUMSTANCES.

1 Q. AND DURING THE SECOND HALF OF 2006, DID YOU REACH ANY  
2 CONCLUSIONS OR OPINIONS ABOUT WHAT HER HER DIAGNOSIS WAS?

3 A. YES. HER DIAGNOSIS, THE FIRST ONE HAS ALWAYS BEEN  
4 MAJOR DEPRESSION, BUT LATER IN THE TREATMENT COURSE I GAVE HER  
5 DIAGNOSIS OF DEPENDANT PERSONALITY DISORDER.

6 Q. AND WHAT FACTORS DID YOU TAKE INTO CONSIDERATION IN  
7 200- -- IN THE SECOND HALF OF 2006, THAT BROUGHT YOU TO COME TO  
8 THE DIAGNOSIS OF MAJOR DEPRESSION FOR PROFESSOR BLOUGH?

9 A. SHE'S ALWAYS HAD MAJOR DEPRESSION, EVER SINCE I  
10 STARTED SEEING HER.

11 Q. AND DID IT CHANGE OVER TIME WHILE YOU WERE SEEING HER?

12 A. SHE GOT BETTER, BUT THE CONDITION WENT WAXING AND  
13 WANING, DEPENDING ON THE STRESSES SHE WAS EXPERIENCING.

14 Q. DID YOU EVER FORM THE OPINION, AT ANY TIME IN 2006  
15 WHILE YOU WERE TREATING PROFESSOR BLOUGH, THAT SHE COULD NOT  
16 WORK AS A TEACHER?

17 A. NO.

18 Q. DID YOU EVER COMMUNICATE THAT FACT TO  
19 PROFESSOR BLOUGH?

20 A. NO.

21 Q. DID YOU EVER TELL PROFESSOR BLOUGH THAT YOU DID NOT  
22 BELIEVE SHE COULD CONTINUE TO TEACH BECAUSE OF HER MENTAL  
23 CONDITION?

24 A. NO.

25 Q. AND DURING YOUR WEEKLY TREATMENT SESSIONS WITH  
26 PROFESSOR BLOUGH, DID YOU DISCUSS HER -- THE DUTIES OF HER JOB

1 WITH HER?

2 A. WE TALKED ABOUT HER TEACHING BUSINESS LAW IN MENLO  
3 COLLEGE, AND SHE TOLD ME THAT SHE WAS TEACHING SEVERAL CLASSES  
4 AND SHE HAD A LOT OF STUDENTS. SHE SAID THAT SHE HAD MORE  
5 STUDENTS THAN OTHER TEACHERS AND IT WAS DIFFICULT FOR HER. AND  
6 AT ONE POINT, BECAUSE OF HER HEARING LOSS THERE WERE SOME  
7 STUDENTS THAT HAD QUESTIONS AND SHE DIDN'T HEAR THE QUESTIONS,  
8 AND THE STUDENTS COMPLAINED ABOUT IT.

9 Q. NOW, WAS THERE EVER A POINT IN TIME WHEN YOU DISCUSSED  
10 WITH PROFESSOR BLOUGH WHETHER OR NOT YOU BELIEVED SHE WAS  
11 CAPABLE OF CONTINUING TO TEACH AT MENLO COLLEGE?

12 A. WHETHER OR NOT SHE WAS CAPABLE OF TEACHING AT THE  
13 COLLEGE? NO.

14 MR. PETERS: CAN I HAVE EXHIBIT 11, PLEASE.

15 (PLAINTIFF'S EXHIBIT NO. 11 WAS MARKED FOR  
16 IDENTIFICATION.)

17 MR. PETERS: THANK YOU.

18 YOUR HONOR, MAY I APPROACH THE WITNESS?

19 THE COURT: YES.

20 MR. PETERS: Q. DR. LIU, SHOWING YOU WHAT HAS BEEN  
21 MARKED PLAINTIFF'S EXHIBIT 11 FOR IDENTIFICATION. HAVE YOU SEEN  
22 THIS DOCUMENT BEFORE?

23 A. YES.

24 Q. AND IS THIS WRITTEN ON YOUR LETTERHEAD?

25 A. YES.

26 Q. IS IT YOUR HANDWRITING IN THIS DOCUMENT?

414

1 A. YES. I WROTE THIS LETTER.

2 Q. LOOKING AT EXHIBIT 11, DOES IT REFRESH YOUR  
3 RECOLLECTION AS TO WHETHER OR NOT YOU HAD SPOKEN WITH  
4 PROFESSOR BLOUGH ABOUT HER ABILITY TO TEACH IN OR ABOUT MAY OF  
5 2006?

6 MR. VARTAIN: OBJECTION. LACKS FOUNDATION AS BEING A  
7 LACK OF RECOLLECTION.

8 THE COURT: SUSTAINED.

9 MR. PETERS: Q. DO YOU RECALL DRAFTING THIS LETTER,  
10 DR. LIU?

11 A. YES.

12 Q. AND WHEN YOU DRAFTED THIS LETTER -- WELL, FIRST, WERE  
13 YOU BEING TRUTHFUL WHEN YOU DRAFTED THIS LETTER?

14 A. YES.

15 Q. AND ARE THE OBSERVATIONS CONTAINED IN THIS LETTER  
16 BASED ON YOUR PROFESSIONAL EXPERIENCE AND THE FACT THAT YOU HAD  
17 BEEN TREATING PROFESSOR BLOUGH FOR APPROXIMATELY TWO-AND-A-HALF  
18 YEARS AT THAT POINT?

19 A. YES.

20 Q. AND WAS THIS YOUR HONEST AND COMPLETE MEDICAL OPINION  
21 REGARDING PROFESSOR BLOUGH'S CAPABILITIES AS OF MAY 12, 2006?

22 MR. VARTAIN: OBJECTION. VAGUE AS TO "COMPLETE."

23 THE COURT: OVERRULED.

24 THE WITNESS: WELL, THIS LETTER WAS WRITTEN PRIMARILY  
25 TO REQUEST ACCOMMODATIONS FOR PROFESSOR BLOUGH. I TALKED ABOUT  
26 HER MAKING PROGRESS IN THERAPY, AND I DID SAY THAT SHE WAS

415

1 COGNITIVE, INTACT, ARTICULATE AND EMOTIONALLY STABLE AT THAT  
2 TIME, BUT SHE HAD A LOT OF STRESS ALSO HAPPENING AND HER HEARING  
3 PROBLEMS AND MARITAL PROBLEMS. THIS IS A BRIEF SUMMARY OF WHAT  
4 WAS GOING ON AT THAT PARTICULAR TIME, BUT IT'S IN NO WAY  
5 REFLECTING -- OR IT'S NOT A LETTER SAYING WHETHER OR NOT SHE WAS  
6 CAPABLE OF WORKING AT THAT COLLEGE AS A LAW PROFESSOR.

7 MR. PETERS: Q. DID YOU HAVE ANY DISCUSSIONS WITH  
8 PROFESSOR BLOUGH REGARDING THIS LETTER THAT'S EXHIBIT 11?

9 A. YES.

10 Q. WHAT DID YOU TELL PROFESSOR BLOUGH ABOUT THE LETTER?

11 MR. VARTAIN: OBJECTION. IRRELEVANT.

12 THE COURT: SUSTAINED.

13 MR. PETERS: Q. DID YOU HAVE -- WELL, LET ME BACK UP.

14 I SEE THAT THIS LETTER IS ADDRESSED TO PRESIDENT  
15 CARLOS LOPEZ, MENLO COLLEGE. DID YOU DELIVER THIS LETTER TO  
16 PRESIDENT LOPEZ?

17 A. NO. I GAVE THIS LETTER TO PROFESSOR BLOUGH, AND SHE  
18 WAS SUPPOSED TO BRING THE LETTER TO THE COLLEGE.

19 Q. AND AFTER YOU GAVE THIS LETTER TO PROFESSOR BLOUGH,  
20 WERE YOU EVER CONTACTED BY ANYONE FROM THE ADMINISTRATION OF THE

21 COLLEGE REGARDING WHAT YOU SAID IN THIS LETTER?

22 A. NO.

23 Q. DID YOU EVER TALK TO ANYONE FROM THE COLLEGE

24 ADMINISTRATION REGARDING YOUR TREATMENT OF PROFESSOR BLOUGH?

25 A. NO.

26 Q. AND AT THE BOTTOM OF EXHIBIT 11, IS THAT YOUR

416

1 SIGNATURE?

2 A. EXHIBIT 11, ARE YOU TALKING ABOUT THIS LETTER?

3 Q. YES. I'M SORRY. YES, IT'S THE MAY 12, 2006 LETTER.

4 A. YES, IT'S MY SIGNATURE.

5 Q. AND AFTER YOU PREPARED THIS LETTER, YOU PROVIDED IT TO

6 PROFESSOR BLOUGH, YOU SAID?

7 A. YES.

8 Q. AND THEN DID YOU ALSO SAVE A COPY OF THIS LETTER IN

9 YOUR FILE FOR PROFESSOR BLOUGH?

10 A. RIGHT.

11 Q. AND WAS THAT YOUR NORMAL PRACTICE, TO SAVE ANY

12 CORRESPONDENCE THAT YOU DID ON BEHALF OF THE PATIENT WITHIN THAT

13 PATIENT'S FILE?

14 A. YES.

15 MR. PETERS: YOUR HONOR, WE OFFER EXHIBIT 11 INTO

16 EVIDENCE.

17 MR. VARTAIN: NO OBJECTION, YOUR HONOR.

18 THE COURT: EXHIBIT 11 WILL BE ADMITTED.

19 (PLAINTIFF'S EXHIBIT NO. 11 WAS ADMITTED INTO  
20 EVIDENCE.)

21 MR. PETERS: Q. DO YOU KNOW WHO DR. MISSETT IS?

22 A. I DON'T KNOW HIM, BUT I HEARD OF HIM FROM  
23 PROFESSOR BLOUGH.

24 Q. WHEN DID YOU FIRST HEAR ABOUT DR. MISSETT FROM  
25 PROFESSOR BLOUGH?

26 A. I THINK IT'S PROBABLY IN SOMETIME MID 2006

417

1 PROFESSOR BLOUGH TOLD ME THAT THE COLLEGE HIRED DR. MISSETT TO  
2 GIVE HER A FINISH OF DUTY EVALUATION.

3 Q. AND DID PROFESSOR BLOUGH TALK TO YOU ABOUT WHETHER OR  
4 NOT YOUR MEDICAL RECORDS FOR PROFESSOR BLOUGH WOULD BE RELEASED  
5 TO DR. MISSETT?

6 A. EXCUSE ME. COULD YOU REPEAT THAT?

7 Q. SURE. MAYBE IT WASN'T A VERY GOOD QUESTION.

8 DID PROFESSOR BLOUGH EVER DISCUSS WITH YOU WHETHER OR  
9 NOT YOU SHOULD GO AHEAD AND SEND YOUR MEDICAL RECORDS TO  
10 DR. MISSETT?

11 A. THE FIRST THING I GOT WAS A FAX FROM DR. MISSETT  
12 REQUESTING RECORDS FROM ME OF PROFESSOR BLOUGH. AND WHEN I  
13 RECEIVED THE FAX, I DISCUSSED WITH PROFESSOR BLOUGH IF THIS IS  
14 WHAT SHE INTENDED TO DO.

15 Q. OKAY.

16 A. AND MY STANDARD PRACTICE IS THAT'S WHAT I DO, BECAUSE

17 WHEN THEY SIGN A RELEASE AT ANOTHER DOCTOR'S OFFICE, I WANT TO  
18 TALK TO THEM ABOUT WHETHER OR NOT THIS IS WHAT THEY REALLY WANT  
19 TO DO. AND IF IT IS, THEN I WILL HAVE THEM SIGN ANOTHER CONSENT  
20 AT MY OFFICE.

21 Q. OKAY.

22 AND AFTER TALKING TO YOU ABOUT THAT ISSUE, DID  
23 PROFESSOR BLOUGH ULTIMATELY GIVE YOU PERMISSION TO GIVE HER  
24 MEDICAL RECORDS TO DR. MISSETT?

25 A. AFTER WE DISCUSSED THIS, SHE SAID THAT I CAN TALK TO  
26 DR. MISSETT BUT SHE PREFERRED NOT TO RELEASE THE RECORDS TO

418

1 DR. MISSETT.

2 Q. OKAY. SO JUST SO WE'RE CLEAR, DID YOU ULTIMATELY  
3 RELEASE THE RECORDS TO DR. MISSETT?

4 THE COURT: COULD WE HAVE A TIMEFRAME, PLEASE.

5 MR. PETERS: I'M SORRY.

6 THE COURT: A TIMEFRAME.

7 MR. PETERS: I'M SORRY. THIS IS IN THE EARLY 2006  
8 TIMEFRAME.

9 MR. VARTAIN: COUNSEL, MAY I BE OF ASSISTANCE? I  
10 THINK THE TIMEFRAME OF THE WITNESS IS -- IT'S JULY OF 2006.

11 MR. PETERS: RIGHT. I APOLOGIZE. JULY OF 2006.

12 THE WITNESS: NO, NOT AT THAT TIME.

13 MR. PETERS: Q. YOU DID NOT RELEASE HER RECORDS?

14 A. NO.



15 Q. AND DID YOU EVER SPEAK WITH DR. MISSETT ABOUT YOUR  
16 TREATMENT OF PROFESSOR BLOUGH IN THE JULY 2006 TIMEFRAME?

17 A. I THINK I DID.

18 Q. AND DID YOU DO THAT WITH PROFESSOR BLOUGH'S  
19 PERMISSION?

20 A. YES.

21 Q. AND WHEN PROFESSOR BLOUGH GAVE YOU PERMISSION TO SPEAK  
22 WITH DR. MISSETT, DID SHE PLACE ANY RESTRICTIONS ON WHAT YOU  
23 COULD DISCUSS WITH DR. MISSETT?

24 A. NO.

25 Q. AND WHEN YOU SPOKE WITH DR. MISSETT, DID YOU ANSWER  
26 ALL OF THE QUESTIONS HE ASKED OF YOU?

419

1 A. I DIDN'T TAKE DOWN NOTES ON THE CONVERSATION I HAD  
2 WITH DR. MISSETT, SO I DON'T REALLY RECALL WHAT THE CONVERSATION  
3 WAS ABOUT.

4 Q. AND I UNDERSTAND THAT. BUT ASIDE FROM WHAT IT WAS  
5 ABOUT, DO YOU RECALL DR. MISSETT EVER ASKING ANY QUESTIONS THAT  
6 YOU REFUSED TO ANSWER?

7 A. I DIDN'T REFUSE TO ANSWER ANY QUESTIONS HE ASKED.

8 Q. AND YOU SHARED WITH HIM ALL THE INFORMATION ABOUT  
9 PROFESSOR BLOUGH THAT YOU HAD THAT HE ASKED YOU ABOUT DURING  
10 THAT DISCUSSION?

11 MR. VARTAIN: OBJECTION. LEADING.

12 THE COURT: OVERRULED.

13 THE WITNESS: I BELIEVE SO.

14 MR. PETERS: Q. DO YOU RECALL IN APRIL OF 2006,  
15 PROFESSOR BLOUGH TELLING YOU SHE FELT SHE HAD AN INCREASE IN  
16 ENERGY?

17 MR. VARTAIN: OBJECTION. CALLS FOR HEARSAY.

18 THE COURT: OVER -- THAT'S SUSTAINED. SORRY.

19 MR. PETERS: Q. DR. LIU, IF YOU WOULD LOOK AT YOUR  
20 NOTES FOR APRIL 2006. DO YOU HAVE THOSE IN FRONT OF YOU?

21 A. (WITNESS COMPLIES.)

22 WHICH DATE?

23 Q. I BELIEVE IT WAS THE 28TH -- I'M SORRY. THE 7TH.

24 A. YES. I DID WRITE "INCREASED ENERGY."

25 Q. AND DID PROFESSOR BLOUGH TELL YOU WHY SHE BELIEVED SHE  
26 WAS HAVING INCREASED ENERGY AT THAT POINT?

420

1 A. I WROTE THAT SHE STOPPED CHEMOTHERAPY SO HER ENERGY  
2 WAS INCREASED.

3 MR. PETERS: ALL RIGHT. THANK YOU. THAT'S ALL I  
4 HAVE.

5 THE COURT: CROSS-EXAMINATION?

6 MR. VARTAIN: THANK YOU, YOUR HONOR.

7

8 CROSS-EXAMINATION

9 BY MR. VARTAIN:

10 Q. GOOD AFTERNOON, DR. LIU.

11 YOU JUST TOLD THE ATTORNEY FOR PROFESSOR BLOUGH THAT  
12 YOU NEVER EVALUATED PROFESSOR BLOUGH FOR WHETHER OR NOT SHE HAD  
13 THE ABILITY TO PERFORM HER TEACHING FUNCTIONS?

14 A. THAT'S CORRECT.

15 Q. AND WHEN YOU TELL THE JURY THAT YOU NEVER EVALUATED  
16 HER ABILITY TO DO HER TEACHING FUNCTIONS, ARE YOU MEANING TO SAY  
17 AT ANY TIME WHILE SHE WAS YOUR PATIENT, YOU NEVER DID SUCH AN  
18 EVALUATION; IS THAT TRUE?

19 A. THAT'S TRUE.

20 Q. YOU KNOW THAT IT WAS THE REQUEST OF THE COLLEGE THAT  
21 DR. MISSETT DO THAT KIND OF AN EVALUATION, CORRECT?

22 A. THAT'S CORRECT.

23 Q. AND WHEN PROFESSOR BLOUGH TOLD YOU THAT SHE DID NOT  
24 WANT YOU TO SEND THE MEDICAL RECORDS TO DR. MISSETT, WHO WAS  
25 SUPPOSED TO DO THE MEDICAL EVALUATION, DID SHE TELL YOU WHY SHE  
26 WANTED TO KEEP THOSE RECORDS FROM HIM?

421

1 A. NO.

2 Q. YOU KNEW AT THE TIME, THAT FOR DR. MISSETT TO DO A  
3 THOROUGH EVALUATION OF WHETHER SHE WAS ABLE TO DO HER JOB  
4 FUNCTIONS, IT WOULD BE BEST IF HE LOOKED AT ALL THE MEDICAL  
5 RECORDS, CORRECT?

6 MR. PETERS: LACKS FOUNDATION.

7 THE WITNESS: CORRECT.

8 THE COURT: SUSTAINED.

9 MR. VARTAIN: Q. HAVE YOU, YOURSELF, EVER  
10 MENTIONED -- YOU MENTIONED YOU'RE A FORENSIC PSYCHIATRIST?

11 A. RIGHT.

12 Q. AND AMONG YOUR RESPONSIBILITIES AS A FORENSIC  
13 PSYCHIATRIST IS TO KNOW WHAT DOCTORS DO WHEN THEY DO FITNESS FOR  
14 DUTY EVALUATIONS?

15 A. YES.

16 Q. AND WHEN DOCTORS DO FITNESS FOR DUTY EVALUATIONS, SUCH  
17 AS DR. MISSETT, DO THEY SOMETIMES WANT TO LOOK AT THE MEDICAL  
18 RECORDS OF THE PATIENT?

19 MR. PETERS: YOUR HONOR, WE OBJECT. THIS IS BEYOND  
20 THE SCOPE OF THE TESTIMONY.

21 THE COURT: OVERRULED.

22 MR. VARTAIN: Q. DO THEY?

23 A. YES.

24 Q. SO YOU DIDN'T FIND IT UNUSUAL THAT DR. MISSETT WAS  
25 REQUESTING TO READ YOUR FILE ON PROFESSOR BLOUGH, DID YOU?

26 A. NO.

422

1 Q. AND, IN FACT, WHEN YOU GOT A FAX FROM DR. MISSETT,  
2 WHAT YOU RECEIVED FROM HIM WAS NOT JUST HIS REQUEST TO LOOK AT  
3 THE FILE, YOUR FILE, BUT IT WAS ALSO PROFESSOR BLOUGH'S  
4 SIGNATURE, SAYING THAT IT WAS OKAY FOR HIM TO LOOK AT THE FILE;  
5 ISN'T THAT TRUE?

6 A. YES.

7 Q. AND WHEN YOU SPOKE WITH PROFESSOR BLOUGH AND ASKED  
8 HER, "DID YOU GIVE DR. MISSETT YOUR SIGNATURE THAT HE COULD LOOK  
9 AT YOUR RECORDS?" PROFESSOR BLOUGH TOLD YOU, YES, THAT WAS HER  
10 SIGNATURE, CORRECT?

11 A. YES.

12 Q. AND SHE TOLD YOU THAT SHE SIGNED THE OKAY FOR  
13 DR. MISSETT TO LOOK AT YOUR FILE ON HER WHEN SHE WAS AT  
14 DR. MISSETT'S OFFICE, CORRECT?

15 A. CORRECT.

16 Q. SHE NEVER TOLD YOU THAT DR. MISSETT FORCED HER TO SIGN  
17 THAT, DID SHE?

18 A. SHE DIDN'T TELL ME THAT.

19 Q. OKAY.

20 SO IF I CAN CAPTURE THIS CORRECTLY, PROFESSOR BLOUGH  
21 SIGNED A DOCUMENT SAYING THAT YOU SHOULD GIVE YOUR MEDICAL FILE  
22 ON PROFESSOR BLOUGH TO DR. MISSETT, CORRECT?

23 A. CORRECT.

24 Q. DR. MISSETT FAXED YOU THAT SIGNATURE, THAT OKAY  
25 AGREEMENT, CORRECT?

26 A. CORRECT.

423

1 Q. YOU THOUGHT THAT THE AGREEMENT, THE RELEASE THAT  
2 PROFESSOR BLOUGH HAD SIGNED WAS LEGITIMATE, DIDN'T YOU?

3 A. YES.

4 Q. YOU WOULD HAVE SENT YOUR MEDICAL RECORDS TO

5 DR. MISSETT -- I MEAN, PROFESSOR BLOUGH'S MEDICAL RECORDS FROM  
6 YOUR OFFICE, IF SHE HADN'T SAID TO YOU, PROFESSOR BLOUGH HADN'T  
7 SAID TO YOU WORDS TO THE EFFECT THAT, "I CHANGED MY MIND. I  
8 DON'T WANT YOU TO SEND THOSE RECORDS"?

9 MR. PETERS: YOUR HONOR, THIS IS CUMULATIVE.

10 THE COURT: OVERRULED.

11 THE WITNESS: I ALWAYS TALK TO MY PATIENT WHEN I  
12 RECEIVE A FAX WITHOUT THEM TELLING ME THAT THEY WANT TO SEND THE  
13 RECORD, BECAUSE I DON'T KNOW WHAT THE CIRCUMSTANCES ARE. AND  
14 THEY ARE MY PATIENT I HAVE BEEN TREATING FOR A LONG TIME, I WANT  
15 TO KNOW WHAT'S GOING ON.

16 MR. VARTAIN: Q. AND SO WHAT YOU DID WAS JUST GOOD  
17 MEDICAL PRACTICE. THAT IS YOU CHECKED IN WITH YOUR PATIENT,  
18 PROFESSOR BLOUGH, AND SAID WORDS TO THE EFFECT, "ARE YOU STILL  
19 WILLING FOR ME TO RELEASE THE RECORDS TO DR. MISSETT," CORRECT?

20 A. I ALSO ASKED HER, "WHAT'S GOING ON HERE?"

21 Q. YEAH, BUT -- AND I APPRECIATE THAT. AS TO WHAT  
22 PROFESSOR BLOUGH SAID TO YOU, SHE SAID WORDS TO THE EFFECT OF,  
23 "WELL, I DID SAY OKAY, BUT NOW I'VE CHANGED MY MIND."

24 A. I ALSO --

25 Q. IS THAT -- GO AHEAD.

26 A. I ALSO ASKED HER, "WHAT IS THIS ABOUT?"

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1 Q. OKAY.

2 AND THAT'S WHEN SHE TOLD YOU THAT THE COLLEGE HAD

3 APPOINTED DR. MISSETT TO DO AN EVALUATION OF WHETHER SHE WAS  
4 ABLE TO DO HER TEACHING FUNCTIONS, CORRECT?

5 A. CORRECT.

6 Q. OKAY.

7 DID SHE ALSO TELL YOU THEN, OR AT ANY OTHER TIME, THAT  
8 SHE KNEW DR. MISSETT FROM SEVERAL YEARS EARLIER, THAT  
9 DR. MISSETT HAD DONE AN EVALUATION OF HER TEACHING ABILITY  
10 SEVERAL YEARS BEFORE? DID SHE TELL YOU THAT?

11 A. NO, SHE DIDN'T TELL ME THAT.

12 Q. SHE DIDN'T TELL YOU THAT SEVERAL YEARS EARLIER  
13 DR. MISSETT HAD HELPED HER GET BACK TO WORK FOR 50 PERCENT TIME,  
14 THEN 75, THEN 100 PERCENT TIME?

15 MR. PETERS: YOUR HONOR, THIS LACKS FOUNDATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: NO, SHE DIDN'T.

18 MR. VARTAIN: Q. I THINK YOU TOLD ME THAT PROFESSOR  
19 BLOUGH NEVER GAVE YOU ANY SPECIFIC REASON WHY SHE WANTED IT THAT  
20 YOU NOT SEND THE RECORDS TO DR. MISSETT; IS THAT TRUE?

21 A. THAT'S TRUE.

22 Q. YOU MENTIONED, DR. LIU, THAT IN THE SPRING OF 2006 --  
23 THIS WOULD HAVE BEEN THOSE MONTHS RIGHT BEFORE DR. MISSETT ASKED  
24 YOU TO SEND THE RECORDS. SO THAT'S THE PERIOD OF TIME WE ARE  
25 TALKING ABOUT; ARE YOU WITH ME?

26 A. YES.

1 Q. OKAY.

2 IN THAT PERIOD OF TIME, WAS IT THE CASE THAT PROFESSOR  
3 BLOUGH'S PROBLEMS WITH HER HUSBAND BEING EMOTIONALLY ABUSIVE,  
4 WAS THAT GOING ON IN THAT PERIOD OF TIME?

5 A. YES.

6 Q. WAS IT GOING ON AT A FAIRLY HIGH LEVEL? IN OTHER  
7 WORDS, YOU SAID SOMETIMES IT WAXED AND WANED UP AND DOWN. BUT  
8 WASN'T IT TRUE THAT IN THE SPRING OF 2006, THE ABUSE FROM THE  
9 HUSBAND WAS AT A PRETTY HIGH LEVEL?

10 MR. PETERS: OBJECTION, MISSTATES PRIOR TESTIMONY.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES, I BELIEVE SO.

13 MR. VARTAIN: Q. IT IS TRUE THAT THE ABUSE SHE WAS  
14 GETTING FROM HER HUSBAND IN THE SPRING OF 2006 WAS FAIRLY ACUTE,  
15 IT WAS FAIRLY INTENSE ON HER AT THAT TIME?

16 A. YES.

17 Q. AND YOU ALSO SAID THAT AT THAT TIME, IN THE SPRING OF  
18 2006, HE, THE HUSBAND, WAS KEEPING HER UP AT NIGHT TO THE  
19 POINT --

20 A. YES.

21 Q. -- POINT WHERE YOU WERE TRYING TO GET HER TO SLEEP  
22 WITH SLEEPING MEDICATIONS?

23 A. YES.

24 Q. AND THAT IT WAS IN THAT PERIOD OF TIME WHERE SHE WAS  
25 VERY FATIGUED AND WAS HAVING TROUBLE MEETING HER CLASS  
26 ASSIGNMENTS?



1 MR. PETERS: OBJECTION, NO FOUNDATION.

2 THE COURT: OVERRULED.

3 MR. VARTAIN: I GUESS, LET ME FINISH THE QUESTION THEN  
4 I WILL GIVE YOU A -- IT'S OKAY. I HEARD THAT I DIDN'T FINISH  
5 THE QUESTION; YOU RIGHTFULLY THOUGHT I DID.

6 Q. DID SHE EVER TELL YOU THAT SHE WAS MISSING CLASSES  
7 BECAUSE SHE WAS SO TIRED FROM SHE COULDN'T SLEEP AT NIGHT?

8 MR. PETERS: OBJECTION, HEARSAY.

9 THE COURT: OVERRULED.

10 THE WITNESS: SHE DIDN'T TELL ME SHE WAS MISSING  
11 CLASSES. SHE TOLD ME THAT SHE HAD TROUBLE SLEEPING, BUT SHE DID  
12 TAKE MEDICATION THAT ENABLED HER TO SLEEP.

13 MR. VARTAIN: Q. SO THIS IS AN IMPORTANT QUESTION.

14 DID PROFESSOR BLOUGH EVER TELL YOU THAT SHE WAS  
15 MISSING CLASSES IN THE SPRING OF 2006, SHE WASN'T ABLE TO GET TO  
16 SCHOOL, THAT SHE WAS CUTTING CLASSES SHORT BECAUSE SHE WAS TIRED  
17 FROM HER SLEEPLESSNESS OR THAT SHE WAS LATE FOR CLASSES?

18 A. THERE WAS A LOT OF QUESTIONS IN ONE SENTENCE.

19 Q. YOU'RE RIGHT. THAT'S WHY YOU'RE A FORENSIC --  
20 MAY I WITHDRAW THAT QUESTION, YOUR HONOR?

21 THE COURT: YES, PLEASE.

22 MR. VARTAIN: Q. YOU HAD YOUR LEGAL TRAINING.

23 DID SHE EVER TELL YOU IN THE SPRING OF 2006 THAT SHE  
24 WASN'T MAKING IT TO SCHOOL FOR HER STUDENTS?

25 A. NO, SHE DID NOT.

26 Q. SO THAT WAS A FACT THAT YOU DIDN'T KNOW AT ALL DURING

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1 YOUR TREATMENT OF PLAINTIFF -- OF PROFESSOR BLOUGH, CORRECT?

2 A. THAT'S CORRECT.

3 Q. SHE DID TELL YOU THAT SHE WAS SOMETIMES LATE FOR CLASS

4 OR SHE SOMETIMES HAD TO CUT CLASS EARLY, RIGHT?

5 A. SHE DID TELL ME THAT, BECAUSE SHE SAID THAT --

6 DO YOU WANT ME TO SAY WHY?

7 Q. YEAH, THAT'S OKAY. I WAS COCKING MY HEAD SO I COULD

8 HEAR.

9 A. OKAY.

10 SHE SAID THAT SOMETIMES SHE FINISHED THE LESSON EARLY

11 SO SHE LET THE STUDENTS LEAVE EARLY, AND SOMETIMES SHE PUT HER

12 HEAD DOWN AFTER CLASS BECAUSE SHE WAS FEELING A LITTLE TIRED.

13 Q. SO SHE DID MENTION TO YOU THAT IN THE SPRING SHE HAD

14 FATIGUE PROBLEMS? I'M ASKING YOU -- I'M TRYING TO LINK UP SHE

15 PUT HER HEAD -- DID SHE EVER EXPLAIN THE REASON SHE WAS PUTTING

16 HER HEAD DOWN IN CLASS WAS SHE GOT TIRED?

17 A. WELL, I SAID TWO THINGS. SHE TOLD ME THAT SHE

18 FINISHED CLASS EARLY, BUT SHE DIDN'T SAY THAT WAS BECAUSE OF

19 FATIGUE. SHE SAID SHE FINISHED CLASS EARLY, SO SHE LET HER

20 STUDENTS GO HOME EARLY. AND THE SECOND THING SHE SAID WAS THAT

21 SOMETIMES SHE PUT HER HEAD DOWN BECAUSE SHE WAS A LITTLE TIRED.

22 Q. OKAY.

23 IS IT THE CASE THAT BEING TIRED, BEING FATIGUED, A

24 LACK OF ENERGY IS CONSISTENT WITH WHEN SOMEONE HAS MAJOR  
25 DEPRESSION THAT IS REALLY BOTHERING THEM?  
26 A. POSSIBLY.

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1 Q. AREN'T SOME OF THE SYMPTOMS OF MAJOR DEPRESSION LOSS  
2 OF ENERGY, DIFFICULTY WITH FOCUSING, MENTALLY FOCUSING, THINGS  
3 LIKE THAT?

4 A. POSSIBLY. BUT PROFESSOR BLOUGH ALSO HAD A LOT OF  
5 THINGS GOING ON. SHE WAS GETTING CHEMO AT THE SAME TIME, THAT  
6 COULD ALSO CAUSE FATIGUE. AND, POSSIBLY, LACKING SLEEP FROM HER  
7 STRESSES OTHER PLACES COULD ALSO HAVE CAUSED FATIGUE.

8 Q. THERE WERE A LOT OF THINGS GOING ON WITH HER AT THAT  
9 TIME IN THE SPRING OF 2006?

10 A. RIGHT.

11 Q. AND DID SHE ALSO TELL YOU, DOCTOR, THAT SHE WAS HAVING  
12 TROUBLE WITH HER PSYCHIATRIC MEDICATION, THAT SHE FELT THEY WERE  
13 SORT OF OUT OF WHACK? DID SHE EVER TELL YOU THAT?

14 A. NO. I THINK THE PSYCHIATRIC MEDICATIONS WERE HELPING  
15 HER A LOT.

16 Q. OKAY. AND I UNDERSTAND THAT'S WHAT YOU'RE SAYING AS  
17 HER DOCTOR, AND I APPRECIATE THAT. MY QUESTION REALLY IS MORE  
18 WHAT SHE TOLD YOU.

19 DID SHE EVER TELL YOU IN THE SPRING OF 2006 THAT SHE  
20 WAS HAVING TROUBLE FOCUSING, AND SHE THOUGHT THAT WAS DUE TO HER  
21 PSYCHIATRIC MEDICINE BEING OUT OF WHACK?

22 MR. PETERS: OBJECTION, ASKED AND ANSWERED.

23 THE COURT: OVERRULED.

24 THE WITNESS: NO, SHE DIDN'T TELL ME THAT. AND IT'S  
25 REALLY HARD TO SAY, TOO, THAT IF -- FIRST OF ALL, SHE DIDN'T  
26 REALLY TELL ME THAT SHE HAD TROUBLE FOCUSING. SECONDLY, IF SHE

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1 DID HAVE TROUBLE FOCUSING, IT'S REALLY HARD TO TELL, AMONG ALL  
2 THESE THINGS WHAT'S GOING ON, IF THAT WAS A CAUSE OF HER  
3 PSYCHIATRIC MEDICATION OR --

4 MR. VARTAIN: Q. OKAY.

5 A. -- OR SOMETHING ELSE.

6 Q. I'M WITH YOU.

7 DID SHE EVER TELL YOU THAT HER SISTER AND HER  
8 FRIENDS -- AND I'M TALKING ABOUT THE SPRING OF 2006, BECAUSE YOU  
9 WERE SEEING HER ON A WEEKLY BASIS, RIGHT, IN THAT TIME PERIOD;  
10 IS THAT TRUE?

11 A. EXCUSE ME?

12 Q. I'M JUST SHAKING MY HEAD AT MYSELF. I ASKED A BAD  
13 QUESTION.

14 IN THE SPRING OF 2006, YOU WERE SEEING PROFESSOR  
15 BLOUGH ON A WEEKLY BASIS, ALMOST EVERY WEEK?

16 A. YES.

17 Q. DURING THAT PERIOD OF TIME IN THE SPRING, DID SHE EVER  
18 TELL YOU THAT HER SISTER AND HER FRIENDS WERE TELLING HER WORDS  
19 TO THE EFFECT THAT, "MARCY, YOU'RE NOT WITH IT. YOU'RE NOT

20 SHARP. YOU'RE OUT OF FOCUS," ANYTHING LIKE THAT, DID SHE TELL  
21 YOU THAT?

22 MR. PETERS: LACKS FOUNDATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: I THINK SOMETHING LIKE THAT WAS  
25 MENTIONED. I DON'T KNOW WHO TOLD HER THAT. IT COULD HAVE BEEN  
26 HER HUSBAND, HER FRIENDS. I DON'T REMEMBER WHO.

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1 MR. VARTAIN: Q. BUT THE ONLY WAY YOU WOULD KNOW  
2 ABOUT IT IS IF YOUR PATIENT, PROFESSOR BLOUGH, TOLD YOU, BECAUSE  
3 YOU WEREN'T SPEAKING TO HER HUSBAND OR HER FRIENDS, CORRECT?

4 A. CORRECT.

5 Q. SO YOU DO HAVE A RECOLLECTION THAT SOMETIME IN THE  
6 SPRING OF 2006, PROFESSOR BLOUGH WAS TELLING YOU SOMETHING TO  
7 THE EFFECT OF, "MY FRIENDS OR RELATIVES THINK I'M NOT FOCUSED.  
8 I'M NOT SHARP MENTALLY," CORRECT?

9 A. I VAGUELY REMEMBER THAT, BUT I THINK THAT DIDN'T LAST  
10 VERY LONG. I THINK THAT WAS WHEN SHE WAS ON VACATION IN HAWAII  
11 IN THE SUMMER.

12 Q. OKAY. YOU JUST DON'T HAVE AN EXACT TIME PERIOD THAT  
13 YOU CAN PUT ON THAT; IS THAT CORRECT?

14 A. I REMEMBER IT WAS WHEN SHE WAS ON VACATION IN HAWAII  
15 IN THE SUMMER.

16 Q. SCHOOL GETS OUT IN MAY, AND THEN, TYPICALLY, SHE'D GO  
17 ON VACATION IN THE SUMMER?

18 A. YES.

19 Q. OKAY.

20 NOW, ONE LAST THING, DR. LIU. YOU HAD BEEN TREATING  
21 PROFESSOR BLOUGH FOR THREE OR FOUR YEARS UP UNTIL THE SPRING OF  
22 2006, CORRECT?

23 A. YES.

24 Q. AND THESE SYMPTOMS OF DEPRESSION THAT SHE WAS SHOWING  
25 IN THE SPRING OF 2006, AND EVEN AFTER THAT LATER ON IN THE YEAR,  
26 THEY WERE VERY MUCH LIKE THE SYMPTOMS SHE HAD HAD UP AND DOWN

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1 THROUGHOUT THE TIME YOU HAD BEEN TREATING HER, CORRECT?

2 A. UP AND DOWN, YES.

3 Q. YES.

4 AND MANY OF THOSE SYMPTOMS WENT UP AND DOWN WITH WHEN  
5 HER HUSBAND WAS MORE OR LESS MISTREATING HER; WOULD THAT BE FAIR  
6 TO SAY?

7 A. YES.

8 Q. YOU MENTIONED THAT YOU HAD ALSO DIAGNOSED PROFESSOR  
9 BLOUGH -- BESIDES THE MAJOR DEPRESSION WITH ANOTHER KIND OF  
10 MENTAL ISSUE, YOU CALLED IT DEPENDANT PERSONALITY DISORDER?

11 A. YES.

12 Q. DEPENDANT PERSONALITY DISORDER, THAT'S NOT SOMETHING  
13 YOU GET FROM YOUR EMPLOYMENT, IS IT?

14 A. IT'S NOT SOMETHING I GET WHAT?

15 Q. IT'S NOT SOMETHING THAT SOMEONE -- YOU KNOW, IT'S NOT

16 AN ILLNESS THAT YOU CATCH FROM YOUR JOB, IS IT?

17 A. YEAH, IT IS.

18 Q. DEPENDANT PERSONALITY?

19 A. YES, IT IS A PSYCHIATRIC DIAGNOSIS.

20 Q. BUT IT DOESN'T COME FROM THE JOB SITUATION. IT'S THE

21 PERSON'S BASIC PERSONALITY, CORRECT?

22 A. YOU MEAN FROM HER JOB SITUATION?

23 Q. I'M ASKING A BAD QUESTION. I'M GOING TO JUST WITHDRAW

24 IT. BECAUSE WHEN I'M NOT CONNECTING WITH YOU, I KNOW IT'S ME

25 NOT YOU.

26 TELL THE JURY, AGAIN -- LET ME START OVER -- WHAT A

432

1 DEPENDANT PERSONALITY DISORDER IS.

2 A. DEPENDANT PERSONALITY DISORDER IS THAT IT'S A

3 PERVASIVE PERSONALITY DISORDER THAT THE PERSON DOESN'T REALLY

4 CHANGE VERY MUCH THROUGHOUT THEIR LIFE, OR IT'S HARD TO CHANGE

5 THEM. IT'S HARD FOR THEM TO BE INDEPENDENT, EVEN THOUGH THE

6 PERSON THEY'RE WITH IS VERY DYSFUNCTIONAL. OFTENTIMES, THEY CAN

7 BE A DRUG ADDICT, OR ALCOHOLIC, OR EVEN ABUSIVE, BUT THE PERSON

8 WITH THE PERSONALITY -- WITH THIS KIND OF PERSONALITY DISORDER

9 STILL STAYS WITH THAT PERSON, EVEN THOUGH THEY'RE ABUSED OR THAT

10 THE OTHER PERSON IS DRUGGED, AND SO ON.

11 Q. SO WOULD IT BE THE CASE THAT A PERSON WITH A DEPENDANT

12 PERSONALITY DISORDER, SUCH AS PROFESSOR BLOUGH, WOULD SUFFER

13 MORE, YOU KNOW, ANGUISH AND HURT FROM LIVING WITH SOMEONE WHO'S

14 ABUSIVE THAN WOULD A PERSON WHO DID NOT HAVE A DEPENDANT  
15 PERSONALITY WOULD SUFFER?

16 A. RIGHT. IF THERE'S SOMEBODY THAT DOESN'T HAVE THIS  
17 PERSONALITY DISORDER, IT WILL BE EASIER FOR THEM TO LEAVE THE  
18 ABUSIVE SITUATION AND BECOME MORE INDEPENDENT.

19 Q. AND IT WAS DIFFICULT FOR YOU TO PERSUADE PROFESSOR  
20 BLOUGH TO LEAVE THE HUSBAND, BECAUSE PROFESSOR BLOUGH HAD THIS  
21 PERSONALITY DISORDER THAT YOU CALLED A DEPENDANT PERSONALITY  
22 DISORDER, CORRECT?

23 A. CORRECT.

24 IN THE COURSE OF TREATMENT SHE TRIED TO MOVE AWAY FROM  
25 HIM. AT SOME POINT, SHE BOUGHT A HOUSE OF HER OWN AND MOVED  
26 OUT. AND, IN MY OPINION, SHE WAS DOING BETTER AND HAPPIER, BUT

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1 THEN THE HUSBAND PERSUADED HER TO MOVE BACK IN WITH HIM, AND  
2 THINGS DIDN'T GO SO WELL WHEN THEY WERE TOGETHER.

3 Q. IN FACT, THEY WERE TOGETHER DURING THAT POINT IN TIME  
4 WHEN DR. MISSETT WAS ASKING FOR THE RECORDS. WHEN HE WAS DOING  
5 THE EMPLOYMENT EVALUATION, PROFESSOR BLOUGH WAS LIVING WITH HER  
6 HUSBAND, CORRECT?

7 A. YES.

8 Q. SO THAT WOULD HAVE BEEN A TIME WHEN THE IMPACTS ON HER  
9 WERE PROBABLY AT THEIR WORST, BECAUSE SHE WAS LIVING IN THE SAME  
10 HOUSE WITH HIM, CORRECT?

11 A. YES.



12 MR. VARTAIN: NO FURTHER QUESTIONS.

13 THE COURT: REDIRECT FOR THIS WITNESS?

14 MR. PETERS: BRIEFLY, YOUR HONOR.

15 THE COURT: YES.

16

17 REDIRECT EXAMINATION

18 BY MR. PETERS:

19 Q. DR. LIU, WAS IT EVER YOUR OPINION THAT PROFESSOR  
20 BLOUGH'S CLINICAL DEPRESSION WAS A BARRIER TO HER CONTINUING TO  
21 WORK AT THE COLLEGE?

22 MR. VARTAIN: LACKS FOUNDATION.

23 THE COURT: SUSTAINED.

24 MR. VARTAIN: Q. AT SOME POINT, DR. LIU, YOU -- WELL,

25 STRIKE THAT.

26 WE LOOKED AT EXHIBIT 11 EARLIER WHEN YOU EXPRESSED

434

1 SOME OPINIONS IN THE LETTER REGARDING PROFESSOR BLOUGH'S ABILITY  
2 TO WORK AT THE COLLEGE; DO YOU RECALL THAT?

3 MR. VARTAIN: OBJECTION.

4 THE COURT: HE JUST ASKED IF SHE RECALLS THE LETTER.

5 MR. VARTAIN: HE'S CHARACTERIZING THE LETTER IN A  
6 MANNER THAT IS NOT ACCURATE AND IT'S CONTRARY TO THE WITNESS'S  
7 TESTIMONY.

8 THE COURT: OVERRULED.

9 MR. PETERS: Q. DO YOU RECALL THE LETTER?

10 A. CAN YOU REPEAT THE QUESTION?

11 Q. I'M SORRY. SURE.

12 DO YOU RECALL THE LETTER, EXHIBIT 11, THAT WE REFERRED  
13 TO EARLIER? THAT'S IT, YES. THANK YOU.

14 AND AT SOME POINT -- OH, LET ME ASK YOU THIS: AT THE  
15 TIME YOU WROTE THAT LETTER IN MAY OF 2006, WAS PROFESSOR BLOUGH  
16 SUFFERING FROM CLINICAL DEPRESSION AT THAT POINT IN TIME?

17 A. YES.

18 Q. SO EVEN THOUGH SHE WAS SUFFERING FROM CLINICAL  
19 DEPRESSION AT THAT POINT IN TIME, DID YOU BELIEVE THAT SHE --  
20 THAT THAT DEPRESSION WAS NEVERTHELESS NOT A BARRIER TO HER  
21 CONTINUING TO WORK AT THE COLLEGE?

22 MR. VARTAIN: OBJECTION, LACKS FOUNDATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: AS I SAID, THIS LETTER IS NOT MEANT TO  
25 SAY IF SHE WAS CAPABLE OR NOT CAPABLE TO WORK AT THE COLLEGE.  
26 THIS LETTER -- THE PURPOSE OF THIS LETTER IS TO SUMMARIZE THE

435

1 CONDITION OF PROFESSOR BLOUGH AT THE TIME: HER STRENGTHS, HER  
2 WEAKNESSES AND THE STRESSES SHE WAS GOING THROUGH.

3 AND THE PURPOSE OF THE LETTER IS TO POINT OUT THE  
4 THINGS THAT SHE COULD IMPROVE ON AND TO ASK THE COLLEGE FOR  
5 ACCOMMODATIONS AND TIME FOR HER TO HEAL AND TO GET BETTER SO,  
6 PERHAPS, SHE CAN PERFORM BETTER AND CONTINUE TO WORK AT THE  
7 COLLEGE.

8 MR. PETERS: Q. OKAY.

9 I BELIEVE YOU TESTIFIED EARLIER THAT THE ENTIRE TIME  
10 THAT YOU TREATED PROFESSOR BLOUGH, SHE SUFFERED FROM CLINICAL  
11 DEPRESSION?

12 A. YES.

13 Q. WAS THERE EVER A POINT IN TIME DURING YOUR TREATMENT  
14 OF PROFESSOR BLOUGH THAT YOU BELIEVED HER CLINICAL DEPRESSION  
15 PRESENTED A BARRIER TO HER CONTINUING TO TEACH AT THE COLLEGE?

16 A. AS I SAID BEFORE, IT'S NOT MY DUTY TO DO A FITNESS  
17 EVALUATION OF PROFESSOR BLOUGH AS TO WHETHER OR NOT SHE'S  
18 CAPABLE TO TEACH AT MENLO COLLEGE AS A LAW PROFESSOR, SO I CAN'T  
19 REALLY SAY THAT WHETHER OR NOT HER DEPRESSION IMPACTS HER  
20 ABILITY TO TEACH AT THE COLLEGE OR NOT. SOMETIMES PEOPLE THAT  
21 HAVE DEPRESSION CAN FUNCTION WELL IN THEIR JOBS; SOMETIMES IT  
22 HAS A LOT OF IMPACT ON THEIR JOBS. AND BECAUSE I DIDN'T SEE HER  
23 TEACH AT HER WORK, SO IT'S HARD FOR ME TO SAY.

24 Q. DURING THE TIME THAT YOU TREATED PROFESSOR BLOUGH UP  
25 UNTIL THE POINT WHEN SHE WAS ULTIMATELY TERMINATED FROM THE  
26 COLLEGE --

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1 MR. VARTAIN: I'M GOING TO OBJECT. LACKS FOUNDATION.

2 THE COURT: I NEED TO HEAR THE WHOLE QUESTION.

3 MR. VARTAIN: I APOLOGIZE.

4 MR. PETERS: IT'S OKAY. I'LL CLEAN IT UP, YOUR HONOR.

5 MR. VARTAIN: WE CAN ACTUALLY SEE EACH OTHER AND FIX

6 QUESTIONS NOW.

7 THE COURT: YOU'RE WAY AHEAD OF ME.

8 MR. PETERS: I'M NOT SURE ABOUT THAT.

9 Q. LET ME ASK IT THIS WAY.

10 PRIOR TO MAY OF 2006, WHILE YOU WERE TREATING  
11 PROFESSOR BLOUGH, SHE WAS WORKING FULL TIME DURING THAT ENTIRE  
12 PERIOD, CORRECT?

13 A. YES.

14 Q. AND DURING THE PERIOD FROM WHEN YOU STARTED TREATING  
15 HER UNTIL MAY OF 2006, SHE WAS HAVING -- SHE WAS TALKING TO YOU  
16 ABOUT VARIOUS ISSUES THAT WERE IMPACTING HER EMOTIONAL STATE,  
17 INCLUDING HER HUSBAND, CORRECT?

18 A. RIGHT.

19 Q. AND THOSE WERE, I THINK YOU SAID, WAXING AND WANING  
20 THAT ENTIRE PERIOD, CORRECT?

21 A. RIGHT.

22 Q. BUT SHE CONTINUED TO TEACH ON A FULL-TIME BASIS DURING  
23 THAT ENTIRE PERIOD, CORRECT?

24 A. YES.

25 MR. PETERS: NOTHING FURTHER, YOUR HONOR. THANK YOU.

26 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

437

1 MR. VARTAIN: JUST A FEW QUESTIONS, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3

4 RE CROSS EXAMINATION

5 BY MR. VARTAIN:

6 Q. DR. LIU, YOU JUST TOLD THE JURY THAT IT WAS NOT YOUR  
7 DUTY TO RENDER AN OPINION AS TO WHETHER PROFESSOR BLOUGH WAS OR  
8 WAS NOT ABLE TO PROPERLY DO HER TEACHING JOB, CORRECT?

9 A. THAT'S CORRECT.

10 Q. WASN'T IT DR. MISSETT'S DUTY TO RENDER THAT OPINION?

11 A. THAT'S CORRECT.

12 MR. VARTAIN: NO FURTHER QUESTIONS.

13 THE COURT: ANYTHING ELSE FOR THIS WITNESS,

14 MR. PETERS?

15 MR. PETERS: VERY BRIEFLY, YOUR HONOR.

16

17 FURTHER DIRECT EXAMINATION

18 BY MR. PETERS:

19 Q. DR. LIU, I THINK YOU MENTIONED EARLIER THAT WHEN I  
20 ASKED YOU ABOUT WHETHER YOU BELIEVED PROFESSOR BLOUGH WAS ABLE  
21 TO TEACH OR NOT, YOU SAID YOU HAD NEVER SEEN HER TEACH, CORRECT?

22 A. CORRECT.

23 Q. WOULD THAT BE AN IMPORTANT FACTOR FOR YOU TO CONSIDER  
24 IF YOU WERE GOING TO TRY TO DETERMINE WHETHER SHE COULD GO BACK  
25 TO TEACHING, GOING AND OBSERVING HER TEACH?

26 A. IT'S NOT MY JOB TO DO THAT.

1 Q. AND I'M NOT IMPLYING THAT IT IS YOUR JOB. I JUST

2 WANTED TO CLARIFY, SINCE YOU HAD SAID EARLIER YOU COULDN'T SAY  
3 WHETHER OR NOT YOU BELIEVED AT THE TIME SHE COULD TEACH, YOU  
4 INCLUDED AS ONE OF THE FACTORS THE FACT THAT YOU HAD NEVER SEEN  
5 HER TEACH. AND MY QUESTION SIMPLY IS, WOULD THAT BE SOMETHING  
6 THAT YOU WOULD WANT TO SEE, YOU'D WANT TO OBSERVE HER TEACHING  
7 IN ORDER TO MAKE THAT DETERMINATION AS TO WHETHER SHE WAS  
8 CAPABLE?

9 MR. VARTAIN: CALLS FOR SPECULATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: WELL, I THINK THAT COULD BE PART OF IT.

12 BUT THE WHOLE FITNESS FOR DUTY EVALUATION IS A PACKAGE THAT  
13 INCLUDES OBSERVATION OF ONE'S PERFORMANCE IN THEIR JOBS, THEIR  
14 MEDICAL PSYCHIATRIC HISTORY AND COGNITIVE FUNCTION IN  
15 EXAMINATIONS AND OTHER THINGS. AND JUST OBSERVING SOMEBODY'S  
16 WORK IS PART OF IT, BUT IT'S NOT ALL OF IT.

17 MR. PETERS: THANK YOU, DOCTOR.

18 MR. VARTAIN: NO FURTHER QUESTIONS, YOUR HONOR.

19 THE COURT: MAY DR. LIU BE EXCUSED?

20 THE WITNESS: THANK YOU.

21 THE COURT: DR. LIU, I'M GOING TO TAKE THAT ONE LOOSE  
22 PAGE THAT I THINK GOT MARKED AS AN EXHIBIT, AND THE REST IS YOUR  
23 FILE, I BELIEVE. THANK YOU FOR YOUR TESTIMONY. YOU ARE FREE TO  
24 GO.

25 THE WITNESS: THANK YOU.

26 MR. LEBOWITZ: YOUR HONOR, MAY WE APPROACH BRIEFLY

1 ABOUT SCHEDULING?

2 THE COURT: YES.

3 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

4 THE COURT: WE'RE JUST GOING TO SEE IF A WITNESS HAS  
5 ARRIVED AS TO WHETHER OR NOT WE ARE GOING TO TAKE A BREAK.

6 IS MR. PETERS CHECKING?

7 MR. LEBOWITZ: YES.

8 THE COURT: THANK YOU.

9 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I THINK  
11 WE'RE GOING TO TAKE OUR BREAK A LITTLE BIT EARLY TODAY. LET'S  
12 TAKE A 15-MINUTE BREAK. AND IF WE NEED A SECOND STRETCH BREAK  
13 LATER IN THE AFTERNOON, WE WILL CERTAINLY DO THAT. IF YOU'D  
14 PLEASE GATHER OUTSIDE THE COURTROOM AT 2:45, I'D APPRECIATE IT.

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 THE COURT: WE'RE BACK ON THE RECORD.

17 MR. PETERS, ARE YOU READY TO CALL YOUR NEXT WITNESS?

18 MR. PETERS: YES, YOUR HONOR. PLAINTIFF CALLS JACK  
19 MCDONOUGH.

20 THE COURT: MR. MCDONOUGH, IF YOU'D PLEASE COME TO THE  
21 WITNESS STAND AND STAND TO BE SWORN.

22 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

23 (WHEREUPON, THE WITNESS WAS SWORN.)

24 THE WITNESS: I DO.

25 THE CLERK: PLEASE BE SEATED.

26 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME

1 AND SPELL THEM BOTH FOR THE RECORD.

2 THE WITNESS: JOHN MCDONOUGH, J-O-H-N

3 M-C-D-O-N-O-U-G-H.

4 THE CLERK: THANK YOU.

5

6 JOHN MCDONOUGH,

7 DULY SWORN, TESTIFIED AS FOLLOWS:

8

9 DIRECT EXAMINATION

10 BY MR. PETERS:

11 Q. GOOD AFTERNOON, PROFESSOR.

12 HOW LONG HAVE YOU BEEN EMPLOYED BY MENLO COLLEGE?

13 A. I'M JUST FINISHING MY 27TH YEAR.

14 Q. AND WHAT IS YOUR POSITION?

15 A. FACULTY MEMBER.

16 Q. AND CAN YOU GIVE US A BRIEF EXPLANATION OF YOUR

17 BACKGROUND PRIOR TO BECOMING A PROFESSOR AT MENLO COLLEGE?

18 A. WELL, I WAS IN MANAGEMENT WITH XEROX CORPORATION AND

19 THEN IN COMMERCIAL REAL ESTATE WITH CALDWELL BANKER, AND

20 20 YEARS IN THOSE JOBS BEFORE COMING TO MENLO COLLEGE.

21 Q. AND WHAT MADE YOU DECIDE TO GO TO MENLO COLLEGE?

22 A. I TOOK A YEAR OFF EARLIER AND TAUGHT A YEAR OF COLLEGE

23 AND FELL IN LOVE WITH WORKING WITH YOUNG PEOPLE. AND WHEN THE

24 TIME PRESENTED ITSELF WHERE I COULD GET INTO A FULL-TIME



25 ARRANGEMENT, I DID THAT AT MENLO COLLEGE.

26 Q. AND HOW DID YOU DECIDE ON MENLO COLLEGE?

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1 A. THE SMALL HUMAN SCALE KIND OF INSTITUTION THAT IT IS,  
2 THE OPPORTUNITY TO HAVE -- IN ADDITION TO THE CLASSROOM  
3 ENVIRONMENT, ONE-ON-ONE OPPORTUNITIES TO WORK WITH STUDENTS WAS  
4 PARTICULARLY APPEALING.

5 Q. ANYTHING ELSE ABOUT THE ENVIRONMENT AT MENLO COLLEGE  
6 AT THE TIME THAT APPEALED TO YOU WHEN YOU STARTED THERE?

7 A. WELL, BECAUSE OF MY BACKGROUND I WAS DRAWN TO IT  
8 BECAUSE OF THE FOCUS ON BUSINESS. THAT'S ALWAYS BEEN A MAJOR  
9 ELEMENT IN THEIR ADMISSIONS, AND SO THAT'S WHERE I COULD OFFER  
10 THE MOST HELP, I THOUGHT.

11 Q. AND HOW LONG HAVE YOU KNOWN -- LET ME ASK YOU THIS.  
12 DO YOU KNOW PROFESSOR MARCINE -- PROFESSOR BLOUGH?

13 A. YES, I DO.

14 Q. HOW LONG HAVE YOU KNOWN PROFESSOR BLOUGH?

15 A. SHE WAS AT MENLO WHEN I CAME TO MENLO, SO I'VE KNOWN  
16 HER 27 YEARS.

17 Q. AND DID YOU EVER WORK WITH PROFESSOR BLOUGH OVER THE  
18 27 YEARS YOU HAD BEEN THERE, WITH HER ON ANY OF THE COMMITTEES  
19 AT THE SCHOOL?

20 A. ON A NUMBER OF OCCASIONS, YES.

21 Q. AND CAN YOU TELL US WHAT YOUR EXPERIENCE WAS LIKE IN  
22 TERMS OF WORKING WITH PROFESSOR BLOUGH AS A COLLEAGUE ON SCHOOL

23 COMMITTEES?

24 A. WELL, SHE WAS PARTICULARLY GOOD AT GETTING DOWN TO THE  
25 NITTY GRITTY OF MATTERS AND KEEP THE GROUP FOCUSED ON THE MOST  
26 IMPORTANT ELEMENTS OF WHAT WAS BEING DISCUSSED. SO SHE WAS

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1 OFTEN ASKED TO CHAIR THESE MEETINGS. IT WAS BECAUSE SHE WAS SO  
2 GOOD AT GETTING THINGS DONE IN AN EXPEDITIOUS MANNER.

3 Q. AND IS THAT TRUE OF THE ENTIRE 27 YEARS THAT YOU'VE  
4 KNOWN PROFESSOR BLOUGH AT THE COLLEGE?

5 A. THAT SHE'S BEEN GOOD AT THAT?

6 Q. YES. I'M SORRY, YEAH.

7 A. YES. ON ALL THE OCCASIONS I'VE HAD AN OPPORTUNITY TO  
8 SEE HER.

9 Q. AND BASED ON YOUR EXPERIENCE OVER THE 27 YEARS, DID  
10 YOU OBSERVE THAT PROFESSOR BLOUGH WAS ALSO INVOLVED IN STUDENT  
11 LIFE AT MENLO COLLEGE?

12 A. YES. THAT WAS ANOTHER STRENGTH, BESIDES HER CLASSROOM  
13 STRENGTH. SHE WAS "MENLO MOMMA" OR SOME NAME LIKE THAT THAT I  
14 REMEMBER THAT BECAME A COMMONPLACE WAY OF DESCRIBING HER  
15 OUT-OF-THE-CLASSROOM KIND OF HELP THAT SHE GAVE STUDENTS.

16 Q. AND WAS IT YOUR RECOLLECTION THAT IT WAS THE STUDENTS  
17 THAT REFERRED TO HER AS "MENLO MOM"?

18 A. AS I RECALL, BUT IT MAY HAVE -- THAT TERM MAY HAVE  
19 BEEN USED BY OTHERS, BUT THAT'S WHERE I THOUGHT I HEARD IT  
20 ORIGINATE. AND ALUMS, I THINK, TOO, THOUGH.

21 Q. AND THERE'S BEEN SOME TESTIMONY ALREADY ABOUT THE FACT  
22 THAT STUDENT EVALUATIONS ARE DONE AT MENLO COLLEGE ON A REGULAR  
23 BASIS; IS THAT CORRECT?

24 A. THAT'S TRUE.

25 Q. AND HAVE YOU EVER HAD AN OPPORTUNITY TO REVIEW  
26 PROFESSOR BLOUGH'S STUDENT EVALUATIONS?

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1 A. ON A COUPLE OF OCCASIONS AT LEAST COME TO MIND, YEAH.

2 Q. DO YOU RECALL WHEN THE MOST RECENT OCCASION WAS?

3 A. WELL, IT'S ALL MELDED TOGETHER OVER THE YEARS, BUT I  
4 THINK -- WITHIN THE LAST YEAR, I THINK I SAW THEM AS RECENTLY AS  
5 THAT, BUT I CAN'T BE MUCH MORE SPECIFIC.

6 Q. AND DO YOU RECALL FOR WHICH SEMESTER THE EVALUATIONS  
7 WERE THAT YOU WERE REVIEWING OF PROFESSOR BLOUGH'S?

8 A. A COUPLE OF YEARS AGO. I CAN'T -- YOU KNOW, THAT'S  
9 JUST ALL I CAN SAY. I CAN'T BE REALLY -- I CAN'T NAME THE YEAR  
10 EXACTLY.

11 Q. AND DID YOU REVIEW ALL OF THESE STUDENT EVALUATIONS  
12 THAT YOU RECEIVED REGARDING PROFESSOR BLOUGH?

13 MR. VARTAIN: OBJECTION. LACKS FOUNDATION.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T REMEMBER HOW MUCH I LOOKED  
16 THROUGH IT. I LOOKED THROUGH IT ENOUGH TO NOTICE THAT IT WAS  
17 IMPRESSIVE, AS I REMEMBERED THE LAST TIME I HAD SEEN HER.

18 MR. PETERS: Q. DO YOU RECALL HOW YOU GOT THESE

19 STUDENT EVALUATIONS FOR PROFESSOR BLOUGH?

20 A. NO, I DON'T HONESTLY.

21 Q. AND YOU SAID THEY WERE IMPRESSIVE?

22 A. I THOUGHT SO.

23 Q. AND AT THE TIME THAT YOU REVIEWED THEM, DID YOU FORM  
24 ANY CONCLUSIONS ABOUT HOW THEY COMPARED TO YOUR STUDENT  
25 EVALUATIONS?

26 A. MINE ARE GENERALLY GOOD, BUT HERS ARE BETTER I MUST

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1 SAY.

2 Q. AND THEN A MOMENT AGO YOU MENTIONED THAT SHE WAS -- I  
3 BELIEVE THAT PERHAPS THE "MENLO MOM" TERM WAS ALSO USED BY MENLO  
4 COLLEGE ALUMNAE TO REFER TO PROFESSOR BLOUGH?

5 A. WELL, THAT'S MY RECOLLECTION THAT STUDENTS THAT SHE'D  
6 HAD YEARS BEFORE, I GUESS THAT'S WHERE THAT TERM CAME FROM  
7 ORIGINALLY. BUT THAT'S WHAT I RECALL, YEAH.

8 Q. IS IT COMMON, IN YOUR EXPERIENCE AS A PROFESSOR AT  
9 MENLO COLLEGE, TO HAVE ALUMNAE RETURN TO VISIT YOU?

10 A. TO VISIT INDIVIDUAL PROFESSORS OR COME TO THE COLLEGE  
11 ON CERTAIN OCCASIONS? WHICH DO YOU MEAN?

12 Q. LET'S TAKE THE FIRST ONE, COME TO THE COLLEGE ON  
13 CERTAIN OCCASIONS, THEY'D COME VISIT?

14 A. DEFINITELY.

15 Q. AND WOULD THEY ALSO COME AND VISIT PARTICULAR  
16 PROFESSORS?

17 A. YES. LESS OFTEN, BUT YES.

18 Q. AND HAVE YOU YOURSELF HAD THAT EXPERIENCE THAT ALUMNAE  
19 HAD COME TO VISIT YOU?

20 A. YES.

21 Q. AND ARE YOU AWARE OF WHETHER PROFESSOR BLOUGH DURING  
22 HER TENURE AT MENLO COLLEGE HAD ALUMNAE COME BACK AND VISIT HER  
23 AS WELL?

24 A. DEFINITELY.

25 Q. AND HOW DO YOU KNOW THAT?

26 A. I'VE SEEN THEM. I'VE HEARD ABOUT THEM COMING AFTER

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1 THE FACT; BOTH.

2 Q. BASED ON YOUR OBSERVATIONS IN THE YEARS WORKING WITH  
3 PROFESSOR BLOUGH, WOULD YOU SAY SHE WAS A POPULAR PROFESSOR AT  
4 THE SCHOOL?

5 A. VERY MUCH SO.

6 Q. IS PART OF YOUR JOB AS A PROFESSOR AT MENLO COLLEGE TO  
7 DEVELOP NEW CURRICULUM?

8 A. YES, IT IS.

9 Q. AND ARE YOU AWARE OF WHETHER OR NOT PROFESSOR BLOUGH  
10 EVER DEVELOPED NEW CURRICULUM AT MENLO COLLEGE?

11 A. YES. I THINK SHE PROBABLY -- ON COMMITTEE WORK, IN  
12 GENERAL, RELATED TO CURRICULUM. BUT ALSO NEW CLASSES THAT SHE  
13 CAME UP WITH ON HER OWN, THINGS RELATED TO WOMEN IN BUSINESS AND  
14 THINGS THAT RELATED TO WOMEN STUDIES AND DIVERSITY, THOSE KINDS

15 OF THINGS. I'M PROBABLY FORGETTING SOME, BUT THERE'S AT LEAST  
16 THOSE.

17 Q. HAVE YOU HAD OCCASION TO WRITE RECOMMENDATIONS FOR  
18 PROFESSOR BLOUGH?

19 A. YES.

20 MR. PETERS: CAN WE HAVE EXHIBIT 59, PLEASE.

21 YOUR HONOR, MAY I APPROACH THE WITNESS?

22 THE COURT: PLEASE.

23 MR. PETERS: Q. PROFESSOR MCDONOUGH, SHOWING YOU WHAT  
24 HAS BEEN ADMITTED INTO EVIDENCE AS EXHIBIT 59, IS THIS A LETTER  
25 YOU WROTE ON BEHALF OF PROFESSOR BLOUGH?

26 A. YES, IT IS.

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1 Q. AND YOU STATE IN THE SECOND PARAGRAPH, "THIS LETTER  
2 FOCUSES ON," QUOTE, "MARCY," CLOSE QUOTE, "AS A HIGHLY  
3 EFFECTIVE, KNOWLEDGEABLE AND CARING EDUCATOR, RATHER THAN ON OUR  
4 FRIENDSHIP, AS VALUABLE AS IT IS TO ME."

5 DID YOU AT THE TIME -- WERE YOU BEING TRUTHFUL AND  
6 HONEST WHEN YOU WROTE THAT YOU BELIEVE PROFESSOR BLOUGH WAS AN  
7 EFFECTIVE, KNOWLEDGEABLE AND CARING EDUCATOR?

8 A. DEFINITELY.

9 Q. AND DO YOU BELIEVE THAT TO THIS DAY?

10 A. I DO.

11 Q. AND YOU STATE THAT IN THE -- I BELIEVE IT'S THE FOURTH  
12 PARAGRAPH YOU STATE, " SINCE HER RETURN TO CAMPUS AFTER A

13 DIFFICULT TIME, MARCY HAS ABLY," QUOTE, "PULLED HER WEIGHT IN  
14 TEACHING 100-PLUS STUDENTS DURING THIS PAST SEMESTER AND HAS  
15 WORKED WITH HER 26 ADVISEES AS WELL."

16 HOW DID YOU KNOW THAT PROFESSOR BLOUGH HAD 100-PLUS  
17 STUDENTS THE PAST SEMESTER?

18 A. I CANNOT TELL YOU ANYMORE, IT'S BEEN SEVERAL YEARS.  
19 BUT I'M SURE I LOOKED EVERYTHING UP BEFORE I PUT IT IN THE  
20 LETTER.

21 Q. OKAY.

22 WAS 100-PLUS STUDENTS A FAIRLY HEAVY LOAD FOR A  
23 FACULTY MEMBER AT MENLO?

24 A. IT IS A HEAVY LOAD, YES.

25 Q. AND WHAT ABOUT 26 ADVISEES?

26 A. THAT ALSO SOUNDS HEAVY.

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1 Q. AND CAN YOU JUST TELL THE JURY HOW THE -- OR WHAT THE  
2 EXPECTATIONS OR THE RESPONSIBILITIES ARE AS A FACULTY MEMBER  
3 WHEN YOU ARE ASSIGNED AN ADVISEE AT MENLO COLLEGE? WHAT DOES  
4 THAT MEAN?

5 A. WELL, YOU KNOW, IN TERMS OF THE YOUNGER STUDENTS,  
6 GETTING THEM ACCLIMATED TO COLLEGE AND COLLEGE WORK, AND  
7 TRANSITIONING FROM ANOTHER LEVEL OF SCHOOLING, AND RELATED TO  
8 GETTING COMFORTABLE WITH COLLEGE WORK AND TRYING TO KIND OF GET  
9 AN INDICATION OF THESE PEOPLE'S DEGREE OF BECOMING FAMILIAR WITH  
10 AND COMFORTABLE WITH COLLEGE WORK; BUT ALSO DISCUSSIONS ABOUT

11 PARTICULAR CLASSES AND HOW THEY'RE DOING AS THAT SEEMS TO BE  
12 NEEDED.

13 Q. YOU CLOSE YOUR LETTER BY SAYING, "I'M PROUD TO COUNT  
14 MARCINE BLOUGH AS MY FRIEND, AND BECAUSE OF HER GOOD MIND, AND  
15 GOOD HEART AND EXCELLENCE IN TEACHING I HEARTILY RECOMMEND HER  
16 FOR REAPPOINTMENT."

17 DO YOU RECALL WRITING THAT?

18 A. NO. IT'S BEEN THREE YEARS BUT, I MEAN, IT SOUNDS  
19 FAMILIAR NOW THAT YOU READ IT; YES.

20 Q. OKAY.

21 A. I'M SURE I WROTE IT. YES.

22 Q. AND YOU STILL BELIEVE THAT TO THIS DAY MARCINE BLOUGH  
23 HAS A GOOD MIND, GOOD HEART AND IS EXCELLENT IN TEACHING?

24 A. YES.

25 Q. NOW, EARLIER IN THE LETTER YOU WRITE IN THE SECOND  
26 PARAGRAPH, "MARCINE HAS HAD MORE THAN HER SHARE OF MEDICAL AND

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1 OTHER UNFORESEEABLE PROBLEMS IN THE RECENT PAST."

2 WHAT WERE YOU REFERRING TO WHEN YOU WERE REFERRING TO  
3 HER SHARE OF MEDICAL PROBLEMS?

4 A. WELL, CANCER IS THE BIGGEST THING THAT, YOU KNOW,  
5 COMES TO MIND. YOU KNOW, IT'S BEEN QUITE A WHILE SINCE ALL THIS  
6 TOOK PLACE, SO THAT'S THE MAIN THING THAT I REMEMBER WHEN I'M  
7 ASKED ABOUT THAT. BUT I THINK THERE WERE OTHER ITEMS AS WELL.

8 Q. WHILE PROFESSOR BLOUGH WAS AT MENLO COLLEGE, HOW OFTEN



9 DID YOU SEE HER, LET'S SAY, IN THE 2006 -- 2005, 2006 TIMEFRAME?

10 A. IN A TWO-YEAR PERIOD, IT'S HARD TO SAY JUST WHAT WAS  
11 GOING ON. THAT WAS WHEN SHE WAS BACK TO SCHOOL; IS THAT  
12 CORRECT? I CAN'T REMEMBER THE TIMES WHEN SHE WAS THERE AND GONE  
13 ANYMORE, AFTER ALL THE YEARS I'VE BEEN THERE.

14 Q. SURE. IT WAS A BAD QUESTION. LET ME FOCUS YOUR  
15 ATTENTION TO THE FALL OF 2005 AND SPRING OF 2006. WHILE  
16 PROFESSOR BLOUGH WAS THERE TEACHING, ON AVERAGE, HOW OFTEN WOULD  
17 YOU SEE HER IN A WEEK?

18 A. OH, FIVE OR SIX AT LEAST.

19 Q. WOULD YOU HAVE LUNCH WITH HER FREQUENTLY?

20 A. DEFINITELY. YES.

21 Q. AND WOULD YOU DESCRIBE YOURSELF AS SOCIAL FRIENDS?

22 A. YES, I WOULD.

23 Q. AND SHE WOULD TALK TO YOU ABOUT VARIOUS PROBLEMS,  
24 INCLUDING HER MEDICAL PROBLEMS?

25 A. YES.

26 Q. OTHER THAN -- SO LET'S FOCUS INTO NOW THE SPRING

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1 SEMESTER IN 2006. DID PROFESSOR BLOUGH EVER TELL YOU ABOUT ANY  
2 PROBLEMS, ANY PHYSICAL PROBLEMS SHE WAS HAVING RELATING TO HER  
3 CANCER?

4 A. HER CANCER -- I WAS THINKING MORE ABOUT HEARING KIND  
5 OF THINGS. BUT CANCER, I CAN'T SAY THAT THAT PARTICULAR BLOCK  
6 OF TIME WAS -- I LEARNED SOMETHING NEW ABOUT CANCER.

7 Q. DID SHE TELL YOU ABOUT ANY HEARING PROBLEMS SHE WAS  
8 HAVING?

9 A. YES.

10 Q. WHAT DID SHE TELL YOU?

11 A. THAT SHE WAS HAVING INCREASING TROUBLE HEARING, YOU  
12 KNOW, IN THE CLASSROOM. RESPONSES OF STUDENTS AND SO FORTH,  
13 ESPECIALLY FURTHER BACK IN THE ROOM OR WHEN THERE WAS AMBIENT  
14 NOISE AROUND, IT WAS INCREASINGLY DIFFICULT FOR HER.

15 Q. AND DID SHE EVER EXPRESS TO YOU WHAT SHE BELIEVED WAS  
16 CAUSING THE HEARING LOSS?

17 MR. VARTAIN: OBJECTION. HEARSAY.

18 THE COURT: SUSTAINED.

19 MR. PETERS: Q. DID THE FACT THAT SHE WAS EXPERIENCING  
20 HEARING LOSS CAUSE ANY FRUSTRATION WITH MS. BLOUGH -- OR  
21 PROFESSOR BLOUGH, FROM YOUR STANDPOINT?

22 MR. VARTAIN: OBJECTION. HEARSAY.

23 THE COURT: WHY DON'T YOU APPROACH.

24 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

25 MR. PETERS: Q. OKAY. PROFESSOR MCDONOUGH, LET'S  
26 MOVE FORWARD IN TIME TO THE END OF THE SPRING SEMESTER OF 2006.

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1 DID YOU SPEAK WITH ANYONE FROM MENLO COLLEGE ADMINISTRATION  
2 REGARDING PROFESSOR BLOUGH'S EMPLOYMENT AT THAT TIME?

3 A. YES. I WENT WITH A FRIEND TO CARLOS LOPEZ, WHO WAS  
4 THEN PRESIDENT OF THE COLLEGE, TO INTERCEDE ON MARCY'S BEHALF --

5 OR TO ASK HIM IF HE WOULD, IS WHAT I SHOULD HAVE SAID. WE WERE  
6 CONCERNED ABOUT HER AND WANTED TO MAKE OUR WISHES ON HER BEHALF  
7 KNOWN, BECAUSE OF HER LONG SERVICE AND HIGH QUALITY OF THAT  
8 SERVICE.

9 Q. AND DID YOU, IN FACT, MEET WITH PRESIDENT LOPEZ?

10 A. YES, I DID.

11 Q. AND WHERE DID THAT MEETING TAKE PLACE?

12 A. IT TOOK PLACE IN THE PRESIDENT'S OFFICE. AND WHEN I  
13 GOT THERE, CRAIG WAS WITH DOCTOR -- THE PRESIDENT, AND THEY WERE  
14 TALKING. AND THEN I NOTICED THAT THE PRESIDENT WAS -- CARLOS  
15 WAS A LITTLE BIT AGITATED. AND I JUST WALKED IN, SO I WASN'T  
16 SURE THAT THE SOURCE OF THE AGITATION WAS SOMETHING THEY HAD  
17 BEEN TALKING ABOUT BEFOREHAND OR WHETHER IT WAS ACTUALLY ON THAT  
18 MATTER.

19 AS TIME PASSED, MINUTES PASSED, I BECAME AWARE OF THE  
20 FACT THAT THEY WERE INDEED TALKING ABOUT MARCY'S SITUATION. AND  
21 I GOT THE FEELING, AS THE MINUTES PROGRESSED, THAT CARLOS WAS  
22 NOT FAVORABLY DISPOSED TO INTERCEDING. I DON'T KNOW WHETHER --  
23 WHAT THE REASON FOR THAT WAS, BUT IT JUST IS A -- THAT WAS MY  
24 NET TAKEAWAY, IF YOU WILL, FROM THAT CONVERSATION, THAT IT  
25 DIDN'T SEEM AS IF OUR INTERCESSION WAS HELPFUL.

26 Q. AND I THINK YOU HINTED AT IT, BUT WHAT WAS YOUR GOAL

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1 IN ATTENDING THAT MEETING WITH PRESIDENT LOPEZ?

2 A. TO TRY TO GET THE PRESIDENT TO INTERCEDE ON MARCY'S

3 BEHALF OR TO DO SOMETHING SO THAT SHE WOULD BE ABLE TO GET HER  
4 FULL-TIME JOB BACK.

5 Q. AND WAS IT YOUR UNDERSTANDING AT THAT TIME THAT SHE NO  
6 LONGER WAS A FULL-TIME PROFESSOR AT MENLO COLLEGE?

7 MR. VARTAIN: OBJECTION. LEADING THE WITNESS.

8 THE COURT: SUSTAINED.

9 MR. PETERS: Q. WHAT WAS YOUR UNDERSTANDING AS TO HER  
10 EMPLOYMENT STATUS AT THAT POINT IN TIME THAT YOU MET WITH  
11 PRESIDENT LOPEZ?

12 A. I CAN'T REMEMBER WHETHER SHE WAS PART TIME THEN OR IF  
13 IT WAS AFTER THAT TIME. AGAIN, THERE'S A LOT OF TIME AND ORDER  
14 IN WHICH THINGS HAPPENED THAT I CAN'T RECALL, YOU KNOW,  
15 PRECISION. BUT WE -- I OR WE -- I'LL JUST SPEAK FOR MYSELF. I  
16 BELIEVE THAT SHE WAS IN NEED OF SOME HELP IN TERMS OF SOMEBODY  
17 COMING TO HER AID, SO I MUST HAVE THOUGHT THAT THINGS WERE NOT  
18 GOING WELL IN ORDER -- YOU KNOW, TO MAKE IT FEEL AS IF GOING TO  
19 TALK TO CARLOS WAS NECESSARY OR WORTHWHILE.

20 Q. AND DID PROFESSOR BLOUGH ASK YOU TO GO MEET WITH  
21 PRESIDENT LOPEZ ON HER BEHALF?

22 A. I HONESTLY CAN'T REMEMBER WHETHER WE TOOK IT UPON  
23 OURSELVES TO DO THAT OR WHETHER -- I WOULD THINK NOW THAT WE  
24 CHOSE TO DO IT ON OUR OWN, BUT I CAN'T SWEAR TO THAT.

25 Q. AND CAN YOU DESCRIBE FOR US PRESIDENT LOPEZ'S DEMEANOR  
26 DURING THE MEETING?

1 A. WELL, HE LOOKED AS IF WE WERE DISCUSSING A RELATIVELY  
2 UNPLEASANT SUBJECT. THAT'S KIND OF MY GENERALIZED KIND OF  
3 IMPRESSION.

4 Q. AND I THINK YOU SAID YOU THOUGHT HE WAS AGITATED?

5 A. YES.

6 MR. VARTAIN: I'M GOING TO -- NO COMMENT.

7 THE COURT: THANK YOU.

8 MR. PETERS: Q. AND DO YOU RECALL ANYTHING THAT  
9 PRESIDENT LOPEZ SAID DURING THAT MEETING WITH REGARD TO  
10 PROFESSOR BLOUGH?

11 A. YOU KNOW, IT'S REALLY A BLANK. AND I CAN'T REMEMBER  
12 THE SPECIFICS OF THAT CONVERSATION -- TWO OR THREE YEARS AGO, I  
13 REALLY CANNOT -- A 15, 20-MINUTE MEETING, I'M SORRY TO SAY I  
14 CAN'T REMEMBER.

15 Q. THINKING BACK ON THAT MEETING, AS YOU WERE LEAVING THE  
16 MEETING, DID YOU FEEL THAT YOU HAD ACHIEVED YOUR GOAL OF  
17 ATTENDING THAT MEETING WITH PRESIDENT LOPEZ?

18 MR. VARTAIN: OBJECTION. IRRELEVANT.

19 THE COURT: OVERRULED.

20 THE WITNESS: NO. I FELT THAT IT WAS NOT. MY  
21 OBJECTIVE WAS NOT MET. I GOT THAT FEELING.

22 MR. PETERS: OKAY.

23 Q. DID YOU FEEL YOU HAD CHANGED PRESIDENT LOPEZ'S MIND?

24 A. NO.

25 Q. NOW, YOU AUTHORED THIS LETTER MAY 2005, WHICH WE HAVE  
26 MARKED AS EXHIBIT 59. AT THE TIME THAT YOU WROTE THIS LETTER OF

1 RECOMMENDATION FOR PROFESSOR BLOUGH, YOU WERE AWARE THAT SHE HAD  
2 SOME MEDICAL ISSUES, CORRECT?

3 A. YES. I THINK IT WAS BEFORE THE HEARING, BUT YES.

4 Q. AND WERE YOU ALSO AWARE THAT SHE WAS HAVING SOME  
5 MARITAL ISSUES AT THE TIME?

6 A. YES.

7 Q. SHE TALKED TO YOU ABOUT PERSONAL ISSUES?

8 A. YES.

9 Q. AND IN SPITE OF ALL THAT, YOU WROTE THE LETTER OF  
10 RECOMMENDATION THAT'S EXHIBIT 59; IS THAT RIGHT?

11 A. CORRECT.

12 Q. AND I TAKE IT, SINCE YOU WROTE THE LETTER YOU DIDN'T  
13 BELIEVE THAT THOSE ISSUES INTERFERED WITH HER ABILITY TO TEACH?

14 MR. VARTAIN: LEADING THE WITNESS.

15 THE COURT: SUSTAINED.

16 MR. PETERS: Q. DID YOU CONTINUE TO SEE  
17 PROFESSOR BLOUGH DURING THE SUMMER OF 2006, AFTER YOU HAD HAD  
18 THE MEETING WITH PRESIDENT LOPEZ?

19 A. YES. I'M SURE I DID. AND WE'VE BEEN SEEING EACH  
20 OTHER PRETTY REGULARLY FOR A LONG TIME, AND CERTAINLY DURING  
21 THAT TIME.

22 Q. AND HOW DID SHE APPEAR TO YOU TO BE DOING EMOTIONALLY,  
23 WITH THE FACT THAT SHE WAS NO LONGER TEACHING AT MENLO COLLEGE?

24 MR. VARTAIN: OBJECTION. HE'S NOT A DOCTOR.

25 THE COURT: OVERRULED.

1 WITH A COMBINATION OF THOSE DIFFERENT FACTORS. THE LACK OF  
2 SUPPORT THAT SHE SOUGHT FROM THE COLLEGE AND --

3 MR. VARTAIN: MOVE TO STRIKE AS HEARSAY.

4 THE COURT: SUSTAINED. I WILL STRIKE THAT.

5 PROFESSOR MCDONOUGH, WE'RE LOOKING FOR YOUR  
6 OBSERVATIONS.

7 THE WITNESS: PARDON ME?

8 THE COURT: WE'RE LOOKING FOR YOUR OBSERVATIONS.

9 THE WITNESS: OKAY. THANK YOU.

10 I SAW HER. SHE WAS HAVING A DIFFICULT TIME.  
11 EMOTIONALLY, IT WAS A TOUGH TIME FOR HER.

12 MR. PETERS: Q. WAS SHE, ON OCCASION, DURING THE  
13 SUMMER OF 2006, WHEN YOU WOULD MEET WITH HER AND TALK ABOUT  
14 THESE ISSUES, WAS SHE CRYING?

15 A. YES. AT TIMES, YES.

16 Q. FINALLY, PROFESSOR BLOUGH (SIC), WERE YOU CONTACTED BY  
17 ANYONE FROM THE SCHOOL IN THE LAST COUPLE OF WEEKS REGARDING  
18 YOUR TESTIMONY HERE TODAY?

19 A. LET'S SEE. I WAS CONTACTED ABOUT MY TESTIMONY, YES.

20 Q. WHO CONTACTED YOU?

21 A. A BRIEF CONVERSATION WITH JAMES -- I CAN'T REMEMBER  
22 THE LAST NAME. THE PROVOST.

23 Q. IS THAT JAMES KELLY?

24 A. KELLY, EXCUSE ME. YES.

25 Q. AND DO YOU RECALL WHEN MR. KELLY OR PROVOST KELLY

26 CONTACTED YOU?

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1 A. JUST BRIEFLY OUTSIDE OF OUR CLASSROOM BUILDING FOR A

2 MINUTE OR SO, AND THAT'S ABOUT THE EXTENT OF IT.

3 Q. WHAT DID HE ASK YOU?

4 A. WONDERED WHETHER I WOULD BE -- COULD BE AVAILABLE TO

5 HAVE THE COLLEGE'S ATTORNEY TALK ABOUT -- JUST TO GET SOME

6 INFORMATION ABOUT WHAT I WAS MAYBE GOING TO SAY AT THE MEETINGS

7 OR HOW I SAW THINGS. I COULDN'T SAY, BUT I JUST THOUGHT THAT

8 THAT WOULD NOT BE THE THING TO DO.

9 Q. DID PROVOST KELLY TELL YOU ANYTHING ELSE AT THAT TIME?

10 A. NOTHING COMES TO MIND AT THIS MOMENT.

11 Q. WAS THAT THE FIRST TIME YOU HAD BEEN CONTACTED BY

12 PROVOST KELLY REGARDING YOUR TESTIMONY HERE AT THIS TRIAL?

13 A. ALL I CAN RECALL AT THE MOMENT.

14 MR. PETERS: OKAY. THANK YOU.

15 THE COURT: CROSS-EXAMINATION?

16

17 CROSS-EXAMINATION

18 BY MR. VARTAIN:

19 Q. GOOD AFTERNOON, PROFESSOR.

20 A. GOOD AFTERNOON.

21 Q. I DON'T HAVE TOO MANY QUESTIONS.



22           WHEN YOU SPOKE WITH THE PRESIDENT, PRESIDENT LOPEZ  
23   THERE IN 2006, HE DIDN'T SAY ANYTHING DEROGATORY ABOUT  
24   PROFESSOR BLOUGH, DID HE, AS FAR AS YOU CAN RECALL?

25       A. I CAN'T RECALL. I'M SORRY.

26       Q. YOU DON'T RECALL ANY DEROGATORY STATEMENTS, EITHER

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1   PRESIDENT LOPEZ HAS EVER MADE OR ANY OTHER OFFICER OF THE  
2   COLLEGE HAS EVER MADE ABOUT PROFESSOR BLOUGH; IS THAT CORRECT?

3       A. I CAN'T REMEMBER ANY.

4       Q. HAVE YOU EVER KNOWN A FACULTY MEMBER WHO WAS UNABLE TO  
5   GET DISABILITY ACCOMMODATIONS FROM THE COLLEGE?

6       A. NOT -- NO, NOT OFFHAND.

7       Q. DID PROFESSOR BLOUGH TELL YOU OF THE EXTENT TO WHICH  
8   SHE WAS MISSING CLASS IN THE SPRING OF 2006?

9       A. THE EXTENT TO WHICH?

10      Q. SHE WAS MISSING HER TEACHING OBLIGATIONS IN THE SPRING  
11   OF 2006, DID SHE TELL YOU THAT?

12      A. I WAS AWARE THAT THERE WERE SOME INTERRUPTIONS, BUT I  
13   CAN'T REMEMBER HOW MUCH OR HOW FREQUENTLY.

14      Q. WHEN YOU WROTE THIS LETTER -- WHICH I THINK WAS IN  
15   2005?

16      A. RIGHT.

17      Q. YOU WROTE THAT LETTER LONG BEFORE THIS ISSUE OF HER  
18   PROBLEMS MEETING HER TEACHING OBLIGATION AROSE; IS THAT CORRECT?

19      A. WELL, THE CANCER HAD ALREADY OCCURRED, I THINK, BY

20 THAT TIME, BUT THE HEARING ELEMENT WAS BEFORE. YEAH.

21 Q. OKAY. BUT THE PROBLEMS IN THE SPRING THAT SHE TOLD  
22 YOU SHE HAD MEETING CLASSES, THAT CAME AFTER YOU WROTE THIS  
23 LETTER, CORRECT?

24 A. I THINK THAT'S CORRECT. YES.

25 Q. HAVING BEEN A TEACHER FOR SO MANY YEARS AT MENLO  
26 COLLEGE, WOULD YOU AGREE THAT BECAUSE OF THE CLOSE STUDENT

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1 FACULTY CONTACT THAT EACH AND EVERY TEACHER AT THE COLLEGE AND  
2 THEIR ABILITY TO WORK FULL TIME IS AN IMPORTANT -- IS IMPORTANT  
3 TO THE COLLEGE?

4 A. IT IS IMPORTANT. YES.

5 Q. AND EACH FACULTY MEMBER HAVING THE ABILITY TO THINK  
6 CLEARLY SO THEY CAN FOCUS IN CLASS AND RESPOND TO THE STUDENTS,  
7 WOULD YOU AGREE THAT THAT'S IMPORTANT AS WELL?

8 MR. PETERS: OBJECTION. LACKS FOUNDATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: THAT'S A VALUABLE ATTRIBUTE. YES.

11 MR. VARTAIN: NO FURTHER QUESTIONS.

12 THE COURT: REDIRECT FOR THIS WITNESS?

13 MR. PETERS: JUST BRIEFLY.

14

15 REDIRECT EXAMINATION

16 BY MR. PETERS:

17 Q. PROFESSOR MCDONOUGH, DID YOU EVER RECEIVE A TELEPHONE

18 CALL FROM JIM KELLY REGARDING YOUR TRIAL TESTIMONY?

19 MR. VARTAIN: OUTSIDE THE SCOPE OF --

20 THE COURT: I'LL ALLOW IT.

21 THE WITNESS: OH, YES.

22 MR. PETERS: Q. DO YOU RECALL WHEN THAT TELEPHONE

23 DISCUSSION WAS?

24 A. I THINK IT WAS THE DAY BEFORE THANKSGIVING. YOU KNOW,

25 TUESDAY, WHATEVER THE DAY OF THE WEEK IT WAS.

26 Q. AND DID YOU ACTUALLY SPEAK WITH MR. KELLY, PROVOST

458

1 KELLY?

2 A. YES.

3 Q. AND WHAT DID HE TELL YOU DURING THAT TELEPHONE

4 DISCUSSION?

5 A. MY MEMORY IS REALLY SHOT. OH, HE SAID INITIALLY THAT

6 HE WAS CALLING TO JUST MAKE ME AWARE OF THE FACT THAT, IN CASE I

7 WASN'T AWARE OF IT, THAT I WAS TO BE CALLED TO THIS TRIAL. AND

8 I TOLD HIM THAT I WAS ALREADY AWARE, THAT I HAD BEEN SUBPOENAED

9 AND SO FORTH. AND HE SAID SOMETHING ABOUT THE FACT THAT HE WAS

10 THE PERSON WHO HAD GIVEN THE SHORT-TERM OR TEMPORARY ASSIGNMENT

11 TO MARCY AT THAT TIME, BECAUSE THAT'S THE KIND OF ASSIGNMENT SHE

12 HAD PREVIOUSLY.

13 AND HE ASSUMED, FOLLOWING ON THE NATURE OF THE

14 RELATIONSHIP THAT IT WAS THAT LAST THAT HE WAS AWARE OF,

15 SOMETHING ON THAT ORDER. BUT THAT HE THOUGHT THAT HER

16 EVALUATIONS WERE NOT GOOD, HORRIBLE. I DON'T KNOW WHAT THE  
17 EXACT WORDS WERE, SOMETHING TO THE EFFECT OF HORRIBLE, TERRIBLE  
18 OR SOMETHING LIKE THAT.

19 Q. AND DID YOU RESPOND TO PROVOST KELLY ON THAT ISSUE?

20 A. I DON'T KNOW WHETHER I SAID IT OR WHETHER I JUST  
21 THOUGHT IT, THAT IT'S NOT SQUARE WITH MY KNOWLEDGE OF MARCY AND  
22 HER ABILITY TO TEACH. I HADN'T SEEN WHAT HE SAID HE HAD SEEN,  
23 SO I COULDN'T CALL HIM WRONG. BUT THAT CERTAINLY WASN'T THE  
24 MARCY I KNOW.

25 Q. ANYTHING ELSE OCCUR DURING THAT DISCUSSION?

26 A. THAT'S ALL I CAN RECALL.

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1 Q. AND DID PROVOST KELLY SAY WHETHER HE HAD EVER MET OR  
2 KNEW PROFESSOR BLOUGH?

3 A. I THINK HE SAID THAT HE HAD NOT MET HER AND -- HAD NOT  
4 MET HER.

5 MR. PETERS: THANK YOU.

6 THE COURT: RE-CROSS?

7 MR. VARTAIN: JUST TWO QUESTIONS, YOUR HONOR.

8 THE COURT: GO AHEAD. YES.

9

10 RE-CROSS EXAMINATION

11 BY MR. VARTAIN:

12 Q. PROFESSOR MCDONOUGH, DID YOU EVER SEE THE PARTS OF  
13 PROFESSOR BLOUGH'S STUDENT EVALUATIONS WHERE HER STUDENT SAID

14 THAT SHE WAS NOT COMING TO CLASS ON A REGULAR BASIS, OR WORDS TO  
15 THAT EFFECT?

16 A. NO. I DON'T RECALL SEEING THAT.

17 MR. VARTAIN: OKAY. THANK YOU.

18 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

19 MR. PETERS: NOTHING FURTHER, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 PROFESSOR MCDONOUGH, THANK YOU FOR YOUR TESTIMONY. I  
22 WILL TAKE THAT EXHIBIT BACK FROM YOU. I THINK IT'S JUST THAT  
23 ONE PAGE. THANK YOU AND YOU ARE FREE TO GO.

24 PLAINTIFF'S NEXT WITNESS?

25 MR. LEBOWITZ: THANK YOU. THE PLAINTIFF WOULD LIKE TO  
26 BEGIN HER TESTIMONY. PROFESSOR MARCINE BLOUGH.

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1 THE COURT: PROFESSOR BLOUGH, IF YOU'D COME FORWARD TO  
2 THE WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

3 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

4 (WHEREUPON, THE WITNESS WAS SWORN.)

5 THE WITNESS: I DO.

6 THE CLERK: PLEASE BE SEATED.

7 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
8 AND SPELL THEM BOTH FOR THE RECORD.

9 THE WITNESS: YES. FIRST NAME IS MARCINE,  
10 M-A-R-C-I-N-E; LAST NAME BLOUGH, B-L-O-U-G-H.

11 THE CLERK: THANK YOU.

12

13

MARCINE BLOUGH,

14

DULY SWORN, TESTIFIED AS FOLLOWS:

15

16

DIRECT EXAMINATION

17

BY MR. LEBOWITZ:

18

Q. GOOD AFTERNOON, PROFESSOR BLOUGH.

19

A. GOOD AFTERNOON.

20

Q. WE ARE GOING TO START YOUR TESTIMONY TODAY. WE'LL

21

FINISH IT AT ANOTHER TIME BECAUSE OF SCHEDULING ISSUES, BUT

22

WE'LL DO AS MUCH AS WE CAN TODAY.

23

FIRST, LET'S TALK A LITTLE BIT ABOUT -- LET THE JURY

24

KNOW A LITTLE BIT ABOUT YOUR BACKGROUND. I WANT TO START WITH

25

WHERE YOU WERE BORN.

26

A. I WAS BORN IN JOHNSTOWN, PENNSYLVANIA. WESTERN

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1

PENNSYLVANIA IS A VERY SMALL -- IT WAS A STEEL TOWN.

2

Q. AND SO YOU GREW UP THERE?

3

A. I GREW UP THERE.

4

Q. WHAT WAS IT LIKE GROWING UP IN WESTERN PENNSYLVANIA?

5

A. IT'S VERY HARD WORKING, CONSERVATIVE, BUT ALSO -- VERY

6

COMFORTABLE PLACE TO GROW UP.

7

Q. WHAT DID YOUR PARENTS DO?

8

A. MY MOTHER WAS A HOMEMAKER AND MY FATHER WAS A

9

SMALL-TOWN LAWYER.

10 Q. WHAT KIND OF LAW DID HE PRACTICE?

11 A. ANYTHING SMALL-TOWN LAWYERS DO. HE WROTE WILLS, FILED  
12 DEEDS, NOTHING BIG.

13 Q. JUST HAD A SHOP ON THE STREET?

14 A. YEAH. HE HAD A ONE-PERSON -- HE HAD ONE PARTNER.

15 Q. OKAY.

16 AND DID YOU GO TO HIGH SCHOOL IN JOHNSTOWN?

17 A. YES, I DID.

18 Q. AND HOW DID YOU DO?

19 A. I WAS VALEDICTORIAN OF MY CLASS IN HIGH SCHOOL.

20 Q. VALEDICTORIAN MEANS YOU GRADUATED FIRST IN YOUR CLASS?

21 A. YES, I DID.

22 Q. PRIOR TO YOU ACHIEVING THE STATUS OF VALEDICTORIAN IN  
23 YOUR CLASS, HAD YOU KNOWN ANY OTHER YOUNG WOMAN TO ACHIEVE THAT  
24 STATUS AT YOUR HIGH SCHOOL?

25 A. I DIDN'T KNOW OF ANY.

26 Q. YOU'D NEVER HEARD OF ANY?

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1 A. I NEVER HEARD OF ANY. THERE MAY HAVE BEEN; I DON'T  
2 KNOW.

3 Q. AND FROM THERE, WHERE DID YOU GO?

4 A. I WENT TO THE UNIVERSITY OF PENNSYLVANIA IN  
5 PHILADELPHIA.

6 Q. WHAT DID YOU STUDY AT THE UNIVERSITY OF PENNSYLVANIA?

7 A. I STUDIED INTERNATIONAL RELATIONS AND SPANISH.

8 Q. AND HOW DID THAT GO?

9 A. WELL, I WAS AWARDED MY JUNIOR YEAR ABROAD IN SPAIN.

10 AND THE COLLEGE SENT ME TO SPAIN, AND I WENT TO THE UNIVERSITY  
11 OF MADRID, STUDIED WITH THE SPANISH STUDENTS. IT WAS THE MOST  
12 DIFFICULT STUDENT YEAR OF MY LIFE. EVENTUALLY, I COULD DREAM IN  
13 SPANISH, SO THAT'S WHEN THEY TOLD ME I WAS OKAY.

14 Q. YOU SAID YOU WERE AWARDED A YEAR ABROAD. CAN YOU  
15 DESCRIBE FOR US WHAT YOU MEAN BY THAT?

16 A. YES. YOU HAVE TO APPLY FOR IT, AND THEN THE SCHOOL  
17 HAS TO APPROVE IT OR NOT.

18 Q. IT WASN'T SOMETHING THAT JUST ANYBODY COULD DO?

19 A. NO.

20 Q. AND HOW DID YOU DO DURING THAT YEAR IN SPAIN?

21 A. I DID VERY WELL.

22 Q. CAN YOU SPEAK SPANISH NOW?

23 A. WELL, NOT AS GOOD AS I USED TO, BUT YES, I SPEAK  
24 SPANISH.

25 Q. SO WHEN DID YOU GRADUATE COLLEGE, UNIVERSITY OF  
26 PENNSYLVANIA?

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1 A. 1974.

2 Q. WHAT DID YOU DO FROM THERE?

3 A. I WENT TO CORNELL LAW SCHOOL.

4 Q. WHY DID YOU GO TO LAW SCHOOL?

5 A. MY FATHER WAS A LAWYER. I WANTED TO HELP PEOPLE. I



6 WANTED TO BE IN A HELPING PROFESSION AND I WANTED TO DO IT  
7 THROUGH SOME METHOD LIKE THIS. I REALLY WASN'T SURE WHAT  
8 METHOD.

9 Q. AND SO HOW DID YOU FIND CORNELL LAW SCHOOL?

10 A. WELL, PENN IS THE IVY LEAGUES. AND, OF COURSE,  
11 EVERYBODY AT PENN WAS APPLYING FOR THE IVY LEAGUES, AND SO DID  
12 I.

13 Q. AND HOW WAS YOUR TIME THERE AT CORNELL?

14 A. VERY, VERY GOOD.

15 Q. AND WHAT KIND OF CLASSES DID YOU TAKE?

16 A. I TOOK ALL REQUIRED CLASSES, BUT I ALSO TOOK LEGAL  
17 AID, WHICH IS -- WE WORKED FOR THE IMPOVERISHED LOCAL  
18 POPULATION. I TOOK SEVERAL UNUSUAL CLASSES.

19 Q. THE LEGAL AID WORK YOU DID, DID YOU ACTUALLY REPRESENT  
20 ANYBODY?

21 A. YES, I WENT TO COURT ONCE.

22 Q. TELL US A LITTLE BIT MORE ABOUT THAT.

23 A. WE REPRESENTED -- I REPRESENTED A WOMAN WHOSE HUSBAND  
24 HAD THROWN THE BABY OUT OF THE TRAILER ON ITS HEAD AND HIT HER  
25 ON THE HEAD WITH A TIRE IRON.

26 Q. SO WHAT WAS YOUR FUNCTION IN REPRESENTING HER?

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1 A. GETTING HER DIVORCED.

2 Q. WERE YOU SUCCESSFUL?

3 A. YES.

4 Q. AND IN YOUR ENTIRE LAW SCHOOL EXPERIENCE, DID YOU EVER  
5 REPRESENT ANYBODY ELSE?

6 A. IN COURT?

7 Q. YES.

8 A. NEVER.

9 Q. OKAY.

10 AND SO WHEN DID YOU GRADUATE LAW SCHOOL?

11 A. 1977.

12 Q. HOW DID YOU DO IN THE END?

13 A. VERY WELL.

14 Q. WHAT DO YOU MEAN?

15 A. TOP THIRD OF MY CLASS IN LAW SCHOOL. THERE WERE ONLY  
16 SEVEN WOMEN, SO I WAS ONE OF THE TOP WOMEN IN THE CLASS.

17 Q. NOW, DESCRIBE FOR US WHAT WERE YOUR JOB OPPORTUNITIES  
18 WHEN YOU GRADUATED LAW SCHOOL?

19 A. WELL, BEING ONE OF SEVEN WOMEN AT THAT TIME, I WAS  
20 APPROACHED BY WALL STREET -- BIG WALL STREET LAW FIRMS, WHICH  
21 ARE THE CREAM OF THE CROP IF YOU WANT TO MAKE IT. I WAS  
22 APPROACHED BY FLORIDA LAW FIRMS. I WAS APPROACHED BY THE  
23 FEDERAL BENCH. IN OTHER WORDS, FEDERAL JUDGES WHO WANTED A  
24 CLERK. AND THAT'S ANOTHER TOP FIELD, BECAUSE YOU CAN GO  
25 ANYWHERE YOU WANT FROM A FEDERAL CLERKSHIP.

26 Q. DESCRIBE FOR US A LITTLE MORE -- LET THE JURY

1 UNDERSTAND WHAT A FEDERAL CLERKSHIP IS.

2 A. A FEDERAL CLERKSHIP IS YOU WORK FOR A JUDGE. FOR  
3 EXAMPLE, THE NUMBER ONE PERSON IN THE CLASS WAS SENT TO THE U.S.  
4 SUPREME COURT. SO YOU GO TO SOME HIGH LEVEL APPEALS COURT, SO  
5 YOU TRAIN UNDER THEM FOR AT LEAST A YEAR. AND FROM THERE  
6 EVERYBODY WANTS YOU BECAUSE YOU HAVE NOW WORKED FOR ONE OF THE  
7 BEST JUDGES IN THE COUNTRY.

8 Q. SO IT'S A PRETTY PRESTIGIOUS WAY TO EXIT LAW SCHOOL?

9 A. VERY PRESTIGIOUS, YES.

10 Q. AND THE WALL STREET FIRMS THAT WERE APPROACHING YOU,  
11 WHAT KIND OF LAW WERE THEY PRACTICING?

12 A. THEY WERE PRACTICING CORPORATE LAW.

13 Q. DID THAT INTEREST YOU AT ALL?

14 A. NO, IT DIDN'T.

15 Q. WHY NOT?

16 A. I WANTED TO GIVE. I WANTED TO DO SOMETHING GIVING,  
17 GIVE BACK. AND PRACTICING CORPORATE LAW DID NOT FEEL LIKE  
18 GIVING.

19 Q. AND HOW ABOUT WORK FOR ANY OF THE FEDERAL JUDGES, DID  
20 YOU PURSUE ANY OF THOSE?

21 A. I SPOKE TO SOME. BUT, AGAIN, I JUST -- IT WASN'T WHAT  
22 I WANTED TO DO, EVEN THOUGH I COULD HAVE.

23 Q. SO WHAT DID YOU WANT TO DO?

24 A. I WANTED TO WORK WITH STUDENTS. I HAD DECIDED BY THEN  
25 THAT I WANTED TO WORK WITH UNDERGRADUATE STUDENTS, AND I WANTED  
26 TO WORK WITH THEM ONE ON ONE.

1 Q. HOW DID YOU COME TO THAT DECISION?

2 A. HOW DID I COME TO IT? I DON'T KNOW. JUST BY THE TIME  
3 I GRADUATED, I SAID, "I WANT TO BE A TEACHER. I WANT TO WORK  
4 WITH UNDERGRADS." I WANT TO WORK WITH THEM ONE ON ONE. I WANT  
5 TO KNOW THEM PERSONALLY; WANTED TO HAVE THEM KNOW ME PERSONALLY.

6 Q. SO WHAT DID YOU DO TO PURSUE THIS?

7 A. I DID A LOT OF RESEARCH. I RESEARCHED COLLEGES ALL  
8 OVER THE COUNTRY WHO HAD SMALL TEACHING COLLEGES. IN OTHER  
9 WORDS, NOT PUBLISH OR PERISH, BUT WHERE YOU WERE SUPPOSED TO  
10 TEACH, AND YOU WERE SUPPOSED TO HELP THE STUDENTS AND ADVISE  
11 THEM, AND HELP THEM PERSONALLY.

12 Q. AND HOW MANY SCHOOLS DID YOU IDENTIFY IN THIS PROCESS?

13 A. I IDENTIFIED ABOUT FOUR.

14 Q. AND WAS MENLO COLLEGE ONE OF THE FOUR?

15 A. YES, MENLO COLLEGE WAS ONE OF THE FOUR.

16 Q. SO WHAT DID YOU DO NEXT IN YOUR PURSUIT OF EMPLOYMENT?

17 A. I APPLIED TO ALL FOUR SCHOOLS FOR A FULL-TIME POSITION  
18 IN BUSINESS LAW. THAT'S WHAT THEY WERE TEACHING AT THE TIME.

19 Q. AT ALL OF THOSE SCHOOLS?

20 A. YES.

21 Q. OKAY.

22 AND WHAT DO YOU MEAN "BUSINESS LAW"? WHAT WAS IT THAT  
23 THEY WERE TEACHING?

24 A. IT'S NOW CALLED "LEGAL ENVIRONMENT OF BUSINESS," BUT  
25 WE CALLED IT "BUSINESS LAW" THEN. WHAT IT MEANT WAS  
26 INTRODUCTORY STUDIES TO LAW AND HOW IT AFFECTS YOU. THESE ARE

1 BUSINESS STUDENTS, SO HOW IT WOULD AFFECT YOU IF YOU WERE A  
2 BUSINESS PERSON AND TO UNDERSTAND SOME LAW.

3 Q. AND SO WHAT HAPPENED NEXT IN THE PROCESS AFTER YOU  
4 APPLIED?

5 A. I WAS OFFERED TWO JOBS; TWO OF THE FOUR JOBS.

6 Q. WHICH COLLEGES?

7 A. CAL POLY IN LOS ANGELES AND MENLO, OF COURSE.

8 Q. DID YOU VISIT THE COLLEGE?

9 A. I WENT TO CAL POLY, AND I REALLY DIDN'T LIKE L.A., I  
10 HAVE TO ADMIT. SO I CAME UP HERE AND I VISITED MENLO, WHERE I  
11 DID LIKE THE BAY AREA; SO I ACCEPTED THE JOB AT MENLO COLLEGE.

12 Q. TELL US ABOUT THE INTERVIEW PROCESS. WHAT HAPPENED?

13 A. I CAME TO MENLO AND THE ENTIRE BUSINESS FACULTY TOOK  
14 ME OUT TO DINNER; THE ENTIRE BUSINESS FACULTY TOOK ME OUT TO  
15 DINNER. I INTERVIEWED ONE ON ONE WITH EVERYBODY IN THE BUSINESS  
16 DEPARTMENT, AND I SAID THIS IS A FAMILY.

17 Q. HOW DID THE PROCESS GO AT CAL POLY? WAS IT --

18 A. CAL POLY WAS MORE I MET WITH ADMINISTRATORS. I DON'T  
19 THINK I SAW A STUDENT. I DON'T REMEMBER SEEING A FACULTY  
20 MEMBER.

21 Q. AND SO REMIND US, WHAT YEAR WAS THIS?

22 A. 1977.

23 Q. AND DID YOU ACCEPT THE OFFER OF EMPLOYMENT FROM MENLO  
24 COLLEGE?

25 A. YES, I DID.

26 MR. LEBOWITZ: CAN I HAVE EXHIBIT 1, PLEASE?

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1 THE CLERK: (COMPLIES.)

2 (PLAINTIFF'S EXHIBIT NO. 1 WAS PREVIOUSLY

3 MARKED FOR IDENTIFICATION.)

4 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

5 THE COURT: YES.

6 MR. LEBOWITZ: Q. PROFESSOR BLOUGH, CAN YOU PLEASE,

7 IN GENERAL TERMS, IDENTIFY THE DOCUMENT WE HAVE JUST PLACED IN

8 FRONT OF YOU, WHICH WE HAVE MARKED AS EXHIBIT 1 FOR

9 IDENTIFICATION?

10 A. YES. THIS IS MY FIRST OFFER OF EMPLOYMENT IN JULY

11 1977 FROM MENLO COLLEGE.

12 Q. DOES THIS LETTER HAVE YOUR SIGNATURE ON IT?

13 A. YES, IT IS.

14 Q. IS THAT YOUR SIGNATURE ON THE BOTTOM?

15 A. YES, IT DOES.

16 MR. LEBOWITZ: OKAY.

17 YOUR HONOR, I'D LIKE TO OFFER EXHIBIT 1 INTO EVIDENCE.

18 MR. VARTAIN: NO OBJECTION.

19 THE COURT: EXHIBIT 1 WILL BE ADMITTED.

20 (PLAINTIFF'S EXHIBIT NO. 1 WAS ADMITTED INTO

21 EVIDENCE.)

22 MR. LEBOWITZ: Q. SO WE SEE HERE, PROFESSOR BLOUGH,

23 YOUR ORIGINAL OFFER LETTER. IT SAYS IN THE FIRST PARAGRAPH THAT  
24 YOU WERE BEING OFFERED EMPLOYMENT FOR THE 1977-1978 YEAR AT A  
25 SALARY OF \$13,000. THAT WAS PRETTY GOOD BACK THEN, HUH?

26 A. NO. NO.

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1 Q. NOT EVEN THEN?

2 A. IT WAS NOT. NO, IT WASN'T.

3 Q. OKAY.

4 AND THE ONE-YEAR TERM, WHAT DID YOU UNDERSTAND THAT  
5 PROCESS TO BE, AS FAR AS YOUR LENGTH OF EMPLOYMENT AND HOW THAT  
6 WOULD GO?

7 A. WELL, I UNDERSTOOD FROM THE FACULTY MEMBERS THAT  
8 MOSTLY EVERYBODY GOT THEIR ONE-YEAR CONTRACT IF THEY DID A GOOD  
9 JOB DURING THE PRECEDING YEAR, SO I DIDN'T WORRY ABOUT IT.

10 Q. THAT WAS SOMETHING YOU HAD LEARNED DURING THE  
11 INTERVIEW PROCESS?

12 A. YES.

13 Q. AND THOSE FACULTY MEMBERS THAT YOU HAD SPOKEN WITH  
14 DURING THE INTERVIEW PROCESS, THEY WERE LONG-TERM FACULTY  
15 MEMBERS?

16 A. YES. CARLOS LOPEZ IS ONE OF THEM.

17 Q. CARLOS LOPEZ WAS ONE OF THOSE FIRST FACULTY MEMBERS  
18 YOU MET WITH?

19 A. YES.

20 Q. ANYBODY ELSE STILL THERE?

21 A. CRAIG MEDLEN, WHO WAS IN HERE, WAS STILL THERE. WHO  
22 ELSE? I DON'T THINK ANYBODY ELSE IS STILL THERE.  
23 Q. OKAY. YOU CAN SET THAT ASIDE.  
24 WE'RE GOING TO GO THROUGH THIS, EVERYTHING THAT  
25 HAPPENED IN A PRETTY CHRONOLOGICAL ORDER, BUT I DO WANT TO STEP  
26 OUT FOR JUST A SECOND OF THAT AND CLEAR UP SOMETHING THAT'S COME

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1 UP. AND THAT'S IN REGARDS TO YOUR BEING A, QUOTE, "LAWYER,"  
2 OKAY?

3 HAVE YOU EVER HAD OR OPERATED A LAW PRACTICE?

4 A. NEVER.

5 Q. HAVE YOU EVER LITIGATED ANY CASES?

6 A. NEVER.

7 Q. NOW, YOU TOLD US ABOUT THE ONE TIME IN LAW SCHOOL,  
8 WHERE YOU REPRESENTED THE INDIGENT WOMAN, MAKING SURE SHE WAS  
9 ABLE TO GET AWAY FROM HER ABUSIVE HUSBAND. AT ANY OTHER TIME  
10 HAVE YOU ACTED AS A LAWYER REPRESENTING SOMEONE?

11 A. NO.

12 Q. AND LET'S BE SPECIFIC. SO IN THAT INSTANCE, YOU  
13 APPEARED IN COURT?

14 A. YES, I DID.

15 Q. SO HAVE YOU APPEARED IN COURT IN ANY OTHER FASHION  
16 SINCE THAT TIME?

17 A. NEVER SINCE.

18 Q. HAVE YOU EVER GIVEN LEGAL HELP TO ANYBODY?



19 A. YES.

20 Q. AND HOW MANY TIMES HAVE YOU DONE THAT?

21 A. TWICE TO FRIENDS.

22 Q. WHAT WAS THE FIRST TIME?

23 A. THE FIRST TIME, A FRIEND OF MINE WANTED TO GIVE HER  
24 HOUSE TO HER DAUGHTER WITH CERTAIN TAX RAMIFICATIONS. SO WE SAT  
25 DOWN TOGETHER, SHE AND I, AT HER COMPUTER AND I GOT THE TAX CODE  
26 OUT, AND WE FIGURED OUT A WAY THAT SHE COULD GIVE HER HOUSE TO

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1 HER DAUGHTER IN A CERTAIN WAY WITH CERTAIN TAX RAMIFICATIONS.

2 Q. HOW LONG AGO WAS THAT?

3 A. THAT WAS EARLY WHEN I GOT HERE. I'D SAY EARLY 1980,  
4 1980-ISH.

5 Q. AND AFTER THAT CIRCUMSTANCE, DID YOU EVER ACT AS A  
6 LAWYER FOR ANYBODY ELSE?

7 A. ONLY ONE MORE TIME, THEN I WENT IN INACTIVE STATUS  
8 BECAUSE I WAS TIRED OF BEING ASKED FOR FREE LEGAL SERVICES. ONE  
9 OF OUR SECRETARIES AT MENLO HAD COME TO MENLO FEELING SHE HAD  
10 BEEN DISCRIMINATED AGAINST BECAUSE SHE WAS AFRICAN AMERICAN.

11 Q. LET ME JUST STOP YOU THERE. SHE WASN'T FEELING THAT  
12 FROM MENLO. IT WAS FROM HER PRIVATE --

13 A. NO. IT WAS A PRIVATE INSTITUTION. SHE CAME RIGHT TO  
14 MENLO. SHE ACTUALLY HAD NO FINANCIAL LOSSES, BUT SHE JUST  
15 WANTED THEM TO APOLOGIZE.

16 Q. AND WHEN WAS THIS?

17 A. 1980-ISH -- '90-ISH, I'M SORRY. AROUND THE '90S.

18 Q. SO WHAT DID YOU DO FOR HER?

19 A. I HELPED HER WRITE A LETTER. MATTER OF FACT, SHE  
20 BOUGHT ME LETTERHEAD. I HAD NO LETTERHEAD. THE LETTERHEAD SAID  
21 "MARCINE BLOUGH, ATTORNEY AT LAW," WHICH WAS TRUE. I WAS A  
22 MEMBER OF THE CALIFORNIA BAR. AND I WROTE A LETTER WITH HER  
23 EXPLAINING THAT THESE ARE THE CIRCUMSTANCES, SHE HAD BEEN  
24 DISMISSED BECAUSE SHE WAS AFRICAN AMERICAN. SHE WAS WORKING  
25 AGAIN, BUT SHE WOULD LIKE SOME PAIN AND SUFFERING.

26 Q. AND WHAT HAPPENED?

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1 A. THEY SENT HER A CHECK FOR \$30,000.

2 Q. PRETTY GOOD LETTER?

3 A. YEAH. IT WAS ALL TRUE.

4 Q. AND AFTER THAT, HAVE YOU DONE ANY LEGAL SERVICES FOR  
5 ANYBODY ELSE?

6 A. NEVER.

7 Q. WHAT IS YOUR CURRENT CALIFORNIA BAR STATUS?

8 A. INACTIVE.

9 Q. AND WHAT DOES THAT MEAN?

10 A. I WENT TO RETIREMENT STATUS AFTER SO MANY FRIENDS  
11 ASKED ME TO DO THINGS THAT I REALLY DIDN'T -- WAS NOT TRAINED TO  
12 DO.

13 Q. SO ASIDE FROM THESE TWO CIRCUMSTANCES YOU'VE  
14 DESCRIBED, WHERE YOU ACTUALLY DID PERFORM SERVICES, IS IT THE

15 CASE THAT OTHER PEOPLE WOULD ASK YOU?

16 A. OH, YES. STUDENTS ASKED ME ALL THE TIME. I MEAN,  
17 LIKE TEN TIMES A YEAR.

18 Q. AND SO YOU WANTED TO HAVE A READY EXCUSE?

19 A. I WANTED TO HAVE AN EXCUSE, "I'M INACTIVE. I'M SORRY.  
20 I CANNOT HELP YOU."

21 Q. OKAY.

22 HAVE YOU EVER LITIGATED AN EMPLOYMENT LAW CASE?

23 A. NEVER.

24 Q. HAVE YOU EVER DEALT WITH -- AS FAR AS BEING A LAWYER,  
25 DID YOU EVER DEAL WITH THE AMERICANS WITH DISABILITIES ACT?

26 A. NEVER.

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1 Q. DID YOU, IN ANY WAY ACTING AS A LAWYER, DEAL WITH ANY  
2 OF THE LAWS COVERING DISABILITY DISCRIMINATION IN THE WORKPLACE?

3 A. NEVER.

4 Q. AND INCLUDED IN THAT UMBRELLA, DID YOU EVER HAVE ANY  
5 EXPERIENCE WORKING AS A LAWYER, DEALING WITH THE CIRCUMSTANCES  
6 UNDER WHICH AN EMPLOYER IS PERMITTED TO ASK AN EMPLOYEE TO GO TO  
7 A MEDICAL EXAM?

8 A. NEVER.

9 Q. LET'S GO BACK INTO WHERE WE WERE. YOU HAD JUST LOOKED  
10 AT EXHIBIT 1, WHICH IS YOUR ORIGINAL OFFER LETTER, WHICH YOU HAD  
11 ACCEPTED EMPLOYMENT. AND LET'S TALK ABOUT -- I WANT TO NOW  
12 FRAME THE YEARS 1977 TO 1998. LET'S FOCUS ON THAT TIME PERIOD

13 FOR A LITTLE BIT. TELL US ABOUT YOUR EXPERIENCE AT MENLO DURING  
14 THAT TIME.

15 A. LOVED IT. LOVED THE STUDENTS -- I'M SORRY. I LOVE MY  
16 COLLEAGUES. JUST ONE MINUTE. I FELT I HAD FOUND A FAMILY.

17 Q. WHAT DO YOU MEAN?

18 A. EVERYBODY CARED ABOUT EACH OTHER, HELPED EACH OTHER.  
19 THEY ARE MY FAMILY. THEY ARE MY FRIENDS. THEY ARE MY LIFE.

20 Q. DID YOU SHARE YOUR EXPERIENCES WITH THEM?

21 A. I TALKED TOO MUCH. I TOLD TOO MANY THINGS ABOUT MY  
22 OWN PERSONAL LIFE. EVERYBODY LAUGHED AT ME, THEY SAID, "OH,  
23 MARCY TELLS EVERYBODY EVERYTHING," AND IT WAS TRUE.

24 Q. THIS CATEGORY OF "TOO MUCH INFORMATION"?

25 A. YEAH, I JUST WANTED TO SHARE WITH THEM.

26 Q. AND WHAT KIND OF WORK DID YOU DO OVER THIS 21-YEAR

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1 PERIOD?

2 A. I TAUGHT BUSINESS LAW MOSTLY, BUT WHEN THE COLLEGE  
3 ASKED ME TO MAKE UP OTHER CLASSES FOR LAW, I WOULD MAKE THEM UP  
4 FOR THEM. FOR EXAMPLE, EMPLOYMENT LAW. I DID TEACH AN  
5 EMPLOYMENT LAW CLASS FOR A HUMAN RESOURCE CONCENTRATION WE HAD  
6 THAT I'M UNDER, SO THAT I TAUGHT THAT FOR A WHILE. SPORTS  
7 MANAGEMENT, THEY ASKED ME TO MAKE UP AND TEACH, AND I DID.  
8 COMMERCIAL LAW, THEY ASKED ME TO MAKE UP AND TEACH, AND I DID.  
9 PROPERTY LAW, THEY ASKED ME TO MAKE UP AND TEACH, AND I DID. I  
10 MADE UP MY OWN COURSES.

11 I MADE UP DIVERSITY IN THE WORKPLACE, TALKING ABOUT --  
12 A DISCUSSION CLASS TALKING ABOUT NOW YOU'RE GOING TO GO OUT IN  
13 THE WORKPLACE AND YOU'RE GOING TO BE WITH A DIVERSE GROUP OF  
14 PEOPLE. YOU'RE GOING TO HAVE TO GET ALONG WITH PEOPLE OF  
15 DIFFERENT ETHNIC BACKGROUNDS, SEXUAL ORIENTATION, WHATEVER IT  
16 MAY BE, AND WHAT ARE YOU GOING TO DO ABOUT IT. SEXUAL  
17 HARASSMENT, WE TALKED ABOUT SEXUAL HARASSMENT. WHAT ARE THE  
18 WOMEN GOING TO DO OR MEN IF THEY WERE HARASSED, WHAT SHOULD THEY  
19 DO, ET CETERA.

20 Q. YOU MENTIONED AN EMPLOYMENT LAW CLASS. FIRST OF ALL,  
21 WHEN WAS THAT?

22 A. WELL, THAT MUST HAVE BEEN IN THE '80S SOMETIME,  
23 BECAUSE IT WAS QUITE A LONG TIME AGO. IT COULD HAVE BEEN EARLY  
24 '90S; LATE '80S, EARLY '90S.

25 Q. HOW LONG DID YOU TEACH THAT CLASS?

26 A. I THINK FOUR YEARS, UNTIL THE PROGRAM FOLDED.

475

1 Q. WHAT WAS THE PROGRAM AGAIN?

2 A. HUMAN RESOURCE CONCENTRATION.

3 Q. DID YOU TEACH ANY OTHER CLASSES IN THAT CONCENTRATION?

4 A. NO, I DID NOT.

5 Q. WHAT KIND OF SUBJECTS DID YOU COVER IN THAT EMPLOYMENT  
6 LAW?

7 A. WE COVERED TERMINATION, ILLEGAL TERMINATION. WE  
8 COVERED THE A.D.A. I DID COVER THE A.D.A. WE COVERED SEXUAL

9 HARASSMENT, ANYTHING THAT A MANAGER WOULD HAVE TO KNOW ABOUT  
10 DEALING WITH THEIR EMPLOYEES.

11 Q. DID YOU COVER ANY TOPICS ABOUT MEDICAL EXAMS IN THAT?

12 A. NO.

13 Q. SO YOU'VE TOLD US ABOUT A NUMBER OF CLASSES THAT YOU  
14 HAVE CREATED FOR TEACHING AT THE COLLEGE?

15 A. YES.

16 Q. DO YOU RECALL CREATING ANY OTHERS?

17 A. CREATING?

18 Q. YES.

19 A. AT THE TIME I WAS LET GO, I WAS CREATING ANOTHER  
20 CLASS. I HAD IT READY TO GO.

21 Q. AND WE'LL GET INTO THAT TIME PERIOD, SO LET'S STICK  
22 WITH THIS 1977 TO 1998 --

23 A. OKAY.

24 Q. -- FOR NOW.

25 AND SO DURING THIS TIME PERIOD DID YOU RECEIVE ANY  
26 AWARDS AT THE COLLEGE?

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1 A. YES, I RECEIVED TWO TEACHER-OF-THE-YEAR AWARDS. I  
2 THOUGHT THEY WERE FROM THE STUDENTS, BUT DR. MEDLEN SAID THIS  
3 MORNING THEY WEREN'T. I THOUGHT THEY WERE THE STUDENTS  
4 PRESENTED IT TO YOU, SO I THOUGHT IT WAS FROM THE STUDENTS. I  
5 RECEIVED THE EMERICK TEACHING PRIZE WHICH DOES COME FROM THE  
6 COLLEGE, THE ADMINISTRATION AND THE COLLEGE. I WAS SENT TO

7 OXFORD ON AN EXCHANGE. MENLO COLLEGE CHOSE ME TO GO TO OXFORD  
8 AND TEACH AT OXFORD UNIVERSITY FOR A SEMESTER.

9 Q. YOU SAID THE EMERICK AWARD?

10 A. EMERICK TEACHING AWARD.

11 Q. WHAT WAS THAT AWARD?

12 A. MR. EMERICK HAD LEFT SOME MONEY TO GIVE AN AWARD TO  
13 THE BEST TEACHERS AND FACULTY. I THINK THIS IS WHAT DR. MEDLEN  
14 WAS TALKING ABOUT. PAST WINNERS WOULD DECIDE ON WHO THIS YEAR  
15 WAS THE BEST, AND I WON THAT.

16 Q. DO YOU RECALL WHEN THAT WAS?

17 A. I'M THINKING '89, BUT I DON'T KNOW.

18 Q. AND HOW ABOUT COMMITTEE WORK? WHAT KIND OF COMMITTEE  
19 WORK DID YOU DO DURING 1977 TO 1998?

20 A. I HAD A LIST OF COMMITTEE WORK THAT'S 20 -- 20 ENTRIES  
21 LONG.

22 Q. SO JUST ABOUT EVERY COMMITTEE IN THE BUSINESS SCHOOL?

23 A. EVERY COMMITTEE IN THE BUSINESS SCHOOL? NO, JUST THE  
24 COLLEGE; SOMETIMES THEY WERE COLLEGE-WIDE. EVERY COMMITTEE,  
25 ANYWHERE, ANYHOW.

26 Q. WHAT KIND OF COMMUNITY ACTIVITIES, IF ANY, DID YOU DO

477

1 DURING THIS TIME SPAN --

2 A. I AM --

3 Q. -- INVOLVING THE COLLEGE?

4 A. INVOLVING WHAT?

5 Q. INVOLVING THE COLLEGE.

6 A. OH, INVOLVING THE COLLEGE.

7 WELL, I MENTORED THE STUDENTS. I HAD THEM COME IN TO  
8 SEE ME -- AS CRAIG REFERRED TO AS THE "COLLEGE MOMMA." I HAD  
9 FIVE RAPE VICTIMS AT THAT TIME WHO CAME TO ME ABOUT RAPE AND  
10 WHAT MY IMPRESSION WAS THEY SHOULD DO. I HAD THREE SEXUALLY  
11 HARASSED STUDENTS COMING TO ME. I HAD FOUR OR FIVE ABUSED WOMEN  
12 COMING TO ME, ASKING WHAT THEY SHOULD DO, HOW THEY SHOULD GET  
13 OUT OF IT. I EVEN HAD A MAN ONCE COME IN CRYING IN MY OFFICE  
14 ABOUT A -- WELL, A SUICIDE ON THE PART OF A FAMILY MEMBER.

15 Q. SO THIS NOTION THAT PROFESSOR MEDLEN TALKED ABOUT THIS  
16 MORNING, THE CAMPUS MOM --

17 A. YES.

18 Q. -- YOU HEARD THAT TESTIMONY?

19 A. YES, I DID.

20 Q. AND DID YOU HEAR THAT TERM?

21 A. ACTUALLY, I HAD NOT HEARD THAT TERM.

22 Q. OKAY.

23 AND SO THESE TIMES WHEN THESE STUDENTS WOULD COME TO  
24 YOU AND TELL YOU SOME VERY INTIMATE AND VERY PERSONAL THINGS,  
25 WAS THAT PART OF WHAT YOU UNDERSTOOD THE REQUIRED FACULTY  
26 RESPONSIBILITIES TO BE?

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1 A. I WOULD NOT SAY IT WAS REQUIRED, BUT IT WAS REQUIRED

2 BY ME. I MEAN, I WANTED TO DO IT, AND I THOUGHT IT WAS PART OF



3 THE JOB, AND I THOUGHT IT WAS MAYBE THE MOST IMPORTANT PART OF  
4 THE JOB.

5 Q. WERE THESE STUDENTS WHO CAME TO YOU, WERE THEY  
6 OFFICIALLY ASSIGNED TO YOU AS ADVISEES?

7 A. NO, THEY WERE NOT. MOST OF THEM CAME FROM MY CLASSES.

8 Q. NOW, LET'S TALK ABOUT THE ADVISING FUNCTIONS A LITTLE  
9 BIT. AND, AGAIN, FOCUSING ON THE SAME TIME PERIOD. WHAT WAS  
10 THAT FUNCTION?

11 A. THE FUNCTION OF THE ADVISOR WAS MENTORING, IN A SENSE.  
12 I'M TALKING ABOUT, NOT AT THE LEVEL OF THE RAPE VICTIMS OR THE  
13 ABUSED VICTIMS. IT WAS MORE MENTORING IN GETTING ALONG IN  
14 COLLEGE, GETTING INTO COLLEGE, GETTING ALONG, MAYBE, NOT WITH  
15 THEIR ROOMMATE. NOTHING TOO EARTH SHATTERING.

16 Q. KIND OF HOW TO GET THROUGH COLLEGE?

17 A. YEAH, HOW TO GET THROUGH COLLEGE.

18 Q. AND HOW DID YOU FIND THAT FUNCTION? DID YOU ENJOY IT?

19 A. IT WAS EASY. YES, I WOULD -- YES, IT WAS FINE.

20 Q. DID YOU LIKE THE INTERACTION WITH THE STUDENTS?

21 A. I LIKED THE INTERACTION WITH THE STUDENTS.

22 Q. AND DURING THE TIME PERIOD, AGAIN, '77 TO '98, HOW DID  
23 YOU -- DID YOU GET THE STUDENT EVALUATIONS WE KEEP HEARING  
24 ABOUT?

25 A. YES, I DID.

26 Q. AND HOW WERE THEY OVER THAT TIME PERIOD?

1 A. THEY WERE EXCELLENT.

2 Q. DID YOU EVER RECEIVE ANY NEGATIVE COMMENTS?

3 A. OCCASIONALLY. I WOULD ALWAYS TELL NEW FACULTY THAT  
4 ONE PERSON ALWAYS HATES YOU EVERY SEMESTER. AND THAT PERSON  
5 HATES YOU, AND YOU JUST CAN'T DO ANYTHING ABOUT IT.

6 Q. YOU OBVIOUSLY TRY YOUR BEST?

7 A. TRY YOUR BEST, BUT THERE'S ALWAYS ONE PERSON THAT  
8 HATES YOU FOR WHO KNOWS WHAT REASON.

9 Q. WAS THERE EVER A PERIOD -- ANY CIRCUMSTANCE IN THIS  
10 SAME TIME PERIOD, '77 TO '98, WHERE THE STUDENT EVALUATIONS  
11 RAISED ANY -- WHEN YOU READ THE STUDENT EVALUATIONS -- RAISED  
12 ANY SERIOUS PROBLEMS AS FAR AS YOUR TEACHING?

13 A. NOT AS FAR AS MY TEACHING, BUT AS FAR AS CHEATING.  
14 THERE'S A PERIOD IN THERE WHEN A LOT OF STUDENTS WROTE DOWN --  
15 AND THIS IS THE TIME TO DO IT -- FELT THAT THERE HAD BEEN A LOT  
16 OF CHEATING AND HOW IT HAD BEEN DONE, SO I KEPT MAKING  
17 ACCOMMODATIONS. FOR EXAMPLE, PEOPLE WOULD BRING IN PREWRITTEN  
18 BLUE BOOKS, WHICH I HADN'T THOUGHT OF.

19 SO I WENT OUT AND GOT A STACK OF PURPLE NOTEPADS AND  
20 PASSED OUT PURPLE NOTEPADS, SO THEY DIDN'T HAVE BLUE BOOKS. THE  
21 NEXT TIME IT WAS BLUE NOTEPADS, AND THEN WHITE AND YELLOW, AND I  
22 HAD A WHOLE BUNCH OF COLOR NOTEPADS, THAT ENDED THAT.

23 THE OTHER CHEATING WAS SITTING TOGETHER AND COPYING.  
24 I SEPARATED EVERYBODY OUT SO THEY COULDN'T SIT WITH ANYBODY.

25 Q. OKAY.

26 ANYTHING IN THERE THAT -- BUT THAT WAS THE EXTENT

1 OF --

2 A. THAT WAS THE MOST SERIOUS THING TO ME, BECAUSE I  
3 DIDN'T WANT THEM CHEATING.

4 Q. OKAY. NOW, LET'S TALK ABOUT 1998.

5 A. '98, YES.

6 Q. WHAT, IF ANYTHING, CHANGED IN THAT YEAR?

7 A. I FELT BURNED OUT. I FELT -- I HAD A LOT OF PASSION  
8 FOR THIS BEFOREHAND. I ASSUME EVERYBODY CAN SEE THAT. THIS IS  
9 WHAT I WANTED. BUT IN '98, I STARTED TO FEEL BURNT OUT AND OFF,  
10 SO I THOUGHT IF I TOOK A YEAR OFF, RECHARGE MY BATTERIES, THAT  
11 WOULD BE GOOD FOR ME.

12 Q. WHEN YOU SAY "BURNED OUT," DESCRIBE FOR US A LITTLE  
13 MORE ABOUT WHAT KINDS OF THINGS YOU WERE FEELING.

14 A. TIRED AND NOT SO PASSIONATE, NOT SO INTERESTED IN THE  
15 THINGS THAT INTERESTED ME IN THE SCHOOL, NOT SO EXCITED. I WAS  
16 EXCITED ALL THE TIME, NOT SO EXCITED ANYMORE.

17 Q. AND SO WHAT DID YOU DO?

18 A. I ASKED FOR A LEAVE OF ABSENCE, UNPAID.

19 Q. WHO DID YOU ASK?

20 A. I ASKED MY DEAN -- MY THEN DEAN, WHO IS NOW  
21 DECEASED -- WHO THEN ASKED HIS BOSS, WHO THEN ASKED HIS BOSS,  
22 AND THEY ALL SIGNED OFF ON IT.

23 Q. THERE WERE NO TROUBLES IN GETTING THIS LEAVE?

24 A. NO TROUBLES.

25 Q. DID YOU HAVE ANY COMPLAINTS ABOUT HOW THAT ALL WENT?

1 Q. AND SO DID YOU TAKE THE YEAR OFF?

2 A. I DID.

3 Q. AND WHAT DID YOU DO?

4 A. I WENT TO HAWAII AND I SPENT A YEAR IN HAWAII TRYING  
5 TO RELAX, RECOVER, RECHARGE MY BATTERIES. I READ A LOT. I  
6 THOUGHT A LOT.

7 Q. AND WHAT WAS YOUR GOAL OVER THIS YEAR?

8 A. MY GOAL WAS TO COME BACK REFRESHED, PASSIONATE,  
9 EXCITED AGAIN. EXCITED ABOUT MY JOB, AND ESPECIALLY EXCITED  
10 ABOUT THE STUDENTS.

11 Q. SO YOU WANTED TO COME BACK TO WORK?

12 A. OH, YES.

13 Q. AND THAT WAS THE POINT OF TAKING THIS YEAR OFF, TO BE  
14 ABLE TO WORK WELL?

15 A. TO BE ABLE TO DO THE WORK AT THE LEVEL I EXPECTED  
16 MYSELF TO DO IT, WHICH WAS AT THE LEVEL OF EXCELLENCE.

17 Q. AND SO YOUR RECHARGED-THE-BATTERIES LEAVE OF ABSENCE  
18 ENDED IN 1999; IS THAT RIGHT?

19 A. YES, IT DID.

20 Q. AND DID YOU COME BACK TO THE SCHOOL?

21 A. YES, I DID.

22 Q. HOW DID THAT GO?

23 A. THERE WAS SOMETHING WRONG WITH ME. I WASN'T WELL. I

24 HAD MIGRAINE HEADACHES. THEY WOULD LAST FOR THREE DAYS IN WHICH  
25 I COULD NOT GET OUT OF BED. I WAS IN A DARK ROOM, COULDN'T  
26 LISTEN TO ANYTHING. I'D GET UP AND THROW UP, PASS OUT IN THE

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1 BATHROOM. AND WHEN I WOKE UP, I'D GET BACK IN BED UNTIL THE  
2 NEXT TIME I HAD TO GET UP TO THROW UP IN THE BATHROOM. I KEPT A  
3 BLANKET IN THE BATHROOM TO COVER ME UP BECAUSE IT WOULD BE SO  
4 COLD WHEN I WOULD WAKE UP ON THE BATHROOM FLOOR.

5 Q. OVER WHAT PERIOD OF TIME WAS THIS HAPPENING?

6 A. IT WAS HAPPENING OVER THAT WHOLE SCHOOL YEAR -- WELL,  
7 IT HAPPENED UNTIL I HAD THE CANCER REMOVED, SO IT HAPPENED  
8 BETWEEN 2000 -- 1998 -- 1999 AND 2001.

9 Q. SO THE 1999-2000 SCHOOL YEAR IS WHEN YOU CAME BACK TO  
10 MENLO AFTER YOUR ONE YEAR LEAVE OF ABSENCE?

11 A. RIGHT.

12 Q. AND WERE YOU EXPERIENCING THESE HEADACHE SYMPTOMS --

13 A. YES, I WAS. YES, I WAS.

14 Q. OKAY.

15 AND SO WHAT, IF ANYTHING, DID YOU DO?

16 A. I WENT TO A LOT OF DOCTORS. I WENT TO ALL KINDS OF  
17 DOCTORS TO TRY TO GET THIS DIAGNOSED. NOBODY COULD DIAGNOSE IT.  
18 I WENT TO DR. GOLDSTEIN IN THE CITY, WHO IS THE HEADACHE  
19 SPECIALIST. HE SAID SOME PEOPLE JUST HAVE MIGRAINES AND HAVE TO  
20 LIVE WITH NINE DAYS A MONTH IN BED, THROWING UP. I SAID I CAN'T  
21 DO THAT. I WANT TO WORK. I HAVE TO WORK. I HAVE TO LIVE. I

22 CAN'T SPEND NINE DAYS IN BED A MONTH THROWING UP.

23 Q. AND SO HOW DID ALL OF THIS AFFECT OR IMPACT YOUR  
24 EMPLOYMENT IN THE '99-2000 SCHOOL YEAR?

25 A. I ASKED FOR ANOTHER LEAVE, THIS TIME A MEDICAL LEAVE.  
26 BECAUSE I SAID -- THE TIME I KNEW I NEEDED A MEDICAL LEAVE IS

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1 THE TIME I THREW UP IN CLASS. I TURNED TO THE BOARD TO WRITE  
2 SOMETHING AND IT SUDDENLY CAME OVER ME, A WAVE OF NAUSEA AND I  
3 THREW UP ON THE FLOOR, RAN OUT OF THE ROOM, AND THAT'S WHEN I  
4 KNEW. I SAID, "I CAN'T WORK. I'M VERY SICK. THERE'S SOMETHING  
5 VERY WRONG WITH ME, AND I CAN'T THROW UP IN CLASS."

6 Q. SO WHAT DID YOU DO?

7 A. I ASKED FOR A LEAVE OF ABSENCE FOR MEDICAL -- A  
8 DISABILITY LEAVE OF ABSENCE.

9 Q. WHEN DID YOU MAKE THAT -- OR TO WHOM DID YOU MAKE THAT  
10 REQUEST?

11 A. THE SAME DEAN AS BEFORE, WHO IS NOW DECEASED, JOHN  
12 JORDAN.

13 Q. AND WHAT HAPPENED AS FAR AS THE REQUEST AND THE LEAVE?

14 A. OH, HE APPROVED IT. IT WAS APPROVED.

15 Q. DID YOU HAVE ANY PROBLEMS WITH GETTING THAT LEAVE  
16 APPROVED?

17 A. NO.

18 Q. AND SO YOU WENT THROUGH THE PROCESS OF HAVING A  
19 LONG-TERM DISABILITY LEAVE APPROVED?

20 A. YES, I DID.

21 Q. DID THAT INVOLVE ANY KIND OF DISABILITY INSURANCE?

22 A. YES. THERE WAS LONG-TERM DISABILITY INSURANCE THAT I  
23 RECEIVED FROM MENLO. AFTER A YEAR OF THAT, THEY ASKED ME TO  
24 APPLY FOR SOCIAL SECURITY DISABILITY, INSTEAD OF THEM BEING ON  
25 THE HOOK, WHICH I DID. AND I RECEIVED SEVEN YEARS OF SOCIAL  
26 SECURITY DISABILITY.

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1 Q. YOU MEAN YOU RECEIVED APPROVAL FOR SEVEN YEARS?

2 A. YES, I DID.

3 Q. OKAY.

4 A. I DIDN'T -- YES, I APPROVED -- I WAS APPROVED FOR  
5 SEVEN YEARS.

6 Q. OKAY.

7 AND SO YOU HAD THE EXPERIENCE OF GOING THROUGH THE  
8 PROCESS OF APPLYING FOR THE PRIVATE INSURANCE LONG-TERM  
9 DISABILITY?

10 A. YES, I DID.

11 Q. AND WHAT DID YOU UNDERSTAND THAT PROCESS -- BY GOING  
12 THROUGH IT, WHAT WERE THE COMPONENTS OF THAT PROCESS?

13 A. I FOUND THAT THE PROCESS WAS MADE SO YOU DIDN'T GET  
14 DISABILITY.

15 Q. ASIDE FROM THAT, WHAT KIND OF THINGS DID YOU HAVE TO  
16 DO?

17 A. I HAD TO GET ALL MY DOCTORS, CURRENT ONES TO SAY I WAS

18 DISABLED, WHICH, OF COURSE, THEY DID. I WAS THROWING UP IN  
19 CLASS. NOBODY COULD SAY I WASN'T DISABLED. BUT THAT WASN'T  
20 ENOUGH. I HAD TO GO TO THEIR DOCTOR, DR. JORDAN PAUPER, IN  
21 HAWAII. I WAS IN HAWAII AT THE TIME. I HAD HIM SAY I WAS  
22 DISABLED, WHICH HE DID.

23 Q. AND SO IN THE PROCESS WHERE YOU HAD TO HAVE YOUR OWN  
24 DOCTORS TELL THE INSURANCE COMPANY ABOUT YOUR CONDITION, WHAT  
25 DID YOU UNDERSTAND ABOUT HOW MUCH INFORMATION THOSE DOCTORS HAD  
26 TO GIVE THE INSURANCE COMPANY?

485

1 A. I DON'T KNOW.

2 Q. DID YOU PUT ANY RESTRICTIONS ON WHAT THOSE DOCTORS --

3 A. NO, I DID NOT.

4 Q. AND SO YOU MENTIONED HAWAII. WHEN DID YOU GO TO  
5 HAWAII WHILE YOU WERE ON THIS LEAVE?

6 A. I WENT TO HAWAII BECAUSE --

7 Q. FIRST, WHEN WAS IT THAT YOU WENT?

8 A. I WENT IN THE '98-'99 SCHOOL YEAR.

9 Q. RIGHT. BUT THEN IN 2000 --

10 A. IN 2000, ONE OF MY DOCTORS SUGGESTED MAYBE IT WAS THE  
11 ENVIRONMENT. BECAUSE IN '89 TO '99, I FELT OKAY. THEY SAID TRY  
12 GOING BACK AND SEE IF IT'S SOMETHING IN OUR ENVIRONMENT, HERE IN  
13 CALIFORNIA. BUT I WENT BACK AND I WAS SICKER, AND SICKER, AND  
14 SICKER.

15 Q. OKAY. LET'S TAKE THIS A LITTLE BIT MORE SLOWLY.



16 SO WHICH DOCTOR SUGGESTED TO YOU THAT IT MIGHT BE THE  
17 ENVIRONMENT IN NORTHERN CALIFORNIA?

18 A. IT WAS ACTUALLY MY OB/GYN DOCTOR, WHO IS NOT MY OB/GYN  
19 DOCTOR ANYMORE, DR. KEN. HE'S THE HEAD OF ONCOLOGY AT KAISER.

20 Q. OKAY.

21 AND ONCOLOGY OR GYNECOLOGY?

22 A. ONCOLOGY.

23 Q. AND ONCOLOGY BEING CANCER?

24 A. CANCER, YES.

25 Q. AND SO IT WAS THIS DOCTOR, WHILE YOU WERE ALREADY ON  
26 THE LEAVE OF ABSENCE, WHO SUGGESTED THAT PERHAPS THIS WAS AN

486

1 ENVIRONMENTAL ISSUE?

2 A. PERHAPS IT WAS ENVIRONMENTAL.

3 Q. SO ON THE ADVICE OF THAT DOCTOR, WHAT DID YOU DO?

4 A. I MOVED BACK TO HAWAII TO TRY TO SEE IF THAT WOULD  
5 HELP.

6 Q. DID YOUR HUSBAND, STEVE, COME WITH YOU?

7 A. YES, HE DID.

8 Q. YOU BOTH MOVED TO HAWAII TO SEE IF THIS WOULD HELP GET  
9 YOU BETTER?

10 A. YES.

11 Q. AND WHAT HAPPENED?

12 A. I GOT WORSE.

13 Q. HOW LONG DID YOU STAY THERE?

14 A. STAYED THERE NINE MONTHS, AND THEN I WAS SO SICK I HAD  
15 TO COME BACK.

16 Q. AND WHEN YOU CAME BACK, DID YOU SEEK TREATMENT?

17 A. YES, IMMEDIATELY, FROM LOTS OF DOCTORS.

18 Q. AND DR. GOLDSTEIN BEING ONE OF THEM?

19 A. YES. DR. PAUPER HAD REFERRED ME TO DR. GOLDSTEIN.

20 Q. SO DR. PAUPER -- JUST TO CONNECT UP WITH SOME OF THE  
21 TESTIMONY. SO DR. PAUPER WAS THE DOCTOR THAT THE INSURANCE  
22 COMPANY HAD YOU SEE IN HAWAII --

23 A. YES.

24 Q. -- TO EVALUATE YOU?

25 A. YES.

26 Q. AND HE REFERRED YOU BACK TO DR. MARCUS?

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1 A. DR. GOLDSTEIN.

2 Q. EXCUSE ME. I'M SORRY. DR. GOLDSTEIN?

3 A. YES.

4 Q. AND DR. GOLDSTEIN WAS LOCATED WHERE?

5 A. IN SAN FRANCISCO.

6 Q. SO DID YOU SEEK TREATMENT FROM DR. GOLDSTEIN?

7 A. YES, I DID.

8 Q. SO WE'RE IN WHAT TIME PERIOD HERE, IN THE EARLY 2001  
9 TIME PERIOD?

10 A. YES, EARLY 2000 -- YEAH, 2001.

11 Q. OKAY.

12 NOW, AT WHAT POINT DID YOUR CANCER GET DISCOVERED?

13 A. IT WAS A ROUTINE COLONOSCOPY. I WAS SEEING A -- I  
14 DON'T KNOW WHAT THEY CALL THOSE DOCTORS THAT GO DOWN --  
15 GASTRONOMIC? WHATEVER. I WENT TO SEE ONE OF THOSE BECAUSE I  
16 WAS STARTING TO GET DIARRHEA, WHICH, BY THE WAY, IS A SYMPTOM OF  
17 CARCINOID CANCER. SHE WENT DOWN THROUGH MY THROAT TO CHECK MY  
18 STOMACH AND SAID I WAS FINE.

19 AND SHE SAID, "YOU KNOW, YOU'RE 49 AND YOU NEED A  
20 ROUTINE COLONOSCOPY NEXT YEAR. LET'S DO IT NOW." SO WE DID IT  
21 WHEN I WAS 49, AND SHE SAID YOU'RE FINE. THE LAB RESULTS CAME  
22 BACK AND SAID I WAS NOT FINE. THEY FOUND FOUR TINY LITTLE  
23 CARCINOIDS, CANCER IN MY COLON.

24 Q. AND SO WHEN WAS THIS?

25 A. THIS WOULD BE -- WELL, THIS WOULD HAVE BEEN IN THE  
26 FALL.

488

1 Q. OF 2001?

2 A. NO -- YES.

3 Q. OKAY.

4 AND SO WHAT HAPPENED NEXT IN THE PROCESS?

5 A. DR. HO DIDN'T BELIEVE IT. WELL, SHE BELIEVED IT BUT  
6 SHE HADN'T SEEN IT. SO SHE DID ANOTHER COLONOSCOPY WHERE SHE  
7 SAW THE FOUR.

8 Q. WHEN WAS THAT?

9 A. IMMEDIATELY THEREAFTER. WE DID THIS FAST.

10 Q. AND SO SHE SAW THE OTHER TUMORS?

11 A. YES, SHE DID.

12 Q. AND THEN WHAT HAPPENED?

13 A. THEN SHE REFERRED ME TO DR. KITERAKIS, WHO IS A CANCER  
14 SURGEON, AND SAID YOU HAVE TO HAVE THEM OUT AND REFERRED IT TO  
15 DR. KITERAKIS.

16 Q. DID YOU ACTUALLY HAVE THE SURGERY?

17 A. YES, I DID.

18 Q. WHEN WAS THAT?

19 A. VALENTINE'S DAY, 2002.

20 Q. A MEMORABLE DAY?

21 A. YES.

22 Q. WHAT HAPPENED?

23 A. DR. KITERAKIS HAD SAID HE WOULD TAKE,  
24 LAPAROSCOPICALLY, THE FOUR OUT OF MY COLON. IT WOULD BE  
25 NOTHING. HE SAID OR I COULD WAKE UP CUT OPEN LIKE A WATERMELON,  
26 WHICH MEANS THERE WERE MORE THAN FOUR. AND I WOKE UP CUT OPEN

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1 LIKE A WATERMELON, FROM HERE TO HERE (INDICATING).

2 Q. AND WHEN YOU SAY "LAPAROSCOPICALLY," DID YOU HAVE AN  
3 UNDERSTANDING WHAT THAT MEANT?

4 A. YEAH. THAT MEANT GOING FOR LASER SURGERY AND JUST  
5 REMOVING THE FOUR LITTLE TINY CANCERS THAT THEY FOUND.

6 Q. AND SO YOU WOKE UP AND YOU DISCOVERED THAT THEY HAD --

7 A. THEY CUT ME WIDE OPEN LIKE A WATERMELON, IS WHAT I

8 FELT LIKE.

9 Q. AND HOW LONG DID IT TAKE YOU TO RECOVER?

10 A. WELL, I HAD TO SPEND FIVE DAYS IN THE HOSPITAL WITHOUT  
11 MOVING. I WAS NOT ALLOWED TO MOVE. I COULDN'T EAT. I COULDN'T  
12 DRINK. THAT WAS THE WORST PART; I WAS NOT ALLOWED TO HAVE  
13 WATER. AND I HAD TO MAKE SURE IN FIVE DAYS THAT IT CLOSED UP SO  
14 I COULD HAVE SOMETHING -- THE SURGERY HAD CLOSED UP SO THAT I  
15 COULD EAT, DRINK OR WHATEVER.

16 Q. AND DID YOU LEARN FROM YOUR DOCTORS AFTER YOUR SURGERY  
17 EXACTLY THE EXTENT OF THE CANCER?

18 A. YES. THEY SAID I WAS RIDDLED WITH THOUSANDS OF LITTLE  
19 PIN PRICKS -- CARCINOID CANCER HAS LITTLE TINY PIN PRICKS OF  
20 CANCER. THERE ARE ONLY 500,000 OF US IN THE UNITED STATES  
21 DIAGNOSED WITH THIS CANCER, WHICH IS WHY THEY COULDN'T FIND IT.  
22 AND WHEN HE OPENED IT UP, HE SAID, "YOU HAVE THOUSANDS OF THEM  
23 IN THERE."

24 Q. AND DID HE TELL YOU WHAT PROCEDURES HE DID OR WHAT HE  
25 ACTUALLY CUT IT FROM?

26 A. OH, YES. HE CUT OFF HALF MY COLON AND SIX INCHES OF

490

1 MY SMALL INTESTINE. MY APPENDIX, OF COURSE.

2 Q. SO YOU SPENT FIVE DAYS IMMOBILE IN THE HOSPITAL?

3 A. IMMOBILE.

4 Q. AND THEN WHAT HAPPENED WITH YOUR RECOVERY?

5 A. I WAS ALLOWED TO GO HOME, BUT I COULD NOT MOVE.

6 PHYSICALLY, I JUST COULDN'T MOVE. SO MY HUSBAND TOOK CARE OF ME  
7 FOR SIX MONTHS, AT LEAST, WHERE I COULDN'T GET UP, COULDN'T  
8 WALK, COULDN'T EAT. MATTER OF FACT, I COULDN'T EAT FOR THREE  
9 WEEKS. I HAD NOTHING BUT WATER FOR THREE WEEKS. FINALLY, I  
10 STARTED TO BE ABLE TO EAT. I COULDN'T GO OUT. I COULDN'T DO  
11 ANYTHING.

12 Q. SO AT WHAT POINT WERE YOU ABLE TO ACTUALLY WALK ON  
13 YOUR OWN WITHOUT ASSISTANCE?

14 A. AFTER ABOUT SIX MONTHS I STARTED TAKING SHORT WALKS IN  
15 THE NEIGHBORHOOD, WHICH THEY SUGGESTED.

16 Q. SO THIS WAS -- IF YOUR SURGERY WAS VALENTINE'S DAY OF  
17 2002, SIX MONTHS FROM THERE IS SOMETIME IN THE LATE SUMMER OF  
18 '02; IS THAT WHAT WE'RE TALKING ABOUT?

19 A. YES, I WOULD SAY THAT'S RIGHT.

20 Q. OKAY.

21 SO AT WHAT POINT DID YOU START SEEING DR. FRED MARCUS?

22 A. DR. KITERAKIS, MY SURGEON, SAID HE HAD NEVER OPERATED  
23 ON A PERSON WITH CARCINOIDS BEFORE. AND HE DIDN'T KNOW IF  
24 THERE'S ANYPLACE ELSE TO SEND ME. I WAS HIS FIRST CARCINOID  
25 PATIENT. AND, BY THE WAY, HE'S IN HIS FIFTIES OR SIXTIES. BUT  
26 HE SAID DR. FRED MARCUS WAS THE BEST ONCOLOGIST AROUND, IN HIS

491

1 OPINION. AND HE SAID SEE DR. MARCUS AND SEE IF HE KNOWS OF  
2 ANYTHING THAT YOU CAN DO FOR CARCINOIDS.

3 Q. OKAY.

4           BEFORE WE GET TO DR. MARCUS, DID YOUR SURGEON TELL YOU  
5 ANYTHING ABOUT YOUR HEADACHES?

6       A. YES. HE TOLD ME HE HAD TAKEN MY HEADACHES OUT.

7       Q. WHAT DID HE MEAN?

8       A. I WAS WAKING UP. I WAS IN THAT RECOVERY ROOM. HE  
9 THINKS I DIDN'T REMEMBER THIS, BUT I DID. HE CAME IN AND HE  
10 SAID, "I HAVE TAKEN YOUR" -- "MARCY, I'VE TAKEN YOUR HEADACHES  
11 OUT. YOU AREN'T GOING TO REMEMBER THIS." I WOKE UP, THE FIRST  
12 THING I SAID TO HIM WAS, "DR. KITERAKIS, YOU TOLD ME YOU TOOK MY  
13 HEADACHES OUT."

14      Q. AND WAS THAT TRUE?

15      A. YES, IT WAS TRUE.

16      Q. SO THESE MASSIVE MIGRAINE HEADACHES THAT YOU TALKED  
17 ABOUT, THOSE WERE HISTORY?

18      A. I HAD ONE MORE. I HAD ONE MORE ON LABOR DAY OF THAT  
19 YEAR.

20      Q. MUST HAVE BEEN PRETTY SCARY?

21      A. YES, BECAUSE IT LASTED A WEEK AND I WAS AFRAID I WAS  
22 SICK AGAIN.

23      Q. BUT BETWEEN THAT POINT AND THE FALL OF 2002 AND TODAY,  
24 HAVE YOU HAD ANY MORE OF THOSE MASSIVE MIGRAINES?

25      A. NO. NO MORE OF THOSE TERRIBLE MIGRAINES.

26      Q. SO LET'S TALK ABOUT WHEN YOU FIRST WENT TO SEE

1   DR. MARCUS. HOW DID THAT GO?

2 A. FINE. DR. MARCUS IS A WONDERFUL ONCOLOGIST.

3 Q. AND WHAT DID HE TELL YOU ABOUT CARCINOID TUMORS IN  
4 YOUR FIRST VISIT OR EARLY VISITS?

5 A. I TOLD HIM MY SURGEON SAID HE DIDN'T KNOW IF THERE WAS  
6 ANY TREATMENT. AND DR. MARCUS SAID THERE'S ONE TREATMENT. IT'S  
7 CALLED SANDOSTATIN. IT'S CHEMOTHERAPY ONLY FOR THIS KIND OF  
8 CANCER. IT COSTS \$11,000 A SHOT AND YOU GET ONE EVERY MONTH.  
9 AND THEY ARE LONG-LASTING; THEY LAST THROUGH THE MONTH. SO IF  
10 YOU NEED IT, YOU GET ANOTHER ONE, AND YOU'RE SUPPOSED TO GET  
11 THEM FOR LIFE.

12 Q. SO CHEMOTHERAPY FOR LIFE?

13 A. CHEMOTHERAPY FOR LIFE.

14 Q. HOW DID THAT FEEL?

15 A. OH, AT FIRST IT HELPED A LOT BECAUSE I WAS STILL VERY  
16 ILL. AND AT FIRST IT HELPED A LOT. BUT BY THE SPRING OF  
17 2006 -- OR MAYBE '05, PEOPLE ARE NOW SAYING -- I STARTED LOSING  
18 MY HEARING.

19 Q. OKAY. WE'LL GET TO THAT. BUT LET'S JUST TALK ABOUT  
20 THE BEGINNING.

21 A. AT THE BEGINNING IT WAS FINE.

22 Q. OKAY.

23 A. IT HELPED.

24 Q. SO WHAT WAS YOUR ROUTINE WITH DR. MARCUS WHEN YOU  
25 FIRST STARTED SEEING HIM?

26 A. EVERY MONTH I'D GO IN TO SEE DR. MARCUS. AND,



1 USUALLY, HIS ONCOLOGY NURSE, SHERRI GAROUTTE -- IT'S AN  
2 INJECTION, A ONCE-A-MONTH INJECTION -- WOULD GIVE ME THE  
3 INJECTIONS. AND DR. MARCUS ALWAYS EVERY MONTH EXAMINED ME,  
4 WITHOUT FAIL.

5 Q. WHAT DO YOU MEAN EXAMINED YOU?

6 A. CHECKED -- YOU KNOW, PALPITATE THE AREA, THE COLON, TO  
7 SEE IF THERE'S ANYTHING ELSE THERE. HE EXAMINED ME FOR  
8 EVERYTHING. LOOKED AT MY EARS, LOOKED AT MY NOSE, LOOKED AT MY  
9 EYES, MY MOUTH.

10 Q. HOW ABOUT LAB TESTS OR DIAGNOSTIC TESTS?

11 A. NOT EVERY MONTH, BUT ABOUT EVERY SIX MONTHS. OR THEN  
12 PROBABLY EVERY FEW MONTHS. HE'D SEND ME FOR LAB TESTS, BLOOD  
13 TESTS, DIAGNOSTIC TESTS.

14 Q. AND DID DR. MARCUS EVER SEND YOU FOR A SECOND OPINION?

15 A. YES, HE DID.

16 Q. WHEN WAS THAT?

17 A. SOON AFTER I STARTED SEEING HIM.

18 Q. AND WHERE DID HE SEND YOU?

19 A. HE SENT ME TO THE SAN FRANCISCO CANCER CENTER.

20 Q. AT UCSF?

21 A. AT UCSF.

22 Q. AND WHAT DID YOU DO?

23 A. I WENT TO SEE ALAN VANUK. HE'S SUPPOSED TO BE ONE OF  
24 THE LEADING EXPERTS IN CARCINOID CANCER IN THIS AREA. HE TOLD  
25 ME I WAS HIS 80TH PATIENT, AND THAT'S AN EXPERT. AND HE SAID  
26 DR. MARCUS WANTED TO KNOW IF HE WAS DOING THE RIGHT THING;

1 DR. MARCUS, BEING NOT SPECIALIZED IN THIS. AND DR. VANUK SAID,  
2 "YES, DR. MARCUS IS DOING EXACTLY THE RIGHT THING. YOU HAVE TO  
3 TAKE SANDOSTATIN FOR THE REST OF YOUR LIFE. AND DR. MARCUS IS  
4 AN EXCELLENT ONCOLOGIST."

5 Q. NOW WHAT WAS DR. MARCUS'S PRACTICE INSOFAR AS PRIMARY  
6 CARE OR GENERAL CARE? DID HE TAKE YOU ON AS A GENERAL CARE  
7 PATIENT?

8 A. YES. HE WAS AN ONCOLOGIST. HE TOOK ALL HIS ONCOLOGY  
9 PATIENTS AS PRIMARY CARE, GENERAL CARE.

10 Q. SO AT LEAST HE TOLD YOU THAT WAS A MATTER OF WHAT HE  
11 DID AS A PRACTICE?

12 A. AS A PRACTICE.

13 Q. SO YOU STARTED GOING TO SEE DR. FRED MARCUS AS BOTH  
14 YOUR ONCOLOGIST AND AS YOUR PRIMARY CARE PHYSICIAN?

15 A. YES.

16 Q. OKAY.

17 AND SO WHEN YOU FIRST STARTED SEEING DR. MARCUS AND  
18 BEING ADMINISTERED THE SANDOSTATIN TREATMENTS, YOU SAID THEY  
19 WERE MONTHLY?

20 A. YES. ACTUALLY, THEY STARTED OUT EVERY DAY TWICE A  
21 DAY.

22 Q. TWICE A DAY?

23 A. TWICE A DAY IN THE STOMACH; TWO SHOTS IN THE STOMACH,  
24 AND I HAD TO COME BACK EVERY DAY. AND THAT WAS A WAY TO SEE IF

25 IT MIGHT WORK. AND I ALMOST DROPPED OUT OF THAT BECAUSE I WAS  
26 FEELING VERY BAD.

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1 Q. OVER WHAT PERIOD OF TIME DID THIS TAKE PLACE?

2 A. THIS WAS ABOUT TWO WEEKS. AND HE TOLD ME, "STICK IT  
3 OUT THE TWO WEEKS, AND THEN WE'LL SEE."

4 Q. AND SO IF YOU STARTED SEEING DR. MARCUS IN MARCH OF  
5 '02, THIS IS OVER THE TIME PERIOD WHERE YOU STILL NEEDED  
6 SUBSTANTIAL ASSISTANCE GETTING AROUND --

7 A. SOMEONE HAD TO DRIVE ME.

8 Q. SO YOU HAD TO COME TO THE DOCTOR'S OFFICE TWICE A DAY?

9 A. TWICE A DAY.

10 Q. AND THEN THE TREATMENT SWITCHED?

11 A. AFTER WE FOUND OUT THE TWO WEEKS HAD WORKED -- WHICH I  
12 THOUGHT IT WASN'T GOING TO -- WE WENT TO ONCE A MONTH. IT'S  
13 CALLED LONG-TERM.

14 Q. NOW, I ASSUME YOU'VE HAD FRIENDS OR ACQUAINTANCES WHO  
15 HAVE GONE THROUGH CANCER TREATMENTS BEFORE?

16 A. YES.

17 Q. AND YOU'VE SEEN WHAT HAPPENS WHEN THEY GO THROUGH  
18 CHEMOTHERAPY TREATMENTS?

19 A. YES.

20 Q. AND THINGS LIKE THEIR HAIR FALLS OUT, AND THEY'RE  
21 PRETTY WIPED OUT THE DAY OR TWO AFTER THEY RECEIVE A TREATMENT  
22 OF CHEMOTHERAPY. YOU'VE OBSERVED THAT?

23 A. YES, I HAVE.

24 Q. WAS YOUR TREATMENT WITH THE SANDOSTATIN ANYTHING LIKE  
25 THAT?

26 A. NO. MY HAIR DID NOT FALL OUT. I DID NOT THROW UP,

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1 LIKE MOST OF THE -- MANY CANCER PATIENTS DID. I WAS TIRED AFTER  
2 THE TREATMENT, BUT NOTHING LIKE MOST CANCER PATIENTS I'D SEE.

3 Q. SO IT DIDN'T KNOCK YOU OUT?

4 A. NO.

5 MR. LEBOWITZ: YOUR HONOR, THIS IS PROBABLY A GOOD  
6 TIME.

7 THE COURT: LADIES AND GENTLEMEN, WE NEED TO STOP A  
8 FEW MINUTES EARLY BECAUSE I HAVE A MATTER TO TAKE UP WITH THE  
9 ATTORNEYS, AND I CAN DO THAT WHEN YOU'RE NOT HERE AND WAITING  
10 FOR US. WE'RE GOING TO STOP HERE FOR THE DAY. PROFESSOR BLOUGH  
11 WILL CONTINUE HER TESTIMONY, MAYBE INTERRUPTED WITH OTHER  
12 WITNESSES THAT NEED TO COME IN, BUT WE'LL JUST DO THAT TO  
13 ACCOMMODATE OTHERS.

14 PLEASE LEAVE YOUR NOTEBOOKS AND YOUR BADGES ON YOUR  
15 CHAIRS. REMEMBER, TOMORROW WE START AT 10:00 A.M. AND PLEASE  
16 GATHER OUTSIDE WHEN YOU COME IN TOMORROW. IF ANY OF YOU NEED  
17 ANOTHER COPY OF THE SCHEDULE, WE'D BE GLAD TO GIVE IT TO YOU.  
18 THIS TUESDAY, TOMORROW, I HAVE ANOTHER GROUP OF PEOPLE IN HERE  
19 IN THE MORNING, SO I DON'T NEED YOU TO BE WAITING. LET ME  
20 REMIND YOU YOU ARE NOT TO FORM OR EXPRESS ANY OPINIONS IN THE

21 CASE OR DO ANY RESEARCH OR INVESTIGATION, AND YOU ARE NOT TO  
22 TALK TO ANYONE ABOUT ANYTHING REGARDING THE CASE.

23 HAVE A GOOD EVENING. I'LL SEE YOU TOMORROW.

24 (WHEREUPON, THE JURORS EXITED THE COURTROOM.)

25 THE COURT: WE'RE BACK ON THE RECORD OUTSIDE THE  
26 PRESENCE OF THE JURY. I HAVE RECEIVED AND REVIEWED BRIEFS ON

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1 THE ISSUE OF WHETHER FRONT PAY IS AN EQUITABLE RELIEF TRIED ONLY  
2 TO THE COURT VERSUS A MEASURE OF DAMAGES TO BE TRIED TO THE  
3 JURY.

4 FIRST OF ALL, LET ME THANK YOU FOR THE EXCELLENT JOB  
5 YOU'VE BOTH DONE. AND I GREATLY APPRECIATE THE TIME YOU'VE  
6 SPENT PULLING THE CASES FOR ME. THE FEDERAL CASES AND THE  
7 FEDERAL STATUTES ARE DIFFICULT FOR ME TO ACCESS.

8 I HAD THE STATE BOOKS BUT, MR. VARTAIN, YOU'VE BEEN SO  
9 KIND AS TO PRINT OUT SOME OF THOSE CASES, AND I APPRECIATE IT.

10 MR. VARTAIN, DID YOU HAVE ANYTHING YOU WANTED TO  
11 RESPOND TO? THERE'S NO REPLY BRIEF THAT WAS SET UP IN THE  
12 BRIEFING SCHEDULE THAT WAS BRIEFED BY MR. LEBOWITZ IN HIS PAPERS  
13 THAT I GOT THIS MORNING.

14 MR. VARTAIN: YES, I WOULD. BUT I WILL KEEP IT SHORT  
15 AND ONLY RESPOND TO THOSE THINGS THAT, YOU KNOW, HAVEN'T BEEN  
16 MAYBE TOUCHED ON, YOUR HONOR.

17 THE COURT: THANK YOU. I APPRECIATE THAT.

18 MR. VARTAIN: MAYBE THE WAY -- THE BEST WAY FOR THE

19 COURT'S CONVENIENCE, I WOULD GO TO PAGE AND LINE NUMBER OF THE  
20 OPPOSITION AND JUST COMMENT ON THOSE PORTIONS.

21 THE COURT: OKAY.

22 MR. VARTAIN: MAY I PROCEED?

23 THE COURT: YOU MAY.

24 MR. VARTAIN: AT PAGE 2, VOLUME 4 OF -- I'M SORRY, 4  
25 AND 5 OF THE BRIEF, COUNSEL FOR THE PLAINTIFF SUGGESTS THAT IT  
26 IS THE LEGISLATURE'S EXPLICIT INTENT THAT FEHA BE BROADLY

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1 CONSTRUED IN FAVOR OF THE PLAINTIFF IN ORDER TO EFFECTUATE THE  
2 SWEEPING SCOPE OF THE ACT. I WOULD SAY IT'S IN FAVOR OF -- THAT  
3 THAT'S NOT THE CORRECT STATEMENT OF THE LAW. IT'S TO BE  
4 CONSTRUED LIBERALLY IN FAVOR OF EFFECTUATING THE PURPOSES OF THE  
5 LAW, NOT IN FAVOR OF PROVIDING THE GREATEST POSSIBLE MONETARY  
6 RELIEF, EVEN ABSENT -- OR RATHER EVEN WHERE THERE IS A  
7 LEGITIMATE VEHICLE ALREADY IN EXISTENCE, NAMELY REINSTATEMENT.  
8 SO I DISAGREE WITH THAT STATEMENT.

9 I DO DISAGREE -- I DO AGREE WITH THE STATEMENT THAT'S  
10 ACTUALLY QUOTED AT LINE 8, THAT THE PURPOSE IS TO PROVIDE  
11 EFFECTIVE REMEDIES THAT WILL ELIMINATE DISCRIMINATORY PRACTICE,  
12 QUOTE, UNQUOTE. AND WHAT OUR MOTION SUGGESTS TO YOUR HONOR IS  
13 THAT EFFECTIVE REMEDIES IS WHAT'S AT ISSUE HERE, AND PARTICULAR  
14 REINSTATEMENT AS THE EQUITABLE REMEDY. SO THOSE COMMENTS.

15 I THEN GO SIMILARLY, YOUR HONOR, TO --

16 THE COURT: I'M READY.

17 MR. VARTAIN: -- PAGE 3, LINE 20, WHERE WE REALLY GET  
18 TO THE GUTS OF THE ARGUMENT OF THE PLAINTIFF IN OPPOSITION TO  
19 THE MOTION, WHERE THE PLAINTIFF ARGUES THAT YOU SHOULD NOT  
20 FILE -- FOLLOW TITLE 7 PRECEDENCE, QUOTE, "WHEN TO DO SO WOULD,"  
21 SINGLE QUOTE, "CONFLICT WITH THE ESSENTIAL PURPOSES OF THE  
22 ACT," CLOSE SINGLE QUOTE.

23 IT GOES ON TO SAY, "THE REMEDIES AVAILABLE TO AN  
24 AGGRIEVED EMPLOYEE ENSURING THEY ARE MADE WHOLE AFTER BEING  
25 SUBJECT TO AN UNLAWFUL DISCRIMINATION CERTAINLY QUALIFIES IN AN  
26 ELEMENT WHICH MAKE UP THE ESSENTIAL PURPOSES." THE COLLEGE'S

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1 RESPONSE TO THAT IS, WE AGREE THAT AN ESSENTIAL PURPOSE OF THE  
2 ACT IS TO HAVE AN EFFECTIVE REMEDY AND, YES, EVEN TO BE MADE  
3 WHOLE FOR DISCRIMINATION.

4 BUT WHAT'S AT ISSUE IN OUR MOTION IS IS REINSTATEMENT  
5 PART OF THE MAKE-WHOLE SCHEME WHICH SHOULD BE DETERMINED BY THE  
6 COURT NOT THE JURY. SO WE ARE IN AGREEMENT THAT -- IT'S JUST A  
7 QUESTION OF WHETHER THE PLAINTIFF GETS TO PICK THAT FRONT PAY BE  
8 ITS PREFERRED REMEDY IN LIEU OF REINSTATEMENT. THAT'S A  
9 RHETORICAL QUESTION RIGHT THERE, YOUR HONOR.

10 THE COURT: I THINK WE'RE PROBABLY GOING TO TRY TO  
11 ANSWER THAT QUESTION. IT MAY BE RHETORICAL BUT, IN ESSENCE,  
12 THAT'S WHAT THIS BOILS DOWN TO.

13 MR. VARTAIN: I THINK IT'S WHAT IT DOES, BUT IT WOULD  
14 BE AN ISSUE. I THINK THE ONE THING THAT BOTH BRIEFS WOULD AGREE

15 WITH, AND I HESITATE TO SAY WE ARE IN AGREEMENT, BUT IN ORDER TO  
16 MAYBE JOIN THE ISSUE, IS THAT THE ISSUE HASN'T BEEN DETERMINED  
17 BY A STATE LAW CASE.

18 THE COURT: THAT SEEMS FAIRLY CLEAR FROM ALL THE  
19 RESEARCH THAT HAS BEEN DONE.

20 MR. VARTAIN: AND WE NEED TO BE VERY CANDID WITH YOUR  
21 HONOR. I THINK WE DID SAY THAT RIGHT AT THE FRONT OF OUR BRIEF.  
22 BUT WE ARE CLEAR, ON THE OTHER HAND -- AND I'M STILL REPLYING TO  
23 THE PLAINTIFF'S OPPOSITION THAT, THOUGH THIS IS PERHAPS A CASE  
24 OF FIRST IMPRESSIONS, THE CALIFORNIA APPELLATE COURTS HAS GIVEN  
25 YOUR HONOR GUIDANCE ON HOW TO RESOLVE THE CASE OF FIRST  
26 IMPRESSION. AND THAT'S TO LOOK TO FEDERAL LAW UNLESS, AS

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1 PLAINTIFF PUTS IT, TO DO SO WOULD CONFLICT WITH THE ESSENTIAL  
2 PURPOSES OF FEHA.

3 AND I DON'T SEE -- WHERE OUR RESPONSE IS, WE DON'T SEE  
4 ANYTHING IN THE OPPOSITION BRIEF THAT WOULD SHOW HOW  
5 REINSTATEMENT AS A REMEDY -- OR AT LEAST A COURT ADJUDICATING  
6 THAT ISSUE WOULD SOMEHOW, OR THAT THERE'S ANY LAW THAT WOULD  
7 SHOW THAT IT WOULD CONFLICT WITH THE ESSENTIAL PURPOSES OF FEHA.

8 THE COURT: I GUESS WHEN I REVIEWED THIS -- AND I READ  
9 THE FEDERAL CASES YOU CITED TO ME, CLEARLY THEY STAND FOR THE  
10 PROPOSITION THAT YOU CITED THEM FOR. BUT IN READING THOSE CASES  
11 THAT WE'RE NOT DEALING WITH CALIFORNIA'S STATE LAW,  
12 ANTIDISCRIMINATION LAW, BUT ONLY FEDERAL TITLE 7 LAW, IT SEEMED



13 CLEAR TO THE COURT THAT THE ISSUE THAT WAS BEING ADDRESSED WAS  
14 THE INTERPRETATION OF 2000(E) AND THE HISTORY OF THAT STATUTE  
15 AND THE HISTORY OF DAMAGES AWARDS AND RELIEF THAT HAS COME DOWN  
16 THROUGH THE DECADES UNDER FEDERAL LAW.

17 AND WHEN I READ THE STATUTE ITSELF, WHICH IS CITED IN  
18 PASSING BY ALL OF THE FEDERAL COURTS THAT YOU CITED, WHAT I SEE  
19 IS THAT UNDER FEDERAL LAW FRONT PAY VERSUS REINSTATEMENT WAS  
20 CLEARLY DEFINED AS EQUITABLE RELIEF THAT COULD BE AWARDED OR  
21 CONSIDERED BY THE COURT IN THE APPROPRIATE ACTION. AND SO  
22 THAT'S WHERE IT SEEMS TO THE COURT THAT THE ANALYSIS UNDER  
23 TITLE 7 IS NOT APT, WHEN YOU LOOK AT THE HOLDING IN COMMODORE  
24 HOME SYSTEMS VS. SUPERIOR COURT, WHICH IS OUR SUPREME COURT'S  
25 DISCUSSION ABOUT THE REMEDIES AVAILABLE.

26 AND WHICH ALL KNOW THAT OUR SUPREME COURT DID NOT

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1 DISCUSS THIS PRECISE ISSUE, SO I CAN ONLY LOOK AT THE LANGUAGE  
2 THAT OUR SUPREME COURT USED. AND ALTHOUGH WHEN SOME COURTS SAY  
3 SOMETHING IN DICTA THAT'S ONE THING, BUT WHEN IT'S OUR SUPREME  
4 COURT, A TRIAL JUDGE LIKE ME IS GOING TO TAKE IT A LOT MORE  
5 SERIOUSLY THAN SOMETHING ELSE THAT MIGHT BE SAID. I FOUND THAT  
6 THE MANNER IN WHICH MR. LEBOWITZ USED THE COMMODORE CASE TO SHOW  
7 THAT, IN FACT, THE ANALYSIS TO TITLE 7 CASES BY FEDERAL COURTS  
8 WAS NOT HELPFUL IN THIS DETERMINATION OF THE MEASURE OF DAMAGES  
9 UNDER FEHA.

10 AND SO I THINK IT'S ALWAYS HARD TO LOOK AT THE

11 ESSENTIAL ELEMENTS OF A STATUTE VERSUS ITS CLEAR LANGUAGE, WE'RE  
12 READING TEA LEAVES SOMETIMES IN ORDER TO DO THAT. BUT I FOUND  
13 IT HELPFUL, IF NOT PERSUASIVE, AND PERHAPS IT IS PERSUASIVE THE  
14 LANGUAGE AND THE SPECIFIC HOLDING THAT MR. LEBOWITZ CITED AT  
15 PAGE 221 OF COMMODORE, "WE RULE THAT IN A CIVIL ACTION UNDER  
16 FEHA, ALL RELIEF GENERALLY AVAILABLE IN NONCONTRACTUAL  
17 ACTIONS" -- AND, OF COURSE, THE CASE INVOLVED PUNITIVE DAMAGES,  
18 AND I RECOGNIZE THAT -- "MAY BE OBTAINED."

19 AND IT SEEMED, AS THAT THE COURT DISCUSSED THE HISTORY  
20 OF FEHA AND EXPLAINED THE MANNER IN WHICH IT REVIEWED THE  
21 LEGISLATIVE HISTORY, THAT UNDER FEHA DAMAGES WERE BROADLY  
22 CONSTRUED AND NOT -- AND THERE WAS NO DIVISION BETWEEN DAMAGES  
23 VERSUS EQUITABLE RELIEF UNDER THE STATE LAW.

24 WE THEN GO INTO THE CASES THAT ARE CLEAR AS MUD ON  
25 THIS ISSUE AND, INTERESTINGLY, THE CLOUD CASE, WHICH  
26 MR. LEBOWITZ CITED INITIALLY, WHICH YOU ACCURATELY POINTED OUT

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1 DOES NOT DISCUSS THIS ISSUE, IS CITED WITH APPROVAL BY THE  
2 RUDDER GROUP EMPLOYMENT LAW BOOK AS THE AUTHORITY, ALTHOUGH  
3 OFFERING NO DISCUSSION FOR THIS DIVISION IN STATE LAW.

4 AND IT'S NOT THAT I'M BOUND BY THE RUDDER GROUP, BUT I  
5 DO HAVE TO LOOK AT THE EXPERTS WHO WROTE THAT AND TAKE PAUSE TO  
6 SEE THAT THEY SIMPLY, CLEARLY STATE, WITHOUT FURTHER DISCUSSION  
7 THAT UNDER FEDERAL LAW, IT'S AN EQUITABLE REMEDY AND UNDER STATE  
8 LAW, IT'S CONSIDERED DAMAGES. AND, IN FACT, THE CLOUD COURT

9 DENOMINATES THE FRONT PAY AS DAMAGES. DAMAGES ARE TRIED TO A  
10 JURY; WE KNOW THAT.

11 SO IN STRUGGLING WITH THIS ISSUE, IT APPEARS,  
12 MR. VARTAIN, THAT IT MAY IN FACT BE THAT UNDER STATE LAW IT IS  
13 THE PLAINTIFF WHO CAN ONLY COME TO COURT FOR DAMAGES AND CANNOT  
14 SUE ON HER OWN FOR EQUITABLE RELIEF OF REINSTATEMENT. I'M NOT  
15 SURE WHETHER A PLAINTIFF COULD BRING AN ACTION IN EQUITY TO GET  
16 HER JOB BACK. I'M NOT CERTAIN OF THAT.

17 I ALSO LOOK AT THE JURY INSTRUCTIONS, NOT THE GENERAL  
18 DAMAGES. THAT WAS NOT HELPFUL BECAUSE THAT'S GENERAL DAMAGES.  
19 BUT THE 2433 -- UNFORTUNATELY, THE CASE NOTES GIVE ME NO HELP  
20 BUT THEN, AGAIN, IF THERE WAS A CASE YOU WOULD HAVE CITED IT FOR  
21 ME -- WHICH I THINK TALKS ABOUT FRONT PAY AS WELL AS THE OTHER  
22 FORM OF ECONOMIC DAMAGES THAT YOU ADDRESS IN YOUR OPENING BRIEF,  
23 WHICH WOULD HAVE TO DO WITH A DIMINUTION IN ABILITY TO WORK DUE  
24 TO THE STRESS OR OTHER DAMAGE CAUSED TO THE EMPLOYEE BECAUSE OF  
25 THE UNLAWFUL ACTION.

26 THIS, TO ME, APPEARS TO BE, AGAIN, A RECOGNITION

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1 WITHOUT ANY CLEAR CASE AUTHORITY ON POINT THAT, OF COURSE,  
2 DAMAGE AWARDS INCLUDE FRONT PAY UNDER FEHA. SO THAT'S WHAT I'VE  
3 PUT TOGETHER HERE. I'VE STRUGGLED WITH THIS, BECAUSE CLEARLY  
4 IF, AS YOU ARGUE, THE ISSUE REINSTATEMENT IS SIMPLY ON THE TABLE  
5 TO BE DECIDED ONE WAY OR THE OTHER, THAT ONLY THE COURT COULD  
6 AWARD REINSTATEMENT AND ENFORCE IT. THE PROBLEM, AS I SEE IT,

7 IS THAT IT MUST BE EQUITABLE BECAUSE IT SIMPLY CAN'T BE ENFORCED  
8 IF A JURY SIMPLY SAYS REINSTATEMENT, BECAUSE UNDER WHAT TERMS?  
9 UNDER WHAT CRITERIA? AND SO THERE'S NO DOUBT THAT, TO ME, IF  
10 REINSTATEMENT IS ON THE TABLE IT CAN ONLY BE EQUITABLE RELIEF.

11 I DON'T SEE IT BEING ON THE TABLE, EXCEPT IN YOUR  
12 AFFIRMATIVE DEFENSE OF FAILURE TO MITIGATE DAMAGES FOR WHICH  
13 THERE ARE EXPRESS JURY INSTRUCTIONS, AND I DO BELIEVE THAT YOU  
14 CAN COMPLETELY DEFEAT A FRONT PAY CLAIM FOR DAMAGES WITH  
15 PERSUASIVE EVIDENCE THAT A PLAINTIFF HAS FAILED TO MITIGATE HER  
16 DAMAGES, THAT THE JOB WAS THERE AND SHE SIMPLY CHOSE TO SEEK HER  
17 BOUNTY TO THE JURY, AND THAT WASN'T HER CHOICE.

18 AND SO THAT'S HOW IT APPEARS TO ME THAT THE FEHA HAS  
19 BEEN DEFINED BY OUR COURTS AND APPLIED WITHOUT ANY COURT,  
20 APPELLATE COURT HAVING BEEN ASKED TO ACTUALLY RULE ON THIS  
21 PRECISE ISSUE.

22 MR. VARTAIN: MAY I COMMENT, YOUR HONOR, WITHOUT  
23 ARGUING IT WITH YOU.

24 INSOFAR AS YOUR HONOR CITES TO THE RUDDER GROUP, I  
25 WOULD MORE ARGUE PERSUASIVE SECONDARY AUTHORITY IS THE  
26 CALIFORNIA EMPLOYMENT TREATISE WILCOX, WHICH IS AT PAGE 1,

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1 LINE 13 OF OUR SUPPLEMENTAL BRIEF, AND WHICH IS ON CALIFORNIA  
2 EMPLOYMENT LAW.

3 THE COURT: YOU GAVE ME THAT CITATION IN YOUR  
4 EXHIBIT 14, CORRECT?

5 MR. VARTAIN: I QUOTED IT AT PAGE 1, LINE 13 OF OUR  
6 SUPPLEMENTAL BRIEF. MAY I NOW BRING IT UP TO YOUR HONOR?

7 THE COURT: YOU GAVE IT UP TO ME IN EXHIBIT 14 AND I  
8 DO HAVE IT.

9 MR. VARTAIN: IT SAYS QUITE CLEARLY THAT IN THE  
10 OPINION OF THESE TREATISE WRITERS, AND THEY ARE THE -- WE ALL  
11 REDACT WILCOX ON CALIFORNIA EMPLOYMENT LAW -- THAT FRONT PAY IS  
12 AN EQUITABLE REMEDY THAT A COURT MAY GRANT OR DENY USING ITS  
13 SOUNDS DISCRETION. SO I THINK WHERE YOUR HONOR IS -- PERHAPS  
14 WHERE I WOULD SAY YOUR HONOR, IN ALL ITS READING, IS MISSING THE  
15 MARK IS, I DO THINK THERE IS NO DOUBT THAT IN REINSTATEMENT ALL  
16 EQUITABLE POWERS AND REMEDIES ARE AVAILABLE UNDER FEHA. THAT IS  
17 EFFECTUATING THE ACT.

18 THE COURT: WELL, WHAT ABOUT THE DISTINCTION THAT  
19 MR. LEBOWITZ DRAWS IN HIS BRIEF, THAT THE COMMISSION HAS THE  
20 RIGHT TO REQUIRE REINSTATEMENT OR TO REQUEST IT. I GUESS THE  
21 COMMISSION MAKES THE RULING. BUT IF IT IS AN ACTION BROUGHT BY  
22 THE STATE AGENCY AGAINST THE EMPLOYER, THAT REINSTATEMENT IS A  
23 REMEDY, BUT IN THE COMMODORE CASE, AS MR. LEBOWITZ POINTS OUT,  
24 THE REMEDIES ALLOWED IN COMMISSION ACTIONS ARE NOT NECESSARILY  
25 THOSE ALLOWED IN COURT ACTIONS.

26 MR. VARTAIN: WELL, THERE'S NO AUTHORITY. CLEARLY,

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1 THE CASE THAT I GAVE YOU THIS AFTERNOON AND OPPOSING COUNSEL  
2 HAS, THE SMITTY COFFEE SHOP CASE, WAS A CASE WHERE THE

3 COMMISSION ORDERED REINSTATEMENT IN LIEU OF FRONT PAY.

4 THE COURT: BUT THAT'S IN 12970, ISN'T IT? AND THAT  
5 COMMISSION ACTION, WHICH THE COMMODORE COURT SEEMS TO INDICATE  
6 IS NOT BINDING ON THE COURTS.

7 MR. VARTAIN: WELL, IT ACTUALLY -- THAT AUTHORITY OF  
8 THE COMMISSION COMES FROM THE GENERAL AUTHORITY TO EFFECTUATE  
9 THE PURPOSES OF THE ACTS. SO THAT'S WHY I SAID TO YOUR HONOR, I  
10 THINK YOU'RE WRONG WHERE YOU SAY THAT IT'S DOUBTFUL THAT THE  
11 FEHA PERMITS EQUITABLE REMEDIES; IT CLEARLY DOES. AND IT IS THE  
12 CASE, YOUR HONOR, THAT MANY PLAINTIFFS DON'T NECESSARILY ASK FOR  
13 REINSTATEMENT BECAUSE THEY DON'T WANT IT.

14 THE COURT: RIGHT.

15 MR. VARTAIN: THERE'S A BREACH OF THE RELATIONSHIP.  
16 CONVERSELY, MANY EMPLOYERS DON'T BRING FORWARD THE ISSUE THAT  
17 WE'RE DOING, BECAUSE THEY DON'T WANT THE EMPLOYEE BACK. THEY  
18 FEEL THERE WAS A BREACH. SO, AGAIN, THE GENERAL REMEDIAL  
19 LANGUAGE OF FEHA IS WHAT I THINK IS AT ISSUE UNDER THIS --

20 THE COURT: THIS IS COMPLICATED FOR ME, AND I  
21 APPRECIATE WHAT YOU'RE SAYING. IN LOOKING AT THIS WILCOX CITE,  
22 OF COURSE, THEY RELY ON AKERMAN. INTERESTINGLY, AS BROUGHT OUT  
23 IN THE PLAINTIFF'S BRIEF, AKERMAN WAS NOT A JURY TRIAL. YOU  
24 KNOW, ALL WE HAVE AS AUTHORITY ARE JURY TRIALS WHERE FRONT PAY'S  
25 BEEN AWARDED WITHOUT ANY DISCUSSION. THAT'S FRUSTRATING.  
26 THAT'S HARD FOR EVERYONE.

1 I THINK IT WOULD BE A DEPARTURE FROM THE MANNER IN  
2 WHICH THE STATUTE HAS BEEN ENFORCED FOR ITS MANY YEARS OF  
3 EXISTENCE FOR ME TO LIMIT PLAINTIFF TO A COURT TRIAL AND  
4 EQUITABLE REMEDIES ON FRONT PAY. AND I'M NOT --

5 MR. VARTAIN: I HAVE SOME SUGGESTIONS --

6 THE COURT: -- PREPARED TO GO THERE.

7 MR. VARTAIN: -- FOR A SOLUTION THAT'S CONSISTENT WITH  
8 YOUR HONOR'S REASONS AND THAT WOULD, PERHAPS, AVOID RETRIALS AND  
9 ALL THAT.

10 THE COURT: WE ALWAYS LIKE TO AVOID THAT.

11 MR. VARTAIN: I MEAN, NOT WITH ANY LACK OF RESPECT.

12 THE COURT: I TAKE NONE.

13 MR. VARTAIN: NO MATTER WHICH WAY YOU GO, YOU'RE GOING  
14 TO MAKE SOMEBODY REASONABLY UNHAPPY.

15 THE COURT: EVERY DAY, THAT'S WHAT I DO.

16 MR. VARTAIN: AND THIS IN PARTICULAR, SINCE IT'S  
17 SOMEWHAT OF A CASE OF FIRST IMPRESSION. WERE YOUR HONOR TO GO  
18 AHEAD WITH THIS SPECIAL VERDICT -- AND, YOU KNOW, PERHAPS WE  
19 NEVER GET TO THE ISSUE OF FRONT PAY, DEPENDING HOW THE JUDGE  
20 RULES.

21 THE COURT: SURE.

22 MR. VARTAIN: BUT ALSO MAYBE THE ECONOMIST IS NOT  
23 RELEVANT UNTIL AFTER THE JURY ISSUES ITS SPECIAL VERDICT. IN  
24 OTHER WORDS, WE'RE REALLY TALKING ABOUT THE ECONOMIST EVIDENCE  
25 HERE, YOUR HONOR.

26 THE COURT: YOU KNOW WHAT I THINK I'D RATHER DO ON

1 THAT? I APPRECIATE THAT. IT IS THE ECONOMIST. CAN'T THE  
2 VERDICT FORM SIMPLY DIVIDE, AS THE JURY INSTRUCTIONS SUGGEST,  
3 PAST AND FUTURE ECONOMIC DAMAGES?

4 MR. VARTAIN: FOR SURE.

5 THE COURT: AND THEN, IF THERE IS AN ISSUE LATER, EVEN  
6 IN THE APPELLATE COURT IT WOULD NOT REQUIRE A RETRIAL, BUT  
7 SIMPLY -- OR NOT A NEW JURY TRIAL. CERTAINLY, WE LIKE THAT  
8 ECONOMY. I APPRECIATE THAT THIS ISSUE SHOULD HAVE APPELLATE  
9 REVIEW. I'VE GOT TWO AUTHORITIES WHO ARE WELL-RESPECTED THAT GO  
10 THE OTHER WAY FROM THESE PRACTICE BOOKS THAT YOU'VE SHOWN ME.  
11 AND THE AUTHORITY THAT THEY RELY UPON IS ABOUT AS STEADY AS  
12 QUICKSAND.

13 SO THERE WE ARE WITH YOUR VERY THOROUGH EVALUATION OF  
14 FEDERAL LAW -- AND YOU'RE RIGHT, IF I WERE TO APPLY FEDERAL LAW  
15 I WOULD AGREE WITH YOU ENTIRELY. IN FACT, I CAN SEE MANY VERY  
16 DESIRABLE REASONS. UNDER FEDERAL LAW REINSTATEMENT IS  
17 PREFERRED, AND I DON'T SEE THAT IN STATE LAW. TO ME, THAT IS A  
18 HUGE ISSUE OF THAT STRONG PREFERENCE, AND IT COMES FROM THE  
19 STATUTE BECAUSE, INITIALLY, UNDER TITLE 7 ALL RELIEF WAS  
20 EQUITABLE AND DAMAGES WERE NOT ALLOWED.

21 AND I DON'T KNOW WHAT CAUSED THE CHANGE IN THE LAW. I  
22 WASN'T A STUDENT OF IT OVER THE YEARS; YOU MAY HAVE BEEN. BUT  
23 IT CLEARLY SEEMS TO ME, IN REVIEWING THE HISTORY OF TITLE 7,  
24 THAT THAT IS A DEPARTURE FROM THE HISTORY OF THE FAIR EMPLOYMENT  
25 AND HOUSING ACT IN CALIFORNIA. AND I JUST CAN'T GO TO THE



1 IT'S NOT MY JOB TO MAKE POLICY AND SO I'M RELUCTANT TO DO THAT.

2 THERE ARE MANY THINGS THAT WOULD BE MORE EFFICIENT AND  
3 MAYBE BETTER -- AND I PUT THAT IN QUOTES BECAUSE IT'S NOT FOR ME  
4 TO DECIDE WHAT'S BETTER DECIDED FROM A LITIGANT'S STANDPOINT, IF  
5 A COURT WERE TO DECIDE IT. BUT I'M LOOKING AT THE VASTLY  
6 DIFFERENT HISTORY OF THE STATUTORY SCHEME UNDER THE TWO ACTS,  
7 AND THIS IS AN AREA WHERE I'M SIMPLY NOT WILLING TO USE THE  
8 TITLE 7 CASE AUTHORITY WHERE THERE IS NONE IN CALIFORNIA, WHICH  
9 I WOULD DO IF I FELT THEY WERE ESSENTIALLY THE SAME. AND I FEEL  
10 IT IS THE HISTORY OF THE TWO ACTS THAT CAUSES ME TO DEPART FROM  
11 THE FEDERAL PRECEDENCE.

12 MR. VARTAIN: I'M GOING TO LEAVE THE ARGUMENT. I  
13 THINK THE HISTORY, YOUR HONOR -- I THINK WHAT I HAVE PROBABLY  
14 NOT FULLY BRIEFED WOULD BE THAT IN THE OPERATIVE ISSUES HERE,  
15 THE HISTORY OF THE TWO ACTS IS NOT DIVERGENT.

16 THE COURT: ON REMEDIES, DON'T YOU THINK IT IS? I'M  
17 TALKING ABOUT REMEDIES. I'M NOT TALKING ABOUT THE PUBLIC POLICY  
18 BEHIND THE LEGISLATION AND WHAT THESE STATUTES WERE INTENDED TO  
19 CURE. I'M TALKING ABOUT THE HISTORY OF REMEDIES.

20 MR. VARTAIN: NO, I DON'T. I JUST THINK THAT THE WAY  
21 THINGS HAVE UNFOLDED IN THE CASE LAW, EMPLOYERS AND EMPLOYEES  
22 HAVE NOT CREATED A BODY OF THE LAW ON REINSTATEMENT FOR THE  
23 PRACTICAL REASONS THAT THE EMPLOYEES WANT TO MAXIMIZE THEIR

24 FINANCIAL RECOVERY AND THE EMPLOYERS OFTEN DON'T WANT TO  
25 REINSTATE THE EMPLOYEE. I DON'T THINK THERE'S A DIVERGENCE IN  
26 THE PUBLIC POLICY ON REMEDIES, MAINLY BECAUSE WHAT -- THE

509

1 EMPLOYER'S POSITION HERE IS NOT TO FORECLOSE THE FINANCIAL  
2 REMEDY OF FRONT PAY --

3 THE COURT: I UNDERSTAND.

4 MR. VARTAIN: -- BUT ONLY TO SAY THAT THE COURT SHOULD  
5 DETERMINE FIRST DEGREE OF REINSTATEMENT IS OR IS NOT FEASIBLE  
6 UNDER THE STANDARD, AND THEN AND ONLY THEN THE FRONT PAY -- IT  
7 ACTUALLY ENLARGES THE SCOPE OF REMEDIES AVAILABLE TO THE  
8 PLAINTIFF. BUT I GUESS MAYBE WHAT THE BEST ANSWER WOULD BE,  
9 YOUR HONOR, IS FOR US TO WORK WITH THE SPECIAL VERDICTS TO --

10 THE COURT: OKAY.

11 MR. VARTAIN: -- MAKE SURE THE MOST JUST RESULT IS  
12 ACHIEVED, AND MAYBE TO CONSIDER WHETHER THE ECONOMIST SHOULD  
13 WAIT UNTIL THEN. I APPRECIATE THE HEARING. I UNDERSTAND  
14 YOUR -- I DO NOT SUBMIT TO, BUT I UNDERSTAND AND THANK THE COURT  
15 FOR ITS VERY CAREFUL WORK ON THE BRIEF, AND I APPRECIATE IT.

16 THE COURT: THANK YOU.

17 I DON'T THINK I NEED TO HEAR ANYTHING FROM PLAINTIFFS.

18 MR. LEBOWITZ: NO. THANK YOU, YOUR HONOR. EXCEPT TO  
19 SAY THAT, WITHOUT BEING TOO IMMODEST, I AM SOMEWHAT OF A STUDENT  
20 OF THE ACT. I WORKED WITH EDUCATING THE COMMISSION IN 1990,  
21 TRACKED THE LEGISLATION. IT'S NOT AUTHORITATIVE, OBVIOUSLY.

22 THE COURT: WELL, I THINK YOU'RE BOTH EXPERTS ON IT.  
23 I APPRECIATE THE HIGH QUALITY OF BRIEFING. IT IS AN ISSUE OF  
24 FIRST IMPRESSIONS AND I CERTAINLY WELCOME THAT. YOU HAVE MY  
25 RULING ON IT FOR THIS CASE AND, PERHAPS, THIS WILL BE THE CASE  
26 THAT WILL GET US A PUBLISHED OPINION ON THE ISSUE. THAT WOULD

510

1 BE HELPFUL NO MATTER -- WHETHER I'M RIGHT OR WRONG, THAT WILL BE  
2 HELPFUL FOR THE PROGRESSION OF THE LAW.

3 ALL RIGHT. I THINK THAT'S IT FOR THIS AFTERNOON. WE  
4 HAVE OUR WORK CUT OUT FOR US ON JURY INSTRUCTIONS. THIS BATTLE  
5 WILL NOW TAKE PLACE ON THE EVIDENCE REGARDING MITIGATION OF  
6 DAMAGES.

7 ALL RIGHT. THANK YOU.

8 (WHEREUPON, THE MATTER WAS ADJOURNED.)

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1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2                    IN AND FOR THE COUNTY OF SAN MATEO  
3 DEPARTMENT NO. 3           HON. BETH LABSON FREEMAN, JUDGE  
4  
5 MARCINE BLOUGH,    )  
6                    )  
7                    PLAINTIFF,    )  
8                    )  
9                    VS.            )CASE NO. CIV 465027  
10                    )REPORTER'S CERTIFICATE  
11                    MENLO COLLEGE, ET AL.,)  
12                    )  
13                    DEFENDANTS.    )  
14                    \_\_\_\_\_)

10  
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14

15                    I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,  
17 DO HEREBY CERTIFY THAT THE FOREGOING PAGES 320 THROUGH 512,

18 INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE  
19 PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

20

21 DATED: OCTOBER 3, 2011

22

23

24

25

---

CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER

26

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2                   IN AND FOR THE COUNTY OF SAN MATEO

3

4   MARCINE BLOUGH,    )

5                    )  
6    PLAINTIFF,    )

7                    )  
8    VS.            )CASE NO. CIV 465027

9                    )  
10   MENLO COLLEGE, ET AL.,)

11                    )  
12   DEFENDANTS.    )

13                    )  
14   \_\_\_\_\_)

15

16                   REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
17                   BEFORE: HONORABLE BETH LABSON FREEMAN, JUDGE  
18                   DEPARTMENT 3

19                   DECEMBER 9, 2008

20

21

22

23

24   A P P E A R A N C E S:

25

26

27   FOR THE PLAINTIFF: NOAH D. LEBOWITZ, ATTORNEY AT LAW  
28                   MARK C. PETERS, ATTORNEY AT LAW

29

30

31   FOR THE DEFENDANTS: MICHAEL J. VARTAIN, ATTORNEY AT LAW  
32                   LINDA K. ADLER, ATTORNEY AT LAW

33

34

35   REPORTED BY:     CHRISTINE M. PEREZ, CSR #10945

36

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22

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24

(NONE WERE CALLED AT THIS TIME.)

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1

## I N D E X

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2

EXHIBITS FOR THE PLAINTIFF:

IDENT. EVID.

3

15 7/10/06 LETTER DRAFTED BY MS. GAROUTTE 610 614

17 7/22/06 E-MAIL FROM BLOUGH TO LOPEZ SCHULTZ

4

AND PRATT 211 576

18 7/28/06 LETTER FROM DR. SIEBEL 539 540

5

24 8/10/06 E-MAIL FROM SAPRAI TO BLOUGH 562 563

25 8/14/06 E-MAIL FROM SAPRAI TO BLOUGH 566 567

6

27 9/7/06 LETTER FROM SAPRAI TO BLOUGH 570 572

31 9/29/06 E-MAIL FROM SAPRAI TO BLOUGH 625 625

7

33 10/13/06 LETTER FROM SAPRAI TO BLOUGH 627 627

34 10/25/06 E-MAIL FROM BLOUGH TO SAPRAI 629 629

8

35 10/26/06 LETTER FROM SAPRAI TO BLOUGH 630 630

36 11/1/06 E-MAIL FROM SAPRAI TO BLOUGH 631 632

9

40 11/22/06 E-MAIL FROM BLOUGH TO SAPRAI 633 634

42 1/26/07 E-MAIL FROM BLOUGH TO SAPRAI 634 634

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45 3/26/07 A LETTER FROM SAPRAI TO BLOUGH 636 636

46 4/11/07 E-MAIL FROM SAPRAI TO BLOUGH 638 638

11

47 4/17/07 E-MAIL FROM SAPRAI TO BLOUGH &amp; LOYA 641 641

48 4/18/07 LETTER FROM LOYA TO BLOUGH 643 643

12

49 5/25/07 LETTER FROM HITE TO BLOUGH 645 645

51 7/16/07 LETTER FROM SAPRAI TO BLOUGH 646 646

13

53 8/3/07 E-MAIL FROM BLOUGH TO SAPRAI 650 651

54 8/7/07 E-MAIL FROM BLOUGH TO SAPRAI 651 652

14

63 4/13/07 E-MAIL THREAD SAPRAI, PRATT &amp; KELLY 639 639

64 7/26/07 E-MAIL FROM BLOUGH TO SAPRAI 648 650

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EXHIBITS FOR THE DEFENSE:

IDENT. EVID.

20

GG BROCHURE FOR EMPLOYMENT AT MENLO COLLEGE 668 669

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514

1 PROCEEDINGS

2 DECEMBER 9, 2008 A.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. WE ARE ON THE RECORD IN  
4 BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT.

5 GOOD MORNING, LADIES AND GENTLEMEN. ALL JURORS AND  
6 ALTERNATES ARE HERE.

7 WE'RE READY TO GO BACK TO THE PLAINTIFF'S CASE.

8 LADIES AND GENTLEMEN, WE'RE GOING TO INTERRUPT  
9 PROFESSOR BLOUGH'S TESTIMONY TO ACCOMMODATE THE SCHEDULE OF  
10 ANOTHER WITNESS.

11 AND, MR. LEBOWITZ, I THINK YOU'RE READY TO CALL YOUR  
12 NEXT WITNESS.

13 MR. LEBOWITZ: I AM. THANK YOU, YOUR HONOR.

14 THE COURT: GO AHEAD, PLEASE.

15 MR. LEBOWITZ: PLAINTIFF CALLS ERIC RAINES.

16 THE COURT: MR. RAINES, PLEASE COME FORWARD TO THE  
17 WITNESS STAND AND STAND TO BE SWORN.

18 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

19 (WHEREUPON, THE WITNESS WAS SWORN.)

20 THE WITNESS: I DO.

21 THE CLERK: PLEASE BE SEATED.

22 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
23 AND SPELL THEM BOTH FOR THE RECORD.

24 THE WITNESS: MY FIRST NAME IS ERIC; MY LAST NAME IS  
25 RAINES, R-A-I-N-E-S.

26 WHAT ELSE DID YOU ASK ME? I'M SORRY.

515

1 THE CLERK: IF YOU COULD SPELL YOUR FIRST NAME AS  
2 WELL.

3 THE WITNESS: E-R-I-C.

4 THE CLERK: THANK YOU.

5

6 ERIC RAINES,

7 DULY SWORN, TESTIFIED AS FOLLOWS:

8

9 DIRECT EXAMINATION

10 BY MR. LEBOWITZ:

11 Q. GOOD MORNING, DR. RAINES.

12 A. GOOD MORNING.

13 Q. CAN YOU TELL THE JURY WHAT YOUR PROFESSION IS.

14 A. I'M A DOCTOR OF CHIROPRACTICS.

15 Q. AND CAN YOU PLEASE GIVE US A RUNDOWN OF YOUR EDUCATION  
16 AND TRAINING IN CHIROPRACTICS?

17 A. WELL, I WENT TO FOUR YEARS OF UNDERGRADUATE COLLEGE IN

18 NEW YORK, AND THEN GO ON TO FOUR MORE YEARS OF CHIROPRACTIC  
19 SCHOOL. I DID THAT IN LOS ANGELES, LOS ANGELES COLLEGE OF  
20 CHIROPRACTICS.

21 Q. AND WHEN DID YOU GET A DEGREE FROM THE LOS ANGELES  
22 COLLEGE OF CHIROPRACTICS?

23 A. DECEMBER OF 1979.

24 Q. AND WHAT HAVE YOU DONE PROFESSIONALLY SINCE THAT TIME?

25 A. I'VE BEEN IN PRACTICE NOW FOR 28 YEARS. 25 YEARS ON  
26 MY OWN, SOLO PRACTICE WITH MY WIFE. WE WORK IN MENLO PARK.

516

1 Q. ARE YOU CERTIFIED OR LICENSED BY ANY STATE  
2 ORGANIZATION?

3 A. I'M LICENSED BY THE STATE OF CALIFORNIA, ACTIVE  
4 LICENSE. I'M ALSO LICENSED IN NEW YORK, NEW JERSEY AND FLORIDA,  
5 BUT THOSE ARE INACTIVE.

6 Q. ARE YOU A MEMBER OF ANY PROFESSIONAL ASSOCIATIONS?

7 A. YES. I'M A MEMBER OF THE CALIFORNIA CHIROPRACTIC  
8 ASSOCIATION.

9 Q. OKAY.

10 NOW, HAVE YOU, IN YOUR PRACTICE, HAD OCCASION TO SEE  
11 AND TREAT PROFESSOR MARCINE BLOUGH?

12 A. YES, I HAVE.

13 Q. HOW LONG HAVE YOU TREATED PROFESSOR BLOUGH?

14 A. I'VE TREATED HER SINCE 1991.

15 Q. BEFORE WE GET INTO THE SPECIFICS IN REGARDS TO

16 PROFESSOR BLOUGH, CAN YOU PLEASE EXPLAIN TO US WHAT YOUR NORMAL  
17 PRACTICE IS, AS FAR AS WHAT A TYPICAL SESSION OR APPOINTMENT  
18 WITH YOU WOULD BE LIKE?

19 A. A TYPICAL SESSION IN MY OFFICE IS, SOMEBODY WILL CALL  
20 IN AND WE WILL SET THEM UP FOR -- SEE IF THEY WANT TO GO THROUGH  
21 CHIROPRACTIC CARE, MAKE SURE IT'S SOMETHING THEY WANT AND NEED.  
22 THE PERSON WILL COME IN. WE'LL DO A HISTORY, WHICH I SIT DOWN  
23 WITH THEM -- REALLY, A HISTORY CONSULT. I SIT DOWN WITH THEM  
24 AND I MAKE SURE IT'S A GOOD FIT, THAT THE PERSON COMING -- THAT  
25 I CAN HELP THEM WITH THE KIND OF CARE THAT I PROVIDE. AND THEN  
26 WE PUT THEM THROUGH SOMETHING CALLED A SURFACE EMG, WHICH

517

1 MEASURES LEVELS OF MUSCLE TENSION IN THE PERSON. AT THE TIME  
2 WHEN MARCY STARTED, I DIDN'T HAVE THAT UNIT.

3 BUT WE THEN DO A REGULAR ORTHOPEDIC NEUROLOGIC EXAM,  
4 WHICH I'M PUTTING THEM THROUGH BASIC TESTS TO SEE HOW THEIR  
5 BODY'S FUNCTIONING. ONCE I'M DONE WITH THAT, IF I NEED X-RAYS  
6 OR SOMETHING LIKE THAT -- I USED TO HAVE AN X-RAY MACHINE, BUT  
7 NOW I SEND OUT FOR THE X-RAYS IF IT'S NEEDED. SOMETIMES IT'S AN  
8 UNNECESSARY EXPENSE. I DON'T FEEL THAT I NEED IT, SO I DON'T DO  
9 THAT. AND THEN, USUALLY, ON THAT FIRST DAY I'LL PROVIDE THEM  
10 WITH SOME ADJUSTMENTS, SPINAL ADJUSTMENTS THAT -- WELL, I WON'T  
11 GO INTO THAT AT THE MOMENT.

12 Q. AND IN YOUR TYPICAL SESSION, CAN YOU TAKE US THROUGH  
13 THE PROCEDURE. WHAT YOU DO WHEN THE PATIENT FIRST COMES TO SEE

14 YOU ON A PARTICULAR SESSION.

15 A. ON A REGULAR -- I JUST DESCRIBED A FIRST-DAY VISIT.

16 Q. YES.

17 A. ON A REGULAR SESSION, I'M DIFFERENT THAN MOST -- IT  
18 PROBABLY DOESN'T HELP ME MUCH TO SPEND THE AMOUNT OF TIME THAT I  
19 DO WITH EACH PERSON, BUT I SPEND ABOUT A HALF-HOUR WITH EACH  
20 PERSON. EACH PERSON COMES IN AND THEY ARE SPECIFICALLY THAT  
21 TIME. I DON'T GET A BUNCH OF PEOPLE IN AT ONCE. SO THE PERSON  
22 COMES IN, AND I SIT DOWN WITH THEM AND I ASK THEM HOW THEIR DAY  
23 IS GOING AND WHAT -- YOU KNOW, WHAT'S GOING ON WITH THEM. HOW  
24 DO THEY FEEL THAT DAY? DO THEY FEEL BETTER, SAME, WORSE FROM  
25 THE LAST TIME I SAW THEM?

26 AND THEN I JOT ALL THESE THINGS DOWN TO MAKE SURE THAT

518

1 I CAN GO BACK TO THAT. BECAUSE SOMETIMES TREATMENTS CAN LAST A  
2 WHILE, AND I MAY NOT REMEMBER WHAT THE PERSON TOLD YOU TWO OR  
3 THREE DAYS AGO AND THEY MIGHT NOT REMEMBER. SO I'LL JOT DOWN  
4 WHAT THEY TELL ME, AND THEN I'LL PUT THEM THROUGH A LOT OF  
5 MOTION PALPATION, STATIC PALPATION. I USE AN INSTRUMENT THAT I  
6 RUN DOWN THE PERSON'S BACK THAT MEASURES HEAT COMING OFF THE  
7 NERVE ROOTS. IT'S A MEASURE OF INFLAMMATION ON SPECIFIC NERVE  
8 ROOTS. IT HELPS ME TO BE VERY SPECIFIC AS TO WHERE I MIGHT END  
9 UP DOING MY ADJUSTMENTS.

10 AND THEN I GO ABOUT -- ONCE I FIGURE ALL THAT OUT,  
11 THEN I ADJUST THE PERSON. I MIGHT GIVE THEM SPECIFIC EXERCISES

12 TO DO TO TRY TO STRENGTHEN THEIR SPINE SO THEY DON'T HAVE TO  
13 KEEP COMING IN. I MIGHT GIVE THEM ERGONOMIC ADVICE, POSTURAL  
14 ADVISE OR DIETARY, NUTRITIONAL ADVICE. AND THEN THAT USUALLY  
15 ENDS THE SESSION.

16 Q. I WANT TO FOCUS ON THE BEGINNING OF THE SESSION, WHEN  
17 YOU'RE HAVING A CONVERSATION WITH YOUR PATIENT. WHY IS THAT  
18 IMPORTANT, IN YOUR PROFESSIONAL OPINION?

19 A. WELL, THERE'S A DEFINITE MIND, BODY CONNECTION WITH  
20 PEOPLE. STRESS IS A HORRIBLE THING. IF YOU'RE VERY STRESSED  
21 OUT, IT CAN MAKE YOUR MUSCLES TIGHT. IT CAN AFFECT YOUR  
22 DIGESTION. IT COULD GIVE YOU HEADACHES, DIARRHEA, ALL KINDS OF  
23 PROBLEMS. I THINK WE ALL KNOW WHAT THAT'S LIKE RIGHT AT THIS  
24 MOMENT. SO IF SOMEBODY'S UNDER A LOT OF STRESS, THAT'S  
25 IMPORTANT FOR ME TO KNOW AND IT'S IMPORTANT FOR HOW I'M GOING TO  
26 WORK WITH THEM.

519

1 Q. SO IT'S AN IMPORTANT PART OF YOU GIVING APPROPRIATE  
2 TREATMENT, TO LEARN FROM THE PATIENT WHAT IS CAUSING THEM STRESS  
3 AT A PARTICULAR SESSION?

4 A. YES.

5 Q. AND IS THAT WHAT YOU ACTUALLY DO AT EACH SESSION, IS  
6 LEARN WHAT IS STRESSING THEM OUT?

7 A. AS BEST AS POSSIBLE, YES.

8 Q. AND IS THAT THE PRACTICE YOU UNDERTOOK WITH  
9 PROFESSOR BLOUGH?

10 A. YES.

11 Q. AND DO YOU CONTINUE TO TREAT PROFESSOR BLOUGH?

12 A. YES.

13 Q. AND THIS PRACTICE THAT YOU DESCRIBED, AS FAR AS AT  
14 LEAST THE BEGINNING OF YOUR SESSIONS, WHERE YOU'RE TALKING WITH  
15 PROFESSOR BLOUGH TO UNDERSTAND WHAT IS STRESSING HER OUT ON THAT  
16 PARTICULAR DAY, THAT HAS REMAINED CONSTANT THROUGHOUT YOUR  
17 TREATMENT?

18 A. YES.

19 Q. NOW, I WANT TO ASK YOU ABOUT A FEW PARTICULAR SESSIONS  
20 THAT YOU'VE HAD WITH PROFESSOR BLOUGH OVER TIME. JUST BY ASKING  
21 YOU ABOUT A PARTICULAR DATE, ARE YOU ABLE TO HAVE SPECIFIC  
22 RECOLLECTION OF WHAT HAPPENED AT ANY PARTICULAR SESSION?

23 A. NO.

24 Q. ALL RIGHT.

25 IS THERE ANYTHING THAT COULD REFRESH YOUR RECOLLECTION  
26 AS TO THOSE PARTICULAR SESSIONS?

520

1 A. YES. I WOULD LIKE TO REFER TO SOME NOTES THAT I TOOK.

2 Q. AND DESCRIBE FOR US WHAT THOSE NOTES ARE.

3 A. WELL, THEY ARE CALLED "SOAP NOTES," AND IT'S AN  
4 ACRONYM, S-O-A-P, SUBJECTIVE OBJECTIVE ASSESSMENT AND PROCEDURE  
5 OR PLAN. SO THAT'S WHAT I TRY TO GO THROUGH IN MY MIND AS I'M  
6 WRITING THESE NOTES.

7 Q. AND ARE THESE NOTES THAT YOU MAINTAIN IN ANY SORT OF

8 PATIENT FILE?

9 A. YES.

10 Q. SO THIS IS PROFESSOR BLOUGH'S OFFICIAL CHART THAT YOU  
11 MAINTAINED?

12 A. YES.

13 Q. AND AS, I BELIEVE YOU DESCRIBED EARLIER, YOU MAINTAIN  
14 THEM IN THE REGULAR COURSE OF YOUR BUSINESS?

15 A. YES.

16 Q. OKAY.

17 I WANT TO ASK YOU ABOUT -- GO BACK TO DECEMBER OF  
18 2005, IF YOU WOULD. CAN YOU TELL ME, DID YOU HAVE A SESSION  
19 WITH PROFESSOR BLOUGH IN THE BEGINNING OF DECEMBER OF 2005?

20 A. I'M SORRY. IT WILL JUST TAKE A MOMENT TO GET MY  
21 NOTES.

22 Q. OKAY.

23 A. OKAY. I FOUND IT.

24 Q. AND DID YOU HAVE A SESSION WITH PROFESSOR BLOUGH IN  
25 THE BEGINNING OF DECEMBER OF 2005?

26 A. YES.

521

1 Q. ON WHAT DATE?

2 A. 12/5/05.

3 Q. AND ON DECEMBER 5TH OF 2005, DID YOU GO THROUGH THE  
4 PROCEDURE THAT YOU'VE ALREADY DESCRIBED FOR US, AS FAR AS TAKING  
5 A -- HAVING A CONVERSATION WITH PROFESSOR BLOUGH ABOUT WHAT WAS



6 CAUSING HER STRESS ON THAT PARTICULAR DAY?

7 A. YES, I DID.

8 Q. AND WHAT DID SHE TELL YOU?

9 A. WHAT I HAVE WRITTEN HERE UNDER SYMPTOMS WAS, "BOTH  
10 EARS FEEL LIMITED HEARING," AND I PUT QUESTION MARK, "POSSIBLE  
11 SINUS. LAST TWO WEEKS SUDDEN ONSET."

12 Q. SO THAT'S WHAT SHE TOLD YOU AT THAT TIME?

13 A. YES.

14 Q. AND WAS THAT SESSION, TO THE BEST OF YOUR  
15 RECOLLECTION, DECEMBER 5, 2005, THE FIRST TIME PROFESSOR BLOUGH  
16 RELATED TO YOU ANY COMPLAINTS ABOUT HER HEARING?

17 A. YES.

18 Q. I WANT TO MOVE TO APRIL 3RD OF 2006.

19 A. YES, I HAVE IT.

20 Q. DID YOU HAVE A SESSION WITH PROFESSOR BLOUGH ON  
21 APRIL 3RD, 2006?

22 A. YES.

23 Q. AND ON THAT DATE DID YOU GO THROUGH THE SAME PROCESS  
24 THAT YOU'VE DESCRIBED FOR US, AS FAR AS TAKING A HISTORY OF  
25 PROFESSOR BLOUGH, AS FAR AS WHAT WAS CAUSING HER STRESS ON THAT  
26 DAY?

522

1 A. YES, I DID.

2 Q. AND WHAT DID SHE TELL YOU?

3 A. AGAIN, IF I MIGHT READ DIRECTLY FROM WHAT I WROTE

4 UNDER SYMPTOMS. THIS IS THE OBJECTIVE COLUMN, THE HISTORY PART  
5 OF THE COLUMN. I WROTE, "THIS MORNING LOW BACK STIFFNESS.  
6 TAKEN OFF CHEMOTHERAPY TO SEE IF IT HELPS WITH HEARING. STILL  
7 HAS HEARING LOSS. NO HEADACHES, BUT TIRED TODAY." AND THEN ON  
8 THE SIDE, IN A LITTLE SIDEBAR I WROTE, "LOSS OF HEARING ON LOWER  
9 TONES. CAME IN" -- I'M SORRY. OH, "CAME ON FAST. COULD BE  
10 SICKNESS" -- "DRUG OR SICKNESS RELATED," I PUT.

11 Q. OKAY.

12 AND WHEN PROFESSOR BLOUGH WAS TELLING YOU THE THINGS  
13 THAT YOU'VE JUST READ TO US, DID YOU UNDERSTAND HER TO BE  
14 TELLING YOU THAT SHE WAS HAVING STRESS RELATED TO THESE ISSUES?

15 A. I'M SORRY?

16 Q. WERE THESE THINGS THAT YOU'VE JUST RELATED, THESE  
17 OBJECTIVE KIND OF COMMENTS, WERE THOSE COMMENTS MADE TO YOU IN  
18 THE SENSE THAT THESE ARE CAUSING HER STRESS?

19 A. I BELIEVE SO AT THAT TIME. AT THAT POINT, I'M  
20 THINKING OF A NUMBER OF THINGS, TRYING TO FIGURE OUT WHAT WOULD  
21 CAUSE SOME KIND OF HEARING LOSS.

22 Q. AND YOU'RE USING THIS INFORMATION TO HELP HER DEAL  
23 WITH HER STRESS?

24 A. YES.

25 Q. AND, AGAIN, GLOBALLY, WHEN YOU'RE GIVING CHIROPRACTIC  
26 CARE, WHAT IS THE GOAL?

1 A. THE GOAL IS TO RELIEVE INTERFERENCE ON THE NERVOUS

2 SYSTEM, WHICH CAN COME ABOUT DUE TO STRESS. I'M TRYING TO LET  
3 HER WHOLE BODY FUNCTION BETTER. IT'S BASICALLY TRYING TO MAKE  
4 HER FEEL BETTER, GIVE HER MORE WELLNESS IN HER LIFE, LET HER  
5 DEAL WITH THE STRESS MORE APPROPRIATELY.

6 Q. SO YOU'RE TRYING TO DEAL WITH THE -- YOU'RE DEALING  
7 WITH THE PHYSICAL SIDE OF WHAT STRESS CAUSES?

8 A. YES.

9 Q. MAY 3, 2006, DID YOU HAVE A SESSION WITH  
10 PROFESSOR BLOUGH?

11 A. YES.

12 Q. AND DURING THAT SESSION, DID YOU FOLLOW THE SAME  
13 PROCEDURES THAT WE'VE DISCUSSED PREVIOUSLY?

14 A. YES, I DID.

15 Q. AND WHAT DID PROFESSOR BLOUGH RELATE TO YOU AS FAR AS  
16 WHAT WAS CAUSING HER STRESS AT THAT TIME?

17 A. I HAVE WRITTEN HERE, "OFF CHEMOTHERAPY TWO TO THREE  
18 MONTHS. HASN'T SEEMED TO HAVE MADE MUCH DIFFERENCE WITH RESPECT  
19 TO HEARING. HUSBAND SAYS HE STILL CAN'T HEAR HER" -- NO, SORRY.  
20 I SAID THAT BACKWARDS, "HUSBAND SAYS SHE STILL CAN'T HEAR HIM.  
21 HASN'T BEEN IN CLASSROOM TO REALLY BE ABLE TO TELL." AND IN  
22 PARENTHESIS, "FINALS WEEK RIGHT NOW." AND THEN I MADE SOME  
23 OTHER NOTATION ABOUT HER HEADACHES. ALSO, "BUZZING, RINGING  
24 STILL OCCUR, PATIENT STATES. EENT FOUND NO APPRECIABLE WAX IN  
25 EARS."

26 Q. EENT, WHAT'S THAT?

1 A. EAR, NOSE AND THROAT DOCTOR.

2 Q. LET'S GO JUST BRIEFLY TO MAY 15, 2006. DID YOU HAVE A  
3 SESSION WITH PROFESSOR BLOUGH THEN?

4 A. MAY 15, YES.

5 Q. AND DID YOU FOLLOW THE SAME PROCEDURES WE'VE DISCUSSED  
6 BEFORE?

7 A. YES, I DID.

8 Q. AND WHAT DID PROFESSOR BLOUGH TELL YOU THAT DAY?

9 A. "LESS HEADACHES. BETTER ENERGY SINCE BEING OFF  
10 CHEMOTHERAPY. LOSS OF HEARING OF LOWER TONES, LIKELY ASSOCIATED  
11 WITH BEING ON CHEMOTHERAPY FOR INTESTINAL CARCINOIDS."

12 Q. NOW, LET'S SKIP AHEAD TO AUGUST 4TH OF 2006.

13 A. YES.

14 Q. DID YOU HAVE A SESSION WITH PROFESSOR BLOUGH THAT DAY?

15 A. I DID.

16 Q. AND DID YOU FOLLOW THE SAME PROCEDURES WE'VE DISCUSSED  
17 BEFORE?

18 A. YES, I DID.

19 Q. WHAT DID PROFESSOR BLOUGH TELL YOU THAT DAY?

20 A. "EXTREMELY STRESSED OUT ABOUT LOSING JOB. PATIENT HAS  
21 BEEN EXPERIENCING DIARRHEA AND INCREASED ANXIETY."

22 Q. HOW ABOUT AUGUST 25, 2006?

23 A. YES, I DID.

24 Q. AND DID YOU FOLLOW THE SAME PROCEDURES WE'VE DISCUSSED  
25 PREVIOUSLY?

26 A. YES.

1 Q. WHAT DID PROFESSOR BLOUGH TELL YOU ON THAT DAY?

2 A. "NECK IS VERY TIGHT. SCHOOL HAS STARTED AND SHE'S  
3 WITHOUT A JOB. SHE'S DEPRESSED. MOST OF BACK IS VERY TIGHTLY  
4 MUSCLED" -- AND PARENTHESIS, "HYPERTROPHY."

5 Q. I'M SORRY. WHAT DID YOU SAY?

6 A. "HYPERTROPHY."

7 Q. WHAT IS THAT?

8 A. HYPERTROPHY MEANS A MUSCLE IS IN A STATE OF A LOT OF  
9 EXTREME TENSION. IT'S NOT A SPASM, BUT IT'S JUST VERY TIGHT ALL  
10 THE TIME.

11 Q. HOW ABOUT SEPTEMBER 1ST OF 2006?

12 A. YES.

13 Q. AND DID YOU HAVE A SESSION WITH PROFESSOR BLOUGH THAT  
14 DAY?

15 A. YES, I DID.

16 Q. DID YOU FOLLOW THE SAME PROCEDURES WE DISCUSSED  
17 PREVIOUSLY?

18 A. YES, I HAVE.

19 Q. WHAT DID PROFESSOR BLOUGH TELL YOU ON THAT DAY?

20 A. "PATIENT STILL DEPRESSED OVER LOSING JOB. POSTURALLY  
21 EXAGGERATED AP CURVES. INCREASED TENSION GUARDING IN MID TO  
22 LOWER CERVICAL, MID THORACIC AND UPPER LUMBAR AREAS."

23 Q. NOW, JUST TO STEP BACK FOR A SECOND. ALL OF THESE  
24 SESSIONS THAT WE'VE DISCUSSED, WHERE YOU'VE DESCRIBED WHAT

25 PROFESSOR BLOUGH HAS TOLD YOU, IN EACH OF THOSE SESSIONS DID YOU  
26 THEN PROVIDE CHIROPRACTIC CARE?

526

1 A. YES.

2 Q. AND, GENERALLY SPEAKING, YOU PROVIDED PHYSICAL CARE  
3 FOR HER --

4 A. YES.

5 Q. -- WITH THE GOAL OF RELIEVING THE STRESS THAT SHE WAS  
6 TELLING YOU ABOUT?

7 A. YES, AS BEST I CAN.

8 Q. AND HOW ABOUT SEPTEMBER 25, 2006, DID YOU HAVE A  
9 SESSION WITH HER ON THAT DAY?

10 A. YES, I DID.

11 Q. DID YOU FOLLOW THE SAME PROCEDURES WE'VE DISCUSSED  
12 BEFORE?

13 A. YES, I DID.

14 Q. WHAT DID PROFESSOR BLOUGH TELL YOU ON THAT DAY?

15 A. I MADE SOME NOTATIONS. SHE HAD IRRITATED -- SHE HAD A  
16 LEFT, SWOLLEN IRRITATED FOOT THAT SHE TWISTED. IT WAS AN  
17 INVERSION SPRAIN WHILE WALKING. BUT THEN THERE WAS A SIDEBAR, I  
18 THINK, IS WHAT YOU'RE REFERRING TO, WHERE I WROTE "A LOT OF  
19 STRESS AND TENSION, ACCUMULATION IN MIDDLE BACK AND UPPER MIDDLE  
20 BACK, BASE OF NECK SINCE LOSING JOB."

21 Q. NOW, THAT OBSERVATION YOU MADE WAS THAT BOTH WHAT SHE  
22 TOLD YOU AND WHAT YOU OBSERVED IN HER PHYSICALLY?

23 A. YES. IT WAS A COMBINATION OF BOTH.

24 Q. OKAY.

25 SO SHE TOLD YOU SHE HAD A LOT OF STRESS, AND THEN YOU  
26 OBSERVED THE PHYSICAL MANIFESTATION OF THAT?

527

1 A. YES.

2 Q. OKAY.

3 AND THEN THE LAST NOTE WE'RE GOING TO LOOK AT IS  
4 DECEMBER 18, 2006.

5 A. DECEMBER?

6 Q. YES. DECEMBER 18, 2006.

7 A. YES. I FOUND IT.

8 Q. DID YOU HAVE A SESSION WITH PROFESSOR BLOUGH ON THAT  
9 DAY?

10 A. YES, I DID.

11 Q. DID YOU FOLLOW THE SAME PROCEDURES WE'VE DISCUSSED  
12 PREVIOUSLY?

13 A. YES.

14 Q. WHAT DID PROFESSOR BLOUGH TELL YOU ON THAT DAY?

15 A. "STILL STRESSED FROM NOT HEARING WORD ABOUT HER JOB  
16 NEXT SEMESTER. SLIPPED AND FELL, LUMBOSACRAL BACK DID NOT HURT  
17 AFTER. LANDED ON THE CONCRETE FLOOR." THAT WAS THE EXTENT OF  
18 IT.

19 Q. I'M NOT GOING TO GO THROUGH ANY MORE PARTICULAR  
20 SESSIONS TO NOT BELABOR THE POINT ANYMORE, BUT I WANT TO ASK

21 YOU, GENERALLY, SINCE DECEMBER 2006, HAS PROFESSOR BLOUGH  
22 RELATED TO YOU THAT SHE CONTINUES TO HAVE STRESS IN RELATION TO  
23 LOSING HER JOB?

24 MR. VARTAIN: OBJECTION.

25 THE WITNESS: YES.

26 THE COURT: OVERRULED.

528

1 MR. LEBOWITZ: Q. YOU HAVE TO WAIT FOR THE JUDGE.

2 A. SORRY.

3 Q. AND SO THAT'S SOMETHING SHE'S CONTINUED TO TELL YOU  
4 ABOUT?

5 A. YES, SHE HAS.

6 Q. AND DOES THAT CONTINUE THROUGH YOUR SESSIONS THROUGH  
7 THE PRESENT TIME?

8 A. YES.

9 MR. LEBOWITZ: THANK YOU.

10 I HAVE NO MORE QUESTIONS, YOUR HONOR.

11 THE COURT: CROSS-EXAMINATION?

12 MR. VARTAIN: THANK YOU, YOUR HONOR.

13

14 CROSS-EXAMINATION

15 BY MR. VARTAIN:

16 Q. SIR, YOU DON'T TREAT THE MIND. YOU ONLY TREAT THE  
17 BODY; IS THAT CORRECT?

18 A. I TREAT -- IS THAT A SIMPLE YES OR NO ANSWER, OR CAN I



19 ELABORATE?

20 Q. WELL, I THINK YOU SAID TO MR. LEBOWITZ -- AND I'M  
21 GOING TO JUST SEE IF I CAN FIND MY QUOTE HERE -- THAT YOU WORK  
22 ON THE BODY, THE PHYSICAL SIDE?

23 A. THAT'S TRUE. I WORK ON THE BODY.

24 Q. OKAY.

25 AND YOU USE YOUR HANDS MOSTLY TO WORK ON THE BODY,  
26 CORRECT?

529

1 A. MOSTLY, YES.

2 Q. YOU'RE NOT A PSYCHOLOGIST, ARE YOU?

3 A. NO, I'M NOT.

4 Q. YOU'RE NOT A PSYCHIATRIST?

5 A. NO, I'M NOT.

6 Q. YOU DON'T HAVE MEDICAL TRAINING OF THE KIND THAT  
7 PHYSICIANS HAVE, DO YOU?

8 A. NO. I'M NOT A MEDICAL DOCTOR.

9 Q. SO YOU WEREN'T DIAGNOSING THIS -- YOU WERE NOT  
10 DIAGNOSING THE MENTAL SOURCES OF PROFESSOR BLOUGH'S STRESS. YOU  
11 WERE JUST LISTENING TO WHAT SHE TOLD YOU, CORRECT?

12 A. CORRECT.

13 Q. YOU NEVER DISCUSSED WITH HER HOW IT CAME TO BE THAT  
14 SHE WASN'T WORKING AT MENLO COLLEGE, DID YOU?

15 A. NO. WE DIDN'T GET INTO THE SPECIFICS OF THAT.

16 Q. SHE DIDN'T TELL YOU, DID SHE, THAT SHE ACTUALLY WAS

17 EVALUATED BY AN OUTSIDE EVALUATOR, A MEDICAL EVALUATOR WHO GAVE  
18 THE OPINION THAT SHE WASN'T READY TO COME BACK TO WORK. SHE  
19 DIDN'T TELL YOU THAT, DID SHE?

20 MR. LEBOWITZ: OBJECTION. NO FOUNDATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: ANSWER THE QUESTION?

23 THE COURT: YOU MAY.

24 THE WITNESS: SHE MENTIONED IT, BUT WE DIDN'T --

25 THAT'S NOT PART OF OUR SESSIONS. THAT'S NOT WHAT WE DO.

26 MR. VARTAIN: Q. SO PROFESSOR BLOUGH DID TELL YOU

530

1 THAT THE COLLEGE HAD ASKED HER TO GO TO AN OUTSIDE MEDICAL  
2 EVALUATOR? SHE DID TELL YOU THAT?

3 A. YES. I WAS FAMILIAR WITH THAT.

4 Q. AND WHEN SHE TOLD YOU THE COLLEGE HAD TERMINATED HER,  
5 SHE DIDN'T TELL YOU THAT INITIALLY THE COLLEGE TOLD HER SHE WAS  
6 ON A LEAVE OF ABSENCE AND MIGHT BE TERMINATED FOR THE REASON  
7 THAT THE EVALUATOR TOLD THE COLLEGE THAT SHE COULDN'T WORK; DID  
8 SHE TELL YOU THAT?

9 MR. LEBOWITZ: OBJECTION. NO FOUNDATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: CAN YOU REPEAT THE QUESTION?

12 MR. VARTAIN: Q. YEAH.

13 YOU SAID THAT DOCTOR -- THAT PROFESSOR BLOUGH

14 MENTIONED TO YOU THAT THE COLLEGE HAD SENT HER TO AN OUTSIDE

15 MEDICAL EVALUATOR. SHE DID SAY THAT TO YOU?

16 A. YES.

17 Q. DID SHE ALSO SAY TO YOU THAT THE OUTSIDE MEDICAL  
18 EVALUATOR HAD GIVEN A LETTER TO THE COLLEGE SAYING THAT  
19 PROFESSOR BLOUGH WASN'T YET READY TO DO HER TEACHING FUNCTION;  
20 DID SHE TELL YOU THAT?

21 A. I WAS AWARE OF THIS RULING. YES.

22 Q. AND WERE YOU AWARE THAT THE DOCTOR'S RULING WAS THAT  
23 SHE SHOULDN'T BE WORKING YET? DID SHE TELL YOU THAT?

24 A. I WAS AWARE OF THAT.

25 Q. WERE YOU AWARE OF IT FROM PROFESSOR BLOUGH TELLING YOU  
26 THAT?

531

1 A. YES, I BELIEVE SHE TOLD ME THAT.

2 Q. DID SHE TELL YOU THAT IN THE 2006 PERIOD OF TIME WHEN  
3 SHE TOLD YOU THAT SHE LOST HER JOB?

4 A. I THINK THAT WAS THE FRAMEWORK OF THE TIME THAT I WAS  
5 TOLD.

6 Q. SO SHE DID TELL YOU THAT THE REASON SHE WASN'T WORKING  
7 THERE IN THE SUMMER AND FALL OF 2006 IS BECAUSE OF WHAT THE  
8 OUTSIDE MEDICAL DOCTOR HAD SAID, CORRECT?

9 A. YES. I WAS AWARE OF THAT WAS THE REASONING WHY.

10 Q. OKAY.

11 YOU'VE BEEN HER DOCTOR OF CHIROPRACTIC SINCE 1991?

12 A. YES.

13 Q. DO YOU TREAT HER NOW, THAT IS IN THE LAST YEAR OR TWO,  
14 ON THE SAME FREQUENCY OR REGULARITY THAT YOU'VE TREATED HER  
15 SINCE 1991?

16 A. MORE OR LESS, YES.

17 Q. SO YOU DON'T -- IT'S ABOUT THE SAME HOW MUCH TIME --  
18 HOW OFTEN SHE HAS TO COME IN TO SEE YOU FOR HER BACK PROBLEMS  
19 SINCE THE TIME THAT SHE TOLD YOU THAT THE DOCTOR GAVE THAT  
20 OPINION, AS COMPARED WITH THOSE YEARS BEFORE THE DOCTOR GAVE  
21 THAT OPINION, WOULD THAT BE FAIR?

22 A. RIGHT. SHE COMES IN INDEPENDENT OF THAT.

23 Q. FOR THE JURY'S SAKE, I WANT YOU TO GIVE -- TRY TO AS  
24 BEST YOU CAN SAY WHETHER OR NOT PROFESSOR BLOUGH COMES TO SEE  
25 YOU FOR BACK HELP ABOUT AS FREQUENTLY NOW, THAT IS NOW SINCE SHE  
26 STOPPED WORKING AT MENLO COLLEGE AS SHE DID OVER THOSE YEARS

532

1 THAT SHE WAS WORKING AT MENLO COLLEGE; IS IT ABOUT THE SAME?

2 A. MORE OR LESS, YES IT IS ABOUT THE SAME.

3 MR. VARTAIN: NO FURTHER QUESTIONS.

4 THE COURT: REDIRECT FOR THIS WITNESS?

5 MR. LEBOWITZ: NO, THANK YOU. NO QUESTIONS.

6 THE COURT: MAY DR. RAINES BE EXCUSED?

7 MR. LEBOWITZ: YES.

8 THE COURT: DR. RAINES, THANK YOU FOR YOUR TESTIMONY.

9 YOU'RE FREE TO GO.

10 THE WITNESS: THANK YOU.

11 THE COURT: YOUR NEXT WITNESS?

12 MR. LEBOWITZ: YES, YOUR HONOR.

13 THE COURT: WHO IS IT?

14 MR. LEBOWITZ: DR. JOHN SIEBEL.

15 THE COURT: DR. SIEBEL, IF YOU'D COME FORWARD TO THE  
16 WITNESS STAND AND STAND TO BE SWORN.

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

18 (WHEREUPON, THE WITNESS WAS SWORN.)

19 THE WITNESS: I DO.

20 THE CLERK: PLEASE BE SEATED.

21 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
22 AND SPELL THEM BOTH FOR THE RECORD.

23 THE WITNESS: JOHN SIEBEL; J-O-H-N S-I-E-B-E-L.

24

25 JOHN SIEBEL,

26 DULY SWORN, TESTIFIED AS FOLLOWS:

533

1 DIRECT EXAMINATION

2 BY MR. LEBOWITZ:

3 Q. GOOD MORNING, DR. SIEBEL.

4 A. GOOD MORNING.

5 Q. CAN YOU PLEASE TELL THE JURY, WHAT KIND OF DOCTOR ARE  
6 YOU?

7 A. I'M AN ONCOLOGIST AND HEMATOLOGIST.

8 Q. WHAT IS AN ONCOLOGIST?

9 A. A DOCTOR WHO TREATS CANCER.

10 Q. WHERE DO YOU PRESENTLY WORK?

11 A. I HAVE AN OFFICE IN SAN MATEO, CRYSTAL SPRINGS  
12 SHOPPING CENTER. IT'S SORT OF A --

13 Q. ARE YOU PART OF A PRACTICE?

14 A. I'M IN PRIVATE PRACTICE, YES, IN A GROUP OF FIVE  
15 ONCOLOGISTS.

16 Q. IF YOU COULD POSSIBLY SPEAK INTO THE MICROPHONE A  
17 LITTLE BIT?

18 A. SURE.

19 Q. THAT WOULD BE GREAT. THANK YOU.

20 DESCRIBE FOR US WHAT YOUR EDUCATION AND TRAINING HAS  
21 BEEN UP TO THIS POINT.

22 A. I GRADUATED FROM COLLEGE AND WENT TO MEDICAL SCHOOL.  
23 I THEN DID A SUCCESSION OF RESIDENCIES AND FELLOWSHIPS, AND I'M  
24 BOARD CERTIFIED IN PATHOLOGY, INTERNAL MEDICINE, ONCOLOGY.

25 Q. WHERE DID YOU GO TO MEDICAL SCHOOL?

26 A. TULANE.

534

1 Q. AND HOW LONG HAVE YOU BEEN PRACTICING ONCOLOGY?

2 A. APPROXIMATELY 30 YEARS.

3 Q. OKAY.

4 DID THERE COME A TIME IN THE SUMMER OF 2006, WHERE YOU  
5 WERE NOT WORKING IN YOUR OWN PRACTICE BUT HELPING OUT ANOTHER  
6 ONCOLOGIST, DR. FRED MARCUS?

7 A. YES.

8 Q. HOW DID THAT COME ABOUT?

9 A. FRED BECAME SICK AND SEVERAL MEMBERS OF OUR PRACTICE  
10 AGREED TO HELP OUT IN HIS PRACTICE, SEEING PATIENTS IN SEQUOIA  
11 HOSPITAL AND WORKING AT HIS OFFICE, SEEING PATIENTS -- SEEING  
12 HIS OUTPATIENT CLIENTS.

13 Q. SO YOU WERE COVERING FOR DR. MARCUS WHILE HE WAS ILL?

14 A. YES.

15 Q. AND AT THE TIME, DID YOU KNOW THE EXTENT OF  
16 DR. MARCUS'S ILLNESS?

17 A. YES.

18 Q. WHAT WAS THAT?

19 A. DR. MARCUS HAD DEVELOPED LUNG CANCER.

20 Q. AND FOR HOW LONG DID YOU HELP OUT BY COVERING  
21 DR. MARCUS'S PRACTICE?

22 A. I THINK IT WAS APPROXIMATELY TWO MONTHS.

23 Q. AND THOSE WERE IN THE SUMMER OF 2006?

24 A. YES.

25 Q. AND SO IN THE COURSE OF COVERING DR. MARCUS'S PRIVATE  
26 PRACTICE, WOULD YOU SEE HIS REGULAR ONCOLOGY PATIENTS?

535

1 A. YES, I WOULD.

2 Q. AND WHAT WOULD YOU DO TO FAMILIARIZE YOURSELF WITH  
3 EACH OF THE PATIENTS BEFORE THEY ARRIVED?

4 A. I HAD DR. MARCUS'S RECORDS, WHICH ARE VERY GOOD. AND

5 I WOULD REFER TO THE RECORDS TO THE EXTENT NECESSARY TO PERFORM  
6 THE EVALUATIONS.

7 Q. SO YOU WOULD GO BACK AND LOOK AT THE MEDICAL CHARTS OF  
8 EACH PATIENT BEFORE YOU SAW THEM?

9 A. YES.

10 Q. AND FROM THOSE MEDICAL CHARTS, YOU WOULD LEARN WHAT  
11 THE STATUS AND PROGRESS OF THAT PATIENT WAS?

12 A. AS MUCH AS COULD BE LEARNED. YES.

13 Q. SURE. AND YOU LEARNED FROM THAT CHART WHAT A  
14 PARTICULAR PATIENT'S DIAGNOSIS WAS?

15 A. YES.

16 Q. PERHAPS, IF IT'S WRITTEN IN THERE, WHAT THE PATIENT'S  
17 PROGNOSIS WAS?

18 A. YES.

19 Q. AND THROUGH THAT REVIEW OF THAT CHART, YOU LEARNED  
20 WHAT THE PATIENT'S MEDICATIONS OR DRUG REGIMEN IS AT THAT TIME?

21 A. YES.

22 Q. AND DO YOU RECALL THAT IN MID TO LATE JULY OF 2006 YOU  
23 SAW ONE OF DR. MARCUS'S PATIENTS NAMED MARCINE BLOUGH?

24 A. I'VE BEEN REMINDED OF THE FACT, YES.

25 Q. HOW MANY TIMES DID YOU SEE PROFESSOR BLOUGH?

26 A. I BELIEVE JUST ONCE.

536

1 Q. AND DID THAT VISIT HAPPEN ON JULY 21, 2006?

2 A. I PRESUME SO.



3 Q. WELL, YOU HAVE REVIEWED -- PRIOR TO COMING HERE TODAY  
4 YOU REVIEWED THE CHART NOTES?

5 A. YES.

6 Q. AND THAT'S WHAT YOU SAW WAS JULY 21, 2006?

7 A. IF YOU SAY SO, I AGREE; YES.

8 Q. YOU DON'T HAVE A REASON TO DOUBT THAT DATE?

9 A. NO.

10 Q. OKAY.

11 AND BEFORE PROFESSOR BLOUGH CAME TO SEE YOU, DID YOU  
12 FOLLOW THE SAME PROCEDURE YOU'VE JUST DESCRIBED, WHEREBY YOU  
13 FAMILIARIZED YOURSELF WITH HER CONDITION AND STATUS AND PROGRESS  
14 BY LOOKING THROUGH HER CHART?

15 A. YES.

16 Q. AND THESE ARE CHARTS THAT ARE MAINTAINED BY DR. MARCUS  
17 IN HIS REGULAR COURSE OF BUSINESS?

18 A. YES.

19 Q. THE SAME WAY YOU WOULD IF IT WERE YOUR PRACTICE?

20 A. EXACTLY.

21 Q. AND SO WHAT WAS THE PURPOSE OF PROFESSOR BLOUGH COMING  
22 TO SEE YOU ON THAT DAY? MEANING, WAS IT JUST A REGULAR SESSION  
23 OR WAS IT SOMETHING SPECIAL?

24 A. I'M REALLY NOT SURE. I THINK IT WAS A  
25 REGULARLY-SCHEDULED SESSION.

26 Q. SO IT WAS ONE OF THESE INSTANCES WHERE YOU WERE JUST

1 COVERING ONE OF HIS REGULAR PATIENT APPOINTMENTS?

2 A. YES.

3 Q. AND AT THAT APPOINTMENT, DID YOU PERFORM THE REGULAR  
4 ONCOLOGICAL EXAM?

5 A. I BELIEVE I DID. YES.

6 Q. AND TELL US, WHAT ARE THE COMPONENTS OF A REGULAR  
7 ONCOLOGICAL EXAM?

8 A. WELL, ONE REVIEWS THE HISTORY. ONE REVIEWS ANY  
9 LABORATORY STUDIES WHICH HAVE BEEN PROVIDED IN THE RECENT TESTS  
10 AND INTERVIEWS THE PATIENT TO SEE HOW HE OR SHE IS DOING, AND  
11 THEN PERFORMS A PHYSICAL EXAMINATION TO THE EXTENT NECESSARY  
12 DIRECTED TOWARD ASSESSING WHETHER THERE'S BEEN ANY CHANGE  
13 RELATIVE TO THE CANCER STATUS OF THE PATIENT.

14 Q. WHAT ARE THE ELEMENTS OF THE PHYSICAL PART OF THE  
15 EXAM?

16 A. TYPICALLY, ONE ASSESSES THE OVERALL CONDITION OF THE  
17 PATIENT, WHETHER THE PATIENT APPEARS TO BE SUFFERING FROM ANY  
18 KIND OF DISCOMFORT OR DISTURBANCE. THEN ONE REVIEWS WITH THE  
19 PATIENT ANYTHING THAT'S HAPPENED IN THE RECENT PAST THAT'S MAYBE  
20 CONTRIBUTING TO THIS, ASKING ABOUT ANY PAIN, OR ANY DIGESTIVE  
21 PROBLEMS, ANY RESPIRATORY PROBLEMS, ANYTHING LIKE THAT, THAT'S  
22 PART OF THE ASSESSMENT.

23 AND THEN THE PATIENT PARTIALLY DISROBES AND ONE CHECKS  
24 THE LYMPH NODES, WHICH ARE AN IMPORTANT FEATURE IN MOST CANCERS;  
25 LISTENS TO THE LUNGS; BRIEFLY CHECKS THE HEART. IF THE ABDOMEN  
26 HAS A POTENTIAL OF RELEVANT FINDINGS, ONE EXAMS THE ABDOMEN,

1 LOOKING FOR MASSES OR LARGE ORGANS. AND, IF NECESSARY, THE EXAM  
2 CAN BE EXTENDED TO PARTICULAR THINGS. THE EXAMINATION OF THE  
3 SKIN, EXAMINATION OF THE EXTREMITIES, YOU KNOW, BREASTS, WHAT  
4 HAVE YOU.

5 Q. AND WHAT YOU'VE JUST DESCRIBED TO US AS YOUR TYPICAL  
6 PHYSICAL COMPONENT OF YOUR TYPICAL ONCOLOGICAL EXAM, WOULD THAT  
7 BE THE SAME FOR SOMEONE LIKE PROFESSOR BLOUGH, WHO SUFFERS FROM  
8 CARCINOID TUMORS, A FORM OF CANCER?

9 A. YES.

10 Q. SO YOU HAD AN APPOINTMENT WITH PROFESSOR BLOUGH. DID  
11 YOU PERFORM ALL OF THE EXAMINATIONS THAT YOU'VE JUST DESCRIBED?

12 A. I WAS GIVEN THE CHART NOTES, AND I ACTUALLY DON'T  
13 REMEMBER WHAT ELEMENTS I PERFORMED BUT I PERFORMED WHAT I FELT  
14 WAS NECESSARY.

15 Q. YOU DID WHAT, OF COURSE, YOU BELIEVED TO BE THE  
16 MEDICALLY PROPER THING TO DO AT THE TIME?

17 A. YES.

18 Q. OKAY.

19 NOW, SUBSEQUENT TO HAVING THIS APPOINTMENT WITH  
20 PROFESSOR BLOUGH AND ASSESSING HER STATUS, REVIEWING HER CHART,  
21 DID YOU HAVE OCCASION TO WRITE A LETTER?

22 A. YES, I DID.

23 MR. LEBOWITZ: OKAY. CAN I HAVE EXHIBIT 18, PLEASE.

24 (PLAINTIFF'S EXHIBIT NO. 18 WAS MARKED FOR  
25 IDENTIFICATION.)

26 MR. LEBOWITZ: THANK YOU.

539

1 MAY APPROACH THE WITNESS, YOUR HONOR?

2 THE COURT: YES.

3 MR. LEBOWITZ: Q. DR. SIEBEL, WE'VE JUST PUT IN FRONT

4 OF YOU WHAT WE'VE MARKED FOR IDENTIFICATION AS EXHIBIT 18.

5 DO YOU RECOGNIZE THIS DOCUMENT?

6 A. YES, I DO.

7 Q. AND, GENERALLY, DESCRIBE FOR US WHAT THIS DOCUMENT IS.

8 A. THE DOCUMENT IS A LETTER WRITTEN BY ME TO "WHOM IT MAY  
9 CONCERN," AND THE SUBJECT OF IT IS PROFESSOR BLOUGH'S -- HOW CAN  
10 I DESCRIBE IT? IT WAS WRITTEN IN AN EFFORT TO COMMUNICATE THAT  
11 PROFESSOR BLOUGH WAS IN A MEDICALLY SATISFACTORY CONDITION TO  
12 PURSUE HER WORK.

13 Q. THIS LETTER IS SIGNED BY YOU?

14 A. YES, IT IS.

15 Q. AND THE DATE ON IT IS JULY 28, 2006?

16 A. YES.

17 Q. AND WERE YOU BEING TRUTHFUL AND HONEST WHEN YOU WROTE  
18 THIS LETTER?

19 A. YES.

20 MR. LEBOWITZ: YOUR HONOR, I'D OFFER 18 INTO EVIDENCE.

21 THE COURT: ANY OBJECTION?

22 MR. VARTAIN: NO OBJECTION.

23 THE COURT: EXHIBIT 18 WILL BE ADMITTED.

24 (PLAINTIFF'S EXHIBIT NO. 18 WAS ADMITTED INTO  
25 EVIDENCE.)  
26 MR. LEBOWITZ: Q. DR. SIEBEL, IF I CAN TROUBLE YOU TO

540

1 JUST READ THE LETTER TO THE JURY, PLEASE.

2 A. SURE. "JULY 18, 2006. RE" --

3 Q. I DON'T MEAN TO INTERRUPT YOU. DOES THAT SAY "28"?  
4 YOU SAID "18."

5 A. I'M SORRY, "28."

6 "RE: BLOUGH, MARCINE, DATE OF BIRTH 4/5/52.

7 "TO WHOM IT MAY CONCERN, ON 7/21/06, I HAD OCCASION TO  
8 "MEET DR. BLOUGH WHILE COVERING DR. FRED MARCUS'S ONCOLOGY  
9 "PRACTICE. CLINICALLY, SHE IS COMPLETELY STABLE, AND  
10 "SUBJECTIVELY AND OBJECTIVELY, HER CARCINOID TUMOR REMAINS  
11 "ABSOLUTELY STABLE. SHE APPEARS TO BE FULLY RESTORED  
12 "PSYCHOLOGICALLY."

13 "SHE INFORMS ME THAT SHE HAD BEEN DISCHARGED FROM HER  
14 "TEACHING POSITION FOR MEDICAL REASONS. THIS WAS  
15 "SURPRISING TO ME, GIVEN HER COMPLETE PHYSICAL STABILITY,  
16 "GOOD PROGNOSIS AND ABILITY TO UNDERTAKE THE WORK. I WAS  
17 "FURTHER SURPRISED TO FIND THAT HER DISCHARGE HAD TAKEN  
18 "PLACE, IN SPITE OF A NOTE FROM MS. GAROUTTE OF  
19 "DR. MARCUS'S OFFICE AFFIRMING THAT SHE WAS FIT TO CONTINUE  
20 "IN HER PRESENT TEACHING POSITION WITHOUT ANY LIMITATION."  
21 "I AM WRITING, ONCE AGAIN, TO AFFIRM THAT DR. BLOUGH'S

22 "DISCHARGE FOR MEDICAL REASONS IS ENTIRELY INAPPROPRIATE  
23 "COMING AS IT DOES AFTER ASSURANCES FROM HER PHYSICIANS  
24 "THAT SHE IS FULLY FIT FOR DUTY."  
25 "SINCERELY, JOHN B. SIEBEL, M.D."  
26 Q. DID YOU GIVE THIS LETTER TO ANYBODY?

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1 A. IT WAS GIVEN TO SOMEBODY. I'M NOT SURE WHOM.

2 Q. DO YOU KNOW WHETHER OR NOT IT WAS GIVEN TO PROFESSOR  
3 BLOUGH?

4 A. I PRESUME IT WAS.

5 Q. AND, ONCE AGAIN, THE SOURCE OF YOUR INFORMATION THAT  
6 YOU USED TO WRITE THIS LETTER WAS THE REVIEW OF  
7 PROFESSOR BLOUGH'S CHART AND YOUR EXAMINATION OF HER; IS THAT  
8 CORRECT?

9 A. YES. AND, OBVIOUSLY, SOME COMMUNICATION FROM  
10 MS. GAROUTTE ALSO.

11 Q. AND THAT COMMUNICATION FROM MS. GAROUTTE, WAS THAT IN  
12 THE FILE THAT YOU REVIEWED?

13 A. NO. I THINK IT WAS CONVEYED VERBALLY.

14 MR. LEBOWITZ: OKAY.

15 I HAVE NO MORE QUESTIONS, YOUR HONOR.

16 THE COURT: CROSS-EXAMINATION?

17 MR. VARTAIN: THANK YOU, YOUR HONOR.

18

19 CROSS-EXAMINATION

20 BY MR. VARTAIN:

21 Q. GOOD MORNING, DOCTOR.

22 A. GOOD MORNING.

23 Q. WE MET LAST WEEK OR TWO WEEKS AGO?

24 A. YES.

25 Q. THANK YOU FOR COMING.

26 WHEN WE MET, IT WAS BECAUSE PROFESSOR BLOUGH'S

542

1 ATTORNEY HAD TOLD ME YOU MIGHT COME AND TESTIFY, AND I GOT TO  
2 TAKE YOUR DEPOSITION, WHICH WAS YOUR SWORN TESTIMONY. YOU  
3 REMEMBER THAT?

4 A. YES.

5 Q. YOU WROTE THIS LETTER, DOCTOR, AFTER SEEING  
6 PROFESSOR BLOUGH JUST ONE TIME; IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND SHE ASKED YOU TO WRITE A LETTER FOR HER THAT SHE  
9 COULD GIVE THE COLLEGE, HER EMPLOYER, CORRECT?

10 A. I BELIEVE THAT'S WHAT HAPPENED. YES.

11 Q. AND AS A GOOD CANCER DOCTOR, YOU KNOW THAT IF THE  
12 PATIENT -- IT'S GOOD FOR THE PATIENT TO GO BACK TO WORK. THAT  
13 GIVES THE PERSON A SENSE OF HOPE, AND IF THEY CAN POSSIBLY DO  
14 THE JOB, THAT'S SOMETHING YOU'RE GOING TO ADVOCATE FOR THEM; IS  
15 THAT A FAIR STATEMENT?

16 A. SOMETIMES IT'S GOOD FOR THE PATIENT TO GO BACK TO WORK  
17 AND SOMETIMES IT ISN'T. BUT IN HER CASE, IT SEEMED THAT -- IT

18 WAS NOT REALLY FOR MEDICAL REASONS THAT I RECOMMENDED IT. IT  
19 WAS BECAUSE SHE INFORMED ME THAT SHE WAS BEING DISCHARGED FOR  
20 MEDICAL REASONS, WHICH I FELT WAS AN INAPPROPRIATE REASON.

21 Q. AND YOU THOUGHT SHE WAS SAYING THAT THE COLLEGE HAD  
22 DISCHARGED HER BECAUSE OF THAT CONDITION THAT YOU WERE SEEING  
23 HER FOR, THE CANCER, CORRECT?

24 A. MOST ASSUREDLY, THAT'S WHAT I THOUGHT.

25 Q. SO WHEN SHE TOLD YOU, WHATEVER SHE SAID, IT CAUSED YOU  
26 TO BELIEVE THAT THE COLLEGE WAS CONCERNED ABOUT THE CANCER, AND

543

1 THAT'S WHY THEY DIDN'T HAVE HER WORKING THERE, CORRECT?

2 A. IT DIDN'T CAUSE ME TO BELIEVE ANYTHING. IT CAUSED ME  
3 TO FEEL THAT IT WAS APPROPRIATE TO MAKE IT CLEAR TO THE COLLEGE  
4 THAT HER MEDICAL CONDITION, HER CANCER CONDITION WAS NOT A  
5 REASON FOR DISCHARGE.

6 Q. AND THAT'S WHAT I THOUGHT YOU WERE SAYING TO ME, THAT  
7 THERE WAS NO REASON IN THE CANCER CONDITION FOR HER NOT TO BE  
8 WORKING; IS THAT FAIR?

9 A. THAT'S FAIR.

10 Q. AND THAT'S WHAT YOU WERE TRYING TO TELL THE COLLEGE IN  
11 THIS LETTER THAT YOU WROTE TO -- THAT YOU WROTE AND YOU READ OUT  
12 LOUD TO THE JURY, CORRECT?

13 A. PRECISELY.

14 Q. YOU DIDN'T EVALUATE HER DIAGNOSIS OF MAJOR DEPRESSION,  
15 DID YOU?



16 A. NO.

17 Q. SHE DIDN'T TELL YOU THAT SHE HAD A PSYCHIATRIST DOWN  
18 THE STREET FROM YOU, AND YOU DIDN'T CONSULT WITH THE  
19 PSYCHIATRIST TO EVALUATE WHETHER HER MENTAL STATE WOULD ALLOW  
20 HER TO WORK, DID YOU?

21 A. THAT WOULD HAVE BEEN COMPLETELY OUTSIDE THE RANGE OF  
22 MY RESPONSIBILITIES.

23 Q. AND THAT'S WHY YOU -- WHEN YOU WROTE THE LETTER THAT  
24 SAID THE CANCER WAS NOT A REASON FOR HER TO BE OUT OF WORK, YOU  
25 WEREN'T TRYING TO SAY TO THE COLLEGE THAT HER MENTAL HEALTH  
26 ISSUES WERE PERMITTING HER TO WORK, WERE YOU?

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1 A. I WAS SAYING NOTHING ABOUT HER MENTAL HEALTH ISSUES.

2 Q. OKAY.

3 DID SHE TELL YOU THAT IT ACTUALLY WAS THE CASE THAT IT  
4 WAS HER MENTAL HEALTH ISSUES THAT HAD BEEN EVALUATED BY A  
5 PSYCHIATRIST WHO WAS LOOKING AT HER MENTAL HEALTH ISSUES AND HER  
6 MEDICATIONS?

7 MR. LEBOWITZ: OBJECTION. NO FOUNDATION.

8 THE COURT: OVERRULED.

9 MR. VARTAIN: Q. DID SHE TELL YOU THAT?

10 A. NO.

11 Q. DID SHE TELL YOU THAT THE COLLEGE HAD A DOCTOR ASSESS  
12 HER AND THAT THE COLLEGE MADE ITS DECISION BASED ON WHAT THE  
13 DOCTOR THOUGHT, NOT WHAT THE COLLEGE THOUGHT?

14 A. NO.

15 Q. SO YOU DID NOT -- DOCTOR, YOU DIDN'T DO ANY EVALUATION  
16 OF PROFESSOR BLOUGH'S PSYCHIATRIC MENTAL AND THINKING ABILITY  
17 WHEN YOU WROTE THIS LETTER?

18 A. I'M NOT A PSYCHIATRIST OR A PSYCHOLOGIST.

19 Q. SO YOU DIDN'T EVALUATE -- WOULD THE RIGHT PERSON TO  
20 EVALUATE THINKING PROBLEMS OR PSYCHIATRIC MEDICAL, MEDICINE  
21 PROBLEMS, WOULD IT BE A PSYCHIATRIST?

22 A. YES.

23 MR. VARTAIN: NO FURTHER QUESTIONS.

24 THE COURT: REDIRECT?

25 MR. LEBOWITZ: JUST BRIEFLY, YOUR HONOR.

26

545

1 REDIRECT EXAMINATION

2 BY MR. LEBOWITZ:

3 Q. DURING THE SESSION WHERE YOU MET WITH  
4 PROFESSOR BLOUGH, DID YOU OBSERVE ANYTHING IN HER AFFECT OR HER  
5 INTERACTION WITH YOU THAT CAUSED YOU TO HAVE ANY CONCERN ABOUT  
6 HER MENTAL PROCESSING OR HER ABILITY TO COMMUNICATE?

7 A. SHE WAS QUITE DISTRAUGHT, AND I DIDN'T EVALUATE IT  
8 FURTHER THAN TO TAKE AT FACE VALUE WHAT SHE SAID, WHICH IS THAT  
9 SHE HAD BEEN DISCHARGED FROM HER POSITION AT THE COLLEGE.

10 Q. AND SHE WAS DISTRAUGHT WHEN SHE WAS TELLING YOU ABOUT  
11 HER DISCHARGE?

12 A. YES.

13 Q. WAS SHE ABLE TO ARTICULATE HER THOUGHTS TO YOU, AS FAR  
14 AS YOU COULD OBSERVE?

15 A. I CAN'T RECALL.

16 Q. DO YOU RECALL HAVING ANY DIFFICULTY UNDERSTANDING WHAT  
17 SHE WAS TRYING TO COMMUNICATE TO YOU?

18 A. NO.

19 Q. DO YOU RECALL OBSERVING ANY DIFFICULTIES SHE WAS  
20 HAVING FORMING THOUGHTS?

21 A. NO.

22 Q. DO YOU RECALL ANY DIFFICULT -- SEEING ANY DIFFICULTIES  
23 IN PROFESSOR BLOUGH THAT WOULD CAUSE YOU ALARM, AS FAR AS A  
24 PSYCHIATRIC CONDITION?

25 MR. VARTAIN: OBJECTION. LEADING.

26 THE COURT: OVERRULED.

546

1 THE WITNESS: NO.

2 MR. LEBOWITZ: THANK YOU. I HAVE NOTHING.

3 THE COURT: REDIRECT -- I'M SORRY -- RECROSS?

4 MR. VARTAIN: YES. THANK YOU, YOUR HONOR.

5

6 RECROSS EXAMINATION

7 BY MR. VARTAIN:

8 Q. BUT, DOCTOR, YOU SAID YOU WEREN'T SEEING HER FOR THE

9 PURPOSE OF EVALUATING WHETHER HER MENTAL CONDITION WAS GOOD

10 ENOUGH TO TEACH; ISN'T THAT THE CASE?

11 A. I ABSOLUTELY WAS NOT SEEING HER FOR THAT PURPOSE.

12 MR. VARTAIN: THANK YOU VERY MUCH.

13 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

14 MR. LEBOWITZ: NO MORE, YOUR HONOR.

15 THE COURT: DR. SIEBEL, THANK YOU FOR YOUR TESTIMONY.

16 I'M GOING TO TAKE THAT EXHIBIT FROM YOU, SIR. AND YOU'RE FREE

17 TO GO.

18 THE WITNESS: THANK YOU.

19 THE COURT: THANK YOU.

20 MR. LEBOWITZ: YOUR HONOR, MAY WE APPROACH?

21 THE COURT: YES.

22 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

23 MR. LEBOWITZ: READY TO CALL OUR NEXT WITNESS, YOUR

24 HONOR.

25 THE COURT: OKAY.

26 MR. LEBOWITZ: THE PLAINTIFF CALLS, PURSUANT TO

547

1 EVIDENCE CODE 776, MS. STEPHANIE SAPRAI.

2 THE COURT: MS. SAPRAI, IF YOU'D COME FORWARD TO THE

3 WITNESS STAND PLEASE AND STAND TO BE SWORN.

4 AND, LADIES AND GENTLEMEN, WE'RE GOING TO GET SOME

5 EQUIPMENT SET UP WHILE WE'RE STARTING WITH MS. SAPRAI BECAUSE I

6 HAVE A SHORT MORNING.

7 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

8 (WHEREUPON, THE WITNESS WAS SWORN.)

9 THE WITNESS: I DO.

10 THE CLERK: PLEASE BE SEATED.

11 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME

12 AND SPELL THEM BOTH FOR THE RECORD.

13 THE WITNESS: STEPHANIE, S-T-E-P-H-A-N-I-E, SAPRAI,

14 S-A-P-R-A-I.

15 THE CLERK: THANK YOU.

16

17 STEPHANIE SAPRAI,

18 DULY SWORN, TESTIFIED AS FOLLOWS:

19

20 DIRECT EXAMINATION PURSUANT TO EVIDENCE CODE 776

21 BY MR. LEBOWITZ:

22 Q. GOOD MORNING, MS. SAPRAI.

23 A. GOOD MORNING.

24 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

25 MR. LEBOWITZ: Q. GOOD MORNING, AGAIN.

26 A. GOOD MORNING.

548

1 Q. WHO IS YOUR CURRENT EMPLOYER?

2 A. MENLO COLLEGE.

3 Q. WHAT IS YOUR POSITION WITH THE COLLEGE?

4 A. I AM DIRECTOR OF HUMAN RESOURCES.

5 Q. HOW LONG HAVE YOU BEEN WITH THE COLLEGE?

6 A. I STARTED IN JANUARY 2006.

7 Q. AND PRIOR TO THAT TIME -- WELL, STRIKE THAT.

8 WHAT POSITION WERE YOU HIRED INTO?

9 A. I WAS HIRED -- THE TITLE WAS DIRECTOR OF  
10 ADMINISTRATION AT THAT TIME.

11 Q. IS THAT THE SAME THING AS DIRECTOR OF HUMAN RESOURCES?

12 A. BASICALLY, YES.

13 Q. SO IT WAS BASICALLY JUST A TITLE CHANGE FROM DIRECTOR  
14 OF ADMINISTRATION TO DIRECTOR OF HUMAN RESOURCES?

15 A. YES.

16 Q. AND PRIOR TO COMING TO THE COLLEGE, DID YOU HAVE PRIOR  
17 EXPERIENCE WORKING IN HUMAN RESOURCES?

18 A. I HAVE WORKED IN HUMAN RESOURCES SINCE MY GRADUATION  
19 FROM COLLEGE.

20 Q. I HAVE TO ASK THIS BUT --

21 MR. VARTAIN: YOU CAN'T ASK IT. NEVER ASK A WOMAN.

22 I OBJECT, YOUR HONOR. I TOLD HER SHE WOULDN'T HAVE TO  
23 REVEAL HER AGE.

24 HE'S INDIRECTLY TRYING TO GET YOUR AGE.

25 MR. LEBOWITZ: Q. WHEN WAS IT THAT YOU GRADUATED  
26 COLLEGE?

549

1 A. 1978.

2 Q. THANK YOU.

3 HAVE YOU EVER ACTUALLY MET PROFESSOR MARCINE BLOUGH?

4 A. I HAVE MET HER; YES.

5 Q. WHEN DID YOU FIRST MEET HER?

6 A. I BELIEVE IT WAS SOMETIME DURING THE SUMMER OF 2006.

7 I WAS NEW AND I DID NOT MEET HER UNTIL ABOUT THAT TIME.

8 Q. AND WHAT WERE THE CIRCUMSTANCES UNDER WHICH YOU MET

9 WITH HER?

10 A. SHE HAD REQUESTED TO COME TO MY OFFICE TO SEE HER

11 PERSONNEL FILE.

12 Q. OKAY.

13 SO IN THE SUMMER OF 2006. DO YOU REMEMBER WHAT MONTH

14 IT WAS, JUNE OR JULY?

15 A. I REALLY DON'T.

16 Q. BUT THAT WAS THE VERY FIRST TIME YOU HAD MET HER?

17 A. YES.

18 Q. WHAT ARE YOUR JOB DUTIES AT THE COLLEGE AS A HUMAN

19 RESOURCES DIRECTOR?

20 A. I MANAGE ALL OF THE HUMAN RESOURCES, ADMINISTRATION,  
21 PERSONNEL FILES, BENEFITS ADMINISTRATION, WORKER'S COMP. LEAVES.

22 I ASSIST IN EMPLOYMENT AND RECRUITING, COMPENSATIONS.

23 Q. WHAT ABOUT TRAINING OF BOTH ADMINISTRATION AND

24 EMPLOYEES?

25 A. ANY TRAINING THAT WE WOULD DO WOULD ALSO COME THROUGH

26 THE HUMAN RESOURCES DEPARTMENT, WHETHER IT WAS MYSELF OR AN

1 OUTSIDE SOURCE.

2 Q. IS THAT SOMETHING YOU WOULD COORDINATE AND ARRANGE?

3 A. YES.

4 Q. NOW, IS THERE A DIFFERENCE IN THE TYPES OF THINGS YOU  
5 TRAINED MANAGERS OF THE ADMINISTRATION ABOUT VERSUS WHAT YOU  
6 TRAINED EMPLOYEES ABOUT?

7 A. YES. WE WOULD TRAIN MANAGERS ON PERSONNEL POLICIES AT  
8 THE COLLEGE, THINGS THAT I WOULD CALL "HOW TO" PROCESSES,  
9 PERSONNEL PROCESSES AND PROCEDURES, EMPLOYMENT LAW.

10 Q. AND WHAT KIND OF TRAINING HAVE YOU PROVIDED FOR THE  
11 ADMINISTRATION AT MENLO COLLEGE?

12 A. WE HAVE PROVIDED REQUIRED TRAINING FOR MANAGERS AND  
13 SUPERVISORS IN SEXUAL HARASSMENT AND THAT TYPE OF THING. WE  
14 ALSO PROVIDED A SERIES OF TRAINING IN THE 2006, 2007 ACADEMIC  
15 YEAR ON VARIOUS MANAGEMENT SKILLS.

16 Q. WHAT KIND OF MANAGEMENT SKILLS?

17 A. CONFLICT RESOLUTION, PERFORMANCE MANAGEMENT. THERE  
18 WERE FOUR DIFFERENT SESSIONS. I DON'T RECALL THE OTHER TWO  
19 WITHOUT CHECKING THAT.

20 Q. OKAY.

21 HAVE YOU EVER PROVIDED ANY TRAINING TO ANY MENLO  
22 COLLEGE EMPLOYEE REGARDING THE COLLEGE'S POLICIES AGAINST  
23 DISABILITY DISCRIMINATION IN THE WORKPLACE?

24 A. THE SEXUAL HARASSMENT AND DISCRIMINATION TRAINING THAT  
25 WE HAVE DONE EVERY TWO YEARS DOES PROVIDE A GENERAL OVERVIEW ON  
26 THAT KIND OF DISCRIMINATION.



1 Q. WELL, I WANT TO MAKE SURE WE ARE CLEAR HERE. YOU SAY  
2 "GENERAL OVERVIEW" ON THAT KIND OF DISCRIMINATION. WHAT DO YOU  
3 MEAN?

4 A. ON DISABILITY DISCRIMINATION.

5 Q. DO YOU REMEMBER HAVING YOUR DEPOSITION TAKEN IN THIS  
6 CASE?

7 A. YES.

8 Q. DO YOU REMEMBER COMING TO MY OFFICE AND HAVING A  
9 DEPOSITION TAKEN?

10 A. YES.

11 Q. AND YOU UNDERSTOOD, BECAUSE I INSTRUCTED YOU IN THE  
12 BEGINNING OF THAT DEPOSITION, THAT YOU WERE UNDER OATH TO TELL  
13 THE TRUTH?

14 A. YES.

15 Q. AND THAT YOUR DEPOSITION TESTIMONY WOULD HAVE THE SAME  
16 FORCE AND EFFECT AS IF YOU WERE TESTIFYING HERE IN THIS  
17 COURTROOM?

18 A. YES.

19 Q. AND I ALSO ADVISED YOU THAT THAT DEPOSITION WAS THE  
20 ONE AND ONLY TIME I HAD TO SPEAK WITH YOU PRIOR TO TRIAL IN THIS  
21 MATTER?

22 A. YES.

23 Q. AND YOU UNDERSTOOD THAT AT THAT TIME?

24 A. YES.

25 MR. LEBOWITZ: OKAY.

26 MAY I APPROACH THE WITNESS, YOUR HONOR? YOUR HONOR,

1 I'D LIKE TO READ FROM THE DEPOSITION TRANSCRIPT OF STEPHANIE  
2 SAPRAI, PAGE 35, LINES 4 THROUGH 7.

3 THE COURT: GO AHEAD.

4 MR. LEBOWITZ: MA'AM, ARE YOU ON THAT PAGE? I'M  
5 SORRY. 35 --

6 THE WITNESS: YES.

7 MR. LEBOWITZ: -- LINE 4 TO LINE 7. I'M GOING TO READ  
8 IT.

9 "Q. HAVE YOU EVER PROVIDED ANY TRAINING TO ANY MENLO

10 "COLLEGE EMPLOYEE REGARDING THE COLLEGE'S POLICIES

11 "AGAINST DISABILITY OR DISCRIMINATION?

12 "A. NO."

13 Q. DO YOU REMEMBER GIVING ME THAT ANSWER AT THE  
14 DEPOSITION?

15 A. I SEE THAT I GAVE IT. I DON'T REMEMBER DISTINCTLY TO  
16 THAT; YES.

17 Q. THAT'S A DIFFERENT ANSWER THAN WHAT YOU GAVE ME A  
18 MOMENT AGO, ISN'T IT?

19 MR. VARTAIN: OBJECTION, ARGUMENTATIVE.

20 THE COURT: OVERRULED.

21 MR. LEBOWITZ: Q. THAT'S A DIFFERENT ANSWER FROM WHAT  
22 YOU GAVE ME A MOMENT AGO, ISN'T IT?

23 A. YES.

24 Q. NOW, HAVE YOU EVER GIVEN ANY TRAINING ON THE CONCEPT

25 OF REASONABLE ACCOMMODATION INSOFAR AS IT RELATES TO DISABILITY  
26 DISCRIMINATION?

553

1 A. NO.

2 Q. ISN'T IT TRUE THAT THE COLLEGE CUT YOUR TRAINING  
3 BUDGET IN 2007?

4 A. FOR THE ACADEMIC YEAR BEGINNING 2007, WE DID NOT HAVE  
5 THE SAME TRAINING BUDGET THAT WE HAD HAD THE PREVIOUS YEAR.

6 Q. SO YOUR BUDGET HAD BEEN CUT, CORRECT?

7 A. THERE WAS NO BUDGET PROVIDED; YES.

8 Q. SO THE PRIOR YEAR YOU AT LEAST HAD SOME MONEY TO DO  
9 SOME TRAINING, CORRECT?

10 A. YES.

11 Q. AND THEN STARTING IN 2007, AT LEAST FOR THE 2007 YEAR,  
12 YOU DIDN'T HAVE ANY MONEY TO DO ANY TRAINING, CORRECT?

13 A. I DID NOT HAVE THE SAME BUDGET THAT I HAD HAD  
14 PREVIOUSLY.

15 Q. DID YOU HAVE ANY MONEY TO DO TRAINING?

16 A. WE DID DO TRAINING FOR SEXUAL HARASSMENT AND  
17 DISCRIMINATION.

18 Q. OKAY. THE SEXUAL HARASSMENT IS REQUIRED BY LAW TO  
19 GIVE THAT TRAINING, CORRECT?

20 A. YES.

21 Q. AND, BUT IN ANY EVENT, WHATEVER YOUR BUDGET WAS  
22 BETWEEN 2006 AND 2007, IN 2007 IT WAS LESS THAN IT HAD BEEN

23 PREVIOUSLY?

24 A. YES.

25 Q. SO YOU WEREN'T ABLE TO DO AS MANY TRAININGS AS YOU

26 MIGHT HAVE LIKED, CORRECT?

554

1 A. WE WEREN'T -- WE DID NOT HAVE THE PROFESSIONAL  
2 DEVELOPMENT BUDGET TO DO THE SAME KINDS OF TRAINING THAT WE HAD  
3 IN 2006.

4 Q. SO BECAUSE OF THE CONSTRAINTS THAT THE COLLEGE PUT ON  
5 YOUR BUDGET, YOU WERE NOT ABLE TO DO THE KIND OF TRAINING THAT  
6 YOU WOULD HAVE HOPED TO DO AS A HUMAN RESOURCES' PROFESSIONAL,  
7 CORRECT?

8 A. AS A HUMAN RESOURCES PROFESSIONAL, I SUPPOSE I WOULD  
9 LIKE AN UNLIMITED BUDGET TO DO TRAINING. SO WITHOUT A BUDGET, I  
10 DIDN'T HAVE THE SAME RESOURCES.

11 Q. AND BASED ON YOUR EXPERIENCE IN HUMAN RESOURCES,  
12 TRAINING IS AN IMPORTANT PART OF HUMAN RESOURCES FUNCTION, ISN'T  
13 IT?

14 A. IT'S CERTAINLY AN IMPORTANT FUNCTION.

15 Q. BECAUSE IT'S IMPORTANT TO LET EMPLOYEES KNOW WHAT THE  
16 COMPANY OR COLLEGE'S POLICIES ARE THAT AFFECT THEM, ISN'T IT?

17 A. A TRAINING BUDGET IS GENERALLY USED TO PROVIDE  
18 PROFESSIONAL DEVELOPMENT FOR EMPLOYEES IN THEIR AREA OF  
19 DISCIPLINE, FINANCE OR WHATEVER.

20 Q. ISN'T THAT THE SAME BUDGET YOU DRAW FROM TO GIVE

21 TRAINING ON THE COLLEGE'S POLICIES AND PROCEDURES?

22 A. WE CAN STILL DO TRAINING ON POLICIES AND PROCEDURES  
23 FROM A COMMUNICATION STANDPOINT, WHICH WE DO IN TERMS OF OUR  
24 POLICIES AND PROCEDURES.

25 Q. MEANING, YOU PUBLISH YOUR POLICIES AND PROCEDURES?

26 A. WE PUBLISH, AND WE'LL HAVE MEETINGS ON POLICIES AND

555

1 PROCEDURES, IF WE HAVE CHANGES IN THEM.

2 Q. BUT AS YOU TESTIFIED A MOMENT AGO, YOU DON'T HAVE AND  
3 HAVEN'T HAD TRAININGS ON THE COLLEGE'S POLICY ON DISABILITY AND  
4 DISCRIMINATION, CORRECT?

5 A. WE HAVE NOT HAD SPECIFIC TRAINING ON DISCRIMINATION  
6 OTHER THAN THE GENERAL OVERVIEW PROVIDED IN THE SEXUAL  
7 HARASSMENT TRAINING.

8 Q. LET ME SWITCH HERE A LITTLE BIT.

9 HOW DID YOU FIRST LEARN THAT THERE WERE ANY ISSUES  
10 WITH PROFESSOR BLOUGH AND HER ABILITY TO PERFORM HER JOB DUTIES?

11 A. I RECEIVED A COPY OF A LETTER AT THE END OF THE  
12 ACADEMIC YEAR, WHICH WOULD HAVE BEEN APRIL/MAY TIMEFRAME OF  
13 2006, FROM THE PRESIDENT'S OFFICE TO PROFESSOR BLOUGH.

14 Q. AND THAT LETTER WAS SIGNED AT THE TIME YOU SAW IT?

15 A. I WOULD HAVE TO LOOK AT THE PERSONNEL FILE TO MAKE  
16 SURE IT WAS SIGNED; BUT YES, I BELIEVE IT WAS SIGNED BY CARLOS  
17 LOPEZ.

18 Q. MY POINT BEING, THE LETTER WASN'T GIVEN TO YOU AS A

19 DRAFT AND REVIEWED?

20 A. NO, IT WAS A COPY TO HER PERSONNEL FILE.

21 Q. AND THAT'S HOW YOU FIRST SAW THE LETTER THAT WE'RE  
22 TALKING ABOUT?

23 A. YES.

24 MR. LEBOWITZ: OKAY.

25 CAN I HAVE EXHIBIT 10, PLEASE?

26 MAY I APPROACH THE WITNESS, YOUR HONOR?

556

1 THE COURT: YES.

2 MR. LEBOWITZ: I JUST HANDED YOU WHAT WE'VE ADMITTED  
3 INTO EVIDENCE IN THIS CASE AS EXHIBIT 10. THIS IS A MAY 8TH  
4 LETTER FROM PRESIDENT LOPEZ TO PROFESSOR BLOUGH.

5 Q. IS THIS THE LETTER YOU WERE JUST REFERRING TO?

6 A. YES.

7 Q. OKAY.

8 SO READING THIS LETTER DATED MAY 8, 2006, READING A  
9 COPY OF IT, WAS THE FIRST TIME THAT YOU LEARNED THERE WAS ANY  
10 ISSUES REGARDING PROFESSOR BLOUGH AND HER PERFORMANCE AT THE  
11 SCHOOL?

12 A. YES.

13 Q. AND PRIOR TO SEEING THIS LETTER, HAD YOU HAD ANY  
14 DISCUSSIONS WITH PRESIDENT LOPEZ ABOUT REQUIRING AN EMPLOYEE TO  
15 GO SEE AN OUTSIDE MEDICAL EXAMINER?

16 A. NO.

17 Q. SO WOULD IT BE FAIR TO SAY THAT PRESIDENT LOPEZ DID  
18 NOT SEEK OUT YOUR OPINION PRIOR TO HIM SIGNING THIS MAY 8TH  
19 LETTER?

20 A. I CAN'T SAY FOR SURE THAT HE HADN'T TALKED TO ME ABOUT  
21 THE SITUATION. YOU ASKED ABOUT SEEKING AN INDEPENDENT MEDICAL  
22 EVALUATOR. I WASN'T CONSULTED FOR THAT; NO.

23 Q. OKAY.

24 AND SO IS YOUR TESTIMONY THAT YOU LEARNED -- IF YOU  
25 LOOK AT PAGE 2, THERE'S AN IDENTITY OF A PHYSICIAN, A DR. JAMES  
26 MISSETT LISTED THERE. SO WHEN YOU SAW THIS MAY 8TH LETTER, THAT

557

1 WAS THE FIRST TIME YOU'D SEEN REFERENCE TO DR. MISSETT, CORRECT?

2 A. YES.

3 Q. SO WOULD IT BE FAIR TO SAY THAT YOU WERE NOT THE ONE  
4 WHO SELECTED DR. MISSETT TO BE THE MEDICAL EXAMINER FOR  
5 PROFESSOR BLOUGH IN MAY OF 2006?

6 A. IT WOULD BE FAIR TO SAY THAT.

7 Q. WHO WAS IT, TO YOUR UNDERSTANDING, THAT SELECTED  
8 DR. MISSETT FOR THE EVALUATION IN THE SUMMER OF 2006?

9 A. I LEARNED LATER THAT DR. MISSETT HAD BEEN USED IN A  
10 PREVIOUS SIMILAR SITUATION WITH PROFESSOR BLOUGH.

11 Q. OKAY. I DON'T WANT TO KNOW ABOUT WHAT YOU LEARNED  
12 LATER.

13 MR. VARTAIN: OBJECTION TO THE COMMENT.

14 THE COURT: WELL, THE COMMENT -- LET'S JUST MOVE ON.

15 MR. LEBOWITZ: SURE.

16 Q. AT THE TIME THE SELECTION WAS MADE IN MAY OF 2006, DID  
17 YOU HAVE ANY UNDERSTANDING AS TO WHO ACTUALLY SELECTED  
18 DR. MISSETT?

19 A. NOT RIGHT AT THAT TIME, NO.

20 Q. WHOEVER IT WAS, IT WASN'T YOU?

21 A. IT WAS NOT ME.

22 Q. AS OF THE TIME YOU FIRST SAW THIS MAY 8TH LETTER, DID  
23 YOU HAVE ANY UNDERSTANDING OF WHO DR. MISSETT WAS?

24 A. NO.

25 Q. DID YOU UNDERSTAND THAT DR. MISSETT -- AT THE TIME YOU  
26 SAW THIS LETTER, DID YOU UNDERSTAND THAT DR. MISSETT WAS A

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1 PSYCHIATRIST?

2 A. NO. ALL I KNEW WAS THAT HE WAS AN INDEPENDENT MEDICAL  
3 EVALUATOR.

4 Q. AND YOU LEARNED THAT JUST BY READING THE LETTER?

5 A. RIGHT.

6 Q. AND WHEN YOU READ THE LETTER AND FIRST SAW  
7 DR. MISSETT'S NAME, DID YOU HAVE ANY IDEA OR UNDERSTANDING AS TO  
8 WHETHER OR NOT DR. MISSETT HAD ANY EXPERIENCE OR TRAINING IN  
9 TREATING ONCOLOGY PATIENTS?

10 A. NO.

11 Q. DID YOU HAVE ANY UNDERSTANDING AS TO WHETHER OR NOT  
12 DR. MISSETT KNEW ANYTHING ABOUT CARCINOID TUMORS?



13 A. NO.

14 Q. NOW, I WANT TO MOVE FORWARD IN TIME. I'M GOING TO GO  
15 TO EARLY AUGUST OF 2006, OKAY?

16 NOW, DO YOU RECALL HAVING, IN EARLY AUGUST, AROUND  
17 AUGUST 10TH OF 2006, HAVING A TELEPHONE CONVERSATION WITH  
18 PROFESSOR BLOUGH ABOUT HER EMPLOYMENT STATUS WITH THE COLLEGE?

19 A. I DO.

20 Q. AND DO YOU RECALL THAT PRIOR TO THAT PHONE  
21 CONVERSATION, PROFESSOR BLOUGH HAD SENT AN E-MAIL TO YOU AND THE  
22 COLLEGE OFFERING, WHAT SHE CALLED, A COMPROMISE POSITION?

23 A. I DO.

24 Q. AND THAT SHE HAD OFFERED IN THAT E-MAIL TO PROVE TO  
25 YOU THAT SHE WAS FIT TO WORK BY WORKING FULL TIME FOR THE NEXT  
26 SCHOOL YEAR. DO YOU RECALL THAT?

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1 A. I DON'T RECALL THE SPECIFICS.

2 Q. BUT WHATEVER THE SPECIFICS WERE, IT HAD TO DO WITH HER  
3 RESUMING WORK FOR THE FALL 2006 SEMESTER, CORRECT?

4 A. IT HAD TO DO WITH HER RESUMING WORK; YES.

5 Q. AND THEN YOU HAD A TELEPHONE CONVERSATION WITH  
6 PROFESSOR BLOUGH AFTER RECEIVING THAT E-MAIL TO TELL HER THE  
7 RESPONSE TO THAT COMPROMISE OFFER, CORRECT?

8 A. YES.

9 Q. AND WHAT DID YOU TELL HER IN THAT CONVERSATION?

10 A. I HAD RECEIVED SEVERAL E-MAILS FROM HER, BUT THE MOST

11 RECENT WAS ABOUT HER RETURNING TO WORK. AND I PHONED HER  
12 SPECIFICALLY BECAUSE I WANTED HER TO KNOW THAT, FROM THE  
13 COLLEGE'S POINT OF VIEW IS WE HAD STILL NOT RECEIVED ANYTHING  
14 FURTHER FROM DR. MISSETT TO CLEAR HER FOR WORK, AND SO THEN THAT  
15 SHE WAS NOT TO RETURN TO WORK IN THE FALL.

16 Q. ISN'T IT THE CASE THAT BY THE TIME YOU MADE THAT PHONE  
17 CALL, PROFESSOR BLOUGH HAD COMMUNICATED TO YOU THAT HER OWN  
18 TREATING PHYSICIANS HAD SAID THAT SHE WAS CAPABLE OF WORKING?

19 A. SHE HAD COMMUNICATED THAT AND BROUGHT ME OTHER  
20 DOCTORS' INFORMATION; YES.

21 Q. SO SHE HAD, PRIOR TO THAT TIME, BROUGHT YOU  
22 INFORMATION FROM HER OWN TREATING DOCTORS OFFERING STATEMENTS TO  
23 THE EFFECT THAT SHE WAS CAPABLE OF WORKING?

24 A. I AM NOT CAPABLE OF EVALUATING THAT. SHE HAD BROUGHT  
25 ME DOCTORS' NOTES FROM OTHER DOCTORS AT THAT POINT TO TRY AND  
26 SHOW ME THAT SHE WAS CAPABLE OF RETURNING TO WORK.

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1 Q. OKAY.

2 A. I'M NOT ABLE TO EVALUATE DOCTORS.

3 Q. I'M NOT ASKING YOU TO EVALUATE OR MAKE AN EVALUATION  
4 OR A JUDGMENT. MY QUESTION SIMPLY IS, BY THE TIME YOU HAD THIS  
5 AUGUST 10TH CONVERSATION WITH PROFESSOR BLOUGH, SHE HAD BROUGHT  
6 YOU INFORMATION, BOTH HER OWN AND LETTERS FROM HER OWN TREATING  
7 PHYSICIANS. WITHIN THOSE LETTERS YOU WERE INFORMED THAT THOSE  
8 DOCTORS BELIEVED SHE COULD CONTINUE TO WORK?

9 A. I DO NOT RECALL EXACTLY WHAT THE NOTE SAID BECAUSE I'M  
10 NOT ABLE TO INTERPRET MEDICAL INFORMATION. SHE HAD BROUGHT ME  
11 NOTES FROM OTHER DOCTORS.

12 MR. LEBOWITZ: OKAY.

13 IF I COULD HAVE EXHIBIT 18.

14 MAY I APPROACH THE WITNESS?

15 Q. I HAVE JUST HANDED YOU, MS. SAPRAI, WHAT WE HAVE  
16 ENTERED INTO EVIDENCE HERE AS EXHIBIT 18. IT'S A JULY 28TH  
17 LETTER FROM DR. SIEBEL WRITING ABOUT PROFESSOR BLOUGH. THIS IS  
18 ONE OF THE LETTERS YOU RECEIVED FROM PROFESSOR BLOUGH, ISN'T IT?

19 A. I WOULD HAVE TO CHECK HER PERSONNEL FILE. I RECEIVED  
20 OTHER DOCTORS' NOTES FROM DR. BLOUGH. I DO NOT RECALL  
21 SPECIFICALLY. THIS ONE I'D HAVE TO CHECK THE FILE.

22 Q. READING THIS, SITTING HERE RIGHT NOW, DO YOU HAVE A  
23 PROBLEM UNDERSTANDING WHAT DR. SIEBEL IS TRYING TO COMMUNICATE?

24 A. I SEE WHAT IS SAID HERE. I AM NOT ABLE TO EVALUATE  
25 MEDICAL INFORMATION.

26 Q. WHAT, IN THIS LETTER, ARE YOU UNABLE TO EVALUATE? YOU

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1 UNDERSTAND THAT DR. SIEBEL IS EXPRESSING AN OPINION THAT  
2 PROFESSOR BLOUGH CAN CONTINUE TO WORK, CORRECT?

3 A. I SEE WHAT IS SAID HERE; YES.

4 Q. YOU DON'T HAVE ANY PROBLEMS UNDERSTANDING THAT  
5 LANGUAGE, DO YOU?

6 A. NO.

7 Q. OKAY. GOING BACK TO AUGUST 10TH. SO THE CONVERSATION  
8 YOU HAD WITH PROFESSOR BLOUGH, YOU TOLD HER -- WELL, STRIKE  
9 THAT.

10 BEFORE YOU HAD THE CONVERSATION WITH PROFESSOR BLOUGH,  
11 YOU WENT AND CONFERRED WITH PRESIDENT LOPEZ, CORRECT, ABOUT  
12 PROFESSOR BLOUGH'S COMPROMISE OFFER?

13 A. I WOULD HAVE TALKED WITH MY BOSS AT THE TIME OR  
14 DR. LOPEZ.

15 MR. LEBOWITZ: CAN I HAVE EXHIBIT 24, PLEASE.

16 (PLAINTIFF'S EXHIBIT NO. 24 WAS PREVIOUSLY  
17 MARKED FOR IDENTIFICATION.)

18 MR. LEBOWITZ: MAY I APPROACH THE WITNESS?

19 THE COURT: YES.

20 MR. LEBOWITZ: Q. I HAVE HANDED YOU WHAT WE HAVE  
21 MARKED FOR IDENTIFICATION AS EXHIBIT 24. DO YOU RECOGNIZE THIS  
22 DOCUMENT?

23 A. YES.

24 Q. AND CAN YOU DESCRIBE GENERALLY WHAT THIS DOCUMENT IS?

25 A. ALL RIGHT. I WANTED TO CONFIRM IN WRITING --

26 Q. I'M SORRY. BEFORE WE GET INTO THE SUBSTANCE, JUST

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1 GENERALLY, THIS IS AN E-MAIL?

2 A. THIS IS AN E-MAIL FROM MYSELF TO MARCY.

3 Q. IT'S ACTUALLY -- THE PRINTOUT SHOWS AN E-MAIL

4 EXCHANGE, ONE FROM PROFESSOR BLOUGH TO YOU, AND THEN YOUR

5 RESPONSE TO HER, DATED AUGUST 10, 2006, CORRECT?

6 A. YES.

7 Q. AND YOU READ THE E-MAIL FROM PROFESSOR BLOUGH WHEN IT  
8 WAS SENT TO YOU?

9 A. YES.

10 Q. AND YOU WROTE THE E-MAIL THAT'S REFLECTED ABOVE THAT,  
11 CORRECT?

12 A. YES.

13 MR. LEBOWITZ: OKAY.

14 YOUR HONOR, I'D LIKE TO OFFER EXHIBIT 24 INTO  
15 EVIDENCE.

16 MR. VARTAIN: NO OBJECTION.

17 THE COURT: EXHIBIT 24 WILL BE ADMITTED.

18 (PLAINTIFF'S EXHIBIT NO. 24 WAS ADMITTED INTO  
19 EVIDENCE.)

20 MR. LEBOWITZ: Q. SO THE E-MAIL FROM PROFESSOR  
21 BLOUGH -- WHICH WE SEE IS, AS WE READ E-MAILS FROM THE BOTTOM UP  
22 IN SEQUENCE -- SHE IS OFFERING -- SHE IS CONFIRMING THE  
23 TELEPHONE CONVERSATION THAT THE TWO OF YOU HAD HAD ON THAT DAY,  
24 AUGUST 10, RIGHT?

25 A. YES.

26 Q. AND SHE'S REPEATING BACK TO YOU SOME OF THE THINGS

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1 THAT SHE HAD HEARD FROM YOU, CORRECT?

2 A. YES.

3 Q. AND ONE OF THE THINGS WAS, YOU HAD TOLD HER SHE'S NOT  
4 TO TALK TO ANYONE ELSE AT THE COLLEGE ABOUT HER EMPLOYMENT  
5 SITUATION EXCEPT FOR YOU, CORRECT?

6 A. I TOLD HER THAT I WAS THE PERSON THAT SHE SHOULD USE  
7 FOR A CONTACT.

8 Q. AND YOU ALSO TOLD HER ABOUT -- YOU TOLD HER ABOUT THE  
9 RESULTS OF YOUR INQUIRY WITH PRESIDENT LOPEZ ABOUT PROFESSOR  
10 BLOUGH'S COMPROMISE OFFER?

11 A. I DIDN'T HAVE AN INQUIRY WITH PROFESSOR -- WITH  
12 DR. LOPEZ ABOUT THE COMPROMISE. I WOULD HAVE MERELY  
13 COMMUNICATED WITH HIM ABOUT HER CONVERSATION WITH ME.

14 Q. DIDN'T YOU COMMUNICATE WITH PRESIDENT LOPEZ ABOUT THE  
15 COMPROMISE OFFER FROM PROFESSOR BLOUGH?

16 A. NO, NOT AT ALL.

17 Q. LET'S READ YOUR E-MAIL, WHICH WAS IN RESPONSE. CAN  
18 YOU PLEASE READ THE FIRST TWO SENTENCES?

19 A. "THIS IS WHAT I TOLD YOU. I WANTED TO REMIND YOU THAT  
20 NO ONE ELSE WAS CONTACTING YOU BESIDES ME AT THE ADVICE OF OUR  
21 COUNSEL."

22 Q. AND THE NEXT LINE, PLEASE?

23 A. "AND THAT CARLOS, HIS DECISION WAS FIRM."

24 Q. WHAT WERE YOU MEANING TO COMMUNICATE TO PROFESSOR  
25 BLOUGH WHEN YOU SAID THAT CARLOS'S DECISION WAS FIRM?

26 A. WHAT I WAS TRYING TO TELL HER WAS THAT, GOING ALONG

1 WITH DR. MISSETT'S EVALUATION, THAT SHE WAS NOT AT THIS TIME FIT  
2 TO RETURN TO WORK, NOTHING HAD CHANGED FROM THE ORIGINAL  
3 DECISION.

4 Q. AND SO WHEN YOU WROTE THE WORDS AND YOU TOLD PROFESSOR  
5 BLOUGH ON THE PHONE THAT CARLOS'S DECISION WAS, QUOTE, "FIRM,"  
6 HAD YOU ACTUALLY CONFERRED WITH PRESIDENT LOPEZ ON THAT TOPIC?

7 A. I WOULD HAVE TALKED TO DR. LOPEZ OR MY BOSS, MR. HITE.

8 Q. AT THE DEPOSITION WE HAVE AN ISSUE ABOUT THE QUESTION  
9 OF THE WORD "WOULD." I UNDERSTAND THAT YOU BELIEVE YOU WOULD  
10 HAVE DONE THAT AS A NORMAL PRACTICE. WHAT WE'RE ASKING HERE  
11 TODAY IS IF YOU ACTUALLY DID?

12 A. I DID DO THAT.

13 Q. SO YOU DID CONFER WITH PRESIDENT LOPEZ BEFORE  
14 WRITING -- OR BEFORE CALLING PROFESSOR BLOUGH AND GIVING THE  
15 RESPONSE TO HER COMPROMISE OFFER?

16 A. SURELY.

17 Q. OKAY.

18 AND THE NEXT SENTENCE, IF YOU COULD READ THAT, PLEASE?

19 A. "YOU ARE NOT TO RETURN TO CLASSES, AND THAT YOUR  
20 PAYCHECK WILL STOP AFTER AUGUST 20, 2006."

21 Q. AND THAT'S WHAT YOU UNDERSTOOD AT THE TIME TO BE THE  
22 COLLEGE'S POSITION IN REGARD TO PROFESSOR BLOUGH'S EMPLOYMENT?

23 A. YES.

24 Q. AND THE NEXT LINE, IF YOU CAN READ THAT, PLEASE?

25 A. "AND MY OFFER TO ASSIST YOU IN FILING FOR DISABILITY  
26 STANDS, THAT IF YOU WAIT, YOU CANNOT GO BACK AND RECOUP TIME

1 GONE."

2 Q. FILING FOR DISABILITY, WHAT IS THAT?

3 A. WHEN SOMEBODY IS NO LONGER RECEIVING A PAYCHECK AND  
4 THEY'RE OUT ON A MEDICAL DISABILITY, THEY HAVE THE RIGHT TO FILE  
5 WITH CALIFORNIA STATE FOR SHORT-TERM DISABILITY.

6 Q. SO THAT'S WHAT YOU'RE REFERRING TO IS THE CALIFORNIA  
7 STATE DISABILITY INSURANCE PROGRAM?

8 A. YES.

9 Q. AND THAT'S A BENEFIT OFFERED BY THE STATE OF  
10 CALIFORNIA?

11 A. YES.

12 Q. SO YOU'RE FAMILIAR WITH THAT BENEFIT THROUGH YOUR WORK  
13 WITH HUMAN RESOURCES?

14 A. YES.

15 Q. AND YOU UNDERSTAND THAT THAT'S A TAXPAYER-FUNDED  
16 BENEFIT?

17 A. YES.

18 MR. LEBOWITZ: OKAY.

19 IF I COULD HAVE EXHIBIT 25.

20 (PLAINTIFF'S EXHIBIT NO. 25 WAS PREVIOUSLY  
21 MARKED FOR IDENTIFICATION.)

22 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

23 THE COURT: YES.

24 MR. LEBOWITZ: I HAVE HANDED YOU WHAT WE HAVE MARKED  
25 AS EXHIBIT 25 FOR IDENTIFICATION. I CAN TELL YOU THAT COUNSEL



1 THIS LETTER, THE DATE SHOWS AUGUST 14, 2006.

2 THE COURT: IS THAT CORRECT, MR. VARTAIN?

3 MR. VARTAIN: YES.

4 THE COURT: THANK YOU.

5 MR. LEBOWITZ: Q. CAN YOU IDENTIFY IN GENERAL TERMS

6 WHAT THIS LETTER IS?

7 A. I WAS CONFIRMING THAT SHE WOULD --

8 Q. I'M SORRY. I DON'T MEAN TO INTERRUPT. WE'LL GET INTO

9 ALL THE DETAILS.

10 A. OKAY.

11 Q. LET ME DO IT A DIFFERENT WAY.

12 IS THIS A LETTER YOU WROTE?

13 A. YES.

14 Q. AND YOUR SIGNATURE IS ON THE BOTTOM?

15 A. YES.

16 Q. AND YOU WROTE THIS LETTER AS PART OF YOUR OFFICIAL  
17 CAPACITIES AS DIRECTOR OF HUMAN RESOURCES OR DIRECTOR OF  
18 ADMINISTRATION AT THE COLLEGE, CORRECT?

19 A. YES.

20 MR. LEBOWITZ: YOUR HONOR, WE'D LIKE TO OFFER  
21 EXHIBIT 25 INTO EVIDENCE.

22 THE COURT: ANY OBJECTION?

23 MR. VARTAIN: NO OBJECTION, YOUR HONOR.

24 THE COURT: EXHIBIT 25 WILL BE ADMITTED.  
25 (PLAINTIFF'S EXHIBIT NO. 25 WAS ADMITTED INTO  
26 EVIDENCE.)

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1 MR. LEBOWITZ: Q. SO THIS LETTER, WHICH WE'VE AGREED  
2 IS DATED AUGUST 14, 2006, THIS IS A LETTER THAT YOU WROTE,  
3 CORRECT?

4 A. YES.

5 Q. AND THIS WAS A LETTER THAT FOLLOWED UP ON THE E-MAIL,  
6 THE AUGUST 10TH E-MAIL EXCHANGE THAT WE JUST DISCUSSED, CORRECT?

7 A. YES.

8 Q. AND READING IN THE THIRD PARAGRAPH, STARTING WITH:

9 "THEREFORE," IN THIS IS LETTER, YOU WRITE, "THEREFORE,  
10 YOU WERE INFORMED THAT YOUR FMLA RIGHT LEAVE BEGINS ON  
11 AUGUST 20, 2006 AND ENDS ON NOVEMBER 30, 2006. AND YOU WILL  
12 CONTINUE TO RECEIVE HEALTH BENEFITS FROM THE COLLEGE AS IF YOU  
13 WERE WORKING. YOU ARE ALSO INFORMED THAT YOUR APPOINTMENT WITH  
14 THE COLLEGE ENDS EFFECTIVE NOVEMBER 20, 2006."

15 AND I'LL STOP THERE. THAT'S A TYPO, RIGHT? THE 20 IS  
16 SUPPOSED TO BE NOVEMBER 30TH?

17 A. YES.

18 Q. WE CAN AGREE ON THAT.

19 "AS I EXPRESSED IN OUR PHONE CONVERSATION, I WILL  
20 ASSIST YOU, IF YOU WISH, WITH THE APPLICATION FOR LONG-TERM  
21 DISABILITY INSURANCE, AS WELL AS ELECTION OF CONTINUATION OF

22 HEALTH BENEFITS AT YOUR COST UNDER COBRA."

23 AND WHEN YOU WROTE THIS LETTER, YOU WERE EXPRESSING  
24 THE POSITION OF THE COLLEGE, CORRECT?

25 A. YES. I WAS INFORMING HER OF HER FMLA RIGHTS.

26 Q. AND YOU WERE ALSO TELLING HER, AS YOU WRITE IN THE

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1 THIRD -- BEGINNING IN THE MIDDLE OF THE THIRD LINE OF THIS  
2 PARAGRAPH, YOU WERE ALSO CONFIRMING THAT HER APPOINTMENT WITH  
3 THE COLLEGE WAS GOING TO END ON NOVEMBER 30, 2006, CORRECT?

4 A. AT THAT TIME, AT THE END OF THE THREE MONTHS, I  
5 BELIEVED HER APPOINTMENT WOULD END, YES.

6 Q. THE NEXT PARAGRAPH, THE FIRST SENTENCE READS, "I WOULD  
7 LIKE TO REITERATE THAT YOU HAVE BEEN PLACED ON LEAVE AND THAT  
8 YOU WILL NOT RESUME TEACHING DUTIES IN THE FALL."

9 WAS THAT ACCURATE WHEN YOU WROTE IT?

10 A. YES.

11 Q. THE NEXT SENTENCE, YOU SAID, "YOU HAVE MENTIONED IN  
12 VARIOUS RECENT E-MAILS A NUMBER OF ITEMS ABOUT YOUR MEDICAL  
13 DIAGNOSES, CONDITIONS AND DISABILITIES."

14 YOU WROTE THAT, RIGHT?

15 A. YES.

16 Q. AND YOU WROTE THAT -- YOU WERE REFERRING TO, AS WE  
17 DISCUSSED BEFORE, THE LETTERS FROM PROFESSOR BLOUGH'S DOCTOR  
18 THAT SHE HAD SENT TO YOU?

19 A. YES.

20 Q. THE E-MAILS THAT PROFESSOR BLOUGH HAD SENT TO YOU  
21 EXPRESSING HER OWN OPINION THAT SHE WAS CAPABLE OF WORKING?  
22 A. YES.  
23 Q. AND AS OF THIS POINT IN TIME, AUGUST 14, 2006, HAD YOU  
24 DONE ANYTHING TO INVESTIGATE WHETHER OR NOT PROFESSOR BLOUGH --  
25 OTHER THAN READING DR. MISSETT'S OPINION, HAD YOU DONE ANYTHING  
26 ELSE TO INVESTIGATE WHETHER OR NOT THERE ARE ANY OTHER FACTS

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1 THAT MIGHT HELP INFORM YOU AS TO WHETHER OR NOT PROFESSOR BLOUGH  
2 WAS CAPABLE OF CONTINUING TO WORK?

3 A. UNTIL SHE BROUGHT THE ADDITIONAL DOCTORS' INFORMATION,  
4 I WASN'T EVEN AWARE THAT THERE WERE OTHER MEDICAL ISSUES. SO  
5 NO.

6 Q. SO THE ANSWER IS NO, YOU DIDN'T DO ANYTHING?

7 A. NO.

8 Q. AND SHE HAD BEEN TELLING YOU THIS INFORMATION OVER THE  
9 COURSE OF THE SUMMER, CORRECT?

10 A. YES.

11 Q. IN JULY, CORRECT?

12 A. WHENEVER SHE FIRST PRODUCED ADDITIONAL MEDICAL  
13 INFORMATION.

14 MR. LEBOWITZ: OKAY.

15 LET ME HAVE EXHIBIT 27.

16 MR. VARTAIN: YOU WANT THAT OFFERED, 26?

17 MR. LEBOWITZ: I BELIEVE WE OFFERED IT.

18 MR. PETERS: 25.  
19 MR. LEBOWITZ: 25 HAS BEEN ADMITTED.  
20 THE CLERK: YEAH.  
21 (PLAINTIFF'S EXHIBIT NO. 27 WAS PREVIOUSLY  
22 MARKED FOR IDENTIFICATION.)  
23 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?  
24 THE COURT: YES.  
25 WHICH ONE ARE WE ON NOW?  
26 THE CLERK: 27.

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1 THE COURT: 27. THANK YOU.  
2 MR. VARTAIN: YOUR HONOR, BEFORE THIS IS SHOWN TO THE  
3 JURY, THERE'S GOING TO BE SOME OBJECTION.  
4 THE COURT: OKAY.  
5 MR. LEBOWITZ: WELL, I'M GOING TO ASK ONE MORE  
6 QUESTION.  
7 THE COURT: GO AHEAD.  
8 MR. LEBOWITZ: Q. BACK ON EXHIBIT 25 FOR A MOMENT,  
9 THE AUGUST 14, 2006 LETTER.  
10 A. OKAY.  
11 Q. IS THERE ANYWHERE IN THIS LETTER -- I'LL PUT IT UP  
12 AGAIN -- DID YOU TELL PROFESSOR BLOUGH THAT SHE NEEDED TO GO  
13 BACK AND TRY TO REINITIATE THE MEDICAL EXAM WITH DR. MISSETT?  
14 A. THERE IS NOTHING IN THIS LETTER TO THAT.  
15 Q. NOW, LET'S MOVE TO EXHIBIT 27. DO YOU HAVE THAT IN

16 FRONT OF YOU?

17 A. YES.

18 Q. THIS IS ANOTHER LETTER FROM YOU TO PROFESSOR BLOUGH?

19 A. YES.

20 Q. AND THERE'S A HANDWRITTEN DATE OF SEPTEMBER 7, 2006 ON

21 THERE. IS THAT YOUR HANDWRITING?

22 A. YES.

23 Q. YOU WROTE THAT ON THERE?

24 A. YES.

25 Q. YOU FORGOT TO TYPE IN THE DATE ON IT WHEN YOU WROTE

26 IT. OKAY.

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1 AND YOU WROTE THIS LETTER IN YOUR CAPACITY AS A

2 DIRECTOR OF ADMINISTRATION WITH THE COLLEGE?

3 A. YES.

4 MR. LEBOWITZ: YOUR HONOR, I'D LIKE TO OFFER

5 EXHIBIT 27.

6 THE COURT: THERE'S AN OBJECTION TO THE ADMISSIBILITY

7 OF THIS DOCUMENT?

8 MR. VARTAIN: NO OBJECTION, YOUR HONOR. I MISSPOKE.

9 I THOUGHT IT WAS A DIFFERENT NUMBER.

10 THE COURT: OKAY. EXHIBIT 27 WILL BE ADMITTED.

11 (PLAINTIFF'S EXHIBIT NO. 27 WAS ADMITTED INTO

12 EVIDENCE.)

13 MR. LEBOWITZ: Q. READING FROM THE BEGINNING OF THIS

14 LETTER, YOU TELL PROFESSOR BLOUGH, "I RECEIVED A LETTER OF  
15 AUGUST 29TH FROM YOUR ATTORNEY."

16 DID YOU ACTUALLY SEE THAT LETTER?

17 A. YES.

18 Q. WAS THAT THE FIRST TIME YOU SAW ANY COMMUNICATION FROM  
19 ANY ATTORNEY FOR PROFESSOR BLOUGH?

20 A. YES.

21 Q. IF YOU GO DOWN TO THE FOURTH PARAGRAPH, THAT STARTS  
22 WITH "YOU." DO YOU SEE WHERE I AM?

23 A. YES.

24 Q. IT READS, "YOU ARE, HOWEVER, NOW CONTRADICTING THE  
25 INDEPENDENT PHYSICIAN AND ARE ASSERTING THAT YOUR MEDICAL  
26 TREATMENT IS UNCHANGED, AND THAT YOU MAY OR WILL IN THE FUTURE

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1 BE FIT TO WORK, EITHER WITH OR WITHOUT REASONABLE  
2 ACCOMMODATIONS."

3 THAT WASN'T ENTIRELY ACCURATE WHEN YOU WROTE IT, WAS  
4 IT?

5 A. I DON'T UNDERSTAND.

6 Q. WELL, YOU WRITE -- IN PARTICULAR, I WANT TO FOCUS ON  
7 THE WORD "NOW." YOU SAY, "YOU ARE, HOWEVER, NOW CONTRADICTING  
8 THE INDEPENDENT PHYSICIAN," RIGHT? ISN'T IT THE CASE THAT SHE  
9 HAD BEEN CONTRADICTING THE INDEPENDENT INFORMATION ALL SUMMER  
10 LONG?

11 A. SHE -- YES. SHE HAD BEEN OBJECTING TO DR. MISSETT'S

12 EVALUATION.

13 Q. ALL RIGHT. AND SHE HAD BEEN SENDING YOU HER OWN  
14 MEDICAL INFORMATION ALL SUMMER LONG?

15 A. YES.

16 Q. AND SHE HAD BEEN SENDING YOU HER OWN -- SENDING  
17 COMMUNICATIONS EXPRESSING HER OWN BELIEF THAT SHE WAS CAPABLE OF  
18 WORKING, IN CONTRADICTION WITH DR. MISSETT, ALL SUMMER LONG,  
19 CORRECT?

20 A. "ALL SUMMER LONG," I DON'T KNOW WHAT THAT MEANS. BUT  
21 YES, I HAD RECEIVED OBJECTIONS AND FURTHER -- THE DOCTORS'  
22 NOTES, WHENEVER I DID RECEIVE THEM, I'D HAVE TO CHECK THE FILE.

23 Q. AND OVER THE SUMMER, IN ADDITION TO THE DOCTORS' NOTES  
24 THAT YOU RECEIVED THAT WERE CONTRADICTORY TO DR. MISSETT'S  
25 OPINION, YOU ALSO RECEIVED COMMUNICATIONS DIRECTLY FROM  
26 PROFESSOR BLOUGH, WHERE SHE WAS TELLING YOU THAT SHE FELT SHE

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1 WAS CAPABLE OF WORKING, DIRECTLY IN CONTRADICTION WITH  
2 DR. MISSETT'S OPINION, CORRECT?

3 A. I WOULD HAVE TO GO TO THE PERSONNEL FILE TO SEE  
4 EXACTLY WHAT THOSE E-MAILS SAID. SHE OBJECTED TO DR. MISSETT'S  
5 EVALUATION.

6 Q. BECAUSE SHE TOLD YOU SHE FELT LIKE SHE COULD WORK?

7 A. I WOULD HAVE TO GO TO THOSE E-MAILS TO SEE EXACTLY  
8 WHAT SHE SAID.

9 Q. BUT IN ANY EVENT, THOSE COMMUNICATIONS, BOTH HER OWN



10 AND THE DOCTORS' -- FROM HER PHYSICIANS, THAT IS -- TOOK PLACE  
11 OVER THE SUMMER, PRIOR TO THE AUGUST 29TH LETTER FROM PROFESSOR  
12 BLOUGH'S ATTORNEY, CORRECT?

13 A. THEY TOOK PLACE IN THE SUMMER, PRIOR TO THE BEGINNING  
14 OF THE FALL SEMESTER.

15 Q. SO WHEN YOU SAY IN THIS PARAGRAPH THAT I'VE READ TO  
16 YOU, "YOU ARE, HOWEVER, NOW CONTRADICTING THE INDEPENDENT  
17 PHYSICIAN," THAT WASN'T ENTIRELY ACCURATE, WAS IT?

18 A. IF YOU MEAN "NOW" BEING THIS WAS THE FIRST TIME, YOU  
19 ARE CORRECT; WE HAD HAD CONVERSATIONS.

20 MR. LEBOWITZ: IF I CAN HAVE EXHIBIT 17, PLEASE.

21 THIS HAS BEEN MARKED AND NOT ENTERED.

22 THE CLERK: ONLY IDENTIFIED, NOT ADMITTED.

23 MR. LEBOWITZ: Q. NOW, MS. SAPRAI, I PUT IN FRONT OF  
24 YOU WHAT WE HAVE IDENTIFIED AND MARKED FOR IDENTIFICATION AS  
25 EXHIBIT 17. IT WAS AN E-MAIL FROM PROFESSOR BLOUGH ON JULY 22ND  
26 OF 2006. YOU RECEIVED THIS E-MAIL, CORRECT?

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1 A. I WAS COPIED ON IT; YES.

2 Q. AND YOU RECEIVED IT IN JULY OF 2006?

3 A. YES.

4 Q. AND YOU READ IT AT THE TIME YOU RECEIVED IT?

5 A. YES.

6 Q. AND IN THIS E-MAIL, AMONGST OTHER THINGS, PROFESSOR  
7 BLOUGH IS COMMUNICATING TO YOU HER OWN OPINION THAT SHE IS

8 CAPABLE OF WORKING, CORRECT?

9 A. SHE IS STATING THE OPINIONS OF HER OTHER DOCTORS. I  
10 DON'T SEE SPECIFICALLY WHERE IT SAYS THAT SHE SAYS THAT SHE  
11 FEELS SHE CAN COME BACK TO WORK.

12 MR. LEBOWITZ: YOUR HONOR, BEFORE I GO FURTHER, I'D  
13 LIKE TO OFFER EXHIBIT 17 INTO EVIDENCE.

14 THE COURT: ANY OBJECTION?

15 MR. VARTAIN: NOT FOR THE TRUTH. I'M GOING TO OBJECT  
16 TO --

17 THE COURT: JUST THE ADMISSIBILITY.

18 MR. VARTAIN: PARDON ME, YOUR HONOR?

19 THE COURT: DO YOU HAVE ANY OBJECTION TO IT BEING  
20 ADMITTED INTO EVIDENCE?

21 MR. VARTAIN: I HAVE NO OBJECTION TO IT BEING ADMITTED  
22 INTO EVIDENCE, EXCEPT FOR THE TRUTH OF THE STATEMENTS MADE  
23 THEREIN.

24 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THIS  
25 DOCUMENT IS BEING ADMITTED INTO EVIDENCE, WHICH MEANS IT'S  
26 PASSED THAT HURDLE OF BEING A DOCUMENT THAT HAS BEEN ESTABLISHED

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1 AS EXISTING AT THE TIME. CERTAIN PORTIONS OF IT REFLECT WHAT  
2 OTHER PEOPLE MAY HAVE SAID. AND FOR THOSE PORTIONS, WHICH  
3 YOU'RE ABOUT TO SEE, TO THE EXTENT THAT THE DOCUMENT REFERS TO  
4 WHAT OTHER PEOPLE SAID, IT IS ONLY THE WRITER OF THE DOCUMENT  
5 WHO IS SAYING THAT AND NOT THE TRUTH OF WHAT THOSE OTHER PEOPLE

6 SAID. THAT'S WHAT HEARSAY IS. BUT YOU CAN ACCEPT IT FOR THE  
7 LIMITED PURPOSE OF THIS IS WHAT PROFESSOR BLOUGH TOLD THE  
8 COLLEGE ADMINISTRATION, NOT WHETHER OR NOT THAT WAS A TRUE  
9 STATEMENT.

10 GO AHEAD.

11 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

12 THE COURT: AND EXHIBIT 17 IS ADMITTED.

13 (PLAINTIFF'S EXHIBIT NO. 17 WAS ADMITTED INTO  
14 EVIDENCE.)

15 MR. LEBOWITZ: Q. NOW, THE FIRST THING ABOUT THE LAST  
16 QUESTION I JUST ASKED YOU ABOUT PROFESSOR BLOUGH OFFERING HER  
17 OWN OPINION TO YOU ABOUT HER OWN BELIEFS, I WANT TO DIRECT YOU  
18 RIGHT TO THE VERY END OF THE FIRST PARAGRAPH. THE LAST  
19 SENTENCE, IT STARTS ON THE THIRD -- MIDDLE OF THE THIRD TO  
20 BOTTOM LINE. IT STARTS WITH, "I DO NOT." DO YOU SEE WHERE I  
21 AM?

22 A. YES.

23 Q. PROFESSOR BLOUGH STATES, "I DO NOT UNDERSTAND HOW YOU  
24 CAN TAKE THE WORD OF DR. MISSETT, WHO HAD THESE LETTERS, OVER MY  
25 OWN DOCTORS' OPINIONS AND MY OWN WORDS, THAT AFTER GETTING OFF  
26 THIS HARSH CHEMOTHERAPY I AM BACK TO MYSELF."

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1 YOU READ THAT AT THE TIME, CORRECT?

2 A. YES.

3 Q. AND SO YOU UNDERSTOOD, WHEN YOU READ THIS LETTER, THAT

4 PROFESSOR BLOUGH WAS TELLING YOU THAT SHE, HERSELF, FELT BETTER,  
5 CORRECT?

6 A. I BELIEVED THAT SHE FELT SHE FELT BETTER; YES.

7 Q. AND SHE WAS TELLING YOU THAT, YES?

8 A. SHE SAID SHE FELT SHE WAS BACK TO HERSELF.

9 Q. AND IN THE COURSE OF THIS PARAGRAPH LEADING UP TO THAT  
10 ASSERTION OF HER OWN WELL-BEING, SHE RELATED TO YOU THE HISTORY  
11 OF HER CONSULTATIONS WITH HER TREATING PHYSICIANS, CORRECT?

12 A. SHE RELATES WHAT SHE'S BEEN THROUGH WITH HER OTHER  
13 DOCTORS.

14 Q. OKAY.

15 IN THE MIDDLE OF THE PARAGRAPH SHE TALKS ABOUT  
16 DR. SIEBEL, CORRECT?

17 A. YES.

18 Q. AND SHE RELATES TO YOU THAT DR. SIEBEL, QUOTE, "AGREES  
19 WITH MY TRUSTED ONCOLOGIST, DR. FRED MARCUS OF REDWOOD CITY, WHO  
20 PROVIDED DR. MISSETT WITH A LETTER EXPRESSING HIS PROFESSIONAL  
21 OPINION THAT I COULD DEFINITELY TEACH FULL TIME AGAIN NEXT  
22 YEAR," UNQUOTE. YOU SEE THAT?

23 A. I SEE THAT.

24 Q. SO YOU UNDERSTOOD AT THE TIME THAT PROFESSOR BLOUGH  
25 WAS TELLING YOU THAT HER TREATING PHYSICIANS HAD AGREED THAT SHE  
26 COULD TEACH FULL TIME IN THE NEXT YEAR, CORRECT?

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1 A. I SEE THAT SHE WAS SAYING THAT; YES.

2 Q. AND YOU UNDERSTOOD THAT AT THE TIME, THAT THAT'S WHAT  
3 SHE WAS TELLING YOU?

4 A. I SEE THAT THAT'S WHAT SHE WAS SAYING; YES.

5 Q. DID YOU HAVE ANY -- I'M SORRY. GO AHEAD.

6 A. NO.

7 Q. DID YOU HAVE ANY PROBLEM UNDERSTANDING WHAT SHE WAS  
8 TELLING YOU?

9 A. NO.

10 Q. OKAY.

11 IF WE CAN RETURN TO EXHIBIT 27, WHICH IS THE  
12 SEPTEMBER 7, 2006 LETTER. GOING TO THE LAST PARAGRAPH, STARTING  
13 IN THE MIDDLE OF THIS PARAGRAPH, STARTING ON THE FOURTH LINE  
14 DOWN AT THE WORD "THE." IT'S IN THE MIDDLE OF THE SENTENCE.

15 DO YOU SEE WHERE I AM?

16 A. LAST PARAGRAPH, FOURTH LINE DOWN.

17 Q. STARTS WITH "THE COLLEGE"?

18 A. "THE COLLEGE," YES.

19 Q. HERE YOU WRITE, "THE COLLEGE INVITES YOU TO REINITIATE  
20 INDEPENDENT MEDICAL EVALUATION BY DR. MISSETT. AND IF YOU DO  
21 SO, TO MAKE SURE TO FULLY AND UNCONDITIONALLY RELEASE TO HIM ALL  
22 PAST AND CURRENT MEDICAL AND PSYCHOLOGICAL RECORDS AND  
23 INFORMATION AND TO COOPERATE WITH HIM."

24 I HAVE A COUPLE OF QUESTIONS ABOUT THIS SENTENCE. THE  
25 FIRST BEING, THIS IS THE FIRST DOCUMENT THAT YOU KNOW OF, IS IT  
26 NOT, THAT OFFICIALLY INVITES PROFESSOR BLOUGH TO GO BACK AND SEE

1 DR. MISSETT, ISN'T IT?

2 A. THIS IS THE FIRST WRITTEN DOCUMENT.

3 Q. OKAY.

4 AND YOU SAY -- THEN YOU GO ON TO SAY THAT IF SHE TAKES  
5 YOU UP ON THAT INVITATION, SHE SHOULD MAKE SURE TO FULLY AND  
6 UNCONDITIONALLY RELEASE ALL PAST AND CURRENT MEDICAL AND  
7 PSYCHOLOGICAL RECORDS, RIGHT?

8 A. RIGHT.

9 Q. DID YOU HAVE ANY CONCERN AT THAT POINT AS OF  
10 SEPTEMBER 7, 2006, THAT PROFESSOR BLOUGH HAD NOT DONE SO WHEN  
11 SHE FIRST MET WITH DR. MISSETT?

12 A. NO. I JUST WANTED HER TO UNDERSTAND THAT IF SHE HAD  
13 INFORMATION, SHE SHOULD PROVIDE IT ALL TO HIM.

14 Q. AND WITHOUT CONDITION, RIGHT? ALL OF HER MEDICAL  
15 RECORDS WITHOUT CONDITION?

16 A. ANY INFORMATION THAT SHE HAD.

17 Q. OKAY.

18 WELL, YOU WROTE, "FULLY AND UNCONDITIONALLY RELEASE  
19 ALL PAST AND CURRENT MEDICAL AND PSYCHOLOGICAL RECORDS," RIGHT?

20 A. RIGHT.

21 Q. YOU DIDN'T SAY, "RELEASE ALL RELEVANT PSYCHOLOGICAL OR  
22 MEDICAL INFORMATION," DID YOU?

23 A. NO, I DIDN'T SAY THAT.

24 Q. AND YOU DIDN'T COMMUNICATE TO HER IN ANY WAY IN THIS  
25 LETTER THAT SHE SHOULD ONLY RELEASE TO DR. MISSETT WHAT IS  
26 RELEVANT AND WHAT IS CURRENT, CORRECT?

1 MR. VARTAIN: OBJECTION, LACKS FOUNDATION THAT THIS  
2 WITNESS WOULD HAVE THE PHYSICIAN'S ABILITY TO DETERMINE WHAT'S  
3 RELEVANT.

4 THE COURT: OVERRULED.

5 MR. LEBOWITZ: Q. YOU CAN ANSWER THE QUESTION.

6 A. THIS LETTER SIMPLY -- I WANTED TO LET HER KNOW TO MAKE  
7 AVAILABLE TO DR. MISSETT ANYTHING THAT SHE MIGHT HAVE OR THAT HE  
8 COULD USE TO RE-EVALUATE HER SITUATION.

9 Q. BUT YOU DIDN'T SAY THAT. YOU SAID, "FULLY AND  
10 UNCONDITIONALLY RELEASE ALL RECORDS."

11 A. THAT'S WHAT I MEANT. ANYTHING THAT SHE HAD THAT  
12 DR. MISSETT COULD USE, SHE SHOULD GIVE TO HIM. THAT'S WHAT I  
13 MEANT.

14 MR. LEBOWITZ: YOUR HONOR, THIS MIGHT BE A GOOD PLACE  
15 TO STOP.

16 THE COURT: IT WOULD BE A GOOD TIME.

17 ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING TO TAKE  
18 OUR LUNCH BREAK. LEAVE YOUR NOTEBOOKS HERE AND TAKE THOSE  
19 BADGES, IF YOU'RE STAYING IN THE BUILDING. WE'RE GOING TO  
20 RETURN AT 1:30.

21 AND I WILL ASK THE WITNESS TO RETURN AT THAT TIME AS  
22 WELL. JUST LEAVE THOSE EXHIBITS ON THE DESK THERE, MS. SAPRAI.

23 ALL RIGHT. SEE YOU AFTER LUNCH.

24 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

1 PROCEEDINGS

2 DECEMBER 9, 2008 P.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD AFTERNOON. WE'RE ON THE RECORD IN  
4 BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT,  
5 ALL JURORS AND ALTERNATES.

6 GOOD AFTERNOON, LADIES AND GENTLEMEN. WE WERE IN THE  
7 MIDDLE OF THE TESTIMONY OF MS. SAPRAI, AND I UNDERSTAND THAT  
8 WE'RE GOING TO INTERRUPT HER TESTIMONY TO BRING IN SOMEONE ELSE;  
9 IS THAT CORRECT?

10 MR. PETERS: THANK YOU, YOUR HONOR. WE ARE.

11 THE COURT: LADIES AND GENTLEMEN, AGAIN, WE'RE TRYING  
12 TO MOVE IT ALONG QUICKLY. AND BY ACCOMMODATING WITNESSES THIS  
13 WAY, IT REALLY MOVES IT ALONG QUICKLY, AND I THINK IT WON'T BE  
14 TOO CONFUSING FOR ANYONE.

15 MR. PETERS, YOU MAY CALL YOUR NEXT WITNESS.

16 MR. PETERS: THANK YOU, YOUR HONOR. PLAINTIFF CALLS  
17 NURSE SHARON GAROUTTE.

18 MR. VARTAIN: WE HAVE AN ISSUE, YOUR HONOR.

19 THE COURT: SHOULD WE STEP OUT IN THE HALL?

20 MR. VARTAIN: PERHAPS, BEFORE YOU COULD DECIDE IF YOU  
21 WANT TO STEP OUT IN THE HALL ABOUT WHAT I'M GOING TO SAY. WE  
22 THOUGHT DR. HAYWARD WAS GOING TO BE CALLED FIRST, BUT THE NURSE



23 IS GOING TO CALLED FIRST, AND THAT'S THE ONE WE HAVE A PRIVATE  
24 ISSUE WITH THAT.

25 MR. PETERS: WE'RE CALLING THE NURSE BECAUSE  
26 DR. HAYWARD IS NOT HERE YET.

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1 THE COURT: THEN I THINK WE HAVE TO STEP OUT IN THE  
2 HALL.

3 MR. PETERS: OH, WE HAVE DR. HAYWARD.

4 PLAINTIFF CALLS DR. JOHN HAYWARD.

5 THE COURT: DR. HAYWARD, IF YOU WOULD PLEASE STAND TO  
6 BE SWORN.

7 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

8 (WHEREUPON, THE WITNESS WAS SWORN.)

9 THE WITNESS: YES, I DO.

10 THE CLERK: PLEASE BE SEATED.

11 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
12 AND SPELL THEM BOTH FOR THE RECORD.

13 THE WITNESS: JOHN HAYWARD, J-O-H-N H-A-Y-W-A-R-D.

14 THE CLERK: THANK YOU.

15

16 JOHN HAYWARD,

17 DULY SWORN, TESTIFIED AS FOLLOWS:

18

19 DIRECT EXAMINATION

20 BY MR. PETERS:

21 Q. GOOD AFTERNOON, DR. HAYWARD. HOW ARE YOU?

22 A. GOOD AFTERNOON. FINE, THANK YOU.

23 Q. COULD YOU BRIEFLY TELL THE JURY WHAT YOUR BACKGROUND  
24 IS, WHAT KIND OF DOCTOR YOU ARE?

25 A. HEMATOLOGY AND ONCOLOGY, SO I TAKE CARE OF PATIENTS  
26 WITH CANCER. PROBABLY HALF OF WHAT WE DO ARE BREAST CANCER, AND

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1 THE OTHER HALF OF ALL THE PATIENTS WE SEE ARE A MIX OF  
2 EVERYTHING. SO WE DO EVERYTHING FROM SCREENING, TO DIAGNOSIS,  
3 TO TREATMENT, TO FOLLOW UP AND MAKING SURE THEY DON'T HAVE  
4 RECURRENCE.

5 Q. AND COULD YOU BRIEFLY TELL US WHAT YOUR EDUCATIONAL  
6 BACKGROUND IS?

7 A. EDUCATIONAL BACKGROUND, I WENT TO UNIVERSITY OF  
8 CALIFORNIA, AND THEN I WENT TO USC FOR MEDICAL SCHOOL. I DID AN  
9 INTERNSHIP IN INTERNAL MEDICINE. I DID AN INTERNAL MEDICINE  
10 RESIDENCY FOR TWO YEARS IN SANTA BARBARA, THEN I DID A TWO-YEAR  
11 ONCOLOGY FELLOWSHIP AT USC, THEN I DID A ONE-YEAR HEMATOLOGY  
12 FELLOWSHIP AT USC.

13 THE COURT: I'M GOING TO INTERRUPT.

14 DR. HAYWARD, IMAGINE YOU WERE TAKING NOTES AND SOMEONE  
15 WAS SPEAKING AT YOUR SPEED.

16 THE WITNESS: I'LL SLOW DOWN.

17 THE COURT: IF YOU COULD HELP US OUT. THE COURT  
18 REPORTER HAS TO MAKE A VERBATIM TRANSCRIPT OF WHAT YOU'RE

19 SAYING. I CAN'T LISTEN THAT FAST, AND I DON'T THINK SHE CAN  
20 TRANSCRIBE THAT FAST.

21 THE WITNESS: OKAY.

22 THE COURT: THANK YOU.

23 GO AHEAD, MR. PETERS. SORRY TO INTERRUPT.

24 MR. PETERS: THANK YOU, YOUR HONOR. NO PROBLEM.

25 Q. DR. HAYWARD, HOW LONG HAVE YOU BEEN PRACTICING  
26 ONCOLOGY?

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1 A. 16 YEARS.

2 Q. AND WHERE DO YOU CURRENTLY PRACTICE?

3 A. AT SEQUOIA HOSPITAL, AT FRED S. MARCUS AND ASSOCIATES.

4 Q. HOW LONG HAVE YOU BEEN WITH THAT PRACTICE?

5 A. TWO -- TWO YEARS AND A FEW MONTHS.

6 Q. AND CAN YOU BRIEFLY DESCRIBE WHAT KIND OF PRACTICE  
7 FRED MARCUS AND ASSOCIATES IS?

8 A. IT'S A SMALL PRIVATE PRACTICE. FRED WAS A  
9 ONE-PHYSICIAN PRACTICE FOR MOST OF THE TIME. HE HAS TAKEN ILL  
10 RECENTLY, AND SO I STARTED COMING DOWN A COUPLE HALF DAYS A  
11 WEEK, AND NOW I'VE TAKEN OVER MOST OF THE PHYSICIAN  
12 RESPONSIBILITIES THERE.

13 Q. AND WHEN YOU SAY YOU'VE TAKEN OVER THE PHYSICIAN  
14 RESPONSIBILITIES, DOES THAT MEAN YOU'RE NOW SEEING DR. MARCUS'S  
15 PATIENTS?

16 A. YES.

17 Q. DO YOU KNOW PROFESSOR MARCINE BLOUGH?

18 A. YES. YES, WE'VE HAD A COUPLE MEETINGS.

19 Q. YOU SAID YOU'VE HAD A COUPLE MEETINGS. HAVE YOU SEEN  
20 HER AS A PATIENT?

21 A. YES, MEETINGS AS A PATIENT.

22 Q. THANK YOU.

23 WAS SHE ONE OF THE PATIENTS THAT YOU TOOK OVER FROM  
24 DR. MARCUS?

25 A. CORRECT.

26 Q. WHEN DID YOU FIRST SEE PROFESSOR BLOUGH?

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1 A. CAN I TAKE A LOOK AT THE CHART?

2 Q. SURE. LET ME JUST ASK YOU, DID YOU BRING YOUR MEDICAL  
3 FILE FOR PROFESSOR BLOUGH WITH YOU TODAY?

4 A. YES.

5 Q. WOULD IT HELP TO REFRESH YOUR MEMORY AS TO WHAT YOU  
6 DID WITH PROFESSOR BLOUGH TO REFER TO YOUR CHART?

7 A. RIGHT. THIS WAY I CAN GIVE YOU SOME ACCURATE DATES.

8 I SAW HER FOR THE FIRST TIME MAY 2ND, 2007.

9 Q. AND PRIOR TO SEEING HER FOR THE FIRST TIME, DID YOU  
10 REVIEW THE CHART THAT YOU HAVE THERE IN FRONT OF YOU?

11 A. DID I REVIEW IT BEFORE SHE CAME IN THE FIRST TIME?

12 Q. THAT'S CORRECT.

13 A. YES.

14 Q. DID YOU DO THAT IN ORDER TO PREPARE YOURSELF TO MEET

15 WITH HER?

16 A. YES.

17 Q. DO YOU RECALL HOW LONG YOU MET WITH HER THE FIRST TIME  
18 IN MAY 2007?

19 A. IT'S A PRETTY EXTENSIVE EVALUATION, SO I WOULD GUESS  
20 CLOSE TO AN HOUR.

21 Q. AND THE CHART YOU'RE REFERRING TO THERE, IS THAT THE  
22 CHART THAT'S NORMALLY OR REGULARLY KEPT IN THE COURSE OF  
23 BUSINESS AT YOUR MEDICAL OFFICE?

24 A. YES. YES. THIS IS OUR CHART, I THINK. I THINK SHE  
25 ONLY HAS ONE, YEAH. SOME PEOPLE HAVE TWO CHARTS, BUT SHE  
26 DOESN'T SO THIS SHOULD CONTAIN EVERYTHING.

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1 Q. AND THAT CONTAINS ALL OF THE TREATMENT THAT  
2 PROFESSOR BLOUGH HAS RECEIVED THROUGH FRED MARCUS AND ASSOCIATES  
3 FROM THE TIME SHE FIRST STARTED TREATING THERE, CORRECT?

4 A. YES.

5 Q. WHEN YOU FIRST SAW PROFESSOR BLOUGH, WHAT SORT OF  
6 TREATMENT WAS SHE RECEIVING THROUGH YOUR OFFICE?

7 A. WELL, SHE WASN'T RECEIVING MUCH FROM OUR OFFICE AT  
8 THAT POINT. SHE HAD HAD SURGERY IN 2002, AND THEN SHE WAS  
9 RECEIVING A TREATMENT CALLED SANDOSTATIN FROM APRIL 2002 THROUGH  
10 MARCH 2006. AND THAT WAS STOPPED BECAUSE OF SOME POSSIBLE  
11 ASSOCIATION WITH HEARING LOSS. AND WHEN I SAW HER I ORDERED  
12 X-RAYS AND LABORATORY TESTS TO MAKE SURE WE KNEW THE STATUS OF

13 HER DISEASE, HOW EXTENSIVE IT WAS AND HOW ACTIVE IT WAS.

14 Q. AND DID YOU -- FOLLOWING THOSE TESTS, DID YOU  
15 DETERMINE WHETHER HER DISEASE WAS ACTIVE OR INACTIVE AT THAT  
16 POINT?

17 A. YES. IT APPEARED THAT IT WAS QUITE QUIESCENT. WE DID  
18 NOT SEE LARGE TUMOR MASSES. WE ONLY SAW SOME VERY SMALL THINGS;  
19 A STABLE SMALL HYPOVASCULAR LEGION IN THE LIVER, SO SOMETHING  
20 THAT DID NOT LOOK DANGEROUS.

21 Q. AND YOU'VE SEEN HER SUBSEQUENT TO MAY 2007, CORRECT?

22 A. CORRECT.

23 Q. ARE YOU HER CURRENT TREATING ONCOLOGIST?

24 A. YES, I WOULD THINK SO. I SAW HER AGAIN NOVEMBER '07,  
25 JULY '08.

26 Q. OKAY.

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1 IS SHE RECEIVING CURRENTLY ANY, WHAT I WOULD CALL  
2 ACTIVE TREATMENT, FROM YOU?

3 A. NO. WHEN WE'RE SEEING HER NOW, WE'RE MOSTLY SCREENING  
4 HER TO SEE IF THERE'S ANY REAPPEARANCE OF THE CANCER.

5 Q. AND SO FAR SO GOOD?

6 A. SO FAR SO GOOD.

7 Q. NOW, YOU MENTIONED A MOMENT AGO THAT SHE WAS ON  
8 SANDOSTATIN, CORRECT?

9 A. YES.

10 Q. HAVE YOU ADMINISTERED SANDOSTATIN BEFORE TO PATIENTS?

11 A. YES.

12 Q. AND I BELIEVE YOU SAID SHE STOPPED TAKING IT AT SOME  
13 POINT?

14 A. RIGHT. THE MEDICATION WAS STOPPED BECAUSE OF CONCERN  
15 ABOUT SOME HEARING LOSS.

16 Q. AND THAT WAS A CONCERN THAT PROFESSOR BLOUGH HAD,  
17 CORRECT?

18 A. WELL, I THINK IT WAS A CONCERN THAT EVERYBODY HAD,  
19 THAT LOOKED LIKE DR. MARCUS WAS MONITORING IT. HE WASN'T  
20 CONVINCED IT WAS FROM THE MEDICATION. HE THOUGHT THE MEDICATION  
21 HAD A MUCH MORE IMPORTANT BENEFIT FOR HER IN CONTROLLING THE  
22 DISEASE, SO HE DIDN'T WANT TO STOP IT TOO EARLY. BUT THEN IT  
23 APPEARS THAT THE HEARING LOSS MAY HAVE TAKEN ON A GREATER  
24 PROMINENCE.

25 Q. IN YOUR EXPERIENCE IN WORKING IN THE AREA OF ONCOLOGY  
26 OVER 16 YEARS AND TREATING OTHER PATIENTS WITH SANDOSTATIN, DO

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1 YOU HAVE ANY OR HAVE YOU EVER HAD A PATIENT LIKEWISE EXPERIENCE  
2 HEARING LOSS WHILE THEY WERE TAKING SANDOSTATIN?

3 MR. VARTAIN: OBJECTION TO THE "LIKEWISE." HE'S GOING  
4 TO REPHRASE.

5 THE COURT: OVERRULED.

6 YOU CAN FIX IT IF YOU WANT. I THINK IT'S CLEAR.

7 MR. PETERS: Q. YOU CAN ANSWER.

8 A. CAN YOU RESTATE THAT, PLEASE?

9 Q. SURE.

10 HAVE YOU EVER HAD A PATIENT PREVIOUSLY WHO WAS TAKING  
11 SANDOSTATIN WHO EXPERIENCED HEARING LOSS?

12 A. NO, I HAVEN'T.

13 Q. HAVE YOU EVER HEARD OF THAT HAPPENING, IN YOUR  
14 PROFESSIONAL EXPERIENCE?

15 A. YES. I KNOW ON THE -- THERE'S A THING CALLED "PACKAGE  
16 INSERT," THAT COMES WITH ALL MEDICATIONS THAT LIST EVERY SIDE  
17 EFFECT THAT EVERY PATIENT HAS EVER REPORTED WHILE ON THE  
18 MEDICATION. OFTENTIMES, THINGS LIKE HEADACHES, PEOPLE HAVE MORE  
19 HEADACHES ON A MEDICINE THAN OFF, BUT THERE ARE OTHER TIMES WHEN  
20 PEOPLE HAVE MORE HEADACHES OFF THEM AS ON IT. SO, USUALLY, YOU  
21 KIND OF HAVE TO MAKE SOME SORT OF JUDGEMENT CALL BASED ON THE  
22 PACKAGE INSERT. IT DOESN'T MEAN THAT A SIDE EFFECT IS GOING TO  
23 HAPPEN AND IT DOESN'T MEAN A SIDE EFFECT A PATIENT HAS IS FROM  
24 THAT MEDICATION, SO IT'S NOT A WELL-KNOWN ASSOCIATION.

25 Q. BUT IT IS SOMETHING THAT IS OUTLINED IN THAT PACKAGE  
26 INSERT THAT YOU MENTIONED?

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1 A. RIGHT. IT IS SOMETHING THAT'S MENTIONED IN THE  
2 PACKAGE INSERT.

3 Q. I BELIEVE -- I'M SORRY, BUT I BELIEVE YOU SAID  
4 ACCORDING TO THE FILE YOU'VE SEEN PROFESSOR BLOUGH THREE TIMES  
5 SINCE MAY 2007, CORRECT?

6 A. I THINK THREE TIMES TOTAL. LOOKS LIKE JULY '08, 11/07



7 AND THEN MAY 2ND, '07.

8 Q. SO THREE APPOINTMENTS?

9 A. CORRECT.

10 Q. AND DO YOU FOLLOW THE SAME ROUTINE IN EACH APPOINTMENT  
11 WHEN YOU MEET WITH PROFESSOR BLOUGH, IN TERMS OF TAKING A  
12 HISTORY, DOING EXAM, WHATEVER IT IS YOU MAY DO?

13 A. RIGHT. THERE'S A STANDARD FORMAT THAT PHYSICIANS ARE  
14 SUPPOSED TO FOLLOW. WE CALL IT A "SOAP" NOTE OR WHERE YOU GET A  
15 SUBJECTIVE IMPRESSION FROM THE PATIENT, ASK THEM HOW THEY FEEL;  
16 AND THEN YOU GET OBJECTIVE EVALUATION OF THE PATIENT, WHERE YOU  
17 TRY TO QUANTIFY IF THERE'S ANY PRESENCE OF CANCER OR ANY --  
18 QUANTIFY THEIR HEART RATE. YOU QUANTIFY HOW THEIR PHYSICAL  
19 APPEARANCE IS. AND THEN YOU DO AN ASSESSMENT, YOU TRY TO PUT IT  
20 ALL TOGETHER AND THEN YOU COME UP WITH A PLAN. AND SO  
21 SUBJECTIVE, OBJECTIVE, ASSESSMENT, PLAN, CALLED SOAP. AND SO  
22 HER NOTES ARE ARRANGED IN A STANDARD SOAP FORMAT.

23 Q. AND CAN YOU GIVE US AN ESTIMATE OF HOW LONG YOU SPENT  
24 WITH PROFESSOR BLOUGH EACH TIME YOU HAD AN APPOINTMENT WITH HER?

25 A. WELL, PATIENTS WHO AREN'T EXACTLY STRAIGHTFORWARD, WE  
26 TEND TO SPEND A LOT MORE TIME WITH. SOME PEOPLE WANT TO GET IN

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1 AND OUT FAST. NOBODY EVER WANTS TO GO TO A CANCER DOCTOR, SO A  
2 LOT OF PEOPLE ARE IN A HURRY TO GET OUT OF OUR OFFICE. SOME  
3 PEOPLE HAVE A LOT OF OTHER ISSUES; MEDICATION, SOCIAL ISSUES,  
4 PHYSICAL ISSUES, SIDE EFFECTS, THAT SORT OF THING. SO WE TEND

5 TO BE FLEXIBLE AND TRY TO ACCOMMODATE ALL THOSE FEATURES.

6 Q. OKAY. AND I APPRECIATE THAT. MY QUESTION WAS MORE  
7 SPECIFIC TO PROFESSOR BLOUGH.

8 DO YOU RECALL HOW LONG IT TOOK YOU EACH TIME -- YOU  
9 KNOW, HOW MUCH TIME YOU SPENT WITH HER EACH TIME SHE CAME IN FOR  
10 THE APPOINTMENT TO GO THROUGH THE SOAP ELEMENTS, AS YOU --

11 A. SURE.

12 USUALLY, I DICTATE HOW LONG IT TOOK. SO MAY '07, IT  
13 WAS AN HOUR. NOVEMBER 8, '07, THAT WAS AN HOUR. IF IT'S MORE  
14 THAN ABOUT FIVE OR TEN MINUTES LONGER, THEN WE'LL ADD EXTRA. SO  
15 AN HOUR IS USUALLY AN HOUR PLUS OR MINUS FIVE MINUTES. LET'S  
16 SEE. JULY 17, RIGHT ABOUT AN HOUR, TOO. SO THREE HOURS  
17 FACE-TO-FACE.

18 Q. AND DURING THAT TIME YOU HAD AN OPPORTUNITY TO OBSERVE  
19 PROFESSOR BLOUGH'S MANNERISMS AS WELL AS HER PHYSICAL CONDITION,  
20 CORRECT?

21 A. YES.

22 Q. AND I'M SORRY, WHEN WAS THE LAST TIME YOU SAW  
23 PROFESSOR BLOUGH?

24 A. JULY 17, 2008.

25 Q. OKAY.

26 AT THE TIME THAT YOU SAW PROFESSOR BLOUGH ON

1 JULY 17, 2008, DID YOU FORM ANY OPINION AS TO WHETHER SHE WAS  
2 CAPABLE OF WORKING AT THAT TIME?

3 A. YES --

4 MR. VARTAIN: OBJECT -- I INTERRUPTED. EXCUSE ME. I  
5 APOLOGIZE.

6 MR. PETERS: OKAY.

7 THE WITNESS: RIGHT AT THE BEGINNING, WE HAD DISCUSSED  
8 THAT SHE HAD A SUIT AGAINST HER PRIOR EMPLOYER. AND THE SOCIAL  
9 HISTORY MENTIONS SHE'S GOT A LAW DEGREE, SHE WAS TEACHING  
10 BUSINESS LAW AT MENLO COLLEGE, AND SHE WAS FIRED FROM HER JOB  
11 WHILE UNDERGOING TREATMENT OF HER CANCER. AND THEN AT THE END  
12 IT DIDN'T MENTION IT AGAIN ON THAT LAST VISIT.

13 MR. PETERS: Q. I'M SORRY, DOCTOR. ARE YOU LOOKING  
14 AT YOUR JULY 17, 2008?

15 A. YES.

16 Q. I WOULD DIRECT YOUR ATTENTION TO PAGE 3 OF YOUR NOTES.

17 A. YES.

18 Q. FOR THAT DATE, THE FOURTH PARAGRAPH.

19 A. YES.

20 Q. OKAY.

21 A. I WROTE THAT I TOLD HER THAT I'D BE HAPPY TO SUPPORT  
22 HER EFFORTS TO RECLAIM HER TEACHING POSITION.

23 Q. DOES THAT REFRESH YOUR RECOLLECTION AS TO WHETHER OR  
24 NOT YOU FORMED AN OPINION AS OF JULY 17, 2008, WHETHER  
25 PROFESSOR BLOUGH WAS CAPABLE OF TEACHING OR NOT?

26 A. YEAH. IN MY ASSESSMENT, SHE CERTAINLY SEEMED CAPABLE

1 OF RECLAIMING HER TEACHING DUTIES.

2 Q. OKAY.

3 AND I THINK EARLIER YOU SAID NOTHING, IN TERMS OF HER  
4 CANCER AT ANY RATE, HAD CHANGED IN TERMS OF -- WELL, HER CANCER  
5 DIAGNOSIS AND PROGNOSIS NEVER CHANGED THE YEAR AND A HALF THAT  
6 YOU HAVE SEEN HER, CORRECT?

7 A. CORRECT.

8 Q. OKAY.

9 SO WOULD YOUR OPINION LIKEWISE BE THAT WHEN YOU FIRST  
10 STARTED SEEING HER IN MAY 2007, SHE WAS CAPABLE OF TEACHING?

11 MR. VARTAIN: OBJECTION. LEADING; CALLS FOR  
12 SPECULATION.

13 THE COURT: SUSTAINED.

14 MR. PETERS: OKAY.

15 Q. DOCTOR, WOULD YOU TURN TO YOUR -- WELL, LET ME JUST  
16 ASK THE QUESTION. AS OF WHEN YOU FIRST SAW HER IN MAY 2007, DO  
17 YOU RECALL REACHING A CONCLUSION AS TO WHETHER YOU BELIEVED SHE  
18 WAS CAPABLE OF TEACHING AT THAT POINT OR NOT?

19 A. YEAH. MY IMPRESSION WAS THAT SHE WAS CAPABLE OF GOING  
20 BACK TO HER TEACHING JOB.

21 Q. AND PRIOR TO SEEING HER ON THAT DATE, YOU HAD REVIEWED  
22 HER MEDICAL FILE THAT YOU HAVE THERE IN FRONT OF YOU, CORRECT?

23 A. CORRECT.

24 Q. AND HER CONDITION, IN FACT, HAD NOT CHANGED?

25 MR. VARTAIN: LEADING -- SORRY.

26 MR. PETERS: Q. HAD HER CONDITION CHANGED FROM

1 MARCH 2006 UNTIL YOU SAW HER IN MAY 2007?

2 A. WITH RESPECT TO HER CANCER?

3 Q. THAT'S CORRECT.

4 A. NO. IT LOOKED LIKE HER CANCER WAS UNDER GOOD CONTROL.  
5 WE DID NOT SEE SIGNIFICANT ACTIVITY OF IT.

6 MR. PETERS: OKAY. THAT'S ALL I HAVE.

7 THANK YOU, DOCTOR.

8 THE COURT: CROSS-EXAMINATION?

9 MR. VARTAIN: THANK YOU, YOUR HONOR.

10

11 CROSS-EXAMINATION

12 BY MR. VARTAIN:

13 Q. THANK YOU FOR COMING, DR. HAYWARD.

14 A. YES. THANK YOU.

15 Q. THE LAST THING YOU JUST SAID TO THE JURY WAS, AND I  
16 QUOTE, "WITH RESPECT TO HER CANCER, HER MEDICAL CONDITION HAD  
17 NOT CHANGED." YOU WERE NOT HER TREATING PSYCHIATRIST, WERE YOU?

18 A. NO.

19 Q. YOU WERE NOT FOLLOWING HER PSYCHIATRIC MEDICATIONS,  
20 WERE YOU?

21 A. NO.

22 Q. IN FACT -- AND I'M SURE IT'S NOT NECESSARY FOR YOU TO  
23 TREAT HER FOR CANCER -- YOU AREN'T AWARE OF EACH AND EVERY  
24 PSYCHIATRIC MEDICINE SHE WAS ON DURING THE TIME YOU WERE  
25 TREATING HER AND/OR THE CHANGES OF DOSAGE, CORRECT?

1 MEDICATIONS A PATIENT'S ON. BUT IF THEY HAVE ADDITIONS OR  
2 SUBTRACTIONS BETWEEN VISITS, WE MAY NOT HEAR ABOUT THOSE.

3 Q. AND, IN FACT, THE ONLY WAY YOU EVEN HAVE THAT  
4 INFORMATION IS WHAT THE PATIENT TELLS YOU. YOU WEREN'T GETTING  
5 INFORMATION FROM HER PSYCHIATRIST ON ANY KIND OF REGULAR BASIS  
6 AS TO ALL THESE DIFFERENT PSYCHIATRIC MEDICATIONS; IS THAT FAIR  
7 TO SAY?

8 A. THAT'S CORRECT.

9 Q. SO WHEN YOU TOLD THE JURY THAT YOU THOUGHT SHE WAS  
10 HEALTHY ENOUGH TO WORK, THAT WAS NOT -- YOU WERE NOT IN  
11 CONSIDERATION OF HER PSYCHIATRIC MEDICATIONS AND HER PSYCHIATRIC  
12 DISORDERS; WOULD THAT BE FAIR TO SAY?

13 A. NO. THAT WAS MY ASSESSMENT OF MEETING WITH HER, HER  
14 TELLING ME WHAT KIND OF WORK SHE DID, AND THAT WE OFTENTIMES SEE  
15 WOMEN WHO ARE UNDERGOING CANCER THERAPY WHO ARE FIRED FROM THEIR  
16 JOBS. SO IT'S SOMETHING THAT I SEE FREQUENTLY IN OUR PRACTICE,  
17 AND I WANTED TO BE SUPPORTIVE FOR HER.

18 Q. AND I CONGRATULATE YOU ON THAT BUT, YOU DON'T KNOW OF  
19 ANY INFORMATION TO SHOW THAT IT WAS HER CANCER THAT ACTUALLY  
20 RESULTED IN THE FACT THAT SHE WASN'T WORKING AT THE COLLEGE.  
21 YOU ONLY KNOW WHAT SHE TOLD YOU, CORRECT?

22 A. THAT IS CORRECT.

23 Q. YOU NEVER TALKED TO DR. MISSETT, THE INDEPENDENT

24 EVALUATOR, TO FIND OUT WHY IT WAS THAT HE SAID HE DIDN'T THINK  
25 SHE SHOULD BE WORKING, DID YOU?  
26 A. NO.

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1 Q. YOU KNEW SHE HAD A PSYCHIATRIST?

2 A. YES.

3 Q. BUT YOU DIDN'T TALK TO THE PSYCHIATRIST TO FIND OUT  
4 IF, FROM A PSYCHIATRIC STANDPOINT, SHE SHOULD OR SHOULDN'T BE  
5 WORKING; IS THAT FAIR?

6 A. NO.

7 Q. IS THAT FAIR TO SAY?

8 A. THAT IS CORRECT.

9 Q. THANK YOU.

10 SO IN ORDER TO DO A COMPLETE FITNESS-FOR-DUTY  
11 EVALUATION OF SOMEONE THAT'S HAVING PSYCHIATRIC DIAGNOSES, WOULD  
12 YOU WANT TO INCLUDE THE PSYCHIATRIST'S EVALUATION IN THAT?

13 MR. PETERS: LACKS FOUNDATION.

14 THE COURT: OVERRULED.

15 THE WITNESS: WELL, I'M NOT AN OCCUPATIONAL PHYSICIAN,  
16 SO I THINK IT WOULD DEPEND ON WHAT WAS REQUIRED OR IF THERE WAS  
17 SOME SORT OF PRECEDENT.

18 MR. VARTAIN: Q. WHEN YOU SAY -- YOU TOLD THE JURY  
19 YOU'RE NOT AN OCCUPATIONAL PHYSICIAN, YOU'RE NOT A DOCTOR WHO,  
20 IN HIS JOB, EVALUATES WHETHER EMPLOYEES CAN PERFORM PROPERLY THE  
21 FUNCTIONS OF THE JOB; IS THAT WHAT YOU'RE SAYING?

22 A. WELL, WE'RE FREQUENTLY CALLED UPON TO WRITE NOTES FOR  
23 PATIENTS WHO ARE SICK TO GET OUT OF WORK AND WE, FREQUENTLY, ARE  
24 CALLED UPON TO WRITE NOTES SO THAT THEY CAN GO BACK TO WORK. WE  
25 FREQUENTLY FILL OUT TEMPORARY AND PERMANENT DISABILITY, AND SO  
26 THERE'S A GENERAL AMOUNT OF ASSESSMENT THAT I THINK WE'RE PRETTY

595

1 GOOD AT. BUT FOR VERY SPECIFIC JOBS THAT HAVE VERY STRICT  
2 REQUIREMENTS, I MIGHT NOT KNOW ALL OF THE INS AND OUTS ABOUT  
3 THAT.

4 Q. WELL, YOU WOULD AGREE THAT FOR A TEACHER, THE  
5 INTELLECTUAL, MENTAL, COGNITIVE, EMOTIONAL PARTS OF THE PERSON'S  
6 HEALTH WOULD BE IMPORTANT TO WHETHER THEY'RE FUNCTIONING AT A  
7 PEAK PERFORMANCE, WOULD YOU AGREE? AS OPPOSED TO, YOU KNOW, A  
8 MORE MANUAL JOB, YOU KNOW, A GARDENER OR SOMETHING LIKE THAT?

9 A. I GUESS I KNOW THERE'RE SOME REALLY GOOD TEACHERS OUT  
10 THERE AND SOME NOT SO GREAT TEACHERS, AND WHAT MAKES GOOD ONES  
11 GOOD AND NOT SO GOOD ONES NOT SO GOOD IS PRETTY COMPLEX.

12 Q. WELL, WOULD YOU AGREE THAT WHILE THERE'S MANY GOOD  
13 TEACHERS AND MANY NOT-SO-GOOD TEACHERS, THE MORE HEALTHY YOUR  
14 MENTAL FUNCTIONING IS, GENERALLY THAT'S GOING TO ASSIST THE  
15 TEACHER TO PERFORM BETTER IN THE CLASSROOM?

16 A. I DON'T KNOW. I MEAN, THEY ALWAYS SAY, YOU KNOW,  
17 BRILLIANCE IS CLOSE TO INSANITY SO I DON'T KNOW.

18 Q. YOU'RE NOT TALKING ABOUT ME, ARE YOU?

19 A. NO.



20 Q. OKAY. I GET IT. I'M WITH YOU.

21 BUT YOU ARE SAYING THAT YOU DID NOT DO A  
22 FITNESS-FOR-DUTY EVALUATION OF THE PATIENT; IS THAT CORRECT?

23 A. CORRECT. I DID NOT DO A FITNESS.

24 Q. AND YOUR OFFICE DOESN'T DO FITNESS-FOR-DUTY  
25 EVALUATIONS FOR EMPLOYERS; IS THAT CORRECT?

26 A. NOT THAT I KNOW OF.

596

1 Q. OKAY.

2 DO YOU HAVE ANY ACQUAINTANCE-SHIP WITH DR. MISSETT OF  
3 MENLO PARK?

4 A. NO.

5 Q. SO YOU HAVEN'T EVER TALKED TO HIM ABOUT WHY IT IS HE  
6 FELT THAT YOUR PATIENT WASN'T YET READY TO GO BACK TO WORK,  
7 CORRECT?

8 A. CORRECT. I NEVER SPOKE WITH HIM.

9 Q. NOBODY AT THE COLLEGE EVER -- EXCEPT FOR MAYBE  
10 PROFESSOR BLOUGH, BUT NOBODY IN AUTHORITY AT THE COLLEGE EVER  
11 TOLD YOU THAT THE CANCER WAS THE REASON WHY DR. MISSETT WAS  
12 SAYING SHE WASN'T YET READY TO GO BACK TO WORK; IS THAT CORRECT?

13 A. CORRECT.

14 Q. NOW I WANT TO TALK TO YOU ABOUT THE MEDICATION CALLED  
15 VICODIN. I NOTICE WHEN YOU GAVE ME A COPY OF THE MEDICAL  
16 RECORDS A COUPLE OF WEEKS AGO, THERE WAS SOME ENTRIES IN THERE  
17 WHERE YOU WERE COUNSELING YOUR PATIENT, PROFESSOR BLOUGH,

18 AGAINST THE USE OF VICODIN BECAUSE IT WAS A HABIT-FORMING DRUG.

19 MR. PETERS: OBJECTION. LACKS FOUNDATION, YOUR HONOR.

20 THE COURT: OVERRULED.

21 THE WITNESS: CAN YOU REPHRASE THAT? WHAT IS THE  
22 QUESTION?

23 MR. VARTAIN: Q. THE QUESTION IS, DO YOU REMEMBER  
24 TALKING AT LENGTH WITH PROFESSOR BLOUGH ABOUT HER USE OF THE  
25 MEDICATION VICODIN?

26 A. WELL, ANY PATIENT WHO TAKES A MEDICATION THAT COULD

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1 POSSIBLY INDUCE DEPENDANCE, WE SPEAK TO THEM JUST ABOUT EVERY  
2 VISIT. AND --

3 Q. AND THE REASON -- I'M SORRY. YOU'RE THE DOCTOR.

4 A. I'M LOOKING TO SEE IF I DOCUMENTED WHAT WE HAD  
5 ACTUALLY DISCUSSED. IF THERE'S A SPECIFIC COMMENT THAT YOU  
6 COULD GUIDE ME TO --

7 Q. YOU WOULD LIKE SOME ASSISTANCE FROM ME --

8 A. YES, PLEASE.

9 Q. -- TO MOVE TO ALONG. OKAY. I DIDN'T WANT TO...

10 YOU SAID AT ONE POINT IN YOUR NOTES, "REGARDING HER  
11 MIGRAINES, I DID NOT WANT TO CONTINUE WITH CHRONIC VICODIN FOR  
12 DEPENDENCE AND TOLERANCE ISSUES." REMEMBER THAT IN YOUR NOTES?

13 A. YEAH, WHAT VISIT WAS THAT? HERE IT IS, 5/2/07.

14 Q. THAT WAS THE VERY FIRST TIME YOU SAW HER. AND WASN'T  
15 IT THE CASE THAT FIRST TIME YOU WENT BACK IN THE CHARTS FOR THE

16 PAST COUPLE OF YEARS, AND YOU NOTICED SHE WAS GETTING REGULAR  
17 PRESCRIPTIONS FROM DR. MARCUS FOR VICODIN?

18 A. LOOKS LIKE SHE WAS RECEIVING VICODIN. I'M NOT EXACTLY  
19 SURE WHO WAS PRESCRIBING IT. I SEE ZITHROMAX -- OKAY. SO SHE  
20 GOT VICODIN. I SEE A PRESCRIPTION FROM DR. MARCUS IN OCTOBER OF  
21 '03.

22 Q. WHICH WAS STARTED ABOUT THREE AND A HALF YEARS BEFORE  
23 YOU SAW HER, CORRECT?

24 A. RIGHT. AND...

25 Q. WASN'T ONE OF YOUR CONCERNS, DOCTOR -- AND I'LL LET  
26 YOU CONTINUE TO FLIP BECAUSE I WANT TO MOVE THIS ALONG.

598

1 A. YES.

2 Q. -- THAT VICODIN IN A CONTINUOUS OR HIGH DOSE CAN  
3 ACTUALLY CAUSE HEARING LOSS?

4 A. I'VE NEVER SEEN HEARING LOSS WITH VICODIN.

5 Q. NO?

6 A. NO. TYLENOL HAS A LOT OF AMPHOROUS EFFECTS.

7 Q. AND TYLENOL IS A COMPOUND THAT'S WITHIN --

8 A. IT'S IN VICODIN.

9 Q. I GOT IT. THAT'S RIGHT. YOU TAUGHT ME THAT BEFORE; I  
10 FORGOT IT.

11 SO WHEN SOMEONE USES VICODIN, THEY'RE NECESSARILY  
12 USING TYLENOL; IS THAT RIGHT?

13 A. RIGHT. THERE'S ABOUT 500 MILLIGRAMS IN EACH VICODIN.

14 Q. AND IT'S THE TYLENOL THAT COULD CAUSE HEARING LOSS IN  
15 SOME PATIENTS?

16 A. IN SOME PEOPLE, IT CAN. IT'S PRETTY LOW GRADE. IT  
17 REALLY IS A DOSE-DEPENDANT THING. YOU'D HAVE TO BEING TAKING  
18 EIGHT A DAY CONSISTENTLY TO END UP WITH SOME HEARING TROUBLE.

19 Q. IN ANY EVENT, YOU WERE CONCERNED THAT THE PATIENT,  
20 PROFESSOR BLOUGH, APPARENTLY HAD HAD PRESCRIPTIONS FOR A LONG  
21 TIME FOR VICODIN, WHICH INCLUDES THIS TYLENOL, AND YOU WERE  
22 WORRIED ABOUT, MAYBE, A HEARING LOSS COMING OUT OF THAT, BUT YOU  
23 WERE ALSO WORRIED ABOUT THAT SOMETIMES IT LEADS TO DEPENDENCY;  
24 THAT IS, THE VICODIN IS A DEPENDANT-FORMING DRUG, CORRECT?

25 MR. PETERS: OBJECTION. COMPOUND.

26 THE COURT: SUSTAINED.

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1 WHY DON'T YOU BREAK THAT DOWN.

2 MR. VARTAIN: YES, YOUR HONOR.

3 Q. YOU WERE CONCERNED OF TWO THINGS. THE FIRST THING YOU  
4 WERE CONCERNED OF IS THAT VICODIN, BECAUSE IT CONTAINS TYLENOL,  
5 CAN CAUSE HEARING LOSS IN CERTAIN DOSAGES OR AMOUNTS?

6 A. I DON'T THINK THAT WAS MUCH OF A CONCERN. I DIDN'T  
7 MENTION THAT. I MENTIONED HER CHRONIC VICODIN FOR DEPENDANCE  
8 AND TOLERANCE ISSUES, THAT MAYBE IF SOMEBODY NEEDS ONGOING PAIN  
9 MEDICATION, THEN HER MEDICINES AREN'T WORKING. I MENTIONED THAT  
10 I WAS GOING TO POSSIBLY SEND HER TO A NEUROLOGIST, AND I STATED  
11 THAT IF THEY THOUGHT THAT A CHRONIC OPIATE, CHRONIC PAIN

12 MEDICINE LIKE VICODIN WAS REASONABLE, I'D BE HAPPY TO PRESCRIBE  
13 THE MEDICATION. BUT STEPPING INTO A SITUATION LIKE HERS, I  
14 WANTED TO MAKE SURE I WASN'T MISSING SOMETHING. BUT MY CONCERN  
15 I DON'T THINK WAS ABOUT HER HEARING.

16 Q. OKAY.

17 YOUR CONCERN WAS MORE ABOUT GETTING DEPENDANT ON THIS  
18 OPIATE, THIS DRUG THAT'S VICODIN, CORRECT?

19 A. RIGHT.

20 Q. AND THAT WAS YOUR CONCERN WHEN YOU LOOKED AT HER CHART  
21 AND YOU SAW FOR HOW LONG SHE HAD BEEN USING VICODIN; IS THAT  
22 RIGHT?

23 A. RIGHT.

24 Q. DID SHE TELL -- DID PROFESSOR BLOUGH TELL YOU THAT SHE  
25 WAS USING VICODIN PRESCRIBED BY DR. MARCUS, YOUR PREDECESSOR,  
26 FOR MIGRAINES?

600

1 A. YES.

2 Q. DIDN'T SHE TELL YOU THAT HER MIGRAINES HAD STOPPED  
3 BACK ON VALENTINE'S DAY OF 2002, WHEN SHE HAD HER SURGERY OR THE  
4 FOLLOWING LABOR DAY? DO YOU REMEMBER THAT, DOCTOR?

5 A. THE FIRST TIME I MET HER 5/2/07, I NOTE SHE HAS  
6 MIGRAINES FOR WHICH SHE USES IMITREX AND OCCASIONAL HYDROCODONE,  
7 WHICH IS THE PAIN MEDICINE IN VICODIN, THAT SHE HAD USED 90 OF  
8 THEM IN THE LAST 90 DAYS, SO SHE WAS ONLY TAKING AN AVERAGE OF  
9 ONE A DAY.

10 Q. WAS PROFESSOR BLOUGH IN 2007 TELLING YOU SHE WAS  
11 TAKING ONE VICODIN A DAY OR THEREABOUTS?

12 A. YEAH, WELL, SHE SAID SHE TOOK 90 IN 90 DAYS, SO I WAS  
13 AVERAGING IT TO ONE A DAY.

14 Q. RIGHT.

15 AND DID SHE TELL YOU SHE WAS TAKING THAT FOR MIGRAINE  
16 HEADACHES?

17 A. YES.

18 Q. AND THIS WAS IN 2007 AND 2008?

19 A. YES.

20 Q. DID YOU EVER CONTACT HER PSYCHIATRIST TO DISCUSS WITH  
21 HER PSYCHIATRIST WHETHER -- HOW THE VICODIN INTERACTS WITH HER  
22 PSYCHIATRIC MEDICATION AND WHETHER THAT COULD THROW HER  
23 PSYCHIATRIC MEDICATION OUT OF WHACK?

24 A. IN MY EXPERIENCE, IT DOESN'T TEND TO THROW PSYCHIATRIC  
25 MEDICINES OUT OF WHACK, BUT I DON'T THINK I MADE ANY CONTACT  
26 WITH HER PSYCHIATRIST.

601

1 Q. OKAY. FAIR ENOUGH.

2 SO TO RECAP, DOCTOR, YOUR POINT OF SAYING SHE COULD GO  
3 BACK TO WORK HAD TO DO WITH THE CANCER. IT DIDN'T HAVE TO DO  
4 WITH HER PSYCHIATRIC CONDITION, CORRECT?

5 A. WELL, HER PSYCHIATRIC CONDITION WAS SOMETHING THAT I  
6 GOT A GENERAL FEELING FOR WHEN SHE'S IN THE OFFICE. SHE  
7 APPEARED TO BE ABLE TO CARRY ON A NORMAL CONVERSATION, AND I

8 THOUGHT IT WAS PROBABLY ADEQUATE TO GO BACK TO HER JOB.

9 Q. BUT YOU DIDN'T ASSESS HER PSYCHIATRIC MEDICATIONS AT  
10 THAT POINT TO SEE WHAT EFFECT THEY WERE HAVING ON HER EMOTIONS;  
11 IS THAT TRUE?

12 A. ON WHAT DATE?

13 Q. ON ACTUALLY ANY OF THESE DATES, THE THREE DATES?

14 A. NO. I JUST -- I HAVE A LIST EVERY TIME OF WHAT SHE  
15 WAS TAKING, BUT I WASN'T ASSESSING IF SHE NEEDED MORE OR LESS OF  
16 THEM. IT WAS A GENERAL OPINION THAT SHE WAS ABLE TO RELATE HER  
17 HISTORY WELL, SHE APPEARED TO --

18 Q. SHE APPEARED TO COMMUNICATE OKAY?

19 A. YES.

20 Q. YEAH.

21 YOU DIDN'T EXPLICITLY ASSESS HER TEACHING DUTIES AND  
22 GO THROUGH THEM AND GO THROUGH HER COURSE LOAD AND GO THROUGH  
23 THE NUMBER OF STUDENTS, DID YOU?

24 A. NO.

25 Q. OKAY.

26 DOCTOR, DID THE PATIENT -- DID PROFESSOR BLOUGH EVER

602

1 TELL YOU THAT SHE HAD A DISPUTE WITH DR. MARCUS, THAT SHE HAD  
2 SOME LEGAL ISSUES WITH DR. MARCUS?

3 A. SHE HAD MENTIONED AT ONE POINT THAT THERE WAS A  
4 CONSIDERATION -- I HAVE WRITTEN IN A NOTE HERE THAT THERE WAS A  
5 CONSIDERATION OF A SUIT AGAINST DR. MARCUS FOR TREATING THE

6 PATIENT WITH SANDOSTATIN, THINKING THAT IT MAY HAVE RESULTED IN  
7 HEARING LOSS. AND --

8 Q. DID YOU -- I'M SORRY.

9 A. AND THEN I WROTE, AFTER I HAD REVIEWED THE CHART, I  
10 SAW NO STRONG EVIDENCE THAT THE SANDOSTATIN CAUSED THE HEARING  
11 LOSS.

12 Q. DID YOU ACTUALLY TELL PROFESSOR BLOUGH THAT IT WAS  
13 YOUR OPINION THAT THAT ONCOLOGY MEDICATION DID NOT CAUSE HER  
14 HEARING LOSS?

15 A. I WROTE THAT I DID NOT BELIEVE THAT IT CAUSED THE  
16 HEARING LOSS OR HAD ANYTHING TO DO WITH HER JOB LOSS, AND SO I  
17 THINK I DID MENTION THAT.

18 Q. TO PROFESSOR BLOUGH?

19 A. YES.

20 Q. YOU TOLD HER THAT YOU DIDN'T THINK THAT THIS CANCER  
21 DRUG HAD ANYTHING TO DO WITH THE HEARING LOSS, CORRECT?

22 A. RIGHT.

23 Q. SHE TOLD YOU THAT SHE WAS CONSIDERING SUING DR. MARCUS  
24 BECAUSE SHE FELT THAT HER HEARING LOSS WAS CAUSED BY HIM  
25 PRESCRIBING SANDOSTATIN?

26 A. RIGHT. THAT WAS MY IMPRESSION.

603

1 Q. THAT'S WHAT SHE TOLD YOU?

2 A. RIGHT.

3 Q. AND SHE'S TOLD YOU THAT WITHIN THE LAST YEAR THAT SHE



4 WAS CONSIDERING SUING DR. MARCUS; ISN'T THAT TRUE?

5 A. RIGHT. IN JULY -- JULY 17, '08.

6 MR. VARTAIN: NO FURTHER QUESTIONS.

7 THE COURT: REDIRECT?

8 MR. PETERS: THANK YOU, YOUR HONOR.

9

10 REDIRECT EXAMINATION

11 BY MR. PETERS:

12 Q. DR. HAYWARD, JUST ONE QUESTION, I BELIEVE.

13 DID YOU EVER REACH THE CONCLUSION THAT

14 PROFESSOR BLOUGH WAS ABUSING VICODIN?

15 A. I NEVER BELIEVED THAT SHE WAS ABUSING IT; NO.

16 MR. PETERS: OKAY. THANK YOU.

17

18 RECROSS EXAMINATION

19 BY MR. VARTAIN:

20 Q. DID YOU DO A SUBSTANCE ABUSE ASSESSMENT, DOCTOR?

21 A. I ASKED HER HOW SHE WAS USING IT AND THE NUMBERS THAT

22 SHE WAS USING.

23 Q. THAT WASN'T -- I'M SORRY. I HEARD YOU.

24 BUT YOU DIDN'T DO A SUBSTANCE ABUSE ASSESSMENT OF HER,

25 DID YOU? DO YOU KNOW WHAT THAT IS? IN OTHER WORDS, THE DOCTORS

26 WHO ARE SPECIALISTS IN SUBSTANCE ABUSE?

604

1 A. I KNOW THERE'S MANY SUBSTANCE ABUSE ASSESSMENTS.

2 THEY'RE ALL TOOLS THAT PHYSICIANS USE.

3 Q. RIGHT. DID YOU USE THOSE TOOLS -- IN OTHER WORDS,  
4 OTHER THAN JUST ASKING PROFESSOR BLOUGH HOW MUCH VICODIN SHE WAS  
5 USING, DID YOU USE ANY OF THOSE OTHER TOOLS?

6 A. WELL, I USED THE TOOLS THAT I HAVE USED FREQUENTLY IN  
7 BECOMING BOARD CERTIFIED IN PAIN MEDICATION AND DAILY CARE, SO I  
8 DO A FAIRLY GOOD HISTORY OF PAIN MEDICATION USE.

9 Q. I GUESS MY VERY SIMPLE QUESTION IS, OTHER THAN ASKING  
10 PROFESSOR BLOUGH HOW MUCH OF THIS ADDICTIVE PAIN MEDICATION SHE  
11 WAS USING, YOU REALLY DIDN'T DO ANY TEST TO FIND THAT OUT; ISN'T  
12 THAT CORRECT? AND I'M NOT SUGGESTING THAT YOU SHOULD HAVE; I'M  
13 JUST ASKING IF YOU DID.

14 A. I DON'T KNOW OF ANY TESTS THAT COULD BE DONE.

15 MR. VARTAIN: THANK YOU.

16 MR. PETERS: NOTHING FURTHER.

17 THE COURT: THANK YOU.

18 DR. HAYWARD, THANK YOU FOR YOUR TESTIMONY. YOU'RE  
19 FREE TO GO.

20 THE WITNESS: THANK YOU.

21 THE COURT: YOUR NEXT WITNESS?

22 MR. VARTAIN: YOUR HONOR, THIS IS THE ONE THAT --

23 THE COURT: THERE WAS A PROBLEM.

24 MR. VARTAIN: WELL, THERE'S NEVER A PROBLEM BETWEEN US  
25 ATTORNEYS, BUT WE COULD INVITE YOUR ASSISTANCE.

26 THE COURT: LADIES AND GENTLEMEN, IT'S A LITTLE EARLY

1 FOR A BREAK BUT YOU MAY AS WELL STAND UP AND STRETCH. I'M GOING  
2 TO STEP OUT IN THE HALL WITH THE ATTORNEYS SO WE DON'T HAVE TO  
3 WHISPER.

4 (WHEREUPON, THERE WAS DISCUSSION OUTSIDE THE  
5 PRESENCE OF THE JURY.)

6 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD.

7 MR. PETERS, WOULD YOU LIKE TO CALL YOUR NEXT WITNESS?

8 MR. PETERS: YES. THANK YOU, YOUR HONOR.

9 NOW PLAINTIFF WILL CALL SHARON GAROUTTE.

10 THE COURT: OKAY.

11 MS. GAROUTTE, IF YOU'D COME FORWARD TO THE WITNESS  
12 STAND, PLEASE, AND STAND TO BE SWORN.

13 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

14 (WHEREUPON, THE WITNESS WAS SWORN.)

15 THE WITNESS: I DO.

16 THE CLERK: PLEASE BE SEATED.

17 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
18 AND SPELL THEM BOTH FOR THE RECORD.

19 THE WITNESS: SHARON, S-H-A-R-O-N, GAROUTTE,  
20 G-A-R-O-U-T-T-E.

21 THE CLERK: THANK YOU.

22

23 SHARON GAROUTTE,

24 DULY SWORN, TESTIFIED AS FOLLOWS:

25

26 DIRECT EXAMINATION

1 BY MR. PETERS:

2 Q. MS. GAROUTTE, COULD YOU PLEASE TELL US WHAT YOUR  
3 OCCUPATION IS?

4 A. I AM AN ONCOLOGY NURSE.

5 Q. WHAT DOES THAT MEAN? WHAT IS YOUR SPECIALTY?

6 A. MY SPECIALTY IS TAKING CARE OF PEOPLE WITH CANCER.

7 Q. AND COULD YOU BRIEFLY TELL THE JURY WHAT YOUR  
8 BACKGROUND AND EDUCATION IS THAT BROUGHT YOU TO THIS POINT TO BE  
9 AN ONCOLOGY NURSE?

10 A. I'M A REGISTERED NURSE. I'VE BEEN TAKING CARE OF  
11 PEOPLE WITH CANCER SINCE 1986. I'M AN ONCOLOGY-CERTIFIED NURSE  
12 WHICH IS A NATIONWIDE CERTIFICATION. YOU HAVE TO HAVE BEEN IN  
13 THE PRACTICE OF ONCOLOGY FOR THREE YEARS BEFORE YOU CAN SIT FOR  
14 THE NATIONWIDE EXAM AND YOU HAVE TO RECERTIFY EVERY FOUR YEARS.  
15 I'M CHEMOTHERAPY-CERTIFIED AND HAVE TO RECERTIFY FOR THAT EVERY  
16 TWO YEARS. SO I, MOST OF THE TIME, GIVE CHEMOTHERAPY AND I ALSO  
17 DO A LOT OF THE ADMINISTRATION FOR OUR PRACTICE.

18 Q. THANK YOU.

19 AND WHERE DO YOU WORK?

20 A. I WORK IN REDWOOD CITY IN A PRIVATE PRACTICE,  
21 FRED S. MARCUS, M.D., AND ASSOCIATES.

22 Q. HOW LONG HAVE YOU WORKED WITH THAT PRIVATE PRACTICE?

23 A. WE WENT INTO PRIVATE PRACTICE ON MAY 1, 1999. PRIOR  
24 TO THAT DR. MARCUS AND I WERE PART OF THE SEQUOIA MEDICAL GROUP.

25 Q. AND I BELIEVE YOU SAID AS AN RN IN THE ONCOLOGICAL  
26 PRACTICE YOU ADMINISTERED CHEMOTHERAPY TREATMENT?

607

1 A. YES, I DO.

2 Q. DO YOU ADMINISTER SANDOSTATIN?

3 A. YES, I DO.

4 Q. WHAT OTHER INTERACTIONS DO YOU HAVE, AS THE NURSE AT  
5 THAT PRACTICE, WITH PATIENTS WHO COME IN TO THAT PRACTICE?

6 A. OFTENTIMES I'M IN THE EXAM ROOM WITH THE PATIENTS WHEN  
7 THEY COME IN FOR THEIR INITIAL CONSULTATION, WHEN THEY'VE JUST  
8 FOUND OUT THAT THEY HAVE CANCER. IN FACT, I GET THE FIRST PHONE  
9 CALL WHEN SOMEONE KNOWS THAT THEY JUST GOT A DIAGNOSIS OF  
10 CANCER. I'M WITH THEM FOR THEIR CONSULTATION. I PARTICIPATE IN  
11 THE TREATMENT PLANNING.

12 I OFTEN WRITE THE PROTOCOLS AND THEN THE DOCTOR AND I  
13 DOUBLE CHECK EACH OTHER ON OUR NUMBERS. I GIVE THE TREATMENTS.  
14 I RECEIVE THE PHONE CALLS WHEN PATIENTS ARE HAVING SIDE EFFECTS,  
15 DIFFICULTIES. I THEN COMMUNICATE WITH THE PHYSICIAN AND THEN  
16 RELAY WHATEVER ORDERS THE DOCTOR HAS GIVEN. I MIGHT CALL IN  
17 PRESCRIPTIONS. I MIGHT HAVE A PATIENT COME IN TO GET IV  
18 HYDRATION.

19 Q. AFTER THE RECEPTIONIST, ARE YOU USUALLY THE FIRST  
20 PERSON THE PATIENT MEETS WITH WHEN THEY COME IN FOR TREATMENT?

21 A. YES.

22 Q. DO YOU KNOW PROFESSOR MARCINE BLOUGH?

23 A. YES, I DO.

24 Q. HOW DO YOU KNOW PROFESSOR BLOUGH?

25 A. SHE'S A PATIENT OF OUR PRACTICE. I HAVE TREATED HER.

26 Q. AND DO YOU RECALL WHEN YOU FIRST MET PROFESSOR BLOUGH?

608

1 A. I BELIEVE SHE STARTED COMING TO OUR PRACTICE IN 2003.

2 MAY I REFER TO MY CHART OR --

3 Q. YOU MAY. YOU'VE BROUGHT THE MEDICAL CHART --

4 DR. HAYWARD JUST TESTIFIED AND USED A MEDICAL CHART. DID HE

5 HAND YOU THE CHART ON HIS WAY OUT?

6 A. YES, HE DID.

7 Q. AND THAT'S THE MEDICAL CHART THAT'S KEPT AT FRED

8 MARCUS AND ASSOCIATES FOR PROFESSOR BLOUGH?

9 A. YES.

10 Q. YEAH. PLEASE REFER TO THAT IF THAT WILL HELP YOU

11 REFRESH YOUR MEMORY.

12 A. (WITNESS COMPLIES.)

13 HER FIRST VISIT WITH US WAS MARCH 15, 2002.

14 Q. AND, GENERALLY SPEAKING, WHEN PROFESSOR BLOUGH CAME IN

15 FOR AN APPOINTMENT, IF YOU WERE THERE WERE YOU THE PERSON SHE

16 WOULD INITIALLY MEET WITH?

17 A. OFTENTIMES SHE'D JUST COME IN FOR TREATMENT, AND I

18 WOULD BE THE PERSON WHO WOULD GIVE HER HER TREATMENT.

19 Q. SO SOMETIMES YOU WOULD BE THE ONLY PERSON?

20 A. THAT'S CORRECT.

21 Q. AND IF SHE WAS COMING IN TO MEET WITH ONE OF THE  
22 DOCTORS, WOULD YOU -- WAS IT YOUR PRACTICE TO GENERALLY MEET  
23 WITH HER BEFORE SHE MET WITH THE DOCTORS AS WELL?

24 A. NO. USUALLY, A MEDICAL ASSISTANT WOULD GET HER VITAL  
25 SIGNS, TAKE HER INTO AN EXAMINING ROOM, AND THEN QUITE OFTEN  
26 DR. MARCUS AND I WOULD BE IN THE EXAMINING ROOM TOGETHER.

609

1 Q. I SEE. SO YOU GO IN WITH THE DOCTOR FOR THE  
2 EXAMINATION?

3 A. MOST OF THE TIME, YES. NOT ALWAYS.

4 MR. PETERS: OKAY.

5 CAN I PLEASE HAVE EXHIBIT 15, PLEASE.

6 (PLAINTIFF'S EXHIBIT NO. 15 WAS MARKED FOR  
7 IDENTIFICATION.)

8 MR. PETERS: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YES.

10 MR. PETERS: Q. MS. GAROUTTE, I'M SHOWING YOU WHAT'S  
11 BEEN MARKED AS EXHIBIT 15 IN THIS MATTER. DO YOU RECOGNIZE THIS  
12 DOCUMENT?

13 A. YES, I DO.

14 Q. AND IS IT A COPY OF A DOCUMENT FROM THE MEDICAL FILE  
15 THAT YOU HAVE THERE WITH YOU?

16 A. YES, IT IS.

17 Q. AND DOES YOUR SIGNATURE APPEAR ON THIS?

18 A. YES, IT DOES.

19 Q. IS THIS A LETTER?

20 A. YES.

21 Q. AND CAN YOU JUST DESCRIBE FOR ME -- NOT THE SUBSTANCE  
22 OF IT, BUT WHAT APPEARS AT THE BOTTOM HALF OF EXHIBIT 15 -- OR  
23 THE BOTTOM THIRD, I'M SORRY.

24 A. THE BOTTOM IS A PHOTOCOPY, THAT I HAD TAPED ONTO THE  
25 BOTTOM OF THE LETTER FOR THE PURPOSES OF THE CHART, OF A  
26 TELEPHONE RECORD THAT I WROTE.

610

1 Q. AND THE LETTER WHICH APPEARS IN WHAT I'LL REFER TO AS  
2 THE TOP TWO-THIRDS OF EXHIBIT 15, DID YOU DRAFT THAT LETTER?

3 A. YES, I DID.

4 Q. AND THEN GOING BACK TO THE -- I'M SORRY TO JUMP AROUND  
5 HERE -- BUT THE BACK, TO THE BOTTOM PART, THERE'S HANDWRITING  
6 THROUGHOUT THE BOTTOM PART OF THAT TELEPHONE NOTE. IS THAT YOUR  
7 HANDWRITING?

8 A. YES, IT IS.

9 Q. IS ALL OF THAT YOUR HANDWRITING?

10 A. YES, IT IS.

11 Q. STAYING WITH THE BOTTOM PART, THE HANDWRITTEN NOTE,  
12 WHAT DOES THE HANDWRITTEN NOTE REFLECT -- WELL, WHAT DOES THE  
13 NOTE REFLECT? WHAT DID YOU WRITE?

14 A. I PUT THE NAME OF THE PATIENT, THE NAME OF THE PERSON  
15 WHO CALLED ME, WHO WAS DR. MISSETT, AND A PHONE NUMBER. AND  
16 THEN ON THE RIGHT HALF OF THAT TELEPHONE RECORD, I PUT WHAT THE



17 QUESTIONS WERE.

18 Q. AND DID YOU SPEAK WITH DR. MISSETT WHEN HE CALLED?

19 A. YES.

20 Q. AND YOU TOOK THESE --

21 A. I HAVE TO SAY, YES, I'M SURE I DID BECAUSE I'M THE ONE

22 WHO WROTE THE NOTE, BUT I DON'T REMEMBER.

23 Q. OKAY.

24 IS IT YOUR PRACTICE, WHEN YOU RECEIVE A CALL REGARDING

25 ONE OF YOUR PATIENTS, TO TAKE AND MAKE NOTES ON A TELEPHONE PAD,

26 SUCH AS THE ONE THAT'S IN EXHIBIT 15?

611

1 A. YES.

2 Q. AND DO YOU RECALL THAT DR. MISSETT HAD SOME QUESTIONS

3 FOR YOU ABOUT PROFESSOR BLOUGH?

4 A. YES.

5 Q. AND WHAT, IF ANYTHING, DID YOU DO AS A RESULT OF THE

6 TELEPHONE CALL YOU HAD WITH DR. MISSETT?

7 A. I CALLED AND SPOKE WITH DR. MARCUS.

8 Q. AND WHERE WAS DR. MARCUS AT THE TIME?

9 A. DR. MARCUS WAS AT HIS HOME IN LOS ALTOS.

10 Q. AND WHAT DID YOU TELL DR. MARCUS WHEN YOU CALLED HIM

11 AT HIS HOME?

12 A. I TOLD DR. MARCUS THAT I HAD RECEIVED A PHONE CALL

13 FROM DR. MISSETT, THAT HE HAD BEEN HIRED BY MENLO COLLEGE TO ASK

14 QUESTIONS ABOUT DR. PROFESSOR BLOUGH, AND THERE WAS CONCERN

15 ABOUT WHETHER SHE COULD TOLERATE ANOTHER YEAR OF WORK AT THE  
16 COLLEGE.

17 Q. AND THEN DID YOU HAVE A DISCUSSION WITH DR. MARCUS  
18 ABOUT THAT SUBJECT?

19 A. YES, I DID.

20 Q. AND IS THE RESPONSE THAT DR. MARCUS THEN ACCURATELY  
21 CONTAINED IN THE LETTER THAT YOU WROTE, WHICH IS THE TOP  
22 TWO-THIRDS OF EXHIBIT 15?

23 A. YES. AND YOU WILL SEE THAT THE LETTER ON THE TOP  
24 TWO-THIRDS REALLY STATES WHAT I HAD PUT ON THE LEFT HALF OF THIS  
25 PAGE OF THE TELEPHONE RECORD.

26 Q. OKAY.

612

1 IS THERE A REASON THAT DR. MARCUS DIDN'T DO THIS  
2 LETTER HIMSELF?

3 A. YES. DR. MARCUS WAS OUT ON MEDICAL DISABILITY.

4 Q. SO HE WASN'T IN THE OFFICE, CORRECT?

5 A. CORRECT.

6 Q. AND THE LETTER THAT YOU DRAFTED THAT IS EXHIBIT 15,  
7 THIS ACCURATELY REFLECTS THE INFORMATION THAT DR. MARCUS GAVE  
8 YOU OVER THE PHONE; IS THAT CORRECT?

9 A. YES.

10 Q. AND IS IT YOUR PRACTICE, WHEN CONTACTED BY ANOTHER  
11 DOCTOR REGARDING ONE OF DR. MARCUS'S PATIENTS, TO THEN DOCUMENT  
12 THE RESPONSE, AS YOU HAVE DONE HERE IN EXHIBIT 15?

13 A. YES, IT IS.

14 Q. AND IS IT YOUR PRACTICE AT THE OFFICE TO THEN PUT THAT  
15 DOCUMENT, WHATEVER IT IS, RESPONDING REGARDING YOUR PATIENTS  
16 INTO THAT PATIENT'S FILE?

17 A. YES, IT IS.

18 Q. AND THAT'S WHY THIS DOCUMENT THAT IS EXHIBIT 15 ENDED  
19 UP IN PROFESSOR BLOUGH'S FILE?

20 A. YES.

21 MR. PETERS: YOUR HONOR, WE WOULD OFFER EXHIBIT 15  
22 INTO EVIDENCE.

23 MR. VARTAIN: YOUR HONOR, MAY I HAVE PERMISSION TO  
24 WITHHOLD MY PERMISSION FOR CROSS-EXAMINATION ON THE  
25 ADMISSIBILITY?

26 THE COURT: YOU DON'T WANT ME TO ADVISE THE JURY?

613

1 MR. VARTAIN: WELL, IF YOU ADMIT IT I DO WANT YOU TO  
2 ADVISE THE JURY BUT --

3 THE COURT: I AM GOING TO ADMIT IT.

4 MR. VARTAIN: THEN I WANT YOU TO ADVISE THE JURY, YOUR  
5 HONOR.

6 THE COURT: ARE YOU GOING TO BE PUBLISHING THIS TO THE  
7 JURY NOW?

8 MR. PETERS: YES, I AM.

9 THE COURT: LADIES AND GENTLEMEN, I AM GOING TO ADMIT  
10 EXHIBIT NO. 15. I'M GOING TO GIVE YOU A LIMITING INSTRUCTION ON

11 SOME OF THE CONTENT OF THIS EXHIBIT SIMILAR TO ANOTHER ONE THAT  
12 YOU SAW. IN THIS EXHIBIT, YOU WILL SEE IT REFERENCES WHAT  
13 SOMEBODY ELSE SUPPOSEDLY SAID, AND THAT SOMEBODY ELSE ISN'T HERE  
14 IN COURT. SO IT'S NOT BEING OFFERED FOR THE TRUTH OF THE  
15 MATTER, BUT ONLY FOR THE FACT THAT IT WAS REPORTED TO  
16 DR. MISSETT. IT'S ON WHETHER OR NOT THIS INFORMATION WAS  
17 CONVEYED. NOT WHETHER IT'S TRUE INFORMATION, BUT WHETHER THIS  
18 STATEMENT WAS IN FACT CONVEYED.

19 AND WITH THAT, I WILL ADMIT EXHIBIT 15.

20 (PLAINTIFF'S EXHIBIT NO. 15 WAS ADMITTED INTO  
21 EVIDENCE.)

22 MR. PETERS: COULD WE HAVE A SIDEBAR FOR JUST A  
23 MOMENT, YOUR HONOR?

24 THE COURT: SURE.

25 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

26 THE COURT: GO AHEAD, PLEASE.

614

1 MR. PETERS: THANK YOU, YOUR HONOR.

2 Q. MS. GAROUTTE, DIRECTING YOUR ATTENTION TO THE BOTTOM,  
3 WHAT WE HAVE BEEN REFERRING TO AS THE BOTTOM THIRD OF  
4 EXHIBIT 15. YOU REFERRED EARLIER, I BELIEVE, TO THE FACT THAT  
5 THE HANDWRITTEN PART MIMICS, FOR LACK OF A BETTER TERM, THE  
6 LETTER THAT YOU WROTE, WHICH IS ABOVE. CAN YOU JUST READ FOR US  
7 WHAT IT SAYS IN THE HANDWRITTEN PART UNDER "DR. MISSETT."

8 AND LET ME ASK YOU, FIRST, IS THAT THE PART OF YOUR

9 NOTES THAT REFLECT WHAT DR. MARCUS TOLD TO YOU IN THAT  
10 CONVERSATION?

11 A. YES.

12 Q. OKAY.

13 A. ACTUALLY, THE LETTER MIMICS WHAT THE NOTE SAID.

14 Q. OKAY.

15 I JUST WANT TO MAKE SURE THAT WE HAVE THAT CLEAR.

16 A. IT SAYS, "PER FSM," WHICH IS FREDRICK STEVEN MARCUS,  
17 "AS FAR AS HE'S CONCERNED, SHE IS STABLE AND CAN CERTAINLY  
18 TOLERATE ANOTHER YEAR. OBVIOUSLY, HER SITUATION IS FLUID, BUT  
19 AS WE SPEAK SHE'S MEDICALLY AND PSYCHOLOGICAL STABLE. IF HER  
20 STATUS CHANGES WE WILL NOTIFY YOU."

21 Q. THANK YOU.

22 AND THEN LOOKING AT THE TOP PART OF EXHIBIT 15, THE  
23 LETTER IS ADDRESSED, "TO WHOM IT MAY CONCERN." WHO DID YOU GIVE  
24 THIS LETTER TO?

25 A. I FAXED IT TO DR. BLOUGH.

26 Q. MOVING AWAY FROM THE LETTER FOR A MINUTE.

615

1 IN 2006, DID YOU EVER BECOME AWARE THAT  
2 PROFESSOR BLOUGH WAS EXPERIENCING PROBLEMS WITH HEARING LOSS?

3 A. I WAS NOT VERY MUCH INVOLVED WITH THE HEARING LOSS  
4 PROBLEM.

5 Q. WERE YOU AWARE THAT SHE WAS COMPLAINING OF HEARING  
6 LOSS?

7 A. I HEARD ABOUT IT SOMETIME IN THE PAST YEAR.

8 Q. DID YOU EVER -- WELL, YOU ADMINISTERED SANDOSTATIN TO  
9 PROFESSOR BLOUGH, CORRECT?

10 A. YES.

11 Q. DID SHE EVER RELATE TO YOU THAT SHE FELT SANDOSTATIN  
12 WAS CAUSING ANY KIND OF HEARING PROBLEMS FOR HER?

13 A. WHAT SHE RELATED TO ME -- AND I BELIEVE WE STOPPED THE  
14 SANDOSTATIN IN MARCH OF 2006, WAS THE LAST DOSE, THAT SHE HAD  
15 BEEN HAVING HEADACHES.

16 Q. OKAY.

17 A. AND THAT WAS MY UNDERSTANDING OF WHY WE STOPPED THE  
18 SANDOSTATIN.

19 Q. AND DID YOU DO ANYTHING TO INVESTIGATE -- OR DID YOU  
20 DO ANYTHING IN RESPONSE TO HER COMPLAINTS?

21 A. NOT IN 2006. WE STOPPED THE SANDOSTATIN BECAUSE OF  
22 THE HEADACHES SHE WAS HAVING IN 2006.

23 Q. CAN YOU LOOK IN YOUR FILE AND TELL ME IF YOU HAVE  
24 ANYTHING THAT HELPS REFRESH YOUR RECOLLECTION IN MARCH 2006  
25 REGARDING WHETHER YOU MADE ANY CONTACTS OR DID ANY RESEARCH  
26 REGARDING SANDOSTATIN?

616

1 THE COURT: COUNSEL, IF YOU CAN POINT THE WITNESS TO A  
2 PAGE YOU'D LIKE HER TO LOOK AT TO REFRESH HER RECOLLECTION, I'D  
3 APPRECIATE IT.

4 MR. PETERS: THANK YOU, YOUR HONOR.

5 THE WITNESS: I'M LOOKING AT DR. MARCUS'S NOTE,  
6 MARCH 24, 2006.

7 MR. PETERS: Q. OKAY.

8 A. AND HE DOES MENTION -- I MUST NOT HAVE BEEN IN THE  
9 ROOM. HE DOES MENTION, "DECREASED HEARING, QUESTIONABLY RELATED  
10 TO SANDOSTATIN."

11 Q. DIRECTING YOUR ATTENTION -- DO YOU KNOW WHO NOVARTIS  
12 IS?

13 A. IT'S A MAJOR DRUG COMPANY.

14 Q. OKAY.

15 A. AND I BELIEVE THEY MAKE SANDOSTATIN.

16 Q. OKAY.

17 A. AND WE DID ADVISE -- OKAY. WE DID QUERY THEM, MARCH  
18 OF 2006, AND THEY RESPONDED TO ME.

19 Q. AND WHAT DID THEY TELL YOU ABOUT SANDOSTATIN?

20 A. THEY SAID DEAFNESS HAS BEEN REPORTED RARELY LESS THAN  
21 ONE PERCENT IN PATIENTS RECEIVING SANDOSTATIN LAR, AND THE  
22 RELATIONSHIP TO THE ADMINISTRATION OF THAT DRUG HAS NOT BEEN  
23 DETERMINED, AND THERE HAVE BEEN NO REPORTS OF DEAFNESS IN THE  
24 LAST SEVERAL YEARS.

25 SO MY MEMORY FAILED ME. IT WAS IN 2006.

26 Q. THAT'S FINE. ALL RIGHT. THANK YOU.

617

1 NOW, JUMPING AHEAD TO 2008.

2 A. YES.

3 Q. DID PROFESSOR BLOUGH EVER SPEAK WITH YOU ABOUT A  
4 POSSIBLE MEDICAL MALPRACTICE CLAIM?

5 A. YES, SHE DID.

6 Q. AND DID SHE CALL YOU?

7 A. SHE CALLED ME.

8 Q. AND WHAT DID SHE TELL YOU?

9 A. SHE TOLD ME THAT SHE HAD BEEN SPEAKING WITH SOMEONE  
10 ELSE, WHO I BELIEVE WAS RELATED TO THE COLLEGE, WHO SAID TO HER  
11 THAT POSSIBLY SHE SHOULD SUE DR. MARCUS BECAUSE HE HAD GIVEN HER  
12 SANDOSTATIN FOR SUCH A LONG PERIOD OF TIME, AND THAT'S PROBABLY  
13 WHAT CAUSED HER HEARING LOSS.

14 Q. AND DID SHE TELL YOU SHE WAS GOING TO SUE DR. MARCUS?

15 A. NO. SHE WAS VERY UPSET ABOUT HAVING BEEN TOLD THAT  
16 SHE SHOULD SUE DR. MARCUS.

17 Q. AND DID YOU DO ANYTHING IN RESPONSE TO THAT TELEPHONE  
18 CALL FROM PROFESSOR BLOUGH?

19 A. I CALLED NOVARTIS AT THE TIME AND ASKED ABOUT LENGTH  
20 OF TREATMENT. BECAUSE WHEN I READ THE PACKAGE INSERT, WHICH IS  
21 OUR BIBLE FOR DRUGS, IT DOESN'T SAY HOW LONG. IT JUST SAYS,  
22 "CONTINUED SANDOSTATIN," SO I CALLED AND ASKED. AND THEY TOLD  
23 ME THAT SANDOSTATIN FOR CARCINOID SHOULD BE GIVEN LIFELONG.  
24 THAT'S THE STANDARD OF CARE.

25 Q. AND DID YOU TELL PROFESSOR BLOUGH THAT?

26 A. I DO NOT KNOW IF I ACTUALLY CALLED HER BACK ON THAT.



1 MR. PETERS: OKAY. THANK YOU.

2 THE COURT: CROSS-EXAMINATION?

3 MR. VARTAIN: THANK YOU, YOUR HONOR.

4

5 CROSS-EXAMINATION

6 BY MR. VARTAIN:

7 Q. GOOD AFTERNOON.

8 A. HELLO.

9 Q. JUST A FEW QUESTIONS.

10 I'M GOING TO COME UP TO THE SCREEN HERE BECAUSE THIS  
11 IS THE LETTER. THE PART THAT YOUR BOSS, DR. MARCUS, TOLD YOU,  
12 HE PUT IN QUOTES HERE -- OR PART OF IT WAS, "OBVIOUSLY, HER  
13 SITUATION IS FLUID." WHEN DR. MARCUS USES THE TERM "FLUID,"  
14 DOES IT -- YOU'VE KNOWN HIM FOR YEARS. YOU'VE WORKED WITH HIM  
15 FOR A LONG TIME. WHEN HE USES THE TERM "FLUID," DOESN'T IT MEAN  
16 THAT IT'S CHANGEABLE?

17 A. POSSIBLY.

18 Q. IT'S SUBJECT TO, YOU KNOW, THE CONDITION CAN GO UP OR  
19 DOWN. WHEN HE USES THE WORD "FLUID," HE'S IS JUST TALKING ABOUT  
20 TODAY THIS IS WHAT IT IS, BUT IT CAN CHANGE LATER.

21 A. THAT'S CORRECT.

22 MR. PETERS: OBJECTION. SPECULATION.

23 THE COURT: OVERRULED.

24 MR. VARTAIN: Q. YOU SAID THAT'S CORRECT?

25 A. I SAID THAT'S CORRECT.

26 Q. OKAY.

1           NOW, WHEN YOU GOT THE REQUEST FROM DR. MISSETT THAT'S  
2   EMBODIED IN THE PHONE MESSAGE -- I WANT TO SEE IF I CAN DO THIS  
3   SO THE JURY CAN ACTUALLY SEE THE PHONE MESSAGE. AND, YOU KNOW,  
4   UNLIKE DOCTORS, NURSES, ACTUALLY, YOU CAN READ WHAT THEY SAY.  
5   AND I CAN DO THE ELMO.

6           OKAY. SO DR. MISSETT CALLED. YOU UNDERSTOOD THAT HE  
7   WAS RETAINED BY MENLO COLLEGE TO DO SOME KIND OF  
8   FITNESS-FOR-DUTY EVALUATION OR ASSESSMENT, RIGHT?

9    A. YES.

10   Q. AND THAT SEEMED LIKE A LEGITIMATE PURPOSE OR REASON  
11   FOR HIM GETTING AT THE INFORMATION THAT DR. MARCUS HAD, CORRECT?

12           MR. PETERS: OBJECTION. BEYOND THE SCOPE OF THIS  
13   WITNESS'S --

14           THE COURT: OVERRULED.

15           MR. VARTAIN: Q. HE'S OBJECTED. SHE'S SAYING OKAY.

16    A. I ASSUMED SO.

17    Q. RIGHT.

18           DID YOU KNOW DR. MISSETT?

19    A. NO.

20    Q. SO YOU DIDN'T REALLY KNOW HIM FROM ADAM, BUT YOU  
21    DECIDED TO CALL YOUR BOSS WHO WAS OUT ON MEDICAL LEAVE,  
22    DR. MARCUS, RIGHT?

23    A. CORRECT.

24    Q. THIS POINT IN TIME IS JULY -- AROUND THE FIRST WEEK OF  
25    JULY, RIGHT?

1 Q. JUNE 28TH, OKAY.

2 IT JUST TOOK YOU A WHILE TO GET AROUND TO WRITING THE  
3 LETTER, PROBABLY. OKAY.

4 SO THE LAST TIME THAT PROFESSOR BLOUGH HAD BEEN  
5 EXAMINED OR EVEN SEEN BY DR. MARCUS WAS MORE THAN THREE MONTHS  
6 EARLIER; THAT IS, IN MARCH OF 2006, CORRECT?

7 A. CORRECT.

8 Q. SO WHEN DR. MARCUS -- WHO I GUESS YOU TALKED TO HIM AT  
9 HOME. WAS HE AT HOME IN LOS ALTOS?

10 A. YES.

11 Q. SO YOU WERE ABLE TO TALK TO HIM. YOU TOLD HIM THAT  
12 HIS PATIENT, MARCINE BLOUGH, WAS BEING ASSESSED BY MENLO  
13 COLLEGE'S PHYSICIAN AND HE WOULD LIKE TO KNOW WHAT DR. MARCUS  
14 THINKS ABOUT HER SITUATION, OR WORDS TO THAT EFFECT. DR. MARCUS  
15 SAID, "YOU CAN TELL HIM THAT AS FAR AS I'M CONCERNED, ALTHOUGH  
16 HER SITUATION IS FLUID, AS WE SPEAK SHE'S STABLE. SHE CAN  
17 TOLERATE ANOTHER YEAR OF TEACHING," CORRECT?

18 A. CORRECT.

19 Q. BUT, REALLY, DR. MARCUS HADN'T EVEN SEEN OR TALKED TO  
20 PROFESSOR BLOUGH FOR THREE OR SO MONTHS. SO, REALLY, WHAT  
21 DR. MARCUS WAS SAYING, AS YOU UNDERSTOOD IT, WAS, "AS OF THE  
22 LAST TIME I SAW HER SHE WAS STABLE, AND I THOUGHT SHE COULD  
23 TOLERATE ANOTHER YEAR OF TEACHING." WOULD THAT BE FAIR?

24 A. YES.

25 Q. SO, REALLY, WHAT WE'RE LOOKING AT IS A LETTER DATED  
26 JULY 10TH, BUT THE OPINION OF THE DOCTOR -- THAT IS YOUR BOSS,

621

1 DR. MARCUS, IS AS OF MARCH 24, 2006, CORRECT?

2 A. CORRECT.

3 Q. AND THERE WAS -- A LOT THAT HAD BEEN GOING ON  
4 MEDICALLY WITH PROFESSOR BLOUGH SINCE THEN. FOR EXAMPLE, SHE  
5 HAD COME OFF THE SANDOSTATIN, THE ONCOLOGY MEDICINE, RIGHT?

6 A. YES.

7 Q. SO PROBABLY, AS FAR AS YOU UNDERSTOOD, THAT'S PROBABLY  
8 WHY DR. MARCUS SAID, YOU KNOW, HER SITUATION IS FLUID BECAUSE  
9 SHE WAS UNDERGOING CHANGES IN MEDICATION?

10 MR. PETERS: CALLS FOR SPECULATION.

11 THE COURT: SUSTAINED.

12 MR. VARTAIN: Q. YOUR LAST PART OF YOUR LETTER SAYS  
13 THAT DR. MARCUS TOLD YOU -- OR YOU DECIDED, EITHER WAY -- AND I  
14 THINK PROPERLY SO -- TELL DR. MISSETT THAT IF PROFESSOR BLOUGH'S  
15 MEDICAL STATUS CHANGES YOU WOULD NOTIFY HIM.

16 A. YES.

17 Q. THAT IS HIM, BEING DR. MISSETT?

18 A. YES.

19 Q. BUT DR. MARCUS NEVER SAW PROFESSOR BLOUGH AGAIN; ISN'T  
20 THAT TRUE?

21 A. THAT'S CORRECT.

22 Q. SO DR. MARCUS COULDN'T EVER HAVE GIVEN ANY MORE  
23 INFORMATION TO DR. MISSETT BECAUSE DR. MARCUS WAS NEVER AGAIN IN  
24 THE OFFICE, UNFORTUNATELY, CORRECT?  
25 MR. PETERS: CALLS FOR SPECULATION.  
26 THE COURT: OVERRULED.

622

1 MR. VARTAIN: Q. IS THAT CORRECT?  
2 A. HE NEVER SAW HER AGAIN.  
3 Q. SO HE NEVER HAD ANY MORE INFORMATION ON  
4 PROFESSOR BLOUGH AFTER MARCH 24, 2006 THAT HE COULD HAVE PASSED  
5 ON TO DR. MISSETT; IS THAT TRUE?  
6 A. UNFORTUNATELY, THAT'S TRUE.  
7 Q. YES, THAT'S SAD. OKAY.  
8 WHEN YOU TALKED TO DR. MISSETT, DID HE TELL YOU THAT  
9 -- WHEN YOU CALLED HIM BACK WITH THE INFORMATION IN THE MESSAGE,  
10 WAS HE APPRECIATIVE?  
11 A. I DON'T RECALL THE CONVERSATION.  
12 Q. OKAY.  
13 BUT HE NEVER TOLD YOU THAT HE DISAGREED WITH  
14 DR. MARCUS, DID HE?  
15 A. NOT THAT I RECALL.  
16 Q. NO ONE HAS EVER TOLD YOU FROM MENLO COLLEGE THAT  
17 DR. MISSETT HAS EVER DISAGREED WITH DR. MARCUS'S OPINION THAT  
18 HER CANCER SHOULD NOT PREVENT HER FROM WORKING; ISN'T THAT TRUE?  
19 YOU HAVE NEVER HEARD THAT?

20 A. I'VE NEVER HEARD THAT.

21 Q. OKAY.

22 DR. MISSETT DIDN'T SAY TO YOU, "WELL, I DO THINK HER  
23 CANCER IS GOING TO KEEP HER FROM WORKING," DID HE?

24 A. I THINK I WOULD REMEMBER THAT. NO.

25 Q. BECAUSE IT WOULD HAVE BEEN IN DIRECT CONTRADICTION TO  
26 DR. MARCUS. AND I WOULD TAKE IT THAT DR. MISSETT WOULD NOT HAVE

623

1 BROUGHT UP TO YOU THAT HE OR -- THAT'S A BAD QUESTION.

2 DID HE BRING UP TO YOU THAT HE WAS ALSO ASSESSING  
3 PROFESSOR BLOUGH'S PSYCHIATRIC CONDITION?

4 A. NOT THAT I RECALL.

5 MR. VARTAIN: OKAY. THANK YOU. THANK YOU VERY MUCH.

6 THE COURT: REDIRECT?

7 MR. PETERS: YOUR HONOR, MAY WE HAVE A BRIEF SIDEBAR?

8 THE COURT: SURE.

9 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

10 THE COURT: ANY OTHER QUESTIONS FOR THIS WITNESS?

11 MR. PETERS: THANK YOU. NO FURTHER QUESTIONS.

12 THE COURT: MS. GAROUTTE, THANK YOU FOR YOUR  
13 TESTIMONY. YOU ARE FREE TO GO.

14 SHOULD WE TAKE OUR AFTERNOON BREAK NOW SINCE WE'RE AT  
15 A BREAK IN THE WITNESS?

16 MR. LEBOWITZ: YEAH. WE'RE READY TO GO BACK TO

17 MS. SAPRAI.

18 THE COURT: AS LONG AS NO ONE IS WAITING.

19 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE OUR

20 AFTERNOON BREAK. LET'S COME BACK AT 3:00 O'CLOCK FOR THE REST

21 OF THE AFTERNOON SESSION.

22 (WHEREUPON, A BREAK WAS TAKEN.)

23 THE COURT: WE'RE BACK ON THE RECORD. ALL COUNSEL AND

24 PARTIES ARE PRESENT; ALL JURORS AND ALTERNATES.

25 MR. LEBOWITZ, ARE YOU READY TO HAVE OUR WITNESS

26 RETURN?

624

1 MR. LEBOWITZ: YES, WE ARE, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MS. SAPRAI, IF YOU'D COME BACK TO THE WITNESS STAND,

4 PLEASE. THANK YOU FOR YOUR COURTESY IN LETTING US INTERRUPT

5 YOUR TESTIMONY. IT'S APPRECIATED. AND LET ME REMIND YOU, YOU

6 REMAIN UNDER OATH.

7 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

8 THE COURT: GO AHEAD.

9 MR. LEBOWITZ: LET ME EXPRESS MY APPRECIATION,

10 MS. SAPRAI, FOR YOUR PATIENCE BECAUSE WE DO APPRECIATE IT.

11

12 DIRECT EXAMINATION (RESUMED)

13 BY MR. LEBOWITZ:

14 Q. I WANT TO RESUME IN SEPTEMBER OF 2006.

15 MAY I HAVE EXHIBIT 31, PLEASE.

16 (PLAINTIFF'S EXHIBIT NO. 31 WAS PREVIOUSLY  
17 MARKED FOR IDENTIFICATION.)

18 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 MR. LEBOWITZ: YOUR HONOR, WE HAVE A STIPULATION THAT  
21 31 BE ADMITTED INTO EVIDENCE.

22 THE COURT: CORRECT?

23 MR. VARTAIN: YES, YOUR HONOR.

24 THE COURT: EXHIBIT 31 WILL BE ADMITTED.

25 (PLAINTIFF'S EXHIBIT NO. 31 WAS ADMITTED INTO  
26 EVIDENCE.)

625

1 MR. LEBOWITZ: THANK YOU.

2 Q. MS. SAPRAI, EXHIBIT 31 IS AN E-MAIL EXCHANGE BETWEEN  
3 YOURSELF AND PROFESSOR BLOUGH IN LATE SEPTEMBER OF 2006,  
4 CORRECT?

5 A. YES.

6 Q. AND THE INITIAL E-MAIL FROM PROFESSOR BLOUGH IS IN  
7 RESPONSE TO, SHE SAYS, YOUR LETTER OF SEPTEMBER 9TH, WHICH IS  
8 THE LETTER WE WERE LOOKING AT BEFORE WE BROKE TODAY, CORRECT?

9 A. YES.

10 Q. AND SHE GOES THROUGH IN -- HER E-MAIL TO YOU GOES  
11 THROUGH A NUMBER OF THINGS ABOUT THE HISTORY AND EVERYTHING  
12 THAT'S GONE ON BETWEEN HERSELF AND THE COLLEGE OVER THE SUMMER.  
13 I WANT TO FOCUS ON THE LAST SENTENCE OF OR LAST TWO SENTENCES OF



14 THE SECOND PARAGRAPH, WHERE SHE WRITES:

15 "I NOW HAVE NO FAITH IN DR. MISSETT, AS HE DID NOT  
16 LISTEN TO MY DOCTORS OR TO ME. IF THE COLLEGE NEEDS MORE  
17 INFORMATION FROM MY DOCTORS ON MY CONDITION AND ABILITY TO  
18 TEACH, LET ME KNOW AND I WILL BE HAPPY TO PROVIDE IT."

19 DID YOU READ THAT WHEN YOU READ THIS E-MAIL?

20 A. YES.

21 Q. AND DID YOU TAKE HER UP ON THAT OFFER TO GET MORE  
22 INFORMATION FROM HER TREATING PHYSICIANS?

23 A. NO. AGAIN, I WOULD -- ANY RESPONSE I WOULD HAVE MADE  
24 WOULD HAVE BEEN TO HAVE HER GO BACK TO SEE DR. MISSETT WITH ANY  
25 AND ALL INFORMATION THAT SHE HAD.

26 Q. SET THAT ASIDE.

626

1 COULD WE HAVE EXHIBIT 33, PLEASE.

2 (PLAINTIFF'S EXHIBIT NO. 33 WAS PREVIOUSLY  
3 MARKED FOR IDENTIFICATION.)

4 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

5 THE COURT: YES.

6 MR. LEBOWITZ: AND, AGAIN, WE HAVE ANOTHER STIPULATION  
7 THAT THIS DOCUMENT BE ADMITTED INTO EVIDENCE.

8 THE COURT: CORRECT?

9 MR. VARTAIN: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT. EXHIBIT 33 WILL BE ADMITTED.

11 (PLAINTIFF'S EXHIBIT NO. 33 WAS ADMITTED INTO

12 EVIDENCE.)

13 MR. LEBOWITZ: THANK YOU.

14 Q. CAN YOU PLEASE TELL US WHAT EXHIBIT 33 IS?

15 A. IT'S A LETTER TO MARCY RESTATING THAT WE REQUESTED SHE  
16 RETURN TO DR. MISSETT TO RESUMPTION OF THE INDEPENDENT MEDICAL  
17 EVALUATION.

18 Q. SO IS THIS LETTER WRITTEN BY YOU, CORRECT?

19 A. YES.

20 Q. ON OCTOBER 13, 2006, CORRECT?

21 A. YES.

22 Q. AND YOU WROTE THIS IN YOUR CAPACITY AS THE DIRECTOR OF  
23 ADMINISTRATION FOR THE COLLEGE, CORRECT?

24 A. YES.

25 Q. AND AS PART OF THAT LETTER, ON THE FIRST PAGE YOU  
26 HAVE -- UNDER THE HEADING "RESUMPTION OF MEDICAL EVALUATION,"

627

1 YOU LIST A NUMBER OF ITEMS. AND THE FIRST ONE UNDER THE BULLET  
2 ONE, NUMBER ONE SAYS:

3 "THE COLLEGE WANTS YOU TO PROVIDE DR. MISSETT WITH ALL  
4 MEDICAL INFORMATION THAT HE ASKED FOR, SO HE CAN REASSESS YOU  
5 FOR YOUR ABILITY TO CARRY OUT IN EFFECTIVE MANNER THE COLLEGE'S  
6 FACULTY FUNCTIONS EITHER WITH OR WITHOUT REASONABLE  
7 ACCOMMODATION"?

8 DID YOU HAVE ANY BELIEF AT THIS TIME WHEN YOU WROTE  
9 THIS LETTER ON OCTOBER 13TH THAT PROFESSOR BLOUGH HAD NOT FULLY

10 COOPERATED WITH DR. MISSETT TO THAT POINT?

11 A. I HAD SOME CONCERN THAT SHE WAS RESISTING GOING BACK  
12 TO HIM AND PROVIDING HIM WITH ALL OF THE MEDICAL INFORMATION  
13 THAT SHE HAD PROVIDED US.

14 Q. DID YOU BELIEVE THAT SHE HAD WITHHELD THE INFORMATION  
15 THAT SHE HAD GIVEN TO YOU AND THE COLLEGE, YOU BELIEVE SHE HAD  
16 WITHHELD THAT FROM DR. MISSETT?

17 A. I DIDN'T KNOW ONE WAY OR THE OTHER THAT SHE WITHHELD  
18 IT.

19 Q. AND THEN IF YOU TURN TO THE NEXT PAGE. ON THIS PAGE  
20 YOU INFORM PROFESSOR BLOUGH THAT THE COLLEGE HAS RECONSIDERED  
21 ITS DECISION TO END HER EMPLOYMENT ON NOVEMBER 30TH, CORRECT?

22 A. YES.

23 Q. OKAY. AND THIS LETTER REPRESENTS THE FIRST TIME THAT  
24 THE COLLEGE EVER INFORMED HER OF THAT DECISION; ISN'T THAT  
25 CORRECT?

26 A. THIS WAS THE FIRST TIME THAT WE TOLD HER THAT WE WOULD

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1 EXTEND HER MEDICAL LEAVE BEYOND THAT NOVEMBER DATE; YES.

2 Q. OKAY. YOU CAN PUT THAT ASIDE.

3 IF WE CAN HAVE 34, PLEASE.

4 (PLAINTIFF'S EXHIBIT NO. 34 WAS PREVIOUSLY  
5 MARKED FOR IDENTIFICATION.)

6 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

7 THE COURT: PLEASE.

8 MR. LEBOWITZ: AS WITH THE OTHERS, WE HAVE STIPULATION  
9 TO ADMISSIBILITY.

10 THE COURT: THAT'S CORRECT, MR. VARTAIN?

11 MR. VARTAIN: YES.

12 THE COURT: EXHIBIT 34 WILL BE ADMITTED.

13 (PLAINTIFF'S EXHIBIT NO. 34 WAS ADMITTED INTO  
14 EVIDENCE.)

15 MR. LEBOWITZ: THANK YOU.

16 Q. EXHIBIT 34 IS AN E-MAIL FROM PROFESSOR BLOUGH TO YOU,  
17 WITH THE SUBJECT LINE "MEDICAL EVALUATION," CORRECT?

18 A. YES.

19 Q. AND IT HAS A DATE OF THE 25TH OF OCTOBER, 2006?

20 A. YES.

21 Q. IN THE FIRST PARAGRAPH OF THIS E-MAIL,  
22 PROFESSOR BLOUGH FIRST THANKS YOU FOR EXTENDING HER LEAVE OF  
23 ABSENCE INSTEAD OF TERMINATING HER, CORRECT?

24 A. YES.

25 Q. AND THEN SHE GOES ON IN THAT PARAGRAPH TO, AGAIN,  
26 DISCUSS THE FACT THAT SHE IS -- SHE DOESN'T UNDERSTAND WHY THE

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1 COLLEGE IS INSISTING ON DR. MISSETT, CORRECT?

2 A. CORRECT.

3 Q. AND I WANT TO FOCUS ON THE SECOND PARAGRAPH WHERE SHE  
4 SAYS, "MY ONLY GOAL AT THIS POINT IS TO GET BACK INTO THE  
5 CLASSROOM. AND I ONLY WANT A FAIR CHANCE TO PROVE THAT I'M

6 CAPABLE OF DOING THAT."

7 DID YOU HAVE ANY REASON TO DOUBT THAT THAT WAS  
8 PROFESSOR BLOUGH'S GOAL AT THAT POINT?

9 A. I HAVE NO REASON TO DOUBT HER.

10 MR. LEBOWITZ: IF WE CAN HAVE 35, PLEASE.  
11 (PLAINTIFF'S EXHIBIT NO. 35 WAS PREVIOUSLY  
12 MARKED FOR IDENTIFICATION.)

13 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

14 THE COURT: YES.

15 MR. LEBOWITZ: WE HAVE A STIPULATION FOR  
16 ADMISSIBILITY.

17 THE COURT: IS THAT CORRECT, MR. VARTAIN?

18 MR. VARTAIN: THAT'S CORRECT.

19 THE COURT: EXHIBIT 35 WILL BE ADMITTED.

20 MR. LEBOWITZ: THANK YOU.

21 (PLAINTIFF'S EXHIBIT NO. 35 WAS ADMITTED INTO  
22 EVIDENCE.)

23 MR. LEBOWITZ: Q. NOW, EXHIBIT 35, THIS IS AN OCTOBER  
24 26 LETTER THAT YOU WROTE, CORRECT?

25 A. YES.

26 Q. YOU WROTE IT TO PROFESSOR BLOUGH?

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1 A. YES.

2 Q. AND YOU WROTE IT IN RESPONSE TO THE E-MAIL FROM  
3 PROFESSOR BLOUGH, CORRECT?

4 A. YES.

5 Q. AND THE E-MAIL -- PART OF THAT E-MAIL WAS EXPRESSING,  
6 AGAIN, PROFESSOR BLOUGH'S CONCERN IN NOT UNDERSTANDING THE  
7 REASON WHY DR. MISSETT WAS THE DOCTOR SELECTED BY THE COLLEGE  
8 FOR THE EVALUATION, CORRECT?

9 A. YES.

10 Q. AND SO IN RESPONSE YOU WRITE -- I WANT TO FOCUS ON THE  
11 SECOND SENTENCE THAT STARTS AT THE END OF THE SECOND LINE OF THE  
12 SECOND PARAGRAPH, STARTS WITH "AS TO."

13 DO YOU SEE WHERE I AM?

14 A. YES.

15 Q. OKAY. IT READS, "AS TO INCLUDING AN ONCOLOGIST IN THE  
16 MEDICAL EVALUATION, AS I'VE TRIED TO CONVEY IN MY PREVIOUS  
17 LETTER TO YOU, DR. MISSETT IS A MEDICAL DOCTOR AS WELL AS A  
18 PH.D., WHICH THE COLLEGE USES AS ITS SOLE INDEPENDENT MEDICAL  
19 EXAMINER." YOU WROTE THAT, CORRECT?

20 A. YES.

21 Q. IT WAS TRUE AT THE TIME YOU WROTE IT?

22 A. YES.

23 MR. LEBOWITZ: CAN WE HAVE 36, PLEASE.

24 (PLAINTIFF'S EXHIBIT NO. 36 WAS MARKED FOR  
25 IDENTIFICATION.)

26 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

1 THE COURT: YES.

2 MR. LEBOWITZ: AND WE HAVE ANOTHER STIPULATION FOR  
3 ADMISSIBILITY.

4 THE COURT: IS THAT CORRECT, MR. VARTAIN?

5 MR. VARTAIN: YES, YOUR HONOR.

6 THE COURT: EXHIBIT 36 WILL BE ADMITTED.

7 (PLAINTIFF'S EXHIBIT NO. 36 WAS ADMITTED INTO  
8 EVIDENCE.)

9 THE COURT: LADIES AND GENTLEMEN, I KNOW IT MAY SEEM  
10 TEDIOUS THAT I'M EVERY TIME ASKING MR. VARTAIN. I CERTAINLY  
11 TRUST MR. LEBOWITZ. WHEN YOU GET THE TRANSCRIPT, YOU WONDER,  
12 DID HE REALLY STIPULATE? I'M JUST DOING IT FOR THE WRITTEN  
13 RECORD. SO I'M SORRY IF IT'S TEDIOUS FOR YOU, BUT I HAVE TO  
14 PROTECT THAT. THAT'S ONE OF THE THINGS I DO WHILE I'M SITTING  
15 HERE.

16 GO AHEAD. I'M SORRY TO INTERRUPT YOU.

17 MR. LEBOWITZ: IT'S ALL RIGHT. THANK YOU.

18 Q. EXHIBIT 36 IS AN E-MAIL EXCHANGE BETWEEN YOURSELF AND  
19 PROFESSOR BLOUGH ON OR AROUND NOVEMBER 1ST, 2006, CORRECT?

20 A. YES.

21 Q. OKAY.

22 MR. VARTAIN: YOU WANT THE WHOLE THING?

23 MR. LEBOWITZ: NO, I JUST WANT THE --

24 Q. IN THE E-MAIL FROM PROFESSOR BLOUGH TO YOU, WHICH IS  
25 BEING SHOWN ON THE SCREEN RIGHT HERE, WHERE SHE WRITES, "DEAR  
26 STEPHANIE," I WANT TO FOCUS ON IN THE MIDDLE, ABOUT THE THIRD,

1 FOURTH LINE DOWN IN THE MIDDLE OF THE LINE, THE SENTENCE THAT  
2 STARTS, "HOWEVER, SINCE."

3 DO YOU SEE THAT?

4 A. YES.

5 Q. PROFESSOR BLOUGH TELLS YOU IN THIS E-MAIL, "HOWEVER,  
6 SINCE I WANT TO GET BACK INTO THE CLASSROOM THIS SPRING  
7 SEMESTER, AND THE COLLEGE IS INSISTING ON DR. MISSETT, I WILL  
8 SEE HIM ON NOVEMBER 6TH, AS YOU'VE SCHEDULED."

9 DO YOU SEE THAT?

10 A. YES.

11 Q. SO YOU UNDERSTOOD FROM READING THIS E-MAIL THAT  
12 PROFESSOR BLOUGH WAS -- BASED ON THE COLLEGE'S AND WHAT YOU HAD  
13 TOLD HER, SHE WAS AGREEING TO GO BACK TO SEE DR. MISSETT?

14 A. YES.

15 Q. SHE WASN'T HAPPY ABOUT IT, WAS SHE?

16 A. I DON'T THINK SO, BUT...

17 Q. BUT ULTIMATELY SHE AGREED.

18 A. SHE DID.

19 MR. LEBOWITZ: OKAY.

20 CAN WE HAVE 40, PLEASE?

21 (PLAINTIFF'S EXHIBIT NO. 40 WAS PREVIOUSLY  
22 MARKED FOR IDENTIFICATION.)

23 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

24 THE COURT: YES.

25 MR. LEBOWITZ: WE HAVE A STIPULATION FOR  
26 ADMISSIBILITY.



1 MR. VARTAIN: YES.

2 MR. LEBOWITZ: JUST QUICKLY ON THIS ONE, MS. SAPRAI.

3 THIS IS A NOVEMBER 22ND, 2006 E-MAIL FROM PROFESSOR BLOUGH TO  
4 YOU WITH THE SUBJECT LINE "MEDICAL EVALUATION." AND IN THIS  
5 E-MAIL, SHE'S TELLING YOU THAT SHE HAS COMMUNICATED WITH  
6 DR. MISSETT'S OFFICE AND THAT SHE'S GOING TO UNDERGO EVEN  
7 FURTHER EXAMINATION AT DR. MISSETT'S ORDERS, CORRECT?

8 A. YES.

9 Q. SO SHE COMMUNICATED TO YOU AND KEPT YOU INFORMED AS TO  
10 WHAT WAS GOING ON WITH THE PROCESS?

11 A. YES.

12 THE COURT: AND THIS EXHIBIT 40 WILL BE ADMITTED. I'M  
13 SORRY. I MISSED THAT.

14 (PLAINTIFF'S EXHIBIT NO. 40 WAS ADMITTED INTO  
15 EVIDENCE.)

16 MR. LEBOWITZ: COULD WE HAVE 42, PLEASE?

17 MR. VARTAIN: YES.

18 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 MR. LEBOWITZ: WE HAVE A STIPULATION FOR  
21 ADMISSIBILITY.

22 THE COURT: CORRECT?

23 MR. VARTAIN: YES.

24 THE COURT: EXHIBIT 42 WILL BE ADMITTED.

25 (PLAINTIFF'S EXHIBIT NO. 42 WAS PREVIOUSLY  
26 MARKED AND ADMITTED INTO EVIDENCE.)

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1 MR. LEBOWITZ: THANK YOU.

2 Q. SO THIS EXHIBIT 42 IS AN E-MAIL FROM PROFESSOR BLOUGH  
3 TO YOU ON JANUARY 26TH OF 2007 WITH THE SUBJECT LINE  
4 "DR. MISSETT'S REPORT."

5 NOW, IN THIS E-MAIL PROFESSOR BLOUGH LETS YOU KNOW  
6 THAT IT HAS BEEN ALMOST TWO MONTHS SINCE SHE HAS UNDERGONE ALL  
7 OF THE TESTING THAT WAS ASKED OF HER, CORRECT?

8 A. YES.

9 Q. AND THAT SHE HAD NOT HEARD FROM ANYBODY, FROM YOU OR  
10 FROM DR. MISSETT, THAT HE HAD REACHED ANY CONCLUSIONS YET,  
11 CORRECT?

12 A. YES.

13 Q. AND SHE'S ASKING -- SHE'S HOPING THAT YOU CAN HELP  
14 OUT?

15 A. YES.

16 Q. AND THEN THE NEXT PARAGRAPH I WANT TO LOOK AT SAYS, "I  
17 HEAR THAT MENLO HAS A NEW PRESIDENT, TIM HAIGHT. I HOPE THAT  
18 HE'S FULLY INFORMED ABOUT THIS DISPUTE. IF NOT, I WOULD BE  
19 HAPPY TO FILL HIM IN, EITHER IN PERSON, BY PHONE OR VIA E-MAIL."

20 DID YOU READ THAT WHEN YOU GOT THIS E-MAIL?

21 A. YES.

22 Q. AND DID YOU DO ANYTHING TO PASS THAT INFORMATION ALONG

23 TO THE NEW PRESIDENT, TIM HAIGHT?

24 A. I TRULY DON'T REMEMBER WHAT I SPECIFICALLY DID. I

25 WOULD HAVE SHARED -- I DID SHARE THIS E-MAIL WITH MY BOSS. AND

26 I CERTAINLY KNEW THAT DR. HAIGHT HAD BEEN FILLED IN.

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1 Q. OKAY. DID YOU DO ANYTHING TO FOLLOW UP TO SEE IF

2 PRESIDENT HAIGHT WOULD BE WILLING TO SIT DOWN AND MEET WITH

3 PROFESSOR BLOUGH?

4 A. I DON'T RECALL DOING ANYTHING THAT WAY SPECIFICALLY.

5 MR. LEBOWITZ: OKAY.

6 I AM GOING TO HAVE 45, PLEASE.

7 (PLAINTIFF'S EXHIBIT NO. 45 WAS PREVIOUSLY

8 MARKED FOR IDENTIFICATION.)

9 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

10 THE COURT: YES.

11 MR. LEBOWITZ: WE HAVE A STIPULATION FOR

12 ADMISSIBILITY.

13 THE COURT: IS THAT CORRECT?

14 MR. VARTAIN: YES, YOUR HONOR.

15 THE COURT: EXHIBIT 45 WILL BE ADMITTED.

16 (PLAINTIFF'S EXHIBIT NO. 45 WAS ADMITTED INTO

17 EVIDENCE.)

18 MR. LEBOWITZ: OKAY.

19 Q. EXHIBIT 45, THIS IS A LETTER YOU WROTE TO

20 PROFESSOR BLOUGH, CORRECT?

21 A. YES.

22 Q. AND YOU WROTE IT ON -- AT LEAST IT'S DATED MARCH 26,  
23 2007; IS THAT RIGHT?

24 A. YES.

25 Q. AND YOU NOTE IN THIS LETTER THAT YOU'D RECEIVED A  
26 LETTER FROM DR. MISSETT, RIGHT?

636

1 A. YES.

2 Q. AND THAT WAS THE REPORT THAT DR. MISSETT FINALLY SENT  
3 TO THE COLLEGE IN REGARDS TO THE MEDICAL EXAM HE CONDUCTED IN  
4 THE FALL OF '06, CORRECT? NOVEMBER OR DECEMBER OF '06?

5 A. YES.

6 Q. OKAY.

7 AND YOU ENCLOSE -- EVEN THOUGH IT'S NOT ATTACHED  
8 HERE -- YOU ENCLOSE THAT LETTER TO PROFESSOR BLOUGH AT THE TIME?

9 A. YES.

10 Q. ALL RIGHT.

11 AND WHAT YOU READ IN THE LETTER FROM DR. MISSETT WAS  
12 THAT IT WAS HIS OPINION THAT AT THIS POINT IN TIME  
13 PROFESSOR BLOUGH COULD TOLERATE A ONE-HALF WORKLOAD?

14 A. YES.

15 Q. AND SO FOLLOWING THAT OPINION, YOU FOLLOWED UP TO SEE  
16 WHAT WAS -- YOU WERE GOING TO FOLLOW UP TO SEE WHAT WAS  
17 AVAILABLE FOR HER?

18 A. YES.

19 Q. NOW, WHAT I WANT REALLY WANT TO FOCUS ON THEN IS THE  
20 LAST PART OF THAT SECOND PARAGRAPH. YOU SAY, "BECAUSE OF  
21 DR. MISSETT'S OPINION, I'M GETTING IN TOUCH WITH THE PROVOST'S  
22 OFFICE TO FIND OUT COLLEGE COURSE TEACHING NEEDS FOR THIS COMING  
23 FALL." DO YOU SEE THAT?

24 A. YES.

25 Q. THAT'S ACCURATE, THAT AT THE TIME YOU WERE LOOKING FOR  
26 COURSES FOR PROFESSOR BLOUGH FOR THE FALL OF 2007?

637

1 A. YES.

2 Q. YOU WEREN'T LOOKING FOR COURSES FOR HER FOR THE SPRING  
3 OF 2007, WERE YOU?

4 A. THE SPRING SEMESTER HAD ALREADY STARTED.

5 Q. IN FACT, IT WAS ALREADY ALMOST OVER?

6 A. RIGHT.

7 Q. SO IT WASN'T YOUR INTENTION, WHEN YOU GOT THE LETTER  
8 FROM DR. MISSETT, TO TRY AND SEARCH OUT FOR ANY CLASSES FOR THE  
9 SPRING, RIGHT?

10 A. NO, THAT WAS NOT MY INTENTION.

11 Q. OKAY.

12 MR. LEBOWITZ: 46.

13 (PLAINTIFF'S EXHIBIT NO. 46 WAS MARKED FOR  
14 IDENTIFICATION.)

15 MR. LEBOWITZ: MAY I APPROACH?

16 THE COURT: YES.

17 MR. LEBOWITZ: WE HAVE ANOTHER STIPULATION FOR  
18 ADMISSIBILITY.

19 THE COURT: CORRECT, MR. VARTAIN?

20 MR. VARTAIN: YES.

21 THE COURT: EXHIBIT 46 WILL BE ADMITTED.

22 (PLAINTIFF'S EXHIBIT NO. 46 WAS ADMITTED INTO  
23 EVIDENCE.)

24 MR. VARTAIN: WITH THE ASSUMPTION THAT COUNSEL WILL  
25 GIVE ME DUE RECIPROCITY LATER.

26 MR. LEBOWITZ: AS ALWAYS.

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1 MR. VARTAIN: I WANT IT ON THE RECORD.

2 THE COURT: I NOTICED.

3 MR. LEBOWITZ: Q. AND JUST BRIEFLY ON THIS EXHIBIT,

4 MS. SAPRAI, THIS IS AN EARLY APRIL 2007 E-MAIL EXCHANGE BETWEEN  
5 YOURSELF AND PROFESSOR BLOUGH, CORRECT?

6 A. YES.

7 Q. AND IN THIS E-MAIL PROFESSOR BLOUGH'S RESPONDING TO  
8 THE LETTER WE JUST SAW, CORRECT?

9 A. YES.

10 Q. AND SHE'S SAYING SHE'S RECEIVED THE LETTER AND IS  
11 INQUIRING AS TO WHAT THE STATUS IS AS FAR AS THE FALL  
12 ASSIGNMENTS, CORRECT?

13 A. YES.

14 Q. AND YOU RESPONDED THAT YOU WERE -- YOU HAD BEEN IN

15 CONTACT WITH THE PROVOST AND THAT YOU'RE GOING TO GET BACK TO  
16 HER?

17 A. RIGHT.

18 MR. LEBOWITZ: IF WE CAN SKIP TO 63.

19 (PLAINTIFF'S EXHIBIT NO. 63 WAS MARKED FOR  
20 IDENTIFICATION.)

21 MR. VARTAIN: NO OBJECTION.

22 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

23 THE COURT: YES.

24 MR. LEBOWITZ: WE HAVE A STIPULATION FOR  
25 ADMISSIBILITY.

26 THE COURT: CORRECT? IS THAT CORRECT?

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1 MR. VARTAIN: YES, YOUR HONOR.

2 THE COURT: EXHIBIT 63 WILL BE ADMITTED.

3 (PLAINTIFF'S EXHIBIT NO. 63 WAS ADMITTED INTO  
4 EVIDENCE.)

5 MR. LEBOWITZ: Q. EXHIBIT 63 IS AN E-MAIL BETWEEN  
6 YOURSELF, LOWELL PRATT AND JIM KELLY, CORRECT?

7 A. YES.

8 Q. AND JIM KELLY WAS THE PROVOST AT THE TIME?

9 A. YES; HE HAD JUST STARTED. YES.

10 Q. AND SO WHEN YOU HAD TOLD PROFESSOR BLOUGH IN THE  
11 E-MAIL WE SAW A MOMENT AGO THAT YOU HAD BEEN CONFERRING WITH --  
12 OR YOU WERE CONFERRING WITH THE PROVOST, THIS E-MAIL REFLECTS AT

13 LEAST PART OF THAT DISCUSSION?

14 A. YES.

15 Q. OKAY.

16 AND I JUST WANT TO FOCUS ON THE LAST E-MAIL, THE ONE  
17 THAT'S ON THE TOP THAT'S DATED APRIL 13, 2007, FROM JIM KELLY TO  
18 YOURSELF. AND HE WRITES, "STEPHANIE, WE WILL NOT HAVE ANY  
19 COURSES AVAILABLE FOR MARCINE FOR THE FALL, JIM," CORRECT?

20 A. YES. THAT'S WHAT IT SAYS.

21 Q. AND YOU UNDERSTOOD THAT THAT MEANT THAT THE PROVOST  
22 HAD LOOKED AND DETERMINED THAT THERE WAS NO CLASSES THAT THEY  
23 WERE GOING TO BE ABLE TO OFFER PROFESSOR BLOUGH FOR FALL 2007,  
24 CORRECT?

25 A. CORRECT.

26 MR. LEBOWITZ: IF WE COULD HAVE 47.

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1 (PLAINTIFF'S EXHIBIT NO. 47 WAS PREVIOUSLY  
2 MARKED FOR IDENTIFICATION.)

3 MR. VARTAIN: ARE YOU GOING TO OFFER --

4 (WHEREUPON, THERE WAS DISCUSSION OFF THE RECORD.)

5 MR. VARTAIN: UNLESS YOU OFFER ALL THE EXHIBITS THAT  
6 GO TOGETHER, I'M NOT GOING TO AGREE. IF YOU OFFER 49, WHICH IS  
7 THE END OF THE E-MAILS, THEN I WILL STIPULATE TO THIS.

8 MR. LEBOWITZ: I HAVE NO PROBLEM WITH THAT.

9 MR. VARTAIN: OKAY.

10 MR. LEBOWITZ: I WAS JUST TRYING TO SAVE A LITTLE



11 TIME.

12 MR. VARTAIN: SO STIPULATED, YOUR HONOR, WITH THAT  
13 UNDERSTANDING.

14 THE CLERK: 47 AND 49?

15 THE COURT: THIS IS GOING TO BE EXHIBIT 47 AND 49?

16 MR. LEBOWITZ: NO, JUST 47.

17 THE COURT: 47. THANK YOU. AND BY STIPULATION, THAT  
18 WILL BE ADMITTED.

19 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

20 (PLAINTIFF'S EXHIBIT NO. 47 WAS ADMITTED INTO  
21 EVIDENCE.)

22 MR. VARTAIN: 47'S STIPULATION IS CONDITIONAL ON --

23 THE COURT: YOU CAN REINTRODUCE IT YOURSELF. IT'S NOT  
24 A PROBLEM.

25 MR. LEBOWITZ: MAY I APPROACH?

26 THE COURT: YES.

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1 MR. LEBOWITZ: OKAY.

2 Q. WE ARE LOOKING AT EXHIBIT 47. NOW, THIS IS AN E-MAIL  
3 EXCHANGE, AGAIN, BETWEEN YOURSELF AND PROFESSOR BLOUGH. IT'S  
4 ACTUALLY THE ORIGINAL E-MAIL FROM PROFESSOR BLOUGH IS WHAT WE  
5 ALREADY SAW IN THE LAST EXHIBIT, CORRECT? THE MORE RECENT ONE  
6 IS -- THE E-MAIL ON TOP IS JUST A FRESH RESPONSE, RIGHT?

7 A. YES.

8 Q. AND SO THIS IS THE RESPONSE THAT YOU GAVE

9 PROFESSOR BLOUGH AFTER RECEIVING THE E-MAIL THAT WE JUST SAW AS  
10 EXHIBIT 33, WHICH WAS THE NOTIFICATION FROM JIM KELLY THAT THERE  
11 WERE NO CLASSES?

12 A. YES.

13 Q. AND SO BASED ON THE E-MAIL FROM JILL KELLY, THE  
14 PROVOST, YOU, IN TURN, WROTE THIS E-MAIL ON APRIL 17, 2007 TO  
15 PROFESSOR BLOUGH, CORRECT?

16 A. YES.

17 Q. SO IN THIS E-MAIL YOU SAY, "I HAVE BEEN ADVISED BY THE  
18 PROVOST THAT THERE ARE NO CLASSES AVAILABLE AT THIS TIME. AS  
19 YOU MAY KNOW, MIKE SCHULTZ HAS RETURNED TO FULL-TIME FACULTY AND  
20 ALL OF OUR OPEN COURSES ARE POSTED ON THE INTERNET. AT THIS  
21 TIME, YOUR INSURANCE BENEFITS WILL TERMINATE EFFECTIVE THE LAST  
22 DAY OF APRIL, AS YOU ARE NO LONGER A FULL-TIME EMPLOYEE. I WILL  
23 HAVE YOUR COBRA NOTICE SENT TO YOU. PLEASE CALL IF YOU HAVE ANY  
24 QUESTIONS"?

25 AND YOU WROTE THIS E-MAIL TO PROFESSOR BLOUGH, RIGHT?

26 A. YES.

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1 Q. AND YOU WERE BEING TRUTHFUL WHEN YOU SENT THIS E-MAIL,  
2 CORRECT?

3 A. YES.

4 Q. AND DID YOU, IN FACT, DIRECT THE COBRA NOTICE THAT YOU  
5 REFERENCE HERE TO BE SENT TO PROFESSOR BLOUGH?

6 A. YES. THE BENEFITS MANAGER THEN SENDS OUT THE COBRA

7 NOTICE.

8 Q. OKAY. AND THAT BENEFITS MANAGER WAS PEGGY LOYA?

9 A. YES.

10 Q. AND SHE WAS SOMEONE WHO WAS IN YOUR DEPARTMENT?

11 A. YES.

12 Q. AND YOU WERE HER SUPERVISOR?

13 A. YES.

14 Q. AND SO AT THE TIME, IN APRIL OF 2007, DID YOU ACTUALLY  
15 DIRECT HER TO SEND OUT THAT COBRA LETTER?

16 A. YES.

17 MR. LEBOWITZ: IF WE CAN HAVE 48, PLEASE?

18 (PLAINTIFF'S EXHIBIT NO. 48 WAS PREVIOUSLY MARKED FOR  
19 IDENTIFICATION.)

20 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

21 THE COURT: YES.

22 MR. LEBOWITZ: WE HAVE STIPULATION FOR THE  
23 ADMISSIBILITY OF EXHIBIT 48.

24 MR. VARTAIN: SO STIPULATED.

25 THE COURT: EXHIBIT 48 WILL BE ADMITTED.

26 (PLAINTIFF'S EXHIBIT NO. 48 WAS ADMITTED INTO

643

1 EVIDENCE.)

2 MR. LEBOWITZ: Q. SO WE'RE LOOKING AT EXHIBIT 48,  
3 WHICH IS THE COBRA LETTER THAT YOU REFERRED TO IN YOUR  
4 APRIL 17TH E-MAIL, CORRECT?

5 A. YES.

6 Q. AND PEGGY LOYA, UNDER YOUR INSTRUCTION, WAS WRITING TO  
7 PROFESSOR BLOUGH ON BEHALF OF THE COLLEGE, CORRECT?

8 A. YES.

9 Q. AND I WANT TO FOCUS JUST ON THE PART UNDER "INSURANCE  
10 CONTINUATION."

11 A. UH-HUH.

12 Q. OKAY?

13 A. YES.

14 Q. AND THAT FIRST SENTENCE, IT SAYS, "YOUR MEDICAL AND  
15 DENTAL BENEFITS PROVIDED BY MENLO WILL TERMINATE ON APRIL 30,  
16 2007 DUE TO YOUR TERMINATION."

17 DO YOU SEE THAT?

18 A. YES.

19 Q. AND DO YOU HAVE ANY REASON TO DOUBT THAT PEGGY LOYA  
20 WAS BEING HONEST WHEN SHE WROTE THIS LETTER?

21 A. I HAVE NO REASON TO DOUBT.

22 Q. AND THE INTENT OF SENDING THIS LETTER WAS TO CONVEY  
23 THE INFORMATION CONTAINED IN THE LETTER TO PROFESSOR BLOUGH?

24 A. THE INTENT WAS TO TELL HER THAT HER BENEFITS WERE  
25 TERMINATED AND SHE WAS NOW ELIGIBLE FOR COBRA.

26 Q. AND AS YOU WROTE IN THIS LETTER, IT ALSO TELLS HER

644

1 THAT SHE'S BEING TERMINATED, CORRECT?

2 A. IT DOES SAY, "DUE TO TERMINATION," YES.

3 MR. LEBOWITZ: OKAY. 49, PLEASE.

4 MAY I APPROACH?

5 THE COURT: YES.

6 MR. LEBOWITZ: STIPULATED TO ADMISSIBILITY.

7 THE COURT: ALL RIGHT. EXHIBIT 49 WILL BE ADMITTED.

8 (PLAINTIFF'S EXHIBIT NO. 49, PREVIOUSLY MARKED,  
9 WAS ADMITTED INTO EVIDENCE.)

10 MR. LEBOWITZ: Q. SO 49 IS A MAY 25, 2007 LETTER, NOT  
11 FROM YOU BUT FROM ROBERT HITE, CORRECT?

12 A. YEAH.

13 Q. AND THIS IS "HITE" AS COMPARED TO "HAIGHT," RIGHT?

14 A. YES.

15 Q. IT'S NOT THE SAME PERSON?

16 A. YES.

17 Q. AND ROBERT HITE WAS, AT THE TIME, THE VICE PRESIDENT  
18 FOR FINANCE AT ADMINISTRATION?

19 A. YES.

20 Q. AND HE WAS TAKING OVER YOUR ROLE, AS IT SAYS IN THE  
21 LETTER, BECAUSE YOU WERE OUT OF THE COUNTRY AT THE TIME?

22 A. YES.

23 Q. AND AS PART OF THIS LETTER, MR. HITE CONVEYED TO  
24 PROFESSOR BLOUGH THE SCHEDULED CLASSES FOR THE FALL FOR PURPOSES  
25 OF SEEING IF THERE WAS ANY AVAILABILITY FOR IT?

26 A. YES.

1 MR. VARTAIN: COULD YOU POST THAT SO THE JURY CAN SEE  
2 IT, COUNSEL?

3 MR. LEBOWITZ: YOU CAN POST IT IN YOURS, COUNSEL. I'M  
4 MOVING ON.

5 MAY I HAVE 51, PLEASE. THANK YOU.

6 (PLAINTIFF'S EXHIBIT NO. 51 WAS MARKED FOR  
7 IDENTIFICATION.)

8 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YES.

10 MR. LEBOWITZ: WE HAVE STIPULATION FOR ADMISSIBILITY.

11 THE COURT: CORRECT? THAT WILL BE ADMITTED.

12 (PLAINTIFF'S EXHIBIT NO. 51 WAS ADMITTED INTO  
13 EVIDENCE.)

14 MR. LEBOWITZ: Q. CAN YOU TELL US WHAT EXHIBIT 51 IS?

15 A. IT IS A LETTER FROM MYSELF INDICATING THE CLASSES THAT  
16 ARE AVAILABLE FOR HER FOR THE FALL SEMESTER AND INDICATES WHAT  
17 HER HALF-TIME SALARY WILL BE WITH A THREE PERCENT ADJUSTMENT FOR  
18 THE PAST YEAR'S INCREASE.

19 Q. SO THIS IS AN OFFER OF EMPLOYMENT FOR THE FALL OF  
20 2007, CORRECT?

21 A. YES.

22 Q. AND IT SETS FORTH PROFESSOR BLOUGH'S SALARY, IF SHE  
23 WERE TO ACCEPT THE OFFER?

24 A. YES.

25 Q. AND THAT'S AT HALF TIME?

26 A. YES.

1 Q. AND IT'S A -- THE LETTER ITSELF LISTS CLASSES FOR THE  
2 FALL, TWO CLASSES FOR THE FALL, CORRECT?

3 A. YES.

4 Q. AND TO BE DETERMINED FOR SPRING COURSES?

5 A. YES.

6 Q. AND ON THE SECOND PAGE -- WELL, WE CAN -- ANOTHER TERM  
7 OR ANOTHER PART OF THE OFFER IS THAT THE COLLEGE WAS OFFERING TO  
8 PROVIDE HEALTH AND DENTAL BENEFITS AS IF SHE WERE FULL TIME?

9 A. YES.

10 Q. RIGHT. I WANT TO FOCUS ON THE SECOND PARAGRAPH OF THE  
11 SECOND PAGE OF THIS EXHIBIT FOR A MOMENT. YOU ARE RESPONDING TO  
12 A REFERENCE THAT PROFESSOR BLOUGH HAD SENT TO YOU WHERE SHE WAS  
13 REFERENCING HER, QUOTE, "SIX-YEAR CONTRACT"?

14 A. YES.

15 Q. AND YOU INFORM HER IN THIS LETTER THAT AS PART OF THE  
16 OFFICIAL OFFER FOR EMPLOYMENT FOR THE FALL OF '07, THAT SHE WILL  
17 BE ELIGIBLE TO APPLY FOR A SIX-YEAR CONTRACT?

18 A. YES.

19 Q. CORRECT? AND THAT SHE WOULD GO THROUGH ALL THE NORMAL  
20 PROCEDURES FOR APPLYING FOR A SIX-YEAR CONTRACT?

21 A. YES.

22 Q. THERE WAS -- YOU WEREN'T CONVEYING TO HER ANY  
23 GUARANTEE OF THE SIX-YEAR CONTRACT, WERE YOU?

24 A. NO.

25 Q. AND WERE YOU CONVEYING TO HER ANY EXPECTATION THAT SHE

1 CONTRACT?

2 A. NO.

3 Q. JUST THAT SHE WOULD HAVE TO APPLY?

4 A. YES.

5 MR. LEBOWITZ: 64.

6 (PLAINTIFF'S EXHIBIT NO. 64 WAS PREVIOUSLY

7 MARKED FOR IDENTIFICATION.)

8 MR. LEBOWITZ: MAY, I APPROACH, YOUR HONOR?

9 THE COURT: YES.

10 MR. LEBOWITZ: EXHIBIT 64 IS AN E-MAIL FROM

11 PROFESSOR BLOUGH TO YOU, CORRECT?

12 A. YES.

13 Q. AND IT HAS A DATE OF JULY 26, 2007?

14 A. YES.

15 Q. AND IT'S ADDRESSED TO YOU?

16 A. YES.

17 Q. IN THE FIRST PARAGRAPH PROFESSOR BLOUGH SAYS SHE IS

18 RESPONDING TO YOUR E-MAIL OF 7/16/07. I THINK SHE MEANT YOUR

19 LETTER; IS THAT FAIR TO ASSUME?

20 A. YES.

21 Q. AND SHE'S RESPONDING TO YOUR OFFER OR THE COLLEGE'S

22 OFFER FOR EMPLOYMENT FOR THE FALL, RIGHT?

23 A. YES.



24 Q. AND SHE TOLD YOU IN THIS LETTER THAT -- IN THIS E-MAIL  
25 THAT HER REQUEST WAS TO BE RESTORED TO HER SIX-YEAR CONTRACT,  
26 RIGHT?

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1 A. YES. FULL TIME AND SIX-YEAR CONTRACT.

2 Q. FULL TIME, SIX-YEAR CONTRACT. AND THEN SHE RECOUNTS  
3 THE HISTORY, AS FAR AS WHAT HAS GONE ON AS FAR AS EXCHANGES  
4 BETWEEN THE COLLEGE AND HERSELF SINCE THE SUMMER OF 2006?

5 A. YES.

6 Q. RIGHT. AND THEN IN THE FOURTH PARAGRAPH DOWN SHE SAYS  
7 TO YOU, "BASED ON PAST HISTORY, I DO NOT BELIEVE YOUR," QUOTE,  
8 "INVITATION' TO MEET ME" -- "OR YOUR INVITATION TO APPLY FOR A  
9 SIX-YEAR CONTRACT IS BEING MADE IN GOOD FAITH," CORRECT?

10 A. CORRECT.

11 Q. AND THEN SHE GOES ON TO EXPLAIN ALL THE REASONS WHY  
12 SHE BELIEVED THAT THE INVITATION TO APPLY FOR THE SIX-YEAR  
13 CONTRACT WAS NOT BEING MADE IN GOOD FAITH?

14 A. CORRECT.

15 Q. OKAY.

16 AND THEN SHE, IN THE NEXT PARAGRAPH, GIVES YOU  
17 ADDITIONAL REASONS FOR WHAT SHE BELIEVES IS BAD FAITH, CORRECT?

18 A. CORRECT.

19 Q. ONE OF THEM IS THAT THE COLLEGE HAD REFUSED UP TO THAT  
20 POINT TO PAY OR COMPENSATE HER FOR ANY WAGES LOST OVER THAT YEAR  
21 WHERE SHE HAD BEEN OUT OF WORK, CORRECT?

22 A. CORRECT.

23 Q. AND THE COLLEGE HAD REFUSED TO COMPENSATE HER IN ANY  
24 WAY FOR THE PAIN AND SUFFERING THAT SHE HAD GONE THROUGH BECAUSE  
25 OF WHAT HAD GONE ON OVER THE PAST YEAR, YEAR-AND-A-HALF,  
26 CORRECT?

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1 A. CORRECT.

2 Q. AND SHE ALSO NOTES THAT THE COLLEGE HAD REFUSED, AS  
3 PART OF HER REQUEST, TO ALSO PAY FOR HER ATTORNEYS' FEES, RIGHT?

4 A. CORRECT.

5 Q. IN FACT, SHE SAYS IN THE NEXT SENTENCE, "TO PUT IT  
6 BLUNTLY, THE COLLEGE HAS PUT ME THROUGH HELL THIS PAST YEAR. MY  
7 LIFE HAS BEEN TURNED COMPLETELY INSIDE OUT, AND THE ONLY THING  
8 THAT HAS SAVED ME TO THIS POINT IS MY ATTORNEY AND HIS POINTING  
9 OUT TO THE COLLEGE ALL OF THE ILLEGAL THINGS THEY DID TO ME.  
10 AGAIN, THE COLLEGE REFUSED TO EVEN TALK TO ME UNTIL MY ATTORNEY  
11 WROTE TO PRESIDENT LOPEZ," CORRECT?

12 A. CORRECT.

13 Q. AND YOU READ THIS E-MAIL WHEN IT CAME TO YOU, RIGHT?

14 A. YES.

15 MR. LEBOWITZ: CAN WE HAVE 53?

16 (PLAINTIFF'S EXHIBIT NO. 53 WAS MARKED FOR  
17 IDENTIFICATION.)

18 THE COURT: I DON'T BELIEVE I ADMITTED 64. I DIDN'T  
19 MAKE A NOTE OF IT.

20 MR. LEBOWITZ: I'M SORRY. THERE'S A STIPULATION ON

21 64.

22 THE COURT: I WILL ADMIT EXHIBIT 64.

23 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

24 (PLAINTIFF'S EXHIBIT NO. 64 WAS ADMITTED INTO

25 EVIDENCE.)

26 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

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1 THE COURT: YES.

2 MR. LEBOWITZ: OKAY. EXHIBIT 53, WE HAVE A

3 STIPULATION FOR ADMISSIBILITY, YOUR HONOR.

4 THE COURT: I WILL ADMIT IT.

5 MR. VARTAIN: YES, YOUR HONOR.

6 THE COURT: THANK YOU.

7 (PLAINTIFF'S EXHIBIT NO. 53 WAS ADMITTED INTO

8 EVIDENCE.)

9 MR. LEBOWITZ: Q. IN THIS E-MAIL EXCHANGE BETWEEN

10 YOURSELF AND PROFESSOR BLOUGH, YOU HAVE A BRIEF EXCHANGE ABOUT

11 THE FACT THAT SHE'S STILL CONSIDERING THE OFFER FROM THE

12 COLLEGE, CORRECT?

13 A. YES.

14 Q. AND THIS IS AN E-MAIL EXCHANGE THAT OCCURRED ON

15 AUGUST 2ND AND AUGUST 3RD, 2007, CORRECT?

16 A. YES.

17 Q. SO EVEN AFTER PROFESSOR BLOUGH SENT THE E-MAIL THAT'S

18 EXHIBIT 64, THAT'S STILL UP HERE ON THE SCREEN, SHE TOLD YOU ON  
19 AUGUST 2ND THAT SHE EVEN -- EVEN SO, SHE WAS STILL CONSIDERING  
20 THE OFFER?

21 A. YES.

22 Q. SHE TELLS YOU, OF COURSE, SHE STILL BELIEVES IT WAS  
23 MADE IN BAD FAITH, BUT SHE WAS STILL CONSIDERING IT?

24 A. YES.

25 MR. LEBOWITZ: OKAY. FINALLY, WE HAVE EXHIBIT 54.

26 (PLAINTIFF'S EXHIBIT NO. 54 WAS PREVIOUSLY

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1 MARKED FOR IDENTIFICATION.)

2 MR. VARTAIN: YES, YOU CAN HAVE IT.

3 MR. LEBOWITZ: THANK YOU.

4 MR. VARTAIN: I APOLOGIZE, YOUR HONOR. THE E-MAIL  
5 PRINT IS MESMERIZING.

6 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

7 THE COURT: YES.

8 MR. LEBOWITZ: AND WE HAVE A STIPULATION ON  
9 EXHIBIT 54.

10 THE COURT: CORRECT. EXHIBIT 54 WILL BE ADMITTED.

11 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

12 (PLAINTIFF'S EXHIBIT NO. 54 WAS ADMITTED INTO  
13 EVIDENCE.)

14 MR. VARTAIN: I HAVE NO OBJECTION TO THE ADMISSION. I  
15 DO THINK IT'S CUMULATIVE TO WALK THE WITNESS THROUGH IT UNLESS,

16 YOU KNOW --

17 THE COURT: YOU KNOW, I WILL LET HIM TAKE HIS --

18 MR. LEBOWITZ: THIS IS MY LAST PIECE OF IT.

19 MR. VARTAIN: OKAY.

20 MR. LEBOWITZ: THANK YOU.

21 Q. SO EXHIBIT 54 IS AN E-MAIL FROM PROFESSOR BLOUGH TO  
22 YOU ON AUGUST 7, 2007?

23 A. YES.

24 Q. AND SHE BEGINS THE E-MAIL BY TELLING YOU THAT SHE HAS  
25 CAREFULLY READ BOTH YOUR LETTER AND A LETTER SHE HAD ALSO READ  
26 FROM PRESIDENT HAIGHT OFFERING HER RE-EMPLOYMENT FOR THE FALL,

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1 CORRECT?

2 A. YES.

3 Q. AND THEN SHE GOES THROUGH ALL OF THE VARIOUS REASONS  
4 AND THE HISTORY, AGAIN, EVERYTHING THAT'S GONE ON BETWEEN  
5 HERSELF AND THE COLLEGE OVER THE PAST YEAR-AND-A-HALF, CORRECT?

6 A. YES.

7 Q. SHE GOES OVER HER MEDICAL CONDITION AGAIN, RIGHT?

8 A. YES.

9 Q. AND SHE SUMMARIZES EVERYTHING THAT HAS GONE ON BETWEEN  
10 HER AND THE COLLEGE OVER THIS TIME PERIOD, RIGHT?

11 A. YES.

12 Q. AND IN THE END, SHE TELLS YOU THAT SHE'S DETERMINED  
13 THAT SHE -- THAT SHE CANNOT ACCEPT THE OFFER OF EMPLOYMENT,

14 CORRECT?

15 A. I DON'T SEE IT SPECIFICALLY IN HERE BUT, YES, I

16 BELIEVE IT'S HERE.

17 Q. OKAY.

18 AND AFTER AUGUST 7, 2007, HAVE YOU HAD ANY OTHER

19 EITHER WRITTEN OR VERBAL COMMUNICATIONS WITH PROFESSOR BLOUGH?

20 A. I DON'T BELIEVE SO.

21 Q. SINCE PROFESSOR BLOUGH REJECTED THIS OFFER OF

22 RE-EMPLOYMENT FOR THE FALL 2007, HAVE YOU ATTEMPTED IN ANY WAY

23 TO SEE IF PROFESSOR BLOUGH WOULD BE INTERESTED IN ANY OTHER

24 EMPLOYMENT WITH THE COLLEGE?

25 A. NO.

26 Q. SINCE THIS LAST E-MAIL FROM PROFESSOR BLOUGH ON

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1 AUGUST 7, 2007, TO YOUR KNOWLEDGE, HAS THE COLLEGE DONE ANYTHING

2 TO SEE IF THERE WOULD BE A DIFFERENT AVAILABILITY OF CLASSES FOR

3 HER?

4 MR. VARTAIN: OBJECTION, AMBIGUOUS.

5 THE COURT: OVERRULED.

6 MR. LEBOWITZ: Q. YOU CAN ANSWER.

7 A. NO, NOT SPECIFICALLY. SINCE SHE HAD TURNED US DOWN,

8 WE WERE NOT PURSUING IT.

9 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS, YOUR HONOR.

10 THE COURT: THANK YOU.

11 CROSS-EXAMINATION?

12 MR. VARTAIN: THANK YOU, YOUR HONOR. CAN I HAVE  
13 30 SECONDS JUST TO ORGANIZE?

14 THE COURT: SURE.

15 JUST TO LET YOU KNOW, MR. VARTAIN, I'M GOING TO GIVE  
16 YOU UNTIL 20 PAST TO RESERVE 20 MINUTES FOR REDIRECT.

17 MR. VARTAIN: I WILL TRY TO BEAT THE CLOCK. I WON'T  
18 GO BEYOND THAT.

19 THE COURT: YOU WON'T.

20 MR. VARTAIN: I'M GOING TO TRY TO LEAVE OUT THE PAPER  
21 AS MUCH AS I CAN. BUT I'D LIKE TO JUST GET --

22 DO YOU HAVE ALL THE EXHIBITS HERE?

23

24 CROSS-EXAMINATION

25 BY MR. VARTAIN:

26 Q. SO LET'S FIRST COVER THE LAST POINT THAT THE COUNSEL

654

1 ASKED YOU. IN AUGUST 2007, YOU SAID THAT IT WAS YOUR  
2 UNDERSTANDING THAT PROFESSOR BLOUGH REJECTED THE OFFER OF  
3 EMPLOYMENT OF THE COLLEGE, THE HALF-TIME POSITION?

4 A. YES.

5 Q. AND HAS SHE EVER CONTACTED YOU SINCE THEN TO SAY SHE  
6 CHANGED HER MIND, THAT SHE'S READY TO COME BACK?

7 A. NO.

8 Q. TO YOUR KNOWLEDGE, HAS PROFESSOR BLOUGH CONTACTED  
9 ANYBODY IN THE UNIVERSITY -- IN THE COLLEGE, THE PRESIDENT, THE

10 DEANS, TO TELL THEM SHE'S CHANGED HER MIND, SHE'S READY TO COME  
11 BACK?  
12 A. NO, NOT TO MY KNOWLEDGE.  
13 Q. DO YOU KNOW, HAS THE COLLEGE DONE ANYTHING WITH HER  
14 PROFESSORIAL OFFICE ON THE CAMPUS?  
15 A. HER OFFICE REMAINS AS THE DAY SHE LEFT IT.  
16 Q. AND DOES THE COLLEGE STILL CARRY HER ON ITS LIST AS A  
17 FACULTY MEMBER ON LEAVE OF ABSENCE?  
18 A. SHE'S STILL LISTED IN THE ACADEMIC AFFAIRS OFFICE.  
19 Q. SO THAT IF SHE CHANGED HER MIND, IS IT YOUR  
20 UNDERSTANDING THAT THE COLLEGE WOULD, SUBJECT TO MEDICAL  
21 VERIFICATION, TAKE HER BACK?  
22 A. YES.  
23 MR. LEBOWITZ: OBJECTION, CALLS FOR SPECULATION.  
24 THE COURT: OVERRULED.  
25 MR. VARTAIN: Q. IS YOUR ANSWER YES?  
26 A. YES.

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1 Q. BUT SHE'S NEVER ASKED TO COME BACK, AS FAR AS YOU  
2 KNOW?  
3 A. NO.  
4 Q. AND THE LAWSUIT WAS FILED WITHIN A MATTER OF WEEKS  
5 AFTER SHE REJECTED THE OFFER?  
6 A. YES.  
7 Q. NOW, IN THE SPRING OF 2007, PRECEDING THE CONTRACT



8 LETTERS, THE HALF-TIME CONTRACT LETTERS, YOU WERE WORKING TO TRY  
9 TO FIGURE OUT WHAT HER COURSE LOAD WAS GOING TO BE FOR THE FALL?

10 A. YES.

11 Q. AND I THINK YOU TOLD THE JURY THAT, FIRST, THE PERSON  
12 IN CHARGE OF THE COURSES, THE PROVOST, DR. KELLY, SAID, "I DON'T  
13 THINK WE HAVE ANY COURSES AVAILABLE," CORRECT?

14 MR. LEBOWITZ: OBJECTION, MISSTATES THE TESTIMONY.

15 THE COURT: THAT DOES MISSTATE WHAT SHE PREVIOUSLY  
16 SAID.

17 MR. VARTAIN: I THINK IT'S CLOSE. THE PROVOST SAID TO  
18 YOU, "WE DON'T HAVE ANY COURSES FOR MARCY BLOUGH IN THE FALL."  
19 HE DIDN'T USE THE WORD "AVAILABLE." THAT'S WHAT THE COUNSEL --

20 MR. LEBOWITZ: HE DIDN'T USE THE WORD "THINK."

21 THE COURT: DIDN'T USE THE WORD "THINK."

22 MR. VARTAIN: THAT'S WHAT HAPPENS WHEN I DON'T LOOK AT  
23 THE PAPER.

24 MR. LEBOWITZ: THAT'S WHY I USE IT.

25 MR. VARTAIN: OKAY.

26 Q. WHATEVER. I AM GOING TO -- I HATE THAT WORD

656

1 "WHATEVER."

2 YOU WENT BACK AND WORKED WITH THE PROVOST, AND WITHIN  
3 A MATTER OF WEEKS OR WITHIN THAT PERIOD OF APRIL OR MAY, THEY  
4 CHANGED THE COURSES AROUND SO THAT THEY CAME UP WITH A -- THEY  
5 REASSIGNED THE COURSES THAT THE OTHER GUY WAS GOING TO TEACH AND

6 THEY GAVE THEM TO PROFESSOR BLOUGH?

7 A. INITIALLY, HER LAW COURSES HAD BEEN ALREADY ASSIGNED  
8 TO A GENTLEMAN WHO HAD GONE BACK FULL-TIME TEACHING. BUT YES, I  
9 DID GO THEN AND ASKED WHAT ELSE COULD SHE TEACH, AND WE CAME UP  
10 WITH THOSE CLASSES.

11 Q. SO IN THE END, INITIALLY, THERE WASN'T ANY COURSES FOR  
12 HER, BUT WITHIN A MATTER OF WEEKS YOU ARRANGED TO HAVE HER OLD  
13 COURSES GIVEN BACK TO HER; IS THAT FAIR TO SAY?

14 A. NOT HER OLD COURSES, BUT ONES THAT SHE WAS CAPABLE OF  
15 TEACHING.

16 Q. IT WASN'T THE ONES, THE EXACT ONES SHE HAD TAUGHT THE  
17 YEAR BEFORE, BUT IT WAS THE ONES SHE HAD BEEN TEACHING?

18 A. RIGHT.

19 Q. OKAY.

20 SO WHATEVER THE ASSIGNMENTS WERE, THEY WERE TO COURSES  
21 THAT SHE KNEW HOW TO TEACH?

22 A. YES.

23 Q. AND YOU ARRANGED IT SO THAT THE PROFESSORS THAT HAD  
24 ALREADY BEEN IN THE CATALOG TO TEACH, YOU TOOK THEM AWAY FROM  
25 THOSE PROFESSORS?

26 A. THE ADJUNCT THAT WE MAY HAVE HIRED FOR THOSE CLASSES,

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1 WE THEN UNHIRED THEM.

2 Q. TO MAKE ROOM FOR PROFESSOR BLOUGH?

3 A. YES.

4 Q. OKAY. AND THAT WAS THE COURSES FOR THE HALF-TIME  
5 POSITION THAT PROFESSOR BLOUGH REJECTED?

6 A. YES, TWO CLASSES.

7 Q. OKAY.

8 WHEN YOU PUT IN THAT HALF-TIME CONTRACT OFFER TO HER  
9 THAT YOU WERE GOING TO GUARANTEE HER FULL-TIME HEALTH AND DENTAL  
10 BENEFITS, WAS THAT AN EXCEPTION OR A SPECIAL ACCOMMODATION FOR  
11 HER, PROFESSOR BLOUGH?

12 A. YES. THAT'S AN EXCEPTION TO OUR POLICY, WHICH STATES  
13 THAT EMPLOYEES MUST WORK AT LEAST 80 PERCENT TO BE ELIGIBLE FOR  
14 BENEFITS.

15 Q. AND THAT NORMAL POLICY THAT SAYS EMPLOYEES ARE  
16 SUPPOSED TO WORK 80 PERCENT TO BE ELIGIBLE FOR BENEFITS, IS THAT  
17 THE POLICY THAT EARLIER IN THE SPRING HAD CAUSED YOUR CLERK TO  
18 SEND THAT COBRA LETTER, THE ONE THAT HAD THE WORD "TERMINATION"  
19 IN IT?

20 A. YES. ONCE AN EMPLOYEE FALLS BELOW 80 PERCENT, WE  
21 WOULD AUTOMATICALLY SEND OUT THE COBRA LETTER.

22 Q. SO THE DOCTOR HAD GIVEN, IN THE SPRING -- DR. MISSETT  
23 HAD SENT YOU THAT OPINION THAT SHE WOULD ONLY BE WORKING  
24 50 PERCENT TIME. SO IS IT TRUE THAT YOU KNEW SHE WAS GOING TO  
25 BE DROPPING DOWN BELOW THE 80 PERCENT THRESHOLD?

26 A. YES.

1 Q. SO THAT'S WHY YOU HAD YOUR CLERK SEND THE COBRA

2 LETTER?

3 A. EXACTLY.

4 Q. THERE WAS THAT WORD "TERMINATION" IN THE COBRA LETTER  
5 THAT WAS SIGNED BY THE CLERK. YOUR CLERK ISN'T AUTHORIZED TO  
6 DISCHARGE ANY EMPLOYEE, IS SHE?

7 A. NOT AT ALL.

8 Q. AND WHO IS THE OFFICER OF THE COLLEGE THAT IS ALLOWED  
9 TO SIGN A TERMINATION LETTER FOR A FACULTY MEMBER?

10 A. IT WOULD BE THE PRESIDENT. ALL FACULTY APPOINTMENTS  
11 ARE THROUGH THE PRESIDENT'S OFFICE.

12 Q. HAS THE PRESIDENT OF THE COLLEGE EVER SIGNED THE  
13 TERMINATION LETTER FOR PROFESSOR BLOUGH, TO YOUR KNOWLEDGE?

14 A. NO.

15 Q. SO WAS THAT A FORM LETTER THAT YOUR CLERK SENT OUT?

16 A. IT'S A FORM LETTER, UNFORTUNATELY, THAT MOST COBRA  
17 LETTERS ARE BECAUSE OF EMPLOYEES TERMINATING.

18 Q. OKAY.

19 A. UNFORTUNATELY, THAT WAS THE LETTER.

20 Q. WITHIN A FEW WEEKS OF SENDING OUT THAT LETTER CAME THE  
21 LETTER THAT SENT -- THAT YOUR BOSS, MR. HITE, SENT TO HER,  
22 SAYING THAT SHE WOULD BE GETTING HER HALF-TIME CONTRACT SOON,  
23 CORRECT?

24 A. YES.

25 Q. SO DID PROFESSOR BLOUGH EVER TELL YOU IN THAT TIME  
26 PERIOD THAT SHE THOUGHT SHE HAD BEEN FIRED, AS OPPOSED TO THAT A

1 CONTRACT WAS ON ITS WAY?

2 A. NO.

3 Q. IN THE CONTRACT, THE HALF-TIME CONTRACT, YOU WROTE IN  
4 THAT LETTER THAT PROFESSOR BLOUGH COULD COME UP FOR  
5 CONSIDERATION OR EVALUATION FOR A SIX-YEAR CONTRACT, IF SHE  
6 ACCEPTED THE CONTRACT AND CAME BACK TO WORK?

7 A. YES.

8 Q. AND YOU WROTE IN THAT LETTER THAT SHE WOULD BE  
9 EVALUATED FOR A SIX-YEAR CONTRACT IF SHE CHOSE TO REQUEST OR  
10 APPLY ON THE SAME CRITERIA ALL OTHER FACULTY MEMBERS GET  
11 EVALUATED, CORRECT?

12 A. YES.

13 Q. DID YOU CHECK INTO THE FILES OF THE COLLEGE TO SEE  
14 WHETHER OR NOT IT WAS TRUE THAT THE PRESIDENT, PRESIDENT LOPEZ,  
15 HAD NEVER SIGNED OFF ON HER GETTING A SIX-YEAR CONTRACT UP UNTIL  
16 YOU SENT THAT LETTER OUT?

17 A. I WAS ASKED AT SOME POINT DURING THIS TO GO INTO BOARD  
18 MINUTES TO CONFIRM WHETHER OR NOT THERE WAS SUCH A LETTER, AND  
19 NEVER DID FIND A LETTER.

20 Q. SO DID YOU LOOK IN HER PERSONNEL FILE TO MAKE SURE  
21 THAT THE PRESIDENT HAD NEVER SENT A LETTER GIVING HER A SIX-YEAR  
22 CONTRACT?

23 A. YES.

24 Q. AND YOU FOUND NO SUCH LETTER?

25 A. RIGHT.

26 Q. SO WHEN YOU SENT THAT LETTER INFORMING

1 PROFESSOR BLOUGH THAT IF SHE CAME BACK FOR THE HALF-TIME JOB FOR  
2 THE YEAR, SHE COULD COME UP FOR CONSIDERATION FOR THE SIX-YEAR  
3 CONTRACT, IT WAS YOUR UNDERSTANDING SHE HAD NEVER BEEN AWARDED  
4 THE SIX-YEAR CONTRACT. IT WAS STILL ON HOLD; IS THAT CORRECT?

5 A. CORRECT.

6 Q. AND YOU TALKED TO -- THE OTHER OFFICERS OF THE  
7 COLLEGE, THEY CONFIRMED THAT THAT SIX-YEAR CONTRACT HAD JUST  
8 BEEN ON HOLD AND HAD NEVER BEEN APPROVED, CORRECT?

9 A. WELL, AGAIN, THOSE APPOINTMENTS ARE MADE THROUGH THE  
10 PRESIDENT'S OFFICE. AND I COULD FIND NO CONFIRMATION BY THE  
11 PRESIDENT'S OFFICE THAT APPOINTMENT HAD NEVER BEEN MADE, EVER  
12 BEEN MADE.

13 Q. ONLY THE PRESIDENT CAN SIGN OFF ON A SIX-YEAR  
14 CONTRACT, CORRECT?

15 A. ONLY THE PRESIDENT CAN SIGN OFF ON ANY FACULTY  
16 CONTRACT.

17 Q. OKAY.

18 YOU ALSO, IN YOUR CONTRACT LETTERS, ONE OF WHICH  
19 WASN'T PUT UP FOR THE JURY TO SEE, BUT I'M NOT GOING TO -- WE  
20 CAN DO THAT LATER AT ANOTHER TIME. IN THAT CONTRACT LETTER, YOU  
21 TOLD PROFESSOR BLOUGH THAT ALL OF HER DISABILITY ACCOMMODATION  
22 REQUESTS WERE GRANTED, DID YOU?

23 A. YES.

24 Q. THE SMALL CLASS SIZES, THE REST TIME IN BETWEEN

25 CLASSES, AND REDUCING THE NUMBER OF STUDENTS?

26 A. RIGHT. THE CLASS SIZE, THE DAYS OF THE WEEK AND THE

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1 HOURS IN BETWEEN CLASSES.

2 Q. BECAUSE IT WAS YOUR UNDERSTANDING THAT SHE STILL HAD  
3 THIS FATIGUE PROBLEM AND SHE NEEDED TO REST. DID SHE ASK FOR  
4 ANY ACCOMMODATIONS THAT YOU DIDN'T WRITE AND GUARANTEE IN THAT  
5 LETTER?

6 A. SHE ASKED FOR THOSE ACCOMMODATIONS AND WE GRANTED  
7 THEM.

8 Q. I ASKED A BAD QUESTION. THE QUESTION I REALLY MEANT  
9 TO ASK WAS, DID SHE ASK FOR ANY MORE ACCOMMODATIONS THAN WHAT  
10 YOU GUARANTEED HER?

11 A. NO, BUT WE WOULD CERTAINLY LISTEN TO ANY REQUESTS SHE  
12 MADE.

13 Q. BECAUSE I SAW THAT YOU INVITED HER TO COME AND SEE YOU  
14 IF SHE HAD ANY MORE ACCOMMODATION REQUESTS. DID YOU PUT THAT IN  
15 THE LETTER?

16 A. YES.

17 Q. DID SHE EVER COME AND ASK YOU FOR ANY OTHER  
18 ACCOMMODATIONS?

19 A. NO.

20 Q. OTHER THAN ASKING YOU THAT SHE WANTED TO BE PAID FOR  
21 THE WAGES WHILE SHE WAS ON MEDICAL LEAVE, DID SHE ASK YOU FOR  
22 ANYTHING OTHER THAN THE ATTORNEYS' FEES THAT YOU WERE UNWILLING

23 TO GIVE HER?

24 A. (NO RESPONSE.)

25 MR. VARTAIN: THAT WAS A BAD QUESTION. SHE ASKED FOR

26 PAIN AND SUFFERING. THAT'S RIGHT.

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1 YOU SHOULD HAVE OBJECTED. THAT WAS A BAD QUESTION.

2 YOU'RE BEING NICE TO ME. THAT'S THE RECIPROCITY THAT I INSISTED

3 ON AND YOU -- OKAY.

4 Q. YOU SAID IN THAT LETTER ABOUT THE SIX-YEAR CONTRACT

5 THAT, QUOTE, "PLEASE BE AWARE THAT, YES, WHILE IN 2006 THE

6 ACADEMIC DEAN MADE A RECOMMENDATION FOR A SIX-YEAR CONTRACT FOR

7 YOU AND FOR OTHERS, THE THEN PRESIDENT OF THE COLLEGE DID NOT

8 APPROVE A NUMBER OF THESE RECOMMENDATIONS, INCLUDING YOURS."

9 A. YES.

10 Q. WHEN YOU WROTE THAT, YOU WERE REFERRING TO THE THEN

11 PRESIDENT, PRESIDENT LOPEZ?

12 A. YES.

13 Q. AND THE FACT THAT HE HAD NOT APPROVED THE SIX-YEAR

14 CONTRACT FOR PROFESSOR BLOUGH?

15 A. YES.

16 Q. AND SOME OTHER PEOPLE AS WELL?

17 A. YES.

18 Q. OKAY.

19 YOU ALSO SAID, "YOU WILL HAVE THIS SAME OPTION TO COME

20 UP FOR CONSIDERATION FOR CONTRACT THIS YEAR, AS DO OTHERS WHO



21 ARE NOT THEN APPROVED." YOU WROTE THAT?

22 A. YES.

23 Q. WERE YOU TRYING TO CONVEY TO PROFESSOR BLOUGH THAT SHE  
24 WOULD BE TREATED EQUALLY AS TO ANY OTHER FACULTY MEMBERS, EVEN  
25 THOUGH SHE HAD BEEN ON MEDICAL LEAVE?

26 A. YES, SHE WOULD BE TREATED THE SAME AS ANY OTHER

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1 FACULTY MEMBER.

2 Q. MR. LEBOWITZ ASKED YOU -- I'M GOING TO GO BACK IN  
3 TIME, NOW. WE'VE COVERED LAST YEAR, 2007, WHEN THE CONTRACT  
4 OFFER WENT TO PROFESSOR BLOUGH AND SHE REJECTED IT.

5 NOW, I WANT TO GO BACK TO 2006, WHEN YOU WERE HAVING  
6 ALL THE BACK AND FORTH, WAS SHE GOING TO GO TO DR. MISSETT AGAIN  
7 OR WASN'T SHE, OKAY? SO THAT'S THE POINT IN TIME.

8 I DON'T NEED TO PUT UP ALL THE LETTERS THERE, BUT WAS  
9 IT CLEAR TO YOU THAT THE LETTERS PRESIDENT LOPEZ WROTE AND THAT  
10 YOU WROTE TO PROFESSOR BLOUGH CONVEYED TO HER THAT ALL THE  
11 MEDICAL INFORMATION THAT SHE HAD SHOULD GO TO DR. MISSETT, THAT  
12 THE COLLEGE REALLY DIDN'T WANT TO BE THE PEOPLE WHO ANALYZED HER  
13 MEDICAL INFORMATION?

14 A. YES. ALL I WANTED MARCY TO UNDERSTAND WAS THAT HE WAS  
15 THE INDEPENDENT MEDICAL EVALUATOR, AND I OR ANYBODY ELSE AT THE  
16 COLLEGE DID NOT NEED TO SEE MEDICAL INFORMATION ON HER, BUT THAT  
17 SHOULD GO TO DR. MISSETT.

18 Q. AND ISN'T IT TRUE THAT ALL OF THE MEDICAL INFORMATION

19 THAT PROFESSOR BLOUGH GAVE TO YOU THAT SUMMER, IT ALL CAME AFTER  
20 THE PRESIDENT OF THE COLLEGE HAD SENT THE LETTER IN MAY, STATING  
21 THAT HE WAS WANTING HER TO GO SEE DR. MISSETT AS THE INDEPENDENT  
22 MEDICAL EVALUATOR, CORRECT?

23 A. YES.

24 Q. SO ALL THE MEDICAL INFORMATION THAT SHE WAS SENDING TO  
25 THE COLLEGE CAME AFTER THE POINT IN TIME THAT THE COLLEGE HAD  
26 SELECTED AND ANNOUNCED THAT DR. MISSETT WOULD HANDLE THE MEDICAL

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1 ISSUES, CORRECT?

2 A. YES.

3 Q. DID PROFESSOR BLOUGH EVER TELL YOU THAT SHE DIDN'T  
4 REALIZE THAT DR. MISSETT WAS THE ONE SHE SHOULD SEND ALL HER  
5 MEDICAL INFORMATION TO?

6 A. NO. SHE NEVER TOLD ME THAT.

7 Q. SHE JUST DIDN'T WANT TO SEND IT TO DR. MISSETT,  
8 CORRECT?

9 A. SHE JUST OBJECTED TO DR. MISSETT AND THOUGHT THAT ONE  
10 OF HER OTHER DOCTORS COULD MAKE THAT DECISION. I WAS NOT EVEN  
11 AWARE OF ALL OF HER MEDICAL ISSUES UNTIL I SAW SOME OF THAT  
12 INFORMATION.

13 Q. SOUNDED LIKE YOU DIDN'T REALLY WANT TO KNOW ABOUT HER  
14 PRIVATE MEDICAL INFORMATION?

15 A. WELL, THAT'S PERSONAL INFORMATION THAT, CERTAINLY, SHE  
16 HAS A RIGHT TO HAVE PRIVATE.

17 Q. WHEN THE PRESIDENT OF THE COLLEGE FIRST SENT THAT  
18 LETTER IN MAY, ASKING PROFESSOR BLOUGH TO GO SEE DR. MISSETT AND  
19 TAKE ALL HER MEDICAL INFORMATION TO HIM, DID THAT LETTER SAY  
20 THAT DR. MISSETT WAS INSTRUCTED TO NOT RELEASE ANY MEDICAL  
21 INFORMATION TO MENLO COLLEGE? DO YOU REMEMBER THAT?

22 A. I DON'T RECALL THE LETTER, SPECIFICALLY.

23 Q. OKAY. I'LL GET IT OUT THEN. MAY 8TH, 2006.

24 A. IT'S IN THE BOTTOM OF THE PILE YOU TOOK FROM ME.

25 Q. ON THE BOTTOM. THANK YOU.

26 WHERE IT SAYS, QUOTE -- YOU DIDN'T WRITE THIS. THIS

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1 IS PRESIDENT LOPEZ. QUOTE, "WE HAVE ASKED DR. MISSETT NOT TO  
2 SHARE YOUR MEDICAL RECORDS OR DETAILED MEDICAL INFORMATION WITH  
3 THE COLLEGE OR ANY PERSONNEL OF THE COLLEGE." THAT'S THE  
4 PHRASE.

5 DID PROFESSOR BLOUGH EVER TELL YOU THAT SHE WAS  
6 WORRIED THAT THE REASON SHE WAS, YOU KNOW, BAULKING AT GOING TO  
7 DR. MISSETT'S WAS THAT SHE WAS WORRIED THAT DR. MISSETT WOULD  
8 GIVE OUT HER PRIVATE MEDICAL RECORDS TO THE COLLEGE? DID SHE  
9 EVER SAY THAT?

10 A. NO, NOT AT ALL.

11 Q. THERE WERE SEVERAL LETTERS WHERE YOU TOLD  
12 PROFESSOR BLOUGH IN THE FALL THAT SHE WAS NOT GOING TO BE  
13 TERMINATED IN NOVEMBER, SHE WAS GOING TO BE KEPT ON MEDICAL  
14 LEAVE. AND SHE KEPT WRITING BACK TO YOU, SAYING, "ARE YOU SURE?"

15 ARE YOU SURE?" AND YOU KEPT WRITING BACK, SAYING, "YES, I'M  
16 SURE YOU'RE NOT GOING TO BE TERMINATED." YOU PUT THAT IN  
17 WRITING, DIDN'T YOU?

18 A. I CONFIRMED TO HER THAT SHE WAS NOT GOING TO BE  
19 TERMINATED, THAT WE WERE GOING TO EXTEND HER MEDICAL LEAVE PAST  
20 THE END OF HER 12-WEEK FMLA LEAVE.

21 Q. AND WAS THE THING THAT CAUSED THE COLLEGE TO SAY,  
22 "OKAY, WE'RE NOT GOING TO TERMINATE HER. WE'RE GOING TO KEEP  
23 HER ON MEDICAL LEAVE," THE THING THAT SHE FINALLY AGREED TO GO  
24 TAKE HER MEDICAL INFORMATION BACK TO DR. MISSETT AND GET  
25 RE-EVALUATED? WAS THAT THE THING THAT --

26 A. WELL, YES. I WAS TRYING TO CONVINCHE HER TO GO BACK

666

1 AND GET THE RE-EVALUATION WITH DR. MISSETT, AND GIVE HER THE  
2 TIME TO DO SO.

3 Q. AND THEN WHEN SHE AGREED TO DO THAT -- YOU ACTUALLY  
4 MADE THE -- YOU MADE THE APPOINTMENT FOR HER?

5 A. I DID. AT THAT TIME, I CALLED HIS OFFICE TO GET SOME  
6 DATES FOR HER.

7 Q. WHY DID YOU CALL, INSTEAD OF MAKING PROFESSOR BLOUGH  
8 CALL TO GET THE APPOINTMENT IN NOVEMBER TO SEE DR. MISSETT?

9 A. BECAUSE I WAS SINCERELY TRYING TO ASSIST HER TO GET  
10 BACK TO HIM SO WE COULD GET A RE-EVALUATION OF HER ABILITY TO  
11 WORK.

12 Q. DO YOU REMEMBER THAT WHEN SHE WENT BACK TO DR. MISSETT

13 IN NOVEMBER AND DECEMBER, IT TOOK A COUPLE OF MONTHS BEFORE HE  
14 FINISHED THE REPORT AND THEN SAID YOU CAN TAKE HER BACK HALF  
15 TIME? TOOK A COUPLE OF MONTHS THERE?

16 A. YES. SHE SAW HIM LATE LAST IN EARLY DECEMBER, AND  
17 BECAUSE OF THE HOLIDAYS IT WASN'T UNTIL -- I THINK I FINALLY  
18 CALLED HIS OFFICE IN FEBRUARY TO SEE IF WE COULD GET A STATUS,  
19 AND THEN HE GENERATED A LETTER IN MARCH.

20 Q. SO YOU WERE TRYING TO PROMPT DR. MISSETT TO MOVE IT  
21 ALONG?

22 A. YES.

23 Q. IS THAT TRUE?

24 A. YES.

25 Q. DID YOU KEEP PROFESSOR BLOUGH INFORMED THAT YOU WERE  
26 TRYING TO PROMPT HIM TO GET THE REPORT OUT?

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1 A. I DON'T RECALL SPECIFICALLY ON THAT.

2 Q. OKAY.

3 WHENEVER SHE CALLED, DID YOU RESPOND TO HER CALLS AND  
4 HER E-MAILS?

5 A. I RESPONDED AS SOON AS I COULD. AS SOON AS I HAD  
6 INFORMATION.

7 Q. I WOULD LIKE TO PUT A DEFENSE EXHIBIT IN FRONT OF YOU.  
8 EXCUSE ME.

9 CAN I HAVE ONE SECOND, YOUR HONOR?

10 THE COURT: SURE.

11 MR. VARTAIN: THE COUNSEL ASKED ABOUT TRAINING  
12 PROGRAMS OF THE COLLEGE. I'D LIKE TO ASK YOU TO LOOK AT GG OF  
13 THE COLLEGE, THE COLLEGE'S EXHIBITS.

14 (DEFENDANT'S EXHIBIT GG WAS PREVIOUSLY MARKED  
15 FOR IDENTIFICATION.)

16 MR. VARTAIN: THANK YOU.

17 Q. I KNOW THIS BROCHURE OF THE COLLEGE'S EMPLOYMENT  
18 TRAINING PREDATED YOU. IS THAT TRUE THAT IT DID? YOU CAME TO  
19 THE COLLEGE IN 2006?

20 A. YES.

21 Q. AND IS THIS A TRAINING BROCHURE THAT'S IN THE FILES OF  
22 THE HUMAN RESOURCES DEPARTMENT?

23 A. YES.

24 Q. WOULD YOU LOOK AT EXHIBIT GG. YOU SEE THAT UNDER ITEM  
25 SIX OF THE AGENDA FOR AUGUST 2002, THE COLLEGE HAS AMONG ITS  
26 HANDOUTS FOR THE EMPLOYEES, DISABILITY; THEY HAVE RACE, GENDER,

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1 ETHNIC, SEXUAL ORIENTATION AND DISABILITY?

2 A. YES.

3 MR. LEBOWITZ: WHAT PAGE ARE YOU ON, COUNSEL?

4 MR. VARTAIN: N 509.

5 MR. LEBOWITZ: THANK YOU.

6 MR. VARTAIN: Q. AND YOU ATTENDED EMPLOYMENT TRAINING  
7 PROGRAMS PUT ON BY THE COLLEGE IN SUBSEQUENT YEARS, BUT YOU  
8 DIDN'T ACTUALLY DELIVER THOSE PROGRAMS; OUTSIDE PEOPLE DO,

9 CORRECT?

10 A. CORRECT.

11 Q. AND WHEN THE COUNSEL ASKED YOU IN YOUR DEPOSITION, DID  
12 YOU DELIVER TRAINING PROGRAMS, YOU SAID NO. YOU AREN'T THE ONE  
13 DELIVERING THE PROGRAMS. YOU HAD EXTERNAL PEOPLE, CORRECT?

14 A. YES.

15 Q. AND THERE WERE ALL AREAS OF EMPLOYMENT LAW COVERED IN  
16 THOSE PROGRAMS; IS THAT TRUE?

17 A. YES.

18 MR. VARTAIN: NO FURTHER QUESTIONS.

19 THE COURT: REDIRECT?

20 MR. LEBOWITZ: THANK YOU.

21 MR. VARTAIN: I'D LIKE TO OFFER GG, PLEASE.

22 THE COURT: ANY OBJECTION?

23 MR. LEBOWITZ: NO OBJECTION.

24 THE COURT: EXHIBIT GG WILL BE ADMITTED.

25 (DEFENDANT'S EXHIBIT GG WAS ADMITTED INTO  
26 EVIDENCE.)

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1 MR. VARTAIN: YOU WANT GG?

2 MR. LEBOWITZ: NO.

3

4 REDIRECT EXAMINATION

5 BY MR. LEBOWITZ:

6 Q. JUST A FEW MINUTES MORE.

7 ON THE ONE-YEAR CONTRACT, SIX-YEAR CONTRACT ISSUE

8 2007, JUST TALK ABOUT THAT FOR A SECOND.

9 YOU UNDERSTOOD, THROUGH YOUR RESEARCH OF THE PERSONNEL

10 FILE AND WHATEVER ELSE YOU DID, THAT BACK IN THE 2005 FALL

11 SEMESTER, PROFESSOR BLOUGH'S APPLICATION FOR A SIX-YEAR CONTRACT

12 RENEWAL HAD BEEN APPROVED FOR -- OR BEEN RECOMMENDED FOR

13 APPROVAL BY THE PERSONNEL COMMITTEE, CORRECT?

14 A. THE PERSONNEL COMMITTEE OF THE FACULTY, YES.

15 Q. AND THEN SUBSEQUENT TO THAT, THE ACADEMIC DEAN, DEAN

16 PRATT, HAD ALSO RECOMMENDED APPROVAL FOR THAT SIX-YEAR CONTRACT

17 RENEWAL, CORRECT?

18 A. I BELIEVE SO, YES.

19 Q. OKAY.

20 NOW, IN THE SUMMER OF 2007, WHEN THE COLLEGE OFFERED

21 HER THE ONE-YEAR, PART-TIME CONTRACT, THERE WAS NOTHING

22 PREVENTING THE COLLEGE FROM OFFERING HER THE SIX-YEAR CONTRACT,

23 WAS THERE? THERE WAS NOTHING THAT DR. MISSETT SAID TO THE

24 COLLEGE, FOR INSTANCE, THAT SAID, "MAKE SURE YOU ONLY HAVE HER

25 BACK FOR ONE YEAR," RIGHT?

26 A. NO, NOTHING DR. MISSETT SAID.

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1 Q. OKAY. SO THE DECISION TO ONLY OFFER ONE YEAR, AS

2 OPPOSED TO SIX, WAS A DECISION MADE SOLELY BY THE COLLEGE,

3 CORRECT?

4 A. YES, EXCEPT THAT WE WOULD NOT GIVE A SIX-YEAR CONTRACT



5 TO ANYBODY OTHER THAN FULL-TIME FACULTY, AND SHE HAD ONLY  
6 BEEN...

7 Q. THE COLLEGE COULD HAVE -- JUST AS IT MADE AN EXCEPTION  
8 IN REGARDS TO THE BENEFITS, COULD HAVE MADE AN EXCEPTION  
9 ACCOMMODATION FOR PROFESSOR BLOUGH AND SAID, "FOR YOU, BECAUSE  
10 OF WHATEVER REASONS, FOR INSTANCE, YOUR 29 YEARS OF GREAT  
11 HISTORY WITH THE COLLEGE, WE WILL GO AHEAD AND GIVE YOU A  
12 SIX-YEAR CONTRACT, WHERE THE FIRST YEAR WILL BE HALF TIME."

13 COULD HAVE DONE THAT, RIGHT?

14 A. I SUPPOSE IT COULD HAVE.

15 Q. AND IF, IN FACT, AFTER THAT ONE YEAR THE COLLEGE  
16 BELIEVED THAT PROFESSOR BLOUGH WAS MEDICALLY OR FOR ANY OTHER  
17 REASON INCAPABLE OF PERFORMING THE ESSENTIAL FUNCTIONS OF HER  
18 JOB, THE COLLEGE COULD HAVE EXERCISED SECTION 3.9.3.3 OF THE  
19 FACULTY HANDBOOK AND ENDED HER EMPLOYMENT, CORRECT?

20 A. CORRECT.

21 Q. AND SO BY OFFERING HER A SIX-YEAR CONTRACT IN THE  
22 SUMMER 2007, THE COLLEGE WOULD NOT HAVE BEEN IN ANY WORSE  
23 POSITION, CORRECT?

24 A. WORSE POSITION HOW?

25 Q. WELL, THEY WOULDN'T BE OBLIGATED TO DO ANYTHING MORE  
26 THAN WHEN THEY OFFERED HER A ONE-YEAR CONTRACT, RIGHT?

671

1 A. LITERALLY, RIGHT.

2 Q. RIGHT. AND BECAUSE ISN'T IT TRUE THAT THE REASON THE

3 COLLEGE AT LEAST STATED THAT THEY OFFERED THE ONE-YEAR CONTRACT  
4 WAS TO MAKE SURE THAT SHE WAS UP TO THE JOB, PHYSICALLY OR  
5 MEDICALLY, CORRECT?

6 A. CORRECT.

7 Q. AND IF, IN FACT, SHE HAD A SIX-YEAR CONTRACT STARTING  
8 IN THE FALL OF 2007, IF, IN FACT, THE FACTS WERE THAT SHE WAS  
9 NOT UP TO THE JOB MEDICALLY, BY THE END OF THAT FIRST YEAR THE  
10 COLLEGE COULD HAVE EXERCISED THAT SECTION OF THE FACULTY  
11 HANDBOOK AND ENDED HER EMPLOYMENT, RIGHT?

12 A. IF THEY COULD HAVE ASCERTAINED THAT SHE WAS MEDICALLY  
13 IN ANY WAY INCAPABLE OF PERFORMING HER JOB.

14 Q. AND YOU KNEW THROUGH THE E-MAILS AND THE EXCHANGES  
15 WITH PROFESSOR BLOUGH, THAT THAT SIX-YEAR CONTRACT WAS VERY  
16 IMPORTANT TO HER?

17 A. CERTAINLY.

18 Q. AND THE SECURITY THAT A SIX-YEAR CONTRACT WOULD GIVE  
19 HER, THAT WAS EXTREMELY IMPORTANT TO HER?

20 A. CERTAINLY.

21 Q. AND SHE NEVER SAID ANYTHING TO THE COLLEGE TO INDICATE  
22 THAT SHE WANTED A GUARANTEE THAT EVEN IF SHE WERE DISABLED,  
23 TRULY DISABLED FROM WORKING, THAT SHE WOULD STILL BE PAID UNDER  
24 A SIX-YEAR CONTRACT, DID SHE?

25 A. SHE DID NOT MENTION ANYTHING ABOUT WHAT IF SHE WERE  
26 DISABLED; NO.

1 Q. SHE DIDN'T SAY TO THE COLLEGE, "I WANT MY SIX-YEAR  
2 CONTRACT WHETHER I AM CAPABLE OF WORKING OR NOT." SHE DIDN'T  
3 SAY THAT, DID SHE?

4 A. NO.

5 Q. NOW, A MOMENT AGO MR. VARTAIN WAS ASKING YOU QUESTIONS  
6 ABOUT PROFESSOR BLOUGH PROVIDING MEDICAL INFORMATION TO THE  
7 COLLEGE, HER OWN PERSONAL MEDICAL INFORMATION TO THE COLLEGE.  
8 TO YOUR KNOWLEDGE, PRIOR TO MAY 8TH, 2006, DID THE COLLEGE EVER  
9 ASK PROFESSOR BLOUGH TO PROVIDE MEDICAL INFORMATION FROM HER OWN  
10 TREATING PHYSICIANS?

11 A. PRIOR TO THE LETTER OF MAY 8TH?

12 Q. YES.

13 MR. VARTAIN: I'M GOING TO OBJECT. COULD YOU INQUIRE,  
14 COUNSEL, PRIOR TO MAY 8TH BUT AFTER WHAT DATE? WHAT'S THE TIME  
15 FRAME?

16 THE COURT: THANK YOU.

17 MR. LEBOWITZ: I AGREE. IT WAS TOO BROAD.

18 MR. VARTAIN: 30 YEARS?

19 MR. LEBOWITZ: Q. IN THE SPRING 2006 TIME PERIOD,  
20 WE'RE GOING TO FOCUS THESE QUESTIONS SPECIFICALLY ON THE SPRING  
21 2006 SEMESTER.

22 SO AT ANY TIME DURING THAT SEMESTER, PRIOR TO MAY 8TH,  
23 TO YOUR KNOWLEDGE, DID THE COLLEGE ASK PROFESSOR BLOUGH TO  
24 PROVIDE OPINIONS FROM HER OWN TREATING PHYSICIANS AS TO WHETHER  
25 OR NOT SHE WAS MEDICALLY ABLE TO CONTINUE WORKING?

26 A. TO MY KNOWLEDGE, NO.

1 Q. DID PROFESSOR BLOUGH EVER REFUSE, PRIOR TO MAY 8TH, TO  
2 PROVIDE MEDICAL INFORMATION TO THE COLLEGE?

3 A. I'M UNAWARE OF HER BEING ASKED OR REFUSING OR NOT  
4 REFUSING.

5 Q. SO ISN'T IT FAIR TO SAY THAT THE COLLEGE HAD NO IDEA  
6 -- PRIOR TO MAY 8TH HAD NO IDEA WHETHER OR NOT PROFESSOR BLOUGH  
7 WOULD HAVE BEEN WILLING TO GO TO HER OWN TREATING PHYSICIANS AND  
8 ASK THEM FOR THEIR OPINION AS TO HER ABILITY TO WORK?

9 MR. VARTAIN: SPECULATION, OBJECTION.

10 THE COURT: SUSTAINED.

11 MR. LEBOWITZ: Q. MR. VARTAIN ALSO ASKED YOU ABOUT  
12 THE MEDICAL DOCUMENTATION THAT PROFESSOR BLOUGH WAS SENDING TO  
13 YOU AND YOUR HESITANCY TO REVIEW IT OR LOOK AT IT BECAUSE OF THE  
14 PRIVACY ISSUES.

15 NOW, THOSE PRIVACY ISSUES ARE PROFESSOR BLOUGH'S  
16 PRIVACY, RIGHT?

17 A. IT'S INCUMBENT UPON THE HR DEPARTMENT TO ALSO PROTECT  
18 THE PRIVACY OF OUR EMPLOYEES.

19 Q. ABSOLUTELY. AND IT'S PROFESSOR BLOUGH'S PRIVACY THAT  
20 YOU'RE BOUND TO PROTECT, CORRECT?

21 A. YES.

22 Q. AND WHEN SHE'S SAYING IT'S OKAY FOR YOU TO LOOK AT  
23 THIS INFORMATION BY SENDING IT TO YOU AFFIRMATIVELY, ISN'T SHE  
24 TELLING YOU, "I'M OKAY. IT'S NOT AN ISSUE OF PRIVACY FOR ME,  
25 THAT YOU CAN LOOK AT THIS PARTICULAR INFORMATION THAT I'M

1 A. I WOULD ASSUME SO, SINCE SHE DID FREELY GIVE IT.

2 Q. OKAY.

3 YOU WERE ALSO ASKED BY MR. VARTAIN ABOUT SENDING  
4 DOCUMENTS, THESE MEDICAL DOCUMENTS TO THE COLLEGE AS OPPOSED TO  
5 SENDING THEM TO DR. MISSETT. NOW, THIS IS THE REASON WHY I WANT  
6 TO REFOCUS ON THESE DOCUMENTS, BECAUSE IT'S REALLY IMPORTANT,  
7 THESE E-MAILS. AND I WANT YOU TO LOOK AT EXHIBIT 17.

8 IN THE FIRST PARAGRAPH -- I'LL WAIT FOR YOU TO GET IT  
9 IN FRONT OF YOU. I'M SORRY. YOU DON'T HAVE IT.

10 MAY I APPROACH, YOUR HONOR?

11 THE COURT: YES.

12 MR. LEBOWITZ: THE LAST SENTENCE OF THIS E-MAIL --  
13 THIS IS A JULY 22ND, 2007 E-MAIL. THE LAST SENTENCE OF THE  
14 FIRST PARAGRAPH, PROFESSOR BLOUGH TELLS YOU, "I DO NOT  
15 UNDERSTAND HOW YOU CAN TAKE THE WORD OF DR. MISSETT, WHO HAD  
16 THESE LETTERS OVER MY OWN DOCTORS' OPINION AND MY OWN WORD."  
17 AND IT GOES ON.

18 Q. SO PROFESSOR BLOUGH WAS TELLING YOU, AS EARLY AS  
19 JULY 22ND, THAT SHE HAD GIVEN ALL OF THESE LETTERS THAT SHE WAS  
20 GIVING THE COLLEGE, SHE HAD ALREADY GIVEN THEM TO DR. MISSETT,  
21 RIGHT?

22 A. SHE IS, YES, INDICATING THAT SHE HAD GIVEN SOME  
23 MEDICAL INFORMATION TO DR. MISSETT.

24 Q. THE SAME LETTERS SHE'S TALKING ABOUT GIVING TO YOU,  
25 RIGHT?

26 A. I WOULD HAVE TO ASSUME THEY ARE THE SAME.

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1 Q. SO THE LETTERS SHE WAS SENDING TO THE COLLEGE WERE  
2 NOT -- WAS NOT ANYTHING DIFFERENT THAN WHAT SHE HAD ALREADY SENT  
3 TO DR. MISSETT?

4 MR. VARTAIN: OBJECTION, LACKS FOUNDATION THAT THE  
5 WITNESS HAS THAT PERSONAL KNOWLEDGE.

6 THE COURT: OVERRULED.

7 MR. VARTAIN: Q. YOU CAN ANSWER.

8 A. OKAY. ASK ME THAT AGAIN.

9 Q. YES.

10 SO YOU WERE AWARE, AS OF JULY 22ND, THAT ALL OF THE  
11 INFORMATION THAT PROFESSOR BLOUGH -- THE MEDICAL INFORMATION SHE  
12 WAS SENDING YOU IN THAT SUMMER, SHE HAD ALREADY SENT THAT TO  
13 DR. MISSETT?

14 A. I DID NOT KNOW IF IT WAS EVERYTHING. I KNEW THAT SHE  
15 SAID THAT SHE HAD PROVIDED DR. MISSETT WITH HER OTHER MEDICAL  
16 DOCTORS' INFORMATION.

17 Q. AND IT'S THE SAME DOCTORS' INFORMATION THAT SHE WAS  
18 GIVING TO YOU?

19 MR. VARTAIN: OBJECTION; AMBIGUOUS, ARGUMENTATIVE.

20 MR. LEBOWITZ: I'LL MOVE ON.

21 THE COURT: OVERRULED.

22 ALL RIGHT. THANK YOU.

23 MR. LEBOWITZ: Q. AND ANOTHER REASON WE LOOK AT THESE  
24 E-MAILS, AGAIN, IS EXHIBIT 31. NOW, 31, AGAIN, THIS IS AN  
25 E-MAIL FROM PROFESSOR BLOUGH TO YOU AROUND THE 29TH OF  
26 SEPTEMBER. AND THE SECOND PARAGRAPH, WHERE PROFESSOR BLOUGH IS

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1 TELLING YOU, AGAIN, ABOUT THE INTERCHANGE BETWEEN HERSELF AND  
2 DR. MISSETT AND HER OWN PHYSICIANS, CORRECT?

3 A. YES.

4 Q. AND SHE TELLS YOU IN THIS E-MAIL, STARTING THE SECOND  
5 SENTENCE, SHE SAYS, "AS SOON AS I RECEIVED DR. MISSETT'S LETTER  
6 FROM PRESIDENT LOPEZ" -- AND THIS IS -- I'LL STEP OUT. THIS IS  
7 IN EARLY JULY 2007. GOING BACK, "I TOOK STEPS TO CORRECT  
8 DR. MISSETT'S CONCLUSION ABOUT MY FITNESS TO CONTINUE TEACHING,  
9 WHEN ALL MY DOCTORS CONCLUDED JUST THE OPPOSITE. I THEN SENT  
10 THREE LETTERS AND ONE REPORT FROM MY OWN DOCTORS, WHICH WERE  
11 180 DEGREES DIFFERENT FROM DR. MISSETT'S REPORT TO PRESIDENT  
12 LOPEZ. DESPERATE TO TRY TO UNDERSTAND DR. MISSETT'S REPORT AND  
13 MENLO'S RESPONSE TO IT, I TOOK STEPS TO INFORM THE COLLEGE, MY  
14 EMPLOYER, THAT DR. MISSETT'S CONCLUSION WAS WRONG. I NOW HAVE  
15 NO FAITH IN DR. MISSETT, AS DID HE NOT LISTEN TO MY DOCTORS OR  
16 ME."

17 SO IN THAT LAST SENTENCE IN PARTICULAR,  
18 PROFESSOR BLOUGH IS TELLING YOU THAT SHE HAD GIVEN HER OWN  
19 DOCTORS' INFORMATION TO DR. MISSETT, CORRECT?

20 A. RIGHT.

21 Q. AND YOU UNDERSTOOD THAT WHEN YOU READ THIS LETTER?

22 A. YES.

23 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS, YOUR HONOR.

24 THE COURT: ANY RECROSS FOR THIS WITNESS?

25 MR. VARTAIN: JUST A LITTLE, YOUR HONOR.

26

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1 RECROSS EXAMINATION

2 BY MR. VARTAIN:

3 Q. I WANT TO BRING BACK THIS QUESTION OF A SIX-YEAR  
4 CONTRACT. SO IT'S YOUR TESTIMONY THAT WHEN PROFESSOR BLOUGH  
5 WENT OUT ON MEDICAL LEAVE IN 2006, SHE HAD NOT BEEN AWARDED A  
6 SIX-YEAR CONTRACT BY PRESIDENT LOPEZ; IS THAT CORRECT?

7 A. SHE HAD NOT BEEN AWARDED.

8 Q. SO THAT WHEN YOU HELPED ARRANGE THE ONE-YEAR CONTRACT  
9 IN 2007, SHE STILL HAD NOT YET BEEN AWARDED A SIX-YEAR CONTRACT,  
10 CORRECT?

11 A. CORRECT.

12 Q. SO SHE WAS IN THE SAME POSITION AFTER THE MEDICAL  
13 LEAVE AS SHE WAS AT THE TIME SHE WENT ON THE MEDICAL LEAVE,  
14 CORRECT?

15 A. CORRECT.

16 Q. AND SHE HADN'T DONE ANY TEACHING IN BETWEEN, CORRECT?

17 A. CORRECT.



18 MR. VARTAIN: THANK YOU.  
19 THE COURT: ANYTHING ELSE FOR THIS WITNESS?  
20 MR. LEBOWITZ: NOTHING FURTHER, YOUR HONOR.  
21 THE COURT: MS. SAPRAI, THANK YOU FOR YOUR TESTIMONY.  
22 I WILL TAKE THOSE EXHIBITS.  
23 AND SHE'S EXCUSED; IS THAT CORRECT?  
24 MR. LEBOWITZ: YES, YOUR HONOR.  
25 THE COURT: ALL RIGHT. YOU ARE FREE TO GO.  
26 PERHAPS THIS IS A GOOD TIME TO END FOR THE DAY.

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1 MR. LEBOWITZ: YES.  
2 THE COURT: LADIES AND GENTLEMEN, WE'VE REACHED THE  
3 END OF OUR COURT DAY. TOMORROW WE BEGIN AT 9:00 A.M. PLEASE,  
4 NOTE THE EARLIER START TIME. LEAVE YOUR NOTEBOOKS AND BADGES  
5 HERE. LET ME REMIND YOU, YOU ARE NOT TO FORM OR EXPRESS ANY  
6 OPINIONS IN THE CASE. YOU ARE NOT TO DO ANY RESEARCH,  
7 INVESTIGATION OR TALK TO ANYONE IN REGARD TO THE CASE.  
8 HAVE A GOOD EVENING, AND I WILL SEE YOU IN THE  
9 MORNING.  
10 (WHEREUPON, THE JURORS EXITED.)  
11 THE COURT: WE ARE BACK ON THE RECORD.  
12 ANYTHING MORE FOR THE RECORD TONIGHT?  
13 MR. LEBOWITZ: NO, YOUR HONOR.  
14 MR. VARTAIN: NO.  
15 THE COURT: OFF THE RECORD.

16 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN MATEO  
3 DEPARTMENT NO. 3 HON. BETH LABSON FREEMAN, JUDGE  
4  
5 MARCINE BLOUGH, )  
6 )  
7 ) PLAINIFF, )  
8 )  
9 ) VS. )CASE NO. CIV 465027  
10 )REPORTER'S CERTIFICATE  
11 ) MENLO COLLEGE, ET AL.,)  
12 )  
13 ) DEFENDANTS. )  
\_\_\_\_\_)

STATE OF CALIFORNIA )  
) SS  
COUNTY OF SAN MATEO )

14

15

I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE

16

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,

17

DO HEREBY CERTIFY THAT THE FOREGOING PAGES 513 THROUGH 680,

18

INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE

19

PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

20

21

DATED: OCTOBER 3, 2011

22

23

24

25

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CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER

26

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2                   IN AND FOR THE COUNTY OF SAN MATEO

3

4   MARCINE BLOUGH,    )

5                    )  
6    PLAINTIFF,    )

7                    )  
8    VS.            )CASE NO. CIV 465027

9                    )  
10   MENLO COLLEGE, ET AL.,)

11                    )  
12   DEFENDANTS.    )

13                    )  
14   \_\_\_\_\_)

15

16                   REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
17                   BEFORE: HONORABLE BETH LABSON FREEMAN, JUDGE  
18                   DEPARTMENT 3

19                   DECEMBER 10, 2008

20

21

22

23

24   A P P E A R A N C E S:

25

26

27   FOR THE PLAINTIFF: NOAH D. LEBOWITZ, ATTORNEY AT LAW  
28                   MARK C. PETERS, ATTORNEY AT LAW

29

30

31   FOR THE DEFENDANTS: MICHAEL J. VARTAIN, ATTORNEY AT LAW  
32                   LINDA K. ADLER, ATTORNEY AT LAW

33

34

35   REPORTED BY:    CHRISTINE M. PEREZ, CSR #10945

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18

(NONE WERE MARKED AT THIS TIME.)

19

20

21

22

23

24

25

26

682

1 PROCEEDINGS

2 DECEMBER 10, 2008 A.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. WE ARE ON THE RECORD IN  
4 BLOUGH VERSUS MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE  
5 PRESENT.

6 GOOD MORNING, LADIES AND GENTLEMEN. ALL JURORS AND  
7 ALTERNATES ARE HERE. I HOPE THAT ACCIDENT ON 101 DIDN'T CAUSE  
8 MANY OF YOU TOO MUCH TROUBLE. I ENDED UP TAKING THE SCENIC  
9 ROUTE FROM EL CAMINO TO SAN MATEO, SO THAT WAS A LITTLE BIT  
10 SLOW. OBVIOUSLY, YOU ALL GOT HERE ON TIME. I'M GLAD FOR THAT.

11 ALL RIGHT. WE'RE GOING TO RESUME THE PRESENTATION OF  
12 EVIDENCE.

13 AND AT THIS POINT, MR. LEBOWITZ?

14 MR. LEBOWITZ: WE'RE GOING TO BRING BACK PROFESSOR  
15 BLOUGH TO THE STAND.

16 THE COURT: PROFESSOR BLOUGH, IF YOU'D COME FORWARD TO  
17 THE WITNESS STAND, PLEASE. AND SINCE IT'S A NEW COURT DAY, I'M  
18 GOING TO HAVE YOU SWORN AGAIN.

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

20 (WHEREUPON, THE WITNESS WAS SWORN.)

21 THE WITNESS: I DO.

22 THE CLERK: PLEASE BE SEATED.

23

24 DIRECT EXAMINATION (RESUMED)

25 BY MR. LEBOWITZ:

26 Q. GOOD MORNING, PROFESSOR BLOUGH.

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1 A. GOOD MORNING.

2 Q. HOW ARE YOU DOING TODAY?

3 A. GOOD. HOW ARE YOU DOING?

4 Q. I'M ALL RIGHT. HAD THE SAME PROBLEMS ON 101.

5 SO WE'RE GOING TO STEP BACK INTO THE SEQUENCE WHERE WE  
6 LEFT OFF IN THE LAST PART OF YOUR EXAMINATION. WE WERE LEADING  
7 UP TO YOUR RETURN TO WORK AT THE COLLEGE IN 2003.

8 A. RIGHT.

9 Q. BEFORE WE GET THERE, THOUGH, I DO WANT TO TAKE ABOUT  
10 TWO OR THREE MINUTES TO TALK ABOUT A COUPLE OF DISCRETE TOPICS.  
11 WE'VE HEARD THE TERM "MIGRAINE HEADACHE" A COUPLE OF TIMES TO  
12 THIS POINT. JUST TO ORIENT YOU, WE TALKED ABOUT YOUR MIGRAINES  
13 LAST TIME, WHAT WE CALLED THE MASSIVE MIGRAINES THAT PUT YOU IN  
14 BED FOR A FEW DAYS. AND THEN YOU HEARD DR. HAYWARD'S TESTIMONY  
15 YESTERDAY, WHERE HE REFERENCED MIGRAINES, WHEN WE HAD TALKED  
16 WITH HIM.

17 CAN YOU EXPLAIN TO THE JURY WHAT, IF AT ALL,



18 DIFFERENCE THERE IS WHEN YOU USE THE TERM "MIGRAINE" FOR THOSE  
19 TWO DIFFERENT THINGS?

20 A. YES. WHEN I HAD CANCER, THE MIGRAINES WERE  
21 INCAPACITATING. I HAD TO LIE DOWN FOR THREE DAYS. I THREW UP  
22 CONSTANTLY. I COULDN'T EAT, SLEEP. I COULDN'T DO ANYTHING.  
23 THOSE ARE VERY STRONG MIGRAINES. WHAT DR. HAYWARD IS TALKING  
24 ABOUT IS, I'VE HAD HEADACHES SINCE I WAS A CHILD. I'VE ALWAYS  
25 HAD HEADACHES. AND WHAT HE'S TALKING ABOUT ARE STRONG HEADACHES  
26 THAT NEED SOMETHING STRONG.

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1 Q. AND SO WHEN YOU USED THE WORD "MIGRAINE" WITH  
2 DR. HAYWARD, WHICH WERE YOU REFERRING TO? THE MASSIVE  
3 KNOCK-YOU-OUT HEADACHES OR THESE OTHER KIND?

4 A. NOT THE KNOCK-YOU-OUT HEADACHES. THEY ENDED AFTER THE  
5 SURGERY; THE STRONG HEADACHES.

6 Q. OKAY.

7 THEN THERE WAS SOME TALK ABOUT YOUR VICODIN  
8 PRESCRIPTION. I WANT TO MAKE SURE WE ALL UNDERSTAND EXACTLY  
9 WHAT THIS IS. TELL US WHAT YOUR PRESCRIPTION IS RIGHT NOW.

10 A. ONE VICODIN PER DAY.

11 Q. THAT'S WHAT'S PRESCRIBED TO YOU?

12 A. THAT'S WHAT IS PRESCRIBED.

13 Q. DO YOU ACTUALLY TAKE ONE VICODIN PER DAY?

14 A. NO, I DO NOT.

15 Q. HOW LONG HAVE YOU HAD THIS PRESCRIPTION?

16 A. WELL, DR. MARCUS GAVE IT TO ME AND, NOW, MY NEW  
17 DOCTOR.

18 Q. SO SEVERAL YEARS?

19 A. YES.

20 Q. AND NOT EVEN TAKING ONE PER DAY, HAS THAT BEEN THE  
21 COURSE SINCE YOU'VE HAD THE PRESCRIPTION?

22 A. YES.

23 Q. SO YOU SAID DR. MARCUS PRESCRIBED IT TO YOU FIRST, AND  
24 HE WAS YOUR PRIMARY CARE PHYSICIAN AS WELL AS YOUR ONCOLOGIST AT  
25 THE TIME?

26 A. CORRECT.

685

1 Q. NOW, SINCE DR. MARCUS HAS BEEN UNABLE TO CONTINUE THE  
2 PRACTICE AND YOU HAVE SEEN DR. HAYWARD, HAS DR. HAYWARD TAKEN ON  
3 YOUR PRIMARY CARE FUNCTIONS?

4 A. NO. DR. HAYWARD DOES NOT DO THAT. HE'S JUST THE  
5 ONCOLOGIST.

6 Q. OKAY. SO WHO DO YOU GO TO FOR PRIMARY CARE?

7 A. PALO ALTO MEDICAL CENTER.

8 Q. AND WHEN YOU FIRST WENT TO PALO ALTO MEDICAL CENTER,  
9 DID YOU DISCUSS WITH THEM YOUR VICODIN PRESCRIPTION?

10 A. YES, I DID.

11 Q. AND DID THE DOCTORS AT THE PALO ALTO MEDICAL CENTER  
12 EXPRESS ANY CONCERN ABOUT YOUR PRESCRIPTION?

13 A. YES. THEY SAID EVERY PERSON OFF THE STREET ASKS FOR

14 VICODIN.

15 Q. AND SO WHAT, IF ANYTHING, DID THEY DO IN REGARDS TO  
16 THAT PRESCRIPTION?

17 A. THEY SENT ME TO A NEUROLOGIST TO HAVE ME TESTED, AND  
18 CHECKED, AND TO SEE IF I NEEDED IT -- IF I WAS ADDICTED TO IT,  
19 WHATEVER.

20 Q. SO DID YOU ACTUALLY GO TO A NEUROLOGIST?

21 A. I WENT TO A NEUROLOGIST.

22 Q. AND AFTER GOING TO THE NEUROLOGIST AND BEING ASSESSED  
23 BY THE NEUROLOGIST, DID THE PALO ALTO MEDICAL CENTER CONTINUE  
24 WITH YOUR VICODIN PRESCRIPTION?

25 A. YES. THE NEUROLOGIST, DR. WESTIN, SAID THIS IS FINE.  
26 SENT THAT NOTICE BACK TO MY PRIMARY CARE PHYSICIAN, AND SHE

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1 PRESCRIBED IT; ALTHOUGH IT IS UNDER HIS CARE, REALLY.

2 Q. OKAY.

3 SO, NOW, TELL US WHY IS IT THAT YOU GET THE  
4 PRESCRIPTION IN A -- YOU CALL IT A 90/90; 90 DAYS, 90 PILLS.  
5 TELL US WHY IS IT IN THAT FORMAT?

6 MR. VARTAIN: OBJECTION, FOUNDATION. THE ONLY THING I  
7 WOULD SUGGEST IS TO ORIENT THE JURY TO THE TIME FRAME. WHAT  
8 YEAR ARE WE TALKING ABOUT?

9 THE COURT: YES, WHY DON'T YOU SPECIFY AS TO --

10 MR. LEBOWITZ: SURE.

11 Q. HAS THE FORMAT IN WHICH YOU'VE RECEIVED YOUR

12 PRESCRIPTION FOR VICODIN CHANGED AT ALL OVER THE YEARS?

13 A. NO.

14 Q. OKAY.

15 SO PLEASE DESCRIBE FOR US WHY IT IS THAT YOU HAVE THIS  
16 90/90.

17 MR. VARTAIN: SAME OBJECTION. I THINK IT WILL BE  
18 HELPFUL TO KNOW WHAT YEAR YOU'RE TALKING ABOUT VERSUS 2006, WHEN  
19 SHE WAS EVALUATED BY DR. MISSETT.

20 THE COURT: WHY DON'T WE JUST DEAL WITH THAT  
21 SPECIFICITY, IF YOU WOULD PLEASE.

22 MR. LEBOWITZ: Q. SO IN 2006, WHY WERE YOU GETTING  
23 THE VICODIN IN THIS FORMAT OF 90 PILLS IN 90 DAYS?

24 A. BECAUSE MY INSURANCE WILL ONLY PAY IF I GET A  
25 THREE-MONTH PRESCRIPTION. AND IN THIS CASE, SINCE IT'S ONE A  
26 DAY, THAT'S 90. AND IT'S A MAIL ORDER PHARMACY, SO I WILL NOT

687

1 EVER GO OUT AND GET ANY PRESCRIPTIONS. THEY'RE AUTOMATICALLY  
2 REFILLED AND MAILED TO ME EVERY THREE MONTHS.

3 Q. AND THAT WAS THE CASE IN THE SPRING OF 2006?

4 A. YES, IT WAS.

5 Q. DOES THAT REMAIN THE CASE TODAY?

6 A. YES, IT DOES.

7 Q. HAVE YOU EVER, WHILE UNDER THE PRESCRIPTION FOR  
8 VICODIN FROM EITHER DR. MARCUS OR TO THE PRESENT, EVER TAKEN AS  
9 MANY AS EIGHT VICODIN IN ONE DAY?

10 A. NO.

11 Q. HAVE YOU EVER TAKEN AS MANY AS FIVE VICODIN IN ONE  
12 DAY?

13 A. NO.

14 Q. ALL RIGHT. LET'S GET BACK INTO THE TIME LINE.

15 SO WHERE WE LEFT OFF, YOU WERE AT THE END OF THE  
16 DISABILITY LEAVE FOR WHEN YOU HAD YOUR CANCER SURGERY. TELL US  
17 ABOUT HOW IT IS THAT YOU CAME BACK TO WORK.

18 A. WELL, I HAD A SEVEN-YEAR DISABILITY AWARD FROM THE  
19 SOCIAL SECURITY, BUT I THOUGHT IN THREE YEARS I WAS WELL ENOUGH  
20 TO COME BACK TO WORK. SO I WROTE TO THE COLLEGE AND SAID, "I'M  
21 READY TO COME BACK TO WORK."

22 Q. AND THEN WHAT HAPPENED?

23 A. AND THEN THEY SAID YOU HAVE TO GO SEE DR. MARCUS --  
24 NO, MISSETT. I'M SORRY.

25 Q. SO DID YOU DO THAT?

26 A. YES, I DID.

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1 Q. AND WHAT WAS THAT EXPERIENCE LIKE?

2 A. I DO NOT TRUST DR. MISSETT, AND I DID NOT FROM THE  
3 BEGINNING.

4 Q. CAN YOU GIVE US A REASON WHY?

5 A. YES. ALL HE DID WAS TALK TO ME. HE DIDN'T ASK ME  
6 ABOUT ANYTHING -- HE DIDN'T TALK ABOUT CANCER. HE DIDN'T KNOW  
7 WHAT A CARCINOID TUMOR WAS THE FIRST TIME I WENT TO HIM.

8 DR. MISSETT AND I DO NOT LIKE EACH OTHER. WE JUST DON'T LIKE  
9 EACH OTHER. I DON'T LIKE DR. MISSETT, AND I DON'T TRUST  
10 DR. MISSETT AT ALL.

11 Q. AND THIS RELATIONSHIP, OR WHAT YOU'VE JUST DESCRIBED,  
12 IS THAT SOMETHING THAT DEVELOPED IN THAT FIRST -- BACK IN 2003?

13 A. YES.

14 Q. ALL RIGHT.

15 WHAT WAS THE ULTIMATE RESULT OF YOUR SEEING  
16 DR. MISSETT IN 2003?

17 A. HE RECOMMENDED HALF TIME.

18 Q. AND DID YOU RETURN ON A HALF-TIME BASIS?

19 A. YES, I DID.

20 Q. AND THAT WAS FALL OF 2003?

21 A. YES.

22 Q. NOW, AS OF THAT POINT YOU HAD BEEN TOTALLY OFF WORK  
23 FOR ABOUT THREE YEARS?

24 A. THREE YEARS TOTAL, YES.

25 Q. AND THAT INCLUDED, AS WE DISCUSSED, YOUR SURGERY AND  
26 THE RECOVERY FROM THE SURGERY?

689

1 A. YES.

2 Q. PART OF THAT TIME -- A BIG PART OF THAT TIME, YOU WERE  
3 TOTALLY INCAPACITATED, WOULD YOU AGREE?

4 A. YES.

5 Q. SO THE FALL OF 2003, YOU CAME BACK ON A HALF TIME.

6 HOW DID THAT GO?

7 A. GOOD. WENT VERY WELL. I WAS GLAD TO BE BACK.

8 Q. HOW DID IT FEEL TO BE BACK AT WORK AGAIN?

9 A. WONDERFUL.

10 Q. NOW, I WANT TO KIND OF, IN THE COURSE OF THIS, TALK  
11 ABOUT SOME OF THE ISSUES THAT HAVE COME UP ABOUT YOUR HUSBAND.

12 WHEN WAS IT THAT -- WE'VE HEARD, AS I SAID, A LITANY  
13 OF MISDEEDS. WHEN DID ALL OF THAT START?

14 A. AFTER I HAD CANCER.

15 Q. AND DID IT START DURING YOUR LEAVE OF ABSENCE?

16 A. YES, WHEN I WAS RECOVERING FROM THE CANCER.

17 Q. SO THIS IS HOW HE REACTED AND DEALT WITH WHAT WAS  
18 GOING ON?

19 A. CORRECT.

20 Q. AND THROUGH THE ACTIVITIES THAT YOUR HUSBAND WAS  
21 ENGAGED IN, YOU CAME BACK TO WORK?

22 A. YES, I DID.

23 Q. AND IN THE FALL 2003, WHEN THESE ACTIVITIES WITH YOUR  
24 HUSBAND WERE GOING ON AND YOU WERE LEARNING ABOUT THEM --

25 A. YES.

26 Q. -- YOU WORKED?

690

1 A. YES, I WAS.

2 Q. AND HOW DID YOU DO AT WORK?

3 A. GOOD. GOT EXCELLENT EVALUATIONS THAT I'VE ALWAYS

4 RECEIVED.

5 Q. AND THEN WHAT HAPPENED IN THE SPRING OF 2004?

6 A. I WENT BACK TO DR. MISSETT, AND HE RECOMMENDED FULL  
7 TIME, AND IN THE SPRING I WAS FULL TIME AGAIN.

8 Q. NOW, WE'VE HEARD MENTION OF A THREE-QUARTER TIME.

9 DO YOU HAVE ANY --

10 A. HE MENTIONED IT AT ONE TIME, BUT IT NEVER HAPPENED.

11 Q. WHO MENTIONED IT?

12 A. DR. MISSETT. I'M SORRY. IT NEVER HAPPENED. I WENT  
13 FROM HALF TIME TO FULL TIME.

14 Q. SO IN THE SPRING OF 2004, YOU CARRIED A FULL LOAD OF  
15 FOUR CLASSES?

16 A. YES, I DID.

17 Q. AND SO YOU ENDED THE SPRING 2004 SEMESTER. HOW DID  
18 THAT SEMESTER GO?

19 A. VERY WELL. EXCELLENT EVALUATIONS AGAIN.

20 Q. AND WHAT WERE YOU DOING AS FAR AS -- YOU KNOW, WE'VE  
21 HEARD ABOUT OTHER THINGS THAT FACULTY MEMBERS NEED TO DO,  
22 DEVELOP CURRICULUM, BE ADVISORS, ALL THOSE OTHER THINGS. WERE  
23 YOU DOING THOSE ACTIVITIES IN THE SPRING OF 2004?

24 A. YES, I WAS, EVEN THOUGH THE CURRENT PRESIDENT HAD TOLD  
25 ME I SHOULD NOT. HE SAID I DIDN'T NEED TO BECAUSE I WAS COMING  
26 BACK FROM SUCH A DEVASTATING LEAVE. BUT I FELT THAT IF I DIDN'T

1 DO IT MY COLLEAGUES HAD TO, AND THAT WASN'T FAIR. AND YES, I



2 DID ALL THOSE THINGS.

3 Q. AND, AGAIN, OVER THE SPRING OF 2004, WAS YOUR HUSBAND  
4 ENGAGED IN ALL OF THIS ACTIVITY THAT WE'VE HEARD OF?

5 A. YES.

6 Q. AND DESPITE ALL HIS ACTIVITY, YOU WERE ABLE TO EXCEL?

7 A. YES.

8 Q. AND THEN WHAT HAPPENED WITH YOUR EMPLOYMENT AT THE END  
9 OF THE 2004 SPRING SEMESTER?

10 A. 2004?

11 Q. WERE YOU OFFERED CONTINUED EMPLOYMENT?

12 A. OH, YES. I WAS OFFERED REEMPLOYMENT; YES.

13 MR. LEBOWITZ: IF I CAN HAVE EXHIBIT 4, PLEASE.

14 THE CLERK: FOUR?

15 MR. LEBOWITZ: YES.

16 (PLAINTIFF'S EXHIBIT NO. 4 WAS PREVIOUSLY  
17 MARKED FOR IDENTIFICATION.)

18 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 MR. LEBOWITZ: YOUR HONOR, WE HAVE A STIPULATION FOR  
21 ADMISSIBILITY OF THIS EXHIBIT.

22 THE COURT: IS THAT CORRECT?

23 MR. VARTAIN: YES.

24 THE COURT: EXHIBIT 4 WILL BE ADMITTED.

25 (PLAINTIFF'S EXHIBIT NO. 4 WAS ADMITTED INTO  
26 EVIDENCE.)

1 MR. LEBOWITZ: THANK YOU.

2 Q. I'VE JUST HANDED YOU WHAT WE'VE ADMITTED INTO EVIDENCE  
3 AS EXHIBIT 4. CAN YOU TELL US WHAT THIS IS?

4 A. YES. THIS IS MY EMPLOYMENT LETTER FOR 2004, 2006.

5 Q. OKAY. SO JULY 26, 2004 -- I'LL JUST PUT IT UP REALLY  
6 QUICK. THIS WAS YOUR NEW EMPLOYMENT LETTER, BEGINNING SUMMER  
7 2004?

8 A. YES.

9 Q. NOW, WE'VE HEARD ABOUT SIX-YEAR CONTRACTS AND VARIOUS  
10 TYPES OF CONTRACTS. THIS IS FOR A TWO-YEAR SPAN. WHY WAS THAT?

11 A. I HAD FINISHED FOUR YEARS OF MY SIX-YEAR CONTRACT, AND  
12 THESE WERE THE REMAINING TWO.

13 Q. SO PRIOR TO GOING OUT ON YOUR LEAVE WHEN YOU HAD YOUR  
14 CANCER SURGERY, YOU HAD BEEN OPERATING UNDER A SIX-YEAR  
15 CONTRACT?

16 A. YES.

17 Q. AND YOU HAD COMPLETED FOUR YEARS OF THAT?

18 A. YES.

19 Q. AND THEN YOU CAME BACK IN THIS ONE YEAR, WHERE YOU  
20 WORKED YOUR WAY UP TO FULL TIME?

21 A. RIGHT.

22 Q. AND THEN STARTING SUMMER '04, YOU ESSENTIALLY RESUMED  
23 THAT OLD SIX-YEAR CONTRACT?

24 A. CORRECT.

25 Q. OKAY.

26 AND SO STARTING IN THE FALL OF 2004, HOW WERE YOU

1 DOING?

2 A. GOOD.

3 Q. YEAH? HOW WAS SCHOOL?

4 A. WONDERFUL. I LOVE SCHOOL.

5 Q. AND IF I COULD HAVE EXHIBIT 56, PLEASE.

6 (PLAINTIFF'S EXHIBIT NO. 56 WAS PREVIOUSLY  
7 MARKED FOR IDENTIFICATION.)

8 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YES.

10 MR. LEBOWITZ: WE HAVE A STIPULATION TO ADMISSIBILITY  
11 OF EXHIBIT 56.

12 THE COURT: THAT'S CORRECT?

13 MR. VARTAIN: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: EXHIBIT 56 WILL BE ADMITTED.

15 (PLAINTIFF'S EXHIBIT NO. 56 WAS ADMITTED INTO  
16 EVIDENCE.)

17 MR. LEBOWITZ: Q. PROFESSOR BLOUGH, WE'RE JUST GOING  
18 TO QUICKLY IDENTIFY EXHIBIT 56. CAN YOU TELL US WHAT THIS IS?

19 A. YES. THESE ARE MY FALL 2004 CLASS EVALUATIONS.

20 Q. THESE ARE -- AS WE'VE TALKED AT VARIOUS TIMES IN THIS  
21 TRIAL, THESE ARE STUDENT EVALUATIONS?

22 A. STUDENT EVALUATIONS OF ME.

23 Q. SO THE SPRING OF 2005, I WANT TO GO THROUGH. WE ARE  
24 DONE WITH THE FALL 2004. WE WILL GO TO SPRING OF 2005.

25 HOW WERE THINGS GOING AT WORK?

26 A. FINE.

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1 Q. NOW, YOU TALKED ABOUT EARLIER IN THAT FIRST TIME  
2 PERIOD THAT WE WERE TALKING ABOUT THE OTHER DAY, THAT 1977 TO  
3 '98 TIME PERIOD, THAT THE COLLEGE HAD BEEN YOUR FAMILY AND THESE  
4 OTHER NOTIONS ABOUT WHAT THE COLLEGE WAS LIKE. AS OF THE SPRING  
5 OF '05, UPON YOUR RETURN AND CONTINUING TO WORK, WAS THAT  
6 FEELING THE SAME ABOUT THE COLLEGE?

7 A. I'D SAY AT THAT TIME IT WAS.

8 Q. ALL RIGHT. AND GIVEN WHAT WAS GOING ON IN YOUR HOME  
9 LIFE WITH YOUR HUSBAND, WHAT DID THE COLLEGE MEAN TO YOU?

10 A. WELL, IT MEANT SOMEWHERE I COULD GO AND ESCAPE FROM  
11 FAMILY LIFE. AND LOWELL PRATT AND I TALKED ABOUT THAT ALL THE  
12 TIME. MENLO IS A PLACE YOU COULD GO AND BE AT HOME AND BE AWAY  
13 FROM YOUR PROBLEMS.

14 Q. AND IN THE SPRING OF 2005, HOW DID YOU DO AT WORK?

15 A. I THOUGHT -- USUALLY MY PERCENTAGES WERE IN THE  
16 90 PERCENT, AND I THINK THEY STILL WERE IN 2005. BUT I STARTED  
17 TO HAVE SOME HEARING PROBLEMS.

18 Q. THAT'S IN THE -- WE'RE STILL TALKING ABOUT THE SPRING.

19 A. I'M SORRY. IN THE SPRING, EVERYTHING WENT FINE. I'M  
20 SORRY.

21 Q. AND NOW IN THE --

22 MR. VARTAIN: SPRING 2005, COUNSEL?

23 MR. LEBOWITZ: YES.

24 Q. SPRING OF 2005 IS WHAT WE'RE TALKING ABOUT, RIGHT?

25 A. YES.

26 Q. AND EVERYTHING WENT FINE?

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1 A. EVERYTHING WENT FINE.

2 Q. OKAY.

3 AND YOU WERE AWARE THAT COMING UP THAT FALL, YOU WERE  
4 GOING TO HAVE TO GO THROUGH THE CONTRACT RENEWAL PROCESS?

5 A. ACTUALLY, I WAS NOT. I DID NOT REMEMBER. I WAS  
6 REMINDED BY LOWELL PRATT.

7 Q. IN ANY EVENT, YOU WENT ABOUT PUTTING TOGETHER YOUR  
8 DOSSIER?

9 A. I DID.

10 Q. AND AS PART OF THE DOSSIER, YOU'VE PUT TOGETHER WHAT  
11 WE'VE SEEN IN EVIDENCE.

12 IT'S EXHIBIT 60.

13 MR. VARTAIN: NO OBJECTION.

14 MR. LEBOWITZ: IT'S ALREADY IN.

15 MR. VARTAIN: OH, IT'S IN.

16 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

17 MR. VARTAIN: THEN I WITHDRAW MY AGREEMENT.

18 THE COURT: SAVE IT FOR LATER.

19 MR. VARTAIN: I'LL GIVE IT TO HIM LATER.

20 MR. LEBOWITZ: Q. SO THIS IS WHAT WE SAW WITH

21 PROFESSOR PRATT WHEN HE WAS ON THE STAND WAY BACK LAST WEEK, IN  
22 THE EARLY PART OF THIS TRIAL.

23 DESCRIBE FOR US WHAT THIS DOCUMENT IS.

24 A. AS PART OF THE DOSSIER, YOU PUT TOGETHER WHAT YOU'VE  
25 DONE -- IN MY CASE, 2004 -- AND WHAT YOU INTEND TO DO IN THE  
26 FUTURE.

696

1 Q. ALL RIGHT.

2 AND EVERYTHING THAT YOU PUT IN THIS DOCUMENT THAT YOU  
3 SUBMITTED WITH YOUR DOSSIER WAS ACCURATE AT THE TIME?

4 A. YES, IT IS.

5 Q. AND WHAT KIND OF THINGS WERE YOU WORKING ON FOR THE  
6 FUTURE?

7 A. I WAS WORKING ON THE SPORTS LAW CLASS THAT THE COLLEGE  
8 HAD ASKED ME TO TEACH, WHICH I NEVER TAUGHT AND DIDN'T KNOW  
9 ANYTHING ABOUT. AND SO I WAS PREPARING FOR THAT. OH, AND I WAS  
10 ATTENDING A CONTINUING EDUCATION OF THE BAR MEETINGS, TO KEEP UP  
11 WITH WHAT THE NEW THINGS WERE AND WHAT I NEEDED TO KNOW.

12 Q. AND --

13 A. OH, I WAS IN A PRE-LAW CONCENTRATION. YES, I WAS IN A  
14 PRE-LAW CONCENTRATION THEN.

15 Q. TELL US A LITTLE MORE ABOUT THAT. WHAT WAS THE  
16 PRE-LAW CONCENTRATION?

17 A. WE HAD AN IDEA THAT IF WE COULD PUT A CONCENTRATION  
18 TOGETHER THAT PEOPLE THAT WANTED TO GO TO LAW SCHOOL COULD TAKE,

19 THAT WOULD BE GOOD. THE PROBLEM WAS WE COULD NOT AGREE --  
20 NOBODY COULD AGREE ON WHAT A GOOD PROGRAM WOULD BE FOR SUCH A  
21 PERSON.

22 Q. WHAT WERE YOU DOING TO SEE IF THIS PRE-LAW  
23 CONCENTRATION --

24 A. TALKING TO MY COLLEAGUES WHO MIGHT HAVE BEEN TEACHING  
25 COURSES AND SAYING, "DOES THIS COURSE FIT IN THIS?" OR, "COULD  
26 YOU CHANGE THIS COURSE A LITTLE BIT SO IT WOULD FIT IN THIS?"

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1 OR, "DO YOU HAVE SUGGESTIONS OF WHAT MIGHT FIT IN THIS?"

2 MR. LEBOWITZ: IF I COULD HAVE EXHIBIT 6, PLEASE.

3 (PLAINTIFF'S EXHIBIT NO. 6 WAS PREVIOUSLY  
4 MARKED FOR IDENTIFICATION.)

5 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

6 THE COURT: YES.

7 MR. LEBOWITZ: JUST BRIEFLY, AGAIN, PROFESSOR BLOUGH,  
8 I PUT EXHIBIT 6 IN FRONT OF YOU.

9 I'M SORRY, YOUR HONOR. WE HAVE A STIPULATION FOR  
10 ADMISSIBILITY.

11 THE COURT: DIDN'T WE JUST SEE THESE?

12 MR. LEBOWITZ: NO, THIS IS '05 NOW.

13 THE COURT: BEG YOUR PARDON. EXHIBIT 6 WILL BE  
14 ADMITTED.

15 (PLAINTIFF'S EXHIBIT NO. 6 WAS ADMITTED INTO  
16 EVIDENCE.)

17 THE WITNESS: I'M GLAD YOU GET CONFUSED, TOO.

18 MR. LEBOWITZ: OKAY.

19 Q. PROFESSOR BLOUGH, EXHIBIT 6, WHAT IS IT?

20 A. THESE ARE MY FALL 2005 COURSE EVALUATIONS.

21 Q. OKAY.

22 NOW, LET'S GO TO THE END OF THE FALL 2005 SEMESTER.

23 AND JUST BRIEFLY BEFORE WE GET THERE, UP UNTIL THE VERY END OF

24 THE SEMESTER, HOW DID YOU FEEL LIKE YOU WERE DOING?

25 A. VERY WELL.

26 Q. THE SAME AS ALWAYS?

698

1 A. SAME AS ALWAYS.

2 Q. OKAY.

3 AND, AGAIN, THROUGH ALL THIS TIME PERIOD, ALL OF THE

4 UNFORTUNATE ACTIVITIES THAT YOUR HUSBAND WAS ENGAGED IN, THAT

5 WAS ALL GOING ON AT THE SAME TIME?

6 A. MENLO WAS SAVING ME.

7 Q. WHAT DO YOU MEAN MENLO WAS SAVING YOU?

8 A. I COULD GO THERE. I COULD BE WITH THE STUDENTS. I

9 COULD MENTOR THEM, WHICH I LOVED. I COULD TAKE CARE OF THEM. I

10 COULD HELP THEM. I COULD TEACH THEM. I COULD BE -- I GUESS

11 WHAT SOMEBODY CALLED ME -- THE CAMPUS MOMMA, WHICH I DIDN'T

12 KNOW.

13 Q. AND THEN IN THE END -- NEAR THE END OF THE SEMESTER,

14 WHAT, IF ANYTHING, CHANGED ABOUT YOUR HEALTH OR YOUR CONDITION?



15 A. THE STUDENTS STARTED MENTIONING IT, AND THEY MENTIONED  
16 IT IN THESE EVALUATIONS -- I THINK MAYBE THAT WAS THE FIRST TIME  
17 I NOTICED IT -- THAT MY HEARING WAS NOT RIGHT. THAT IF THEY DID  
18 NOT SPEAK DIRECTLY TO ME, I MISSED A QUESTION. AND I REALLY  
19 THINK IT WAS IN THESE EVALUATIONS THAT I FIRST THOUGHT THERE'S  
20 SOMETHING WRONG WITH MY HEARING.

21 Q. AND DID YOU ACTUALLY HAVE DISCUSSIONS WITH STUDENTS  
22 ABOUT THIS AT THE END OF THE SEMESTER?

23 A. NO, THESE ARE PAST -- THEY'RE GONE BY THE TIME I  
24 RECEIVE THESE.

25 Q. NOW, OTHER THAN -- WELL, STRIKE THAT.

26 CAN YOU GIVE US A PRECISE TIMEFRAME OR AS PRECISE AS

699

1 YOU CAN GET AS TO WHEN IT IS THAT YOU FIRST STARTED HAVING --  
2 NOTICING OR BEING TOLD THAT YOU WEREN'T POSSIBLY HEARING AS WELL  
3 AS YOU COULD HAVE IN CLASS?

4 A. THE BEST I CAN SAY IS IT CREPT UP ON ME. I DID NOT  
5 THINK I WAS HAVING -- DID NOT REALIZE I WAS HAVING HEARING  
6 PROBLEMS UNTIL STUDENTS STARTED TELLING -- MY HUSBAND STARTED  
7 TELLING ME. I THINK THAT'S ALL. AND I SAID, BETTER I CHECK  
8 THIS OUT.

9 Q. AND SO WE HEARD YESTERDAY FROM YOUR CHIROPRACTOR THAT  
10 YOU REPORTED TO HIM ABOUT THE HEARING LOSS IN EARLY DECEMBER,  
11 RIGHT? DO YOU REMEMBER THAT TESTIMONY?

12 A. YES, YES.

13 Q. AND DOES THAT, YOU KNOW, FIT WITH YOUR MEMORY ABOUT  
14 WHEN THIS WAS ALL HAPPENING?

15 A. YES. IT WAS AFTER THIS SEMESTER WAS OVER, BASICALLY.  
16 AND, ACTUALLY, I READ THESE EVALUATIONS, WHICH I READ VERY  
17 CAREFULLY.

18 Q. AND OTHER THAN REPORTING TO YOUR CHIROPRACTOR THE  
19 ISSUE WITH THE HEARING LOSS AND IT COMING ON IN THE PAST RECENT  
20 PERIOD, DID YOU DO ANYTHING ELSE?

21 A. YES. I WENT IMMEDIATELY TO MY ONCOLOGIST.

22 Q. AND THAT WAS DR. FRED MARCUS?

23 A. DR. FRED MARCUS.

24 Q. WHEN WAS IT THAT YOU ACTUALLY SAW HIM AND DISCUSSED  
25 YOUR HEARING PROBLEM?

26 A. I SAW HIM EARLY IN JANUARY.

700

1 Q. DID YOU SEE HIM IN DECEMBER AT ALL?

2 A. I DON'T RECALL.

3 Q. AND WHAT WAS IT THAT DR. MARCUS ADVISED YOU TO DO?

4 A. DR. MARCUS SENT ME TO DR. LAANE, WHO'S AN EAR, NOSE  
5 AND THROAT SPECIALIST, BECAUSE HE WAS WORRIED THAT THIS MIGHT BE  
6 RELATED TO THE CANCER OR ALTERNATELY THE CHEMOTHERAPY THAT I WAS  
7 ON FOR LIFE.

8 Q. AND SO THE IDEA THAT YOUR HEARING LOSS MIGHT BE  
9 CONNECTED TO YOUR CHEMOTHERAPY, WAS THAT INITIALLY YOUR IDEA OR  
10 WAS IT SOMEBODY ELSE'S?

11 A. NO, IT WAS DR. MARCUS'S IDEA.

12 Q. SO HE'S THE FIRST ONE THAT RAISED ANY POSSIBILITY OF A  
13 CONNECTION BETWEEN YOUR CHEMOTHERAPY AND YOUR HEARING LOSS?

14 A. YES.

15 Q. AND DID YOU GO SEE DR. LAANE, THE EAR, NOSE AND THROAT  
16 DOCTOR?

17 A. YES, I DID. IT TOOK A MONTH TO GET AN APPOINTMENT, SO  
18 I KNOW THAT IT WAS ON JANUARY 31ST THAT I WENT TO SEE DR. LAANE.

19 Q. AND WHAT HAPPENED WHEN YOU SAW DR. LAANE?

20 A. SHE HAD AN OTOLOGIST COME IN -- WHICH WAS VERY NICE --  
21 AND CHECKED MY HEARING. AND THEY FOUND MILD TO MODERATE HEARING  
22 LOSS. IN WHICH CASE SHE SAID TO ME, "THIS CAME ON SUDDENLY,  
23 DIDN'T IT?" I SAID, "YES." AND SHE SAID, "THERE ARE THREE  
24 DISEASES WE HAVE TO CHECK FOR TO MAKE SURE YOU DON'T HAVE THEM."  
25 AND SHE SENT ME TO SEQUOIA HOSPITAL FOR THREE TESTS OF THREE  
26 DIFFERENT EAR DISEASES.

701

1 Q. SO WHEN YOU FIRST WENT TO SEE DR. LAANE, YOU HAD AN  
2 OTOLOGY TEST?

3 A. UH-HUH.

4 Q. I'M SORRY. YOU HAVE TO SAY YES OR NO BECAUSE OF THE  
5 COURT REPORTER.

6 A. YES. SORRY.

7 Q. AND YOU LEARNED FROM THAT MEETING WITH THE OTOLOGIST  
8 AND THE TESTING THAT YOU HAD HEARING LOSS?

9 A. YES.

10 Q. AND YOU SAID MILD TO MODERATE HEARING LOSS?

11 A. THAT'S WHAT THEY CALLED IT, MILD TO MODERATE.

12 Q. AND THEN THEY RECOMMENDED -- THEY SAID WE NEED TO RULE

13 OUT -- BECAUSE IT WAS A SUDDEN ONSET, WE NEED TO RULE OUT AT

14 LEAST THREE POSSIBLE CAUSES?

15 A. YES.

16 Q. AND SO THEY RECOMMENDED THAT YOU GO TO SEQUOIA

17 HOSPITAL?

18 A. I WENT TO SEQUOIA HOSPITAL.

19 Q. WHEN DID YOU ACTUALLY DO THAT?

20 A. I DID IT IN FEBRUARY.

21 Q. AND WHAT WERE THE RESULTS OF THOSE TESTS?

22 A. THE RESULTS WERE THAT I DID NOT HAVE ANY OF THE

23 DISEASES.

24 Q. SO THEY RULED OUT THOSE THREE --

25 A. CORRECT, THEY DID.

26 Q. -- THINGS THAT THEY WERE CONCERNED ABOUT?

702

1 A. UH-HUH.

2 Q. OKAY.

3 WHAT, IF ANYTHING, DID EITHER THE OTOLOGIST OR

4 DR. LAANE SAY ABOUT HEARING AIDS AT THAT TIME, IN YOUR FIRST

5 MEETING?

6 A. THEY SAID I PROBABLY WOULD NEED HEARING AIDS, BUT THEY

7 NEED TO RULE OUT ALL THESE OTHER THINGS AND MAKE SURE MY EARS  
8 ARE STABLE BEFORE I CAN GET AIDS.

9 Q. NOW, THERE'S ANOTHER COMPONENT I WANT TO TALK ABOUT  
10 WHAT WAS GOING ON WITH YOU, AND THAT IS FATIGUE. SO  
11 CONTEMPORANEOUS WITH WHAT YOU'VE JUST DESCRIBED AS FAR AS WHAT  
12 WAS GOING ON WITH YOUR HEARING LOSS, WHAT WAS YOUR PHYSICAL  
13 STATE AS FAR AS FATIGUE GOES?

14 A. I WAS EXTREMELY FATIGUED AND I DIDN'T HAVE THE STAMINA  
15 I HAD BEFORE.

16 Q. WHEN DID YOU FIRST START NOTICING THE FATIGUE?

17 A. IT CREPT UP ON ME, TOO. BUT I KNOW THAT THE TIME THAT  
18 I WAS WORRYING ABOUT MY HEARING, IT WAS VERY ACUTE.

19 Q. SO IT WAS -- DEFINITELY THE DECEMBER, JANUARY TIME  
20 PERIOD IS WHEN YOU WERE WORRIED ABOUT YOUR HEARING?

21 A. YES. AND I WAS VERY, VERY EXHAUSTED.

22 Q. NOW, THE SEMESTER STARTED THAT YEAR, THE SPRING  
23 SEMESTER ON JANUARY 9TH?

24 A. YES.

25 Q. YOU BEGAN THE SEMESTER. WHAT WAS YOUR HOPE FOR THE  
26 SEMESTER?

703

1 A. MY HOPE WAS THAT EVERYTHING WOULD GO FINE, AS ALWAYS,  
2 AND THAT I WOULD GET STRAIGHTENED OUT WITH MY PHYSICAL PROBLEMS.

3 Q. NOW, THERE WAS SOME TESTIMONY FROM LOWELL PRATT  
4 EARLIER IN THE CASE ABOUT DISCUSSIONS YOU AND HE WERE HAVING IN

5 THE SECOND HALF OF THE 2005 SEMESTER, THE FALL 2005 SEMESTER,  
6 ABOUT ENDING CLASS EARLY, THAT KIND OF THING.

7 DO YOU RECALL THAT TESTIMONY?

8 A. YES, I DO.

9 Q. DESCRIBE FOR US FROM YOUR EXPERIENCE WHAT WAS GOING ON  
10 AND WHAT YOU WERE TALKING ABOUT WITH LOWELL PRATT.

11 A. I WAS TALKING ABOUT THE FATIGUE THAT I HAD, THAT I  
12 COULD NOT SOMETIMES HAVE THE STAMINA TO STAND IN FRONT OF A  
13 CLASS FOR AN HOUR-AND-A-HALF AND TALK BY MYSELF.

14 Q. AND ON THOSE OCCASIONS, DID YOU ACTUALLY END SOME  
15 CLASSES EARLY?

16 A. YES, I DID.

17 Q. AND HOW EARLY WOULD YOU END THE CLASS?

18 A. IT WOULD DEPEND ON THE STUDENTS AND THE MATERIAL. I  
19 ALWAYS COVERED ALL THE MATERIAL, AND THEIR QUESTIONS, AND ET  
20 CETERA.

21 Q. SO I WANT TO MAKE SURE WE ALL UNDERSTAND.

22 SO EVEN ON THE CLASSES THAT YOU ENDED EARLY, YOU STILL  
23 GOT ALL OF THE MATERIAL TO THE STUDENTS?

24 A. I MADE SURE I COVERED ALL THE MATERIAL.

25 Q. SO THE STUDENTS MAY NOT HAVE GOTTEN YOUR BEST --

26 A. RIGHT.

704

1 Q. -- BUT THEY CERTAINLY GOT EVERYTHING THEY WERE  
2 REQUIRED TO GET?

3 A. YES.

4 MR. VARTAIN: OBJECTION. THE ATTORNEY'S LEADING THE  
5 WITNESS.

6 THE COURT: SUSTAINED.

7 MR. VARTAIN: AND --

8 THE COURT: SUSTAINED. LET'S MOVE ON.

9 MR. LEBOWITZ: Q. SO DURING THIS TIME PERIOD, YOU  
10 WERE HAVING DISCUSSIONS WITH LOWELL PRATT, WHO WAS THE ACADEMIC  
11 DEAN AT THAT POINT?

12 A. YES, I WAS.

13 Q. AND HE WAS YOUR SUPERVISOR?

14 A. YES, HE WAS.

15 Q. DID YOU WITHHOLD ANY INFORMATION FROM DEAN PRATT IN  
16 THIS TIME PERIOD?

17 A. NOTHING.

18 Q. WERE YOU AS OPEN AND HONEST AS YOU COULD BE?

19 A. I ALWAYS AM. I'M AS HONEST AS I CAN BE.

20 Q. LET'S GO BACK INTO THE SPRING OF 2006. YOU TOLD US  
21 ABOUT WHAT YOU WERE DOING ABOUT YOUR HEARING LOSS. WHAT ABOUT  
22 YOUR FATIGUE HAD CHANGED FROM WHAT YOU JUST DESCRIBED ABOUT 2005  
23 INTO THE 2006 PERIOD?

24 A. JUST LIKE THE HEARING LOSS, IT KEPT CREEPING UP ON ME  
25 AND GETTING WORSE AND WORSE. AND THE HEARING LOSS WAS GETTING  
26 WORSE AND WORSE.

1 Q. DID YOU ACTUALLY MISS SOME CLASSES IN THE SPRING OF  
2 2006 BECAUSE OF YOUR FATIGUE?

3 A. OH, YES. OH, YES.

4 Q. AND DID YOU ACTUALLY ARRIVE LATE AT SOME CLASSES?

5 A. ARRIVING LATE, I DON'T REMEMBER. BUT LETTING THEM OUT  
6 EARLY, I DO REMEMBER.

7 Q. SO THERE WERE OCCASIONS YOU LET CLASSES OUT EARLY IN  
8 THE SPRING 2006 SEMESTER?

9 A. YES.

10 Q. AND IN THOSE CLASSES WHERE YOU LET STUDENTS OUT EARLY,  
11 DID THEY GET ALL OF THE MATERIAL?

12 A. YES. I COVERED EVERYTHING IN THE BOOK THAT WAS  
13 REQUIRED.

14 Q. HOW DID THAT MAKE YOU FEEL WHEN YOU HAD TO LET CLASSES  
15 OUT EARLY BECAUSE OF YOUR CONDITION?

16 A. WELL, I FELT PERSONALLY GUILTY BECAUSE I KNOW THAT --  
17 I KNOW THAT I STRIVE FOR EXCELLENCE IN THESE CLASSES. THEY ARE  
18 VERY, VERY IMPORTANT TO ME. AND EVEN THOUGH THEY WERE GETTING  
19 THE MATERIAL, I DO NOT FEEL THEY GOT THE BEST OF ME.

20 MR. LEBOWITZ: COULD WE HAVE DEFENSE EXHIBIT H? OR  
21 NOT H --

22 (DISCUSSION OFF THE RECORD.)

23 MR. LEBOWITZ: I CAN JUST SHOW THIS?

24 THE COURT: WHICH EXHIBIT IS IT, MR. LEBOWITZ?

25 MR. LEBOWITZ: I'M SORRY. IT'S DEFENSE H.

26 THE COURT: THANK YOU.



1 MR. LEBOWITZ: I'M JUST GOING TO PUT IT UP ON THE  
2 SCREEN FOR A BRIEF MINUTE.

3 Q. PROFESSOR BLOUGH, YOU CAN JUST LOOK AT IT ON THE  
4 SCREEN. EARLIER IN THE CASE, WE SAW THIS E-MAIL FROM TUNDE  
5 HERZEG. FIRST OF ALL, WHO WAS MS. HERZEG?

6 A. SHE WAS BASICALLY --

7 Q. I'M SORRY. I'VE DONE THIS TO YOU. IT'S MY FAULT.

8 A. SHE WAS THE ADMINISTRATOR ASSISTANT TO THE ACADEMIC  
9 DEAN AND, REALLY, TO THE WHOLE FACULTY.

10 Q. AND HOW WOULD SHE KNOW, TO YOUR KNOWLEDGE, WHEN YOU  
11 WERE ABSENT?

12 A. POLICY, WHICH I ALWAYS FOLLOWED, WAS TO CALL TUNDE  
13 WHENEVER I WAS NOT ABLE TO COME IN -- IF ANYBODY WASN'T -- AND  
14 SHE WOULD PUT UP NOTES ON THE DOOR SO THE STUDENTS WOULD KNOW.

15 Q. AND IF YOU JUST FOCUS ON THE BULLETS IN THE MIDDLE  
16 WITH THOSE FIVE DATES ON THERE. I WANT TO FOCUS, AGAIN, ON THE  
17 JANUARY 31, 2006, ABSENT ONLY FOR HER 11:10 A.M. SESSION. I  
18 WANT TO ASK YOU A QUESTION NOW.

19 IS THAT THE DATE THAT YOU WERE AT YOUR DOCTOR'S  
20 APPOINTMENT, YOUR EAR, NOSE AND THROAT DOCTOR?

21 A. YES, I WAS.

22 Q. AND THAT WAS THE DATE YOU WERE GETTING A HEARING TEST?

23 A. YES, I WAS. AND I EXPLAINED IT TO THE STUDENTS BOTH  
24 BEFORE AND AFTER I GOT THEM.

25 Q. NOW, LET ME ORIENT AGAIN.

1 SANDOSTATIN?

2 A. YES, I WAS.

3 Q. AND WHAT WAS THE REGULARITY OF YOUR INJECTIONS?

4 A. ONCE A MONTH. IT'S A LONG-TERM, ONCE-A-MONTH  
5 MEDICINE.

6 Q. SO YOU WOULD GO INTO DR. MARCUS'S OFFICE?

7 A. AND SHERRI GAROUTTE, WHO YOU MET YESTERDAY, WOULD  
8 INJECT ME. THAT WOULD LAST ONE MONTH, THE MEDICINE.

9 Q. AND WHEN YOU WENT INTO THE OFFICE -- TO THE DOCTOR'S  
10 OFFICE, WOULD YOU MEET WITH DR. MARCUS?

11 A. ALMOST EVERY TIME DR. MARCUS MET WITH ME.

12 Q. AND WHAT WOULD YOU TALK ABOUT?

13 A. WE TALKED ABOUT, IN THIS CASE, THE HEARING LOSS A LOT,  
14 WE SPOKE ABOUT THEN. ANY OTHER SYMPTOMS THAT MAY BE CAUSED BY  
15 THE CANCER. HE ALWAYS DID A PHYSICAL EXAM IN WHICH HE  
16 PALPITATED MY WHOLE BODY TO SEE IF HE COULD FIND ANY TUMORS. HE  
17 WAS A VERY THOROUGH ONCOLOGIST.

18 Q. AND DID YOU CONTINUE HAVING DISCUSSIONS ABOUT THE  
19 POSSIBILITY OF A RELATIONSHIP BETWEEN YOUR HEARING LOSS AND THE  
20 SANDOSTATIN?

21 A. YES, WE DID.

22 Q. AND WHAT, IF ANY, CONCLUSIONS DID YOU COME TO AS FAR  
23 AS FIGURING OUT WHAT TO DO?

24 A. HE SAID HE WOULD HAVE SHERRI GAROUTTE WRITE A LETTER  
25 TO NAVARUS, THE COMPANY THAT MADE IT, AND SEE WHAT THEY DID.  
26 Q. AND, ULTIMATELY, DID YOU AND DR. MARCUS MAKE ANY

708

1 DECISIONS ABOUT THE COURSE OF YOUR TREATMENT?

2 A. YES, WE DID.

3 Q. WHAT WAS THAT DECISION?

4 A. WE DECIDED TO TAKE A TRIAL OF BEING OFF THE  
5 SANDOSTATIN FOR THREE OR FOUR MONTHS TO SEE IF MY HEARING  
6 IMPROVED OR STAYED THE SAME AND SEE IF MY ENERGY CAME BACK.

7 Q. AND SO THIS CONCEPT OF A TRIAL PERIOD OF GOING OFF THE  
8 SANDOSTATIN, IS THAT SOMETHING YOU AGREED TO DO?

9 A. OH, YES.

10 Q. AND WHY?

11 A. BECAUSE I WANTED TO FEEL BETTER.

12 Q. AND SO WHEN DID YOU ACTUALLY -- WELL, STRIKE THAT.

13 DID YOU ACTUALLY AGREE TO STOP TAKE THE SANDOSTATIN?

14 A. YES.

15 Q. AND WHEN WAS THE FIRST TIME YOU SKIPPED AN  
16 ADMINISTRATION OF THE SANDOSTATIN?

17 A. MARCH 26TH. I WENT IN BUT DID NOT GET THE INJECTION  
18 BECAUSE DR. MARCUS AND I DECIDED, LET'S TAKE A BREAK AND SEE  
19 WHAT HAPPENS.

20 Q. SO YOUR APPOINTMENTS WERE APPROXIMATELY EVERY 30 DAYS?

21 A. YES, THEY WERE.

22 Q. SO YOUR PREVIOUS APPOINTMENT WAS THE END OF FEBRUARY?

23 A. YES, I HAD A SHOT THEN.

24 Q. AND YOU HAD A SHOT IN FEBRUARY. AND THEN YOUR NEXT

25 SCHEDULED APPOINTMENT WAS THE END OF MARCH?

26 A. RIGHT.

709

1 Q. SO I WANT TO STOP THERE FOR A SECOND. AT THIS POINT,

2 HAD YOU HAD -- OR ANYTIME IN THE SPRING AROUND THIS TIME, DID

3 YOU HAVE ANY CONVERSATIONS WITH PRESIDENT CARLOS LOPEZ ABOUT

4 YOUR MEDICAL CONDITION, WHAT WAS GOING ON?

5 A. YES, I DID.

6 Q. WHERE DID THAT CONVERSATION TAKE PLACE?

7 A. I THINK IN THE DINING HALL, BUT AS EVERYBODY SAID,

8 YOU'VE HEARD BEFORE, CONVERSATIONS JUST HAPPENED AROUND.

9 Q. AND TELL US ABOUT THAT CONVERSATION WITH PRESIDENT

10 LOPEZ.

11 MR. VARTAIN: LACKS FOUNDATION AS TO WHEN.

12 THE COURT: COULD WE JUST GET CLOSER TO THE DATE?

13 MR. LEBOWITZ: SURE. ABSOLUTELY.

14 Q. AND CAN YOU RECALL WHAT MONTH IT WAS THAT YOU HAD THIS

15 CONVERSATION WITH PRESIDENT LOPEZ?

16 A. I WOULD SAY IT WAS EARLY MARCH.

17 Q. SO WAS IT BEFORE YOU ACTUALLY MISSED YOUR FIRST -- OR

18 SKIPPED YOUR FIRST DOSE OR -- BAD QUESTION.

19 WAS IT BEFORE YOUR APPOINTMENT ON MARCH 26TH WHERE YOU

20 MISSED YOUR FIRST DOSAGE?

21 A. YES.

22 Q. AND TELL US ABOUT THIS CONVERSATION, PLEASE.

23 A. I TOLD CARLOS THAT I WAS LOSING MY HEARING, AND I WAS  
24 VERY UPSET ABOUT IT. AND I WAS TRYING TO WORK WITH MY  
25 ONCOLOGIST TO DO SOMETHING ABOUT IT.

26 Q. DID YOU TELL PRESIDENT LOPEZ ABOUT THE DISCUSSIONS YOU

710

1 AND DR. MARCUS WERE HAVING ABOUT WHAT TO DO ABOUT THIS?

2 A. YES. I TOLD HIM I WAS GOING TO GO ON A TRIAL OF BEING  
3 OFF THE SANDOSTATIN AND HOPE IT CAME BACK.

4 Q. DID YOU ALSO TALK TO PRESIDENT LOPEZ ABOUT YOUR  
5 FATIGUE?

6 A. AT THAT TIME -- NOT AT THAT TIME.

7 Q. BUT IN ANY EVENT, IN THIS CONVERSATION YOU TOLD HIM  
8 ABOUT YOUR HEARING LOSS AND YOUR SUSPICION THAT IT WAS CONNECTED  
9 TO YOUR CHEMOTHERAPY, RIGHT?

10 A. YES.

11 Q. OKAY.

12 SO MARCH 26TH COMES, YOU DECIDE TO NOT TAKE THE  
13 SANDOSTATIN. HOW, IF AT ALL, DOES YOUR CONDITION IMPROVE IN  
14 APRIL?

15 MR. VARTAIN: LEADING.

16 THE COURT: OVERRULED.

17 THE WITNESS: IT TOOK THE WHOLE MONTH OF APRIL, BUT BY

18 THE END OF APRIL I FELT GREAT. I FELT -- I WROTE LETTERS TO  
19 PEOPLE TELLING THEM I FELT 20 YEARS YOUNGER.

20 MR. LEBOWITZ: Q. WELL, JUST TELL US, IN WHAT WAYS  
21 DID YOU FEEL GREAT AND 20 YEARS YOUNGER?

22 A. I HAD ENERGY. I WAS -- AND I'M A VERY ENERGETIC  
23 PERSON, SO NOT TO HAVE ENERGY WAS VERY UPSETTING. I HAD ENERGY.  
24 I HAD BOUNCE IN MY STEP. I FELT YOUNG AGAIN. I FELT LIKE I  
25 SHOULD HAVE FELT BEFORE THE CANCER, LIKE I FELT BEFORE THE  
26 CANCER.

711

1 Q. AND DID YOU TELL ANYBODY ABOUT HOW YOU WERE FEELING?

2 A. I TOLD LOWELL PRATT.

3 Q. AND WHAT DID YOU TELL DEAN PRATT?

4 A. I TOLD DEAN PRATT THAT I FELT LIKE MYSELF AGAIN.

5 Q. AND UP TO THAT POINT HAD YOU BEEN TALKING TO DEAN  
6 PRATT ABOUT YOUR FATIGUE AND YOUR HEARING LOSS?

7 MR. VARTAIN: LEADING.

8 THE COURT: OVERRULED.

9 THE WITNESS: YES. DEAN PRATT AND I HAD MANY  
10 CONVERSATIONS. BUT, AGAIN, SOMETIMES IT WAS IN THE COURTYARD.  
11 I KNOW I TOLD HIM I WAS 20 YEARS YOUNGER IN THE COURTYARD.  
12 EVERY TIME I'D SEE DEAN LOWELL, I SAID, "LOWELL, I'M GETTING  
13 BETTER. I'M GETTING THIS. I'M HAPPY ABOUT THIS. IT'S WORKING  
14 OUT," BECAUSE I KNEW HE WAS CONCERNED.

15 MR. LEBOWITZ: Q. THESE SENTIMENTS THAT YOU EXPRESSED

16 TO DEAN PRATT ABOUT FEELING BETTER, FEELING YOURSELF AGAIN, THAT  
17 KIND OF THING, DID YOU EXPRESS THOSE SENTIMENTS TO DEAN PRATT  
18 PRIOR TO RECEIVING WHAT WE'VE SEEN AS THE MAY 8TH LETTER FROM  
19 PRESIDENT LOPEZ?

20 A. OH, YES.

21 Q. AND PRIOR TO RECEIVING THAT MAY 8TH LETTER, DID YOU  
22 HAVE ANY CONVERSATIONS WITH DEAN PRATT ABOUT THE COMING FALL  
23 SEMESTER?

24 A. YES. I ASKED HIM -- I SAID, "I SHOULD MENTION THAT  
25 AFTER I STOPPED TAKING THE SANDOSTATIN, MY HEARING SETTLED AND  
26 IT STOPPED DROPPING." BUT I SAID TO THE DEAN, "I STILL HAVE A

712

1 HEARING LOSS, AND I'D LIKE TO HAVE SMALLER CLASSROOMS AND  
2 SMALLER CLASS SO THAT" -- BECAUSE I DON'T KNOW HOW A HEARING AID  
3 IS GOING TO WORK.

4 Q. SO AT THAT POINT, YOU HAD NOT GOTTEN HEARING AIDS YET?

5 A. I HAD NOT GOTTEN THEM YET BECAUSE THEY WERE STILL IN  
6 THE TRIAL, AS A MATTER OF FACT.

7 Q. OKAY.

8 AND WHAT DID DEAN PRATT SAY TO YOU ABOUT THESE  
9 REQUESTS FOR THE FALL?

10 A. HE SAID HE'D DO WHAT HE COULD.

11 Q. AND WERE YOU SATISFIED WITH THAT?

12 A. YES.

13 Q. AND THEN YOU GOT -- DID YOU GET THE MAY 8TH LETTER

14 THAT WE'VE SEEN?

15 A. YES.

16 Q. HOW WAS THAT DELIVERED TO YOU?

17 A. HAND-DELIVERED BY LOWELL PRATT.

18 Q. AND YOU READ THAT. WHEN YOU READ THAT LETTER, HOW DID  
19 THAT MAKE YOU FEEL?

20 A. DEPRESSED. UPSET. ANXIOUS.

21 Q. WHY?

22 A. I HAD KNOWN THESE PEOPLE FOR 29 YEARS. THOUGHT THEY  
23 TRUSTED ME, AND I TRUSTED THEM. I'M SORRY.

24 Q. DON'T APOLOGIZE.

25 NOW, UP TO THIS POINT WHEN YOU RECEIVED THE MAY 8TH  
26 LETTER, HAD ANYONE FROM THE COLLEGE EVER ASKED YOU TO GET AN

713

1 OPINION FROM YOUR OWN TREATING PHYSICIANS ABOUT YOUR CONDITION?

2 A. NO.

3 Q. HAD YOU EVER REFUSED -- UP TO THIS POINT IN THE SPRING  
4 2006 SEMESTER, HAD YOU REFUSED TO GIVE THE COLLEGE ANY  
5 INFORMATION FROM YOUR TREATING PHYSICIANS?

6 A. NO.

7 Q. WHEN YOU GOT THE MAY 8TH LETTER, DID YOU BELIEVE THAT  
8 YOU HAD A CHOICE, AS OPPOSED -- ABOUT WHETHER TO GO SEE  
9 DR. MISSETT OR NOT?

10 A. NO, I DID NOT THINK I HAD A CHOICE.

11 Q. DID ANYONE TELL YOU THAT THIS WAS JUST A REQUEST AND



12 NOT MANDATORY?

13 A. NO. NO ONE TOLD ME THAT. I NEVER WOULD HAVE GONE.

14 MR. LEBOWITZ: NOW, WE HAVE SEEN EXHIBIT 11.

15 MAY I APPROACH, YOUR HONOR?

16 THE COURT: YES.

17 THE WITNESS: YES.

18 MR. LEBOWITZ: NOW, THIS IS THE LETTER THAT'S IN

19 EVIDENCE THAT DR. LIU, YOUR TREATING PSYCHIATRIST AT THE TIME,

20 WROTE ON MAY 12 OF 2006.

21 Q. IS THIS A LETTER THAT DR. LIU GAVE TO YOU?

22 A. YES, SHE DID.

23 Q. DID YOU ASK HER TO WRITE IT?

24 A. YES, I DID.

25 Q. FOR WHAT PURPOSE?

26 A. AFTER THE MAY 8TH LETTER I ASKED ALL MY DOCTORS IF

714

1 THEY WOULD WRITE A LETTER SAYING THAT I WAS ABLE TO TEACH FULL  
2 TIME.

3 Q. DID YOU TELL DR. LIU WHAT TO WRITE IN THIS LETTER?

4 A. NO. SHE WROTE IT HERSELF.

5 Q. AND DID DR. LIU GIVE YOU THIS LETTER?

6 A. YES, SHE DID.

7 Q. AND WHAT DID YOU DO WITH IT?

8 A. I SENT IT TO CARLOS LOPEZ, BECAUSE THAT'S WHO IT WAS  
9 ADDRESSED TO.

10 Q. AND AT SOME POINT, DID YOU ACTUALLY SEE DR. MISSETT?

11 A. AT SOME POINT, YES.

12 Q. AND WHEN YOU SAW DR. MISSETT, DID YOU GIVE HIM A COPY  
13 OF THIS LETTER?

14 A. YES, I DID.

15 Q. NOW, LET'S TALK ABOUT YOUR MEETING WITH DR. MISSETT.  
16 DO YOU RECALL WHEN THAT TOOK PLACE?

17 A. IT TOOK PLACE IN EITHER LATE MAY OR EARLY JUNE 2006.

18 Q. HOW LONG DID YOU MEET WITH DR. MISSETT?

19 A. ONE HOUR.

20 Q. AND WERE YOU OPEN AND HONEST WITH HIM IN THAT SESSION?

21 A. VERY.

22 Q. AND DID YOU WITHHOLD ANY INFORMATION FROM HIM DURING  
23 THAT SESSION?

24 A. NO.

25 Q. DID YOU REFUSE TO ANSWER ANY QUESTION HE ASKED YOU?

26 A. NO.

715

1 Q. DID YOU EXAGGERATE OR IN ANY WAY COLOR ANY OF WHAT YOU  
2 WERE TELLING HIM?

3 A. I -- NO.

4 Q. DID DR. MISSETT PERFORM ANY PHYSICAL EXAMS?

5 A. NOT AT ALL.

6 Q. DID HE ASK YOU ABOUT YOUR CANCER?

7 A. I THINK I TOLD YOU BEFORE, HE DID NOT KNOW WHAT

8 CARCINOID CANCER WAS. HE MIGHT HAVE MENTIONED, "HOW IS IT?"  
9 BUT BEING UNINFORMED ABOUT IT, HE COULD NOT ANSWER VERY MANY  
10 QUESTIONS.

11 Q. DID YOU TELL HIM ABOUT YOUR FATIGUE ISSUES?

12 A. YES, I DID.

13 Q. DID YOU TELL HIM ABOUT YOUR HEARING LOSS ISSUES?

14 A. YES, I DID.

15 Q. AND DID YOU TELL HIM WHAT YOU'VE ALREADY TOLD US ABOUT  
16 HOW YOU WERE FEELING AFTER YOU STOPPED THE SANDOSTATIN?

17 A. YES, I DID.

18 MR. LEBOWITZ: IF I COULD HAVE EXHIBIT 12, PLEASE.

19 (PLAINTIFF'S EXHIBIT NO. 12 WAS PREVIOUSLY  
20 MARKED FOR IDENTIFICATION.)

21 MR. VARTAIN: I MAY HAVE SOME VOIR DIRE.

22 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

23 THE COURT: YES.

24 MR. LEBOWITZ: I'VE JUST HANDED YOU WHAT WE'VE MARKED  
25 FOR IDENTIFICATION AS EXHIBIT 12 FOR THIS TRIAL. IT'S A PACKET,  
26 A MULTI-PAGE DOCUMENT.

716

1 Q. IN GENERAL TERMS, CAN YOU TELL US WHAT THESE DOCUMENTS  
2 ARE?

3 A. THEY'RE DOCUMENTS DR. MISSETT GAVE ME TO SIGN.

4 Q. AND WHAT DID YOU UNDERSTAND THESE DOCUMENTS TO BE  
5 DOING?

6 A. LETTING MY OTHER DOCTORS TELL HIM MY PHYSICAL  
7 CONDITION.

8 Q. AND SO THESE ARE RELEASES FOR MEDICAL RECORDS?

9 A. YES.

10 Q. DID DR. MISSETT HAND YOU THESE DURING YOUR SESSION?

11 A. YES, HE DID.

12 Q. AND DID HE GIVE YOU A CHOICE AS TO WHETHER OR NOT --

13 MR. VARTAIN: LEADING. I'M SORRY.

14 MR. LEBOWITZ: Q. DID HE GIVE YOU A CHOICE AS TO  
15 WHETHER OR NOT TO SIGN THEM?

16 A. NO, HE DID NOT.

17 MR. VARTAIN: I'M GOING TO OBJECT THAT THE ATTORNEY IS  
18 LEADING THE WITNESS.

19 THE COURT: PLEASE REMEMBER. GO AHEAD.

20 MR. LEBOWITZ: Q. BASED ON THE MAY 8TH LETTER, DID  
21 YOU UNDERSTAND WHAT THE COLLEGE WANTED YOU TO DO AS FAR AS  
22 MEDICAL RECORDS?

23 A. SEE DR. MISSETT AND GIVE HIM WHATEVER HE NEEDED.

24 Q. YOU UNDERSTOOD THAT FROM THE MAY 8TH LETTER?

25 A. WELL, YES.

26 Q. AND EACH OF THESE DOCUMENTS CONTAINS YOUR SIGNATURE;

717

1 IS THAT CORRECT?

2 A. THAT'S RIGHT.

3 Q. AND YOU SIGNED ALL OF THESE IN THE OFFICE WITH

4 DR. MISSETT?

5 A. YES.

6 MR. LEBOWITZ: OKAY. YOUR HONOR, I'D OFFER  
7 EXHIBIT 12.

8 THE COURT: ANY OBJECTION?

9 MR. VARTAIN: I'D LIKE TO HAVE A SHORT VOIR DIRE ON  
10 THE EXHIBIT.

11 THE COURT: ON THE AUTHENTICITY OF IT?

12 MR. VARTAIN: WELL, THERE'S MULTIPLE PAGES. WHICH ONE  
13 ARE YOU ASKING?

14 THE COURT: THE ENTIRE DOCUMENT AS PRESENTED IS WHAT'S  
15 BEING OFFERED.

16 MR. VARTAIN: I DON'T THINK THERE'S A FOUNDATION THAT  
17 SHE HAS SIGNED EACH DOCUMENT.

18 THE COURT: OKAY. WHY DON'T YOU GO THROUGH THAT.  
19 THAT WOULD BE FINE.

20 MR. VARTAIN: AND I DO THINK THE TITLE OF THE  
21 DOCUMENT --

22 THE COURT: I'M SORRY. YOU CAN APPROACH, IF YOU'D  
23 LIKE TO ARGUE.

24 MR. VARTAIN: I DON'T NEED TO TAKE UP THE TIME.

25 THE COURT: OKAY. THANK YOU.

26 GO AHEAD.

1 MR. LEBOWITZ: PROFESSOR BLOUGH, IF YOU COULD JUST GO

2 THROUGH EACH PAGE AND BY PAGE NUMBER IDENTIFY WHETHER YOUR  
3 SIGNATURE APPEARS ON EACH OF THE PAGES, PLEASE.

4 THE WITNESS: (COMPLIES.)

5 YES, MY SIGNATURE APPEARS ON -- YES, ALL THE PAGES.

6 MR. LEBOWITZ: YOUR HONOR, I'D OFFER EXHIBIT 12.

7 MR. VARTAIN: NO OBJECTION.

8 THE COURT: THANK YOU. EXHIBIT 12 WILL BE ADMITTED.

9 (PLAINTIFF'S EXHIBIT NO. 12 WAS ADMITTED INTO  
10 EVIDENCE.)

11 MR. LEBOWITZ: Q. NOW, AFTER YOU WENT AND SAW

12 DR. MISSETT, WHAT WAS THE NEXT THING YOU HEARD FROM THE COLLEGE?

13 A. THAT I WAS TERMINATED.

14 Q. AND IS THAT THE JULY 7TH LETTER WE'VE SEEN?

15 A. YES, IT WAS.

16 Q. AND HOW DID THAT MAKE YOU FEEL WHEN YOU SAW THAT  
17 LETTER?

18 A. I REALLY DON'T WANT TO CRY, BUT IT MADE ME FEEL LIKE  
19 SOMEONE HIT ME IN THE STOMACH WITH A SLEDGEHAMMER.

20 Q. AND WHEN YOU RECEIVED THE JULY 7TH LETTER, ATTACHED TO  
21 THAT LETTER WAS THE LETTER FROM DR. MISSETT, RIGHT?

22 A. YES, IT WAS.

23 Q. AND I WANT TO PUT THAT UP QUICKLY BECAUSE WE HAVEN'T  
24 SEEN THAT PART OF IT YET. THIS IS IN EVIDENCE.

25 THE COURT: WHAT EXHIBIT WAS THAT, PLEASE?

26 MR. LEBOWITZ: I'M SORRY. 14.

1 THE COURT: THANK YOU.

2 MR. LEBOWITZ: Q. AND AS PART OF THIS LETTER, YOU  
3 READ THAT DR. MISSETT HAD DETERMINED, AS SAID IN THE SECOND TO  
4 THE LAST PARAGRAPH, THAT YOU WERE NOT AT PRESENT -- YOU WERE AT  
5 PRESENT NOT MEDICALLY OR PSYCHOLOGICALLY FIT TO FULFILL THE  
6 DUTIES OF YOUR POSITION AT MENLO COLLEGE AND NOT LIKELY IN THE  
7 FORESEEABLE FUTURE TO BE ABLE TO RESUME THE FULFILLMENT OF THOSE  
8 RESPONSIBILITIES.

9 A. YES, IT DID.

10 Q. DID YOU AGREE WITH THAT ASSESSMENT?

11 A. ABSOLUTELY NOT.

12 Q. AND WHAT, IF ANYTHING, DID YOU DO TO TRY TO CORRECT  
13 THAT?

14 A. I ASKED ALL MY ATTENDING PHYSICIANS TO WRITE LETTERS  
15 SAYING THAT I WAS FIT TO WORK.

16 Q. DID YOU TELL YOUR ATTENDING PHYSICIANS WHAT TO SAY?

17 A. NO, I DID NOT TELL THEM. I JUST ASKED THEM TO  
18 COMMUNICATE WHAT THEY THOUGHT.

19 Q. NOW, LET'S STOP FOR A MOMENT AND TALK ABOUT DR. LIU.

20 WHEN YOU WERE AT THE SESSION WITH DR. MISSETT, DID YOU  
21 SIGN A RELEASE FOR DR. LIU'S RECORDS?

22 A. YES.

23 Q. AND AT THAT TIME, DID YOU INTEND TO ALLOW DR. MISSETT  
24 TO SEE THOSE RECORDS?

25 A. YES.

26 Q. WHAT HAPPENED?

1       A. I WENT TO DR. LIU, AND SHE SAID, "I DO NOT BELIEVE IN  
2       GIVING OUT PATIENTS' PSYCHIATRIC RECORDS." NOW, HERE, THE OTHER  
3       DAY SOMEHOW WE HAD A BIG MISUNDERSTANDING, I GUESS. BECAUSE SHE  
4       SAID, "THERE'S A LOT OF BAD THINGS ABOUT YOUR HUSBAND AND YOU IN  
5       THERE THAT HAVE NOTHING TO DO WITH THE CASE. AND I'LL CALL HIM  
6       OR I WILL WRITE HIM A LETTER, OR I WILL DO WHATEVER HE LIKES,  
7       BUT I DO NOT LIKE TO RELEASE PSYCHIATRIC RECORDS."

8       Q. SO WAS IT YOUR INITIAL THOUGHT TO HAVE DR. LIU NOT  
9       SEND THE PSYCHIATRIC RECORDS?

10      A. ABSOLUTELY NOT.

11      Q. YOU HEARD HER TESTIFY HERE?

12      A. YES.

13      Q. AND SHE TESTIFIED SOMETHING DIFFERENT?

14      A. YES.

15      Q. CAN YOU EXPLAIN THAT?

16      A. I WAS THINKING THE OTHER DAY WE MUST HAVE HAD A HUGE  
17      MISUNDERSTANDING, AND I HOPE WE DIDN'T HAVE TOO MANY OTHERS IN  
18      THE TWO-AND-A-HALF YEARS SHE WAS TREATING ME.

19      Q. SO IT WAS YOUR UNDERSTANDING THROUGH YOUR CONVERSATION  
20      WITH DR. LIU, THAT IT WAS HER GENERAL POLICY TO NOT RELEASE  
21      PSYCHIATRIC RECORDS?

22      A. THAT WAS MY UNDERSTANDING.

23      Q. DID YOU ALLOW DR. LIU TO TALK TO DR. MISSETT ON THE  
24      TELEPHONE?



25 A. I ASKED HER TO. I SAID, "IF YOU WILL NOT RELEASE THE  
26 RECORDS, PLEASE TALK TO HIM ON THE TELEPHONE AND TELL HIM

721

1 ANYTHING THAT HE ASKS."

2 Q. DID YOU PUT ANY RESTRICTIONS ON DR. LIU ON WHAT SHE  
3 COULD TELL DR. MISSETT ON THE PHONE?

4 A. NO.

5 Q. SO OVER THE SUMMER OF 2006, WHAT DID YOU DO TO TRY TO  
6 CORRECT WHAT HAD HAPPENED WITH DR. MISSETT AND THE JULY 7TH  
7 LETTER?

8 MR. VARTAIN: LEADING, OBJECTION.

9 THE COURT: OVERRULED.

10 THE WITNESS: I SENT MENLO E-MAIL, AFTER E-MAIL, AFTER  
11 E-MAIL ASKING THEM WHAT WAS GOING ON. I DID NOT UNDERSTAND. I  
12 HAVE BEEN AN EXCELLENT FACULTY MEMBER. I HAD A LITTLE TROUBLE  
13 ONE SEMESTER BECAUSE OF MY CANCER CHEMOTHERAPY, BUT ALL THE  
14 OTHERS -- BECAUSE ALL SIX YEARS, ALL THE EVALUATIONS HAVE BEEN  
15 EXCELLENT. I DIDN'T UNDERSTAND.

16 MR. LEBOWITZ: LET ME HAVE EXHIBIT 13, PLEASE.

17 (PLAINTIFF'S EXHIBIT NO. 13 WAS PREVIOUSLY MARKED  
18 FOR IDENTIFICATION.)

19 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

20 THE COURT: YES.

21 MR. LEBOWITZ: THANK YOU.

22 Q. I'VE GIVEN YOU WHAT WE'VE MARKED FOR IDENTIFICATION AS

23 EXHIBIT 13. IN GENERAL TERMS, WITHOUT TALKING ABOUT THE  
24 SUBSTANCE, CAN YOU TELL US WHAT THIS DOCUMENT IS?

25 A. YES. AFTER I'D SEEN DR. MISSETT BECAUSE CARLOS TOLD  
26 ME TO, I WANTED TO LET HIM KNOW THAT I HAD GONE, THAT I

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1 EXPLAINED EVERYTHING TO DR. MISSETT, AND THAT I'D LIKE TO  
2 EXPLAIN TO CARLOS THAT, YES, I ABSOLUTELY AGREE I WAS NOT AT MY  
3 TOP FORM DURING THE SPRING SEMESTER.

4 Q. OKAY.

5 NOW, THIS E-MAIL, IT'S A LITTLE DIFFERENT THAN OTHERS  
6 BECAUSE IT SAYS IT'S FROM, QUOTE, "CINDY." WHO IS CINDY?

7 A. CINDY IS MY SISTER. AND MY MOTHER WAS VERY ILL, AND I  
8 WAS STAYING AT MY SISTER'S, TAKING CARE OF MY MOTHER.

9 Q. SO YOU SENT IT FROM HER E-MAIL ACCOUNT IS WHAT YOU ARE  
10 SAYING?

11 A. RIGHT.

12 Q. AND YOU WROTE EVERYTHING THAT'S IN THIS E-MAIL?

13 A. YES, I DID.

14 Q. AND WHO DID YOU SEND IT TO?

15 A. I SENT IT TO CARLOS.

16 Q. ANYBODY ELSE?

17 A. DOES IT SAY ANYBODY ELSE? NO.

18 Q. IF YOU LOOK AT THE CC LINE ON THE ORIGINAL?

19 A. OH, CC -- OH, I'M SORRY. MIKE SCHULTZ AND LOWELL  
20 PRATT.

21 Q. AND MIKE SCHULTZ WAS THE PROVOST AT THE TIME?  
22 A. PROVOST, AND LOWELL PRATT WAS THE DEAN, MY BOSS.  
23 MR. LEBOWITZ: I'D OFFER EXHIBIT 13.  
24 MR. VARTAIN: NO OBJECTION.  
25 THE COURT: AND WE DIDN'T ADMIT THE OTHER?  
26 MR. LEBOWITZ: NO. I MARKED IT. WE WERE GOING TO USE

723

1 IT AND I DIDN'T.  
2 THE COURT: SO THAT ONE IS --  
3 MR. LEBOWITZ: IT'S JUST REPLACED.  
4 THE COURT: THANK YOU. AND THAT WILL BE ADMITTED.  
5 (PLAINTIFF'S EXHIBIT NO. 13 WAS ADMITTED INTO  
6 EVIDENCE.)  
7 MR. LEBOWITZ: Q. AND THIS E-MAIL, I WANT TO FOCUS ON  
8 THE BOTTOM OF THIS FIRST PAGE. IF YOU CAN LOOK AT THE COPY. IT  
9 MIGHT BE EASIER FOR YOU TO LOOK AT THE COPY I GAVE YOU BECAUSE  
10 YOU DO HAVE IT DOWN THERE.  
11 A. OKAY.  
12 Q. AND YOU WERE EXPLAINING TO -- AS YOU SAID, YOU WERE  
13 TRYING TO EXPLAIN TO CARLOS LOPEZ EVERYTHING THAT HAD GONE ON,  
14 RIGHT?  
15 A. UH-HUH; YES.  
16 Q. THANK YOU.  
17 AND THEN YOU SAID IN THE BOTTOM, STARTING WITH,  
18 "HOWEVER," CAN YOU READ THE NEXT TWO LINES, PLEASE?

19 A. "HOWEVER, BOTH MY ONCOLOGIST AND MY HEARING DOCTOR  
20 THOUGHT THAT MY SUDDEN HEARING LOSS WAS LIKELY DUE TO MY  
21 CHEMOTHERAPY, SO I WENT OFF IT AND FELT IMMEDIATELY 20 YEARS  
22 YOUNGER."

23 Q. OKAY. AND YOU CAN READ THE NEXT SENTENCE.

24 A. "FOUR YEARS OF HAVING CONSTANT CHEMOTHERAPY IN MY BODY  
25 HAD NOT ONLY DAMAGED MY HEARING BUT CAUSED ME TO BE ZOMBIE-LIKE.  
26 NOW THAT I'M BETTER MY FRIENDS TELL ME" -- OR "SOME PEOPLE

724

1 THOUGHT I WAS HIGH ON TOO MANY DRUGS."

2 Q. LET'S GO DOWN. YOU LISTED A NUMBER OF ITEMS IN THIS  
3 E-MAIL. CAN YOU READ NUMBER FOUR, PLEASE?

4 A. NUMBER FOUR. OH, NEXT PAGE. I DON'T HAVE MY READING  
5 GLASSES.

6 Q. I'M SORRY?

7 A. "I AM DEFINITELY BETTER NOW AND I'M GOING TO WORK  
8 SOMETHING OUT WITH MY ONCOLOGIST TO EITHER NOT GET THE  
9 CHEMOTHERAPY, MY CHOICE, OR GET A LOWER DOSE LESS OFTEN. I KNOW  
10 I CANNOT WORK IN THAT STATE THAT IT REDUCED ME TO, AND I DON'T  
11 LIKE TO LIVE IN THAT STATE EITHER."

12 Q. OKAY.

13 NOW, WHEN YOU SAY -- I JUST WANT TO MAKE SURE WE'RE  
14 ALL CLEAR ABOUT WHAT YOU MEAN WHEN YOU SAY THAT YOU'RE GOING TO  
15 WORK SOMETHING OUT --

16 A. RIGHT.

17 Q. -- IN THE FUTURE ABOUT STOPPING YOUR CHEMOTHERAPY.

18 A. RIGHT.

19 Q. AT THIS POINT, HAD YOU ALREADY BEEN ON THE TRIAL?

20 A. I WAS ON THE TRIAL.

21 Q. AND SO WHAT WERE YOU TALKING ABOUT AS FAR AS THE  
22 FUTURE?

23 A. THE FUTURE WAS AFTER WE HAD FINISHED THE TRIAL, WHICH  
24 I BELIEVE WAS FOUR MONTHS LONG, THEY WERE GOING TO TEST MY  
25 HEARING AGAIN AND SEE IF IT NEEDED -- THE HEARING HAD CHANGED  
26 AND WE WOULD CHECK MY STAMINA AGAIN.

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1 Q. SO THE IDEA, THEN, IS THAT AFTER THE TRIAL YOU WOULD  
2 MAKE ANOTHER CHOICE ABOUT WHETHER TO CONTINUE OR NOT?

3 A. YES.

4 Q. OKAY.

5 AND DID, IN FACT, YOU EVER -- SINCE THAT MARCH 2006  
6 DATE, WHERE YOU FIRST STOPPED TAKING THE SANDOSTATIN, HAVE YOU  
7 TAKEN ANOTHER DOSE SINCE THEN?

8 A. NEVER AGAIN.

9 Q. AND HAS YOUR HEARING LOSS CHANGED IN ANY WAY SINCE  
10 THEN?

11 A. YES. IT'S IMPROVED.

12 Q. IT'S GOTTEN BETTER?

13 A. IT'S GOTTEN BETTER.

14 Q. DID YOU EVER GET YOUR HEARING AIDS?

15 A. OH, YES. EVERYBODY WANTS TO SEE MY HEARING AIDS.

16 Q. YOU'RE WEARING THEM RIGHT NOW.

17 A. I GOT THEM IN BOTH EARS. I WEAR THEM ALL THE TIME.

18 Q. OKAY.

19 AND WHEN DID YOU GET THEM?

20 A. I GOT THEM IN THE FALL 2007.

21 Q. 2007 OR 2006?

22 A. '6. I AM SORRY; 2006.

23 Q. AND WHY DID IT TAKE UNTIL THEN TO GET YOUR HEARING  
24 AIDS?

25 A. WELL, ONE, I WAS TERMINATED, NO INCOME, AND THEY WERE  
26 \$12,000. ALTHOUGH I FOUND OUT -- I THINK DR. MISSETT TOLD ME

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1 THAT THEY HAD THEM AT COSTCO FOR HALF THE PRICE. I WENT TO  
2 COSTCO THAT DAY AND I PURCHASED THEM.

3 Q. SO YOU HAVE COSTCO HEARING AIDS?

4 A. I HAVE COSTCO HEARING AIDS. THEY TELL ME STANFORD --  
5 OTHER LAUREATES WEAR THEM; I FIGURE THAT'S GOOD ENOUGH.

6 Q. OKAY.

7 NOW, WE HAVE LOOKED AT, UP UNTIL NOW WITH OTHER  
8 WITNESSES, SOME OF THE CORRESPONDENCE THAT YOU SENT TO THE  
9 COLLEGE OVER THE SUMMER, AND WE DON'T NEED TO GO THROUGH THEM  
10 ALL AGAIN. BUT THERE'S ONE THAT WE HAVEN'T LOOKED AT AND I'D  
11 LIKE TO TAKE A LOOK AT IT NOW, WHICH IS EXHIBIT 21.

12 (PLAINTIFF'S EXHIBIT NO. 21 WAS PREVIOUSLY MARKED FOR

13 IDENTIFICATION.)  
14 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?  
15 THE COURT: YES.  
16 MR. LEBOWITZ: COUNSEL?  
17 MR. VARTAIN: YES.  
18 MR. LEBOWITZ: YOUR HONOR, WE HAVE A STIPULATION FOR  
19 ADMISSIBILITY.  
20 THE COURT: CORRECT.  
21 MR. LEBOWITZ: COUNSEL?  
22 THE COURT: DO YOU AGREE?  
23 MR. VARTAIN: I'M SORRY, YOUR HONOR. I APOLOGIZE.  
24 THE COURT: EXHIBIT 21 MAY BE ADMITTED?  
25 MR. VARTAIN: YES, I DO.  
26 THE COURT: EXHIBIT 21 MAY BE ADMITTED.

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1 (PLAINTIFF'S EXHIBIT NO. 21 WAS ADMITTED INTO  
2 EVIDENCE.)  
3 MR. LEBOWITZ: THANK YOU.  
4 Q. WE REFERENCED THIS E-MAIL A LITTLE BIT YESTERDAY WITH  
5 STEPHANIE SAPRAI. THIS IS AN AUGUST 7TH E-MAIL FROM YOURSELF  
6 ADDRESSED TO LOWELL PRATT, MIKE SCHULTZ, CARLOS LOPEZ AND  
7 MS. SAPRAI AND CRAIG MEDLEN. YOU WROTE THIS E-MAIL?  
8 A. YES, I DID.  
9 Q. AND WHY DID YOU WRITE THIS E-MAIL?  
10 A. MY FRIEND AND COLLEAGUE, DONNA LITTLE, SUGGESTED TO ME

11 THAT, "WHY DON'T YOU OFFER A COMPROMISE? WHY DON'T YOU SAY,  
12 'LET ME TRY TO DO IT FOR ONE YEAR AND SEE IF I CAN DO IT,  
13 BECAUSE I KNOW I CAN,' AND THEN GET A SIX-YEAR CONTRACT." I  
14 SAID OKAY. I WAS DESPERATE. I WANTED TO GO BACK TO WORK. I  
15 SAID, "OKAY. THAT'S A GOOD IDEA," AND I SENT THEM A COMPROMISE.

16 Q. AND UP TO THIS POINT, AUGUST 7TH, 2006, BETWEEN  
17 JULY 7TH, THE DATE OF THE LETTER THAT WE TALKED ABOUT EARLIER --

18 A. YES.

19 Q. -- AND AUGUST 7TH, HAD YOU TRIED TO CONTACT THE  
20 COLLEGE ABOUT YOUR SITUATION?

21 A. I HAD WRITTEN MANY E-MAILS TO THE PEOPLE WHO ARE IN  
22 CHARGE OF THIS, SUPPOSEDLY, AS THE HANDBOOK SAYS, WHICH IS  
23 LOWELL PRATT, MIKE SCHULTZ AND CARLOS LOPEZ.

24 Q. AND ASIDE FROM WRITING E-MAILS, DID YOU SEND THEM ANY  
25 OTHER INFORMATION?

26 A. YES. I SENT THEM ALL THE DOCTORS' REPORTS THAT I HAD

728

1 RECEIVED.

2 Q. OKAY.

3 AND SO YOU TALKED ABOUT THE -- WHAT'S EXHIBIT 11,  
4 WHICH IS DR. LIU'S LETTER, RIGHT?

5 A. YES.

6 Q. WHAT ELSE DID YOU SEND TO THE COLLEGE?

7 A. I SENT THEM MY LATEST OTOLOGY REPORT, SHOWING MILD TO  
8 MODERATE HEARING LOSS. I SENT THEM THE LETTER YOU SAW YESTERDAY



9 FROM SHERRI MARCUS -- SHOWING THAT SHE HAD TALKED TO DOCTOR --  
10 SORRY -- SHERRI GAROUTTE TALKED TO DR. MARCUS WHO WAS REALLY  
11 ILL. AND I SHOWED THEM A LETTER FROM DR. SIEBEL, WHO HAD BEEN  
12 COVERING FOR DR. MARCUS WHEN I WENT IN.

13 Q. AND HAD ANYBODY RESPONDED TO YOU UP UNTIL AUGUST 7TH?  
14 HAD ANYBODY RESPONDED TO YOU IN ANY WAY TO THOSE E-MAILS WHERE  
15 YOU'RE TALKING ABOUT YOUR EMPLOYMENT SITUATION?

16 A. NO, NOT ONE WORD.

17 Q. HAD ANYONE TALKED TO YOU FROM THE COLLEGE ABOUT THE  
18 SUBSTANCE OR THOSE E-MAILS OR WHAT YOU WERE ASKING IN THOSE  
19 E-MAILS?

20 A. NO.

21 Q. NOW, YOU DID GET A RESPONSE TO THIS ONE, RIGHT?

22 A. I'M NOT SURE. 7TH -- I AM NOT SURE, THIS ONE. I KNOW  
23 IN AUGUST I DID GET A RESPONSE FINALLY.

24 Q. AND WE TALKED ABOUT THAT A LITTLE BIT WITH MS. SAPRAI  
25 YESTERDAY?

26 A. RIGHT.

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1 Q. AND WHAT DID YOU UNDERSTAND FROM YOUR CONVERSATION AND  
2 YOUR E-MAIL EXCHANGE WITH MS. SAPRAI ABOUT YOUR EMPLOYMENT  
3 STATUS AFTER YOU WROTE THIS E-MAIL OF AUGUST 7TH?

4 MR. VARTAIN: OBJECTION, LACKS FOUNDATION.

5 THE COURT: OVERRULED.

6 THE WITNESS: I UNDERSTOOD THAT CARLOS LOPEZ WAS FIRM,

7 THAT HE WOULDN'T TALK TO ME, AND HE WOULDN'T TRY TO COMPROMISE  
8 WITH ME, AND THAT HE WOULDN'T DEAL WITH ME.

9 MR. LEBOWITZ: YOUR HONOR, IT'S --

10 THE COURT: WE CAN BREAK NOW. SURE.

11 MR. LEBOWITZ: THIS IS PROBABLY A GOOD TIME.

12 THE COURT: LADIES AND GENTLEMEN, LET'S TAKE OUR  
13 MORNING BREAK. LET'S MAKE IT A 15-MINUTE BREAK, AND WE WILL  
14 COME BACK AT 20 MINUTES OF THE HOUR.

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 THE COURT: WE ARE BACK ON THE RECORD.

17 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

18 THE COURT: GO AHEAD.

19 MR. LEBOWITZ: BEFORE I BEGIN, YOUR HONOR, WE HAVE A  
20 STIPULATION AS TO THE ADMISSIBILITY OF EXHIBIT 19.

21 THE COURT: IS THAT CORRECT?

22 MR. VARTAIN: YES, YOUR HONOR.

23 THE COURT: EXHIBIT 19 WILL BE ADMITTED.

24 (PLAINTIFF'S EXHIBIT NO. 19, PREVIOUSLY MARKED,  
25 WAS ADMITTED INTO EVIDENCE.)

26 MR. LEBOWITZ: WE'LL JUST HAVE IT IN THE RECORD.

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1 WE'RE NOT GOING TO -- AND JUST TO DESCRIBE IT FOR THE RECORD,  
2 SINCE WE'RE ON THIS POINT, IT IS AN AUGUST 1, 2006 E-MAIL FROM  
3 MARCINE BLOUGH TO CARLOS LOPEZ, MICHAEL SCHULTZ AND LOWELL  
4 PRATT, SUBJECT LINE, "WAITING A RESPONSE."

5 Q. I'M GOING TO SHOW YOU ON THE SCREEN EXHIBIT 27, WHICH  
6 IS IN EVIDENCE. AND WE TALKED ABOUT THIS YESTERDAY WITH  
7 MS. SAPRAI. THIS IS THE SEPTEMBER 7, 2006 LETTER FROM  
8 MS. SAPRAI TO YOU -- OR AS PART OF THE LETTER SHE IS INVITING  
9 YOU TO GO BACK TO SEE DR. MISSETT, JUST TO REFRESH WHAT THIS IS.

10 DO YOU RECALL RECEIVING THIS LETTER?

11 A. YES, I DO.

12 Q. PRIOR TO RECEIVING THIS LETTER -- IT'S OKAY. YOU  
13 DON'T NEED TO READ IT. I'M JUST GOING TO ASK YOU ABOUT IT.

14 A. OKAY.

15 Q. PRIOR TO RECEIVING THIS LETTER, HAD YOU HAD ANY  
16 COMMUNICATION FROM THE COLLEGE? LET ME RE-ASK IT.

17 BETWEEN THE JULY 7, 2006 LETTER THAT YOU RECEIVED AND  
18 THIS LETTER OF SEPTEMBER 7, 2006, DID ANYONE FROM THE COLLEGE  
19 TELL YOU OR INVITE YOU TO GO SEE DR. MISSETT ANY MORE?

20 A. NO.

21 Q. SO THIS SEPTEMBER 7TH LETTER IS THE FIRST  
22 COMMUNICATION OF ANY KIND THAT YOU GOT FROM THE COLLEGE TELLING  
23 YOU YOU SHOULD GO BACK TO SEE DR. MISSETT?

24 A. YES.

25 Q. OKAY.

26 NOW, OVER THE FALL OF 2006, TELL US ABOUT WHAT WAS

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1 GOING ON WITH YOU AND THE COLLEGE.

2 A. ME AND WHO?

3 Q. AND THE COLLEGE.

4 A. I KEPT ASKING THEM FOR A DIFFERENT EVALUATOR. I TOLD  
5 THEM MANY TIMES THAT DR. MISSETT DID NOT EVEN KNOW WHAT A  
6 CARCINOID TUMOR WAS, THAT I HAD EXPLAINED IT TO HIM. THAT IT'S  
7 VERY HARD TO EXPLAIN SIDE EFFECTS OR WHATEVER WHEN HE DIDN'T  
8 KNOW WHAT IT WAS. I ASKED FOR -- THEY COULD GET AN INDEPENDENT  
9 ONCOLOGIST, THEY COULD TALK TO MY ONCOLOGIST. I WOULD HELP THEM  
10 FIND AN ONCOLOGIST THAT KNEW SOMETHING ABOUT CARCINOIDS. AND I  
11 KEPT WRITING STEPHANIE, "STEPHANIE, I NEED A DIFFERENT  
12 EVALUATOR."

13 Q. AND HOW DID THE COLLEGE RESPOND?

14 A. THEY SAID THAT DR. MISSETT WAS THEIR SOLE MEDICAL  
15 EVALUATOR.

16 Q. SO DID YOU GO BACK TO SEE DR. MISSETT?

17 A. UNDER PROTEST. I WAS STILL TRYING TO SAY IT WAS NOT  
18 THE RIGHT PERSON; BUT SINCE IT WAS THEIR SOLE MEDICAL EVALUATOR,  
19 I WENT BACK.

20 Q. NOW, THE COURT REPORTER IS STRAINING TO HEAR YOU. IF  
21 YOU COULD SLOW DOWN A LITTLE BIT.

22 A. I'M SORRY.

23 Q. AND YOU TOLD MS. SAPRAI THAT YOU WERE GOING BACK TO  
24 DR. MISSETT?

25 A. YES.

26 Q. DID YOU GIVE HER ANY REASON WHY YOU WERE GOING BACK,

1 WHY YOU WERE AGREEING?

2 A. YES, BECAUSE THIS IS THE ONLY WAY I COULD GET MY JOB  
3 BACK. I WAS WILLING TO DO IT.

4 Q. AND DID YOU GO SEE DR. MISSETT?

5 A. YES, I DID.

6 Q. AND HOW LONG WAS YOUR MEETING WITH DR. MISSETT?

7 A. ANOTHER HOUR.

8 Q. AND DID HE PERFORM ANY SORT OF PHYSICAL EXAM?

9 A. NONE.

10 Q. DID YOU TALK TO DR. MISSETT ABOUT YOUR CANCER?

11 A. YES, I DID.

12 Q. AND DID YOU TALK TO HIM ABOUT YOUR PHYSICAL CONDITION?

13 A. YES, I DID.

14 Q. AND WHAT DID YOU TELL HIM ABOUT YOUR CONDITION INSOFAR  
15 AS IT RELATED TO THE CONDITION AS OF THE LAST TIME YOU MET WITH  
16 HIM?

17 MR. VARTAIN: OBJECTION, VAGUE. YOU MEAN THE CANCER  
18 OR OTHER HEALTH CONDITIONS?

19 THE COURT: WE'LL LET THE WITNESS TELL US.

20 GO AHEAD. OBJECTION OVERRULED.

21 THE WITNESS: I NEED TO HEAR THE QUESTION AGAIN. I'M  
22 SORRY.

23 MR. LEBOWITZ: SURE. IT'S OKAY.

24 Q. YOUR MEETING WITH DR. MISSETT IN NOVEMBER 2006, DID  
25 YOU EXPLAIN TO HIM IN RELATION TO YOUR LAST MEETING WITH HIM IN  
26 MAY HOW, IF AT ALL, YOUR CONDITION HAD CHANGED?

1 A. YES, I DID.

2 Q. AND WHAT DID YOU TELL HIM?

3 A. I TOLD HIM I WAS THEN OFF THE SANDOSTATIN FOR GOOD. I  
4 HAD CHOSEN AFTER THE TRIAL TO STAY OFF THE SANDOSTATIN. THAT I  
5 WAS FILLED WITH ENERGY, THAT I NO LONGER HAD FATIGUE AND HAD TO  
6 SLEEP 12 HOURS A NIGHT, AS I HAD TO BEFORE. THAT I HAD NO  
7 LONGER HAD TO NAP. HE ASKED ME ALL THESE QUESTIONS. I SAID,  
8 "NO, I DO NOT HAVE TO DO THIS ANYMORE."

9 Q. OKAY.

10 NOW, THOSE THINGS THAT YOU JUST DESCRIBED, WAS THAT  
11 THE STATE OF YOUR CONDITION IN MAY AS WELL?

12 A. AS SOON AS I GOT OFF THE SANDOSTATIN, I STOPPED -- I  
13 HAVEN'T HAD A NAP SINCE.

14 Q. AND DID YOU TELL DR. MISSETT THAT INFORMATION IN MAY  
15 ALSO?

16 A. YES.

17 Q. AND SO HAD YOUR CONDITION CHANGED IN ANY REMARKABLE  
18 WAY BETWEEN MAY AND NOVEMBER OR HAD IT REMAINED THE SAME?

19 A. WELL, IT HAD REMAINED THE SAME THEN. I WAS ON THE  
20 TRIAL AND NOW I WAS TOTALLY DRUG-FREE, AND THAT I WAS HAPPY  
21 ABOUT THAT. THAT'S HOW IT CHANGED.

22 Q. OKAY.

23 AND THEN THROUGH THE -- AFTER YOU SAW DR. MISSETT, HE  
24 MADE AN APPOINTMENT FOR YOU TO SEE SOMEONE ELSE, CORRECT?

25 A. YES.

26 Q. WHO WAS THAT?

734

1 A. DR. LYNCH.

2 Q. AND WHAT KIND OF DOCTOR DID YOU UNDERSTAND DR. LYNCH  
3 TO BE?

4 A. A NEUROPSYCHOLOGIST, I BELIEVE.

5 Q. AND WHAT DID YOU -- WELL, FIRST OF ALL, DID YOU HAVE  
6 ANY COMMUNICATIONS WITH THE COLLEGE ABOUT GOING TO SEE  
7 DR. LYNCH?

8 A. YES. I WROTE STEPHANIE SAPRAI TO TELL THEM  
9 DR. MISSETT HAD SENT ME TO DR. LYNCH AND THAT I WAS GOING.

10 Q. DID YOU TELL HER WHY YOU WERE GOING TO GO?

11 A. NO.

12 Q. AND WHY DID YOU GO SEE DR. LYNCH?

13 A. BECAUSE DR. MISSETT TOLD ME TO.

14 Q. DID YOU ACTUALLY GO THROUGH A NEUROPSYCHOLOGICAL EXAM  
15 FROM --

16 A. YES, I DID.

17 Q. -- DR. LYNCH?

18 JUST WAIT UNTIL I'M FINISHED.

19 A. SORRY.

20 Q. AND WHEN DID THAT TAKE PLACE?

21 A. THAT TOOK PLACE, I WOULD SAY IN NOVEMBER.

22 Q. SOMETIME IN THE END OF 2006?

23 A. CORRECT.

24 Q. AND WHEN WAS THE NEXT TIME -- WHEN DID YOU LEARN THE  
25 RESULTS OF THIS EXAMINATION?

26 A. TWO MONTHS LATER.

735

1 Q. AND SO INTO 2007?

2 A. YES.

3 Q. AND WHAT DID YOU HEAR?

4 A. I HEARD THAT DR. MISSETT WAS RECOMMENDING HALF TIME.

5 Q. AND WE SAW SOME OF THE EXCHANGE WITH MS. SAPRAI  
6 YESTERDAY. WHEN YOU WERE CORRESPONDING WITH MS. SAPRAI IN THE  
7 SPRING OF 2007 ABOUT HALF-TIME WORK, WERE YOU CORRESPONDING  
8 ABOUT -- WERE YOU LOOKING FOR WORK OR ASSIGNMENT TO CLASSES FOR  
9 THE SPRING 2007 SEMESTER?

10 A. YES, I WAS.

11 Q. FOR THE SPRING SEMESTER OR THE FALL SEMESTER?

12 A. I WAS HOPING TO GET IN AS SOON AS I COULD.

13 Q. AND MS. SAPRAI YESTERDAY TALKED ABOUT LOOKING AT THE  
14 FALL SEMESTER. DO YOU RECALL THAT?

15 A. YES.

16 Q. AND IS THAT WHAT YOU AND SHE WERE TALKING ABOUT IN  
17 APRIL?

18 A. YES, IT WAS.

19 Q. OKAY.

20 AND WE SAW YESTERDAY THE APRIL 17TH E-MAIL FROM  
21 STEPHANIE SAPRAI, TELLING YOU THAT THERE WERE NO CLASSES



22 AVAILABLE FOR YOU. AND WE SAW THE APRIL 18TH LETTER SIGNED BY  
23 PEGGY LOYA, TELLING YOU THAT THEY'RE ENDING YOUR BENEFITS  
24 BECAUSE OF YOUR TERMINATION?

25 A. YES.

26 Q. OBVIOUSLY, CAN YOU TELL US HOW THAT MADE YOU FEEL?

736

1 A. I WORKED THIS WHOLE 29 YEARS. I HAD BEEN AN  
2 EXCELLENT -- WHICH NOBODY HAS, SINCE WE'VE BEEN IN THIS  
3 COURTROOM, DENIED. AND THEY FIRE ME TWICE WHEN I'M TRYING TO  
4 WORK IT OUT WITH THEM.

5 Q. NOW, AFTER RECEIVING THE APRIL 17TH AND APRIL 18TH  
6 CORRESPONDENCE FROM THE COLLEGE, YOU ALSO GOT A JOB OFFER?

7 A. YES.

8 Q. AND YOU REJECTED THAT JOB OFFER?

9 A. YES, I DID.

10 Q. CAN YOU TELL US WHY?

11 A. ONE WAS THE FIRING LETTERS OF THE 16TH AND THE 17TH,  
12 WHERE THEY TOLD ME I HAD BEEN TERMINATED FOR THE SECOND TIME, SO  
13 THAT IN THE TIME PERIOD I HAD RECEIVED TWO TERMINATION LETTERS.  
14 THAT MADE ME THINK THE COLLEGE WAS IN BAD FAITH, THAT THEY  
15 DIDN'T WANT ME BACK. THAT THEY DIDN'T -- THAT THIS WAS JUST AN  
16 OFFER IN BAD FAITH.

17 Q. AND DID YOU HAVE ANY COMMUNICATIONS WITH THE COLLEGE  
18 ABOUT YOUR OPINIONS?

19 A. YES. I WROTE SEVERAL E-MAILS.

20 Q. AND WE SAW SOME OF THOSE E-MAILS YESTERDAY?

21 A. YES.

22 Q. AND DO THOSE E-MAILS DETAIL ALL OF THE REASONS WHY YOU  
23 BELIEVED THE COLLEGE WAS IN BAD FAITH?

24 A. YES, THEY DID.

25 Q. OKAY.

26 NOW, THE ISSUE OF THE SIX-YEAR CONTRACT THAT WAS

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1 DISCUSSED IN THOSE CORRESPONDENCE, THE BACK AND FORTH ABOUT THE  
2 OFFER IN THE SUMMER OF 2007 --

3 A. YES.

4 Q. -- TELL US HOW IMPORTANT THAT WAS TO YOU, THE SIX-YEAR  
5 PART.

6 A. IT WAS VERY IMPORTANT.

7 Q. WHY?

8 A. WELL, SINCE I DIDN'T TRUST THEM SINCE THEY FIRED ME  
9 TWICE IN THE SAME YEAR FOR REASONS THAT WERE NEVER EXPLAINED  
10 PROPERLY, THAT SAID TO ME NO ONE TALKED TO ME, I WAS AFRAID TO  
11 GO BACK AND WORK THERE. I WAS AFRAID THAT THEY DIDN'T WANT ME  
12 THERE, FOR WHATEVER REASON I DID NOT KNOW.

13 Q. NOW, AT THIS TIME IN THE SUMMER OF 2007, A NEW  
14 ADMINISTRATION HAD COME TO THE COLLEGE?

15 A. YES.

16 Q. THERE WAS A PRESIDENT, NEW PRESIDENT, TIM HAIGHT?

17 A. YES.

18 Q. AND A NEW PROVOST, JAMES KELLY?

19 A. YES.

20 Q. AS OF THE TIME YOU RECEIVED THIS JOB OFFER, HAD YOU  
21 EVER MET EITHER OF THOSE GENTLEMEN?

22 A. NEITHER.

23 Q. WHEN WAS THE FIRST TIME YOU MET EITHER OF THEM?

24 A. IN THIS COURTROOM.

25 Q. FOR THIS TRIAL?

26 A. FOR THIS TRIAL.

738

1 Q. AND PRIOR TO MEETING THOSE GENTLEMEN HERE IN THIS  
2 COURTROOM, HAD EITHER OF THEM EVER CALLED YOU?

3 A. NEVER.

4 Q. HAD EITHER OF THEM EVER SENT YOU AN E-MAIL?

5 A. NO.

6 Q. NOW, WE SAW THE ONE LETTER THAT PRESIDENT HAIGHT  
7 SIGNED AS PART OF THE OFFER?

8 A. RIGHT.

9 Q. OTHER THAN THAT COMMUNICATION, HAVE YOU RECEIVED ANY  
10 COMMUNICATION FROM PRESIDENT HAIGHT?

11 A. NONE.

12 Q. NOW, WE HAVE HEARD A LOT AND WE HAVE HEARD FROM YOU  
13 TODAY ABOUT HOW THIS HAS ALL IMPACTED YOU. AND I THINK WE HAVE  
14 AN UNDERSTANDING, SO I'M NOT GOING TO GO BACK THERE NOW. WHAT I  
15 DO WANT TO ASK YOU, THOUGH, IS WHAT HAVE YOU DONE SINCE THE

16 SUMMER OF 2007 TO TRY TO GET YOUR LIFE BACK ON TRACK?

17 A. I HAVE LOOKED FOR A JOB EVERY DAY ON THE NET.

18 NOWADAYS, RATHER THAN 29 YEARS AGO, THE ONLY WAY YOU ARE ALLOWED  
19 TO LOOK IS ON THE NET.

20 Q. AND WHAT KIND OF JOBS HAVE YOU BEEN LOOKING FOR?

21 A. I'VE BEEN LOOKING FOR, OF COURSE, BUSINESS LAW  
22 PROFESSOR, BUT I HAVE ALSO APPLIED FOR FOUR JOBS THAT WERE OUT  
23 OF MY FIELD BECAUSE I COULD NOT FIND BUSINESS LAW PROFESSOR.

24 Q. WHAT TYPES OF JOBS DID YOU APPLY FOR?

25 A. THEY'RE MANAGEMENT JOBS. THEY'RE JOBS LIKE DIRECTOR  
26 OF EQUAL OPPORTUNITY HIRING. THEY WERE ALL JOBS IN THE

739

1 AFFIRMATIVE ACTION AREA.

2 Q. ALL RIGHT.

3 AND DID YOU RECEIVE ANY JOB OFFERS?

4 A. THE CLOSEST ONE I GOT, THEY ENDED UP TELLING ME THAT  
5 THEY WERE NOT HIRING FOR THE POSITION, AND THANK YOU VERY MUCH.

6 Q. AND WERE THERE ANY -- HAVE YOU LOOKED FOR OTHER  
7 FACULTY JOBS IN THE BAY AREA?

8 A. EVERY DAY; FACULTY JOBS, THAT'S WHAT I LOOK FOR.

9 Q. OKAY.

10 NOW, WE HEARD DR. PITHER, YOUR PSYCHOLOGIST, TALK  
11 ABOUT SOME OF THE VOLUNTEER WORK YOU HAVE DONE. CAN YOU TELL US  
12 ABOUT THAT?

13 A. YES. SINCE I HADN'T BEEN ABLE TO GET A JOB IN MY AREA

14 OR EVEN MANAGEMENT, I WANTED TO DO SOMETHING TO GIVE BACK. I  
15 VOLUNTEERED FOR THE AMERICAN CANCER SOCIETY.

16 Q. WHAT DO YOU DO FOR THE AMERICAN CANCER SOCIETY?

17 A. I RAN THEIR -- IT'S CALLED DAFFODILS DAYS. I DON'T  
18 KNOW IF ANYBODY KNOWS ABOUT IT. IT'S THEIR SECOND LARGEST  
19 FUNDRAISING EVENT OF THE YEAR. I BASICALLY WALKED INTO THEIR  
20 OFFICE AND THEIR BOSS, GARY, GRABBED ME AND SAID, "CAN YOU RUN  
21 THIS EVENT?" AND THE NEXT DAY I WAS RUNNING THE EVENT.

22 Q. SO WHAT IS THE EVENT?

23 A. THE EVENT IS WE GATHER MONEY BY ASKING CORPORATIONS TO  
24 DONATE MONEY TO BUY A DAFFODIL FOR EVERY CANCER PATIENT IN THE  
25 AREA. AND THEN WE TRACK DOWN ALL THE CANCER PATIENTS, WHICH IS  
26 VERY DIFFICULT WITH HIPAA. AND THEN WE DELIVER DAFFODILS ON

740

1 THAT DAY TO EVERY CANCER PATIENT WE HAVE FOUND.

2 Q. AND SO THIS EVENT IS SOMETHING THAT YOU'RE IN CHARGE  
3 OF?

4 A. I WAS IN CHARGE, YES.

5 Q. AND, FINALLY, WHAT'S GOING ON WITH YOUR HUSBAND THESE  
6 DAYS?

7 A. WE'RE NOT LIVING TOGETHER.

8 Q. YOU'RE NOT LIVING TOGETHER?

9 A. NO.

10 Q. AND HOW LONG HAS THAT BEEN THE CASE?

11 A. I'M TRYING TO THINK WHAT DAY I LEFT TO GO TO

12 PENNSYLVANIA. SEPTEMBER 19TH.

13 Q. SINCE SEPTEMBER 19TH OF THIS YEAR?

14 A. UH-HUH. YES, SEPTEMBER 19TH OF THIS YEAR.

15 Q. AND PRIOR TO THAT -- WELL, LET ME ASK YOU THIS.

16 WE'VE HEARD ABOUT SOME OF YOUR HUSBAND'S DRUG ABUSE OR  
17 ADDICTION PROBLEMS. WHAT, IF ANYTHING, HAVE YOU DONE OVER THE  
18 TIME PERIOD THAT HE'S HAD THESE ISSUES TO HELP HIM WITH THOSE?

19 A. I HAD HIM IN THE CAR TWICE TO TAKE HIM TO THE DRUG  
20 ABUSE PROGRAMS; BOTH TIMES HE TOLD ME TO TURN AROUND. HE WASN'T  
21 GOING. I'VE LOOKED UP PROGRAMS, SUGGESTED PROGRAMS -- OH, AND I  
22 DID GET HIM TO GO TO A PSYCHIATRIST. THAT WAS THE ONE THING I  
23 ACCOMPLISHED.

24 Q. WHEN WAS THAT?

25 A. YEARS AGO. HE'S BEEN GOING FOR TWO OR THREE YEARS.

26 Q. AND DID YOU TRY TO GET HIM ANY OTHER HELP?

741

1 A. TRIED TO GET HIM ANY HELP I CAN GET HIM.

2 Q. MY PARTNER REMINDS ME OF ONE THING.

3 WE TALKED ABOUT YOUR -- THE VERY FIRST PART OF YOUR  
4 TESTIMONY A COUPLE OF DAYS AGO, TALKED ABOUT AWARDS THAT YOU --

5 A. YES.

6 Q. -- RECEIVED FROM FACULTY AND FROM STUDENTS.

7 DID YOU EVER RECEIVE ANY OTHER TOKENS OF APPRECIATION  
8 FROM YOUR STUDENTS?

9 A. OH, YES, I HAVE.

10 Q. WHAT IS THAT?

11 A. MY SHOES.

12 Q. YOUR SHOES? TELL US --

13 A. MY SHOES.

14 Q. WHAT KIND OF SHOES DO THEY LIKE TO GET YOU?

15 A. IF YOU'VE BEEN WATCHING EVERY DAY, I'VE COME IN IN A  
16 PAIR OF UNUSUAL, FANCY SHOES. WELL, IT STARTED OUT THAT MY  
17 MOTHER GAVE ME A PAIR OF RED TENNIS SHOES THAT I STARTED TO WEAR  
18 TO SCHOOL, AND THE KIDS LOVED IT. SO IT BECAME A TRADITION THAT  
19 AT THE END OF EVERY SEMESTER, THE STUDENTS WOULD BUY ME A PAIR  
20 OF THE MOST OUTLANDISH SHOES THEY COULD FIND. AND THIS IS A  
21 PAIR THEY BOUGHT ME.

22 Q. AND DO YOU STILL HAVE A LOT OF THOSE SHOES?

23 A. I HAVE BEEN WEARING THOSE SHOES ALL WEEK.

24 Q. AND DO YOU WEAR THEM ALL THE TIME, NOT JUST THIS WEEK?

25 A. I WEAR THEM ALL THE TIME.

26 MR. LEBOWITZ: THANK YOU, YOUR HONOR. I HAVE NO MORE

742

1 QUESTIONS.

2 THE COURT: CROSS-EXAMINATION?

3 MR. VARTAIN: CAN I HAVE TEN SECONDS TO GIVE MYSELF --

4 THE COURT: OF COURSE.

5 MR. VARTAIN: CAN I ASK THE BAILIFF TO REMOVE THE

6 LECTERN?

7 THE COURT: YES.

8 MR. VARTAIN: YOUR HONOR, MAY I SIT IN A CHAIR IN

9 FRONT OF THE WITNESS OVER HERE? IT'S GOING TO BE --

10 THE COURT: IF YOU'RE MORE COMFORTABLE, THAT WOULD BE  
11 FINE. IT ONLY SEEMS LIKE WE'RE TRYING TO TORTURE THE LAWYERS IN  
12 TRIAL.

13 MR. VARTAIN: I'VE GOT A BAD BACK. MAYBE I SHOULD  
14 STAND UP FOR A WHILE.

15 THE COURT: LET'S GET A CHAIR IN PLACE.

16 (WHEREUPON, THERE WAS A BRIEF PAUSE IN THE  
17 PROCEEDINGS.)

18 MR. VARTAIN: THIS IS EXHIBIT 51, IS IT, MS. ADLER?

19 MS. ADLER: 52.

20 MR. VARTAIN: 52. WOULD YOU GET THE LETTERHEAD OF THE  
21 COLLEGE UP THERE. THIS IS EXHIBIT 52. AND THIS IS THE LETTER,  
22 THE CONTRACT OFFER FROM THE PRESIDENT FROM LAST JULY. AND COULD  
23 YOU SCROLL DOWN SLOWLY A LITTLE BIT, MS. ADLER, SO THE JURY CAN  
24 SEE IT.

25

26 CROSS-EXAMINATION

743

1 BY MR. VARTAIN:

2 Q. YOU DID READ THE LETTER WHEN IT CAME?

3 A. OF COURSE.

4 Q. AND I THINK YOU CONSIDERED IT FOR A WEEK OR TWO. YOU  
5 SENT AN E-MAIL TO THE COLLEGE SAYING, "I AM GIVING IT CAREFUL



6 CONSIDERATION"?

7 A. YES, I DID.

8 Q. AND WHEN YOU WERE GIVING IT CAREFUL CONSIDERATION, YOU  
9 NOTICED THAT THE SCHOOL WAS TELLING YOU THAT YOU WOULD GET A  
10 FULL BENEFITS PACKAGE, EVEN THOUGH FOR THE BEGINNING YOU'D ONLY  
11 BE WORKING HALF TIME? DID YOU NOTICE THAT?

12 A. YES, I DID.

13 Q. AND YOU ALSO NOTICED THAT YOU WOULD BE EVALUATED FOR A  
14 SIX-YEAR CONTRACT BASED ON THE SAME FACTORS THAT ARE IN THE  
15 FACULTY HANDBOOK THE FACULTY MEMBERS ARE SUPPOSED TO BE  
16 EVALUATED ON, CORRECT?

17 A. YES.

18 Q. THEY DIDN'T ADD ANY NEW FACTORS FOR YOU TO BE  
19 EVALUATED. THEY JUST PUT IN THE LETTER THE SAME ONES THAT THEY  
20 ARE SUPPOSED TO, CORRECT?

21 A. YES.

22 Q. YOU HAD NEVER GOTTEN -- YOU HAD NEVER RECEIVED FROM  
23 THE COLLEGE ANY FINAL LETTER SAYING WHAT WAS THE OUTCOME OF THE  
24 REVIEW THAT HAPPENED IN 2006; ISN'T THAT CORRECT? THERE WAS NO  
25 LETTER FROM THE PRESIDENT?

26 A. I'M SORRY. WHICH REVIEW ARE YOU REFERRING TO?

744

1 Q. THE REVIEW THAT TOOK PLACE IN THE 2005, 2006 YEAR,  
2 WHERE THE DEAN RECOMMENDED YOU SUBJECT TO -- HE HAD A CONCERN  
3 ABOUT YOUR HEALTH. BUT THEN YOU NEVER GOT A LETTER FROM THE

4 PRESIDENT SAYING WHAT THE FINAL DECISION WAS?

5 A. NO, I DID NOT.

6 Q. OKAY.

7 BUT THEN THE NEW PRESIDENT CAME IN IN THAT INTERVENING  
8 YEAR, AND HE SENT THIS LETTER TO YOU, CORRECT?

9 A. YES.

10 Q. AND IN THIS LETTER HE SAID THAT IF YOU ACCEPTED THE  
11 CONTRACT, EVEN THOUGH IT WAS HALF TIME, YOU WOULD BE UP FOR  
12 EVALUATION. THEY WOULD USE THE SAME FACTORS THAT THEY ALWAYS  
13 USED FOR WHETHER A FACULTY MEMBER GETS THEIR RENEWAL, CORRECT?

14 A. YES.

15 MR. VARTAIN: SCROLL DOWN A LITTLE, IF YOU WOULD,  
16 MS. ADLER. I GUESS GO TO THE NEXT PAGE, PLEASE.

17 Q. NOW, YOU TOLD THE JURY THAT YOU DIDN'T -- YOU SEE THE  
18 PLACE FOR SIGNATURE?

19 A. YES.

20 Q. THAT'S A STANDARD PART OF EVERY FACULTY CONTRACT.  
21 ONLY THE PRESIDENT CAN SEND YOU A CONTRACT OFFER, AND IT'S NOT  
22 VALID UNTIL THE FACULTY MEMBER ACCEPTS IT AND SIGNS IT AND SENDS  
23 IT BACK?

24 A. YES.

25 Q. SO HE WASN'T ASKING YOU TO DO ANYTHING UNUSUAL, JUST  
26 ASKING YOU IF YOU AGREED, SIGN IT AND SEND IT BACK, RIGHT?

1 WHICH YOU NEVER DID.

2 A. YES, HE ASKED ME TO DO SOMETHING UNUSUAL. HE WAS  
3 ASKING ME TO SIGN A ONE-YEAR CONTRACT, WHEN WE HAD BEEN TALKING  
4 FOR A YEAR ABOUT A SIX-YEAR CONTRACT.

5 Q. THAT PART YOU THOUGHT WAS UNUSUAL. THE CONTRACT OFFER  
6 FOR THE ONE YEAR SAID THAT YOU COULD BE EVALUATED FOR THE  
7 SIX-YEAR CONTRACT DURING THAT ONE YEAR?

8 A. YES, AND I HAD ALREADY BEEN EVALUATED. I HAD ALREADY  
9 BEEN EVALUATED.

10 Q. BUT THE EVALUATION HADN'T BEEN COMPLETED BY THE  
11 PRESIDENT?

12 A. NO.

13 Q. ISN'T THAT TRUE?

14 A. I DON'T THINK SO.

15 Q. OKAY.

16 A. I WAS NOT PRIVY.

17 Q. RIGHT. AS FAR AS YOU KNOW, THE PRESIDENT HAD NEVER --  
18 THE OLD PRESIDENT, LOPEZ, HAD NOT COMPLETED THAT EVALUATION?

19 A. AS FAR AS I KNOW.

20 Q. SO THE NEW PRESIDENT SENT YOU THIS LETTER ABOUT AN  
21 EVALUATION ON YOUR FIRST YEAR BACK FROM THE MEDICAL LEAVE,  
22 CORRECT?

23 A. YES. IT WAS A MEDICAL LEAVE I DID NOT TAKE, THE  
24 COLLEGE FORCED ON ME.

25 Q. OKAY. WE'LL GET TO THAT.

26 BUT THIS YEAR THAT WAS IN BETWEEN WHEN YOU WERE LAST

1 WORKING AND WHEN THEY SENT THIS LETTER TO YOU WAS A YEAR OF  
2 MEDICAL LEAVE. YOU THOUGHT IT WAS A FORCED MEDICAL LEAVE?

3 A. YES, I DID.

4 Q. OKAY. FAIR ENOUGH. WE'LL JUST CALL IT MEDICAL LEAVE  
5 AND WE WILL TALK ABOUT FORCED OR UNFORCED LATER.

6 COULD YOU PUT THAT EXHIBIT, PAGE ONE OF THAT, BACK UP  
7 FOR THE JURY.

8 BUT THIS IS THE LETTER THAT YOU THOUGHT WAS IN BAD  
9 FAITH, WHICH IS WHY YOU DIDN'T ACCEPT IT?

10 A. YES, I DID.

11 Q. OKAY. BUT YOU NEVER TALKED TO THE PRESIDENT. YOU  
12 NEVER CALLED HIM UP TO TALK ABOUT THIS LETTER, DID YOU?

13 A. NO.

14 Q. YOU NEVER ASKED HIM FOR A MEETING, DID YOU?

15 A. NO. NOR DID HE.

16 Q. WHAT?

17 A. NOR DID HE.

18 Q. WELL, HE'S THE ONE THAT SENT THE LETTER. HE HAD THE  
19 LAST COMMUNICATION. WHAT I'M SAYING IS YOU NEVER CALLED HIM --  
20 RESPONDED TO THE LETTER AND SAID, "I'D LIKE TO TALK ABOUT WHAT  
21 YOU MEAN BY THIS LETTER," DID YOU?

22 A. I WAS TOLD THAT I WAS ONLY ALLOWED TO TALK TO  
23 STEPHANIE SAPRAI LONG BEFORE THIS. I HAD TRIED TO TALK TO  
24 MR. HAIGHT AND MR. KELLY SOMETIME AND NO ONE -- THERE WAS NO  
25 RESPONSE.

26 Q. THAT WAS THE YEAR BEFORE?

1 A. YES.

2 Q. OKAY. BUT I AM TALKING ABOUT IN RESPONSE TO THIS  
3 CONTRACT OFFER.

4 A. NO, I NEVER SPOKE TO HIM.

5 Q. YOU DIDN'T TRY TO SPEAK WITH HIM ONCE YOU GOT THIS  
6 LETTER?

7 A. NO.

8 Q. AND YOU DIDN'T TRY TO SPEAK WITH THE PROVOST,  
9 DR. KELLY, WHO IS THE HEAD OF THE FACULTY, TO ASK HIM WHAT THIS  
10 LETTER MEANT, DID YOU?

11 A. NO.

12 Q. YOUR DEFINITION -- YOUR JUDGMENT THAT IT WAS IN BAD  
13 FAITH WAS MADE, YOU KNOW, IN THE PRIVACY OF YOUR HOME. YOU READ  
14 THE LETTER. YOU THOUGHT IT WAS IN BAD FAITH, BUT YOU NEVER  
15 ASKED THE COLLEGE PRESIDENT AND THE PROVOST, WHO SENT THE  
16 LETTER, YOU KNOW, WHAT IS YOUR INTENT? WHAT ARE YOU TRYING TO  
17 GET AT HERE? OR ANYTHING LIKE THAT, DID YOU?

18 A. I TRIED TALKING TO THE COLLEGE MANY TIMES. I WAS NOT  
19 ALLOWED.

20 Q. BUT --

21 A. I WAS MET ONLY BY SILENCE.

22 Q. MA'AM, I'M NOT TALKING ABOUT THE PREVIOUS YEAR, WHEN  
23 THERE WAS THAT SILENCE BECAUSE THEY WANTED YOU TO GO TO THE  
24 DOCTOR. I'M TALKING ABOUT ONCE EVERYTHING HAD COME TO SOME TYPE

25 OF CLOSURE AND THE COLLEGE PUT A CONTRACT OFFER IN WRITING --  
26 AND YOU'RE A LAWYER -- DID YOU CALL UP THE PRESIDENT OR THE

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1 PROVOST AND SAY, "I'M CONCERNED WHAT YOU THINK IS GOING TO  
2 HAPPEN"?

3 A. I WOULD HAVE LIKED TO, BUT I THOUGHT I WOULD BE MET  
4 WITH SILENCE AGAIN.

5 Q. OKAY. BUT YOU HAD HAD NO EXPERIENCE WITH DR. KELLY OR  
6 PRESIDENT HAIGHT. MAYBE YOU DIDN'T LIKE CARLOS LOPEZ, BUT THESE  
7 WERE THE NEW KIDS ON THE BLOCK.

8 A. YES, AND I'D ASKED TO SPEAK WITH THEM BEFORE.

9 Q. YOU HAD NEVER ASKED THEM?

10 A. NO. I ASKED STEPHANIE SAPRAI, WHO WAS TOLD, "I'M THE  
11 ONLY PERSON YOU'RE ALLOWED TO SPEAK TO."

12 Q. THAT WAS WHEN THE MEDICAL THING WAS GOING BACK AND  
13 FORTH. I'M SAYING IN THE NEW YEAR, AFTER DR. MISSETT COMPLETED  
14 THE EVALUATION, ALL THAT TROUBLE ABOUT WHETHER YOU WERE OR NOT  
15 GOING TO GO BACK TO DR. MISSETT. YOU FINALLY GAVE IN. YOU  
16 WENT. HE CAME BACK -- THE DOCTOR SAID, "GO BACK TO WORK HALF  
17 TIME FOR STARTERS," THEN THE CONTRACT WAS PUT IN WRITING. AT  
18 THAT TIME, YOU DIDN'T ASK TO SIT DOWN WITH THE PRESIDENT OR THE  
19 PROVOST AND SEE HOW THEY FELT ABOUT IT?

20 A. NO. INSTEAD I WROTE STEPHANIE SAPRAI, WHO I HAD BEEN  
21 TOLD IS THE ONLY PERSON I AM ALLOWED TO CONTACT, AND NO ONE HAD  
22 CHANGED THAT.

23 Q. OKAY. THAT STATEMENT WAS IN 2006, BEFORE THE NEW  
24 PRESIDENT CAME IN, CORRECT?

25 A. WELL, NOBODY SPOKE TO ME AFTER THAT. NOBODY.

26 Q. WELL, YOU HAD HAD E-MAILS BACK AND FORTH WITH

749

1 STEPHANIE SAPRAI ALL ABOUT THE COURSES YOU WERE GOING TO --

2 A. ONLY STEPHANIE, YES.

3 Q. -- ALL ABOUT THE COURSES YOU WERE GOING TO HAVE --

4 A. NO.

5 THE COURT: EXCUSE ME.

6 JUST LET HIM FINISH. I'D APPRECIATE IT.

7 THE WITNESS: OKAY.

8 MR. VARTAIN: SOMETIMES IT LOOKS LIKE I'M DONE, BUT --

9 WE MET IN A DEPOSITION -- AND SOMETIMES I STOP AND IT  
10 LOOKS LIKE I'M DONE. THAT'S MY FAULT.

11 Q. SO WHEN YOU SAID THE FIRST TIME YOU EVER SAW THE  
12 PRESIDENT OR PROVOST WAS IN THIS COURTROOM, YOU'RE NOT BLAMING  
13 THE PRESIDENT OR THE PROVOST FOR THAT. THEY NEVER SAID THEIR  
14 DOOR WAS CLOSED TO YOU THIS WHOLE YEAR, DID THEY? EVEN THOUGH  
15 THERE WAS A LAWSUIT?

16 A. YES, I DID BLAME THEM.

17 Q. BUT YOU NEVER SENT THEM AN E-MAIL OR YOU NEVER PHONED  
18 THEM TO GET ON THEIR CALENDAR?

19 A. I WAS TOLD I WAS NOT ALLOWED.

20 Q. AND THAT WAS BY STEPHANIE DURING THE MEDICAL --

21 GETTING THE MEDICAL DOCUMENTS OVER TO DR. MISSETT, CORRECT?  
22 A. IF I WAS ALLOWED, SOMEBODY SHOULD HAVE LET ME KNOW.  
23 AND I WOULD HAVE BEEN HAPPY TO SPEAK TO THEM; MORE THAN HAPPY.

24 MR. VARTAIN: PUT UP 51. THANK YOU.

25 Q. I THINK WE CAN AGREE THAT YOUR DECISION THAT THIS  
26 CONTRACT WAS IN BAD FAITH WASN'T BASED ON ANYTHING THAT YOU

750

1 TALKED ABOUT WITH PROVOST KELLY?

2 A. OH, YES.

3 Q. OR PRESIDENT HAIGHT, RIGHT?

4 A. I'M SORRY. YES.

5 Q. IS THAT CORRECT?

6 A. YES, CORRECT.

7 Q. OKAY.

8 NOW, THIS IS THE LETTER THAT ACTUALLY WAS WITH IT. IT  
9 CAME THE SAME DAY, 51. THIS WAS SENT TO YOU ALONG WITH THE  
10 CONTRACT THAT SAID WHAT YOUR CLASS SCHEDULE WAS GOING TO BE FOR  
11 THE YEAR IF YOU DECIDED TO COME BACK.

12 DO YOU REMEMBER READING THAT, PROFESSOR?

13 A. YES.

14 Q. OKAY.

15 AND, AGAIN, I'M COMING BACK TO THIS REASON OF BAD  
16 FAITH. ISN'T IT TRUE THAT EVERY SINGLE DISABILITY SUPPORT  
17 MEASURE THAT YOU HAD ASKED THE COLLEGE FOR, THEY NOT ONLY  
18 APPROVED BUT THEY PUT IT IN WRITING IN THIS LETTER?



19 A. ACTUALLY, THAT IS NOT CORRECT.

20 Q. OKAY.

21 LET'S FIRST FIND OUT, DID YOU ASK THE -- I'LL GO TO  
22 THE LETTER ITSELF. THEY'RE SAYING THAT THESE ARE YOUR LIST OF  
23 YOUR TEACHING ASSIGNMENTS FOR THE NEXT YEAR. AND THEY SAID  
24 THEY'LL DO THE SPRING SEMESTER LATER WITH YOU, BUT THE FIRST  
25 FALL SEMESTER -- THOSE COURSES THEY GAVE YOU WERE YOUR COURSES,  
26 WEREN'T THEY?

751

1 A. YES, THEY WERE.

2 Q. THEY WEREN'T TRYING TO PUSH NEW COURSES AND MAKE YOU  
3 HAVE TO TEACH SOMETHING NEW?

4 A. NO.

5 Q. OKAY. SO THAT PART'S FAIR?

6 A. OH, YES.

7 Q. AND THEN THE BEGINNING PART SAYS, "YOU CAN SEE WE ARE  
8 INCLUDING YOUR REQUESTED ACCOMMODATIONS IN THE TEACHING SCHEDULE  
9 TO HAVE TIME IN BETWEEN CLASSES."

10 A. YES, AND I HAD ASKED FOR SOMETHING DIFFERENT. I HAD  
11 ASKED FOR A MONDAY, WEDNESDAY, FRIDAY SCHEDULE SO THEY'D ONLY BE  
12 AN HOUR LONG, INSTEAD OF AN HOUR-AND-A-HALF.

13 Q. OKAY. BUT THEY DID GIVE YOU TIME IN BETWEEN CLASSES  
14 AND TO HAVE A DAY OFF?

15 A. YES, THEY DID.

16 Q. THEY DIDN'T GIVE IT EXACTLY THE WAY YOU WANTED IT --

17 A. WELL, I WANTED A SIX-YEAR CONTRACT. FOR A SIX-YEAR  
18 CONTRACT, I WOULD HAVE HAD TO HAVE MONDAY, WEDNESDAY, FRIDAY TO  
19 DO IT.

20 Q. BUT YOU AGREED THAT YOU DID ASK THEM FOR A REST TIME  
21 BETWEEN CLASSES AND TO HAVE A DAY OFF, AND THEY PUT IT IN THE  
22 CONTRACT?

23 A. YES.

24 Q. OKAY.

25 THEN THEY SAID, "AS TO THE CLASS SIZE AND THE ROOM  
26 SIZE" -- LET ME STOP. YOU HAD ASKED THE SCHOOL TO KEEP THE

752

1 CLASSROOMS SMALL BECAUSE MAYBE THEN YOU WOULD HAVE LESS  
2 DIFFICULTY HEARING?

3 A. YES.

4 Q. AND NOT ALL THE ROOMS ARE SMALL. A LOT OF THEM ARE  
5 BIG?

6 A. VERY BIG.

7 Q. AND YOU KNOW IT'S A PAIN FOR THE PEOPLE TO SCHEDULE  
8 WHICH ROOMS WILL GO IN WHICH CLASSES. THAT'S A BIG HEADACHE FOR  
9 THE ADMINISTRATIVE PEOPLE, BUT THEY SAID THEY WOULD GET YOU  
10 SMALL CLASSROOMS FOR ALL YEAR?

11 A. YES, THEY DID.

12 Q. AND THAT WAS SOMETHING THAT YOU ASKED, AND THEY PUT IN  
13 THE CONTRACT?

14 A. YES, I DID.

15 Q. SO YOU THOUGHT THAT WAS FAIR, TOO?

16 A. YES, I DID.

17 Q. AND IN GOOD FAITH?

18 A. YES, I DID.

19 Q. NOW, THAT'S THE ROOM SIZE. BUT THE CLASS SIZE, YOU  
20 HAD SAID THAT, YOU KNOW, YOU'D LIKE IT BETTER IF THEY COULD CAP  
21 THE NUMBER OF STUDENTS IN A CLASS AT 25, BECAUSE YOU DIDN'T WANT  
22 TO TAKE MORE THAN 25. I GATHER THAT KEEPS THE WORKLOAD DOWN A  
23 LITTLE BIT. YOU DON'T HAVE TO GRADE AS MANY TESTS. YOU DON'T  
24 HAVE TO DEAL WITH AS MANY, YOU KNOW, STUDENTS WITH QUESTIONS IN  
25 THE HALLWAY. SO THAT WAS A USEFUL ACCOMMODATION TO YOU?

26 A. YES.

753

1 Q. AND THE SCHOOL GRANTED IT AND PUT IT IN THE CONTRACT?

2 A. YES.

3 Q. YOU THOUGHT THAT WAS IN GOOD FAITH?

4 A. YES.

5 Q. THEY ALSO SAID TO YOU -- THIS IS STEPHANIE SAPRAI'S  
6 LETTER THAT CAME WITH THE PRESIDENT'S CONTRACT, RIGHT?

7 A. YES.

8 Q. OKAY.

9 THEY ALSO SAID THAT THEY ARE -- THAT STEPHANIE SAID  
10 SHE WOULD MEET WITH YOU IF YOU NEEDED ANY OTHER DISABILITY  
11 ACCOMMODATIONS. PLEASE SCHEDULE A CONVENIENT TIME BY E-MAILING  
12 ME OR PHONING ME FOR A MEETING.

13 A. YES.

14 Q. SO YOU UNDERSTOOD THAT EVEN IF THIS WASN'T EVERYTHING  
15 YOU WANTED FOR DISABILITY HELP, ALL YOU NEEDED TO DO WAS SIT  
16 DOWN WITH STEPHANIE AND SEE WHAT YOU TWO COULD WORK OUT, RIGHT?

17 A. YES.

18 Q. YOU THOUGHT THAT WAS IN GOOD FAITH?

19 A. YES.

20 Q. YOU DIDN'T CALL HER OR SET UP A MEETING TO LAY OUT ANY  
21 OTHER DISABILITY ACCOMMODATIONS, DID YOU?

22 A. NO, I DID NOT.

23 Q. BECAUSE THERE WERE NO OTHERS THAT YOU NEEDED, CORRECT?

24 A. FOR A SIX-YEAR CONTRACT, THERE WAS.

25 Q. I'M NOT TALKING ABOUT THE CONTRACT. I'M TALKING ABOUT  
26 SUPPORT MEASURES THAT WOULD ALLOW YOU TO TEACH TO THE BEST OF

754

1 YOUR ABILITY; LIKE CLASS SIZE, CLASSROOMS, PART TIME, YOU KNOW,  
2 SOMEBODY TO CARRY YOUR BOOKS IF YOU WERE TIRED. THERE WASN'T  
3 ANYTHING ELSE OF THAT NATURE THAT YOU ASKED THE COLLEGE FOR; IS  
4 THAT RIGHT?

5 A. YES. I ASKED FOR SPECIAL ACCOMMODATIONS FOR A  
6 SIX-YEAR CONTRACT, FOR FOUR CLASSES.

7 Q. OKAY. I UNDERSTAND YOU CALL THAT A DISABILITY  
8 ACCOMMODATION, BUT I'M SORT OF REDEFINING IT AS THINGS THAT  
9 WOULD HELP YOU TEACH. I THINK WE'RE IN AGREEMENT. YOU DIDN'T  
10 ASK FOR ANYTHING ELSE THAT WOULD HELP YOU TEACH?

11 A. NO.

12 Q. OKAY. THANK YOU.

13 COULD YOU SCROLL DOWN A LITTLE, MS. ADLER?

14 SO YOU THOUGHT THAT OTHER THAN THE LENGTH OF THE

15 CONTRACT -- WHICH YOU DIDN'T HAVE A SIX-YEAR CONTRACT, BUT YOU

16 WANTED IT WRITTEN IN THIS -- OTHER THAN THAT, EVERYTHING THEY

17 GAVE YOU WAS AN ACCOMMODATION THAT WOULD HELP YOU TEACH AND DO

18 WELL?

19 A. YES.

20 Q. OKAY.

21 THE COLLEGE ALSO SAID THAT THIS IS A HALF-TIME JOB,

22 BUT THAT THEY WOULD CONSIDER YOU AS BEING ON MEDICAL LEAVE FOR

23 THE REMAINDER OF THE FULL-TIME POSITION. IN OTHER WORDS, YOU'RE

24 GOING TO HAVE A FULL-TIME POSITION, HALF MEDICAL LEAVE, HALF

25 WORK. DID YOU UNDERSTAND THAT TO BE THE CASE?

26 A. I DID NOT UNDERSTAND IT; NO.

755

1 Q. OKAY.

2 IT SAYS THEY WILL CALL YOU ONE-HALF MEDICAL LEAVE FOR

3 THE HALF YOU'RE NOT WORKING AND ONE-HALF WORKING FOR THE -- YOU

4 DID UNDERSTAND?

5 A. WHAT I MEAN IS I DIDN'T KNOW WHAT THAT MEANT.

6 Q. DID YOU SET UP ANY MEETING WITH MS. SAPRAI AT HR TO

7 ASK HER WHAT IT MEANT?

8 A. NO.

9 Q. YOU'D BEEN THERE FOR 30 YEARS, YOU JUST -- YOU KNEW  
10 YOU COULD LOOK IT UP IN THE FACULTY HANDBOOK?

11 A. I DID NOT HAVE A FACULTY HANDBOOK AT HOME WITH ME.

12 Q. OH. DID YOU COME TO THE CAMPUS AND ASK FOR ONE AND  
13 GET ONE FROM HR?

14 A. NO, I DID NOT. I COULD NOT FACE TO GO ON CAMPUS EVER  
15 AGAIN.

16 Q. EVEN AFTER YOU GOT THE CONTRACT OFFER AND THEY INVITED  
17 YOU BACK TO JOIN THE CAMPUS, YOU STILL COULDN'T FACE IT?

18 A. WELL, I COULD NOT FACE IT.

19 Q. OKAY.

20 LET ME KNOW WHEN YOU'RE READY.

21 A. EXCUSE ME?

22 Q. JUST LET ME KNOW WHEN YOU'RE READY.

23 A. I'M OKAY.

24 Q. OKAY.

25 THE COLLEGE, THE PRESIDENT PUT IN THE CONTRACT THAT  
26 WHAT YOUR SALARY WOULD BE FOR THE HALF-TIME WORK WAS -- DID HE

756

1 PUT A SALARY THAT WAS ABOUT A HALF OF WHAT A FULL-TIME SALARY IS  
2 FOR YOU?

3 A. YES.

4 Q. BECAUSE HE SAID THIS IS 50 PERCENT OF YOUR LAST  
5 SALARY. THEY EVEN ADDED THREE PERCENT, SO THEY GAVE YOU THE  
6 COST-OF-LIVING INCREASE WHILE YOU WERE ON MEDICAL LEAVE, DIDN'T

7 THEY?

8 A. YES.

9 Q. SO THEY DIDN'T HOLD THAT AGAINST YOU, THAT YOU HAD  
10 BEEN ON MEDICAL LEAVE. THEY GAVE YOU THE SAME RAISES THAT THE  
11 FACULTY WHO WERE WORKING HAD GOTTEN IN THAT YEAR, RIGHT?

12 A. YES.

13 Q. DID YOU FEEL THAT WAS IN GOOD FAITH?

14 A. YES.

15 Q. AND FAIR?

16 A. YES.

17 Q. THE NEXT LINE SAYS THAT, "THE COLLEGE WILL PROVIDE YOU  
18 HEALTH AND DENTAL BENEFITS AS IF YOU WERE A FULL-TIME EMPLOYEE  
19 AND WILL NOT REDUCE THOSE BENEFITS IN REGARDS TO YOU BEING  
20 ONE-HALF ON UNPAID."

21 COULD YOU JUST TURN IT OVER PLEASE, MS. ADLER. THANK  
22 YOU.

23 AND THEY WERE GIVING YOU THE SAME HEALTH BENEFITS YOU  
24 USED TO HAVE WHEN YOU WERE A FULL-TIME EMPLOYEE?

25 A. YES.

26 Q. AND YOU HEARD MS. SAPRAI TESTIFY YESTERDAY, YOU KNEW

757

1 THAT GENERALLY SPEAKING, IF SOMEBODY FALLS BELOW 80 PERCENT OF  
2 FULL TIME, THE COLLEGE'S POLICY IS THEY SEND THEM OUT THAT COBRA  
3 LETTER, THEY'RE TERMINATED FROM BENEFITS BECAUSE IT'S A POLICY?

4 A. YES.

5 Q. SO YOU KNEW THAT THE COLLEGE WAS GIVING YOU A SPECIAL  
6 PERK HERE THAT WAS BEYOND POLICY AND A DIFFERENT ACCOMMODATION?

7 A. YES.

8 Q. ALL THESE THINGS THAT THEY WERE DOING, DIDN'T THE  
9 THOUGHT CROSS YOUR MIND THAT, THESE PEOPLE REALLY WANT ME TO  
10 COME BACK?

11 A. NO, SIR, IT DID NOT.

12 Q. YOU DIDN'T THINK THAT, BOY, IF THEY DIDN'T WANT ME TO  
13 COME BACK, THEY'D JUST GO STRAIGHT BY POLICY AND GIVE ME NOTHING  
14 ABOVE THE BOARD? YOU DIDN'T THINK THAT?

15 A. NO. AFTER ALL THE THINGS THAT HAD HAPPENED --

16 Q. OKAY.

17 A. -- I DIDN'T TRUST THEM ANYMORE.

18 Q. AND I HEARD THAT, AND I WANT TO GO BACK TO THE  
19 QUESTION OF TRUST. AND LET ME KNOW WHEN YOU'RE READY, IF YOU  
20 WOULD, PLEASE.

21 I'M GOING TO SKIP THE PART WHERE THEY'RE SAYING YOU  
22 CAN APPLY FOR YOUR SIX-YEAR CONTRACT AND A NORMAL ACADEMIC  
23 EVALUATION WILL BE PERFORMED. WE'VE COVERED THAT.

24 AND THEY EXPLAIN TO YOU IN THE LETTER THAT YOU AND  
25 SEVERAL OTHER FACULTY MEMBERS HADN'T BEEN APPROVED WHEN THE NEW  
26 PRESIDENT -- THE OLD PRESIDENT RETIRED, SO THEY EXPLAINED TO YOU

758

1 WHY YOU DIDN'T HAVE A SIX-YEAR CONTRACT, CORRECT?

2 A. NO, THEY DID NOT EXPLAIN WHY. IT'S JUST THAT THEY



3 DIDN'T.

4 Q. JUST THAT THEY DIDN'T. OKAY.

5 IN OTHER WORDS, YOU DON'T KNOW WHY PRESIDENT LOPEZ  
6 DIDN'T SIGN OFF --

7 A. NO, I DID NOT.

8 Q. -- ON THESE SEVERAL PEOPLE'S CONTRACTS?

9 A. TO THIS DAY I DO NOT KNOW.

10 Q. OKAY.

11 BUT THEY DID TELL YOU, YOU'RE GOING TO HAVE THE SAME  
12 OPTION TO COME BACK UP TO THE SIX-YEAR CONTRACT EVALUATION AS  
13 THE OTHER FACULTY WHO WEREN'T APPROVED?

14 A. THEY TOLD ME THAT; I DID NOT TRUST IT.

15 Q. YOU JUST DIDN'T BELIEVE IT?

16 A. I DIDN'T BELIEVE IT AFTER ALL THAT HAD GONE BEFORE IT.

17 Q. BUT DIDN'T YOU KNOW, AS A LAWYER, THAT IF THE  
18 PRESIDENT OF THE UNIVERSITY PUTS IT IN WRITING AND SIGNS IT,  
19 THAT'S A LOT MORE TRUSTWORTHY. YOU CAN EVEN -- IT'S A LEGAL  
20 THING. IF YOU SIGN IT, IT'S A CONTRACT.

21 A. I NEEDED MY SIX-YEAR CONTRACT SO I FELT COMFORTABLE,  
22 THAT I FELT SAFE, THAT I FELT THIS WOULD NOT HAPPEN TO ME AGAIN.  
23 IT WAS IMPORTANT FOR ME.

24 Q. OKAY. I DO UNDERSTAND THAT, BUT I WOULD LIKE TO ASK  
25 YOU, IT WAS ONLY ABOUT SIX OR EIGHT MONTHS BEFORE, WHEN YOU HAD  
26 OFFERED THAT COMPROMISE OF THE ONE-YEAR CONTRACT?

1 A. YES, BUT THINGS HAD NOT HAPPENED IN THAT SIX TO EIGHT  
2 MONTHS.

3 Q. SO YOU BASICALLY PULLED THAT COMPROMISE OFF THE TABLE?

4 A. I WOULD HAVE BEEN HAPPY TO DO IT AT THAT TIME BECAUSE  
5 I TRUSTED THE INSTITUTION. I TRUSTED CARLOS LOPEZ.

6 Q. YOU DID TRUST CARLOS?

7 A. I DID. HE HAD BEEN A COLLEAGUE OF MINE FOR 29 YEARS.

8 Q. OKAY. WELL, WHO ARE THE PEOPLE THEN -- I MEAN, IT WAS  
9 THE NEW PEOPLE YOU DIDN'T TRUST; IS THAT IT?

10 A. I HAD NO IDEA. SO FAR I SAT IN THIS CLASSROOM -- THIS  
11 COURTROOM, I'M SORRY -- AND NO ONE HAS TOLD ME WHO MADE THESE  
12 DECISIONS. NOBODY HAS TOLD ME WHO I CAN'T TRUST. NOBODY HAS  
13 TOLD ME WHO IS TRUSTWORTHY.

14 Q. BUT I THOUGHT YOU SAW THE PRESIDENT SAY THAT  
15 DR. KELLY, THE PROVOST, RECOMMENDED THIS PARTICULAR LETTER TO  
16 HIM?

17 A. YEAH, I DID HEAR THAT. BUT I DIDN'T ORIGINALLY.

18 Q. BUT YOU'VE HAD NO PERSONAL EXPERIENCE WITH DR. KELLY  
19 TO FEEL HE'S UNTRUSTWORTHY?

20 A. NO, I DO NOT.

21 Q. YOU DON'T HAVE ANY PERSONAL EXPERIENCE WITH THE NEW  
22 PRESIDENT TO FEEL HE'S UNTRUSTWORTHY, DO YOU?

23 A. NO.

24 Q. OKAY.

25 SO THE ONLY PERSON I THINK -- I THOUGHT YOU WERE GOING  
26 TO SAY WAS UNTRUSTWORTHY WAS CARLOS LOPEZ, BUT YOU JUST SAID HE

1 IS TRUSTWORTHY?

2 A. NO. HE MUST NOT HAVE BEEN. I THOUGHT HE WAS. I  
3 TRUSTED HIM.

4 Q. SO WERE YOU SURPRISED WHEN THE COLLEGE SAID THAT THEY  
5 DID NOT WANT TO PAY MONEY TO YOUR ATTORNEYS? THAT'S THE NEXT  
6 LINE, WHERE YOU HAD SAID YOU WOULD ONLY SIGN THE CONTRACT IF  
7 THEY PAID MONEY TO YOUR ATTORNEYS. WERE YOU SURPRISED --

8 A. I WAS SURPRISED.

9 Q. THERE HADN'T BEEN A LAWSUIT THEN, CORRECT? THERE WAS  
10 NO LAWSUIT?

11 A. IN GOOD FAITH.

12 Q. WAS THERE A LAWSUIT?

13 A. YES, THERE WAS.

14 Q. NOT AS OF THIS LETTER. IT HADN'T BEEN FILED YET.

15 A. OH, YES. IT WAS A LAWSUIT AS OF THE TIME THIS WAS  
16 WRITTEN.

17 MR. LEBOWITZ: WE CAN STIPULATE.

18 MR. VARTAIN: WE CAN STIPULATE, YOUR HONOR, THAT THERE  
19 WAS NO LAWSUIT AS OF THE TIME THE PRESIDENT OFFERED THE  
20 CONTRACT.

21 MR. LEBOWITZ: WE CAN TAKE JUDICIAL NOTICE IT WAS  
22 AUGUST 7, 2007 WHEN THE ORIGINAL COMPLAINT WAS FILED.

23 THE COURT: DO WE HAVE TO TAKE JUDICIAL NOTICE OF IT  
24 OR --

25 MR. LEBOWITZ: OR WE CAN STIPULATE TO IT.

1 MR. VARTAIN: STIPULATION, PLEASE, YOUR HONOR --

2 THE COURT: ALL RIGHT.

3 MR. LEBOWITZ: THANK YOU.

4 MR. VARTAIN: -- THAT THERE WAS NO LAWSUIT FILED  
5 WHEN --

6 THE WITNESS: I'M SORRY. I DIDN'T UNDERSTAND THE  
7 DIFFERENCE.

8 MR. VARTAIN: THAT'S OKAY.

9 Q. YOU MIGHT HAVE BEEN CONSIDERING IT AND YOU GOT  
10 CONFUSED.

11 A. I'M SORRY. I DIDN'T REALIZE THE DIFFERENCE.

12 Q. I'M JUST SAYING YOUR ATTORNEY HADN'T DONE ANY LAWSUIT  
13 WORK IN TERMS OF EVERYTHING WE ARE DOING HERE, FOR WHICH YOU  
14 WOULD WANT TO GET HIM PAID?

15 A. IF HE SAYS SO, THEN THAT'S --

16 Q. OKAY.

17 AND, ACTUALLY, YOU WOULD AGREE YOUR ATTORNEYS HAD  
18 NEVER EVEN MET WITH THE COLLEGE. THERE HADN'T BEEN ANY  
19 MEETINGS. THERE WASN'T ANY WORK VIS-A-VIS MEETING WITH THE  
20 COLLEGE THAT THE COLLEGE -- THAT THERE WOULD BE PAYMENT TO YOUR  
21 ATTORNEY FOR, WOULD YOU AGREE?

22 A. I HAVE -- YOU KEEP SAYING I'M AN ATTORNEY. I'M NOT.

23 I HAVE A BRIEFCASE. I AM A TEACHER. I DO NOT UNDERSTAND WHEN

24 THE LAWSUIT STARTED. I KNOW THERE WAS A SUMMARY JUDGMENT, WHICH  
25 WE WON. AND IT TOOK MY LAWYERS A LOT OF TIME AND ENERGY.

26 Q. I'M NOT TALKING ABOUT AFTER THE LAWSUIT WAS FILED.

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1 I'M TALKING ABOUT BEFORE THE LAWSUIT WAS FILED, WHEN THE COLLEGE  
2 WAS SENDING YOU THE CONTRACT OFFER TO COME BACK TO WORK, ISN'T  
3 IT TRUE YOUR ATTORNEY HAD NEVER EVEN COME TO THE COLLEGE, HAD  
4 DONE NO WORK WITH THE COLLEGE?

5 A. I DO NOT KNOW.

6 Q. OKAY.

7 AND YOU DID NOT KNOW THEN EITHER, WHEN YOU WERE ASKING  
8 THE COLLEGE TO PAY YOUR ATTORNEY MONEY, CORRECT?

9 A. I DID NOT KNOW.

10 Q. OKAY.

11 THEN STEPHANIE WRITES AND CALLS YOU BY YOUR FIRST  
12 NAME. YOU WERE ON A FIRST-NAME BASIS WITH HER, WEREN'T YOU?

13 A. I HAD NEVER MET HER BEFORE THIS HAPPENED BUT, YES, WE  
14 BECAME ON A FIRST-NAME BASIS.

15 Q. AND YOU DID MEET HER AT YOUR OFFICE DURING THAT SUMMER  
16 THAT YOU SAID TO THE JURY NOBODY WAS TALKING TO YOU. YOU  
17 ACTUALLY SAT DOWN WITH HER IN HER OFFICE AND HAD A MEETING?

18 A. I'M SORRY. STEPHANIE SAPRAI WAS THE ONLY PERSON THAT  
19 WAS TALKING TO ME. THAT WAS WHAT I WAS TOLD.

20 Q. BUT SHE WAS THE HEAD OF HUMAN RESOURCES. SHE'S THE  
21 ONE THAT MAKES THE PAPER HAPPEN, DOESN'T SHE?

22 A. YES, BUT MY BOSSES WERE LOWELL PRATT, MIKE SCHULTZ AND  
23 CARLOS LOPEZ. THAT'S WHO I WANTED TO TALK TO.

24 Q. AND EVEN LOWELL PRATT TALKED TO YOU ON THE PHONE THAT  
25 SUMMER. HE JUST SAID, "AS FAR AS THE MEDICAL ISSUE GOES, MARCY,  
26 I CAN'T TALK TO YOU ABOUT THAT."

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1 A. HE SAID, "I CANNOT TALK TO YOU AT ALL."

2 Q. BUT HE DID TALK TO YOU ON THE PHONE?

3 A. A FEW MINUTES.

4 Q. YOU HAD A FRIENDLY CONVERSATION, YEAH?

5 A. YES. LOWELL AND I ALWAYS WERE FRIENDLY.

6 Q. OKAY.

7 BUT STEPHANIE SAYS IN THIS LETTER, "MARCY, THE COLLEGE  
8 IS HOPEFUL THAT YOU WILL BE COMING BACK TO TEACH THIS FALL."

9 AND I WANT TO ASK YOU, WHEN YOU DECIDED THAT THE  
10 COLLEGE WASN'T ACTING IN GOOD FAITH, PROFESSOR BLOUGH, DID YOU  
11 THINK THAT STEPHANIE -- YOU WERE ON A FIRST-NAME -- WAS LYING  
12 WHEN SHE SAID THE COLLEGE REALLY WANTED YOU BACK?

13 A. I DID NOT TRUST IT AFTER A MONTH BEFORE GETTING A  
14 TERMINATION LETTER, A SECOND TERMINATION.

15 Q. OKAY. I'M GOING TO TALK ABOUT THAT IN A MINUTE.

16 THE QUESTION I REALLY HAVE IS, YOU DIDN'T BELIEVE THAT  
17 THE COLLEGE WAS HOPEFUL THAT YOU WOULD ACCEPT THEIR OFFER?

18 A. I DID NOT TRUST THAT I COULD GO BACK AND HAVE ANY  
19 SECURITY.

20 Q. EVEN THOUGH THE PRESIDENT PUT IT IN THE CONTRACT THAT  
21 YOU WOULD COME UP FOR EVALUATION ON THE SAME TERMS AS ANY OTHER  
22 FACULTY MEMBER, YOU DIDN'T FEEL HE MEANT THAT; IS THAT TRUE?

23 A. I DIDN'T FEEL THAT I HAD ANY SECURITY.

24 Q. YOU MENTIONED SOMETHING TO THE JURY ABOUT THAT YOU  
25 HAVE ONLY DONE THREE CASES AS A LAWYER AND YOU DIDN'T QUITE KNOW  
26 WHAT LAW CONTRACTS ARE. IS THAT WHAT YOU'RE TRYING TO SAY?

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1 A. YES, I AM TRYING TO SAY I DIDN'T KNOW WHEN THE LAWSUIT  
2 YOU'RE TALKING ABOUT -- I DIDN'T KNOW THE DATE WHEN YOU SAID THE  
3 LAWSUIT WAS FILED OR WHAT WAS INVOLVED IN THAT.

4 Q. OKAY. BUT YOU DID TELL THE JURY THAT YOU DID NOT HAVE  
5 A LAW PRACTICE?

6 A. NO, I DID NOT. I'VE BEEN ON INACTIVE STATUS FOR MANY,  
7 MANY YEARS.

8 Q. WHEN WAS IT THAT YOU BECAME INACTIVE AS A LAWYER AND  
9 THUS HAD NO PRIVATE LAW PRACTICE? WHEN DID THAT --

10 A. THE '80S, WHEN ALL THE STUDENTS WOULD ASK ME TO DO  
11 FREE LAWSUITS FOR THEM; AND MY FRIENDS, WHICH I DID.

12 Q. DID YOU EVER, AROUND THE YEAR 1999 OR 2000, PUT OUT IN  
13 YOUR FACULTY STATEMENTS IN SUPPORT OF YOUR APPLICATION THAT YOU  
14 DO HAVE A PRIVATE LAW PRACTICE?

15 A. I SAID I HAD, BUT I HAD HAD ONE.

16 Q. YOU HAD HAD ONE?

17 A. HAD ONE, BUT IT WAS INACTIVE. EVERYBODY KNEW IT WAS

18 INACTIVE.

19 Q. THAT WASN'T MY QUESTION, MA'AM.

20 IN THE YEAR 2000, YOU WERE STATING IN YOUR BIOGRAPHIES  
21 FOR YOUR CONTRACT OFFERS THAT YOU HAD A PRIVATE LAW PRACTICE,  
22 DIDN'T YOU?

23 A. IN MY BIOGRAPHY IT WAS CORRECT, I HAD HAD ONE.

24 Q. YOU WERE JUST SAYING IN THE PAST?

25 A. IT WAS IN THE PAST.

26 Q. OKAY.

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1 YOU MENTIONED THAT YOU DIDN'T LIKE DR. MISSETT FROM  
2 THE VERY FIRST TIME?

3 A. NO, I DID NOT.

4 Q. BUT YOU DO AGREE THAT THAT FIRST TIME WHEN YOU CAME  
5 BACK FROM THAT LONG LEAVE OF ABSENCE, DR. MISSETT WAS VERY  
6 HELPFUL IN GETTING YOU BACK TO WORK HALF TIME, THREE-QUARTER  
7 TIME -- WELL, YOU SAID YOU ACTUALLY SKIPPED FROM HALF TO FULL  
8 TIME, BUT HE WAS THE ONE WHO CAME UP WITH THE IDEA FOR THE  
9 GRADUAL RETURN BECAUSE YOU WERE SO TIRED, RIGHT?

10 A. IN RETROSPECT, I THOUGHT IT WAS A GOOD IDEA. AT THE  
11 TIME, I DID NOT.

12 Q. AND HE SAID TO YOU, "MARCY, I THINK" -- "I'VE WORKED  
13 WITH COLLEGES. I'VE WORKED WITH FACULTY. I THINK I KNOW HOW  
14 THIS CAN WORK OUT WELL FOR YOU." AND YOU TOLD ME IN YOUR  
15 DEPOSITION THAT AFTER IT HAPPENED, YOU WERE VERY GRATEFUL FOR



16 DOCTOR --

17 A. IN RETROSPECT, I WAS GRATEFUL.

18 Q. OKAY.

19 SO WHETHER OR NOT YOU LIKED HIM AS A, YOU KNOW, HIS  
20 PERSONALITY, HE ACTUALLY IS THE ONE WHO BASICALLY MADE THE  
21 COLLEGE GIVE YOU THE PART TIME, THE 50 PERCENT, THE 75 PERCENT  
22 AND THE 100 PERCENT SO YOU COULD GET BACK IN A, LIKE, A SOFT  
23 LANDING TYPE OF WAY?

24 A. EXCUSE ME. I NEVER HAD THE 75 PERCENT.

25 Q. YEAH.

26 A. THAT'S NOT 75.

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1 Q. HE WAS GOING TO DO THAT, BUT --

2 A. HE CHANGED HIS MIND TO FULL TIME.

3 Q. -- YOU SAID, "I THINK I CAN GO RIGHT TO FULL TIME."

4 A. RIGHT.

5 Q. AND HE SAID, "OKAY, MARCY. IF YOU THINK YOU CAN DO  
6 IT, LET'S TRY IT OUT."

7 A. RIGHT.

8 Q. AND THEN HE SENT A LETTER TO THE COLLEGE AND SAID,  
9 "LET'S SKIP THE 75. LET'S GET HER RIGHT TO FULL TIME FOR THE  
10 SECOND SEMESTER." SO HE DID A GOOD JOB FOR YOU AND FOR THE  
11 COLLEGE, AFTER YOU CAME BACK FROM THE CANCER LEAVE AND THE  
12 DEPRESSION?

13 A. YES. IN RETROSPECT, YES. I AGREE WITH HIM.

14 Q. OKAY.

15 AND, ACTUALLY, THE MEDICAL CONDITIONS THAT YOU HAD  
16 THIS TIME AROUND, WHEN YOU DIDN'T WANT TO GO AND COOPERATE WITH  
17 HIM, WHEN YOU DIDN'T WANT TO GIVE HIM THE MEDICAL RECORDS, WERE  
18 THE EXACT SAME MEDICAL CONDITIONS THAT YOU HAD THE COUPLE OF  
19 YEARS BEFORE, WHEN HE DID A GOOD JOB FOR YOU, YOU HAD CANCER  
20 RECOVERY, AND YOU HAD THE MAJOR MENTAL DEPRESSION; BOTH OF THEM.  
21 SO HE DID A GOOD JOB. YOU HAD BOTH OF THOSE THE FIRST TIME  
22 AROUND; THE SECOND TIME AROUND YOU HAD THE SAME TWO HEALTH  
23 CONDITIONS, CORRECT?

24 A. NO, SIR. I HAD HEARING LOSS, WHICH IS A BIG  
25 DIFFERENCE. AND I HAD STAMINA LOSS, WHICH I DID NOT HAVE  
26 ORIGINALLY.

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1 Q. OKAY. BUT LET'S TALK A LITTLE BIT ABOUT THIS HEARING  
2 LOSS. BECAUSE WHEN YOU SAW DR. MISSETT, HE SAID WORDS TO THE  
3 EFFECT OF, "YOU'RE GOING TO GET HEARING AIDS. LET'S NOT WORRY  
4 ABOUT THAT. THAT SHOULDN'T BE A REASON TO GO BACK TO WORK,"  
5 RIGHT?

6 A. HE TOLD ME I HAD TO GET HEARING AIDS.

7 Q. YES?

8 A. HE DID NOT SAY THAT SHOULD NOT BE A PROBLEM.

9 Q. BUT HE SAID WORDS TO THE EFFECT OF, "GET YOUR HEARING  
10 AIDS AND YOU SHOULD BE OKAY IN THE CLASSROOM."

11 A. YES.

12 Q. SO YOU UNDERSTOOD FROM THAT THAT DR. MISSETT WASN'T  
13 WORRIED ABOUT YOUR HEARING AS A REASON TO NOT TEACH. MY REAL  
14 QUESTION IS ON THE FATIGUE. ISN'T IT TRUE THAT THE FATIGUE WAS  
15 SOMETHING THAT WAS RELATED TO THE PROBLEMS, THE PSYCHOLOGICAL  
16 PROBLEMS THAT YOUR HUSBAND WAS CAUSING YOU?

17 A. ABSOLUTELY NOT.

18 Q. WELL, LET ME REMIND YOU GENTLY, IF I MAY, THAT ISN'T  
19 IT THE CASE THAT YOUR WORRYING ABOUT ALL OF THE ANTICS YOUR  
20 HUSBAND WAS DOING IN THE MIDDLE OF THE NIGHT WAS KEEPING YOU UP  
21 AT NIGHT?

22 A. AND DR. LIU TESTIFIED THAT SHE GAVE ME REAL SLEEPING  
23 PILLS SO I COULD SLEEP.

24 Q. OKAY. YOU HAVE A GOOD MEMORY. I'LL TAKE YOUR WORD  
25 FOR IT. I DON'T QUITE REMEMBER HER -- SHE SAID SOMETHING  
26 ABOUT --

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1 BUT MY POINT IS THAT ONE OF YOUR PROBLEMS IN TERMS OF  
2 FATIGUE WAS YOU WEREN'T GETTING GOOD SLEEP. YOUR PSYCHIATRIST  
3 DID SAY THAT, RIGHT?

4 A. I WAS WITH SLEEPING PILLS SHE PRESCRIBED. I NEEDED  
5 THEM; YES.

6 Q. AND YOU WERE NOT GETTING TO SLEEP MANY NIGHTS THAT  
7 SPRING UNTIL 2:00, 3:00 O'CLOCK IN THE MORNING BECAUSE YOU WERE  
8 WORRIED ABOUT WHERE YOUR HUSBAND WAS?

9 A. MR. VARTAIN, I ALWAYS TOOK MY SLEEPING PILL BECAUSE I

10 KNEW THIS WOULD ALWAYS HAPPEN. I KNEW I HAD TO BE SHARP IN THE  
11 MORNING, AND I SLEPT.

12 Q. BUT I THINK YOU TOLD ME IN THE DEPOSITION SOMETIMES  
13 YOU WOULDN'T POP THAT SLEEPING PILL UNTIL THE MIDDLE OF THE  
14 NIGHT.

15 A. SOMETIMES I WOULDN'T POP IT UNTIL LATER ON, BUT I  
16 ALWAYS TOOK IT.

17 Q. BUT YOU'RE SAYING THAT TAKING A SLEEPING PILL AT 2:00  
18 OR 3:00 O'CLOCK IN THE MORNING DIDN'T KEEP YOU SLEEPY IN THE  
19 MORNING AND GET YOU LATE TO SCHOOL OR MISSING CLASS OR ANY OF  
20 THAT?

21 A. NO. THE FATIGUE WAS TOTALLY MEDICAL.

22 Q. OKAY. YOU'RE SAYING THERE WAS NO FATIGUE RELATING  
23 FROM THE FACT THAT YOU WERE GETTING POOR SLEEP AND YOU WERE  
24 GETTING TO SLEEP LATE AT NIGHT?

25 A. FATIGUE I KNOW, BECAUSE IT WENT AWAY AFTER THE  
26 SANDOSTATIN. IT WAS A DIFFERENT THING; A TOTALLY DIFFERENT

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1 FEELING.

2 Q. WELL, YOU DID SAY TO THE JURY A FEW MINUTES AGO, WHEN  
3 MR. LEBOWITZ WAS ASKING YOU QUESTIONS THAT THE FATIGUE WAS GONE,  
4 BY THE TIME PRESIDENT LOPEZ ASKED YOU ON MAY 8 TO GO TO  
5 DR. MISSETT, IT WAS PRETTY MUCH GONE?

6 A. YES. AS SOON AS I GOT OFF THE SANDOSTATIN, WHICH IS  
7 WHAT I KEEP TELLING EVERYBODY, THE FATIGUE WENT. THEREFORE, I

8 ASSUMED AND MY DOCTORS ASSUMED IT WAS CAUSED BY SANDOSTATIN,  
9 WHICH I WAS SUPPOSED TO BE ON THE REST OF MY LIFE.

10 Q. IS IT YOUR TESTIMONY THAT AS OF WHEN THE GOOD  
11 PRESIDENT EMERITUS ON MAY 8TH SAID, "PLEASE, GO SEE  
12 DR. MISSETT," THAT YOU WERE ABLE TO WORK?

13 A. YES.

14 Q. SO BY MAY 8TH, WHEN HE SENT YOU TO DR. MISSETT, YOU  
15 HAD PROGRESSED ENOUGH, AFTER GETTING OFF THE CANCER, THAT YOU  
16 WERE FIT AS A FIDDLE, ABLE TO WORK?

17 A. YES.

18 MR. VARTAIN: WOULD YOU MOUNT UP THE VIDEO DEPOSITION,  
19 PLEASE. AND I'M GOING TO TELL YOU WHICH ONE, IF I MAY, GABE.

20 THE COURT: COUNSEL, MAY IT BE STIPULATED THAT THE  
21 COURT REPORTER NEED NOT TRANSCRIBE THE PORTIONS THAT ARE SHOWN  
22 IN THE VIDEOTAPE?

23 MR. VARTAIN: THAT'S CORRECT, BECAUSE I'M GOING TO PUT  
24 THOSE IN THE RECORD, AS YOU DIRECTED ME TO DO.

25 THE COURT: THANK YOU.

26 MR. LEBOWITZ: WHICH EXCERPTS?

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1 MR. VARTAIN: 90. SEGMENT 90.

2 Q. WE ARE TALKING ABOUT MAY 8TH, AND YOU SAID THAT YOU  
3 WERE FIT AS A FIDDLE, AND THAT PRESIDENT LOPEZ SHOULDN'T HAVE  
4 SENT YOU BACK, SHOULDN'T HAVE SENT YOU TO THE DOCTOR?

5 A. I STILL HAD THE HEARING LOSS. EXCUSE ME. I WASN'T

6 FIT AS A FIDDLE. I STILL HAD THE HEARING LOSS.

7 Q. EXCEPT FOR THE HEARING. I'M JUST TALKING ABOUT THE  
8 FATIGUE. EXCEPT FOR THE HEARING LOSS, YOU WERE FIT AS A FIDDLE.  
9 THANK YOU, PROFESSOR.

10 MR. LEBOWITZ: IF I MAY, YOUR HONOR. THIS IS AN ITEM  
11 THAT I DO HAVE AN EXPANSION REQUEST ON.

12 THE COURT: YOU CAN APPROACH.

13 MR. LEBOWITZ: I JUST --

14 MR. VARTAIN: I THOUGHT WE RESOLVED THIS.

15 THE COURT: YOU MAY APPROACH, COUNSEL. I'M NOT GOING  
16 TO HAVE THIS, COUNSEL, IN FRONT OF THE JURY.

17 MR. LEBOWITZ: FOR THE RECORD, WE CAN GO BACK TO IT  
18 LATER. I JUST WANT TO PUT IT ON THE PROTECTIVE ORDER.

19 THE COURT: COUNSEL, WOULD YOU PLEASE APPROACH.

20 (DISCUSSION AT THE BENCH.)

21 THE COURT: MR. VARTAIN, YOU MAY CONTINUE.

22 MR. VARTAIN: Q. SO EXCEPT FOR HEARING, WHEN CARLOS  
23 LOPEZ SENT YOU THAT LETTER ON MAY 8, 2006, YOU WERE FIT AS A  
24 FIDDLE AND ABLE TO FULLY DO YOUR TEACHING?

25 A. I WAS FEELING MUCH BETTER.

26 Q. OKAY.

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1 AND TOTALLY ABLE TO DO YOUR TEACHING; ATTENDANCE. THE  
2 FATIGUE WAS GONE. YOU WERE EMOTIONALLY STABLE. IS THAT WHAT  
3 YOU'RE SAYING?

4 A. YES, ONCE I GOT -- I HADN'T GOT MY HEARING AIDS YET.

5 Q. WE SET THAT ASIDE. WE KNEW YOU HADN'T GOTTEN YOUR  
6 HEARING AIDS, WHICH I'M GOING TO ASK ABOUT.

7 (WHEREUPON, A VIDEOTAPE WAS PLAYED.)

8 MR. VARTAIN: Q. SO, MA'AM, AS OF MAY 2006, ISN'T IT  
9 TRUE YOU WERE NOT ABLE TO DO YOUR TEACHING FUNCTIONS, EVEN APART  
10 FROM THE HEARING AIDS, MAINLY BECAUSE OF THE FATIGUE, RIGHT?

11 A. NO. THAT IS INCORRECT ON MY PART IN THE DEPOSITION.  
12 I WAS CONFUSED. I WAS CONFUSED FOR MUCH OF THE DEPOSITION.

13 Q. YOU WERE CONFUSED FOR THE DEPOSITION?

14 A. YES.

15 Q. YOU WERE REPRESENTED BY YOUR COUNSEL THROUGHOUT THE  
16 DEPOSITION, WEREN'T YOU?

17 A. MY COUNSEL WAS NOT ALLOWED TO SAY ANYTHING FOR ME.

18 Q. WELL, HE MADE OBJECTIONS THROUGHOUT?

19 A. YES, HE MADE MANY OBJECTIONS.

20 Q. BUT ALSO, I ASKED YOU AT EACH STAGE OF THE DEPOSITION,  
21 "HOW ARE YOU FEELING TODAY, PROFESSOR? ARE YOU FEELING GOOD  
22 ENOUGH TO TESTIFY? IS YOUR MIND CLEAR?" EACH TIME YOU SAID  
23 YES, DIDN'T YOU?

24 A. YOU ALSO HAD HARASSED ME, BADGERED ME, DISRESPECTED ME  
25 AND TREATED ME LIKE A CRIMINAL.

26 Q. I'M SORRY, MA'AM. I THINK I WAS CIVIL. BUT ALL I'M

1 REALLY ASKING YOU IS NOT -- YOU'RE ACCUSING ME OF DOING BAD

2 THINGS, AND YOUR ATTORNEY DIDN'T EVEN. BUT JUST, IS IT TRUE  
3 THAT YOU ANSWERED THE QUESTION AT EACH AND EVERY DEPOSITION -- I  
4 ASKED YOU, "HOW ARE YOU DOING TODAY, PROFESSOR BLOUGH? ARE YOU  
5 OKAY ENOUGH TO TESTIFY?" AND EACH DAY YOU SAID, "FINE. LET'S  
6 GO."

7 A. YES.

8 Q. IN FACT, ONE DAY OF THE FOUR DAYS THAT YOU WERE IN MY  
9 OFFICE, YOUR ATTORNEY SAID, "SHE'S NOT FEELING TOO WELL, CAN WE  
10 LEAVE EARLY?" DO YOU REMEMBER THAT ONE?

11 A. YES.

12 Q. AND I SAID, "SURE. JUST CALL US WHEN YOU FEEL BETTER  
13 AND RESCHEDULE." DO YOU REMEMBER THAT ONE?

14 A. YES.

15 Q. THERE WERE BREAKS. YOU GOT UP TO TAKE BREAKS WHENEVER  
16 YOU WANTED. DO YOU REMEMBER THAT? I HAD WATER AND COFFEE  
17 AND -- WASN'T IT COMFORTABLE?

18 A. NO, IT WAS NOT COMFORTABLE. YOU SCARED ME TO DEATH.

19 Q. BELIEVE ME, I APOLOGIZE. ALL I'M SAYING IS YOU'RE  
20 TELLING THE JURY THAT YOUR TESTIMONY UNDER PENALTY OF PERJURY  
21 WAS WRONG IN THE DEPOSITION BUT YOU'RE BLAMING THAT ON ME?

22 A. I WAS INCORRECT BECAUSE IT WAS ON A TRIAL OF BEING OFF  
23 THE CHEMOTHERAPY THEN --

24 Q. MA'AM --

25 A. -- NOT THE FINAL.

26 Q. IT WAS A BIG INCORRECT, BECAUSE YOU SAID IN THE



1 DEPOSITION THAT YOU WERE NOT ABLE TO TEACH IN MAY, WHEN THE  
2 PRESIDENT SENT YOU TO THE DOCTOR. AND NOW YOU'RE TELLING THE  
3 JURY THE SAME THING UNDER PENALTY OF PERJURY, THAT YOU WERE  
4 READY TO TEACH?

5 A. YES. I'M SORRY. I FORGOT ABOUT THE -- WE WERE ON THE  
6 TRIAL, THAT WE HAD A FOUR-MONTH TRIAL.

7 Q. MA'AM, IN THE DEPOSITION YOU SAY YOU FORGOT. BUT THE  
8 DEPOSITION, WHICH WAS TAKEN A YEAR OR TWO AGO, WHICH WAS MUCH  
9 CLOSER TO THE TIME WHEN ALL THESE EVENTS HAPPENED THAN WE ARE  
10 TODAY, WASN'T YOUR MEMORY BETTER WHEN --

11 MR. LEBOWITZ: OBJECTION, YOUR HONOR. THERE'S NO  
12 FOUNDATION AS TO THE DATE OF DEPOSITION.

13 THE COURT: SUSTAINED.

14 MR. VARTAIN: Q. DO YOU REMEMBER THAT THE DEPOSITIONS  
15 WERE GIVEN MANY MONTHS AGO?

16 A. YES.

17 Q. SO THAT'S WHEN YOU GAVE THIS TESTIMONY THAT THE JURY'S  
18 LOOKING AT, IT WAS MANY MONTHS AGO. WASN'T YOUR MEMORY BETTER  
19 FOR WHAT HAPPENED BACK IN 2006, BETTER THEN? IT WAS CLOSER TO  
20 THE TIME, WASN'T IT?

21 A. MR. VARTAIN, I STAND BY THE FACT THAT I WAS TERRIFIED  
22 OF YOU.

23 Q. WELL, EACH TIME YOU CAME BACK -- OKAY. I'M NOT GOING  
24 TO ANSWER THAT.

25 THAT'S YOUR EXPLANATION FOR WHY YOUR TESTIMONY IS  
26 WRONG?

1 A. THAT AND I FORGOT ABOUT THE TRIAL. I WAS UPSET; I WAS  
2 AFRAID, AND I FORGOT WE WERE ON THE TRIAL ALREADY. I DID NOT  
3 GET ACTUALLY OFF OF IT UNTIL DR. SIEBEL TOOK ME OFF OF IT.

4 Q. BUT THE MOST IMPORTANT FACT AT ISSUE IN THE CASE IS  
5 WHETHER YOU COULD TEACH, WHETHER YOU COULD TEACH AT THE TIME THE  
6 DOCTOR SENT YOU -- AT THE TIME THE PRESIDENT ASKED YOU TO GO TO  
7 DOCTOR --

8 A. AT THE TIME THE PRESIDENT ASKED ME, I COULD. I WAS ON  
9 THE TRIAL --

10 Q. BUT --

11 A. AT THE TIME OF THE DEPOSITION, I FORGOT ABOUT THE  
12 TRIAL.

13 Q. BUT I DIDN'T ASK YOU ABOUT THE TRIAL. I ASKED YOU  
14 POINT BLANK, WERE YOU ABLE TO TEACH AT THAT TIME, AND IN THE  
15 DEPOSITION YOU SAID NO. RIGHT? DIDN'T YOU?

16 A. THIS IS EXACTLY HOW YOU HARASSED ME WHEN I WAS ON  
17 DEPOSITION.

18 Q. OKAY. I'M GOING TO DROP --

19 A. I DO NOT LIKE BEING QUESTIONED BY YOU.

20 Q. I'M GOING TO DROP THE SUBJECT BECAUSE YOU'RE  
21 UNCOMFORTABLE RIGHT NOW. I WANT TO GIVE YOU A BREAK.

22 THE COURT: SHOULD WE TAKE A BREAK FOR LUNCH?

23 MR. VARTAIN: I THINK SHE WOULD LIKE TO TAKE A BREAK.

24 THE COURT: ARE YOU ASKING TO BREAK FOR LUNCH?

25 MR. VARTAIN: I AM ASKING FOR THE SAKE OF THE WITNESS,  
26 WHO IS NOT HAPPY WITH ME.

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1 THE COURT: NO OBJECTION TO BREAKING A LITTLE EARLY?

2 MR. LEBOWITZ: TO THE COMMENTARY, I DO; TO THE  
3 QUESTION OF BREAK, NO.

4 MR. VARTAIN: WHAT?

5 THE COURT: WE WILL IGNORE THE COMMENT. I'LL ASK THE  
6 JURY TO IGNORE THE COMMENT.

7 LADIES AND GENTLEMEN, LET'S TAKE OUR LUNCH BREAK NOW.  
8 IT'S ONLY FIVE MINUTES EARLY. LET'S COME BACK AT 1:30. LEAVE  
9 THOSE NOTEBOOKS ON YOUR CHAIRS. IF YOU'RE GOING TO BE IN THE  
10 BUILDING, YOU CAN TAKE YOUR BADGES WITH YOU; OTHERWISE, FEEL  
11 FREE TO LEAVE THEM ON YOUR CHAIR. GATHER OUTSIDE AT 1:30, AND  
12 WE'LL SEE YOU THEN.

13 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

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1                   P R O C E E D I N G S  
2    DECEMBER 10, 2008 P.M.                REDWOOD CITY, CALIFORNIA  
3            THE COURT: WE'RE BACK ON THE RECORD OUTSIDE THE  
4    PRESENCE OF THE JURY. ALL COUNSEL AND PARTIES ARE PRESENT.  
5            DURING THE MORNING SESSION, WHEN MR. VARTAIN BEGAN THE  
6    PLAYING OF THE VIDEOTAPED DEPOSITION OF PROFESSOR BLOUGH,  
7    MR. LEBOWITZ MADE AN OBJECTION AND WE DISCUSSED IT AT SIDEBAR.  
8    I WANTED TO STATE FOR THE RECORD THAT MR. LEBOWITZ HAS PRESERVED  
9    HIS OBJECTION ON THE SCOPE OF THE VIDEOTAPED DEPOSITION THAT'S  
10   BEING PLAYED. I WANT TO GIVE HIM THE CHANCE TO STATE IT ON THE  
11   RECORD.  
12           PRIOR TO THE MORNING SESSION, COUNSEL BROUGHT TO THE  
13   COURT'S ATTENTION THE PASSAGES THAT THE DEFENSE WAS PLANNING TO  
14   PUBLISH TO THE JURY AND MR. LEBOWITZ IMMEDIATELY AND TIMELY  
15   POSED HIS OBJECTION, AND I ASKED HIM TO WAIT TO STATE IT ON THE  
16   RECORD UNTIL THE JURY WAS AT A BREAK SO THAT WE DIDN'T  
17   INCONVENIENCE THEM. BUT IT WAS STATED THIS MORNING WELL IN  
18   ADVANCE OF THE VIDEOTAPE BEING PLAYED.  
19            SO WITH THAT, MR. LEBOWITZ, I'M GOING TO LET YOU MAKE  
20   YOUR OWN RECORD, BUT I JUST WANTED TO STATE THAT.

21 MR. LEBOWITZ: THANK YOU VERY MUCH FOR THE  
22 OPPORTUNITY, YOUR HONOR. I APPRECIATE IT.  
23 AND, ALSO FOR THE RECORD, A LITTLE BIT OF BACKGROUND.  
24 THE DOCUMENT THAT WAS HANDED TO US THIS MORNING BY MR. VARTAIN  
25 CONTAINS EXCERPTS FROM THE PRIOR DISCLOSURE FROM THE PRETRIAL  
26 DISCLOSURES OF ALL OF THE DEPOSITION SEGMENTS. SO WHAT'S IN

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1 TODAY'S DISCLOSURE IS A SUBSET OF WHAT WAS IN THE PRIOR  
2 DISCLOSURE. AND ON, I BELIEVE TUESDAY MORNING OF LAST WEEK, WE  
3 HAD LODGED, FILED AND SERVED ALL OF OUR DETAILED OBJECTIONS AND  
4 REQUESTS FOR EXPANSIONS TO EACH OF THE ENTIRE SCOPE OF  
5 DESIGNATED VIDEO SEGMENTS, AND WE CERTAINLY REASSERT ALL OF  
6 THOSE OBJECTIONS AND REQUESTS FOR EXPANSIONS HERE NOW.

7 AND TO THE EXTENT THAT THEY WOULD APPLY TO THE SUBSET  
8 THAT MR. VARTAIN HANDED TO US THIS MORNING AND PLANS ON PLAYING,  
9 AND HAS ALREADY PLAYED TODAY AND PLANS ON PLAYING LATER, THEN WE  
10 WOULD CERTAINLY ASSERT ALL OF THE OBJECTIONS THAT ARE WITHIN  
11 THOSE. AND, IN PARTICULAR, THE REQUEST FOR EXPANSIONS AND THE  
12 FACT THAT IT IS OUR REQUEST -- IT WAS OUR REQUEST THAT THE  
13 EXPANSIONS BE GRANTED AND SHOWN AT THE TIME OF THE ORIGINAL  
14 CLIPS TO SHOW CONTEXT CONTEMPORANEOUSLY TO THE JURY.

15 AND THAT'S OUR OBJECTION.

16 THE COURT: THANK YOU.

17 MR. VARTAIN?

18 MR. VARTAIN: YES. AND I HAD COMMUNICATED MY POSITION

19 IN THE SIDEBAR WITH THE COURT THAT THE EXPANSIONS WERE NOT  
20 RELATED FAIRLY TO THE PARTS THAT I WAS USING FOR  
21 CROSS-EXAMINATION. AND WE, OBVIOUSLY, HAVE A DIFFERENCE OF  
22 OPINION. WE'RE GOING TO MEET AND CONFER BEFORE -- WE'RE GOING  
23 TO PROBABLY ALLOW REDIRECT OF THE PLAINTIFF, WITH THE COURT'S  
24 PERMISSION, AT A TIME WHEN MR. LEBOWITZ AND I CAN MAYBE HAVE A  
25 LITTLE TIME TO MEET AND CONFER AND TRY TO GET OPINION ON THE  
26 EXPANSIONS.

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1 WE WEREN'T TRULY ABLE TO DO THAT BEFORE TODAY, BECAUSE  
2 UNTIL THE DIRECT EXAMINATION IT WASN'T CLEAR TO ME WHAT I WOULD  
3 BE DOING MY CROSS ON.

4 THE COURT: I UNDERSTAND.

5 MR. LEBOWITZ: WELL, YOUR HONOR, I WOULD LIKE TO MAKE  
6 CLEAR THAT WE INTEND TO TAKE AND COMPLETE OUR REDIRECT TODAY,  
7 AND CALL OUR FINAL WITNESS, WHO'S DR. MAHLA, OUR ECONOMIST,  
8 TODAY AND THEN REST. THAT IS OUR INTENT, AND WE WILL FOLLOW  
9 THROUGH WITH THAT. AND TO THE EXTENT THAT WE WILL TAKE OUR  
10 OPPORTUNITY ON REDIRECT TO THE EXTENT THAT WE HAVE EXPANSIONS OR  
11 WE BELIEVE ARE RELATED, THE JURY CAN MAKE A DETERMINATION, I  
12 BELIEVE, IF THEY'RE RELATED OR NOT. THEN I WILL READ THOSE  
13 WHILE PROFESSOR BLOUGH IS ON THE STAND.

14 THE COURT: OKAY.

15 JUST TO COMPLETE THE RECORD ON THIS, THIS MORNING WHEN  
16 THIS ISSUE WAS DISCUSSED OFF THE RECORD WITH THE COURT, IT

17 WAS -- A FEW THINGS OCCURRED. FIRST, THE COURT DID NOT REVIEW  
18 AND DETERMINE WHETHER OR NOT THE EXPANSIONS WERE JUST  
19 CONTEXTUAL, AS OPPOSED TO THE INTEREST IN SHOWING OTHER  
20 FAVORABLE PORTIONS OF THE DEPOSITION, SO I DID NOT MAKE A  
21 DECISION ON ANYTHING IN PARTICULAR.

22 IT WAS THE COURT'S UNDERSTANDING THAT THE EXPANSIONS  
23 THAT THE PLAINTIFF WOULD REQUEST WOULD NOT BE NECESSARY, AND  
24 PROBABLY IN FACT NOT STATEMENTS OR QUESTIONS AND ANSWERS THAT  
25 IMMEDIATELY PRECEDED OR SUCCEDED THE QUOTED TEXT THAT IS BEING  
26 PLAYED FOR THE JURY. IT WAS IN REGARD TO THE SUBJECT MATTER,

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1 NOT THE CHRONOLOGY OF THE STATEMENTS THAT MR. LEBOWITZ WAS  
2 REFERRING TO.

3 IS THAT CORRECT?

4 MR. LEBOWITZ: IT'S A LITTLE OF BOTH.

5 THE COURT: LITTLE OF BOTH? OKAY.

6 I ALSO DID OFFER TO THE PLAINTIFF THAT I WOULD ALLOW  
7 PLAINTIFF TO RESERVE REDIRECT EXAMINATION UNTIL TOMORROW MORNING  
8 SO THAT THEY COULD RESTRUCTURE THE VIDEOTAPE PRESENTATION TO  
9 EITHER REPLAY OR OTHERWISE SHOW THE PORTIONS THAT THEY WANTED.  
10 AND SO TO THE EXTENT PLAINTIFF CHOOSES TO COMPLETE THE  
11 EXAMINATION OF PROFESSOR BLOUGH TODAY, I JUST WANT THE RECORD TO  
12 BE CLEAR THAT THE COURT DID OFFER TO ALLOW THAT CONCLUSION OF  
13 HER TESTIMONY TO BE OUT OF ORDER, EVEN IF THE DEFENSE WAS  
14 REQUIRED TO START ITS CASE IN CHIEF.

15 AND, FINALLY, IN DETERMINING TO MOVE ON AND TO ALLOW  
16 THE DEFENSE TO PLAY THESE PORTIONS WITHOUT PLAINTIFF BEING ABLE  
17 TO EXPAND THEM, IT WAS THE COURT'S DETERMINATION THAT THIS WAS  
18 CROSS-EXAMINATION AND IMPEACHMENT OF THE DIRECT TESTIMONY, AND  
19 THAT WAS DIFFERENT THAN USING THE DEPOSITION AS THE DIRECT  
20 TESTIMONY OF A WITNESS. THOSE WERE DISTINCTIONS THAT WE  
21 DISCUSSED AND THAT I FELT WERE DIFFERENT, SO THAT I DID NOT  
22 ACTUALLY REVIEW EACH OF THE PLAINTIFF'S OBJECTIONS. AND I WANT  
23 THE RECORD TO BE CLEAR, I DID NOT REVIEW EACH OBJECTION.

24 MR. LEBOWITZ: AND YOUR STATEMENT ACCURATELY REFLECTS  
25 MY RECOLLECTION OF OUR SIDEBAR.

26 THE COURT: THANK YOU.

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1 ALL RIGHT. I THINK WE HAVE A COMPLETE RECORD.

2 ARE WE READY TO BRING THE JURY BACK?

3 MR. LEBOWITZ: YES.

4 MR. VARTAIN: YES, YOUR HONOR.

5 THE COURT: OKAY. LET'S BRING THE JURY BACK.

6 (WHEREUPON, THE JURY ENTERS THE COURTROOM.)

7 THE COURT: WE'RE BACK ON THE RECORD IN BLOUGH VS.

8 MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT, AND ALL  
9 JURORS AND ALTERNATES.

10 GOOD AFTERNOON, LADIES AND GENTLEMEN. WE'RE GOING TO  
11 CONTINUE WITH THE CROSS-EXAMINATION OF PROFESSOR BLOUGH.

12 PROFESSOR, IF YOU WOULD RETAKE THE WITNESS STAND. AND



13 LET ME REMIND YOU, YOU REMAIN UNDER OATH.

14 MR. VARTAIN: MAY I PROCEED, YOUR HONOR?

15 THE COURT: PLEASE.

16

17 CROSS-EXAMINATION (RESUMED)

18 BY MR. VARTAIN:

19 Q. BEFORE WE BROKE FOR LUNCH, PROFESSOR -- I WANT TO  
20 BRING YOU BACK TO THE PART WHERE YOU WERE TALKING ABOUT WHAT  
21 YOUR SISTER AND YOUR FRIENDS WERE TELLING YOU IN THE SPRING,  
22 ABOUT THE PSYCHOTROPIC DRUGS. THEY TOLD YOU THEY THOUGHT THEY  
23 WERE MAKING YOU SLUGGISH?

24 A. THAT'S WHAT THEY THOUGHT. THEY WERE INCORRECT.

25 Q. OKAY. WELL, A NUMBER OF YOUR FRIENDS TOLD YOU THAT IT  
26 WAS THE PSYCHIATRIC DRUGS?

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1 A. YES, THAT'S CORRECT.

2 Q. AND YOU WERE TAKING HOW MANY DIFFERENT PSYCHIATRIC  
3 DRUGS AT THAT POINT?

4 A. I TAKE FOUR.

5 Q. FOUR. AND YOU ACTUALLY THOUGHT THERE WAS SOMETHING  
6 WRONG WITH THEM BECAUSE YOU HAD SAID YOU WERE THINKING OF GOING  
7 TO DR. LIU, YOUR PSYCHIATRIST, TO HAVE THEM ADJUSTED?

8 A. YES.

9 Q. YOU, YOURSELF, THOUGHT THEY WERE OUT OF WHACK MAYBE?

10 A. I THOUGHT IF MY SISTER AND MY FRIENDS ARE SAYING THAT,

11 I BETTER CHECK INTO IT.

12 Q. OKAY.

13 SO AT LEAST WE CAN AGREE THERE WAS AN ISSUE THERE IN  
14 THE SPRING OF 2006 THAT WAS IN YOUR MIND, YOUR FRIENDS' MINDS,  
15 PEOPLE WHO CARED ABOUT YOU, AS TO WHETHER ALL THESE PSYCHIATRIC  
16 DRUGS WERE CAUSING YOU TO BE SLUGGISH OR NOT. WHETHER OR NOT  
17 IT'S TRUE, THAT'S FOR THE DOCTORS. AT LEAST WE CAN AGREE THERE  
18 WAS A GENUINE ISSUE IN YOUR MIND AND IN YOUR LOVED ONES' MINDS;  
19 IS THAT RIGHT?

20 A. YES.

21 Q. OKAY.

22 NOW, I'M JUST GOING TO STAY IN THAT SPRING TIME  
23 PERIOD, BECAUSE THAT'S WHEN PRESIDENT LOPEZ ASKED YOU TO GO SEE  
24 DR. MISSETT. AND IS IT TRUE THAT BEFORE THE PRESIDENT SENT YOU  
25 THAT LETTER, YOU SAID IT WAS HAND-DELIVERED BY THE DEAN TO YOUR  
26 OFFICE, AND HE BROUGHT IT IN HIMSELF?

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1 A. YES, HE DID.

2 Q. AND DID HE TELL YOU WHY IT WAS THAT THE PRESIDENT HAD  
3 PREPARED A LETTER?

4 A. HE SAID, "DON'T WORRY ABOUT THIS. IT'S VERY  
5 LEGALISTIC, BUT DON'T WORRY."

6 Q. OKAY. HE TRIED TO REASSURE YOU?

7 A. YES, HE DID.

8 Q. AND HE'S SOMEONE WHO YOU DO TRUST?

9 A. YES, I DO.

10 Q. AND YOU STILL DO TODAY, THE DEAN, RIGHT?

11 A. YES, I DO.

12 Q. OKAY.

13 AND THROUGHOUT ALL OF THIS -- HE'S BEEN KIND, THE  
14 DEAN'S BEEN KIND THROUGHOUT THIS WHOLE PROCESS; YOU WOULD AGREE?

15 A. EXCEPT FOR NOT TALKING TO ME WHEN I ASKED HIM TO.

16 Q. OKAY.

17 A. AS A FRIEND.

18 Q. OKAY. EXCEPT FOR THAT FOUR, FIVE, SIX-WEEK PERIOD,  
19 WHEN THERE WAS THE FUSSING OVER GETTING THE MED INFORMATION TO  
20 THE DOCTOR, HE'S BEEN KIND TO YOU?

21 A. LOWELL'S ALWAYS BEEN KIND TO ME.

22 Q. OKAY.

23 DID YOU MEET WITH PRESIDENT LOPEZ IN HIS OFFICE THAT  
24 SPRING?

25 A. YES.

26 Q. AND YOU DID MEET WITH HIM BEFORE HE SENT YOU THAT

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1 LETTER?

2 A. YES.

3 Q. BECAUSE I THINK YOU TOLD THE JURY THAT THE LETTER CAME  
4 OUT OF THE BLUE, THAT NOBODY AT THE SCHOOL HAD TALKED TO YOU  
5 ABOUT MAYBE YOU SHOULD BE ON MEDICAL LEAVE. BUT IS IT TRUE THE  
6 PRESIDENT DID TALK TO YOU?

7 A. YES, BUT HE DIDN'T MENTION MEDICAL LEAVE.

8 Q. BUT HE DID, IN LATE APRIL, AROUND APRIL 29TH, ABOUT A  
9 WEEK BEFORE THAT LETTER, HE SAID, "COME ON OVER, MARCY. LET'S  
10 SIT DOWN AND TALK ABOUT WHAT YOUR PROBLEMS HAVE BEEN."

11 A. YES, HE DID.

12 Q. AND WAS HE GENTLEMANLY WITH YOU?

13 A. YES.

14 Q. RESPECTFUL?

15 A. YES.

16 Q. SAID NOTHING DEROGATORY ABOUT YOU; IS THAT TRUE?

17 A. NOTHING DEROGATORY.

18 Q. HE DIDN'T SAY ANYTHING NEGATIVE ABOUT THE FACT THAT  
19 YOU HAVE A PSYCHIATRIC CONDITION, DID HE?

20 A. I DON'T HAVE A PSYCHIATRIC CONDITION. I DO NOT HAVE A  
21 PSYCHIATRIC CONDITION.

22 Q. OKAY.

23 A. I HAVE A MEDICAL CONDITION.

24 Q. OKAY.

25 YOU, THEN, HAD THE -- I DIDN'T MEAN IT ANY KIND OF  
26 NEGATIVE WAY, BUT THE ATTORNEYS HAVE BEEN TALKING THROUGHOUT

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1 THIS WHOLE CASE ABOUT YOU HAD THE CANCER?

2 A. YES.

3 Q. THAT'S PHYSICAL. AND THEN YOU HAVE A MENTAL  
4 DISABILITY. THERE'S NOTHING NEGATIVE ABOUT IT. IT'S JUST --

5 IT'S BEEN A SEVERE CLINICAL DEPRESSION. THAT'S ALL I WAS  
6 TALKING ABOUT.

7 A. RIGHT.

8 Q. SO I'LL USE THE WORDS "SEVERE CLINICAL DEPRESSION"  
9 FROM NOW ON.

10 A. THANK YOU.

11 Q. OKAY.

12 SO IT IS TRUE THAT THE PRESIDENT DID TALK TO YOU ABOUT  
13 THE PROBLEMS AND THE NEED FOR SOME TYPE OF MEDICAL ASSESSMENT?

14 A. NO. HE NEVER MENTIONED ANY OF THAT. HE NEVER  
15 MENTIONED ANYTHING ABOUT ANY PROBLEMS -- OF THE HEARING PROBLEM,  
16 WE DISCUSSED THE HEARING PROBLEM.

17 Q. OKAY. BUT HE DID HAVE A MEETING WITH YOU THAT WEEK,  
18 ABOUT A WEEK RIGHT BEFORE HE SENT YOU THE LETTER ASKING YOU TO  
19 GO SEE DR. MISSETT?

20 A. NO, HE DID NOT ASK ME -- OH, HE NEVER ASKED ME AT THE  
21 MEETING TO SEE DR. MISSETT.

22 Q. YEAH, I UNDERSTAND THAT. LET'S FIRST ESTABLISH, HE  
23 DID MEET WITH YOU?

24 A. YES, HE DID.

25 Q. AND HE MET WITH YOU BEFORE HE SENT YOU THAT LETTER  
26 THAT WAS HAND-DELIVERED BY THE DEAN?

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1 A. CORRECT.

2 Q. BECAUSE I THOUGHT YOU SAID HE DIDN'T -- NOBODY MET

3 WITH YOU AT ALL?

4 A. OH, NO.

5 Q. SO WE HAVE A MISUNDERSTANDING. SO IT IS TRUE THAT THE  
6 PRESIDENT MET WITH YOU ABOUT A WEEK BEFORE HE SENT THE LETTER?

7 A. YES.

8 Q. THE LETTER THAT YOU DIDN'T LIKE THAT SAID GO SEE  
9 DR. MISSETT. AND DID THE PRESIDENT TELL YOU THAT HE, YOU KNOW,  
10 WAS CONCERNED FOR YOU AND FOR THE STUDENTS?

11 A. NO, HE DID NOT. NO, HE DID NOT.

12 Q. DID HE TALK TO YOU ABOUT THE FACT THAT THERE HAD BEEN  
13 QUESTIONS ABOUT HOW MANY CLASSES YOU WERE MEETING?

14 A. NO, HE DID NOT.

15 Q. SO DID HE TALK TO YOU ABOUT YOUR EVALUATIONS?

16 A. NO, HE DID NOT.

17 Q. DID YOU TALK ABOUT ANYTHING?

18 A. MY HEARING.

19 Q. OKAY. YOU TALKED ABOUT YOUR HEARING. OKAY.

20 SO I DON'T MEAN TO GO INTO THAT TOO MUCH. I JUST WANT  
21 TO MAKE SURE THAT WE AGREE THAT THE PRESIDENT DID MEET WITH YOU  
22 IN THE SPRING, ABOUT A WEEK BEFORE THE LETTER. AND HE DIDN'T  
23 JUST DUMP THAT LETTER ON YOU OUT OF THE BLUE?

24 A. IT CAME OUT OF THE BLUE TO ME.

25 Q. OKAY.

26 A. THE CONVERSATION ABOUT MY HEARING AND WHAT I WAS

1 TRYING TO DO ABOUT IT.

2 Q. OKAY. YOU WERE TELLING HIM THAT YOU WERE GOING TO GET  
3 YOUR HEARING FIXED?

4 A. CORRECT, AND THAT I NEEDED TO.

5 Q. WHAT?

6 A. YES. I NEEDED TO FIX IT, AND I WAS WORKING ON IT.

7 Q. SO IT MUST HAVE BEEN THE CASE, THOUGH, THAT IF YOU  
8 WERE TALKING WITH THE PRESIDENT ABOUT YOUR HEARING, THAT YOU  
9 WERE ALSO TALKING TO HIM ABOUT THAT IT HAD BEEN ADVERSELY  
10 IMPACTING --

11 A. YES.

12 Q. -- YOUR ABILITY TO TEACH?

13 A. I'M SORRY. YES, I WAS TALKING TO HIM ABOUT THAT.

14 Q. SO YOU AND THE PRESIDENT WERE TALKING IN THAT MEETING  
15 ABOUT HOW IT HAD BEEN A DIFFICULT SEMESTER --

16 A. ABSOLUTELY.

17 Q. -- FOR YOU?

18 THE COURT: EXCUSE ME.

19 MS. BLOUGH, I NEED YOU TO LET HIM FINISH.

20 THE WITNESS: I KNOW.

21 THE COURT: MY COURT REPORTER CAN'T MAKE A RECORD --

22 THE WITNESS: I KNOW, IT'S MY FAULT.

23 THE COURT: IT'S HARD TO DO.

24 THE WITNESS: YES.

25 THE COURT: I DON'T WANT TO HAVE TO INTERRUPT, BUT I  
26 JUST NEED YOU TO TAKE A BREATH AND LET MR. VARTAIN FINISH. HE'S

1 RIGHT. HE DOES MAKE THOSE PAUSES, SO YOU THINK HE'S DONE.

2 MR. VARTAIN: MY WIFE HATES IT; LET ME TELL YOU.

3 THE COURT: IF YOU COULD HELP ME OUT, I'D REALLY  
4 APPRECIATE IT. I'M SORRY, MR. VARTAIN.

5 MR. VARTAIN: NO PROBLEM. I'M MINDFUL OF THE COURT  
6 REPORTER.

7 Q. OKAY. SO WE DO KNOW THAT THE PRESIDENT TALKED TO YOU  
8 ABOUT A WEEK BEFORE HE SENT THAT LETTER IN HIS OFFICE ABOUT,  
9 YET, A BACK AND FORTH ABOUT HOW IT HAD BEEN A DIFFICULT SEMESTER  
10 FOR YOU?

11 A. YES, WE DID.

12 Q. AND HE DID SEEM CONCERNED FOR YOU, DIDN'T HE?

13 A. YES, HE DID.

14 Q. HE WASN'T ONLY CONCERNED ABOUT THE STUDENTS AND THE  
15 PARENTS; HE WAS ALSO CONCERNED ABOUT YOU, CORRECT?

16 A. CORRECT. HE DID NOT MENTION THE STUDENTS OR THE  
17 PARENTS; ONLY ME.

18 Q. OKAY. BUT YOU COULD TELL HE WAS CONCERNED THAT THE  
19 REPORTS WERE THERE HAD BEEN QUITE A FEW CLASSES MISSED, AND THAT  
20 THERE HAD BEEN SOME CLASSES YOU DIDN'T SHOW UP ON TIME OR LEFT  
21 EARLY?

22 A. HE DID NOT MENTION THAT.

23 Q. OKAY. BUT DID HE MENTION HIS CONCERN?

24 A. JUST THAT -- I TOLD HIM THAT I WAS HAVING A VERY HARD  
25 SEMESTER.



26 Q. OKAY. DID HE CALL FOR THE MEETING?

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1 A. HE INVITED ME.

2 Q. YEAH. YOU DIDN'T HAVE TO SET THE MEETING UP, HE --

3 A. NO, HE INVITED ME.

4 Q. HE REACHED OUT TO YOU?

5 A. YES.

6 Q. AND IT WAS PROFESSIONAL, AND HE WAS CORDIAL IN THE  
7 MEETING?

8 A. EXCUSE ME. HE WAS WHAT?

9 Q. I'M SORRY. I SAID HE WAS PROFESSIONAL AND CORDIAL?

10 A. YES, HE WAS.

11 Q. THEN YOU GOT THE LETTER THAT ASKED YOU TO GO SEE  
12 DR. MISSETT?

13 A. YES, I DID. I'M SORRY.

14 Q. AND YOU WERE RELATIVELY PROMPT IN GOING TO SEE  
15 DR. MISSETT, BECAUSE YOU GOT THE LETTER IN THAT FIRST WEEK IN  
16 MAY AND YOU WERE OVER AT HIS OFFICE A WEEK OR TWO LATER?

17 A. I WAS TOLD, AND I FELT THAT THIS WAS THE ONLY WAY TO  
18 GET BACK IN THE CLASSROOM NEXT FALL, AND SO I WENT.

19 Q. OKAY. YOU KNEW WHERE DR. MISSETT'S OFFICE WAS BECAUSE  
20 YOU HAD BEEN THERE SEVERAL YEARS EARLIER THREE OR FOUR TIMES?

21 A. YES.

22 Q. AND THOSE WERE THE THREE OR FOUR TIMES WHEN HE WAS  
23 WEANING YOU BACK TO WORK?

24 A. RIGHT.

25 Q. SO YOU DIDN'T HAVE ANY FEAR OF HIM, BECAUSE AS OF THIS  
26 POINT IN TIME WHEN PRESIDENT LOPEZ SENT YOU TO SEE HIM, THE ONLY

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1 EXPERIENCE YOU HAD HAD WITH DR. MISSETT WAS THAT HE HAD HAD A  
2 GOOD RESULT WITH YOU, FOR WANT OF A BETTER WORD?

3 A. YES, BUT I DID HAVE A FEAR OF HIM. I FEARED HIM FROM  
4 THE MOMENT I MET HIM. I FEARED HIM FROM THE MOMENT I MET HIM.

5 Q. OKAY. THERE MUST HAVE BEEN THREE OR FOUR OR FIVE  
6 DIFFERENT MEETINGS IN THAT FIRST TIME IN 2003, BECAUSE THE  
7 TRANSITION WAS HE HAD TO KEEP MEETING WITH YOU?

8 A. YES, HE DID.

9 Q. AND EACH TIME DID HE -- I'M SORRY. EACH TIME, DID HE  
10 SIT DOWN WITH YOU AND ASK YOU, "MARCY, HOW'S IT GOING AT SCHOOL?  
11 HOW'S YOUR FATIGUE? HOW ARE YOUR MEDICATIONS GOING?"

12 WAS THAT THE KIND OF THING HE WOULD ASK YOU?

13 A. YES. AND HE DID NOT LISTEN TO THE ANSWERS.

14 Q. HE DIDN'T -- DIDN'T HE ACTUALLY TAKE NOTES?

15 A. HE DID TAKE NOTES, BUT HE DIDN'T LISTEN TO THE  
16 ANSWERS.

17 Q. HOW --

18 A. HE DIDN'T LISTEN TO ME, AND HE DIDN'T LISTEN TO ANY OF  
19 MY DOCTORS.

20 Q. WELL --

21 A. WHEN I TOLD HIM I WAS FINE, HE DID NOT LISTEN. WHEN I

22 TOLD HIM I WAS GETTING WHATEVER IT WAS, HEARING AIDS, HE DID NOT  
23 LISTEN.

24 Q. I'M NOT AT 2006. I'M TRYING TO LET THE JURY KNOW  
25 WHAT -- THE FIRST TIME AROUND YOU WORKED SUCCESSFULLY WITH  
26 DR. MISSETT, SO THAT THE JURY CAN UNDERSTAND THE SECOND TIME THE

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1 COLLEGE ASKED YOU TO GO, WHAT MUST HAVE BEEN YOUR ATTITUDE  
2 TOWARDS HIM. SO I WANT TO GO TO THE FIRST TIME WHEN YOU CAME  
3 BACK FOR THE THREE-YEAR LEAVE. ARE YOU WITH ME?

4 A. YES.

5 Q. YOU MUST HAVE HAD THREE OR FOUR DIFFERENT SESSIONS  
6 WITH HIM, BECAUSE FIRST HE HAD TO EVALUATE YOU; THEN HE SAID,  
7 "GO BACK TO 50 PERCENT TIME, MARCY," RIGHT? IS THAT RIGHT?

8 A. YES.

9 Q. OKAY.

10 THEN HE SAID 75 PERCENT. BUT YOU CONVINCED HIM, I  
11 THINK I CAN DO 100 PERCENT, RIGHT?

12 A. RIGHT.

13 Q. SO HE DID LISTEN TO YOU THAT TIME. HE WANTED YOU TO  
14 GO BACK 75, BUT YOU GOT HIM PERSUADED THAT YOU HAD THE ENERGY --  
15 YOUR MEDS WERE OKAY, YOUR FATIGUE WASN'T TOO BAD. YOU GOT HIM  
16 TO SEND YOU BACK 100 PERCENT BEFORE HE REALLY WANTED TO, RIGHT?  
17 ISN'T THAT TRUE?

18 A. YES, SIR.

19 Q. SO HE DID LISTEN TO YOU ON SOMETHING THAT WAS REALLY

20 IMPORTANT TO YOU, THAT YOU WANTED TO GET BACK FULL TIME FASTER  
21 THAN HE THOUGHT WAS HEALTHY, RIGHT?

22 A. YES.

23 Q. SO THOSE FOUR OR FIVE SESSIONS THAT YOU HAD WITH  
24 DR. MISSETT, WHILE HE DIDN'T ALWAYS AGREE WITH EVERYTHING, YOU  
25 SAID HE DID AGREE WITH SOME OF THE IMPORTANT REQUESTS YOU MADE  
26 OF HIM?

791

1 A. YES.

2 Q. AND THE OVERALL TRANSITION, YOU SAID WAS WORKED OUT  
3 FOR THE BEST FOR YOU, AND YOU WERE ACTUALLY GRATEFUL TO HIM?

4 A. IN THAT PARTICULAR CASE, WHERE I HAD BEEN OUT FOR  
5 THREE YEARS IN BED, THROWING UP, IN CHEMOTHERAPY, YES, IT WORKED  
6 OUT.

7 Q. SO NOW WE'RE BACK TO THE POINT IN TIME, 2006, WHERE  
8 THE PRESIDENT'S SAYING GO BACK AND SEE DR. MISSETT AGAIN. LET'S  
9 TRY THAT PROCESS AGAIN, RIGHT?

10 A. RIGHT.

11 Q. SO HE'S JUST -- HIS OFFICE IS JUST A BLOCK OR TWO FROM  
12 THE COLLEGE, ISN'T IT?

13 A. YES.

14 Q. SO IT WAS VERY CONVENIENT FOR YOU. DID YOU UNDERSTAND  
15 THAT'S ONE OF THE THINGS, THE COLLEGE WAS TRYING TO GET SOMEBODY  
16 THAT WAS --

17 A. NO, I DID NOT. NO ONE TOLD ME. NO, I DID NOT. NO

18 ONE TOLD ME.

19 Q. OKAY. BUT IT WAS VERY CONVENIENT TO YOU BECAUSE HE'S  
20 RIGHT THERE IN MENLO PARK, RIGHT?

21 A. LOCATIONWISE, IT WAS VERY CONVENIENT.

22 Q. AND IT WAS EASY FOR YOU. HE GOT YOU RIGHT IN FOR AN  
23 APPOINTMENT. THE PRESIDENT SENT YOU THE LETTER; YOU WERE IN HIS  
24 OFFICE WITHIN A WEEK OR SO?

25 A. YES.

26 Q. AND YOU COULD TELL HIS OFFICE WAS REALLY RECEPTIVE TO

792

1 GETTING YOU IN. THEY PUT YOU HIGH ON THE PRIORITY LIST?

2 A. YES.

3 Q. YOU KNOW HE'S A REALLY, REALLY BUSY DOCTOR?

4 A. NO, I DON'T KNOW.

5 Q. OKAY.

6 BUT THEN THE RAILROAD WENT OFF THE TRACKS, DIDN'T IT,  
7 ABOUT A MONTH LATER, WHEN YOU SAID TO DR. LIU, "DON'T SEND HIM  
8 THE MEDICAL RECORDS."

9 MR. LEBOWITZ: OBJECTION, ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

11 MR. VARTAIN: Q. ABOUT A MONTH OR SO LATER IS WHEN  
12 YOU FIRST MET WITH HIM, MAY 17; THEN YOU SIGNED ALL THOSE  
13 RELEASES SO HE COULD GATHER ALL THE MEDICAL RECORDS FROM YOUR  
14 DOCTORS, RIGHT?

15 A. YES.

16 Q. AND YOU DO HAVE TO AGREE, DON'T YOU, HE'S A PRETTY  
17 THOROUGH GUY? HE LIKES TO READ MEDICAL RECORDS?

18 A. NO, I DO NOT KNOW THE ANSWER TO THAT QUESTION.

19 Q. OKAY.

20 BUT HE ASKED YOU TO SIGN ALL OF THOSE RELEASES; YOUR  
21 ONCOLOGIST, YOUR HEARING DOCTOR, YOUR PSYCHIATRIST. HE JUST  
22 WANTED TO GET EVERYTHING SO HE COULD READ IT AND SEE HOW YOU  
23 WERE?

24 A. YES.

25 Q. THAT'S WHAT YOU UNDERSTOOD, RIGHT? YES?

26 A. YES.

793

1 Q. OKAY.

2 SO THE ONLY ONE OF THE DOCTORS THAT YOU CANCELED OR  
3 REVOKED THE OKAY FOR WAS THE PSYCHIATRIST; IS THAT RIGHT?

4 A. YES.

5 Q. BUT YOU KNEW DR. MISSETT'S A PSYCHIATRIST, RIGHT?

6 A. WHICH IS WHY I THOUGHT HE WAS THE WRONG DOCTOR FOR ME.

7 Q. I UNDERSTAND THAT, BUT YOU DID HAVE A CLINICAL --  
8 SEVERE CLINICAL DEPRESSION THAT SPRING, RIGHT?

9 A. YES.

10 Q. AND THE PROBLEMS WITH YOUR HUSBAND WERE REALLY  
11 EXACERBATING THAT SEVERE CLINICAL --

12 A. AND MY CANCER WAS MORE IMPORTANT THAN THAT.

13 Q. I'M NOT -- YOU KNOW, THAT'S THE PART WHERE I DON'T

14 WANT EITHER OF US TO BE THE DOCTOR, OKAY? I'M JUST SAYING FROM  
15 DR. MISSETT'S STANDPOINT --

16 A. MR. VARTAIN, I LIVED WITH THAT CANCER. I KNOW WHAT  
17 WAS IMPORTANT IN MY LIFE.

18 Q. AND WASN'T DR. MISSETT VERY OPEN WITH YOU WHEN HE  
19 SAID, "YOU KNOW, I REALLY" -- "I'M NOT AN EXPERT ON CARCINOID  
20 TUMORS." HE DIDN'T TRY TO HIDE THAT FACT, DID HE?

21 A. AND I TOLD HIM HE WAS THE WRONG DOCTOR FOR ME.

22 Q. AND I'M SURE YOU DID.

23 A. YES. I TOLD HIM IN THAT CASE, HE WAS THE WRONG  
24 DOCTOR.

25 Q. BECAUSE YOU WANTED HIM TO CONCENTRATE ON THE CANCER,  
26 RIGHT?

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1 A. YEAH, BECAUSE IT WAS THE MOST IMPORTANT THING IN MY  
2 LIFE.

3 Q. AND WHEN IT REALLY WAS TROUBLING YOU, MA'AM, WHEN IT  
4 WAS MORE REALLY LIFE THREATENING, THE COLLEGE SUPPORTED YOU,  
5 DIDN'T THEY?

6 A. YES, IT DID.

7 Q. SO THE COLLEGE NEVER, LIKE, MADE CANCER, LIKE, A BAD  
8 THING ABOUT YOU, BECAUSE WHEN YOU WANTED TO GO ON MEDICAL LEAVE  
9 FOR CANCER, THEY HELD YOUR JOB FOR THREE YEARS, RIGHT?

10 A. YES. THEY MADE IT A BAD THING FOR ME WHEN THEY  
11 DECIDED THAT I HAD A MEDICAL REVIEW AND FIRED ME BECAUSE OF IT.

12 Q. YOU'RE SAYING THAT, MA'AM. BUT WHEN YOU CAME BACK  
13 FROM THE THREE-YEAR LEAVE FROM CANCER, THEY HELD -- YOU KNOW,  
14 THAT'S A LONG TIME TO HOLD SOMEBODY'S JOB; WOULDN'T YOU AGREE?

15 A. YES.

16 Q. THEY DIDN'T TAKE YOUR JOB AND GO HIRE A NEW PROFESSOR?

17 A. NO, THEY DID NOT.

18 Q. THEY HAD TO IMPOSE ON THE STUDENTS FILL-IN  
19 INSTRUCTORS, DIDN'T THEY?

20 A. YES, THEY DID.

21 Q. AND YOU NEVER -- DID YOU EVER ASK THEM HOW MUCH MORE  
22 MONEY THAT COST THEM TO DO THAT, TO HIRE ALL THE FILL-INS?

23 A. I ASSUMED IT WAS CHEAPER.

24 Q. YOU DID, BUT YOU NEVER ASKED?

25 A. NO.

26 Q. YOU DIDN'T ASK THEM HOW MUCH TIME THEY HAD TO SPEND

795

1 RECRUITING AND TRAINING THE FILL-IN PEOPLE?

2 A. NO, I DID NOT.

3 Q. SO WOULD YOU AGREE THAT AS TO YOUR CANCER AND ALL THAT  
4 TIME, THE COLLEGE DID NOTHING BUT SUPPORT YOU TO THE BEST --

5 A. DURING THAT TIME, YES.

6 Q. OKAY.

7 SO CANCER WAS -- I UNDERSTAND TOTALLY WHY CANCER IS SO  
8 MUCH ON YOUR MIND IN MAY OF 2006, BECAUSE IT'S -- IT CAN'T EVER  
9 BE NOT ON YOUR MIND, AND I RESPECT THAT. BUT IN THE SPRING OF



10 2006, THERE WAS SOMETHING ELSE GOING ON AND THAT WAS THE  
11 DEPRESSION, TOO?

12 A. THAT WAS CAUSED BY THE CANCER, ALSO. WE'VE HAD  
13 DOCTORS TESTIFY TO THAT IN THIS COURTROOM.

14 Q. WELL, I WON'T DEBATE THAT WITH YOU. THERE WAS  
15 DIFFERENT THINGS GOING ON, AND YOU SAY THEY WERE FEEDING EACH  
16 OTHER, I THINK IS WHAT YOU'RE -- FEEDING OFF EACH OTHER, BUT  
17 FINE. EITHER WAY --

18 MR. LEBOWITZ: OBJECTION, YOUR HONOR. THAT WASN'T THE  
19 QUESTION.

20 THE COURT: ALL RIGHT.

21 LADIES AND GENTLEMEN, OF COURSE, I'VE TOLD YOU THAT  
22 THE ATTORNEYS DON'T GIVE YOU EVIDENCE, BUT TO THE EXTENT THAT  
23 WAS ARGUMENTATIVE, I WILL STRIKE THAT.

24 MR. VARTAIN: I WAS GOING TO ASK A QUESTION BUT HE CUT  
25 ME OFF, SO THAT'S FINE.

26 Q. I'M GOING TO PLAY SOME VIDEO ABOUT WHAT YOU SAID IN

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1 YOUR DEPOSITION ABOUT THE CLINICAL DEPRESSION IN THE SPRING.  
2 BUT YOU DID SAY YOUR SISTER AND YOUR FRIENDS THOUGHT IT WAS THE  
3 PSYCHOLOGICAL DRUGS THAT WERE CAUSING THE FATIGUE. AND YOU SAW  
4 YOUR SISTER AND YOUR FRIENDS ON A REGULAR BASIS; IS THAT RIGHT?

5 A. AND NONE OF THEM THOUGHT OF THE SANDOSTATIN. NONE OF  
6 THEM THOUGHT OF THE CHEMOTHERAPY, INCLUDING ME.

7 Q. RIGHT. BUT IT WAS AT THE TIME WHEN YOUR FRIENDS AND

8 YOUR SISTER THOUGHT IT WAS THE PSYCHIATRIC DRUGS THAT THE  
9 COLLEGE SENT YOU TO THE PSYCHIATRIST FOR THE EVALUATION OF THOSE  
10 KINDS OF THINGS, CORRECT? WOULD THAT BE FAIR TO SAY?

11 A. NO, THAT WOULDN'T BE FAIR. BECAUSE BY THAT TIME I WAS  
12 ON THE TRIAL -- ON THE TRIAL OF NOT BEING ON THE SANDOSTATIN. I  
13 WAS MUCH BETTER.

14 Q. FROM THE CANCER, BUT YOU STILL HAD THE SEVERE CLINICAL  
15 DEPRESSION, RIGHT? AND YOU WERE STILL TAKING --

16 A. I WAS GETTING BETTER FROM THAT, TOO. GETTING BETTER  
17 FROM EVERYTHING OFF THAT SANDOSTATIN.

18 Q. YOU TOLD US IN THE DEPOSITION -- YOU SAID AS OF MAY  
19 THAT YOU WERE NOT ABLE TO BE TEACHING; IS THAT CORRECT?

20 A. EXCUSE ME, SIR. I CHANGED THAT LATER IN THE  
21 DEPOSITION. THERE'S A PART OF THE DEPOSITION WHERE I SAID I HAD  
22 MISSPOKEN. I MISUNDERSTOOD. AND IT IS LATER IN THE DEPOSITION.

23 Q. DID YOU READ THAT? DID YOU READ SOME STUFF?

24 A. NO, I JUST REMEMBERED.

25 Q. DURING THE LUNCH HOUR?

26 MR. LEBOWITZ: OBJECTION, ARGUMENTATIVE.

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1 THE WITNESS: I HAD LUNCH WITH MY FRIEND, MARILYNN. I  
2 DID NOT TALK TO ANYONE ELSE.

3 THE COURT: I'M SORRY. SUSTAINED.

4 MR. LEBOWITZ: THANK YOU.

5 MR. VARTAIN: LET'S GO BACK TO DR. MISSETT.

6 Q. SO YOU WERE SAYING THAT THE FIRST TIME AROUND IT ALL  
7 WAS DONE RIGHT BY HIM. HE DID A GOOD JOB FOR YOU. NOW, WE'RE  
8 HERE IN MAY. YOU WENT TO HIS OFFICE. YOU SIGNED THE RELEASES.  
9 YOU READ THEM BEFORE YOU SIGNED THEM, DIDN'T YOU?

10 A. YES.

11 Q. OKAY. YOU KNEW YOU WERE APPROVING HIM TO GO GET THOSE  
12 RECORDS, RIGHT?

13 A. YES.

14 Q. AND YOU KNEW HE WAS GOING TO FAX YOUR APPROVALS TO ALL  
15 YOUR DOCTORS, BECAUSE THE DOCTORS WEREN'T GOING TO GIVE  
16 DR. MISSETT ANY FILES ON YOU UNLESS YOU RELEASED THEM. SO YOU  
17 AGREED -- YOU DO AGREE THAT YOU SIGNED THE DOCUMENT?

18 A. YES.

19 Q. AND YOU KNOWINGLY SAID OKAY. OKAY. THE ONLY DOCTOR  
20 YOU CHANGED THE OKAY FOR WAS THE PSYCHIATRIST, RIGHT?

21 A. YES. I THOUGHT IT WAS HER DECISION. IT MAY BE A  
22 MISTAKE. I AM NOT -- BUT I THOUGHT IT WAS HER DECISION.

23 Q. AT THE TIME YOU THOUGHT IT WAS HER DECISION?

24 A. RIGHT.

25 Q. NOW, YOU'RE NOT SO SURE?

26 A. NOW, I DON'T KNOW.

798

1 Q. OKAY. EITHER WAY, YOU KNEW AT THE TIME THAT  
2 WHOEVER -- WHETHER IT WAS YOU OR THE DOCTOR -- THAT SHE WAS NOT  
3 GOING TO SEND THE RECORDS THAT DR. MISSETT WAS EXPECTING, RIGHT?

4 A. CORRECT. SHE WAS ONLY GOING TO TALK TO HIM ON THE  
5 PHONE. SHE WAS GOING TO SPEAK TO HIM ON THE PHONE.

6 Q. YEAH, BUT HE NEVER TOLD -- DR. MISSETT NEVER SAID THAT  
7 HE COULD DO A THOROUGH ENOUGH REVIEW JUST BY TALKING ON THE  
8 PHONE. HE NEVER TOLD YOU THAT, DID HE?

9 A. NO.

10 Q. SO YOU NEVER WERE UNDER THE UNDERSTANDING THAT THE  
11 EVALUATION DOCTOR CAN SIGN TO THE COLLEGE THAT YOU'RE READY TO  
12 GO BACK WHEN HE HASN'T EVEN READ THE MEDICAL RECORD OF YOUR  
13 PRIMARY PSYCHIATRIST. HE NEVER SAID THAT, DID HE?

14 A. MR. VARTAIN, I NEVER UNDERSTOOD THE ENTIRE TIME WHY I  
15 WAS BEING SENT TO A PSYCHIATRIST.

16 Q. I THINK YOU'VE SAID THAT, MA'AM.

17 A. I NEVER UNDERSTOOD. I ASKED FOR AN ONCOLOGIST.  
18 THAT'S WHAT MY PROBLEMS COME FROM; THAT'S WHERE THEY STILL COME  
19 FROM.

20 Q. WELL, RIGHT NOW YOUR CANCER IS IN REMISSION?

21 A. I HOPE SO, YES. I HOPE SO.

22 Q. OKAY.

23 LET'S MAYBE -- JUST ONE SECOND BEFORE WE PLAY THAT.

24 ARE YOU SAYING THAT THE ISSUE REALLY WASN'T YOUR  
25 DISLIKE FOR DR. MISSETT, THE PERSON, YOU JUST DIDN'T WANT TO  
26 HAVE A DOCTOR WHO HAS A PSYCHIATRIC BACKGROUND DO THE

1 EVALUATION?

2 A. I WANTED AN ONCOLOGIST, AND I WANTED AN ONCOLOGIST WHO  
3 MAY EVEN UNDERSTAND A VERY RARE CANCER.

4 Q. OKAY.

5 DR. MISSETT NEVER TOLD YOU THAT THE PROBLEM HE WAS  
6 HAVING RELEASING YOU WAS THE CANCER, DID HE?

7 A. NO.

8 Q. SO HE NEVER TOLD YOU THAT HE WAS AGAINST FULLY  
9 ACCEPTING WHAT DR. MARCUS, YOUR ONCOLOGIST, SAID, THAT THE  
10 CANCER'S NO PROBLEM TO YOU WORKING. HE NEVER SAID THAT HE  
11 DISAGREED WITH YOUR ONCOLOGIST, DID HE?

12 A. NO.

13 Q. SO THE COLLEGE HAS NEVER SAID TO YOU THAT YOUR CANCER  
14 IS SOMETHING TO THE COLLEGE THAT THEY THINK IMPAIRS YOU FROM  
15 TEACHING, DID THEY?

16 A. NO, NOR HAVE THEY EVER SAID MY PSYCHOLOGICAL STATE HAS  
17 STOPPED ME FROM TEACHING.

18 Q. THE ONLY THING THEY'VE SAID IS -- THEY HAVEN'T SAID  
19 ANYTHING ABOUT WHAT THE MEDICAL CONDITION --

20 A. CORRECT.

21 Q. THE ONLY THING THEY SAID IS, THE ONLY REASON THEY  
22 DIDN'T LET YOU TEACH IS BECAUSE DR. MISSETT SAID NOT TO LET YOU  
23 TEACH, RIGHT?

24 A. CORRECT, AND HE WAS A PSYCHIATRIST.

25 Q. OKAY.

26 SO IT'S NOT THE COLLEGE'S FAULT. THEY JUST WENT BY

1 WHAT DR. MISSETT SAID, RIGHT?

2 MR. LEBOWITZ: OBJECTION, ARGUMENTATIVE.

3 THE WITNESS: IT'S THE COLLEGE'S FAULT --

4 MR. LEBOWITZ: IT CALLS FOR A LEGAL CONCLUSION.

5 THE COURT: SUSTAINED.

6 MR. VARTAIN: ALL RIGHT.

7 MR. LEBOWITZ: SUSTAINED.

8 THE COURT: I SUSTAINED THE OBJECTION.

9 MR. VARTAIN: OKAY. I'M GOING TO MOVE TO THE NEXT --

10 I'M NOT GOING TO DISOBEY THE JUDGE.

11 THE COURT: GOOD.

12 MR. VARTAIN: I WAS TRYING TO BUY SOME TIME HERE FOR

13 MY NEXT QUESTION. OKAY.

14 Q. SO FAIR ENOUGH. THE COLLEGE, DR. MISSETT, NO ONE HAS  
15 EVER TOLD YOU THAT IT WAS THE CANCER THAT IS WHY YOU'RE NOT  
16 TEACHING, CORRECT?

17 A. CORRECT, AND THEY NEVER TOLD ME IT WAS ANY  
18 PSYCHOLOGICAL REASON EITHER.

19 Q. AS FAR AS YOU KNOW, DR. MISSETT NEVER TOLD THE COLLEGE  
20 WHAT EXACTLY --

21 A. NO, I HAVE NO IDEA.

22 Q. BECAUSE THE COLLEGE SHOWED YOU THE LETTERS DR. MISSETT  
23 SENT, AND HE NEVER ONCE DISCLOSED TO THE COLLEGE EXACTLY WHAT  
24 YOUR DIAGNOSIS IS, RIGHT?

25 A. RIGHT.

26 Q. DIDN'T YOU UNDERSTAND, AS A LAWYER, THAT THE COLLEGE

1 DIDN'T WANT TO KNOW YOUR PRIVATE MEDICAL INFORMATION? THEY  
2 DIDN'T WANT DR. MISSETT TELLING THEM WHAT WAS THE MEDICAL  
3 REASON. DIDN'T YOU UNDERSTAND THAT?

4 A. I WOULD HAVE PREFERRED THEY WOULD KNOW.

5 Q. WHAT?

6 A. I WOULD HAVE PREFERRED THEY WOULD KNOW SO THEY WOULD  
7 KNOW WHAT BASIS HE WAS MAKING A DECISION ON.

8 Q. OKAY.

9 A. NO ONE KNEW, INCLUDING ME, WHAT BASIS HE MADE A  
10 DECISION ON.

11 Q. DID YOU EVER GO BACK TO DR. MISSETT AND SAY, WHY DID  
12 YOU WRITE THAT ONE LETTER?

13 A. YES, I DID. WE SPOKE ABOUT IT LATER ON.

14 Q. RIGHT. AND DIDN'T HE SAY TO YOU, "MARCY, YOU KNOW,  
15 THE PROBLEM I HAD, WHY I SAID YOU COULDN'T WORK AT ALL, WAS THAT  
16 I COULDN'T LOOK AT THOSE -- DR. LIU'S RECORDS." DIDN'T HE SAY  
17 TO YOU, "YOU KNOW, I FELT MAYBE YOU'D BE READY TO GO BACK  
18 50 PERCENT TIME, BUT I COULDN'T IN GOOD CONSCIENCE CLEAR YOU  
19 BECAUSE I COULDN'T READ THE FILE," DIDN'T HE SAY THAT?

20 A. MR. VARTAIN, DON'T SAY "YOU CANNOT WORK IN THE  
21 FORESEEABLE FUTURE," UNLESS THERE ARE REASONS. HE COULD HAVE  
22 SAID "THAT SEMESTER BECAUSE YOU'VE NOT RELEASED THEM." I WOULD  
23 HAVE SAID, "OH, I'LL GET HER TO RELEASE THEM."

24 Q. WELL, AGAIN, LET ME SEE IF I CAN EXPLAIN THE

25 CHRONOLOGY -- OR WE CAN JOINTLY EXPLAIN THE CHRONOLOGY TO THE  
26 JURY.

802

1 WHEN DR. MISSETT -- IT WAS ONLY A MATTER OF DAYS FROM  
2 WHEN YOU TOLD DR. LIU OR DR. LIU TOLD YOU, WHICHEVER WAY IT WAS  
3 NOT TO SEND HIM THE RECORDS, IT WAS ONLY A MATTER OF DAYS LATER  
4 YOU GOT THE LETTER FROM PRESIDENT LOPEZ, WHICH ATTACHED THE  
5 LETTER FROM DR. MISSETT THAT SAID, "YOU'RE GOING ON LEAVE UNTIL  
6 NOVEMBER AND YOUR APPOINTMENT IS GOING TO LAPSE BECAUSE DR.  
7 MISSETT SAYS YOU'RE NOT ABLE TO WORK FOR THE FORESEEABLE  
8 FUTURE," RIGHT?

9 A. YES, BUT I NEVER GOT AN EXPLANATION ON WHY.

10 Q. I'M GOING TO GET --

11 A. WHY IT WAS -- WHY THE FORESEEABLE FUTURE.

12 Q. I GRANT YOU THAT THAT IS A TERM THAT WAS, YOU KNOW,  
13 DIFFICULT FOR YOU TO UNDERSTAND. BUT YOU DID KNOW WHEN YOU READ  
14 THAT LETTER THAT YOU'RE THE ONE, AND YOUR DOCTOR ARE THE ONES  
15 THAT HAD KEPT THE RECORDS FROM DR. MISSETT?

16 A. YES, AND I ASKED DR. LIU TO SEND THEM.

17 Q. THAT WAS SIX MONTHS LATER?

18 A. WHENEVER I WAS ASKED AGAIN, I ASKED HER TO SEND THEM.

19 Q. STAY WITH ME IN JULY, BECAUSE THEN YOU GOT THE LETTER  
20 FROM THE PRESIDENT THAT SAID YOU CAN'T COME BACK NOW. YOU'RE  
21 GOING ON LEAVE AND YOUR APPOINTMENT IS GOING TO LAPSE IN  
22 NOVEMBER, RIGHT?



23 A. YES.

24 Q. THAT LETTER CAME ONLY ABOUT A WEEK AFTER YOU AND YOUR  
25 PSYCHIATRIST SAID, "NO, WE'RE NOT GOING TO GIVE THE RECORDS"?

26 A. I DON'T RECALL WHEN, BUT PROBABLY.

803

1 Q. OKAY.

2 AND THEN THAT WHOLE SUMMER YOU HAD THE BACK AND FORTH  
3 WITH STEPHANIE AND THE OTHER PEOPLE WHERE YOU WERE ROUNDING UP  
4 YOUR DOCTORS' NOTES AND SENDING THEM TO THE SCHOOL, AND THE  
5 SCHOOL WAS SAYING, "HEY, TAKE THEM OVER TO DR. MISSETT."

6 DO YOU REMEMBER ALL THAT?

7 A. NO ONE TOLD ME TO TAKE THEM TO DR. MISSETT --

8 Q. UNTIL SEPTEMBER 7TH?

9 A. -- UNTIL SEPTEMBER WHEN THE SCHOOL YEAR HAD ALREADY  
10 STARTED.

11 Q. I'M GOING TO GET TO THAT IN A SECOND. OKAY.

12 YOU KNEW THROUGHOUT THAT TIME THAT DR. MISSETT HAD  
13 SAID YOU WEREN'T FIT. YOU WERE UPSET ABOUT IT, RIGHT?

14 A. YES, I WAS UPSET ABOUT IT. IT WAS INCORRECT.

15 Q. WELL, YOU'RE NOT A DOCTOR, ARE YOU? YOU THOUGHT IT  
16 WAS INCORRECT?

17 MR. LEBOWITZ: OBJECTION, ARGUMENTATIVE.

18 MR. VARTAIN: I'LL WITHDRAW THAT.

19 THE COURT: THANK YOU.

20 MR. VARTAIN: IT'S NOT A GOOD QUESTION.

21 Q. BUT WHAT I'M SAYING IS THAT WHOLE SUMMER, YOU KNEW  
22 THAT YOU HAD KEPT THOSE RECORDS FROM DR. MISSETT. YOU KNEW THAT  
23 DR. MISSETT HAD RESPONDED BY SAYING, "SHE CAN'T GO BACK FOR THE  
24 FORESEEABLE FUTURE." HE DIDN'T SAY "NEVER," DID HE?

25 A. THE "FORESEEABLE FUTURE" SAYS NEVER TO ME.

26 Q. TO YOU IT DOES, BUT HE DIDN'T SAY "SHE CAN NEVER GO

804

1 BACK"?

2 A. I THOUGHT HE HAD.

3 Q. OKAY. I GUESS THE REAL QUESTION I HAVE IS -- I'LL LET  
4 YOU PAUSE FOR A MINUTE.

5 THE REAL QUESTION I HAVE IS, PROFESSOR; THAT WHOLE  
6 SUMMER YOU DIDN'T CHANGE YOUR MIND OR CHANGE YOUR DOCTOR'S MIND  
7 AND GO GET THOSE MEDICAL RECORDS AND TAKE THEM OVER TO HIM, DID  
8 YOU?

9 A. DOCTOR --

10 Q. COULD YOU ANSWER THAT?

11 A. -- MISSETT DID NOT SAY THAT WAS THE REASON.

12 Q. RIGHT.

13 A. HE ONLY SAID, "YOU CANNOT WORK NOW OR IN THE  
14 FORESEEABLE FUTURE," AND THAT'S ALL I GOT.

15 Q. HIS OFFICE IS ABOUT TWO BLOCKS. YOU NEVER WENT OVER  
16 THERE AND SAID TO HIM -- OR MADE AN APPOINTMENT, SAID,  
17 "DR. MISSETT, WHY DID YOU SEND THAT LETTER? WHAT'S THE  
18 PROBLEM?" YOU DIDN'T DO THAT, DID YOU?

19 A. NO.

20 Q. YOU ONLY WENT TO THE COLLEGE, BUT THE COLLEGE DIDN'T  
21 KNOW EITHER WHY HE DIDN'T RELEASE YOU, DID THEY?

22 A. I DIDN'T KNOW THAT.

23 Q. YOU DID KNOW THAT BECAUSE YOU READ THE LETTER THAT  
24 DR. MISSETT SENT THEM, DIDN'T YOU?

25 A. YES.

26 Q. AND THAT LETTER GAVE NO INFORMATION TO THE COLLEGE.

805

1 THEY DIDN'T KNOW EITHER WHY HE HAD SAID YOU CAN'T GO BACK,  
2 RIGHT?

3 A. YES.

4 Q. SO WHY DIDN'T YOU GO OVER TO DR. MISSETT AND SAY, "YOU  
5 KNOW, THIS IS REALLY BAD NEWS FOR ME. CAN YOU EXPLAIN TO ME WHY  
6 I CAN'T GO BACK?" BUT YOU NEVER DID THAT, DID YOU?

7 A. MR. VARTAIN, I WAS TOO UPSET TO DO ANYTHING.

8 Q. MA'AM, YOU WERE SENDING A LOT OF E-MAILS AND SOME OF  
9 THEM --

10 A. I SENT THEM TO MY BOSSES WHO I THOUGHT WERE DECISION  
11 MAKERS.

12 Q. WELL, YOU KNEW THE PRESIDENT HAD MADE THE DECISION,  
13 BUT HE SAID IN HIS LETTER HE ONLY MADE IT BECAUSE OF WHAT  
14 DR. MISSETT SAID, DIDN'T HE?

15 A. I DID NOT THINK TO GO SEE DR. MISSETT. I'M SORRY.

16 Q. NO, IT'S FINE. I'M JUST SAYING HE WAS LIKE TWO BLOCKS

17 AWAY. HE HAS AN OPEN DOOR. YOU COULD HAVE JUST GONE OVER THERE  
18 AND SAID, "WHAT THE HECK? WHY DID YOU GIVE THAT OPINION?"

19 MR. LEBOWITZ: OBJECTION, ARGUMENTATIVE; CALLS FOR  
20 SPECULATION.

21 THE COURT: SUSTAINED.

22 MR. VARTAIN: Q. BUT YOU DIDN'T GO AND SEE HIM,  
23 RIGHT?

24 A. I DID NOT.

25 Q. AND YOU WERE OF ABLE BODY. YOU WEREN'T IN THE  
26 HOSPITAL. YOU WERE SENDING E-MAILS, BUT YOU DIDN'T GO AND SEE

806

1 DR. MISSETT?

2 A. NO, I DID NOT THINK TO DO THAT.

3 Q. OKAY. THAT'S FINE.

4 SO, BASICALLY, WHAT HAPPENED IN THE SUMMER THERE WAS  
5 YOU WERE IN THE DARK, THE COLLEGE WAS IN THE DARK, THE ONLY  
6 PERSON WHO REALLY KNEW WHY HE DIDN'T WANT YOU TO GO BACK WAS  
7 DR. MISSETT, RIGHT?

8 A. RIGHT.

9 Q. THE COLLEGE COULDN'T ASK HIM BECAUSE THEY DIDN'T THINK  
10 THEY WERE SUPPOSED TO HAVE THAT KIND OF INFORMATION, RIGHT?

11 MR. LEBOWITZ: OBJECTION. CALLS FOR SPECULATION.

12 THE COURT: SUSTAINED.

13 MR. VARTAIN: SHE KNOWS.

14 Q. DID YOU REALIZE THAT THE COLLEGE -- THE ONLY

15 INFORMATION THEY HAD WAS THE BARE BONES OF WHAT WAS IN THE  
16 LETTER?

17 A. THAT'S WHAT THE LETTER SAID. THAT'S ALL I CAN SAY.

18 Q. RIGHT.

19 SO AS FAR AS YOU KNEW, THE COLLEGE HAD NO MORE  
20 INFORMATION THAN YOU DID, RIGHT, ABOUT WHY DR. MISSETT DIDN'T  
21 WANT YOU TO GO BACK?

22 A. RIGHT.

23 Q. SO YOU DIDN'T KNOW. THE COLLEGE DIDN'T KNOW. BUT  
24 IT'S YOUR INFORMATION, BUT YOU DIDN'T ASK DR. MISSETT, RIGHT?

25 MR. LEBOWITZ: YOUR HONOR, WE'VE BEEN OVER THIS ABOUT  
26 TEN TIMES. IT'S CUMULATIVE.

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1 THE COURT: I AGREE. LET'S MOVE ON.

2 MR. VARTAIN: I'M GOING TO MOVE ON.

3 Q. SO IN THAT SUMMER, YOU SAID THAT YOU WERE SENDING A  
4 LOT OF E-MAILS TO THE COLLEGE THAT THEY WEREN'T ANSWERING. DO  
5 YOU REMEMBER THAT WHOLE THING?

6 A. YES.

7 Q. BUT LET ME SEE IF I CAN TELL YOU WHAT THE ACTUAL  
8 PERIOD OF TIME WINDOW THAT THEY DIDN'T ANSWER YOUR E-MAILS WAS  
9 REALLY JUST ABOUT TWO WEEKS, WASN'T IT?

10 A. NO. IT WAS FROM JULY 7TH UNTIL AUGUST 29TH.

11 Q. YOU SENT YOUR FIRST E-MAIL AROUND JULY 22ND, RIGHT?

12 A. YES.

13 Q. OKAY.

14 SO THAT'S THE FIRST -- YOU GOT THE LETTER FROM  
15 DR. LOPEZ ON JULY 7TH. YOU FIRST SENT AN E-MAIL TO THE COLLEGE  
16 ON JULY 22ND, AND YOU FINALLY GOT A RESPONSE ON AUGUST THE 10TH?

17 A. THAT'S RIGHT.

18 Q. OKAY.

19 AND THEN ONCE THAT RESPONSE CAME, YOU AND STEPHANIE  
20 WERE DOING YOUR BACK AND FORTH, AND SHE WASN'T TELLING YOU WHAT  
21 YOU WANTED TO HEAR BECAUSE SHE DIDN'T WANT TO LOOK AT YOUR  
22 MEDICAL STUFF. BUT AT LEAST SHE WAS TALKING TO YOU AND  
23 E-MAILING YOU, RIGHT?

24 MR. LEBOWITZ: OBJECTION --

25 THE WITNESS: YES.

26 THE COURT: OVERRULED.

808

1 MR. VARTAIN: Q. SO EXACTLY ONE WEEK IN JULY AND TEN  
2 DAYS IN AUGUST PASSED THAT THIS SILENCE, AS YOU POINT OUT, CAME  
3 FROM THE COLLEGE, RIGHT? ABOUT THAT LONG?

4 A. ONE WEEK IN JULY AND HOW MUCH IN AUGUST?

5 Q. YOU SAID YOUR FIRST E-MAIL WAS JULY 22ND.

6 A. RIGHT.

7 Q. AND THEN, FINALLY, STEPHANIE, THE HR PERSON, RESPONDED  
8 ON AUGUST 10TH, RIGHT?

9 A. AUGUST 10TH, I DO NOT KNOW.

10 Q. WELL, THE RECORDS REFLECT.

11 YOU KNOW THAT IT'S THAT TIME OF THE YEAR WHEN A LOT OF  
12 THE ADMINISTRATION TAKES THEIR VACATION?

13 A. YES.

14 Q. AND THE PRESIDENT GOES ON VACATION IN JULY, THE VICE  
15 PRESIDENT. YOU HEARD VICE PRESIDENT SCHULTZ SAY HE WAS AWAY AT  
16 THAT TIME.

17 MR. LEBOWITZ: OBJECTION. THERE'S NO FOUNDATION FOR  
18 WHEN THE PRESIDENT WAS ON VACATION.

19 MR. VARTAIN: I'M GOING TO WITHDRAW IT.

20 THE COURT: THANK YOU.

21 MR. VARTAIN: Q. YOU WERE AWARE THAT IT IS IN JULY  
22 AND EARLY AUGUST WHEN A LOT OF THE SENIOR PEOPLE AT THE SCHOOL  
23 TAKE VACATION, RIGHT?

24 A. I'M AWARE OF THE SUMMER, RIGHT AFTER GRADUATION.

25 Q. YES. AND YOU'RE AWARE THAT A LOT OF THEM DON'T EVEN  
26 READ THEIR E-MAILS. THEY GO ON STUDY TRIPS AND THEY JUST GO --

809

1 THEY JUST GO IN THE DARK, RIGHT?

2 A. I DON'T KNOW WHAT THEY DO.

3 Q. OKAY.

4 AS FAR AS THE TIME BETWEEN JULY 22ND AND AUGUST 10TH,  
5 YOU DO KNOW THAT IS A PRIME VACATION TIME FOR THE SENIOR PEOPLE  
6 AT THE COLLEGE?

7 A. IT COULD BE.

8 Q. SO THAT IS THE ONLY PERIOD OF THIS WHOLE TIME WHEN

9 THERE WAS SILENCE FROM THE COLLEGE, BECAUSE OTHER THAN THAT,  
10 YES, YOU DIDN'T LIKE WHAT THEY WERE SAYING, BUT THEY WERE  
11 TALKING TO YOU, E-MAILING LETTERS?

12 A. NO, THEY WERE NOT, SIR.

13 Q. WELL, YOU HAD ABOUT FOUR OR FIVE E-MAILS FROM  
14 STEPHANIE IN AUGUST, RIGHT?

15 A. STEPHANIE WAS NOT WHO I WANTED TO TALK TO.

16 Q. SHE WAS THE PERSON IN CHARGE OF THE LEAVE OF ABSENCE  
17 AND THE HUMAN RESOURCES, RIGHT?

18 A. LOWELL PRATT WAS MY BOSS. HIS BOSS IS MIKE SCHULTZ.  
19 CARLOS LOPEZ IS HIS BOSS. THEY ARE THE ONES THAT WERE SUPPOSED  
20 TO DECIDE TO ISSUE THE SIX-YEAR CONTRACT. I NEEDED TO TALK TO  
21 THEM.

22 Q. ACTUALLY, ONLY THE PRESIDENT COULD DECIDE THAT, RIGHT?

23 A. YOU READ IT IN THE HANDBOOK, IT SAYS THE PERSONNEL WHO  
24 MADE IT, LOWELL PRATT, MIKE SCHULTZ AND THE PRESIDENT.

25 Q. WHO MAKES THE FINAL DECISION? WHO MAKES THE FINAL  
26 DECISION?

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1 A. I THINK ALL OF THEM SHOULD OR DO. IF I READ THE  
2 HANDBOOK CORRECTLY, ALL OF THEM. "IN CONJUNCTION," IS WHAT IT  
3 SAYS.

4 Q. EVERY SINGLE CONTRACT LETTER YOU HAVE EVER GOTTEN FROM  
5 THE MENLO COLLEGE HAS BEEN SIGNED BY ONE PERSON AND ONLY ONE  
6 PERSON, THE PRESIDENT?



7 A. WHICH DOESN'T MEAN HE DIDN'T LISTEN TO ALL OF THE  
8 OTHERS AND TAKE IT INTO CONSIDERATION.

9 Q. BUT AM I RIGHT ABOUT --

10 A. YEAH, THEY ARE ONLY SIGNED BY THE PRESIDENT.

11 Q. OKAY.

12 I WANT TO GO BACK TO THIS TIME, AND I'M GOING TO TRY  
13 TO GET US DONE IN THE NEXT 15 OR 20 MINUTES. BUT I WANT TO TALK  
14 ABOUT YOUR MEDICAL CONDITION OF CLINICAL DEPRESSION. I DON'T  
15 WANT TO USE THAT WORD YOU DON'T LIKE, BUT THE WAY IT WAS WORKING  
16 ON YOU IN THE SPRING. BECAUSE YOU DON'T THINK THE COLLEGE  
17 SHOULD HAVE SENT YOU TO A PSYCHIATRIST.

18 SO WOULD YOU PLAY THAT FIRST, THE ZZ CLIP, PLEASE.

19 MR. LEBOWITZ: WHICH, COUNSEL?

20 MR. VARTAIN: I'M SORRY. IT'S 86, 37, 27, 28. WE  
21 TOOK OUT 35.

22 (WHEREUPON, A VIDEOTAPE WAS PLAYED.)

23 MR. VARTAIN: COULD YOU PLAY 34, PLEASE, FOR THE  
24 WITNESS AND THE JURY. 34.

25 MR. LEBOWITZ: I SEE.

26 (WHEREUPON, A VIDEOTAPE WAS PLAYED.)

811

1 MR. VARTAIN: Q. SO PROFESSOR, SO WAS THAT TESTIMONY  
2 ABOUT HOW YOUR CLINICAL DEPRESSION WAS AT A HIGH LEVEL IN THE  
3 SPRING OF 2006 BECAUSE OF YOUR HUSBAND AND OTHER THINGS?

4 A. AT THE TIME OF THAT DEPOSITION I DID NOT KNOW ABOUT

5 ALL THESE SYMPTOMS CAUSED BY MY SANDOSTATIN, MY CHEMOTHERAPY.  
6 NO ONE MENTIONED -- EVERYBODY MENTIONED MY PSYCHOTROPIC DRUGS;  
7 NOBODY MENTIONED IT. I DID NOT KNOW.

8 Q. THIS DEPOSITION WAS ABOUT SIX MONTHS AGO, WASN'T IT?  
9 IT WAS LONG AFTER YOU FILED THE LAWSUIT. IT WAS LONG AFTER ALL  
10 YOUR DOCTORS --

11 A. AT THE TIME THIS IS HAPPENING, I DID NOT KNOW THAT IT  
12 WAS CAUSED BY THAT.

13 Q. YOU DID TESTIFY THAT IN THE SPRING OF 2006 YOU KNEW  
14 YOUR CLINICAL DEPRESSION WAS --

15 A. YES, I DID NOT KNOW IT WAS CAUSED BY SANDOSTATIN. I  
16 DIDN'T --

17 Q. YOU'RE SAYING IT WAS CAUSED BY THAT, BUT YOUR FRIENDS  
18 AND RELATIVES WERE SAYING IT WAS THE PSYCHOTROPIC --

19 A. AND THEY NOW AGREE IT WAS WRONG, BECAUSE THEY AGREE  
20 I'M BETTER.

21 Q. THEY AGREE THAT YOU'RE BETTER NOW?

22 A. AFTER THE SANDOSTATIN, EVERYBODY'S SAID IT WAS ALMOST  
23 IMMEDIATE.

24 Q. BUT YOU HEARD YOUR PSYCHOLOGIST SAY THAT YOU'RE  
25 STILL -- YOU STILL HAVE THE DIAGNOSIS?

26 A. YES, I HAVE SOME DEPRESSION. BUT ALMOST EVERYONE,

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1 EVERYONE SAID I WAS IMMEDIATELY MYSELF AGAIN.

2 Q. LET'S GO BACK TO DR. MISSETT. AS YOU NOW KNOW, THE

3 REASON THAT HE SAID YOU COULDN'T WORK WAS OR HE COULD NOT  
4 RELEASE YOU FOR THE FORESEEABLE FUTURE WAS BECAUSE HE DIDN'T  
5 HAVE THE FILE. HE EXPLAINED THAT TO YOU, DIDN'T HE?

6 A. NO, HE DID NOT.

7 Q. WHEN YOU WENT BACK TO SEE HIM AND YOU FINALLY RELEASED  
8 YOUR RECORDS, HE SAT YOU DOWN. HE SAID, "MARCY, I'M GOING TO  
9 REEVALUATE YOU NOW. I GOT ALL THE RECORDS."

10 DIDN'T HE SAY THAT?

11 A. YES, AT THAT TIME HE DID.

12 Q. THIS IS JANUARY 2007, JUST BEFORE THE COLLEGE GAVE YOU  
13 THE --

14 A. YES.

15 Q. -- ONE-YEAR CONTRACT?

16 A. AT THAT TIME HE DID, YES.

17 Q. AND AT THAT TIME THE DOCTOR, DR. MISSETT, HE WAS OPEN.  
18 DID HE EXPLAIN TO YOU, "MARCY, YOU KNOW, I WANTED TO RELEASE YOU  
19 BUT I COULDN'T. I COULDN'T BE SURE UNTIL I READ THE FILES." HE  
20 EXPLAINED THAT TO YOU, DIDN'T HE?

21 A. YES, HE DID.

22 Q. OKAY.

23 A. MONTHS LATER.

24 Q. MONTHS LATER. BUT YOU DIDN'T GO TO SEE HIM DURING  
25 THOSE MONTHS. YOU MIGHT HAVE KNOWN THAT BEFORE. YOU MIGHT HAVE  
26 RELEASED THE RECORDS BEFORE?

1 A. I WOULD HAVE, YES.

2 Q. I KNOW. AND THAT'S WHAT I AM SAYING.

3 A. I WOULD HAVE, YES.

4 Q. YOU DIDN'T GO AND ASK FOR THEM, SO IT WASN'T THE  
5 COLLEGE'S FAULT. THEY DIDN'T EVEN KNOW YOU DIDN'T RELEASE THE  
6 RECORDS, AS FAR AS YOU KNEW, RIGHT?

7 A. IT WAS THE COLLEGE'S FAULT THEY SENT ME FOR A  
8 PSYCHIATRIC EXAM IN THE FIRST PLACE --

9 Q. OKAY.

10 A. -- AND BASED THEIR ENTIRE SIX-YEAR OPINION OF ME ON  
11 THAT. WHEN I'VE BEEN AN EXCELLENT EMPLOYEE FOR SIX YEARS.

12 Q. I JUST WANT TO FINISH THIS ONE THING AND THEN ONE MORE  
13 TOPIC, AND THEN WE'LL CALL IT A DAY.

14 WHEN YOU FINALLY RELEASED THE RECORDS IN NOVEMBER, YOU  
15 TOOK FIVE OR SIX MONTHS. THE ONLY REASON YOU RELEASED THEM WAS  
16 THE COLLEGE KEPT SAYING, "GO BACK TO DR. MISSETT." THE COLLEGE  
17 KEPT PRODDING YOU?

18 A. YES.

19 Q. AND SO THE COLLEGE ACTUALLY ARE THE ONES WHO SORT OF  
20 ENCOURAGED YOU TO GO BACK TO HIM, AND DR. MISSETT SAID, "OKAY.  
21 I NEED YOUR RECORDS, THOUGH," RIGHT?

22 A. FINE. I GAVE THEM THE RELEASE.

23 Q. YOU RELEASED THEM. YOU CHANGED YOUR MIND AND RELEASED  
24 THEM?

25 A. I DIDN'T CHANGE MY MIND. I JUST TOLD DR. LIU I DIDN'T  
26 CARE ABOUT THE POLICY, HER POLICY WAS. SEND THEM.

1 Q. OKAY. THEN DR. MISSETT GOT ALL THE RECORDS. HE SENT  
2 YOU TO THE NEUROPSYCHOLOGIST?

3 A. YES.

4 Q. HE FINISHED ALL THE TESTS THAT HE NEEDED TO DO. TOOK  
5 HIM ABOUT TWO MONTHS, RIGHT?

6 A. YES.

7 Q. THEN I REMEMBER YOU HAD SAID TO THE JURY THERE WAS  
8 SOME DELAY OVER THE CHRISTMAS HOLIDAYS, RIGHT?

9 A. YES.

10 Q. AND THEN WHEN HE SAT YOU DOWN, HE SAID, "MARCY, I'M  
11 GOING TO DO IT THE WAY WE DID IT A COUPLE OF YEARS AGO. I'M  
12 GOING TO RELEASE YOU 50 PERCENT TIME, LET'S SEE HOW YOU DO.  
13 THEN IF YOU DO WELL, THEN I'LL RELEASE YOU TO WORK MORE."

14 REMEMBER HE SAID THAT?

15 A. YES.

16 Q. SO DR. MISSETT WANTED TO DO IT THE WAY IT WAS DONE THE  
17 FIRST TIME WHEN IT WORKED SO WELL, DIDN'T HE?

18 A. THE FIRST TIME, I HAD BEEN INCAPACITATED FOR THREE  
19 YEARS; THAT'S CORRECT. IN THIS CASE, I HAD NOT BEEN  
20 INCAPACITATED. I HAD BEEN WORKING. I SHOULD NOT HAVE BEEN SENT  
21 TO ANY MEDICAL EVALUATION, PARTICULARLY A PSYCHIATRIST.

22 Q. I UNDERSTAND YOUR POSITION. BUT COULD YOU -- LET ME  
23 RE-ASK THE QUESTION. I KNOW THAT'S YOUR POSITION OR YOUR WAY OF  
24 THINKING ABOUT IT. BUT THE QUESTION I ASKED YOU WAS, WHEN  
25 DR. MISSETT, THE SECOND TIME AROUND, SAID, "OKAY. THANKS FOR

1 TIME." YOU SAID, "NO, I THINK I CAN GO BACK FULL TIME."

2 A. YES, I DID.

3 Q. AND HE SAID, "NO, I THINK IT WOULD BE BETTER FOR YOU,  
4 MARCY, IF YOU START BACK HALF TIME, LIKE YOU DID THE TIME  
5 BEFORE. LET'S SEE HOW YOU DO THE FIRST SEMESTER. IF YOU DO  
6 BETTER, THEN I'LL RELEASE YOU MORE," RIGHT?

7 A. YES. IT WAS NOT LIKE THE TIME BEFORE.

8 Q. I KNOW YOU SAY IT WAS. I'M JUST TRYING TO GET FOR THE  
9 JURY WHAT THE GOOD DOCTOR IS TELLING YOU.

10 A. THAT'S WHAT HE TOLD ME, AND I TOLD HIM IT WAS NOT THE  
11 SAME SITUATION.

12 Q. I KNOW, BUT WHO'S MORE QUALIFIED MEDICALLY BETWEEN --  
13 THAT'S A BAD QUESTION.

14 OKAY. SO DR. MISSETT WAS BEING KIND TO YOU. HE WAS  
15 SPEAKING KINDLY, AND HE SEEMED TO BE LOOKING OUT FOR YOUR BEST  
16 INTEREST IN THAT MEETING IN EARLY 2007, WHEN HE WAS SAYING LET'S  
17 DO IT THE WAY WE DID IT BEFORE, WASN'T HE?

18 A. I DID NOT THINK SO.

19 Q. THE ONLY REASON YOU DIDN'T THINK SO IS HE DIDN'T AGREE  
20 WITH YOU, RIGHT?

21 A. I DIDN'T THINK SO. I TOLD THE COLLEGE MANY TIMES HE  
22 WAS NOT COMPETENT. HE WAS NOT THE RIGHT DOCTOR; THAT I DID NOT  
23 TRUST HIM; THAT I SHOULD NOT HAVE BEEN SENT IN THE FIRST PLACE;

24 THAT I SHOULD NOT HAVE GONE.

25 Q. I UNDERSTAND THAT, MA'AM.

26 A. SO THEREFORE --

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1 Q. THE QUESTION IS -- I'M SORRY. I'M TALKING OVER YOU.

2 A. I'M SORRY.

3 Q. WE'RE BOTH AT FAULT. I'M SORRY.

4 THE QUESTION THAT I'M ASKING YOU, THAT I'D LIKE YOU TO  
5 FOCUS ON IS, WHEN DR. MISSETT WAS EXPLAINING TO YOU AND SAYING,  
6 "MARCY, I WANT YOU TO GO BACK HALF TIME THE FIRST SEMESTER AND  
7 THEN LET'S SEE HOW YOU DO," HE DID SAY TO YOU, "MARCY, IT WORKED  
8 WELL FOR YOU THE FIRST TIME. LET'S TRY IT AGAIN THAT WAY,"  
9 DIDN'T HE?

10 A. HE SAID THAT AND I DISAGREED.

11 Q. I UNDERSTAND. BUT HE DID SAY IT, AND HE SAID IT IN A  
12 KIND WAY. HE DID SEEM TO BE -- EVEN THOUGH YOU DISAGREED, HE  
13 DID SEEM TO BE TRYING TO LOOK OUT FOR YOU AS AN INDIVIDUAL,  
14 DIDN'T HE?

15 A. I DID NOT THINK SO.

16 Q. YOU TRIED TO PERSUADE HIM TO RELEASE YOU FULL TIME,  
17 RIGHT? DIDN'T YOU?

18 A. I TRIED TO PERSUADE HIM TO SEND ME TO SOME OTHER  
19 MEDICAL EVALUATOR.

20 Q. DID YOU TELL HIM YOU THOUGHT HE WAS INCOMPETENT?

21 A. YES, I DID.

22 Q. IT PROBABLY DIDN'T ENDEAR HIM -- YOU DIDN'T PROBABLY  
23 GET IN HIS GOOD GRACES BY SAYING THAT. DID HE GET REALLY UPSET?

24 A. I DIDN'T SAY HE WAS INCOMPETENT. I SAID HE WAS IN THE  
25 WRONG, PROFESSIONALLY. I WOULD NEVER SAY TO THE MAN HE'S  
26 INCOMPETENT.

817

1 Q. FAIR ENOUGH.

2 I JUST WANT TO GIVE THE JURY A LITTLE PERSPECTIVE ON  
3 YOUR CLINICAL DEPRESSION. IT DIDN'T JUST COME UP WHEN YOUR  
4 CANCER CAME IN 2000, AND IT WASN'T JUST COMING UP IN 2006.  
5 YOU'VE HAD THAT FOR MANY YEARS. AND YOU'VE HAD TO COPE WITH IT,  
6 AND YOU'VE HAD -- FOR 10 OR 12 YEARS, YOU'VE HAD CLINICAL  
7 DEPRESSION. AND ALL THAT TIME THE COLLEGE WAS WORKING WITH YOU.  
8 YOU GOT THAT BURN-OUT LEAVE. REMEMBER, YOU SAID THEY GAVE YOU A  
9 LEAVE WHEN YOU WENT TO HAWAII?

10 SO EVEN -- NOT JUST YOUR CANCER, BUT YOUR CLINICAL  
11 DEPRESSION, THE COLLEGE -- AND YOU WERE OPEN IN TELLING PEOPLE  
12 ABOUT IT, BUT THE COLLEGE DIDN'T -- THEY DID ACCOMMODATE YOU IN  
13 DIFFERENT WAYS ON THAT?

14 A. YES. AND I WAS NUMBER ONE IN THE EVALUATIONS FROM THE  
15 STUDENTS. THEY HAD NO REASON TO DO ANY ACCOMMODATIONS WHEN THE  
16 STUDENTS RATED ME THE NUMBER ONE FACULTY MEMBER IN THE COLLEGE.

17 Q. I REMEMBER THAT YOU SAID THAT THE PRESIDENT IN 2004  
18 SAID, "YOU JUST CAME BACK FROM YOUR MEDICAL LEAVE, MARCY. I  
19 KNOW YOU GOT THE DEPRESSION. LET ME RELIEVE YOU OF HAVING TO BE



20 ON ALL THOSE COMMITTEES." AND YOU SAID, "NO, I CAN DO IT ALL."

21 AND I ADMIRE THAT. BUT THE PRESIDENT DID OFFER --

22 A. YES, HE DID.

23 Q. AND TO DO IT WITHOUT ANY RETRIBUTIONS?

24 A. YES, HE DID.

25 Q. NO REDUCTION IN PAY. SO EVEN ON THE CLINICAL

26 DEPRESSION, NOT JUST THE CANCER, THE COLLEGE GAVE YOU

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1 ADJUSTMENTS AND ACCOMMODATIONS, MEDICAL LEAVES, WHAT THEY  
2 THOUGHT WOULD BE HELPFUL TO YOU?

3 A. HE NEVER SAID CLINICAL DEPRESSION. HE SAID YOU'RE

4 COMING BACK FROM A TERRIBLE BOUT OF CANCER.

5 Q. OKAY.

6 YOU DID ONE TIME ASK -- YOU WERE BURNED OUT; YOU WERE

7 FATIGUED?

8 A. RIGHT.

9 Q. YOU HAD DEPRESSION AT THAT TIME?

10 A. YES.

11 Q. AND YOU ASKED FOR MEDICAL LEAVE. THAT WAS IN, LIKE

12 1999, OR SOMETHING. THEY GAVE YOU A LEAVE, AND YOU DID HAVE

13 DEPRESSION THEN, RIGHT?

14 A. YES, I DID, BUT I DIDN'T ASK FOR IT FOR THAT REASON.

15 Q. YOU ASKED FOR IT BECAUSE YOU WERE FATIGUED AND BURNT

16 OUT?

17 A. RIGHT.

18 Q. ISN'T THAT A PRETTY COMMON SYMPTOM OF -- TO YOUR  
19 KNOWLEDGE -- OF DEPRESSION, YOU GET BURNT OUT; YOU GET TIRED?

20 A. AFTER 27 YEARS OF DOING THE SAME THINGS, I THINK IT'S  
21 PRETTY COMMON FOR MOST OF US TO GET BURNED OUT AND NEED TO  
22 REFRESH OUR BATTERIES.

23 Q. SO WHATEVER, THE COLLEGE ACCOMMODATED YOU?

24 A. YES, THEY DID.

25 Q. OKAY.

26 JUST ONE OTHER THING ABOUT DR. MISSETT, THEN WE'LL

819

1 WIND IT UP. THIS WHOLE FOUR OR FIVE MONTHS WHERE YOU WERE NOT  
2 RELEASING YOUR PSYCHIATRIC RECORDS TO DR. MISSETT, AND STEPHANIE  
3 KEPT SAYING COULD YOU GO BACK THERE, COULD YOU TAKE YOUR MEDICAL  
4 RECORDS TO DR. MISSETT. DO YOU REMEMBER THAT?

5 A. YES.

6 Q. ARE YOU WITH ME?

7 FINALLY, SHE EVEN SAID, "OKAY. YOU'RE NOT MAKING THE  
8 APPOINTMENT. I'LL MAKE THE APPOINTMENT FOR YOU." REMEMBER?

9 A. YES.

10 Q. AND THAT'S WHAT GOT YOU TO GO THERE. STEPHANIE  
11 ACTUALLY MADE THE PHONE CALL FOR YOU, DIDN'T SHE?

12 A. WHAT GOT ME TO GO THERE IS STEPHANIE SAID THERE WAS  
13 NO -- MISSETT WAS THE SOLE MEDICAL EVALUATOR AT THE COLLEGE.  
14 THERE WAS NO ONE ELSE THEY COULD SEND ME TO. AND I WANTED MY  
15 JOB BACK, SO I SAID, UNDER DURESS AND UNDER PRESSURE, THIS IS

16 NOT THE RIGHT EVALUATOR, BUT I WILL GO TO HIM.

17 Q. OKAY.

18 SHE MADE THE APPOINTMENT FOR YOU TO GET OVER THERE.

19 AS SOON AS YOU SAID, "OKAY, I'LL GO," THE COLLEGE -- THE HR

20 PERSON MADE THE APPOINTMENT?

21 A. YES, SHE DID.

22 Q. FROM THE MOMENT YOU SAID YOU'D GO BACK TO HIM, THE

23 COLLEGE GOT RIGHT ON IT AND MADE THE APPOINTMENT FOR YOU?

24 A. THAT'S CORRECT.

25 Q. OKAY.

26 AND THAT YEAR -- WE'LL CALL IT THE MEDICAL LEAVE YEAR,

820

1 YOU TOLD THE JURORS YOU THOUGHT IT WAS INVOLUNTARY; IT WAS

2 IMPOSED, BUT LET'S CALL IT THE MEDICAL LEAVE YEAR FOR A SECOND,

3 OKAY? YOU'RE TALKING ABOUT A DISCHARGE OR A TERMINATION; LET'S

4 BE CLEAR ABOUT THAT. THE PRESIDENT SENT YOU A LETTER IN JULY

5 SAYING YOU WOULD BE ON MEDICAL LEAVE UNTIL NOVEMBER AND THEN

6 YOUR APPOINTMENT WOULD LAPSE?

7 A. CORRECT.

8 Q. AND YOU UNDERSTOOD THAT MEANT THAT YOU WERE GOING TO

9 LOSE YOUR JOB?

10 A. YES.

11 Q. OKAY. I UNDERSTAND WHAT YOU'RE SAYING. BUT BEFORE

12 THAT DAY EVER CAME IN NOVEMBER THAT, YOU KNOW, THE DOOMSDAY, YOU

13 HAD RECEIVED TWO OR THREE LETTERS FROM STEPHANIE SAYING, "THAT'S

14 OFF THE TABLE. NOW THAT YOU'RE GOING BACK TO DR. MISSETT, WE'LL  
15 KEEP YOU ON MEDICAL LEAVE. YOU WON'T BE TERMINATED." REMEMBER  
16 THAT?

17 A. YES.

18 Q. AND THEY PUT IT IN WRITING. IT WAS SIGNED, SEALED,  
19 DELIVERED; RIGHT?

20 A. YES.

21 Q. AND THEN IN THE SPRING YOU GOT THE CONTRACT. YOU  
22 DIDN'T WANT TO ACCEPT THE CONTRACT FOR THE YEAR BECAUSE -- FOR  
23 WHATEVER REASONS -- AND WE'RE HERE TODAY, RIGHT?

24 A. WHAT?

25 Q. AND WE'RE HERE TODAY. YOU KNOW YOUR OFFICE IS STILL  
26 AT THE CAMPUS, RIGHT?

821

1 MR. LEBOWITZ: YOUR HONOR, I'M NOT SURE WHERE THE  
2 QUESTION STARTED AND ENDED OR WHAT HAPPENED.

3 MR. VARTAIN: SHE WAS NODDING AT ME. SHE DIDN'T SAY  
4 ANYTHING.

5 Q. YOU DO KNOW YOUR OFFICE IS WAITING FOR YOU AT THE  
6 CAMPUS?

7 A. NOT UNTIL THIS COURT DID I.

8 Q. BECAUSE YOU NEVER WENT OVER TO THE CAMPUS TO GET YOUR  
9 THINGS?

10 A. NO, I NEVER DID.

11 Q. THE COLLEGE NEVER CALLED YOU UP AND SAID, "MARCY,

12 CLEAN UP YOUR OFFICE. WE DON'T WANT YOU HERE ANYMORE." DID  
13 THEY?

14 A. THE COLLEGE NEVER CALLED ME UP, PERIOD.

15 Q. WELL, STEPHANIE CALLED YOU UP?

16 A. THEY NEVER TOLD ME ANYTHING. I WAS IN THE DARK.

17 Q. OKAY. I WOULD LIKE AN ANSWER TO THE QUESTION.

18 DID THE COLLEGE EVER CALL YOU UP AND SAY, "GET YOUR  
19 STUFF OUT OF HERE. YOU ARE NOT WELCOME"?

20 A. NO.

21 Q. OKAY.

22 ALL YOUR PERSONAL BELONGINGS ARE STILL OVER ON THE  
23 CAMPUS AT YOUR OFFICE, AREN'T THEY, IN THE OFFICE?

24 A. ACCORDING TO TESTIMONY HERE, YES.

25 Q. WELL, YOU KNOW THAT BECAUSE YOU'VE NEVER GONE TO CLEAN  
26 OUT YOUR OFFICE?

822

1 A. NO, I NEVER HAVE.

2 Q. AND YOU KNOW THE FACULTY STILL LISTS YOU AS THEIR  
3 COLLEAGUE ON THE ROLLS, RIGHT, AS BEING ON MEDICAL LEAVE?

4 A. YES, I KNOW THAT.

5 MR. VARTAIN: NO FURTHER QUESTIONS. THANKS FOR  
6 PUTTING UP WITH ME.

7 THE COURT: FIVE-MINUTE BREAK?

8 MR. LEBOWITZ: YES, I HAVE MORE THAN -- I ONLY HAVE  
9 PROBABLY 10 OR 15 MINUTES.

10 THE COURT: WE'RE NOT GOING TO TAKE OUR AFTERNOON  
11 BREAK. IT JUST MIGHT BE A GOOD TIME TO GET A LITTLE BIT OF A  
12 BREAK BEFORE WE GO INTO REDIRECT.

13 LADIES AND GENTLEMEN, JUST A FIVE-MINUTE STRETCH. YOU  
14 CAN WALK ACROSS THE HALL, IF YOU WANT. AT 3:00 O'CLOCK, OR  
15 MAYBE WHEN WE'RE DONE WITH PROFESSOR BLOUGH, WE'LL TAKE OUR  
16 REGULAR LONGER BREAK.

17 (WHEREUPON, A BRIEF RECESS WAS TAKEN.)

18 THE COURT: BACK ON THE RECORD.

19 MR. LEBOWITZ, WOULD YOU LIKE TO REDIRECT?

20 MR. LEBOWITZ: YES. BRIEFLY, YOUR HONOR. THANK YOU.

21

22 REDIRECT EXAMINATION

23 BY MR. LEBOWITZ:

24 Q. PROFESSOR BLOUGH, JUST A FEW MINUTES MORE OF  
25 QUESTIONS.

26 A. FINE.

823

1 Q. I WANT TO CLARIFY A FEW THINGS. THE FIRST IS, I WANT  
2 TO START WHERE WE JUST LEFT OFF, THIS IDEA OF WERE YOU  
3 TERMINATED, OR WERE YOU ON MEDICAL LEAVE, OR ARE YOU STILL ON  
4 MEDICAL LEAVE, OKAY?

5 FIRST OF ALL, ON APRIL 17TH AND 18 YOU RECEIVED  
6 COMMUNICATIONS FROM THE COLLEGE?

7 A. YES.

8 Q. AND THOSE COMMUNICATIONS TOLD YOU WHAT?

9 A. THAT I WAS TERMINATED.

10 Q. OKAY. AND THAT WAS OF 2007?

11 A. YES.

12 Q. AND WE'VE SEEN THOSE YESTERDAY AND TODAY, THOSE  
13 DOCUMENTS?

14 A. YES.

15 Q. NOW, BASED ON YOUR 29 YEARS OF EXPERIENCE AT THE  
16 COLLEGE, WHEN YOU'RE ACTIVELY EMPLOYED AT THE COLLEGE, DO YOU  
17 EVER RECEIVE ANY KIND OF MAILINGS OR CORRESPONDENCE AT HOME FROM  
18 THE COLLEGE?

19 A. OH, YES. YOU GET THREE OR FOUR A MONTH.

20 Q. WHAT KIND OF THINGS?

21 A. THERE'S A NEWSLETTER. THERE'S REQUESTS FOR MONEY.  
22 THERE'S INFORMATION ABOUT WHAT'S NEW, WHAT'S HAPPENING. THE  
23 ALUMNI MAGAZINE COMES TO YOU. I'D SAY YOU GET THREE OR FOUR A  
24 MONTH.

25 Q. NOW, THE TIME WHEN YOU WERE OUT BETWEEN 2002 AND 2003,  
26 ON YOUR MEDICAL DISABILITY LEAVE, WHERE YOU HAD YOUR CANCER

824

1 SURGERY --

2 A. YES.

3 Q. -- DID YOU ALSO, DURING THAT TIME PERIOD, RECEIVE ALL  
4 THE MAILINGS YOU'VE JUST DESCRIBED?

5 A. YES. I READ THEM, KEPT UP OF WHAT WAS GOING ON.

6 Q. SO ALL THE SAME KIND OF NEWSLETTERS, UPDATES, THAT  
7 KIND OF THING, YOU RECEIVED THEM ALL WHILE YOU WERE ON MEDICAL  
8 LEAVE?

9 A. YES, I DID.

10 Q. SINCE THE MIDDLE OF 2007, HAVE YOU RECEIVED ANY SUCH  
11 CORRESPONDENCE FROM THE COLLEGE?

12 A. NOT ONE THING.

13 Q. HAVE YOU RECEIVED ANY NEWSLETTERS FROM THE COLLEGE?

14 A. NO NEWSLETTERS.

15 Q. HAVE YOU RECEIVED ANY FUNDRAISING REQUESTS FROM THE  
16 COLLEGE?

17 A. NONE.

18 Q. HAVE YOU RECEIVED ANYTHING THAT IN ANY WAY COMPARES TO  
19 THE TYPE OF INFORMATION YOU WERE RECEIVING WHEN YOU WERE  
20 ACTIVELY EMPLOYED WITH THE COLLEGE SINCE THE SUMMER 2007?

21 A. NO.

22 Q. NOW, MR. VARTAIN ASKED YOU ABOUT ACCESS OR GOING BACK  
23 TO YOUR OFFICE ON CAMPUS, WHICH, AS YOU SAID, WE LEARNED AT THIS  
24 TRIAL STILL EXISTS IN ITS APPARENTLY PRESENT STATE, CORRECT?

25 A. YES, I DID NOT BEFORE.

26 Q. IN THIS COURTROOM IS WHERE YOU LEARNED THAT

825

1 INFORMATION?

2 A. JUST IN THIS COURTROOM.

3 Q. OKAY.



4 WAS THERE A CIRCUMSTANCE IN THE FALL OF 2006, WHERE  
5 YOU AND THE COLLEGE COMMUNICATED ABOUT YOU GOING BACK TO YOUR  
6 OFFICE?

7 A. YES. DEAN PRATT WANTED MY GRADE BOOK TO SEE ABOUT  
8 SOME GRADES. AND I SAID IT WAS -- I DIDN'T HAVE IT AT HOME. IT  
9 WAS IN MY OFFICE, AND I'D HAVE TO GO BACK AND GET IT.

10 Q. AND LET'S SLOW THIS DOWN A LITTLE BIT. SO DID SOMEONE  
11 FROM THE COLLEGE TELL YOU THAT THERE WAS AN ISSUE WITH SOME  
12 GRADES?

13 A. STEPHANIE SAPRAI DID. SHE WAS THE ONLY ONE THAT EVER  
14 COMMUNICATED WITH ME.

15 Q. OKAY. AND THIS WAS AFTER SEPTEMBER OF 2000 --

16 A. AFTER SEPTEMBER, YES.

17 Q. BUT BEFORE DECEMBER?

18 A. YES.

19 Q. SO IT WAS IN THE FALL 2006?

20 A. ABOUT SPRING 2006 GRADES.

21 Q. OKAY. SO IT WAS IN THE FALL 2006 SEMESTER, AND THE  
22 INQUIRY WAS ABOUT THE GRADES FOR THE STUDENTS IN THE SPRING  
23 2006 --

24 A. YES.

25 Q. -- THAT YOU HAD COMPLETED?

26 A. YES.

1 Q. AND THE INQUIRY WAS ABOUT SOME OF THE STUDENTS HAD

2 QUESTIONS ABOUT THEIR GRADES?

3 A. YES.

4 Q. AND THE INFORMATION YOU GOT FROM STEPHANIE SAPRAI WAS  
5 THAT DEAN PRATT WAS LOOKING TO GET MORE INFORMATION ABOUT IT?

6 MR. VARTAIN: OBJECTION, LEADING.

7 THE COURT: SUSTAINED.

8 MR. LEBOWITZ: Q. WHAT DID YOU LEARN FROM STEPHANIE  
9 SAPRAI ABOUT WHAT KIND OF INFORMATION WAS BEING NEEDED?

10 A. WELL, THEY NEEDED MY GRADE BOOK TO SEE HOW I GRADED.

11 Q. AND DID YOU RESPOND TO THAT?

12 A. I SAID I'D BE HAPPY TO COME IN AND GET IT FOR HER.

13 Q. AND DID ANYBODY FROM THERE SAY, "OKAY," OR SAY  
14 ANYTHING THAT INVITED YOU BACK TO THE CAMPUS?

15 A. NO, NEVER.

16 Q. OKAY.

17 I'M GOING TO JUMP AROUND A LITTLE BIT TO TRY TO ORIENT  
18 YOU.

19 A. THAT'S OKAY.

20 Q. THE ISSUE OF HOW LONG IT WAS OVER THE SUMMER 2006 THAT  
21 THE COLLEGE DIDN'T RESPOND TO YOU, WE HAVE ESTABLISHED THE TIME  
22 LINE WITH THE E-MAILS. WAS THERE ANYTHING ELSE, OR WAS THERE  
23 ANY OTHER WAY OR ANY OTHER EFFORTS YOU MADE TO COMMUNICATE WITH  
24 THE COLLEGE, CARLOS LOPEZ OR ANYBODY ELSE OVER THE SUMMER OF  
25 2006, OTHER THAN JUST THOSE E-MAILS?

26 A. I CALLED LOWELL PRATT BECAUSE HE WAS A FRIEND OF MINE.

1 Q. DID YOU CALL ANYBODY ELSE?

2 A. NO.

3 Q. DID YOU CALL ANY MEMBER OF THE BOARD OF TRUSTEES?

4 A. YES. I CALLED NIKHIL BEHL, WHO ALSO HAD BEEN A  
5 STUDENT OF MINE AND WAS A FRIEND OF MINE.

6 Q. SO MR. BEHL WAS, AT LEAST AT THE TIME, A MEMBER OF THE  
7 BOARD OF TRUSTEES AT THE COLLEGE?

8 A. YES, HE WAS.

9 Q. AND YOU SAID HE HAD BEEN A STUDENT?

10 A. HE HAD BEEN A STUDENT OF MINE.

11 Q. AND WHY DID YOU REACH OUT TO MR. BEHL?

12 MR. VARTAIN: OBJECTION, LEADING, OUTSIDE THE SCOPE.

13 THE COURT: OVERRULED. IT IS OUTSIDE THE SCOPE,  
14 HOWEVER.

15 MR. LEBOWITZ: HE WAS TALKING ABOUT THE SILENCE OVER  
16 THE SUMMER. IT'S WITHIN THAT SCOPE.

17 THE COURT: I WILL ALLOW IT. GO AHEAD.

18 THE WITNESS: I CALLED NIKHIL BECAUSE I WANTED  
19 SOMEBODY TO TALK TO ME BEFORE SCHOOL STARTED. I WANTED TO HAVE  
20 A SETTLEMENT. I WANTED TO SIT DOWN AND TRY TO SETTLE THIS  
21 MATTER IN A FRIENDLY AND FAMILIAL MANNER WITH CARLOS LOPEZ. AND  
22 I CALLED NIKHIL AND SAID, "PLEASE ASK CARLOS TO TALK TO ME."

23 Q. TO YOUR KNOWLEDGE, DID MR. BEHL DO ANYTHING IN  
24 RESPONSE TO YOUR CALL?

25 A. YES, HE TOLD ME HE DID.

26 Q. WHAT DID HE TELL YOU?

1 A. HE TOLD ME THAT CARLOS NEVER GOT BACK TO HIM EITHER.

2 Q. SO MR. BEHL TOLD YOU THAT HE HAD ACTUALLY CALLED  
3 MR. LOPEZ -- PRESIDENT LOPEZ?

4 A. YES.

5 MR. VARTAIN: OBJECTION, HEARSAY.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES. MR. BEHL TOLD ME THAT -- MR. BEHL  
8 TOLD ME THAT HE HAD CALLED CARLOS, LEFT A MESSAGE, AND THAT  
9 CARLOS HAD NOT GOTTEN BACK TO HIM EITHER.

10 MR. LEBOWITZ: Q. NOW, WE SAW -- I GUESS THE SECOND  
11 SET OF CLIPS FROM YOUR DEPOSITION. YOU WERE TALKING ABOUT THE  
12 COGNITIVE IMPAIRMENTS YOU WERE HAVING IN THE SPRING OF 2006.  
13 AND I'M NOT SURE, THERE MIGHT HAVE BEEN SOME CONFUSION ON THE  
14 EXCHANGE YOU HAD WITH MR. VARTAIN AFTER THAT. SO LET ME TRY AND  
15 SEE IF WE CAN GET THIS CLEAR.

16 MR. VARTAIN: OBJECTION TO THE COMMENTARY.

17 MR. LEBOWITZ: I'LL REFRAIN.

18 THE COURT: THANK YOU.

19 MR. LEBOWITZ: Q. THE COGNITIVE DIFFICULTIES SUCH AS  
20 THEY WERE IN THE SPRING OF 2006, WHAT WERE THEY RELATED TO?

21 MR. VARTAIN: OBJECTION. CALLS FOR A MEDICAL OPINION.

22 THE COURT: WHY DON'T YOU RESTATE IT.

23 MR. LEBOWITZ: OKAY.

24 THE COURT: I WILL ALLOW IT.

25 MR. LEBOWITZ: Q. IN THE SPRING OF 2006, WERE YOU  
26 HAVING DIFFICULTIES FOCUSING?

829

1 A. YES. I WAS FATIGUED AND HAD NO STAMINA.

2 Q. AND WHAT WERE THOSE CONDITIONS RELATED TO?

3 MR. VARTAIN: OBJECTION. CALLS FOR A MEDICAL OPINION.

4 THE COURT: SUSTAINED.

5 MR. LEBOWITZ: Q. BASED ON YOUR OWN KNOWLEDGE OF YOUR  
6 OWN SELF, AND YOUR OWN BODY, AND YOUR OWN PHYSICAL BEING, WHAT  
7 WERE THOSE CONDITIONS RELATED TO?

8 MR. VARTAIN: OBJECTION.

9 THE COURT: EXCUSE ME.

10 MR. VARTAIN: CALLS FOR A MEDICAL OPINION.

11 THE COURT: SUSTAINED.

12 MR. VARTAIN: WE'VE HAD DOCTORS, YOUR HONOR.

13 THE COURT: EXCUSE ME. YOU DON'T NEED TO ARGUE.

14 MR. VARTAIN: OKAY.

15 MR. LEBOWITZ: Q. WHAT WAS YOUR BELIEF AS TO WHAT  
16 THOSE CONDITIONS WERE RELATED TO?

17 MR. VARTAIN: OBJECTION. AT THIS POINT, THAT'S  
18 IRRELEVANT.

19 THE COURT: SUSTAINED.

20 MR. LEBOWITZ: Q. WE TALKED ABOUT THE SANDOSTATIN AND  
21 THE FACT THAT YOU WENT OFF IT IN MARCH. AFTER STOPPING THE  
22 SANDOSTATIN, DID YOUR -- WHATEVER ISSUES YOU HAD WITH FOCUSING

23 IMPROVE?

24 A. VERY MUCH SO.

25 Q. HOW SOON AFTER YOU STOPPED THE SANDOSTATIN, WHICH WAS  
26 YOUR CHEMOTHERAPY DRUG, DID YOUR FOCUSING AND ISSUES ASSOCIATED

830

1 WITH THAT IMPROVE?

2 A. BY ABOUT A MONTH, I FELT GOOD AGAIN.

3 Q. SO WE'LL LEAVE IT AT THAT.

4 IN THE VERY BEGINNING OF MR. VARTAIN'S EXAM, HE ASKED  
5 YOU ABOUT COMMUNICATIONS BETWEEN YOURSELF AND PRESIDENT HAIGHT.

6 DO YOU RECALL THAT PART OF YOUR TESTIMONY?

7 A. YES.

8 Q. NOW, I JUST WANT TO MAKE SURE WE ALL UNDERSTAND.

9 THIS IS EXHIBIT 42, WHICH IS IN EVIDENCE, YOUR HONOR.

10 THE COURT: THANK YOU.

11 MR. LEBOWITZ: Q. THIS IS AN E-MAIL YOU WROTE TO  
12 STEPHANIE SAPRAI ON JANUARY 26, 2007. AND I WANT TO FOCUS ON  
13 THAT SECOND PARAGRAPH. WE READ IT YESTERDAY. I JUST WANT TO  
14 READ. IT'S VERY QUICK. IT SAYS THAT, "I HEAR THAT MENLO HAS A  
15 NEW PRESIDENT, TIM HAIGHT. I HOPE THAT HE IS FULLY INFORMED  
16 ABOUT THIS DISPUTE. IF NOT, I WOULD BE HAPPY TO FILL HIM IN,  
17 EITHER IN PERSON, BY PHONE OR BY E-MAIL."

18 A. YES.

19 Q. DID YOU WRITE THAT?

20 A. YES, I DID.

21 Q. AND DID YOU HAVE ANY HOPES AS FAR AS TALKING TO  
22 PRESIDENT HAIGHT WHEN YOU WROTE THAT?

23 A. YES, I DID.

24 Q. DID ANYONE FROM THE COLLEGE EVER RESPOND TO THAT  
25 REQUEST?

26 A. NEVER.

831

1 MR. VARTAIN: OBJECTION. LACKS FOUNDATION THAT THERE  
2 WAS A REQUEST FOR A MEETING.

3 THE COURT: OVERRULED.

4 MR. LEBOWITZ: Q. DID ANYONE FROM THE COLLEGE,  
5 SUBSEQUENT TO YOU SENDING THIS E-MAIL ON JANUARY 26, 2007,  
6 INVITE YOU TO COME MEET WITH PRESIDENT HAIGHT?

7 A. NO. NO ONE DID.

8 Q. MR. VARTAIN ASKED YOU ABOUT A MEETING YOU HAD WITH  
9 STEPHANIE SAPRAI IN THE SUMMER OF 2006, WHEN YOU WERE HAVING  
10 THESE E-MAILS?

11 A. YES, UH-HUH.

12 Q. WHAT WAS THE PURPOSE OF THAT MEETING?

13 A. I ASKED TO GO AND SEE MY PERSONNEL FILE TO SEE WHAT  
14 WAS IN THERE THAT WAS SO BAD THAT I WAS BEING FIRED.

15 Q. AND SO DID YOU GO ACTUALLY SEE YOUR PERSONNEL FILE?

16 A. I ACTUALLY WENT AND SAW MY PERSONNEL FILE.

17 Q. AND DID YOU HAVE ANY DISCUSSIONS WITH MS. SAPRAI AT  
18 THAT POINT WHERE SHE RESPONDED IN ANY WAY TO ANY OF THE E-MAIL

19 OR ANY --

20 A. NO, JUST ABOUT THE FILE IS ALL WE TALKED ABOUT.

21 Q. THE FIRST RESPONSE YOU DID GET FROM THE COLLEGE WAS ON

22 AUGUST 10, 2006 --

23 A. UH-HUH.

24 Q. -- CORRECT?

25 A. YES.

26 Q. AND THAT RESPONSE WAS WHAT?

832

1 A. I'M ONLY ALLOWED TO TALK TO STEPHANIE SAPRAI.

2 Q. WELL, WE CAN LOOK AT THE E-MAIL, BUT DO YOU RECALL

3 WHAT THEY SAID ABOUT CARLOS'S DECISION IN THAT E-MAIL?

4 A. THAT'S WHEN THEY SAID CARLOS'S DECISION WAS FIRM, AND

5 I WAS ONLY ALLOWED TO TALK TO STEPHANIE.

6 Q. SO THE ONLY RESPONSE YOU GOT BEFORE SEPTEMBER -- WAS

7 THE ONLY RESPONSE YOU GOT BEFORE SEPTEMBER 7TH OF 2007 THE

8 CORRESPONDENCE FROM STEPHANIE SAPRAI TELLING YOU THAT THE

9 COLLEGE'S DECISION WAS FIRM?

10 MR. VARTAIN: OBJECTION, LACKS FOUNDATION AS TO THE

11 FRONT PART OF THE TIME PERIOD.

12 THE COURT: SUSTAINED.

13 MR. LEBOWITZ: Q. FROM JULY 7, 2007 THROUGH

14 SEPTEMBER 7, 200- -- EXCUSE ME -- JULY 7, 2006 THROUGH

15 SEPTEMBER 7TH OF 2007, WAS THE RESPONSE YOU JUST TOLD US ABOUT,

16 WHERE CARLOS'S DECISION WAS FIRM, IS THAT THE ONLY RESPONSE YOU



17 GOT FROM THE COLLEGE IN THAT PERIOD?

18 A. YES.

19 Q. I JUST WANT TO PUT UP BRIEFLY THE THIRD PAGE OF  
20 EXHIBIT 14, WHICH IS THE LETTER FROM DR. MISSETT, WHICH WAS  
21 ATTACHED TO THE JULY 7TH LETTER FROM CARLOS LOPEZ. I'LL DIRECT  
22 YOU TO THE FINAL PARAGRAPH, WHERE IT SAYS:

23 "IT IS MY PROFESSIONAL OPINION, ON THE BASIS OF MY  
24 INTERVIEW WITH MS. BLOUGH AND MY CONTACT WITH HER PHYSICIANS,  
25 THAT SHE IS AT PRESENT NOT MEDICALLY OR PSYCHOLOGICALLY FIT TO  
26 FULFILL THE DUTIES OF HER POSITION AT MENLO COLLEGE, AND IS NOT

833

1 LIKELY IN THE FORESEEABLE FUTURE TO BE ABLE TO RESUME THE  
2 FULFILLMENT OF THOSE RESPONSIBILITIES."

3 THIS IS WHAT THE COLLEGE SENT TO YOU ALONG WITH YOUR  
4 NOTICE OF TERMINATION, CORRECT?

5 A. YES.

6 MR. VARTAIN: I'M GOING TO OBJECT TO THE  
7 CHARACTERIZATION OF THE DOCUMENT. LACKS FOUNDATION.

8 THE COURT: OVERRULED.

9 MR. LEBOWITZ: Q. AND THEN BRIEFLY, AGAIN, ON THE  
10 SUBJECT OF THE INTERACTION BETWEEN DR. LIU AND DR. MISSETT. WE  
11 SAW EXHIBIT 11, WHICH WAS THE LETTER THAT DR. LIU WROTE. AND I  
12 WANT TO GO OVER IT AGAIN. YOU TESTIFIED YOU GAVE THAT TO  
13 DR. MISSETT?

14 A. YES, I DID.

15 Q. AND THAT LETTER EXPRESSED -- WELL, DR. LIU'S OPINION  
16 AT THAT TIME?

17 A. RIGHT.

18 Q. AND SO DR. MISSETT HAD THAT LETTER AT THE TIME HE WAS  
19 DOING THE EVALUATION?

20 A. YES, HE DID.

21 Q. AND DID YOU GIVE DR. LIU PERMISSION TO TALK TO  
22 DR. MISSETT?

23 A. YES, I DID.

24 Q. AGAIN, DID YOU PUT ANY RESTRICTIONS ON WHAT DR. LIU  
25 SAID TO DR. MISSETT?

26 A. NO.

834

1 Q. DID YOU PUT ANY RESTRICTIONS ON WHAT DR. MISSETT COULD  
2 ASK DR. LIU?

3 A. NO.

4 Q. FINALLY, I WANT TO ADDRESS THIS PART OF YOUR  
5 DEPOSITION THAT WE SAW. WE SAW THE FIRST CLIP.

6 YOUR HONOR, IF YOU'D LIKE TO HAVE THE CITE, IT'S ON --

7 I DON'T KNOW IF YOU LODGED THE ORIGINALS, COUNSEL?

8 THE CLERK: NONE.

9 MR. LEBOWITZ: DO YOU HAVE THE ORIGINALS OF THE  
10 DEPOSITION FOR THE JUDGE?

11 MR. VARTAIN: THE JUDGE SAID BY THE END OF THE TRIAL  
12 WE SHOULD LODGE THE ORIGINALS.

13 THE COURT: GO AHEAD. YOU CAN READ IT. WE'LL TAKE  
14 CARE OF IT.

15 MR. LEBOWITZ: IF YOU WANTED TO READ ALONG. SORRY.

16 THE COURT: NOT A PROBLEM.

17 MR. LEBOWITZ: OKAY.

18 Q. WE'RE LOOKING AT VOLUME THREE OF YOUR DEPOSITION, AND  
19 WE'RE GOING TO START AT PAGE 548, LINE 13, AND GO THROUGH 550,  
20 LINE 14. BEFORE I DO THAT, I JUST WANT TO ORIENT EVERYBODY  
21 WHERE WE WERE.

22 THAT FIRST CLIP WE SAW, WE WERE TALKING ABOUT A  
23 DOCUMENT. DO YOU REMEMBER THAT?

24 MR. VARTAIN: OBJECTION, LEADING --

25 THE WITNESS: YES.

26 MR. VARTAIN: -- THE WITNESS.

835

1 THE COURT: WELL, I'LL GIVE YOU A LITTLE LATITUDE JUST  
2 AS A FOUNDATION TO ORIENT THE WITNESS.

3 MR. LEBOWITZ: Q. DO YOU RECALL THAT?

4 A. YES, I DO.

5 Q. AND DO YOU RECALL WHAT DOCUMENT YOU WERE DISCUSSING  
6 WITH MR. VARTAIN?

7 A. WELL, I WAS DISCUSSING THE DOCUMENT THAT I WROTE FROM  
8 MY SISTER, CINDY'S, HOUSE, WHICH IS ENTITLED FROM CINDY BLOUGH.

9 Q. AND THIS IS WHAT WE'VE PUT UP, WHAT WE'VE MARKED AND  
10 ENTERED INTO EVIDENCE AS EXHIBIT 13 FOR TRIAL.

11 IS THAT THE DOCUMENT YOU WERE DISCUSSING AT THE  
12 DEPOSITION?

13 A. YES. UH-HUH.

14 Q. NOW, DID THERE EVER COME A TIME WHILE THE DEPOSITION  
15 WAS STILL OPEN YOU ASKED TO REVISE YOUR TESTIMONY?

16 A. YES, I DID.

17 Q. OKAY. AND SO TELL US WHAT HAPPENED. NOT NECESSARILY  
18 WHAT YOU SAID -- WE'LL GO THROUGH THE TESTIMONY -- BUT DESCRIBE  
19 FOR US THE CIRCUMSTANCES.

20 A. AS I SAID, AT THE TIME I WAS VERY UPSET. I WAS VERY  
21 DISTRAUGHT. I REALLY CAN'T TELL YOU WHY I WAS UPSET. WHAT  
22 MR. VARTAIN SAID WAS VERY PERSONAL. BUT AFTER THAT, I COULD NOT  
23 THINK STRAIGHT, AND I DID NOT THINK. LATER ON, AFTER I'D TAKEN  
24 TWO DAYS OFF, I SAID, "OH, I KNOW WHAT -- NOW, I UNDERSTAND.  
25 I'VE GOT IT."

26 Q. AND THEN DID YOU COMMUNICATE TO MR. VARTAIN THAT YOU

836

1 WANTED TO REVISE ANY OF YOUR TESTIMONY?

2 A. YES. I SAID I WAS SORRY. I WAS UPSET AND I COULD  
3 NOT -- I DID NOT TESTIFY CORRECTLY.

4 Q. AND SO YOU GAVE MR. VARTAIN AN OPPORTUNITY TO --  
5 MR. VARTAIN: LEADING THE WITNESS.

6 THE COURT: SUSTAINED.

7 MR. LEBOWITZ: SO --

8 MR. VARTAIN: DEPOSITION -- I THOUGHT WE WERE GOING TO

9 READ FROM THE DEPOSITION.

10 THE COURT: HE MAY CONDUCT HIS REDIRECT AS HE WISHES.

11 MR. LEBOWITZ: WE'LL JUST GO RIGHT TO IT. I THINK

12 WE'VE ORIENTED EVERYBODY AS TO WHAT'S GOING ON.

13 Q. SO AT PAGES 547 -- AND WOULD YOU LIKE TO READ ALONG?

14 A. YES, PLEASE.

15 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

16 THE COURT: YES.

17 NOW, MR. LEBOWITZ, THE COURT REPORTER WILL BE WRITING  
18 THIS DOWN. AND SO I KNOW THE NATURAL TENDENCY IS TO READ FAST.

19 IF I COULD JUST ASK YOU TO KEEP THAT IN MIND NOT TO DO THAT.

20 MR. LEBOWITZ: ABSOLUTELY, YOUR HONOR.

21 THE COURT: APPRECIATE IT.

22 MR. LEBOWITZ: AND THIS IS IN RESPONSE TO TALKING  
23 ABOUT THE EXHIBIT 13, WHICH WAS DATED MAY 26, 2006. STARTING AT  
24 PAGE 548, LINE 13.

25 THE WITNESS: 13. OKAY. I GOT IT.

26 MR. LEBOWITZ: I'M JUST GOING TO READ NOW. IT SAYS,

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1 "OKAY" -- THIS IS YOU SPEAKING:

2 "A. OKAY. YOU HAD ASKED ME IF I WAS STILL ON

3 "CHEMOTHERAPY AND WASN'T BETTER AT THIS TIME. THAT

4 "WAS FALSE. THE ANSWER IS, I WAS NOT. I WAS ON A

5 "TRIAL OF BEING OFF OF IT FOR TWO TO FOUR MONTHS,

6 "WHICH IS WHY I SAID I FELT LIKE MYSELF AGAIN. ALMOST

7 "IMMEDIATELY IN THAT TRIAL I WAS MYSELF AGAIN. IT  
8 "HAPPENED TO BE AT THE END OF THE SCHOOL YEAR, SO I  
9 "COULD NOT SHOW IT IN THE WAYS OF TEACHING. BUT I  
10 "TOLD LOWELL PRATT AND CARLOS THAT I WAS OFF ON THIS.  
11 "WE WERE TESTING ON THIS TEST FOR TWO TO FOUR MONTHS,  
12 "AND I WAS PLANNING NOT TO GO BACK ON AGAIN.  
13 "Q. OKAY. LET ME SEE IF I CAPTURE WHAT YOU JUST  
14 "SAID --  
15 "A. OKAY.  
16 "Q. -- AND GET IT RIGHT. I THINK THAT WHAT YOU'RE  
17 "TELLING ME IS THAT YOU AGREE THAT YOU WERE NOT ABLE  
18 "TO PERFORM YOUR ESSENTIAL FUNCTIONS IN THE SPRING  
19 "SEMESTER, RIGHT?  
20 "A. RIGHT.  
21 "Q. BUT AT THE END OF THE SPRING SEMESTER, YOU WERE  
22 "STARTING TO CHANGE YOUR CHEMO MEDICATION SUCH THAT  
23 "YOU WERE HOPING THAT IN THE FALL, THAT CHANGE OF YOUR  
24 "CHEMO MEDICATION, WHICH WAS STARTING TO MAKE YOU FEEL  
25 "BETTER, WOULD TAKE FULL EFFECT, AND THAT YOU WOULD BE  
26 "ABLE TO PERFORM YOUR ESSENTIAL FUNCTIONS?

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1 "A. NO, THAT IS INCORRECT.  
2 "Q. GO AHEAD.  
3 "A. AS SOON AS I GOT OFF THE CHEMO MEDICATION --  
4 "Q. YEAH.

5 "A. -- I FELT, AS I PUT IN HERE, 20 YEARS YOUNGER. I  
6 "FELT WONDERFUL.  
7 "Q. THIS IS AT THE END OF THE SEMESTER?  
8 "A. RIGHT. SO, THEREFORE, I HAD NO CHANCE TO PROVE IT  
9 "IN MY TEACHING.  
10 "Q. FOR THE SPRING SEMESTER?  
11 "A. FOR THE SPRING SEMESTER. I DID TELL LOWELL AND  
12 "CARLOS LOPEZ ONCE I WAS OFF OF IT I FELT 20 YEARS  
13 "YOUNGER. AND IT OBVIOUSLY HAD BEEN THE CHEMOTHERAPY,  
14 "EVEN THOUGH I WASN'T AWARE OF IT. BECAUSE I TRUSTED  
15 "MY ONCOLOGIST, AND THAT WAS THE PROBLEM.  
16 "Q. AND YOU DIDN'T KNOW YET, THOUGH, IF YOUR HEARING  
17 "WAS GOING TO COME BACK?  
18 "A. NO. THAT'S WHAT WE WERE DOING THE TRIAL FOR, TO  
19 "SEE IF MY HEARING WOULD COME BACK.  
20 "Q. BUT DIDN'T -- IT DIDN'T COME BACK?  
21 "A. NO, IT DID NOT.  
22 "Q. THAT'S WHY YOU GOT THE HEARING -- HAD TO GET  
23 "HEARING AIDS?  
24 "A. I GOT HEARING AIDS."  
25 Q. DO YOU RECALL GIVING THAT TESTIMONY?  
26 A. YES, I DO.

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1 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS, YOUR HONOR.  
2 THE COURT: FURTHER QUESTIONS?

3 MR. VARTAIN: YES, YOUR HONOR.

4

5 RECROSS EXAMINATION

6 BY MR. VARTAIN:

7 Q. BUT THAT TESTIMONY, PROFESSOR BLOUGH, WAS ABOUT YOUR  
8 CANCER. IT WASN'T ABOUT YOUR MENTAL HEALTH ISSUES, WOULD YOU  
9 AGREE?

10 A. BOTH. IT COULD BE SHOWN AS THIS TESTIMONY, THE SAME  
11 THING. I WAS CLEARING UP --

12 Q. NO, I UNDERSTAND. I GAVE YOU THE OPPORTUNITY AT YOUR  
13 DEPOSITION, AND MR. LEBOWITZ DIDN'T READ THE PART WHERE I SAID,  
14 "GO AHEAD AND EXPAND." BUT YOU WERE TALKING ABOUT YOUR CANCER,  
15 WEREN'T YOU?

16 A. IN BOTH CLIPS, YES.

17 Q. AND NOT THE MENTAL HEALTH ISSUES, RIGHT?

18 A. NO.

19 Q. OKAY. BECAUSE I WAS FOCUSING ON THE MENTAL HEALTH  
20 ISSUES WHEN I QUESTIONED YOU, NOT THE CANCER. OKAY. WE'RE  
21 FINE.

22 I JUST WANT TO COVER A FEW LITTLE THINGS AND THEN  
23 STOP. MR. LEBOWITZ ASKED YOU ABOUT IN THE FALL OF 2006, YOU  
24 WERE IN THAT YEAR OF LIMBO LAND. AND THE DEAN HAD A QUESTION  
25 ABOUT YOUR GRADES, SOME OF THE STUDENTS HAD -- YOU KNOW, THEY  
26 OFTEN DISPUTE GRADES, WHATEVER.



1 A. YES.

2 Q. YOU CALLED -- THE HR PERSON SAID, "COULD WE GET YOUR  
3 GRADE BOOK," RIGHT?

4 A. YES.

5 Q. YOU SAID, "IT'S STILL IN MY OFFICE."

6 A. RIGHT.

7 Q. SO YOU KNEW YOUR OFFICE WAS STILL THERE, RIGHT?

8 A. NO, I DID NOT KNOW. I SAID THAT'S WHERE I LEFT IT. I  
9 LEFT IT IN MY OFFICE. I DON'T KNOW.

10 Q. BUT YOU KNEW THE OFFICE WAS -- YOU STILL HAD AN OFFICE  
11 BECAUSE STEPHANIE SAID, "I'LL GO GET THE GRADE BOOK. YOU DON'T  
12 HAVE TO COME OVER TO CAMPUS."

13 A. NO, SHE DID NOT TELL ME THAT.

14 Q. WHAT DID SHE TELL YOU?

15 A. NOTHING.

16 Q. SHE JUST SAID --

17 A. THERE WAS NO RESPONSE.

18 Q. OH. YOU DIDN'T KNOW WHERE YOUR GRADE BOOK WAS?

19 A. I SAID, "LAST I SAW IT WAS IN MY OFFICE. I DON'T KNOW  
20 IF MY OFFICE IS STILL THERE. I'LL GO OVER THERE AND LOOK FOR  
21 IT, IF YOU'D LIKE." NO RESPONSE.

22 Q. WHEN YOU SAID, "I'LL COME OVER AND LOOK FOR IT, IF  
23 YOU'D LIKE," THE PLACE WHERE YOU WERE OFFERING TO COME OVER AND  
24 LOOK AT IT WAS TO YOUR OFFICE?

25 A. ACTUALLY, NO. I WAS OFFERING TO LOOK IN THE CLOSET  
26 THEY PUT ALL MY THINGS IN WHEN I WAS ON MEDICAL LEAVE.

1 Q. THE FIRST TIME AROUND?

2 A. YES. THEY PUT ALL MY THINGS IN A CLOSET.

3 Q. BUT NOBODY HAD TOLD YOU EITHER WAY THEY HAD TAKEN YOUR  
4 OFFICE AWAY. YOU JUST DIDN'T KNOW?

5 A. I DIDN'T KNOW.

6 Q. OKAY. FAIR ENOUGH.

7 AND STEPHANIE DIDN'T DO ANYTHING WRONG BY SAVING YOU A  
8 TRIP OVER TO CAMPUS. SHE JUST SAID, "I'LL GO FETCH THE GRADE  
9 BOOK," RIGHT?

10 A. SHE DIDN'T TELL ME THAT. SHE DIDN'T TELL ME ANYTHING.

11 Q. THEY SAVED YOU A TRIP FROM COMING OVER TO CAMPUS?

12 A. I SENT HER AN E-MAIL SAYING, "YOU ASKED ME ABOUT THE  
13 GRADE BOOK. WHAT'S HAPPENING?" AND I GOT NO RESPONSE AGAIN.

14 Q. OKAY. BUT THEY DIDN'T MAKE YOU COME IN TO --

15 A. NO.

16 Q. -- GET THE GRADES?

17 A. I WOULD HAVE, BUT THEY DIDN'T MAKE ME.

18 Q. THAT'S FINE.

19 IF YOU HAD COME IN AND HAD GONE TO YOUR OFFICE, AS FAR  
20 AS YOU KNEW, WAS THE GRADE BOOK IN YOUR OFFICE WHEN YOU LAST  
21 LEFT IT?

22 A. LAST I SAW IT, IT WAS THERE.

23 Q. IF SHE HAD INVITED YOU TO COME TO THE CAMPUS AND GET  
24 YOUR GRADE BOOK, YOU WOULD HAVE DONE IT?

25 A. I WOULD HAVE DONE IT.

26 Q. YOU WOULD HAVE BEEN ABLE TO GET INTO YOUR OFFICE?

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1 A. I DON'T KNOW IF I HAD A KEY, IF THE KEY WOULD STILL  
2 FIT.

3 Q. THAT WAS MY POINT. YOU STILL HAD THE KEY TO THE  
4 OFFICE, DIDN'T YOU?

5 A. I DON'T KNOW. I DIDN'T KNOW IF THEY CHANGED IT.

6 Q. MA'AM, YOU STILL HAD YOUR KEY TO THE OFFICE?

7 A. YES, BUT I DIDN'T KNOW IT WORKED.

8 Q. THE COLLEGE HAD NEVER TAKEN YOUR KEY FROM YOU. THEY  
9 HAD NEVER SAID, LIKE SOME CORPORATIONS DO, "TURN IN YOUR KEYS.  
10 TURN IN YOUR STUFF." THEY HAD NEVER DONE THAT?

11 A. EVERY TIME AN EMPLOYEE LEAVES, THEY CHANGE THE LOCKS,  
12 MR. VARTAIN.

13 Q. I WASN'T ASKING ABOUT CHANGING THE LOCKS.

14 A. SO I ASSUMED THE LOCKS WERE CHANGED.

15 Q. I WASN'T ASKING IF YOU ASSUMED IT, MA'AM. I WAS JUST  
16 SAYING THAT WHEN YOU WENT OUT ON THAT YEAR OF LEAVE, YOU STILL  
17 HAD YOUR KEY TO THE OFFICE, RIGHT?

18 A. WHEN I WENT ON WHICH LEAVE? I'M CONFUSED ABOUT THE  
19 LEAVES.

20 Q. THE TIME THAT WE'RE TALKING ABOUT, IN THE FALL OF  
21 2006, YOU KNOW, YOU'RE ON MEDICAL LEAVE UNTIL NOVEMBER 20TH.  
22 YOU THOUGHT YOU WERE GOING TO GET TERMINATED, BUT THEN THEY SENT  
23 YOU A LETTER SAYING, "NO, YOU'RE NOT GOING TO GET TERMINATED,"

24 RIGHT?

25 A. RIGHT.

26 Q. IT'S IN THAT TIME WHEN THE STUDENTS HAD SOME MESSING

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1 AROUND TO DO ABOUT THE GRADES, THE DEAN WANTED TO TALK TO YOU  
2 ABOUT THE GRADES. AND I'M SAYING THAT AT THAT TIME YOU STILL  
3 HAD YOUR KEY TO THE OFFICE?

4 A. I HAD A KEY. I DO NOT KNOW IT WOULD WORK.

5 Q. OKAY, BECAUSE MAYBE THEY CHANGED THE LOCKS. BUT  
6 NOBODY EVER TOLD YOU, "WE'VE CHANGED THE LOCKS"?

7 A. NO, BUT THEY OFTEN DID.

8 Q. BUT THEY NEVER SAID, "WE'RE LOCKING YOU OUT OF YOUR  
9 OFFICE"?

10 A. NO, THEY DID NOT.

11 Q. MR. LEBOWITZ ASKED YOU WHETHER YOU WERE GETTING  
12 NEWSLETTERS FROM THE COLLEGE DURING THIS TIME WHERE YOU DIDN'T  
13 ACCEPT THE CONTRACT. DID YOU EVER GO TO HUMAN RESOURCES OR ASK  
14 THE COLLEGE AND SAY, "YOU KNOW, I HAVEN'T ACCEPTED THE CONTRACT,  
15 BUT I STILL WANT TO GET ON THE MAILING LIST." DID YOU EVER ASK  
16 TO BE ON THE MAILING LIST?

17 A. I FELT TOO REJECTED.

18 MR. VARTAIN: OKAY. NO FURTHER QUESTIONS.

19 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

20 MR. LEBOWITZ: NO, YOUR HONOR.

21 MR. VARTAIN: THANK YOU VERY MUCH.

22 THE COURT: PROFESSOR BLOUGH, THANK YOU FOR YOUR  
23 TESTIMONY. YOU MAY STEP DOWN. I THINK THAT BOOK GOES BACK TO  
24 YOUR ATTORNEY.

25 IS THIS A GOOD TIME FOR OUR AFTERNOON BREAK?

26 MR. LEBOWITZ: YEAH.

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1 MR. VARTAIN: YES.

2 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE  
3 GOING TO TAKE OUR 15-MINUTE BREAK NOW. PLEASE GATHER OUTSIDE AT  
4 25 PAST.

5 (WHEREUPON, A BREAK WAS TAKEN.)

6 THE COURT: WE'RE BACK ON THE RECORD. ALL COUNSEL AND  
7 PARTIES ARE PRESENT, AND ALL JURORS AND ALTERNATES.

8 MR. PETERS, ARE YOU READY TO CALL YOUR NEXT WITNESS?

9 MR. PETERS: WE ARE, YOUR HONOR.

10 THE COURT: GO AHEAD, PLEASE.

11 MR. PETERS: THANK YOU.

12 PLAINTIFF CALLS DR. CHARLES MAHLA.

13 THE COURT: DR. MAHLA, IF YOU'D COME FORWARD TO THE  
14 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

15 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

16 (WHEREUPON, THE WITNESS WAS SWORN.)

17 THE WITNESS: I DO.

18 THE CLERK: PLEASE BE SEATED.

19 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME

20 AND SPELL THEM BOTH FOR THE RECORD.

21 THE WITNESS: CHARLES MAHLA, C-H-A-R-L-E-S; LAST NAME  
22 IS MAHLA, M-A-H-L-A.

23

24 CHARLES MAHLA,  
25 DULY SWORN, TESTIFIED AS FOLLOWS:

26

845

1 DIRECT EXAMINATION

2 BY MR. PETERS:

3 Q. GOOD AFTERNOON, DR. MAHLA.

4 A. GOOD AFTERNOON.

5 Q. COULD YOU PLEASE TELL THE JURY FOR WHOM YOU WORK?

6 A. I WORK FOR A COMPANY CALLED ECON ONE RESEARCH,  
7 INCORPORATED.

8 Q. AND WHAT KIND OF WORK DOES ECON ONE DO?

9 A. ECON ONE IS AN ECONOMIC RESEARCH AND CONSULTING FIRM.  
10 WE HAVE OFFICES IN LOS ANGELES; HOUSTON, TEXAS; WASHINGTON D.C.  
11 AND SACRAMENTO. I HEAD UP THE SACRAMENTO OFFICE.

12 Q. AND COULD YOU PLEASE TELL THE JURY BRIEFLY WHAT YOUR  
13 EDUCATIONAL BACKGROUND IS.

14 A. I HAVE A BACHELOR OF ARTS IN ECONOMICS FROM LAFAYETTE  
15 COLLEGE IN PENNSYLVANIA. I HAVE A PH.D. IN ECONOMICS FROM THE  
16 UNIVERSITY OF NORTH CALIFORNIA, CHAPEL HILL, IN CHAPEL HILL,  
17 NORTH CAROLINA.

18 Q. AND, DR. MAHLA, DO YOU HAVE ANY EXPERIENCE WORKING AS  
19 AN ECONOMIST IN EMPLOYMENT MATTERS?

20 A. I DO. I HAVE TESTIFIED NUMEROUS TIMES ON EMPLOYMENT  
21 MATTERS. MY TESTIMONY EXPERIENCE SPANS NUMEROUS INDUSTRIES,  
22 BOTH PLAINTIFF AND DEFENSE WORK. I'VE BEEN DOING THIS WORK --  
23 GENERAL LITIGATION CONSULTING SINCE 1992, AND HAVE WORKED IN NOT  
24 ONLY EMPLOYMENT MATTERS, I'VE DONE DAMAGE ANALYSIS AND OTHER  
25 CONTEXTS. MUCH OF IT ENTAILS THE KIND OF CALCULATION THAT WE  
26 WILL BE TALKING ABOUT TODAY.

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1 Q. AND HAVE YOU QUALIFIED IN THE PAST AS AN EXPERT IN  
2 ECONOMICS?

3 A. I HAVE.

4 MR. PETERS: YOUR HONOR, WE WOULD OFFER DR. MAHLA AS  
5 AN EXPERT IN ECONOMICS.

6 THE COURT: WOULD YOU LIKE TO VOIR DIRE THE WITNESS ON  
7 HIS QUALIFICATIONS?

8 MR. VARTAIN: NO. THANK YOU, YOUR HONOR.

9 THE COURT: DR. MAHLA MAY TESTIFY AS AN EXPERT IN  
10 ECONOMICS.

11 MR. PETERS: THANK YOU, YOUR HONOR.

12 Q. SO, DR. MAHLA, LET'S GET RIGHT TO IT. LET'S TURN TO  
13 THIS CASE. COULD YOU PLEASE TELL US WHAT YOU WERE ASKED TO DO  
14 IN THIS CASE?

15 A. MY ASSIGNMENT WAS VERY STRAIGHTFORWARD. I WAS ASKED

16 TO CALCULATE THE NET PRESENT VALUE OF A STREAM OF EARNINGS TO  
17 PROFESSOR BLOUGH, RUNNING FROM SEPTEMBER OF 2006 FOR A PERIOD OF  
18 12 YEARS THROUGH JUNE OF 2018.

19 Q. AND IS THIS A TYPE OF CALCULATION YOU TYPICALLY DO AS  
20 AN ECONOMIST?

21 A. IT IS. PRESENT VALUE IS AN ECONOMIC CONCEPT THAT MANY  
22 PEOPLE ARE FAMILIAR WITH. IT IS ESSENTIALLY THE TIME -- ANOTHER  
23 PHRASE FOR IT IS THE TIME VALUE OF MONEY. IT IS A CALCULATION  
24 THAT IS CONCEPTUALLY VERY STRAIGHTFORWARD, ALTHOUGH DEPENDING  
25 UPON THE PARTICULAR CALCULATION CAN BE A RELATIVELY COMPLICATED  
26 CALCULATION.

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1 Q. AND YOU DID A PRESENT VALUE CALCULATION IN THIS CASE?

2 A. I DID.

3 Q. AND DID YOU DO THE CALCULATIONS YOU JUST STATED YOU  
4 WERE ASKED TO DO?

5 A. I DID.

6 MR. PETERS: YOUR HONOR, WE HAVE A DEMONSTRATIVE. I  
7 HAVE AN EXTRA COPY.

8 THE COURT: THANK YOU. I APPRECIATE IT.

9 MR. PETERS: Q. DR. MAHLA, SHOWING YOU WHAT HAS  
10 BEEN -- I THINK THE TITLE OF IT IS "SLIDE ONE." CAN YOU TELL US  
11 WHAT THIS -- FIRST OF ALL, DID YOU CREATE THIS GRAPH?

12 A. IT WAS CREATED UNDER MY DIRECTION BY AN ANALYST WHO  
13 WORKS FOR ECON ONE.



14 Q. AND CAN YOU EXPLAIN TO THE JURY WHAT THIS SLIDE SHOWS?

15 A. THIS SHOWS THE FIRST TWO YEARS OF EARNINGS THAT  
16 MS. BLOUGH WOULD HAVE EXPECTED FROM BEGINNING OF -- FROM  
17 SEPTEMBER 1ST OF 2006. IT ENTAILS THE LAST FOUR MONTHS OF 2006,  
18 AND IT ENTAILS THE ENTIRE YEAR 2007. THESE ARE THE FIRST TWO  
19 CALCULATIONS THAT WE'LL SEE IN A LONGER TABLE IN THE NEXT SLIDE.

20 BUT IT ENTAILS A NUMBER OF ASSUMPTIONS I WAS ASKED TO  
21 MAKE. THE FIRST BEING THAT PROFESSOR BLOUGH WOULD HAVE AN  
22 ANNUAL INCREASE IN EARNINGS OF THREE PERCENT, A COLA, A COST OF  
23 LIVING ADJUSTMENT OF THREE PERCENT PER YEAR. I WAS ALSO ASKED  
24 TO ASSUME THAT PROFESSOR BLOUGH WOULD RECEIVE A FIVE PERCENT  
25 CONTRIBUTION FROM THE COLLEGE TOWARDS HER RETIREMENT. THAT FIVE  
26 PERCENT FIGURE IS LOCATED THERE.

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1 ACCORDING TO PROFESSOR BLOUGH'S TIAA-CREF STATEMENTS,  
2 THERE WERE A NUMBER OF CONTRIBUTIONS MADE TO HER RETIREMENT  
3 ACCOUNT IN BOTH 2006 AND THE EARLY PART OF 2007. I'VE ADJUSTED  
4 WHAT WE WOULD CALL "A BUT FOR" EARNINGS FOR THE AMOUNTS THAT SHE  
5 ACTUALLY DID RECEIVE. AND SO FOR 2006, THE TOTAL EARNINGS WOULD  
6 HAVE BEEN 23,794, FOR THE REMAINING FOUR MONTHS OF 2006; AND FOR  
7 2007, \$73,011.

8 Q. AND YOU SAID YOU MADE SOME ASSUMPTIONS. WHERE DID YOU  
9 GET THOSE ASSUMPTIONS?

10 A. I WAS ASKED BY COUNSEL TO MAKE THOSE ASSUMPTIONS.

11 Q. AND I THINK YOU SAID IT EARLIER, BUT WHEN DO YOU

12 ESTIMATE PROFESSOR BLOUGH WOULD HAVE ENDED HER EMPLOYMENT WITH  
13 MENLO COLLEGE?

14 A. HER EMPLOYMENT -- I WAS ASKED TO ASSUME TWO, SIX-YEAR  
15 CONTRACTS OR 12 YEARS, SO THOSE EARNINGS WOULD RUN THROUGH  
16 JUNE 2018.

17 Q. OKAY.

18 AND DID YOU PREPARE THIS SLIDE TO REFLECT HER LOST  
19 EARNINGS GOING INTO THE FUTURE, AS YOU JUST SAID?

20 A. YES. AGAIN, IT WAS PREPARED BY A COLLEAGUE UNDER MY  
21 DIRECTION.

22 Q. AND CAN YOU EXPLAIN TO THE JURY HOW YOU CAME TO THE  
23 CALCULATIONS FOR THE TOTAL -- THE FUTURE LOST EARNINGS THAT YOU  
24 HAVE HERE IN SLIDE TWO?

25 A. SURE.

26 THE TWO FIGURES THAT WE JUST TALKED ABOUT, YOU WILL

849

1 SEE THAT THERE'S AN ANNUAL EARNINGS COLUMN HERE, AND THAT RUNS  
2 FROM 2006 THROUGH MID YEAR 2018. THIS IS THE EARNINGS STREAM.  
3 COLUMN TWO IS RETIREMENT BENEFITS OF FIVE PERCENT APPLIED TO THE  
4 BASE EARNINGS FOR EACH OF THOSE YEARS. THE TOTAL OF THOSE TWO  
5 IS COLUMN THREE AND THIS FIGURE RIGHT HERE IS 23, 704 IS THE  
6 FIGURE FROM THE PREVIOUS SLIDE. THE 73,011 IS ALSO THE FIGURE  
7 FROM THE PREVIOUS SLIDE. AND THE REMAINDER OF THE SLIDE IS A  
8 CONTINUATION OF THAT EARNING STREAM APPLYING THE FIVE PERCENT  
9 RETIREMENT BENEFITS OUT TO JUNE OF 2018.

10 Q. AND THOSE INCLUDE THE COST OF LIVING INCREASES YOU  
11 TALKED ABOUT, THE THREE PERCENT COST OF LIVING INCREASE?

12 A. THOSE THREE PERCENT INCREASES ARE EMBEDDED IN THE  
13 ANNUAL EARNINGS AMOUNTS THAT GROW OUT OVER THIS PERIOD FROM 2006  
14 TO MID 2018.

15 Q. OKAY.

16 AND I SEE THERE'S A COLUMN THERE, "THE PRESENT VALUE  
17 FACTOR." YOU MENTIONED THAT EARLIER. CAN YOU EXPLAIN TO US HOW  
18 YOU CAME UP WITH THE VALUES IN THAT COLUMN?

19 A. SURE. PRESENT VALUE -- LET ME TAKE JUST A MOMENT TO  
20 GIVE AN OVERVIEW, THE CONCEPTUAL OVERVIEW OF THE PRESENT VALUE.

21 ESSENTIALLY, A DOLLAR RECEIVED TODAY, IF PLACED IN AN  
22 INTEREST-BEARING ACCOUNT, IS GOING TO BE WORTH MORE IN THE  
23 FUTURE. THESE DOLLARS THAT I'VE CALCULATED OUT HERE INTO THE  
24 FUTURE HAVEN'T BEEN ADJUSTED FOR THE FACT THAT THEY'RE GOING TO  
25 BE RECEIVED, IN SOME CASES, EIGHT, NINE, TEN OR 11 OR 12 YEARS  
26 FROM NOW. WHICH MEANS THEY HAVE NOT BEEN DISCOUNTED. THEY ARE

850

1 NOT IN PRESENT VALUE TERMS.

2 A SIMPLE EXAMPLE, SOMEBODY ASKS YOU IF YOU WOULD  
3 PREFER TO HAVE A HUNDRED DOLLARS TO BE RECEIVED IN ONE YEAR OR  
4 SOME AMOUNT TODAY. AND LET'S SUPPOSE THAT YOU COULD INVEST THAT  
5 AMOUNT AT TEN PERCENT. IN TODAY'S MARKET, THAT WOULD BE A GREAT  
6 RETURN. BUT SUPPOSE YOU COULD PUT THOSE DOLLARS, WHATEVER THOSE  
7 DOLLARS ARE, IN AN ACCOUNT THAT WOULD GROW AT TEN PERCENT FOR

8 ONE YEAR. WELL, THE QUESTION WOULD BE HOW MUCH WOULD YOU TAKE  
9 NOW, INSTEAD OF WAITING A YEAR TO GET A HUNDRED DOLLARS. AND  
10 THE ANSWER TO THAT IS ACTUALLY \$90.91.

11 SO WE SAY THAT \$90.91 IS THE PRESENT VALUE OF A  
12 HUNDRED DOLLARS TO BE RECEIVED A YEAR FROM NOW. BECAUSE IF YOU  
13 PUT THAT \$90.91 INTO AN ACCOUNT AND LET IT GROW AT TEN PERCENT,  
14 IN A YEAR IT WOULD BE WORTH A HUNDRED DOLLARS. THIS COLUMN,  
15 PRESENT VALUE FACTOR, IS NOTHING MORE THAN THE CALCULATION OF  
16 FIGURING OUT THE FACTOR YOU NEED TO APPLY TO THESE UNMODIFIED OR  
17 FUTURE VALUE DOLLARS TO TURN THEM INTO PRESENT VALUE DOLLARS.  
18 OKAY?

19 THIS COLUMN REPRESENTS THAT FACTOR. YOU'LL NOTICE FOR  
20 ALL PAST YEARS, THE FACTOR IS ONE. AND BECAUSE WE'RE NOT GOING  
21 TO DISCOUNT PAST DOLLARS, WE'RE ONLY GOING TO DISCOUNT FUTURE  
22 DOLLARS. SO ONCE WE GET PAST DECEMBER OF 2008 -- AND I THINK  
23 IT'S PROBABLY IMPORTANT TO RECOGNIZE THAT THE DEMARCATION LINE  
24 BETWEEN PRESENT AND FUTURE VALUE IN THIS CALCULATION IS  
25 DECEMBER 1ST OF THIS YEAR. EVERYTHING PRIOR TO DECEMBER 1ST WAS  
26 CONSIDERED PAST; EVERYTHING AFTER DECEMBER 1ST OF THIS YEAR IS

851

1 CONSIDERED FUTURE.

2 SO IF 2008 IS SPLIT 11 MONTHS INTO THE PAST, ONE MONTH  
3 INTO THE FUTURE, AND FROM THAT POINT FORWARD EACH OF  
4 THESE FUTURE DOLLARS HAS APPLIED TO IT THIS DISCOUNT FACTOR TO  
5 GET YOU BACK TO PRESENT VALUE.

6 Q. OKAY.

7 AND JUST BY WAY OF EXAMPLE, SINCE IT'S A LITTLE HARD  
8 TO SEE THE CHART, LOOKING AT THE LAST YEAR IN YOUR CALCULATION,  
9 2018, THE EARNINGS BENEFITS YOU CALCULATED -- WHICH I GUESS  
10 ACTUALLY IS PART OF IT, BUT IT'S NOT A FULL YEAR -- WERE 51,538?

11 A. YEAH, THAT'S THIS FIGURE RIGHT HERE.

12 Q. RIGHT. AND THEN YOU APPLIED THAT DISCOUNT RATE. CAN  
13 YOU TELL THE JURY WHAT THAT NUMBER IS?

14 A. THE DISCOUNT RATE I'VE APPLIED IS 2.1 PERCENT, WHICH  
15 IS DERIVED FROM A PORTFOLIO OF RISK-FREE SECURITIES, GOVERNMENT  
16 SECURITIES RANGING FROM SIX MONTHS UP TO TEN YEARS. IF WE LOOK  
17 AT CURRENT RATES AND MAKE A PORTFOLIO OF THOSE, KEEP THEM AT  
18 RISK-FREE RATE, THAT PORTFOLIO AMOUNT WOULD BE 2.1 PERCENT. I  
19 APPLIED THAT PERCENTAGE TO ALL OF THESE FUTURE DOLLARS.

20 THE 51,538 TO BE RECEIVED IN JUNE -- THROUGH JUNE OF  
21 2018 IS WORTH TODAY \$42,346. AND GOING BACK TO THE EXAMPLE WE  
22 TALKED ABOUT A LITTLE WHILE AGO, \$42,346 PUT INTO AN ACCOUNT  
23 THAT BEARS 2.1 PERCENT INTEREST UNTIL JUNE OF 2018 WOULD EQUAL  
24 51,538. SO THESE DOLLARS INVESTED AT 2.1 PERCENT WOULD GIVE YOU  
25 THE DOLLARS IN THIS UNDISCOUNTED COLUMN.

26 Q. SO THE TOTAL PRESENT VALUE OF HER FUTURE EARNINGS, IF

852

1 PROFESSOR BLOUGH HAD REMAINED AT MENLO COLLEGE THROUGH JUNE OF  
2 2018, WHAT IS THAT TOTAL?

3 A. THAT TOTAL IS RIGHT HERE. IT'S DIFFICULT TO SEE.

4 IT'S \$788,755.

5 Q. AND SO WHAT DID YOU CALCULATE HER TOTAL LOSS, IF YOU  
6 TAKE PAST LOST EARNINGS AND FUTURE LOST EARNINGS?

7 A. THE PAST LOST EARNINGS ARE THE NUMBER -- IS THE NUMBER  
8 CONTAINED HERE. THAT NUMBER IS 168,166. WHEN WE ADD THAT TO  
9 THE 788,755 FIGURE, THE TOTAL PRESENT VALUE AMOUNT IS \$956,921.

10 MR. PETERS: THANK YOU, DOCTOR. THAT'S ALL I HAVE.

11 THE COURT: CROSS-EXAMINATION?

12

13 CROSS-EXAMINATION

14 BY MR. VARTAIN:

15 Q. DOCTOR, YOU BASICALLY GAVE ME THIS TESTIMONY A COUPLE  
16 OF WEEKS AGO WHEN YOU CAME DOWN TO MY OFFICE AND WE HAD A  
17 DEPOSITION. DO YOU REMEMBER THAT?

18 A. YES.

19 Q. AND THE OPINIONS YOU JUST GAVE THE JURY WERE THE  
20 OPINIONS YOU HAD ALREADY FORMED SEVERAL WEEKS AGO WHEN YOU CAME  
21 TO MY OFFICE; IS THAT CORRECT?

22 A. THE NUMBERS I CALCULATED HAVEN'T CHANGED. THAT'S  
23 RIGHT.

24 Q. I WASN'T ASKING ABOUT THE NUMBERS. THE OPINIONS YOU  
25 JUST GAVE THE COUNSEL?

26 A. MY OPINIONS HAVEN'T CHANGED. NO.

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1 Q. OKAY.

2 I ASKED YOU AT THAT TIME -- BASICALLY, YOUR NUMBER IS  
3 A MILLION DOLLARS OR CLOSE TO IT, GIVE OR TAKE, RIGHT? 956,000  
4 IS THE PRESENT VALUE OF WHAT YOU'RE CALCULATING HERE, RIGHT?

5 A. 956,000, THAT'S CORRECT.

6 Q. HOW MUCH TIME DID YOU SPEND WORKING ON THIS, COMING UP  
7 WITH THIS ANALYSIS AS OF WHEN YOU CAME DOWN TO MY OFFICE AND  
8 GAVE THE OPINION?

9 A. I DON'T RECALL. IT WASN'T VERY LONG.

10 Q. IT WAS ABOUT AN HOUR, WASN'T IT?

11 A. APPROXIMATELY.

12 Q. YOU TOOK AN HOUR TO WORK UP THIS ANALYSIS, TO COME UP  
13 WITH \$956,000, RIGHT? AND YOU HAD SOME HELP FROM YOUR  
14 ASSISTANT?

15 A. THAT'S CORRECT.

16 Q. OKAY.

17 AND YOUR ASSISTANT, I THINK YOU SAID, PUT IN ABOUT AN  
18 HOUR OR TWO AS WELL?

19 A. HE PUT IN A COUPLE OF HOURS. SURE.

20 Q. THIS WAS, ESSENTIALLY, A NUMBER-CRUNCHING EXERCISE,  
21 WASN'T IT?

22 A. I WAS GIVEN PARAMETERS. I WAS ASKED TO -- I WAS GIVEN  
23 PARAMETERS, AND I WAS ASKED TO ASSUME THOSE PARAMETERS, AND I  
24 WAS ASKED TO DO A CALCULATION. IT WAS NOT A COMPLICATED  
25 ASSIGNMENT ON MY PART.

26 Q. WOULDN'T IT BE FAIR TO SAY THAT NONCOMPLICATED

1 ASSIGNMENT WAS NOTHING MORE THAN NUMBER CRUNCHING? ISN'T THAT A  
2 FAIR TERM FOR WHAT YOU DID?

3 A. WELL, HELP ME WITH "NUMBER CRUNCHING."

4 Q. YOU KNOW WHAT NUMBER CRUNCHING MEANS?

5 A. WELL, THERE WAS A -- THERE WAS SOME INVESTIGATION OF  
6 DISCOUNT RATES, SO THERE WAS SOME -- THERE WAS --

7 Q. DISCOUNT RATES ARE ON THE COMPUTER. YOU JUST PUNCH IN  
8 ON THE COMPUTER, AND YOU GET THE DISCOUNT. IT'S ON A GRAPH.  
9 IT'S ON THE CHART. IT'S ON THE INTERNET, ISN'T IT? ISN'T IT?

10 A. WELL, THERE'S LOTS OF RATES ON THE INTERNET.

11 Q. THE RATES YOU USED ARE ON THE INTERNET, AREN'T THEY?

12 A. THEY ARE.

13 Q. SO THE NUMBER CRUNCHING WAS WHAT YOU DID. YOU DIDN'T  
14 HAVE TO GO RESEARCH DISCOUNT RATES. YOU JUST POP THE BUTTON ON  
15 THE INTERNET. YOU LOOK AT IT AND POP IT IN YOUR CALCULATION,  
16 RIGHT?

17 A. YOU STILL HAVE TO GO TO THE APPROPRIATE PLACE TO PULL  
18 OFF THE NUMBERS. IT'S NOT A DIFFICULT EXERCISE.

19 Q. ON THE INTERNET. ANYBODY IN THE PUBLIC CAN GO GET  
20 THAT INFORMATION?

21 A. SURE.

22 Q. OKAY.

23 SO YOU WORKED ABOUT AN HOUR TO COME UP WITH THIS  
24 MILLION-DOLLAR FIGURE. YOUR ASSISTANT, WHO'S WHAT? 28 YEARS  
25 OLD?

26 A. HE'S 28.



1 Q. AND HE'S NOT GOT A MASTER'S DEGREE OR ANY ADVANCED  
2 DEGREE, CORRECT?

3 A. NOT AS OF TODAY, NO.

4 Q. OKAY.

5 SO NOW LET'S TALK ABOUT THESE WORDS YOU USED FOR THE  
6 JURY CALLED "ASSUMPTIONS." ASSUMPTIONS REALLY MEANS THE  
7 ATTORNEY TOLD YOU WHAT THE FACTS WERE, BUT YOU DIDN'T CHECK OUT  
8 WHETHER THOSE FACTS ARE TRUE OR NOT, CORRECT?

9 A. I DID NOT.

10 Q. THE ATTORNEY TOLD YOU WHAT THE FACTS WERE, AND THOSE  
11 FACTS YOU RELIED ON TO DO THESE NUMBERS, CORRECT?

12 A. CORRECT.

13 Q. BUT YOU DON'T KNOW IF THE FACTS THAT THE ATTORNEY GAVE  
14 YOU ARE TRUE OR NOT TRUE, CORRECT?

15 A. IT WASN'T MY ASSIGNMENT TO KNOW THAT.

16 Q. FIRST, ANSWER THE QUESTION. IS IT THE CASE THAT THE  
17 FACTS THAT THE ATTORNEY GAVE YOU, YOU DIDN'T CHECK OUT WHETHER  
18 THEY WERE TRUE OR NOT?

19 A. WELL, SOME OF THE ASSUMPTIONS I WAS ASKED TO MAKE  
20 AREN'T FACTS, SO I COULDN'T CHECK THEM OUT ANYWAY.

21 Q. OKAY. NO, I UNDERSTAND THAT.

22 BUT THE ASSUMPTIONS THAT YOU WERE GIVEN THAT ARE  
23 FACTS, YOU DIDN'T CHECK THEM OUT, DID YOU?

24 A. I DIDN'T -- WELL, AGAIN, I WAS ASKED TO ASSUME

25 12 YEARS OF CONTINUED WORK.

26 Q. OKAY.

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1 A. I CAN'T CHECK IF THAT'S GOING TO BE TRUE.

2 Q. BUT YOU COULD CHECK HOW MUCH THE PERSON WORKED -- HOW  
3 MUCH MONEY THEY MADE THE LAST 12 YEARS. YOU DIDN'T ASK TO CHECK  
4 THAT OUT, DID YOU?

5 A. I DID NOT.

6 Q. SO, FOR EXAMPLE -- AND JUST TO MAKE IT PLAIN FOR THE  
7 JURY. WHEN MY SECOND CHILD WAS GOING TO COLLEGE AND MY WIFE  
8 ASKED ME, "ARE YOU GOING TO MAKE ENOUGH MONEY TO PAY FOR HIM TO  
9 GO TO COLLEGE?" I SAID, "I DON'T KNOW. JUST LOOK AT WHAT WE  
10 MADE THE LAST FOUR YEARS AND GO OFF OF THAT. I DON'T THINK IT'S  
11 GOING TO BE TOO MUCH MORE, TOO MUCH LESS." SHE SAID, "THAT'S A  
12 BENCHMARK." SO WE LOOKED AT THE LAST FOUR YEARS OF WHAT WE HAD  
13 SAVED UP AND SHE SAID, "OKAY. NOW, I'LL FIGURE THAT THAT'S WHAT  
14 WE HAVE FOR THE NEXT FOUR."

15 DID YOU GO BACK AND LOOK AT PROFESSOR BLOUGH'S LAST  
16 12 YEARS OF EARNINGS WHEN YOU WERE FIGURING OUT HOW MUCH SHE WAS  
17 GOING TO MAKE FOR THE NEXT 12?

18 A. NO.

19 Q. YOU READ A PIECE OF PAPER THAT THE ATTORNEY GAVE YOU  
20 THAT SHOWED THAT SHE HAD BEEN OUT ON MEDICAL LEAVE FOR SOME OF  
21 THESE 12 YEARS, DIDN'T YOU?

22 A. I DID.

23 Q. AND YOU, I THINK, COULD HAVE FAIRLY ASSUMED THAT IF  
24 SHE WAS OUT ON MEDICAL LEAVE, SHE WASN'T DRAWING SALARY. WOULD  
25 THAT BE A FAIR ASSUMPTION?

26 A. I DON'T KNOW IF IT'S A FAIR ASSUMPTION OR NOT. I

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1 DIDN'T LOOK AT IT SO I WOULDN'T KNOW.

2 Q. OKAY.

3 SO YOU DIDN'T FACTOR IN AND FIGURE OUT THE NEXT  
4 12 YEARS FOR PROFESSOR BLOUGH, THAT SHE'S BEEN SICK A LOT AND  
5 SHE'S MISSED THREE OR FOUR YEARS OF THE LAST FIVE, WHERE SHE  
6 COULDN'T WORK AND COULDN'T MAKE MONEY. YOU DIDN'T FACTOR THAT  
7 IN?

8 A. I DIDN'T.

9 Q. THE ATTORNEY DIDN'T GIVE YOU THAT INFORMATION, DID HE?

10 A. HE GAVE ME THE PARAMETERS I DESCRIBED DURING MY DIRECT  
11 TESTIMONY.

12 Q. THAT WASN'T MY QUESTION. HE DIDN'T GIVE YOU THE  
13 INFORMATION THAT PROFESSOR BLOUGH HAD BEEN TOO ILL TO WORK FOR  
14 FOUR OF THE LAST FIVE OR SIX YEARS, DID HE?

15 A. HE DID NOT.

16 Q. HAVE YOU EVER WORKED ON AN ECONOMIC CASE FOR A COLLEGE  
17 OR ABOUT A COLLEGE? YOU KNOW, I ACCEPT THAT YOU'VE WORKED ON  
18 EMPLOYMENT CASES. HAVE YOU EVER WORKED ON EMPLOYMENT CASES  
19 INVOLVING A COLLEGE?

20 A. NO.

21 Q. BECAUSE YOU TOLD THE JURY YOU ASSUMED THAT THERE WOULD  
22 BE A THREE PERCENT COLA. THAT STANDS FOR COST OF LIVING  
23 ADJUSTMENT, RIGHT?

24 A. YES.

25 Q. DID YOU DO ANYTHING TO CHECK OUT WHETHER MENLO COLLEGE  
26 EVEN HAS SOMETHING CALLED A COST OF LIVING ADJUSTMENT?

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1 A. WELL, I DIDN'T USE IT -- I USED IT AS A TERM OF ART  
2 FOR AN ADJUSTMENT FOR EARNINGS INCREASES.

3 Q. NO. YOU USED THE WORD COLA. I HEARD YOU SAY COLA.

4 A. COST OF LIVING ADJUSTMENT, SURE.

5 Q. DID YOU LOOK AT MENLO COLLEGE'S -- DID YOU LOOK AT  
6 PROFESSOR BLOUGH'S PERSONNEL FILE TO SEE WHETHER THERE WAS  
7 ANYTHING CALLED A COLA OR ANY GUARANTEED ANNUAL SALARY  
8 ADJUSTMENTS?

9 A. I DID NOT.

10 Q. DID YOU ASK THE ATTORNEY TO GIVE YOU ANY OF THAT  
11 INFORMATION?

12 A. NO. AGAIN, MY ASSIGNMENT WAS FAIRLY STRAIGHTFORWARD.

13 Q. SO NOTHING IN YOUR CHART HAS ANY FACTUAL CONNECTION AS  
14 TO WHAT THE HISTORY OF SALARY INCREASES AT MENLO COLLEGE IS,  
15 CORRECT? IS THAT CORRECT?

16 A. THAT IS.

17 Q. THANK YOU.

18 DID THE ATTORNEY TELL YOU THAT YOU SHOULD MAKE SOME

19 KIND OF DEDUCTION FROM THIS MILLION-DOLLAR CALCULATION FOR THE  
20 EARNINGS THAT PROFESSOR BLOUGH COULD HAVE EARNED IF SHE HAD  
21 ACCEPTED THE CONTRACT, THE CONTRACT THAT THE PRESIDENT OF THE  
22 COLLEGE OFFERED HER?

23 A. I DID NOT.

24 Q. HE DIDN'T GIVE YOU THAT INFORMATION?

25 A. HE DID NOT.

26 Q. YOU DO KNOW THAT IT'S APPROPRIATE FOR AN ECONOMIST TO

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1 LOOK AT, NOT JUST WHAT THE PERSON MIGHT HAVE EARNED, BUT WHAT  
2 THE EMPLOYER OFFERED TO PAY THEM. THAT'S CALLED NET -- THAT'S  
3 CALLED A DEDUCTION FOR EARNINGS, CORRECT? OR MITIGATION? HAVE  
4 YOU HEARD THAT TERM?

5 A. SURE.

6 Q. DID YOU DO ANYTHING IN YOUR ANALYSIS FOR MITIGATION OF  
7 LOSSES?

8 A. I WAS SPECIFICALLY ASKED TO DO THE CALCULATION I  
9 DESCRIBED. I WAS NOT ASKED TO TAKE INTO ACCOUNT AT ALL ANY KIND  
10 OF MITIGATING EARNINGS.

11 Q. SO YOU WERE SPECIFICALLY ASKED TO NOT COUNT AS AN  
12 OFFSET THE MONEY THAT PROFESSOR BLOUGH WOULD HAVE EARNED IF SHE  
13 HAD ACCEPTED THE COLLEGE'S CONTRACT OFFER?

14 A. I WASN'T SPECIFICALLY TOLD THAT, BUT I WAS TOLD THAT  
15 THERE WAS -- MITIGATING INCOME, FOR PURPOSES OF MY CALCULATION,  
16 WAS CONSIDERED TO BE ZERO.

17 Q. OH, THE ATTORNEYS TOLD YOU THAT SHE HAD NO OPPORTUNITY  
18 FOR MITIGATING INCOME; IS THAT CORRECT?

19 A. WE DIDN'T HAVE ANY CONVERSATION ABOUT THAT. NO.

20 Q. DID THEY GIVE YOU ANY INFORMATION THAT WOULD SHOW THE  
21 FACTS REGARDING PROFESSOR BLOUGH HAVING CONTRACTS FROM THE  
22 COLLEGE TO COME BACK TO WORK STARTING LAST YEAR?

23 A. WE DIDN'T HAVE ANY SUCH CONVERSATION.

24 Q. DID THE ATTORNEYS TELL YOU THAT SHE HAD AN OPPORTUNITY  
25 TO COME BACK TO WORK?

26 A. IT WASN'T PART OF MY ASSIGNMENT, AND WE DIDN'T HAVE A

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1 DISCUSSION ABOUT IT. NO.

2 Q. DID THE ATTORNEYS TELL YOU THAT? NO?

3 A. NO.

4 Q. DID THE ATTORNEYS TELL YOU THAT IF SHE HAD ACCEPTED  
5 THAT CONTRACT, THE COLLEGE HAD GUARANTEED THAT SHE COULD BE  
6 EVALUATED FOR A SIX-YEAR CONTRACT? DID THEY TELL YOU THAT?

7 A. WE DIDN'T HAVE THAT CONVERSATION. NO.

8 Q. SO THEY DIDN'T TELL YOU THAT; IS THAT CORRECT?

9 A. NO.

10 Q. IT IS CORRECT?

11 A. IT IS CORRECT.

12 Q. THANK YOU.

13 THE REASON I ASKED YOU ABOUT COLLEGES -- HAVE YOU EVER  
14 WORKED ON A CASE INVOLVING A COLLEGE BEFORE?

15 A. I THINK I TOLD YOU A COUPLE OF MINUTES AGO, NO.

16 Q. OKAY.

17 ARE YOU FAMILIAR WITH THE COLLEGE RETIREMENT PLAN?

18 IT'S A NATIONWIDE RETIREMENT PLAN CALLED TIAA, TEACHERS -- NO.

19 I FORGET THE REST. DO YOU KNOW ABOUT THAT?

20 A. I WAS A MEMBER OF IT FOR AWHILE, YES.

21 Q. YOU WERE? WHEN YOU WERE A COLLEGE FACULTY?

22 A. WHEN I TAUGHT, YEAH.

23 Q. YOU KNOW THAT EACH COLLEGE HAS ITS OWN PERCENTAGE THAT

24 THEY PUT INTO THE RETIREMENT PLAN. IT ISN'T A NATIONWIDE

25 NUMBER. IT VARIES FROM COLLEGE TO COLLEGE?

26 A. THAT'S CORRECT.

861

1 Q. AND YOU ALSO KNOW THAT COLLEGES CAN CHANGE EVERY YEAR  
2 HOW MUCH MONEY THEY KICK INTO THE RETIREMENT PLAN, RIGHT?

3 A. SURE.

4 Q. IT DEPENDS ON HOW MANY STUDENTS THEY'RE GETTING, WHAT  
5 THEIR REVENUES ARE. AND IT GOES UP OR DOWN FOR SOME COLLEGES,  
6 DEPENDING ON HOW GOOD THE TUITION REVENUES ARE COMING IN.  
7 YOU'RE AWARE OF THAT, RIGHT?

8 A. YES.

9 Q. DID YOU DO ANYTHING TO INVESTIGATE WHAT THE SITUATION  
10 HAD BEEN AT MENLO COLLEGE IN TERMS OF, YOU KNOW, THE SHORTFALLS  
11 AND THE BUDGET CRIMPS, YOU KNOW, WHATEVER THEY MIGHT HAVE  
12 AVAILABLE OR NOT FOR CONTRIBUTIONS TO RETIREMENT?

13 A. I DID NO INDEPENDENT INVESTIGATION OF THAT. NO.

14 Q. SO YOU JUST ASSUMED A CERTAIN PERCENTAGE BY WHAT THE  
15 ATTORNEY TOLD YOU, THAT WOULD BE FOR 12 YEARS, FIVE PERCENT A  
16 YEAR?

17 A. I THINK WE'VE BEEN THROUGH THIS. I WAS ASKED TO  
18 ASSUME 12 YEARS OF EARNINGS, FIVE PERCENT CONTRIBUTION TOWARDS  
19 RETIREMENT AND THREE PERCENT INCREASES IN -- ANNUAL INCREASES IN  
20 EARNINGS. I WAS ASKED TO ASSUME THOSE THINGS. I ASSUMED THOSE  
21 THINGS. I LEFT IT TO THE ATTORNEYS. WHEN I'M ASKED TO MAKE  
22 THOSE ASSUMPTIONS, I IMMEDIATELY ASSUME THAT IT'S NOT GOING TO  
23 BE MY JOB TO PROVE UP THOSE PARAMETERS.

24 Q. I'M JUST ASKING YOU THE QUESTIONS, SIR. I WASN'T  
25 THERE WHEN YOU AND YOUR ATTORNEY TALKED, SO I DON'T KNOW WHAT  
26 YOU TALKED ABOUT. I'M JUST TRYING TO GET ACROSS TO THE JURY

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1 THAT YOU ASSUMED FIVE PERCENT INTO THE RETIREMENT PLAN EVERY  
2 YEAR, BUT YOU DIDN'T ASSUME IT BASED ON ANY REALITY OR FACTS AT  
3 MENLO COLLEGE; IS THAT TRUE?

4 A. THAT IS TRUE.

5 Q. OKAY.

6 A. I THINK I'VE BEEN CLEAR. I WAS ASKED TO ASSUME THESE  
7 THINGS BY COUNSEL.

8 Q. AND YOU'RE BEING VERY CLEAR THAT THE COUNSEL TOLD YOU  
9 THAT, SO I'M NOT CHALLENGING, YOU KNOW, THAT YOU DIDN'T DO YOUR  
10 JOB RIGHT. I'M JUST SAYING THE JURY DOESN'T UNDERSTAND THAT



11 NECESSARILY, NOR DID I, THAT THIS IS INFORMATION YOU'RE GIVEN  
12 THAT YOU GOT FROM THE ATTORNEY. OKAY.

13 DID YOU DO ANY DISCOUNTING OF THE RETIREMENT NUMBERS  
14 FOR THE FACT THAT -- AS WE ALL KNOW, THE ECONOMY IS IN SUCH A  
15 DOWNTURN THAT EMPLOYERS ARE TURNING THE FAUCET OFF ON RETIREMENT  
16 CONTRIBUTIONS. I WAS SORT OF SURPRISED YOU JUST ASSUMED FIVE  
17 PERCENT FOR 12 YEARS, WHEN THE ECONOMISTS IN WASHINGTON ARE  
18 SAYING THE 401K PLANS ARE DRYING UP. DID YOU DO ANY DISCOUNT  
19 FOR THAT?

20 A. NO.

21 Q. YOU USED THE TERM "PAST LOST EARNINGS," AS IF THAT --  
22 WELL, NO. I'M SORRY. "FUTURE LOST EARNINGS." YOU'RE  
23 PROJECTING THAT PROFESSOR BLOUGH IS GOING TO LOSE THESE EARNINGS  
24 INTO THE FUTURE BASED ON WHAT THE ATTORNEYS TOLD YOU; IS THAT  
25 CORRECT?

26 A. BASED ON MY CALCULATION. IT ENTAILS A FUTURE

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1 COMPONENT, SO YES.

2 Q. AND IT'S BASED ON THE INFORMATION THE ATTORNEY GAVE  
3 YOU TO ASSUME THAT SHE'S GOING TO LOSE THESE EARNINGS; IS THAT  
4 TRUE?

5 A. IT'S EMBEDDED IN THE ASSIGNMENT. SURE.

6 Q. OKAY.

7 BUT SHE HASN'T LOST THAT MONEY YET. THAT'S A  
8 PROJECTION OF LOOKING INTO THE CRYSTAL BALL OF WHAT SHE MIGHT

9 LOSE. SHE HASN'T -- IT HASN'T HAPPENED YET, CORRECT?

10 A. THAT'S CORRECT.

11 MR. VARTAIN: NO FURTHER QUESTIONS.

12 THE COURT: REDIRECT FOR THIS WITNESS?

13 MR. PETERS: BRIEFLY, YOUR HONOR.

14 THE COURT: GO AHEAD.

15

16 REDIRECT EXAMINATION

17 BY MR. PETERS:

18 Q. DR. MAHLA, DID YOU RECEIVE ANY DOCUMENTS FROM OUR

19 OFFICE?

20 A. I DID.

21 Q. I'M SORRY. I PAUSED JUST LIKE MR. VARTAIN DOES.

22 MR. VARTAIN: IT'S CATCHING.

23 MR. PETERS: YES.

24 Q. DID YOU RECEIVE ANY DOCUMENTS FROM OUR OFFICE

25 REGARDING PROFESSOR BLOUGH THAT GAVE TO YOU PROFESSOR BLOUGH'S

26 SALARY AT ANY POINT?

864

1 A. YES.

2 Q. AND DID YOU BASE YOUR CALCULATIONS ON THOSE DOCUMENTS?

3 A. THE INITIAL EARNINGS FROM THE 2004, 2005 PERIOD ARE

4 FROM THAT DOCUMENT.

5 Q. AND CAN YOU IDENTIFY WHAT DOCUMENT YOU'RE REFERRING

6 TO?

7 A. IT'S A JULY 26, 2004 LETTER TO PROFESSOR BLOUGH,  
8 SIGNED BY CARLOS LOPEZ.

9 Q. AND WAS THERE ANOTHER LETTER YOU RECEIVED FROM OUR  
10 OFFICE REGARDING HER SALARY FROM THAT TIME PERIOD, JUNE 2004?

11 A. THERE WAS ANOTHER DOCUMENT THAT RELATES TO A FIVE  
12 PERCENT CONTRIBUTION FOR PROFESSOR BLOUGH'S RETIREMENT.

13 Q. AND THAT'S CONSISTENT -- THAT'S THE FIVE PERCENT --  
14 THAT'S CONSISTENT WITH THE FIVE PERCENT YOU USE IN YOUR  
15 CALCULATION?

16 A. CORRECT.

17 MR. PETERS: THANK YOU. NOTHING FURTHER.

18 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

19 MR. VARTAIN: YEAH.

20

21 RE CROSS EXAMINATION

22 BY MR. VARTAIN:

23 Q. I'M NOT SURE WHAT YOU'RE LOOKING AT, DOCTOR, AND IT'S  
24 NOT THAT IMPORTANT. BUT WAS THERE JUST TWO PIECES OF PAPER THAT  
25 THE ATTORNEYS SENT YOU, A LETTER, AN OFFER LETTER FROM THE  
26 PRESIDENT?

865

1 A. THERE WAS ALSO A -- THERE WAS ANOTHER LETTER THAT WAS  
2 RELATING TO --

3 Q. OKAY.

4 A. -- A FUTURE CONTRACT. THERE WERE ALSO DOCUMENTS FROM

5 PROFESSOR BLOUGH'S TIAA-CREF.

6 Q. OKAY.

7 I'M NOT INTERESTED IN ALL THE MONTHLY PRINTOUTS FROM  
8 HER RETIREMENT PLAN. OTHER THAN THAT, THERE WAS JUST TWO OR  
9 THREE PIECES OF PAPER THAT THE ATTORNEYS SENT YOU; IS THAT  
10 RIGHT?

11 A. THAT'S CORRECT.

12 Q. AND THAT'S ALL YOU REVIEWED TO COME UP WITH THE  
13 MILLION DOLLARS, TWO OR THREE PIECES OF PAPER; IS THAT CORRECT?

14 A. GIVEN WHAT I WAS ASKED TO ASSUME ABOUT THE  
15 CALCULATIONS, I WOULDN'T HAVE EVEN NEEDED THOSE.

16 Q. THAT'S WHY I CALLED IT NUMBER CRUNCHING. THAT'S WHAT  
17 IT WAS, JUST NUMBER CRUNCHING, RIGHT?

18 A. IT WAS A CALCULATION.

19 Q. OKAY. WE GOT IT.

20 YOU WON'T GIVE ME THE NUMBER CRUNCHING?

21 A. QUITE FRANKLY, IT'S SORT OF DISRESPECTFUL.

22 Q. WHAT?

23 A. IT'S SORT OF DISRESPECTFUL --

24 THE COURT: I THINK WE'RE NOT GOING TO GO INTO THIS.

25 MR. VARTAIN: Q. I DIDN'T MEAN ANYTHING

26 DISRESPECTFUL. I JUST FIGURED IF YOU ONLY PUT AN HOUR INTO THE

1 CASE, YOU REALLY COULDN'T -- NO ONE COULD REASONABLY EXPECT YOU  
2 TO DO MUCH MORE THAN NUMBER CRUNCHING. I DIDN'T MEAN ANY

3 DISRESPECT. I WAS JUST GOING BY HOW MUCH TIME YOU PUT IN, SIR.

4 THANK YOU.

5 THE COURT: WAIT ONE SECOND.

6 COUNSEL, COULD YOU APPROACH FOR A SECOND.

7 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

8 THE COURT: ALL RIGHT.

9 IS THERE ANYTHING ELSE FOR DR. MAHLA?

10 MR. PETERS: NOTHING FURTHER. THANK YOU.

11 THE COURT: DR. MAHLA, THANK YOU FOR YOUR TESTIMONY.

12 YOU ARE FREE TO GO.

13 PLAINTIFF'S NEXT WITNESS?

14 MR. LEBOWITZ: YOUR HONOR, THE PLAINTIFF RESTS.

15 THE COURT: THANK YOU.

16 WITHOUT TELLING ME WHAT THEY ARE, WILL THERE BE ANY

17 DEFENSE MOTIONS?

18 MR. VARTAIN: COULD WE START OUR WITNESS, SUBJECT TO

19 THE DEFENSE MOTION?

20 THE COURT: I WILL RESERVE THE SPOT FOR YOU WITHOUT

21 OBJECTION AND THEN WE WILL PROCEED.

22 ALL RIGHT. I'M SORRY. LADIES AND GENTLEMEN, I KNOW

23 THAT WAS CODE, BUT I'M SORRY. THEY KNEW WHAT I MEANT AND YOU'RE

24 NOT SUPPOSED TO, SO SORRY ABOUT THAT.

25 ALL RIGHT. WE'RE NOW GOING TO SWITCH GEARS, LADIES

26 AND GENTLEMEN. THE PLAINTIFF HAS COMPLETED THE PRESENTATION OF

1 HER EVIDENCE. AND IT IS NOW THE DEFENSE'S OPPORTUNITY TO  
2 PRESENT ITS EVIDENCE. CLEARLY, WE'RE ONLY GOING TO GET  
3 30 MINUTES STARTED TODAY AND TOMORROW WE WILL RESUME.

4 SO, MR. VARTAIN, YOU MAY CALL YOUR FIRST WITNESS.

5 MR. VARTAIN: MS. ADLER WENT TO GET THE WITNESS. SHE  
6 WAS DOWN THE HALL TO STAY AWAY, SO IT MAY TAKE 30 SECONDS OR SO.

7 THE COURT: THANK YOU.

8 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

9 THE COURT: AND YOUR FIRST WITNESS IS?

10 MR. VARTAIN: RACHEL TIPTON FROM MENLO COLLEGE.

11 THE COURT: MS. TIPTON, IF YOU'D COME FORWARD TO THE  
12 WITNESS STAND, PLEASE.

13 AND, DEPUTY, WE HAVE AN ACCUMULATION OF WATER CUPS.

14 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

15 (WHEREUPON, THE WITNESS WAS SWORN.)

16 THE WITNESS: YES.

17 THE CLERK: PLEASE BE SEATED.

18 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
19 AND SPELL THEM BOTH FOR THE RECORD.

20 THE WITNESS: RACHEL TIPTON; R-A-C-H-E-L T-I-P-T-O-N.

21 THE CLERK: THANK YOU.

22

23 RACHEL TIPTON,

24 DULY SWORN, TESTIFIED AS FOLLOWS:

25

26 DIRECT EXAMINATION

1 BY MS. ADLER:

2 Q. GOOD AFTERNOON, MS. TIPTON.

3 A. HI.

4 Q. MS. TIPTON, DO YOU WORK FOR MENLO COLLEGE?

5 A. YES.

6 Q. AND HOW LONG HAVE YOU WORKED FOR THE COLLEGE?

7 A. SINCE MAY 1999; NINE YEARS.

8 Q. WHAT DID YOU DO BEFORE YOU BEGAN WORKING FOR MENLO

9 COLLEGE?

10 A. I WAS A STUDENT AT MENLO COLLEGE.

11 Q. AND WHEN DID YOU GRADUATE?

12 A. MAY 1999.

13 Q. AND WHAT IS YOUR CURRENT POSITION AT THE COLLEGE?

14 A. DIRECTOR OF ACADEMIC ADVISING.

15 Q. AND COULD YOU DESCRIBE FOR US WHAT YOU DO AS DIRECTOR

16 OF ACADEMIC ADVISING?

17 A. I HELP STUDENTS PLAN THEIR DEGREE AT MENLO COLLEGE,  
18 WITH THE FRESHMEN, ALL THE GENERAL ED REQUIREMENTS, EDUCATION  
19 COURSES THEY WILL NEED, ALL THE WAY DOWN TO HOW THEY WILL  
20 GRADUATE IN A TIMELY FASHION. ANYTHING THAT HAS TO DO WITH  
21 REGISTRAR FUNCTIONS, AS WELL AS ASSIGNING THEM TO AN ADVISOR AS  
22 WELL AT MENLO.

23 Q. OKAY.

24 COULD YOU DESCRIBE WHAT YOUR DUTIES ARE WITH REGARD TO  
25 THE FACULTY?

1 PLANNING THE COURSE SCHEDULE FOR UPCOMING SEMESTERS, AS WELL AS  
2 ANY QUESTIONS THEY MIGHT HAVE ON A PARTICULAR STUDENT OR SUCH.

3 Q. WHAT ARE YOUR DUTIES AS TO STUDENTS?

4 A. FOR STUDENTS, IT'S TO HELP THEM WITH THEIR  
5 DEGREE PROCESS, DEGREE AT MENLO, AND ALSO ANY QUESTIONS OR  
6 CONCERNS THEY MIGHT HAVE REGARDING, FROM POLICIES AND PROCEDURES  
7 OR IT CAN ALSO BE FOR FACULTY AS WELL.

8 Q. OKAY.

9 AND WOULD IT BE FAIR TO SAY YOU SPEND QUITE A BIT OF  
10 TIME TALKING TO STUDENTS IN YOUR JOB?

11 A. YES.

12 Q. AND DO YOU ALSO SPEND A FAIR AMOUNT OF TIME TALKING TO  
13 THE FACULTY, HELPING THEM?

14 A. YES.

15 Q. COULD YOU DESCRIBE FOR US A TYPICAL DAY AT WORK FOR  
16 YOU?

17 A. IT WOULD BE THAT I WOULD JUST HELP BE THERE TO ASSIST  
18 STUDENTS, ANY QUESTIONS OR CONCERNS THEY MIGHT HAVE. ALSO  
19 THEY'LL COME IN TO SEE WHAT THEY MIGHT HAVE FOR DEGREES, HOW FAR  
20 WITH COURSES THEY NEED TO TAKE FOR UPCOMING SEMESTERS. EVERY  
21 DAY IS DIFFERENT, SO IT'S NEVER THE SAME.

22 Q. OKAY.

23 WHAT WAS YOUR JOB TITLE DURING THE SPRING 2006



24 SEMESTER?

25 A. IT WAS COORDINATOR OF ACADEMIC ADVISING.

26 Q. WOULD YOU SAY THAT YOUR JOB DUTIES WERE ESSENTIALLY

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1 THE SAME THEN AS THEY ARE NOW?

2 A. YES.

3 Q. OKAY.

4 WHO DID YOU REPORT TO IN THE SPRING OF 2006? WHO WAS  
5 YOUR BOSS?

6 A. I REPORTED TO DEAN LOWELL PRATT.

7 Q. AND WHAT WAS LOWELL PRATT'S POSITION AT THAT TIME?

8 A. ACADEMIC DEAN.

9 Q. AND DID YOU REGULARLY REPORT TO HIM?

10 A. YES.

11 Q. WHAT DO YOU LIKE BEST ABOUT YOUR JOB?

12 A. I LIKE BEST ABOUT MY JOB, I LIKE THAT I GET TO WORK  
13 WITH THE STUDENTS, JUST TO SEE THEM GROW WHEN THEY START AT  
14 MENLO, THEN WHEN THEY FINISH. IT'S REWARDING FOR ME. I DON'T  
15 THINK OF IT AS A JOB. I THINK OF IT AS I ENJOY COMING TO WORK  
16 EVERY DAY.

17 Q. OKAY. THAT'S GREAT.

18 AND I WANT TO FOCUS YOU NOW ON THE SPRING 2006  
19 SEMESTER.

20 A. OKAY.

21 Q. COULD YOU JUST TELL ME ABOUT WHEN DOES -- DID THE

22 SPRING 2006 SEMESTER START, LIKE WHAT WEEK OF WHAT MONTH?

23 A. JANUARY OF 2006. USUALLY, AT THAT TIME IT WAS THE  
24 SECOND WEEK. IT'S USUALLY RIGHT AFTER NEW YEAR'S; AS NEW YEAR'S  
25 FALLS, NEW YEAR'S DAY.

26 Q. WHEN APPROXIMATELY DID THE SEMESTER END?

871

1 A. MAY OF 2006. SO IT'S USUALLY THE SECOND WEEK OF MAY.

2 Q. OKAY.

3 AND WERE YOU WORKING THAT ENTIRE SEMESTER?

4 A. YES.

5 Q. AND DID YOU HAVE AN OFFICE ON CAMPUS THAT SEMESTER?

6 A. YES.

7 Q. AND WHERE WAS YOUR OFFICE LOCATED ON CAMPUS?

8 A. MY OFFICE WAS LOCATED IN FLORENCE MOORE, ROOM 306.

9 Q. OKAY.

10 WHAT KIND OF BUILDING -- WHAT DOES FLORENCE MOORE  
11 HOUSE IN IT?

12 A. IT HOUSES CLASSROOMS, FACULTY OFFICES. THERE'S TWO  
13 SCIENCE LABS AS WELL AND AN AUDITORIUM.

14 Q. OKAY.

15 AND DO YOU KNOW WHERE PROFESSOR BLOUGH'S OFFICE WAS  
16 LOCATED THAT SEMESTER?

17 A. YES.

18 Q. AND WHERE WAS THAT?

19 A. IT WAS UPSTAIRS IN THE AUDITORIUM. YOU HAD TO GO UP A

20 FLIGHT OF STAIRS, AND HER OFFICE WAS IN THE MIDDLE.

21 Q. AND WHAT BUILDING WAS HER OFFICE LOCATED IN?

22 A. FLORENCE MOORE.

23 Q. IS THAT THE SAME BUILDING WHERE YOUR OFFICE WAS?

24 A. YES, JUST -- IT'S A COURTYARD-SHAPED BUILDING.

25 Q. OKAY.

26 WOULD YOU RUN INTO PROFESSOR BLOUGH IN THE FLORENCE

872

1 MOORE BUILDING DURING THE SPRING 2006 SEMESTER?

2 A. YES.

3 Q. WAS THAT A REGULAR OCCURRENCE?

4 A. YES.

5 Q. AND COULD YOU DESCRIBE UNDER WHAT CIRCUMSTANCES YOU

6 WOULD RUN INTO PROFESSOR BLOUGH IN THE BUILDING?

7 A. IT WOULD BE IN THE MORNING OR AFTER SHE WOULD TEACH  
8 HER CLASSES, WOULD GO SAY HELLO. BECAUSE MY OFFICE WOULD -- SHE  
9 WOULD GO IN THERE TO CHECK HER MAIL OR MAKE COPIES. THE  
10 MAILROOM WAS IN THERE.

11 Q. SO WOULD SHE WALK BY YOUR OFFICE, IS THAT WHEN YOU'D  
12 SEE HER?

13 A. YOU HAD TO WALK BY MY OFFICE TO GET TO THE MAILROOM.

14 Q. SO WHERE IS THE MAILROOM LOCATED COMPARED TO YOUR  
15 OFFICE?

16 A. YOU WOULD OPEN THE -- IF IT WAS OPEN OR IT WAS SHUT,  
17 THEY GO THROUGH -- MY OFFICE WAS IN A HALLWAY.

18 Q. OKAY.

19 A. AND MY OFFICE DOOR, I HAD A DOOR BUT IT WAS ALWAYS  
20 OPEN. AND YOU HAD TO GO IN THERE TO PASS THROUGH THE HALLWAY TO  
21 GET TO THE MAILROOM --

22 Q. OKAY.

23 A. -- THE WORKSTATION.

24 Q. WAS THE MAILROOM AT THE END OF THE HALL AT THE OFFICE?

25 A. AT THE BEGINNING.

26 Q. AT THE BEGINNING OF THE HALL?

873

1 A. WHAT WAS THAT? I AM SORRY.

2 Q. NO, GO AHEAD.

3 A. THE MAILROOM?

4 Q. YEAH.

5 A. THE MAILROOM WAS -- MY OFFICE THEN THE MAILROOM.

6 Q. OKAY.

7 SO IF I UNDERSTAND YOU CORRECTLY, YOU WOULD ENTER THE  
8 BUILDING, AND THEN YOUR OFFICE WOULD BE WHERE WHEN YOU WALK INTO  
9 THE BUILDING?

10 A. ON THE LEFT-HAND SIDE.

11 Q. AND THEN YOU WOULD CONTINUE WALKING DOWN THE HALL?

12 A. YES.

13 Q. AND WHERE WOULD THE MAILROOM BE LOCATED?

14 A. JUST STRAIGHT DOWN THE HALL. YOU'D HAVE TO -- YOU'D  
15 RUN RIGHT INTO IT.

16 Q. OKAY.

17 AND ALL THE FACULTY WHO HAD OFFICES IN THE FLORENCE  
18 MOORE BUILDING, WOULD THEIR MAILBOXES HAVE BEEN IN THAT ROOM?

19 A. YES.

20 Q. AND THAT'S WHERE PROFESSOR BLOUGH'S MAILBOX WAS?

21 A. YES.

22 Q. SO DID SHE PASS BY YOUR OFFICE ON A REGULAR BASIS TO  
23 CHECK HER MAIL?

24 A. YES.

25 Q. AND I THINK YOU SAID THAT SHE'D STOP AND YOU GUYS  
26 WOULD CHAT SOMETIMES?

874

1 A. YES.

2 Q. WERE YOU ON FRIENDLY TERMS?

3 A. YES.

4 Q. OKAY.

5 HOW MANY TIMES A WEEK WOULD YOU ESTIMATE THAT YOU SAW  
6 HER WALKING BY YOUR OFFICE?

7 A. I WOULD SAY ANYWHERE BETWEEN FOUR TO SIX TIMES A WEEK.

8 Q. DURING THE SPRING 2006 SEMESTER, DID YOU SEE ANYTHING  
9 UNUSUAL DURING ANY OF THE TIMES THAT SHE PASSED BY YOUR OFFICE?

10 A. YES.

11 Q. AND WHAT WAS THAT?

12 MR. PETERS: OBJECTION, CALLS FOR HEARSAY.

13 THE COURT: OVERRULED.

14 MS. ADLER: Q. YOU CAN ANSWER.

15 A. I REMEMBER ONE TIME WHEN I WAS SITTING AT MY DESK JUST  
16 DOING MY WORK, AND THEN I DID SEE PROFESSOR BLOUGH COME IN AND  
17 SHE WAS STAGGERING DOWN THE HALLWAY, KIND OF LIKE HOLDING THE --  
18 HOLDING ONTO THE WALL, GOING DOWN. AND I REMEMBER JUST THINKING  
19 TO MYSELF, HOW DID SOMEONE GET TO WORK THAT WAY? SHE JUST  
20 DIDN'T LOOK WELL.

21 Q. WHEN YOU SAY "STAGGERING," COULD YOU DESCRIBE WHAT YOU  
22 MEAN BY THAT?

23 A. JUST WALKING, USING HER HAND AGAINST THE WALL.

24 Q. DID IT APPEAR THAT SHE WAS USING THE WALL FOR SUPPORT?

25 A. YES.

26 Q. OKAY. ALL RIGHT.

875

1 AND WHEN YOU SAY YOU WONDERED HOW SOMEONE COULD GET TO  
2 WORK IN THAT CONDITION, WHAT DID YOU MEAN BY THAT?

3 A. WELL, THEY HAD TO DRIVE TO WORK SO I JUST -- I WAS  
4 THINKING TO MYSELF, HOPEFULLY, THE PERSON WAS OKAY, NOT TO HARM  
5 ANYBODY.

6 Q. OKAY.

7 AND WHAT DID YOU THINK WHEN YOU SAW HER STAGGERING BY  
8 YOUR OFFICE?

9 MR. PETERS: IRRELEVANT, YOUR HONOR.

10 THE COURT: SUSTAINED.

11 MS. ADLER: Q. DID YOU TELL ANYONE?

12 A. NO, I DID NOT.

13 Q. DID YOU TELL YOUR BOSS, DEAN PRATT?

14 A. NO.

15 Q. AND WHY IS THAT?

16 A. IT WASN'T -- TO RESPECT SOMEONE'S PRIVACY. SHE DIDN'T  
17 REPORT TO ME; I DIDN'T REPORT TO HER. I DIDN'T WANT TO CROSS  
18 THAT LINE WITH SOMEBODY. IT JUST WASN'T -- I DIDN'T FEEL IT WAS  
19 MY PLACE TO SAY SOMETHING.

20 Q. DID YOU THINK IT WAS A PRIVATE MATTER?

21 A. YES.

22 Q. OKAY.

23 ALSO, FOCUSING ON THE SPRING 2006 SEMESTER, DID  
24 PROFESSOR BLOUGH EVER MENTION HER HUSBAND TO YOU?

25 A. YES.

26 Q. AND CAN YOU ESTIMATE HOW MANY TIMES SHE MENTIONED HER

876

1 HUSBAND TO YOU DURING THAT SEMESTER?

2 A. TWO.

3 Q. OKAY.

4 A. AT LEAST TWO TIMES.

5 Q. A COUPLE CONVERSATIONS?

6 A. YES.

7 Q. AND DO YOU RECALL WHAT IS IT THAT --

8 WELL, FIRST OF ALL, WHO INITIATED THE SUBJECT? WAS IT  
9 YOU OR PROFESSOR BLOUGH?

10 A. PROFESSOR BLOUGH DID. YOU ASK SOMEONE HOW -- SHE GAVE  
11 ME THE INFORMATION.

12 Q. AND DO YOU RECALL WHERE THESE CONVERSATIONS TOOK  
13 PLACE?

14 A. IT WAS OUTSIDE MY OFFICE.

15 Q. OKAY.

16 A. IN THE HALLWAY.

17 Q. ALL RIGHT.

18 AND DO YOU RECALL WHEN IN THE SEMESTER THEY OCCURRED?  
19 CAN YOU ESTIMATE?

20 A. LATE -- I'D SAY MARCH, APRIL.

21 Q. AND DO YOU REMEMBER WHAT IT IS THAT SHE TOLD YOU?

22 A. THAT HER HUSBAND WAS INVOLVED IN PROSTITUTION AND ALSO  
23 WITH DRUGS.

24 Q. AND HOW DID SHE SEEM WHEN SHE WOULD BE TALKING TO YOU  
25 ABOUT HER HUSBAND? COULD YOU DESCRIBE HER FACE?

26 A. SOMEONE THAT WAS UPSET, HURT, OUT OF IT. SOMEONE THAT

877

1 WAS -- I MEAN, IT WAS JUST, YOU COULD JUST SEE THAT THEY WERE  
2 NOT THEIR NORMAL SELF.

3 Q. AND DID YOU SAY OUT OF IT?

4 A. WELL, JUST SOMEONE THAT JUST WASN'T THEIR NORMAL SELF.

5 Q. OKAY.

6 A. AND JUST WAS HURT, WAS UPSET.

7 Q. CAN YOU DESCRIBE WHAT YOU MEAN WHEN YOU SAY SOMEONE



8 WHO WAS NOT THEIR NORMAL SELF?

9 A. I WANT TO SAY KIND OF SOMEONE THAT, YOU KNOW, TO GIVE  
10 THAT INFORMATION, TO TELL ME THAT INFORMATION, YOU COULD JUST  
11 TELL THAT THEY WERE UPSET ABOUT IT, HURT. THE EXPRESSION ON  
12 THEIR FACE WHEN THEY WERE --

13 Q. COULD YOU DESCRIBE SOME DETAILS ABOUT THE EXPRESSION  
14 ON HER FACE, LIKE HER EYES?

15 A. JUST THAT -- SHE WAS NOT CRYING, BUT JUST SOMEONE THAT  
16 YOU COULD SEE IT IN THEIR EYES THAT THEY WERE HURTING --

17 Q. OKAY.

18 A. -- AND UPSET BY THE SITUATION.

19 Q. AND WHAT WAS HER VOICE LIKE?

20 A. IT WAS RASPY.

21 Q. AND DID YOU SAY ANYTHING TO HER?

22 A. I PROBABLY -- I DID SAY, YOU KNOW, "I AM SORRY TO HEAR  
23 ABOUT THAT."

24 Q. OKAY.

25 AND WAS PROFESSOR BLOUGH SOMEONE THAT YOU WOULD  
26 CONFIDE PERSONAL THINGS ABOUT YOUR LIFE TO?

878

1 A. NO.

2 Q. WERE YOU SURPRISED THAT SHE TOLD YOU THOSE THINGS  
3 ABOUT HER HUSBAND?

4 A. YES.

5 Q. OKAY.

6 WAS ONE OF YOUR DUTIES AS COORDINATOR OF ACADEMIC  
7 ADVISING IN 2007 TO PREPARE COURSE OFFERINGS?

8 A. YES.

9 MS. ADLER: OKAY. EXHIBIT 51.

10 THE CLERK: (COMPLIES.)

11 MS. ADLER: MAY I APPROACH?

12 THE COURT: WHAT EXHIBIT NUMBER, PLEASE?

13 MS. ADLER: 51.

14 THE COURT: 51. THANK YOU.

15 MS. ADLER: I'VE JUST HANDED YOU EXHIBIT 51 THAT'S

16 BEEN ENTERED INTO EVIDENCE. AND IT'S A LETTER DATED

17 JULY 16, 2007, FROM THE COLLEGE TO PROFESSOR BLOUGH, LISTING

18 COURSE OFFERINGS, A CLASS SCHEDULE FOR HER FOR FALL 2007.

19 Q. DID YOU HAVE ANY INVOLVEMENT IN -- DID YOU DO ANY WORK  
20 FOR YOUR BOSS, DEAN PRATT, IN PUTTING THIS SCHEDULE TOGETHER?

21 A. YES.

22 Q. OKAY.

23 AND IF YOU LOOK AT THE LETTER, IN PARAGRAPH TWO IT

24 SAYS, "AS YOU CAN SEE, WE ARE INCLUDING YOUR REQUESTED

25 ACCOMMODATIONS IN THE TEACHING SCHEDULE TO HAVE TIME BETWEEN

26 CLASSES AND HAVE A DAY OFF IN BETWEEN CLASSES. AS TO CLASS SIZE

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1 AND ROOM SIZE, WE WILL TRY TO LIMIT STUDENTS TO 25 AND USE SMALL  
2 CLASSROOMS."

3 A. YES.

4 Q. ARE YOU FAMILIAR WITH THESE HELPFUL JOB CHANGES THAT  
5 WERE BEING OFFERED TO PROFESSOR BLOUGH THAT SEMESTER?

6 A. YES.

7 Q. AND DID YOU HAVE ANY MEETINGS WITH YOUR BOSS, DEAN  
8 PRATT, TO DISCUSS THESE, THE HELPFUL JOB CHANGES I JUST  
9 MENTIONED IN THE LETTER?

10 A. YES.

11 Q. AND DID DEAN PRATT DISCUSS THESE SCHEDULING NEEDS THAT  
12 PROFESSOR BLOUGH HAD WITH YOU DURING THOSE MEETINGS?

13 A. YES.

14 Q. CAN YOU ESTIMATE ABOUT HOW MANY TIMES YOU MET WITH  
15 DEAN PRATT REGARDING THESE ISSUES?

16 A. I WOULD SAY APPROXIMATELY FOUR TIMES.

17 Q. AND DO YOU REMEMBER WHEN IT WAS? CAN YOU GIVE US A  
18 TIMEFRAME OF WHEN IT WAS THAT YOU WERE HAVING THESE DISCUSSIONS  
19 WITH HIM?

20 A. WELL, THERE'S A PROCESS WE HAVE. WE HAVE TO GET THE  
21 FALL SCHEDULE OUT TO OUR STUDENTS, SO WE DID LIST DIVERSITY IN  
22 THE WORKPLACE, WOMEN IN BUSINESS. AND AT THAT POINT IT WAS  
23 LISTED AS STAFF. AND STAFF IS, WE ARE NOT SURE WHO'S GOING TO  
24 BE TEACHING THE CLASS. SO AFTER I WOULD -- WHEN I SPOKE TO DEAN  
25 PRATT REGARDING ALL THIS, IT WAS IN MAY AND JUNE.

26 Q. SO AM I CORRECT IN UNDERSTANDING THERE'S A CERTAIN

1 POINT IN THE SEMESTER WHERE THE COLLEGE LISTS WHAT CLASSES ARE

2 GOING TO BEING TAUGHT?

3 A. YES.

4 Q. BUT IS IT FAIR TO SAY THAT THE SPECIFIC -- WHAT

5 PROFESSOR WOULD ACTUALLY TEACH THE CLASSES IS NOT SOLELY DECIDED  
6 AT THAT TIME?

7 A. YES.

8 Q. OKAY. THAT WAS WHAT YOU MEANT BY SAYING THAT  
9 SOMETIMES THE COURSE OFFERING WILL SAY "STAFF"?

10 A. RIGHT.

11 Q. OKAY.

12 A. YES.

13 Q. WITH THE FACULTY MEMBER TO BE DETERMINED LATER?

14 A. YES.

15 Q. AND GOING BACK TO YOUR MEETINGS WITH DEAN PRATT, WHAT  
16 DID HE TELL YOU DURING THESE MEETINGS IN TERMS OF WHAT HE WANTED  
17 YOU TO DO TO PUT THE CLASS SCHEDULE TOGETHER?

18 A. FOR THE CLASS SCHEDULE HE WOULD COME INTO MY OFFICE  
19 AND WE WOULD DISCUSS WHAT COURSES. HE WOULD TELL ME THAT  
20 PROFESSOR BLOUGH IS COMING BACK FROM LEAVE OF ABSENCE AND THAT  
21 WE HAD TO GIVE HER A BREAK IN BETWEEN HER CLASSES.

22 Q. SO HE TOLD YOU THAT THE SCHEDULE NEEDED TO BE ARRANGED  
23 SUCH THAT SHE WOULD HAVE ADEQUATE BREAKS?

24 MR. PETERS: OBJECTION. HEARSAY, YOUR HONOR.

25 THE COURT: SUSTAINED.

26 MS. ADLER: OKAY.

1 Q. DO YOU RECALL ON HOW MANY OCCASIONS YOU DISCUSSED --  
2 FIRST OF ALL, DID DEAN PRATT EXPRESS CONCERN TO YOU  
3 ABOUT MAKING SURE THAT SHE GOT -- THAT HER SCHEDULING NEEDS WERE  
4 BEING MET?

5 MR. PETERS: HEARSAY.

6 THE COURT: I DON'T THINK IT'S BEING OFFERED FOR THE  
7 TRUTH. IT'S BEING OFFERED FOR IT BEING SAID, AND I WILL ADMIT  
8 IT FOR THAT PURPOSE.

9 THE WITNESS: YES, HE DID.

10 MS. ADLER: OKAY.

11 Q. AND WHAT WAS YOUR UNDERSTANDING OF WHY HE WAS  
12 CONCERNED ABOUT MEETING THESE NEEDS?

13 MR. PETERS: LACKS FOUNDATION. CALLS FOR SPECULATION.

14 THE COURT: WELL, IT DOES LACK FOUNDATION.

15 MS. ADLER: OKAY.

16 Q. WHY IS IT THAT YOU THINK HE WAS CONCERNED ABOUT HER  
17 SCHEDULING?

18 MR. PETERS: CALLS FOR SPECULATION.

19 THE COURT: SUSTAINED.

20 MS. ADLER: OKAY.

21 Q. DO YOU KNOW, IN PREPARING THE SCHEDULE, WAS THE  
22 SCHEDULE PREPARED FOR HER WITH BREAKS IN BETWEEN HER CLASSES?

23 A. YES, IT WAS.

24 Q. AND WHAT CLASSES WERE -- WHAT CLASSES DID SHE END UP  
25 BEING OFFERED IN THE FALL 2007?

26 A. IT WAS DIVERSITY IN THE WORKPLACE AND WOMEN IN

1 BUSINESS.

2 Q. AND YOU SCHEDULED HER CLASSES FOR FALL 2007 SO THAT  
3 SHE WOULD HAVE BREAKS IN BETWEEN CLASSES?

4 A. YES.

5 Q. AND ARE YOU ALSO AWARE THAT SHE REQUESTED SMALL  
6 CLASSROOMS?

7 A. NO, I WAS NOT. THE REASON FOR THAT IS, WE KNEW THAT  
8 DIVERSITY IN THE WORKPLACE AND WOMEN IN BUSINESS WAS TAUGHT IN  
9 THE BOARDROOM. THAT'S IN BRONNER HALL.

10 Q. OKAY.

11 WELL, FIRST OF ALL, WAS IT YOUR JOB TO ASSIGN SPECIFIC  
12 CLASSROOMS FOR CLASSES?

13 A. NO, THAT COMES OUT OF ACADEMIC AFFAIRS.

14 Q. OKAY. BUT YOU HAPPEN TO KNOW WHAT CLASSROOM SHE WOULD  
15 BE TEACHING THOSE TWO COURSES IN?

16 A. YES.

17 Q. AND YOU SAID THAT'S THE BOARDROOM?

18 A. YES.

19 Q. AND DO YOU HAPPEN TO KNOW HOW MANY STUDENTS THOSE --  
20 THAT CLASSROOM SEATS?

21 A. 15 TO 20 STUDENTS.

22 Q. OKAY.

23 WAS IT PART OF YOUR JOB TO DECIDE HOW MANY STUDENTS  
24 WERE IN THE PROFESSOR'S CLASS?

25 A. NO, BECAUSE THE SYSTEM -- THE SYSTEM THAT WE USE, IT'S  
26 SET AT A -- IT ALREADY HAS A MAXIMUM AND MINIMUM IN THERE, SO IT

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1 WAS SET, I BELIEVE, AT 15 --

2 Q. OKAY.

3 A. -- STUDENTS.

4 Q. SO YOU DIDN'T HAVE ANY INVOLVEMENT IN THAT?

5 A. NO, THAT'S ALL WE HAVE.

6 Q. AND HOW LONG HAVE YOU KNOWN DEAN PRATT?

7 A. FOR NINE -- SINCE MAY 1999.

8 Q. AND HOW WOULD YOU DESCRIBE HIM AS A BOSS?

9 A. FOR ME, HE'S BEEN VERY HELPFUL, THOUGHTFUL. I HAVE  
10 NEVER HAD ANY PROBLEMS. WHEN I GO TO HIM WITH ANY PROBLEMS OR  
11 CONCERNS, STUDENT CONCERNS, HE DEALS WITH IT AND HE'LL GET BACK  
12 TO ME WITH IT. SO HE'S NOT ONE I WOULD SAY -- HE'S JUST A  
13 PERSON THAT I CAN TRUST.

14 Q. OKAY.

15 AND HAVE YOU EVER HEARD HIM SAY ANYTHING NEGATIVE  
16 ABOUT PROFESSOR BLOUGH?

17 A. NO.

18 Q. HAVE YOU EVER HEARD HIM MAKE ANY DEROGATORY REMARKS  
19 ABOUT ANY OF PROFESSOR BLOUGH'S MEDICAL CONDITIONS?

20 A. NO.

21 Q. AND HAS HE EVER DISCLOSED TO YOU ANY PRIVATE  
22 INFORMATION ABOUT PROFESSOR BLOUGH IN ANY OF HER MEDICAL ISSUES?

23 A. NO.

24 Q. OKAY.

25 IN SPRING OF 2006, DID YOU MEET WITH DEAN PRATT TO  
26 TALK ABOUT ANYTHING REGARDING ANY OF PROFESSOR BLOUGH'S

884

1 STUDENTS?

2 A. YES, WE DID.

3 Q. AND ON HOW MANY OCCASIONS?

4 A. THAT WAS, I WOULD SAY, APPROXIMATELY FOUR -- AT LEAST  
5 FOUR TIMES.

6 Q. AND DO YOU RECALL ABOUT THE TIMEFRAME THAT THIS  
7 CONVERSATION TOOK PLACE IN THE SEMESTER?

8 A. YES. MARCH AND APRIL.

9 Q. AND DO YOU RECALL, WAS THERE A TYPICAL PLACE THAT  
10 THOSE CONVERSATIONS WOULD TAKE PLACE?

11 A. IT WOULD USUALLY BE IN THE AFTERNOON IN MY OFFICE. HE  
12 WOULD COME IN -- HE WOULD COME IN AND CHECK WITH ME, USUALLY IN  
13 THE AFTERNOONS --

14 Q. OKAY.

15 A. -- EACH DAY. SO I WOULD JUST MAKE MY NOTES, AND WE  
16 WOULD SIT DOWN AND DISCUSS HOW THE DAY WAS.

17 Q. OKAY.

18 AND WHAT DID YOU TELL DEAN PRATT DURING THOSE  
19 MEETINGS?

20 MR. PETERS: OBJECTION, HEARSAY.



21 THE COURT: OVERRULED.

22 THE WITNESS: I WOULD INFORM HIM THAT THERE WAS  
23 COMPLAINTS REGARDING PROFESSOR BLOUGH. AND I WOULD REPLAY THE  
24 MESSAGE FROM THE STUDENT TO HIM.

25 MS. ADLER: OKAY.

26 Q. AND DID YOU TELL HIM WHAT THE COMPLAINTS WERE?

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1 A. YES, I DID.

2 Q. AND WHAT DID YOU TELL HIM?

3 MR. PETERS: OBJECTION. LACKS FOUNDATION.

4 THE COURT: OVERRULED.

5 LADIES AND GENTLEMEN, THE COMMENTS THAT MAY OR MAY NOT  
6 HAVE BEEN MADE BY THE STUDENTS, AGAIN, ARE NOT BEING OFFERED FOR  
7 THE TRUTH OF IT, BUT JUST THAT THE STATEMENTS WERE MADE. AND SO  
8 I WILL ALLOW IT AS A NON-HEARSAY PURPOSE.

9 I THINK I INTERRUPTED THE FLOW. YOU MAY ASK THE  
10 QUESTION AGAIN. I'M SORRY.

11 MS. ADLER: SURE. SURE.

12 Q. AND WHAT DID YOU TELL DEAN PRATT ABOUT THE STUDENT  
13 COMPLAINTS?

14 A. THE STUDENTS' COMPLAINTS THAT I RECEIVED WERE THAT SHE  
15 WASN'T COMING TO CLASS OR SOME -- SHE WASN'T COMING TO CLASS.  
16 THAT WAS THE MAIN CONCERN OF STUDENT COMPLAINTS, WASN'T SHOWING  
17 FOR CLASS. ALSO, HER MANNERISMS IN THE CLASS, THEY WERE UPSET  
18 ABOUT AS WELL.

19 Q. OKAY.

20 AND WHAT WERE THEY SAYING ABOUT HER ATTENDANCE?

21 A. SHE WAS NOT THERE MUCH. THEY WERE MISSING A LOT OF  
22 CLASS TIME AND THEY WERE UPSET ABOUT THAT. AND THE REASON WHY  
23 THEY WERE UPSET ABOUT IT WAS BECAUSE -- OFTENTIMES STUDENTS  
24 DON'T MIND IF THERE'S ONE OR TWO CLASSES THAT ARE MISSED  
25 THROUGHOUT THE SEMESTER, BUT WHEN IT KEEPS HAPPENING THEN THEY  
26 ARE UPSET BECAUSE THEY'RE SAYING, "WHAT ARE WE PAYING MENLO FOR

886

1 WHEN THE CLASSES KEEP GETTING CANCELED?"

2 Q. AND CAN YOU ESTIMATE HOW MANY DIFFERENT STUDENTS CAME  
3 TO YOU WITH COMPLAINTS ABOUT PROFESSOR BLOUGH'S ATTENDANCE THAT  
4 SEMESTER, SPRING 2006?

5 A. I WOULD SAY BETWEEN FOUR TO SIX STUDENTS.

6 Q. AND THESE ARE FOUR TO SIX SEPARATE STUDENTS?

7 A. YES.

8 Q. AND DID SOME OF THEM -- WOULD SOME OF THESE FOUR TO  
9 SIX STUDENTS COME IN WITH THE SAME COMPLAINTS MORE THAN ONCE OR  
10 WAS IT JUST ONCE?

11 A. IT WAS MORE THAN ONCE. THEY WOULD COME IN AND EXPRESS  
12 THEIR CONCERNS IN THE CLASSROOM.

13 Q. OKAY.

14 AND IN YOUR EXPERIENCE, HAVE STUDENTS COME TO YOU AND  
15 COMPLAINED ABOUT OTHER PROFESSORS?

16 A. YES.

17 Q. WAS THIS SITUATION DIFFERENT?

18 A. NO. BECAUSE I WOULD ALWAYS JUST DO THE SAME THING,  
19 GET THEIR NAMES, INFORMATION, PASS IT ALONG TO DEAN PRATT OR  
20 WHOEVER MY PREVIOUS SUPERVISOR WAS AT THE TIME.

21 Q. IN YOUR NINE YEARS IN ACADEMIC ADVISING, HAVE YOU EVER  
22 HEARD OF THAT NUMBER OF COMPLAINTS IN A SEMESTER ABOUT A  
23 PROFESSOR'S ATTENDANCE?

24 A. NO, I HAVE NOT.

25 Q. DID YOU THINK THAT THIS WAS UNUSUAL, THE NUMBER OF  
26 COMPLAINTS THAT YOU RECEIVED ON THAT ISSUE?

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1 A. YES.

2 Q. DID YOU BELIEVE THE STUDENTS WHEN THEY CAME TO YOU?

3 MR. PETERS: OBJECTION. RELEVANCE.

4 THE COURT: SUSTAINED.

5 MS. ADLER: OKAY.

6 Q. AND DID YOU TELL DEAN PRATT THAT THE STUDENTS WERE  
7 COMPLAINING ABOUT ATTENDANCE ISSUES?

8 A. YES, I DID.

9 Q. AND DID HE SAY ANYTHING TO YOU IN RESPONSE?

10 MR. PETERS: HEARSAY.

11 THE COURT: SUSTAINED.

12 MS. ADLER: Q. DURING THE SPRING 2006 SEMESTER, DID  
13 PROFESSOR BLOUGH EVER TELL YOU THAT SHE MISSED CLASS?

14 A. YES, SHE DID.

15 Q. AND WHAT DID SHE TELL YOU?

16 A. ONE TIME SHE TOLD ME THAT SHE OVERSLEPT, SO SHE MISSED  
17 THE CLASS TIME FOR THE STUDENTS.

18 Q. DO YOU REMEMBER WHERE IT WAS SHE TOLD YOU THAT?

19 A. IN THE HALLWAY, MY OFFICE.

20 Q. OKAY.

21 DO YOU REMEMBER WHEN IT WAS IN THE SEMESTER?

22 A. IT HAD TO HAVE BEEN EITHER, AGAIN, MARCH OR APRIL.

23 Q. AND DO YOU REMEMBER WHAT REASON SHE GAVE?

24 A. THAT SHE WASN'T FEELING WELL, AND SHE WAS ON  
25 MEDICATION AS WELL. ALSO, I REMEMBER, AND THIS IS THE FIRST  
26 TIME I EVER HEARD IT, WHERE SOMEONE TAKES AN ORAL FORM OF CHEMO,

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1 CHEMOTHERAPY. THAT WAS THE FIRST TIME I EVER HEARD ANYBODY  
2 TAKING IT, AND I KNOW SHE MENTIONED THAT TO ME.

3 Q. AND DO YOU KNOW WHAT TIME THAT CLASS STARTED, THE ONE  
4 THAT SHE WASN'T THERE FOR?

5 A. IT BEGAN ON -- TUESDAY/THURSDAY, 11:10, AND IT ENDS AT  
6 12:30 P.M.

7 Q. IT STARTED AT AROUND --

8 A. 11:10.

9 Q. 11:10, OKAY.

10 DURING THE SPRING 2006 SEMESTER, DID PROFESSOR BLOUGH  
11 EVER TELL YOU THAT SHE ENDED HER CLASSES EARLY?

12 A. YES, SHE DID.

13 Q. AND WHAT REASON DID SHE GIVE?

14 A. SHE TOLD ME THE STUDENTS WEREN'T DOING THE READING IN  
15 THE CLASS, SO SHE WOULD DISMISS THEM.

16 Q. OKAY.

17 DID YOU EVER HEAR -- DID ANY STUDENTS EVER MENTION  
18 THAT TO YOU?

19 A. YES, THEY DID.

20 Q. OKAY.

21 A. AND THEY -- SORRY.

22 Q. GO AHEAD.

23 A. THEY DIDN'T FEEL THAT WAS RIGHT BECAUSE THEY WERE --  
24 THEY THOUGHT THAT SHE SHOULD --

25 MR. PETERS: OBJECTION. RELEVANCE.

26 THE COURT: OVERRULED.

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1 MS. ADLER: Q. GO AHEAD.

2 A. THE STUDENTS CAME IN TO COMPLAIN WHEN THE CLASSES --  
3 SHE WOULD DISMISS THEM. THEY FELT IT WAS UNFAIR BECAUSE SHE  
4 SHOULD BE TRYING TO HELP THEM, ASKING WHY THEY'RE NOT READING.  
5 AND TO JUST SAY, "OKAY, YOU AREN'T DOING THE READING, THAT'S  
6 IT." THEY FELT THEY WEREN'T GETTING WHAT THEY WERE IN FOR FOR  
7 THE SEMESTER. THEY SHOULDN'T HAVE THEM SITTING THERE READING  
8 THE MATERIALS FOR IT.

9 Q. DID THEY SEEM UPSET?

10 A. YES, THEY DID.

11 Q. OKAY.

12 ARE PROFESSORS OF THE COLLEGE ASSIGNED  
13 RESPONSIBILITIES FOR ADVISING CERTAIN STUDENTS?

14 A. YES, THEY ARE.

15 THE COURT: YOU KNOW WHAT, IF WE'RE CHANGING AREAS, I  
16 THINK WE'RE GOING TO HAVE TO END TODAY. I'M SORRY.

17 TOMORROW WE'RE GOING TO START AT 10:00 O'CLOCK, SO  
18 I'LL ASK THE JURORS IF YOU WOULD -- LET ME CHECK THE SCHEDULE.  
19 IT'S 10:00 O'CLOCK TOMORROW. I DON'T WANT TO GET THAT WRONG.  
20 HOPEFULLY, THE TRAFFIC WON'T BE AS FEROCIOUS TOMORROW, BUT ONE  
21 NEVER KNOWS.

22 LADIES AND GENTLEMEN, I'M GOING TO HAVE YOU LEAVE YOUR  
23 NOTEBOOKS AND YOUR BADGES ON YOUR CHAIRS. AGAIN, LET ME REMIND  
24 YOU, YOU ARE NOT TO FORM OR EXPRESS ANY OPINIONS IN THE CASE OR  
25 DO ANY RESEARCH OR INVESTIGATION. I WILL SEE YOU IN THE  
26 MORNING. WE WILL HAVE ANOTHER FULL DAY.

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1 (WHEREUPON, THE JURORS EXIT.)

2 THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD.  
3 WHEN THE PLAINTIFF RESTED, I MADE A PLACE SAVER FOR THE DEFENSE.  
4 I DON'T KNOW WHETHER YOU ARE PREPARED TO MAKE ANY MOTIONS AT  
5 THIS TIME. I REALLY JUST WANT TO KNOW WHERE YOU ARE. WE'RE NOT  
6 GOING TO ARGUE ANY MOTIONS TODAY.

7 MR. VARTAIN: THAT'S RIGHT. ALL RIGHT, YOUR HONOR. I  
8 AM PREPARED TO MAKE AN ORAL MOTION. WHEN CAN I DO THAT?

9 THE COURT: I THOUGHT WE'D DO IT FIRST THING IN THE  
10 MORNING.

11 MR. VARTAIN: YES.

12 THE COURT: I JUST WANTED TO KNOW WHETHER I SHOULD  
13 HAVE YOU COME IN BEFORE THE JURY. PROBABLY SHOULD HAVE CHECKED  
14 THAT BEFORE THEY ARRIVED, BUT PRESUMABLY THAT WILL BE FAIRLY  
15 QUICK.

16 MR. VARTAIN: YES.

17 THE COURT: SO LET'S BE PREPARED AT 10:00 O'CLOCK TO  
18 DO THAT, SO WE CAN TAKE CARE OF THE MOTION BEFORE WE GET TOO  
19 MUCH OF YOUR CASE UNDERWAY.

20 MR. VARTAIN: YOU WOULD LIKE US AT 10:00 SHARP?

21 THE COURT: YOU KNOW, YES, I WOULD. AND I AM NOT SURE  
22 THAT I WILL BE READY BECAUSE THOSE MORNING CALENDARS ARE PRETTY  
23 BIG, BUT IF YOU DON'T MIND WE WILL, AS SOON AS WE CAN START, WE  
24 WILL AT 10:00.

25 MR. VARTAIN: OKAY. THANK YOU.

26 THE COURT: ALL RIGHT.

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1 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

2 MR. PETERS: THANK YOU, YOUR HONOR.

3 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

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1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2                    IN AND FOR THE COUNTY OF SAN MATEO  
3   DEPARTMENT NO. 3            HON. BETH LABSON FREEMAN, JUDGE  
4   MARCINE BLOUGH,    )



5 )  
PLAINTIFF, )  
6 )  
VS. )CASE NO. CIV 465027  
7 )REPORTER'S CERTIFICATE  
MENLO COLLEGE, ET AL.,)  
8 )  
DEFENDANTS. )  
9 \_\_\_\_\_)

10

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STATE OF CALIFORNIA )  
12 ) SS  
COUNTY OF SAN MATEO )

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I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE

16

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,

17

DO HEREBY CERTIFY THAT THE FOREGOING PAGES 681 THROUGH 893,

18

INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE

19

PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

20

21

DATED: OCTOBER 3, 2011

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23

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25

\_\_\_\_\_  
CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER

26



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2

WITNESSES FOR THE PLAINTIFF: PAGE

3

(NONE WERE CALLED AT THIS TIME.)

4

5

6

7

8 WITNESSES FOR THE DEFENSE: PAGE

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25 CROSS-EXAMINATION BY MR. LEBOWITZ

1110

26

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1

I N D E X

2

PAGE

EXHIBITS FOR THE PLAINTIFF: IDENT. EVID.

3

65 PHONE RECORD CALL FROM MARCINE BLOUGH

4

TO DR. MISSETT'S OFFICE 7/8/06 --- ---

5

66 PHONE RECORD CALL FROM MARCINE BLOUGH

TO DR. MISSETT'S OFFICE 7/14/06 --- ---

6

(PLAINTIFF'S EXHIBITS NOS. 37, 43 AND 50

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WERE ADMITTED INTO EVIDENCE BY STIPULATION

BUT WERE NOT IDENTIFIED ON THE RECORD.)

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11

12

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PAGE

16 EXHIBITS FOR THE DEFENSE: IDENT. EVID.

17

PP CURRICULUM VITAE FOR DR. REYNOLDS 1034 ---

18

UU 8 1/2 COLOR PHOTO OF MARCINE BLOUGH 1140 1140

19

(DEFENSE EXHIBITS A, B, C, D, E-1, F, G,

20

H-1, H-2, K, S, FF, AND JJ WERE ADMITTED

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INTO EVIDENCE BY STIPULATION BUT WERE NOT

IDENTIFIED ON THE RECORD.)

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1                   P R O C E E D I N G S  
2    DECEMBER 11, 2008 A.M.            REDWOOD CITY, CALIFORNIA  
3            THE COURT: GOOD MORNING. WE'RE ON THE RECORD IN  
4    BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT.  
5    WE'RE OUTSIDE THE PRESENCE OF THE JURY.  
6            MR. VARTAIN, IS THERE A DEFENSE MOTION AT THE CLOSE OF  
7    THE PLAINTIFF'S CASE?  
8            MR. VARTAIN: YES, THERE IS, YOUR HONOR. THERE'S A  
9    MOTION FOR NONSUIT ON ALL AND/OR ANY OF THE CAUSES OF ACTION  
10    THAT REMAIN IN THE THIRD AMENDED COMPLAINT, AND ON THE PRAYER  
11    FOR PUNITIVE DAMAGES AS WELL. THE SPECIFIC CAUSES OF ACTION ON  
12    WHICH THE MOTION FOR NONSUIT IS BROUGHT AND PRIOR FOR RELIEF  
13    REQUEST IS BROUGHT IS THE FIRST CAUSE OF ACTION FOR UNLAWFUL  
14    MEDICAL EXAM.  
15            AND THE SECOND, FIFTH AND EIGHTH CAUSES OF ACTION FOR  
16    WRONGFUL DISCHARGE FROM EMPLOYMENT, I SORT OF LUMPED THEM  
17    TOGETHER BECAUSE THAT'S THE WAY WE HANDLED IT. AND THEN THE  
18    MOTION FOR NONSUIT IS BROUGHT ON THE PRAYER FOR PUNITIVE  
19    DAMAGES, WHICH IS SET FORTH AT PAGE 23, LINE 5 OF THE THIRD

20 AMENDED COMPLAINT.

21 THE ISSUES UPON WHICH THE MOTION FOR NONSUIT IS  
22 BROUGHT ARE AS FOLLOWS. I'M GOING TO TAKE THE WRONGFUL  
23 DISCHARGE CAUSES OF ACTION FIRST, BECAUSE THERE'S THREE OF  
24 THOSE. AND THE ISSUES THAT I'M STATING THE MOTION AS TO THOSE  
25 CAUSES OF ACTION ARE ISSUES COMMON TO THOSE THREE CAUSES OF  
26 ACTION. AND IN THAT REGARD, YOUR HONOR, TWO OF THE THREE ARE

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1 FEHA CAUSES OF ACTION, AND THE THIRD IS THE COMMON LAW WRONGFUL  
2 DISCHARGE AND VIOLATION OF PUBLIC POLICY.

3 IT IS QUITE WELL-ESTABLISHED IN THE COURT BY THE  
4 SUPREME COURT THAT THE WRONGFUL DISCHARGE AND VIOLATION OF  
5 PUBLIC POLICY, AS FAR AS SUBSTANTIVE ELEMENTS OF THE CLAIM AND  
6 OF THE DEFENSES IS IDENTICAL TO THE FEHA. THERE'S PROCEDURAL  
7 VARIATIONS AND MAYBE EVEN SOME WOULD ARGUE THERE ARE REMEDY  
8 VARIATIONS, BUT THE CLAIMS AND DEFENSES ARE IDENTICAL.

9 SO THE ISSUES UPON WHICH THE MOTION FOR NONSUIT IS  
10 BROUGHT AS TO THE THREE WRONGFUL DISCHARGE CAUSES OF ACTION ARE  
11 AS FOLLOWS:

12 FIRST, THAT THE EVIDENCE EDUCED BY THE PLAINTIFF DOES  
13 NOT SHOW THAT THE PLAINTIFF IS ACTUALLY DISCHARGED FROM THE  
14 EMPLOYMENT. IT ONLY SHOWS THAT AT ONE POINT THERE WAS AN  
15 INTENTION OR PROSPECT OF DISCHARGE HAPPENING, BUT THAT SHE WAS  
16 ACTUALLY NOT EVER SEPARATED FROM EMPLOYMENT. THERE WAS NO  
17 SEVERANCE OF THE EMPLOYMENT RELATIONSHIP. THE SECOND ISSUE ON

18 WHICH THE MOTION IS BROUGHT, APART FROM THE LACK OF DISCHARGE,  
19 IS THE FACT THAT THE EVIDENCE DOESN'T SHOW THAT, EVEN IF THERE  
20 WAS A DISCHARGE THAT IT WAS WRONGFUL WITHIN THE MEANING OF FEHA  
21 FOR THE COMMON LAW.

22 AND ON THE NON-WRONGFULNESS -- FOR THE LACK OF  
23 EVIDENCE OF WRONGFULNESS, I SPECIFICALLY POINT TO THAT THE  
24 PLAINTIFF HAS FAILED, WHOLLY FAILED TO CONTROVERT -- WITHDRAW  
25 THE WORD "CONTROVERT" -- TO SUSTAIN HER BURDEN UNDER GREEN V.  
26 STATE OF CALIFORNIA. WHICH IS HER BURDEN THROUGHOUT THE CASE,

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1 TO SHOW THAT SHE WAS AN EMPLOYEE WHO WAS ABLE TO PERFORM HER  
2 ESSENTIAL DUTIES WITH OR WITHOUT REASONABLE ACCOMMODATIONS AS OF  
3 THE TIME THAT THE ALLEGED DISCHARGE HAPPENED.

4 AND I'LL COME BACK TO WHAT -- WHEN YOUR HONOR WANTS ME  
5 TO, I'LL COME BACK TO WHAT THE EVIDENCE SHOWS AND DOESN'T SHOW  
6 ON THAT POINT.

7 SO THE FIRST ISSUE IS NO DISCHARGE; THE SECOND ISSUE  
8 IS THE PLAINTIFF HAS NOT PRODUCED ADMISSIBLE EVIDENCE ON THE  
9 ISSUE OF ABILITY TO PERFORM, WHICH IS HER BURDEN.

10 THE COURT: MAY I INTERRUPT FOR JUST A SECOND? I BEG  
11 YOUR PARDON.

12 WOULD YOU LET THE JURY KNOW TO COME BACK AT 10:30. I  
13 THINK THAT'S REASONABLE.

14 I'M SORRY TO INTERRUPT. I DIDN'T WANT TO BE LOOKING  
15 AT THE CLOCK WHILE WE WERE TALKING.

16 GO AHEAD.

17 MR. VARTAIN: ON THE MEDICAL EXAM CAUSE OF ACTION,  
18 WHICH IS THE FIRST CAUSE OF ACTION, YOUR HONOR, THE EVIDENCE  
19 EDUCED BY THE PLAINTIFF SHOWS THAT THERE WAS IN FACT -- SHOWS IN  
20 FACT THAT THE JOB, THE MEDICAL AND PSYCHOLOGICAL EVALUATION WAS  
21 JOB-RELATED AND WAS CONSISTENT WITH THE COLLEGE'S NEEDS. AND I  
22 UNDERSTAND, YOUR HONOR, THAT FOR A MOTION FOR NONSUIT YOU ARE  
23 TO -- YOUR STANDARD IS ADMISSIBLE EVIDENCE THAT COULD REASONABLY  
24 BE CONSTRUED BY YOU, AND YOUR JOB IS NOT TO RENDER CREDIBILITY  
25 DETERMINATIONS.

26 I ALSO DID LOOK AT THE COURT'S USE OF 776 EVIDENCE,

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1 AND I DO KNOW THAT YOU ARE TO CONSTRUE THAT EVIDENCE, EVEN  
2 THOUGH IT'S EDUCED BY THE PLAINTIFF YOU DO NOT HAVE TO TAKE  
3 EMPLOYER'S EVIDENCE AGAINST THE PLAINTIFF. AND I HAVE  
4 CONSIDERED THAT IN MY MOTION AS BEING.

5 AND SO WHAT YOU WILL HEAR FROM ME IS I'M GOING TO RELY  
6 ON THE PLAINTIFF'S EVIDENCE, THE PLAINTIFF'S OWN NON-776  
7 WITNESSES, AND I'M EVEN GOING TO ALLOW THE -- IN MY ARGUMENT FOR  
8 THAT THE PLAINTIFF COULD USE THE 776 EVIDENCE IN SUPPORT OF ITS  
9 OPPOSITION TO THIS MOTION, BUT I CAN'T USE IT IN SUPPORT OF MY  
10 MOTION.

11 THE COURT: ON THAT ISSUE, IT'S YOUR PREMISE THAT THE  
12 PLAINTIFF BEARS THE BURDEN OF DISPROVING THAT THE COLLEGE HAD  
13 MEDICAL -- HAD GOOD CAUSE OR REASON RELATED TO THE COLLEGE'S



14 NEED TO CONDUCT IT? IT SEEMED TO ME, ALTHOUGH I DIDN'T READ  
15 CASES ON THIS PRECISE ISSUE, THAT THE PLAINTIFF'S PRIMA FACIE  
16 CASE WAS MERELY THAT THERE WAS A MEDICAL EXAM.

17 MR. LEBOWITZ: EXACTLY.

18 THE COURT: AND THEN THE BURDEN SHIFTS TO THE DEFENSE.  
19 DO YOU DISAGREE THAT?

20 MR. VARTAIN: I DO DISAGREE, BUT I DO THINK FOR  
21 PURPOSES OF NONSUIT MOTION YOU'RE NOT GOING TO ACCEPT MY  
22 DISAGREEMENT, AND I STILL THINK THE MOTION --

23 THE COURT: NO, PLEASE -- BELIEVE ME, IT'S NOT THAT  
24 I'M DECIDING. I'M REALLY ASKING, BECAUSE I THINK IT MAY MAKE A  
25 DIFFERENCE. IT SEEMS IT COULD BE EITHER WAY. IT COULD BE A  
26 PRIMA FACIE CASE BEING JUST THAT THERE WAS A MEDICAL EXAM.

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1 BECAUSE OF THE WAY THE STATUTE'S WRITTEN, AND IF IT'S IN YOUR  
2 TRIAL BRIEF THIS IS A FINE POINT I DID NOT RESEARCH.

3 MR. VARTAIN: I GUESS THE RESOLUTION OF THAT ISSUE, I  
4 WOULD SUGGEST, NEED NOT HAPPEN ON THIS MOTION BECAUSE I BELIEVE  
5 THAT THE PLAINTIFF'S EVIDENCE SHOWS THAT THE EMPLOYER HAS SHOWN  
6 THAT THE EXAM IS JOB-RELATED AND CONSISTENT WITH BUSINESS NEEDS.  
7 IN OTHER WORDS, I DON'T THINK THE SHOWING HAS TO BE IN COURT --  
8 IN THE EMPLOYER'S CASE. IF THE PLAINTIFF'S EVIDENCE CONSTRUED  
9 IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF IS THAT THE  
10 EMPLOYER HAD JOB-RELATED AND A BUSINESS COLLEGE REASON --

11 THE COURT: OKAY. DID YOU PREPARE JURY INSTRUCTIONS

12 ON THIS CAUSE OF ACTION YET?

13 MR. VARTAIN: I DID AND I HAVE IT HERE.

14 THE COURT: AND THERE'S ONLY SO MUCH PAPER I CAN HAVE  
15 AT THE BENCH AT ONE TIME. IN YOUR PROPOSED JURY INSTRUCTION --  
16 AND I DON'T BELIEVE THERE ARE FORM INSTRUCTIONS ON THIS CAUSE OF  
17 ACTION.

18 MR. VARTAIN: THERE ARE NOT, YOUR HONOR.

19 THE COURT: DID YOU PROPOSE IN YOUR INSTRUCTIONS THAT  
20 THE BURDEN OF PROOF WAS ON THE EMPLOYER TO PROVE A BUSINESS  
21 NEED?

22 MR. VARTAIN: I DID NOT BUT, YOU KNOW, I DID RESOLVE  
23 THE ISSUE, AND IF I MAY LOOK AT IT. I THOUGHT ABOUT IT --

24 THE COURT: YEAH.

25 MR. VARTAIN: -- AND I TRIED TO RESOLVE IT IN THE WAY  
26 THAT WOULD BE CONSISTENT WITH THE FACT THAT THERE'S NO SPECIFIC

900

1 FORM INSTRUCTIONS. MAY I TAKE A MOMENT?

2 THE COURT: PLEASE DO.

3 MR. VARTAIN: I JUST FORGET HOW I RESOLVED THAT.

4 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

5 MR. VARTAIN: HERE'S HOW I DID IT, YOUR HONOR. MAY I  
6 READ IT?

7 THE COURT: PLEASE.

8 MR. VARTAIN: "MS. BLOUGH CLAIMS THAT THE COLLEGE  
9 WRONGFULLY REQUIRED A MEDICAL AND PSYCHOLOGICAL EVALUATION OF

10 HER AND THAT SHE WAS HARMED BY THE COLLEGE'S DOING SO. THE  
11 COLLEGE ASSERTS THAT IT DID NOT ACT WRONGFULLY BECAUSE THE  
12 EVALUATION WAS JOB-RELATED AND WAS CONSISTENT WITH THE NEEDS OF  
13 THE COLLEGE." THAT'S SORT OF AN INTRODUCTION.

14 "TO ESTABLISH THIS CLAIM MS. BLOUGH MUST PROVE ALL OF  
15 THE FOLLOWING: A, THAT THE MEDICAL AND PSYCHOLOGICAL EVALUATION  
16 WAS REQUIRED BY THE COLLEGE; B, THAT THE COLLEGE HAS NOT SHOWN  
17 THAT THE MEDICAL AND PSYCHOLOGICAL EVALUATION WAS JOB-RELATED  
18 AND CONSISTENT WITH" --

19 THE COURT: SO DID YOU ACKNOWLEDGE THAT THE BURDEN OF  
20 PROOF IS ON THE COLLEGE?

21 MR. VARTAIN: YOU KNOW, NOT TO PUT IT IN YOUR WORDS.  
22 IT'S SUCH A FINE -- I THINK THE BURDEN OF PROOF IS ON THE  
23 PLAINTIFF TO PROVE THAT THE COLLEGE HAS NOT SHOWN THAT IT HAD A  
24 JOB-RELATED AND NEED CONSISTENCY. IN OTHER WORDS, I  
25 DO BELIEVE --

26 THE COURT: AND I'M NOT EVEN SURE ONE COULD PROVE THAT

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1 NEGATIVE. THAT'S REALLY THE -- AND THERE ARE SOME THINGS ABOUT  
2 THAT JURY INSTRUCTION THAT WE'LL BE ABLE TO TALK ABOUT WHEN WE  
3 HAVE OUR CONFERENCE, BUT IT APPEARS TO ME THAT YOU HAVE AGREED  
4 THAT THE PLAINTIFF MUST PROVE THE PRIMA FACIE CASE AND THEN THE  
5 BURDEN SHIFTS TO THE DEFENSE, TO THE EMPLOYER TO SHOW THAT THERE  
6 WAS A LEGITIMATE REASON.

7 MR. VARTAIN: ON THE MEDICAL EVALUATION.

8 THE COURT: ON THE MEDICAL EVALUATION ONLY. AND, OF  
9 COURSE, IN EMPLOYMENT LAW WE LEARNED ABOUT SHIFTING THE BURDEN  
10 SINCE MCDONALD, DOUGLAS. AND NOT THAT ANYBODY'S EVER UNDERSTOOD  
11 THEM -- AT LEAST NOT FROM WHERE I SIT. I'M SURE YOU ALL HAVE.  
12 BUT I'M VERY ATTUNED TO THIS ISSUE OF SHIFTING BURDENS IN  
13 EMPLOYMENT CASES. I'M GOING TO GO WITH YOUR JURY INSTRUCTIONS  
14 AS YOUR VIEWPOINT. I DIDN'T SAY IT'S WHAT I'LL APPROVE LATER SO  
15 WE'RE NOT ARGUING THE JURY INSTRUCTIONS.

16 BUT IF THAT IS THE WAY WE'RE GOING TO LOOK AT THIS  
17 ISSUE, I WOULD BE INCLINED TO REQUIRE YOU TO PUT ON THE  
18 EVIDENCE. BECAUSE I DON'T ACTUALLY KNOW WHY THE EXAM WAS  
19 REQUIRED -- I DON'T KNOW WHETHER IT WAS REQUIRED. THAT'S A JURY  
20 ISSUE. YOU'RE NOT ASKING ME ON THIS MOTION TO FIND THAT THERE'S  
21 NO EVIDENCE THAT IT WAS REQUIRED. SO SKIPPING OVER THAT ISSUE  
22 OF WHETHER OR NOT IT WAS REQUIRED AS AN ESSENTIAL ELEMENT, IF  
23 THE BURDEN SHIFTS THERE COULD BE NO EVIDENCE ON THE REASONS.  
24 YOU'RE SAYING THAT THE EVIDENCE PLAINTIFF HAS GIVEN US IS THE  
25 EVIDENCE OF BUSINESS NECESSITY.

26 MR. VARTAIN: WELL, THE PLAINTIFF PUT INTO EVIDENCE

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1 AND EXAMINED THE PRESIDENT EMERITUS ON HIS LETTER THAT STATED  
2 THE REASONS WHY HE REQUIRED THE -- HE SENT THE LETTER TO THE --

3 THE COURT: THE MAY 8TH LETTER?

4 MR. VARTAIN: THE MAY 8TH LETTER. AND HE AFFIRMED

5 THAT THAT WAS WHY HE REQUIRED OR -- AND I DO THINK, TO BE FAIR,

6 MR. LEBOWITZ GOT HIM TO SAY THAT SHE AGREED TO THE MEDICAL EXAM,  
7 BUT THEN HE MADE IT A CONDITION OF THE EMPLOYMENT.

8 AND I THINK THAT'S WHAT YOU'RE GOING TO ARGUE ON THE  
9 REQUIREMENT. I'M TALKING TO YOU. I'M NOT TALKING TO THE COURT.

10 I'LL STOP, YOUR HONOR.

11 THE COURT: I WANT TO SEE WHAT PRESIDENT LOPEZ SAID IN  
12 HIS LETTER.

13 MR. VARTAIN: YEAH.

14 THE COURT: I'M LOOKING AT EXHIBIT 10.

15 ALL RIGHT. GO AHEAD. SORRY TO INTERRUPT.

16 MR. VARTAIN: DO YOU HAVE IT, YOUR HONOR?

17 THE COURT: I HAVE IT.

18 MR. VARTAIN: SO, YOU KNOW, I DO THINK THE EVIDENCE IS  
19 IN THE RECORD OF THE REASON WHY THE COLLEGE REQUESTED AND/OR  
20 REQUIRED, AS THE PLAINTIFF ARGUES, THE EXAMINATION. AND IT WAS  
21 PUT IN BY THE PLAINTIFF. AND I GUESS MAYBE YOU'RE SAYING I  
22 GUESS I HAVE TO PUT IT BACK IN IN MY CASE.

23 THE COURT: WELL, IF THAT'S ALL THE EVIDENCE YOU WISH  
24 TO PRESENT ON THAT ISSUE, OF COURSE, THAT'S WHAT YOUR POSITION  
25 IS.

26 MR. VARTAIN: YEAH. BUT YOU'RE SAYING YOU WON'T

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1 CONSIDER IT AT THIS POINT BECAUSE IT'S --

2 THE COURT: WELL, I THINK THAT THAT IS WHAT I NEED TO  
3 DO TO BE CERTAIN HERE. AND I'M NOT PREPARED TO SAY THAT THE

4 LETTER ITSELF IS SUFFICIENT. OF COURSE, I CAN'T DIVORCE THE  
5 LETTER FROM THE TESTIMONY SURROUNDING THE LETTER.

6 MR. VARTAIN: YEAH. THERE WAS EXTENSIVE TESTIMONY  
7 ELICITED BY MR. LEBOWITZ OF THE PRESIDENT. THERE IS NO MORE  
8 EVIDENCE THAN WHAT HE SAID. I MEAN, HE SAID WHY HE SIGNED THE  
9 LETTER, WHY HE WANTED HER TO GO THROUGH THE EVALUATION.  
10 MR. LEBOWITZ ASKED HIM ABOUT WHAT INFORMATION HE HAD.

11 THE COURT: THE PROBLEM THAT I HAVE HERE -- I'VE SEEN  
12 THE DOCUMENTS, BUT THERE'S BEEN NO TESTIMONY -- THERE'S BEEN  
13 TESTIMONY FROM PROFESSOR BLOUGH THAT SHE BELIEVED THAT THE  
14 MEDICAL EXAM PERTAINED TO HER PHYSICAL HEALTH, AND THAT SHE WAS  
15 OFFENDED AND OUTRAGED THAT A PSYCHIATRIST WOULD BE EVALUATING  
16 HER PHYSICAL HEALTH. I HAVE NOT HEARD THE DEFENSE CASE, NOR  
17 WOULD I CONSIDER HERE, AS TO WHY A PSYCHIATRIST WAS HIRED TO  
18 CONDUCT THAT EVALUATION.

19 AND SO THERE'S A LOT STILL TO LEARN THAT WILL THEN GO  
20 TO THE JURY AND THAT'S WHERE I FEEL THAT, AT THIS STAGE, THE  
21 COURT IS NOT INCLINED TO GRANT A NONSUIT ON THE FIRST CAUSE OF  
22 ACTION FOR AN IMPROPER MEDICAL EXAM, LISTENING TO THE  
23 PLAINTIFF'S EVIDENCE OF WHY SHE WAS SENT. AND SHE TESTIFIED  
24 VERY CLEARLY THAT SHE BELIEVED SHE WAS BEING EXAMINED FOR HER  
25 PHYSICAL HEALTH PROBLEMS, THE CANCER.

26 MR. VARTAIN: WELL, SHE BELIEVED THAT WITHOUT ANY

2 THE COURT: BUT THAT'S NOT AN ISSUE. THAT'S YOUR VIEW  
3 OF THE EVIDENCE.

4 MR. VARTAIN: RIGHT.

5 THE COURT: BUT THAT WOULD REQUIRE ME TO DRAW SOME  
6 INFERENCES THAT I'M NOT PREPARED TO DO.

7 MR. VARTAIN: I HEAR YOU ON THAT.

8 THE COURT: OKAY.

9 SO I DO THINK THAT THE PLAINTIFF HAS PUT FORTH  
10 EVIDENCE THAT SHE WENT TO A MEDICAL EXAM AT THE INSTIGATION --  
11 I'M JUST GOING TO TRY TO USE THAT WORD AS A NEUTRAL -- OF HER  
12 EMPLOYER. AND SHE TESTIFIED THAT SHE WOULD NOT HAVE GONE BUT  
13 FOR THE MAY 8TH LETTER AND THE RESPONSE SHE GOT FROM THE COLLEGE  
14 IN REGARD TO WHETHER SHE NEEDED TO GO OR NOT. THE JURY CAN  
15 DECIDE WHETHER OR NOT IT WAS REQUIRED.

16 SO THEN I THINK THAT BECAUSE IT APPEARS QUITE CLEARLY,  
17 EVEN FROM YOUR OWN RESEARCH, THAT THE BURDEN SHIFTS TO MENLO  
18 COLLEGE TO ESTABLISH ITS LEGITIMATE REASON FOR THE MEDICAL EXAM,  
19 THAT THIS IS NOT A PROPER VEHICLE FOR THIS MOTION FOR  
20 DETERMINING THE FIRST CAUSE OF ACTION.

21 MR. VARTAIN: AND IS THAT PRIMARILY BECAUSE, YOUR  
22 HONOR, THAT THE EVIDENCE ON THAT ISSUE IS THROUGH THE 776  
23 MECHANISM?

24 THE COURT: I'M NOT PREPARED TO SAY THAT.

25 MR. VARTAIN: OKAY.

26 THE COURT: OKAY.

1 ID BE GLAD TO HEAR ARGUMENT ON THE FIRST CAUSE OF  
2 ACTION, MR. LEBOWITZ, BUT I'M NOT REQUIRING IT.

3 MR. LEBOWITZ: I JUST WANTED TO POINT OUT TWO VERY  
4 BRIEF THINGS. ONE, IS THAT OUR TRIAL BRIEF, AT PAGES 11 THROUGH  
5 15, DO ANALYZE THIS CAUSE OF ACTION AND THE SETTING FORTH --  
6 STARTING WITH THE STATUTE, WHICH SETS IT OUT AS AN AFFIRMATIVE  
7 DEFENSE, AND GOES THROUGH THE ANALYSIS OF HOW YOU ANALYZE,  
8 THROUGH THE AUTHORITIES, HOW TO DETERMINE WHETHER THERE'S A  
9 BUSINESS NECESSITY OR WHETHER THE EXAM ITSELF IS JOB-RELATED FOR  
10 THE PURPOSES OF -- JUST BECAUSE YOU MENTIONED THE TRIAL BRIEFS,  
11 I JUST WANTED TO POINT THAT OUT TO YOU.

12 THE COURT: I APPRECIATE THAT. AND YOU COUCHED IT AS  
13 THE COLLEGE DIDN'T PLEAD AN AFFIRMATIVE DEFENSE.

14 MR. LEBOWITZ: THAT WAS ONE MINOR SECTION OF IT. THE  
15 BEGINNING OF IT SETS OUT THE ACTUAL THING.

16 THE COURT: I SEE.

17 MR. LEBOWITZ: AND AFTER THAT SECTION THERE'S A  
18 THOROUGH ANALYSIS OF THE PARAMETERS FOR ANALYZING THIS CLAIM.

19 I WOULD ALSO POINT TO PLAINTIFF'S PROPOSED SPECIAL  
20 JURY INSTRUCTIONS 22, 23 AND 24, WHERE WE SET FORTH WHAT WE  
21 BELIEVE WOULD BE AN APPROPRIATE WAY TO INSTRUCT THE JURY.

22 THE COURT: OKAY. ALL RIGHT.

23 LET'S GO TO, THEN, THE TWO ISSUES, MR. VARTAIN, THAT  
24 YOU IDENTIFIED FOR THE THREE WRONGFUL DISCHARGE CAUSES OF  
25 ACTION.

26 MR. VARTAIN: WOULD YOU LIKE ME TO GO THROUGH MY VIEW



1 OF THE EVIDENCE ON THOSE POINTS, YOUR HONOR?

2 THE COURT: YOU KNOW, TO ME, THE INTERESTING ISSUE IN  
3 THE CASE IS YOUR FIRST ONE AS TO WHETHER OR NOT SHE WAS  
4 DISCHARGED, BUT I'M NOT SUGGESTING THAT YOU'RE GOING TO WIN YOUR  
5 MOTION; I HAVEN'T HEARD THE ARGUMENT ON IT. BUT IT IS, PERHAPS,  
6 A MORE -- IT IS A DIFFICULT ISSUE. THE SECOND ONE, YOU KNOW, I  
7 THINK UNDER GREEN IT MAY BE ENOUGH TO SURVIVE THIS MOTION THAT  
8 THE PLAINTIFF SIMPLY TESTIFIED, "I WAS READY TO GO BACK TO  
9 WORK."

10 MR. VARTAIN: SHE TESTIFIED THAT AT THE TIME SHE SENT  
11 THAT E-MAIL SHE BELIEVED THAT SHE HAD NOT BEEN ABLE TO WORK FOR  
12 THAT SEMESTER, BUT THAT SHE THOUGHT THAT SHE WOULD BE ABLE TO GO  
13 BACK TO WORK. THE CASE -- SO I'M GOING TO ADDRESS YOUR POINT,  
14 YOUR HONOR.

15 THE COURT: OKAY.

16 WELL, YOU KNOW, WE HAD THE INTERPLAY REGARDING THE  
17 APPARENT DISCREPANCIES BETWEEN THE DEPOSITION TESTIMONY AND THE  
18 TESTIMONY AT TRIAL. THE JURY CAN DECIDE THAT ISSUE.

19 MR. VARTAIN: I'M NOT PARTICULARLY REFERRING TO THAT  
20 PARTICULAR ITEM.

21 THE COURT: OKAY.

22 BUT DIDN'T PROFESSOR BLOUGH TESTIFY, AS SHE SAT HERE  
23 TODAY, THAT AS OF FALL OF 2007 SHE WAS ABLE TO DO THE WORK? I  
24 THINK SHE GAVE THAT TESTIMONY.

25 MR. VARTAIN: I DON'T THINK SHE DID, BUT I'M NOT -- MY  
26 GUESS WOULD BE IF YOU REOPEN DIRECT THAT SHE WOULD.

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1 THE COURT: OF COURSE, I'D HAVE TO LET HER DO THAT.

2 OKAY.

3 MR. VARTAIN: WHERE THE FOCUS OF MY MOTION IS, YOUR  
4 HONOR, THIS IS NOT THE CASE OF A BUS DRIVER, WHERE THE QUESTION  
5 ON THE ABILITY IS, DO YOU HAVE YOUR LICENSE? DO YOU HAVE  
6 EXPERIENCE DRIVING A BUS? HAVE YOU BEEN QUALIFIED TO DO THIS?  
7 THIS IS A MEDICAL ISSUE.

8 THE COURT: WELL, IN YOUR VIEW IT'S A MEDICAL ISSUE.  
9 IN PROFESSOR BLOUGH'S IT'S NOT A MEDICAL ISSUE. YOU KNOW,  
10 THAT'S JUST YOUR VIEWPOINT OF IT. IN THIS CASE PROFESSOR BLOUGH  
11 IS, PERHAPS, A LAY EXPERT ON WHAT THE QUALIFICATIONS FOR DOING  
12 HER JOB OF 29 YEARS ARE.

13 MR. VARTAIN: WELL, SHE ACTUALLY TESTIFIED AND SO DID  
14 HER WITNESSES AS TO THE ESSENTIAL FUNCTIONS OF HER JOB WERE TO  
15 BE MENTALLY ALERT, TO HAVE GOOD FOCUS, TO BE ABLE TO MEET THE  
16 CLASS SCHEDULE, AND THAT TEACHER/STUDENT INTERACTION AND  
17 PERFORMING YOUR JOB PROPERLY WERE ESSENTIAL FUNCTIONS OF THE  
18 JOB.

19 THE COURT: AND THERE WERE MANY MORE AS WELL. BECAUSE  
20 SHE TESTIFIED THAT THE SIX-YEAR CONTRACT REVIEW PROCESS AND  
21 DEVELOPMENT OF THE DOSSIER INCLUDED THE PRESENTATION OF OTHER  
22 EVIDENCE OF WHAT SHE'D ACCOMPLISHED, WHICH ONE I THINK CAN INFER

23 WOULD BE ESSENTIAL FUNCTIONS OF HER JOB AS WELL. SHOWING THE  
24 SCHOLARSHIP AND DEVELOPMENT OF NEW COURSES, THE COMMITTEE WORK  
25 THAT SHE HAD DONE. THOSE ARE ALL ESSENTIAL ELEMENTS, I THINK  
26 THAT COULD BE ARGUED ANYWAY TO THE JURY. I'M TO DRAW ALL

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1 INFERENCES IN FAVOR OF THE PLAINTIFF'S EVIDENCE FOR THIS MOTION.

2 SO I THINK THAT, YES, WHAT YOU INDICATE, THERE IS  
3 EVIDENCE THAT THOSE COGNITIVE ABILITIES ARE -- THOSE GENERAL  
4 COGNITIVE ABILITY ARE ESSENTIAL FUNCTIONS OF THE JOB, BUT SO ARE  
5 THE VERY CONCRETE REQUIREMENTS OF THE INFORMATION THAT, FOR  
6 EXAMPLE, WOULD BE SHOWN IN THE DOSSIER.

7 MR. VARTAIN: BUT MY ARGUMENT WOULD BE, YOUR HONOR,  
8 THAT IT'S HER BURDEN TO PROVE, NOT THAT SHE COULD PERFORM ONE OR  
9 MORE OF THE ESSENTIAL FUNCTIONS, BUT THAT SHE COULD PERFORM ALL  
10 OF THE ESSENTIAL FUNCTION OF THE JOB AND THAT THAT BURDEN HAS  
11 NOT BEEN MET.

12 THE COURT: OKAY.

13 MR. VARTAIN: AND, MOST PARTICULARLY, I WOULD FOCUS  
14 THE COURT ON THE FACT THAT WHILE I DON'T THINK IT'S JUST THE  
15 DEFENSE WHO HAS SAID THAT THIS IS A MEDICAL ISSUE, THE PLAINTIFF  
16 ARGUED TO HER EMPLOYER AND THROUGHOUT THIS CASE THAT HER DOCTORS  
17 MEDICALLY CLEARED HER TO COME BACK TO WORK. SHE BELIEVED THAT  
18 THEY HAD. WHEN THE EVIDENCE ACTUALLY CAME IN --

19 THE COURT: I DON'T THINK THEY CLEARED HER TO COME  
20 BACK TO WORK. SHE'S ARGUED IT THROUGH HER EVIDENCE THAT THEY

21 SAID SHE WAS FIT. WELL, I WOULD HOPE THAT MY DOCTORS WOULD SAY  
22 I'M FIT, BUT I WAS WORKING TODAY AND I'M FIT. YOU'RE SAYING TO  
23 COME BACK SHE WASN'T ACTUALLY ON LEAVE IN THE SPRING OF 2006.  
24 NOW, I KNOW THERE'S SOME EVIDENCE FROM THE PLAINTIFF HERSELF  
25 THAT IN HINDSIGHT MAYBE SHE SHOULD HAVE REQUESTED A LEAVE, BUT  
26 SHE WORKED THAT SEMESTER. WE KNOW THAT.

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1 MR. VARTAIN: SHE SAID SHE SHOULD HAVE BEEN ON LEAVE.

2 THE COURT: SAID SHE SHOULD HAVE BEEN.

3 MR. VARTAIN: SHE SAID SHE WAS NOT ABLE TO WORK THAT  
4 SEMESTER.

5 THE COURT: WHAT YOU ARE, IN ESSENCE, ARGUING IS THAT  
6 ALL EMPLOYEES NEED TO BRING EXPERT TESTIMONY OF COGNITIVE  
7 FUNCTIONS WHEN THE JOB REQUIRES A CERTAIN LEVEL OF COGNITIVE  
8 FUNCTION. AND I DON'T NECESSARILY AGREE THAT EXPERT TESTIMONY  
9 IS REQUIRED. IT MIGHT MAKE HER CASE WEAKER, BUT THAT'S HER  
10 CHOICE. THAT'S HER STRATEGY.

11 MR. VARTAIN: OKAY.

12 THE COURT: MR. LEBOWITZ, AGAIN, I'M GLAD TO HEAR  
13 ARGUMENT FROM YOU ON THAT ISSUE, BUT I THINK THERE'S SUFFICIENT  
14 EVIDENCE BY YOUR CLIENT'S OWN TESTIMONY TO SURVIVE THIS MOTION.

15 MR. LEBOWITZ: OKAY.

16 THE COURT: I'M NOT COMMENTING ON THE STRENGTH OF  
17 IT -- YOU UNDERSTAND THAT -- OR THE CREDIBILITY.

18 MR. VARTAIN: I DO UNDERSTAND.

19 THE COURT: YEAH, BUT I THINK --  
20 MR. LEBOWITZ: I WOULD -- AGAIN, ONLY TWO BRIEF  
21 COMMENTS. ONE IS TO AGREE WITH YOU THAT GREEN CERTAINLY DOES  
22 NOT IMPOSE THE BURDEN ON A PLAINTIFF TO PROVIDE AN EXPERT IN  
23 EVERY CASE TO COME IN AND OPINE AFTER THE FACT AS TO WHETHER OR  
24 NOT THE PLAINTIFF COULD HAVE OR WAS ABLE TO PERFORM HER JOB.  
25 THERE IS NO SUCH BURDEN, AND TO DO SO WOULD BE ONEROUS ON ALL  
26 PLAINTIFFS.

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1 AND THEN, JUST TO POINT OUT THE ONE PIECE OF EVIDENCE  
2 THAT HAS NOT BEEN COMMENTED ON, WHICH IS THE STUDENT  
3 EVALUATIONS. WHICH, WHILE SOME NEGATIVE OVERWHELMINGLY FOR THE  
4 CONTEMPORANEOUS SEMESTER OF 2006, WHICH ARE ALL IN EVIDENCE, DID  
5 ATTEST TO HER ABILITIES TO COMMUNICATE THE INFORMATION AND TEACH  
6 EFFECTIVELY IN THAT SPRING SEMESTER, DESPITE PROFESSOR BLOUGH'S  
7 OWN BELIEF THAT SHE WASN'T -- AS SHE TESTIFIED -- TEACHING UP TO  
8 HER OWN HIGH STANDARDS. BUT HER HIGH STANDARDS ARE NOT  
9 NECESSARILY ESSENTIALLY FUNCTIONS; GETTING INFORMATION AND DOING  
10 IT EFFECTIVELY ARE THE ESSENTIAL FUNCTIONS.

11 THE COURT: I THINK THAT IS ALSO EVIDENCE THAT SPEAKS  
12 TO THAT ISSUE. I AGREE.

13 NOW, LET'S GET TO WHAT I THINK IS -- IT'S AN  
14 INTERESTING ISSUE, I DON'T KNOW ON THIS MOTION WHETHER IT'S  
15 SUCCESSFUL, WHETHER THERE'S EVIDENCE TO SHOW DISCHARGE FROM  
16 EMPLOYMENT. AND AM I RIGHT THAT WE HAVE A SERIES OF LETTERS

17 THAT COULD FAIRLY BE READ IN A LIGHT MOST FAVORABLE TO  
18 PLAINTIFF, THAT SHE WAS ON-AGAIN, OFF-AGAIN; YOU'RE TERMINATED,  
19 YOU'RE NOT; YOU'RE TERMINATED, YOU'RE NOT?

20 MR. VARTAIN: NO, I DON'T AGREE.

21 THE COURT: OKAY.

22 MR. VARTAIN: IT'S COMPLETELY NOT THE CASE. THE ON --  
23 I THINK WHERE YOUR HONOR IS RIGHTLY READING THE ON IS, THE ON  
24 WAS IN JULY 7TH, THE LETTER SAID, "YOU'RE ON LEAVE AND YOUR  
25 APPOINTMENT WILL LAPSE IN NOVEMBER," WHICH --

26 THE COURT: DID YOU USE THE WORD "LAPSE"? I THOUGHT

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1 THE WORD "TERMINATE" WAS THERE, BUT LET'S LOOK AT IT.

2 MR. LEBOWITZ: THE LETTER ITSELF SAYS "LAPSE," AND HE  
3 INTERPRETED -- HE TESTIFIED THAT MEANT "TERMINATED," THAT WOULD  
4 END.

5 MR. VARTAIN: AND THEN THE LETTERS BEFORE THAT  
6 NOVEMBER DATE HAPPENED CLEARLY SAID, "WE'RE NOT GOING TO  
7 TERMINATE YOU ON NOVEMBER 30TH. YOU'RE GOING TO STAY ON MEDICAL  
8 LEAVE."

9 THE COURT: THIS LAWSUIT WAS FILED IN AUGUST OF 2007?

10 MR. LEBOWITZ: CORRECT.

11 THE COURT: AND SO, YOU KNOW, I DON'T KNOW THAT IT  
12 MATTERS TO THE JURY. I'VE BEEN ATTUNE TO THE DATE THE CASE WAS  
13 FILED MYSELF, BECAUSE I WAS JUST PROCESSING THAT AS I LISTENED  
14 TO SOME OF THE EVIDENCE. I BELIEVE THE LETTER THAT SAID THE

15 NOVEMBER 30 DATE IS EXTENDED, CAME AFTER THE LITIGATION WAS  
16 COMMENCED.

17 MR. VARTAIN: NO, IT WAS NOT, YOUR HONOR.

18 MR. LEBOWITZ: NO. IT WAS A YEAR -- IT CAME ABOUT  
19 WITHIN A MONTH OF MY INITIAL LETTER CONTACT WITH THE COLLEGE ON  
20 AUGUST 29TH, SAYING I REPRESENT PROFESSOR BLOUGH. THAT'S WHEN  
21 IT STARTED.

22 THE COURT: SO WE'RE TALKING NOVEMBER 2006. THANK  
23 YOU.

24 MR. LEBOWITZ: CORRECT. AND THE LAWSUIT STARTED  
25 AUGUST 2007, AFTER THE BACK AND FORTH ABOUT THE JOB OFFER WAS  
26 COMPLETED. THAT'S THE SEQUENCE.

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1 THE COURT: WELL, MR. VARTAIN, THERE ARE SOME LETTERS  
2 THAT COULD REASONABLY BE INTERPRETED, FOR PURPOSE OF THIS  
3 MOTION, AS BEING LETTERS OF TERMINATION, INCLUDING THE LETTER  
4 THAT WAS SUPPOSEDLY ONLY A COBRA LETTER, THE FORM LETTER. DOES  
5 USE TERMINATION LANGUAGE, DOESN'T IT?

6 MR. VARTAIN: IT DOES USE THE WORD "TERMINATION."

7 THE COURT: AND MS. SAPRAI TESTIFIED, "WELL, IT'S A  
8 FORM LETTER, AND IT REALLY JUST MEANS THAT BENEFITS ARE  
9 TERMINATING," AND THAT WAS HER TESTIMONY. BUT THAT'S UP TO THE  
10 JURY TO DECIDE WHETHER THAT'S CREDIBLE, AND THAT WOULD BE THE  
11 776 TESTIMONY AS WELL. SO THE BARE LETTER ITSELF SPEAKS OF  
12 TERMINATION.

13 MR. VARTAIN: WELL, IT DOES. BUT THE TESTIMONY FROM  
14 THE PLAINTIFF WAS THAT SHE KNEW THAT ONLY THE PRESIDENT COULD  
15 TERMINATE, AND THAT A CLERK SENDING A LETTER COULDN'T DO THAT,  
16 SO I WOULD DISAGREE WITH THAT IT COULD REASONABLY BE INTERPRETED  
17 BY A FACULTY --

18 THE COURT: BUT, OF COURSE, THIS WAS PRECEDED BY A  
19 LETTER FROM THE PRESIDENT TERMINATING HER.

20 MR. VARTAIN: AND THEN THE RESCISSION OF THAT LETTER  
21 THAT WAS --

22 THE COURT: I DON'T THINK THE OTHER LETTER SAYS THAT  
23 THE PRIOR LETTER WAS RESCINDED, THOUGH.

24 MR. VARTAIN: I WILL --

25 THE COURT: LET'S LOOK AT IT. YOU KNOW, I'VE LOOKED  
26 AT THESE THINGS FOR THE PURPOSES IDENTIFIED FOR THE TESTIMONY.

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1 THIS IS A DIFFERENT PURPOSE AND MY MEMORY ISN'T SO GOOD ON IT  
2 EITHER.

3 MR. LEBOWITZ: IF I MAY POINT OUT ON THAT, THE E-MAIL  
4 THAT WE'RE ABOUT TO REFER -- THE E-MAIL AND LETTERS WE'RE ABOUT  
5 TO REFER TO WERE OFFERED BY STEPHANIE SAPRAI. SO SHE CLEARLY  
6 HAD THE AUTHORITY TO MAKE SOME DECISIONS ABOUT  
7 PROFESSOR BLOUGH'S EMPLOYMENT STATUS, BEING TERMINATED OR NOT  
8 TERMINATED.

9 MR. VARTAIN: SHE HAD THE AUTHORITY TO SEND THE  
10 LETTERS THAT SHE SENT, BUT THESE DIDN'T SAY ANYTHING ABOUT



11 DECISIONS. LET ME FIND THOSE.

12 THE COURT: THOSE ARE GOOD ARGUMENTS FOR THE JURY.

13 MR. VARTAIN: I DIDN'T HEAR WHAT YOU SAID, YOUR HONOR.

14 THE COURT: I WAS JUST SAYING THOSE ARE ARGUMENTS FOR  
15 THE JURY THAT MR. LEBOWITZ IS MAKING.

16 MR. VARTAIN: THEN I'M NOT GOING TO CONTINUE. IF  
17 YOU'VE MADE UP YOUR MIND, YOUR HONOR.

18 THE COURT: NO. I WANT TO SEE THE LANGUAGE IN THAT  
19 LETTER OR E-MAIL -- NOW, I CAN'T REMEMBER WHICH.

20 MR. VARTAIN: IT'S NOT AN E-MAIL. THERE'S TWO LETTERS  
21 WHERE THE PLAINTIFF SAID, "PLEASE CONFIRM THAT I'M NOT BEING  
22 TERMINATED." SO LET'S GO TO EXHIBIT 34 OF THE PLAINTIFF.

23 THE COURT: OKAY.

24 MR. LEBOWITZ: IT'S 33.

25 THE COURT: 33.

26 MR. LEBOWITZ: ARE YOU LOOKING AT THE OCTOBER 13TH

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1 LETTER?

2 THE COURT: OCTOBER 13TH LETTER.

3 MR. VARTAIN: YES. THANK YOU.

4 THE OCTOBER 13TH LETTER OF STEPHANIE SAPRAI SAID AT  
5 LINE 1 OF THE PAGE 2, "REGARDING YOUR EMPLOYMENT RELATIONSHIP  
6 WITH THE COLLEGE, THE COLLEGE HAS DECIDED IT WOULD BE BEST THAT  
7 YOU REMAIN ON MEDICAL LEAVE AFTER NOVEMBER 2006. YOUR  
8 APPOINTMENT WITH THE COLLEGE WILL NOT LAPSE OR TERMINATE ON THAT

9 DATE."

10 THE COURT: OKAY.

11 MR. VARTAIN: "YOU WILL REMAIN ON MEDICAL LEAVE, AT  
12 LEAST UNTIL YOU COMPLETE THE UPDATED MEDICAL EVALUATION WITH  
13 DR. MISSETT. BECAUSE UNTIL THAT IS COMPLETED, THE COLLEGE WILL  
14 NOT KNOW FOR SURE IF YOU CAN RESUME FACULTY DUTIES."

15 THE COURT: OKAY.

16 MR. VARTAIN: THEN THE NEXT IS SHE THEN -- THE NEXT  
17 EXHIBIT IS 34, WHERE THE PLAINTIFF E-MAILS HER, MS. SAPRAI, AND  
18 SAYS ON OCTOBER 25TH, "I HAVE YOUR OCTOBER 13 LETTER. I'M  
19 WRITING A RESPONSE TO YOU. I WOULD FIRST LIKE TO CONFIRM THAT  
20 THE COLLEGE IS NOT TERMINATING MY EMPLOYMENT ON NOVEMBER 30TH,  
21 EVEN THOUGH LETTERS OF JULY 7TH, AUGUST 10TH, AUGUST 27TH STATE  
22 THAT MY EMPLOYMENT WILL BE TERMINATED ON NOVEMBER 30TH. FOR  
23 THIS, I THANK YOU."

24 THEN THE NEXT LETTER IS 35, OCTOBER 26, 2006, "IN  
25 REPLY TO YOUR E-MAIL OF YESTERDAY, YES, IT IS TRUE, THE COLLEGE  
26 IS KEEPING YOU ON LEAVE OF ABSENCE AND NOT TERMINATING YOUR

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1 EMPLOYMENT."

2 THEN, WE PROCEED THEN TO THE NEXT -- YOU KNOW, THEN WE  
3 GET TO THAT COBRA LETTER ISSUE, YOUR HONOR, IN WHICH A PAYROLL  
4 MANAGER SENDS HER A LETTER SAYING, "YOUR BENEFITS WILL TERMINATE  
5 ON APRIL 30, 2007, DUE TO YOUR TERMINATION," AND THAT'S THE  
6 LANGUAGE THAT -- AND THEN THAT'S MS. SAPRAI'S TESTIMONY THAT SHE

7 WAS NOT TERMINATED. THAT'S A FORM LETTER, AND YOU REFER TO  
8 THAT.

9 THE PLAINTIFF TESTIFIED THAT SHE KNEW SHE WAS ON  
10 MEDICAL LEAVE THAT WHOLE YEAR. I WENT OVER THAT AND OVER THAT,  
11 AND SHE SAID, "WELL, BUT I DIDN'T PUT MYSELF ON MEDICAL LEAVE.  
12 THE COLLEGE DID." THERE WAS NO DOUBT THAT SHE UNDERSTOOD SHE  
13 WAS ON MEDICAL LEAVE THAT WHOLE TIME UNTIL SHE GOT THE CONTRACT  
14 OFFER, WHICH SHE REJECTED. SO, YOU KNOW, THAT'S I THINK THE  
15 EVIDENCE MOST FAIR TO THE PLAINTIFF, WHICH IS I KNOW THE BURDEN  
16 ON THE MOTION FOR NONSUIT. I WOULD ALSO LIKE TO RESTATE THE  
17 MOTION FOR NONSUIT IS BASED ON -- IS ADDRESSED TO THE PRAYER FOR  
18 PUNITIVE DAMAGES.

19 THE COURT: WE'LL GET TO THAT. THAT'S ENTIRELY  
20 SEPARATE FROM THESE ISSUES, AND I DO WANT TO ADDRESS THAT AS  
21 WELL. LET ME JUST ASK YOU ON THIS ISSUE, IN YOUR VIEW IS THE  
22 PLAINTIFF REQUIRED TO PROVE THE DATE ON WHICH THE DISCHARGE  
23 OCCURRED?

24 MR. VARTAIN: THE DATE ON WHICH THE DISCHARGE  
25 OCCURRED? I THINK THAT THERE'S A STATUTE OF LIMITATIONS ISSUE  
26 FOR SURE.

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1 THE COURT: OKAY.

2 MR. VARTAIN: AND THEN I DO THINK IT'S A BURDEN TO  
3 SHOW, WELL, WHEN DID THE SEVERANCE OF EMPLOYMENT HAPPEN BECAUSE  
4 THAT'S WHEN ALL THE DAMAGES CLOSE ON THAT.

5 THE COURT: OKAY.

6 AND I AM SORRY. I SHOULD TAKE NOTES WHILE THESE  
7 ISSUES COME UP INTO MY MIND.

8 MR. VARTAIN: AND I WOULD POINT OUT, YOUR HONOR --

9 THE COURT: I'M SORRY. I THOUGHT OF IT AND I'LL  
10 FORGET IT AGAIN. I BEG YOUR PARDON.

11 AM I RIGHT THAT THERE'S NO ALLEGATION OF CONSTRUCTIVE  
12 DISCHARGE IN THIS CASE?

13 MR. VARTAIN: THAT'S CORRECT. AND UNDER TURNER V.  
14 ANHEISER, YOU WOULD HAVE TO ALLEGE THE FACTS OF X, Y AND Z, AND  
15 YOU WOULD HAVE TO ALLEGE THAT THE ELEMENTS OF THAT ARE PURPORTED  
16 VOLUNTARY RESIGNATION THAT WAS CONSTRUCTIVELY COMPELLED. SHE'S  
17 NEVER ALLEGED NOR PROVEN THAT SHE RESIGNED HER EMPLOYMENT.

18 THE COURT: AND I'LL ASK MR. LEBOWITZ IF HE AGREES  
19 WITH THAT. BUT THAT'S YOUR VIEW, IS THAT IT WAS NOT ALLEGED AND  
20 IS NOT A PART OF THIS CASE.

21 MR. VARTAIN: RIGHT.

22 THE ONLY ALLEGATIONS ARE WRONGFUL DISCHARGE FOR  
23 EMPLOYMENT, NOT WRONGFUL CONSTRUCTIVE DISCHARGE.

24 THE COURT: ALL RIGHT.

25 MR. LEBOWITZ, I THINK THIS IS A COMPLICATED ISSUE, BUT  
26 IT MAY BE COMPLICATED FOR THE JURY AND NOT FOR THIS COURT ON

1 THIS MOTION, SO I DON'T WANT TO CONFUSE THE TWO. BUT IT IS AN  
2 INTRIGUING ISSUE IN THIS CASE, MORE SO THAN I'VE SEEN BEFORE.

3 AND I'M SURE YOU WOULD BOTH AGREE THAT IT IS MORE INTRIGUING  
4 THAN IN MOST CASES. LET ME JUST HEAR YOUR RESPONSE.

5 FIRST, DO YOU AGREE THAT YOU'RE NOT GOING FORWARD ON A  
6 CONSTRUCTIVE DISCHARGE THEORY?

7 MR. LEBOWITZ: I DO.

8 THE COURT: OKAY. GOOD. THEN LET'S MOVE ON.

9 MR. LEBOWITZ: WELL, IN THE SCOPE -- EVERYTHING HAS TO  
10 BE TAKEN IN CONTEXT. AND THAT'S THE IMPORTANT PART AND I THINK  
11 THAT'S WHAT'S SO IMPORTANT FOR THIS ISSUE TO GO TO THE JURY,  
12 BECAUSE IT HAS TO BE TAKEN IN CONTEXT. WHAT STARTED THIS BALL  
13 ROLLING WAS A LETTER SIGNED BY THE PRESIDENT, THE MAY 8TH  
14 LETTER. THAT'S WHAT STARTED THIS ENTIRE PROCESS.

15 AND THAT INITIAL LETTER DID SAY THAT HER EMPLOYMENT  
16 WOULD LAPSE AS OF A PARTICULAR DATE. PRESIDENT LOPEZ TESTIFIED  
17 THAT MEANT IT WOULD END, AND HER EMPLOYMENT WOULD NO LONGER --  
18 AND IT ALSO SAID, AND THE FACTS ARE, THAT SHE STOPPED BEING PAID  
19 ANY COMPENSATION BY THE COLLEGE IN AUGUST 2006. SHE'S NOT BEEN  
20 PAID ANYTHING SINCE THEN. THEY EXTENDED SOME HEALTH BENEFITS  
21 BUT NO PAY.

22 THE NOTION THAT SHE CAN'T BE TERMINATED UNLESS IT IS  
23 AN ACTUAL LETTER SIGNED BY THE PRESIDENT, IN MY VIEW, IS A JURY  
24 QUESTION MORE THAN ANYTHING. BECAUSE EVEN THOUGH SOMETHING MAY  
25 SAY SO AS A POLICY IN THE HANDBOOK, DOESN'T MEAN THAT POLICIES  
26 IN THE HANDBOOK ARE ALWAYS FOLLOWED. AND THE EVIDENCE CAN BE IN

1 DISPUTE ON THAT.

2 AND THE EVIDENCE IN DISPUTE ON THAT IN THIS CASE ARE  
3 THAT ONCE THIS WHOLE PROCESS STARTED AND ONCE PRESIDENT LOPEZ  
4 DID SIGN THAT LETTER, STEPHANIE SAPRAI, THE DIRECTOR OF HUMAN  
5 RESOURCES WAS PUT IN CHARGE OF EVERYTHING BY THE COLLEGE. AND  
6 NOT JUST AS THE CONTACT PERSON BUT, AS SHE STATED, SHE WAS THE  
7 PERSON WHO WAS COORDINATING EVERYTHING, WRITING ON BEHALF OF THE  
8 COLLEGE, MAKING THE COLLEGE'S POSITION KNOWN IN OFFICIAL FORM IN  
9 THESE LETTERS AND E-MAILS TO PROFESSOR BLOUGH.

10 THE ONE THING SHE DID, AS WE NOTED IN THESE EXHIBITS,  
11 IN 34 -- 33 AND 34, IS SAYING, ESSENTIALLY, RESTORE HER  
12 EMPLOYMENT STATUS AS ON-LEAVE AND ON-HOLD, AS OPPOSED TO BEING  
13 TERMINATED. THAT IS AT LEAST APPARENT AUTHORITY THAT SHE HAS,  
14 YOU KNOW, EVIDENCE OF APPARENT AUTHORITY TO MAKE THESE TYPES OF  
15 DECISIONS AND THAT SHE HAS BEEN GIVEN THAT AUTHORITY BY THE  
16 COLLEGE, DESPITE WHAT THE HANDBOOK MAY SAY OR MAY NOT SAY ABOUT  
17 WHO GOVERNS EMPLOYMENT.

18 YOU ALSO RECALL PRESIDENT LOPEZ'S TESTIMONY, IN HIS  
19 MIND, IF PROFESSOR BLOUGH HADN'T PRESENTED SOME NEW INFORMATION  
20 FROM DR. MISSETT BY THE END OF HIS TERM ON DECEMBER 31, 2006,  
21 THAT PROFESSOR BLOUGH'S EMPLOYMENT WOULD HAVE BEEN TERMINATED  
22 AND WOULD HAVE REMAINED TERMINATED. NOW, THERE WAS SOME BACK  
23 AND FORTH ABOUT HIS DEPOSITION TESTIMONY ON THAT, BUT THAT'S IN  
24 FRONT OF THE JURY AS A CREDIBILITY ISSUE.

25 AND THEN WE GO FORWARD INTO 2007. AND, AGAIN,  
26 STEPHANIE SAPRAI IS THE ONE MAKING THE COMMUNICATIONS ON BEHALF

1 OF THE COLLEGE ABOUT PROFESSOR BLOUGH'S EMPLOYMENT STATUS. WE  
2 HAVE CLASSES; WE DON'T HAVE CLASSES; THIS IS WHAT WE'RE DOING  
3 FOR YOU; THIS IS WHAT WE'RE NOT DOING FOR YOU. AND, IN FACT,  
4 PART OF THE OFFER IN 2007, A MATERIAL PART OF THE OFFER WAS A  
5 LETTER FROM STEPHANIE SAPRAI DESCRIBING WHAT THE OFFER WAS AND  
6 DESCRIBING WHAT THE ELEMENTS OF THE NEW OFFER WERE.

7 SO SHE WAS CLEARLY GIVEN AT LEAST APPARENT AUTHORITY,  
8 AND THE JURY IS ENTITLED TO BELIEVE THAT SHE HAD THE AUTHORITY  
9 TO MAKE THOSE DECISIONS, AND BY DIRECTING PEGGY LOYA, THE  
10 SIGNATURE ON THAT APRIL 18TH COBRA LETTER TO SEND THAT LETTER,  
11 SHE HERSELF WAS DIRECTING THAT EVENT TO HAPPEN. AND, OBVIOUSLY,  
12 THE REASONABLE -- WHAT THAT LETTER MEANS, CLEARLY A JURY  
13 QUESTION. THAT'S IN DISPUTE, AND IT'S SOMETHING THE JURY CAN  
14 INFER ONE WAY OR THE OTHER AT ITS WHIM.

15 MR. VARTAIN: MAY I RESPOND TO THAT, YOUR HONOR?

16 THE COURT: GO AHEAD.

17 MR. VARTAIN: MY RESPONSE MAY BE HELPFUL TO WHAT IS  
18 WRONG WITH THAT ARGUMENT -- OR NOT WRONG BUT INEFFECTIVE.

19 MANY TIMES IN EMPLOYMENT CASES -- AND MR. LEBOWITZ AND  
20 I BOTH DEAL WITH THOSE THINGS -- THE PLAINTIFF PLEADS A SET OF  
21 ADVERSE EMPLOYMENT ACTIONS THAT ARE SHORT OF OR IN ADDITION TO  
22 DISCHARGE. FOR EXAMPLE, "YOU PUT ME ON MEDICAL LEAVE AND YOU  
23 DEPRIVED ME OF MY SALARY. YES, YOU GAVE ME HEALTH BENEFITS,"  
24 BUT THAT WOULD BE A WELL-PLED ADVERSE EMPLOYMENT ACTION. "YES,  
25 YOU GAVE ME A COBRA LETTER THAT TERMINATED MY BENEFITS AND YOU

1 SCARED ME. YOU REALLY DID."

2 BUT THAT'S NOT WHAT THIS CASE IS ABOUT. THAT WASN'T  
3 PLED AND IT WASN'T EVEN ATTEMPTED TO BE PROVEN. THE FACT THAT  
4 SHE WAS SCARED OR EVEN IF SHE REASONABLY THOUGHT SHE WAS BEING  
5 TERMINATED, THE FACT REMAINS THE PLAINTIFF HAS THE BURDEN TO  
6 SHOW THAT SHE WAS, IN FACT, SEVERED FROM EMPLOYMENT.

7 ALL OF MR. LEBOWITZ'S ARGUMENTS, I THINK, WOULD BE  
8 FAIR GAME ON A MOTION FOR NONSUIT AS TO AN ADVERSE EMPLOYMENT  
9 ACTION OF PLACEMENT ON MEDICAL LEAVE, OF DEPRAVATION OF  
10 COMPENSATION OR SALARY FOR A PERIOD OF TIME, OR EVEN MAYBE  
11 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, "YOU SCARED THE  
12 HECK OUT OF ME WITH THAT LETTER."

13 THE FACT REMAINS THAT EVIDENCE IS WITHOUT -- YOUR  
14 STANDARD, I THINK, UNDER THE CASE LAW IS HE CAN'T MAKE IT WITH A  
15 SCINTILLA OF EVIDENCE. THERE HAS TO BE EVIDENCE OF SIGNIFICANT  
16 SUBSTANTIALITY.

17 THE COURT: OKAY.

18 YOU KNOW, THIS IS A HARD ISSUE. I THINK ONCE WE HAVE  
19 THE LETTER FROM PRESIDENT LOPEZ AND THE COBRA LETTER, IT'S  
20 REALLY UP TO THE JURY. I THINK THAT THERE ARE DIFFERENT  
21 INTERPRETATIONS OF THOSE LETTERS. I THINK IT'S COMPLICATED. IF  
22 I WERE ON THE JURY -- IF I WERE THE TRIER OF FACT, I WOULD  
23 STRUGGLE WITH IT. BUT I WOULDN'T STRUGGLE IF IT WAS CLEAR.



24 THAT WOULD BE EASY FOR ME. THIS ISN'T EASY.

25 I DO THINK THE PLAINTIFF HAS PUT FORTH SUFFICIENT

26 EVIDENCE TO SURVIVE THIS MOTION. YOUR POINTS ARE WELL-TAKEN.

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1 THEY'RE GOING TO BE VERY IMPORTANT POINTS FOR THE JURY TO

2 CONSIDER, BUT I'M GOING TO LET THEM CONSIDER IT.

3 ALL RIGHT. LET'S MOVE ON TO THE PUNITIVE DAMAGES.

4 THAT'S COMPLETELY DIFFERENT THAN THESE ISSUE. PLEASE STATE YOUR

5 GROUNDS FOR IT. YOU DID SEGREGATE THOSE.

6 MR. VARTAIN: THE SECTION 3294 ELEMENT OF PRAYER FOR

7 PUNITIVE DAMAGES, THERE'S BEEN NO EVIDENCE EVEN INTRODUCED ON

8 THOSE POINTS. AND THE ACTUAL TESTIMONY OF PLAINTIFF IS JUST THE

9 OPPOSITE, THAT THE COLLEGE PEOPLE WERE KIND, THEY HAD -- EVEN

10 THOUGH SHE DISAGREED WITH THEM, THAT EACH OF THE OFFICERS OF THE

11 COLLEGE WHO TESTIFIED, SHE AFFIRMED THEIR HONESTY, THEIR

12 VERACITY -- MAYBE NOT VERACITY, BUT HONESTY, GOOD INTENTIONS, ET

13 CETERA, ET CETERA.

14 I DON'T THINK THERE WAS EVEN ANY EVIDENCE OTHER THAN,

15 WELL, IF THERE'S DISABILITY DISCRIMINATION, IT MUST BE PUNITIVE

16 DAMAGES. BUT THAT OBVIOUSLY DOESN'T CARRY THE DAY.

17 THE COURT: NO.

18 MR. VARTAIN: SO I'LL LET MR. LEBOWITZ --

19 THE COURT: I NEED TO HEAR FROM HIM BECAUSE THIS

20 ONE --

21 MR. LEBOWITZ, I THINK THIS IS A TOUGH ONE FOR THE

22 PLAINTIFF. MY ONLY ISSUE IS WHETHER OR NOT THE JURY WILL  
23 STRUGGLE WITH IT. WHAT EVIDENCE OF MALICE -- I DON'T THINK  
24 THERE'S ANY FRAUD HERE. YOU'RE ALLEGING MALICE OR OPPRESSION.  
25 AND WITH AN ORGANIZATION SUCH AS MENLO COLLEGE I NEED TO KNOW  
26 WHO WAS RESPONSIBLE FOR THE MALICIOUS OR OPPRESSIVE ACTS, NOT

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1 JUST THE ORGANIZATION ITSELF. SO WHY DON'T YOU GIVE ME A  
2 SUMMARY OF THE EVIDENCE?

3 MR. LEBOWITZ: SURE. WE'LL START WITH WHO WERE THE  
4 MANAGING AGENTS. THE PRESIDENT, PRESIDENT LOPEZ, CERTAINLY,  
5 WHO'S SUPPOSEDLY MAKING A DECISION OF THIS. AND STEPHANIE  
6 SAPRAI, WHO'S THE DIRECTOR OF HUMAN RESOURCES, DIRECTOR OF  
7 ADMINISTRATION, DEPENDING ON THE TITLE. SHE TESTIFIED ABOUT HER  
8 EXPERIENCE IN BEING THE PERSON IN CHARGE OF HUMAN RESOURCES.

9 THE COURT: SURE. I'LL GRANT YOU THAT.

10 MR. LEBOWITZ: OKAY.

11 WOULD THIS -- AND MR. VARTAIN HAS REPEATEDLY, THROUGH  
12 WITNESSES AND OTHERS, ELICITED TESTIMONY THAT, IN FACT, THERE  
13 WAS NO HARASSMENT IN THIS CASE. AND, IN FACT, THERE HAS NEVER  
14 BEEN AN ALLEGATION OF HARASSMENT. NOT SINCE THE DFEH COMPLAINT,  
15 NOT IN THE CIVIL COMPLAINT, NOT EVER. SO ALL OF THAT TESTIMONY  
16 IS, FRANKLY, IRRELEVANT. THE CLAIM IS DISCRIMINATORY DISCHARGE  
17 AND WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY AND, ALSO,  
18 THE MEDICAL EXAM. THIS IS ALL UNDER THE FEHA AND ALL CAUSES  
19 UNDER THE FEHA ARE ELIGIBLE FOR POTENTIAL FOR PUNITIVE DAMAGES.

20 THE COURT: FOR THE MEDICAL EXAM, FOR EXAMPLE, IF YOU  
21 HAVE SOME EVIDENCE THAT THEY SENT HER TO THIS PSYCHIATRIC EXAM  
22 TO EMBARRASS HER AND THAT THEIR MOTIVE WAS OR THAT THEY DID  
23 IT -- I KNOW YOU DIDN'T CLAIM HARASSMENT, BUT THAT THEY DID IT  
24 FOR HARASSMENT, THAT WOULD BE EVIDENCE OF MALICE AND OPPRESSION.  
25 BUT TO NEGLIGENTLY SEND HER TO A MEDICAL EXAM IN VIOLATION OF  
26 THE LAW WOULDN'T RISE TO THAT LEVEL.

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1 MR. LEBOWITZ: WELL, IT'S A GOOD POINT, BUT THE POINT  
2 IS THAT THAT'S NOT THE ONLY WAY YOU CAN PROVE MALICE. AND THE  
3 JURY INSTRUCTION ON MALICE, WHICH IS CACCI NO. 3946 --

4 THE COURT: LET ME JUST OPEN IT. OKAY.

5 MR. LEBOWITZ: AND THERE'S THREE ENUMERATED, AND THEN  
6 RIGHT UNDER THAT ARE THE DEFINITIONS. AND MALICE IS DEFINED  
7 AS -- I'LL JUST READ WHAT I HAVE. I'VE MODIFIED IT WITH THE  
8 PARTIES. "MALICE MEANS THAT MENLO COLLEGE ACTED WITH INTENT TO  
9 CAUSE INJURY OR THAT MENLO COLLEGE'S CONDUCT WAS DESPICABLE AND  
10 DONE WITH THE WILLFUL AND KNOWING DISREGARD OF THE RIGHTS OR  
11 SAFETY OF ANOTHER."

12 THE COURT: AND WHAT EVIDENCE DO YOU HAVE TO SUPPORT  
13 THAT DEFINITION?

14 MR. LEBOWITZ: WE HAVE THE EVIDENCE THAT NOBODY HAS  
15 EVER -- FIRST OF ALL, THE EVIDENCE OF THE COLLEGE IGNORING  
16 EVERYTHING THAT PROFESSOR BLOUGH WAS TELLING THEM ABOUT HER  
17 HEALTH IN APRIL AND MAY OF 2006; THE EVIDENCE THAT THEY IGNORED

18 HER MEDICAL PROFESSIONALS; THE EVIDENCE THAT THEY NEVER EVEN  
19 BEFORE --

20 AS A PRECURSOR TO SENDING HER TO A MEDICAL EXAM, THEY  
21 NEVER HAD EVEN A SINGLE CONVERSATION WITH HER WHERE THEY SAID  
22 ANYTHING TO THE EFFECT OF, "WE THINK YOU MIGHT HAVE SOME MEDICAL  
23 ISSUES OR SOME PERFORMANCE ISSUES BASED ON YOUR HEALTH. CAN YOU  
24 PLEASE GO TO YOUR OWN TREATING PHYSICIANS AND ASK THEM TO  
25 EVALUATE YOU, AND SEND US A LETTER WITH THEIR OPINION AS TO  
26 WHETHER OR NOT YOU COULD CONTINUE WORKING OR WHETHER YOU HAVE

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1 ANY FUNCTIONAL LIMITATIONS AT THIS POINT." THEY DIDN'T DO ANY  
2 OF THAT. THOSE ARE REASONABLE STEPS THAT SOMEBODY TAKES --

3 THE COURT: AND YOU THINK THIS WAS WILLFUL AND KNOWING  
4 DISREGARD?

5 MR. LEBOWITZ: WELL, THIS IS WHAT THEY DID. THE  
6 REASON WHY IT'S WILLFUL AND KNOWING IS THE EVIDENCE THAT THERE  
7 WAS NO TRAINING PROVIDED BY ANYBODY AT THE COLLEGE, EVER. WE  
8 HAVE TESTIMONY FROM EVERY COLLEGE WITNESS THAT THERE WAS NEVER  
9 ANY TRAINING PROVIDED ON WHAT THE REQUIREMENTS ARE FOR SENDING  
10 AN EMPLOYEE TO AN EMPLOYER-MANDATED MEDICAL EXAM.

11 THE COURT: WELL, BUT THE WILLFUL AND KNOWING HAS TO  
12 BE WILLFULLY AND KNOWINGLY KNEW OF THE DANGEROUS CONSEQUENCES OF  
13 THE CONDUCT, NOT THE MERE VIOLATION OF LAW. SO THIS IS VERY  
14 STRONG LANGUAGE. THIS IS NOT JUST, "I DIDN'T KNOW. I WAS  
15 NEGLIGENT." THIS IS THAT -- AND PLUS IT'S THE ADDED BURDEN OF

16 PROOF OF CLEAR AND CONVINCING EVIDENCE.

17 MR. LEBOWITZ: I UNDERSTAND.

18 THE COURT: "A PERSON ACTS WITH KNOWING DISREGARD WHEN  
19 HE OR SHE IS AWARE OF THE PROBABLE DANGEROUS CONSEQUENCES OF HIS  
20 OR HER CONDUCT AND DELIBERATELY," DELIBERATELY, "FAILS TO AVOID  
21 THOSE CONSEQUENCES."

22 MR. LEBOWITZ: WELL, THEY CERTAINLY -- I THINK YOU CAN  
23 ASSUME THAT ANYBODY KNOWS WHEN THEY SEND SOMEBODY TO A MEDICAL  
24 EXAM THAT THE CONSEQUENCES ARE PRETTY DANGEROUS TO THE  
25 EMPLOYEE'S --

26 MR. VARTAIN: WHAT?

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1 MR. LEBOWITZ: -- EMPLOYMENT STATUS.

2 THE COURT: OKAY. I'M NOT PREPARED -- DANGEROUS TO  
3 EMPLOYMENT STATUS?

4 MR. LEBOWITZ: YES.

5 THE COURT: THEN YOU WOULD HAVE TO OUTLAW EXAMS.

6 MR. LEBOWITZ: NO. THIS IS WHAT I'M SAYING. I'M  
7 SAYING IF YOU'RE TAKING THAT DRASTIC STEP, TO SAY, "I'M GOING TO  
8 SEND YOU TO A MEDICAL EXAM," AS THE EMPLOYER YOU ARE CHARGED  
9 WITH KNOWING THAT THE CONSEQUENCES OF THAT MEDICAL EXAM COULD BE  
10 THE END OF THAT PERSON'S EMPLOYMENT.

11 THE COURT: OKAY. I DON'T ACCEPT THAT ARGUMENT.

12 YOU KNOW, A KNOWING CONSEQUENCE OF EMPLOYMENT IS  
13 TERMINATION. EVERY PERSON WHO'S HIRED IS POSSIBLY GOING TO BE

14 TERMINATED AS A RESULT OF BEING HIRED, SO I DON'T SEE THE LOGIC.  
15 YOU'RE JUST SAYING WAY TOO MUCH HERE.

16 MR. LEBOWITZ: OKAY.

17 WELL, THEN LET'S JUST FOCUS IT. THE FACT IS THAT THE  
18 LAW PUTS -- THE FAIR EMPLOYMENT HOUSING ACT PUT AN AFFIRMATIVE  
19 DUTY ON EMPLOYERS TO KNOW THE LAW OF THE FEHA AND TO TAKE  
20 REASONABLE, APPROPRIATE STEPS TO MAKE SURE THAT THE  
21 DISCRIMINATORY ACTS DO NOT HAPPEN.

22 THE COURT: WELL, I AGREE. AND THAT'S WHY YOU HAVE A  
23 VALIDLY PLED CAUSE OF ACTION FOR FAILURE TO TAKE REASONABLE  
24 STEPS TO PREVENT DISCRIMINATION. AND I THINK THAT -- I'VE READ  
25 THE CASE LAW ON IT. IT'S NOT A LOGICAL CAUSE OF ACTION BECAUSE  
26 IT'S NOT DISTINCT FROM DISCRIMINATION, AND IT CAN'T HAPPEN

926

1 WITHOUT DISCRIMINATION. IT'S A LEGAL CAUSE OF ACTION. IT'S A  
2 STATUTORY TORT AND I ACCEPT IT AS SUCH, AND I'VE STOPPED TRYING  
3 TO RATIONALIZE IT BECAUSE THAT'S NOT MY JOB.

4 BUT YOU HAVE APPROPRIATELY PLED IT. YOU HAVE PLENTY  
5 OF EVIDENCE TO GO TO THE JURY ON IT. MR. VARTAIN DIDN'T EVEN  
6 RAISE THAT PARTICULAR ISSUE, AND SO THAT'S JUST WHAT YOU'RE  
7 TELLING ME. YES, THEY DO HAVE A DUTY TO TAKE REASONABLE STEPS  
8 TO AVOID DISCRIMINATORY CONDUCT. SO YOUR CLAIM FOR PUNITIVE  
9 DAMAGES NEEDS TO BE OVER AND ABOVE, NEEDS TO BE MALICIOUS AND  
10 OPPRESSIVE. THAT'S DIFFERENT THAN -- THE CAUSE OF ACTION IS  
11 REALLY A NEGLIGENCE CAUSE OF ACTION WITH AN EXPRESSED DUTY.

12 MR. LEBOWITZ: I UNDERSTAND.

13 AND I THINK YOU RECALL THE END OF MY OPENING

14 ARGUMENT -- EXCUSE ME, OPENING STATEMENT.

15 MR. VARTAIN: IT WAS AT TIMES USED AS ARGUMENT. I

16 READ THE TRANSCRIPT LAST NIGHT. I WAS NICE TO YOU.

17 THE COURT: I NEED TO WRAP THIS UP. I APOLOGIZE.

18 MR. LEBOWITZ: AT THE END I MADE A VERY CLEAR

19 STATEMENT; "ACTIONS SPEAK LOUDER THAN WORDS," AND THAT'S EXACTLY

20 WHAT THIS IS ABOUT. AND PUNITIVE DAMAGES CAN BE DRAWN OUT OF A

21 JURY INTERPRETING THE ACTIONS OF AN EMPLOYER, AS OPPOSED TO THE

22 WORDS THEY SPEAK.

23 THE COURT: SO YOU'RE SAYING THAT SENDING A PROFESSOR

24 WHO'S HAD CANCER TO A PSYCHIATRIST IS MALICIOUS. THAT WOULD BE

25 ENOUGH TO GO TO THE JURY FOR THEM TO FIGURE IT OUT?

26 MR. LEBOWITZ: IN THE CIRCUMSTANCES THAT WE HAVE

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1 PRESENTED, I BELIEVE THAT THAT IS MALICIOUS OR OPPRESSIVE. AND

2 OPPRESSIVE THAT THE CONDUCT WAS DESPICABLE AND SUBJECTED THE

3 PLAINTIFF TO CRUEL AND UNJUST HARDSHIP IN KNOWING DISREGARD OF

4 HER RIGHTS.

5 THE COURT: ALL RIGHT.

6 YOU KNOW, MR. VARTAIN, ON THE STATE OF EVIDENCE AS IT

7 IS NOW, WHERE WE DON'T -- WHERE I CAN'T CONSIDER WHY THE

8 COLLEGE, THROUGH ITS ACTORS, CHOSE A PSYCHIATRIST. ONLY CAN I

9 CONSIDER THE PLAINTIFF'S EVIDENCE. I'M GOING TO LET THE

10 PUNITIVE DAMAGES GO. I HAVE GRAVE RESERVATIONS ABOUT THIS. AND  
11 I'M GOING TO WANT TO HEAR -- I MAY REVISIT THIS MOTION. MAYBE  
12 I'M JUST GOING TO WAIT TO RULE ON THIS PART OF THE MOTION. I  
13 HAVE SERIOUS RESERVATIONS.

14 BUT THE ONE ISSUE OF PROFESSOR BLOUGH'S EVIDENCE COULD  
15 REASONABLY BE INTERPRETED FOR THIS MOTION TO STATE THAT SHE  
16 SUFFERED PHYSICAL AILMENTS RELATED TO CANCER AND WAS SENT TO A  
17 PSYCHIATRIST WAS MALICIOUS IN AND OF ITSELF, AND THAT A JURY  
18 COULD CONSIDER THAT. THERE'S SO MUCH MORE THAT WE'RE WAITING TO  
19 HEAR. FIRST OF ALL, WE HAVEN'T HEARD DR. MISSETT, BUT I  
20 COULDN'T CONSIDER THAT NOW ANYWAY.

21 SO I'M GOING TO WAIT ON RULING ON THIS MOTION. I HAVE  
22 TREMENDOUS RESERVATIONS ABOUT LETTING PUNITIVE DAMAGE LIABILITY  
23 GO TO THE JURY. IF I FEEL AT THE END OF THE EVIDENCE THAT NO  
24 REASONABLE JURY COULD RENDER A VERDICT ON PUNITIVE DAMAGES AS  
25 CLEAR AND CONVINCING EVIDENCE, I THINK I CAN HOLD THAT BACK FROM  
26 THE JURY. AND SO I'M GOING TO RESERVE ON THAT AT THIS TIME.

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1 I'M NOT GOING TO RULE. I HAVE TREMENDOUS RESERVATIONS ABOUT THE  
2 EVIDENCE, BUT I'M GOING TO HAVE YOU PUT ON WHATEVER ELSE YOU  
3 HAVE.

4 MR. VARTAIN: WITH REGARD TO -- AND I'M AWARE THE  
5 JURORS ARE OUT THERE, YOUR HONOR. SINCE YOU'RE GOING TO  
6 CONTINUE TO THINK ABOUT IT, LET ME JUST SAY TWO THINGS. ONE,  
7 THERE'S NOTHING IN THE LAW THAT SAYS THAT THE EMPLOYER HAS TO



8 SOLICIT THE HEALTHCARE INFORMATION, AND THERE'S NOTHING IN THE  
9 EVIDENCE THAT SAYS THAT PLAINTIFF OFFERED HER HEALTHCARE  
10 INFORMATION BEFORE.

11 THE COURT: I AGREE WITH YOU.

12 MR. VARTAIN: SO ON ITS FACE, THERE'S NO EVIDENCE TO  
13 SUPPORT THE THEORY THAT MR. LEBOWITZ IS ARGUING FOR.

14 THE COURT: WELL, I TEND TO AGREE WITH YOU THAT THE  
15 MERE FAILURE TO MEET WITH HER AND TO INVITE HER TO BRING HER OWN  
16 DOCTORS' LETTERS IN WOULD NOT BE ENOUGH TO CONSIDER PUNITIVE  
17 DAMAGES. BUT THIS OTHER ISSUE IS WHAT I'M GOING TO PAUSE ON.  
18 AND THAT IS, PROFESSOR BLOUGH'S TESTIMONY THAT SHE HAD PHYSICAL  
19 AILMENTS AND SHE WAS SENT TO A PSYCHIATRIST. AND, YOU KNOW, WE  
20 ALL HEARD THIS YESTERDAY. THIS WAS VERY INTENSE EVIDENCE. AND  
21 I'M SURE THERE'S MORE TO COME, BUT AT THIS STAGE I THINK THAT I  
22 NEED TO LET THIS HOLD FOR A LITTLE BIT ON A --

23 MR. VARTAIN: WITHOUT TRYING TO CHANGE YOUR MIND FOR  
24 NOW, JUST LET ME LEAVE YOU WITH THIS THOUGHT. THE EVIDENCE WAS  
25 THAT SHE WAS SENT TO DR. MISSETT BECAUSE HE WAS THE DOCTOR THAT  
26 WAS USED THE PREVIOUS TIME, AND IT WAS VERY HELPFUL FOR BOTH THE

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1 COLLEGE AND HER. THAT'S WHAT MS. SAPRAI SAID SHE UNDERSTOOD.

2 THE COURT: OKAY. BUT THAT'S NOT ENOUGH.

3 MR. VARTAIN: I'M NOT SAYING THAT'S SUBSTANTIAL ENOUGH  
4 TO GET THE MOTION FOR NONSUIT. BUT WHAT I'M SAYING IS, HE HAS  
5 THE BURDEN -- HE HAS THE BURDEN TO PUT IN EVIDENCE OF MALICE.

6 IT'S NOT THERE. WHAT THIS IS GOING TO DO TO MY CASE, YOUR  
7 HONOR -- AND I KNOW IT'S GOING TO CHANGE NOW THE NUMBER OF  
8 WITNESSES I HAVE. AND IT'S GOING TO -- WHAT I WAS TRYING TO DO  
9 WITH THESE MOTIONS --

10 THE COURT: I'M SURE YOU DIDN'T BANK ON ANY PARTICULAR  
11 RULING I MADE.

12 MR. VARTAIN: I DID BANK ON THIS ONE, AND I AM  
13 DISAPPOINTED BECAUSE I'M NOW GOING TO HAVE TO GET A SET OF  
14 WITNESSES TOGETHER. I DO THINK THAT THE DEFENSE IS ENTITLED TO  
15 A MOTION FOR NONSUIT TO BE GRANTED WHERE, IN THIS PARTICULAR  
16 CASE, THE EVIDENCE IS WHOLLY LACKING. AND SO I WOULD LIKE YOU  
17 TO KEEP THAT IN MIND AS YOU THINK ABOUT THIS OVER THE NEXT DAY  
18 OR SO.

19 THE COURT: OKAY. I WILL.

20 MR. LEBOWITZ: VERY BRIEFLY.

21 ON THE ISSUE OF THE SEQUENCING OF WHO TO ASK AND WHAT  
22 TYPE OF MEDICAL EXAMINATION AND WHAT THE COLLEGE IS SUPPOSED TO  
23 DO, I WOULD AGAIN DIRECT YOUR HONOR TO MY TRIAL BRIEF WHICH  
24 CITES AUTHORITY THAT SAYS THAT THOSE ARE THE APPROPRIATE STEPS  
25 THAT A COLLEGE -- OR EMPLOYERS ARE SUPPOSED TO TAKE BEFORE  
26 SENDING AN EMPLOYEE TO A MEDICAL EXAM.

930

1 THE COURT: ALL RIGHT.

2 BUT MERELY FAILING TO DO WHAT YOU'RE SUPPOSED TO DO IS  
3 NOT MALICE AND OPPRESSION. LET'S BE CLEAR. THE JURY COULD

4 DECIDE BEYOND A REASONABLE DOUBT THAT THERE WAS NEGLIGENCE AND  
5 IT STILL WOULD NEVER BE EVIDENCE OF MALICE AND OPPRESSION.

6 MR. LEBOWITZ: WELL --

7 THE COURT: LET'S NOT CONFUSE IT. JUST BECAUSE YOU  
8 HAVE A STRONG CASE ON NEGLIGENCE -- AND I'M NOT SAYING YOU DO --  
9 BUT IN A CASE WHERE ONE DOES, IT STILL COULD BE DEVOID OF  
10 EVIDENCE OF MALICE.

11 MR. LEBOWITZ: I AGREE, YOUR HONOR. AND WHEN WE  
12 REVISIT THIS, I WILL ARTICULATE THE EVIDENCE THAT I THINK SHOWS  
13 THAT IT WAS -- IT MEETS THE STANDARD OF MALICE AND OPPRESSION --

14 THE COURT: OKAY.

15 MR. LEBOWITZ: -- IN A MORE SUCCINCT FASHION.

16 MR. VARTAIN: THANK YOU FOR YOU TAKING YOUR PRECIOUS  
17 TIME.

18 THE COURT: IT'S YOUR TIME, BECAUSE WE HAVE TO GET  
19 THIS CASE FINISHED, BUT ALL RIGHT.

20 LET'S BRING THE JURY IN.

21 (WHEREUPON, THE JURY ENTERS THE COURTROOM.)

22 THE COURT: WE'RE ON THE RECORD IN BLOUGH VS. MENLO  
23 COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT, AND ALL JURORS  
24 AND ALTERNATES.

25 LADIES AND GENTLEMEN, THAT WAS A LONG HOUR. I'M SORRY  
26 THAT YOU HAD TO SIT IN THE HALLWAY. I WAS ENGAGED IN DISCUSSION

1 ON LEGAL ISSUES WITH THE ATTORNEYS, AND IT WAS IMPORTANT THAT I

2 NOT RUSH IT. SO THANK YOU FOR YOUR COURTESY. WE COMMENTED MANY  
3 TIMES THAT WE WERE BEING RUDE TO YOU, AND I APOLOGIZE FOR ALL OF  
4 US, BUT IT WAS NECESSARY. SO I DON'T REGRET IT, BUT I AM SORRY  
5 FOR YOU THAT I DIDN'T HAVE A CRYSTAL BALL SO THAT I COULD HAVE  
6 BROUGHT YOU IN AN HOUR LATER. BUT WE ARE READY TO GO BACK TO  
7 THE TESTIMONY.

8 IS OUR WITNESS, MS. TIPTON, READY TO RESUME HER DIRECT  
9 EXAMINATION?

10 MS. ADLER: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. LET'S BRING HER FORWARD.

12 AND, MS. TIPTON, I'M GOING TO HAVE YOU SWORN AGAIN FOR  
13 A NEW COURT DAY.

14 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

15 (WHEREUPON, THE WITNESS WAS SWORN.)

16 THE WITNESS: YES.

17 THE CLERK: PLEASE BE SEATED.

18 THE COURT: MS. ADLER, YOU MAY CONTINUE.

19 MS. ADLER: THANK YOU, YOUR HONOR.

20

21 DIRECT EXAMINATION (RESUMED)

22 BY MS. ADLER:

23 Q. GOOD MORNING, MS. TIPTON.

24 A. GOOD MORNING.

25 Q. DO YOU REMEMBER YESTERDAY AFTERNOON WHEN YOU TESTIFIED

26 WE DISCUSSED SOME OF THE STUDENT COMPLAINTS REGARDING PROFESSOR

1 BLOUGH IN THE SPRING 2006 SEMESTER?

2 A. YES.

3 Q. AND IS IT YOUR TESTIMONY THAT ABOUT FOUR TO SIX  
4 STUDENTS CAME TO YOU COMPLAINING ABOUT HER ATTENDANCE ISSUES  
5 THAT SEMESTER?

6 MR. PETERS: OBJECTION, LEADING.

7 THE COURT: WELL, WE ARE JUST REGAINING WHERE WE WERE  
8 YESTERDAY.

9 BUT THAT WAS A LEADING QUESTION, SO KEEP THAT IN MIND.

10 MS. ADLER: OKAY.

11 THE WITNESS: YES.

12 MS. ADLER: Q. OKAY. AND IS IT YOUR TESTIMONY THAT  
13 ON ONE OCCASION THAT SEMESTER PROFESSOR BLOUGH TOLD YOU THAT SHE  
14 MISSED A CLASS BEGINNING AROUND 11:00 O'CLOCK?

15 A. YES.

16 Q. AND DID SHE GIVE YOU A REASON WHY SHE MISSED THAT  
17 CLASS?

18 A. THAT SHE WASN'T FEELING WELL.

19 Q. THEN I THINK WE WERE DISCUSSING PROFESSOR BLOUGH'S  
20 ADVISEES?

21 A. YES.

22 Q. AND REGARDING DURING THE SPRING 2006 SEMESTER --

23 A. YES.

24 Q. -- DO YOU KNOW HOW MANY ADVISEES SHE HAD THAT  
25 SEMESTER?

26 A. APPROXIMATELY 20.

1 Q. OKAY.

2 AND WHAT KIND OF THINGS DO PROFESSORS ADVISE STUDENTS  
3 ON?

4 MR. PETERS: OBJECTION. LACKS FOUNDATION.

5 THE COURT: SUSTAINED.

6 MS. ADLER: OKAY.

7 Q. DO YOU KNOW OF WHAT IT IS THAT PROFESSORS ADVISE THEIR  
8 ADVISEES ON?

9 A. THAT STAFF AND FACULTY ADVISE THEIR STUDENTS ON  
10 HELPING THEM CHOOSE THEIR CLASSES FOR ANY PARTICULAR MAJOR, FOR  
11 COURSE CONTENT, THEY WANT TO KNOW MORE INFORMATION ABOUT A  
12 CERTAIN CLASS TO HELP THEM WITH THAT, AND ALSO TO BE A MENTOR TO  
13 THEIR ADVISEE AS WELL.

14 Q. OKAY.

15 AND DURING THE SPRING 2006 SEMESTER, DID ANY OF  
16 PROFESSOR BLOUGH'S ADVISEES TALK TO YOU ABOUT PROFESSOR BLOUGH  
17 THAT SEMESTER?

18 A. YES.

19 Q. AND WHAT DID THEY TELL YOU?

20 MR. PETERS: OBJECTION. HEARSAY.

21 THE COURT: I'M GOING TO OVERRULE IT AND ALLOW IT FOR  
22 THE -- NOT FOR THE TRUTH, LADIES AND GENTLEMEN, THAT THESE  
23 THINGS ACTUALLY HAPPENED, BUT THE FACT THAT THIS INFORMATION WAS  
24 REPORTED TO MS. TIPTON.

25 AND WITH THAT I WILL ALLOW IT AND OVERRULE THE  
26 OBJECTION.

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1 MS. ADLER: Q. GO AHEAD AND ANSWER.

2 A. CAN YOU REPEAT THE QUESTION? I'M SORRY.

3 Q. WHAT IS IT THAT THE ADVISEES TOLD YOU ABOUT PROFESSOR  
4 BLOUGH?

5 A. THEY WOULD TELL ME THAT THEY HAVE BEEN TRYING TO GET  
6 IN CONTACT WITH HER AND THEY COULD NOT CONTACT HER. THEY  
7 PHONED, E-MAILED, GO TO HER OFFICE DURING OFFICE HOURS AND THEY  
8 COULD NOT FIND HER. AND SO THEY WOULD COME AND SEE ME TO SEEK  
9 ASSISTANCE.

10 Q. OKAY.

11 SO THE STUDENTS TOLD YOU THAT THEY WOULD ACTUALLY GO  
12 TO HER OFFICE DURING OFFICE HOURS AND SHE WASN'T PRESENT; IS  
13 THAT CORRECT?

14 A. YES.

15 Q. OKAY.

16 AND CAN YOU REMEMBER -- YOU TESTIFIED THAT SHE HAD  
17 ABOUT 20 ADVISEES. CAN YOU REMEMBER, ESTIMATE ABOUT HOW MANY OF  
18 HER ADVISEES CAME TO YOU THAT SEMESTER, 2006?

19 A. I WOULD SAY APPROXIMATELY HALF, WHICH WOULD BE ABOUT  
20 TEN STUDENTS.

21 Q. AND THESE ARE ABOUT TEN DIFFERENT STUDENTS?

22 A. YES.

23 Q. OKAY.

24 AND DID THEY SEEM MAD?

25 A. YES. THEY WERE FRUSTRATED WITH THE WHOLE -- THEY

26 COULDN'T FIND THEIR ADVISOR AND THEY WANTED TO GET REGISTERED

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1 FOR CLASSES, AND THEY COULDN'T FIND THEM. BECAUSE THEY DIDN'T

2 WANT TO GET CHARGED A LATE FEE. AND THEY GET CHARGED A LATE FEE

3 IF THEY DON'T REGISTER BY A CERTAIN DATE.

4 Q. SO DID SOME OF THE STUDENTS, THE ADVISEES THAT CAME TO

5 YOU, DID THEY SAY THEY WERE TRYING TO GET AHOLD OF HER REGARDING

6 SOME TIME-SENSITIVE MATTERS?

7 A. YES.

8 Q. AND DID THEY TELL YOU THAT THEY WEREN'T ABLE TO GET

9 AHOLD OF HER IN TIME?

10 A. YES.

11 Q. AND WAS THIS REGARDING -- COULD YOU ELABORATE A LITTLE

12 BIT MORE ON THAT? YOU SAID SOMETHING ABOUT REGISTERING. WHAT

13 WAS IT THAT THEY --

14 A. THE STUDENTS ARE --

15 MR. PETERS: HEARSAY, YOUR HONOR.

16 THE COURT: SUSTAINED.

17 MS. ADLER: OKAY.

18 MR. VARTAIN: COULD WE HAVE A SIDEBAR ON THAT?

19 THE COURT: SURE.

20 MR. VARTAIN: WE HAD SIDEBARS --



21 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

22 THE COURT: MS. ADLER, YOU MAY CONTINUE.

23 MS. ADLER: THANK YOU, YOUR HONOR.

24 Q. COULD YOU DESCRIBE FOR ME MORE SPECIFICALLY WHAT IT IS  
25 THE STUDENTS, THE ADVISEES TOLD YOU IN TERMS OF WHY IT WAS TIME  
26 SENSITIVE, SOME OF THE ISSUES THEY WANTED TO TALK TO PROFESSOR

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1 BLOUGH ABOUT?

2 A. THE STUDENTS GET TO REGISTER BY WHAT CLASS STANDING  
3 THEY ARE IN. SO IF THEY ARE SENIORS, JUNIORS, SOPHOMORE,  
4 FRESHMEN, THEY GET TO REGISTER BY THAT DATE, AND THEY GET FIRST  
5 CHOICE OF CLASSES. SO IF THEY ARE SENIORS OR JUNIORS, THEY GET  
6 TO CHOOSE THEIR CLASSES WITHOUT HAVING ANY PROBLEMS, CONFLICTS  
7 OR WHATNOT. AND ALSO, THEY WANTED TO JUST GET THEIR SCHEDULE  
8 DONE WITH. SOMETIMES THEY HAVE TO HAVE IT DONE IF THEY NEED  
9 TO -- IF THEY WORK, THEY WANT TO HAND THEIR SCHEDULE TO THEIR  
10 EMPLOYER AS WELL.

11 AND ALSO, IF THEY DON'T REGISTER BY A CERTAIN DATE,  
12 THE COLLEGE CHARGES THEM A LATE FEE, AND I BELIEVE IT'S \$75.  
13 THEY GET CHARGED A LATE FEE, SO THEY TRY TO AVOID THAT BECAUSE  
14 THEY DON'T WANT THAT BILLED TO THEIR ACCOUNT.

15 Q. OKAY.

16 AND WHEN YOU RECEIVED THESE COMPLAINTS FROM HER  
17 ADVISEES, DID YOU TELL DEAN PRATT? DID YOU MAKE HIM AWARE OF  
18 THESE COMPLAINTS?

19 A. I MENTIONED IT ONCE OR TWICE TO HIM.

20 Q. OKAY.

21 AND IN YOUR EXPERIENCE IN YOUR NINE YEARS WORKING IN  
22 THE ACADEMIC ADVISING DEPARTMENT, IS IT YOUR EXPERIENCE THAT  
23 STUDENTS BECOME ANXIOUS WHEN THEY WERE UNABLE TO GET AHOLD OF  
24 THEIR PROFESSOR?

25 MR. PETERS: OBJECTION. RELEVANCE.

26 THE COURT: OVERRULED.

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1 MS. ADLER. Q. YOU MAY ANSWER.

2 A. YES, THEY ARE VERY ANXIOUS.

3 Q. OKAY.

4 AGAIN, FOCUSING ON THE SPRING 2006 SEMESTER, DID YOU  
5 NOTICE ANYTHING ABOUT PROFESSOR BLOUGH'S APPEARANCE AND GROOMING  
6 THAT SEMESTER?

7 A. YES.

8 Q. HOW WOULD YOU DESCRIBE HER GENERAL APPEARANCE DURING  
9 THE SPRING 2006 SEMESTER?

10 A. IT WAS -- SHE WASN'T -- HAIR WASN'T ALL THE WAY  
11 COMBED. I REMEMBER ONE TIME SHE HAD, I THINK IT WAS A GREEN  
12 BLOUSE THAT HAD WATER SPOTS ON IT. AND I JUST REMEMBER HER  
13 GOING TO CLASS THAT WAY. AND IT WASN'T BEING PROFESSIONAL IN  
14 RESPECT TO THE STUDENTS AS WELL. SO THE GROOMING PART, SHE JUST  
15 WASN'T WELL-KEPT FOR BEING A PROFESSOR. AND SOMETIMES YOU HAVE  
16 PROFESSORS THAT -- YOU KNOW, THEY'RE DIFFERENT, SOME ARE. BUT

17 THIS ONE JUST WASN'T -- YOU CAN SOMETIMES TELL THAT THERE WAS NO  
18 EFFORT PUT INTO BEGINNING THE DAY --

19 Q. OKAY.

20 A. -- TO START THE DAY OFF.

21 Q. DID YOU THINK SHE APPEARED DISHEVELED?

22 A. YES.

23 Q. AND DID YOU SEE PROFESSOR BLOUGH DURING THE PREVIOUS  
24 SEMESTER IN FALL 2005?

25 A. YES.

26 Q. AND HOW WOULD YOU COMPARE HER APPEARANCE IN THE SPRING

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1 2006 SEMESTER COMPARED TO WHEN YOU SAW HER IN FALL 2005?

2 A. IT WAS MUCH BETTER IN THE PREVIOUS SEMESTER.

3 Q. DID YOU THINK HER APPEARANCE LOOKED PROFESSIONAL THE  
4 PREVIOUS SEMESTER?

5 A. YES.

6 Q. DID YOU THINK SHE LOOKED PROFESSIONAL IN THE SPRING  
7 2006 SEMESTER?

8 A. NO.

9 Q. OKAY.

10 AND YOU MENTIONED EARLIER THAT YOU WERE A STUDENT AT  
11 MENLO COLLEGE PRIOR TO WORKING IN THE ACADEMIC ADVISING  
12 DEPARTMENT; IS THAT CORRECT?

13 A. YES.

14 Q. AND HOW AVAILABLE DID YOUR PROFESSORS MAKE THEMSELVES

15 TO YOU WHEN YOU WERE A STUDENT THERE?

16 A. THEY WERE ALWAYS THERE. THE DOORS ARE ALWAYS OPEN FOR  
17 OUR FACULTY. EVEN WHEN YOU DO THE WHOLE ADMISSIONS PROCESS,  
18 THEY ALWAYS SAY THE FACULTY IS ALWAYS THERE AVAILABLE FOR YOU.  
19 SO THEY ARE ALWAYS WILLING. THEY ALWAYS ANNOUNCE IN THEIR  
20 CLASS, "PLEASE, COME SEE ME." THEIR OFFICE HOURS, "WRITE IT ON  
21 YOUR TERM PAPERS. FOR ANYTHING, PLEASE, COME SEE ME DURING  
22 OFFICE HOURS." SO THEY ARE ALWAYS THERE AVAILABLE TO THE  
23 STUDENTS. AND IF THEY'RE NOT, THEY USUALLY PUT A NOTE SAYING,  
24 "SORRY. I HAVE A MEETING," OR "I'M OUT. PLEASE CONTACT ME THIS  
25 WAY."

26 Q. SO IT WAS YOUR EXPERIENCE THAT WHEN WOULD YOU GO VISIT

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1 YOUR PROFESSORS DURING OFFICE HOURS, THAT THEY WERE ACTUALLY  
2 THERE?

3 A. YES.

4 Q. OKAY.

5 AND DID YOUR PROFESSORS MAKE THEMSELVES AVAILABLE TO  
6 YOU OUTSIDE OF OFFICE OURS?

7 MR. PETERS: OBJECTION. RELEVANCE.

8 THE COURT: I WILL ALLOW IT FOR BASIS FOUNDATION. A  
9 MENLO COLLEGE EXPERIENCE.

10 THE WITNESS: CAN YOU REPEAT THAT QUESTION?

11 MS. ADLER: Q. DID YOUR PROFESSORS MAKE THEMSELVES  
12 AVAILABLE TO YOU OUTSIDE OF THEIR POSTED OFFICE HOURS AS WELL?

13 A. YES.

14 Q. OKAY.

15 AND DID YOU HAVE ANY PROFESSORS DURING YOUR -- WERE  
16 YOU AT MENLO COLLEGE FOR FOUR YEARS?

17 A. YES, I WAS.

18 Q. -- DURING YOUR FOUR YEARS THERE WHO REPEATEDLY  
19 CANCELED CLASSES IN THE SEMESTER?

20 A. NO.

21 Q. DID YOU HAVE PROFESSORS WHO REPEATEDLY ENDED THEIR  
22 CLASSES EARLY IN A SEMESTER?

23 A. NO. MAYBE FIVE, 10 MINUTES, IF THAT. BUT NOTHING --  
24 YOU KNOW, YOU JUST START THE DAY AND YOU'RE DONE. NOTHING LIKE  
25 THAT, NO.

26 Q. SO YOU DIDN'T EXPERIENCE PROFESSORS WHO REPEATEDLY

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1 WOULD END CLASSES EARLY?

2 A. NO.

3 Q. AND DID YOU HAVE ANY PROFESSORS WHO REPEATEDLY WOULD  
4 NOT RESPOND TO YOUR E-MAILS?

5 A. NO.

6 Q. VOICE MAILS?

7 A. NO.

8 MS. ADLER: OKAY. THANK YOU.

9 THE COURT: CROSS-EXAMINATION?

10 MR. PETERS: NO QUESTIONS, YOUR HONOR.

11 THE COURT: MAY SHE BE EXCUSED?

12 MR. PETERS: YES.

13 THE COURT: MS. TIPTON, THANK YOU FOR YOUR TESTIMONY.

14 YOU ARE FREE TO GO.

15 THE WITNESS: THANK YOU.

16 THE COURT: NEXT WITNESS.

17 MR. VARTAIN: JAMES MISSETT. I THINK HE MIGHT BE DOWN

18 THE HALL.

19 MAY I HAVE A MOMENT, YOUR HONOR, BEFORE YOU SWEAR THE

20 WITNESS?

21 THE COURT: OH, SURE.

22 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

23 THE COURT: DR. MISSETT, IF YOU'D COME FORWARD TO THE

24 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

25 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

26 (WHEREUPON, THE WITNESS WAS SWORN.)

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1 THE WITNESS: I DO.

2

3 JAMES MISSETT,

4 DULY SWORN, TESTIFIED AS FOLLOWS:

5

6 DIRECT EXAMINATION

7 BY MR. VARTAIN:

8 Q. I'M GOING TO SIT HERE, DR. MISSETT. WE HAVE TO LOOK

9 THROUGH THE COURT REPORTER.

10 WOULD YOU PLEASE STATE YOUR NAME AND ADDRESS?

11 A. JAMES MISSETT, M-I-S-S-E-T-T.

12 Q. WHERE DO YOU WORK, DR. MISSETT?

13 A. I HAVE AN OFFICE AT 1187 UNIVERSITY DRIVE IN MENLO  
14 PARK.

15 Q. WHAT IS YOUR PRACTICE, DOCTOR?

16 A. I'M A PSYCHIATRIST.

17 Q. AND WHAT IS THE NATURE OF YOUR MEDICAL PRACTICE?

18 A. WELL, IT COVERS A RANGE. I PROBABLY HAVE ABOUT 20  
19 INDIVIDUALS THAT I WILL SEE AS PATIENTS DURING THE COURSE OF AN  
20 AVERAGE WEEK. I WILL -- RATHER REGULARLY, I DO EVALUATIONS FOR  
21 COURTS, USUALLY OF PEOPLE FACING CRIMINAL CHARGES. AND THAT  
22 WOULD BE FOR COUNTIES REALLY AROUND THE BAY AREA FOR THE MOST  
23 PART, BUT ALSO IN OTHER STATES AND SOMETIMES FOR THE FEDERAL  
24 GOVERNMENT.

25 Q. IS THAT ONE, DOCTOR, WHERE YOU'RE RETAINED BY THE  
26 COURTS, THE COURT SYSTEM TO DO THOSE EVALUATIONS?

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1 A. MOST OF THE TIME. SOME OF THE ONES IN THE OTHER  
2 STATES WERE CASES -- USUALLY DEATH PENALTY CASES, AND IT WOULD  
3 DEPEND ON WHETHER IT WAS THE OFFICE OF THE PROSECUTOR OR THE  
4 OFFICE OF THE PUBLIC DEFENDER THAT RETAINED ME.

5 Q. SO IT COULD BE EITHER THE PLAINTIFF SIDE OR THE  
6 DEFENSE SIDE?

7 A. IN A CRIMINAL CASE. AND THEN, AGAIN, ON AN AVERAGE  
8 WEEK I'LL HAVE ABOUT ONE REFERRAL FOR AN EVALUATION IN SOMETHING  
9 THAT'S A CIVIL MATTER; NO CRIME IS ALLEGED. AND THAT COULD BE  
10 FOR ALMOST ANYTHING. THAT CAN BE BECAUSE THERE'S A LAWSUIT  
11 ALREADY. IT CAN BE BECAUSE SOMEBODY WAS INJURED AND SOMEONE IS  
12 THINKING ABOUT A LAWSUIT. IT COULD BE A FITNESS-FOR-DUTY  
13 EVALUATION, NAMELY A REFERRAL, GENERALLY FROM AN EMPLOYER AS TO  
14 WHETHER THAT PERSON, USUALLY FOR A MEDICAL OR PSYCHIATRIC  
15 REASON, IS UNABLE TO OR GOING TO HAVE DIFFICULTIES WITH  
16 FULFILLING THE ESSENTIAL RESPONSIBILITIES OF THEIR JOB.

17 Q. THAT'S WHAT YOU CALL A FITNESS-FOR-DUTY EVALUATION?

18 A. THAT WOULD BE -- THAT'S THE LAST ONE, YES.

19 Q. WOULD YOU TELL US, DOCTOR, HOW MANY WOULD YOU SAY IN  
20 YOUR CAREER -- AND I'LL WANT TO GO A LITTLE BIT BACKWARDS SO THE  
21 JURY UNDERSTANDS YOUR BREADTH OF YOUR EXPERIENCE. BUT OVER YOUR  
22 CAREER, HOW MANY FITNESS-FOR-DUTY EVALUATIONS OF EMPLOYEES HAVE  
23 YOU DONE FOR DIFFERENT ORGANIZATIONS? AND COULD YOU GIVE SOME  
24 EXAMPLES OF THE KINDS OF PROFESSIONALS AND WORKERS THAT YOU HAVE  
25 BEEN ASKED TO MEDICALLY AND PSYCHOLOGICALLY EVALUATE?

26 A. IT'S SOMEWHERE OVER 300. OVER 50 OF THEM WERE FOR THE

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1 CALIFORNIA MEDICAL BOARD.

2 Q. WHAT IS THE CALIFORNIA MEDICAL BOARD, DOCTOR?

3 A. WELL, THERE'S ORDINARILY FOR ALL THE HEALTHCARE  
4 PROFESSIONS, A STATE BOARD IN THE DEPARTMENT OF CONSUMER



5 SERVICES OF CONSUMER AFFAIRS, WHICH LICENSES THAT PROFESSIONAL  
6 TO PRACTICE HIS OR HER PROFESSION, AND THAT CAN BE AS A  
7 PHYSICIAN, AS A PSYCHOLOGIST, ON THE ORDER OF PSYCHOLOGY,  
8 MARRIAGE AND FAMILY THERAPIST FOR BEHAVIORAL SCIENCE.  
9 PHARMACIST, PODIATRIST.

10 Q. SO ON THESE CASES, DO YOU GET REQUESTED BY THE STATE  
11 OF CALIFORNIA TO DO THE FITNESS-FOR-DUTY EVALUATIONS FOR THOSE  
12 PROFESSIONALS AS A CONSULTANT TO THE STATE BOARD?

13 A. YES, WHEN THAT HAPPENS. AND THEN THERE ARE MANY OTHER  
14 NUMBER OF GROUPS. THERE ARE OTHER STATE ORGANIZATIONS, THE  
15 STATE NURSING BOARD, THE BOARD OF PSYCHOLOGY, AS I MENTIONED,  
16 THE BOARD OF BEHAVIORAL SCIENCE, THE STATE BAR AND THEN VARIOUS  
17 GOVERNMENT AGENCIES. THE MOST COMMON OF THOSE ARE POLICE  
18 DEPARTMENTS.

19 Q. WHICH COUNTIES OR STATES DO YOU EVALUATE POLICE  
20 OFFICERS AND WHETHER THEY'RE ABLE TO PERFORM THEIR JOB DUTIES?

21 A. THEY HAVE ALL BEEN WITHIN CALIFORNIA.

22 Q. SO AROUND HERE THEN?

23 A. THE MAJORITY ARE CLOSE TO HERE. THERE WERE A COUPLE  
24 THAT WERE FROM FURTHER AWAY, TWO OR THREE FROM SOUTHERN  
25 CALIFORNIA. AND THEN THERE ARE TEACHERS, COMMONLY, MOST OFTEN  
26 AT THE ELEMENTARY SCHOOL LEVELS. AND IT GETS FEWER AND FEWER AS

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1 THE GRADE GETS HIGHER. SO THE MAJORITY ARE ELEMENTARY SCHOOL,  
2 AND THE NEXT MOST COMMON ARE THE HIGH SCHOOL AND JUNIOR HIGH

3 SCHOOL. THE NEXT MOST COMMON, TEACHERS AT COLLEGE LEVEL.

4 Q. AT THE COLLEGE LEVEL.

5 WOULD YOU GIVE THE JURY A SENSE OF HOW, OVER YOUR  
6 CAREER, HOW MANY PEOPLE YOU'VE EVALUATED WHO DO TEACH IN SOME  
7 EDUCATIONAL ORGANIZATION OR ANOTHER THAT YOU'VE BEEN ASKED BY  
8 THE SCHOOL OR THE COLLEGE TO ASSESS THEIR FITNESS TO TEACH?

9 A. IT'S ABOUT A HUNDRED.

10 Q. A HUNDRED?

11 A. ABOUT A THIRD OF THE TOTAL.

12 Q. A THIRD OF THE TOTAL FITNESS FOR DUTIES WOULD BE  
13 PEOPLE WHO DO TEACHING?

14 A. YES.

15 Q. AND IS IT TRUE THAT SOMETIMES YOU ADVISE THE SCHOOL TO  
16 PUT THEM BACK TO WORK, SOMETIMES YOU ADVISE THEM NOT TO, AND  
17 SOMETIMES YOU ARE SOMEWHERE IN THE MIDDLE?

18 A. THAT WOULD BE ACCURATE.

19 Q. JUST GIVE SOME EXAMPLES OF WHAT KINDS OF OPINIONS YOU  
20 SOMETIMES GIVE IN TEACHER-TYPE CASES.

21 A. ONE WAS AN INDIVIDUAL MAN HAD PREVIOUSLY BEEN FELT BY  
22 A SCHOOL DISTRICT TO BE INCOMPETENT TO CONTINUE TEACHING -- AND  
23 I THINK THAT WAS AT THE ELEMENTARY OR JUNIOR HIGH SCHOOL  
24 LEVEL -- AS A RESULT OF A MAJOR DEPRESSION. THEY HAD HIM GO TO  
25 A HOSPITAL WHERE HE WAS SUICIDAL. AND THEY DECIDED THAT WAS TOO  
26 SCARY FOR THEM. AND SO THEY PUT HIM ON LEAVE, AND THE QUESTION

1 WAS HE WANTED TO COME BACK TO WORK.

2 IN THAT CASE I WAS RETAINED BY THE ATTORNEY FOR THIS  
3 PARTICULAR TEACHER. THE SCHOOL BOARD GOT ANOTHER PERSON. AND  
4 ALL I DID WAS SIT IN AND IN THE END I DIDN'T HAVE TO DO ANYTHING  
5 BECAUSE THE OTHER PERSON HAD A SOLUTION IN THE END THAT HAD  
6 THINGS WORK OUT FOR EVERYBODY.

7 OTHERS WOULD BE INDIVIDUALS WHO IN THE COURSE OF  
8 TEACHING A CLASS HAD SOMETHING THAT WAS FELT TO BE STRANGE COME  
9 UP. THEY JUST ACTED IN A WAY THAT EITHER THE ADMINISTRATOR OR  
10 THE OTHER TEACHERS OR SOME OF THE STUDENTS DIDN'T UNDERSTAND AND  
11 BECAME CONCERNED ABOUT. AND THAT COULD BE ALMOST ANYTHING FROM  
12 THE MOST INNOCENT BEHAVIOR IN THE WORLD TO SOMEBODY WHO IS  
13 FLORIDLY PSYCHOTIC OR JUST REALLY UNABLE TO --

14 Q. WELL, IN YOUR EXPERIENCE WHAT DO YOU FIND THAT THE  
15 SCHOOLS AND EDUCATIONAL ORGANIZATIONS ARE OFTEN CONCERNED ABOUT  
16 WHEN THEY REFER TEACHERS OR INSTRUCTORS FOR FITNESS-FOR-DUTY  
17 EVALUATIONS BY YOU?

18 MR. LEBOWITZ: OBJECTION. RELEVANCE.

19 THE COURT: OVERRULED.

20 THE WITNESS: WELL, SAFETY IS ONE THING ON THE TOP OF  
21 THE LIST. A RATHER THOROUGH EVALUATION IS ANOTHER. IN THAT --  
22 GENERALLY DO A THOROUGH EXAM. THE OTHER HAS TO DO WITH WHAT THE  
23 TYPE OF WORK THAT THE PERSON DOES HAPPENS TO BE. IN OTHER  
24 WORDS, TO EVALUATE A SECRETARY IN, SAY, A SCHOOL OFFICE IS  
25 DIFFERENT FROM EVALUATING A TEACHER. AND THEN IT DEPENDS ON  
26 WHERE THAT TEACHER IS IN THE SCHOOL SYSTEM.

1 MR. VARTAIN: Q. WHAT DO YOU MEAN BY THAT, DOCTOR?

2 A. SOME TEACHERS ARE EMPLOYED ON A PART-TIME BASIS

3 ANYWAY, SO THEY'RE ONLY IN THE CLASSROOM ONE DAY A WEEK. OTHERS  
4 ARE THERE TWO DAYS A WEEK. SO THAT THE AMOUNT OF PROBLEMS YOU  
5 COULD HAVE WITH THEM IS MORE TOLERABLE BECAUSE YOU'RE NOT GOING  
6 TO BE INFLUENCING THE WHOLE SCHOOL YEAR. OTHER TEACHERS ARE  
7 THERE FULL TIME. THEY ARE THE FULL-TIME TEACHER FOR THIS  
8 PARTICULAR CLASS.

9 AND ORDINARILY THAT MEANS NOW IF I HAVE TO MAKE THE  
10 ASSESSMENT, PART OF THE ASSESSMENT IS TIME-RELATED. DOES THE  
11 PERSON GIVE INDICATIONS THAT HE OR SHE CAN FULFILL THE ESSENTIAL  
12 RESPONSIBILITIES OF THE TEACHING POSITION AND DO SO FOR A LENGTH  
13 OF TIME THAT WILL GET THAT PERSON THROUGH, SAY, THE SEMESTER SO  
14 THAT THEY CAN GET TO A BREAK.

15 IT'S LIKE FLYING AN AIRPLANE. IF YOU WANT TO START  
16 FROM SAN FRANCISCO AND GO TO CHICAGO, YOU WANT TO MAKE SURE YOU  
17 HAVE ENOUGH FUEL TO GET FROM SAN FRANCISCO TO CHICAGO. AND IT'S  
18 REALLY NOT THAT MUCH DIFFERENT IN TERMS OF AT LEAST THE  
19 DECISION-MAKING PROCESS. WHAT IS THE LIKELIHOOD THE PERSON CAN  
20 MAKE IT TO THE END OF THE SEMESTER? AND THEN IT'S JUST A  
21 QUESTION OF TAKING ALL THE DATA AND PUTTING IT TOGETHER.

22 Q. WHEN YOU GET REFERRALS FROM COLLEGES, SCHOOLS,  
23 ELEMENTARY SCHOOLS OR POLICE AGENCIES, DO THEY COME WITH A  
24 MYRIAD OF HEALTH -- PRESENT HEALTH ISSUES THAT ARE PRESENTED?  
25 GIVE THE JURY A DESCRIPTION OF THE KINDS OF CASES -- THAT IS,

1 A. ALMOST ANY KIND OF PSYCHIATRIC PROBLEM. THAT COULD BE  
2 A MENTAL PROBLEM WHERE THE THINKING DOESN'T SEEM TO BE STRAIGHT.  
3 MAYBE THEY'RE MORE PARANOID OR MORE CAUTIOUS IN TERMS OF BEING  
4 AROUND OTHERS THAN THEY SEEM TO HAVE BEEN BEFORE. ANOTHER WOULD  
5 BE EMOTIONAL. THAT'S NOT AT ALL UNCOMMON IN TERMS OF EITHER  
6 BEING EXCESSIVELY DEPRESSED SO THAT THEY CAN'T GET THROUGH THE  
7 DAY OR THEY CAN'T GET THROUGH THE CLASS.

8 OR, ALTERNATIVELY, SOMETIMES THAT THEY ARE EXCESSIVELY  
9 AGITATED. AND THAT CAN BE EITHER AS A RESULT OF A BIOLOGICAL  
10 CONDITION, SUCH AS A BI-POLAR CONDITION, OR IT CAN BE BECAUSE OF  
11 SUBSTANCE ABUSE. ANOTHER WOULD BE SUBSTANCE ABUSE IN THAT OFTEN  
12 IT'S MORE A SUSPICION ON OTHER PEOPLE'S PARTS THAT THERE MAY BE  
13 A SUBSTANCE ABUSE PROBLEM, BUT THERE'S NOT ENOUGH FOR THE SCHOOL  
14 DIRECTLY TO TAKE ACTION. NO ONE HAS SEEN THE PERSON WITH DRUGS  
15 ON THE CAMPUS SO WHAT THEY DO IS REFER THE PERSON, AND THAT IS  
16 NOT AT ALL UNCOMMON.

17 WITH POLICE OFFICERS, PERHAPS THE MOST COMMON REASON  
18 ARE REPEATED MISTAKES OF JUDGMENT. AND THAT CAN BE AN EXCESSIVE  
19 INVOLVEMENT IN CHASES, AN EXCESSIVE NUMBER OF CASES OF DRAWING  
20 THEIR WEAPON IN CONTRAST TO OTHER PEOPLE IN THE POLICE  
21 DEPARTMENT, AN EXCESSIVE NUMBER OF REFERRALS TO THE POLICE  
22 ADMINISTRATION FOR CONDUCT PROBLEMS, BEING LATE, BEING  
23 NONRESPONSIVE, TALKING BACK, THAT SORT OF THING.

24 AND THERE'S BEEN A MODEST NUMBER OF DISPATCHERS, WITH  
25 THE DISPATCHERS GETTING NUMBERS WRONG OR ADDRESSES WRONG  
26 REPEATEDLY, SHOWING UP LATE REPEATEDLY, GIVING WRONG INFORMATION

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1 REPEATEDLY, ESTABLISHING RELATIONSHIPS WITH OTHER PEOPLE IN THE  
2 DEPARTMENT WHEN THEY'VE BEEN TOLD THAT'S NOT THE THING TO DO.  
3 THEIR JOB IS THIS, NOT THAT. THOSE ARE THE SORTS OF THINGS.

4 Q. SOUNDS LIKE WHAT YOU'RE TELLING THE JURY IS THAT THE  
5 WAY THE REFERRAL COMES TO YOU, IT'S BASED ON A SET OF BEHAVIORS  
6 THAT THE EMPLOYEE IS SHOWING AT WORK, NOT NECESSARILY THAT THE  
7 EMPLOYER HAS DIAGNOSED THEM AS HAVING A PARTICULAR, YOU KNOW,  
8 DIAGNOSES, MENTAL DIAGNOSIS, PHYSICAL DIAGNOSES, THEY'RE  
9 CONCERNED MORE ABOUT HOW THEY'RE DOING THEIR JOB. IS THAT  
10 TYPICALLY HOW IT HAPPENS?

11 A. THAT'S TYPICALLY HOW IT HAPPENS, BUT IT ALSO HAS TO DO  
12 WITH THE ISSUE OF -- MOST OF THE TIME MOST OF THESE PLACES, THESE  
13 EMPLOYERS WANT THE PERSON TO STAY. THEY HAVE AN INVESTMENT IN  
14 THE EMPLOYEE. USUALLY, THE EMPLOYEE'S BEEN THERE FOR A MODESTLY  
15 LONG PERIOD OF TIME, CERTAINLY ENOUGH TO GET THROUGH ANY  
16 PROBATIONARY PERIOD. AND OFTEN THE EMPLOYERS ARE AMBIVALENT.  
17 BY "AMBIVALENT," I MEAN THEY WANT THE PERSON TO BE ABLE TO DO  
18 THE WORK. THAT'S WHY THEY HIRED THAT PARTICULAR PERSON.

19 AND YET THEY'RE FINDING THAT THERE ARE PROBLEMS THAT  
20 ARE BEING CREATED WITH SOMEBODY. COULD BE CUSTOMERS, COULD BE  
21 CITIZENS, COULD BE ANYBODY THAT ARE OVER AND ABOVE WHAT THEY

22 ORDINARILY EXPERIENCE AS PROBLEMS WITH OTHER PEOPLE THAT ARE  
23 WORKING FOR THEM. AND THE TROUBLE IS THAT A LOT OF TIMES THEY  
24 DON'T KNOW IF THERE'S AN UNDERLYING ISSUE. AND IF THERE IS AN  
25 UNDERLYING ISSUE, CAN IT BE ADDRESSED, AND CAN IT BE ADDRESSED  
26 IN A RELATIVELY RESPONSIVE MANNER SO THAT THE NEEDS OF WHATEVER

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1 THE COMPANY, OR THE GROUP, OR THE SCHOOL DISTRICT OR THE POLICE  
2 DEPARTMENT CAN STILL BE FULFILLED?

3 Q. SO IS IT THE CASE THAT YOU GET A REFERRAL WHERE THE  
4 EMPLOYER OR THE ORGANIZATION IS TELLING YOU WHAT THEIR CONCERNS  
5 ARE, AND THEN YOU HAVE TO EVALUATE WHAT THE MEDICAL OR  
6 PSYCHOLOGICAL BASIS MIGHT BE AS YOU GO ABOUT DECIDING WHETHER  
7 THEY'RE FIT TO GO BACK TO WORK OR NOT?

8 A. IF THERE IS A MEDICAL OR PSYCHIATRIC UNDERLIE TO  
9 WHATEVER IT IS THAT'S GOING ON.

10 Q. WHAT DO MEAN BY "IF THERE IS"?

11 A. WELL, SOMETIMES PEOPLE ARE JERKS. IT'S NOT LIKE  
12 THERE'S A PSYCHIATRIC BASIS FOR THIS. THEY JUST -- THEY DON'T  
13 LIKE THE BOSS. WELL, MAYBE THE BOSS IS UNLIKABLE. THEY DON'T  
14 LIKE THE WORK ANYMORE. MAYBE THE WORK IS REAL DRUDGERY.  
15 THERE'S A LOT OF THINGS THAT GO ON. IT DOESN'T HAVE TO BE THAT  
16 THE WORLD IS COMPOSED OF PEOPLE WITH ALL KINDS OF PSYCHIATRIC  
17 AND MEDICAL ISSUES.

18 BUT THE QUESTION IS, ALL THE TIME, NO MATTER WHAT IT  
19 IS, WHETHER THERE ISN'T A MEDICAL OR PSYCHIATRIC ISSUE OR

20 WHETHER THERE IS SOME OTHER KIND OF ISSUE, IS IT THE KIND OF  
21 THING THAT IS POTENTIALLY REMEDIAL?

22 Q. REMEDIAL?

23 A. THAT THE EMPLOYER AND/OR THE EMPLOYEE CAN ADDRESS IT,  
24 THAT THERE IS A REASONABLE CHANCE THAT, YOU KNOW, THE TWO CAN  
25 RESUME WHATEVER KIND OF RELATIONSHIP IT WAS THAT THEY HAD  
26 BEFORE. AND THE SAME THING APPLIES TO DOCTORS, IN TERMS OF

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1 EVALUATIONS OF DOCTORS. THE QUESTION IS, DOES HE OR SHE HAVE A  
2 MENTAL OR EMOTIONAL OR SOME OTHER KIND OF PROBLEM THAT MAKES  
3 THEM RISKIER WHEN THEY'RE DEALING WITH THEIR PATIENTS,  
4 PARTICULARLY.

5 BUT A PART OF THAT NOW IS, CAN THEY DEAL WITH OTHER  
6 PEOPLE IN A HOSPITAL SETTING? BECAUSE IF THEY CAN'T THEN THEY  
7 BECOME -- THEY RUN THE RISK OF BEING CHARACTERIZED BY THE  
8 STATEMENT AT THE PRESENT TIME AS A "DISRUPTIVE DOCTOR." CAN  
9 THEY GET ALONG WITH THE NURSES? CAN THEY SPEAK AND RELATE TO  
10 OTHER PEOPLE IN AN APPROPRIATE WAY? CAN THEY KEEP THEIR HANDS  
11 TO THEMSELVES? THAT SORT OF THING. CAN THEY FUNCTION OUTSIDE  
12 OF AN INSTITUTION IN A MANNER THAT DOESN'T IMPLY THAT THEY ARE  
13 RISKY?

14 Q. SO YOU REALLY ARE AN EVALUATOR OF BEHAVIORS OF PEOPLE  
15 AND THAT'S WHERE YOU START WITH, WHAT'S THE BEHAVIOR THAT'S  
16 BECOMING -- THAT IS CAUSING AN ISSUE?

17 A. YES, IN TERMS OF THE REFERRAL.



18 Q. YOU MENTIONED THAT OFTENTIMES THE REFERRAL COMES FROM  
19 AN ORGANIZATION THAT APPEARS TO YOU THAT THEY WANT TO CONTINUE  
20 THEIR RELATIONSHIP WITH THE EMPLOYEE, THEY JUST WANT TO KNOW IF  
21 IT'S OKAY TO DO THAT, IF THERE'S ANY ISSUES. WHEN YOU HAD  
22 COMMUNICATIONS WITH MENLO COLLEGE WITH REGARD TO  
23 PROFESSOR BLOUGH -- AND I'M JUST GOING TO TOUCH ON  
24 PROFESSOR BLOUGH FOR A SECOND, THEN I WANT TO COME BACK AND ASK  
25 YOU SOME QUESTIONS ABOUT OTHER THINGS YOU DO THAT RELATE TO  
26 FITNESS FOR DUTY.

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1 YOU EVALUATED PROFESSOR BLOUGH IN TWO DIFFERENT STAGES  
2 OF HER CAREER, THE 2003/2004 PERIOD AND THEN THE 2006/2007  
3 PERIOD.

4 A. I DIDN'T LOOK AT IT AS TWO DIFFERENT PERIODS. I  
5 LOOKED AT IT AS A -- THERE WERE A SERIES OF TIMES THAT I SAW  
6 HER. IN GENERAL, THE REFERRAL HAD A SIMILARITY BETWEEN THE  
7 FIRST AND THE SECOND, BETWEEN THE SECOND AND THE THIRD, THE  
8 THIRD AND THE FOURTH, THE FOURTH AND THE FIFTH. I DIDN'T SEE  
9 THEM AS BEING THAT DIFFERENT ONE FROM ANOTHER.

10 Q. HOWEVER YOU SAW THEM IN TERMS OF HOW MANY, WHAT WAS  
11 YOUR UNDERSTANDING OF YOUR JOB OR WHAT YOU WERE SUPPOSED TO DO  
12 FOR MENLO COLLEGE AND FOR PROFESSOR BLOUGH?

13 A. IT WAS A FUNCTION AS AN INDEPENDENT MEDICAL EXAMINER.  
14 AND INDEPENDENT MEANT THAT EVEN THOUGH MENLO COLLEGE MAY IN THE  
15 END BE PAYING THE BILL, OR WHATEVER BILL IT WAS, THAT MY

16 RESPONSIBILITY WAS TO DO AN ADEQUATE AND COMPETENT EXAMINATION.  
17 AND I WAS TO BE AS FAIR TO THE COLLEGE AND THE STUDENTS AS I WAS  
18 MS. BLOUGH AND VICE VERSA.

19 THE UNDERLYING QUESTION WAS -- AT LEAST WHEN I FIRST  
20 SAW HER IN, I BELIEVE, 2003 -- NOW THAT SHE'S RETURNING FROM  
21 THREE YEARS OF ABSENCE OF DISABILITY, ARE THERE INDICATIONS THAT  
22 SHE HAS EITHER MEDICAL AND/OR PSYCHIATRIC PROBLEMS THAT WILL  
23 MAKE IT QUITE DIFFICULT OR IMPOSSIBLE FOR HER TO FULFILL THE  
24 RESPONSIBILITIES OF HER POSITION AT MENLO COLLEGE?

25 Q. MEDICAL, INCLUDING MEDICAL ISSUES?

26 A. WELL, IT HAS TO BE MEDICAL FOR ME. I'M A MEDICAL

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1 DOCTOR. I AM NOT A PSYCHOLOGIST. I CANNOT SEPARATE OUT  
2 MEDICINE FROM PSYCHIATRY IN THAT PSYCHIATRY IS JUST A BRANCH OR  
3 AN ASPECT OF MEDICAL ASSESSMENT OVERALL. BUT THE WAY I WOULD  
4 USE MEDICAL WOULD BE TO APPLY PRINCIPALLY TO THE PHYSICAL KINDS  
5 OF PROBLEMS THAT PEOPLE ENCOUNTER AND THE PHYSICAL COMPLAINTS  
6 THAT THEY HAVE. THAT'S WHERE MY TRAINING WAS.

7 AND I WOULD SAY IT WAS NO DIFFERENT IN TERMS OF  
8 MS. BLOUGH THAN IT WOULD BE WITH ANY OTHER PATIENT THAT I SEE.  
9 I'LL MAKE A REFERRAL A MONTH TO SOMEBODY TO LOOK AT A MEDICAL  
10 PROBLEM OF SOME SORT ON THE AVERAGE. AND THAT CAN BE ANYTHING  
11 FROM, YOU KNOW, HEADACHES TO BLOODY NOSES, TO TROUBLE SLEEPING,  
12 THAT KIND OF THING.

13 Q. SO WHEN YOU DO HAVE A REFERRAL FOR SOMEONE WHO HAS A

14 VARIETY OF ISSUES, WHETHER THEY BE MENTAL AND EMOTIONAL, BUT  
15 ALSO PHYSICAL, IF YOU NEED TO HAVE A SPECIALIST TO CONSULT WITH  
16 ON A PHYSICAL MEDICAL MATTER THAT YOU'RE NOT REGULARLY  
17 PRACTICING IN, WHAT DO YOU DO?

18 A. I REFER THEM. IT'S A WONDERFUL AREA IN WHICH TO DO  
19 THIS. IT'S VERY HARD TO ESTABLISH A MEDICAL PRACTICE OF ANY  
20 SORT IN THIS AREA. IT'S VERY EXPENSIVE TO ESTABLISH A MEDICAL  
21 PRACTICE OF ANY SORT IN THIS AREA. THE PEOPLE WHO COME HERE ARE  
22 GENERALLY VERY GOOD, AND THAT'S PRETTY MUCH ACROSS THE BOARD.  
23 THEY ARE WELL-TRAINED. THEY ARE GENERALLY EXPERIENCED. THEY  
24 ARE ABLE TO PROVIDE, AS A GENERAL GROUP, THE LEVEL OF CARE THAT  
25 BASICALLY THE PEOPLE IN THIS AREA DEMAND AND THEY ARE DEMANDING.  
26 SO THERE ARE LOTS OF PEOPLE WHO ARE AVAILABLE. AND

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1 THE FORTUNATE THING ABOUT BEING HERE FOR 35 YEARS NOW IS THAT I  
2 KNOW A LOT OF THEM. AND BECAUSE I KNOW A LOT OF THEM, EVEN IF I  
3 DON'T KNOW SOMEBODY WHO HAS A PARTICULAR SPECIALTY, I KNOW  
4 SOMEBODY WHOM I CAN CALL WHO CAN TELL ME WHO THEY THINK MIGHT BE  
5 AVAILABLE OR TO CALL.

6 Q. WHEN MENLO COLLEGE ASKED YOU ON ANY OF THESE OCCASIONS  
7 TO EVALUATE PROFESSOR BLOUGH, DID ANYBODY AT THE SCHOOL GIVE YOU  
8 ANY INDICATION THAT THEY WANTED TO END THEIR RELATIONSHIP WITH  
9 HER?

10 A. NO. IT WAS THE CONTRARY.

11 Q. WHAT DID THEY SAY? WHAT DID YOU UNDERSTAND?

12 MR. LEBOWITZ: YOUR HONOR, COULD WE HAVE A TIMEFRAME?

13 MR. VARTAIN: Q. WHAT TIMEFRAME ARE YOU SPEAKING OF?

14 A. WELL, WHAT THEY SAID WHEN THEY FIRST CALLED IN 2003

15 NEVER CHANGED, REALLY.

16 Q. WHO DO YOU REMEMBER FIRST CALLED YOU? DO YOU REMEMBER

17 WHO THAT WAS?

18 A. I THINK IT WAS MR. HITE. AND I DON'T KNOW WHAT HIS

19 POSITION WAS. I KNOW IT WAS SOME SORT --

20 Q. ROBERT HITE?

21 A. ROBERT HITE. IT WAS ALONG THE LINES OF MS. BLOUGH

22 TRYING TO COME BACK TO TEACH, THAT SHE'D HAD A LONG-TERM

23 RELATIONSHIP WITH THE SCHOOL. SHE WAS WELL THOUGHT OF. SHE WAS

24 REGARDED AS A GOOD TEACHER. SHE WAS REGARDED AS A VALUABLE

25 ASSET. SHE WAS DOING SOMETHING THEY DID NOT HAVE ANYBODY ELSE

26 DOING, THAT THEY FELT SHE WOULD BE VERY HARD TO REPLACE.

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1 ON THE OTHER HAND, SHE'D BEEN QUITE SICK. SHE'D BEEN

2 GONE FOR A WHILE, AND THEY WANTED TO MAKE SURE IF SHE WAS GOING

3 TO -- FIRST OF ALL, IS SHE ABLE TO COME BACK? AND IF SHE'S ABLE

4 TO COME BACK, ARE THERE ANY THINGS THEY NEED TO DO IN ORDER TO

5 MAKE IT EASIER FOR HER OR ANY THINGS THEY HAVE TO WATCH FOR IF

6 SHE DOES COME BACK?

7 THAT NEVER CHANGED. THAT HAS NOT CHANGED TO THIS DAY.

8 I HAVE NEVER TALKED TO ANYBODY FROM MENLO COLLEGE WHO HAS NOT

9 SAID SIMILAR THINGS WITH RESPECT TO HER. SHE'S A VALUED PERSON.

10 SHE HAD A LONG-TERM RELATIONSHIP. TO THE EXTENT THAT EITHER I  
11 OR OTHERS THINK THAT SHE CAN WORK, THEY WANTED HER TO WORK.

12 Q. WHAT IS YOUR WORK IN REGARDS TO GOVERNMENT AGENCIES,  
13 IN FEDERAL GOVERNMENT AND SO ON? COULD YOU GIVE THE JURY A  
14 FLAVOR OF YOUR WORK ON A NATIONAL BASIS IN THIS COUNTRY.

15 MR. LEBOWITZ: OBJECTION. RELEVANCE.

16 THE COURT: OVERRULED.

17 THE WITNESS: IN 1981, WHEN JOHN HINCKLEY SHOT  
18 PRESIDENT REAGAN, THE SECRET SERVICE WAS CONCERNED THAT THERE  
19 WERE PEOPLE LIKE MR. HINCKLEY IN THE COMMUNITY AND THEY DIDN'T  
20 KNOW ANYTHING ABOUT THEM. AND SO THEY WENT TO THE INSTITUTE OF  
21 MEDICINE, WHICH IS PART OF THE NATIONAL ACADEMY OF SCIENCES, AND  
22 THEY WENT TO THE NATIONAL INSTITUTE OF MENTAL HEALTH. AND THEY  
23 SAID, WHAT DO WE DO ABOUT THIS? AND THE RESPONSE THEY GOT FROM  
24 MOST PEOPLE WAS TO GO OUT AND HIRE YOURSELF A PSYCHIATRIST. SO  
25 THEY HIRED FIVE OF US IN 1985.

26 MR. VARTAIN: Q. WHO DID THAT? WHO HIRED?

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1 A. THE SECRET SERVICE HIRED US. WE WERE SCATTERED: ONE  
2 IN BOSTON; ONE IN NEW YORK; ONE IN WASHINGTON; ONE IN -- I  
3 GUESS, ONE IN DALLAS; AND MYSELF OUT HERE. AND THE JOB WAS TO  
4 DO EVALUATIONS FOR THEM OF INDIVIDUALS WHO MAY HAVE A MENTAL  
5 ILLNESS ASSOCIATED WITH OR UNDERLYING -- WHATEVER KIND OF THING  
6 MADE THE AGENTS ANXIOUS.

7 IT WAS TEACH THE AGENTS HOW IT IS THAT PSYCHIATRISTS

8 OR MENTAL HEALTH PEOPLE FUNCTION SO THAT THEY THEMSELVES COULD  
9 DO A GOOD PART OF THIS BY THEMSELVES WITHOUT THERE BEING THE  
10 NEED TO CALL ANY OF US. IT WAS TO RUN TWO SORTS OF TRAINING  
11 EXERCISES. ONE WAS FOR INCOMING AGENTS, BECAUSE THEY HAVE MAYBE  
12 200 A YEAR COMING IN.

13 Q. THESE ARE SPECIAL AGENTS OF THE SECRET SERVICE?

14 A. THE SECRET SERVICE.

15 AND THE OTHER WAS TO TEACH AGENTS WHO HAD BEEN WITH  
16 THEM FOR A LONG PERIOD OF TIME. THAT REALLY DIDN'T CHANGE. IT  
17 WAS ALSO TO INTERVIEW PEOPLE WHO MADE THE AGENTS NERVOUS AS TO  
18 HOW MUCH, IF ANYTHING, OF A THREAT THEY MIGHT POSE TO ONE OF THE  
19 PEOPLE THEY'VE GOT TO PROTECT. THEY GOT A LITTLE TIGHTER FOR A  
20 WHILE. WHEN CHELSEA CLINTON WAS AT STANFORD AT THE SAME TIME,  
21 IT DIDN'T CHANGE TOO MUCH IN TERMS OF WHAT THE WORK WAS. WE  
22 JUST DID THE WORK WE ORDINARILY DO.

23 Q. WHAT WAS THE WORK WHEN THE PRESIDENT WAS BILL CLINTON,  
24 FOR YOU, IN REGARD TO YOU?

25 A. THE SECRET SERVICE HAS A LOT OF YOUNG-LOOKING AGENTS.  
26 THEY SUDDENLY BECAME UNDERGRADUATES AT STANFORD. THEY WORE

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1 BACKPACKS, WENT TO BASKETBALL GAMES. THEY DRESSED LIKE A  
2 SIX-MAN CLUB. YOU WOULDN'T KNOW HOW MUCH THE STUDENT BODY HAD  
3 SWOLLEN OVER A SHORT PERIOD OF TIME. AND I DIDN'T KNOW WHO THEY  
4 WERE. THEY NEVER INTRODUCED ME TO THEM. BASICALLY, MY JOB WAS  
5 TO DO SOMETHING ELSE.

6 Q. WHAT WAS IT, WHAT WAS YOUR JOB, THEN?

7 A. MY JOB WAS?

8 Q. YEAH.

9 A. MY JOB WAS TO WAIT UNTIL THEY CAME TO ME AND ASKED ME  
10 A QUESTION, AND I WAS NOT TO BE TOO NOSEY ABOUT WHAT THEY WERE  
11 DOING OR HOW THEY WERE DOING IT.

12 Q. IF THEY HAD QUESTIONS, WOULD IT USUALLY RELATE TO YOUR  
13 EVALUATING WHETHER A CERTAIN SITUATION WAS ONE THAT COULD  
14 POSSIBLY GET DANGEROUS?

15 A. YES.

16 Q. I THINK YOU INDICATED TO THE JURY THAT YOU OPERATE  
17 BOTH A CLINICAL PRACTICE -- THAT IS, YOU TREAT PATIENTS, AND  
18 THEN YOU HAVE THIS EVALUATION PRACTICE, WHERE YOU EVALUATE THE  
19 PEOPLE WHO'VE BEEN EMPLOYEES AND DOCTORS AND SO ON ON WHETHER  
20 THEY -- UNDER WHAT CIRCUMSTANCES THEY CAN WORK?

21 A. YES.

22 Q. SO YOU HAVE YOUR OWN SET OF PATIENTS THAT YOU TREAT  
23 YOURSELF; IS THAT TRUE?

24 A. YES.

25 Q. GIVE THE JURY SOME SENSE OF HOW THAT BREAKS UP, WHAT  
26 PERCENTAGE OF YOUR PRACTICE IS CAREGIVING TO PATIENTS AND WHAT

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1 PART OF YOUR PRACTICE IS EVALUATING, YOU KNOW, SOMEBODY ELSE'S  
2 PATIENT, AS WITH PROFESSOR BLOUGH?

3 A. ON AN AVERAGE WEEK I'LL SEE ABOUT 20 PATIENTS OF MY

4 OWN AND SPEND ABOUT AN HOUR APIECE, SO MAYBE 20 HOURS. AGAIN,  
5 IN AN AVERAGE WEEK, I'LL SEE ABOUT TWO PEOPLE ON THE AVERAGE WHO  
6 ARE PURE EVALUATION SITUATIONS. AND, ORDINARILY, THAT WILL BE  
7 ONLY TWO TO THREE HOURS PER PERSON THAT I'LL SPEND WITH THEM.  
8 SOMETIMES A LITTLE LESS THAN AN HOUR.

9 IT DEPENDS ON HOW MUCH OTHER INFORMATION IS THERE AND  
10 HOW MUCH ACCESS I'VE GOT TO INFORMATION ABOUT THEIR BACKGROUND.  
11 BUT THEN, ORDINARILY, WITH THE EVALUATION OF PATIENTS, A REPORT  
12 IS REQUIRED. AND ASIDE FROM FITNESS-FOR-DUTY EVALUATIONS, WHERE  
13 THE REPORT IS ONLY ONE PAGE --

14 Q. WHICH WOULD BE IN THE CASE OF PROFESSOR BLOUGH, THEN,  
15 A FITNESS-FOR-DUTY EVALUATION?

16 A. YES. A FITNESS-FOR-DUTY EVALUATION IS -- IN THE END  
17 IT'S A YES OR NO. AND IT CAN BE A YES WITH SOME QUALIFICATIONS;  
18 IT CAN BE A NO WITH SOME QUALIFICATIONS. BUT, BASICALLY, THE  
19 RULE IS I CANNOT COMMUNICATE TO THE EMPLOYER ANYTHING WITH  
20 RESPECT TO A DIAGNOSIS ABOUT THE INDIVIDUAL THAT I'VE EVALUATED.  
21 AND THAT WOULD BE A PHYSICAL DIAGNOSIS, A MENTAL DIAGNOSIS OR A  
22 PERSONALITY DIAGNOSIS. IT'S JUST THIS IS MY OPINION, AND IT  
23 STANDS OR FALLS ON ITS OWN.

24 Q. SO LET ME JUST STOP THERE, DOCTOR, REAL BRIEFLY.

25 THERE'S BEEN SOME TESTIMONY IN FRONT OF THE JURY ABOUT  
26 HOW IT WAS THAT THE COLLEGE GOT A LETTER FROM YOU REGARDING

1 WHETHER OR NOT PROFESSOR BLOUGH WAS FIT AT A PARTICULAR POINT,



2 BUT WHY IT WAS THAT THE COLLEGE DIDN'T KNOW WHY YOU GAVE THE  
3 OPINION THAT YOU DID. COULD YOU EXPLAIN TO THE JURY WHY IT  
4 WOULD BE THAT THE COLLEGE WOULDN'T KNOW FROM YOUR LETTER WHY YOU  
5 FELT THE WAY YOU FELT ABOUT HER FITNESS OR NOT FITNESS?

6 A. YES.

7 IN THE EARLY 1990S THERE WERE TWO DOCTORS IN  
8 SAN FRANCISCO; ONE A PSYCHOLOGIST AND ONE A PSYCHIATRIST, WHO  
9 SAW A MAN WHO WORKED FOR PG&E. THEY WROTE A REPORT WITH RESPECT  
10 TO THIS MAN. AND IN IT THEY INDICATED THAT THEY FELT THAT HE'D  
11 BE ABLE TO COME BACK TO WORK, BUT THAT THEY WERE SUGGESTING THAT  
12 HE, YOU KNOW, LOOK INTO OR ENROLL IN A SUBSTANCE ABUSE TREATMENT  
13 PROGRAM, ESPECIALLY FOR ALCOHOL.

14 WELL, THE MAN WAS UPSET THAT THOSE DOCTORS TO WHOM HE  
15 HAD TALKED HAD GONE AND TOLD HIS EMPLOYER THAT HE HAD A PROBLEM  
16 DRINKING, SO HE SUED THEM. AND HIS NAME WAS PETIS. AT LEAST  
17 ONE OF THE DOCTORS WAS COLE; THE OTHER WAS UNGER.

18 AND THE SUPREME COURT IN CALIFORNIA SAID, "WHEN YOU  
19 WERE MADE TO GO TO AN EXAM, THAT DOES NOT MEAN THAT YOU ARE  
20 GIVING UP YOUR RIGHT TO THE CONFIDENTIALITY OF YOUR MEDICAL  
21 INFORMATION," THAT THE EMPLOYER'S NOT ENTITLED TO IT. THE  
22 EMPLOYER IS ENTITLED TO VERY, VERY LITTLE WITH RESPECT TO  
23 PERSONAL INFORMATION ABOUT ANY OF US.

24 AND SO IT BASICALLY SAID THESE TWO DOCTORS, THEY  
25 VIOLATED THE 1978 CONFIDENTIALITY OF MEDICAL INFORMATION ACT IN  
26 THE STATE OF CALIFORNIA. AND IT SAID YOU, IN ESSENCE, WHATEVER

1 YOU DOCTORS DO, DO NOT COMMUNICATE TO THE EMPLOYER ANYTHING WITH  
2 RESPECT TO THE DIAGNOSIS THAT YOU HAVE MADE OF THIS PARTICULAR  
3 INDIVIDUAL WHO WAS SENT TO YOU. THEY'RE TALKING, NOT BY THEIR  
4 OWN CHOICE AND WAS NOT ASKING YOU TO GIVE THAT TO THE EMPLOYER.

5 BUT THEY ALSO SAID, TOO, IF THE EMPLOYEE SAYS, "I  
6 DON'T CARE. YOU CAN GO AHEAD AND DO IT." AND THEY SIGN  
7 SOMETHING THAT SPECIFICALLY SAYS, "YOU CAN TELL THEM THIS,"  
8 THAT'S OKAY. BUT, ORDINARILY, WE'RE NOT ALLOWED TO TELL THEM  
9 THIS.

10 Q. DID YOU EVER TELL MENLO COLLEGE WHAT YOUR DIAGNOSES OF  
11 PROFESSOR BLOUGH WAS OR WHAT THE MEDICAL REASONS FOR YOUR  
12 CONCLUSIONS WERE?

13 A. I HAVE NOT TOLD ANYBODY, FROM 2003 WHEN I FIRST SAW  
14 MS. BLOUGH UNTIL THIS DAY, WHAT MY DIAGNOSES WERE OR ARE AND  
15 I'VE NEVER BEEN ASKED. AND UNLESS ASKED -- AND IN THIS SETTING,  
16 I CAN DO IT IF I'M ASKED -- I DO NOT INTEND TO DO IT.

17 Q. WELL, DID PROFESSOR BLOUGH EVER COME TO YOU AND SAY  
18 WORDS TO THE EFFECT OF, "DR. MISSETT, THE COLLEGE SAYS THEY'RE  
19 NOT TAKING ME BACK BECAUSE OF WHAT YOUR LETTER SAID. THE  
20 COLLEGE GAVE ME A COPY OF YOUR LETTER. I DON'T UNDERSTAND YOUR  
21 LETTER. COULD YOU TELL ME WHY YOU FOUND ME NOT FIT AT THIS  
22 TIME?" DID SHE EVER DO THAT?

23 A. NO.

24 Q. DID SHE EVER SET AN APPOINTMENT WITH YOU WITH THAT  
25 AGENDA ITEM ON THE TABLE?

26 A. I THINK IN A GENERAL WAY THAT WOULD APPLY TO A MEETING

1 THAT I HAD WITH PROFESSOR BLOUGH IN NOVEMBER OF 2003. SO THE  
2 FIRST TIME WAS 2003, THEN 2004. THEN I SAW HER IN 2006 IN MAY,  
3 I THINK ON THE 17TH, AND I EXPRESSED THE OPINION THAT SHE WAS  
4 NOT FIT. AND GOING ON THE INDICATIONS FROM HER PSYCHIATRIST,  
5 THAT IT WASN'T GOING TO DO ME ANY GOOD TO WAIT FOR HER TO GIVE  
6 THE PSYCHIATRIST PERMISSION TO TALK TO ME OR TO GIVE ME THE  
7 RECORDS, I DIDN'T SEE THAT THERE WAS THE LIKELIHOOD THAT WOULD  
8 CHANGE IN THE FORESEEABLE FUTURE. AND THAT WAS THE LETTER.

9 AND IN NOVEMBER -- I GOT A CALL, ONE CALL, I THINK  
10 FROM THE SCHOOL, ONE CALL FROM MS. BLOUGH ASKING FOR AN  
11 APPOINTMENT. I SAW HER AGAIN. THE RECORDS WERE PRODUCED. I  
12 STARTED THE EVALUATION AGAIN. I DID THE EVALUATION THE SAME WAY  
13 AS I HAD DONE EARLIER. HAD HER SEE A NEUROPSYCHOLOGIST BECAUSE  
14 OF A NUMBER OF QUESTIONS THAT HAD COME UP FOR ME, AND GOT THE  
15 REST OF THE RECORDS. AUTHORIZED HER TO GO BACK TO WORK IN THE  
16 SAME WAY AS I HAD THE FIRST TIME, HALF TIME. AND THAT WAS, I  
17 THINK, IN MARCH OF 2007.

18 Q. WHEN YOU MET WITH HER IN MARCH 2007 AND SAID YOU WERE  
19 AUTHORIZING HER TO GO BACK TO WORK, DID YOU TALK TO HER ABOUT  
20 WHY YOU WANTED TO DO IT THE SAME WAY THAT IT WORKED WELL THE  
21 FIRST TIME AND WHAT YOU WERE THINKING, HOW IT MIGHT UNFOLD FOR  
22 HER?

23 A. IN A GENERAL WAY. THEY WERE TAPE RECORDED. BOTH  
24 THOSE INTERVIEWS WERE TAPE RECORDED BECAUSE SHE ASKED WHEN SHE

25 CALLED ABOUT TAPE RECORDING IT. I TAPE RECORD PROBABLY HALF THE  
26 EVALUATIONS I DO. IT'S NO PROBLEM. SO WE TAPE RECORDED IT.

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1 WE'VE GOT A RECORD; SHE HAS A RECORD. PLAINTIFFS HAVE THE  
2 RECORDS. YOU CAN LISTEN.

3 Q. DID YOU BRING THOSE TAPES WITH YOU? ARE THEY IN YOUR  
4 OFFICE?

5 A. THEY'RE AVAILABLE. I DON'T HAVE THEM WITH ME BUT,  
6 YES.

7 Q. IF THE ATTORNEYS WANTED TO PLAY THEM, THEY COULD  
8 LISTEN -- HAVE THEY EVER ASKED TO LISTEN TO THEM, THE ATTORNEYS?

9 MR. LEBOWITZ: OBJECTION, RELEVANCE.

10 THE COURT: OVERRULED.

11 THE WITNESS: I DON'T KNOW. I KNOW THAT WE WERE ASKED  
12 FOR RECORDS AND WE PRODUCED WHAT WE WERE TOLD TO PRODUCE BY THE  
13 COURT.

14 MR. VARTAIN: OKAY.

15 THE WITNESS: BUT I DON'T KNOW IF THAT WAS ONE OF  
16 THEM.

17 MR. VARTAIN: Q. THEY ARE AVAILABLE IS WHAT YOU'RE  
18 SAYING?

19 A. THEY ARE AVAILABLE.

20 Q. IN THAT MEETING WITH PROFESSOR BLOUGH THAT SHE ASKED  
21 TO HAVE TAPE RECORDED -- THIS IS IN MAY OF 2007, WHEN YOU TOLD  
22 HER YOUR OPINION WAS THAT SHE COULD GO BACK TO WORK HALF-TIME --

23 DID YOU TALK TO HER ABOUT WHAT YOUR THINKING WAS AND WHY YOU  
24 WERE SUGGESTING THAT?

25 A. YES. I DON'T THINK I EVER HAD IT IN, AS IT WERE, FOR  
26 PROFESSOR BLOUGH. I WANTED HER TO WORK. THE SCHOOL HAD SAID TO

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1 ME THEY WANTED HER TO WORK. THEY JUST WANTED TO HAVE A CERTAIN  
2 LEVEL OF ASSURANCE THAT THERE WAS NOT SOME KIND OF MEDICAL, OR  
3 MENTAL, OR EMOTIONAL PROBLEM THAT WAS GOING TO INTERFERE WITH  
4 HER BEING ABLE TO DO WHAT SHE NEEDED TO DO WITH RESILIENT  
5 DISSIDENCE. AND WHATEVER IT WAS THAT HAD HAPPENED THE PREVIOUS  
6 SUMMER, IT HAPPENED THE PREVIOUS SUMMER. THAT WAS -- IT WAS IN  
7 THE PAST.

8 I COULD NOT IN MY SOUL THEN, AND I COULD NOT NOW IF I  
9 WERE REDOING IT, GET TO THE POINT OF SAYING THIS PERSON IS  
10 COMPETENT COGNITIVELY, EMOTIONALLY AND MEDICALLY TO GET HERSELF  
11 THROUGH TEACHING 160 STUDENTS FOR A FULL SCHOOL YEAR WITH A FULL  
12 BATTERY OF CLASSES.

13 MR. LEBOWITZ: YOUR HONOR, I'D MOVE TO STRIKE THE  
14 ENTIRE ANSWER AS NONRESPONSIVE.

15 THE COURT: OVERRULED.

16 MR. VARTAIN: Q. I WANT TO GO BACK TO THE SUMMER OF  
17 THE YEAR BEFORE, YOU SAID THE SUMMER WAS BEHIND YOU OR YOU  
18 THOUGHT THAT WAS IN THE PAST. YOU WERE NOW LOOKING AT 2007.  
19 SHE HAD FINALLY RELEASED HER RECORDS. YOU HAD FINISHED THE  
20 EVALUATION. WHAT HAD HAPPENED THE PREVIOUS SUMMER? YOU TOUCHED

21 ON IT A LITTLE BIT. THIS IS THE PREVIOUS SUMMER WHEN YOU SAW  
22 HER ON MAY 17, 2006, AND THEN YOU, AT THAT TIME, HAD SAID SHE'S  
23 NOT -- FOR THE FORESEEABLE FUTURE SHE'S NOT READY TO COME BACK  
24 TO WORK. WHAT HAPPENED THAT SUMMER?

25 A. THE PROBLEM I FACED IN THE MAY 17TH EVALUATION WAS  
26 THAT I HAD A LETTER THAT PROFESSOR BLOUGH HAD WRITTEN TO ONE OF

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1 THE ADMINISTRATORS AT MENLO COLLEGE, WHERE SHE INDICATED THAT  
2 SHE FELT SHE HAD BEEN IMPAIRED OR SOMETHING ALONG THAT LINE FOR  
3 THE GREATER PART OF THE YEAR.

4 AND I HAD ANOTHER LETTER FROM -- OR A NOTE FROM ONE OF  
5 THE ADMINISTRATORS TO HER, WHICH, IN EFFECT, SAID THE SAME  
6 THING. I HAD TWO PEOPLE WHO WERE APPARENTLY AGREEING THERE HAD  
7 BEEN A PROBLEM WITH MODERATE TO MAJOR SIGNIFICANCE IN TERMS OF  
8 HER ABILITY TO SHOW UP FOR CLASS, HANG IN THERE DURING CLASS OR  
9 WHATEVER.

10 I HAVE TAUGHT 160 PEOPLE AT UNIVERSITY LEVEL. I HAVE  
11 DONE IT FOR TWO YEARS. I KNOW HOW EXHAUSTING THAT EXPERIENCE  
12 IS, AND I KNOW HOW GOOD YOU HAVE TO BE TO BE REGARDED AS GOOD.  
13 SO I KNEW WHEN THEY WERE TALKING ABOUT HER, THEY WERE NOT  
14 CHANGING THE WAY THEY TALKED ABOUT HER. AS A GOOD TEACHER, THAT  
15 SHE HAD THE CAPACITY TO DO THIS IF THINGS WERE OKAY WITH HER,  
16 AND THEY CLEARLY HAD NOT BEEN THE PREVIOUS YEAR.

17 FOR ME TO DO AN EXAMINATION THAT I REGARD AS  
18 OBJECTIVE -- AND THAT'S MY JOB, TO RELY AS MUCH AS I CAN ON

19 TANGIBLE THINGS; THINGS THAT YOU CAN SEE, THAT YOU CAN HOLD,  
20 THAT YOU CAN IN SOME WAYS TOUCH. AND THOSE CAN BE ANY NUMBER OF  
21 THINGS. IT CAN BE LETTERS; IT CAN BE REPORTS; STATEMENTS THAT  
22 ARE IN SOME WAY COMMITTED TO WRITING, USUALLY NOTES.

23 AND ON THE OTHER SIDE, WHEN SHE CAME IN, IT WAS  
24 MS. BLOUGH'S SUBJECTIVE IMPRESSION. "I'M ALL READY TO GO. I'M  
25 MUCH BETTER. I'M BACK ON IT. I'M REALLY READY TO GO." BUT  
26 THIS WAS ONLY A MONTH OR SO AFTER THAT LETTER, THAT NOTE I

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1 MENTIONED THAT HAD BEEN WRITTEN.

2 WHEN I ASKED HER FOR THE PERMISSION TO CONTACT HER  
3 DOCTORS, SHE GAVE IT TO ME. THERE WAS NO -- THERE WAS NO  
4 HESITATION, AT LEAST THAT WAS OBVIOUS. AND SOME OF THE DOCTORS  
5 RESPONDED RIGHT AWAY; SOME DIDN'T. AND WHEN I GOT TO THE END OF  
6 JUNE, I HAD BEEN TOLD BY THE SCHOOL -- NOT THIS TIME, BUT  
7 EARLIER -- THAT IF I DID AN EVALUATION, THEY NEEDED MY REPORT BY  
8 THE END OF JUNE. BECAUSE THEY HAD TO HAVE ENOUGH TIME TO FIND A  
9 REPLACEMENT, IF THEY WERE GOING TO FIND A REPLACEMENT, OR TO  
10 KNOW THEY WEREN'T GOING TO HAVE TO LOOK, IF THEY DIDN'T.

11 SO I KNEW THE DEADLINE HERE WAS SOMEWHERE TOWARDS THE  
12 END OF JUNE. AND WHEN I HADN'T HEARD FROM SOME OF THE DOCTORS,  
13 I STARTED TO CALL. AND I THINK TWO OR THREE OF THEM SAID, WE  
14 DON'T SEE ANY PROBLEM. THERE'S NO DIFFICULTY FOR US. AND THE  
15 DIFFERENCE BETWEEN THEM AND MYSELF IS, THEIR RESPONSIBILITY IS  
16 TO PROFESSOR BLOUGH. THEY'RE HER DOCTOR. THEIR JOB IS TO DO

17 WHAT THEY THINK IS BEST FOR HER, AND TO SOME EXTENT THAT'S  
18 LISTENING TO WHAT SHE SAYS SHE THINKS IS BEST FOR HER.  
19 MY RESPONSIBILITY IS DIFFERENT. IT WAS NOT  
20 PRINCIPALLY TO HER. IT WAS NOT PRINCIPALLY TO THE SCHOOL. IT  
21 WAS LIKE I USED TO TELL MY KIDS. I GET PAID FOR TELLING THE  
22 TRUTH AS I SEE IT. NOW, THE TRUTH DOES NOT NECESSARILY MEAN I'M  
23 RIGHT. I KNOW THERE ARE TIMES WHERE I HAVE NOT BEEN RIGHT.  
24 THERE IS NO WAY -- I HAVE DONE ABOUT 15,000 EVALUATIONS OVER THE  
25 COURSE OF MY CAREER. THERE IS NO WAY I CAN BE, AS IT WERE,  
26 CORRECT OR RIGHT IN 15,000 EVALUATIONS.

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1 THE ISSUE IS, HOW DO YOU DECREASE THE LEVEL OF  
2 POTENTIAL MISTAKES AS MUCH AS POSSIBLE? AND THE WAY TO DO IT IS  
3 BY LOOKING AT AS MUCH OF THE DATA AS I CAN GET MY HANDS ON. SO  
4 THAT'S WHEN I CALLED DR. LIU. AND DR. LIU SAID, "WELL, I'M  
5 SORRY. I CAN'T TALK TO YOU." "WELL, HOW COME?" "WELL,  
6 PROFESSOR BLOUGH HAS SAID THAT I CAN'T." "WELL, HOW ABOUT THE  
7 RECORDS?" "SHE HAS TOLD ME I'M NOT TO SEND THEM TO YOU." I  
8 SAID, "WELL, WHAT IF WE SORT OF WAIT A BIT?" AND SHE SAID, "I  
9 WOULDN'T COUNT ON IT."

10 THAT WAS THE LAST CONVERSATION I HAD, I THINK,  
11 WITH MAYBE THE EXCEPTION OF ONE CONVERSATION WITH SOMEBODY FROM  
12 DR. MARCUS'S OFFICE, BEFORE I GOT THE REPORT. BECAUSE IT CAN'T  
13 GO BOTH WAYS. IT CAN'T GO THAT THE PERSON IS SAYING, "I REALLY  
14 WANT TO WORK. AND, OH, BY THE WAY, YOU CAN LOOK AT ALL THE



15 MATERIAL EXCEPT FOR THIS."

16 AND I DON'T CARE WHAT THE "THIS" IS. I ALREADY HAD  
17 ENOUGH IN THE WAY OF TANGIBLE INDICATIONS THROUGHOUT THE COURSE  
18 OF THAT PREVIOUS YEAR THAT PROFESSOR BLOUGH HAD BEEN UNABLE  
19 ADEQUATELY TO FULFILL THE FUNDAMENTAL ESSENTIAL ASPECTS OF HER  
20 JOB, AND THAT THE INDICATIONS WERE THAT IT CAUSED AN ENORMOUSLY  
21 DISRUPTIVE IMPACT ON THE STUDENTS, OF THE FACULTY AND THE  
22 ADMINISTRATORS.

23 AND TO THE EXTENT THAT I WAS BEING ASKED, IS THERE  
24 SOMETHING HERE THAT INDICATES THERE'S A COGNITIVE, OR EMOTIONAL,  
25 OR MEDICAL UNDERLAY TO IT, I WASN'T GOING TO BE RESPONSIBLE FOR  
26 PUTTING THAT PLANE IN THE AIR FOR ANOTHER SIX MONTHS OR EIGHT

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1 MONTHS, WITHOUT SOME KIND OF ABILITY TO LAND IT SOMEWHERE. AND  
2 THAT'S WHY I WROTE IT THE WAY I DID.

3 IF SHE'S NOT GOING TO COOPERATE WITH THE -- IF SHE'S  
4 NOT GOING TO COOPERATE WITH THE EXAM, WHAT, IN ESSENCE, SHE'S  
5 DOING IS, SAYING THE WAY I PRESCRIBED OVER THE PREVIOUS YEAR  
6 STILL STANDS. BECAUSE THAT'S THE OBJECTIVE DATA. THAT'S THE  
7 MATERIAL THAT'S THERE IS THAT SHE'S LOST HALF OF HER HEARING,  
8 THAT BASICALLY INDICATES SHE'S GOT THIS PROBLEM HERE AND THAT  
9 PROBLEM THERE. AND SO I FOUND HER UNFIT TO GO BACK TO WORK AT  
10 THAT TIME AND FOR THE FORESEEABLE FUTURE.

11 MR. VARTAIN: I THINK, DOCTOR, THE JUDGE IS THINKING  
12 IT'S HER TIME TO RELEASE THE JURY.

13 AND PICK UP AT WHAT TIME, YOUR HONOR?

14 THE COURT: 1:30.

15 THE WITNESS: FINE, YOUR HONOR.

16 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO

17 RETURN AT 1:30, AFTER OUR LUNCH BREAK. JUST LEAVE YOUR

18 NOTEBOOKS THERE. AND YOU CAN LEAVE YOUR BADGES IF YOU ARE GOING

19 OUT FOR LUNCH. SEE YOU AT 1:30.

20 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

21

22

23

24

25

26

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1 PROCEEDINGS

2 DECEMBER 11, 2008 P.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD AFTERNOON. WE'RE ON THE RECORD IN

4 BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT,

5 AND ALL JURORS AND ALTERNATES. OUR WITNESS HAS RETURNED.

6 MR. VARTAIN, WOULD YOU LIKE TO CONTINUE YOUR DIRECT

7 EXAMINATION?

8 MR. VARTAIN: YES, I WOULD. THANK YOU.

9

10 DIRECT EXAMINATION (RESUMED)

11 BY MR. VARTAIN:

12 Q. DR. MISSETT, WHEN WE LEFT OFF BEFORE LUNCH, YOU WERE  
13 DISCUSSING WHAT HAPPENED WHEN YOU TRIED TO GET  
14 PROFESSOR BLOUGH'S MEDICAL RECORDS FROM HER PSYCHIATRIST,  
15 DR. LIU. COULD YOU SORT OF RECAP WHERE WE LEFT OFF ON THAT  
16 SUBJECT, PLEASE?

17 A. WELL, IT'S JUST THAT I CALLED DR. LIU AND SHE SAID  
18 THAT MS. BLOUGH HAD WITHDRAWN AUTHORIZATION FOR HER TO GIVE ME  
19 THE RECORDS OR SPEAK TO ME.

20 Q. DID YOU HAVE A CONVERSATION WITH HER?

21 A. VERY BRIEF; MAYBE TWO, THREE MINUTES. ENOUGH THAT SHE  
22 INDICATED SHE DIDN'T THINK IT WAS GOING TO BE WORTHWHILE, MY  
23 WAITING ANY LONGER WITH -- THAT WAS ALL.

24 Q. OKAY.

25 WHEN YOU HAD MET WITH PROFESSOR BLOUGH SHE HAD GIVEN  
26 YOU A SIGNED RELEASE TO GET HER RECORDS FROM ALL THE DOCTORS,

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1 INCLUDING DR. LIU; IS THAT TRUE?

2 A. FOR EACH OF THE DOCTORS THAT WE HAD TALKED ABOUT; YES.

3 Q. WHEN PROFESSOR BLOUGH MET WITH YOU IN YOUR OFFICE ON  
4 MAY 17TH AND SIGNED THOSE RELEASES, DID SHE INDICATE TO YOU OR  
5 YOUR STAFF THAT SHE HAD ANY RELUCTANCE TO LET YOU LOOK AT HER  
6 PHYSICIANS, AND HER ONCOLOGIST, PSYCHIATRIST MEDICAL RECORDS?

7 A. NO.

8 Q. DID SHE CALL YOU AT ANY TIME IN THAT TIME WHERE IT WAS

9 THE END OF JUNE AND YOU WERE TRYING TO GET THE RECORDS, SHE  
10 BEING PROFESSOR BLOUGH, LET YOU KNOW THAT SHE HAD A CONCERN  
11 ABOUT THOSE RECORDS, THAT SHE DIDN'T -- MAYBE DIDN'T WANT TO LET  
12 YOU LOOK AT THEM?

13 A. NO.

14 Q. DID SHE EVER TELL YOU THERE WAS SOMETHING IN THOSE  
15 RECORDS THAT, YOU KNOW, SHE FELT WAS TOO PRIVATE?

16 MR. LEBOWITZ: OBJECTION. LEADING.

17 THE COURT: SUSTAINED.

18 MR. VARTAIN: Q. DID SHE TELL YOU ANYTHING ABOUT THAT  
19 SHE DIDN'T WANT THOSE RECORDS RELEASED?

20 A. NO.

21 Q. WAS THE FIRST PERSON TO TELL YOU THAT HER  
22 PSYCHIATRIST?

23 A. YES.

24 Q. DID HER PSYCHIATRIST INDICATE THAT HER PSYCHIATRIST  
25 WAS OF THE OPINION THAT THE RECORDS SHOULD NOT BE GIVEN TO YOU?

26 MR. LEBOWITZ: OBJECTION. LEADING.

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1 THE COURT: OVERRULED.

2 THE WITNESS: SHE KIND OF JUST SAID NOTHING ABOUT WHAT  
3 HER POSITION WAS, EXCEPT TO SAY, "SHE HAS NOT GIVEN ME  
4 AUTHORIZATION TO TALK TO YOU ABOUT ANYTHING." I UNDERSTOOD WHAT  
5 SHE MEANT.

6 MR. VARTAIN: Q. NOW, YOU INDICATED THAT PART OF YOUR

7 PRACTICE IS TO DO THESE EVALUATIONS OF EMPLOYEES, AND THE OTHER  
8 PART OF YOUR PRACTICE YOU ACTUALLY ARE TESTIFYING -- YOUR JOB IS  
9 TO TESTIFY IN COURT ABOUT A MEDICAL ISSUE. THERE'S TWO  
10 DIFFERENT PARTS, AND THEN YOU TREAT PATIENTS AS WELL.

11 A. WELL, TESTIFYING IN COURT IS PROBABLY THE LEAST  
12 FREQUENT EXPERIENCE.

13 Q. OKAY.

14 A. SOMETHING SOUGHT AFTER BY ATTORNEYS, BUT NOT BY ME.

15 Q. WELL, WHICH OF THESE THREE CAPACITIES ARE YOU HERE  
16 TODAY IN, AND ARE YOU RECEIVING ANY FEES FOR YOUR TESTIMONY  
17 TODAY?

18 A. WELL, I THINK I'M HERE BECAUSE I DID THE EVALUATION,  
19 BECAUSE MENLO COLLEGE IS GETTING SUED BECAUSE THEY ACTED ON  
20 WHATEVER IT WAS I SAID, I GUESS, AT LEAST IN PART. AND I'M HERE  
21 ALSO, I SUPPOSE, ON THE THIRD ONE. I'VE BEEN TO COURT A LOT  
22 OVER THE COURSE OF MY LIFE. I'VE PROBABLY SPENT MORE TIME IN  
23 COURT THAN IF I HAD COMMITTED SOME CRIMES.

24 Q. YOU'RE NOT BEING PAID FOR YOU TESTIMONY?

25 A. NO. WELL, I DIDN'T GET PAID FOR THE TESTIMONY -- I'M  
26 NOT RECEIVING ANY MONEY AT ALL FOR ANYTHING WITH REGARDS TO

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1 MS. BLOUGH. I WAS RECOMPENSED FOR THE TIME I SPENT SEEING HER  
2 AND WRITING WHATEVER I WROTE, BUT THAT WAS IT.

3 Q. ARE YOU BEING COMPENSATED FOR THE TIME SPENT IN GIVING  
4 DEPOSITIONS AND COMING TO COURT TODAY?

5 A. NO.

6 Q. WHEN YOU DO FITNESS-FOR-DUTY EVALUATIONS, IS IT YOUR  
7 PRACTICE TO TRY TO GATHER ALL THE MEDICAL RECORDS THAT THE  
8 EMPLOYEE'S DOCTORS HAVE?

9 A. YES.

10 Q. WHAT'S THE IMPORTANCE OF THAT? I KNOW YOU TALKED A  
11 LITTLE BIT ABOUT DATA. COULD YOU EXPLAIN WHY REVIEWING THE  
12 EMPLOYEE'S -- THE MEDICAL RECORDS THAT THE EMPLOYEE'S DOCTORS  
13 HAVE IS IMPORTANT?

14 A. THE ADVANTAGE OF FUNCTIONING AS A PSYCHIATRIST IS THAT  
15 THE VAST MAJORITY OF PEOPLE THAT I SEE IN ANY CAPACITY TALK A  
16 LOT ABOUT EITHER WHAT THEIR EXPERIENCES WERE, THEIR HOPES, THEIR  
17 FEARS, THINGS ABOUT WHICH THEY ARE PROUD OR LESS PROUD. BUT AS  
18 I'M HEARING IT, IT'S ALL THEIR SUBJECTIVE REPORT. I HAVE NO WAY  
19 OF KNOWING, EVEN THOUGH THEY MAY TALK ABOUT THEIR CHILDREN, IF  
20 THEY EVEN HAVE CHILDREN; IF THEY TALK ABOUT A JOB OR IF THEY  
21 HAVE A JOB.

22 BECAUSE THE AMOUNT THAT I CAN KNOW IS RESTRICTED TO  
23 WHAT THEY TELL ME. MOST OF THE TIME, THAT'S OKAY. MAYBE THEY  
24 EXAGGERATE IN SOME WAYS OR UNDERPLAY OTHER THINGS. THAT'S OKAY.  
25 IT'S PART OF THE INTERPLAY. BUT WHEN IT'S A QUESTION OF AN  
26 INDEPENDENT EVALUATION FOR A THIRD PARTY, AT LEAST TO ME, THE

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1 MORAL REQUIREMENTS AS WELL AS THE PROFESSIONAL ONES REQUIRE THAT  
2 I AT LEAST REVIEW WHATEVER IS AVAILABLE OF AN OBJECTIVE NATURE.

3           NOW, SOMETIMES I DO THAT WITH PRIVATE PATIENTS. I ASK  
4   FOR HOSPITAL RECORDS OR MATERIAL FOR THAT. BUT WITH REGARDS TO  
5   INDEPENDENT MEDICAL EXAMS, TO THE EXTENT THAT THERE ARE OUT  
6   THERE OBJECTIVE MATERIALS, I WILL ASK TO REVIEW THEM. AND I  
7   WILL SEND FOR HOSPITAL RECORDS OR OTHER KINDS OF THINGS THAT I  
8   THINK MIGHT BE RELEVANT, PARTICULARLY TO THE TIME THAT I'M  
9   MAKING THE EXAM.

10           THE IMPORTANCE OF GETTING THE DATA WAS THAT IF I WENT  
11   BY THE SUBJECTIVE REPORT OF THE SCHOOL, WHAT WAS CONTAINED IN  
12   THAT NOTE ABOUT HER APPEARING IMPAIRED OVER THE PREVIOUS YEAR --  
13   IF I WENT BY THAT I'D BE LEANING TOWARD SHE'S STILL IMPAIRED.  
14   IF I WENT BY HER STATEMENT -- THAT'S ANOTHER SUBJECTIVE  
15   REPORT -- I'D LEAN TOWARDS SHE'S NOT THAT IMPAIRED. HOW DO I  
16   RESOLVE THE DILEMMA?

17           WELL, ONE WAY IS TO FIND OUT WHAT ARE THE OTHER  
18   DOCTORS WHO HAVE SEEN HER OR OTHER PROFESSIONALS OR WHO HAVE  
19   SEEN HER OR ADMINISTERED TESTS OR GIVEN HER TREATMENT; WHAT HAVE  
20   THEY SAID THAT THEY SAW AND WHAT DID THEY DO WITH HER? THAT, TO  
21   ME, WAS THE OBJECTIVE MATERIAL. AND THE REASON THAT I REGARD IT  
22   AS SO IMPORTANT WAS IT SPEAKS FOR ITSELF. THE SCHOOL'S NOT  
23   INTERPRETING IT. MS. BLOUGH IS NOT INTERPRETING IT. IT'S JUST,  
24   IT IS WHAT IT IS.

25           AND I'LL TAKE WHAT I GET. BUT I WANT IT BECAUSE  
26   THAT'S THE WAY I RESOLVE FOR MYSELF, YOU KNOW, WHETHER IT'S

1 ETHICAL OR PERSONAL OR A PROFESSIONAL DILEMMA OF HOW YOU BALANCE  
2 OFF ONE REMARK AGAINST ANOTHER. I WANTED TO BE ABLE TO RESOLVE  
3 IT, SO AT LEAST I COULD DO WHATEVER I COULD DO WITH RESPECT TO  
4 IT.

5 Q. WOULD IT HAVE BEEN SUFFICIENT FOR YOUR WISHING TO BE  
6 THOROUGH AND GATHER ALL THE DATA FOR DR. LIU TO JUST TELL YOU OR  
7 WRITE A LETTER ABOUT HER PATIENT FOR YOUR BENEFIT OR WAS THERE  
8 SOMETHING ABOUT THE MEDICAL RECORDS THEMSELVES?

9 A. THERE'S SOMETHING ABOUT THE MEDICAL RECORDS  
10 THEMSELVES. AS I MENTIONED EARLIER, THE OBLIGATION OF THE  
11 DOCTOR WHO WAS TREATING MS. BLOUGH OR ANY PATIENT IS TO THAT  
12 PATIENT. AND TO THE EXTENT OF IF I WERE ASKED -- IF I HAD A  
13 PATIENT WHO WERE TO SAY, "WELL, YOU KNOW, I'D LIKE TO GO BACK TO  
14 WORK AND YOU MIGHT GET A CALL FROM WORK. HELP ME OUT," I WOULD  
15 DO MY BEST TO HELP THIS PERSON OUT.

16 THERE MAY BE A LINE OVER WHICH I WON'T GO, BUT I WOULD  
17 DO MY BEST TO HELP THIS PERSON OUT BECAUSE THAT PERSON IS MY  
18 PATIENT. I OWE THEM THE OBLIGATION.

19 Q. YOU'RE TALKING ABOUT A SITUATION WHERE YOU'RE TREATING  
20 YOUR OWN PATIENT?

21 A. YES.

22 Q. NOT EVALUATING SOMEONE ELSE'S PATIENT?

23 A. ABSOLUTELY.

24 SO IS IT WORTHWHILE TO HEAR FROM THE DOCTORS? IT WAS.  
25 IT WAS WORTHWHILE TO HEAR FROM THEM, BUT IT'S ALSO IMPORTANT TO  
26 KNOW WHAT DID EACH ONE OF THESE DOCTORS PUT IN THEIR RECORDS ON



1 A DAY WHERE THEY WERE SEEING MS. BLOUGH OR IN OR AROUND THAT,  
2 WHETHER IT WAS THE OBJECTIVE STUFF THEY SAW, THE LAB RESULTS,  
3 THEIR OPINIONS, THEIR PLANS, THEIR MEDICATION, IT MAKES NO  
4 DIFFERENCE WHAT IT WAS. IT'S ALL OF SOME HELP BECAUSE IT REALLY  
5 TELLS YOU AT LEAST WHAT THEY'RE THINKING; NOT THE WHOLE STORY,  
6 BUT IT'S A LOT.

7 AT THE SAME TIME I WANT TO HEAR FROM THEM, IF THEY  
8 CALL. I'M DELIGHTED TO GET THE CALL. I LIKE TALKING FOR THE  
9 MOST PART. THESE ARE -- I WILL SAY THERE ARE A LOT OF VERY  
10 DESCENT PEOPLE AROUND HERE. YOU KNOW, IT'S NOT BAD TO CHAT WITH  
11 THEM.

12 Q. YOU WENT TO WHICH MEDICAL SCHOOL, DOCTOR?

13 A. YALE.

14 Q. AND YOU DID YOUR POST MEDICAL SCHOOL TRAINING WHERE?

15 A. AT JOHNS HOPKINS UNIVERSITY AND STANFORD.

16 Q. WHAT DID YOU DO AT STANFORD IN THE WAY OF PHYSICIAN  
17 TRAINING?

18 A. I WAS AN INTERN IN THE DEPARTMENT OF MEDICINE, AND  
19 THEN I WAS RESIDENT PSYCHIATRY FOR TWO YEARS AND CHIEF RESIDENT  
20 FOR THREE YEARS AND CHIEF RESIDENT FOR THE FOURTH YEAR.

21 Q. WHAT DOES IT MEAN -- WELL, WHAT WAS YOUR TRAINING IN  
22 THE DEPARTMENT OF MEDICINE AT STANFORD AS DISTINGUISHED FROM THE  
23 DEPARTMENT OF PSYCHIATRY AT STANFORD?

24 A. QUITE TOUGHER THAN I THOUGHT WHEN I CAME HERE.

25 BASICALLY, THAT I WOULD GO INTO WORK 7:00 O'CLOCK IN THE MORNING

1 BETWEEN 5:00 AND 9:00 P.M. THE NEXT NIGHT; SO TUESDAY MORNING,  
2 AND THEN I'D BE OFF 7:00 A.M. THE NEXT MORNING. AND THAT WENT  
3 ON FOR A YEAR.

4 AND I WOULD TAKE CARE OF PEOPLE ABOUT A THIRD OF THE  
5 YEAR ON THE CANCER UNIT, WHICH WAS THEN EAST 1A AND EAST 1B, FOR  
6 ABOUT HALF THAT TIME IN THE CARDIAC UNIT, FOR ABOUT THAT SAME  
7 PERIOD OF TIME IN THE EMERGENCY ROOM, WHERE IT'S JUST EVERYTHING  
8 IN THE WORLD. AND THEN THERE WAS ONE ROTATION IN PSYCHIATRY AND  
9 ONE ON -- IT WAS SORT OF CONSULTATION LIAISON SERVICE, WHERE  
10 WHAT YOU DO IS YOU WORK AS AN INTERN WITH REGARDS TO PEOPLE ON  
11 OTHER SERVICES THAT HAVE MEDICAL PROBLEMS. COULD BE OB/GYN,  
12 COULD BE SURGERY, COULD BE SOMETHING ELSE.

13 Q. WHEN YOU DO THESE OVER 300 OR SO FITNESS-FOR-DUTY  
14 EVALUATIONS THAT YOU HAVE WORKED ON, SUCH AS THE ONE OF  
15 PROFESSOR BLOUGH, DO YOU FROM TIME TO TIME EVALUATE PATIENTS  
16 THAT HAVE VARIOUS AND SUNDRY MEDICAL ISSUES OTHER THAN MENTAL  
17 HEALTH ISSUES?

18 A. AT LEAST HALF THE TIME. THAT DOESN'T MEAN IT'S  
19 RELEVANT, THOUGH, TO THE EVALUATION. I MEAN, THEY HAVE THE  
20 PROBLEMS BUT IT'S NOT NECESSARILY WHAT'S CONTRIBUTING TO IT.  
21 THE QUESTION OF WHETHER IT CONTRIBUTES OR NOT IS PART OF THE  
22 DECISION.

23 Q. SO YOU DO ASSESS TO WHAT EXTENT PERHAPS THE MENTAL

24 HEALTH ISSUES CONTRIBUTE TO THE PROBLEM BEHAVIOR ON THE JOB OR  
25 TO WHAT EXTENT OTHER MEDICATIONS OR OTHER MEDICAL PROBLEMS  
26 CONTRIBUTE. DO YOU GET IN THAT?

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1 A. YES, SAME AS WITH MY PATIENTS. YOU DON'T SEPARATE OUT  
2 ONE FROM THE OTHER.

3 Q. WHAT DO YOU MEAN "YOU DON'T SEPARATE OUT ONE FROM THE  
4 OTHER," DOCTOR? WHAT DO YOU MEAN?

5 A. I'VE HAD ABOUT HALF DOZEN PEOPLE OVER 30 YEARS I'VE  
6 DIAGNOSED BRAIN TUMORS IN. AND, I MEAN, IT'S NOT THAT HARD. IF  
7 A PERSON SAID THEY HAD A STRANGE SMELL. STRANGE SMELLS ARE NOT  
8 GOOD THINGS TO HAVE. SO I'LL JUST SAY, "WELL, GEE, YOU OUGHT TO  
9 SEE SOMEBODY, SOMEBODY WHO KNOWS WHAT THEY'RE DOING ABOUT THIS."  
10 SO THEY GO OFF. OR, YOU KNOW, "I WAS COMING DOWN THE STAIRS THE  
11 OTHER DAY AND I GOT HALFWAY DOWN THE STAIRS AND I DON'T REMEMBER  
12 THE LAST HALF." OOPS, BETTER GO SEE SOMEBODY THAT'S USED TO  
13 DEALING WITH PEOPLE THAT HAVE WHAT-HAPPENED SEIZURES.

14 AND IT'S THAT SORT OF THING. AND IT'S NOT LIKE THIS  
15 IS AN EVERY MONTH THING. IT MAY BE TWO TIMES A YEAR, THREE  
16 TIMES A YEAR, BUT IT'S ONE OF THE NICE THINGS ABOUT BEING A  
17 PSYCHIATRIST, TO HAVE SOME TRAINING IN INTERNAL MEDICINE.

18 Q. WHY IS IT -- OR IS IT TRUE THAT MANY ORGANIZATIONS  
19 SELECT PHYSICIANS TO DO INDEPENDENT MEDICAL EVALUATIONS OF  
20 EMPLOYEES? PHYSICIANS THAT HAVE PSYCHIATRIC TRAINING, WHAT DOES  
21 THAT ADD TO THE SKILL SET FOR THE PHYSICIAN WHO'S GOING TO

22 EVALUATE THE EMPLOYEE, WHERE MAYBE THEY'RE NOT SURE IT'S A  
23 MENTAL HEALTH PROBLEM?

24 MR. LEBOWITZ: OBJECTION. NO FOUNDATION. CALLS FOR  
25 SPECULATION.

26 THE COURT: SUSTAINED.

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1 MR. VARTAIN: Q. DO YOU DO EVALUATIONS AND DO YOU  
2 TALK TO EMPLOYERS ABOUT WHAT THEIR NEEDS ARE IN THE INDEPENDENT  
3 MEDICAL EVALUATOR?

4 MR. LEBOWITZ: OBJECTION. VAGUE.

5 THE COURT: OVERRULED.

6 THE WITNESS: I TALK TO OTHER PSYCHIATRISTS, TO  
7 RESIDENTS AND TO EMPLOYERS ABOUT WHAT'S THE KIND OF THING YOU  
8 CAN LEGITIMATELY THINK ABOUT DOING AS THE EMPLOYER WITH AN IME.

9 MR. VARTAIN: Q. "IME" BEING INDEPENDENT MEDICAL  
10 EVALUATION?

11 A. THAT'S RIGHT, THE INDEPENDENT MEDICAL EXAM. FOR THE  
12 RESIDENTS AND THE PHYSICIANS, THIS IS THE FACULTY REALLY AT  
13 STANFORD, IT WAS THE ISSUE OF HOW DO YOU GO ABOUT DOING THE  
14 EXAM? WHY IS IT YOU LOOK FOR THE MATERIAL YOU LOOK FOR? HOW DO  
15 YOU PUT IT TOGETHER IN A WAY THAT ADDRESSES THE ISSUE THAT THE  
16 EMPLOYER'S GOT, WHICH SOMETIMES MEANS JUST THAT ONE PAGE  
17 STATEMENT? HOW DO YOU SAY -- AVOID SAYING ANYTHING MORE THAN  
18 WHAT YOU'RE SUPPOSED TO SAY BECAUSE IT'S ESSENTIALLY THE LAW  
19 THAT CONSTRAINS US IN TERMS OF WHAT WE DO?

20 BUT HOW DO YOU DO IT IN SUCH A WAY THAT, IN THE END,  
21 YOU'RE ABLE YOURSELF TO BE ABLE TO DEFEND THE OPINION YOU HAVE  
22 ARRIVED AT. AGAIN, IT DOESN'T MEAN IT'S THE RIGHT OPINION, BUT  
23 YOU OUGHT TO HAVE IT FOR REASONS THAT YOU CAN CITE. AND SAY,  
24 "WELL, THIS WAS MY REASON," WHETHER IT'S GOOD, BAD OR  
25 INDIFFERENT, AT LEAST ADVANCE SOME KIND OF REASONING WHERE YOU  
26 LOOK AT THE DATA TO DO THAT AND HOW DO YOU BALANCE OUT OBJECTIVE

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1 KINDS OF MATERIAL VERSUS SUBJECTIVE REPORTS AND COMPLAINTS.

2 Q. BASED ON YOUR EXPERIENCE ARE MANY OF THE PHYSICIANS  
3 WHO DO INDEPENDENT MEDICAL EVALUATIONS THOSE THAT HAVE A  
4 PSYCHIATRIC TRAINING? PSYCHIATRISTS?

5 MR. LEBOWITZ: OBJECTION. CALLS FOR SPECULATION. NO  
6 FOUNDATION.

7 THE COURT: OVERRULED.

8 THE WITNESS: WELL, MANY ARE, BUT I DON'T KNOW HOW  
9 WHAT -- PROPORTION OF THE TOTAL WORLD OF INDEPENDENT MEDICAL  
10 EXAMINERS THEY COMPRISE. IN OTHER WORDS, I DON'T KNOW IF THEY  
11 ARE 50 OUT OF 2,000.

12 MR. VARTAIN: Q. FAIR ENOUGH.

13 YOU KNOW OTHER PHYSICIANS WHO ARE PSYCHIATRISTS WHO DO  
14 THIS INDEPENDENT MEDICAL EVALUATION AS PART OF THEIR PRACTICE?

15 A. YES.

16 Q. SO YOU'RE NOT ONE -- YOU'RE NOT ONE OF A KIND THAT IS  
17 A PHYSICIAN AND A PSYCHIATRIST WHO DOES INDEPENDENT MEDICAL

18 EVALUATIONS?

19 A. NO.

20 Q. SINCE YOU WERE SAYING -- YOU WERE JUST TALKING ABOUT  
21 YOUR -- HOW YOU TRY TO ARRIVE AT OPINIONS THAT ARE BASED ON  
22 OBJECTIVE INFORMATION. WHAT WAS YOUR OPINION THE FIRST TIME --  
23 I WANT TO GO TO THE FIRST TIME YOU EVALUATED PROFESSOR BLOUGH,  
24 WHEN SHE CAME BACK FROM THAT 2003, THREE-YEAR LEAVE.

25 AND JUST TAKE US THROUGH WHAT WAS YOUR OPINION, AND  
26 THEN -- WE UNDERSTAND YOU MADE A 75 PERCENT RETURN TO WORK

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1 OPINION AND A HUNDRED PERCENT; THEN A COUPLE OF YEARS LATER,  
2 WHEN SHE CAME BACK IN 2006, WOULD YOU TAKE US THROUGH EACH STAGE  
3 OF YOUR OPINIONS, PLEASE. AND, FIRST, AS GENERAL AS YOU WANT  
4 TO.

5 A. I BELIEVE I HAD THE MAJORITY OF PROFESSOR BLOUGH'S --  
6 I'LL CALL IT MEDICAL AND/OR PSYCHIATRIC HISTORY WHEN SHE FIRST  
7 CAME, EITHER DIRECTLY FROM HER OR FROM THE PHYSICIANS SHE  
8 CONSULTED WITH. I DID HAVE A DIAGNOSIS OF HER AT THAT TIME.

9 Q. AND WHAT WAS THAT, DOCTOR?

10 A. THAT AS OF THE TIME I SAW HER -- AND THIS IS 2003 --  
11 THAT SHE WAS A STATUS POST, WHICH MEANS THIS IS SOMETHING THAT  
12 OCCURRED IN THE PAST AND IS NOT NECESSARILY PRESENT. THEN, A  
13 POST-CONCUSSION SYNDROME AT AGE 17, IN AN AUTOMOBILE ACCIDENT  
14 THAT THE RECORDS APPEAR TO INDICATE WAS IN BRAZIL. THAT SHE  
15 HAD -- SHE WAS ALSO STATUS POST A CHRONIC POST-TRAUMATIC STRESS

16 DISORDER WITH NIGHTMARES FROM THAT SAME EVENT. THAT WAS 17.

17 Q. WHEN SHE WAS AGE 17?

18 A. SO THIS IS GOING BACK A LONG TIME.

19 THAT THERE WERE CHRONIC HEADACHES OVER A PERIOD OF  
20 CLOSE TO 30 YEARS, AT THE TIME I WAS SEEING HER, AT LEAST FOR 30  
21 YEARS, SO BACK SOMETIME IN THE 1970S, MAYBE 1980S. IT WAS GOING  
22 BACK, IT SEEMED ALMOST TO THE TIME OF THE ACCIDENT EARLIER, AND  
23 IT WAS UNCLEAR WHETHER THE HEADACHES WERE RELATED TO THE  
24 ACCIDENT OR NOT, BUT THERE WAS A REPORT OF CHRONIC HEADACHES.  
25 THERE WAS ALSO INDICATIONS OF VICODIN ABUSE, STARTING AT LEAST  
26 AS EARLY AS 1997, AND IT MAY HAVE BEEN EARLIER BECAUSE -- IT WAS

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1 UNCLEAR. THE ONE SHE WAS CLEAREST ABOUT WAS ABOUT EARLY 1990S.

2 Q. WHAT IS VICODIN ABUSE? WHAT DO YOU MEAN BY THAT,  
3 DOCTOR?

4 MR. LEBOWITZ: YOUR HONOR, MAY WE APPROACH?

5 THE COURT: YES.

6 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

7 THE COURT: THE OBJECTION IS OVERRULED.

8 MR. VARTAIN: Q. BEFORE THE ATTORNEY OBJECTED,  
9 DOCTOR, I WAS ASKING YOU WHAT DO YOU MEAN BY APPARENT VICODIN  
10 ABUSE?

11 A. VICODIN ABUSE IS -- VICODIN IS AN OPIATE. BASICALLY,  
12 IT'S A NARCOTIC-LIKE SUBSTANCE THAT IS SYNTHETICALLY  
13 MANUFACTURED AND IS COMBINED WITH WHAT WE CALL TYLENOL,

14 ACETAMINOPHEN. THE DIFFICULTY IS THAT IS ORDINARILY NOT USED OR  
15 NOT RECOMMENDED FOR TREATMENT OF HEADACHES AND, YET, THAT WAS  
16 WHERE THE REPORT WAS THAT SHE WAS USING IT.

17 Q. WHY IS IT NOT RECOMMENDED FOR HEADACHES? WHY IS  
18 VICODIN NOT GENERALLY USED FOR HEADACHES?

19 A. BECAUSE, LIKE ALL OPIATES, IT HAS A VERY STRONG  
20 ADDICTION POTENTIAL. AND AS EARLY AS THE EARLY 2000S, REALLY,  
21 THERE WERE INDICATIONS THAT IT COULD INTERFERE WITH YOUR HEARING  
22 AND RESULT IN HEARING LOSS AND ALSO CAUSE SLEEP DISTURBANCE,  
23 ABOUT WHICH SHE COMPLAINED.

24 Q. WHO IS THAT?

25 A. MS. BLOUGH COMPLAINED.

26 Q. WHEN SHE CAME TO SEE YOU WAS SHE COMPLAINING ABOUT

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1 SLEEP DISTURBANCE?

2 A. YES. THIS IS THE FIRST TIME. WE'RE GOING BACK IN  
3 EARLY '93. IT CAN MAKE THE EXPERIENCE OF THE PAIN WORSE BECAUSE  
4 WHILE IT INITIALLY HAS AN IMPACT TO RELIEVE THE PAIN, WITH ALL  
5 OF THESE MEDICATIONS, THERE'S A REBOUND EFFECT. NAMELY, THE  
6 MEDICINE WEARS OFF. AND WHEN THE MEDICINE WEARS OFF JUST AS  
7 YOUR PAIN LEVEL GOES DOWN -- AND THIS IS NORMAL -- AS YOU'RE  
8 COMING OUT, THE TENDENCY ALWAYS IS TO OVERSHOOT.

9 AND I THINK MAYBE THE MOST COMMON EXAMPLE IS THAT IF  
10 WE WERE TO GO OUT AND HAVE THREE GLASSES OF WINE AT 9:00 O'CLOCK  
11 AT NIGHT, AND WE WERE GOING TO BE A LITTLE BIT SEDATED, A LITTLE



12 BIT CALMER OR SOMETHING AND WE'LL GO TO BED, AND SOMETIME DURING  
13 THAT NIGHT WE'LL COME OUT AND WE'LL WAKE UP. AND THE ULTIMATE  
14 EXAGGERATION OF IT IS YOU HAVE A HANGOVER IN THE MORNING. IT  
15 JUST MEANS THAT YOU HAVE COME OUT AND YOU'RE NOW MUCH MORE  
16 SUSCEPTIBLE TO BEING AGITATED OR UPSET OR WHATEVER.

17 SO I COULD NOT RULE OUT A PAIN-INDUCED SITUATION FROM  
18 THE VICODIN. I COULD NOT RULE OUT MOOD DISORDER, SECONDARY TO  
19 THE VICODIN, AND THERE'S A DIAGNOSIS FOR THAT --

20 Q. WHAT IS THAT?

21 A. IT'S CALLED OPIATE- OR OPIOID-INDUCED MOOD DISORDER;  
22 THAT'S ONE. THE OTHER IS OPIOID-INDUCED SLEEP DISORDER. I  
23 COULD NOT RULE OUT AN OPIOID-INDUCED COGNITIVE DISORDER.

24 Q. WHAT IS THAT?

25 A. COGNITIVE JUST MEANS IT HAS TO DO WITH OUR THINKING.  
26 AND, AGAIN, THE OPIOID IS FUNCTIONING VERY MUCH THE SAME WAY IT

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1 WOULD BE IF WE HAD SOMETHING TO DRINK. IT'S HARD TO THINK  
2 CLEARLY THE MORE THAT WE HAVE THIS LEGAL SUBSTANCE IN US. BUT I  
3 WOULD SAY ALSO, AT THE SAME TIME, WITH REGARDS TO ALL OF THESE  
4 THINGS ABOUT THE VICODIN, IS SHE DID APPARENTLY GET THEM ON  
5 PRESCRIPTION, SO THAT THERE WAS A DOCTOR WHO WAS MAKING A  
6 DECISION WITH RESPECT TO GIVING THEM TO HER.

7 SHE WAS WARNED BY AT LEAST TWO PEOPLE, DR. TOPPER IN  
8 HAWAII AND DR. GOLDSTEIN, THAT HAD IN THEIR NOTES INDICATIONS  
9 ABOUT THEIR CONCERN WITH RESPECT TO THE USE OF VICODIN; THAT SHE

10 WAS STILL USING IT AND WAS STILL SAYING THAT SHE NEEDED IT. BUT  
11 THIS IS WHERE -- THE REASON I SAY ITS DIAGNOSIS IS THAT I CAN'T  
12 RULE IT OUT, SO I WOULD LIST IT.

13 THE OTHER WOULD BE A PARTNER RELATIONAL PROBLEM, THE  
14 ISSUE OF THE PROBLEMS WITH HER HUSBAND. AN OCCUPATIONAL  
15 PROBLEM. OCCUPATIONAL PROBLEM DOESN'T IMPLY THERE'S ANYTHING  
16 WRONG WITH THE PERSON THAT'S GOT IT. IT JUST MEANS THERE'S A  
17 DIFFICULTY AT WORK FOR WHATEVER CAUSE. IT'S NOT PEJORATIVE. IT  
18 JUST SAYS -- IT'S ONE OF THE THINGS THAT IF YOU WANTED TO TALK  
19 ABOUT OR PUT YOUR ATTENTION ON, IT'S OKAY TO DO IT. AND THAT  
20 WOULD BE NUMBER ONE.

21 I THEN GAVE HER A PERSONALITY TEST, WHICH INDICATED IN  
22 THE RESULTS A CERTAIN LEVEL OF SELF-CENTEREDNESS, A CERTAIN  
23 LEVEL OF DEPENDENCY EMOTIONALLY TO OVERREACT TO THINGS. THE  
24 THIRD ONE WOULD BE -- SO AXIS I WOULD BE ALL THOSE PSYCHOLOGICAL  
25 ISSUES THAT I MENTIONED EARLIER, AND WITH THEM DEPRESSION AND  
26 ANXIETY, WHATEVER THE CAUSE WAS; STUFF IN HER LIFE, MEDICATIONS,

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1 THE ILLNESS. JUST SHE HAD THEM.

2 NUMBER TWO WOULD BE ALL THE PERSONALITIES, THIS IS  
3 AXIS II. IT'S THE SECOND PART OF THE DIAGNOSIS. AND THE  
4 PERSONALITY TESTS WILL INDICATE THIS TENDENCY TO LIVE AT  
5 SELF-OPUS. BUT, AGAIN, THAT'S NOT UNUSUAL. YOU'VE BEEN SICK  
6 FOR TWO OR THREE YEARS. YOU'RE FOCUSED ON YOURSELF. I MEAN,  
7 YOU'RE NOT THINKING ABOUT MUCH OTHER THINGS THAN THAT, SO THERE

8 WAS THE POSSIBILITY OF THAT.

9 AND ALSO WITH REGARDS TO THE TENDENCY EMOTIONALLY TO  
10 OVERREACT TO THINGS. YOU'VE GOT A CANCER. YOU COULD WELL  
11 OVERREACT TO THINGS EMOTIONALLY. SO, IN ESSENCE, MAYBE IT'S A  
12 PROBLEM; MAYBE IT'S NOT. IT DOESN'T NECESSARILY AFFECT THE WAY  
13 THE PERSON WOULD ACT -- IN THIS CASE, MS. BLOUGH, WOULD BEHAVE  
14 AT SCHOOL.

15 IN TERMS OF THE PHYSICAL PROBLEMS, THERE WAS THE  
16 HISTORY OF HEADACHES, FOR WHATEVER CAUSE. THERE WAS THE HISTORY  
17 OF THE CONCUSSION, FOR WHATEVER CAUSE. THERE WAS THE HISTORY OF  
18 THE CANCER. IT DOES APPEAR THAT FOLLOWING THE SURGERY AND  
19 FOLLOWING WHAT THE DOCTORS WERE DOING WITH RESPECT TO THE  
20 CANCER, IT WAS LARGELY TAKEN CARE OF.

21 IN OTHER WORDS, THERE WAS NOTHING THERE WITH THOSE  
22 THREE AREAS OF SYMPTOMS, PERSONALITY STRUCTURE AND PHYSICAL THAT  
23 WERE NOT SURMOUNTABLE IN SOME WAYS IF THINGS BROKE RIGHT FOR  
24 HER. SO THAT'S WHERE THIS ISSUE OF GOING BACK TO WORK, BUT  
25 GOING BACK TO WORK, TO EASE IN IT, BOTH FOR HER OWN SAKE AND FOR  
26 THE SAKE OF THE STUDENTS. I SUPPOSE TO SOME EXTENT FOR THE SAKE

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1 OF THE SCHOOL, BUT SHE'S MORE LIKELY TO MAKE IT. SHE'S MORE  
2 LIKELY TO DO WHAT SHE WANTS, AND SHE DID WANT TO GO BACK. ALL  
3 THOSE THINGS MAKE A DIFFERENCE. SO THAT WAS THE WAY IT WAS IN  
4 THE LATE SPRING OF 2003.

5 Q. SO DOES THAT EXPLAIN WHY IT WAS YOU RECOMMENDED TO THE

6 SCHOOL THEY TAKE HER BACK, FIRST HALF TIME, THEN THREE-QUARTER  
7 TIME. FINALLY, SHE WAS DOING WELL SO YOU APPROVED HER TO GO  
8 BACK FULL TIME --

9 A. YES.

10 Q. -- IN 2003?

11 A. BUT ALSO SHE DID COMPLAIN ABOUT FATIGUE, AND FATIGUE'S  
12 ASSOCIATED WITH HAVING TO GO BACK IN. AND THE OTHER SIDE OF  
13 IT -- I WAS AWARE OF WAS THAT IF I PUT HER BACK TO WORK, JUST  
14 WROTE A LETTER THAT SAID -- I'M NOT THE ONE THAT PUTS HER BACK  
15 TO WORK. I WRITE A LETTER THAT SAYS THIS IS MY OPINION, AND  
16 MOST OF THE TIME THEY FOLLOW MY OPINION. AND IF I DON'T, MAYBE  
17 I NEVER HEAR ABOUT IT. BUT I DID WRITE IT. I DID WANT HER TO  
18 SUCCEED. THE SCHOOL HAD MADE IT CLEAR THEY WANTED HER TO  
19 SUCCEED.

20 Q. AND WAS BOB HITE, ROBERT HITE YOU HAD TALKED TO IN  
21 2003, THAT HE FIRST SENT HER TO YOU? IS THAT WHO IT WAS?

22 A. HE WAS VERY POSITIVE ON HER. AND THAT NEVER CHANGED  
23 IN ANY CONVERSATION I HAD WITH ANYBODY ELSE. I DON'T THINK I  
24 TALKED TO HIM AGAIN, WHILE HE WAS THERE. IT NEVER CHANGED.

25 Q. SO AFTER YOU WORKED WITH PROFESSOR BLOUGH TO  
26 TRANSITION BACK IN 2003, 2004, WHAT WAS THE NEXT TIME YOU HAD AN

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1 OCCASION TO GIVE AN OPINION?

2 A. SHE CAME BACK, I THINK ONCE BEFORE SHE WENT TO  
3 FULL-TIME WORK, JUST VERY MUCH THE SAME AS BEFORE. THINGS

4 SEEMED TO BE GOING OKAY AND I DIDN'T SEE ANY REASON TO CHANGE  
5 ANYTHING. AND SHE DID. SHE WENT BACK FULL TIME AND IT WAS  
6 EITHER A YEAR AND A HALF OR TWO YEARS BEFORE I SAW HER AGAIN.

7 Q. SO THE SCHOOL FOLLOWED YOUR ADVICE AND YOUR OPINION ON  
8 THOSE OCCASIONS?

9 A. YES. BUT IT'S NOT AS IF THEY CALLED AND SAID, "OH, WE  
10 DECIDED..."

11 Q. YOU JUST HEARD ABOUT IT?

12 A. IT SORT OF GOES INTO A VACUUM, AND THEN AFTER AWHILE  
13 WHEN YOU'VE ALREADY MADE YOUR...

14 Q. SO THEN SHE CAME TO SEE YOU IN MAY OF 2006?

15 A. YES.

16 Q. AND THEN JULY YOU WROTE A LETTER SAYING SHE WASN'T FIT  
17 FOR THE FORESEEABLE FUTURE?

18 A. YES.

19 Q. AND TELL THE JURY AGAIN WHY YOU MADE THAT OPINION.  
20 YOU TALKED A LITTLE BIT ABOUT THE RECORDS FROM DR. LIU, BUT ALSO  
21 TALK TO THE JURY ABOUT WHERE YOU SAW HER ISSUE, HER SITUATION  
22 WITH CANCER AND WITH HER HEARING PROBLEM FITTING INTO -- IF IT  
23 DID FIT INTO WHY YOU SAID TO THE SCHOOL, "I DON'T THINK SHE'S  
24 FIT FOR THE FORESEEABLE FUTURE."

25 A. WELL, I THINK FIRST SHE WAS VERY CLEAR THAT SHE REALLY  
26 FELT THINGS WERE OKAY WITH HER AND THAT THERE WAS -- SHE WAS

1 READY TO GO BACK IN THE FALL; THAT WHATEVER IT WAS THAT HAD BEEN

2 GOING ON THE PREVIOUS YEAR WAS ALL DONE; THAT SHE WAS MUCH  
3 BETTER; THAT SHE WAS ON THE MEDICATION, THE SANDOSTATIN; AND  
4 THAT, REALLY, SHE DIDN'T THINK THAT SHE WAS LIKELY TO HAVE ANY  
5 TROUBLE.

6 Q. CAN I STOP YOU RIGHT THERE.

7 I THINK YOU MENTIONED SOMETHING IN YOUR DEPOSITION  
8 THAT MR. LEBOWITZ TALKED -- EXAMINED YOU. IS THERE SOMETHING  
9 CALLED A FIGHT TO -- A FLIGHT TO HEALTH?

10 A. YES.

11 Q. IS THERE SOME SYNDROME WHERE PATIENTS TALK ABOUT HOW  
12 WELL THEY ARE? COULD YOU TALK TO THE JURY ABOUT THAT, IF IT'S  
13 IN ANY WAY CONNECTED WITH PROFESSOR BLOUGH, IN YOUR OPINION.

14 A. WELL, I THINK IT IS. I THOUGHT IT WAS.

15 A FLIGHT TO HEALTH, IT'S AN EXPERIENCE THAT WE'VE  
16 PROBABLY ALL HAD TO SOME DEGREE IN THE COURSE OF OUR LIFE.  
17 WE'VE NEVER CALLED IT THAT. BUT IT'S SORT OF LIKE, YOU KNOW,  
18 WE'RE NOT FEELING SO GOOD OR WE'RE SICK, ACTUALLY SICK. AND  
19 THIS MOVIE WE'VE BEEN WAITING FOR FOR TWO MONTHS COMES AND OUR  
20 FRIENDS ARE GOING. THEY'RE ALL GOING TOGETHER ON SATURDAY  
21 NIGHT. AND HER PARENTS SAID, YOU KNOW, "NO WAY. YOU HAVEN'T  
22 GONE TO SCHOOL ALL WEEK." "I'M ALL BETTER."

23 IT'S A FLIGHT TO HEALTH. WE WANT TO BE TREATED AS IF  
24 WE ARE HEALTHY. AND SO WE ACT AS IF WE ARE. WE TALK AS IF WE  
25 ARE. NOW, ARE WE? MAYBE WE ARE; BUT WE WERE NOT. IN TERMS OF  
26 OUR HEAD, WE'VE HAD A FLIGHT INTO HEALTH BECAUSE THERE WAS

1 SOMETHING THERE THAT WE WANT, AND I COULDN'T RULE THAT OUT.

2 ON THE OTHER HAND, MAYBE SHE ACTUALLY WAS BETTER. BUT  
3 THAT'S WHERE THE RECORDS BECAME -- I MEAN, TO ME, SO IMPORTANT.  
4 BECAUSE I HAD RECORDS OVER HERE THAT SAID -- BY BOTH THESE  
5 PARTIES, THE SCHOOL AND MS. BLOUGH COMPARED AND THE QUESTION  
6 WAS, WERE THE OTHER RECORDS GOING TO SAY THE SAME.

7 AND THE RECORD I PAID MOST ATTENTION TO TO START WITH  
8 WERE THE RESULTS OF THE HEARING TESTS. SHE HAD A HEARING TEST.  
9 THIS IS MS. BLOUGH HAD A HEARING TEST IN JANUARY. AND THE  
10 INDICATIONS WERE THAT SHE HAD ABOUT 50 PERCENT HEARING LOSS. IT  
11 WAS UNCLEAR WHETHER THAT WAS DUE TO THE SANDOSTATIN. IT MIGHT  
12 BE, BUT I DIDN'T FIND RECORDS THAT IT WAS ANYWHERE IN THE PDR OR  
13 ANYWHERE ELSE. IT WAS THE BIGGEST DEAL GOING.

14 Q. WAS THAT A PROBLEM? WAS THAT A REASON WHY YOU SAID  
15 SHE WASN'T FIT, HER HEARING?

16 A. WELL, ASSOCIATED WITH IT WAS THE RECOMMENDATION FOR A  
17 HEARING AID. RECOMMENDATION WAS MADE, FIRST, IN JANUARY,  
18 REPEATED IN MARCH. I SAW HER IN MAY. SHE HAD NO HEARING AID.  
19 NOW, HER RESPONSE TO THAT WAS SHE HAD ANOTHER HEARING EXAM  
20 SCHEDULED ON AUGUST THE 2ND.

21 MY OPINION WAS, IF YOU REALLY WANT TO GO BACK TEACHING  
22 AND YOU KNOW THERE HAD BEEN COMPLAINTS ABOUT RESPONSIVENESS IN  
23 THE CLASSROOM, AND YOU'VE SEEN THE DOCTOR AND THE DOCTOR HAS  
24 SAID, "I'M RECOMMENDING TO YOU THAT YOU GET A HEARING AID," AND  
25 YOU DON'T GO GET IT, THAT BEHAVIOR WOULD IMPLY MAYBE YOU'RE NOT  
26 AS ENTHUSIASTIC ABOUT THIS AS YOU'RE OTHERWISE SUBJECTIVELY

1 TRYING TO CONVEY.

2 AND WHEN I WROTE THAT FINAL ONE SHEET, SHE STILL --  
3 EITHER SHE HADN'T GOTTEN THE HEARING AID OR SHE HADN'T GOTTEN  
4 BACK TO ME ABOUT A HEARING AID. SO I WAS ACTING ON THE FACT  
5 THAT THIS WOMAN STILL, AFTER KNOWING FOR SIX MONTHS THAT SHE'S  
6 LOST HALF HER HEARING AND SHE HAS STUDENTS COMPLAINING ABOUT HER  
7 AND THE ADMINISTRATION APPROACHING HER, HAS NOT TAKEN THE  
8 BEHAVIORAL STEP TO CORRECT IT WHEN IT'S AVAILABLE TO HER.

9 Q. DOCTOR --

10 A. THAT WAS A BIG DEAL TO ME.

11 Q. DO YOU REMEMBER SHE FINALLY CAME TO SEE YOU WITH THE  
12 RECORDS IN NOVEMBER OF THAT YEAR?

13 A. YES.

14 Q. DO YOU REMEMBER WHETHER OR NOT YOU HELPED HER AT THAT  
15 POINT GO GET HER HEARING AIDS? THERE WAS SOMETHING ABOUT  
16 COSTCO?

17 A. I THINK SHE'D ALREADY -- SHE'D INDICATED, I THINK,  
18 THAT -- YOU GO THROUGH THE RECORD. I HAVEN'T LOOKED AT THE  
19 TRANSCRIPT FOR THIS OR THESE STATEMENTS FOR A WHILE. I THINK  
20 THAT WAS HER PLAN. BUT SHE'D ALSO SAID THE PREVIOUS TIME THAT  
21 WAS A PLAN. WHEN SHE CAME BACK IN MARCH, IT WAS DONE. ALL OF  
22 THESE ARE -- YOU KNOW, EVERYBODY GETS THE BENEFIT OF A DOUBT.  
23 YOU WOULDN'T GET ANYWHERE IF YOU DIDN'T.

24 Q. WHAT ABOUT IN JULY WHEN YOU SAID SHE WASN'T FIT TO GO



25 BACK FOR THE FORESEEABLE FUTURE? TALK ABOUT WHAT WAS THE DEAL  
26 WITH HER CANCER, AND DID YOU TALK TO HER DOCTORS OR HER DOCTORS'

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1 OFFICES?

2 A. WELL, I KNEW DR. MARCUS WAS SICK. I'VE KNOWN  
3 DR. MARCUS 15, 20 YEARS.

4 Q. HOW HAVE YOU KNOWN HIM, DOCTOR?

5 A. HE AND I WERE ON A COMMITTEE FOR A WHILE WITH THE  
6 SAN MATEO COUNTY MEDICAL ASSOCIATION. IT WAS A COMMITTEE THAT  
7 LOOKED AT CASES WHERE PEOPLE COMPLAINED. THEY EITHER COMPLAINED  
8 IN COURT OR THEY COMPLAINED IN THE MEDICAL SOCIETY THAT SOMEBODY  
9 DID WRONG BY THEM. SAY, IMPROPER DIAGNOSIS, IT WAS THE WRONG  
10 MEDICINE, IT WAS WHATEVER. AND THE COMMITTEE'S COMPOSED OF  
11 ABOUT 13 PEOPLE, EACH ONE FROM A DIFFERENT SPECIALTY.

12 AND DR. MARCUS IS ONE OF THE MOST RESPECTED  
13 ONCOLOGISTS IN THE ENTIRE COUNTY. I WOULD GO TO HIM MYSELF  
14 TOMORROW IF I WERE TO FIND THAT I NEEDED HIS SERVICES. I WAS  
15 PRESIDENT OF THE SAN MATEO COUNTY MEDICAL ASSOCIATION, SO I KNEW  
16 WHO THE ONES WERE WHO WERE REGARDED AS GOOD AND I KNEW IF I  
17 COULDN'T FIND OUT WHO THE BEST ONES WERE, HOW TO GO ABOUT  
18 FINDING OUT. AND DR. MARCUS -- DR. MARCUS IS VERY, VERY GOOD.

19 AND SO WHEN I CALLED HIS OFFICE -- AND HE WAS SICK AT  
20 THAT TIME -- HE WAS COVERED BY SOMEBODY. AND I KNOW I TALKED TO  
21 A MALE AND THEN I TALKED TO A FEMALE AT SOME POINT. BOTH OF  
22 THEM SAID THE SAME THING, THAT AS FAR AS THEY WERE CONCERNED

23 THERE WAS NOTHING IN TERMS OF HER CANCER OR TREATMENT THAT WOULD  
24 KEEP HER FROM WORKING. AND THAT WAS FINE. THAT MEANT, AS FAR  
25 AS I WAS CONCERNED, CANCER WAS OFF THE TABLE.

26 Q. SO THERE WAS NOTHING ABOUT HER HAVING CANCER THAT

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1 PLAYED A ROLE, IN YOUR OPINION, THAT SHE WASN'T READY TO GO BACK  
2 TO WORK?

3 A. I MEAN, THIS IS A TOPNOTCH OFFICE. I TOLD YOU I'D GO  
4 THERE MYSELF. AND SO IT WAS A GREAT RELIEF. I DIDN'T EVEN HAVE  
5 TO THINK ABOUT THAT. BUT I COULDN'T RULE OUT THE SANDOSTATIN AS  
6 QUICKLY, BUT IT DIDN'T MAKE A DIFFERENCE BECAUSE, AGAIN, WHAT IS  
7 ADDRESSABLE? WHAT'S IMPROVABLE? EVEN IF SHE HAD A BAD  
8 SITUATION AS OF THAT TIME, IS IT THE KIND OF THING THAT SOMEBODY  
9 CAN DO SOMETHING ABOUT? I THOUGHT THEY COULD.

10 Q. SO, THEN, WHY DID YOU NOT PUT HER BACK OR GIVE THE  
11 OPINION THAT SHE COULD -- WAS IT THE ABSENCE OF YOUR ABILITY TO  
12 REVIEW THE PSYCHIATRIC RECORDS?

13 MR. LEBOWITZ: OBJECTION. LEADING.

14 THE COURT: SUSTAINED.

15 THE WITNESS: SHE WAS STILL ON THE VICODIN.

16 MR. VARTAIN: Q. WHAT, IF ANYTHING, ABOUT THE  
17 PSYCHIATRIC RECORDS CAUSED YOU TO REACH THE OPINION YOU DID?

18 A. THE FACT THAT MS. BLOUGH TOOK THE INITIATIVE,  
19 UNILATERALLY, TO WITHDRAW PERMISSION FOR ANYBODY TO REVIEW THEM  
20 AND BASICALLY TO SAY TO THE SCHOOL, "SCREW YOU. I'M GOING TO

21 COME BACK TO WORK AND I'LL DECIDE WHAT'S APPROPRIATE AND WHAT'S  
22 NOT." BUT THAT MEANT THAT NEITHER THE SCHOOL NOR I WERE ABLE TO  
23 FULFILL OUR RESPONSIBILITY AT THAT POINT. AND I WAS HAVING THEN  
24 TO RELY ON -- I WAS HAVING TO RELY ON BEHAVIOR I REGARDED AS  
25 UNACCEPTABLE.

26 I COULD NOT EVER, AT THAT POINT IN TIME, HAVE RETURNED

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1 HER TO WORK BECAUSE I KNEW THAT THERE WAS SOME FORM OF SUB ROSA  
2 THINKING OR BEHAVIOR THAT I DIDN'T UNDERSTAND.

3 Q. WHAT DOES SUB ROSA MEAN, DOCTOR?

4 A. IT MEANS YOU DON'T KNOW WHAT IT IS BECAUSE IT'S UNDER  
5 THE TABLE. IT'S UNDERHANDED. IT IS NOT THE KIND OF BEHAVIOR  
6 THAT YOU EXPECT FROM PEOPLE THAT YOU ARE GOING TO ENTRUST THE  
7 CHILDREN TO. AND IT'S NOT THE KIND OF THING THAT I WOULD ACCEPT  
8 IF IT WERE FROM MY KIDS, OR FROM MY NEIGHBOR OR IN THIS CASE  
9 FROM MS. BLOUGH.

10 Q. BUT THEN --

11 A. AND I WAS NOT IN A POSITION TO AMELIORATE IT BECAUSE  
12 IF I CALLED -- IF I WERE THE ONE THAT CALLED, THAT MEANT I WAS  
13 DOING FOR HER WHAT SHE, AS A RESPONSIBLE ADULT, WHO'S GOING TO  
14 BE TEACHING IN THIS COLLEGE, SHOULD BE DOING FOR HERSELF. SO  
15 IT'S LIKE -- I SAID I WOULD HAVE DONE ANYTHING THAT HAD HER IN A  
16 POSITION TO GO TO WORK, BUT I ALSO WOULD NOT HAVE HAD HER WORK  
17 MORE THAN HALF TIME.

18 Q. AND THE NEXT YEAR YOU DID SAY -- GIVE THE OPINION THAT

19 SHE COULD WORK HALF TIME ONCE YOU GOT A LOOK AT ALL THE RECORDS?

20 A. YES. AND THE INDICATIONS WERE THAT WHATEVER IT WAS  
21 THAT WAS GOING ON IN THE 2005/2006 SCHOOL YEAR, WHATEVER IT WAS,  
22 WAS BETTER. I DON'T THINK I SAW ANYTHING IN THE NOVEMBER OF  
23 2006 OR MARCH OF 2007 MEETING THAT WOULD -- I DIDN'T THINK WAS  
24 ADDRESSABLE IN SOME WAY.

25 Q. SO THAT'S WHY YOU -- IS THAT THE REASON WHY YOU  
26 SUGGESTED SHE, ONCE AGAIN, START BACK AT 50 PERCENT TIME?

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1 A. NO. IT WAS TO GO BACK TO THE SAME THING IN 2003. SHE  
2 STILL -- SHE WAS STILL A RELATIVELY YOUNG TEACHER. SHE WAS IN  
3 HER EARLY FIFTIES. I MEAN, THIS WOMAN HAD A FUTURE. I  
4 CERTAINLY DIDN'T WANT TO BE THE ONE TO STAND BETWEEN HER  
5 FINISHING OUT HER CAREER IN THE SAME WAY THAT SHE HAD IT  
6 EARLIER. BUT ON THE OTHER HAND, I CAN'T DO FOR HER THAT WHAT  
7 SHE NEEDS TO DO FOR HERSELF, IF SHE IS THE ONE WHO'S GOING TO BE  
8 FUNCTIONING AS THE TEACHER. I DID WHAT I DID.

9 THE COURT: DO YOU NEED A BREAK?

10 (WHEREUPON, THERE WAS A PAUSE IN THE PROCEEDINGS.)

11 MR. VARTAIN: Q. DOCTOR, YOU MENTIONED IN YOUR  
12 TESTIMONY THAT THERE WAS MATERIAL, WRITTEN MATERIAL FROM THE  
13 SCHOOL ABOUT WHAT THE PROBLEMS HAD BEEN, THE BEHAVIOR PROBLEMS  
14 ON THE CAMPUS WITH MS. BLOUGH, AND THAT THERE WERE SOME THINGS  
15 THAT SHE WROTE THAT SEEMED TO BE SIMILAR OR CONSISTENT WITH WHAT  
16 THE SCHOOL WAS WRITING TO YOU, THE PRESIDENT LOPEZ.

17 WOULD YOU LOOK AT PLAINTIFF'S EXHIBIT 13, AND WOULD  
18 YOU GIVE THAT TO THE WITNESS --  
19 THE REPORTER'S GOING TO GIVE YOU THE EXHIBITS SO YOU  
20 DON'T HAVE TO --  
21 MAY I APPROACH THE WITNESS?  
22 THE COURT: YES.  
23 MR. VARTAIN: Q. HERE'S A HARDCOPY. IT'S AN E-MAIL.  
24 IT'S IN EVIDENCE ALREADY, DOCTOR. IT'S AN E-MAIL FROM THE  
25 PROFESSOR TO THE PRESIDENT IN THAT SPRING, MAY 2006. WOULD YOU  
26 READ THAT -- DID SOMEHOW THAT INFORMATION COME TO YOU AS SOME

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1 TYPE OF INFORMATION FROM THE PROFESSOR HERSELF?  
2 A. I HAVE SEEN THIS BEFORE. I THOUGHT THE SOURCE WAS THE  
3 SCHOOL, BUT I COULDN'T SQUARE THAT.  
4 Q. I'M GOING TO SHOW YOU A LETTER FROM THE SCHOOL, BUT  
5 THAT'S A LETTER FROM PROFESSOR --  
6 A. YES.  
7 Q. YOU HAVE SEEN THAT BEFORE?  
8 A. YES. THIS IS WHAT I WAS REFERRING TO.  
9 Q. AND WHAT IS IT ABOUT -- WHAT IS THE CONTENTS OF THAT  
10 LETTER BY MS. BLOUGH THAT YOU RECALL WAS OF NOTE TO YOU WHEN YOU  
11 WERE DOING THE EVALUATION?  
12 A. I THINK THE ESSENTIAL THING TO ME WAS THAT SHE WAS  
13 BASICALLY INDICATING THAT HER CONDITION OVER THE PREVIOUS YEAR  
14 REALLY HAD BEEN BAD. ALL IT MEANT TO ME WAS THAT THE LIKELIHOOD

15 IS THAT SHE HAS EXPERIENCED A MIRACULOUSLY SUDDEN CURE IS PRETTY  
16 LOW. BUT IT DOESN'T MEAN IT'S IMPOSSIBLE; IT JUST MEANT IT WAS  
17 LOW. BUT BECAUSE OF THIS, AND ALSO BECAUSE OF -- I THINK IT WAS  
18 PRESIDENT LOPEZ'S LETTER -- I FELT THAT THE NEED TO HAVE  
19 DOCUMENTATION WAS ALL THE GREATER, WHEREVER I COULD GET IT FROM.

20 MR. VARTAIN: COULD YOU PUT EXHIBIT 10 BEFORE THE  
21 WITNESS, PLEASE. PLAINTIFF'S 10, I MEAN.

22 I'M GOING TO SHOW YOU PRESIDENT LOPEZ'S LETTER,  
23 DOCTOR. IT'S IN EVIDENCE ALREADY.

24 MAY I APPROACH, YOUR HONOR?

25 THE COURT: YES.

26 MR. VARTAIN: Q. IT'S A TWO-PAGE LETTER, DOCTOR. IT

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1 SHOWS A COPY TO DR. MISSETT, SO WE'LL SEE IF THAT'S THE LETTER  
2 THE PRESIDENT SENT TO YOU.

3 A. YES.

4 Q. DID THE COLLEGE EVER GIVE YOU ANY OTHER INFORMATION  
5 ABOUT WHAT YOUR INDEPENDENT MEDICAL EVALUATION WAS TO BE FOCUSED  
6 ON THAN THIS LETTER FROM THE PRESIDENT?

7 A. WELL, I THINK ALL ALONG THE SCHOOL HAD BEEN VERY CLEAR  
8 THAT PROFESSOR BLOUGH DID EXHIBIT SOME PROBLEMS. THIS WAS GOING  
9 BACK TO 2003. BUT THAT TO THE EXTENT THAT THEY WERE ADDRESSABLE  
10 OR REMEDIABLE, THEY WANTED HER TO BE ABLE TO TEACH, AND TO THE  
11 EXTENT THAT I COULD FIND SOMETHING THAT WOULD ALLOW HER TO TEACH  
12 THAT WOULD BE THEIR PREFERENCE. AND I DIDN'T SEE ANYTHING IN

13 THIS THAT WAS AT ALL DIFFERENT FROM WHAT I HAD SEEN EARLIER,  
14 EXCEPT THAT IT HAD BEEN A REALLY BAD YEAR AND THAT WAS IT.

15 Q. WHEN YOU MET WITH PROFESSOR BLOUGH, DID SHE TALK ABOUT  
16 ANY ISSUES THAT SUGGESTED WHAT HER PSYCHIATRIC CONDITIONS WERE  
17 AT WORK IN THAT SPRING?

18 A. WELL, ONLY SOMETHING THAT I COULDN'T BE SURE ABOUT,  
19 AND THAT WAS THE LEVEL OF DENIAL WITH REGARDS TO HER PHYSICAL  
20 HEALTH. BECAUSE I MENTIONED HER PHYSICAL HEALTH REALLY MIGHT  
21 HAVE BEEN BETTER, BUT SHE WAS CLEARLY DENYING ANY PROBLEM  
22 WHATSOEVER, REPORTING THAT HER HEARING WAS BETTER, EVEN THOUGH  
23 THE RECORDS DIDN'T REFLECT THAT, AND THAT SHE FELT BETTER, WHICH  
24 SHE MAY HAVE.

25 THERE WAS ENOUGH OF AN INCONGRUITY BETWEEN THE REPORTS  
26 FROM THE SCHOOL AND HER LETTER.

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1 Q. THE ONE WE JUST HAD?

2 A. THE ONE IN LATE MAY.

3 AND WHAT I WAS HEARING FROM HER -- AND I FELT I JUST  
4 HAVE TO SEE WHAT OTHER PEOPLE THINK. THAT WAS ALL.

5 Q. AND THE OTHER PEOPLE BEING HER DOCTORS?

6 A. YES.

7 Q. HAVE YOU EVER BEEN RETAINED TO DO A FITNESS-FOR-DUTY  
8 EVALUATION OF AN EMPLOYEE OF MENLO COLLEGE OTHER THAN  
9 PROFESSOR BLOUGH?

10 A. NO.

11 Q. YOU SOMETIMES DO WORK ON COURT CASES FOR DIFFERENT LAW  
12 FIRMS; IS THAT TRUE?

13 A. YES.

14 Q. YOU DO WORK FOR DEFENSE FIRMS AND PLAINTIFF FIRMS AT  
15 TIMES?

16 A. YES, IN CIVIL CASES.

17 Q. YOU'VE ALSO DONE WORK ON CASES FOR COLLEGES AND  
18 UNIVERSITIES, INCLUDING ONES THAT I REPRESENT; IS THAT TRUE?

19 A. I THINK ONLY ONE. THE ONE YOU REPRESENT.

20 Q. AND WHEN MR. LEBOWITZ ASKED YOU ABOUT THAT CASE, YOU  
21 GAVE HIM THE DOCUMENT ON THAT CASE AS WELL?

22 A. YES.

23 Q. WHEN YOU DO CASES FOR LAW FIRMS, WHATEVER THE LAWYERS  
24 ARE, THE GOVERNMENT, THE COLLEGES, UNIVERSITIES, DO YOU DO IT  
25 WITH AN EYE TO GETTING MORE BUSINESS FROM THEM?

26 A. I DON'T KNOW. WHEN I SAY THAT, I'M SAYING IT BECAUSE

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1 I THINK WE'RE ALL SUBJECT TO BIAS AND THAT TO SOME EXTENT WE MAY  
2 NOT BE FULLY AWARE WE ARE BIASED. IT'S NOT SOMETHING I'M AWARE  
3 OF. BUT I'VE HELD FOR A LONG TIME THAT I THINK THERE IS A BIAS  
4 THAT'S CREATED BY THE FIRST PERSON THAT CALLED. AND I SAY THAT  
5 ONLY BECAUSE THERE WERE TIMES WHERE AT 1:00 O'CLOCK IN THE  
6 MORNING THE PROSECUTOR WOULD CALL; AT 3:00 O'CLOCK IN THE  
7 MORNING THE PUBLIC DEFENDER WOULD CALL, AND I WAS ALREADY  
8 RETAINED BY THE PROSECUTOR. OR ALTERNATIVELY THE PUBLIC



9 DEFENDER WOULD CALL AT 1:00 O'CLOCK AND THEN THE PROSECUTOR  
10 WOULD BE THE ONE DELAYED.

11 AND I KNOW WHEN YOU'RE LOOKING AT A CASE TO SEE WHAT  
12 KINDS OF THINGS WOULD SAY GOOD THINGS ABOUT THIS PERSON VERSUS  
13 BAD THINGS, THAT MAKES A DIFFERENCE. OR THAT YOU'RE BEING  
14 RETAINED TO FIND OUT OR TO LOOK AT WHAT KIND OF THINGS MIGHT  
15 REFLECT MORE BAD THINGS ABOUT A PERSON THAN GOOD VERSUS TRYING  
16 TO BE RIGHT IN THE MIDDLE. THEY'RE NOT ALL THE SAME.

17 Q. WHEN YOU --

18 A. THE BEST EXPLANATION I GOT WAS, WHO CALLED FIRST?

19 Q. BUT WHEN YOU DO INDEPENDENT MEDICAL EVALUATIONS FOR  
20 COLLEGES, EMPLOYERS, HOW IS THAT DIFFERENT FROM A LAWSUIT WHERE  
21 YOU'RE RETAINED?

22 A. THE WORD "INDEPENDENT" WAS IN THE RETENTION. I MEAN,  
23 BASICALLY, I'M AGREEING TO BE INDEPENDENT. I'M NOT GOING TO  
24 TALK TO THE EMPLOYER. I'M AGREEING TO BE INDEPENDENT. I AM NOT  
25 GOING TO BE, AS IT WERE, LIKE TALKING TO THE PERSON I'M  
26 EVALUATING. I WILL DO THE EVALUATION. I WILL DO IT TO THE BEST

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1 OF MY ABILITY AND THAT'S IT. THAT'S DIFFERENT FROM THE OTHER  
2 RETAINED THINGS.

3 Q. WHEN YOU DID THE INDEPENDENT MEDICAL EVALUATION OF  
4 PROFESSOR BLOUGH, DID YOU TALK TO HER ATTORNEYS OR THE COLLEGE'S  
5 ATTORNEYS ABOUT HOW YOU WERE DOING THE EVALUATION?

6 A. NO.

7 Q. DID YOU HAVE SOME CORRESPONDENCE FROM MS. BLOUGH'S  
8 ATTORNEY AT ONE POINT THAT YOU EXCHANGED WITH THE COLLEGE AND  
9 THE COLLEGE'S ATTORNEYS, YOU GAVE THE COLLEGE ATTORNEYS'  
10 CORRESPONDENCE TO HER ATTORNEYS, WERE YOU EVENHANDED IN  
11 EXCHANGING THAT CORRESPONDENCE?

12 A. YES.

13 Q. PROFESSOR BLOUGH TESTIFIED THAT, IN REALLY THE LATTER  
14 PART OF YOUR EVALUATION, IT TOOK A COUPLE EXTRA MONTHS THAN WHAT  
15 MADE HER HAPPY TO FINISH THAT UP. AND SHE CAME TO SEE YOU --  
16 THE COLLEGE MADE AN APPOINTMENT FOR HER TO COME SEE YOU IN  
17 NOVEMBER, AND THEN SHE CAME AND SAW YOU AGAIN IN FEBRUARY WHEN  
18 YOU FINISHED THE EVALUATION. WHAT WAS GOING ON IN THOSE TWO  
19 MONTHS AROUND THE HOLIDAYS THAT CAUSED SOME ADDITIONAL TIME TO  
20 ELAPSE BEFORE YOU COMPLETED THAT, AS BEST YOU CAN RECALL?

21 A. THE FIRST PERSON I WANTED HER TO SEE WAS DR. LYNCH,  
22 WHO'S A NEUROPSYCHOLOGIST, WHO HAD BEEN FOR 25 YEARS THE HEAD OF  
23 THE BRAIN INJURY CLINIC AT THE MENLO PARK VA HOSPITAL. AND I  
24 WANTED HER TO SEE HIM BECAUSE -- AS I MENTIONED EARLIER, THERE  
25 WAS THE INDICATION OF THE HEAD INJURY AT 17. THERE WERE THE  
26 COMPLAINTS ABOUT HEADACHES. THERE WAS A CANCER. I COULD NOT

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1 RULE OUT THIS ISSUE OF IMPOSSIBLE METASTASES OR SOME OTHER KIND  
2 OF INTERFERENCE WITH HER THINKING.

3 SHE HAD IN HER RECORDS DIAGNOSIS OF DIFFICULTY WITH  
4 NUMBERS, AND ALSO DIFFICULTY TELLING RIGHT FROM LEFT. BOTH OF

5 THOSE CAN BE -- THESE GO BACK A LONG TIME. BOTH OF THEM CAN BE  
6 INDICATIONS OF BRAIN DAMAGE AND I DID NOT KNOW, SO I WANTED HIM  
7 TO EVALUATE HER.

8 Q. DID HE?

9 A. YES. I THINK IT WAS IN DECEMBER THAT HE DID. AND I  
10 GOT THE REPORT BACK, I THINK IT WAS EITHER LATE DECEMBER OR  
11 EARLY JANUARY, AND THAT'S WHEN I MADE ARRANGEMENTS TO GO TO  
12 DR. MARCUS'S OFFICE BECAUSE I COULDN'T -- YOU KNOW, IF IT'S NOT  
13 COMING TO THE MOUNTAIN; THE MOUNTAIN IS GOING TO GO TO MOHAMMED.  
14 I WAS GOING TO GO.

15 Q. YOU WENT UP TO DR. MARCUS'S OFFICE YOURSELF?

16 A. YES.

17 Q. WHY?

18 A. BECAUSE I COULDN'T GET THE RECORDS, SO I SAID OKAY, I  
19 DID HAVE PERMISSION TO COME AND SEE HIM SO I WENT AND SAW HIM.  
20 AND THAT WAS WHAT TOOK THE TIME, AND THEN I HAD TO TAKE THE  
21 MATERIAL AND I THINK IT WAS PROBABLY MARCH. MAYBE IT WAS  
22 FEBRUARY, BUT MAYBE MARCH.

23 Q. DID THE COLLEGE DO ANYTHING IN COMMUNICATION WITH YOU  
24 TO ASK YOU TO GO SLOW OR TO TAKE MORE TIME TO FINISH THE  
25 EVALUATION?

26 A. I THINK THERE WAS ONE CALL ABOUT, "WHEN ARE YOU GOING

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1 TO HAVE IT, BECAUSE WE" -- YOU KNOW, "IF YOU'RE GOING TO BE  
2 NEGATIVE WE HAVE TO GET ON WITH HIRING SOMEBODY ELSE, AND IF

3 IT'S GOING TO BE POSITIVE WE WANT TO KNOW SO WE CAN SET UP NEXT  
4 YEAR." IT WAS MORE THAN THAT.

5 Q. SO THE COLLEGE WAS TRYING TO GET YOU TO EXPEDITE IT,  
6 IS THAT YOUR TESTIMONY? WITH THAT ONE CALL?

7 A. WITH THE ONE CALL. IT WAS NOT AN IRON TWISTING CALL.  
8 IT WAS JUST AN INQUIRY, BUT I KNEW WHAT THEY WANTED.

9 MR. VARTAIN: COULD YOU PUT BACK UP, PLEASE,  
10 MS. ADLER, THE OPUS E-MAIL FROM PROFESSOR BLOUGH, WHICH IS, I  
11 GUESS, P13. THE SECOND PAGE, IF YOU WOULD.

12 Q. I WOULD LIKE TO ADDRESS YOUR ATTENTION TO THE PART  
13 WHERE MS. BLOUGH IS SAYING THAT, QUOTE, "NOW THAT I'M BETTER, MY  
14 FRIENDS TELL ME, OR SOME PEOPLE THOUGHT I WAS HIGH ON TOO MANY  
15 DRUGS, I WISH SOMEONE WOULD HAVE TOLD ME ABOUT THE DRUGS BECAUSE  
16 THEY WERE RIGHT, THE CHEMOTHERAPY WAS KILLING ME."

17 I WANT TO SET ASIDE THE CHEMOTHERAPY FOR A MINUTE.  
18 WHAT PSYCHIATRIC DRUGS WAS SHE ON AT THAT TIME THAT, IN YOUR  
19 OPINION, CAN BE CONSISTENT WITH SOMEONE, AS SHE PUT IT LATER IN  
20 THE E-MAIL, APPEARING ZOMBIE-LIKE?

21 MR. LEBOWITZ: OBJECTION. LEADING.

22 THE COURT: OVERRULED.

23 THE WITNESS: I'D HAVE TO LOOK AT THE DATE.

24 MR. VARTAIN: Q. MAY 26TH IS THE DATE OF THE E-MAIL,  
25 WITHIN A WEEK OR SO AFTER YOU SAW HER.

26 A. I THINK THE PROBLEM IN ANSWERING THE QUESTION IS THAT

1 SHE WAS ON A LOT OF MEDICATIONS OVER THE YEARS, WHICH I CAN  
2 RECITE FOR YOU, THAT WOULD RESULT IN AN INDIVIDUAL APPEARING  
3 ZOMBIE-LIKE. BUT ON THAT PARTICULAR DAY, I DON'T KNOW. I'D  
4 ALMOST HAVE TO SEE WHAT HER RECORDS WERE FROM EACH PERSON IF I  
5 WAS GOING TO SAY THAT.

6 Q. OKAY.

7 ARE LOOKING AT PSYCHIATRIC MEDICAL RECORDS A WAY TO  
8 OBJECTIVELY DETERMINE WHAT MEDICATION IS BEING PRESCRIBED BY THE  
9 TREATING PSYCHIATRIST FOR PROFESSOR BLOUGH?

10 A. YES.

11 Q. PROFESSOR BLOUGH OBVIOUSLY COULD TELL YOU, BUT IF YOU  
12 WANTED TO HAVE OBJECTIVE EVIDENCE IT WOULD BE -- AT LEAST ONE  
13 VEHICLE WOULD BE THE PSYCHIATRIC MEDICAL RECORDS?

14 A. THE REPORT FROM THE PATIENT IS A SUBJECTIVE REPORT AND  
15 THEY'RE TELLING YOU. THE REPORT WHERE THE DOCTOR HAS WRITTEN  
16 SOMETHING IS OBJECTIVE. TO THE EXTENT YOU CAN, YOU WANT  
17 OBJECTIVE.

18 Q. DID YOU DO THE FITNESS-FOR-DUTY, THE INDEPENDENT  
19 MEDICAL EVALUATION OF PROFESSOR BLOUGH USING ANY PROCEDURE OR  
20 WAYS THAT ARE DIFFERENT FROM THE MANY OTHER INDEPENDENT MEDICAL  
21 EVALUATIONS YOU HAVE DONE IN YOUR PRACTICE?

22 A. I THINK I KNEW PROFESSOR BLOUGH BETTER THAN ANYBODY  
23 ELSE FOR WHOM I'VE DONE FITNESS-FOR-DUTY EVALUATIONS, LARGELY AS  
24 AN ACCIDENT OF THE NUMBER OF TIMES I SAW HER; LARGELY AS A  
25 RESULT ALSO OF THE NUMBER OF DIFFERENT DOCTORS THAT SHE SAW AND  
26 THE VOLUME OF THEIR DOCUMENTATION, WHICH WAS GENERALLY PRETTY

1 GOOD FROM JUST ABOUT EVERYBODY. THE WAY IN WHICH 90 PERCENT OF  
2 THE MATERIAL IN THERE, IN ONE SET OF DOCUMENTS WOULD BE  
3 DUPLICATED IN ONE WAY OR OTHER OR IN DIFFERENT WORDS WITH  
4 SOMEBODY ELSE, AND THE THIRD PERSON WOULD MAKE A DIFFERENT  
5 OBSERVATION ON THESE. ONE WOULD, IN ESSENCE, SUPPORT THE OTHER.

6 I KNEW A LOT ABOUT HER. I THINK I PROBABLY KNEW MORE  
7 ABOUT HER IN TERMS OF PATIENT WITH A MEDICAL HISTORY THAN JUST  
8 ABOUT ANYBODY I'VE SEEN OUTSIDE A PERSON WHO'S BEEN IN THE  
9 HOSPITAL, EITHER MENTAL HOSPITAL OR A GENERAL HOSPITAL, FOR A  
10 MODESTLY LONG PERIOD OF TIME. THEY WERE GOOD RECORDS.

11 Q. AND PRETTY MUCH THE LAST QUESTION, DR. MISSETT. WHEN  
12 MR. ROBERT HITE AT THE COLLEGE FIRST CONTACTED YOU WAY BACK IN  
13 2003 TO ASK YOU TO START THE EVALUATION OF PROFESSOR BLOUGH, DID  
14 HE SAY WHY HE WAS PICKING YOU OR WHY HE KNEW OF YOU OR ANYTHING  
15 LIKE THAT?

16 A. NO.

17 Q. YOU DON'T KNOW WHY YOU WERE SELECTED BY THE COLLEGE  
18 BACK WHEN IT ALL STARTED?

19 A. NO.

20 Q. IS THAT CORRECT?

21 A. YES. IT IS CORRECT I DO NOT KNOW.

22 MR. VARTAIN: THANK YOU, DR. MISSETT.

23 THE COURT: CROSS-EXAMINATION?

24 MR. LEBOWITZ: ARE WE GOING TO HAVE A BREAK?

25 THE COURT: WE COULD HAVE OUR BREAK NOW. I'M GLAD TO

26 DO THAT, IF YOU'D LIKE.

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1 MR. LEBOWITZ: I THINK THAT WILL BE APPROPRIATE.

2 THE COURT: ALL RIGHT.

3 LADIES AND GENTLEMEN, LET'S TAKE A BREAK. WE'LL COME  
4 BACK AT 3:00 O'CLOCK.

5 (WHEREUPON, A BREAK WAS TAKEN.)

6 THE COURT: WE'RE BACK ON THE RECORD.

7 MR. LEBOWITZ, WOULD YOU LIKE TO BEGIN YOUR  
8 CROSS-EXAMINATION?

9 MR. LEBOWITZ: I WOULD, YOUR HONOR. THANK YOU.

10 THE COURT: GO AHEAD.

11

12 CROSS-EXAMINATION

13 BY MR. LEBOWITZ:

14 Q. GOOD AFTERNOON, DR. MISSETT.

15 A. MR. LEBOWITZ.

16 Q. YOU TOUCHED ON IT BRIEFLY IN YOUR DIRECT EXAMINATION,  
17 BUT I WANT THE JURORS TO GET A BETTER PICTURE OF SOME OF YOUR  
18 EXPERIENCE HERE IN THE COURTROOM.

19 HOW MANY TIMES HAVE YOU ACTUALLY TESTIFIED IN A COURT  
20 OF LAW?

21 A. PROBABLY OVER A COUPLE THOUSAND.

22 Q. A COUPLE THOUSAND TIMES; THAT'S RIGHT?

23 A. YES.

24 Q. YOU TESTIFIED IN THIS COURTHOUSE EASILY HUNDREDS OF  
25 TIMES?

26 A. COULD WELL BE.

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1 Q. AND THOSE WERE ON LITIGATION MATTERS, CRIMINAL, CIVIL,  
2 WHAT HAVE YOU, ALL OF THE MATTERS THAT YOU'VE DESCRIBED EARLIER?

3 A. NO. ABOUT 75 TO 80 PERCENT ARE CRIMINAL MATTERS. THE  
4 CIVIL DON'T GO TO COURT THAT OFTEN.

5 Q. AND IN THE CIVIL CASES WHERE YOU'VE BEEN RETAINED IN  
6 LITIGATION MATTERS, IN THOSE MATTERS YOU'VE HAD YOUR DEPOSITION  
7 TAKEN MANY TIMES?

8 A. MANY TIMES.

9 Q. THOUSANDS OF TIMES?

10 A. I THINK CERTAINLY OVER A THOUSAND.

11 Q. OKAY.

12 SO IN ADDITION TO -- IF YOU ADD TOGETHER BOTH YOUR  
13 DEPOSITION TESTIMONY AND YOUR COURT APPEARANCE TESTIMONY, IT'S  
14 EASILY OVER 2,000 TIMES?

15 A. YES.

16 Q. MR. VARTAIN TALKED BRIEFLY ABOUT -- AND I JUST WANT TO  
17 TOUCH ON THIS FOR A MOMENT -- CORRESPONDENCE BETWEEN ATTORNEYS  
18 IN THIS CASE AND YOURSELF. DO YOU RECALL THE FIRST TIME YOU  
19 RECEIVED ANY CORRESPONDENCE FROM ANY ATTORNEY IN THIS CASE?

20 A. I THOUGHT THE FIRST ONE WAS FROM YOU IN, SAY,  
21 SEPTEMBER OR OCTOBER OF 2006. I MAY BE MISTAKEN ABOUT THAT.



22 MAYBE THERE WAS AN EARLIER ONE FROM MR. VARTAIN OR SOMEONE ELSE.

23 Q. THAT'S MY QUESTION. DO YOU RECALL RECEIVING A FAX  
24 FROM MR. VARTAIN ON SEPTEMBER 7, 2006, IN REFERENCE TO THIS  
25 CASE?

26 A. NOT OFFHAND, BUT IF I DID I DID.

1003

1 MR. LEBOWITZ: MAY I APPROACH THE WITNESS, YOUR HONOR?

2 Q. JUST TO REFRESH YOUR RECOLLECTION, AND WE CAN MARK IT  
3 AS AN EXHIBIT.

4 MR. VARTAIN: WHAT'S THE NUMBER, COUNSEL?

5 MR. LEBOWITZ: 28.

6 MR. VARTAIN: HOW MANY PAGES IS IT?

7 MR. LEBOWITZ: TWO.

8 MR. VARTAIN: WELL, THE DOCUMENT YOU'VE GIVEN TO --  
9 THE COURT: EXCUSE ME.

10 MR. VARTAIN, FIRST, WE'RE NOT GOING TO DISCUSS  
11 EXHIBITS ON THE RECORD; AND, SECOND, IT'S ONLY BEING USED TO  
12 REFRESH RECOLLECTION BUT THAT'S ALL.

13 MR. VARTAIN: I DIDN'T HEAR THAT.

14 MR. LEBOWITZ: THAT'S ALL I PRESENTED TO THE WITNESS.

15 MR. VARTAIN: I WOULD LIKE TO HAVE A SIDEBAR.

16 THE COURT: YOU MAY, COUNSEL.

17 (WHEREUPON, THERE WAS DISCUSSION AT THE BENCH.)

18 MR. LEBOWITZ: Q. DR. MISSETT, DOES LOOKING AT THIS  
19 DOCUMENT REFRESH YOUR RECOLLECTION?

20 A. NO.

21 Q. YOU DON'T RECALL SEEING THIS AT ALL?

22 A. NO. I HAVE NO DOUBT IT WAS SENT, BUT I COULDN'T -- I  
23 DON'T REMEMBER SEEING IT, BUT THEN I'M NOT SURE I'D CLUTTER UP  
24 MY MIND WITH IT BECAUSE IT DOESN'T SAY ANYTHING EXCEPT "HAVE A  
25 GREAT DAY."

26 Q. WELL, IT SAYS -- WE'RE NOT GOING TO GO INTO WHAT IT

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1 SAYS RIGHT NOW. THANK YOU.

2 AND MR. VARTAIN ALSO MENTIONED THAT YOU HAD BEEN  
3 RETAINED IN ONE OF THE LITIGATION MATTERS THAT HE WAS HANDLING.  
4 DO YOU RECALL THAT TESTIMONY?

5 A. YES.

6 Q. AND ISN'T IT TRUE THAT THAT RETENTION TOOK PLACE IN  
7 THE YEARS 2005 AND 2006?

8 A. I THOUGHT IT WAS EARLIER THAN THAT, BUT IT COULD WELL  
9 HAVE BEEN.

10 Q. AND DO YOU RECALL HOW MUCH YOU EARNED WORKING ON THAT  
11 CASE?

12 A. I THINK IT WAS CLOSE TO \$20,000. IT WAS A LAWSUIT.

13 Q. AND IT WAS MR. VARTAIN WHO HAD RETAINED YOU TO WORK ON  
14 THAT CASE?

15 A. YES.

16 Q. AND YOU SENT THE BILL TO MR. VARTAIN'S OFFICE OVER THE  
17 COURSE OF THE 2006 YEAR FOR THE AMOUNT OF \$18,200. DOES THAT

18 REFRESH YOUR RECOLLECTION?

19 A. WELL, NOT THE EXACT AMOUNT BUT, CERTAINLY, I DID -- I  
20 WOULD SEND IT TO HIS OFFICE BECAUSE HE WAS THE ONE THAT RETAINED  
21 ME. IT WAS A LAWSUIT.

22 Q. AND IT WAS THAT TIME, IT WAS 2005, 2006?

23 A. THAT, I DON'T KNOW. IF IT SAYS THAT, IT SAYS THAT.

24 MR. LEBOWITZ: WELL, IF I MAY, TO REFRESH THE  
25 WITNESS'S RECOLLECTION?

26 THE WITNESS: IT SAYS THAT.

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1 MR. LEBOWITZ: Q. OKAY. SO NOW REVIEWING THAT  
2 DOCUMENT, YOUR RECOLLECTION IS REFRESHED THAT, IN FACT, THE WORK  
3 THAT YOU DID ON THIS ONE CASE FOR MR. VARTAIN WAS OF THE 2005  
4 AND 2006 TIME PERIOD?

5 A. IT DOES NOT REFLECT -- OR REFRESH MY RECOLLECTION, BUT  
6 THAT IS WHAT THE DOCUMENT SAYS AND I HAVE NO REASON TO DOUBT IT.

7 Q. THANK YOU.

8 EARLIER IN YOUR TESTIMONY YOU TALKED ABOUT SOME OF THE  
9 REASONS WHY EMPLOYERS SEND EMPLOYEES FOR FITNESS-FOR-DUTY EXAMS.  
10 AND ONE OF THE REASONS YOU SAID THAT COMMONLY EMPLOYERS DO THIS  
11 IS FOR SAFETY, WORKPLACE SAFETY OR WORKPLACE VIOLENCE SCENARIOS.  
12 DO YOU RECALL THAT TESTIMONY?

13 A. YES.

14 Q. WORKPLACE SAFETY AND WORKPLACE VIOLENCE WEREN'T  
15 INVOLVED AT ALL IN THIS CASE, WERE THEY?

16 A. NOT THAT I SAW.

17 Q. NOW, WHEN PROFESSOR BLOUGH CAME TO YOU IN 2003, 2006,  
18 BOTH IN MAY AND IN NOVEMBER, YOU PRESENTED HER WITH A SERIES OF  
19 RELEASES, AUTHORIZATIONS FOR RELEASE OF MEDICAL RECORDS,  
20 CORRECT?

21 A. YES.

22 Q. AND YOU FOLLOWED THROUGH AND YOU SENT THOSE RELEASES  
23 TO THE PARTICULAR PHYSICIANS ON EACH OF THOSE OCCASIONS?

24 A. I BELIEVE SO.

25 Q. WE'VE HEARD ABOUT YOUR TESTIMONY ABOUT DR. LIU AND HER  
26 RECORDS. AS A RESULT OF THE OTHER AUTHORIZATIONS FOR RELEASES,

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1 YOU RECEIVED MEDICAL RECORDS OVER THESE YEARS, CORRECT?

2 A. SOME, YES.

3 Q. IN FACT, YOU RECEIVED QUITE A FEW MEDICAL RECORDS OVER  
4 THE YEARS FOR HER?

5 A. YES.

6 Q. AND THOSE RELEASES DIDN'T HAVE ANY LIMITATIONS ON THE  
7 SCOPE OF WHAT TYPES OF RECORDS WOULD BE PRODUCED TO YOU, DID  
8 THEY?

9 A. NO. WELL, IT WOULD -- THERE WOULD BE CHECKMARKS ON  
10 THE RELEASE THAT WOULD SAY, "ALL PROGRESS NOTES, HISTORIES AND  
11 PHYSICALS, LABORATORY REPORTS, DISCHARGE SUMMARIES," THEY MIGHT  
12 BE THE SAME FOR ALL OF THEM; IT MIGHT BE DIFFERENT DEPENDING ON  
13 THE PERSON I WAS SENDING THE RECORD TO.

14 MR. LEBOWITZ: EXHIBIT 12, WHICH IS IN EVIDENCE.

15 MAY I APPROACH THE WITNESS, YOUR HONOR?

16 THE COURT: YES.

17 THE WITNESS: THANK YOU.

18 MR. LEBOWITZ: Q. SO WE ARE SHOWING YOU EXHIBIT 12,  
19 WHICH IS IN EVIDENCE, WHICH ARE THE AUTHORIZATIONS, CONSENT TO  
20 RELEASE MEDICAL OR PSYCHIATRIC INFORMATION SIGNED BY  
21 PROFESSOR BLOUGH IN YOUR OFFICE ON MAY 17, 2006. SO, FIRST OF  
22 ALL, THESE ARE THE STANDARD TYPES OF RELEASES THAT YOU USE?

23 A. YES.

24 Q. AND ON THIS, FOR INSTANCE, WE'LL LOOK AT THE FIRST  
25 PAGE.

26 AND I'LL SHOW IT TO THE JURY SO THEY UNDERSTAND WHAT

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1 WE'RE TALKING ABOUT.

2 THESE CHECKMARKS IN THE MIDDLE OF THE PAGE, ON THE  
3 FIRST PAGE, JUST AS AN EXAMPLE, THIS IS ONE OF THE THINGS WHERE  
4 YOU HAVE THE CHECKMARKS NEXT TO THE CATEGORIES?

5 A. YES.

6 Q. AND WHEN YOU GAVE THESE TO PROFESSOR BLOUGH, WAS THAT  
7 YOU WHO CHECKED ALL THOSE BOXES?

8 A. YES.

9 Q. AND SO YOU WERE INTERESTED IN GETTING ALL THOSE TYPES  
10 OF RECORDS FROM WHATEVER PHYSICIAN'S OFFICE YOU WERE SENDING  
11 THIS TO?

12 A. YES.

13 Q. AND UNDER "OTHER," IF YOU COULD READ YOUR HANDWRITING  
14 ON THAT, PLEASE.

15 A. "ORAL DISCUSSION BETWEEN DR. LIU AND DR. MISSETT  
16 REGARDING MY CONDITION."

17 Q. AND THAT'S SOMETHING YOU WROTE --

18 A. YES.

19 Q. -- AS PART OF THE SCOPE OF WHAT THE RECORDS OR  
20 INFORMATION YOU WERE LOOKING FOR, CORRECT?

21 A. YES. WHAT I WAS ASKING HER TO PROVIDE ME PERMISSION  
22 TO PURSUE.

23 Q. SURE.

24 AND IN THIS PACKET YOU WILL SEE THAT THERE'S REQUESTS  
25 FOR DR. LIU, AMONGST OTHERS?

26 A. YES.

1008

1 Q. FRED MARCUS, CORRECT?

2 A. YES.

3 Q. AND DR. LAANE, THE EAR, NOSE AND THROAT DOCTOR?

4 A. YES.

5 Q. AND THESE ARE THE STANDARD FORMS THAT YOU ALSO USED IN  
6 2003, CORRECT?

7 A. I WOULDN'T BE SURPRISED. I DON'T KNOW EXACTLY WHEN IT  
8 WAS THAT I DEVELOPED THEM OR WHEN I TOOK THEM FROM WHATEVER  
9 SOURCE IT WAS, BUT I WOULDN'T BE SURPRISED.

10 Q. AND AS A RESULT OF SENDING THESE RELEASES TO  
11 PROFESSOR BLOUGH'S MEDICAL PROVIDERS, YOU SAID YOU RECEIVED  
12 DOCUMENTS OVER THE COURSE OF THESE EVALUATIONS?

13 A. YES.

14 Q. AND YOU RECEIVED ALL KINDS OF MEDICAL RECORDS ABOUT  
15 PROFESSOR BLOUGH, DIDN'T YOU?

16 A. I DID.

17 Q. INCLUDING RESULTS OF HER PAP SMEARS?

18 A. IT'S POSSIBLE.

19 Q. RESULTS OF HER FEMALE EXAMINATION QUESTIONNAIRES?

20 A. IT'S POSSIBLE.

21 Q. RESULTS OF GENITAL CULTURE TESTS?

22 A. POSSIBLE.

23 Q. RESULTS OF CHLAMYDIA AND GONORRHEA TESTS?

24 A. POSSIBLE.

25 Q. HIV TEST RESULTS?

26 A. THAT'S POSSIBLE.

1009

1 Q. YOU DIDN'T BRING YOUR FILE WITH YOU TODAY, DID YOU?

2 A. NO.

3 Q. WHY NOT?

4 A. BECAUSE I EXPECTED THAT YOU HAD ALREADY HAD ALL THE  
5 MATERIALS THAT YOU WERE GOING TO DEDUCE. I DON'T MIND  
6 BRINGING -- I CAN GO BACK AND GET IT. I CAN BRING IT IN. IT'S  
7 A BOX, A FULL BANKER'S BOX FULL.

8 Q. BANKER'S BOX FULL.

9 WELL, YOU ALSO PRODUCED RECORDS AS PART OF THE FILES

10 IN THIS CASE, RIGHT?

11 A. I'M SORRY?

12 Q. YOU ALSO PRODUCED, AS YOU MENTIONED EARLIER, AS PART

13 OF A COURT ORDER, YOU PRODUCED PART OF YOUR CHART IN THIS CASE,

14 RIGHT?

15 A. YES.

16 Q. RIGHT?

17 A. YES.

18 MR. LEBOWITZ: OKAY.

19 IF I MAY APPROACH THE WITNESS, YOUR HONOR?

20 THE COURT: SURE.

21 MR. LEBOWITZ: Q. I'VE PLACED IN FRONT OF YOU WHAT

22 WAS PRODUCED IN THIS CASE AS YOUR CHART. DOES THAT LOOK LIKE

23 YOUR FILE?

24 A. WELL, I WOULDN'T KNOW WITHOUT GOING THROUGH IT, BUT I

25 RECOGNIZE THE NAMES OF THE DOCTORS AND THOSE ARE THE DOCTORS

26 FROM WHOM I REQUESTED MATERIAL, SO I'M PRESUMING IT'S THE SAME.

1010

1 Q. OKAY.

2 AND THAT'S THE FILE I WAS JUST READING FROM WHEN I WAS

3 ASKING YOU THE QUESTIONS ABOUT THE TYPES OF RESULTS AND MEDICAL

4 RECORDS YOU WERE RECEIVING?

5 MR. VARTAIN: OBJECTION.



6 THE COURT: THE WITNESS CAN'T ANSWER THAT.

7 MR. VARTAIN: YEAH.

8 MR. LEBOWITZ: Q. DO YOU HAVE ANY REASON TO DOUBT  
9 THAT ANY -- EXCUSE ME.

10 DO YOU HAVE ANY REASON TO DOUBT THAT WHAT I WAS  
11 READING FROM WAS IN FACT FROM YOUR FILE?

12 MR. VARTAIN: OBJECTION.

13 THE COURT: COUNSEL, THE WITNESS DOESN'T KNOW WHAT YOU  
14 WERE READING FROM BECAUSE YOU DIDN'T SHOW IT TO HIM AT THE TIME.

15 MR. LEBOWITZ: I'LL MOVE ON.

16 THE COURT: THANK YOU.

17 MR. LEBOWITZ: Q. NOW, AS PART OF YOUR -- IN YOUR  
18 TESTIMONY -- I JUST WANT TO PICK UP A COUPLE OF THINGS -- YOU  
19 MENTIONED A TIME PRESSURE, A TIMELINE IN THE MAY 2006 EXAM  
20 PERIOD. AND CORRECT ME IF I'M WRONG, BUT THE WAY I GOT YOUR  
21 TESTIMONY WAS THAT IN THE PRIOR EXAM, IN 2003, YOU HAD RECEIVED  
22 INFORMATION FROM THE COLLEGE OF SOME URGENCY OVER THE SUMMER  
23 PERIOD OF GETTING A RESULT; IS THAT RIGHT?

24 A. I THINK THE IMMEDIATELY PRIOR ONE WAS 2004. IT WAS --  
25 THEY WERE FIVE EXAMS, I THINK, ALL TOGETHER.

26 Q. SO THE FOLLOW-ON TO THE ORIGINAL EXAM, WHICH WAS IN

1011

1 2004, THAT'S WHEN YOU GOT THE INFORMATION FROM THE COLLEGE THAT  
2 THEY NEEDED A SPEEDY RESULT IN THE SUMMER?

3 A. NO. I THINK THAT WAS THE FIRST ONE. THE FIRST -- IT

4 WAS THE ONE THAT I DID IN 2003, WHERE THEY INDICATED THAT ONE  
5 WAY OR THE OTHER THEY'D LIKE TO KNOW BY, I THINK IT WAS AUGUST  
6 THE 1ST, LAST PART OF JULY, SOMETHING LIKE THAT.

7 Q. AND IT WAS FROM THAT THAT YOU ASSUMED THAT IN THE  
8 SUMMER OF 2006 THE COLLEGE WAS UNDER THE SAME TIME PRESSURE,  
9 CORRECT?

10 A. WELL, ESPECIALLY INASMUCH I HAD NO INDICATION THAT THE  
11 SCHOOL YEAR HAD CHANGED. MS. BLOUGH WAS VERY CLEAR THAT THE  
12 CLASS ENDED IN LATE APRIL OR EARLY MAY, AND THAT WAS CONSISTENT  
13 WITH WHAT I KNEW FROM EARLIER. BUT IT IS TRUE IT WAS AN  
14 ASSUMPTION ON MY PART.

15 Q. NO ONE FROM THE COLLEGE PUT ANY TIME PRESSURE ON YOU  
16 FOR THE SUMMER OF 2006; IS THAT RIGHT?

17 A. NO, THEY DID NOT.

18 Q. HAVE YOU EVER TAUGHT A CLASS AT MENLO COLLEGE?

19 A. NO.

20 Q. HAVE YOU EVER BEEN IN ANY OF THE CLASSROOMS AT MENLO  
21 COLLEGE?

22 A. YES.

23 Q. AND HAVE YOU EVER SEEN -- HAVE YOU EVER OBSERVED  
24 PROFESSOR BLOUGH TEACH AT MENLO COLLEGE?

25 A. NO.

26 Q. HAVE YOU EVER RECEIVED ANY REPORTS FROM ANYONE WHO HAS

1 ACTUALLY OBSERVED PROFESSOR BLOUGH TEACH?

2 A. NO.

3 Q. DID THE COLLEGE EVER SEND YOU -- AS PART OF THE  
4 MAY 2006 EVALUATION, DID THE COLLEGE EVER SEND YOU ANY OF  
5 PROFESSOR BLOUGH'S STUDENT EVALUATIONS FOR THE SPRING 2006  
6 SEMESTER?

7 A. NOT IN PAPER FORM. I WAS TOLD THAT THERE WERE  
8 COMPLAINTS PARTICULARLY ABOUT LEAVING CLASS EARLY OR ARRIVING  
9 LATE, THAT SORT OF THING, OR BEING NONRESPONSIVE. BUT THAT WAS  
10 ABOUT ALL.

11 Q. WHO TOLD YOU THAT?

12 A. I DON'T KNOW. I KNOW IT WAS A CONVERSATION BEFORE I  
13 HAD THE INTERVIEW, BECAUSE I KNEW THAT THERE WERE COMPLAINTS  
14 BEFORE I SAW MS. BLOUGH.

15 Q. IN THAT CONVERSATION, DID THAT PERSON ALSO TELL YOU  
16 THAT THE VAST MAJORITY OF PROFESSOR BLOUGH'S STUDENT EVALUATIONS  
17 FOR THE SPRING 2006 SEMESTER WERE FAVORABLE?

18 A. NO.

19 Q. IN YOUR CONVERSATIONS, EARLY COMMUNICATIONS WITH THE  
20 COLLEGE IN THE MAY PERIOD OF 2006, DID ANYONE TELL YOU HOW MANY  
21 CLASSES PROFESSOR BLOUGH HAD MISSED?

22 A. NO.

23 Q. IN THOSE SAME CONVERSATIONS OR COMMUNICATIONS, DID  
24 ANYONE TELL YOU HOW MANY CLASSES PROFESSOR BLOUGH WAS LATE FOR?

25 A. NO.

26 Q. IN THOSE SAME CONVERSATIONS AND COMMUNICATIONS IN THE

1 MAY 2006 TIME PERIOD, DID ANYONE FROM THE COLLEGE TELL YOU HOW  
2 MANY CLASSES PROFESSOR BLOUGH HAD ENDED EARLY?

3 A. NO.

4 Q. BEFORE CONDUCTING THE MAY 2006 EVALUATION, DID ANYONE  
5 FROM THE COLLEGE PROVIDE YOU WITH ANY DATA OR INFORMATION  
6 COMPARING PROFESSOR BLOUGH'S PERFORMANCE TO OTHER FACULTY  
7 MEMBERS?

8 A. THAT'S WITH RESPECT TO THAT PREVIOUS YEAR.

9 Q. FOR THE SPRING 2006 SEMESTER.

10 A. NO, THEY DID NOT.

11 Q. IN ANY OF YOUR COMMUNICATIONS, BE IT WRITTEN  
12 CORRESPONDENCE OR TELEPHONE CALLS OR SPEAKING WITH  
13 REPRESENTATIVES FROM MENLO COLLEGE IN THE MAY 2006 TIME PERIOD,  
14 DID ANYBODY FROM THE COLLEGE COMMUNICATE TO YOU ANY LIMITS ON  
15 THE SCOPE OF WHAT YOUR EXAM SHOULD BE?

16 A. NO, THEY DID NOT.

17 Q. AND, AGAIN, THIS SAME FOCUS, SAME TIME PERIOD, DID  
18 ANYONE FROM MENLO COLLEGE EVER COMMUNICATE TO YOU ANY LIMIT ON  
19 THE SCOPE OF WHAT THE MEDICAL RELEASES SHOULD BE?

20 A. THEY DID NOT.

21 Q. I WANT TO CLARIFY SOMETHING. I JUST WANT TO MAKE SURE  
22 I UNDERSTAND. YOU SAID -- FIRST OF ALL, YOU ARE NOT AND NEVER  
23 WERE PROFESSOR BLOUGH'S EMPLOYER, CORRECT?

24 A. THAT'S TRUE.

25 Q. AND I BELIEVE YOU SAID THAT YOU DON'T MAKE EMPLOYMENT  
26 DECISIONS, RIGHT?

1 A. I DON'T.

2 Q. IT'S UP TO THE COLLEGE TO MAKE THE EMPLOYMENT  
3 DECISION, RIGHT?

4 A. THAT'S TRUE.

5 Q. AND IT'S UP TO THE COLLEGE -- THE COLLEGE JUST GETS  
6 YOUR LETTER, RIGHT?

7 A. IN THE END, THAT'S TRUE.

8 Q. AND THAT'S WHY YOU ARE VERY CAREFUL ABOUT WHAT YOU  
9 WRITE IN THAT LETTER, RIGHT?

10 A. THAT'S RIGHT.

11 Q. AND IT'S UP TO THE COLLEGE TO THEN DECIDE WHAT TO DO  
12 WITH THIS LETTER, RIGHT?

13 A. THAT'S TRUE.

14 Q. AND SO WHATEVER EMPLOYMENT DECISIONS ARE MADE  
15 SUBSEQUENT TO AN EMPLOYER LIKE THE COLLEGE RECEIVING A LETTER  
16 FROM YOU, IT'S ALL THEIR DECISION, RIGHT?

17 A. WELL, I DON'T THINK I COULD GO THAT FAR BECAUSE I HAVE  
18 NO DOUBT IT INFLUENCES WHATEVER DECISION THEY MAKE. IT MAY NOT  
19 DETERMINE IT. IT MAY STILL BE THEIR DECISION, BUT I CAN'T  
20 BELIEVE IT DOESN'T INFLUENCE IT.

21 Q. BUT, AGAIN, IT MAY BE A FACTOR BUT YOU DON'T KNOW HOW  
22 MUCH WEIGHT IT WOULD HOLD. IT'S UP TO THE COLLEGE TO DETERMINE  
23 HOW MUCH WEIGHT TO GIVE IT?

24 A. IT IS UP TO THE COLLEGE TO DECIDE WHETHER THEY WILL

25 ACCEPT IT OR NOT AND WHAT KIND OF ACTION, IF ANY, THEY'LL TAKE  
26 ON IT. AND THAT MAY BE ANYTHING UNDER THE SUN.

1015

1 Q. NOW, YOU TESTIFIED EARLIER THAT IT WAS YOUR BELIEF  
2 THAT PROFESSOR BLOUGH TOLD YOU THAT SHE HAD 50 PERCENT HEARING  
3 LOSS. THAT'S NOT QUITE ACCURATE, IS IT?

4 A. NO, I DON'T THINK SHE SAID -- SHE SAID IT WAS  
5 50 PERCENT. I THINK THAT WAS THE RECORD FROM THE OTOLOGIST. IT  
6 WAS MILD TO MODERATE, BUT IF YOU LOOK AT THE -- IT WAS IN THE  
7 MILD TO MODERATE RANGE, BUT IF YOU LOOK AT THE FALLOFF IN HER  
8 HEARING ACUITY IT WOULD APPROACH 50 PERCENT.

9 Q. I JUST WANTED TO BE CLEAR SO THE JURY UNDERSTANDS,  
10 WHEN YOU SAY 50 PERCENT, WHAT YOU'RE TALKING ABOUT.

11 A. I UNDERSTAND. SHE CLEARLY -- WHEN I SPOKE WITH HER,  
12 AND THIS WAS IN A QUIET OFFICE, BUT SHE HAD NO OBVIOUS  
13 DIFFICULTY HEARING WHAT I WAS SAYING AND SHE WAS ABLE TO  
14 ARTICULATE AN APPROPRIATE RESPONSE.

15 Q. AND WHAT SHE TOLD YOU WAS SHE HAD BEEN DIAGNOSED WITH  
16 MILD TO MODERATE HEARING LOSS?

17 A. WELL, SHE SAID THAT BUT I THINK THAT WAS ALSO WHAT WAS  
18 REFLECTED IN THE RECORDS.

19 Q. OKAY.

20 IN YOUR INTERVIEW WITH PROFESSOR BLOUGH ON  
21 MAY 17, 2006, DID SHE ANSWER ALL OF YOUR QUESTIONS?

22 A. YES. I THINK SO.

23 Q. DID SHE REFUSE TO ANSWER ANY OF YOUR QUESTIONS?

24 A. NOT THAT I REMEMBER.

25 Q. AND SHE TOLD YOU THAT HER HEARING LOSS -- SHE BELIEVED  
26 HER HEARING LOSS WAS RELATED TO HER CHEMOTHERAPY TREATMENT,

1016

1 CORRECT?

2 A. SHE DID.

3 Q. AND SHE TOLD YOU SHE HAD STOPPED HER CHEMOTHERAPY  
4 ABOUT TWO MONTHS EARLIER?

5 A. I THINK IT'D BE MORE ACCURATE TO SAY WHAT SHE SAID WAS  
6 THAT HER DOCTOR INDICATED THAT HE WAS STOPPING THE CHEMOTHERAPY,  
7 RATHER THAN SHE WAS STOPPING IT.

8 Q. WHOEVER INSTIGATED IT, THE CHEMOTHERAPY HAD STOPPED  
9 ABOUT TWO MONTHS EARLIER. THAT'S WHAT SHE TOLD YOU IN THE --

10 A. WELL, IT WAS IMPORTANT TO ME, THOUGH, THAT IT BE THE  
11 DOCTOR THAT STOPPED IT BECAUSE, AS I MENTIONED EARLIER, THE  
12 ISSUE OF HER UNILATERALLY DOING THINGS WITH REGARDS TO MEDICAL  
13 CARE WAS ONE OF THE THINGS I WAS PAYING ATTENTION TO. SO I AM  
14 CERTAIN SHE SAID EITHER THE DOCTOR RECOMMENDED IT OR THE DOCTOR  
15 STOPPED IT OR WHATEVER. I HAVE NO DOUBT ABOUT THAT.

16 Q. I'M NOT QUIBBLING ABOUT THAT. MY ONLY POINT IS TO  
17 CONFIRM YOU KNEW THE INFORMATION AS OF MAY 17, 2006, THAT THE  
18 CHEMOTHERAPY TREATMENT HAD BEEN STOPPED FOR AT LEAST TWO MONTHS?

19 A. YES.

20 Q. AND SHE TOLD YOU THAT SHE HAD BEEN VERY FATIGUED BUT

21 THAT SHE HAD IMPROVED SINCE THE CHEMOTHERAPY HAD STOPPED?

22 A. SHE SAID THAT.

23 Q. AND SHE TOLD YOU THAT SHE HAD ALSO TOLD THE DEAN THAT

24 SHE WAS FEELING BETTER?

25 A. SHE SAID THAT ALSO.

26 Q. AND THEN YOU TALKED TO -- AS PART OF YOUR INTERVIEW ON

1017

1 MAY 17TH, YOU TALKED TO PROFESSOR BLOUGH ABOUT HER HUSBAND,

2 RIGHT?

3 A. YES.

4 Q. AND YOU TALKED TO HER ABOUT THINGS THAT WERE GOING ON

5 IN HER LIFE AND WITH HER HUSBAND, RIGHT?

6 A. YES.

7 Q. TO YOUR KNOWLEDGE, DID PROFESSOR BLOUGH'S HUSBAND WORK

8 AT MENLO COLLEGE?

9 A. AT THAT TIME?

10 Q. YES.

11 A. NO, HE DID NOT.

12 Q. SORRY?

13 A. HE DID NOT.

14 Q. AND SO PROFESSOR BLOUGH'S HUSBAND WAS NOT A CO-WORKER

15 OF PROFESSOR BLOUGH'S AT THAT TIME; IS THAT RIGHT?

16 A. THAT WAS MY UNDERSTANDING. HE WAS NOT.

17 Q. AND WHEN YOU HAD THIS INTERVIEW WITH PROFESSOR BLOUGH

18 ON MAY 17TH, SHE HANDED YOU A HANDWRITTEN LETTER -- OR A COPY OF



19 A HANDWRITTEN LETTER FROM HER TREATING PSYCHIATRIST, DR. LIU,  
20 CORRECT?

21 A. I BELIEVE SO.

22 Q. IT WAS A HANDWRITTEN LETTER THAT WAS ADDRESSED TO  
23 CARLOS LOPEZ, BUT PROFESSOR BLOUGH HANDED YOU A COPY OF THAT,  
24 RIGHT?

25 A. YES.

26 Q. AND YOU REVIEWED THAT LETTER AND CONSIDERED IT IN

1018

1 REACHING YOUR CONCLUSIONS IN REGARD TO PROFESSOR BLOUGH'S  
2 STATUS, CORRECT?

3 A. YES.

4 MR. LEBOWITZ: CAN I HAVE 15, PLEASE.

5 MAY I APPROACH, YOUR HONOR?

6 THE COURT: YES.

7 MR. LEBOWITZ: Q. NOW I'VE HANDED YOU WHAT WE HAVE IN  
8 EVIDENCE HERE AS EXHIBIT 15. IT'S A JULY 10, 2006 LETTER SIGNED  
9 BY DR. MARCUS'S ONCOLOGY NURSE, SHARON GAROUTTE.

10 A. YES.

11 Q. YOU TESTIFIED EARLIER THAT YOU HAD A CONVERSATION WITH  
12 SOMEONE AT DR. MARCUS'S OFFICE AS PART OF YOUR EVALUATION IN  
13 MAY OF 2006. DO YOU RECALL THAT?

14 A. YES.

15 Q. AND IS MS. GAROUTTE THE ONE YOU SPOKE WITH?

16 A. I REMEMBER SPEAKING TO A MAN. I DO REMEMBER SPEAKING

17 WITH A WOMAN, BUT THE MAN WAS, I THINK, THE DOCTOR WHO WAS  
18 COVERING FOR DR. MARCUS. I DO REMEMBER SPEAKING WITH HER.

19 Q. AND, AS YOU'RE SITTING ON THE STAND, YOU READ WHAT WE  
20 HAVE HERE AS EXHIBIT 15?

21 A. YES.

22 Q. AND DOES THAT LETTER ACCURATELY REFLECT THE  
23 INFORMATION YOU WERE TOLD FROM DR. MARCUS'S OFFICE?

24 A. I THINK SO.

25 Q. AND IT ACCURATELY REFLECTS WHAT YOU CONSIDERED AS FAR  
26 AS DR. MARCUS'S OPINION WAS AS FAR AS IN REGARDS TO

1019

1 PROFESSOR BLOUGH?

2 A. YES. IT'S CONSISTENT WITH WHAT I REMEMBERED.

3 Q. AND AT THE TIME YOU RECEIVED THE INFORMATION THAT'S  
4 REFLECTED IN EXHIBIT 15, YOU TOOK IT AS TRUE?

5 A. YES.

6 Q. AND YOU CONSIDERED THAT INFORMATION AND RELIED ON IT  
7 IN REACHING YOUR CONCLUSIONS IN THE MAY EVALUATION?

8 MR. VARTAIN: OBJECTION. COMPOUND, "CONSIDERED" AND  
9 "RELIED."

10 THE COURT: OVERRULED.

11 THE WITNESS: NO, AS I SAID EARLIER, I FELT THE  
12 CONTACT WITH DR. MARCUS'S OFFICE ESSENTIALLY MEANT THAT I DID  
13 NOT HAVE TO PAY THAT MUCH ATTENTION TO ANY IMPACT THE CANCER  
14 MIGHT HAVE.

15 MR. LEBOWITZ: YOUR HONOR, THERE WAS A LIMITING  
16 INSTRUCTION ON THIS EXHIBIT. I WOULD ASK THAT IT BE LIFTED AT  
17 THIS TIME, BASED UPON THE WITNESS'S TESTIMONY.

18 THE COURT: I AM NOT PREPARED TO DO THAT.

19 MR. LEBOWITZ: Q. IN TALKING ABOUT YOUR DIAGNOSIS  
20 EARLIER IN YOUR TESTIMONY, THERE'S A DIAGNOSES YOU HAD REACHED  
21 IN 2003, CORRECT?

22 A. I HAD THE DATA TO SUPPORT THEM IN 2003. THE HEARING  
23 LOSS WOULD NOT HAVE INCLUDED 2003; I DON'T THINK THERE WAS ANY  
24 EVIDENCE OF THAT. I THINK WITH RESPECT TO THE REST, THE  
25 INFORMATION WAS THERE.

26 Q. DID YOU EVER COMMUNICATE TO THE COLLEGE ANY OF THE

1020

1 DIAGNOSES THAT YOU HAD REACHED IN 2003?

2 A. I'M FORBIDDEN BY LAW FROM COMMUNICATING TO ANY  
3 EMPLOYER OR ANYBODY REPRESENTING THE EMPLOYER ANYTHING HAVING TO  
4 DO WITH THE DIAGNOSIS OF AN EMPLOYEE.

5 Q. SO IT WOULD BE FAIR TO SAY THAT AS OF MAY 2006,  
6 WHATEVER INFORMATION THE COLLEGE HAD ABOUT PROFESSOR BLOUGH'S  
7 MEDICAL PSYCHIATRIC/PSYCHOLOGICAL CONDITIONS DID NOT COME FROM  
8 YOU -- OR DIAGNOSES, I SHOULD SAY, DID NOT COME FROM YOU?

9 MR. VARTAIN: OBJECTION WITHDRAWN WITH THE LIMITATION  
10 OF DIAGNOSES.

11 THE COURT: THANK YOU.

12 THE WITNESS: WELL, I THINK IT DEPENDS ON WHAT YOU

13 MEAN BY "DIAGNOSIS." BECAUSE I HAD WRITTEN A LETTER EARLIER  
14 WHERE I EXPRESSED CONCERN ABOUT A PROPENSITY FOR FATIGUE, AND  
15 THAT WAS ONE OF THE CONCERNS I HAD ABOUT PUTTING HER BACK TO  
16 WORK FULL TIME. THAT WAS IN THE LETTER. FATIGUE IS NOT A  
17 DIAGNOSIS AS SUCH, BUT I DID THINK IT WAS THE SALIENT ASPECT OF  
18 HER PRESENTATION THAT WAS MOST LIKELY TO BE A PROBLEM FOR HER,  
19 AND IT WAS THE KIND OF THING THAT THE COLLEGE COULD INTERVENE  
20 WITH IF IT SO --

21 MR. LEBOWITZ: Q. OTHER THAN THE FATIGUE ISSUE?

22 A. WELL, AT LEAST RIGHT NOW I DON'T REMEMBER ANOTHER --  
23 THERE MIGHT HAVE BEEN, BUT I DON'T REMEMBER ONE.

24 Q. AND ONE OF THE THINGS YOU MENTIONED, AS FAR AS  
25 DIAGNOSES IN 2003, WAS THAT YOU COULD NOT RULE OUT VICODIN  
26 ABUSE; IS THAT RIGHT?

1021

1 A. THAT'S TRUE.

2 Q. YOU HADN'T ACTUALLY DIAGNOSED HER AS ABUSING VICODIN.  
3 IT'S JUST THAT YOU COULDN'T RULE IT OUT; ISN'T THAT CORRECT?

4 A. SHE WAS ABUSING VICODIN.

5 Q. THAT'S YOUR --

6 A. I KNEW IT THEN; I KNOW IT NOW. THE ANSWER I GAVE  
7 EARLIER WAS THAT IF, INDEED, SHE WAS -- AND I DO BELIEVE SHE  
8 WAS -- IT HAD BEEN PRESCRIBED BY A DOCTOR. YOU GET A PASS TO  
9 SOME EXTENT FOR THAT. YOU DON'T GET IT WHEN YOU CONTINUE USING  
10 IT DESPITE AWARENESS TO THE CONTRARY THAT IT'S CAUSING YOU

11 PHYSICAL HARM. AND AT SOME POINT IN TIME SHE SHOWED THAT SHE  
12 KNEW AND SHE WENT AHEAD ANYWAY.

13 Q. YOU BELIEVE THAT SHE IS STILL ABUSING VICODIN?

14 A. I DON'T KNOW BECAUSE I HAVEN'T TALKED WITH HER NOW  
15 SINCE 19 -- 2007, SO I DON'T KNOW. I DO KNOW WITH DR. PAUPER,  
16 DR. GOLDSTEIN AND THE DR. LAANE, EVERY ONE OF THOSE MENTIONED TO  
17 HER, "THIS IS A PROBLEM. YOU SHOULDN'T BE DOING IT. YOU'VE GOT  
18 TO CUT BACK," AND SHE DIDN'T. HOW MANY TIMES DO YOU HAVE TO HIT  
19 HER OVER THE HEAD TO GET HER TO DO WHAT SHE'S SUPPOSED TO DO TO  
20 TAKE CARE OF HERSELF?

21 Q. HOW DO YOU KNOW THAT'S WHAT DR. LAANE SAID?

22 A. BECAUSE IT MENTIONED IN THE RECORDS, "I WARNED HER  
23 ABOUT VICODIN."

24 Q. DID YOU EVER SPEAK WITH DR. LAANE?

25 A. NO.

26 Q. YOU ONLY READ HER RECORDS?

1022

1 A. YES.

2 Q. HER NOTE CHARTS?

3 A. I'M SORRY?

4 Q. HER CHART NOTES?

5 A. YES. I'M SURE IT'S THE SAME AS WHAT YOU HAVE THERE.

6 MR. LEBOWITZ: OKAY.

7 IF I MAY APPROACH, YOUR HONOR.

8 Q. TAKING A MOMENT TO REVIEW THE LAST ENTRY IN

9 DR. LAANE'S CHART NOTE, IS IT YOUR BELIEF THAT DR. LAANE WAS  
10 TELLING PROFESSOR BLOUGH, BASED ON THAT CHART NOTE, THAT SHE IS  
11 ABUSING VICODIN?

12 MR. VARTAIN: OBJECTION. LACKS FOUNDATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: SPEAKS FOR ITSELF.

15 MR. LEBOWITZ: I'M SORRY. WHAT WAS THE RULING?

16 THE COURT: I OVERRULED THE OBJECTION.

17 THE WITNESS: IT SPEAKS FOR ITSELF.

18 MR. LEBOWITZ: Q. DOES IT SAY ON THAT NOTE, "I  
19 ADVISED PROFESSOR BLOUGH, 'YOU ARE ABUSING VICODIN'?"

20 A. THE NOTE DOES NOT USE THOSE WORDS. THE NOTE SPEAKS  
21 FOR ITSELF.

22 Q. CAN I HAVE IT, PLEASE.

23 I'M GOING TO READ THE NOTE TO YOU.

24 A. I UNDERSTAND.

25 Q. 3/14/06 IS THE DATE ON THE NOTE. "TAKES HYDROCODONE  
26 THREE TO FOUR TIMES A WEEK FOR FIVE YEARS AND WONDERS IF COULD

1023

1 RELATE TO HEARING LOSS. I KNOW OF ASSOCIATION WITH, QUOTE,  
2 'VICODIN ABUSE,' UNQUOTE, AND HEARING LOSS, BUT IF SHE CAN LIMIT  
3 USE, I WOULD ADVISE THIS." THAT'S WHAT THE NOTE SAID, RIGHT?

4 A. I UNDERSTAND.

5 Q. THIS IS NOT A FINDING THAT DR. LAANE MADE THAT  
6 PROFESSOR BLOUGH WAS ACTUALLY ABUSING VICODIN, IS IT?

7 A. NO, NOT BY DR. LAANE. BUT I'M THE ONE THAT'S GOT THE  
8 BOARDS IN ADDICTION PSYCHIATRY. I KNOW WHAT OPIATES DO.  
9 DR. LAANE MAY OR MAY NOT. SHE HAS THE NOTES. DR. BLOUGH WAS  
10 INFORMED OF IT. SHE WAS THE ONE THAT WAS COMPLAINING ABOUT IT.  
11 IT INTERFERED WITH HER ABILITY TO PERFORM HER WORK. SHE  
12 CONTINUED TO USE IT.

13 Q. IT'S YOUR BELIEF THAT THE HYDROCODONE INTERFERED WITH  
14 HER ABILITY TO WORK?

15 A. TO THE EXTENT THAT HER HEARING LOSS INTERFERED WITH  
16 HER ABILITY TO PROPERLY RESPOND TO HER STUDENTS -- AND WHICH SHE  
17 SAID, EVEN IN THE INTERVIEW WITH HER, THAT SHE CONTINUED TO USE  
18 IT. IT KEEPS COMING BACK TO THE ISSUE OF HOW MUCH CAN ONE DO  
19 TO, IN SOME WAYS, PICK HER UP WHEN SHE SHOULD BE ABLE TO STAND  
20 UP BY HERSELF? THAT IS WHAT SHE'S BEING ASKED TO DO; STAND UP  
21 AND WALK. STOP THE DRUGS. BUT THAT'S THE PROBLEM.

22 THERE'S NOTHING I CAN DO ABOUT THIS. I HAD AN  
23 INDICATION THAT HERE WAS A -- AT LEAST A DIRECT OR AN INDIRECT  
24 SUGGESTION, MAYBE IF YOU ACTUALLY HAVE THE HEARING LOSS AND  
25 THERE IS AN ASSOCIATION WITH VICODIN, MAYBE YOU SHOULD TRY AND  
26 DO SOMETHING ABOUT THE VICODIN.

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1 Q. THERE'S NOTHING IN YOUR RECORD, IS THERE, THAT DRAWS  
2 THE ACTUAL CONNECTION IN A FACTUAL WAY BETWEEN THE LEVEL OF  
3 PROFESSOR BLOUGH'S VICODIN USE AND HER HEARING LOSS, IS THERE?

4 A. YES, THERE IS.

5 Q. WHAT'S THAT?

6 A. WHEN YOU HAVE HEARING LOSS AND YOU'RE USING VICODIN,  
7 THE PRESUMPTION, ABSENT OTHER SOURCES OF INFORMATION OR PROOF AS  
8 TO SOME OTHER CAUSE, IS THAT THE VICODIN IS THE CAUSE OF THE  
9 HEARING LOSS. IT IS NOT -- THIS IS NOT SOME MEDICAL SECRET.  
10 THIS IS A WELL-KNOWN RESULT, AND SHE HAS IT IN HER NOTE.  
11 DR. BLOUGH WAS INFORMED OF IT. DR. BLOUGH LATER KNOWS SHE'S  
12 HAVING PROBLEMS WITH HEARING. SHE CONTINUES THE VICODIN USE.  
13 THAT'S A PROBLEM.

14 Q. AND ISN'T IT TRUE THAT THE MEDICAL LITERATURE IS THAT  
15 IT'S VICODIN ABUSE THAT'S BEEN LINKED TO HEARING LOSS?

16 A. THAT'S EXACTLY WHAT THE MEDICAL LITERATURE IS, WHICH  
17 MEANS THAT IF YOU HAVE THE HEARING LOSS AND SOMEONE WHO'S USING  
18 VICODIN REGULARLY, WHEN THEY'VE BEEN COUNSELED AT LEAST TWICE  
19 BEFORE BY TWO DIFFERENT DOCTORS IN TWO DIFFERENT STATES, TO CUT  
20 IT DOWN, DO AWAY WITH IT OR WHATEVER AND SHE HAS NOT DONE IT.  
21 SHE HAS, BY HER OWN DECISION, PUT HERSELF AT RISK FOR  
22 EXPERIENCING THE SIDE EFFECTS OF THAT USE.

23 Q. ARE YOU AWARE, DR. MISSETT, THAT PROFESSOR BLOUGH HAS  
24 BEEN ASSESSED BY A NEUROLOGIST IN REGARDS TO HER VICODIN USE?

25 A. WELL, SHE WAS ASSESSED BY DR. PAUPER WHO WAS A  
26 NEUROLOGIST, AND HE'S ONE OF THE ONES THAT WARNED HER. SHE WAS

1025

1 ASSESSED ALSO BY DR. GOLDSTEIN, WHO'S A NEUROLOGIST WITH RESPECT  
2 TO THIS, AND HE ALSO MADE A REMARK ABOUT THIS.



3 Q. HE MADE A REMARK BUT DIDN'T MAKE A FINDING OR A  
4 DIAGNOSIS, DID HE?

5 A. WELL, I DON'T KNOW THAT HE WAS ASKED A DIAGNOSES. AND  
6 AS I TOLD YOU, I DON'T KNOW HOW LONG THIS CASE HAS BEEN GOING  
7 ON, BUT TODAY IS THE FIRST DAY ANYBODY EVER ASKED ME ABOUT A  
8 DIAGNOSIS.

9 Q. AND WERE YOU AWARE THAT PROFESSOR BLOUGH HAS BEEN  
10 EVALUATED IN REGARDS TO HER VICODIN PRESCRIPTION AND AS A RESULT  
11 OF THAT EVALUATION THE PRESCRIPTION HAS BEEN MAINTAINED? SHE  
12 HAS RECEIVED A FULL MEDICAL EVALUATION OF HER VICODIN USE AND  
13 HAS BEEN AFFIRMED THAT IT IS APPROPRIATE AND AT THE LEVEL THAT  
14 SHE'S TAKING IT IS APPROPRIATE?

15 A. WELL --

16 Q. ARE YOU AWARE OF THAT INFORMATION?

17 A. I'M NOT AWARE OF WHAT YOU'RE TELLING ME. AND A FULL  
18 EVALUATION WOULD REQUIRE A CURES -- A CURES INQUIRY, AND I'M NOT  
19 AWARE THAT ANY WAS EVER MADE.

20 Q. REGARDLESS OF YOUR DIAGNOSES IN 2003, YOU ARE AWARE  
21 THAT PROFESSOR BLOUGH WENT BACK TO WORK, RIGHT?

22 A. YES.

23 Q. AND IN 2004, SHE WAS BACK AT FULL TIME, RIGHT?

24 A. YES.

25 Q. AND IN 2005, SHE WAS BACK AT FULL TIME?

26 A. YES.

1 Q. AND SHE WAS FUNCTIONING IN 2005, AS FAR AS YOU KNOW?

2 A. NO. THE INDICATIONS FROM THE RECORDS ARE THAT IN LATE  
3 2005, IN THE FALL SEMESTER SHE HAD TROUBLE. IT'S UNCLEAR  
4 WHETHER IT'S EARLIER OR MID FALL THAT IT CAME UP.

5 Q. YOU'RE NOT AWARE OF EXACTLY WHEN THESE TROUBLES MIGHT  
6 HAVE STARTED?

7 A. SHE'S NOT CLEAR IN THE ANSWER SHE GAVE AS TO WHEN THEY  
8 STARTED. ONE TIME SHE WILL SAY EARLY, ANOTHER TIME LATE,  
9 ANOTHER TIME IN THE MIDDLE. IT WAS CLEAR SHE HAD TROUBLE AT  
10 SOME POINT IN THAT FIRST SEMESTER. WHETHER IT WAS EARLY OR  
11 LATE, THAT WASN'T AS MUCH MY CONCERN BECAUSE THAT'S MORE THE  
12 SCHOOL'S CONCERN.

13 Q. SO AT LEAST FOR THE FULL ACADEMIC YEAR OF 2004, AND AS  
14 FAR AS YOU KNOW FOR AT LEAST THE FULL SPRING SEMESTER OF 2005,  
15 PROFESSOR BLOUGH WAS FUNCTIONING AT FULL CAPACITY AND FULL  
16 CAPABILITIES IN HER TEACHING JOB AT MENLO COLLEGE?

17 A. YES.

18 Q. AND THAT WAS DESPITE WHATEVER DIAGNOSIS YOU HAD GIVEN  
19 HER IN 2003, CORRECT?

20 A. YES. THAT'S TRUE.

21 Q. NOW, EARLIER IN YOUR TESTIMONY I BELIEVE -- AND,  
22 AGAIN, PLEASE CORRECT ME IF MY RECOLLECTION IS WRONG HERE --  
23 THAT YOU TESTIFIED THAT PROFESSOR BLOUGH, BETWEEN THE MAY  
24 EVALUATION AND THE NOVEMBER EVALUATION, ASIDE FROM SETTING UP  
25 THAT APPOINTMENT WITH YOU IN NOVEMBER, YOU HAD NO OTHER CONTACT  
26 FROM PROFESSOR BLOUGH; IS THAT RIGHT?

1 A. YES. THAT'S MY MEMORY.

2 Q. IS YOUR MEMORY THAT OVER THE SUMMER OF 2006 YOU DIDN'T  
3 RECEIVE ANY PHONE CALLS FROM PROFESSOR BLOUGH?

4 A. NOT THAT I REMEMBER. I MAY HAVE, BUT I DON'T  
5 REMEMBER.

6 Q. IS IT YOUR TESTIMONY THAT YOU DIDN'T RECEIVE ANY  
7 MESSAGES THAT PROFESSOR BLOUGH HAD TRIED TO CALL YOU?

8 A. I DON'T REMEMBER. "DON'T REMEMBER" MEANS DON'T  
9 REMEMBER. I MAY HAVE.

10 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

11 Q. WILL YOU REVIEW THE DOCUMENT I PUT IN FRONT OF YOU.

12 A. YES.

13 Q. DOES REVIEWING THOSE DOCUMENTS FRESH YOUR RECOLLECTION  
14 THAT, IN FACT, PROFESSOR BLOUGH TRIED TO CALL YOU TWICE OVER THE  
15 SUMMER 2006?

16 A. THOSE ARE MY RECORDS.

17 Q. AND, IN FACT, THOSE RECORDS SHOW THAT PROFESSOR BLOUGH  
18 TRIED TO CALL YOU ON JULY 8, 2006?

19 A. YES.

20 Q. AND SHE LEFT A MESSAGE THAT SAID, "PLEASE, CALL RE  
21 EVALUATION. ISN'T HAPPY ABOUT IT"?

22 A. YES.

23 Q. AND SHE TRIED TO CALL AGAIN ON -- TRIED TO REACH YOU  
24 AGAIN ON JULY 14TH?

25 A. YES.

26 Q. AND SHE LEFT A MESSAGE FOR YOU THAT SAYS, QUOTE, "I

1028

1 WANT A NEW EVALUATION," UNQUOTE?

2 A. YES.

3 Q. NOW EARLIER YOU TESTIFIED ABOUT -- AND THIS IS THE  
4 LAST SET OF QUESTIONS I HAVE FOR YOU -- ABOUT WHAT INFLUENCED  
5 YOU, SOME OF THE THINGS THAT INFLUENCED YOU IN REACHING YOUR  
6 CONCLUSIONS THAT YOU SET FORTH IN YOUR JUNE 29, 2006 LETTER TO  
7 THE COLLEGE.

8 A. YES.

9 Q. ONE OF THE THINGS THAT YOU SAID INFLUENCED YOU WAS  
10 THIS E-MAIL THAT YOU RECEIVED THAT WAS WRITTEN BY  
11 PROFESSOR BLOUGH, CORRECT?

12 A. I'M NOT SURE WHICH E-MAIL WE'RE TALKING ABOUT.

13 Q. THE ONE THAT YOU WERE SHOWN ON THE SCREEN, EXHIBIT 13.  
14 THIS E-MAIL RIGHT HERE THAT YOU WERE SHOWN DURING YOUR DIRECT  
15 EXAMINATION.

16 A. YES.

17 Q. AND YOU RELIED ON THAT IN REACHING YOUR CONCLUSIONS?  
18 MAY I APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 THE WITNESS: I DID.

21 MR. LEBOWITZ: Q. ALL RIGHT.

22 NOW, IT TOOK YOU A COUPLE OF SECONDS TO RECOGNIZE THIS  
23 DOCUMENT WHEN MR. VARTAIN HANDED IT TO YOU, RIGHT?

24 A. YES.

25 Q. BECAUSE THAT'S NOT THE ACTUAL FORMAT THAT YOU RECEIVED

26 IT IN, RIGHT?

1029

1 A. NO, IT'S NOT.

2 Q. IT'S DIFFERENT THAN THE WAY IT'S PRESENTED IN YOUR

3 FILE, ISN'T IT?

4 A. I KNOW MY FILE IS DIFFERENT THAN THIS, BUT I KNOW THE

5 WORDS SO THAT'S ALL I CAN SAY.

6 MR. LEBOWITZ: MAY I APPROACH, YOUR HONOR?

7 Q. I JUST HANDED YOU A DOCUMENT I PULLED FROM YOUR FILE.

8 CAN YOU CONFIRM THAT THIS IS, IN FACT, THE DOCUMENT THAT YOU

9 RECEIVED?

10 A. YES. THIS IS THE DOCUMENT I RECEIVED.

11 Q. AND WHO DID YOU RECEIVE THAT FROM?

12 A. I DON'T KNOW.

13 Q. AND ON THE BOTTOM, RIGHT-HAND CORNER THERE'S A DATE

14 STAMPED ON THERE, ISN'T IT?

15 A. 13/07/06.

16 Q. WHAT DOES THAT REFLECT TO YOU?

17 A. JULY 13, 2006.

18 Q. THAT REFLECTS THAT THIS DOCUMENT WAS PRINTED ON

19 JULY 13TH OF 2006, CORRECT?

20 A. THAT'S THE WAY IT APPEARS.

21 Q. DR. MISSETT, YOU WROTE YOUR OPINION LETTER ON

22 JUNE 29TH, DIDN'T YOU?

23 A. YES.

24 Q. YOU WROTE YOUR OPINION LETTER TWO WEEKS BEFORE YOU  
25 RECEIVED THAT DOCUMENT, DIDN'T YOU?

26 A. I HAD SEEN SOMETHING ALONG THIS LINE. IF IT WASN'T

1030

1 THIS, IT WAS SOMETHING. BECAUSE I KNEW WHEN I WROTE IT THAT SHE  
2 HAD A STATEMENT. MAYBE IT WAS NOT THIS DOCUMENT, BUT I KNEW  
3 WHEN I WROTE IT THAT SHE HAD A STATEMENT.

4 Q. YOU TESTIFIED AFFIRMATIVELY IN YOUR DIRECT EXAMINATION  
5 THAT THE CONTENTS OF THIS E-MAIL ARE WHAT INFORMED YOU AND  
6 INFLUENCED YOU IN WRITING YOUR OPINION ON JUNE 29TH?

7 A. THAT IS TRUE, AND THE CONTENTS STILL STAY. I CAN'T  
8 EXPLAIN, YOU KNOW, WHAT THE 13/7/06 IS, BUT I KNEW ALL THIS.

9 MR. LEBOWITZ: I HAVE NOTHING FURTHER, YOUR HONOR.

10 THE COURT: THANK YOU.

11 REDIRECT?

12 MR. VARTAIN: YES, YOUR HONOR.

13

14 REDIRECT EXAMINATION

15 BY MR. VARTAIN:

16 Q. YOU MENTIONED, DR. MISSETT, YOU HAVE BOARDS IN  
17 ADDICTION. I DIDN'T QUITE HEAR THE LAST WORD OF THAT PHRASE  
18 WHEN YOU ANSWERED THE QUESTION FROM MR. LEBOWITZ. WHAT DID YOU  
19 SAY IN THAT REGARD?

20 A. ADDICTION PSYCHIATRY.

21 Q. WHAT IS YOUR TRAINING IN ADDICTION PSYCHIATRY?

22 A. I'VE EVALUATED OVER THE YEARS ABOUT 5,000 PEOPLE WHO  
23 USE ILLEGAL OR ABUSABLE DRUGS. AND IF YOU DO IT ENOUGH, YOU CAN  
24 TAKE AN EXAMINATION THAT'S, QUOTE, "PRACTICAL" IN A FACE-TO-FACE  
25 AND WRITTEN, WHERE YOU TAKE AN EXAM. AND IF YOU CAN PASS IT --  
26 ABOUT 80 PERCENT DO -- THEN YOU'RE REGARDED AS HAVING A

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1 SUFFICIENT AMOUNT OF KNOWLEDGE IN ABUSABLE SUBSTANCES TO BE ABLE  
2 TO TREAT PEOPLE FOR AND EVALUATE PEOPLE FOR IT, THAT SORT OF  
3 THING.

4 Q. DID YOU HAVE YOUR BOARDS IN ADDICTION AT THE TIME YOU  
5 EVALUATED PROFESSOR BLOUGH?

6 A. YES.

7 Q. YOU MENTIONED A CURES INQUIRY. I DIDN'T QUITE -- WHAT  
8 WAS THAT WORD, SIR?

9 A. A CURES, C-U-R-E-S, INQUIRY IS AN INQUIRY THAT A  
10 PHYSICIAN CAN MAKE IN THE STATE OF CALIFORNIA, WHERE THEY  
11 MAINTAIN A DATABASE ON ALL OF US, AS WITH REGARDS TO ANY  
12 CONTROLLED SUBSTANCE THAT WE HAVE A PRESCRIPTION WRITTEN FOR.  
13 AND IT'S FILED BOTH UNDER THE DOCTORS WHO MAKE THE PRESCRIPTION,  
14 THE PHARMACIES THAT FILL IT AND THE NAME OF THE PERSON WHO GOT  
15 IT AND/OR THE MEDICATIONS. WHAT IT DOES IS IT TELLS YOU FROM  
16 HOW MANY DOCTORS THAT A PATIENT -- A GIVEN PATIENT GETS  
17 CONTROLLABLE SUBSTANCES OVER A GIVEN PERIOD OF TIME.

18 AND IT TELLS YOU ALL THE PHARMACIES, THE AMOUNT, YOU  
19 KNOW, WHAT THE FULL PANOPLY OF SUBSTANCE USE IS. IT CAN BE ALL  
20 THE WAY FROM EVERYTHING AS, AS ADVERTISED, TO, WHERE DID THIS  
21 COME FROM? BUT THAT'S WHAT YOU HAVE TO DO IN ORDER TO BE ABLE  
22 TO DO A FULL-SCALE REVIEW OF SOMEONE'S USE OF ANY CONTROLLED  
23 SUBSTANCE. AND IT'S NOT JUST THAT. IT'S BENZODIAZEPINES,  
24 NARCOTICS, ANY KIND OF THING TO WHICH THERE'S A PROPENSITY TO  
25 OVERUSE IT.

26 MR. VARTAIN: THANK YOU.

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1 MR. LEBOWITZ: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: MAY DR. MISSETT BE EXCUSED?

3 MR. LEBOWITZ: IT'S YOUR WITNESS.

4 MR. VARTAIN: BY ME, FOR SURE, YOUR HONOR.

5 THE COURT: DR. MISSETT, THANK YOU FOR YOUR TESTIMONY.

6 YOU ARE FREE TO GO. I'LL TAKE THOSE EXHIBITS BACK FROM YOU.

7 MR. VARTAIN: MAY COUNSEL HAVE A MINUTE WITH YOU, YOUR  
8 HONOR?

9 THE COURT: LADIES AND GENTLEMEN, LET'S JUST TAKE A  
10 LITTLE STRETCH BREAK, AND I WILL SEE COUNSEL IN THE HALL.

11 (WHEREUPON, THERE WAS A DISCUSSION OUTSIDE THE  
12 PRESENCE OF THE JURY.)

13 THE COURT: WE'RE BACK ON THE RECORD, LADIES AND  
14 GENTLEMEN. THANK YOU.

15 IN TRYING TO DETERMINE THE ORDER OF WITNESSES IN OUR



16 SCHEDULE FOR TOMORROW, WE TOOK THAT BREAK. WHEN WE FINISH TODAY  
17 I'LL GIVE YOU ALL THOSE INSTRUCTIONS.  
18 ALL RIGHT, MR. VARTAIN, YOUR NEXT WITNESS, PLEASE?  
19 MR. VARTAIN: MS. ADLER'S WITNESS.  
20 THE COURT: MS. ADLER, YOUR NEXT WITNESS?  
21 MS. ADLER: THE COLLEGE CALLS DR. NORM REYNOLDS.  
22 THE COURT: DR. REYNOLDS, IF YOU'D COME FORWARD TO THE  
23 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.  
24 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.  
25 (WHEREUPON, THE WITNESS WAS SWORN.)  
26 THE WITNESS: I DO.

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1 THE CLERK: PLEASE BE SEATED.  
2 THE WITNESS: THANK YOU.  
3 MS. ADLER: GOOD AFTERNOON, DR. REYNOLDS.  
4 THE CLERK: WOULD YOU PLEASE STATE YOUR FIRST NAME AND  
5 LAST NAME AND SPELL THEM BOTH FOR THE RECORD.  
6 THE WITNESS: YES. MY NAME IS NORM REYNOLDS.  
7 N-O-R-M-A-N; LAST NAME R-E-Y-N-O-L-D-S.  
8 THE CLERK: THANK YOU.  
9 THE WITNESS: SURE.  
10  
11 NORMAN REYNOLDS, M.D.,  
12 DULY SWORN, TESTIFIED AS FOLLOWS:  
13

14 DIRECT EXAMINATION

15 BY MS. ADLER:

16 Q. WHAT IS YOUR PROFESSION?

17 A. I AM A PSYCHIATRIST AND A MEDICAL DOCTOR.

18 MS. ADLER: OKAY.

19 MAY I PLEASE HAVE EXHIBIT PP.

20 (DEFENDANT'S EXHIBIT PP WAS MARKED FOR

21 IDENTIFICATION.)

22 MS. ADLER: THANK YOU.

23 MAY I APPROACH THE WITNESS, YOUR HONOR?

24 THE COURT: YES.

25 MS. ADLER: Q. DR. REYNOLDS, I HAVE JUST HANDED YOU A

26 DOCUMENT THAT'S BEEN MARKED EXHIBIT PP FOR PURPOSES OF

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1 IDENTIFICATION. COULD YOU PLEASE LOOK AT THE DOCUMENT AND TELL  
2 US WHAT IT IS?

3 A. THIS IS A COPY OF MY PROFESSIONAL CURRICULUM VITAE.

4 Q. SO THAT'S YOUR RESUME?

5 A. CORRECT.

6 Q. AND DOES EXHIBIT PP ACCURATELY REFLECT WHAT YOUR  
7 CURRENT -- WHAT YOUR ACADEMIC AND PROFESSIONAL EXPERIENCE IS?

8 A. YES.

9 Q. AND IS THIS A CURRENT RESUME?

10 A. MINUS ONE LISTING, IN OCTOBER 2008, ON THE LAST PAGE,  
11 OF A PRESENTATION THAT I DID IN NEWPORT BEACH FOR THE CALIFORNIA

12 SOCIETY OF ADDICTION MEDICINE.

13 Q. BUT APART FROM THAT, IT'S CURRENT?

14 A. CORRECT.

15 MS. ADLER: OKAY.

16 YOUR HONOR, I'D LIKE TO OFFER EXHIBIT PP INTO

17 EVIDENCE.

18 THE COURT: ANY OBJECTION?

19 MR. LEBOWITZ: IT'S HEARSAY, YOUR HONOR.

20 THE COURT: SUSTAINED. IT WILL NOT BE ADMITTED.

21 MS. ADLER: OKAY.

22 THE COURT: WE WILL GO THROUGH IT.

23 MS. ADLER: OKAY.

24 Q. I'D LIKE TO GO THROUGH YOUR BACKGROUND, DR. REYNOLDS.

25 HOW LONG IS IT THAT -- YOU SAID THAT YOU'RE A MEDICAL DOCTOR AND

26 A PSYCHIATRIST. HOW LONG IS IT THAT YOU'VE BEEN A DOCTOR?

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1 A. I COMPLETED MY TRAINING IN 1968 AND HAVE BEEN LICENSED  
2 IN THE STATE OF CALIFORNIA AS AN M.D., MEDICAL DOCTOR.

3 Q. OKAY.

4 AND COULD YOU DESCRIBE FOR ME WHAT DEGREES YOU HOLD?

5 A. I HAVE A BACHELOR OF ARTS DEGREE IN CHEMISTRY AND MY  
6 M.D. DEGREE FROM STANFORD.

7 Q. AND WHERE DID YOU GO FOR UNDER GRAD?

8 A. MIAMI UNIVERSITY IN OXFORD, OHIO.

9 Q. AND WHERE DID YOU DO YOUR RESIDENCY AFTER MEDICAL

10 SCHOOL?

11 A. IMMEDIATELY AFTER MEDICAL SCHOOL, I DID AN INTERNSHIP  
12 AND THEN RESIDENCY AT STANFORD.

13 Q. WHAT WAS YOUR RESIDENCY IN?

14 A. PSYCHIATRY.

15 Q. AND DO YOU HOLD ANY BOARD CERTIFICATIONS?

16 A. YES.

17 Q. AND WHAT ARE THOSE?

18 A. I'M BOARD CERTIFIED IN PSYCHIATRY.

19 Q. THROUGH YOUR PROFESSIONAL ASSOCIATIONS, DO YOU HOLD  
20 ANY SPECIAL HONORS?

21 A. YES.

22 Q. AND COULD YOU TELL US WHAT THOSE ARE?

23 A. I AM A DISTINGUISHED LIFE FELLOW OF THE AMERICAN  
24 PSYCHIATRIC ASSOCIATION.

25 Q. AND WHAT DOES THAT MEAN?

26 A. THERE ARE FELLOWS IN MANY OTHER MEDICAL ORGANIZATIONS

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1 AS WELL AS PSYCHIATRY, WHICH MEANS YOU'RE A MEMBER IN GOOD  
2 STANDING FOR A CERTAIN NUMBER OF YEARS. IN PSYCHIATRY, THERE'S  
3 ALSO A DISTINGUISHED DESIGNATION, WHICH MEANS THAT YOU ARE  
4 ETHICAL, YOU'VE MADE SERVICE CONTRIBUTIONS TO THE PROFESSION AS  
5 WELL AS BEING A MEMBER IN GOOD STANDING. AND THAT CONVERTS TO  
6 WHAT'S CONSIDERED A LIFE STATUS, IF YOU CONTINUE THAT FOR A  
7 CERTAIN NUMBER OF YEARS.

8 Q. OKAY. THANK YOU.

9 AND COULD YOU DESCRIBE YOUR CURRENT PRACTICE? WHAT IS  
10 IT THAT YOU DO NOW?

11 A. WELL, CURRENTLY, I ONLY DO EVALUATIONS SIMILAR TO  
12 FITNESS FOR DUTY AND OTHER TYPES OF EVALUATIONS. THAT'S WHAT I  
13 DO EXCLUSIVELY NOW.

14 Q. AND COULD YOU TELL ME A LITTLE BIT MORE ABOUT THAT?  
15 LIKE, WHO DO YOU PERFORM THE FITNESS-FOR-DUTY EVALUATIONS FOR?  
16 WHAT TYPES OF --

17 A. THE MAIN REFERRALS COME FROM PHYSICIAN ORGANIZATIONS,  
18 INCLUDING THE CALIFORNIA MEDICAL BOARD, AS WELL AS POLICE  
19 DEPARTMENTS, BUT I ACCEPT REFERRALS FROM ANY SOURCE. I HAVE  
20 ALSO WORKED WITH THE BAR ASSOCIATION FOR THE STATE OF CALIFORNIA  
21 AND WORKED WITH TEACHERS ALSO.

22 Q. OKAY.

23 AND WHAT TYPES OF FITNESS-FOR-DUTY EVALUATIONS HAVE  
24 YOU DONE? IN OTHER WORDS, I THINK YOU MENTIONED BEING REFERRED  
25 BY THE POLICE DEPARTMENT; IS THAT CORRECT?

26 A. YEAH. SO IT INVOLVES EVALUATION OF EMPLOYEES OF ANY

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1 SETTING, BUT PRIMARILY PHYSICIANS, POLICE OFFICERS, AS WELL AS  
2 OTHER TYPES OF PROFESSIONS.

3 Q. HAVE YOU DONE FITNESS-FOR-DUTY EVALUATIONS OF  
4 TEACHERS?

5 A. YES.

6 Q. OKAY.

7 AND CAN YOU ESTIMATE FOR ME THE TOTAL NUMBER OF  
8 FITNESS-FOR-DUTY EVALUATIONS YOU'VE DONE IN YOUR CAREER?

9 A. I WOULD ESTIMATE THAT THE TOTAL NUMBER IS SOMEWHERE  
10 AROUND -- OF COMPREHENSIVE FITNESS-FOR-DUTY EVALUATIONS IS  
11 SOMEWHERE AROUND 625. IT'S ROUGHLY 25 A YEAR, MORE OR LESS, OF  
12 IN-DEPTH, DETAILED EVALUATION. THERE ARE OTHER TYPES OF  
13 EVALUATIONS THAT I HAVE DONE THAT ARE NOT AS IN-DEPTH, AS WHAT I  
14 CALL THE COMPREHENSIVE TYPE.

15 Q. AND JUST TOTAL NUMBER OF EVALUATIONS THAT YOU HAVE  
16 DONE?

17 A. UPWARDS OF 2,000.

18 Q. OKAY.

19 AND I SEE HERE IN YOUR RESUME REFERENCES TO SOME  
20 LITERATURE THAT YOU HAVE PUBLISHED. HAVE YOU PUBLISHED ANYTHING  
21 ON THE SUBJECT OF FITNESS-FOR-DUTY EVALUATIONS?

22 A. YES.

23 Q. COULD YOU TELL ME WHAT THAT IS?

24 A. WELL, THERE ARE A NUMBER OF IN-HOUSE PUBLICATIONS THAT  
25 I HAVE DONE, MEANING THAT I PRODUCE THEM AND DISTRIBUTE THEM.  
26 THE PRIMARY ONE THAT HAS BEEN DONE, WHERE IT'S BEEN PUBLISHED BY

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1 SOMEONE ELSE, IS IN THE OCCUPATIONAL MEDICINE STATE OF NEW YORK  
2 REVIEW, TITLED "A MODEL COMPREHENSIVE PSYCHIATRIC  
3 FITNESS-FOR-DUTY EVALUATION."

4 Q. AND ARE THERE ANY OTHER PUBLICATIONS THAT YOU'VE  
5 PUBLISHED ON THE SUBJECT?

6 A. THERE ARE TWO ARTICLES PUBLISHED BY THE MEDICAL BOARD  
7 INTERACTION REPORT HAVING TO DO WITH VERY SPECIALIZED ASPECTS OF  
8 EVALUATING PHYSICIANS.

9 Q. AND COULD YOU TELL ME A LITTLE BIT ABOUT THESE  
10 PUBLICATIONS REGARDING -- YOU MENTIONED ONE, "A MODEL  
11 COMPREHENSIVE PSYCHIATRIC FITNESS-FOR-DUTY EVALUATION."

12 WHAT WAS THAT ARTICLE ABOUT?

13 A. THAT ARTICLE WAS BASED ON A PRESENTATION THAT I HAD  
14 DONE FOR THE OCCUPATIONAL MEDICINE GROUP, AND THEY SOLICITED ME  
15 TO, THEN, WRITE A CHAPTER IN THEIR BOOK TO HELP INSTRUCT OTHER  
16 PHYSICIANS AND PSYCHOLOGISTS ON HOW TO DO THOROUGH COMPREHENSIVE  
17 EVALUATIONS. AND I LAID OUT A FRAMEWORK FOR HOW TO GO ABOUT  
18 DOING THAT, AS WELL AS SOME CASE EXAMPLES.

19 Q. SO THE ARTICLE ADDRESSES HOW IT IS THAT  
20 FITNESS-FOR-DUTY EVALUATIONS SHOULD BE CONDUCTED?

21 A. THAT'S CORRECT.

22 Q. OKAY.

23 AND I SEE HERE A NUMBER OF LECTURE PRESENTATIONS IN  
24 YOUR RESUME. HAVE YOU GIVEN PRESENTATIONS ON THE SUBJECT OF  
25 FITNESS-FOR-DUTY EVALUATIONS?

26 A. YES, I HAVE.

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1 Q. AND COULD YOU TELL ME A LITTLE ABOUT THAT?

2 A. THE PRIMARY SET HAS BEEN DONE FOR THE CALIFORNIA  
3 SOCIETY OF ADDICTION MEDICINE, WHERE THEY ASKED ME TO DO A BEST  
4 PRACTICES SERIES TO, AGAIN, EDUCATE PHYSICIANS ON HOW TO CONDUCT  
5 THESE EVALUATIONS. BUT I HAVE DONE IT FOR A NUMBER OF OTHER  
6 ORGANIZATIONS OVER THE YEARS ALSO. I WOULD SAY THAT WAS SORT OF  
7 THE PREMIER SET OF PRESENTATIONS.

8 Q. AND ARE THOSE PRESENTATIONS REFLECTED IN YOUR RESUME  
9 HERE, EXHIBIT PP?

10 A. YES, THEY ARE.

11 Q. OKAY.

12 AND YOU MENTIONED EARLIER THAT YOU ALSO HAVE SOME  
13 EXPERIENCE IN TEACHING OTHERS HOW TO PERFORM FITNESS-FOR-DUTY  
14 EVALUATIONS; IS THAT CORRECT?

15 A. YES.

16 Q. COULD YOU TELL ME A LITTLE BIT ABOUT THAT?

17 A. THROUGH MY PROFESSIONAL ORGANIZATIONS I'VE BEEN ASKED  
18 TO MAKE PRESENTATIONS TO PROFESSIONAL GROUPS TO INSTRUCT THEM ON  
19 HOW TO DO THESE EVALUATIONS. AND AS I MENTIONED PREVIOUSLY, THE  
20 CALIFORNIA SOCIETY OF ADDICTION MEDICINE WAS THE PRIMARY ONE WHO  
21 ASKED ME TO CONDUCT A BEST PRACTICES SERIES ON THIS TOPIC.

22 Q. ALL RIGHT. AND HOW MANY -- WHEN DID THAT TAKE PLACE?

23 A. I WILL HAVE TO TAKE A LOOK HERE. SO I BELIEVE IT  
24 BEGAN IN THE YEAR 2000, AND THEN THERE WERE FOUR MORE  
25 PRESENTATIONS THEREAFTER.

26 Q. OKAY.



1 I NOTICE HERE IN YOUR RESUME, UNDER "IN-HOUSE  
2 PUBLICATIONS," THERE'S AN ARTICLE "ENTERING THE LION'S DEN  
3 PERFORMING FITNESS-FOR-DUTY EVALUATIONS" --

4 THE COURT: I'M SORRY. I CAN'T HEAR.

5 MS. ADLER: I'M SORRY.

6 Q. THERE'S ANOTHER ARTICLE ENTITLED, "ENTERING THE LION'S  
7 DEN PERFORMING FITNESS-FOR-DUTY EVALUATIONS," IS THAT ALSO WITH  
8 REGARD TO HOW TO PERFORM FITNESS-FOR-DUTY EVALUATIONS?

9 A. THERE IS SOME REFERENCE TO THAT. THERE'S ALSO  
10 REFERENCE TO THE DIFFICULTIES THAT EVALUATORS CAN GET INTO IN  
11 THE COURSE OF PERFORMING THESE EVALUATIONS.

12 MS. ADLER: OKAY. YOUR HONOR, I'D LIKE TO OFFER  
13 EXHIBIT PP INTO EVIDENCE.

14 THE COURT: YOU HAVEN'T CURED THE HEARSAY, BUT WE HAVE  
15 NOW LAID THE FOUNDATION FOR HIS EXPERTISE. WOULD YOU LIKE TO  
16 OFFER HIM AS AN EXPERT?

17 MS. ADLER: YES, I WOULD LIKE TO OFFER HIM AS AN  
18 EXPERT IN FITNESS-FOR-DUTY EVALUATIONS.

19 THE COURT: ANY OBJECTION?

20 MR. LEBOWITZ: NO OBJECTION.

21 THE COURT: THE WITNESS MAY TESTIFY AS AN EXPERT IN  
22 FITNESS-FOR-DUTY EVALUATIONS.

23 MS. ADLER: Q. DR. REYNOLDS, WHAT WORK WERE YOU ASKED  
24 TO DO IN THIS CASE?

25 A. I WAS ASKED TO REVIEW RECORDS IN CONNECTION WITH  
26 PROFESSOR BLOUGH'S CASE, AND MENLO COLLEGE AND DR. MISSETT.

1 AND, IN PARTICULAR, TO LOOK AT DR. MISSETT'S ROLE IN EVALUATING  
2 PROFESSOR BLOUGH FOR THE COLLEGE AND WHETHER HE CONDUCTED THAT  
3 IN A PROPER WAY.

4 Q. OKAY.

5 AND SO YOU WERE ASKED TO REVIEW SOME MATERIALS; IS  
6 THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND WHAT MATERIALS DID YOU REVIEW?

9 A. I HAVE TO LOOK AT MY RECORDS HERE. THERE WAS A  
10 CONDENSED DEPOSITION TRANSCRIPT FROM DR. MISSETT, A CONDENSED  
11 DEPOSITION TRANSCRIPT OF FOUR VOLUMES OF PROFESSOR BLOUGH, THERE  
12 WERE DOCUMENTS PRODUCED BY DR. MISSETT WITH BATES STAMPS ON  
13 THEM, AS WELL AS AN EXHIBIT A-1 CORRESPONDENCE PRODUCED IN THE  
14 COURSE OF DISCOVERY, MENLO COLLEGE'S MOTION FOR SUMMARY  
15 JUDGMENT, THE PLAINTIFF'S OPPOSITION BRIEF, MENLO COLLEGE'S  
16 REPLY BRIEF, A JUDGE'S ORDER FROM THE HEARING REGARDING THE  
17 MOTION FOR SUMMARY JUDGMENT, NOTICE OF DEPOSITION OF MY  
18 DEPOSITION, SUMMARY FILE OF DR. MISSETT'S CORRESPONDENCE, AND  
19 MENLO COLLEGE DISCLOSURE OF EXPERT WITNESS INFORMATION AND  
20 DECLARATIONS, A DRAFT DEPOSITION OF BRUCE PITHER, PH.D., THE  
21 DEPOSITION OF DR. HAYWARD, A DRAFT DEPOSITION OF NURSE SHARON  
22 GAROUTTE, A DRAFT DEPOSITION OF DR. SIEBEL, AND I DID REVIEW MY  
23 OWN DEPOSITION BEFORE COMING HERE TODAY.

24 Q. AND AMONG THE MATERIALS THAT YOU REVIEWED, DID YOU

25 REVIEW DR. MISSETT'S FILE OF PROFESSOR BLOUGH?

26 A. YES.

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1 Q. AND DID THOSE RECORDS CONTAIN MEDICAL RECORDS FROM  
2 PROFESSOR BLOUGH'S DOCTORS?

3 A. YES.

4 Q. AND DID YOU REVIEW DOCUMENTS REGARDING DR. MISSETT'S  
5 FITNESS-FOR-DUTY EVALUATION OF PROFESSOR BLOUGH IN 2003?

6 A. YES.

7 Q. DID YOU REVIEW DOCUMENTS REGARDING DR. MISSETT'S  
8 FITNESS-FOR-DUTY EVALUATION OF PROFESSOR BLOUGH IN 2006 AND  
9 2007?

10 A. YES.

11 Q. DO THE DOCUMENTS CONTAIN MENLO COLLEGE'S FACULTY  
12 HANDBOOK?

13 A. YES.

14 Q. AND DO THE DOCUMENTS INCLUDE CORRESPONDENCE BETWEEN  
15 DR. MISSETT AND PROFESSOR BLOUGH AND -- OR DR. MISSETT AND MENLO  
16 COLLEGE?

17 A. YES, BETWEEN DR. MISSETT AND MENLO COLLEGE, YEAH.

18 Q. DID THE DOCUMENTS YOU REVIEWED INCLUDE A REPORT OF  
19 PSYCHOLOGIST, DR. LYNCH?

20 A. YES, IT DID.

21 Q. SO IS IT YOUR UNDERSTANDING THAT YOU REVIEWED  
22 DR. MISSETT'S ENTIRE FILE REGARDING PROFESSOR BLOUGH?

23 A. I BELIEVE SO.

24 Q. AND UPON REVIEW OF THESE MATERIALS, DID YOU FORM ANY  
25 OPINIONS AS TO WHETHER DR. MISSETT CONDUCTED A THOROUGH AND  
26 UNBIASED FITNESS-FOR-DUTY EVALUATION OF PROFESSOR BLOUGH IN 2006

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1 AND 2007?

2 A. YES.

3 Q. AND DID YOU FORM AN OPINION AS TO WHETHER THE  
4 COLLEGE'S REFERRAL OF PROFESSOR BLOUGH FOR AN INDEPENDENT  
5 MEDICAL EVALUATION WAS CONSISTENT WITH THE NEED FOR HIGH-QUALITY  
6 TEACHING?

7 MR. LEBOWITZ: OBJECTION, YOUR HONOR. IT'S LEADING.

8 THE COURT: OVERRULED.

9 MS. ADLER: Q. WHAT OPINIONS DID YOU FORM?

10 THE COURT: OVERRULED. THE QUESTION IS IF HE FORMED  
11 AN OPINION, NOT WHAT THEY ARE. SO IT'S OVERRULED.

12 MS. ADLER: YOU CAN GO AHEAD AND ANSWER.

13 THE COURT: THE WITNESS MAY ANSWER.

14 THE WITNESS: COULD YOU REPEAT THE QUESTION BACK?

15 MS. ADLER: SURE.

16 THE COURT: WE INTERRUPTED A LOT.

17 MS. ADLER: Q. WAS THE COLLEGE'S REFERRAL OF  
18 PROFESSOR BLOUGH FOR AN INDEPENDENT MEDICAL EVALUATION  
19 CONSISTENT WITH ITS NEED FOR HIGH-QUALITY TEACHING?

20 A. YES.

21 Q. AND WHAT DO YOU BASE THAT OPINION ON?

22 THE COURT: WELL, NO. WE DON'T KNOW WHAT THE OPINION  
23 IS. DO YOU WANT THAT FIRST?

24 MS. ADLER: Q. PLEASE. WHAT IS YOUR OPINION?

25 THE COURT: ON WHICH ONE? WE HAVE TWO -- YOU ASKED  
26 HIM ABOUT TWO SEPARATE OPINIONS, SO WOULD YOU SPECIFY WHICH ONE

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1 YOU ARE ASKING HIM TO GIVE YOU HIS ANSWER ON.

2 MS. ADLER: Q. WHETHER THE REFERRAL OF PROFESSOR  
3 BLOUGH FOR THE EVALUATION WAS CONSISTENT WITH THE NEED FOR  
4 HIGH-QUALITY TEACHING.

5 A. YES.

6 Q. AND COULD YOU ELABORATE WHAT YOUR OPINION IS?

7 A. STATED WITHIN THE COLLEGE'S HANDBOOK ARE SOME  
8 EXPECTATIONS FOR LEVELS OF TEACHING AT THE COLLEGE, AND THAT  
9 THEY EXPECT A HIGH LEVEL OF TEACHING AND PERFORMANCE FROM THEIR  
10 FACULTY. THE PRESIDENT OF THE COLLEGE HAD ALSO OUTLINED HIS  
11 CONCERNS REGARDING PROFESSOR BLOUGH IN 2006. NAMELY, THAT SHE  
12 HAD TERMINATED CLASSES EARLY, HAD NOT COME TO CLASSES AT TIMES.  
13 THERE WERE SOME STUDENT COMPLAINTS.

14 AND THERE WERE CONVERSATIONS THAT SHE HAD HAD WITH THE  
15 PRESIDENT AND, I BELIEVE, ANOTHER FACULTY MEMBER REGARDING  
16 DIFFICULTIES THAT SHE WAS HAVING. AND ON THAT BASIS, THE  
17 PRESIDENT OF THE COLLEGE MADE A REFERRAL TO DR. MISSETT THAT SHE  
18 SHOULD UNDERGO AN EVALUATION. AND, IN MY OPINION, THERE WAS

19 SORT OF REASONABLE CONCERNS ON THE PART OF THE COLLEGE TO HAVE A  
20 FOUNDATION FOR MAKING THAT REFERRAL.

21 Q. ALL RIGHT.

22 AND DID YOU FORM ANY OPINION AS TO WHETHER DR. MISSETT  
23 UTILIZED THE APPROPRIATE METHODS IN CONDUCTING THE INDEPENDENT  
24 MEDICAL EVALUATION OF PROFESSOR BLOUGH?

25 A. YES.

26 Q. AND WHAT OPINIONS DID YOU FORM?

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1 A. THAT HE DID USE APPROPRIATE METHODS FOR DOING THIS.  
2 NAMELY, SOLICITING INPUT FROM THE KEY PARTIES INVOLVED. IN THIS  
3 CASE THE EMPLOYER, THE COLLEGE, AS WELL AS THE EMPLOYEE,  
4 PROFESSOR BLOUGH, REVIEWING RECORDS IN ASSOCIATION WITH THE  
5 ISSUES AT HAND. HE ALSO MADE A REFERRAL TO DR. LYNCH FOR  
6 ADDITIONAL INPUT REGARDING ONE OF THE EVALUATIONS. HE REQUESTED  
7 HER MEDICAL RECORDS, AS WELL AS HER PSYCHIATRIC MEDICAL RECORDS  
8 FOR REVIEW. HE ALSO RENDERED REPORTS BACK TO THE COLLEGE THAT  
9 WERE LIMITED IN SCOPE AS TO THE INFORMATION THAT HE CONVEYED;  
10 NAMELY, REFERENCING THE EMPLOYMENT-RELATED TYPE ISSUES AND NOT  
11 REVEALING A LOT OF PERSONAL INFORMATION ABOUT HER.

12 Q. OKAY.

13 DID YOU FORM ANY OPINION AS TO WHETHER DR. MISSETT WAS  
14 QUALIFIED TO CONDUCT THE INDEPENDENT MEDICAL EVALUATION OF  
15 PROFESSOR BLOUGH?

16 A. YES.

17 Q. AND COULD YOU ELABORATE ON THAT?

18 THE COURT: LET'S HEAR WHAT THE OPINION IS, FIRST.

19 MS. ADLER: Q. LET'S HEAR YOUR OPINION.

20 A. I BELIEVE THAT HE IS QUALIFIED, YES, OR WAS QUALIFIED.

21 Q. AND WHAT DO YOU BASE THAT OPINION ON?

22 A. DR. MISSETT GRADUATED FROM A MEDICAL SCHOOL AND HAS  
23 FOUR YEARS OF GENERAL MEDICAL TRAINING. HE IS LICENSED IN THE  
24 STATE OF CALIFORNIA. HE COMPLETED AN INTERNSHIP. HE COMPLETED  
25 A RESIDENCY SPECIALIZING IN PSYCHIATRY. HE IS BOARD CERTIFIED  
26 IN PSYCHIATRY. HE SPECIALIZES IN THE AREA OF FORENSIC CASES,

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1 AND HE'S KNOWN IN THE MEDICAL COMMUNITY FOR DOING THAT WORK.

2 Q. OKAY.

3 IS IT THE CASE THAT DOCTORS WHO PERFORM INDEPENDENT  
4 MEDICAL EVALUATIONS SOMETIMES HAVE TRAINING IN PSYCHIATRY, IN  
5 YOUR EXPERIENCE?

6 A. YES.

7 Q. OKAY.

8 DID YOU FORM ANY OPINIONS AS TO WHAT THE FAIR AND  
9 ESSENTIAL ELEMENTS OF AN INDEPENDENT MEDICAL EVALUATION IS?

10 A. YES.

11 Q. AND WHAT OPINIONS DID YOU FORM?

12 A. A FAIR, INDEPENDENT EVALUATION IS ONE CONDUCTED BY  
13 SOMEONE WHO IS NEITHER EMPLOYED BY THE COLLEGE NOR HAS A  
14 TREATING RELATIONSHIP WITH THE EMPLOYEE, SOMEONE WHO HAS

15 EXPERTISE AND BACKGROUND IN PERFORMING THESE SORTS OF  
16 EVALUATIONS AND CAN DO SO IN A WAY THAT IS RESPECTFUL OF THE LAW  
17 AND DOES IT IN A PROFESSIONALLY RESPONSIBLE WAY.

18 Q. OKAY.

19 AND DID YOU FORM THE OPINION AS TO WHETHER OR NOT  
20 SPECIFICALLY DR. MISSETT PERFORMED THE INDEPENDENT MEDICAL  
21 EVALUATION WITHOUT BIAS AND IN A MEDICALLY REASONABLE MANNER?

22 A. YES.

23 Q. AND WHAT ARE YOUR OPINIONS?

24 A. THAT HE DID DO SO.

25 Q. AND COULD YOU ELABORATE ON THAT?

26 A. AS I MENTIONED, HE IS QUALIFIED TO DO THE EVALUATIONS,

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1 AND HE PERFORMED THE ESSENTIAL ELEMENTS INVOLVED IN DOING SUCH  
2 AN EVALUATION. AND RENDERED REPORTS CONSISTENT WITH HAVING  
3 PERFORMED THOSE EVALUATIONS.

4 Q. OKAY.

5 DID YOU FORM ANY OPINION AS TO WHETHER THE FACT THAT  
6 DR. MISSETT WANTED TO SEE THE TREATMENT RECORDS OF DR. LIU,  
7 PROFESSOR BLOUGH'S PSYCHIATRIST, WHETHER THAT WAS CONSISTENT  
8 WITH CONDUCTING AN OBJECTIVE AND THOROUGH INDEPENDENT MEDICAL  
9 EVALUATION?

10 A. YES.

11 Q. AND WHAT ARE YOUR OPINIONS REGARDING THAT?

12 A. I BELIEVE THAT IT'S REASONABLE TO HAVE MEDICAL RECORDS



13 AND BE ABLE TO REVIEW THEM IN ORDER TO HAVE AS MUCH INFORMATION  
14 ABOUT THE INDIVIDUAL AS POSSIBLE TO MAKE DETERMINATIONS ABOUT  
15 THEIR FITNESS FOR DUTY. AND THAT WOULD INCLUDE THE PSYCHIATRIC  
16 RECORDS.

17 Q. OKAY.

18 AND IN YOUR EXPERIENCE IN DETERMINING WHAT RECORDS YOU  
19 WANT TO LOOK AT WHEN YOU DO EVALUATIONS, DO YOU ALWAYS KNOW IN  
20 ADVANCE WHAT THE PARTICULAR RELEVANCE OR NEED IS FOR A RECORD  
21 BEFORE YOU REQUEST THE RECORDS THAT YOU WANT TO SEE?

22 A. NOT NECESSARILY. IN DOING AN INDEPENDENT EVALUATION  
23 THAT'S COMPREHENSIVE, I BASICALLY WANT TO SEE EVERYTHING. AND I  
24 WILL EVEN TELL INDIVIDUALS, YOU KNOW, MAYBE 90 PERCENT OR  
25 UPWARDS OF 90 PERCENT OF WHAT WE TALK ABOUT AND WHAT I REVIEW  
26 MAY BE IRRELEVANT, BUT I DON'T KNOW WHICH TEN PERCENT IS

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1 RELEVANT AND WHICH 90 PERCENT IS NOT UNTIL AFTER I'VE SEEN AND  
2 REVIEWED THE RECORDS. SO IT'S IMPORTANT TO GET ALL THE  
3 INFORMATION IN ORDER TO BE THOROUGH, FAIR AND UNBIASED.

4 Q. OKAY.

5 DID YOU FORM THE OPINION AS TO WHETHER THERE WAS ANY  
6 PROCESSES THAT DR. MISSETT EMPLOYED IN CONDUCTING HIS  
7 INDEPENDENT MEDICAL EVALUATION OF PROFESSOR BLOUGH THAT WERE  
8 UNSOUND?

9 A. YES.

10 Q. AND WHAT ARE YOUR OPINIONS?

11 A. I DID NOT FIND THAT THERE WERE ANY UNSOUND PRACTICES  
12 THAT HE EMPLOYED.

13 Q. AND HOW DID YOU ARRIVE AT THAT CONCLUSION?

14 A. YOU KNOW, BASICALLY HE FOLLOWED THE OUTLINE THAT I  
15 GAVE EARLIER AS TO THE ESSENTIAL ELEMENTS FOR CONDUCTING AN  
16 EVALUATION, AND I THINK HIS PRACTICE WAS CONSISTENT WITH THAT.

17 Q. OKAY.

18 IN YOUR EXPERIENCE, AND GIVEN THE PUBLICATIONS THAT  
19 YOU'VE DONE REGARDING HOW TO DO FITNESS-FOR-DUTY EVALUATIONS,  
20 AND THE TRAINING THAT YOU HAVE DONE FOR OTHER DOCTORS, DO YOU  
21 ADDRESS WHAT THE BEST PRACTICES ARE FOR AN INDEPENDENT MEDICAL  
22 EVALUATOR?

23 A. YES.

24 Q. AND IS IT YOUR OPINION THAT IT'S ALWAYS THE BEST  
25 PRACTICE FOR AN EMPLOYER TO SEND AN EMPLOYEE FOR AN INDEPENDENT  
26 MEDICAL EVALUATION WHEN THERE'S CONCERNS ABOUT AN EMPLOYEE'S

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1 WORK PERFORMANCE THAT MIGHT HAVE SOME KIND OF MEDICAL CAUSATION?

2 A. NOT ALWAYS, NO.

3 Q. OKAY.

4 COULD YOU EXPLAIN FOR US THE TYPES OF SITUATIONS WHERE  
5 YOU THINK IT IS WARRANTED VERSUS THE TYPES OF SITUATIONS WHERE  
6 PERHAPS IT -- YOU WOULD NOT THINK IT'S NECESSARY FOR AN EMPLOYER  
7 TO REFER AN EMPLOYEE OUT FOR AN INDEPENDENT EXAM?

8 A. I THINK I CAN BEST ANSWER THE QUESTION THROUGH

9 EXAMPLE. SO ONE EXAMPLE WOULD BE AN EMPLOYEE WHO'S BEEN QUITE  
10 SICK, OUT ON LEAVE TWO WEEKS, A MONTH, OR WHATEVER. THEY HAVE  
11 NO PRIOR RECORD OF PERFORMANCE PROBLEMS OR ABSENCES FOR ANY  
12 REASONS FROM WORK, BUT THE EMPLOYER JUST WANTS TO BE REASSURED  
13 THAT THEY HAVE RECOVERED SUFFICIENTLY TO COME BACK TO WORK, SO  
14 THAT THEY DON'T POSE ANY DANGER TO THEMSELVES AND THAT THEY CAN,  
15 YOU KNOW, DO THE JOB. AND SIMPLY ACCEPTING THE TREATER'S  
16 OPINION IN THAT CASE WOULD BE REASONABLE.

17 NOW, IF WE TAKE THE SAME CASE AND SAY THERE ARE  
18 REPEATED ABSENCES, AND THE EMPLOYER HAS A CONCERN AS TO WHAT THE  
19 UNDERLYING FACTORS OF CAUSATION MAY BE, AND THERE ARE  
20 PERFORMANCE PROBLEMS WHEN THE EMPLOYEE IS AT WORK, THAT WOULD BE  
21 A REASONABLE BASIS, THEN, TO SAY, "HEY, LET'S GET ANOTHER  
22 OPINION, SOMEONE INDEPENDENT FROM THE TREATER TO TAKE A LOOK AT  
23 THIS AND TRY TO PULL ALL THE PIECES TOGETHER AND SEE IF THERE'S  
24 MORE TO THIS THAN MEETS THE EYE AND COME UP WITH SOMETHING  
25 THAT'S WORKABLE FOR ALL THE PARTIES CONCERNED."

26 Q. IN THIS PARTICULAR SITUATION, DR. REYNOLDS, DO YOU

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1 HAVE ANY OPINION AS TO WHETHER IT WAS THE BEST PRACTICE,  
2 CONSISTENT WITH BEST PRACTICE FOR THE COLLEGE TO REQUEST THAT  
3 PROFESSOR BLOUGH UNDERGO AN INDEPENDENT MEDICAL EVALUATION?

4 MR. LEBOWITZ: OBJECTION, YOUR HONOR. THIS INVADES  
5 THE PROVINCE OF THE JURY.

6 THE COURT: OVERRULED.

7 THE WITNESS: I'M SORRY. I GOT DISTRACTED.

8 THE COURT: YOU MAY ANSWER THE QUESTION.

9 THE WITNESS: COULD YOU REPEAT THE QUESTION BACK TO  
10 ME? THANK YOU.

11 MS. ADLER: Q. YOU WERE JUST DISCUSSING A COUPLE OF  
12 EXAMPLES. I WANTED TO ASK YOU, SPECIFICALLY IN THIS CASE, DO  
13 YOU HAVE ANY OPINION AS TO WHETHER IT WAS CONSISTENT WITH THE  
14 BEST PRACTICE FOR THE COLLEGE TO ASK THAT PROFESSOR BLOUGH  
15 UNDERGO AN INDEPENDENT MEDICAL EVALUATION IN THIS CASE?

16 A. YES, I DO.

17 Q. AND COULD YOU EXPLAIN WHAT YOUR OPINIONS ARE?

18 A. MY UNDERSTANDING, FROM READING THE RECORDS, IS THAT  
19 PROFESSOR BLOUGH HAD SUFFERED FROM A NUMBER OF MEDICAL  
20 CONDITIONS, AND THE COLLEGE FELT IT WAS BEYOND THEIR ABILITY TO  
21 REVIEW THE MEDICAL INFORMATION AND MAKE DECISIONS SURROUNDING  
22 THOSE RECORDS.

23 IN ADDITION, THERE HAD BEEN PROBLEMS WITH PERFORMANCE,  
24 NAMELY CANCELING CLASSES EARLY OR NOT BEING ABLE TO ATTEND  
25 CLASS. THERE WERE SOME HEARING PROBLEMS. AND JUST, GENERALLY,  
26 NOT BEING UP TO PAR IN TERMS OF THE HIGH LEVEL OF PERFORMANCE

1051

1 THAT SHE HAD DEMONSTRATED FOR MANY YEARS IN THE COLLEGE, SO  
2 THERE WAS A SHIFT NOW IN HER PERFORMANCE AND HER BEHAVIOR, AND  
3 THEY WERE AT A LOSS TO KNOW QUITE WHAT TO DO WITH ALL OF THIS.  
4 AND I BELIEVE THAT IS A REASONABLE BASIS FOR MAKING THE

5 REFERRAL.

6 Q. AND IN THIS PARTICULAR SITUATION, WOULD YOU SAY THAT  
7 THE VARIOUS DIFFERENT MEDICAL ISSUES THAT COULD HAVE BEEN  
8 AFFECTING PROFESSOR BLOUGH DURING THE SPRING 2006 SEMESTER WERE  
9 COMPLEX, IN TERMS OF KNOWING WHAT THEY WERE?

10 MR. LEBOWITZ: OBJECTION, VAGUE.

11 THE COURT: SUSTAINED.

12 MS. ADLER: Q. DID IT APPEAR TO YOU THAT THE ISSUES  
13 THAT WERE -- MEDICAL ISSUES THAT WERE POTENTIALLY AFFECTING  
14 PROFESSOR BLOUGH WERE COMPLEX IN NATURE?

15 A. YES.

16 Q. AND HOW SO?

17 A. SHE HAD BEEN DEALING WITH A NUMBER OF DIFFERENT  
18 MEDICAL ISSUES, ACCORDING TO THE RECORDS, INCLUDING  
19 DEPRESSION -- CHRONIC DEPRESSION FOR MANY YEARS; CARCINOID,  
20 WHICH IS A TYPE OF CANCER CONDITION; HEADACHES; AND OTHER THINGS  
21 THAT SHE HAD HAD TO COPE WITH OVER THE YEARS OF A MEDICAL AND  
22 EMOTIONAL AND PSYCHIATRIC NATURE.

23 Q. AND WHEN YOU MENTIONED JUST A LITTLE EARLIER THAT THE  
24 COLLEGE DIDN'T KNOW QUITE WHAT TO DO WITH THE INFORMATION, DID  
25 YOU MEAN THAT -- WHAT DID YOU MEAN BY THAT?

26 A. MY UNDERSTANDING IS THAT THE COLLEGE, ALTHOUGH THEY

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1 HAD A HUMAN RESOURCES PERSON ONBOARD, THAT THEY DID NOT HAVE AN  
2 IN-HOUSE MEDICAL DIRECTOR OR SOMEONE HOLDING A MEDICAL DEGREE

3 THAT WAS PART OF THEIR IN-HOUSE STRUCTURE TO REVIEW THESE  
4 THINGS. AND FOR THEM TO OBTAIN HER MEDICAL RECORDS WOULD BE  
5 SOMETHING OUT OF THEIR ABILITY TO EVALUATE THOSE.

6 IN ADDITION, THERE CAN BE PROBLEMS, THEN, WITH  
7 EXPOSING THINGS THAT MIGHT BE PRIVATE TO HER IN AN EMPLOYMENT  
8 SETTING THAT WOULD NOT OTHERWISE BE NECESSARY TO EXPOSE. AND BY  
9 HAVING AN INDEPENDENT EVALUATOR, THEY ARE SORT OF A BUFFER NOW  
10 BETWEEN THE INDIVIDUAL EMPLOYEE IN THIS CASE, PROFESSOR BLOUGH,  
11 AND THE COLLEGE.

12 Q. OKAY.

13 THE COURT: IT IS 4:30. IF YOU ARE JUST ABOUT DONE, I  
14 WILL GIVE YOU ANOTHER MINUTE, OTHERWISE, WE WILL STOP HERE.

15 MS. ADLER: I HAVE A LITTLE MORE.

16 THE COURT: ALL RIGHT, THEN. WE WILL FINISH THAT  
17 TOMORROW.

18 DR. REYNOLDS, I'M GOING TO NEED YOU COME BACK TOMORROW  
19 AT 9:00 O'CLOCK.

20 THE WITNESS: OKAY.

21 THE COURT: LADIES AND GENTLEMEN, WE HAVE FINISHED FOR  
22 THE DAY. LET ME GIVE YOU A LITTLE SCHEDULING INFORMATION. WE  
23 REMAIN RIGHT ON SCHEDULE. I AM PLEASED ABOUT THAT. BUT  
24 TOMORROW, I NEED ACTUALLY TO LEAVE AT ABOUT 11:15. AND JUST TO  
25 BE CANDID WITH YOU, IT'S THE JUDGES' CHRISTMAS PARTY AND THEY  
26 TAKE A PICTURE RIGHT AT NOON SO I NEED TO BE THERE, AND I HOPE

1 YOU UNDERSTAND.

2 HOWEVER, SO I'M NOT GOING TO HAVE YOU COME BACK AFTER  
3 A LONG LUNCH. I THINK THAT WOULD BE VERY TEDIOUS FOR YOU TO  
4 COOL YOUR HEELS IN REDWOOD CITY WHILE I'M TAKING A LONGER LUNCH.  
5 SO SINCE WE'RE RIGHT ON SCHEDULE, I'M GOING TO LET YOU GO NO  
6 LATER THAN 11:15 TOMORROW AND YOU CAN PLAN YOUR AFTERNOON  
7 ACCORDINGLY. WE'LL COME BACK MONDAY MORNING RIGHT AT  
8 9:00 O'CLOCK. I EXPECT THAT MONDAY WE WILL FINISH WITH THE  
9 EVIDENCE AND GO RIGHT INTO INSTRUCTIONS AND CLOSING ARGUMENTS BY  
10 THE ATTORNEYS.

11 SO MONDAY WILL BE A FULL DAY, AND I CAN'T QUITE  
12 PREDICT WHETHER THE CASE WILL BE DELIVERED TO YOU LATE MONDAY  
13 AFTERNOON OR TUESDAY, BUT THAT'S THE SCHEDULE WE'RE ON SO THAT  
14 YOU KNOW THAT. AND TOMORROW, I'M SURE YOU ALL CAN FILL THOSE  
15 HOURS. YOU PROBABLY ALREADY HAVE IN YOUR MIND. IT'S ONLY BEEN  
16 30 SECONDS, BUT YOU CAN DO THAT. I KNOW YOU CAN. ALL RIGHT.

17 AND FOR TRJ08, WE'LL SEE HOW IT GOES. I NEED YOU TO  
18 STAY ON THE JURY UNTIL WE GET TO THE DAY, WHICH YOU WILL  
19 BE BEING A NURSE TO YOUR DAUGHTER WHEN SHE HAS HER WISDOM TEETH  
20 OUT, BUT WE'RE STILL AT TUESDAY. I JUST CAN'T RELEASE YOU EARLY  
21 BECAUSE MAYBE SOMETHING WILL HAPPEN THAT YOU DO DELIBERATE ON  
22 MONDAY. I CAN'T QUITE CONTROL EVERYTHING, BUT I HAVEN'T  
23 FORGOTTEN.

24 TRJ08: THANK YOU.

25 THE COURT: FOR OUR ALTERNATE, ONE OF YOU MAY BE  
26 SELECTED. WE DO THAT RANDOMLY. YOUR NAME IS PULLED OUT OF A

1 HAT, SO I DON'T KNOW WHICH OF YOU IT WILL BE. YOU BOTH PAID  
2 FULL ATTENTION, SO YOU WILL BOTH BE READY, WHICHEVER OF YOU IT  
3 IS.

4 I'M GOING TO HAVE YOU LEAVE YOUR NOTEBOOKS AND YOUR  
5 BADGES ON YOUR CHAIRS. LET ME REMIND YOU, YOU ARE NOT TO FORM  
6 OR EXPRESS ANY OPINIONS IN THE CASE OR DO ANY RESEARCH OR  
7 INVESTIGATION. I WILL SEE YOU ALL TOMORROW MORNING AT  
8 9:00 O'CLOCK.

9 (WHEREUPON, THE JURORS EXIT THE COURTROOM.)

10 THE COURT: BACK ON THE RECORD OUTSIDE THE PRESENCE OF  
11 THE JURY. ANYTHING ELSE THIS EVENING FOR THE RECORD?

12 MR. LEBOWITZ: NOT FOR THE RECORD.

13 THE COURT: OFF THE RECORD. WE ARE DONE.

14 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

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1 PROCEEDINGS

2 DECEMBER 12, 2008 A.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. WE ARE ON THE RECORD IN  
4 BLOUGH VERSUS MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE  
5 PRESENT, AND ALL JURORS AND ALTERNATES.

6 GOOD MORNING, LADIES AND GENTLEMEN. WE ARE GOING TO  
7 GET RIGHT DOWN TO BUSINESS. THANK YOU ALL FOR BEING SO PROMPT.  
8 WE ARE GOING TO END ON TIME TODAY, AS I TOLD YOU QUITE EARLY. I  
9 SEE OUR WITNESS, DR. REYNOLDS, HAS RETURNED.

10 SIR, IF YOU'D COME BACK TO THE WITNESS STAND. AND I  
11 AM GOING TO HAVE YOU SWORN FOR A NEW COURT DATE.

12 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

13 (WHEREUPON, THE WITNESS WAS SWORN.)

14 THE WITNESS: I DO.

15 THE CLERK: PLEASE BE SEATED.

16 THE COURT: OKAY.

17

18 DIRECT EXAMINATION (RESUMED)

19 BY MS. ADLER:

20 Q. GOOD MORNING, DR. REYNOLDS.

21 A. GOOD MORNING.

22 Q. I WANT TO RETURN TO THE SUBJECT YESTERDAY, WHERE WE  
23 DISCUSSED DR. MISSETT'S QUALIFICATIONS. WHAT WAS THE BASIS OF

24 YOUR OPINION THAT DR. MISSETT WAS MEDICALLY QUALIFIED TO PERFORM  
25 THE INDEPENDENT MEDICAL EVALUATION?

26 A. DR. MISSETT IS A GRADUATE OF A MEDICAL SCHOOL, WHICH

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1 MEANS HE HAD FOUR YEARS OF GENERAL MEDICAL TRAINING. HE  
2 COMPLETED AN INTERNSHIP. HE COMPLETED A PSYCHIATRIC RESIDENCY.  
3 HE COMPLETED BOARD EXAMINATIONS TO BE QUALIFIED TO BE A  
4 BOARD-CERTIFIED PSYCHIATRIST. HE PERFORMS WORK IN THE FORENSIC  
5 AREA, INCLUDING FITNESS-FOR-DUTY EVALUATIONS AND IS KNOWN IN THE  
6 LOCAL CIRCLES AROUND ME FOR DOING THAT SORT OF WORK.

7 Q. OKAY.

8 AND WHERE DID DR. MISSETT GO TO MEDICAL SCHOOL?

9 A. I BELIEVE IT WAS AT YALE.

10 Q. AND SO DOES YOUR TESTIMONY, DOES THAT MEAN  
11 DR. MISSETT, IN ADDITION TO HAVING A GENERAL MEDICAL TRAINING  
12 ALSO HAS A SPECIALIZATION IN PSYCHIATRY?

13 A. THAT'S CORRECT.

14 Q. AND BASED ON YOUR REVIEW OF THE MATERIALS THAT YOU  
15 RECEIVED REGARDING PROFESSOR BLOUGH'S MEDICAL CONDITION, WHAT,  
16 IF ANY, PSYCHIATRIC CONDITIONS OF PROFESSOR BLOUGH WERE  
17 IDENTIFIED IN THOSE RECORDS?

18 A. DEPRESSION IS MENTIONED THROUGHOUT THE RECORDS. I  
19 BELIEVE BEGINNING IN EARLY 2000 BY HER PRIMARY CARE PHYSICIAN AT  
20 THAT TIME AND, SUBSEQUENTLY, BY DR. LIU, HER TREATING  
21 PSYCHIATRIST.

22 Q. OKAY. AND IN REACHING YOUR OPINION THAT DR. MISSETT  
23 WAS QUALIFIED TO CONDUCT THE INDEPENDENT MEDICAL EVALUATION OF  
24 PROFESSOR BLOUGH, WHAT, IF ANY, CONSIDERATION DID YOU GIVE TO  
25 THE FACT THAT, IN ADDITION TO HIS GENERAL PHYSICIAN TRAINING AND  
26 EXPERTISE, THAT HE IS ALSO BOARD CERTIFIED IN PSYCHIATRY?

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1 A. I BELIEVE THAT HAVING PSYCHIATRIC TRAINING WAS  
2 IMPORTANT IN TERMS OF BEING ABLE TO CONDUCT A COMPREHENSIVE  
3 IN-DEPTH FITNESS-FOR-DUTY EVALUATION. PSYCHIATRISTS ARE  
4 REQUIRED BY TRAINING TO DIAGNOSE ALONG FIVE AXIS OF DIAGNOSES,  
5 THE FIRST ONE BEING CLINICAL CONDITIONS, SUCH AS DEPRESSION.  
6 AXIS II WOULD INVOLVE LOOKING AT PERSONALITY FACTORS IN AN  
7 INDIVIDUAL. AND AXIS III SAYS THAT ONE MUST LOOK AT MEDICAL  
8 CONDITIONS OR FACTORS IN TERMS OF EVALUATING THE INDIVIDUAL.  
9 AND THEN AXIS IV LOOKS AT PSYCHOSOCIAL STRESSORS.

10 SO IT'S A REQUIREMENT FOR LOOKING AT THE INDIVIDUAL  
11 OVER A BROAD SET OF DOMAINS THAT ARE BEYOND JUST LOOKING AT,  
12 SAY, DEPRESSION OR PSYCHOLOGICAL FACTORS. YOU REALLY HAVE TO  
13 TAKE THE WHOLE PERSON INTO CONSIDERATION. AND THAT IS  
14 IMPORTANT. AND IT'S PART OF THE EXPECTATION FOR PSYCHIATRISTS  
15 TO PERFORM THAT WORK.

16 Q. ALL RIGHT.

17 AND YOU JUST DISCUSSED THE DIFFERENT AXES THAT A  
18 PSYCHIATRIST WOULD HAVE TO TAKE INTO CONSIDERATION IN PERFORMING  
19 AN INDEPENDENT MEDICAL EVALUATION. HOW DOES THAT COMPARE TO

20 WHAT A MEDICAL DOCTOR WITHOUT PSYCHIATRIC TRAINING WOULD HAVE TO  
21 TAKE INTO CONSIDERATION?

22 MR. LEBOWITZ: OBJECTION. NO FOUNDATION.

23 THE COURT: SUSTAINED.

24 MS. ADLER: Q. IN THE CIRCUMSTANCES OF PROFESSOR  
25 BLOUGH'S HEALTH CONDITION, WAS THE FACT THAT THE COLLEGE  
26 RETAINED A DOCTOR WITH PSYCHIATRIC TRAINING AND EXPERIENCE

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1 SOMETHING THAT WOULD, IN YOUR OPINION, REDUCE THE IMPARTIALITY  
2 AND QUALIFICATIONS OF DR. MISSETT TO PERFORM THE INDEPENDENT  
3 MEDICAL EVALUATION?

4 A. I'M SORRY. REPEAT THE QUESTION.

5 Q. IN THE CIRCUMSTANCES HERE OF, YOU KNOW, PROFESSOR  
6 BLOUGH'S MEDICAL CONDITION, WAS THE FACT THAT THE COLLEGE  
7 RETAINED A DOCTOR WITH EXPERTISE IN PSYCHIATRY SOMETHING THAT  
8 WOULD, IN YOUR OPINION, REDUCE DR. MISSETT'S IMPARTIALITY WITH  
9 REGARD TO CONDUCTING THE INDEPENDENT MEDICAL EVALUATION?

10 A. I BELIEVE THAT IT WAS INDICATED TO THE POINT THE  
11 PSYCHIATRIST WHO HAS EXPERIENCE IN PERFORMING FITNESS-FOR-DUTY  
12 EVALUATIONS SUCH AS DR. MISSETT IN THIS CASE, WHERE THERE ARE A  
13 MIXED SET OF FACTORS INVOLVED IN THE EMPLOYEE'S PRESENTATION,  
14 WHICH WOULD INCLUDE BOTH PHYSICAL FACTORS AS WELL AS  
15 PSYCHOLOGICAL EMOTIONAL FACTORS.

16 Q. IN YOUR OPINION, IS THE FACT THAT THE COLLEGE RETAINED  
17 A DOCTOR WITH A PSYCHIATRIC BACKGROUND SOMETHING THAT WOULD

18 REDUCE HIS QUALIFICATIONS TO CONDUCT THE INDEPENDENT MEDICAL  
19 EVALUATION IN THIS CASE?

20 A. NO, I DON'T THINK IT WOULD REDUCE HIS QUALIFICATIONS.  
21 IN FACT, IT WOULD ADD TO THE LEGITIMACY OF SUCH A REFERRAL.

22 Q. AND HOW SO?

23 A. WELL, FOR REASONS THAT I'VE STATED ALONG THE WAY, THAT  
24 A PSYCHIATRIST WHO HAS EXPERIENCE IN PERFORMING THESE  
25 EVALUATIONS WILL, BY TRAINING, LOOK AT A BROAD RANGE OF FACTORS  
26 INVOLVED IN THE PATIENT'S PRESENTATION OR THE EMPLOYEE'S

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1 PRESENTATION, BOTH PHYSICAL AND PSYCHOLOGICAL; VERSUS, SAY, A  
2 GENERAL MEDICAL DOCTOR, WHO WOULD NOT HAVE MUCH IN-DEPTH  
3 TRAINING ON THE PSYCHOLOGICAL OR PSYCHIATRIC SIDE.

4 Q. SO IS IT CORRECT THAT WHAT YOU'RE SAYING IS THAT A  
5 PSYCHIATRIST WOULD BE ABLE TO ADDRESS BOTH A PATIENT'S PHYSICAL  
6 CONDITION AND MENTAL HEALTH ISSUES?

7 MR. LEBOWITZ: OBJECTION. LEADING.

8 THE COURT: OVERRULED.

9 MS. ADLER: Q. YOU CAN GO AHEAD AND ANSWER.

10 A. I'M SORRY. PLEASE REPEAT THE QUESTION BACK.

11 Q. SO IS WHAT YOU'RE SAYING A PSYCHIATRIST CAN ADDRESS  
12 BOTH A PATIENT'S PHYSICAL CONDITION AS WELL AS MENTAL HEALTH  
13 CONDITION?

14 A. THAT IS CORRECT. NOW, YOU KNOW, I WOULD ADD THE  
15 PROVISIO THAT A PSYCHIATRIST MAY NOT HAVE A FULL GRASP OF ALL THE

16 MEDICAL ISSUES, BUT WOULD HAVE A GENERAL GRASP OF THEM AT LEAST.  
17 AND IN CASES WHERE THEY DON'T HAVE A FULL GRASP ON THEM, THEY  
18 MAY WANT TO REVIEW RECORDS OR CONSULT WITH A PHYSICIAN IN THAT  
19 SPECIALTY, OR THEY MAY WANT TO MAKE A REFERRAL OUT TO SOMEONE  
20 ELSE TO FURTHER CLARIFY THE ISSUES. IT REALLY -- IT'S CASE  
21 SPECIFIC AND DEPENDS UPON WHAT THE ISSUES ARE THAT ARE BEFORE  
22 THE PSYCHIATRIST.

23 Q. OKAY.

24 LET'S SAY THAT THE COLLEGE DID NOT REQUEST THAT  
25 PROFESSOR BLOUGH BE EVALUATED BY AN INDEPENDENT MEDICAL  
26 EVALUATOR AND, INSTEAD, THAT THE COLLEGE SOLELY RELIED ON THE

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1 OPINIONS OF PROFESSOR BLOUGH'S TREATING PHYSICIANS. IN YOUR  
2 OPINION, DO YOU THINK THAT WOULD HAVE RESULTED IN A THOROUGH AND  
3 OBJECTIVE ASSESSMENT OF HER ABILITY TO PERFORM HER ESSENTIAL JOB  
4 FUNCTION?

5 MR. LEBOWITZ: OBJECTION. INCOMPLETE HYPOTHETICAL.

6 THE COURT: OVERRULED.

7 THE WITNESS: I AM SORRY. PLEASE REPEAT THE QUESTION  
8 BACK.

9 MS. ADLER: Q. LET'S SAY THAT THE COLLEGE DID NOT  
10 REQUEST THAT PROFESSOR BLOUGH BE EVALUATED BY AN INDEPENDENT  
11 MEDICAL EVALUATOR AND, INSTEAD, THE COLLEGE RELIED SOLELY ON THE  
12 OPINIONS OF HER TREATING PHYSICIANS. IN YOUR OPINION, WOULD  
13 THAT HAVE RESULTED IN A THOROUGH AND OBJECTIVE ASSESSMENT OF HER

14 ABILITY TO DO HER JOB?

15 A. NO, IT WOULD NOT, IN MY OPINION.

16 Q. AND WHY IS THAT?

17 A. IN THIS PARTICULAR CASE, THERE WERE IDENTIFIED A  
18 PSYCHIATRIC CONDITION OF DEPRESSION. IN ADDITION, THERE WERE  
19 MANY SERIOUS PSYCHOLOGICAL STRESSORS THAT PROFESSOR BLOUGH WAS  
20 EXPERIENCING IN HER LIFE. AND, TYPICALLY, PEOPLE IN GENERAL  
21 MEDICINE DON'T HAVE THE TRAINING OR THE BACKGROUND TO GET INTO  
22 EVALUATING THE SIGNIFICANCE OF THOSE SORTS OF PROBLEMS AND BEING  
23 ABLE TO ADDRESS THEM IN TERMS OF A FITNESS-FOR-DUTY  
24 DETERMINATION.

25 IN ADDITION, TYPICALLY THEY DON'T GET THE BACKGROUND  
26 FROM THE EMPLOYER, NAMELY, A JOB DESCRIPTION OR RECORDS FROM THE

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1 EMPLOYER AND, AGAIN, WHAT I WOULD CONSIDER TO BE A FULL,  
2 THOROUGH AND COMPREHENSIVE EVALUATION.

3 MS. ADLER: OKAY. THANK YOU.

4 THE COURT: CROSS-EXAMINATION?

5 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

6

7 CROSS-EXAMINATION

8 BY MR. LEBOWITZ:

9 Q. GOOD MORNING, DR. REYNOLDS.

10 A. GOOD MORNING.

11 Q. YOU WERE FIRST GIVEN THE ASSIGNMENT TO WORK ON THIS

12 CASE ON OCTOBER 10TH OF THIS YEAR, CORRECT?

13 A. THAT IS CORRECT.

14 Q. AND YOU STARTED YOUR ACTUAL WORK REVIEWING THE FILES,  
15 REVIEWING ALL THE THINGS YOU LISTED YESTERDAY, ALL OF THE ACTUAL  
16 HARD WORK ON THE CASE ON OCTOBER 25TH; ISN'T THAT RIGHT?

17 A. I BELIEVE THAT'S CORRECT.

18 Q. AND YOU CAME TO MY OFFICE, AND I TOOK YOUR DEPOSITION  
19 ON THE 24TH OF NOVEMBER. DO YOU REMEMBER THAT?

20 A. YES.

21 Q. AND BY THAT TIME YOU HAD DONE ALL THE WORK AND ALL THE  
22 RESEARCH YOU NEEDED TO DO TO FORM ALL OF THE OPINIONS THAT YOU  
23 ARE EXPRESSING HERE TODAY?

24 A. THAT IS CORRECT.

25 Q. SO WITHIN THAT ONE-MONTH PERIOD, OCTOBER 25 TO  
26 NOVEMBER 24TH, IS WHEN YOU DID ALL OF YOUR WORK ON THIS CASE?

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1 A. THAT'S CORRECT. WITH THE EXCEPTION THAT THERE WERE  
2 THREE DRAFT DEPOSITIONS THAT I HAD PERUSED AT THAT POINT, AND I  
3 REVIEWED THEM IN MORE DETAIL AFTER I HAD MET WITH YOU.

4 Q. OKAY.

5 ASIDE FROM READING THOSE THREE DEPOSITION TRANSCRIPTS  
6 IN A LITTLE MORE DETAIL, HAVE YOU DONE ANY OTHER WORK ON THIS  
7 CASE FROM NOVEMBER 24TH TO TODAY?

8 A. YES, IN THE SENSE OF HAVING REVIEWED MY ABSTRACTED  
9 NOTES AND SPOKEN WITH THE ATTORNEYS.



10 Q. HAVE YOU REVIEWED ANY NEW MATERIAL?

11 A. NO.

12 Q. CAN YOU TELL THE JURY, PLEASE -- YOU HAVE YOUR BILLING  
13 RECORDS IN FRONT OF YOU, CORRECT?

14 A. YES.

15 Q. YOU HAVE THEM IN FRONT OF YOU?

16 A. I DO. THANK YOU.

17 Q. CAN YOU TELL THE JURY, PLEASE, HOW MUCH MONEY YOU  
18 CHARGED THE COLLEGE FOR YOUR WORK FOR THAT ONE MONTH,  
19 OCTOBER 25TH THROUGH NOVEMBER 24TH?

20 A. IT WAS \$35,769.

21 Q. AND PRIOR TO YOU TAKING AND ACCEPTING THE ASSIGNMENT  
22 IN THIS CASE, DID YOU TELL THE COLLEGE'S ATTORNEYS WHAT YOUR  
23 RATE WAS, YOUR RATE FOR YOUR COMPENSATION?

24 A. YES.

25 Q. AND THEY ACCEPTED THAT RATE AND SAID -- PLEDGED TO PAY  
26 IT?

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1 A. YES.

2 Q. SO IN JUST ABOUT ONE MONTH YOU BILLED THE COLLEGE MORE  
3 THAN \$35,000 FOR YOUR OPINIONS IN THIS CASE, CORRECT?

4 MR. VARTAIN: OBJECTION. "FOR YOUR OPINIONS." IT'S  
5 ARGUMENTATIVE.

6 THE COURT: OVERRULED.

7 THE WITNESS: THE COLLEGE PAID ME IN EXCESS OF \$35,000

8 IN ORDER FOR ME TO FORMULATE AN OPINION AND PRESENT IT IN THESE  
9 PROCEEDINGS.

10 MR. LEBOWITZ: Q. NOW, BEFORE YOU FORMULATED YOUR  
11 OPINIONS IN THIS CASE, YOU DID SOME RESEARCH, RIGHT?

12 A. CORRECT.

13 Q. YOU DID SOME MEDICAL RESEARCH?

14 A. THAT IS CORRECT.

15 Q. BECAUSE YOU NEEDED TO LEARN WHAT CARCINOID TUMORS WERE  
16 ABOUT, CORRECT?

17 A. I NEEDED MORE INFORMATION ABOUT CARCINOID TUMORS,  
18 CORRECT.

19 Q. BECAUSE YOU KNEW THAT WAS AN ISSUE IN THE CASE?

20 A. I DID.

21 Q. AND YOU DID SOME RESEARCH INTO SANDOSTATIN, CORRECT?

22 A. THAT'S CORRECT.

23 Q. BECAUSE YOU KNEW THAT WAS A SIGNIFICANT ISSUE IN THIS  
24 CASE?

25 A. YES.

26 Q. AND YOU ALSO DID A LITTLE BIT OF LEGAL RESEARCH,

1064

1 CORRECT?

2 A. I'M NOT SURE WHAT YOU MEAN.

3 Q. WELL, LET ME PUT IT THIS WAY. YOU UNDERSTOOD FROM  
4 YOUR FIRST PHONE CALL WITH MS. ADLER THAT THIS CASE INVOLVED A  
5 CLAIM FOR AN UNLAWFUL MEDICAL EVALUATION, CORRECT?

6 A. THAT IS CORRECT.

7 Q. AND YOU UNDERSTOOD FROM MS. ADLER THAT THE UNLAWFUL  
8 MEDICAL EXAM CLAIM THAT WAS BEING PURSUED WAS BEING BROUGHT  
9 UNDER CALIFORNIA'S FAIR EMPLOYMENT AND HOUSING ACT, CORRECT?

10 A. THAT IS CORRECT.

11 Q. AND YOU UNDERSTOOD AT THAT TIME, GENERALLY SPEAKING,  
12 THAT THE FAIR EMPLOYMENT AND HOUSING ACT CONCERNS EMPLOYMENT  
13 DISCRIMINATION, CORRECT?

14 A. THAT IS CORRECT.

15 Q. BUT BEFORE YOU STARTED WORKING ON THIS CASE -- YOU  
16 SAID YOU HAVE BEEN PERFORMING FITNESS-FOR-DUTY EXAMS IN  
17 CALIFORNIA FOR THE BETTER PART OF 25 YEARS, RIGHT?

18 A. THAT IS CORRECT.

19 Q. AND BEFORE YOU STARTED WORKING ON THIS CASE, YOU HAD  
20 NO IDEA THAT THE FAIR EMPLOYMENT AND HOUSING ACT CONTAINED  
21 RESTRICTIONS ON WHEN AN EMPLOYER WAS PERMITTED TO SEND AN  
22 EMPLOYEE FOR MEDICAL EXAM, RIGHT?

23 MR. VARTAIN: OBJECTION. LACKS FOUNDATION. CALLS FOR  
24 LEGAL CONCLUSION.

25 THE COURT: OVERRULED.

26 THE WITNESS: I DID NOT KNOW SPECIFICALLY ABOUT THE

1065

1 FEHA LAW. HOWEVER, IN ONE OF THE RESOURCES THAT I PRODUCED AT  
2 YOUR OFFICE IS AN ADA MANUAL THAT DOES MAKE REFERENCE TO THE  
3 FEHA. I HAD NOT NOTED OR FOCUSED ON THAT IN READING THAT BOOK,

4 BUT IT IS REFERENCED IN THERE, AND I AM FAMILIAR WITH SOME OF  
5 THE CONCEPTS THAT ARE PROMULGATED THROUGH THAT LAW.

6 MR. LEBOWITZ: Q. DIDN'T YOU TELL ME AT YOUR  
7 DEPOSITION THAT YOU LEARNED ABOUT THE FAIR EMPLOYMENT AND  
8 HOUSING ACT AND THE RESTRICTIONS IT HAS ON WHEN AN EMPLOYER CAN  
9 SEND SOMEONE TO A MEDICAL EXAM, YOU LEARNED THAT FROM THIS CASE?

10 MR. VARTAIN: OBJECTION. LACKS FOUNDATION ON THE WORD  
11 "RESTRICTIONS," AND I'D LIKE TO BE HEARD.

12 THE COURT: WELL, I'M GOING TO -- THANK YOU. I'M  
13 GOING TO SUSTAIN THE OBJECTION.

14 YOU CAN READ HIM HIS WORDS OR SHOW HIM HIS WORDS. YOU  
15 MAY NOT PARAPHRASE THEM. THE OBJECTION IS SUSTAINED.

16 MR. LEBOWITZ: LET ME ASK YOU A DIFFERENT QUESTION.

17 Q. BEFORE YOU STARTED WORKING ON THIS CASE, YOU HAD NO  
18 IDEA THAT THE FAIR EMPLOYMENT AND HOUSING ACT CONTAINED  
19 RESTRICTIONS ON THE SCOPE OF AN EMPLOYER-MANDATED MEDICAL EXAM;  
20 IS THAT CORRECT?

21 MR. VARTAIN: I'M GOING TO OBJECT, YOUR HONOR. IT  
22 LACKS FOUNDATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: PLEASE REPEAT THE QUESTION.

25 MR. LEBOWITZ: Q. BEFORE YOU STARTED WORKING ON THIS  
26 CASE, YOU HAD NO IDEA THAT THE FAIR EMPLOYMENT AND HOUSING ACT

1 CONTAINED RESTRICTIONS ON THE SCOPE OF EMPLOYER-MANDATED MEDICAL

2 EXAMS; ISN'T THAT RIGHT?

3 A. THAT IS CORRECT.

4 Q. THAT IS SOMETHING YOU LEARNED FROM WORKING ON THIS  
5 CASE?

6 A. FROM WORKING ON THIS CASE, I LEARNED SPECIFICALLY  
7 ABOUT THE FEHA LAW AND ITS INSTRUCTION TO EMPLOYERS REGARDING  
8 REFERRAL OF EMPLOYEES FOR EVALUATION EXAMS.

9 Q. NOW, YOU'VE FORMULATED YOUR OPINIONS. ARE YOU  
10 COMFORTABLE THAT YOU REVIEWED ALL OF THE INFORMATION, THE  
11 FACTUAL INFORMATION THAT YOU NEED TO FORMULATE THOSE OPINIONS?

12 A. YES.

13 Q. NOW, YOU'RE AWARE, ARE YOU NOT, THAT THE NOVEMBER 6,  
14 2006 MEETING BETWEEN DR. MISSETT AND PROFESSOR BLOUGH WAS TAPE  
15 RECORDED?

16 A. YES.

17 Q. DID YOU LISTEN TO THAT TAPE RECORDING?

18 A. NO.

19 Q. WAS THAT TAPE RECORDING MADE AVAILABLE TO YOU?

20 A. IT WAS NOT.

21 Q. WERE YOU AWARE OF THAT TAPE RECORDING PRIOR TO THE  
22 EXISTENCE OF THAT TAPE RECORDING, PRIOR TO COMING TO MY OFFICE  
23 AND HAVING YOUR DEPOSITION TAKEN?

24 A. YES.

25 Q. SO YOU HAD THE OPPORTUNITY TO ASK FOR THAT TAPE  
26 RECORDING AND REVIEW THE ACTUAL VERBATIM CONVERSATION BETWEEN

1 DR. MISSETT AND PROFESSOR BLOUGH PRIOR TO FORMING YOUR OPINIONS  
2 IN THIS CASE; IS THAT RIGHT?

3 A. WHEN YOU SAY I HAD THE OPPORTUNITY, I'M NOT SURE WHAT  
4 YOU MEAN.

5 Q. YOU HAD THE CHOICE. YOU COULD HAVE ASKED FOR IT AND  
6 COULD YOU HAVE LISTENED TO IT, CORRECT?

7 A. THAT'S CORRECT.

8 Q. NOBODY WAS PREVENTING YOU FROM GETTING ACCESS TO THAT  
9 TAPE?

10 A. THAT'S CORRECT.

11 Q. AND YOU CHOSE TO NOT LISTEN TO THAT TAPE, CORRECT?

12 A. I DID NOT HAVE THE TAPE. SO IN THAT SENSE, I DID NOT  
13 CHOOSE TO LISTEN TO IT.

14 Q. BUT YOU DIDN'T ASK FOR IT EITHER, DID YOU?

15 A. I DID NOT ASK FOR IT.

16 Q. NOW, YOU TALKED ABOUT, BOTH YESTERDAY AND THIS  
17 MORNING, DR. MISSETT'S QUALIFICATIONS AND YOUR OPINION THAT HE  
18 HAD THE APPROPRIATE QUALIFICATIONS TO DO THIS MEDICAL EXAM.

19 DO YOU RECALL THAT TESTIMONY?

20 A. YES.

21 Q. AND I JUST WANT TO CLARIFY A FEW THINGS. ISN'T IT  
22 TRUE THAT ALL PSYCHIATRISTS, BY DEFINITION, ARE MEDICAL DOCTORS?

23 A. THAT IS CORRECT.

24 Q. TO BE A PSYCHIATRIST YOU HAVE TO HAVE GONE TO MEDICAL  
25 SCHOOL, RIGHT?

26 A. THAT'S CORRECT.

1 Q. AND SO THERE'S NOTHING UNIQUE ABOUT DR. MISSETT IN THE  
2 SENSE THAT HE WENT TO MEDICAL SCHOOL, RIGHT?

3 A. NOTHING UNIQUE IN TERMS OF HIM HOLDING AN M.D. DEGREE,  
4 THAT'S CORRECT.

5 Q. AND YOU REVIEWED DR. MISSETT'S DEPOSITION IN  
6 PREPARATION FOR FORMING YOUR OPINIONS, CORRECT?

7 A. YES, I DID.

8 Q. AND YOU LEARNED FROM THAT DEPOSITION THAT DR. MISSETT  
9 HASN'T IN ANY WAY SEEN A CANCER PATIENT AS IN A MEDICAL DOCTOR  
10 SENSE FOR AT LEAST 25 YEARS?

11 A. YES.

12 Q. AND THAT THE ONLY TRAINING OR EDUCATION DR. MISSETT  
13 GOT OR RECEIVED IN REGARDS TO TREATING CANCER PATIENTS WAS  
14 DURING MEDICAL SCHOOL AND HIS INITIAL YEARS AFTER MEDICAL  
15 SCHOOL, CORRECT?

16 A. THAT IS CORRECT.

17 Q. FROM YOUR REVIEW OF THE CASE AND ALL THE MATERIALS  
18 THAT WERE GIVEN TO YOU, IT WAS YOUR UNDERSTANDING THAT  
19 DR. MISSETT WAS PERFORMING AN EVALUATION OF ALL OF PROFESSOR  
20 BLOUGH'S MEDICAL CONDITIONS, CORRECT?

21 A. THAT IS CORRECT.

22 Q. INCLUDING HER CANCER, RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND NOW, YOU HAVE PARTICIPATED -- CORRECT ME --

25 HUNDREDS OF FITNESS-FOR-DUTY EXAMS; IS THAT RIGHT?

26 A. YES.

1069

1 Q. AND THERE HAVE BEEN OCCASIONS, HAVEN'T THERE, WHERE  
2 YOU WERE NOT THE SOLE EVALUATOR; ISN'T THAT RIGHT?

3 A. THAT IS CORRECT.

4 Q. THERE ARE TIMES WHEN, IN FACT, YOU, IN CONJUNCTION  
5 WITH ANOTHER OR MAYBE EVEN TWO OTHER DOCTORS, ARE PERFORMING THE  
6 MEDICAL EXAM, CORRECT?

7 A. THAT IS CORRECT.

8 Q. AND SO IT'S NOT NECESSARY -- OR IT'S NOT A NECESSARY  
9 ELEMENT OF A FITNESS-FOR-DUTY EXAM THAT IT BE PERFORMED BY A  
10 SINGLE PHYSICIAN, CORRECT?

11 A. THAT IS CORRECT.

12 Q. SO THE COLLEGE, IN THIS CASE, COULD HAVE UTILIZED  
13 THAT, HAD THAT OPTION AVAILABLE TO THEM. THEY COULD HAVE HAD  
14 TWO DIFFERENT PHYSICIAN, EITHER AT THE SAME TIME OR AT SEPARATE  
15 OCCASIONS, EVALUATING PROFESSOR BLOUGH, CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND THAT WOULD HAVE BEEN CONSISTENT WITH BEST  
18 PRACTICES?

19 A. WELL, THERE WOULD BE NO CONTRARY REASON THAT THEY  
20 SHOULDN'T DO IT. IT'S NOT INCONSISTENT.

21 Q. SO, FOR INSTANCE, THE COLLEGE COULD HAVE HAD PROFESSOR  
22 BLOUGH EVALUATED BY BOTH AN ONCOLOGIST AND A PSYCHIATRIST,



23 CORRECT?

24 A. THAT IS CORRECT.

25 Q. AND, IN YOUR OPINION, THAT WOULD HAVE BEEN A PERFECTLY

26 ACCEPTABLE WAY OF DOING A FITNESS-FOR-DUTY EXAM, CORRECT?

1070

1 A. YES.

2 Q. NOW, EARLY ON IN YOUR TESTIMONY MS. ADLER WAS ASKING  
3 YOU ABOUT YOUR OWN QUALIFICATIONS TO TESTIFY HERE AS AN EXPERT.

4 DO YOU RECALL THAT TESTIMONY?

5 A. YES.

6 Q. AND AS PART OF THAT TESTIMONY, YOU WERE TALKING ABOUT  
7 SOME OF THE MANY PUBLICATIONS YOU HAVE AUTHORED, CORRECT?

8 A. YES.

9 Q. AND YOU USED THESE PUBLICATIONS AS EDUCATION TOOLS,  
10 CORRECT?

11 A. YES.

12 Q. YOU EDUCATED OTHER PHYSICIANS ON BEST PRACTICES FOR  
13 FITNESS-FOR-DUTY EXAMS, CORRECT?

14 A. YES, THAT'S CORRECT.

15 Q. AND I'M LOOKING AT SOMETHING THAT YOU PRODUCED IN YOUR  
16 DEPOSITION TO ME, WHICH IS A PAPER WRITTEN BY YOU ENTITLED, "THE  
17 COMPREHENSIVE PSYCHIATRIC FITNESS-FOR-DUTY EVALUATION."

18 ARE YOU FAMILIAR WITH THIS DOCUMENT?

19 A. YES.

20 Q. AND YOU WROTE THIS DOCUMENT; IS THAT CORRECT?

21 A. YES.

22 Q. AND YOU STAND BEHIND ALL OF THE ITEMS THAT ARE WRITTEN  
23 IN HERE; IS THAT CORRECT?

24 A. YES.

25 Q. AND THE PURPOSE OF WRITING THIS WAS TO EXPRESS YOUR  
26 OPINIONS AS TO BEST PRACTICES FOR FITNESS-FOR-DUTY EXAMS; IS

1071

1 THAT RIGHT?

2 A. CORRECT.

3 Q. I WANT TO READ YOU PART OF IT AND ASK YOU A FEW  
4 QUESTIONS AFTER. OKAY? AND THIS IS FOUND ON PAGE FIVE OF THIS  
5 DOCUMENT, UNDER THE HEADING, "GUIDELINES FOR COORDINATING THE  
6 REFERRAL." AND THE REFERRAL, SO EVERYBODY UNDERSTANDS, MEANS --  
7 AT LEAST IN THIS CASE, MEANS THE EMPLOYER, CORRECT?

8 A. CORRECT.

9 Q. THE REFERRAL SOURCE WOULD BE THE COLLEGE IN THIS CASE,  
10 CORRECT?

11 A. YES.

12 Q. OKAY.

13 THERE'S A BULLET POINT THAT'S TITLED, "COMPLETE  
14 INVESTIGATION AND FACT FINDING." AND IN THAT YOU WRITE THE  
15 FOLLOWING: "WHENEVER POSSIBLE THE REFERRING SOURCE SHOULD  
16 COMPLETE A THOROUGH FACT-FINDING INVESTIGATION BEFORE ARRANGING  
17 FOR PSYCHIATRIC EVALUATION."

18 IS THAT YOUR OPINION AS TO BEST PRACTICES?

19 A. YES.

20 Q. YOU THEN WRITE -- THE NEXT SENTENCE SAYS, "PSYCHIATRIC  
21 EVALUATORS SHOULD NOT BE EXPECTED TO BE TRIERS OF FACT."

22 IS THAT, AGAIN, PART OF YOUR OPINION OF BEST  
23 PRACTICES?

24 A. YES.

25 Q. YOU GO ON. "AN EVALUATOR CAN DO A MUCH BETTER JOB  
26 WHEN PRESENTED WITH THE," QUOTE, "FACTS BASED ON THE RESULTS OF

1072

1 A THOROUGH INVESTIGATION." THAT, AGAIN, IS WHAT YOU BELIEVE IS  
2 AN IMPORTANT PART OF BEST PRACTICES FOR FITNESS-FOR-DUTY EXAMS,  
3 CORRECT?

4 A. CORRECT.

5 Q. AND YOU CONCLUDE THAT PARAGRAPH BY WRITING THE  
6 FOLLOWING TWO SENTENCES: "REMEMBER, THE PROCESS OF  
7 INVESTIGATION AND EVALUATION MAY END UP IN LITIGATION. IT IS  
8 BEST TO COMPLETE INVESTIGATIONS ON THE FRONT END, RATHER THAN  
9 DEFENSIVELY HAVING TO DO SO AFTER THE MATTER COMES TO  
10 LITIGATION. IN FACT, THOROUGHLY COMPLETING INVESTIGATION ON THE  
11 FRONT END MAY REDUCE THE LIKELIHOOD THAT A LAWSUIT GETS  
12 SPARKED."

13 IS THAT YOUR OPINION?

14 A. YES.

15 Q. NOW, PRIOR TO ACCEPTING THE ASSIGNMENT IN THIS CASE,  
16 YOU KNEW WHO DR. MISSETT WAS, RIGHT?

17 A. THAT IS CORRECT.

18 Q. AND, IN FACT, IN YOUR WORDS, YOUR PATHS HAVE CROSSED  
19 BEFORE, CORRECT?

20 A. THAT IS CORRECT.

21 Q. AND, IN FACT, IN THE PAST THREE YEARS YOU AND  
22 DR. MISSETT HAVE HAD YOUR PATHS CROSS ON AT LEAST TWO OCCASIONS,  
23 CORRECT?

24 A. I BELIEVE SO.

25 Q. ONE OF THOSE OCCASIONS WAS WHEN DR. MISSETT WAS  
26 EVALUATING YOUR WORK; ISN'T THAT RIGHT?

1073

1 A. YES.

2 Q. IN THAT SITUATION YOU HAD PERFORMED A FITNESS-FOR-DUTY  
3 EXAM FOR AN EMPLOYEE, CORRECT?

4 A. I PERFORMED A FITNESS-FOR-DUTY EVALUATION OF AN  
5 EMPLOYEE FOR THE EMPLOYER.

6 Q. YES. I'M SORRY.

7 AND DR. MISSETT WAS CALLED IN TO EVALUATE THE JOB THAT  
8 YOU HAD DONE IN THAT EVALUATION, CORRECT?

9 A. THAT IS CORRECT.

10 Q. AND IT WAS HIS JOB TO DETERMINE WHETHER YOU HAD  
11 ENGAGED IN BEST PRACTICES IN PERFORMING THAT FITNESS-FOR-DUTY  
12 EXAM, CORRECT?

13 A. THAT IS CORRECT.

14 Q. AND DR. MISSETT CONCLUDED THAT INDEED, YES, YOU HAD

15 FOLLOWED BEST PRACTICES; ISN'T THAT RIGHT?

16 A. YES.

17 Q. AND THEN THE SECOND TIME YOUR PATHS CROSSED, SAME  
18 SCENARIO, RIGHT?

19 A. THE DETAILS DIFFERED BUT, IN GENERAL, THAT'S CORRECT.

20 Q. SO DR. MISSETT WAS EVALUATING YOU FOR WHETHER OR NOT  
21 YOU HAD ENGAGED IN -- OR CONDUCTED YOUR EXAM FOLLOWING BEST  
22 PRACTICES, CORRECT?

23 A. THAT IS CORRECT.

24 Q. AND HE, AGAIN, CONCLUDED THAT YOU HAD FOLLOWED SUCH  
25 BEST PRACTICES, RIGHT?

26 A. CORRECT.

1074

1 Q. AND YOUR JOB IN THIS CASE IS NOW TO EVALUATE  
2 DR. MISSETT, RIGHT?

3 A. THAT IS CORRECT.

4 Q. AND TO DETERMINE WHETHER OR NOT HE CONDUCTED THE  
5 FITNESS-FOR-DUTY EXAM HERE USING BEST PRACTICES, CORRECT?

6 A. THAT IS CORRECT.

7 Q. AND IT IS YOUR OPINION THAT HE, INDEED, FOLLOWED ALL  
8 THOSE BEST PRACTICES AS WELL?

9 A. I BELIEVE SO.

10 Q. NOW, IS IT YOUR OPINION, DR. REYNOLDS, THAT IN A  
11 FITNESS-FOR-DUTY EXAM FOLLOWING BEST PRACTICES, IF THE  
12 EVALUATING PHYSICIAN DOES NOT HAVE ALL THE INFORMATION AVAILABLE

13 TO THEM THAT THEY BELIEVE THEY NEED, THAT IN SUCH A CASE THE  
14 EVALUATOR SHOULD FIND THE INDIVIDUAL UNFIT TO WORK?

15 A. IT DEPENDS UPON THE SPECIFIC CASE AND THE DETAILS. SO  
16 THERE'S NO GENERAL BLANKET RULE THAT I COULD APPLY HERE, BUT IT  
17 DEPENDS ON HOW THE EVALUATOR VIEWS THE MATERIAL AND THE  
18 SIGNIFICANCE OF IT ON A CASE-BY-CASE BASIS.

19 Q. SO YOU DON'T BELIEVE IT'S BEST PRACTICES FOR AN  
20 EVALUATOR WHO DOESN'T HAVE ALL THE INFORMATION AVAILABLE, TO  
21 SIMPLY INFORM THE REFERRAL SOURCE, "I'M SORRY. I CAN'T COME TO  
22 A CONCLUSION BECAUSE I DON'T HAVE ALL THE INFORMATION  
23 AVAILABLE"?

24 MR. VARTAIN: OBJECTION. DOUBLE NEGATIVE, VAGUE.

25 THE COURT: WELL, WHY DON'T WE FIX THAT UP SO WE CAN  
26 BE SURE WHAT THE ANSWER IS.

1075

1 MR. LEBOWITZ: SURE.

2 Q. WOULD YOU AGREE WITH ME, DR. REYNOLDS, THAT AS BEST  
3 PRACTICES FOR A FITNESS-FOR-DUTY EVALUATOR WHO DON'T HAVE ALL  
4 THE INFORMATION AVAILABLE TO THEM THAT THEY ARE ASKING FOR, TO  
5 INFORM THE REFERRAL SOURCE THAT -- THE FOLLOWING: "I CAN'T COME  
6 TO A CONCLUSION ON THIS MATTER BECAUSE I DON'T HAVE ALL THE  
7 INFORMATION AVAILABLE"?

8 A. YES, THAT'S CERTAINLY ONE OPTION, BUT THERE ARE OTHER  
9 OPTIONS WHICH MAY BE BASED ON THE MATERIAL THAT'S AVAILABLE.  
10 THEY MAY BE ABLE TO DRAW A CONCLUSION.

11 Q. WOULD IT BE BEST PRACTICES IN THAT SCENARIO FOR THE  
12 EVALUATOR IN HIS OWN MIND TO SAY OR BELIEVE THAT, BECAUSE I  
13 DON'T HAVE THIS INFORMATION I'M GOING TO FIND THE EMPLOYEE  
14 UNFIT?

15 A. I'M SORRY. REPEAT THAT BACK TO ME.

16 Q. IN YOUR OPINION, WOULD IT BE BEST PRACTICES FOR AN  
17 EVALUATOR FINDING HIMSELF IN THE SCENARIO WE HAVE JUST DISCUSSED  
18 TO CONCLUDE THE FOLLOWING: BECAUSE I DON'T HAVE ALL THE  
19 INFORMATION AVAILABLE TO ME, I'M GOING TO FIND THIS INDIVIDUAL  
20 UNFIT TO WORK?

21 A. THE ANSWER WOULD BE YES, IF THERE WERE INFORMATION  
22 AVAILABLE THAT WAS SIGNIFICANT OR THE ABSENT INFORMATION WAS OF  
23 SIGNIFICANCE IN THE MIND OF THE EVALUATOR.

24 Q. NOW, PRIOR TO FORMING YOUR OPINIONS IN THIS CASE --  
25 WELL, LET ME DO IT THIS WAY. I'M SORRY.

26 FOLLOWING BEST PRACTICES, IF YOU HAD OFFERED AN

1076

1 OPINION, AS FAR AS AN EVALUATION GOES IN A FITNESS-FOR-DUTY  
2 EVALUATION, AND THE EMPLOYEE, THE SUBJECT OF THAT EVALUATION  
3 CALLED YOUR OFFICE AND LEFT A MESSAGE AND SAID, "PLEASE, CALL  
4 ABOUT MY EVALUATION. I'M NOT HAPPY ABOUT IT," WHAT WOULD YOU DO  
5 FOLLOWING BEST PRACTICES?

6 A. IF I HAD ALREADY RENDERED A REPORT TO THE EMPLOYER,  
7 GENERALLY, THAT MEANS THAT THE CASE IS CLOSED IN TERMS OF MY  
8 OFFICIAL INVOLVEMENT AT THAT POINT. WHAT I WOULD DO IS CALL THE

9 EMPLOYER AND SAY, "HEY, LISTEN. I HAVE RECEIVED THIS CALL. YOU  
10 KNOW THAT I CONCLUDED MY WORK, AND I'M INFORMING YOU THAT THIS  
11 CALL HAS COME TO ME. AND I'M NOT IN A POSITION TO BE ABLE TO  
12 RETURN THE CALL OR COMMUNICATE WITH THE EMPLOYEE AT THIS POINT."

13 Q. AND WHAT ABOUT THE SCENARIO IF THE EVALUATION, IN  
14 FACT, HAD NOT BEEN COMPLETED? YOU HAD ISSUED AN OPINION, BUT  
15 YOU UNDERSTOOD THAT THERE WAS AN ONGOING RELATIONSHIP OR THE  
16 POSSIBILITY OF RE-EVALUATION?

17 MR. VARTAIN: OBJECTION. COMPOUND, INCOMPLETE  
18 HYPOTHETICAL.

19 THE COURT: SUSTAINED AS COMPOUND.

20 MR. LEBOWITZ: Q. SO YOU DISCUSSED YOUR OPINION IN  
21 RELATION TO WHEN YOU BELIEVED THE -- IN THE SCENARIO WHERE YOUR  
22 WORK HAS BEEN COMPLETED?

23 MR. VARTAIN: OBJECTION. COMPOUND.

24 THE COURT: I DON'T KNOW IF I HAVE HEARD THE QUESTION  
25 YET.

26 MR. LEBOWITZ: LET ME -- SO LET'S CHANGE THE SCENARIO.

1077

1 Q. THE SCENARIO NOW IS, YOU'VE ISSUED AN OPINION ON YOUR  
2 EVALUATION, BUT YOU UNDERSTAND THAT THERE'S A POSSIBILITY FOR  
3 RE-EVALUATION OF THIS INDIVIDUAL. WHAT WOULD BE -- IN THAT  
4 SCENARIO, WHAT WOULD BE BEST PRACTICES FOR YOU IF YOU WERE TO  
5 RECEIVE A PHONE MESSAGE FROM THE SUBJECT OF THE EVALUATION  
6 SAYING, "PLEASE CALL ME ABOUT THE EVALUATION. I'M NOT HAPPY



7 ABOUT IT"?

8 A. IF IT WERE CLEAR THAT I WAS BEING KEPT ON THE CASE FOR  
9 A REPEAT EVALUATION, WHAT I WOULD DO, AGAIN, IS TO CALL THE  
10 EMPLOYER AND TO SAY, "YOU KNOW, I HAVE RECEIVED THIS PHONE CALL  
11 AND I NEED SOME DIRECTION FROM YOU AS TO HOW TO RESPOND TO IT."

12 Q. AND THAT IS YOUR OPINION ON WHAT THE BEST PRACTICES  
13 WOULD BE IN THAT SCENARIO?

14 A. I BELIEVE THAT WOULD BE THE BEST WAY OF HANDLING IT.

15 Q. AND, FINALLY, DR. REYNOLDS, HOW MUCH ARE YOU CHARGING  
16 THE COLLEGE FOR YOUR TESTIMONY YESTERDAY?

17 MR. VARTAIN: OBJECTION. "FOR YOUR TESTIMONY," IS  
18 ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 MR. LEBOWITZ: Q. HOW MUCH ARE YOU CHARGING THE  
21 COLLEGE FOR YOUR APPEARANCE HERE YESTERDAY?

22 A. \$3,500.

23 Q. AND HOW MUCH ARE YOU CHARGING THE COLLEGE FOR YOUR  
24 TESTIMONY HERE TODAY?

25 MR. VARTAIN: OBJECTION. SAME OBJECTION.

26 MR. LEBOWITZ: I WILL REPHRASE IT.

1078

1 THE COURT: THANK YOU.

2 MR. LEBOWITZ: Q. HOW MUCH ARE YOU CHARGING FOR YOUR  
3 APPEARANCE HERE TODAY?

4 A. \$3,500.

5 Q. SO YOU'RE CHARGING THE COLLEGE A TOTAL OF \$7,000 FOR  
6 THE PAST TWO DAYS; IS THAT CORRECT?

7 A. THAT IS CORRECT.

8 Q. AND SO THAT BRINGS YOUR TOTAL BILL TO WELL OVER  
9 \$40,000 FOR YOUR WORK IN THIS CASE; IS THAT CORRECT?

10 A. THAT IS CORRECT.

11 MR. LEBOWITZ: THANK YOU.

12 I HAVE NO MORE QUESTIONS.

13 THE COURT: REDIRECT?

14

15 REDIRECT EXAMINATION

16 BY MS. ADLER:

17 Q. CAN YOU SHOW ME HOW HIGH THE STACK OF DOCUMENTS WERE  
18 THAT YOU REVIEWED IN THIS CASE?

19 MR. LEBOWITZ: OBJECTION. RELEVANCE.

20 THE COURT: OVERRULED.

21 THE WITNESS: IT'S ROUGHLY THAT MANY DOCUMENTS, SOME  
22 OF WHICH ARE SINGLE PAGE AND SOME ARE CONDENSED RECORDS, WHICH  
23 MEANS THERE'S FOUR PAGES CONDENSED ONTO EACH PAGE.

24 THE COURT: COULD WE STATE FOR THE RECORD WHAT THE  
25 DOCTOR SHOWED.

26 THE WITNESS: IT'S THE SIZE OF A CRATE.

1079

1 THE COURT: I'M SORRY. INCHES OR FEET WOULD BE  
2 HELPFUL.

3 THE WITNESS: A FOOT-AND-A-HALF.

4 THE COURT: THANK YOU.

5 THE WITNESS: THANK YOU.

6 MS. ADLER: Q. DO YOU SET HOURLY FEES FOR ALL OF YOUR  
7 LITIGATION CLIENTS?

8 A. YES.

9 Q. AND IS THE AMOUNT THAT YOU CHARGED THE COLLEGE THE  
10 SAME HOURLY FEE THAT YOU CHARGE TO YOUR OTHER CLIENTS IN  
11 LITIGATION MATTERS?

12 A. THAT IS CORRECT.

13 Q. AND ARE YOUR FEES BASED ON THE AMOUNT OF TIME THAT YOU  
14 SPENT WORKING ON A CASE?

15 A. MY CHARGES ARE BASED ON THE AMOUNT OF TIME THAT I  
16 SPENT ON A CASE.

17 Q. IS THE AMOUNT OF YOUR COMPENSATION FROM THE COLLEGE  
18 THE SAME, REGARDLESS OF WHETHER YOUR OPINIONS ARE FAVORABLE OR  
19 NOT TO THE COLLEGE?

20 A. THAT IS CORRECT.

21 Q. DO YOU HAVE ANY VESTED INTEREST IN THE OUTCOME OF THIS  
22 CASE?

23 A. NO, I DO NOT.

24 Q. DID YOU REVIEW THE PROVISIONS IN THE FAIR EMPLOYMENT  
25 AND HOUSING ACT REGARDING EMPLOYER -- INVOLVING INDEPENDENT  
26 MEDICAL EVALUATIONS?

1 MR. LEBOWITZ: OBJECTION. VAGUE AS TO TIME.

2 THE WITNESS: YES, I DID.

3 THE COURT: OVERRULED.

4 MS. ADLER: Q. AND IN YOUR REVIEW OF THOSE

5 PROVISIONS, DID YOU SEE ANYTHING IN THE PROVISIONS THAT

6 INDICATED HOW AN INDEPENDENT MEDICAL EVALUATOR IS TO PERFORM AN

7 INDEPENDENT MEDICAL EVALUATION?

8 A. NO, I DID NOT.

9 Q. DID YOU SEE ANY GUIDELINES IN THE PROVISIONS

10 INDICATING WHAT THE STANDARDS ARE FOR AN INDEPENDENT EVALUATOR

11 TO PERFORM SUCH AN EVALUATION?

12 A. NO, I DID NOT.

13 Q. OKAY.

14 AS AN INDEPENDENT MEDICAL EVALUATOR, WAS DR. MISSETT

15 ACTING AS PROFESSOR BLOUGH'S TREATING PHYSICIAN?

16 A. NO.

17 Q. IN WHAT CAPACITY WAS HE ACTING?

18 A. HE WAS ASKED BY THE COLLEGE TO PERFORM AN INDEPENDENT

19 MEDICAL EVALUATION REGARDING HER FITNESS FOR DUTY AND

20 SUITABILITY TO RETURN TO WORK AS A TEACHER AT THE COLLEGE.

21 Q. WAS HE EVALUATING HER, RATHER THAN TREATING HER?

22 A. THAT IS CORRECT. HE WAS EVALUATING HER, RATHER THAN

23 TREATING HER.

24 Q. OKAY.

25 AND COUNSEL WAS JUST ASKING YOU IF DR. MISSETT COULD

26 HAVE USED ANOTHER DOCTOR IN ADDITION TO HIMSELF IN PERFORMING

1 THE INDEPENDENT MEDICAL EVALUATION. BASED ON YOUR REVIEW OF THE  
2 RECORDS, DID DR. MISSETT SPEAK TO PROFESSOR BLOUGH'S DOCTORS?

3 A. WELL, THERE WERE DIFFERENT SETS OF EVALUATIONS, SO IT  
4 WOULD HELP ME TO KNOW WHAT YOU ARE REFERRING TO.

5 Q. IN THE 2006, 2007 TIME FRAME.

6 A. YES, HE DID.

7 Q. AND DID HE REFER HER TO ANOTHER DOCTOR, A  
8 PSYCHOLOGIST?

9 A. YES, HE DID.

10 Q. WAS THAT DR. LYNCH?

11 A. YES.

12 Q. AND, IN YOUR OPINION, WAS IT CALLED FOR IN THIS CASE  
13 FOR DR. MISSETT TO HAVE USED ANOTHER DOCTOR IN ADDITION TO  
14 DR. LYNCH?

15 A. I'M SORRY. REPEAT THE QUESTION BACK TO ME.

16 Q. WAS IT ACCEPTABLE TO DO THE INDEPENDENT MEDICAL  
17 EVALUATION AS DR. MISSETT DID, RELYING ON THE SOURCES THAT HE  
18 RELIED ON?

19 A. YES, IT WAS.

20 Q. DO YOU THINK IT WAS CALLED FOR IN THIS CASE TO RELY ON  
21 ANY OTHER MEDICAL DOCTOR?

22 A. RELY ON, YES, IN THE SENSE OF GETTING INPUT FROM  
23 OTHERS.

24 Q. DO YOU THINK IT WAS CALLED FOR IN THIS CASE FOR HIM TO  
25 RELY ON ANY OTHER SOURCES APART FROM WHAT HE DID RELY ON?

1082

1 "RELY." I THINK THAT'S THE CONFUSION HERE.

2 MS. ADLER: Q. DO YOU THINK IT WAS CALLED FOR IN THIS  
3 CASE FOR HIM TO CALL IN ANOTHER DOCTOR TO ASSIST HIM PERFORM THE  
4 INDEPENDENT MEDICAL EVALUATION?

5 A. YES, I DO.

6 Q. AND ARE YOU TALKING ABOUT DR. LYNCH?

7 A. THAT IS CORRECT.

8 Q. DO YOU THINK IT WAS CALLED FOR FOR HIM TO CALL IN ANY  
9 OTHER DOCTOR, OTHER THAN DR. LYNCH, TO ASSIST HIM WITH THE  
10 INDEPENDENT MEDICAL EVALUATION IN THIS CASE?

11 A. NO, I DON'T THINK IT WAS REQUIRED OR NECESSARY.

12 Q. OKAY.

13 AND JUST A LITTLE WHILE AGO COUNSEL WAS DISCUSSING  
14 SOME OF YOUR PUBLICATIONS REGARDING BEST PRACTICES FOR  
15 FITNESS-FOR-DUTY EVALUATIONS, AND IT WAS MENTIONED THAT  
16 EVALUATION IS BETTER IF IT INVOLVES A THOROUGH INVESTIGATION.  
17 BY "THOROUGH INVESTIGATION," INVESTIGATION IN THAT CONTEXT, DOES  
18 THAT REFER TO THE FACT THAT IT IS THE EVALUATOR THAT SHOULD BE  
19 DOING A THOROUGH INVESTIGATION?

20 A. YES AND NO. THE DOCUMENT THAT THE OTHER ATTORNEY  
21 REFERRED TO IS ONE THAT INVOLVES EVALUATION OF PHYSICIANS, AND  
22 THAT IS A MATTER THAT GENERALLY COMES BEFORE THE MEDICAL BOARD.  
23 AND THERE ARE ISSUES OF INVESTIGATION REGARDING FACTUAL MATTERS

24 THAT ARE IMPORTANT TO ESTABLISH IN THOSE TYPES OF EVALUATIONS.  
25 IN THIS PARTICULAR CASE, IT WAS REALLY THE MEDICAL AND  
26 PSYCHIATRIC RECORDS THAT WERE AT ISSUE, AND THAT WAS THE FOCUS

1083

1 OF WHAT DR. MISSETT WAS ATTEMPTING TO OBTAIN.

2 Q. OKAY.

3 A. AGAIN, TO EXPLAIN, THAT'S NOT AN INVESTIGATION IN THE  
4 SENSE OF HAVING AN EXTERNAL BODY GO OUT AND COLLECT FACTUAL  
5 INFORMATION OR MAKE DETERMINATIONS. IT'S A MATTER OF HIS  
6 COLLECTING AND EVALUATING THE RECORDS.

7 Q. ALL RIGHT. AND YOU TESTIFIED JUST A LITTLE WHILE AGO  
8 ABOUT THE COUPLE OF OCCASIONS THAT YOU'VE COME INTO CONTACT WITH  
9 DR. MISSETT. YOU MENTIONED A COUPLE OF EVALUATIONS. THE FIRST  
10 INSTANCE, YOU DISCUSSED AN EVALUATION THAT DR. MISSETT DID OF  
11 YOUR WORK. WHO WAS DR. MISSETT WORKING FOR IN THAT INSTANCE?  
12 WAS HE WORKING FOR THE EMPLOYER OR THE EMPLOYEE?

13 A. THERE WERE TWO EXAMPLES OF THIS AND I CAN'T REMEMBER  
14 THE SEQUENCING OF WHICH ONE CAME FIRST.

15 Q. OKAY.

16 A. SO THERE WAS ONE IN WHICH HE WAS CALLED IN AT THE  
17 BEHEST OF THE EMPLOYEE --

18 Q. OKAY.

19 A. -- WHO HAD UNDERGONE EVALUATION BY ME, AND THIS WAS  
20 BEING HEARD BEFORE A CIVIL SERVICE HEARING PANEL. AND THE OTHER  
21 CASE, I'M NOT SURE WHETHER HE WAS CALLED IN BY THE EMPLOYEE OR

22 THE EMPLOYER SCHOOL BOARD, TO MAKE SURE THAT THE EVALUATION WAS  
23 CONDUCTED IN A FAIR WAY WITH REGARD TO THE RIGHTS OF THE  
24 EMPLOYEE.

25 Q. OKAY.

26 AND DO YOU HAVE ANY SOCIAL RELATIONSHIP WITH

1084

1 DR. MISSETT?

2 A. NO.

3 Q. ARE YOU FRIENDS WITH HIM?

4 A. NO.

5 Q. DO YOU EVER TALK TO HIM?

6 A. THERE HAVE BEEN -- YES, THERE HAVE BEEN SOME OCCASIONS  
7 WHERE I HAVE SPOKEN WITH HIM.

8 Q. AND COULD YOU DESCRIBE THE NATURE OF YOUR INTERACTIONS  
9 WITH HIM?

10 A. THEY'RE REVIEWS. AN EXAMPLE WOULD BE IN OCTOBER OF  
11 THIS YEAR, I GAVE A PRESENTATION IN NEWPORT BEACH FOR THE  
12 CALIFORNIA SOCIETY OF ADDICTION MEDICINE. HE WAS IN ATTENDANCE  
13 OF THAT CONFERENCE, AND WE SHOOK HANDS AND SAID HELLO IN PASSING  
14 IN THE HALLWAY.

15 Q. SO DO YOU HAVE ANY COMMUNICATION WITH DR. MISSETT  
16 OTHER THAN EXCHANGING CIVILITIES?

17 A. NO.

18 Q. OKAY.

19 YOU WERE ASKED TO COMMENT ON A HYPOTHETICAL, WHERE IF



20 YOU WERE STILL -- IF YOU HAD ISSUED AN OPINION THAT, THOUGHT  
21 THAT THERE WAS A POSSIBILITY THAT THERE WOULD BE A RE-EVALUATION  
22 IN THE FUTURE, WHAT WOULD YOU DO AT THAT POINT, IF AN EMPLOYEE  
23 TOLD YOU THEY WERE UNHAPPY WITH YOUR EVALUATION?

24 IN THIS PARTICULAR CASE, DO YOU KNOW IF AFTER  
25 DR. MISSETT ISSUED HIS REPORT IN THE SUMMER 2006, IF HE KNEW AT  
26 THE TIME THAT HE WOULD BE DOING ANOTHER EVALUATION OF PROFESSOR

1085

1 BLOUGH?

2 A. IT'S MY UNDERSTANDING THAT THE CASE WAS CLOSED AT THAT  
3 POINT, THAT HE HAD RENDERED AN OPINION THAT SHE WAS NOT FIT FOR  
4 DUTY AND UNLIKELY TO BE FIT FOR DUTY IN THE FUTURE. AS FAR AS I  
5 KNOW, THERE WAS NO CONSIDERATION OF RESCHEDULING HER FOR A  
6 SUBSEQUENT APPOINTMENT AT THAT TIME.

7 MS. ADLER: OKAY. THANK YOU.

8 THE COURT: RE-CROSS?

9 MR. LEBOWITZ: VERY BRIEFLY, YOUR HONOR.

10 THE COURT: OKAY.

11

12 RE-CROSS EXAMINATION

13 BY MR. LEBOWITZ:

14 Q. JUST ON THE SUBJECT OF YOUR PUBLICATION AND THE PART  
15 THAT I READ TO YOU. IN THIS DOCUMENT, YOU'RE TALKING ABOUT A  
16 FACTUAL INVESTIGATION THAT THE REFERRING SOURCE SHOULD DO,  
17 CORRECT?

18 A. THAT'S CORRECT.

19 Q. YOU'RE NOT TALKING ABOUT, FOR INSTANCE, WHAT

20 DR. MISSETT SHOULD DO. YOU'RE TALKING ABOUT THE BEST PRACTICE

21 FOR WHAT THE COLLEGE SHOULD DO, CORRECT?

22 A. WHAT THE EMPLOYER SHOULD DO.

23 MR. LEBOWITZ: THANK YOU.

24 THE COURT: ANYTHING ELSE, MS. ADLER?

25 MS. ADLER: YES, BRIEFLY.

26

1086

1 REDIRECT EXAMINATION

2 BY MS. ADLER:

3 Q. THAT SCENARIO IN THE PUBLICATION WITH REGARD TO A

4 SITUATION INVOLVING A PHYSICIAN, WAS THAT SITUATION INVOLVING A

5 PHYSICIAN WHERE A MEDICAL REPORT WAS INVOLVED?

6 A. THAT'S CORRECT.

7 Q. IS THAT DIFFERENT THAN THIS SITUATION?

8 A. YES. MAYBE I COULD EXPLAIN?

9 Q. PLEASE.

10 A. MAYBE BY EXAMPLE. LET'S SAY A PHYSICIAN IS ACCUSED OF

11 STEALING DRUGS, AND THERE IS A REQUEST FOR THE EVALUATOR TO

12 DETERMINE WHETHER THE PERSON HAS A DRUG ABUSE PROBLEM. IT'S

13 MUCH BETTER IF THE EMPLOYER HAS DONE A THOROUGH INVESTIGATION TO

14 DETERMINE WHETHER, IN FACT, THAT PHYSICIAN STOLE DRUGS, WHAT THE

15 DRUGS WERE, WHAT THE AMOUNTS WERE, OVER WHAT SPAN OF TIME, ET

16 CETERA; RATHER THAN THE EVALUATOR NOT HAVING THAT INFORMATION  
17 AND HAVING TO ACT IN A VACUUM AROUND IT.

18 Q. SO IS INVESTIGATION USED IN THAT SENSE NOT REFERRING  
19 TO A FACTUAL INVESTIGATION, NOT OF MEDICAL DIAGNOSES OR POSSIBLE  
20 MEDICAL CAUSATION, BUT MORE OF A FACTUAL FINDING OF WHAT  
21 HAPPENED?

22 A. I'M SORRY. I DON'T UNDERSTAND THE QUESTION.

23 Q. SO FACTUAL INVESTIGATION IN THAT CONTEXT, DOES THAT  
24 REFER TO FACT FINDING BY THE EMPLOYER OF WHAT EVENTS HAPPENED  
25 VERSUS AN INVESTIGATION OF THE POSSIBLE MEDICAL ISSUES  
26 THEMSELVES?

1087

1 A. YES. BY EXAMPLE IN THE CASE OF A TEACHER, THE  
2 EMPLOYER MIGHT WANT TO DO FACT FINDING AROUND WHAT THEIR  
3 PERFORMANCE IN THE CLASSROOM HAS BEEN. THAT WOULD BE AN  
4 EXAMPLE. THAT'S NOT SOMETHING THAT THE PSYCHIATRIST EVALUATOR  
5 WOULD DO. THAT'S A RESPONSIBILITY OF THE EMPLOYER.

6 MS. ADLER: ALL RIGHT. THANK YOU.

7 MR. LEBOWITZ: NO QUESTIONS, YOUR HONOR.

8 THE COURT: THANK YOU. MAY DR. REYNOLDS BE EXCUSED?

9 MS. ADLER: YES, YOUR HONOR.

10 THE COURT: DR. REYNOLDS, THANK YOU FOR YOUR  
11 TESTIMONY. YOU ARE FREE TO GO.

12 THE WITNESS: THANK YOU.

13 THE COURT: LADIES AND GENTLEMEN, I THINK WE'RE GOING

14 TO TAKE OUR BREAK NOW BECAUSE WE ARE FINISHING PROMPTLY AT  
15 11:15. LET'S MAKE IT JUST A BARE 15 MINUTES SO WE HAVE ENOUGH  
16 TIME FOR OUR NEXT WITNESSES. WE'LL COME BACK AT TEN PAST.

17 (WHEREUPON, A BREAK WAS TAKEN.)

18 THE COURT: WE'RE ON THE RECORD OUTSIDE THE PRESENCE  
19 OF THE JURY. I UNDERSTAND THERE ARE A FEW EXHIBITS THAT WILL BE  
20 ADMITTED BY STIPULATION; IS THAT CORRECT?

21 MR. VARTAIN: YES, YOUR HONOR.

22 MR. LEBOWITZ: YES, YOUR HONOR.

23 THE COURT: IF YOU COULD READ THE NUMBERS, PLEASE.

24 MR. VARTAIN: FIRST, WE'LL DO THE LETTERS FROM THE  
25 DEFENSE.

26 THE COURT: YES. THANK YOU.

1088

1 MR. VARTAIN: A, B, C, D, E-1, F, G, H-1, H-2, K, S,  
2 FF, JJ. NOW, TURNING TO THE PLAINTIFF'S SIDE, WE HAVE  
3 STIPULATED TO ADMIT 37, 43, 50, AND THAT'S IT.

4 MR. LEBOWITZ: YES. I AGREE.

5 THE COURT: AND THE PLAINTIFF AGREES.

6 ALL RIGHT. ALL OF THOSE EXHIBITS WILL BE ADMITTED.

7 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

8 (DEFENSE EXHIBITS A, B, C, D, E-1, F, G, H-1, H-2,  
9 K, S, FF AND JJ WERE ADMITTED INTO EVIDENCE.)

10 (PLAINTIFF'S EXHIBITS NOS. 37, 43 AND 50 WERE  
11 ADMITTED INTO EVIDENCE.)

12 THE COURT: CAN WE BRING IN THE JURY?  
13 (WHEREUPON, THE JURY ENTERS THE COURTROOM.)  
14 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD.  
15 ALL COUNSEL AND PARTIES ARE PRESENT, AND ALL JURORS  
16 AND ALTERNATES.  
17 MR. VARTAIN, ARE YOU READY TO CALL YOUR NEXT WITNESS?  
18 MR. VARTAIN: YES. MR. ROBERT HITE, H-I-T-E.  
19 THE COURT: MR. HITE, IF YOU'D COME FORWARD TO THE  
20 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.  
21 (WHEREUPON, THE WITNESS WAS SWORN.)  
22 THE WITNESS: I DO.  
23 THE CLERK: PLEASE BE SEATED.  
24 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME  
25 AND SPELL THEM BOTH FOR THE RECORD.  
26 THE WITNESS: MY NAME IS ROBERT HITE, R-O-B-E-R-T

1089

1 H-I-T-E.  
2 THE CLERK: THANK YOU.  
3 MR. VARTAIN: MAY I PROCEED, YOUR HONOR?  
4 THE COURT: YES.  
5  
6 ROBERT HITE,  
7 DULY SWORN, TESTIFIED AS FOLLOWS:  
8  
9 DIRECT EXAMINATION

10 BY MR. VARTAIN:

11 Q. MR. HITE, WHERE ARE YOU EMPLOYED AT THE CURRENT TIME?

12 A. I AM EMPLOYED AT GOLDEN GATE UNIVERSITY IN SAN  
13 FRANCISCO.

14 Q. WHAT IS YOUR JOB AT GOLDEN GATE? WHAT'S YOUR POSITION  
15 TITLE?

16 A. VICE PRESIDENT OF BUSINESS AFFAIRS AND CHIEF FINANCIAL  
17 OFFICER.

18 Q. AND FOR HOW LONG HAVE YOU BEEN WORKING AT GOLDEN GATE  
19 UNIVERSITY?

20 A. JUST ABOUT ONE YEAR NOW. I STARTED IN FEBRUARY 2008.

21 Q. IN THIS WHOLE YEAR, HAVE YOU HELD THAT POSITION OF  
22 VICE PRESIDENT?

23 A. YES.

24 Q. WHERE DID YOU WORK JUST BEFORE YOU BECAME THE VICE  
25 PRESIDENT AT GOLDEN GATE UNIVERSITY?

26 A. I WAS AT MENLO COLLEGE FOR EIGHT YEARS.

1090

1 Q. WHAT WAS YOUR POSITION TITLE AT MENLO COLLEGE?

2 A. SAME WORK, LITTLE DIFFERENT TITLE. VICE PRESIDENT OF  
3 FINANCE AND ADMINISTRATION.

4 Q. WHEN YOU WERE AT MENLO COLLEGE, IN THE PART OF YOUR  
5 JOB THAT WAS ADMINISTRATION, WERE YOU OVER THE HUMAN RESOURCES  
6 DEPARTMENT?

7 A. YES. THE DIRECTOR OF HUMAN RESOURCES REPORTED TO ME.

8 Q. DID YOU HAVE THAT SAME VICE PRESIDENT TITLE THE WHOLE  
9 TIME, THE WHOLE EIGHT YEARS YOU WORKED AT MENLO COLLEGE?

10 A. I DID.

11 Q. SO WHAT YEAR DID YOU COME TO MENLO COLLEGE?

12 A. IT WAS IN NOVEMBER 1999.

13 Q. AND THEN YOU STAYED THERE UNTIL WHEN?

14 A. NOVEMBER 2007.

15 Q. BEFORE YOU CAME TO MENLO COLLEGE IN 1999 AS THE VICE  
16 PRESIDENT, WHERE WERE YOU WORKING?

17 A. I WAS AT HOLY NAMES COLLEGE IN OAKLAND.

18 Q. WHAT KIND OF COLLEGE IS HOLY NAMES IN OAKLAND?

19 A. IT'S A SMALL PRIVATE CATHOLIC COLLEGE. IT'S NOW A  
20 UNIVERSITY.

21 Q. HOW LONG WERE YOU AT HOLY NAMES COLLEGE?

22 A. I WAS THERE ABOUT SIX YEARS.

23 Q. WHAT WAS YOUR JOB AT HOLY NAMES?

24 A. I STARTED AS CONTROLLER FOR ABOUT A YEAR, AND THEN I  
25 WAS MADE VICE PRESIDENT OF FINANCE.

26 Q. WHAT DID YOU DO FOR WORK BEFORE YOU CAME TO HOLY NAMES

1091

1 IN THE 1990S? WHAT DID YOU DO BEFORE THAT?

2 A. IT'S ALL BEEN HIGHER EDUCATION; 15 YEARS AT THE  
3 CALIFORNIA STATE UNIVERSITY LEVEL.

4 Q. SO YOUR WHOLE CAREER HAS BEEN IN COLLEGES AND  
5 UNIVERSITIES?

6 A. IT HAS.

7 Q. WHAT DID YOU DO FOR THE CALIFORNIA STATE UNIVERSITIES  
8 FOR ALL THOSE YEARS?

9 A. I WAS DIRECTOR OF FINANCIAL AID, STUDENT FINANCIAL  
10 AID; AND THEN AT SAN FRANCISCO STATE, I WAS THE CONTROLLER.

11 Q. LET'S COME BACK TO MENLO COLLEGE.

12 I'M GOING TO BREAK YOUR EIGHT YEARS OF MENLO COLLEGE  
13 UP INTO TWO PARTS; THE FIRST FOUR YEARS AND THE SECOND FOUR  
14 YEARS. THE FIRST FOUR YEARS FROM 1993 TO 2003, WHO WAS YOUR  
15 BOSS?

16 A. DR. JAMES WADDELL.

17 Q. WHAT WAS HIS POSITION?

18 A. HE WAS THE PRESIDENT OF THE COLLEGE.

19 Q. AND THEN FROM 2003 TO 2007, YOUR LAST FOUR YEARS, WHO  
20 WERE YOUR BOSSES?

21 A. FOR ABOUT A YEAR, I THINK, JAMES WADDELL WAS STILL  
22 THERE, AND THEN CARLOS LOPEZ BECAME PRESIDENT.

23 Q. AND HOW MANY YEARS WAS CARLOS LOPEZ YOUR BOSS?

24 A. I THINK IT WAS TWO -- MAYBE A LITTLE OVER TWO YEARS.

25 Q. SO THAT WOULD BE FROM APPROXIMATELY 2003 TO 2005, YOU  
26 STILL HAD THE PRESIDENT MR. WADDELL?

1092

1 A. THAT'S CORRECT.

2 Q. AND THEN THE LAST TWO YEARS WAS 2006 TO 2007, CARLOS  
3 LOPEZ WAS THE PRESIDENT?



4 A. THAT'S CORRECT.

5 Q. I WANT TO TAKE YOU TO -- WELL, LET ME JUST ASK YOU,  
6 WHILE YOU WERE WORKING AT MENLO COLLEGE, WERE YOU ACQUAINTED  
7 WITH PROFESSOR MARCINE BLOUGH?

8 A. YES.

9 Q. AND HOW WERE YOU ACQUAINTED, JUST IN GENERAL?

10 A. WELL, SHE WAS A FACULTY MEMBER AND I WAS IN THE  
11 ADMINISTRATION, AND WE SOMETIMES MET IN THE CAFETERIA AND ON  
12 CAMPUS.

13 Q. WHAT WAS YOUR RELATIONSHIP LIKE WITH HER?

14 A. FRIENDLY. I LIKED HER. SHE'S A GOOD PERSON.

15 Q. IN 2003, WAS IT THE CASE THAT PROFESSOR BLOUGH WAS  
16 RETURNING FROM A LONG-TERM MEDICAL LEAVE?

17 A. YES.

18 Q. AND WERE YOU INVOLVED AT THAT TIME WHEN SHE WAS  
19 RETURNING FROM THE LONG-TERM MEDICAL LEAVE, WERE THERE ANY  
20 DISCUSSIONS WITH THE THEN PRESIDENT AND THE OTHER OFFICERS OF  
21 THE COLLEGE REGARDING ISSUES WITH PROFESSOR BLOUGH'S RETURN FROM  
22 LEAVE?

23 A. YES.

24 Q. WHO WERE THE OTHER OFFICERS OF THE COLLEGE BESIDES YOU  
25 AND PRESIDENT WADDELL THAT HAD DISCUSSIONS REGARDING THE  
26 IMPENDING RETURN OF PROFESSOR BLOUGH?

1093

1 A. WELL, THERE WERE TWO DEANS. ONE WAS MIKE -- GOSH, THE

2 NAME IS SLIPPING.

3 Q. WOULD THAT BE SCHULTZ?

4 A. MICHAEL SCHULTZ. MICHAEL SCHULTZ. AND THE OTHER DEAN  
5 WAS DON JORDAN.

6 Q. AND WERE THERE ANY PARTICULAR CONCERNS THAT THE GROUP  
7 OF YOU WERE DISCUSSING REGARDING PROFESSOR BLOUGH'S RETURN IN  
8 2003?

9 A. THERE WERE. THERE WERE REALLY TWO CONCERNS. ONE, FOR  
10 MARCY HERSELF, WHETHER SHE WAS ACTUALLY CAPABLE OF RETURNING AND  
11 TEACHING; AND THE OTHER WAS FOR THE STUDENTS.

12 Q. LET'S START WITH THE CONCERN REGARDING PROFESSOR  
13 BLOUGH, AND THEN WE'LL GO -- WELL, WHAT WAS DISCUSSED ABOUT THE  
14 CONCERN REGARDING THE STUDENTS?

15 A. WELL, THERE HAD BEEN SOME PREVIOUS INCIDENTS BEFORE  
16 WHEN MARCY WENT ON LEAVE OF LEAVING CLASS, OF CRYING IN CLASS  
17 AND HAVING TO LEAVE.

18 Q. CRYING IN CLASS?

19 A. CRYING IN CLASS, AND JUST BEING VERY EMOTIONAL IN  
20 CLASS, SO THE STUDENTS WERE SUFFERING.

21 Q. WHAT WAS THE CONCERN THAT THE GROUP OF YOU OFFICERS  
22 DISCUSSED REGARDING MARCY HERSELF, PROFESSOR BLOUGH HERSELF?

23 A. WELL, IT WAS ABOUT MARCY, WHETHER SHE ACTUALLY HAD THE  
24 ABILITY TO RETURN TO CLASS AND WHETHER THAT WOULD BE GOOD FOR  
25 HER, GOOD FOR THE CLASS.

26 Q. NOW, PRIOR TO THIS TIME IN 2003, WHEN PROFESSOR BLOUGH

1 WAS COMING BACK FROM THE LONG MEDICAL LEAVE, HAD YOU, YOURSELF,  
2 HAD ANY PERSONAL CONVERSATIONS WITH PROFESSOR BLOUGH REGARDING  
3 HER VIEW OR HER FEELINGS ABOUT HER ABILITY TO TEACH AND THAT  
4 TOPIC?

5 A. YES, I DID.

6 Q. AND WAS THAT AROUND THE TIME SHE WENT OUT ON THE LEAVE  
7 ITSELF?

8 A. IT WAS PRIOR TO HER REQUESTING THE LONG-TERM  
9 DISABILITY LEAVE.

10 Q. AND DID YOU ACTUALLY ASSIST HER TO GET APPROVAL FOR  
11 THE MEDICAL LEAVE?

12 A. WELL, I DON'T KNOW IF I WOULD CALL IT "ASSIST HER,"  
13 BUT SHE CALLED ME AND WE TALKED ON THE PHONE, AND SHE ACTUALLY  
14 CAME TO MY OFFICE. AND SHE TOLD ME THAT SHE THOUGHT SHE WAS  
15 DISABLED. AND THAT'S WHEN I THOUGHT, AND I TOLD HER THAT I  
16 COULDN'T MAKE A JUDGMENT ON THAT. SHE WOULD HAVE TO GO TO THE  
17 HR DEPARTMENT AND COMPLETE THE APPROPRIATE FORMS AND DEAL WITH  
18 THE INSURANCE CARRIER.

19 Q. SO DID YOU HAVE YOUR HR DIRECTOR ASSIST PROFESSOR  
20 BLOUGH AT THAT TIME IN EARLY, YOU KNOW, 2000, 2001 TO GET HELP,  
21 LONG-TERM DISABILITY PAYMENTS FROM THE INSURANCE COMPANY?

22 A. WELL, THAT'S CORRECT. I SENT HER -- SHE WENT TO SEE  
23 TERRY MCDOWELL, WHO WAS THE DIRECTOR OF HUMAN RESOURCES AT THAT  
24 TIME. AND SHE DID COMPLETE THE PAPERWORK, AND WENT FORWARD AND  
25 WAS ELIGIBLE.

26 Q. OKAY.

1 SO THIS -- AROUND THE YEAR 2000 OR SO, BEFORE SHE WENT  
2 ON THE THREE-YEAR LEAVE, DID YOU AND SHE HAVE A CONVERSATION AT  
3 THAT TIME WHERE SHE SAID SHE THOUGHT SHE WAS DISABLED?

4 A. YES. AND SHE SAID SHE WAS FINE WHEN SHE WASN'T ON  
5 CAMPUS, BUT WHEN SHE GOT ON CAMPUS IN HER CLASSROOM, SHE WAS  
6 STRESSED, ANXIOUS, NERVOUS, THAT SHE JUST COULDN'T DEAL WITH  
7 BEING IN THE CLASSROOM, BUT SHE WAS FINE WHEN SHE WAS AWAY FROM  
8 THE CLASSROOM.

9 Q. SO WHEN SHE CAME BACK FROM THE LEAVE, THE THREE-YEAR  
10 LEAVE, DID YOU STILL HAVE A CONCERN WHETHER THERE WAS GOING TO  
11 BE A REPEAT OF HER FEELING ANXIOUS WHEN SHE CAME TO THE CAMPUS  
12 BUT OKAY WHEN SHE DIDN'T COME TO THE CAMPUS?

13 A. YES. YES.

14 Q. DID YOU DISCUSS THAT WITH YOUR COLLEAGUES, THE  
15 PRESIDENT AND THE VICE PRESIDENT?

16 A. WE DID. WE DISCUSSED IT.

17 Q. DID YOU ACTUALLY HAVE CONVERSATIONS WITH PROFESSOR  
18 BLOUGH AT THAT TIME AS WELL?

19 A. NO, I DID NOT.

20 Q. THAT WOULD BE FOR THE DEANS AND THE PRESIDENT TO DO?

21 A. RIGHT.

22 Q. IS THAT CORRECT?

23 A. THAT'S CORRECT.

24 Q. WHAT WAS THE UPSHOT OF THE TWO CONCERNS THE COLLEGE

25 HAD IN 2003; ONE FOR PROFESSOR BLOUGH AND ONE FOR THE STUDENTS?  
26 WAS THERE SOME DECISION MADE AT THAT TIME FOR A MEDICAL

1096

1 EVALUATION?

2 A. THERE WAS. WE DECIDED THAT WE NEEDED TO GET AN  
3 INDEPENDENT MEDICAL EXAMINER TO TALK TO MARCY AND MAKE A  
4 DETERMINATION.

5 Q. SO WAS THAT WHEN THE PROCESS WAS STARTED WHEREBY SHE  
6 CAME BACK TO WORK PART TIME AND THEN WORKED HER WAY BACK TO FULL  
7 TIME?

8 A. THAT'S CORRECT.

9 Q. HAD YOU HAD ANY EXPERIENCE --

10 SO WERE YOU INVOLVED AT THAT TIME WITH THE DECISION TO  
11 SELECT DR. MISSETT AS THE INDEPENDENT MEDICAL EVALUATOR FOR  
12 PROFESSOR BLOUGH?

13 A. I WAS. I RECOMMENDED THAT.

14 Q. AND HAD YOU HAD SOME EXPERIENCE WITH DR. MISSETT, NOT  
15 NECESSARILY PERSONAL EXPERIENCE, BUT HAD YOU BECOME AWARE OF  
16 DR. MISSETT DOING ANY WORK FOR A STUDENT OF THE COLLEGE THAT  
17 CAUSED YOU TO LOOK FAVORABLY ON HIM WHEN YOU WERE FIGURING OUT  
18 WHO SHOULD DO THE EVALUATION FOR PROFESSOR BLOUGH?

19 MR. LEBOWITZ: OBJECTION, LEADING.

20 THE COURT: OVERRULED.

21 THE WITNESS: YES. I THINK IT WAS ABOUT A YEAR BEFORE

22 THAT, WE HAD A STUDENT WITH PSYCHOLOGICAL AND EMOTIONAL PROBLEMS

23 THAT WAS IN HIS LAST SEMESTER. AND WE WANTED HIM TO  
24 SUCCESSFULLY COMPLETE THAT SEMESTER AND GRADUATE. AND WE USED  
25 DR. MISSETT, AND HE WAS VERY EFFECTIVE IN WORKING US THROUGH  
26 THAT PROCESS.

1097

1 MR. VARTAIN: Q. WHAT DID DR. MISSETT DO TO HELP THE  
2 COLLEGE, HELP THAT STUDENT, YOU KNOW, LIKE IN THAT TIME, 2002 OR  
3 2003? THAT IS BEFORE YOU APPOINTED DR. MISSETT AS THE MEDICAL  
4 EVALUATOR FOR PROFESSOR BLOUGH.

5 A. HE ACTUALLY MET WITH US AND TALKED US THROUGH A  
6 PROCESS THAT ALLOWED US TO HAVE THE STUDENT COMPLETE THEIR WORK  
7 OFF CAMPUS AT HOME THROUGH INDEPENDENT STUDIES, COMPLETE THEIR  
8 DEGREE. AND THE STUDENT WAS ABLE TO COME BACK AND WALK THROUGH  
9 GRADUATION AND PARTICIPATE IN THE GRADUATION CEREMONIES.

10 Q. SO THAT WAS A SUCCESSFUL RESULT, BOTH FOR THE STUDENT  
11 WITH THE HEALTH PROBLEM AND FOR THE COLLEGE GETTING THE STUDENT  
12 TO GRADUATE?

13 A. ABSOLUTELY.

14 Q. AT THAT TIME, DID YOU COME TO LEARN OF ANYTHING ABOUT  
15 DR. MISSETT INsofar AS ANY CONTACT WITH WORKING WITH COLLEGES  
16 AND UNIVERSITIES?

17 A. I DID. THROUGH THAT INCIDENT, I LEARNED THAT HE HAD  
18 WORKED NUMEROUS TIMES WITH STANFORD UNIVERSITY IN DEALING WITH  
19 STUDENTS AND FACULTY THERE, AND THAT HE WAS A VERY WELL-KNOWN  
20 DOCTOR TO WORK WITH.

21 Q. WHAT, IF ANYTHING, OF WHAT YOU UNDERSTOOD OF  
22 DR. MISSETT'S EXPERIENCE WORKING WITH STUDENTS AND FACULTY AT  
23 STANFORD, HOW DID THAT IMPACT YOUR DECISION TO SELECT HIM TO  
24 HELP WITH THE EVALUATION OF PROFESSOR BLOUGH IN 2003?

25 A. WELL, I DON'T KNOW IF IT WAS SIMPLY THAT. IT WAS  
26 WORKING WITH THE STUDENT.

1098

1 Q. AND ALSO WORKING WITH THE MENLO STUDENT?

2 A. THAT WAS SO SUCCESSFUL, AND HE WAS VERY CLOSE BY. HE  
3 WAS TWO BLOCKS AWAY FROM THE CAMPUS, SO IT WAS CONVENIENT ALSO.  
4 AND JUST HIS ENTIRE REPUTATION.

5 Q. LET'S FAST FORWARD A LITTLE BIT, THEN, TO 2006. YOU  
6 WERE STILL THE VICE PRESIDENT IN THE SPRING OF 2006?

7 A. I WAS.

8 Q. AND AT THAT TIME, CARLOS LOPEZ WAS THE PRESIDENT; IS  
9 THAT RIGHT?

10 A. THAT'S CORRECT.

11 Q. AT THAT TIME, DID YOU HAVE A NEW, A DIFFERENT HR  
12 DIRECTOR ON BOARD?

13 A. I DID. I HAD DONE SOME RESTRUCTURING AND CREATED A  
14 DIRECTOR OF ADMINISTRATION, SO THERE WAS A NEW INDIVIDUAL.

15 Q. AND SO WAS MS. SAPRAI THAT NEW INDIVIDUAL IN THE  
16 SPRING OF 2006?

17 A. YES. STEPHANIE SAPRAI.

18 Q. SO SHE HAD JUST COME ONBOARD?

19 A. THAT'S CORRECT.

20 Q. DURING THE TIME YOU WERE BREAKING HER IN AND BEFORE  
21 SHE CAME, WERE YOU HAVING TO SPEND MORE TIME WITH HR FUNCTIONS  
22 THAN YOU NORMALLY WOULD HAVE?

23 A. PROBABLY TO SOME DEGREE.

24 Q. DID YOU PARTICIPATE IN THAT SPRING OF 2006 IN TALKING  
25 TO PRESIDENT LOPEZ ABOUT HIS DECISION TO SEND PROFESSOR BLOUGH  
26 BACK TO DR. MISSETT FOR AN EVALUATION?

1099

1 A. I DID.

2 Q. WHAT, IF ANYTHING, DID YOU RECOMMEND AT THAT TIME?

3 A. I RECOMMENDED THAT WE ASK MARCY TO GO BACK TO SEE  
4 DR. MISSETT, BECAUSE HE WAS FAMILIAR WITH HER AND WITH THE  
5 COLLEGE AND WITH THE SITUATION THAT OCCURRED BEFORE.

6 Q. BY "THE SITUATION THAT HAD OCCURRED," THAT DR. MISSETT  
7 WAS FAMILIAR WITH, WHAT DID YOU MEAN BY THAT? DO YOU MEAN  
8 2003 --

9 A. RIGHT.

10 Q. -- WHEN HE HAD WORKED WITH HER TO GET HER BACK TO  
11 WORK?

12 A. THAT'S CORRECT.

13 Q. IN 2003, WHAT DID THE COLLEGE REALLY WANT TO HAPPEN  
14 WITH REGARD TO PROFESSOR BLOUGH, AND THEN THE SAME QUESTION FOR  
15 2006, AS FAR AS YOU CAN REMEMBER? WHAT WAS THE OUTCOME THAT THE  
16 COLLEGE FELT WOULD BE THE BEST THING?



17 A. I THINK WE ALL WANTED MARCY TO BE SUCCESSFUL. AND IF  
18 THAT MEANT COMING BACK AND WORKING HALF TIME BECAUSE THAT WAS  
19 WHAT SHE WAS CAPABLE OF DOING, THAT WOULD BE THE SOLUTION. IF  
20 SHE COULD WORK FULL TIME, THAT WOULD BE GREAT ALSO.

21 Q. SO WHAT WAS THE POINT OF HAVING THE MEDICAL EVALUATOR  
22 TO HELP MAKE THAT DECISION? WHAT DID YOU WANT TO ACHIEVE WITH  
23 GETTING A MEDICAL EVALUATION?

24 A. WELL, IT WAS SOMETHING WE COULD NOT DETERMINE. WE  
25 NEEDED THAT OUTSIDE MEDICAL ADVICE TO MAKE THAT DETERMINATION.

26 MR. VARTAIN: THANK YOU.

1100

1 THE COURT: CROSS-EXAMINATION?

2 MR. LEBOWITZ: JUST BRIEFLY, YOUR HONOR.

3

4 CROSS-EXAMINATION

5 BY MR. LEBOWITZ:

6 Q. DR. HITE?

7 A. NO. MISTER.

8 Q. I'M SORRY. I HAVEN'T MET YOU BEFORE SO I WANTED TO  
9 MAKE SURE.

10 IN THE SPRING 2006 SEMESTER, DID YOU EVER OBSERVE  
11 PROFESSOR BLOUGH IN THE CLASSROOM?

12 A. NO, I DID NOT.

13 Q. AND PRIOR TO THIS CONVERSATION YOU SAID YOU HAD WITH  
14 PRESIDENT LOPEZ ABOUT SENDING PROFESSOR BLOUGH BACK TO

15 DR. MISSETT, HAD YOU SEEN ANY STUDENT EVALUATIONS FOR THAT  
16 SPRING SEMESTER FOR PROFESSOR BLOUGH?

17 A. I DON'T KNOW IF I SAW A STUDENT EVALUATION. I SAW  
18 SOME REPORTS AND MARCY'S OWN INITIATIVE.

19 Q. SO IT WAS PRESIDENT LOPEZ'S DECISION TO MAKE IN SPRING  
20 OF '06; IS THAT RIGHT?

21 A. THAT'S CORRECT. HE WAS PRESIDENT.

22 Q. AND IT WAS HIS DECISION TO SEND PROFESSOR BLOUGH TO  
23 THE MEDICAL EXAM?

24 A. THAT'S CORRECT.

25 MR. LEBOWITZ: THAT'S ALL I HAVE.

26 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

1101

1 MR. VARTAIN: NO. NOTHING ELSE, YOUR HONOR.

2 THE COURT: MAY MR. HITE BE EXCUSED?

3 MR. VARTAIN: YES.

4 THE COURT: MR. HITE, THANK YOU FOR YOUR TESTIMONY.

5 YOU ARE FREE TO GO.

6 MR. VARTAIN: MAY COUNSEL HAVE A ONE-MINUTE SIDE-BAR  
7 WITH YOU REGARDING --

8 THE COURT: SURE. OF COURSE.

9 LADIES AND GENTLEMEN, I'M JUST GOING TO STEP OUTSIDE.  
10 FEEL FREE TO STAND UP AND STRETCH.

11 (WHEREUPON, THERE WAS A DISCUSSION OUTSIDE  
12 THE PRESENCE OF THE JURY.)

13 THE COURT: WE ARE BACK ON THE RECORD.

14 MR. VARTAIN, WOULD YOU LIKE TO CALL YOUR NEXT WITNESS?

15 MR. VARTAIN: YES, I WOULD, YOUR HONOR. DR. JAMES

16 KELLY.

17 THE COURT: DR. KELLY, IF YOU'D COME FORWARD TO THE

18 WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

20 (WHEREUPON, THE WITNESS WAS SWORN.)

21 THE WITNESS: I DO.

22 THE CLERK: PLEASE BE SEATED.

23 WOULD YOU PLEASE STATE YOUR FIRST NAME AND LAST NAME

24 AND SPELL THEM BOTH FOR THE RECORD.

25 THE WITNESS: JAMES KELLY. JAMES, J-A-M-E-S; KELLY,

26 K-E-L-L-Y.

1102

1 JAMES KELLY, PH.D.,

2 DULY SWORN, TESTIFIED AS FOLLOWS:

3

4 DIRECT EXAMINATION

5 BY MR. VARTAIN:

6 Q. WHAT'S YOUR CURRENT TITLE WITH THE COLLEGE, MENLO

7 COLLEGE, DR. KELLY?

8 A. I'M THE EXECUTIVE VICE PRESIDENT AND PROVOST.

9 Q. AND TO WHOM DO YOU REPORT?

10 A. THE PRESIDENT.

11 Q. WHEN DID YOU COME TO MENLO COLLEGE FOR THE FIRST TIME?  
12 A. MARCH 29, 2007.  
13 Q. AND WHERE DID YOU COME FROM?  
14 A. I CAME FROM CAL STATE EAST BAY.  
15 Q. EAST BAY UP IN --  
16 A. IN HAYWARD, FORMERLY CAL STATE HAYWARD.  
17 Q. WHAT WAS YOUR POSITION AT CAL STATE HAYWARD?  
18 A. I WAS THE INTERIM PROVOST WHEN I LEFT.  
19 Q. WHAT IS A PROVOST? IT'S A WEIRD WORD.  
20 A. THE PROVOST IS THE CHIEF ACADEMIC OFFICER, THAT ALL  
21 ACADEMIC PROGRAMS, ACCREDITATIONS, THE HIRING, EVALUATION OF  
22 FACULTY, ANYTHING THAT HAS TO DO WITH THE ACADEMIC SIDE OF THE  
23 COLLEGE, THE PROVOST IS RESPONSIBLE FOR.  
24 Q. SO AT MENLO COLLEGE, ARE YOU RESPONSIBLE FOR ALL THE  
25 FACULTY MEMBERS, THE HIRING, FIRING, SUPERVISION, EVALUATION?  
26 A. I AM.

1103

1 Q. DID YOU DO THAT JOB ON AN INTERIM BASIS AT CAL STATE  
2 HAYWARD?  
3 A. I DID.  
4 Q. HOW LONG DID YOU DO IT AT CAL STATE HAYWARD?  
5 A. APPROXIMATELY TWO YEARS.  
6 Q. AND WHAT DID YOU DO BEFORE THOSE TWO YEARS AT CAL  
7 STATE HAYWARD?  
8 A. I SPENT 27 YEARS IN THE CAL STATE SYSTEM. I STARTED

9 AT CAL STATE LONG BEACH, WHERE I WAS THE DIRECTOR OF THE SOCIAL  
10 WORK PROGRAM FOR 17 YEARS.

11 Q. DIRECTOR OF WHAT?

12 A. THE SOCIAL WORK PROGRAM FOR 17 YEARS.

13 Q. ARE YOU A SOCIAL WORKER?

14 A. I AM A SOCIAL WORKER BY TRADE.

15 Q. WHAT WAS YOUR TRAINING TO BECOME A SOCIAL WORKER?

16 A. I HAVE A MASTER'S IN SOCIAL WORK FROM THE UNIVERSITY  
17 OF TENNESSEE. I HAVE A DOCTORATE IN POLICY PLANNING  
18 ADMINISTRATION IN SOCIAL WELFARE FROM GREENWICH UNIVERSITY. AND  
19 I HAVE A TWO-YEAR POST DOC FROM THE SCHOOL OF MEDICINE  
20 DEPARTMENT OF PSYCHIATRY AT UCLA, ALSO VETERAN ADMINISTRATION  
21 MEDICAL CENTER.

22 Q. TELL THE JURY WHAT A POST DOC IS. A POST DOCTORAL  
23 PROGRAM.

24 A. IT'S USUALLY ADDITIONAL TRAINING AFTER YOU HAVE YOUR  
25 DOCTORATE. I STARTED MY CAREER AT THE UNIVERSITY OF HAWAII. I  
26 SPENT THREE YEARS AT THE COLLEGE OF HEALTH SCIENCES THERE.

1104

1 AFTER THAT EXPERIENCE, I DECIDED THAT I WANTED TO GET A DEEPER  
2 UNDERSTANDING OF THE CLINICAL ASPECTS OF SOCIAL WORK, SO I  
3 APPLIED FOR A POST DOC THROUGH UCLA AND WAS PLACED AT THE  
4 COLLEGE OF VETERAN'S ADMINISTRATION MEDICAL CENTER IN THE  
5 DEPARTMENT OF PSYCHIATRY FOR TWO YEARS.

6 Q. SO YOU'RE A MENTAL HEALTH PROFESSIONAL BY TRADE?

7 A. I AM. AND I'M LICENSED IN THE STATE OF CALIFORNIA.

8 Q. WHAT'S YOUR LICENSE IN CALIFORNIA?

9 A. I'M A LICENSED CLINICAL SOCIAL WORKER.

10 Q. DOES THAT MEAN YOU KNOW AND HAVE A SENSE OF DIFFERENT  
11 MENTAL DISORDERS, EVEN THOUGH YOU'RE NOT A MEDICAL DOCTOR  
12 YOURSELF?

13 A. YES.

14 Q. WHEN YOU CAME TO MENLO COLLEGE IN THE SPRING OF 2007,  
15 DID IT COME TO YOUR ATTENTION THAT DR. MISSETT HAD ISSUED A  
16 REPORT SUGGESTING OR RECOMMENDING THAT PROFESSOR BLOUGH MAY  
17 RETURN TO WORK AT A 50 PERCENT TIME LEVEL?

18 A. YES.

19 Q. AND HOW DID THAT INFORMATION COME TO YOUR ATTENTION,  
20 IF YOU CAN RECALL?

21 A. IT WAS AN INDEPENDENT MEDICAL EXAM. THE FORM LETTER  
22 THAT I SAW, WHICH BASICALLY STATED THAT PROFESSOR BLOUGH WAS  
23 ABLE TO COME BACK HALF TIME. SHE WOULD NEED TO HAVE HER CLASSES  
24 SCHEDULED IN SUCH A WAY SO THAT SHE HAD TIME TO REST IN BETWEEN;  
25 SHE WOULD NEED TO HAVE SMALL CLASSROOMS. AND WE MADE THE  
26 ACCOMMODATION.

1105

1 Q. WHAT DO YOU MEAN BY "WE MADE THE ACCOMMODATION"?

2 A. IT'S A TEAM-TYPE OF DECISION, AS FAR AS YOU WORK WITH  
3 THE ACADEMIC DEAN ON THE COURSES AND WHAT ARE THE BEST COURSES.

4 Q. WHO WAS THE ACADEMIC DEAN?

5 A. LOWELL PRATT WAS THE ACADEMIC DEAN. AND WE LOOKED AT  
6 WHAT SHE HAD TAUGHT BEFORE, SO THAT WHAT SHE WAS SUCCESSFUL IN  
7 AND WHAT WOULD NOT TAKE UP A LOT OF PREPARATION FOR HER TO GET  
8 UP TO SPEED. SO WE GAVE HER "DIVERSITY IN THE WORKPLACE" AND  
9 "WOMEN IN BUSINESS," WHICH SHE HAD TAUGHT VERY SUCCESSFULLY IN  
10 THE PAST, AND ASSIGNED THOSE TWO CLASSES TO HER IN SMALL  
11 CLASSROOMS WITH, I THINK, A TWO-HOUR BREAK IN BETWEEN THE TWO.

12 Q. WHEN YOU DID THAT, DID YOU GIVE INSTRUCTIONS TO THE  
13 DEAN AND ALL THE SUPPORT TEAM TO IMPLEMENT WHATEVER -- WHAT THE  
14 ACCOMMODATIONS WERE FOR HER?

15 A. YES.

16 Q. PRESIDENT HAIGHT CAME AND TESTIFIED EARLIER IN THE  
17 TRIAL THAT HE SIGNED THAT CONTRACT LETTER, OFFER LETTER TO  
18 PROFESSOR BLOUGH AT THE RECOMMENDATION OF -- THAT YOU HAD MADE,  
19 THAT YOU SUGGESTED THAT HE GRANT THAT OFFER. IS THAT THE CASE?

20 A. YES.

21 Q. WHAT WERE YOUR DISCUSSIONS WITH THE PRESIDENT  
22 REGARDING RETURNING PROFESSOR BLOUGH TO ACTIVE WORK?

23 A. THE PRESIDENT HAS A PHILOSOPHY OF DOING THE BEST THAT  
24 CAN BE DONE AS FAR AS FOR THE FACULTY AND THE STUDENTS. AND IN  
25 THE SITUATION OF PROFESSOR BLOUGH, WE WERE REALLY EXCITED ABOUT  
26 THE POSSIBILITY OF GETTING HER BACK FULL TIME. WE ARE A SMALL

1106

1 INSTITUTION, VERY SMALL NUMBER OF FACULTY. SHE HAD HISTORY OF  
2 BEING VERY SUCCESSFUL, AND SHE HAD COME BACK TO US ONCE BEFORE

3 AFTER A MEDICAL LEAVE. AND WE WERE EXCITED THAT THE INDEPENDENT  
4 MEDICAL EXAMINER, AT THIS POINT IN TIME, HAD SAID THAT SHE COULD  
5 COME BACK. AND SO AFTER REVIEWING, AND READING AND TALKING TO  
6 PEOPLE, I WAS REAL CONFIDENT ABOUT MAKING THAT RECOMMENDATION TO  
7 THE PRESIDENT BECAUSE ALL DECISIONS ON CAMPUS ARE MADE BY THE  
8 PRESIDENT.

9 Q. THERE WAS A LETTER THAT STEPHANIE SAPRAI SENT ALONG  
10 WITH THAT CONTRACT, AND I THINK YOU WERE HERE AT THAT TIME. I'M  
11 NOT SURE IN THE TESTIMONY WHERE IT SAID, WHERE STEPHANIE SAPRAI  
12 SAID IN HER LETTER TO PROFESSOR BLOUGH, "WE REALLY WANT AND HOPE  
13 THAT YOU'RE GOING TO COME BACK AND RESUME TEACHING IN THE FALL."

14 WAS THAT YOUR FEELING OF WHAT YOU WANTED TO HAPPEN AT  
15 THE TIME YOU MADE THIS RECOMMENDATION TO THE PRESIDENT?

16 A. ABSOLUTELY.

17 Q. YOU DIDN'T KNOW HER PERSONALLY, DID YOU?

18 A. NEVER SAW HER UNTIL THE FIRST DAY IN COURT.

19 Q. SO ON WHAT BASIS WAS IT YOUR HOPE THAT SHE WOULD  
20 ACCEPT THAT OFFER AND COME BACK TO WORK?

21 A. ON REVIEWING THE RECORD, AS FAR AS ACADEMIC AFFAIRS,  
22 AS FAR AS HER HISTORY AND HOW SUCCESSFUL SHE HAD BEEN TEACHING  
23 SPECIFIC CLASSES.

24 Q. HAS PROFESSOR BLOUGH EVER, THROUGHOUT -- FROM THE TIME  
25 YOU CAME TO CAMPUS, WHEN YOU FIRST CAME TO MENLO IN THE SPRING  
26 OF 2007, UP UNTIL THIS CASE STARTED -- AND I MEAN LAST WEEK OR



1 TWO WEEKS AGO, HAS SHE EVER ASKED YOU FOR A MEETING OR TO SIT  
2 DOWN AND TALK TO YOU?

3 A. NO.

4 Q. HAS SHE EVER ASKED, TO YOUR KNOWLEDGE, THE PRESIDENT  
5 FOR A MEETING TO SIT DOWN AND TALK TO YOU?

6 A. NO.

7 Q. WHEN YOU HEARD THAT PROFESSOR BLOUGH HAD REJECTED THE  
8 REQUEST OF THE COLLEGE TO COME BACK TO WORK, WHAT DID YOU HAVE  
9 TO DO TO CHANGE YOUR COURSE ASSIGNMENTS FOR THE FALL? BECAUSE  
10 THAT REJECTION CAME IN RIGHT BEFORE SCHOOL STARTED, DIDN'T IT?

11 A. IT WAS VERY CLOSE TO THE BEGINNING OF THE SEMESTER,  
12 AND WE HAD TO SWITCH GEARS AND TRY TO FIND A FACULTY MEMBER AS  
13 FAR AS TO, I BELIEVE, MOVE OUT OF SOME OTHER CLASSES, SO TO  
14 BASICALLY BE ABLE TO COVER THE SCHEDULE OF THOSE CLASSES.

15 Q. WHEN YOU RECOMMENDED TO THE PRESIDENT THAT HE SEND THE  
16 CONTRACT FOR HALF TIME, WAS THAT ON THE BASIS OF DR. MISSETT'S  
17 RECOMMENDATION?

18 A. ABSOLUTELY.

19 Q. WAS THERE ANYTHING ABOUT HER CANCER OR HER MENTAL  
20 HEALTH CONDITIONS, PER SE, THAT, YOU KNOW, YOU DIDN'T WANT HER  
21 HERE FULL TIME?

22 A. NO. I KNEW NOTHING ABOUT THE CANCER, IN FACT.

23 Q. SO ALL YOU KNEW OF WAS IN THE MEDICAL REPORT OF  
24 DR. MISSETT?

25 A. RIGHT, WHICH BASICALLY SAID THAT SHE WAS READY TO COME  
26 BACK.

1 Q. DID IT SAY ANYTHING ABOUT CANCER? DID IT SAY ANYTHING  
2 ABOUT HER MENTAL HEALTH PROBLEMS?

3 A. IT DID NOT.

4 Q. IN THE LETTER THAT MS. SAPRAI SENT TO PROFESSOR  
5 BLOUGH, THAT ENCLOSED THE CONTRACT OFFER FROM THE PRESIDENT, IT  
6 SAID SOMETHING ABOUT IF SHE WOULD LIKE TO MEET TO TALK ABOUT ANY  
7 OTHER HELP THAT SHE MIGHT NEED TO GET HER BACK IN THE CLASS, SHE  
8 SHOULD SET A MEETING. DID YOU EVER HEAR THAT PROFESSOR BLOUGH  
9 WANTED TO HAVE A MEETING TO TALK ABOUT ANY OTHER THINGS THE  
10 COLLEGE COULD DO TO GET HER BACK IN GEAR?

11 A. NO.

12 Q. YOU REMEMBER THE PRESIDENT'S CONTRACT OFFER DID NOT  
13 GUARANTEE HER A SIX-YEAR CONTRACT, BUT SAID SHE COULD BE  
14 EVALUATED FOR A SIX-YEAR CONTRACT DURING THE COMING YEAR?

15 A. YES.

16 Q. WAS THAT WITH YOUR APPROVAL?

17 A. YES.

18 Q. WAS IT YOUR UNDERSTANDING WHEN YOU APPROVED THE  
19 PRESIDENT -- OR RECOMMENDED TO THE PRESIDENT THAT HE PUT THAT IN  
20 THE LETTER, THAT SHE WAS NOT ON A SIX-YEAR GUARANTEE, THAT SHE  
21 HADN'T GOTTEN A SIX-YEAR GUARANTEE, THAT THAT PART WAS IN LIMBO  
22 WHEN PRESIDENT LOPEZ LEFT OFFICE?

23 A. YES.

24 MR. VARTAIN: THANK YOU, DR. KELLY.

25 THE COURT: CROSS-EXAMINATION?

1 CROSS-EXAMINATION

2 BY MR. LEBOWITZ:

3 Q. GOOD AFTERNOON, DR. KELLY.

4 A. GOOD AFTERNOON.

5 Q. OR GOOD MORNING. I'M SORRY. WE HAVE ALL BEEN HERE  
6 TOO LONG, I GUESS. GETTING READY TO BREAK FOR THE DAY.

7 JUST TO BE CLEAR, THE FIRST TIME YOU MET PROFESSOR  
8 BLOUGH WAS IN THIS COURTROOM, RIGHT?

9 A. IT WAS.

10 Q. NOW, OVER THE SUMMER OF 2007, AFTER PRESIDENT HAIGHT  
11 HAD SENT THE LETTER WITH THE OFFER OF RE-EMPLOYMENT FOR THE  
12 FALL, DID YOU SEE ANY OF THE E-MAIL CORRESPONDENCE BETWEEN  
13 PROFESSOR BLOUGH AND THE COLLEGE?

14 A. I DID NOT.

15 Q. SO DID YOU LEARN IN ANY WAY WHAT PROFESSOR BLOUGH'S  
16 OBJECTIONS WERE TO THE HALF-TIME OFFER?

17 A. I DID NOT.

18 Q. NOBODY TOLD YOU THAT?

19 A. NO.

20 MR. LEBOWITZ: I HAVE NO MORE QUESTIONS.

21 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

22 MR. VARTAIN: NO. THANK YOU, YOUR HONOR.

23 THE COURT: MR. KELLY, THANK YOU FOR YOUR TESTIMONY.

24 YOU MAY GO BACK TO YOUR SEAT.

25 MR. VARTAIN: BACK TO THE BACK OF THE CLASS.

26 THE COURT: MR. VARTAIN, ANY OTHER DEFENSE WITNESSES?

1110

1 MR. VARTAIN: NO, YOUR HONOR.

2 THE COURT: IS THERE ANY REBUTTAL CASE BY THE

3 PLAINTIFF?

4 MR. VARTAIN: YOUR HONOR, I HAVEN'T RESTED YET.

5 THE COURT: I'M SORRY.

6 MR. VARTAIN: THAT'S OKAY.

7 THE COURT: WAS THERE MORE?

8 MR. VARTAIN: YOU HAVE POWER BUT THAT'S --

9 THE COURT: NO. NO. YOU HAVE TO REST. I SHOULD HAVE  
10 ASKED YOU IF YOU RESTED.

11 MR. VARTAIN: I'M TIRED, I'M READY TO REST. I WANT TO  
12 PUT IN -- I CAN DO THIS WHEN WE NEXT COME ON, BUT YOU HAD  
13 GIVEN -- I TALKED TO OPPOSING COUNSEL. THE VIDEOTAPE OF THE  
14 DEPOSITION OF THE PLAINTIFF, PROFESSOR BLOUGH, THAT WAS PLAYED  
15 IN THE OPENING STATEMENT, WE'VE AGREED THAT IT NEED NOT BE  
16 PLAYED AGAIN TO BE PUT IN EVIDENCE. THE PARTIES HAVE STIPULATED  
17 THAT THE TRANSCRIPT OF IT WILL BE PUT IN EVIDENCE.

18 THE COURT: WE CAN DEFINITELY DEAL WITH THAT  
19 HOUSEKEEPING WHEN THE JURY IS GONE.

20 MR. VARTAIN: YES.

21 THE COURT: SO WITH THE EXCEPTION OF HOUSEKEEPING OF

22 REVIEWING THE STATE OF THE RECORD, DOES THE DEFENSE REST?

23 MR. VARTAIN: YES.

24 THE COURT: THANK YOU.

25 IS THERE REBUTTAL CASE BY PLAINTIFF?

26 MR. LEBOWITZ: THERE IS NOT, YOUR HONOR.

1111

1 THE COURT: SO PLAINTIFF RESTS AS WELL.

2 MR. LEBOWITZ: YES.

3 THE COURT: ALL RIGHT.

4 LADIES AND GENTLEMEN, WE HAVE NOW COMPLETED THE  
5 PRESENTATION OF EVIDENCE. THIS ACTUALLY WENT A LITTLE BIT  
6 EARLIER THAN I HAD THOUGHT, SO WE CAN ALL BE PLEASED WITH THAT.  
7 ON MONDAY WHEN YOU RETURN, WE'RE GOING TO START RIGHT AWAY WITH  
8 THE PRESENTATION OF THE JURY INSTRUCTIONS. THAT USUALLY TAKES  
9 ME ABOUT 45 MINUTES TO READ TO YOU. YOU HEARD ME READ THEM  
10 BEFORE. IT'S NOT EXCITING. IT'S VERY IMPORTANT, BUT IT'S NOT A  
11 DRAMATIC PRESENTATION SO JUST BE READY FOR THAT.

12 AS I SAID TO YOU AT THE BEGINNING, YOU'LL GET A FULL  
13 COPY OF THE JURY INSTRUCTIONS SO YOU DON'T NEED TO BE READY TO  
14 TAKE RAPID NOTES. BUT SOMETIMES JURORS LIKE TO TAKE NOTES JUST  
15 TO REMEMBER WHAT ORDER THEY CAME IN. AFTER I GIVE YOU THE JURY  
16 INSTRUCTIONS, THEN THE ATTORNEYS WILL BE ABLE TO MAKE THEIR  
17 FINAL CLOSING ARGUMENTS TO YOU. WHEN THEY ARE DONE, THEN I WILL  
18 GIVE YOU THE VERY FINAL INSTRUCTIONS, WHICH HAVE TO DO WITH YOUR  
19 ROLE AS DELIBERATING JURORS, AND THEN I WILL SEND YOU OFF TO THE

20 JURY ROOM. AND THEN WE WILL ALL BE HERE AT YOUR BECK AND CALL,  
21 ESSENTIALLY.

22 I'LL EXPLAIN ALL OF THAT ON MONDAY, BUT I JUST WANT  
23 YOU TO UNDERSTAND WHAT THE SEQUENCE OF EVENTS IS. ONCE THE CASE  
24 IS IN YOUR HANDS, YOU ARE REALLY IN CHARGE OF HOW YOUR  
25 DELIBERATIONS GO. AND I WILL TALK TO YOU ABOUT THAT IN GREAT  
26 DETAIL NEXT WEEK, SO DON'T WORRY ABOUT THAT AT ALL. TODAY WE

1112

1 ARE DONE.

2 NOW THAT YOU'VE HEARD ALL THE EVIDENCE, THE NATURAL  
3 INCLINATION IS TO START PUTTING ALL THE PUZZLE PIECES TOGETHER.  
4 REMEMBER, NO HOMEWORK IN JURY DUTY. I REALLY NEED YOU TO LET IT  
5 REST. I WANT YOU TO DISCUSS ALL OF THIS IN DELIBERATIONS. I  
6 ALSO WANT YOU TO LISTEN TO THE CLOSING ARGUMENTS OF THE  
7 ATTORNEYS AND TO HEAR THE INSTRUCTIONS BEFORE YOU PUT EVERYTHING  
8 TOGETHER.

9 AND SO, JUST LIKE I'VE SAID TO YOU EVERY DAY, BUT I  
10 KNOW IT GETS HARDER AND HARDER OVER THIS TWO-DAY WEEKEND. LEAVE  
11 IT ALONE; PUT IT ASIDE. DON'T TALK ABOUT IT. I KNOW YOU  
12 HAVEN'T TALKED ABOUT IT YET. DON'T TALK ABOUT IT NOW. DON'T GO  
13 ON THE INTERNET. DON'T LOOK IN THE DICTIONARY. DON'T TALK TO  
14 ANYONE. WHEN YOU'RE RELEASED FROM JURY DUTY YOU CAN DO ALL OF  
15 THAT, BUT IT'S VERY IMPORTANT THAT YOU ALL STICK TOGETHER AND  
16 YOU MANAGE THE CASE AS I PARCEL IT OUT TO YOU, ESSENTIALLY. SO  
17 I KNOW YOU'VE DONE THAT, BUT I WANT TO BE REALLY CLEAR.

18           THERE'S STILL TWO IMPORTANT PARTS TO COME BEFORE YOU  
19 CAN DELIBERATE. SOME OF YOU I KNOW ARE GOING TO GO BACK TO WORK  
20 THIS AFTERNOON, AND I'M SURE YOU HAVE MOUNTAINS ON YOUR DESK OR  
21 WHATEVER IT IS THAT YOU DO. SOME OF US ARE GOING TO BE MAKING  
22 THE MAD DASH TO BUY THOSE CHRISTMAS PRESENTS OVER THE WEEKEND.  
23 SO THERE'S PLENTY TO DO THAT'S NOT ABOUT THIS CASE.

24           SO LEAVE THOSE NOTEBOOKS AND BADGES ON YOUR CHAIRS.  
25 HAVE A GOOD WEEKEND. AND SEE YOU MONDAY MORNING AT  
26 9:00 O'CLOCK.

1113

1           (WHEREUPON, THE JURORS EXITED THE COURTROOM.)

2           THE COURT: WE'RE BACK ON THE RECORD OUTSIDE THE  
3 PRESENCE OF THE JURY.

4           COUNSEL, I'M GOING TO ASK THAT YOU REVIEW THE CLERK'S  
5 RECORD ON ALL OF THE EXHIBITS. AND YOU MAY DO ONE OF TWO  
6 THINGS. IF YOU BELIEVE THAT A DOCUMENT YOU DISCUSSED ON THE  
7 RECORD, EITHER YOU NEGLECTED TO OFFER IT IN EVIDENCE OR YOU  
8 BELIEVE THE CLERK'S RECORD IS NOT COMPLETE, PLEASE LET ME KNOW.  
9 IF YOU HAVE LAID A FOUNDATION FOR IT ON THE RECORD AND FORGOT TO  
10 MOVE IT INTO EVIDENCE, YOU CAN DO IT OUTSIDE THE PRESENCE OF THE  
11 JURY. IT'S NO PROBLEM.

12           IF IT'S ONE YOU NEVER DISCUSSED BUT YOU BOTH AGREE  
13 THAT IT MAY GO INTO EVIDENCE, ALL YOU NEED TO DO IS TO LET US  
14 KNOW. WE CAN PUT IT ON THE RECORD AT SOME OTHER TIME THAT YOU  
15 BOTH AGREE OR YOU CAN PREPARE A BRIEF DOCUMENT INDICATING THAT

16 YOU BOTH STIPULATE THAT THE FOLLOWING DOCUMENTS COME INTO  
17 EVIDENCE, AND IF YOU BOTH SIGN IT THAT WILL MAKE A RECORD. SO  
18 THAT PART SHOULD BE EASY FOR US TO DEAL WITH.

19 AS TO THE PORTIONS OF THE DEPOSITION THAT WERE PLAYED,  
20 ALL I NEED FOR THAT IS THE TRANSCRIPT OF THOSE PORTIONS. SO I  
21 NEED THAT EXTRACTED INTO A DOCUMENT. AND IF THAT'S NOT READY  
22 TODAY YOU CAN BRING THAT IN ON MONDAY. THAT SHOULDN'T BE A  
23 PROBLEM BUT I DON'T THINK IT'S ENOUGH JUST TO LODGE THE FULL  
24 FOUR-DAY DEPOSITION TRANSCRIPT.

25 MR. VARTAIN: OH, NO. I'VE GOT THAT ALREADY.

26 THE COURT: BUT IF THAT'S MONDAY THAT IT COMES IN,

1114

1 THAT'S ABSOLUTELY FINE. AND I DON'T THINK THAT WILL BE A  
2 PROBLEM. AND IF THE JURY WERE TO ASK TO HEAR SOME OF THAT, IT  
3 WOULD BE READ BACK TO THEM. IT WOULD NOT BE PLAYED TO THE JURY.  
4 IT DIDN'T COME IN AS A VIDEOTAPE. IT WOULD JUST BE READ LIKE  
5 ANY OTHER TESTIMONY, BECAUSE THAT'S WHAT IT IS. IT'S TESTIMONY.

6 MR. VARTAIN: YOU MEAN, IF DURING THEIR DELIBERATIONS  
7 THEY WANT --

8 THE COURT: I WOULD NOT LET THEM SEE IT AGAIN. I'M  
9 NOT BRINGING THE WITNESSES BACK TO REPLAY THEIR TESTIMONY  
10 EITHER.

11 MR. VARTAIN: I MAY PLAY SOME OF IT IN MY CLOSING.

12 THE COURT: YOU'RE ABSOLUTELY WELCOME TO DO THAT; OF  
13 COURSE, YOU ARE. I'M JUST TALKING ABOUT THE RECORD.



14 ALL RIGHT. WE WILL NOW BREAK. WE'RE GOING TO SPEND  
15 THE AFTERNOON DOING OUR JURY INSTRUCTIONS CONFERENCE. THAT IS  
16 DONE OFF THE RECORD. IF YOU HAVE ANY OBJECTIONS THAT YOU WISH  
17 TO PLACE ON THE RECORD, I'LL GIVE YOU THAT OPPORTUNITY; MAYBE  
18 NOT TODAY, THOUGH. MY GUESS IS THAT THAT WOULD BE NEXT WEEK  
19 AFTER WE EXCUSE THE JURY, BECAUSE THEN WE'LL ACTUALLY HAVE MORE  
20 TIME. OF COURSE, ANY JURY INSTRUCTION YOU PROPOSE THAT IS NOT  
21 ACCEPTED BY THE COURT, YOU'VE PRESERVED YOUR OBJECTION, ANY JURY  
22 INSTRUCTION THAT IS GIVEN THAT YOU DON'T LIKE, YOU'VE PRESERVED  
23 YOUR OBJECTION.

24 SO THERE'S NOT MUCH THAT USUALLY GOES ON THE RECORD,  
25 BUT I DON'T RESTRICT YOU. YOU CAN MAKE WHATEVER RECORD YOU  
26 LIKE, BUT WE'RE JUST GOING TO DO IT LATER. MY GOAL AT THE END

1115

1 OF THIS AFTERNOON IS TO HAVE A FULL SET OF JURY INSTRUCTIONS  
2 THAT WILL THEN BE PREPARED IN FINAL AND A VERDICT FORM. THAT'S  
3 OFTEN DIFFICULT.

4 ANYTHING ELSE FOR THE RECORD THIS MORNING?

5 MR. VARTAIN: WHAT TIME DO YOU WANT US HERE?

6 THE COURT: I WILL BE BACK AT 1:45. I'M SORRY FOR  
7 THAT LONG BREAK.

8 MR. VARTAIN: YOU WANT US HERE THEN?

9 THE COURT: YES.

10 MR. LEBOWITZ: THE ONLY OTHER QUESTION IS, COMPLETING  
11 THE DISCUSSION ABOUT THE NONSUIT, THE REMAINING NONSUIT MOTION

12 ON PUNITIVE DAMAGES, AND THE OPPORTUNITY TO MAKE A MOTION FOR  
13 DIRECTED VERDICT.

14 THE COURT: WELL, LET'S FIND OUT IF THERE'S GOING TO  
15 BE A MOTION FOR DIRECTED VERDICT?

16 MR. VARTAIN: NO.

17 THE COURT: ALL RIGHT.

18 MR. LEBOWITZ: WELL, I WOULD MAKE A MOTION FOR  
19 DIRECTED VERDICT ON THE AFFIRMATIVE DEFENSES, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 DO WE NEED TO HAVE ARGUMENT ON IT? IT'S UP TO YOU.  
22 I'M ASKING.

23 MR. LEBOWITZ: NOT LENGTHY. WE COULD PROBABLY DO IT  
24 RIGHT NOW.

25 THE COURT: LET'S DO IT RIGHT NOW.

26 MR. LEBOWITZ: YOUR HONOR, THE ANSWER TO THE SECOND

1116

1 AMENDED COMPLAINT, WHICH HAS BEEN DEEMED THE ANSWER TO THE THIRD  
2 AMENDED COMPLAINT AND IS THE OPERATIVE ANSWER IN THIS CASE,  
3 CONTAINS 15 AFFIRMATIVE DEFENSES AND I WOULD MOVE FOR DIRECTED  
4 VERDICT ON EACH OF THOSE. AND IN PARTICULAR --

5 THE COURT: ALL RIGHT.

6 MAY I PLEASE SEE THE ANSWER TO THE SECOND AMENDED  
7 COMPLAINT?

8 MR. LEBOWITZ: WOULD YOU LIKE MY COPY?

9 THE COURT: NO.

10 MR. LEBOWITZ: IF I MAY, YOUR HONOR.  
11 WITH THE EXCEPTION OF THE AFFIRMATIVE DEFENSES THAT  
12 HAVE BEEN CONSTRUED TO RAISE THE DEFENSES RELATED TO MY FIRST  
13 CAUSE OF ACTION, I CAN RESERVE THAT SEPARATE FROM THE REST.  
14 THERE'S BEEN NO EVIDENCE PRESENTED OR ANY ASSERTIONS MADE ON THE  
15 REMAINING AFFIRMATIVE DEFENSES.

16 THE COURT: I GUESS, LET ME START IN A DIFFERENT  
17 PLACE, BECAUSE WE ALL KNOW WHAT ONE THINKS WHEN AFFIRMATIVE  
18 DEFENSES ARE ALLEGED AND WE KNOW THAT THAT'S OFTEN DIFFERENT  
19 THAN WHAT HAPPENS AT TRIAL.

20 MR. VARTAIN, WOULD IT BE MORE EFFICIENT IF YOU LOOKED  
21 THROUGH HERE TO SEE WHICH ONES YOU STILL ARE PUTTING FORWARD?

22 MR. VARTAIN: YES. AND IT WOULD BE EVEN MORE  
23 EFFICIENT -- SINCE I WASN'T ANTICIPATING THIS -- FOR ME TO DO  
24 THAT OVER THE LUNCH HOUR.

25 THE COURT: LET'S DO THAT. LET'S DO THAT.

26 MR. VARTAIN: WE CAN.

1117

1 THE COURT: THANK YOU.

2 MR. LEBOWITZ: THAT'S FINE.

3 THE COURT: MR. LEBOWITZ, THIS IS AN APPROPRIATE  
4 MOTION, AND I THINK THAT PROBABLY MANY OF THE AFFIRMATIVE  
5 DEFENSES WILL SIMPLY BE WITHDRAWN. SO LET'S GIVE THE DEFENSE  
6 THAT OPPORTUNITY, AND THEN WHEN I GET BACK MAYBE RIGHT AT 1:45  
7 WE'LL PUT THIS ON THE RECORD AND GET THIS RESOLVED, BECAUSE WE

8 CAN'T DO JURY INSTRUCTIONS WITHOUT IT, I THINK.

9 MR. LEBOWITZ: ABSOLUTELY.

10 THE COURT: AND THAT SHOULD GIVE THE DEFENSE PLENTY OF  
11 TIME. THEN WE'LL JUST FOCUS ON THE ONES.

12 DO YOU HAVE A COPY OF YOUR ANSWER?

13 MR. VARTAIN: YES.

14 THE COURT: ANYTHING ELSE FOR THE RECORD THIS MORNING  
15 THEN?

16 MR. LEBOWITZ: NO, YOUR HONOR.

17 THE COURT: EXCELLENT.

18 ALL RIGHT. I'LL SEE YOU AT 1:45.

19 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

20 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

21

22

23

24

25

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1118

1 PROCEEDINGS

2 DECEMBER 12, 2008 P.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD AFTERNOON. WE'RE BACK ON THE RECORD

4 OUTSIDE THE PRESENCE OF THE JURY. ALL COUNSEL ARE PRESENT.

5 YOUR CLIENTS HAVE ALL DECIDED THAT THEY HAD ENOUGH

6 TODAY AND DECIDED NOT TO BE HERE?

7 MR. LEBOWITZ: YES, INDEED.

8 THE COURT: OKAY.

9 ALL RIGHT. BEFORE THE LUNCH BREAK, MR. LEBOWITZ WAS  
10 BEGINNING HIS MOTION FOR NONSUIT ON THE AFFIRMATIVE DEFENSES  
11 AND, MR. VARTAIN, YOU WERE GOING TO LET ME KNOW IF YOU WERE  
12 GOING TO WITHDRAW ANY OF THEM.

13 MR. VARTAIN: I'M LOOKING AT THE ANSWER TO THE SECOND  
14 AMENDED COMPLAINT, WHICH HAS BEEN STIPULATED TO BE THE ANSWER TO  
15 THE THIRD AMENDED.

16 THE COURT: YES.

17 MR. VARTAIN: AND THE ONES THAT THE DEFENSE ARE  
18 PREPARED TO WITHDRAW ARE NUMBER ONE -- WOULD YOU LIKE ME TO  
19 STATE WHAT THEY ARE, YOUR HONOR?

20 THE COURT: THE NUMBERS WILL BE FINE BECAUSE THEY'RE  
21 ALL IDENTIFIED IN THE PLEADINGS.

22 MR. VARTAIN: NUMBER FOUR, NUMBER FIVE, NUMBER NINE,  
23 NUMBER 12. AND THAT'S THE END OF THE ONES TO BE WITHDRAWN,  
24 YOUR HONOR.

25 THE COURT: MR. LEBOWITZ, I'M GOING TO ASK YOU TO LOOK  
26 ONLY AT THOSE WHICH ARE TRULY AFFIRMATIVE DEFENSES, AS OPPOSED

1119

1 TO REFUTING ELEMENTS OF YOUR CAUSES OF ACTION ON WHICH YOUR  
2 CLIENT BEARS THE BURDEN OF PROOF. THIS IS A VERY WELL-DRAWN  
3 ANSWER, BUT IT DOESN'T MEAN ANYTHING IF IT IS A TRUE AFFIRMATIVE

4 DEFENSE. SO, HOPEFULLY, WE'RE NOT GOING TO BE ARGUING WHETHER  
5 OR NOT YOU'VE PROVED ENOUGH TO GO TO THE JURY FOR YOUR OWN  
6 NONSUIT AGAINST THESE AFFIRMATIVE DEFENSES.

7 I'M LOOKING AT THE SECOND AFFIRMATIVE DEFENSE, IN  
8 PARTICULAR, WHICH APPEARS TO THE COURT WHICH CONTAIN NO TRUE  
9 AFFIRMATIVE DEFENSES, WHICH IF NOT PLEAD WOULD RELIEVE YOU FROM  
10 YOUR OBLIGATION TO CARRY YOUR BURDEN OF PROOF.

11 MR. LEBOWITZ: CORRECT. LET ME PUT IT THIS WAY. I  
12 DON'T INTEND TO DO WHAT YOU ASKED ME NOT TO DO --

13 THE COURT: THANK YOU.

14 MR. LEBOWITZ: -- WHICH IS ATTACK THOSE ELEMENTS THAT  
15 ARE NOT TRULY LEGAL AFFIRMATIVE DEFENSES. I HAD TWO GOALS AT  
16 THIS POINT. ONE WAS TO CLEAR UP EXACTLY WHAT AFFIRMATIVE  
17 DEFENSES WERE AT ISSUE, WHICH I THINK WE'VE DONE.

18 THE COURT: GOOD. THAT'S IMPORTANT.

19 MR. LEBOWITZ: THE SECOND IS TO SPECIFICALLY DISCUSS  
20 IN ENOUGH DETAIL TO MAKE THE MOTION ON THE TWO AFFIRMATIVE  
21 DEFENSES OR PARTS OF AFFIRMATIVE DEFENSES THAT HAVE BEEN  
22 CONSTRUED IN THE MOTIONS IN LIMINE PRETRIAL TO CONSTITUTE THE  
23 AFFIRMATIVE DEFENSE AGAINST MY FIRST CAUSE OF ACTION FOR THE  
24 UNLAWFUL MEDICAL EXAM. AND I BELIEVE THAT IT WAS 2A AND EIGHT  
25 WHICH WERE THE AFFIRMATIVE DEFENSES THAT WERE ACKNOWLEDGED BY  
26 THE --

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1 THE COURT: YOU'RE NOT ARGUING THE PLEADING ANYMORE,

2 THOUGH.

3 MR. LEBOWITZ: NO. I'M JUST TRYING TO IDENTIFY IN THE  
4 RECORD WHAT WE'RE TALKING ABOUT.

5 THE COURT: OKAY.

6 MR. LEBOWITZ: AND I DON'T HAVE MY NOTES IN FRONT OF  
7 ME FROM THE MOTIONS IN LIMINE, BUT I BELIEVE IT WAS 2A AND  
8 EIGHT.

9 MR. VARTAIN: WELL, IT WAS 2A AND EIGHT THAT THE JUDGE  
10 SAID WERE PLED -- THAT IF THIS WAS AN AFFIRMATIVE DEFENSE, IT  
11 WAS PLED. I DON'T THINK THAT ISSUE WAS RESOLVED AS TO WHETHER  
12 IT'S AN AFFIRMATIVE DEFENSE OR NOT.

13 THE COURT: WELL, I THINK YOU BEAR THE BURDEN.

14 MR. VARTAIN: WHAT?

15 THE COURT: I THINK THAT THE DEFENSE BEARS THE BURDEN  
16 OF PROOF, BUT IT DOESN'T NECESSARILY MAKE IT AN AFFIRMATIVE  
17 DEFENSE. I RESOLVED THE MATTER BY FEELING YOU HAD PLED IT IF IT  
18 NEEDS TO BE PLED, AND WE'RE NOT GOING TO GO BACK OVER THAT  
19 ISSUE. NOW WE'RE JUST LOOKING AT WHETHER THERE WAS ANY EVIDENCE  
20 TO SUPPORT THE CLAIM.

21 MR. LEBOWITZ: CORRECT.

22 THE COURT: LET ME TELL YOU THAT I HAVE EXACTLY  
23 15 MINUTES FOR THIS MOTION.

24 MR. LEBOWITZ: YES.

25 THE COURT: THEN WE WILL DO JURY INSTRUCTIONS, AND  
26 THEN WE WILL COME BACK TO THIS AT SOME TIME AFTER THE JURY IS

1 DELIBERATING.

2 MR. LEBOWITZ: THAT'S FINE.

3 THE COURT: IS THAT ALL RIGHT?

4 MR. LEBOWITZ: THAT'S ABSOLUTELY FINE, YOUR HONOR. I  
5 WILL TAKE LESS THAN 15.

6 THE COURT: I WAS UNAWARE -- I WAS UNAWARE THAT WE  
7 WERE GOING TO DO THIS. AND I'M GLAD TO GIVE IT THE TIME IT  
8 NEEDS, BUT NOT NOW.

9 MR. LEBOWITZ: I COMPLETELY UNDERSTAND, AND I  
10 APPRECIATE THE LEEWAY THAT I DO HAVE HERE.

11 THE COURT: OKAY.

12 MR. LEBOWITZ: SIMPLY PUT, STARTING WITH THE STATUTE  
13 IT IS SET FORTH AS AN AFFIRMATIVE DEFENSE BECAUSE IT IS SET  
14 AS -- WHERE THE STATUTE SAYS IT IS AN UNLAWFUL EMPLOYMENT  
15 PRACTICE TO SEND AN EMPLOYEE TO A MEDICAL OR PSYCHOLOGICAL EXAM  
16 WITH THE EXCEPTION OF THE CIRCUMSTANCES WHERE THE EMPLOYER --  
17 AND AS THE STATUTE SAYS, "IT CAN SHOW," MEANING THE EMPLOYER CAN  
18 SHOW THE BUSINESS NECESSITY AND JOB-RELATEDNESS.

19 AND, YOUR HONOR, THERE IS NO SUBSTANTIAL EVIDENCE  
20 OF -- CERTAINLY BUSINESS NECESSITY AT THE TIME THAT THE EXAM WAS  
21 ACTUALLY ORDERED IN THIS CASE, IN MAY OF 2006.

22 THE COURT: YOU DISCOUNT THE TESTIMONY OF MS. TIPTON,  
23 OF DEAN PRATT AND OF PRESIDENT LOPEZ ENTIRELY. I SHOULD IGNORE  
24 THOSE?

25 MR. LEBOWITZ: WHAT I REQUEST YOUR HONOR TO LOOK AT IS  
26 THE FACT THAT THERE WAS NO ACTUAL SUBSTANCE TO THEIR TESTIMONY,



1 OTHER THAN INNUENDO AND RUMOR. AND WHEN ASKED ABOUT WHAT  
2 SUBSTANCE THEY HAD AND WHAT DETAILS THEY HAD, THEY ALL -- NONE  
3 OF THEM COULD ANSWER, AS FAR AS HOW MANY CLASSES, FOR INSTANCE,  
4 PROFESSOR BLOUGH MISSED, ALL OF THOSE DETAILS.

5 THE COURT: I THINK THAT'S ARGUMENT ON HOW ONE COULD  
6 INTERPRET THE EVIDENCE. AND MY JOB HERE, OF COURSE, IS TO DRAW  
7 EVERY REASONABLE INFERENCE AGAINST YOUR POSITION ON THIS MOTION,  
8 AND I SIMPLY CAN'T AGREE WITH YOU UNDER THIS DIFFICULT STANDARD.

9 MR. LEBOWITZ: OKAY.

10 THE COURT: THE JURY MIGHT, BUT I CAN'T.

11 MR. LEBOWITZ: MOVING ON TO THE JOB-RELATEDNESS,  
12 THERE'S NOTHING IN THE RECORD AT ALL THAT SHOWS AFFIRMATIVELY  
13 WHAT THE PARAMETERS THAT THE FULL SCOPE AND PARAMETERS OF THE  
14 EXAM UNDERTAKEN BY DR. MISSETT WERE ACTUALLY JOB-RELATED. AND  
15 THE SCOPE -- WHAT THE EVIDENCE IS IN THE RECORD IS THAT THE  
16 SCOPE WAS UNLIMITED.

17 AND IT'S THE COLLEGE'S OBLIGATION TO ENSURE -- AND  
18 DUTY TO ENSURE THAT THE EXAM IS JOB-RELATED. AND THE EVIDENCE  
19 IN THE RECORD IS NOT ONE PERSON FROM THE COLLEGE CONTACTED  
20 DR. MISSETT TO EXPLAIN TO HIM WHAT THE LIMITS OF THE INQUIRY  
21 SHOULD BE, AND BOTH THE COLLEGE ACKNOWLEDGED THAT AND DR.  
22 MISSETT ACKNOWLEDGED --

23 THE COURT: YES.

24 MR. LEBOWITZ: -- THERE WAS NO COMMUNICATION ABOUT

25 LIMITS OR SCOPE OF THE INQUIRY. THEREFORE, THERE'S A COMPLETE  
26 ABSENCE OF EVIDENCE IN THE RECORD TO SHOW THAT THE EMPLOYER DID

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1 ANYTHING TO UNDERTAKE ITS DUTY TO ENSURE IT WAS JOB-RELATED.

2 THE COURT: BUT ISN'T IT A FAIR INTERPRETATION OF THE  
3 EVIDENCE, AGAIN, WITH THIS HIGH STANDARD THAT ONCE THE COLLEGE  
4 HAD THE INFORMATION FROM MS. TIPTON AND FROM DEAN PRATT OF THE  
5 FAILURE OF MEETING CLASSES, THEN IT WAS REASONABLE FOR THE SCOPE  
6 TO BE UNLIMITED. I AGREE WITH YOU, THE EVIDENCE IS IT WAS  
7 UNLIMITED, BUT THE STATUTE DOESN'T PREVENT UNLIMITED EXAM. AND  
8 THE COLLEGE MAY ARGUE TO THE JURY THAT THIS WAS THE APPROPRIATE  
9 SCOPE OF AN INDEPENDENT MEDICAL EXAM.

10 MR. LEBOWITZ: WELL, I, FRANKLY, AND WITH RESPECT,  
11 YOUR HONOR, DISAGREE WITH THAT.

12 THE COURT: I UNDERSTAND THAT.

13 MR. LEBOWITZ: I BELIEVE THAT THE STATUTE SAYS  
14 "JOB-RELATED," WHICH MEANS THAT THE INQUIRY NEEDS TO BE RELATED  
15 TO BEING ABLE TO PERFORM.

16 THE COURT: I DON'T THINK THE STATUTE SAYS IN NO CASE  
17 CAN AN EXAM BE OF UNLIMITED SCOPE, AND THAT'S REALLY WHAT YOU'RE  
18 ARGUING UNDER THIS EVIDENCE. AGAIN, I THINK THIS IS INFERENCES  
19 THAT YOU'RE DRAWING FROM THE EVIDENCE THAT WE HAVE, AND THAT'S  
20 IN THE JURY'S PROVINCE, NOT MINE.

21 MR. LEBOWITZ: SIMPLY TO MAKE THE ARGUMENT FOR THE  
22 RECORD.

23 THE COURT: OKAY.

24 MR. LEBOWITZ: I BELIEVE THAT THE STATUTE SAYS THAT  
25 IT'S JOB-RELATED AND THAT ALL INQUIRIES ARE ALL AT ALL TIMES  
26 RESTRICTED TO BEING JOB-RELATED, AND THERE IS NO CIRCUMSTANCE

1124

1 WHEREIN AN EMPLOYER IS PERMITTED TO MAKE AN OPEN-ENDED,  
2 UNLIMITED EXAM, EITHER PSYCHIATRIC/PSYCHOLOGICAL OR  
3 PHYSICAL/MEDICAL.

4 THE COURT: WE HAD THE TESTIMONY OF DR. REYNOLDS THAT  
5 TRULY IN MOST CASES ONLY TEN PERCENT OF THE MEDICAL RECORDS ARE  
6 RELEVANT, YOU JUST DON'T KNOW WHICH ONES THEY ARE UNTIL YOU GET  
7 THEM. YOU MAY DISAGREE WITH THAT, BUT I THINK FROM THE EXPERT  
8 THAT WAS HIS OPINION. AND I THINK THE JURY COULD CERTAINLY DRAW  
9 AN INFERENCE FROM IT.

10 MR. LEBOWITZ: MY ARGUMENT IS THE LAW, YOUR HONOR.  
11 AND THE LAW, I BELIEVE, DOES NOT ALLOW THAT. AND I BELIEVE THAT  
12 DR. REYNOLDS IS IN ERROR IN WHAT THE LAW SAYS ON THIS POINT.

13 THE COURT: ALL RIGHT. I APPRECIATE THAT.

14 ABSENT THE LAW PROHIBITING UNLIMITED EXAMS, I THINK  
15 THERE'S EVIDENCE SIGNIFICANT FOR THE JURY TO MAKE THE  
16 DETERMINATION.

17 MR. LEBOWITZ: THANK YOU FOR HEARING THE ARGUMENT,  
18 YOUR HONOR, AND ALSO MADE ON THE OTHERS.

19 THE COURT: OKAY.

20 NOW, I'M SEEING A THIRD AFFIRMATIVE DEFENSE ON STATUTE

21 OF LIMITATIONS.

22 MR. VARTAIN: MAY I ADDRESS THAT, YOUR HONOR?

23 THE COURT: YES, BECAUSE I'M UNAWARE OF THAT PROBLEM.

24 MR. VARTAIN: THE ONLY WAY IT WOULD BE A PROBLEM WOULD  
25 BE IF THE PLAINTIFF WAS GOING TO ARGUE TO THE JURY THAT THE  
26 FIRST ROUND OF THE MEDICAL EVALUATION WAS UNLAWFUL. AND HE HAS

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1 AT CERTAIN TIMES TRIED TO BOOTSTRAP --

2 BY THE WAY, I'M NOT BEING CRITICAL.

3 MR. LEBOWITZ: I APPRECIATE THAT.

4 MR. VARTAIN: HE HAS TRIED TO SAY THAT TO THE EXTENT  
5 THE SECOND EVALUATION FLOWED FROM THE FIRST EVALUATION, THE  
6 FIRST EVALUATION CAN'T LEGITIMIZE THE SECOND ONE. AND MY POINT  
7 IS THAT IF HE TRIES TO ARGUE TO THE JURY THAT THEY'RE  
8 INTERCONNECTED, THEN THE FIRST ONE IS -- HIS ATTACK ON THE FIRST  
9 EVALUATION IS UNTIMELY.

10 MR. LEBOWITZ: AND TO BE CLEAR ON THE RECORD, I'VE  
11 NEVER -- THERE MAY BE SOME CONFUSION IN THE REFERENCE TO FIRST  
12 VERSUS SECOND, AND MAYBE IT'S SECOND VERSUS THIRD IS PROBABLY  
13 MORE APPROPRIATE. I HAVE NEVER -- THE 2003 EXAM, TO BE MORE  
14 PRECISE, HAS NEVER BEEN PART OF THE CLAIM IN OUR CASE.

15 THE COURT: OKAY. AND I APPRECIATE THAT. LET'S MAKE  
16 A NOTE OF THAT WHEN WE LOOK AT THE JURY INSTRUCTIONS SO THE JURY  
17 IS NOT UNCLEAR ON WHICH ONE THEY'RE LOOKING AT.

18 MR. VARTAIN: YEAH.

19 THE COURT: AND I THINK THAT IS, PERHAPS, THE BEST WAY  
20 TO DEAL WITH THAT. BECAUSE THERE IS NOTHING IN YOUR COMPLAINT  
21 THAT SUGGESTS --

22 MR. LEBOWITZ: EXACTLY.

23 THE COURT: -- DAMAGES BEING SOUGHT FOR THE 2003  
24 EXAMINATION.

25 MR. LEBOWITZ: ABSOLUTELY, YOUR HONOR.

26 MR. VARTAIN: IT COULD BE CONFUSING TO THE JURY. I

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1 THINK IT NEEDS TO BE CLEARED UP.

2 THE COURT: I THINK WE CAN CLARIFY THAT, AND I THINK  
3 THAT'S A VERY GOOD POINT.

4 MR. LEBOWITZ: THAT'S FINE.

5 MR. VARTAIN: IF YOU DO HAVE TIME, YOUR HONOR, IN THIS  
6 15 MINUTES THAT YOU'VE ALLOTTED, MIGHT YOU BE WILLING TO REVISIT  
7 THE PUNITIVE DAMAGE MOTION?

8 THE COURT: I'M PREPARED TO MAKE A RULING ON IT. I'VE  
9 BEEN GIVING IT SOME THOUGHT SO, YES, I CAN DO THAT.

10 LET'S GO ON TO THE SIXTH AFFIRMATIVE DEFENSE.

11 MR. VARTAIN: THAT IS A MIRROR OF WHAT WE JUST  
12 DISCUSSED, YOUR HONOR, THAT IS THE ONLY REASON I HAVE IT IN  
13 THERE IS FOR THAT SAME FIRST EVALUATION ISSUE.

14 THE COURT: ALL RIGHT.

15 MR. LEBOWITZ, I WOULD BE INCLINED NOT TO RULE ON THE  
16 THIRD AND SIXTH AFFIRMATIVE DEFENSES FOR THAT REASON. BUT IT

17 DOES APPEAR TO THE COURT THAT ULTIMATELY THE JURY WILL NOT BE  
18 ASKED TO DECIDE THESE AFFIRMATIVE DEFENSES.

19 MR. LEBOWITZ: THAT'S FINE.

20 THE COURT: IS THAT ALL RIGHT?

21 MR. LEBOWITZ: YES.

22 THE COURT: THEN LET'S GO ON TO NUMBER SEVEN.

23 MR. VARTAIN: I COULD MAYBE TAKE THE LEAD ON THIS ONE,  
24 YOUR HONOR.

25 THE COURT: ALL RIGHT.

26 MR. VARTAIN: AND I WANT TO EXPAND, IF I MAY, THE

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1 DISCUSSION BEYOND THE AFFIRMATIVE DEFENSE INTO THE MERITS --  
2 INTO THE ALLEGATIONS OF THE COMMON LAW CAUSE OF ACTION. AND I  
3 JUST WANT TO POINT OUT THAT THE WAY MR. LEBOWITZ HAS PLED THE  
4 EIGHTH CAUSE OF ACTION -- AND I'M NOT SURE YOU'RE REALIZING IT  
5 AT THIS POINT NOT -- IS THAT THE -- YOU KNOW, IT'S A  
6 FEHA-MIRRORED CAUSE OF ACTION. BUT IF YOU LOOK AT PAGE 20,  
7 LINE --

8 MAY I APPROACH, YOUR HONOR?

9 THE COURT: NO. I'LL GET IT FROM MY CLERK. THANK  
10 YOU.

11 MR. LEBOWITZ: IT'S THE SAME AS THE SECOND ON THIS  
12 CAUSE OF ACTION.

13 THE COURT: THAT'S THE EIGHTH CAUSE OF ACTION,  
14 MR. VARTAIN?

15 MR. VARTAIN: YES, MA'AM.

16 THE COURT: THANK YOU.

17 MR. VARTAIN: PAGE 20.

18 MR. LEBOWITZ: IT MAY NOT BE THE SAME. THE PAGINATION  
19 MAY NOT BE THE SAME.

20 THE COURT: THAT'S ALL RIGHT. I'LL FIND IT.

21 MR. VARTAIN: PARAGRAPH 100 IS WHAT IT IS.

22 MR. LEBOWITZ: THIRD PARAGRAPH IN THE EIGHTH CAUSE OF  
23 ACTION.

24 THE COURT: THANK YOU. GO AHEAD.

25 MR. VARTAIN: NOW, I'M NOT SURE IF THE PLAINTIFF --

26 THE PLAINTIFF DISMISSES THE FEHA CLAIMS FOR REASONABLE

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1 ACCOMMODATIONS AND FOR INTERACTIVE PROCESS VIOLATIONS AND FOR  
2 RETALIATION. BUT THEN HE LEFT THESE IN THE WRONGFUL TERMINATION  
3 AND -- YOU KNOW, I DON'T KNOW WHAT YOU'RE INTENT IS AT THIS  
4 POINT.

5 MR. LEBOWITZ: IT'S NOT -- IT'S MORE SCRIBNER AND --  
6 BECAUSE YOU CAN'T -- IT WOULD BE IMPOSSIBLE FOR ME TO DISMISS  
7 PART OF -- IN THE FORM OF DISMISSAL, I COULDN'T SEND IN A  
8 DISMISSAL, YOU KNOW, FOR LINES 4 THROUGH 6 --

9 THE COURT: NO, YOU CANNOT.

10 MR. LEBOWITZ: -- OF THE AMENDED CAUSE OF ACTION. SO  
11 TO THE EXTENT THAT WE ARE PURSUING -- IF I COULD PUT ON THE  
12 RECORD, TO THE EXTENT WE ARE PURSUING A WRONGFUL TERMINATION IN

13 VIOLATION OF PUBLIC POLICY, THE PUBLIC POLICY AT ISSUE IS SIMPLY  
14 THE PUBLIC POLICY TO NOT DISCRIMINATE BASED ON DISABILITY OR  
15 MEDICAL CONDITION.

16 THE COURT: TYPICALLY, WHAT WOULD HAPPEN IN MOTION FOR  
17 SUMMARY JUDGMENT IS THAT THIS IS ACTUALLY FOUR CAUSES OF ACTION  
18 ROLLED INTO ONE. BECAUSE EACH OF THOSE ACTS IS A SEPARATE CAUSE  
19 OF ACTION.

20 MR. LEBOWITZ: RIGHT.

21 THE COURT: AND SO YOU ARE NOT GOING FORWARD,  
22 OBVIOUSLY; THERE'S NO EVIDENCE ON THOSE CLAIMS.

23 MR. LEBOWITZ: CORRECT.

24 MR. VARTAIN: THE CLAIMS BEING IN LINE 9 OF PAGE 20 OF  
25 EIGHT -- OF THE THIRD AMENDMENT, BEGINNING WITH THE WORDS  
26 "REASONABLE ACCOMMODATION," COMMA, "TO ANTICIPATE THE

1129

1 INTERACTIVE PROCESS IN RETALIATION FOR THE ABOVE ACTS AND/OR."  
2 IF YOU TAKE THAT OUT --

3 MR. LEBOWITZ: RIGHT.

4 MR. VARTAIN: -- THEN WHAT YOU'RE LEFT WITH IS THAT  
5 THE DECISION TO TERMINATE WAS THE RESULT OF THE DEFENSE --  
6 ACTUALLY, WAS MOTIVATED, AT LEAST IN PART, BY PROFESSOR BLOUGH'S  
7 DISABILITY OR MEDICAL CONDITION.

8 MR. LEBOWITZ: I WOULD AGREE WITH THAT.

9 MR. VARTAIN: OKAY.

10 SO NOW THAT THAT'S CLEAR IN THE EIGHTH CAUSE OF



11 ACTION, I WOULD SUGGEST YOUR HONOR RETURN TO THE SEVENTH  
12 AFFIRMATIVE DEFENSE, WHICH IS TO THAT CAUSE OF ACTION. AND NOW  
13 I'M PREPARED TO WITHDRAW THAT AFFIRMATIVE DEFENSE.

14 THE COURT: OKAY. THANK YOU.

15 AND THEN LET'S GO ON. WE TALKED ABOUT THE EIGHTH  
16 AFFIRMATIVE DEFENSE. THE NINTH IS WITHDRAWN. THE TENTH --  
17 WELL, THIS IS REALLY THE OTHER SIDE OF THE COIN OF SUBSTANTIAL  
18 FACTORS, SO I DON'T ACTUALLY SEE IT AS A TRUE AFFIRMATIVE  
19 DEFENSE. THE 11TH, MITIGATION, THAT'S IMPORTANT. WE'RE  
20 CERTAINLY GOING FORWARD ON THAT. I DON'T KNOW WHETHER IT'S  
21 ACTUALLY AN AFFIRMATIVE DEFENSE OR YOU HAVE A DUTY TO MITIGATE.  
22 IT DOESN'T MUCH MATTER; IT IS EVIDENCE.

23 MR. LEBOWITZ: IT'S THE BURDEN OF THE DEFENSE TO  
24 PROVE --

25 THE COURT: IT IS THE BURDEN OF THE DEFENDANT.

26 MR. LEBOWITZ: -- LACK OF MITIGATION.

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1 THE COURT: THAT'S RIGHT.

2 MR. LEBOWITZ: TO THE EXTENT THAT -- AS LONG AS THE  
3 BURDEN REMAINS THE SAME, I HAVE NO QUALMS.

4 THE COURT: OKAY. BUT THERE IS SOME EVIDENCE ON --

5 MR. LEBOWITZ: THERE'S EVIDENCE FROM US OF LACK OF --  
6 OF EFFORT TO MITIGATE. THERE'S NO EVIDENCE ON THE OTHER SIDE OF  
7 LACK.

8 THE COURT: I THINK NOT HAVING A JOB IS EVIDENCE OF

9 LACK OF MITIGATION, FRANKLY. SO IT DOESN'T TAKE MUCH FOR THIS  
10 MOTION.

11 MR. LEBOWITZ: I UNDERSTAND.

12 THE COURT: I LIKE TO LET YOU KNOW WHAT I'M  
13 IDENTIFYING. AND THEN THE 12TH IS WITHDRAWN. THE 13TH --

14 MR. VARTAIN: THAT'S THE PUNITIVE DAMAGES.

15 THE COURT: YEAH. WELL, THAT'S YOUR MOTION. WE'LL  
16 GET TO IT IN A MINUTE.

17 THE 14TH AFFIRMATIVE DEFENSE, THIS ONE -- I MEAN, THIS  
18 IS NOT A LAYOFF CASE, SO I DON'T ACTUALLY UNDERSTAND HOW THIS IS  
19 A PROPER AFFIRMATIVE DEFENSE HERE IN THIS CASE.

20 MR. VARTAIN: PRICE WATERHOUSE ISN'T LIMITED TO A  
21 PARTICULAR KIND OF TERMINATION. IT REALLY REFERS TO WHAT'S  
22 CALLED A MIX MOTIVE, WHERE THE PLAINTIFF HAS SHOWN -- SHE HASN'T  
23 HERE, BUT IF SHE HAD SHOWN THAT BUT FOR THE PROTECTED CATEGORY,  
24 THE ADVERSE ACTION WOULDN'T HAVE HAPPENED. IF THE EMPLOYER CAN  
25 SHOW THAT, IN FACT, MAYBE THERE WAS SOME CONSIDERATION OF THE  
26 PROTECTED STATUS BUT THAT THE OTHER FACTORS WERE SUCH THAT IT

1131

1 WOULD HAVE HAPPENED ANYWAY, THE ADVERSE ACTION -- YOU GET INTO  
2 THE PRICE WATERHOUSE.

3 AND I THINK THAT THERE ARE MANY CASES, INCLUDING THIS  
4 ONE, WHERE THE EVIDENCE IS SUSCEPTIBLE TO THAT INTERPRETATION.  
5 ESPECIALLY, WHEREAS HERE THE PLAINTIFF HAS TESTIFIED THAT THEY  
6 WERE SUPPORTIVE, ATTITUDES AND ACTIONS AND DEMEANORS TOWARDS HER

7 MEDICAL CONDITIONS THROUGHOUT HER CAREER, AND WHERE THE EVIDENCE  
8 IS SUSCEPTIBLE OF THE INTERPRETATION THAT THE EMPLOYER RELIED  
9 ON -- NOT ON ANY PREJUDICE OR PRESUMPTIONS ABOUT WHETHER SHE  
10 COULD DO THE JOB, BUT RELIED ON MEDICAL EVALUATION. I THINK IT  
11 DOES -- THE EVIDENCE DOES FIT WITHIN PRICE WATERHOUSE.

12 THE COURT: YOU KNOW, THE TEXTBOOK CASES ARE SO MUCH  
13 EASIER TO COMPREHEND BECAUSE IF, FOR EXAMPLE, IN THIS CASE  
14 PRESIDENT LOPEZ HAD SIMPLY CHOSEN NOT TO -- THE ACTION WAS A  
15 NONRENEWAL, AND THEN PROFESSOR BLOUGH BROUGHT THIS CASE ALLEGING  
16 THAT SHE WAS NONRENEWED BECAUSE OF HER DISABILITY, THAT WOULD  
17 HAVE BEEN THE PRICE WATERHOUSE SITUATION; WHERE THEN THE  
18 EMPLOYER COULD SHOW THE KIND OF EVIDENCE SUCH AS THAT SHE WAS  
19 NOT PERFORMING WELL SO WE DIDN'T RENEW OR OUR FINANCES WERE BAD  
20 AND WE HAD TO REDUCE PROFESSOR STAFFING. THAT'S THE CLASSIC MIX  
21 MOTIVE CASE.

22 THIS ONE IS -- I'M A LITTLE UNCOMFORTABLE EVEN  
23 IMAGINING IT BECAUSE THE COLLEGE HAS SAID FOR TWO WEEKS THAT  
24 PROFESSOR BLOUGH WAS TERMINATED FOR THE MEDICAL CONDITIONS THAT  
25 WERE EVIDENCED IN HER TEACHING.

26 MR. VARTAIN: NO. THAT'S NOT CORRECT. AND I REALIZE

1132

1 IT'S A LITTLE BIT LINGUISTIC, BUT THEY ARE IMPORTANT  
2 LINGUISTICS.

3 THE COURT: OKAY.

4 MR. VARTAIN: THE COLLEGE HAS ASSERTED -- ASIDE FROM

5 THE FACT THAT IT DID NOT TERMINATE HER --

6 THE COURT: I APPRECIATE THAT. THEY HAVE SAID THAT.

7 MR. VARTAIN: -- THAT IT WAS CONSIDERING TERMINATING  
8 HER, AND THEN THEY WITHDRAW THAT CONSIDERATION. BUT THAT ACTION  
9 THAT IT WAS CONSIDERING TAKING WAS NOT BASED ON HER MEDICAL  
10 CONDITION OR --

11 THE COURT: WHAT WAS IT BASED ON THEN?

12 MR. VARTAIN: IT WAS BASED ON THE REPORT OF THE  
13 DOCTORS AS TO HER INABILITY TO PERFORM THE ESSENTIAL FUNCTIONS  
14 OF HER JOB, WHICH MAY BE ORIGINATED WITH THE MEDICAL  
15 CONDITIONS --

16 THE COURT: BY THAT BROAD LANGUAGE, YOU WOULD BRING  
17 EVERY INABILITY SUCH AS INCOMPETENCE, NOT KNOWING YOUR SUBJECT  
18 MATTER, INTO THAT DEFINITION, AND I DON'T AGREE WITH THAT AT  
19 ALL. INABILITY TO DO THE JOB IS A VERY BIG CATEGORY. AND THE  
20 FEHA AND THE ADA DEAL WITH DISABILITY.

21 WHEN YOU GET INTO AREAS OF SUBJECT MATTER COMPETENCE,  
22 YOU COULD USE THE SAME LANGUAGE OF INABILITY TO DO THE JOB. SHE  
23 DIDN'T KNOW ECONOMICS BUT SHE WAS AN ECONOMICS TEACHER. SHE  
24 FAILED TO KEEP UP WITH HER SUBJECT MATTER AND, THEREFORE, FELL  
25 BEHIND. SHE WASN'T ABLE TO DO THE ESSENTIAL FUNCTIONS OF HER  
26 JOB. I'M FEELING YOUR LANGUAGE IS SO BROAD THAT IT'S BLEEDING

1133

1 THE TWO, AND I THINK WE'RE DEALING HERE WITH --

2 MR. VARTAIN: IT'S THE LANGUAGE OF GREEN, YOUR HONOR.

3 THAT'S THE SUPREME COURT'S LANGUAGE. IT'S NOT MINE. AND I DO  
4 THINK IT'S GOING TO BE IMPORTANT IN OUR JURY INSTRUCTIONS.

5 THE COURT: WE NEED TO BE CAREFUL. THERE'S NO  
6 EVIDENCE IN THIS CASE THAT SHE WAS TERMINATED -- THAT SHE HAD  
7 THE TIME BECAUSE OF HER INABILITY -- HER KNOWLEDGE BASE WAS  
8 INSUFFICIENT. LET'S TALK ABOUT THAT LEVEL.

9 MR. VARTAIN: NOW I'M WITH YOU, YOUR HONOR. BUT THE  
10 ABILITY TO PERFORM THE ESSENTIAL FUNCTIONS OF HER POSITION IS  
11 MUCH DIFFERENT FROM THE SKILL SET TO DO THE JOB.

12 THE COURT: UH-HUH.

13 MR. VARTAIN: AND SO WE'RE ON THE SAME WAVELENGTH,  
14 YOUR HONOR, AS WE ARE AND YOU ARE AS TO THE TESTIMONY HAS BEEN  
15 ENORMOUS THAT THE PROFESSOR HAD THE KNOWLEDGE BASE AND HAD  
16 PREVIOUSLY BEEN PERFORMING THE JOB WELL. SO THE QUESTION IS --  
17 THE ISSUE IS TO SPECIFY THE RIGHT VERBIAGE --

18 THE COURT: YES.

19 MR. VARTAIN: -- THAT SEPARATE PHYSICAL AND MEDICAL  
20 CONDITION FOR WHICH IT'S NOT PERMISSIBLE TO USE THE FACT THAT  
21 SOMEONE HAS THE CONDITION AS A FACTOR BUT THE RESULT -- BUT TO  
22 USE THE RESULT OF THE CONDITION BEING A PERSON CANNOT DO THE JOB  
23 WELL, THAT YOU CAN USE.

24 THE COURT: I'M WITH YOU A HUNDRED PERCENT. A HUNDRED  
25 PERCENT.

26 MR. VARTAIN: ALL RIGHT.

1 THE COURT: AND THE LANGUAGE IS IMPORTANT BECAUSE IT  
2 IS -- IT'S VERY SPECIAL LANGUAGE. ALL RIGHT.

3 MR. VARTAIN: AND I RESPECT WHAT YOU'RE SAYING, THAT  
4 WHILE THE PRICE WATERHOUSE AFFIRMATIVE DEFENSE NORMALLY ARISES  
5 IN OTHER TYPES OF WHAT'S CALLED A NONDISABILITY, THE PRINCIPLE  
6 OF PRICE WATERHOUSE DOES RESEMBLE THE ONE WE'RE TALKING ABOUT,  
7 IN MY VIEW.

8 THE COURT: WELL, I'LL BE WILLING TO DISCUSS A JURY  
9 INSTRUCTION.

10 BUT, MR. LEBOWITZ, I DON'T EVEN SEE HOW THEY'RE  
11 TALKING ABOUT IT. I THINK MIXED MOTIVE IS CERTAINLY SOMETHING  
12 THE DEFENSE IS ALLOWED TO ARGUE. I DON'T SEE THIS AS A MIXED  
13 MOTIVE CASE MYSELF, AND YOU PROBABLY AGREE WITH ME.

14 MR. LEBOWITZ: I DO. SHOCKINGLY ENOUGH, YES, I AGREE  
15 WITH THAT.

16 THE COURT: YEAH.

17 WELL, I'M NOT GOING TO DISMISS THIS AFFIRMATIVE  
18 DEFENSE NOW. I'LL TALK ABOUT IT FURTHER -- IT MAY NEVER COME UP  
19 IN A JURY INSTRUCTION, ACTUALLY. BUT LET'S DELAY IT FOR THAT.  
20 AND THEN LET'S GO ON TO 14 -- THAT WAS 14. BEG YOUR PARDON.

21 15.

22 MR. LEBOWITZ: I'M NOT SURE THAT'S AN AFFIRMATIVE  
23 DEFENSE.

24 THE COURT: AGAIN, THIS SOUNDS LIKE CAUSATION AND  
25 SUBSTANTIAL FACTOR.

26 DO YOU DISAGREE WITH THAT?

1 MR. VARTAIN: IF WE GET THE RIGHT INSTRUCTION, I THINK  
2 THIS GOES AWAY.

3 THE COURT: THEN LET'S DELAY UNTIL WE TALK ABOUT THE  
4 INSTRUCTIONS.

5 LET ME THEN FINISH UP -- THE DEFENSE BROUGHT A MOTION  
6 FOR NONSUIT ON PUNITIVE DAMAGES IN THE LIABILITY PHASE. WE DID  
7 BIFURCATE. I'M GOING TO LET IT GO TO THE JURY. I'VE THOUGHT  
8 ABOUT IT A LOT. IT'S NOT AN EASY CALL FOR ME. THE PLAINTIFF  
9 ARGUES, AT LEAST, THAT SENDING HER TO A PSYCHIATRIST BY ITSELF,  
10 UNDER THE FACTS OF THIS CASE AS SUBMITTED IN EVIDENCE, WAS A  
11 MALICIOUS AND OPPRESSIVE ACT. PLAINTIFFS ARGUE OTHER EVIDENCE  
12 AS WELL, BUT THAT IS THE ONE PIECE THAT RESONATED WITH THE COURT  
13 AS BEING ENOUGH TO GET OVER THIS HURDLE ON NONSUIT. IT'S A VERY  
14 CLOSE CALL. I'M GOING TO LET THE JURY DECIDE.

15 MR. LEBOWITZ: AND, YOUR HONOR, JUST -- I DID SAY  
16 YESTERDAY -- AND THIS WAS A MOTION THAT I WAS NOT PREPARED FOR  
17 AT THE TIME. I ANTICIPATED THE NONSUIT MOTIONS ON LIABILITY BUT  
18 NOT ON THE PUNITIVE DAMAGES, SO I HADN'T REALLY THOUGHT IT  
19 THROUGH VERY CLEARLY BY THE TIME WE WERE ARGUING. AND I DID ON  
20 THE RECORD SAY THAT FRAUD WAS NOT PART OF WHAT WE WERE LOOKING  
21 AT AND I'VE RETHOUGHT THAT.

22 BASED ON THE SEQUENCE OF EVENTS THAT WE'VE ARGUED --  
23 OR WE'VE PRESENTED EVIDENCE FOR, AND I INTEND TO ARGUE TO THE  
24 JURY IF ALLOWED, ABOUT THE OFFER, THE JOB OFFER, THAT THAT IN  
25 FACT WAS -- WOULD MEET THE DEFINITION WITHIN THE PUNITIVE

1 THE COURT: YOU DON'T HAVE A CAUSE OF ACTION TO  
2 SUPPORT THAT.

3 MR. LEBOWITZ: WELL, THERE'S NO FRAUD CAUSE OF ACTION  
4 BUT I DON'T THINK YOU NEED A FRAUD CAUSE OF ACTION TO SHOW FRAUD  
5 FOR PUNITIVE DAMAGES. I THINK YOU NEED TO SHOW WHATEVER IT IS  
6 THE INSTRUCTION SAYS, AND THE EVIDENCE THAT WE HAVE SHOWN --

7 THE COURT: BUT YOU ALSO HAVE TO ESTABLISH WITH FRAUD,  
8 THAT NOT ONLY WAS A FALSE STATEMENT MADE AND THE SPEAKER  
9 INTENDED THE RECEIVING PARTY TO RELY UPON IT, BUT THEN YOU HAVE  
10 TO PROVE PROFESSOR BLOUGH, IN FACT, RELIED UPON IT TO HER  
11 DETRIMENT AND WAS HARMED BY IT. SINCE SHE REJECTED THE  
12 SUPPOSEDLY FRAUDULENT ACTION, YOU DON'T HAVE -- YOU COULDN'T  
13 ALLEGE A FRAUD CAUSE OF ACTION IN THIS CASE. EVEN I WOULD GRANT  
14 A NONSUIT ON FRAUD CAUSE OF ACTION.

15 MR. VARTAIN: I REJECT THE "EVEN I," YOUR HONOR.  
16 ALTHOUGH I DISAGREE WITH YOU, I THINK YOU'RE MUCH TOO HARD ON  
17 YOURSELF.

18 THE COURT: I JUST DON'T SEE ANY -- YOU KNOW, THERE  
19 MIGHT HAVE BEEN FRAUD, FOR EXAMPLE. AGAIN, I GIVE EXTREME  
20 EXAMPLES. I DON'T MEAN THAT YOU NEEDED TO PROVE THIS, BUT HAD  
21 THERE BEEN EVIDENCE THAT THEY SENT HER TO DR. MISSETT CLAIMING  
22 THAT HE WAS A CAREER COUNSELOR AND IT TURNED OUT HE WAS A  
23 PSYCHIATRIST THAT'S --



24 MR. LEBOWITZ: I'M WITH YOU. ABSOLUTELY. I'M LOOKING  
25 AT FRAUD AS DEFINED IN JURY INSTRUCTIONS.

26 MR. VARTAIN: WHY ARE YOU WORRIED? SHE'S GOING TO

1137

1 DENY THE MOTION.

2 MR. LEBOWITZ: CAN I FINISH, COUNSEL?

3 MR. VARTAIN: I'M JUST SAYING --

4 THE COURT: I'M DENYING THE MOTION.

5 MR. LEBOWITZ: I JUST WANT TO BE ABLE TO ARGUE --

6 MR. VARTAIN: YOU CAN ARGUE TO THE APPEALS COURT.

7 MR. LEBOWITZ: CAN I FINISH? I'D LIKE TO MAKE MY

8 RECORD. 39.6 --

9 THE COURT: BUT YOU'VE WON. YOU DON'T NEED TO MAKE A  
10 RECORD WHEN YOU WIN.

11 MR. LEBOWITZ: BUT I WANT TO BE ABLE TO ARGUE TO THE  
12 JURY THAT --

13 THE COURT: NO ONE SAID YOU CAN'T.

14 MR. LEBOWITZ: OKAY.

15 THE COURT: IF YOU AGREE TO THE DISCUSSION, FOR THE  
16 SAKE OF THE DISCUSSION I CAN --

17 MR. LEBOWITZ: ABSOLUTELY. BECAUSE YESTERDAY ON THE  
18 RECORD I HAD SAID THAT I DON'T INTEND TO PURSUE FRAUD AND NOW  
19 WE'RE TALKING ABOUT MALICE AND OPPRESSION.

20 THE COURT: AND NOW YOU DO.

21 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

22 I APPRECIATE IT.  
23 THE COURT: OKAY. WE'RE OFF THE RECORD.  
24 MR. LEBOWITZ: OH, I'M SORRY.  
25 THE COURT: WE'RE ON THE RECORD.  
26 MR. LEBOWITZ: I APOLOGIZE. IT'S BEEN LONG HOURS.

1138

1 YOU DID ASK ABOUT FINAL HOUSEKEEPING AND REQUESTS  
2 ABOUT DOCUMENTS THAT WERE REFERRED TO ON THE RECORD THAT HAD NOT  
3 BEEN OFFERED OR ENTERED.  
4 THE COURT: OKAY.  
5 MR. LEBOWITZ: I DO HAVE TWO DOCUMENTS THAT I INFORMED  
6 MR. VARTAIN.  
7 MR. VARTAIN: AND I HAVE ONE, TOO.  
8 THE COURT: WHICH TWO ARE THEY?  
9 MR. LEBOWITZ: THESE ARE THE PHONE RECORDS.  
10 THE COURT: GIVE ME THE EXHIBIT NUMBER.  
11 MR. LEBOWITZ: THEY DON'T HAVE EXHIBIT NUMBERS. THIS  
12 WOULD HAVE BEEN THE CROSS-EXAMINATION OF DR. MISSETT. THEY WERE  
13 THE TWO PHONE RECORDS THAT HE READ ON THE STAND AND TESTIFIED  
14 ABOUT.  
15 THE COURT: YOU OFFERED THEM TO REFRESH HIS  
16 RECOLLECTION?  
17 MR. LEBOWITZ: THOSE, I DID NOT. THOSE WERE FOR  
18 IMPEACHMENT. AND HE READ THEM AND TESTIFIED AND SAID --  
19 ACKNOWLEDGED THAT THEY WERE GENUINE.

20 THE COURT: OKAY.

21 MR. LEBOWITZ: SO I WOULD OFFER THEM INTO EVIDENCE SO  
22 THE JURY CAN HAVE THEM IN THE ROOM WITH THEM.

23 THE COURT: MR. VARTAIN, ANY OBJECTION?

24 MR. VARTAIN: I DO HAVE AN OBJECTION BUT I PROMISED  
25 COUNSEL I WOULD NOT OBJECT.

26 THE COURT: THAT WAS NICE. WE'LL NUMBER THEM NEXT IN

1139

1 ORDER. THEY WILL BE ADMITTED.

2 MR. LEBOWITZ: THERE'S ALWAYS QUID PRO QUO.

3 THANK YOU, YOUR HONOR.

4 THE COURT: AND YOU HAVE --

5 MR. LEBOWITZ: THAT'S ALL I HAVE, YOUR HONOR.

6 THE COURT: THANK YOU.

7 MR. VARTAIN?

8 MR. VARTAIN: AND BY WAY OF HOUSEKEEPING, THIS WOULD

9 BE EXHIBIT UU. AND THE PHOTOGRAPHS OF THE OFFICE OF THE

10 PLAINTIFF AT THE SCHOOL, IT WAS SHOWN TO THE JURY IN THE OPENING

11 AND --

12 THE CLERK: THEY WILL BE NEXT IN ORDER UU; IS THAT

13 CORRECT?

14 MR. VARTAIN: YES.

15 THE COURT: I KNOW WHAT THEY LOOK LIKE.

16 NO OBJECTION?

17 MR. LEBOWITZ: IT'S JUST A SINGLE PHOTOGRAPH.

18 MR. VARTAIN: JUST THAT.  
19 MR. LEBOWITZ: OKAY.  
20 THE COURT: ALL RIGHT. THAT WILL BE ADMITTED THEN.  
21 MR. LEBOWITZ: NO OBJECTION.  
22 (DEFENSE EXHIBIT UU WAS MARKED FOR  
23 IDENTIFICATION AND ADMITTED INTO EVIDENCE.)  
24 THE COURT: IS THAT ALL THE EXHIBITS?  
25 MR. VARTAIN: EXCEPT FOR THE EXHIBIT THAT I WILL  
26 GIVE -- I WILL ENTER ON THE RECORD ON MONDAY, WHICH SHOULD BE A

1140

1 DEPOSITION TRANSCRIPT OF THE VIDEOTAPED PORTION.  
2 THE COURT: ACTUALLY, THE CALIFORNIA RULES OF COURT  
3 REQUIRE THAT THAT BE FILED. IT'S NOT ACTUALLY AN EXHIBIT.  
4 MR. VARTAIN: YES.  
5 THE COURT: AND SO YOU CAN JUST FILE IT. JUST PUT A  
6 COVER SHEET ON IT SO THAT IT HAS A CAPTION.  
7 MR. VARTAIN: IT WILL BE DONE.  
8 THE COURT: THAT WILL BE EASY. THE JURY DOESN'T  
9 ACTUALLY GET TO READ IT AS AN EXHIBIT.  
10 NOW, ARE WE OFF THE RECORD? OKAY.  
11 MR. LEBOWITZ: THANK YOU, YOUR HONOR.  
12 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)  
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1141

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2                    IN AND FOR THE COUNTY OF SAN MATEO  
3 DEPARTMENT NO. 3           HON. BETH LABSON FREEMAN, JUDGE  
4  
5 MARCINE BLOUGH,    )  
6                    )  
7                    )PLAINTIFF,    )  
8                    )  
9                    )VS.            )CASE NO. CIV 465027  
10                    )REPORTER'S CERTIFICATE  
11                    )MENLO COLLEGE, ET AL.,)  
12                    )  
13                    )DEFENDANTS.    )  
                  \_\_\_\_\_)  
  
STATE OF CALIFORNIA )  
                  ) SS  
COUNTY OF SAN MATEO )

14

15

I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE

16

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,

17

DO HEREBY CERTIFY THAT THE FOREGOING PAGES 894 THROUGH 1142,

18

INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE

19

PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

20

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DATED: OCTOBER 3, 2011

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CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER

26

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2                   IN AND FOR THE COUNTY OF SAN MATEO

3

4   MARCINE BLOUGH,    )

5                    )  
6    PLAINTIFF,    )

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8    VS.            )CASE NO. CIV 465027

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1 I N D E X

2

WITNESSES FOR THE PLAINTIFF: PAGE

3

TIMOTHY HAIGHT (CALLED PURSUANT TO EVIDENCE CODE 776)

4

DIRECT EXAMINATION BY MR. LEBOWITZ 1306

5

CROSS-EXAMINATION BY MR. VARTAIN 1311

6

7

8

9 WITNESSES FOR THE DEFENSE: PAGE

10 (NONE WERE CALLED AT THIS TIME.)

11

12

13

14 PAGE

EXHIBITS FOR THE PLAINTIFF: IDENT. EVID.

15

(NONE WERE MARKED AT THIS TIME.)

16

17

18

19 PAGE

EXHIBITS FOR THE DEFENSE: IDENT. EVID.

20

VV 6-PAGE PRINTOUTS/ARTICLES RE:

21 MENLO COLLEGE ANNUAL FUND AND BEQUESTS 1319 1321

22

23



24

25

26

1143

1 PROCEEDINGS

2 DECEMBER 15, 2008 A.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. WE'RE ON THE RECORD IN

4 BLOUGH VS. MENLO COLLEGE.

5 MORNING, LADIES AND GENTLEMEN. AS YOU CAN SEE, SEAT

6 NO. 3 IS EMPTY. OUR JUROR, TRJ03, HAS TAKEN ILL THIS WEEKEND,

7 AND SO I'M GOING TO HAVE TO EXCUSE HER. AND WE ARE SORRY FOR

8 THAT AND WE HOPE SHE HAS A SPEEDY RECOVERY, BUT WE WON'T BE

9 SEEING HER AGAIN.

10 COUNSEL, THERE'S NO OBJECTION TO EXCUSING JUROR NO. 3?

11 MR. VARTAIN: NO.

12 MR. LEBOWITZ: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. THANK YOU.

14 SO HERE'S WHAT WE DO, LADIES AND GENTLEMEN. AND,

15 MOSTLY TO OUR ALTERNATE JURORS, THE LAW ACTUALLY REQUIRES -- AND

16 THIS IS SOMETHING THAT I'VE ONLY SEEN IN THIS STATUTE -- THAT

17 ONE OF YOUR NAMES BE PULLED RANDOMLY FROM A HAT. IT DOESN'T USE

18 THE WORDS "RANDOMLY FROM A HAT," BUT YOU ARE TO BE SELECTED

19 RANDOMLY, AS OPPOSED TO THE ORDER IN WHICH YOU WERE SELECTED AS

20 ALTERNATE JURORS. I'M GOING TO HAVE MY CLERK AND MY BAILIFF

21 PERFORM THIS TASK IN FRONT OF EVERYONE.

22 THE CLERK: ATRJ03.

23 THE COURT: ATRJ03, YOU ARE THE LUCKY PERSON. YOU'RE  
24 GOING TO BE TAKING THE SEAT OF TRJ03. I'M GOING TO HAVE YOU  
25 STAND TO BE SWORN TO TAKE THE OATH AS A JUROR.

26 THE CLERK: PLEASE, RAISE YOUR RIGHT HAND.

1144

1 (WHEREUPON, THE JUROR WAS SWORN.)

2 ATRJ03: I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED.

4 THE COURT: ALL RIGHT. ATRJ03, YOU GET A DIFFERENT  
5 PERSPECTIVE ON THE PROCEEDINGS NOW. THANK YOU. AND, YOU KNOW,  
6 MANY TIMES OUR ALTERNATES ARE DILIGENT THROUGHOUT THE TRIAL AND  
7 NOT CALLED ON, AND THESE ARE THE THINGS THAT HAPPEN. WE ALL  
8 KNOW IN OUR OWN FAMILIES, SOMETIMES ILLNESSES COME ON AND THAT'S  
9 THE MOST IMPORTANT THING IS TO TAKE CARE OF ONE'S SELF.

10 ALL RIGHT. WE'RE GOING TO GET RIGHT DOWN TO BUSINESS  
11 THIS MORNING. AND THANK YOU FOR YOUR PATIENCE. I NEEDED YOU  
12 OUT IN THE HALLWAY BECAUSE I WAS STILL PROOFREADING THE JURY  
13 INSTRUCTIONS, AND SO THANK YOU FOR YOUR COURTESY. WHAT HAPPENS  
14 IS THAT EVEN NOW WHEN I READ THEM TO YOU, YOU MAY SEE ME MAKING  
15 CHANGES BECAUSE THERE ARE THINGS THAT I'VE MISSED. AND THE  
16 INSTRUCTIONS ACTUALLY ARE GOING TO TELL YOU THAT IF YOU SEE  
17 HANDWRITING, THESE ARE TYPOS AND I'M CORRECTING THEM. EVEN IF  
18 THE WORD IS SIGNIFICANTLY DIFFERENT, YOU'RE TO ONLY PAY  
19 ATTENTION TO -- IF I CROSS SOMETHING OUT -- ONLY TO THE WORD

20 I'VE WRITTEN IN. AND I APOLOGIZE. I'M A PRETTY GOOD  
21 PROOFREADER, BUT THINGS GET BY ME. AND SO I'M GOING TO SIT  
22 HERE, AND SOMETIMES WHEN YOU SAY IT OUT LOUD YOU RECOGNIZE THAT  
23 IT WAS WRONG, SO I'M GOING TO DO THAT.

24 I HAVE TO READ THESE INSTRUCTIONS TO YOU. IT'S A BIG  
25 PACKET. YOU KNOW FROM WHEN I READ TO YOU TWO WEEKS AGO, IT'S  
26 NOT THE MOST EXCITING READING YOU'VE EVER HEARD BUT YOU'RE FRESH

1145

1 THIS MORNING, SO I HOPE YOU WON'T FALL ASLEEP. WE'LL MAKE SURE  
2 THAT YOU DON'T. THESE ARE VERY IMPORTANT, THOUGH, AND I KNOW  
3 YOU'RE AWARE OF THAT.

4 I'M GOING TO READ YOU THE INSTRUCTIONS ON THE LAW.  
5 YOU'RE GOING TO HEAR AND THEN YOU'RE GOING TO GET COPIES OF IT.  
6 I DON'T EXPECT YOU TO COMPLETELY UNDERSTAND IT BY HEARING IT ONE  
7 TIME. I ACTUALLY EXPECT IN THE JURY ROOM THAT YOU'RE GOING TO  
8 PULL THE INSTRUCTIONS THAT ARE IMPORTANT TO THAT PART OF YOUR  
9 DISCUSSION AS IT GOES ALONG AND THAT YOU WILL READ AND REREAD  
10 THESE.

11 I'M GOING TO GIVE YOU PROBABLY THREE COPIES OF  
12 INSTRUCTIONS WHEN YOU'RE IN THE JURY ROOM. BUT IF EACH OF YOU  
13 WANTED AN ENTIRE SET I'D BE GLAD TO DO THAT. WE TRY TO SAVE  
14 PAPER BY NOT ANTICIPATING THAT YOU ALL WANT YOUR OWN COPIES, BUT  
15 THAT DOESN'T MEAN THAT THREE IS A MAGIC NUMBER. SO YOU'LL JUST  
16 ASK ME WHAT YOU WANT. I DON'T WANT YOU TO FEEL ANXIOUS ABOUT  
17 HOW QUICKLY THIS GOES ABOUT, BUT WE ALL LEARN BY LISTENING, AND

18 BY READING AND BY TALKING, SO YOU GET TO DO ALL THOSE THINGS.  
19 WHEN I'M DONE READING THE INSTRUCTIONS, I THINK WE'RE  
20 ALL GOING TO NEED TO STRETCH A LITTLE BIT. THIS AMOUNT WILL  
21 TAKE ME ABOUT 40 MINUTES TO READ. WE'RE GOING TO TAKE A  
22 15-MINUTE BREAK AT THAT TIME, MAYBE TEN MINUTES DEPENDING ON  
23 WHAT TIME IT IS. THEN WE'RE GOING TO START WITH THE CLOSING  
24 ARGUMENTS OF THE ATTORNEYS. AFTER MR. LEBOWITZ COMPLETES HIS  
25 CLOSING ARGUMENT, WE'LL TAKE ANOTHER BREAK. AGAIN, THIS IS  
26 EXHAUSTING FOR THE COURT REPORTER. BECAUSE THERE ARE NO BREAKS

1146

1 WHEN ONE PERSON GIVES A MONOLOGUE.  
2 IN THE TESTIMONY, YOU COULD SEE THERE WERE SECONDS IN  
3 BETWEEN QUESTIONS AND ANSWERS AND THAT GAVE HER A LITTLE BIT OF  
4 A BREAK, BUT THIS IS TOUGH GOING SO WE'RE GOING TO BE  
5 CONSIDERATE AND TAKE THOSE BREAKS. AND, OF COURSE, IF WE GET TO  
6 NOON, WE'LL TAKE OUR NORMAL LUNCH BREAK AND WE'LL COME BACK. I  
7 FULLY EXPECT THAT THE CASE WILL BE IN YOUR HANDS BY THE END OF  
8 THE DAY. I'M NOT QUITE SURE WHEN THAT WILL BE. AND WE'LL JUST  
9 SEE HOW IT GOES, BUT I DO GIVE THE ATTORNEYS THE OPPORTUNITY TO  
10 MAKE THE CLOSING ARGUMENT THEY FEEL IS NEEDED FOR THEIR CLIENT,  
11 SO WE'RE GOING TO AND I KNOW IT WILL BE HELPFUL TO YOU.

12 WITH THAT, I AM GOING TO START READING THE  
13 INSTRUCTIONS. THE ONE PART I'M NOT GOING TO READ TO YOU NOW IS  
14 THE LAST SECTION ON HOW YOU ARE TO DO YOUR JOB AS DELIBERATING  
15 JURORS. IT'S VERY IMPORTANT BUT I THINK IT'S BEST TO GIVE THAT

16 TO YOU JUST AS YOU GO INTO THE JURY ROOM. AND IT'S LITERALLY  
17 THE NUTS AND BOLTS ABOUT HOW TO DEAL WITH THE EVIDENCE IN TERMS  
18 OF PHYSICALLY HAVING IT AND WHAT TO DO WITH IT.

19 AND I TALK TO YOU ABOUT THE VERDICT FORM BUT I WANT TO  
20 HEAR WHAT THE ATTORNEYS TELL YOU ABOUT IT FIRST SO I DON'T  
21 REPEAT OR STEAL THEIR THUNDER ON THAT. SO WHEN I FINISH, I KNOW  
22 YOU'RE GOING TO SAY, "WELL, WAIT A MINUTE. WHAT ABOUT THESE  
23 OTHER THINGS?" IT COMES AT THE END AND I'LL DO THAT. I'LL  
24 PROBABLY TALK TO YOU FOR ANOTHER TEN MINUTES, MAYBE 15 BEFORE I  
25 LET YOU GO INTO THE JURY ROOM. AND THEN WE -- YOU KNOW, THEN  
26 IT'S IN YOUR HANDS.

1147

1 SO I'M GOING TO READ THIS. TAKE NOTES IF YOU WANT.  
2 YOU KNOW, AGAIN, YOU'VE SEEN ME. I'VE FILLED UP NOTEBOOKS FULL,  
3 BUT THAT'S WHAT I DO. IF IT HELPS YOU TO REMEMBER AND  
4 UNDERSTAND BY TAKING NOTES, BY ALL MEANS YOU SHOULD. BUT, AS I  
5 SAID, IT'S NOT YOUR LAST CHANCE TO SEE THEM.

6 MEMBERS OF THE JURY, YOU HAVE NOW HEARD ALL THE  
7 EVIDENCE AND YOU SOON WILL HEAR THE CLOSING ARGUMENTS OF THE  
8 ATTORNEYS. IT IS MY DUTY TO INSTRUCT YOU ON THE LAW THAT  
9 APPLIES TO THIS CASE. YOU MUST FOLLOW THESE INSTRUCTIONS AS  
10 WELL AS THOSE I PREVIOUSLY GAVE TO YOU. YOU WILL HAVE A COPY OF  
11 MY INSTRUCTIONS WITH YOU WHEN YOU GO TO THE JURY ROOM TO  
12 DELIBERATE.

13 YOU MUST DECIDE WHAT THE FACTS ARE. YOU MUST CONSIDER

14 ALL THE EVIDENCE AND THEN DECIDE WHAT YOU THINK HAPPENED. YOU  
15 MUST DECIDE THE FACTS BASED ON THE EVIDENCE ADMITTED INTO THIS  
16 TRIAL. DO NOT DO ANY RESEARCH ON YOUR OWN OR AS A GROUP. DO  
17 NOT USE DICTIONARIES, THE INTERNET OR OTHER REFERENCE MATERIALS.  
18 DO NOT INVESTIGATE THE CASE OR CONDUCT ANY EXPERIMENTS. DO NOT  
19 CONTACT ANYONE TO ASSIST YOU, SUCH AS A FAMILY ACCOUNTANT,  
20 DOCTOR OR LAWYER.

21 DO NOT VISIT OR VIEW THE SCENE OF ANY EVENT INVOLVED  
22 IN THIS CASE. IF YOU HAPPEN TO PASS BY THE SCENE DO NOT STOP OR  
23 INVESTIGATE. ALL JURORS MUST SEE OR HEAR THE SAME EVIDENCE AT  
24 THE SAME TIME. YOU MUST NOT LET BIAS, SYMPATHY, PREJUDICE OR  
25 PUBLIC OPINION INFLUENCE YOUR DECISION.

26 I WILL NOW TELL YOU THE LAW THAT YOU MUST FOLLOW TO

1148

1 REACH YOUR VERDICT. YOU MUST FOLLOW THE LAW EXACTLY AS I GIVE  
2 IT TO YOU, EVEN IF YOU DISAGREE WITH IT. IF THE ATTORNEYS HAVE  
3 SAID ANYTHING DIFFERENT ABOUT WHAT THE LAW MEANS, YOU MUST  
4 FOLLOW WHAT I SAY.

5 IN REACHING YOUR VERDICT, DO NOT GUESS WHAT I THINK  
6 YOUR VERDICT SHOULD BE FROM SOMETHING I MAY HAVE SAID OR DONE.  
7 PAY CAREFUL ATTENTION TO ALL THE INSTRUCTIONS THAT I GIVE YOU.  
8 ALL THE INSTRUCTIONS ARE IMPORTANT BECAUSE TOGETHER THEY STATE  
9 THE LAW THAT YOU WILL USE IN THIS CASE. YOU MUST CONSIDER ALL  
10 OF THE INSTRUCTIONS TOGETHER. AFTER YOU HAVE DECIDED WHAT THE  
11 FACTS ARE, YOU MAY FIND THAT SOME INSTRUCTIONS DO NOT APPLY. IN

12 THAT CASE, FOLLOW THE INSTRUCTIONS THAT DO APPLY AND USE THEM  
13 TOGETHER WITH THE FACTS TO REACH YOUR VERDICT.

14 IF I REPEAT ANY IDEA OR RULES OF LAW DURING MY  
15 INSTRUCTIONS, THAT DOES NOT MEAN THAT THESE IDEAS OR RULES ARE  
16 MORE IMPORTANT THAN THE OTHERS. IN ADDITION, THE ORDER IN WHICH  
17 THE INSTRUCTIONS ARE GIVEN DOES NOT MAKE ANY DIFFERENCE. YOU  
18 MUST NOT CONSIDER WHETHER ANY OF THE PARTIES IN THIS CASE HAS  
19 INSURANCE. THE PRESENCE OR ABSENCE OF INSURANCE IS TOTALLY  
20 IRRELEVANT. YOU MUST DECIDE THIS CASE BASED ONLY ON THE LAW AND  
21 THE EVIDENCE.

22 SWORN TESTIMONY, DOCUMENTS OR ANYTHING ELSE MAY BE  
23 ADMITTED INTO EVIDENCE. YOU MUST DECIDE WHAT THE FACTS ARE IN  
24 THIS CASE FROM THE EVIDENCE YOU HAVE SEEN OR HEARD DURING THE  
25 TRIAL, INCLUDING ANY EXHIBITS I ADMITTED INTO EVIDENCE. YOU MAY  
26 NOT CONSIDER AS EVIDENCE ANYTHING THAT YOU SAW OR HEARD WHEN

1149

1 COURT WAS NOT IN SESSION, EVEN SOMETHING DONE OR SAID BY ONE OF  
2 THE PARTIES, ATTORNEYS OR WITNESSES.

3 WHAT THE ATTORNEYS SAY DURING THE TRIAL IS NOT  
4 EVIDENCE. IN THEIR OPENING STATEMENT AND CLOSING ARGUMENTS, THE  
5 ATTORNEYS TALK TO YOU ABOUT THE LAW AND THE EVIDENCE. WHAT THE  
6 LAWYERS SAY MAY HELP YOU UNDERSTAND THE LAW AND THE EVIDENCE,  
7 BUT THEIR STATEMENTS AND ARGUMENTS ARE NOT EVIDENCE. THE  
8 ATTORNEYS' QUESTIONS ARE NOT EVIDENCE. ONLY THE WITNESSES'  
9 ANSWERS ARE EVIDENCE. YOU SHOULD NOT THINK THAT SOMETHING IS

10 TRUE JUST BECAUSE AN ATTORNEY'S QUESTIONS SUGGESTED THAT IT WAS  
11 TRUE.

12 EACH SIDE HAD THE RIGHT TO OBJECT TO EVIDENCE OFFERED  
13 BY THE OTHER SIDE. IF I SUSTAINED AN OBJECTION TO A QUESTION,  
14 YOU MUST IGNORE THE QUESTION. IF THE WITNESS DID NOT ANSWER,  
15 YOU MUST NOT GUESS WHAT HE OR SHE MIGHT HAVE SAID OR WHY I  
16 SUSTAINED THE OBJECTION. IF THE WITNESS ALREADY ANSWERED, YOU  
17 MUST IGNORE THE ANSWER. DURING THE TRIAL I GRANTED A MOTION TO  
18 STRIKE TESTIMONY THAT YOU HEARD. YOU MUST TOTALLY DISREGARD  
19 THAT TESTIMONY. YOU MUST TREAT IT AS THOUGH IT DID NOT EXIST.

20 A WITNESS IS A PERSON WHO HAS KNOWLEDGE RELATED TO  
21 THIS CASE. YOU WILL HAVE TO DECIDE WHETHER YOU BELIEVE EACH  
22 WITNESS AND HOW IMPORTANT EACH WITNESS'S TESTIMONY IS TO THE  
23 CASE. YOU MAY BELIEVE ALL, PART OR NONE OF A WITNESS'S  
24 TESTIMONY. IN DECIDING WHETHER TO BELIEVE A WITNESS'S TESTIMONY  
25 YOU MAY CONSIDER, AMONG OTHER FACTORS, THE FOLLOWING:

26 HOW WELL DID THE WITNESS SEE, HEAR OR OTHERWISE SENSE

1150

1 WHAT HE OR SHE DESCRIBED IN COURT? HOW WELL DID THE WITNESS  
2 REMEMBER AND DESCRIBE WHAT HAPPENED? HOW DID THE WITNESS LOOK,  
3 ACT AND SPEAK WHILE TESTIFYING? DID THE WITNESS HAVE ANY REASON  
4 TO SAY SOMETHING THAT WAS NOT TRUE? DID THE WITNESS SHOW ANY  
5 BIAS OR PREJUDICE? DID THE WITNESS HAVE A PERSONAL RELATIONSHIP  
6 WITH ANY OF THE PARTIES INVOLVED IN THE CASE? DOES THE WITNESS  
7 HAVE A PERSONAL STAKE IN HOW THE CASE IS DECIDED? WHAT WAS THE



8 WITNESS'S ATTITUDE TOWARD THIS CASE OR ABOUT GIVING TESTIMONY?

9 SOMETIMES A WITNESS MAY SAY SOMETHING THAT IS NOT  
10 CONSISTENT WITH SOMETHING ELSE HE OR SHE SAID. SOMETIMES  
11 DIFFERENT WITNESSES WILL GIVE DIFFERENT VERSIONS OF WHAT  
12 HAPPENED. PEOPLE OFTEN FORGET THINGS OR MAKE MISTAKES IN WHAT  
13 THEY REMEMBER. ALSO, TWO PEOPLE MAY SEE THE SAME EVENT BUT  
14 REMEMBER IT DIFFERENTLY. YOU MAY CONSIDER THESE DIFFERENCES BUT  
15 DO NOT DECIDE THAT TESTIMONY IS UNTRUE JUST BECAUSE IT DIFFERS  
16 FROM OTHER TESTIMONY.

17 HOWEVER, IF YOU DECIDE THAT A WITNESS DELIBERATELY  
18 TESTIFIED UNTRUTHFULLY ABOUT SOMETHING IMPORTANT, YOU MAY CHOOSE  
19 NOT TO BELIEVE ANYTHING THAT WITNESS SAID. ON THE OTHER HAND,  
20 IF YOU THINK THE WITNESS TESTIFIED UNTRUTHFULLY ABOUT SOME  
21 THINGS BUT TOLD THE TRUTH ABOUT OTHERS, YOU MAY ACCEPT THE PART  
22 YOU THINK IS TRUE AND IGNORE THE REST.

23 DO NOT MAKE ANY DECISIONS SIMPLY BECAUSE THERE WERE  
24 MORE WITNESSES ON ONE SIDE THAN ON THE OTHER. IF YOU BELIEVE IT  
25 IS TRUE, THE TESTIMONY OF A SINGLE WITNESS IS ENOUGH TO PROVE A  
26 FACT. YOU MUST NOT BE BIASED IN FAVOR OF OR AGAINST ANY WITNESS

1151

1 BECAUSE OF HIS OR HER DISABILITY, GENDER, RACE, RELIGION, SEXUAL  
2 ORIENTATION, AGE, NATIONAL ORIGIN OR SOCIOECONOMIC STATUS.

3 A PARTY MUST PERSUADE YOU BY THE EVIDENCE PRESENTED IN  
4 COURT THAT WHAT HE OR SHE IS REQUIRED TO PROVE IS MORE LIKELY TO  
5 BE TRUE THAN NOT TRUE. THIS IS REFERRED TO AS THE BURDEN OF

6 PROOF. AFTER WEIGHING ALL THE EVIDENCE, IF YOU CANNOT DECIDE  
7 THAT SOMETHING IS MORE LIKELY TO BE TRUE THAN NOT, YOU MUST  
8 CONCLUDE THAT THE PARTY DID NOT PROVE IT. YOU SHOULD CONSIDER  
9 ALL THE EVIDENCE, NO MATTER WHICH PARTY PRODUCED THE EVIDENCE.

10 IN CRIMINAL TRIALS THE PROSECUTION MUST PROVE THE  
11 DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT, BUT IN CIVIL  
12 TRIALS, SUCH AS THIS ONE, THE PARTY WHO IS REQUIRED TO PROVE  
13 SOMETHING NEED PROVE ONLY THAT IT IS MORE LIKELY TO BE TRUE THAN  
14 NOT TRUE. CERTAIN FACTS MUST BE PROVED BY CLEAR AND CONVINCING  
15 EVIDENCE, WHICH IS A HIGHER BURDEN OF PROOF. THIS MEANS THE  
16 PARTY MUST PERSUADE YOU THAT IT IS HIGHLY PROBABLE THAT THE FACT  
17 IS TRUE. I WILL TELL YOU SPECIFICALLY WHICH FACTS MUST BE  
18 PROVED BY CLEAR AND CONVINCING EVIDENCE.

19 EVIDENCE CAN COME IN MANY FORMS. IT CAN BE TESTIMONY  
20 ABOUT WHAT SOMEONE SAW OR HEARD OR SMELLED. IT CAN BE AN  
21 EXHIBIT ADMITTED INTO EVIDENCE. IT CAN BE SOMEONE'S OPINION.  
22 SOME EVIDENCE PROVES A FACT DIRECTLY, SUCH AS TESTIMONY OF A  
23 WITNESS WHO SAW A JET PLANE FLY ACROSS THE SKY. SOME EVIDENCE  
24 PROVES A FACT INDIRECTLY, SUCH AS TESTIMONY OF A WITNESS WHO SAW  
25 ONLY THE WHITE TRAIL THAT JET PLANES OFTEN LEAVE. THIS INDIRECT  
26 EVIDENCE IS SOMETIMES REFERRED TO AS CIRCUMSTANTIAL EVIDENCE.

1152

1 IN EITHER INSTANCE THE WITNESS'S TESTIMONY IS EVIDENCE THAT A  
2 JET PLANE FLEW ACROSS THE SKY.

3 AS FAR AS THE LAW IS CONCERNED, IT MAKES NO DIFFERENCE

4 WHETHER EVIDENCE IS DIRECT OR INDIRECT. YOU MAY CHOOSE TO  
5 BELIEVE OR DISBELIEVE EITHER KIND, WHETHER IT IS DIRECT OR  
6 INDIRECT. YOU SHOULD GIVE EVERY PIECE OF EVIDENCE WHATEVER  
7 WEIGHT YOU THINK IT DESERVES.

8 YOU MAY CONSIDER THE ABILITY OF EACH PARTY TO PROVIDE  
9 EVIDENCE. IF A PARTY PROVIDED WEAKER EVIDENCE WHEN IT COULD  
10 HAVE PROVIDED STRONGER EVIDENCE, YOU MAY DISTRUST THE WEAKER  
11 EVIDENCE. YOU MAY CONSIDER WHETHER A PARTY FAILED TO EXPLAIN OR  
12 DENY SOME UNFAVORABLE EVIDENCE. FAILURE TO EXPLAIN OR DENY  
13 UNFAVORABLE EVIDENCE MAY SUGGEST THAT THE EVIDENCE IS TRUE.  
14 DURING THE TRIAL I EXPLAINED TO YOU THAT CERTAIN EVIDENCE WAS  
15 ADMITTED FOR A LIMITED PURPOSE. YOU MAY CONSIDER THAT EVIDENCE  
16 ONLY FOR THE LIMITED PURPOSE THAT I DESCRIBED AND NOT FOR ANY  
17 OTHER PURPOSE.

18 DURING THE TRIAL YOU HEARD TESTIMONY READ FROM A  
19 DEPOSITION. A DEPOSITION IS THE TESTIMONY OF A PERSON TAKEN  
20 BEFORE TRIAL. AT THE DEPOSITION, THE PERSON IS SWORN TO TELL  
21 THE TRUTH AND IS QUESTIONED BY THE ATTORNEYS. YOU MUST CONSIDER  
22 THE DEPOSITION TESTIMONY THAT WAS READ TO YOU IN THE SAME WAY AS  
23 YOU CONSIDER TESTIMONY GIVEN IN COURT. THIS WOULD APPLY TO THE  
24 VIDEOTAPED DEPOSITION THE SAME WAY.

25 A PARTY MAY OFFER INTO EVIDENCE ANY ORAL OR WRITTEN  
26 STATEMENT MADE BY AN OPPOSING PARTY OUTSIDE THE COURTROOM. WHEN

1 YOU EVALUATE EVIDENCE OF SUCH A STATEMENT, YOU MUST CONSIDER

2 THESE QUESTIONS: ONE, DO YOU BELIEVE THAT THE PARTY ACTUALLY  
3 MADE THE STATEMENT? IF YOU DO NOT BELIEVE THAT THE PARTY MADE  
4 THE STATEMENT, YOU MAY NOT CONSIDER THE STATEMENT AT ALL; TWO,  
5 IF YOU BELIEVE THAT THE STATEMENT WAS MADE, DO YOU BELIEVE IT  
6 WAS REPORTED ACCURATELY? YOU SHOULD VIEW TESTIMONY ABOUT AN  
7 ORAL STATEMENT MADE BY A PARTY OUTSIDE THE COURTROOM WITH  
8 CAUTION.

9 MEDICAL DOCTORS AND HEALTHCARE PROFESSIONALS HAVE  
10 TESTIFIED THAT MARCINE BLOUGH MADE STATEMENTS TO THEM ABOUT  
11 MARCINE BLOUGH'S MEDICAL HISTORY. THESE STATEMENTS HELPED THE  
12 DOCTORS DIAGNOSE THE PATIENT'S CONDITION. YOU CAN USE THESE  
13 STATEMENTS TO HELP YOU EXAMINE THE BASIS OF EACH DOCTOR'S  
14 OPINION. YOU CANNOT USE THEM FOR ANY OTHER PURPOSE. HOWEVER, A  
15 STATEMENT BY MARCINE BLOUGH TO ANY OF THESE DOCTORS ABOUT A  
16 CURRENT MEDICAL CONDITION MAY BE CONSIDERED AS EVIDENCE OF THAT  
17 MEDICAL CONDITION.

18 DURING THE TRIAL YOU HEARD TESTIMONY FROM EXPERT  
19 WITNESSES. THE LAW ALLOWS AN EXPERT TO STATE OPINIONS ABOUT  
20 MATTERS IN HIS OR HER FIELD OF EXPERTISE, EVEN IF HE OR SHE HAS  
21 NOT WITNESSED ANY OF THE EVENTS INVOLVED IN THE TRIAL. YOU DO  
22 NOT HAVE TO ACCEPT AN EXPERT'S OPINION. AS WITH ANY OTHER  
23 WITNESS, IT IS UP TO YOU TO DECIDE WHETHER YOU BELIEVE THE  
24 EXPERT'S TESTIMONY AND CHOOSE TO USE IT AS A BASIS FOR YOUR  
25 DECISION.

26 YOU MAY BELIEVE ALL, PART OR NONE OF AN EXPERT'S

1 TESTIMONY. IN DECIDING WHETHER TO BELIEVE AN EXPERT'S TESTIMONY  
2 YOU SHOULD CONSIDER THE EXPERT'S TRAINING AND EXPERIENCE, THE  
3 FACTS THE EXPERT RELIED ON AND THE REASONS FOR THE EXPERT'S  
4 OPINION. THE LAW ALLOWS EXPERT WITNESSES TO BE ASKED QUESTIONS  
5 THAT ARE BASED ON ASSUMED FACTS. THESE ARE SOMETIMES CALLED  
6 HYPOTHETICAL QUESTIONS.

7 IN DETERMINING THE WEIGHT TO GIVE TO THE EXPERT'S  
8 OPINION THAT IS BASED ON THE ASSUMED FACTS, YOU SHOULD CONSIDER  
9 WHETHER THE ASSUMED FACTS ARE TRUE. IF THE EXPERT WITNESSES  
10 DISAGREED WITH ONE ANOTHER, YOU SHOULD WEIGH EACH OPINION  
11 AGAINST THE OTHERS. YOU SHOULD EXAMINE THE REASONS GIVEN FOR  
12 EACH OPINION AND THE FACTS OR OTHER MATTERS THAT EACH WITNESS  
13 RELIED ON. YOU MAY ALSO COMPARE THE EXPERTS' QUALIFICATIONS.

14 MARCINE BLOUGH CLAIMS THAT THE COLLEGE WRONGFULLY  
15 REQUIRED A MEDICAL AND PSYCHOLOGICAL EVALUATION OF HER AND THAT  
16 SHE WAS HARMED BY THE COLLEGE'S DOING SO. TO ESTABLISH THIS  
17 CLAIM, MS. BLOUGH MUST PROVE BOTH OF THE FOLLOWING: ONE, THAT  
18 THE MEDICAL AND PSYCHOLOGICAL EVALUATION WAS REQUIRED BY THE  
19 COLLEGE; AND, TWO, THAT SHE WAS HARMED BY THE MEDICAL AND  
20 PSYCHOLOGICAL EVALUATIONS. THE INSTRUCTIONS ABOUT HARM ARE  
21 GIVEN ELSEWHERE.

22 MENLO COLLEGE CLAIMS THAT THE MEDICAL AND  
23 PSYCHOLOGICAL EXAM WAS LAWFUL BECAUSE THE EXAM WAS JOB-RELATED  
24 AND CONSISTENT WITH THE BUSINESS NECESSITY OF THE COLLEGE. TO  
25 ESTABLISH THAT THE MEDICAL AND PSYCHOLOGICAL EXAM WAS LAWFUL,  
26 THE COLLEGE MUST PROVE BOTH OF THE FOLLOWING: ONE, THE MEDICAL

1 AND PSYCHOLOGICAL EXAM WAS JOB-RELATED; AND, TWO, THE MEDICAL  
2 AND PSYCHOLOGICAL EXAM WAS CONSISTENT WITH THE BUSINESS  
3 NECESSITY OF THE COLLEGE.

4 MARCINE BLOUGH CLAIMS THAT MENLO COLLEGE WRONGFULLY  
5 DISCHARGED HER BASED ON HER DISABILITY AND/OR MEDICAL CONDITION.  
6 TO ESTABLISH THIS CLAIM MARCINE BLOUGH MUST PROVE ALL OF THE  
7 FOLLOWING:

8 ONE, THAT MENLO COLLEGE WAS AN EMPLOYER; TWO, THAT  
9 MARCINE BLOUGH WAS AN EMPLOYEE OF MENLO COLLEGE; THREE, THAT  
10 MENLO COLLEGE KNEW MARCINE BLOUGH HAD A DISABILITY AND/OR  
11 MEDICAL CONDITION; FOUR, THAT MARCINE BLOUGH WAS ABLE TO PERFORM  
12 THE ESSENTIAL JOB DUTIES WITH OR WITHOUT REASONABLE  
13 ACCOMMODATIONS FOR HER CONDITION; FIVE, THAT MENLO COLLEGE  
14 DISCHARGED MARCINE BLOUGH; SIX, THAT MARCINE BLOUGH'S DISABILITY  
15 AND/OR MEDICAL CONDITION WAS A MOTIVATING REASON FOR THE  
16 DISCHARGE; SEVEN, THAT MARCINE BLOUGH WAS HARMED; AND, EIGHT,  
17 THAT MENLO COLLEGE'S DECISION WAS A SUBSTANTIAL FACTOR IN  
18 CAUSING MARCINE BLOUGH'S HARM.

19 A SUBSTANTIAL FACTOR IN CAUSING HARM IS A FACTOR THAT  
20 A REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED TO THE  
21 HARM. IT MUST BE MORE THAN A REMOTE OR TRIVIAL FACTOR. IT DOES  
22 NOT HAVE TO BE THE ONLY CAUSE OF THE HARM. A MOTIVATING REASON  
23 IS A REASON THAT CONTRIBUTED TO THE DECISION TO TAKE CERTAIN  
24 ACTIONS, EVEN THOUGH OTHER REASONS MAY ALSO HAVE CONTRIBUTED TO

25 THE DECISION.

26 MARCINE BLOUGH CLAIMS THAT MENLO COLLEGE FAILED TO

1156

1 PREVENT UNLAWFUL DISCRIMINATION BASED ON MARCINE BLOUGH'S STATUS  
2 AS A PERSON WITH A DISABILITY AND/OR WITH A MEDICAL CONDITION.  
3 TO ESTABLISH THIS CLAIM MARCINE BLOUGH MUST PROVE ALL OF THE  
4 FOLLOWING:

5 ONE, THAT MARCINE BLOUGH WAS AN EMPLOYEE OF MENLO  
6 COLLEGE; TWO, THAT MARCINE BLOUGH WAS SUBJECTED TO UNLAWFUL  
7 DISCRIMINATION BECAUSE SHE WAS A PERSON WITH A DISABILITY AND/OR  
8 MEDICAL CONDITION; THREE, THAT MENLO COLLEGE FAILED TO TAKE  
9 REASONABLE STEPS TO PREVENT THE DISCRIMINATION; FOUR, THAT  
10 MARCINE BLOUGH WAS HARMED; AND, FIVE, THAT MENLO COLLEGE'S  
11 FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION WAS A  
12 SUBSTANTIAL FACTOR IN CAUSING MARCINE BLOUGH'S HARM.

13 MARCINE BLOUGH CLAIMS SHE WAS DISCHARGED FROM  
14 EMPLOYMENT FOR REASONS THAT VIOLATE PUBLIC POLICIES. TO  
15 ESTABLISH THIS CLAIM MARCINE BLOUGH MUST PROVE ALL OF THE  
16 FOLLOWING:

17 ONE, THAT MARCINE BLOUGH WAS EMPLOYED BY MENLO  
18 COLLEGE; TWO, THAT MENLO COLLEGE DISCHARGED MARCINE BLOUGH;  
19 THREE, THAT MARCINE BLOUGH WAS ABLE TO PERFORM THE ESSENTIAL JOB  
20 DUTIES WITH OR WITHOUT REASONABLE ACCOMMODATION FOR HER  
21 CONDITION; FOUR, THAT MARCINE BLOUGH'S DISABILITY AND/OR MEDICAL  
22 CONDITION WAS A MOTIVATING REASON FOR MARCINE BLOUGH'S

23 DISCHARGE; AND, FIVE, THAT THE DISCHARGE CAUSED MARCINE BLOUGH  
24 HARM.

25 A REASONABLE ACCOMMODATION IS A REASONABLE CHANGE TO  
26 THE WORKPLACE THAT ALLOWS AN EMPLOYEE WITH A DISABILITY TO

1157

1 PERFORM THE ESSENTIAL DUTIES OF THE JOB. A REASONABLE  
2 ACCOMMODATION MAY INCLUDE A CHANGE IN THE WORK SCHEDULE, A  
3 CHANGE IN RESPONSIBILITIES OF THE EMPLOYEE AND OTHER SIMILAR  
4 ACCOMMODATIONS.

5 MENLO COLLEGE IS RESPONSIBLE FOR HARM CAUSED BY  
6 WRONGFUL CONDUCT OF ITS EMPLOYEES WHILE ACTING WITHIN THE SCOPE  
7 OF THEIR EMPLOYMENT. IF YOU DECIDE THAT MARCINE BLOUGH HAS  
8 PROVED HER CLAIM AGAINST MENLO COLLEGE, YOU MUST ALSO DECIDE HOW  
9 MUCH MONEY WILL REASONABLY COMPENSATE MARCINE BLOUGH FOR THE  
10 HARM. THIS COMPENSATION IS CALLED DAMAGES.

11 THE AMOUNT OF DAMAGES MUST INCLUDE AN AWARD FOR EACH  
12 ITEM OF HARM THAT WAS CAUSED BY MENLO COLLEGE'S WRONGFUL  
13 CONDUCT, EVEN IF THE PARTICULAR HARM COULD NOT HAVE BEEN  
14 ANTICIPATED. MARCINE BLOUGH DOES NOT HAVE TO PROVE THE EXACT  
15 AMOUNT OF DAMAGES THAT WILL PROVIDE REASONABLE COMPENSATION FOR  
16 THE HARM; HOWEVER, YOU MUST NOT SPECULATE OR GUESS IN AWARDING  
17 DAMAGES. THE FOLLOWING ARE THE SPECIFIC ITEMS OF DAMAGES  
18 CLAIMED BY MARCINE BLOUGH:

19 THE DAMAGES CLAIMED BY MARCINE BLOUGH FOR HARM CAUSED  
20 BY MENLO COLLEGE FALL INTO TWO CATEGORIES, CALLED ECONOMIC



21 DAMAGES AND NONECONOMIC DAMAGES. YOU WILL BE ASKED ON THE  
22 VERDICT FORM TO STATE THE TWO CATEGORIES OF DAMAGES SEPARATELY.  
23 THE FOLLOWING ARE THE SPECIFIC ITEMS OF ECONOMIC DAMAGES CLAIMED  
24 BY MARCINE BLOUGH: ONE, LOST PAST COMPENSATION, INCLUDING WAGES  
25 AND RETIREMENT BENEFITS; TWO, LOST FUTURE COMPENSATION,  
26 INCLUDING WAGES AND RETIREMENT BENEFITS.

1158

1 IF YOU FIND THAT MENLO COLLEGE UNLAWFULLY DISCHARGED  
2 MARCINE BLOUGH, THEN YOU MUST DECIDE THE AMOUNT OF DAMAGES, IF  
3 ANY, THAT MARCINE BLOUGH HAS PROVED SHE'S ENTITLED TO RECOVER.  
4 TO MAKE THIS DECISION YOU MUST: ONE, DECIDE THE AMOUNT THAT  
5 MARCINE BLOUGH WOULD HAVE EARNED FROM MENLO COLLEGE UP TO TODAY,  
6 INCLUDING ANY BENEFITS AND PAY INCREASES; AND, TWO, ADD THE  
7 PRESENT CASH VALUE OF ANY FUTURE WAGES AND BENEFITS THAT SHE  
8 WOULD HAVE EARNED AFTER TODAY OR THE LENGTH OF TIME THE  
9 EMPLOYMENT WITH MENLO COLLEGE WAS REASONABLY CERTAIN TO  
10 CONTINUE.

11 IN DETERMINING THE PERIOD THAT MARCINE BLOUGH'S  
12 EMPLOYMENT WAS REASONABLY CERTAIN TO HAVE CONTINUED, YOU SHOULD  
13 CONSIDER AMONG OTHER FACTORS THE FOLLOWING: MARCINE BLOUGH'S  
14 AGE, WORK PERFORMANCE AND INTENT REGARDING CONTINUING EMPLOYMENT  
15 WITH MENLO COLLEGE; MENLO COLLEGE'S PROSPECTS FOR CONTINUING THE  
16 OPERATION INVOLVING MARCINE BLOUGH; AND ANY OTHER FACTOR THAT  
17 BEARS ON HOW LONG MARCINE BLOUGH WOULD HAVE CONTINUED TO WORK.

18 MENLO COLLEGE CLAIMS THAT IF MARCINE BLOUGH IS

19 ENTITLED TO ANY DAMAGES THEY SHOULD BE REDUCED BY THE AMOUNT  
20 THAT SHE COULD HAVE EARNED FROM AVAILABLE EMPLOYMENT. TO  
21 SUCCEED MENLO COLLEGE MUST PROVE ALL THE FOLLOWING: ONE, THAT  
22 EMPLOYMENT SUBSTANTIALLY SIMILAR TO MARCINE BLOUGH'S FORMER JOB  
23 WAS AVAILABLE TO HER; TWO, THAT MARCINE BLOUGH FAILED TO MAKE  
24 REASONABLE EFFORTS TO SEEK THIS EMPLOYMENT; AND, THREE, THE  
25 AMOUNT THAT MARCINE BLOUGH COULD HAVE EARNED FROM THIS  
26 EMPLOYMENT.

1159

1 IN DECIDING WHETHER THE EMPLOYMENT WAS SUBSTANTIALLY  
2 SIMILAR YOU SHOULD CONSIDER AMONG OTHER FACTORS WHETHER: A, THE  
3 NATURE OF THE WORK WAS DIFFERENT FROM MARCINE BLOUGH'S  
4 EMPLOYMENT WITH MENLO COLLEGE; B, THE NEW POSITION WAS  
5 SUBSTANTIALLY INFERIOR TO MARCINE BLOUGH'S FORMER POSITION; C,  
6 THE SALARIES, BENEFITS AND HOURS OF THE JOB WERE SIMILAR TO  
7 MARCINE BLOUGH'S FORMER JOB; D, THE NEW POSITION REQUIRED  
8 SIMILAR SKILLS, BACKGROUND AND EXPERIENCE; E, THE JOB  
9 RESPONSIBILITIES WERE SIMILAR; AND, F, THE JOB WAS IN THE SAME  
10 LOCALITY.

11 TO CALCULATE THE AMOUNT OF DAMAGES YOU MUST: ONE,  
12 DETERMINE THE AMOUNT MARCINE BLOUGH WOULD HAVE EARNED FROM THE  
13 JOB SHE HELD AT THE TIME SHE WAS INJURED; AND, TWO, SUBTRACT THE  
14 AMOUNT MARCINE BLOUGH EARNED OR COULD HAVE EARNED BY RETURNING  
15 TO GAINFUL EMPLOYMENT.

16 IF YOU DECIDE THAT MARCINE BLOUGH'S HARM INCLUDES

17 FUTURE ECONOMIC DAMAGES FOR LOSS OF EARNINGS AND/OR LOSS OF  
18 RETIREMENT CONTRIBUTIONS, THEN THE AMOUNT OF THOSE FUTURE  
19 DAMAGES MUST BE REDUCED TO THEIR PRESENT CASH VALUE. THIS IS  
20 NECESSARY BECAUSE MONEY RECEIVED NOW WILL, THROUGH INVESTMENT,  
21 GROW TO A LARGER AMOUNT IN THE FUTURE. TO FIND THE PRESENT CASH  
22 VALUE YOU MUST DETERMINE THE AMOUNT OF MONEY THAT, IF REASONABLY  
23 INVESTED TODAY, WILL PROVIDE MARCINE BLOUGH WITH THE AMOUNT OF  
24 HER FUTURE DAMAGES. YOU MAY CONSIDER EXPERT TESTIMONY IN  
25 DETERMINING THE PRESENT CASH VALUE OF FUTURE ECONOMIC DAMAGES.

26 THE FOLLOWING ARE THE SPECIFIC ITEMS OF NONECONOMIC

1160

1 DAMAGES CLAIMED BY MARCINE BLOUGH: PAST AND FUTURE MENTAL  
2 SUFFERING, INCONVENIENCE, GRIEF, ANXIETY, HUMILIATION AND  
3 EMOTIONAL DISTRESS. TO RECOVER FOR FUTURE MENTAL SUFFERING,  
4 INCONVENIENCE, GRIEF, ANXIETY, HUMILIATION AND EMOTIONAL  
5 DISTRESS MARCINE BLOUGH MUST PROVE THAT SHE IS REASONABLY  
6 CERTAIN TO SUFFER THAT HARM. NO FIXED STANDARD EXISTS FOR  
7 DECIDING THE AMOUNT OF THESE DAMAGES. YOU MUST USE YOUR  
8 JUDGMENT TO DECIDE A REASONABLE AMOUNT BASED ON THE EVIDENCE AND  
9 YOUR COMMON SENSE.

10 FOR FUTURE MENTAL SUFFERING, INCONVENIENCE, GRIEF,  
11 ANXIETY, HUMILIATION AND EMOTIONAL DISTRESS, DETERMINE THE  
12 AMOUNT IN CURRENT DOLLARS PAID AT THE TIME OF JUDGMENT THAT WILL  
13 COMPENSATE MARCINE BLOUGH FOR FUTURE MENTAL SUFFERING,  
14 INCONVENIENCE, GRIEF, ANXIETY, HUMILIATION AND EMOTIONAL

15 DISTRESS. THIS AMOUNT SHOULD NOT BE FURTHER REDUCED TO PRESENT  
16 CASH VALUE. IF YOU FIND THAT MS. BLOUGH SUFFERED EMOTIONAL  
17 DISTRESS DAMAGES, YOU MUST NOT AWARD HER ANY DAMAGES FOR ANY  
18 EMOTIONAL DISTRESS THAT WAS CAUSED BY HER PARTICIPATION IN THIS  
19 LITIGATION.

20 MARCINE BLOUGH IS NOT ENTITLED TO DAMAGES FOR ANY  
21 PHYSICAL OR EMOTIONAL CONDITION THAT SHE HAD BEFORE MENLO  
22 COLLEGE'S CONDUCT OCCURRED; HOWEVER, IF MARCINE BLOUGH HAD A  
23 PHYSICAL OR EMOTIONAL CONDITION THAT WAS MADE WORSE BY MENLO  
24 COLLEGE'S WRONGFUL CONDUCT, YOU MUST AWARD DAMAGES THAT WILL  
25 REASONABLY AND FAIRLY COMPENSATE HER FOR THE EFFECT OF THAT  
26 CONDITION.

1161

1 YOU MUST DECIDE THE FULL AMOUNT OF MONEY THAT WILL  
2 REASONABLY AND FAIRLY COMPENSATE MARCINE BLOUGH FOR ALL DAMAGES  
3 CAUSED BY THE WRONGFUL CONDUCT OF MENLO COLLEGE, EVEN IF MARCINE  
4 BLOUGH WAS MORE SUSCEPTIBLE TO INJURY THAN A NORMALLY HEALTHY  
5 PERSON WOULD HAVE BEEN, AND EVEN IF A NORMALLY HEALTHY PERSON  
6 WOULD NOT HAVE SUFFERED SIMILAR INJURY.

7 IF YOU DECIDE MENLO COLLEGE IS RESPONSIBLE FOR THE  
8 ORIGINAL HARM, MARCINE BLOUGH IS NOT ENTITLED TO RECOVER DAMAGES  
9 FOR HARM THAT MENLO COLLEGE PROVES MARCINE BLOUGH COULD HAVE  
10 AVOIDED WITH REASONABLE EFFORTS OR EXPENDITURES. YOU SHOULD  
11 CONSIDER THE REASONABLENESS OF MARCINE BLOUGH'S EFFORTS IN LIGHT  
12 OF THE CIRCUMSTANCES FACING HER AT THE TIME, INCLUDING HER

13 ABILITY TO MAKE EFFORTS OR EXPENDITURES WITHOUT UNDUE RISK OR  
14 HARDSHIP. IF MARCINE BLOUGH MADE REASONABLE EFFORTS TO AVOID  
15 HARM, THEN YOUR AWARD SHOULD INCLUDE REASONABLE AMOUNTS THAT SHE  
16 SPENT FOR THAT PURPOSE.

17 YOU MUST NOT CONSIDER OR INCLUDE AS PART OF ANY AWARD  
18 ATTORNEYS' FEES OR EXPENSES THAT THE PARTIES INCURRED IN  
19 BRINGING OR DEFENDING THIS LAWSUIT. IF YOU DECIDE THAT MENLO  
20 COLLEGE'S CONDUCT CAUSED MARCINE BLOUGH HARM, YOU MUST DECIDE  
21 WHETHER THAT CONDUCT JUSTIFIES AN AWARD OF PUNITIVE DAMAGES.  
22 THE AMOUNT, IF ANY, OF PUNITIVE DAMAGES WILL BE AN ISSUE DECIDED  
23 LATER.

24 AT THIS TIME YOU MUST DECIDE WHETHER MARCINE BLOUGH  
25 HAS PROVED THAT MENLO COLLEGE ENGAGED IN THE CONDUCT WITH  
26 MALICE, OPPRESSION OR FRAUD. TO DO THIS MENLO COLLEGE MUST

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1 PROVE ONE OF THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:  
2 ONE, THAT THE CONDUCT CONSTITUTING MALICE, OPPRESSION OR FRAUD  
3 WAS COMMITTED BY ONE OR MORE OFFICERS, DIRECTORS OR MANAGING  
4 AGENTS OF MENLO COLLEGE WHO ACTED ON BEHALF OF MENLO COLLEGE;  
5 OR, TWO, THAT THE CONDUCT CONSTITUTING MALICE, OPPRESSION OR  
6 FRAUD WAS AUTHORIZED BY ONE OR MORE OFFICERS, DIRECTORS OR  
7 MANAGING AGENTS OF MENLO COLLEGE --

8 MR. VARTAIN: YOUR HONOR, WE APOLOGIZE. WE BOTH  
9 NOTICED A MISREADING.

10 THE COURT: I APOLOGIZE.

11 MR. LEBOWITZ: IT'S ACTUALLY A TYPOGRAPHICAL ERROR.  
12 IF WE COULD APPROACH AND JUST POINT IT OUT TO YOU.

13 THE COURT: YES.

14 LADIES AND GENTLEMEN, THANK YOU FOR LETTING ME GET  
15 THIS RIGHT.

16 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

17 MR. VARTAIN: THAT'S WHAT HAPPENS WHEN YOU MAKE THE  
18 ATTORNEYS DO THE WORD PROCESSING, YOUR HONOR.

19 THE COURT: YOU HAVEN'T SEEN MINE.

20 LADIES AND GENTLEMEN, THIS IS ONE INSTANCE WHERE THE  
21 ATTORNEYS WERE TOO POLITE. THEY ONLY STOOD AND DIDN'T GET MY  
22 ATTENTION.

23 THANK YOU. I APPRECIATE IT.

24 I'M GOING TO GO BACK AND START THIS ENTIRE INSTRUCTION  
25 OVER AGAIN. THE CHANGE IS VERY MINOR, BUT I DON'T WANT TO TRY  
26 TO COBBLE IT TOGETHER FOR YOU. I'M JUST GOING TO GO BACK.

1163

1 THANK YOU. PLEASE MAKE SOME NOISE NEXT TIME. I WAS  
2 DEVOTING MY ATTENTION --

3 MR. VARTAIN: WE'RE SCARED, YOUR HONOR.

4 THE COURT: SCARED OF ME? THANK YOU.

5 IF YOU DECIDE THAT MENLO COLLEGE'S CONDUCT CAUSED  
6 MARCINE BLOUGH'S HARM, YOU MUST DECIDE WHETHER THAT CONDUCT  
7 JUSTIFIES AN AWARD OF PUNITIVE DAMAGES. THE AMOUNT, IF ANY, OF  
8 PUNITIVE DAMAGES WILL BE AN ISSUE DECIDED LATER. AT THIS TIME

9 YOU MUST DECIDE WHETHER MARCINE BLOUGH HAS PROVED THAT MENLO  
10 COLLEGE ENGAGED IN THE CONDUCT WITH MALICE, OPPRESSION OR FRAUD.  
11 TO DO THIS MARCINE BLOUGH MUST PROVE ONE OF THE FOLLOWING BY  
12 CLEAR AND CONVINCING EVIDENCE:

13 ONE, THAT THE CONDUCT CONSTITUTING MALICE, OPPRESSION  
14 OR FRAUD WAS COMMITTED BY ONE OR MORE OFFICERS, DIRECTORS OR  
15 MANAGING AGENTS OF MENLO COLLEGE WHO ACTED ON BEHALF OF MENLO  
16 COLLEGE; OR, TWO, THAT THE CONDUCT CONSTITUTING MALICE,  
17 OPPRESSION OR FRAUD WAS AUTHORIZED BY ONE OR MORE OFFICERS,  
18 DIRECTORS OR MANAGING AGENTS OF MENLO COLLEGE; OR, THREE, THAT  
19 ONE OR MORE OFFICERS, DIRECTORS OR MANAGING AGENTS OF MENLO  
20 COLLEGE KNEW OF THE CONDUCT CONSTITUTING MALICE, OPPRESSION OR  
21 FRAUD AND ADOPTED OR APPROVED THAT CONDUCT AFTER IT OCCURRED.

22 MALICE MEANS THAT MENLO COLLEGE ACTED WITH INTENT TO  
23 CAUSE INJURY OR THAT MENLO COLLEGE'S CONDUCT WAS DESPICABLE AND  
24 WAS DONE WITH A WILLFUL AND KNOWING DISREGARD OF THE RIGHTS OR  
25 SAFETY OF ANOTHER. A PERSON ACTS WITH KNOWING DISREGARD WHEN HE  
26 OR SHE IS AWARE OF THE PROBABLE DANGEROUS CONSEQUENCES OF HIS OR

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1 HER CONDUCT AND DELIBERATELY FAILS TO AVOID THOSE CONSEQUENCES.  
2 OPPRESSION MEANS THAT MENLO COLLEGE'S CONDUCT WAS DESPICABLE AND  
3 SUBJECTED MARCINE BLOUGH TO CRUEL AND UNJUST HARDSHIP IN KNOWING  
4 DISREGARD OF HER RIGHTS.

5 DESPICABLE CONDUCT IS CONDUCT THAT IS SO VILE-BASED OR  
6 CONTEMPTIBLE THAT IT WOULD BE LOOKED DOWN UPON AND DESPISED BY A

7 REASONABLE PERSON. FRAUD MEANS THAT MENLO COLLEGE INTENTIONALLY  
8 MISREPRESENTED OR CONCEALED A MATERIAL FACT AND DID SO INTENDING  
9 TO HARM MARCINE BLOUGH. AN EMPLOYEE IS A MANAGING AGENT IF HE  
10 OR SHE EXERCISES SUBSTANTIAL INDEPENDENT AUTHORITY AND JUDGMENT  
11 IN HIS OR HER CORPORATE DECISION-MAKING SUCH THAT HIS OR HER  
12 DECISIONS ULTIMATELY DETERMINE CORPORATE POLICY.

13 ALL RIGHT. I'M GOING TO STOP HERE. THE REST OF MY  
14 INSTRUCTIONS DEAL WITH HOW YOU'RE TO DO YOUR JOB. WE'RE GOING  
15 TO DO A LITTLE BIT OF CHANGE OF SCENERY, SO LET'S TAKE A  
16 TEN-MINUTE BREAK NOW. AND IF YOU WOULD GATHER OUTSIDE THE  
17 COURTROOM AT A QUARTER PAST, WE'LL GET STARTED WITH THE FIRST  
18 CLOSING ARGUMENT.

19 (WHEREUPON, A BREAK WAS TAKEN.)

20 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD.

21 LADIES AND GENTLEMEN, I'M NOW GOING TO TURN THIS OVER  
22 TO THE ATTORNEYS. WE'RE GOING TO START WITH MR. LEBOWITZ FOR  
23 THE PLAINTIFF, AND THEN MR. VARTAIN WILL GIVE HIS CLOSING  
24 ARGUMENT. AND THEN AT THE VERY END, MR. LEBOWITZ IS ALLOWED TO  
25 GIVE A FINAL CLOSING ARGUMENT.

26 GO AHEAD, PLEASE.

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1 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

2 LADIES AND GENTLEMEN, BEFORE I GET STARTED I WANT TO  
3 SAY ONCE AGAIN HOW THANKFUL WE ARE FOR ALL OF YOUR SERVICE.  
4 PROFESSOR BLOUGH, MARCY, IS JUST SO INDEBTED TO YOU FOR ALL THE



5 SACRIFICE YOU'VE MADE, AND SHE'S SO PLEASED THAT YOU ALL HAVE  
6 BEEN SO ATTENTIVE AND TAKEN TIME OUT OF YOUR LIVES. AND THE  
7 SACRIFICES THAT YOU'VE MADE HERE WE RECOGNIZE AND WE APPRECIATE.  
8 SO WE, AGAIN, SAY THANK YOU.

9 NOW, WHAT I'M ABOUT TO GIVE YOU IS WHAT'S NORMALLY  
10 CALLED A CLOSING ARGUMENT. I DON'T INTEND TO ARGUE. WHAT I  
11 INTEND TO DO IS HELP TO GIVE YOU THE TOOLS YOU NEED IN THAT JURY  
12 ROOM TO UNDERSTAND WHAT YOUR JOB IS AND TO HELP WORK -- HELP  
13 YOURSELF WORK THROUGH THAT JOB. BECAUSE WHAT YOU'LL SEE IS --  
14 WHAT THE JUDGE IS GOING TO GIVE YOU WHEN SHE'S DONE WITH HER  
15 FINAL INSTRUCTIONS IS WHAT'S CALLED A SPECIAL VERDICT FORM. AND  
16 THIS IS THE FORM THAT YOU HAVE TO FILL OUT AND SIGN AND BRING  
17 BACK, WHICH WILL REFLECT ALL OF YOUR DECISIONS IN THIS CASE.

18 NOW, THIS FORM HAS ABOUT 28 QUESTIONS ON IT. IT'S A  
19 LONG FORM, BUT THAT'S WHY I'M GOING TO SPEND MY TIME NOW HELPING  
20 YOU UNDERSTAND WHAT THE FORM IS, GIVING YOU A PREVIEW OF WHAT  
21 THE QUESTIONS ARE AND WALKING YOU THROUGH IT, SO THAT WHEN YOU  
22 SEE THE FORM IN THE JURY ROOM, YOU RECOGNIZE IT, YOU UNDERSTAND  
23 IT AND YOU CAN HIT THE GROUND RUNNING.

24 NOW, EVEN THOUGH THERE ARE ABOUT 28 QUESTIONS, A LOT  
25 OF THEM ARE REPETITIVE BECAUSE THE LAW REQUIRES US TO ASK THE  
26 SAME QUESTIONS OVER AND OVER AGAIN SOMETIMES. AND YOU'LL SEE --

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1 AND WE'LL GO THROUGH THEM AND YOU'LL SEE PART OF THIS  
2 PRESENTATION WILL GO A LITTLE MORE QUICKLY THAN OTHERS BECAUSE

3 WE'LL COVER THE MATERIAL.

4 NOW, AGAIN, YOU ALL SAT HERE. YOU'VE BEEN INCREDIBLY  
5 ATTENTIVE. YOU'VE WATCHED ALL THE WITNESSES. YOU'VE SEEN ALL  
6 THE EVIDENCE. YOU'VE SEEN THE DOCUMENTS. YOU'VE LISTENED TO  
7 THE WITNESSES. YOU'VE SEEN THEIR DEMEANORS. YOU'RE GOING TO  
8 JUDGE THEIR CREDIBILITY. I'M NOT GOING TO GO THROUGH ALL THE  
9 EVIDENCE. I TOLD YOU THE STORY IN THE BEGINNING IN  
10 CHRONOLOGICAL ORDER AS TO WHAT THE ENTIRE SPAN OF THE STORY WAS.

11 OVER THE COURSE OF THE EVIDENCE YOU SAW, AGAIN IN  
12 MOSTLY CHRONOLOGICAL ORDER, WHAT THE SPAN OF THE EVIDENCE AND  
13 WHAT THIS CASE IS ABOUT. I'M GOING TO TAKE A LITTLE DIFFERENT  
14 PATH HERE TODAY AND GO THROUGH THE VERDICT FORM BECAUSE, AGAIN,  
15 THAT IS WHAT YOU'RE GOING TO USE AS YOUR TOOL FOR ANSWERING AND  
16 DECIDING THIS CASE, AND THAT IS NOT A CHRONOLOGICAL FORM.

17 SO WE'RE GOING TO GO THROUGH -- AND I'M NOT GOING TO  
18 CITE EVERY PIECE OF EVIDENCE BECAUSE YOU KNOW WHAT IT IS AND  
19 YOU'LL HAVE ALL OF THE DOCUMENTS IN FRONT OF YOU. I'M GOING TO  
20 SHOW YOU SOME HIGHLIGHTS OF SOME THINGS THAT I THINK YOU CAN USE  
21 AS IMPORTANT TOOLS WHEN YOU'RE TRYING TO DECIDE THESE QUESTIONS.

22 SO, YOU MIGHT THINK RIGHT NOW THAT YOU HAVE ONE JOB AS  
23 A JUROR. I THINK THAT'S ACTUALLY NOT QUITE ACCURATE. YOU DO  
24 HAVE THE ONE JOB OF DECIDING THE CASE. THAT'S WHAT EVERYBODY  
25 THINKS. THAT'S WHAT A JURY DOES. THERE'S ALSO A SECOND JOB  
26 THAT YOU HAVE, AND THAT'S TO EXPLAIN TO EACH OTHER IN THAT JURY

1 ROOM WHY YOU FEEL THE WAY YOU DO ABOUT THE CASE. THAT'S CALLED  
2 DELIBERATING. AND THAT'S PART OF YOUR JOB IS TO EXPLAIN TO ONE  
3 ANOTHER WHEN YOU'RE AT THAT TABLE WHY YOU FEEL THE WAY YOU FEEL.  
4 WHAT I HOPE TO DO TODAY IS HELP YOU TO HAVE THE INFORMATION YOU  
5 NEED TO MAKE THOSE EXPLANATIONS TO YOUR FELLOW JURORS.

6 NOW, WHAT YOU'LL SEE IS -- AGAIN, IT IS ONE PACKET  
7 THAT WILL BE GIVEN TO YOU, AND IT IS A CONTINUOUS SERIES OF  
8 QUESTIONS, 1 THROUGH 25, AND THEN STARTS OVER AGAIN. BUT IT IS  
9 OFFICIALLY FIVE DIFFERENT FORMS. AND THEY FOLLOW -- THE TITLES,  
10 LET ME ALSO EXPLAIN. THE TITLES MAY BE A LITTLE BIT DIFFERENT  
11 THAN WHAT'S ON HERE. THERE WAS SOME FINAL EDITING ON THE  
12 TITLES, BUT THEY SUMMARIZE GENERALLY WHAT THESE FORMS ARE. AND  
13 THE ACTUAL VERDICT FORM, OF COURSE, IS WHAT GOVERNS ANYTHING  
14 THAT'S IN FRONT OF YOU.

15 THE FIRST FORM WILL BE FOR THE UNLAWFUL MEDICAL EXAM  
16 CLAIM THAT WE'VE TALKED ABOUT FROM THE BEGINNING. THE SECOND  
17 FORM WILL BE FOR DISCRIMINATORY DISCHARGE. THAT'S TERMINATION  
18 BASED ON PROFESSOR BLOUGH'S CANCER -- OR HER DISABILITY AND/OR  
19 HER MEDICAL CONDITION. THE THIRD FORM WILL BE FOR THE FAILURE  
20 TO PREVENT DISCRIMINATION.

21 THE FOURTH FOR THE WRONGFUL TERMINATION AND VIOLATION  
22 OF PUBLIC POLICY CLAIM. BECAUSE DISCRIMINATION IS AN IMPORTANT  
23 PUBLIC POLICY IN THE STATE OF CALIFORNIA. TO MAKE SURE THAT OUR  
24 WORKPLACES ARE FREE FROM DISCRIMINATION, THE LEGISLATURE HAS SAW  
25 FIT TO MAKE IT A PUBLIC POLICY IN THE STATE TO BE SURE THERE IS  
26 NO DISCRIMINATION IN THE WORKPLACE. AND THE FIFTH VERDICT FORM

1 WILL BE FOR DAMAGES.

2 SO LET'S WALK THROUGH IT A LITTLE BIT. THE FIRST  
3 QUESTION YOU'LL SEE IN THE VERDICT FORM WILL BE, "WAS THE  
4 2006/2007 MEDICAL AND PSYCHOLOGICAL EVALUATION/EXAM REQUIRED BY  
5 THE COLLEGE?" WE'LL ASK YOU TO VOTE YES ON THAT QUESTION. AND  
6 HERE'S SOME OF THE HIGHLIGHTS OF THE REASONS WHY.

7 THE FIRST THING YOU LOOK AT IS EXHIBIT 10, WHICH IS  
8 THE MAY 8TH LETTER THAT WE'VE SEEN MANY, MANY TIMES. AS YOU SAW  
9 FROM THE LETTERS AND FROM THE TESTIMONY, THERE IS NO WIGGLE ROOM  
10 IN THIS LETTER. THERE WAS NO, "YOU CAN GO TO THIS EXAM IF YOU  
11 LIKE OR YOU CAN DO SOMETHING ELSE." IT WAS STRAIGHTFORWARD, "GO  
12 TO THE EXAM." SO IF SOMEONE IN THE JURY ROOM SAYS, "WELL, I'M  
13 NOT SURE THIS EXAM WAS ACTUALLY REQUIRED. I THINK IT WAS REALLY  
14 REQUESTED." ASK THEM TO TAKE A LOOK AT THIS EXHIBIT 10.

15 AND THEN EVEN MORE IMPORTANTLY WAS THE TESTIMONY OF  
16 PRESIDENT LOPEZ ON THIS WITNESS STAND. I ASKED HIM A VERY  
17 STRAIGHTFORWARD QUESTION YOU WILL RECALL. I SAID, "WAS GOING TO  
18 THIS MEDICAL EXAM A CONDITION OF PROFESSOR BLOUGH'S CONTINUED  
19 EMPLOYMENT WITH THE COLLEGE?" THE STRAIGHTFORWARD ANSWER WAS  
20 YES.

21 NOW, THE SECOND QUESTION SAYS, "WAS THE 2006/2007  
22 MEDICAL AND PSYCHOLOGICAL EVALUATION OR EXAM JOB-RELATED AND  
23 CONSISTENT WITH THE COLLEGE'S BUSINESS NEEDS?" NOW THIS, YOU'LL  
24 SEE, LADIES AND GENTLEMEN, IS THE ONLY QUESTION WE'RE GOING TO  
25 ASK YOU TO VOTE NO ON, THE WHOLE THING, OKAY. THIS IS BECAUSE,

1 OBLIGATION TO PROVE BOTH THAT THE EXAM WAS BOTH JOB-RELATED AND  
2 CONSISTENT WITH THE BUSINESS NEEDS OF THE COLLEGE. IF THEY  
3 DIDN'T DO BOTH, THEN THE ANSWER IS NO.

4 AND WE'LL LOOK AT SOME OF THE EVIDENCE. BECAUSE  
5 REMEMBER, IT IS THE COLLEGE'S LEGAL OBLIGATION TO ENSURE THAT  
6 ANY MEDICAL EXAM THAT IT REQUIRES AN EMPLOYEE TO UNDERGO, THAT  
7 THAT EXAM IS JOB-RELATED. WHAT EVIDENCE -- IF SOMEONE IN THE  
8 JURY ROOMS SAYS, "WELL, I THINK THEY PROVED IT. I THINK IT WAS  
9 A JOB-RELATED EXAM." WHAT EVIDENCE DID THEY PRODUCE? THE ONLY  
10 EVIDENCE IS THAT IT WAS AN UNLIMITED EXAM. THERE WAS NOT A  
11 SINGLE LIMIT PLACED ON THIS EXAM BY THE COLLEGE.

12 ALL OF THESE EXHIBITS, THE LETTERS 10, 27, 33, EACH  
13 ONE OF THEM, THE MAY 8TH LETTER, THE SEPTEMBER 7TH LETTER, THE  
14 DECEMBER 13TH LETTER, EACH ONE OF THEM FROM THE COLLEGE SAID TO  
15 PROFESSOR BLOUGH, "UNCONDITIONALLY RELEASE ALL OF YOUR MEDICAL  
16 RECORDS AND PRODUCE THEM TO THE PSYCHIATRIST." NO LIMITS. ALL  
17 THE TESTIMONY FROM DEAN PRATT, PRESIDENT LOPEZ, PROVOST SCHULTZ  
18 AND DR. MISSETT HIMSELF ALL CONFIRMED THAT THE COLLEGE DIDN'T  
19 COMMUNICATE A SINGLE THING TO DR. MISSETT AS FAR AS LIMITS ON  
20 THE SCOPE OF THE EXAM.

21 AND, FINALLY, IF YOU LOOK AT THE ACTUAL DOCUMENTS,  
22 EXHIBIT 12, WHICH ARE THE RELEASES -- MEDICAL RELEASES THAT  
23 DR. MISSETT HAD PROFESSOR BLOUGH SIGN DURING THE EXAM. THERE

24 ARE NO LIMITS ON THOSE RELEASES. THERE'S NOT A SINGLE LIMIT ON  
25 THE SCOPE OF THE INQUIRY. THAT IS THE COLLEGE'S DUTY TO MAKE  
26 SURE THAT THAT IS THE CASE.

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1 THE SECOND PART OF THAT QUESTION IS THE  
2 BUSINESS-RELATED PRONG OF THE QUESTION. AGAIN, IT IS THE  
3 COLLEGE'S LEGAL OBLIGATION, THE COLLEGE'S LEGAL DUTY TO SHOW  
4 THAT THEY HAD A LEGITIMATE BUSINESS NEED TO SEND PROFESSOR  
5 BLOUGH TO THE PSYCHIATRIST IN THE FIRST PLACE. WHAT EVIDENCE  
6 DID THEY PRODUCE?

7 WELL, REMEMBER THEIR EXPERT DR. REYNOLDS WHO THEY PAID  
8 MORE THAN \$40,000 FOR HIS WORK IN THIS CASE, HE DID ABOUT THREE,  
9 FOUR WEEKS WORTH OF WORK? EVEN DR. REYNOLDS TESTIFIED THAT  
10 BEFORE AN EMPLOYER SENDS AN EMPLOYEE TO A PSYCHIATRIC EXAM, THE  
11 EMPLOYER SHOULD BE SURE TO DO A THOROUGH FACTFINDING  
12 INVESTIGATION; THAT THAT'S THE STANDARD OF DOING THE BEST  
13 PRACTICES. THAT'S WHAT DR. REYNOLDS SAID.

14 WELL, WHAT EVIDENCE DID THEY PRODUCE? IF SOMEONE IN  
15 THE JURY ROOM SAYS, "I THINK THEY HAD A BUSINESS NEED. THEY HAD  
16 SOME ISSUES AND THEY NEEDED TO WORK IT OUT, AND THE STUDENTS" --  
17 YOU KNOW, THEY'RE TALKING ABOUT THE STUDENTS. WELL, LET'S TALK  
18 ABOUT THE FACTS. WHAT DID THEY PROVE? NOTHING. ALL THEY  
19 PROVED WAS THAT THEY BASED THEIR DECISION ON RUMOR AND INNUENDO.

20 NOBODY, NOT A SINGLE MEMBER OF THE ADMINISTRATION  
21 ACTUALLY WENT AND OBSERVED PROFESSOR BLOUGH IN HER CLASS. NOT A

22 SINGLE MEMBER OF THE ADMINISTRATION HAS ANY IDEA WHAT WAS  
23 ACTUALLY GOING ON IN THE CLASSROOM. THEY HAD THE OPTION. THEY  
24 HAD THE ABILITY TO DO THAT. THEY COULD HAVE GONE AND DONE A  
25 THOROUGH FACTFINDING INVESTIGATION TO SUPPORT THEIR DECISION,  
26 BUT THEY DIDN'T DO IT.

1171

1 THE ONLY EVIDENCE THAT THEY PUT IN IN THIS RECORD THAT  
2 SHOWS ANY SORT OF ISSUE IN THE SPRING OF 2006, AS FAR AS  
3 ABSENCES OR LATE CLASSES OR CUTTING CLASSES SHORT WAS EXHIBIT H.  
4 THAT WAS THE E-MAIL FROM TUNDE HERZEG. NOW, REMEMBER, THAT  
5 E-MAIL WAS WRITTEN ON MARCH 21ST. THERE WAS ONLY ABOUT A MONTH  
6 LEFT IN THE SEMESTER AT THAT POINT; EASILY, TWO-THIRDS LEFT.  
7 WHAT DID THAT E-MAIL SHOW?

8 THE E-MAIL SHOWED THAT PROFESSOR BLOUGH WAS ABSENT A  
9 TOTAL OF THREE DAYS THROUGH THE FIRST TWO-THIRDS OF THE  
10 SEMESTER, THREE DAYS. AS OF MARCH 21ST, THAT SHE HAD MISSED TWO  
11 CLASSES ON TOP OF THOSE THREE DAYS BEING ABSENT, BUT ONE OF  
12 THOSE WAS WHEN SHE WAS AT HER HEARING TEST. WHEN SHE WAS TAKING  
13 ACTION TO MAKE SURE THAT SHE WAS ABLE TO DO HER JOB, THEY'RE  
14 TRYING TO USE AGAINST HER NOW.

15 SO WHAT EVIDENCE -- IF SOMEONE IN THE JURY ROOM SAYS,  
16 "I THINK THEY HAVE A LEGITIMATE BUSINESS NEED." HAVE SOMEONE  
17 ELSE START TALKING ABOUT EXHIBIT H AND WHAT THAT WAS. THIS IS  
18 WHERE I WANT YOU TO ALSO GO TO THE JURY INSTRUCTION. THIS IS A  
19 VERY IMPORTANT JURY INSTRUCTION. IT'S CALLED NUMBER 203, POWER

20 TO PRODUCE BETTER EVIDENCE. AND THIS IS HOW IT READS.

21 IT SAYS, "YOU MAY CONSIDER THE ABILITY OF EACH PARTY  
22 TO PROVIDE EVIDENCE. IF A PARTY PROVIDED WEAKER EVIDENCE WHEN  
23 IT COULD HAVE PROVIDED STRONGER EVIDENCE, YOU MAY DISTRUST THE  
24 WEAKER EVIDENCE." WELL, WHAT'S THE STRONGER EVIDENCE THAT THE  
25 COLLEGE COULD HAVE PRODUCED TO SUPPORT ITS CLAIM THAT THIS WAS A  
26 BUSINESS-RELATED EXAM?

1172

1 TUNDE HERZEG. THEY COULD HAVE BROUGHT HER IN. SHE'S  
2 THE ONE THE WITNESSES TESTIFIED IS THE ONE THAT KEEPS THE  
3 RECORDS. SHE'S THE ONE WHO ALL THE WITNESSES TESTIFIED IS THE  
4 ONE WHO FACULTY MEMBERS, WHEN THEY'RE GOING TO BE LATE OR  
5 ABSENT, CALL TO TELL THEM TO PUT SIGNS ON THE DOOR. SHE'S THE  
6 ONE WHO EVERYONE TESTIFIED KEEPS A LOGBOOK OF FACULTY MEMBERS'  
7 ATTENDANCE.

8 DID THEY PRODUCE HER? WHERE WAS SHE? SHE COULD HAVE  
9 PROVIDED THE EVIDENCE TO SUPPORT A BUSINESS-RELATED REASON. BUT  
10 SHE WASN'T HERE. THEY HAD THE POWER TO DO IT AND YOU MAY  
11 DISTRUST, UNDER THIS INSTRUCTION, THE WEAKER EVIDENCE THAT THEY  
12 DID ATTEMPT TO USE TO SUPPORT THIS CLAIM.

13 THEN YOU HAVE TO LOOK AT THE TIMING, AS FAR AS WHETHER  
14 IT WAS THEY HAD A LEGITIMATE BUSINESS NEED TO SEND HER TO THIS  
15 EXAM. AS OF MAY 8TH, WHEN THEY ACTUALLY WROTE THE LETTER, SHE  
16 HAD TAKEN ALL THE STEPS NECESSARY TO CORRECT WHATEVER HEALTH  
17 ISSUES SHE HAD. SHE HAD WORKED WITH HER ONCOLOGIST TO STOP HER



18 CHEMOTHERAPY. SHE HAD GONE TO THE EAR, NOSE AND THROAT -- THE  
19 HEARING DOCTOR TO SEE EXACTLY WHAT WAS GOING ON TO GET AN  
20 ASSESSMENT OF HER HEARING LOSS, AND SHE WAS PLANNING TO GET  
21 HEARING AIDS AS THE TREATMENT PROGRESSED.

22 THE TESTIMONY YOU HAVE FOR THIS IS PROFESSOR BLOUGH  
23 AND DEAN PRATT. REMEMBER, DEAN PRATT TESTIFIED THAT PROFESSOR  
24 BLOUGH TOLD HIM BEFORE MAY 8TH THAT SHE WAS FEELING BETTER; THAT  
25 SHE HAD STOPPED HER CHEMOTHERAPY; THAT HER FATIGUE WAS GONE; AND  
26 THAT HER HEARING LOSS WAS STABILIZED. THIS IS THE TESTIMONY

1173

1 THAT YOU HEARD. YOU CAN ALSO LOOK AT THE EVIDENCE.

2 THE EVIDENCE -- NOW, EXHIBIT UU IS SOMETHING THAT WE  
3 ADMITTED OUTSIDE OF YOUR PRESENCE BY STIPULATION. SO YOU'LL  
4 HAVE IT IN THE JURY ROOM. YOU HAVEN'T SEEN IT YET. WHAT IT IS  
5 IS DR. MARCUS'S BUSINESS RECORDS FROM MARCH 24, 2006. AND WHEN  
6 YOU READ IT, WHAT YOU WILL SEE IS THAT WAS THE DATE THAT  
7 DR. MARCUS AND PROFESSOR BLOUGH DECIDED TOGETHER TO SKIP THE  
8 FIRST DOSE OF CHEMOTHERAPY. SO THAT ESTABLISHES FOR CONCERN THE  
9 DATE THAT THE CHEMOTHERAPY WAS STOPPED. THIS WAS WHEN THEY  
10 STARTED THAT TRIAL OF BEING OFF OF THE CHEMOTHERAPY.

11 AND THEN EXHIBIT 13, WHICH IS THE MAY 26 E-MAIL THAT  
12 WE'VE SEEN OVER AND OVER AGAIN. AND I WANT TO TALK ABOUT THAT  
13 JUST FOR A SECOND. I KNOW I SAID I WOULDN'T GET TOO FAR INTO  
14 THE EVIDENCE, BUT THIS IS SOMETHING THAT REALLY NEEDS A LITTLE  
15 BIT OF TIME BECAUSE THERE WAS A LOT OF BACK AND FORTH ABOUT WHAT

16 THIS E-MAIL SAID.

17 YOU'LL RECALL EXHIBIT 13 WAS THE MAY 26 E-MAIL THAT  
18 PROFESSOR BLOUGH SENT TO PRESIDENT LOPEZ AND DEAN PRATT. AND  
19 THIS IS AFTER SHE WENT TO SEE DR. MISSETT ON THE 17TH,  
20 EXPLAINING WHAT SHE IN HER OWN HONESTY, HER REFLECTION ON THE  
21 PAST SEMESTER. AND IN THE PART THAT'S CIRCLED YOU'LL SEE THAT  
22 SHE TOLD THEM RIGHT THEN ABOUT BEING ON CONSTANT CHEMOTHERAPY  
23 FOR FOUR YEARS AND HOW BOTH -- SHE AND HER ONCOLOGIST AND HER  
24 HEARING DOCTOR THOUGHT THE SUDDEN HEARING LOSS WAS LIKELY DUE TO  
25 HER CHEMOTHERAPY, AND SO SHE WENT OFF IT AND FELT IMMEDIATELY  
26 20 YEARS YOUNGER.

1174

1 SHE'S TALKING ABOUT THE TRIAL OF CHEMOTHERAPY. THIS  
2 IS THE FIRST TWO TO FOUR MONTHS WHEN THEY WERE ON THE TRIAL.  
3 AND ALSO IN EXHIBIT 13, IN THIS ITEM NO. 4 THAT'S CIRCLED, SHE  
4 AGAIN TELLS DEAN PRATT AND PRESIDENT LOPEZ THAT SHE'S DEFINITELY  
5 HERSELF AGAIN. AND THIS IS THE PART THAT GETS A LITTLE SCREWY.  
6 BECAUSE THE WAY SHE TALKED ABOUT IT IS A LITTLE BIT -- IT'S NOT  
7 AS CLEAR AS IT COULD HAVE BEEN AND IT CAUSED SOME ISSUES AT THE  
8 DEPOSITION, THAT YOU WERE SHOWN A CLIP AND THEN I READ YOU A  
9 PIECE.

10 AND THIS IS WHAT IT WAS ALL ABOUT. SHE SAYS, "I AM  
11 DEFINITELY BETTER NOW AND I'M GOING TO WORK SOMETHING OUT WITH  
12 MY ONCOLOGIST TO EITHER NOT GET THE CHEMOTHERAPY, MY CHOICE, OR  
13 TO GET A LOWER DOSAGE LESS OFTEN." NOW, IN THE FIRST CLIP THAT

14 YOU WERE SHOWN BY MR. VARTAIN OF PROFESSOR BLOUGH'S DEPOSITION  
15 TESTIMONY, TALKING ABOUT THAT E-MAIL AND TALKING SPECIFICALLY  
16 ABOUT THAT ONE SENTENCE, SHE SAID -- AND SHE MISSPOKE. SHE TOLD  
17 YOU FROM THE STAND IT WAS A MISTAKE.

18 SHE SAID IN HER DEPOSITION AT FIRST, "THAT'S RIGHT.  
19 AS OF MAY 26TH, WHEN I WROTE THIS E-MAIL, I STILL HAD NOT  
20 STOPPED THE CHEMOTHERAPY." WELL, WE KNOW THAT'S A MISTAKE. WE  
21 KNOW THAT'S WRONG BECAUSE OF THE TIMING AND WE KNOW ALSO FROM  
22 THE DOCTOR'S RECORDS, EXHIBIT UU, THAT IT WAS STOPPED TWO MONTHS  
23 EARLIER. BUT WHILE THE DEPOSITION WAS STILL ONGOING  
24 PROFESSOR BLOUGH GAVE MR. VARTAIN THE OPPORTUNITY TO UNDERSTAND  
25 THAT SHE HAD MADE A MISTAKE, AND THAT'S THE PART THAT I READ TO  
26 YOU ON FOLLOWUP.

1175

1 AND THIS IS WHAT SHE SAID. "YOU HAD ASKED ME IF I WAS  
2 STILL ON CHEMOTHERAPY," REFERRING TO MAY 26TH, "AND WAS IT  
3 BETTER AT THIS TIME." HER PRIOR ANSWER WAS "YES." HER PRIOR  
4 ANSWER EARLIER IN THE DEPO, THE CLIP THAT WAS SHOWN TO YOU SHE  
5 SAID, "YES. I WAS STILL ON CHEMOTHERAPY AND I WAS NOT BETTER."

6 AND THIS IS WHAT SHE SAID AT THE DEPOSITION WHILE IT  
7 WAS STILL OPEN. "THAT ANSWER WAS FALSE. THE ANSWER IS, I WAS  
8 NOT," MEANING, SHE WAS NOT STILL ON CHEMOTHERAPY. "I WAS ON A  
9 TRIAL OF BEING OFF IT FOR TWO TO FOUR MONTHS, WHICH IS WHY I  
10 SAID IN THAT E-MAIL," EXHIBIT 13, "I FELT MYSELF AGAIN. ALMOST  
11 IMMEDIATELY IN THAT TRIAL I WAS MYSELF AGAIN. IT HAPPENED TO BE

12 AT THE END OF THE SCHOOL YEAR, SO I COULD NOT SHOW IT IN WAYS OF  
13 TEACHING, BUT I TOLD LOWELL PRATT AND CARLOS THAT I WAS OFF ON  
14 THIS. WE WERE TESTING ON THIS FOR TWO TO FOUR MONTHS AND I WAS  
15 PLANNING NOT TO GO BACK ON THE CHEMOTHERAPY AGAIN."

16 THAT'S WHAT SHE MEANT IN THAT E-MAIL, EXHIBIT 13. AND  
17 SHE GAVE THE COLLEGE THE OPPORTUNITY TO UNDERSTAND THAT  
18 TESTIMONY WHILE THE DEPOSITION WAS STILL OPEN, AND THAT'S WHY I  
19 FELT IT IMPORTANT TO READ YOU THE FULL TESTIMONY. SO, AGAIN,  
20 GOING BACK TO THIS QUESTION, THIS IS THE ONE QUESTION WHERE WE  
21 WANT YOU TO SAY NO. AND THIS IS THE ONE QUESTION WHERE THE  
22 EVIDENCE LEADS YOU TO SAY NO.

23 ONE QUICK POINT ON THE TIMING OF THE 2006 TO 2007  
24 MEDICAL EXAM. YOU'LL RECALL THERE'S A LOT OF EVIDENCE AND A LOT  
25 OF TESTIMONY ABOUT THE 2003, 2004 TIME PERIOD. THAT'S NOT PART  
26 OF THIS CASE, AS FAR AS AN UNLAWFUL CLAIM. THAT'S SOMETHING

1176

1 THAT WE CALL BEYOND THE STATUTE OF LIMITATIONS. THAT'S TOO FAR  
2 IN THE PAST, SO THAT'S NOT SOMETHING THAT WE'RE TALKING ABOUT IN  
3 THIS CASE. WE ARE ONLY ADDRESSING THE 2006 AND 2007 TIMEFRAME  
4 AS FAR AS THE MEDICAL EXAMS.

5 QUESTION 3 ON THE VERDICT FORM WAS, "WAS PROFESSOR  
6 BLOUGH HARMED BY THE MEDICAL EXAM?" WE WILL ASK YOU TO SAY YES,  
7 AND I'LL TAKE ALL OF THE HARM QUESTIONS AT ONCE AT THE END. I  
8 WILL HANDLE ALL OF THE EVIDENCE FOR THAT AT THE END. AND THEN,  
9 "WAS THE PSYCHOLOGICAL EVALUATION EXAM A SUBSTANTIAL FACTOR?"

10 AND THE ANSWER AGAIN WILL BE YES.

11 THIS IS ANOTHER IMPORTANT JURY INSTRUCTION FOR YOU TO  
12 UNDERSTAND AT THIS POINT, SUBSTANTIAL FACTOR. YOU HEARD THE  
13 JUDGE READ IT. THIS IS WHAT IT SAYS, "SUBSTANTIAL FACTOR IN  
14 CAUSING HARM IS A FACTOR THAT A REASONABLE PERSON WOULD CONSIDER  
15 TO HAVE CONTRIBUTED TO THE HARM. IT MUST BE MORE THAN REMOTE OR  
16 TRIVIAL. IT DOES NOT HAVE TO BE THE ONLY CAUSE OF HARM." IT'S  
17 A VERY IMPORTANT INSTRUCTION FOR YOU TO UNDERSTAND AND USE IN  
18 YOUR DELIBERATIONS.

19 SO NOW WE GO ON TO VERDICT FORM NO. 2. I HAVE A  
20 COUPLE OF EASY QUESTIONS TO GET THINGS GOING. "WAS MENLO  
21 COLLEGE AN EMPLOYER?" YES. THERE'S NO DISPUTE ABOUT THAT.  
22 "WAS MARCINE BLOUGH AN EMPLOYEE OF THE COLLEGE?" YES, OF COURSE  
23 THERE'S NO DISPUTE ABOUT THAT. "DID MENLO COLLEGE KNOW THAT  
24 MARCINE BLOUGH HAD A DISABILITY OR MEDICAL CONDITION?" AGAIN,  
25 NO DISPUTE ABOUT THAT. ALL OF THESE ARE YES. "WAS MARCINE  
26 BLOUGH ABLE TO PERFORM HER ESSENTIAL JOB DUTIES WITH OR WITHOUT

1177

1 A REASONABLE ACCOMMODATION?" AGAIN, THE EVIDENCE WILL LEAD YOU  
2 TO ANSWER YES.

3 NOW, WHAT EVIDENCE IS THERE? IF SOMEONE IN THIS JURY  
4 ROOM SAYS, "I'M NOT SURE SHE WAS ACTUALLY ABLE TO DO HER JOB.  
5 I'M NOT SURE IF SHE REALLY COULD HAVE DONE IT AT THE TIME." I  
6 WOULD LIKE YOU TO TAKE A LOOK AT SOME OF THE EXHIBITS;  
7 EXHIBITS 6 AND 9 ARE EXTREMELY IMPORTANT EXHIBITS. THESE ARE

8 THE STUDENT EVALUATIONS. EXHIBITS 6 AND 9 ARE THE FALL 2005 AND  
9 SPRING 2006 STUDENT EVALUATIONS. WE'VE HEARD A LOT OF TALK IN  
10 THIS TRIAL ABOUT CONCERN FOR THE STUDENTS, AND THAT THERE'S  
11 CONCERN THAT THE STUDENTS ARE BEING CHEATED OUT OF THEIR  
12 EDUCATION.

13 WELL, WHERE'S THE BEST PLACE TO FIND OUT WHAT THE  
14 STUDENTS REALLY THOUGHT ABOUT PROFESSOR BLOUGH AND THEIR  
15 EXPERIENCE IN HER CLASSES? IN THEIR OWN HAND, IN THEIR  
16 EVALUATIONS. AND WHAT YOU'LL SEE ALSO IS IN THE TESTIMONY --  
17 WHEN YOU LINE UP THE STUDENT EVALUATIONS WITH THE TESTIMONY OF  
18 ALL OF THESE PEOPLE; PROFESSOR BLOUGH HERSELF, DR. LIU,  
19 DR. SIEBEL, DR. HAYWARD, PROFESSORS MEDLEN AND MCDONOUGH, THEY  
20 ALL CONCLUDED THAT PROFESSOR BLOUGH WAS CAPABLE OF DOING HER  
21 JOB.

22 AND LET'S NOT FORGET ABOUT THE PERSONNEL COMMITTEE,  
23 WHO ACTUALLY REVIEWED HER DOSSIER, WHO ACTUALLY DID AN  
24 INVESTIGATION. WHO IS THE BODY, WHO ARE THE PEOPLE WHO ACTUALLY  
25 DID LOOK AT FACTS IN THIS CASE? THE PERSONNEL COMMITTEE. THEY  
26 APPROVED HER FOR A SIX-YEAR CONTRACT. DEAN PRATT, SHORTLY

1178

1 THEREAFTER, DID THE SAME. HE LOOKED AT THE DOSSIER. HE LOOKED  
2 AT THE FACTS. HE LOOKED AT THE EVIDENCE. AND HE ALSO CONCLUDED  
3 THAT PROFESSOR BLOUGH SHOULD BE GRANTED THE RENEWAL APPLICATION  
4 FOR HER SIX-YEAR CONTRACT.

5 FINALLY, I GO BACK TO THE TOP AND PROFESSOR BLOUGH

6 HERSELF. WHO BETTER TO KNOW WHETHER SHE COULD DO THE ESSENTIAL  
7 FUNCTIONS OF HER JOB THAN PROFESSOR BLOUGH? DOING IT FOR  
8 29 YEARS. SHE KNOWS WHAT IT TAKES. SHE KNOWS WHAT HER HEALTH  
9 IS. SHE KNOWS WHAT IT MEANS TO BE A GOOD PROFESSOR AND TO BE  
10 THERE FOR THE STUDENTS AND PROVIDE THE BEST EDUCATION POSSIBLE.  
11 SHE KNOWS, AND SHE TESTIFIED VERY CLEARLY THAT SHE WAS CAPABLE  
12 OF DOING IT.

13 SHE TOLD DEAN PRATT AND CARLOS LOPEZ IN THE SPRING OF  
14 2006 THAT SHE WAS READY TO GO. SHE'S IN THE BEST POSITION TO  
15 KNOW, AND THAT'S WHAT SHE TESTIFIED TO. NOT ONE PERSON --  
16 AGAIN, NOT ONE PERSON FROM THE ADMINISTRATION ACTUALLY OBSERVED  
17 HER IN THE CLASSROOM, SO YOU DON'T HAVE ANY EVIDENCE FROM  
18 ANYWHERE OF ANYONE WHO ACTUALLY SAW HER THAT SHE WAS NOT UP TO  
19 THE TASK OF DOING THE ESSENTIAL DUTIES OF HER JOB.

20 QUESTION 9, "DID MENLO COLLEGE DISCHARGE MARCINE  
21 BLOUGH FROM HER EMPLOYMENT?" THE ANSWER IS YES. YOU KNOW, THIS  
22 IS A BIG ISSUE. THIS IS A BIG ISSUE OF CONTENTION IN THIS  
23 TRIAL. THE COLLEGE HAS COME IN AND TOLD YOU AGAIN AND AGAIN  
24 THAT IT HAS NEVER DISCHARGED HER. SHE WAS ON SOME KIND OF  
25 MEDICAL LEAVE. WELL, IF SOMEONE IN THE JURY ROOM ASKS YOU THAT,  
26 SAYS, "I'M NOT SO SURE THAT THEY ACTUALLY TERMINATED HER," LOOK

1179

1 AT THE EVIDENCE. THEY TERMINATED HER TWICE.

2 THE FIRST TIME, WHERE DO YOU HAVE TO LOOK AT?

3 EXHIBIT 14, THE JULY 7TH LETTER, VERY CLEARLY SAYS, "YOU ARE

4 TERMINATED." DOESN'T USE THE EXACT WORDS "TERMINATED," BUT WHAT  
5 ELSE COULD IT MEAN? "YOU ARE ON MEDICAL LEAVE. YOUR PAY WILL  
6 STOP IN AUGUST. YOU HAVE NO MORE DUTIES WITH THE COLLEGE. YOUR  
7 APPOINTMENT WILL LAPSE ON NOVEMBER 30TH." THAT'S WHAT IT SAYS.

8 AND THEN THEY FOLLOWED IT UP ON AUGUST 10TH WITH AN  
9 E-MAIL FROM STEPHANIE SAPRAI SAYING, "CARLOS'S DECISION IS  
10 FIRM." CARLOS'S DECISION WAS IN THAT JULY 7TH LETTER. AND THEN  
11 EXHIBIT 25, THE AUGUST 14TH LETTER; VERY CLEAR, NO OTHER  
12 CONCLUSION OTHER THAN "YOU ARE BEING TERMINATED."

13 THE SECOND TERMINATION, WHICH YOU HAVE, ARE  
14 EXHIBITS 47 AND 48, THE APRIL 17TH E-MAIL FROM STEPHANIE SAPRAI.  
15 AND THE APRIL 18TH LETTER THAT SHE DIRECTED BE SENT TO PROFESSOR  
16 BLOUGH. THAT WAS THE COBRA LETTER. THE COBRA LETTER THAT SAYS,  
17 "YOUR BENEFITS ARE ENDING ON APRIL 30TH DUE TO YOUR  
18 TERMINATION." THAT'S THE WORD. IT'S IN THE LETTER.

19 WELL, THE COLLEGE HAS TOLD YOU EVERYTHING'S THE SAME.  
20 SHE'S STILL EMPLOYED. SHE'S STILL IN THE FACULTY -- OR THE  
21 CATALOG. SHE'S STILL -- HER OFFICE, THEY SHOWED YOU THAT  
22 PICTURE. THEY BROUGHT IT OUT FIRST DAY OF TRIAL. THAT'S THE  
23 FIRST TIME WE'VE SEEN THAT PICTURE. THAT HER OFFICE WAS IN THE  
24 SAME STATE IT WAS IN.

25 WELL, LADIES AND GENTLEMEN, NOTHING IS THE SAME. THE  
26 EVIDENCE IS THAT NOTHING IS THE SAME. AND IF SOMEONE IN THE

1180

1 JURY ROOM SAYS, "I THINK SHE'S MAYBE STILL EMPLOYED. SHE'S JUST



2 ON MEDICAL LEAVE." WELL, IF SOMEONE SAYS THAT I WANT SOMEONE  
3 ELSE TO SAY, "WELL, LET'S COMPARE. WHAT WAS IT LIKE WHEN SHE  
4 WAS EMPLOYED AND COMPARE IT TO WHAT'S IT LIKE NOW."

5 YOU REMEMBER SOME OF THE LAST QUESTIONS I ASKED  
6 PROFESSOR BLOUGH WHEN SHE WAS ON THE STAND. I SAID, WHEN YOU  
7 WERE AN ACTIVE EMPLOYEE, DID YOU RECEIVE ANYTHING IN THE MAIL  
8 FROM THE COLLEGE?" "OH, YES. THREE OR FOUR TIMES A MONTH, I  
9 DID. NEWSLETTERS, FUNDRAISING LETTERS, ALL KINDS OF STUFF."  
10 THEN I ASKED, "WHEN YOU WERE ON THAT MEDICAL LEAVE FROM 2000 TO  
11 2003 WHEN YOU HAD THAT CANCER SURGERY, DID YOU STILL GET MAIL  
12 FROM THE COLLEGE?" "OH, YEAH. I GET THE EXACT SAME THINGS,  
13 SAME RATE, SAME TYPES OF THINGS."

14 THEN I ASKED, "SINCE ALL THIS HAS BEEN GOING ON WITH  
15 THE COLLEGE, HAVE YOU RECEIVED ANYTHING IN THE MAIL?" "NO."  
16 "HAVE YOU RECEIVED ANY COLLEGE NEWSLETTERS?" "NO." "HAVE YOU  
17 RECEIVED ANY FACULTY -- ANY FUNDRAISING LETTERS?" "NO." THAT'S  
18 BECAUSE THEY DON'T BELIEVE SHE'S AN EMPLOYEE.

19 THOSE ARE JUST WORDS, LADIES AND GENTLEMEN. THOSE ARE  
20 WORDS FOR YOU. THOSE ARE WORDS THAT THEY WANTED TO USE TO  
21 CONVINCING YOU OF SOMETHING THAT'S NOT THERE, BECAUSE THE FACTS  
22 THAT SPEAK LOUDER THAN THE WORDS ARE THAT THEY DO NOT TREAT HER  
23 AS AN EMPLOYEE. THEY ARE DOING THAT SIMPLY FOR PURPOSES OF THIS  
24 TRIAL TO COME IN AND TRY TO CONVINCING YOU THAT THEY HAVEN'T DONE  
25 ANYTHING WRONG.

26 NUMBER TEN, "WAS MARCINE BLOUGH'S DISABILITY OR

1 MEDICAL CONDITION A MOTIVATING REASON FOR THE DISCHARGE?"  
2 AGAIN, WE'LL ASK YOU TO CHECK THE BOX YES. AND HERE'S ANOTHER  
3 VERY IMPORTANT INSTRUCTION. YOU HEARD THIS AS WELL DEFINING  
4 MOTIVATING REASON. IT SAYS, "A MOTIVATING REASON IS A REASON  
5 THAT CONTRIBUTED TO THE DECISION TO TAKE CERTAIN ACTION, EVEN  
6 THOUGH OTHER REASONS MAY HAVE CONTRIBUTED TO THE DECISION."

7 IT WAS AN INCREDIBLY IMPORTANT INSTRUCTION, LADIES AND  
8 GENTLEMEN. BECAUSE YOU'LL SEE THESE WORDS "MOTIVATING REASON"  
9 IN THE VERDICT FORM. AND THIS IS WHAT IT MEANS UNDER THE LAW.  
10 IT DOESN'T HAVE TO BE THE SOLE REASON, DOESN'T EVEN HAVE TO BE  
11 THE PREDOMINANT REASON. IT JUST HAS TO HAVE CONTRIBUTED TO THE  
12 DECISION.

13 WELL, IF SOMEONE SAYS IN THE JURY ROOM, "I'M NOT SURE  
14 THAT PROFESSOR BLOUGH'S MEDICAL CONDITION OR DISABILITY ACTUALLY  
15 CONTRIBUTED TO THESE DECISIONS. I THINK IT WAS BASED ON  
16 SOMETHING ELSE." WELL, ALL WE HAVE TO DO IS LOOK AT THE  
17 EVIDENCE. AND THIS IS WHAT YOU CAN USE TO RESPOND. YOU CAN  
18 SAY, "LET'S LOOK AT EXHIBIT 14, THAT JULY 7TH LETTER. WHAT WAS  
19 THE REASON STATED IN THAT LETTER SIGNED BY PRESIDENT LOPEZ?  
20 WHERE HE WROTE ON THE SECOND PAGE, 'IN CIRCUMSTANCES SUCH AS  
21 THESE, WE ARE EXERCISING OUR RIGHT UNDER FACULTY HANDBOOK,  
22 SECTION 3.9.3.3.'"

23 YOU SAW THIS. AND THIS IS WHAT THAT SECTION MEANS.  
24 "INVOLUNTARY TERMINATION DUE TO INCAPACITY." THAT SETS FORTH  
25 THE COLLEGE'S REASON. IT IS NOT JUST A MOTIVATING REASON. IT  
26 DIDN'T JUST CONTRIBUTE TO THE DECISION MAKING. IT WAS THE ONLY

1 REASON. THAT'S WHAT THE COLLEGE PUT IN ITS LETTER.

2 AGAIN, THE HARM QUESTION. "WAS MARCINE BLOUGH  
3 HARMED?" YES. "WAS THE DECISION TO DISCHARGE A SUBSTANTIAL  
4 FACTOR IN THAT HARM?" AGAIN, REMEMBER THE SUBSTANTIAL FACTOR  
5 INSTRUCTION. AGAIN, YES.

6 THEN WE GO ON TO VERDICT FORM NO. 3. THIS IS KIND OF  
7 FUNKY. IT SAYS, "DID YOU ANSWER YES TO QUESTION TEN ON SPECIAL  
8 VERDICT FORM NO. 2?" NOW THAT JUST INCORPORATES THE PRIOR  
9 QUESTION WHICH MEANS WAS THERE DISCRIMINATION? BECAUSE AS A  
10 PRECURSOR TO FINDING A FAILURE TO PREVENT DISCRIMINATION,  
11 OBVIOUSLY THERE HAS TO HAVE BEEN DISCRIMINATION IN THE FIRST  
12 PLACE. THAT'S ALL THIS QUESTION MEANS. AND SO THE ANSWER, OF  
13 COURSE, IS YES, BECAUSE YOU DID ANSWER YES TO QUESTION TEN.

14 NOW, DID THE COLLEGE FAIL TO TAKE REASONABLE STEPS TO  
15 PREVENT THE UNLAWFUL DISCRIMINATION? AND WE WILL ASK YOU TO  
16 VOTE YES, AND THAT'S WHAT THE EVIDENCE SHOWS. REMEMBER, THEY  
17 DIDN'T DO ANY TRAINING. EVERY SINGLE WITNESS FOR THE COLLEGE  
18 TESTIFIED THERE WAS NOT A SINGLE BIT OF TRAINING ON UNLAWFUL  
19 MEDICAL EXAMS, WHEN AN EMPLOYER IS ALLOWED TO SEND AN EMPLOYEE  
20 TO A MEDICAL EXAM, WHETHER OR NOT THERE ARE ANY LIMITS ON  
21 EMPLOYER-MANDATED MEDICAL EXAMS. NOT ONE PERSON HAS EVER BEEN  
22 TRAINED ON THAT AT THE COLLEGE.

23 EVERY SINGLE ONE OF THESE WITNESSES TESTIFIED THAT  
24 WAY, AND THAT THERE WAS NO TRAINING ON DISABILITY DISCRIMINATION

25 IN THE WORKPLACE. NOW, YOU'LL RECALL STEPHANIE SAPRAI'S  
26 TESTIMONY ON THIS POINT. SHE'S THE DIRECTOR OF HUMAN RESOURCES.

1183

1 SHE'S THE ONE WHO IS RESPONSIBLE FOR MAKING SURE THAT EMPLOYEES  
2 ARE TRAINED, THAT THE ADMINISTRATION IS TRAINED, THAT EVERYBODY  
3 UNDERSTANDS WHAT THE COLLEGE'S POLICIES ARE.

4 WHAT DOES SHE TESTIFY WHEN I ASKED HER, "DID YOU DO  
5 ANY TRAINING ON DISABILITY DISCRIMINATION IN THE WORKPLACE?"  
6 WELL, HERE, SHE ANSWERED YES. BUT DO YOU REMEMBER WHAT SHE  
7 ANSWERED IN DEPOSITION? SHE SAID NO. VERY STRAIGHTFORWARD  
8 QUESTION; A STRAIGHTFORWARD ANSWER. IN DEPOSITION SHE ANSWERED  
9 ONE WAY; IN COURT SHE ANSWERED ANOTHER WAY.

10 NOW, SOMETIMES YOU HEARD IN THE INSTRUCTIONS WITNESSES  
11 MISSPEAK OR THEY HAVE MISTAKES. BUT ON IMPORTANT ISSUES WHERE  
12 THE DIFFERENCE IN TESTIMONY IS INTENDED TO MAKE YOURSELF LOOK  
13 BETTER, WELL, THAT'S SOMETHING YOU'RE ENTITLED TO CONSIDER UNDER  
14 INSTRUCTIONS 107 AND IT'S ALSO, I BELIEVE, IN SECTION 5003, IN  
15 TWO PLACES, JUST TITLED WITNESSES.

16 IT TALKS ABOUT YOU ARE THE ONES WHO ARE THE ONES WHO  
17 JUDGE CREDIBILITY OF WITNESSES. AND THE PART THAT'S BOLDED HERE  
18 IS WHAT I THINK IS REALLY IMPORTANT WHEN YOU'RE TALKING AND WHEN  
19 YOU'RE IN THE JURY ROOM DISCUSSING STEPHANIE SAPRAI. IF YOU  
20 DECIDE THAT A WITNESS HAS DELIBERATELY TESTIFIED UNTRUTHFULLY  
21 ABOUT SOMETHING IMPORTANT, YOU MAY CHOOSE NOT TO BELIEVE  
22 ANYTHING THAT THAT WITNESS SAID. THIS IS WHAT WE USED TO CALL

23 THE FALSE-IN-ONE-FALSE-IN-ALL INSTRUCTION.

24 IT MEANS IF YOU BELIEVE THAT THE WITNESS WAS WILLFULLY  
25 FALSE IN A PIECE OF IMPORTANT TESTIMONY, YOU ARE ENTITLED TO  
26 DISBELIEVE EVERYTHING THAT THEY SAY. THAT'S IN THE INSTRUCTION,

1184

1 AND THAT APPLIES TO STEPHANIE SAPRAI AND THE LIE THAT SHE TOLD  
2 YOU ABOUT THE TRAINING, ABOUT DISABILITY DISCRIMINATION IN THE  
3 WORKPLACE. BECAUSE IT IS A VERY IMPORTANT PIECE OF THE CLAIM  
4 FOR FAILURE TO PREVENT DISCRIMINATION.

5 BECAUSE HOW DO YOU PREVENT DISCRIMINATION? YOU TRAIN  
6 PEOPLE. YOU INSTRUCT PEOPLE. YOU TELL THEM WHAT THE POLICIES  
7 ARE. YOU GIVE THEM AN OPPORTUNITY TO ASK QUESTIONS. YOU TEACH  
8 THEM WHAT THE LAW IS AND HOW TO NOT DISCRIMINATE AND TO MAKE  
9 SURE THAT THEY'RE NOT DOING ANYTHING WRONG. THAT'S WHY IT'S AN  
10 IMPORTANT PIECE.

11 ALSO, LOOK -- IF SOMEONE SAYS, "WELL, I'M NOT SURE  
12 THAT THEY REALLY FAILED TO PREVENT THIS DISCRIMINATION." LOOK  
13 AT THIS EVIDENCE. IN THE SUMMER OF 2006 YOU HAVE EXHIBITS 17,  
14 19 AND 21, WHICH ARE THOSE E-MAILS FROM PROFESSOR BLOUGH WHERE  
15 SHE TOLD THE COLLEGE OVER AND OVER AGAIN, "SOMETHING IS WRONG  
16 HERE. HERE'S ALL OF MY MEDICAL EXAMINATION. WHY IS THE DOCTOR  
17 FINDING ME UNFIT TO WORK? THIS IS THE INFORMATION. ALL OF MY  
18 OWN TREATERS ARE SAYING THAT I CAN WORK. I'M SAYING I CAN WORK.  
19 THERE'S SOMETHING WRONG HERE. PLEASE, LET'S TALK ABOUT THIS. I  
20 DON'T UNDERSTAND."

21 WELL, IF THE COLLEGE WAS DOING ITS DILIGENCE AND  
22 FOLLOWING ITS LEGAL OBLIGATION TO MAKE SURE THAT DISCRIMINATION  
23 WASN'T TAKING PLACE, IN RESPONSE TO THOSE COMMUNICATIONS THEY  
24 SHOULD HAVE RESPONDED. WHEN THEY RECEIVED THOSE COMMUNICATIONS  
25 THEY SHOULD HAVE CALLED HER BACK OR WRITTEN BACK AND SAID,  
26 "OKAY. LET'S SIT DOWN AND TALK ABOUT THIS. THERE'S CLEARLY A

1185

1 MISCOMMUNICATION. THERE'S CLEARLY SOMETHING THAT'S MISSING,  
2 EITHER FROM DR. MISSETT OR FROM YOU." BUT THEY DIDN'T DO  
3 ANYTHING. AGAIN, THEY DIDN'T DO ANYTHING.

4 AND THEN FALL 2006, AGAIN, THEY'RE PUT ON NOTICE.  
5 THEY'RE GIVEN INFORMATION THAT SHOULD LEAD A REASONABLE EMPLOYER  
6 TO UNDERSTAND THAT PERHAPS THERE'S SOME DISCRIMINATORY CONDUCT  
7 GOING ON HERE. PERHAPS THEY'RE TAKING INTO ACCOUNT SOMETHING  
8 THEY'RE NOT SUPPOSED TO; MAINLY, PROFESSOR BLOUGH'S DISABILITY.  
9 MAYBE THEY'RE RELYING ON HER DISABILITY TO TERMINATE HER.  
10 THAT'S WHAT A REASONABLE EMPLOYER DOES IN THE CIRCUMSTANCE.  
11 THEY DIDN'T DO THAT. THEY CONTINUED TO INSIST THAT SHE GO BACK  
12 TO THE SAME DR. MISSETT WHO STARTED THIS -- WHO THEY IN TANDEM  
13 STARTED THIS WHOLE PROCESS IN THE FIRST PLACE.

14 AND THEN WE MOVE ON TO 15. "WAS MARCINE BLOUGH  
15 HARMED?" YES. "WAS THE FAILURE TO TAKE THOSE REASONABLE STEPS  
16 A SUBSTANTIAL FACTOR?" AGAIN, YES. NOW WE GO ON TO VERDICT  
17 FORM 4, WHICH IS THE VIOLATION OF PUBLIC POLICY I MENTIONED  
18 EARLIER. SO, AGAIN, WE GO THROUGH SOME QUESTIONS PRETTY QUICKLY

19 BECAUSE YOU'VE ANSWERED THESE ALREADY IN VERDICT FORM 2, BUT,  
20 AGAIN, WE HAVE TO REPEAT THEM.

21 SO "WAS MENLO COLLEGE THE EMPLOYER?" YES. "WAS  
22 MARCINE BLOUGH AN EMPLOYEE OF THE COLLEGE?" YES. "DID MENLO  
23 COLLEGE KNOW THAT MARCINE BLOUGH HAD A DISABILITY CONDITION?"  
24 YES. THERE'S NO DISPUTE ABOUT ANY OF THESE. AGAIN, "WAS  
25 MARCINE BLOUGH ABLE TO PERFORM THE ESSENTIAL DUTIES?" ALL THE  
26 EVIDENCE WE TALKED ABOUT BEFORE WHEN YOU ANSWERED THE EARLIER

1186

1 QUESTION IS THE SAME, YES. "DID MENLO COLLEGE DISCHARGE MARCINE  
2 BLOUGH FROM EMPLOYMENT?" AGAIN, YES.

3 ALL THE SAME EVIDENCE WE TALKED ABOUT BEFORE. AND,  
4 "WAS IT A MOTIVATING REASON?" AGAIN, SAME INSTRUCTION, LOOK AT  
5 THE MOTIVATING REASON INSTRUCTION. "WAS SHE HARMED? WAS IT A  
6 SUBSTANTIAL FACTOR IN THE HARM?" AGAIN, YES ALL THE WAY  
7 THROUGH.

8 NOW, QUESTION 25 SAYS, "DID YOU ANSWER YES TO  
9 QUESTION NO. 4, QUESTION NO. 12, QUESTION NO. 16 AND/OR  
10 QUESTION NO. 24?" THOSE ARE ALL THE SUBSTANTIAL FACTORS. THE  
11 BRACKETING LANGUAGE IS MINE. THAT'S NOT IN THE INSTRUCTIONS.  
12 EACH ONE OF THOSE IS THE SUBSTANTIAL FACTOR IN CAUSING HARM  
13 INSTRUCTIONS. AND SO BECAUSE YOU'VE ANSWERED YES TO ALL OF  
14 THOSE QUESTIONS YOU CHECK YES AGAIN HERE. AND THEN YOU MOVE ON  
15 TO VERDICT FORM NO. 5, WHICH IS THE DAMAGES.

16 AS YOU HEARD IN THE INSTRUCTIONS AND AS WE TOLD YOU IN

17 THE BEGINNING OF THIS CASE, THERE ARE TWO TYPES OF HARM HERE.  
18 THERE'S ECONOMIC HARM. THIS IS WHAT YOU AS A JURY HAVE THE  
19 POWER TO HELP AND FIX. NOW, THERE'S NOT MANY TIMES IN THIS  
20 SOCIETY WHERE WE AS ORDINARY CITIZENS HAVE THE ABILITY AND HAVE  
21 THE POWER TO ACTUALLY TRULY HELP SOMEBODY, TO ACTUALLY TRULY FIX  
22 SOMETHING THAT WENT WRONG.

23 AND CERTAINLY WHEN OTHER PEOPLE WHO YOU'RE NOT  
24 INVOLVED WITH, WHERE SOMETHING WENT WRONG AND SOMEONE WAS  
25 HARMED, YOU DON'T GENERALLY HAVE THAT POWER. BUT YOU AS JURORS  
26 HAVE THAT UNIQUE POWER, AND YOU CAN DO THAT HERE TODAY. YOU CAN

1187

1 HELP AND YOU CAN FIX WHAT HAPPENED HERE. AND YOU CAN RESTORE  
2 PROFESSOR BLOUGH TO WHERE SHE WOULD HAVE BEEN HAD SHE NOT BEEN  
3 DISCRIMINATED AGAINST. AND THAT'S WHAT WE'LL ASK YOU TO DO WITH  
4 THE ECONOMIC DAMAGES.

5 AND THEN WE'RE GOING ASK FOR EMOTIONAL DISTRESS  
6 DAMAGES. AND THIS IS TO MAKE UP FOR WHAT CANNOT BE HELPED OR  
7 FIXED. NOW, WE TALKED A LOT IN JURY SELECTION ABOUT EMOTIONAL  
8 DISTRESS. AND I PROMISE YOU I'LL TELL YOU HOW, THAT THERE'S A  
9 METHOD TO DOING THIS AND I WILL TELL YOU THAT IN A MOMENT.

10 JUST REMEMBER THE SYSTEM WE HAVE IN PLACE IS THAT IT'S  
11 NOT NECESSARILY THE BEST THING IF YOU'VE THOUGHT ABOUT IT IN  
12 ABSOLUTE TERMS, AS FAR AS WHAT WE CAN DO TO HELP SOMEONE WHO  
13 SUFFERED THROUGH EMOTIONAL DISTRESS. BUT THIS IS HOW YOU DO IT.  
14 YOU USE MONEY TO MAKE UP FOR WHAT CANNOT BE HELPED OR FIXED



15 THROUGH THE ECONOMIC LOSSES.

16 SO IN THE VERDICT FORM 5 YOU TALK ABOUT QUESTIONS 1A  
17 AND 1B, AND HERE WE GO WITH DR. MAHLA'S CHART. NOW, YOU'RE NOT  
18 GOING TO GET THIS IN THE JURY ROOM BECAUSE THE RULES OF EVIDENCE  
19 SAY YOU'RE NOT ALLOWED TO HAVE THESE. IT'S CALLED  
20 DEMONSTRATIVES. I JUST WANT TO PUT THIS UP FOR YOU AGAIN TO  
21 REMIND YOU WHAT IT LOOKED LIKE. IT'S A LITTLE BIT CLEARER.

22 YOU'LL RECALL DR. MAHLA TESTIFIED, AND HE TALKED ABOUT  
23 ALL OF HIS CALCULATIONS WITH THE ASSUMPTION THAT PROFESSOR  
24 BLOUGH WOULD HAVE RECEIVED HER SIX-YEAR CONTRACT SHE WAS  
25 APPROVED FOR BY THE PERSONNEL COMMITTEE AND THE DEAN. AND SHE  
26 WOULD RECEIVE THAT STARTING SUMMER 2006, AND THAT SHE WOULD HAVE

1188

1 RENEWED ONE MORE TIME FOR AN EXTRA SIX-YEAR CONTRACT. AND AT  
2 THAT POINT SHE WOULD BE AGE 65 AND THEN RETIRE.

3 AND SO WHAT YOU'LL SEE IS FOR -- THE FIRST QUESTION  
4 YOU'LL SEE IS 1A ON THE VERDICT FORM. AND THAT'S TOTAL PAST  
5 LOSSES. THAT'S THE WAGES AND RETIREMENT CONTRIBUTIONS THAT  
6 SHE'S LOST UP TO THE BEGINNING OF THIS TRIAL. AND THAT FIGURE'S  
7 RIGHT THERE: \$168,166. THEN HE DID THIS CALCULATION FOR FUTURE  
8 LOSSES. AGAIN, HE EXPLAINED TO YOU WHAT IS THE DISCOUNT FACTOR  
9 AND PRESENT VALUE OF MONEY, AND YOU HEARD THE INSTRUCTION THAT  
10 SAYS YOU CAN ONLY INCLUDE FOR FUTURE LOST WAGES THE PRESENT CASH  
11 VALUE OF THAT. AND THE FUTURE DAMAGES THERE ARE \$788,755. SO  
12 THAT'S WHAT YOU WRITE IN THE ANSWER TO QUESTION 1B.

13           WHAT YOU HAVE IS A TOTAL OF ECONOMIC LOSSES THERE,  
14 \$956,921. AGAIN, THIS IS WHAT IT WOULD TAKE TO RESTORE  
15 PROFESSOR BLOUGH TO THE POSITION SHE WOULD HAVE BEEN HAD THE  
16 COLLEGE NOT DISCRIMINATED AGAINST HER, HAD NOT SENT HER TO THAT  
17 UNLAWFUL MEDICAL EXAM.

18           AND THEN WE HAVE THE PAST AND FUTURE EMOTIONAL  
19 DISTRESS. THESE ARE THE FOLKS WHO TESTIFIED ABOUT THE EMOTIONAL  
20 DISTRESS. DR. PITHER, PROFESSOR BLOUGH'S TREATING PSYCHOLOGIST,  
21 TESTIFIED VERY CLEARLY THAT THE TERMINATION AND THE MEDICAL  
22 EXAMS HAVE CAUSED SUBSTANTIAL STRESS AND EMOTIONAL DISTRESS TO  
23 PROFESSOR BLOUGH. IN FACT, HE SAID THAT IT'S THE PRIMARY THING  
24 HE WAS TREATING, THE PRIMARY SOURCE OF HER COMPLAINTS.

25           NOW, YOU'VE HEARD A LOT ABOUT THIS MYSTERY -- DID YOU  
26 FIGURE OUT WHO THIS MYSTERY THIRD PARTY WAS, WHO MR. VARTAIN

1189

1 TOLD YOU ABOUT IN HIS OPENING? HE SAID THERE'S TWO IMPORTANT  
2 PEOPLE, PROFESSOR BLOUGH AND DR. MISSETT, AND THEN THERE'S A  
3 THIRD MYSTERY GUY. WELL, THAT'S PROFESSOR BLOUGH'S HUSBAND.

4           YOU HEARD A LOT ABOUT PROFESSOR BLOUGH'S HUSBAND.  
5 HE'S DONE A LOT OF THINGS THAT MOST OF US WOULDN'T DO. HE'S GOT  
6 ADDICTION PROBLEMS AND HE HAS SOME ISSUES WITH VERBAL ABUSE.  
7 AND PROFESSOR BLOUGH UNFORTUNATELY HAD TO DEAL WITH THAT. I  
8 WANT YOU TO REMEMBER ONE THING. REMEMBER WHAT PROFESSOR BLOUGH  
9 TOLD YOU ABOUT HOW THIS ALL STARTED. ALL OF THE THINGS THAT HER  
10 HUSBAND WAS DOING, WHERE DID IT START? IT STARTED AFTER SHE GOT

11 THE CANCER.

12 REMEMBER THAT WHEN SHE WENT OFF ON HER INITIAL MEDICAL  
13 LEAVE, SHE DIDN'T KNOW SHE HAD CANCER. IT WAS JUST THESE  
14 MASSIVE HEADACHES, MIGRAINES THAT WERE PUTTING HER IN BED FOR  
15 ALMOST A WEEK AT A TIME. AND UNDER DOCTOR'S PRESCRIPTION SHE  
16 MOVED TO HAWAII BECAUSE PERHAPS THE ENVIRONMENT WAS A FACTOR IN  
17 THIS. HER HUSBAND WENT WITH HER. REMEMBER SHE TESTIFIED HER  
18 HUSBAND TOOK A LEAVE FROM HIS OWN JOB AND WENT WITH HER TO HELP.

19 AND THEN WHEN SHE HAD HER CANCER, SHE HAD HER SURGERY  
20 AND IT TOOK HER SIX MONTHS TO GET BACK ON HER FEET AGAIN, WHO  
21 WAS THERE TO HELP HER? HER HUSBAND WAS THERE. WELL, AS SHE  
22 TESTIFIED EVERYTHING THAT HAPPENED AFTER THAT WAS HIS WAY OF  
23 DEALING WITH WHAT WAS GOING ON WITH HER. AND I THINK IT'S  
24 UNDERSTANDABLE THAT SHE MIGHT HAVE FELT SOME RESPONSIBILITY FOR  
25 THAT, AND THAT SHE STUCK IT OUT WITH HIM BECAUSE SHE FELT SOME  
26 RESPONSIBILITY FOR THAT.

1190

1 AND SO SHE STAYED WITH HIM, EVEN THOUGH HE HAD THESE  
2 ADDICTION PROBLEMS, EVEN THOUGH HE WAS VERBALLY ABUSIVE TO HER  
3 AT TIMES. SHE STUCK IT OUT, BECAUSE THAT'S WHAT YOU DO FOR  
4 FAMILY MEMBERS. THAT'S WHAT YOU DO WHEN YOUR FAMILY IS HURTING,  
5 AND THAT'S WHAT SHE DID. AND WHAT DID SHE DO ALONG THE WAY?  
6 SHE WASN'T AN ENABLER OR THIS CODEPENDENCY, ALL THESE KIND OF  
7 THINGS THAT WERE FLOATING AROUND. SHE WAS TRYING TO GET HIM  
8 HELP. DO YOU REMEMBER WHAT SHE SAID, SHE ACTUALLY GOT HIM TO GO

9 TO A PSYCHIATRIST.

10 THAT'S HELPING, THAT'S WHAT SHE WAS TRYING TO DO. AND  
11 ALL THE WHILE SHE WAS STILL WORKING. THROUGH ALL OF THIS, 2004,  
12 2005, SHE WAS STILL WORKING. AND NOT JUST WORKING, BUT REMEMBER  
13 THE STUDENT EVALUATIONS AND THE LETTER OF RECOMMENDATION FROM  
14 PROFESSOR MCDONOUGH. SHE WASN'T JUST WORKING; SHE WAS  
15 EXCELLING. AND THAT'S BECAUSE, AS DR. PITHER EXPLAINED TO YOU,  
16 THE COLLEGE IS WHERE PROFESSOR BLOUGH COULD BE HERSELF. WHERE  
17 MARCY COULD BE MARCY. WHERE SHE COULD BE RESPECTED; WHERE SHE  
18 COULD EXCEL; WHERE SHE COULD LIVE OUT ALL OF HER DREAMS WAS AT  
19 THIS COLLEGE WITH HER FAMILY, WITH THE PEOPLE WHO SHE BELIEVED  
20 WERE HER FAMILY MEMBERS.

21 THIS IS THE PLACE THAT KEPT HER TOGETHER THROUGH  
22 EVERYTHING THAT WAS GOING ON OUTSIDE, WITH HER HUSBAND AND  
23 ANYTHING ELSE AND HER MOTHER BEING SICK AND HER FATHER DYING.  
24 THIS COLLEGE IS WHERE SHE COULD BE HERSELF. IT WAS THE ONE  
25 STABLE THING IN HER LIFE. AND WHEN THAT WAS TAKEN AWAY FROM HER  
26 FOR DISCRIMINATORY AND UNLAWFUL REASONS, IT'S BEEN DEVASTATING.

1191

1 THE BETRAYAL HAS BEEN IMMENSE.

2 AND THAT'S WHAT ALL OF THESE FOLKS TESTIFIED TO. ALL  
3 OF THESE FOLKS SUPPORT THE FACT THAT PROFESSOR BLOUGH HAS BEEN  
4 SEVERELY DAMAGED EMOTIONALLY BY THE COLLEGE AND WHAT THE COLLEGE  
5 DID. AND YOU ALSO SAW, NOT JUST IN THE WORDS BUT YOU SAW IT IN  
6 PROFESSOR BLOUGH. AND THIS IS AN IMPORTANT POINT BECAUSE WHEN

7 YOU WATCHED HER TESTIFY, I WANT YOU TO REMEMBER, WHAT GOT HER  
8 REALLY UPSET? WHEN WE TALKED ABOUT HER HUSBAND, DID IT GET HER  
9 UPSET? SURE, SHE WAS HURTING BUT WAS SHE ACTUALLY CRYING OR  
10 VISIBLY SHAKEN? UH-UH.

11 WHEN SHE TALKED ABOUT HER FATHER DYING IT WAS  
12 OBVIOUSLY UPSETTING, BUT WAS SHE CRYING AND VISIBLY SHAKEN? NO.  
13 AS SOON AS YOU MENTION THE JOB, AS SOON AS WE MENTION THE  
14 TERMINATION, AS SOON AS WE MENTION THE UNLAWFUL MEDICAL EXAM,  
15 THAT'S WHEN IT HAPPENS. THAT'S NOT ACTING, LADIES AND  
16 GENTLEMEN; THAT'S GENUINE. THAT'S REAL. THAT'S HURT AND THAT'S  
17 HARM. AND THAT IS WHY YOU HAVE THIS ABILITY TO MAKE UP FOR WHAT  
18 THE COLLEGE HAS DONE.

19 AND SO WHAT IS THE METHOD? HOW DO YOU DO THIS? WELL,  
20 YOU ASK YOURSELF THREE QUESTIONS: HOW BAD IS THE HARM? HOW  
21 LONG DOES IT LAST? HOW INTERFERING IS IT WITH HER LIFE? AND I  
22 SUGGEST YOU CAN USE A SCALE IN YOUR OWN MIND. YOU CAN SAY,  
23 "WELL, HOW BAD IS THE HARM?" SAY SOMETHING MINOR. YOU STUB  
24 YOUR TOE; YOU'VE GOT SOME PAIN. YOU TRIP ON THE SIDEWALK AND  
25 YOU HAVE SOME PAIN FROM IT. HOW LONG DOES THAT LAST, A DAY,  
26 MAYBE TWO? MAYBE YOU ACTUALLY BREAK YOUR TOE AND YOU HAVE PAIN

1192

1 FOR A COUPLE OF DAYS. WELL, THAT'S ON THE LOW END OF THE SCALE.

2 THINK OF SOMETHING ELSE THAT'S A LITTLE BIT -- HURTS A  
3 LITTLE BIT MORE. MAYBE YOU HAVE A CLOSE FAMILY MEMBER THAT SAYS  
4 SOMETHING TO YOU AND IT'S HURTFUL. YOU CAN'T GET IT OUT OF YOUR

5 MIND. IT'S BOTHERING YOU. MAYBE IT TAKES A WEEK OR TWO.  
6 THAT'S MOVING UP THE SCALE A LITTLE BIT. AND THEN IF YOU GO ALL  
7 THE WAY TO THE END OF THE SCALE, YOU THINK ABOUT SOMETHING  
8 COMPLETELY DEVASTATING THAT'S THROWING YOU INTO THE WORST  
9 TAILSPIN OF YOUR LIFE AND THERE'S NOTHING THAT CAN EVER BE DONE  
10 ABOUT IT. THAT'S THE WAY END OF THE SCALE.

11 WELL, THANKFULLY, PROFESSOR BLOUGH ISN'T THERE. SHE'S  
12 NOT AT THE WAY END OF THE SCALE. YOU REMEMBER DR. PITHER SAID,  
13 SHE'S ACTUALLY STARTING TO COME AROUND. SHE'S DOING BETTER.  
14 SHE'S IMPROVING. SO YOU COME DOWN A LITTLE BIT. SHE'S NOT AT  
15 THE TOP OF THE SCALE, BUT SHE'S SOMEWHERE IN HERE. AND THAT'S  
16 HOW YOU BALANCE THE HARM. HOW BAD IS IT? HOW LONG DOES IT  
17 LAST? AGAIN, THE STUBBED TOE, COUPLE OF DAYS. THE HURTFUL  
18 STATEMENT FROM THE FAMILY MEMBER, A WEEK, MAYBE TWO WEEKS.  
19 SOMETHING COMPLETELY DEVASTATING, PERHAPS YOU'RE INCAPACITATED  
20 AND IT LASTS FOR WHO KNOWS HOW LONG?

21 AGAIN, FAR END OF THE SCALE. THAT'S NOT WHERE WE ARE,  
22 BUT WE'RE SOMEWHERE IN HERE. WHERE, HOW LONG DOES IT LAST?  
23 WELL, IT'S LASTED ALREADY TWO-AND-A-HALF YEARS. DR. PITHER  
24 THINKS AT LEAST ANOTHER YEAR. WHO KNOWS BASED ON INTERVENING  
25 CIRCUMSTANCES. AT LEAST ANOTHER YEAR. HOW INTERFERING IS IT?  
26 I THINK YOU'VE SEEN THAT, LADIES AND GENTLEMEN. BECAUSE FROM

1193

1 HER TESTIMONY AND FROM HOW SHE'S TESTIFIED HOW INTERFERING IT'S  
2 BEEN.

3 AND THEN, FINALLY, LADIES AND GENTLEMEN, THE LAST  
4 QUESTION ON THIS VERDICT FORM IS, "DO YOU FIND BY CLEAR AND  
5 CONVINCING EVIDENCE THAT MENLO COLLEGE ENGAGED IN THE CONDUCT  
6 WITH MALICE, OPPRESSION OR FRAUD?" NOW, YOU HEARD A LITTLE BIT  
7 ABOUT CLEAR AND CONVINCING EVIDENCE IN THE INSTRUCTIONS. YOU  
8 HEARD A LITTLE BIT ABOUT BURDEN OF PROOF IN THE INSTRUCTIONS.  
9 LET ME JUST TRY TO HELP YOU UNDERSTAND THE WAY THIS WORKS.

10 EVERYTHING UP UNTIL NOW, WHICH HAS BEEN OUR BURDEN  
11 EXCEPT FOR THAT ONE QUESTION NO. 2. YOU ONLY HAVE TO PROVE BY  
12 WHAT'S CALLED A PREPONDERANCE OF THE EVIDENCE. THAT MEANS IF  
13 YOU HAVE SCALES THAT ARE 50/50, WE ONLY HAVE TO MOVE THE  
14 SCALES -- OUR OBLIGATION IS TO MOVE THE SCALES THIS MUCH  
15 (INDICATING). JUST THAT MUCH. THAT'S ALL OUR OBLIGATION IS TO  
16 PROVE, MORE LIKELY THAN NOT TRUE. THAT'S WHAT THAT MEANS.

17 NOW, YOU ALSO HEARD ABOUT IN THE INSTRUCTIONS AND YOU  
18 SEE ON TV WITH ALL THE TV DRAMAS AND CRIMINAL CASES AND THINGS,  
19 THERE'S SOMETHING CALLED BEYOND A REASONABLE DOUBT. NOW, IF  
20 YOU'VE GOT THAT ON THE SCALE, THAT'S WAY UP HERE. THAT'S BEYOND  
21 A REASONABLE DOUBT AND THAT'S FOR TAKING SOMEONE'S FREEDOM AWAY.  
22 OBVIOUSLY, THAT'S A VERY HIGH STANDARD AND IT SHOULD BE.

23 WELL, CLEAR AND CONVINCING, IT'S NOT PREPONDERANCE AND  
24 IT'S NOT BEYOND REASONABLE DOUBT; IT'S SOMEWHERE IN BETWEEN. SO  
25 IT'S MORE THAN MORE LIKELY THAN NOT, BUT IT'S NOT NEARLY AS MUCH  
26 AS BEYOND A REASONABLE DOUBT. BUT WE DO HAVE AN OBLIGATION TO

1 PROVE IT TO YOU. AND IF SOMEBODY -- YOU'RE TALKING ABOUT THIS  
2 QUESTION IN THE JURY ROOM, AGAIN, WE'RE GOING TO ASK YOU TO VOTE  
3 YES.

4 IF YOU'RE TALKING ABOUT THIS QUESTION IN THE JURY  
5 ROOM, "I DON'T THINK THEY REALLY PROVED IT BY CLEAR AND  
6 CONVINCING EVIDENCE. THERE MIGHT BE SOME EVIDENCE OF MALICE,  
7 OPPRESSION OR FRAUD, BUT NOT SO MUCH OF CLEAR AND CONVINCING  
8 EVIDENCE." LOOK MORE AT WHAT IT MEANS, FIRST OF ALL. THAT  
9 MALICE -- AND THIS IS IN THE INSTRUCTIONS SO YOU CAN READ THIS  
10 MORE CAREFULLY WHEN YOU HAVE IT IN THE JURY ROOM. BUT IT'S  
11 IMPORTANT TO UNDERSTAND WHAT THIS MEANS.

12 AND THE WORDS I HAVE BOLDED I THINK ARE THE MOST  
13 IMPORTANT WORDS IN THIS INSTRUCTION. IT'S ABOUT A KNOWING  
14 DISREGARD, A KNOWING DISREGARD FOR THE RIGHTS OR SAFETY OF  
15 ANOTHER. THAT'S WHAT WE HAVE HERE, LADIES AND GENTLEMEN. AT  
16 CORE, WE HAVE AT MINIMUM A KNOWING DISREGARD TO  
17 PROFESSOR BLOUGH'S RIGHTS TO ALL THE EVIDENCE THAT YOU'VE SEEN  
18 AND WE'VE TALKED ABOUT.

19 OPPRESSION, THAT THE CONDUCT WAS DESPICABLE. AGAIN,  
20 IN KNOWING DISREGARD OF HER RIGHTS. DESPICABLE CONDUCT IS  
21 SOMETHING THAT WOULD BE LOOKED DOWN ON AND DESPISED BY  
22 REASONABLE PEOPLE. THAT'S WHAT THIS CONDUCT WAS, LADIES AND  
23 GENTLEMEN. AND THE FRAUD IS TO INTENTIONALLY MISREPRESENT OR  
24 CONCEAL MATERIAL FACTS.

25 NOW, YOU'VE HEARD A LOT OF WORDS IN THIS CASE. YOU'VE  
26 HEARD A LOT OF WORDS FROM THE COLLEGE ABOUT HOW MARCY'S PART OF



1 THE FAMILY. WE'RE ONE BIG, HAPPY FAMILY AND MARCY'S PART OF  
2 THAT FAMILY. WE NEVER WOULD HAVE INTENDED TO DO ANYTHING TO  
3 HARM HER. NO ONE SAID ANYTHING DEROGATORY ABOUT HER OR HER  
4 MEDICAL CONDITION.

5 WELL, FIRST OF ALL, LADIES AND GENTLEMEN, ALL THAT  
6 TESTIMONY ABOUT DEROGATORY STATEMENTS OR LACK OF DEROGATORY  
7 STATEMENTS -- FIRST OF ALL, THERE'S NEVER BEEN A CLAIM OF  
8 HARASSMENT IN THIS CASE. THAT'S WHAT DEROGATORY STATEMENT GOES  
9 TO. THEY GO TO HARASSMENT. WE'RE TALKING ABOUT DISCRIMINATION.  
10 THAT'S SOMETHING DIFFERENT.

11 IN THIS DAY AND AGE, HOW MANY PEOPLE, ESPECIALLY IN AN  
12 EMPLOYMENT SITUATION, WILL ACTUALLY UTTER THE WORDS WHEN THEY  
13 HAVE A BAD INTENT? HOW MANY SITUATIONS IN TODAY'S SOPHISTICATED  
14 SOCIETY WITH EMPLOYERS DO THEY ACTUALLY USE THINGS, SUCH AS IN A  
15 RACE DISCRIMINATION CASE, WHERE THEY USE AN "N" WORD WITH AN  
16 AFRICAN AMERICAN EMPLOYEE? IT'S NOT GOING TO HAPPEN. YOU'RE  
17 NOT GOING TO SEE THAT TYPE OF EVIDENCE.

18 BUT YOU, AGAIN, WHEN YOU LOOK AT THE JURY INSTRUCTIONS  
19 YOU'RE ALLOWED -- THE LAW CONSIDERS CIRCUMSTANTIAL EVIDENCE JUST  
20 AS STRONG AS DIRECT EVIDENCE. SO YOU DON'T NEED TO HEAR THOSE  
21 WORDS TO BELIEVE THAT THERE WAS A DISCRIMINATORY INTENT, OR AN  
22 EVIL INTENT, OR A MALICIOUS INTENT OR AN OPPRESSIVE INTENT. THE  
23 WORDS WERE "MARCY'S PART OF THE FAMILY."

24 I WOULD ASK YOU, IS THIS HOW YOU TREAT YOUR FAMILY?  
25 IS WHAT THEY DID TO PROFESSOR BLOUGH HOW YOU TREAT A MEMBER OF

1 SICK, WHO'S TAKEN STEPS TO RECOVER? IS THIS HOW YOU TREAT A  
2 MEMBER OF YOUR FAMILY WHEN THEY HAVE PHYSICAL PROBLEMS? YOU  
3 SEND THEM TO A PSYCHIATRIST, BASED ON NO FACTS AT ALL, ONLY  
4 RUMOR AND INNUENDO. THAT'S MALICIOUS AND OPPRESSIVE. AND IT'S  
5 CLEAR AND IT'S CONVINCING.

6 IS THIS HOW YOU TREAT A FAMILY MEMBER, YOU MAKE SURE  
7 THAT SHE HAS TO RELINQUISH ALL OF HER MEDICAL PRIVACY AS PART OF  
8 THE PSYCHIATRIC EXAM? THAT'S MALICIOUS AND OPPRESSIVE, LADIES  
9 AND GENTLEMEN. IT'S CLEAR AND IT'S CONVINCING. EXCOMMUNICATING  
10 HER FROM THE FAMILY. CUTTING HER OFF. IGNORING ALL OF HER  
11 PLEAS FOR HELP IN THOSE E-MAILS THAT SHE DOCUMENTED, REFUSING TO  
12 RESPOND TO HER IN ANY WAY.

13 IS THAT HOW YOU TREAT A MEMBER OF YOUR FAMILY, FORCING  
14 FAMILY MEMBERS TO BE CUT OFF FROM ONE ANOTHER? YOU REMEMBER  
15 DEAN PRATT. NOW, WE'VE NEVER SAID THAT DEAN PRATT DID ANYTHING  
16 WRONG, BUT REMEMBER WHAT HAPPENED WHEN DEAN PRATT WAS ON THIS  
17 STAND, WHEN HE WAS TALKING ABOUT HIS RELATIONSHIP WITH PROFESSOR  
18 BLOUGH? HE STARTED CRYING. HE BROKE DOWN BECAUSE HE WAS NOT  
19 ALLOWED TO TALK TO HER.

20 BECAUSE THE COLLEGE SEPARATED THESE TWO FAMILY  
21 MEMBERS. THESE ARE BROTHERS AND SISTERS IN THIS FAMILY. AND  
22 THE COLLEGE SAID, "NO, YOU CANNOT SPEAK TO ONE ANOTHER. YOU  
23 MUST GO THROUGH STEPHANIE SAPRAI." DEAN PRATT WAS THE

24 SUPERVISOR. DEAN PRATT WAS HER BROTHER IN ARMS AT THIS SCHOOL.  
25 IS THIS HOW YOU TREAT FAMILY? THAT'S MALICIOUS AND OPPRESSIVE,  
26 LADIES AND GENTLEMEN. IT'S CLEAR AND IT'S CONVINCING.

1197

1 IGNORING ALL THE MEDICAL EVIDENCE THAT SHE GAVE THE  
2 COLLEGE, THROWING UP HER HANDS AND SAYING, "OH, WE DON'T KNOW  
3 HOW TO READ THIS. WE DON'T KNOW WHAT THIS IS." THAT'S  
4 MALICIOUS AND OPPRESSIVE, LADIES AND GENTLEMEN. THAT'S CLEAR  
5 AND CONVINCING.

6 IGNORING HER PLEAS TO SAY, "SEND ME PLEASE" -- FIRST  
7 OF ALL, "LISTEN TO MY TREATERS. LISTEN TO THE DOCTOR WHO KNOWS  
8 ME BEST, WHO I'VE BEEN TREATING WITH FOR ALL OF THESE YEARS. IF  
9 YOU'RE NOT GOING TO DO THAT, SEND ME TO AN ONCOLOGIST. DON'T  
10 SEND ME TO A PSYCHIATRIST. SEND ME TO SOMEBODY WHO KNOWS WHAT  
11 I'M GOING THROUGH AND CAN PROPERLY EVALUATE ME."

12 IGNORING HER AND SAYING, "NO, YOU MUST GO TO  
13 DR. MISSETT, THE PSYCHIATRIST." THAT'S MALICIOUS AND OPPRESSIVE  
14 AND IT'S CLEAR AND CONVINCING. AND THEN WE TALK ABOUT TAKING  
15 BACK THE TERMINATION, SUSPENDING IT FOR A LITTLE WHILE BEFORE  
16 THEY TERMINATED HER FOR THE SECOND TIME. WHAT IS THAT, LADIES  
17 AND GENTLEMEN?

18 FIRST OF ALL, EXHIBIT 27. REMEMBER THE DATE; REMEMBER  
19 THE TIMING ON THIS, SEPTEMBER 7, 2006, OF THIS LETTER, WHERE  
20 STEPHANIE SAPRAI SAYS, "YOU ARE, HOWEVER, NOW CONTRADICTING THE  
21 INDEPENDENT PHYSICIAN." RECALL MS. SAPRAI'S TESTIMONY ON THAT.

22 RECALL WE TALKED ABOUT THIS WORD NOW. AND SHE HAD TO ADMIT ON  
23 THE WITNESS STAND THAT THAT WAS NOT ACCURATE. THAT, IN FACT,  
24 SHE HAD BEEN CONTRADICTING HER INDEPENDENT PHYSICIAN ALL SUMMER  
25 LONG.

26 AND WHAT HAPPENED AFTER SEPTEMBER 7TH? YOU RECALL

1198

1 WHAT ALSO SHE WROTE IN THE SEPTEMBER 7TH LETTER WAS, "WE HAVE  
2 RECEIVED A LETTER FROM YOUR ATTORNEY ON AUGUST 29TH." THAT DATE  
3 IS VERY IMPORTANT, LADIES AND GENTLEMEN. BECAUSE EVERYTHING UP  
4 TO THAT DATE, THE COLLEGE HAD ONE POSITION AND ONE POSITION  
5 ONLY. YOU ARE TERMINATED. IT'S IN THE JULY 7TH LETTER. IT'S  
6 IN THE AUGUST 10TH E-MAIL. IT WAS IN THE AUGUST 14TH LETTER.

7 THE ONLY THING THAT CHANGED THIS COLLEGE'S MIND AND  
8 MADE THEM TAKE ANY DIFFERENT TACT WAS THEY FOUND OUT THAT  
9 PROFESSOR BLOUGH HAD HIRED AN ATTORNEY. THAT'S WHEN THEY  
10 STARTED BACKTRACKING. THAT'S WHEN THEY STARTED THIS WHOLE SONG  
11 AND DANCE ABOUT GOING BACK TO ANOTHER EXAM, ABOUT AN OFFER IN  
12 THE SUMMER OF '07. THIS OFFER AFTER SHE WAS TERMINATED THE  
13 SECOND TIME, THAT THIS WAS SOMEHOW IN GOOD FAITH.

14 WELL, LADIES AND GENTLEMEN, YOU ARE ENTITLED TO  
15 BELIEVE THAT THAT WAS IN BAD FAITH. AND WHAT I POINT TO, IF  
16 SOMEONE SAYS IN THAT JURY ROOM, "YOU KNOW, THAT OFFER, THAT  
17 HALF-TIME, ONE-YEAR OFFER, THAT WAS REALLY GOOD FAITH. SHE  
18 REALLY SHOULD HAVE TAKEN THAT BECAUSE THAT WAS THEIR GOOD FAITH  
19 EFFORT TO TRY AND FIX THIS."

20 I WANT YOU TO LOOK AT EXHIBITS 54 AND 64. THESE ARE  
21 E-MAILS THAT PROFESSOR BLOUGH WROTE IN RESPONSE IN THAT TIME  
22 PERIOD, IN RESPONSE TO THAT OFFER. AND WHAT SHE TOLD THE  
23 COLLEGE THEN WAS THOSE VERY WORDS, "I BELIEVE THIS OFFER IS  
24 BEING MADE IN BAD FAITH AND IT IS DISINGENUOUS." NOW, IF YOU  
25 TRULY BELIEVE -- I'M THE COLLEGE AND I TRULY, TRULY BELIEVE THAT  
26 I'M ACTING IN GOOD FAITH AND I'M GIVING AN OFFER OF REEMPLOYMENT

1199

1 AND I'M GIVING AN OFFER OF EMPLOYMENT TO A CURRENT EMPLOYEE, WHO  
2 WE TREASURE AND WE HOLD DEAR, AND I GET AN E-MAIL TELLING ME I'M  
3 IN BAD FAITH AND TELLING ME THAT MY OFFER IS DISINGENUOUS AND  
4 SHE IS TRULY A MEMBER OF MY FAMILY, WHAT DO I DO? DO I IGNORE  
5 IT? DO I SAY, "OH, WELL"? NO.

6 I PICK UP THE PHONE. I CALL HER. I SAY, "MARCY,  
7 WE'VE GOT A MISCOMMUNICATION HERE. SOMETHING WENT WRONG HERE.  
8 LET'S TALK ABOUT THIS. WE'RE NOT IN BAD FAITH. THIS IS GOOD  
9 FAITH. LET ME TRY TO CONVINCING YOU. LET ME GIVE YOU SOME  
10 INFORMATION THAT MIGHT HELP YOU TO BELIEVE THAT, IN FACT, WE ARE  
11 ACTING IN GOOD FAITH." THAT'S WHAT A REASONABLE, GOOD FAITH  
12 EMPLOYER DOES. IT'S NOT WHAT HAPPENED HERE. IT'S NOT WHAT  
13 HAPPENED HERE.

14 AND WHAT THEY DID INSTEAD WAS ACT MALICIOUSLY,  
15 OPPRESSIVELY AND WITH FRAUD. BECAUSE THIS ENTIRE SEQUENCE OF  
16 EVENTS THAT STARTED ON SEPTEMBER 7TH WAS DESIGNED FOR ONE  
17 PURPOSE, LADIES AND GENTLEMEN. IT WAS DESIGNED FOR YOU. IT WAS

18 DESIGNED TO COME INTO THIS COURTROOM AND FOOL YOU AND DUPE YOU  
19 INTO BELIEVING THAT THEY WERE ACTING IN GOOD FAITH. THAT'S WHAT  
20 IT WAS, AND THAT'S WHAT'S HAPPENING.

21 BECAUSE WHEN YOU LOOK AT THE FACTS, AND YOU LOOK AT  
22 THE EVIDENCE AND YOU LOOK AT THE RESPONSE, IF IT WERE TRUE, IF  
23 THESE WORDS WERE TRUE, THEIR ACTIONS WOULD HAVE BEEN DIFFERENT.  
24 IF THEIR WORDS WERE TRUE, THEIR ACTIONS WOULD HAVE BEEN TO CALL  
25 MARCY. THEIR ACTIONS WOULD HAVE BEEN TO E-MAIL MARCY AND SAY,  
26 "YOU'VE GOT IT WRONG. THERE'S SOME KIND OF MISUNDERSTANDING.

1200

1 LET'S WORK THIS OUT." THAT'S NOT WHAT HAPPENED, LADIES AND  
2 GENTLEMEN. IT'S CLEAR AND IT'S CONVINCING.

3 AND I LEFT YOU WITH THIS SLIDE AT THE END OF MY  
4 OPENING, AND I'LL LEAVE IT WITH YOU AGAIN. WHEN YOU'RE LOOKING  
5 AT THE EVIDENCE IN THIS CASE, LADIES AND GENTLEMEN, AND YOU'RE  
6 GOING THROUGH THE VERDICT FORM THAT I'VE WALKED YOU THROUGH, AND  
7 YOU USE THE TOOLS THAT I'VE HOPEFULLY GIVEN YOU TO HELP YOU  
8 ANSWER THESE QUESTIONS, THIS IS WHAT I WANT EVERYONE TO BE  
9 ASKING EACH OTHER AND ASKING THEMSELVES: DO THE ACTIONS IN THIS  
10 CASE MATCH UP WITH THE WORDS? DO THE COLLEGE'S ACTIONS MATCH UP  
11 WITH THEIR WORDS? BECAUSE, LADIES AND GENTLEMEN, WE ALL KNOW  
12 THAT ACTIONS DO SPEAK LOUDER THAN WORDS.

13 NOW, I'LL HAVE ONE MORE OPPORTUNITY TO SPEAK WITH YOU  
14 AFTER MR. VARTAIN IS DONE. AGAIN, I WANT TO THANK YOU AND I  
15 APPRECIATE ALL YOUR TIME.

16 THE COURT: THANK YOU, MR. LEBOWITZ.

17 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A SHORT  
18 BREAK. LET'S MAKE THAT ANOTHER TEN-MINUTE BREAK, AND THEN WE'LL  
19 BEGIN WITH THE DEFENSE.

20 (WHEREUPON, A BREAK WAS TAKEN.)

21 THE COURT: WE'RE BACK ON THE RECORD.

22 MR. VARTAIN, WOULD YOU LIKE TO BEGIN YOUR CLOSING  
23 ARGUMENT?

24 MR. VARTAIN: THANK YOU, YOUR HONOR.

25 STILL, GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY.

26 THE FIRST PART OF WHAT I'D LIKE TO DISCUSS WITH YOU IS

1201

1 A RESPONSE TO WHAT MR. LEBOWITZ SAID. WE'LL PROBABLY GET THAT  
2 DONE, IF THE COURT ALLOWS ME RIGHT AROUND THE NOON BREAK AND  
3 I'LL FINISH UP SHORTLY AFTER LUNCH, IF THE COURT ALLOWS ME TO.

4 MALICE, FRAUD AND OPPRESSION, THAT'S WHAT  
5 MR. LEBOWITZ -- THAT'S THE LABEL HE PUTS ON THE PEOPLE FROM THE  
6 COLLEGE THAT CAME AND TESTIFIED.

7 PRESIDENT HAIGHT, WOULD YOU STAND UP, PLEASE.

8 I DON'T BELIEVE HIS TESTIMONY IN ANY WAY SUGGESTS A  
9 MALICIOUS, FRAUDULENT OR OPPRESSIVE PERSON.

10 THANK YOU.

11 DR. KELLY, THE EXECUTIVE VICE PRESIDENT PROVOST, SAME  
12 THING. MENTAL HEALTH PROFESSIONAL, FACILITATED THE RETURN -- OR  
13 THE HOPED-FOR RETURN TO WORK OF PROFESSOR BLOUGH. SHE DIDN'T

14 TAKE IT. DOES THAT MAKE HIM MALICIOUS?

15 THANK YOU, DR. KELLY.

16 DEAN PRATT, WAS IT MALICIOUS, OPPRESSIVE AND  
17 FRAUDULENT FOR HIM TO TELL THE PRESIDENT THAT THERE WERE SOME  
18 PROBLEMS WITH THE TEACHING OF PROFESSOR BLOUGH, FOR HIM TO TRY  
19 TO LOOK OUT FOR THE STUDENTS AND PROFESSOR BLOUGH? I DON'T  
20 THINK SO.

21 PRESIDENT LOPEZ, HE CANNOT STAY BEYOND LUNCH. HE HAS  
22 A MEDICAL APPOINTMENT. MALICE, FRAUD AND OPPRESSION? NO WAY.

23 MS. TIPTON, PLEASE STAND UP.

24 RACHEL TIPTON, SHE TESTIFIED. THEY DIDN'T EVEN ASK  
25 HER A QUESTION BECAUSE SHE WAS DIRECT AND HONEST. I DON'T THINK  
26 SHE WAS MALICIOUS, OPPRESSIVE OR FRAUDULENT. SHE JUST WAS

1202

1 LOOKING OUT FOR THE STUDENTS. AND PROFESSOR BLOUGH -- EVEN TO  
2 THE POINT OF SHE DIDN'T WANT TO TELL THE DEAN ABOUT THE  
3 STAGGERING INCIDENT, WHERE PROFESSOR BLOUGH WAS IN A STATE WHERE  
4 SHE SHOULDN'T HAVE BEEN AT WORK, WHATEVER THE CAUSE WAS. NOT  
5 MALICIOUS, NOT FRAUDULENT, NOT OPPRESSIVE.

6 GOOD THING THAT THE COURT HAS INSTRUCTED THE JURY AND  
7 HAS REQUIRED THE ATTORNEYS TO PRESENT EVIDENCE, NOT THE  
8 ARGUMENTS OF COUNSEL. BECAUSE IT'S ONLY THE EVIDENCE THAT OUR  
9 JUSTICE SYSTEM GOES BY, AND THERE'S NO EVIDENCE OF ANYTHING OF  
10 THE KIND.

11 WHO'S THAT MYSTERY THIRD PERSON? MR. LEBOWITZ WAS WAY



12 OFF. I'M SORRY. AFTER TWO WEEKS OF THE PROFESSOR SITTING HERE,  
13 ALL OF YOU SITTING HERE, HOW HE COULD BE SO WRONG THAT THE  
14 MISSING THIRD PERSON, THE PERSON I SAID THAT WAS NEVER GOING TO  
15 COME INTO THE COURTROOM, TOTALLY LOST IT. THAT PERSON OR  
16 PERSONS ARE THE STUDENTS. THEY'RE THE PEOPLE WHO NOBODY REALLY  
17 GOT TO REPRESENT HERE, EXCEPT THE COLLEGE.

18 THE MYSTERY THIRD PERSON WASN'T THE HUSBAND. THAT'S  
19 NOT THE PERSON THE COLLEGE IS OBLIGED TO LOOK AFTER. IT'S THE  
20 STUDENTS. AND IT'S THE STUDENTS WHO ALL OF THESE PEOPLE WERE  
21 LOOKING AFTER, AT THE SAME TIME AS THEY WERE TRYING TO ASSIST,  
22 ACCOMMODATE, SUPPORT PROFESSOR BLOUGH.

23 REMEMBER IN THE VOIR DIRE QUESTIONS, THAT'S THE  
24 QUESTIONS WHERE YOU WERE ASKED TO DESCRIBE A SITUATION WHERE YOU  
25 HAD TO BALANCE CONFLICTING OBLIGATIONS; THAT'S WHAT THE SCHOOL  
26 OFFICIALS HAD TO DO. AND I THINK THEY DID IT AND THE EVIDENCE,

1203

1 I THINK, SUGGESTS TO YOU THEY DID IT JUST RIGHT. THEY DIDN'T --  
2 THEY WERE LIKE A SEE-SAW. THEY STAYED RIGHT EVEN, TAKING CARE  
3 OF THE STUDENTS AND STILL TRYING TO HELP, ASSIST AND WATCH OUT  
4 FOR PROFESSOR BLOUGH.

5 AFTER THE LUNCH BREAK -- UNLIKE MR. LEBOWITZ, I AM  
6 GOING TO GO THROUGH THE EVIDENCE. BECAUSE WE SPENT TWO WEEKS  
7 HERE, AND I DO WANT TO GIVE YOU THAT ASSISTANCE TO REVIEW WHAT  
8 EACH WITNESS SAID. MR. LEBOWITZ DIDN'T WANT TO DO THAT, AND I  
9 THINK I KNOW WHY. BECAUSE THE EVIDENCE SUPPORTS THE COLLEGE

10 THAT IT DID NOT ACT UNLAWFULLY. THE MYSTERY THIRD PERSON ISN'T  
11 THE HUSBAND; IT'S THE STUDENTS.

12 I WANT TO NOW TALK ABOUT THE SO-CALLED LIE. HE SAID  
13 MS. SAPRAI LIED ABOUT DISABILITY TRAINING. NOBODY LIED IN THIS  
14 CASE. WE DON'T HAVE TO GO THROUGH LIFE IN COURT HERE, IN COURT  
15 PROCEEDINGS WHERE WE ACCUSE SOMEBODY OF LYING WITHOUT BASIS.  
16 EVERYBODY, INCLUDING PROFESSOR BLOUGH, CAME IN AND DID THE BEST  
17 THEY COULD IN A NERVOUS SITUATION, JUST -- YOU KNOW, WE DIDN'T  
18 ACCUSE PROFESSOR BLOUGH OF LYING AND WE'RE NOT GOING TO.

19 SHE WAS MISTAKEN IN SOME WAYS, BUT SHE WASN'T LYING.  
20 NO PROFESSOR OF OURS, EVEN IF SHE HAS A NON-MERITORIOUS CLAIM,  
21 WE WOULD ACCUSE OF COMING IN AND LYING. AND I RESENT THAT AN  
22 HONEST WOMAN, AN HR DIRECTOR WHO DID NOTHING BUT WRITE,  
23 "DEAR MARCY. YOU'RE NOT BEING TERMINATED. PLEASE, GO SEE  
24 DR. MISSETT. HERE'S YOUR NEW JOB OFFER. HERE'S YOUR  
25 ACCOMMODATIONS," HAS NOW BECOME A LIAR IN THIS COURTROOM. NO  
26 WAY.

1204

1 MS. ADLER --

2 AND I'LL GO THROUGH THE INTRODUCTIONS LATER.

3 -- BUT WOULD YOU PUT ONE PAGE AFTER ANOTHER OF THE  
4 TRAINING MATERIALS THAT SUPPOSEDLY MS. SAPRAI LIED ABOUT THAT  
5 SUPPOSEDLY THERE WAS NO DISABILITY ELEMENTS OF THE TRAINING. SO  
6 THIS IS THE OCTOBER 2003 WORKSHOP AT THE COLLEGE. THIS IS  
7 AUGUST 23, 2002, SORRY. "LET'S TALK THE LAW, RACE, GENDER,

8 ETHNIC, SEXUAL ORIENTATION, DISABILITY LAW."

9 NEXT PAGE, PLEASE, MS. ADLER.

10 THESE MAY SEEM LITTLE, BUT HE'S THE ONE WHO RAISED UP  
11 THAT MS. SAPRAI, 52-YEAR-OLD WOMAN, PROFESSIONAL, IS A LIAR.  
12 "DISABILITY-RELATED CLAIMS." THAT'S THE QUESTIONNAIRE THAT WAS  
13 USED TO TEST WHETHER THE STUDENT -- THE PEOPLE ATTENDING THE  
14 PROGRAM HAD LEARNED THEIR DISABILITY LAW, NUMBER 3 AND NUMBER 6.  
15 MS. SAPRAI DIDN'T LIE.

16 NOW, A COUPLE OF OTHER THINGS THAT I WANT TO RESPOND  
17 TO. WE'RE SUPPOSED TO ONLY GO BY WHAT PROFESSOR BLOUGH SAID  
18 ABOUT WHETHER SHE COULD PERFORM HER JOB PROPERLY. THAT'S WHAT  
19 MR. LEBOWITZ SAID, IN ESSENCE. LET'S HEAR AND SEE ON THE VIDEO,  
20 OKAY, WHAT THE PROFESSOR SAID AT THE TIME THE COLLEGE SENT HER  
21 THROUGH THE EVALUATION ABOUT WHETHER SHE COULD PERFORM HER JOB.  
22 IT'LL TAKE ABOUT SIX MINUTES AND THEN YOU'LL SEE THAT, YES,  
23 OKAY. LET'S ACCEPT WHAT MR. LEBOWITZ SAYS. AND, IF SO, THEN  
24 CLEARLY SHE WAS NOT ABLE TO PERFORM HER ESSENTIAL JOB DUTIES,  
25 WHICH IS ONE OF THOSE QUESTIONS ON THE FORM.

26 BEFORE WE DO THAT, I WOULD LIKE TO ADD SOMETHING. I

1205

1 AM NOT GOING TO SUGGEST, UNLIKE MR. LEBOWITZ, WHAT YOU ALL  
2 SHOULD TALK ABOUT IN THE JURY ROOM. I'M NOT GOING TO SUGGEST  
3 THAT IF ONE OF YOU SAYS THIS ONE, THE OTHER ONE SHOULD SAY THAT  
4 ONE. THAT'S NOT OUR BUSINESS AS ATTORNEYS. WE'RE PRESENTING  
5 THE EVIDENCE AND THE ARGUMENT. WE TRUST, THE COLLEGE TRUSTS

6 THAT YOU WILL BE ABLE TO REACH THE CORRECT FINDINGS WITHOUT US  
7 AS ATTORNEYS GETTING INTO THE JURY ROOM. WE'RE NOT GOING TO DO  
8 THAT.

9 NOW, GABE, WOULD YOU KINDLY PLAY THAT -- THE TAPE OF  
10 PROFESSOR BLOUGH'S TESTIMONY.

11 WHICH IS HER TESTIMONY ABOUT THAT SHE COULD NOT  
12 PERFORM HER ESSENTIAL JOB FUNCTIONS AND WHICH EXPLAINS IT WAS A  
13 MENTAL ISSUE, AND SO IT EXPLAINS WHY ONE WOULD USE A DOCTOR WITH  
14 PSYCHIATRIC EXPERTISE TO EVALUATE WHETHER SHE COULD TEACH, A  
15 MENTAL JOB.

16 THANK YOU.

17 (WHEREUPON, A TAPE WAS PLAYED.)

18 MR. VARTAIN: I JUST WANT TO STOP ONE MINUTE. THIS IS  
19 THE PART WE TALKED ABOUT, UP UNTIL HERE, THE PROFESSOR IS  
20 TESTIFYING AT HER SWORN DEPOSITION. YOUR HONOR HAS INSTRUCTED  
21 US THAT WE'RE TO ACCEPT THE DEPOSITION AS IF IT WAS TESTIMONY  
22 RIGHT HERE. UP UNTIL THIS POINT, SHE'S TESTIFYING AS TO HOW THE  
23 COLLEGE TREATED HER PROPERLY. YOU MIGHT WONDER, WHY ARE WE IN  
24 COURT, BUT THAT'S SOMETHING I'M GOING TO WONDER ABOUT AT THE END  
25 OF MY ARGUMENT.

26 HERE'S WHERE PROFESSOR BLOUGH IS EXPLAINING ABOUT HER

1206

1 MENTAL HEALTH MEDICATION AND HOW IT IS NOT WORKING PROPERLY.  
2 AND IT EXPLAINS WHY ONE WOULD WANT A DOCTOR WITH MENTAL HEALTH  
3 EXPERTISE TO DO THE EVALUATION. A PSYCHIATRIST WAS NOT TREATING

4 HER, DR. NORMAN REYNOLDS EXPLAINED TO YOU, AN EVALUATION DOCTOR  
5 DOESN'T TREAT. AN EVALUATION DOCTOR JUST ANALYZES THE RECORDS,  
6 THE INFORMATION, THEN COMES UP WITH A WORK OPINION.

7 THANK YOU, GABE.

8 (WHEREUPON, A TAPE WAS PLAYED.)

9 MR. VARTAIN: SO WE HAVE FROM PROFESSOR BLOUGH --  
10 SADLY, NOBODY WANTED HER TO HAVE THIS BUT IT'S RATHER CLEAR THAT  
11 THIS -- SHE FROM HER OWN WORDS, THIS IS A MENTAL DISABILITY, A  
12 MENTAL IMPAIRMENT THAT IS AFFECTING HER ABILITY TO TEACH.  
13 AGAIN, YOU WOULD WANT TO HAVE A DOCTOR WITH SOME EXPERIENCE, AS  
14 DR. MISSETT HAD WITH MENTAL IMPAIRMENTS, TO DO THE EVALUATION.  
15 AGAIN, AS DR. REYNOLDS THE EXPERT EXPLAINED TO US.

16 THANK YOU, GABE. GO AHEAD.

17 (WHEREUPON, A TAPE WAS PLAYED.)

18 MR. VARTAIN: THIS IS WHERE PROFESSOR BLOUGH EXPLAINS  
19 THAT WORD THAT IS GOING TO BE IN THE JURY VERDICT INSTRUCTIONS,  
20 "ESSENTIAL JOB DUTIES," WHERE SHE, FOR US -- AS DID THE OTHER  
21 PROFESSORS THAT CAME -- EXPLAINED HOW THE ESSENTIAL JOB DUTIES  
22 OF A FACULTY MEMBER ARE MENTAL.

23 SO WE'RE NOT SENDING THE MAINTENANCE MAN OUT FOR A  
24 MEDICAL EXAM WITH A PSYCHIATRIST TRAINING. WE'RE SENDING A  
25 TEACHER WHO IS TESTIFYING THAT SHE HAS A MENTAL ISSUE -- THAT  
26 SHE HAD, WAS NOT A PROBLEM FOR THE COLLEGE -- THAT IT WAS

1207

1 CAUSING HER TO NOT GO TO CLASS, NOT FOCUS AND NOT TEACH

2 PROPERLY. THAT'S WHERE WE GET INTO THE ESSENTIAL JOB DUTIES AND  
3 THE IMPACTS. THAT'S WHERE THE JUDGE'S INSTRUCTIONS COME IN.

4 THANK YOU, GABE.

5 (WHEREUPON, A TAPE WAS PLAYED.)

6 MR. VARTAIN: SO WHEN WE RESPOND TO MR. LEBOWITZ THAT  
7 THIS WAS ALL ABOUT CANCER, PROFESSOR BLOUGH'S OWN TESTIMONY IS  
8 THAT IT WAS ALL ABOUT HER ABILITY TO THINK AND FOCUS AND HER  
9 FATIGUE THAT KEPT HER FROM DOING HER JOB PROPERLY. AND WHEN WE  
10 READ LATER THE JUDGE'S INSTRUCTIONS ABOUT WHAT'S DISCRIMINATION  
11 AND WHAT'S NOT DISCRIMINATION, WE'LL FOCUS ON THE IDEA OF THE  
12 LAW IS, DON'T BE PRESUMPTUOUS THAT SOMEBODY WITH A HEALTH  
13 CONDITION CAN'T DO THEIR JOB. AND THAT THE COLLEGE WAS NOT  
14 PRESUMPTUOUS. THAT'S WHY THEY SAID, "WE CAN'T MAKE A MEDICAL  
15 DECISION. WE'LL HAVE DR. MISSETT DO THAT."

16 SO, AGAIN, THE MENTAL ISSUE, THE PSYCHIATRIC ISSUE WAS  
17 ONE THAT PROFESSOR BLOUGH, BY HER OWN TESTIMONY, EXPLAINS WAS A  
18 CONDITION THAT, AS SHE PUT IT, WAS MAKING IT NOT POSSIBLE FOR  
19 HER TO DO HER ESSENTIAL TEACHING FUNCTIONS.

20 WOULD THIS BE A GOOD TIME, YOUR HONOR, TO BREAK?

21 THE COURT: YES, ABSOLUTELY.

22 LADIES AND GENTLEMEN, WE ARE GOING TO TAKE OUR LUNCH  
23 BREAK. MR. VARTAIN KNEW HE'D HAVE TO SPLIT HIS CLOSING ARGUMENT  
24 PRE AND POST LUNCH, AND SO THIS IS A GOOD TIME TO MAKE THAT  
25 BREAK. LET'S COME BACK AT 1:30. WE'RE GOING TO FINISH UP THE  
26 ARGUMENT AT THAT TIME THIS AFTERNOON AND I'M QUITE CERTAIN I'LL

1 BE ABLE TO HAND THIS CASE TO YOU BEFORE YOU GO HOME TODAY.

2 LEAVE THOSE NOTEBOOKS ON YOUR CHAIR. NOW THERE ARE  
3 LOTS OF PEOPLE AROUND THAT ARE ASSOCIATED WITH THE CASE.  
4 JUST -- WE'VE TALKED ABOUT THIS BEFORE. IF YOU THINK PEOPLE ARE  
5 TALKING ABOUT THE CASE, JUST MOVE AWAY. IF YOU'RE IN THE  
6 BUILDING, WEAR THOSE BADGES SO THAT OTHERS IN THE COURTHOUSE  
7 KNOW THAT YOU'RE JURORS.

8 IF YOU GO OUT -- FIRST OF ALL, STAY DRY, STAY WARM. I  
9 DON'T KNOW IF IT'S RAINING OR NOT. WE'LL ALL FIND OUT WHEN WE  
10 GO OUTSIDE. IF YOU THINK SOMEONE'S SITTING NEAR YOU AT A LOCAL  
11 RESTAURANT, AGAIN, IF YOU DON'T MIND MOVING THE TABLE OR JUST  
12 LETTING THEM KNOW YOU'RE A JUROR AND MAYBE THEY CAN MOVE.

13 HAVE A GOOD LUNCH AND SEE YOU AFTER LUNCH.

14 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

15

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## 1 PROCEEDINGS

2 DECEMBER 15, 2008 P.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD AFTERNOON. WE'RE BACK ON THE RECORD.

4 ALL COUNSEL AND PARTIES ARE PRESENT, AND ALL JURORS AND  
5 ALTERNATE.

6 MR. VARTAIN, WOULD YOU LIKE TO CONTINUE?

7 MR. VARTAIN: THANK YOU, YOUR HONOR.

8 THE COURT: GO AHEAD.

9 MR. VARTAIN: I'M HOPING TO -- FOR YOU, LADIES AND  
10 GENTLEMEN, I'M HOPING TO COMPLETE MY CLOSING IN ABOUT 30 TO  
11 35 MINUTES. IT SHOULD BE LESS BUT IF IT'S MORE, JUST A FEW  
12 MINUTES.13 BY WAY OF RECAP, BEFORE WE LEFT FOR LUNCH, I HAD AN  
14 OPPORTUNITY TO RESPOND TO SOME OF THE ASSERTIONS THAT  
15 MR. LEBOWITZ MADE AND I'M PRETTY MUCH DONE WITH THAT. I JUST  
16 WANT TO REITERATE THAT, AS FAR AS THE MENTAL ABILITIES ISSUES OF  
17 PROFESSOR BLOUGH, SHE HERSELF TESTIFIED THAT HER FOCUS PROBLEM,  
18 HER THINKING PROBLEM, HER MENTAL IMPAIRMENTS WERE GOING ON IN  
19 THE SPRING OF 2006, WHEN PRESIDENT LOPEZ REQUESTED HER TO GO SEE  
20 DR. MISSETT.21 AS THE JUDGE REMINDED US, AND AS I PROMISED TO DO, I'M  
22 GOING TO TAKE US ON A WALK THROUGH THE EVIDENCE, ALMOST WITNESS  
23 BY WITNESS. CASES ARE DECIDED BY EVIDENCE, AND I THOUGHT IT WAS  
24 IMPORTANT TO AT LEAST HAVE A BRIEF REVIEW OF WHAT EACH WITNESS



25 SAID. AS THE COURT INSTRUCTED US ATTORNEYS, WE'RE SUPPOSED TO  
26 BE OFFICERS OF THE COURT, SO I'M GOING TO TRY TO DO AN IMPARTIAL

1210

1 ASSESSMENT OF EACH WITNESS'S EVIDENCE AS BEST I CAN. I PUT A  
2 LIST OF THE WITNESSES UP THERE ON THE BOARD, AND I THINK IT JUST  
3 MIGHT BE HELPFUL TO WALK THROUGH WHAT EACH WITNESS TESTIFIED TO.

4 MS. RACHEL TIPTON, WHO IS I THINK STILL HERE, IS THE  
5 ADVISOR FOR THE STUDENTS, WHO TESTIFIED THAT DURING THAT SPRING  
6 OF 2006, 10 OF THE 20 STUDENTS WHO WERE THE STUDENTS WHO  
7 PROFESSOR BLOUGH WAS ASSIGNED TO ADVISE CAME TO HER AND  
8 REGISTERED COMPLAINTS ABOUT THEY COULDN'T FIND PROFESSOR BLOUGH;  
9 E-MAILS UNRETURNED, OFFICE HOURS NOT KEPT, VOICEMAILS NOT  
10 RESPONDED TO.

11 MS. TIPTON ALSO TESTIFIED THAT A NUMBER OF OTHER  
12 STUDENTS CAME AND DESCRIBED ABSENCES FOR CLASS, LATE TIMES AND  
13 CUTTING CLASSES SHORT. ALL, OBVIOUSLY, PART OF THE ESSENTIAL  
14 FUNCTIONS OF A TEACHER ARE TO DO THOSE VERY THINGS, TEACH AND  
15 ADVISE THE STUDENTS. IMPORTANTLY, BUT VERY CIRCUMSPECTIVELY,  
16 MS. TIPTON ALSO OBSERVED PROFESSOR BLOUGH IN A STATE THAT WAS  
17 NOT APPROPRIATE FOR BEING ON CAMPUS.

18 SHE TESTIFIED THAT SHE WAS WALKING DOWN A HALL AND  
19 WAVERING FROM ONE SIDE TO THE OTHER, ALMOST THE WALLS HAVING TO  
20 HOLD HER UP. DR. MISSETT WOULD BE A BETTER ONE THAN WOULD I TO  
21 ANALYZE WHAT MEDICALLY THAT WAS DUE TO, BUT I THINK WE COULD ALL  
22 FAIRLY ASSUME FROM HIS TESTIMONY THAT IT WAS SOMETHING THAT

23 WOULD BE APPROPRIATE FOR A MENTAL HEALTH EXPERT LIKE DR. MISSETT  
24 TO EVALUATE.

25 MS. TIPTON ALSO -- WHEN I SAID "CIRCUMSPECT," SHE WAS  
26 VERY PRIVATE IN THAT THAT PARTICULAR ITEM SHE DID NOT REPORT TO

1211

1 DEAN PRATT. SHE FELT IT WAS A LITTLE TOO PERSONAL. SHE DID  
2 REPORT THE COMPLAINTS OF THE STUDENTS TO THE DEAN. THE DEAN,  
3 AGAIN, ACTING IN A VERY, YOU KNOW, OBJECTIVE AND EVENHANDED WAY,  
4 TOOK THE PROFESSOR ASIDE AND TALKED TO HER, TRIED TO FIND OUT  
5 WHAT WAS GOING ON AND DID NOT OVERLY INTRUDE AND INQUIRE INTO  
6 HER MEDICAL PROBLEMS. BUT HE DID GIVE THAT INFORMATION TO THE  
7 PRESIDENT, PRESIDENT LOPEZ WHO HAS --

8 THAT'S RIGHT. HE HAD TO GO FOR AN APPOINTMENT.

9 DEAN PRATT TESTIFIED THAT HE GAVE THAT INFORMATION TO  
10 THE PRESIDENT DURING THAT SPRING. THE PRESIDENT TESTIFIED --  
11 AND I BELIEVE I HEARD MR. LEBOWITZ USE THE WORD "FORTHRIGHT." I  
12 DON'T THINK ANYBODY COULD USE A BETTER WORD FOR PRESIDENT LOPEZ  
13 THAN "FORTHRIGHT." AND PROFESSOR BLOUGH ALSO AGREED THAT HE MET  
14 WITH HER ABOUT A WEEK BEFORE HE SENT THAT LETTER, ASKING HER TO  
15 GO SEE DR. MISSETT. HE SAT DOWN WITH HER IN HIS OFFICE AND THEY  
16 TALKED.

17 HE, THEN, HAVING HAD THE INFORMATION FROM DEAN PRATT  
18 WHICH CAME FROM MS. TIPTON -- AND I ADD THE NAME MS. HERZEG.

19 MS. ADLER, YOU COULD PUT THAT DOCUMENT UP.

20 MR. LEBOWITZ MADE A BIG DEAL THAT MS. HERZEG WAS NOT

21 BROUGHT HERE AS AN ADDITIONAL WITNESS. BUT HER BUSINESS MEMO  
22 WAS BROUGHT HERE AND PUT IN EVIDENCE.  
23 MAYBE YOU COULD JUST SLIDE IT DOWN A LITTLE BIT.  
24 YOU SEE HER NAME, MS. HERZEG, AT THE TOP,  
25 MARCH 22, 2006, WHERE SHE'S LISTING A NUMBER OF THE ABSENCES;  
26 SHE'S LISTING THAT THREE DIFFERENT STUDENTS HAVE COMMENTED THAT

1212

1 PROFESSOR BLOUGH MISSES, QUOTE, "CLASS OFTEN," AS WELL AS LETS  
2 CLASSES OUT EARLY, UP TO A HALF HOUR EARLY. HER ROOM, HER  
3 CLASSROOM IS ALWAYS EMPTY BY 3:00 P.M. THE CLASS IS SUPPOSED TO  
4 END AT 3:30.  
5 YOU CAN TAKE THAT DOWN.  
6 SO INSOFAR AS MR. LEBOWITZ MADE A BIG DEAL ABOUT  
7 MS. HERZEG NOT BEING HERE, HER BUSINESS MEMO -- SHE WORKS WITH  
8 MS. TIPTON. SHE GAVE IT TO DEAN PRATT. DEAN PRATT TESTIFIED HE  
9 RECEIVED IT AND COMMUNICATED THAT INFORMATION TO THE PRESIDENT.  
10 SO IF THAT ISN'T OBJECTIVE EVIDENCE, AND MR. LEBOWITZ IS ASKING  
11 YOU TO MAKE A -- SOME KIND OF SUPPOSITION THAT THEY SHOULD HAVE  
12 GONE INTO HER CLASSROOM TO OBSERVE HER TEACH.  
13 WELL, SHE WASN'T SHOWING UP TO TEACH A LOT. SHE WAS  
14 CUTTING CLASSES SHORT. SHE WAS LEAVING EARLY. THE ISSUE  
15 WASN'T -- SHE WAS ABLE TO TEACH IN THE SENSE OF THE PAST. SHE  
16 KNEW HOW TO TEACH. HER HEALTH WASN'T ALLOWING HER TO BE ABLE TO  
17 TEACH THEN. THE QUESTION WASN'T HER PAST SKILL. SHE WAS A GOOD  
18 TEACHER. AND, HOPEFULLY, HAD SHE COME BACK TO WORK WHEN THE

19 COLLEGE ASKED HER TO, SHE WOULD HAVE BEEN A GOOD TEACHER. BUT  
20 SHE WASN'T THEN, AND THAT WAS OBVIOUSLY A HEALTH IMPAIRMENT THAT  
21 WAS AFFECTING HER.

22 SO INsofar AS THE PRESIDENT EMERITUS TESTIFIED, HE  
23 SENT THIS VERY IMPORTANT LETTER. AND I WOULD ASK -- THIS IS,  
24 YOU KNOW, PROBABLY THE KEY DOCUMENT IN THE CASE, OTHER THAN THE  
25 OPINION OF DR. MISSETT. SO, AGAIN, PRESIDENT LOPEZ, MAY 8TH,  
26 SENDS A LETTER CALLED, "BELIEF AND NEED FOR YOUR LEAVE OF

1213

1 ABSENCE." THE FIRST SENTENCE IS THE WHOLE CASE. "I AM WRITING  
2 OUT OF CONCERN FOR OUR STUDENTS AND FOR YOU." IT COULDN'T BE  
3 CLEARER WHAT THE MESSAGE TO THE PROFESSOR IS: WE CARE ABOUT YOU  
4 AND WE CARE ABOUT OUR STUDENTS.

5 GOES ON TO DESCRIBE HER VERY CHALLENGING HEALTH  
6 ISSUES, HOW THEY HAVE ADVERSELY IMPACTED HER ABILITY TO PERFORM  
7 HER TEACHING OBLIGATIONS, EVEN AT THE STANDARDS THAT THE COLLEGE  
8 KNOWS THAT SHE EXPECTS OF HERSELF. AND IT GOES ON, FOURTH  
9 PARAGRAPH DOWN; ONE, TWO, THREE, FOUR. "AT THIS POINT, NEAR THE  
10 END OF THE ACADEMIC YEAR, IT SEEMS PRUDENT BOTH FOR YOU AND FOR  
11 THE STUDENTS."

12 WHEN WE TALK ABOUT THE COLLEGE'S BUSINESS NEEDS, AND  
13 THE COURT INSTRUCTED YOU ON THAT AS THE DEFINITION OF WHAT, WHEN  
14 THE LAW ALLOWS AN EMPLOYER TO SEND AN EMPLOYEE FOR A MEDICAL  
15 EVALUATION, WHEN IT'S CONSISTENT WITH THE EMPLOYER'S BUSINESS  
16 NEEDS. RIGHT THERE, IT'S TALKING ABOUT THE STUDENTS AS THE

17 BUSINESS NEEDS OF THE COLLEGE. THE BUSINESS OF THE COLLEGE IS  
18 THE STUDENTS. IT'S NOT A FOR-PROFIT ENTERPRISE. IT'S NOT A  
19 PRODUCT. IT'S NOT A BOTTOM LINE RETURN OF DIVIDENDS. IT'S THE  
20 STUDENTS.

21 FIVE, SIXTH PARAGRAPH DOWN BEGINS, "PRIOR REPORTS FROM  
22 THE INDEPENDENT MEDICAL EVALUATOR, DR. MISSETT" -- NOW, THAT'S  
23 TALKING ABOUT SEVERAL YEARS EARLIER WHEN WE'LL RECALL  
24 DR. MISSETT HELPED PROFESSOR BLOUGH RETURN ON A GRADUAL BASIS.  
25 THE PRESIDENT IS REMINDING PROFESSOR BLOUGH THAT BACK THEN  
26 DR. MISSETT HAD SAID THAT SOMETIMES HER MEDICAL CONDITIONS

1214

1 PRESENT AN INCREASED RISK OF IMPAIRING HER PERFORMANCE OF  
2 FACULTY DUTIES. SO IT ISN'T THE ISSUE THAT SHE HAD CANCER. IT  
3 ISN'T THE ISSUE THAT SHE EVEN HAD DEPRESSION. THE ISSUE WAS THE  
4 IMPAIRMENT OF THE PERFORMANCE OF HER FACULTY DUTIES.

5 AND WHEN YOU READ THE JUDGE'S JURY INSTRUCTIONS -- AND  
6 I'M NOT GOING TO PUT UP THOSE FORMS THAT MR. LEBOWITZ PUT ON AND  
7 TELL YOU HOW TO CHECK A BOX. WHEN YOU READ THOSE, THIS DOCUMENT  
8 WILL BE, I HOPE, HELPFUL TO YOU TO SEE THAT IT WASN'T THE FACT  
9 THAT SHE HAD HEALTH CONDITIONS. IT WAS THAT THOSE CONDITIONS  
10 WERE IMPAIRING HER PERFORMANCE.

11 NEXT PAGE, PLEASE. THANK YOU.

12 THIS IS IMPORTANT. THIS IS WHERE THE PRESIDENT IS  
13 REQUESTING THE PROFESSOR TO GO OVER TO SEE DR. MISSETT NEARBY IN  
14 MENLO PARK. HE'S ASKING FOR HER, QUOTE, "TIMELY AND FULL

15 COOPERATION," WHICH AS YOU WILL REMEMBER SHE DIDN'T GIVE. SHE  
16 FIRST SIGNED THE RELEASES AND THEN TOLD HER PSYCHIATRIST NOT TO  
17 SEND THE RECORDS. SO THAT'S HER, QUOTE, "FAULT," CLOSE QUOTE.

18 THE PRESIDENT ASKED PROFESSOR BLOUGH TO "AUTHORIZE  
19 YOUR PAST AND PRESENT HEALTHCARE GIVERS TO PROVIDE HIM WITH  
20 RECORDS AND INFORMATION." AGAIN, SHE DID DO THAT INITIALLY, BUT  
21 THEN SHE REVOKED THE MEDICAL RECORDS' OKAY FOR DR. LIU, WHICH IS  
22 WHAT HAMPERED THE WHOLE PROCESS.

23 IT GOES ON. AND THIS IS IMPORTANT BECAUSE  
24 MR. LEBOWITZ TALKED ABOUT THIS UNLIMITED EXAMINATION AND  
25 INTRUSION ON PRIVACY. THE PRESIDENT REMINDED PROFESSOR BLOUGH  
26 THAT, QUOTE -- THIS IS THE LAST SENTENCE OF THE SECOND TO THE

1215

1 LAST PARAGRAPH -- "WE HAVE ASKED DR. MISSETT NOT TO SHARE YOUR  
2 MEDICAL RECORDS OR DETAILED MEDICAL INFORMATION WITH THE COLLEGE  
3 OR ANY PERSONNEL OF THE COLLEGE. HE WILL GET INFORMATION FROM  
4 THE COLLEGE, BUT HE WILL NOT GIVE IT."

5 AND YOU REMEMBER, DR. MISSETT TESTIFIED HE NEVER  
6 TALKED TO THE COLLEGE. HE SAID UNTIL THAT DAY HE TESTIFIED, HE  
7 HAD NEVER TOLD THE COLLEGE WHAT HER MEDICAL DIAGNOSES WERE. SO  
8 EVERYBODY KEPT THAT. WHEN MR. LEBOWITZ SAID THIS WAS AN  
9 UNLIMITED RELEASE AND IT WAS GOING TO BE INTRUSION OF HER  
10 PRIVACY, IT WAS IN WRITING. IT WAS GOING TO BE IN THE HANDS OF  
11 THE DOCTOR AND NO ONE ELSE, AND THE EVIDENCE SUPPORTS THAT TO BE  
12 THE CASE.

13           THANKS.

14           SO LET'S PROCEED FROM PRESIDENT LOPEZ, WHO MADE THE  
15   DECISION. YES, HE SENT THAT LETTER AND HE MADE IT ON THE BASIS  
16   OF DEAN PRATT'S INFORMATION, MS. TIPTON'S INFORMATION AND THAT  
17   MEMO OF MS. HERZEG. AND YOU HEARD BEFORE WE WENT TO LUNCH, YOU  
18   SAW PROFESSOR BLOUGH'S TESTIMONY, THAT ALL OF THIS WAS TRUE.  
19   SHE WAS IMPAIRED. SHE COULDN'T DO HER JOB. SHE SAID SHE SHOULD  
20   HAVE BEEN ON LEAVE.

21           SO NOW YOU HEARD MR. HITE. HE WAS THE SECOND TO THE  
22   LAST WITNESS ON FRIDAY. HE'S THE GENTLEMAN FROM GOLDEN GATE  
23   COLLEGE. THAT'S WHY HE'S NOT HERE TODAY. HE EXPLAINED TO YOU  
24   HOW IT WAS IN THE VERY BEGINNING DR. MISSETT WAS SELECTED. HE  
25   WAS SELECTED BECAUSE HE HAD HELPED THE COLLEGE HELP A STUDENT  
26   GRADUATE, A STUDENT WITH EMOTIONAL PROBLEMS.

1216

1           DO YOU REMEMBER THAT TESTIMONY? HE HAD SAID --  
2   MR. HITE SAID WHEN, BACK IN 2003, PROFESSOR BLOUGH CAME BACK  
3   FROM LEAVE, WE KNEW SHE HAD MENTAL HEALTH AND FATIGUE ISSUES.  
4   WE JUST WANTED TO MAKE SURE SHE COULD COME BACK, AND WE SELECTED  
5   DR. MISSETT BECAUSE HE HAD HELPED ONE OF OUR STUDENTS.

6           SO IT WAS A TOTALLY POSITIVE REASON FOR SELECTING HIM.  
7   HE WORKS WITH COLLEGES AND UNIVERSITIES. MR. HITE SAID HE  
8   WORKED AT STANFORD WITH THE STUDENTS AND FACULTY THERE. THAT'S  
9   HOW THEY FIRST USED HIM. MR. HITE ALSO SAID, SO LATER ON IN  
10   2006, THAT'S HOW HE GOT PICKED. HE KNEW PROFESSOR BLOUGH FROM

11 BEFORE. HE KNEW HER CONDITION AND IT JUST MADE TOTAL SENSE TO  
12 SELECT HIM.

13 THIS ISSUE OF PSYCHIATRIST, HE WASN'T SELECTED TO GIVE  
14 HER PSYCHIATRIC TREATMENT. HE WAS SELECTED TO EVALUATE HER  
15 HEALTH ISSUES, AS HE HAD DONE A GOOD JOB ONCE BEFORE, AS  
16 MR. HITE HAD TESTIFIED.

17 DR. MISSETT. SO HE CAME IN AND TESTIFIED AND HE --  
18 THANKS TO OUR WONDERFUL COURT REPORTER, WHO MR. LEBOWITZ AND I  
19 ASKED HER TO QUICKLY TRANSCRIBE HIS TESTIMONY -- AND IF YOU WANT  
20 TO ASK THE JUDGE FOR IT, I THINK THAT GOES THROUGH A NOTE. THIS  
21 IS HIS TESTIMONY. I'M JUST GOING TO READ IT VERBATIM.

22 "I WANTED HER TO WORK. THE SCHOOL HAD SAID TO ME THEY  
23 WANTED HER TO WORK. THEY JUST WANTED TO HAVE A CERTAIN LEVEL OF  
24 ASSURANCE THAT THERE WAS NOT SOME KIND OF MEDICAL, OR MENTAL OR  
25 EMOTIONAL PROBLEM THAT WAS GOING TO INTERFERE WITH HER BEING  
26 ABLE TO DO WHAT SHE NEEDED TO DO."

1217

1 IT GOES ON. "I COULD NOT" -- THIS IS AT PAGE 4 -- "I  
2 COULD NOT IN MY SOUL THEN, AND I COULD NOT NOW IF I WERE REDOING  
3 IT, GET TO THE POINT OF SAYING THIS PERSON IS COMPETENT  
4 COGNITIVELY." WELL, PROFESSOR BLOUGH ADMITTED SHE WASN'T  
5 COMPETENT COGNITIVELY IN 2006.

6 HE GOES ON TO SAY, "I COULD NOT IN MY SOUL THEN AND I  
7 COULD NOT NOW IF I WERE REDOING IT, GET TO THE POINT OF SAYING  
8 THIS PERSON IS COMPETENT COGNITIVELY, EMOTIONALLY AND MEDICALLY



9 TO GET HERSELF THROUGH TEACHING 160 STUDENTS FOR A SCHOOL YEAR  
10 WITH A FULL BATTERY OF CLASSES."

11 THAT WOULD EXPLAIN WHY HE LATER ON, ONCE SHE RELEASED  
12 THE RECORDS, WHICH TOOK SIX MONTHS, GAVE HER THE HALF TIME OKAY,  
13 BECAUSE IT WOULDN'T QUITE MAKE IT POSSIBLE FOR HER TO GET  
14 HERSELF THROUGH TEACHING THE FEWER STUDENTS WITH NOT A FULL  
15 BATTERY OF CLASSES.

16 SO THAT WAS DR. MISSETT. AND I THINK YOU ALL, AS THE  
17 JUDGE HAS INSTRUCTED, THAT IT'S YOUR DUTY TO ASSESS THE VALUE OF  
18 THE WITNESSES' TESTIMONY, NOT MINE. BUT I THINK, EVEN THOUGH  
19 PROFESSOR BLOUGH SAID -- AND SHE SAID DIRECTLY SHE DIDN'T LIKE  
20 HIM. SHE DIDN'T TRUST HIM. BUT YOU'LL REMEMBER SHE THEN  
21 ADMITTED, "OH, YEAH. HE DID DO A GOOD JOB FOR ME. I WAS  
22 GRATEFUL."

23 I DIDN'T UNDERSTAND THAT CONTRADICTION. IT MADE NO  
24 SENSE WHATSOEVER. AND I OFFER THAT UP TO YOU FOR WHY YOU WOULD  
25 BELIEVE DR. MISSETT THAT HE DID A GOOD JOB. BUT HE DID SAY SHE  
26 WASN'T READY TO GO BACK TO WORK AND THAT'S WHAT THE COLLEGE

1218

1 RELIED ON THERE IN THE SUMMER.

2 LET'S TALK A LITTLE ABOUT, AS I CONTINUE TO GO THROUGH  
3 THE WITNESSES AND CHECK THEM OFF, DR. SAMANTHA LIU, WHO WAS  
4 ANOTHER PSYCHIATRIST. SHE WAS PROFESSOR BLOUGH'S PSYCHIATRIST.  
5 NOW, I HAVE A REAL LOGICAL PROBLEM, WHY MR. LEBOWITZ SAYS THEY  
6 SHOULDN'T HAVE HIRED A PSYCHIATRIST TO EVALUATE THE HEALTH

7 ISSUES, WHEN HE BRINGS HER PSYCHIATRIST IN TO COMMENT ON HER  
8 HEALTH ISSUES. IT JUST MADE NO SENSE TO ME.

9 BUT EVEN MORE, DR. LIU HOLDS A KEY TO WHY THIS CASE  
10 SHOULD BE FOUND TOTALLY WITHOUT MERIT AND NO AWARD OF ANY  
11 DOLLARS WHATSOEVER. DR. LIU CAME IN AND TESTIFIED -- AND,  
12 AGAIN, MS. PEREZ WAS KIND ENOUGH TO GIVE US -- TO DO US THE  
13 TRANSCRIPT. SHE SAYS AT PAGE 16 -- REMEMBER SHE SENT A LETTER  
14 TO THE COLLEGE AND MR. LEBOWITZ BROUGHT IT UP. BUT THE LETTER  
15 DIDN'T SAY SHE WOULD GO BACK TO WORK. IT JUST SAID NICE THINGS  
16 ABOUT HER. SHE WASN'T THINKING FOGGILY AND SHE HAD MADE A LOT  
17 OF PROGRESS OVER THE YEARS WITH HER DEPRESSION.

18 SHE SAYS ABOUT THAT LETTER, QUOTE, "AS I SAID, THIS  
19 LETTER IS NOT MEANT TO SAY IF SHE WAS CAPABLE OR NOT CAPABLE TO  
20 WORK AT THE COLLEGE. THIS LETTER -- THE PURPOSE OF THIS LETTER  
21 IS TO SUMMARIZE THE CONDITION OF PROFESSOR BLOUGH AT THAT TIME;  
22 HER STRENGTHS, HER WEAKNESSES AND THE STRESSES SHE WAS GOING  
23 THROUGH. THE PURPOSE OF THIS LETTER IS TO POINT OUT THE THINGS  
24 SHE COULD IMPROVE ON AND TO ASK THE COLLEGE FOR ACCOMMODATIONS."  
25 WELL, AS YOU'VE HEARD OVER AND OVER AGAIN, THE COLLEGE GAVE HER  
26 ALL THE ACCOMMODATIONS THAT PROFESSOR BLOUGH EVER ASKED.

1219

1 SHE GOES ON TO SAY, "ASK THE COLLEGE FOR  
2 ACCOMMODATIONS AND TIME FOR HER TO HEAL AND GET BETTER, SO  
3 PERHAPS SHE COULD PERFORM BETTER AND CONTINUE TO WORK AT THE  
4 COLLEGE." THAT'S EXACTLY WHAT THE COLLEGE DID. IT PUT HER ON

5 MEDICAL LEAVE; A YEAR LATER IT ASKED HER TO COME BACK. IT GAVE  
6 HER THE TIME TO HEAL.

7 BUT EVEN MORE IMPORTANTLY, DR. LIU -- AGAIN, THIS IS  
8 PROFESSOR BLOUGH'S PSYCHIATRIST SAYS, AT PAGE 17, QUOTE, "AS I  
9 SAID BEFORE, IT'S NOT MY DUTY TO DO A FITNESS EVALUATION OF  
10 PROFESSOR BLOUGH AS TO WHETHER OR NOT SHE'S CAPABLE TO TEACH AT  
11 MENLO COLLEGE AS A LAW PROFESSOR, SO I CAN'T REALLY SAY THAT  
12 WHETHER OR NOT HER DEPRESSION IMPACTS HER ABILITY TO TEACH AT  
13 THE COLLEGE OR NOT."

14 I THEN ASKED HER, "DR. LIU" -- THIS IS AT PAGE 19 --  
15 "DR. LUI, YOU JUST TOLD THE JURY IT WAS NOT YOUR DUTY TO RENDER  
16 AN OPINION AS TO WHETHER PROFESSOR BLOUGH WAS OR WAS NOT ABLE TO  
17 PROPERLY DO HER TEACHING JOB, CORRECT?" SHE SAID, "THAT'S  
18 CORRECT." I SAID, "WASN'T IT DR. MISSETT'S DUTY TO RENDER THAT  
19 OPINION?" SHE SAID, "THAT'S CORRECT." DR. LIU POINTS YOU TO  
20 DR. MISSETT FOR THE ANSWER TO THE CASE. THAT'S  
21 PROFESSOR BLOUGH'S OWN PSYCHIATRIST THAT'S TELLING YOU LISTEN TO  
22 DR. MISSETT.

23 MS. STEPHANIE SAPRAI, THE SO-CALLED LIAR, WHO'S NOT A  
24 LIAR, AS WE SHOWED. SHE TOLD THE TRUTH, AS WE SHOWED.  
25 MS. SAPRAI DID NOTHING MORE TERRIBLE THAN TO MAKE IT CLEAR TO  
26 PROFESSOR BLOUGH THAT SHE WAS NOT GOING TO BE TERMINATED IF SHE

1220

1 WENT BACK AND SAW DR. MISSETT. A COUPLE OF LETTERS -- AND LET  
2 ME GET THOSE OUT FOR YOU. I MAY JUST, RATHER THAN TAKE YOUR

3 TIME UP, THE OCTOBER 26TH LETTER, "YES. IT IS TRUE THE COLLEGE  
4 IS KEEPING YOU ON LEAVE OF ABSENCE AND NOT TERMINATING YOUR  
5 EMPLOYMENT," THE FIRST SENTENCE.

6 WHERE DO WE GET A DISCHARGE OUT OF TELLING SOMEONE  
7 THAT YOUR EMPLOYMENT IS NOT BEING TERMINATED? GRANTED,  
8 DR. MISSETT HAD SAID SHE WOULD NOT BE ABLE TO WORK FOR THE  
9 FORESEEABLE FUTURE, AND GRANTED PRESIDENT LOPEZ HAD PREVIOUSLY  
10 TOLD HER, "YOUR APPOINTMENT WOULD BE TERMINATED BECAUSE OF  
11 THAT," BUT IN THE INTERIM --

12 SHOW THE DATE, IF YOU WOULD, PLEASE, MS. ADLER.

13 -- OCTOBER 26TH, PRIOR TO NOVEMBER, THE HUMAN RESOURCE  
14 DIRECTOR MAKES IT VERY CLEAR THAT THAT IS NOT HAPPENING, AND IT  
15 DID NOT HAPPEN. LET'S CHECK OFF MS. -- I ALREADY CHECKED OFF.

16 DR. KELLY CAME AND WAS THE LAST WITNESS ON FRIDAY.

17 DR. KELLY IS THE EXECUTIVE VICE PRESIDENT. AND DR. KELLY --

18 YOU CAN TAKE THAT DOWN.

19 -- EXPLAINED TO YOU HE'S A MENTAL HEALTH PROFESSIONAL.

20 HE'S A SOCIAL WORKER. HE TESTIFIED STRAIGHT ON THAT THE ONLY  
21 REASON HE RECOMMENDED TO PRESIDENT HAIGHT THAT THE HALF-TIME JOB  
22 WAS THAT'S WHAT DR. MISSETT SAID. HE JUST FOLLOWED THE DOCTOR'S  
23 ORDERS. IT WASN'T ABOUT HER CANCER. IT WASN'T ABOUT HER  
24 DEPRESSION.

25 IT WAS ABOUT THE DOCTOR SAID THAT'S WHAT SHE COULD DO.

26 NOT CONTENDING WITH THAT, THE EXECUTIVE VICE PRESIDENT THEN MADE

1 SURE THAT HE RECOMMENDED TO THE PRESIDENT THAT ALL THE  
2 ACCOMMODATIONS THAT SHE COULD POSSIBLY WANT WOULD GET INCLUDED  
3 IN HER CONTRACT. SO THE CONTRACT LETTER INCLUDES -- AND YOU'VE  
4 SEEN THIS BEFORE -- "YOUR REQUESTED ACCOMMODATIONS; TIME IN  
5 BETWEEN CLASSES, DAY OFF IN BETWEEN CLASSES, LIMIT OF 25  
6 STUDENTS, SMALL ROOMS. COME MEET WITH ME IF YOU NEED ANY OTHER  
7 DISABILITY ACCOMMODATIONS. JUST SCHEDULE A CONVENIENT TIME."

8 JUST GO DOWN A LITTLE.

9 "YOU WILL GET YOUR THREE PERCENT, EVEN THOUGH YOU  
10 DIDN'T WORK HERE LAST YEAR. YOU WILL GET FULL-TIME HEALTH AND  
11 DENTAL EVEN THOUGH YOU'RE NOT A FULL-TIME EMPLOYEE." LAST LINE,  
12 "MARCY, THE COLLEGE IS HOPEFUL THAT YOU WILL BE COMING BACK TO  
13 TEACH THIS FALL." THIS IS A DUPING OF THE JURY IS WHAT WE HEARD  
14 FROM MR. LEBOWITZ. THIS LETTER, WHICH THERE WASN'T EVEN A  
15 LAWSUIT THEN -- AND THAT WAS STIPULATED TO AND APPROVED BY THE  
16 COURT -- WAS SOMEHOW, ACCORDING TO THE PLAINTIFF'S ATTORNEY, AN  
17 EFFORT TO DUPE A JURY THAT DIDN'T EVEN EXIST. THERE WASN'T A  
18 COURT CASE.

19 THAT'S HOW THE PARANOIA OF DOING GOOD THINGS COMES  
20 BACK TO BE YOU WEREN'T DOING A GOOD THING. THIS IS THE PERSON  
21 WHO ALLEGEDLY MADE A FALSE STATEMENT, MS. SAPRAI. BUT SHE  
22 DIDN'T. SHE JUST SAID, "WE HOPE YOU'RE COMING BACK."

23 THE LAST -- NOT THE LAST WITNESS. I'LL GET FIRED IF I  
24 SAY THAT. BUT PRESIDENT HAIGHT WAS THE LAST OF MY LIST HERE.  
25 HE TESTIFIED THAT THE FURTHEST THING FROM HIS MIND WAS HER  
26 DISABILITY OR HER CANCER. YOU'LL REMEMBER, WHEN HE TRIED TO

1 TALK ABOUT HOW HE'S HELPED STUDENTS WITH DISABILITIES, THERE WAS  
2 A BIG OBJECTION. THE ATTORNEYS DIDN'T WANT YOU TO HEAR ABOUT  
3 THAT BECAUSE, AGAIN, WE JUST WANT YOU TO HEAR THE PART -- WE  
4 DON'T WANT YOU TO HEAR THE PART THAT SHOWS THE WHOLE PICTURE.

5 BUT PRESIDENT HAIGHT TESTIFIED THAT HE TOOK  
6 DR. KELLY'S RECOMMENDATION BECAUSE THAT'S WHAT THE DOCTOR SAID,  
7 HE WAS HOPING SHE'D COME BACK. PROFESSOR MEDLEN AND  
8 PROFESSOR MCDONOUGH, GREAT PROFESSORS. THEY'VE BEEN THERE  
9 FOREVER. THEY WERE OBVIOUSLY GREAT COLLEAGUES TO  
10 PROFESSOR BLOUGH. THEY CONCEDED THEY DON'T KNOW ABOUT HER  
11 MEDICAL ISSUES. THEY CONCEDED THEY'RE NOT DOCTORS. BUT THEY  
12 SPOKE NICELY OF HER. WHY WOULDN'T THEY? AND THEY SAID SHE HAD  
13 GOOD STUDENT EVALUATIONS, WHICH SHE DID AT TIMES. SHE ALSO HAD  
14 SOME BAD ONES THAT SPRING.

15 THEY WERE IMPORTANT BECAUSE THEY DID AGREE THAT MENTAL  
16 FOCUS AT THIS COLLEGE, BEING VERY CLOSE TO THE STUDENTS, IS AN  
17 ESSENTIAL JOB DUTY. IT WAS A PLEASURE FOR US TO MEET THEM, AND  
18 I CAN ADMIRE HOW THEY WOULD STAND UP FOR A COLLEAGUE. IN FACT,  
19 THE COLLEGE STOOD UP FOR THE COLLEAGUE IS WHAT'S PART OF OUR  
20 ARGUMENT.

21 DR. SIEBEL, THAT I CALLED THE ONE-DAY ONCOLOGIST. HE  
22 WAS THE FILL-IN ONCOLOGIST. HE ONLY SAW PROFESSOR BLOUGH ONE  
23 DAY. HE ALSO TESTIFIED -- JUST LIKE DR. LIU. HE WROTE A NICE  
24 LETTER FOR HER BUT HE SAID, "I WASN'T GIVING AN OPINION THAT HER  
25 MENTAL HEALTH WAS GOOD ENOUGH TO WORK." HE SAT THERE AND SAID,

1 NOT A MENTAL HEALTH DOCTOR.

2 DR. HAYWARD, WHO IS PROFESSOR BLOUGH'S CURRENT  
3 ONCOLOGIST, HE JUST SAID HER CANCER HAS NOT BEEN A PROBLEM FOR A  
4 LONG TIME. IT'S BEEN IN REMISSION AND HE JUST WATCHES HER. AND  
5 ALL THAT DID WAS GIVE US COMFORT THAT PROFESSOR BLOUGH HASN'T  
6 HAD, FORTUNATELY, THE RECURRENCE OF CANCER.

7 THIS PERSON, DR. MAHLA WAS HER ECONOMIST. AND YOU  
8 REMEMBER HE AND I GOT INTO IT A LITTLE BIT? HE DIDN'T LIKE I  
9 USED THE WORDS "NUMBER CRUNCHING." AND HE GOT REALLY TESTY OVER  
10 THE FACT THAT HE JUST SAID WHAT THE ATTORNEYS SAID HE SHOULD  
11 SAY. REMEMBER HE SAID, "I DIDN'T CHECK THAT OUT. I DIDN'T  
12 CHECK THAT OUT." THEN WHEN I SAID, "WELL, ALL YOU DID WAS  
13 CRUNCH THE NUMBERS," WHICH IS TRUE, HE GOT ALL ANNOYED AT ME AND  
14 SAID THAT WAS DISRESPECTFUL.

15 BUT HE'S THE ONE WITNESS -- EVERYBODY ELSE WAS RIGHT  
16 ONBOARD WITH YOU. YOU KNOW, HE CAME FROM SACRAMENTO. HE DIDN'T  
17 COME FROM THE COLLEGE. HE'S THE ONE WHO SAID, "I DIDN'T CHECK  
18 OUT MY ASSUMPTIONS. I JUST RAN THESE NUMBERS AND I CAME UP WITH  
19 A MILLION DOLLARS. GIVE HER A MILLION DOLLARS." I WOULD JUST  
20 CROSS HIS NAME OFF.

21 PROFESSOR BLOUGH, WE WENT THROUGH QUITE A BIT OF HER  
22 TESTIMONY ON THE VIDEO. AND UNLIKE -- I WOULD JUST -- NOTHING  
23 MORE NEEDS TO BE SAID. I THINK PROFESSOR BLOUGH GAVE SOME VERY

24 IMPORTANT TESTIMONY WHEN SHE SAID NOBODY SAID ANYTHING AGAINST  
25 HER CANCER. NOBODY SAID ANYTHING AGAINST HER MENTAL HEALTH.  
26 NOBODY DID ANYTHING BUT GIVE HER ACCOMMODATIONS. AND YET SHE

1224

1 CONSIDERED THIS RETURN TO WORK OFFER IN BAD FAITH.

2 REMEMBER WE WENT THROUGH THAT LETTER. SHE COULDN'T  
3 EXPLAIN WHY IT WAS IN BAD FAITH. EVERYTHING IN THE LETTER, SHE  
4 SAID, "GOOD FAITH, GOOD FAITH, GOOD FAITH." SO THAT'S WHAT I  
5 THINK IS IMPORTANT TESTIMONY FROM PROFESSOR BLOUGH.

6 DR. REYNOLDS, LET ME PUT HIM DOWN. DR. REYNOLDS CAME  
7 AFTER DR. MISSETT. AND HIS TESTIMONY WAS -- HE'S THE ONE WHO  
8 DOES FITNESS-FOR-DUTY EVALUATIONS FOR A LIVING. HE WRITES THE  
9 ARTICLES. HE'S THE EXPERT. HE'S A TRUE EXPERT, UNLIKE THE  
10 ATTORNEYS' ECONOMIST. HE SAID RATHER CLEARLY WHY YOU WOULD HIRE  
11 A PHYSICIAN WITH PSYCHIATRIC TRAINING TO DO AN EVALUATION OF AN  
12 EMPLOYEE THAT HAS MENTAL HEALTH ISSUES; YOU'D WANT TO GET THE  
13 BEST DOCTOR.

14 HE ALSO SAID WHY IT WOULD BE A PROBLEM WHEN SHE WON'T  
15 LET HIM GET AT THE MEDICAL RECORDS, THE PSYCHIATRIC RECORDS,  
16 THAT THAT WOULD CAUSE IT TO BE INCOMPLETE. SO HE EXPLAINED  
17 THOSE TWO THINGS. HE FURTHER EXPLAINED THAT DR. MISSETT DID IT  
18 THE WAY YOU'RE SUPPOSED TO DO IT. AND WE ALL KNEW THAT, BECAUSE  
19 HE DID IT IN 2003, IN A WAY THAT WORKED JUST FINE WITH EVERYONE.  
20 TOO BAD PROFESSOR BLOUGH GOT SOMETHING IN HER HEAD AND DIDN'T  
21 COOPERATE THIS TIME.



22 AND REMEMBER, SHE SAID IT WAS HER PSYCHIATRIST THAT  
23 DIDN'T WANT TO RELEASE THE RECORDS. HER PSYCHIATRIST, DR. LIU,  
24 CAME UP AND SAID, "NO, IT WAS PROFESSOR BLOUGH." IT WAS  
25 PROFESSOR BLOUGH WHO DIDN'T WANT TO RELEASE THE RECORDS. IT'S  
26 HER, IN A SENSE, RESPONSIBILITY FOR HOW THE TRAIN GOT OFF THE

1225

1 TRACK AND PROBABLY WHY SHE DECIDED TO SUE US.

2 BUT SHE'S CALLED IT A MISUNDERSTANDING. I ACCEPT  
3 THAT. BUT WHY SUE YOUR EMPLOYER OVER A MISUNDERSTANDING BETWEEN  
4 YOU AND YOUR PSYCHIATRIST? IT'S A PRETTY COSTLY  
5 MISUNDERSTANDING TO THE STUDENTS AND THE PARENTS, WHO FUND THE  
6 COLLEGE. AND IT WASN'T THE COLLEGE'S MISUNDERSTANDING.

7 I THINK THAT IS A FAIR SUMMARY OF THE EVIDENCE.

8 NOW, IN THE NEXT FIVE MINUTES --

9 AND I'LL STILL BE WITHIN MY 35, JUDGE. I WANT CREDIT  
10 FOR THAT.

11 -- I WOULD LIKE TO TAKE THE OPPORTUNITY TO GO THROUGH  
12 THE LEGAL ISSUES WITH YOU. I'M NOT GOING TO DISTRIBUTE THE FORM  
13 WITH THE AUTOMATIC CHECKS, BUT I'M GOING TO ASK YOU TO LOOK AT  
14 WHERE THE JUDGE'S INSTRUCTIONS SAY THAT THE COLLEGE CAN ASK FOR  
15 THE MEDICAL EVALUATION IF IT'S CONSISTENT WITH THE BUSINESS  
16 NEEDS OF THE COLLEGE. I JUST ASK YOU, YOU KNOW, IN A NON-PROFIT  
17 COLLEGE THE BUSINESS NEEDS ARE THE STUDENTS. SO WHAT ELSE DID  
18 WE DO BUT WATCH OUT FOR THE STUDENTS WHEN WE SENT HER FOR THE  
19 DR. MISSETT EVALUATION?

20 SO I BELIEVE WE HAVE PROVED OUR CASE 100 PERCENT THAT  
21 WE HAD COLLEGE NEEDS, BUSINESS NEEDS, STUDENT NEEDS WHEN WE  
22 ASKED PROFESSOR BLOUGH TO GO SEE DR. MISSETT. THE OTHER  
23 INSTRUCTION THAT THE JUDGE GIVES YOU IS THAT WHEN WE DO THAT --  
24 YOU KNOW, THE LAW DOESN'T WANT EMPLOYERS WILLY-NILLY SENDING  
25 THEIR EMPLOYEES TO DOCTORS. THAT'S ONLY FAIR. DR. REYNOLDS  
26 SAID THAT THAT'S TRUE. BUT HE ALSO SAID IN A COMPLEX MEDICAL

1226

1 CASE LIKE THIS, YOU DON'T WANT THE HR MANAGER DOING DIAGNOSES.  
2 THAT'S WHY THE LAW SAYS YOU CAN SEND -- IN THESE CIRCUMSTANCES  
3 YOU CAN SEND THE EMPLOYEE TO THE OUTSIDE MEDICAL EVALUATOR.

4 BUT, AS THE JUDGE INSTRUCTED YOU, IT SHOULD BE A  
5 JOB-RELATED EVALUATION. AND I SUBMIT TO YOU, WHAT COULD BE MORE  
6 JOB-RELATED FOR A TEACHER THAN TO EVALUATE IF SHE HAS THE FOCUS  
7 AND THE MENTAL STAMINA TO TEACH. I MEAN, YES, IT MIGHT NOT BE  
8 JOB-RELATED TO SEND A -- AGAIN, A CARPENTER WHO HAS NO MENTAL  
9 HEALTH PROBLEMS TO A PSYCHIATRIST. I GRANT YOU THAT.

10 BUT TO SEND A TEACHER, WHO HAS ENORMOUS MENTAL HEALTH  
11 PROBLEMS -- SHE SAID HER SISTER SAID SHE WAS GOOFY ON THE  
12 PSYCHOTROPIC DRUGS. REMEMBER, THAT WAS IN THE VIDEO. WHAT  
13 COULD BE MORE JOB-RELATED THAN TO HAVE HER EVALUATED FOR HER  
14 MENTAL HEALTH? IF YOU SENT HER TO AN ONCOLOGIST, WHAT DO WE  
15 NEED TO DO THAT FOR? HER ONCOLOGIST SAID HER CANCER WAS,  
16 FORTUNATELY, IN REMISSION. IT WAS THE MENTAL HEALTH THAT NEEDED  
17 TO BE EVALUATED.

18           WHEN YOU'RE A TEACHER AND YOU ADVISE STUDENTS, DO YOU  
19   REALLY WANT A GROWN-UP IN THE COMPANY OF YOUNG PEOPLE WHO'S NOT  
20   AT THAT POINT MENTALLY HEALTHY ENOUGH TO DO HER JOB RIGHT? WHAT  
21   WOULD YOU THINK OF A COLLEGE IF THEY DIDN'T DO THIS? YOU'D SAY,  
22   "PUT THEM OUT OF BUSINESS, IF THEY DIDN'T WATCH OUT FOR THE  
23   STUDENTS." SO THE MEDICAL EVALUATION, I SUBMIT TO YOU THAT THE  
24   JOB-RELATED AND THE BUSINESS NEEDS HAS BEEN PROVEN 100 PERCENT  
25   BY THE COLLEGE.

26           LET'S GO TO THE NEXT ISSUE, WRONGFUL DISCHARGE. I

1227

1   NEVER HAD A CASE WHERE SOMEONE WAS DISCHARGED, SUPPOSEDLY.  
2   THEIR OFFICE WAS THERE. THEIR BENEFITS ARE THERE. THEY'RE  
3   LISTED IN THE FACULTY CATALOG AS BEING ON MEDICAL LEAVE.

4           MAYBE WE'LL PUT THAT ONE UP, MS. ADLER.

5           THEY ARE ASKED TO COME BACK TO WORK 50 PERCENT TIME  
6   AND TOLD THAT IF THEY DO WELL, THEY'LL GET A SIX-YEAR CONTRACT  
7   EVALUATION.

8           THANK YOU.

9           YOU DIDN'T SEE THIS BECAUSE WE WANTED TO MOVE THINGS  
10   ALONG. THIS IS THE CATALOG FOR THE YEAR PROFESSOR BLOUGH --  
11   THIS IS JUST THE FRONT PAGE. THE YEAR SHE DECIDED NOT TO COME  
12   BACK, 2007. AND THEN IT LISTS HER AS -- I'LL SHOW YOU IN A  
13   SECOND. SHE'S NOT FIRED. IT LISTS HER AS ONE OF THE FACULTY ON  
14   LEAVE.

15           THERE IT IS, OKAY.

16 FULL-TIME FACULTY, MARCINE BLOUGH. PROFESSOR BUSINESS  
17 LAW OF MULTI-CULTURE, ET CETERA, ON LEAVE. THAT'S THAT LEAVE.  
18 AND THE NEXT YEAR, WHICH IS THIS YEAR, REALLY, '08, '09, SAME  
19 THING. PROFESSOR BLOUGH IS ON LEAVE. SO WHY WOULD WE TRY TO  
20 DUPE THE JURY TWO YEARS AGO WHEN THERE WASN'T A CASE, AS  
21 MR. LEBOWITZ SAYS, AND LIST HER AS FULL-TIME FACULTY ON LEAVE  
22 WHEN -- IF WE HAD WANTED TO FIRE HER?

23 LAST POINT. THIS IS HER OFFICE, AND WE BROUGHT IT  
24 FORWARD. PROFESSOR BLOUGH'S OFFICE IS THERE. THE ONLY REASON  
25 SHE HASN'T INHABITED IT, AND PROBABLY ONLY REASON SHE DOESN'T  
26 THINK SHE GOT HER MAIL IS -- REMEMBER, THE WHOLE THING ABOUT SHE

1228

1 DIDN'T GET HER MAIL? AND I ASKED HER, "WELL, DID YOU EVER ASK  
2 TO HAVE YOUR MAIL SENT TO YOUR HOME?" SHE SAID NO.

3 WELL, THERE'S HER OFFICE. YOU CAN SEE THE PAPERS  
4 PILING UP THERE. SO I DON'T KNOW WHAT THE BIG DEAL WAS FOR  
5 MR. LEBOWITZ ABOUT THE MISSING MAIL AND THE FUNDRAISING. SHE  
6 SAYS SHE'S NEVER BEEN TO HER OFFICE, EVEN THOUGH SHE HAS HER  
7 KEY. REMEMBER THAT, SHE STILL HAS HER KEY? HAVE YOU EVER HEARD  
8 OF SOMEONE BEING FIRED AND THE EMPLOYER LEAVES HER WITH THE KEY,  
9 THEIR OFFICE, AND LISTS THEM AS AN EMPLOYEE?

10 SO I THINK THE COLLEGE -- AND I WOULD RESPECTFULLY  
11 SUGGEST THAT THE COLLEGE HAS AMPLY PROVEN THAT THERE'S NO --  
12 THERE'S NO WRONGFUL DISCHARGE. THERE'S NO DISCHARGE.  
13 MR. LEBOWITZ CORRECTLY POINTED OUT THAT THE JUDGE HAS SAID EVEN

14 IF THERE WAS A DISCHARGE IT WOULD BE THE PROFESSOR BLOUGH'S  
15 BURDEN OF PROOF TO SHOW SHE HAD THE ABILITY TO PERFORM HER  
16 TEACHING JOB.

17 I SAY THAT'S AN EASY ONE. DR. MISSETT, THE ONLY  
18 DOCTOR THAT CAME IN HERE AND EVALUATED THAT ISSUE -- REMEMBER,  
19 DR. LIU SAID SHE DIDN'T. DR. SIEBEL SAID HE DIDN'T. HE SAID --  
20 AND THE LETTERS ARE GOING TO BE IN FRONT OF YOU, YOU'VE HEARD  
21 IT. HE TESTIFIED HE FOUND HER NOT ABLE TO PERFORM BECAUSE HE  
22 COULDN'T LOOK AT THE MEDICAL RECORDS. SHE WOULDN'T RELEASE  
23 THEM. LATER ON HE SAID SHE COULD DO 50 PERCENT, BUT THAT WAS  
24 ALL SHE WAS ABLE TO DO.

25 THE ONLY MEDICAL EVIDENCE IS THAT SHE DID NOT HAVE THE  
26 ABILITY TO PERFORM HER JOB AT ANY MORE THAN 50 PERCENT, AND IN

1229

1 JULY WHEN THE COLLEGE PRESIDENT LOPEZ WOULDN'T PUT HER BACK, SHE  
2 HAD NO ABILITY, ACCORDING TO DR. MISSETT. DON'T FIND FAULT WITH  
3 THE COLLEGE. IT WAS DR. MISSETT, THE MEDICAL DOCTOR, WHO  
4 RENDERED THE OPINION.

5 SO THERE'S NO DISCHARGE. THERE'S NO ABILITY TO  
6 PERFORM THAT PROFESSOR BLOUGH CAN PROVE. THE WRONGFUL DISCHARGE  
7 CASE HAS NO MERIT. EVEN IF SHE HAD A DISCHARGE, WHICH SHE  
8 DIDN'T -- EVEN IF SHE COULD HAVE SAID, "I WAS ABLE TO WORK. THE  
9 DOCTORS SAID I WAS ABLE TO WORK," SHE STILL HAS TO PROVE THAT  
10 HER CANCER WAS WHY SHE WASN'T WORKING. SHE COVERED THAT ISSUE  
11 VERY AUTHENTICALLY.

12 I ASKED HER AT THE END OF HER TESTIMONY, "PROFESSOR  
13 BLOUGH, DID ANYBODY SAY ANYTHING BAD ABOUT YOUR CANCER?" "NO."  
14 "ISN'T IT TRUE EVERYBODY HELPED YOU? YOU WENT ON A THREE-YEAR  
15 LEAVE. YOU CAME BACK. DR. MISSETT HELPED YOU COME BACK FROM  
16 THE CANCER LEAVE?" IT WOULD BE RIDICULOUS TO ASSUME THAT AN  
17 EMPLOYER WOULD DO ALL THESE WONDERFUL THINGS THAT SHE EARNED.

18 I'M NOT SAYING SHE DIDN'T EARN THEM. SHE HAD WORKED  
19 MANY YEARS. SHE DESERVED THAT KIND TREATMENT. BUT THE COLLEGE  
20 DOESN'T DESERVE TO BE FALSELY ACCUSED OF COMMITTING A HEINOUS  
21 CRIME OF CANCER RETALIATION. THAT WAS THE FURTHEST THING FROM  
22 THE COLLEGE'S MIND, AND PROFESSOR BLOUGH ADMITTED THAT IN  
23 FAIRNESS.

24 SO WHEN YOU GO THROUGH THE EVIDENCE, LADIES AND  
25 GENTLEMEN OF THE JURY, WHICH IS WHAT WE'RE SUPPOSED TO, IN THIS  
26 SETTING, RELY ON, I THINK YOU ARE MORE THAN RIGHT TO CONCLUDE

1230

1 THAT THERE WAS NOTHING BUT A GOOD BUSINESS REASON, A STUDENT  
2 REASON FOR THE COLLEGE TO HAVE HER EVALUATED; THAT IT WAS A  
3 JOB-RELATED EVALUATION.

4 IT WAS ALL ABOUT, COULD SHE TEACH? THAT WAS HER JOB;  
5 WHAT COULD BE MORE JOB-RELATED? THAT SHE WASN'T DISCHARGED;  
6 THERE'S NO WRONGFUL DISCHARGE. THAT SHE COULDN'T DO HER JOB;  
7 THAT'S A LEGITIMATE REASON. DR. MISSETT SAID IT, NOT THE  
8 COLLEGE. THE COLLEGE DIDN'T GO AROUND SAYING SHE COULDN'T DO  
9 HER JOB. IT RELIED ON INDEPENDENT MEDICAL EVIDENCE.

10 NOW, IF I MAY, A WORD IN CLOSING. FROM THE FIRST DAY  
11 WE ARRIVED HERE, MY EARS WERE BURNING WITH LISTENING TO ALL  
12 ABOUT MONEY. THE COLLEGE ISN'T ABOUT MONEY. THE COLLEGE CAME  
13 HERE TO SHOW THAT IT DID NO HARM AND IT MEANT NO HARM, AND I  
14 THINK WE'VE SHOWN THAT. SO NOW THE QUESTION IS, WHY ALL THE  
15 TALK ABOUT MONEY? WHEN YOU WERE BEING QUESTIONED AS TO WHETHER  
16 YOU WOULD COME ON THE JURY, MR. LEBOWITZ TALKED ABOUT MONEY,  
17 MONEY, MONEY; A MILLION DOLLARS.

18 HE BROUGHT IN AN ECONOMIST WITH NO -- I JUST HAVE TO  
19 SAY, HE HAD NO CREDIBILITY TO STAND IN FRONT OF YOU AND ASK YOU  
20 TO TAKE A MILLION DOLLARS FROM THE COLLEGE, WHICH IS FUNDED BY  
21 THE STUDENTS AND PARENTS, AND GIVE IT TO SOMEONE WHO WOULDN'T  
22 COME BACK TO WORK. SO, REALLY, MAYBE THAT'S WHAT THIS IS ALL  
23 ABOUT, MONEY. AND THAT ECONOMIST REALLY OPENED UP THAT DOOR.

24 SO THE QUESTION FOR US HAS BEEN, WHAT DOES IT MEAN FOR  
25 A JURY TO GIVE JUSTICE? DOES IT MEAN TO TAKE MONEY FROM THE  
26 NON-PROFIT COLLEGE AND GIVE IT TO SOMEONE WHO IT DIDN'T WRONG?

1231

1 I DON'T THINK SO. IS PROFESSOR BLOUGH DUE COMPASSION AND  
2 RESPECT? I TOTALLY THINK SO, AND I THINK THAT'S WHAT THE  
3 COLLEGE MADE EVERY EFFORT TO GIVE HER. BUT I DON'T THINK THAT  
4 AWARDING ONE PENNY IS THE WAY TO SHOW JUSTICE IN THIS CASE.

5 THE JURY'S ROLE IS, PERHAPS, TO EVALUATE THE -- IT'S  
6 DEFINITELY TO EVALUATE THE EVIDENCE, BUT IT IS NOT TO TAKE MONEY  
7 FROM ONE PARTY AND GIVE IT TO ANOTHER AS A -- AND I DON'T THINK

8 YOU'RE GOING TO DO THAT AND I DON'T THINK YOU WANT TO DO THAT --  
9 AS A PEACE OFFERING. THE COLLEGE MADE ITS PEACE OFFERING. THE  
10 COLLEGE, AT EVERY TURN, TRIED TO REACH OUT, REACH OUT. AND IT'S  
11 STILL REACHING OUT. IT CONDUCTED THIS CASE WITH CONSIDERATION  
12 FOR PROFESSOR BLOUGH, EVEN TODAY.

13 I WOULD ASK YOU, AS YOU GO TO DELIBERATE -- AND I'M  
14 NOT GOING TO GET INTO YOUR DELIBERATIONS -- TO FIND THAT THE  
15 COLLEGE HAD A RIGHT TO SEND HER TO DR. MISSETT FOR THE MEDICAL  
16 EVALUATION, DID NOT DISCHARGE HER. EVEN IF MR. LEBOWITZ WOULD  
17 ARGUE THAT -- ALL THAT LETTER ABOUT THE COBRA BENEFIT HAD THE  
18 WORD TERMINATION. SHE DIDN'T THINK SHE WAS DISCHARGED. SHE GOT  
19 A CONTRACT OFFER AT THE SAME TIME.

20 FINALLY, THE COLLEGE HAD NO CANCER HOSTILITY, NOTHING  
21 BUT HELP FOR HER CANCER. YOU REMEMBER THE OPENING LINE FROM  
22 MR. LEBOWITZ WAS, "SHE DID NOTHING WRONG BUT GET CANCER." I  
23 DON'T THINK THAT WAS ANYTHING WRONG AND NOR DID THE COLLEGE.  
24 THE COLLEGE NEVER ONCE DID ANYTHING BUT HELP HER WITH HER  
25 CANCER.

26 IN CLOSING, I'D LIKE TO THANK YOUR HONOR FOR ALLOWING

1232

1 THE COLLEGE TO PRESENT ITS CASE IN A FAIR MANNER; THE LADIES AND  
2 GENTLEMEN OF THE JURY FOR GIVING US A FAIR HEARING; THE BAILIFF,  
3 THE GREAT CLERK, AND LAST BUT NOT LEAST, OUR COURT REPORTER; MY  
4 CO-COUNSEL, MS. ADLER, AND PROFESSOR BLOUGH, WHO IS, CONTRARY TO  
5 MR. LEBOWITZ, STILL PART OF THE FAMILY. SHE WAS NOT FIRED.



6 SHE'S ON LEAVE.

7 AND WITH THAT, THE COLLEGE THANKS THE COURT FOR THE  
8 TIME.

9 THE COURT: THANK YOU, MR. VARTAIN.

10 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A BRIEF  
11 BREAK AND THEN I WILL ALLOW MR. LEBOWITZ TO MAKE HIS FINAL  
12 CLOSING ARGUMENT. LET'S COME BACK AT HALF PAST THE HOUR.

13 (WHEREUPON, A BREAK WAS TAKEN.)

14 THE COURT: WE'RE BACK ON THE RECORD.

15 MR. LEBOWITZ, WOULD YOU LIKE TO GIVE YOUR FINAL  
16 CLOSING ARGUMENT?

17 MR. LEBOWITZ: I WOULD. THANK YOU, YOUR HONOR.

18 THE COURT: GO AHEAD, PLEASE.

19 MR. LEBOWITZ: IT'S ALMOST HERE, ALMOST TIME. I  
20 PROMISE 10, 15 MINUTES TOPS AND THE CASE IS YOURS. I JUST WANT  
21 TO TALK ABOUT A COUPLE OF THINGS, AND I'M NOT GOING TO GO OVER  
22 WHAT I'VE ALREADY TOLD YOU THIS MORNING. WE'VE ALREADY HIT, I  
23 THINK, WHAT ARE THE IMPORTANT PARTS OF THE CASE AND WHAT WILL  
24 HELP YOU IN YOUR DELIBERATION PROCESS.

25 I FIND VERY CURIOUS THE NOTION OF -- FORGIVE ME. I'M  
26 INTRIGUED BY THIS THIRD PARTY, THIS MYSTERY PARTY. I JUST WANT

1233

1 TO READ SOMETHING FROM THE OPENING STATEMENT FROM MR. VARTAIN.

2 HE TOLD YOU, QUOTE:

3 "THE TWO PEOPLE, REALLY, ARE DR. MISSETT AND

4 PROFESSOR BLOUGH. THEY'RE THE REAL GUTS OF THE CASE. AND I  
5 THINK MOST OF THE INFORMATION THAT WILL BE MOST IMPORTANT WILL  
6 COME THROUGH THEM. THE THIRD PERSON WON'T BE IN THE COURTROOM,  
7 BUT YOU'LL HEAR A LOT ABOUT THAT PERSON INSOFAR AS I THINK THE  
8 FACTS WERE OF WHAT HAPPENED TO PROFESSOR BLOUGH IN HER HEALTH.  
9 GOES BACK TO THAT PERSON, AND IT WAS THAT PERSON'S  
10 RESPONSIBILITY. THAT PERSON DOESN'T WORK AT THE COLLEGE; NEVER  
11 HAS." YOU CAN JUDGE FOR YOURSELF WHO THAT PERSON WAS.

12 NOW, I CAN TELL YOU ONE THING WE AGREE ON, THAT THE  
13 STUDENTS ARE WHO MATTER MOST HERE. I CAN ABSOLUTELY,  
14 UNEQUIVOCALLY SAY THAT WE AGREE ON THAT. BUT ONE PLACE WE DON'T  
15 AGREE IS THAT THE STUDENTS VOICES WEREN'T HEARD IN THIS CASE,  
16 BECAUSE THEY WERE. AND YOU CAN HEAR THEM IN THAT JURY ROOM.  
17 EXHIBIT 9, RIGHT HERE, THE SPRING 2006 STUDENT EVALUATIONS, IN  
18 THEIR OWN HAND, ARE TELLING YOU -- THIS IS IN EVIDENCE AS THE  
19 TRUTH -- ARE TELLING YOU WHAT THEY BELIEVE ABOUT  
20 PROFESSOR BLOUGH.

21 MR. VARTAIN: OBJECTION. THAT WAS HEARSAY, YOUR  
22 HONOR.

23 THE COURT: OVERRULED.

24 MR. LEBOWITZ: "SHE IS AWESOME. VERY KNOWLEDGEABLE  
25 AND EXPLAINS THINGS WELL." WE WENT THROUGH THESE DURING THE  
26 TRIAL, LADIES AND GENTLEMEN. WE EVEN HAD TO STOP BECAUSE IT WAS

1 GETTING CUMULATIVE OF HOW MANY GOOD ONES THERE ARE IN HERE;

2 SPRING 2006, THE VOICES OF THE STUDENTS. EXHIBIT 6, FALL 2005,  
3 THE VOICES OF THE STUDENTS, IN THEIR OWN HAND, SPEAKING TO YOU  
4 IN THE JURY ROOM. SAME THING. THEY WERE HEARD IN THIS  
5 COURTROOM.

6 AND, LADIES AND GENTLEMEN, IF THE COLLEGE TRULY WAS  
7 LOOKING OUT FOR THE STUDENTS HERE AND THEIR BUSINESS NEEDS, WE  
8 WOULDN'T BE HERE. IF THEY TRULY WERE LOOKING OUT FOR THE  
9 STUDENTS, WE WOULD NOT BE HERE TODAY BECAUSE PROFESSOR BLOUGH  
10 WOULD BE IN THAT CLASSROOM WITH THOSE STUDENTS, TEACHING THEM  
11 AND GIVING THEM ALL OF THE KNOWLEDGE AND ALL OF THE HELP, AND  
12 BEING OPEN AND RESPONSIVE AND THE GREAT TEACHER THAT SHE ALWAYS  
13 WAS.

14 I ALSO WANT TO ADDRESS THOSE VIDEO CLIPS BECAUSE YOU  
15 SAW THEM IN OPENING AND NOW YOU SAW THEM IN CLOSING. IN  
16 BETWEEN, YOU SAW PROFESSOR BLOUGH. TWO THINGS ABOUT THOSE VIDEO  
17 CLIPS: ONE, CONTEXT. CONTEXT MATTERS. CLIPS, BY DEFINITION,  
18 ARE CLIPS. THEY ARE NOT THE WHOLE PICTURE. THEY ARE LITTLE  
19 TIDBITS OF THE BIG PICTURE, AND THEY CAN BE MISLEADING. AND LET  
20 ME TELL YOU HOW THOSE CLIPS ARE MISLEADING.

21 THE FIRST THREE OR FOUR MINUTES OF THOSE CLIPS, WHERE  
22 PROFESSOR BLOUGH WAS TALKING ABOUT HER RETURN TO WORK AND  
23 WORKING HALF TIME AND HOW WELL THAT DID, THOSE WERE ABOUT 2003,  
24 THREE YEARS BEFORE ANYTHING THAT THIS CASE IS ABOUT HAPPENED.  
25 THOSE WERE NOT ABOUT 2007. THOSE WERE NOT ABOUT 2006. THEY  
26 WERE ABOUT 2003. AND AS YOU SAW IN THE VERDICT FORM, THE ONLY

1 MEDICAL EXAMS AT ISSUE FOR YOU TO DECIDE ABOUT ARE 2006 AND  
2 2007. SO THOSE CLIPS ARE MISLEADING AND THEY'RE TAKEN OUT OF  
3 CONTEXT. WHAT YOU SAW ON THE WITNESS STAND IS THE FULL CONTEXT  
4 OF PROFESSOR BLOUGH.

5 IT ALSO TALKED ABOUT PRESIDENT LOPEZ A LITTLE BIT.  
6 AND I DO WANT TO ADDRESS PRESIDENT LOPEZ FOR A MINUTE BECAUSE WE  
7 HAVE THE TRANSCRIPT OF HIS TESTIMONY. AND THE ONE THING YOU'VE  
8 HEARD OVER AND OVER AGAIN -- AND I'VE TALKED ABOUT A LITTLE BIT  
9 IN MY ORIGINAL DISCUSSION WITH YOU THIS MORNING -- IS THAT  
10 THERE'S NO ONE OUT THERE WHO SAYS, "YES, WE DON'T LIKE PROFESSOR  
11 BLOUGH BECAUSE OF HER CANCER." THAT SAID, THIS DAY AND AGE,  
12 NOBODY SAYS THAT.

13 BUT YOU CAN JUDGE -- AND YOU'RE IN CHARGE AS THE JURY,  
14 YOU CAN ASSESS THESE WITNESSES, NOT JUST WHAT THEY SAY BUT HOW  
15 THEY SAY IT. AND I WOULD REMIND YOU ABOUT PRESIDENT LOPEZ'S  
16 TESTIMONY. IN PARTICULAR, WHEN I WAS ASKING PRESIDENT LOPEZ  
17 ABOUT PROFESSOR CRAIG MEDLEN, NOW YOU'LL RECALL THAT  
18 PROFESSOR MEDLEN CAME IN WITH PROFESSOR MCDONOUGH TO TRY AND FIX  
19 THIS, TO TRY AND DO THEN WHAT WE NEED YOU ALL TO DO NOW.

20 THEY CAME ON THEIR OWN TO TRY TO FIX THIS, BECAUSE  
21 THEY THEMSELVES WERE LISTENING TO THE STUDENTS, BECAUSE THEY HAD  
22 READ THEIR OWN STUDENT EVALUATIONS AND THEY HAD READ  
23 PROFESSOR BLOUGH'S STUDENT EVALUATIONS, AND THEY SAID, "HERS ARE  
24 BETTER THAN OURS. WHAT IS GOING ON HERE?" AND THEY TRIED TO  
25 TELL PRESIDENT LOPEZ, "PLEASE, FIX THIS. GET IN THE MIDDLE. DO  
26 SOMETHING. DON'T JUST SAY SOMETHING; DO SOMETHING."

1           AND I'M NOT GOING TO TRY TO RETAKE THE WORDS, BECAUSE  
2 I WANT TO REMIND YOU OF THE MANNER IN WHICH PRESIDENT LOPEZ  
3 TESTIFIED. THESE ARE THE WORDS, AND I'LL READ THE FIRST PART OF  
4 THE ANSWER.

5           THE QUESTION IS, "WHAT DID MR. MEDLEN TELL YOU IN THAT  
6 CONVERSATION?" ANSWER, "THAT WE WERE BEING UNFAIR. THAT POOR  
7 MARCY HAD BEEN HERE ALL THESE YEARS AND THEN THAT WE HAD FORCED  
8 HER TO GO TO A PHYSICIAN THAT WAS UNDER OUR PAY." IT WASN'T  
9 JUST THOSE WORDS. DO YOU REMEMBER HOW HE SAID THOSE WORDS? IT  
10 WAS A SINGSONG, "POOR MARCY," DO YOU REMEMBER THAT? THAT WAS A  
11 WINDOW INTO THE TRUE MOTIVATION RIGHT THERE. "POOR MARCY, SHE  
12 HAD BEEN HERE ALL THESE YEARS."

13           NOW, THIS IS YOUR RECOLLECTION. THAT'S HOW I RECALL  
14 IT. I WAS STANDING RIGHT HERE AND HE WAS ANSWERING THE  
15 QUESTION. BUT I WANT YOU TO REMEMBER THAT, BECAUSE IT IS YOUR  
16 JOB TO DETERMINE -- TO ASSESS NOT JUST WHAT THEY SAY BUT HOW  
17 THEY SAID IT, AND IT'S INCREDIBLY IMPORTANT. YOU WILL ALSO  
18 RECALL THAT DR. LOPEZ -- OR PRESIDENT LOPEZ SAID THAT IT WAS  
19 STEPHANIE SAPRAI WHO MADE THE DECISION TO SEND PROFESSOR BLOUGH  
20 TO GO SEE DR. MISSETT. STEPHANIE SAPRAI CAME IN AND SAID, "NO.  
21 THE FIRST I LEARNED OF IT WAS FROM THIS LETTER."

22           LATER ON BOB HITE CAME IN AND SAID, "NO. I MADE THE  
23 DECISION." WELL, PRESIDENT LOPEZ DIDN'T SAY THAT MR. HITE DID  
24 IT. HE SAID VERY CLEARLY IT WAS STEPHANIE SAPRAI. YOU DON'T

25 HAVE CLEAR TESTIMONY FROM THE COLLEGE ABOUT TAKING  
26 RESPONSIBILITY FOR THE MOST IMPORTANT DECISION THERE WAS IN THIS

1237

1 CASE.

2 AND THEN THERE'S DR. MISSETT. I AVOIDED TALKING ABOUT  
3 DR. MISSETT AS MUCH AS I COULD IN THE OPENING DISCUSSION THIS  
4 MORNING, BECAUSE THE REAL POINT IS THIS: THE COLLEGE MAINTAINS  
5 THE LEGAL OBLIGATION, THE DUTY TO MAKE SURE THAT WHATEVER  
6 DR. MISSETT DOES IS APPROPRIATE. THE LEGAL CLAIMS ARE AGAINST  
7 THE COLLEGE BECAUSE THE COLLEGE HAS THE OBLIGATION TO MAKE SURE  
8 THAT WHAT DR. MISSETT DOES IS APPROPRIATE.

9 AND THE COLLEGE, BY MAKING ITS DECISION TO CHOOSE  
10 DR. MISSETT, IS RESPONSIBLE FOR EVERYTHING THAT HAPPENS AFTER  
11 THAT. AND RECALL THAT EVEN DR. MISSETT AGREED WITH THAT. HE  
12 SAID, "I'M NOT THE EMPLOYER. I'M NOT MAKING AN EMPLOYMENT  
13 DECISION. I'M JUST WRITING A LETTER. IT IS UP TO THE COLLEGE  
14 TO DETERMINE WHAT TO DO WITH THIS LETTER." HE'S NOT DICTATING  
15 WHAT THE COLLEGE SHOULD DO. THAT WAS HIS TESTIMONY.

16 BUT I ALSO WANT TO REMIND YOU ABOUT DR. MISSETT,  
17 BECAUSE THERE WERE TWO THINGS IN HIS TESTIMONY THAT REALLY  
18 BOTHERED ME. ONE WAS WHEN HE SAID VERY CLEARLY THAT HE HAD NOT  
19 HEARD -- THAT PROFESSOR BLOUGH HAD NOT TRIED TO CONTACT HIM IN  
20 THE SUMMER OF 2006. HE VERY CLEARLY SAID THAT ON DIRECT  
21 EXAMINATION.

22 AND, AGAIN, IN THE TRANSCRIPT THE QUESTION, "WELL, DID

23 PROFESSOR BLOUGH EVER COME TO YOU AND SAY WORDS TO THE EFFECT,  
24 'DR. MISSETT, THE COLLEGE SAYS THEY'RE NOT TAKING ME BACK  
25 BECAUSE OF WHAT YOUR LETTER SAID. THE COLLEGE GAVE ME A COPY OF  
26 YOUR LETTER. I DON'T UNDERSTAND YOUR LETTER. COULD YOU TELL ME

1238

1 WHY YOU FOUND ME NOT FIT AT THIS TIME?' DID SHE EVER DO THAT?"

2 ANSWER, "NO."

3 BUT THEN I SHOWED HIM THESE TWO RECORDS FROM HIS OWN  
4 FILE. WE MARKED THEM LATER AS EXHIBIT 65 AND 66, AND YOU'LL  
5 HAVE THEM IN THE JURY ROOM. THE FIRST ONE SAYS -- DATED JULY OF  
6 '06, A MESSAGE FROM MARCINE BLOUGH TO DR. MISSETT, "PLEASE CALL  
7 RE EVALUATION. ISN'T HAPPY ABOUT IT." THE NEXT ONE, A WEEK  
8 LATER FROM PROFESSOR BLOUGH TO DR. MISSETT. "I WANT A NEW  
9 EVALUATION." THIS IS THE EVIDENCE.

10 AND THEN ALSO IN HIS TESTIMONY, YOU'LL REMEMBER ABOUT  
11 EXHIBIT 13, THE BIG E-MAIL, THE MAY 26 E-MAIL. HE SAID VERY  
12 SPECIFICALLY HE RELIED ON THAT E-MAIL IN REACHING HIS DECISION  
13 ON JUNE 29TH. BUT THEN WHEN I SHOWED HIM HIS FILE, DO YOU  
14 REMEMBER WHAT HAPPENED? HE REALIZED HE DIDN'T HAVE THAT LETTER,  
15 HE DIDN'T HAVE THAT DOCUMENT UNTIL TWO WEEKS LATER. SO THERE'S  
16 NO WAY HE COULD HAVE RELIED ON THAT E-MAIL WHEN HE WROTE HIS  
17 OPINION. BUT, AGAIN, THE COLLEGE IS RESPONSIBLE FOR ALL OF THIS  
18 BECAUSE IT IS THE COLLEGE'S DECISION TO SEND HER TO DR. MISSETT.

19 AND, FINALLY -- AND THIS TRULY IS FINAL. THE CASE IS  
20 GOING TO BE YOURS IN JUST A FEW MINUTES -- THE OFFER. AGAIN, I

21 REALLY, REALLY, REALLY WANT TO EMPHASIZE EXHIBITS 54 AND 64,  
22 BECAUSE THEY SET OUT IN ONE SINGLE PLACE ALL OF THE REASONS WHY  
23 PROFESSOR BLOUGH DECIDED TO NOT TAKE THAT OFFER OF  
24 RE-EMPLOYMENT. AND YOU'LL RECALL THE BIGGEST -- THE PRIMARY  
25 ISSUE WAS THE SIX-YEAR CONTRACT, WHICH IS THE ONE-YEAR CONTRACT  
26 AND THIS INVITATION TO APPLY FOR HER SIX-YEAR CONTRACT.

1239

1 GIVEN EVERYTHING THAT HAD HAPPENED OVER THE YEAR AND  
2 ALL OF THE BACK AND FORTH, SHE DIDN'T TRUST THE COLLEGE ANYMORE.  
3 SHE HAD LOST FAITH. AND SHE WANTED TO SAY -- SHE SAID TO THEM,  
4 "THE SIX-YEAR CONTRACT IS THE MOST IMPORTANT THING TO ME." AND  
5 YOU'LL RECALL THAT STEPHANIE SAPRAI TESTIFIED ON THIS STAND THAT  
6 HAD THE COLLEGE GIVEN HER THAT SIX-YEAR CONTRACT, THEY WOULD BE  
7 IN NO WORSE POSITION THAN IF THEY HAD GIVEN HER THE ONE-YEAR  
8 CONTRACT.

9 BECAUSE UNDER THE FACULTY HANDBOOK, THAT PART THAT I  
10 KEEP SHOWING YOU, 3.9.3.3, IF SHE INDEED IS NOT ABLE TO DO HER  
11 JOB, THEY CAN TERMINATE THE CONTRACT. THE SIX-YEAR CONTRACT PUT  
12 THE COLLEGE IN NO WORSE SPOT THAN THEY WOULD HAVE BEEN GIVING  
13 HER THE ONE-YEAR CONTRACT.

14 THEY KNEW, BASED ON HER E-MAILS, THAT THE SECURITY AND  
15 GOOD FAITH OF GIVING HER THE SECURITY OF A SIX-YEAR CONTRACT,  
16 THAT SHE HAD BEEN APPROVED FOR FROM THE PERSONNEL COMMITTEE AND  
17 FROM DEAN PRATT, THAT WAS PARAMOUNT TO HER SECURITY AND A NOTION  
18 TO GOOD FAITH. THEY COULD HAVE DONE IT, BUT THEY DIDN'T. AND



19 THEIR INACTION, THEIR INACTION SPEAKS LOUDER THAN THEIR WORDS,  
20 LADIES AND GENTLEMEN.

21 I THANK YOU VERY MUCH. MARCY THANKS YOU.

22 THANK YOU.

23 THE COURT: THANK YOU, MR. LEBOWITZ.

24 DEPUTY, COULD WE MOVE THE EASEL, PLEASE, SO THAT I  
25 COULD SEE ALL THE JURORS.

26 AND, COUNSEL, COULD YOU APPROACH JUST FOR A SECOND.

1240

1 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

2 THE COURT: ALL RIGHT.

3 LADIES AND GENTLEMEN, I AM NOW GOING TO GIVE YOU THE  
4 FINAL INSTRUCTIONS ON YOUR ROLE AS JURORS IN THE CASE. AND THEN  
5 WE'LL, AS WE KEEP PROMISING -- I KNOW WE KEEP MOVING THE  
6 GOALPOST BACK FOR YOU, BUT WE'RE REALLY GOING TO GET YOU INTO  
7 THE JURY ROOM.

8 LADIES AND GENTLEMEN, THE ARGUMENT OF THE ATTORNEYS  
9 ARE NOT EVIDENCE IN THIS CASE AND THEY ARE NOT EVIDENCE OF  
10 DAMAGES. YOUR AWARD MUST BE BASED ON YOUR REASONED JUDGMENT  
11 APPLIED TO THE TESTIMONY OF THE WITNESSES AND THE OTHER EVIDENCE  
12 THAT HAS BEEN ADMITTED DURING THE TRIAL. YOU MUST NOT INCLUDE  
13 IN YOUR AWARD ANY DAMAGES TO PUNISH OR MAKE AN EXAMPLE OF THE  
14 COLLEGE. SUCH DAMAGES WOULD BE PUNITIVE DAMAGES AND THEY CANNOT  
15 BE PART OF YOUR VERDICT. YOU MUST AWARD ONLY THE DAMAGES THAT  
16 FAIRLY COMPENSATE MS. BLOUGH FOR HER LOSS.

17           WHEN YOU GO TO THE JURY ROOM, THE FIRST THING YOU  
18 SHOULD DO IS CHOOSE A PRESIDING JUROR. THE PRESIDING JUROR  
19 SHOULD SEE TO IT THAT YOUR DISCUSSIONS ARE ORDERLY AND THAT  
20 EVERYONE HAS A FAIR CHANCE TO BE HEARD. IT IS YOUR DUTY TO TALK  
21 WITH ONE ANOTHER IN THE JURY ROOM AND TO CONSIDER THE VIEWS OF  
22 ALL THE JURORS. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF,  
23 BUT ONLY AFTER YOU HAVE CONSIDERED THE EVIDENCE WITH THE OTHER  
24 MEMBERS OF THE JURY.

25           FEEL FREE TO CHANGE YOUR MIND IF YOU ARE CONVINCED  
26 THAT YOUR POSITION SHOULD BE DIFFERENT. YOU SHOULD ALL TRY TO

1241

1 AGREE, BUT DO NOT GIVE UP YOUR HONEST BELIEFS JUST BECAUSE  
2 OTHERS THINK DIFFERENTLY. PLEASE DO NOT STATE YOUR OPINIONS TOO  
3 STRONGLY AT THE BEGINNING OF YOUR DELIBERATIONS. ALSO, DO NOT  
4 IMMEDIATELY ANNOUNCE HOW YOU PLAN TO VOTE.

5           KEEP AN OPEN MIND SO THAT YOU AND YOUR FELLOW JURORS  
6 CAN EASILY SHARE IDEAS ABOUT THE CASE. YOU SHOULD USE YOUR  
7 COMMON SENSE, BUT DO NOT USE OR CONSIDER ANY SPECIAL TRAINING OR  
8 UNIQUE PERSONAL EXPERIENCE THAT ANY OF YOU HAVE IN MATTERS  
9 INVOLVED IN THIS CASE. YOUR TRAINING OR EXPERIENCE IS NOT PART  
10 OF THE EVIDENCE RECEIVED IN THIS CASE.

11           SOMETIMES JURORS DISAGREE OR HAVE QUESTIONS ABOUT THE  
12 EVIDENCE OR ABOUT WHAT THE WITNESSES SAID DURING THEIR  
13 TESTIMONY. IF THAT HAPPENS, YOU MAY ASK TO HAVE TESTIMONY READ  
14 BACK TO YOU OR ASK TO SEE ANY EXHIBITS ADMITTED INTO EVIDENCE

15 THAT HAVE NOT ALREADY BEEN PROVIDED TO YOU. ACTUALLY, I AM  
16 SENDING ALL THE ADMITTED EXHIBITS IN SO YOU WILL HAVE ALL OF  
17 THEM.

18 ALSO, JURORS MAY NEED FURTHER EXPLANATION ABOUT THE  
19 LAWS THAT APPLY IN THE CASE. IF THIS HAPPENS DURING YOUR  
20 DISCUSSIONS, WRITE DOWN YOUR QUESTIONS AND GIVE THEM TO THE  
21 BAILIFF. I WILL DO MY BEST TO ANSWER THEM. WHEN YOU WRITE ME A  
22 NOTE, DO NOT TELL ME HOW YOU VOTED ON AN ISSUE UNTIL I ASK FOR  
23 THIS INFORMATION IN OPEN COURT. AT LEAST NINE JURORS MUST AGREE  
24 ON EACH VERDICT AND ON EACH QUESTION THAT YOU ARE ASKED TO  
25 ANSWER; HOWEVER, THE SAME JURORS DO NOT HAVE TO AGREE ON EACH  
26 VERDICT OR EACH QUESTION; ANY NINE JURORS IS SUFFICIENT.

1242

1 AS SOON AS YOU HAVE AGREED ON A VERDICT AND ANSWERED  
2 ALL THE QUESTIONS AS INSTRUCTED, THE PRESIDING JUROR MUST DATE  
3 AND SIGN THE FORMS AND NOTIFY THE BAILIFF. WHILE I KNOW YOU  
4 WOULD NOT DO THIS, I AM REQUIRED TO ADVISE YOU THAT YOU MUST NOT  
5 BASE YOUR DECISION ON CHANCE, SUCH AS A FLIP OF A COIN. IF YOU  
6 DECIDE TO AWARD DAMAGES, YOU MAY NOT AGREE IN ADVANCE TO SIMPLY  
7 ADD UP THE AMOUNTS EACH JUROR THINKS IS RIGHT AND THEN MAKE AN  
8 AVERAGE FOR A VERDICT.

9 YOU MAY TAKE BREAKS BUT DO NOT DISCUSS THE CASE WITH  
10 ANYONE, INCLUDING EACH OTHER UNTIL ALL OF YOU ARE BACK IN THE  
11 JURY ROOM. IF YOU HAVE TAKEN NOTES DURING THE TRIAL, YOU MAY  
12 TAKE YOUR NOTEBOOKS WITH YOU INTO THE JURY ROOM. YOU MAY USE

13 YOUR NOTES ONLY TO HELP YOU REMEMBER WHAT HAPPENED DURING THE  
14 TRIAL. YOUR INDEPENDENT RECOLLECTION OF THE EVIDENCE SHOULD  
15 GOVERN YOUR VERDICT. YOU SHOULD NOT ALLOW YOURSELF TO BE  
16 INFLUENCED BY THE NOTES OF OTHER JURORS IF THOSE NOTES DIFFER  
17 FROM WHAT YOU REMEMBER.

18 YOU MAY REQUEST IN WRITING THAT TRIAL TESTIMONY BE  
19 READ TO YOU. I WILL HAVE THE COURT REPORTER READ THE TESTIMONY  
20 TO YOU. YOU MAY REQUEST THAT ALL OR A PART OF A WITNESS'S  
21 TESTIMONY BE READ. YOUR REQUEST SHOULD BE AS SPECIFIC AS  
22 POSSIBLE. IT WILL BE HELPFUL IF YOU CAN STATE THE NAME OF THE  
23 WITNESS, THE SUBJECT OF THE TESTIMONY YOU WOULD LIKE TO HAVE  
24 READ AND THE NAME OF THE ATTORNEY OR ATTORNEYS ASKING THE  
25 QUESTIONS WHEN THE TESTIMONY WAS GIVEN.

26 THE COURT REPORTER IS NOT PERMITTED TO TALK WITH YOU

1243

1 WHEN SHE IS READING THE TESTIMONY YOU HAVE REQUESTED. WHILE THE  
2 COURT REPORTER IS READING THE TESTIMONY, YOU MAY NOT DELIBERATE  
3 OR DISCUSS THE CASE. YOU MAY NOT ASK THE COURT REPORTER TO READ  
4 TESTIMONY THAT WAS NOT SPECIFICALLY MENTIONED IN THE WRITTEN  
5 REQUEST. IF YOUR NOTES DIFFER FROM THE TESTIMONY, YOU MUST  
6 ACCEPT THE COURT REPORTER'S RECORD AS ACCURATE.

7 I WILL GIVE YOU A SPECIAL VERDICT FORM WITH QUESTIONS  
8 YOU MUST ANSWER. I HAVE ALREADY INSTRUCTED YOU ON THE LAW THAT  
9 YOU ARE TO USE IN ANSWERING THESE QUESTIONS. YOU MUST FOLLOW MY  
10 INSTRUCTIONS AND THE FORM CAREFULLY. YOU MUST CONSIDER EACH

11 QUESTION SEPARATELY. PLEASE ANSWER THE QUESTIONS IN THE ORDER  
12 THEY APPEAR. AFTER YOU ANSWER A QUESTION, THE FORM TELLS YOU  
13 WHAT TO DO NEXT.

14 AT LEAST NINE OF YOU MUST AGREE ON AN ANSWER BEFORE  
15 YOU CAN MOVE ON TO THE NEXT QUESTION; HOWEVER, THE SAME NINE OR  
16 MORE PEOPLE DO NOT HAVE TO AGREE ON EACH ANSWER. WHEN YOU ARE  
17 FINISHED FILLING OUT THE FORM, YOUR PRESIDING JUROR MUST WRITE  
18 THE DATE AND SIGN IT AT THE BOTTOM. RETURN THE FORM TO THE  
19 BAILIFF WHEN YOU HAVE FINISHED.

20 AS TO OUR ALTERNATE JUROR, YOU ARE BOUND BY THE SAME  
21 RULES THAT GOVERN THE CONDUCT OF THE JURORS WHO ARE SITTING ON  
22 THE PANEL. YOU SHOULD NOT FORM OR EXPRESS ANY OPINION ABOUT THE  
23 CASE UNTIL AFTER YOU HAVE BEEN SUBSTITUTED IN FOR ONE OF THE  
24 DELIBERATING JURORS ON THE PANEL OR UNTIL THE JURY HAS BEEN  
25 DISCHARGED. I DON'T REQUIRE THAT YOU REMAIN IN THE COURTHOUSE  
26 WHILE THE JURY IS DELIBERATING, BUT I WILL HAVE YOU LEAVE US A

1244

1 TELEPHONE NUMBER, AND I NEED YOU TO BE ON STANDBY. IF YOU CARRY  
2 A CELLPHONE, THAT WOULD BE THE BEST. JUST MAKE SURE IT'S ON AND  
3 WITH YOU DURING OUR NORMAL COURT HOURS.

4 IF IT GETS TO THE LUNCH HOUR, YOU CAN ASSUME THE JURY  
5 WILL TAKE THE NORMAL LUNCH BREAK AND YOU DON'T NEED TO WORRY IF  
6 IT GETS TO BE 4:30. AGAIN, YOU CAN ASSUME THE COURT DAY IS OVER  
7 AND YOU CAN GO ABOUT YOUR BUSINESS. OTHERWISE, WE WILL NEED TO  
8 BE ABLE TO REACH YOU. YOU CAN'T GO OUT OF TOWN, BUT WHEREVER IT

9 IS YOU WORK YOU CAN GO BACK TO WORK OR OTHER ACTIVITY, IF YOU  
10 WISH.

11 IF YOU'RE NEEDED, YOU WILL GET A CALL. YOU WILL BE  
12 SWORN, AS WE SAW TODAY, AND THE JURY WOULD WELCOME YOU AND BEGIN  
13 THEIR DELIBERATIONS AFRESH SO THAT YOU WILL BE PART OF THE FULL  
14 DELIBERATIONS, AND WE WILL GET IN TOUCH WITH YOU. IF YOUR  
15 SERVICES ARE NOT NEEDED AND THE CASE CONCLUDES, MY CLERK,  
16 MR. KANE, WILL CALL YOU AND LET YOU KNOW THAT YOU ARE EXCUSED.  
17 WHEN YOU ARE FINALLY EXCUSED, LIKE THE OTHER JURORS, YOU WILL BE  
18 RELEASED FROM ALL OF MY OTHER ADMONITIONS, AND AT THAT TIME YOU  
19 CAN TALK ABOUT THE CASE, BUT NOW YOU CAN'T. IT'S JUST LIKE  
20 GOING HOME ANY OTHER DAY. I REMIND YOU OF THAT.

21 LADIES AND GENTLEMEN, I HAVE A NUMBER OF THINGS I WANT  
22 TO TALK TO YOU ABOUT MORE INFORMALLY, ABOUT WHAT IT'S LIKE IN  
23 THE JURY ROOM. MY RECOLLECTION IS THAT NOT MANY OF YOU HAVE  
24 SERVED ON A JURY BEFORE. SO IT SEEMS LIKE I'M SENDING YOU INTO  
25 A BLACK BOX, BUT IT'S NOT QUITE THAT BAD.

26 FIRST OF ALL, YOU'RE GOING TO GO INTO THE JURY ROOM,

1245

1 WHICH IS OUTSIDE, RIGHT NEXT TO MY CHAMBERS. NOW, I NEVER COME  
2 INTO THE JURY ROOM. I NEVER GREET YOU AT THE DOOR TO YOUR JURY  
3 ROOM, BUT I'M RIGHT THERE AND I WILL BE RIGHT THERE THE ENTIRE  
4 TIME THAT YOU'RE DELIBERATING.

5 NOW, IT'S RARE THAT MY PRESIDING JUDGE LETS ME JUST  
6 SIT AND WAIT TO BE AT YOUR BECK AND CALL, SO I MIGHT START

7 ANOTHER TRIAL. THAT'S POSSIBLE. DON'T BE SURPRISED. IT'S JUST  
8 WE'RE TOO BUSY TO LET JUDGES SIT AND WAIT FOR JURY QUESTIONS.  
9 BUT YOU ARE MY NUMBER ONE PRIORITY, AND ANY OTHER MATTERS THAT I  
10 TAKE ON WILL TAKE A BACKSEAT TO YOUR NEEDS, SO PLEASE UNDERSTAND  
11 THAT. DEPUTY HENNESSY WILL BE POSTED RIGHT OUTSIDE YOUR DOOR.

12 NOW, WHEN YOU GO INTO THE JURY ROOM, LET ME TELL YOU  
13 THAT TO CALL THE ROOM MODEST WOULD BE FLATTERING TO THE ROOM.  
14 AND THE ATTORNEYS AND I WORKED ON THE JURY INSTRUCTIONS IN  
15 THERE. IT IS RELATIVELY UNCOMFORTABLE AND SPARTAN. THERE'S A  
16 LARGE TABLE AND 12 CHAIRS IN A CROWDED WAY TO FIT AROUND THERE.  
17 THERE IS A WATERCOOLER THERE AND THERE ARE BATHROOMS. THE  
18 WINDOW DOES OPEN, ALTHOUGH IN THIS WEATHER THAT MAY NOT BE  
19 HELPFUL, BUT AT LEAST YOU CAN CONTROL THE TEMPERATURE A LITTLE  
20 BIT.

21 WHEN YOU'RE IN THE ROOM THE DOOR IS CLOSED. AND IN  
22 FACT, YOU'RE NOT ALLOWED TO EXIT THE ROOM EXCEPT WITH DEPUTY  
23 HENNESSY'S PERMISSION. SO WHEN YOU'RE ON THE INSIDE IF YOU WANT  
24 TO TAKE A BREAK IT'S TOTALLY UP TO YOU, BUT YOU'LL NEED TO KNOCK  
25 ON THE INSIDE OF THE DOOR AND HE'LL GREET YOU. AND IF YOU'RE  
26 TAKING A BREAK, YOU'LL JUST TALK TO HIM ABOUT WHEN YOU'RE COMING

1246

1 BACK. HE'LL TELL YOU WHERE TO MEET HIM AND HE'LL GIVE YOU ALL  
2 THE INFORMATION THAT YOU NEED. PLEASE, DON'T TALK TO DEPUTY  
3 HENNESSY ABOUT ANYTHING OTHER THAN YOUR COMINGS AND GOINGS.  
4 HE'S NOT THERE TO DELIBERATE WITH YOU. I THINK YOU KNOW THAT.

5 IF FOR SOME REASON DEPUTY HENNESSY IS CALLED AWAY, YOU  
6 ARE ONLY TO ANSWER THE DOOR TO A UNIFORMED DEPUTY SHERIFF. IT'S  
7 NEVER ACTUALLY HAPPENED, BUT I DON'T WANT YOU TO BE STARTLED IF  
8 HE'S CALLED AWAY ON OTHER DUTY AND I HAVE TO HAVE ANOTHER DEPUTY  
9 THERE. IF IT'S SOMEONE OUT OF UNIFORM THAT'S NOT THE RIGHT  
10 PERSON, SO THAT WILL BE YOUR KEY. AND NO DEPUTY SHERIFF WOULD  
11 INTERVENE IF HE OR SHE WASN'T SUPPOSED TO.

12 WHEN YOU'RE IN THE JURY ROOM, I'M GOING TO SEND IN ALL  
13 OF THE EXHIBITS THAT WERE ADMITTED INTO EVIDENCE. PLEASE, USE  
14 THEM AS YOU SEE FIT. IT'S ABSOLUTELY ESSENTIAL THAT I GET THEM  
15 ALL BACK AND THAT YOU NOT MAKE ANY MARKS ON ANY OF THEM, THAT  
16 YOU NOT SEPARATE PAGES THAT MIGHT BE STAPLED TOGETHER. SO  
17 PLEASE KEEP THAT IN MIND. IF FOR ANY REASON THERE'S AN EXHIBIT  
18 YOU'D LIKE A COPY OF, I DON'T WANT TO KNOW WHY YOU WANT A COPY  
19 OF IT, BUT WE WOULD BE GLAD TO XEROX IT IF YOU NEED IT TO MARK  
20 ON. IF THAT HELPS YOU IN YOUR DISCUSSIONS, YOU CAN DO IT BUT  
21 PLEASE DON'T MARK ON THEM. THEY MAKE THE PERMANENT RECORD. YOU  
22 DON'T GET COPIES; YOU GET THE REAL THING.

23 I'M GOING TO SEND IN THREE COPIES OF THE JURY  
24 INSTRUCTIONS PACKET. I KEEP THE ORIGINAL OUT HERE SO, IN FACT,  
25 YOU CAN DO WHATEVER YOU WANT WITH THOSE. I THINK IT'S A GOOD  
26 IDEA TO KEEP ONE SET CLIPPED TOGETHER, SO THAT IF YOU SEPARATE

1247

1 THE OTHERS AND SOMETHING SEEMS TO BE MISSING YOU CAN GO BACK TO  
2 YOUR BASIC SET. IF MORE OF YOU WANT YOUR OWN SET, PLEASE LET ME



3 KNOW. IT'S JUST A MATTER OF XEROXING. WE'RE GLAD TO DO IT.

4 IT'S SIMPLE TO DO.

5 THE NEXT THING THAT I'M GOING TO DO IS THAT I'M GOING

6 TO GIVE YOU THE VERDICT FORM. IT'S A PACKET. IT'S GOT A COVER

7 SHEET ON IT, AND IT THEN HAS, I BELIEVE, EIGHT PAGES. AND AS

8 THE INSTRUCTIONS SAY, AND AS YOU SAW, IT STARTS WITH

9 QUESTION NO. 1, AND YOU ARE TO START WITH QUESTION NO. 1. I

10 THINK THE INSTRUCTION'S CLEAR BUT I DON'T WANT YOU TO HAVE TO

11 SPEND ANY TIME WONDERING ABOUT IT.

12 QUESTION 1, LIKE EVERY QUESTION, HAS A BLANK SPACE FOR

13 A YES OR A NO. IN THE INSTRUCTIONS I TOLD YOU IT TAKES NINE

14 VOTES. IT TAKES NINE VOTES TO VOTE YES, BUT IT ALSO TAKES NINE

15 VOTES TO VOTE NO. THE FAILURE TO GET NINE YES VOTES DOES NOT

16 RESULT IN A NO VOTE. THE FAILURE TO GET NINE VOTES FOR EITHER

17 YES OR NO IS TO FILL NOTHING IN.

18 AND THAT MEANS THAT YOU'RE NOT READY TO MOVE ON TO THE

19 NEXT QUESTION, AND YOU SHOULD CONTINUE YOUR DELIBERATIONS ON

20 QUESTION 1 UNTIL YOU'RE ABLE TO FOLLOW THE DIRECTION UNDER IT

21 FOR WHAT YOU DO BASED ON THE VOTE. AFTER EVERY QUESTION IT

22 SAYS, "IF YOU VOTE YES," IT TELLS YOU WHAT TO DO NEXT, AND "IF

23 YOU VOTE NO," AND IT TELLS YOU WHAT TO DO. I WANT THAT TO BE

24 CLEAR.

25 NOW, I'M GOING TO GIVE EACH OF YOU YOUR OWN PERSONAL

26 COPY OF THE VERDICT FORM. I DO THIS FOR A FEW REASONS AND LET

1 ME EXPLAIN WHAT IT IS. FIRST OF ALL, SINCE THIS IS WHAT YOU'RE  
2 VOTING ON I WANT EACH OF YOU TO KNOW EXACTLY WHAT THE LANGUAGE  
3 IS IN THE QUESTION. I DON'T WANT THERE TO BE ANY CONFUSION  
4 BECAUSE SOMEONE READ IT TO YOU AND YOU FORGOT WHAT ONE OF THE  
5 WORDS WAS. BUT I HAVE ANOTHER REASON THAT HELPS ME OUT LATER.

6 AT THE END OF THE TRIAL, IF YOU REACH A VERDICT, BOTH  
7 ATTORNEYS HAVE THE RIGHT TO ASK THAT THE JURY BE POLLED. WHAT  
8 THAT MEANS IS THAT FOR EACH QUESTION THAT IS ANSWERED, THEY HAVE  
9 THE RIGHT TO -- NOT THEY, I ASK. I WOULD THEN ASK EACH OF YOU  
10 HOW YOU VOTED ON THAT QUESTION. THERE ARE A LOT OF QUESTIONS  
11 HERE. YOU SAW THAT. I WOULDN'T REMEMBER NECESSARILY HOW I  
12 VOTED, AND SO THIS IS NOT A TEST FOR YOU WHEN YOU COME BACK  
13 HERE.

14 AND, YOU KNOW, JUST LIKE WITNESSES ARE NERVOUS, AND  
15 LAWYERS ARE NERVOUS AND JUDGES ARE NERVOUS, YOU'D BE NERVOUS TOO  
16 ANSWERING THESE QUESTIONS IN OPEN COURT. SO I GIVE YOU THIS,  
17 AND I'M GOING TO SUGGEST THAT WHEN THE RECORDED ANSWER, IF THERE  
18 IS ONE, TO ANY OF THESE QUESTIONS IS WRITTEN DOWN, THAT YOU MAKE  
19 A NOTE OF YOUR PERSONAL VOTE. I'M NEVER GOING TO COLLECT THIS  
20 FROM YOU, THOUGH. I WANT YOU TO UNDERSTAND THAT. THIS IS JUST  
21 TO HELP YOU IF THE JURY IS POLLED.

22 NOW, THE PRESIDING JUROR WILL HAVE THE ORIGINAL  
23 VERDICT FORM, AND IT ACTUALLY GOES IN AN ENVELOPE. YOU MAY TAKE  
24 MORE THAN ONE VOTE. YOU MAY TAKE A VOTE AND THERE AREN'T NINE  
25 ON EITHER SIDE. YOU MAY TAKE ANOTHER VOTE AND YOU KEEP  
26 DELIBERATING. THAT HAPPENS. I MEAN, I'VE NEVER BEEN IN A JURY

1 ROOM, BUT I'M TOLD THAT HAPPENS.

2 FOR THE PRESIDING JUROR, YOU CAN ONLY WRITE THE FINAL  
3 VOTE, AND I DON'T WANT NUMBERS ON THIS FORM. YOU'RE GOING TO  
4 PUT AN X OR A CHECK IN EITHER THE YES OR NO OR DO NOTHING. BUT  
5 DON'T GIVE ME A TALLY. YOU ONLY CHECK ONE OF THOSE BOXES IF  
6 THERE ARE NINE VOTES SUPPORTING IT. JUST KEEP THAT IN MIND.

7 AND FOR THE PRESIDING JUROR, WHOEVER YOU WILL BE --  
8 YOU DON'T KNOW YET -- MARK YOUR OWN PERSONAL FORM AS WELL,  
9 BECAUSE YOU'LL BE POLLED AS WELL. SO YOU'RE GOING TO KEEP TRACK  
10 OF TWO THINGS.

11 FOR ALL OF YOU, YOU'RE WELCOME TO DO THIS, BUT FOR THE  
12 PRESIDING JUROR, YOU MAY KEEP TALLIES. AND, AGAIN, IF YOU NEED  
13 OTHER PAPER TO DO THIS WE'LL GIVE IT TO YOU, BUT DON'T KEEP  
14 TALLIES ON HERE. I DON'T WANT TO SEE THE FIRST TALLY AND A LINE  
15 THROUGH IT AND SECOND ONE BECAUSE WE'RE NOT ALLOWED TO KNOW  
16 THAT. AND YET YOU MAY NEED TO WRITE IT DOWN. I JUST WANT YOU  
17 TO KNOW THAT IN ADVANCE. I HOPE THAT THAT IS HELPFUL TO YOU.

18 WHEN YOU GO INTO THE JURY ROOM, YOU'RE WELCOME TO  
19 BRING FOOD AND DRINKS WITH YOU. YOU REMEMBER I WAS ADAMANT  
20 ABOUT NO STARBUCKS IN THE COURTROOM. WELL, YOU CAN DO ANYTHING  
21 YOU WANT. IF YOU WANT STARBUCKS, IF YOU WANT TO BRING IN  
22 MUFFINS TOMORROW MORNING, WHATEVER YOU WANT IN THE JURY ROOM IS  
23 FINE. AND I WANT YOU TO BE COMFORTABLE. AND YOU WILL BE IN  
24 CHARGE OF YOUR OWN BREAKS. SO YOU CAN TAKE YOUR MIDMORNING  
25 BREAK OR YOU CAN WORK RIGHT THROUGH. THAT'S YOUR CHOICE.

1250

1 YOU'RE GOING TO KEEP GOING.

2 WE START -- WE'VE ALWAYS STARTED AT 9:00 O'CLOCK BUT,  
3 AGAIN, THAT'S YOUR CHOICE. IF YOU WANTED TO START EARLIER, TALK  
4 TO DEPUTY HENNESSY. IF HE'S HERE AND IT'S OKAY WITH HIM, THAT'S  
5 FINE. I'VE NEVER HAD A JURY WHO WANTED TO START EARLIER, BUT  
6 WHATEVER. IT'S FINE.

7 AND AT LUNCHTIME, IT'S A GOOD THING TO TALK TO DEPUTY  
8 HENNESSY. HE'S PROBABLY GOING TO NEED AT LEAST A SHORT TIME TO  
9 WALK AROUND. REMEMBER, HE'S SITTING OUT THERE, POSTED THERE.  
10 AND SO HE MAY BE WILLING TO TAKE A SHORTER BREAK FOR LUNCH, AS  
11 LONG AS YOU TALK TO HIM AND LET HIM KNOW. HE OFTEN BRINGS HIS  
12 LUNCH, SO JUST HAVE THAT DIALOGUE ABOUT SCHEDULE. YOU'RE NOT  
13 BOUND BY THE HOUR AND A HALF THAT I'VE TAKEN, AND I KNOW THAT  
14 SEEMS LIKE A LONG TIME WHEN YOU'RE TRYING TO GET A JOB DONE. SO  
15 THAT'S YOUR CHOICE.

16 AT THE END OF THE DAY, YOU KNOW WE'VE ENDED AT 4:30.  
17 THAT'S REALLY OUR NORMAL QUITTING TIME, BUT IF YOU'RE COMING  
18 BACK THE NEXT DAY ANYWAY BECAUSE YOU HAVEN'T FINISHED, I'M GOING  
19 TO RECOMMEND THAT YOU TRY TO ROUND IT UP AND FINISH BY AROUND  
20 4:30. BUT IF YOU THINK STAYING FOR A SHORT AMOUNT OF TIME WOULD  
21 ALLOW YOU TO FINISH, AGAIN, COMMUNICATE WITH DEPUTY HENNESSY.  
22 TELL HIM YOU WANT ANOTHER 15 MINUTES. YOU THINK YOU CAN FINISH.  
23 IT'S A COMMUNICATION. HE WILL LET ME KNOW AND I CAN LET YOU

24 KNOW IF THAT'S GOING TO WORK.

25 I'M NOT GOING ANYWHERE AND I DON'T GO HOME AT 4:30

26 BUT, AGAIN, IT'S JUST A MATTER OF KNOWING WHAT YOUR THOUGHTS ARE

1251

1 ON TIMING. AND YOU KNOW WHAT? IT'S NOT A PROMISE. IF YOU ASK  
2 FOR 15 MINUTES BECAUSE YOU THINK YOU CAN FINISH AND IT DOESN'T  
3 WORK, THAT'S OKAY. THAT'S THE WAY IT GOES AND THEN YOU'LL JUST  
4 COME BACK THE NEXT DAY.

5 NOW, WHEN YOU'RE IN THE JURY ROOM, YOU CANNOT USE YOUR  
6 CELLPHONES, YOUR PAGERS, YOUR BLACKBERRIES, YOUR COMPUTERS,  
7 ANYTHING ELECTRONIC THAT WOULD ALLOW YOU TO COMMUNICATE WITH THE  
8 OUTSIDE WORLD. IT MUST BE TURNED OFF. YOU CAN'T EVEN ANSWER A  
9 CALL TO SAY, "I'M BUSY NOW." NO COMMUNICATION.

10 NOW, I DON'T CONFISCATE YOUR CELLPHONES THE WAY MANY  
11 JUDGES DO. WE ACTUALLY HAVE BINS THAT WE'VE HAD MADE BECAUSE  
12 MOST JUDGES DO. I HAVE NO WORRIES ABOUT YOU. YOU HAVE BEEN  
13 WONDERFUL IN KEEPING YOUR CELLPHONES TURNED OFF THROUGHOUT THIS  
14 TRIAL, SO I THINK THAT THE 12 OF YOU CAN MONITOR EACH OTHER.  
15 BUT IF YOU HAVE A CALL YOU HAVE TO MAKE, TAKE A BREAK. THAT'S  
16 ABSOLUTELY FINE. I'M NOT TRYING TO BE PUNITIVE. BUT JUST TAKE  
17 A BREAK, GO OUT IN THE HALL LIKE YOU'VE DONE BEFORE, MAKE YOUR  
18 CALL AND THEN EVERYBODY CAN COME BACK IN.

19 IF YOU KNOW IN THE MORNING YOU'VE GOT SOMEBODY YOU'VE  
20 GOT TO CALL, TALK TO THE OTHER JURORS. LET THEM KNOW THAT  
21 INSTEAD OF A BREAK AT 10:15 YOU'D LIKE TO MAKE IT FIVE MINUTES

22 TO 10:00 SO YOU CAN MAKE YOUR CALL, AND I'M SURE THAT WILL WORK  
23 OUT. BUT NOT IN THE JURY ROOM. AND IF THERE'S A PROBLEM, LET  
24 DEPUTY HENNESSY KNOW AND HE WILL TAKE ALL THE CELLPHONES. WE  
25 DON'T JUST TAKE ONE PERSON'S. IT'S ALL OF YOU. I'M NOT GOING  
26 TO REFEREE THIS ISSUE. I'VE NEVER HAD A PROBLEM. I KNOW I

1252

1 WON'T WITH YOU.

2 QUESTIONS, I'M GOING TO SEND YOU BLANK FORMS. I SEND  
3 IN USUALLY AROUND THREE THAT YOU CAN ASK QUESTIONS. I NEED YOU  
4 TO LIMIT IT TO ONE QUESTION PER FORM BECAUSE I NEED TO BE ABLE  
5 TO GIVE YOU AN ANSWER, AND IT MAKES THE RECORD. I USUALLY DON'T  
6 BRING YOU BACK INTO THE COURTROOM TO PUT ON THE RECORD MY ANSWER  
7 BECAUSE IT'S USUALLY VERY STRAIGHTFORWARD AND BRIEF, AND I CAN  
8 WRITE IT DOWN.

9 AND WITH THE READBACK OF TESTIMONY, THE RESPONSE  
10 NORMALLY IS, WHEN THE COURT REPORTER HAS IT READY IT WILL BE  
11 READ TO YOU. SO IT'S JUST A MATTER OF MAKING SURE THAT THE  
12 READBACK IS AT YOUR REQUEST, SO WE HAVE THAT RECORD.

13 SO WRITE THE ONE QUESTION PER PAGE. IF YOU RUN OUT OF  
14 PAGES, MR. KANE WILL BRING YOU MORE. AGAIN, I'M JUST TRYING NOT  
15 TO OVERWHELM YOU, BUT I DON'T MEAN TO SUGGEST YOU'LL HAVE ANY  
16 QUESTIONS, THAT THERE WILL ONLY BE THREE OR MORE THAN THREE.  
17 IT'S UP TO YOU.

18 ON READING BACK OF TESTIMONY, YOU HAVE THE INSTRUCTION  
19 THAT TELLS YOU WHAT WE NEED. MRS. PEREZ DOES A WORD SEARCH, SO

20 IF YOU KNOW A KEYWORD THAT YOU THINK WAS SAID IN THE TESTIMONY,  
21 THAT WILL HELP HER. THE NAME OF THE ATTORNEY, THE NAME OF THE  
22 WITNESS -- CLEARLY, THE NAME OF THE WITNESS OR ELSE WE'RE REALLY  
23 GOING TO STRUGGLE KNOWING WHAT IT IS YOU WANT.

24 NOW, YOU DID SEE THAT THERE ARE SOME TRANSCRIPTS THAT  
25 HAVE BEEN PRODUCED. I CAN NEVER SEND THE TRANSCRIPTS IN TO YOU,  
26 SO MRS. PEREZ WOULD COME IN AND READ THAT PORTION. BUT SHE'LL

1253

1 BE QUICKER ON THAT BECAUSE SHE ALREADY DID THE WORK. IT MAY  
2 SEEM TO YOU, BECAUSE YOU CAN SEE THE WORDS POPPING UP ON HER  
3 SCREEN, THAT SHE'S JUST READY TO GO. BUT THOSE ARE WHAT WE CALL  
4 ROUGH NOTES. SOME ARE BETTER THAN OTHERS. HER COMPUTER HAS  
5 BEEN PROGRAMMED WITH A FAIRLY EXTENSIVE VOCABULARY, BUT EVERY  
6 TRIAL BROADENS OUR USE OF LANGUAGE. SO SHE'S GOT MANY THINGS  
7 THAT HER COMPUTER IS UNABLE TO TRANSLATE INTO ENGLISH WORDS FROM  
8 THE SHORTHAND, SO SHE HAS TO GO THROUGH IT.

9 IT VARIES IN TIME HOW LONG IT'S GOING TO TAKE HER.  
10 WHAT I TRY TO DO ONCE WE FIND THE PORTION YOU'RE INTERESTED IN  
11 IS GIVE YOU AN ESTIMATE. PLEASE KEEP DELIBERATING WHILE WE'RE  
12 GETTING THE TRANSCRIPT READY TO BE READ TO YOU; OTHERWISE,  
13 YOU'LL BE VERY FRUSTRATED.

14 BY THE SAME TOKEN, IF YOU HAVE QUESTIONS FOR ME TO  
15 ANSWER, I HAVE TO CONSULT WITH THE ATTORNEYS BEFORE I GIVE YOU  
16 THAT ANSWER. SO IT'S NOT GOING TO BE INSTANT. KEEP  
17 DELIBERATING. IF THERE'S A DELAY, I'LL LET YOU KNOW. YOU MIGHT

18 WANT TO TAKE A BREAK IF THERE'S GOING TO BE A DELAY. YOU MIGHT  
19 BREAK FOR LUNCH EARLY IF YOU'RE WAITING FOR READBACK, BUT KEEP  
20 GOING. AND WE REALLY TRY TO COMMUNICATE.

21 I THINK THAT TAKES CARE OF ALL OF THE THINGS. I WANT  
22 TO LASTLY TALK ABOUT YOUR SELECTION OF YOUR PRESIDING JUROR. I  
23 THINK IT'S VERY IMPORTANT THAT YOU PICK SOMEONE WHO IS GOING TO  
24 MAKE SURE THAT EACH OF YOU HAS THE OPPORTUNITY TO TALK DURING  
25 THE DELIBERATIONS. IT'S UP TO YOU HOW YOU PICK YOUR PRESIDING  
26 JUROR, AND THERE ARE NO RULES THAT YOU HAVE TO FOLLOW. YOU JUST

1254

1 HAVE TO PICK SOMEONE. BUT LET ME SUGGEST THAT IT'S A HARD JOB  
2 TO ORGANIZE INFORMATION AND GIVE EVERYONE THE OPPORTUNITY TO  
3 TALK.

4 YOU KNOW, WE'VE ALL BEEN IN GROUPS OR IN SCHOOL WHERE  
5 THERE ARE ALWAYS THOSE PEOPLE IN CLASS WHO SAID, "ME, ME. CALL  
6 ON ME." THOSE PEOPLE TALK ALL THE TIME. THEY WALK OUT FEELING  
7 GREAT BECAUSE THEY GOT TO TALK A THOUSAND TIMES. AND THEN THERE  
8 ARE OTHERS WHO ARE MUCH MORE THOUGHTFUL. THEY LIKE TO LISTEN.  
9 THEY LIKE NOT TO SAY WHAT THEY'RE THINKING UNTIL THEY'VE  
10 FORMULATED THEIR OPINION. AND IF OTHER PEOPLE ARE BUTTING IN,  
11 THEY MIGHT JUST SAY, "OH, NEVER MIND," BECAUSE IT'S JUST A  
12 PERSONALITY THING. IT DOESN'T MAKE THEIR OPINION LESS  
13 IMPORTANT.

14 PICK A PRESIDING JUROR WHO IS A GOOD LISTENER, WHO'S  
15 GOING TO RECOGNIZE THE DIFFERENT STYLES THAT PEOPLE HAVE AROUND



16 THE TABLE AND WILL SEE THAT ARCHED EYEBROW AND KNOW THAT'S  
17 SOMEONE WHO WANTS TO TALK AND MAKE A NOTE OF IT, AND WILL  
18 RECOGNIZE THAT ONE OF THE JURORS HAS SPOKEN FOUR TIMES ON THIS  
19 POINT AND MAYBE OTHERS SHOULD BE INVITED BEFORE THAT PERSON  
20 SPEAKS AGAIN.

21 THAT'S WHAT WE'RE LOOKING FOR, SOMEONE WHO CAN BE  
22 ORGANIZED AND POLITE. AND BY ALL MEANS, IT'S FINE TO DISAGREE  
23 BUT DON'T BE DISAGREEABLE. YOU'RE NOT FRIENDS. YOU'VE GOTTEN  
24 TO KNOW EACH OTHER IN THIS TWO WEEKS. THIS IS A TEAM EFFORT  
25 THAT YOU'RE ENGAGING IN, SO COURTESY IS IMPORTANT. AND I KNOW  
26 YOU WILL ALL TREAT EACH OTHER WELL, BUT I JUST WANT TO SAY THAT

1255

1 IF IT GETS A LITTLE TENSE, JUST TAKE A DEEP BREATH AND RECOGNIZE  
2 THAT YOU HAVE A HARD JOB TO DO. BUT BEING RUDE TO EACH OTHER IS  
3 NEVER GOING TO MAKE IT ANY EASIER, SO I'LL JUST LEAVE THAT WITH  
4 YOU.

5 I THINK THAT'S AS MUCH AS I CAN TELL YOU. AS YOU CAN  
6 SEE, I DON'T DESCRIBE THE LAW TO YOU. I CAN'T DO THAT. I CAN'T  
7 GIVE MY OWN SPIN. THE ATTORNEYS GET TO DO THAT, AND THEY HAVE  
8 MADE THEIR ARGUMENTS TO YOU. BUT THE ONE THING I GET TO DO IS  
9 TALK TO YOU A LITTLE BIT ABOUT THE DYNAMIC OF BEING IN THE JURY  
10 ROOM.

11 ALL RIGHT. COUNSEL, MAY IT BE STIPULATED THAT THE  
12 EXHIBITS AND JURY INSTRUCTIONS MAY GO INTO THE JURY ROOM?

13 MR. LEBOWITZ: YES, YOUR HONOR.

14 MR. VARTAIN: YES, YOUR HONOR.

15 THE COURT: AND MAY IT ALSO BE STIPULATED THAT DURING  
16 JURY DELIBERATIONS, THE JURY MAY TAKE RECESSES, ADJOURN FOR  
17 LUNCH IN THE EVENINGS AND RECONVENE FOR FURTHER DELIBERATIONS  
18 WITHOUT THE NECESSITY OF THE COURT FORMALLY CONVENING?

19 MR. VARTAIN: YES.

20 MR. LEBOWITZ: YES.

21 THE COURT: WOULD THE CLERK PLEASE SWEAR IN THE  
22 BAILIFF.

23 (WHEREUPON, THE BAILIFF WAS SWORN.)

24 THE BAILIFF: I DO.

25 THE CLERK: THANK YOU.

26 THE COURT: THANK YOU.

1256

1 IT'S GOING TO TAKE US A FEW MINUTES TO GET EVERYTHING  
2 INTO THE JURY ROOM, SO DEPUTY HENNESSY IN JUST A MINUTE WILL  
3 TAKE YOU. TAKE YOUR BADGES AND YOUR NOTEBOOKS.

4 AND FOR OUR ALTERNATE JUROR, IF YOU LEAVE YOUR  
5 NOTEBOOK ON YOUR CHAIR NO ONE WILL LOOK AT IT IN YOUR ABSENCE.  
6 AGAIN, WE LEAVE THAT HERE.

7 MR. KANE WILL BE COMING WITH THINGS, SO IF DEPUTY  
8 HENNESSY IS WITH HIM IT'S OKAY. JUST DON'T TALK ABOUT ANYTHING  
9 WHILE HE'S IN THE ROOM. HE'S GOING TO BRING YOU YOUR PACKETS OF  
10 JURY INSTRUCTIONS. HE'S GOING TO BRING YOU YOUR VERDICT FORMS.  
11 HE'S GOING TO BRING YOU THE EXHIBITS.

12 WE DON'T TYPICALLY SEND IN, YOU KNOW, LEGAL PADS, BUT  
13 IF YOU NEED THEM THAT'S FINE. I DON'T KNOW IF WE SEND IN  
14 PENCILS OR ANYTHING. ANY SUPPLIES YOU NEED, YOU JUST LET US  
15 KNOW AND WE GET THEM. YOU'LL GET THOSE QUESTION FORMS AS WELL  
16 SO THAT YOU CAN SEND OUT QUESTIONS, IF YOU HAVE THEM, AND JUST  
17 SEND THOSE OUT TO DEPUTY HENNESSY.

18 ALL RIGHT. LADIES AND GENTLEMEN, THANK YOU. AS I'VE  
19 SAID, I'LL BE RIGHT HERE AND I'M GOING TO LET DEPUTY HENNESSY  
20 TAKE YOU TO THE JURY ROOM NOW.

21 (WHEREUPON, THE JURORS EXITED TO DELIBERATE.)

22 THE COURT: WE'RE BACK ON THE RECORD OUTSIDE THE  
23 PRESENCE OF THE JURY.

24 COUNSEL, LET ME JUST INDICATE THAT I NEED YOU TO BE NO  
25 MORE THAN 20 MINUTES AWAY FROM THE COURTHOUSE. AND WHEN THE  
26 JURY REACHES A VERDICT, IF THEY DO, I WELCOME YOUR CLIENTS TO BE

1257

1 HERE BUT THEY, TOO, MUST BE WITHIN 20 MINUTES' RANGE. PLEASE,  
2 REMEMBER THAT. THEY'LL BE WAITING AND IT'S VERY IMPORTANT. I  
3 CAN'T HAVE SOMEONE SAY, "I'LL BE AN HOUR." I JUST COULDN'T KEEP  
4 THEM WAITING. IF YOU COULD DO US THAT COURTESY, I'D APPRECIATE  
5 IT.

6 THERE ARE A COUPLE OF THINGS WE NEED TO DO BUT WE'RE  
7 GOING TO TAKE A BREAK FOR A FEW MINUTES BEFORE WE DO, BUT WE  
8 WILL GO BACK ON THE RECORD.

9 FIRST, WE DID HAVE OUR JURY INSTRUCTIONS CONFERENCE ON

10 FRIDAY AND IT WAS UNREPORTED, AND I'LL GIVE YOU THE CHANCE TO  
11 MAKE THE RECORD THAT YOU WOULD LIKE ON THE JURY INSTRUCTIONS  
12 THAT WERE -- EITHER THAT YOU PROPOSED AND I DID NOT GIVE OR THAT  
13 YOU OBJECTED TO AND I DID GIVE. SO WE WILL DO THAT.

14 AND, SECOND, DURING THE BREAK, I'M GOING TO HAVE THE  
15 COURT REPORTER LOOK AT THE EXHIBITS THAT ARE THE STUDENT  
16 EVALUATIONS AND TO PULL UP THE TESTIMONY SURROUNDING THEM BEING  
17 OFFERED INTO EVIDENCE TO SEE IF AN OBJECTION WAS MADE. AND  
18 WE'LL COME BACK ON THE RECORD WITH THAT INFORMATION.

19 SO WITH THAT, LET'S TAKE A BREAK. LET'S MAKE IT A  
20 15-MINUTE BREAK, AND THEN WE'LL COME BACK AND DO THE REST.

21 (WHEREUPON, A BREAK WAS TAKEN.)

22 THE COURT: WE'RE BACK IN SESSION. ALL COUNSEL ARE  
23 PRESENT. WE'RE OUTSIDE THE PRESENCE OF THE JURY.

24 LET'S START WITH MR. LEBOWITZ. IF YOU WOULD LIKE TO  
25 MAKE A RECORD ON ANY JURY INSTRUCTIONS ISSUE THAT CAME UP DURING  
26 OUR CONFERENCE.

1258

1 MR. LEBOWITZ: THERE WAS ONLY ONE, YOUR HONOR. AND  
2 THAT WAS MY OBJECTION TO THE INSERTION OF CACCI 3930, MITIGATION  
3 OF DAMAGES, PERSONAL INJURY. I OBJECTED TO THE DEFENSE REQUEST  
4 TO HAVE THIS AS PART OF THE INSTRUCTIONS. I DON'T BELIEVE IT  
5 APPLIES IN AN EMPLOYMENT CASE SUCH AS THIS.

6 THE COURT: OKAY.

7 MR. VARTAIN, IT'S UP TO YOU AS TO WHETHER YOU WANT TO

8 MAKE ANY COMMENT, SINCE WE'RE CREATING A RECORD.

9 MR. VARTAIN: THE ONLY INSTRUCTION THAT I REQUEST IS  
10 THAT I --

11 THE COURT: NO. I'M SORRY. IN RESPONSE TO  
12 MR. LEBOWITZ'S OBJECTION TO 3930, IF YOU WANT TO MAKE ANY RECORD  
13 ON THAT ISSUE. BEG YOUR PARDON.

14 MR. VARTAIN: NO. OTHER THAN -- I DON'T NEED TO MAKE  
15 ANY FURTHER RECORD.

16 THE COURT: SO YOUR OBJECTION IS NOTED. AND, OF  
17 COURSE, I DID DECIDE THAT THAT INSTRUCTION WOULD BE GIVEN.

18 MR. LEBOWITZ, ANY OTHERS?

19 MR. LEBOWITZ: NO, YOUR HONOR.

20 THE COURT: OKAY.

21 MR. VARTAIN, ANY THAT YOU WOULD LIKE TO PUT ON THE  
22 RECORD?

23 MR. VARTAIN: YES. THE OBJECTION IS TO THE COURT'S  
24 FAILURE TO GIVE SPECIAL INSTRUCTION NUMBER 2, ENTITLED  
25 "DISCHARGE FROM EMPLOYMENT THAT IS MOTIVATED BY DISABILITY OR A  
26 MEDICAL CONDITION, CAUSE OF ACTION 2, 5 AND 8." THAT WAS THE

1259

1 INSTRUCTION WHERE I REQUESTED THAT YOU INCLUDE THE LANGUAGE THAT  
2 HAD TO DO WITH AN HONEST, MEDICALLY-SUPPORTED JUDGMENT THAT  
3 MS. BLOUGH WAS UNABLE TO PERFORM THE ESSENTIAL DUTIES OF HER  
4 JOB, GIVEN THE REASONABLE ACCOMMODATIONS.

5 THE COURT: OKAY.

6 DID YOU WANT TO SAY MORE ABOUT IT?

7 MR. VARTAIN: NOT ANY MORE ABOUT THAT.

8 THE COURT: OKAY.

9 MR. LEBOWITZ: JUST THAT THE PLAINTIFF'S POSITION ON  
10 THAT IS THAT THAT INSTRUCTION WAS NOT SUPPORTED BY THE LAW, THAT  
11 THE AUTHORITY CITED IN SUPPORT, IF I RECALL, IS A SIXTH CIRCUIT  
12 1991 CASE. IF I'M THINKING OF THE RIGHT INSTRUCTION, THEN THAT  
13 IS NOT THE STATE OF THE LAW EITHER IN FEDERAL LAW OR IN  
14 CALIFORNIA, AND THAT IT WAS PROPERLY DENIED.

15 MR. VARTAIN: I'LL SAVE MY ARGUMENT FOR ELSEWHERE,  
16 YOUR HONOR.

17 THE COURT: OKAY.

18 MR. VARTAIN: THE ONLY OTHER ONE THAT I HAVE IS THE  
19 STANDING OBJECTION TO THE COURT'S DENIAL OF THE MOTION FOR  
20 NONSUIT ON THE PUNITIVE DAMAGES INSTRUCTION AS BEING -- THERE  
21 WAS NO EVIDENCE TO SUPPORT THE MALICE, OPPRESSION, ET CETERA.  
22 AND, FURTHER, THAT THE COURT DENIED THE MOTION IN LIMINE TO  
23 EXCLUDE EVIDENCE OR ARGUMENT OF FRONT PAY.

24 THE COURT: OF? I'M SORRY.

25 MR. VARTAIN: OF FRONT PAY.

26 THE COURT: OKAY.

1260

1 MR. VARTAIN: THANK YOU FOR THE OPPORTUNITY TO PUT  
2 THAT ON THE RECORD, YOUR HONOR.

3 THE COURT: I WILL LET YOU STATE ANYTHING MORE FOR THE

4 RECORD NOW THAT YOU FEEL WOULD BE BENEFICIAL TO YOU.

5 MR. VARTAIN: THE MOTION IN LIMINE IS IN THE COURT  
6 FILE ON THE FRONT PAY, AND THE MOTION FOR NONSUIT ON THE  
7 PUNITIVE DAMAGES IS ON THE RECORD AS WELL, YOUR HONOR.

8 THE COURT: IT IS.

9 MR. VARTAIN: THANK YOU.

10 THE COURT: ALL RIGHT. ANYTHING ELSE?

11 MR. LEBOWITZ: I HAVE NOTHING FURTHER OTHER THAN WHAT  
12 WE'VE ALREADY RESPONDED TO.

13 THE COURT: THANK YOU.

14 IS THERE ANYTHING ELSE THAT WE NEED FOR THE RECORD  
15 THAT WE PUT OVER FOR HOUSEKEEPING? I DON'T ACTUALLY REMEMBER  
16 ANYTHING MYSELF.

17 MR. LEBOWITZ: NOT THAT I CAN RECALL.

18 MR. VARTAIN: JUST SO YOUR HONOR KNOWS, WE DID FILE  
19 THE DEPOSITION EXCERPTS THAT WE COMMITTED TO FILE AND SERVED  
20 THEM.

21 THE COURT: THANK YOU. SO THAT IF THE JURY WANTED ANY  
22 OF THE VIDEOTAPE THEY'VE SEEN TO BE READ BACK, MRS. PEREZ WOULD  
23 BE ABLE TO GO RIGHT TO IT.

24 MR. VARTAIN: YES.

25 THE COURT: THANK YOU FOR DOING THAT. THANK YOU.

26 ALL RIGHT, THEN. THANK YOU BOTH. I KNOW I DIDN'T

1 GIVE YOU A VERY LONG TETHER. I HOPE YOU CAN FIND SOMEPLACE

2 COMFORTABLE TO WORK WHILE YOU'RE WAITING. I WOULD EXPECT TODAY  
3 THAT WILL JUST BE AN HOUR.

4 IF YOU'RE NOT HERE AT THE COURTROOM AT THE END OF THE  
5 COURT DAY, UNLESS THEY TELL US THEY WANT TO STAY BEYOND 4:30,  
6 YOU CAN ASSUME THAT THEY'RE DONE. IF THEY LET DEPUTY HENNESSY  
7 KNOW THEY WANT TO STAY, WE'LL CALL YOU TO LET YOU KNOW THAT. I  
8 DON'T WANT YOU TO HAVE TO BE WAITING. WE'RE NOT GOING TO CALL  
9 YOU IF THEY TAKE THEIR NORMAL SCHEDULE. AND YOU SHOULD ASSUME  
10 TOMORROW MORNING THAT IF THEY COME AT 9:00, AS LONG AS YOU'RE  
11 WITHIN MY RANGE AT 9:00 O'CLOCK THAT WOULD BE GREAT.

12 MR. LEBOWITZ: ARE THE JURORS EATING LUNCH TOGETHER?  
13 DO YOU DO THAT HERE?

14 THE COURT: LET'S GO OFF THE RECORD.

15 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

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1 PROCEEDINGS

2 DECEMBER 17, 2008 A .M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. WE'RE ON THE RECORD IN  
4 BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT,  
5 AND ALL JURORS EXCEPT TRJ08.

6 LADIES AND GENTLEMEN, JUST FOR THE RECORD LET ME  
7 REPEAT WHAT YOU ALREADY KNOW. AT THE BEGINNING OF THIS TRIAL  
8 WHEN WE WERE SELECTING JURORS, TRJ08 INFORMED THE COURT IN  
9 WRITING THAT HER DAUGHTER WAS HAVING HER WISDOM TEETH OUT TODAY.  
10 AND, IN FACT, THIS DAY HAS COME AND THE JURY HAS NOT FINISHED  
11 ITS WORK. I PROMISED HER THEN, AND THE ATTORNEYS BOTH AGREED,  
12 THAT SHOULD THE JURY NOT FINISH BY THE 17TH, SHE WOULD BE  
13 EXCUSED.

14 WE HAVE NO WAY OF KNOWING WHETHER IT WILL BE A ONE-DAY  
15 MOMMY JOB OR MORE, BECAUSE KIDS RESPOND TO WISDOM TEETH BEING  
16 PULLED IN MANY WAYS. MY OWN STAYED HOME FOR A WEEK, SO WE ALL  
17 KNOW. AND I WOULD NEVER MAKE YOU WAIT DAY-TO-DAY TO COMPLETE  
18 YOUR WORK, SO TRJ08 HAS BEEN EXCUSED. THAT IS TRJ08, AND ATRJ08  
19 IS HERE. HE IS GOING TO BE SWORN IN JUST A MINUTE. AND ONCE  
20 HE'S SWORN, I WILL TALK TO YOU ABOUT THE NEXT PART OF YOUR JOB.

21 ATRJ08, IF YOU WOULD STAND, PLEASE.

22 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

23 (WHEREUPON, THE JUROR WAS SWORN.)

24 ATRJ08: I DO.

25 THE CLERK: THANK YOU.

26 THE COURT: ATRJ08, I'M GOING TO HAVE YOU TAKE THE

1 SEAT THAT TRJ08 VACATED. IT IS NOW YOURS AND I SEE THAT YOU  
2 HAVE YOUR NOTES.

3 ALL RIGHT. LADIES AND GENTLEMEN, LET ME TELL YOU YOU  
4 ARE GOING TO GO BACK INTO DELIBERATIONS; HOWEVER, BY LAW YOU  
5 MUST START ALL OVER AGAIN BECAUSE YOU NOW ARE A DIFFERENT GROUP  
6 OF 12 WITH ATRJ08 JOINING YOU. WHEN YOU GO INTO THE JURY ROOM,  
7 YOUR PRESIDING JUROR WILL BE GIVEN A NEW ORIGINAL VERDICT FORM,  
8 AND EACH OF YOU WILL BE GIVEN NEW VERDICT FORMS.

9 I DON'T WANT TO KNOW, AND I DON'T KNOW HOW FAR YOU'VE  
10 MADE YOUR WAY THROUGH YOUR DISCUSSIONS AND WHETHER YOU'VE EVEN  
11 LOOKED AT THE VERDICT FORM. I DON'T WANT TO KNOW ANY OF THAT,  
12 BUT I'M GOING TO ASSUME THAT SOME OF YOU MAY HAVE PUT MARKS ON  
13 YOUR VERDICT FORMS IN THE LAST DAY AND A HALF, SO I'M GIVING YOU  
14 ALL NEW ONES. THAT'S JUST FOR YOUR EASE, SO YOU DON'T MIX THEM  
15 UP AND DO WHAT IT IS YOU NEED SO THAT YOU KNOW YOU'RE WORKING ON  
16 THE RIGHT ONE. WE DIDN'T CHANGE IT; IT'S JUST A FRESH ONE.

17 YOU MUST START YOUR DISCUSSIONS OVER. ATRJ08 MUST BE  
18 PART OF ALL THE DISCUSSIONS AND HE MUST BE PART OF EVERY VOTE  
19 THAT YOU TAKE. THAT'S WHY YOU START BACK AT THE BEGINNING. I'M  
20 NOT SUGGESTING ANY AMOUNT OF TIME THAT THAT WOULD TAKE. THAT IS  
21 COMPLETELY UP TO YOU, BUT YOU CAN'T JUST MAKE HIM START WHERE  
22 YOU LEFT OFF. OBVIOUSLY, NOT ONLY DOES HE NEED THE BENEFIT OF  
23 YOUR DISCUSSION, YOU NEED THE BENEFIT OF HIS DISCUSSION. AND SO  
24 PLEASE DO THAT.

25 AND IF THERE'S ANYTHING THE COURT CAN ASSIST YOU WITH,  
26 PLEASE LET ME KNOW. I BELIEVE ON ALL THE QUESTIONS THAT YOU'VE

1264

1 ASKED THE COURT, THAT I'VE RESPONDED TO, YOU HAVE THOSE FORMS,  
2 AND YOU CAN REVIEW THOSE WITH ATRJ08 AS THAT WILL BE HELPFUL TO  
3 YOU.

4 THAT'S ALL THE INSTRUCTIONS I HAVE, COUNSEL. DID  
5 EITHER OF YOU HAVE ANYTHING THAT YOU WANTED TO REQUEST ME TO  
6 ADD?

7 MR. VARTAIN: NO. THANK YOU, YOUR HONOR.

8 MR. LEBOWITZ: NO.

9 THE COURT: LADIES AND GENTLEMEN, I'M GOING TO LET YOU  
10 GO BACK TO THE JURY ROOM. I UNDERSTAND IT WAS COLD YESTERDAY.  
11 I AM RIGHT NEXT DOOR TO YOU AND IT WAS HOT IN MINE. I WAS  
12 BAFFLED. I BELIEVED YOU, BUT I WAS BAFFLED. NOW ALL I CAN  
13 ASSUME IS THAT SOME JURY AT SOME TIME WAS SO HOT THEY MADE THEM  
14 TURN THE HEAT OFF IN THAT ROOM.

15 WHY DON'T YOU GO INTO THE ROOM YOU WERE IN, JUST  
16 CONFIRM YOU DON'T LIKE IT, AND WE'LL MOVE YOU NEXT DOOR. WHERE  
17 WE'VE WALKED IN AND OUT AND IT SEEMS VERY APPROPRIATE IN  
18 TEMPERATURE. WE'LL GLADLY MOVE YOU NEXT DOOR. WE'RE GOING TO  
19 LET YOU MOVE YOUR OWN THINGS. NOT ME, BUT DEPUTY HENNESSY  
20 DOESN'T WANT TO BE LOOKING AT THE WORK THAT YOU'VE BEEN DOING,  
21 BUT IF YOU NEED HIS HELP IN TERMS OF CARRYING EXHIBITS OR  
22 SOMETHING, HE'S GLAD TO HELP YOU.

23           WHEN YOU GO BACK, WORK WITH DEPUTY HENNESSY IN GETTING  
24   THE RIGHT ROOM. AND, AS BEFORE, WE WILL ALL BE HERE AT YOUR  
25   BECK AND CALL. SO HAVE A GOOD DAY, LADIES AND GENTLEMEN.  
26           (WHEREUPON, THE JURORS EXITED TO DELIBERATE.)

1265

1           P R O C E E D I N G S

2   DECEMBER 18, 2008 P.M.           REDWOOD CITY, CALIFORNIA

3           THE COURT: GOOD AFTERNOON. WE'RE ON THE RECORD IN  
4   BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT.

5           GOOD AFTERNOON, LADIES AND GENTLEMEN. YOU'VE BEEN  
6   WORKING HARD FOR A FEW DAYS AND I UNDERSTAND THE JURY HAS  
7   REACHED A VERDICT. WHO IS THE PRESIDING JUROR?

8           TRPJXXXXXXXX, THANK YOU. AND HAS THE JURY REACHED A  
9   VERDICT?

10          TRPJXXXXXXXX: YES, THEY HAVE.

11          THE COURT: IF YOU WOULD GIVE THE VERDICT TO THE  
12   BAILIFF, PLEASE.

13          TRPJXXXXXXXX: (COMPLIES.)

14          THE COURT: THANK YOU.

15          WOULD THE CLERK PLEASE READ THE VERDICT.

16          THE CLERK: IN THE SUPERIOR COURT OF THE STATE OF  
17   CALIFORNIA, IN AND FOR THE COUNTY OF SAN MATEO, CASE NO.  
18   CIV 465027, MARCINE BLOUGH, PLAINTIFF, VS. MENLO COLLEGE AND  
19   DOES 1 TO 25, INCLUSIVE, DEFENDANTS. SPECIAL VERDICT FORMS.  
20          SPECIAL VERDICT FORM NO. 1, MEDICAL AND PSYCHOLOGICAL

21 EVALUATION/EXAM. WE ANSWER THE QUESTIONS SUBMITTED TO US AS  
22 FOLLOWS:  
23 QUESTION NO. 1, WAS THE 2006-2007 MEDICAL AND  
24 PSYCHOLOGICAL EVALUATION/EXAM REQUIRED BY THE COLLEGE? YES.  
25 QUESTION NO. 2, WAS THE 2006-2007 MEDICAL AND PSYCHOLOGICAL  
26 EVALUATION EXAM JOB-RELATED AND CONSISTENT WITH THE COLLEGE'S

1266

1 BUSINESS NEEDS? YES.  
2 SPECIAL VERDICT FORM NO. 2, DISABILITY DISCRIMINATION  
3 DISPARATE TREATMENT. WE ANSWER THE QUESTIONS SUBMITTED TO US AS  
4 FOLLOWS:  
5 QUESTION NO. 5, WAS MENLO COLLEGE AN EMPLOYER? YES.  
6 QUESTION NO. 6, WAS MARCINE BLOUGH AN EMPLOYEE OF MENLO COLLEGE?  
7 YES. QUESTION NO. 7, DID MENLO COLLEGE KNOW THAT MARCINE BLOUGH  
8 HAD A DISABILITY OR MEDICAL CONDITION? YES. QUESTION 8, WAS  
9 MARCINE BLOUGH ABLE TO PERFORM HER ESSENTIAL JOB DUTIES WITH OR  
10 WITHOUT REASONABLE ACCOMMODATIONS? YES.  
11 QUESTION NO. 9, DID MENLO COLLEGE DISCHARGE MARCINE  
12 BLOUGH FROM ITS EMPLOYMENT? YES. QUESTION 10, WAS MARCINE  
13 BLOUGH'S DISABILITY OR MEDICAL CONDITION A MOTIVATING REASON FOR  
14 THE DISCHARGE? YES. QUESTION NO. 11, WAS MARCINE BLOUGH HARMED  
15 BY THE COLLEGE DISCHARGING HER FROM EMPLOYMENT? YES.  
16 QUESTION NO. 12, WAS THE COLLEGE'S DECISION TO DISCHARGE A  
17 SUBSTANTIAL FACTOR IN CAUSING HARM TO MARCINE BLOUGH? YES.  
18 SPECIAL VERDICT FORM NO. 3, FAILURE TO PREVENT

19 DISCRIMINATION. WE ANSWER THE QUESTIONS SUBMITTED TO US AS  
20 FOLLOWS:

21 QUESTION NO. 13, DID YOU ANSWER YES TO QUESTION 10 ON  
22 SPECIAL VERDICT FORM NO. 2? YES. QUESTION NO. 14, DID THE  
23 COLLEGE FAIL TO TAKE REASONABLE STEPS TO PREVENT THE UNLAWFUL  
24 DISCRIMINATION? YES. QUESTION NO. 15, WAS MS. BLOUGH HARMED BY  
25 THE COLLEGE'S FAILURE TO TAKE REASONABLE STEPS TO PREVENT THE  
26 UNLAWFUL DISCRIMINATION? YES. QUESTION NO. 16, WAS THE FAILURE

1267

1 TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION A SUBSTANTIAL  
2 FACTOR IN CAUSING HARM TO MS. BLOUGH? YES.

3 SPECIAL VERDICT FORM NO. 4, WRONGFUL DISCHARGE  
4 VIOLATION OF PUBLIC POLICY. WE ANSWER THE QUESTIONS SUBMITTED  
5 TO US AS FOLLOWS:

6 QUESTION NO. 17, WAS MENLO COLLEGE AN EMPLOYER? YES.  
7 QUESTION NO. 18, WAS MARCINE BLOUGH AN EMPLOYEE OF MENLO  
8 COLLEGE? YES. QUESTION NO. 19, DID MENLO COLLEGE KNOW THAT  
9 MARCINE BLOUGH HAD A DISABILITY OR MEDICAL CONDITION? YES.  
10 QUESTION NO. 20, WAS MARCINE BLOUGH ABLE TO PERFORM THE  
11 ESSENTIAL JOB DUTIES WITH OR WITHOUT REASONABLE ACCOMMODATIONS?  
12 YES.

13 QUESTION NO. 21, DID MENLO COLLEGE DISCHARGE MARCINE  
14 BLOUGH FROM ITS EMPLOYMENT? YES. QUESTION NO. 22, WAS  
15 MARCINE BLOUGH'S DISABILITY OR MEDICAL CONDITION A MOTIVATING  
16 REASON FOR THE DISCHARGE? YES. QUESTION NO. 23, WAS

17 MARCINE BLOUGH HARMED BY THE COLLEGE DISCHARGING HER FROM  
18 EMPLOYMENT? YES. QUESTION NO. 24, WAS THE COLLEGE'S DECISION  
19 TO DISCHARGE A SUBSTANTIAL FACTOR IN CAUSING HARM TO  
20 MARCINE BLOUGH? YES. QUESTION NO. 25, DID YOU ANSWER YES TO  
21 QUESTION NO. 4, QUESTION NO. 12, QUESTION NO. 16 AND/OR  
22 QUESTION NO. 24? YES.

23 DAMAGES. WE, THE JURY, ANSWER THE QUESTIONS PUT TO US  
24 AS FOLLOWS:

25 QUESTION NO. 1, WHAT ARE MARCINE BLOUGH'S DAMAGES?  
26 SUBSECTION A, PAST ECONOMIC LOSS, THE JURY AWARDS \$150,180;

1268

1 SUBSECTION B, FUTURE ECONOMIC LOSS, \$355,486; SUBSECTION C, PAST  
2 EMOTIONAL DISTRESS, \$50,000.

3 THE COURT: COULD YOU SAY THAT NUMBER AGAIN.

4 THE CLERK: \$50,000.

5 SUBSECTION D, FUTURE EMOTIONAL DISTRESS, \$31,200.

6 TOTAL AWARDED, \$586,866.

7 WE, THE JURY, ANSWER THE QUESTIONS PUT TO US AS  
8 FOLLOWS:

9 QUESTION NO. 2, DO YOU FIND BY CLEAR AND CONVINCING  
10 EVIDENCE THAT MENLO COLLEGE ENGAGED IN THE CONDUCT WITH MALICE,  
11 OPPRESSION OR FRAUD? YES. SIGNED PRESIDING JUROR, TRPJXXXXXXX,  
12 DATED DECEMBER 18TH, 2008.

13 THE COURT: THANK YOU.

14 COUNSEL, DO EITHER OF YOU WISH TO HAVE THE JURY

15 POLLED?

16 MR. VARTAIN: YES.

17 MR. LEBOWITZ: NO.

18 THE COURT: ALL RIGHT.

19 LADIES AND GENTLEMEN, LET ME GO THROUGH HOW WE POLL

20 THE JURY. I'M SEEING THAT SOME OF YOU HAVE YOUR COPY OF THE

21 FORM. DO ALL OF YOU HAVE IT, IF YOU NEED IT?

22 JURORS: YES.

23 THE COURT: ALL RIGHT.

24 LET ME EXPLAIN TO YOU WHAT WE'RE GOING TO DO. WE'RE

25 GOING TO GO BACK TO THE TOP OF THE VERDICT FORM. WE'RE GOING TO

26 DO QUESTION, POLLING; QUESTION, POLLING. SO LET ME JUST GIVE

1269

1 YOU THE EXAMPLE. QUESTION NO. 1, MR. KANE IS GOING TO READ THE

2 QUESTION, AND GOING TO REPEAT WHAT THE VERDICT FORM REFLECTS.

3 SO ON QUESTION NO. 1, THE VERDICT FORM REFLECTS A YES VOTE.

4 AND THEN WE START WITH TRJ01. AND I DON'T WANT YOU TO

5 TELL ME YES OR NO THAT WAS YOUR VOTE BECAUSE I'M NOT GOING TO

6 KNOW WHAT YOU'RE SAYING, BECAUSE THE ANSWER IS YES ON THE FORM.

7 YOU'RE GOING TO SAY CORRECT, THAT WAS YOUR PERSONAL VOTE. NOT

8 THAT THAT WAS WHAT EVERYBODY AS A GROUP DID, BUT THAT'S WHAT YOU

9 PERSONALLY VOTED. AND THEN WE'RE GOING TO GO THROUGH THE 12 OF

10 YOU. THEN WE'RE GOING TO GO TO QUESTION 2. HE'LL READ IT

11 AGAIN.

12 IF YOU THINK YOU GET LOST, WOULD YOU PLEASE LET ME



13 KNOW. PLEASE DON'T BE EMBARRASSED BECAUSE IT WILL THROW IT ALL  
14 OFF AND WE'LL HAVE TO START OVER AGAIN. I JUST WANT YOU TO BE  
15 CLEAR. I WANT TO KNOW YOUR PERSONAL VOTE, NOT JUST THAT THIS IS  
16 THE CORRECT TOTAL OF THE GROUP. SO THIS IS A QUESTION TO YOU AS  
17 AN INDIVIDUAL.

18 IF THAT'S HOW YOU VOTED, SAY "CORRECT." IF IT'S NOT  
19 HOW YOU VOTED, SAY "INCORRECT." WE'RE GOING TO TALLY THEM UP.  
20 REMEMBER, I'M ONLY LOOKING FOR NINE FOR EACH ONE. I DON'T KNOW  
21 UNTIL WE'RE DONE WHETHER THIS IS RIGHT, BUT THIS IS OUR  
22 DOUBLE-CHECK ON THIS PROCESS. SO WE WILL BE DOING OUR TALLY AS  
23 WE GO THROUGH, AND WE'RE GOING TO REFER TO YOU BY YOUR SEAT  
24 NUMBER, 1 THROUGH 12, FOR THE RECORD. IT'S EASIER FOR US TO DO  
25 IT THAT WAY, SO NO OFFENSE INTENDED.

26 GO AHEAD.

1270

1 THE CLERK: QUESTION NO. 1. AS TO QUESTION NO. 1, WAS  
2 THE 2006-2007 MEDICAL AND PSYCHOLOGICAL EVALUATION/EXAM REQUIRED  
3 BY THE COLLEGE?

4 Q. DO YOU VOTE YES, JUROR NO. 1?

5 A. CORRECT.

6 Q. JUROR NO. 2?

7 A. CORRECT.

8 Q. JUROR NO. 3?

9 A. CORRECT.

10 Q. JUROR NO. 4?

11 A. CORRECT.  
12 Q. JUROR NO. 5?  
13 A. CORRECT.  
14 Q. JUROR NO. 6?  
15 A. CORRECT.  
16 Q. JUROR NO. 7?  
17 A. CORRECT.  
18 Q. JUROR NO. 8?  
19 A. CORRECT.  
20 Q. JUROR NO. 9?  
21 A. CORRECT.  
22 Q. JUROR NO. 10?  
23 A. CORRECT.  
24 Q. JUROR NO. 11?  
25 A. CORRECT.  
26 Q. JUROR NO. 12?

1271

1 A. CORRECT.  
2 Q. AS TO QUESTION NO. 2, WAS THE 2006-2007 MEDICAL AND  
3 PSYCHOLOGICAL EVALUATION/EXAM JOB-RELATED AND CONSISTENT WITH  
4 THE COLLEGE'S BUSINESS NEEDS?  
5 DO YOU VOTE YES, JUROR NO. 1?  
6 A. INCORRECT.  
7 Q. JUROR NO. 2?  
8 A. CORRECT.

9 Q. JUROR NO. 3?  
10 A. CORRECT.  
11 Q. JUROR NO. 4?  
12 A. CORRECT.  
13 Q. JUROR NO. 5?  
14 A. CORRECT.  
15 Q. JUROR NO. 6?  
16 A. CORRECT.  
17 Q. JUROR NO. 7?  
18 A. CORRECT.  
19 Q. JUROR NO. 8?  
20 A. INCORRECT.  
21 Q. JUROR NO. 9?  
22 A. CORRECT.  
23 Q. JUROR NO. 10?  
24 A. CORRECT.  
25 Q. JUROR NO. 11?  
26 A. INCORRECT.

1272

1 Q. JUROR NO. 12?  
2 A. CORRECT.  
3 Q. AS TO QUESTION NO. 5, WAS MENLO COLLEGE AN EMPLOYER?  
4 DO YOU VOTE YES, JUROR NO. 1?  
5 A. CORRECT.  
6 Q. JUROR NO. 2?

7 A. CORRECT.  
8 Q. JUROR NO. 3?  
9 A. CORRECT.  
10 Q. JUROR NO. 4?  
11 A. CORRECT.  
12 Q. JUROR NO. 5?  
13 A. CORRECT.  
14 Q. JUROR NO. 6?  
15 A. CORRECT.  
16 Q. JUROR NO. 7?  
17 A. CORRECT.  
18 Q. JUROR NO. 8?  
19 A. CORRECT.  
20 Q. JUROR NO. 9?  
21 A. CORRECT.  
22 Q. JUROR NO. 10?  
23 A. CORRECT.  
24 Q. JUROR NO. 11?  
25 A. CORRECT.  
26 Q. JUROR NO. 12?

1273

1 A. CORRECT.  
2 Q. AS TO QUESTION NO. 6, WAS MARCINE BLOUGH AN EMPLOYEE  
3 OF MENLO COLLEGE?  
4 DO YOU VOTE YES, JUROR NO. 1?

5 A. CORRECT.  
6 Q. JUROR NO. 2?  
7 A. CORRECT.  
8 Q. JUROR NO. 3?  
9 A. CORRECT.  
10 Q. JUROR NO. 4?  
11 A. CORRECT.  
12 Q. JUROR NO. 5?  
13 A. CORRECT.  
14 Q. JUROR NO. 6?  
15 A. CORRECT.  
16 Q. JUROR NO. 7?  
17 A. CORRECT.  
18 Q. JUROR NO. 8?  
19 A. CORRECT.  
20 Q. JUROR NO. 9?  
21 A. CORRECT.  
22 Q. JUROR NO. 10?  
23 A. CORRECT.  
24 Q. JUROR NO. 11?  
25 A. CORRECT.  
26 Q. JUROR NO. 12?

1274

1 A. CORRECT.  
2 Q. AS TO QUESTION NO. 7, DID MENLO COLLEGE KNOW THAT

3 MARCINE BLOUGH HAD A DISABILITY OR MEDICAL CONDITION?

4 DO YOU VOTE YES, JUROR NO. 1?

5 A. CORRECT.

6 Q. JUROR NO. 2?

7 A. CORRECT.

8 Q. JUROR NO. 3?

9 A. CORRECT.

10 Q. JUROR NO. 4?

11 A. CORRECT.

12 Q. JUROR NO. 5?

13 A. CORRECT.

14 Q. JUROR NO. 6?

15 A. CORRECT.

16 Q. JUROR NO. 7?

17 A. CORRECT.

18 Q. JUROR NO. 8?

19 A. CORRECT.

20 Q. JUROR NO. 9?

21 A. CORRECT.

22 Q. JUROR NO. 10?

23 A. CORRECT.

24 Q. JUROR NO. 11?

25 A. CORRECT.

26 Q. JUROR NO. 12?

1 A. CORRECT.

2 Q. AS TO QUESTION NO. 8, WAS MARCINE BLOUGH ABLE TO

3 PERFORM HER ESSENTIAL JOB DUTIES WITH OR WITHOUT REASONABLE

4 ACCOMMODATIONS?

5 DO YOU VOTE YES, JUROR NO. 1?

6 A. CORRECT.

7 Q. JUROR NO. 2?

8 A. CORRECT.

9 Q. JUROR NO. 3?

10 A. CORRECT.

11 Q. JUROR NO. 4?

12 A. CORRECT.

13 Q. JUROR NO. 5?

14 A. CORRECT.

15 Q. JUROR NO. 6?

16 A. CORRECT.

17 Q. JUROR NO. 7?

18 A. CORRECT.

19 Q. JUROR NO. 8?

20 A. CORRECT.

21 Q. JUROR NO. 9?

22 A. CORRECT.

23 Q. JUROR NO. 10?

24 A. CORRECT.

25 Q. JUROR NO. 11?

26 A. CORRECT.

1 Q. JUROR NO. 12?

2 A. CORRECT.

3 Q. AS TO QUESTION NO. 9, DID MENLO COLLEGE DISCHARGE

4 MARCINE BLOUGH FROM ITS EMPLOYMENT?

5 DO YOU VOTE YES, JUROR NO. 1?

6 A. CORRECT.

7 Q. JUROR NO. 2?

8 A. CORRECT.

9 Q. JUROR NO. 3?

10 A. CORRECT.

11 Q. JUROR NO. 4?

12 A. INCORRECT.

13 Q. JUROR NO. 5?

14 A. CORRECT.

15 Q. JUROR NO. 6?

16 A. CORRECT.

17 Q. JUROR NO. 7?

18 A. CORRECT.

19 Q. JUROR NO. 8?

20 A. CORRECT.

21 Q. JUROR NO. 9?

22 A. CORRECT.

23 Q. JUROR NO. 10?

24 A. CORRECT.

25 Q. JUROR NO. 11?



26 A. CORRECT.

1277

1 Q. JUROR NO. 12?

2 A. CORRECT.

3 Q. AS TO QUESTION NO. 10, WAS MARCINE BLOUGH'S DISABILITY  
4 OR MEDICAL CONDITION A MOTIVATING REASON FOR THE DISCHARGE?

5 DO YOU VOTE YES, JUROR NO. 1?

6 A. CORRECT.

7 Q. JUROR NO. 2?

8 A. CORRECT.

9 Q. JUROR NO. 3?

10 A. CORRECT.

11 Q. JUROR NO. 4?

12 A. CORRECT.

13 Q. JUROR NO. 5?

14 A. CORRECT.

15 Q. JUROR NO. 6?

16 A. CORRECT.

17 Q. JUROR NO. 7?

18 A. CORRECT.

19 Q. JUROR NO. 8?

20 A. INCORRECT.

21 Q. JUROR NO. 9?

22 A. CORRECT.

23 Q. JUROR NO. 10?

24 A. CORRECT.  
25 Q. JUROR NO. 11?  
26 A. CORRECT.

1278

1 Q. JUROR NO. 12?  
2 A. CORRECT.  
3 Q. AS TO QUESTION NO. 11, WAS MARCINE BLOUGH HARMED BY  
4 THE COLLEGE DISCHARGING HER FROM EMPLOYMENT?  
5 DO YOU VOTE YES, JUROR NO. 1?  
6 A. CORRECT.  
7 Q. JUROR NO. 2?  
8 A. CORRECT.  
9 Q. JUROR NO. 3?  
10 A. CORRECT.  
11 Q. JUROR NO. 4?  
12 A. CORRECT.  
13 Q. JUROR NO. 5?  
14 A. CORRECT.  
15 Q. JUROR NO. 6?  
16 A. CORRECT.  
17 Q. JUROR NO. 7?  
18 A. CORRECT.  
19 Q. JUROR NO. 8?  
20 A. CORRECT.  
21 Q. JUROR NO. 9?

22 A. CORRECT.  
23 Q. JUROR NO. 10?  
24 A. CORRECT.  
25 Q. JUROR NO. 11?  
26 A. CORRECT.

1279

1 Q. JUROR NO. 12?  
2 A. CORRECT.  
3 Q. AS TO QUESTION NO. 12, WAS THE COLLEGE'S DECISION TO  
4 DISCHARGE A SUBSTANTIAL FACTOR IN CAUSING HARM TO MARCINE  
5 BLOUGH?  
6 DO YOU VOTE YES, JUROR NO. 1?  
7 A. CORRECT.  
8 Q. JUROR NO. 2?  
9 A. CORRECT.  
10 Q. JUROR NO. 3?  
11 A. CORRECT.  
12 Q. JUROR NO. 4?  
13 A. CORRECT.  
14 Q. JUROR NO. 5?  
15 A. CORRECT.  
16 Q. JUROR NO. 6?  
17 A. CORRECT.  
18 Q. JUROR NO. 7?  
19 A. CORRECT.

20 Q. JUROR NO. 8?  
21 A. CORRECT.  
22 Q. JUROR NO. 9?  
23 A. CORRECT.  
24 Q. JUROR NO. 10?  
25 A. CORRECT.  
26 Q. JUROR NO. 11?

1280

1 A. CORRECT.  
2 Q. JUROR NO. 12?  
3 A. CORRECT.  
4 Q. AS TO QUESTION NO. 13, DID YOU ANSWER YES TO  
5 QUESTION 10 ON SPECIAL VERDICT FORM NO. 2?  
6 DO YOU VOTE YES, JUROR NO. 1?  
7 A. CORRECT.  
8 Q. JUROR NO. 2?  
9 A. CORRECT.  
10 Q. JUROR NO. 3?  
11 A. CORRECT.  
12 Q. JUROR NO. 4?  
13 A. CORRECT.  
14 Q. JUROR NO. 5?  
15 A. CORRECT.  
16 Q. JUROR NO. 6?  
17 A. CORRECT.

18 Q. JUROR NO. 7?  
19 A. INCORRECT.  
20 Q. JUROR NO. 8?  
21 A. CORRECT.  
22 Q. JUROR NO. 9?  
23 A. CORRECT.  
24 Q. JUROR NO. 10?  
25 A. CORRECT.  
26 Q. JUROR NO. 11?

1281

1 A. CORRECT.  
2 Q. JUROR NO. 12?  
3 A. CORRECT.  
4 Q. AS TO QUESTION 14, DID THE COLLEGE FAIL TO TAKE  
5 REASONABLE STEPS TO PREVENT THE UNLAWFUL DISCRIMINATION?  
6 DO YOU VOTE YES, JUROR NO. 1?  
7 THE COURT: EXCUSE ME. WE HAVE A QUESTION?  
8 ATRJ08: I'M SORRY. I MISSTATED MY ANSWER TO THE  
9 QUESTION. IT SHOULD HAVE BEEN INCORRECT.  
10 THE COURT: I THINK MAYBE WE SHOULD GO BACK AND  
11 RE-POLL ON QUESTION 13.  
12 ATRJ08: SORRY ABOUT THAT.  
13 THE COURT: IT'S NOT A PROBLEM. THANK YOU FOR LETTING  
14 ME KNOW. LET'S TAKE THAT ONE OVER AGAIN ON NUMBER 13, AND  
15 THAT'S EXACTLY WHAT I WANTED. AT THE END OF THE DAY, WE'D HAVE

16 TO START WAY OVER.

17 OKAY. TRJ01, WE'RE GOING TO START WITH YOU AGAIN.

18 LET'S REREAD THE QUESTION.

19 THE CLERK: AS TO QUESTION NO. 13, DID YOU ANSWER YES

20 TO QUESTION 10 ON SPECIAL VERDICT FORM NO. 2?

21 DO YOU VOTE YES, JUROR NO. 1?

22 A. CORRECT.

23 Q. JUROR NO. 2?

24 A. CORRECT.

25 Q. JUROR NO. 3?

26 A. CORRECT.

1282

1 Q. JUROR NO. 4?

2 A. CORRECT.

3 Q. JUROR NO. 5?

4 A. CORRECT.

5 Q. JUROR NO. 6?

6 A. CORRECT.

7 Q. JUROR NO. 7?

8 A. CORRECT.

9 Q. JUROR NO. 8?

10 A. INCORRECT.

11 Q. JUROR NO. 9?

12 A. CORRECT.

13 Q. JUROR NO. 10?

14 A. CORRECT.

15 Q. JUROR NO. 11?

16 A. CORRECT.

17 Q. JUROR NO. 12?

18 A. CORRECT.

19 Q. AS TO QUESTION NO. 14, DID THE COLLEGE FAIL TO TAKE

20 REASONABLE STEPS TO PREVENT THE UNLAWFUL DISCRIMINATION?

21 DO YOU VOTE YES, JUROR NO. 1?

22 A. CORRECT.

23 Q. JUROR NO. 2?

24 A. CORRECT.

25 Q. JUROR NO. 3?

26 A. CORRECT.

1283

1 Q. JUROR NO. 4?

2 A. INCORRECT.

3 Q. JUROR NO. 5?

4 A. CORRECT.

5 Q. JUROR NO. 6?

6 A. CORRECT.

7 Q. JUROR NO. 7?

8 A. INCORRECT.

9 Q. JUROR NO. 8?

10 A. CORRECT.

11 Q. JUROR NO. 9?

12 A. CORRECT.

13 Q. JUROR NO. 10?

14 A. CORRECT.

15 Q. JUROR NO. 11?

16 A. CORRECT.

17 Q. JUROR NO. 12?

18 A. CORRECT.

19 Q. AS TO QUESTION NO. 15, WAS MS. BLOUGH HARMED BY THE  
20 COLLEGE'S FAILURE TO TAKE REASONABLE STEPS TO PREVENT THE  
21 UNLAWFUL DISCRIMINATION?

22 DO YOU VOTE YES, JUROR NO. 1?

23 A. CORRECT.

24 Q. JUROR NO. 2?

25 A. CORRECT.

26 Q. JUROR NO. 3?

1284

1 A. CORRECT.

2 Q. JUROR NO. 4?

3 A. CORRECT.

4 Q. JUROR NO. 5?

5 A. CORRECT.

6 Q. JUROR NO. 6?

7 A. CORRECT.

8 Q. JUROR NO. 7?

9 A. CORRECT.



10 Q. JUROR NO. 8?

11 A. CORRECT.

12 Q. JUROR NO. 9?

13 A. CORRECT.

14 Q. JUROR NO. 10?

15 A. CORRECT.

16 Q. JUROR NO. 11?

17 A. CORRECT.

18 Q. JUROR NO. 12?

19 A. CORRECT.

20 Q. AS TO QUESTION NO. 16, WAS THE FAILURE TO TAKE

21 REASONABLE STEPS TO PREVENT DISCRIMINATION A SUBSTANTIAL FACTOR

22 IN CAUSING HARM TO MS. BLOUGH?

23 DO YOU VOTE YES, JUROR NO. 1?

24 A. CORRECT.

25 Q. JUROR NO. 2?

26 A. CORRECT.

1285

1 Q. JUROR NO. 3?

2 A. CORRECT.

3 Q. JUROR NO. 4?

4 A. CORRECT.

5 Q. JUROR NO. 5?

6 A. CORRECT.

7 Q. JUROR NO. 6?

8 A. CORRECT.  
9 Q. JUROR NO. 7?  
10 A. CORRECT.  
11 Q. JUROR NO. 8?  
12 A. CORRECT.  
13 Q. JUROR NO. 9?  
14 A. CORRECT.  
15 Q. JUROR NO. 10?  
16 A. CORRECT.  
17 Q. JUROR NO. 11?  
18 A. CORRECT.  
19 Q. JUROR NO. 12?  
20 A. CORRECT.  
21 Q. AS TO QUESTION 17, WAS MENLO COLLEGE AN EMPLOYER?  
22 DO YOU VOTE YES, JUROR NO. 1?  
23 A. CORRECT.  
24 Q. JUROR NO. 2?  
25 A. CORRECT.  
26 Q. JUROR NO. 3?

1286

1 A. CORRECT.  
2 Q. JUROR NO. 4?  
3 A. CORRECT.  
4 Q. JUROR NO. 5?  
5 A. CORRECT.

6 Q. JUROR NO. 6?

7 A. CORRECT.

8 Q. JUROR NO. 7?

9 A. CORRECT.

10 Q. JUROR NO. 8?

11 A. CORRECT.

12 Q. JUROR NO. 9?

13 A. CORRECT.

14 Q. JUROR NO. 10?

15 A. CORRECT.

16 Q. JUROR NO. 11?

17 A. CORRECT.

18 Q. JUROR NO. 12?

19 A. CORRECT.

20 Q. AS TO QUESTION NO. 18, WAS MARCINE BLOUGH AN EMPLOYEE

21 OF MENLO COLLEGE?

22 DO YOU VOTE YES, JUROR NO. 1?

23 A. CORRECT.

24 Q. JUROR NO. 2?

25 A. CORRECT.

26 Q. JUROR NO. 3?

1287

1 A. CORRECT.

2 Q. JUROR NO. 4?

3 A. CORRECT.

4 Q. JUROR NO. 5?

5 A. CORRECT.

6 Q. JUROR NO. 6?

7 A. CORRECT.

8 Q. JUROR NO. 7?

9 A. CORRECT.

10 Q. JUROR NO. 8?

11 A. CORRECT.

12 Q. JUROR NO. 9?

13 A. CORRECT.

14 Q. JUROR NO. 10?

15 A. CORRECT.

16 Q. JUROR NO. 11?

17 A. CORRECT.

18 Q. JUROR NO. 12?

19 A. CORRECT.

20 Q. AS TO QUESTION NO. 19, DID MENLO COLLEGE KNOW THAT

21 MARCINE BLOUGH HAD A DISABILITY OR MEDICAL CONDITION?

22 DO YOU VOTE YES, JUROR NO. 1?

23 A. CORRECT.

24 Q. JUROR NO. 2?

25 A. CORRECT.

26 Q. JUROR NO. 3?

1 A. CORRECT.

2 Q. JUROR NO. 4?

3 A. CORRECT.

4 Q. JUROR NO. 5?

5 A. CORRECT.

6 Q. JUROR NO. 6?

7 A. CORRECT.

8 Q. JUROR NO. 7?

9 A. CORRECT.

10 Q. JUROR NO. 8?

11 A. CORRECT.

12 Q. JUROR NO. 9?

13 A. CORRECT.

14 Q. JUROR NO. 10?

15 A. CORRECT.

16 Q. JUROR NO. 11?

17 A. CORRECT.

18 Q. JUROR NO. 12?

19 A. CORRECT.

20 Q. AS TO QUESTION NO. 20, WAS MARCINE BLOUGH ABLE TO

21 PERFORM THE ESSENTIAL JOB DUTIES WITH OR WITHOUT REASONABLE

22 ACCOMMODATIONS?

23 DO YOU VOTE YES, JUROR NO. 1?

24 A. CORRECT.

25 Q. JUROR NO. 2?

26 A. CORRECT.

1 Q. JUROR NO. 3?

2 A. CORRECT.

3 Q. JUROR NO. 4?

4 A. CORRECT.

5 Q. JUROR NO. 5?

6 A. CORRECT.

7 Q. JUROR NO. 6?

8 A. CORRECT.

9 Q. JUROR NO. 7?

10 A. CORRECT.

11 Q. JUROR NO. 8?

12 A. CORRECT.

13 Q. JUROR NO. 9?

14 A. CORRECT.

15 Q. JUROR NO. 10?

16 A. CORRECT.

17 Q. JUROR NO. 11?

18 A. CORRECT.

19 Q. JUROR NO. 12?

20 A. CORRECT.

21 Q. AS TO QUESTION NO. 21, DID MENLO COLLEGE DISCHARGE

22 MARCINE BLOUGH FROM ITS EMPLOYMENT?

23 DO YOU VOTE YES, JUROR NO. 1?

24 A. CORRECT.

25 Q. JUROR NO. 2?

26 A. CORRECT.

1 Q. JUROR NO. 3?

2 A. CORRECT.

3 Q. JUROR NO. 4?

4 A. INCORRECT.

5 Q. JUROR NO. 5?

6 A. CORRECT.

7 Q. JUROR NO. 6?

8 A. CORRECT.

9 Q. JUROR NO. 7?

10 A. CORRECT.

11 Q. JUROR NO. 8?

12 A. CORRECT.

13 Q. JUROR NO. 9?

14 A. CORRECT.

15 Q. JUROR NO. 10?

16 A. CORRECT.

17 Q. JUROR NO. 11?

18 A. CORRECT.

19 Q. JUROR NO. 12?

20 A. CORRECT.

21 Q. AS TO QUESTION NO. 22, WAS MARCINE BLOUGH'S DISABILITY

22 OR MEDICAL CONDITION A MOTIVATING REASON FOR THE DISCHARGE?

23 DO YOU VOTE YES, JUROR NO. 1?

24 A. CORRECT.

25 Q. JUROR NO. 2?

26 A. CORRECT.

1291

1 Q. JUROR NO. 3?

2 A. CORRECT.

3 Q. JUROR NO. 4?

4 A. CORRECT.

5 Q. JUROR NO. 5?

6 A. CORRECT.

7 Q. JUROR NO. 6?

8 A. CORRECT.

9 Q. JUROR NO. 7?

10 A. CORRECT.

11 Q. JUROR NO. 8?

12 A. INCORRECT.

13 Q. JUROR NO. 9?

14 A. CORRECT.

15 Q. JUROR NO. 10?

16 A. CORRECT.

17 Q. JUROR NO. 11?

18 A. CORRECT.

19 Q. JUROR NO. 12?

20 A. CORRECT.

21 Q. AS TO QUESTION NO. 23, WAS MARCINE BLOUGH HARMED BY

22 THE COLLEGE DISCHARGING HER FROM HER EMPLOYMENT?



23 DO YOU VOTE YES, JUROR NO. 1?  
24 A. CORRECT.  
25 Q. JUROR NO. 2?  
26 A. CORRECT.

1292

1 Q. JUROR NO. 3?  
2 A. CORRECT.  
3 Q. JUROR NO. 4?  
4 A. CORRECT.  
5 Q. JUROR NO. 5?  
6 A. CORRECT.  
7 Q. JUROR NO. 6?  
8 A. CORRECT.  
9 Q. JUROR NO. 7?  
10 A. CORRECT.  
11 Q. JUROR NO. 8?  
12 A. CORRECT.  
13 Q. JUROR NO. 9?  
14 A. CORRECT.  
15 Q. JUROR NO. 10?  
16 A. CORRECT.  
17 Q. JUROR NO. 11?  
18 A. CORRECT.  
19 Q. JUROR NO. 12?  
20 A. CORRECT.

21 Q. AS TO QUESTION NO. 24, WAS THE COLLEGE'S DECISION TO  
22 DISCHARGE A SUBSTANTIAL FACTOR IN CAUSING HARM TO MARCINE  
23 BLOUGH?

24 DO YOU VOTE YES, JUROR NO. 1?

25 A. CORRECT.

26 Q. JUROR NO. 2?

1293

1 A. CORRECT.

2 Q. JUROR NO. 3?

3 A. CORRECT.

4 Q. JUROR NO. 4?

5 A. CORRECT.

6 Q. JUROR NO. 5?

7 A. CORRECT.

8 Q. JUROR NO. 6?

9 A. CORRECT.

10 Q. JUROR NO. 7?

11 A. CORRECT.

12 Q. JUROR NO. 8?

13 A. CORRECT.

14 Q. JUROR NO. 9?

15 A. CORRECT.

16 Q. JUROR NO. 10?

17 A. CORRECT.

18 Q. JUROR NO. 11?

19 A. CORRECT.

20 Q. JUROR NO. 12?

21 A. CORRECT.

22 Q. AS TO QUESTION NO. 25, DID YOU ANSWER YES TO

23 QUESTION NO. 4, QUESTION NO. 12, QUESTION NO. 16 AND/OR

24 QUESTION NO. 24?

25 DO YOU VOTE YES, JUROR NO. 1?

26 A. CORRECT.

1294

1 Q. JUROR NO. 2?

2 A. CORRECT.

3 Q. JUROR NO. 3?

4 A. CORRECT.

5 Q. JUROR NO. 4?

6 A. CORRECT.

7 Q. JUROR NO. 5?

8 A. CORRECT.

9 Q. JUROR NO. 6?

10 A. CORRECT.

11 Q. JUROR NO. 7?

12 A. CORRECT.

13 Q. JUROR NO. 8?

14 A. CORRECT.

15 Q. JUROR NO. 9?

16 A. CORRECT.

17 Q. JUROR NO. 10?

18 A. CORRECT.

19 Q. JUROR NO. 11?

20 A. CORRECT.

21 Q. JUROR NO. 12?

22 A. CORRECT.

23 Q. AS TO DAMAGES QUESTION NO. 1, WHAT ARE MARCINE

24 BLOUGH'S DAMAGES? SUBSECTION A, PAST ECONOMIC LOSS:

25 DO YOU AWARD \$150,180, JUROR NO. 1?

26 A. INCORRECT.

1295

1 Q. JUROR NO. 2?

2 A. CORRECT.

3 Q. JUROR NO. 3?

4 A. CORRECT.

5 Q. JUROR NO. 4?

6 A. CORRECT.

7 Q. JUROR NO. 5?

8 A. CORRECT.

9 Q. JUROR NO. 6?

10 A. CORRECT.

11 Q. JUROR NO. 7?

12 A. CORRECT.

13 Q. JUROR NO. 8?

14 A. CORRECT.

15 Q. JUROR NO. 9?  
16 A. CORRECT.  
17 Q. JUROR NO. 10?  
18 A. CORRECT.  
19 Q. JUROR NO. 11?  
20 A. INCORRECT.  
21 Q. JUROR NO. 12?  
22 A. CORRECT.  
23 Q. SUBSECTION B, FUTURE ECONOMIC LOSS:  
24 DO YOU AWARD \$355,486, JUROR NO. 1?  
25 A. INCORRECT.  
26 Q. JUROR NO. 2?

1296

1 A. CORRECT.  
2 Q. JUROR NO. 3?  
3 A. CORRECT.  
4 Q. JUROR NO. 4?  
5 A. CORRECT.  
6 Q. JUROR NO. 5?  
7 A. CORRECT.  
8 Q. JUROR NO. 6?  
9 A. CORRECT.  
10 Q. JUROR NO. 7?  
11 A. CORRECT.  
12 Q. JUROR NO. 8?

13 A. CORRECT.  
14 Q. JUROR NO. 9?  
15 A. CORRECT.  
16 Q. JUROR NO. 10?  
17 A. CORRECT.  
18 Q. JUROR NO. 11?  
19 A. INCORRECT.  
20 Q. JUROR NO. 12?  
21 A. CORRECT.  
22 Q. AS TO SUBSECTION C, PAST EMOTIONAL DISTRESS:  
23 DO YOU AWARD \$50,000, JUROR NO. 1?  
24 A. INCORRECT.  
25 Q. JUROR NO. 2?  
26 A. CORRECT.

1297

1 Q. JUROR NO. 3?  
2 A. CORRECT.  
3 Q. JUROR NO. 4?  
4 A. CORRECT.  
5 Q. JUROR NO. 5?  
6 A. INCORRECT.  
7 Q. JUROR NO. 6?  
8 A. CORRECT.  
9 Q. JUROR NO. 7?  
10 A. CORRECT.

11 Q. JUROR NO. 8?  
12 A. CORRECT.  
13 Q. JUROR NO. 9?  
14 A. CORRECT.  
15 Q. JUROR NO. 10?  
16 A. CORRECT.  
17 Q. JUROR NO. 11?  
18 A. INCORRECT.  
19 Q. JUROR NO. 12?  
20 A. CORRECT.  
21 Q. AS TO SUBSECTION D, FUTURE EMOTIONAL DISTRESS:  
22 DO YOU AWARD \$31,200, JUROR NO. 1?  
23 A. INCORRECT.  
24 Q. JUROR NO. 2?  
25 A. CORRECT.  
26 Q. JUROR NO. 3?

1298

1 A. CORRECT.  
2 Q. JUROR NO. 4?  
3 A. CORRECT.  
4 Q. JUROR NO. 5?  
5 A. CORRECT.  
6 Q. JUROR NO. 6?  
7 A. CORRECT.  
8 Q. JUROR NO. 7?

9 A. CORRECT.  
10 Q. JUROR NO. 8?  
11 A. CORRECT.  
12 Q. JUROR NO. 9?  
13 A. CORRECT.  
14 Q. JUROR NO. 10?  
15 A. CORRECT.  
16 Q. JUROR NO. 11?  
17 A. INCORRECT.  
18 Q. JUROR NO. 12?  
19 A. CORRECT.  
20 Q. AS TO THE TOTAL AMOUNT:  
21 DO YOU AWARD \$586,866, JUROR NO. 1?  
22 A. INCORRECT.  
23 Q. JUROR NO. 2?  
24 A. CORRECT.  
25 Q. JUROR NO. 3?  
26 A. CORRECT.

1299

1 Q. JUROR NO. 4?  
2 A. CORRECT.  
3 Q. JUROR NO. 5?  
4 A. INCORRECT.  
5 Q. JUROR NO. 6?  
6 A. CORRECT.



7 Q. JUROR NO. 7?

8 A. CORRECT.

9 Q. JUROR NO. 8?

10 A. CORRECT.

11 Q. JUROR NO. 9?

12 A. CORRECT.

13 Q. JUROR NO. 10?

14 A. CORRECT.

15 Q. JUROR NO. 11?

16 A. INCORRECT.

17 Q. JUROR NO. 12?

18 A. CORRECT.

19 Q. AS TO QUESTION NO. 2, DO YOU FIND BY CLEAR AND

20 CONVINCING EVIDENCE THAT MENLO COLLEGE ENGAGED IN THE CONDUCT

21 WITH MALICE, OPPRESSION OR FRAUD?

22 DO YOU VOTE YES, JUROR NO. 1?

23 A. CORRECT.

24 Q. JUROR NO. 2?

25 A. CORRECT.

26 Q. JUROR NO. 3?

1300

1 A. CORRECT.

2 Q. JUROR NO. 4?

3 A. INCORRECT.

4 Q. JUROR NO. 5?

5 A. CORRECT.

6 Q. JUROR NO. 6?

7 A. CORRECT.

8 Q. JUROR NO. 7?

9 A. CORRECT.

10 Q. JUROR NO. 8?

11 A. CORRECT.

12 Q. JUROR NO. 9?

13 A. CORRECT.

14 Q. JUROR NO. 10?

15 A. CORRECT.

16 Q. JUROR NO. 11?

17 A. CORRECT.

18 Q. JUROR NO. 12?

19 A. CORRECT.

20 THE COURT: ALL RIGHT. THANK YOU. I WILL ORDER THAT  
21 THE VERDICT BE RECORDED.

22 COUNSEL, WILL YOU WAIVE THE 24-HOUR REQUIREMENT FOR  
23 RECORDING OF THE VERDICT?

24 MR. LEBOWITZ: YES, YOUR HONOR.

25 THE COURT: ALL RIGHT.

26 COUNSEL, WOULD YOU APPROACH?

1301

1 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

2 THE COURT: LADIES AND GENTLEMEN, BASED UPON YOUR VOTE

3 FINDING THAT BY CLEAR AND CONVINCING EVIDENCE THAT MENLO COLLEGE  
4 ACTED WITH MALICE, OPPRESSION AND FRAUD, I NEED YOU TO COME BACK  
5 TOMORROW MORNING TO HEAR EVIDENCE ON THE AMOUNT OF PUNITIVE  
6 DAMAGE THAT YOU AWARD, IF ANY, FOR BAD CONDUCT.

7 I EXPECT THAT THIS WILL TAKE TOMORROW AND YOU WILL BE  
8 DONE AT THE END OF THE DAY. BUT, AGAIN, THE DELIBERATIONS ARE  
9 IN YOUR HANDS AND IT IS YOUR DECISION ON HOW MUCH TIME YOU  
10 SPEND. I WOULD EXPECT THAT THE PRESENTATION OF THE EVIDENCE  
11 WILL TAKE A VERY SHORT TIME. WE'RE GOING TO WORK ON  
12 STREAMLINING IT THIS AFTERNOON. I HAVE A MATTER AT 9:00, SO I'M  
13 GOING TO HAVE YOU COME BACK AT 9:15 TOMORROW MORNING.

14 AND I KNOW SOME OF YOU MAY BE THINKING, WHY DIDN'T SHE  
15 TELL US THIS? I'VE GIVEN IT A LOT OF THOUGHT OVER THE YEARS,  
16 WHEN -- IT'S WHAT WE CALL A BIFURCATED OR CUT IN TWO PARTS  
17 TRIAL. I ALWAYS FEAR THAT IF YOU KNOW THAT A CERTAIN WAY OF  
18 VOTING MAY CAUSE YOU TO COME BACK AND ANOTHER WAY OF VOTING MAY  
19 LET YOU GO, THAT YOU MIGHT VOTE OUT OF SELF-INTEREST. I DON'T  
20 SAY THAT AS TO YOU AS THESE 12 JURORS, BUT OVERALL I JUST NEED  
21 TO BE SURE THAT YOU'RE NEVER MOTIVATED BY WANTING TO GO HOME.

22 AS I SAY, I DON'T SAY THAT TO OFFEND ANY OF YOU. IT'S  
23 BEEN MY LONGSTANDING PRACTICE. IF YOU'RE OFFENDED BY THAT, I  
24 APOLOGIZE. THAT'S NOT MY INTENTION. THAT'S WHY I'M EXPLAINING  
25 TO YOU NOW WHY I DIDN'T TELL YOU THAT A YES VOTE WOULD BRING YOU  
26 BACK FOR ANOTHER DAY.

1 SO WITH THAT, LADIES AND GENTLEMEN, I STILL NEED TO  
2 TELL YOU YOU'RE NOT ALLOWED TO TALK ABOUT THE CASE TO ANYONE.  
3 YOU ARE NOT YET DISCHARGED. IF I THOUGHT WE COULD SPEED THINGS  
4 ALONG BY GOING RIGHT INTO THAT EVIDENCE NOW I WOULD, BUT I THINK  
5 THAT IN CONSULTATION WITH THE ATTORNEYS WE CAN MAKE THIS MUCH  
6 MORE EFFICIENT TOMORROW MORNING. AND TOMORROW MORNING WHEN YOU  
7 COME IN YOU WILL RECEIVE THE EVIDENCE. YOU WILL HEAR ONLY  
8 CLOSING ARGUMENTS FROM COUNSEL, BRIEF JURY INSTRUCTIONS ON WHAT  
9 YOUR JOB IS AND THEN YOU WILL BE DELIBERATING. I WOULD EXPECT  
10 THAT BY NOON THIS WILL BE IN YOUR HANDS.

11 AS A GROUP, IF YOU WANT TO BRING YOUR LUNCH OR TO PLAN  
12 TO TAKE A SHORT LUNCH SO THAT YOU CAN MAKE USE OF THE DAY, I'LL  
13 LET YOU THINK ABOUT THAT. I'M NOT GOING TO LET YOU DISCUSS IT  
14 AMONG YOURSELVES, BUT YOU KNOW WHAT THE LUNCH SITUATION IN TOWN  
15 IS. A 20-MINUTE OR HALF-HOUR BREAK ALLOWS EVERYONE TO GO BUY A  
16 SANDWICH, IF YOU NEED TO DO THAT. IF YOU FIND THAT AN HOUR  
17 LUNCH SUITS YOU BECAUSE YOU NEED FRESH AIR, THAT'S YOUR CHOICE.  
18 DEPUTY HENNESSY WILL BE PREPARED TO DO WHATEVER YOU NEED AND WE  
19 WILL ALL BE HERE THROUGHOUT THE DAY AS LONG AS YOU NEED US.

20 WITH THAT, LADIES AND GENTLEMEN, I'M GOING TO EXCUSE  
21 YOU FOR THE DAY. I'M GOING TO HAVE YOU LEAVE YOUR NOTEBOOKS.  
22 YOU CAN LEAVE YOUR VERDICT FORMS. JUST TURN THEM DOWN. NO  
23 ONE'S GOING TO LOOK AT THEM. DEPUTY HENNESSEY WILL BE CHARGED  
24 WITH THEM. I JUST CAN'T LET YOU TAKE ANYTHING HOME. AND WE  
25 WILL COME BACK IN TOMORROW. YOU'LL BE TAKING YOUR SEATS HERE IN  
26 THE JURY BOX FOR THE FURTHER PRESENTATION OF EVIDENCE.

1 WITH THAT, LADIES AND GENTLEMEN, HAVE A GOOD DAY AND I  
2 WILL SEE YOU TOMORROW.

3 (WHEREUPON, THE JURORS EXITED THE COURTROOM.)

4 THE COURT: WE'RE BACK ON THE RECORD OUTSIDE THE  
5 PRESENCE OF THE JURY.

6 COUNSEL, I DON'T KNOW IF THERE'S ANYTHING ELSE YOU  
7 NEED FOR THE RECORD. WE WILL DISCUSS THE NEXT PHASE BEFORE YOU  
8 LEAVE. I WANT TO HAVE THOSE JURY INSTRUCTIONS NAILED DOWN. IS  
9 THERE ANYTHING ELSE FOR THE RECORD, HOWEVER?

10 MR. VARTAIN: NO.

11 MR. LEBOWITZ: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. WE'LL GO OFF THE RECORD.

13 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

14

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

2 DECEMBER 19, 2008 A.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. WE'RE ARE ON THE RECORD IN  
4 BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE PRESENT.

5 GOOD MORNING, LADIES AND GENTLEMEN. ALL JURORS ARE  
6 HERE.

7 WE'VE BEEN WORKING HARD THIS MORNING TO GET THINGS  
8 STREAMLINED. I KNOW IT SEEMS LIKE WE'VE BEEN WASTING YOUR TIME,  
9 AND I APOLOGIZE. I THINK WE'RE GOING TO MOVE RIGHT ALONG HERE  
10 AND, HOPEFULLY, THE TIME WE SPENT IS GOING TO SHORTEN YOUR TIME.  
11 THAT'S ALWAYS WHAT WE TRY TO DO.

12 LADIES AND GENTLEMEN, AS I EXPLAINED TO YOU YESTERDAY,  
13 BASED UPON YOUR RULING IN THE VERDICT YESTERDAY, NOW WE'LL HEAR  
14 EVIDENCE FROM BOTH SIDES ABOUT THE FINANCIAL CONDITION OF MENLO  
15 COLLEGE SO THAT YOU CAN TAKE PART IN THE NEXT PHASE OF THE  
16 TRIAL. THERE IS A SINGLE JURY INSTRUCTION. I'M GOING TO READ  
17 THAT TO YOU AFTER YOU HEAR THIS EVIDENCE. AND I THINK WE'RE  
18 GOING TO GET RIGHT DOWN TO IT. SO WE'RE GOING TO START WITH  
19 MR. LEBOWITZ.

20 DO YOU HAVE EVIDENCE OR A WITNESS TO CALL?

21 MR. LEBOWITZ: YES, WE DO, YOUR HONOR. THANK YOU.

22 THE COURT: GO AHEAD.

23 MR. LEBOWITZ: PLAINTIFF CALLS UNDER EVIDENCE CODE

24 776, PRESIDENT TIM HAIGHT.

25 MR. VARTAIN: MR. HAIGHT IS UNDER SUBPOENA. HE JUST

26 ARRIVED. HE'S IN THE CONFERENCE ROOM.

1305

1 THE COURT: THANK YOU.

2 MR. VARTAIN: YOUR HONOR, MAY I MAKE A NOTE ABOUT HIS  
3 AVAILABILITY? DID YOU MAKE A NOTE IN CHAMBERS ABOUT HIS -- HE  
4 HAS A FLIGHT BACK.

5 THE COURT: YES, I UNDERSTAND THAT. THAT SHOULD NOT  
6 BE A PROBLEM.

7 PRESIDENT HAIGHT, IF YOU'D COME FORWARD TO THE WITNESS  
8 STAND, PLEASE, AND STAND TO BE SWORN.

9 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

10 (WHEREUPON, THE WITNESS WAS SWORN.)

11 THE WITNESS: I DO.

12 THE CLERK: PLEASE BE SEATED.

13

14 TIM HAIGHT,

15 DULY SWORN, TESTIFIED AS FOLLOWS:

16

17 DIRECT EXAMINATION PURSUANT TO EVIDENCE CODE 776

18 BY MR. LEBOWITZ:

19 Q. GOOD MORNING, PRESIDENT HAIGHT.

20 A. GOOD MORNING.

21 Q. I UNDERSTAND YOU HAVE AN INJURED RIB, AND I'LL TRY NOT

22 TO --

23 A. IT'S BEEN A ROUGH DAY WITH MY DOG.

24 Q. I RE-INJURED MY TOE LAST NIGHT, SO I'LL BE HOBBLING

25 AROUND AND YOU CAN BE LIMPING AROUND.

26 AS WE ESTABLISHED EARLIER IN THE TRIAL, YOU ARE THE

1306

1 CURRENT PRESIDENT OF MENLO COLLEGE, CORRECT?

2 A. YES.

3 Q. AND, THAT IS, YOU ARE THE CHIEF EXECUTIVE OFFICER OF

4 THE COLLEGE?

5 A. YES.

6 Q. AND IN THAT POSITION YOU ARE -- WOULD IT BE FAIR TO

7 SAY THAT YOU ARE FULLY AWARE OF THE FINANCIAL STATUS AND

8 CONDITION OF THE COLLEGE?

9 A. OVERALL, YES.

10 Q. DID YOU BRING WITH YOU THE IRS FORM 990?

11 A. YES.

12 Q. AND CAN YOU EXPLAIN FOR THE JURY WHAT THE IRS FORM 990

13 IS, AS BEST YOU KNOW.

14 A. I'M NOT AN ACCOUNTANT. MY TRAINING IS IN FINANCE, AND

15 MORE OF A CORPORATE. IT'S A STATEMENT THAT IS REQUIRED ON

16 REVENUES, I THINK, AND EXPENSES AND ASSETS THAT'S FILED EACH

17 YEAR BY NON-PROFITS.

18 Q. AND THE FORM 990 THAT YOU REFERRED TO TO REFRESH YOUR

19 RECOLLECTION TO BE PREPARED FOR TODAY, IS THAT THE MOST CURRENT



20 FORM 990 FROM THE COLLEGE?

21 A. YES, IT IS.

22 Q. WHEN WAS THAT FILED?

23 A. I DON'T KNOW. IT WAS FOR THIS YEAR.

24 Q. OKAY. FOR THE YEAR 2008?

25 A. 2007 TO -8.

26 Q. SO AM I CORRECT THAT THE FISCAL YEAR THAT THIS IS

1307

1 ACCOUNTING FOR IS JULY 1, 2007 THROUGH JUNE 30, 2008?

2 A. CORRECT.

3 Q. AND, AGAIN, THAT'S THE MOST CURRENT FORM 990 THAT THE

4 COLLEGE HAS?

5 A. CORRECT.

6 Q. AND ON THAT FORM IT REFLECTS ON LINE 12 THAT THE

7 REVENUES FOR THE COLLEGE IN THAT YEAR WERE -- LINE 12, AGAIN,

8 \$24,534,446; IS THAT CORRECT? LINE 12?

9 A. I'M WONDERING IF I HAVE THE -- MAYBE I HAVE AN EARLIER

10 ONE. I'M SORRY. IT WAS THE YEAR BEFORE.

11 Q. SO I'LL READ IT AGAIN. 24,534,446?

12 A. THAT IS CORRECT.

13 Q. AND THE EXPENSES, WHICH ARE LINE 17, ARE 24,079,520;

14 IS THAT CORRECT?

15 A. THAT IS CORRECT.

16 Q. AND THEN IF YOU LOOK AT LINE 18, THERE'S AN EXCESS

17 LINE. DO YOU SEE THAT?

18 A. YES, I DO.

19 Q. AND THE EXCESS OF THE REVENUE VERSUS EXPENSES IS

20 \$454,926?

21 A. THAT IS CORRECT.

22 Q. OKAY.

23 AND THEN IF YOU LOOK ON LINE 21, LINE 21 SHOWS THE NET

24 ASSETS OF THE COLLEGE, CORRECT?

25 A. YES, IT DOES.

26 Q. AND ON THIS MOST CURRENT IRS FILING, THE NET ASSETS

1308

1 AMOUNT TO \$12,217,206; IS THAT CORRECT?

2 A. THAT IS CORRECT.

3 Q. I WOULD LIKE YOU TO TURN TO WHAT'S PAGE 33 OF THIS

4 FORM. I COULD HELP, IF YOU'D LIKE.

5 A. WOULD YOU?

6 MR. LEBOWITZ: MAY I APPROACH?

7 Q. OKAY. THE NUMBERING STARTS AGAIN AFTER THOSE

8 SCHEDULES. WE'RE LOOKING AT WHAT'S MARKED AS PAGE 33, AND IF

9 YOU LOOK AT -- I THINK IT'S CALLED STATEMENT 12, IT'S THE FINAL

10 ACCOUNTING ON THAT PAGE. DO YOU SEE THAT?

11 A. YES.

12 Q. AND CAN YOU DESCRIBE WHAT THAT TABLE SHOWS.

13 A. LET'S SEE. THEY WOULD BE -- I THINK THIS WOULD BE THE

14 EQUITIES AT THAT TIME, WHICH WOULD BE THE INVESTMENTS OF THE

15 COLLEGE, I BELIEVE.

16 Q. THESE ARE THE SECURITIES, INVESTMENTS AND SUCH THAT  
17 THE COLLEGE HOLDS; IS THAT CORRECT?

18 A. THE VALUE AT THAT TIME. YES.

19 Q. AND IT SHOWS THE FAIR MARKET VALUE, FMV, CORRECT?

20 A. FAIR MARKET VALUE, CORRECT.

21 Q. OKAY.

22 AND AS OF THE FILING OF THIS STATEMENT, THE FAIR  
23 MARKET VALUE OF THOSE SECURITIES, ASSETS WERE \$9,235,048; IS  
24 THAT CORRECT?

25 A. CORRECT.

26 Q. OKAY.

1309

1 NOW, THAT 9 MILLION IS PART OF THE 12 MILLION THAT I  
2 ASKED YOU ABOUT A MOMENT AGO, THAT'S ON PAGE 1, LINE 21, THE  
3 TOTAL NET ASSETS?

4 A. I DON'T KNOW HOW TO CALCULATE THAT.

5 Q. OKAY.

6 I DON'T WANT TO MISREPRESENT THE CONDITION OF THE  
7 COLLEGE. I WANT TO GIVE YOU A FAIR OPPORTUNITY TO --

8 MR. VARTAIN: OBJECTION. ARGUMENTATIVE.

9 THE COURT: SUSTAINED.

10 MR. LEBOWITZ: Q. OKAY. SO MY POINT IS, I'M NOT --  
11 IT'S ALL RIGHT. I'LL LEAVE IT FOR LATER.

12 NOW, IN ADDITION TO THE FORM 990 THAT'S IN FRONT OF  
13 YOU, ISN'T IT TRUE THAT THE COLLEGE HAS ALSO IN THE PAST SEVERAL

14 MONTHS RECEIVED A SUBSTANTIAL BEQUEST?

15 A. THAT IS CORRECT.

16 Q. AND THAT BEQUEST WAS FROM A FOUNDATION IN THE AMOUNT  
17 OF \$21.3 MILLION?

18 A. I DON'T BELIEVE IT WAS A FOUNDATION. IT WAS FROM AN  
19 ESTATE. I BELIEVE IT WAS A CHARITABLE REMAINDER OF THE BELOUGH  
20 FAMILY.

21 Q. AND THAT WAS A DIRECT BEQUEST TO THE COLLEGE?

22 A. IT WAS A BEQUEST THAT NAMED THE COLLEGE AND THE HIGH  
23 SCHOOL.

24 Q. AND OF THE \$21.3 MILLION, IS THERE AN ALLOCATION  
25 BETWEEN THE COLLEGE AND THE HIGH SCHOOL?

26 A. EVENTUALLY, THE 21.3 MILLION MINUS, I THINK IT WAS 3.7

1310

1 MILLION, WHICH WAS SET ASIDE FOR JOINT IMPROVEMENTS OF THE  
2 CAMPUS.

3 Q. OKAY.

4 A. WHATEVER THAT NETS OUT TO BE.

5 Q. WHATEVER THAT NETS OUT TO BE IS FOR THE COLLEGE?

6 A. THAT IS CORRECT.

7 MR. LEBOWITZ: THANK YOU.

8 I HAVE NO MORE QUESTIONS, YOUR HONOR.

9 THE COURT: CROSS-EXAMINATION?

10 MR. VARTAIN: YES, YOUR HONOR. THANK YOU.

11

12 CROSS-EXAMINATION

13 BY MR. VARTAIN:

14 Q. PRESIDENT HAIGHT, MR. LEBOWITZ ASKED YOU QUESTIONS  
15 HAVING TO DO WITH THE EXCESS AS OF JUNE 30, 2008, WITH AN EXCESS  
16 OF 454,000; THAT IS, THE REVENUES OVER THE EXPENSES. I'LL WAIT  
17 TILL YOU CATCH UP.

18 I GUESS THE QUESTION I'LL ASK YOU -- MAYBE YOU DON'T  
19 NEED THAT DOCUMENT -- IS WHAT'S THE CURRENT, AT THIS POINT IN  
20 TIME, STATUS OF THE FINANCIALS OF THE COLLEGE, IN TERMS OF ITS  
21 OPERATING BUDGET?

22 A. WELL, THE OPERATING BUDGET, WE'RE LOOKING AT THIS  
23 POINT IN TIME PROBABLY ABOUT 3-, \$400,000 SHORTFALL, SUBJECT TO  
24 WHAT HAPPENS IN THE SPRING SEMESTER WITH OUR STUDENTS.

25 Q. WHEN YOU SAY SHORTFALL, DO YOU MEAN RED INK, AS IN  
26 DEFICIT?

1311

1 A. YES. IT'S THE OPERATING INCOME WE WOULD HAVE. RIGHT  
2 NOW, WE'RE PROJECTING A SHORTFALL OF A COUPLE HUNDRED THOUSAND.

3 Q. OKAY.

4 AND WHEN YOU SAY THAT IT -- HOW MUCH OF THAT WILL  
5 STILL BE RED INK IN THE SPRING, THAT HAS TO DO WITH HOW MANY  
6 STUDENTS ENROLL AND PAY THEIR TUITION IN THE SPRING?

7 A. YEAH. OUR FORECAST, IF I MAY, FOR THIS YEAR WAS A  
8 DEFICIT OF \$86,000 FOR THE YEAR. OUR ENROLLMENTS WEREN'T WHAT  
9 WE WERE EXPECTING. I THINK WE WERE FORECASTING 616 STUDENTS.

10 WE ENDED UP WITH 592, WHICH CAUSED US TO HAVE THIS SHORTFALL FOR  
11 THE FALL OF A FEW HUNDRED THOUSAND DOLLARS. AND SO THE SPRING,  
12 WE TYPICALLY DO A FORECAST USING 90 PERCENT OF THE FALL FOR THE  
13 SPRING. AND SINCE OUR FALL NUMBERS WERE DOWN, OUR SPRING  
14 NUMBERS WERE LIKELY TO BE DOWN. WE HAVE TO WAIT UNTIL JANUARY.

15 Q. SO YOU'RE PROJECTING EVEN A GREATER AMOUNT OF RED INK?

16 A. WE'LL HAVE A LOSS FOR THE YEAR. YES.

17 Q. OKAY.

18 NOW, WOULD YOU EXPLAIN TO THE JURY WHAT A NON-PROFIT  
19 CORPORATION IS, AS YOU UNDERSTAND IT, AS YOU MANAGE THE COLLEGE.

20 A. WELL, THE MOTIVE IS NOT TO MAKE A PROFIT. OUR MOTIVE  
21 IS BASICALLY WE PROVIDE A SERVICE, EDUCATING STUDENTS. SO WHAT  
22 WE TRY TO DO IS TRY TO RAISE REVENUE TO CARRY OUT THAT MISSION.

23 Q. AND IS IT THE CASE THAT THE COLLEGE IS REQUIRED TO AND  
24 DOES SPEND ALL OF ITS MONEY EXCLUSIVELY ON THE EDUCATIONAL  
25 MISSION OF THE COLLEGE?

26 A. ON THE MISSION OF THE COLLEGE. THAT'S CORRECT.

1312

1 Q. ARE THERE ANY SHAREHOLDERS? ARE THERE ANY TRUSTEES  
2 WHO DERIVE INCOME FROM THE COLLEGE?

3 A. NO, QUITE THE OPPOSITE. IN A CORPORATE SETTING YOU'D  
4 HAVE -- THE BOARD OF DIRECTORS WOULD GET FEES. AND MOST PRIVATE  
5 INSTITUTIONS, COLLEGES, THE BOARD OF TRUSTEES ACTUALLY  
6 CONTRIBUTE TO MAKE UP THE SHORTFALL.

7 Q. SO YOUR BOARD OF DIRECTORS, THOSE PEOPLE ON THE BOARD

8 ARE TOTAL VOLUNTEERS. IN FACT, THEY ACTUALLY DONATE MONEY TO  
9 THE COLLEGE?

10 A. THEY DO DONATE MONEY.

11 Q. DO THEY GET PAID ANYTHING BY THE COLLEGE?

12 A. NO.

13 Q. GIVE THE JURY SOME OF THE ITEMS FOR WHICH THE ASSETS  
14 OF THE COLLEGE, WHICH MR. LEBOWITZ IS ASKING THE JURY TO AWARD  
15 SOME OF THOSE ASSETS TO BE PAID TO MS. BLOUGH --

16 MR. LEBOWITZ: OBJECTION. ARGUMENTATIVE.

17 THE COURT: I HAVEN'T HEARD THE WHOLE QUESTION YET.

18 MR. VARTAIN: Q. GIVE THE JURY AN EXAMPLE, SOME  
19 EXAMPLES OF HOW THOSE ASSETS ARE SPENT BY THE COLLEGE.

20 A. BASICALLY, WHAT WE DO, AS MANY OF THE SMALLER PRIVATE  
21 INSTITUTIONS, WE GIVE DISCOUNTS TO THE STUDENT. TYPICALLY, AT A  
22 COLLEGE LIKE OURS, THE DISCOUNT WOULD BE AROUND 40 PERCENT OF  
23 OUR TUITION THAT WE WOULD TAKE OFF. SO --

24 Q. LET ME JUST INTERRUPT YOU. WHAT IS THE ANNUAL  
25 TUITION -- LET'S CALL IT A STICKER PRICE -- WHAT'S THE STICKER  
26 PRICE ANNUAL TUITION AT MENLO COLLEGE RIGHT NOW?

1313

1 A. 30,500.

2 Q. OKAY.

3 AND NOW DOES THE COLLEGE GIVE SCHOLARSHIPS TO ITS  
4 STUDENTS, AND IF SO, WHAT'S THEN THE -- I FORGET. I HAVEN'T  
5 BOUGHT A CAR IN SO LONG -- WHAT'S THE BOTTOM NUMBER CALLED?

6 A. ROUGHLY 60 PERCENT OF -- 60, 61 PERCENT OF THE STICKER  
7 PRICE WOULD BE WHAT WE WOULD CHARGE STUDENTS, AND THAT'S BEEN  
8 PRETTY STABLE FOR THE LAST SEVERAL YEARS.

9 Q. SO WHO PAYS THE 40 PERCENT OF THE TUITION THAT YOU  
10 DON'T COLLECT FROM THE STUDENTS AND THEIR PARENTS?

11 A. IT COMES FROM OUR INVESTMENT FUNDS.

12 Q. SO THE INVESTMENT FUNDS THAT YOU JUST DESCRIBED TO  
13 MR. LEBOWITZ ARE USED TO GIVE THE SCHOLARSHIPS TO BOTH NEEDY  
14 STUDENTS AND THEIR PARENTS; IS THAT TRUE?

15 A. YES, BUT WE ALSO USE PART OF THE INCOME TO COVER THE  
16 SHORTFALL.

17 Q. OKAY.

18 SO WHEN YOU HAVE RED INK LIKE YOU HAVE NOW, YOU USE  
19 THOSE INVESTMENTS AND THE INCOME TO SMOOTH THINGS OUT; IS THAT  
20 WHAT YOU'RE SAYING?

21 A. WE TAKE FIVE PERCENT, IS WHAT WE DO, OUT OF THE  
22 ENDOWMENT OR OUT OF THE FUNDS TO PAY FOR THE SHORTFALL. SO WHEN  
23 WE LOOK AT THE NUMBERS THAT I THREW OUT AT YOU, THAT'S ASSUMING  
24 THAT WE HAVE THAT FIVE PERCENT AS A CONTRIBUTION TOWARDS THE  
25 REVENUES.

26 Q. OKAY.

1314

1 SO ARE ALL THE INVESTMENTS OF THE COLLEGE USED  
2 EXCLUSIVELY TO GENERATE RETURNS TO FURTHER THE EDUCATIONAL  
3 ACTIVITIES OF THE COLLEGE?



4 A. YES.

5 Q. AND PART OF THOSE EDUCATIONAL ACTIVITIES ARE TO OFFSET  
6 THE SCHOLARSHIPS AND GRANTS THAT THE COLLEGE GIVES TO STUDENTS?

7 A. THAT'S CORRECT.

8 Q. WHAT IS THE COLLEGE'S FINANCIAL AID PROGRAM? TO WHAT  
9 EXTENT DOES THE COLLEGE USE THOSE INVESTMENTS TO PROVIDE GRANTS  
10 TO NEEDY STUDENTS?

11 A. I'M NOT SURE I FOLLOW THAT QUESTION.

12 Q. OKAY.

13 YOU SAID THAT SOME OF THE INVESTMENT MONIES ARE USED  
14 TO COVER SHORTFALLS IN THE OPERATING BUDGET. IS IT TRUE THAT  
15 THE OPERATING BUDGET FUNDS GRANTS AND SCHOLARSHIPS FOR STUDENTS,  
16 AND TO WHAT EXTENT?

17 A. WELL, YOU KNOW, AS I SAID, I THINK IT'S ABOUT  
18 40 PERCENT OF THE -- THAT'S OUR DISCOUNT AND THAT COMES FROM  
19 EITHER BASICALLY NOT COLLECTING MONEY OR WE'RE POSSIBLY TRYING  
20 TO OFFSET THAT WITH OUR FUNDING.

21 Q. SO WOULD IT BE FAIR TO SAY THAT 40 PERCENT OF EVERY  
22 \$30,000 BILL TO A STUDENT IS OFFSET BY THE COLLEGE'S OWN  
23 INVESTMENTS AND ASSETS ONE WAY OR ANOTHER?

24 MR. LEBOWITZ: OBJECTION. LEADING.

25 THE WITNESS: ONE WAY OR ANOTHER, YES.

26 THE COURT: OVERRULED.

1315

1 MR. VARTAIN: Q. COULD YOU REPEAT YOUR ANSWER,

2 PLEASE.

3 A. ONE WAY OR ANOTHER.

4 Q. OKAY.

5 SO THE ASSETS THAT ARE AT ISSUE HERE, PURSUANT TO  
6 MR. LEBOWITZ'S REQUEST, ARE ASSETS THAT ARE USED TO FUND THE  
7 SCHOLARSHIPS FOR THE STUDENTS; IS THAT TRUE?

8 A. IN A LARGER SENSE, IT'S TO MAKE UP THE SHORTFALL THAT  
9 WE HAVE IN CASH.

10 Q. WHICH INCLUDES THE GRANTS FOR THE STUDENTS; IS THAT  
11 CORRECT?

12 A. CORRECT.

13 Q. WHEN THE COLLEGE GETS DONATIONS FROM ITS ALUMNAE, ARE  
14 THOSE SOMEHOW COVERED IN THE ASSETS SHEET THAT YOU DESCRIBED TO  
15 THE JURY?

16 A. YES. THOSE ARE DONATIONS.

17 Q. OKAY.

18 WHAT IS THE COMMITMENT OF THE COLLEGE TO ITS ALUMNAE  
19 AS TO HOW TO USE THOSE DONATIONS THAT ARE PART OF THE ASSETS ON  
20 THAT SHEET?

21 A. WELL, ALL OF THE ASSETS HAVE TO BE USED FOR  
22 EDUCATIONAL PURPOSES. IF A CONTRIBUTOR DESIGNATES WHAT WE HAVE  
23 TO USE IT FOR, THEN IT'S RESTRICTED. FOR EXAMPLE, THEY WILL  
24 GIVE US MONEY FOR SCHOLARSHIPS, AND WE CAN'T USE IT FOR ANY  
25 OTHER PURPOSE. SOMETIMES THEY WILL GIVE IT TO US SIMPLY TO  
26 COVER THE SHORTFALLS.

1 Q. WHAT ABOUT WHEN IT GETS -- TALK ABOUT THIS ONE TRUST,  
2 THE MULTIMILLION DOLLARS THAT MR. LEBOWITZ ASKED YOU ABOUT, WHO  
3 DID THAT COME FROM AND WHAT WAS THE CIRCUMSTANCE?

4 A. THE SOURCE OF IT WAS REALLY THE BELOUGH FAMILY. AND I  
5 BELIEVE THE SON'S NAME WAS MARTIN BELOUGH. HE WENT TO MENLO IN  
6 THE 1960S. HE ONLY ATTENDED MENLO COLLEGE FOR ONE SEMESTER. HE  
7 HAD SOME VERY, VERY SERIOUS ISSUES. WE DID OUR BEST TO HELP  
8 HIM. WE OBVIOUSLY WEREN'T VERY SUCCESSFUL. AFTER ONE SEMESTER  
9 HE LEFT THE SCHOOL. HE HAD SOME ISSUES.

10 AND HIS MOTHER SENT A -- I BELIEVE SET UP A CHARITABLE  
11 REMAINDER TRUST, WHICH MEANS THAT THEY GET THE INCOME, AND AFTER  
12 THE LAST PERSON IS DECEASED, THEN THE MONEY GOES TO THE COLLEGE.  
13 SO THAT WAS THE SOURCE OF THE FUNDS.

14 Q. AND SO WAS IT THE MOM OR THE SON WHO RECENTLY DIED OR  
15 DIED IN THE PAST FEW YEARS?

16 A. I THINK IT WAS -- I DON'T KNOW.

17 Q. OKAY.

18 IN OTHER WORDS, SHE GAVE THE GIFT TO THE COLLEGE ON  
19 BEHALF OF HER SON WENT TO MENLO COLLEGE?

20 A. YES.

21 Q. WHAT IS THE COLLEGE -- DOES THE COLLEGE HAVE AN  
22 INTENTION OF TO WHAT EXTENT TO USE THAT MONEY FOR ITS CURRENT  
23 STUDENTS AND FUTURE STUDENTS?

24 A. WELL, THE COLLEGE IS ABOUT 95 -- 92, 95 PERCENT  
25 DEPENDANT UPON TUITION. A TYPICAL HEALTHY COLLEGE, PRIVATE  
26 COLLEGE SHOULD HAVE ABOUT 70 PERCENT OF ITS MONEY, OF ITS FUNDS

1 THROUGH TUITION; THE OTHER 30 PERCENT IS GENERAL ENDOWMENTS.  
2 WE'RE VERY, VERY MUCH TUITION-DRIVEN, SO THIS WILL ALLOW US  
3 BASICALLY TO BE LESS TUITION-DRIVEN.

4 Q. SO YOU'LL GET CLOSER TO WHAT OTHER COLLEGES HAVE; THAT  
5 IS, YOU'LL HAVE AN INVESTMENT FUND TO PAY FOR EXPENSES OF  
6 EDUCATING. YOU WON'T HAVE TO DEPEND ON EACH YEAR'S STUDENT  
7 TUITION?

8 A. THAT IS CORRECT.

9 Q. BUT IT'S STILL THE CASE, THEN, IS IT YOUR TESTIMONY,  
10 THAT EVEN GIFTS THAT COME INTO THE COLLEGE HAVE TO BE USED ONLY  
11 FOR EDUCATION?

12 A. EDUCATIONAL PURPOSES.

13 Q. ARE THERE ANY DOLLARS IN THE -- ANY ASSETS WHATSOEVER  
14 OF THE COLLEGE THAT ARE FREE TO BE USED BY THE COLLEGE FOR SOME  
15 PURPOSE OTHER THAN EDUCATING THE STUDENTS?

16 A. NO.

17 Q. WHAT PERCENTAGE OF MENLO COLLEGE'S STUDENTS ARE  
18 TYPICALLY ON FINANCIAL AID? WHETHER, YOU KNOW, AS A NEEDY  
19 STUDENT FINANCIAL AID.

20 A. I'VE BEEN TOLD APPROXIMATELY 85 PERCENT OF OUR  
21 STUDENTS ARE IN SOME -- HAVE SOME TYPE OF FINANCIAL AID.

22 Q. BEFORE I STARTED TO REPRESENT YOUR COLLEGE, I USED TO  
23 THINK MENLO COLLEGE WAS --

24 MR. LEBOWITZ: OBJECTION, YOUR HONOR. IT'S NOT A

25 QUESTION.

26 THE COURT: WHY DON'T WE HAVE A QUESTION.

1318

1 MR. VARTAIN: Q. HAVE YOU EVER HEARD IT RUMORED THAT  
2 MENLO COLLEGE IS OR USED TO BE THOUGHT OF AS A RICH KIDS'  
3 SCHOOL?

4 A. I THINK IT DEVELOPED A REPUTATION FOR THAT OVER THE  
5 YEARS.

6 Q. BUT WHAT DO YOU THINK THE PROPER RESERVATION WOULD BE  
7 RIGHT NOW?

8 A. IT'S A VERY DIVERSE SCHOOL. WE HAVE PEOPLE OF ALL  
9 ECONOMIC PERSUASIONS AS WELL AS LOCATIONS, I THINK I TESTIFIED  
10 EARLIER TO.

11 Q. WHEN YOU WERE IN THE FIRST PHASE OF THE TRIAL?

12 A. CORRECT.

13 MR. VARTAIN: SEAN, COULD WE SHOW THAT EXHIBIT?

14 THE CLERK: I HAVE IT MARKED.

15 MR. VARTAIN: I'M GOING TO SHOW YOU VV.

16 (DEFENSE EXHIBIT VV WAS MARKED FOR  
17 IDENTIFICATION.)

18 MR. VARTAIN: MAY I APPROACH THE WITNESS AND LOOK AT  
19 IT OVER HIS SHOULDER, YOUR HONOR?

20 THE COURT: YES.

21 MR. VARTAIN: I DON'T HAVE A COPY.

22 Q. IS THIS A PRINTOUT FROM THE WEBSITE OF THE COLLEGE

23 REGARDING HOW IT HANDLES DONATIONS?

24 A. YES, IT IS.

25 Q. IS THE DONATION PART OF THE COLLEGE UNDER YOUR

26 SUPERVISION, PRESIDENT?

1319

1 A. YES. THIS IS FOR THE DIRECTOR OF DEVELOPMENT WHO

2 REPORTS TO ME.

3 Q. WOULD YOU JUST VERY BRIEFLY WALK THROUGH WHAT THE

4 MOTTO OF THE COLLEGE'S DONATIONS IS AS STATED IN THE WEBSITE,

5 AND THEN TAKE THE JURY THROUGH THE DIFFERENT KINDS OF GIFTS AND

6 WHAT YOU USE THE MONEY FOR.

7 A. WELL, WE START WITH THE QUOTE THAT MONEY IS NEVER SO

8 HONORED AS WHEN IT IS USED TO EDUCATE. AND WE HAVE ITEMS THAT

9 ALLOW OPPORTUNITIES FOR PEOPLE TO GIVE MONEY. THE FIRST ONE

10 BEING THE ANNUAL FUND, WHICH IS TYPICAL OF MOST COLLEGES. THEY

11 WILL SEND OUT LETTERS AND SOLICITATIONS TO OUR ALUMNAE AND

12 FRIENDS SEEKING MONEY TO HELP SUPPORT US.

13 Q. AND THE SECOND ITEM?

14 A. IS BEQUESTS AND TRUSTS.

15 Q. WOULD THAT BE LIKE THE BELOUGH TRUST?

16 A. THAT WOULD BE. YES.

17 Q. THAT'S THE BIG ONE. OKAY.

18 A. THE NEXT ONE WOULD BE ENDOWMENTS, AND AN ENDOWMENT IS

19 MONEY GIVEN BY A DONOR WITH A SPECIFIC PURPOSE.

20 Q. WHAT WOULD BE AN EXAMPLE OF THAT FOR THE JURY?

21 A. WE MIGHT HAVE AN ENDOWED SCHOLARSHIP FOR STUDENTS, AND  
22 THOSE MONIES CAN ONLY BE USED TO FUND THOSE SCHOLARSHIPS.  
23 ANOTHER EXAMPLE WOULD BE AN ENDOWED PROFESSORSHIP, WHERE AN  
24 INDIVIDUAL WOULD LIKE US TO BE ABLE TO HIRE A FACULTY MEMBER  
25 THAT'S BEYOND OUR COSTS, AND THEY WOULD CONTRIBUTE MONEY IN THE  
26 FORM OF ENDOWMENT AS LET'S SAY THE NAMED PROFESSOR. AND THEN WE

1320

1 HAVE OUR ATHLETIC PROGRAMS, WHICH WE DO FUNDRAISING FOR AS WELL.

2 Q. WHAT IS THAT, THE MONEY YOU GET FOR THE FUNDRAISING  
3 FOR ATHLETICS -- I'LL ASK YOU THE OBVIOUS QUESTION, WHAT DO YOU  
4 USE THAT FOR?

5 A. WELL, WE USE IT TO FINANCE TRAVEL, EQUIPMENT,  
6 CLOTHING, THE TYPES OF THINGS THAT WE NORMALLY WOULDN'T BE ABLE  
7 TO SUPPORT WITHOUT THE -- WITHOUT THESE TYPES OF GIFTS.

8 Q. SO THAT'S FOR THE STUDENTS TO TRAVEL TO THEIR GAME?

9 A. STUDENT ATHLETES.

10 Q. OKAY.

11 INCLUDED IN THE WEBSITE IS A DESCRIPTION OF WHAT  
12 YOU'RE GOING TO DO FOR EDUCATIONAL PURPOSES WITH THIS TRUST GIFT  
13 THAT JUST CAME TO YOU?

14 A. THAT IS CORRECT.

15 Q. AND THAT CAME AS A RESULT OF THE COLLEGE HAVING THIS  
16 PERSON AS A STUDENT?

17 A. YES.

18 Q. ARE THOSE DONATIONS, IS THE MONEY THAT IS GIVEN IN

19 TERMS OF THE DONATIONS FROM ALUMNAE AND SO ON, IS THAT IN THE  
20 STATEMENT OF ASSETS THAT MR. LEBOWITZ ASKED YOU ABOUT?

21 A. YES.

22 MR. VARTAIN: I'D OFFER EXHIBIT VV, PLEASE.

23 THE COURT: ANY OBJECTION?

24 MR. LEBOWITZ: NO OBJECTION.

25 THE COURT: EXHIBIT VV WILL BE ADMITTED.

26 (DEFENSE EXHIBIT VV WAS ADMITTED INTO

1321

1 EVIDENCE.)

2 MR. VARTAIN: Q. NOW, PRESIDENT HAIGHT, YOU CAME TO  
3 THE COLLEGE IN ABOUT THE LAST WHAT? YEAR AND A HALF, YEAR?

4 A. TWO YEARS, I THINK, ON MONDAY.

5 Q. WHAT'S YOUR MISSION, IN TERMS OF USING THE COLLEGE'S  
6 ASSETS? WHAT'S YOUR ADMINISTRATION'S GOAL FOR THE COLLEGE WITH  
7 REGARD TO USING THIS MONEY?

8 A. WELL, WE WANT TO BUILD A VERY, VERY GOOD SCHOOL.  
9 THAT'S THE PURPOSE. WE'RE HOPING TO HAVE SPECIALTY IN THE  
10 BUSINESS AREA, BUT IT'S TO BUILD A HIGH-QUALITY INSTITUTION.

11 Q. AND WHEN YOU SAY -- WHAT IN PARTICULAR WERE YOU  
12 BROUGHT TO THE COLLEGE BY THE BOARD OF TRUSTEES TO DO? WHAT  
13 WERE YOU HIRED TO DO, IN TERMS OF ANYTHING NEW OR DIFFERENT?

14 A. WELL, THE FIRST THING I WAS ASKED TO DO IS STABILIZE  
15 THE COLLEGE FROM A FINANCIAL PERSPECTIVE. WE WERE ISSUED, PRIOR  
16 TO MY ARRIVAL, A NOTICE OF CONCERN BY WASC, WHICH IS THE WESTERN



17 ASSOCIATION OF SCHOOLS AND COLLEGES.

18 Q. LET ME INTERRUPT YOU.

19 WHAT'S A NOTICE OF CONCERN?

20 A. IT MEANS THAT THEY -- IF WE DON'T IMPROVE, IT'S THE  
21 FIRST STEP IN PULLING OUR ACCREDITATION.

22 Q. AND IF THE COLLEGE'S ACCREDITATION IS PULLED BY WASC,  
23 THAT'S THE ACCREDITATION COMMISSION FOR COLLEGES?

24 A. IN THIS PARTICULAR REGION.

25 Q. IN THE WESTERN AREA?

26 A. THAT'S RIGHT.

1322

1 Q. IF THEY PULL THE ACCREDITATION, WHAT HAPPENS TO THE  
2 COLLEGE?

3 A. OUR FINANCIAL AID FROM THE GOVERNMENT DISAPPEARS.

4 Q. SO DOES THAT MEAN THAT THE STUDENTS CAN'T GET THEIR  
5 FEDERAL FINANCIAL AID IF THE ACCREDITATION COMMISSION YANKS THE  
6 ACCREDITATION?

7 A. YES.

8 Q. SO WAS YOUR MISSION TO PUT THE COLLEGE ON A PROPER  
9 FOOTING SO THAT IT WOULDN'T LOSE THE ACCREDITATION?

10 A. WHEN I TOOK THE JOB, THAT WASN'T WHAT I THOUGHT I HAD  
11 TO DO. BUT ONCE I CAME THERE, I FOUND OUT THAT I HAD TO DO  
12 THAT.

13 Q. AND SO ARE THE FUNDS THAT ARE IN THIS ASSET GROUP THAT  
14 MR. LEBOWITZ ASKED YOU ABOUT, THE FUNDS THAT YOU USED TO PUT THE

15 COLLEGE ON GOOD FOOTING SO IT WON'T LOSE THE ACCREDITATION?

16 A. IT WAS THE MAIN FACTOR, YES, IN OUR ONGOING EFFORTS.

17 MR. VARTAIN: THANK YOU, PRESIDENT HAIGHT.

18 THE COURT: REDIRECT?

19 MR. LEBOWITZ: NO, YOUR HONOR.

20 THE COURT: ANYTHING ELSE FOR THIS WITNESS?

21 MR. VARTAIN: (SHAKES HEAD.)

22 THE COURT: MAY PRESIDENT HAIGHT BE EXCUSED?

23 MR. LEBOWITZ: YES, YOUR HONOR.

24 THE COURT: PRESIDENT HAIGHT, THANK YOU FOR YOUR

25 TESTIMONY. YOU ARE FREE TO GO.

26 THE WITNESS: THANK YOU.

1323

1 THE COURT: MR. LEBOWITZ, OTHER EVIDENCE?

2 MR. LEBOWITZ: NO, YOUR HONOR.

3 THE COURT: ANY EVIDENCE FOR THE DEFENSE?

4 MR. VARTAIN: NO OTHER EVIDENCE, YOUR HONOR.

5 THE COURT: BOTH SIDES REST ON PRESENTATION OF

6 EVIDENCE FOR THIS PHASE OF THE TRIAL?

7 MR. LEBOWITZ: YES, YOUR HONOR.

8 MR. VARTAIN: (NODS HEAD.)

9 THE COURT: ALL RIGHT.

10 LADIES AND GENTLEMEN, I'M NOW GOING TO READ TO YOU THE

11 ONE JURY INSTRUCTION, AND THEN I'M GOING TO SEND YOU BACK TO THE

12 JURY DELIBERATION ROOM.

13 MR. LEBOWITZ: EXCUSE ME, YOUR HONOR. WE GET  
14 ARGUMENT.

15 THE COURT: I WAS GOING TO INSTRUCT FIRST.

16 MR. LEBOWITZ: SORRY.

17 THE COURT: YOU'RE RIGHT. I DID SAY I WAS GOING TO  
18 SEND THEM IN. THANK YOU. YOU'RE RIGHT. I THINK I WOULD HAVE  
19 REMEMBERED THAT.

20 MR. LEBOWITZ: I JUST WANTED TO MAKE SURE.

21 THE COURT: THEY DO GET TO ADDRESS THIS ISSUE AND IT'S  
22 OBVIOUSLY VERY IMPORTANT.

23 THANK YOU, MR. LEBOWITZ. BUT I AM GOING TO INSTRUCT  
24 FIRST.

25 YOU MUST NOW DECIDE THE AMOUNT, IF ANY, THAT YOU WOULD  
26 AWARD MARCINE BLOUGH IN PUNITIVE DAMAGES. THE PURPOSES OF

1324

1 PUNITIVE DAMAGES ARE TO PUNISH A WRONGDOER FOR THE CONDUCT THAT  
2 HARMED THE PLAINTIFF AND TO DISCOURAGE SIMILAR CONDUCT IN THE  
3 FUTURE. THERE IS NO FIXED FORMULA FOR DETERMINING THE AMOUNT OF  
4 PUNITIVE DAMAGES, AND YOU ARE NOT REQUIRED TO AWARD ANY PUNITIVE  
5 DAMAGES. IF YOU DECIDE TO AWARD PUNITIVE DAMAGES, YOU SHOULD  
6 CONSIDER ALL THE FOLLOWING:

7 A, HOW REPREHENSIBLE WAS MENLO COLLEGE'S CONDUCT? IN  
8 DECIDING HOW REPREHENSIBLE A DEFENDANT'S CONDUCT WAS, YOU MAY  
9 CONSIDER, AMONG OTHER FACTORS, ONE, WHETHER THE CONDUCT CAUSED  
10 PHYSICAL HARM; TWO, WHETHER MENLO COLLEGE DISREGARDED THE HEALTH

11 OR SAFETY OF OTHERS; THREE, WHETHER MARCINE BLOUGH WAS  
12 FINANCIALLY WEAK OR VULNERABLE AND MENLO COLLEGE KNEW SHE WAS  
13 FINANCIALLY WEAK OR VULNERABLE AND TOOK ADVANTAGE OF HER; FOUR,  
14 WHETHER MENLO COLLEGE'S CONDUCT INVOLVED A PATTERN OR PRACTICE;  
15 AND, FIVE, WHETHER MENLO COLLEGE ACTED WITH TRICKERY OR DECEIT.

16 B, IS THERE A REASONABLE RELATIONSHIP BETWEEN THE  
17 AMOUNT OF PUNITIVE DAMAGES AND MARCINE BLOUGH'S HARM THAT MENLO  
18 COLLEGE KNEW WAS LIKELY TO OCCUR BECAUSE OF ITS CONDUCT. C, IN  
19 VIEW OF MENLO COLLEGE'S FINANCIAL CONDITION, WHAT AMOUNT IS  
20 NECESSARY TO PUNISH IT AND DISCOURAGE FUTURE WRONGFUL CONDUCT?

21 YOU MAY NOT INCREASE THE PUNITIVE AWARD ABOVE AN  
22 AMOUNT THAT IS OTHERWISE APPROPRIATE MERELY BECAUSE MENLO  
23 COLLEGE HAS SUBSTANTIAL FINANCIAL RESOURCES. ANY AWARD YOU  
24 IMPOSE MAY NOT EXCEED THE DEFENDANT'S ABILITY TO PAY. PUNITIVE  
25 DAMAGES MAY NOT BE USED TO PUNISH A DEFENDANT FOR THE IMPACT OF  
26 ITS ALLEGED MISCONDUCT ON PERSONS OTHER THAN MARCINE BLOUGH.

1325

1 AS I SAID, YOU'LL GET A COPY OF THIS INSTRUCTION. I  
2 WILL NOW TURN TO COUNSEL FOR ARGUMENT.

3 MR. LEBOWITZ.

4 MR. LEBOWITZ: THANK YOU VERY MUCH, YOUR HONOR.

5 LADIES AND GENTLEMEN, THIS REALLY IS MY LAST TIME TO  
6 TALK TO YOU. I SAID IT BEFORE BUT, UNFORTUNATELY, WE ARE BOUND  
7 BY THE RULES TO NOT TALK ABOUT PHASE TWO DURING PHASE ONE.  
8 THAT'S HOW WE GOT HERE.

9           YOU'LL NOTICE TWO CHANGES AS YOU'RE SITTING HERE  
10   TODAY. ONE IS, AS I MENTIONED, I'M LIMPING AROUND. I  
11   RE-INJURED MY TOE LAST NIGHT, WHICH I HAD DONE ABOUT TWO MONTHS  
12   AGO. I'M GOING TO STAY AS STILL AS POSSIBLE. AND YOU'LL NOTICE  
13   MR. PETERS IS NOT HERE AND THAT'S BECAUSE --

14           MR. VARTAIN: OBJECTION.

15           THE COURT: LET'S NOT DO THAT NOW.

16           MR. LEBOWITZ: I'M JUST --

17           THE COURT: LET'S NOT DO THAT NOW.

18           MR. LEBOWITZ: OKAY.

19           WE ARE HERE NOW IN PHASE TWO TO TALK ABOUT PUNITIVE  
20   DAMAGES. AND YOU HAVE THE INSTRUCTION THAT TELLS YOU WHAT  
21   PUNITIVE DAMAGES ARE FOR. THEY ARE, AS IT SOUNDS, TO PUNISH.  
22   TO PUNISH A WRONGDOER FOR SOMETHING THAT THEY'VE DONE. AND  
23   THEY'RE ALSO TO DETER FUTURE SIMILAR WRONGFUL CONDUCT. AND  
24   THAT'S REALLY, I THINK, WHAT WE NEED TO TALK ABOUT HERE TODAY.

25           AND THAT IS WHAT DOES THIS INSTITUTION DO IN THE  
26   FUTURE WHEN IT IS FACED WITH A SITUATION LIKE IT WAS FACED WITH

1326

1   WITH PROFESSOR BLOUGH? AND AT WHAT POINT DO THEY GET IT, SO TO  
2   SPEAK? WHAT DOES IT TAKE FOR THEM TO LEARN THE LESSON THAT WHAT  
3   THEY'VE DONE IS WRONG, IT'S UNLAWFUL, IT'S AGAINST PUBLIC POLICY  
4   OF THE STATE OF CALIFORNIA.

5           NOW, PRESIDENT HAIGHT WAS HERE. HE WAS JUST HERE ON  
6   THE STAND. HE COULD HAVE APOLOGIZED.

7 MR. VARTAIN: MOTION TO STRIKE.

8 THE COURT: SUSTAINED.

9 MR. VARTAIN: I'D ASK --

10 THE COURT: SUSTAINED.

11 MR. VARTAIN: I'D REQUEST FOR AN INSTRUCTION -- MAY I  
12 BE HEARD, YOUR HONOR?

13 THE COURT: NOT IN FRONT OF THE JURY, MR. VARTAIN.

14 LADIES AND GENTLEMEN, YOU ARE TO DISREGARD THAT  
15 COMMENT.

16 GO AHEAD, MR. LEBOWITZ.

17 MR. LEBOWITZ: WE NEED TO MAKE SURE THAT THIS COLLEGE  
18 HEARS YOU, HEARS YOUR VERDICT AND UNDERSTANDS WHAT MESSAGE YOU  
19 ARE SENDING WITH THIS VERDICT.

20 NOW, WE'VE GONE THROUGH PHASE ONE AND YOU HAVE FOUND  
21 THAT THIS COLLEGE IS LIABLE FOR UNLAWFUL CONDUCT. YOU HAVE  
22 FOUND BY CLEAR AND CONVINCING EVIDENCE THAT THIS COLLEGE ACTED  
23 UNLAWFULLY WITH MALICE, OPPRESSION OR FRAUD. NOW IT IS TIME TO  
24 MAKE SURE THAT THE COLLEGE LEARNS THAT IT CANNOT DO THIS AGAIN.  
25 AND IT NEEDS TO BE DETERRED FROM DOING IT IN THE FUTURE. AND,  
26 UNFORTUNATELY, IN THIS WORLD, WHAT MOTIVATES INSTITUTIONS AND,

1327

1 UNFORTUNATELY, WHAT PRIMARILY MOTIVATES PEOPLE TO CHANGE THEIR  
2 CONDUCT IS MONEY. IT'S NOT THE PERFECT SYSTEM. IT'S NOT THE  
3 PERFECT SOLUTION, BUT THAT'S THE WORLD WE LIVE IN.

4 NOW, THE INSTRUCTION IS VERY CLEAR. YOU ARE NOT TO

5 AWARD AN AMOUNT THAT IS BEYOND THE COLLEGE'S ABILITY TO PAY, AND  
6 WE ARE NOT ASKING FOR THAT. WE DO NOT WANT TO HARM THIS COLLEGE  
7 IN A WAY THAT IT CANNOT PROVIDE THE SERVICES TO ITS STUDENTS.  
8 PROFESSOR BLOUGH HAS NO DESIRE TO HURT THE STUDENTS. YOU'VE  
9 HEARD THAT ALL THROUGH THIS TRIAL.

10 MR. VARTAIN: OBJECTION. THERE WAS NO TESTIMONY.

11 THE COURT: OVERRULED.

12 MR. LEBOWITZ: SO THE QUESTION FOR THE JURY AT THIS  
13 POINT IS, HOW DO YOU COME UP WITH AN AMOUNT THAT IS PROPER, THAT  
14 IS ENOUGH FOR THE COLLEGE TO UNDERSTAND YOUR MESSAGE BUT NOT SO  
15 MUCH THAT IT HURTS THEM IN A WAY THAT THEY CANNOT CARRY OUT  
16 THEIR MISSION. AND I LIKE TO THINK OF IT THIS WAY. THE COLLEGE  
17 IS A SICK PATIENT. THEY COME TO YOU. YOU'RE A PHYSICIAN. YOU  
18 NEED TO FIGURE OUT HOW TO CURE THIS PATIENT OF WHATEVER IT IS  
19 THAT'S AILING THEM.

20 YOUR PUNITIVE DAMAGE AWARD IS THE MEDICINE. YOU NEED  
21 TO GIVE ENOUGH SO IT'S EFFECTIVE, BECAUSE IF YOU DON'T GIVE  
22 ENOUGH, AND IF YOU DON'T GIVE ENOUGH OF THE MEDICATION OR THE  
23 MEDICINE, THEY'RE JUST GOING TO BE BACK A FEW MONTHS LATER WITH  
24 THE SAME PROBLEM.

25 MR. VARTAIN: OBJECTION. INFLAMMATORY.

26 THE COURT: OVERRULED.

1328

1 MR. LEBOWITZ: AND IF YOU GIVE THEM TOO MUCH MEDICINE,  
2 THEY'LL OVERDOSE AND THEY'LL BE HARMED SIGNIFICANTLY OR DIE.

3 AND THAT'S NOT WHAT WE'RE LOOKING FOR. SO AS THE JURY AND AS  
4 THE PHYSICIAN IS TRYING TO CURE THIS PATIENT THAT HAS THIS  
5 AILMENT, YOUR JOB IS TO TRY TO FIGURE OUT WHAT IS THAT RIGHT  
6 AMOUNT, WHAT IS THAT RIGHT DOSAGE OF MEDICINE? AND I THINK IF  
7 YOU LOOK AT IT THAT WAY, THAT MIGHT BE HELPFUL IN COMING UP WITH  
8 AN ACTUAL NUMBER THAT WOULD BE APPROPRIATE FOR THIS CASE.

9 AND WHEN WE TALK ABOUT WHAT'S APPROPRIATE FOR THIS  
10 CASE, I THINK WHAT WE NEED TO THINK ABOUT IS WHAT WAS THE  
11 WRONGDOING HERE? WHAT IS THE NATURE OF THE WRONGDOING? THE  
12 NATURE OF THE WRONGDOING IS DISCRIMINATION, EMPLOYMENT  
13 DISCRIMINATION. THIS IS SOMETHING THAT WE, AS A SOCIETY AND AS  
14 A STATE IN PARTICULAR, HAVE DECLARED IS SOMETHING THAT WE WILL  
15 NOT TOLERATE. AND THIS IS SOMETHING THAT WE WILL NOT STAND FOR  
16 AS A SOCIETY. PEOPLE ARE TO BE JUDGED ON AN EQUAL PLAYING FIELD  
17 BASED ON THEIR ABILITY, AND THAT'S ALL.

18 SO ESPECIALLY FOR AN INSTITUTION OF HIGHER EDUCATION  
19 AND HIGHER LEARNING LIKE THIS COLLEGE, WHICH BY ITS OWN CREED IS  
20 EDUCATING THE NEXT GENERATION OF BUSINESS LEADERS IN SILICON  
21 VALLEY, WHAT BETTER MOMENT THAN RIGHT NOW TO BE A TEACHABLE  
22 MOMENT? THIS IS A TEACHABLE MOMENT FOR THIS COLLEGE, TO SAY  
23 THIS TYPE OF DISCRIMINATION IS NOT TOLERATED. THIS TYPE OF  
24 CONDUCT IS NOT SOMETHING THAT WE WILL ALLOW TO HAPPEN IN THIS  
25 STATE. THAT THIS TYPE OF CONDUCT IS WHAT WE SHOULD BE TRAINING  
26 THE NEXT GENERATION OF MANAGEMENT, OF SUPERVISORS OF OUR



1 BUSINESS LEADERS IS NOT TO BE ACCEPTABLE IN OUR BUSINESS  
2 ENVIRONMENT.

3 THIS IS A TEACHABLE MOMENT, LADIES AND GENTLEMEN, AND  
4 YOU ARE THE TEACHERS. YOU CAN TEACH THIS COLLEGE THAT THIS IS  
5 THE MESSAGE OF OUR SOCIETY AND THIS IS THE MESSAGE THEY SHOULD  
6 BE IMPARTING ONTO THE NEXT GENERATION OF BUSINESS LEADERS. AND  
7 SO WE LEAVE IT TO YOUR DISCRETION LADIES AND GENTLEMEN, AS FAR  
8 AS WHAT IS THE ACTUAL AMOUNT OF PUNITIVE DAMAGES TO BE AWARDED.

9 AND YOU'LL SEE, YOU'LL HAVE A VERY STRAIGHTFORWARD  
10 VERDICT FORM THIS TIME. IT'S ONLY TWO QUESTIONS LONG. THE  
11 FIRST QUESTION IS, "WAS THE UNLAWFUL CONDUCT THAT CONSTITUTES  
12 MALICE, OPPRESSION OR FRAUD COMMITTED BY ONE OR MORE OFFICERS,  
13 DIRECTORS OR MANAGING AGENTS OF MENLO COLLEGE ACTING IN A  
14 CORPORATE CAPACITY?" THE QUESTION ASKS YOU YES OR NO.

15 AND YOU'LL RECALL, EVERYONE WHO WAS RESPONSIBLE FOR  
16 ANY DECISION-MAKING POINT, WAS AN OFFICER OR A MANAGING AGENT OF  
17 THE COLLEGE; PRESIDENT LOPEZ, PRESIDENT HAIGHT, PROVOST KELLY,  
18 THE DIRECTOR OF HUMAN RESOURCES, STEPHANIE SAPRAI. SO ALL OF  
19 THEM WOULD QUALIFY AS ANY OF THESE WHAT ARE CALLED OFFICERS,  
20 DIRECTORS OR MANAGING AGENTS, SO YOU CAN CHECK YES TO THAT.

21 AND THEN THE SECOND QUESTION IS VERY STRAIGHTFORWARD,  
22 "WHAT AMOUNT OF PUNITIVE DAMAGES, IF ANY, DO YOU AWARD TO  
23 MARCINE BLOUGH?" AND, AGAIN, WE LEAVE THAT TO YOUR DISCRETION.  
24 AND YOU'VE HEARD WHAT THE FINANCIAL STATUS OF THIS COLLEGE IS.  
25 AND, AGAIN, WE'RE NOT LOOKING TO TAKE PENCILS AWAY. WE'RE NOT  
26 LOOKING TO TAKE PAPER AWAY FROM THE STUDENTS. BUT THE COLLEGE

1 DOES HAVE THE ABILITY TO PAY A PUNITIVE DAMAGES AWARD, AND A  
2 REASONABLE PUNITIVE DAMAGES AWARD.

3 AND WE NEED TO MAKE SURE THAT THAT AWARD IS NOT  
4 GOVERNED BY PASSION OR BY PREJUDICE BUT IS REASONABLE, IN LIGHT  
5 OF WHAT THE AWARD OF COMPENSATORY DAMAGES IS. AND SO I LEAVE  
6 THAT IN YOUR DISCRETION. YOU'VE HEARD THE NUMBERS. YOU KNOW  
7 THAT THEY CARRY MORE THAN \$12 MILLION IN ASSETS CURRENTLY, OVER  
8 \$9 MILLION IN THE FAIR MARKET VALUE OF THEIR SECURITIES OF THEIR  
9 INVESTMENTS. AND THEY HAVE THE TRUST -- EXCUSE ME, THE BEQUEST  
10 OF SOMEWHERE OVER \$15 MILLION ONCE IT'S ALL NETTED OUT. THERE  
11 IS AN ABILITY TO PAY A REASONABLE PUNITIVE DAMAGES AWARD, AND  
12 THAT'S WHAT WE ASK YOU FOR.

13 THANK YOU, LADIES AND GENTLEMEN.

14 THE COURT: THANK YOU, MR. LEBOWITZ.

15 MR. VARTAIN, CLOSING?

16 MR. VARTAIN: YES, YOUR HONOR.

17 MAY I START SITTING HERE?

18 THE COURT: OF COURSE.

19 MR. VARTAIN: I DO THINK THE COLLEGE WILL HEAR AND  
20 WILL RESPOND FAVORABLY TO THE JURY VERDICT IN THIS CASE. WE  
21 HAVE WORKED THROUGH THE JURY VERDICT AND TRIED TO FIGURE OUT  
22 WHAT ISSUES THE JURY FELT MOST STRONGLY ABOUT. WE HOPE TO  
23 PURSUE THAT INQUIRY. THE COLLEGE IS AN EDUCATIONAL INSTITUTION.  
24 IT HAS A CAPACITY TO LEARN. IT DOESN'T NEED TO PAY ADDITIONAL  
25 FUNDS TO PROFESSOR BLOUGH OUT OF ITS ASSETS FOR IT TO LEARN WHAT

1 THIS CASE, HAS DECIDED.

2 AND WE WILL ASSIST THE COLLEGE TO DO THAT. BUT  
3 TRANSFERRING FUNDS FROM THE STUDENTS AND TEACHING THE STUDENTS,  
4 ADDITIONAL FUNDS BEYOND WHICH THIS JURY HAS AWARDED THE PROPER  
5 COMPENSATION IS WHAT MR. LEBOWITZ IS ARGUING FOR, AND THAT IS  
6 NOT APPROPRIATE. AS PRESIDENT HAIGHT TESTIFIED, ALL OF THE  
7 FUNDS ARE USED FOR NON-PROFIT EDUCATIONAL PURPOSES.

8 MR. LEBOWITZ AND PROFESSOR BLOUGH HAS EVERY RIGHT TO  
9 ASK YOU TO TRANSFER SOME ADDITIONAL UNDEFINED PART OF ITS  
10 STUDENT RESOURCES TO HER, AND SHE'S DOING THAT. THAT'S HER  
11 RIGHT. BUT MR. LEBOWITZ DIDN'T POINT OUT THAT THE JURY  
12 INSTRUCTION THAT THE COURT READ SAID THAT YOU DO NOT HAVE TO  
13 AWARD ANY PUNITIVE DAMAGES. YOU MAY, BUT THE INSTRUCTION SAYS  
14 SPECIFICALLY THE JURY HAS NO DUTY TO AWARD \$1 TRANSFERRING THOSE  
15 RESOURCES FROM ITS STUDENTS TO PROFESSOR BLOUGH.

16 AND, AS I SAID, I DON'T THINK IT'S NECESSARY FOR YOU  
17 TO DO THAT. THE COLLEGE CAME IN HERE AND ARGUED ITS CASE, AND  
18 WHAT I WOULD SUBMIT IS AN ETHICAL WAY THE JURY FOUND AGAINST THE  
19 COLLEGE AND THE COLLEGE WILL HEAR THAT. BUT THE COLLEGE DID NOT  
20 COME IN IN SOME CORPORATE STYLE, LET'S ROLL OVER  
21 PROFESSOR BLOUGH. I THINK THE EVIDENCE WAS AT LEAST SOMEWHAT TO  
22 THE CONTRARY.

23 YES, THE JURY HAS FOUND SOME MISTAKES AND WE RESPECT

24 THAT. BUT THE COLLEGE DID OPEN ITS CASE TO THE JURY IN A VERY  
25 NEUTRAL WAY IN AN ATTEMPT TO LAY THE CASE SO THE JURY COULD  
26 DECIDE IT IN THE BEST WAY IT SAW FIT. SO WHEN YOU LOOK AT THE

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1 WAY THE COLLEGE, PERHAPS, BROUGHT THE CASE BEFORE THE JURY, I  
2 HOPE YOU'LL AGREE THAT THE REQUEST FOR ADDITIONAL TRANSFER OF  
3 FUNDS BEYOND THE \$580,000 AND SO ON IS NOT REQUIRED TO TEACH THE  
4 COLLEGE, OR PRESIDENT HAIGHT OR ITS CURRENT OFFICERS.

5 NOW, I'D LIKE TO JUST CONCLUDE WITH A FEW COMMENTS ON  
6 THAT, WHAT YOU HEARD FROM PRESIDENT HAIGHT IS IT'S TRULY A  
7 COLLEGE THAT IS NOT ALIGNING ITSELF WITH A PARTICULAR CLASS OF  
8 PEOPLE, BUT IS TRYING TO OPEN UP TO ALL SEGMENTS OF SOCIETY.  
9 YOU COULD SEE THAT IN ITS FINANCIAL AID POLICIES, IN THE WAY IT  
10 USES ITS FUNDS FOR GRANTS.

11 AND, GRANTED, PROFESSOR BLOUGH BELIEVES THAT SHE'S  
12 ENTITLED TO SOME OF THOSE MONIES FOR AN AWARD OF PUNISHMENT BUT,  
13 REALLY, THAT WOULD ONLY PUNISH THE BENEFICIARIES OF THOSE FUNDS,  
14 WHICH ARE THE STUDENTS, THE CURRENT STUDENTS AND THE FUTURE.  
15 THE COLLEGE IS NOT A FOR-PROFIT CORPORATION. IT ACTUALLY IS NOT  
16 ANYTHING EXCEPT FOR THE PEOPLE WHO TEACH, WHO WORK AND WHO STUDY  
17 THERE, MOST OF WHICH PEOPLE HAD NOTHING TO DO WITH THIS CASE.  
18 SOME OF THE PEOPLE WHO HAD TO DO WITH THIS CASE AREN'T EVEN IN  
19 THE POSITION ANYMORE; PRESIDENT HAIGHT HAVING BROUGHT IN A NEW  
20 GROUP OF PEOPLE TO LEAD THE COLLEGE IN A DIFFERENT DIRECTION.

21 SO IN CLOSING, I WOULD ASK YOU TO NOT AWARD ANY

22 PUNITIVE DAMAGES, WHICH THE COURT HAS INSTRUCTED YOU IS WITHIN  
23 YOUR PROVINCE. BECAUSE TO AWARD ANY PUNITIVE DAMAGES, EVEN A  
24 DOLLAR WOULD BE UNNECESSARY. THE COLLEGE WILL REVIEW THE JURY'S  
25 VERDICT AND WILL MAKE THOSE CHANGES TO MAKE SURE THAT WHAT YOU  
26 SAID WAS WRONG DOESN'T HAPPEN AGAIN.

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1 THANK YOU.

2 THE COURT: THANK YOU, MR. VARTAIN.

3 FINAL CLOSING BY PLAINTIFF?

4 MR. LEBOWITZ: THANK YOU.

5 MR. VARTAIN: YOUR HONOR, HE SAID HE WASN'T GOING TO

6 SPEAK AGAIN.

7 THE COURT: I'M GIVING HIM THAT OPPORTUNITY.

8 MR. LEBOWITZ: THANK YOU, YOUR HONOR.

9 MR. VARTAIN: MAY I HAVE AN OPPORTUNITY TO SPEAK AFTER

10 HIM, YOUR HONOR --

11 THE COURT: NO.

12 MR. VARTAIN: -- BECAUSE --

13 CAN I BE HEARD?

14 THE COURT: EXCUSE ME. COUNSEL, YOU MAY APPROACH.

15 (WHEREUPON, THERE WAS A DISCUSSION AT THE BENCH.)

16 THE COURT: THE OBJECTION IS OVERRULED.

17 MR. LEBOWITZ: I JUST WANT TO REMIND EVERYONE OF ONE

18 IMPORTANT JURY INSTRUCTION -- ALL THE ORIGINAL JURY INSTRUCTIONS

19 STILL APPLY. AND YOU HEARD IT FROM THE JUDGE ALSO THROUGHOUT

20 THE TRIAL -- AND THAT IS -- AND IT APPLIES TO ME EQUALLY -- WHAT  
21 THE ATTORNEYS SAY IS NOT EVIDENCE AND WHAT THE ATTORNEYS TELL  
22 YOU IS NOT EVIDENCE. SO WHEN YOU ARE CONSIDERING WHAT THE  
23 COLLEGE NEEDS TO LEARN OUT OF THIS CASE, YOU NEED TO REMEMBER  
24 THAT THERE'S NO EVIDENCE THAT THE COLLEGE HAS HEARD YOU YET.  
25 AND AT THIS POINT THEY STILL NEED TO HEAR SOMETHING, AND THAT'S  
26 WHAT YOUR ROLE IS HERE TODAY.

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1 THANK YOU.

2 THE COURT: THANK YOU, MR. LEBOWITZ.

3 LADIES AND GENTLEMEN, IT IS CORRECT THAT ALL OF THE  
4 JURY INSTRUCTIONS STILL APPLY.

5 ARE THE JURY INSTRUCTIONS STILL IN THE JURY ROOM?

6 THE CLERK: YES, THEY ARE.

7 THE COURT: AND ALL OF THE EXHIBITS ARE AS WELL?

8 THE CLERK: YES.

9 THE COURT: ALL RIGHT.

10 I'M GOING TO SEND IN THE NEW EXHIBIT THAT YOU CAN LOOK  
11 AT AND THE NEW JURY INSTRUCTION. BECAUSE IT'S ONLY ONE, WE'RE  
12 GOING TO MAKE COPIES FOR EACH OF YOU. IT DIDN'T SEEM LIKE TOO  
13 MUCH PAPER, AND IT WENT BY PRETTY QUICKLY. I'M GOING TO DO THE  
14 SAME THING ON THE VERDICT FORM THAT WE DID BEFORE. THERE WILL  
15 BE THE ORIGINAL THAT TRPJXXXXXX WILL TAKE CHARGE OF AS YOUR  
16 PRESIDING JUROR. AND THEN EACH OF YOU WILL HAVE YOUR OWN COPY  
17 SO YOU CAN CAREFULLY LOOK AT THE TWO QUESTIONS AND ANSWER THEM

18 AS THE JURY DEEMS APPROPRIATE, IF YOU CAN.

19 THERE'S REALLY NOTHING DIFFERENT ABOUT THE  
20 DELIBERATIONS AT THIS POINT. YOU'RE GOING TO APPLY ALL THE JURY  
21 INSTRUCTIONS. YOU'RE GOING TO CONSIDER THE EVIDENCE AND LOOK AT  
22 THE VERDICT FORM AND RESPOND TO IT. WHEN YOU HAVE CONCLUDED,  
23 YOU'LL LET DEPUTY HENNESSY KNOW. HE CONTINUES TO BE RESPONSIBLE  
24 FOR TAKING CARE OF YOU.

25 SO, AT THIS POINT, COUNSEL, IS THERE ANYTHING ELSE  
26 BEFORE I EXCUSE THE JURY TO DELIBERATE?

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1 MR. VARTAIN: NOT FROM THE COLLEGE, YOUR HONOR.

2 MR. LEBOWITZ: NO, YOUR HONOR.

3 THE COURT: THANK YOU.

4 ALL RIGHT. LADIES AND GENTLEMEN, YOU CAN BRING YOUR  
5 NOTEBOOKS AND YOUR BADGES WITH YOU. IT'S GOING TO TAKE MR. KANE  
6 A FEW MINUTES TO DO THE XEROXING, BUT YOU CAN GO AHEAD AND GET  
7 SETTLED IN. I HOPE THAT ROOM IS WARM FOR YOU TODAY.

8 (WHEREUPON, THE JURORS EXIT TO DELIBERATE.)

9 THE COURT: WE'RE BACK ON THE RECORD OUTSIDE THE  
10 PRESENCE OF THE JURY. ALL COUNSEL AND PARTIES ARE PRESENT.

11 BEFORE WE BEGAN THIS MORNING, I HAD A CONFERENCE WITH  
12 COUNSEL REGARDING THE ADDITIONAL JURY INSTRUCTION AND THE NEW  
13 VERDICT FORM, AND THERE WERE OBJECTIONS. I ASKED COUNSEL TO  
14 WAIT UNTIL NOW TO MAKE A RECORD OF THOSE OBJECTIONS.

15 MR. VARTAIN, YOU MAY PROCEED.

16 MR. VARTAIN: YES, YOUR HONOR. MAY I GO OFF THE  
17 RECORD A MINUTE?

18 THE COURT: YES, OF COURSE.

19 (WHEREUPON, THERE WAS A DISCUSSION OFF THE RECORD.)

20 THE COURT: BACK ON THE RECORD.

21 MR. VARTAIN: YOUR HONOR, I HAD SOME REQUESTS TO ALTER  
22 QUESTION NO. 2 OF THE VERDICT FORM AND MAKE IT -- CHANGE  
23 QUESTION NO. 2 INTO TWO SEPARATE QUESTIONS. MAY I READ THAT?

24 THE COURT: GO AHEAD, PLEASE.

25 MR. VARTAIN: DELETE QUESTION 2 AS YOU GAVE IT AND  
26 REPLACE IT WITH A NEW QUESTION 2 TO READ AS FOLLOWS: "DO YOU

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1 AWARD ANY AMOUNT OF PUNITIVE DAMAGES TO MARCINE BLOUGH FROM  
2 MENLO COLLEGE," QUESTION 1. QUESTION 3 WOULD BE, "IF THE ANSWER  
3 IS YES," COMMA, "HOW MUCH," WITH A DOLLAR SIGN AND A BLANK NEXT  
4 TO IT.

5 I HAVE ANOTHER MATTER. I'D LIKE TO PUT THAT ON THE  
6 RECORD, YOUR HONOR.

7 THE COURT: ALL RIGHT. AND THAT OBJECTION WAS TIMELY  
8 MADE, AND THE COURT GAVE THE VERDICT FORM AS SUBMITTED IN THE  
9 RECORD.

10 ANY OTHER OBJECTION BY PLAINTIFF ON JURY INSTRUCTION  
11 OR VERDICT FORM?

12 MR. LEBOWITZ: ON THE VERDICT FORM AS GIVEN, I  
13 OBJECTED TO QUESTION NO. 1 BEING GIVEN TO THE JURY AT ALL. I



14 BELIEVE IT WAS SUBSUMED WITHIN THE QUESTION ON THE ORIGINAL  
15 PHASE ONE, QUESTION 2 OF THE DAMAGES VERDICT FORM, BASED ON THE  
16 INSTRUCTION THAT WAS GIVEN IN TANDEM WITH THAT QUESTION ON THE  
17 VERDICT FORM. SO I BELIEVE IT'S ALREADY BEEN ANSWERED BY THE  
18 JURY AND IT WAS UNNECESSARILY DUPLICATIVE AND CONFUSING FOR THE  
19 JURY TO ANSWER AGAIN NOW.

20 THE COURT: AND THAT WAS TIMELY MADE AS WELL.

21 ALL RIGHT. MR. VARTAIN?

22 MR. VARTAIN: YOUR HONOR, I'D LIKE TO MOVE FOR A  
23 MISTRIAL ON THE PUNITIVE DAMAGES PHASE ON THE FOLLOWING GROUNDS:  
24 NUMBER 1, THE CURATIVE INSTRUCTION WHICH YOUR HONOR KINDLY GAVE  
25 AFTER MR. LEBOWITZ ARGUED ABOUT THE LACK OF APOLOGY IS AN  
26 INSUFFICIENT CURATION IN THE CIRCUMSTANCE OF THIS ARGUMENT,

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1 PARTICULARLY IN THE CONTEXT OF A NON-PROFIT AND PARTICULARLY  
2 BECAUSE THE PLAINTIFFS SUBPOENAED THE PRESIDENT TO COME TO THE  
3 WITNESS STAND AND DID NOT ASK HIM ANY QUESTIONS FROM WHICH HE  
4 COULD VALIDLY BE EXPECTED TO APOLOGIZE.

5 THE ATTORNEY KNEW THAT WAS A -- KNEW OR SHOULD HAVE  
6 KNOWN THAT MENTIONING THAT TO THE JURY WAS LIKELY TO INFLAME THE  
7 PASSIONS, PARTICULARLY GIVEN HIS ARGUMENT THAT THE PUNITIVE  
8 DAMAGES AWARD NEEDED TO BE ISSUED BY THE JURY IN ORDER TO GET  
9 THE MESSAGE TO THE COLLEGE. SO THAT'S THE FIRST POINT.

10 THE SECOND POINT IS THAT EARLIER IN THE TRIAL, IT WAS  
11 MENTIONED IN FRONT OF THE JURY THAT MR. PETERS' WIFE WAS

12 PREGNANT. AND MR. LEBOWITZ DELIBERATELY REFERRED TO THE ABSENCE  
13 OF MR. PETERS IN FRONT OF THE JURY SO AS TO CURRY FAVOR WITH THE  
14 JURY, AGAIN TO INAPPROPRIATELY INJECT ISSUES NOT PROPERLY  
15 BEFORE -- THERE ARE EIGHT WOMEN ON THE JURY, ALL OF WHOM WOULD  
16 BE EXPECTED TO BE ATTENTIVE TO THAT TOPIC OF WHERE IS MR. PETERS  
17 WHEN HIS WIFE WAS PREGNANT?

18 MR. LEBOWITZ, DURING THE COURSE OF THE TRIAL, INVITED  
19 A VERY PREGNANT WOMAN TO OBSERVE THE TRIAL, AND HE WAS TALKING  
20 TO HER IN FRONT OF THE JURY ON A NUMBER OF OCCASIONS. YOU MAY  
21 NOT HAVE NOTICED, YOUR HONOR, BUT THE JURY WAS GOING IN AND OUT.  
22 AND SO MY POINT IS SIMPLY THAT --

23 THE COURT: MR. VARTAIN, ARE YOU SUGGESTING THAT A  
24 PROCEEDING THAT IS OPEN TO THE PUBLIC SHOULD EXCLUDE OBVIOUSLY  
25 PREGNANT WOMEN?

26 MR. VARTAIN: OBVIOUSLY NOT, YOUR HONOR.

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1 THE COURT: THANK YOU.

2 MR. VARTAIN: OBVIOUSLY NOT. BUT KNOWING  
3 MR. LEBOWITZ, KNOWING THAT THERE WAS A CIRCUMSTANCE WHERE HE WAS  
4 SPEAKING TO SUCH AN OBVIOUSLY PREGNANT WOMAN AND KNOWING THAT  
5 MR. PETERS' WIFE BEING PREGNANT WAS MENTIONED IN THE COURTROOM  
6 WHEN SOME JURORS WERE PRESENT, PUTTING TWO AND TWO TOGETHER,  
7 THIS DELIBERATE EFFORT TO INJECT THAT ISSUE, WHICH HAD NO  
8 CONCERN TO THE JURY WHY MR. PETERS WAS HERE, BECAUSE HE HASN'T  
9 BEEN HERE FOR SEVERAL DAYS, YOU MIGHT IMAGINE, WAS INTENTIONAL,

10 AN INTENTIONAL EFFORT TO CONDITION THE JURY. AND IT'S BEEN  
11 HAPPENING THROUGHOUT THE TRIAL ON A NUMBER OF OCCASIONS.  
12 THE THIRD THING -- AND THIS MAY BE INDEPENDENT OR  
13 CUMULATIVE GROUNDS FOR A MISTRIAL, YOUR HONOR -- IS I WAS MISLED  
14 BY MR. LEBOWITZ STATING TO THE JURY VERY PLAINLY, "THIS IS THE  
15 LAST TIME YOU WILL HEAR FROM ME," AND IT WAS IN HIS OPENING  
16 ARGUMENT. IN THE MATTER OF PUNITIVE DAMAGES, FOR ME TO BE LED  
17 INTO BELIEVING THAT THERE WOULD NOT BE A REBUTTAL AND IF THERE  
18 WAS NOT A CLEAR WAIVER OF REBUTTAL -- AND I HEARD YOUR HONOR SAY  
19 THAT THERE IS NOT A LAW OF LABOR, BUT THE MISLEADING ASPECT OF  
20 IT WAS SUCH THAT I TIMELY REQUESTED AN OPPORTUNITY FOR  
21 SURREBUTTAL AND THE COURT DENIED ME THAT OPPORTUNITY.

22 AND IN THE CIRCUMSTANCE OF THIS PARTICULAR CASE THE  
23 DENIAL OF THAT OPPORTUNITY INDEPENDENTLY OR IN COMBINATION WITH  
24 THE OTHER GROUNDS FOR MISTRIAL THAT I'VE INDICATED WARRANTS  
25 GRANTING THE MOTION.

26 MAY I HAVE A MOMENT, YOUR HONOR?

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1 THE COURT: OF COURSE.

2 MR. VARTAIN: FINALLY, THE USE OF THE ANALOGY OF  
3 DOSAGE OF MEDICINE, WHICH LEFT ME WITHOUT THE ABILITY TO REPLY  
4 IN THIS CASE. IN THE CONTEXT WHERE MEDICAL ISSUES WERE SO  
5 PREVALENT, IT COULD DO NOTHING BUT TO INFLAME THE PASSIONS OF  
6 THE JURY AND WAS DONE WITH THAT EFFORT. THERE WERE MANY DOCTORS  
7 ON THE WITNESS STAND HERE; THERE WAS MUCH MEDICAL EVIDENCE, BUT

8 TO USE THAT PARTICULAR ANALOGY WITHOUT CAUSE WAS NOT FAIR  
9 ARGUMENT, AND IN THE CONTEXT OF THESE OTHER ACTS OF MISCONDUCT.

10 THANK YOU FOR THE OPPORTUNITY TO MAKE THIS MOTION,  
11 YOUR HONOR.

12 THE COURT: RESPONSE BY PLAINTIFF?

13 MR. LEBOWITZ: I'M HAVING A VERY DIFFICULT TIME  
14 FORMULATING A RESPONSE TO WHAT WAS JUST SAID. I'M HIGHLY  
15 OFFENDED BY SOME OF THE ACCUSATIONS AND SOME OF THE ISSUES THAT  
16 ARE RAISED, NOT JUST ON BEHALF OF MYSELF BUT ON BEHALF OF THE  
17 JURORS, WHO MR. VARTAIN HAS NOW IMPUGNED THE ABILITY OF WOMEN TO  
18 ACT RATIONALLY ON --

19 MR. VARTAIN: MOVE TO STRIKE THAT COMMENT.

20 THE COURT: IT'S ARGUMENTATIVE. THERE'S NO JURY HERE.

21 MR. LEBOWITZ: -- UNDER THE THOUGHT THAT THEY COULD  
22 SOMEHOW SEPARATE BEING A WOMAN AND HAVING SYMPATHY FOR SOMEONE  
23 WHO'S PREGNANT. IT'S VERY DIFFICULT FOR ME TO EVEN FORMULATE  
24 ANY KIND OF RESPONSE TO THAT IT'S SO OFFENSIVE.

25 THE LAST POINT, ON THE DOSAGE OF MEDICINE AS AN  
26 ANALOGY, I DON'T KNOW THAT I NEED TO RESPOND TO THAT. I THINK

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1 IT WAS FAIR ARGUMENT. IT WAS A FAIR ANALOGY. MR. VARTAIN HAD  
2 THE OPPORTUNITY TO REPLY TO THAT BECAUSE THAT WAS IN MY ORIGINAL  
3 OPENING -- MY ORIGINAL CLOSING AND MR. VARTAIN HAD FAIR  
4 OPPORTUNITY TO ADDRESS THAT WITH THE JURY AND DID NOT.  
5 IF HE FEELS I MISLED HIM IN MY STATEMENT TO THE JURY

6 THAT THIS IS MY LAST APPEARANCE BEFORE THEM, I DON'T KNOW WHAT  
7 TO SAY ABOUT THAT. THE JURY IS ENTITLED TO HOLD THAT AGAINST ME  
8 FOR LYING TO THEM. I DON'T KNOW WHAT THE JURY -- I WAS NOT  
9 INTENDING TO WAIVE ANYTHING. AND AS YOU SAW FROM MY -- AS THE  
10 COURT SAW FROM MY REBUTTAL, IT WAS ABOUT 45 SECONDS LONG. SO I  
11 DON'T THINK THAT THERE COULD BE ANY PREJUDICE, EVEN IF THERE  
12 WERE SOME SORT OF IDEA OF WAIVER.

13 MY INTENTION ON ADDRESSING MR. PETERS' ABSENCE WAS  
14 SIMPLY TO ALLOW THE JURY TO UNDERSTAND THAT MR. PETERS WAS NOT  
15 ABANDONING THEM AND NOT THINKING THAT IT'S TOO SERIOUS. I HAD  
16 NO INTENTION OF CURRYING FAVOR OR DOING ANYTHING OF THE SORT.

17 THE COURT WILL RECALL THAT FROM THE BEGINNING OF THIS  
18 TRIAL MR. VARTAIN, ESPECIALLY AND INCLUDING IN JURY SELECTION,  
19 HAS BEEN INJECTING HIMSELF AND HIS REPRESENTATION OF MULTIPLE  
20 UNIVERSITIES AND COLLEGES IN HIS OWN PRACTICE AND THAT TYPE OF  
21 THING TO THE JURY. SO TO SAY THAT I HAVE IN THIS VERY BRIEF  
22 COMMENT, WHICH WAS CUT OFF, TO SAY THAT THAT WAS SOMEHOW  
23 CURRYING FAVOR WITH THE JURY, I DON'T THINK HOLDS.

24 AND MY INTENT WITH THE COMMENT TO THE JURY, WHICH I  
25 BELIEVE WAS COMPLETELY CURED -- IF THERE WAS SOMETHING  
26 OBJECTIONABLE ABOUT MY COMMENT REGARDING THE LACK OF AN APOLOGY,

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1 IT WAS CERTAINLY CURED IMMEDIATELY AND VOCIFEROUSLY FROM THE  
2 COURT, AND I IMMEDIATELY MOVED ON TO A DIFFERENT TOPIC. AND,  
3 FRANKLY, I DID NOT EVEN GET A FULL SENTENCE OUT ON THE TOPIC.

4 MY INTENT, SO THE RECORD IS CLEAR, WAS TO ARGUE TO THE  
5 JURY UNDER JURY INSTRUCTION, I BELIEVE, 203 -- I THINK THAT'S  
6 THE NUMBER -- WHICH IS THE POWER TO PRODUCE STRONGER EVIDENCE,  
7 AND THAT THE JURY WOULD BE ENTITLED TO CONSIDER WHETHER THE  
8 COLLEGE HAD THE ABILITY TO PRODUCE STRONGER EVIDENCE OF ITS --  
9 WHETHER OR NOT IT HEARD THE VERDICT.

10 AND THAT, IN MY EXPERIENCE, IS A VERY TYPICAL RESPONSE  
11 OF A DEFENDANT IS TO PUT SOMEONE ON THE STAND AND ELICIT  
12 TESTIMONY FROM THAT PERSON, GENERALLY, A CEO OR HIGH-RANKING  
13 OFFICER, TO TELL THE JURY, "WE HEAR YOU. WE'VE HEARD YOU. YOU  
14 DON'T NEED TO ADD ANYTHING ELSE TO YOUR VERDICT BECAUSE WE HAVE  
15 HEARD YOUR ORIGINAL VERDICT." THAT IS A VERY, IN MY EXPERIENCE,  
16 CERTAINLY TYPICAL APPROACH BY A DEFENDANT FACED WITH A MALICE  
17 FINDING AND FACED WITH THE POTENTIAL FOR PUNITIVE DAMAGES AWARD.

18 SO MY INTENT IN THAT -- IN MY PRESENTATION TO THE JURY  
19 AFTER THE CLOSE OF EVIDENCE WAS TO SIMPLY MENTION THAT THERE HAD  
20 BEEN NO EFFORT FROM THE COLLEGE TO SAY TO THEM THAT THEY HAD  
21 HEARD THE VERDICT. THAT WAS ALL. AND I DON'T THINK I CAN  
22 FORMULATE FURTHER RESPONSES TO ANY OF THE OTHER PARTS OF THIS  
23 OBJECTION.

24 THE COURT: ANYTHING ELSE, MR. VARTAIN, BEFORE I RULE?

25 MR. LEBOWITZ: I'M SORRY. THERE'S ONE THING.

26 I DON'T RECALL ANY PRIOR MENTION OF MR. PETERS' WIFE

1 BEING PREGNANT IN FRONT OF THE JURY. MY ONLY RECOLLECTION IS

2 THAT WAS IN CHAMBERS. I DON'T RECALL THAT EVER BEING REMARKED  
3 IN FRONT OF THE JURY DURING THE TRIAL, SO I JUST WANTED TO  
4 ADDRESS THAT.

5 THANK YOU.

6 THE COURT: MR. VARTAIN, FINAL ARGUMENT?

7 MR. VARTAIN: JUST THAT NONE OF THE STATEMENTS BY  
8 COUNSEL REGARDING HIS PERSONAL INTENT CHANGED THE IMPACT ON THE  
9 JURY IN THE PUNITIVE DAMAGES. AND THE FACT THAT, ALTHOUGH YOUR  
10 HONOR ACTED VERY PROPERLY IN TIMELY GIVING THE CURATIVE  
11 INSTRUCTION REGARDING THE APOLOGY, THE OTHER MATTERS WERE NOT  
12 CURED. AND AN EXPERIENCED ATTORNEY COULD HAVE APOLOGIZED TO THE  
13 JURY OR TAKEN ACTION BEYOND JUST MOVING ON TO CURE HIS OWN  
14 OBVIOUS MISCONDUCT.

15 UNDER THESE CIRCUMSTANCES, ANY UNIQUE CIRCUMSTANCES OF  
16 THIS PARTICULAR BIFURCATED PROCEEDINGS, I BELIEVE A MOTION FOR  
17 MISTRIAL SHOULD BE GRANTED BY THE COURT.

18 THE COURT: THANK YOU.

19 I'M GOING TO DENY THE MOTION FOR MISTRIAL. ON THE  
20 ISSUE OF LACK OF APOLOGY, I DID GIVE A CURATIVE INSTRUCTION TO  
21 THE JURY. I BELIEVE THAT THE JURY CAN BE PRESUMED TO FOLLOW THE  
22 COURT'S INSTRUCTIONS. THEY'VE ALL TAKEN AN OATH TO DO THAT.  
23 AND THE INSTRUCTION TO THEM TO DISREGARD THE QUESTION WAS -- I'M  
24 SORRY -- THE ARGUMENT WAS CLEAR.

25 IN ADDITION, HAD THE FINAL CLOSING ARGUMENT INCLUDED A  
26 REBUTTAL TO MR. VARTAIN'S ARGUMENT THAT THE COLLEGE HAS HEARD

1 THE JURY AND WILL BE SELF-CURATIVE, I WOULD NOT HAVE SUSTAINED  
2 THE OBJECTION TO AN ARGUMENT, LADIES AND GENTLEMEN, YOU HEARD NO  
3 APOLOGY. BECAUSE OF THE TIMING OF IT, I THINK THAT THE CURATIVE  
4 INSTRUCTION WAS APPROPRIATE. MR. LEBOWITZ CHOSE NOT TO OBJECT  
5 TO THE ARGUMENT THAT THE COLLEGE HAD HEARD BUT HE, RATHER, JUST  
6 ARGUED IT THE OPPOSITE WAY.

7 AS TO THE ISSUE OF MR. PETERS' WIFE GIVING BIRTH, THE  
8 JURY DID NOT HEAR ANYTHING ABOUT MR. PETERS' ACTUAL CIRCUMSTANCE  
9 BECAUSE THE OBJECTION WAS VERY PROMPT AND THE RULING WAS PROMPT,  
10 AND SO WHATEVER IT WAS MR. LEBOWITZ PLANNED TO SAY, THE JURY WAS  
11 LEFT IN THE DARK. I PERSONALLY DON'T RECALL THAT MR. LEBOWITZ  
12 SAID TO THE JURY THAT MR. PETERS' WIFE WAS EXPECTING TO DELIVER  
13 THEIR BABY WITHIN THE NEXT FEW DAYS.

14 I JUST DON'T REMEMBER. I COULDN'T SAY ONE WAY OR THE  
15 OTHER. I WAS CERTAINLY INFORMED OF IT, BUT I DON'T RECALL  
16 WHETHER IT WAS IN FRONT OF THE JURY. IF IT WAS, IT WAS NOT  
17 OBJECTED TO AT THAT TIME, WHICH WOULD HAVE PUT MR. LEBOWITZ ON  
18 NOTICE THAT THIS WAS AN ISSUE THE DEFENSE THOUGHT WAS  
19 INFLAMMATORY. IT CERTAINLY WAS INAPPROPRIATE IN CLOSING. IT  
20 COULD ONLY CALL ON THE PASSION OR PREJUDICE OF THE JURY TO LIKE  
21 THE PLAINTIFFS BETTER, THAT'S WHY I STOPPED IT. THAT'S WHY THE  
22 OBJECTION WAS PROPER. BUT I THINK IT WAS DEALT WITH  
23 SUFFICIENTLY AND MISTRIAL WOULD NOT BE APPROPRIATE THERE.

24 AS TO THE ISSUE OF HAVING BEEN MISLED REGARDING THE  
25 FINAL CLOSING ARGUMENT, I DID NOT HAVE A WAIVER OF THE FINAL  
26 CLOSING. I DON'T BELIEVE THAT THE STATEMENT WAS SO MISLEADING



1 THAT IT WOULD PREJUDICE THE DEFENSE. AND, FINALLY, AS TO THE  
2 ISSUE OF WHETHER THE ANALOGY OF THE DOSAGE OF MEDICINE WAS FAIR,  
3 FIRST, THERE WAS NO OBJECTION, SECOND, DEFENSE HAD THE  
4 OPPORTUNITY TO COUNTER IT BY ARGUING TO THE JURY THAT IT WAS  
5 UNFAIR; NEITHER OF THOSE THINGS DID OCCUR.

6 FOR ALL OF THOSE REASONS, THE COURT DOES DENY THE  
7 MOTION FOR MISTRIAL.

8 ANYTHING ELSE BEFORE WE GO OFF THE RECORD?

9 MR. VARTAIN: JUST ON THAT LAST, MAY I?

10 THE COURT: YES, PLEASE.

11 MR. VARTAIN: ON THAT LAST COMMENT, YOUR HONOR, I  
12 COULD NOT HAVE CURED THAT WITHOUT DRAWING FURTHER ATTENTION TO  
13 THE ANALOGY. IT WAS NOT A CURATIVE ANALOGY, NOT A CURATIVE  
14 THING BUT --

15 THE COURT: I RESPECT THAT DECISION ON YOUR PART.  
16 THAT'S A STRATEGIC DECISION THAT ONLY YOU CAN MAKE ON BEHALF OF  
17 YOUR CLIENT BUT, IN FACT, THERE WAS NO OBJECTION TO IT WHEN IT  
18 WAS MADE.

19 ALL RIGHT.

20 MR. LEBOWITZ: NOTHING FURTHER FROM THE PLAINTIFF.

21 THE COURT: ANYTHING ELSE FOR THE RECORD?

22 MR. VARTAIN: (SHAKES HEAD.)

23 THE COURT: ALL RIGHT. WE WILL BE IN RECESS AND  
24 WAITING FOR ANY QUESTIONS BY THE JURY OR A CONCLUSION BY THEM.

25 (WHEREUPON, THERE WAS A DISCUSSION OFF THE RECORD.)

26 THE COURT: MR. LEBOWITZ HAS ASKED FOR THE BASIS OF

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1 THE COURT'S RULING ON THE OBJECTION BY THE DEFENSE THAT THE  
2 ARGUMENT ON LACK OF APOLOGY WAS INAPPROPRIATE. THE COURT  
3 DETERMINED THAT THE DEFENSE IS NOT REQUIRED TO ESSENTIALLY WAIVE  
4 ITS APPELLATE RIGHTS ON ANY ISSUE DETERMINED BY THE JURY AT THIS  
5 PHASE, AND THAT WAS THE BASIS ON WHICH I MADE MY RULING, IS THAT  
6 I FELT THAT THAT WOULD BE AN UNFAIR CIRCUMSTANCE TO PUT THE  
7 DEFENSE IN OF WAIVING ITS RIGHTS IF IT'S APOLOGIZING FOR  
8 SOMETHING THAT IT MAY WISH TO ARGUE TO THE COURT OF APPEAL THE  
9 EVIDENCE DID NOT ESTABLISH THAT IT DID.

10 MR. LEBOWITZ: OKAY. THANK YOU, YOUR HONOR. I VERY  
11 MUCH APPRECIATE THE EXPLANATION.

12 THE COURT: ALL RIGHT.

13 AND WE'RE OFF THE RECORD NOW.

14 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

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1 PROCEEDINGS

2 DECEMBER 19, 2008 P.M. REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD AFTERNOON. WE'RE BACK ON THE RECORD  
4 IN BLOUGH VS. MENLO COLLEGE. ALL COUNSEL AND PARTIES ARE  
5 PRESENT AND ALL JURORS.

6 GOOD AFTERNOON, LADIES AND GENTLEMEN. TRPJXXXXXXXX, AS  
7 I UNDERSTAND THE JURY HAS REACHED A VERDICT ON PHASE TWO; IS  
8 THAT CORRECT?

9 TRPJXXXXXXXX: YES.

10 THE COURT: IF YOU COULD GIVE THE VERDICT FORM TO THE  
11 BAILIFF, PLEASE.

12 TRPJXXXXXXXX: (COMPLIES.)

13 THE COURT: IF I MAY ASK THE CLERK TO PLEASE READ THE  
14 VERDICT.

15 THE CLERK: IN THE SUPERIOR COURT OF THE STATE OF  
16 CALIFORNIA, IN AND FOR THE COUNTY OF SAN MATEO, CASE  
17 NO. CIV 465027, MARCINE BLOUGH, PLAINTIFF, VERSUS MENLO COLLEGE  
18 AND DOES 1 TO 25, INCLUSIVE, DEFENDANTS, VERDICT FORM PUNITIVE  
19 DAMAGES ENTITY DEFENDANT.

20 WE ANSWER THE QUESTIONS SUBMITTED TO US AS FOLLOWS:

21 QUESTION NO. 1, WAS THE UNLAWFUL CONDUCT THAT CONSTITUTES  
22 MALICE, OPPRESSION OR FRAUD COMMITTED BY ONE OR MORE OFFICERS,  
23 DIRECTORS OR MANAGING AGENTS AT MENLO COLLEGE ACTING IN A  
24 CORPORATE CAPACITY? YES. QUESTION NO. 2, WHAT AMOUNT PUNITIVE  
25 DAMAGES, IF ANY, DO YOU AWARD MARCINE BLOUGH? \$100,000. SIGNED  
26 PRESIDING JUROR, TRPJXXXXXXX, DATED 12/19/2008.

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1 THE COURT: COUNSEL, DO EITHER OF YOU WISH TO HAVE THE  
2 JURY POLLED?

3 MR. LEBOWITZ: NO, YOUR HONOR.

4 MR. VARTAIN: NO, THANK YOU.

5 THE COURT: ALL RIGHT.

6 LADIES AND GENTLEMEN, THE ATTORNEYS ARE NOT GOING TO  
7 HAVE YOU POLLED. WE WENT THROUGH THAT LONG PROCESS YESTERDAY.  
8 I WILL ORDER THAT THE VERDICT FORM BE ENTERED AS READ ON THE  
9 RECORD.

10 AND, COUNSEL, YESTERDAY YOU DID WAIVE RECORDING THAT  
11 VERDICT WITHIN THE 24-HOUR RULE. YOU CONTINUE TO WAIVE THAT?

12 MR. VARTAIN: YES, YOUR HONOR.

13 THE COURT: THE VERDICT WILL BE ENTERED, AND IT JUST  
14 GIVES THE CLERK'S OFFICE A LITTLE MORE TIME, AND WE DO  
15 APPRECIATE THAT.

16 MR. LEBOWITZ: YES, YOUR HONOR.

17 THE COURT: LADIES AND GENTLEMEN, YOU'VE BEEN HERE FOR  
18 A LONG TIME. IT'S BEEN A LONG TRIAL, AND I WANT TO THANK YOU

19 FOR YOUR ATTENTION TO THE CASE. YOU'VE BEEN PROMPT EVERY DAY.  
20 YOU'VE BEEN DILIGENT IN YOUR WORK. THIS IS THE FIRST TIME IN A  
21 LONG TIME THAT I CAN REMEMBER THAT WE SEATED BOTH OF THE  
22 ALTERNATES.

23 I'M SURE, ATRJ03 AND ATRJ08, WHEN YOU WERE BOTH SEATED  
24 AS ALTERNATES YOU MAY HAVE BEEN A LITTLE DISAPPOINTED THAT YOU  
25 WERE GOING TO HAVE TO BE HERE FOR NO PURPOSE, BUT AS IT TURNED  
26 OUT WE NEEDED YOU SO WE'RE VERY GRATEFUL THAT YOU WERE ATTENTIVE

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1 THROUGHOUT THE PROCESS.

2 I KNOW THIS WAS DISRUPTIVE FOR ALL OF YOU. I'M SURE  
3 THAT YOU'RE GOING TO NOW SPEND A LOT OF TIME CATCHING UP WITH  
4 ALL THE TIME THAT YOU MISSED. FOR THE COMMUNITY AND OUR COURT I  
5 WANT TO THANK YOU FOR THIS GREAT PUBLIC SERVICE THAT YOU HAVE  
6 PROVIDED TO OUR COUNTY AND TO OUR JUSTICE SYSTEM. I'M NOW GOING  
7 TO RELIEVE YOU FROM ALL OF THE ADMONITIONS. YOU ARE WELCOME TO  
8 TALK TO ANYONE ABOUT ANYTHING ABOUT THIS CASE. YOU DON'T HAVE  
9 TO TALK TO ANYONE, THOUGH.

10 LET ME TELL YOU A COUPLE OF THINGS, THOUGH. FIRST OF  
11 ALL, I ONLY HAVE ANOTHER MINUTE OR TWO WITH THE ATTORNEYS, BUT  
12 IT'S SOMETIMES HELPFUL IF YOU WANT TO VOLUNTEER TO CHAT WITH  
13 THEM, THAT YOU JUST DESIGNATE THAT BY STAYING FOR A MINUTE  
14 OUTSIDE THE COURTROOM, AND I WILL RELEASE THEM IN REALLY JUST  
15 TWO OR THREE MINUTES AND THEY WILL JOIN YOU OUT IN THE HALLWAY.  
16 CLEARLY, IF YOU GO ON YOUR WAY THEY'LL KNOW YOU'RE NOT CHOOSING

17 TO STAY AND TALK. BUT IT'S OFTEN HELPFUL. THEY COULD ASK YOU  
18 THINGS THAT WE COULD NEVER DO IN THE COURTROOM, AND IT WILL BE  
19 HELPFUL TO THEM. YOU'RE NOT REQUIRED TO, THOUGH.

20 LET ME ALSO TELL YOU THAT THE ATTORNEYS AND  
21 CONSULTANTS ASSOCIATED WITH THEM ARE ALLOWED TO CONTACT YOU TO  
22 TALK TO YOU ABOUT THE CASE. I DON'T WANT YOU TO BE SURPRISED IF  
23 YOU GET A PHONE CALL FROM SOMEONE OR CONTACT IN SOME WAY. IT'S  
24 PERFECTLY APPROPRIATE. IT'S COMMON. IT'S ALMOST EXPECTED. BUT  
25 BY THE SAME TOKEN, YOU MAY SIMPLY SAY, "NO, THANK YOU," AND  
26 WE'RE DONE. IF FOR ANY REASON YOU DECLINE TO SPEAK TO SOMEONE

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1 AND THEY CONTINUE TO INSIST, PLEASE CONTACT ME AND I WILL MAKE  
2 SURE IT'S TAKEN CARE OF, BUT I'M SURE THAT WON'T BE THE CASE.

3 I JUST DON'T WANT YOU TO BE SURPRISED AND THINK  
4 THERE'S SOMETHING WRONG IF YOU GET A CALL FROM SOMEONE  
5 ASSOCIATED WITH THE CASE. IT'S HOW LAWYERS LEARN, THEY'RE  
6 TRAINED, AND SO I WANT YOU TO UNDERSTAND THAT MIGHT HAPPEN AND  
7 IT MIGHT NOT. SO THERE'S REALLY NO WAY OF MY KNOWING ONE WAY OR  
8 THE OTHER.

9 I THINK DEPUTY HENNESSY --

10 MR. VARTAIN: YOUR HONOR, MAY I BE HEARD FOR JUST A  
11 SECOND?

12 THE COURT: YEAH, OF COURSE.

13 MR. VARTAIN: COULD I REQUEST THAT THE JURY BE POLLED?

14 I REALIZE IT WOULD ONLY TAKE A MINUTE. I REMEMBERED THE TIME IT

15 TOOK 20 MINUTES.

16 THE COURT: NO OBJECTION?

17 MR. LEBOWITZ: NO OBJECTION.

18 THE COURT: ALL RIGHT. ABSOLUTELY. I'M GLAD TO.

19 MR. VARTAIN: THE REASON I WAIVED WAS I THOUGHT IT

20 WOULD TAKE A LONG TIME, BUT I REALIZED --

21 THE COURT: SURE. JUST ON THOSE TWO QUESTIONS?

22 MR. VARTAIN: JUST ON THE SECOND QUESTION.

23 THE COURT: YOU JUST WANT IT ON THE SECOND QUESTION?

24 MR. VARTAIN: MIGHT AS WELL DO BOTH.

25 THE COURT: WE'LL DO BOTH. ALL RIGHT.

26 THANK YOU FOR YOUR COURTESY, LADIES AND GENTLEMEN. WE

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1 ARE GOING DO IT JUST LIKE WE DID YESTERDAY. MR. KANE IS GOING  
2 TO READ THE FIRST QUESTION. YOU'RE GOING TO TELL US IF THIS WAS  
3 YOUR PERSONAL VOTE THE WAY IT WAS REPORTED BY TRPJXXXXXXXX, AND  
4 YOU'LL SAY CORRECT OR INCORRECT JUST LIKE WE DID YESTERDAY.

5 SO LET'S START.

6 THE CLERK: AS TO QUESTION NO. 1, WAS THE UNLAWFUL  
7 CONDUCT THAT CONSTITUTES MALICE, OPPRESSION OR FRAUD COMMITTED  
8 BY ONE OR MORE OFFICERS, DIRECTORS OR MANAGING AGENTS OF MENLO  
9 COLLEGE ACTING IN A CORPORATE CAPACITY?

10 DO YOU VOTE YES, JUROR NO. 1?

11 A. CORRECT.

12 Q. JUROR NO. 2?

13 A. INCORRECT.  
14 Q. JUROR NO. 3?  
15 A. CORRECT.  
16 Q. JUROR NO. 4?  
17 A. CORRECT.  
18 Q. JUROR NO. 5?  
19 A. CORRECT.  
20 Q. JUROR NO. 6?  
21 A. CORRECT.  
22 Q. JUROR NO. 7?  
23 A. CORRECT.  
24 Q. JUROR NO. 8?  
25 A. INCORRECT.  
26 Q. JUROR NO. 9?

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1 A. CORRECT.  
2 Q. JUROR NO. 10?  
3 A. CORRECT.  
4 Q. JUROR NO. 11?  
5 A. CORRECT.  
6 Q. JUROR NO. 12?  
7 A. CORRECT.  
8 Q. AS TO QUESTION NO. 2, WHAT AMOUNT OF PUNITIVE DAMAGES,  
9 IF ANY, DO YOU AWARD MARCINE BLOUGH?  
10 DO YOU AWARD \$100,000, JUROR NO. 1?



11 A. CORRECT.  
12 Q. JUROR NO. 2?  
13 A. CORRECT.  
14 Q. JUROR NO. 3?  
15 A. INCORRECT.  
16 Q. JUROR NO. 4?  
17 A. INCORRECT.  
18 Q. JUROR NO. 5?  
19 A. CORRECT.  
20 Q. JUROR NO. 6?  
21 A. CORRECT.  
22 Q. JUROR NO. 7?  
23 A. INCORRECT.  
24 Q. JUROR NO. 8?  
25 A. CORRECT.  
26 Q. JUROR NO. 9?

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1 A. CORRECT.  
2 Q. JUROR NO. 10?  
3 A. CORRECT.  
4 Q. JUROR NO. 11?  
5 A. CORRECT.  
6 Q. JUROR NO. 12?  
7 A. CORRECT.  
8 THE COURT: THANK YOU.

9 NOW WE WILL RECORD THE VERDICT AS POLLED. THANK YOU.

10 ALL RIGHT. JUST TO FINISH UP, I KNOW YOU HAVE YOUR  
11 VERDICT FORMS WITH YOU. IF YOU DON'T WANT THEM, YOU CAN LEAVE  
12 THEM ON YOUR CHAIRS AND DEPUTY HENNESSY WILL BE THE ONLY ONE TO  
13 TAKE THEM AND DESTROY THEM. THE SAME WITH YOUR NOTES; NO ONE  
14 WILL LOOK AT THEM. YOU'RE WELCOME TO HAVE THEM OR HE WILL MAKE  
15 SURE THAT THEY'RE SHREDDED AND NO ONE TAKES A LOOK AT THEM.

16 WITH THAT, LADIES AND GENTLEMEN, IF YOU HAVE ALL OF  
17 YOUR PERSONAL BELONGINGS, I'M GOING TO RELEASE YOU. HAVE A GOOD  
18 HOLIDAY AND THANK YOU AGAIN FOR ALL OF YOUR TIME.

19 (WHEREUPON, THE JURORS WERE RELEASED AND EXITED THE  
20 COURTROOM.)

21 THE COURT: WE'RE BACK ON THE RECORD OUTSIDE THE  
22 PRESENCE OF THE JURY.

23 COUNSEL, IS THERE ANYTHING ELSE FOR THE RECORD?

24 MR. LEBOWITZ: NO, YOUR HONOR.

25 MR. VARTAIN: NO, EXCEPT FOR THANKING YOU FOR  
26 CONDUCTING THE TRIAL, YOUR HONOR --

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1 THE COURT: THANK YOU.

2 MR. VARTAIN: -- IN A VERY HIGH-QUALITY MANNER. WE  
3 APPRECIATE IT.

4 THE COURT: I APPRECIATE THAT.

5 MR. LEBOWITZ: ABSOLUTELY, YOUR HONOR. IF ALL  
6 COURTROOMS WERE LIKE THIS, I THINK WE'D HAVE A MUCH -- I'LL SAY

7 IT LIKE THIS, A MUCH BETTER JUDICIARY. I THINK ALL PARTIES  
8 WOULD SAY THAT, NOT JUST BECAUSE OF THE OUTCOME.

9 THE COURT: THANK YOU.

10 MR. LEBOWITZ: I TRULY MEAN IT.

11 THE COURT: THANK YOU.

12 COUNSEL, JUST FOR YOUR INFORMATION, THE JUDGMENT WILL  
13 NOT BE READY TODAY. I WILL NOT BE ABLE TO SIGN IT UNTIL THE  
14 29TH WHEN I RETURN. SO PLEASE DON'T BE WORRYING ABOUT WHEN IT'S  
15 GOING TO ARRIVE. IS THERE ANY OBJECTION TO THAT?

16 MR. VARTAIN: NO OBJECTION, YOUR HONOR.

17 MR. LEBOWITZ: NO, YOUR HONOR.

18 THE COURT: THANK YOU VERY MUCH.

19 MR. VARTAIN: THANK YOU TO YOUR STAFF. THEY WERE  
20 EXCELLENT THROUGHOUT.

21 THE COURT: I APPRECIATE THAT.

22 MR. LEBOWITZ: IT'S BEEN A WONDERFUL EXPERIENCE.

23 THE COURT: ALL RIGHT.

24 GIVE OUR BEST TO MR. PETERS AND HIS FAMILY.

25 MR. LEBOWITZ: I WILL.

26 THE COURT: I'M SURE YOU MAY WANT TO SPEAK TO THE

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1 JURY. I'LL LET YOU GO RIGHT AWAY.

2 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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1                    P R O C E E D I N G S

2    FEBRUARY 20, 2009 A.M.                    REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. CALLING BLOUGH VERSUS MENLO  
4 COLLEGE. CAN I HAVE APPEARANCES, PLEASE?

5 MR. LEBOWITZ: GOOD MORNING, YOUR HONOR.

6 NOAH LEBOWITZ ON BEHALF OF THE PLAINTIFF.

7 MS. ADLER: GOOD MORNING. LINDA ADLER FOR MENLO  
8 COLLEGE.

9 MR. VARTAIN: GOOD MORNING, YOUR HONOR. MICHAEL  
10 VARTAIN FOR MENLO COLLEGE.

11 THE COURT: GOOD MORNING.

12 FIRST OF ALL, I GATHER THAT YOU ALL SAW THE TENTATIVE  
13 RULING.

14 MR. LEBOWITZ: THAT'S CORRECT.

15 THE COURT: I BELIEVE WE GOT CALLS FROM BOTH OF YOU,  
16 AND I APPRECIATE THAT. PLEASE BE SEATED. I THINK WE WILL BE  
17 HERE AWHILE.

18 BEFORE WE BEGIN, I WOULD LIKE TO COMMENT ON THE  
19 EXTRAORDINARILY HIGH QUALITY OF THE PAPERS THAT YOU ALL  
20 SUBMITTED. IT WAS ALMOST OVERWHELMING TO GET THROUGH ALL OF THE  
21 MATERIALS, BUT IT WAS REALLY EXTRAORDINARILY WELL DONE. I  
22 GREATLY APPRECIATE THE TIME AND EFFORT YOU TOOK IN PREPARING THE  
23 PAPERS.

24 WHY DON'T WE START WITH THE JUDGMENT NOT WITHSTANDING  
25 THE VERDICT RULING. I THINK THERE WAS SOMETHING FOR EVERYONE TO  
26 DISLIKE IN THAT RULING, SO I UNDERSTAND THAT, PERHAPS --

1 MR. VARTAIN, I'M NOT ACTUALLY SURE THAT YOU'RE  
2 CONTESTING THAT OR PUTTING YOUR ENERGY INTO THE NEW TRIAL  
3 MOTION.

4 MR. VARTAIN: WELL, WE ARE APPEARING ON BOTH, YOUR  
5 HONOR. BUT IT IS TRUE THAT THE BULK OF OUR -- THE COLLEGE'S  
6 ARGUMENTS ARE ON THE NEW TRIAL ORDER.

7 THE COURT: OKAY.

8 MR. VARTAIN: I KNOW THAT WITH THE JNOV YOU WERE  
9 NOT -- PROPERLY NOT ABLE TO LOOK AT THE COLLEGE'S EVIDENCE. I  
10 DO HAVE ONE COMMENT THAT --

11 THE COURT: YES.

12 MR. VARTAIN: -- INsofar AS YOUR ORDER DESCRIBED IN  
13 PART, THAT THE PLAINTIFF'S EVIDENCE WAS SUCH THAT THE COLLEGE  
14 WAS ACTING ON RUMOR AND INNUENDO IN DETERMINING TO SEND HER FOR  
15 A FITNESS-FOR-DUTY EVALUATION, IT'S TRUE THAT SHE TESTIFIED IN  
16 PART THAT WAY AND SHE'S THE ONLY WITNESS WHO TESTIFIED THAT WAY.  
17 AND FOR THAT, I GRANT YOU THAT YOU HAD TO TAKE THAT.

18 BUT, IN FACT, AS I WILL GET TO ON THE NEW TRIAL MOTION  
19 ARGUMENT, THE JURY DID FIND, IN ESSENCE, THAT THE COLLEGE DID  
20 NOT ACT ON RUMOR AND INNUENDO BUT, RATHER, ACTED FOR REASONS  
21 CONSISTENT WITH BUSINESS NECESSITY IN THAT VERY ISSUE OF ON WHAT  
22 BASIS THEY WERE SENDING HER TO THE MEDICAL EVALUATION. BUT I  
23 INFER THAT THE COURT DID NOT BELIEVE THAT THAT FINDING WAS  
24 APPROPRIATE FOR THE COURT TO RELY UPON FOR PURPOSES OF THE JNOV  
25 MOTION. AND SO THAT'S REALLY THE THRUST OF MY COMMENT.

26 THE COURT: I APPRECIATE THAT. THANK YOU.

1 LET'S TALK ABOUT THE PUNITIVE DAMAGES. WE'VE TALKED  
2 ABOUT THIS QUITE A BIT. THE DEFENSE BROUGHT A MOTION FOR  
3 NONSUIT. WE HAD A LENGTHY DISCUSSION ON IT. ONE OF THE ISSUES  
4 THAT I WAS WILLING TO -- THE REASON I STATED -- ALTHOUGH I HAD  
5 LOOKED AT THIS THOROUGHLY NOW -- THAT I LET THE ISSUE OF  
6 PUNITIVE DAMAGES GO TO THE JURY WAS MR. LEBOWITZ CLAIMED THAT  
7 SENDING MS. BLOUGH TO A PSYCHIATRIST COULD BE CONSIDERED  
8 MALICIOUS. THE JURY RENDERED A VERDICT THAT PUT TO REST THAT  
9 ISSUE.

10 NOW, MR. LEBOWITZ, YOU'VE HAD THE OPPORTUNITY TO  
11 CONSIDER WITH SOME TIME ALL OF THE EVIDENCE ON PUNITIVE DAMAGES,  
12 AND I KNOW YOU WANT TO CONTEST MY RULING, SO LET ME HEAR FROM  
13 YOU NOW.

14 MR. LEBOWITZ: THANK YOU VERY MUCH, YOUR HONOR. AND  
15 THANK YOU FOR THE OPPORTUNITY TO ADDRESS THE MOTION MORE FULLY  
16 IN WRITING.

17 I WOULD ALSO START BY SAYING THAT IN CLOSING ARGUMENTS  
18 I EXPLAINED TO THE JURY THAT IT WASN'T JUST THAT OUR THEORY OF  
19 PUNITIVE DAMAGES WAS NOT LIMITED TO THE IDEA OF THE SENDING  
20 PROFESSOR BLOUGH TO A PSYCHIATRIST, AND SPENT A SIGNIFICANT  
21 AMOUNT OF THE CLOSING ARGUMENT'S TIME EXPLAINING THE PROCESS BY  
22 WHICH WE BELIEVE THAT THE COLLEGE ACTED WITH ALL THREE; MALICE,  
23 RECKLESS DISREGARD, AND FRAUDULENTLY IN REGARDS TO THE WAY THEY  
24 TREATED PROFESSOR BLOUGH FROM THE BEGINNING OF THE SEQUENCE OF  
25 EVENTS, FROM EARLY FEBRUARY IN 2006 THROUGH THE FINAL ACT IN THE

1 AND THE SEQUENCE OF EVENTS TAKEN IN TOTAL, ALONG WITH  
2 THE VARIOUS ASPECTS OF HOW THEY WENT ABOUT DEALING WITH  
3 PROFESSOR BLOUGH ALL, EITHER INDIVIDUALLY OR CUMULATIVELY,  
4 AMOUNTED TO SUFFICIENT CLEAR AND CONVINCING EVIDENCE FOR  
5 PUNITIVE DAMAGE'S SAKE. I DON'T WANT TO REPEAT WHAT I'VE PUT IN  
6 THE PAPERS. I UNDERSTAND YOUR HONOR HAS READ THEM, AND WE PUT  
7 OUR ARGUMENTS, I BELIEVE, PRETTY THOROUGHLY IN THE PAPERS.

8 I DO WANT TO RAISE ONE OR TWO POINTS BASED ON THE  
9 TENTATIVE --

10 THE COURT: GOOD.

11 MR. LEBOWITZ: -- AND POINTS THAT ARE RAISED IN THE  
12 TENTATIVE. FIRST, DEALING WITH THE CASE OF CLOUD V. CASEY,  
13 WHICH IS OUR PRIMARY SOURCE OF AUTHORITY --

14 THE COURT: YES.

15 MR. LEBOWITZ: -- FOR PUNITIVE DAMAGES. CERTAINLY, IN  
16 PLAINTIFF DISCRIMINATION CASES IN GENERAL, AND IN THIS CASE IN  
17 PARTICULAR.

18 WHAT I WANTED TO MAKE CLEAR IN THE PAPERS, AND I'M NOT  
19 SURE I MADE CLEARLY AS I COULD HAVE, IS THAT WE WERE NOT SAYING  
20 THAT EITHER WE BELIEVE OR THAT CLOUD EVEN STOOD FOR THE  
21 PROPOSITION THAT A FINDING OF DISCRIMINATION IN AND OF ITSELF IS  
22 SUFFICIENT TO SUPPORT A CLAIM OR A FINDING OF PUNITIVE DAMAGES.

23 THE COURT: I ACTUALLY THINK THAT'S WHAT YOU SAID IN



24 YOUR PAPERS.

25 MR. LEBOWITZ: WELL, I REREAD THAT SECTION LAST NIGHT  
26 TO MAKE SURE. BECAUSE I READ THAT IN YOUR RULING AND I SAID, "I

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1 DON'T THINK I SAID THAT," BUT I OBVIOUSLY WASN'T AS CLEAR AS I  
2 COULD HAVE BEEN. AND, YOU KNOW, IN MY OWN ERROR THERE WAS ONLY  
3 ONE OR TWO SENTENCES THAT REALLY BROUGHT THAT OUT, AND SO IT WAS  
4 SOMEWHAT BURIED IN THE ARGUMENT.

5 BUT OUR POINT IS THAT THAT IS THE KIND OF FOUNDATION  
6 AND KIND OF WHAT CLOUD'S FOUND, WAS THAT THE UNDERLYING ACT OF  
7 INTENTIONAL DISCRIMINATION IS MALICIOUS. BUT IT IS ALSO -- BUT  
8 NOT ENOUGH -- I AGREE, IT DID NOT SAY THAT THAT WAS ENOUGH. AND  
9 THE QUOTE THAT WE --

10 THE COURT: I DON'T THINK THAT THE CLOUD COURT SAID  
11 THE UNDERLYING ACT OF INTENTIONAL DISCRIMINATION IS MALICIOUS.  
12 IN CLOUD THERE WAS THE COVER UP.

13 MR. LEBOWITZ: CORRECT.

14 THE COURT: AND THERE WERE THE -- AND I THINK I  
15 REITERATED. I'M SORRY, I READ SO MANY CASES, I'M NOT GOING TO  
16 TRY TO MISQUOTE ONE OF THESE CASES. WE ADDRESSED CLOUD ON OTHER  
17 ISSUES. WE'VE USED THIS CASE FROM THE BEGINNING. I STILL HAVE  
18 THE COPY HERE THAT YOU GAVE ME DURING TRIAL.

19 YOU KNOW, MR. VARTAIN CITED A CASE -- YOU WILL  
20 REMEMBER THE NAME BECAUSE I CAN'T -- TALKING ABOUT IT WAS SORT  
21 OF AN ODD CONCEPT THAT MERE NEGLIGENCE IN CONDUCTING POTENTIAL

22 DISCRIMINATION IS NOT AN OPPORTUNITY TO DAMAGES. TO USE THE  
23 WORDS "NEGLIGENCE" IN AN INTENTIONAL ACT IS A LITTLE JOLTING,  
24 BUT WHAT I GLEANED FROM THAT IS THAT YOUR BARE BONES EVIDENCE  
25 THAT PROVES INTENTIONAL DISCRIMINATION BY ITSELF IS NOT ENOUGH.

26 MR. LEBOWITZ: AND I AGREE WITH THAT.

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1 THE COURT: ALL RIGHT.

2 MR. LEBOWITZ: I DO AGREE WITH THAT. AND IF WE DID  
3 NOT SAY THAT AS FORCEFULLY AS WE SHOULD HAVE IN OUR PAPERS, I  
4 APOLOGIZE. BUT WE DEFINITELY DO AGREE WITH THAT STATEMENT OF  
5 THE LAW.

6 THE COURT: OKAY.

7 MR. LEBOWITZ: BECAUSE WHAT CLOUD DID SAY IS THE  
8 INTENTIONAL DISCRIMINATION COMBINED WITH EVIDENCE OF A COVER UP  
9 OR STEPS TAKEN TO SOMEHOW ESCAPE THAT LIABILITY IN A WAY THAT  
10 WAS FOUND BY THE JURY, AT LEAST, TO BE NOT BELIEVED AND NOT  
11 CREDIBLE, THAT THAT COMBINATION OF THE TWO CAN BE SUFFICIENT TO  
12 AMOUNT TO BOTH MALICE AND RECKLESS DISREGARD IN THE CLOUD  
13 COURT'S RULING.

14 AND WE BELIEVE WE HAVE THAT HERE. NOT JUST -- AND  
15 SOMETIMES IN SOMEWHAT EVEN STRONGER TERMS THAN WHAT WAS IN THE  
16 CLOUD CASE -- BECAUSE RECALL, THE CLOUD WAS A FAILURE-TO-PROMOTE  
17 CASE. THE CONSTRUCTIVE DISCHARGE CLAIM IN THAT CASE WAS  
18 REJECTED, AND THE REJECTION WAS AFFIRMED BY THE COURT OF APPEAL.  
19 AND WHAT WAS THE LIABILITY AND FORMED THE LIABILITY IN THE CLOUD

20 CASE WERE TWO OR THREE INSTANCES WHERE THE PLAINTIFF WAS  
21 INFORMED BY HER SUPERIORS THAT SHE COULD NOT ADVANCE TO THE  
22 HIGHEST PARTS OF HER DEPARTMENT BECAUSE THE COMPANY WOULD NOT  
23 EVER HAVE A WOMAN IN THAT POSITION.

24 THE COURT: PRETTY OUTRAGEOUS, VILE STATEMENTS.

25 MR. LEBOWITZ: IT IS. AND IT IS SIMILAR TO OUR CASE  
26 IN THAT IT IS DIRECT EVIDENCE OF DISCRIMINATORY INTENT.

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1 WHAT WE HAVE IN OUR CASE ARE DOCUMENTS THAT  
2 DEMONSTRATE DIRECT EVIDENCE OF TAKING PROFESSOR BLOUGH'S  
3 DISABILITY INTO ACCOUNT IN MAKING THEIR TERMINATION DECISION.

4 THE COURT: WELL, REMEMBER, THOUGH, AN EMPLOYER CAN  
5 TAKE A DISABILITY INTO ACCOUNT IF BECAUSE OF THE DISABILITY THE  
6 EMPLOYEE IS UNABLE TO PERFORM THE ESSENTIAL FUNCTION OF THE JOB.

7 MR. LEBOWITZ: THAT'S CORRECT.

8 THE COURT: AND SO, YES, OF COURSE, THEY TOOK IT INTO  
9 ACCOUNT. BUT CRITICAL FINDING, IN MY VIEW, BY THE JURY WAS THE  
10 FINDING THAT PROFESSOR BLOUGH WAS ABLE TO PERFORM THE ESSENTIAL  
11 FUNCTIONS, THEREFORE ANY CONSIDERATION OF THE DISABILITY WAS  
12 UNLAWFUL.

13 MR. LEBOWITZ: THAT IS CORRECT. AND THAT WAS A  
14 UNANIMOUS FINDING BY THE JURY. WHAT MAKES THAT EVIDENCE SO  
15 POWERFUL AND SUCH A FOUNDATION TO LEAD INTO A FINDING OF  
16 PUNITIVE DAMAGES WAS THE FACT, AS YOUR HONOR NOTED IN THE OTHER  
17 PARTS OF THE RULING ON JNOV, THAT THERE WAS ALMOST A CONSCIOUS

18 DISREGARD OF HER RIGHTS, CERTAINLY RECKLESS.

19 THERE WAS NO ATTEMPT TO GLEAN ANY INFORMATION FROM HER  
20 TREATING PHYSICIANS INDEPENDENTLY. THERE WAS NO ATTEMPT TO  
21 INDEPENDENTLY VERIFY WHETHER OR NOT SHE, IN FACT, COULD PERFORM  
22 THE ESSENTIAL FUNCTIONS OF HER JOB WHEN THEY HAD THE OPPORTUNITY  
23 AND THE POWER TO DO SO.

24 THE COURT: BUT WHAT YOU'RE MISSING -- I SEE THIS IN  
25 THE NEGLIGENCE CATEGORY. WHAT THE EVIDENCE SHOWS, AND IT WAS  
26 UNCONTROVERTED, IS THAT MENLO COLLEGE LEADERSHIP WAS IN

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1 TRANSITION.

2 AND, MR. VARTAIN, I DON'T MEAN ANY OFFENSE, BUT IT WAS  
3 VIRTUALLY A LEADERSHIP VACUUM DURING THE TENURE OF PRESIDENT  
4 LOPEZ, WHO TESTIFIED THAT HE NEVER READS STUDENT EVALUATIONS.  
5 HE DIDN'T SAY, "I REFUSED TO READ PROFESSOR BLOUGH'S  
6 EVALUATIONS." HE SAID, "I NEVER DO." AND THEN HE STEPPED DOWN  
7 AS THESE EVENTS CONTINUED TO UNFOLD, AND PRESIDENT HITE  
8 INHERITED SOMETHING THAT WAS MIDSTREAM.

9 I CAN'T IGNORE THESE FACTS WHEN I LOOK AT YOUR  
10 ARGUMENT OF RECKLESS DISREGARD OF HER RIGHTS. THIS IS NOT A  
11 PREMEDITATED SCHEME TO DENY PROFESSOR BLOUGH HER TEACHING  
12 POSITION IN THIS CIRCUMSTANCE. AND THAT EVIDENCE -- I THINK  
13 IT'S A VERY IMPORTANT PART OF THE ANALYSIS OF WHETHER IT WAS  
14 RECKLESS OR THIS CONCEPT OF NEGLIGENCE.

15 MR. LEBOWITZ: WELL, I THINK WE HAVE TO FOCUS FIRST ON

16 THE SUMMER OF 2006. BECAUSE A GOOD PART OF MY ARGUMENT IS  
17 FOCUSED ON THE FACT THAT ONCE THE COLLEGE WAS AWARE THAT  
18 PROFESSOR BLOUGH HAD CANCER, SUDDENLY THE EQUATION SWITCHED. SO  
19 UP UNTIL SEPTEMBER, LATE AUGUST OF 2006, THE COLLEGE'S POSITION  
20 WAS UNIFORM AND WAS UNWAVERING THAT THEY WOULD NOT RECONSIDER  
21 HER POSITION.

22 THEY REFUSED -- NOT ONLY DID -- IT'S NOT NEGLIGENCE  
23 WHEN THEY ARE GIVEN INFORMATION THAT CALLS INTO QUESTION THEIR  
24 DECISION MAKING. IT'S NOT NEGLIGENCE WHEN THEY REFUSED TO  
25 REVIEW IT, WHEN THEY REFUSED TO ACKNOWLEDGE AND REVIEW AND  
26 CONSIDER HER MEDICAL INFORMATION.

1363

1 THE COURT: NOWHERE IN THE LAW ARE YOU REQUIRED TO A  
2 POST-DECISION RECONSIDERATION OF AN EMPLOYMENT DECISION. AND  
3 SO I CONSIDERED YOUR ARGUMENT ON WHAT HAPPENED BETWEEN THE  
4 JULY 7, 2006 LETTER FROM PRESIDENT LOPEZ THROUGH THE REST OF  
5 THAT SUMMER, AND I WASN'T PERSUADED AS A MATTER OF LAW THAT THAT  
6 WAS EVIDENCE THAT THEIR ACTS WERE RECKLESS AND MALICIOUS AFTER  
7 THEY MADE THEIR DECISION.

8 YOU KNOW, EMPLOYERS ARE ENTITLED TO SOME FINALITY AS  
9 WELL. THEY GO THROUGH WHATEVER PROCESS, WHETHER IT'S A LAWFUL  
10 ONE OR NOT, AND THEY REACH A CONCLUSION. AND TO CLAIM THAT THEY  
11 ARE SUBJECT TO PUNITIVE DAMAGES BECAUSE THEY MADE A FINAL  
12 DECISION AND DECLARED IT TO BE FINAL, I DON'T THINK, IS A  
13 STATEMENT OF LAW. I DON'T THINK THERE'S ANY CASE THAT WOULD

14 SUPPORT IT.

15 MR. LEBOWITZ: WELL, I THINK IN -- I UNDERSTAND YOUR  
16 POINT, YOUR HONOR. I SIMPLY BELIEVE THAT BECAUSE THERE WAS AN  
17 ONGOING KIND OF -- WHETHER IT WAS DIALOGUE, OR MONOLOGUE, OR  
18 WHATEVER YOU WANT TO CALL IT, CERTAINLY OVER THE SUMMER THERE  
19 WAS STILL A COMMUNICATION AND THERE WAS A TRANSMISSION --

20 THE COURT: WELL, YOU GET INTO A TRICKY AREA --

21 MR. LEBOWITZ: RIGHT.

22 THE COURT: -- BECAUSE YOU CLAIM SHE WAS TERMINATED.

23 MR. LEBOWITZ: I AGREE.

24 THE COURT: AND IF WE GET INTO THIS DIALOGUE,  
25 MR. VARTAIN IS GOING TO BE VERY HAPPY TO LET YOU GO DOWN THAT  
26 ROAD, BECAUSE THAT'S THE ROAD HE WANTS YOU TO GO DOWN.

1364

1 MR. LEBOWITZ: THAT'S EXACTLY MY POINT IS THAT THERE  
2 WAS -- THERE WAS A FINAL DECISION OF TERMINATION, AND IT WAS  
3 REITERATED AT THE END OF AUGUST. BUT THERE WAS, AT THAT POINT,  
4 AN OPPORTUNITY FOR THE COLLEGE, OVER THE SUMMER, TO LOOK AT WHAT  
5 THEY HAD DONE AND CHANGE WHAT -- AND MAKE UP FOR IT.

6 THE COURT: IF YOU WANT TO GO DOWN THAT ROAD, THIS  
7 WHOLE THING MAY UNRAVEL. THAT'S MY CONCERN HERE.

8 MR. LEBOWITZ: BUT I WANT TO ALSO ADDRESS -- I'LL MOVE  
9 ON TO THE NEXT TIME PERIOD, WHICH IS YOU TALKING ABOUT PRESIDENT  
10 HAIGHT AND PROVOST KELLY IN THE TRANSITION. AND WHAT WE TALK  
11 ABOUT, WHAT WE ALSO RECOGNIZE IS THAT THEY -- THE FIRST TIME

12 PROFESSOR BLOUGH MET EITHER OF THOSE GENTLEMEN WAS HERE IN THIS  
13 COURTROOM.

14       THERE WAS AN ATTEMPT TO EXPLAIN TO THEM THAT WHAT THEY  
15 WERE DOING WAS IN BAD FAITH AND WHAT THEY WERE DOING WAS  
16 SOMEHOW -- THAT THEY HAD VIOLATED THE LAW IN THE PAST AND THEY  
17 COULD MAKE UP FOR IT, AND THEY REFUSED TO RESPOND. THEY NEVER  
18 RESPONDED TO THOSE E-MAILS. SO THE ARGUMENT THAT THAT WAS --  
19 THAT THERE'S ALL THIS GOOD FAITH ON BEHALF OF THE COLLEGE IN  
20 THIS ENTIRE SEQUENCE, I THINK THE EVIDENCE GOES AGAINST THAT.

21       THE COURT: I GUESS, IF I HOLD IN MY TENTATIVE RULING  
22 THAT THERE WAS A TERMINATION, WHAT I SEE IN THOSE POST  
23 TERMINATION DISCUSSIONS ARE PRE-LITIGATION ATTEMPTS TO RESOLVE  
24 THE DISPUTE. AND I DON'T THINK WE WANT TO -- ESSENTIALLY, WE  
25 WOULD TELL EMPLOYERS NOT TO DO ANYTHING, AND I THINK THAT AN  
26 OPPORTUNITY TO MEDIATE AND DISCUSS RESOLUTION OF DISPUTES IS

1365

1 ALWAYS A GOOD THING.

2       YOU KNOW --

3       MR. LEBOWITZ: I'LL BE HAPPY TO SUBMIT, YOUR HONOR.

4       THE COURT: ALL RIGHT.

5       WELL, MR. VARTAIN, DID YOU HAVE ANYTHING TO ADD? I  
6 HAVE SPOKEN FOR YOU, AND I DIDN'T MEAN TO.

7       MR. VARTAIN: NO. WHAT I'D LIKE TO DO, THOUGH, YOUR  
8 HONOR, IS NOT TAKE YOUR TIME UP WITH AN ARGUMENT ON AN ISSUE  
9 THAT I BELIEVE YOU'RE GOING TO STAY WITH, BUT USE SOME OF THESE

10 POINTS IN THE NEW TRIAL MOTION. MAY I DO THAT?

11 THE COURT: ABSOLUTELY, YOU MAY. I'M NOT SURPRISED.

12 MR. LEBOWITZ, I APPRECIATE THAT YOU DISAGREE WITH MY  
13 TENTATIVE ON THE JUDGMENT NOTWITHSTANDING THE VERDICT RULING.  
14 IF WE HAVE DISCUSSED ALL OF THOSE ISSUES -- AND I DON'T WANT TO  
15 CUT YOU OFF -- I AM READY TO MOVE ON.

16 MR. LEBOWITZ: I'M HAPPY TO SUBMIT, YOUR HONOR.

17 THE COURT: THANK YOU.

18 ALL RIGHT, THEN. I WILL ADOPT THE TENTATIVE RULING ON  
19 THE JUDGMENT NOTWITHSTANDING THE VERDICT MOTION.

20 AND WITH THAT, I, THEN, DID NOT DISCUSS THE PUNITIVE  
21 DAMAGES ISSUE ON THE NEW TRIAL MOTION AT ALL. AND I THINK I  
22 ADDRESSED THAT, THE FACT THAT I DID NOT, IN MY TENTATIVE.

23 MR. VARTAIN: YES, YOU DID, YOUR HONOR.

24 THE COURT: OKAY. LET'S GO ON, THEN, TO THE MOTION  
25 FOR NEW TRIAL. THERE WERE MANY MORE ISSUES THERE.

26 AND, FIRST, I THINK I ADDRESSED ALL OF THE ISSUES YOU

1366

1 RAISED.

2 MR. VARTAIN: I THINK YOU DID, AND I APPRECIATE THAT,  
3 YOUR HONOR.

4 THE COURT: OKAY. ALL RIGHT.

5 MR. VARTAIN: AND I'M GRAPPLING WITH THE WAY TO USE  
6 THE COURT'S TIME MOST EFFECTIVELY HERE AND NOT, AS YOU SAY,  
7 REPEAT. WHAT I TRIED TO DO -- AND I LOOKED AT YOUR ORDER AND I



8 STUDIED IT CAREFULLY -- IS TRY TO UNDERSTAND THE PRISM OF THE  
9 WAY THE COURT WAS LOOKING AT THE EVIDENCE. THERE WAS NO POINT  
10 IN ME RE-ARGUING WHEN I DON'T TRY TO UNDERSTAND WHAT THE COURT  
11 HAS PRESUMED, AND SO I HAVE DONE THAT.

12 AND TO THE EXTENT THAT I CHALLENGED PARTICULAR LINES  
13 OF YOUR RULING, PLEASE UNDERSTAND, YOUR HONOR, I HAVE TRIED TO  
14 GET INTO YOUR HEAD AND SEE IT YOUR WAY --

15 THE COURT: I APPRECIATE THAT.

16 MR. VARTAIN: -- BECAUSE THAT'S YOUR JOB.

17 AND WHAT MY OBJECTIVE IN MAKING THIS ARGUMENT IS TO  
18 PERSUADE YOU TO LOOK AT YOUR TENTATIVE RULING IN SPECIFIC  
19 PORTIONS AND TO CHANGE IT IN THOSE PORTIONS. AND THEN FOR YOU  
20 TO DECIDE, IF YOU FIND THAT YOU SHOULD CHANGE THOSE PORTIONS OF  
21 YOUR REASONING, WHAT THAT SHOULD DO TO YOUR CONCLUSION AND TO  
22 LOOK AT IT FROM THAT PERSPECTIVE.

23 I HAVE ACTUALLY PREPARED MY ARGUMENT IN A TYPEWRITTEN  
24 NARRATIVE THAT -- I WILL GIVE THAT TO THE COURT REPORTER FOR  
25 ASSISTANCE IN CASE. BUT YOU COULD HAVE IT, IF YOU WANTED TO  
26 READ IT LATER. I'M GOING TO DELIVER IT ALMOST VERBATIM.

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1 THE COURT: I WOULD APPRECIATE THAT --

2 MR. VARTAIN: YEAH.

3 THE COURT: -- BECAUSE GETTING A -- MY COURT REPORTER  
4 WOULDN'T NORMALLY PREPARE A TRANSCRIPT FOR ME.

5 MR. VARTAIN: YEAH. AND IT MAY BE THAT I'M ABOUT

6 15 MINUTES OR 20 MINUTES. WHAT I WANT TO DO IS INTERACT WITH  
7 YOUR HONOR AND TRY TO PERSUADE YOU, BUT I HAVE PREPARED IT THIS  
8 WAY.

9 THE COURT: UNFORTUNATELY, I HAVE A HABIT OF  
10 INTERRUPTING.

11 MR. VARTAIN: THAT'S WHERE THE INTERACTION COMES AND,  
12 THEREFORE, I WILL INVITE THAT.

13 THE TWO MAJOR THINGS THAT I WANT TO FOCUS ON IS THE  
14 MOTIVATION ISSUE AND THE DISCHARGE, THE QUESTION OF DISCHARGE  
15 ISSUE, YOUR HONOR. I WILL TALK ABOUT THE FRONT PAY ISSUE, BUT  
16 YOUR HONOR HAS READ THE CASES, INCLUDING THE CASES IN OUR REPLY.  
17 LET ME JUST TAKE -- WIPE THAT ISSUE AWAY, BECAUSE YOUR HONOR IS  
18 RIGHT, THERE'S NOT LAW THAT SQUARELY RESOLVES IT.

19 BUT I DON'T THINK THAT EITHER THE COLLEGE OR THE  
20 PLAINTIFF DID SUCH A GREAT JOB ON IT, EVEN THOUGH YOU  
21 COMPLIMENTED US ON OUR BRIEFING BEFORE TRIAL, BECAUSE THE CASES  
22 THAT I CITED IN MY NEW TRIAL MOTION WERE NOT SQUARELY CITED AND  
23 DISCUSSED AT THE MOTION. INsofar AS THE CAL STATE CASE SAID  
24 THAT FRONT PAY WAS A RIGHT DEPENDANT UPON WHETHER OR NOT  
25 REINSTATEMENT WAS AN APPROPRIATE REMEDY, IT DIDN'T SQUARELY  
26 ADDRESS THE ISSUE OF WHAT INSTRUCTIONS GO TO THE JURY AND WHAT

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1 DOESN'T.

2 SO I WOULD TAKE ISSUE WITH YOUR HONOR IN HER  
3 CONCLUSION -- YOUR CONCLUSION ON THE FRONT PAY ISSUE THAT THERE

4 ISN'T THE BETTER -- THE BETTER LAW, SUCH AS IT EXISTS IN  
5 CALIFORNIA, IS THAT THE COURT HAS THE EQUITABLE AUTHORITY TO  
6 ORDER REINSTATEMENT AS AN ALTERNATIVE FRONT PAY.

7 THE COURT: YOU KNOW, WHAT I LOOKED AT -- AND I THINK  
8 I MENTIONED IT IN MY TENTATIVE -- IS WHAT YOU'RE REALLY ARGUING  
9 IS THAT PLAINTIFF'S ARE DENIED THE RIGHT TO A TRIAL BY JURY ON  
10 THE ISSUE OF FRONT PAY.

11 MR. VARTAIN: LET ME RESPOND TO THAT, YOUR HONOR.  
12 WHAT I'M ARGUING IS THAT IF ONLY WHERE REINSTATEMENT WOULD NOT  
13 BE A LEGITIMATE PART OF A MAKE-WHOLE REMEDY WOULD THE JURY NOT  
14 GET TO DETERMINE FRONT PAY. IN OTHER WORDS, WHERE REINSTATEMENT  
15 IS A VIABLE, APPROPRIATE PART OF AN OVERALL MAKE-WHOLE REMEDY,  
16 WHICH THE STATUTE TALKS ABOUT MAKE WHOLE, AND I'VE THOUGHT ABOUT  
17 NOT "MAKE WEALTHY," "MAKE WHOLE."

18 THE COURT: YES.

19 MR. VARTAIN: AND THERE'S COMPENSATORY DAMAGES THAT  
20 ARE PART OF THAT AND EQUITABLE REMEDIES. AND ALL I'M SAYING IN  
21 MY ARGUMENT IS THIS WAS THE CASE WHERE THE EQUITABLE REMEDIES  
22 SHOULD HAVE BEEN CONSIDERED AS TO WHERE, IF AT ALL, THE COURT  
23 FELT IT HAD A PROPER PIECE OF THAT MAKE-WHOLE REMEDY.

24 IF THE COURT HAD DETERMINED FOR GOOD CAUSE AND  
25 PROPERLY DETERMINED, WHICH IT DID NOT, THAT REINSTATEMENT WAS  
26 NOT A PROPER PART OF A MAKE-WHOLE REMEDY, BECAUSE MAYBE THERE

1 WAS TOO MUCH FRICTION, THERE WAS BAD VIBES, THEY WOULDN'T GET

2 ALONG, IT WOULD AFFECT THE WORKPLACE, THEN I WOULD AGREE THAT  
3 YOU COULDN'T DEPRIVE THE PLAINTIFF OF COMPENSATORY DAMAGES.

4 AND EVEN THOUGH IN FEDERAL COURT, THE COURT SITTING  
5 WITHOUT THE JURY WOULD DECIDE THAT THERE'S NO PRECEDENT IN  
6 CALIFORNIA FOR THE COURT DETERMINING FRONT PAY SLASH  
7 COMPENSATORY DAMAGES; FINE, THAT'S A JURY ISSUE. BUT WE DIDN'T  
8 EVEN GET TO THAT BECAUSE THE COURT WAS UNWILLING TO DETERMINE  
9 WHETHER THE EQUITABLE REMEDY OF REINSTATEMENT WAS A PROPER  
10 COMPONENT IN THE CIRCUMSTANCES OF THIS CASE.

11 SO THAT'S MY THRUST. IT ISN'T SO MUCH THAT EVENTUALLY  
12 IT COULDN'T GO TO THE JURY; IT'S THAT WE DIDN'T HAVE THE  
13 INTERCEDING PIECE, WHERE THE JUDGE EXERCISED HER -- ITS, RATHER,  
14 EQUITY JURISDICTION.

15 THE COURT: THAT'S A LITTLE -- AND IF MY MEMORY IS  
16 INCORRECT, I APOLOGIZE. BUT THAT WAS A DIFFERENT ARGUMENT THAN  
17 I RECALL YOU MAKING IN IN LIMINE MOTIONS. I RECALL YOUR ARGUING  
18 THE ENTIRE ISSUE OF THE FUTURE, RAISED IT WITH THE COURT.

19 MR. VARTAIN: I REMEMBER THAT YOU BROUGHT IT UP AT  
20 ORAL ARGUMENT, YOUR HONOR. AND UNLESS I'M MISTAKEN, I SAID I  
21 DID NOT -- THAT ISSUE, I WASN'T WILLING TO COMMENT ON UPON  
22 THIS -- AT THIS TIME. BUT, FIRST, I WANTED TO HEAR WHETHER YOUR  
23 COURT -- YOU WERE TROUBLED BY HOW IT WOULD PROCEDURALLY WORK.

24 THE COURT: OF COURSE.

25 MR. VARTAIN: AND I SAID, "WELL, YOUR HONOR," BECAUSE  
26 WE WERE TALKING ABOUT -- IT ALL CAME UP IN EXCLUDING THE EXPERT

1 WITNESS FROM TALKING ABOUT FRONT PAY. AND I SAID, "YOUR HONOR,  
2 LISTEN TO THE" -- "LET HIM TESTIFY, BECAUSE IT WON'T BE  
3 PREJUDICIAL -- IF YOUR HONOR DECIDES THIS ISSUE, IT WON'T GO TO  
4 THE JURY." AND YOU SAID, "WELL, WHAT IF IT ENDS UP IN FRONT OF  
5 THE JURY?" AND I SAID, "WELL, LET'S DEAL WITH IT THEN." AND  
6 YOU SAID -- YOU PRESSED ME ON IT. AND SO I DON'T THINK IT'S A  
7 LITTLE DIFFERENT. I DON'T THINK WE CLOSED ON THAT ISSUE.

8 THE COURT: AND I'M NOT PRECLUDING YOU. IT'S  
9 SOMETHING THAT I DO WANT TO EVALUATE, WHETHER THE COURT HAD,  
10 UNDER FEHA, AN OBLIGATION TO MAKE A RULING ON REINSTATEMENT.  
11 AND IN MANY CASES, THE COURT HAS AN OBLIGATION TO MAKE A LEGAL  
12 RULING, SUCH AS INTERPRETATION OF A CONTRACT. JURIES DON'T  
13 INTERPRET CONTRACTS; COURTS DO.

14 THERE ARE A NUMBER OF ISSUES IN MANY KINDS OF TRIALS  
15 WHERE THE JURY DOESN'T GIVE AN ADVISORY RULING. ITS ABILITY TO  
16 MAKE A RULING IS DEPENDANT UPON A RULING THAT THE COURT MAKES.  
17 AND THE TRIALS ESSENTIALLY GO ON SIMULTANEOUSLY; AND THE COURT  
18 MAKES ITS RULING AND THEN THINGS FLOW. I'M WILLING TO DISCUSS  
19 THAT ISSUE, BECAUSE --

20 AND I'M NOT SAYING, MR. LEBOWITZ, THAT I'M CHANGING MY  
21 MIND. BUT I'D LIKE TO FULLY EVALUATE IT. IT WOULD BE A SHAME  
22 FOR THE CASE TO COME BACK FOR THE COURT TO HAVE A NEW TRIAL ON  
23 REINSTATEMENT THREE YEARS FROM NOW. I THINK THAT PREJUDICES  
24 EVERYBODY, BECAUSE LIFE GOES ON. AND SO LET'S LOOK AT THAT. AT  
25 THIS JUNCTURE, A NEW TRIAL ON REINSTATEMENT COULD OCCUR.

26 MR. VARTAIN: IT ACTUALLY COULD OCCUR, YOUR HONOR,

1 WITHOUT A JURY BEING HERE. I MEAN, IT --

2 THE COURT: THAT'S RIGHT. I DON'T NEED A JURY.

3 MR. VARTAIN: IT WOULD BE A STATEMENT OF DECISION BY  
4 THE COURT.

5 THE COURT: CORRECT. CORRECT.

6 MR. VARTAIN: AND THAT'S ACTUALLY WHAT I ENVISIONED  
7 COMING HERE TODAY TO SAY TO YOUR HONOR, THAT IT'S RATHER CLEAR  
8 THAT THE WAY THE COURT WOULD EXERCISE ITS EQUITABLE DISCRETION  
9 IS TO LOOK AT THE EVIDENCE, WHICH THE COURT HAS NOW DONE,  
10 BECAUSE IT'S BEEN ON A NEW TRIAL ORDER DETERMINED IN THE COURT'S  
11 VIEW. WELL, WHY WOULDN'T SOME TYPE OF RE-EMPLOYMENT REMEDY BE  
12 FOR THIS PERIOD OF TIME FOR WHICH FRONT PAY WAS ORDERED?

13 THE COURT: AND WE WOULD BE -- AND I PRESUME, JUST SO  
14 THAT I CAN CONSIDER THE ISSUES, THE COLLEGE IS ARGUING THAT I  
15 SHOULD CONSIDER WHETHER THE COLLEGE SHOULD BE ORDERED TO  
16 REINSTATE PROFESSOR BLOUGH TO A FULL-TIME TEACHING POSITION.

17 MR. VARTAIN: I THINK WE SHOULD ENTERTAIN ARGUMENT ON  
18 THAT ISSUE AS TO WHAT, YOU KNOW -- BUT FOR SURE WHAT THE TERMS  
19 OF THE POSITION WOULD BE, ET CETERA.

20 THE COURT: AND I JUST WANT TO BE CLEAR, I'M NOT  
21 TALKING HALF-TIME, THOUGH. WE'RE TALKING FULL-TIME.

22 MR. VARTAIN: WE'RE TALKING REINSTATEMENT TO HER  
23 FORMER POSITION OF EMPLOYMENT. AND THEN YOU WOULD DECIDE WHAT  
24 THAT WAS BEFORE THE UNLAWFUL CONDUCT OCCURRED. SO WE GOT TO

25 JUST TALK ABOUT IT. I DON'T WANT TO SHORTCUT IT WITH FULL-TIME,  
26 PART-TIME. OBVIOUSLY, IT WAS FULL-TIME BEFORE THE UNLAWFUL

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1 CONDUCT OCCURRED.

2 THE COURT: AND YOU AGREE THAT THE COURT WOULD BE IN A  
3 POSITION TO MAKE THAT DETERMINATION?

4 MR. VARTAIN: YES, I DO AGREE THAT THE COURT WOULD  
5 DETERMINE THAT.

6 THE COURT: OKAY.

7 MR. VARTAIN: AND INCLUDING EVEN WHAT HER SALARY LEVEL  
8 WOULD BE ON RETURN AND SO ON. AND I THINK THAT THE PLAINTIFF  
9 WOULD BE ENTITLED TO A SEPARATE ARGUMENT BEFORE THAT STATEMENT  
10 OF DECISION WAS FINALIZED.

11 THE COURT: YOU UNDERSTAND THAT, IN TERMS OF NEW  
12 TRIAL, I HAVE JURISDICTIONAL REQUIREMENTS.

13 MR. VARTAIN: I UNDERSTAND IT.

14 THE COURT: AND I BELIEVE NEXT FRIDAY --

15 MR. VARTAIN: FRIDAY.

16 THE COURT: -- IS THE LAST DAY.

17 MR. VARTAIN: YES.

18 THE COURT: I GET A FEW MORE DAYS TO ISSUE A RULING --

19 MR. VARTAIN: RIGHT.

20 THE COURT: -- IF I GRANT A NEW TRIAL, BUT I HAVE  
21 TO -- I NEVER SET THESE ON THE LAST DAY. THAT'S WHY I DIDN'T  
22 CONTINUE THIS TO ANOTHER DAY NEXT WEEK.

23 MR. LEBOWITZ: I UNDERSTAND.

24 MR. VARTAIN: I DO BELIEVE THAT WHAT I WOULD DO WERE  
25 YOU TO LOOK AT THAT -- WANT TO LOOK AT THAT ISSUE, RATHER THAN  
26 THE COLLEGE BRIEFING IT ANEW, I WOULD SEND YOU, BY LETTER, THE

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1 PORTIONS OF PREVIOUS BRIEFING THAT I BELIEVE ADDRESS THE ISSUE  
2 OF THE FEASIBILITY OF THAT, OF REINSTATEMENT UNDER THE CASE LAW.  
3 SO I'M ASKING -- THE COLLEGE IS ASKING YOU TO GRANT A NEW TRIAL  
4 ON THAT PORTION OF THE VERDICT THAT GOES INTO THE FUTURE  
5 COMPENSATORY, AND I'LL ENTER ON THAT ISSUE.

6 THE COURT: OKAY.

7 MR. VARTAIN: MAYBE YOU MIGHT WANT TO INVITE  
8 MR. LEBOWITZ TO ADDRESS THAT PART OF THE ARGUMENT BEFORE I GO  
9 INTO REALLY -- I TOOK THE LAST PART, THE LEAST -- THE THIRD PART  
10 AND I'LL GO TO THE OTHER TWO. BUT WHATEVER YOUR HONOR IS  
11 COMFORTABLE WITH AS FAR AS --

12 THE COURT: I WOULD APPRECIATE THAT, BECAUSE YOUR  
13 ARGUMENTS ARE FRESH IN MY MIND RIGHT NOW.

14 MR. VARTAIN: YES.

15 THE COURT: MR. LEBOWITZ, TWO THINGS. FIRST, ARE YOU  
16 SURPRISED BY THIS ARGUMENT?

17 MR. LEBOWITZ: I ABSOLUTELY AM.

18 THE COURT: AT LEAST I'M NOT THE ONLY ONE WHO WAS A  
19 LITTLE SURPRISED BY IT, WHICH MEANS THAT I DON'T WANT TO PUT YOU  
20 ON THE SPOT TO ARGUE WHAT MIGHT BE THE MOST IMPORTANT THING THAT



21 HAPPENS TODAY. AND WE HAVE A WEEK. WE HAVE TIME. I DON'T NEED  
22 TO MAKE YOU GIVE YOUR ARGUMENT ON IT RIGHT NOW.

23 THIS IS AN ISSUE THAT'S TROUBLED ME. WE'VE HAD  
24 LENGTHY DISCUSSIONS ON THE STATE OF THE LAW. AND, ULTIMATELY, I  
25 AGREED WITH YOUR POSITION THAT CALIFORNIA LAW GRANTS PLAINTIFFS  
26 ALL REMEDIES THAT PLAINTIFFS HAVE IN CIVIL ACTIONS, WHICH WOULD

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1 BE A RIGHT TO A TRIAL BY JURY ON ALL DAMAGES SUFFERED.

2 THIS IS A DIFFERENT PRESENTATION OF THE DEFENDANT'S  
3 POSITION THAT THE COURT WOULD MAKE A DECISION ON REINSTATEMENT,  
4 AND DEPENDANT ON THAT IT WOULD THEN GO TO THE JURY FOR FRONT PAY  
5 AWARD. SO ANY COMMENTS YOU CAN GIVE ME NOW? OR A REQUEST FOR  
6 FURTHER REVIEW OF THE LAW?

7 MR. LEBOWITZ: I WOULD CERTAINLY REQUEST ALL  
8 OPPORTUNITY TO ADDRESS THAT PARTICULAR ARGUMENT AND STATE  
9 THAT -- FRANKLY, BECAUSE IT HAD NOT BEEN MADE UNTIL THIS  
10 MORNING, I DON'T THINK IT'S PROPERLY BEFORE THIS COURT, FOR ONE.  
11 FOR TWO, NOTHING THAT HAS BEEN SAID TODAY SAYS ANYTHING TO  
12 CONTRADICT THE COMMODORE CASE. AND THE COMMODORE CASE SAID "ALL  
13 REMEDIES," AND IT IS THE PLAINTIFF WHO IS ENTITLED TO ALL  
14 REMEDIES --

15 THE COURT: YEAH.

16 MR. LEBOWITZ: -- BY A JURY. AND THERE IS NOTHING  
17 THAT HAS BEEN SAID OR ARGUED THAT I UNDERSTAND THAT HAS IN ANY  
18 WAY CALLED INTO QUESTION THAT SEMINAL RULING BY THE CALIFORNIA

19 SUPREME COURT. AND SO JUST BASED ON THAT, I DON'T SEE HOW ANY  
20 OF THIS PROVIDES ANY NEW -- WHILE IT'S A NEW CREATIVE ARGUMENT,  
21 AND IT IS NEW AND CREATIVE, I DON'T BELIEVE THAT IT CHANGES  
22 ANYTHING IN THE LAW, IN THE STATE OF LAW.

23 AND, FRANKLY, IT IS FOR THE COURT OF APPEAL. IF THIS  
24 IS TO BE A CHANGE IN THE LAW, I BELIEVE THAT THE COURT OF APPEAL  
25 IS THE PROPER VENUE TO MAKE THAT CHANGE. I DON'T BELIEVE THAT,  
26 YOU KNOW, SITTING HERE WITHOUT ANY AUTHORITY OR ANY GUIDANCE

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1 FROM ANY BINDING APPELLATE DECISION THAT WE CAN GO OUT ON A LIMB  
2 HERE AND MAKE A RULING ON IT.

3 THE COURT: WELL, I'M VERY CAUTIOUS IN MAKING MY  
4 RULINGS, BUT IT IS MY BELIEF THAT WHERE THERE IS NO PRECEDENT  
5 THE TRIAL COURT IS REQUIRED TO MAKE RULINGS THAT, THEN, THE  
6 COURT OF APPEAL CAN CONSIDER.

7 MR. LEBOWITZ: AND I BELIEVE WE'VE MADE THE RECORD SO  
8 THAT THE COURT OF APPEAL CAN CONSIDER THE ARGUMENTS AND THE  
9 FRESH ARGUMENTS MADE BY COUNSEL. BUT IT WOULD BE -- TO MAKE  
10 THAT RULING NOW, I BELIEVE, WOULD BE CONTRARY TO THE COMMODORE  
11 CASE AND WOULD BE CONTRARY TO THE --

12 THE COURT: WELL, THAT --

13 MR. LEBOWITZ: -- THE CALIFORNIA SUPREME COURT --

14 THE COURT: ALL RIGHT.

15 MR. LEBOWITZ: -- AND THE ONLY EXISTING AUTHORITY THAT  
16 THERE IS.

17 THE COURT: EXCUSE ME. OBVIOUSLY, ANOTHER CASE HAS  
18 BEEN SENT TO ME. I WOULD LIKE SOME INFORMATION ABOUT IT.

19 (WHEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

20 THE COURT: BACK ON THE RECORD.

21 I'M SORRY, MR. LEBOWITZ.

22 MR. LEBOWITZ: I COMPLETED MY STATEMENT, UNLESS YOU  
23 HAVE FURTHER QUESTIONS. BUT IF THE COURT IS INCLINED TO  
24 CONSIDER THE ARGUMENT, WHICH I BELIEVE IS IMPROPERLY MADE, THEN  
25 WE WOULD CERTAINLY REQUEST OPPORTUNITY TO SUBMIT BRIEFING ON IT.

26 THE COURT: MR. LEBOWITZ, LET ME JUST ASK YOU -- AND

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1 IF I'M PUTTING YOU ON THE SPOT, YOU DON'T HAVE TO RESPOND NOW.  
2 I CERTAINLY RESPECT THE LEVEL OF EXPERTISE THAT BOTH YOU AND  
3 MR. VARTAIN AND MS. ADLER HAVE IN THIS AREA OF LAW. AND I KNOW  
4 FROM OUR DISCUSSIONS, BOTH IN JURY INSTRUCTIONS OFF THE RECORD  
5 AND ON THE RECORD, THAT YOU HAVE DEVOTED A LOT OF TIME TO  
6 STUDYING THE PROGRESSION OF THE LAW, BOTH FEDERALLY AND UNDER  
7 THE STATE LAW.

8 IT DOES SEEM TO THE COURT, IN READING THE CASES THAT  
9 MR. VARTAIN HAS PROVIDED TO ME FROM THE VARIOUS FEDERAL COURTS,  
10 THAT UNDER FEDERAL LAW, IN FACT, THIS ISSUE WOULD CLEARLY --  
11 IT'S CLEARLY DECIDED THAT THIS WOULD BE CONSIDERED BY THE COURT  
12 AS UNDER ITS EQUITABLE POWER TO CONSIDER REINSTATEMENT OR FRONT  
13 PAY. DO YOU AGREE WITH THAT, THAT THAT'S THE STATE OF FEDERAL  
14 LAW?

15 MR. LEBOWITZ: YES.

16 THE COURT: CAN YOU TELL ME WHY THE LAW IN CALIFORNIA  
17 HAS DEVELOPED DIFFERENTLY? I AGREED WITH YOU THAT IT HAD, BUT  
18 CAN YOU HELP FLESH THAT OUT FOR ME?

19 MR. LEBOWITZ: YOU KNOW, I REALLY DON'T KNOW THE -- I  
20 DON'T KNOW WHY CALIFORNIA LAW HAS GONE THE WAY IT HAS. I KNOW  
21 THE FEDERAL LAW HAS GONE THE WAY IT HAS BECAUSE OF, REALLY,  
22 LEGISLATIVE COMPROMISE. AND OVER TIME, PASSING THE 1964 CIVIL  
23 RIGHTS ACT, WHICH PROVIDED ONLY FOR EQUITABLE RELIEF, WAS AT AN  
24 EXTRAORDINARY TIME, AND AN EXTRAORDINARY ACT OF CONGRESS. AND  
25 TO GET SOMETHING LIKE THAT THROUGH, IT'S ONE OF THESE THINGS  
26 THAT REQUIRED, ESSENTIALLY, NO DAMAGES, YOU KNOW, NO JURY TRIAL

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1 AND OTHER THINGS TO ENABLE IT TO GET PASSED TO GET THE FINAL  
2 VOTES TO GET IT THROUGH.

3 AS TIME DEVELOPED THROUGH THE LATE EIGHTIES AND THE  
4 SUPREME COURT DECISIONS, WHICH HAD EVEN LIMITED THE SCOPE OF THE  
5 ACT EVEN FURTHER, AND CONGRESS DECIDED THAT IT WAS TIME TO TAKE  
6 ANOTHER LOOK AT THE REMEDY PROVISIONS, IN PARTICULAR OF TITLE  
7 SEVEN, THEN IT WAS A LITTLE BIT OF A DIFFERENT WORLD. AND THERE  
8 WERE -- THE IDEA THAT THERE SHOULD BE JURY TRIALS HAD COME MORE  
9 TO BE DEVELOPED.

10 AND YOU CAN ALSO SEE, THOUGH, IN THAT SAME TIME  
11 THERE'S A LOT OF COMPROMISE IN THAT BILL, BECAUSE EVEN THEN  
12 THERE ARE DAMAGES CAPS. AND EVEN GIVEN -- TO BE ABLE TO GET THE

13 JURY TRIAL, THE PROPONENTS HAD TO ALLOW FOR DAMAGES CAPS, AND  
14 PRETTY SIGNIFICANT DAMAGES CAPS, WHICH ARE, YOU KNOW, PRETTY  
15 EXTRAORDINARY IN ANY CIVIL CASE. THERE AREN'T MAY LAWS, SAVE  
16 MED MAL TYPE OF JURIS PRUDENCE THAT ALLOW FOR DAMAGES CAPS.

17 SO IT'S OBVIOUSLY -- AT LEAST ON THE FEDERAL LEVEL,  
18 IT'S SOMETHING THAT'S ALWAYS BEEN FOUGHT VERY HARD BETWEEN THE  
19 VARIOUS SIDES OF THE EQUATION, AS FAR AS WHAT THE LEGISLATIVE  
20 FEHA IS AT THE TIME. SO THE UNDERSTANDING IS THAT -- IT WAS MY  
21 UNDERSTANDING OF HOW IT DEVELOPED. THAT WAS A SIGNIFICANT --  
22 JUST THE KIND OF TYPICAL BARGAINING AND COMPROMISING MADE IN  
23 CONGRESS AT THE CONGRESSIONAL LEVEL IS WHAT LED TO THE  
24 DEVELOPMENT OF WHERE IT IS NOW.

25 ON THE STATE LEVEL, IT'S REALLY JUST BEEN  
26 CONDITIONALLY AN OPEN, THIS IS WHAT IT IS. THERE WAS NONE OF

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1 THIS KIND OF BACK AND FORTH, AND THERE WASN'T THIS KIND OF, YOU  
2 KNOW, PUSH AND PULL AT THE LEGISLATIVE LEVEL. SO THE ARGUMENT  
3 WAS NEVER -- JUST LIKE HERE, YOU KNOW, WE HAVE TROUBLE FINDING  
4 CASES ON POINT BECAUSE THE ARGUMENT HAS NEVER BEEN THERE IN THE  
5 WAY THAT IT'S BEEN PRESENTED HERE; AND TO THAT EXTENT, IT'S NEW.

6 AND TO THE EXTENT THAT MR. VARTAIN OBVIOUSLY HAS HIS  
7 TAKE ON WHY IT'S NEVER BEEN PRESENTED TO THE APPELLATE COURT,  
8 AND THAT'S ALL WELL AND GOOD. BUT I THINK THAT WITHOUT GUIDANCE  
9 FROM AN APPELLATE COURT TO THE CONTRARY, WE ARE LEFT WITH THE  
10 GENERAL PROPOSITION THAT THE COMMODORE CASE SETS FORTH, IN THAT

11 THE DEVELOPMENT OF FEHA HAS BEEN A VERY -- ESPECIALLY IN THE  
12 REMEDY SIDE, HAS BEEN A VERY DIFFERENT PROCESS.

13 AND THAT TELLS A HUGE PART OF THE STORY AS TO WHY WE  
14 ARE IN THE POSITION WE ARE IN TODAY, AND AS IT GOES TO THOSE TWO  
15 LAWS.

16 THE COURT: OKAY.

17 MR. VARTAIN: YOUR HONOR, TO THE EXTENT YOU'D LIKE  
18 SOME OF THAT HISTORY, AND WITHOUT BEING AS LONG AS MR. LEBOWITZ  
19 WAS PROPERLY LONG, I COULD ADD A FEW FOOTNOTES TO THAT.

20 THE COURT: SURE. GO AHEAD.

21 MR. VARTAIN: AS A FORMER LABOR LAWYER COMING OUT OF  
22 THE NORB, WHERE REINSTATEMENT IS ACTUALLY ONE OF THE LISTED  
23 REMEDIES IN THE STATUTE AND TITLE SEVEN WAS PATTERNED IN MANY  
24 WAYS ON THE NORA ACT, REINSTATEMENT HAD A STATUTORY AND  
25 HISTORICAL ELEMENT OF THE MAKE-WHOLE REMEDIES AND WAS CONSIDERED  
26 TO BE -- UNLIKE THE SITUATION OF GENERAL TORT AND CONTRACT

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1 CASES, EMPLOYMENT RELATIONSHIPS WERE CONSIDERED TO BE, FOR  
2 PURPOSES OF PRESERVATION OF INTERSTATE COMMERCE, ONES THAT WERE  
3 POSSIBLY TO BE PRESERVED, NOT DISRUPTED.

4 SUCH THAT EVEN IF AN UNLAWFUL ACT HAPPENED AND IT WAS  
5 POSSIBLE TO PRESERVE THE EMPLOYMENT RELATIONSHIP, THAT WAS  
6 CONSIDERED TO BE PART OF THE POLICIES OF THE LAW, BOTH NORB AND  
7 TITLE SEVEN; AND THAT'S PART OF THE HISTORY.

8 BUT NOW MOVING OVER TO FEHA, WHICH IS WHERE YOUR FOCUS

9 IS, YOUR HONOR, IF YOU READ THE HORSFORD CASE, WHICH IS CITED ON  
10 PAGE TEN OF MY REPLY MEMORANDUM, IT SAYS VERY EXPLICITLY THAT  
11 EQUITABLE REMEDY OF REINSTATEMENT IS AUTHORIZED BY FEHA. THERE  
12 IS NOT UNCLEAR FROM THAT -- THAT'S A 5TH DISTRICT COURT OF  
13 APPEAL DECISION. AND SO THAT THERE IS VERY SCANT LAW, THERE IS  
14 LAW ON WHICH THIS COURT COULD PROPERLY RELY ON THE HORSFORD  
15 CASE. AND IT SAID --

16 THE COURT: I THOUGHT IN THE HORSFORD CASE, THE JURY  
17 AWARDED FRONT PAY, THOUGH.

18 MR. VARTAIN: YES. THE COURT OF APPEAL SAID FRONT PAY  
19 IS RESERVED FOR THOSE SITUATIONS, AND I QUOTE, "ARE RESERVED FOR  
20 TEMPORARY SITUATIONS," QUOTE, UNQUOTE. AND THEN IT SAID -- AND  
21 I'M NOT QUOTING NOW -- WHERE REINSTATEMENT CANNOT FEASIBLY BE  
22 IMPLEMENTED IN THE SERVICE. AND THE COURT WENT ON ABOUT WHY  
23 THAT WAS SO IN THAT CASE. SO I WOULD REQUEST THE COURT TO TAKE  
24 ITS LOOK AT HORSFORD V. CALIFORNIA STATE UNIVERSITY. AND IN  
25 REVIEWING IT, WHERE IT WANTS TO END UP ON THIS ISSUE. AND I  
26 THINK THAT MAY GIVE GUIDANCE TO THE COURT.

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1 REGARDING THE FRESH -- THE QUESTION OF WHETHER THIS IS  
2 A FRESH ISSUE, I DO THINK THE ARGUMENTS AT BENCH MAKE IT CLEAR  
3 THIS IS NOT A FRESH ISSUE. AND IN MY NEW TRIAL MOTION, I  
4 SPECIFIED IT AS ONE OF THE ISSUES OF LAW.

5 THE COURT: I CERTAINLY THINK YOU HAVE PRESERVED IT.

6 MR. VARTAIN: YES.

7 THE COURT: I THINK THE SUBTLETY OF THE DIFFERENCE  
8 BETWEEN THE ARGUMENT THAT I THOUGHT YOU MADE AND THE ONE YOU  
9 MADE HERE IS -- I AM NOT GOING TO SPLIT HAIRS.

10 MR. VARTAIN: AND YOU VERY INSIGHTFULLY WANTED TO  
11 SPLIT HAIRS ON THAT IN THE MOTION ARGUMENT, AND I RATHER  
12 EVASIVELY WANTED NOT TO. BUT I HAVE THOUGHT ABOUT IT SOME MORE,  
13 AND I DO THINK THAT IT MAY BE THAT THE DIFFERENCE IN CALIFORNIA  
14 LAW IS THAT THE JURY WOULD DECIDE THE COMPENSATORY DAMAGES. AND  
15 YOU SAID, "IF SO, I'M GOING TO SEND IT TO THE JURY SO I HAVE A  
16 JURY VERDICT ON THE FRONT PAY, AND I DON'T HAVE TO CALL ANOTHER  
17 JURY IN FOR THAT." YOU KNOW, BUT YOU DIDN'T GO TO THE NEXT  
18 STEP, WHICH IS MAKE THE EQUITABLE DECISION THAT I ASKED YOU.

19 OKAY. THANK YOU.

20 THE COURT: OKAY.

21 MR. VARTAIN: BUT THE HORSFORD CASE IS THE ONE.

22 THE COURT: AND I DID READ IT. I WENT BACK TO MY  
23 NOTES TO MAKE SURE THAT I DID. I'M GLAD TO LOOK AT IT AGAIN,  
24 AND WE MIGHT EVEN DO THAT THIS MORNING. I DON'T NEED MORE --  
25 I'M NOT INCLINED TO ASK FOR FURTHER BRIEFING ON THE ISSUE.

26 OKAY. LET'S NOW GO TO -- THAT WAS A LITTLE DETOUR,

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1 AND THAT WAS THE SHORT ONE. SO LET'S GO ON.

2 WHICH ISSUE WOULD YOU LIKE TO START WITH? THE  
3 MOTIVATION OR THE --

4 MR. VARTAIN: MOTIVATION.



5 THE COURT: GO AHEAD.

6 MR. VARTAIN: I THOUGHT ABOUT HOW TO PRESENT THE ISSUE  
7 IN A WAY OF LEGAL VERBIAGE THAT WOULD ACCOUNT FOR THE COURT'S  
8 PRISM ON THE EVIDENCE, BECAUSE THAT IS YOUR DISCRETION TO SEE.  
9 HERE'S HOW I WOULD POSITION THE ISSUE IN A WAY THAT I THINK  
10 WOULD MORE CORRECTLY ACCOUNT FOR THE EMPLOYER'S POSITION.  
11 BECAUSE I DON'T THINK YOU DESCRIBED THE COLLEGE'S POSITION AS IT  
12 INTENDED IT TO BE. AND WHEN YOU LOOK AT THE PROPOSED JURY  
13 INSTRUCTIONS WE OFFERED YOU, WHICH WE CAN TALK ABOUT THAT MORE  
14 CORRECTLY.

15 THE COURT: ON THE PESTERFIELD ISSUE?

16 MR. VARTAIN: YOU CALL IT THE PESTERFIELD ISSUE.

17 THE COURT: WELL, YOU QUOTED IT IN YOUR JURY  
18 INSTRUCTIONS.

19 MR. VARTAIN: ONE OF THE CASES CITED WAS THE -- BUT  
20 THE FIRST CITATION WAS TO THE FEHA STATUTE. BECAUSE THE ADR,  
21 YOUR HONOR, DOES NOT HAVE A PROVISION THAT AUTHORIZES MEDICAL  
22 EVALUATIONS PUT IN QUOTES, NOR DOES IT SET FORTH WHAT ARE THE  
23 STATUTORY REQUIREMENTS THE EMPLOYER MUST MEET TO CONDUCT THAT.

24 SO THE QUESTION AT HAND IS IN THIS CASE -- AND I WANT  
25 TO DETAIL IT A LITTLE MORE -- WHAT'S THE PROPER LEGAL STANDARD  
26 WHERE, UNDER FEHA, THE LEGISLATURE HAS SPOKEN AS TO IF, WHEN AND

1 HOW AN EMPLOYER IS TO BE ALLOWED TO SEND AN EMPLOYEE FOR A  
2 MEDICAL EVALUATION, AND WHERE THE JURY HAS DECIDED THAT THE

3 EMPLOYER DID IT, IF, WHEN AND HOW PROPERLY?  
4 THEN WHAT FLOWS THEN IS, WHAT'S THE EXTENT OF RELIANCE  
5 THAT AN EMPLOYER IS ENTITLED TO GIVE TO THE RESULTS OF THAT,  
6 WHERE IT HAS FOLLOWED PRECISELY WHAT THE LEGISLATURE HAS SAID IT  
7 MUST DO TO SEND THE EMPLOYEE FOR THAT? IT WOULD ALMOST BE  
8 FRUITFUL FOR AN EMPLOYER TO EXERCISE ITS RIGHT.

9 THE COURT: YOU KNOW, I DON'T THINK SO. I THINK THE  
10 CASES THAT MR. LEBOWITZ PROVIDED THE COURT -- ONE WAS HOLIDAY,  
11 AND I'M BLANKING ON THE NAME OF THE OTHER CASE YOU PROVIDED ME  
12 ON THIS ISSUE.

13 MR. LEBOWITZ: SO AM I.

14 THE COURT: I'M SORRY.

15 IN THE PESTERFIELD CASE, THE DOCTOR, IN FACT, WAS THE  
16 EMPLOYEE'S OWN TREATING PHYSICIAN. THE LETTER THAT THE DOCTOR  
17 PROVIDED WAS EXTRAORDINARILY DETAILED AND RELATED TO THE  
18 ESSENTIAL POSITIONS OF THAT JOB. IN THE SUBSEQUENT CASES THAT  
19 DISTINGUISHED PESTERFIELD -- AND I'M NOT GOING TO TAKE THE TIME  
20 TO GO THROUGH MY NOTES -- THE COURT TALKED ABOUT NOT BEING A  
21 MECHANISTIC IMPLEMENTATION OF THE DOCTOR'S RESPONSE AND DID DEAL  
22 WITH A LETTER, A WORKER'S COMP. DOCTOR WHO HAD A FORM LETTER AND  
23 SOME HAND-SCRIBBLED NOTES.

24 I'M WILLING TO CONCEDE, FOR THE SAKE OF THIS ARGUMENT,  
25 THAT THAT WORKER'S COMP. LETTER WAS MORE DEFICIENT THAN WHAT ONE  
26 MIGHT LOOK AT DR. MISSETT'S LETTER TO BE. BUT THERE IS CLEARLY

1 A PLACE AT WHICH THE EMPLOYER MUST LOOK AT WHAT IT GETS BACK  
2 FROM THE DOCTOR AND SAY, "THIS ISN'T ENOUGH."

3 AND IN LOOKING AT THAT, I HAVE TO TELL YOU I WAS -- IN  
4 LOOKING OVER THIS EVIDENCE, IT WAS CLEAR THAT NO ONE AT THE  
5 COLLEGE -- AND THEY ALL TESTIFIED THAT THEY DID NOT TELL  
6 DR. MISSETT WHAT THE ESSENTIAL FUNCTIONS OF THE JOB WERE.

7 MR. VARTAIN: I THINK THAT'S WHERE -- THAT'S ONE FACT  
8 I WAS GOING TO LIST WHERE YOU ARE MISTAKEN ON THE EVIDENCE, YOUR  
9 HONOR.

10 THE COURT: I THINK DR. MISSETT TESTIFIED HE WAS  
11 AWARE.

12 MR. VARTAIN: HE TESTIFIED THAT HE WAS AWARE OF WHAT  
13 THE ESSENTIAL FUNCTIONS WERE. AND HIS RECORD WHICH -- AND HE  
14 HAD RECEIVED THE FACULTY HANDBOOK OF WHAT THE ESSENTIAL  
15 FUNCTIONS WERE, AND HE TESTIFIED THAT PROFESSOR BLOUGH TOLD HIM  
16 WHAT THEY WERE. AND THE LETTER FROM -- THEY ENGAGED HIM --  
17 STATED WHAT HER DUTIES WERE. SO THERE'S A LETTER FROM --  
18 PRESIDENT LOPEZ, YOU'RE CORRECT, TESTIFIED HE NEVER TOLD MISSETT  
19 THAT.

20 THE COURT: AND SO DID PROVOST KELLY AND DEAN PRATT.

21 MR. VARTAIN: AND THEY ALL DID.

22 THE COURT: PROVOST SCHULTZ, RATHER.

23 MR. VARTAIN: BUT THE QUESTIONS WERE NOT --

24 THE COURT: EXCUSE ME. I BEG YOUR PARDON.

25 (WHEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

26 THE COURT: BACK ON THE RECORD.

1 GO AHEAD, MR. VARTAIN.

2 MR. VARTAIN: LET ME REPOSITION, SINCE YOU GOT  
3 DISTRACTED A LITTLE BIT, YOUR HONOR.

4 SO WHERE IN THIS CASE THE JURY RENDERED A VERDICT,  
5 YOUR HONOR, ON THE FIRST CAUSE OF ACTION FOR THE FEHA VIOLATION  
6 WITH THE MEDICAL EVALUATION, THAT THE EMPLOYER COMPLIED WITH ALL  
7 OF THE CONDITIONS SET BY FEHA.

8 THE COURT: BUT HAVING THE CONDITIONS PRECEDENT TO  
9 SEND THE EMPLOYEE TO THE DOCTOR IS NOT SUFFICIENT TO THEN TAKE,  
10 WITHOUT ANY THOUGHT, THE CONCLUSIONS. AND I THINK THAT'S WHAT  
11 THE HOLIDAY COURT SAYS, IS THAT YOU HAVE TO LOOK AT THE QUALITY  
12 OF WHAT YOU GET BACK.

13 MR. VARTAIN: OKAY. BUT WHAT I'M SAYING, YOUR  
14 HONOR -- WHICH I HAVEN'T GOTTEN TO IT IS -- WHY DIDN'T WE GET A  
15 JURY INSTRUCTION THAT ALLOWED THE JURY TO LOOK AT THE VERY ISSUE  
16 THAT YOUR HONOR LOOKED AT? IN OTHER WORDS, YOU LOOKED AT THE  
17 CIRCUIT COURT LAW AND YOU MADE A -- IN YOUR TENTATIVE RULING,  
18 YOU LOOKED AT THOSE LEGAL STANDARDS THAT WERE NEVER GIVEN TO THE  
19 JURY, BECAUSE YOU REFUSED MY JURY INSTRUCTION THAT WAS BASED ON  
20 IT. MY VIEW IS THAT THE COURT'S TENTATIVE RULING CONFIRMS,  
21 ACTUALLY CONFIRMS WHY THAT SPECIAL INSTRUCTION WAS SO IMPORTANT  
22 IN THIS CASE.

23 BECAUSE LOOK AT IT THIS WAY, YOUR HONOR. IT'S NOT AN  
24 UNCONFUSING THING TO TALK ABOUT, WAS IT DISABILITY CONSIDERED  
25 VERSUS WERE THEY ESSENTIAL? WAS IT BASED ON AN EVALUATION OF

1 ASKED YOU FOR WAS AN INSTRUCTION THAT DEALT WITH THE UNIQUE  
2 FACTS OF THIS CASE, WHERE -- AND IT PROVED TO BE CORRECT.

3 THE JURY BELIEVED AND FOUND THAT THE COLLEGE HAD A  
4 BUSINESS NECESSITY TO HAVE HER EVALUATED BY AN INDEPENDENT  
5 EVALUATOR, BUT THEN THEY WEREN'T ALLOWED TO CONSIDER TO WHAT  
6 EXTENT IS -- AND I'M NOT SAYING THAT WE ARGUED, BECAUSE WE  
7 DIDN'T ASK YOU FOR AN INSTRUCTION THAT WAS A PER SE RELIANCE.  
8 WE HAVE A TOTAL -- THE INSTRUCTIONS CALLED HONEST -- I HAD IN  
9 THE INSTRUCTIONS HONEST, MEDICALLY-SUPPORTED JUDGMENT.

10 THE COURT: CORRECT.

11 MR. VARTAIN: WE DIDN'T ASK YOU FOR AN INSTRUCTION  
12 THAT ALLOWED A PER SE RELIANCE WITHOUT ANY IFS, ANDS OR BUTS ON  
13 THE MEDICAL EVALUATION, SO LONG AS IT WAS DONE IN A LAWFUL  
14 MANNER, AS THIS JURY FOUND.

15 WHAT I DID ASK YOU FOR, AND WHAT I BELIEVE YOUR  
16 TENTATIVE RULING UNINTENTIONALLY SUGGESTS I SHOULD HAVE  
17 GOTTEN -- I SHOULD HAVE OBTAINED, WAS SOME STANDARDS BY WHICH  
18 THE JURY COULD HAVE WEIGHED, "WELL, HOW DO WE ASSESS MOTIVATION  
19 WHERE THE ONLY THING THAT THE COLLEGE DID WAS RELY ON A MEDICAL  
20 EVALUATION AND THE MEDICAL EVALUATION PROCESS WAS LAWFULLY  
21 INITIATED," WE SAY LAWFULLY WAS JOB-RELATED.

22 HOW DO WE -- WHAT'S OUR PRISM FOR MOTIVATION IN THIS  
23 VERY UNIQUE CIRCUMSTANCE, WHERE THE LEGISLATURE SAID THE

24 EMPLOYER CAN ONLY SEND THE EMPLOYEE IF IT MEETS THESE STANDARDS?  
25 THE JURY SAID THE EMPLOYER MET THESE STANDARDS. BUT THE JURY  
26 DIDN'T HAVE INSTRUCTIONS ON WHAT THE COURT, IN ITS TENTATIVE

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1 RULING, EVALUATED. THAT IS GOOD FAITH AND --

2 THE COURT: YOU ARGUED A GOOD FAITH DEFENSE IN YOUR  
3 PAPERS. IN FACT, YOU ONLY DROPPED A FOOTNOTE CHALLENGING THE  
4 JURY INSTRUCTION. I CAN'T BELIEVE I EVEN FOUND IT, BUT THERE  
5 WAS AN EXHIBIT A, AND I WANTED TO KNOW WHAT THE EXHIBIT A  
6 PERTAINED TO.

7 MR. VARTAIN: I FILED A DECLARATION WITH THE JURY  
8 INSTRUCTIONS.

9 THE COURT: YES, YOU DID. THAT WAS YOUR EXHIBIT A TO  
10 THE DECLARATION. BUT YOU DIDN'T ARGUE AN ERROR OF LAW, PER SE.  
11 I RULED ON IT. I FOUND IT. AS I SAY, IT WAS CONFINED IT A  
12 FOOTNOTE.

13 MR. VARTAIN: WELL, IT WAS THREE PAGES IN THE REPLY  
14 BRIEF ON THE ISSUE, YOUR HONOR. BUT I DIDN'T MEAN TO SAY -- I'M  
15 NOT CRITIQUING THE COURT FOR --

16 THE COURT: I KNOW YOU'RE NOT.

17 MR. VARTAIN: -- GOING THROUGH THAT ANALYSIS IN ITS  
18 TENTATIVE RULING. I'M JUST SAYING THAT'S THE VERY ANALYSIS THAT  
19 WE'VE ALL DONE IN OUR PAPERS. I DID IN MY MOVING PAPERS; NOAH  
20 DID IT, AND YOU DID IT. BUT THE JURY NEVER GOT TO DO THAT  
21 ANALYSIS BECAUSE THEY WERE DEPRIVED OF ANY SPECIAL INSTRUCTION

22 ON THE ISSUE OF HOW DO YOU VIEW MOTIVATION THROUGH THE PRISM OF  
23 TO WHAT EXTENT, HOWEVER LIMITED, HOWEVER GREAT IS THE EMPLOYER  
24 ENTITLED TO RELY ON THE PROPERLY COMMISSIONED, ENGAGED AND  
25 CONDUCTED MEDICAL EVALUATION?

26 THE JURY WAS DEPRIVED OF THAT ISSUE. AND THAT

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1 EXPLAINS, YOUR HONOR, VERY MUCH WHY, WHEN WE GOT INTO THE JURY  
2 ROOM AND WE GET THE DECLARATIONS OF THE JURY, EVEN TO THE EXTENT  
3 THAT THE COURT HAS DENIED THE -- OR TENTATIVELY DENIED THE  
4 MOTION FOR NEW TRIAL AS BEING ON A JURY MISCONDUCT, THE COURT  
5 HAS INDICATED THAT, YES, AT MOST THIS IS DELIBERATIVE ERROR BY  
6 THE JURY. NO WONDER THERE'S DELIBERATIVE ERROR. THEY DIDN'T  
7 HAVE AN INSTRUCTION ON THE MAJOR ISSUE IN THIS CASE.

8 THIS WAS NOT A DISPARAGED TREATMENT CASE IN THAT CACCI  
9 -- IT WASN'T THE GARDEN VARIETY DISABILITY DISCRIMINATION CASE.  
10 THE EMPLOYER WAS VERY CLEAR. IT HAD TO RELY -- AS YOUR HONOR  
11 FOUND IN HER TENTATIVE RULING, YOU SAID THREE DIFFERENT TIMES,  
12 I'VE GOT A CASE WHERE THE COLLEGE BASED ITS DECISION EITHER  
13 SOLELY OR PRIMARILY ON WHAT THE MEDICAL EVALUATOR DID.

14 SO WHAT DO WE DO WITH THE POTENTIAL INCONSISTENCY OF A  
15 VERDICT WHERE USING THE MEDICAL EVALUATION PROCEDURE THAT THE  
16 STATUTE SAYS CAN BE USED IN CERTAIN CIRCUMSTANCES WAS DONE  
17 PROPERLY, AS THE JURY FOUND, BUT THEN THE JURY ISN'T GIVEN  
18 INSTRUCTIONS AS TO WELL, WHAT DOES THAT MEAN, FOR ILLEGAL  
19 MOTIVATION? AND THAT'S WHY WE MADE A PITCH TO YOU ON THAT

20 SPECIAL INSTRUCTION.

21 WE DIDN'T HAVE CALIFORNIA LAW. WE USED THE FEDERAL  
22 LAW, AND THAT'S WHY YOU'RE USING IT IN YOUR RULING. BUT THE  
23 JURY NEVER GOT TO USE ANY OF THAT BECAUSE YOU WOULDN'T GIVE THE  
24 INSTRUCTION. AND SO WE'RE ALL LIKE -- IN MY VIEW, WE'RE ALL  
25 DANCING AROUND. WE'RE ALL, AS ATTORNEYS, DOING THE LEGAL  
26 ANALYSIS, BUT THE JURY NEVER GOT TO DO IT, BECAUSE THE REQUESTED

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1 INSTRUCTION WASN'T GIVEN TO THEM. AND THAT'S WHY WE HAVE THIS  
2 MESS IN THE JURY ROOM OF THE DELIBERATIVE ERROR.

3 PERHAPS, AS YOUR HONOR --

4 THE COURT: PROBABLY, WE HAVE A MESS IN EVERY JURY  
5 ROOM, AS LOOKED AT BY LAWYERS. YOU KNOW, THAT'S WHY I  
6 REEVALUATE THE EVIDENCE.

7 MR. VARTAIN: AND THAT'S WHY YOU SHOULD, YOUR HONOR.  
8 BUT THE POINT IS THAT IT'S NOT -- THE EVIDENCE THAT WAS  
9 SUBMITTED IN SUPPORT OF JURY MISCONDUCT IS USEFUL TO UNDERSTAND  
10 WHY THIS WAS PREJUDICIAL ERROR THAT WE DIDN'T GET THAT  
11 INSTRUCTION.

12 THE COURT: YOU KNOW, I'M LOOKING AT THE CACCI  
13 INSTRUCTIONS HERE. THERE WAS NO CACCI INSTRUCTION ON THIS --  
14 I'LL CALL IT AN AFFIRMATIVE DEFENSE. I DON'T KNOW WHETHER IT'S  
15 THAT STRONG OR IT'S ACTUALLY A FACTUAL ELEMENT OF THE  
16 PLAINTIFF'S CASE. I THINK IT'S REALLY AN AFFIRMATIVE DEFENSE  
17 THAT THE DEFENDANT -- I'M NOT SAYING IT IS AN AFFIRMATIVE



18 DEFENSE -- YOU'RE ARGUING A DEFENDANT MAY PROVE REASONABLE AND  
19 GOOD FAITH RELIANCE ON A PROPERLY INSTITUTED INDEPENDENT MEDICAL  
20 FITNESS-FOR-DUTY EVALUATION.

21 MR. VARTAIN: NO.

22 THE COURT: NO? OKAY.

23 MR. VARTAIN: I'M ARGUING THAT THE PROOF BY THE  
24 PLAINTIFF OF MOTIVATION IN A MEDICAL EVALUATION CASE MUST  
25 GIVE -- MUST BE BASED ON -- MUST BE REVIEWED BY THE JURY BASED  
26 ON SOME INSTRUCTION THAT ISN'T IN CACCI, WHICH HAS TO DO WITH,

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1 WELL, TO WHAT EXTENT MAY AN EMPLOYER RELY ON A MEDICAL  
2 EVALUATION?

3 THE COURT: I GUESS --

4 MR. VARTAIN: WHETHER IT'S GOOD FAITH --

5 THE COURT: I GET SUBSUMED IN THE CACCI INSTRUCTION  
6 2540. I KNOW YOU DISAGREE. YOU CLEARLY PRESERVED IT. YOU  
7 PRESENTED ME WITH JURY INSTRUCTIONS ON IT. I WILL HEAR FROM  
8 MR. LEBOWITZ ON IT. IT'S A DIFFICULT ISSUE, MR. VARTAIN.

9 MR. VARTAIN: I WOULD ADD ONE THING, YOUR HONOR.  
10 BECAUSE IF YOU DO LOOK AT THIS AGAIN IN YOUR FINAL RULING, IT  
11 WOULD BE USEFUL TO NOTE THAT THIS IS ALSO A UNIQUE CASE WHERE  
12 THE EVIDENCE SHOWED THERE WAS NO ANIMUS TOWARDS THE PROTECTED  
13 CONDITIONS. IN FACT, THE RECORD WAS AFFIRMATIVELY OF A HISTORY  
14 OF ACCOMMODATIONS, FOR THE RECORD.

15 NOW, MR. LEBOWITZ ARGUES THAT THAT DOESN'T END THE

16 INQUIRY THAT YOU CAN STILL HAVE DIRECT EVIDENCE AND THAT JUST  
17 THE ABSENCE OF HOSTILITY DOESN'T MAKE IT. BUT ALSO THERE'S NO  
18 PRETEXT EVIDENCE HERE. AND THE COURT OF APPEALS HAVE BEEN VERY  
19 CLEAR THAT IN FEHA CASES YOU HAVE TO HAVE ONE OR THE OTHER TO  
20 PROVE INTENT, EITHER THE PRETEXT OR THE ANIMUS.

21 NOW, I GUESS ONE WOULD --

22 THE COURT: AND ANIMUS CAN BE PROVED BY MORE THAN VILE  
23 STATEMENTS.

24 MR. VARTAIN: UNDERSTOOD. BUT HERE, THE QUESTION --  
25 BUT WHAT I'M SAYING, YOUR HONOR, IS WHERE THERE IS NO SUCH  
26 EVIDENCE, HOW MORE IMPORTANT IT IS TO HAVE A CLEAR INSTRUCTION

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1 ON THE SOLE ISSUE AS TO WHETHER THE EMPLOYER CONSIDERED THE  
2 ABILITY TO WORK ISSUE OR THE DISABILITY -- THE EXISTENCE OF THE  
3 DISABILITY SLASH MEDICAL CONDITION? THERE'S NO OTHER EVIDENCE  
4 OF MOTIVATION THAN THAT.

5 THAT'S WHY IT WAS SO IMPORTANT FOR US TO GET THAT  
6 SPECIAL INSTRUCTION ON DID THE COLLEGE HONESTLY RELY ON A  
7 MEDICALLY SUPPORTED JUDGMENT? AND, CLEARLY, IT DID. AND,  
8 CLEARLY, HERE THAT MEDICALLY SUPPORTED JUDGMENT RESULTED FROM A  
9 STATUTORY COMPLIANT MEDICAL EVALUATION, AS CONCLUDED BY THE  
10 JURY. THAT'S WHERE THIS -- THAT'S HOW THIS CASE BOILS DOWN.  
11 THAT'S THE ISSUE IN THE CASE.

12 THE COURT: YES, AND YOU HAVE STATED IT WELL. I'M  
13 JUST LOOKING BACK AT YOUR REPLY BRIEF. I WANTED TO BE CERTAIN

14 OF IT -- YOU DIDN'T CITE ANY CASES. I PRESUME THERE ARE NONE  
15 BECAUSE YOUR RESEARCH IS THOROUGH. YOU CITED NO CASES TO  
16 SUPPORT THE GIVING OF A SPECIAL JURY INSTRUCTION UNDER  
17 SUBDIVISION F OF 12940. YOU CITE PESTERFIELD. YOU CITED NO  
18 CALIFORNIA CASES.

19 MR. VARTAIN: RIGHT, BECAUSE THERE ARE NONE.

20 THE COURT: AND THERE ARE NONE.

21 MR. VARTAIN: BUT THAT DOESN'T MEAN THAT -- A SPECIAL  
22 INSTRUCTION IS OFTEN TO FILL A VOID IN THE LAW. AND WHAT BETTER  
23 WAY -- WHAT MORE PREJUDICIAL CASE COULD YOU HAVE, WHERE THE  
24 EMPLOYER DID EVERYTHING RIGHT IN GETTING TO THE POINT OF  
25 RECEIVING THE MEDICAL OPINION? IN OTHER WORDS, DONE FROM A  
26 BUSINESS NECESSITY, COMMISSIONED A JOB-RELATED EVALUATION. EVEN

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1 THOUGH YOUR HONOR SAID, IN HER OPINION, THAT THEY DIDN'T GIVE TO  
2 THE EVALUATOR THE ESSENTIAL FUNCTION INFORMATION, YOUR HONOR  
3 IS -- THAT'S CONTRARY TO THE JURY FINDING, WHICH SAID THAT THE  
4 EVALUATION WAS JOB-RELATED.

5 THE COURT: WELL, WE DISAGREE ON THAT.

6 MR. VARTAIN: OKAY. FAIR ENOUGH.

7 BUT ALL OF THIS GOES TO -- WE'RE ALL ARGUING THE ISSUE  
8 THAT WE DIDN'T HAVE AN INSTRUCTION TO THE JURY, AND THAT'S WHERE  
9 THE PROBLEM IS.

10 THE COURT: I APPRECIATE THAT. AND WHERE I COME OUT  
11 ON THIS IS THAT I BELIEVE THAT INCLUDED IN THE CACCI JURY

12 INSTRUCTION 2540, ARE ALL THE ELEMENTS THE JURY NEEDS TO  
13 PROPERLY DECIDE THIS ISSUE. AND THIS CASE, I THINK, WHEN I LOOK  
14 AT ALL OF THE EVIDENCE, IT REALLY COMES DOWN TO A BARE BONES  
15 LETTER THAT DOES INDICATE RIGHT UPFRONT THERE WAS A FAILURE TO  
16 PROVIDE THE MEDICAL RECORDS. I DON'T KNOW WHETHER DR. LUI'S  
17 MENTIONED BY NAME OR A FAILURE TO PROVIDE ALL MEDICAL RECORDS  
18 AND, THEREFORE, FITNESS FOR DUTY IS NOT FOUND.

19 MR. VARTAIN: THAT WAS HIS TESTIMONY, YOUR HONOR.

20 THE COURT: WHAT EXHIBIT WAS IT?

21 MR. LEBOWITZ: IT'S IN THE RECORD, TOO, YOUR HONOR.

22 IT'S EXHIBIT 7, I BELIEVE.

23 THE COURT: I THOUGHT IT WAS, BECAUSE I LOOKED AGAIN.

24 MR. LEBOWITZ: IT'S AN ATTACHMENT TO EXHIBIT 7.

25 EXHIBIT 7 IS THREE PAGES; THE FIRST TWO ARE DOCTOR --

26 THE COURT: EXHIBIT 7 WAS THE FACULTY HANDBOOK.

1392

1 MR. LEBOWITZ: I'M SORRY. THEN IT WAS 14.

2 THE COURT: I THOUGHT THOSE WERE THE NUMBERS I WAS  
3 LOOKING AT. THAT'S THE LETTER. MAYBE IT'S ATTACHED.

4 MR. LEBOWITZ: IT WAS ATTACHED TO THE LETTER FROM  
5 PRESIDENT LOPEZ.

6 MR. VARTAIN: RECALL THE TESTIMONY, YOUR HONOR, OF  
7 DR. MISSETT ON WHY THAT LETTER WAS SO SKINNY.

8 THE COURT: WELL, WHAT IT SAYS IS, "THE SECOND OF  
9 THOSE PHYSICIANS INDICATED EARLIER TODAY THAT MS. BLOUGH HAD

10 WITHDRAWN HER EARLIER SIGNED PERMISSION FOR ME TO SPEAK WITH  
11 THAT DOCTOR."

12 SO DR. MISSETT TOLD THE COLLEGE IN HIS LETTER, IN HIS  
13 LETTER TO THEM THAT HE DID NOT GET TO SEE ALL OF THE RECORDS.  
14 AND THEN THE NEXT THING HE SAYS IS, IT IS MY PROFESSIONAL  
15 OPINION THAT SHE'S NOT FIT FOR DUTY. I AM SUMMARIZING IT. THE  
16 LETTER SPEAKS FOR ITSELF.

17 MR. VARTAIN: SO THE QUESTION I WOULD OFFER UP IS,  
18 WHAT INSTRUCTION ALLOWED, GAVE THE JURY THE SAME GUIDANCE THAT  
19 WE'RE ALL GIVING OURSELVES ON THE FEDERAL LAW AS TO HOW TO TREAT  
20 THAT, THAT LETTER? IN OTHER WORDS, WHAT WAS THE COLLEGE TO DO  
21 WITH THAT, WAS NOT SOMETHING THAT THERE WAS A JURY INSTRUCTION  
22 ON. THEY GOT THE BARE BONES INSTRUCTION ON MOTIVATION BUT NOT  
23 ON RELIANCE ON THE RESULT OF A LAWFULLY INITIATED EVALUATION.

24 AND THAT'S CONTRARY TO YOUR HONOR'S -- YOUR HONOR SAID  
25 IT'S A FAIR INTERPRETATION OF THAT LETTER THAT YOU JUST READ.  
26 YOU SAID IN YOUR TENTATIVE RULING THAT A FAIR INTERPRETATION OF

1393

1 THAT LETTER IS THAT DR. MISSETT WAS MAKING HIS DETERMINATION,  
2 NOT ON HER ABILITY TO FULFILL HER JOB DUTIES BUT ON THE  
3 EXISTENCE OF THE PSYCHOLOGICAL CONDITION.

4 WELL, IF THAT WAS AN ISSUE, CERTAINLY THE JURY DIDN'T  
5 GET TO AN INSTRUCTION ON THAT. UNDER WHAT CIRCUMSTANCES WOULD  
6 AN EMPLOYER -- IN CALIFORNIA, WHERE THE MEDICAL EVALUATOR IS NOT  
7 ALLOWED TO GIVE UNDERLYING DETAIL, AND DR. MISSETT TESTIFIED

8 ABOUT THAT. IT'S THE PETIS V. COLE CASE. IT HAS TO BE A BARE  
9 BONES LETTER. IN PETIS V. COLE THERE'S A LIMITATION ON  
10 DISCLOSURE.

11 THE COURT: I BELIEVE UNDER THE LAW THAT DR. MISSETT  
12 COULD HAVE SAID, THESE ARE THE ESSENTIAL FUNCTIONS THAT SHE'S  
13 UNABLE TO PERFORM. HE COULDN'T SAY, BECAUSE I DIAGNOSED HER  
14 WITH A MAJOR DEPRESSIVE DISORDER, PERHAPS, BUT HE COULD HAVE  
15 SAID, SHE'S UNABLE TO FOCUS; SHE'S UNABLE TO ATTEND CLASS  
16 REGULARLY; SHE'S UNABLE TO -- THAT, HE COULD HAVE SAID.

17 MR. VARTAIN: HE COULD HAVE OR HE COULD NOT HAVE. BUT  
18 THE --

19 THE COURT: BUT I THINK A FAIR --

20 MR. VARTAIN: AGAIN, THE JURY DIDN'T KNOW. OKAY. SO  
21 THEN YOU'RE SAYING THE SAME THING I'M SAYING, WHICH IS THERE'S  
22 AN ISSUE THERE AS TO WHAT IS AN EMPLOYER'S LEGITIMATE LEVEL OF  
23 RELIANCE WHEN IT GETS TO THE OPINION LETTER?

24 THE COURT: AND I THINK THE JURY MAKES THAT  
25 DETERMINATION WHEN IT DECIDES WHETHER THE TERMINATION WAS BASED  
26 ON INABILITY TO PERFORM THE ESSENTIAL FUNCTIONS VERSUS A

1394

1 DISABILITY ALONE. AND I THINK THAT IT IS SUBSUMED INTO THAT  
2 STANDARD INSTRUCTION. IT'S A VERY INTERESTING ISSUE.

3 THIS IS AN ISSUE OF LAW, WHETHER THE INSTRUCTION  
4 SHOULD HAVE BEEN GIVEN, WHERE WE'RE TALKING ABOUT BOTH SIDES OF  
5 WHETHER THE JURY'S VERDICT IS SUPPORTED BY THE EVIDENCE, AS

6 OPPOSED TO THE INSTRUCTION ITSELF. BUT IN LOOKING AT ALL SIDES  
7 OF THIS ISSUE, I'M SATISFIED THAT THE INSTRUCTION THAT WAS GIVEN  
8 WAS THE CORRECT ONE.

9 MR. VARTAIN: SINCE THE JUDGE --

10 THE COURT: I DON'T NEED TO HEAR -- I THINK

11 MR. LEBOWITZ --

12 MR. VARTAIN: YOU WON THAT, MR. LEBOWITZ.

13 THE COURT: RIGHT.

14 MR. LEBOWITZ: NOTICE I'M NOT SAYING A THING.

15 MR. VARTAIN: I WANT MR. LEBOWITZ TO ARGUE; MAYBE

16 HE'LL UNWIN IT.

17 THE COURT: I THINK HE'S A LITTLE TOO SMART FOR THAT.

18 ALL RIGHT. IS THERE MORE ON THE MOTIVATION ISSUE?

19 MR. VARTAIN: ON THE MOTIVATION ISSUE, YOUR HONOR,

20 THERE IS NOT MORE.

21 THE COURT: OKAY.

22 MR. VARTAIN: I WOULD LIKE TO TALK A LITTLE BIT ABOUT

23 THE QUESTION OF DISCHARGE AND SUBSTANTIAL EVIDENCE. I DO

24 BELIEVE MOST OF WHAT I WOULD OTHERWISE SAY IS IN MY BRIEFING, SO

25 I'M GOING TO BE SHORT THRIFT ON THAT ISSUE. HOWEVER, I WOULD

26 LIKE TO ADDRESS SOME OF THE COURT'S -- AT PAGE FOUR IN THE

1395

1 COURT'S CONTENTS OF ITS TENTATIVE RULING. IF I WENT TO PAGE

2 FOUR --

3 THE COURT: THIS IS AT THE TOP OF PAGE FOUR?

4 MR. VARTAIN: YES, YOUR HONOR. TO THE SECOND SENTENCE  
5 WHERE THE COURT STATED THAT MS. BLOUGH TESTIFIED THAT SHE HAD  
6 NOT RECEIVED A PAYCHECK SINCE AUGUST 2006, WHEN PRESIDENT LOPEZ  
7 SENT THE INITIAL TERMINATION LETTER, THAT MENLO COLLEGE SENT TO  
8 HER AT LEAST TWO LETTERS THAT EXPRESSLY STATED THAT SHE WAS  
9 TERMINATED.

10 ACTUALLY, EXCEPT FOR THE COBRA LETTER, THE WITNESS  
11 TESTIFIED VERY CLEARLY THAT THE COLLEGE SENT HER, NOT A LETTER  
12 THAT SHE WAS TERMINATED BUT THAT SHE WOULD BE TERMINATED -- VERY  
13 DIFFERENT -- AND THAT THAT WOULD BE LETTER WAS REVOKED, WAS  
14 RESCINDED BEFORE IT WOULD HAVE TAKEN EFFECT AND THAT SHE  
15 ACKNOWLEDGED THAT SHE WAS NOT TERMINATED.

16 SO THERE WAS A LOT OF WORD "TERMINATION" IN THE AIR,  
17 BUT AT THE TIME IN QUESTION, ACCORDING TO THE PLAINTIFF'S  
18 TESTIMONY, SHE WASN'T TERMINATED, AND SHE KNEW SHE WASN'T. THAT  
19 IS THE TIME IN QUESTION BEING THE FALL OF THAT YEAR.

20 THE COURT: I GUESS --

21 MR. VARTAIN: SO -- I'M SORRY, YOUR HONOR.

22 THE COURT: I BEG YOUR PARDON. I INTERRUPTED YOU.

23 IT SEEMS, THOUGH, THAT THIS OVERLYING FACT -- OR THE  
24 EVIDENCE ON THIS ISSUE OF NOT GETTING A PAYCHECK SINCE AUGUST OF  
25 2006 IS HUGE, AND A REASONABLE JURY COULD CONSIDER IT THAT. AND  
26 WHEN I LOOK AT THE EVIDENCE, ALL OF THESE LETTERS AND

1 CONVERSATIONS BACK AND FORTH ABOUT, WAS SHE TERMINATED? WAS SHE



2 ON SOME LEAVE? I THINK ARE EASILY OUTWEIGHED BY THE FAILURE TO  
3 GET A PAYCHECK. THE ESSENCE OF EMPLOYMENT IS, I GO TO WORK AND  
4 YOU PAY ME. SHE DIDN'T GO TO WORK AND MENLO DIDN'T PAY HER.

5 I THINK A JURY COULD LOOK AT IT THAT SIMPLY. AND I  
6 KNOW I'M OVERSIMPLIFYING THIS. THERE WAS A LOT GOING ON OVER  
7 THE COURSE OF THAT YEAR. EVEN AFTER DR. MISSETT GAVE HIS SECOND  
8 LETTER, THEN WHEN SHE'S READY TO GO TO WORK SHE WAS TOLD, OH,  
9 WELL, IT'S APRIL AND, OF COURSE, THERE ISN'T ANYTHING. IT'S NOT  
10 UNREASONABLE. IT WASN'T PRETEXT. IT'S AN ACADEMIC YEAR; I  
11 UNDERSTAND THAT. BUT AS I SAID, THE ESSENCE OF EMPLOYMENT IS, I  
12 GO TO WORK AND YOU PAY ME. SO...

13 MR. VARTAIN: IF YOU'RE NOT ON A LEAVE OF ABSENCE,  
14 THAT'S THE ESSENCE, YOUR HONOR.

15 THE COURT: WELL, BUT IT'S NICE TO CALL SOMETHING A  
16 LEAVE OF ABSENCE, BUT I THINK --

17 MR. VARTAIN: BUT SHE CALLED IT A LEAVE OF ABSENCE IN  
18 HER TESTIMONY, YOUR HONOR. THE PLAINTIFF DID. SHE CALLED IT AN  
19 INVOLUNTARY LEAVE OF ABSENCE. IT WAS HER TESTIMONY. THAT'S  
20 WHERE I THINK THE --

21 THE COURT: BUT I'M LOOKING AT LEGALLY, WHETHER IT  
22 QUALIFIED AS TERMINATION.

23 MR. VARTAIN: I UNDERSTAND THAT. I'M GOING TO ABANDON  
24 MY FURTHER COMMENTS ON THIS ISSUE IN THE HOPES OF CONTINUING MY  
25 GOOD RELATIONSHIP WITH YOUR HONOR.

26 THE COURT: I DON'T THINK YOU HAVE --

1 MR. VARTAIN: YOU DON'T THINK THAT'S POSSIBLE?

2 THE COURT: -- DESTROY THAT. YOU HAVE AN EXCELLENT --

3 MR. VARTAIN: FOR THE RECORD, BECAUSE I BRIEFED THE  
4 ISSUE.

5 THE COURT: YES.

6 MR. VARTAIN: I BRIEFED THE ISSUES. AND SINCE -- ON  
7 THE JURY ISSUES, YOUR HONOR.

8 (BRIEF PAUSE IN THE PROCEEDINGS.)

9 THE COURT: GO AHEAD, MR. VARTAIN.

10 MR. VARTAIN: ON THE JURY ISSUE, ALTHOUGH WE OBJECT TO  
11 THE ENTIRETY OF YOUR HONOR'S RULING, THE PART THAT I WOULD LIKE  
12 YOUR HONOR, IF YOU'RE WILLING TO, IS LOOK AT THOSE OBJECTIONS TO  
13 THE JUROR AFFIDAVITS THAT YOU IN PART SUSTAINED. BECAUSE I  
14 THINK THAT THE AFFIDAVITS, WITH THE EXCEPTION OF ONE PARAGRAPH  
15 OF MR. MERRITT'S DECLARATION, WHICH I DO THINK HE TALKED ABOUT  
16 HIS STATE OF MIND.

17 ALL THE OTHER -- NONE OF THE OTHER JUROR DECLARATIONS  
18 DISCUSSED THEIR STATE OF MIND AT ALL. THEY ONLY DISCUSSED WHAT  
19 WAS SAID AND DONE IN THE JUROR ROOM, AND I DO THINK YOU SHOULD  
20 REVERSE YOUR RULING. WHETHER OR NOT YOU CHOOSE TO REVERSE YOUR  
21 ULTIMATE FINDING THAT THERE WAS NOT JURY MISCONDUCT, WE WERE  
22 ENTITLED TO PRESENT THE EVIDENCE OF WHAT WAS SAID AND WHAT  
23 HAPPENED IN THE JURY ROOM.

24 WE DIDN'T OFFER IT FOR THE PURPOSE OF THE STATE OF  
25 MIND OF THE JURORS; WE OFFERED IT FOR WHAT HAPPENED. TO THE  
26 EXTENT THE COURT DISAGREED THAT WHAT HAPPENED WAS MISCONDUCT,

1 THAT'S SEPARATE. I THINK THAT THE EVIDENTIARY OBJECTIONS, YOUR  
2 HONOR GOT A LITTLE CONFUSED WITH WHERE YOU ENDED UP.

3 THE COURT: I'LL BE CANDID WITH YOU. I WENT BACK AND  
4 FORTH ON THIS. THERE'S AN OLDER SUPREME COURT CASE CALLED  
5 KRAUSE, WHICH I THOUGHT SEEMED TO INDICATE, LET IT ALL IN AND  
6 THEN DECIDE WHETHER IT IS ACTUALLY EVIDENCE OF MISCONDUCT. THE  
7 SUBSEQUENT CASES, WHICH MR. LEBOWITZ CITED, ACTUALLY SHOW THAT  
8 THAT SUPREME COURT CASE, AS APPLIED BY THE COURTS OF APPEAL, HAS  
9 BEEN GREATLY LIMITED TO ALLOWING THE KIND OF EVIDENCE THAT YOU  
10 SUBMITTED ONLY WHERE IT PERTAINS TO EXTRANEOUS MATTERS COMING  
11 INTO THE JURY ROOM.

12 AND I ACTUALLY NOTED IN MY RULINGS -- EVEN THOUGH I  
13 SUSTAINED THE OBJECTIONS, I ACTUALLY ACKNOWLEDGED THE EVIDENCE  
14 ITSELF, AND SO IT WOULDN'T CHANGE THE OUTCOME. I WAS TEMPTED TO  
15 LET IT ALL IN. AND THEN TO THE SECOND PART OF THE ANALYSIS, I  
16 DO BELIEVE THAT YOU HAVE NOT SHOWN EVIDENCE, FACTS OF  
17 MISCONDUCT. AND I THINK I DESCRIBED THAT IN EACH OF THE AREAS  
18 THAT YOU'VE IDENTIFIED, AND I HAVE TO GO BACK AND --

19 MR. VARTAIN: YOU DID, YOUR HONOR --

20 THE COURT: I THINK I DID.

21 MR. VARTAIN: -- AND I ACKNOWLEDGE THAT.

22 THE COURT: MR. LEBOWITZ, IT'S ALWAYS SAFER TO LET IT  
23 IN, CONSIDER IT, AND NOT HAVE THE COURT OF APPEAL SEND IT BACK  
24 TO ME TO CONSIDER THE EVIDENCE. IT WAS A CLOSE CALL. I THINK

25 THE CASES THAT YOU CITED, AND I THOUGHT ACCURATELY, INDICATED  
26 THAT WHEN THE EVIDENCE DOES NOT POINT TO MISCONDUCT, IT'S NOT

1399

1 EVEN ADMISSIBLE. AND YOU CITED JUSTICE MOSK'S CONCURRING  
2 DECISION, WHICH IS ELOQUENT, AS ALWAYS. I GUESS I COULD BE  
3 PERSUADED EITHER WAY. ANY THOUGHTS ON THAT?

4 MR. LEBOWITZ: NO. I THINK IT'S IMPORTANT TO ALLOW  
5 THE RULING TO STAND AND TO ALLOW THE OBJECTIONS TO BE SUSTAINED.  
6 BECAUSE I BELIEVE UNDER THE CASE LAW, BOTH UNDER GELFO -- AND I  
7 DON'T HOW TO PRONOUNCE IT, MESECHER VS. COUNTY OF SAN DIEGO  
8 CASE, WHICH I CITED IN THE PAPERS AND THAT YOUR HONOR CITED IN  
9 THE TENTATIVE, ADDRESS IT REALLY REMARKABLY. COMPARED TO THE  
10 OTHER AREAS WE'VE BEEN DISCUSSING THIS MORNING THAT HAD VERY  
11 LIMITED PRECEDENT IN SOME RESPECTS, THIS IS REMARKABLY KIND OF  
12 ON POINT AS FAR AS WHAT WAS BEING PRESENTED TO THOSE COURTS AND  
13 WHAT WAS PRESENTED TO THIS COURT.

14 MR VARTAIN: SO IN CLOSING, YOUR HONOR, MY LAST  
15 COMMENT ON THE JURY ISSUE IS THAT YOUR HONOR THOUGHT THAT AS TO  
16 THE ISSUE OF STARTING WITH THE DELIBERATIONS FRESH WHEN THE  
17 ALTERNATE JUROR CAME IN, YOU FIRST THOUGHT THAT THERE WAS NOT  
18 ERROR. THERE WAS NOT MISCONDUCT, AND YOU FOUND THAT THERE ALSO  
19 WAS NOT PREJUDICE --

20 THE COURT: THAT'S RIGHT.

21 MR. VARTAIN: -- BECAUSE OF THE REPETITION. THE SAME  
22 QUESTIONS SHOWED UP IN A LATER -- THAT ON ITS FACE MAKES SENSE,

23 BUT WHEN LOOKED AT MORE CAREFULLY IN HOW JURORS DECIDE THINGS,  
24 IF, IN FACT, I'M CORRECT THAT THERE WAS MISCONDUCT, THE FACT  
25 THAT LATER ON THE SAME QUESTIONS WERE ANSWERED WOULD ONLY MEAN  
26 THAT, AS MOST JURIES CAN BE EXPECTED TO DO, ONCE THEY'VE DECIDED

1400

1 A SET OF ISSUES AND THOSE ISSUES REAPPEAR LATER, THEY'RE GOING  
2 TO DECIDE THEM THE SAME WAY. IT DOESN'T MEAN THAT THERE'S A  
3 CURATIVE OPPORTUNITY HERE.

4 THE COURT: I DON'T THINK THAT'S A REASONABLE  
5 INFERENCE.

6 MR. VARTAIN: I THEN WILL SUBMIT IT.

7 THE COURT: AND IN THIS CIRCUMSTANCES, IT WAS  
8 INTERESTING. BECAUSE, CLEARLY, ONCE YOU ESTABLISH MISCONDUCT --  
9 AND I SAID IF IT WAS MISCONDUCT -- AND THERE'S A REBUTTABLE  
10 PRESUMPTION THAT IT IS PREJUDICIAL, IT'S VERY HARD TO REBUT THAT  
11 PRESUMPTION. AND MR. LEBOWITZ ACTUALLY HIT A HOME RUN ON THAT.  
12 I, FRANKLY, WOULDN'T EVEN LOOK AT THOSE OTHER QUESTIONS. I WAS  
13 RELIEVED THAT YOU HAD DONE THAT. I DIDN'T REMEMBER THE LENGTHY  
14 VERDICT FORM WELL ENOUGH TO HAVE MADE THAT CONNECTION. I THEN  
15 WENT BACK AND COMPARED THEM TO EACH OTHER AND THEY WERE  
16 IDENTICAL.

17 AND SO EVEN IF THAT WAS MISCONDUCT, I DO THINK THAT  
18 YOU DID REBUT THE PRESUMPTION OF PREJUDICE, BECAUSE NO JUROR  
19 SAID THEY FAILED TO DELIBERATE ON THE LATER QUESTIONS. AND  
20 MS. MERRISS, OUR PRESIDING JUROR -- I THOUGHT THAT WAS

21 PERSUASIVE. I KNOW TWO OTHER JURORS SAID THEY JUST GALLOPED  
22 RIGHT THROUGH, BUT I FOUND HER PERSPECTIVE ON IT IN HER  
23 DECLARATION TO BE PERSUASIVE AS WELL.

24 ALL RIGHT. ANYTHING ELSE?

25 MR. VARTAIN: NO, YOUR HONOR.

26 THE COURT: MR. LEBOWITZ, ANYTHING YOU'D LIKE TO SAY?

1401

1 MR. LEBOWITZ: NO, YOUR HONOR. THANK YOU.

2 THE COURT: I'M NOT GOING TO ASK FOR FURTHER BRIEFING.

3 MR. VARTAIN, I APPRECIATE THE ARGUMENTS THAT YOU'VE  
4 MADE. BASED ON EVERYTHING THAT I'VE HEARD TODAY -- AND I DID  
5 PUT A SIGNIFICANT AMOUNT OF TIME INTO REVIEWING YOUR PAPERS  
6 BEFORE YOU CAME TODAY. I HOPE THAT THAT WAS EVIDENT -- I AM  
7 PREPARED TO ADOPT MY TENTATIVE RULING IN FULL TODAY AND NOT MAKE  
8 ANY MODIFICATIONS IN IT. WITH THE RULING ON THE JNOV, I DON'T  
9 BELIEVE -- I KNOW THAT THE LAW REQUIRES ME TO WRITE IN MY OWN  
10 HAND AN ORDER GRANTING NEW TRIAL. I DON'T BELIEVE -- AND I DID  
11 WRITE IT.

12 I DO THINK WE NEED FORMAL ORDERS. I THINK MY MINUTE  
13 ORDER IS SUFFICIENT, AND I COULD LET YOU PREPARE -- I GUESS  
14 MR. LEBOWITZ WILL HAVE THE HONOR OF PREPARING THAT. THE OTHER  
15 THING THAT I CAN DO IS TO -- BECAUSE TIMELINES ARE IMPORTANT  
16 HERE. I BELIEVE THAT YOU HAVE ISSUES OF APPEAL THAT RUN FROM MY  
17 DECISION TODAY THAT ARE DIFFERENT THAN WHEN THERE IS NO HEARING  
18 ON MOTION FOR NEW TRIAL IN JNOV.

19 SO I DON'T KNOW WHAT YOU WANT TO DO. I DON'T MAKE THE  
20 DECISION ON WHEN TIMELINES RUN AND WHEN THEY END. THAT IS NOT  
21 BEFORE ME, BUT I WANT TO KNOW WHAT YOU WANT TO DO.

22 MR. VARTAIN: SO, YOUR HONOR, YOU'RE NOT GOING TO TAKE  
23 BACK THE ISSUE OF THE FRONT PAY? IS THAT WHAT I HEAR? DO I  
24 HEAR THAT?

25 THE COURT: THAT'S RIGHT. I'M SATISFIED THAT I'VE  
26 MADE -- I'VE STUDIED THAT AND MADE MY RULING ON IT. AND IT

1402

1 SHOULD GO ON TO THE COURT OF APPEAL, IF THAT'S WHERE IT NEEDS TO  
2 GO.

3 MR. LEBOWITZ: SO IF I UNDERSTAND, THE QUESTION NOW  
4 IS --

5 THE COURT: YOU WANT A FORMAL ORDER OR IS THE MINUTE  
6 ORDER SUFFICIENT?

7 MR. LEBOWITZ: I'M MORE THAN HAPPY TO ALLOW AND  
8 STIPULATE THAT THE TENTATIVE RULING BECOME THE RULING OF THE  
9 COURT, AND THAT SATISFIES THE FORMAL ORDER. IT'S DONE ROUTINELY  
10 IN THIS COURT ON LAW AND MOTION.

11 THE COURT: MAYBE WHAT THE COURT WILL DO IS TO PRINT  
12 IT AND SEND OUT NOTICE OF THE ORDER, AND THAT WAY IT WILL BE  
13 CLEAR. AND I DON'T RE-TYPE IT. I DON'T THINK THERE'S ANY  
14 BENEFIT TO THAT. QUITE OFTEN MINUTE ORDERS SIMPLY SAY "GRANT,"  
15 "DENY." AND THAT'S A LITTLE DIFFICULT. I DID A LITTLE MORE  
16 THAN THAT. WHY DON'T WE DO THAT? WE'LL SEND OUT A NOTICE OF

17 THE ORDER TODAY AND ATTACH THE MINUTE ORDER, WHICH I KNOW YOU'VE  
18 SEEN, BUT WE'LL FORMALLY ATTACH IT AND SEND IT TO BOTH OF YOU.  
19 YOU WILL DETERMINE WHEN THE APPEAL TIMES RUN FROM THAT.

20 MR. VARTAIN: THANK YOU, YOUR HONOR.

21 MR. LEBOWITZ: AND THANK YOU VERY MUCH FOR THE TIME.

22 THE COURT: I WOULD LIKE TO SEE COUNSEL IN CHAMBERS  
23 BRIEFLY.

24 (WHEREUPON, THE MATTER WAS CONCLUDED.)

25

26

1403

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

3 DEPARTMENT NO. 3 HON. BETH LABSON FREEMAN, JUDGE

4

MARCINE BLOUGH, )

5 )

PLAINTIFF, )

6 )

VS. )CASE NO. CIV 465027

7 )

)REPORTER'S CERTIFICATE

MENLO COLLEGE, ET AL.,)

8 )

DEFENDANTS. )

9 \_\_\_\_\_)

10

11

STATE OF CALIFORNIA )

12 ) SS

COUNTY OF SAN MATEO )

13

14



15 I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,  
17 DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1143 THROUGH 1404,  
18 INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE  
19 PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

20

21 DATED: OCTOBER 3, 2011

22

23

24

25

26

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CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER



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4		
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6	(PLAINTIFF'S EXHIBITS NOS. 37, 43 AND 50 WERE ADMITTED INTO EVIDENCE BY STIPULATION BUT WERE NOT IDENTIFIED ON THE RECORD.)	12/12/08
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STATE OF CALIFORNIA )  
                                  ) SS  
COUNTY OF SAN MATEO )

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I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,

17

DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 9,

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INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE

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PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

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DATED: OCTOBER 3, 2011

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CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER

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